

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  
Susan Dunavan in Support of  
Landowner Intervenor**

State of Nebraska                    )  
  ) ss.  
York County                         )

1   **Q:    Please state your name.**

2   A:    My name is Susan Dunavan.

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 York 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:    William Dunavan.

1   **Q:   Do you have children?**

2   A:   Yes, five.

3   **Q:   Do you have grandchildren?**

4   A:   Yes, nine living and two that have passed away.

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:   When we purchased our land in 1979 the previous owner requested that the land  
12       be kept as pastureland and not be farmed. We were very willing to make this  
13       promise as that was our intention all along...to keep the property as pastureland  
14       and to increase the varieties of native grasses, flowers, and forbes. This land has  
15       become our heritage over the years and is one of the last stands of native prairie in  
16       York County. We paid on this land for 30 years, working overtime and our  
17       American Dream is now gone. This land is where our children were raised and  
18       where our grandchildren come and run and explore. To us this land is priceless.  
19       There is an intermittent stream that runs through our property as well as about 6  
20       acres of woods. The combination of prairie, stream bed and small forest makes for  
21       an immense diversity of plant and animal life. There have been new discoveries in  
22       every season over the past 38 years and we hope our family's hard work and love  
23       of the land will not be torn apart.

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

25   A:   My husband and I own a crop consulting business called Nebraska Crop and Soil  
26       Systems. We started the business in 1978 and currently consult with  
27       approximately 30 farms in a 45 mile radius of York, Nebraska. My husband is the  
28       President and consultant and I am the Secretary, Treasurer, and Chief Investigator  
29       for all background work that needs to be done in running a business.

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

2    A:    Yes.

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

5    A:    Yes.

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

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

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

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

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

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

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

28   A:    Yes.

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

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

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

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

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

11 A: No, they have not.

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

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

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

19 A: No, they did not.

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

22 A: Yes, they did.

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

25 A: Yes, they did.

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

27 A: TransCanada stated that the eminent domain property will be used to "lay, relay,  
28 operate, and maintain the pipeline and the plant and equipment reasonably  
29 necessary to operate the pipeline, specifically including surveying, laying,



1 constructing, inspecting, maintaining, operating, repairing, replacing, altering,  
2 reconstructing, removing and abandoning one pipeline, together with all fittings,  
3 cathodic protection equipment, pipeline markers, and all their equipment and  
4 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,  
5 petroleum products, and all by-products thereof.”

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

9 A: No, I do not.

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

12 A: Yes, they did.

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

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

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

25 A: Yes, it is.

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

28 A: Yes, I have.

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

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

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

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

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

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

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

26 A: The very first sentence talks about consideration or how much money they will  
27 pay to compensate me for all of the known and unknown affects and all of the  
28 rights I am giving up and for all the things they get to do to my land and for what

1 they will prevent me from doing on my land and they only will pay me one time at  
2 the signing of the easement agreement. That is a huge problem.

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

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

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

18 A: The first paragraph goes on to say Grantor, which is me the landowner, "does  
19 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a  
20 limited partnership..." and I have no idea who that really is. I have no idea who is  
21 forcing this pipeline on us or who the owners of the entities are, or what are the  
22 assets backing this limited partnership, or who the general partner is, or who all  
23 the limited partners are, and who makes up the ownership of the these partners or  
24 the structure or any of the basic things you would want to know and understand if  
25 you would want to do business with such an outfit. According to TransCanada's  
26 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited  
27 liability company called TransCanada Keystone Pipeline GP, LLC is the general  
28 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so

1 basically nothing. That is really scary since the general partner has the liability but  
2 virtually none of the ownership and who knows if it has any other assets.

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

6 A: No.

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

11 A: No.

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

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

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

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

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

27 A: Then it says "...a perpetual permanent easement and right-of-way..." and this  
28 really concerns me. Why does the easement and right-of-way have to be perpetual

1 and permanent? That is the question myself and my family want an answer to.  
2 Perpetual to me is forever and that doesn't make sense.

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

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

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

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

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

24 A: Yes.

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

26 A: Here the Easement identifies a 24-month deadline to complete construction of the  
27 pipeline but has caveats that are undefined and ambiguous. The 24-month period  
28 starts to run from the moment "actual pipeline installation activities" begin on  
29 Landowners property. It appears that TransCanada would define this phrase as

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 A: Again, undefined terms leave a lot of room for confusion. What does the phrase  
28 "where rock is encountered" mean and why does TransCanada solely get to  
29 determine whether or not this phrase is triggered. This phrase could be used to



1 justify installing the pipeline 24 inches beneath the surface. The ability to use this  
2 provision to minimal locate the pipeline at a depth of 24 inches could negatively  
3 affect Landowners property are not conducive to the protection of property rights.  
4 A shallow pipeline is much more likely to become a danger and liability in the  
5 future given farming operations and buried irrigation lines and other factors  
6 common to the current typical agricultural uses of the land in question impacted  
7 by TransCanada's preferred pipeline route.

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

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

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

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

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

25 A: TransCanada has the power to unilaterally move or modify the location of any  
26 Easement area whether permanent or temporary at their sole discretion.  
27 Regardless, if Landowner has taken prior steps relative the their property in  
28 preparation or planning of TransCanada's taking of the initial easement area(s),  
29 the language here does not require TransCanada to compensate the Landowner if

1 they decide to move the easement anywhere on Landowners property. Such  
2 unilateral powers would negatively affect Landowners property are not conducive  
3 to the protection of property rights or economic interests.

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

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

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

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

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

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

- 24 i. "pipeline installation activities"
- 25 ii. "availability of labor and materials"
- 26 iii. "commercially reasonable costs and expenses"
- 27 iv. "reasonably anticipated and foreseeable costs and expenses"
- 28 v. "yield loss damages"
- 29 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.

**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.

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

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

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

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

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

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

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

22 A: No, never.

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

26 A: Yes, they did.

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

29 A: Yes, it is.

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

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

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

9   A:   No, I did not.

10  **Q:   Why not?**

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

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

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

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

27  A:   No, they have not.

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 the public interest of the State of Nebraska?**

4 A: No, they have not.

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

7 A: Yes, I am.

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

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

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

16 A: No, they have not.

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

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

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

1 A: No, it has not.

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

5 A: No, I do not.

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

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

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

12 A: Yes, I do.

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

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

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

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

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

23 A: No, of course not.

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

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

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

2   A:    Well, yes I have.

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

7   A:    No, of course not.

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

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

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

23  A:    I have included this answer in my attached documents.

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

27  A:    Yes, I have significant concerns.  I am aware of landowners being treated unfairly  
28       or even bullied around and being made to feel scared that they did not have any  
29       options but to sign whatever papers TransCanada told them they had to.  I am



1 aware of folks being threatened that their land would be taken if they didn't follow  
2 what TransCanada was saying. I am aware of tactics to get people to sign  
3 easements that I don't believe have any place in Nebraska or anywhere such as  
4 TransCanada or some outfit associated with it hiring a pastor or priest to pray with  
5 landowners and convince them they should sign TransCanada's easement  
6 agreements. I am aware of older folks and widows or widowers feeling they had  
7 no choice but to sign TransCanada's Easement and they didn't know they could  
8 fight or stand up for themselves. From a more practical standpoint, I am worried  
9 that according to their answer to our Interrogatory No. 211, TransCanada only  
10 owns and operates one (1) major oil pipeline. They simply do not have the  
11 experience with this type of pipeline and that scares me. There are others but that  
12 is what I can recollect at this time and if I remember more or my recollection is  
13 refreshed I will share those with the 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. A 2½%

1 detection level for spills is inadequate-a ridiculous safeguard for a pipeline of this  
2 magnitude. More concerns are in my attached documents.

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 its**  
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. Both the  
20      preferred route and the mainline alternative routes are economic liabilities our  
21      state cannot risk.

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

25      A: No, I have not. I have shared that which I can think of as of the date I signed this  
26      document below but other things may come to me or my memory may be  
27      refreshed and I will add and address those things at the time of the Hearing in  
28      August and address any additional items at that time as is necessary. Additionally,  
29      I have not had an adequate amount of time to receive and review all of

1 TransCanada's answers to our discovery and the discovery of others so it was  
2 impossible to competently and completely react to that in my testimony here and I  
3 reserve the right to also address anything related to discovery that has not yet  
4 concluded as of the date I signed this document below. Lastly, certain documents  
5 requested have not yet been produced by TransCanada and therefore I may have  
6 additional thoughts on those I will also share at the hearing as needed.

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

10 A: I am respectfully and humbly requesting that the Commissioners think far beyond  
11 a temporary job spike that this project may bring to a few counties and beyond the  
12 relatively small amount of taxes this proposed foreign pipeline would possibly  
13 generate. And, instead think about the perpetual and forever impacts of this  
14 pipeline as it would have on the landowners specifically, first and foremost, but  
15 also thereby upon the entire state of Nebraska, and to determine that neither the  
16 preferred route nor the Keystone mainline alternative route are in the public  
17 interest of the citizens of the state of Nebraska.

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

21 A: Yes.

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

25 A: Yes, they are.

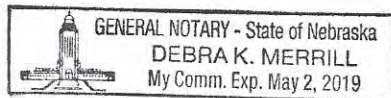
26 **Q: Thank you, I have no further questions at this time and reserve the right to**  
27 **ask you additional questions at the August 2017 Hearing.**



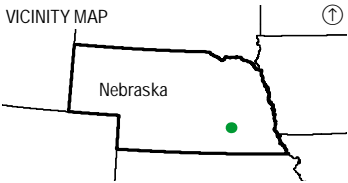
Susan Dunavan  
Susan Dunavan

Subscribed and Sworn to me before this 24<sup>th</sup> day of May, 2017.

Debra K. Merrill  
Notary Public



**Attachment No. 1**



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY  
Susan C. Dunavan  
William F. Dunavan

TRACT NO. ML-NE-YK-00600.000  
STATE: Nebraska  
COUNTY: York  
SECTION: 006  
TOWNSHIP: 009N  
RANGE: 002W

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

**Attachment No. 2**



**The Dunavan Family**  
Bill, Susan, Sr. Fidelis, Fr. Tom,  
Jesse, Jennie, Isaac, Levi, James, Matthew,  
Sr. Agnes, Elizabeth, Tommy, Timmy,  
Olivia, Daniel, Francis, Theo



**Attachment No. 3**

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

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(Above Space for Recorder's Use Only)

Tract No.: ML-NE-YK-00600.000

**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**"), **William F. Dunavan and Susan C. Dunavan, husband and wife, as joint tenants**, whose mailing address is 1312 Road 6, York, NE 68467 (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 York, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 80 acres, more or less, situated in the County of York, in the State of Nebraska, being further described as two tracts of land situated in the W1/2 of the SE1/4 of Section 6, T9N, R2W of the 6th P.M., as recorded in Book 169, Page 137 and Book 167, Page 342 in the Deed Records of York 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):

\_\_\_\_\_  
William F. Dunavan

\_\_\_\_\_  
Susan C. Dunavan

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **William F. Dunavan**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Susan C. Dunavan**

\_\_\_\_\_  
Notary Public Signature

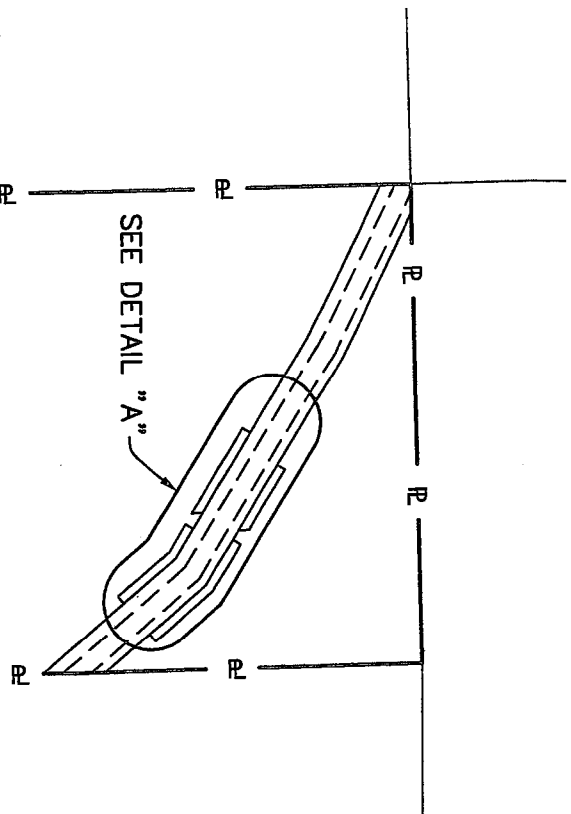
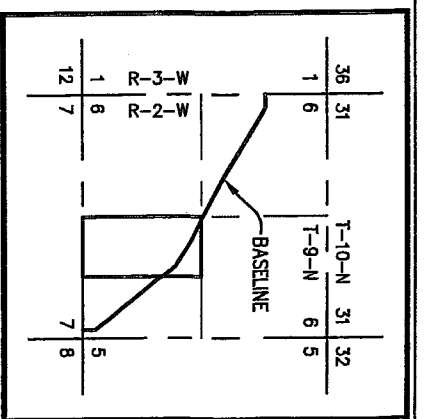
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Affix Seal Here

LEGEND  
 R. PROPERTY LINE  
 S. SECTION LINE  
 P. PROPOSED  
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE  
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY  
 D.R.Y.C.N. DEED RECORDS OF YORK COUNTY, NEBRASKA

# YORK COUNTY, NEBRASKA

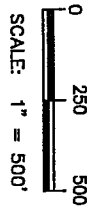
## T-9-N, R-2-W, SECTION 6

### ML-NE-YK-00600.000



WILLIAM F. DUNAVAN AND  
 SUSAN C. DUNAVAN, AS  
 JOINT TENANTS WITH  
 RIGHT OF SURVIVORSHIP,  
 AND NOT AS TENANTS IN  
 COMMON

VOLUME 167, PAGE 342  
 VOLUME 169, PAGE 137  
 D.R.Y.C.N.



TRACT LEGAL DESCRIPTION:  
 W/2 SE/4 OF SECTION 6,  
 T-9-N, R-2-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: 1,613'±  
 AREA OF PERMANENT EASEMENT: 1.9 ACRES  
 AREA OF TEMPORARY WORKSPACE: 2.2 ACRES  
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.6 ACRE



KEYSTONE XL PROJECT

EASEMENT AREA  
 ACROSS THE PROPERTY OF  
 WILLIAM F. DUNAVAN AND SUSAN  
 C. DUNAVAN, AS JOINT TENANTS  
 WITH RIGHT OF SURVIVORSHIP,  
 AND NOT AS TENANTS IN COMMON  
 ML-NE-YK-00600.000

PROJECT	XL	EXHIBIT A
APPROVED BY		DRAWING NUMBER
SLR	XL-08-ML-SK-2160	DATE
NO.	REVISION	
SCALE	DATE	DRAWN BY
1" = 500'	10/27/14	PB
		CHECKED BY
		ALS



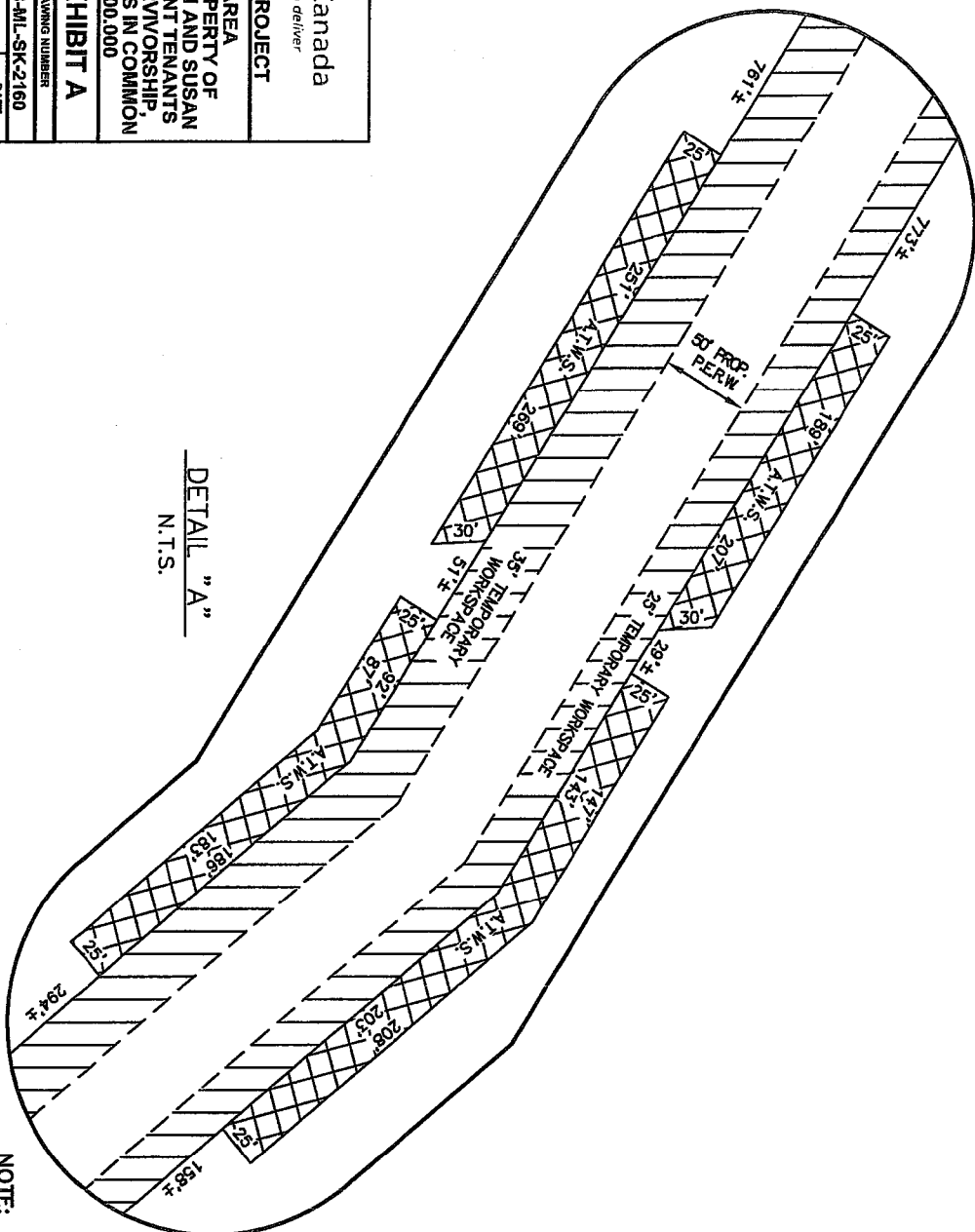
SHEET 1 OF 2

LEGEND  
R  
PROP.  
A.T.W.S.  
P.E.R.W.

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

# YORK COUNTY, NEBRASKA

T-9-N, R-2-W, SECTION 6  
ML-NE-YK-00600.000



DETAIL "A"  
N.T.S.



KEYSTONE XL PROJECT

EASEMENT AREA  
ACROSS THE PROPERTY OF  
WILLIAM F. DUNAVAN AND SUSAN  
C. DUNAVAN, AS JOINT TENANTS  
WITH RIGHT OF SURVIVORSHIP,  
AND NOT AS TENANTS IN COMMON  
ML-NE-YK-00600.000

PROJECT: XL EXHIBIT A

APPROVED BY: DRAWING NUMBER

SLR XL-08-ML-SK-2160

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 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-YK-00600.000

We, William F. Dunavan and Susan C. Dunavan, of York County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Two Hundred Twenty-two Dollars and No Cents (\$1,222.00), 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 York, State of Nebraska:

**W/2 SE/4**

**Section 6, Township 9N, Range 2W**

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

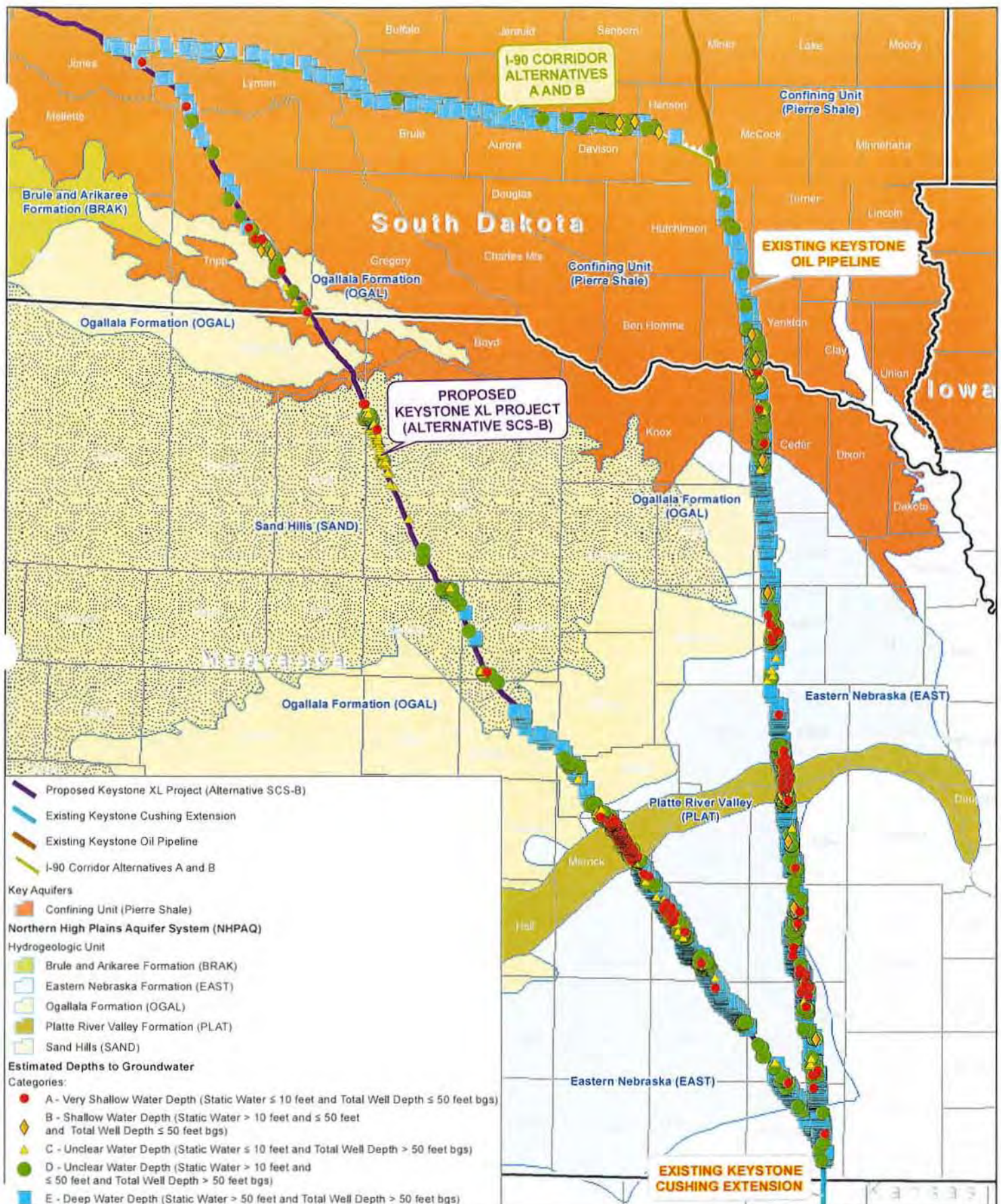
\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

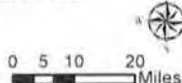
**Attachment No. 6**





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

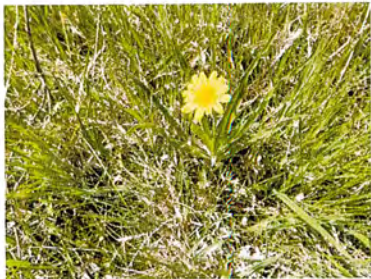


**Attachment No. 8**

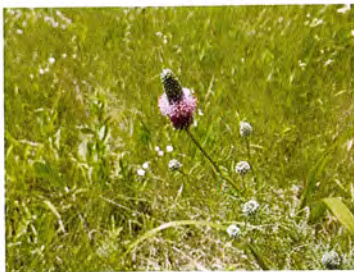
**Attachment 8.1**



Prairie Plants











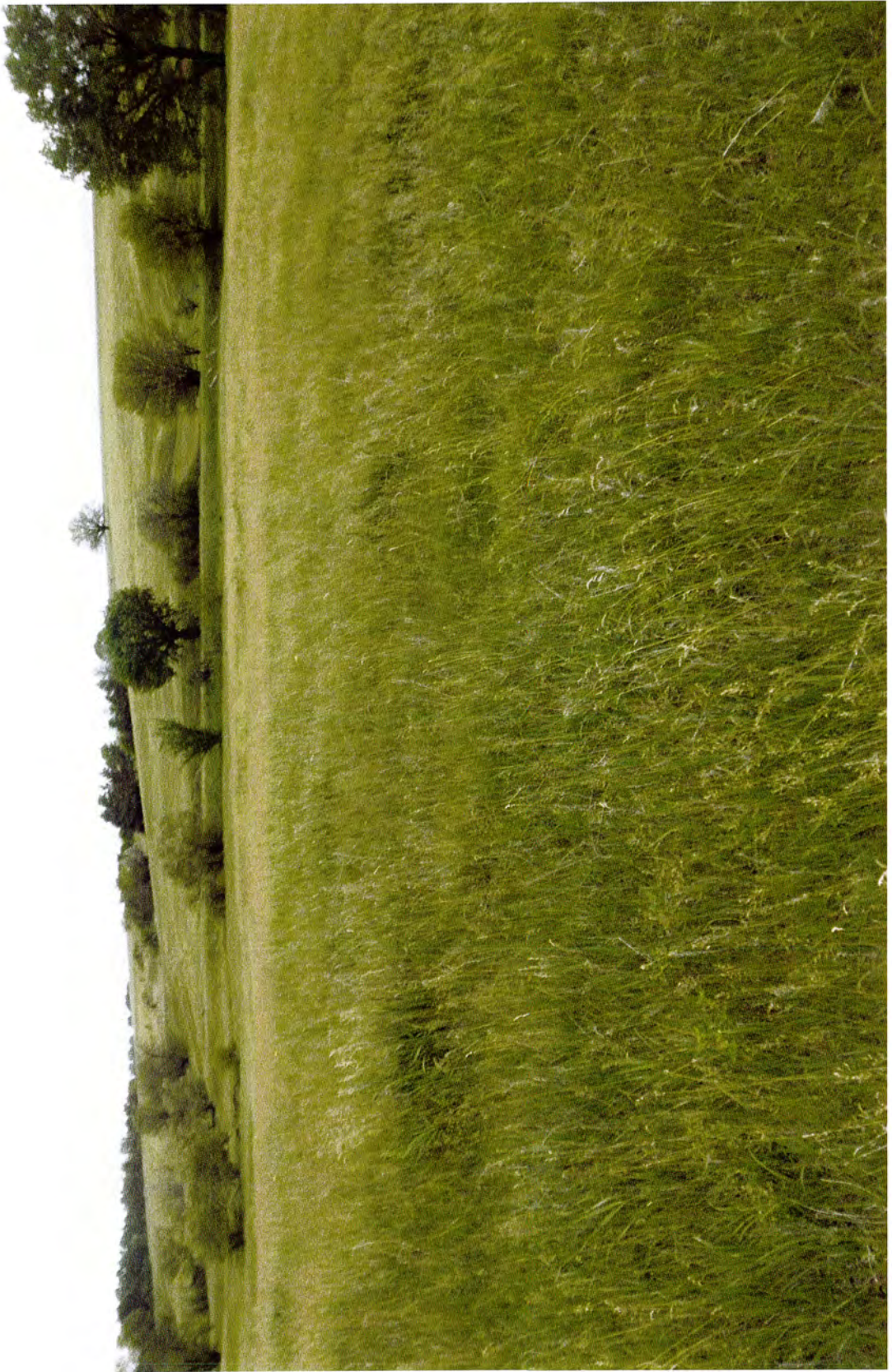




















**Attachment 8.2**



## NEGATIVE IMPACTS OF KEYSTONE XL ON THE PROPERTY OF BILL AND SUSAN DUNAVAN

W ½ SE ¼ 6-9-2 YORK COUNTY, NEBRASKA

1. **DESTRUCTION OF NATIVE PRAIRIE:** We have some of the last surviving Native Prairie in York County, Nebraska. When we called the County Assessor years ago at the start of the Keystone XL controversy and asked how much native prairie there was in York County, we were told they did not know there was any. In the Draft Environmental Impact Statement 3.5.2.1 it states, "Native grasslands or prairies are among the most threatened native vegetation communities in the United States". TransCanada's brochures promised to **"RESTORE"** lands impacted by this project. Our easements and the EIS mention the terms **"RESEED, REVEGETATE, RESESTABLISH and RECLAIM** interchangeably. None of these terms define **"RESTORE"**. We have over 15 species grass and over 90 species of flowers, forbs and herbs. The EIS Construction/Reclamation Plan for Tall Grass Prairie lists only 6 varieties of grass that will be provided. **This is NOT RESTORATION.** Also the Draft Report for the Nebraska Department of Environmental Quality mentions that "Less than 2% of seed was available or could be obtained in the future from local ecotypes...without availability of local ecotype seed, restoration would be extremely difficult if not impossible".
2. **MANY WELLS NOT DOCUMENTED:** The Keystone Mapping Project has documented wells listed in the Environmental Impact Statement. Looking at the map we saw that our two wells were not identified and neither were our neighbor's wells. If this is the case along the proposed route, there must be innumerable wells that are not documented.
3. **DO WE REALLY CONTINUE TO OWN OUR PROPERTY?** TransCanada states that despite their easements, the property owners will still own their land and can continue to use it. In our case, the diagonal cutting through our property would allow TransCanada to control our land use. Our property has a perfect dam site that we have intended to utilize and we have been told that "Grantor shall not...construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization". This gives control of our entire property to a foreign corporation. An easement of 4-6 acres across takes away control of our entire 80 acre parcel. There shall be no water conservation dam, nor a modern underground cattle watering system, etc.
4. **WHAT WILL BE THE USE OF THE PIPELINE AFTER THE "OIL"?** With oil at or below \$50.00 a barrel and the cost of tar sands extraction needing to be \$80.00 or above to even break even, what is the real motive of this pipeline going over the aquifer? During a Natural Resources Committee hearing on February 9, 2011, Jim Krause, operations director for TransCanada stated "if the pipeline is not needed for oil somewhere down the road and there is no other use for any other product...or maybe by that time in the future, water".
5. **INSURANCE:** Purchasing a \$20,000,000 liability policy annually by a landowner cannot be afforded without continual rents, royalties, percentages, residual payments, etc. The landowner is stuck with a one-time payment and a perpetual liability.

6. PERPETUAL EASEMENT: The easements offered by TransCanada are **FOREVER**. Even for a  $\pm$  50 year project. This should never be allowed.
7. TAXES: The landowner must forever pay property tax on land taken by the easement.
8. SUBCONTRACTORS: All of TransCanada's work seems to be done by subcontractors. We have grave concerns over the supervision of these contractors. With everything being subcontracted, TransCanada does not need to be responsible, need to answer to anyone and there seem to be no penalties, consequences or fines if something is not done correctly.
9. LANDOWNER AGREEMENTS: All of the 7 easement offers we have had do not cover all of our concerns. TransCanada can promise us the world...they can promise they will follow the EIS and the 57 Special Conditions they have agreed to, but if these are not specifically outlined in our easements, there is no way they can actually be enforced and are nothing more than mere suggestions.
10. THREATS TO CONDEMN WITHOUT A PERMIT: Most people enjoy seeing FedEx come up their driveway...not anymore.
11. REALIZING THAT TRANSCANADA IS A FOREIGN (NON U.S.A.) OPERATION FROM BEGINNING TO END:



## NEGATIVE IMPACTS OF KEYSTONE XL ON THE PROPERTY OF BILL AND SUSAN DUNAVAN

W1/2 se ¼ 6-9-2 YORK COUNTY NEBRASKA

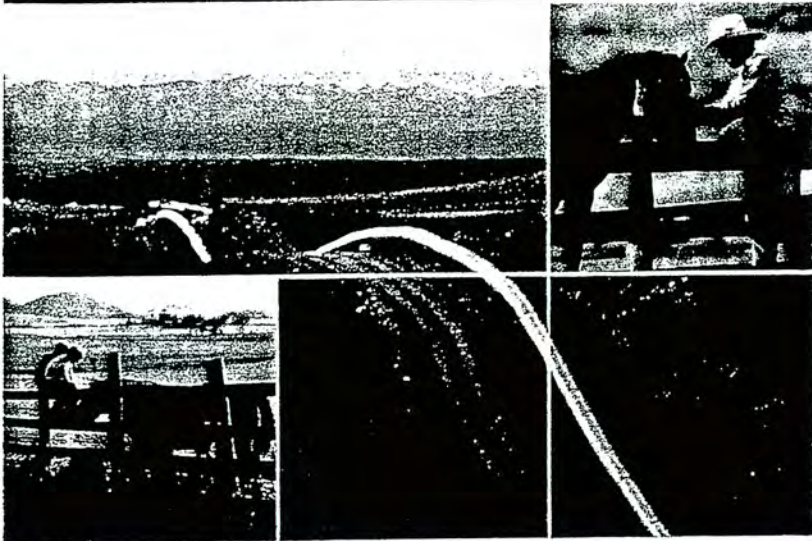
### EVIDENCE

1. DESTRUCTION OF NATIVE PRAIRIE:
  - a. TransCanada Brochure stating they will "restore" Prairie
  - b. Plant listing from our property
  - c. Trow Engineering stating they were hired for "Reclamation" survey, not "Restoration"
  - d. Photos of plants on our property can be made available
2. MANY WELLS NOT DOCUMENTED:
  - a. Nebraska Department of Natural Resources list of wells with GPS
  - b. Overlay from local platt book showing numerous residences all with wells, some with cattle windmills all left off report
  - c. Copy of map with DNR wells, made by "Keystone XL Mapping Project"
3. DO WE REALLY CONTINUE TO OWN OUR PROPERTY?:
  - a. Easement language prohibiting dam construction, digging, etc.
4. WHAT WILL BE THE USE OF THE PIPELINE AFTER THE "OIL"?
  - a. Copy of Business Card of Jim Krause
  - b. Natural Resources Committee Hearing 2-9-2011 with statement of Krause
  - c. Reference to Beck Plan R.W. Beck and Assoc. 1967 for Missouri River Basin
5. INSURANCE:
  - a. No documentation other than current property liability policy. Need bid from Insurance Company for \$20 million policy
6. PERPETUAL EASEMENT:
  - a. See Easement language
7. TAXES:
8. SUBCONTRACTORS:
  - a. Business card of TransCanada spokesman Jeff Rauh.
  - b. Personal observation of Bill Dunavan and others that surveyor's vehicles were inscribed with "International Pegasus" on their doors.
9. LANDOWNER AGREEMENT:
  - a. See Easement (s) Language
  - b. Only terms written into easements can be enforced
10. THREATS TO CONDEMN WITHOUT A PERMIT:
  - a. Copy of Letter from TransCanada dated: 7-21-2010
  - b. Copy of Letter from TransCanada dated: 4-7-2011
  - c. Copy of Letter to Atty. General Bruning and Attorney General's Office Reply dated 8-12-10 and 9-30-10 respectively.
11. REALIZING TRANSCANADA IS A FOREIGN (NON U.S.A.) OPERATION FROM BEGINNING TO END:
  - a. Copy from front page of Lincoln Journal Star with photo of TransCanada explaining the destination of their KXL products 9-4-2011.
12. OTHER EVIDENCE:
  - a. "Cornhusker Economics" Newsletter 2-9-2011 Conclusion, " Considering the potential benefits and costs alluded to above, we do not support the project...supporters have yet to make a clear case that benefits to Nebraska would offset the costs and risks." Richard K. Perrin, Dr. Lilyan Fulginiti, Department of Agricultural Economics.
  - b. 30+ Binders full of well documented information at Susan Dunavan's Office.
  - c. Dunavan Family Photo

### **Attachment 8.3**



# What Landowners Can Expect



- We will negotiate in good faith for land rights needed for the Keystone XL project. Fair value will be paid for land rights.
- In more than 50 years of building and operating its pipeline system TransCanada has used eminent domain or right-of-entry procedures very sparingly. We are committed to extending that positive record.
- We will work cooperatively with individual landowners to identify and address issues of crop loss, construction impacts and plans to bring land back to an equivalent productivity capability.
- The Keystone XL Pipeline project will be designed, constructed, operated and maintained in a manner that minimizes impact on landowners and the environment.

## Keystone XL Pipeline Project

We are committed to treating all landowners who may be affected by the Keystone XL Pipeline honestly, fairly and respectfully. We recognize that construction of a pipeline on or near land you own raises many questions; it is important that you understand what we are proposing and how you can participate in the process.

The preliminary Keystone XL Pipeline route is based on an analysis of land use, topography and environmental data. Refinements to the route have been – and will be – made based on feedback from landowners, communities and agencies reviewing the proposal, as well as our own detailed environmental and engineering analysis of the route. Even as Keystone XL acquires right-of-way for the pipeline, we will strive to understand and address landowner and community concerns.

## Guiding Principles for Landowner Relations

- We seek to develop positive relationships with landowners through open communication, honesty, fairness and mutual respect.
- We plan to keep potentially impacted landowners informed of the project status on an ongoing basis throughout all phases of the project.

## About Pipeline Easements:

- A right-of-way easement, negotiated in good faith between the landowner and the pipeline company, would grant Keystone XL the right to construct, operate, and maintain the pipeline. It specifies an easement width within which certain activities are restricted or prohibited, with the primary goal of keeping the pipeline safe. For example, while buildings and excavation are not allowed in the right-of-way, normal farming and cultivation practices are not restricted.
- Canada, the permanent right-of-way width for Keystone XL is generally 20 metres (66 feet) – 10 metres (32 feet) on either side of the pipeline. In addition to the permanent easement lands, temporary working space will be required for the construction phase of the project which will consist of generally 10 metres of additional space

The proposed Keystone XL project is a partnership between TransCanada and ConocoPhillips.

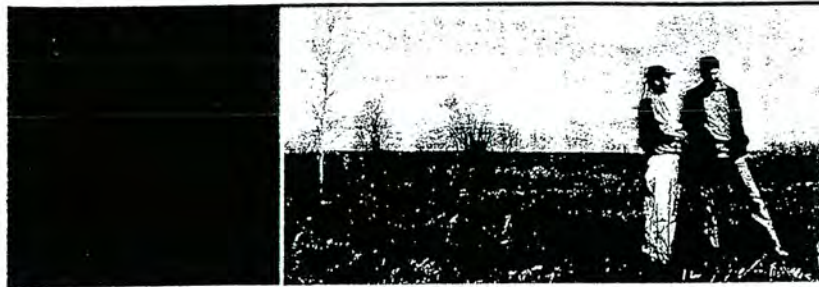




## 1. Destruction of Native Prairie

### a. TransCanada Brochure saying they will "restore" Prairie

## What Landowners Can Expect



- In the US, the permanent right-of-way easements will be 50 feet (15 meters) wide, with an additional 60 feet (18 metres) of temporary workspace.
- In Canada and the U.S., additional temporary work space may also be required for road crossings and other unique construction features.
- Keystone XL will work with landowners on specific issues such as crop losses, timber, drainage and irrigation systems, wells, fences, equipment, improvements, and other potential construction impacts in order to return the land to full productivity.
- There are no restrictions for crossing the right-of-way with normal farming equipment. If it is necessary for unusually heavy equipment to cross the right-of-way or to excavate near the right-of-way, we request that the pipeline company be contacted in advance to ensure the safety of landowners, work crews and the pipeline itself.
- The easement document and rights run with the land and are not impacted by changes in land ownership.
- Keystone XL will reclaim disturbed land and return it to its equivalent productivity.
- Keystone XL will be responsible for any taxes assessed against the pipeline. Responsibility for property taxes remains with the landowner.
- It is important that landowners read easement agreements carefully and understand the information they contain.

### Next Steps

- Keystone XL will seek to acquire rights from landowners to build, operate and maintain the pipeline, will compensate for construction losses and inconvenience and will restore the land impacted by construction activities.
- The Keystone XL pipeline is proposed to be buried with a minimum of 1.2 metres (4 feet of cover), except in site-specific areas, such as consolidated rock, in which case the pipeline will be buried with at least 0.9 metres (3 feet) of cover.

- Keystone XL is responsible for repair of drain tiles, irrigation, or other buried utilities if damaged during Keystone XL construction.
- Keystone XL will seek to minimize road impact and will be responsible for repair of all impacted roads after construction.

If at any time you have questions about the easement process, we encourage you to contact your local Keystone XL land agent or the Keystone XL Project Office.

### Contact

For more information, please call our toll free project number (1.866.717.7473) or use our project-specific email address [keystone@transcanada.com](mailto:keystone@transcanada.com)

#### Landowner Inquiries

Canada (toll free) 1.866.412.5263

U.S. (toll free) 1.866.585.7063

Alternatively, you can refer to our website at [www.transcanada.com/keystone/kxl](http://www.transcanada.com/keystone/kxl) or write, attention to:

#### In Canada

TransCanada Keystone XL Project Team  
450 – 1st Street S.W.  
Calgary, Alberta  
Canada T2P 5H1

#### In the U.S.

TransCanada Keystone XL Project Team  
7505 NW Tiffany Springs Parkway  
Northpointe Circle II Suite 400  
Kansas City, MO 64153

The proposed Keystone XL project is a partnership between TransCanada and ConocoPhillips.



**Attachment 8.4**

## 1. Destruction of Native Prairie

### b. Plant listing from our property

#### GRASSES

Big Bluestem	Creeping Foxtail	Little Bluestem	Switch Grass
Bluegrama	Eastern Gamma Grass	Prairie Cordgrass	Tall Dropseed
Blue Grass	Hairy Grama	Sand Lovegrass	Tall Wheat Grass
Brome Grass	Indian Grass	Sideoats Grama	Virginia Wildrye
Buffalo Grass	Intermediate Wheat Grass	Stink Grass	Western Wheat Grass

#### FLOWERS AND FORBS

Arrowhead	Ground Cherry	Prairie Coneflower	Umbrella Plant
Birdsfoot trefoil	Ground Plum	Prairie Dogbane	Venus Looking-Glass
Black Sampson	Hairy Vetch	Prairie Mallow	Vetch spp.
Blue Lettuce	Heath Aster	Prairie Phlox	Violet Sorrel
Blue-Eyed Grass	Hoary Vervain	Prairie ragwort	Virginia Creeper
Bull Thistle	Horsetails	Prairie Rose	Virginia Pepperweed
Catnip	Ironweed	Prairie Violets	Virginia Stonecrop
Cocklebur	Knotweed	Purple Coneflower	Water Hemlock
Common Milkweed	Lambsquarters	Purple Prairie Clover	Water Plantain
Louisiana Wormwood	Leadplant	Pussy Toes	Western Yarrow
Mapleleaf Goosefoot	Scouring Rush	Red Clover	White Clover
Milk Vetch	Sedges (many kinds)	White Vervain	White Prairie Clover
Curly Dock	Showy Partirdgepea	White-Eyed Grass	White Sweetclover
Curlycup Gumweed	Motherwort	Whorled Milkweed	Wild Four O'clock
Daisy Fleabane	Mullein	Silky Prairie Clover	Wild Grape
Dayflower	Narrow Leaf Puccoon	Silverleaf Scurf Pea	Wild Onion and Garlic
Dotted Gayfeather	Pale Dock	Slender Gerardia	Wild Rose
Dwarf Milkweed	Partridge Pea	Smartweed	Wild Strawberry
Evening Primrose	Pasque Flower	Snow on the Mountain	Wood Nettle
False Bonset	Pink Poppy Mallow	Spiderwort	Wooly Plantain
False Gromwell	Plains Coreopsis	St. John's Wort	Wooly Verbena
Plains Larkspur	Tall Nettle	Sunflower	Yellow Wood Sorrel
Plains Wild Indigo	Tall Thistle	Tall knotweed	
Goldenrod	Plantain	Yellow Goatsbeard	
Green Sagewort	Prairie Anemone	Yellow Sweet Clover	

**Attachment 8.5**





**Trow Engineering Consultants Inc.**

2700 Post Oak Blvd., Suite 400  
Houston, Texas 77581

Telephone: (713) 693-6400  
Facsimile: (713) 693-6498

June 16, 2010

Ms. Susan Dunavan  
1312 Road 6  
York, Nebraska 68467

**Re: Surveys conducted for Keystone XL Pipeline Project on W ½ of the SE ¼ Section 6-9-2 York County, Nebraska**

Dear Ms. Dunavan:

We received your request dated May 5, 2010 to obtain information about surveys associated with the Keystone XL Pipeline Project (Project) that have been conducted on your property. For your reference, please find enclosed a drawing showing the currently proposed pipeline route on your property (Figure 1).

