

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Bob Allpress**

State of Nebraska)
) ss.
Keya Paha County)

1 **Q: Please state your name.**

2 A: My name is Bob Allpress. I am a member of Allpress Brothers, LLC.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Keya Paha County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Rancher.

1 **Q: If you are you married tell us your spouse's name please?**
2 A: Nancy Allpress.

3 **Q: If you have grandchildren how many do you have?**
4 A: We have three grandsons.

5 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
6 **and or your family?**
7 A. Yes.

8 **Q: For the land that would be affected and impacted by the proposed KXL tar**
9 **sands pipeline give the Commissioners a sense how long the land has been in**
10 **your family and a little history of the land.**

11 A: Allpress Brothers' LLC is a family owned ranch between myself and my two
12 brothers. Our property was homesteaded by the Allpress family in 1886. This
13 makes it one of the oldest, if not oldest, continuously owned homestead, by one
14 family, in Keya Paha County. Currently, my wife and I are the only partners living
15 full time on the ranch.

16 **Q: Do you earn any income from this land?**
17 A: Yes.

18 **Q: Have you depended on the income from your land to support your livelihood**
19 **or the livelihood of your family?**

20 A: Yes.

21 **Q: Have you ever in the past or have you thought about in the future leasing all**
22 **or a portion of your land in question here?**

23 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
24 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
25 all the restrictions and risks and potential negative impacts to farming or ranching
26 operations as opposed to land that did not have those same risks. If I was looking
27 to lease or rent ground I would pay more for comparable non-pipeline land than I
28 would for comparable pipeline land and I think most folks would think the same
29 way. This is another negative economic impact that affects the landowner and the

1 county and the state and will forever and ever should TransCanada's preferred or
2 mainline alternative routes be approved. If they were to twin or closely parallel to
3 Keystone I the vast majority of landowners would be those that already have a
4 pipeline so there would be considerable less new incremental negative impacts.

5 **Q: Do you have similar concerns about selling the land?**

6 A: Well I hope not to have to sell the land in my lifetime but times change and you
7 never know what is around the corner and yes I am concerned that if another piece
8 of ground similar to mine was for sale and it did not have the pipeline and mine
9 did that I would have a lower selling price. I think this would be true for pipeline
10 ground on both the preferred and mainline alternative routes.

11 **Q: What is your intent with your land after you die?**

12 A: Like I said I hope not to have to sell and I hope that it stay in the family for years
13 to come and that it passes to our three grandsons but I have thought about getting
14 out if this risky pipeline were to come through.

15 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
16 Pipeline would cross the land described above and owned by you?**

17 A: Yes.

18 **Q: When you first learned about this possibility what did you think and what did
19 you do next?**

20 A: When we first heard that the KXL pipeline was rerouted and would now cross our
21 property, we went to TransCanada's seminars with an open mind and our concerns.
22 At the first meeting, we expressed our concerns of location of route, as they were
23 not aware of our ranch house, buildings, and five (5) potable water wells. Also
24 explained to them was the unstable terrain, continually shifting river course, and
25 endangered species that exist on the proposed route. When we received no follow
26 up response, we went to their second seminar to get more answers and reiterate
27 our concerns. We left the seminar realizing they were willing to take our concerns
28 into consideration, only if we signed a survey easement. At this point, we knew
29 they did not care about our issues. Their only concern was to secure easements.

1 This is where they told us that if we didn't sign their easement offers, they would
2 go to eminent domain lawsuits to secure the route.

3 **Q: What happened next?**

4 A: Shortly after the last meeting, we spotted strange trucks on the neighbors land and
5 close to our property line. When we approached them, we saw a couple of guys
6 with surveying equipment at our fence, and 3 others, including a man who turned
7 out to be the crew supervisor, exploring an early 1900s abandoned schoolhouse,
8 that was well off the route they were surveying. The supervisor came to the fence
9 line with an apparent attitude. He demanded to know who we were. We told him
10 and informed him that he and his crew had no permission to cross the fence survey
11 on our land. His insolent attitude continued through the conversation. We ended
12 the meeting by enforcing our position by telling them that if we found them on
13 their property, the Keya Paha County sheriff would be called and they would be
14 arrested.

15 **Q: Did you attend any other related meetings that stand out to you?**

16 A: At a later date that year, we attended a "Road Haul" agreement meeting between
17 TransCanada and the Keya Paha County commissioners. We were sitting next to
18 Mark Johnson, TransCanada's construction representative. When my wife told him
19 that she did not want the pipeline on our property and that she would be able to see
20 the desecration less than 200 yards away out her kitchen window, he flippantly
21 told her that was good, as she would be able to make lunch for the construction
22 workers.

23 **Q: Were you or an entity for which you are a member, shareholder, or director**
24 **previously sued by TransCanada Keystone Pipeline, LP?**

25 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
26 petition for condemnation against our land so it could place its proposed pipeline
27 within an easement that it wanted to take from us on our land.

28 **Q: Did you defend yourself and your land in that condemnation action?**

1 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
2 and expenses in our resistance of TransCanada's lawsuit against us.

3 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
4 **incurred?**

5 A: No, they have not.

6 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
7 **property that it wanted to take for its proposed pipeline?**

8 A: The lawsuit against us stated they would take the amount of property that is
9 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
10 and equipment reasonably necessary to operate the pipeline.

11 **Q: Did TransCanada define what they meant by "property that is reasonably**
12 **necessary"?**

13 A: No, they did not.

14 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
15 **property portion of your land?**

16 A: Yes, they did.

17 **Q: Did TransCanada describe what rights it proposed to take related to the**
18 **eminent domain property on your land?**

19 A: Yes, they did.

20 **Q: What rights that they proposed to take did they describe?**

21 A: TransCanada stated that the eminent domain property will be used to "lay, relay,
22 operate, and maintain the pipeline and the plant and equipment reasonably
23 necessary to operate the pipeline, specifically including surveying, laying,
24 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
25 reconstructing, removing and abandoning one pipeline, together with all fittings,
26 cathodic protection equipment, pipeline markers, and all their equipment and
27 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
28 petroleum products, and all by-products thereof."

1 **Q: Prior to filing an eminent domain lawsuit to take your land that**
2 **TransCanada identified, do you believe they attempted to negotiate in good**
3 **faith with you?**

4 A: No, I do not.

5 **Q: Did TransCanada at any time approach you with or deliver to you their**
6 **proposed easement and right-of-way agreement?**

7 A: Yes, they did.

8 **Q: At the time you reviewed TransCanada's easement and right-of-way**
9 **agreement, did you understand that they would be purchasing a fee title**
10 **interest in your property or that they were taking something else?**

11 A: I understood that they proposed to have the power to take both a temporary
12 construction easement that could last for a certain period of time and then also a
13 permanent easement which they described to be 50 feet across or in width, and
14 that would run the entire portion of my property from where a proposed pipeline
15 would enter my property until where it would exit the property.

16 **Q: Is the document included with your testimony here as Attachment No. 3, a**
17 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
18 **Way agreement that they included with their condemnation lawsuit against**
19 **you?**

20 A: Yes, it is.

21 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
22 **and Right-of-Way agreement?**

23 A: Yes, I have.

24 **Q: What is your understanding of the significance of the Easement and Right-of-**
25 **Way agreement as proposed by TransCanada?**

26 A: My understanding is that this is the document that will govern all of the rights and
27 obligations and duties as well as the limitations of what I can and cannot do and
28 how I and any future landowner and any person I invite to come onto my property

1 must behave as well as what TransCanada is and is not responsible for and how
2 they can use my land.

3 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
4 **agreement do you have any concerns about any portions of it or any of the**
5 **language either included in the document or missing from the proposed**
6 **document?**

7 A: Yes, I have a number of significant concerns and worries about the document and
8 how the language included and the language not included potentially negatively
9 impacts my land and thereby potentially negatively impacts my community and
10 my state.

11 **Q: I would like you to walk the Commissioners through each and every one of**
12 **your concerns about TransCanada's proposed Easement and Right-of-Way**
13 **agreement so they can develop an understanding of how that language and**
14 **the terms of that contract, in your opinion, potentially negatively impacts you**
15 **and your land. So, if you can start at the beginning of that document and**
16 **let's work our way through it, okay?**

17 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
18 Easement and Right-of-Way agreement and how it negatively could affect my
19 property rights and my economic interests.

20 **Q. Okay, let's start with your first concern please.**

21 A: The very first sentence talks about consideration or how much money they will
22 pay to compensate me for all of the known and unknown affects and all of the
23 rights I am giving up and for all the things they get to do to my land and for what
24 they will prevent me from doing on my land and they only will pay me one time at
25 the signing of the easement agreement. That is a huge problem.

26 **Q: Explain to the Commissioners why that is a problem.**

27 A: It is not fair to the landowner, the county, or the State. It is not fair to the
28 landowner because they want to have my land forever for use as they see fit so
29 they can make a daily profit from their customers. If I was to lease ground from

1 my neighbor I would typically pay twice a year every year as long as they granted
2 me the rights to use their land. That only makes sense – that is fair. If I was going
3 to rent a house in town I would typically pay monthly, every month until I gave up
4 my right to use that house. By TransCanada getting out on the cheap and paying
5 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
6 revenue collection on the money I would be paid and then pay taxes on and
7 contribute to this state and this country. It is money I would be putting back into
8 my local community both spending and stimulating the local economy and
9 generating more economic activity right here. Instead TransCanada's shareholders
10 keep all that money and it never finds its way to Nebraska.

11 **Q: What is your next concern?**

12 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
13 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
14 limited partnership...” and I have no idea who that really is. I have no idea who is
15 forcing this pipeline on us or who the owners of the entities are, or what are the
16 assets backing this limited partnership, or who the general partner is, or who all
17 the limited partners are, and who makes up the ownership of the these partners or
18 the structure or any of the basic things you would want to know and understand if
19 you would want to do business with such an outfit. According to TransCanada's
20 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
21 liability company called TransCanada Keystone Pipeline GP, LLC is the general
22 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
23 basically nothing. That is really scary since the general partner has the liability but
24 virtually none of the ownership and who knows if it has any other assets.

25 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
26 **percent clear on exactly who could become the owner of over 275 miles of**
27 **Nebraska land?**

28 A: No.

1 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
2 **percent clear on exactly who will be operating and responsible for**
3 **approximately 275 miles of tar sands pipeline underneath and through**
4 **Nebraska land?**

5 A: No.

6 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
7 **and the State of Nebraska of TransCanada's easement terms.**

8 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
9 called "Grantee")..." and this concerns me because it would allow the easement to
10 be transferred or sold to someone or some company or country or who knows what
11 that I don't know and who we may not want to do business with. This pipeline
12 would be a huge asset for TransCanada and if they can sell to the highest bidder
13 that could have terrible impacts upon all of Nebraska depending upon who may
14 buy it and I don't know of any safeguards in place for us or the State to veto or
15 have any say so in who may own, operate, or be responsible for this pipeline in the
16 future.

17 **Q: Do you think that type of uncertainty and lack of control over a major piece**
18 **of infrastructure crossing our State is in the public interest?**

19 A: No, certainly not, in fact, just the opposite.

20 **Q: What's next?**

21 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
22 really concerns me. Why does the easement and right-of-way have to be perpetual
23 and permanent? That is the question myself and my family want an answer to.
24 Perpetual to me is like forever and that doesn't make sense.

25 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

26 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
27 data proving there is a perpetual supply of tar sands. I am not aware in
28 TransCanada's application where it proves there is a perpetual necessity for this
29 pipeline. My understanding of energy infrastructure like wind towers is they have

1 a decommission plan and actually take the towers down when they become
2 obsolete or no longer needed. Nothing manmade lasts forever. My land however
3 will, and I want my family or future Nebraska families to have that land as
4 undisturbed as possible and it is not in my interest or the public interest of
5 Nebraska to be forced to give up perpetual and permanent rights in the land for
6 this specific kind of pipeline project.

7 **Q: Okay, what is your next concern?**

8 A: The easement language includes all these things TransCanada can do and it says
9 "...abandoning in place..." so they can just leave this pipeline under my ground
10 until the end of time just sitting there while they are not using it, but I am still
11 prevented from doing on my land and using my land what I would like. If I owned
12 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
13 there. It doesn't make sense and it scares me and it is not in my interest or the
14 public interest of Nebraska to allow this.

15 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
16 **right?**

17 A: Yes.

18 **Q: So now on the second page of the Easement what are your concerns?**

19 A: Here the Easement identifies a 24-month deadline to complete construction of the
20 pipeline but has caveats that are undefined and ambiguous. The 24-month period
21 starts to run from the moment "actual pipeline installation activities" begin on
22 Landowners property. It appears that TransCanada would define this phrase as
23 needed. It would be wise to explain what types of TransCanada action constitutes
24 "installation activity" For instance, would the placement and storage of an
25 excavator or other equipment on or near the Easement property be an activity or
26 would earth have to be moved before the activity requirement is triggered. This
27 vague phrase is likely to lead to future disputes and litigation that is not in the best
28 interest of the welfare of Nebraska and would not protect property interests. The
29 24-months can also be extended in the case of "force majeure." My understanding

1 is that force majeure is often used to insulate a party to a contract when events
2 occur that are completely out of their control. In TransCanada's easement this is
3 expanded to include "without limitation...availability of labor and materials."
4 Extending this language to labor and materials is problematic because these are
5 two variables that TransCanada does have some or significant control over and to
6 allow extension of the 24-month period over events not truly out of the control of
7 TransCanada and without further provision for compensation for the Landowner is
8 not conducive to protection of property rights.

9 **Q: Okay, what is your next concern?**

10 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
11 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially
12 reasonable costs and expenses" will pay for damages caused but then limits
13 TransCanada's liability to certain circumstances. There is no definition of
14 "commercially reasonable" and no stated right that the Landowner would get to
15 determine the amounts of cost or expense that is "commercially reasonable."
16 TransCanada excepts out from their liability any damages that are caused by
17 Landowner's negligence or the negligence of anyone ever acting on the behalf of
18 Landowner. It is understandable that if the Landowner were to willfully and
19 intentionally cause damages to the pipeline that Landowner should be liable.
20 However, anything short of willful misconduct should be the liability of
21 TransCanada who is subjecting the pipeline on the Landowner and who is making
22 a daily profit from that pipeline. When evaluating the impact on property rights of
23 this provision, you must consider the potentially extremely expensive fight a
24 Landowner would have over this question of whether or not damage was an act of
25 negligence. Putting this kind of potential liability upon the Landowner is
26 incredibly problematic and is detrimental to the protection of property rights. I
27 don't think this unilateral power which I can't do anything about as the landowner
28 is in the best economic interest of the land in question or the State of Nebraska for
29 landowners to be treated that way.

1 **Q: Is there any specific event or example you are aware of that makes this**
2 **concern more real for you?**

3 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
4 Nemaha County, Nebraska landowner farmers who accidentally struck two
5 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
6 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
7 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
8 copy of the Federal Court Complaint is here as **Attachment No. 4.**

9 **Q: What is your next concern with the Easement language?**

10 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
11 they choose unless 1) any Landowner use interferes in any way with
12 TransCanada's exercise of any of its rights within the Easement, or 2)
13 TransCanada decides to take any action on the property it deems necessary to
14 prevent injury, endangerment or interference with anything TransCanada deems
15 necessary to do on the property. Landowner is also forbidden from excavating
16 without prior authorization by TransCanada. So my understanding is that
17 TransCanada will unilaterally determine what Landowner can and can't do based
18 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
19 could also completely deny my request to excavate. Further, TransCanada retains
20 all "privileges necessary or convenient for the full use of the rights" granted to
21 them in the Easement. Again, TransCanada unilaterally can decide to the
22 detriment of the property rights of Landowner what TransCanada believes in
23 necessary or convenient for it. And there is no option for any additional
24 compensation to landowner for any right exercised by TransCanada that leads to
25 the removal of tress or plants or vegetation or buildings or structures or facilities
26 owned by Landowner of any kind. Such undefined and unilateral restrictions and
27 rights without having to compensate Landowner for such further destruction or
28 losses are not conducive to the protection of property rights or economic interest.

29 **Q: What is the next concern you have?**

1 A: The Easement also allows some rights for Landowner but restricts them at the
2 same time and again at the sole and unilateral decision making of TransCanada.
3 TransCanada will determine if the actions of Landowner might in anyway
4 endanger or obstruct or interfere with TransCanada's full use of the Easement or
5 any appurtenances thereon of to the pipeline itself or to their access to the
6 Easement or within the Easement and TransCanada retains the right at any time,
7 whether during growing season or not, to travel "within and along Easement Area
8 on foot or in vehicle or machinery..." Further, at TransCanada's sole discretion it
9 will retain the rights to prevent any landowner activity that it thinks may
10 "unreasonably impair[ed] or interfere[ed] with" TransCanada's use of the Easement
11 Area. Such undefined and unilateral restrictions are not conducive to the
12 protection of property rights or economic interest.

13 **Q: What is the next concern you have with the Easement language?**

14 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
15 Landowner's land any debris of any kind without any input or power of
16 Landowner to demand an alternative method or location of debris disposal. Such
17 unilateral powers would negatively affect Landowners property are not conducive
18 to the protection of property rights or economic interest.

19 **Q: What is the next concern you have with the Easement language?**

20 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
21 "where rock is encountered" mean and why does TransCanada solely get to
22 determine whether or not this phrase is triggered. This phrase could be used to
23 justify installing the pipeline 24 inches beneath the surface. The ability to use this
24 provision to minimal locate the pipeline at a depth of 24 inches could negatively
25 affect Landowners property are not conducive to the protection of property rights.
26 A shallow pipeline is much more likely to become a danger and liability in the
27 future given farming operations and buried irrigation lines and other factors
28 common to the current typical agricultural uses of the land in question impacted
29 by TransCanada's preferred pipeline route.

1 **Q: What is the next concern you have with the Easement language?**

2 A: There are more vague concepts solely at the determination of TransCanada such as
3 “as nearly as practicable” and “pre-construction position” and “extent reasonably
4 possible.” There is nothing here that defines this or provides a mechanism for
5 documenting or memorializing “pre-construction position” so as to minimize
6 costly legal battles or wasted Landowner time attempting to recreate the soil
7 condition on their fields or pasture. Such unilateral powers would negatively affect
8 Landowners property are not conducive to the protection of property rights or
9 economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: TransCanada maintains the unilateral right to abandon the pipeline and all
12 appurtenances thereto in place on, under, across, or through Nebraska land at any
13 time it chooses. There is no provision for Landowner compensation for such
14 abandonment nor any right for the Landowner to demand removal. Such unilateral
15 powers would negatively affect Landowners property are not conducive to the
16 protection of property rights or economic interest.

17 **Q: What is the next concern you have with the Easement language?**

18 A: TransCanada has the power to unilaterally move or modify the location of any
19 Easement area whether permanent or temporary at their sole discretion.
20 Regardless, if Landowner has taken prior steps relative to their property in
21 preparation or planning of TransCanada’s taking of the initial easement area(s),
22 the language here does not require TransCanada to compensate the Landowner if
23 they decide to move the easement anywhere on Landowners property. Such
24 unilateral powers would negatively affect Landowners property are not conducive
25 to the protection of property rights or economic interests.

26 **Q: What is the next concern you have with the Easement language?**

27 A: The Easement requires that all of the burdens and restrictions upon Landowner to
28 transfer and be applicable to an future owner of the Land in question without the

1 ability of the future Landowner to modify or negotiate any of the language in
2 question to which it will be held to comply.

3 **Q: What is the next concern you have with the Easement language?**

4 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
5 Easement to any person, company, country, etc. at their sole discretion at any time
6 to anyone. This also means that any buyer of the easement could do the same to a
7 third buyer and so on forever. There is no change of control or sale provision in
8 place to protect the Landowner or Nebraska or to provide compensation for such
9 change of control or ownership. It is not conducive to the protection of property
10 rights or economic interests to allow unilateral unrestricted sale of the Easement
11 thereby forcing upon the Landowner and our State a new unknown Easement
12 owner.

13 **Q: What is the next concern you have with the Easement language?**

14 A: There are many terms in the Easement that are either confusing or undefined terms
15 that are without context as to whether or not the Landowner would have any say
16 so in determining what these terms mean or if the evaluation is solely in
17 TransCanada's control. Some of these vague undefined terms are as follows:

- 18 i. "pipeline installation activities"
- 19 ii. "availability of labor and materials"
- 20 iii. "commercially reasonable costs and expenses"
- 21 iv. "reasonably anticipated and foreseeable costs and expenses"
- 22 v. "yield loss damages"
- 23 vi. "diminution in the value of the property"
- 24 vii. "substantially same condition"
- 25 viii. "an actual or potential hazard"
- 26 ix. "efficient"
- 27 x. "convenient"
- 28 xi. "endangered"
- 29 xii. "obstructed"

- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada’s proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline’s impact upon you and your land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

1 **Q: Did TransCanada ever offer you financial compensation for the rights that**
2 **they sought to obtain in your land, and for what they sought to prevent you**
3 **and any future land owner of your property from doing in the future?**

4 A: Yes, we received an offer from them.

5 **Q: As the owner of the land in question and as the person who knows it better**
6 **than anyone else, do you believe that TransCanada offered you just, or fair,**
7 **compensation for all of what they proposed to take from you so that their tar**
8 **sands pipeline could be located across your property?**

9 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
10 offer for all the potential impacts and affects and the rights that I'm giving up, and
11 what I will be prevented from doing in the future and how their pipeline would
12 impact my property for ever and ever.

13 **Q: Has TransCanada at any time offered to compensate you annually, such as**
14 **wind farm projects do, for the existence of their potential tar sands pipeline**
15 **across your property.**

16 A: No, never.

17 **Q: At any time did TransCanada present you with or request that you, as the**
18 **owner of the land in question, sign and execute a document called, "Advanced**
19 **Release of Damage Claims and Indemnity Agreement?"**

20 A: Yes, they did.

21 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
22 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

23 A: Yes, it is.

24 **Q: What was your understanding of that document?**

25 A: When I read that document in the plain language of that document, it was my
26 understanding that TransCanada was attempting to pay me a very small amount at
27 that time in order for me to agree to give up my rights to be compensated from
28 them in the future related to any damage or impact they may have upon my

1 property “arising out of, in connection with, or alleged to resulted from
2 construction or surveying over, under or on” my land.

3 **Q: Did you ever sign that document?**

4 A: No, I did not.

5 **Q: Why not?**

6 A; Because I do not believe that it is fair or just to try to get me to agree to a small
7 sum of money when I have no idea how bad the impacts or damages that they, or
8 their contractors, or subcontractors, or other agents or employees, may cause on
9 my land at any time in the future that resulted from the construction or surveying
10 or their activities upon my land.

11 **Q: When you reviewed this document, what did it make you feel?**

12 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
13 shield themselves against known and foreseeable impacts that their pipeline, and
14 the construction of it, would have upon my land. It made me feel that they knew it
15 was in their financial interest to pay me as little as possible to prevent me from
16 ever having the opportunity to seek fair compensation again, and that this must be
17 based upon their experience of unhappy landowners and situations in other places
18 where they have built pipelines.

19 **Q: Has TransCanada ever contacted you and specifically asked you if you
20 thought their proposed location of their proposed pipeline across your land
21 was in your best interest?**

22 A: No, they have not.

23 **Q: Has TransCanada ever contacted you and specifically asked you if you
24 thought their proposed location of their proposed pipeline across your land
25 was in the public interest of the State of Nebraska?**

26 A: No, they have not.

27 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
28 Takings Clause?**

29 A: Yes, I am.

1 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
2 **an American citizens property?**

3 A: My understanding is that, according to the United States Constitution, that if the
4 government is going to take land for public use, then in that case, or by taking for
5 public use, it can only occur if the private land owner is compensated justly, or
6 fairly.

7 **Q: Has TransCanada ever contacted you specially to explain the way in which**
8 **the public could use its proposed Keystone XL Pipeline?**

9 A: No, they have not.

10 **Q: Can you think of any way in which the public, that is the citizens of the State**
11 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
12 **Pipeline, as it dissects the State of Nebraska?**

13 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
14 public benefits from this pipeline in any way, how they can use it any way, or how
15 it's in the public interest in any way. By looking at the map, it is quite clear to me
16 that the only reason it's proposed to come through Nebraska, is that because we
17 are geographically in the way from between where the privately-owned Tar Sands
18 are located to where ~~the~~ TransCanada wants to ship the Tar Sands to refineries in
19 Houston, Texas.

20 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
21 **crude petroleum, or oil and petroleum by-products that you would like to**
22 **ship in its pipeline?**

23 A: No, it has not.

24 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
25 **products that you, at this time or any time in the future, would desire to place**
26 **for transport within the proposed TransCanada Keystone XL Pipeline?**

27 A: No, I do not.

1 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
2 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
3 **products within the proposed TransCanada Keystone XL Pipeline?**

4 A: No, I do not. I've never heard of such a person or company like that.

5 **Q: Do you pay property taxes for the land that would be affected and impacted**
6 **at the proposed TransCanada Keystone XL Pipeline?**

7 A: Yes, I do.

8 **Q: Why do you pay property taxes on that land?**

9 A: Because that is the law. The law requires us to pay the property taxes as the owner
10 of that property.

11 **Q: Because you follow the law and pay property taxes, do you believe you**
12 **deserve any special consideration or treatment apart from any other person**
13 **or company that pays property taxes?**

14 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
15 just what you do.

16 **Q: Do you believe the fact that you pay property taxes entitles you to special**
17 **treatment of any kind, or special rights of any kind?**

18 A: No, of course not.

19 **Q: Do you believe the fact that you pay property taxes on your land would be**
20 **enough to qualify you to have the power of eminent domain to take land of**
21 **your neighbors or other people in your county, or other people across the**
22 **state of Nebraska?**

23 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
24 I expect an award for or any type of special consideration.

25 **Q: Have you at any time ever employed any person other than yourself?**

26 A: Well, yes I have.

27 **Q: Do you believe that the fact that you have, at some point in your life,**
28 **employed one or more other persons entitle you to any special treatment or**

1 **consideration above and beyond any other Nebraskan that has also employed**
2 **one or more persons?**

3 A: No, of course not.

4 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
5 **have at one point employed another person within this state, entitles you to**
6 **preferential treatment or consideration of any kind?**

7 A: No, of course not. If I choose to employ someone that decision is up to me. I
8 don't deserve any special treatment or consideration for that fact.

9 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
10 **crude oil pipeline in its preferred location, or ultimate location across the**
11 **state of Nebraska?**

12 A: Yes, I have significant concerns. TransCanada representatives have made many
13 statements that have turned out to not be true, made threats and conducted
14 coercion, and generally purveyed a condescending attitude towards the
15 landowners' during this whole event. I am aware of landowners being treated
16 unfairly or even bullied around and being made to feel scared that they did not
17 have any options but to sign whatever papers TransCanada told them they had to. I
18 am aware of folks being threatened that their land would be taken if they didn't
19 follow what TransCanada was saying. I am aware of tactics to get people to sign
20 easements that I don't believe have any place in Nebraska or anywhere such as
21 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
22 landowners and convince them they should sign TransCanada's easement
23 agreements. I am aware of older folks and widows or widowers feeling they had
24 no choice but to sign TransCanada's Easement and they didn't know they could
25 fight or stand up for themselves. From a more practical standpoint, I am worried
26 that according to their answer to our Interrogatory No. 211, TransCanada only
27 owns and operates one (1) major oil pipeline. They simply do not have the
28 experience with this type of pipeline and that scares me. There are others but that

1 is what I can recollect at this time and if I remember more or my recollection is
2 refreshed I will share those with the Commissioners at the Hearing in August.

3 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
4 **landowner is reasonable or just?**

5 A: No, I do not.

6 **Q: Do you have any concern about limitations that the construction of this**
7 **proposed pipeline across your affected land would prevent construction of**
8 **future structures upon the portion of your land affected by the proposed**
9 **easement and immediately surrounding areas?**

10 A: Well yes, of course I do. We would not be able to build many, if any, types of
11 structures directly across or touching the easement, and it would be unwise and I
12 would be uncomfortable to build anything near the easement for fear of being
13 blamed in the future should any damage or difficulty result on my property in
14 regards to the pipeline.

15 **Q: Do you think such a restriction would impact you economically?**

16 A: Well yes, of course.

17 **Q: How do you think such a restriction would impact you economically?**

18 A: The future of this land may not be exactly how it's being used as of this moment,
19 and having the restrictions and limiting my ability to develop my land in certain
20 ways presents a huge negative economic impact on myself, my family, and any
21 potential future owner of the property. You have no idea how I or the future owner
22 may want to use this land in the future or the other land across Nebraska
23 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
24 ago it would have been hard to imagine all the advances that we have now or how
25 things change. Because the Easement is forever and TransCanada gets the rights in
26 my land forever we have to think with a very long term view. By placing their
27 pipeline on under across and through my land that prevents future development
28 which greatly negatively impacts future taxes and tax revenue that could have
29 been generated by the County and State but now will not. When you look at the

1 short blip of economic activity that the two years of temporary construction efforts
2 may bring, that is far outweighed by the perpetual and forever loss of opportunity
3 and restrictions TransCanada is forcing upon us and Nebraska.

4 **Q: Do you have any concerns about the environmental impact of the proposed**
5 **pipeline?**

6 A: Yes, I do.

7 **Q: What are some of those concerns?**

8 A: As an affected land owner and Nebraskan, I am concerned that any construction,
9 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
10 a detrimental impact upon the environment of my land specifically, as well as the
11 lands near my land and surrounding the proposed pipeline route.

12 **Q: Do you have other environmental concerns?**

13 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
14 construction and/or maintenance and operation. I am concerned about spills and
15 leaks that TransCanada has had in the past and will have in the future. This could
16 be catastrophic to my operations or others and to my county and the State.

17 **Q: Do you have any thoughts regarding if there would be an impact upon the**
18 **natural resources on or near your property due to the proposed pipeline?**

19 A: Yes, I believe that any construction, operation, and/or maintenance of the
20 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
21 resources of my land, and the lands near and surrounding the proposed pipeline
22 route.

23 **Q: Do you have any worries about potential impacts from the proposed pipeline**
24 **to the soil of your land, or land near you?**

25 A: Yes, I believe that any construction, operation, and/or maintenance of the
26 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
27 land, as well as land along and surrounding the proposed pipeline route. This
28 includes, but is not limited to, the reasons that we discussed above of disturbing
29 the soil composition and makeup as it has ~~and~~ naturally existed for thousands and

1 millions of years during the construction process, and any future maintenance or
2 removal process. I'm gravely concerned about the fertility and the loss of
3 economic ability of my property to grow the crops, or grow the grasses, or grow
4 whatever it is at that time they exist on my property or that I may want to grow in
5 the future, or that a future owner may want to grow. The land will never be the
6 same from as it exists now undisturbed to after it is trenched up for the proposed
7 pipeline.

8 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
9 **upon the groundwater over your land, or surrounding lands?**

10 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
11 the proposed Keystone XL Pipeline would have a detrimental impact upon the
12 groundwater of not only under my land, but also near and surrounding the pipeline
13 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
14 simple and it is simply too valuable to our State and the country to put at
15 unreasonable risk.

16 **Q: Do you have any concern about the potential impact of the proposed pipeline**
17 **upon the surface water on, or near or around your land?**

18 A: Yes, I have significant concerns that any construction, operation, and/or
19 maintenance of the proposed Keystone XL Pipeline would have detrimental
20 impact upon the surface water of not only within my property boundary, but along
21 and near and surrounding the pipeline route, and in fact, across the state of
22 Nebraska.

23 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
24 **upon the wildlife and plants, other than your growing crops on or near your**
25 **land?**

26 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
27 the proposed Keystone XL Pipeline would have a detrimental impact upon the
28 wildlife and the plants, not only not only that are located on or can be found upon
29 my land, but also near and along the proposed pipeline route.

1 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
2 **fair market value of your land?**

3 A: Yes, I do. I am significantly concerned about how the existence of the proposed
4 pipeline underneath and across and through my property will negatively affect the
5 fair market value at any point in the future, especially at that point in which I
6 would need to sell the property, or someone in my family would need to sell the
7 property. I do not believe, and certainly would not be willing to pay, the same
8 price for land that had the pipeline located on it, versus land that did not. I hope
9 there is never a point where I'm in a position where I have to sell and have to
10 realize as much value as I can out of my land. But because it is my single largest
11 asset, I'm gravely concerned that the existence of the proposed Keystone XL
12 Pipeline upon my land will affect a buyer's willingness to pay as much as they
13 would've paid and as much as I could've received, if the pipeline were not upon
14 my property. There are just too many risks, unknowns, impacts and uncertainties,
15 not to mention all of the rights you give up by the nature of having the pipeline
16 due to having the easement that we have previously discussed, for any reasonable
17 person to think that the existence of the pipeline would not negatively affect my
18 property's value.

19 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
20 **testimony?**

21 A: Yes, I have.

22 **Q: Where have you seen that before?**

23 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
24 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
25 believe the portion of the alternative route in Nebraska essentially twins or
26 parallels Keystone I.

27 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
28 **Application, and as found on Attachment No. 7, here to your testimony, is in**
29 **the public interest of Nebraska?**

1 A: No, I do not.

2 **Q: Do you believe that the Keystone mainline alternative route as shown on**
3 **Attachment No. 7 included with your testimony here is a major oil pipeline**
4 **route that is in the public interest of Nebraska?**

5 A: No, I do not.

6 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
7 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
8 **your testimony, is in the public interest of Nebraska?**

9 A: No, I do not.

10 **Q: Do you believe there is any potential route for the proposed Keystone XL**
11 **Pipeline across, within, under, or through the State of Nebraska that is in the**
12 **public interest of the citizens of Nebraska?**

13 A: No, I do not.

14 **Q: Why do you hold that belief?**

15 A: Because there simply is no public interest based on all of the factors that I am
16 aware and that I have read and that I have studied that this Commission is to
17 consider that would establish that a for-profit foreign-owned pipeline that simply
18 crosses Nebraska because we are geographically in the way between where tar
19 sands are in Canada to where it wants to ship it to in Texas could ever be in the
20 public interest of Nebraskans. We derive no benefit from this project. It is not for
21 public use. Nebraska is simply in the way and when all considerations are taken in
22 there is no net benefit of any kind for Nebraska should this project be placed in our
23 state. Even if there was some arguable “benefit” it is not enough to outweigh all
24 the negative impacts and concerns.

25 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
26 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
27 **of Nebraska because it may bring temporary jobs during the construction**
28 **phase to Nebraska?**

1 A: First of all, not all jobs are created equally. Most jobs that are created, whether
2 temporary or on a permanent basis, don't come with a project that has all the
3 potential and foreseeable negative impacts, many of which we have discussed here
4 and other witnesses throughout the course of this hearing have and will discuss. If
5 I decide to hire and employ someone to help me out in my farming or ranching
6 business, I've created a job but I haven't done so at the risk or detrimental impact
7 to my land or my town or my county or my state. And I've hired someone who is
8 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
9 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
10 jobs are not created equal. Additionally, I understand from what I'm familiar with
11 from TransCanada's own statements that the jobs numbers they originally touted
12 were determined to be a minute fraction of the permanent jobs that had been
13 projected. According to their answer to our Interrogatory No. 191, TransCanada
14 has created only thirty-four (34) jobs within Nebraska working specifically on
15 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
16 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
17 Further, according to their answer to Interrogatory No. 199, TransCanada would
18 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
19 constructed on its Preferred Route or its Mainline Alternative Route.

20 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
21 **because it would cross your land?**

22 A: No, absolutely not. I am opposed to this project because it is not in the public
23 interest, neither within my community nor within our state.

24 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
25 **was to cross someone else's land?**

26 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
27 the fear and anxiety and potential foreseeable risks and negative impacts that this
28 type of a project carrying this type of product brings foisted upon anyone in this
29 state or any other state.

1 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
2 **Pipeline to cross the state of Nebraska?**

3 A: I don't believe there is an intelligent route because as I have stated I don't believe
4 this project anywhere within Nebraska is within the public interest. However, if
5 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
6 had to go somewhere in the state of Nebraska, the only intelligent route I believe
7 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
8 preferred route and the mainline alternative routes are economic liabilities our
9 state cannot risk.

10 **Q: What do you rely upon to make that statement?**

11 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
12 already exists in that area is reason enough as it is not in our best interest or the
13 public interests to have more major oil pipelines crisscrossing our state. Second,
14 they have all the infrastructure already there in terms of relationships with the
15 counties and local officials and first responders along that route. Third, they have
16 already obtained easements from all the landowners along that route and have
17 relationships with them. Fourth, that route avoids our most sensitive soils, the
18 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
19 Aquifer. Sixth, they have already studied that route and previously offered it as an
20 alternative. Seventh, it just makes the most sense that as a state we would have
21 some intelligent policy of energy corridors and co-locating this type of
22 infrastructure near each other.

23 **Q: Do you have any other concerns or comments you would like to reiterate or**
24 **can think of at this time you would like the Commissioners to understand?**

25 A: Yes. Two years ago they legally abandoned the filed eminent domain proceedings,
26 after President Obama denied the border crossing permit. Two years now we have
27 been in litigation to recover expenses granted by Nebraska State law. TransCanada
28 has done nothing but drag out not living up to their obligation. TransCanada is not,

1 and has proven time after time that they are bad actors and will never be a good
2 neighbor for Nebraska's landowner.

3 **Q: What else?**

4 A: INADEQUATE SITING INVESTIGATION - The company TransCanada hired to
5 devise the alternate route map was seriously deficient in their selection. In my
6 Federal Government days, we would have called this a "pencil whipped" product.
7 They drew a line on the map that, to them, looked to be the least populated and
8 most direct route for their client. Their proposed route took them directly through
9 a neighbor's house. When informed of my brother's and our two houses and 5
10 domestic wells, TransCanada's maps did not show our residences, nor wells. Their
11 proposal, "Authorize us to survey your property and we will talk about it!"

12 **Q: What else concerns you?**

13 A: UNSTABLE GROUND ON THE ROUTE - Their proposed route crosses many
14 hills and ridges on the north drainage for the Keya Paha River. These hills and
15 ridges are composed of rotted shale over a hard shale pan. TransCanada
16 representatives were notified of, and ignored, this landowner input. Within one
17 mile of the route across our land are 8 different ridges. Of these 8, 5 have visible
18 evidence of past or recent slides comprising hundreds of square yards of moved
19 earth. Fear of the same thing that happened in North Dakota is real as a slide broke
20 the pipeline there and contaminated the Little Missouri River. Below is an excerpt
21 from the Bismark Tribune:

22 BISMARCK TRIBUNE March 31, 2017

23 BELFIELD, N.D. – The Belle Fourche Pipeline system that contaminated a
24 tributary of the Little Missouri River is in a landslide-prone area and vulnerable to
25 future spills, federal pipeline regulators say. A document from the Pipeline and
26 Hazardous Materials Safety Administration shows that regulators believe the
27 pipeline company may have experienced other spills in southwest North Dakota
28 that went undetected due to inadequate leak detection monitoring and unstable
29 terrain. The agency issued a corrective action order to Belle Fourche Pipeline Co.,

1 part of True Companies of Wyoming, following the spill discovered Dec. 5 by a
2 landowner northwest of Belfield. The spill, now estimated at 529,830 gallons,
3 three times larger than an earlier estimate and one of the most significant in North
4 Dakota history, contaminated about 5 miles of Ash Coulee Creek, which flows
5 into the Little Missouri River. The cause of the spill is under investigation, but the
6 company points to the slumping of a hillside in the rugged Badlands terrain where
7 the pipeline break occurred."

8 **Q: What else concerns you?**

9 A: REDUCED LAND VALUE - When land comes up for sale in our area, one of the
10 first questions asked of the realtors is whether the land is on the pipeline route.
11 Bidders are making their decisions based on if the land carries the pipeline risk.
12 Fewer bidders lower the value of the land sales.

13 **Q: What else concerns you?**

14 A: ENDANGERED SPECIES - During meetings with TransCanada representatives,
15 they were unaware of a long existing Bald Eagle nest directly on the route path.
16 Since 2013 notification, winds blew down the original nest tree. The eagles moved
17 a short distance and built another nest. This nest is still within the buffer exclusion
18 zone identified in the 2014 FSEIS sections on migratory and Bald and Golden
19 Eagles. The adult eagles use a sentry/guard tree where they sit to protect the nest.
20 This tree will be destroyed by the pipeline construction. American Burying beetles
21 are also present on our land.

22 **Q: What else concerns you?**

23 A: SINK HOLES - For unknown reasons, when land on our ranch is disturbed, large
24 sink holes randomly appear. These sink holes happen suddenly and can be 20 feet
25 across and over 5 feet deep! The pipeline is land disturbing, and these sink holes
26 are a possibility that will break the pipeline.

27 **Q: What else concerns you?**

28 A: NATIVE AMERICAN SACRED SITES - Two different, pre-1900 Native
29 American encampment sites, probable burial grounds, and sacred prayer sites have

1 been identified by Ponca TIPO representatives. They are either directly on the
2 pipeline route and/or within yards of the pipeline route.

3 **Q: What else concerns you?**

4 A: INCOME IMPACT - Our land footprint is a north/south oriented rectangle. The
5 proposed route bisects our land from the northwest corner to the southeast corner.
6 Half of our land will be on one side and half on the other side. The route will
7 destroy our only heavy equipment crossing on Alkali Creek. Cattle in the pastures
8 will be unable to get to the water tank and shade trees. We will be unable to reach
9 tilled fields for crop production. The pipeline will impede access to valuable hay
10 fields needed to produce winter feed for the cattle. The pipeline will traverse up
11 slope of 5 potable water wells on our ranch. A leak into the river bottom land,
12 where these wells are located, will permeate the deposited fine sands and destroy
13 our only water source.

14 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
15 **like the Public Service Commissioners to consider in their review of**
16 **TransCanada's Application?**

17 A: No, I have not. I have shared that which I can think of as of the date I signed this
18 document below but other things may come to me or my memory may be
19 refreshed and I will add and address those things at the time of the Hearing in
20 August and address any additional items at that time as is necessary. Additionally,
21 I have not had an adequate amount of time to receive and review all of
22 TransCanada's answers to our discovery and the discovery of others so it was
23 impossible to competently and completely react to that in my testimony here and I
24 reserve the right to also address anything related to discovery that has not yet
25 concluded as of the date I signed this document below. Lastly, certain documents
26 requested have not yet been produced by TransCanada and therefore I may have
27 additional thoughts on those I will also share at the hearing as needed.

1 **Q: Does Attachment No. 8 here contain other documents you are competent to**
2 **speak about that you wish to be part of your testimony and to discuss in more**
3 **detail as needed at the August 2017 Hearing?**

4 A: Yes. I have included pictures of hills within one mile of the proposed route that
5 have slid/slumped. I have pictures of different hills that have done this. I also have
6 pictures of the eagle's nest, an adult eagle in a "guard tree" that will be removed by
7 TC and pictures of large sink holes that occur on our land when the soil is
8 disturbed.

9 **Q: What is it that you are requesting the Public Service Commissioners do in**
10 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
11 **across Nebraska?**

12 A: I am respectfully and humbly requesting that the Commissioners think far beyond
13 a temporary job spike that this project may bring to a few counties and beyond the
14 relatively small amount of taxes this proposed foreign pipeline would possibly
15 generate. And, instead think about the perpetual and forever impacts of this
16 pipeline as it would have on the landowners specifically, first and foremost, but
17 also thereby upon the entire state of Nebraska, and to determine that neither the
18 preferred route nor the Keystone mainline alternative route are in the public
19 interest of the citizens of the state of Nebraska. And if the Commissioners were
20 inclined to modify TransCanada's proposed routes and were to be inclined to grant
21 an application for a route in Nebraska, that the only potential route that would
22 make any intelligent sense whatsoever would be twinning or near paralleling of
23 the proposed KXL with the existing Keystone I pipeline. It simply does not make
24 sense to add yet another major oil pipeline crisscrossing our state creating new
25 pumping stations, creating new impacts on additional counties and communities
26 and going through all of the court processes with myself and other landowners like
27 me when this applicant already has relationships with the landowners, the towns
28 and the communities along Keystone I, and that Keystone I is firmly outside of the

1 sand hills and a significantly further portion away from the heart of the Ogallala
2 Aquifer than the preferred route or the Keystone mainline alternative route.

3 **Q: Are all of your statements in your testimony provided above true and**
4 **accurate as of the date you signed this document to the best of your**
5 **knowledge?**

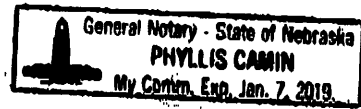
6 **A: Yes, they are.**

7 **Q: Thank you, I have no further questions at this time and reserve the right to**
8 **ask you additional questions at the August 2017 Hearing.**


Bob Allpress, Allpress Brothers, LLC

Subscribed and Sworn to me before this 24th day of May, 2017.


Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.

S.011
T.034N
R.017W

S.012
T.034N
R.017W

S.014
T.034N
R.017W

S.013
T.034N
R.017W

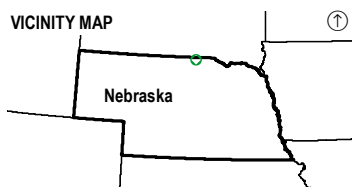
Allpress Brothers, LLC

S.024
T.034N
R.017W

S.019
T.034N
R.016W

IMAGERY: NAIP 2016

0 250 500 1,000 1,500 Feet



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Allpress Brothers, LLC

TRACT NO. ML-NE-KP-40640.000
STATE: Nebraska
COUNTY: Keya Paha
SECTION: 013
TOWNSHIP: 034N
RANGE: 017W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\5038\KEYSTONE_XL\5002_09\95383

PREPARED BY
exp Energy Services Inc.

S.014
T.034N
R.017W

S.013
T.034N
R.017W

Allpress Brothers., LLC

S.024
T.034N
R.017W

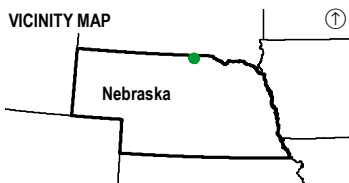
S.019
T.034N
R.016W

IMAGERY: NAIP 2016

0 250 500 1,000 1,500 Feet






 **TransCanada**
In business to deliver

VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Allpress Brothers., LLC

TRACT NO. ML-NE-KP-40660.000
STATE: Nebraska
COUNTY: Keya Paha
SECTION: 024
TOWNSHIP: 034N
RANGE: 017W

 Proposed Centerline
 Perm. Easement
 Temp. Easement
 Property Line
 Section Line

Attachment No. 2









Attachment No. 3

Prepared by and after recording

please return to:

TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-KP-40640.000
ML-NE-KP-40660.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Allpress Brothers, LLC**, whose mailing address is 14566 42nd Street, Plattsmouth, NE 68048 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through

a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Keya Paha, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 551.05 acres, more or less, situated in the County of Keya Paha, in the State of Nebraska, being further described as the W1/2 NE1/4; N1/2 NW1/4; SE1/4 NW1/4; SE1/4; E1/2 SW1/4; NW1/4 SW1/4; SW1/4 NW1/4; and Lot 2 of Section 13, Township 34 North, Range 17 West of the 6th P.M., as recorded in Book 42, Page 240 in the Deed Records of Keya Paha County, Nebraska; less and except any conveyances heretofore made.

Less and Except: An irregular tract of land located in the SE1/4 of Section 13 and in Government Lot 5 of Section 24 described as follows: Commencing at the Southeast corner of said SE1/4 of Section 13, assuming a bearing of North 00°00'00" East on the East line of said SE1/4 of Section 13; thence South 88°38'25" West, a distance of 1887.29 feet to the true point of beginning; thence North 01°29'29" East, a distance of 335.08 feet; thence North 88°30'31" West, a distance of 650.00 feet; thence South 01°29'29" West, a distance of 335.08 feet; thence South 88°30'31" East, a distance of 650.00 feet to the point of beginning, as recorded in Book 42, Page 655.

A tract of land containing 189.7 acres, more or less, situated in the County of Keya Paha, in the State of Nebraska, being further described as the NE1/4 of the NE1/4, Lots 4, 5, and 6 of Section 24, Township 34 North, Range 17 West of the 6th P.M., as recorded in Book 42, Page 240 in the Deed Records of Keya Paha County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated

and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____
_____, 20____.

GRANTOR(S):

Allpress Brothers, LLC

By: _____

Its: _____

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20____

By _____ of

Allpress Brothers, LLC, on behalf of the corporation.

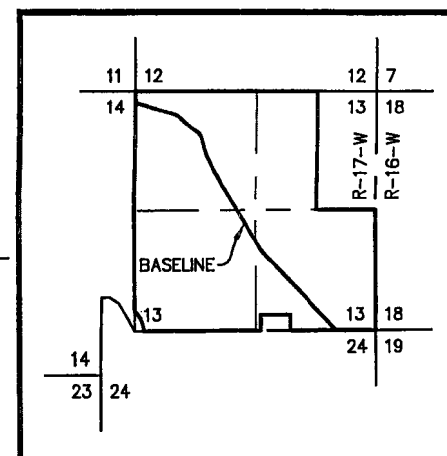
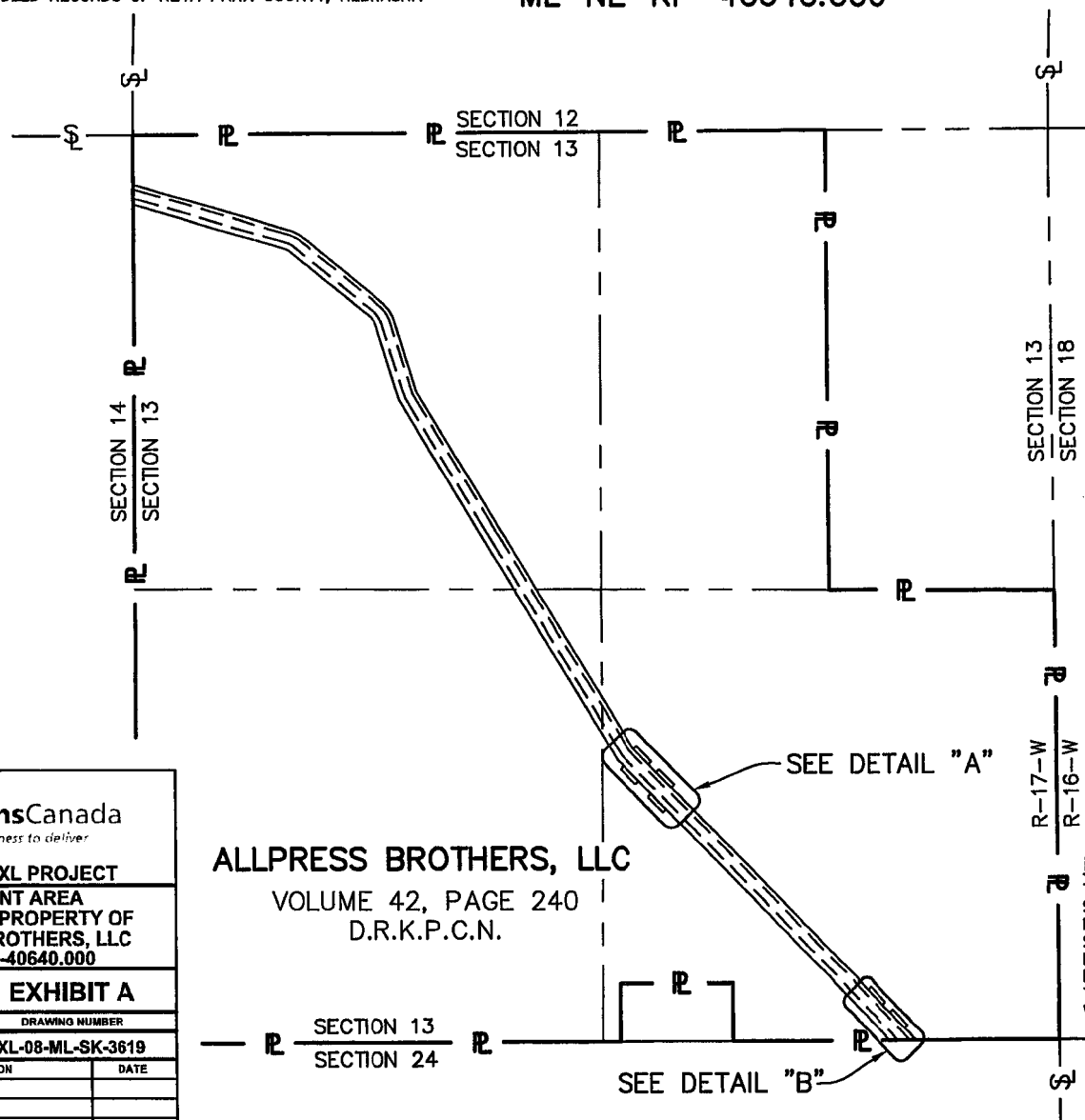
Notary Public Signature

Affix Seal Here

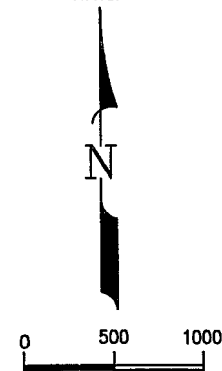
Grantor's Initials _____

ML-NE-KP-40640.000

PROPERTY LINE
SECTION LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF KEYA PAHA COUNTY, NEBRASKA



VICINITY MAP
N.T.S.



SCALE: 1" = 1,000'

TRACT LEGAL DESCRIPTION:
W/2 NE/4, NW/4, NW/4 SW/4,
E/2 SW/4, PART SE/4, LOT 2
OF SECTION 13,
T-34-N, R-17-W

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 6,845'±
 AREA OF PERMANENT EASEMENT: 7.8 ACRES
 AREA OF TEMPORARY WORKSPACE: 9.4 ACRES
 ADDITIONAL TEMPORARY WORKSPACE: 0.4 ACRE



KEYSTONE XL PROJECT

**EASEMENT AREA
ACROSS THE PROPERTY OF
ALLPRESS BROTHERS, LLC
ML-NE-KP-40640.000**

PROJECT: XL		EXHIBIT A	
APPROVED BY		DRAWING NUMBER	
SLR		XL-08-ML-SK-3619	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 1000'	10/27/14	JN	ALS

ALLPRESS BROTHERS, LLC

VOLUME 42, PAGE 240
D.R.K.P.C.N.

- SEE DETAIL "A"

SEE DETAIL "B"—



The new identity of Trow

ML-NE-KP-40640.000

PROPERTY LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY



THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.



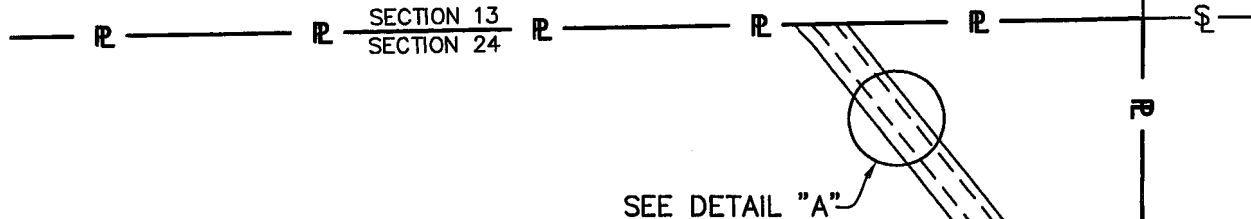
LEGEND
 PL
 §
 PROP.
 P.E.R.W.
 D.R.K.P.C.N.

PROPERTY LINE
 SECTION LINE
 PROPOSED
 PERMANENT EASEMENT & RIGHT OF WAY
 DEED RECORDS OF KEYA PAHA COUNTY, NEBRASKA

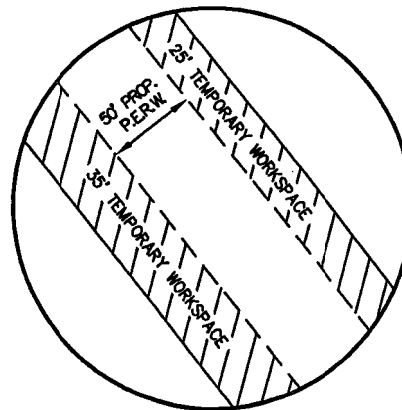
KEYA PAHA COUNTY, NEBRASKA

T-34-N, R-17-W, SECTION 24

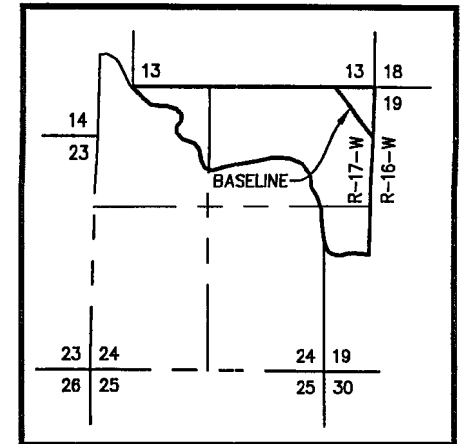
ML-NE-KP-40660.000



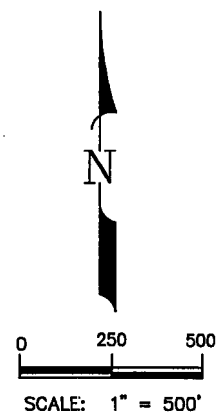
ALLPRESS BROTHERS, LLC
 VOLUME 42, PAGE 240
 D.R.K.P.C.N.



DETAIL "A"
 N.T.S.



VICINITY MAP
 N.T.S.



TRACT LEGAL DESCRIPTION:
 NE/4 NE/4, LOTS 4,5, AND 6
 OF SECTION 24,
 T-34-N, R-17-W

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 1,382'±
 AREA OF PERMANENT EASEMENT: 1.6 ACRES
 AREA OF TEMPORARY WORKSPACE: 2.0 ACRES



KEYSTONE XL PROJECT
 EASEMENT AREA
 ACROSS THE PROPERTY OF
 ALLPRESS BROTHERS, LLC
 ML-NE-KP-40660.000

PROJECT: XL		EXHIBIT A	
APPROVED BY		DRAWING NUMBER	
SLR		XL-08-ML-SK-3620	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/27/14	JN	ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Plaintiff,

v.

RICHARD ANDREW, JANE ANDREW,
LUKE ANDREW, and BRYCE ANDREW,

Defendants.

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-KP-40640.000

I/we Allpress Brothers, LLC, of Cass County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Four Thousand Five Hundred Seventy Six Dollars and No Cents (\$4,576.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Keya Paha, State of Nebraska:

W/2 NE/4, NW/4, NW/4 SW/4, E/2 SW/4, PART SE/4, LOT 2

Section 13, Township 34N, Range 17W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-KP-40660.000

I/we Allpress Brothers, LLC, of Cass County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Nine Hundred Thirty Six Dollars and No Cents (\$ 936.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Keya Paha, State of Nebraska:

NE/4 NE/4, LOTS 4, 5, AND 6

Section 24, Township 34N, Range 17W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6

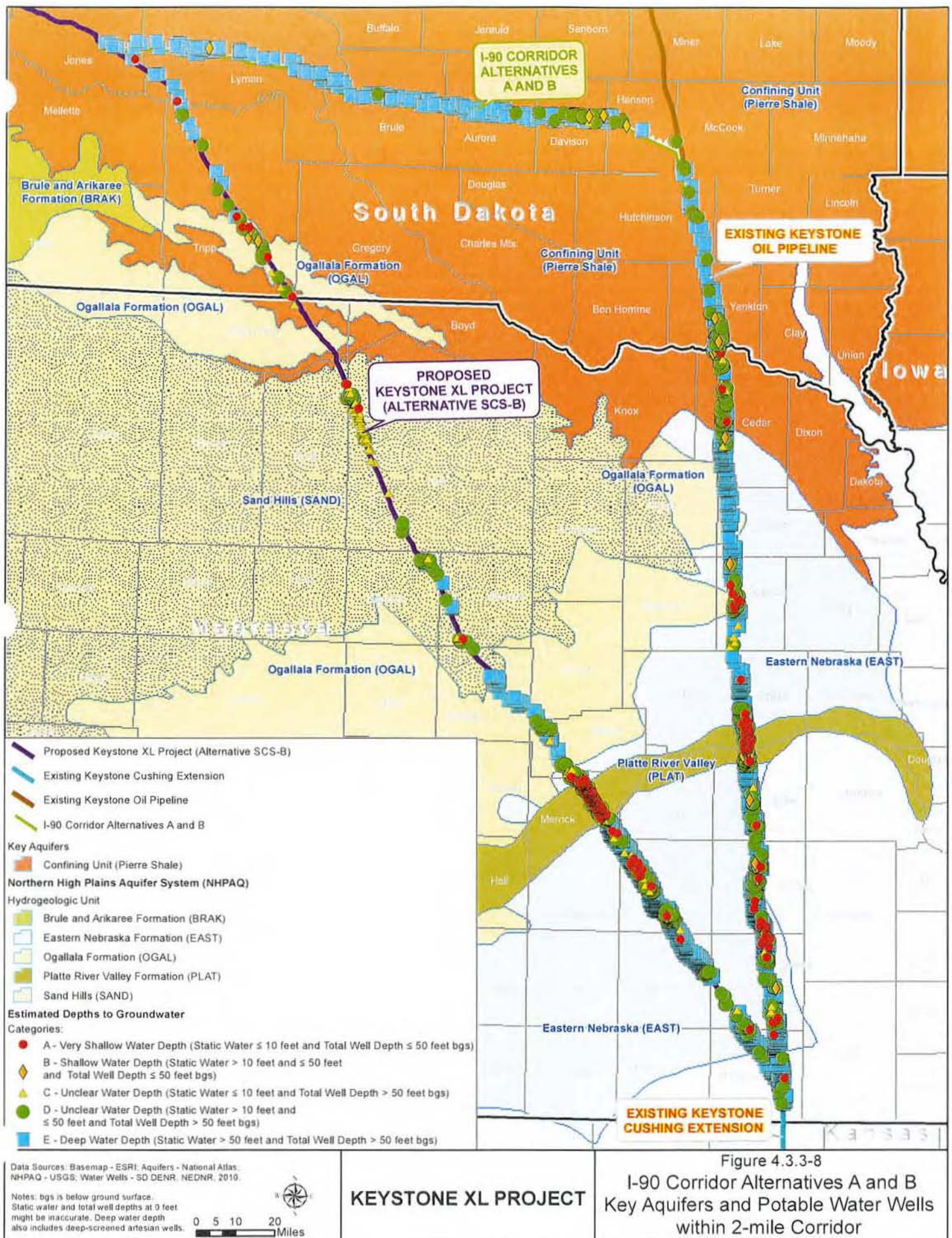


Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor

Attachment No. 7



VICINITY MAP



LEGEND

- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

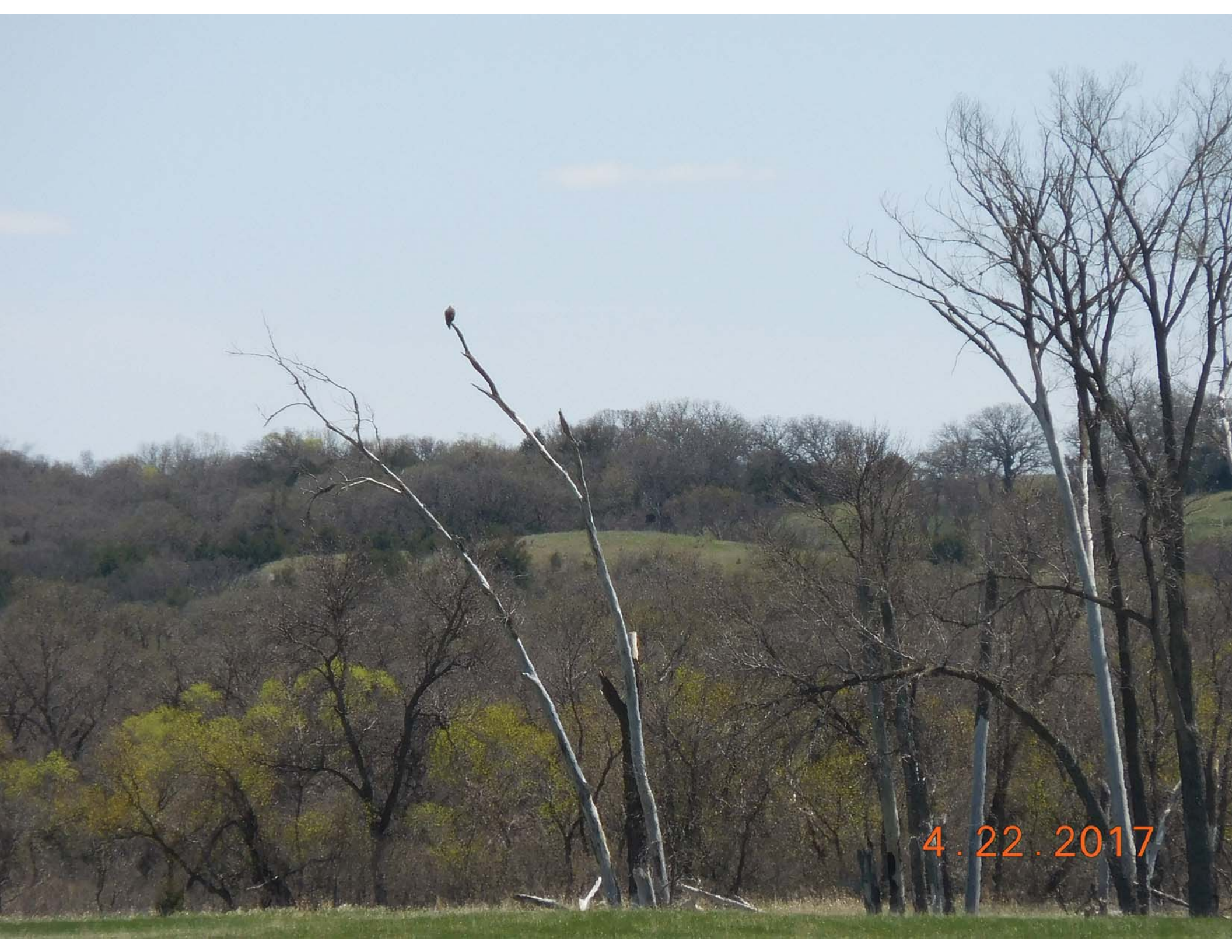
KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Attachment No. 8



4.22.2017



4.22.2017



4.22.2017







4.22.2017



4.22.2017



4.22.2017

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Robert Bartels in
Support of Landowner Intervenors**

State of Nebraska)
) ss.
Saline County)

1 **Q: Please state your name.**

2 A: My name is Robert Bartels.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Saline County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
16 **and or your family?**

1 A: Yes.

2 **Q: Do you earn any income from this land?**

3 A: Yes.

4 **Q: Have you depended on the income from your land to support your livelihood**
5 **or the livelihood of your family?**

6 A: Yes.

7 **Q: Have you ever in the past or have you thought about in the future leasing all**
8 **or a portion of your land in question here?**

9 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
10 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
11 all the restrictions and risks and potential negative impacts to farming or ranching
12 operations as opposed to land that did not have those same risks. If I was looking
13 to lease or rent ground I would pay more for comparable non-pipeline land than I
14 would for comparable pipeline land and I think most folks would think the same
15 way. This is another negative economic impact that affects the landowner and the
16 county and the state and will forever and ever should TransCanada's preferred or
17 mainline alternative routes be approved. If they were to twin or closely parallel to
18 Keystone I the vast majority of landowners would be those that already have a
19 pipeline so there would be considerable less new incremental negative impacts.

20 **Q: Do you have similar concerns about selling the land?**

21 A: Well I hope not to have to sell the land in my lifetime but times change and you
22 never know what is around the corner and yes I am concerned that if another piece
23 of ground similar to mine were for sale and it did not have the pipeline and mine
24 did that I would have a lower selling price. I think this would be true for pipeline
25 ground on both the preferred and mainline alternative routes.

26 **Q: What is your intent with your land after you die?**

27 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
28 to come but I have thought about getting out if this pipeline were to come through.

1 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
2 **Pipeline would cross the land described above and owned by you?**

3 A: Yes.

4 **Q: Were you or an entity for which you are a member, shareholder, or director**
5 **previously sued by TransCanada Keystone Pipeline, LP?**

6 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
7 petition for condemnation against our land so it could place its proposed pipeline
8 within an easement that it wanted to take from us on our land.

9 **Q: Did you defend yourself and your land in that condemnation action?**

10 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
11 and expenses in our resistance of TransCanada's lawsuit against us.

12 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
13 **incurred?**

14 A: No, they have not.

15 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
16 **property that it wanted to take for its proposed pipeline?**

17 A: The lawsuit against us stated they would take the amount of property that is
18 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
19 and equipment reasonably necessary to operate the pipeline.

20 **Q: Did TransCanada define what they meant by "property that is reasonably**
21 **necessary"?**

22 A: No, they did not.

23 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
24 **property portion of your land?**

25 A: Yes, they did.

26 **Q: Did TransCanada describe what rights it proposed to take related to the**
27 **eminent domain property on your land?**

28 A: Yes, they did.

29 **Q: What rights that they proposed to take did they describe?**

1 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
2 operate, and maintain the pipeline and the plant and equipment reasonably
3 necessary to operate the pipeline, specifically including surveying, laying,
4 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
5 reconstructing, removing and abandoning one pipeline, together with all fittings,
6 cathodic protection equipment, pipeline markers, and all their equipment and
7 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
8 petroleum products, and all by-products thereof.”

9 **Q: Prior to filing an eminent domain lawsuit to take your land that**
10 **TransCanada identified, do you believe they attempted to negotiate in good**
11 **faith with you?**

12 A: No, I do not.

13 **Q: Did TransCanada at any time approach you with or deliver to you their**
14 **proposed easement and right-of-way agreement?**

15 A: Yes, they did.

16 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
17 **agreement, did you understand that they would be purchasing a fee title**
18 **interest in your property or that they were taking something else?**

19 A: I understood that they proposed to have the power to take both a temporary
20 construction easement that could last for a certain period of time and then also a
21 permanent easement which they described to be 50 feet across or in width, and
22 that would run the entire portion of my property from where a proposed pipeline
23 would enter my property until where it would exit the property.

24 **Q: Is the document included with your testimony here as Attachment No. 3, a**
25 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
26 **Way agreement that they included with their condemnation lawsuit against**
27 **you?**

28 A: Yes, it is.

1 **Q: Have you had an opportunity to review TransCanada’s proposed Easement**
2 **and Right-of-Way agreement?**

3 A: Yes, I have.

4 **Q: What is your understanding of the significance of the Easement and Right-of-**
5 **Way agreement as proposed by TransCanada?**

6 A: My understanding is that this is the document that will govern all of the rights and
7 obligations and duties as well as the limitations of what I can and cannot do and
8 how I and any future landowner and any person I invite to come onto my property
9 must behave as well as what TransCanada is and is not responsible for and how
10 they can use my land.