Keystone proposes to construct and operate a crude oil pipeline and related facilities to transport Western Canadian Sedimentary Basin (WCSB) crude oil from an oil supply hub near Hardisty, Alberta, Canada to destinations in the south central United States, including an existing oil terminal in Cushing, Oklahoma and existing delivery points in the Port Arthur and east Houston areas of Texas.

Biological and cultural resource surveys are conducted for the proposed Keystone pipeline route and associated ancillary facilities to ensure compliance with all federal, state and local regulations. A 300 foot wide survey corridor, 150 feet on each side of the proposed pipeline route, was utilized during these surveys. Any proposed re-routes to the centerline that fall outside the 300 foot corridor are also surveyed.

Biological and cultural resource surveys were conducted on your land since the proposed pipeline is routed across your property (Figure 1). Biological surveys are conducted by trained professional biologists to identify wetlands, waterbodies, threatened and endangered species and their habitats and noxious weeds. Crews from AECOM completed a pedestrian biological survey on your property on May 21, 2008. A change in the proposed centerline resulted in a second survey on April 11, 2009. None of the aforementioned biological features were recorded during either field visit to your property.

Reclamation surveys were conducted by trained professional biologists and reclamation specialists to determine the type of vegetation present and develop reclamation plans. Crews from WESTECH Environmental Services, Inc. (WESTECH) completed a pedestrian reclamation survey on your property on September 19, 2009. Vegetation within the proposed right-of-way



## 1. Destruction of Native Prairie

- c. Trow Engineering stating they were hired for "Reclamation" not "Restoration"



was categorized as moderate to low quality tallgrass prairie that had been invaded by smooth brome and intermediate wheatgrass. The northwest corner of the property appeared to have been previously cultivated and reseeded. Cultivated land occurred to the east and west of the property. Trees were noted south of the centerline. Recorded species included: smooth brome (*Bromus inermis*), little bluestem (*Schizachyrium scoparium*), big bluestem (*Andropogon gerardii*), Indian grass (*Sorghastrum nutans*), switch grass (*Panicum virgatum*), intermediate wheatgrass (*Thinopyrum intermedium*), western wheatgrass (*Pascopyron smithii*), dandelion (*Taraxacum officianale*), vetch (*Vicia sp.*), pussy toes (*Antennaria sp.*), common burdock (*Arctium minus*), whorled milkweed (*Asclepias verticillata*), and common sunflower (*Helianthus annuus*). Other species undoubtedly occur on the property but were not recorded since the intention of the survey was to classify the site for reclamation purposes rather than complete a species inventory. The area was classified within the Tall Grasslands Construction/Reclamation Unit due to the presence of native grass species at the site (Attachment #1). Topsoil salvage depths were specified between 8 and 12 inches due to the relatively deep soils at the site. Problematic noxious weeds were not noted at the site although weedy species, such as dandelion and common burdock occur on or near the proposed right-of-way.

Additionally, aerial raptor surveys were conducted via helicopter over your property on April 7, 2009 by AECOM and April 13, 2010 by WESTECH. The 2009 search corridor was 0.25 miles wide on either side of the proposed pipeline centerline and 1 mile wide on either side of the centerline at major river crossings. The 2010 search corridor was expanded to 1 mile on either side of the centerline. No raptors or raptor nests were sighted on your property during the aerial surveys. Another aerial helicopter survey was conducted over your property on February 10, 2009 to identify bald eagle winter roost sites. The surveys covered an area at least 1 mile upstream and downstream of major waterbody crossings and within all suitable bald eagle nest and winter roost habitat. No bald or golden eagle winter roost sites or bald eagle nests were identified on your property.

Pedestrian cultural resource surveys were conducted on your property on May 20, 2008 and April 14, 2009 by crews from American Resources Group Ltd. Again, the re-route necessitated the second field visit. One historic site was recorded during the pedestrian survey, a railroad bed running north-south through your property. Site 25YK25 is a historic railroad bed of the Burlington Northern Railroad located on an upland ridge slope adjacent to an intermittent tributary of the West Fork Big Blue River. At the time of the cultural resource survey, the railroad bed was found in grass with zero ground surface visibility; no artifacts were recovered from the site. The railroad is illustrated on the 1924 and 1947 historic county atlases. The tracks have since been removed, but gravel and cinders were present. On the basis of archival documentation, the portion of the site recorded within the Project survey corridor does not appear to have the potential to yield additional information important to local or regional history. The site does not meet the National Register of Historic Places criteria of significance and was evaluated as ineligible for listing or nomination. No further archaeological investigation was recommended for the site and the Nebraska State Historical Society concurred with this recommendation in a letter addressed to Elizabeth Orlando of the United States Department of State on March 17, 2009. Please find enclosed a drawing showing this historic railroad and its proximity to the proposed Keystone pipeline route (Figure 2).



Please contact me at [jonathan.minton@trow.com](mailto:jonathan.minton@trow.com) should you have further questions regarding the surveys conducted on your property or any questions about the proposed Project.

Sincerely,

Jonathan Minton

Enclosures

cc: Steve Craycroft (TransCanada)  
Michael Schmaltz (TransCanada)  
Suzanne Ban (ENTRIX)  
Jon Schmidt (Trow)

**Attachment 8.6**



Available Water Well Data within One Mile of the Centerline in Nebraska					
Well ID	Total Well Depth (Feet)	Static Water Level (Feet)	Use	Latitude	Longitude
33685	78	4	Irrigation	40.298858	-97.128610
55201	85	4	Irrigation	40.302412	-97.165644
27339	94	4	Irrigation	40.302455	-97.156787
167639	100	4	Domestic	40.305444	-97.157083
37347	104	4	Irrigation	40.306886	-97.151301
152036	106	4	Irrigation	40.309528	-97.184639
111927	108	4	Irrigation	40.309665	-97.146575
36153	136	4	Irrigation	40.316823	-97.175042
31236	52	5	Irrigation	40.316745	-97.150734
111584	0	5	Irrigation	40.318676	-97.182170
152485	26	5	Domestic	40.320694	-97.170504
74892	31	5	Irrigation	40.324180	-97.194023
74893	32	5	Irrigation	40.324125	-97.184554
117460	34	5	Irrigation	40.324079	-97.176563
171179	35	5	Irrigation	40.327972	-97.203444
25153	36	5	Irrigation	40.329153	-97.156161
5826	36	5	Irrigation	40.331427	-97.194005
120967	38	5	Irrigation	40.331205	-97.170333
201131	40	5	Domestic	40.336000	-97.189639
68097	42	5	Irrigation	40.338831	-97.212793
189303	46	5	Irrigation	40.338694	-97.194111
150524	52	5	Irrigation	40.340173	-97.165520
125535	53	5	Domestic	40.340241	-97.166201
4507	64	5	Irrigation	40.342523	-97.168948
63338	64	5	Irrigation	40.344116	-97.196278
64323	64	5	Irrigation	40.345982	-97.203272
7765	65	5	Irrigation	40.347619	-97.178951
34246	80	5	Irrigation	40.349683	-97.196142
191554	80	5	Domestic	40.349556	-97.184611
170166	123	5	Irrigation	40.350066	-97.193235
37708	26	6	Irrigation	40.351722	-97.209741
92721	27	6	Domestic	40.353060	-97.179226
96294	28	6	Irrigation	40.353681	-97.202636
7422	30	6	Irrigation	40.355338	-97.219279
197624	30	6	Irrigation	40.357028	-97.183944
72376	32	6	Irrigation	40.358976	-97.228781
54795	33	6	Irrigation	40.358919	-97.186011
80753	35	6	Irrigation	40.360766	-97.212270
100286	35	6	Irrigation	40.360772	-97.193112
10797	36	6	Irrigation	40.362607	-97.200269
37264	37	6	Irrigation	40.368204	-97.236823
58027	38	6	Irrigation	40.368046	-97.221699
191450	39	6	Irrigation	40.367805	-97.198362
32985	40	6	Irrigation	40.369174	-97.213108
54516	40	6	Irrigation	40.369784	-97.195398
71159	40	6	Irrigation	40.373502	-97.228776
204381	42	6	Irrigation	40.375444	-97.211694
32682	44	6	Irrigation	40.379233	-97.220457
76356	44	6	Irrigation	40.380709	-97.219280



2.Many Wells Not Documented

- a. Nebraska Dept. of Natural Resources list of wells with GPS

Available Water Well Data within One Mile of the Centerline in Nebraska

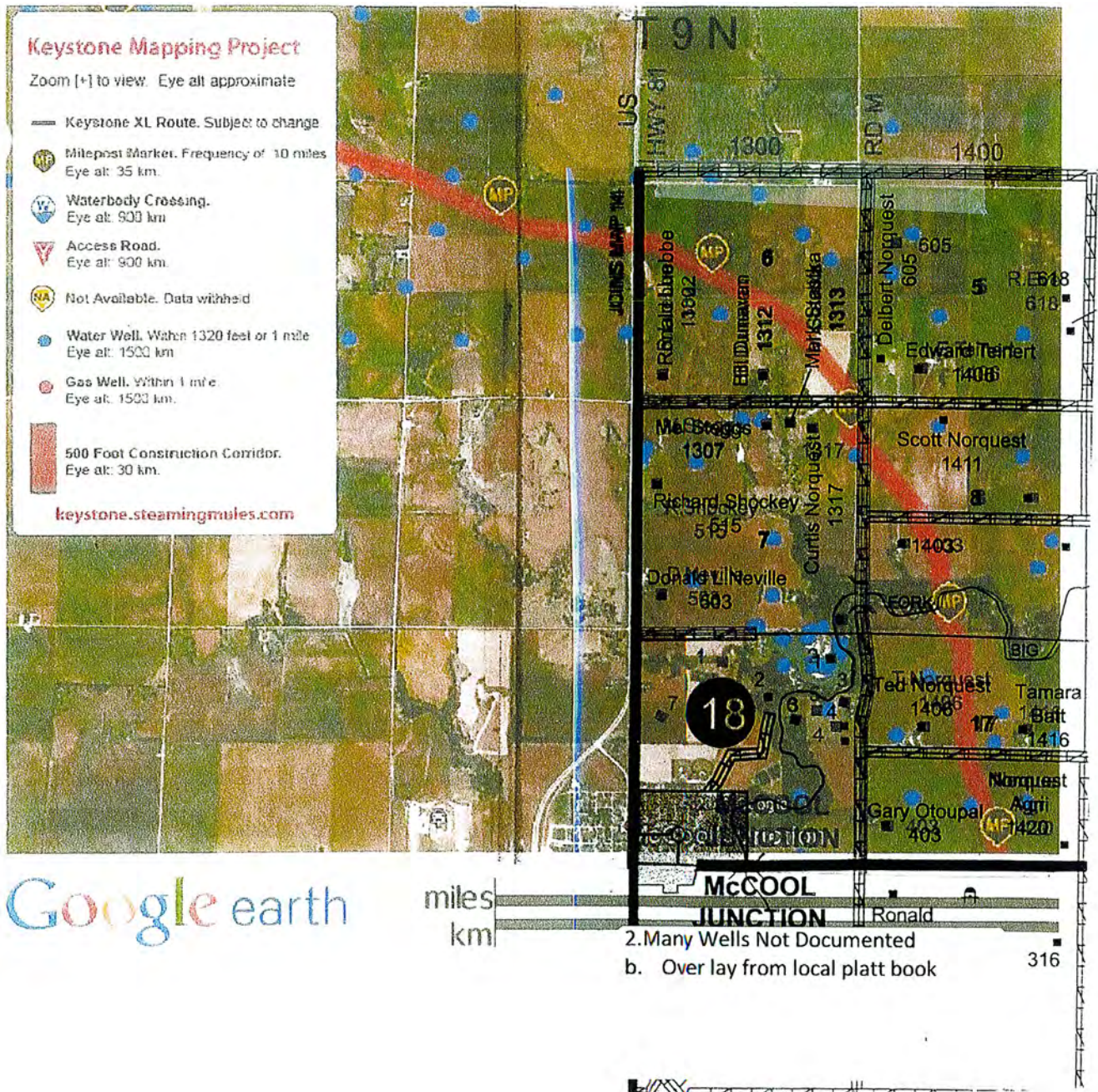
Well ID	Total Well Depth (Feet)	Static Water Level (Feet)	Use	Latitude	Longitude
197482	45	6	Domestic	40.392917	-97.234889
146020	48	6	Domestic	40.394000	-97.231333
166811	49	6	Domestic	40.408439	-97.219041
133782	50	6	Domestic	40.414308	-97.231213
164535	51	6	Domestic	40.433108	-97.293222
172076	53	6	Domestic	40.434388	-97.281194
93213	54	6	Domestic	40.464275	-97.293027
128865	57	6	Domestic	40.474502	-97.311259
74110	58	6	Irrigation	40.529867	-97.366267
63850	60	6	Irrigation	40.538703	-97.349358
43322	65	6	Irrigation	40.541074	-97.394679
83358	70	6	Irrigation	40.542530	-97.382780
33882	80	6	Irrigation	40.542440	-97.353237
32152	102	6	Irrigation	40.546043	-97.391162
83466	104	6	Irrigation	40.546417	-97.382964
60669	121	6	Irrigation	40.548511	-97.386756
124335	147	6	Irrigation	40.549736	-97.392320
171143	24	7	Irrigation	40.549322	-97.372272
35350	33	7	Domestic	40.549756	-97.386508
19317	37	7	Irrigation	40.549861	-97.381900
72588	37	7	Irrigation	40.549914	-97.376283
42353	38	7	Irrigation	40.550651	-97.400601
73978	38	7	Irrigation	40.553429	-97.401758
69809	39	7	Irrigation	40.553459	-97.363763
82123	39	7	Irrigation	40.553942	-97.373264
204484	39	7	Domestic	40.558383	-97.404200
119455	39	7	Irrigation	40.564295	-97.402032
104461	40	7	Irrigation	40.564252	-97.392373
205091	40	7	Domestic	40.566833	-97.395611
206175	40	7	Domestic	40.566778	-97.381000
28045	40	7	Irrigation	40.567753	-97.389931
155976	40	7	Irrigation	40.571576	-97.411245
136865	41	7	Irrigation	40.571389	-97.382927
91267	41	7	Domestic	40.573375	-97.420789
60670	41	7	Irrigation	40.574897	-97.401514
36247	43	7	Irrigation	40.574970	-97.394923
118764	44	7	Irrigation	40.578726	-97.420706
61349	44	7	Irrigation	40.578755	-97.411259
19318	48	7	Irrigation	40.578881	-97.404526
139100	50	7	Irrigation	40.578850	-97.401825
136198	50	7	Irrigation	40.578777	-97.382794
72309	50	7	Irrigation	40.580493	-97.389909
14131	50	7	Irrigation	40.582412	-97.416114
59362	52	7	Irrigation	40.583077	-97.401601
66636	53	7	Irrigation	40.584234	-97.408880
40831	53	7	Irrigation	40.586058	-97.429049
147804	60	7	Irrigation	40.589764	-97.439831
146043	60	7	Irrigation	40.593523	-97.444820
64500	63	7	Irrigation	40.593318	-97.430182

Source DNR, 2011. Available @ <http://dnrdata.dnr.ne.gov/wellsccs/menu.aspx>



2.Many Wells Not Documented

c. Copy of map with DNR wells made by Keystone XL Mapping Project



**Attachment 8.7**



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Natural Resources Committee  
February 09, 2011

---

JIM KRAUSE: Twenty years. [LB340 LB578 LB629]

SENATOR SMITH: And that contract, of course, would begin the day that they would begin to receive or have they already begun to receive? [LB340 LB578 LB629]

JIM KRAUSE: It's once the people on the far end start to receive the oil, as they have already been doing since June on the first phase of the Keystone pipeline. [LB340 LB578 LB629]

SENATOR SMITH: One year, one year into it at this point. [LB340 LB578 LB629]

JIM KRAUSE: Yeah. Yep. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Since you're in operations, actually how much does this oil heat up because of friction? [LB340 LB578 LB629]

JIM KRAUSE: That's a great question that has been going around a number of times, and as stated earlier in this committee, we provide no heat to the pipe. But you're correct, the pipe does heat up from the friction not only from the pumps, but from the pipe itself. Ultimately, the oil of...the temperature of the pipe and the oil is governed mainly by ground temperature. That has a huge impact on the temperature of the oil. So as the oil comes up to a pump station, it can be very close to what the current ground temperature is four feet below ground. As it exits the station, some of that pumping will heat it up a bit, but it's not like it gets really, really hot and changes the viscosity to a great amount. [LB340 LB578 LB629]

SENATOR HAAR: Now you may not be the person to answer this one, maybe the next person, but if there is decommissioning for whatever purpose, who pays for that and



how are we guaranteed, for example, the landowners? [LB340 LB578 LB629]

**JIM KRAUSE:** Sure. It's an excellent question and it has come up a few times here.

There will be some testimony later that will cover that in detail, but, again, my background and knowledge of this is we're required through a permitting process through PHMSA, the Department of Transportation, we are held liable for reclamation and restoration of any abandoned pipeline. In technical terms, what that would mean, if the pipeline is not needed for oil somewhere down the road and there is no other use for any other product to go through that pipe, let's say gasoline, or maybe by that time in the future, water, then the pipeline needs to be...follow very stringent processes to be taken out of service. Cleaning pigs squeal down the pipeline and remove whatever oil is in the pipe. And then further pigs goes down and clean whatever residue is in there. And then, essentially, the pipe is closed at each end and the inert gas, such as nitrogen, is put into the pipe. The cathodic protection systems on the pipe continue to have the function, by law, to ensure the pipe doesn't corrode. And the nitrogen inside makes sure there's no internal corrosion taking place as well. [LB340 LB578 LB629]

**SENATOR HAAR:** So, but if some point, because everything eventually wears out, I mean, pipeline will last a lot longer than I will, but if it collapses at some point after it is decommissioned, how...who takes care of that? [LB340 LB578 LB629]

**JIM KRAUSE:** The owner of the pipeline which is us. [LB340 LB578 LB629]

**SENATOR HAAR:** And if you're no longer the owner? [LB340 LB578 LB629]

**JIM KRAUSE:** Whoever takes ownership from us would have to carry on that liability. [LB340 LB578 LB629]

**SENATOR HAAR:** And if it's abandoned and just, you know, goes through bankruptcy or something, I still...at the end you could come up with someone with a situation where

**Attachment 8.8**



Starting with proposals made in 1950 in the Bureau of Reclamation's United Western Study, preliminary studies were made of even larger interbasin transfers until a moratorium on such studies by federal agencies was legislated in 1968. A summary of these developed by C. C. Warnick and published by the University of Arizona in *Arid Lands in Perspective*, 1969, is included as Table 2. The last project shown on the table is the Texas Water Plan, studied by the Bureau of Reclamation and the Corps of Engineers under a special Congressional authorization between 1967 and 1973. This proposal would have transferred over 10 million acre-feet annually from the Mississippi River or its tributaries to the high plains of Texas and New Mexico to sustain agricultural production after the Ogallala aquifer is pumped out. Cost of water delivered on the high plains was estimated to be well over \$300 an acre-foot with the cost of energy for the 5,000-foot pump lift computed at pre-1973 price levels. Since that report was completed there has been less interest in interbasin transfers.

It is dubious whether any of these plans involving diversions across state lines can be undertaken, even if funds for construction could be made available. No state will be willing to sell its water "birthright" unless the consideration is so high as to increase the cost of the project to such an extent that it would not be economically justified.

International water transfers might have some possibility of being effected if the benefit from water development in the exporting country, which would be Canada, could be made high enough, and since the water for export would probably always flow north into the Arctic unused. However, the environmental disruption would be huge, and if the environmental movement develops in Canada as it has in the United States, it would be very difficult to negotiate the necessary treaty and enact the implementing legislation in the two countries.

### Groundwater Management

There are an estimated 180 billion acre-feet of water in underground aquifers within a depth of 2,500 feet under the forty-eight contiguous United States. About one-fourth of this, 46 billion acre-feet, is usable with present technology; this is

TABLE 2  
Summary of Information on Conceptual Plans Proposed for Regional Water Transfer

Project Name	Agency/Company Sponsor Author of Plan	Approximate Date of Proposal	River Basin(s) for Source	River Basin(s) of Use	Countries Involved	States Involved	Proposed Diversion: (a) 10 <sup>6</sup> acre-ft/yr; (b) cfs; (c) mgd.
United Western	U.S. Bureau of Reclamation Rep. R. J. Welch— Calif.	1950	Columbia River North Pacific Coastal Streams	Great Basin South Pacific Coastal Plain Colorado River	United States Mexico	11 Western States	6.0 9,100 5,900
California Water Plan	California Depart- ment of Water Resources	1957	Northern Califor- nia Rivers	Central Valley California South Pacific Coastal Plain	United States	California	
Pacific Southwest Water Plan	U.S. Bureau of Reclamation W. I. Palmer	1963	Northern Califor- nia Streams Colorado River	Lower Colorado River South Pacific Coastal Plain	United States Mexico	California Arizona, Nevada Utah, New Mexico	1.2 1,660 1,070
Snake-Colorado Project	Los Angeles Depart- ment of Water & Power S. B. Nelson	1963	Snake River	Colorado River South Pacific Coastal Plain	United States Mexico	Idaho, Nevada Arizona California	2.4 3,320 2,140
North American Power & Water Alliance (NAWAPA)	Ralph M. Parsons Company	1964	Alaskan & Cana- dian Rivers, with Columbia River	Great Lakes Basin South Pacific Coastal Plain Colorado River Texas High Plains	United States Canada Mexico	Western States Texas Lake States	110.0 152,000 98,000
Yellowstone- Snake-Green Project	T. M. Stetson Consulting Engineer	1964	Yellowstone River Snake River	Green River Colorado River	United States	Montana, Idaho Wyoming, Lower Colorado States	2.0 2,770 1,780

4. What Will be the Use of the Pipeline  
After the "Oil"?  
C. Reference to Beck Plan

Western water resources: Mexico to transport the surplus



TABLE 2 (continued)  
Summary of Information on Conceptual Plans Proposed for Regional Water Transfer

Project Name	Agency/Company Sponsor Author of Plan	Approximate Date of Proposal	River Basin(s) for Source	River Basin(s) of Use	Countries Involved	States Involved	Proposed Diversion: (a) 10 <sup>6</sup> acre-ft/yr; (b) cfs; (c) mgd.
Pirkey's Plan Western Water Project	F. Z. Pirkey Consulting Engineer	1964	Columbia River	Colorado River	United States	Oregon	15.0
				Sacramento River	Mexico	Washington	20,800
				South Pacific Coastal Plain		California	13,400
						Utah, Arizona Nevada	
Dunn Plan Modified Snake- Colorado Project	W. G. Dunn, Consulting Engineer	1965	Snake & Colum- bia Rivers	Great Basin	United States	Idaho, Oregon	5.0
				Snow River	Mexico	Washington	6,900
				South Pacific Coastal Plain		Utah, Arizona	4,450
				Colorado River		Nevada California	
Sierra-Cascade Project	E. F. Miller, Consulting Engineer, Maryland	1965	Columbia River	Oregon Valleys	United States	Oregon, Nevada	7.0
				Central Valley, California		California	9,700
				South Pacific Coastal Plain			6,250
Undersea Aque- duct System	National Engineering Science Company F. C. Lee	1965	North Coast Pacific Rivers	Central Valley	United States	Oregon	11.0
				South Pacific Coastal Plain		California	15,200
Southwest Idaho Development Project	U.S. Bureau of Reclamation, Region 1	1966	Payette River Weiser River Bruneau River	Snake River	United States	Idaho	9,800
Canadian Water Export	E. Kuiper	1966	Several Canadian Rivers	Western States (indefinite)	United States Canada	All Western States	150.0
							208,000
							134,000
Central Arizona Project	U.S. Bureau of Reclamation	1948, 1967	Lower Colorado River Basin	Colorado River	United States	Utah, Nevada	1.2
					Mexico	Arizona	1,660
						California	1,070
Central North American Water Project C3 NAWP	E. R. Tinney Washington State University, Professor	1967	Canadian Rivers	Great Lakes	United States	Great Lakes	150.0
				Entire Western States	Canada	Western States	208,000
					Mexico		134,000
Smith Plan	L. G. Smith Consulting Engineer	1967	Liard River McKenzie River	All river basins of 17 western states	United States	17 Western States	40.0
					Canada		55,500
Grand Canal Concept	T. W. Kierens Sudbury, Ontario	1965	Great Lakes and St. Lawrence River	Canadian rivers flowing to Hudson Bay	Mexico		35,750
					United States	Great Lake States	17.0
Beck Plan	R. W. Beck Associates	1967	Missouri River	Texas High Plains	United States	South Dakota	17.0
						Nebraska	23,600
						Kansas, Colorado Oklahoma, Texas	15,200
West Texas and Eastern New Mexico Import Project	U.S. Bureau of Reclamation & U.S. Corps of Engineers	1967 (1972 due)	Mississippi and Texas Rivers	High Plain of Texas and New Mexico	United States	Oklahoma, Texas	10.0
						New Mexico	13,800
						Louisiana	8,930
							16.5
							22,900
							14,700

Source: C. C. Warnick, "Historical Background and Philosophical Basis of Regional Water Transfer," in *Arid Lands in Perspective*, McGinnies and Goldman, Eds. (Tucson: The University of Arizona Press, 1969), pp. 340-351.

**Attachment 8.9**

8. Subcontractors:  
a. Business Card of Jeff Rauh

**Jeff Rauh**  
**Keystone Project Representative**

An employee of Neil Palmer & Associates  
an independent contractor to TransCanada

890 Elm Grove Road  
Suite 100  
Elm Grove, WI 53122

Office: 262.821.5230  
Cell: 262.853.6567

E-mail: [jrauh@neilpalmerllc.com](mailto:jrauh@neilpalmerllc.com)

Contracted to the Keystone Pipeline

***Call Before You Dig! For US line locates, call 811.***

**Attachment 8.10**



9. Landowner Agreement  
b. Only terms written into easements  
can be enforced

**1.56.1:** Regarding Mitigation Commitments and Landowner Agreements, in the Draft Report the NDEQ “encourages Keystone to negotiate mutually acceptable agreements with adversely affected landowners to address potential construction and restoration issues.” The Nebraska Draft Evaluation Report, October 2012, Chapter 2 Project Description Overview Section 2.2.1 Right-of way Acquisition Process states:

To construct, operate, and maintain the proposed Nebraska Reroute, Keystone would negotiate easement agreements with landowners along the route. The easement agreements would list the conditions to which the landowners and Keystone both agree, including financial compensation to the landowners in return for granting easements. Compensation would also be made for loss of use during construction, crop loss, loss of nonrenewable or other resources, restrictions on future use of the land, and restoration of any unavoidable damage to personal property during construction. Easement negotiations and final agreements are private business concerns between the landowners and Keystone, and neither DOS nor NDEQ has legal authority or ability to intervene in the proceedings or enforce the conditions of an easement agreement. In most cases, agreements would allow the agricultural uses currently in place to continue within the permanent ROW after pipeline installation.

**Attachment 8.11**

10. Threats to Condemn without a Permit

a. Letter from TransCanada 7-21-10



July 21, 2010

WILLIAM F. & SUSAN C. DUNAVAN  
1312 ROAD 6  
YORK, NE 68467

Re: ML-NE-YK-00600.000

Dear Owner:

You by now are aware that TransCanada Keystone Pipeline L.P. ("Keystone") is constructing and will operate a 1,833 mile crude oil pipeline, which will begin in Canada and will cross through approximately 1,073 miles of property in the United States, including Nebraska. As you know, the path of the pipeline will cross a portion of your property.

In order to construct the pipeline, Keystone must acquire a permanent and temporary easement over your property. It is Keystone's strong preference to negotiate a voluntary transfer with each property owner. However, in the event we cannot come to an agreement, Keystone will use eminent domain to acquire the easement, which is authorized pursuant to Nebraska Revised Statute § 57-1101 et. seq.

The description of the proposed permanent and temporary easements is described in the enclosed form of easement and its attachments.

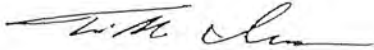
As consideration for granting Keystone these easements, TransCanada is offering you the total sum of \_\_\_\_\_. This sum includes \_\_\_\_\_ for the permanent easement, which represents 100% of the total fee value for the permanent easement, despite the fact the permanent easement encompasses significantly less property rights than the total fee. Additionally, the amount includes \_\_\_\_\_ for the temporary easement which is based upon a rental value of 50% of the fee value per year. Finally, Keystone will provide compensation for any damages that occur during the course of the construction including crop loss and any damages to fences, trees or other improvements.

This letter is Keystone's final offer, and it will remain open for one month after the date of this letter or until you reject it. We believe the amount of the offer is a premium price for your property. Keystone's offer is high because the company prefers to acquire this property through negotiation and to avoid litigation and its associated delays and risks. In order to accept this offer, please have the authorized person(s) execute two original Easement and Right of Way forms before a notary public and return them to me in the enclosed postage pre-paid envelope before the expiration of the one month period. Also enclosed is a W-9 tax form that needs to be completely filled out, signed and returned along with the other forms. We will deliver the agreed upon amount of compensation to you immediately upon our receipt of the signed and notarized documents.

While we hope to acquire this property through negotiation, if we are unable to do so, we will be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property promptly after the expiration of this one month period. In the event that we are forced to invoke the power of eminent domain, this letter and its contents are subject to Nebraska Revised Statute § 27-408 and are not admissible to prove the existence or amount of liability.

Please contact me in the event you have any questions or concerns at (832) 320-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim M. Irons", with a stylized flourish at the end.

Tim M. Irons  
Senior Land Coordinator  
TransCanada Keystone Pipeline, L.P.  
717 Texas Street  
Suite 24215  
Houston, TX 7702-2761

Encl.

**Attachment 8.12**





April 7, 2011

WILLIAM F. & SUSAN C. DUNAVAN  
1312 ROAD 6  
YORK, NE 68467

Re: ML-NE-YK-00600.000

Dear Owners:

The proposed route of a crude oil pipeline, known as Keystone XL, crosses a portion of your property in Nebraska. The project, proposed by Delaware-based TransCanada Keystone Pipeline L.P., responds to U.S. demand for crude oil from refineries seeking a secure and stable supply. The project seeks to create a land-based link between this U.S. demand and growing oil supplies in Canada and in the northern Great Plains states. Oil delivered would reduce the need for imports from Venezuela or the Middle East, significantly improving U.S. energy security.

The federal regulatory review of this proposed project continues and we expect a decision from the federal government in the first half of 2011. To construct the project, we must acquire permanent and temporary easements, and possibly other pipeline and construction related land rights, through the area where this project will be constructed in Canada and in the U.S., including in Nebraska.

Permanent easements provide Keystone limited rights to construct, operate, and maintain the pipeline. Landowners retain all rights of ownership and productive use of the easement area with only those restrictions that ensure the continued integrity and safety of the pipeline. In addition, temporary easements, which are in place only until construction and reclamation are completed, support the construction activities on the permanent easement.

To construct the pipeline, we must acquire a permanent and temporary easement over your property. The proposed permanent easement and temporary easement is described in the enclosed form of easement and its attachments.

It is our strong preference to negotiate a voluntary easement acquisition with each property owner. We have been working with Nebraska landowners since 2008 to understand how best to minimize the impact of this project on individual properties and operations. This process can include multiple visits to the land to address specific routing issues as well as provisions to minimize impacts associated with the construction process. You are receiving this letter because our discussions and negotiations are not progressing to a voluntary settlement in a timely manner.

In such circumstances, property laws in Nebraska and most other jurisdictions allow proponents of projects that are in the broader public interest to use eminent domain to acquire the easement, which is authorized pursuant to Nebraska Revised Statute § 57-1101 et. seq.

It is important to point out that in addition to the easement itself, Keystone's work on your land and the pipeline itself must be in compliance with applicable state and federal rules and regulations. In particular, throughout its route in the U.S., the safe operation of this pipeline is governed by the U.S. Department of Transportation. These requirements include measures required to ensure safety when the pipeline is operating and if it is shut down. Construction methods and techniques are spelled out in detail in the Construction Mitigation and Reclamation Plan, a copy of which you should have received as a part of the Draft Environmental Impact Statement issued by federal agencies reviewing this project (and available on the U.S. Department of State project web site at [www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open](http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open) under "Project Documents"). Additional requirements related to construction may be added as regulatory reviews continue to proceed.

As consideration for granting these easements, we are offering you the total sum of                      This sum includes                      for the permanent easement, which is based on 100 per cent of the current, unit fee value (i.e. dollars per acre as determined by an independent market assessment) of similar land in your region, despite the fact the permanent easement grants us significantly fewer property rights than outright ownership. Additionally, the amount includes                      or the temporary easement which is a rental value based on 50 per cent of the assessed unit fee value. Finally, we will provide compensation for any damages that occur during the course of the construction including crop loss and any damages to fences, trees or other improvements.

We prefer to acquire this property through negotiation and voluntary settlement. We will initiate eminent domain only as a last resort, where good faith efforts have not resulted in a voluntary agreement. Even after initiating this process, we will continue to work to reach a voluntary agreement.

This letter represents our final offer, and will remain open for one month after the date of this letter or until you reject it, whichever is earlier. After that period, we will initiate the eminent domain process. To avoid litigation, we are offering an amount for the easement that exceeds the value of the rights we seek.

To accept this offer, the authorized person(s) must execute two original Easement and Right of Way forms before a notary public and return them to the undersigned in the enclosed postage pre-paid envelope before the expiration of the one month period. Also, the enclosed W-9 tax form needs to be completely filled out, signed and returned along with the other forms. We will deliver the agreed upon amount of compensation to you immediately upon our receipt of the signed and notarized documents. This settlement remains in place regardless of whether Keystone receives its federal permit.

Our strong preference is to reach voluntary agreement and we will continue these efforts regardless of the initiation of legal processes. In the event that we must invoke the power of eminent domain, this letter and its contents are subject to Nebraska Revised Statute § 27-408 and are not admissible to prove the existence or amount of liability.



Please contact me in the event you have any questions or concerns at (832) 320-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim M. Irons". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tim M. Irons  
Senior Land Coordinator  
TransCanada  
717 Texas Street  
Suite 24215  
Houston, TX 7702-2761

Encl.

cc: Lee H. Hamann, McGrath North Mullin & Kratz, PC LLO  
John Hunt, TransCanada

**Attachment 8.13**



10. Threats to Condemn without a  
Permit  
c. Copy of letter to Bruning and reply

August 12, 2010  
1312 Road 6  
York, NE 68467

Jon Bruning  
Office of the Attorney General  
2115 State Capitol  
Lincoln, NE 68509-4604

Dear Mr. Bruning,

I am writing to you over the concern of the TransCanada Keystone XL Pipeline. This pipeline is scheduled to go through our property which consists of native prairie. I am concerned over losing this prairie as well as the dangers of polluting the Ogallala Aquifer. I have written TransCanada asking questions. I have not received any replies from the company. I have not signed any easement papers. I just received a somewhat threatening letter from TransCanada. At first I thought it was the answers to my questions. Instead it was a letter that says unless the easement papers are signed "we will be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property."

My question to you is can TransCanada threaten us with eminent domain if they have no permits yet and the Environmental Impact Statement agreement has been given to them?

I am sure I am not the only one receiving these letters. I urge you to use your power to protect the citizens of the State of Nebraska.

Sincerely,

Susan C. Dunavan

**Attachment 8.14**



STATE OF NEBRASKA  
**Office of the Attorney General**

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
CAPITOL FAX (402) 471-3297  
TIERONE FAX (402) 471-4725

**JON BRUNING**  
ATTORNEY GENERAL

**LIZ EBERLE**  
CONSTITUENT SERVICES DIRECTOR

September 30, 2010

Susan Dunavan  
1312 Road 6  
York, NE 68467

Dear Susan:

Thank you for taking time to contact our office. We are sorry to hear about the frustrations you and your family are going through.

We share your concern for preservation of native prairie and the pristine quality of the water stored in the Ogallala Aquifer, and are monitoring the progression of the TransCanada Keystone XL Pipeline in Nebraska. While our office is unable to provide private legal advice, we can confirm that public utilities, under certain circumstances, do have the authority to exercise eminent domain.

Since your property rights may be impacted by the proposed pipeline, we encourage you to speak with someone familiar with real estate law to determine the best course of action. We appreciate your interest and concern in contacting our office.

We appreciate your interest and concern in contacting our office.

Sincerely,

JON BRUNING  
Attorney General

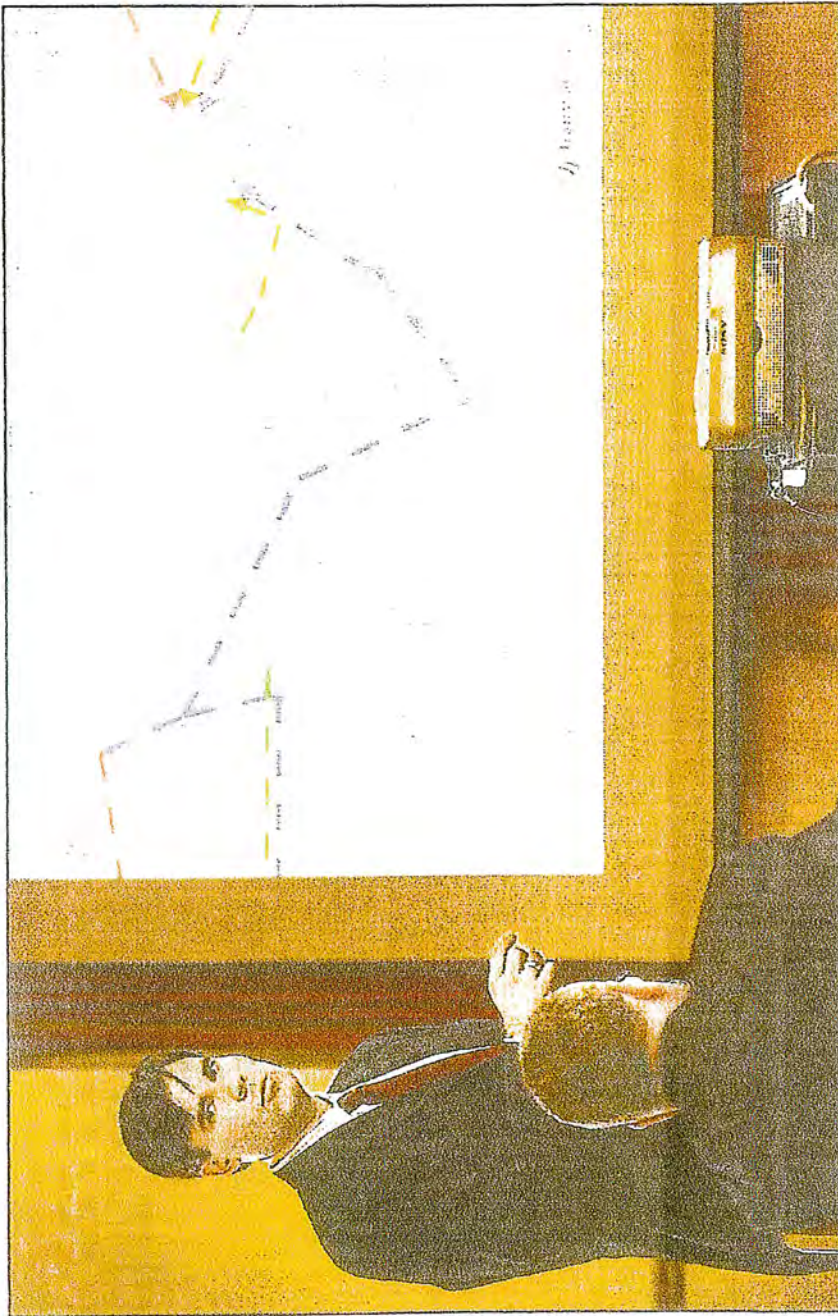
Liz Eberle  
Constituent Services Director

**Attachment 8.15**



11. Realizing TransCanada is a Foreign  
(non U.S.A.) Operation from beginning  
to end. Lincoln Journal Star 9-4-2011

## PIPELINE PRESENTATION



Louis Fenyvesi, manager of marketing, supply and oil pipelines for TransCanada, gives a presentation during the briefing for Keystone XL Pipeline at The Cornhusker Marriott on Wednesday morning.

FRANCIS GARDLER/Lincoln Journal Star

# Pointing fingers

Governor asks Obama  
to deny permit for  
Keystone XL Pipeline;  
legislators debate



Jeff Rattin,  
TransCanada's  
spokesman in  
Nebraska, runs  
the PowerPoint  
presentation for

**Attachment 8.16**



# CORNHUSKER ECONOMICS

University of Nebraska–Lincoln Extension

UNIVERSITY OF  
**Nebraska**  
Lincoln

February 9, 2011

Institute of Agriculture & Natural Resources  
Department of Agricultural Economics  
<http://agecon.unl.edu/cornhuskereconomics>

## The Keystone XL Pipeline Project

Market Report	Yr Ago	4 Wks Ago	2/4/11
<b>Livestock and Products,</b>			
<b>Weekly Average</b>			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight	\$84.58	\$105.29	\$105.50
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb	115.22	147.34	149.05
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb	98.21	126.83	126.32
Choice Boxed Beef, 600-750 lb. Carcass	139.34	165.81	172.40
Western Corn Belt Base Hog Price Carcass, Negotiated	64.08	70.45	80.09
Feeder Pigs, National Direct 50 lbs, FOB	*	*	*
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean	68.59	78.35	88.95
Slaughter Lambs, Ch. & Pr., Heavy, Woolled, South Dakota, Direct	*	161.00	*
National Carcass Lamb Cutout, FOB	243.26	352.13	347.71
<b>Crops,</b>			
<b>Daily Spot Prices</b>			
Wheat, No. 1, H.W. Imperial, bu	3.72	6.87	7.87
Corn, No. 2, Yellow Omaha, bu	3.36	5.68	6.55
Soybeans, No. 1, Yellow Omaha, bu	9.01	13.21	13.91
Grain Sorghum, No. 2, Yellow Dorchester, cwt	5.21	9.46	10.95
Oats, No. 2, Heavy Minneapolis, MN, bu	2.26	3.89	4.15
<b>Feed</b>			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton	135.00	140.00	140.00
Alfalfa, Large Rounds, Good Platte Valley, ton	87.50	72.50	72.50
Grass Hay, Large Rounds, Premium Nebraska, ton	82.50	*	*
Dried Distillers Grains, 10% Moisture, Nebraska Average	104.00	186.00	197.50
Wet Distillers Grains, 65-70% Moisture, Nebraska Average	33.75	65.00	67.25
<b>No Market</b>			

Prior to Canadian Prime Minister Harper's visit to the White House last week, the United States Department of State released the EnSys study<sup>1</sup> of the controversial Keystone XL pipeline project proposed to run through Nebraska's sandhills. The release ignited new debates amid concern that the U.S. Department of State would soon decide whether to grant a permit for the pipeline. The Nebraska Unicameral is considering bills to provide more constraints on pipeline construction. Below is a summary of information about this project that could affect many Nebraskans.

### What is Keystone XL?

Actually, it is the XL extension, or Phase IV, that is at issue in Nebraska. This is a 36-inch pipeline to transport Alberta crude oil, primarily from tar sands through Montana, South Dakota, Nebraska and Kansas into Oklahoma, with a capacity of 0.5 million barrels per day (mbd), larger than the other pipelines from Canada. By way of contrast, total U.S. consumption has been about 21 mbd, with imports of 8.5 mbd of which 2.0 are from Canada, 1.3 from Mexico, 1.1 from Saudi Arabia, 0.9 from Venezuela and 0.8 from Nigeria. U.S. ethanol production is nearing 0.9 mbd. The XL extension would enter Nebraska near Burton and exit near Fairbury, following a 357 mile route including five pumping stations.<sup>2</sup> The total cost of the extension is about \$7 billion.

### Who is Behind Keystone XL?

The pipeline would be built and owned by TransCanada Corp., a publicly traded Canadian pipeline and power generating company. TransCanada also owns the Keystone pipeline running from north to south in Eastern Nebraska, with a 0.4 mbd capacity. Another pipeline, the Kinder Morgan Express-Platte extension, crosses the state from west to east and has a capacity of 0.4 mbd. At this point, the U.S. Department of State has final authority to approve the XL extension.



Extension is a Division of the Institute of Agriculture and Natural Resources at the University of Nebraska–Lincoln cooperating with the Counties and the U.S. Department of Agriculture.

University of Nebraska Extension educational programs abide with the non-discrimination policies of the University of Nebraska–Lincoln and the United States Department of Agriculture.