11 **Q: After reviewing TransCanada’s proposed Easement and Right-of-Way**
12 **agreement do you have any concerns about any portions of it or any of the**
13 **language either included in the document or missing from the proposed**
14 **document?**

15 A: Yes, I have a number of significant concerns and worries about the document and
16 how the language included and the language not included potentially negatively
17 impacts my land and thereby potentially negatively impacts my community and
18 my state.

19 **Q: I would like you to walk the Commissioners through each and every one of**
20 **your concerns about TransCanada’s proposed Easement and Right-of-Way**
21 **agreement so they can develop an understanding of how that language and**
22 **the terms of that contract, in your opinion, potentially negatively impacts you**
23 **and your land. So, if you can start at the beginning of that document and**
24 **let’s work our way through it, okay?**

25 A: Yes, I’ll be happy to express my concerns about TransCanada’s proposed
26 Easement and Right-of-Way agreement and how it negatively could affect my
27 property rights and my economic interests.

28 **Q. Okay, let’s start with your first concern please.**

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership..." and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
6 **percent clear on exactly who could become the owner of over 275 miles of**
7 **Nebraska land?**

8 A: No.

9 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
10 **percent clear on exactly who will be operating and responsible for**
11 **approximately 275 miles of tar sands pipeline underneath and through**
12 **Nebraska land?**

13 A: No.

14 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
15 **and the State of Nebraska of TransCanada's easement terms.**

16 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow their easement
18 to be transferred or sold to someone or some company or country or who knows
19 what that I don't know and who we may not want to do business with. This
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest
21 bidder that could have terrible impacts upon all of Nebraska depending upon who
22 may buy it and I don't know of any safeguards in place for us or the State to veto
23 or have any say so in who may own, operate, or be responsible for this pipeline in
24 the future.

25 **Q: Do you think that type of uncertainty and lack of control over a major piece**
26 **of infrastructure crossing our State is in the public interest?**

27 A: No, certainly not, in fact, just the opposite.

28 **Q: What's next?**

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
25 **right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

1 TransCanada who is subjecting the pipeline on the Landowner and who is making
2 a daily profit from that pipeline. When evaluating the impact on property rights of
3 this provision, you must consider the potentially extremely expensive fight a
4 Landowner would have over this question of whether or not damage was an act of
5 negligence. Putting this kind of potential liability upon the Landowner is
6 incredibly problematic and is detrimental to the protection of property rights. I
7 don't think this unilateral power which I can't do anything about as the landowner
8 is in the best economic interest of the land in question or the State of Nebraska for
9 landowners to be treated that way.

10 **Q: Is there any specific event or example you are aware of that makes this**
11 **concern more real for you?**

12 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
13 Nemaha County, Nebraska landowner farmers who accidentally struck two
14 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
15 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
16 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
17 copy of the Federal Court Complaint is here as **Attachment No. 4.**

18 **Q: What is your next concern with the Easement language?**

19 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
20 they choose unless 1) any Landowner use interferes in any way with
21 TransCanada's exercise of any of its rights within the Easement, or 2)
22 TransCanada decides to take any action on the property it deems necessary to
23 prevent injury, endangerment or interference with anything TransCanada deems
24 necessary to do on the property. Landowner is also forbidden from excavating
25 without prior authorization by TransCanada. So my understanding is that
26 TransCanada will unilaterally determine what Landowner can and can't do based
27 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
28 could also completely deny my request to excavate. Further, TransCanada retains
29 all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative the their property in
2 preparation or planning of TransCanada's taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at any time
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada's control. Some of these vague undefined terms are as follows:

- 27 i. “pipeline installation activities”
- 28 ii. “availability of labor and materials”
- 29 iii. “commercially reasonable costs and expenses”

- iv. “reasonably anticipated and foreseeable costs and expenses”
- v. “yield loss damages”
- vi. “diminution in the value of the property”
- vii. “substantially same condition”
- viii. “an actual or potential hazard”
- ix. “efficient”
- x. “convenient”
- xi. “endangered”
- xii. “obstructed”
- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

1 **Q: Do you have any other concerns about the Easement language that you can**
2 **think of at this time?**

3 A: I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q: Based upon what you have shared with the Commission above regarding**
6 **TransCanada's proposed Easement terms and agreement, do you believe**
7 **those to be reasonable or just, under the circumstances of the pipeline's**
8 **impact upon you and your land?**

9 A: No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q: Did TransCanada ever offer you financial compensation for the rights that**
12 **they sought to obtain in your land, and for what they sought to prevent you**
13 **and any future land owner of your property from doing in the future?**

14 A: Yes, we received an offer from them.

15 **Q: As the owner of the land in question and as the person who knows it better**
16 **than anyone else, do you believe that TransCanada offered you just, or fair,**
17 **compensation for all of what they proposed to take from you so that their tar**
18 **sands pipeline could be located across your property?**

19 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q: Has TransCanada at any time offered to compensate you annually, such as**
24 **wind farm projects do, for the existence of their potential tar sands pipeline**
25 **across your property.**

26 A: No, never.

27 **Q: At any time did TransCanada present you with or request that you, as the**
28 **owner of the land in question, sign and execute a document called, "Advanced**
29 **Release of Damage Claims and Indemnity Agreement?"**

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
3 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, it is.

5 **Q: What was your understanding of that document?**

6 A: When I read that document in the plain language of that document, it was my
7 understanding that TransCanada was attempting to pay me a very small amount at
8 that time in order for me to agree to give up my rights to be compensated from
9 them in the future related to any damage or impact they may have upon my
10 property “arising out of, in connection with, or alleged to resulted from
11 construction or surveying over, under or on” my land.

12 **Q: Did you ever sign that document?**

13 A: No, I did not.

14 **Q: Why not?**

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small
16 sum of money when I have no idea how bad the impacts or damages that they, or
17 their contractors, or subcontractors, or other agents or employees, may cause on
18 my land at any time in the future that resulted from the construction or surveying
19 or their activities upon my land.

20 **Q: When you reviewed this document, what did it make you feel?**

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
22 shield themselves against known and foreseeable impacts that their pipeline, and
23 the construction of it, would have upon my land. It made me feel that they knew it
24 was in their financial interest to pay me as little as possible to prevent me from
25 ever having the opportunity to seek fair compensation again, and that this must be
26 based upon their experience of unhappy landowners and situations in other places
27 where they have built pipelines.

1 **Q: Has TransCanada ever contacted you and specifically asked you if you**
2 **thought their proposed location of their proposed pipeline across your land**
3 **was in your best interest?**

4 A: No, they have not.

5 **Q: Has TransCanada ever contacted you and specifically asked you if you**
6 **thought their proposed location of their proposed pipeline across your land**
7 **was in the public interest of the State of Nebraska?**

8 A: No, they have not.

9 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
10 **Takings Clause?**

11 A: Yes, I am.

12 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
13 **an American citizens property?**

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 **Q: Has TransCanada ever contacted you specially to explain the way in which**
19 **the public could use its proposed Keystone XL Pipeline?**

20 A: No, they have not.

21 **Q: Can you think of any way in which the public, that is the citizens of the State**
22 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
23 **Pipeline, as it dissects the State of Nebraska?**

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
4 **crude petroleum, or oil and petroleum by-products that you would like to**
5 **ship in its pipeline?**

6 A: No, it has not.

7 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
8 **products that you, at this time or any time in the future, would desire to place**
9 **for transport within the proposed TransCanada Keystone XL Pipeline?**

10 A: No, I do not.

11 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
12 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
13 **products within the proposed TransCanada Keystone XL Pipeline?**

14 A: No, I do not. I've never heard of such a person or company like that.

15 **Q: Do you pay property taxes for the land that would be affected and impacted**
16 **at the proposed TransCanada Keystone XL Pipeline?**

17 A: Yes, I do.

18 **Q: Why do you pay property taxes on that land?**

19 A: Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q: Because you follow the law and pay property taxes, do you believe you**
22 **deserve any special consideration or treatment apart from any other person**
23 **or company that pays property taxes?**

24 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q: Do you believe the fact that you pay property taxes entitles you to special**
27 **treatment of any kind, or special rights of any kind?**

28 A: No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**
2 **enough to qualify you to have the power of eminent domain to take land of**
3 **your neighbors or other people in your county, or other people across the**
4 **state of Nebraska?**

5 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q: Have you at any time ever employed any person other than yourself?**

8 A: Well, yes I have.

9 **Q: Do you believe that the fact that you have, at some point in your life,**
10 **employed one or more other persons entitle you to any special treatment or**
11 **consideration above and beyond any other Nebraskan that has also employed**
12 **one or more persons?**

13 A: No, of course not.

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
15 **have at one point employed another person within this state, entitles you to**
16 **preferential treatment or consideration of any kind?**

17 A: No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q: At the beginning of your statement, you briefly described your property that**
20 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
21 **give the Commissioners a sense of specifically how you believe the proposed**
22 **Keystone XL Pipeline and its preferred route, which proposes to go across**
23 **your land, how it would in your opinion based on your knowledge,**
24 **experience, and background of your land, affect it. So please share with the**
25 **Commissioners the characteristics of your land that you believe is important**
26 **for them to understand, while they evaluate TransCanada's application for a**
27 **route for its proposed pipeline to cross Nebraska and across your land,**
28 **specifically.**

1 A: 1. Will we, as the land owner, be responsible for leaks of pipes in the future. XL
2 has not given a "yes" or "no" answer on this matter.
3 2. Resale of the land is less because of the pipeline through it.
4 3. Who pays the taxes on the easement land?
5 4. The designated route of the pipeline comes within 600-700 ft, of the well of
6 water used for human consumption on the family farm, located at 562 St Hwy. 74,
7 Tobias, NE.
8 5. What happens if XL abandons the pipeline? Who is ultimately responsible for
9 the removal of the pipeline?
10 6. Lack of trust with XL Pipeline after talking with them. We have concerns with
11 threats being used to coerce landowners into selling. Why does it have to decrease
12 in value according to the date XL takes control of the property? We also did not
13 appreciate the pressure to sell to XL that was put on Dorothy Bartels after her
14 husband's death.

15 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
16 **crude oil pipeline in its preferred location, or ultimate location across the**
17 **state of Nebraska?**

18 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
19 or even bullied around and being made to feel scared that they did not have any
20 options but to sign whatever papers TransCanada told them they had to. I am
21 aware of folks being threatened that their land would be taken if they didn't follow
22 what TransCanada was saying. I am aware of tactics to get people to sign
23 easements that I don't believe have any place in Nebraska or anywhere such as
24 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
25 landowners and convince them they should sign TransCanada's easement
26 agreements. I am aware of older folks and widows or widowers feeling they had
27 no choice but to sign TransCanada's Easement and they didn't know they could
28 fight or stand up for themselves. From a more practical standpoint, I am worried
29 that according to their answer to our Interrogatory No. 211, TransCanada only

owns and operates one (1) major oil pipeline. They simply do not have the experience with this type of pipeline and that scares me. There are others but that is what I can recollect at this time and if I remember more or my recollection is refreshed I will share those with the Commissioners at the Hearing in August.

Q: Do you believe TransCanada's proposed method of compensation to you as a landowner is reasonable or just?

A: No, I do not.

Q: Do you have any concern about limitations that the construction of this proposed pipeline across your affected land would prevent construction of future structures upon the portion of your land affected by the proposed easement and immediately surrounding areas?

A: Well yes, of course I do. We would not be able to build many, if any, types of structures directly across or touching the easement, and it would be unwise and I would be uncomfortable to build anything near the easement for fear of being blamed in the future should any damage or difficulty result on my property in regards to the pipeline.

Q: Do you think such a restriction would impact you economically?

A: Well yes, of course.

Q: How do you think such a restriction would impact you economically?

A: The future of this land may not be exactly how it's being used as of this moment, and having the restrictions and limiting my ability to develop my land in certain ways presents a huge negative economic impact on myself, my family, and any potential future owner of the property. You have no idea how I or the future owner may want to use this land in the future or the other land across Nebraska potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years ago it would have been hard to imagine all the advances that we have now or how things change. Because the Easement is forever and TransCanada gets the rights in my land forever we have to think with a very long term view. By placing their pipeline on under across and through my land that prevents future development

1 which greatly negatively impacts future taxes and tax revenue that could have
2 been generated by the County and State but now will not. When you look at the
3 short blip of economic activity that the two years of temporary construction efforts
4 may bring, that is far outweighed by the perpetual and forever loss of opportunity
5 and restrictions TransCanada is forcing upon us and Nebraska.

6 **Q: Do you have any concerns about the environmental impact of the proposed**
7 **pipeline?**

8 A: Yes, I do.

9 **Q: What are some of those concerns?**

10 A: As an affected land owner and Nebraskan, I am concerned that any construction,
11 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
12 a detrimental impact upon the environment of my land specifically, as well as the
13 lands near my land and surrounding the proposed pipeline route.

14 **Q: Do you have any other environmental concerns?**

15 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
16 construction and/or maintenance and operation. I am concerned about spills and
17 leaks that TransCanada has had in the past and will have in the future. This could
18 be catastrophic to my operations or others and to my county and the State.

19 **Q: Do you have any thoughts regarding if there would be an impact upon the**
20 **natural resources on or near your property due to the proposed pipeline?**

21 A: Yes, I believe that any construction, operation, and/or maintenance of the
22 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
23 resources of my land, and the lands near and surrounding the proposed pipeline
24 route.

25 **Q: Do you have any worries about potential impacts from the proposed pipeline**
26 **to the soil of your land, or land near you?**

27 A: Yes, I believe that any construction, operation, and/or maintenance of the
28 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
29 land, as well as land along and surrounding the proposed pipeline route. This

1 includes, but is not limited to, the reasons that we discussed above of disturbing
2 the soil composition and makeup as it has naturally existed for thousands and
3 millions of years during the construction process, and any future maintenance or
4 removal process. I'm gravely concerned about the fertility and the loss of
5 economic ability of my property to grow the crops, or grow the grasses, or grow
6 whatever it is at that time they exist on my property or that I may want to grow in
7 the future, or that a future owner may want to grow. The land will never be the
8 same from as it exists now undisturbed to after it is trenched up for the proposed
9 pipeline.

10 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
11 **upon the groundwater over your land, or surrounding lands?**

12 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
13 the proposed Keystone XL Pipeline would have a detrimental impact upon the
14 groundwater of not only under my land, but also near and surrounding the pipeline
15 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
16 simple and it is simply too valuable to our State and the country to put at
17 unreasonable risk.

18 **Q: Do you have any concern about the potential impact of the proposed pipeline**
19 **upon the surface water on, or near or around your land?**

20 A: Yes, I have significant concerns that any construction, operation, and/or
21 maintenance of the proposed Keystone XL Pipeline would have detrimental
22 impact upon the surface water of not only within my property boundary, but along
23 and near and surrounding the pipeline route, and in fact, across the state of
24 Nebraska.

25 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
26 **upon the wildlife and plants, other than your growing crops on or near your**
27 **land?**

28 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
29 the proposed Keystone XL Pipeline would have a detrimental impact upon the

1 wildlife and the plants, not only that are located on or can be found upon my land,
2 but also near and along the proposed pipeline route.

3 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
4 **fair market value of your land?**

5 A: Yes, I do. I am significantly concerned about how the existence of the proposed
6 pipeline underneath and across and through my property will negatively affect the
7 fair market value at any point in the future, especially at that point in which I
8 would need to sell the property, or someone in my family would need to sell the
9 property. I do not believe, and certainly would not be willing to pay, the same
10 price for land that had the pipeline located on it, versus land that did not. I hope
11 there is never a point where I'm in a position where I have to sell and have to
12 realize as much value as I can out of my land. But because it is my single largest
13 asset, I'm gravely concerned that the existence of the proposed Keystone XL
14 Pipeline upon my land will affect a buyer's willingness to pay as much as they
15 would've paid and as much as I could've received, if the pipeline were not upon
16 my property. There are just too many risks, unknowns, impacts and uncertainties,
17 not to mention all of the rights you give up by the nature of having the pipeline
18 due to having the easement that we have previously discussed, for any reasonable
19 person to think that the existence of the pipeline would not negatively affect my
20 property's value.

21 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
22 **testimony?**

23 A: Yes, I have.

24 **Q: Where have you seen that before?**

25 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
26 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
27 believe the portion of the alternative route in Nebraska essentially twins or
28 parallels Keystone I.

1 **Q: Do you believe that TransCanada’s preferred route as found on page 5 of its**
2 **Application, and as found on Attachment No. 7, here to your testimony, is in**
3 **the public interest of Nebraska?**

4 A: No, I do not.

5 **Q: Do you believe that the Keystone mainline alternative route as shown on**
6 **Attachment No. 7 included with your testimony here is a major oil pipeline**
7 **route that is in the public interest of Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
10 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

11 A: No, I do not.

12 **Q: Do you believe there is any potential route for the proposed Keystone XL**
13 **Pipeline across, within, under, or through the State of Nebraska that is in the**
14 **public interest of the citizens of Nebraska?**

15 A: No, I do not.

16 **Q: Why do you hold that belief?**

17 A: Because there simply is no public interest based on all of the factors that I am
18 aware and that I have read and that I have studied that this Commission is to
19 consider that would establish that a for-profit foreign-owned pipeline that simply
20 crosses Nebraska because we are geographically in the way between where tar
21 sands are in Canada to where it wants to ship it to in Texas could ever be in the
22 public interest of Nebraskans. We derive no benefit from this project. It is not for
23 public use. Nebraska is simply in the way and when all considerations are taken in
24 there is no net benefit of any kind for Nebraska should this project be placed in our
25 state. Even if there was some arguable “benefit” it is not enough to outweigh all
26 the negative impacts and concerns.

27 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
28 **preferred route for its proposed Keystone XL Pipeline is in the public interest**

1 **of Nebraska because it may bring temporary jobs during the construction**
2 **phase to Nebraska?**

3 A: First of all, not all jobs are created equally. Most jobs that are created, whether
4 temporary or on a permanent basis, don't come with a project that has all the
5 potential and foreseeable negative impacts, many of which we have discussed here
6 and other witnesses throughout the course of this hearing have and will discuss. If
7 I decide to hire and employ someone to help me out in my farming or ranching
8 business, I've created a job but I haven't done so at the risk or detrimental impact
9 to my land or my town or my county or my state. And I've hired someone who is
10 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
11 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
12 jobs are not created equal. Additionally, I understand from what I'm familiar with
13 from TransCanada's own statements that the jobs numbers they originally touted
14 were determined to be a minute fraction of the permanent jobs that had been
15 projected. According to their answer to our Interrogatory No. 191, TransCanada
16 has created only thirty-four (34) jobs within Nebraska working specifically on
17 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
18 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
19 Further, according to their answer to Interrogatory No. 199, TransCanada would
20 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
21 constructed on its Preferred Route or its Mainline Alternative Route.

22 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
23 **because it would cross your land?**

24 A: No, absolutely not. I am opposed to this project because it is not in the public
25 interest, neither within my community nor within our state.

26 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
27 **was to cross someone else's land?**

28 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
29 the fear and anxiety and potential foreseeable risks and negative impacts that this

1 type of a project carrying this type of product brings foisted upon anyone in this
2 state or any other state.

3 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
4 **Pipeline to cross the state of Nebraska?**

5 A: I don't believe there is an intelligent route because as I have stated I don't believe
6 this project anywhere within Nebraska is within the public interest. However, if
7 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
8 had to go somewhere in the state of Nebraska, the only intelligent route I believe
9 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
10 preferred route and the mainline alternative routes are economic liabilities our
11 state cannot risk.

12 **Q: What do you rely upon to make that statement?**

13 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
14 already exists in that area is reason enough as it is not in our best interest or the
15 public interests to have more major oil pipelines crisscrossing our state. Second,
16 they have all the infrastructure already there in terms of relationships with the
17 counties and local officials and first responders along that route. Third, they have
18 already obtained easements from all the landowners along that route and have
19 relationships with them. Fourth, that route avoids our most sensitive soils, the
20 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
21 Aquifer. Sixth, they have already studied that route and previously offered it as an
22 alternative. Seventh, it just makes the most sense that as a state we would have
23 some intelligent policy of energy corridors and co-locating this type of
24 infrastructure near each other.

25 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
26 **like the Public Service Commissioners to consider in their review of**
27 **TransCanada's Application?**

28 A: No, I have not. I have shared that which I can think of as of the date I signed this
29 document below but other things may come to me or my memory may be

1 refreshed and I will add and address those things at the time of the Hearing in
2 August and address any additional items at that time as is necessary. Additionally,
3 I have not had an adequate amount of time to receive and review all of
4 TransCanada's answers to our discovery and the discovery of others so it was
5 impossible to competently and completely react to that in my testimony here and I
6 reserve the right to also address anything related to discovery that has not yet
7 concluded as of the date I signed this document below. Lastly, certain documents
8 requested have not yet been produced by TransCanada and therefore I may have
9 additional thoughts on those I will also share at the hearing as needed.

10 **Q: What is it that you are requesting the Public Service Commissioners do in**
11 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
12 **across Nebraska?**

13 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
14 a temporary job spike that this project may bring to a few counties and beyond the
15 relatively small amount of taxes this proposed foreign pipeline would possibly
16 generate. And, instead think about the perpetual and forever impacts of this
17 pipeline as it would have on the landowners specifically, first and foremost, but
18 also thereby upon the entire state of Nebraska, and to determine that neither the
19 preferred route nor the Keystone mainline alternative route are in the public
20 interest of the citizens of the state of Nebraska. And if the Commissioners were
21 inclined to modify TransCanada's proposed routes and were to be inclined to grant
22 an application for a route in Nebraska, that the only potential route that would
23 make any intelligent sense whatsoever would be twinning or near paralleling of
24 the proposed KXL with the existing Keystone I pipeline. It simply does not make
25 sense to add yet another major oil pipeline crisscrossing our state creating new
26 pumping stations, creating new impacts on additional counties and communities
27 and going through all of the court processes with myself and other landowners like
28 me when this applicant already has relationships with the landowners, the towns
29 and the communities along Keystone I, and that Keystone I is firmly outside of the

1 sand hills and a significantly further portion away from the heart of the Ogallala
2 Aquifer than the preferred route or the Keystone mainline alternative route.

3 **Q: Are all of your statements in your testimony provided above true and**
4 **accurate as of the date you signed this document to the best of your**
5 **knowledge?**

6 **A:** Yes, they are.

7 **Q: Thank you, I have no further questions at this time and reserve the right to**
8 **ask you additional questions at the August 2017 Hearing.**

Robert Bartels

Robert Bartels

Subscribed and Sworn to me before this 2nd day of June, 2017.

Betty S. Nickel

Notary Public



Attachment No. 1

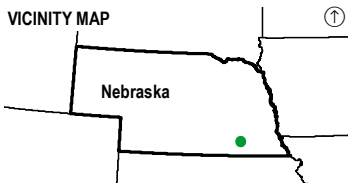


IMAGERY: NAIP 2016

0 250 500 1,000 Feet



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Bartels Farms, Inc.

TRACT NO. ML-NE-SA-00255.000
STATE: Nebraska
COUNTY: Saline
SECTION: 002
TOWNSHIP: 005N
RANGE: 001E

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line



S.002
T.005N
R.001E

S.001
T.005N
R.001E

S.012
T.005N
R.001E

Bartels Farms, Inc.

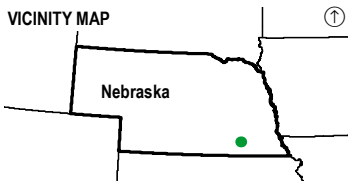
S.011
T.005N
R.001E

IMAGERY: NAIP 2016

0 250 500 1,000 Feet



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Bartels Farms, Inc.

TRACT NO. ML-NE-SA-40000.000
STATE: Nebraska
COUNTY: Saline
SECTION: 011
TOWNSHIP: 005N
RANGE: 001E

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

Attachment No. 2



Attachment No. 3

**Prepared by and after recording
please return to:**
TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-SA-00255.00L
ML-NE-SA-40000.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**"), **Bartels Farms, Inc., a corporation**, whose mailing address is 562 State Highway 74, Tobias, Nebraska 68453 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or

Grantor's Initials _____

through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Saline, State of Nebraska owned by Grantor and described as follows:

A tract containing 76.64 acres, more or less, situated in the County of Saline, in the State of Nebraska, being further described as the S1/2 of the SE1/4 of Section 2, T5N, R1E of the 6th P.M., as recorded in Book 206, Page 36 in the Deed Records of Saline County, Nebraska; less and except any conveyances heretofore made.

Less and Except: A tract of land located in the South Half of the Southeast Quarter of Section 2, Township 5 North, Range 1 East of the 6th P.M., Saline County, Nebraska, described as follows: Beginning at the southeast corner of said Section 2; thence westerly on the South line of the South Half of the Southeast Quarter of said Section 2 a distance of 2,646.8 feet to the southwest corner of said South Half of the Southeast Quarter; thence northerly on the West line of said South Half of the Southeast Quarter a distance of 60.4 feet; thence easterly 89 degrees 55 minutes right a distance of 553.1 feet; thence continuing easterly 12 degrees 33 minutes right a distance of 120.0 feet; thence continuing easterly 14 degrees 02 minutes left a distance of 1,974.8 feet to a point on the East line of said South Half of the Southeast Quarter; thence southerly on said East line a distance of 89.1 feet to the point of beginning, containing 3.72 acres, more or less, which includes 2.05 acres, more or less, previously occupied as a public highway, the remaining 1.67 acres, more or less, being the additional acreage hereby secured, as recorded in Book 112, Page 264.

A tract of land containing 90.32 acres, more or less, situated in the County of Saline, in the State of Nebraska, being further described as a part of the N1/2 of the NE1/4 and approximately 15 acres lying north of the Burlington Northern Railway situated in Section 11, Township 5 North, Range 1 East of the 6th P.M., as recorded in Book 206, Page 36 in the Deed Records of Saline County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock,

bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the

Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation,

inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____
_____, 20____.

GRANTOR(S):

Bartels Farms, Inc., a corporation

By:

Its:

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF NEBRASKA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20____

By _____ of

Bartels Farms, Inc., a corporation, on behalf of the corporation.

Notary Public Signature

Affix Seal Here

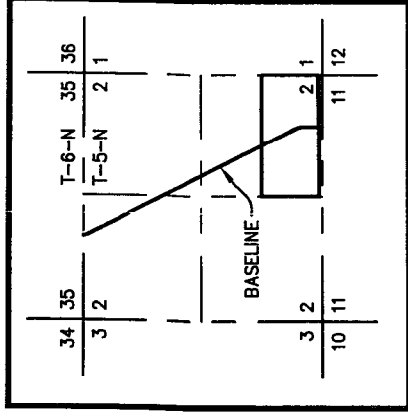
SALINE COUNTY, NEBRASKA

T-5-N, R-1-E, SECTION 2

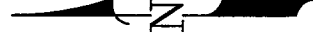
ML-NE-SA-00255.00L

PROPERTY LINE
SECTION LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
A.T.W.S.
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF SALINE COUNTY, NEBRASKA

LEGEND
P
S
PROP.
A.T.W.S.
P.E.R.W.
D.R.S.C.N.



VICINITY MAP
N.T.S.



0 250 500
SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:
PART OF THE S/2 SE/4 OF
SECTION 2, T-5-N, R-1-E

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

BARTELS FARMS, INC.,
A CORPORATION
VOLUME 206, PAGE 36
D.R.S.C.N.

SEE DETAIL "A"

SEE DETAIL "B"

STATE HWY 74

SECTION 2
SECTION 11



KEYSTONE XL PROJECT

EASEMENT AREA
ACROSS THE PROPERTY OF
BARTELS FARMS, INC.,
A CORPORATION
ML-NE-SA-00255.00L

PROJECT: XL EXHIBIT A

APPROVED BY: SLR

DRAWING NUMBER: XL-08-ML-SK-3793

NO. REVISION

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE



TOTAL DISTANCE ACROSS PROPERTY: 1,357'±
AREA OF PERMANENT EASEMENT: 1.6 ACRES
AREA OF TEMPORARY WORKSPACE: 1.9 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.5 ACRE

SHEET 1 OF 2

PB

10/27/14

DATE

CHECKED BY

ALS

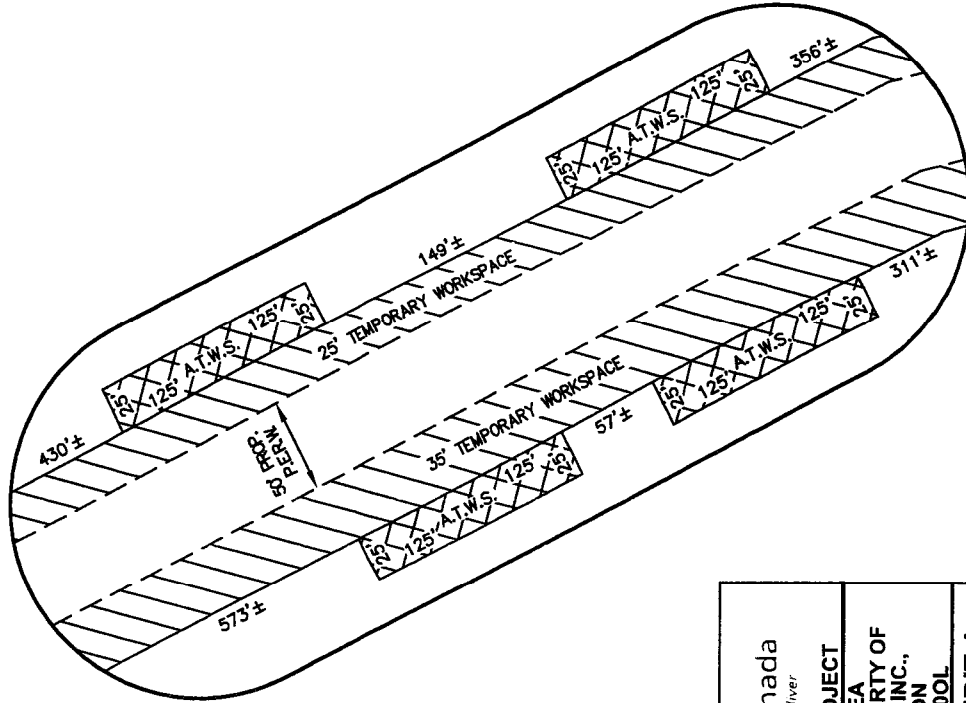
SALINE COUNTY, NEBRASKA

T-5-N, R-1-E, SECTION 2

ML-NE-SA-00255.00L

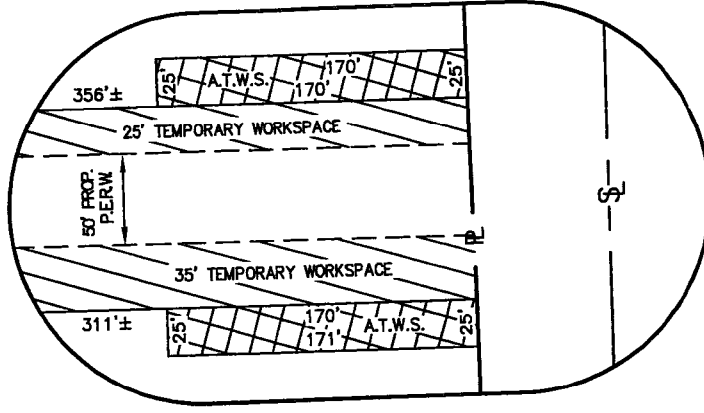
LEGEND

P PROPERTY LINE
 S SECTION LINE
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



DETAIL "A"

N.T.S.



DETAIL "B"

N.T.S.

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.



KEYSTONE XL PROJECT

EASEMENT AREA

ACROSS THE PROPERTY OF

BARTELS FARMS, INC.,

A CORPORATION

ML-NE-SA-00255.00L

PROJECT: XL EXHIBIT A

APPROVED BY: SLR

DRAWING NUMBER: XL-08-ML-SK-3793

NO. REVISION DATE

SCALE: N.T.S.

DATE: 10/27/14

DRAWN BY: PB

CHECKED BY: ALS

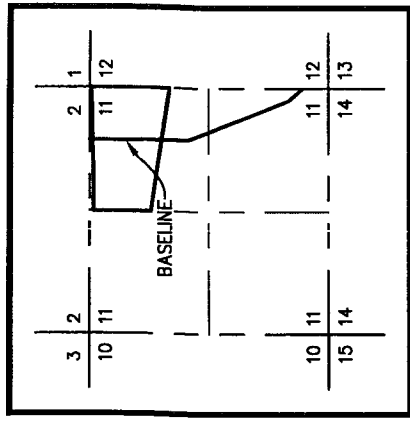
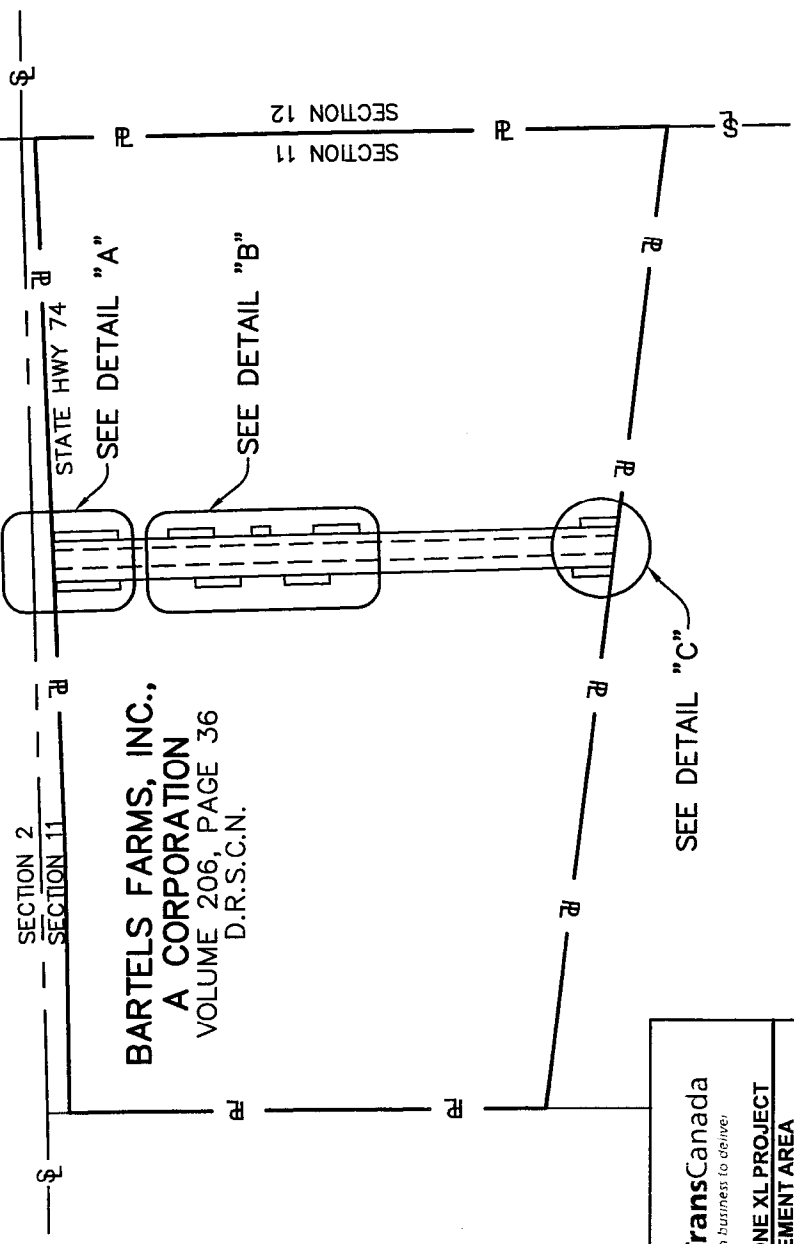


SALINE COUNTY, NEBRASKA

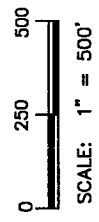
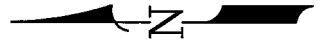
T-5-N, R-1-E, SECTION 11
ML-NE-SA-40000.000

PROPERTY LINE
SECTION LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF SALINE COUNTY, NEBRASKA

LEGEND
P
S
PROP.
A.T.W.S.
P.E.R.W.
D.R.S.C.N.




VICINITY MAP
N.T.S.



TRACT LEGAL DESCRIPTION:
N/2 NE/4, AND APPROXIMATELY 15 ACRES N
OF ROW OF BURLINGTON NORTHERN RAILWAY
OF SECTION 11, T-5-N, R-1-E

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM
STANDARDS FOR PROPERTY BOUNDARY SURVEYS.
IT WAS NOT DERIVED FROM AN ON THE GROUND
SURVEY BUT IS INTENDED FOR RIGHT OF WAY
PURPOSES ONLY. THE EXACT LOCATIONS AND
MEASUREMENTS ARE APPROXIMATE AND MAY
VARY, BUT THE WIDTH OF THE EASEMENT AREA
TO BE ACQUIRED WILL NOT VARY.

		In business to deliver	
KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF BARTELS FARMS, INC., A CORPORATION ML-NE-SA-40000.000			
PROJECT:	XL	EXHIBIT A	
APPROVED BY:	SLR	DRAWING NUMBER:	XL-08-ML-SK-3735
NO.	REVISION	DATE	
SCALE:	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/27/14	PB	ALS







TOTAL DISTANCE ACROSS PROPERTY: 1,545'±
AREA OF PERMANENT EASEMENT: 1.8 ACRES
AREA OF TEMPORARY WORKSPACE: 2.1 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.6 ACRE

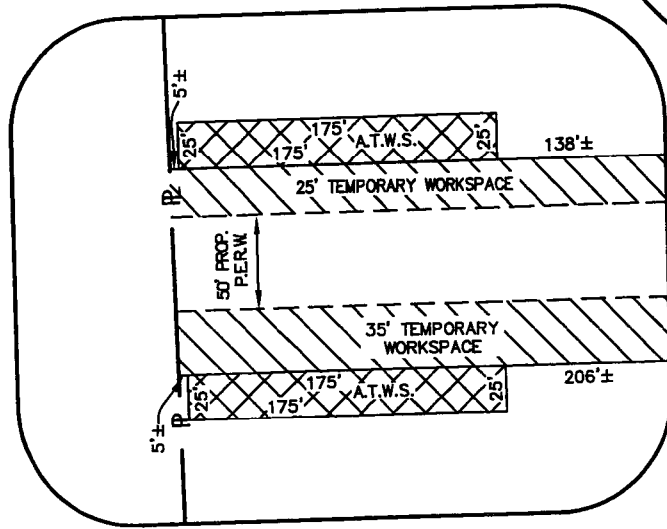
SALINE COUNTY, NEBRASKA

T-5-N, R-1-E, SECTION 11

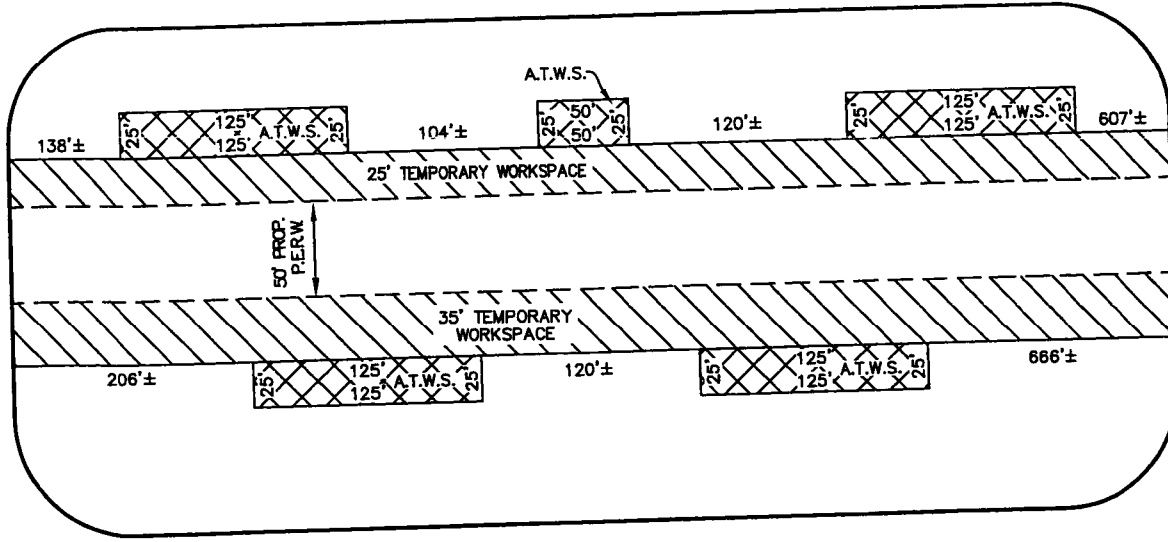
ML-NE-SA-40000.000

LEGEND

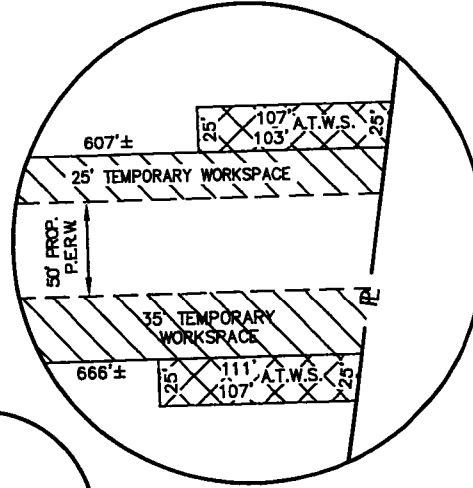
 PROPERTY LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY



DETAIL "A"
N.T.S.




DETAIL "B"
N.T.S.



DETAIL "C"
N.T.S.

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR
 PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON
 THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY
 PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE
 APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT
 AREA TO BE ACQUIRED WILL NOT VARY.

 TransCanada <i>in business to deliver</i>		KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF BARTELS FARMS, INC., A CORPORATION ML-NE-SA-40000.000	
PROJECT:	XL	EXHIBIT A	
APPROVED BY	SLR	DRAWING NUMBER	XL-08-ML-SK-3735
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/27/14	PB	ALS


 The new identity of Tron

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Plaintiff,

v.

RICHARD ANDREW, JANE ANDREW,
LUKE ANDREW, and BRYCE ANDREW,

Defendants.

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-SA-00255.00L

We, Bartels Farms, Inc., of Saline County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand One Hundred Sixty Dollars and No Cents (\$2,160.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Saline, State of Nebraska:

Part of the S/2 SE/4

Section 2, Township 5N, Range 1E

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this day of

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-SA-40000.000

We, Bartels Farms, Inc., of Saline County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Four Hundred Thirty Dollars and No Cents (\$2,430.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Saline, State of Nebraska:

N/2 NE/4, and Approximately 15 Acres N of ROW of Burlington Northern Railway

Section 11, Township 5N, Range 1E

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this day of

_____, 20____.

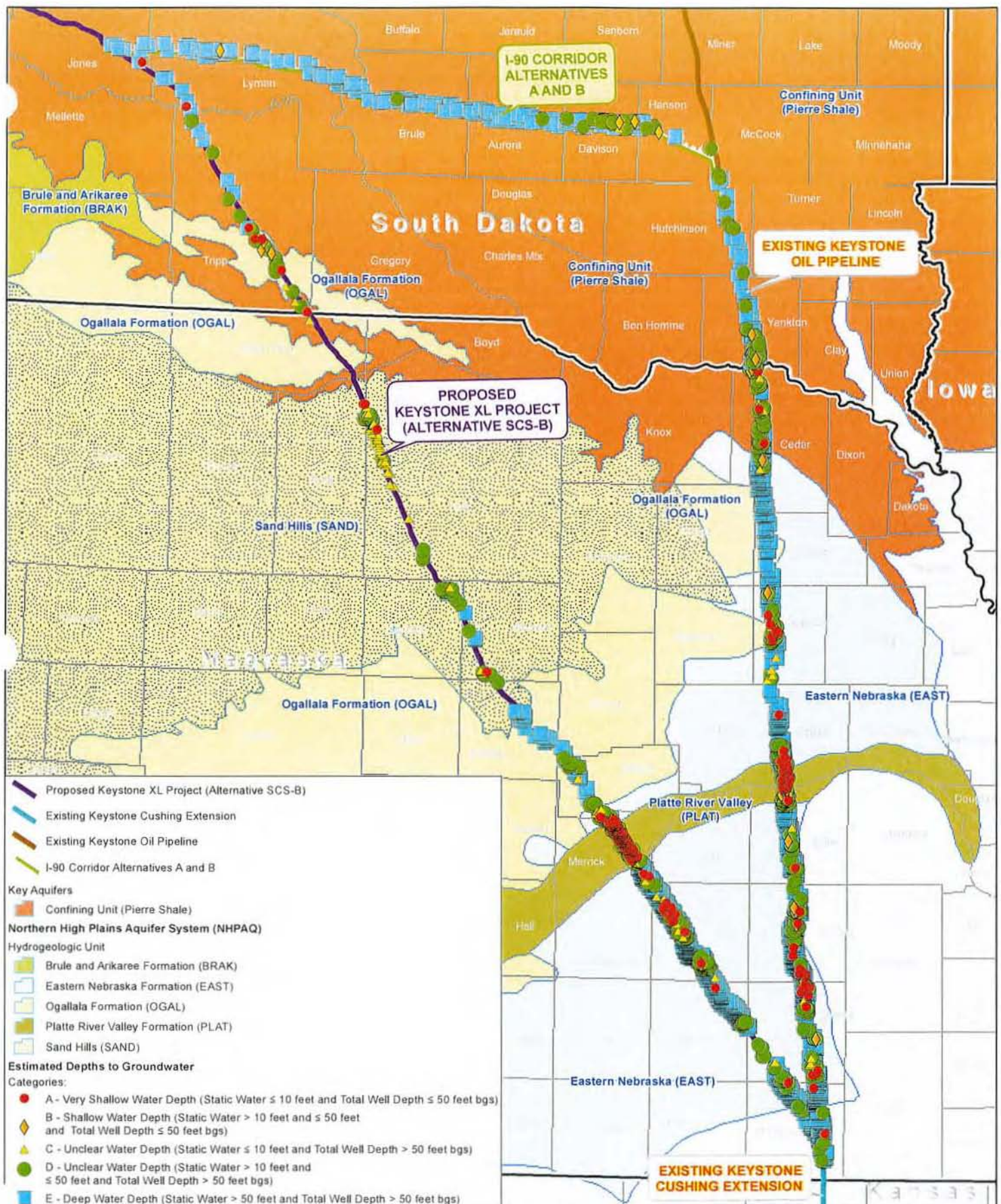
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor

Attachment No. 7



VICINITY MAP



LEGEND

- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
LaVonne Beck in
Support of Landowner Intervenors**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is LaVonne Beck. I am President of Milliron Ranch Corp.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located at NE ¼ 32-32-14 in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

1 A: I am retired from ranching but pay the bills and look after the ranch to the best of
2 my ability.

3 **Q: If you are you married tell us your spouse's name please?**

4 A: I am a widow. I was married to Duane R. Beck, but he passed away Jan.23, 2004.

5 **Q: If you have children how many do you have?**

6 A: Yes, Duane had 3 children and I have two children.

7 **Q: If you have grandchildren how many do you have?**

8 A: Yes, I have 12 grandchildren and two great-grandchildren.

9 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
10 **and or your family?**

11 A. Yes.

12 **Q: For the land that would be affected and impacted by the proposed KXL tar**
13 **sands pipeline give the Commissioners a sense how long the land has been in**
14 **your family and a little history of the land.**

15 **A:** This land has been in my family for over 70 years. This property is of very sandy
16 soil. In the fall of 1974 an insurance agent got tuck on the road, his muffler started
17 a fire which went across section 32-32-14. Several years we could not use the land
18 to its fullest capacity. We had lots of weeds for several years. On the Milliron
19 Ranch Corp. there was much work to do but when you love your work, it is fun. In
20 the spring there was calving, seems the cow needing help was always in the early
21 morning hours like 1, 2, or 3 o'clock. Most times we were able to pull the calf but
22 sometimes had to call the Vet and they would have to drive 30 miles. Then came
23 branding day and taking them to pasture. Of course there was fixing fence before
24 cattle went out to pasture. A job I hated but it had to be done. We cut cedar trees,
25 musk thistle and sprayed for leafy spurge. Of course we must pay taxes which are
26 not cheap. This property is very sandy and with the loss of the top soil, it will blow
27 ~ we have lots of wind. A blowout is not easy to heal, also we do not know what is
28 under our land. At one time many cattle had anthrax and had to be shot and buried.

1 What if an anthrax burial site is dug up and this disease surfaces again. This is a
2 beautiful, productive pasture, if tore up cannot be restored to its original condition.

3 **Q: Do you earn any income from this land?**

4 A: Yes.

5 **Q: Have you depended on the income from your land to support your livelihood**
6 **or the livelihood of your family?**

7 A: Yes. This land is pasture land, I have a very good renter that takes good care of the
8 land. Taxes on this quarter are currently \$6,417.32 per year. I need the full use of
9 this land, it also helps pay my bills.

10 **Q: Have you ever in the past or have you thought about in the future leasing all**
11 **or a portion of your land in question here?**

12 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
13 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
14 all the restrictions and risks and potential negative impacts to farming or ranching
15 operations as opposed to land that did not have those same risks. If I was looking
16 to lease or rent ground I would pay more for comparable non-pipeline land than I
17 would for comparable pipeline land and I think most folks would think the same
18 way. This is another negative economic impact that affects the landowner and the
19 county and the state and will forever and ever should TransCanada's preferred or
20 mainline alternative routes be approved. If they were to twin or closely parallel to
21 Keystone I the vast majority of landowners would be those that already have a
22 pipeline so there would be considerable less new incremental negative impacts.

23 **Q: Do you have similar concerns about selling the land?**

24 A: Well I hope not to have to sell the land in my lifetime but times change and you
25 never know what is around the corner and yes I am concerned that if another piece
26 of ground similar to mine were for sale and it did not have the pipeline and mine
27 did that I would have a lower selling price. I think this would be true for pipeline
28 ground on both the preferred and mainline alternative routes.

29 **Q: What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
4 **Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Were you or an entity for which you are a member, shareholder, or director**
7 **previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
9 petition for condemnation against our land so it could place its proposed pipeline
10 within an easement that it wanted to take from us on our land.

11 **Q: Did you defend yourself and your land in that condemnation action?**

12 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
13 and expenses in our resistance of TransCanada's lawsuit against us.

14 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
15 **incurred?**

16 A: No, they have not.

17 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
18 **property that it wanted to take for its proposed pipeline?**

19 A: The lawsuit against us stated they would take the amount of property that is
20 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
21 and equipment reasonably necessary to operate the pipeline.

22 **Q: Did TransCanada define what they meant by "property that is reasonably**
23 **necessary"?**

24 A: No, they did not.

25 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
26 **property portion of your land?**

27 A: Yes, they did.

28 **Q: Did TransCanada describe what rights it proposed to take related to the**
29 **eminent domain property on your land?**

1 A: Yes, they did.

2 **Q: What rights that they proposed to take did they describe?**

3 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
4 operate, and maintain the pipeline and the plant and equipment reasonably
5 necessary to operate the pipeline, specifically including surveying, laying,
6 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
7 reconstructing, removing and abandoning one pipeline, together with all fittings,
8 cathodic protection equipment, pipeline markers, and all their equipment and
9 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
10 petroleum products, and all by-products thereof.”

11 **Q: Prior to filing an eminent domain lawsuit to take your land that**
12 **TransCanada identified, do you believe they attempted to negotiate in good**
13 **faith with you?**

14 A: No, I do not.

15 **Q: Did TransCanada at any time approach you with or deliver to you their**
16 **proposed easement and right-of-way agreement?**

17 A: Yes, they did.

18 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
19 **agreement, did you understand that they would be purchasing a fee title**
20 **interest in your property or that they were taking something else?**

21 A: I understood that they proposed to have the power to take both a temporary
22 construction easement that could last for a certain period of time and then also a
23 permanent easement which they described to be 50 feet across or in width, and
24 that would run the entire portion of my property from where a proposed pipeline
25 would enter my property until where it would exit the property.

26 **Q: Is the document included with your testimony here as Attachment No. 3, a**
27 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
28 **Way agreement that they included with their condemnation lawsuit against**
29 **you?**

1 A: Yes, it is.

2 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
3 **and Right-of-Way agreement?**

4 A: Yes, I have.

5 **Q: What is your understanding of the significance of the Easement and Right-of-**
6 **Way agreement as proposed by TransCanada?**

7 A: My understanding is that this is the document that will govern all of the rights and
8 obligations and duties as well as the limitations of what I can and cannot do and
9 how I and any future landowner and any person I invite to come onto my property
10 must behave as well as what TransCanada is and is not responsible for and how
11 they can use my land.

12 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
13 **agreement do you have any concerns about any portions of it or any of the**
14 **language either included in the document or missing from the proposed**
15 **document?**

16 A: Yes, I have a number of significant concerns and worries about the document and
17 how the language included and the language not included potentially negatively
18 impacts my land and thereby potentially negatively impacts my community and
19 my state.

20 **Q: I would like you to walk the Commissioners through each and every one of**
21 **your concerns about TransCanada's proposed Easement and Right-of-Way**
22 **agreement so they can develop an understanding of how that language and**
23 **the terms of that contract, in your opinion, potentially negatively impacts you**
24 **and your land. So, if you can start at the beginning of that document and**
25 **let's work our way through it, okay?**

26 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
27 Easement and Right-of-Way agreement and how it negatively could affect my
28 property rights and my economic interests.

29 **Q. Okay, let's start with your first concern please.**

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership..." and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
6 **percent clear on exactly who could become the owner of over 275 miles of**
7 **Nebraska land?**

8 A: No.

9 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
10 **percent clear on exactly who will be operating and responsible for**
11 **approximately 275 miles of tar sands pipeline underneath and through**
12 **Nebraska land?**

13 A: No.

14 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
15 **and the State of Nebraska of TransCanada's easement terms.**

16 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow my easement to
18 be transferred or sold to someone or some company or country or who knows what
19 that I don't know and who we may not want to do business with. This pipeline
20 would be a huge asset for TransCanada and if they can sell to the highest bidder
21 that could have terrible impacts upon all of Nebraska depending upon who may
22 buy it and I don't know of any safeguards in place for us or the State to veto or
23 have any say so in who may own, operate, or be responsible for this pipeline in the
24 future.

25 **Q: Do you think that type of uncertainty and lack of control over a major piece**
26 **of infrastructure crossing our State is in the public interest?**

27 A: No, certainly not, in fact, just the opposite.

28 **Q: What's next?**

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
25 **right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

1 TransCanada who is subjecting the pipeline on the Landowner and who is making
2 a daily profit from that pipeline. When evaluating the impact on property rights of
3 this provision, you must consider the potentially extremely expensive fight a
4 Landowner would have over this question of whether or not damage was an act of
5 negligence. Putting this kind of potential liability upon the Landowner is
6 incredibly problematic and is detrimental to the protection of property rights. I
7 don't think this unilateral power which I can't do anything about as the landowner
8 is in the best economic interest of the land in question or the State of Nebraska for
9 landowners to be treated that way.

10 **Q: Is there any specific event or example you are aware of that makes this**
11 **concern more real for you?**

12 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
13 Nemaha County, Nebraska landowner farmers who accidentally struck two
14 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
15 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
16 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
17 copy of the Federal Court Complaint is here as **Attachment No. 4**

18 **Q: What is your next concern with the Easement language?**

19 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
20 they choose unless 1) any Landowner use interferes in any way with
21 TransCanada's exercise of any of its rights within the Easement, or 2)
22 TransCanada decides to take any action on the property it deems necessary to
23 prevent injury, endangerment or interference with anything TransCanada deems
24 necessary to do on the property. Landowner is also forbidden from excavating
25 without prior authorization by TransCanada. So my understanding is that
26 TransCanada will unilaterally determine what Landowner can and can't do based
27 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
28 could also completely deny my request to excavate. Further, TransCanada retains
29 all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative the their property in
2 preparation or planning of TransCanada's taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiation any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at anytime
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada's control. Some of these vague undefined terms are as follows:

- 27 i. “pipeline installation activities”
- 28 ii. “availability of labor and materials”
- 29 iii. “commercially reasonable costs and expenses”

- iv. “reasonably anticipated and foreseeable costs and expenses”
- v. “yield loss damages”
- vi. “diminution in the value of the property”
- vii. “substantially same condition”
- viii. “an actual or potential hazard”
- ix. “efficient”
- x. “convenient”
- xi. “endangered”
- xii. “obstructed”
- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

1 **Q: Do you have any other concerns about the Easement language that you can**
2 **think of at this time?**

3 A: I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q: Based upon what you have shared with the Commission above regarding**
6 **TransCanada's proposed Easement terms and agreement, do you believe**
7 **those to be reasonable or just, under the circumstances of the pipeline's**
8 **impact upon you and your land?**

9 A: No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q: Did TransCanada ever offer you financial compensation for the rights that**
12 **they sought to obtain in your land, and for what they sought to prevent you**
13 **and any future land owner of your property from doing in the future?**

14 A: Yes, we received an offer from them.

15 **Q: As the owner of the land in question and as the person who knows it better**
16 **than anyone else, do you believe that TransCanada offered you just, or fair,**
17 **compensation for all of what they proposed to take from you so that their tar**
18 **sands pipeline could be located across your property?**

19 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q: Has TransCanada at any time offered to compensate you annually, such as**
24 **wind farm projects do, for the existence of their potential tar sands pipeline**
25 **across your property.**

26 A: No, never.

27 **Q: At any time did TransCanada present you with or request that you, as the**
28 **owner of the land in question, sign and execute a document called, "Advanced**
29 **Release of Damage Claims and Indemnity Agreement?"**

1 A: Yes, they did.

2 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
3 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, it is.

5 **Q: What was your understanding of that document?**

6 A: When I read that document in the plain language of that document, it was my
7 understanding that TransCanada was attempting to pay me a very small amount at
8 that time in order for me to agree to give up my rights to be compensated from
9 them in the future related to any damage or impact they may have upon my
10 property “arising out of, in connection with, or alleged to resulted from
11 construction or surveying over, under or on” my land.

12 **Q: Did you ever sign that document?**

13 A: No, I did not.

14 **Q: Why not?**

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small
16 sum of money when I have no idea how bad the impacts or damages that they, or
17 their contractors, or subcontractors, or other agents or employees, may cause on
18 my land at any time in the future that resulted from the construction or surveying
19 or their activities upon my land.

20 **Q: When you reviewed this document, what did it make you feel?**

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
22 shield themselves against known and foreseeable impacts that their pipeline, and
23 the construction of it, would have upon my land. It made me feel that they knew it
24 was in their financial interest to pay me as little as possible to prevent me from
25 ever having the opportunity to seek fair compensation again, and that this must be
26 based upon their experience of unhappy landowners and situations in other places
27 where they have built pipelines.

1 **Q: Has TransCanada ever contacted you and specifically asked you if you**
2 **thought their proposed location of their proposed pipeline across your land**
3 **was in your best interest?**

4 A: No, they have not.

5 **Q: Has TransCanada ever contacted you and specifically asked you if you**
6 **thought their proposed location of their proposed pipeline across your land**
7 **was in the public interest of the State of Nebraska?**

8 A: No, they have not.

9 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
10 **Takings Clause?**

11 A: Yes, I am.

12 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
13 **an American citizens property?**

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 **Q: Has TransCanada ever contacted you specially to explain the way in which**
19 **the public could use its proposed Keystone XL Pipeline?**

20 A: No, they have not.

21 **Q: Can you think of any way in which the public, that is the citizens of the State**
22 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
23 **Pipeline, as it dissects the State of Nebraska?**

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
4 **crude petroleum, or oil and petroleum by-products that you would like to**
5 **ship in its pipeline?**

6 A: No, it has not.

7 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
8 **products that you, at this time or any time in the future, would desire to place**
9 **for transport within the proposed TransCanada Keystone XL Pipeline?**

10 A: No, I do not.

11 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
12 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
13 **products within the proposed TransCanada Keystone XL Pipeline?**

14 A: No, I do not. I've never heard of such a person or company like that.

15 **Q: Do you pay property taxes for the land that would be affected and impacted**
16 **at the proposed TransCanada Keystone XL Pipeline?**

17 A: Yes, I do.

18 **Q: Why do you pay property taxes on that land?**

19 A: Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q: Because you follow the law and pay property taxes, do you believe you**
22 **deserve any special consideration or treatment apart from any other person**
23 **or company that pays property taxes?**

24 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q: Do you believe the fact that you pay property taxes entitles you to special**
27 **treatment of any kind, or special rights of any kind?**

28 A: No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**
2 **enough to qualify you to have the power of eminent domain to take land of**
3 **your neighbors or other people in your county, or other people across the**
4 **state of Nebraska?**

5 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q: Have you at any time ever employed any person other than yourself?**

8 A: Well, yes I have.

9 **Q: Do you believe that the fact that you have, at some point in your life,**
10 **employed one or more other persons entitle you to any special treatment or**
11 **consideration above and beyond any other Nebraskan that has also employed**
12 **one or more persons?**

13 A: No, of course not.

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
15 **have at one point employed another person within this state, entitles you to**
16 **preferential treatment or consideration of any kind?**

17 A: No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
20 **crude oil pipeline in its preferred location, or ultimate location across the**
21 **state of Nebraska?**

22 A: Yes, I have significant concerns. Yes, I have significant concerns: TransCanada
23 employees threaten landowners with eminent domain, telling them that if they
24 don't sign the easement and take the offered money they will use eminent domain
25 and just use their land with no money involved. It is supposed to be the safest way
26 to go but look at all the spills. Freeman SD for one. How did they clean it up? I am
27 also aware of landowners being treated unfairly or even bullied around and being
28 made to feel scared that they did not have any options but to sign whatever papers
29 TransCanada told them they had to. I am aware of folks being threatened that their

1 land would be taken if they didn't follow what TransCanada was saying. I am
2 aware of tactics to get people to sign easements that I don't believe have any place
3 in Nebraska or anywhere such as TransCanada or some outfit associated with it
4 hiring a pastor or priest to pray with landowners and convince them they should
5 sign TransCanada's easement agreements. I am aware of older folks and widows
6 or widowers feeling they had no choice but to sign TransCanada's Easement and
7 they didn't know they could fight or stand up for themselves. From a more
8 practical standpoint, I am worried that according to their answer to our
9 Interrogatory No. 211, TransCanada only owns and operates one (1) major oil
10 pipeline. They simply do not have the experience with this type of pipeline and
11 that scares me. There are others but that is what I can recollect at this time and if I
12 remember more or my recollection is refreshed I will share those with the
13 Commissioners at the Hearing in August.

14 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
15 **landowner is reasonable or just?**

16 A: No, I do not.

17 **Q: Do you have any concern about limitations that the construction of this**
18 **proposed pipeline across your affected land would prevent construction of**
19 **future structures upon the portion of your land affected by the proposed**
20 **easement and immediately surrounding areas?**

21 A: Well yes, of course I do. We would not be able to build many, if any, types of
22 structures directly across or touching the easement, and it would be unwise and I
23 would be uncomfortable to build anything near the easement for fear of being
24 blamed in the future should any damage or difficulty result on my property in
25 regards to the pipeline.

26 **Q: Do you think such a restriction would impact you economically?**

27 A: Well yes, of course.

28 **Q: How do you think such a restriction would impact you economically?**

1 A: The future of this land may not be exactly how it's being used as of this moment,
2 and having the restrictions and limiting my ability to develop my land in certain
3 ways presents a huge negative economic impact on myself, my family, and any
4 potential future owner of the property. You have no idea how I or the future owner
5 may want to use this land in the future or the other land across Nebraska
6 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
7 ago it would have been hard to imagine all the advances that we have now or how
8 things change. Because the Easement is forever and TransCanada gets the rights in
9 my land forever we have to think with a very long term view. By placing their
10 pipeline on under across and through my land that prevents future development
11 which greatly negatively impacts future taxes and tax revenue that could have
12 been generated by the County and State but now will not. When you look at the
13 short blip of economic activity that the two years of temporary construction efforts
14 may bring, that is far outweighed by the perpetual and forever loss of opportunity
15 and restrictions TransCanada is forcing upon us and Nebraska.

16 **Q: Do you have any concerns about the environmental impact of the proposed**
17 **pipeline?**

18 A: Yes, I do.

19 **Q: What are some of those concerns?**

20 A: As an affected land owner and Nebraskan, I am concerned that any construction,
21 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
22 a detrimental impact upon the environment of my land specifically, as well as the
23 lands near my land and surrounding the proposed pipeline route.

24 **Q: Do you have any other environmental concerns?**

25 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
26 construction and/or maintenance and operation. I am concerned about spills and
27 leaks that TransCanada has had in the past and will have in the future. This could
28 be catastrophic to my operations or others and to my county and the State.

1 **Q: Do you have any thoughts regarding if there would be an impact upon the**
2 **natural resources on or near your property due to the proposed pipeline?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
5 resources of my land, and the lands near and surrounding the proposed pipeline
6 route.

7 **Q: Do you have any worries about potential impacts from the proposed pipeline**
8 **to the soil of your land, or land near you?**

9 A: Yes, I believe that any construction, operation, and/or maintenance of the
10 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
11 land, as well as land along and surrounding the proposed pipeline route. This
12 includes, but is not limited to, the reasons that we discussed above of disturbing
13 the soil composition and makeup as it has naturally existed for thousands and
14 millions of years during the construction process, and any future maintenance or
15 removal process. I'm gravely concerned about the fertility and the loss of
16 economic ability of my property to grow the crops, or grow the grasses, or grow
17 whatever it is at that time they exist on my property or that I may want to grow in
18 the future, or that a future owner may want to grow. The land will never be the
19 same from as it exists now undisturbed to after it is trenched up for the proposed
20 pipeline.

21 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
22 **upon the groundwater over your land, or surrounding lands?**

23 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
24 the proposed Keystone XL Pipeline would have a detrimental impact upon the
25 groundwater of not only under my land, but also near and surrounding the pipeline
26 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
27 simple and it is simply too valuable to our State and the country to put at
28 unreasonable risk.

1 **Q: Do you have any concern about the potential impact of the proposed pipeline**
2 **upon the surface water on, or near or around your land?**

3 A: Yes, I have significant concerns that any construction, operation, and/or
4 maintenance of the proposed Keystone XL Pipeline would have detrimental
5 impact upon the surface water of not only within my property boundary, but along
6 and near and surrounding the pipeline route, and in fact, across the state of
7 Nebraska.

8 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
9 **upon the wildlife and plants, other than your growing crops on or near your**
10 **land?**

11 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
12 the proposed Keystone XL Pipeline would have a detrimental impact upon the
13 wildlife and the plants, not only that are located on or can be found upon my land,
14 but also near and along the proposed pipeline route.

15 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
16 **fair market value of your land?**

17 A: Yes, I do. I am significantly concerned about how the existence of the proposed
18 pipeline underneath and across and through my property will negatively affect the
19 fair market value at any point in the future, especially at that point in which I
20 would need to sell the property, or someone in my family would need to sell the
21 property. I do not believe, and certainly would not be willing to pay, the same
22 price for land that had the pipeline located on it, versus land that did not. I hope
23 there is never a point where I'm in a position where I have to sell and have to
24 realize as much value as I can out of my land. But because it is my single largest
25 asset, I'm gravely concerned that the existence of the proposed Keystone XL
26 Pipeline upon my land will affect a buyer's willingness to pay as much as they
27 would've paid and as much as I could've received, if the pipeline were not upon
28 my property. There are just too many risks, unknowns, impacts and uncertainties,
29 not to mention all of the rights you give up by the nature of having the pipeline

1 due to having the easement that we have previously discussed, for any reasonable
2 person to think that the existence of the pipeline would not negatively affect my
3 property's value.

4 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
5 **testimony?**

6 A: Yes, I have.

7 **Q: Where have you seen that before?**

8 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
9 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
10 believe the portion of the alternative route in Nebraska essentially twins or
11 parallels Keystone I.

12 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
13 **Application, and as found on Attachment No. 7, here to your testimony, is in**
14 **the public interest of Nebraska?**

15 A: No, I do not.

16 **Q: Do you believe that the Keystone mainline alternative route as shown on**
17 **Attachment No. 7 included with your testimony here is a major oil pipeline**
18 **route that is in the public interest of Nebraska?**

19 A: No, I do not.

20 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
21 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
22 **your testimony, is in the public interest of Nebraska?**

23 A: No, I do not.

24 **Q: Do you believe there is any potential route for the proposed Keystone XL**
25 **Pipeline across, within, under, or through the State of Nebraska that is in the**
26 **public interest of the citizens of Nebraska?**

27 A: No, I do not.

28 **Q: Why do you hold that belief?**

1 A: Because there simply is no public interest based on all of the factors that I am
2 aware and that I have read and that I have studied that this Commission is to
3 consider that would establish that a for-profit foreign-owned pipeline that simply
4 crosses Nebraska because we are geographically in the way between where tar
5 sands are in Canada to where it wants to ship it to in Texas could ever be in the
6 public interest of Nebraskans. We derive no benefit from this project. It is not for
7 public use. Nebraska is simply in the way and when all considerations are taken in
8 there is no net benefit of any kind for Nebraska should this project be placed in our
9 state. Even if there was some arguable “benefit” it is not enough to outweigh all
10 the negative impacts and concerns.

11 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
12 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
13 **of Nebraska because it may bring temporary jobs during the construction**
14 **phase to Nebraska?**

15 A: First of all, not all jobs are created equally. Most jobs that are created, whether
16 temporary or on a permanent basis, don’t come with a project that has all the
17 potential and foreseeable negative impacts, many of which we have discussed here
18 and other witnesses throughout the course of this hearing have and will discuss. If
19 I decide to hire and employ someone to help me out in my farming or ranching
20 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
21 to my land or my town or my county or my state. And I’ve hired someone who is
22 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
23 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
24 jobs are not created equal. Additionally, I understand from what I’m familiar with
25 from TransCanada’s own statements that the jobs numbers they originally touted
26 were determined to be a minute fraction of the permanent jobs that had been
27 projected. According to their answer to our Interrogatory No. 191, TransCanada
28 has created only thirty-four (34) jobs within Nebraska working specifically on
29 behalf of TransCanada and according to their answer to Interrogatory No. 196, as

1 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
2 Further, according to their answer to Interrogatory No. 199, TransCanada would
3 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
4 constructed on its Preferred Route or its Mainline Alternative Route.

5 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
6 **because it would cross your land?**

7 A: No, absolutely not. I am opposed to this project because it is not in the public
8 interest, neither within my community nor within our state.

9 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
10 **was to cross someone else's land?**

11 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
12 the fear and anxiety and potential foreseeable risks and negative impacts that this
13 type of a project carrying this type of product brings foisted upon anyone in this
14 state or any other state.

15 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
16 **Pipeline to cross the state of Nebraska?**

17 A: I don't believe there is an intelligent route because as I have stated I don't believe
18 this project anywhere within Nebraska is within the public interest. However, if
19 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
20 had to go somewhere in the state of Nebraska, the only intelligent route I believe
21 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
22 preferred route and the mainline alternative routes are economic liabilities our
23 state cannot risk.

24 **Q: What do you rely upon to make that statement?**

25 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
26 already exists in that area is reason enough as it is not in our best interest or the
27 public interests to have more major oil pipelines crisscrossing our state. Second,
28 they have all the infrastructure already there in terms of relationships with the
29 counties and local officials and first responders along that route. Third, they have

1 already obtained easements from all the landowners along that route and have
2 relationships with them. Fourth, that route avoids our most sensitive soils, the
3 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
4 Aquifer. Sixth, they have already studied that route and previously offered it as an
5 alternative. Seventh, it just makes the most sense that as a state we would have
6 some intelligent policy of energy corridors and co-locating this type of
7 infrastructure near each other.

8 **Q: Do you have any other concerns you would like to reiterate or can think of at**
9 **this time you would like the Commissioners to understand?**

10 A: Yes, here comes TransCanada, a rich foreign company threatening to take our land
11 by eminent domain if we don't sign their easement. A cheap one-time payment to
12 use our land for whatever they please. They have no feeling for the land, I do.
13 Many people have been threatened by Eminent Domain and signed the easement.
14 TransCanada will be stealing our Ogallala Aquifer water and selling it elsewhere.
15 Ruination of our Nebraska land. And the people they will bring in to build the
16 pipeline. If this pipeline goes through our land, we cannot borrow money and if we
17 have a money borrowed we must pay it back immediately. I am debt free now but
18 if I need to replace an irrigation system I will have to borrow money.

19 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
20 **like the Public Service Commissioners to consider in their review of**
21 **TransCanada's Application?**

22 A: No, I have not. I have shared that which I can think of as of the date I signed this
23 document below but other things may come to me or my memory may be
24 refreshed and I will add and address those things at the time of the Hearing in
25 August and address any additional items at that time as is necessary. Additionally,
26 I have not had an adequate amount of time to receive and review all of
27 TransCanada's answers to our discovery and the discovery of others so it was
28 impossible to competently and completely react to that in my testimony here and I
29 reserve the right to also address anything related to discovery that has not yet

1 concluded as of the date I signed this document below. Lastly, certain documents
2 requested have not yet been produced by TransCanada and therefore I may have
3 additional thoughts on those I will also share at the hearing as needed.

4 **Q: What is it that you are requesting the Public Service Commissioners do in**
5 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
6 **across Nebraska?**

7 A: I am respectfully and humbly requesting that the Commissioners think far beyond
8 a temporary job spike that this project may bring to a few counties and beyond the
9 relatively small amount of taxes this proposed foreign pipeline would possibly
10 generate. And, instead think about the perpetual and forever impacts of this
11 pipeline as it would have on the landowners specifically, first and foremost, but
12 also thereby upon the entire state of Nebraska, and to determine that neither the
13 preferred route nor the Keystone mainline alternative route are in the public
14 interest of the citizens of the state of Nebraska. And if the Commissioners were
15 inclined to modify TransCanada's proposed routes and were to be inclined to grant
16 an application for a route in Nebraska, that the only potential route that would
17 make any intelligent sense whatsoever would be twinning or near paralleling of
18 the proposed KXL with the existing Keystone I pipeline. It simply does not make
19 sense to add yet another major oil pipeline crisscrossing our state creating new
20 pumping stations, creating new impacts on additional counties and communities
21 and going through all of the court processes with myself and other landowners like
22 me when this applicant already has relationships with the landowners, the towns
23 and the communities along Keystone I, and that Keystone I is firmly outside of the
24 sand hills and a significantly further portion away from the heart of the Ogallala
25 Aquifer than the preferred route or the Keystone mainline alternative route.

26 **Q: Does Attachment No. 8 here contain other documents you are competent to**
27 **speak about that you wish to be part of your testimony and to discuss in more**
28 **detail as needed at the August 2017 Hearing?**

29 A: Yes.

1 **Q:** Are all of your statements in your testimony provided above true and
2 accurate as of the date you signed this document to the best of your
3 knowledge?

4 **A:** Yes, they are.

5 **Q:** Thank you, I have no further questions at this time and reserve the right to
6 ask you additional questions at the August 2017 Hearing.

LaVonne Beck Milliron Ranch Corp.
LaVonne Beck, Milliron Ranch

Subscribed and Sworn to me before this 25 day of May, 2017.

Victoria L Seger
Notary Public



05/25/2017

Attachment No. 1

PREPARED BY
exp Energy Services Inc.

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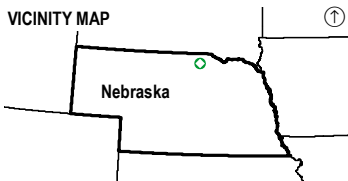
IMAGERY: NAIP 2016

0 250 500 1,000 1,500 Feet

Milliron Ranch Corporation



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Milliron Ranch Corporation

TRACT NO. ML-NE-HT-30140.000
STATE: Nebraska
COUNTY: Holt
SECTION: 032
TOWNSHIP: 032N
RANGE: 014W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

Attachment No. 2



09/15/2012



Attachment No. 3

Prepared by and after recording

please return to:

TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-HT-30140.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Milliron Ranch Corporation, a Nebraska Corporation**, whose mailing address is 88703 476th Avenue, Atkinson, NE 68713 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on,

under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Holt, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 640 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 32, Township 32 North, Range 14 West of the 6th P.M., as recorded in Book 153, Page 623 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the

negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____, 20____.

GRANTOR(S):

Milliron Ranch Corporation, a Nebraska Corporation

By:

Its:

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By _____ of

Milliron Ranch Corporation, a Nebraska Corporation, on behalf of the corporation.

Notary Public Signature

Affix Seal Here

LEGEND
 R₂ SECTION LINE
 S₂ SECTION LINE
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA

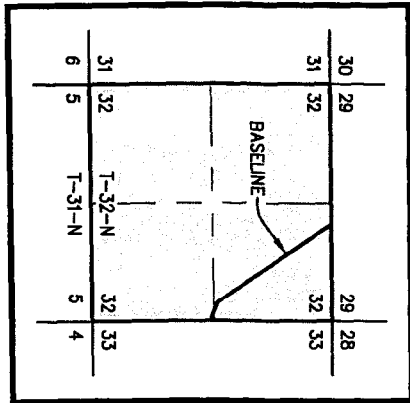
HOLT COUNTY, NEBRASKA

T-32-N, R-14-W, SECTION 32

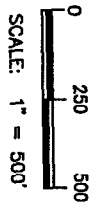
ML-NE-HT-30140.000

SEE DETAIL "A"

MILLIRON RANCH INC.
 VOLUME 153, PAGE 623
 D.R.H.C.N.



VICINITY MAP
 N.T.S.



KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
MILLIRON RANCH INC.
ML-NE-HT-30140.000

PROJECT: XL EXHIBIT A

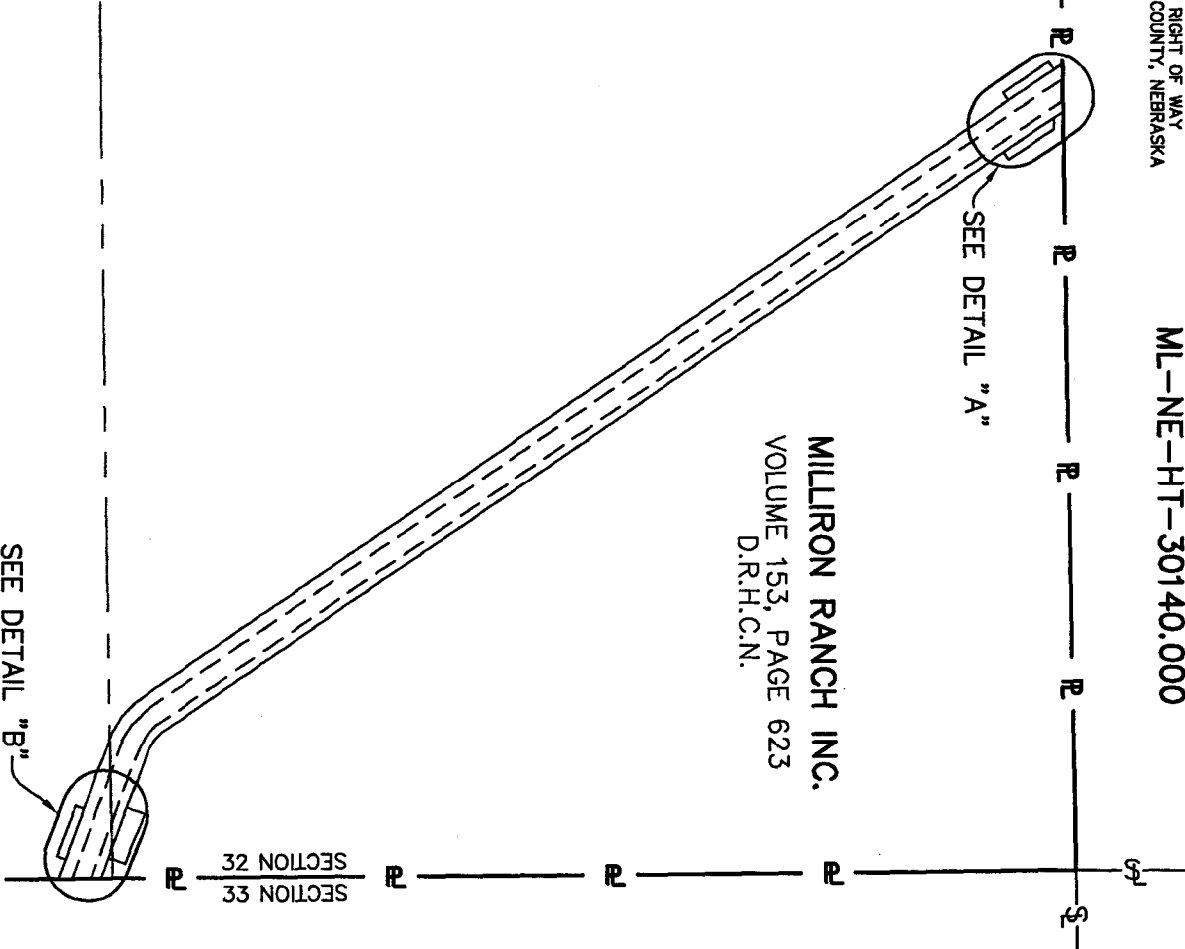
APPROVED BY: XL DRAWING NUMBER: XL-08-ML-SK-3290

NO. REVISION DATE

SCALE DATE DRAWN BY CHECKED BY

1" = 500' 10/27/14 JN ALS

SEE DETAIL "B"



NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

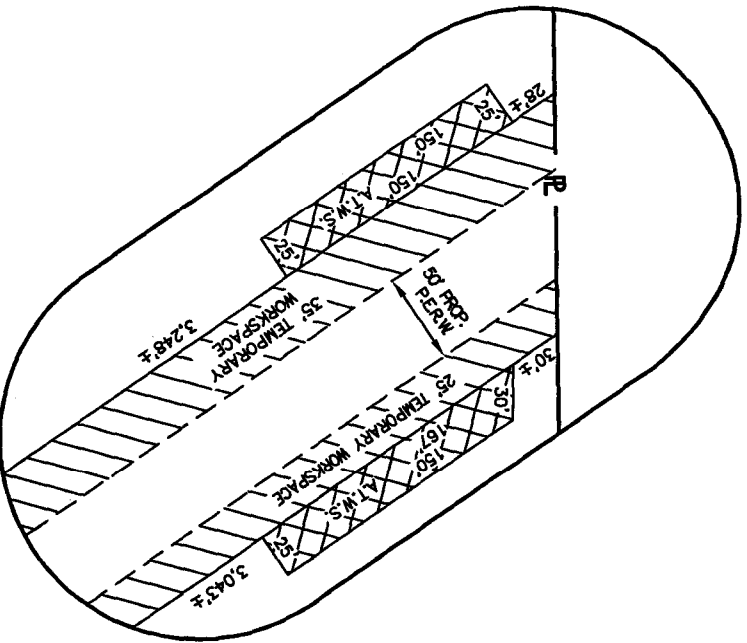
TRACT LEGAL DESCRIPTION:
 ALL OF SECTION 32
 T-32-N, R-14-W

TOTAL DISTANCE ACROSS PROPERTY: 3.517'±
 AREA OF PERMANENT EASEMENT: 4.1 ACRES
 AREA OF TEMPORARY WORKSPACE: 4.9 ACRES
 ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.4 ACRE

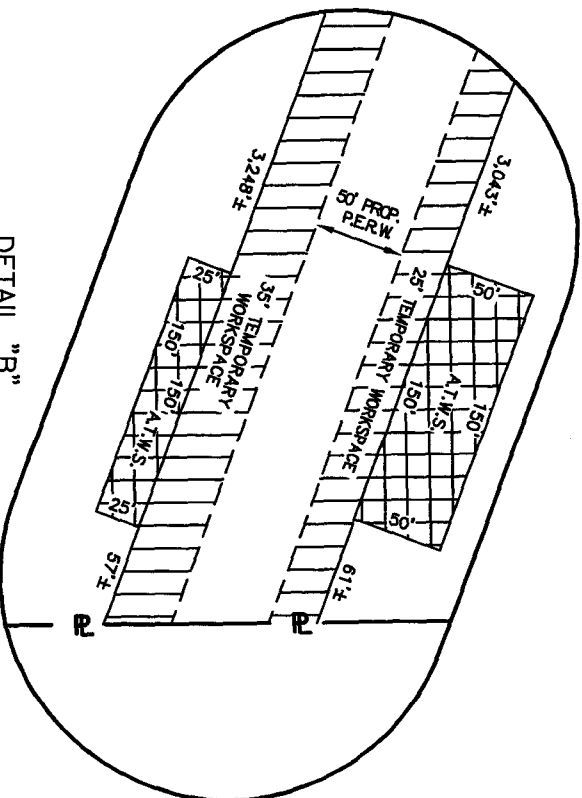
PROPERTY LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY

HOLT COUNTY, NEBRASKA

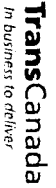
T-32-N, R-14-W, SECTION 32
ML-NE-HT-30140.000



DETAIL "A"
N.T.S.



DETAIL "B"
N.T.S.



KEYSTONE XL PROJECT

**EASEMENT AREA
ACROSS THE PROPERTY OF
MILLIRON RANCH INC.
ML-NE-HT-30140.000**

PROJECT: Y1

EXHIBIT A

APPROVED BY	DRAWING NUMBER
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SLR	XL-08-ML-SK-3290
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NO.	REVISION	DATE
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[illegible][illegible][illegible]

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SCALE	DATE	DRAWN BY	CHECKED
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N.T.S.	10/27/14	JN	AL'S
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The new identity of Trow

SHEET 2 OF 2

NOTE. THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT-OF-WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Plaintiff,

v.

RICHARD ANDREW, JANE ANDREW,
LUKE ANDREW, and BRYCE ANDREW,

Defendants.

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30140.000

We, Milliron Ranch Inc., of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Four Hundred Forty Four Dollars and No Cents (\$2,444.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

All

Section 32, Township 32-N, Range 14-W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this day of

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6

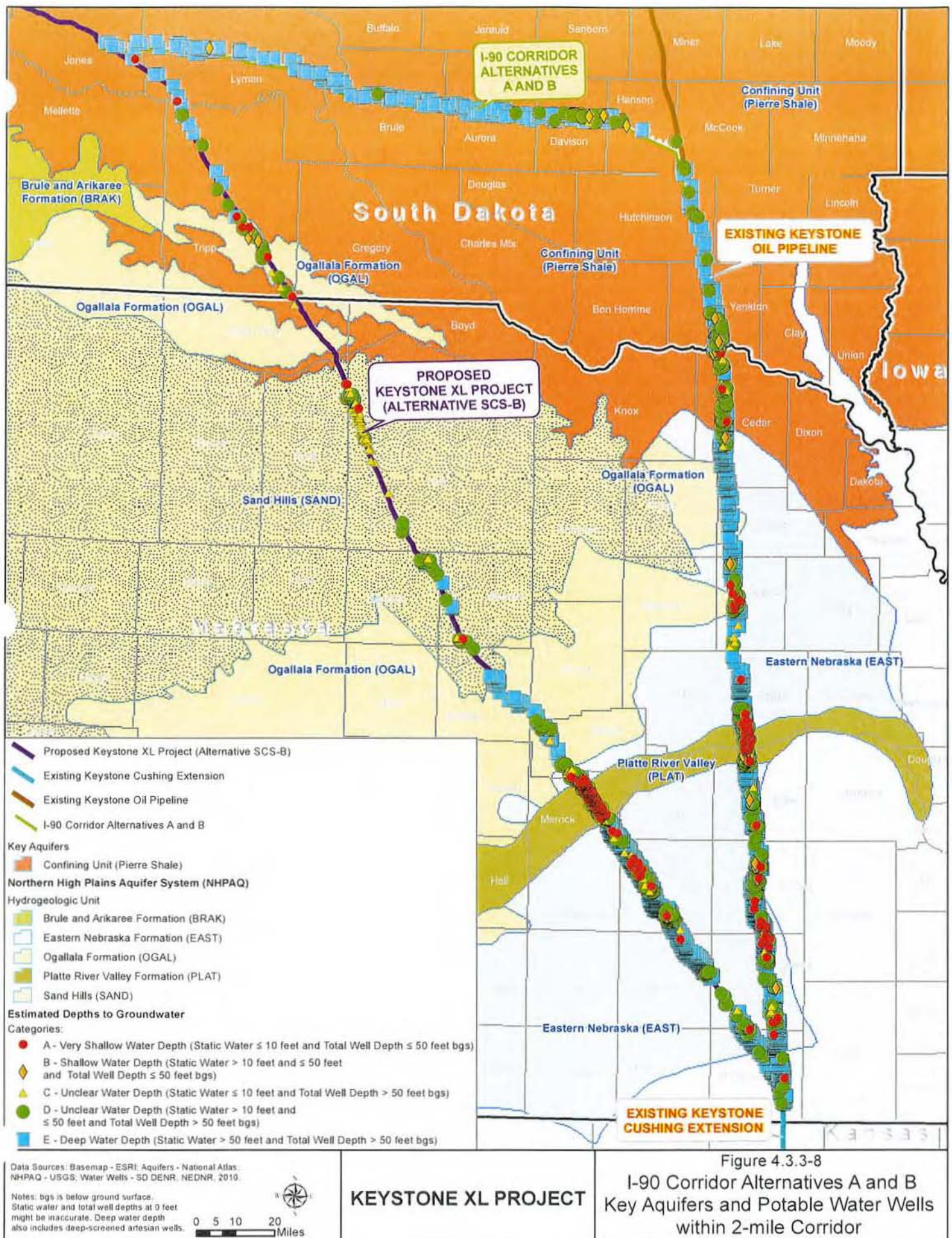


Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor

Attachment No. 7



VICINITY MAP



LEGEND

- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

KEYSTONE XL PROJECT

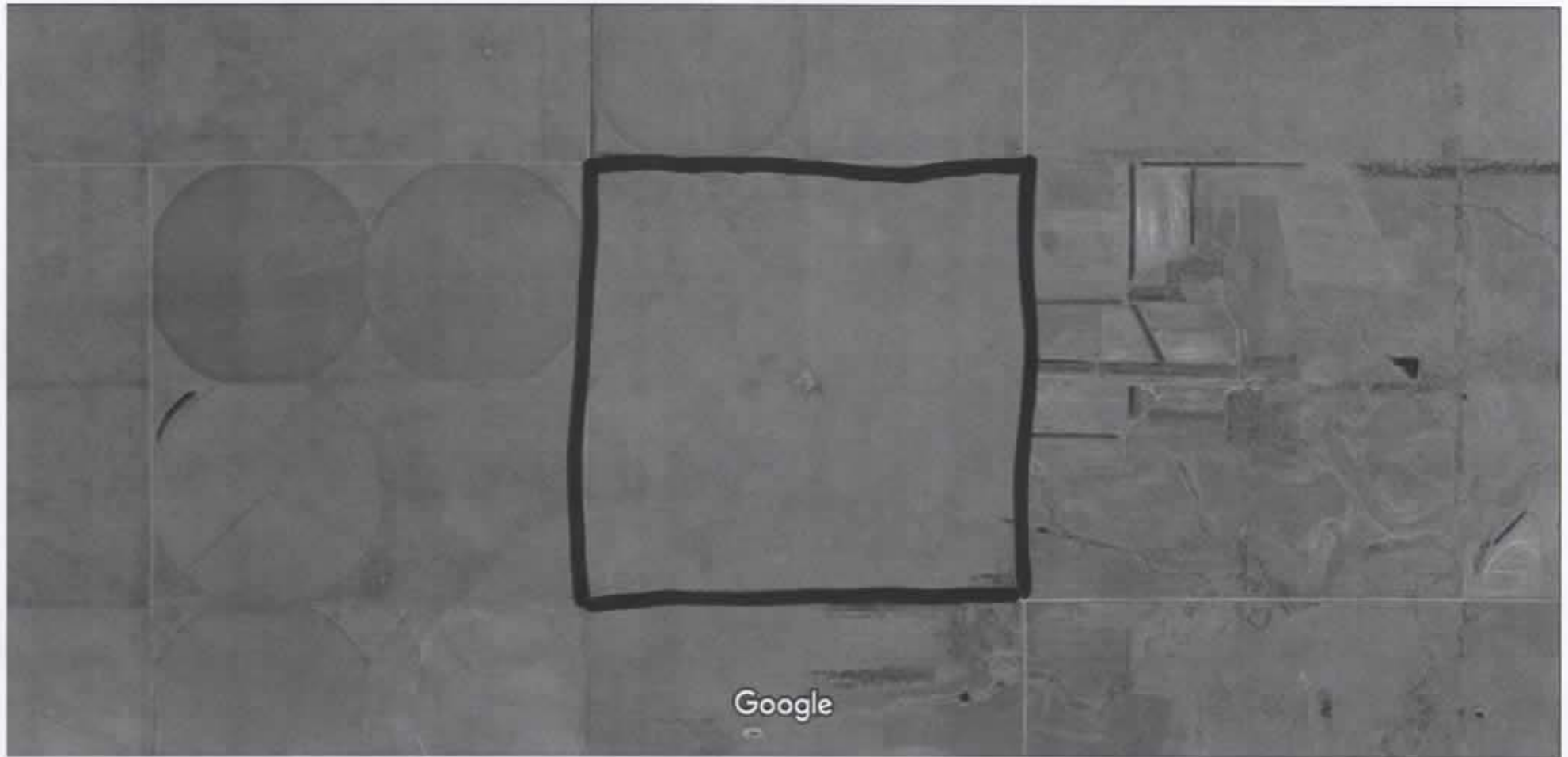
FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Attachment No. 8

Google Maps



Imagery ©2017 Google, Map data ©2017 Google 1000 ft

*Milliron Ranch Corp. ~**Route crosses northeast corner of
Section 32 Township 32 Range 14*

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Mia Bergman in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Mia Bergman.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question?**

13 A: Yes.

14 **Q: What do you do for a living?**

15 A: Farmer and R.N.

1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A: Yes.

4 **Q: Do you earn any income from this land?**

5 A: Yes.

6 **Q: Have you depended on the income from your land to support your livelihood**
7 **or the livelihood of your family?**

8 A: Yes.

9 **Q: Have you ever in the past or have you thought about in the future leasing all**
10 **or a portion of your land in question here?**

11 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
12 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
13 all the restrictions and risks and potential negative impacts to farming or ranching
14 operations as opposed to land that did not have those same risks. If I was looking
15 to lease or rent ground I would pay more for comparable non-pipeline land than I
16 would for comparable pipeline land and I think most folks would think the same
17 way. This is another negative economic impact that affects the landowner and the
18 county and the state and will forever and ever should TransCanada's preferred or
19 mainline alternative routes be approved. If they were to twin or closely parallel to
20 Keystone I the vast majority of landowners would be those that already have a
21 pipeline so there would be considerable less new incremental negative impacts.

22 **Q: Do you have similar concerns about selling the land?**

23 A: Well I hope not to have to sell the land in my lifetime but times change and you
24 never know what is around the corner and yes I am concerned that if another piece
25 of ground similar to mine were for sale and it did not have the pipeline and mine
26 did that I would have a lower selling price. I think this would be true for pipeline
27 ground on both the preferred and mainline alternative routes.

28 **Q: What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
4 **Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Have you reviewed the Easement and Right-of-Way Agreement TransCanada**
7 **holds against your land?**

8 A: Yes.

9 **Q: Did TransCanada describe what rights it has taken related to their Easement**
10 **and Right-of-Way on your land?**

11 A: Yes, they did.

12 **Q: What rights did they take?**

13 A: TransCanada stated that the Easement and Right-of-Way will be used to "lay,
14 relay, operate, and maintain the pipeline and the plant and equipment reasonably
15 necessary to operate the pipeline, specifically including surveying, laying,
16 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
17 reconstructing, removing and abandoning one pipeline, together with all fittings,
18 cathodic protection equipment, pipeline markers, and all their equipment and
19 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
20 petroleum products, and all by-products thereof."

21 **Q: Did you ever have an opportunity to negotiate any of the Easement and**
22 **Right-of-Way language or terms?**

23 A: No, I did not.

24 **Q: At the time you reviewed TransCanada's easement and right-of-way**
25 **agreement, did you understand that they purchased a fee title interest in your**
26 **property or that they took something else?**

27 A: I understood that they have the power to take both a temporary construction
28 easement that could last for a certain period of time and then also a permanent
29 easement which they described to be 50 feet across or in width, and that would run

1 through portion of my property from where a proposed pipeline would enter my
2 property until where it would exit the property.

3 **Q: Is the document included with your testimony here as Attachment No. 3, a**
4 **true and accurate copy of TransCanada's Easement and Right-of-Way**
5 **agreement that affects your property?**

6 A: Yes, it is.

7 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
8 **and Right-of-Way agreement?**

9 A: Yes, I have.

10 **Q: What is your understanding of the significance of the Easement and Right-of-**
11 **Way agreement as proposed by TransCanada?**

12 A: My understanding is that this is the document governs all of the rights and
13 obligations and duties as well as the limitations of what I can and cannot do and
14 how I and any future landowner and any person I invite to come onto my property
15 must behave as well as what TransCanada is and is not responsible for and how
16 they can use my land.

17 **Q: After reviewing TransCanada's Easement and Right-of-Way agreement do**
18 **you have any concerns about any portions of it or any of the language either**
19 **included in the document or missing from the proposed document?**

20 A: Yes, I have a number of significant concerns and worries about the document and
21 how the language included and the language not included potentially negatively
22 impacts my land and thereby potentially negatively impacts my community and
23 my state.

24 **Q: I would like you to walk the Commissioners through each and every one of**
25 **your concerns about TransCanada's proposed Easement and Right-of-Way**
26 **agreement so they can develop an understanding of how that language and**
27 **the terms of that contract, in your opinion, negatively impacts you and your**
28 **land. So, if you can start at the beginning of that document and let's work**
29 **our way through it, okay?**

1 A: Yes, I'll be happy to express my concerns about TransCanada's Easement and
2 Right-of-Way agreement and how it negatively could affect my property rights
3 and my economic interests.

4 **Q: Okay, let's start with your first concern please.**

5 A: The very first sentence talks about consideration or how much money they will
6 pay to compensate for all of the known and unknown affects and all of the rights
7 that are being given up and for all the things they get to do to the land and for what
8 they will prevent me from doing on my land. The problem is they paid the
9 previous owner one time and I have never received any payment. But even if I had
10 received the one-time payment, why should a private, foreign company be allowed
11 to use my land as they see fit? There is no public gain with this project. There
12 isn't even any gain for landowners whose land this pipe will be crossing. A one-
13 time payment isn't just or fair compensation for the burden placed upon us and our
14 State. Where are our rights as landowners who bought and paid for our land with
15 our hard work? We are the ones that are stuck with all the risk. We may only
16 receive compensation for the crop loss during the construction of the pipeline; and
17 who gets to determine what is fair compensation for this? TransCanada? Will they
18 use our average proven yield to determine what fair compensation is? Will they
19 use the lowest price of grain at that time? We wouldn't sell our grain for the
20 lowest price. We would hold on to it and watch the markets to sell for the highest
21 price. And if this ends up being the case, do we take them to court and acquire
22 legal expenses to fight for the money that should rightfully be ours? What happens
23 if this affects our yield enough that our average proven yield is affected and thus
24 also affects any possible crop insurance pay-out if we were to have inclement
25 weather that affected our yield for any of the fields that we farm.

26 **Q: Explain to the Commissioners why that is a problem.**

27 A: It is not fair to the landowner, the county, or the State. It is not fair to the
28 landowner because they want to have my land forever for use as they see fit so
29 they can make a daily profit from their customers. If I was to lease ground from

1 my neighbor I would typically pay twice a year every year as long as they granted
2 me the rights to use their land. That only makes sense – that is fair. If I was going
3 to rent a house in town I would typically pay monthly, every month until I gave up
4 my right to use that house. By TransCanada getting out on the cheap and paying
5 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
6 revenue collection on the money I would be paid and then pay taxes on and
7 contribute to this state and this country. It is money I would be putting back into
8 my local community both spending and stimulating the local economy and
9 generating more economic activity right here. Instead TransCanada's shareholders
10 keep that money. Nebraska's main economy is agriculture. Why should our main
11 economic interests be jeopardized for a foreign company with minimal, if any,
12 benefit to Nebraska or the Country?

13 **Q: What is your next concern?**

14 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
15 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
16 limited partnership...” and I have no idea who that really is. I have no idea who is
17 forcing this pipeline on us or who the owners of the entities are, or what are the
18 assets backing this limited partnership, or who the general partner is, or who all
19 the limited partners are, and who makes up the ownership of the these partners or
20 the structure or any of the basic things you would want to know and understand if
21 you would want to do business with such an outfit. According to TransCanada's
22 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
23 liability company called TransCanada Keystone Pipeline GP, LLC is the general
24 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
25 basically nothing. That is really scary since the general partner has the liability but
26 virtually none of the ownership and who knows if it has any other assets.

27 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
28 **percent clear on exactly who could become the owner of about 275 miles of**
29 **Nebraska land?**

1 A: No.

2 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
3 **percent clear on exactly who will be operating and responsible for**
4 **approximately 275 miles of tar sands pipeline underneath and through**
5 **Nebraska land?**

6 A: No.

7 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
8 **and the State of Nebraska of TransCanada's easement terms.**

9 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
10 called "Grantee")..." and this concerns me because it would allow the easement to
11 be transferred or sold to someone or some company or country or who knows what
12 that I don't know and who we may not want to do business with. This pipeline
13 would be a huge asset for TransCanada and if they can sell to the highest bidder
14 that could have terrible impacts upon all of Nebraska depending upon who may
15 buy it and I don't know of any safeguards in place for us or the State to veto or
16 have any say so in who may own, operate, or be responsible for this pipeline in the
17 future.

18 **Q: Do you think that type of uncertainty and lack of control over a major piece**
19 **of infrastructure crossing our State is in the public interest?**

20 A: No, certainly not, in fact, just the opposite.

21 **Q: What's next?**

22 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
23 really concerns me. Why does the easement and right-of-way have to be perpetual
24 and permanent? That is the question myself and my family want an answer to.
25 Perpetual to me is forever and that doesn't make sense.

26 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

27 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
28 data proving there is a perpetual supply of tar sands. I am not aware in
29 TransCanada's application where it proves there is a perpetual necessity for this

1 pipeline. My understanding of energy infrastructure like wind towers is they have
2 a decommission plan and actually take the towers down when they become
3 obsolete or no longer needed. Nothing manmade lasts forever. My land however
4 will, and I want my family or future Nebraska families to have that land as
5 undisturbed as possible and it is not in my interest or the public interest of
6 Nebraska to be forced to give up perpetual and permanent rights in the land for
7 this specific kind of pipeline project.

8 **Q: Okay, what is your next concern?**

9 A: The easement language includes all these things TransCanada can do and it says
10 "...abandoning in place..." so they can just leave this pipeline under my ground
11 until the end of time just sitting there while they are not using it, but I am still
12 prevented from doing on my land and using my land what I would like. If I owned
13 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
14 there. It doesn't make sense and it scares me and it is not in my interest or the
15 public interest of Nebraska to allow this.

16 **Q: So now on the second page of the Easement what are your concerns?**

17 A: Here the Easement identifies a 24-month deadline to complete construction of the
18 pipeline but has caveats that are undefined and ambiguous. The 24-month period
19 starts to run from the moment "actual pipeline installation activities" begin on
20 Landowners property. It appears that TransCanada would define this phrase as
21 needed. It would be wise to explain what types of TransCanada action constitutes
22 "installation activity" For instance, would the placement and storage of an
23 excavator or other equipment on or near the Easement property be an activity or
24 would earth have to be moved before the activity requirement is triggered. This
25 vague phrase is likely to lead to future disputes and litigation that is not in the best
26 interest of the welfare of Nebraska and would not protect property interests. The
27 24-months can also be extended in the case of "force majeure." My understanding
28 is that force majeure is often used to insulate a party to a contract when events
29 occur that are completely out of their control. In TransCanada's easement this is

1 expanded to include “without limitation...availability of labor and materials.”
2 Extending this language to labor and materials is problematic because these are
3 two variables that TransCanada does have some or significant control over and to
4 allow extension of the 24-month period over events not truly out of the control of
5 TransCanada and without further provision for compensation for the Landowner is
6 not conducive to protection of property rights.

7 **Q: Okay, what is your next concern?**

8 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
9 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
10 reasonable costs and expenses” will pay for damages caused but then limits
11 TransCanada’s liability to certain circumstances. There is no definition of
12 “commercially reasonable” and no stated right that the Landowner would get to
13 determine the amounts of cost or expense that is “commercially reasonable.”
14 TransCanada excepts out from their liability any damages that are caused by
15 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
16 Landowner. It is understandable that if the Landowner were to willfully and
17 intentionally cause damages to the pipeline that Landowner should be liable.
18 However, anything short of willful misconduct should be the liability of
19 TransCanada who is subjecting the pipeline on the Landowner and who is making
20 a daily profit from that pipeline. When evaluating the impact on property rights of
21 this provision, you must consider the potentially extremely expensive fight a
22 Landowner would have over this question of whether or not damage was an act of
23 negligence. Putting this kind of potential liability upon the Landowner is
24 incredibly problematic and is detrimental to the protection of property rights. I
25 don’t think this unilateral power which I can’t do anything about as the landowner
26 is in the best economic interest of the land in question or the State of Nebraska for
27 landowners to be treated that way.

28 **Q: Is there any specific event or example you are aware of that makes this**
29 **concern more real for you?**

1 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
2 Nemaha County, Nebraska landowner farmers who accidentally struck two
3 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
4 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
5 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
6 copy of the Federal Court Complaint is here as **Attachment No. 4**

7 **Q: What is your next concern with the Easement language?**

8 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
9 they choose unless 1) any Landowner use interferes in any way with
10 TransCanada's exercise of any of its rights within the Easement, or 2)
11 TransCanada decides to take any action on the property it deems necessary to
12 prevent injury, endangerment or interference with anything TransCanada deems
13 necessary to do on the property. Landowner is also forbidden from excavating
14 without prior authorization by TransCanada. So my understanding is that
15 TransCanada will unilaterally determine what Landowner can and can't do based
16 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
17 could also completely deny my request to excavate. Further, TransCanada retains
18 all "privileges necessary or convenient for the full use of the rights" granted to
19 them in the Easement. Again, TransCanada unilaterally can decide to the
20 detriment of the property rights of Landowner what TransCanada believes is
21 necessary or convenient for it. And there is no option for any additional
22 compensation to landowner for any right exercised by TransCanada that leads to
23 the removal of trees or plants or vegetation or buildings or structures or facilities
24 owned by Landowner of any kind. Such undefined and unilateral restrictions and
25 rights without having to compensate Landowner for such further destruction or
26 losses are not conducive to the protection of property rights or economic interest.

27 **Q: What is the next concern you have?**

28 A: The Easement also allows some rights for Landowner but restricts them at the
29 same time and again at the sole and unilateral decision making of TransCanada.

1 TransCanada will determine if the actions of Landowner might in anyway
2 endanger or obstruct or interfere with TransCanada's full use of the Easement or
3 any appurtenances thereon to the pipeline itself or to their access to the Easement
4 or within the Easement and TransCanada retains the right at any time, whether
5 during growing season or not, to travel "within and along Easement Area on foot
6 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
7 retain the rights to prevent any landowner activity that it thinks may "unreasonably
8 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
9 undefined and unilateral restrictions are not conducive to the protection of
10 property rights or economic interest.

11 **Q: What is the next concern you have with the Easement language?**

12 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
13 Landowner's land any debris of any kind without any input or power of
14 Landowner to demand an alternative method or location of debris disposal. Such
15 unilateral powers would negatively affect Landowners property are not conducive
16 to the protection of property rights or economic interest.

17 **Q: What is the next concern you have with the Easement language?**

18 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
19 "where rock is encountered" mean and why does TransCanada solely get to
20 determine whether or not this phrase is triggered. This phrase could be used to
21 justify installing the pipeline 24 inches beneath the surface. The ability to use this
22 provision to minimal locate the pipeline at a depth of 24 inches could negatively
23 affect Landowners property are not conducive to the protection of property rights.
24 A shallow pipeline is much more likely to become a danger and liability in the
25 future given farming operations and buried irrigation lines and other factors
26 common to the current typical agricultural uses of the land in question impacted
27 by TransCanada's preferred pipeline route.

28 **Q: What is the next concern you have with the Easement language?**

1 A: There are more vague concepts solely at the determination of TransCanada such as
2 “as nearly as practicable” and “pre-construction position” and “extent reasonably
3 possible.” There is nothing here that defines this or provides a mechanism for
4 documenting or memorializing “pre-construction position” so as to minimize
5 costly legal battles or wasted Landowner time attempting to recreate the soil
6 condition on their fields or pasture. Such unilateral powers would negatively affect
7 Landowners property are not conducive to the protection of property rights or
8 economic interest.

9 **Q: What is the next concern you have with the Easement language?**

10 A: TransCanada maintains the unilateral right to abandon the pipeline and all
11 appurtenances thereto in place on, under, across, or through Nebraska land at any
12 time it chooses. There is no provision for Landowner compensation for such
13 abandonment nor any right for the Landowner to demand removal. Such unilateral
14 powers would negatively affect Landowners property are not conducive to the
15 protection of property rights or economic interest.

16 **Q: What is the next concern you have with the Easement language?**

17 A: TransCanada has the power to unilaterally move or modify the location of any
18 Easement area whether permanent or temporary at their sole discretion.
19 Regardless, if Landowner has taken prior steps relative the their property in
20 preparation or planning of TransCanada’s taking of the initial easement area(s),
21 the language here does not require TransCanada to compensate the Landowner if
22 they decide to move the easement anywhere on Landowners property. Such
23 unilateral powers would negatively affect Landowners property are not conducive
24 to the protection of property rights or economic interests.

25 **Q: What is the next concern you have with the Easement language?**

26 A: The Easement requires that all of the burdens and restrictions upon Landowner to
27 transfer and be applicable to any future owner of the Land in question without the
28 ability of the future Landowner to modify or negotiation any of the language in
29 question to which it will be held to comply.

1 **Q: What is the next concern you have with the Easement language?**

2 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
3 Easement to any person, company, country, etc. at their sole discretion at any time
4 to anyone. This also means that any buyer of the easement could do the same to a
5 third buyer and so on forever. There is no change of control or sale provision in
6 place to protect the Landowner or Nebraska or to provide compensation for such
7 change of control or ownership. It is not conducive to the protection of property
8 rights or economic interests to allow unilateral unrestricted sale of the Easement
9 thereby forcing upon the Landowner and our State a new unknown Easement
10 owner.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are many terms in the Easement that are either confusing or undefined terms
13 that are without context as to whether or not the Landowner would have any say
14 so in determining what these terms mean or if the evaluation is solely in
15 TransCanada's control. Some of these vague undefined terms are as follows:

- 16 i. "pipeline installation activities"
- 17 ii. "availability of labor and materials"
- 18 iii. "commercially reasonable costs and expenses"
- 19 iv. "reasonably anticipated and foreseeable costs and expenses"
- 20 v. "yield loss damages"
- 21 vi. "diminution in the value of the property"
- 22 vii. "substantially same condition"
- 23 viii. "an actual or potential hazard"
- 24 ix. "efficient"
- 25 x. "convenient"
- 26 xi. "endangered"
- 27 xii. "obstructed"
- 28 xiii. "injured"
- 29 xiv. "interfered with"

1 xv. “impaired”

2 xvi. “suitable crossings”

3 xvii. “where rock is encountered”

4 xviii. “as nearly as practicable”

5 xix. “pre-construction position”

6 xx. “pre-construction grade”

7 xxi. “various engineering factors”

8 Each one of these above terms and phrases as read in the context of the Easement
9 could be problematic in many ways. Notably, undefined terms tend to only get
10 definition in further legal proceedings after a dispute arises and the way the
11 Easement is drafted, TransCanada has sole power to determine when and if a
12 particular situation conforms with or triggers rights affected by these terms. For
13 instance, “yield loss damages” should be specifically defined and spelled out
14 exactly how the landowner is to be compensated and in what events on the front
15 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
16 the Landowner is without contractual rights to define these terms or determine
17 when rights related to them trigger and what the affects may be. Worse yet, I am
18 stuck with these now and I had no say so in this Easement language at all and no
19 way to renegotiate or fight for what protections to my property rights and
20 economic interests. This is wrong.

21 **Q: Do you have any other concerns about the Easement language that you can**
22 **think of at this time?**

23 A: I reserve the right to discuss any additional concerns that I think of at the time of
24 my live testimony in August.

25 **Q: Based upon what you have shared with the Commission above regarding**
26 **TransCanada’s proposed Easement terms and agreement, do you believe**
27 **those to be reasonable or just, under the circumstances of the pipeline’s**
28 **impact upon you and your land?**

1 A: No, I do not believe those terms to be reasonable or just for the reasons that we
2 discussed previously.

3 **Q: As the owner of the land in question and as the person who knows it better**
4 **than anyone else, do you believe that TransCanada offered you just, or fair,**
5 **compensation for all of what they proposed to take from you so that their tar**
6 **sands pipeline could be located across your property?**

7 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
8 offer for all the potential impacts and effects and the rights that I'm giving up, and
9 what we will be prevented from doing in the future and how their pipeline would
10 impact my property for ever and ever.

11 **Q: Has TransCanada at any time offered to compensate you annually, such as**
12 **wind farm projects do, for the existence of their potential tar sands pipeline**
13 **across your property.**

14 A: No, never.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you**
16 **thought their proposed location of their proposed pipeline across your land**
17 **was in your best interest?**

18 A: No, they have not.

19 **Q: Has TransCanada ever contacted you and specifically asked you if you**
20 **thought their proposed location of their proposed pipeline across your land**
21 **was in the public interest of the State of Nebraska?**

22 A: No, they have not.

23 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
24 **Takings Clause?**

25 A: Yes, I am.

26 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
27 **an American citizens property?**

28 A: My understanding is that, according to the United States Constitution, that if the
29 government is going to take land for public use, then in that case, or by taking for

1 public use, it can only occur if the private land owner is compensated justly, or
2 fairly.

3 **Q: Has TransCanada ever contacted you specially to explain the way in which**
4 **the public could use its proposed Keystone XL Pipeline?**

5 A: No, they have not.

6 **Q: Can you think of any way in which the public, that is the citizens of the State**
7 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
8 **Pipeline, as it dissects the State of Nebraska?**

9 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
10 public benefits from this pipeline in any way, how they can use it any way, or how
11 it's in the public interest in any way. By looking at the map, it is quite clear to me
12 that the only reason it's proposed to come through Nebraska, is that because we
13 are geographically in the way from between where the privately-owned Tar Sands
14 are located to where TransCanada wants to ship the Tar Sands to refineries in
15 Houston, Texas.

16 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
17 **crude petroleum, or oil and petroleum by-products that you would like to**
18 **ship in its pipeline?**

19 A: No, it has not.

20 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
21 **products that you, at this time or any time in the future, would desire to place**
22 **for transport within the proposed TransCanada Keystone XL Pipeline?**

23 A: No, I do not.

24 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
25 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
26 **products within the proposed TransCanada Keystone XL Pipeline?**

27 A: No, I do not. I've never heard of such a person or company like that.

28 **Q: Do you pay property taxes for the land that would be affected and impacted**
29 **at the proposed TransCanada Keystone XL Pipeline?**

1 A: Yes, I do.

2 **Q: Why do you pay property taxes on that land?**

3 A: Because that is the law. The law requires us to pay the property taxes as the owner
4 of that property.

5 **Q: Because you follow the law and pay property taxes, do you believe you**
6 **deserve any special consideration or treatment apart from any other person**
7 **or company that pays property taxes?**

8 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
9 just what you do.

10 **Q: Do you believe the fact that you pay property taxes entitles you to special**
11 **treatment of any kind, or special rights of any kind?**

12 A: No, of course not.

13 **Q: Do you believe the fact that you pay property taxes on your land would be**
14 **enough to qualify you to have the power of eminent domain to take land of**
15 **your neighbors or other people in your county, or other people across the**
16 **state of Nebraska?**

17 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
18 I expect an award for or any type of special consideration.

19 **Q: Have you at any time ever employed any person other than yourself?**

20 A: Well, yes I have.

21 **Q: Do you believe that the fact that you have, at some point in your life,**
22 **employed one or more other persons entitle you to any special treatment or**
23 **consideration above and beyond any other Nebraskan that has also employed**
24 **one or more persons?**

25 A: No, of course not.

26 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
27 **have at one point employed another person within this state, entitles you to**
28 **preferential treatment or consideration of any kind?**

1 A: No, of course not. If I choose to employ someone that decision is up to me. I
2 don't deserve any special treatment or consideration for that fact.

3 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
4 **crude oil pipeline in its preferred location, or ultimate location across the**
5 **state of Nebraska?**

6 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
7 or even bullied around and being made to feel scared that they did not have any
8 options but to sign whatever papers TransCanada told them they had to. I am
9 aware of folks being threatened that their land would be taken if they didn't follow
10 what TransCanada was saying. I am aware of tactics to get people to sign
11 easements that I don't believe have any place in Nebraska or anywhere such as
12 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
13 landowners and convince them they should sign TransCanada's easement
14 agreements. I am aware of older folks and widows or widowers feeling they had
15 no choice but to sign TransCanada's Easement and they didn't know they could
16 fight or stand up for themselves. From a more practical standpoint, I am worried
17 that according to their answer to Landowners Interrogatory No. 211, TransCanada
18 only owns and operates one (1) major oil pipeline. They simply do not have the
19 experience with this type of pipeline and that scares me. There are others but that
20 is what I can recollect at this time and if I remember more or my recollection is
21 refreshed I will share those with the Commissioners at the Hearing in August.

22 **Q: Do you believe TransCanada's method of compensation to the landowner is**
23 **reasonable or just?**

24 A: No, I do not.

25 **Q: Do you have any concern about limitations that the construction of this**
26 **proposed pipeline across your affected land would prevent construction of**
27 **future structures upon the portion of your land affected by the proposed**
28 **easement and immediately surrounding areas?**

1 A: Well yes, of course I do. We would not be able to build many, if any, types of
2 structures directly across or touching the easement, and it would be unwise and I
3 would be uncomfortable to build anything near the easement for fear of being
4 blamed in the future should any damage or difficulty result on my property in
5 regards to the pipeline.

6 **Q: Do you think such a restriction would impact you economically?**

7 A: Well yes, of course.

8 **Q: How do you think such a restriction would impact you economically?**

9 A: The future of this land may not be exactly how it's being used as of this moment,
10 and having the restrictions and limiting my ability to develop my land in certain
11 ways presents a huge negative economic impact on myself, my family, and any
12 potential future owner of the property. You have no idea how I or the future owner
13 may want to use this land in the future or the other land across Nebraska
14 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
15 ago it would have been hard to imagine all the advances that we have now or how
16 things change. Because the Easement is forever and TransCanada gets the rights in
17 my land forever we have to think with a very long term view. By placing their
18 pipeline on under across and through my land that prevents future development
19 which greatly negatively impacts future taxes and tax revenue that could have
20 been generated by the County and State but now will not. When you look at the
21 short blip of economic activity that the two years of temporary construction efforts
22 may bring, that is far outweighed by the perpetual and forever loss of opportunity
23 and restrictions TransCanada is forcing upon us and Nebraska.

24 **Q: Do you have any concerns about the environmental impact of the proposed**
25 **pipeline?**

26 A: Yes, I do.

27 **Q: What are some of those concerns?**

28 A: As an affected land owner and Nebraskan, I am concerned that any construction,
29 operation, and/or maintenance of the proposed Keystone XL Pipeline would have

1 a detrimental impact upon the environment of my land specifically, as well as the
2 lands near my land and surrounding the proposed pipeline route.

3 **Q: Do you have any other related environmental concerns?**

4 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
5 construction and/or maintenance and operation. I am concerned about spills and
6 leaks that TransCanada has had in the past and will have in the future. This could
7 be catastrophic to my operations or others and to my county and the State. Also, I
8 concerned about removal of topsoil with construction, the quality of the pipe being
9 used, and the quality of the leak monitoring system. What will be the effects on
10 the bodies of water and Ogallala Aquifer? How will they clean up a spill out of
11 water, when it has been stated that nobody knows how to effectively clean up a
12 spill of tar sands. This is evidenced by the spill in the Kalamazoo River. How
13 will a spill affect irrigating our crops? Will crops even grow with the chemicals in
14 the water? Is TransCanada responsible for our crop loss and/or decrease in yield
15 after a spill?

16 **Q: Okay, what else?**

17 A: I am an RN, and within the past year we had a water contamination issue in the
18 city that I work in. This greatly affected how we did patient care; we had to
19 change several things for a period of time to be able to take care of our patient's
20 properly. It also affected several businesses in town. Some had to shut down their
21 kitchens, soda machines, coffee machines due to concern about the water being
22 contaminated. This had to have resulted in a profit loss and extra expenses to
23 operate for these businesses. This could also cause job loss, unrelated to
24 agriculture. Will TransCanada pay for all costs of a spill or will they try to put that
25 on me or others like the are allowed to according to their one-sided Easement
26 language? Including expenses to neighboring landowners that might be affected?
27 What will be the effects on the ground? How will spills or leaks be detected?
28 Based on past experience we have learned they often aren't detected very quickly,
29 if at all, by TransCanada's monitoring system.

1 Will our grain even be marketable after a spill near our farm? Or will it be turned
2 down or receive less money due to possible contamination? How will my family
3 be able to live after a spill? What will we drink? How will we prepare food?
4 How will we bathe, wash clothes, wash dishes, grow a garden? So many things
5 we do on a daily basis revolve around water, how do we live once it is
6 contaminated? Is TransCanada responsible to make sure I have safe water and the
7 cost involved? How do we raise poultry and livestock with contaminated water?
8 How do we take care of our pets? Our lives are based around agriculture and
9 water is a necessity, how will we still be able to farm and support ourselves if we
10 aren't able to farm because of a spill. We will lose many ag related jobs, just to
11 gain a few permanent jobs this pipeline will create. What will the effects on
12 wildlife and plants be? Who will pay for the expenses to help protect and preserve
13 these species once they are in danger from a spill?

14 **Q: What else?**

15 A: A spill in the Ogallala Aquifer has the potential to affect SO many people's water
16 source. There are so many places around the world that don't have safe drinking
17 water. The people that live there suffer, and lack of safe water costs many people
18 their lives. In a place where we are so fortunate to have safe drinking water, why
19 would anyone want to put it at risk? In fact, it seems a perfect way to cripple the
20 United States if a foreign country wanted to. This statement is cited from
21 water.org: "The water crisis is the #1 global risk based on impact to society (as a
22 measure of devastation), as announced by the World Economic Forum in January
23 2015." I believe this statement to be true.

24 **Q: Do you have any thoughts regarding if there would be an impact upon the**
25 **natural resources on or near your property due to the proposed pipeline?**

26 A: Yes, I believe that any construction, operation, and/or maintenance of the
27 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
28 resources of my land, and the lands near and surrounding the proposed pipeline
29 route.

1 **Q: Do you have any worries about potential impacts from the proposed pipeline**
2 **to the soil of your land, or land near you?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
5 land, as well as land along and surrounding the proposed pipeline route. This
6 includes, but is not limited to, the reasons that we discussed above of disturbing
7 the soil composition and makeup as it has naturally existed for thousands and
8 millions of years during the construction process, and any future maintenance or
9 removal process. I'm gravely concerned about the fertility and the loss of
10 economic ability of my property to grow the crops, or grow the grasses, or grow
11 whatever it is at that time they exist on my property or that I may want to grow in
12 the future, or that a future owner may want to grow. The land will never be the
13 same from as it exists now undisturbed to after it is trenched up for the proposed
14 pipeline.

15 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
16 **upon the groundwater over your land, or surrounding lands?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 groundwater of not only under my land, but also near and surrounding the pipeline
20 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
21 simple and it is simply too valuable to our State and the country to put at
22 unreasonable risk.

23 **Q: Do you have any concern about the potential impact of the proposed pipeline**
24 **upon the surface water on, or near or around your land?**

25 A: Yes, I have significant concerns that any construction, operation, and/or
26 maintenance of the proposed Keystone XL Pipeline would have detrimental
27 impact upon the surface water of not only within my property boundary, but along
28 and near and surrounding the pipeline route, and in fact, across the state of
29 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
2 **upon the wildlife and plants, other than your growing crops on or near your**
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the
6 wildlife and the plants, not only that are located on or can be found upon my land,
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed
11 pipeline underneath and across and through my property will negatively affect the
12 fair market value at any point in the future, especially at that point in which I
13 would need to sell the property, or someone in my family would need to sell the
14 property. I do not believe, and certainly would not be willing to pay, the same
15 price for land that had the pipeline located on it, versus land that did not. I hope
16 there is never a point where I'm in a position where I have to sell and have to
17 realize as much value as I can out of my land. But because it is my single largest
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they
20 would've paid and as much as I could've received, if the pipeline were not upon
21 my property. There are just too many risks, unknowns, impacts and uncertainties,
22 not to mention all of the rights you give up by the nature of having the pipeline
23 due to having the easement that we have previously discussed, for any reasonable
24 person to think that the existence of the pipeline would not negatively affect my
25 property's value.

26 **Q: Do you believe there is any potential route for the proposed Keystone XL**
27 **Pipeline across, within, under, or through the State of Nebraska that is in the**
28 **public interest of the citizens of Nebraska?**

29 A: No, I do not.

1 **Q: Why do you hold that belief?**

2 A: Because there simply is no public interest based on all of the factors that I am
3 aware and that I have read and that I have studied that this Commission is to
4 consider that would establish that a for-profit foreign-owned pipeline that simply
5 crosses Nebraska because we are geographically in the way between where tar
6 sands are in Canada to where it wants to ship it to in Texas could ever be in the
7 public interest of Nebraskans. We derive no benefit from this project. It is not for
8 public use. Nebraska is simply in the way and when all considerations are taken in
9 there is no net benefit of any kind for Nebraska should this project be placed in our
10 state. Even if there was some arguable “benefit” it is not enough to outweigh all
11 the negative impacts and concerns.

12 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
13 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
14 **of Nebraska because it may bring temporary jobs during the construction**
15 **phase to Nebraska?**

16 A: First of all, not all jobs are created equally. Most jobs that are created, whether
17 temporary or on a permanent basis, don’t come with a project that has all the
18 potential and foreseeable negative impacts, many of which we have discussed here
19 and other witnesses throughout the course of this hearing have and will discuss. If
20 I decide to hire and employ someone to help me out in my farming or ranching
21 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
22 to my land or my town or my county or my state. And I’ve hired someone who is
23 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
24 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
25 jobs are not created equal. Additionally, I understand from what I’m familiar with
26 from TransCanada’s own statements that the jobs numbers they originally touted
27 were determined to be a minute fraction of the permanent jobs that had been
28 projected. According to their answer to Landowners’ Interrogatory No. 191,
29 TransCanada has created only thirty-four (34) jobs within Nebraska working

1 specifically on behalf of TransCanada and according to their answer to
2 Interrogatory No. 196, as of May 5, 2017 they only employ one (1) temporary
3 working within Nebraska. Further, according to their answer to Interrogatory No.
4 199, TransCanada would only employ six to ten (6 to 10) new individuals if the
5 proposed Keystone XL was constructed on its Preferred Route or its Mainline
6 Alternative Route.

7 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
8 **because it would cross your land?**

9 A: No, absolutely not. I am opposed to this project because it is not in the public
10 interest, neither within my community nor within our state.

11 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
12 **was to cross someone else's land?**

13 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
14 the fear and anxiety and potential foreseeable risks and negative impacts that this
15 type of a project carrying this type of product brings foisted upon anyone in this
16 state or any other state.

17 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
18 **Pipeline to cross the state of Nebraska?**

19 A: I don't believe there is an intelligent route because as I have stated I don't believe
20 this project anywhere within Nebraska is within the public interest. However, if
21 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
22 had to go somewhere in the state of Nebraska, the only intelligent route I believe
23 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
24 preferred route and the mainline alternative routes are economic liabilities our
25 state cannot risk.

26 **Q: What do you rely upon to make that statement?**

27 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
28 already exists in that area is reason enough as it is not in our best interest or the
29 public interests to have more major oil pipelines crisscrossing our state. Second,

1 they have all the infrastructure already there in terms of relationships with the
2 counties and local officials and first responders along that route. Third, they have
3 already obtained easements from all the landowners along that route and have
4 relationships with them. Fourth, that route avoids our most sensitive soils, the
5 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
6 Aquifer. Sixth, they have already studied that route and previously offered it as an
7 alternative. Seventh, it just makes the most sense that as a state we would have
8 some intelligent policy of energy corridors and co-locating this type of
9 infrastructure near each other.

10 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
11 **like the Public Service Commissioners to consider in their review of**
12 **TransCanada's Application?**

13 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
14 document below but other things may come to me or my memory may be
15 refreshed and I will add and address those things at the time of the Hearing in
16 August and address any additional items at that time as is necessary. Additionally,
17 I have not had an adequate amount of time to receive and review all of
18 TransCanada's answers to our discovery and the discovery of others so it was
19 impossible to competently and completely react to that in my testimony here and I
20 reserve the right to also address anything related to discovery that has not yet
21 concluded as of the date I signed this document below. Lastly, certain documents
22 requested have not yet been produced by TransCanada and therefore I may have
23 additional thoughts on those I will also share at the hearing as needed.

24 **Q: What is it that you are requesting the Public Service Commissioners do in**
25 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
26 **across Nebraska?**

27 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
28 a temporary job spike that this project may bring to a few counties and beyond the
29 relatively small amount of taxes this proposed foreign pipeline would possibly

1 generate. And, instead think about the perpetual and forever impacts of this
2 pipeline as it would have on the landowners specifically, first and foremost, but
3 also thereby upon the entire state of Nebraska, and to determine that neither the
4 preferred route nor the Keystone mainline alternative route are in the public
5 interest of the citizens of the state of Nebraska. And if the Commissioners were
6 inclined to modify TransCanada's proposed routes and were to be inclined to grant
7 an application for a route in Nebraska, that the only potential route that would
8 make any intelligent sense whatsoever would be twinning or near paralleling of
9 the proposed KXL with the existing Keystone I pipeline. It simply does not make
10 sense to add yet another major oil pipeline crisscrossing our state creating new
11 pumping stations, creating new impacts on additional counties and communities
12 and going through all of the court processes with myself and other landowners like
13 me when this applicant already has relationships with the landowners, the towns
14 and the communities along Keystone I, and that Keystone I is firmly outside of the
15 sand hills and a significantly further portion away from the heart of the Ogallala
16 Aquifer than the preferred route or the Keystone mainline alternative route.

17 **Q: Are all of your statements in your testimony provided above true and**
18 **accurate as of the date you signed this document to the best of your**
19 **knowledge?**

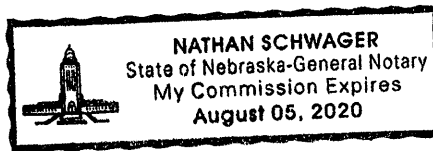
20 **A:** Yes, they are.

21 **Q: Thank you, I have no further questions at this time and reserve the right to**
22 **ask you additional questions at the August 2017 Hearing.**

Mia Bergman
Mia Bergman

Subscribed and Sworn to me before this 25th day of May, 2017.

Nathan Schwager
Notary Public



Attachment No. 1



Attachment No. 2



Attachment No. 3

STATE OF NEBRASKA } ss
ANNELOPE COUNTY }
Entered on the Numerical Index and Filed for Record
the 24 day of September A.D. 20 13
at 11:15 o'clock A. M. Recorded in book 59
of Micelliano Page 552
Carol R. Dean County Clerk

Prepared by and after recording
please return to:
TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

ML-NE-AT-30055.000
ML-NE-AT-30056.000
ML-NE-AT-30057.000

EASEMENT AND RIGHT-OF-WAY AGREEMENT

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**"), **Rodney W. Deck and Kim Deck, husband and wife**, whose mailing address is 85589 567 Avenue, Winside, NE 68790 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 717 Texas Street, Houston, Texas 77002, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all

Grantor's Initials

R.D.
K.D.

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other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Antelope, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 92 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the SW1/4 and the S1/2 NW1/4 of Section 27, T28N, R8W of the 6th P.M., as recorded in Book 123, Page 371 and Book 123, Page 646 in the Deed Records of Antelope, County, Nebraska; less and except any conveyances heretofore made.

Less and Except: A tract of land located in part of the South One Half of the Northwest Quarter and part of the Southwest Quarter of Section 27, Township 28 North, Range 8 West of the 6th P.M., Antelope County, Nebraska, more particularly described as follows: Commencing at the Southwest corner of the Southwest Quarter of Section 27, and assuming the South line of said Southwest Quarter to have a bearing of S 89°39'07" E; thence S 89°39'07" E, 1403.00 feet; thence N 0°14'12" W and parallel to the West line of said Southwest Quarter, 3160.00 feet; thence N 89°39'07" W, 387.79 feet, to point of beginning; thence N 89°39'07" W, 915.90 feet; thence S 36°03'16" E, 43.24 feet; thence S 71°03'20" E, 195.36 feet; thence S 78°33'35" E, 188.68 feet; thence S 71°05'36" E, 207.07 feet; thence S 62°54'42" E, 186.95 feet; thence S 60°14'24" E, 20830 feet; thence N 03°19'48" W, 386.52 feet, to the point of beginning, containing 3.74 acres, more or less, as recorded in Book 127, Page 742; **less and except** a tract of land located in part of the South One Half of the Northwest Quarter and part of the Southwest Quarter of Section 27, Township 28 North, Range 8 West of the 6th P.M., Antelope County, Nebraska, more particularly described as follows: Commencing at the Southwest corner of the Southwest Quarter, and assuming the South line of said Southwest Quarter to have a bearing of S 89°39'07" E; thence S 89°39'07" E and on said South line 1403.00 feet; thence N 0°14'12" W and parallel to the West line of said Southwest Quarter, 3160.00 feet to the point of beginning; thence S 0°14'12" E and parallel to the West line of said Southwest Quarter, 1128.27 feet; thence N 26°25'05" W, 831.59 feet; thence N 3°19'48" W, 386.52 feet; thence S 89°39'07" E and parallel to the South line of said Southwest Quarter, 387.79 feet to the point of beginning, containing 6.37 acres, more or less, as recorded in Book 126, Page 199; and **less and except** a tract of land described in Book 123, Page 646.

A tract of land containing 6.39 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as a part of the SW1/4 of Section 27, Township 28 North, Range 8 West of the 6th P.M., as recorded in Book 126, Page 189 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 2.81 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as a part of the SW1/4 of Section 27, Township 28 North, Range 8 West of the 6th P.M., as recorded in Book 127, Page 741 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the

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"Temporary Work Space"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by

Grantor's Initials R.D.
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Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic

Grantor's Initials

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protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

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19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the 16th day of September, 2013.

GRANTOR(S):

Rodney W. Deck
Rodney W. Deck

Kim Deck
Kim Deck

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

Grantor's Initials R.W.
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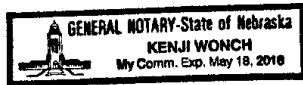
Acknowledgement of Individual

STATE OF NEBRASKA

COUNTY OF Madison

The foregoing instrument was acknowledged before me this 16th day of Sept. 2013

By **Rodney W. Deck**



Affix Seal Here

Kenji Wonch
Notary Public Signature

STATE OF NEBRASKA

COUNTY OF Madison

The foregoing instrument was acknowledged before me this 16th day of Sept. 2013

By **Kim Deck**



Affix Seal Here

Kenji Wonch
Notary Public Signature

Grantor's Initials

RD
KD

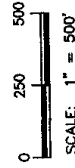
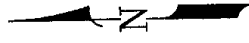
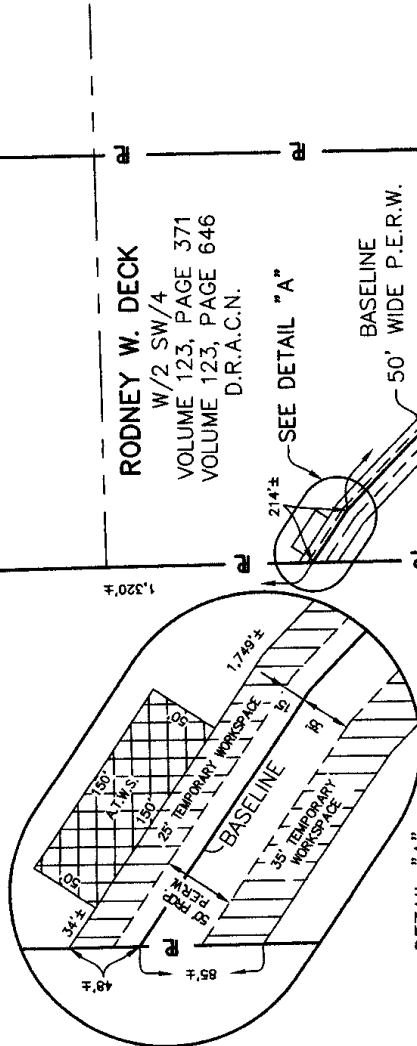
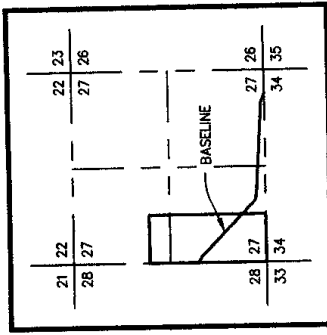
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ANTELOPE COUNTY, NEBRASKA

T-28-N, R-8-W, SECTION 27
ML-NE-AT-30055.000

LEGEND
P.F. PROP.
A.T.W.S.
P.E.R.W.
D.R.A.C.N



TRACT LEGAL DESCRIPTION:
W/2 SW/4, S/2 SW/4 NW/4
OF SECTION 27,
T-28-N, R-8-W


NOTE:

NOTE: THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY.

TOTAL DISTANCE ACROSS PROPERTY: 1,937'±
 AREA OF PERMANENT EASEMENT: 2.2 ACRES
 AREA OF TEMPORARY WORKSPACE: 2.7 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.2 ACRE

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 TransCanada In business to deliver					
KEYSTONE PROJECT		EASTMAN AREA			
ACROSS THE PROPERTY OF HONEY W DECK		MIL-NE-ST-30055.000			
PROJECT:		XL	EXHIBIT A		
APPROVED BY:		D.J.S.	XL-00-MIL-STK-33982	DRAWING NUMBER	
NO.	REVISION				
1	REVISED WORKSPACE & LINE CHANGE	DATE			
2	PINCEL BOUNDARY & INFO UPDATE	04/19/13			
3	BOOK AND PAGE UPDATE	05/04/13			
4	BOOK AND PAGE UPDATE	06/20/13			
				CHECKED BY:	SM
SCALE	DATE	DRAWN BY			
1" = 500'	07/05/12	PB			

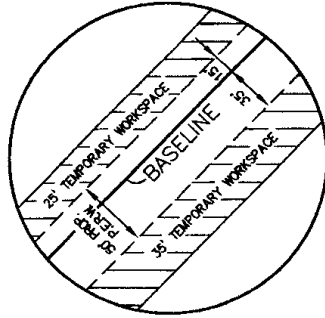
LEGEND

PROPERTY LINE
SECTION LINE
PROPOSED
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA

ANTELOPE COUNTY, NEBRASKA

T-28-N, R-8-W, SECTION 27

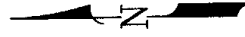
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DETAIL "A"
N.T.S.

**RODNEY W. DECK,
A SINGLE PERSON**
SE/4 SW/4
VOLUME 126, PAGE 189-190
D.R.A.C.N.

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SCALE: 1" = 200'

TRACT LEGAL DESCRIPTION:
A TRACT OF LAND LOCATED IN
THE SW/4 OF SECTION 27,
T-28-N, R-8-W

NOTE:
THIS SKETCH DOES NOT MEET THE MINIMUM
STANDARDS FOR PROPERTY BOUNDARY SURVEYS.
IT WAS NOT DERIVED FROM AN ON-THE-GROUND
SURVEY BUT IS INTENDED FOR RIGHT OF WAY
PURPOSES ONLY.



TOTAL DISTANCE ACROSS PROPERTY: 456'±
AREA OF PERMANENT EASEMENT: 0.5 ACRE
AREA OF TEMPORARY WORKSPACE: 0.6 ACRE

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KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
RODNEY W. DECK, A	
SINGLE PERSON	
ML-NE-AT-30056.000	
PROJECT	EXHIBIT A
APPROVED BY	DRAWING NUMBER
JMP	XL-JB-ML-SK-3802
NO.	REVISION
DATE	DATE
SCALE	DATE
1" = 200'	04/19/13
DRAWN BY	CHECKED BY
JN	SM

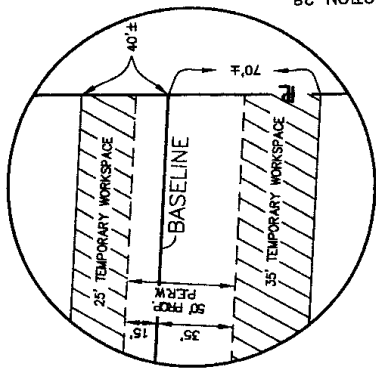
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P.L.S.
 PROP.
 P.E.R.W.
 D.R.A.C.N.