## 12. Other Evidence

### a. "Cornhusker Economics" 2-9-2011

#### Why Do They Want to Build It?

TransCanada wants to build the pipeline because they expect a satisfactory return on their investment. Oil production in Alberta is scheduled to double, oil that can be shipped into the U.S. at a competitive price. Current pipeline capacity from Canada is adequate for a decade or more, but pipeline configurations have reportedly led to congestion and low prices in the Midwest which could be improved with this construction. The project itself is unlikely to have any significant effect on total world production or consumption. Given current consumption trends, Canada would likely ship its extra production to Asia if the XL extension were not built, resulting in just a geographical reallocation.

The EnSys study, commission by the U.S. State Department, estimates that under current trends with the pipeline the U.S. will increase its Canadian imports by 2.6 million barrels per day by 2030. Given that production and imports from Mexico and Venezuela are projected to dwindle, the study concludes that the alternative to Canadian petroleum is an increase in U.S. dependence on imports from the Middle East. These projections assume a continuation of current U.S. energy policies. Opponents of the pipeline point out that the existence of the pipeline would undermine U.S. efforts to replace petroleum consumption with renewable fuels.

#### Environmental Impacts

The potential Nebraska environmental impacts of the pipeline include scarring of sandhills' landscapes and related wildlife disruptions, but more importantly, the risk of contaminating waterways, soils and perhaps the High Plains Aquifer itself, due to oil spills. TransCanada claims to have adequate plans for remediation of the construction sites and for responding to leaks.<sup>3</sup> The adequacy of those plans and the quality of the pipeline components have been challenged by opponents, however.<sup>4</sup> In July, the Environmental Protection Agency (EPA) called for a more exhaustive environmental impact statement,<sup>5</sup> which the State Department has not yet received.

The risks of spills is real. Just within the past year the U.S. has experienced pipeline ruptures at Talmadge Creek, Michigan and Red Butte, Utah, damaging several miles of waterways; and pump station leaks occurred at Ft. Greeley and at Prudhoe Bay on the Alaska pipeline.

Much of the opposition to the pipeline derives from opposition to the environmental impacts of tar sands petroleum itself. The California Air Resources Board calculates that its carbon footprint is 30 percent higher than conventional petroleum,<sup>6</sup> and the mining processes have scarred the landscape in Alberta and polluted waterways and adjacent lands.<sup>7</sup> Pipeline proponents counter this argument by pointing out that Canada expects to triple its tar sands production for the world market,<sup>8</sup> regardless of the Keystone XL. Opponents reply that the

U.S. should not collaborate in developing this "dirty" energy source by encouraging its use here. (Canada is the third largest per-capita greenhouse gas polluter, it has exceeded its Kyoto target by 30 percent, and it has recently joined Japan and Russia in opposing the extension of the Kyoto agreement beyond 2012.)

#### Impact on the Nebraska Economy

Construction and maintenance of the pipeline would contribute an unknown amount of jobs and tax returns to the Nebraska economy. A study by Perryman,<sup>9</sup> commissioned by TransCanada, estimates that construction and development would contribute 7,551 person-years of temporary jobs in Nebraska, \$9.5 million to state revenues and another \$1.8 million to local government revenues. They estimate the long-term (100 years) present value of increased property taxes at \$152 million. Although we have not carefully assessed the validity of this analysis, some of its assumptions strike us as optimistic. For example, the National Wildlife Federation shows that the employment figures in this report are 65 percent higher than those estimated by the Department of State.<sup>10</sup> The study makes no attempt to evaluate economic losses that might occur because of oil spills, scarred landscapes, water contamination, etc.

Considering the potential benefits and costs alluded to above, we do not support the project. While there is room for disagreement on this policy issue, supporters have yet to make a clear case that benefits to Nebraska would offset the costs and risks.

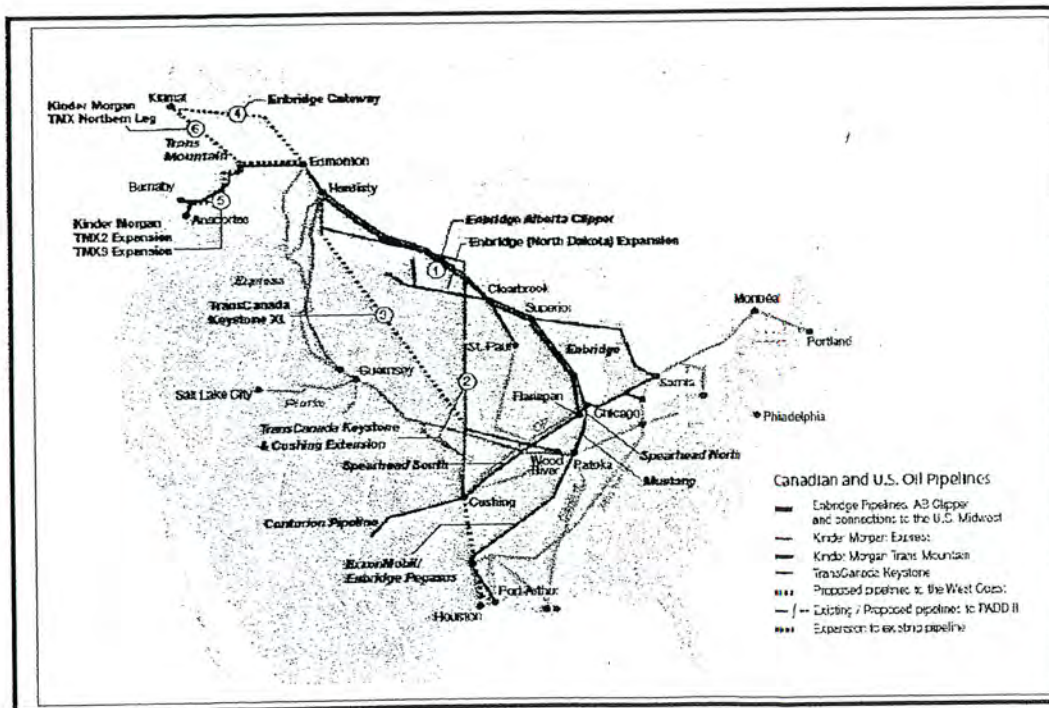
Richard K. Perrin, (402) 472-9818  
Roberts Professor  
Dept. of Agricultural Economics  
University of Nebraska-Lincoln  
[rperrin@unl.edu](mailto:rperrin@unl.edu)

Lilyan Fulginiti, (402) 472-0651  
Professor  
Dept. of Agricultural Economics  
University of Nebraska-Lincoln  
[lfulginiti@unl.edu](mailto:lfulginiti@unl.edu)



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- <sup>3</sup> [http://www.transcanada.com/docs/Key\\_Projects/SandhillsNativeRangeland.pdf](http://www.transcanada.com/docs/Key_Projects/SandhillsNativeRangeland.pdf)
- <sup>4</sup> See, for example: <http://plainsjustice.org/> and [http://dirtyoilsands.org/dirtyspots/category/keystone\\_xl/obamas\\_choice/](http://dirtyoilsands.org/dirtyspots/category/keystone_xl/obamas_choice/)
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[http://www.transcanada.com/docs/Key\\_Projects/TransCanada\\_US\\_Report\\_06-10-10.pdf](http://www.transcanada.com/docs/Key_Projects/TransCanada_US_Report_06-10-10.pdf)
- <sup>10</sup> [http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-fuels/~media/PDFs/Global%20Warming/Tar-Sands/Keystone\\_XL\\_Jobs\\_11-09-10.ashx](http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-fuels/~media/PDFs/Global%20Warming/Tar-Sands/Keystone_XL_Jobs_11-09-10.ashx)



**Attachment 8.17**

12. Other Evidence  
b. 30+ Binders full of documentation



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  
William Dunavan in Support of  
Landowner Intervenor**

State of Nebraska                    )  
  ) ss.  
York County                         )

1   **Q:    Please state your name.**

2   A:    My name is William Dunavan.

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 York 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:    Susan Dunavan.



1   **Q:   Do you have children?**

2   A:   Yes, five.

3   **Q:   Do you have grandchildren?**

4   A:   Yes, nine living and two that have passed away.

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:   When we purchased our land in 1979 the previous owner requested that the land  
12       be kept as pastureland and not be farmed. We were very willing to make this  
13       promise as that was our intention all along...to keep the property as pastureland  
14       and to increase the varieties of native grasses, flowers, and forbes. This land has  
15       become our heritage over the years and is one of the last stands of native prairie in  
16       York County. We paid on this land for 30 years, working overtime and our  
17       American Dream is now gone. This land is where our children were raised and  
18       where our grandchildren come and run and explore. To us this land is priceless.  
19       There is an intermittent stream that runs through our property as well as about 6  
20       acres of woods. The combination of prairie, stream bed and small forest makes for  
21       an immense diversity of plant and animal life. There have been new discoveries in  
22       every season over the past 38 years and we hope our family's hard work and love  
23       of the land will not be torn apart.

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

25   A:   My wife and I own a crop consulting business called Nebraska Crop and Soil  
26       Systems. We started the business in 1978 and currently consult with  
27       approximately 30 farms in a 45 mile radius of York, Nebraska. I am the President  
28       and consultant and my wife is the Secretary, Treasurer, and Chief Investigator for  
29       all background work that needs to be done in running a business.

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

2   A:    Yes.

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

5   A:    Yes.

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

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

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

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

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

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

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

28   A:    Yes.

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

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

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

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

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

11 A: No, they have not.

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

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

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

19 A: No, they did not.

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

22 A: Yes, they did.

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

25 A: Yes, they did.

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

27 A: TransCanada stated that the eminent domain property will be used to "lay, relay,  
28 operate, and maintain the pipeline and the plant and equipment reasonably  
29 necessary to operate the pipeline, specifically including surveying, laying,

1 constructing, inspecting, maintaining, operating, repairing, replacing, altering,  
2 reconstructing, removing and abandoning one pipeline, together with all fittings,  
3 cathodic protection equipment, pipeline markers, and all their equipment and  
4 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,  
5 petroleum products, and all by-products thereof.”

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

9 A: No, I do not.

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

12 A: Yes, they did.

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

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

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

25 A: Yes, it is.

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

28 A: Yes, I have.



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

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

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

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

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

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

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

26 A: The very first sentence talks about consideration or how much money they will  
27 pay to compensate me for all of the known and unknown affects and all of the  
28 rights I am giving up and for all the things they get to do to my land and for what

1 they will prevent me from doing on my land and they only will pay me one time at  
2 the signing of the easement agreement. That is a huge problem.

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

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

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

18 A: The first paragraph goes on to say Grantor, which is me the landowner, "does  
19 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a  
20 limited partnership..." and I have no idea who that really is. I have no idea who is  
21 forcing this pipeline on us or who the owners of the entities are, or what are the  
22 assets backing this limited partnership, or who the general partner is, or who all  
23 the limited partners are, and who makes up the ownership of the these partners or  
24 the structure or any of the basic things you would want to know and understand if  
25 you would want to do business with such an outfit. According to TransCanada's  
26 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited  
27 liability company called TransCanada Keystone Pipeline GP, LLC is the general  
28 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so

1 basically nothing. That is really scary since the general partner has the liability but  
2 virtually none of the ownership and who knows if it has any other assets.

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

6 A: No.

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

11 A: No.

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

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

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

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

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

27 A: Then it says "...a perpetual permanent easement and right-of-way..." and this  
28 really concerns me. Why does the easement and right-of-way have to be perpetual

1 and permanent? That is the question myself and my family want an answer to.  
2 Perpetual to me is forever and that doesn't make sense.

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

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

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

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

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

24 A: Yes.

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

26 A: Here the Easement identifies a 24-month deadline to complete construction of the  
27 pipeline but has caveats that are undefined and ambiguous. The 24-month period  
28 starts to run from the moment "actual pipeline installation activities" begin on  
29 Landowners property. It appears that TransCanada would define this phrase as



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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 A: Again, undefined terms leave a lot of room for confusion. What does the phrase  
28 "where rock is encountered" mean and why does TransCanada solely get to  
29 determine whether or not this phrase is triggered. This phrase could be used to

1 justify installing the pipeline 24 inches beneath the surface. The ability to use this  
2 provision to minimal locate the pipeline at a depth of 24 inches could negatively  
3 affect Landowners property are not conducive to the protection of property rights.  
4 A shallow pipeline is much more likely to become a danger and liability in the  
5 future given farming operations and buried irrigation lines and other factors  
6 common to the current typical agricultural uses of the land in question impacted  
7 by TransCanada's preferred pipeline route.

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

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

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

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

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

25 A: TransCanada has the power to unilaterally move or modify the location of any  
26 Easement area whether permanent or temporary at their sole discretion.  
27 Regardless, if Landowner has taken prior steps relative the their property in  
28 preparation or planning of TransCanada's taking of the initial easement area(s),  
29 the language here does not require TransCanada to compensate the Landowner if



1 they decide to move the easement anywhere on Landowners property. Such  
2 unilateral powers would negatively affect Landowners property are not conducive  
3 to the protection of property rights or economic interests.

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

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

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

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

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

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

- 24 i. "pipeline installation activities"
- 25 ii. "availability of labor and materials"
- 26 iii. "commercially reasonable costs and expenses"
- 27 iv. "reasonably anticipated and foreseeable costs and expenses"
- 28 v. "yield loss damages"
- 29 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.

**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.

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

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

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

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

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

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

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

22 A: No, never.

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

26 A: Yes, they did.

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

29 A: Yes, it is.

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

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

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

9   A:   No, I did not.

10  **Q:   Why not?**

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

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

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

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

27  A:   No, they have not.



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 the public interest of the State of Nebraska?**

4 A: No, they have not.

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

7 A: Yes, I am.

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

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

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

16 A: No, they have not.

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

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

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

1 A: No, it has not.

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

5 A: No, I do not.

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

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

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

12 A: Yes, I do.

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

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

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

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

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

23 A: No, of course not.

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

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

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

2   A:    Well, yes I have.

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

7   A:    No, of course not.

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

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

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

23  A:    I have included this answer in my attached documents.

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

27  A:    Yes, I have significant concerns.  I am aware of landowners being treated unfairly  
28       or even bullied around and being made to feel scared that they did not have any  
29       options but to sign whatever papers TransCanada told them they had to.  I am

1 aware of folks being threatened that their land would be taken if they didn't follow  
2 what TransCanada was saying. I am aware of tactics to get people to sign  
3 easements that I don't believe have any place in Nebraska or anywhere such as  
4 TransCanada or some outfit associated with it hiring a pastor or priest to pray with  
5 landowners and convince them they should sign TransCanada's easement  
6 agreements. I am aware of older folks and widows or widowers feeling they had  
7 no choice but to sign TransCanada's Easement and they didn't know they could  
8 fight or stand up for themselves. From a more practical standpoint, I am worried  
9 that according to their answer to our Interrogatory No. 211, TransCanada only  
10 owns and operates one (1) major oil pipeline. They simply do not have the  
11 experience with this type of pipeline and that scares me. There are others but that  
12 is what I can recollect at this time and if I remember more or my recollection is  
13 refreshed I will share those with the 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. A 2½%

1 detection level for spills is inadequate-a ridiculous safeguard for a pipeline of this  
2 magnitude. More concerns are in my attached documents.

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 its**  
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. Both the  
20      preferred route and the mainline alternative routes are economic liabilities our  
21      state cannot risk.

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

25      A: No, I have not. I have shared that which I can think of as of the date I signed this  
26      document below but other things may come to me or my memory may be  
27      refreshed and I will add and address those things at the time of the Hearing in  
28      August and address any additional items at that time as is necessary. Additionally,  
29      I have not had an adequate amount of time to receive and review all of

1 TransCanada's answers to our discovery and the discovery of others so it was  
2 impossible to competently and completely react to that in my testimony here and I  
3 reserve the right to also address anything related to discovery that has not yet  
4 concluded as of the date I signed this document below. Lastly, certain documents  
5 requested have not yet been produced by TransCanada and therefore I may have  
6 additional thoughts on those I will also share at the hearing as needed.

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

10 A: I am respectfully and humbly requesting that the Commissioners think far beyond  
11 a temporary job spike that this project may bring to a few counties and beyond the  
12 relatively small amount of taxes this proposed foreign pipeline would possibly  
13 generate. And, instead think about the perpetual and forever impacts of this  
14 pipeline as it would have on the landowners specifically, first and foremost, but  
15 also thereby upon the entire state of Nebraska, and to determine that neither the  
16 preferred route nor the Keystone mainline alternative route are in the public  
17 interest of the citizens of the state of Nebraska.

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

21 A: Yes.

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

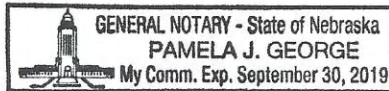
25 A: Yes, they are.

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

William F. Dunavan  
William Dunavan

Subscribed and Sworn to me before this 24<sup>th</sup> day of May, 2017.

Pamela J. George  
Notary Public



**Attachment No. 1**





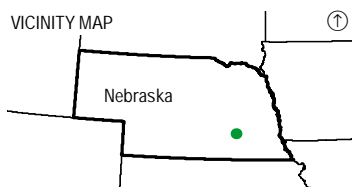
S.006  
T.009N  
R.002W

Susan C. Dunavan  
William F. Dunavan

S.007  
T.009N  
R.002W

IMAGERY: NAIP 2016

0 250 500 Feet



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY  
Susan C. Dunavan  
William F. Dunavan

TRACT NO. ML-NE-YK-00600.000  
STATE: Nebraska  
COUNTY: York  
SECTION: 006  
TOWNSHIP: 009N  
RANGE: 002W

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

**Attachment No. 2**



**The Dunavan Family**  
Bill, Susan, Sr. Fidelis, Fr. Tom,  
Jesse, Jennie, Isaac, Levi, James, Matthew,  
Sr. Agnes, Elizabeth, Tommy, Timmy,  
Olivia, Daniel, Francis, Theo



**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-YK-00600.000

**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**"), **William F. Dunavan and Susan C. Dunavan, husband and wife, as joint tenants**, whose mailing address is 1312 Road 6, York, NE 68467 (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 York, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 80 acres, more or less, situated in the County of York, in the State of Nebraska, being further described as two tracts of land situated in the W1/2 of the SE1/4 of Section 6, T9N, R2W of the 6th P.M., as recorded in Book 169, Page 137 and Book 167, Page 342 in the Deed Records of York 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):

\_\_\_\_\_  
William F. Dunavan

\_\_\_\_\_  
Susan C. Dunavan

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **William F. Dunavan**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Susan C. Dunavan**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

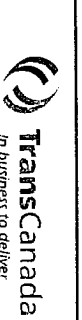


**LEGEND**  
 R. PROPERTY LINE  
 S. SECTION LINE  
 PROP. PROPOSED  
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE  
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY  
 D.R.Y.C.N. DEED RECORDS OF YORK COUNTY, NEBRASKA

# YORK COUNTY, NEBRASKA

## T-9-N, R-2-W, SECTION 6

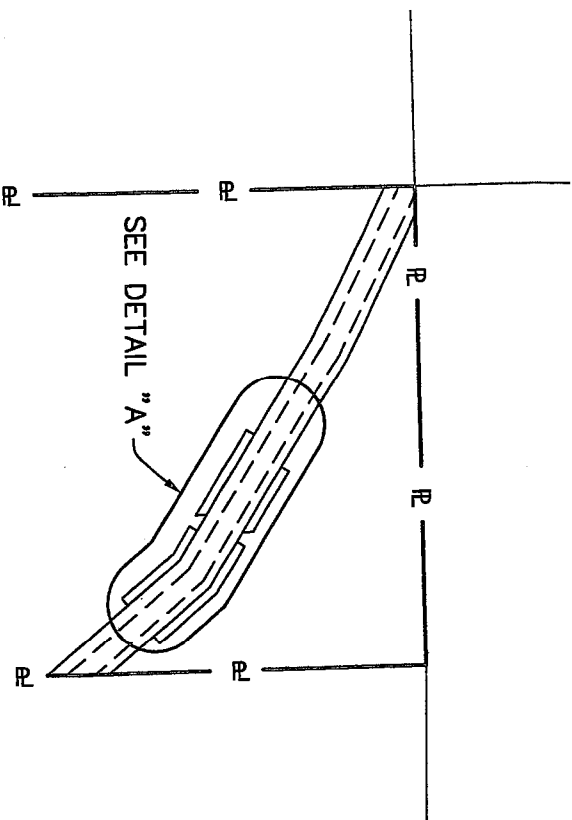
### ML-NE-YK-00600.000



#### KEYSTONE XL PROJECT

**EASEMENT AREA**  
 ACROSS THE PROPERTY OF  
 WILLIAM F. DUNAVAN AND SUSAN  
 C. DUNAVAN, AS JOINT TENANTS  
 WITH RIGHT OF SURVIVORSHIP,  
 AND NOT AS TENANTS IN COMMON  
 ML-NE-YK-00600.000

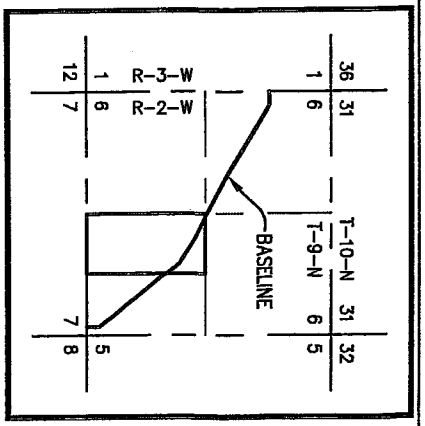
PROJECT	XL	EXHIBIT A
APPROVED BY		DRAWING NUMBER
SLR	XL-08-ML-SK-2160	DATE
NO.	REVISION	
SCALE	DATE	DRAWN BY
1" = 500'	10/27/14	PB
		CHECKED BY
		ALS



**WILLIAM F. DUNAVAN AND  
 SUSAN C. DUNAVAN, AS  
 JOINT TENANTS WITH  
 RIGHT OF SURVIVORSHIP,  
 AND NOT AS TENANTS IN  
 COMMON**

VOLUME 167, PAGE 342  
 VOLUME 169, PAGE 137  
 D.R.Y.C.N.

SECTION 6  
 SECTION 7



0 250 500  
 SCALE: 1" = 500'

**TRACT LEGAL DESCRIPTION:**  
 W/2 SE/4 OF SECTION 6,  
 T-9-N, R-2-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: 1.613'±**  
**AREA OF PERMANENT EASEMENT: 1.9 ACRES**  
**AREA OF TEMPORARY WORKSPACE: 2.2 ACRES**  
**AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.6 ACRE**

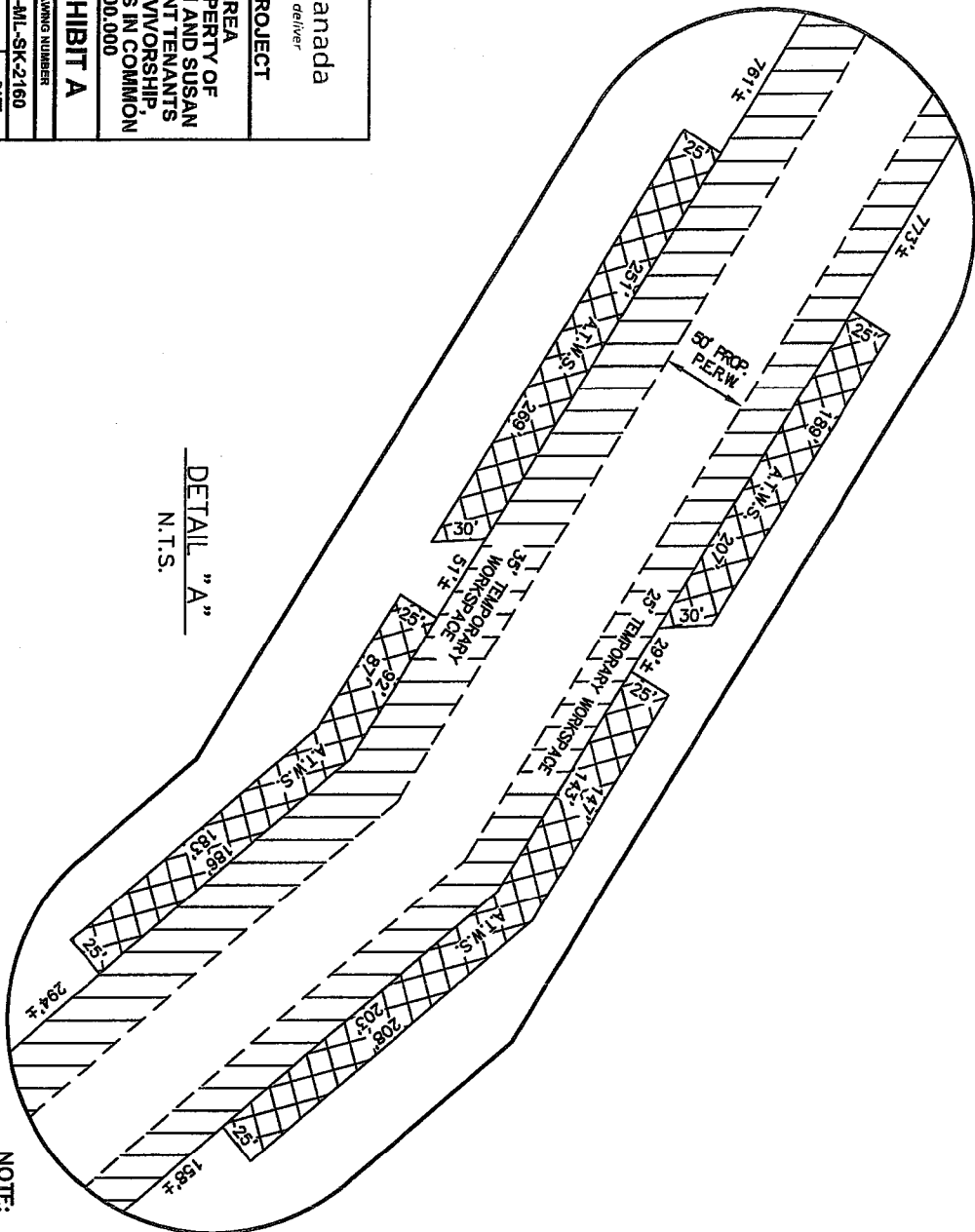


LEGEND  
R  
PROP.  
A.T.W.S.  
P.E.R.W.

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

# YORK COUNTY, NEBRASKA

T-9-N, R-2-W, SECTION 6  
ML-NE-YK-00600.000



DETAIL "A"  
N.T.S.



KEYSTONE XL PROJECT

EASEMENT AREA  
ACROSS THE PROPERTY OF  
WILLIAM F. DUNAVAN AND SUSAN  
C. DUNAVAN, AS JOINT TENANTS  
WITH RIGHT OF SURVIVORSHIP,  
AND NOT AS TENANTS IN COMMON  
ML-NE-YK-00600.000

PROJECT: XL EXHIBIT A

APPROVED BY: DRAWING NUMBER

SLR: XL-08-ML-SK-2160

NO. REGION 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 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-YK-00600.000

We, William F. Dunavan and Susan C. Dunavan, of York County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Two Hundred Twenty-two Dollars and No Cents (\$1,222.00), 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 York, State of Nebraska:

**W/2 SE/4**

**Section 6, Township 9N, Range 2W**

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

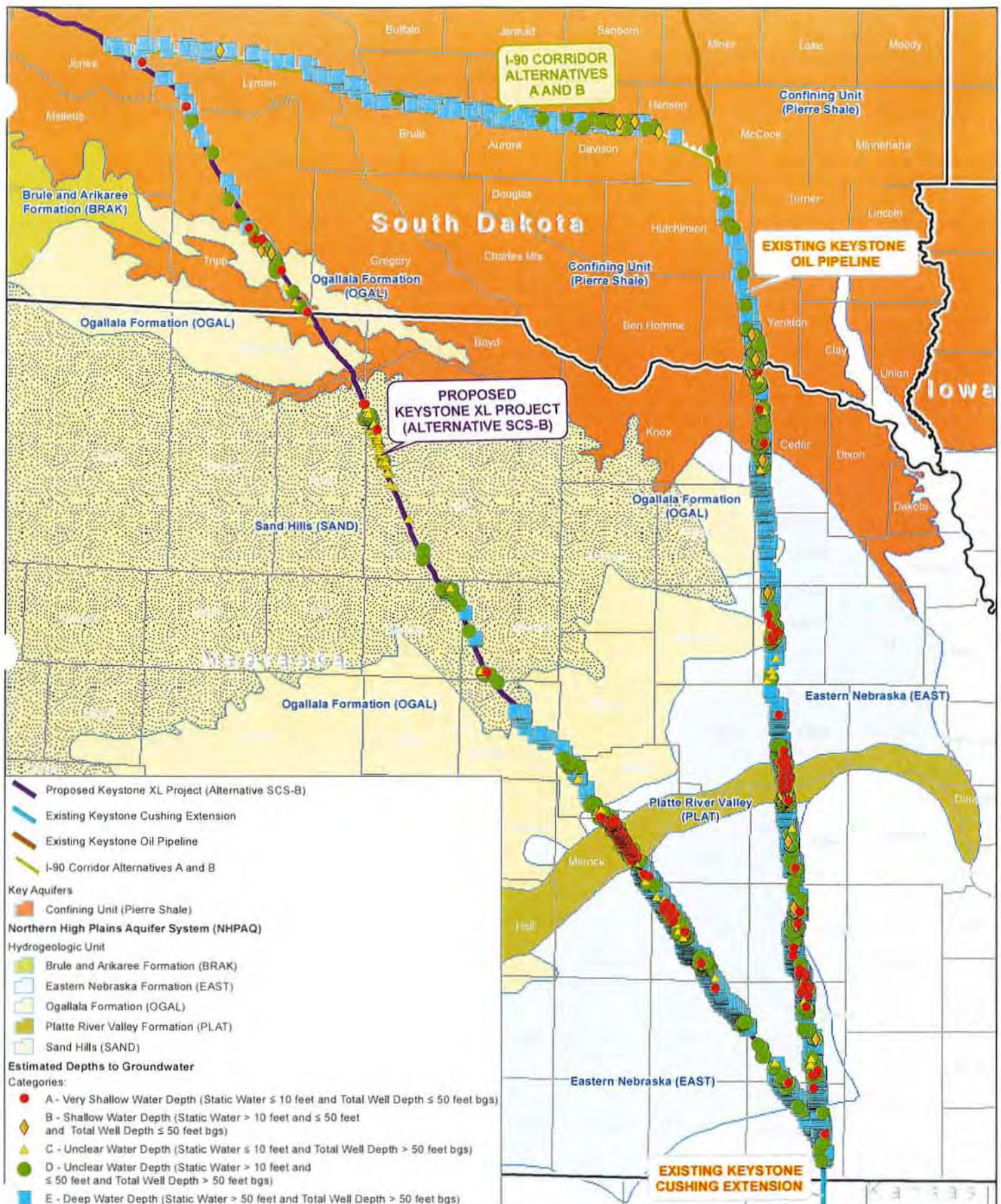
\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name



**Attachment No. 6**



## 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**

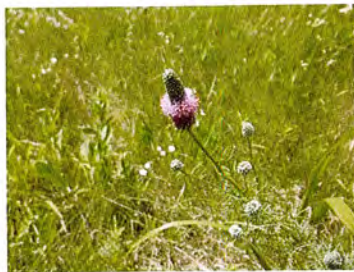
## **Attachment 8.1**



Prairie Plants











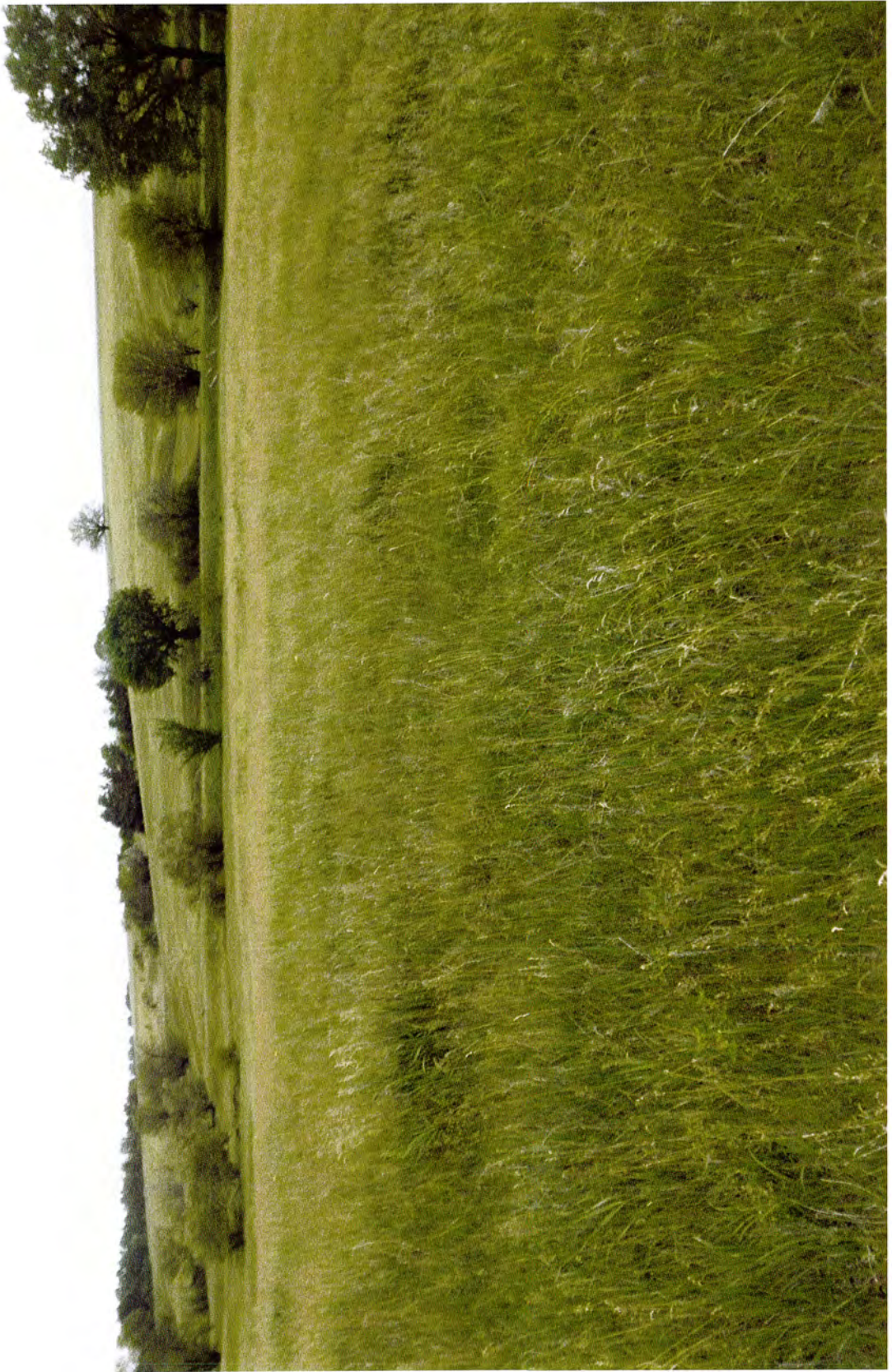






















**Attachment 8.2**

## NEGATIVE IMPACTS OF KEYSTONE XL ON THE PROPERTY OF BILL AND SUSAN DUNAVAN

W ½ SE ¼ 6-9-2 YORK COUNTY, NEBRASKA

1. **DESTRUCTION OF NATIVE PRAIRIE:** We have some of the last surviving Native Prairie in York County, Nebraska. When we called the County Assessor years ago at the start of the Keystone XL controversy and asked how much native prairie there was in York County, we were told they did not know there was any. In the Draft Environmental Impact Statement 3.5.2.1 it states, "Native grasslands or prairies are among the most threatened native vegetation communities in the United States". TransCanada's brochures promised to **"RESTORE"** lands impacted by this project. Our easements and the EIS mention the terms **"RESEED, REVEGETATE, RESESTABLISH and RECLAIM** interchangeably. None of these terms define **"RESTORE"**. We have over 15 species grass and over 90 species of flowers, forbs and herbs. The EIS Construction/Reclamation Plan for Tall Grass Prairie lists only 6 varieties of grass that will be provided. **This is NOT RESTORATION.** Also the Draft Report for the Nebraska Department of Environmental Quality mentions that "Less than 2% of seed was available or could be obtained in the future from local ecotypes...without availability of local ecotype seed, restoration would be extremely difficult if not impossible".
2. **MANY WELLS NOT DOCUMENTED:** The Keystone Mapping Project has documented wells listed in the Environmental Impact Statement. Looking at the map we saw that our two wells were not identified and neither were our neighbor's wells. If this is the case along the proposed route, there must be innumerable wells that are not documented.
3. **DO WE REALLY CONTINUE TO OWN OUR PROPERTY?** TransCanada states that despite their easements, the property owners will still own their land and can continue to use it. In our case, the diagonal cutting through our property would allow TransCanada to control our land use. Our property has a perfect dam site that we have intended to utilize and we have been told that "Grantor shall not...construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization". This gives control of our entire property to a foreign corporation. An easement of 4-6 acres across takes away control of our entire 80 acre parcel. There shall be no water conservation dam, nor a modern underground cattle watering system, etc.
4. **WHAT WILL BE THE USE OF THE PIPELINE AFTER THE "OIL"?** With oil at or below \$50.00 a barrel and the cost of tar sands extraction needing to be \$80.00 or above to even break even, what is the real motive of this pipeline going over the aquifer? During a Natural Resources Committee hearing on February 9, 2011, Jim Krause, operations director for TransCanada stated "if the pipeline is not needed for oil somewhere down the road and there is no other use for any other product...or maybe by that time in the future, water".
5. **INSURANCE:** Purchasing a \$20,000,000 liability policy annually by a landowner cannot be afforded without continual rents, royalties, percentages, residual payments, etc. The landowner is stuck with a one-time payment and a perpetual liability.

6. PERPETUAL EASEMENT: The easements offered by TransCanada are **FOREVER**. Even for a  $\pm$  50 year project. This should never be allowed.
7. TAXES: The landowner must forever pay property tax on land taken by the easement.
8. SUBCONTRACTORS: All of TransCanada's work seems to be done by subcontractors. We have grave concerns over the supervision of these contractors. With everything being subcontracted, TransCanada does not need to be responsible, need to answer to anyone and there seem to be no penalties, consequences or fines if something is not done correctly.
9. LANDOWNER AGREEMENTS: All of the 7 easement offers we have had do not cover all of our concerns. TransCanada can promise us the world...they can promise they will follow the EIS and the 57 Special Conditions they have agreed to, but if these are not specifically outlined in our easements, there is no way they can actually be enforced and are nothing more than mere suggestions.
10. THREATS TO CONDEMN WITHOUT A PERMIT: Most people enjoy seeing FedEx come up their driveway...not anymore.
11. REALIZING THAT TRANSCANADA IS A FOREIGN (NON U.S.A.) OPERATION FROM BEGINNING TO END:



## NEGATIVE IMPACTS OF KEYSTONE XL ON THE PROPERTY OF BILL AND SUSAN DUNAVAN

W1/2 se ¼ 6-9-2 YORK COUNTY NEBRASKA

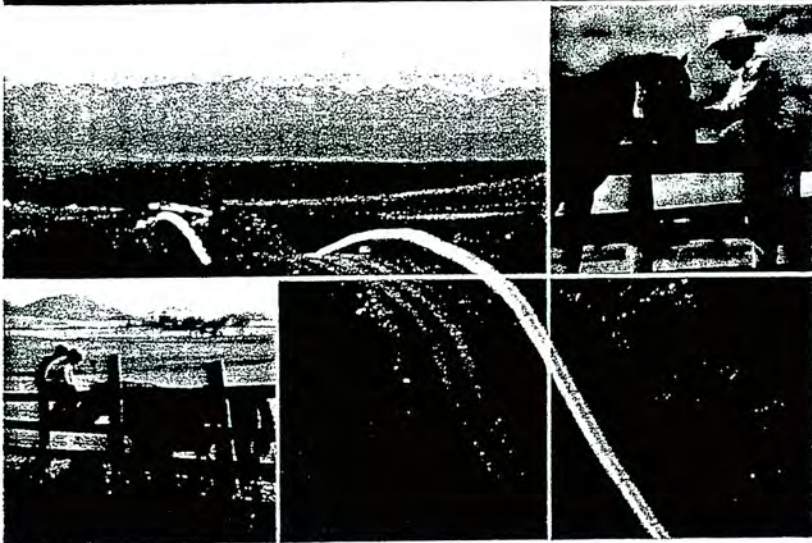
### EVIDENCE

1. DESTRUCTION OF NATIVE PRAIRIE:
  - a. TransCanada Brochure stating they will "restore" Prairie
  - b. Plant listing from our property
  - c. Trow Engineering stating they were hired for "Reclamation" survey, not "Restoration"
  - d. Photos of plants on our property can be made available
2. MANY WELLS NOT DOCUMENTED:
  - a. Nebraska Department of Natural Resources list of wells with GPS
  - b. Overlay from local platt book showing numerous residences all with wells, some with cattle windmills all left off report
  - c. Copy of map with DNR wells, made by "Keystone XL Mapping Project"
3. DO WE REALLY CONTINUE TO OWN OUR PROPERTY?:
  - a. Easement language prohibiting dam construction, digging, etc.
4. WHAT WILL BE THE USE OF THE PIPELINE AFTER THE "OIL"?
  - a. Copy of Business Card of Jim Krause
  - b. Natural Resources Committee Hearing 2-9-2011 with statement of Krause
  - c. Reference to Beck Plan R.W. Beck and Assoc. 1967 for Missouri River Basin
5. INSURANCE:
  - a. No documentation other than current property liability policy. Need bid from Insurance Company for \$20 million policy
6. PERPETUAL EASEMENT:
  - a. See Easement language
7. TAXES:
8. SUBCONTRACTORS:
  - a. Business card of TransCanada spokesman Jeff Rauh.
  - b. Personal observation of Bill Dunavan and others that surveyor's vehicles were inscribed with "International Pegasus" on their doors.
9. LANDOWNER AGREEMENT:
  - a. See Easement (s) Language
  - b. Only terms written into easements can be enforced
10. THREATS TO CONDEMN WITHOUT A PERMIT:
  - a. Copy of Letter from TransCanada dated: 7-21-2010
  - b. Copy of Letter from TransCanada dated: 4-7-2011
  - c. Copy of Letter to Atty. General Bruning and Attorney General's Office Reply dated 8-12-10 and 9-30-10 respectively.
11. REALIZING TRANSCANADA IS A FOREIGN (NON U.S.A.) OPERATION FROM BEGINNING TO END:
  - a. Copy from front page of Lincoln Journal Star with photo of TransCanada explaining the destination of their KXL products 9-4-2011.
12. OTHER EVIDENCE:
  - a. "Cornhusker Economics" Newsletter 2-9-2011 Conclusion, " Considering the potential benefits and costs alluded to above, we do not support the project...supporters have yet to make a clear case that benefits to Nebraska would offset the costs and risks." Richard K. Perrin, Dr. Lilyan Fulginiti, Department of Agricultural Economics.
  - b. 30+ Binders full of well documented information at Susan Dunavan's Office.
  - c. Dunavan Family Photo



### **Attachment 8.3**

# What Landowners Can Expect



- We will negotiate in good faith for land rights needed for the Keystone XL project. Fair value will be paid for land rights.
- In more than 50 years of building and operating its pipeline system TransCanada has used eminent domain or right-of-entry procedures very sparingly. We are committed to extending that positive record.
- We will work cooperatively with individual landowners to identify and address issues of crop loss, construction impacts and plans to bring land back to an equivalent productivity capability.
- The Keystone XL Pipeline project will be designed, constructed, operated and maintained in a manner that minimizes impact on landowners and the environment.

## Keystone XL Pipeline Project

We are committed to treating all landowners who may be affected by the Keystone XL Pipeline honestly, fairly and respectfully. We recognize that construction of a pipeline on or near land you own raises many questions; it is important that you understand what we are proposing and how you can participate in the process.

The preliminary Keystone XL Pipeline route is based on an analysis of land use, topography and environmental data. Refinements to the route have been – and will be – made based on feedback from landowners, communities and agencies reviewing the proposal, as well as our own detailed environmental and engineering analysis of the route. Even as Keystone XL acquires right-of-way for the pipeline, we will strive to understand and address landowner and community concerns.

## Guiding Principles for Landowner Relations

- We seek to develop positive relationships with landowners through open communication, honesty, fairness and mutual respect.
- We plan to keep potentially impacted landowners informed of the project status on an ongoing basis throughout all phases of the project.