28-N, R-8-W, SECTION 27
ML-NE-AT-30057.000

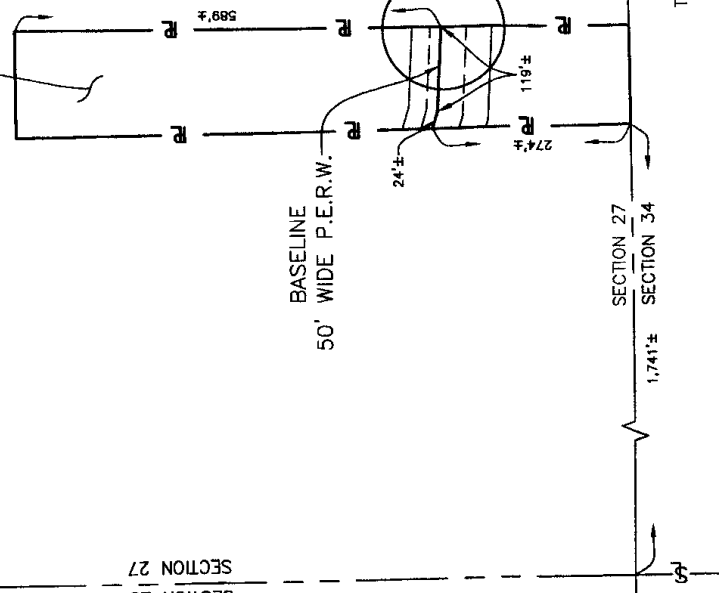
PROPERTY LINE
SECTION LINE
PROPOSED
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA



DETAIL "A"
N.T.S.

RODNEY W. DECK
SE/4 SW/4
VOLUME 127, PAGE 741
D.R.A.C.N.

BASELINE
50' WIDE P.E.R.W.—




SEE DETAILS

TRACT LEGAL DESCRIPTION:
A TRACT OF LAND LOCATED IN
THE SW/4 OF SECTION 27,
T-28-N, R-8-W

NOTE:
THIS SKETCH DOES NOT MEET THE MINIMUM
STANDARDS FOR PROPERTY BOUNDARY SURVEYS.
IT WAS NOT DERIVED FROM AN ON-THE-GROUND
SURVEY BUT IS INTENDED FOR RIGHT-OF-WAY
PURPOSES ONLY.

TOTAL DISTANCE ACROSS PROPERTY:	143'±
AREA OF PERMANENT EASEMENT:	0.2 ACRE
AREA OF TEMPORARY WORKSPACE:	0.2 ACRE

	TransCanada	In business to deliver
KEYSTONE XL PROJECT BASEMENT AREA ACROSS THE PROPERTY OF RODNEY W. DECK MIL-WEAT-35057.000		
PROJECT:	XL	EXHIBIT A
APPROVED BY	JMP	DRAWING NUMBER
NO.		XL-0L-SK-3803
	REVISION	DATE
SCALE	DATE	DRAWN BY
1" = 200'	04/20/13	JN
		SM

R. P. 20

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Plaintiff,

v.

RICHARD ANDREW, JANE ANDREW,
LUKE ANDREW, and BRYCE ANDREW,

Defendants.

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

**Direct Testimony of
Karen Berry in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Karen Berry

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse's name please?**

16 A: **John Pollack**

1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A: Yes.

4 **Q: For the land that would be affected and impacted by the proposed KXL tar**
5 **sands pipeline give the Commissioners a sense how long the land has been in**
6 **your family and a little history of the land.**

7 **A:** The land has been in the Berry family since the 1950s, and it was put into Karen's
8 ownership in the mid to late 1970s. The soil is very sandy and porous. However,
9 due to a high water table, there is a permanent moist area running though the
10 middle of the property. This area has not been farmed for several decades,
11 because farm equipment tended to get stuck, and wet weather prevents a good
12 crop. The pictures I have attached are from this area, which is now beautiful and
13 somewhat secluded. I enjoy visiting this area, and wants it to be preserved.
14 The remaining farmland has proved unusually productive for dryland farming,
15 because the high water table puts adequate water into the root zone of
16 plantings. There is a danger that the digging that accompanies the pipeline will
17 disrupt the hydrology of the area, easing the drainage and dropping the water
18 table, to the detriment of dryland farming. Conversely, blocking drainage as it
19 crosses the wet area could have a damming effect. There is no guarantee in the
20 easement against pipeline-induced changes in the water table, or monitoring of any
21 changes.

22 **Q: Do you earn any income from this land?**

23 A: Yes.

24 **Q: Have you depended on the income from your land to support your livelihood**
25 **or the livelihood of your family?**

26 A: Yes.

27 **Q: Have you ever in the past or have you thought about in the future leasing all**
28 **or a portion of your land in question here?**

1 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
2 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
3 all the restrictions and risks and potential negative impacts to farming or ranching
4 operations as opposed to land that did not have those same risks. If I was looking
5 to lease or rent ground I would pay more for comparable non-pipeline land than I
6 would for comparable pipeline land and I think most folks would think the same
7 way. This is another negative economic impact that affects the landowner and the
8 county and the state and will forever and ever should TransCanada's preferred or
9 mainline alternative routes be approved. If they were to twin or closely parallel to
10 Keystone I the vast majority of landowners would be those that already have a
11 pipeline so there would be considerable less new incremental negative impacts.

12 **Q: Do you have similar concerns about selling the land?**

13 A: Well I hope not to have to sell the land in my lifetime but times change and you
14 never know what is around the corner and yes I am concerned that if another piece
15 of ground similar to mine were for sale and it did not have the pipeline and mine
16 did that I would have a lower selling price. I think this would be true for pipeline
17 ground on both the preferred and mainline alternative routes.

18 **Q: What is your intent with your land after you die?**

19 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
20 to come but I have thought about getting out if this pipeline were to come through.

21 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
22 **Pipeline would cross the land described above and owned by you?**

23 A: Yes.

24 **Q: Were you or an entity for which you are a member, shareholder, or director**
25 **previously sued by TransCanada Keystone Pipeline, LP?**

26 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
27 petition for condemnation against our land so it could place its proposed pipeline
28 within an easement that it wanted to take from us on our land.

29 **Q: Did you defend yourself and your land in that condemnation action?**

1 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
2 and expenses in our resistance of TransCanada's lawsuit against us.

3 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
4 **incurred?**

5 A: No, they have not.

6 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
7 **property that it wanted to take for its proposed pipeline?**

8 A: The lawsuit against us stated they would take the amount of property that is
9 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
10 and equipment reasonably necessary to operate the pipeline.

11 **Q: Did TransCanada define what they meant by "property that is reasonably**
12 **necessary"?**

13 A: No, they did not.

14 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
15 **property portion of your land?**

16 A: Yes, they did.

17 **Q: Did TransCanada describe what rights it proposed to take related to the**
18 **eminent domain property on your land?**

19 A: Yes, they did.

20 **Q: What rights that they proposed to take did they describe?**

21 A: TransCanada stated that the eminent domain property will be used to "lay, relay,
22 operate, and maintain the pipeline and the plant and equipment reasonably
23 necessary to operate the pipeline, specifically including surveying, laying,
24 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
25 reconstructing, removing and abandoning one pipeline, together with all fittings,
26 cathodic protection equipment, pipeline markers, and all their equipment and
27 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
28 petroleum products, and all by-products thereof."

1 **Q: Prior to filing an eminent domain lawsuit to take your land that**
2 **TransCanada identified, do you believe they attempted to negotiate in good**
3 **faith with you?**

4 A: No, I do not.

5 **Q: Did TransCanada at any time approach you with or deliver to you their**
6 **proposed easement and right-of-way agreement?**

7 A: Yes, they did.

8 **Q: At the time you reviewed TransCanada's easement and right-of-way**
9 **agreement, did you understand that they would be purchasing a fee title**
10 **interest in your property or that they were taking something else?**

11 A: I understood that they proposed to have the power to take both a temporary
12 construction easement that could last for a certain period of time and then also a
13 permanent easement which they described to be 50 feet across or in width, and
14 that would run the entire portion of my property from where a proposed pipeline
15 would enter my property until where it would exit the property.

16 **Q: Is the document included with your testimony here as Attachment No. 3, a**
17 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
18 **Way agreement that they included with their condemnation lawsuit against**
19 **you?**

20 A: Yes, it is.

21 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
22 **and Right-of-Way agreement?**

23 A: Yes, I have.

24 **Q: What is your understanding of the significance of the Easement and Right-of-**
25 **Way agreement as proposed by TransCanada?**

26 A: My understanding is that this is the document that will govern all of the rights and
27 obligations and duties as well as the limitations of what I can and cannot do and
28 how I and any future landowner and any person I invite to come onto my property

1 must behave as well as what TransCanada is and is not responsible for and how
2 they can use my land.

3 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
4 **agreement do you have any concerns about any portions of it or any of the**
5 **language either included in the document or missing from the proposed**
6 **document?**

7 A: Yes, I have a number of significant concerns and worries about the document and
8 how the language included and the language not included potentially negatively
9 impacts my land and thereby potentially negatively impacts my community and
10 my state.

11 **Q: I would like you to walk the Commissioners through each and every one of**
12 **your concerns about TransCanada's proposed Easement and Right-of-Way**
13 **agreement so they can develop an understanding of how that language and**
14 **the terms of that contract, in your opinion, potentially negatively impacts you**
15 **and your land. So, if you can start at the beginning of that document and**
16 **let's work our way through it, okay?**

17 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
18 Easement and Right-of-Way agreement and how it negatively could affect my
19 property rights and my economic interests.

20 **Q. Okay, let's start with your first concern please.**

21 A: The very first sentence talks about consideration or how much money they will
22 pay to compensate me for all of the known and unknown effects and all of the
23 rights I am giving up and for all the things they get to do to my land and for what
24 they will prevent me from doing on my land and they only will pay me one time at
25 the signing of the easement agreement. That is a huge problem.

26 **Q: Explain to the Commissioners why that is a problem.**

27 A: It is not fair to the landowner, the county, or the State. It is not fair to the
28 landowner because they want to have my land forever for use as they see fit so
29 they can make a daily profit from their customers. If I was to lease ground from

1 my neighbor I would typically pay twice a year every year as long as they granted
2 me the rights to use their land. That only makes sense – that is fair. If I was going
3 to rent a house in town I would typically pay monthly, every month until I gave up
4 my right to use that house. By TransCanada getting out on the cheap and paying
5 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
6 revenue collection on the money I would be paid and then pay taxes on and
7 contribute to this state and this country. It is money I would be putting back into
8 my local community both spending and stimulating the local economy and
9 generating more economic activity right here. Instead TransCanada's shareholders
10 keep all that money and it never finds its way to Nebraska.

11 **Q: What is your next concern?**

12 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
13 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
14 limited partnership...” and I have no idea who that really is. I have no idea who is
15 forcing this pipeline on us or who the owners of the entities are, or what are the
16 assets backing this limited partnership, or who the general partner is, or who all
17 the limited partners are, and who makes up the ownership of these partners or the
18 structure or any of the basic things you would want to know and understand if you
19 would want to do business with such an outfit. According to TransCanada's
20 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
21 liability company called TransCanada Keystone Pipeline GP, LLC is the general
22 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
23 basically nothing. That is really scary since the general partner has the liability but
24 virtually none of the ownership and who knows if it has any other assets.

25 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
26 **percent clear on exactly who could become the owner of over 275 miles of**
27 **Nebraska land?**

28 A: No.

1 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
2 **percent clear on exactly who will be operating and responsible for**
3 **approximately 275 miles of tar sands pipeline underneath and through**
4 **Nebraska land?**

5 A: No.

6 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
7 **and the State of Nebraska of TransCanada's easement terms.**

8 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
9 called "Grantee")..." and this concerns me because it would allow my easement to
10 be transferred or sold to someone or some company or country or who knows what
11 that I don't know and who we may not want to do business with. This pipeline
12 would be a huge asset for TransCanada and if they can sell to the highest bidder
13 that could have terrible impacts upon all of Nebraska depending upon who may
14 buy it and I don't know of any safeguards in place for us or the State to veto or
15 have any say so in who may own, operate, or be responsible for this pipeline in the
16 future.

17 **Q: Do you think that type of uncertainty and lack of control over a major piece**
18 **of infrastructure crossing our State is in the public interest?**

19 A: No, certainly not, in fact, just the opposite.

20 **Q: What's next?**

21 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
22 really concerns me. Why does the easement and right-of-way have to be perpetual
23 and permanent? That is the question myself and my family want an answer to.
24 Perpetual to me is like forever and that doesn't make sense.

25 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

26 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
27 data proving there is a perpetual supply of tar sands. I am not aware in
28 TransCanada's application where it proves there is a perpetual necessity for this
29 pipeline. My understanding of energy infrastructure like wind towers is they have

1 a decommission plan and actually take the towers down when they become
2 obsolete or no longer needed. Nothing manmade lasts forever. My land however
3 will, and I want my family or future Nebraska families to have that land as
4 undisturbed as possible and it is not in my interest or the public interest of
5 Nebraska to be forced to give up perpetual and permanent rights in the land for
6 this specific kind of pipeline project.

7 **Q: Okay, what is your next concern?**

8 A: The easement language includes all these things TransCanada can do and it says
9 "...abandoning in place..." so they can just leave this pipeline under my ground
10 until the end of time just sitting there while they are not using it, but I am still
11 prevented from doing on my land and using my land what I would like. If I owned
12 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
13 there. It doesn't make sense and it scares me and it is not in my interest or the
14 public interest of Nebraska to allow this.

15 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
16 **right?**

17 A: Yes.

18 **Q: So now on the second page of the Easement what are your concerns?**

19 A: Here the Easement identifies a 24-month deadline to complete construction of the
20 pipeline but has caveats that are undefined and ambiguous. The 24-month period
21 starts to run from the moment "actual pipeline installation activities" begin on
22 Landowners property. It appears that TransCanada would define this phrase as
23 needed. It would be wise to explain what types of TransCanada action constitutes
24 "installation activity" For instance, would the placement and storage of an
25 excavator or other equipment on or near the Easement property be an activity or
26 would earth have to be moved before the activity requirement is triggered. This
27 vague phrase is likely to lead to future disputes and litigation that is not in the best
28 interest of the welfare of Nebraska and would not protect property interests. The
29 24-months can also be extended in the case of "force majeure." My understanding

1 is that force majeure is often used to insulate a party to a contract when events
2 occur that are completely out of their control. In TransCanada's easement this is
3 expanded to include "without limitation...availability of labor and materials."
4 Extending this language to labor and materials is problematic because these are
5 two variables that TransCanada does have some or significant control over and to
6 allow extension of the 24-month period over events not truly out of the control of
7 TransCanada and without further provision for compensation for the Landowner is
8 not conducive to protection of property rights.

9 **Q: Okay, what is your next concern?**

10 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
11 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially
12 reasonable costs and expenses" will pay for damages caused but then limits
13 TransCanada's liability to certain circumstances. There is no definition of
14 "commercially reasonable" and no stated right that the Landowner would get to
15 determine the amounts of cost or expense that is "commercially reasonable."
16 TransCanada excepts out from their liability any damages that are caused by
17 Landowner's negligence or the negligence of anyone ever acting on the behalf of
18 Landowner. It is understandable that if the Landowner were to willfully and
19 intentionally cause damages to the pipeline that Landowner should be liable.
20 However, anything short of willful misconduct should be the liability of
21 TransCanada who is subjecting the pipeline on the Landowner and who is making
22 a daily profit from that pipeline. When evaluating the impact on property rights of
23 this provision, you must consider the potentially extremely expensive fight a
24 Landowner would have over this question of whether or not damage was an act of
25 negligence. Putting this kind of potential liability upon the Landowner is
26 incredibly problematic and is detrimental to the protection of property rights. I
27 don't think this unilateral power which I can't do anything about as the landowner
28 is in the best economic interest of the land in question or the State of Nebraska for
29 landowners to be treated that way.

1 **Q: Is there any specific event or example you are aware of that makes this**
2 **concern more real for you?**

3 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
4 Nemaha County, Nebraska landowner farmers who accidentally struck two
5 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
6 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
7 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
8 copy of the Federal Court Complaint is here as **Attachment No. 4.**

9 **Q: What is your next concern with the Easement language?**

10 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
11 they choose unless 1) any Landowner use interferes in any way with
12 TransCanada's exercise of any of its rights within the Easement, or 2)
13 TransCanada decides to take any action on the property it deems necessary to
14 prevent injury, endangerment or interference with anything TransCanada deems
15 necessary to do on the property. Landowner is also forbidden from excavating
16 without prior authorization by TransCanada. So my understanding is that
17 TransCanada will unilaterally determine what Landowner can and can't do based
18 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
19 could also completely deny my request to excavate. Further, TransCanada retains
20 all "privileges necessary or convenient for the full use of the rights" granted to
21 them in the Easement. Again, TransCanada unilaterally can decide to the
22 detriment of the property rights of Landowner what TransCanada believes is
23 necessary or convenient for it. And there is no option for any additional
24 compensation to landowner for any right exercised by TransCanada that leads to
25 the removal of trees or plants or vegetation or buildings or structures or facilities
26 owned by Landowner of any kind. Such undefined and unilateral restrictions and
27 rights without having to compensate Landowner for such further destruction or
28 losses are not conducive to the protection of property rights or economic interest.

29 **Q: What is the next concern you have?**

1 A: The Easement also allows some rights for Landowner but restricts them at the
2 same time and again at the sole and unilateral decision making of TransCanada.
3 TransCanada will determine if the actions of Landowner might in anyway
4 endanger or obstruct or interfere with TransCanada's full use of the Easement or
5 any appurtenances thereon to the pipeline itself or to their access to the Easement
6 or within the Easement and TransCanada retains the right at any time, whether
7 during growing season or not, to travel "within and along Easement Area on foot
8 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
9 retain the rights to prevent any landowner activity that it thinks may "unreasonably
10 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
11 undefined and unilateral restrictions are not conducive to the protection of
12 property rights or economic interest.

13 **Q: What is the next concern you have with the Easement language?**

14 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
15 Landowner's land any debris of any kind without any input or power of
16 Landowner to demand an alternative method or location of debris disposal. Such
17 unilateral powers would negatively affect Landowners property are not conducive
18 to the protection of property rights or economic interest.

19 **Q: What is the next concern you have with the Easement language?**

20 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
21 "where rock is encountered" mean and why does TransCanada solely get to
22 determine whether or not this phrase is triggered. This phrase could be used to
23 justify installing the pipeline 24 inches beneath the surface. The ability to use this
24 provision to minimal locate the pipeline at a depth of 24 inches could negatively
25 affect Landowners property and is not conducive to the protection of property
26 rights. A shallow pipeline is much more likely to become a danger and liability in
27 the future given farming operations and buried irrigation lines and other factors
28 common to the current typical agricultural uses of the land in question impacted
29 by TransCanada's preferred pipeline route.

1 **Q: What is the next concern you have with the Easement language?**

2 A: There are more vague concepts solely at the determination of TransCanada such as
3 “as nearly as practicable” and “pre-construction position” and “extent reasonably
4 possible.” There is nothing here that defines this or provides a mechanism for
5 documenting or memorializing “pre-construction position” so as to minimize
6 costly legal battles or wasted Landowner time attempting to recreate the soil
7 condition on their fields or pasture. Such unilateral powers would negatively affect
8 Landowners property are not conducive to the protection of property rights or
9 economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: TransCanada maintains the unilateral right to abandon the pipeline and all
12 appurtenances thereto in place on, under, across, or through Nebraska land at any
13 time it chooses. There is no provision for Landowner compensation for such
14 abandonment nor any right for the Landowner to demand removal. Such unilateral
15 powers would negatively affect Landowners property and are not conducive to the
16 protection of property rights or economic interest.

17 **Q: What is the next concern you have with the Easement language?**

18 A: TransCanada has the power to unilaterally move or modify the location of any
19 Easement area whether permanent or temporary at their sole discretion.
20 Regardless, if Landowner has taken prior steps relative to their property in
21 preparation or planning of TransCanada’s taking of the initial easement area(s),
22 the language here does not require TransCanada to compensate the Landowner if
23 they decide to move the easement anywhere on Landowners property. Such
24 unilateral powers would negatively affect Landowners property and are not
25 conducive to the protection of property rights or economic interests.

26 **Q: What is the next concern you have with the Easement language?**

27 A: The Easement requires that all of the burdens and restrictions upon Landowner to
28 transfer and be applicable to any future owner of the Land in question without the

1 ability of the future Landowner to modify or negotiate any of the language in
2 question to which it will be held to comply.

3 **Q: What is the next concern you have with the Easement language?**

4 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
5 Easement to any person, company, country, etc. at their sole discretion at any time
6 to anyone. This also means that any buyer of the easement could do the same to a
7 third buyer and so on forever. There is no change of control or sale provision in
8 place to protect the Landowner or Nebraska or to provide compensation for such
9 change of control or ownership. It is not conducive to the protection of property
10 rights or economic interests to allow unilateral unrestricted sale of the Easement
11 thereby forcing upon the Landowner and our State a new unknown Easement
12 owner.

13 **Q: What is the next concern you have with the Easement language?**

14 A: There are many terms in the Easement that are either confusing or undefined terms
15 that are without context as to whether or not the Landowner would have any say
16 so in determining what these terms mean or if the evaluation is solely in
17 TransCanada's control. Some of these vague undefined terms are as follows:

- 18 i. "pipeline installation activities"
- 19 ii. "availability of labor and materials"
- 20 iii. "commercially reasonable costs and expenses"
- 21 iv. "reasonably anticipated and foreseeable costs and expenses"
- 22 v. "yield loss damages"
- 23 vi. "diminution in the value of the property"
- 24 vii. "substantially same condition"
- 25 viii. "an actual or potential hazard"
- 26 ix. "efficient"
- 27 x. "convenient"
- 28 xi. "endangered"
- 29 xii. "obstructed"

- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada’s proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline’s impact upon you and your land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

1 **Q: Did TransCanada ever offer you financial compensation for the rights that**
2 **they sought to obtain in your land, and for what they sought to prevent you**
3 **and any future land owner of your property from doing in the future?**

4 A: Yes, we received an offer from them.

5 **Q: As the owner of the land in question and as the person who knows it better**
6 **than anyone else, do you believe that TransCanada offered you just, or fair,**
7 **compensation for all of what they proposed to take from you so that their tar**
8 **sands pipeline could be located across your property?**

9 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
10 offer for all the potential impacts and effects and the rights that I'm giving up, and
11 what I we will be prevented from doing in the future and how their pipeline would
12 impact my property for ever and ever.

13 **Q: Has TransCanada at any time offered to compensate you annually, such as**
14 **wind farm projects do, for the existence of their potential tar sands pipeline**
15 **across your property.**

16 A: No, never.

17 **Q: At any time did TransCanada present you with or request that you, as the**
18 **owner of the land in question, sign and execute a document called, "Advanced**
19 **Release of Damage Claims and Indemnity Agreement?"**

20 A: Yes, they did and it was included in the County Court lawsuit against us.

21 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
22 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

23 A: Yes, it is.

24 **Q: What was your understanding of that document?**

25 A: When I read that document in the plain language of that document, it was my
26 understanding that TransCanada was attempting to pay me a very small amount at
27 that time in order for me to agree to give up my rights to be compensated from
28 them in the future related to any damage or impact they may have upon my

1 property “arising out of, in connection with, or alleged to resulted from
2 construction or surveying over, under or on” my land.

3 **Q: Did you ever sign that document?**

4 A: No, I did not.

5 **Q: Why not?**

6 A; Because I do not believe that it is fair or just to try to get me to agree to a small
7 sum of money when I have no idea how bad the impacts or damages that they, or
8 their contractors, or subcontractors, or other agents or employees, may cause on
9 my land at any time in the future that resulted from the construction or surveying
10 or their activities upon my land.

11 **Q: When you reviewed this document, what did it make you feel?**

12 A: I felt angry because it was simply another attempt for TransCanada to try to pay
13 very little to shield themselves against known and foreseeable impacts that their
14 pipeline, and the construction of it, would have upon my land. It made me feel
15 that they knew it was in their financial interest to pay me as little as possible to
16 prevent me from ever having the opportunity to seek fair compensation again, and
17 that this must be based upon their experience of unhappy landowners and
18 situations in other places where they have built pipelines.

19 **Q: Has TransCanada ever contacted you and specifically asked you if you
20 thought their proposed location of their proposed pipeline across your land
21 was in your best interest?**

22 A: No, they have not.

23 **Q: Has TransCanada ever contacted you and specifically asked you if you
24 thought their proposed location of their proposed pipeline across your land
25 was in the public interest of the State of Nebraska?**

26 A: No, they have not.

27 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
28 Takings Clause?**

29 A: Yes, I am.

1 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
2 **an American citizens property?**

3 A: My understanding is that, according to the United States Constitution, that if the
4 government is going to take land for public use, then in that case, or by taking for
5 public use, it can only occur if the private land owner is compensated justly, or
6 fairly.

7 **Q: Has TransCanada ever contacted you specially to explain the way in which**
8 **the public could use its proposed Keystone XL Pipeline?**

9 A: No, they have not.

10 **Q: Can you think of any way in which the public, that is the citizens of the State**
11 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
12 **Pipeline, as it dissects the State of Nebraska?**

13 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
14 public benefits from this pipeline in any way, how they can use it any way, or how
15 it's in the public interest in any way. By looking at the map, it is quite clear to me
16 that the only reason it's proposed to come through Nebraska, is that because we
17 are geographically in the way from between where the privately-owned Tar Sands
18 are located to where TransCanada wants to ship the Tar Sands to refineries in
19 Houston, Texas.

20 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
21 **crude petroleum, or oil and petroleum by-products that you would like to**
22 **ship in its pipeline?**

23 A: No, it has not.

24 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
25 **products that you, at this time or any time in the future, would desire to place**
26 **for transport within the proposed TransCanada Keystone XL Pipeline?**

27 A: No, I do not.

1 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
2 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
3 **products within the proposed TransCanada Keystone XL Pipeline?**
4 A: No, I do not. I've never heard of such a person or company like that.
5 **Q: Do you pay property taxes for the land that would be affected and impacted**
6 **at the proposed TransCanada Keystone XL Pipeline?**
7 A: Yes, I do.
8 **Q: Why do you pay property taxes on that land?**
9 A: Because that is the law. The law requires us to pay the property taxes as the owner
10 of that property.
11 **Q: Because you follow the law and pay property taxes, do you believe you**
12 **deserve any special consideration or treatment apart from any other person**
13 **or company that pays property taxes?**
14 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
15 just what you do.
16 **Q: Do you believe the fact that you pay property taxes entitles you to special**
17 **treatment of any kind, or special rights of any kind?**
18 A: No, of course not.
19 **Q: Do you believe the fact that you pay property taxes on your land would be**
20 **enough to qualify you to have the power of eminent domain to take land of**
21 **your neighbors or other people in your county, or other people across the**
22 **state of Nebraska?**
23 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
24 I expect an award for or any type of special consideration.
25 **Q: Have you at any time ever employed any person other than yourself?**
26 A: Well, yes I have.
27 **Q: Do you believe that the fact that you have, at some point in your life,**
28 **employed one or more other persons entitle you to any special treatment or**

1 **consideration above and beyond any other Nebraskan that has also employed**
2 **one or more persons?**

3 A: No, of course not.

4 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
5 **have at one point employed another person within this state, entitles you to**
6 **preferential treatment or consideration of any kind?**

7 A: No, of course not. If I choose to employ someone that decision is up to me. I
8 don't deserve any special treatment or consideration for that fact.

9 **Q: At the beginning of your statement, you briefly described your property that**
10 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
11 **give the Commissioners a sense of specifically how you believe the proposed**
12 **Keystone XL Pipeline and its preferred route, which proposes to go across**
13 **your land, how it would in your opinion based on your knowledge,**
14 **experience, and background of your land, affect it. So please share with the**
15 **Commissioners the characteristics of your land that you believe is important**
16 **for them to understand, while they evaluate TransCanada's application for a**
17 **route for its proposed pipeline to cross Nebraska and across your land,**
18 **specifically.**

19 A: The terms of the easement essentially guarantee that the pipe and its remaining
20 contents will be left in the ground "as is." In this case, this would mean depositing
21 the contents directly into the water table, or excavating the pipe in an area where it
22 is difficult to operate machinery, entailing additional expense. This is in no way
23 compensated by the terms of the easement. The terms of the easement must be
24 addressed in order for the Commission to truly consider property rights, economic
25 interests, the welfare of Nebraska, and the balancing of the proposed routes against
26 all they will affect and impact.

27 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
28 **crude oil pipeline in its preferred location, or ultimate location across the**
29 **state of Nebraska?**

1 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
2 or even bullied around and being made to feel scared that they did not have any
3 options but to sign whatever papers TransCanada told them they had to. I am
4 aware of folks being threatened that their land would be taken if they didn't follow
5 what TransCanada was saying. I am aware of tactics to get people to sign
6 easements that I don't believe have any place in Nebraska or anywhere such as
7 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
8 landowners and convince them they should sign TransCanada's easement
9 agreements. I am aware of older folks and widows or widowers feeling they had
10 no choice but to sign TransCanada's Easement and they didn't know they could
11 fight or stand up for themselves. From a more practical standpoint, I am worried
12 that according to their answer to our Interrogatory No. 211, TransCanada only
13 owns and operates one (1) major oil pipeline. They simply do not have the
14 experience with this type of pipeline and that scares me. There are others but that
15 is what I can recollect at this time and if I remember more or my recollection is
16 refreshed I will share those with the Commissioners at the Hearing in August.

17 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
18 **landowner is reasonable or just?**

19 A: No, I do not.

20 **Q: Do you have any concern about limitations that the construction of this**
21 **proposed pipeline across your affected land would prevent construction of**
22 **future structures upon the portion of your land affected by the proposed**
23 **easement and immediately surrounding areas?**

24 A: Well yes, of course I do. We would not be able to build many, if any, types of
25 structures directly across or touching the easement, and it would be unwise and I
26 would be uncomfortable to build anything near the easement for fear of being
27 blamed in the future should any damage or difficulty result on my property in
28 regards to the pipeline.

29 **Q: Do you think such a restriction would impact you economically?**

1 A: Well yes, of course.

2 **Q: How do you think such a restriction would impact you economically?**

3 A: The future of this land may not be exactly how it's being used as of this moment,
4 and having the restrictions and limiting my ability to develop my land in certain
5 ways presents a huge negative economic impact on myself, my family, and any
6 potential future owner of the property. You have no idea how I or the future owner
7 may want to use this land in the future or the other land across Nebraska
8 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
9 ago it would have been hard to imagine all the advances that we have now or how
10 things change. Because the Easement is forever and TransCanada gets the rights in
11 my land forever we have to think with a very long term view. By placing their
12 pipeline on under across and through my land that prevents future development
13 which greatly negatively impacts future taxes and tax revenue that could have
14 been generated by the County and State but now will not. When you look at the
15 short blip of economic activity that the two years of temporary construction efforts
16 may bring, that is far outweighed by the perpetual and forever loss of opportunity
17 and restrictions TransCanada is forcing upon us and Nebraska.

18 **Q: Do you have any concerns about the environmental impact of the proposed**
19 **pipeline?**

20 A: Yes, I do.

21 **Q: What are some of those concerns?**

22 A: As an affected land owner and Nebraskan, I am concerned that any construction,
23 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
24 a detrimental impact upon the environment of my land specifically, as well as the
25 lands near my land and surrounding the proposed pipeline route.

26 **Q: Do you have any other environmental concerns?**

27 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
28 construction and/or maintenance and operation. I am concerned about spills and

1 leaks that TransCanada has had in the past and will have in the future. This could
2 be catastrophic to my operations or others and to my county and the State.

3 **Q: Do you have any thoughts regarding if there would be an impact upon the**
4 **natural resources on or near your property due to the proposed pipeline?**

5 A: Yes, I believe that any construction, operation, and/or maintenance of the
6 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
7 resources of my land, and the lands near and surrounding the proposed pipeline
8 route.

9 **Q: Do you have any worries about potential impacts from the proposed pipeline**
10 **to the soil of your land, or land near you?**

11 A: Yes, I believe that any construction, operation, and/or maintenance of the
12 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
13 land, as well as land along and surrounding the proposed pipeline route. This
14 includes, but is not limited to, the reasons that we discussed above of disturbing
15 the soil composition and makeup as it has naturally existed for thousands and
16 millions of years during the construction process, and any future maintenance or
17 removal process. I'm gravely concerned about the fertility and the loss of
18 economic ability of my property to grow the crops, or grow the grasses, or grow
19 whatever it is at that time they exist on my property or that I may want to grow in
20 the future, or that a future owner may want to grow. The land will never be the
21 same from as it exists now undisturbed to after it is trenched up for the proposed
22 pipeline.

23 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
24 **upon the groundwater over your land, or surrounding lands?**

25 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
26 the proposed Keystone XL Pipeline would have a detrimental impact upon the
27 groundwater of not only under my land, but also near and surrounding the pipeline
28 route, and in fact, potentially the entire State of Nebraska. Water is life plain and

1 simple and it is simply too valuable to our State and the country to put at
2 unreasonable risk.

3 **Q: Do you have any concern about the potential impact of the proposed pipeline**
4 **upon the surface water on, or near or around your land?**

5 A: Yes, I have significant concerns that any construction, operation, and/or
6 maintenance of the proposed Keystone XL Pipeline would have detrimental
7 impact upon the surface water of not only within my property boundary, but along
8 and near and surrounding the pipeline route, and in fact, across the state of
9 Nebraska.

10 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
11 **upon the wildlife and plants, other than your growing crops on or near your**
12 **land?**

13 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
14 the proposed Keystone XL Pipeline would have a detrimental impact upon the
15 wildlife and the plants, not only that are located on or can be found upon my land,
16 but also near and along the proposed pipeline route.

17 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
18 **fair market value of your land?**

19 A: Yes, I do. I am significantly concerned about how the existence of the proposed
20 pipeline underneath and across and through my property will negatively affect the
21 fair market value at any point in the future, especially at that point in which I
22 would need to sell the property, or someone in my family would need to sell the
23 property. I do not believe, and certainly would not be willing to pay, the same
24 price for land that had the pipeline located on it, versus land that did not. I hope
25 there is never a point where I'm in a position where I have to sell and have to
26 realize as much value as I can out of my land. But because it is my single largest
27 asset, I'm gravely concerned that the existence of the proposed Keystone XL
28 Pipeline upon my land will affect a buyer's willingness to pay as much as they
29 would've paid and as much as I could've received, if the pipeline were not upon

1 my property. There are just too many risks, unknowns, impacts and uncertainties,
2 not to mention all of the rights you give up by the nature of having the pipeline
3 due to having the easement that we have previously discussed, for any reasonable
4 person to think that the existence of the pipeline would not negatively affect my
5 property's value.

6 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
7 **testimony?**

8 A: Yes, I have.

9 **Q: Where have you seen that before?**

10 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
11 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
12 believe the portion of the alternative route in Nebraska essentially twins or
13 parallels Keystone I.

14 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
15 **Application, and as found on Attachment No. 7, here to your testimony, is in**
16 **the public interest of Nebraska?**

17 A: No, I do not.

18 **Q: Do you believe that the Keystone mainline alternative route as shown on**
19 **Attachment No. 7 included with your testimony here is a major oil pipeline**
20 **route that is in the public interest of Nebraska?**

21 A: No, I do not.

22 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
23 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
24 **your testimony, is in the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe there is any potential route for the proposed Keystone XL**
27 **Pipeline across, within, under, or through the State of Nebraska that is in the**
28 **public interest of the citizens of Nebraska?**

29 A: No, I do not.

1 **Q: Why do you hold that belief?**

2 A: Because there simply is no public interest based on all of the factors that I am
3 aware and that I have read and that I have studied that this Commission is to
4 consider that would establish that a for-profit foreign-owned pipeline that simply
5 crosses Nebraska because we are geographically in the way between where tar
6 sands are in Canada to where it wants to ship it to in Texas could ever be in the
7 public interest of Nebraskans. We derive no benefit from this project. It is not for
8 public use. Nebraska is simply in the way and when all considerations are taken in
9 there is no net benefit of any kind for Nebraska should this project be placed in our
10 state. Even if there was some arguable “benefit” it is not enough to outweigh all
11 the negative impacts and concerns.

12 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
13 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
14 **of Nebraska because it may bring temporary jobs during the construction**
15 **phase to Nebraska?**

16 A: First of all, not all jobs are created equally. Most jobs that are created, whether
17 temporary or on a permanent basis, don’t come with a project that has all the
18 potential and foreseeable negative impacts, many of which we have discussed here
19 and other witnesses throughout the course of this hearing have and will discuss. If
20 I decide to hire and employ someone to help me out in my farming or ranching
21 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
22 to my land or my town or my county or my state. And I’ve hired someone who is
23 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
24 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
25 jobs are not created equal. Additionally, I understand from what I’m familiar with
26 from TransCanada’s own statements that the jobs numbers they originally touted
27 were determined to be a minute fraction of the permanent jobs that had been
28 projected. According to their answer to our Interrogatory No. 191, TransCanada
29 has created only thirty-four (34) jobs within Nebraska working specifically on

1 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
2 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
3 Further, according to their answer to Interrogatory No. 199, TransCanada would
4 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
5 constructed on its Preferred Route or its Mainline Alternative Route.

6 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
7 **because it would cross your land?**

8 A: No, absolutely not. I am opposed to this project because it is not in the public
9 interest, neither within my community nor within our state.

10 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
11 **was to cross someone else's land?**

12 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
13 the fear and anxiety and potential foreseeable risks and negative impacts that this
14 type of a project carrying this type of product brings foisted upon anyone in this
15 state or any other state.

16 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
17 **Pipeline to cross the state of Nebraska?**

18 A: I don't believe there is an intelligent route because as I have stated I don't believe
19 this project anywhere within Nebraska is within the public interest. However, if
20 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
21 had to go somewhere in the state of Nebraska, the only intelligent route I believe
22 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
23 preferred route and the mainline alternative routes are economic liabilities our
24 state cannot risk.

25 **Q: What do you rely upon to make that statement?**

26 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
27 already exists in that area is reason enough as it is not in our best interest or the
28 public interests to have more major oil pipelines crisscrossing our state. Second,
29 they have all the infrastructure already there in terms of relationships with the

1 counties and local officials and first responders along that route. Third, they have
2 already obtained easements from all the landowners along that route and have
3 relationships with them. Fourth, that route avoids our most sensitive soils, the
4 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
5 Aquifer. Sixth, they have already studied that route and previously offered it as an
6 alternative. Seventh, it just makes the most sense that as a state we would have
7 some intelligent policy of energy corridors and co-locating this type of
8 infrastructure near each other.

9 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
10 **like the Public Service Commissioners to consider in their review of**
11 **TransCanada's Application?**

12 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
13 document below but other things may come to me or my memory may be
14 refreshed and I will add and address those things at the time of the Hearing in
15 August and address any additional items at that time as is necessary. Additionally,
16 I have not had an adequate amount of time to receive and review all of
17 TransCanada's answers to our discovery and the discovery of others so it was
18 impossible to competently and completely react to that in my testimony here and I
19 reserve the right to also address anything related to discovery that has not yet
20 concluded as of the date I signed this document below. Lastly, certain documents
21 requested have not yet been produced by TransCanada and therefore I may have
22 additional thoughts on those I will also share at the hearing as needed.

23 **Q: What is it that you are requesting the Public Service Commissioners do in**
24 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
25 **across Nebraska?**

26 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
27 a temporary job spike that this project may bring to a few counties and beyond the
28 relatively small amount of taxes this proposed foreign pipeline would possibly
29 generate. And, instead think about the perpetual and forever impacts of this

1 pipeline as it would have on the landowners specifically, first and foremost, but
2 also thereby upon the entire state of Nebraska, and to determine that neither the
3 preferred route nor the Keystone mainline alternative route are in the public
4 interest of the citizens of the state of Nebraska. And if the Commissioners were
5 inclined to modify TransCanada's proposed routes and were to be inclined to grant
6 an application for a route in Nebraska, that the only potential route that would
7 make any intelligent sense whatsoever would be twinning or near paralleling of
8 the proposed KXL with the existing Keystone I pipeline. It simply does not make
9 sense to add yet another major oil pipeline crisscrossing our state creating new
10 pumping stations, creating new impacts on additional counties and communities
11 and going through all of the court processes with myself and other landowners like
12 me when this applicant already has relationships with the landowners, the towns
13 and the communities along Keystone I, and that Keystone I is firmly outside of the
14 sand hills and a significantly further portion away from the heart of the Ogallala
15 Aquifer than the preferred route or the Keystone mainline alternative route.

16 **Q: Does Attachment No. 8 here contain other documents you are competent to**
17 **speak about that you wish to be part of your testimony and to discuss in more**
18 **detail as needed at the August 2017 Hearing?**

19 A: Yes.

20 **Q: Are all of your statements in your testimony provided above true and**
21 **accurate as of the date you signed this document to the best of your**
22 **knowledge?**

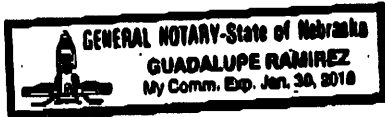
23 A: Yes, they are.

24 **Q: Thank you, I have no further questions at this time and reserve the right to**
25 **ask you additional questions at the August 2017 Hearing.**

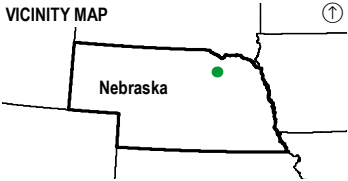
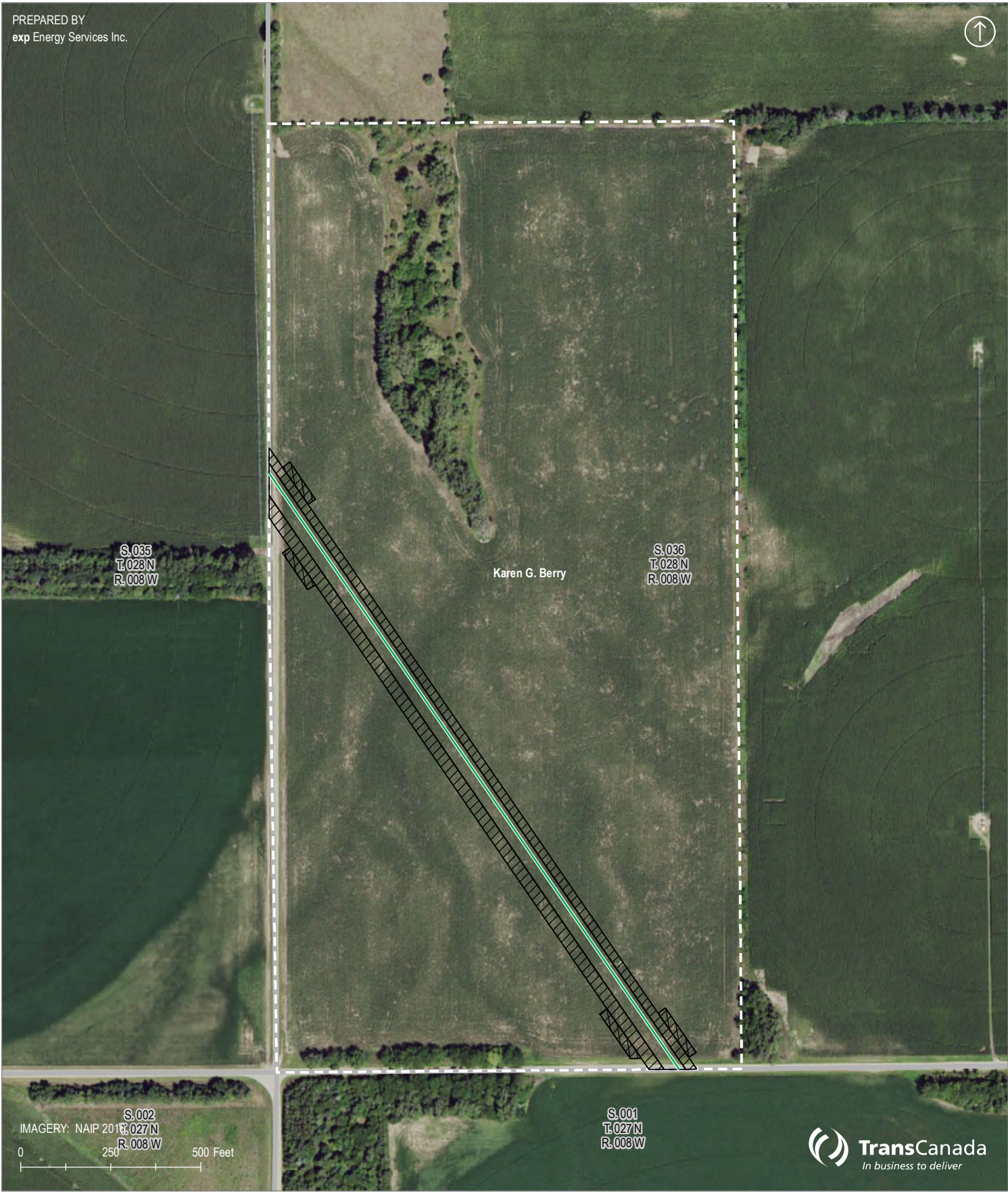
Karen Berry
Karen Berry

Subscribed and Sworn to me before this 30th day of May, 2017.

Guadalupe Ramirez
Notary Public



Attachment No. 1



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Karen G. Berry

TRACT NO. ML-NE-AT-30110.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 036
TOWNSHIP: 028N
RANGE: 008W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

Attachment No. 2



Attachment No. 3

Prepared by and after recording
please return to:
TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-AT-30110.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Karen G. Berry**, whose mailing address is 904 McCoy Lane, Neligh, NE 68756 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip

of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Antelope, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 79 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the W1/2 of the SW1/4 of Section 36, T28N, R8W of the 6th P.M., as recorded in Book 95, Page 557 and Book 95, Page 423 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the

negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____, 20____.

GRANTOR(S):

Karen G. Berry

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

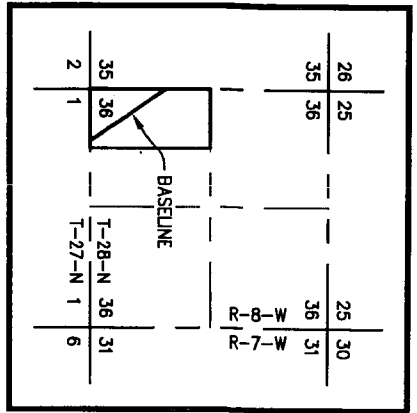
By **Karen G. Berry**

Notary Public Signature

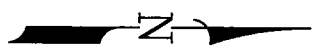
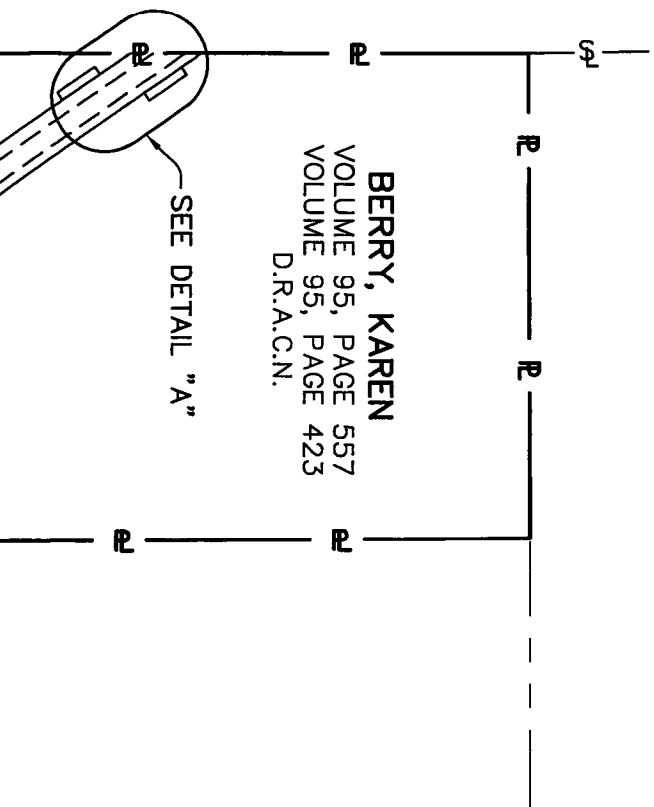
Affix Seal Here

LEGEND
 R PROPERTY LINE
 S SECTION LINE
 P PROP. PROPOSED
 A.I.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.A.C.N. DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA

ANTELOPE COUNTY, NEBRASKA T-28-N, R-8-W, SECTION 36 ML-NE-AT-30110.000



BERRY, KAREN
 VOLUME 95, PAGE 557
 VOLUME 95, PAGE 423
 D.R.A.C.N.



SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:
 W/2 SW/4 OF SECTION 36,
 T-28-N, R-8-W

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TransCanada In business to deliver	
KEYSTONE XL PROJECT	
EASEMENT AREA ACROSS THE PROPERTY OF BERRY, KAREN	
ML-NE-AT-30110.000	
PROJECT: XL	EXHIBIT A
APPROVED BY:	DRAWING NUMBER:
SLR	XL-08-ML-SK-3399
NO.	REVISION
	DATE
SCALE	DATE
1" = 500'	11/05/14
	JN
	ALS



SHEET 1 OF 2

AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.3 ACRE

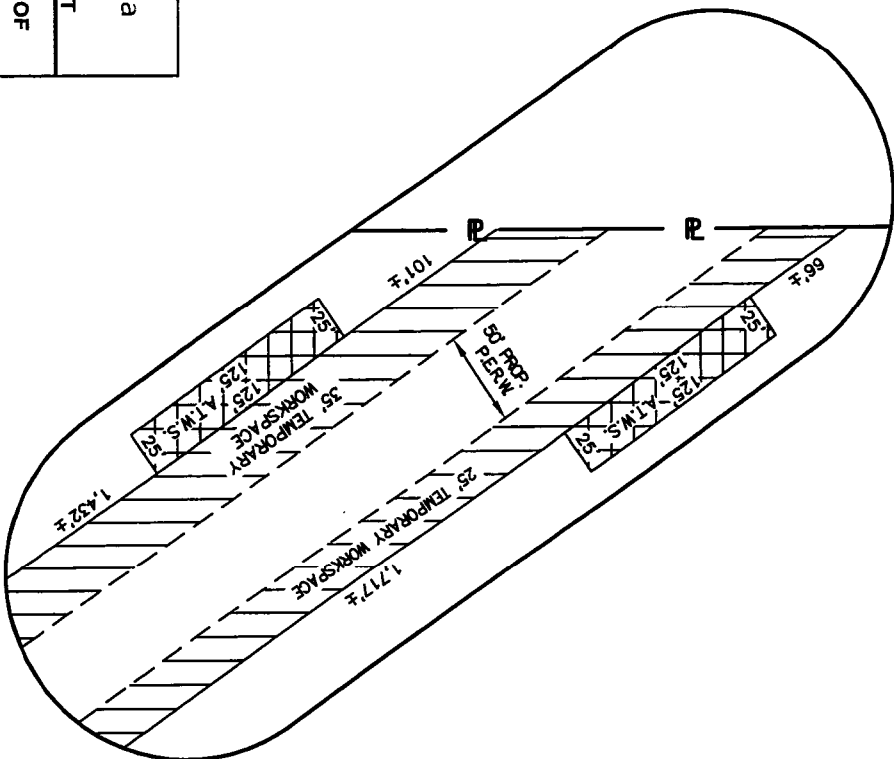
TOTAL DISTANCE ACROSS PROPERTY: 2.012'±

AREA OF PERMANENT EASEMENT: 2.3 ACRES

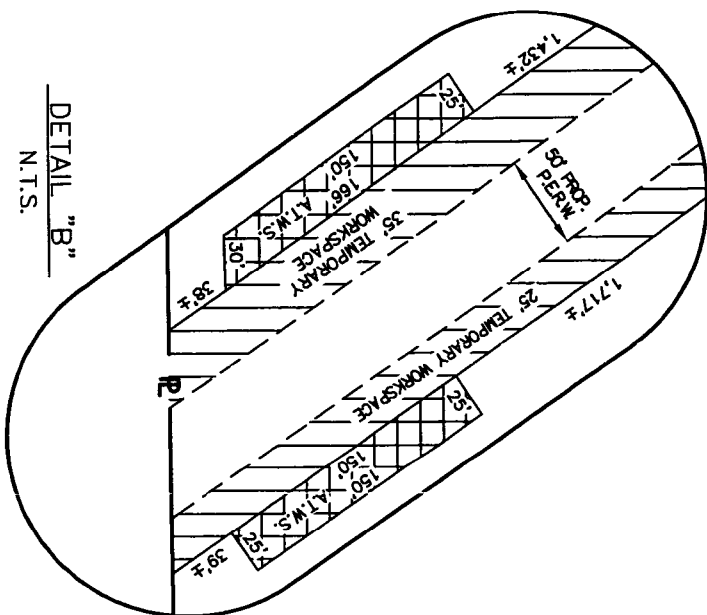
AREA OF TEMPORARY WORKSPACE: 2.7 ACRES

LEGEND
R
PROPERTY LINE
PROPOSED
A.T.W.S.
P.E.R.M.
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY


ANTELOPE COUNTY, NEBRASKA
T-28-N, R-8-W, SECTION 36
ML-NE-AT-30110.000



DETAIL "A"
N.T.S.



DETAIL "B"
N.T.S.

 TransCanada <i>In business to deliver</i>	
KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF BERRY, KAREN ML-NE-AT-30110.000	
PROJECT: XL	EXHIBIT A
APPROVED BY	DRAWING NUMBER
SLR	XL-08-ML-SK-3398
NO.	REVISION
	DATE
SCALE	DATE
1" = 500'	11/05/14
	JN
	ALS



NOTE:
THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Plaintiff,

v.

RICHARD ANDREW, JANE ANDREW,
LUKE ANDREW, and BRYCE ANDREW,

Defendants.

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-AT-30110.000

I, Karen G. Berry, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Eight Hundred Sixty Two Dollars and No Cents (\$2,862.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Antelope, State of Nebraska:

W/2 SW/4

Section 36, Township 28N, Range 8W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I have hereunto set our hands on this _____ day of

_____, 20____.

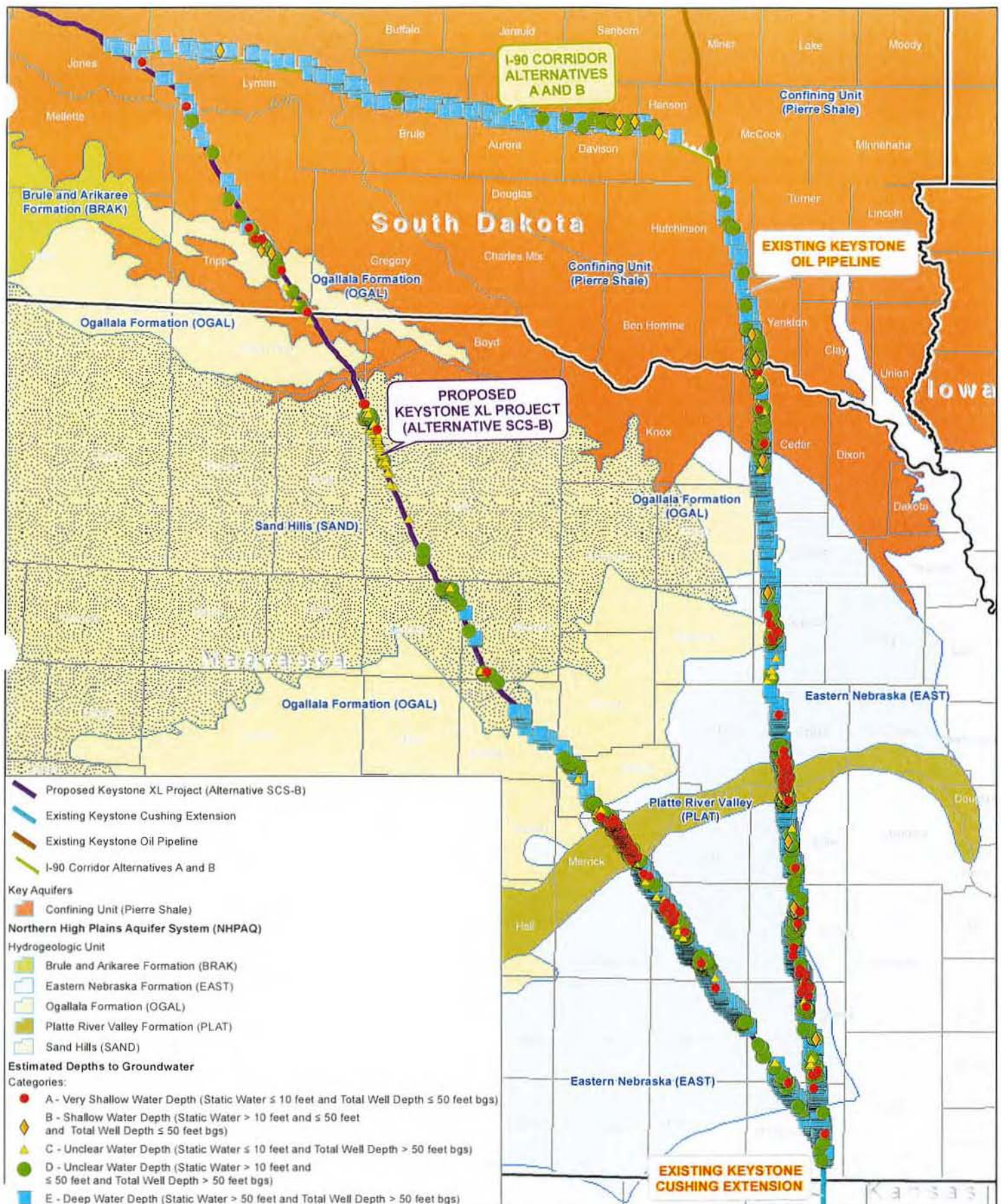
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

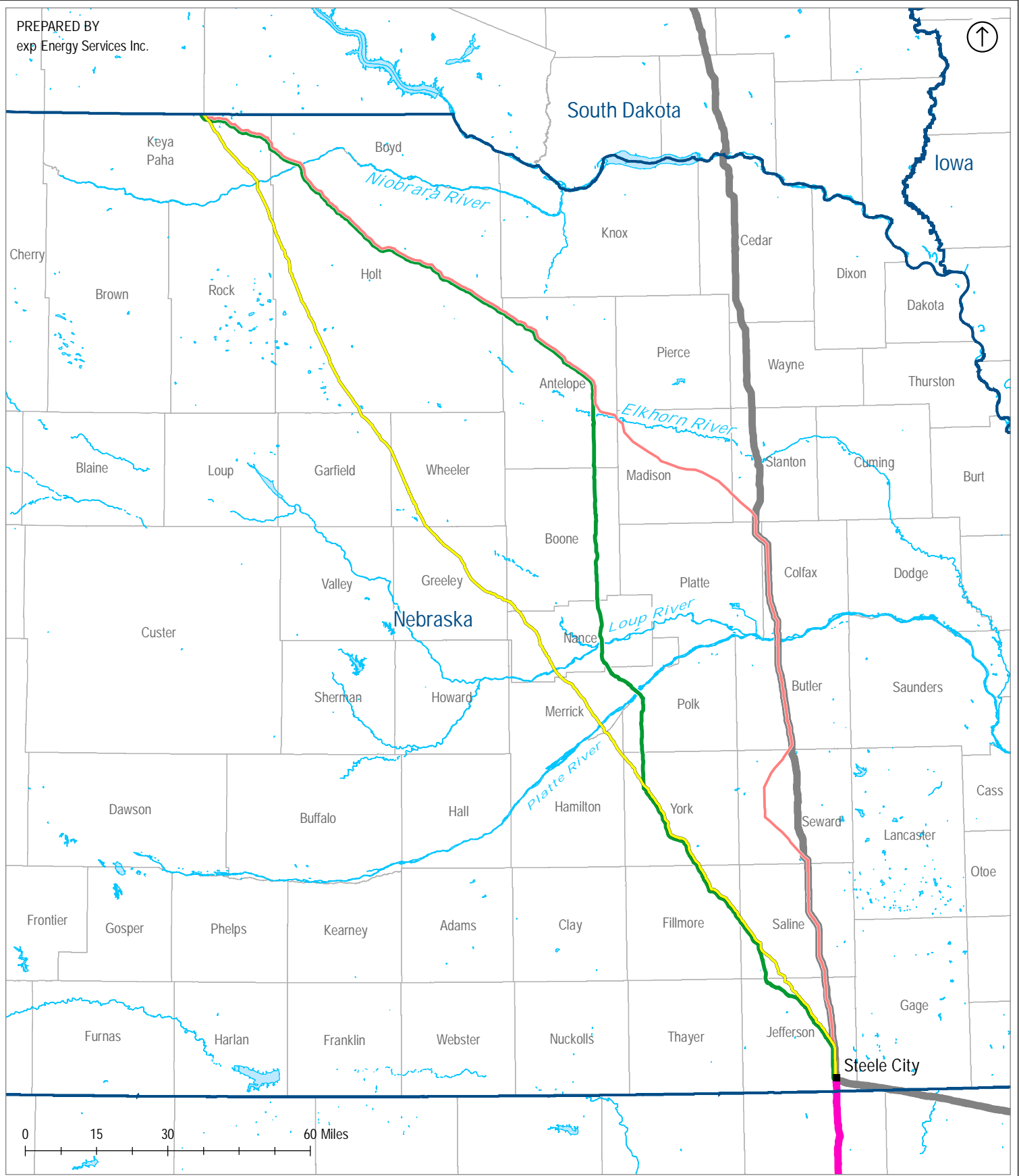
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

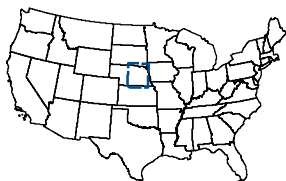
KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor

Attachment No. 7



VICINITY MAP



LEGEND

- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Attachment No. 8



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Johnnie Bialas in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Nance County)

1 **Q: Please state your name.**

2 A: My name is Johnnie Bialas.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Nance County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse's name please?**

16 A: Maxine Bialas

1 **Q: How long the land has been in your family?**

2 A: Our farm has been in the Bialas family for 100 years.

3 **Q: Do you earn any income from this land?**

4 A: Yes.

5 **Q: Have you depended on the income from your land to support your livelihood**
6 **or the livelihood of your family?**

7 A: Yes.

8 **Q: Have you ever in the past or have you thought about in the future leasing all**
9 **or a portion of your land in question here?**

10 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
11 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
12 all the restrictions and risks and potential negative impacts to farming or ranching
13 operations as opposed to land that did not have those same risks. If I was looking
14 to lease or rent ground I would pay more for comparable non-pipeline land than I
15 would for comparable pipeline land and I think most folks would think the same
16 way. This is another negative economic impact that affects the landowner and the
17 county and the state and will forever and ever should TransCanada's preferred or
18 mainline alternative routes be approved. If they were to twin or closely parallel to
19 Keystone I the vast majority of landowners would be those that already have a
20 pipeline so there would be considerable less new incremental negative impacts.

21 **Q: Do you have similar concerns about selling the land?**

22 A: Well I hope not to have to sell the land in my lifetime but times change and you
23 never know what is around the corner and yes I am concerned that if another piece
24 of ground similar to mine were for sale and it did not have the pipeline and mine
25 did that I would have a lower selling price. I think this would be true for pipeline
26 ground on both the preferred and mainline alternative routes.

27 **Q: What is your intent with your land after you die?**

28 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
29 to come but I have thought about getting out if this pipeline were to come through.

1 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
2 **Pipeline would cross the land described above and owned by you?**

3 A: Yes.

4 **Q: Were you or an entity for which you are a member, shareholder, or director**
5 **previously sued by TransCanada Keystone Pipeline, LP?**

6 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
7 petition for condemnation against our land so it could place its proposed pipeline
8 within an easement that it wanted to take from us on our land.

9 **Q: Did you defend yourself and your land in that condemnation action?**

10 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
11 and expenses in our resistance of TransCanada's lawsuit against us.

12 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
13 **incurred?**

14 A: No, they have not.

15 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
16 **property that it wanted to take for its proposed pipeline?**

17 A: The lawsuit against us stated they would take the amount of property that is
18 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
19 and equipment reasonably necessary to operate the pipeline.

20 **Q: Did TransCanada define what they meant by "property that is reasonably**
21 **necessary"?**

22 A: No, they did not.

23 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
24 **property portion of your land?**

25 A: Yes, they did.

26 **Q: Did TransCanada describe what rights it proposed to take related to the**
27 **eminent domain property on your land?**

28 A: Yes, they did.

29 **Q: What rights that they proposed to take did they describe?**

1 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
2 operate, and maintain the pipeline and the plant and equipment reasonably
3 necessary to operate the pipeline, specifically including surveying, laying,
4 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
5 reconstructing, removing and abandoning one pipeline, together with all fittings,
6 cathodic protection equipment, pipeline markers, and all their equipment and
7 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
8 petroleum products, and all by-products thereof.”

9 **Q: Prior to filing an eminent domain lawsuit to take your land that**
10 **TransCanada identified, do you believe they attempted to negotiate in good**
11 **faith with you?**

12 A: No, I do not.

13 **Q: Did TransCanada at any time approach you with or deliver to you their**
14 **proposed easement and right-of-way agreement?**

15 A: Yes, they did.

16 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
17 **agreement, did you understand that they would be purchasing a fee title**
18 **interest in your property or that they were taking something else?**

19 A: I understood that they proposed to have the power to take both a temporary
20 construction easement that could last for a certain period of time and then also a
21 permanent easement which they described to be 50 feet across or in width, and
22 that would run the entire portion of my property from where a proposed pipeline
23 would enter my property until where it would exit the property.

24 **Q: Is the document included with your testimony here as Attachment No. 2, a**
25 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
26 **Way agreement that they included with their condemnation lawsuit against**
27 **you?**

28 A: Yes, it is.

1 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
2 **and Right-of-Way agreement?**

3 A: Yes, I have.

4 **Q: What is your understanding of the significance of the Easement and Right-of-**
5 **Way agreement as proposed by TransCanada?**

6 A: My understanding is that this is the document that will govern all of the rights and
7 obligations and duties as well as the limitations of what I can and cannot do and
8 how I and any future landowner and any person I invite to come onto my property
9 must behave as well as what TransCanada is and is not responsible for and how
10 they can use my land.

11 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
12 **agreement do you have any concerns about any portions of it or any of the**
13 **language either included in the document or missing from the proposed**
14 **document?**

15 A: Yes, I have a number of significant concerns and worries about the document and
16 how the language included and the language not included potentially negatively
17 impacts my land and thereby potentially negatively impacts my community and
18 my state.

19 **Q: I would like you to walk the Commissioners through each and every one of**
20 **your concerns about TransCanada's proposed Easement and Right-of-Way**
21 **agreement so they can develop an understanding of how that language and**
22 **the terms of that contract, in your opinion, potentially negatively impacts you**
23 **and your land. So, if you can start at the beginning of that document and**
24 **let's work our way through it, okay?**

25 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
26 Easement and Right-of-Way agreement and how it negatively could affect my
27 property rights and my economic interests.

28 **Q. Okay, let's start with your first concern please.**

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership..." and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
6 **percent clear on exactly who could become the owner of over 275 miles of**
7 **Nebraska land?**

8 A: No.

9 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
10 **percent clear on exactly who will be operating and responsible for**
11 **approximately 275 miles of tar sands pipeline underneath and through**
12 **Nebraska land?**

13 A: No.

14 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
15 **and the State of Nebraska of TransCanada's easement terms.**

16 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow their easement
18 to be transferred or sold to someone or some company or country or who knows
19 what that I don't know and who we may not want to do business with. This
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest
21 bidder that could have terrible impacts upon all of Nebraska depending upon who
22 may buy it and I don't know of any safeguards in place for us or the State to veto
23 or have any say so in who may own, operate, or be responsible for this pipeline in
24 the future.

25 **Q: Do you think that type of uncertainty and lack of control over a major piece**
26 **of infrastructure crossing our State is in the public interest?**

27 A: No, certainly not, in fact, just the opposite.

28 **Q: What's next?**

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
25 **right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

1 TransCanada who is subjecting the pipeline on the Landowner and who is making
2 a daily profit from that pipeline. When evaluating the impact on property rights of
3 this provision, you must consider the potentially extremely expensive fight a
4 Landowner would have over this question of whether or not damage was an act of
5 negligence. Putting this kind of potential liability upon the Landowner is
6 incredibly problematic and is detrimental to the protection of property rights. I
7 don't think this unilateral power which I can't do anything about as the landowner
8 is in the best economic interest of the land in question or the State of Nebraska for
9 landowners to be treated that way.

10 **Q: Is there any specific event or example you are aware of that makes this**
11 **concern more real for you?**

12 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
13 Nemaha County, Nebraska landowner farmers who accidentally struck two
14 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
15 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
16 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
17 copy of the Federal Court Complaint is here as **Attachment No. 3**.

18 **Q: What is your next concern with the Easement language?**

19 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
20 they choose unless 1) any Landowner use interferes in any way with
21 TransCanada's exercise of any of its rights within the Easement, or 2)
22 TransCanada decides to take any action on the property it deems necessary to
23 prevent injury, endangerment or interference with anything TransCanada deems
24 necessary to do on the property. Landowner is also forbidden from excavating
25 without prior authorization by TransCanada. So my understanding is that
26 TransCanada will unilaterally determine what Landowner can and can't do based
27 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
28 could also completely deny my request to excavate. Further, TransCanada retains
29 all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative the their property in
2 preparation or planning of TransCanada's taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at any time
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada's control. Some of these vague undefined terms are as follows:

- 27 i. "pipeline installation activities"
- 28 ii. "availability of labor and materials"
- 29 iii. "commercially reasonable costs and expenses"

- iv. “reasonably anticipated and foreseeable costs and expenses”
- v. “yield loss damages”
- vi. “diminution in the value of the property”
- vii. “substantially same condition”
- viii. “an actual or potential hazard”
- ix. “efficient”
- x. “convenient”
- xi. “endangered”
- xii. “obstructed”
- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

1 **Q: Do you have any other concerns about the Easement language that you can**
2 **think of at this time?**

3 A: I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q: Based upon what you have shared with the Commission above regarding**
6 **TransCanada's proposed Easement terms and agreement, do you believe**
7 **those to be reasonable or just, under the circumstances of the pipeline's**
8 **impact upon you and your land?**

9 A: No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q: Did TransCanada ever offer you financial compensation for the rights that**
12 **they sought to obtain in your land, and for what they sought to prevent you**
13 **and any future land owner of your property from doing in the future?**

14 A: Yes, we received an offer from them.

15 **Q: As the owner of the land in question and as the person who knows it better**
16 **than anyone else, do you believe that TransCanada offered you just, or fair,**
17 **compensation for all of what they proposed to take from you so that their tar**
18 **sands pipeline could be located across your property?**

19 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q: Has TransCanada at any time offered to compensate you annually, such as**
24 **wind farm projects do, for the existence of their potential tar sands pipeline**
25 **across your property.**

26 A: No, never.

27 **Q: At any time did TransCanada present you with or request that you, as the**
28 **owner of the land in question, sign and execute a document called, "Advanced**
29 **Release of Damage Claims and Indemnity Agreement?"**

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 **Q: Is Attachment No. 4, to your testimony here, a true and accurate copy of the**
3 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, it is.

5 **Q: What was your understanding of that document?**

6 A: When I read that document in the plain language of that document, it was my
7 understanding that TransCanada was attempting to pay me a very small amount at
8 that time in order for me to agree to give up my rights to be compensated from
9 them in the future related to any damage or impact they may have upon my
10 property “arising out of, in connection with, or alleged to resulted from
11 construction or surveying over, under or on” my land.

12 **Q: Did you ever sign that document?**

13 A: No, I did not.

14 **Q: Why not?**

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small
16 sum of money when I have no idea how bad the impacts or damages that they, or
17 their contractors, or subcontractors, or other agents or employees, may cause on
18 my land at any time in the future that resulted from the construction or surveying
19 or their activities upon my land.

20 **Q: When you reviewed this document, what did it make you feel?**

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
22 shield themselves against known and foreseeable impacts that their pipeline, and
23 the construction of it, would have upon my land. It made me feel that they knew it
24 was in their financial interest to pay me as little as possible to prevent me from
25 ever having the opportunity to seek fair compensation again, and that this must be
26 based upon their experience of unhappy landowners and situations in other places
27 where they have built pipelines.

1 **Q: Has TransCanada ever contacted you and specifically asked you if you**
2 **thought their proposed location of their proposed pipeline across your land**
3 **was in your best interest?**

4 A: No, they have not.

5 **Q: Has TransCanada ever contacted you and specifically asked you if you**
6 **thought their proposed location of their proposed pipeline across your land**
7 **was in the public interest of the State of Nebraska?**

8 A: No, they have not.

9 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
10 **Takings Clause?**

11 A: Yes, I am.

12 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
13 **an American citizens property?**

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 **Q: Has TransCanada ever contacted you specially to explain the way in which**
19 **the public could use its proposed Keystone XL Pipeline?**

20 A: No, they have not.

21 **Q: Can you think of any way in which the public, that is the citizens of the State**
22 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
23 **Pipeline, as it dissects the State of Nebraska?**

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
4 **crude petroleum, or oil and petroleum by-products that you would like to**
5 **ship in its pipeline?**

6 A: No, it has not.

7 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
8 **products that you, at this time or any time in the future, would desire to place**
9 **for transport within the proposed TransCanada Keystone XL Pipeline?**

10 A: No, I do not.

11 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
12 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
13 **products within the proposed TransCanada Keystone XL Pipeline?**

14 A: No, I do not. I've never heard of such a person or company like that.

15 **Q: Do you pay property taxes for the land that would be affected and impacted**
16 **at the proposed TransCanada Keystone XL Pipeline?**

17 A: Yes, I do.

18 **Q: Why do you pay property taxes on that land?**

19 A: Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q: Because you follow the law and pay property taxes, do you believe you**
22 **deserve any special consideration or treatment apart from any other person**
23 **or company that pays property taxes?**

24 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q: Do you believe the fact that you pay property taxes entitles you to special**
27 **treatment of any kind, or special rights of any kind?**

28 A: No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**
2 **enough to qualify you to have the power of eminent domain to take land of**
3 **your neighbors or other people in your county, or other people across the**
4 **state of Nebraska?**

5 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q: Have you at any time ever employed any person other than yourself?**

8 A: Well, yes I have.

9 **Q: Do you believe that the fact that you have, at some point in your life,**
10 **employed one or more other persons entitle you to any special treatment or**
11 **consideration above and beyond any other Nebraskan that has also employed**
12 **one or more persons?**

13 A: No, of course not.

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
15 **have at one point employed another person within this state, entitles you to**
16 **preferential treatment or consideration of any kind?**

17 A: No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q: At the beginning of your statement, you briefly described your property that**
20 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
21 **give the Commissioners a sense of specifically how you believe the proposed**
22 **Keystone XL Pipeline and its preferred route, which proposes to go across**
23 **your land, how it would in your opinion based on your knowledge,**
24 **experience, and background of your land, affect it. So please share with the**
25 **Commissioners the characteristics of your land that you believe is important**
26 **for them to understand, while they evaluate TransCanada's application for a**
27 **route for its proposed pipeline to cross Nebraska and across your land,**
28 **specifically.**

1 A: The water level at our farm is high. We cannot have a basement under our house.
2 The water that we drink is 8 (eight) feet deep. If the oil were to spill or leak it
3 would poison our drinking water and kill us. The water hole in our pasture was
4 dug by N.R.D. and the cattle drink from it. TransCanada wants the pipeline to go
5 right by the water hole.

6 **Q: Do you have any concerns TransCanada's fitness as an applicant for a**
7 **major crude oil pipeline in its preferred location, or ultimate location across**
8 **the state of Nebraska?**

9 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
10 or even bullied around and being made to feel scared that they did not have any
11 options but to sign whatever papers TransCanada told them they had to. I am
12 aware of folks being threatened that their land would be taken if they didn't follow
13 what TransCanada was saying. I am aware of tactics to get people to sign
14 easements that I don't believe have any place in Nebraska or anywhere such as
15 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
16 landowners and convince them they should sign TransCanada's easement
17 agreements. I am aware of older folks and widows or widowers feeling they had
18 no choice but to sign TransCanada's Easement and they didn't know they could
19 fight or stand up for themselves. From a more practical standpoint, I am worried
20 that according to their answer to our Interrogatory No. 211, TransCanada only
21 owns and operates one (1) major oil pipeline. They simply do not have the
22 experience with this type of pipeline and that scares me. There are others but that
23 is what I can recollect at this time and if I remember more or my recollection is
24 refreshed I will share those with the Commissioners at the Hearing in August.

25 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
26 **landowner is reasonable or just?**

27 A: No, I do not.

28 **Q: Do you have any concern about limitations that the construction of this**
29 **proposed pipeline across your affected land would prevent construction of**

1 **future structures upon the portion of your land affected by the proposed**
2 **easement and immediately surrounding areas?**

3 A: Well yes, of course I do. We would not be able to build many, if any, types of
4 structures directly across or touching the easement, and it would be unwise and I
5 would be uncomfortable to build anything near the easement for fear of being
6 blamed in the future should any damage or difficulty result on my property in
7 regards to the pipeline.

8 **Q: Do you think such a restriction would impact you economically?**

9 A: Well yes, of course.

10 **Q: How do you think such a restriction would impact you economically?**

11 A: The future of this land may not be exactly how it's being use as of this moment,
12 and having the restrictions and limiting my ability to develop my land in certain
13 ways presents a huge negative economic impact on myself, my family, and any
14 potential future owner of the property. You have no idea how I or the future own
15 may want to use this land in the future or the other land across Nebraska
16 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
17 ago it would have been hard to imagine all the advances that we have now or how
18 things change. Because the Easement is forever and TransCanada gets the rights in
19 my land forever we have to think with a very long term view. By placing their
20 pipeline on under across and through my land that prevents future development
21 which greatly negatively impacts future taxes and tax revenue that could have
22 been generated by the County and State but now will not. When you look at the
23 short blip of economic activity that the two years of temporary construction efforts
24 may bring, that is far outweighed by the perpetual and forever loss of opportunity
25 and restrictions TransCanada is forcing upon us and Nebraska.

26 **Q: Do you have any concerns about the environmental impact of the proposed**
27 **pipeline?**

28 A: Yes, I do.

29 **Q: What are some of those concerns?**

1 A: As an affected land owner and Nebraskan, I am concerned that any construction,
2 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
3 a detrimental impact upon the environment of my land specifically, as well as the
4 lands near my land and surrounding the proposed pipeline route.

5 **Q: Do you have any other environmental concerns?**

6 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
7 construction and/or maintenance and operation. I am concerned about spills and
8 leaks that TransCanada has had in the past and will have in the future. This could
9 be catastrophic to my operations or others and to my county and the State.

10 **Q: Do you have any thoughts regarding if there would be an impact upon the**
11 **natural resources on or near your property due to the proposed pipeline?**

12 A: Yes, I believe that any construction, operation, and/or maintenance of the
13 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
14 resources of my land, and the lands near and surrounding the proposed pipeline
15 route.

16 **Q: Do you have any worries about potential impacts from the proposed pipeline**
17 **to the soil of your land, or land near you?**

18 A: Yes, I believe that any construction, operation, and/or maintenance of the
19 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
20 land, as well as land along and surrounding the proposed pipeline route. This
21 includes, but is not limited to, the reasons that we discussed above of disturbing
22 the soil composition and makeup as it has naturally existed for thousands and
23 millions of years during the construction process, and any future maintenance or
24 removal process. I'm gravely concerned about the fertility and the loss of
25 economic ability of my property to grow the crops, or grow the grasses, or grow
26 whatever it is at that time they exist on my property or that I may want to grow in
27 the future, or that a future owner may want to grow. The land will never be the
28 same from as it exists now undisturbed to after it is trenched up for the proposed
29 pipeline.

1 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
2 **upon the groundwater over your land, or surrounding lands?**

3 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
4 the proposed Keystone XL Pipeline would have a detrimental impact upon the
5 groundwater of not only under my land, but also near and surrounding the pipeline
6 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
7 simple and it is simply too valuable to our State and the country to put at
8 unreasonable risk.

9 **Q: Do you have any concern about the potential impact of the proposed pipeline**
10 **upon the surface water on, or near or around your land?**

11 A: Yes, I have significant concerns that any construction, operation, and/or
12 maintenance of the proposed Keystone XL Pipeline would have detrimental
13 impact upon the surface water of not only within my property boundary, but along
14 and near and surrounding the pipeline route, and in fact, across the state of
15 Nebraska.

16 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
17 **upon the wildlife and plants, other than your growing crops on or near your**
18 **land?**

19 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
20 the proposed Keystone XL Pipeline would have a detrimental impact upon the
21 wildlife and the plants, not only that are located on or can be found upon my land,
22 but also near and along the proposed pipeline route.

23 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
24 **fair market value of your land?**

25 A: Yes, I do. I am significantly concerned about how the existence of the proposed
26 pipeline underneath and across and through my property will negatively affect the
27 fair market value at any point in the future, especially at that point in which I
28 would need to sell the property, or someone in my family would need to sell the
29 property. I do not believe, and certainly would not be willing to pay, the same

1 price for land that had the pipeline located on it, versus land that did not. I hope
2 there is never a point where I'm in a position where I have to sell and have to
3 realize as much value as I can out of my land. But because it is my single largest
4 asset, I'm gravely concerned that the existence of the proposed Keystone XL
5 Pipeline upon my land will affect a buyer's willingness to pay as much as they
6 would've paid and as much as I could've received, if the pipeline were not upon
7 my property. There are just too many risks, unknowns, impacts and uncertainties,
8 not to mention all of the rights you give up by the nature of having the pipeline
9 due to having the easement that we have previously discussed, for any reasonable
10 person to think that the existence of the pipeline would not negatively affect my
11 property's value.

12 **Q: Have you ever seen the document that's marked as Attachment No. 5, to your**
13 **testimony?**

14 A: Yes, I have.

15 **Q: Where have you seen that before?**

16 A: That is a map I think I first saw a couple years ago that shows what was called the
17 Keystone XL I-90 corridor alternate route of its proposed pipeline through
18 Nebraska and I believe the portion of the alternative route in Nebraska essentially
19 twins or parallels Keystone I.

20 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
21 **Application, and as found on Attachment No. 6, here to your testimony, is in**
22 **the public interest of Nebraska?**

23 A: No, I do not.

24 **Q: Do you believe that the Keystone mainline alternative route as shown on**
25 **Attachment No. 6 included with your testimony here is a major oil pipeline**
26 **route that is in the public interest of Nebraska?**

27 A: No, I do not.

28 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
29 **in Attachment No. 5 to your testimony, is in the public interest of Nebraska?**

1 A: No, I do not.

2 **Q: Do you believe there is any potential route for the proposed Keystone XL**
3 **Pipeline across, within, under, or through the State of Nebraska that is in the**
4 **public interest of the citizens of Nebraska?**

5 A: No, I do not.

6 **Q: Why do you hold that belief?**

7 A: Because there simply is no public interest based on all of the factors that I am
8 aware and that I have read and that I have studied that this Commission is to
9 consider that would establish that a for-profit foreign-owned pipeline that simply
10 crosses Nebraska because we are geographically in the way between where tar
11 sands are in Canada to where it wants to ship it to in Texas could ever be in the
12 public interest of Nebraskans. We derive no benefit from this project. It is not for
13 public use. Nebraska is simply in the way and when all considerations are taken in
14 there is no net benefit of any kind for Nebraska should this project be placed in our
15 state. Even if there was some arguable “benefit” it is not enough to outweigh all
16 the negative impacts and concerns.

17 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
18 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
19 **of Nebraska because it may bring temporary jobs during the construction**
20 **phase to Nebraska?**

21 A: First of all, not all jobs are created equally. Most jobs that are created, whether
22 temporary or on a permanent basis, don’t come with a project that has all the
23 potential and foreseeable negative impacts, many of which we have discussed here
24 and other witnesses throughout the course of this hearing have and will discuss. If
25 I decide to hire and employ someone to help me out in my farming or ranching
26 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
27 to my land or my town or my county or my state. And I’ve hired someone who is
28 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
29 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all

1 jobs are not created equal. Additionally, I understand from what I'm familiar with
2 from TransCanada's own statements that the jobs numbers they originally touted
3 were determined to be a minute fraction of the permanent jobs that had been
4 projected. According to their answer to our Interrogatory No. 191, TransCanada
5 has created only thirty-four (34) jobs within Nebraska working specifically on
6 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
7 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
8 Further, according to their answer to Interrogatory No. 199, TransCanada would
9 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
10 constructed on its Preferred Route or its Mainline Alternative Route.

11 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
12 **because it would cross your land?**

13 A: No, absolutely not. I am opposed to this project because it is not in the public
14 interest, neither within my community nor within our state.

15 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
16 **was to cross someone else's land?**

17 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
18 the fear and anxiety and potential foreseeable risks and negative impacts that this
19 type of a project carrying this type of product brings foisted upon anyone in this
20 state or any other state.

21 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
22 **Pipeline to cross the state of Nebraska?**

23 A: I don't believe there is an intelligent route because as I have stated I don't believe
24 this project anywhere within Nebraska is within the public interest. However, if
25 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
26 had to go somewhere in the state of Nebraska, the only intelligent route I believe
27 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
28 preferred route and the mainline alternative routes are economic liabilities our
29 state cannot risk.

1 **Q: What do you rely upon to make that statement?**

2 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
3 already exists in that area is reason enough as it is not in our best interest or the
4 public interests to have more major oil pipelines crisscrossing our state. Second,
5 they have all the infrastructure already there in terms of relationships with the
6 counties and local officials and first responders along that route. Third, they have
7 already obtained easements from all the landowners long that route and have
8 relationships with them. Fourth, that route avoids our most sensitive soils, the
9 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
10 Aquifer. Sixth, they have already studied that route and previously offered it as an
11 alternative. Seventh, it just makes the most sense that as a state we would have
12 some intelligent policy of energy corridors and co-locating this type of
13 infrastructure near each other.

14 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
15 **like the Public Service Commissioners to consider in their review of**
16 **TransCanada's Application?**

17 A: No, I have not. I have shared that which I can think of as of the date I signed this
18 document below but other things may come to me or my memory may be
19 refreshed and I will add and address those things at the time of the Hearing in
20 August and address any additional items at that time as is necessary. Additionally,
21 I have not had an adequate amount of time to receive and review all of
22 TransCanada's answers to our discovery and the discovery of others so it was
23 impossible to competently and completely react to that in my testimony here and I
24 reserve the right to also address anything related to discovery that has not yet
25 concluded as of the date I signed this document below. Lastly, certain documents
26 requested have not yet been produced by TransCanada and therefore I may have
27 additional thoughts on those I will also share at the hearing as needed.

1 **Q: What is it that you are requesting the Public Service Commissioners do in**
2 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
3 **across Nebraska?**

4 A: I am respectfully and humbly requesting that the Commissioners think far beyond
5 a temporary job spike that this project may bring to a few counties and beyond the
6 relatively small amount of taxes this proposed foreign pipeline would possibly
7 generate. And, instead think about the perpetual and forever impacts of this
8 pipeline as it would have on the landowners specifically, first and foremost, but
9 also thereby upon the entire state of Nebraska, and to determine that neither the
10 preferred route nor the Keystone mainline alternative route are in the public
11 interest of the citizens of the state of Nebraska. And if the Commissioners were
12 inclined to modify TransCanada's proposed routes and were to be inclined to grant
13 an application for a route in Nebraska, that the only potential route that would
14 make any intelligent sense whatsoever would be twinning or near paralleling of
15 the proposed KXL with the existing Keystone I pipeline. It simply does not make
16 sense to add yet another major oil pipeline crisscrossing our state creating new
17 pumping stations, creating new impacts on additional counties and communities
18 and going through all of the court processes with myself and other landowners like
19 me when this applicant already has relationships with the landowners, the towns
20 and the communities along Keystone I, and that Keystone I is firmly outside of the
21 sand hills and a significantly further portion away from the heart of the Ogallala
22 Aquifer than the preferred route or the Keystone mainline alternative route.

23 **Q: Are all of your statements in your testimony provided above true and**
24 **accurate as of the date you signed this document to the best of your**
25 **knowledge?**

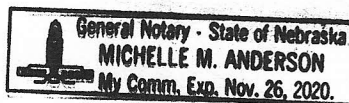
26 A: Yes, they are.

27 **Q: Thank you, I have no further questions at this time and reserve the right to**
28 **ask you additional questions at the August 2017 Hearing.**

Johnnie Bialas
Johnnie Bialas







Subscribed and Sworn to me before this 27th day of May, 2017.

Michelle M Anderson
Notary Public



Attachment No. 1



-  Proposed Centerline
-  Perm. Easement
-  Temp. Easement
-  Add. Temp. Worksp.
-  Property Line
-  Section Line

Attachment No. 2

Prepared by and after recording
please return to:
TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-NA-30135.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**"), **Johnnie P. Bialas and Maxine M. Bialas, Trustees of the Johnnie P. Bialas and Maxine M. Bialas Revocable Living Trust**, whose mailing address is 30298 S. 550th Street, Fullerton, Nebraska 68638 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or

through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Easement Area") located on real property situated in the County of Nance, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 160 acres, more or less, situated in the County of Nance, in the State of Nebraska, being further described as the SW1/4 of Section 16, T16N, R5W of the 6th P.M., as recorded in Book 82, Page 401 in the Deed Records of Nance County, Nebraska; less and except any conveyances heretofore made.

(the "Property"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "Initial Construction Period"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "Temporary Work Space"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the

negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____, 20____.

GRANTOR(S):

Johnnie P. Bialas and Maxine M. Bialas Revocable Living Trust

Johnnie P. Bialas, Trustee

Maxine M. Bialas, Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20____

By Johnnie P. Bialas, Trustee of the Johnnie P. Bialas and Maxine M. Bialas Revocable Living Trust on behalf of said Trust.

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20____

By Maxine M. Bialas, Trustee of the Johnnie P. Bialas and Maxine M. Bialas Revocable Living Trust on behalf of said Trust.

Notary Public Signature

Affix Seal Here

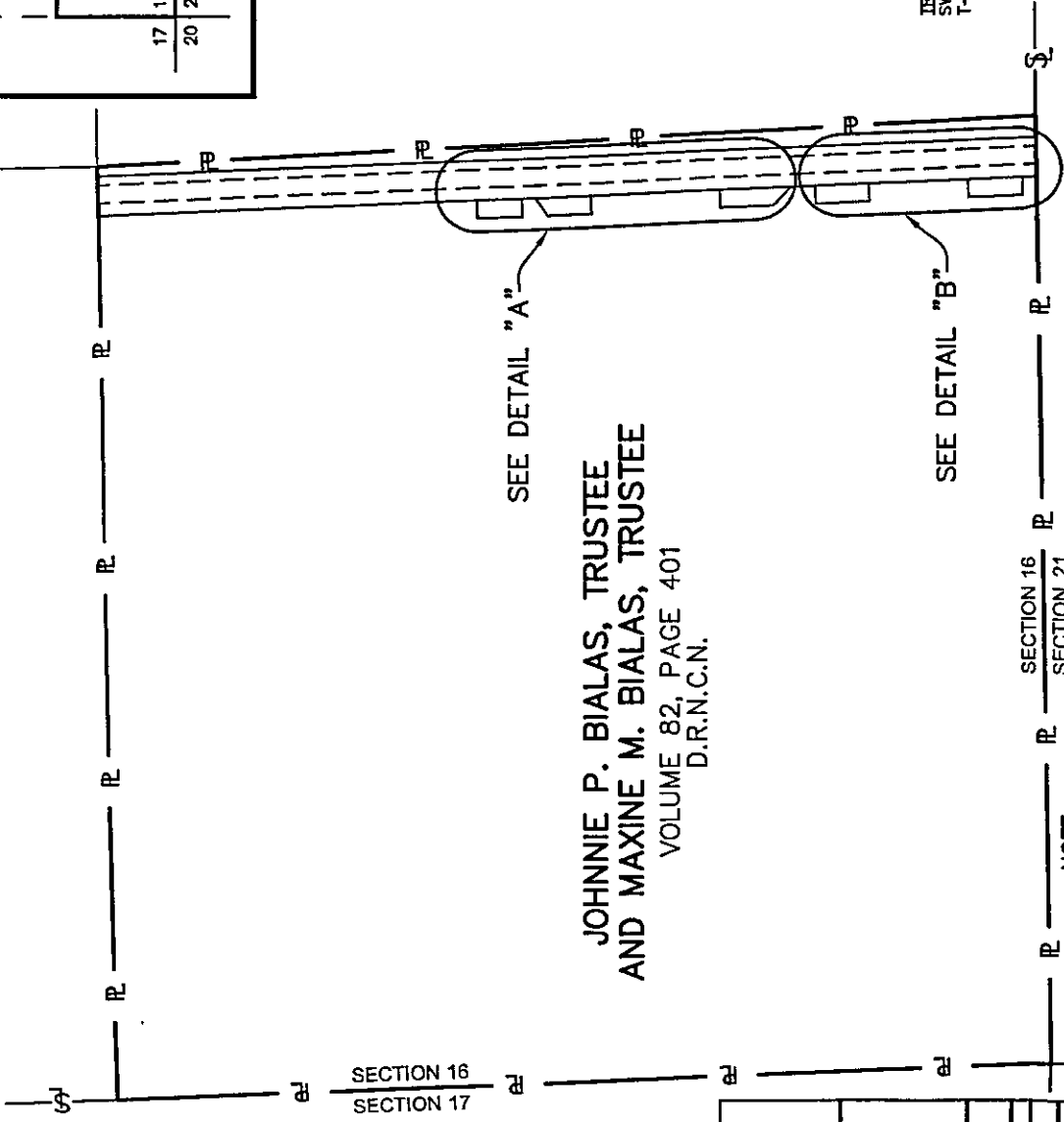
NANCE COUNTY, NEBRASKA

T-16-N, R-5-W, SECTION 16

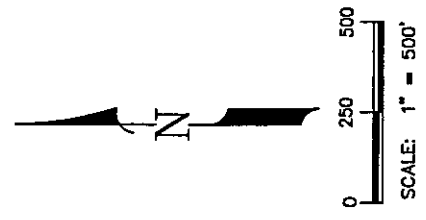
ML-NE-NA-30135.000

PROPERTY LINE
SECTION LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF NANCE COUNTY, NEBRASKA

LEGEND
P.P.
A.T.W.S.
P.E.R.W.
D.R.N.C.N.



VICINITY MAP
N.T.S.



TRACT LEGAL DESCRIPTION:
SW/4 OF SECTION 16,
T-16-N, R-5-W

JOHNNIE P. BIALAS, TRUSTEE
AND MAXINE M. BIALAS, TRUSTEE
VOLUME 82, PAGE 401
D.R.N.C.N.

NOTE:
THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR
PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON
THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY
PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE
APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT
AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 2,631'±
AREA OF PERMANENT EASEMENT: 3.0 ACRES
AREA OF TEMPORARY WORKSPACE: 3.6 ACRES
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.9 ACRES

SHEET 1 OF 2

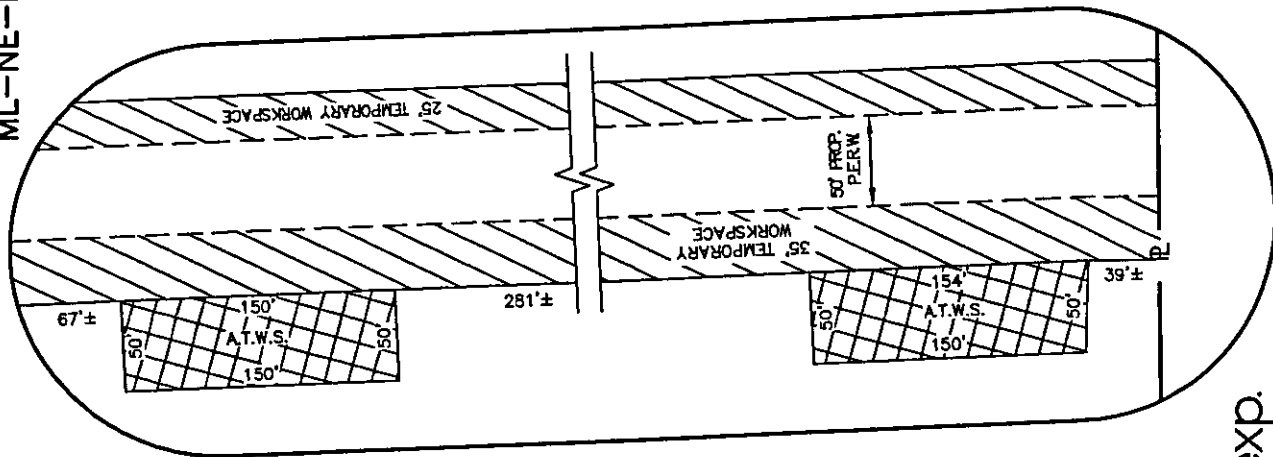
TransCanada <i>in business to deliver</i>	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
JOHNNIE P. BIALAS,	
TRUSTEE AND MAXINE M.	
BIALAS, TRUSTEE	
ML-NE-NA-30135.000	
PROJECT:	XL EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3552
NO.	REVISION
DATE	DATE
SCALE	DATE
1" = 500'	10/28/14
DRAWN BY	CHECKED BY
PB	ALS

exp.
The new identity of Trans

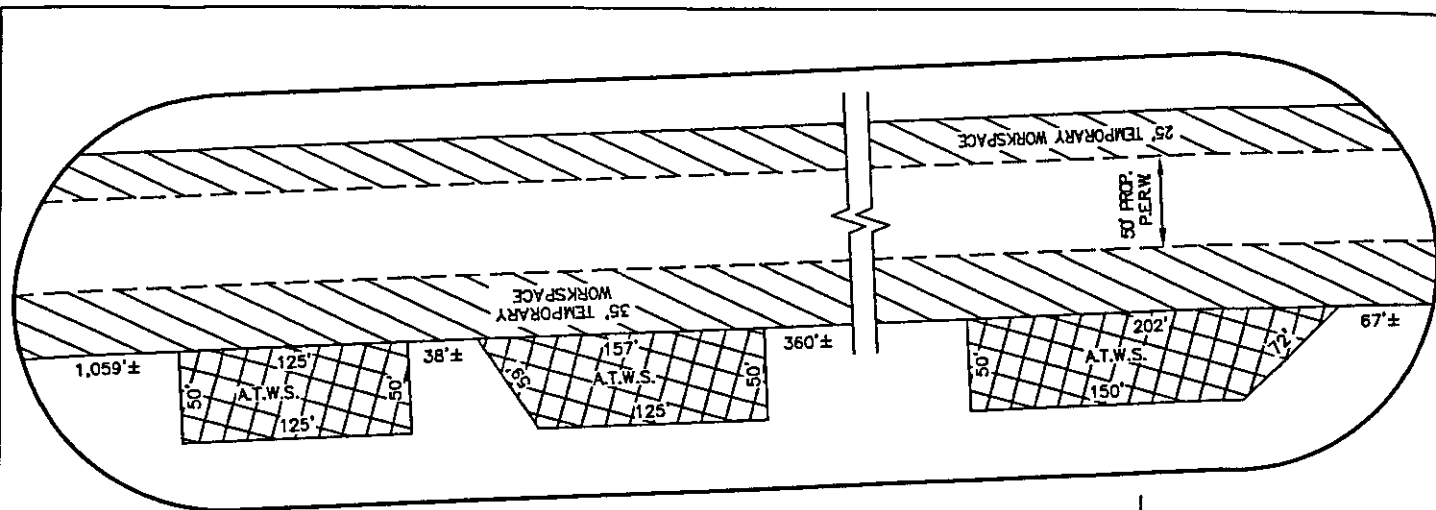
ML-NE-NA-30135.000

PROPERTY LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY

LEGEND
R. PROP.
A.T.W.S.
P.E.R.W.




DETAIL "B"
N.T.S.



DETAIL "A"
N.T.S.

NOTE: THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

	TransCanada	EASEMENT AREA ACROSS THE PROPERTY OF JOHNNIE P. BIALAS, TRUSTEE AND MAXINE M. BIALAS, TRUSTEE ML-NE-NA-30135.000	KEYSTONE XL PROJECT
	<i>In business to deliver</i>		
PROJECT:	XL	EXHIBIT A	
APPROVED BY	DRAWING NUMBER		
SLR	XL-08-ML-SK-3552		
NO.	REVISION	DATE	
SCALE	DATE	CHECKED BY	
N.T.S.	10/28/14	PB	
		ALS	

Attachment No. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Plaintiff,

v.

RICHARD ANDREW, JANE ANDREW,
LUKE ANDREW, and BRYCE ANDREW,

Defendants.

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 4

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-NA-30135.000

We, Johnnie P. Bialas and Maxine M. Bialas, Trustees, of Nance County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Five Hundred Ninety Four Dollars and No Cents (\$2,594.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Nance, State of Nebraska:

SW/4

Section 16, Township 16N, Range 5W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this day of

_____, 20____.

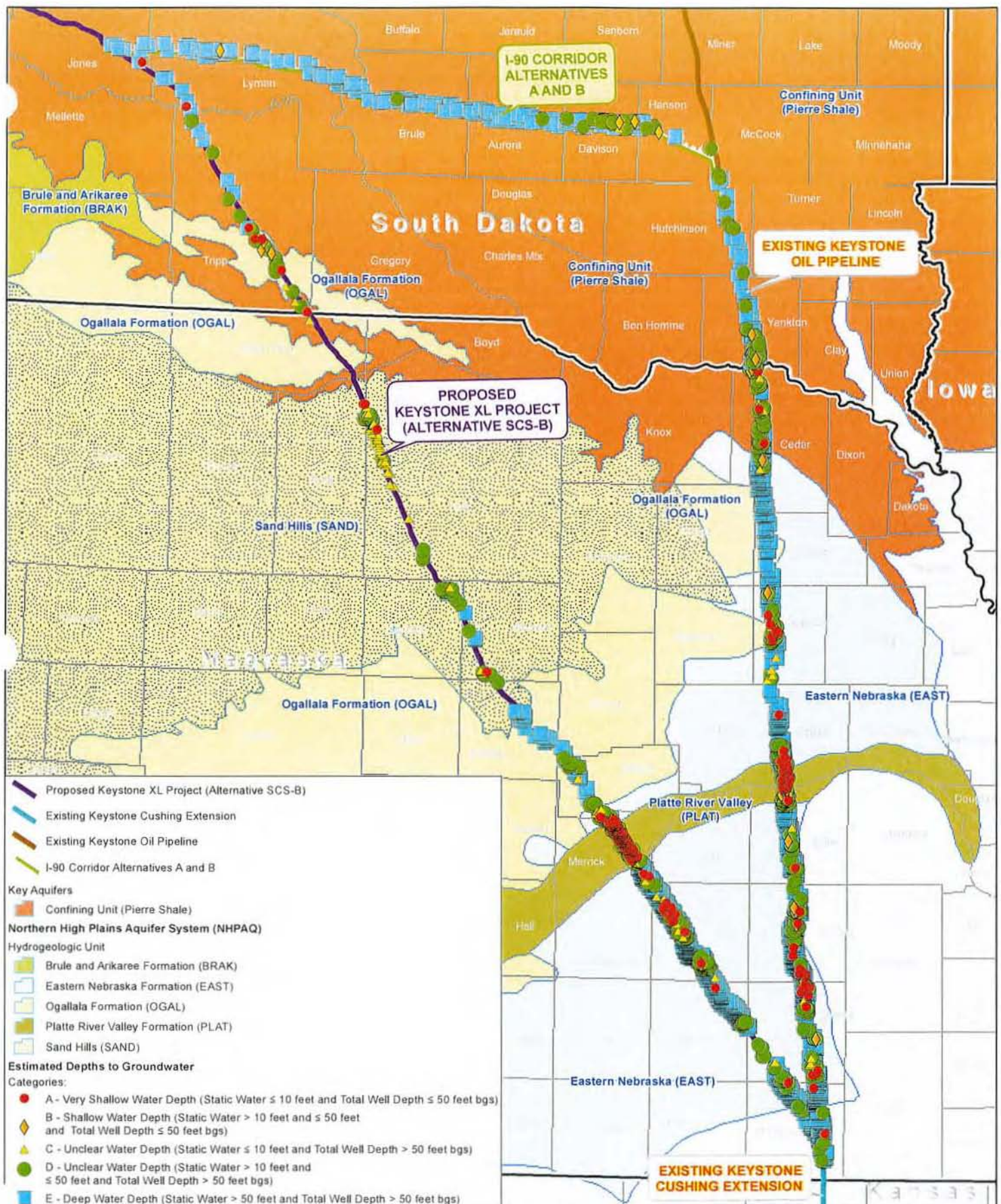
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 5



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

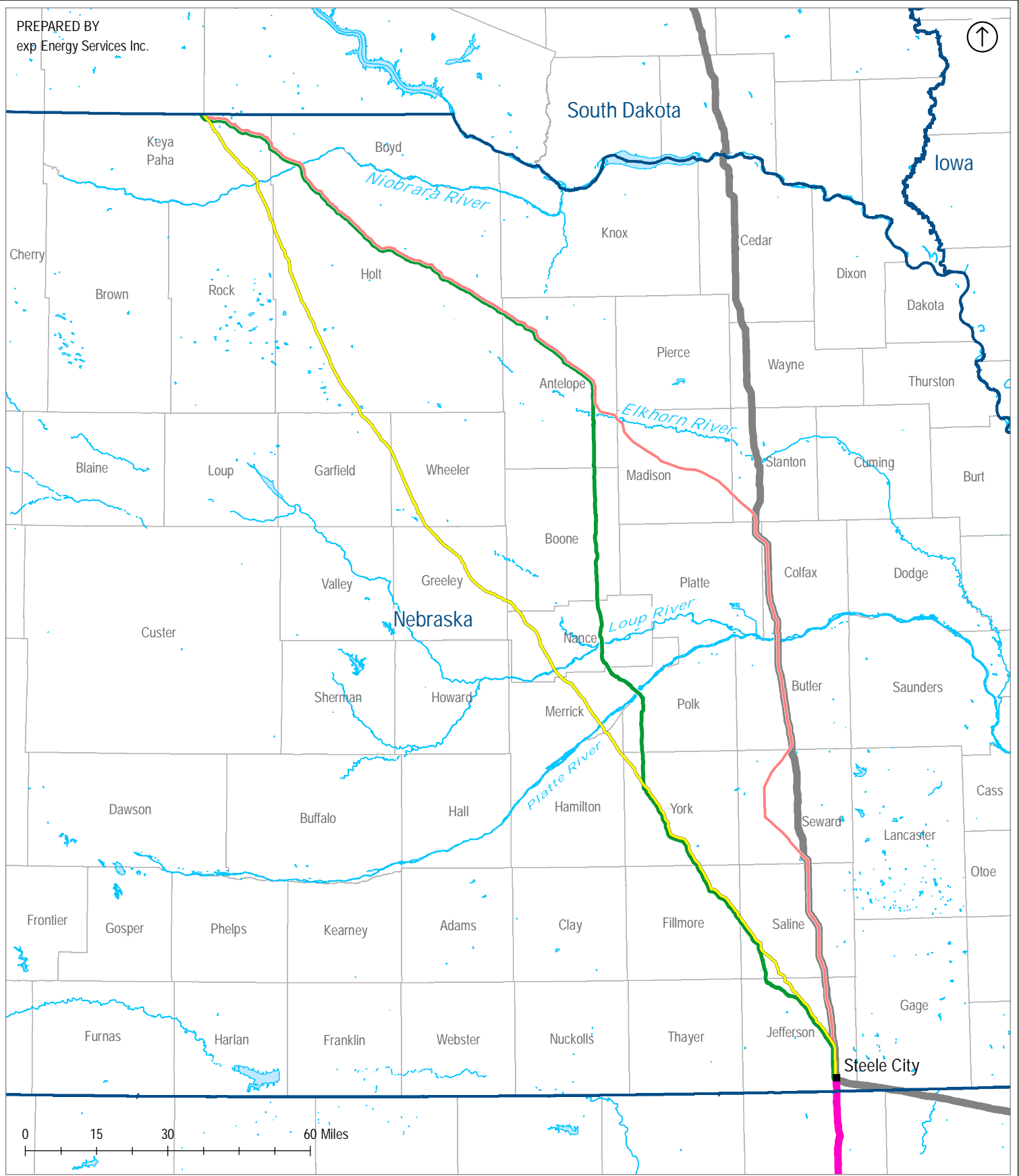
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

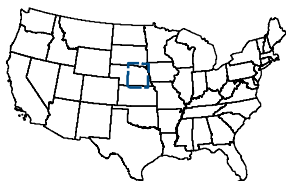
KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor

Attachment No. 6



VICINITY MAP



LEGEND

- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Cheri Blocher in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Cheri Blocher

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Farmer.

1 **Q: If you are you married tell us your spouse's name please?**
2 A: Michael Blocher.

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
4 **and or your family?**
5 A. Yes.

6 **Q: For the land that would be affected and impacted by the proposed KXL tar**
7 **sands pipeline give the Commissioners a sense how long the land has been in**
8 **your family and a little history of the land.**

9 A: Our land in Antelope County where my I was born, has been in my family all
10 sixty-five years of my life. Here we are carrying on the tradition of raising corn,
11 soy beans, and American Quarter Horses began by my late father and mother.

12 **Q: Do you earn any income from this land?**
13 A: Yes.

14 **Q: Have you depended on the income from your land to support your livelihood**
15 **or the livelihood of your family?**
16 A: Yes.

17 **Q: Have you ever in the past or have you thought about in the future leasing all**
18 **or a portion of your land in question here?**

19 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
20 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
21 all the restrictions and risks and potential negative impacts to farming or ranching
22 operations as opposed to land that did not have those same risks. If I was looking
23 to lease or rent ground I would pay more for comparable non-pipeline land than I
24 would for comparable pipeline land and I think most folks would think the same
25 way. This is another negative economic impact that affects the landowner and the
26 county and the state and will forever and ever should TransCanada's preferred or
27 mainline alternative routes be approved. If they were to twin or closely parallel to
28 Keystone I the vast majority of landowners would be those that already have a
29 pipeline so there would be considerable less new incremental negative impacts.

1 **Q: Do you have similar concerns about selling the land?**

2 A: Well I hope not to have to sell the land in my lifetime but times change and you
3 never know what is around the corner and yes I am concerned that if another piece
4 of ground similar to mine were for sale and it did not have the pipeline and mine
5 did that I would have a lower selling price. I think this would be true for pipeline
6 ground on both the preferred and mainline alternative routes.

7 **Q: What is your intent with your land after you die?**

8 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
9 to come but I have thought about getting out if this pipeline were to come through.

10 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
11 **Pipeline would cross the land described above and owned by you?**

12 A: Yes.

13 **Q: Were you or an entity for which you are a member, shareholder, or director**
14 **previously sued by TransCanada Keystone Pipeline, LP?**

15 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
16 petition for condemnation against our land so it could place its proposed pipeline
17 within an easement that it wanted to take from us on our land.

18 **Q: Did you defend yourself and your land in that condemnation action?**

19 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
20 and expenses in our resistance of TransCanada's lawsuit against us.

21 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
22 **incurred?**

23 A: No, they have not.

24 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
25 **property that it wanted to take for its proposed pipeline?**

26 A: The lawsuit against us stated they would take the amount of property that is
27 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
28 and equipment reasonably necessary to operate the pipeline.

1 **Q: Did TransCanada define what they meant by “property that is reasonably**
2 **necessary”?**

3 A: No, they did not.

4 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
5 **property portion of your land?**

6 A: Yes, they did.

7 **Q: Did TransCanada describe what rights it proposed to take related to the**
8 **eminent domain property on your land?**

9 A: Yes, they did.

10 **Q: What rights that they proposed to take did they describe?**

11 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
12 operate, and maintain the pipeline and the plant and equipment reasonably
13 necessary to operate the pipeline, specifically including surveying, laying,
14 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
15 reconstructing, removing and abandoning one pipeline, together with all fittings,
16 cathodic protection equipment, pipeline markers, and all their equipment and
17 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
18 petroleum products, and all by-products thereof.”

19 **Q: Prior to filing an eminent domain lawsuit to take your land that**
20 **TransCanada identified, do you believe they attempted to negotiate in good**
21 **faith with you?**

22 A: No, I do not.

23 **Q: Did TransCanada at any time approach you with or deliver to you their**
24 **proposed easement and right-of-way agreement?**

25 A: Yes, they did.

26 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
27 **agreement, did you understand that they would be purchasing a fee title**
28 **interest in your property or that they were taking something else?**

1 A: I understood that they proposed to have the power to take both a temporary
2 construction easement that could last for a certain period of time and then also a
3 permanent easement which they described to be 50 feet across or in width, and
4 that would run the entire portion of my property from where a proposed pipeline
5 would enter my property until where it would exit the property.

6 **Q: Is the document included with your testimony here as Attachment No. 3, a**
7 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
8 **Way agreement that they included with their condemnation lawsuit against**
9 **you?**

10 A: Yes, it is.

11 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
12 **and Right-of-Way agreement?**

13 A: Yes, I have.

14 **Q: What is your understanding of the significance of the Easement and Right-of-**
15 **Way agreement as proposed by TransCanada?**

16 A: My understanding is that this is the document that will govern all of the rights and
17 obligations and duties as well as the limitations of what I can and cannot do and
18 how I and any future landowner and any person I invite to come onto my property
19 must behave as well as what TransCanada is and is not responsible for and how
20 they can use my land.

21 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
22 **agreement do you have any concerns about any portions of it or any of the**
23 **language either included in the document or missing from the proposed**
24 **document?**

25 A: Yes, I have a number of significant concerns and worries about the document and
26 how the language included and the language not included potentially negatively
27 impacts my land and thereby potentially negatively impacts my community and
28 my state.

1 **Q: I would like you to walk the Commissioners through each and every one of**
2 **your concerns about TransCanada's proposed Easement and Right-of-Way**
3 **agreement so they can develop an understanding of how that language and**
4 **the terms of that contract, in your opinion, potentially negatively impacts you**
5 **and your land. So, if you can start at the beginning of that document and**
6 **let's work our way through it, okay?**

7 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
8 Easement and Right-of-Way agreement and how it negatively could affect my
9 property rights and my economic interests.

10 **Q. Okay, let's start with your first concern please.**

11 A: The very first sentence talks about consideration or how much money they will
12 pay to compensate me for all of the known and unknown affects and all of the
13 rights I am giving up and for all the things they get to do to my land and for what
14 they will prevent me from doing on my land and they only will pay me one time at
15 the signing of the easement agreement. That is a huge problem.

16 **Q: Explain to the Commissioners why that is a problem.**

17 A: It is not fair to the landowner, the county, or the State. It is not fair to the
18 landowner because they want to have my land forever for use as they see fit so
19 they can make a daily profit from their customers. If I was to lease ground from
20 my neighbor I would typically pay twice a year every year as long as they granted
21 me the rights to use their land. That only makes sense – that is fair. If I was going
22 to rent a house in town I would typically pay monthly, every month until I gave up
23 my right to use that house. By TransCanada getting out on the cheap and paying
24 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
25 revenue collection on the money I would be paid and then pay taxes on and
26 contribute to this state and this country. It is money I would be putting back into
27 my local community both spending and stimulating the local economy and
28 generating more economic activity right here. Instead TransCanada's shareholders
29 keep all that money and it never finds its way to Nebraska.

1 **Q: What is your next concern?**

2 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
3 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
4 limited partnership...” and I have no idea who that really is. I have no idea who is
5 forcing this pipeline on us or who the owners of the entities are, or what are the
6 assets backing this limited partnership, or who the general partner is, or who all
7 the limited partners are, and who makes up the ownership of the these partners or
8 the structure or any of the basic things you would want to know and understand if
9 you would want to do business with such an outfit. According to TransCanada’s
10 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
11 liability company called TransCanada Keystone Pipeline GP, LLC is the general
12 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
13 basically nothing. That is really scary since the general partner has the liability but
14 virtually none of the ownership and who knows if it has any other assets.

15 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
16 **percent clear on exactly who could become the owner of over 275 miles of**
17 **Nebraska land?**

18 A: No.

19 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
20 **percent clear on exactly who will be operating and responsible for**
21 **approximately 275 miles of tar sands pipeline underneath and through**
22 **Nebraska land?**

23 A: No.

24 **Q: Okay, let’s continue please with your concerns of the impacts upon your land**
25 **and the State of Nebraska of TransCanada’s easement terms.**

26 A: Yes, so the next sentence talks about “...its successors and assigns (hereinafter
27 called “Grantee”)...” and this concerns me because it would allow the easement to
28 be transferred or sold to someone or some company or country or who knows what
29 that I don’t know and who we may not want to do business with. This pipeline

1 would be a huge asset for TransCanada and if they can sell to the highest bidder
2 that could have terrible impacts upon all of Nebraska depending upon who may
3 buy it and I don't know of any safeguards in place for us or the State to veto or
4 have any say so in who may own, operate, or be responsible for this pipeline in the
5 future.

6 **Q: Do you think that type of uncertainty and lack of control over a major piece**
7 **of infrastructure crossing our State is in the public interest?**

8 A: No, certainly not, in fact, just the opposite.

9 **Q: What's next?**

10 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
11 really concerns me. Why does the easement and right-of-way have to be perpetual
12 and permanent? That is the question myself and my family want an answer to.
13 Perpetual to me is like forever and that doesn't make sense.

14 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

15 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
16 data proving there is a perpetual supply of tar sands. I am not aware in
17 TransCanada's application where it proves there is a perpetual necessity for this
18 pipeline. My understanding of energy infrastructure like wind towers is they have
19 a decommission plan and actually take the towers down when they become
20 obsolete or no longer needed. Nothing manmade lasts forever. My land however
21 will, and I want my family or future Nebraska families to have that land as
22 undisturbed as possible and it is not in my interest or the public interest of
23 Nebraska to be forced to give up perpetual and permanent rights in the land for
24 this specific kind of pipeline project.

25 **Q: Okay, what is your next concern?**

26 A: The easement language includes all these things TransCanada can do and it says
27 "...abandoning in place..." so they can just leave this pipeline under my ground
28 until the end of time just sitting there while they are not using it, but I am still
29 prevented from doing on my land and using my land what I would like. If I owned

1 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
2 there. It doesn't make sense and it scares me and it is not in my interest or the
3 public interest of Nebraska to allow this.

4 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
5 **right?**

6 A: Yes.

7 **Q: So now on the second page of the Easement what are your concerns?**

8 A: Here the Easement identifies a 24-month deadline to complete construction of the
9 pipeline but has caveats that are undefined and ambiguous. The 24-month period
10 starts to run from the moment "actual pipeline installation activities" begin on
11 Landowners property. It appears that TransCanada would define this phrase as
12 needed. It would be wise to explain what types of TransCanada action constitutes
13 "installation activity" For instance, would the placement and storage of an
14 excavator or other equipment on or near the Easement property be an activity or
15 would earth have to be moved before the activity requirement is triggered. This
16 vague phrase is likely to lead to future disputes and litigation that is not in the best
17 interest of the welfare of Nebraska and would not protect property interests. The
18 24-months can also be extended in the case of "force majeure." My understanding
19 is that force majeure is often used to insulate a party to a contract when events
20 occur that are completely out of their control. In TransCanada's easement this is
21 expanded to include "without limitation...availability of labor and materials."
22 Extending this language to labor and materials is problematic because these are
23 two variables that TransCanada does have some or significant control over and to
24 allow extension of the 24-month period over events not truly out of the control of
25 TransCanada and without further provision for compensation for the Landowner is
26 not conducive to protection of property rights.

27 **Q: Okay, what is your next concern?**

28 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
29 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially

1 reasonable costs and expenses” will pay for damages caused but then limits
2 TransCanada’s liability to certain circumstances. There is no definition of
3 “commercially reasonable” and no stated right that the Landowner would get to
4 determine the amounts of cost or expense that is “commercially reasonable.”
5 TransCanada excepts out from their liability any damages that are caused by
6 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
7 Landowner. It is understandable that if the Landowner were to willfully and
8 intentionally cause damages to the pipeline that Landowner should be liable.
9 However, anything short of willful misconduct should be the liability of
10 TransCanada who is subjecting the pipeline on the Landowner and who is making
11 a daily profit from that pipeline. When evaluating the impact on property rights of
12 this provision, you must consider the potentially extremely expensive fight a
13 Landowner would have over this question of whether or not damage was an act of
14 negligence. Putting this kind of potential liability upon the Landowner is
15 incredibly problematic and is detrimental to the protection of property rights. I
16 don’t think this unilateral power which I can’t do anything about as the landowner
17 is in the best economic interest of the land in question or the State of Nebraska for
18 landowners to be treated that way.

19 **Q: Is there any specific event or example you are aware of that makes this**
20 **concern more real for you?**

21 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
22 Nemaha County, Nebraska landowner farmers who accidentally struck two
23 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
24 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
25 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
26 copy of the Federal Court Complaint is here as **Attachment No. 4.**

27 **Q: What is your next concern with the Easement language?**

28 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
29 they choose unless 1) any Landowner use interferes in any way with

1 TransCanada's exercise of any of its rights within the Easement, or 2)
2 TransCanada decides to take any action on the property it deems necessary to
3 prevent injury, endangerment or interference with anything TransCanada deems
4 necessary to do on the property. Landowner is also forbidden from excavating
5 without prior authorization by TransCanada. So my understanding is that
6 TransCanada will unilaterally determine what Landowner can and can't do based
7 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
8 could also completely deny my request to excavate. Further, TransCanada retains
9 all "privileges necessary or convenient for the full use of the rights" granted to
10 them in the Easement. Again, TransCanada unilaterally can decide to the
11 detriment of the property rights of Landowner what TransCanada believes is
12 necessary or convenient for it. And there is no option for any additional
13 compensation to landowner for any right exercised by TransCanada that leads to
14 the removal of trees or plants or vegetation or buildings or structures or facilities
15 owned by Landowner of any kind. Such undefined and unilateral restrictions and
16 rights without having to compensate Landowner for such further destruction or
17 losses are not conducive to the protection of property rights or economic interest.

18 **Q: What is the next concern you have?**

19 A: The Easement also allows some rights for Landowner but restricts them at the
20 same time and again at the sole and unilateral decision making of TransCanada.
21 TransCanada will determine if the actions of Landowner might in anyway
22 endanger or obstruct or interfere with TransCanada's full use of the Easement or
23 any appurtenances thereon of the pipeline itself or to their access to the Easement
24 or within the Easement and TransCanada retains the right at any time, whether
25 during growing season or not, to travel "within and along Easement Area on foot
26 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
27 retain the rights to prevent any landowner activity that it thinks may "unreasonably
28 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such

undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner's land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: Again, undefined terms leave a lot of room for confusion. What does the phrase "where rock is encountered" mean and why does TransCanada solely get to determine whether or not this phrase is triggered. This phrase could be used to justify installing the pipeline 24 inches beneath the surface. The ability to use this provision to minimal locate the pipeline at a depth of 24 inches could negatively affect Landowners property are not conducive to the protection of property rights. A shallow pipeline is much more likely to become a danger and liability in the future given farming operations and buried irrigation lines and other factors common to the current typical agricultural uses of the land in question impacted by TransCanada's preferred pipeline route.

Q: What is the next concern you have with the Easement language?

A: There are more vague concepts solely at the determination of TransCanada such as "as nearly as practicable" and "pre-construction position" and "extent reasonably possible." There is nothing here that defines this or provides a mechanism for documenting or memorializing "pre-construction position" so as to minimize costly legal battles or wasted Landowner time attempting to recreate the soil condition on their fields or pasture. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

1 A: TransCanada maintains the unilateral right to abandon the pipeline and all
2 appurtenances thereto in place on, under, across, or through Nebraska land at any
3 time it chooses. There is no provision for Landowner compensation for such
4 abandonment nor any right for the Landowner to demand removal. Such unilateral
5 powers would negatively affect Landowners property are not conducive to the
6 protection of property rights or economic interest.

7 **Q: What is the next concern you have with the Easement language?**

8 A: TransCanada has the power to unilaterally move or modify the location of any
9 Easement area whether permanent or temporary at their sole discretion.
10 Regardless, if Landowner has taken prior steps relative to their property in
11 preparation or planning of TransCanada's taking of the initial easement area(s),
12 the language here does not require TransCanada to compensate the Landowner if
13 they decide to move the easement anywhere on Landowners property. Such
14 unilateral powers would negatively affect Landowners property are not conducive
15 to the protection of property rights or economic interests.

16 **Q: What is the next concern you have with the Easement language?**

17 A: The Easement requires that all of the burdens and restrictions upon Landowner to
18 transfer and be applicable to any future owner of the Land in question without the
19 ability of the future Landowner to modify or negotiate any of the language in
20 question to which it will be held to comply.

21 **Q: What is the next concern you have with the Easement language?**

22 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
23 Easement to any person, company, country, etc. at their sole discretion at anytime
24 to anyone. This also means that any buyer of the easement could do the same to a
25 third buyer and so on forever. There is no change of control or sale provision in
26 place to protect the Landowner or Nebraska or to provide compensation for such
27 change of control or ownership. It is not conducive to the protection of property
28 rights or economic interests to allow unilateral unrestricted sale of the Easement

1 thereby forcing upon the Landowner and our State a new unknown Easement
2 owner.

3 **Q: What is the next concern you have with the Easement language?**

4 A: There are many terms in the Easement that are either confusing or undefined terms
5 that are without context as to whether or not the Landowner would have any say
6 so in determining what these terms mean or if the evaluation is solely in
7 TransCanada's control. Some of these vague undefined terms are as follows:

- 8 i. "pipeline installation activities"
- 9 ii. "availability of labor and materials"
- 10 iii. "commercially reasonable costs and expenses"
- 11 iv. "reasonably anticipated and foreseeable costs and expenses"
- 12 v. "yield loss damages"
- 13 vi. "diminution in the value of the property"
- 14 vii. "substantially same condition"
- 15 viii. "an actual or potential hazard"
- 16 ix. "efficient"
- 17 x. "convenient"
- 18 xi. "endangered"
- 19 xii. "obstructed"
- 20 xiii. "injured"
- 21 xiv. "interfered with"
- 22 xv. "impaired"
- 23 xvi. "suitable crossings"
- 24 xvii. "where rock is encountered"
- 25 xviii. "as nearly as practicable"
- 26 xix. "pre-construction position"
- 27 xx. "pre-construction grade"
- 28 xxi. "various engineering factors"

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, “yield loss damages” should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 A: I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada’s proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline’s**
18 **impact upon you and your land?**

19 A: No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 A: Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 **Q: Has TransCanada at any time offered to compensate you annually, such as**
6 **wind farm projects do, for the existence of their potential tar sands pipeline**
7 **across your property.**

8 A: No, never.

9 **Q: At any time did TransCanada present you with or request that you, as the**
10 **owner of the land in question, sign and execute a document called, "Advanced**
11 **Release of Damage Claims and Indemnity Agreement?"**

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
14 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

15 A: Yes, it is.

16 **Q: What was your understanding of that document?**

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 **Q: Did you ever sign that document?**

24 A: No, I did not.

25 **Q: Why not?**

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you**
12 **thought their proposed location of their proposed pipeline across your land**
13 **was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you**
16 **thought their proposed location of their proposed pipeline across your land**
17 **was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
20 **Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
23 **an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which**
29 **the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 **Q: Can you think of any way in which the public, that is the citizens of the State**
3 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
4 **Pipeline, as it dissects the State of Nebraska?**

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
13 **crude petroleum, or oil and petroleum by-products that you would like to**
14 **ship in its pipeline?**

15 A: No, it has not.

16 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
17 **products that you, at this time or any time in the future, would desire to place**
18 **for transport within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not.

20 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
21 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
22 **products within the proposed TransCanada Keystone XL Pipeline?**

23 A: No, I do not. I've never heard of such a person or company like that.

24 **Q: Do you pay property taxes for the land that would be affected and impacted**
25 **at the proposed TransCanada Keystone XL Pipeline?**

26 A: Yes, I do.

27 **Q: Why do you pay property taxes on that land?**

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q: Because you follow the law and pay property taxes, do you believe you**
2 **deserve any special consideration or treatment apart from any other person**
3 **or company that pays property taxes?**

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q: Do you believe the fact that you pay property taxes entitles you to special**
7 **treatment of any kind, or special rights of any kind?**

8 A: No, of course not.

9 **Q: Do you believe the fact that you pay property taxes on your land would be**
10 **enough to qualify you to have the power of eminent domain to take land of**
11 **your neighbors or other people in your county, or other people across the**
12 **state of Nebraska?**

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q: Have you at any time ever employed any person other than yourself?**

16 A: Well, yes I have.

17 **Q: Do you believe that the fact that you have, at some point in your life,**
18 **employed one or more other persons entitle you to any special treatment or**
19 **consideration above and beyond any other Nebraskan that has also employed**
20 **one or more persons?**

21 A: No, of course not.

22 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
23 **have at one point employed another person within this state, entitles you to**
24 **preferential treatment or consideration of any kind?**

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q: At the beginning of your statement, you briefly described your property that**
28 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
29 **give the Commissioners a sense of specifically how you believe the proposed**

1 **Keystone XL Pipeline and its preferred route, which proposes to go across**
2 **your land, how it would in your opinion based on your knowledge,**
3 **experience, and background of your land, affect it. So please share with the**
4 **Commissioners the characteristics of your land that you believe is important**
5 **for them to understand, while they evaluate TransCanada's application for a**
6 **route for its proposed pipeline to cross Nebraska and across your land,**
7 **specifically.**

8 A: The current proposed route of the Keystone XL pipeline would cross a half mile of
9 our land consisting of equal parts pasture and row crop. It has been categorized
10 highly erodible by the U.S. Farm Service Agency. This means that any disturbance
11 to the ground results in constant monitoring and maintenance to protect it from
12 severe and catastrophic erosion. We would have to prevent and repair any damage
13 for as long the pipeline is there. According to the easement we would be forced to
14 sign, that could be forever since TransCanada is not responsible to remove it nor
15 return the land to its original state.

16 **Q: What else?**

17 A: Also according to the forced easement, we could be liable for damages and clean-
18 up when the pipeline leaks, resulting in permanent toxic contamination.

19 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
20 **crude oil pipeline in its preferred location, or ultimate location across the**
21 **state of Nebraska?**

22 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
23 or even bullied around and being made to feel scared that they did not have any
24 options but to sign whatever papers TransCanada told them they had to. I am
25 aware of folks being threatened that their land would be taken if they didn't follow
26 what TransCanada was saying. I am aware of tactics to get people to sign
27 easements that I don't believe have any place in Nebraska or anywhere such as
28 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
29 landowners and convince them they should sign TransCanada's easement

1 agreements. I am aware of older folks and widows or widowers feeling they had
2 no choice but to sign TransCanada's Easement and they didn't know they could
3 fight or stand up for themselves. From a more practical standpoint, I am worried
4 that according to their answer to our Interrogatory No. 211, TransCanada only
5 owns and operates one (1) major oil pipeline. They simply do not have the
6 experience with this type of pipeline and that scares me. There are others but that
7 is what I can recollect at this time and if I remember more or my recollection is
8 refreshed I will share those with the Commissioners at the Hearing in August.

9 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
10 **landowner is reasonable or just?**

11 A: No, I do not.

12 **Q: Do you have any concern about limitations that the construction of this**
13 **proposed pipeline across your affected land would prevent construction of**
14 **future structures upon the portion of your land affected by the proposed**
15 **easement and immediately surrounding areas?**

16 A: Well yes, of course I do. We would not be able to build many, if any, types of
17 structures directly across or touching the easement, and it would be unwise and I
18 would be uncomfortable to build anything near the easement for fear of being
19 blamed in the future should any damage or difficulty result on my property in
20 regards to the pipeline.

21 **Q: Do you think such a restriction would impact you economically?**

22 A: Well yes, of course.

23 **Q: How do you think such a restriction would impact you economically?**

24 A: The future of this land may not be exactly how it's being used as of this moment,
25 and having the restrictions and limiting my ability to develop my land in certain
26 ways presents a huge negative economic impact on myself, my family, and any
27 potential future owner of the property. You have no idea how I or the future owner
28 may want to use this land in the future or the other land across Nebraska
29 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years

1 ago it would have been hard to imagine all the advances that we have now or how
2 things change. Because the Easement is forever and TransCanada gets the rights in
3 my land forever we have to think with a very long term view. By placing their
4 pipeline on under across and through my land that prevents future development
5 which greatly negatively impacts future taxes and tax revenue that could have
6 been generated by the County and State but now will not. When you look at the
7 short blip of economic activity that the two years of temporary construction efforts
8 may bring, that is far outweighed by the perpetual and forever loss of opportunity
9 and restrictions TransCanada is forcing upon us and Nebraska.

10 **Q: Do you have any concerns about the environmental impact of the proposed**
11 **pipeline?**

12 A: Yes, I do.

13 **Q: What are some of those concerns?**

14 A: As an affected land owner and Nebraskan, I am concerned that any construction,
15 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
16 a detrimental impact upon the environment of my land specifically, as well as the
17 lands near my land and surrounding the proposed pipeline route.

18 **Q: Do you have any other environmental concerns?**

19 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
20 construction and/or maintenance and operation. I am concerned about spills and
21 leaks that TransCanada has had in the past and will have in the future. This could
22 be catastrophic to my operations or others and to my county and the State.

23 **Q: Do you have any thoughts regarding if there would be an impact upon the**
24 **natural resources on or near your property due to the proposed pipeline?**

25 A: Yes, I believe that any construction, operation, and/or maintenance of the
26 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
27 resources of my land, and the lands near and surrounding the proposed pipeline
28 route.

1 **Q: Do you have any worries about potential impacts from the proposed pipeline**
2 **to the soil of your land, or land near you?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
5 land, as well as land along and surrounding the proposed pipeline route. This
6 includes, but is not limited to, the reasons that we discussed above of disturbing
7 the soil composition and makeup as it has naturally existed for thousands and
8 millions of years during the construction process, and any future maintenance or
9 removal process. I'm gravely concerned about the fertility and the loss of
10 economic ability of my property to grow the crops, or grow the grasses, or grow
11 whatever it is at that time they exist on my property or that I may want to grow in
12 the future, or that a future owner may want to grow. The land will never be the
13 same from as it exists now undisturbed to after it is trenched up for the proposed
14 pipeline.

15 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
16 **upon the groundwater over your land, or surrounding lands?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 groundwater of not only under my land, but also near and surrounding the pipeline
20 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
21 simple and it is simply too valuable to our State and the country to put at
22 unreasonable risk.

23 **Q: Do you have any concern about the potential impact of the proposed pipeline**
24 **upon the surface water on, or near or around your land?**

25 A: Yes, I have significant concerns that any construction, operation, and/or
26 maintenance of the proposed Keystone XL Pipeline would have detrimental
27 impact upon the surface water of not only within my property boundary, but along
28 and near and surrounding the pipeline route, and in fact, across the state of
29 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
2 **upon the wildlife and plants, other than your growing crops on or near your**
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the
6 wildlife and the plants, not only that are located on or can be found upon my land,
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed
11 pipeline underneath and across and through my property will negatively affect the
12 fair market value at any point in the future, especially at that point in which I
13 would need to sell the property, or someone in my family would need to sell the
14 property. I do not believe, and certainly would not be willing to pay, the same
15 price for land that had the pipeline located on it, versus land that did not. I hope
16 there is never a point where I'm in a position where I have to sell and have to
17 realize as much value as I can out of my land. But because it is my single largest
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they
20 would've paid and as much as I could've received, if the pipeline were not upon
21 my property. There are just too many risks, unknowns, impacts and uncertainties,
22 not to mention all of the rights you give up by the nature of having the pipeline
23 due to having the easement that we have previously discussed, for any reasonable
24 person to think that the existence of the pipeline would not negatively affect my
25 property's value.

26 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
27 **testimony?**

28 A: Yes, I have.

29 **Q: Where have you seen that before?**

1 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
2 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
3 believe the portion of the alternative route shown here within Nebraska essentially
4 twins or parallels Keystone I. That is why this is included, to show TransCanada
5 has looked at the possibility of twinning which I believe is feasible.

6 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
7 **Application, and as found on Attachment No. 7, here to your testimony, is in**
8 **the public interest of Nebraska?**

9 A: No, I do not.

10 **Q: Do you believe that the Keystone mainline alternative route as shown on**
11 **Attachment No. 7 included with your testimony here is a major oil pipeline**
12 **route that is in the public interest of Nebraska?**

13 A: No, I do not.

14 **Q: Do you believe the Nebraska portion of the I-90 corridor alternative route,**
15 **specifically for the portion of the proposed pipeline within Nebraska as found**
16 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

17 A: No, I do not.

18 **Q: Do you believe there is any potential route for the proposed Keystone XL**
19 **Pipeline across, within, under, or through the State of Nebraska that is in the**
20 **public interest of the citizens of Nebraska?**

21 A: No, I do not.

22 **Q: Why do you hold that belief?**

23 A: Because there simply is no public interest based on all of the factors that I am
24 aware and that I have read and that I have studied that this Commission is to
25 consider that would establish that a for-profit foreign-owned pipeline that simply
26 crosses Nebraska because we are geographically in the way between where tar
27 sands are in Canada to where it wants to ship it to in Texas could ever be in the
28 public interest of Nebraskans. We derive no benefit from this project. It is not for
29 public use. Nebraska is simply in the way and when all considerations are taken in

1 there is no net benefit of any kind for Nebraska should this project be placed in our
2 state. Even if there was some arguable “benefit” it is not enough to outweigh all
3 the negative impacts and concerns.

4 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
5 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
6 **of Nebraska because it may bring temporary jobs during the construction**
7 **phase to Nebraska?**

8 A: First of all, not all jobs are created equally. Most jobs that are created, whether
9 temporary or on a permanent basis, don’t come with a project that has all the
10 potential and foreseeable negative impacts, many of which we have discussed here
11 and other witnesses throughout the course of this hearing have and will discuss. If
12 I decide to hire and employ someone to help me out in my farming or ranching
13 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
14 to my land or my town or my county or my state. And I’ve hired someone who is
15 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
16 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
17 jobs are not created equal. Additionally, I understand from what I’m familiar with
18 from TransCanada’s own statements that the jobs numbers they originally touted
19 were determined to be a minute fraction of the permanent jobs that had been
20 projected. According to their answer to our Interrogatory No. 191, TransCanada
21 has created only thirty-four (34) jobs within Nebraska working specifically on
22 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
23 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
24 Further, according to their answer to Interrogatory No. 199, TransCanada would
25 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
26 constructed on its Preferred Route or its Mainline Alternative Route.

27 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
28 **because it would cross your land?**

1 A: No, absolutely not. I am opposed to this project because it is not in the public
2 interest, neither within my community nor within our state.

3 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
4 **was to cross someone else's land?**

5 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
6 the fear and anxiety and potential foreseeable risks and negative impacts that this
7 type of a project carrying this type of product brings foisted upon anyone in this
8 state or any other state.

9 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
10 **Pipeline to cross the state of Nebraska?**

11 A: I don't believe there is an intelligent route because as I have stated I don't believe
12 this project anywhere within Nebraska is within the public interest. However, if
13 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
14 had to go somewhere in the state of Nebraska, the only intelligent route I believe
15 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
16 preferred route and the mainline alternative routes are economic liabilities our
17 state cannot risk.

18 **Q: What do you rely upon to make that statement?**

19 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
20 already exists in that area is reason enough as it is not in our best interest or the
21 public interests to have more major oil pipelines crisscrossing our state. Second,
22 they have all the infrastructure already there in terms of relationships with the
23 counties and local officials and first responders along that route. Third, they have
24 already obtained easements from all the landowners along that route and have
25 relationships with them. Fourth, that route avoids our most sensitive soils, the
26 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
27 Aquifer. Sixth, they have already studied that route and previously offered it as an
28 alternative. Seventh, it just makes the most sense that as a state we would have

1 some intelligent policy of energy corridors and co-locating this type of
2 infrastructure near each other.

3 **Q: Do you have any other concerns you would like to reiterate or can think of at**
4 **this time you would like the Commissioners to understand?**

5 **A:** Yes. For a one-time fee this forced easement would give TransCanada the use of
6 our land forever. They are free to sell it at any time to anyone (foreign or
7 domestic), or to simply walk away at a time of their choosing, leaving a
8 dangerous, corroding, toxic structure for which they would not be held
9 responsible. This would not only devalue our property but could cause its
10 condemnation, rendering it useless to anyone. It is incomprehensible that a one-
11 time fee could be considered just compensation for this.