## About Pipeline Easements:

- A right-of-way easement, negotiated in good faith between the landowner and the pipeline company, would grant Keystone XL the right to construct, operate, and maintain the pipeline. It specifies an easement width within which certain activities are restricted or prohibited, with the primary goal of keeping the pipeline safe. For example, while buildings and excavation are not allowed in the right-of-way, normal farming and cultivation practices are not restricted.
- Canada, the permanent right-of-way width for Keystone XL is generally 20 metres (66 feet) – 10 metres (32 feet) on either side of the pipeline. In addition to the permanent easement lands, temporary working space will be required for the construction phase of the project which will consist of generally 10 metres of additional space

The proposed Keystone XL project is a partnership between TransCanada and ConocoPhillips.

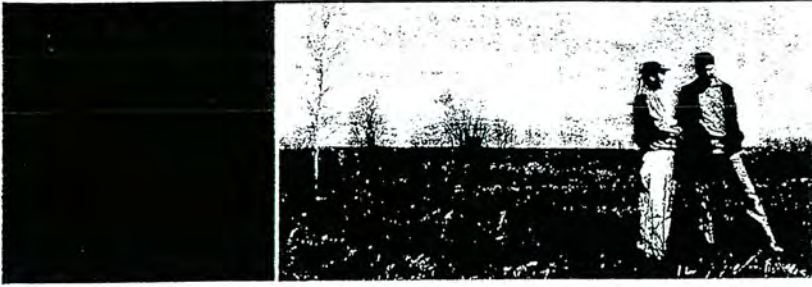




## 1. Destruction of Native Prairie

### a. TransCanada Brochure saying they will "restore" Prairie

## What Landowners Can Expect



- In the US, the permanent right-of-way easements will be 50 feet (15 meters) wide, with an additional 60 feet (18 metres) of temporary workspace.
- In Canada and the U.S., additional temporary work space may also be required for road crossings and other unique construction features.
- Keystone XL will work with landowners on specific issues such as crop losses, timber, drainage and irrigation systems, wells, fences, equipment, improvements, and other potential construction impacts in order to return the land to full productivity.
- There are no restrictions for crossing the right-of-way with normal farming equipment. If it is necessary for unusually heavy equipment to cross the right-of-way or to excavate near the right-of-way, we request that the pipeline company be contacted in advance to ensure the safety of landowners, work crews and the pipeline itself.
- The easement document and rights run with the land and are not impacted by changes in land ownership.
- Keystone XL will reclaim disturbed land and return it to its equivalent productivity.
- Keystone XL will be responsible for any taxes assessed against the pipeline. Responsibility for property taxes remains with the landowner.
- It is important that landowners read easement agreements carefully and understand the information they contain.

### Next Steps

- Keystone XL will seek to acquire rights from landowners to build, operate and maintain the pipeline, will compensate for construction losses and inconvenience and will restore the land impacted by construction activities.
- The Keystone XL pipeline is proposed to be buried with a minimum of 1.2 metres (4 feet of cover), except in site-specific areas, such as consolidated rock, in which case the pipeline will be buried with at least 0.9 metres (3 feet) of cover.

- Keystone XL is responsible for repair of drain tiles, irrigation, or other buried utilities if damaged during Keystone XL construction.
- Keystone XL will seek to minimize road impact and will be responsible for repair of all impacted roads after construction.

If at any time you have questions about the easement process, we encourage you to contact your local Keystone XL land agent or the Keystone XL Project Office.

### Contact

For more information, please call our toll free project number (1.866.717.7473) or use our project-specific email address [keystone@transcanada.com](mailto:keystone@transcanada.com)

#### Landowner Inquiries

Canada (toll free) 1.866.412.5263

U.S. (toll free) 1.866.585.7063

Alternatively, you can refer to our website at [www.transcanada.com/keystone/kxl](http://www.transcanada.com/keystone/kxl) or write, attention to:

#### In Canada

TransCanada Keystone XL Project Team  
450 – 1st Street S.W.  
Calgary, Alberta  
Canada T2P 5H1

#### In the U.S.

TransCanada Keystone XL Project Team  
7505 NW Tiffany Springs Parkway  
Northpointe Circle II Suite 400  
Kansas City, MO 64153

The proposed Keystone XL project is a partnership between TransCanada and ConocoPhillips.



**Attachment 8.4**



## 1. Destruction of Native Prairie

### b. Plant listing from our property

#### GRASSES

Big Bluestem	Creeping Foxtail	Little Bluestem	Switch Grass
Bluegrama	Eastern Gamma Grass	Prairie Cordgrass	Tall Dropseed
Blue Grass	Hairy Grama	Sand Lovegrass	Tall Wheat Grass
Brome Grass	Indian Grass	Sideoats Grama	Virginia Wildrye
Buffalo Grass	Intermediate Wheat Grass	Stink Grass	Western Wheat Grass

#### FLOWERS AND FORBS

Arrowhead	Ground Cherry	Prairie Coneflower	Umbrella Plant
Birdsfoot trefoil	Ground Plum	Prairie Dogbane	Venus Looking-Glass
Black Sampson	Hairy Vetch	Prairie Mallow	Vetch spp.
Blue Lettuce	Heath Aster	Prairie Phlox	Violet Sorrel
Blue-Eyed Grass	Hoary Vervain	Prairie ragwort	Virginia Creeper
Bull Thistle	Horsetails	Prairie Rose	Virginia Pepperweed
Catnip	Ironweed	Prairie Violets	Virginia Stonecrop
Cocklebur	Knotweed	Purple Coneflower	Water Hemlock
Common Milkweed	Lambsquarters	Purple Prairie Clover	Water Plantain
Louisaina Wormwood	Leadplant	Pussy Toes	Western Yarrow
Mapleleaf Goosefoot	Scouring Rush	Red Clover	White Clover
Milk Vetch	Sedges (many kinds)	White Vervain	White Prairie Clover
Curly Dock	Showy Partirdgepea	White-Eyed Grass	White Sweetclover
Curlycup Gumweed	Motherwort	Whorled Milkweed	Wild Four O'clock
Daisy Fleabane	Mullein	Silky Prairie Clover	Wild Grape
Dayflower	Narrow Leaf Puccoon	Silverleaf Scurf Pea	Wild Onion and Garlic
Dotted Gayfeather	Pale Dock	Slender Gerardia	Wild Rose
Dwarf Milkweed	Partridge Pea	Smartweed	Wild Strawberry
Evening Primrose	Pasque Flower	Snow on the Mountain	Wood Nettle
False Bonset	Pink Poppy Mallow	Spiderwort	Wooly Plantain
False Gromwell	Plains Coreopsis	St. John's Wort	Wooly Verbena
Plains Larkspur	Tall Nettle	Sunflower	Yellow Wood Sorrel
Plains Wild Indigo	Tall Thistle	Tall knotweed	
Goldenrod	Plantain	Yellow Goatsbeard	
Green Sagewort	Prairie Anemone	Yellow Sweet Clover	

**Attachment 8.5**



**Trow Engineering Consultants Inc.**

2700 Post Oak Blvd., Suite 400  
Houston, Texas 77581

Telephone: (713) 693-6400  
Facsimile: (713) 693-6498

June 16, 2010

Ms. Susan Dunavan  
1312 Road 6  
York, Nebraska 68467

**Re: Surveys conducted for Keystone XL Pipeline Project on W ½ of the SE ¼ Section 6-9-2 York County, Nebraska**

Dear Ms. Dunavan:

We received your request dated May 5, 2010 to obtain information about surveys associated with the Keystone XL Pipeline Project (Project) that have been conducted on your property. For your reference, please find enclosed a drawing showing the currently proposed pipeline route on your property (Figure 1).

Keystone proposes to construct and operate a crude oil pipeline and related facilities to transport Western Canadian Sedimentary Basin (WCSB) crude oil from an oil supply hub near Hardisty, Alberta, Canada to destinations in the south central United States, including an existing oil terminal in Cushing, Oklahoma and existing delivery points in the Port Arthur and east Houston areas of Texas.

Biological and cultural resource surveys are conducted for the proposed Keystone pipeline route and associated ancillary facilities to ensure compliance with all federal, state and local regulations. A 300 foot wide survey corridor, 150 feet on each side of the proposed pipeline route, was utilized during these surveys. Any proposed re-routes to the centerline that fall outside the 300 foot corridor are also surveyed.

Biological and cultural resource surveys were conducted on your land since the proposed pipeline is routed across your property (Figure 1). Biological surveys are conducted by trained professional biologists to identify wetlands, waterbodies, threatened and endangered species and their habitats and noxious weeds. Crews from AECOM completed a pedestrian biological survey on your property on May 21, 2008. A change in the proposed centerline resulted in a second survey on April 11, 2009. None of the aforementioned biological features were recorded during either field visit to your property.

Reclamation surveys were conducted by trained professional biologists and reclamation specialists to determine the type of vegetation present and develop reclamation plans. Crews from WESTECH Environmental Services, Inc. (WESTECH) completed a pedestrian reclamation survey on your property on September 19, 2009. Vegetation within the proposed right-of-way



## 1. Destruction of Native Prairie

- c. Trow Engineering stating they were hired for "Reclamation" not "Restoration"



was categorized as moderate to low quality tallgrass prairie that had been invaded by smooth brome and intermediate wheatgrass. The northwest corner of the property appeared to have been previously cultivated and reseeded. Cultivated land occurred to the east and west of the property. Trees were noted south of the centerline. Recorded species included: smooth brome (*Bromus inermis*), little bluestem (*Schizachyrium scoparium*), big bluestem (*Andropogon gerardii*), Indian grass (*Sorghastrum nutans*), switch grass (*Panicum virgatum*), intermediate wheatgrass (*Thinopyrum intermedium*), western wheatgrass (*Pascopyron smithii*), dandelion (*Taraxacum officianale*), vetch (*Vicia sp.*), pussy toes (*Antennaria sp.*), common burdock (*Arctium minus*), whorled milkweed (*Asclepias verticillata*), and common sunflower (*Helianthus annuus*). Other species undoubtedly occur on the property but were not recorded since the intention of the survey was to classify the site for reclamation purposes rather than complete a species inventory. The area was classified within the Tall Grasslands Construction/Reclamation Unit due to the presence of native grass species at the site (Attachment #1). Topsoil salvage depths were specified between 8 and 12 inches due to the relatively deep soils at the site. Problematic noxious weeds were not noted at the site although weedy species, such as dandelion and common burdock occur on or near the proposed right-of-way.

Additionally, aerial raptor surveys were conducted via helicopter over your property on April 7, 2009 by AECOM and April 13, 2010 by WESTECH. The 2009 search corridor was 0.25 miles wide on either side of the proposed pipeline centerline and 1 mile wide on either side of the centerline at major river crossings. The 2010 search corridor was expanded to 1 mile on either side of the centerline. No raptors or raptor nests were sighted on your property during the aerial surveys. Another aerial helicopter survey was conducted over your property on February 10, 2009 to identify bald eagle winter roost sites. The surveys covered an area at least 1 mile upstream and downstream of major waterbody crossings and within all suitable bald eagle nest and winter roost habitat. No bald or golden eagle winter roost sites or bald eagle nests were identified on your property.

Pedestrian cultural resource surveys were conducted on your property on May 20, 2008 and April 14, 2009 by crews from American Resources Group Ltd. Again, the re-route necessitated the second field visit. One historic site was recorded during the pedestrian survey, a railroad bed running north-south through your property. Site 25YK25 is a historic railroad bed of the Burlington Northern Railroad located on an upland ridge slope adjacent to an intermittent tributary of the West Fork Big Blue River. At the time of the cultural resource survey, the railroad bed was found in grass with zero ground surface visibility; no artifacts were recovered from the site. The railroad is illustrated on the 1924 and 1947 historic county atlases. The tracks have since been removed, but gravel and cinders were present. On the basis of archival documentation, the portion of the site recorded within the Project survey corridor does not appear to have the potential to yield additional information important to local or regional history. The site does not meet the National Register of Historic Places criteria of significance and was evaluated as ineligible for listing or nomination. No further archaeological investigation was recommended for the site and the Nebraska State Historical Society concurred with this recommendation in a letter addressed to Elizabeth Orlando of the United States Department of State on March 17, 2009. Please find enclosed a drawing showing this historic railroad and its proximity to the proposed Keystone pipeline route (Figure 2).





Please contact me at [jonathan.minton@trow.com](mailto:jonathan.minton@trow.com) should you have further questions regarding the surveys conducted on your property or any questions about the proposed Project.

Sincerely,

Jonathan Minton

Enclosures

cc: Steve Craycroft (TransCanada)  
Michael Schmaltz (TransCanada)  
Suzanne Ban (ENTRIX)  
Jon Schmidt (Trow)

**Attachment 8.6**

Available Water Well Data within One Mile of the Centerline in Nebraska					
Well ID	Total Well Depth (Feet)	Static Water Level (Feet)	Use	Latitude	Longitude
33685	78	4	Irrigation	40.298858	-97.128610
55201	85	4	Irrigation	40.302412	-97.165644
27339	94	4	Irrigation	40.302455	-97.156787
167639	100	4	Domestic	40.305444	-97.157083
37347	104	4	Irrigation	40.306886	-97.151301
152036	106	4	Irrigation	40.309528	-97.184639
111927	108	4	Irrigation	40.309665	-97.146575
36153	136	4	Irrigation	40.316823	-97.175042
31236	52	5	Irrigation	40.316745	-97.150734
111584	0	5	Irrigation	40.318676	-97.182170
152485	26	5	Domestic	40.320694	-97.170504
74892	31	5	Irrigation	40.324180	-97.194023
74893	32	5	Irrigation	40.324125	-97.184554
117460	34	5	Irrigation	40.324079	-97.176563
171179	35	5	Irrigation	40.327972	-97.203444
25153	36	5	Irrigation	40.329153	-97.156161
5826	36	5	Irrigation	40.331427	-97.194005
120967	38	5	Irrigation	40.331205	-97.170333
201131	40	5	Domestic	40.336000	-97.189639
68097	42	5	Irrigation	40.338831	-97.212793
189303	46	5	Irrigation	40.338694	-97.194111
150524	52	5	Irrigation	40.340173	-97.165520
125535	53	5	Domestic	40.340241	-97.166201
4507	64	5	Irrigation	40.342523	-97.168948
63338	64	5	Irrigation	40.344116	-97.196278
64323	64	5	Irrigation	40.345982	-97.203272
7765	65	5	Irrigation	40.347619	-97.178951
34246	80	5	Irrigation	40.349683	-97.196142
191554	80	5	Domestic	40.349556	-97.184611
170166	123	5	Irrigation	40.350066	-97.193235
37708	26	6	Irrigation	40.351722	-97.209741
92721	27	6	Domestic	40.353060	-97.179226
96294	28	6	Irrigation	40.353681	-97.202636
7422	30	6	Irrigation	40.355338	-97.219279
197624	30	6	Irrigation	40.357028	-97.183944
72376	32	6	Irrigation	40.358976	-97.228781
54795	33	6	Irrigation	40.358919	-97.186011
80753	35	6	Irrigation	40.360766	-97.212270
100286	35	6	Irrigation	40.360772	-97.193112
10797	36	6	Irrigation	40.362607	-97.200269
37264	37	6	Irrigation	40.368204	-97.236823
58027	38	6	Irrigation	40.368046	-97.221699
191450	39	6	Irrigation	40.367805	-97.198362
32985	40	6	Irrigation	40.369174	-97.213108
54516	40	6	Irrigation	40.369784	-97.195398
71159	40	6	Irrigation	40.373502	-97.228776
204381	42	6	Irrigation	40.375444	-97.211694
32682	44	6	Irrigation	40.379233	-97.220457
76356	44	6	Irrigation	40.380709	-97.219280



2.Many Wells Not Documented

- a. Nebraska Dept. of Natural Resources list of wells with GPS

Available Water Well Data within One Mile of the Centerline in Nebraska

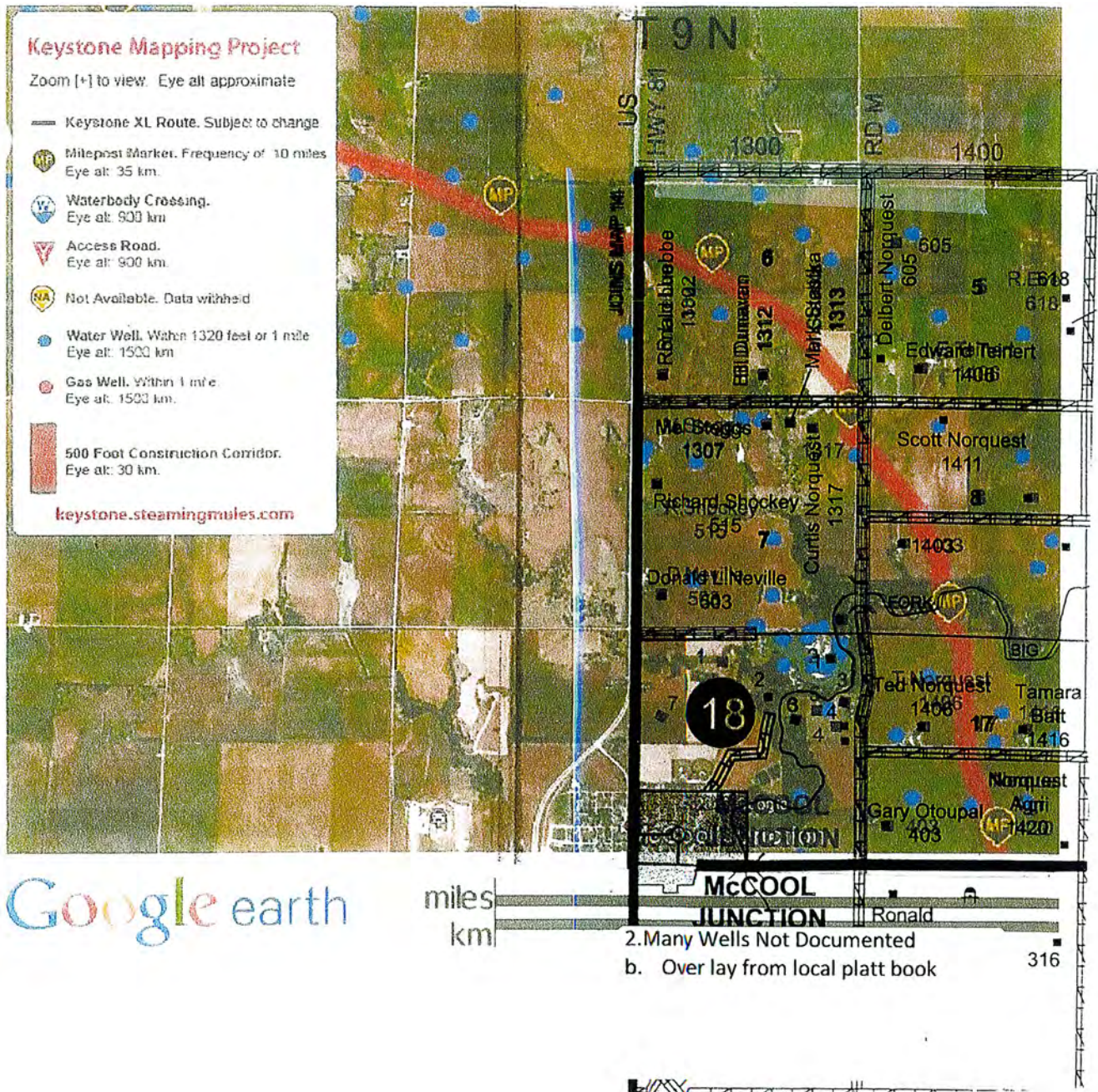
Well ID	Total Well Depth (Feet)	Static Water Level (Feet)	Use	Latitude	Longitude
197482	45	6	Domestic	40.392917	-97.234889
146020	48	6	Domestic	40.394000	-97.231333
166811	49	6	Domestic	40.408439	-97.219041
133782	50	6	Domestic	40.414308	-97.231213
164535	51	6	Domestic	40.433108	-97.293222
172076	53	6	Domestic	40.434388	-97.281194
93213	54	6	Domestic	40.464275	-97.293027
128865	57	6	Domestic	40.474502	-97.311259
74110	58	6	Irrigation	40.529867	-97.366267
63850	60	6	Irrigation	40.538703	-97.349358
43322	65	6	Irrigation	40.541074	-97.394679
83358	70	6	Irrigation	40.542530	-97.382780
33882	80	6	Irrigation	40.542440	-97.353237
32152	102	6	Irrigation	40.546043	-97.391162
83466	104	6	Irrigation	40.546417	-97.382964
60669	121	6	Irrigation	40.548511	-97.386756
124335	147	6	Irrigation	40.549736	-97.392320
171143	24	7	Irrigation	40.549322	-97.372272
35350	33	7	Domestic	40.549756	-97.386508
19317	37	7	Irrigation	40.549861	-97.381900
72588	37	7	Irrigation	40.549914	-97.376283
42353	38	7	Irrigation	40.550651	-97.400601
73978	38	7	Irrigation	40.553429	-97.401758
69809	39	7	Irrigation	40.553459	-97.363763
82123	39	7	Irrigation	40.553942	-97.373264
204484	39	7	Domestic	40.558383	-97.404200
119455	39	7	Irrigation	40.564295	-97.402032
104461	40	7	Irrigation	40.564252	-97.392373
205091	40	7	Domestic	40.566833	-97.395611
206175	40	7	Domestic	40.566778	-97.381000
28045	40	7	Irrigation	40.567753	-97.389931
155976	40	7	Irrigation	40.571576	-97.411245
136865	41	7	Irrigation	40.571389	-97.382927
91267	41	7	Domestic	40.573375	-97.420789
60670	41	7	Irrigation	40.574897	-97.401514
36247	43	7	Irrigation	40.574970	-97.394923
118764	44	7	Irrigation	40.578726	-97.420706
61349	44	7	Irrigation	40.578755	-97.411259
19318	48	7	Irrigation	40.578881	-97.404526
139100	50	7	Irrigation	40.578850	-97.401825
136198	50	7	Irrigation	40.578777	-97.382794
72309	50	7	Irrigation	40.580493	-97.389909
14131	50	7	Irrigation	40.582412	-97.416114
59362	52	7	Irrigation	40.583077	-97.401601
66636	53	7	Irrigation	40.584234	-97.408880
40831	53	7	Irrigation	40.586058	-97.429049
147804	60	7	Irrigation	40.589764	-97.439831
146043	60	7	Irrigation	40.593523	-97.444820
64500	63	7	Irrigation	40.593318	-97.430182

Source DNR, 2011. Available @ <http://dnrdata.dnr.ne.gov/wellsccs/menu.aspx>



2.Many Wells Not Documented

c. Copy of map with DNR wells made by Keystone XL Mapping Project



**Attachment 8.7**



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Natural Resources Committee  
February 09, 2011

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JIM KRAUSE: Twenty years. [LB340 LB578 LB629]

SENATOR SMITH: And that contract, of course, would begin the day that they would begin to receive or have they already begun to receive? [LB340 LB578 LB629]

JIM KRAUSE: It's once the people on the far end start to receive the oil, as they have already been doing since June on the first phase of the Keystone pipeline. [LB340 LB578 LB629]

SENATOR SMITH: One year, one year into it at this point. [LB340 LB578 LB629]

JIM KRAUSE: Yeah. Yep. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Since you're in operations, actually how much does this oil heat up because of friction? [LB340 LB578 LB629]

JIM KRAUSE: That's a great question that has been going around a number of times, and as stated earlier in this committee, we provide no heat to the pipe. But you're correct, the pipe does heat up from the friction not only from the pumps, but from the pipe itself. Ultimately, the oil of...the temperature of the pipe and the oil is governed mainly by ground temperature. That has a huge impact on the temperature of the oil. So as the oil comes up to a pump station, it can be very close to what the current ground temperature is four feet below ground. As it exits the station, some of that pumping will heat it up a bit, but it's not like it gets really, really hot and changes the viscosity to a great amount. [LB340 LB578 LB629]

SENATOR HAAR: Now you may not be the person to answer this one, maybe the next person, but if there is decommissioning for whatever purpose, who pays for that and

how are we guaranteed, for example, the landowners? [LB340 LB578 LB629]

**JIM KRAUSE:** Sure. It's an excellent question and it has come up a few times here.

There will be some testimony later that will cover that in detail, but, again, my background and knowledge of this is we're required through a permitting process through PHMSA, the Department of Transportation, we are held liable for reclamation and restoration of any abandoned pipeline. In technical terms, what that would mean, if the pipeline is not needed for oil somewhere down the road and there is no other use for any other product to go through that pipe, let's say gasoline, or maybe by that time in the future, water, then the pipeline needs to be...follow very stringent processes to be taken out of service. Cleaning pigs squeal down the pipeline and remove whatever oil is in the pipe. And then further pigs goes down and clean whatever residue is in there. And then, essentially, the pipe is closed at each end and the inert gas, such as nitrogen, is put into the pipe. The cathodic protection systems on the pipe continue to have the function, by law, to ensure the pipe doesn't corrode. And the nitrogen inside makes sure there's no internal corrosion taking place as well. [LB340 LB578 LB629]

**SENATOR HAAR:** So, but if some point, because everything eventually wears out, I mean, pipeline will last a lot longer than I will, but if it collapses at some point after it is decommissioned, how...who takes care of that? [LB340 LB578 LB629]

**JIM KRAUSE:** The owner of the pipeline which is us. [LB340 LB578 LB629]

**SENATOR HAAR:** And if you're no longer the owner? [LB340 LB578 LB629]

**JIM KRAUSE:** Whoever takes ownership from us would have to carry on that liability. [LB340 LB578 LB629]

**SENATOR HAAR:** And if it's abandoned and just, you know, goes through bankruptcy or something, I still...at the end you could come up with someone with a situation where



**Attachment 8.8**

Starting with proposals made in 1950 in the Bureau of Reclamation's United Western Study, preliminary studies were made of even larger interbasin transfers until a moratorium on such studies by federal agencies was legislated in 1968. A summary of these developed by C. C. Warnick and published by the University of Arizona in *Arid Lands in Perspective*, 1969, is included as Table 2. The last project shown on the table is the Texas Water Plan, studied by the Bureau of Reclamation and the Corps of Engineers under a special Congressional authorization between 1967 and 1973. This proposal would have transferred over 10 million acre-feet annually from the Mississippi River or its tributaries to the high plains of Texas and New Mexico to sustain agricultural production after the Ogallala aquifer is pumped out. Cost of water delivered on the high plains was estimated to be well over \$300 an acre-foot with the cost of energy for the 5,000-foot pump lift computed at pre-1973 price levels. Since that report was completed there has been less interest in interbasin transfers.

It is dubious whether any of these plans involving diversions across state lines can be undertaken, even if funds for construction could be made available. No state will be willing to sell its water "birthright" unless the consideration is so high as to increase the cost of the project to such an extent that it would not be economically justified.

International water transfers might have some possibility of being effected if the benefit from water development in the exporting country, which would be Canada, could be made high enough, and since the water for export would probably always flow north into the Arctic unused. However, the environmental disruption would be huge, and if the environmental movement develops in Canada as it has in the United States, it would be very difficult to negotiate the necessary treaty and enact the implementing legislation in the two countries.

### Groundwater Management

There are an estimated 180 billion acre-feet of water in underground aquifers within a depth of 2,500 feet under the forty-eight contiguous United States. About one-fourth of this, 46 billion acre-feet, is usable with present technology; this is

TABLE 2  
Summary of Information on Conceptual Plans Proposed for Regional Water Transfer

Project Name	Agency/Company Sponsor Author of Plan	Approximate Date of Proposal	River Basin(s) for Source	River Basin(s) of Use	Countries Involved	States Involved	Proposed Diversion: (a) 10 <sup>6</sup> acre-ft/yr; (b) cfs; (c) mgd.
United Western	U.S. Bureau of Reclamation Rep. R. J. Welch— Calif.	1950	Columbia River North Pacific Coastal Streams	Great Basin South Pacific Coastal Plain Colorado River	United States Mexico	11 Western States	6.0 9,100 5,900
California Water Plan	California Depart- ment of Water Resources	1957	Northern Califor- nia Rivers	Central Valley California South Pacific Coastal Plain	United States	California	
Pacific Southwest Water Plan	U.S. Bureau of Reclamation W. I. Palmer	1963	Northern Califor- nia Streams Colorado River	Lower Colorado River South Pacific Coastal Plain	United States Mexico	California Arizona, Nevada Utah, New Mexico	1.2 1,660 1,070
Snake-Colorado Project	Los Angeles Depart- ment of Water & Power S. B. Nelson	1963	Snake River	Colorado River South Pacific Coastal Plain	United States Mexico	Idaho, Nevada Arizona California	2.4 3,320 2,140
North American Power & Water Alliance (NAWAPA)	Ralph M. Parsons Company	1964	Alaskan & Cana- dian Rivers, with Columbia River	Great Lakes Basin South Pacific Coastal Plain Colorado River Texas High Plains	United States Canada Mexico	Western States Texas Lake States	110.0 152,000 98,000
Yellowstone- Snake-Green Project	T. M. Stetson Consulting Engineer	1964	Yellowstone River Snake River	Green River Colorado River	United States	Montana, Idaho Wyoming, Lower Colorado States	2.0 2,770 1,780

4. What Will be the Use of the Pipeline  
After the "Oil"?  
C. Reference to Beck Plan

Western water resources: Mexico to transport the surplus



TABLE 2 (continued)  
Summary of Information on Conceptual Plans Proposed for Regional Water Transfer

Project Name	Agency/Company Sponsor Author of Plan	Approximate Date of Proposal	River Basin(s) for Source	River Basin(s) of Use	Countries Involved	States Involved	Proposed Diversion: (a) 10 <sup>6</sup> acre-ft/yr; (b) cfs; (c) mgd.
Pirkey's Plan Western Water Project	F. Z. Pirkey Consulting Engineer	1964	Columbia River	Colorado River Sacramento River South Pacific Coastal Plain	United States Mexico	Oregon Washington California Utah, Arizona Nevada	15.0 20,800 13,400
Dunn Plan Modified Snake- Colorado Project	W. G. Dunn, Consulting Engineer	1965	Snake & Colum- bia Rivers	Great Basin Snake River South Pacific Coastal Plain Colorado River	United States Mexico	Idaho, Oregon Washington Utah, Arizona Nevada California	5.0 6,900 4,450
Sierra-Cascade Project	E. F. Miller, Consulting Engineer, Maryland	1965	Columbia River	Oregon Valleys Central Valley, California South Pacific Coastal Plain	United States	Oregon, Nevada California	7.0 9,700 6,250
Undersea Aque- duct System	National Engineering Science Company F. C. Lee	1965	North Coast Pacific Rivers	Central Valley South Pacific Coastal Plain	United States	Oregon California	11.0 15,200 9,800
Southwest Idaho Development Project	U.S. Bureau of Reclamation, Region 1	1966	Payette River Weiser River Bruneau River	Snake River	United States	Idaho	
Canadian Water Export	E. Kuiper	1966	Several Canadian Rivers	Western States (indefinite)	United States Canada	All Western States	150.0 208,000 134,000
Central Arizona Project	U.S. Bureau of Reclamation	1948, 1967	Lower Colorado River Basin	Colorado River	United States Mexico	Utah, Nevada Arizona California	1.2 1,660 1,070
Central North American Water Project C3 NAWP	E. R. Tinney Washington State University, Professor	1967	Canadian Rivers	Great Lakes Entire Western States	United States Canada Mexico	Great Lakes Western States	150.0 208,000 134,000
Smith Plan	L. G. Smith Consulting Engineer	1967	Liard River McKenzie River	All river basins of 17 western states	United States Canada Mexico	17 Western States	40.0 55,500 35,750
Grand Canal Concept	T. W. Kierens Sudbury, Ontario	1965	Great Lakes and St. Lawrence River	Canadian rivers flowing to Hudson Bay	United States	Great Lake States	17.0 23,600 15,200
Beck Plan	R. W. Beck Associates	1967	Missouri River	Texas High Plains	United States	South Dakota Nebraska Kansas, Colorado Oklahoma, Texas	10.0 13,800 8,930
West Texas and Eastern New Mexico Import Project	U.S. Bureau of Reclamation & U.S. Corps of Engineers	1967 (1972 due)	Mississippi and Texas Rivers	High Plain of Texas and New Mexico	United States	Oklahoma, Texas New Mexico Louisiana	16.5 22,900 14,700

Source: C. C. Warnick, "Historical Background and Philosophical Basis of Regional Water Transfer," in *Arid Lands in Perspective*, McGinnies and Goldman, Eds. (Tucson: The University of Arizona Press, 1969), pp. 340-351.

**Attachment 8.9**



8. Subcontractors:
  - a. Business Card of Jeff Rauh

**Jeff Rauh**  
**Keystone Project Representative**

An employee of Neil Palmer & Associates  
an independent contractor to TransCanada

890 Elm Grove Road  
Suite 100  
Elm Grove, WI 53122

Office: 262.821.5230  
Cell: 262.853.6567

E-mail: [jrauh@neilpalmerllc.com](mailto:jrauh@neilpalmerllc.com)

Contracted to the Keystone Pipeline

***Call Before You Dig! For US line locates, call 811.***

**Attachment 8.10**

9. Landowner Agreement  
b. Only terms written into easements  
can be enforced

**1.56.1:** Regarding Mitigation Commitments and Landowner Agreements, in the Draft Report the NDEQ “encourages Keystone to negotiate mutually acceptable agreements with adversely affected landowners to address potential construction and restoration issues.” The Nebraska Draft Evaluation Report, October 2012, Chapter 2 Project Description Overview Section 2.2.1 Right-of way Acquisition Process states:

To construct, operate, and maintain the proposed Nebraska Reroute, Keystone would negotiate easement agreements with landowners along the route. The easement agreements would list the conditions to which the landowners and Keystone both agree, including financial compensation to the landowners in return for granting easements. Compensation would also be made for loss of use during construction, crop loss, loss of nonrenewable or other resources, restrictions on future use of the land, and restoration of any unavoidable damage to personal property during construction. Easement negotiations and final agreements are private business concerns between the landowners and Keystone, and neither DOS nor NDEQ has legal authority or ability to intervene in the proceedings or enforce the conditions of an easement agreement. In most cases, agreements would allow the agricultural uses currently in place to continue within the permanent ROW after pipeline installation.

**Attachment 8.11**



10. Threats to Condemn without a Permit

a. Letter from TransCanada 7-21-10



July 21, 2010

WILLIAM F. & SUSAN C. DUNAVAN  
1312 ROAD 6  
YORK, NE 68467

Re: ML-NE-YK-00600.000

Dear Owner:

You by now are aware that TransCanada Keystone Pipeline L.P. ("Keystone") is constructing and will operate a 1,833 mile crude oil pipeline, which will begin in Canada and will cross through approximately 1,073 miles of property in the United States, including Nebraska. As you know, the path of the pipeline will cross a portion of your property.

In order to construct the pipeline, Keystone must acquire a permanent and temporary easement over your property. It is Keystone's strong preference to negotiate a voluntary transfer with each property owner. However, in the event we cannot come to an agreement, Keystone will use eminent domain to acquire the easement, which is authorized pursuant to Nebraska Revised Statute § 57-1101 et. seq.

The description of the proposed permanent and temporary easements is described in the enclosed form of easement and its attachments.

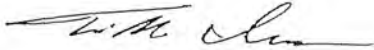
As consideration for granting Keystone these easements, TransCanada is offering you the total sum of \_\_\_\_\_. This sum includes \_\_\_\_\_ for the permanent easement, which represents 100% of the total fee value for the permanent easement, despite the fact the permanent easement encompasses significantly less property rights than the total fee. Additionally, the amount includes \_\_\_\_\_ for the temporary easement which is based upon a rental value of 50% of the fee value per year. Finally, Keystone will provide compensation for any damages that occur during the course of the construction including crop loss and any damages to fences, trees or other improvements.

This letter is Keystone's final offer, and it will remain open for one month after the date of this letter or until you reject it. We believe the amount of the offer is a premium price for your property. Keystone's offer is high because the company prefers to acquire this property through negotiation and to avoid litigation and its associated delays and risks. In order to accept this offer, please have the authorized person(s) execute two original Easement and Right of Way forms before a notary public and return them to me in the enclosed postage pre-paid envelope before the expiration of the one month period. Also enclosed is a W-9 tax form that needs to be completely filled out, signed and returned along with the other forms. We will deliver the agreed upon amount of compensation to you immediately upon our receipt of the signed and notarized documents.

While we hope to acquire this property through negotiation, if we are unable to do so, we will be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property promptly after the expiration of this one month period. In the event that we are forced to invoke the power of eminent domain, this letter and its contents are subject to Nebraska Revised Statute § 27-408 and are not admissible to prove the existence or amount of liability.

Please contact me in the event you have any questions or concerns at (832) 320-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim M. Irons", with a stylized flourish at the end.

Tim M. Irons  
Senior Land Coordinator  
TransCanada Keystone Pipeline, L.P.  
717 Texas Street  
Suite 24215  
Houston, TX 7702-2761

Encl.

**Attachment 8.12**



April 7, 2011

WILLIAM F. & SUSAN C. DUNAVAN  
1312 ROAD 6  
YORK, NE 68467

Re: ML-NE-YK-00600.000

Dear Owners:

The proposed route of a crude oil pipeline, known as Keystone XL, crosses a portion of your property in Nebraska. The project, proposed by Delaware-based TransCanada Keystone Pipeline L.P., responds to U.S. demand for crude oil from refineries seeking a secure and stable supply. The project seeks to create a land-based link between this U.S. demand and growing oil supplies in Canada and in the northern Great Plains states. Oil delivered would reduce the need for imports from Venezuela or the Middle East, significantly improving U.S. energy security.

The federal regulatory review of this proposed project continues and we expect a decision from the federal government in the first half of 2011. To construct the project, we must acquire permanent and temporary easements, and possibly other pipeline and construction related land rights, through the area where this project will be constructed in Canada and in the U.S., including in Nebraska.

Permanent easements provide Keystone limited rights to construct, operate, and maintain the pipeline. Landowners retain all rights of ownership and productive use of the easement area with only those restrictions that ensure the continued integrity and safety of the pipeline. In addition, temporary easements, which are in place only until construction and reclamation are completed, support the construction activities on the permanent easement.

To construct the pipeline, we must acquire a permanent and temporary easement over your property. The proposed permanent easement and temporary easement is described in the enclosed form of easement and its attachments.

It is our strong preference to negotiate a voluntary easement acquisition with each property owner. We have been working with Nebraska landowners since 2008 to understand how best to minimize the impact of this project on individual properties and operations. This process can include multiple visits to the land to address specific routing issues as well as provisions to minimize impacts associated with the construction process. You are receiving this letter because our discussions and negotiations are not progressing to a voluntary settlement in a timely manner.

In such circumstances, property laws in Nebraska and most other jurisdictions allow proponents of projects that are in the broader public interest to use eminent domain to acquire the easement, which is authorized pursuant to Nebraska Revised Statute § 57-1101 et. seq.



It is important to point out that in addition to the easement itself, Keystone's work on your land and the pipeline itself must be in compliance with applicable state and federal rules and regulations. In particular, throughout its route in the U.S., the safe operation of this pipeline is governed by the U.S. Department of Transportation. These requirements include measures required to ensure safety when the pipeline is operating and if it is shut down. Construction methods and techniques are spelled out in detail in the Construction Mitigation and Reclamation Plan, a copy of which you should have received as a part of the Draft Environmental Impact Statement issued by federal agencies reviewing this project (and available on the U.S. Department of State project web site at [www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open](http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open) under "Project Documents"). Additional requirements related to construction may be added as regulatory reviews continue to proceed.

As consideration for granting these easements, we are offering you the total sum of                      This sum includes                      for the permanent easement, which is based on 100 per cent of the current, unit fee value (i.e. dollars per acre as determined by an independent market assessment) of similar land in your region, despite the fact the permanent easement grants us significantly fewer property rights than outright ownership. Additionally, the amount includes                      or the temporary easement which is a rental value based on 50 per cent of the assessed unit fee value. Finally, we will provide compensation for any damages that occur during the course of the construction including crop loss and any damages to fences, trees or other improvements.

We prefer to acquire this property through negotiation and voluntary settlement. We will initiate eminent domain only as a last resort, where good faith efforts have not resulted in a voluntary agreement. Even after initiating this process, we will continue to work to reach a voluntary agreement.

This letter represents our final offer, and will remain open for one month after the date of this letter or until you reject it, whichever is earlier. After that period, we will initiate the eminent domain process. To avoid litigation, we are offering an amount for the easement that exceeds the value of the rights we seek.

To accept this offer, the authorized person(s) must execute two original Easement and Right of Way forms before a notary public and return them to the undersigned in the enclosed postage pre-paid envelope before the expiration of the one month period. Also, the enclosed W-9 tax form needs to be completely filled out, signed and returned along with the other forms. We will deliver the agreed upon amount of compensation to you immediately upon our receipt of the signed and notarized documents. This settlement remains in place regardless of whether Keystone receives its federal permit.

Our strong preference is to reach voluntary agreement and we will continue these efforts regardless of the initiation of legal processes. In the event that we must invoke the power of eminent domain, this letter and its contents are subject to Nebraska Revised Statute § 27-408 and are not admissible to prove the existence or amount of liability.

Please contact me in the event you have any questions or concerns at (832) 320-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim M. Irons". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tim M. Irons  
Senior Land Coordinator  
TransCanada  
717 Texas Street  
Suite 24215  
Houston, TX 7702-2761

Encl.

cc: Lee H. Hamann, McGrath North Mullin & Kratz, PC LLO  
John Hunt, TransCanada

**Attachment 8.13**

10. Threats to Condemn without a  
Permit  
c. Copy of letter to Bruning and reply

August 12, 2010  
1312 Road 6  
York, NE 68467

Jon Bruning  
Office of the Attorney General  
2115 State Capitol  
Lincoln, NE 68509-4604

Dear Mr. Bruning,

I am writing to you over the concern of the TransCanada Keystone XL Pipeline. This pipeline is scheduled to go through our property which consists of native prairie. I am concerned over losing this prairie as well as the dangers of polluting the Ogallala Aquifer. I have written TransCanada asking questions. I have not received any replies from the company. I have not signed any easement papers. I just received a somewhat threatening letter from TransCanada. At first I thought it was the answers to my questions. Instead it was a letter that says unless the easement papers are signed "we will be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property."

My question to you is can TransCanada threaten us with eminent domain if they have no permits yet and the Environmental Impact Statement agreement has been given to them?

I am sure I am not the only one receiving these letters. I urge you to use your power to protect the citizens of the State of Nebraska.

Sincerely,

Susan C. Dunavan



**Attachment 8.14**



STATE OF NEBRASKA  
**Office of the Attorney General**

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
CAPITOL FAX (402) 471-3297  
TIERONE FAX (402) 471-4725

**JON BRUNING**  
ATTORNEY GENERAL

**LIZ EBERLE**  
CONSTITUENT SERVICES DIRECTOR

September 30, 2010

Susan Dunavan  
1312 Road 6  
York, NE 68467

Dear Susan:

Thank you for taking time to contact our office. We are sorry to hear about the frustrations you and your family are going through.

We share your concern for preservation of native prairie and the pristine quality of the water stored in the Ogallala Aquifer, and are monitoring the progression of the TransCanada Keystone XL Pipeline in Nebraska. While our office is unable to provide private legal advice, we can confirm that public utilities, under certain circumstances, do have the authority to exercise eminent domain.

Since your property rights may be impacted by the proposed pipeline, we encourage you to speak with someone familiar with real estate law to determine the best course of action. We appreciate your interest and concern in contacting our office.

We appreciate your interest and concern in contacting our office.

Sincerely,

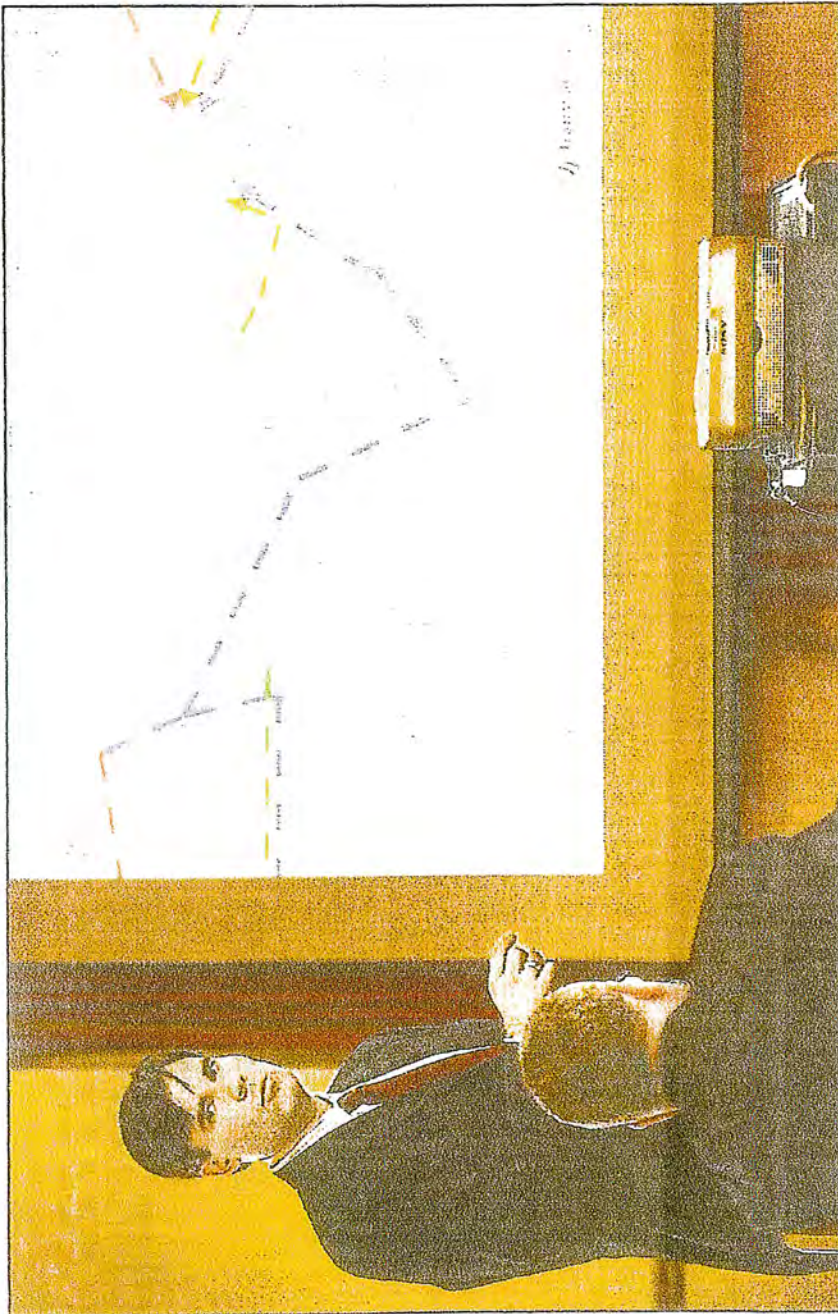
JON BRUNING  
Attorney General

Liz Eberle  
Constituent Services Director

**Attachment 8.15**

11. Realizing TransCanada is a Foreign (non U.S.A.) Operation from beginning to end. Lincoln Journal Star 9-4-2011

## PIPELINE PRESENTATION



Louis Fenyvesi, manager of marketing, supply and oil pipelines for TransCanada, gives a presentation during the briefing for Keystone XL Pipeline at The Cornhusker Marriott on Wednesday morning.

FRANCIS GARDLER/Lincoln Journal Star

# Pointing fingers

Governor asks Obama to deny permit for Keystone XL Pipeline; legislative debate



Jeff Rattin, TransCanada's spokesman in Nebraska, runs the PowerPoint presentation for



**Attachment 8.16**

# CORNHUSKER ECONOMICS

University of Nebraska–Lincoln Extension

UNIVERSITY OF  
**Nebraska**  
Lincoln

February 9, 2011

Institute of Agriculture & Natural Resources  
Department of Agricultural Economics  
<http://agecon.unl.edu/cornhuskereconomics>

## The Keystone XL Pipeline Project

Market Report	Yr Ago	4 Wks Ago	2/4/11
<b>Livestock and Products,</b>			
<b>Weekly Average</b>			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight	\$84.58	\$105.29	\$105.50
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb	115.22	147.34	149.05
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb	98.21	126.83	126.32
Choice Boxed Beef, 600-750 lb. Carcass	139.34	165.81	172.40
Western Corn Belt Base Hog Price Carcass, Negotiated	64.08	70.45	80.09
Feeder Pigs, National Direct 50 lbs, FOB	*	*	*
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean	68.59	78.35	88.95
Slaughter Lambs, Ch. & Pr., Heavy, Woolled, South Dakota, Direct	*	161.00	*
National Carcass Lamb Cutout, FOB	243.26	352.13	347.71
<b>Crops,</b>			
<b>Daily Spot Prices</b>			
Wheat, No. 1, H.W. Imperial, bu	3.72	6.87	7.87
Corn, No. 2, Yellow Omaha, bu	3.36	5.68	6.55
Soybeans, No. 1, Yellow Omaha, bu	9.01	13.21	13.91
Grain Sorghum, No. 2, Yellow Dorchester, cwt	5.21	9.46	10.95
Oats, No. 2, Heavy Minneapolis, MN, bu	2.26	3.89	4.15
<b>Feed</b>			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton	135.00	140.00	140.00
Alfalfa, Large Rounds, Good Platte Valley, ton	87.50	72.50	72.50
Grass Hay, Large Rounds, Premium Nebraska, ton	82.50	*	*
Dried Distillers Grains, 10% Moisture, Nebraska Average	104.00	186.00	197.50
Wet Distillers Grains, 65-70% Moisture, Nebraska Average	33.75	65.00	67.25
<b>No Market</b>			

Prior to Canadian Prime Minister Harper's visit to the White House last week, the United States Department of State released the EnSys study<sup>1</sup> of the controversial Keystone XL pipeline project proposed to run through Nebraska's sandhills. The release ignited new debates amid concern that the U.S. Department of State would soon decide whether to grant a permit for the pipeline. The Nebraska Unicameral is considering bills to provide more constraints on pipeline construction. Below is a summary of information about this project that could affect many Nebraskans.

### What is Keystone XL?

Actually, it is the XL extension, or Phase IV, that is at issue in Nebraska. This is a 36-inch pipeline to transport Alberta crude oil, primarily from tar sands through Montana, South Dakota, Nebraska and Kansas into Oklahoma, with a capacity of 0.5 million barrels per day (mbd), larger than the other pipelines from Canada. By way of contrast, total U.S. consumption has been about 21 mbd, with imports of 8.5 mbd of which 2.0 are from Canada, 1.3 from Mexico, 1.1 from Saudi Arabia, 0.9 from Venezuela and 0.8 from Nigeria. U.S. ethanol production is nearing 0.9 mbd. The XL extension would enter Nebraska near Burton and exit near Fairbury, following a 357 mile route including five pumping stations.<sup>2</sup> The total cost of the extension is about \$7 billion.

### Who is Behind Keystone XL?

The pipeline would be built and owned by TransCanada Corp., a publicly traded Canadian pipeline and power generating company. TransCanada also owns the Keystone pipeline running from north to south in Eastern Nebraska, with a 0.4 mbd capacity. Another pipeline, the Kinder Morgan Express-Platte extension, crosses the state from west to east and has a capacity of 0.4 mbd. At this point, the U.S. Department of State has final authority to approve the XL extension.



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## 12. Other Evidence

### a. "Cornhusker Economics" 2-9-2011

#### Why Do They Want to Build It?

TransCanada wants to build the pipeline because they expect a satisfactory return on their investment. Oil production in Alberta is scheduled to double, oil that can be shipped into the U.S. at a competitive price. Current pipeline capacity from Canada is adequate for a decade or more, but pipeline configurations have reportedly led to congestion and low prices in the Midwest which could be improved with this construction. The project itself is unlikely to have any significant effect on total world production or consumption. Given current consumption trends, Canada would likely ship its extra production to Asia if the XL extension were not built, resulting in just a geographical reallocation.

The EnSys study, commissioned by the U.S. State Department, estimates that under current trends with the pipeline the U.S. will increase its Canadian imports by 2.6 million barrels per day by 2030. Given that production and imports from Mexico and Venezuela are projected to dwindle, the study concludes that the alternative to Canadian petroleum is an increase in U.S. dependence on imports from the Middle East. These projections assume a continuation of current U.S. energy policies. Opponents of the pipeline point out that the existence of the pipeline would undermine U.S. efforts to replace petroleum consumption with renewable fuels.

#### Environmental Impacts

The potential Nebraska environmental impacts of the pipeline include scarring of sandhills' landscapes and related wildlife disruptions, but more importantly, the risk of contaminating waterways, soils and perhaps the High Plains Aquifer itself, due to oil spills. TransCanada claims to have adequate plans for remediation of the construction sites and for responding to leaks.<sup>3</sup> The adequacy of those plans and the quality of the pipeline components have been challenged by opponents, however.<sup>4</sup> In July, the Environmental Protection Agency (EPA) called for a more exhaustive environmental impact statement,<sup>5</sup> which the State Department has not yet received.

The risks of spills is real. Just within the past year the U.S. has experienced pipeline ruptures at Talmadge Creek, Michigan and Red Butte, Utah, damaging several miles of waterways; and pump station leaks occurred at Ft. Greeley and at Prudhoe Bay on the Alaska pipeline.

Much of the opposition to the pipeline derives from opposition to the environmental impacts of tar sands petroleum itself. The California Air Resources Board calculates that its carbon footprint is 30 percent higher than conventional petroleum,<sup>6</sup> and the mining processes have scarred the landscape in Alberta and polluted waterways and adjacent lands.<sup>7</sup> Pipeline proponents counter this argument by pointing out that Canada expects to triple its tar sands production for the world market,<sup>8</sup> regardless of the Keystone XL. Opponents reply that the

U.S. should not collaborate in developing this "dirty" energy source by encouraging its use here. (Canada is the third largest per-capita greenhouse gas polluter, it has exceeded its Kyoto target by 30 percent, and it has recently joined Japan and Russia in opposing the extension of the Kyoto agreement beyond 2012.)

#### Impact on the Nebraska Economy

Construction and maintenance of the pipeline would contribute an unknown amount of jobs and tax returns to the Nebraska economy. A study by Perryman,<sup>9</sup> commissioned by TransCanada, estimates that construction and development would contribute 7,551 person-years of temporary jobs in Nebraska, \$9.5 million to state revenues and another \$1.8 million to local government revenues. They estimate the long-term (100 years) present value of increased property taxes at \$152 million. Although we have not carefully assessed the validity of this analysis, some of its assumptions strike us as optimistic. For example, the National Wildlife Federation shows that the employment figures in this report are 65 percent higher than those estimated by the Department of State.<sup>10</sup> The study makes no attempt to evaluate economic losses that might occur because of oil spills, scarred landscapes, water contamination, etc.

Considering the potential benefits and costs alluded to above, we do not support the project. While there is room for disagreement on this policy issue, supporters have yet to make a clear case that benefits to Nebraska would offset the costs and risks.

Richard K. Perrin, (402) 472-9818  
Roberts Professor  
Dept. of Agricultural Economics  
University of Nebraska-Lincoln  
[rperrin@unl.edu](mailto:rperrin@unl.edu)

Lilyan Fulginiti, (402) 472-0651  
Professor  
Dept. of Agricultural Economics  
University of Nebraska-Lincoln  
[lfulginiti@unl.edu](mailto:lfulginiti@unl.edu)



References:

<sup>1</sup> <http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf/AssmtDrftAcpt.pdf?OpenFileResource>

[http://www.transcanada.com/docs/Key\\_Projects/TransCanada\\_US\\_Report\\_06-10-10.pdf](http://www.transcanada.com/docs/Key_Projects/TransCanada_US_Report_06-10-10.pdf)

<sup>3</sup> [http://www.transcanada.com/docs/Key\\_Projects/SandhillsNativeRangeland.pdf](http://www.transcanada.com/docs/Key_Projects/SandhillsNativeRangeland.pdf)

<sup>4</sup> See, for example: <http://plainsjustice.org/> and [http://dirtyoilsands.org/dirtyspots/category/keystone\\_xl/obamas\\_choice/](http://dirtyoilsands.org/dirtyspots/category/keystone_xl/obamas_choice/)

<sup>5</sup> [http://www.downstreamtoday.com/news/article.aspx?a\\_id=23434](http://www.downstreamtoday.com/news/article.aspx?a_id=23434)

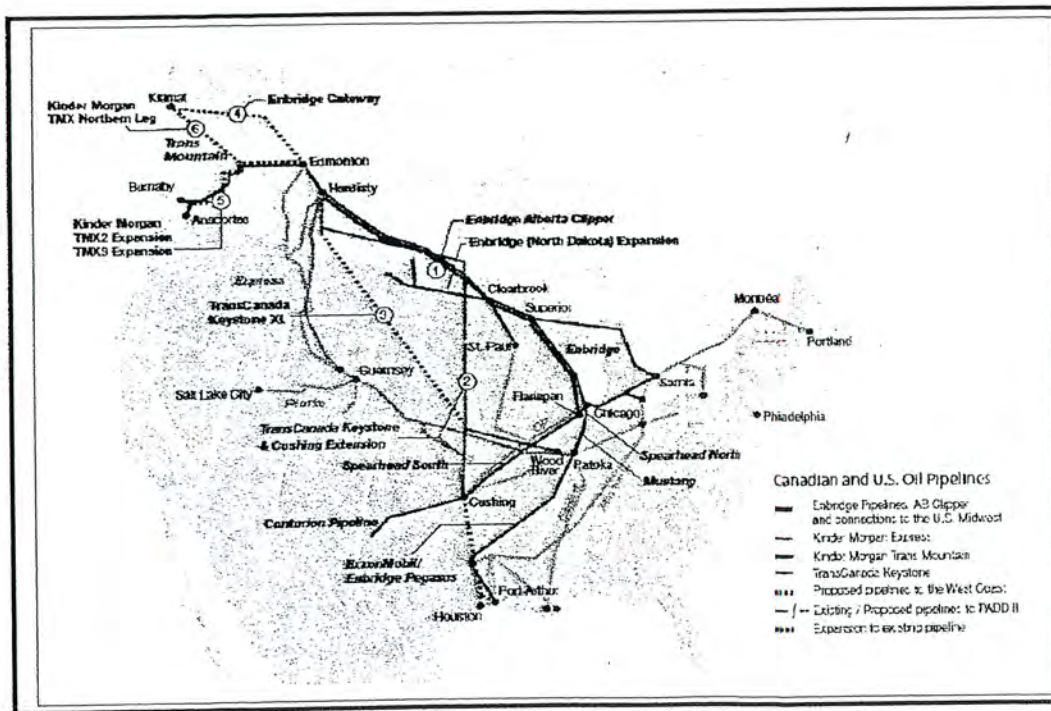
<sup>6</sup> California Air Resources Board, <http://www.arb.ca.gov/fuels/lcfs/091307oharelcfs.pdf>

<sup>7</sup> Proceedings of the National Academy of Science, September 14, 2010, Vol. 107 No. 37 16178-16183.

<sup>8</sup> Natural Resources Canada, <http://www.nrcan-rncan.gc.ca/eneene/sources/pripri/aboapr-eng.php>

<sup>9</sup> Perryman Group, [http://www.transcanada.com/docs/Key\\_Projects/Perryman\\_Group\\_Nebraska\\_Report.pdf](http://www.transcanada.com/docs/Key_Projects/Perryman_Group_Nebraska_Report.pdf)  
[http://www.transcanada.com/docs/Key\\_Projects/TransCanada\\_US\\_Report\\_06-10-10.pdf](http://www.transcanada.com/docs/Key_Projects/TransCanada_US_Report_06-10-10.pdf)

<sup>10</sup> [http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-fuels/~media/PDFs/Global%20Warming/Tar-Sands/Keystone\\_XL\\_Jobs\\_11-09-10.ashx](http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-fuels/~media/PDFs/Global%20Warming/Tar-Sands/Keystone_XL_Jobs_11-09-10.ashx)





**Attachment 8.17**

12. Other Evidence  
b. 30+ Binders full of documentation



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  
Joyce Graves in Support of Landowner  
Intervenors**

State of Nebraska                    )  
  ) ss.  
York County                         )

1   **Q:    Please state your name.**

2   A:    My name is Joyce Graves.

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 York 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:    Daniel.

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

4 A: This land has been in my family for over 150 years.

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

6 A: Yes.

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

9 A: Yes.

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. 2, 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 about 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 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 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: 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. 5, 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 in Nebraska essentially twins or  
4 parallels Keystone I.

5 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**  
6 **Application, and as found on Attachment No. 6, here to your testimony, is in**  
7 **the public interest of Nebraska?**

8 A: No, I do not.

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

12 A: No, I do not.

13 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**  
14 **of the proposed pipeline within Nebraska as found in Attachment No. 5 to**  
15 **your testimony, is in the public interest of Nebraska?**

16 A: No, I do not.

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

20 A: No, I do not.

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

22 A: Because there simply is no public interest based on all of the factors that I am  
23 aware and that I have read and that I have studied that this Commission is to  
24 consider that would establish that a for-profit foreign-owned pipeline that simply  
25 crosses Nebraska because we are geographically in the way between where tar  
26 sands are in Canada to where it wants to ship it to in Texas could ever be in the  
27 public interest of Nebraskans. We derive no benefit from this project. It is not for  
28 public use. Nebraska is simply in the way and when all considerations are taken in  
29 there is no net benefit of any kind for Nebraska should this project be placed in our

1 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
2 the negative impacts and concerns.

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

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

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

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

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

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

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

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

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

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



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

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

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

18 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond  
19 a temporary job spike that this project may bring to a few counties and beyond the  
20 relatively small amount of taxes this proposed foreign pipeline would possibly  
21 generate. And, instead think about the perpetual and forever impacts of this  
22 pipeline as it would have on the landowners specifically, first and foremost, but  
23 also thereby upon the entire state of Nebraska, and to determine that neither the  
24 preferred route nor the Keystone mainline alternative route are in the public  
25 interest of the citizens of the state of Nebraska. And if the Commissioners were  
26 inclined to modify TransCanada's proposed routes and were to be inclined to grant  
27 an application for a route in Nebraska, that the only potential route that would  
28 make any intelligent sense whatsoever would be twinning or near paralleling of  
29 the proposed KXL with the existing Keystone I pipeline. It simply does not make

1 sense to add yet another major oil pipeline crisscrossing our state creating new  
2 pumping stations, creating new impacts on additional counties and communities  
3 and going through all of the court processes with myself and other landowners like  
4 me when this applicant already has relationships with the landowners, the towns  
5 and the communities along Keystone I, and that Keystone I is firmly outside of the  
6 sand hills and a significantly further portion away from the heart of the Ogallala  
7 Aquifer than the preferred route or the Keystone mainline alternative route.

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

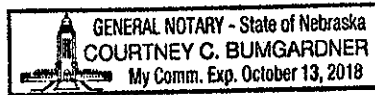
11 A: Yes, they are.

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

Joyce Graves  
Joyce Graves

Subscribed and Sworn to me before this 26<sup>th</sup> day of May, 2017.

Courtney C Bumgardner  
Notary Public



**Attachment No. 1**



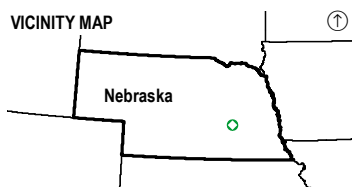


S.011  
T.012N  
R.004W

Joyce K. Graves, Life Estate  
Daniel A. Graves, Remainderman

S.014  
T.012N  
R.004W

IMAGERY: NAIP 2016



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
Joyce K. Graves, Life Estate  
Daniel A. Graves, Remainderman

**TRACT NO.** ML-NE-YK-40140.000  
**STATE:** Nebraska  
**COUNTY:** York  
**SECTION:** 011  
**TOWNSHIP:** 012N  
**RANGE:** 004W

- 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

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(Above Space for Recorder's Use Only)

Tract No.: ML-NE-YK-40140.000

**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**"), **Joyce K. Graves, Life Estate and Daniel A. Graves, Remainderman**, whose mailing address is 1608 Road D, Bradshaw, Nebraska 68319 (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 York, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 156.96 acres, more or less, situated in the County of York, in the State of Nebraska, being further described as a part of the SE1/4 of Section 11, T12N, R4W of the 6th P.M., as recorded in Book 8, Page 469 in the Deed Records of York 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):

\_\_\_\_\_  
Joyce K. Graves, Life Estate

\_\_\_\_\_  
Daniel A. Graves, Remainderman

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Joyce K. Graves, Life Estate**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Daniel A. Graves, Remainderman**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here



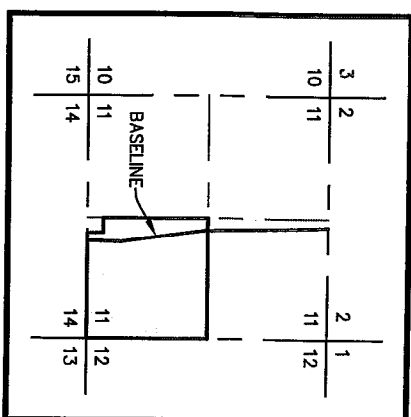
LEGEND  
P  
PROP.  
A.T.W.S.  
P.E.R.W.  
D.R.Y.C.N.

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

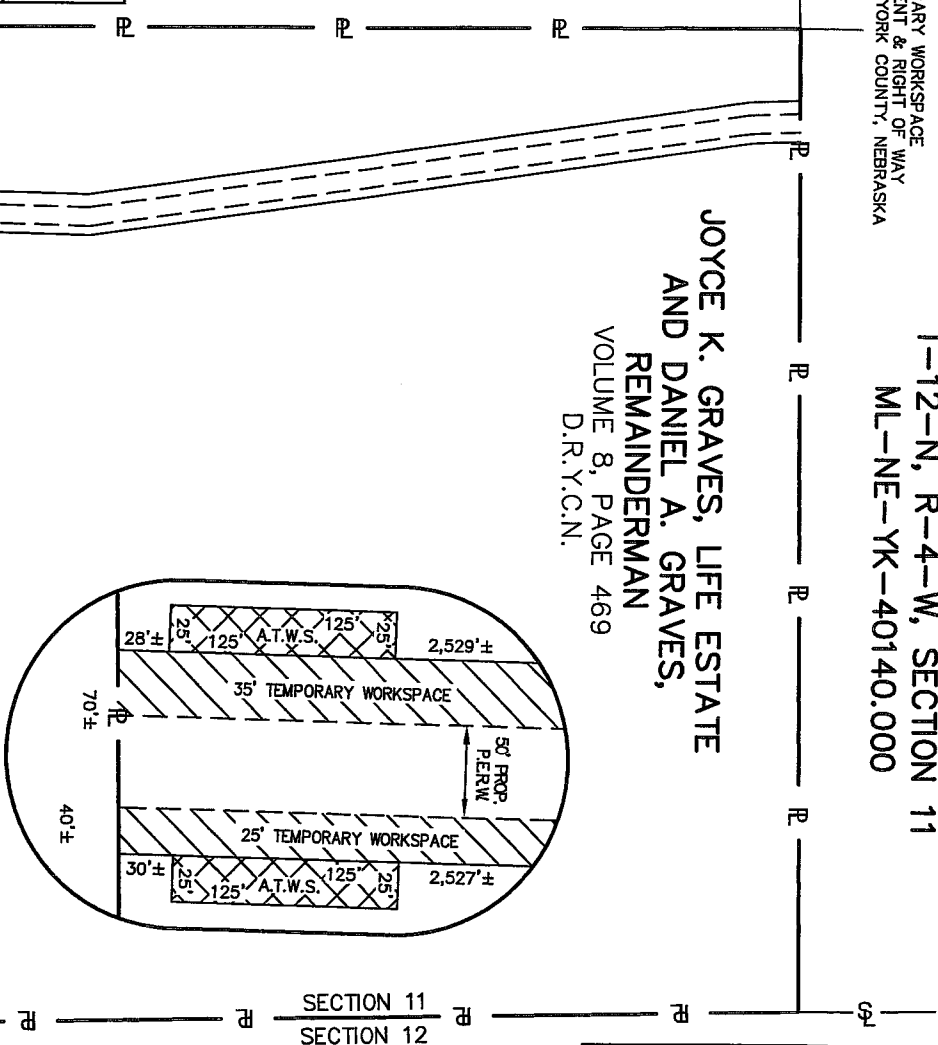
# YORK COUNTY, NEBRASKA

T-12-N, R-4-W, SECTION 11  
ML-NE-YK-40140.000

JOYCE K. GRAVES, LIFE ESTATE  
AND DANIEL A. GRAVES,  
REMAINDERMAN  
VOLUME 8, PAGE 469  
D.R.Y.C.N.



VICINITY MAP  
N.T.S.



SEE DETAIL "A"

DETAIL "A"  
N.T.S.

TRACT LEGAL DESCRIPTION:  
PART OF THE SE/4  
OF SECTION 11,  
T-12-N, R-4-W

SCALE: 1" = 500'



KEYSTONE XL PROJECT

EASEMENT AREA  
ACROSS THE PROPERTY OF  
JOYCE K. GRAVES, LIFE ESTATE  
AND DANIEL A. GRAVES,  
REMAINDERMAN  
ML-NE-YK-40140.000

PROJECT: XL EXHIBIT A

APPROVED BY: XL-08-ML-SK-3724

NO. REVISION DATE

SCALE: 1" = 500'

DATE: 10/27/14

DRAWN BY: PB

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.

TOTAL DISTANCE ACROSS PROPERTY: 2,682'±  
AREA OF PERMANENT EASEMENT: 3.1 ACRES  
AREA OF TEMPORARY WORKSPACE: 3.7 ACRES  
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.1 ACRE



**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-YK-40140.000

We, Joyce K. Graves, Life Estate and Daniel A. Graves, Remainderman, of York County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Five Hundred Twenty Dollars and No Cents (\$5,520.00), 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 York, State of Nebraska:

**Part of the SE/4**

**Section 11, Township 12N, 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

**Attachment No. 5**

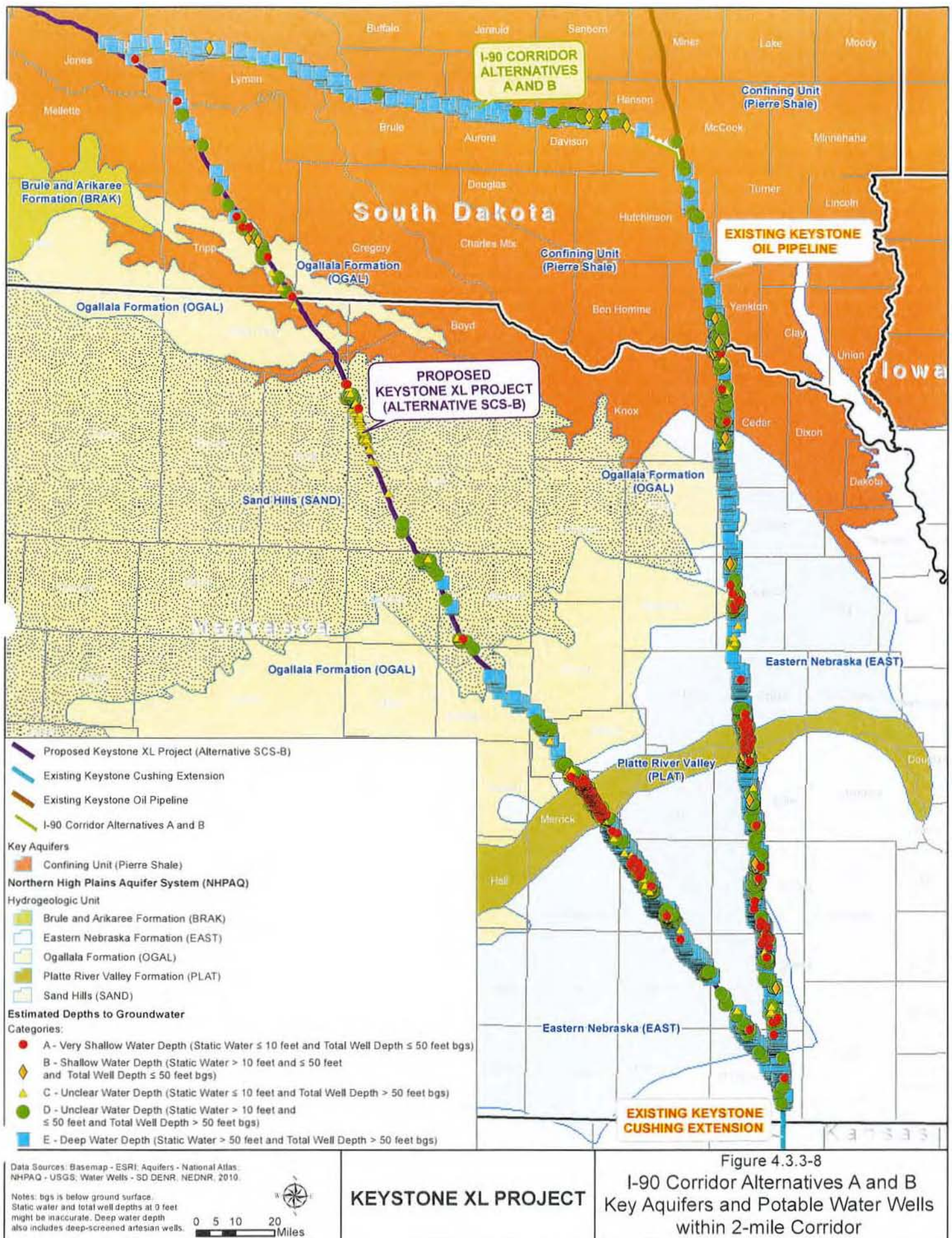


Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor



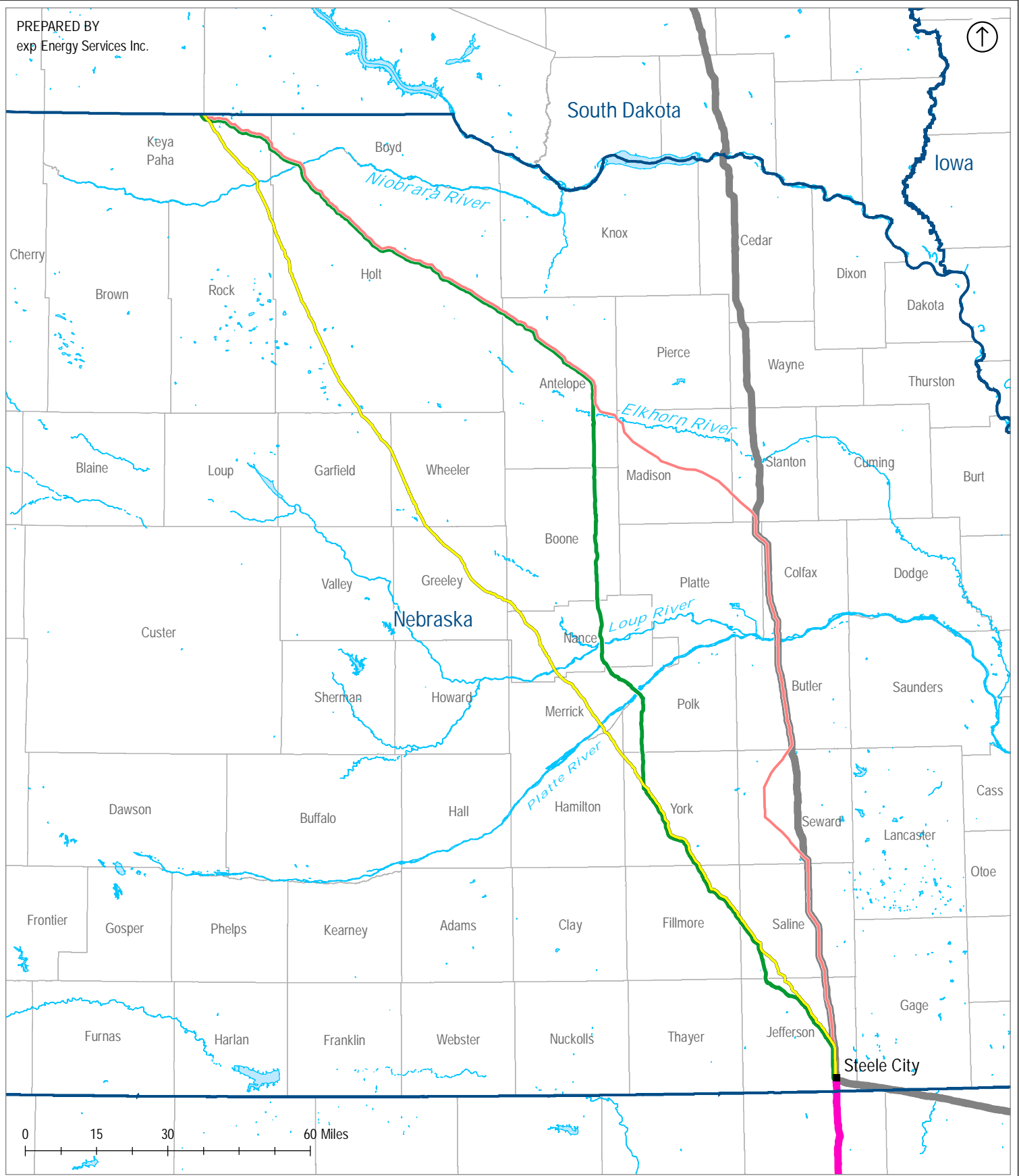


## KEYSTONE XL PROJECT

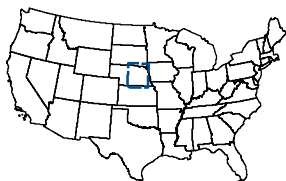
Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor



**Attachment No. 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  
Andy Grier in Support of Landowner  
Intervenors**

State of Nebraska                    )  
  ) ss.  
Douglas County                    )

1   **Q:    Please state your name.**

2   A:    My name is Andy Grier. I am a member of TMAG Ranch, 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 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 a Senior Vice President at Burlington Capital, ATAX. I also make  
2 management decisions for the land and ranch in question here.

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

4 A: Staci Grier

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

6 A: I have three daughters.

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

9 A: Yes.

10 **Q: For the land that would be affected and impacted by the proposed KXL tar**  
11 **sands pipeline give the Commissioners a sense how long the land has been**  
12 **owned by you and a little history of the land.**

13 A: Owned for 27 years and bought by myself and a close friend in Partnership

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

15 A: Yes.

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

18 A: Yes.

19 **Q: Can you explain how the pipeline will decrease the value of your land?**

20 A: Severance decreases the value of the land. The simple presence of the pipeline  
21 results in a material reduction in value of the land especially considering the future  
22 onerous obligations under the easement and inherent liability assumed by any  
23 future owner.

24 **Q: Are there any irrigation efforts driven by ground water in the Holt/Boyd**  
25 **County area?**

26 A: Threat to the Ogallala Aquifer. There are many irrigation efforts driven by ground  
27 water in our area of Holt/Boyd County as well.

28 **Q: How is the water table on your property?**



1 A: I know from drilling a well on our property that the water table is very shallow  
2 given our proximity to the Niobrara River.

3 **Q: Where will the pipeline run in comparison to your water supply?**

4 A: The pipeline will run within a couple hundred yards of our household well water  
5 supply forever posing a risk to our domestic water supply.

6 **Q: How will your ranch operations be affected during the construction of the  
7 pipeline?**

8 A: Ranch Operations. I'm very concerned about our ranch operations during the  
9 pipeline installation. Given the proposed route over our property, the entire scope  
10 of operations including cattle grazing and rotation as well as hay production will  
11 likely be curtailed for the balance of one year of operation.

12 **Q: Can you explain how the construction of a pipeline will affect your revenue?**

13 A: Our operations fund our known obligations from this revenue production including  
14 real estate taxes and loan payments. Longer term I receive a one-time payment yet  
15 my heirs could be held responsible for an accident that occurs indefinitely into the  
16 future.

17 **Q: Do you have any concerns on future costs if the TransCanada chooses to  
18 abandon the pipeline?**

19 A: Abandonment. The easement gives TransCanada the right to abandon the pipeline  
20 in place. This creates a tremendous liability for the future family owners of our  
21 property. The unquantified future cost risk imposed on me and my heirs seems  
22 unfair and uncompensated either now or in the future.

23 **Q: Does the proposed route create a potential risk of the shelter belt on your  
24 property?**

25 A: Destruction of trees. I have a shelter belt and much wooded area in the path of the  
26 pipeline. While a minor issue to some, there is a real potential for a significant  
27 destruction and removal of the immediate landscape of our property.

28 **Q: Does your property provide any risks and challenges to the proposed route  
29 due to your proximity of the Niobrara River?**

1 A: Also, the route across our property includes the challenges and risks of the  
2 Niobrara River crossing as well as a path over significant hilly terrain and a creek  
3 which is likely to radically alter the terrain which is an aesthetic element of value  
4 in our property.

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

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

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

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

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

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

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

29 A: Yes.

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

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

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

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

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

11 A: No, they have not.

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

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

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

19 A: No, they did not.

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

22 A: Yes, they did.

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

25 A: Yes, they did.

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

27 A: TransCanada stated that the eminent domain property will be used to "lay, relay,  
28 operate, and maintain the pipeline and the plant and equipment reasonably  
29 necessary to operate the pipeline, specifically including surveying, laying,

1 constructing, inspecting, maintaining, operating, repairing, replacing, altering,  
2 reconstructing, removing and abandoning one pipeline, together with all fittings,  
3 cathodic protection equipment, pipeline markers, and all their equipment and  
4 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,  
5 petroleum products, and all by-products thereof.”

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

9 A: No, I do not.

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

12 A: Yes, they did.

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

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

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

25 A: Yes, it is.

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

28 A: Yes, I have.



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

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

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

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

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

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

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

26 A: The very first sentence talks about consideration or how much money they will  
27 pay to compensate me for all of the known and unknown affects and all of the  
28 rights I am giving up and for all the things they get to do to my land and for what

1 they will prevent me from doing on my land and they only will pay me one time at  
2 the signing of the easement agreement. That is a huge problem.

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

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

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

18 A: The first paragraph goes on to say Grantor, which is me the landowner, "does  
19 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a  
20 limited partnership..." and I have no idea who that really is. I have no idea who is  
21 forcing this pipeline on us or who the owners of the entities are, or what are the  
22 assets backing this limited partnership, or who the general partner is, or who all  
23 the limited partners are, and who makes up the ownership of the these partners or  
24 the structure or any of the basic things you would want to know and understand if  
25 you would want to do business with such an outfit. According to TransCanada's  
26 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited  
27 liability company called TransCanada Keystone Pipeline GP, LLC is the general  
28 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so

1 basically nothing. That is really scary since the general partner has the liability but  
2 virtually none of the ownership and who knows if it has any other assets.

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

6 A: No.

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

11 A: No.

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

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

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

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

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

27 A: Then it says "...a perpetual permanent easement and right-of-way..." and this  
28 really concerns me. Why does the easement and right-of-way have to be perpetual

1 and permanent? That is the question myself and my family want an answer to.  
2 Perpetual to me is like forever and that doesn't make sense.

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

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

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

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

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

24 A: Yes.

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

26 A: Here the Easement identifies a 24-month deadline to complete construction of the  
27 pipeline but has caveats that are undefined and ambiguous. The 24-month period  
28 starts to run from the moment "actual pipeline installation activities" begin on  
29 Landowners property. It appears that TransCanada would define this phrase as

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

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

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



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

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

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

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

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

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

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

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

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

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

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

27 A: Again, undefined terms leave a lot of room for confusion. What does the phrase  
28 "where rock is encountered" mean and why does TransCanada solely get to  
29 determine whether or not this phrase is triggered. This phrase could be used to

1 justify installing the pipeline 24 inches beneath the surface. The ability to use this  
2 provision to minimal locate the pipeline at a depth of 24 inches could negatively  
3 affect Landowners property are not conducive to the protection of property rights.  
4 A shallow pipeline is much more likely to become a danger and liability in the  
5 future given farming operations and buried irrigation lines and other factors  
6 common to the current typical agricultural uses of the land in question impacted  
7 by TransCanada's preferred pipeline route.

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

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

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

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

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

25 A: TransCanada has the power to unilaterally move or modify the location of any  
26 Easement area whether permanent or temporary at their sole discretion.  
27 Regardless, if Landowner has taken prior steps relative the their property in  
28 preparation or planning of TransCanada's taking of the initial easement area(s),  
29 the language here does not require TransCanada to compensate the Landowner if

1 they decide to move the easement anywhere on Landowners property. Such  
2 unilateral powers would negatively affect Landowners property are not conducive  
3 to the protection of property rights or economic interests.

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

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

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

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

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

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

- 24 i. "pipeline installation activities"
- 25 ii. "availability of labor and materials"
- 26 iii. "commercially reasonable costs and expenses"
- 27 iv. "reasonably anticipated and foreseeable costs and expenses"
- 28 v. "yield loss damages"
- 29 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.

**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.



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

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

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

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

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

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

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

22 A: No, never.

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

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

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

29 A: Yes, it is.

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

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

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

9   A:   No, I did not.

10  **Q:   Why not?**

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

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

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

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

27  A:   No, they have not.

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 the public interest of the State of Nebraska?**

4 A: No, they have not.

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

7 A: Yes, I am.

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

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

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

16 A: No, they have not.

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

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

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

1 A: No, it has not.

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

5 A: No, I do not.

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

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

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

12 A: Yes, I do.

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

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

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

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

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

23 A: No, of course not.

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

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

1   **Q:    Have you at any time ever employed any person other than yourself?**  
2   A:    Well, yes I have.

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

7   A:    No, of course not.

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

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

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

23  A:    Our land borders the Niobrara River and also has a rolling and wooded topography  
24       through the course of the intended route across my property. In addition to the  
25       river crossing intersecting a very high bluff on my property, there would be  
26       significant wooded area and an additional significant hill crossing through pure  
27       timber land. The construction crosses the portion of land directly tied to revenue  
28       production and likely will directly impact a year of operations and could infringe



1 on future operational activities. The route also passes within 300-500 yards of the  
2 main well that provides potable water for our living quarters at the property.

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 our Interrogatory No. 211, TransCanada only  
18 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 proposed method of compensation to you as a**  
23 **landowner is 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 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.

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

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

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

16 A: Yes, I believe that any construction, operation, and/or maintenance of the  
17 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of  
18 land, as well as land along and surrounding the proposed pipeline route. This  
19 includes, but is not limited to, the reasons that we discussed above of disturbing  
20 the soil composition and makeup as it has naturally existed for thousands and  
21 millions of years during the construction process, and any future maintenance or  
22 removal process. I'm gravely concerned about the fertility and the loss of  
23 economic ability of my property to grow the crops, or grow the grasses, or grow  
24 whatever it is at that time they exist on my property or that I may want to grow in  
25 the future, or that a future owner may want to grow. The land will never be the  
26 same from as it exists now undisturbed to after it is trenched up for the proposed  
27 pipeline.

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

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

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

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

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

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

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

23 A: Yes, I do. I am significantly concerned about how the existence of the proposed  
24 pipeline underneath and across and through my property will negatively affect the  
25 fair market value at any point in the future, especially at that point in which I  
26 would need to sell the property, or someone in my family would need to sell the  
27 property. I do not believe, and certainly would not be willing to pay, the same  
28 price for land that had the pipeline located on it, versus land that did not. I hope  
29 there is never a point where I'm in a position where I have to sell and have to

1 realize as much value as I can out of my land. But because it is my single largest  
2 asset, I'm gravely concerned that the existence of the proposed Keystone XL  
3 Pipeline upon my land will affect a buyer's willingness to pay as much as they  
4 would've paid and as much as I could've received, if the pipeline were not upon  
5 my property. There are just too many risks, unknowns, impacts and uncertainties,  
6 not to mention all of the rights you give up by the nature of having the pipeline  
7 due to having the easement that we have previously discussed, for any reasonable  
8 person to think that the existence of the pipeline would not negatively affect my  
9 property's value.

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

12 A: Yes, I have.

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

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

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

21 A: No, I do not.

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

25 A: No, I do not.

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

29 A: No, I do not.



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

4 A: No, I do not.

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

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

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

20 A: First of all, not all jobs are created equally. Most jobs that are created, whether  
21 temporary or on a permanent basis, don’t come with a project that has all the  
22 potential and foreseeable negative impacts, many of which we have discussed here  
23 and other witnesses throughout the course of this hearing have and will discuss. If  
24 I decide to hire and employ someone to help me out in my farming or ranching  
25 business, I’ve created a job but I haven’t done so at the risk or detrimental impact  
26 to my land or my town or my county or my state. And I’ve hired someone who is  
27 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce  
28 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all  
29 jobs are not created equal. Additionally, I understand from what I’m familiar with

1 from TransCanada's own statements that the jobs numbers they originally touted  
2 were determined to be a minute fraction of the permanent jobs that had been  
3 projected. According to their answer to our Interrogatory No. 191, TransCanada  
4 has created only thirty-four (34) jobs within Nebraska working specifically on  
5 behalf of TransCanada and according to their answer to Interrogatory No. 196, as  
6 of May 5, 2017 they only employ one (1) temporary working within Nebraska.  
7 Further, according to their answer to Interrogatory No. 199, TransCanada would  
8 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was  
9 constructed on its Preferred Route or its Mainline Alternative Route.