12 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
13 **like the Public Service Commissioners to consider in their review of**
14 **TransCanada's Application?**

15 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
16 document below but other things may come to me or my memory may be
17 refreshed and I will add and address those things at the time of the Hearing in
18 August and address any additional items at that time as is necessary. Additionally,
19 I have not had an adequate amount of time to receive and review all of
20 TransCanada's answers to our discovery and the discovery of others so it was
21 impossible to competently and completely react to that in my testimony here and I
22 reserve the right to also address anything related to discovery that has not yet
23 concluded as of the date I signed this document below. Lastly, certain documents
24 requested have not yet been produced by TransCanada and therefore I may have
25 additional thoughts on those I will also share at the hearing as needed.

26 **Q: What is it that you are requesting the Public Service Commissioners do in**
27 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
28 **across Nebraska?**

1 A: I am respectfully and humbly requesting that the Commissioners think far beyond
2 a temporary job spike that this project may bring to a few counties and beyond the
3 relatively small amount of taxes this proposed foreign pipeline would possibly
4 generate. And, instead think about the perpetual and forever impacts of this
5 pipeline as it would have on the landowners specifically, first and foremost, but
6 also thereby upon the entire state of Nebraska, and to determine that neither the
7 preferred route nor the Keystone mainline alternative route are in the public
8 interest of the citizens of the state of Nebraska. And if the Commissioners were
9 inclined to modify TransCanada's proposed routes and were to be inclined to grant
10 an application for a route in Nebraska, that the only potential route that would
11 make any intelligent sense whatsoever would be twinning or near paralleling of
12 the proposed KXL with the existing Keystone I pipeline. It simply does not make
13 sense to add yet another major oil pipeline crisscrossing our state creating new
14 pumping stations, creating new impacts on additional counties and communities
15 and going through all of the court processes with myself and other landowners like
16 me when this applicant already has relationships with the landowners, the towns
17 and the communities along Keystone I, and that Keystone I is firmly outside of the
18 sand hills and a significantly further portion away from the heart of the Ogallala
19 Aquifer than the preferred route or the Keystone mainline alternative route.

20 **Q: Are all of your statements in your testimony provided above true and**
21 **accurate as of the date you signed this document to the best of your**
22 **knowledge?**

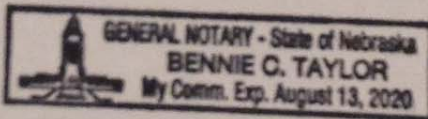
23 A: Yes, they are.

24 **Q: Thank you, I have no further questions at this time and reserve the right to**
25 **ask you additional questions at the August 2017 Hearing.**

Cheri Blocher
Cheri Blocher

Subscribed and Sworn to me before this 30th day of
May, 2017.

Bennie C. Taylor
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.

S.030
T.023 N
R.005 W

S.029
T.023 N
R.005 W

S.031
T.023 N
R.005 W

Cheri G. Blocher
Michael J. Blocher

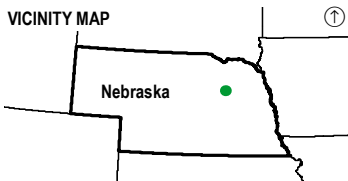
S.032
T.023 N
R.005 W

IMAGERY: NAIP 2016

0 250 500 Feet

 **TransCanada**
In business to deliver







VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY

Cheri G. Blocher
Michael J. Blocher

TRACT NO. ML-NE-AT-30645.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 032
TOWNSHIP: 023N
RANGE: 005W

 Proposed Centerline
 Perm. Easement
 Temp. Easement
 Add. Temp. Worksp.
 Property Line
 Section Line

Attachment No. 2



Attachment No. 3

**Prepared by and after recording
please return to:**
TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-AT-30645.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Cheri G. Blocher and Michael J. Blocher, wife and husband**, whose mailing address is 83474 529 Avenue, Oakdale, NE 68761 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and

petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Antelope, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 160.82 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NW1/4 of Section 32, T23N, R5W of the 6th P.M., as recorded in Book 130, Page 98 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the

negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____, 20____.

GRANTOR(S):

Cheri G. Blocher

Michael J. Blocher

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Cheri G. Blocher**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Michael J. Blocher**

Notary Public Signature

Affix Seal Here

IF 5 PROP. ADDITIONAL TEM. PERMANENT EAS. DEED RECORDS
 SECTION LINE
 PROPERTY LINE
 D.R.A.C.N.

PROPERTY LINE
SECTION LINE
PROPOSED
TEMPORARY WORKSPACE
ADDITIONAL
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA

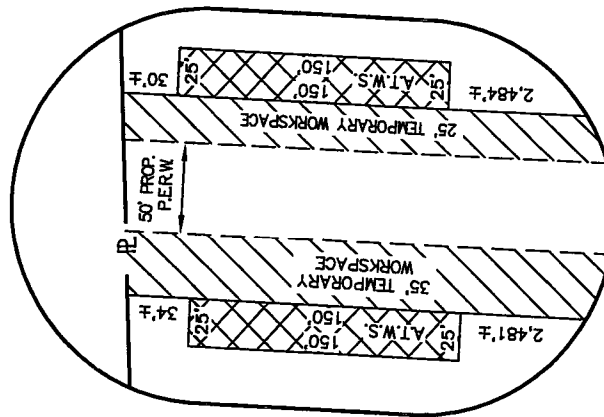
T-23-N, R-5-W, SECTION 32
ML-NE-AT-30645.000

SEE DETAIL "A"

SECTION 29
SECTION 32

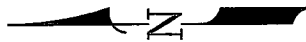
CHERI G. BLOCHER AND
MICHAEL J. BLOCHER

VOLUME 130, PAGE 98
D.R.A.C.N.



DETAIL "A"

N.T.S.



SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:
NW/4 OF SECTION 32,
T-23-N, R-5-W

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

VICINITY MAP
N.T.S.



TransCanada
In business to deliver

KEYSTONE XL PROJECT

**EASEMENT AREA
ACROSS THE PROPERTY OF
CHERI G. BLOCHER AND
MICHAEL J. BLOCHER
MI-NE-AT-30645.000**

EXHIBIT A

APPROVED BY	DRAWING NUMBER
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YI -08-MI -SK-3474	
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REVISION	DATE
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[illegible]

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[illegible][illegible][illegible]

FILE	DATE	DRAWN BY	CHECKED
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500'	10/28/14	PB	ALS

The new Identity of Trow

exp.

TOTAL DISTANCE ACROSS PROPERTY: 2.664'±

AREA OF PERMANENT EASEMENT: 3.1 ACRES

AREA OF TEMPORARY WORKSPACE: 3.7 ACRES

AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.2 ACRE

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Plaintiff,

v.

RICHARD ANDREW, JANE ANDREW,
LUKE ANDREW, and BRYCE ANDREW,

Defendants.

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-AT-30645.000

We, Cheri G. Blocher and Michael J. Blocher, wife and husband, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Eight Hundred Twenty Dollars and No Cents (\$1,820.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Antelope, State of Nebraska:

NW/4

Section 32, Township 23N, Range 5W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this _____ day of

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6

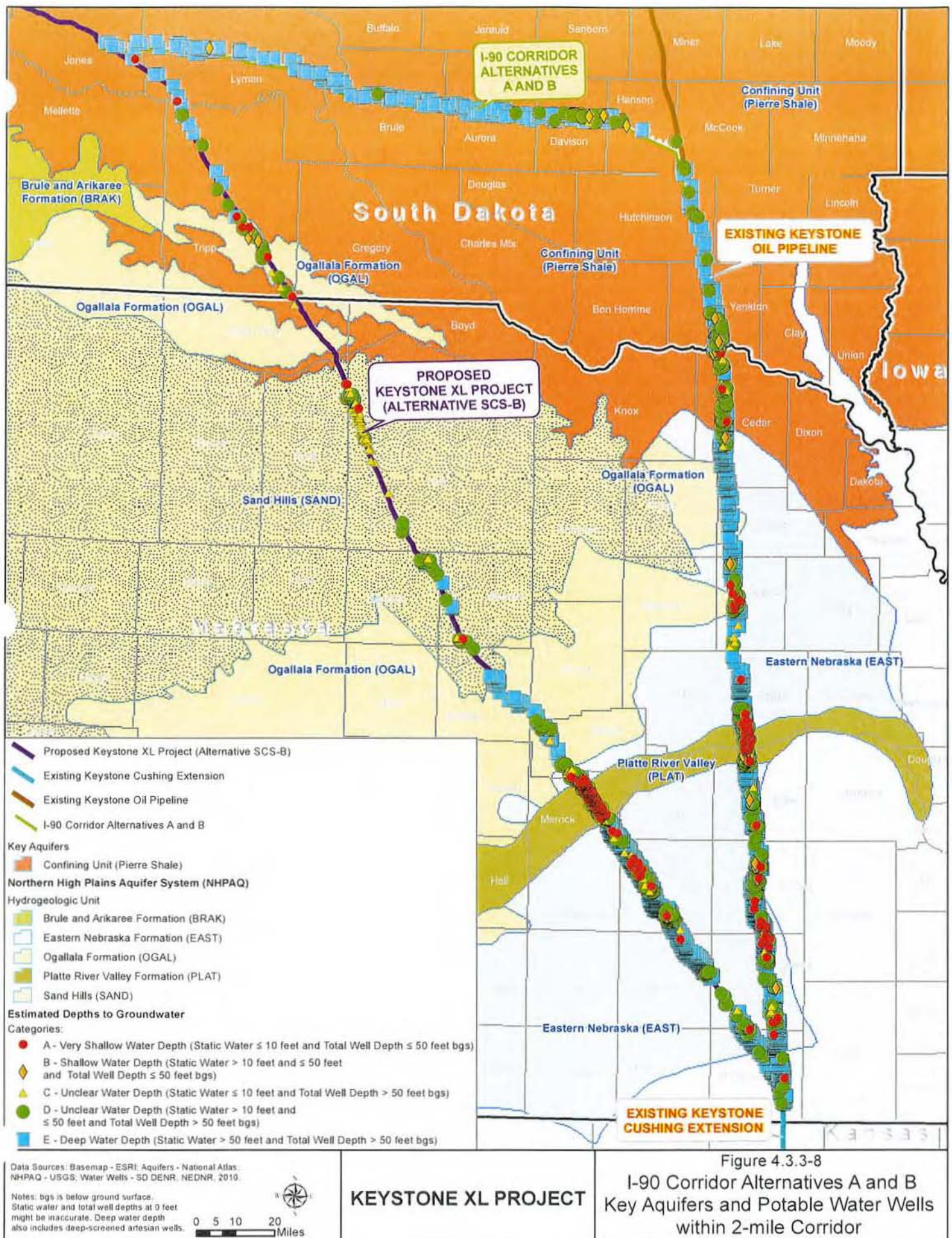


Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor

Attachment No. 7



VICINITY MAP



LEGEND

- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Michael Blocher in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Michael Blocher

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Farmer.

1 **Q: If you are you married tell us your spouse's name please?**
2 A: Cheri Blocher.

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
4 **and or your family?**
5 A. Yes.

6 **Q: For the land that would be affected and impacted by the proposed KXL tar**
7 **sands pipeline give the Commissioners a sense how long the land has been in**
8 **your family and a little history of the land.**

9 A: Our land in Antelope County where my wife was born, has been in her family all
10 sixty-five years of her life. Here we are carrying on the tradition of raising corn,
11 soy beans, and American Quarter Horses began by her late father and mother.

12 **Q: Do you earn any income from this land?**
13 A: Yes.

14 **Q: Have you depended on the income from your land to support your livelihood**
15 **or the livelihood of your family?**
16 A: Yes.

17 **Q: Have you ever in the past or have you thought about in the future leasing all**
18 **or a portion of your land in question here?**

19 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
20 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
21 all the restrictions and risks and potential negative impacts to farming or ranching
22 operations as opposed to land that did not have those same risks. If I was looking
23 to lease or rent ground I would pay more for comparable non-pipeline land than I
24 would for comparable pipeline land and I think most folks would think the same
25 way. This is another negative economic impact that affects the landowner and the
26 county and the state and will forever and ever should TransCanada's preferred or
27 mainline alternative routes be approved. If they were to twin or closely parallel to
28 Keystone I the vast majority of landowners would be those that already have a
29 pipeline so there would be considerable less new incremental negative impacts.

1 **Q: Do you have similar concerns about selling the land?**

2 A: Well I hope not to have to sell the land in my lifetime but times change and you
3 never know what is around the corner and yes I am concerned that if another piece
4 of ground similar to mine were for sale and it did not have the pipeline and mine
5 did that I would have a lower selling price. I think this would be true for pipeline
6 ground on both the preferred and mainline alternative routes.

7 **Q: What is your intent with your land after you die?**

8 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
9 to come but I have thought about getting out if this pipeline were to come through.

10 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
11 **Pipeline would cross the land described above and owned by you?**

12 A: Yes.

13 **Q: Were you or an entity for which you are a member, shareholder, or director**
14 **previously sued by TransCanada Keystone Pipeline, LP?**

15 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
16 petition for condemnation against our land so it could place its proposed pipeline
17 within an easement that it wanted to take from us on our land.

18 **Q: Did you defend yourself and your land in that condemnation action?**

19 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
20 and expenses in our resistance of TransCanada's lawsuit against us.

21 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
22 **incurred?**

23 A: No, they have not.

24 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
25 **property that it wanted to take for its proposed pipeline?**

26 A: The lawsuit against us stated they would take the amount of property that is
27 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
28 and equipment reasonably necessary to operate the pipeline.

1 **Q: Did TransCanada define what they meant by “property that is reasonably**
2 **necessary”?**

3 A: No, they did not.

4 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
5 **property portion of your land?**

6 A: Yes, they did.

7 **Q: Did TransCanada describe what rights it proposed to take related to the**
8 **eminent domain property on your land?**

9 A: Yes, they did.

10 **Q: What rights that they proposed to take did they describe?**

11 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
12 operate, and maintain the pipeline and the plant and equipment reasonably
13 necessary to operate the pipeline, specifically including surveying, laying,
14 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
15 reconstructing, removing and abandoning one pipeline, together with all fittings,
16 cathodic protection equipment, pipeline markers, and all their equipment and
17 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
18 petroleum products, and all by-products thereof.”

19 **Q: Prior to filing an eminent domain lawsuit to take your land that**
20 **TransCanada identified, do you believe they attempted to negotiate in good**
21 **faith with you?**

22 A: No, I do not.

23 **Q: Did TransCanada at any time approach you with or deliver to you their**
24 **proposed easement and right-of-way agreement?**

25 A: Yes, they did.

26 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
27 **agreement, did you understand that they would be purchasing a fee title**
28 **interest in your property or that they were taking something else?**

1 A: I understood that they proposed to have the power to take both a temporary
2 construction easement that could last for a certain period of time and then also a
3 permanent easement which they described to be 50 feet across or in width, and
4 that would run the entire portion of my property from where a proposed pipeline
5 would enter my property until where it would exit the property.

6 **Q: Is the document included with your testimony here as Attachment No. 3, a**
7 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
8 **Way agreement that they included with their condemnation lawsuit against**
9 **you?**

10 A: Yes, it is.

11 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
12 **and Right-of-Way agreement?**

13 A: Yes, I have.

14 **Q: What is your understanding of the significance of the Easement and Right-of-**
15 **Way agreement as proposed by TransCanada?**

16 A: My understanding is that this is the document that will govern all of the rights and
17 obligations and duties as well as the limitations of what I can and cannot do and
18 how I and any future landowner and any person I invite to come onto my property
19 must behave as well as what TransCanada is and is not responsible for and how
20 they can use my land.

21 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
22 **agreement do you have any concerns about any portions of it or any of the**
23 **language either included in the document or missing from the proposed**
24 **document?**

25 A: Yes, I have a number of significant concerns and worries about the document and
26 how the language included and the language not included potentially negatively
27 impacts my land and thereby potentially negatively impacts my community and
28 my state.

1 **Q: I would like you to walk the Commissioners through each and every one of**
2 **your concerns about TransCanada's proposed Easement and Right-of-Way**
3 **agreement so they can develop an understanding of how that language and**
4 **the terms of that contract, in your opinion, potentially negatively impacts you**
5 **and your land. So, if you can start at the beginning of that document and**
6 **let's work our way through it, okay?**

7 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
8 Easement and Right-of-Way agreement and how it negatively could affect my
9 property rights and my economic interests.

10 **Q. Okay, let's start with your first concern please.**

11 A: The very first sentence talks about consideration or how much money they will
12 pay to compensate me for all of the known and unknown affects and all of the
13 rights I am giving up and for all the things they get to do to my land and for what
14 they will prevent me from doing on my land and they only will pay me one time at
15 the signing of the easement agreement. That is a huge problem.

16 **Q: Explain to the Commissioners why that is a problem.**

17 A: It is not fair to the landowner, the county, or the State. It is not fair to the
18 landowner because they want to have my land forever for use as they see fit so
19 they can make a daily profit from their customers. If I was to lease ground from
20 my neighbor I would typically pay twice a year every year as long as they granted
21 me the rights to use their land. That only makes sense – that is fair. If I was going
22 to rent a house in town I would typically pay monthly, every month until I gave up
23 my right to use that house. By TransCanada getting out on the cheap and paying
24 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
25 revenue collection on the money I would be paid and then pay taxes on and
26 contribute to this state and this country. It is money I would be putting back into
27 my local community both spending and stimulating the local economy and
28 generating more economic activity right here. Instead TransCanada's shareholders
29 keep all that money and it never finds its way to Nebraska.

1 **Q: What is your next concern?**

2 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
3 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
4 limited partnership...” and I have no idea who that really is. I have no idea who is
5 forcing this pipeline on us or who the owners of the entities are, or what are the
6 assets backing this limited partnership, or who the general partner is, or who all
7 the limited partners are, and who makes up the ownership of the these partners or
8 the structure or any of the basic things you would want to know and understand if
9 you would want to do business with such an outfit. According to TransCanada’s
10 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
11 liability company called TransCanada Keystone Pipeline GP, LLC is the general
12 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
13 basically nothing. That is really scary since the general partner has the liability but
14 virtually none of the ownership and who knows if it has any other assets.

15 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
16 **percent clear on exactly who could become the owner of over 275 miles of**
17 **Nebraska land?**

18 A: No.

19 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
20 **percent clear on exactly who will be operating and responsible for**
21 **approximately 275 miles of tar sands pipeline underneath and through**
22 **Nebraska land?**

23 A: No.

24 **Q: Okay, let’s continue please with your concerns of the impacts upon your land**
25 **and the State of Nebraska of TransCanada’s easement terms.**

26 A: Yes, so the next sentence talks about “...its successors and assigns (hereinafter
27 called “Grantee”)...” and this concerns me because it would allow the easement to
28 be transferred or sold to someone or some company or country or who knows what
29 that I don’t know and who we may not want to do business with. This pipeline

1 would be a huge asset for TransCanada and if they can sell to the highest bidder
2 that could have terrible impacts upon all of Nebraska depending upon who may
3 buy it and I don't know of any safeguards in place for us or the State to veto or
4 have any say so in who may own, operate, or be responsible for this pipeline in the
5 future.

6 **Q: Do you think that type of uncertainty and lack of control over a major piece**
7 **of infrastructure crossing our State is in the public interest?**

8 A: No, certainly not, in fact, just the opposite.

9 **Q: What's next?**

10 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
11 really concerns me. Why does the easement and right-of-way have to be perpetual
12 and permanent? That is the question myself and my family want an answer to.
13 Perpetual to me is like forever and that doesn't make sense.

14 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

15 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
16 data proving there is a perpetual supply of tar sands. I am not aware in
17 TransCanada's application where it proves there is a perpetual necessity for this
18 pipeline. My understanding of energy infrastructure like wind towers is they have
19 a decommission plan and actually take the towers down when they become
20 obsolete or no longer needed. Nothing manmade lasts forever. My land however
21 will, and I want my family or future Nebraska families to have that land as
22 undisturbed as possible and it is not in my interest or the public interest of
23 Nebraska to be forced to give up perpetual and permanent rights in the land for
24 this specific kind of pipeline project.

25 **Q: Okay, what is your next concern?**

26 A: The easement language includes all these things TransCanada can do and it says
27 "...abandoning in place..." so they can just leave this pipeline under my ground
28 until the end of time just sitting there while they are not using it, but I am still
29 prevented from doing on my land and using my land what I would like. If I owned

1 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
2 there. It doesn't make sense and it scares me and it is not in my interest or the
3 public interest of Nebraska to allow this.

4 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
5 **right?**

6 A: Yes.

7 **Q: So now on the second page of the Easement what are your concerns?**

8 A: Here the Easement identifies a 24-month deadline to complete construction of the
9 pipeline but has caveats that are undefined and ambiguous. The 24-month period
10 starts to run from the moment "actual pipeline installation activities" begin on
11 Landowners property. It appears that TransCanada would define this phrase as
12 needed. It would be wise to explain what types of TransCanada action constitutes
13 "installation activity" For instance, would the placement and storage of an
14 excavator or other equipment on or near the Easement property be an activity or
15 would earth have to be moved before the activity requirement is triggered. This
16 vague phrase is likely to lead to future disputes and litigation that is not in the best
17 interest of the welfare of Nebraska and would not protect property interests. The
18 24-months can also be extended in the case of "force majeure." My understanding
19 is that force majeure is often used to insulate a party to a contract when events
20 occur that are completely out of their control. In TransCanada's easement this is
21 expanded to include "without limitation...availability of labor and materials."
22 Extending this language to labor and materials is problematic because these are
23 two variables that TransCanada does have some or significant control over and to
24 allow extension of the 24-month period over events not truly out of the control of
25 TransCanada and without further provision for compensation for the Landowner is
26 not conducive to protection of property rights.

27 **Q: Okay, what is your next concern?**

28 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
29 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially

1 reasonable costs and expenses” will pay for damages caused but then limits
2 TransCanada’s liability to certain circumstances. There is no definition of
3 “commercially reasonable” and no stated right that the Landowner would get to
4 determine the amounts of cost or expense that is “commercially reasonable.”
5 TransCanada excepts out from their liability any damages that are caused by
6 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
7 Landowner. It is understandable that if the Landowner were to willfully and
8 intentionally cause damages to the pipeline that Landowner should be liable.
9 However, anything short of willful misconduct should be the liability of
10 TransCanada who is subjecting the pipeline on the Landowner and who is making
11 a daily profit from that pipeline. When evaluating the impact on property rights of
12 this provision, you must consider the potentially extremely expensive fight a
13 Landowner would have over this question of whether or not damage was an act of
14 negligence. Putting this kind of potential liability upon the Landowner is
15 incredibly problematic and is detrimental to the protection of property rights. I
16 don’t think this unilateral power which I can’t do anything about as the landowner
17 is in the best economic interest of the land in question or the State of Nebraska for
18 landowners to be treated that way.

19 **Q: Is there any specific event or example you are aware of that makes this**
20 **concern more real for you?**

21 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
22 Nemaha County, Nebraska landowner farmers who accidentally struck two
23 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
24 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
25 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
26 copy of the Federal Court Complaint is here as **Attachment No. 4.**

27 **Q: What is your next concern with the Easement language?**

28 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
29 they choose unless 1) any Landowner use interferes in any way with

1 TransCanada's exercise of any of its rights within the Easement, or 2)
2 TransCanada decides to take any action on the property it deems necessary to
3 prevent injury, endangerment or interference with anything TransCanada deems
4 necessary to do on the property. Landowner is also forbidden from excavating
5 without prior authorization by TransCanada. So my understanding is that
6 TransCanada will unilaterally determine what Landowner can and can't do based
7 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
8 could also completely deny my request to excavate. Further, TransCanada retains
9 all "privileges necessary or convenient for the full use of the rights" granted to
10 them in the Easement. Again, TransCanada unilaterally can decide to the
11 detriment of the property rights of Landowner what TransCanada believes is
12 necessary or convenient for it. And there is no option for any additional
13 compensation to landowner for any right exercised by TransCanada that leads to
14 the removal of trees or plants or vegetation or buildings or structures or facilities
15 owned by Landowner of any kind. Such undefined and unilateral restrictions and
16 rights without having to compensate Landowner for such further destruction or
17 losses are not conducive to the protection of property rights or economic interest.

18 **Q: What is the next concern you have?**

19 A: The Easement also allows some rights for Landowner but restricts them at the
20 same time and again at the sole and unilateral decision making of TransCanada.
21 TransCanada will determine if the actions of Landowner might in anyway
22 endanger or obstruct or interfere with TransCanada's full use of the Easement or
23 any appurtenances thereon to the pipeline itself or to their access to the Easement
24 or within the Easement and TransCanada retains the right at any time, whether
25 during growing season or not, to travel "within and along Easement Area on foot
26 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
27 retain the rights to prevent any landowner activity that it thinks may "unreasonably
28 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such

undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner's land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: Again, undefined terms leave a lot of room for confusion. What does the phrase "where rock is encountered" mean and why does TransCanada solely get to determine whether or not this phrase is triggered. This phrase could be used to justify installing the pipeline 24 inches beneath the surface. The ability to use this provision to minimal locate the pipeline at a depth of 24 inches could negatively affect Landowners property are not conducive to the protection of property rights. A shallow pipeline is much more likely to become a danger and liability in the future given farming operations and buried irrigation lines and other factors common to the current typical agricultural uses of the land in question impacted by TransCanada's preferred pipeline route.

Q: What is the next concern you have with the Easement language?

A: There are more vague concepts solely at the determination of TransCanada such as "as nearly as practicable" and "pre-construction position" and "extent reasonably possible." There is nothing here that defines this or provides a mechanism for documenting or memorializing "pre-construction position" so as to minimize costly legal battles or wasted Landowner time attempting to recreate the soil condition on their fields or pasture. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

1 A: TransCanada maintains the unilateral right to abandon the pipeline and all
2 appurtenances thereto in place on, under, across, or through Nebraska land at any
3 time it chooses. There is no provision for Landowner compensation for such
4 abandonment nor any right for the Landowner to demand removal. Such unilateral
5 powers would negatively affect Landowners property are not conducive to the
6 protection of property rights or economic interest.

7 **Q: What is the next concern you have with the Easement language?**

8 A: TransCanada has the power to unilaterally move or modify the location of any
9 Easement area whether permanent or temporary at their sole discretion.
10 Regardless, if Landowner has taken prior steps relative to their property in
11 preparation or planning of TransCanada's taking of the initial easement area(s),
12 the language here does not require TransCanada to compensate the Landowner if
13 they decide to move the easement anywhere on Landowners property. Such
14 unilateral powers would negatively affect Landowners property are not conducive
15 to the protection of property rights or economic interests.

16 **Q: What is the next concern you have with the Easement language?**

17 A: The Easement requires that all of the burdens and restrictions upon Landowner to
18 transfer and be applicable to any future owner of the Land in question without the
19 ability of the future Landowner to modify or negotiate any of the language in
20 question to which it will be held to comply.

21 **Q: What is the next concern you have with the Easement language?**

22 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
23 Easement to any person, company, country, etc. at their sole discretion at anytime
24 to anyone. This also means that any buyer of the easement could do the same to a
25 third buyer and so on forever. There is no change of control or sale provision in
26 place to protect the Landowner or Nebraska or to provide compensation for such
27 change of control or ownership. It is not conducive to the protection of property
28 rights or economic interests to allow unilateral unrestricted sale of the Easement

1 thereby forcing upon the Landowner and our State a new unknown Easement
2 owner.

3 **Q: What is the next concern you have with the Easement language?**

4 A: There are many terms in the Easement that are either confusing or undefined terms
5 that are without context as to whether or not the Landowner would have any say
6 so in determining what these terms mean or if the evaluation is solely in
7 TransCanada's control. Some of these vague undefined terms are as follows:

- 8 i. "pipeline installation activities"
- 9 ii. "availability of labor and materials"
- 10 iii. "commercially reasonable costs and expenses"
- 11 iv. "reasonably anticipated and foreseeable costs and expenses"
- 12 v. "yield loss damages"
- 13 vi. "diminution in the value of the property"
- 14 vii. "substantially same condition"
- 15 viii. "an actual or potential hazard"
- 16 ix. "efficient"
- 17 x. "convenient"
- 18 xi. "endangered"
- 19 xii. "obstructed"
- 20 xiii. "injured"
- 21 xiv. "interfered with"
- 22 xv. "impaired"
- 23 xvi. "suitable crossings"
- 24 xvii. "where rock is encountered"
- 25 xviii. "as nearly as practicable"
- 26 xix. "pre-construction position"
- 27 xx. "pre-construction grade"
- 28 xxi. "various engineering factors"

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, “yield loss damages” should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 A: I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada’s proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline’s**
18 **impact upon you and your land?**

19 A: No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 A: Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 **Q: Has TransCanada at any time offered to compensate you annually, such as**
6 **wind farm projects do, for the existence of their potential tar sands pipeline**
7 **across your property.**

8 A: No, never.

9 **Q: At any time did TransCanada present you with or request that you, as the**
10 **owner of the land in question, sign and execute a document called, "Advanced**
11 **Release of Damage Claims and Indemnity Agreement?"**

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
14 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

15 A: Yes, it is.

16 **Q: What was your understanding of that document?**

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 **Q: Did you ever sign that document?**

24 A: No, I did not.

25 **Q: Why not?**

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you**
12 **thought their proposed location of their proposed pipeline across your land**
13 **was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you**
16 **thought their proposed location of their proposed pipeline across your land**
17 **was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
20 **Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
23 **an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which**
29 **the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 **Q: Can you think of any way in which the public, that is the citizens of the State**
3 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
4 **Pipeline, as it dissects the State of Nebraska?**

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
13 **crude petroleum, or oil and petroleum by-products that you would like to**
14 **ship in its pipeline?**

15 A: No, it has not.

16 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
17 **products that you, at this time or any time in the future, would desire to place**
18 **for transport within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not.

20 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
21 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
22 **products within the proposed TransCanada Keystone XL Pipeline?**

23 A: No, I do not. I've never heard of such a person or company like that.

24 **Q: Do you pay property taxes for the land that would be affected and impacted**
25 **at the proposed TransCanada Keystone XL Pipeline?**

26 A: Yes, I do.

27 **Q: Why do you pay property taxes on that land?**

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q: Because you follow the law and pay property taxes, do you believe you**
2 **deserve any special consideration or treatment apart from any other person**
3 **or company that pays property taxes?**

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q: Do you believe the fact that you pay property taxes entitles you to special**
7 **treatment of any kind, or special rights of any kind?**

8 A: No, of course not.

9 **Q: Do you believe the fact that you pay property taxes on your land would be**
10 **enough to qualify you to have the power of eminent domain to take land of**
11 **your neighbors or other people in your county, or other people across the**
12 **state of Nebraska?**

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q: Have you at any time ever employed any person other than yourself?**

16 A: Well, yes I have.

17 **Q: Do you believe that the fact that you have, at some point in your life,**
18 **employed one or more other persons entitle you to any special treatment or**
19 **consideration above and beyond any other Nebraskan that has also employed**
20 **one or more persons?**

21 A: No, of course not.

22 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
23 **have at one point employed another person within this state, entitles you to**
24 **preferential treatment or consideration of any kind?**

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q: At the beginning of your statement, you briefly described your property that**
28 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
29 **give the Commissioners a sense of specifically how you believe the proposed**

1 **Keystone XL Pipeline and its preferred route, which proposes to go across**
2 **your land, how it would in your opinion based on your knowledge,**
3 **experience, and background of your land, affect it. So please share with the**
4 **Commissioners the characteristics of your land that you believe is important**
5 **for them to understand, while they evaluate TransCanada's application for a**
6 **route for its proposed pipeline to cross Nebraska and across your land,**
7 **specifically.**

8 A: The current proposed route of the Keystone XL pipeline would cross a half mile of
9 our land consisting of equal parts pasture and row crop. It has been categorized
10 highly erodible by the U.S. Farm Service Agency. This means that any disturbance
11 to the ground results in constant monitoring and maintenance to protect it from
12 severe and catastrophic erosion. We would have to prevent and repair any damage
13 for as long the pipeline is there. According to the easement we would be forced to
14 sign, that could be forever since TransCanada is not responsible to remove it nor
15 return the land to its original state.

16 **Q: What else?**

17 A: Also according to the forced easement, we could be liable for damages and clean-
18 up when the pipeline leaks, resulting in permanent toxic contamination.

19 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
20 **crude oil pipeline in its preferred location, or ultimate location across the**
21 **state of Nebraska?**

22 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
23 or even bullied around and being made to feel scared that they did not have any
24 options but to sign whatever papers TransCanada told them they had to. I am
25 aware of folks being threatened that their land would be taken if they didn't follow
26 what TransCanada was saying. I am aware of tactics to get people to sign
27 easements that I don't believe have any place in Nebraska or anywhere such as
28 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
29 landowners and convince them they should sign TransCanada's easement

1 agreements. I am aware of older folks and widows or widowers feeling they had
2 no choice but to sign TransCanada's Easement and they didn't know they could
3 fight or stand up for themselves. From a more practical standpoint, I am worried
4 that according to their answer to our Interrogatory No. 211, TransCanada only
5 owns and operates one (1) major oil pipeline. They simply do not have the
6 experience with this type of pipeline and that scares me. There are others but that
7 is what I can recollect at this time and if I remember more or my recollection is
8 refreshed I will share those with the Commissioners at the Hearing in August.

9 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
10 **landowner is reasonable or just?**

11 A: No, I do not.

12 **Q: Do you have any concern about limitations that the construction of this**
13 **proposed pipeline across your affected land would prevent construction of**
14 **future structures upon the portion of your land affected by the proposed**
15 **easement and immediately surrounding areas?**

16 A: Well yes, of course I do. We would not be able to build many, if any, types of
17 structures directly across or touching the easement, and it would be unwise and I
18 would be uncomfortable to build anything near the easement for fear of being
19 blamed in the future should any damage or difficulty result on my property in
20 regards to the pipeline.

21 **Q: Do you think such a restriction would impact you economically?**

22 A: Well yes, of course.

23 **Q: How do you think such a restriction would impact you economically?**

24 A: The future of this land may not be exactly how it's being used as of this moment,
25 and having the restrictions and limiting my ability to develop my land in certain
26 ways presents a huge negative economic impact on myself, my family, and any
27 potential future owner of the property. You have no idea how I or the future owner
28 may want to use this land in the future or the other land across Nebraska
29 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years

1 ago it would have been hard to imagine all the advances that we have now or how
2 things change. Because the Easement is forever and TransCanada gets the rights in
3 my land forever we have to think with a very long term view. By placing their
4 pipeline on under across and through my land that prevents future development
5 which greatly negatively impacts future taxes and tax revenue that could have
6 been generated by the County and State but now will not. When you look at the
7 short blip of economic activity that the two years of temporary construction efforts
8 may bring, that is far outweighed by the perpetual and forever loss of opportunity
9 and restrictions TransCanada is forcing upon us and Nebraska.

10 **Q: Do you have any concerns about the environmental impact of the proposed**
11 **pipeline?**

12 A: Yes, I do.

13 **Q: What are some of those concerns?**

14 A: As an affected land owner and Nebraskan, I am concerned that any construction,
15 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
16 a detrimental impact upon the environment of my land specifically, as well as the
17 lands near my land and surrounding the proposed pipeline route.

18 **Q: Do you have any other environmental concerns?**

19 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
20 construction and/or maintenance and operation. I am concerned about spills and
21 leaks that TransCanada has had in the past and will have in the future. This could
22 be catastrophic to my operations or others and to my county and the State.

23 **Q: Do you have any thoughts regarding if there would be an impact upon the**
24 **natural resources on or near your property due to the proposed pipeline?**

25 A: Yes, I believe that any construction, operation, and/or maintenance of the
26 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
27 resources of my land, and the lands near and surrounding the proposed pipeline
28 route.

1 **Q: Do you have any worries about potential impacts from the proposed pipeline**
2 **to the soil of your land, or land near you?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
5 land, as well as land along and surrounding the proposed pipeline route. This
6 includes, but is not limited to, the reasons that we discussed above of disturbing
7 the soil composition and makeup as it has naturally existed for thousands and
8 millions of years during the construction process, and any future maintenance or
9 removal process. I'm gravely concerned about the fertility and the loss of
10 economic ability of my property to grow the crops, or grow the grasses, or grow
11 whatever it is at that time they exist on my property or that I may want to grow in
12 the future, or that a future owner may want to grow. The land will never be the
13 same from as it exists now undisturbed to after it is trenched up for the proposed
14 pipeline.

15 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
16 **upon the groundwater over your land, or surrounding lands?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 groundwater of not only under my land, but also near and surrounding the pipeline
20 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
21 simple and it is simply too valuable to our State and the country to put at
22 unreasonable risk.

23 **Q: Do you have any concern about the potential impact of the proposed pipeline**
24 **upon the surface water on, or near or around your land?**

25 A: Yes, I have significant concerns that any construction, operation, and/or
26 maintenance of the proposed Keystone XL Pipeline would have detrimental
27 impact upon the surface water of not only within my property boundary, but along
28 and near and surrounding the pipeline route, and in fact, across the state of
29 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
2 **upon the wildlife and plants, other than your growing crops on or near your**
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the
6 wildlife and the plants, not only that are located on or can be found upon my land,
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed
11 pipeline underneath and across and through my property will negatively affect the
12 fair market value at any point in the future, especially at that point in which I
13 would need to sell the property, or someone in my family would need to sell the
14 property. I do not believe, and certainly would not be willing to pay, the same
15 price for land that had the pipeline located on it, versus land that did not. I hope
16 there is never a point where I'm in a position where I have to sell and have to
17 realize as much value as I can out of my land. But because it is my single largest
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they
20 would've paid and as much as I could've received, if the pipeline were not upon
21 my property. There are just too many risks, unknowns, impacts and uncertainties,
22 not to mention all of the rights you give up by the nature of having the pipeline
23 due to having the easement that we have previously discussed, for any reasonable
24 person to think that the existence of the pipeline would not negatively affect my
25 property's value.

26 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
27 **testimony?**

28 A: Yes, I have.

29 **Q: Where have you seen that before?**

1 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
2 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
3 believe the portion of the alternative route shown here within Nebraska essentially
4 twins or parallels Keystone I. That is why this is included, to show TransCanada
5 has looked at the possibility of twinning which I believe is feasible.

6 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
7 **Application, and as found on Attachment No. 7, here to your testimony, is in**
8 **the public interest of Nebraska?**

9 A: No, I do not.

10 **Q: Do you believe that the Keystone mainline alternative route as shown on**
11 **Attachment No. 7 included with your testimony here is a major oil pipeline**
12 **route that is in the public interest of Nebraska?**

13 A: No, I do not.

14 **Q: Do you believe the Nebraska portion of the I-90 corridor alternative route,**
15 **specifically for the portion of the proposed pipeline within Nebraska as found**
16 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

17 A: No, I do not.

18 **Q: Do you believe there is any potential route for the proposed Keystone XL**
19 **Pipeline across, within, under, or through the State of Nebraska that is in the**
20 **public interest of the citizens of Nebraska?**

21 A: No, I do not.

22 **Q: Why do you hold that belief?**

23 A: Because there simply is no public interest based on all of the factors that I am
24 aware and that I have read and that I have studied that this Commission is to
25 consider that would establish that a for-profit foreign-owned pipeline that simply
26 crosses Nebraska because we are geographically in the way between where tar
27 sands are in Canada to where it wants to ship it to in Texas could ever be in the
28 public interest of Nebraskans. We derive no benefit from this project. It is not for
29 public use. Nebraska is simply in the way and when all considerations are taken in

1 there is no net benefit of any kind for Nebraska should this project be placed in our
2 state. Even if there was some arguable “benefit” it is not enough to outweigh all
3 the negative impacts and concerns.

4 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
5 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
6 **of Nebraska because it may bring temporary jobs during the construction**
7 **phase to Nebraska?**

8 A: First of all, not all jobs are created equally. Most jobs that are created, whether
9 temporary or on a permanent basis, don’t come with a project that has all the
10 potential and foreseeable negative impacts, many of which we have discussed here
11 and other witnesses throughout the course of this hearing have and will discuss. If
12 I decide to hire and employ someone to help me out in my farming or ranching
13 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
14 to my land or my town or my county or my state. And I’ve hired someone who is
15 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
16 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
17 jobs are not created equal. Additionally, I understand from what I’m familiar with
18 from TransCanada’s own statements that the jobs numbers they originally touted
19 were determined to be a minute fraction of the permanent jobs that had been
20 projected. According to their answer to our Interrogatory No. 191, TransCanada
21 has created only thirty-four (34) jobs within Nebraska working specifically on
22 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
23 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
24 Further, according to their answer to Interrogatory No. 199, TransCanada would
25 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
26 constructed on its Preferred Route or its Mainline Alternative Route.

27 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
28 **because it would cross your land?**

1 A: No, absolutely not. I am opposed to this project because it is not in the public
2 interest, neither within my community nor within our state.

3 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
4 **was to cross someone else's land?**

5 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
6 the fear and anxiety and potential foreseeable risks and negative impacts that this
7 type of a project carrying this type of product brings foisted upon anyone in this
8 state or any other state.

9 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
10 **Pipeline to cross the state of Nebraska?**

11 A: I don't believe there is an intelligent route because as I have stated I don't believe
12 this project anywhere within Nebraska is within the public interest. However, if
13 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
14 had to go somewhere in the state of Nebraska, the only intelligent route I believe
15 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
16 preferred route and the mainline alternative routes are economic liabilities our
17 state cannot risk.

18 **Q: What do you rely upon to make that statement?**

19 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
20 already exists in that area is reason enough as it is not in our best interest or the
21 public interests to have more major oil pipelines crisscrossing our state. Second,
22 they have all the infrastructure already there in terms of relationships with the
23 counties and local officials and first responders along that route. Third, they have
24 already obtained easements from all the landowners along that route and have
25 relationships with them. Fourth, that route avoids our most sensitive soils, the
26 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
27 Aquifer. Sixth, they have already studied that route and previously offered it as an
28 alternative. Seventh, it just makes the most sense that as a state we would have

1 some intelligent policy of energy corridors and co-locating this type of
2 infrastructure near each other.

3 **Q: Do you have any other concerns you would like to reiterate or can think of at**
4 **this time you would like the Commissioners to understand?**

5 **A:** Yes. For a one-time fee this forced easement would give TransCanada the use of
6 our land forever. They are free to sell it at any time to anyone (foreign or
7 domestic), or to simply walk away at a time of their choosing, leaving a
8 dangerous, corroding, toxic structure for which they would not be held
9 responsible. This would not only devalue our property but could cause its
10 condemnation, rendering it useless to anyone. It is incomprehensible that a one-
11 time fee could be considered just compensation for this.

12 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
13 **like the Public Service Commissioners to consider in their review of**
14 **TransCanada's Application?**

15 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
16 document below but other things may come to me or my memory may be
17 refreshed and I will add and address those things at the time of the Hearing in
18 August and address any additional items at that time as is necessary. Additionally,
19 I have not had an adequate amount of time to receive and review all of
20 TransCanada's answers to our discovery and the discovery of others so it was
21 impossible to competently and completely react to that in my testimony here and I
22 reserve the right to also address anything related to discovery that has not yet
23 concluded as of the date I signed this document below. Lastly, certain documents
24 requested have not yet been produced by TransCanada and therefore I may have
25 additional thoughts on those I will also share at the hearing as needed.

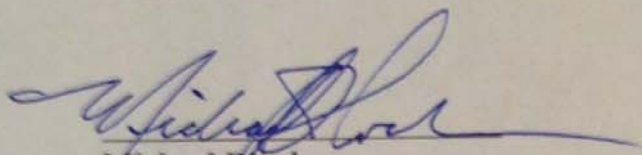
26 **Q: What is it that you are requesting the Public Service Commissioners do in**
27 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
28 **across Nebraska?**

1 A: I am respectfully and humbly requesting that the Commissioners think far beyond
2 a temporary job spike that this project may bring to a few counties and beyond the
3 relatively small amount of taxes this proposed foreign pipeline would possibly
4 generate. And, instead think about the perpetual and forever impacts of this
5 pipeline as it would have on the landowners specifically, first and foremost, but
6 also thereby upon the entire state of Nebraska, and to determine that neither the
7 preferred route nor the Keystone mainline alternative route are in the public
8 interest of the citizens of the state of Nebraska. And if the Commissioners were
9 inclined to modify TransCanada's proposed routes and were to be inclined to grant
10 an application for a route in Nebraska, that the only potential route that would
11 make any intelligent sense whatsoever would be twinning or near paralleling of
12 the proposed KXL with the existing Keystone I pipeline. It simply does not make
13 sense to add yet another major oil pipeline crisscrossing our state creating new
14 pumping stations, creating new impacts on additional counties and communities
15 and going through all of the court processes with myself and other landowners like
16 me when this applicant already has relationships with the landowners, the towns
17 and the communities along Keystone I, and that Keystone I is firmly outside of the
18 sand hills and a significantly further portion away from the heart of the Ogallala
19 Aquifer than the preferred route or the Keystone mainline alternative route.

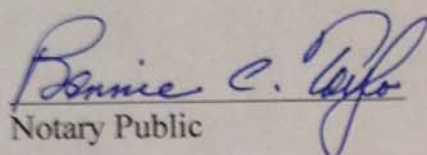
20 **Q: Are all of your statements in your testimony provided above true and**
21 **accurate as of the date you signed this document to the best of your**
22 **knowledge?**

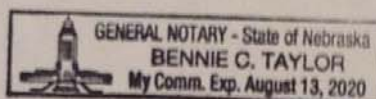
23 A: Yes, they are.

24 **Q: Thank you, I have no further questions at this time and reserve the right to**
25 **ask you additional questions at the August 2017 Hearing.**


Michael Blocher

Subscribed and Sworn to me before this 30th day of May, 2017.


Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.

S.030
T.023 N
R.005 W

S.029
T.023 N
R.005 W

S.031
T.023 N
R.005 W

Cheri G. Blocher
Michael J. Blocher

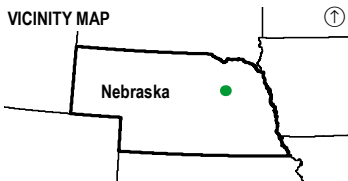
S.032
T.023 N
R.005 W

IMAGERY: NAIP 2016

0 250 500 Feet



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY

Cheri G. Blocher
Michael J. Blocher

TRACT NO. ML-NE-AT-30645.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 032
TOWNSHIP: 023N
RANGE: 005W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

Attachment No. 2



Attachment No. 3

**Prepared by and after recording
please return to:**
TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-AT-30645.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Cheri G. Blocher and Michael J. Blocher, wife and husband**, whose mailing address is 83474 529 Avenue, Oakdale, NE 68761 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and

petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Antelope, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 160.82 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NW1/4 of Section 32, T23N, R5W of the 6th P.M., as recorded in Book 130, Page 98 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the

negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____, 20____.

GRANTOR(S):

Cheri G. Blocher

Michael J. Blocher

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Cheri G. Blocher**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Michael J. Blocher**

Notary Public Signature

Affix Seal Here

The new Identity of Tomw

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Plaintiff,

v.

RICHARD ANDREW, JANE ANDREW,
LUKE ANDREW, and BRYCE ANDREW,

Defendants.

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-AT-30645.000

We, Cheri G. Blocher and Michael J. Blocher, wife and husband, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Eight Hundred Twenty Dollars and No Cents (\$1,820.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Antelope, State of Nebraska:

NW/4

Section 32, Township 23N, Range 5W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this _____ day of

_____, 20____.

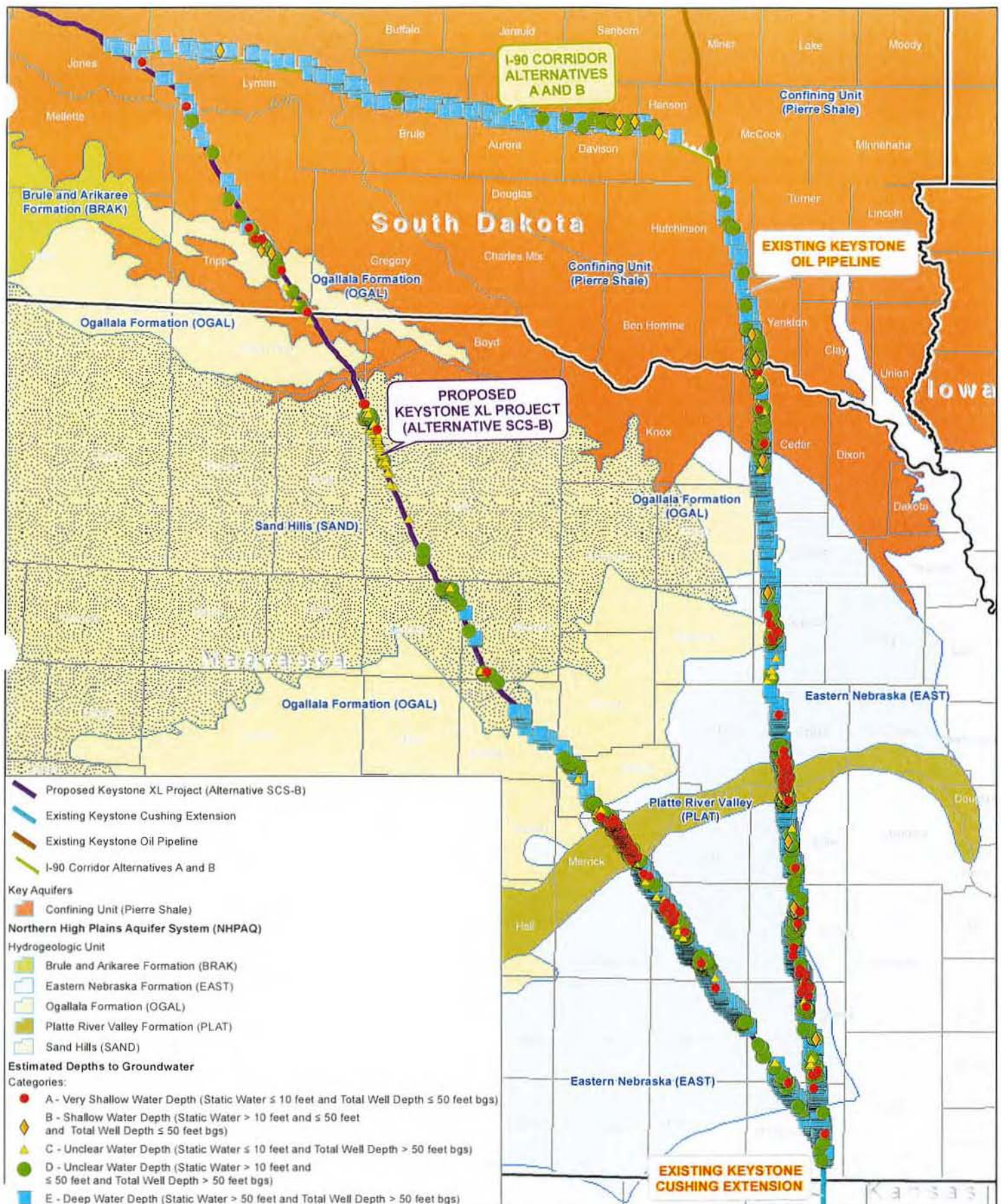
Owner Signature

Owner Signature

Owner/Owner Representative Name

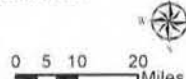
Owner/Owner Representative Name

Attachment No. 6



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor

Attachment No. 7



VICINITY MAP



LEGEND

- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Bonnie Brauer in Support of Landowner
Intervenors**

State of Indiana)
) ss.
Boone County)

1 **Q: Please state your name.**

2 A: My name is Bonnie Brauer.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Polk County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you have children how many do you have?**

16 A: 2

1 **Q: If you have grandchildren how many do you have?**
2 A: 6

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
4 **and or your family?**

5 A. Yes.

6 **Q: How long the land has been in your family?**

7 A: My brother, Leonard Skoglund, and I inherited the land from our Great Aunt Edith
8 Benson, the sister of our maternal grandfather, who had no children. She was a
9 Swedish immigrant who, along with her husband Ed, took advantage of the
10 Homestead Act of 1862 which gave 160 acres to those who build a home on it and
11 farm it for at least 5 years. Thus we each have 80 acres that is farmed jointly by a
12 third party.

13 **Q: Do you earn any income from this land?**

14 A: Yes.

15 **Q: Have you depended on the income from your land to support your livelihood**
16 **or the livelihood of your family?**

17 A: Yes.

18 **Q: Have you ever in the past or have you thought about in the future leasing all**
19 **or a portion of your land in question here?**

20 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
21 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
22 all the restrictions and risks and potential negative impacts to farming or ranching
23 operations as opposed to land that did not have those same risks. If I was looking
24 to lease or rent ground I would pay more for comparable non-pipeline land than I
25 would for comparable pipeline land and I think most folks would think the same
26 way. This is another negative economic impact that affects the landowner and the
27 county and the state and will forever and ever should TransCanada's preferred or
28 mainline alternative routes be approved. If they were to twin or closely parallel to

1 Keystone I the vast majority of landowners would be those that already have a
2 pipeline so there would be considerable less new incremental negative impacts.

3 **Q: Do you have similar concerns about selling the land?**

4 A: Well I hope not to have to sell the land in my lifetime but times change and you
5 never know what is around the corner and yes I am concerned that if another piece
6 of ground similar to mine were for sale and it did not have the pipeline and mine
7 did that I would have a lower selling price. I think this would be true for pipeline
8 ground on both the preferred and mainline alternative routes.

9 **Q: What is your intent with your land after you die?**

10 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
11 to come but I have thought about getting out if this pipeline were to come through.

12 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
13 Pipeline would cross the land described above and owned by you?**

14 A: Yes.

15 **Q: Were you or an entity for which you are a member, shareholder, or director
16 previously sued by TransCanada Keystone Pipeline, LP?**

17 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
18 petition for condemnation against our land so it could place its proposed pipeline
19 within an easement that it wanted to take from us on our land.

20 **Q: Did you defend yourself and your land in that condemnation action?**

21 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
22 and expenses in our resistance of TransCanada's lawsuit against us.

23 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
24 incurred?**

25 A: No, they have not.

26 **Q: In its lawsuit against you, did TransCanada identify the amount of your
27 property that it wanted to take for its proposed pipeline?**

1 A: The lawsuit against us stated they would take the amount of property that is
2 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
3 and equipment reasonably necessary to operate the pipeline.

4 **Q: Did TransCanada define what they meant by “property that is reasonably**
5 **necessary”?**

6 A: No, they did not.

7 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
8 **property portion of your land?**

9 A: Yes, they did.

10 **Q: Did TransCanada describe what rights it proposed to take related to the**
11 **eminent domain property on your land?**

12 A: Yes, they did.

13 **Q: What rights that they proposed to take did they describe?**

14 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
15 operate, and maintain the pipeline and the plant and equipment reasonably
16 necessary to operate the pipeline, specifically including surveying, laying,
17 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
18 reconstructing, removing and abandoning one pipeline, together with all fittings,
19 cathodic protection equipment, pipeline markers, and all their equipment and
20 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
21 petroleum products, and all by-products thereof.”

22 **Q: Prior to filing an eminent domain lawsuit to take your land that**
23 **TransCanada identified, do you believe they attempted to negotiate in good**
24 **faith with you?**

25 A: No, I do not.

26 **Q: Did TransCanada at any time approach you with or deliver to you their**
27 **proposed easement and right-of-way agreement?**

28 A: Yes, they did.

1 **Q: At the time you reviewed TransCanada's easement and right-of-way**
2 **agreement, did you understand that they would be purchasing a fee title**
3 **interest in your property or that they were taking something else?**

4 A: I understood that they proposed to have the power to take both a temporary
5 construction easement that could last for a certain period of time and then also a
6 permanent easement which they described to be 50 feet across or in width, and
7 that would run the entire portion of my property from where a proposed pipeline
8 would enter my property until where it would exit the property.

9 **Q: Is the document included with your testimony here as Attachment No. 3, a**
10 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
11 **Way agreement that they included with their condemnation lawsuit against**
12 **you?**

13 A: Yes, it is.

14 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
15 **and Right-of-Way agreement?**

16 A: Yes, I have.

17 **Q: What is your understanding of the significance of the Easement and Right-of-**
18 **Way agreement as proposed by TransCanada?**

19 A: My understanding is that this is the document that will govern all of the rights and
20 obligations and duties as well as the limitations of what I can and cannot do and
21 how I and any future landowner and any person I invite to come onto my property
22 must behave as well as what TransCanada is and is not responsible for and how
23 they can use my land.

24 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
25 **agreement do you have any concerns about any portions of it or any of the**
26 **language either included in the document or missing from the proposed**
27 **document?**

28 A: Yes, I have a number of significant concerns and worries about the document and
29 how the language included and the language not included potentially negatively

1 impacts my land and thereby potentially negatively impacts my community and
2 my state.

3 **Q: I would like you to walk the Commissioners through each and every one of**
4 **your concerns about TransCanada's proposed Easement and Right-of-Way**
5 **agreement so they can develop an understanding of how that language and**
6 **the terms of that contract, in your opinion, potentially negatively impacts you**
7 **and your land. So, if you can start at the beginning of that document and**
8 **let's work our way through it, okay?**

9 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
10 Easement and Right-of-Way agreement and how it negatively could affect my
11 property rights and my economic interests.

12 **Q. Okay, let's start with your first concern please.**

13 A: The very first sentence talks about consideration or how much money they will
14 pay to compensate me for all of the known and unknown affects and all of the
15 rights I am giving up and for all the things they get to do to my land and for what
16 they will prevent me from doing on my land and they only will pay me one time at
17 the signing of the easement agreement. That is a huge problem.

18 **Q: Explain to the Commissioners why that is a problem.**

19 A: It is not fair to the landowner, the county, or the State. It is not fair to the
20 landowner because they want to have my land forever for use as they see fit so
21 they can make a daily profit from their customers. If I was to lease ground from
22 my neighbor I would typically pay twice a year every year as long as they granted
23 me the rights to use their land. That only makes sense – that is fair. If I was going
24 to rent a house in town I would typically pay monthly, every month until I gave up
25 my right to use that house. By TransCanada getting out on the cheap and paying
26 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
27 revenue collection on the money I would be paid and then pay taxes on and
28 contribute to this state and this country. It is money I would be putting back into
29 my local community both spending and stimulating the local economy and

1 generating more economic activity right here. Instead TransCanada's shareholders
2 keep all that money and it never finds its way to Nebraska.

3 **Q: What is your next concern?**

4 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
5 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
6 limited partnership..." and I have no idea who that really is. I have no idea who is
7 forcing this pipeline on us or who the owners of the entities are, or what are the
8 assets backing this limited partnership, or who the general partner is, or who all
9 the limited partners are, and who makes up the ownership of the these partners or
10 the structure or any of the basic things you would want to know and understand if
11 you would want to do business with such an outfit. According to TransCanada's
12 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
13 liability company called TransCanada Keystone Pipeline GP, LLC is the general
14 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
15 basically nothing. That is really scary since the general partner has the liability but
16 virtually none of the ownership and who knows if it has any other assets.

17 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
18 **percent clear on exactly who could become the owner of over 275 miles of**
19 **Nebraska land?**

20 A: No.

21 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
22 **percent clear on exactly who will be operating and responsible for**
23 **approximately 275 miles of tar sands pipeline underneath and through**
24 **Nebraska land?**

25 A: No.

26 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
27 **and the State of Nebraska of TransCanada's easement terms.**

28 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
29 called "Grantee")..." and this concerns me because it would allow their easement

1 to be transferred or sold to someone or some company or country or who knows
2 what that I don't know and who we may not want to do business with. This
3 pipeline would be a huge asset for TransCanada and if they can sell to the highest
4 bidder that could have terrible impacts upon all of Nebraska depending upon who
5 may buy it and I don't know of any safeguards in place for us or the State to veto
6 or have any say so in who may own, operate, or be responsible for this pipeline in
7 the future.

8 **Q: Do you think that type of uncertainty and lack of control over a major piece**
9 **of infrastructure crossing our State is in the public interest?**

10 A: No, certainly not, in fact, just the opposite.

11 **Q: What's next?**

12 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
13 really concerns me. Why does the easement and right-of-way have to be perpetual
14 and permanent? That is the question myself and my family want an answer to.
15 Perpetual to me is like forever and that doesn't make sense.

16 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

17 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
18 data proving there is a perpetual supply of tar sands. I am not aware in
19 TransCanada's application where it proves there is a perpetual necessity for this
20 pipeline. My understanding of energy infrastructure like wind towers is they have
21 a decommission plan and actually take the towers down when they become
22 obsolete or no longer needed. Nothing manmade lasts forever. My land however
23 will, and I want my family or future Nebraska families to have that land as
24 undisturbed as possible and it is not in my interest or the public interest of
25 Nebraska to be forced to give up perpetual and permanent rights in the land for
26 this specific kind of pipeline project.

27 **Q: Okay, what is your next concern?**

28 A: The easement language includes all these things TransCanada can do and it says
29 "...abandoning in place..." so they can just leave this pipeline under my ground

1 until the end of time just sitting there while they are not using it, but I am still
2 prevented from doing on my land and using my land what I would like. If I owned
3 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
4 there. It doesn't make sense and it scares me and it is not in my interest or the
5 public interest of Nebraska to allow this.

6 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
7 **right?**

8 A: Yes.

9 **Q: So now on the second page of the Easement what are your concerns?**

10 A: Here the Easement identifies a 24-month deadline to complete construction of the
11 pipeline but has caveats that are undefined and ambiguous. The 24-month period
12 starts to run from the moment "actual pipeline installation activities" begin on
13 Landowners property. It appears that TransCanada would define this phrase as
14 needed. It would be wise to explain what types of TransCanada action constitutes
15 "installation activity" For instance, would the placement and storage of an
16 excavator or other equipment on or near the Easement property be an activity or
17 would earth have to be moved before the activity requirement is triggered. This
18 vague phrase is likely to lead to future disputes and litigation that is not in the best
19 interest of the welfare of Nebraska and would not protect property interests. The
20 24-months can also be extended in the case of "force majeure." My understanding
21 is that force majeure is often used to insulate a party to a contract when events
22 occur that are completely out of their control. In TransCanada's easement this is
23 expanded to include "without limitation...availability of labor and materials."
24 Extending this language to labor and materials is problematic because these are
25 two variables that TransCanada does have some or significant control over and to
26 allow extension of the 24-month period over events not truly out of the control of
27 TransCanada and without further provision for compensation for the Landowner is
28 not conducive to protection of property rights.

29 **Q: Okay, what is your next concern?**

1 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
2 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
3 reasonable costs and expenses” will pay for damages caused but then limits
4 TransCanada’s liability to certain circumstances. There is no definition of
5 “commercially reasonable” and no stated right that the Landowner would get to
6 determine the amounts of cost or expense that is “commercially reasonable.”
7 TransCanada excepts out from their liability any damages that are caused by
8 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
9 Landowner. It is understandable that if the Landowner were to willfully and
10 intentionally cause damages to the pipeline that Landowner should be liable.
11 However, anything short of willful misconduct should be the liability of
12 TransCanada who is subjecting the pipeline on the Landowner and who is making
13 a daily profit from that pipeline. When evaluating the impact on property rights of
14 this provision, you must consider the potentially extremely expensive fight a
15 Landowner would have over this question of whether or not damage was an act of
16 negligence. Putting this kind of potential liability upon the Landowner is
17 incredibly problematic and is detrimental to the protection of property rights. I
18 don’t think this unilateral power which I can’t do anything about as the landowner
19 is in the best economic interest of the land in question or the State of Nebraska for
20 landowners to be treated that way.

21 **Q: Is there any specific event or example you are aware of that makes this**
22 **concern more real for you?**

23 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
24 Nemaha County, Nebraska landowner farmers who accidentally struck two
25 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
26 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
27 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
28 copy of the Federal Court Complaint is here as **Attachment No. 4.**

29 **Q: What is your next concern with the Easement language?**

1 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
2 they choose unless 1) any Landowner use interferes in any way with
3 TransCanada's exercise of any of its rights within the Easement, or 2)
4 TransCanada decides to take any action on the property it deems necessary to
5 prevent injury, endangerment or interference with anything TransCanada deems
6 necessary to do on the property. Landowner is also forbidden from excavating
7 without prior authorization by TransCanada. So my understanding is that
8 TransCanada will unilaterally determine what Landowner can and can't do based
9 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
10 could also completely deny my request to excavate. Further, TransCanada retains
11 all "privileges necessary or convenient for the full use of the rights" granted to
12 them in the Easement. Again, TransCanada unilaterally can decide to the
13 detriment of the property rights of Landowner what TransCanada believes is
14 necessary or convenient for it. And there is no option for any additional
15 compensation to landowner for any right exercised by TransCanada that leads to
16 the removal of trees or plants or vegetation or buildings or structures or facilities
17 owned by Landowner of any kind. Such undefined and unilateral restrictions and
18 rights without having to compensate Landowner for such further destruction or
19 losses are not conducive to the protection of property rights or economic interest.

20 **Q: What is the next concern you have?**

21 A: The Easement also allows some rights for Landowner but restricts them at the
22 same time and again at the sole and unilateral decision making of TransCanada.
23 TransCanada will determine if the actions of Landowner might in anyway
24 endanger or obstruct or interfere with TransCanada's full use of the Easement or
25 any appurtenances thereon to the pipeline itself or to their access to the Easement
26 or within the Easement and TransCanada retains the right at any time, whether
27 during growing season or not, to travel "within and along Easement Area on foot
28 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
29 retain the rights to prevent any landowner activity that it thinks may "unreasonably

1 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
2 undefined and unilateral restrictions are not conducive to the protection of
3 property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
6 Landowner’s land any debris of any kind without any input or power of
7 Landowner to demand an alternative method or location of debris disposal. Such
8 unilateral powers would negatively affect Landowners property are not conducive
9 to the protection of property rights or economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
12 “where rock is encountered” mean and why does TransCanada solely get to
13 determine whether or not this phrase is triggered. This phrase could be used to
14 justify installing the pipeline 24 inches beneath the surface. The ability to use this
15 provision to minimal locate the pipeline at a depth of 24 inches could negatively
16 affect Landowners property are not conducive to the protection of property rights.
17 A shallow pipeline is much more likely to become a danger and liability in the
18 future given farming operations and buried irrigation lines and other factors
19 common to the current typical agricultural uses of the land in question impacted
20 by TransCanada’s preferred pipeline route.

21 **Q: What is the next concern you have with the Easement language?**

22 A: There are more vague concepts solely at the determination of TransCanada such as
23 “as nearly as practicable” and “pre-construction position” and “extent reasonably
24 possible.” There is nothing here that defines this or provides a mechanism for
25 documenting or memorializing “pre-construction position” so as to minimize
26 costly legal battles or wasted Landowner time attempting to recreate the soil
27 condition on their fields or pasture. Such unilateral powers would negatively affect
28 Landowners property are not conducive to the protection of property rights or
29 economic interest.

1 **Q: What is the next concern you have with the Easement language?**

2 A: TransCanada maintains the unilateral right to abandon the pipeline and all
3 appurtenances thereto in place on, under, across, or through Nebraska land at any
4 time it chooses. There is no provision for Landowner compensation for such
5 abandonment nor any right for the Landowner to demand removal. Such unilateral
6 powers would negatively affect Landowners property are not conducive to the
7 protection of property rights or economic interest.

8 **Q: What is the next concern you have with the Easement language?**

9 A: TransCanada has the power to unilaterally move or modify the location of any
10 Easement area whether permanent or temporary at their sole discretion.
11 Regardless, if Landowner has taken prior steps relative to their property in
12 preparation or planning of TransCanada's taking of the initial easement area(s),
13 the language here does not require TransCanada to compensate the Landowner if
14 they decide to move the easement anywhere on Landowners property. Such
15 unilateral powers would negatively affect Landowners property are not conducive
16 to the protection of property rights or economic interests.

17 **Q: What is the next concern you have with the Easement language?**

18 A: The Easement requires that all of the burdens and restrictions upon Landowner to
19 transfer and be applicable to any future owner of the Land in question without the
20 ability of the future Landowner to modify or negotiate any of the language in
21 question to which it will be held to comply.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
24 Easement to any person, company, country, etc. at their sole discretion at anytime
25 to anyone. This also means that any buyer of the easement could do the same to a
26 third buyer and so on forever. There is no change of control or sale provision in
27 place to protect the Landowner or Nebraska or to provide compensation for such
28 change of control or ownership. It is not conducive to the protection of property
29 rights or economic interests to allow unilateral unrestricted sale of the Easement

1 thereby forcing upon the Landowner and our State a new unknown Easement
2 owner.

3 **Q: What is the next concern you have with the Easement language?**

4 A: There are many terms in the Easement that are either confusing or undefined terms
5 that are without context as to whether or not the Landowner would have any say
6 so in determining what these terms mean or if the evaluation is solely in
7 TransCanada's control. Some of these vague undefined and ambiguous terms are
8 as follows:

- 9 i. "pipeline installation activities"
- 10 ii. "availability of labor and materials"
- 11 iii. "commercially reasonable costs and expenses"
- 12 iv. "reasonably anticipated and foreseeable costs and expenses"
- 13 v. "yield loss damages"
- 14 vi. "diminution in the value of the property"
- 15 vii. "substantially same condition"
- 16 viii. "an actual or potential hazard"
- 17 ix. "efficient"
- 18 x. "convenient"
- 19 xi. "endangered"
- 20 xii. "obstructed"
- 21 xiii. "injured"
- 22 xiv. "interfered with"
- 23 xv. "impaired"
- 24 xvi. "suitable crossings"
- 25 xvii. "where rock is encountered"
- 26 xviii. "as nearly as practicable"
- 27 xix. "pre-construction position"
- 28 xx. "pre-construction grade"
- 29 xxi. "various engineering factors"

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, “yield loss damages” should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 A: I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada’s proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline’s**
18 **impact upon you and your land?**

19 A: No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 A: Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 **Q: Has TransCanada at any time offered to compensate you annually, such as**
6 **wind farm projects do, for the existence of their potential tar sands pipeline**
7 **across your property.**

8 A: No, never.

9 **Q: At any time did TransCanada present you with or request that you, as the**
10 **owner of the land in question, sign and execute a document called, "Advanced**
11 **Release of Damage Claims and Indemnity Agreement?"**

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
14 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

15 A: Yes, it is.

16 **Q: What was your understanding of that document?**

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 **Q: Did you ever sign that document?**

24 A: No, I did not.

25 **Q: Why not?**

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you**
12 **thought their proposed location of their proposed pipeline across your land**
13 **was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you**
16 **thought their proposed location of their proposed pipeline across your land**
17 **was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
20 **Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
23 **an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which**
29 **the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 **Q: Can you think of any way in which the public, that is the citizens of the State**
3 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
4 **Pipeline, as it dissects the State of Nebraska?**

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
13 **crude petroleum, or oil and petroleum by-products that you would like to**
14 **ship in its pipeline?**

15 A: No, it has not.

16 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
17 **products that you, at this time or any time in the future, would desire to place**
18 **for transport within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not.