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

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

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

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

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

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

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

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

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

15 A: Yes. Severance decreases the value of the land. The simple presence of the  
16 pipeline results in a material reduction in value of the land especially considering  
17 the future onerous obligations under the easement and inherent liability assumed  
18 by any future owner. As mentioned prior, it is also disruptive to the operational  
19 profile of our land impacting its functionality as a vital source of income.

20 Threat to the Ogallala Aquifer. There are many irrigation efforts driven by ground  
21 water in our area of Holt/Boyd County as well and I know from drilling a well on  
22 our property that the water table is very shallow given our proximity to the  
23 Niobrara River. The pipeline will run within a couple hundred yards of our  
24 household well water supply forever posing a risk to our domestic water supply.

25 Ranch Operations. I'm very concerned about our ranch operations during the  
26 pipeline installation. Given the proposed route over our property, the entire scope  
27 of operations including cattle grazing and rotation as well as hay production will  
28 likely be curtailed for the balance of one year of operation. We are a small  
29 operation that funds our known obligations from this revenue production including

1 real estate taxes and loan payments. Longer term I also agree that I receive a  
2 onetime payment yet my heirs could be held responsible for an accident that  
3 occurs indefinitely into the future.

4 Abandonment. The easement gives TC the right to abandon the pipeline in place.  
5 This creates a tremendous liability for the future family owners of our property.  
6 The unquantified future cost risk imposed on me and my heirs seems unfair and  
7 uncompensated either now or in the future.

8 Destruction of trees. I have a shelter belt and much wooded area in the path of the  
9 pipeline. While a minor issue to some, there is a real potential for a significant  
10 destruction and removal of the immediate landscape of our property. Also, the  
11 route across our property includes the challenges and risks of the Niobrara River  
12 crossing as well as a path over significant hilly terrain and a creek which is likely  
13 to radically alter the terrain which is an aesthetic element of value in our property.

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: Does Attachment No. 8 here contain other documents you are competent to**  
24 **speak about that you wish to be part of your testimony and to discuss in more**  
25 **detail as needed at the August 2017 Hearing? (Note this will be the catch all**  
26 **for any other documents you want to attach that we have not specifically**  
27 **identified above) [NOT EVERYONE WILL HAVE THIS AND SO THIS Q**  
28 **and A would be deleted for those folks]**

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.

*Andy Grier*

Andy Grier, TMAG Ranch, LLC

Subscribed and Sworn to me before this 24<sup>TH</sup> day of May, 2017.

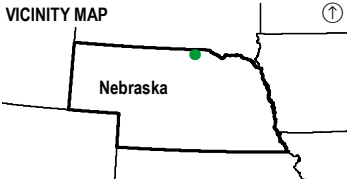
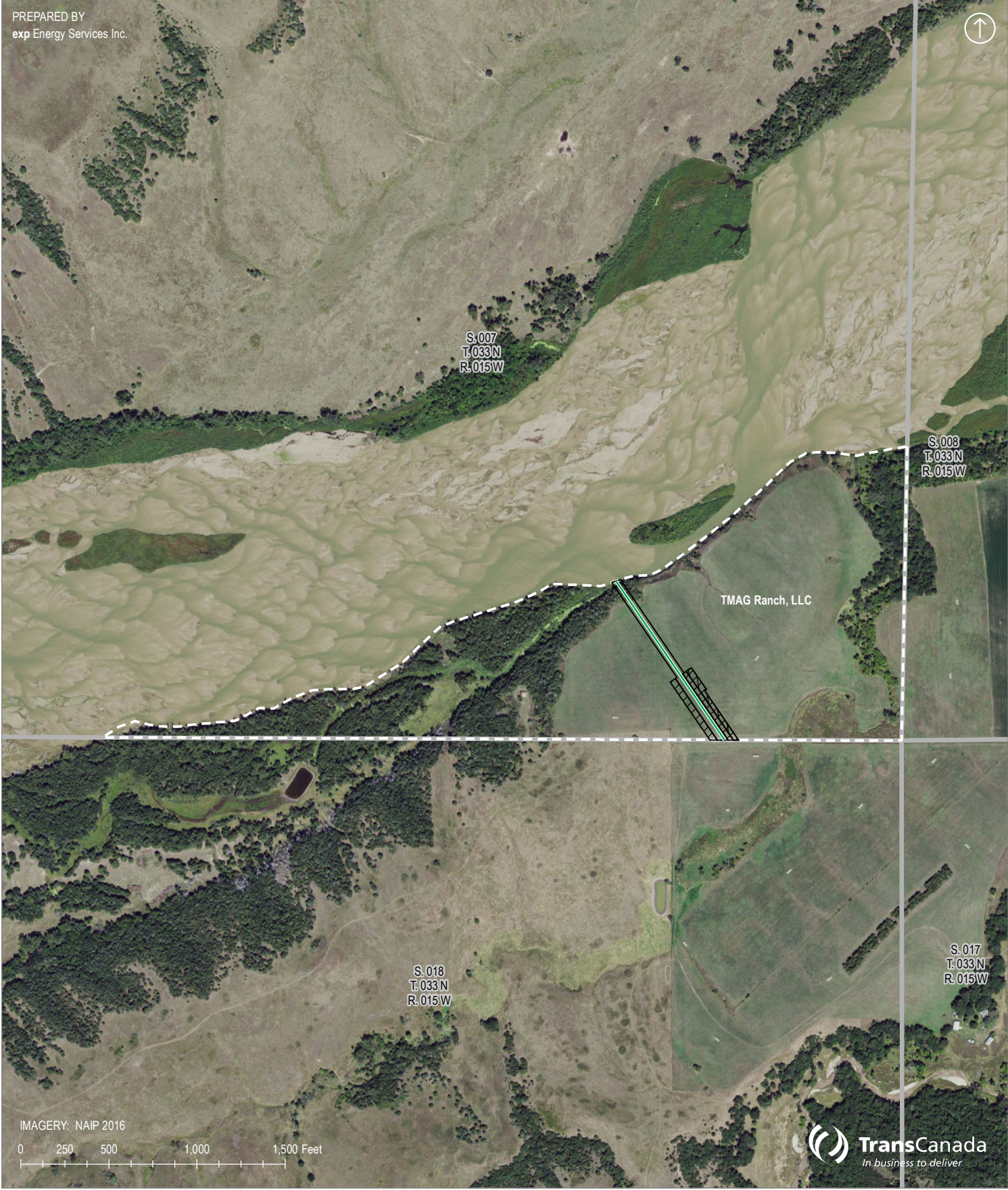
*Nancy L. McBath*  
Notary Public



*My comm expires  
January 7, 2019*

**Attachment No. 1**





KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY  
TMAG Ranch, LLC

TRACT NO. ML-NE-HT-40420.000  
STATE: Nebraska  
COUNTY: Holt  
SECTION: 007  
TOWNSHIP: 033N  
RANGE: 015W

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



PREPARED BY  
exp Energy Services Inc.

S.012  
T.033N  
R.016W

S.007  
T.033N  
R.015W

S.008  
T.033N  
R.015W

S.018  
T.033N  
R.015W

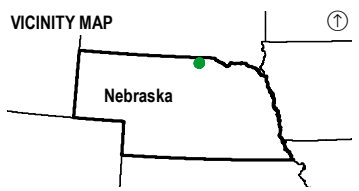
S.017  
T.033N  
R.015W

S.020  
T.033N  
R.015W

TMAG Ranch, LLC

IMAGERY: NAIP 2016

0 250 500 1,000 1,500 Feet



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
TMAG Ranch, LLC

**TRACT NO.** ML-NE-HT-40380.000  
**STATE:** Nebraska  
**COUNTY:** Holt  
**SECTION:** 018  
**TOWNSHIP:** 033N  
**RANGE:** 015W

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

May 2017 - X:\Drawings\558\BA\KEYSTONE\_XL\55800\_9999\558



PREPARED BY  
exp Energy Services Inc.

S.007  
T.033 N  
R.015 W

S.008  
T.033 N  
R.015 W

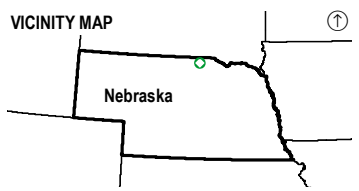
S.018  
T.033 N  
R.015 W

TMAG Ranch, LLC

S.017  
T.033 N  
R.015 W

IMAGERY: NAIP 2016

0 250 500 1,000 Feet



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
TMAG Ranch, LLC

**TRACT NO.** ML-NE-HT-40440.000  
**STATE:** Nebraska  
**COUNTY:** Holt  
**SECTION:** 017  
**TOWNSHIP:** 033N  
**RANGE:** 015W

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

May 2017 - X:\Drawing\5038\KEYSTONE XL\5002\_9999\5038

**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-40380.000  
ML-NE-HT-40420.000  
ML-NE-HT-40440.000

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**") **TMAG Ranch, LLC**, whose mailing address is 916 S. 181<sup>st</sup> Street, Elkhorn, NE 68022 (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

Grantor's Initials \_\_\_\_\_



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 362 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NE1/4, NW1/4 of the SE1/4, and SW1/4 of Section 18, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 198, Page 543 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 72.03 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as Lot 7 of Section 7, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 198, Page 543 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NW1/4 of Section 17, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 198, Page 543 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.

Grantor's Initials \_\_\_\_\_

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):

**TMAG Ranch, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

Grantor's Initials \_\_\_\_\_



STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By \_\_\_\_\_ of

**TMAG Ranch, LLC**, on behalf of the corporation.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

Grantor's Initials \_\_\_\_\_

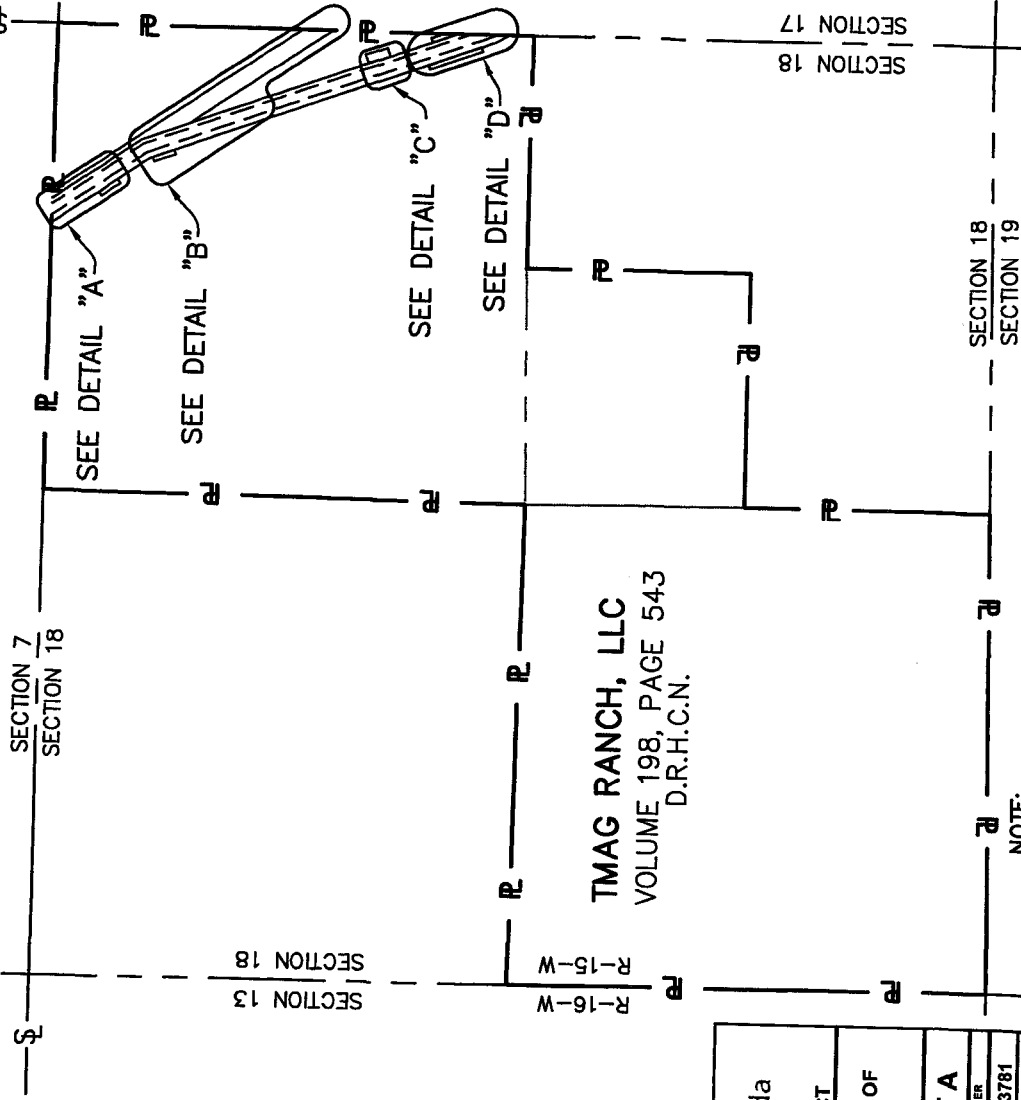
# HOLT COUNTY, NEBRASKA

## T-33-N, R-15-W, SECTION 18

### ML-NE-HT-40380.000

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

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



TRACT LEGAL DESCRIPTION:  
NE 1/4, NW 1/4 SE 1/4, SW 1/4 OF  
SECTION 18,  
T-33-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.

exp.

The new identity of Trans

TransCanada  
In business to deliver

KEYSTONE XL PROJECT  
EASEMENT AREA  
ACROSS THE PROPERTY OF  
TMAG RANCH, LLC  
ML-NE-HT-40380.000

PROJECT:	XL	EXHIBIT A
APPROVED BY	SLR	DRAWING NUMBER
NO.	XL-08-ML-SK-3781	DATE
REVISION		
SCALE	1" = 1000'	DATE
DRAWN BY	JN	CHECKED BY
DATE	11/05/14	ALS

TOTAL DISTANCE ACROSS PROPERTY: 2,539'±  
AREA OF PERMANENT EASEMENT: 2.9 ACRES  
AREA OF TEMPORARY WORKSPACE: 3.5 ACRES  
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 3.1 ACRES

SHEET 1 OF 3

# HOLT COUNTY, NEBRASKA

T-33-N, R-15-W, SECTION 18

ML-NE-HT-40380.000

PROPERTY LINE

PROPOSED

ADDITIONAL TEMPORARY WORKSPACE

PERMANENT EASEMENT & RIGHT OF WAY

LEGEND

P

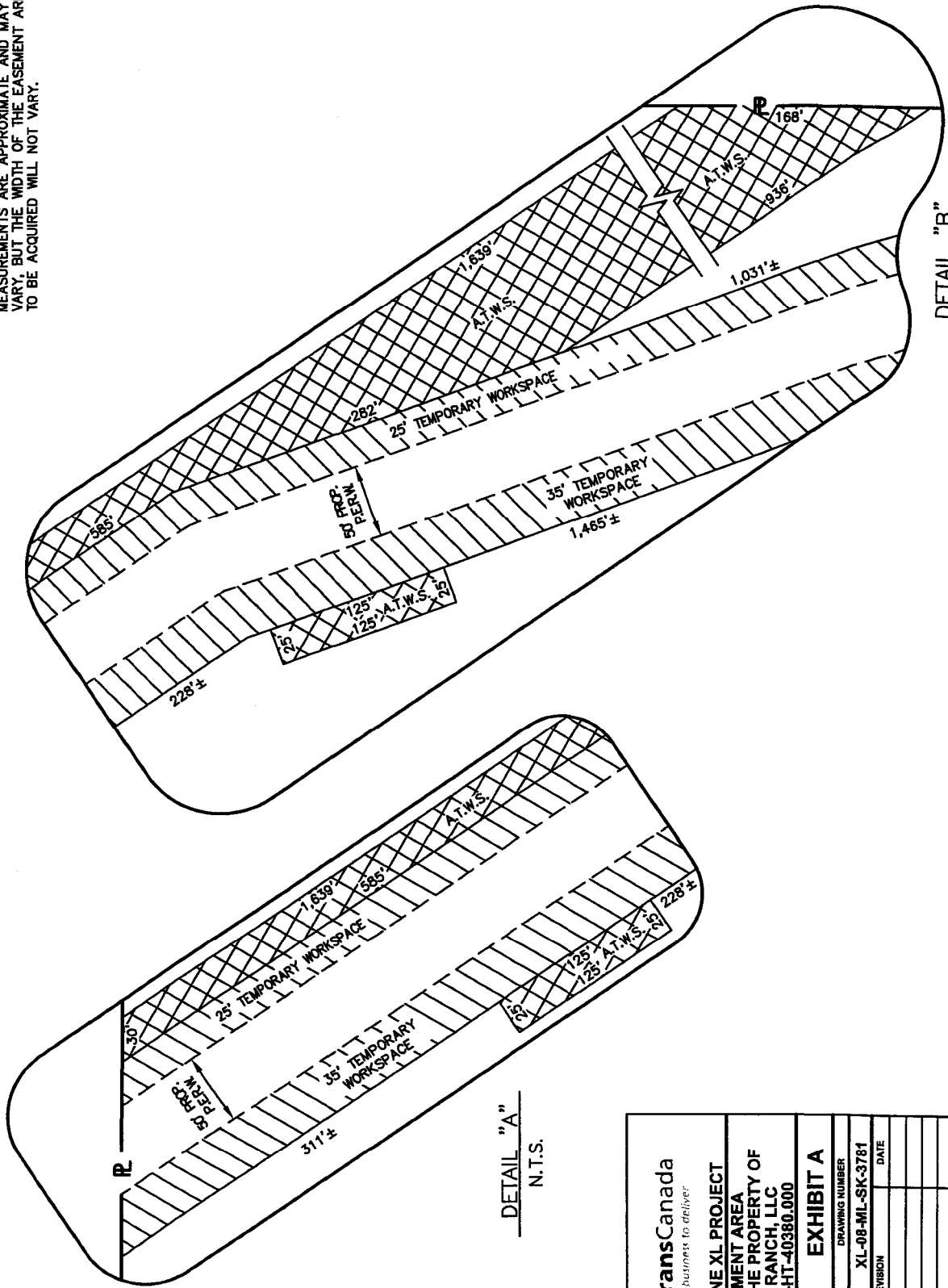
PROP.

A.T.W.S.

P.E.R.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.



DETAIL "A"

N.T.S.

DETAIL "B"

N.T.S.



TransCanada

in business to deliver

KEYSTONE XL PROJECT

EASEMENT AREA

ACROSS THE PROPERTY OF

TIMAG RANCH, LLC

ML-NE-HT-40380.000

PROJECT: EXHIBIT A

APPROVED BY: XL

DRAWING NUMBER: XL-08-ML-SK-3781

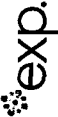
NO. REVISION DATE

SCALE: N.T.S.

DATE: 11/05/14

DRAWN BY: JN

CHECKED BY: ALS



The new identity of Trans

# HOLT COUNTY, NEBRASKA

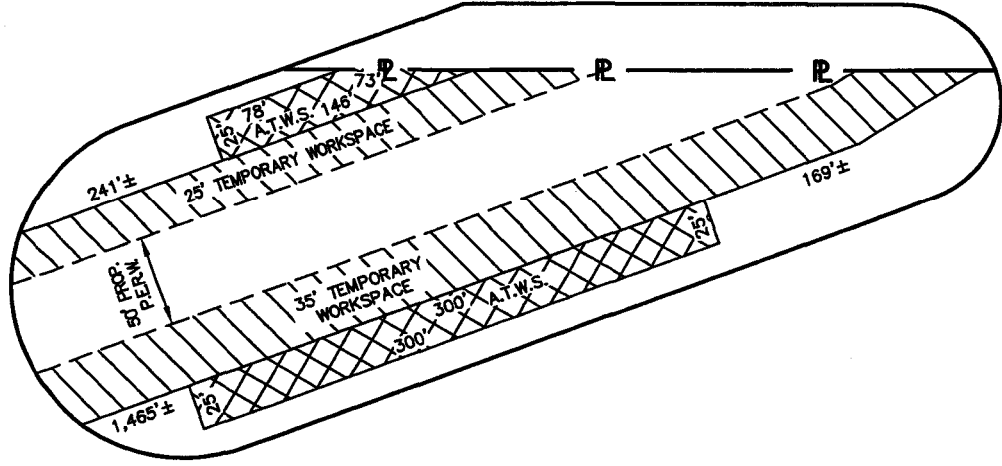
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### ML-NE-HT-40380.000

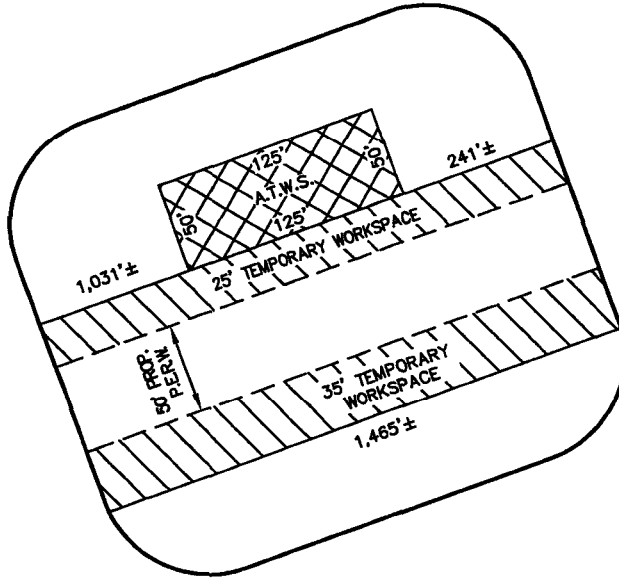
PROPERTY LINE  
PROPOSED  
ADDITIONAL TEMPORARY WORKSPACE  
PERMANENT EASEMENT & RIGHT OF WAY

LEGEND  
P  
PROP.  
A.T.W.S.  
P.E.R.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.



DETAIL "D"  
N.T.S.



DETAIL "C"  
N.T.S.



KEYSTONE XL PROJECT

EASEMENT AREA  
ACROSS THE PROPERTY OF  
TMAG RANCH, LLC  
ML-NE-HT-40380.000

PROJECT: EXHIBIT A

APPROVED BY: XL

DRAWING NUMBER: XL-08-ML-SK-3781

NO. REVISED DATE

DATE

DATE

DATE

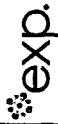
DATE

DATE

DATE

DATE

DATE



The new identity of Trans

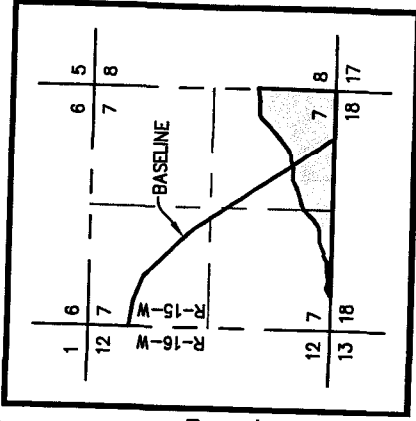
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	11/05/14	JN	ALS

# LEGEND

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

## HOLT COUNTY, NEBRASKA

T-33-N, R-15-W, SECTION 7  
ML-NE-HT-40420.000



VICINITY MAP  
N.T.S.

SECTION 7  
SECTION 8

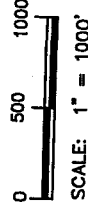
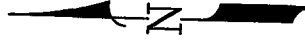
SECTION 6  
SECTION 7

SECTION 7  
SECTION 12

R-15-W  
R-16-W

BOYD COUNTY  
HOLT COUNTY

TMAG RANCH, LLC  
VOLUME 198, PAGE 543  
D.R.H.C.N.



TRACT LEGAL DESCRIPTION:  
LOT 7 OF SECTION 7,  
T-33-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.

SEE DETAIL "A"

exp.

TOTAL DISTANCE ACROSS PROPERTY: 1,094'±  
AREA OF PERMANENT EASEMENT: 1.2 ACRES  
AREA OF TEMPORARY WORKSPACE: 0.6 ACRES  
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.3 ACRES

SHEET 1 OF 2



KEYSTONE XL PROJECT

EASEMENT AREA  
ACROSS THE PROPERTY OF  
TMAG RANCH, LLC  
ML-NE-HT-40420.000

PROJECT: XL EXHIBIT A

APPROVED BY: SLR

DRAWING NUMBER: XL-08-ML-SK-3771

DATE: \_\_\_\_\_

REVISION: \_\_\_\_\_

NO. \_\_\_\_\_

DATE: \_\_\_\_\_

CHECKED BY: \_\_\_\_\_

DRAWN BY: JN

DATE: 11/05/14

SCALE: 1" = 1000'

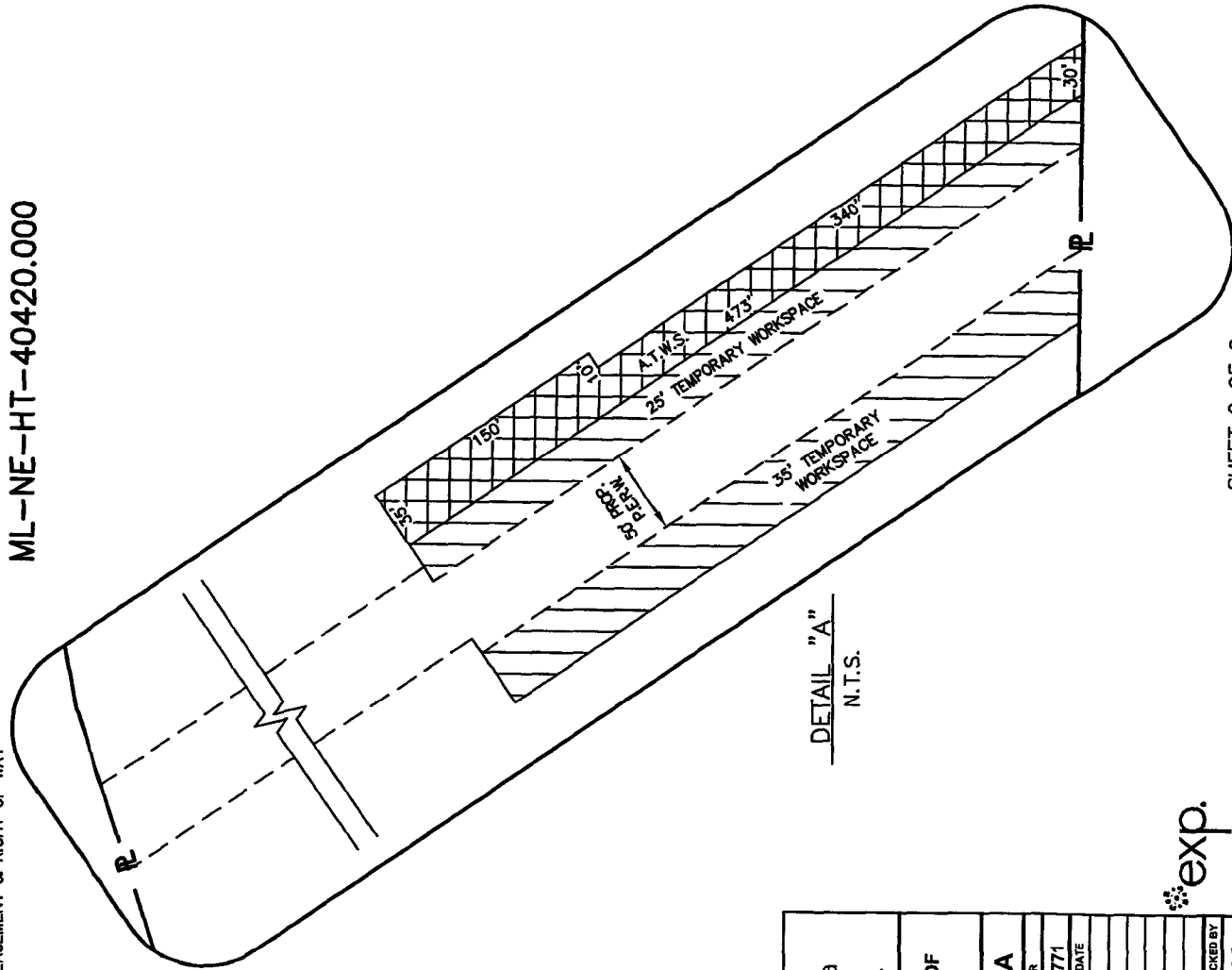
ALS

The new identity of Trans



**T-33-N, R-15-W, SECTION 7**  
**ML-NE-HT-40420.000**


PROPERTY LINE  
PROPOSED  
ADDITIONAL TEMP  
PERMANENT EAS



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.

DETAIL "A"  
N.T.S.

SHEET 2 OF 2

 <b>TransCanada</b> <i>In business to deliver</i>		<b>KEYSTONE XL PROJECT</b>  <b>EASEMENT AREA</b> <b>CROSS THE PROPERTY OF</b> <b>TWAG RANCH, LLC</b> <b>ML-NE-HT-40420.000</b>	
PROJECT:	XL	<b>EXHIBIT A</b>	
APPROVED BY		DRAWING NUMBER	
SLR		XL-08-ML-SK-3771	
NO.		REVISION	DATE
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	11/05/14	JIN	ALS



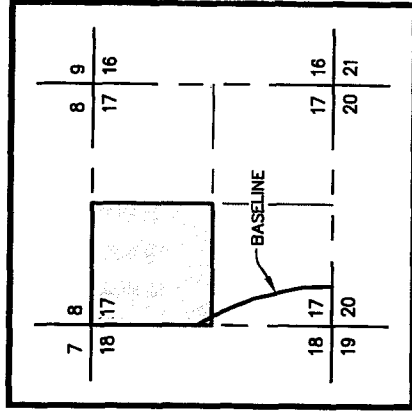
## The new Identity of Tenor

LEGEND  
 P.S. PROPERTY LINE  
 P.P. 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

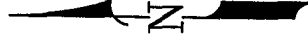
# HOLT COUNTY, NEBRASKA

## T-33-N, R-15-W, SECTION 17

### ML-NE-HT-40440.000



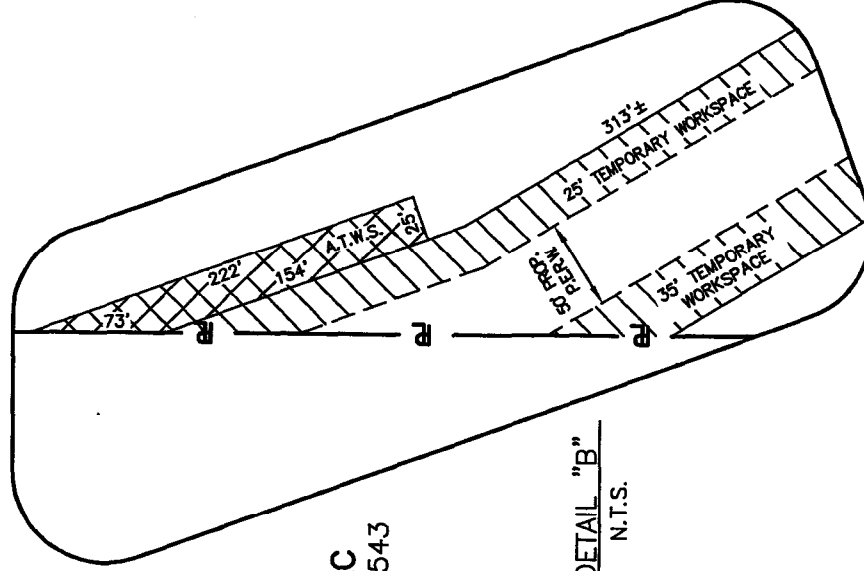
VICINITY MAP  
 N.T.S.



0 250 500  
 SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:  
 NW/4 OF SECTION 17,  
 T-33-N, R-15-W

SECTION 8  
 SECTION 17



TMAG RANCH, LLC  
 VOLUME 198, PAGE 543  
 D.R.H.C.N.

SEE DETAIL "A"

DETAIL "B"  
 N.T.S.

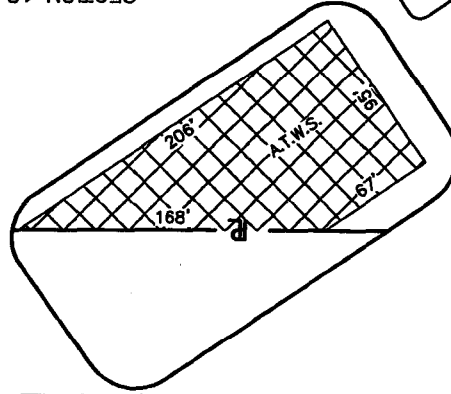
SEE DETAIL "B"

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.

TOTAL DISTANCE ACROSS PROPERTY: 340'±  
 AREA OF PERMANENT EASEMENT: 0.4 ACRE  
 AREA OF TEMPORARY WORKSPACE: 0.4 ACRE  
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.4 ACRE

SECTION 17  
 SECTION 18



DETAIL "A"  
 N.T.S.

<b>TransCanada</b> In business to deliver		<b>KEYSTONE XL PROJECT</b>	
<b>EASEMENT AREA</b>		<b>EXHIBIT A</b>	
<b>ACROSS THE PROPERTY OF</b>		<b>DRAWING NUMBER</b>	
<b>TMAG RANCH, LLC</b>		<b>XL-08-ML-SK-3772</b>	
<b>ML-NE-HT-40440.000</b>		<b>DATE</b>	
<b>PROJECT:</b>	<b>XL</b>	<b>REVISION</b>	<b>DATE</b>
<b>APPROVED BY</b>	<b>SLR</b>	<b>NO.</b>	<b>DATE</b>
<b>SCALE</b>	<b>1" = 500'</b>	<b>11/05/14</b>	<b>JN</b>
<b>CHECKED BY</b>	<b>ALS</b>	<b>DATE</b>	<b>SCALE</b>

exp.  
 The new identity of Tru

**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-40440.000

I/we TMAG Ranch, LLC, of Douglas County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Hundred Twelve Dollars and No Cents (\$312.00), 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:

**NW/4**

**Section 17, Township 33-N, Range 15-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, 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-40420.000

I/we TMAG Ranch, LLC, of Douglas County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Hundred Forty Six Dollars and No Cents (\$546.00), 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:

**Lot 7**

**Section 7, Township 33-N, Range 15-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, 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-40380.000

I/we TMAX Ranch, LLC, of Douglas County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Four Hundred Seventy Dollars and No Cents (\$2,470.00), 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 amage 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:

**NE/4, NW/4 of the SE/4, SW/4**

**Section 18, Township 33-N, Range 15-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, I/we have hereunto set our hands on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

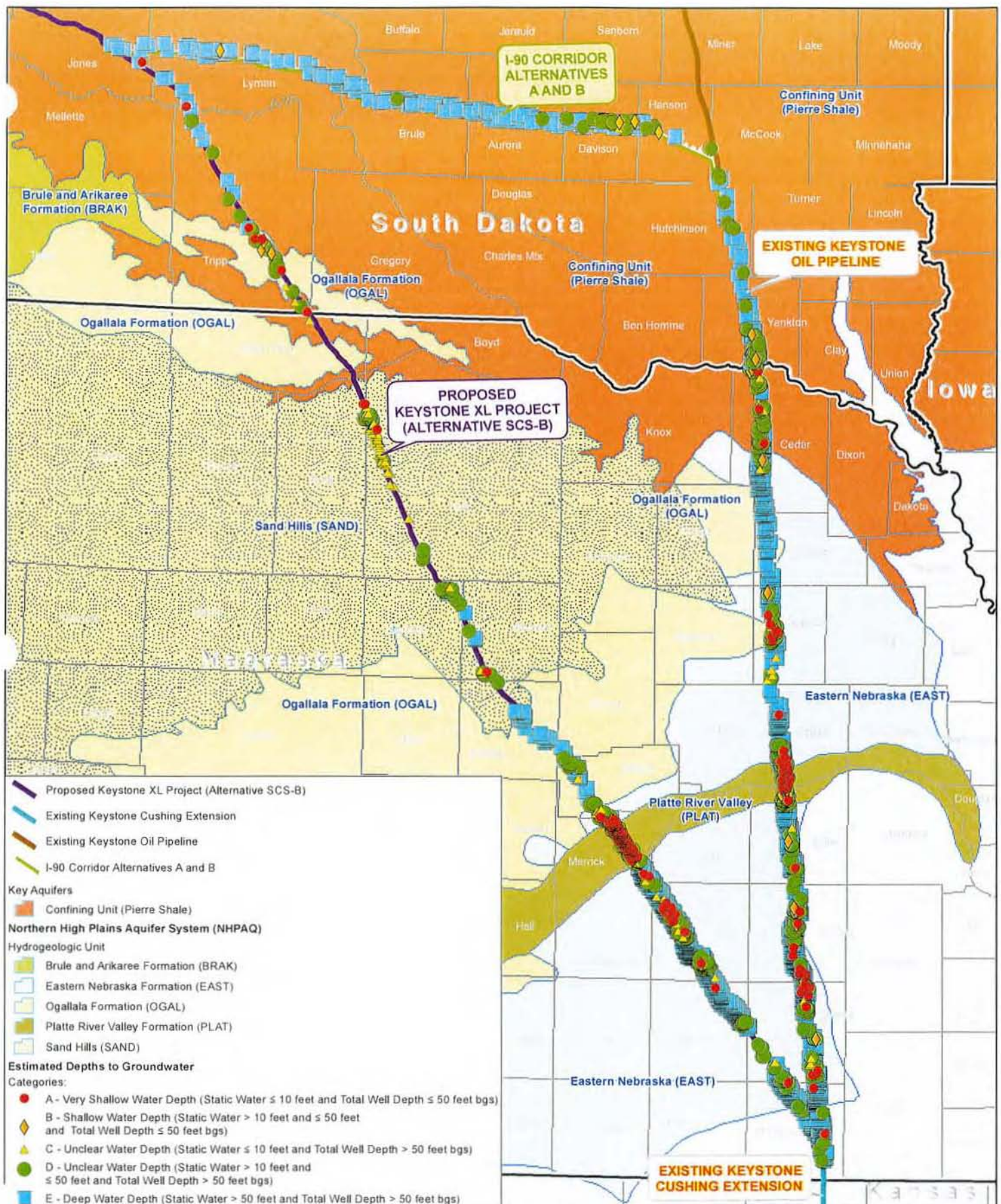
\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
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





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.

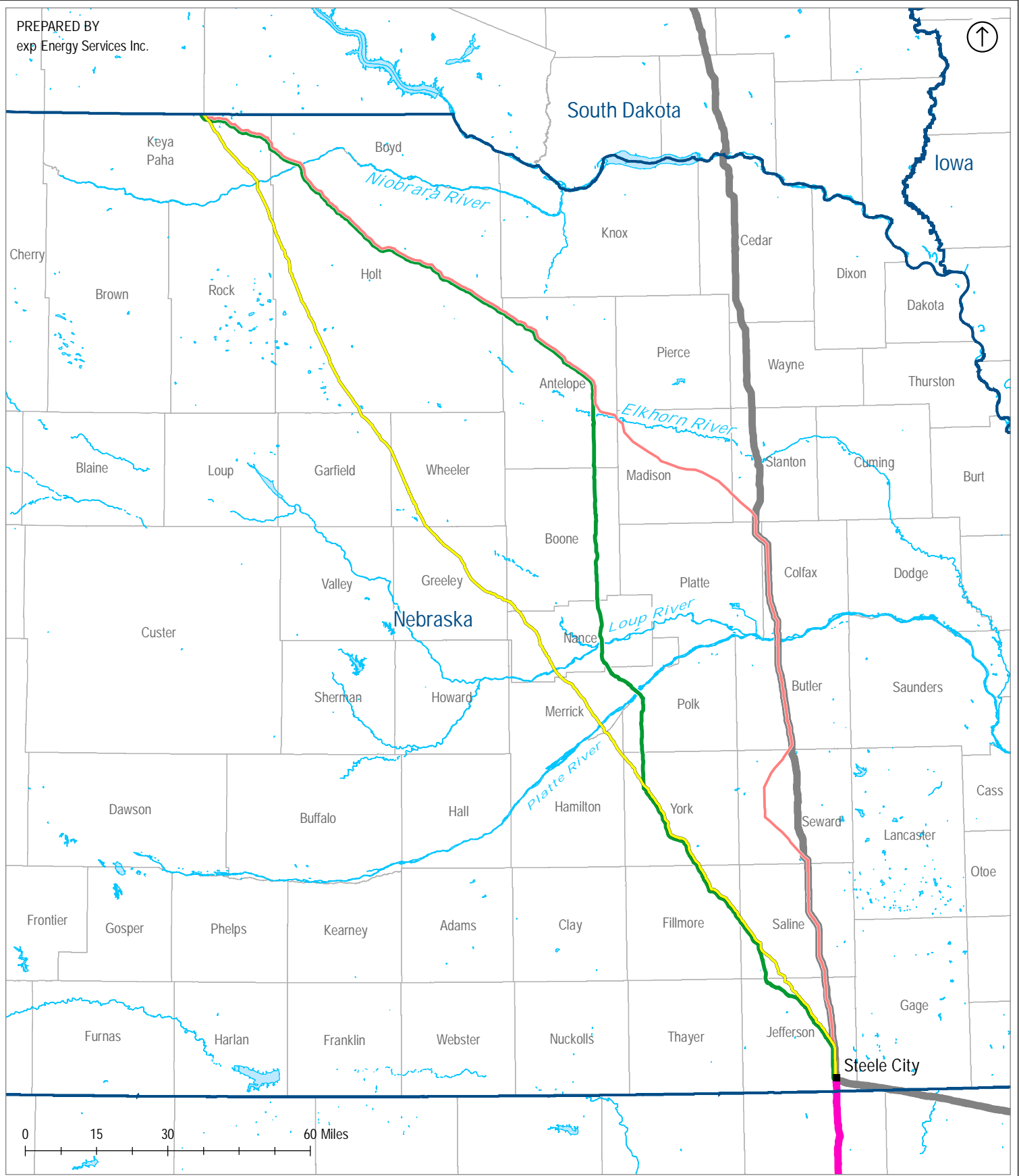
0 5 10 20 Miles

## KEYSTONE XL PROJECT

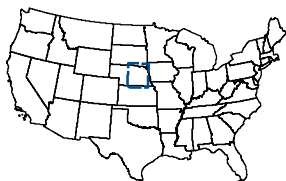
Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor



**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



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  
Patricia Grosserode in Support of  
Landowner Intervenor**

State of Nebraska                    )  
  ) ss.  
Boone County                        )

1   **Q:    Please state your name.**

2   A:    My name is Patricia Grosserode.

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 Boone 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: How long the land has been in your family?**

3 A: The land was purchased by my family in 1972.

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 to 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: As a farmer, ownership of land is very important. It is our income, it is our way of  
2 life and it is our legacy. The fact that a foreign company such as TransCanada can  
3 come through my property and use it for as many years as they want and then do  
4 what they will after they are finished with it is inconceivable to me. I think it is a  
5 privacy issue that they can come on this land whenever they want even though we  
6 still own the land. Land ownership is just that; we own the land.

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

8 A: I am worried about the leaks. It does happen. It is not a matter of “IF” it will leak  
9 but “WHEN”. I have a well that is used for water for the center pivot. A leak  
10 would damage the water and in turn ruin the crops. A lot of you may think that dirt  
11 is just dirt, but soil is one of the most valuable assets a farmer can have. The better  
12 & richer the soil is, the better the crops it will produce. Any kind of leak and  
13 disruption is unacceptable. This makes me wonder: Who will clean up the leak and  
14 make restitution for the lost profits? There are so many things that affect the land  
15 which are caused by Mother Nature. Things pertaining to my land should be my  
16 decision and not a foreign company taking a piece of my land for their own gain. I  
17 am proud to be a farmer.

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

21 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly  
22 or even bullied around and being made to feel scared that they did not have any  
23 options but to sign whatever papers TransCanada told them they had to. I am  
24 aware of folks being threatened that their land would be taken if they didn’t follow  
25 what TransCanada was saying. I am aware of tactics to get people to sign  
26 easements that I don’t believe have any place in Nebraska or anywhere such as  
27 TransCanada or some outfit associated with it hiring a pastor or priest to pray with  
28 landowners and convince them they should sign TransCanada’s easement  
29 agreements. I am aware of older folks and widows or widowers feeling they had

1 no choice but to sign TransCanada's Easement and they didn't know they could  
2 fight or stand up for themselves. From a more practical standpoint, I am worried  
3 that according to their answer to our Interrogatory No. 211, TransCanada only  
4 owns and operates one (1) major oil pipeline. They simply do not have the  
5 experience with this type of pipeline and that scares me. There are others but that  
6 is what I can recollect at this time and if I remember more or my recollection is  
7 refreshed I will share those with the Commissioners at the Hearing in August.

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

10 A: No, I do not.

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

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

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

21 A: Well yes, of course.

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

23 A: The future of this land may not be exactly how it's being use as of this moment,  
24 and having the restrictions and limiting my ability to develop my land in certain  
25 ways presents a huge negative economic impact on myself, my family, and any  
26 potential future owner of the property. You have no idea how I or the future own  
27 may want to use this land in the future or the other land across Nebraska  
28 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years  
29 ago it would have been hard to imagine all the advances that we have now or how

1 things change. Because the Easement is forever and TransCanada gets the rights in  
2 my land forever we have to think with a very long term view. By placing their  
3 pipeline on under across and through my land that prevents future development  
4 which greatly negatively impacts future taxes and tax revenue that could have  
5 been generated by the County and State but now will not. When you look at the  
6 short blip of economic activity that the two years of temporary construction efforts  
7 may bring, that is far outweighed by the perpetual and forever loss of opportunity  
8 and restrictions TransCanada is forcing upon us and Nebraska.

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

11 A: Yes, I do.

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

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

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

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

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

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

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

1 A: Yes, I believe that any construction, operation, and/or maintenance of the  
2 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of  
3 land, as well as land along and surrounding the proposed pipeline route. This  
4 includes, but is not limited to, the reasons that we discussed above of disturbing  
5 the soil composition and makeup as it has naturally existed for thousands and  
6 millions of years during the construction process, and any future maintenance or  
7 removal process. I'm gravely concerned about the fertility and the loss of  
8 economic ability of my property to grow the crops, or grow the grasses, or grow  
9 whatever it is at that time they exist on my property or that I may want to grow in  
10 the future, or that a future owner may want to grow. The land will never be the  
11 same from as it exists now undisturbed to after it is trenched up for the proposed  
12 pipeline.

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

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

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

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

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

8 A: No, I do not.

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

12 A: No, I do not.

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

15 A: No, I do not.

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

19 A: No, I do not.

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

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

1 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
2 the negative impacts and concerns.

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

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

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

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

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

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

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

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

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

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

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

3 **A:** Yes. If the pipeline would happen to go through it would greatly affect my ability  
4 to make my living. The work on the pipeline would stop any working of the land.  
5 Also, we have a center pivot on this land. The amount of land that would be used  
6 to put in the pipeline will make us keep reversing the pivot path to work around it.  
7 This is an added cost of electricity.

8 Another concern is referencing the erosion of the land. This land is very hilly &  
9 dirt can wash away from the pipe. I don't think they are burying it deep enough.  
10 When I work the land, I am afraid I will hit the pipe with the disc. At that point,  
11 I would be liable for the spill and could lose everything to pay for it.

12 I feel it will be very difficult to produce a crop when the pipe goes as the ground is  
13 too hot. Any crop planted here would dry up due to heat from the pipe.

14 In closing, I would rather see that the land be undisturbed. The ground will never  
15 be put back like it was & takes years to get it back to the way it was.

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

19 **A:** No, I have not. I have shared that which I can think of as of the date I signed this  
20 document below but other things may come to me or my memory may be  
21 refreshed and I will add and address those things at the time of the Hearing in  
22 August and address any additional items at that time as is necessary. Additionally,  
23 I have not had an adequate amount of time to receive and review all of  
24 TransCanada's answers to our discovery and the discovery of others so it was  
25 impossible to competently and completely react to that in my testimony here and I  
26 reserve the right to also address anything related to discovery that has not yet  
27 concluded as of the date I signed this document below. Lastly, certain documents  
28 requested have not yet been produced by TransCanada and therefore I may have  
29 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.

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

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

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

1    A:    Yes, they are.

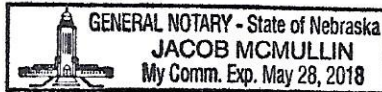
2    **Q:    Thank you, I have no further questions at this time and reserve the right to**  
3       **ask you additional questions at the August 2017 Hearing.**

Patricia Grosserode  
Patricia Grosserode

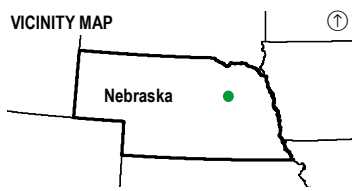
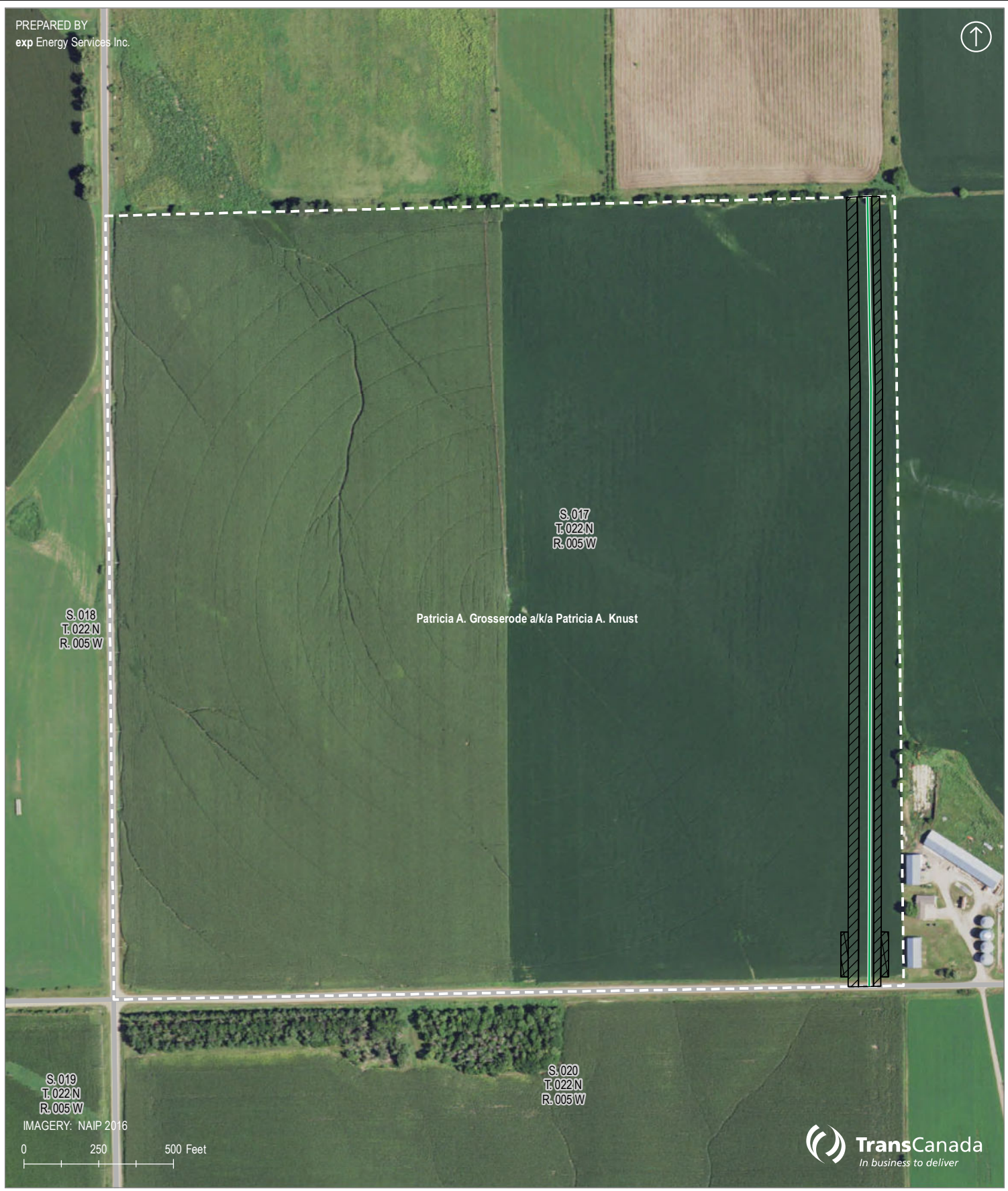
Subscribed and Sworn to me before this 26<sup>th</sup> day of May, 2017.

Jacob McMullin  
Notary Public

State of Nebraska  
County of Lancaster



**Attachment No. 1**



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
Patricia A. Grosserode a/k/a Patricia A. Knust

**TRACT NO.** ML-NE-BO-30035.000  
**STATE:** Nebraska  
**COUNTY:** Boone  
**SECTION:** 017  
**TOWNSHIP:** 022N  
**RANGE:** 005W

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



**Attachment No. 2**

KNUST FAMILY  
REUNION  
AUG 7 2016





**Attachment No. 3**

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

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(Above Space for Recorder's Use Only)

Tract No.: ML-NE-BO-30035.000

**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**"), **Patricia A. Knust a/k/a Patricia Grosserode and Steve Grosserode, wife and husband**, whose mailing address is 6220 L. Street, Lincoln, Nebraska 68510 (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

Grantor's Initials \_\_\_\_\_



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 Boone, 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 Boone, in the State of Nebraska, being further described as the SW1/4 of Section 17, T22N, R5W of the 6th P.M., as recorded in Book 85, Page 523 in the Deed Records of Boone 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):

\_\_\_\_\_  
**Patricia A. Knust a/k/a Patricia Grosserode**

\_\_\_\_\_  
**Steve Grosserode**

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

By **Patricia A. Knust a/k/a Patricia Grosserode**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

By **Steve Grosserode**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

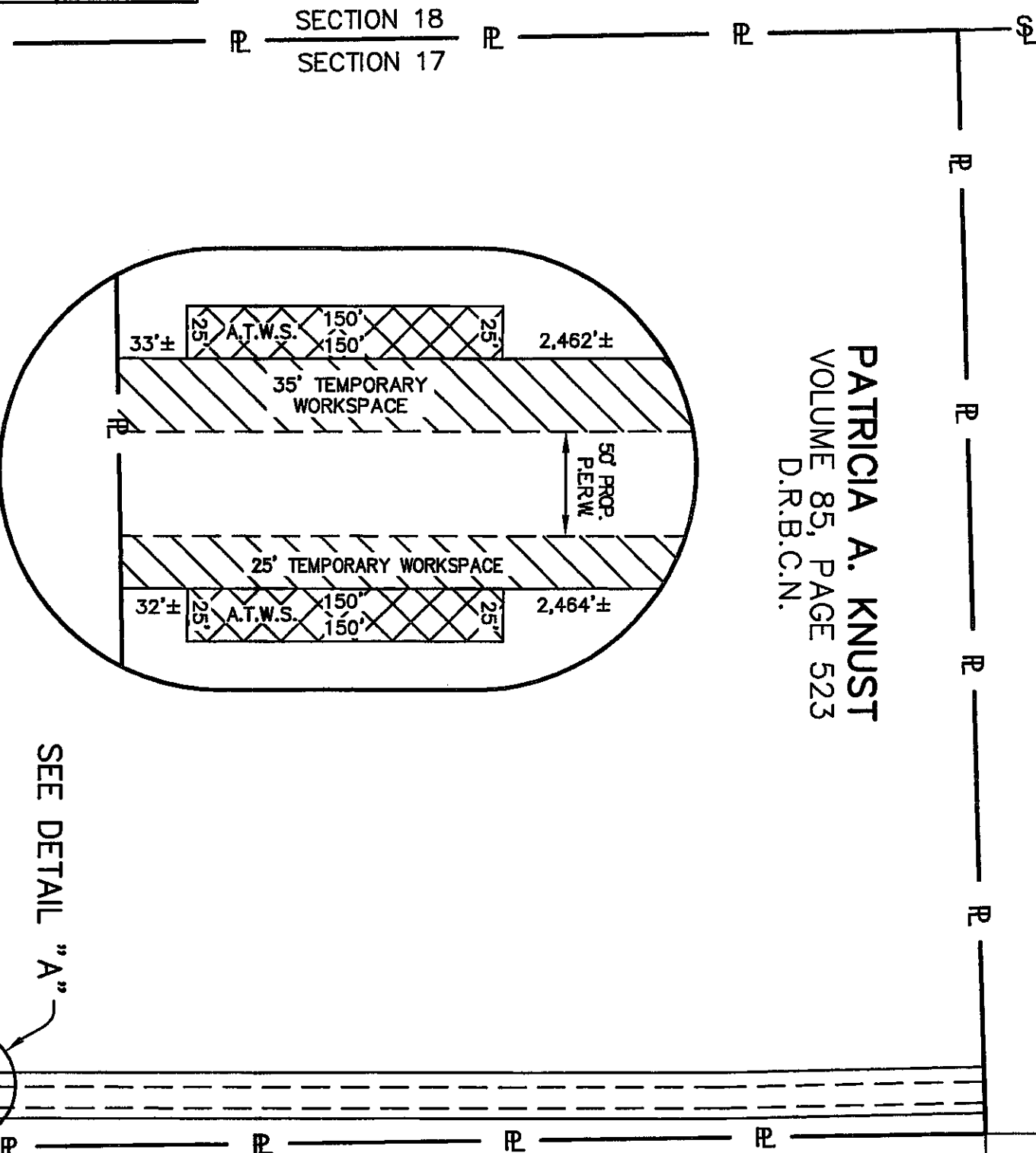
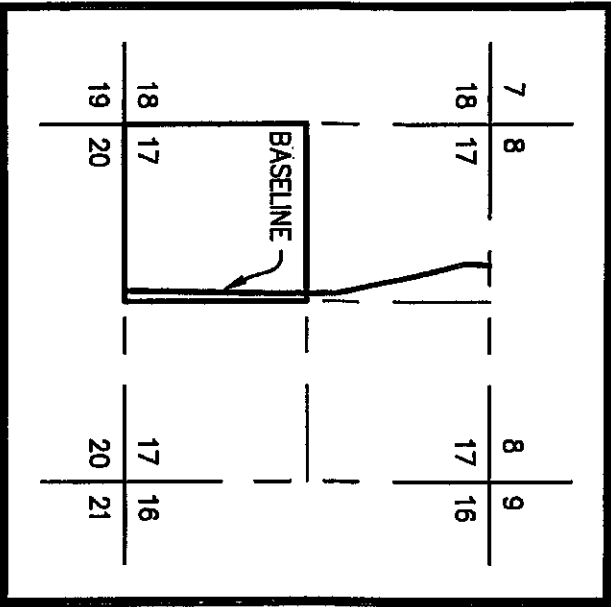
Grantor's Initials \_\_\_\_\_



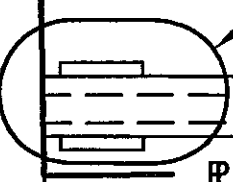
LEGEND  
PROPERTY LINE  
SECTION LINE  
PROPOSED  
ADDITIONAL TEMPORARY WORKSPACE  
PERMANENT EASEMENT & RIGHT OF WAY  
DEED RECORDS OF BOONE COUNTY, NEBRASKA

BOONE COUNTY, NEBRASKA  
T-22-N, R-5-W, SECTION 17  
ML-NE-BO-30035.000

PATRICIA A. KNUST  
VOLUME 85, PAGE 523  
D.R.B.C.N.



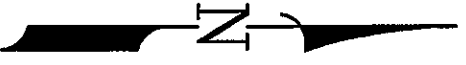
DETAIL "A"  
N.T.S.



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.

TRACT LEGAL DESCRIPTION:  
SW/4 OF SECTION 17,  
T-22-N, R-5-W

SCALE: 1" = 500'



**TransCanada**  
*In business to deliver*

KEYSTONE XL PROJECT  
EASEMENT AREA  
ACROSS THE PROPERTY OF  
PATRICIA A. KNUST  
ML-NE-BO-30035.000

PROJECT: XL EXHIBIT A  
APPROVED BY: DRAWING NUMBER: XL-08-ML-SK-3480  
SLR: REVISION: DATE:  
NO. DATE DRAWN BY CHECKED BY  
SCALE: 1" = 500' DATE: 10/28/14 PB ALS



TOTAL DISTANCE ACROSS PROPERTY: 2,645'±  
AREA OF PERMANENT EASEMENT: 3.0 ACRES  
AREA OF TEMPORARY WORKSPACE: 3.6 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-BO-30035.000

We, Patricia A. Knust a/k/a Patricia Grosserode and Steve Grosserode, wife and husband, of Boone County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Four Hundred Forty Dollars and No Cents (\$5,440.00), 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 Boone, State of Nebraska:

**SW1/4**

**Section 17, Township 22N, 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**



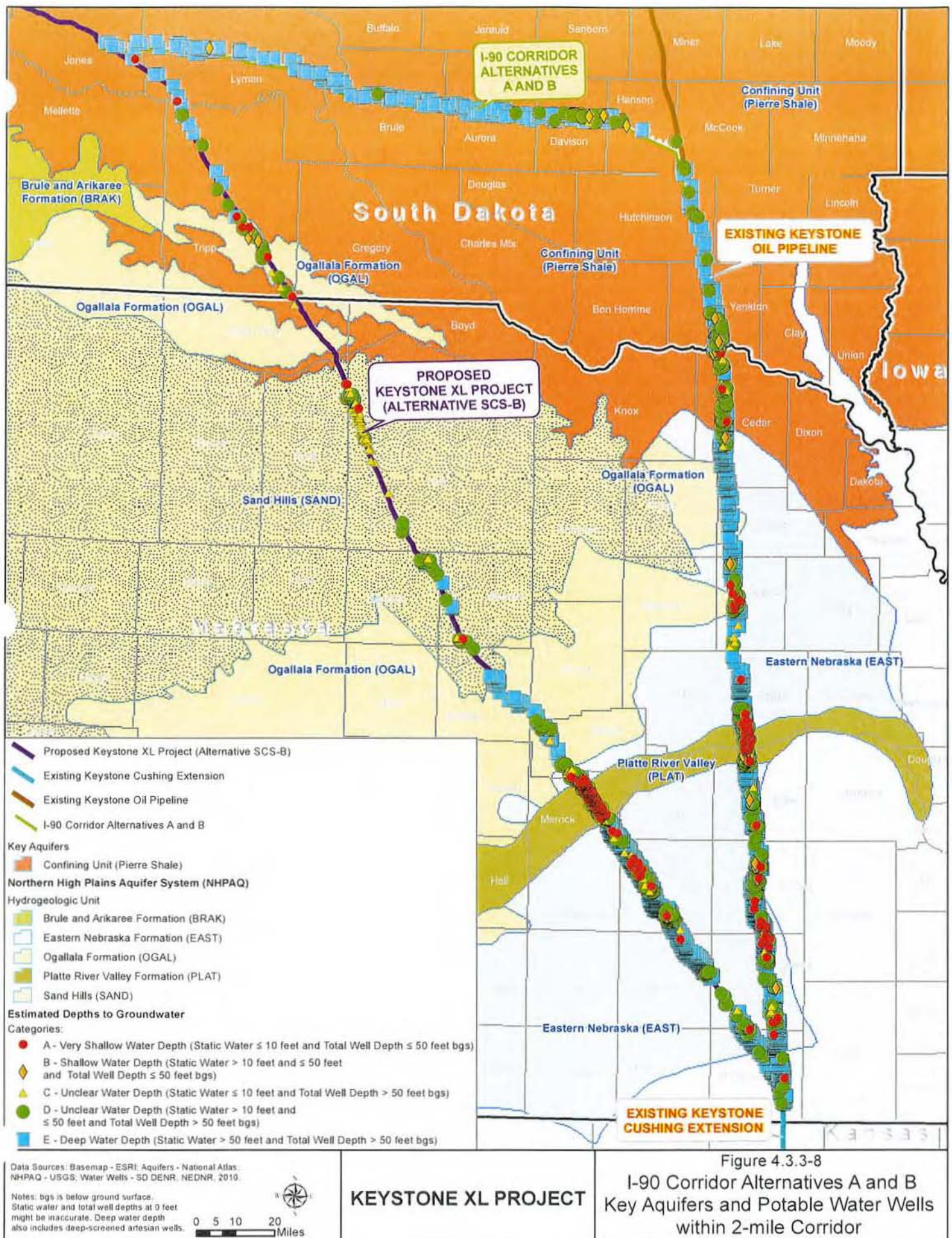


Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor





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

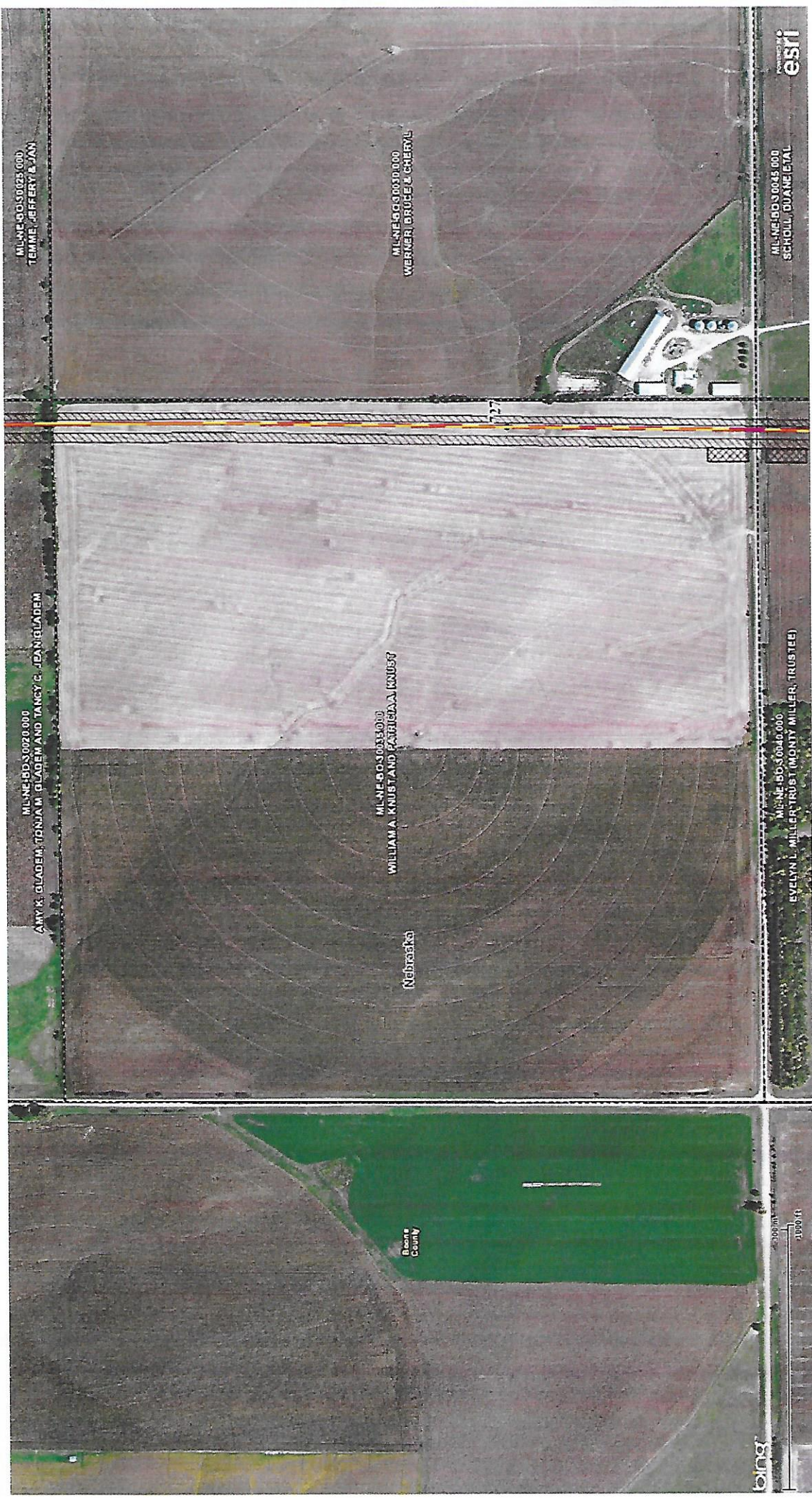
PREFERRED ROUTE AND TWO  
ALTERNATIVE ROUTES



**Attachment No. 8**



ML-NE-BO-30035.000



Thu Jun 6 2013 01:03:21 PM

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  
Rick Hammond in Support of  
Landowner Intervenor**

State of Nebraska                    )  
  ) ss.  
York County                         )

1   **Q:    Please state your name.**

2   A:    My name is Rick Hammond.

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:    No, but I am a tenant of Terri Harrington who is a Landowner Intervenor and my  
7       sister-in-law. I farm her land that would be affected by the proposed preferred  
8       pipeline route of TransCanada. Her land is located in York County.

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

12  A:    Yes.

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

14  A:    I am Farmer.

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: For the land that would be affected and impacted by the proposed KXL tar**  
3 **sands pipeline give the Commissioners a sense how long the land has been in**  
4 **your family.**

5 **A:** The land has been in my wife's family for generations. Collectively, we built a  
6 solar clean energy barn on the proposed route. We have had land worked with  
7 heavy machinery before and it has always caused it to be much less tillable and  
8 productive. The value of the land would be decreased by having all the natural  
9 flora and fauna disturbed and the heavy equipment would destroy and compact the  
10 soil.

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

12 A: Yes.

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

15 A: Yes.

16 **Q: Do you have concerns about your sister-in-law being able to selling the land?**

17 A: Well I hope she never has to sell the land but as a farmer who has bought land  
18 before and attended auctions and who is familiar with what factors you consider  
19 when bidding on farm land, I am concerned that if another piece of ground similar  
20 to hers was for sale at the same time and it did not have the pipeline and hers did  
21 that she would have a lower selling price. I think this would be true for pipeline  
22 ground on both the preferred and mainline alternative routes.

23 **Q: Have you thought about whether or not you would be willing to pay the same**  
24 **rental payments for the land if the proposed route is approve and the KXL**  
25 **pipeline goes through the land as you are today without it?**

26 A: Yes, I have thought of it and that concerns me. The owner is my sister-in-law  
27 which makes that even more difficult but as a business owner and farmer I have to  
28 also control my costs and risks the best I can. For instance, if there are damages to  
29 crops and loss in yields, I need to take that real possibility into account. I need to

1 factor in the likelihood of deferred payment or no payment or even budgeting in  
2 legal expenses to fight about damages caused by the pipeline. These are all real  
3 world things that have and do occur. I just don't know if I could agree to carry on  
4 with the same payment arrangements if the land were to change so dramatically as  
5 it would if a major oil pipeline is present.

6 **Q: Was your sister-in-law or an entity for which she is a member, shareholder,**  
7 **or director previously sued by TransCanada Keystone Pipeline, LP?**

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

11 **Q: Did she defend herself and the land in that condemnation action?**

12 A: Yes. She hired lawyers to defend and protect us and we helped with the legal fees  
13 and expenses actually incurred in her and our collective resistance of  
14 TransCanada's lawsuit.

15 **Q: Has TransCanada reimbursed her or you for any of the expenses or costs for**  
16 **fees incurred?**

17 A: No, they have not.

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

20 A: Yes, they did.

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

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

1 **Q: Prior to filing an eminent domain lawsuit, do you believe TransCanada**  
2 **attempted to negotiate in good faith?**

3 A: No, I do not.

4 **Q: Have you ever reviewed TransCanada's proposed easement and right-of-way**  
5 **agreement?**

6 A: Yes.

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

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

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

18 A: Yes, it is.

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

21 A: My understanding is that this is the document that will govern all of the rights and  
22 obligations and duties as well as the limitations of what can and cannot be done  
23 and how I and any future landowner and any person I invite to come onto the  
24 property must behave as well as what TransCanada is and is not responsible for  
25 and how they can use the land.

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



1 A: Yes, I have a number of significant concerns and worries about the document and  
2 how the language included and the language not included potentially negatively  
3 impacts the land, my rights, and thereby potentially negatively impacts my  
4 community and my state.

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

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

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

15 A: The very first sentence talks about consideration or how much money they will  
16 pay to compensate for all of the known and unknown affects and all of the rights  
17 being given up and for all the things they get to do to the land and for what they  
18 will prevent us from doing on the land and they only will pay a one time at the  
19 signing of the easement agreement. That is a huge problem.

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

21 A: It is not fair to the landowner, the county, or the State. It is not fair to the  
22 landowner because they want to have the land forever for use as they see fit so  
23 they can make a daily profit from their customers. As a tenant, I lease the ground  
24 and I pay twice a year every year so periodically and annually. That only makes  
25 sense – that is fair. If I was going to rent a house in town I would typically pay  
26 monthly, every month until I gave up my right to use that house. By TransCanada  
27 getting out on the cheap and paying once in today's dollars that is monthly, bi-  
28 annual, or at least an annual loss in tax revenue collection on the money Terri  
29 would be paid and then pay taxes on and contribute to this state and this country. It

1 is money she would be putting back into the local community both spending and  
2 stimulating the local economy and generating more economic activity right here.  
3 Instead TransCanada's shareholders keep the money and it never finds its way to  
4 Nebraska.

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

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

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

22 A: No.

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

27 A: No.

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

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

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

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

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

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

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

19 A: For many reasons but mostly because the tar sands are finite. I am unaware of any  
20 data proving there is a perpetual supply of tar sands. I am not aware in  
21 TransCanada's application where it proves there is a perpetual necessity for this  
22 pipeline. My understanding of energy infrastructure like wind towers is they have  
23 a decommission plan and actually take the towers down when they become  
24 obsolete or no longer needed. Nothing manmade lasts forever. The land however  
25 will, if we are all smart about this, and I want my family or future Nebraska  
26 families to have that land as undisturbed as possible and it is not in my interest or  
27 the public interest of Nebraska to be forced to give up perpetual and permanent  
28 rights in the land for this specific kind of pipeline project.

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

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

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

10 A: Yes.

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

12 A: Here the Easement identifies a 24-month deadline to complete construction of the  
13 pipeline but has caveats that are undefined and ambiguous. The 24-month period  
14 starts to run from the moment "actual pipeline installation activities" begin on  
15 Landowners property. It appears that TransCanada would define this phrase as  
16 needed. It would be wise to explain what types of TransCanada action constitutes  
17 "installation activity" For instance, would the placement and storage of an  
18 excavator or other equipment on or near the Easement property be an activity or  
19 would earth have to be moved before the activity requirement is triggered. This  
20 vague phrase is likely to lead to future disputes and litigation that is not in the best  
21 interest of the welfare of Nebraska and would not protect property interests. The  
22 24-months can also be extended in the case of "force majeure." My understanding  
23 is that force majeure is often used to insulate a party to a contract when events  
24 occur that are completely out of their control. In TransCanada's easement this is  
25 expanded to include "without limitation...availability of labor and materials."  
26 Extending this language to labor and materials is problematic because these are  
27 two variables that TransCanada does have some or significant control over and to  
28 allow extension of the 24-month period over events not truly out of the control of

1 TransCanada and without further provision for compensation for the Landowner is  
2 not conducive to protection of property rights.

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

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

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

26 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against  
27 Nemaha County, Nebraska landowner farmers who accidentally struck two  
28 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of  
29 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged



1 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate  
2 copy of the Federal Court Complaint is here as **Attachment No. 4.**

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

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

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

24 A: The Easement also allows some rights for Landowner but restricts them at the  
25 same time and again at the sole and unilateral decision making of TransCanada.  
26 TransCanada will determine if the actions of Landowner might in anyway  
27 endanger or obstruct or interfere with TransCanada's full use of the Easement or  
28 any appurtenances thereon to the pipeline itself or to their access to the Easement  
29 or within the Easement and TransCanada retains the right at any time, whether

1 during growing season or not, to travel “within and along Easement Area on foot  
2 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will  
3 retain the rights to prevent any landowner activity that it thinks may “unreasonably  
4 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such  
5 undefined and unilateral restrictions are not conducive to the protection of  
6 property rights or economic interest.

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

8 A: The Easement allows TransCanada sole discretion to burn or chip or bury under  
9 Landowner’s land any debris of any kind without any input or power of  
10 Landowner to demand an alternative method or location of debris disposal. Such  
11 unilateral powers would negatively affect Landowners property are not conducive  
12 to the protection of property rights or economic interest.

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

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

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

25 A: There are more vague concepts solely at the determination of TransCanada such as  
26 “as nearly as practicable” and “pre-construction position” and “extent reasonably  
27 possible.” There is nothing here that defines this or provides a mechanism for  
28 documenting or memorializing “pre-construction position” so as to minimize  
29 costly legal battles or wasted Landowner time attempting to recreate the soil

1 condition on their fields or pasture. Such unilateral powers would negatively affect  
2 Landowners property are not conducive to the protection of property rights or  
3 economic interest.

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

5 A: TransCanada maintains the unilateral right to abandon the pipeline and all  
6 appurtenances thereto in place on, under, across, or through Nebraska land at any  
7 time it chooses. There is no provision for Landowner compensation for such  
8 abandonment nor any right for the Landowner to demand removal. Such unilateral  
9 powers would negatively affect Landowners property are not conducive to the  
10 protection of property rights or economic interest. As a lawyer I understand the  
11 importance of terms, of the fine print of contracts, and there simply must be  
12 language that requires TransCanada to pay for any leaks and damage and to  
13 remove the pipeline when it is no longer used. They should have to pay dearly for  
14 what they are doing. The possibility of contamination is too great to leave it in the  
15 ground for our heirs to deal with.

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 anytime  
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.

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

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

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

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

28 **Q: As the farmer of the land in question and as the person who knows it better**  
29 **than anyone else, do you believe that TransCanada offered a just, or fair,**



1        **compensation for all of what they proposed to take so that their tar sands**  
2        **pipeline could be located across the property?**

3    A:    No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just  
4        offer for all the potential impacts and effects and the rights that are being given up,  
5        and what will be prevented from doing in the future and how their pipeline would  
6        impact the property forever and ever.

7    **Q:    Has TransCanada at any time offered annual compensation, such as wind**  
8        **farm projects do, for the existence of their potential tar sands pipeline across**  
9        **the property.**

10   A:    No, never.

11   **Q:    Has TransCanada ever contacted you and specifically asked you if you**  
12        **thought their proposed location of their proposed pipeline across the land was**  
13        **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 the land was**  
17        **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: Have you at any time ever employed any person other than yourself?**

25 A: Well, yes I have.

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

1 A: No, of course not.

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

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

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 Interrogatory No. 211, TransCanada only owns  
22 and operates one (1) major oil pipeline. They simply do not have the experience  
23 with this type of pipeline and that scares me. There are others but that is what I can  
24 recollect at this time and if I remember more or my recollection is refreshed I will  
25 share those with the Commissioners at the Hearing in August.

26 **Q: Do you have any concern about limitations that the construction of this**  
27 **proposed pipeline across your affected land would prevent construction of**  
28 **future structures upon the portion of the land affected by the proposed**  
29 **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 the property in  
5 regards to the pipeline.

6 **Q: Do you think such a restriction would have economic impacts?**

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 the land in certain  
11 ways presents a huge negative economic impact on myself, my family, and any  
12 potential future farmer or owner of the property. Fifty years ago it would have  
13 been hard to imagine all the advances that we have now or how things change.  
14 Because the Easement is forever and TransCanada gets the rights in the land  
15 forever we have to think with a very long term view. By placing their pipeline on  
16 under across and through the land that prevents future development which greatly  
17 negatively impacts future taxes and tax revenue that could have been generated by  
18 the County and State but now will not. When you look at the short blip of  
19 economic activity that the two years of temporary construction efforts may bring,  
20 that is far outweighed by the perpetual and forever loss of opportunity and  
21 restrictions TransCanada is forcing upon us and Nebraska.

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

24 A: Yes, I do.

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

26 A: I am concerned that any construction, operation, and/or maintenance of the  
27 proposed Keystone XL Pipeline would have a detrimental impact upon the  
28 environment of the land specifically, as well as the lands near this land and  
29 surrounding the proposed pipeline route.

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

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

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

8 A: Yes, I believe that any construction, operation, and/or maintenance of the  
9 proposed Keystone XL Pipeline would have detrimental impacts upon the natural  
10 resources of the land, and the lands near and surrounding the proposed pipeline  
11 route.

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

14 A: Yes, I believe that any construction, operation, and/or maintenance of the  
15 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of  
16 land, as well as land along and surrounding the proposed pipeline route. This  
17 includes, but is not limited to, the reasons that we discussed above of disturbing  
18 the soil composition and makeup as it has naturally existed for thousands and  
19 millions of years during the construction process, and any future maintenance or  
20 removal process. I'm gravely concerned about the fertility and the loss of  
21 economic ability of the property to grow the crops, or grow the grasses, or grow  
22 whatever it is at that time they exist on the property or that I may want to grow in  
23 the future, or that a future owner may want to grow. The land will never be the  
24 same from as it exists now undisturbed to after it is trenched up for the proposed  
25 pipeline.

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

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 groundwater of not only under the land, but also near and surrounding the pipeline  
2 route, and in fact, potentially the entire State of Nebraska. Water is life plain and  
3 simple and it is simply too valuable to our State and the country to put at  
4 unreasonable risk.

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

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

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

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

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

21 A: Yes, I do. I am significantly concerned about how the existence of the proposed  
22 pipeline underneath and across and through the property will negatively affect the  
23 fair market value at any point in the future, especially at that point in which  
24 someone in my family would need to sell the property. I do not believe, and  
25 certainly would not be willing to pay, the same price for land that had the pipeline  
26 located on it, versus land that did not. There are just too many risks, unknowns,  
27 impacts and uncertainties, not to mention all of the rights you give up by the  
28 nature of having the pipeline due to having the easement that we have previously

1 discussed, for any reasonable person to think that the existence of the pipeline  
2 would not negatively affect the property's value.

3 **Q: Have you ever seen the document that's marked as Attachment No. 5, to your**  
4 **testimony?**

5 A: Yes, I have.

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

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

11 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**  
12 **in Attachment No. 5 to your testimony, is in the public interest of Nebraska?**

13 A: No, I do not.

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. 6, 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. 6 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 there is any potential route for the proposed Keystone XL**  
23 **Pipeline across, within, under, or through the State of Nebraska that is in the**  
24 **public interest of the citizens of Nebraska?**

25 A: No, I do not.

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

27 A: Because there simply is no public interest based on all of the factors that I am  
28 aware and that I have read and that I have studied that this Commission is to  
29 consider that would establish that a for-profit foreign-owned pipeline that simply

1 crosses Nebraska because we are geographically in the way between where tar  
2 sands are in Canada to where it wants to ship it to in Texas could ever be in the  
3 public interest of Nebraskans. We derive no benefit from this project. It is not for  
4 public use. Nebraska is simply in the way and when all considerations are taken in  
5 there is no net benefit of any kind for Nebraska should this project be placed in our  
6 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
7 the negative impacts and concerns.

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

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

1           only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was  
2           constructed on its Preferred Route or its Mainline Alternative Route.

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

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

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

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

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

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

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

23   A:   Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,  
24          already exists in that area is reason enough as it is not in our best interest or the  
25          public interests to have more major oil pipelines crisscrossing our state. Second,  
26          they have all the infrastructure already there in terms of relationships with the  
27          counties and local officials and first responders along that route. Third, they have  
28          already obtained easements from all the landowners along that route and have  
29          relationships with them. Fourth, that route avoids our most sensitive soils, the

1 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala  
2 Aquifer. Sixth, they have already studied that route and previously offered it as an  
3 alternative. Seventh, it just makes the most sense that as a state we would have  
4 some intelligent policy of energy corridors and co-locating this type of  
5 infrastructure near each other.

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

8 A: Yes. I would never buy land with an oil pipeline running under it. You could  
9 never have underground sprinklers or irrigation which may be the wave of the  
10 future. We could never put a home on the land because we can't excavate so it  
11 stops us from freely using the land as we might wish to in the future. My heirs  
12 will be affected for many decades to come and in a manner that is not even  
13 foreseeable at present. Dirty oil flowing under the land and the contamination of  
14 the land by putting something completely unnatural under the soil and then having  
15 it placed right above the valuable and pristine Ogallala aquifer decreases the value  
16 of the land. It is my understanding that pipelines leak and leak without detection  
17 many times. How will the Ogallala aquifer ever be cleaned up if there is a leak?

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

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



1 requested have not yet been produced by TransCanada and therefore I may have  
2 additional thoughts on those I will also share at the hearing as needed.

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

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

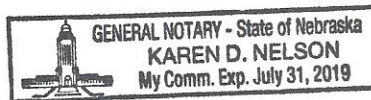
28 A: Yes, they are.

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.

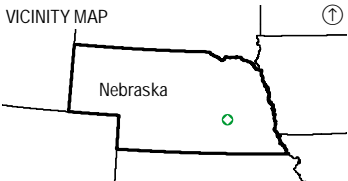
Rick Hammond  
Rick Hammond

Subscribed and Sworn to me before this 30th day of May, 2017.

Karen D. Nelson  
Notary Public



**Attachment No. 1**



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY  
Terri Harrington Trust Agreement dated July 14, 1998  
Terri Harrington

TRACT NO. ML-NE-YK-40200.000  
STATE: Nebraska  
COUNTY: York  
SECTION: 014  
TOWNSHIP: 012N  
RANGE: 004W

- 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

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(Above Space for Recorder's Use Only)

Tract No.: ML-NE-YK-40200.000

**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**"), **Terri Harrington, Trustee under Trust Agreement dated July 14, 1998**, whose mailing address is 12316 E. Bates Circle, Aurora, Colorado 80014 (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 York, 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 York, in the State of Nebraska, being further described as the SE1/4 of Section 14, T12N, R4W of the 6th P.M., as recorded in Book 189, Page 190 in the Deed Records of York 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):

**Terri Harrington, Trustee under Trust Agreement  
dated July 14, 1998**

\_\_\_\_\_  
**Terri Harrington, Trustee**

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Terri Harrington, Trustee under Trust Agreement dated July 14, 1998** on behalf of said Trust.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

# LEGEND

P PROPERTY LINE  
 S SECTION LINE  
 PROPOSED  
 A.T.W.S.  
 P.E.R.W.  
 D.R.Y.C.N.

## YORK COUNTY, NEBRASKA T-12-N, R-4-W, SECTION 14 ML-NE-YK-40200.000

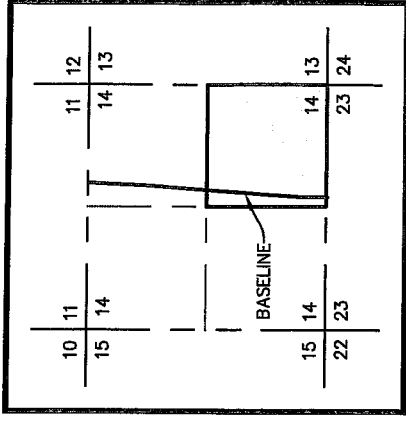
DEED RECORDS OF YORK COUNTY, NEBRASKA  
 ADDITIONAL TEMPORARY WORKSPACE  
 PERMANENT EASEMENT & RIGHT OF WAY

SEE DETAIL "A"

SEE DETAIL "B"

SEE DETAIL "C"

TERRI HARRINGTON, TRUSTEE  
 VOLUME 189, PAGE 190  
 D.R.Y.C.N.



VICINITY MAP  
N.T.S.



TRACT LEGAL DESCRIPTION:  
 SE/4 OF SECTION 14, T-12-N, R-4-W


SECTION 14  
 SECTION 23

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: 2,650'±  
 AREA OF PERMANENT EASEMENT: 3.0 ACRES  
 AREA OF TEMPORARY WORKSPACE: 3.6 ACRES  
 ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.6 ACRE

SHEET 1 OF 2

 <b>TransCanada</b> <i>In business to deliver</i>	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
TERRI HARRINGTON, TRUSTEE	
ML-NE-YK-40200.000	
PROJECT:	EXHIBIT A
APPROVED BY	DRAWING NUMBER
SLR	XL-08-ML-SK-3726
NO.	REVISION
DATE	DATE
SCALE	1" = 500'
DRAWN BY	CHECKED BY
10/27/14	PB
ALS	

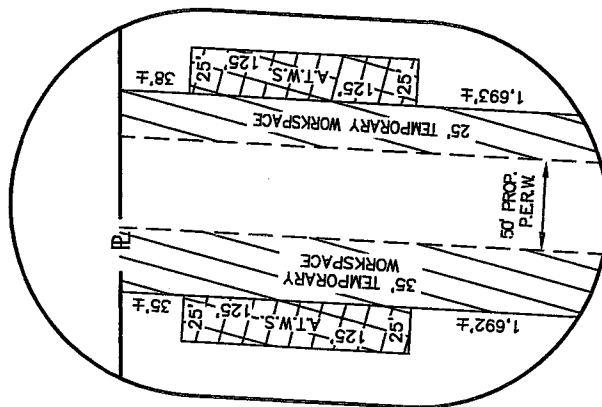
exp.  
 The new identity of Tron

# YORK COUNTY, NEBRASKA

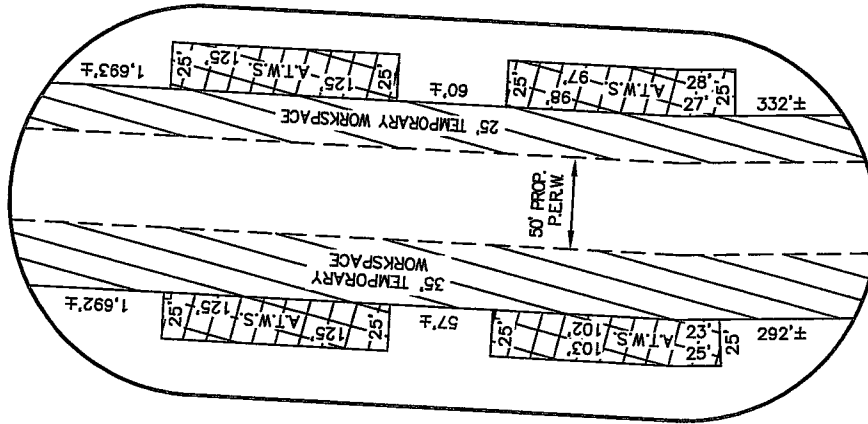
## T-12-N, R-4-W, SECTION 14

### ML-NE-YK-40200.000

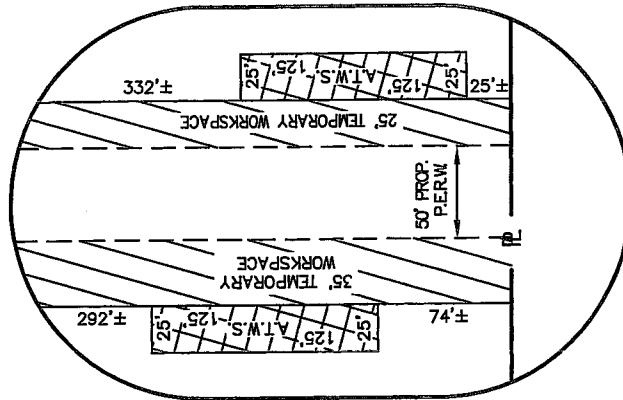
LEGEND  
 PL PROPERTY LINE  
 PROP. PROPOSED  
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE  
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



DETAIL "A"  
N.T.S.