20 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
21 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
22 **products within the proposed TransCanada Keystone XL Pipeline?**

23 A: No, I do not. I've never heard of such a person or company like that.

24 **Q: Do you pay property taxes for the land that would be affected and impacted**
25 **at the proposed TransCanada Keystone XL Pipeline?**

26 A: Yes, I do.

27 **Q: Why do you pay property taxes on that land?**

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q:** Because you follow the law and pay property taxes, do you believe you
2 deserve any special consideration or treatment apart from any other person
3 or company that pays property taxes?

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q:** Do you believe the fact that you pay property taxes entitles you to special
7 treatment of any kind, or special rights of any kind?

8 A: No, of course not.

9 **Q:** Do you believe the fact that you pay property taxes on your land would be
10 enough to qualify you to have the power of eminent domain to take land of
11 your neighbors or other people in your county, or other people across the
12 state of Nebraska?

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q:** Have you at any time ever employed any person other than yourself?

16 A: Well, yes I have.

17 **Q:** Do you believe that the fact that you have, at some point in your life,
18 employed one or more other persons entitle you to any special treatment or
19 consideration above and beyond any other Nebraskan that has also employed
20 one or more persons?

21 A: No, of course not.

22 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
23 have at one point employed another person within this state, entitles you to
24 preferential treatment or consideration of any kind?

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q:** Do you have any concerns TransCanada's fitness as an applicant for a major
28 crude oil pipeline in its preferred location, or ultimate location across the
29 state of Nebraska?

1 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
2 or even bullied around and being made to feel scared that they did not have any
3 options but to sign whatever papers TransCanada told them they had to. I am
4 aware of folks being threatened that their land would be taken if they didn't follow
5 what TransCanada was saying. I am aware of tactics to get people to sign
6 easements that I don't believe have any place in Nebraska or anywhere such as
7 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
8 landowners and convince them they should sign TransCanada's easement
9 agreements. I am aware of older folks and widows or widowers feeling they had
10 no choice but to sign TransCanada's Easement and they didn't know they could
11 fight or stand up for themselves. From a more practical standpoint, I am worried
12 that according to their answer to our Interrogatory No. 211, TransCanada only
13 owns and operates one (1) major oil pipeline. They simply do not have the
14 experience with this type of pipeline and that scares me. There are others but that
15 is what I can recollect at this time and if I remember more or my recollection is
16 refreshed I will share those with the Commissioners at the Hearing in August.

17 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
18 **landowner is reasonable or just?**

19 A: No, I do not.

20 **Q: Do you have any concern about limitations that the construction of this**
21 **proposed pipeline across your affected land would prevent construction of**
22 **future structures upon the portion of your land affected by the proposed**
23 **easement and immediately surrounding areas?**

24 A: Well yes, of course I do. We would not be able to build many, if any, types of
25 structures directly across or touching the easement, and it would be unwise and I
26 would be uncomfortable to build anything near the easement for fear of being
27 blamed in the future should any damage or difficulty result on my property in
28 regards to the pipeline.

29 **Q: Do you think such a restriction would impact you economically?**

1 A: Well yes, of course.

2 **Q: How do you think such a restriction would impact you economically?**

3 A: The future of this land may not be exactly how it's being used as of this moment,
4 and having the restrictions and limiting my ability to develop my land in certain
5 ways presents a huge negative economic impact on myself, my family, and any
6 potential future owner of the property. You have no idea how I or the future owner
7 may want to use this land in the future or the other land across Nebraska
8 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
9 ago it would have been hard to imagine all the advances that we have now or how
10 things change. Because the Easement is forever and TransCanada gets the rights in
11 my land forever we have to think with a very long term view. By placing their
12 pipeline on under across and through my land that prevents future development
13 which greatly negatively impacts future taxes and tax revenue that could have
14 been generated by the County and State but now will not. When you look at the
15 short blip of economic activity that the two years of temporary construction efforts
16 may bring, that is far outweighed by the perpetual and forever loss of opportunity
17 and restrictions TransCanada is forcing upon us and Nebraska. The terms of the
18 easement must be addressed in order for the Commission to truly consider
19 property rights, economic interests, the welfare of Nebraska, and the balancing of
20 the proposed routes against all they will affect and impact.

21 **Q: Do you have any concerns about the environmental impact of the proposed**
22 **pipeline?**

23 A: Yes, I do.

24 **Q: What are some of those concerns?**

25 A: As an affected land owner and Nebraskan, I am concerned that any construction,
26 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
27 a detrimental impact upon the environment of my land specifically, as well as the
28 lands near my land and surrounding the proposed pipeline route.

29 **Q: Do you have any other environmental concerns?**

1 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
2 construction and/or maintenance and operation. I am concerned about spills and
3 leaks that TransCanada has had in the past and will have in the future. This could
4 be catastrophic to my operations or others and to my county and the State.

5 **Q: Do you have any thoughts regarding if there would be an impact upon the**
6 **natural resources on or near your property due to the proposed pipeline?**

7 A: Yes, I believe that any construction, operation, and/or maintenance of the
8 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
9 resources of my land, and the lands near and surrounding the proposed pipeline
10 route.

11 **Q: Do you have any worries about potential impacts from the proposed pipeline**
12 **to the soil of your land, or land near you?**

13 A: Yes, I believe that any construction, operation, and/or maintenance of the
14 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
15 land, as well as land along and surrounding the proposed pipeline route. This
16 includes, but is not limited to, the reasons that we discussed above of disturbing
17 the soil composition and makeup as it has naturally existed for thousands and
18 millions of years during the construction process, and any future maintenance or
19 removal process. I'm gravely concerned about the fertility and the loss of
20 economic ability of my property to grow the crops, or grow the grasses, or grow
21 whatever it is at that time they exist on my property or that I may want to grow in
22 the future, or that a future owner may want to grow. The land will never be the
23 same from as it exists now undisturbed to after it is trenched up for the proposed
24 pipeline.

25 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
26 **upon the groundwater over your land, or surrounding lands?**

27 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
28 the proposed Keystone XL Pipeline would have a detrimental impact upon the
29 groundwater of not only under my land, but also near and surrounding the pipeline

1 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
2 simple and it is simply too valuable to our State and the country to put at
3 unreasonable risk.

4 **Q: Do you have any concern about the potential impact of the proposed pipeline**
5 **upon the surface water on, or near or around your land?**

6 A: Yes, I have significant concerns that any construction, operation, and/or
7 maintenance of the proposed Keystone XL Pipeline would have detrimental
8 impact upon the surface water of not only within my property boundary, but along
9 and near and surrounding the pipeline route, and in fact, across the state of
10 Nebraska.

11 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
12 **upon the wildlife and plants, other than your growing crops on or near your**
13 **land?**

14 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
15 the proposed Keystone XL Pipeline would have a detrimental impact upon the
16 wildlife and the plants, not only that are located on or can be found upon my land,
17 but also near and along the proposed pipeline route.

18 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
19 **fair market value of your land?**

20 A: Yes, I do. I am significantly concerned about how the existence of the proposed
21 pipeline underneath and across and through my property will negatively affect the
22 fair market value at any point in the future, especially at that point in which I
23 would need to sell the property, or someone in my family would need to sell the
24 property. I do not believe, and certainly would not be willing to pay, the same
25 price for land that had the pipeline located on it, versus land that did not. I hope
26 there is never a point where I'm in a position where I have to sell and have to
27 realize as much value as I can out of my land. But because it is my single largest
28 asset, I'm gravely concerned that the existence of the proposed Keystone XL
29 Pipeline upon my land will affect a buyer's willingness to pay as much as they

1 would've paid and as much as I could've received, if the pipeline were not upon
2 my property. There are just too many risks, unknowns, impacts and uncertainties,
3 not to mention all of the rights you give up by the nature of having the pipeline
4 due to having the easement that we have previously discussed, for any reasonable
5 person to think that the existence of the pipeline would not negatively affect my
6 property's value.

7 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
8 **testimony?**

9 A: Yes, I have.

10 **Q: Where have you seen that before?**

11 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
12 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
13 believe the portion of the alternative route in Nebraska essentially twins or
14 parallels Keystone I.

15 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
16 **Application, and as found on Attachment No. 7, here to your testimony, is in**
17 **the public interest of Nebraska?**

18 A: No, I do not.

19 **Q: Do you believe that the Keystone mainline alternative route as shown on**
20 **Attachment No. 7 included with your testimony here is a major oil pipeline**
21 **route that is in the public interest of Nebraska?**

22 A: No, I do not.

23 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
24 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe there is any potential route for the proposed Keystone XL**
27 **Pipeline across, within, under, or through the State of Nebraska that is in the**
28 **public interest of the citizens of Nebraska?**

29 A: No, I do not.

1 **Q: Why do you hold that belief?**

2 A: Because there simply is no public interest based on all of the factors that I am
3 aware and that I have read and that I have studied that this Commission is to
4 consider that would establish that a for-profit foreign-owned pipeline that simply
5 crosses Nebraska because we are geographically in the way between where tar
6 sands are in Canada to where it wants to ship it to in Texas could ever be in the
7 public interest of Nebraskans. We derive no benefit from this project. It is not for
8 public use. Nebraska is simply in the way and when all considerations are taken in
9 there is no net benefit of any kind for Nebraska should this project be placed in our
10 state. Even if there was some arguable “benefit” it is not enough to outweigh all
11 the negative impacts and concerns.

12 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
13 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
14 **of Nebraska because it may bring temporary jobs during the construction**
15 **phase to Nebraska?**

16 A: First of all, not all jobs are created equally. Most jobs that are created, whether
17 temporary or on a permanent basis, don’t come with a project that has all the
18 potential and foreseeable negative impacts, many of which we have discussed here
19 and other witnesses throughout the course of this hearing have and will discuss. If
20 I decide to hire and employ someone to help me out in my farming or ranching
21 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
22 to my land or my town or my county or my state. And I’ve hired someone who is
23 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
24 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
25 jobs are not created equal. Additionally, I understand from what I’m familiar with
26 from TransCanada’s own statements that the jobs numbers they originally touted
27 were determined to be a minute fraction of the permanent jobs that had been
28 projected. According to their answer to our Interrogatory No. 191, TransCanada
29 has created only thirty-four (34) jobs within Nebraska working specifically on

1 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
2 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
3 Further, according to their answer to Interrogatory No. 199, TransCanada would
4 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
5 constructed on its Preferred Route or its Mainline Alternative Route.

6 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
7 **because it would cross your land?**

8 A: No, absolutely not. I am opposed to this project because it is not in the public
9 interest, neither within my community nor within our state.

10 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
11 **was to cross someone else's land?**

12 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
13 the fear and anxiety and potential foreseeable risks and negative impacts that this
14 type of a project carrying this type of product brings foisted upon anyone in this
15 state or any other state.

16 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
17 **Pipeline to cross the state of Nebraska?**

18 A: I don't believe there is an intelligent route because as I have stated I don't believe
19 this project anywhere within Nebraska is within the public interest. However, if
20 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
21 had to go somewhere in the state of Nebraska, the only intelligent route I believe
22 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
23 preferred route and the mainline alternative routes are economic liabilities our
24 state cannot risk.

25 **Q: What do you rely upon to make that statement?**

26 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
27 already exists in that area is reason enough as it is not in our best interest or the
28 public interests to have more major oil pipelines crisscrossing our state. Second,
29 they have all the infrastructure already there in terms of relationships with the

1 counties and local officials and first responders along that route. Third, they have
2 already obtained easements from all the landowners along that route and have
3 relationships with them. Fourth, that route avoids our most sensitive soils, the
4 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
5 Aquifer. Sixth, they have already studied that route and previously offered it as an
6 alternative. Seventh, it just makes the most sense that as a state we would have
7 some intelligent policy of energy corridors and co-locating this type of
8 infrastructure near each other.

9 **Q: Do you have any other concerns you would like to reiterate or can think of at**
10 **this time you would like the Commissioners to understand?**

11 **A:** Yes. We have concerns on potential harm to our property from a TransCanada
12 pipeline leak or break or rupture and not only to the leak itself but all the
13 surrounding activities required to address that issue and remediate.

14 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
15 **like the Public Service Commissioners to consider in their review of**
16 **TransCanada's Application?**

17 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
18 document below but other things may come to me or my memory may be
19 refreshed and I will add and address those things at the time of the Hearing in
20 August and address any additional items at that time as is necessary. Additionally,
21 I have not had an adequate amount of time to receive and review all of
22 TransCanada's answers to our discovery and the discovery of others so it was
23 impossible to competently and completely react to that in my testimony here and I
24 reserve the right to also address anything related to discovery that has not yet
25 concluded as of the date I signed this document below. Lastly, certain documents
26 requested have not yet been produced by TransCanada and therefore I may have
27 additional thoughts on those I will also share at the hearing as needed.

1 **Q: What is it that you are requesting the Public Service Commissioners do in**
2 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
3 **across Nebraska?**

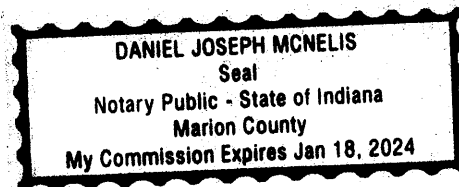
4 A: I am respectfully and humbly requesting that the Commissioners think far beyond
5 a temporary job spike that this project may bring to a few counties and beyond the
6 relatively small amount of taxes this proposed foreign pipeline would possibly
7 generate. And, instead think about the perpetual and forever impacts of this
8 pipeline as it would have on the landowners specifically, first and foremost, but
9 also thereby upon the entire state of Nebraska, and to determine that neither the
10 preferred route nor the Keystone mainline alternative route are in the public
11 interest of the citizens of the state of Nebraska. And if the Commissioners were
12 inclined to modify TransCanada's proposed routes and were to be inclined to grant
13 an application for a route in Nebraska, that the only potential route that would
14 make any intelligent sense whatsoever would be twinning or near paralleling of
15 the proposed KXL with the existing Keystone I pipeline. The point of including
16 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been
17 considered by TransCanada before. It simply does not make sense to add yet
18 another major oil pipeline crisscrossing our state creating new pumping stations,
19 creating new impacts on additional counties and communities and going through
20 all of the court processes with myself and other landowners like me when this
21 applicant already has relationships with the landowners, the towns and the
22 communities along Keystone I, and that Keystone I is firmly outside of the sand
23 hills and a significantly further portion away from the heart of the Ogallala
24 Aquifer than the preferred route or the Keystone mainline alternative route.

25 **Q: Are all of your statements in your testimony provided above true and**
26 **accurate as of the date you signed this document to the best of your**
27 **knowledge?**

28 A: Yes, they are.

1 **Q:** Thank you, I have no further questions at this time and reserve the right to
2 ask you additional questions at the August 2017 Hearing.

Bonnie Brauer
Bonnie Brauer



Subscribed and Sworn to me before this 26th day of May, 2017.

Daniel Joseph McNelis
Notary Public

Attachment No. 1



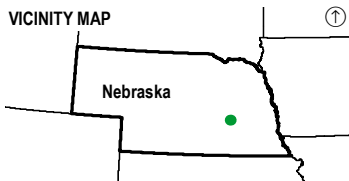
S.026
T.013N
R.004W

Revocable Trust Agreement of Bonnie L. Brauer dated May 17, 2007
Skoglund Family Trust dated August 4, 2006
Bonnie L. Brauer
Joyce E. Skoglund
Leonard E. Skoglund

S.035
T.013N
R.004W

IMAGERY: NAIP 2016

0 250 500 1,000 Feet



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Revocable Trust Agreement of Bonnie L. Brauer dated May 17, 2007
Skoglund Family Trust dated August 4, 2006
Bonnie L. Brauer
Joyce E. Skoglund
Leonard E. Skoglund

TRACT NO. ML-NE-PO-40780.000
STATE: Nebraska
COUNTY: Polk
SECTION: 035
TOWNSHIP: 013N
RANGE: 004W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

Attachment No. 2



04/16/2017

Attachment No. 3

**Prepared by and after recording
please return to:**
TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-PO-40780.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**"), **Bonnie L. Brauer, Trustee of the Revocable Trust Agreement of Bonnie L. Brauer dated May 17, 2007, and Leonard E. Skoglund and Joyce E. Skoglund, Co-Trustees of the Skoglund Family Trust dated August 4, 2006**, whose mailing address is 3415 Country Hill Drive, Fairfax, Virginia 22030 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission

lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Polk, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 160 acres, more or less, situated in the County of Polk, in the State of Nebraska, being further described as the NW1/4 of Section 35, Township 13 North, Range 4 West of the 6th P.M., as recorded in Book 94, Page 422 and Book 93, Page 422 in the Deed Records of Polk County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee

harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.
3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.
4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.
5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.
6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.
7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.
9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.
10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.
11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.
12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.
13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.
14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____, 20____.

GRANTOR(S):

**Revocable Trust Agreement of Bonnie L. Brauer
dated May 17, 2007**

Bonnie L. Brauer, Trustee

Skoglund Family Trust dated August 4, 2006

Leonard E. Skoglund, Co-Trustee

Joyce E. Skoglund, Co-Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

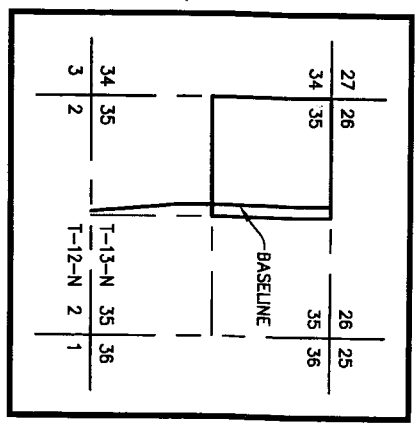
By **Joyce E. Skoglund, Co-Trustee of the Skoglund Family Trust dated August 4, 2006** on behalf of said Trust.

Notary Public Signature

Affix Seal Here

LEGEND
 R. PROPERTY LINE
 S. SECTION LINE
 et al. AND OTHERS
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.P.C.N. DEED RECORDS OF POLK COUNTY, NEBRASKA

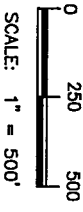
POLK COUNTY, NEBRASKA
T-13-N, R-4-W, SECTION 35
ML-NE-PO-40780.000




VICINITY MAP
 N.T.S.

SECTION 34
SECTION 35
LEONARD E. SKOGLUND, et al
 VOLUME 93, PAGE 422
 VOLUME 94, PAGE 422
 D.R.P.C.N.

SEE DETAIL "A"



TRACT LEGAL DESCRIPTION:
 NW/4 OF SECTION 35,
 T-13-N, R-4-W

			
In business to deliver			
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF			
LEONARD E. SKOGLUND, et al			
ML-NE-PO-40780.000			
PROJECT:	XL	EXHIBIT A	
APPROVED BY		DRAWING NUMBER	
SLR	XL-08-ML-SK-3716	DATE	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/27/14	PB	ALS

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR
 PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON
 THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY
 PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE
 APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT
 AREA TO BE ACQUIRED WILL NOT VARY.

SHEET 1 OF 2
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.3 ACRE
TOTAL DISTANCE ACROSS PROPERTY: 2.667'±
AREA OF PERMANENT EASEMENT: 3.1 ACRES
AREA OF TEMPORARY WORKSPACE: 3.7 ACRES



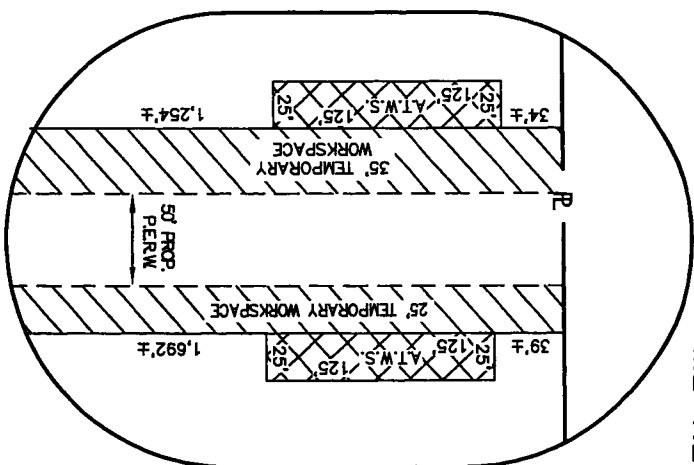
LEGEND
 R et al
 PROP.
 A.T.W.S.
 P.E.R.W.

PROPERTY LINE
 AND OTHERS
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY

POLK COUNTY, NEBRASKA

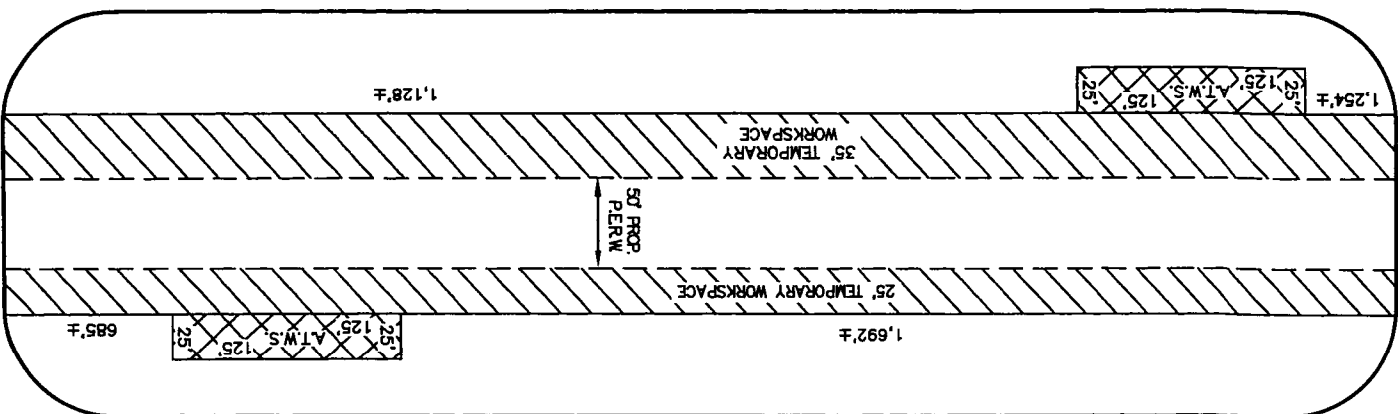
T-13-N, R-4-W, SECTION 35

ML-NE-PO-40780.000



DETAIL "A"
 N.T.S.

DETAIL "B"
 N.T.S.



In Business to Give

KEYSTONE XL PROJECT
 EASEMENT AREA
 ACROSS THE PROPERTY OF
 LEONARD E. SKOGLUND, et al
 ML-NE-PO-40780.000

PROJECT: XL EXHIBIT A

APPROVED BY: DRAWING NUMBER

SLR XL-08-ML-SK-3716

NO. REVISION DATE

SCALE DATE DRAWN BY CHECKED BY

N.T.S. 10/27/14 PB ALS



NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR
 PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON
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 PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE
 APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT
 AREA TO BE ACQUIRED WILL NOT VARY.

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Plaintiff,

v.

RICHARD ANDREW, JANE ANDREW,
LUKE ANDREW, and BRYCE ANDREW,

Defendants.

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-PO-40780.000

We, Bonnie L. Brauer, Trustee, Leonard E. Skoglund and Joyce E. Skoglund, Co-Trustees, of Polk County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Six Hundred Eighty Dollars and No Cents (\$5,680.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Polk, State of Nebraska:

NW/4

Section 35, Township 13N, Range 4W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this day of

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Owner Signature

Owner/Owner Representative Name

Owner Signature

Owner/Owner Representative Name

Attachment No. 6

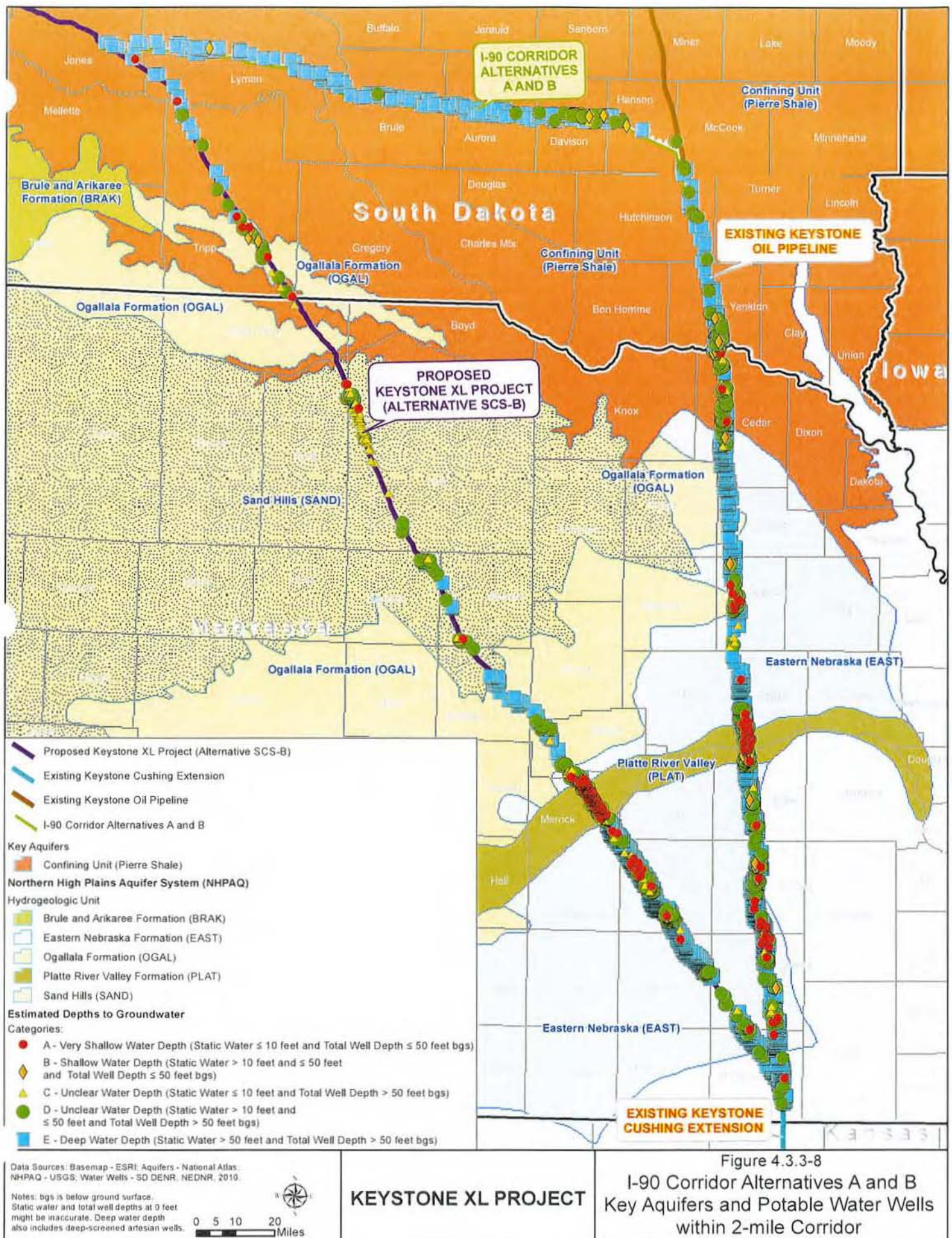


Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor

Attachment No. 7



VICINITY MAP



LEGEND

- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Lonnie “L.A.” Breiner in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Lonnie Breiner.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse’s name please?**

16 A: Sandra Breiner.

1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A: Yes.

4 **Q: Do you earn any income from this land?**

5 A: Yes.

6 **Q: Have you depended on the income from your land to support your livelihood**
7 **or the livelihood of your family?**

8 A: Yes.

9 **Q: Have you ever in the past or have you thought about in the future leasing all**
10 **or a portion of your land in question here?**

11 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
12 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
13 all the restrictions and risks and potential negative impacts to farming or ranching
14 operations as opposed to land that did not have those same risks. If I was looking
15 to lease or rent ground I would pay more for comparable non-pipeline land than I
16 would for comparable pipeline land and I think most folks would think the same
17 way. This is another negative economic impact that affects the landowner and the
18 county and the state and will forever and ever should TransCanada's preferred or
19 mainline alternative routes be approved. If they were to twin or closely parallel to
20 Keystone I the vast majority of landowners would be those that already have a
21 pipeline so there would be considerable less new incremental negative impacts.

22 **Q: Do you have similar concerns about selling the land?**

23 A: Well I hope not to have to sell the land in my lifetime but times change and you
24 never know what is around the corner and yes I am concerned that if another piece
25 of ground similar to mine were for sale and it did not have the pipeline and mine
26 did that I would have a lower selling price. I think this would be true for pipeline
27 ground on both the preferred and mainline alternative routes.

28 **Q: What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
4 **Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Were you or an entity for which you are a member, shareholder, or director**
7 **previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
9 petition for condemnation against our land so it could place its proposed pipeline
10 within an easement that it wanted to take from us on our land.

11 **Q: Did you defend yourself and your land in that condemnation action?**

12 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
13 and expenses in our resistance of TransCanada's lawsuit against us.

14 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
15 **incurred?**

16 A: No, they have not.

17 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
18 **property that it wanted to take for its proposed pipeline?**

19 A: The lawsuit against us stated they would take the amount of property that is
20 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
21 and equipment reasonably necessary to operate the pipeline.

22 **Q: Did TransCanada define what they meant by "property that is reasonably**
23 **necessary"?**

24 A: No, they did not.

25 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
26 **property portion of your land?**

27 A: Yes, they did.

28 **Q: Did TransCanada describe what rights it proposed to take related to the**
29 **eminent domain property on your land?**

1 A: Yes, they did.

2 **Q: What rights that they proposed to take did they describe?**

3 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
4 operate, and maintain the pipeline and the plant and equipment reasonably
5 necessary to operate the pipeline, specifically including surveying, laying,
6 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
7 reconstructing, removing and abandoning one pipeline, together with all fittings,
8 cathodic protection equipment, pipeline markers, and all their equipment and
9 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
10 petroleum products, and all by-products thereof.”

11 **Q: Prior to filing an eminent domain lawsuit to take your land that**
12 **TransCanada identified, do you believe they attempted to negotiate in good**
13 **faith with you?**

14 A: No, I do not.

15 **Q: Did TransCanada at any time approach you with or deliver to you their**
16 **proposed easement and right-of-way agreement?**

17 A: Yes, they did.

18 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
19 **agreement, did you understand that they would be purchasing a fee title**
20 **interest in your property or that they were taking something else?**

21 A: I understood that they proposed to have the power to take both a temporary
22 construction easement that could last for a certain period of time and then also a
23 permanent easement which they described to be 50 feet across or in width, and
24 that would run the entire portion of my property from where a proposed pipeline
25 would enter my property until where it would exit the property.

26 **Q: Is the document included with your testimony here as Attachment No. 3, a**
27 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
28 **Way agreement that they included with their condemnation lawsuit against**
29 **you?**

1 A: Yes, it is.

2 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
3 **and Right-of-Way agreement?**

4 A: Yes, I have.

5 **Q: What is your understanding of the significance of the Easement and Right-of-**
6 **Way agreement as proposed by TransCanada?**

7 A: My understanding is that this is the document that will govern all of the rights and
8 obligations and duties as well as the limitations of what I can and cannot do and
9 how I and any future landowner and any person I invite to come onto my property
10 must behave as well as what TransCanada is and is not responsible for and how
11 they can use my land.

12 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
13 **agreement do you have any concerns about any portions of it or any of the**
14 **language either included in the document or missing from the proposed**
15 **document?**

16 A: Yes, I have a number of significant concerns and worries about the document and
17 how the language included and the language not included potentially negatively
18 impacts my land and thereby potentially negatively impacts my community and
19 my state.

20 **Q: I would like you to walk the Commissioners through each and every one of**
21 **your concerns about TransCanada's proposed Easement and Right-of-Way**
22 **agreement so they can develop an understanding of how that language and**
23 **the terms of that contract, in your opinion, potentially negatively impacts you**
24 **and your land. So, if you can start at the beginning of that document and**
25 **let's work our way through it, okay?**

26 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
27 Easement and Right-of-Way agreement and how it negatively could affect my
28 property rights and my economic interests.

29 **Q. Okay, let's start with your first concern please.**

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership..." and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
6 **percent clear on exactly who could become the owner of over 275 miles of**
7 **Nebraska land?**

8 A: No.

9 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
10 **percent clear on exactly who will be operating and responsible for**
11 **approximately 275 miles of tar sands pipeline underneath and through**
12 **Nebraska land?**

13 A: No.

14 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
15 **and the State of Nebraska of TransCanada's easement terms.**

16 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow their easement
18 to be transferred or sold to someone or some company or country or who knows
19 what that I don't know and who we may not want to do business with. This
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest
21 bidder that could have terrible impacts upon all of Nebraska depending upon who
22 may buy it and I don't know of any safeguards in place for us or the State to veto
23 or have any say so in who may own, operate, or be responsible for this pipeline in
24 the future.

25 **Q: Do you think that type of uncertainty and lack of control over a major piece**
26 **of infrastructure crossing our State is in the public interest?**

27 A: No, certainly not, in fact, just the opposite.

28 **Q: What's next?**

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
25 **right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

1 TransCanada who is subjecting the pipeline on the Landowner and who is making
2 a daily profit from that pipeline. When evaluating the impact on property rights of
3 this provision, you must consider the potentially extremely expensive fight a
4 Landowner would have over this question of whether or not damage was an act of
5 negligence. Putting this kind of potential liability upon the Landowner is
6 incredibly problematic and is detrimental to the protection of property rights. I
7 don't think this unilateral power which I can't do anything about as the landowner
8 is in the best economic interest of the land in question or the State of Nebraska for
9 landowners to be treated that way.

10 **Q: Is there any specific event or example you are aware of that makes this**
11 **concern more real for you?**

12 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
13 Nemaha County, Nebraska landowner farmers who accidentally struck two
14 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
15 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
16 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
17 copy of the Federal Court Complaint is here as **Attachment No. 4.**

18 **Q: What is your next concern with the Easement language?**

19 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
20 they choose unless 1) any Landowner use interferes in any way with
21 TransCanada's exercise of any of its rights within the Easement, or 2)
22 TransCanada decides to take any action on the property it deems necessary to
23 prevent injury, endangerment or interference with anything TransCanada deems
24 necessary to do on the property. Landowner is also forbidden from excavating
25 without prior authorization by TransCanada. So my understanding is that
26 TransCanada will unilaterally determine what Landowner can and can't do based
27 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
28 could also completely deny my request to excavate. Further, TransCanada retains
29 all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative the their property in
2 preparation or planning of TransCanada's taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at any time
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada's control. Some of these vague undefined terms are as follows:

- 27 i. "pipeline installation activities"
- 28 ii. "availability of labor and materials"
- 29 iii. "commercially reasonable costs and expenses"

- iv. “reasonably anticipated and foreseeable costs and expenses”
- v. “yield loss damages”
- vi. “diminution in the value of the property”
- vii. “substantially same condition”
- viii. “an actual or potential hazard”
- ix. “efficient”
- x. “convenient”
- xi. “endangered”
- xii. “obstructed”
- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

1 **Q: Do you have any other concerns about the Easement language that you can**
2 **think of at this time?**

3 A: I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q: Based upon what you have shared with the Commission above regarding**
6 **TransCanada's proposed Easement terms and agreement, do you believe**
7 **those to be reasonable or just, under the circumstances of the pipeline's**
8 **impact upon you and your land?**

9 A: No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q: Did TransCanada ever offer you financial compensation for the rights that**
12 **they sought to obtain in your land, and for what they sought to prevent you**
13 **and any future land owner of your property from doing in the future?**

14 A: Yes, we received an offer from them.

15 **Q: As the owner of the land in question and as the person who knows it better**
16 **than anyone else, do you believe that TransCanada offered you just, or fair,**
17 **compensation for all of what they proposed to take from you so that their tar**
18 **sands pipeline could be located across your property?**

19 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q: Has TransCanada at any time offered to compensate you annually, such as**
24 **wind farm projects do, for the existence of their potential tar sands pipeline**
25 **across your property.**

26 A: No, never.

27 **Q: At any time did TransCanada present you with or request that you, as the**
28 **owner of the land in question, sign and execute a document called, "Advanced**
29 **Release of Damage Claims and Indemnity Agreement?"**

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
3 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, it is.

5 **Q: What was your understanding of that document?**

6 A: When I read that document in the plain language of that document, it was my
7 understanding that TransCanada was attempting to pay me a very small amount at
8 that time in order for me to agree to give up my rights to be compensated from
9 them in the future related to any damage or impact they may have upon my
10 property “arising out of, in connection with, or alleged to resulted from
11 construction or surveying over, under or on” my land.

12 **Q: Did you ever sign that document?**

13 A: No, I did not.

14 **Q: Why not?**

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small
16 sum of money when I have no idea how bad the impacts or damages that they, or
17 their contractors, or subcontractors, or other agents or employees, may cause on
18 my land at any time in the future that resulted from the construction or surveying
19 or their activities upon my land.

20 **Q: When you reviewed this document, what did it make you feel?**

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
22 shield themselves against known and foreseeable impacts that their pipeline, and
23 the construction of it, would have upon my land. It made me feel that they knew it
24 was in their financial interest to pay me as little as possible to prevent me from
25 ever having the opportunity to seek fair compensation again, and that this must be
26 based upon their experience of unhappy landowners and situations in other places
27 where they have built pipelines.

1 **Q: Has TransCanada ever contacted you and specifically asked you if you**
2 **thought their proposed location of their proposed pipeline across your land**
3 **was in your best interest?**

4 A: No, they have not.

5 **Q: Has TransCanada ever contacted you and specifically asked you if you**
6 **thought their proposed location of their proposed pipeline across your land**
7 **was in the public interest of the State of Nebraska?**

8 A: No, they have not.

9 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
10 **Takings Clause?**

11 A: Yes, I am.

12 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
13 **an American citizens property?**

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 **Q: Has TransCanada ever contacted you specially to explain the way in which**
19 **the public could use its proposed Keystone XL Pipeline?**

20 A: No, they have not.

21 **Q: Can you think of any way in which the public, that is the citizens of the State**
22 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
23 **Pipeline, as it dissects the State of Nebraska?**

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
4 **crude petroleum, or oil and petroleum by-products that you would like to**
5 **ship in its pipeline?**

6 A: No, it has not.

7 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
8 **products that you, at this time or any time in the future, would desire to place**
9 **for transport within the proposed TransCanada Keystone XL Pipeline?**

10 A: No, I do not.

11 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
12 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
13 **products within the proposed TransCanada Keystone XL Pipeline?**

14 A: No, I do not. I've never heard of such a person or company like that.

15 **Q: Do you pay property taxes for the land that would be affected and impacted**
16 **at the proposed TransCanada Keystone XL Pipeline?**

17 A: Yes, I do.

18 **Q: Why do you pay property taxes on that land?**

19 A: Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q: Because you follow the law and pay property taxes, do you believe you**
22 **deserve any special consideration or treatment apart from any other person**
23 **or company that pays property taxes?**

24 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q: Do you believe the fact that you pay property taxes entitles you to special**
27 **treatment of any kind, or special rights of any kind?**

28 A: No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**
2 **enough to qualify you to have the power of eminent domain to take land of**
3 **your neighbors or other people in your county, or other people across the**
4 **state of Nebraska?**

5 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q: Have you at any time ever employed any person other than yourself?**

8 A: Well, yes I have.

9 **Q: Do you believe that the fact that you have, at some point in your life,**
10 **employed one or more other persons entitle you to any special treatment or**
11 **consideration above and beyond any other Nebraskan that has also employed**
12 **one or more persons?**

13 A: No, of course not.

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
15 **have at one point employed another person within this state, entitles you to**
16 **preferential treatment or consideration of any kind?**

17 A: No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q: At the beginning of your statement, you briefly described your property that**
20 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
21 **give the Commissioners a sense of specifically how you believe the proposed**
22 **Keystone XL Pipeline and its preferred route, which proposes to go across**
23 **your land, how it would in your opinion based on your knowledge,**
24 **experience, and background of your land, affect it. So please share with the**
25 **Commissioners the characteristics of your land that you believe is important**
26 **for them to understand, while they evaluate TransCanada's application for a**
27 **route for its proposed pipeline to cross Nebraska and across your land,**
28 **specifically.**

1 A: Our farms with electric irrigation systems have schedules of on and off time to
2 irrigate so what will happen when the pipeline uses a lot of our electricity? Also
3 our roads are not good enough for the large trucks and heavy equipment needed to
4 put the pipeline in. all the extra people will also tax our law enforcement people.
5 We don't need more temporary jobs, which it won't provide anyway; we just need
6 someone who will work – every paper is full of help wanted ads.

7 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
8 **crude oil pipeline in its preferred location, or ultimate location across the**
9 **state of Nebraska?**

10 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
11 or even bullied around and being made to feel scared that they did not have any
12 options but to sign whatever papers TransCanada told them they had to. I am
13 aware of folks being threatened that their land would be taken if they didn't follow
14 what TransCanada was saying. I am aware of tactics to get people to sign
15 easements that I don't believe have any place in Nebraska or anywhere such as
16 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
17 landowners and convince them they should sign TransCanada's easement
18 agreements. I am aware of older folks and widows or widowers feeling they had
19 no choice but to sign TransCanada's Easement and they didn't know they could
20 fight or stand up for themselves. From a more practical standpoint, I am worried
21 that according to their answer to our Interrogatory No. 211, TransCanada only
22 owns and operates one (1) major oil pipeline. They simply do not have the
23 experience with this type of pipeline and that scares me. There are others but that
24 is what I can recollect at this time and if I remember more or my recollection is
25 refreshed I will share those with the Commissioners at the Hearing in August.

26 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
27 **landowner is reasonable or just?**

28 A: No, I do not.

1 **Q: Do you have any concern about limitations that the construction of this**
2 **proposed pipeline across your affected land would prevent construction of**
3 **future structures upon the portion of your land affected by the proposed**
4 **easement and immediately surrounding areas?**

5 A: Well yes, of course I do. We would not be able to build many, if any, types of
6 structures directly across or touching the easement, and it would be unwise and I
7 would be uncomfortable to build anything near the easement for fear of being
8 blamed in the future should any damage or difficulty result on my property in
9 regards to the pipeline.

10 **Q: Do you think such a restriction would impact you economically?**

11 A: Well yes, of course.

12 **Q: How do you think such a restriction would impact you economically?**

13 A: The future of this land may not be exactly how it's being used as of this moment,
14 and having the restrictions and limiting my ability to develop my land in certain
15 ways presents a huge negative economic impact on myself, my family, and any
16 potential future owner of the property. You have no idea how I or the future owner
17 may want to use this land in the future or the other land across Nebraska
18 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
19 ago it would have been hard to imagine all the advances that we have now or how
20 things change. Because the Easement is forever and TransCanada gets the rights in
21 my land forever we have to think with a very long term view. By placing their
22 pipeline on under across and through my land that prevents future development
23 which greatly negatively impacts future taxes and tax revenue that could have
24 been generated by the County and State but now will not. When you look at the
25 short blip of economic activity that the two years of temporary construction efforts
26 may bring, that is far outweighed by the perpetual and forever loss of opportunity
27 and restrictions TransCanada is forcing upon us and Nebraska.

28 **Q: Do you have any concerns about the environmental impact of the proposed**
29 **pipeline?**

1 A: Yes, I do.

2 **Q: What are some of those concerns?**

3 A: As an affected land owner and Nebraskan, I am concerned that any construction,
4 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
5 a detrimental impact upon the environment of my land specifically, as well as the
6 lands near my land and surrounding the proposed pipeline route.

7 **Q: Do you have any other environmental concerns?**

8 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
9 construction and/or maintenance and operation. I am concerned about spills and
10 leaks that TransCanada has had in the past and will have in the future. This could
11 be catastrophic to my operations or others and to my county and the State.

12 **Q: Do you have any thoughts regarding if there would be an impact upon the
13 natural resources on or near your property due to the proposed pipeline?**

14 A: Yes, I believe that any construction, operation, and/or maintenance of the
15 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
16 resources of my land, and the lands near and surrounding the proposed pipeline
17 route.

18 **Q: Do you have any worries about potential impacts from the proposed pipeline
19 to the soil of your land, or land near you?**

20 A: Yes, I believe that any construction, operation, and/or maintenance of the
21 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
22 land, as well as land along and surrounding the proposed pipeline route. This
23 includes, but is not limited to, the reasons that we discussed above of disturbing
24 the soil composition and makeup as it has naturally existed for thousands and
25 millions of years during the construction process, and any future maintenance or
26 removal process. I'm gravely concerned about the fertility and the loss of
27 economic ability of my property to grow the crops, or grow the grasses, or grow
28 whatever it is at that time they exist on my property or that I may want to grow in
29 the future, or that a future owner may want to grow. The land will never be the

1 same from as it exists now undisturbed to after it is trenched up for the proposed
2 pipeline.

3 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
4 **upon the groundwater over your land, or surrounding lands?**

5 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
6 the proposed Keystone XL Pipeline would have a detrimental impact upon the
7 groundwater of not only under my land, but also near and surrounding the pipeline
8 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
9 simple and it is simply too valuable to our State and the country to put at
10 unreasonable risk.

11 **Q: Do you have any concern about the potential impact of the proposed pipeline**
12 **upon the surface water on, or near or around your land?**

13 A: Yes, I have significant concerns that any construction, operation, and/or
14 maintenance of the proposed Keystone XL Pipeline would have detrimental
15 impact upon the surface water of not only within my property boundary, but along
16 and near and surrounding the pipeline route, and in fact, across the state of
17 Nebraska.

18 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
19 **upon the wildlife and plants, other than your growing crops on or near your**
20 **land?**

21 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
22 the proposed Keystone XL Pipeline would have a detrimental impact upon the
23 wildlife and the plants, not only that are located on or can be found upon my land,
24 but also near and along the proposed pipeline route.

25 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
26 **fair market value of your land?**

27 A: Yes, I do. I am significantly concerned about how the existence of the proposed
28 pipeline underneath and across and through my property will negatively affect the
29 fair market value at any point in the future, especially at that point in which I

1 would need to sell the property, or someone in my family would need to sell the
2 property. I do not believe, and certainly would not be willing to pay, the same
3 price for land that had the pipeline located on it, versus land that did not. I hope
4 there is never a point where I'm in a position where I have to sell and have to
5 realize as much value as I can out of my land. But because it is my single largest
6 asset, I'm gravely concerned that the existence of the proposed Keystone XL
7 Pipeline upon my land will affect a buyer's willingness to pay as much as they
8 would've paid and as much as I could've received, if the pipeline were not upon
9 my property. There are just too many risks, unknowns, impacts and uncertainties,
10 not to mention all of the rights you give up by the nature of having the pipeline
11 due to having the easement that we have previously discussed, for any reasonable
12 person to think that the existence of the pipeline would not negatively affect my
13 property's value.

14 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
15 **testimony?**

16 A: Yes, I have.

17 **Q: Where have you seen that before?**

18 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
19 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
20 believe the portion of the alternative route in Nebraska essentially twins or
21 parallels Keystone I.

22 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
23 **Application, and as found on Attachment No. 7, here to your testimony, is in**
24 **the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe that the Keystone mainline alternative route as shown on**
27 **Attachment No. 7 included with your testimony here is a major oil pipeline**
28 **route that is in the public interest of Nebraska?**

29 A: No, I do not.

1 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
2 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

3 A: No, I do not.

4 **Q: Do you believe there is any potential route for the proposed Keystone XL**
5 **Pipeline across, within, under, or through the State of Nebraska that is in the**
6 **public interest of the citizens of Nebraska?**

7 A: No, I do not.

8 **Q: Why do you hold that belief?**

9 A: Because there simply is no public interest based on all of the factors that I am
10 aware and that I have read and that I have studied that this Commission is to
11 consider that would establish that a for-profit foreign-owned pipeline that simply
12 crosses Nebraska because we are geographically in the way between where tar
13 sands are in Canada to where it wants to ship it to in Texas could ever be in the
14 public interest of Nebraskans. We derive no benefit from this project. It is not for
15 public use. Nebraska is simply in the way and when all considerations are taken in
16 there is no net benefit of any kind for Nebraska should this project be placed in our
17 state. Even if there was some arguable “benefit” it is not enough to outweigh all
18 the negative impacts and concerns.

19 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
20 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
21 **of Nebraska because it may bring temporary jobs during the construction**
22 **phase to Nebraska?**

23 A: First of all, not all jobs are created equally. Most jobs that are created, whether
24 temporary or on a permanent basis, don’t come with a project that has all the
25 potential and foreseeable negative impacts, many of which we have discussed here
26 and other witnesses throughout the course of this hearing have and will discuss. If
27 I decide to hire and employ someone to help me out in my farming or ranching
28 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
29 to my land or my town or my county or my state. And I’ve hired someone who is

1 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
2 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
3 jobs are not created equal. Additionally, I understand from what I'm familiar with
4 from TransCanada's own statements that the jobs numbers they originally touted
5 were determined to be a minute fraction of the permanent jobs that had been
6 projected. According to their answer to our Interrogatory No. 191, TransCanada
7 has created only thirty-four (34) jobs within Nebraska working specifically on
8 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
9 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
10 Further, according to their answer to Interrogatory No. 199, TransCanada would
11 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
12 constructed on its Preferred Route or its Mainline Alternative Route.

13 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
14 **because it would cross your land?**

15 A: No, absolutely not. I am opposed to this project because it is not in the public
16 interest, neither within my community nor within our state.

17 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
18 **was to cross someone else's land?**

19 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
20 the fear and anxiety and potential foreseeable risks and negative impacts that this
21 type of a project carrying this type of product brings foisted upon anyone in this
22 state or any other state.

23 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
24 **Pipeline to cross the state of Nebraska?**

25 A: I don't believe there is an intelligent route because as I have stated I don't believe
26 this project anywhere within Nebraska is within the public interest. However, if
27 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
28 had to go somewhere in the state of Nebraska, the only intelligent route I believe
29 would be to twin or closely parallel the existing Keystone I Pipeline. Both the

1 preferred route and the mainline alternative routes are economic liabilities our
2 state cannot risk.

3 **Q: What do you rely upon to make that statement?**

4 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
5 already exists in that area is reason enough as it is not in our best interest or the
6 public interests to have more major oil pipelines crisscrossing our state. Second,
7 they have all the infrastructure already there in terms of relationships with the
8 counties and local officials and first responders along that route. Third, they have
9 already obtained easements from all the landowners along that route and have
10 relationships with them. Fourth, that route avoids our most sensitive soils, the
11 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
12 Aquifer. Sixth, they have already studied that route and previously offered it as an
13 alternative. Seventh, it just makes the most sense that as a state we would have
14 some intelligent policy of energy corridors and co-locating this type of
15 infrastructure near each other.

16 **Q: Do you have any other concerns you would like to reiterate or can think of at
17 this time you would like the Commissioners to understand?**

18 A: Yes. The pipeline still crosses the sand hills and the aquifer, which is Nebraska's
19 greatest resource. Millions of people rely on this good water and it would be a
20 great disaster if pollution occurred. The soil here is very sandy and once the top
21 soil and ground cover is disturbed you never get it back to natural. It will blow and
22 wash; we have fought blow-outs for years.

23 **Q: Have you fully expressed each and every opinion, concern, or fact you would
24 like the Public Service Commissioners to consider in their review of
25 TransCanada's Application?**

26 A: No, I have not. I have shared that which I can think of as of the date I signed this
27 document below but other things may come to me or my memory may be
28 refreshed and I will add and address those things at the time of the Hearing in
29 August and address any additional items at that time as is necessary. Additionally,

1 I have not had an adequate amount of time to receive and review all of
2 TransCanada's answers to our discovery and the discovery of others so it was
3 impossible to competently and completely react to that in my testimony here and I
4 reserve the right to also address anything related to discovery that has not yet
5 concluded as of the date I signed this document below. Lastly, certain documents
6 requested have not yet been produced by TransCanada and therefore I may have
7 additional thoughts on those I will also share at the hearing as needed.

8 **Q: Does Attachment No. 8 here contain other documents you are competent to**
9 **speak about that you wish to be part of your testimony and to discuss in more**
10 **detail as needed at the August 2017 Hearing?**

11 A: Yes.

12 **Q: What is it that you are requesting the Public Service Commissioners do in**
13 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
14 **across Nebraska?**

15 A: I am respectfully and humbly requesting that the Commissioners think far beyond
16 a temporary job spike that this project may bring to a few counties and beyond the
17 relatively small amount of taxes this proposed foreign pipeline would possibly
18 generate. And, instead think about the perpetual and forever impacts of this
19 pipeline as it would have on the landowners specifically, first and foremost, but
20 also thereby upon the entire state of Nebraska, and to determine that neither the
21 preferred route nor the Keystone mainline alternative route are in the public
22 interest of the citizens of the state of Nebraska. And if the Commissioners were
23 inclined to modify TransCanada's proposed routes and were to be inclined to grant
24 an application for a route in Nebraska, that the only potential route that would
25 make any intelligent sense whatsoever would be twinning or near paralleling of
26 the proposed KXL with the existing Keystone I pipeline. It simply does not make
27 sense to add yet another major oil pipeline crisscrossing our state creating new
28 pumping stations, creating new impacts on additional counties and communities
29 and going through all of the court processes with myself and other landowners like

1 me when this applicant already has relationships with the landowners, the towns
2 and the communities along Keystone I, and that Keystone I is firmly outside of the
3 sand hills and a significantly further portion away from the heart of the Ogallala
4 Aquifer than the preferred route or the Keystone mainline alternative route.

5 **Q: Are all of your statements in your testimony provided above true and**
6 **accurate as of the date you signed this document to the best of your**
7 **knowledge?**

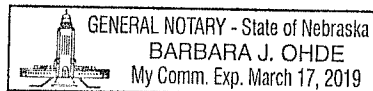
8 A: Yes, they are.

9 **Q: Thank you, I have no further questions at this time and reserve the right to**
10 **ask you additional questions at the August 2017 Hearing.**

Lonnie G Breiner
Lonnie Breiner

Subscribed and Sworn to me before this 30 day of May, 2017.

Barbara J. Ohde
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.



S.010
T.032N
R.015W

S.011
T.032N
R.015W

L. A. Breiner

S.015
T.032N
R.015W

S.014
T.032N
R.015W

S.013
T.032N
R.015W

L. A. Breiner

S.022
T.032N
R.015W

S.023
T.032N
R.015W

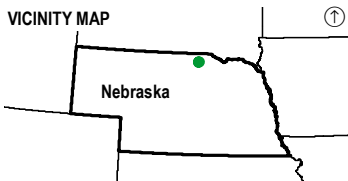
S.024
T.032N
R.015W

IMAGERY: NAIP 2016

0 250 500 1,000 1,500 Feet



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
L. A. Breiner

TRACT NO. ML-NE-HT-30100.000
STATE: Nebraska
COUNTY: Holt
SECTION: 014
TOWNSHIP: 032N
RANGE: 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Property Line
- Section Line

PREPARED BY
exp Energy Services Inc.

S.014
T.032N
R.015W

S.013
T.032N
R.015W

S.018
T.032N
R.014W

S.023
T.032N
R.015W

L. A. Breiner
Sandra Breiner

S.024
T.032N
R.015W

S.019
T.032N
R.014W

S.026
T.032N
R.015W

S.025
T.032N
R.015W

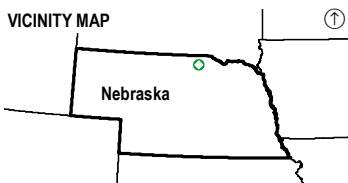
S.030
T.032N
R.014W

IMAGERY: NAIP 2016

0 250 500 1,000 1,500 Feet

 **TransCanada**
In business to deliver







VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY

L. A. Breiner
Sandra Breiner

TRACT NO. ML-NE-HT-30110.000
STATE: Nebraska
COUNTY: Holt
SECTION: 024
TOWNSHIP: 032N
RANGE: 015W

-  Proposed Centerline
-  Perm. Easement
-  Temp. Easement
-  Add. Temp. Worksp.
-  Access Road (Temp.)
-  Property Line

PREPARED BY
exp Energy Services Inc.

S.004
T.032N
R.015W

S.003
T.032N
R.015W

S.009
T.032N
R.015W

S.010
T.032N
R.015W

S.011
T.032N
R.015W

S.016
T.032N
R.015W

S.015
T.032N
R.015W

S.014
T.032N
R.015W

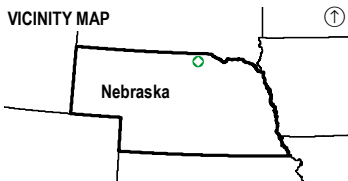
L. A. Breiner

IMAGE FROM NAIP 2016

0 250 500 1,000 1,500 Feet







 **TransCanada**
In business to deliver

VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
L. A. Breiner

TRACT NO. ML-NE-HT-40220.000
STATE: Nebraska
COUNTY: Holt
SECTION: 010
TOWNSHIP: 032N
RANGE: 015W

 Proposed Centerline
 Perm. Easement
 Temp. Easement
 Add. Temp. Worksp.
 Property Line
 Section Line

Attachment No. 2



Attachment No. 3

**Prepared by and after recording
please return to:**

TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-HT-30100.000
ML-NE-HT-30110.000
ML-NE-HT-40220.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **L. A. Breiner and Sandra K. Breiner, husband and wife**, whose mailing address is 47224 889th Road, Stuart, NE 68780 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline

Grantor's Initials _____

markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Holt, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 327.61 acres , more or less, situated in the County of Holt, in the State of Nebraska, being further described as All of Section 14, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 179, Page 195 in the Deed Records of Holt County , Nebraska.

Less and Except: An irregular tract of land located in Section 14, Township 32 North, Range 15 West of the 6th P.M., and Holt county , Nebraska, and more particularly described as follows : Beginning at the Southwest corner of said Section 14; thence N 88 59' 37" E (assumed bearing) on the South line of Section 14, a distance of 2363.46 feet; thence N 44 55' 46" W, a distance of 412.49 feet ; thence N 01 38' 36" E, a distance of 26.70 feet; thence N 44 17' 52" E, a distance of 395.70 feet to a non-tangential curve concave Westerly having a radius of 1449.62 feet; thence Northerly on said curve an arc distance of 2279.25 feet through an angle of 90 05' 14"; thence N 88 47' 12" E, a distance of 749.32 feet to a non-tangential curve concave Westerly having a radius of 1434.63 feet; thence Northerly on said curve an arc distance of 3371.96 feet through an angle of 134 40' 07" to the north line of said Section 14; thence S 88 54' 45" W, on said North line of Section 14, a distance of 2166.37 feet; thence S 01 00' 39" E, a distance of 1253.14 feet to a non-tangential curve concave Easterly having a radius of 1482.14 feet; thence Southerly on said curve an arc distance of 967.34 feet through an angle of 37 23' 42"; thence S 42 04' 17" E, a distance of 170.26 feet; thence N 89 49' 42" W, a distance of 511.66 feet; thence S 78 09' 16" W, a distance of 235.96 feet; thence S 63 51' 41" W, a distance of 365.24 feet; thence S 55 58' 59" W, a distance of 717.07 feet to the West line of said Section 14; thence S 00 57' 23" E on said West line of Section 14, a distance of 2421.51 feet to the point of beginning, of which the West 33 feet is occupied by a public road, referred to as (Survey Tract B), as recorded in Book 199, Page 9.

A tract of land containing 507.52 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 10, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 179, Page 195 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

Less and Except: An irregular tract of land located in Section 10, T32N, R15W of the 6th P.M., Holt County, Nebraska, described as follows: Beginning at the Southeast corner of said Section 10, thence S89° 26' 00" W (assumed bearing) on the south line of said Section 10, a distance of 2377.73 feet; thence N 45° 23' 53" W, a distance of 161.16 feet; thence N 35° 58' 23" W, a distance of 256.12 feet; thence N 16° 37' 13" W, a distance of 182.11 feet; thence N 01° 47' 23" W, a distance of 1117.67 feet; thence N 33° 18' 07" E, a distance of 120.12 feet; thence N 54° 19' 00" E, a distance of 1018.88 feet; thence N 70° 22' 41" E, a distance of 239.64 feet; thence N 80° 02' 11" E, a distance of 104.08 feet; thence N 89° 18' 05" E, a distance of 185.48 feet to a non-tangential curve concave southerly having a radius of 2224.95 feet; thence on said curve an arc distance of 561.99 feet through an angle of 14° 28' 20"; thence S 68° 25' 19" E, a distance of 371.44 feet; thence S 57° 26' 08" E, a distance of 167.84 feet; thence S 54° 15' 09" E, a distance of 319.07 feet to the east line of said Section 10; thence S 00° 51' 47" E on said east line of Section 10, a distance of 1856.88 feet to the point of beginning, of which the east 33 feet is occupied by a public, as recorded in Book 199, Page 9.

A tract of land containing 640 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 24, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 202, Page 501 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____, 20____.

GRANTOR(S):

L. A. Breiner

Sandra K. Breiner

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **L. A. Breiner**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Sandra K. Breiner**

Notary Public Signature

Affix Seal Here

Grantor's Initials _____

HOLT COUNTY, NEBRASKA

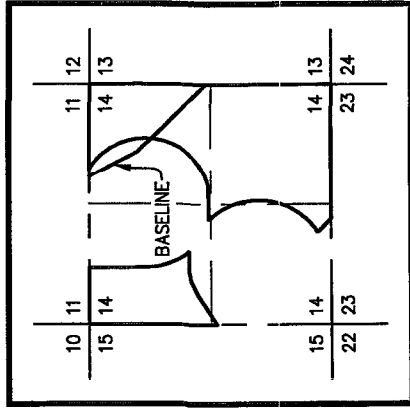
T-32-N, R-15-W, SECTION 14

ML-NE-HT-30100.000

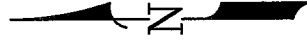
LEGEND

PROPERTY LINE
SECTION LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF HOLT COUNTY, NEBRASKA

PROP.
A.T.W.S.
P.E.R.W.
D.R.H.C.N.

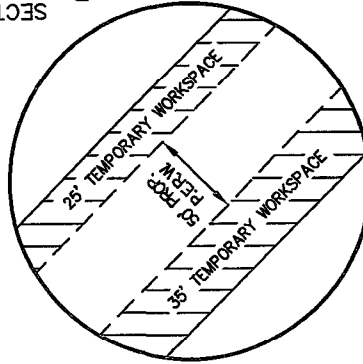
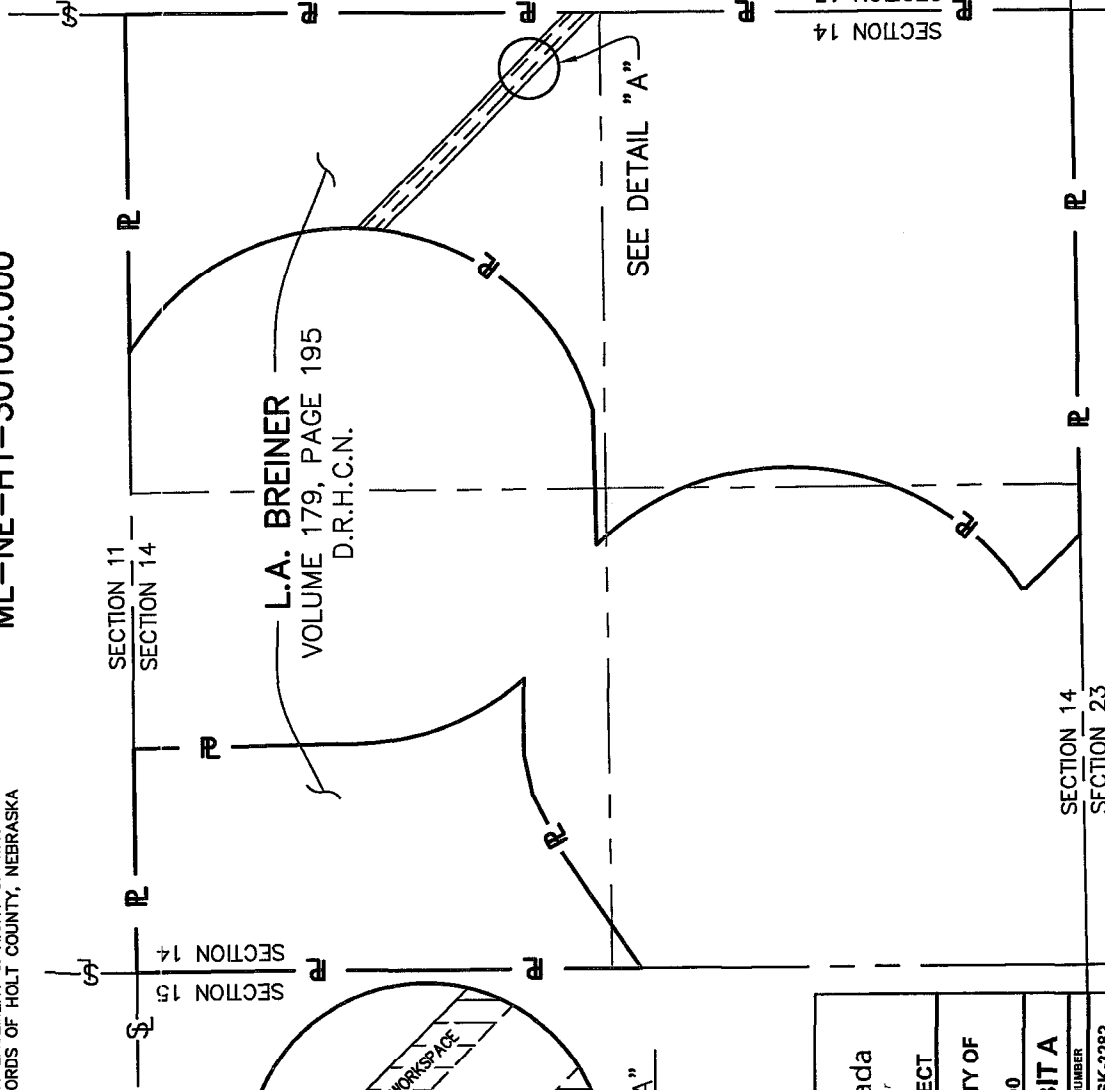


VICINITY MAP
N.T.S.



0 500 1000
SCALE: 1" = 1000'

TRACT LEGAL DESCRIPTION:
IRREGULAR TRACT IN SECTION 14,
T-32-N, R-15-W



DETAIL "A"
N.T.S.

NOTE:
THIS SKETCH DOES NOT MEET THE MINIMUM
STANDARDS FOR PROPERTY BOUNDARY SURVEYS.
IT WAS NOT DERIVED FROM AN ON THE GROUND
SURVEY BUT IS INTENDED FOR RIGHT OF WAY
PURPOSES ONLY. THE EXACT LOCATIONS AND
MEASUREMENTS ARE APPROXIMATE AND MAY VARY,
BUT THE WIDTH OF THE EASEMENT AREA TO BE
ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 1,664'±
AREA OF PERMANENT EASEMENT: 1.9 ACRES
AREA OF TEMPORARY WORKSPACE: 2.3 ACRES
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.0 ACRE



KEYSTONE XL PROJECT

EASEMENT AREA
ACROSS THE PROPERTY OF
L.A. BREINER

ML-NE-HT-30100.000

EXHIBIT A

APPROVED BY

SLR

NO.

REVISION

DATE

DATE

DRAWN BY

CHECKED BY

SCALE

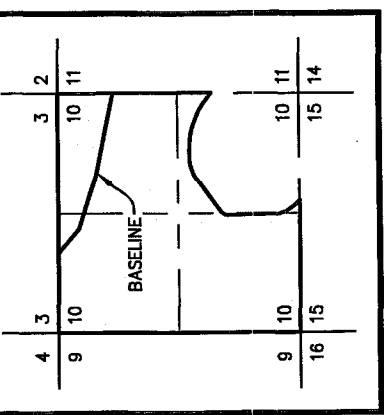
1" = 1000'



HOLT COUNTY, NEBRASKA

T-32-N, R-15-W, SECTION 10
ML-NE-HT-40220.000

LEGEND:
P PROPERTY LINE
S SECTION LINE
PROPOSED
TEMPORARY WORKSPACE
ADDITIONAL
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF HOLT COUNTY, NEBRASKA



VICINITY MAP
N.T.S.

L.A. BREINER
VOLUME 179, PAGE 195
D.R.H.C.N.

SEE DETAIL "A"


SEE DETAIL "B"



TRACT LEGAL DESCRIPTION:
N/2, SW/4, SE/4 EXCLUDING
APPROXIMATELY 133 ACRES OF
SECTION 10,
T-32-N, R-15-W

NOTE:
THIS SKETCH DOES NOT MEET THE MINIMUM
STANDARDS FOR PROPERTY BOUNDARY SURVEYS.
IT WAS NOT DERIVED FROM AN ON THE GROUND
SURVEY BUT IS INTENDED FOR RIGHT OF WAY
PURPOSES ONLY. THE EXACT LOCATIONS AND
MEASUREMENTS ARE APPROXIMATE AND MAY
VARY, BUT THE WIDTH OF THE EASEMENT AREA
TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 3.784'±
AREA OF PERMANENT EASEMENT: 4.4 ACRES
AREA OF TEMPORARY WORKSPACE: 5.3 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.5 ACRE

 TransCanada <i>in business to deliver</i>	
KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF L.A. BREINER ML-NE-HT-40220.000	
PROJECT:	XL EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3654
NO.	REVISION
DATE	DATE
SCALE	1" = 1000'
DATE	11/04/14
DRAWN BY	JN
CHECKED BY	ALS

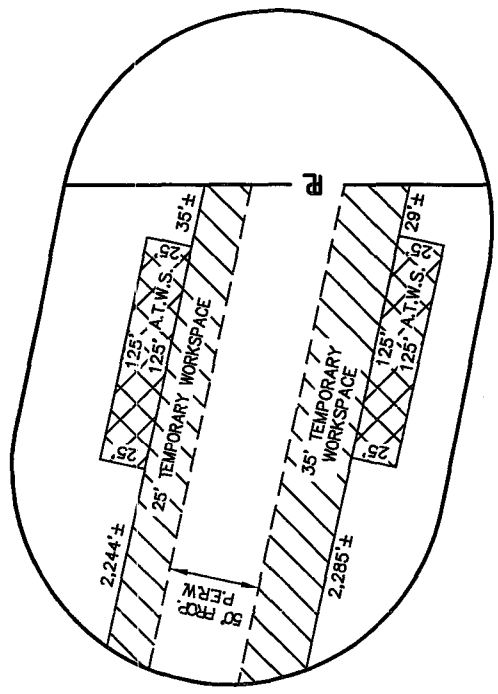
exp.
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HOLT COUNTY, NEBRASKA

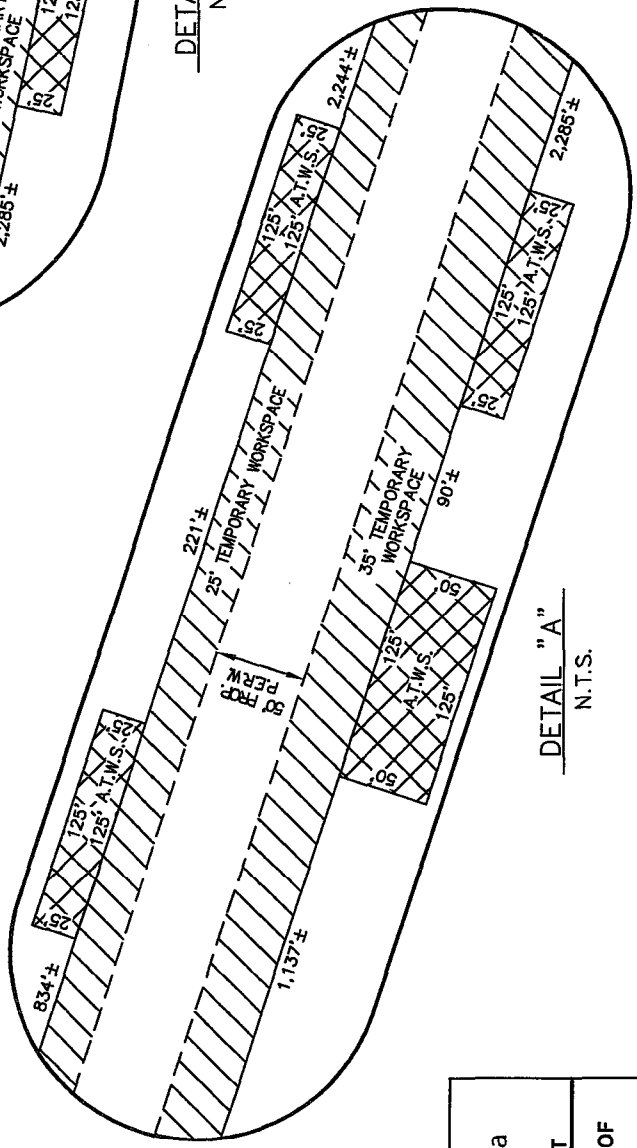
T-32-N, R-15-W, SECTION 10

ML-NE-HT-40220.000

LEGEND:
 P. PROPERTY LINE
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



DETAIL "B"
N.T.S.



DETAIL "A"
N.T.S.

TransCanada <i>In business to deliver</i>	
KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF L.A. BREINER ML-NE-HT-40220.000	
PROJECT:	EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3654
NO.	REVISION
	DATE
SCALE	DATE
N.T.S.	11/04/14
	DRAWN BY
	JN
	CHECKED BY
	ALS

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Plaintiff,

v.

RICHARD ANDREW, JANE ANDREW,
LUKE ANDREW, and BRYCE ANDREW,

Defendants.

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-40220.000

I/we L. A. Breiner and Sandra K. Breiner, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Four thousand Five Hundred Fifteen Dollars and No Cents (\$4,515.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

N/2, SW/4, Part of SE/4

Section 10, Township 32N, Range 15W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30110.000

I/we L.A. and Sandra K. Breiner, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Nine Hundred Sixty Four Dollars and No Cents (\$2,964.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

All

Section 24, Township 32N, Range 15W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30100.000

I/we L.A. and Sandra K. Breiner, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Ninety Two Dollars and No Cents (\$1,092.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

Irregular Tract

Section 14, Township 32N, Range 15W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of _____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6

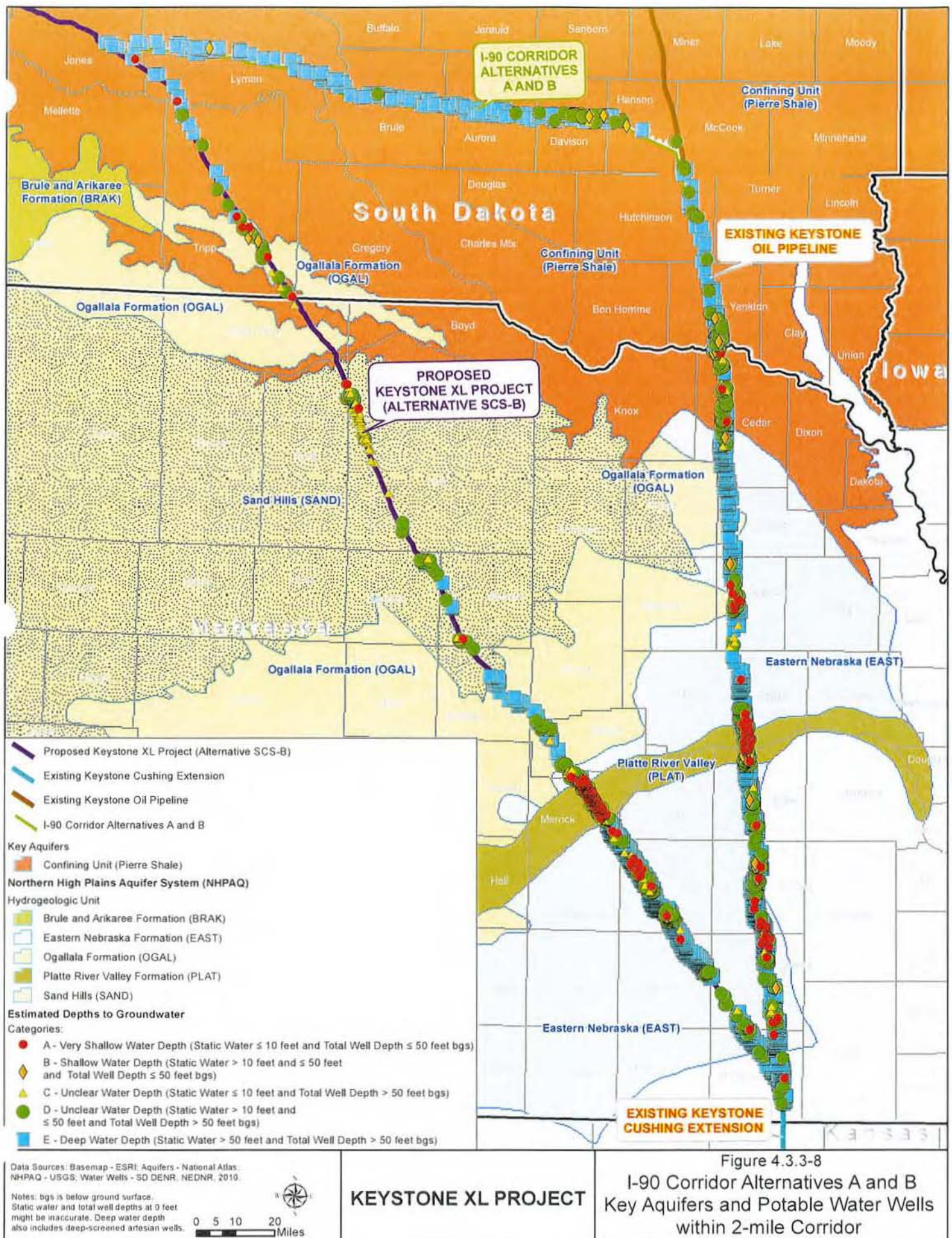


Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor

Attachment No. 7



VICINITY MAP



LEGEND

- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

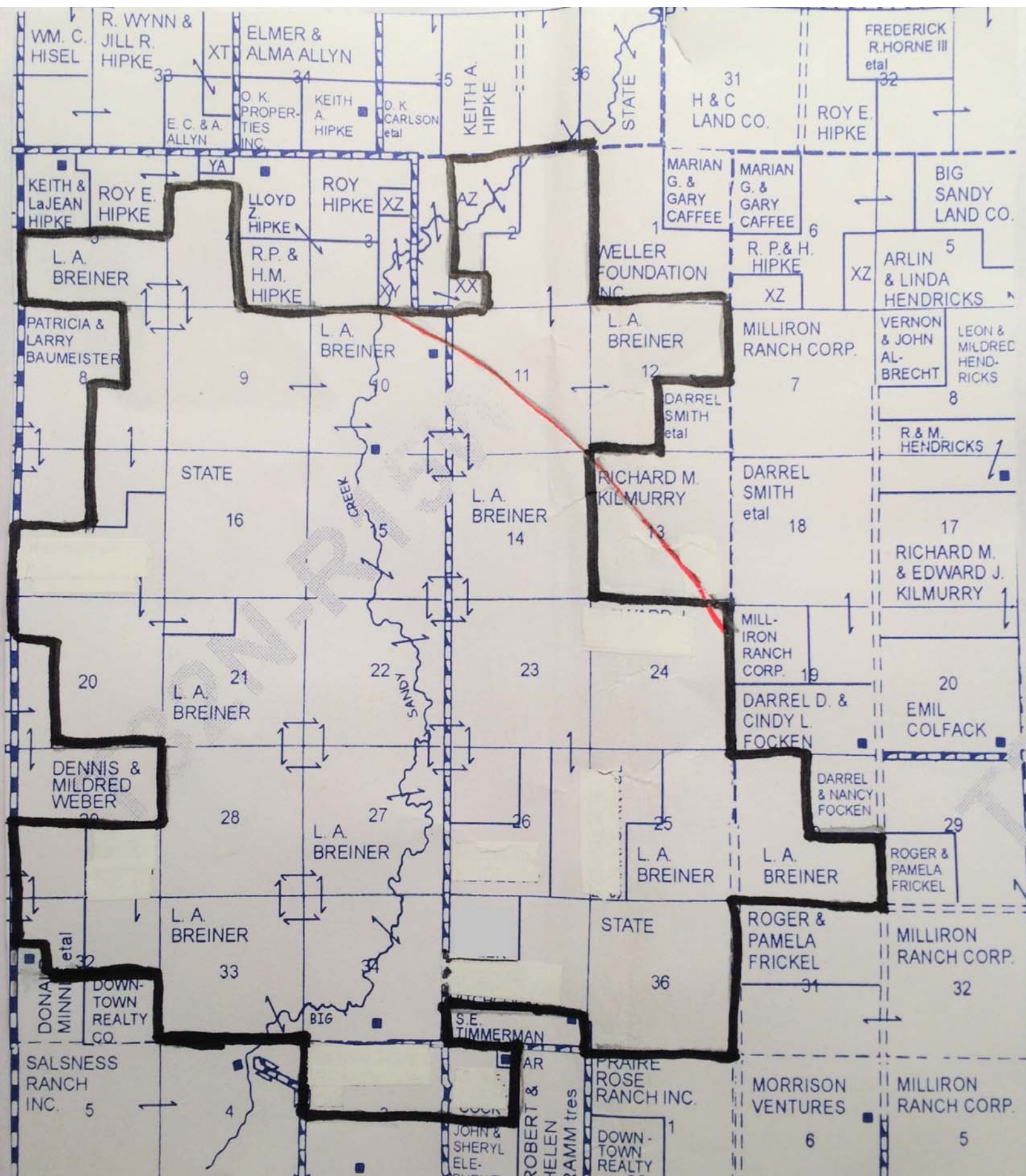
KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Attachment No. 8



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Sandra Breiner in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Sandra Breiner.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse’s name please?**

16 A: Lonnie “L.A.” Breiner.

1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A: Yes.

4 **Q: Do you earn any income from this land?**

5 A: Yes.

6 **Q: Have you depended on the income from your land to support your livelihood**
7 **or the livelihood of your family?**

8 A: Yes.

9 **Q: Have you ever in the past or have you thought about in the future leasing all**
10 **or a portion of your land in question here?**

11 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
12 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
13 all the restrictions and risks and potential negative impacts to farming or ranching
14 operations as opposed to land that did not have those same risks. If I was looking
15 to lease or rent ground I would pay more for comparable non-pipeline land than I
16 would for comparable pipeline land and I think most folks would think the same
17 way. This is another negative economic impact that affects the landowner and the
18 county and the state and will forever and ever should TransCanada's preferred or
19 mainline alternative routes be approved. If they were to twin or closely parallel to
20 Keystone I the vast majority of landowners would be those that already have a
21 pipeline so there would be considerable less new incremental negative impacts.

22 **Q: Do you have similar concerns about selling the land?**

23 A: Well I hope not to have to sell the land in my lifetime but times change and you
24 never know what is around the corner and yes I am concerned that if another piece
25 of ground similar to mine were for sale and it did not have the pipeline and mine
26 did that I would have a lower selling price. I think this would be true for pipeline
27 ground on both the preferred and mainline alternative routes.

28 **Q: What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
4 **Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Were you or an entity for which you are a member, shareholder, or director**
7 **previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
9 petition for condemnation against our land so it could place its proposed pipeline
10 within an easement that it wanted to take from us on our land.

11 **Q: Did you defend yourself and your land in that condemnation action?**

12 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
13 and expenses in our resistance of TransCanada's lawsuit against us.

14 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
15 **incurred?**

16 A: No, they have not.

17 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
18 **property that it wanted to take for its proposed pipeline?**

19 A: The lawsuit against us stated they would take the amount of property that is
20 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
21 and equipment reasonably necessary to operate the pipeline.

22 **Q: Did TransCanada define what they meant by "property that is reasonably**
23 **necessary"?**

24 A: No, they did not.

25 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
26 **property portion of your land?**

27 A: Yes, they did.

28 **Q: Did TransCanada describe what rights it proposed to take related to the**
29 **eminent domain property on your land?**

1 A: Yes, they did.

2 **Q: What rights that they proposed to take did they describe?**

3 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
4 operate, and maintain the pipeline and the plant and equipment reasonably
5 necessary to operate the pipeline, specifically including surveying, laying,
6 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
7 reconstructing, removing and abandoning one pipeline, together with all fittings,
8 cathodic protection equipment, pipeline markers, and all their equipment and
9 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
10 petroleum products, and all by-products thereof.”

11 **Q: Prior to filing an eminent domain lawsuit to take your land that**
12 **TransCanada identified, do you believe they attempted to negotiate in good**
13 **faith with you?**

14 A: No, I do not.

15 **Q: Did TransCanada at any time approach you with or deliver to you their**
16 **proposed easement and right-of-way agreement?**

17 A: Yes, they did.

18 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
19 **agreement, did you understand that they would be purchasing a fee title**
20 **interest in your property or that they were taking something else?**

21 A: I understood that they proposed to have the power to take both a temporary
22 construction easement that could last for a certain period of time and then also a
23 permanent easement which they described to be 50 feet across or in width, and
24 that would run the entire portion of my property from where a proposed pipeline
25 would enter my property until where it would exit the property.

26 **Q: Is the document included with your testimony here as Attachment No. 3, a**
27 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
28 **Way agreement that they included with their condemnation lawsuit against**
29 **you?**

1 A: Yes, it is.

2 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
3 **and Right-of-Way agreement?**

4 A: Yes, I have.

5 **Q: What is your understanding of the significance of the Easement and Right-of-**
6 **Way agreement as proposed by TransCanada?**

7 A: My understanding is that this is the document that will govern all of the rights and
8 obligations and duties as well as the limitations of what I can and cannot do and
9 how I and any future landowner and any person I invite to come onto my property
10 must behave as well as what TransCanada is and is not responsible for and how
11 they can use my land.

12 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
13 **agreement do you have any concerns about any portions of it or any of the**
14 **language either included in the document or missing from the proposed**
15 **document?**

16 A: Yes, I have a number of significant concerns and worries about the document and
17 how the language included and the language not included potentially negatively
18 impacts my land and thereby potentially negatively impacts my community and
19 my state.

20 **Q: I would like you to walk the Commissioners through each and every one of**
21 **your concerns about TransCanada's proposed Easement and Right-of-Way**
22 **agreement so they can develop an understanding of how that language and**
23 **the terms of that contract, in your opinion, potentially negatively impacts you**
24 **and your land. So, if you can start at the beginning of that document and**
25 **let's work our way through it, okay?**

26 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
27 Easement and Right-of-Way agreement and how it negatively could affect my
28 property rights and my economic interests.

29 **Q. Okay, let's start with your first concern please.**

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership..." and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
6 **percent clear on exactly who could become the owner of over 275 miles of**
7 **Nebraska land?**

8 A: No.

9 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
10 **percent clear on exactly who will be operating and responsible for**
11 **approximately 275 miles of tar sands pipeline underneath and through**
12 **Nebraska land?**

13 A: No.

14 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
15 **and the State of Nebraska of TransCanada's easement terms.**

16 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow their easement
18 to be transferred or sold to someone or some company or country or who knows
19 what that I don't know and who we may not want to do business with. This
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest
21 bidder that could have terrible impacts upon all of Nebraska depending upon who
22 may buy it and I don't know of any safeguards in place for us or the State to veto
23 or have any say so in who may own, operate, or be responsible for this pipeline in
24 the future.

25 **Q: Do you think that type of uncertainty and lack of control over a major piece**
26 **of infrastructure crossing our State is in the public interest?**

27 A: No, certainly not, in fact, just the opposite.

28 **Q: What's next?**

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
25 **right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

1 TransCanada who is subjecting the pipeline on the Landowner and who is making
2 a daily profit from that pipeline. When evaluating the impact on property rights of
3 this provision, you must consider the potentially extremely expensive fight a
4 Landowner would have over this question of whether or not damage was an act of
5 negligence. Putting this kind of potential liability upon the Landowner is
6 incredibly problematic and is detrimental to the protection of property rights. I
7 don't think this unilateral power which I can't do anything about as the landowner
8 is in the best economic interest of the land in question or the State of Nebraska for
9 landowners to be treated that way.

10 **Q: Is there any specific event or example you are aware of that makes this**
11 **concern more real for you?**

12 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
13 Nemaha County, Nebraska landowner farmers who accidentally struck two
14 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
15 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
16 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
17 copy of the Federal Court Complaint is here as **Attachment No. 4.**

18 **Q: What is your next concern with the Easement language?**

19 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
20 they choose unless 1) any Landowner use interferes in any way with
21 TransCanada's exercise of any of its rights within the Easement, or 2)
22 TransCanada decides to take any action on the property it deems necessary to
23 prevent injury, endangerment or interference with anything TransCanada deems
24 necessary to do on the property. Landowner is also forbidden from excavating
25 without prior authorization by TransCanada. So my understanding is that
26 TransCanada will unilaterally determine what Landowner can and can't do based
27 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
28 could also completely deny my request to excavate. Further, TransCanada retains
29 all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative the their property in
2 preparation or planning of TransCanada's taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at any time
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada's control. Some of these vague undefined terms are as follows:

- 27 i. "pipeline installation activities"
- 28 ii. "availability of labor and materials"
- 29 iii. "commercially reasonable costs and expenses"

- iv. “reasonably anticipated and foreseeable costs and expenses”
- v. “yield loss damages”
- vi. “diminution in the value of the property”
- vii. “substantially same condition”
- viii. “an actual or potential hazard”
- ix. “efficient”
- x. “convenient”
- xi. “endangered”
- xii. “obstructed”
- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

1 **Q: Do you have any other concerns about the Easement language that you can**
2 **think of at this time?**

3 A: I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q: Based upon what you have shared with the Commission above regarding**
6 **TransCanada's proposed Easement terms and agreement, do you believe**
7 **those to be reasonable or just, under the circumstances of the pipeline's**
8 **impact upon you and your land?**

9 A: No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q: Did TransCanada ever offer you financial compensation for the rights that**
12 **they sought to obtain in your land, and for what they sought to prevent you**
13 **and any future land owner of your property from doing in the future?**

14 A: Yes, we received an offer from them.

15 **Q: As the owner of the land in question and as the person who knows it better**
16 **than anyone else, do you believe that TransCanada offered you just, or fair,**
17 **compensation for all of what they proposed to take from you so that their tar**
18 **sands pipeline could be located across your property?**

19 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q: Has TransCanada at any time offered to compensate you annually, such as**
24 **wind farm projects do, for the existence of their potential tar sands pipeline**
25 **across your property.**

26 A: No, never.

27 **Q: At any time did TransCanada present you with or request that you, as the**
28 **owner of the land in question, sign and execute a document called, "Advanced**
29 **Release of Damage Claims and Indemnity Agreement?"**

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
3 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, it is.

5 **Q: What was your understanding of that document?**

6 A: When I read that document in the plain language of that document, it was my
7 understanding that TransCanada was attempting to pay me a very small amount at
8 that time in order for me to agree to give up my rights to be compensated from
9 them in the future related to any damage or impact they may have upon my
10 property “arising out of, in connection with, or alleged to resulted from
11 construction or surveying over, under or on” my land.

12 **Q: Did you ever sign that document?**

13 A: No, I did not.

14 **Q: Why not?**

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small
16 sum of money when I have no idea how bad the impacts or damages that they, or
17 their contractors, or subcontractors, or other agents or employees, may cause on
18 my land at any time in the future that resulted from the construction or surveying
19 or their activities upon my land.

20 **Q: When you reviewed this document, what did it make you feel?**

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
22 shield themselves against known and foreseeable impacts that their pipeline, and
23 the construction of it, would have upon my land. It made me feel that they knew it
24 was in their financial interest to pay me as little as possible to prevent me from
25 ever having the opportunity to seek fair compensation again, and that this must be
26 based upon their experience of unhappy landowners and situations in other places
27 where they have built pipelines.

1 **Q: Has TransCanada ever contacted you and specifically asked you if you**
2 **thought their proposed location of their proposed pipeline across your land**
3 **was in your best interest?**

4 A: No, they have not.

5 **Q: Has TransCanada ever contacted you and specifically asked you if you**
6 **thought their proposed location of their proposed pipeline across your land**
7 **was in the public interest of the State of Nebraska?**

8 A: No, they have not.

9 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
10 **Takings Clause?**

11 A: Yes, I am.

12 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
13 **an American citizens property?**

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 **Q: Has TransCanada ever contacted you specially to explain the way in which**
19 **the public could use its proposed Keystone XL Pipeline?**

20 A: No, they have not.

21 **Q: Can you think of any way in which the public, that is the citizens of the State**
22 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
23 **Pipeline, as it dissects the State of Nebraska?**

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
4 **crude petroleum, or oil and petroleum by-products that you would like to**
5 **ship in its pipeline?**

6 A: No, it has not.

7 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
8 **products that you, at this time or any time in the future, would desire to place**
9 **for transport within the proposed TransCanada Keystone XL Pipeline?**

10 A: No, I do not.

11 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
12 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
13 **products within the proposed TransCanada Keystone XL Pipeline?**

14 A: No, I do not. I've never heard of such a person or company like that.

15 **Q: Do you pay property taxes for the land that would be affected and impacted**
16 **at the proposed TransCanada Keystone XL Pipeline?**

17 A: Yes, I do.

18 **Q: Why do you pay property taxes on that land?**

19 A: Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q: Because you follow the law and pay property taxes, do you believe you**
22 **deserve any special consideration or treatment apart from any other person**
23 **or company that pays property taxes?**

24 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q: Do you believe the fact that you pay property taxes entitles you to special**
27 **treatment of any kind, or special rights of any kind?**

28 A: No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**
2 **enough to qualify you to have the power of eminent domain to take land of**
3 **your neighbors or other people in your county, or other people across the**
4 **state of Nebraska?**

5 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q: Have you at any time ever employed any person other than yourself?**

8 A: Well, yes I have.

9 **Q: Do you believe that the fact that you have, at some point in your life,**
10 **employed one or more other persons entitle you to any special treatment or**
11 **consideration above and beyond any other Nebraskan that has also employed**
12 **one or more persons?**

13 A: No, of course not.

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
15 **have at one point employed another person within this state, entitles you to**
16 **preferential treatment or consideration of any kind?**

17 A: No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q: At the beginning of your statement, you briefly described your property that**
20 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
21 **give the Commissioners a sense of specifically how you believe the proposed**
22 **Keystone XL Pipeline and its preferred route, which proposes to go across**
23 **your land, how it would in your opinion based on your knowledge,**
24 **experience, and background of your land, affect it. So please share with the**
25 **Commissioners the characteristics of your land that you believe is important**
26 **for them to understand, while they evaluate TransCanada's application for a**
27 **route for its proposed pipeline to cross Nebraska and across your land,**
28 **specifically.**

1 A: Our farms with electric irrigation systems have schedules of on and off time to
2 irrigate so what will happen when the pipeline uses a lot of our electricity? Also
3 our roads are not good enough for the large trucks and heavy equipment needed to
4 put the pipeline in. all the extra people will also tax our law enforcement people.
5 We don't need more temporary jobs, which it won't provide anyway; we just need
6 someone who will work – every paper is full of help wanted ads.

7 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
8 **crude oil pipeline in its preferred location, or ultimate location across the**
9 **state of Nebraska?**

10 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
11 or even bullied around and being made to feel scared that they did not have any
12 options but to sign whatever papers TransCanada told them they had to. I am
13 aware of folks being threatened that their land would be taken if they didn't follow
14 what TransCanada was saying. I am aware of tactics to get people to sign
15 easements that I don't believe have any place in Nebraska or anywhere such as
16 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
17 landowners and convince them they should sign TransCanada's easement
18 agreements. I am aware of older folks and widows or widowers feeling they had
19 no choice but to sign TransCanada's Easement and they didn't know they could
20 fight or stand up for themselves. From a more practical standpoint, I am worried
21 that according to their answer to our Interrogatory No. 211, TransCanada only
22 owns and operates one (1) major oil pipeline. They simply do not have the
23 experience with this type of pipeline and that scares me. There are others but that
24 is what I can recollect at this time and if I remember more or my recollection is
25 refreshed I will share those with the Commissioners at the Hearing in August.

26 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
27 **landowner is reasonable or just?**

28 A: No, I do not.

1 **Q: Do you have any concern about limitations that the construction of this**
2 **proposed pipeline across your affected land would prevent construction of**
3 **future structures upon the portion of your land affected by the proposed**
4 **easement and immediately surrounding areas?**

5 A: Well yes, of course I do. We would not be able to build many, if any, types of
6 structures directly across or touching the easement, and it would be unwise and I
7 would be uncomfortable to build anything near the easement for fear of being
8 blamed in the future should any damage or difficulty result on my property in
9 regards to the pipeline.

10 **Q: Do you think such a restriction would impact you economically?**

11 A: Well yes, of course.

12 **Q: How do you think such a restriction would impact you economically?**

13 A: The future of this land may not be exactly how it's being used as of this moment,
14 and having the restrictions and limiting my ability to develop my land in certain
15 ways presents a huge negative economic impact on myself, my family, and any
16 potential future owner of the property. You have no idea how I or the future owner
17 may want to use this land in the future or the other land across Nebraska
18 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
19 ago it would have been hard to imagine all the advances that we have now or how
20 things change. Because the Easement is forever and TransCanada gets the rights in
21 my land forever we have to think with a very long term view. By placing their
22 pipeline on under across and through my land that prevents future development
23 which greatly negatively impacts future taxes and tax revenue that could have
24 been generated by the County and State but now will not. When you look at the
25 short blip of economic activity that the two years of temporary construction efforts
26 may bring, that is far outweighed by the perpetual and forever loss of opportunity
27 and restrictions TransCanada is forcing upon us and Nebraska.

28 **Q: Do you have any concerns about the environmental impact of the proposed**
29 **pipeline?**

1 A: Yes, I do.

2 **Q: What are some of those concerns?**

3 A: As an affected land owner and Nebraskan, I am concerned that any construction,
4 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
5 a detrimental impact upon the environment of my land specifically, as well as the
6 lands near my land and surrounding the proposed pipeline route.

7 **Q: Do you have any other environmental concerns?**

8 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
9 construction and/or maintenance and operation. I am concerned about spills and
10 leaks that TransCanada has had in the past and will have in the future. This could
11 be catastrophic to my operations or others and to my county and the State.

12 **Q: Do you have any thoughts regarding if there would be an impact upon the**
13 **natural resources on or near your property due to the proposed pipeline?**

14 A: Yes, I believe that any construction, operation, and/or maintenance of the
15 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
16 resources of my land, and the lands near and surrounding the proposed pipeline
17 route.

18 **Q: Do you have any worries about potential impacts from the proposed pipeline**
19 **to the soil of your land, or land near you?**

20 A: Yes, I believe that any construction, operation, and/or maintenance of the
21 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
22 land, as well as land along and surrounding the proposed pipeline route. This
23 includes, but is not limited to, the reasons that we discussed above of disturbing
24 the soil composition and makeup as it has naturally existed for thousands and
25 millions of years during the construction process, and any future maintenance or
26 removal process. I'm gravely concerned about the fertility and the loss of
27 economic ability of my property to grow the crops, or grow the grasses, or grow
28 whatever it is at that time they exist on my property or that I may want to grow in
29 the future, or that a future owner may want to grow. The land will never be the

1 same from as it exists now undisturbed to after it is trenched up for the proposed
2 pipeline.

3 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
4 **upon the groundwater over your land, or surrounding lands?**

5 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
6 the proposed Keystone XL Pipeline would have a detrimental impact upon the
7 groundwater of not only under my land, but also near and surrounding the pipeline
8 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
9 simple and it is simply too valuable to our State and the country to put at
10 unreasonable risk.

11 **Q: Do you have any concern about the potential impact of the proposed pipeline**
12 **upon the surface water on, or near or around your land?**

13 A: Yes, I have significant concerns that any construction, operation, and/or
14 maintenance of the proposed Keystone XL Pipeline would have detrimental
15 impact upon the surface water of not only within my property boundary, but along
16 and near and surrounding the pipeline route, and in fact, across the state of
17 Nebraska.

18 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
19 **upon the wildlife and plants, other than your growing crops on or near your**
20 **land?**

21 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
22 the proposed Keystone XL Pipeline would have a detrimental impact upon the
23 wildlife and the plants, not only that are located on or can be found upon my land,
24 but also near and along the proposed pipeline route.

25 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
26 **fair market value of your land?**

27 A: Yes, I do. I am significantly concerned about how the existence of the proposed
28 pipeline underneath and across and through my property will negatively affect the
29 fair market value at any point in the future, especially at that point in which I

1 would need to sell the property, or someone in my family would need to sell the
2 property. I do not believe, and certainly would not be willing to pay, the same
3 price for land that had the pipeline located on it, versus land that did not. I hope
4 there is never a point where I'm in a position where I have to sell and have to
5 realize as much value as I can out of my land. But because it is my single largest
6 asset, I'm gravely concerned that the existence of the proposed Keystone XL
7 Pipeline upon my land will affect a buyer's willingness to pay as much as they
8 would've paid and as much as I could've received, if the pipeline were not upon
9 my property. There are just too many risks, unknowns, impacts and uncertainties,
10 not to mention all of the rights you give up by the nature of having the pipeline
11 due to having the easement that we have previously discussed, for any reasonable
12 person to think that the existence of the pipeline would not negatively affect my
13 property's value.

14 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
15 **testimony?**

16 A: Yes, I have.

17 **Q: Where have you seen that before?**

18 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
19 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
20 believe the portion of the alternative route in Nebraska essentially twins or
21 parallels Keystone I.

22 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
23 **Application, and as found on Attachment No. 7, here to your testimony, is in**
24 **the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe that the Keystone mainline alternative route as shown on**
27 **Attachment No. 7 included with your testimony here is a major oil pipeline**
28 **route that is in the public interest of Nebraska?**

29 A: No, I do not.

1 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
2 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

3 A: No, I do not.

4 **Q: Do you believe there is any potential route for the proposed Keystone XL**
5 **Pipeline across, within, under, or through the State of Nebraska that is in the**
6 **public interest of the citizens of Nebraska?**

7 A: No, I do not.

8 **Q: Why do you hold that belief?**

9 A: Because there simply is no public interest based on all of the factors that I am
10 aware and that I have read and that I have studied that this Commission is to
11 consider that would establish that a for-profit foreign-owned pipeline that simply
12 crosses Nebraska because we are geographically in the way between where tar
13 sands are in Canada to where it wants to ship it to in Texas could ever be in the
14 public interest of Nebraskans. We derive no benefit from this project. It is not for
15 public use. Nebraska is simply in the way and when all considerations are taken in
16 there is no net benefit of any kind for Nebraska should this project be placed in our
17 state. Even if there was some arguable “benefit” it is not enough to outweigh all
18 the negative impacts and concerns.

19 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
20 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
21 **of Nebraska because it may bring temporary jobs during the construction**
22 **phase to Nebraska?**

23 A: First of all, not all jobs are created equally. Most jobs that are created, whether
24 temporary or on a permanent basis, don’t come with a project that has all the
25 potential and foreseeable negative impacts, many of which we have discussed here
26 and other witnesses throughout the course of this hearing have and will discuss. If
27 I decide to hire and employ someone to help me out in my farming or ranching
28 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
29 to my land or my town or my county or my state. And I’ve hired someone who is

1 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
2 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
3 jobs are not created equal. Additionally, I understand from what I'm familiar with
4 from TransCanada's own statements that the jobs numbers they originally touted
5 were determined to be a minute fraction of the permanent jobs that had been
6 projected. According to their answer to our Interrogatory No. 191, TransCanada
7 has created only thirty-four (34) jobs within Nebraska working specifically on
8 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
9 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
10 Further, according to their answer to Interrogatory No. 199, TransCanada would
11 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
12 constructed on its Preferred Route or its Mainline Alternative Route.

13 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
14 **because it would cross your land?**

15 A: No, absolutely not. I am opposed to this project because it is not in the public
16 interest, neither within my community nor within our state.

17 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
18 **was to cross someone else's land?**

19 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
20 the fear and anxiety and potential foreseeable risks and negative impacts that this
21 type of a project carrying this type of product brings foisted upon anyone in this
22 state or any other state.

23 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
24 **Pipeline to cross the state of Nebraska?**

25 A: I don't believe there is an intelligent route because as I have stated I don't believe
26 this project anywhere within Nebraska is within the public interest. However, if
27 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
28 had to go somewhere in the state of Nebraska, the only intelligent route I believe
29 would be to twin or closely parallel the existing Keystone I Pipeline. Both the

1 preferred route and the mainline alternative routes are economic liabilities our
2 state cannot risk.

3 **Q: What do you rely upon to make that statement?**

4 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
5 already exists in that area is reason enough as it is not in our best interest or the
6 public interests to have more major oil pipelines crisscrossing our state. Second,
7 they have all the infrastructure already there in terms of relationships with the
8 counties and local officials and first responders along that route. Third, they have
9 already obtained easements from all the landowners along that route and have
10 relationships with them. Fourth, that route avoids our most sensitive soils, the
11 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
12 Aquifer. Sixth, they have already studied that route and previously offered it as an
13 alternative. Seventh, it just makes the most sense that as a state we would have
14 some intelligent policy of energy corridors and co-locating this type of
15 infrastructure near each other.

16 **Q: Do you have any other concerns you would like to reiterate or can think of at
17 this time you would like the Commissioners to understand?**

18 A: Yes. The pipeline still crosses the sand hills and the aquifer, which is Nebraska's
19 greatest resource. Millions of people rely on this good water and it would be a
20 great disaster if pollution occurred. The soil here is very sandy and once the top
21 soil and ground cover is disturbed you never get it back to natural. It will blow and
22 wash; we have fought blow-outs for years.

23 **Q: Have you fully expressed each and every opinion, concern, or fact you would
24 like the Public Service Commissioners to consider in their review of
25 TransCanada's Application?**

26 A: No, I have not. I have shared that which I can think of as of the date I signed this
27 document below but other things may come to me or my memory may be
28 refreshed and I will add and address those things at the time of the Hearing in
29 August and address any additional items at that time as is necessary. Additionally,

1 I have not had an adequate amount of time to receive and review all of
2 TransCanada's answers to our discovery and the discovery of others so it was
3 impossible to competently and completely react to that in my testimony here and I
4 reserve the right to also address anything related to discovery that has not yet
5 concluded as of the date I signed this document below. Lastly, certain documents
6 requested have not yet been produced by TransCanada and therefore I may have
7 additional thoughts on those I will also share at the hearing as needed.

8 **Q: Does Attachment No. 8 here contain other documents you are competent to**
9 **speak about that you wish to be part of your testimony and to discuss in more**
10 **detail as needed at the August 2017 Hearing?**

11 A: Yes.

12 **Q: What is it that you are requesting the Public Service Commissioners do in**
13 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
14 **across Nebraska?**

15 A: I am respectfully and humbly requesting that the Commissioners think far beyond
16 a temporary job spike that this project may bring to a few counties and beyond the
17 relatively small amount of taxes this proposed foreign pipeline would possibly
18 generate. And, instead think about the perpetual and forever impacts of this
19 pipeline as it would have on the landowners specifically, first and foremost, but
20 also thereby upon the entire state of Nebraska, and to determine that neither the
21 preferred route nor the Keystone mainline alternative route are in the public
22 interest of the citizens of the state of Nebraska. And if the Commissioners were
23 inclined to modify TransCanada's proposed routes and were to be inclined to grant
24 an application for a route in Nebraska, that the only potential route that would
25 make any intelligent sense whatsoever would be twinning or near paralleling of
26 the proposed KXL with the existing Keystone I pipeline. It simply does not make
27 sense to add yet another major oil pipeline crisscrossing our state creating new
28 pumping stations, creating new impacts on additional counties and communities
29 and going through all of the court processes with myself and other landowners like

1 me when this applicant already has relationships with the landowners, the towns
2 and the communities along Keystone I, and that Keystone I is firmly outside of the
3 sand hills and a significantly further portion away from the heart of the Ogallala
4 Aquifer than the preferred route or the Keystone mainline alternative route.

5 **Q: Are all of your statements in your testimony provided above true and**
6 **accurate as of the date you signed this document to the best of your**
7 **knowledge?**

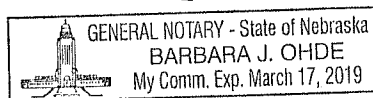
8 A: Yes, they are.

9 **Q: Thank you, I have no further questions at this time and reserve the right to**
10 **ask you additional questions at the August 2017 Hearing.**

Sandra Breiner
Sandra Breiner

Subscribed and Sworn to me before this 30 day of May, 2017.

Barbara J. Ohde
Notary Public



Attachment No. 1



S.010
T.032N
R.015W

S.011
T.032N
R.015W

L. A. Breiner

S.015
T.032N
R.015W

S.014
T.032N
R.015W

S.013
T.032N
R.015W

L. A. Breiner

S.022
T.032N
R.015W

S.023
T.032N
R.015W

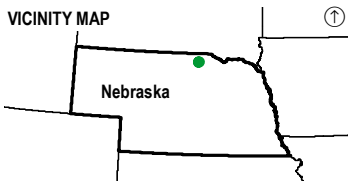
S.024
T.032N
R.015W

IMAGERY: NAIP 2016

0 250 500 1,000 1,500 Feet



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
L. A. Breiner

TRACT NO. ML-NE-HT-30100.000
STATE: Nebraska
COUNTY: Holt
SECTION: 014
TOWNSHIP: 032N
RANGE: 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Property Line
- Section Line

PREPARED BY
exp Energy Services Inc.

S.014
T.032N
R.015W

S.013
T.032N
R.015W

S.018
T.032N
R.014W

S.023
T.032N
R.015W

L. A. Breiner
Sandra Breiner

S.024
T.032N
R.015W

S.019
T.032N
R.014W

S.026
T.032N
R.015W

S.025
T.032N
R.015W

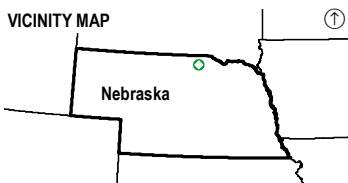
S.030
T.032N
R.014W

IMAGERY: NAIP 2016

0 250 500 1,000 1,500 Feet

 **TransCanada**
In business to deliver







VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY

L. A. Breiner
Sandra Breiner

TRACT NO. ML-NE-HT-30110.000
STATE: Nebraska
COUNTY: Holt
SECTION: 024
TOWNSHIP: 032N
RANGE: 015W

-  Proposed Centerline
-  Perm. Easement
-  Temp. Easement
-  Add. Temp. Worksp.
-  Access Road (Temp.)
-  Property Line

PREPARED BY
exp Energy Services Inc.

S.004
T.032N
R.015W

S.003
T.032N
R.015W

S.009
T.032N
R.015W

S.010
T.032N
R.015W

S.011
T.032N
R.015W

S.016
T.032N
R.015W
IMAGERY: NAIP 2016

S.015
T.032N
R.015W

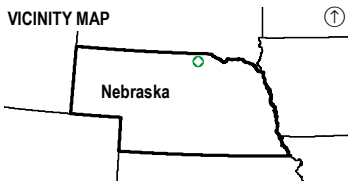
S.014
T.032N
R.015W

L. A. Breiner

0 250 500 1,000 1,500 Feet







 **TransCanada**
In business to deliver

VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
L. A. Breiner

TRACT NO. ML-NE-HT-40220.000
STATE: Nebraska
COUNTY: Holt
SECTION: 010
TOWNSHIP: 032N
RANGE: 015W

 Proposed Centerline
 Perm. Easement
 Temp. Easement
 Add. Temp. Worksp.
 Property Line
 Section Line

Attachment No. 2



Attachment No. 3

**Prepared by and after recording
please return to:**

TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-HT-30100.000
ML-NE-HT-30110.000
ML-NE-HT-40220.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **L. A. Breiner and Sandra K. Breiner, husband and wife**, whose mailing address is 47224 889th Road, Stuart, NE 68780 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline

Grantor's Initials _____

markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Holt, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 327.61 acres , more or less, situated in the County of Holt, in the State of Nebraska, being further described as All of Section 14, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 179, Page 195 in the Deed Records of Holt County , Nebraska.

Less and Except: An irregular tract of land located in Section 14, Township 32 North, Range 15 West of the 6th P.M., and Holt county , Nebraska, and more particularly described as follows : Beginning at the Southwest corner of said Section 14; thence N 88 59' 37" E (assumed bearing) on the South line of Section 14, a distance of 2363.46 feet; thence N 44 55' 46" W, a distance of 412.49 feet ; thence N 01 38' 36" E, a distance of 26.70 feet; thence N 44 17' 52" E, a distance of 395.70 feet to a non-tangential curve concave Westerly having a radius of 1449.62 feet; thence Northerly on said curve an arc distance of 2279.25 feet through an angle of 90 05' 14"; thence N 88 47' 12" E, a distance of 749.32 feet to a non-tangential curve concave Westerly having a radius of 1434.63 feet; thence Northerly on said curve an arc distance of 3371.96 feet through an angle of 134 40' 07" to the north line of said Section 14; thence S 88 54' 45" W, on said North line of Section 14, a distance of 2166.37 feet; thence S 01 00' 39" E, a distance of 1253.14 feet to a non-tangential curve concave Easterly having a radius of 1482.14 feet; thence Southerly on said curve an arc distance of 967.34 feet through an angle of 37 23' 42"; thence S 42 04' 17" E, a distance of 170.26 feet; thence N 89 49' 42" W, a distance of 511.66 feet; thence S 78 09' 16" W, a distance of 235.96 feet; thence S 63 51' 41" W, a distance of 365.24 feet; thence S 55 58' 59" W, a distance of 717.07 feet to the West line of said Section 14; thence S 00 57' 23" E on said West line of Section 14, a distance of 2421.51 feet to the point of beginning, of which the West 33 feet is occupied by a public road, referred to as (Survey Tract B), as recorded in Book 199, Page 9.

A tract of land containing 507.52 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 10, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 179, Page 195 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

Less and Except: An irregular tract of land located in Section 10, T32N, R15W of the 6th P.M., Holt County, Nebraska, described as follows: Beginning at the Southeast corner of said Section 10, thence S89° 26' 00" W (assumed bearing) on the south line of said Section 10, a distance of 2377.73 feet; thence N 45° 23' 53" W, a distance of 161.16 feet; thence N 35° 58' 23" W, a distance of 256.12 feet; thence N 16° 37' 13" W, a distance of 182.11 feet; thence N 01° 47' 23" W, a distance of 1117.67 feet; thence N 33° 18' 07" E, a distance of 120.12 feet; thence N 54° 19' 00" E, a distance of 1018.88 feet; thence N 70° 22' 41" E, a distance of 239.64 feet; thence N 80° 02' 11" E, a distance of 104.08 feet; thence N 89° 18' 05" E, a distance of 185.48 feet to a non-tangential curve concave southerly having a radius of 2224.95 feet; thence on said curve an arc distance of 561.99 feet through an angle of 14° 28' 20"; thence S 68° 25' 19" E, a distance of 371.44 feet; thence S 57° 26' 08" E, a distance of 167.84 feet; thence S 54° 15' 09" E, a distance of 319.07 feet to the east line of said Section 10; thence S 00° 51' 47" E on said east line of Section 10, a distance of 1856.88 feet to the point of beginning, of which the east 33 feet is occupied by a public, as recorded in Book 199, Page 9.

A tract of land containing 640 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 24, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 202, Page 501 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____, 20____.

GRANTOR(S):

L. A. Breiner

Sandra K. Breiner

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **L. A. Breiner**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Sandra K. Breiner**

Notary Public Signature

Affix Seal Here

Grantor's Initials _____

HOLT COUNTY, NEBRASKA

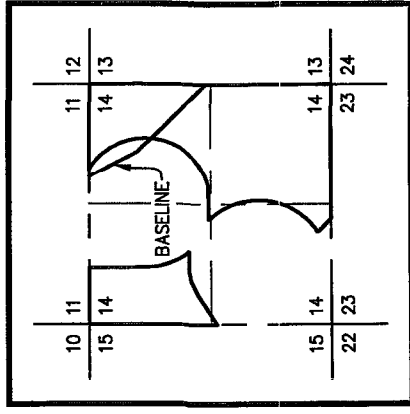
T-32-N, R-15-W, SECTION 14

ML-NE-HT-30100.000

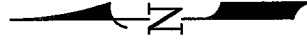
LEGEND

PROPERTY LINE
SECTION LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF HOLT COUNTY, NEBRASKA

PROP.
A.T.W.S.
P.E.R.W.
D.R.H.C.N.

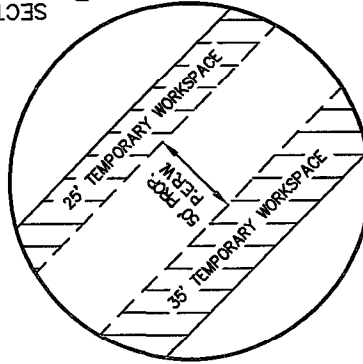
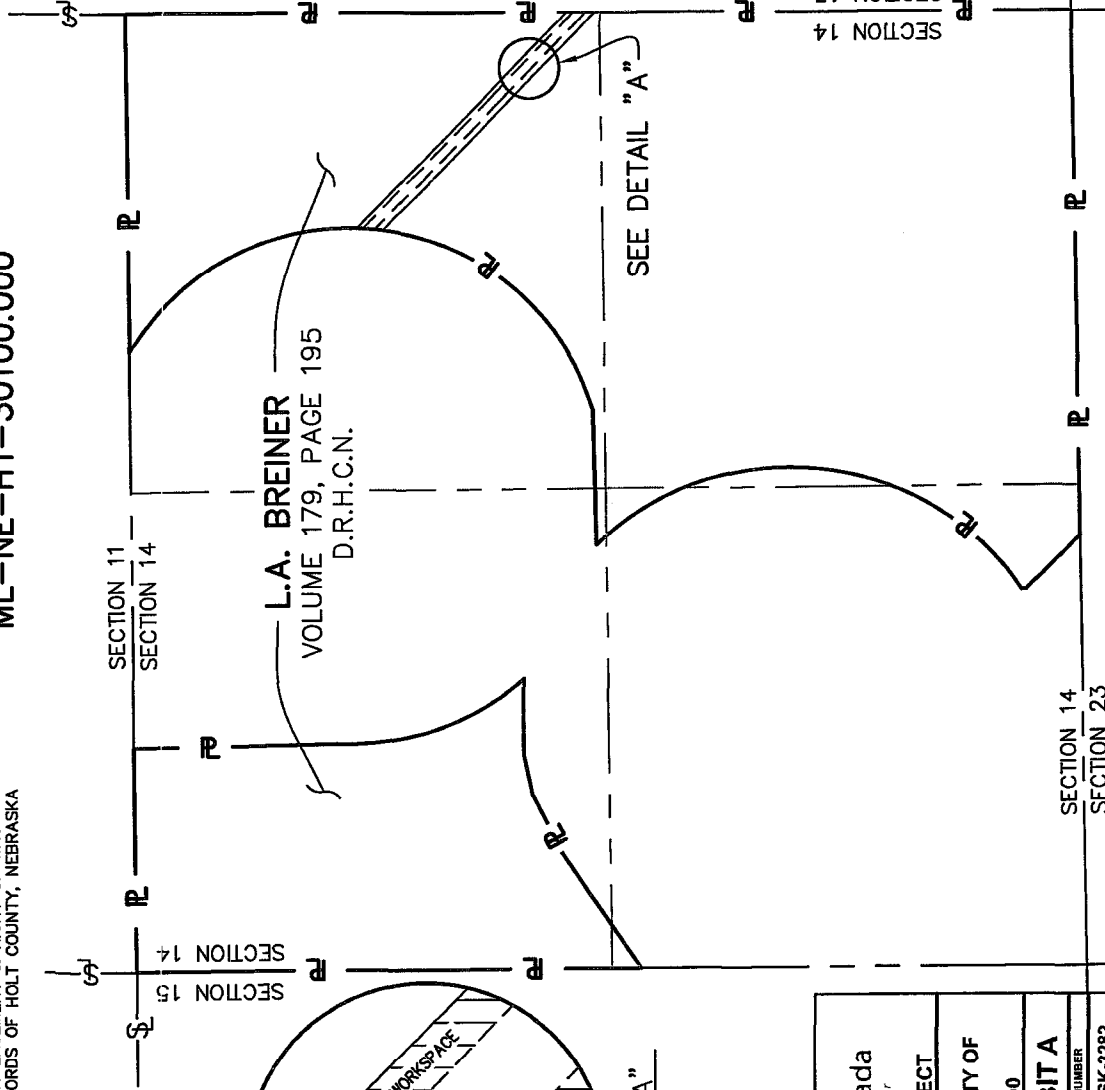


VICINITY MAP
N.T.S.



0 500 1000
SCALE: 1" = 1000'

TRACT LEGAL DESCRIPTION:
IRREGULAR TRACT IN SECTION 14,
T-32-N, R-15-W



DETAIL "A"
N.T.S.

NOTE:
THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 1,664'±
AREA OF PERMANENT EASEMENT: 1.9 ACRES
AREA OF TEMPORARY WORKSPACE: 2.3 ACRES
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.0 ACRE



KEYSTONE XL PROJECT

EASEMENT AREA
ACROSS THE PROPERTY OF
L.A. BREINER
ML-NE-HT-30100.000

PROJECT: XL EXHIBIT A

APPROVED BY: DRAWING NUMBER

SLR XL-08-ML-SK-3282

NO. REVISION DATE

SCALE: 1" = 1000'

DATE: 11/10/14

DRAWN BY: JN

CHECKED BY: ALS



T-32-N, R-15-W, SECTION 24
ML-NE-HT-30110.000

PROPERTY LINE
SECTION LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF HOLT COUNTY, NEBRASKA

L.A. BREINER AND
SANDRA K. BREINER
VOLUME 202, PAGE 501
D.R.H.C.N.

-SEE DETAIL "A"

SECTION 24
SECTION 19

R-15-W
R-14-W

SECTION 23



TransCanada
In business to deliver

KEYSTONE XL PROJECT

EASEMENT AREA

CROSS THE PROPERTY OF

L.A. BREINER AND
CANDRA K. BREINER

SANDRA K. BREINER
MI -NE-HT-30110 000

ME-NE-111 00110:030

XL	EXHIBIT A
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APPROVED BY	DRAWING NUMBER
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LR	XL-08-ML-SK-3658
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REVISION	DATE
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[illegible]

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[illegible]

DATE	DATE	DRAWN BY	CHECKED
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0000'	10/27/14	JN	ALSO
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NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY. THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 4,434'±
 AREA OF PERMANENT EASEMENT: 5.1 ACRES
 AREA OF TEMPORARY WORKSPACE: 6.2 ACRES
 ADDITIONAL TEMPORARY WORKSPACE: 0.1 ACRE

AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.1 ACRE

TRACT LEGAL DESCRIPTION:
ALL OF SECTION 24,
T-32-N, R-15-W

VICINITY MAP
N.T.S.

DETAIL "A"
N.T.S.

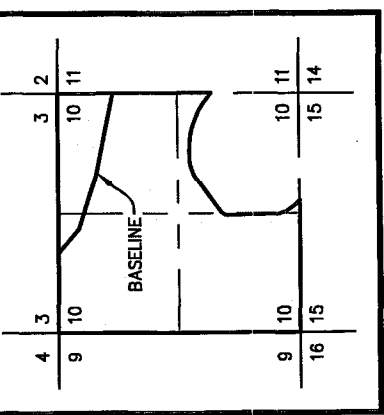
SCALE: 1" = 1,000'

500 1000

HOLT COUNTY, NEBRASKA

T-32-N, R-15-W, SECTION 10
ML-NE-HT-40220.000

LEGEND:
P PROPERTY LINE
S SECTION LINE
PROPOSED
TEMPORARY WORKSPACE
ADDITIONAL
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF HOLT COUNTY, NEBRASKA

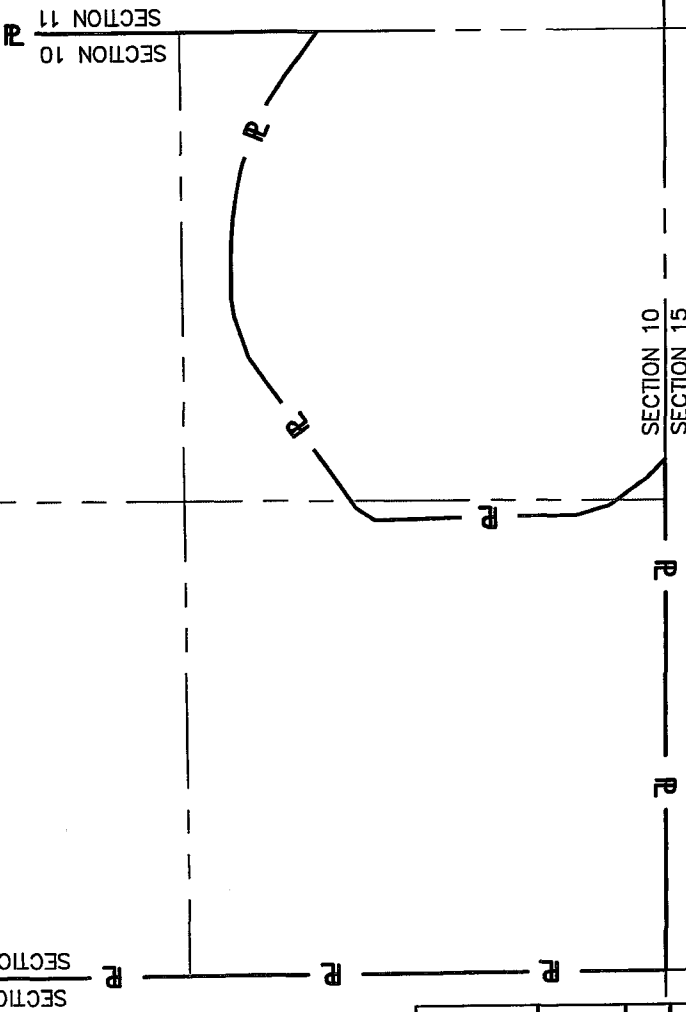


VICINITY MAP
N.T.S.

L.A. BREINER
VOLUME 179, PAGE 195
D.R.H.C.N.

SEE DETAIL "A"


SEE DETAIL "B"



TRACT LEGAL DESCRIPTION:
N/2, SW/4, SE/4 EXCLUDING
APPROXIMATELY 133 ACRES OF
SECTION 10,
T-32-N, R-15-W

NOTE:
THIS SKETCH DOES NOT MEET THE MINIMUM
STANDARDS FOR PROPERTY BOUNDARY SURVEYS.
IT WAS NOT DERIVED FROM AN ON THE GROUND
SURVEY BUT IS INTENDED FOR RIGHT OF WAY
PURPOSES ONLY. THE EXACT LOCATIONS AND
MEASUREMENTS ARE APPROXIMATE AND MAY
VARY, BUT THE WIDTH OF THE EASEMENT AREA
TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 3.784'±
AREA OF PERMANENT EASEMENT: 4.4 ACRES
AREA OF TEMPORARY WORKSPACE: 5.3 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.5 ACRE

 TransCanada <i>in business to deliver</i>	
KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF L.A. BREINER ML-NE-HT-40220.000	
PROJECT:	XL EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3654
NO.	REVISION
DATE	DATE
SCALE	1" = 1000'
DATE	11/04/14
DRAWN BY	JN
CHECKED BY	ALS

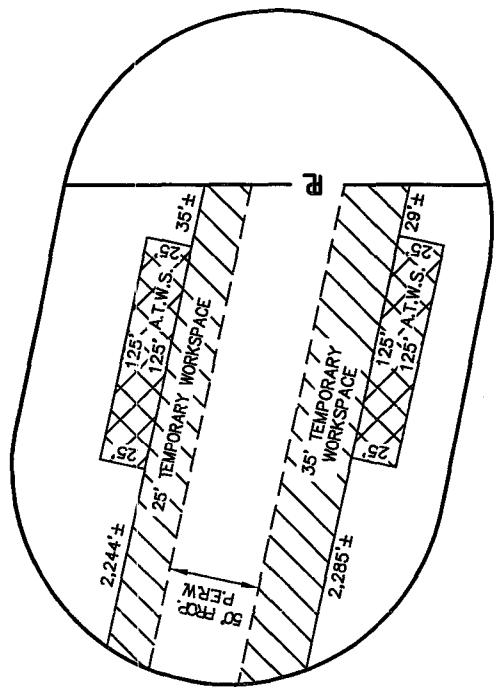
exp.
The new identity of Trans

HOLT COUNTY, NEBRASKA

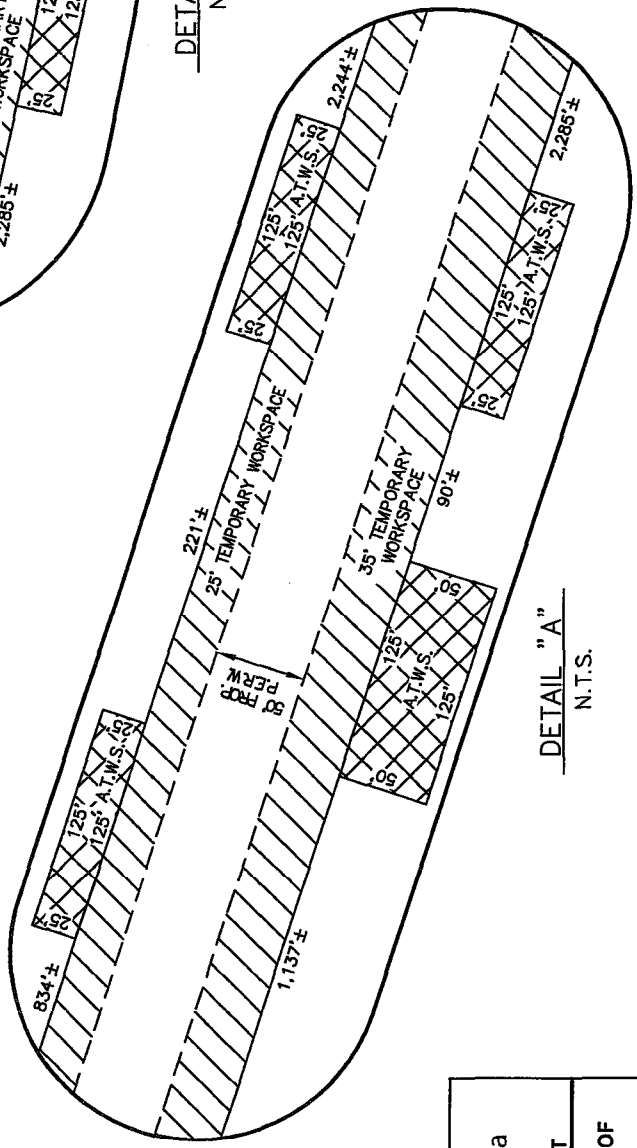
T-32-N, R-15-W, SECTION 10

ML-NE-HT-40220.000

LEGEND:
 P. PROPERTY LINE
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



DETAIL "B"
N.T.S.



DETAIL "A"
N.T.S.

TransCanada <i>In business to deliver</i>	
KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF L.A. BREINER ML-NE-HT-40220.000	
PROJECT:	EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3654
NO.	REVISION
	DATE
SCALE	DATE
N.T.S.	11/04/14
	DRAWN BY
	JN
	CHECKED BY
	ALS

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Plaintiff,

v.

RICHARD ANDREW, JANE ANDREW,
LUKE ANDREW, and BRYCE ANDREW,

Defendants.

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-40220.000

I/we L. A. Breiner and Sandra K. Breiner, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Four thousand Five Hundred Fifteen Dollars and No Cents (\$4,515.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

N/2, SW/4, Part of SE/4

Section 10, Township 32N, Range 15W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30110.000

I/we L.A. and Sandra K. Breiner, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Nine Hundred Sixty Four Dollars and No Cents (\$2,964.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

All

Section 24, Township 32N, Range 15W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30100.000

I/we L.A. and Sandra K. Breiner, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Ninety Two Dollars and No Cents (\$1,092.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

Irregular Tract

Section 14, Township 32N, Range 15W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of _____, 20____.

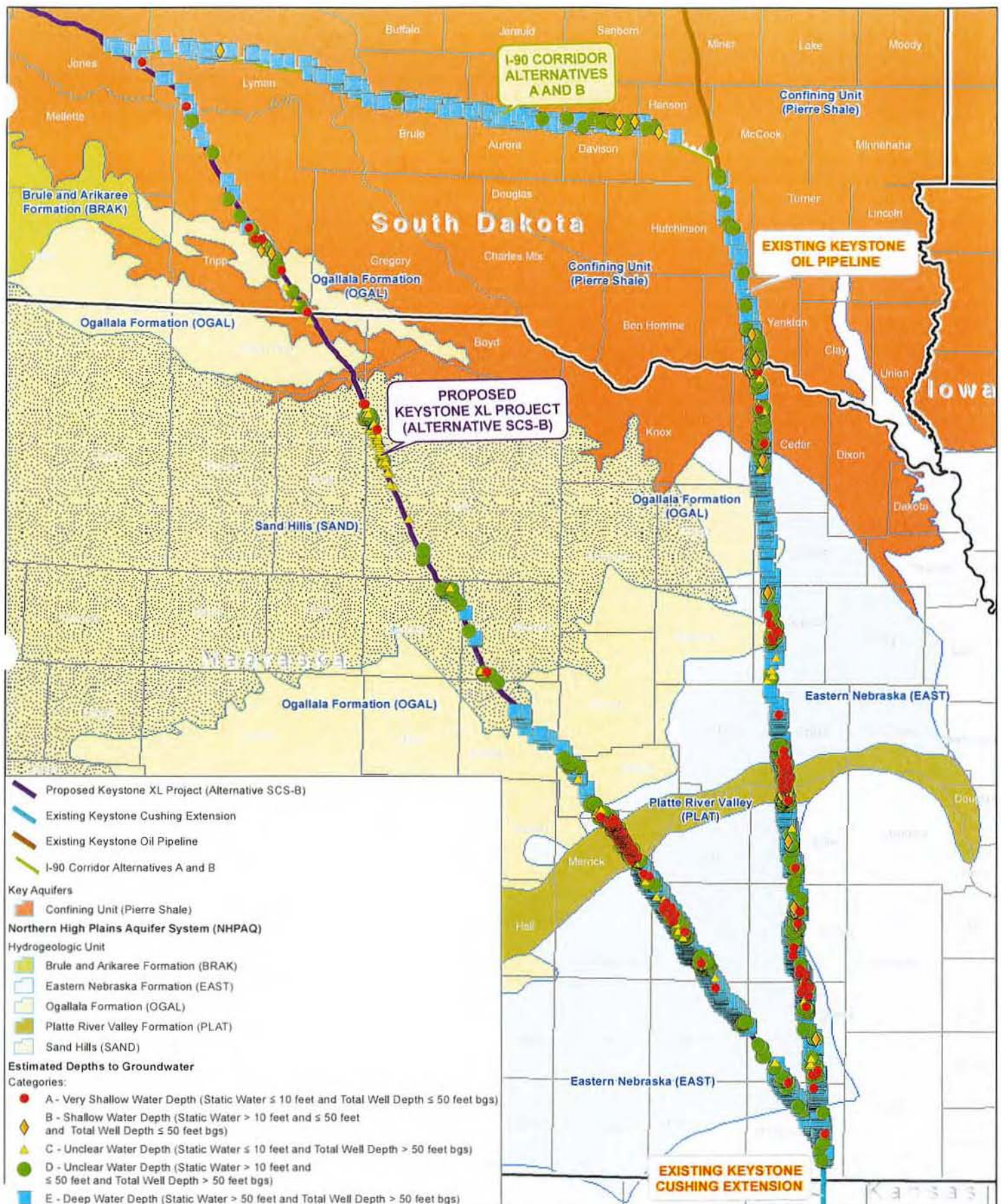
Owner Signature

Owner Signature

Owner/Owner Representative Name

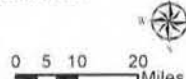
Owner/Owner Representative Name

Attachment No. 6



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor

Attachment No. 7



VICINITY MAP



LEGEND

- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

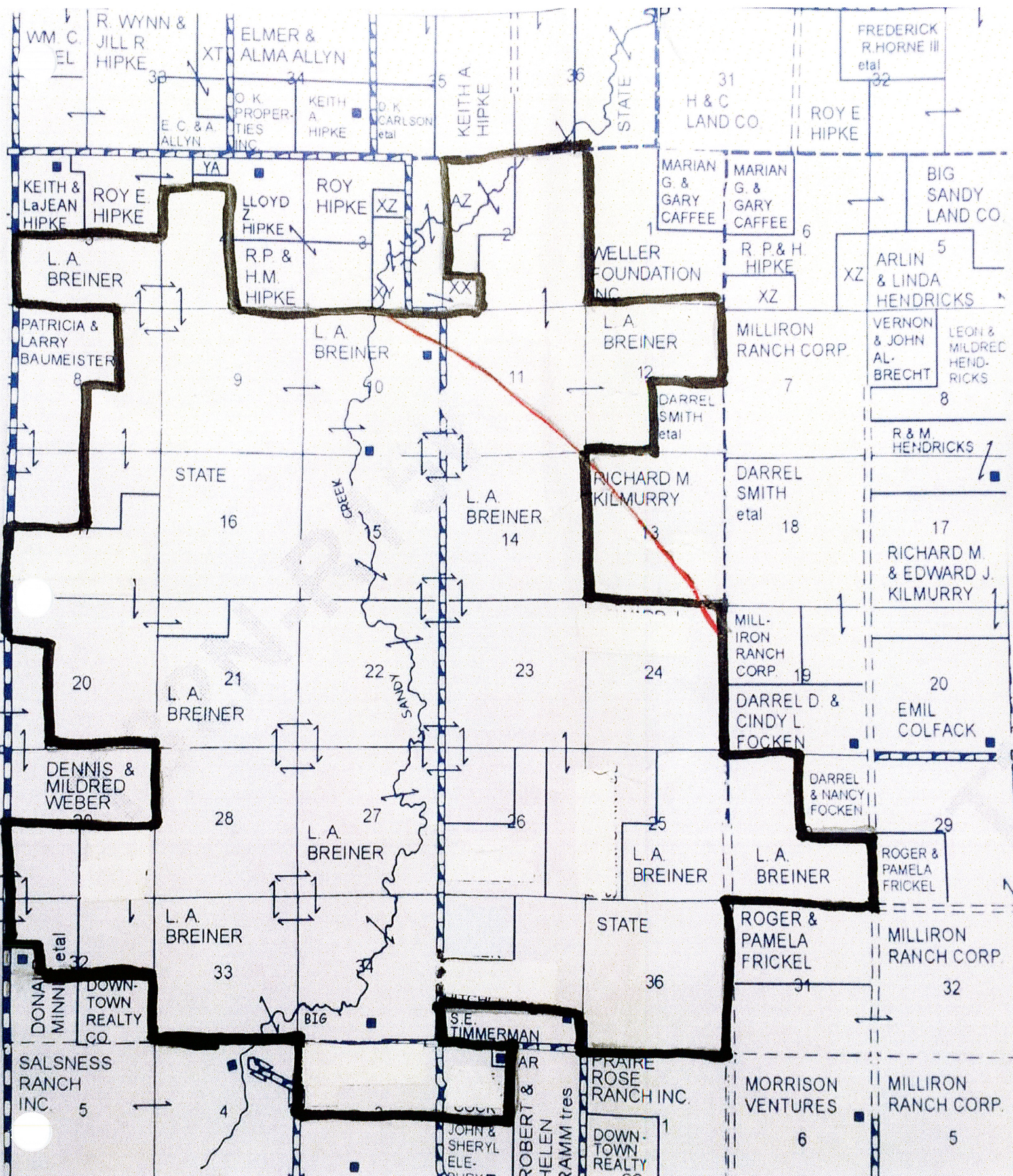
KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Attachment No. 8



Attachment 8.1

Sandra Breiner
47224 889th RD
Stuart NE 68780

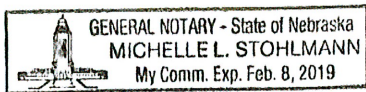
To Whom It May Concern,

I, Sandra Breiner met with Diana Steskal on Sunday, March 19th, 2017 at our resident of 47224 899th RD, Stuart NE 68780. I took her on a tour of our property, which lies in the proposed preferred route of the Keystone XL pipeline route. Diana took photos of the blow outs and the sandy soil on the property, we visited about the concerns of land reclamation.

Dated this the 20 day March 2017

Sandra K. Breiner
Signature of Affiant

Sworn to subscribed before me, this 20th day March 2017



Michelle L. Stohlmann
Notary Public

Attachment 8.2

March 19, 2017

#1



#2



March 17, 2017

#13



#14



March 19, 2017

#5



#6



March 19, 2000

47



48



March 19, 2017

#9



#10



March 19, 2017



#83



#14



Attachment 8.3

Blow outs are a big problem when ranching in the sandhills. When the ground cover is disturbed, wind keeps making the blowout worse and it takes a lifetime of work to get it healed up again, if you ever do.

Sander Breiner
Breiner Ranch