DETAIL "B"  
N.T.S.



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.

 <b>TransCanada</b> <i>In business to deliver</i>		<b>KEYSTONE XL PROJECT</b> <b>EASEMENT AREA</b> <b>ACROSS THE PROPERTY OF</b> <b>TERRI HARRINGTON, TRUSTEE</b> <b>ML-NE-YK-40200.000</b>	
PROJECT:	XL	<b>EXHIBIT A</b>	
APPROVED BY	SLR	DRAWING NUMBER	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/27/14	PB	ALS

 **exp.**  
 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**

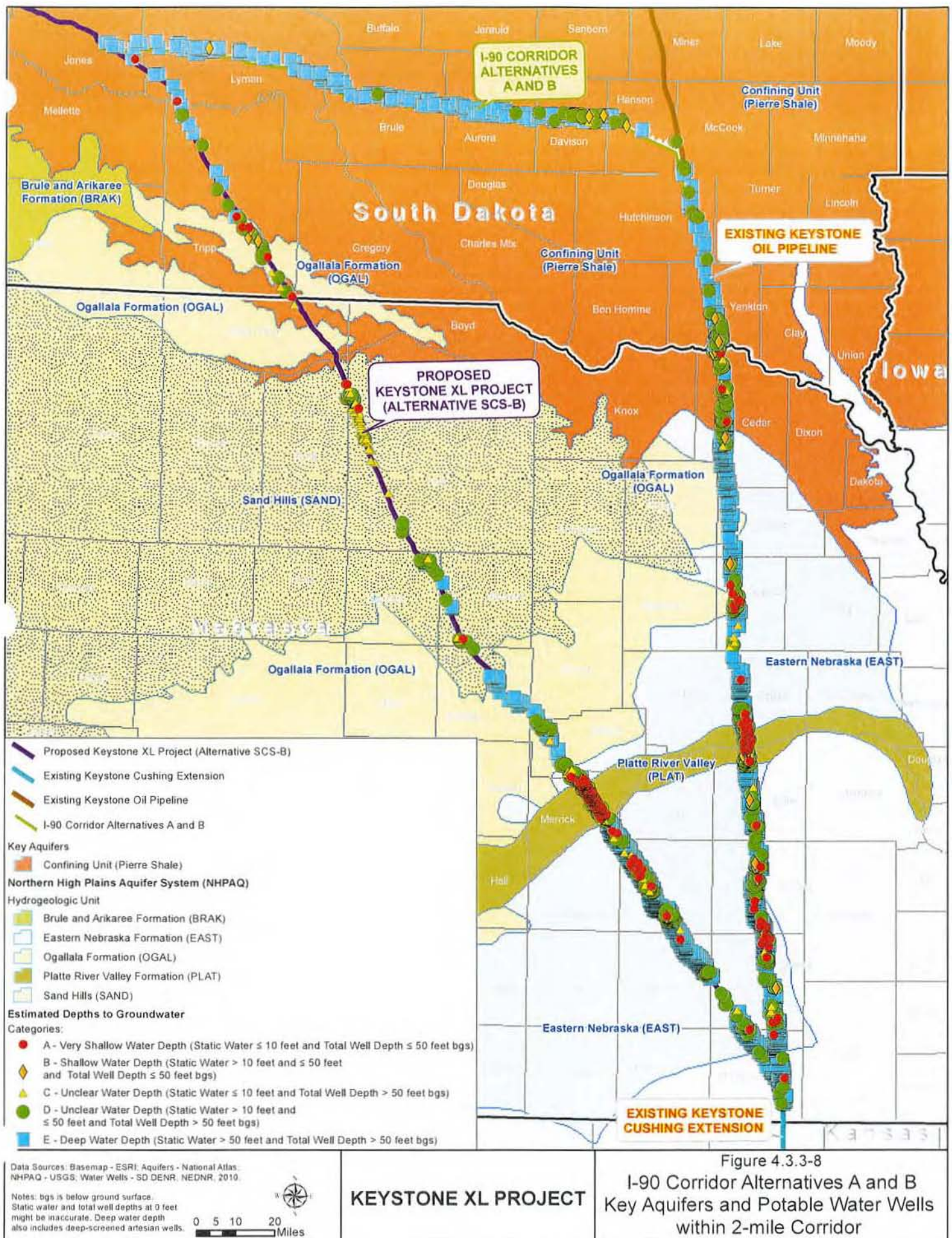


Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor





## 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. 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  
Kimberly Hansen in  
Support of Landowner Intervenors**

State of Nebraska                    )  
  ) ss.  
Madison County                    )

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

2    A:    My name is Kimberly Hansen. I am a member of Tree Corners Farm, 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 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:    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 stay 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 about 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 to 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 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 and ambiguous terms are  
27      as follows:

- 28              i.   “pipeline installation activities”
- 29              ii. “availability of labor and materials”



- 1           iii. “commercially reasonable costs and expenses”
- 2           iv. “reasonably anticipated and foreseeable costs and expenses”
- 3           v. “yield loss damages”
- 4           vi. “diminution in the value of the property”
- 5           vii. “substantially same condition”
- 6           viii. “an actual or potential hazard”
- 7           ix. “efficient”
- 8           x. “convenient”
- 9           xi. “endangered”
- 10          xii. “obstructed”
- 11          xiii. “injured”
- 12          xiv. “interfered with”
- 13          xv. “impaired”
- 14          xvi. “suitable crossings”
- 15          xvii. “where rock is encountered”
- 16          xviii. “as nearly as practicable”
- 17          xix. “pre-construction position”
- 18          xx. “pre-construction grade”
- 19          xxi. “various engineering factors”

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

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 which greatly negatively impacts future taxes and tax revenue that could have been generated by the County and State but now will not. When you look at the short blip of economic activity that the two years of temporary construction efforts may bring, that is far outweighed by the perpetual and forever loss of opportunity and restrictions TransCanada is forcing upon us and Nebraska. The terms of the easement must be addressed in order for the Commission to truly consider property rights, economic interests, the welfare of Nebraska, and the balancing of the proposed routes against all they will affect and impact.

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

A: Yes, I do.

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

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

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

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

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

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impacts upon the natural

resources of my land, and the lands near and surrounding the proposed pipeline route.

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

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the soil of land, as well as land along and surrounding the proposed pipeline route. This includes, but is not limited to, the reasons that we discussed above of disturbing the soil composition and makeup as it has naturally existed for thousands and millions of years during the construction process, and any future maintenance or removal process. I'm gravely concerned about the fertility and the loss of economic ability of my property to grow the crops, or grow the grasses, or grow whatever it is at that time they exist on my property or that I may want to grow in the future, or that a future owner may want to grow. The land will never be the same from as it exists now undisturbed to after it is trenched up for the proposed pipeline.

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

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

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

A: Yes, I have significant concerns that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impact upon the surface water of not only within my property boundary, but along

1 and near and surrounding the pipeline route, and in fact, across the state of  
2 Nebraska.

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

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

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

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

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

1 A: Yes, I have.

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

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

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

9 A: No, I do not.

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

13 A: No, I do not.

14 **Q: Do you believe that the Keystone mainline alternative route as shown on**  
15 **Attachment No. 7 included with your testimony here is a major oil pipeline**  
16 **route that 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. I have concerns first and foremost, what is it really carrying? Is the material  
6 hazardous or contain explosives? This leads to another concern; the shallow depth  
7 of the trench, and our high water table, especially in the Spring, whereas you dig a  
8 post hole, and get water. Crop loss is one of many economic concerns, as well as  
9 decline in value of both quarters of land it bisects. Soil erosion and contamination  
10 of soil are another two factors to consider. Water pollution is a huge worry, for all  
11 number of reasons. Diversion of the ground water in fields and subsoil can affect  
12 the whole field of crops. Loss of wildlife habitat. They have already lost too much  
13 of their living space. The safety of anyone farming the land is in question as well.  
14 The aesthetics of the farmland is negatively affected as well.

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

18 A: No, I have not. I have shared that which I can think of as of the date I signed this  
19 document below but other things may come to me or my memory may be  
20 refreshed and I will add and address those things at the time of the Hearing in  
21 August and address any additional items at that time as is necessary. Additionally,  
22 I have not had an adequate amount of time to receive and review all of  
23 TransCanada's answers to our discovery and the discovery of others so it was  
24 impossible to competently and completely react to that in my testimony here and I  
25 reserve the right to also address anything related to discovery that has not yet  
26 concluded as of the date I signed this document below. Lastly, certain documents  
27 requested have not yet been produced by TransCanada and therefore I may have  
28 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.

Kim Hansen  
Kimberly Hansen

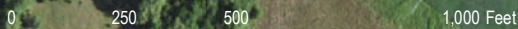
Subscribed and Sworn to me before this 27<sup>th</sup> day of May, 2017.

Patricia A. Tobey  
Notary Public



**Attachment No. 1**





①



## Tree Corners Farm LLC

RANGE: 006W

- 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

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(Above Space for Recorder's Use Only)

Tract No.: ML-NE-AT-30330.000  
ML-NE-AT-30340.000

**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**") **Tree Corners Farm, LLC, a Nebraska limited liability company**, whose mailing address is 621 Roland Street, Norfolk, NE 68701 (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-

Grantor's Initials \_\_\_\_\_

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 77.86 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the N1/2 of the SE1/4 of Section 25, T26N, R6W of the 6th P.M., as recorded in Book 127, Page 9 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 392.24 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NE1/4, E1/2 of the SW1/4, and a part of the SE1/4 of Section 30, Township 26 North, Range 5 West of the 6th P.M., as recorded in Book 127, Page 9 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):

**Tree Corners Farm, LLC, a Nebraska limited liability company**

By: \_\_\_\_\_

Its: \_\_\_\_\_

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

By \_\_\_\_\_ of

**Tree Corners Farm, LLC, a Nebraska limited liability company**, on behalf of the corporation.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

# LEGEND

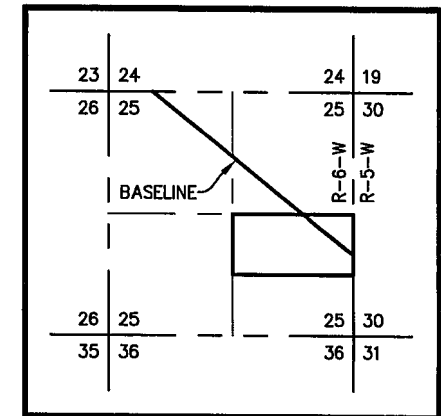
PL  
 §  
 PROP.  
 A.T.W.S.  
 P.E.R.W.  
 D.R.A.C.N.

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

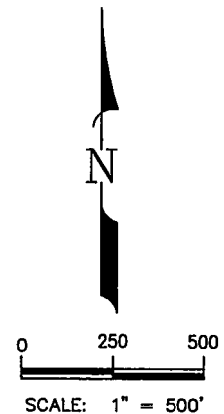
## ANTELOPE COUNTY, NEBRASKA

T-26-N, R-6-W, SECTION 25

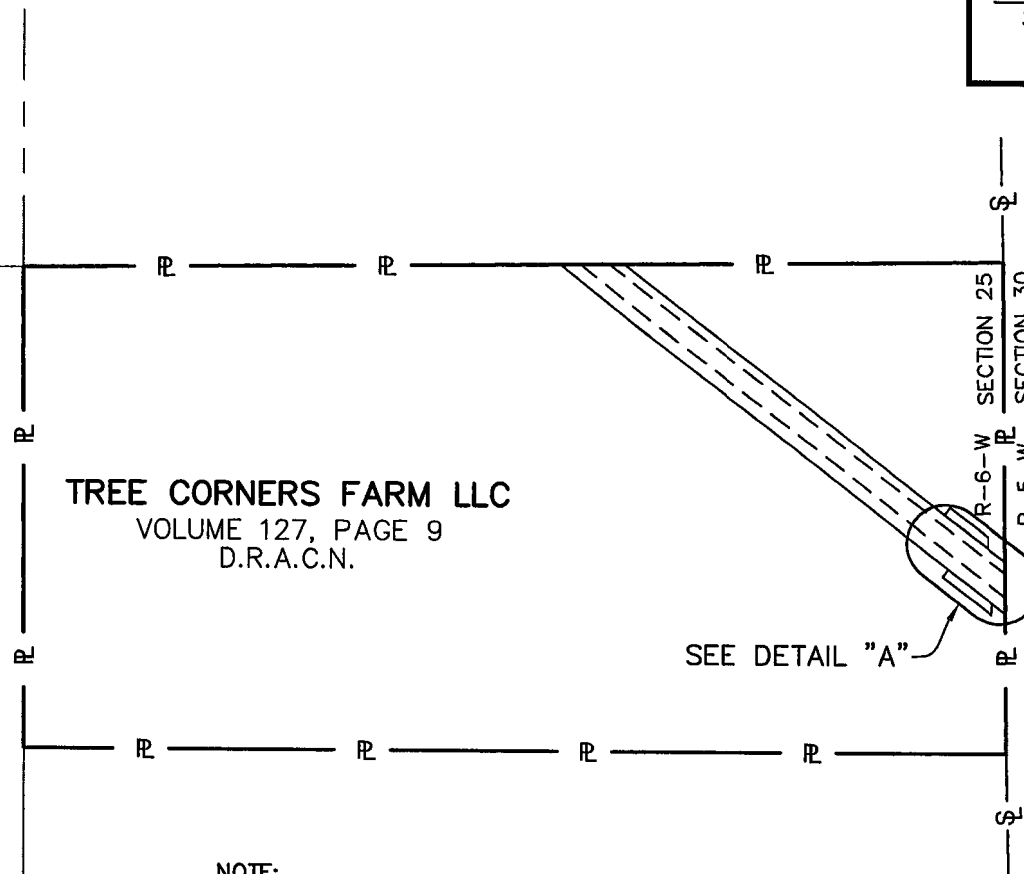
ML-NE-AT-30330.000



VICINITY MAP  
N.T.S.



TRACT LEGAL DESCRIPTION:  
 N/2 SE/4 OF SECTION 25,  
 T-26-N, R-6-W




TREE CORNERS FARM LLC  
 VOLUME 127, PAGE 9  
 D.R.A.C.N.

SEE DETAIL "A"

### 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: 1,383'±  
 AREA OF PERMANENT EASEMENT: 1.6 ACRES  
 AREA OF TEMPORARY WORKSPACE: 2.0 ACRES  
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.2 ACRE

 <b>TransCanada</b> <i>In business to deliver</i>			
<b>KEYSTONE XL PROJECT</b>			
<b>EASEMENT AREA</b>			
<b>ACROSS THE PROPERTY OF</b>			
<b>TREE CORNERS FARM LLC</b>			
<b>ML-NE-AT-30330.000</b>			
PROJECT:	<b>EXHIBIT A</b>		
APPROVED BY:	<b>DRAWING NUMBER</b>		
SLR	<b>XL-08-ML-SK-3432</b>		
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	11/07/14	PB	ALS

  
 The new identity of Trow

**LEGEND**

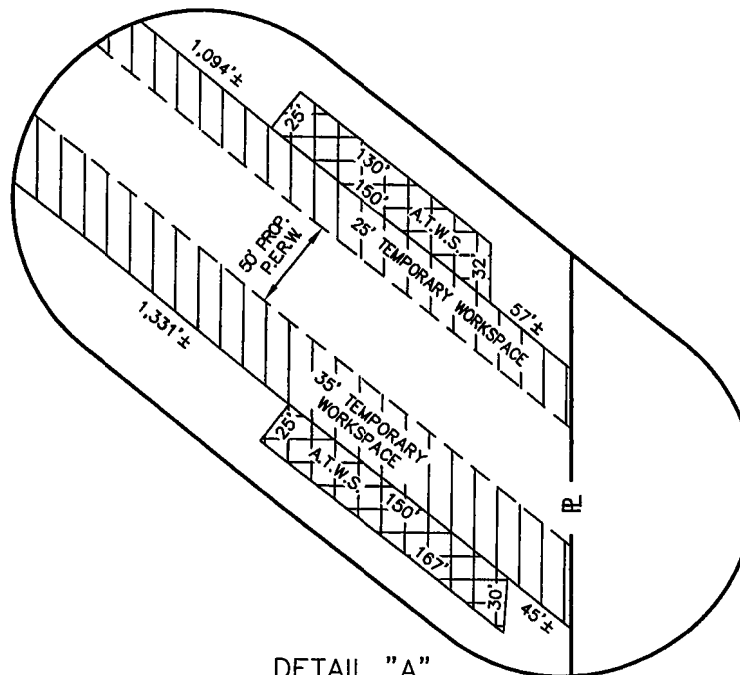
P.  
PROP.  
A.T.W.S.  
P.E.R.W.

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

# ANTELOPE COUNTY, NEBRASKA

T-26-N, R-6-W, SECTION 25

ML-NE-AT-30330.000



DETAIL "A"

N.T.S.



**KEYSTONE XL PROJECT**

**EASEMENT AREA  
ACROSS THE PROPERTY OF  
TREE CORNERS FARM LLC  
ML-NE-AT-30330.000**

PROJECT:		<b>EXHIBIT A</b>	
APPROVED BY		DRAWING NUMBER	
SLR		XL-08-ML-SK-3432	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	11/07/14	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.



**LEGEND**

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

3

R-6-W  
R-5-W

SECTION 25  
SECTION 30

25 30 29  
36 31 31 32

BASELINE

VICINITY MAP  
N.T.S.

0 250 500  
SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:  
NE/4, E/2 SW/4, SE/4  
LESS A PORTION OF THE  
SE/4 SE/4 OF SECTION 30  
T-26-N, R-5-W

3

R-6-W  
R-5-W

SECTION 25  
SECTION 30

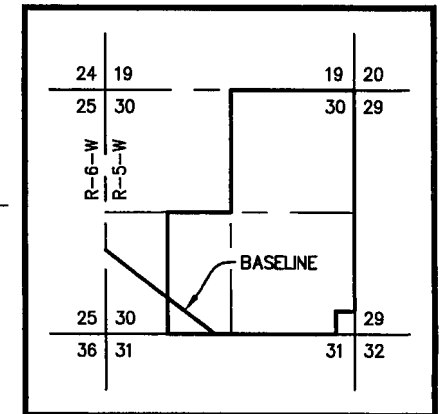
25 30 29  
36 31 31 32

BASELINE

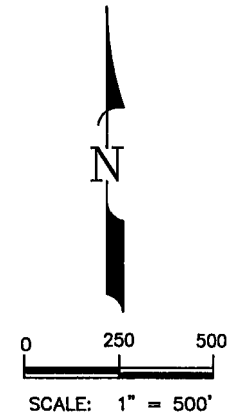
VICINITY MAP  
N.T.S.

0 250 500  
SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:  
NE/4, E/2 SW/4, SE/4  
LESS A PORTION OF THE  
SE/4 SE/4 OF SECTION 30  
T-26-N, R-5-W



VICINITY MAP  
N.T.S.



**TRACT LEGAL DESCRIPTION:**  
NE/4, E/2 SW/4, SE/4  
LESS A PORTION OF THE  
SE/4 SE/4 OF SECTION 30,  
T-26--N, R-5--W



**KEYSTONE XL PROJECT  
EASEMENT AREA  
ACROSS THE PROPERTY OF  
TREE CORNERS FARM LLC  
ML-NE-AT-30340.000**

PROJECT: <b>XL</b>		<b>EXHIBIT A</b>	
APPROVED BY		DRAWING NUMBER	
<b>SLR</b>		<b>XL-08-ML-SK-3434</b>	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
<b>1" = 500'</b>	<b>10/28/14</b>	<b>PB</b>	<b>ALS</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.

TOTAL DISTANCE ACROSS PROPERTY:	1,245'±
AREA OF PERMANENT EASEMENT:	1.4 ACRES
AREA OF TEMPORARY WORKSPACE:	1.7 ACRES

**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-30340.000

We, Tree Corners Farm, LLC, a Nebraska limited liability company, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Four Hundred Eighty Dollars and No Cents (\$2,480.00), 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:

**NE/4, E/2 SW/4, SE/4 Less a Portion of the SE/4 SE/4**

**Section 30, Township 26N, 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

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-AT-30330.000

We, Tree Corners Farm, LLC, a Nebraska limited liability company, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Thousand Forty Dollars and No Cents (\$3,040.00), 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:

**N/2 SE/4**

**Section 25, Township 26N, Range 6W**

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\_\_\_\_.

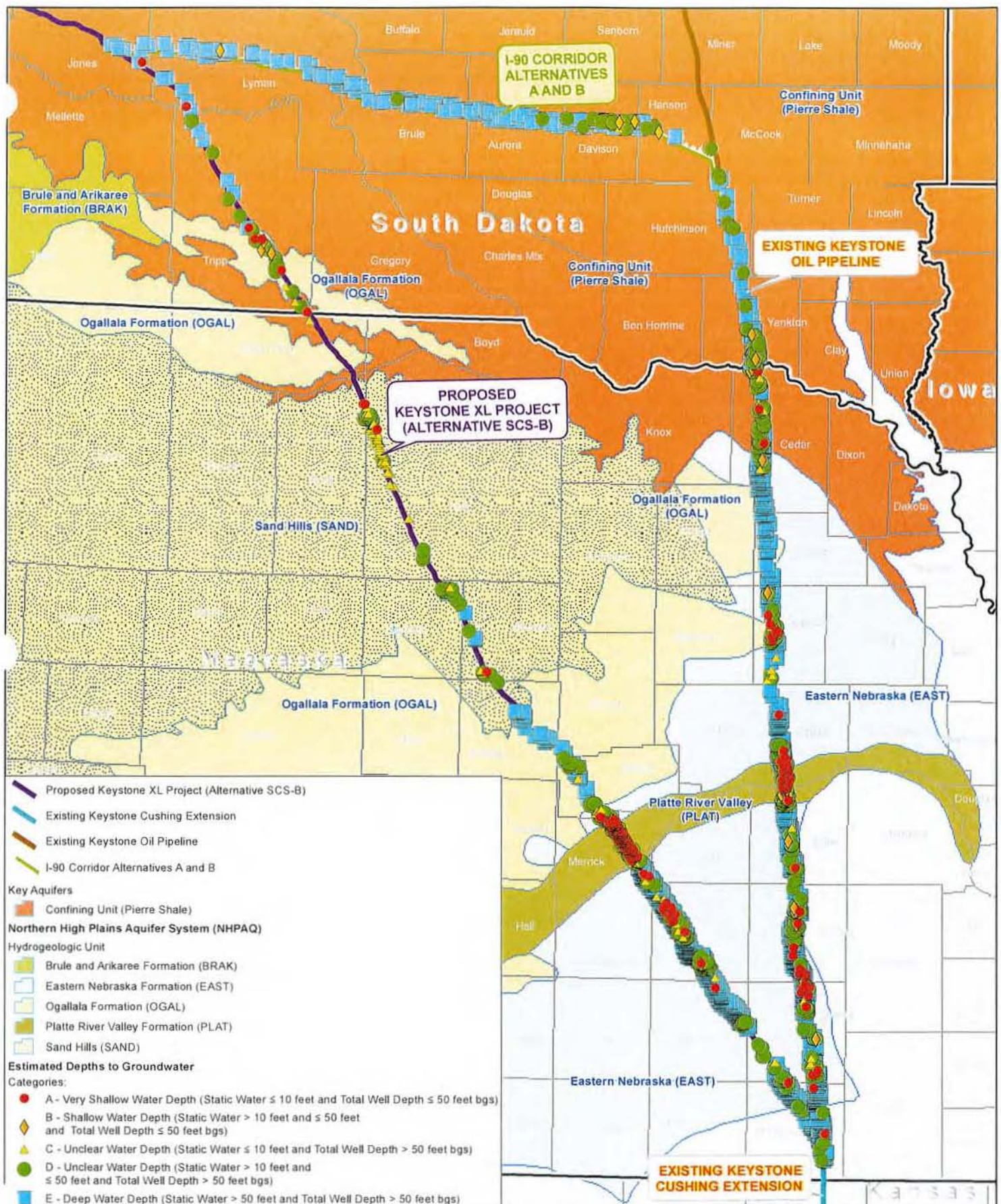
\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
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  
Terri Harrington in Support of  
Landowner Intervenor**

State of Colorado                    )  
  ) ss.  
Denver County                        )

1   **Q:    Please state your name.**

2   A:    My name is Terri Harrington.

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 York 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:    I am a lawyer.

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: My land has been in my family for generations. My family has built a solar clean  
8 energy barn on the proposed route. We have had land worked with heavy  
9 machinery before and it has always caused it to be much less tillable and  
10 productive. The value of my land would be decreased by having all the natural  
11 flora and fauna disturbed and the heavy equipment would destroy and compact  
12 the soil.

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 stay 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 about 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 my easement to

1 be transferred or sold to someone or some company or country or who knows what  
2 that I don't know and who we may not want to do business with. This pipeline  
3 would be a huge asset for TransCanada and if they can sell to the highest bidder  
4 that could have terrible impacts upon all of Nebraska depending upon who may  
5 buy it and I don't know of any safeguards in place for us or the State to veto or  
6 have any say so in who may own, operate, or be responsible for this pipeline in the  
7 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. As a lawyer I understand the  
8 importance of terms, of the fine print of contracts, and there simply must be  
9 language that requires TransCanada to pay for any leaks and damage and to  
10 remove the pipeline when it is no longer used. They should have to pay dearly for  
11 what they are doing. The possibility of contamination is too great to leave it in the  
12 ground for our heirs to deal with.

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

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

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

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

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

28 A: The Easement allows TransCanada to assign, transfer, or sell any part of the  
29 Easement to any person, company, country, etc. at their sole discretion at any time

1 to anyone. This also means that any buyer of the easement could do the same to a  
2 third buyer and so on forever. There is no change of control or sale provision in  
3 place to protect the Landowner or Nebraska or to provide compensation for such  
4 change of control or ownership. It is not conducive to the protection of property  
5 rights or economic interests to allow unilateral unrestricted sale of the Easement  
6 thereby forcing upon the Landowner and our State a new unknown Easement  
7 owner.

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

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

- 13 i. "pipeline installation activities"
- 14 ii. "availability of labor and materials"
- 15 iii. "commercially reasonable costs and expenses"
- 16 iv. "reasonably anticipated and foreseeable costs and expenses"
- 17 v. "yield loss damages"
- 18 vi. "diminution in the value of the property"
- 19 vii. "substantially same condition"
- 20 viii. "an actual or potential hazard"
- 21 ix. "efficient"
- 22 x. "convenient"
- 23 xi. "endangered"
- 24 xii. "obstructed"
- 25 xiii. "injured"
- 26 xiv. "interfered with"
- 27 xv. "impaired"
- 28 xvi. "suitable crossings"
- 29 xvii. "where rock is encountered"

1                   xviii. “as nearly as practicable”

2                   xix. “pre-construction position”

3                   xx. “pre-construction grade”

4                   xxi. “various engineering factors”

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

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

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

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

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

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

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



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

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

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

12 A: No, never.

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

16 A: Yes, they did.

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

19 A: Yes, it is.

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

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

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

28 A: No, I did not.

29 **Q:** Why not?

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

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

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

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

17 A: No, they have not.

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

21 A: No, they have not.

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

24 A: Yes, I am.

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

27 A: My understanding is that, according to the United States Constitution, that if the  
28 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 our Interrogatory No. 211, TransCanada only  
18 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 proposed method of compensation to you as a**  
23 **landowner is 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 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.

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

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

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

16 A: Yes, I believe that any construction, operation, and/or maintenance of the  
17 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of  
18 land, as well as land along and surrounding the proposed pipeline route. This  
19 includes, but is not limited to, the reasons that we discussed above of disturbing  
20 the soil composition and makeup as it has naturally existed for thousands and  
21 millions of years during the construction process, and any future maintenance or  
22 removal process. I'm gravely concerned about the fertility and the loss of  
23 economic ability of my property to grow the crops, or grow the grasses, or grow  
24 whatever it is at that time they exist on my property or that I may want to grow in  
25 the future, or that a future owner may want to grow. The land will never be the  
26 same from as it exists now undisturbed to after it is trenched up for the proposed  
27 pipeline.

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

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

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

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

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

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

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

23 A: Yes, I do. I am significantly concerned about how the existence of the proposed  
24 pipeline underneath and across and through my property will negatively affect the  
25 fair market value at any point in the future, especially at that point in which I  
26 would need to sell the property, or someone in my family would need to sell the  
27 property. I do not believe, and certainly would not be willing to pay, the same  
28 price for land that had the pipeline located on it, versus land that did not. I hope  
29 there is never a point where I'm in a position where I have to sell and have to

1 realize as much value as I can out of my land. But because it is my single largest  
2 asset, I'm gravely concerned that the existence of the proposed Keystone XL  
3 Pipeline upon my land will affect a buyer's willingness to pay as much as they  
4 would've paid and as much as I could've received, if the pipeline were not upon  
5 my property. There are just too many risks, unknowns, impacts and uncertainties,  
6 not to mention all of the rights you give up by the nature of having the pipeline  
7 due to having the easement that we have previously discussed, for any reasonable  
8 person to think that the existence of the pipeline would not negatively affect my  
9 property's value.

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

12 A: Yes, I have.

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

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

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

21 A: No, I do not.

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 there is any potential route for the proposed Keystone XL**  
2 **Pipeline across, within, under, or through the State of Nebraska that is in the**  
3 **public interest of the citizens of Nebraska?**

4 A: No, I do not.

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

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

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

20 A: First of all, not all jobs are created equally. Most jobs that are created, whether  
21 temporary or on a permanent basis, don’t come with a project that has all the  
22 potential and foreseeable negative impacts, many of which we have discussed here  
23 and other witnesses throughout the course of this hearing have and will discuss. If  
24 I decide to hire and employ someone to help me out in my farming or ranching  
25 business, I’ve created a job but I haven’t done so at the risk or detrimental impact  
26 to my land or my town or my county or my state. And I’ve hired someone who is  
27 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce  
28 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all  
29 jobs are not created equal. Additionally, I understand from what I’m familiar with

1 from TransCanada's own statements that the jobs numbers they originally touted  
2 were determined to be a minute fraction of the permanent jobs that had been  
3 projected. According to their answer to our Interrogatory No. 191, TransCanada  
4 has created only thirty-four (34) jobs within Nebraska working specifically on  
5 behalf of TransCanada and according to their answer to Interrogatory No. 196, as  
6 of May 5, 2017 they only employ one (1) temporary working within Nebraska.  
7 Further, according to their answer to Interrogatory No. 199, TransCanada would  
8 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was  
9 constructed on its Preferred Route or its Mainline Alternative Route.

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

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

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

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

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

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

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

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

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

15 A: Yes. I would never buy land with a pipeline running under it. You could never  
16 have underground sprinklers or irrigation which may be the wave of the future.  
17 We could never put a home on the land because we can't excavate so it stops us  
18 from freely using the land as we might wish to in the future. My heirs will be  
19 affected for many decades to come and in a manner that is not even foreseeable at  
20 present. Dirty oil flowing under my land and the contamination of the land by  
21 putting something completely unnatural under the soil and then having it placed  
22 right above the valuable and pristine Ogallala aquifer decreases the value of my  
23 land. It is my understanding that pipelines leak and leak without detection many  
24 times. How will the Ogallala aquifer ever be cleaned up if there is a leak?

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?**

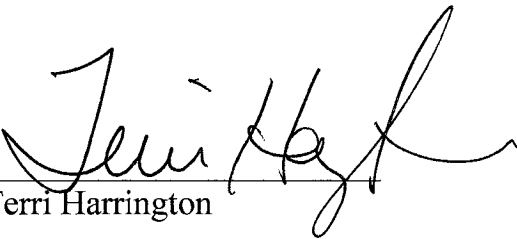
13 A: I am respectfully and humbly requesting that the Commissioners think far beyond  
14 a temporary job spike that this project may bring to a few counties and beyond the  
15 relatively small amount of taxes this proposed foreign pipeline would possibly  
16 generate. And, instead think about the 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?**

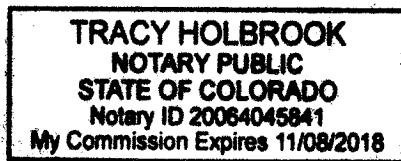
6 **A:** Yes, they are.

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.**

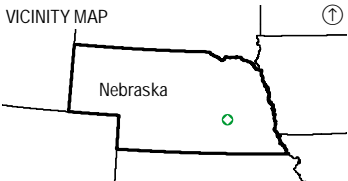
  
Terri Harrington

Subscribed and Sworn to me before this 29<sup>th</sup> day of May, 2017.

  
Notary Public



**Attachment No. 1**



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY  
Terri Harrington Trust Agreement dated July 14, 1998  
Terri Harrington

TRACT NO. ML-NE-YK-40200.000  
STATE: Nebraska  
COUNTY: York  
SECTION: 014  
TOWNSHIP: 012N  
RANGE: 004W

- 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

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(Above Space for Recorder's Use Only)

Tract No.: ML-NE-YK-40200.000

**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**"), **Terri Harrington, Trustee under Trust Agreement dated July 14, 1998**, whose mailing address is 12316 E. Bates Circle, Aurora, Colorado 80014 (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 York, 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 York, in the State of Nebraska, being further described as the SE1/4 of Section 14, T12N, R4W of the 6th P.M., as recorded in Book 189, Page 190 in the Deed Records of York 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):

**Terri Harrington, Trustee under Trust Agreement  
dated July 14, 1998**

\_\_\_\_\_  
**Terri Harrington, Trustee**

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

By **Terri Harrington, Trustee under Trust Agreement dated July 14, 1998** on behalf of said Trust.

\_\_\_\_\_  
Notary Public Signature

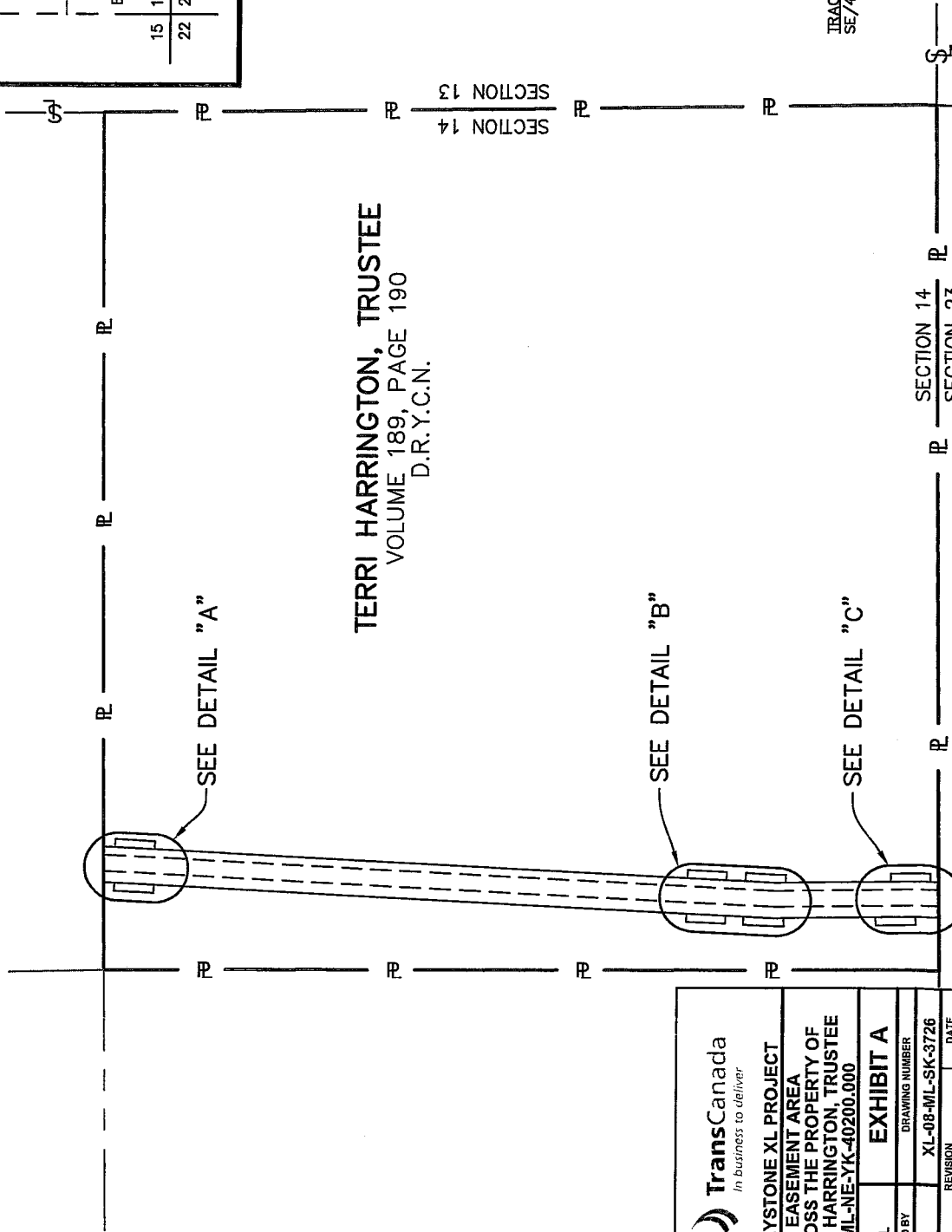
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# LEGEND

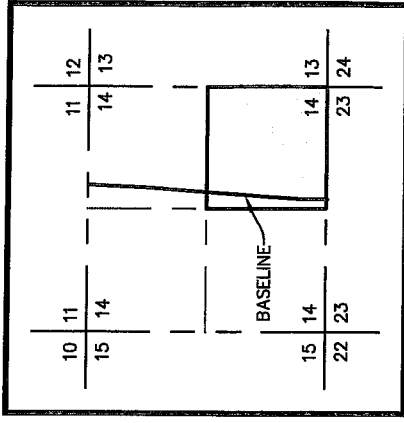
P PROPERTY LINE  
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 PROPOSED  
 A.T.W.S.  
 P.E.R.W.  
 D.R.Y.C.N.

## YORK COUNTY, NEBRASKA T-12-N, R-4-W, SECTION 14 ML-NE-YK-40200.000

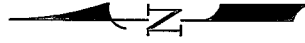
DEED RECORDS OF YORK COUNTY, NEBRASKA  
 ADDITIONAL TEMPORARY WORKSPACE  
 PERMANENT EASEMENT & RIGHT OF WAY



TERRI HARRINGTON, TRUSTEE  
 VOLUME 189, PAGE 190  
 D.R.Y.C.N.



VICINITY MAP  
N.T.S.



0 250 500  
 SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:  
 SE/4 OF SECTION 14, T-12-N, R-4-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: 2,650'±  
 AREA OF PERMANENT EASEMENT: 3.0 ACRES  
 AREA OF TEMPORARY WORKSPACE: 3.6 ACRES  
 ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.6 ACRE

SHEET 1 OF 2



### KEYSTONE XL PROJECT

EASEMENT AREA  
 ACROSS THE PROPERTY OF  
 TERRI HARRINGTON, TRUSTEE  
 ML-NE-YK-40200.000

PROJECT: XL EXHIBIT A

APPROVED BY: SLR

DRAWING NUMBER: XL-08-ML-SK-3726

NO. REVISION DATE

SCALE: 1" = 500'

DRAWN BY: PB

CHECKED BY: ALS

DATE: 10/27/14

1" = 500'

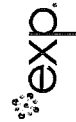
DATE: 10/27/14

CHECKED BY: PB

DATE: 10/27/14

CHECKED BY: ALS

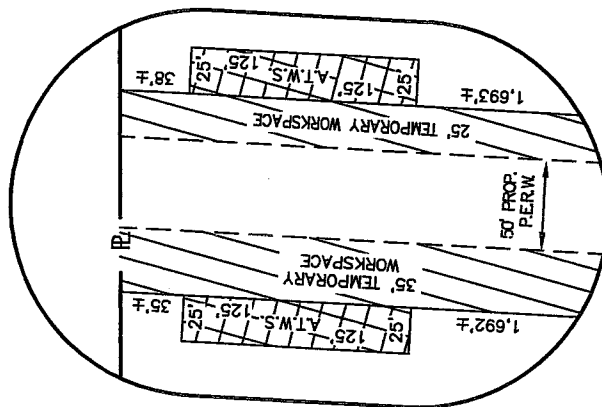
DATE: 10/27/14



T-12-N, R-4-W, SECTION 14  
ML-NE-YK-40200.000

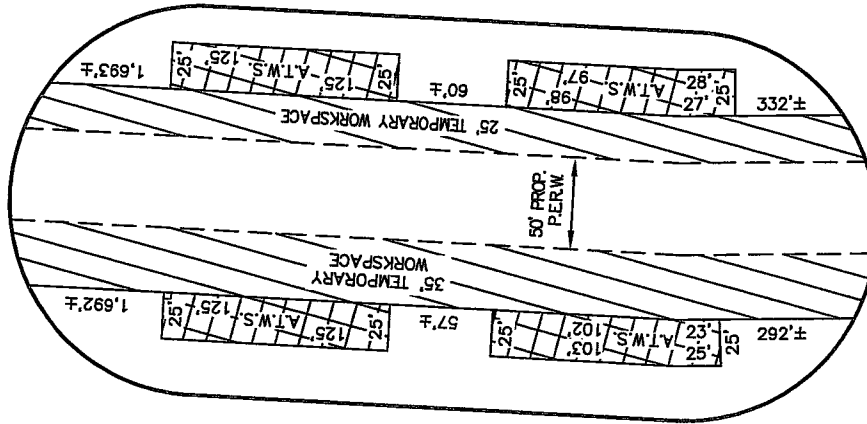
**LEGEND**  
R PROP.  
A.T.W.S.  
P.E.R.W.

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



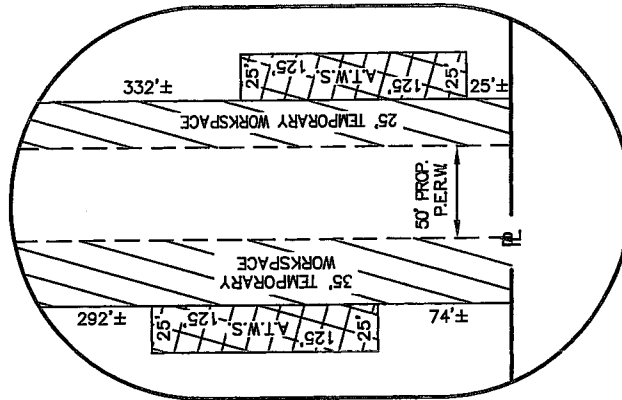
DETAIL "A"

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.

SHEET 2 OF 2

[illegible]

**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-YK-40200.000

I, Terri Harrington, Trustee, of Arapahoe County, in the State of Colorado, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Seven Hundred Sixty Dollars and No Cents (\$5,760.00), 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 York, State of Nebraska:

**SE/4**

**Section 14, Township 12N, 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, I have hereunto set our hands on this\_\_ day of

\_\_\_\_\_, 20\_\_\_\_.

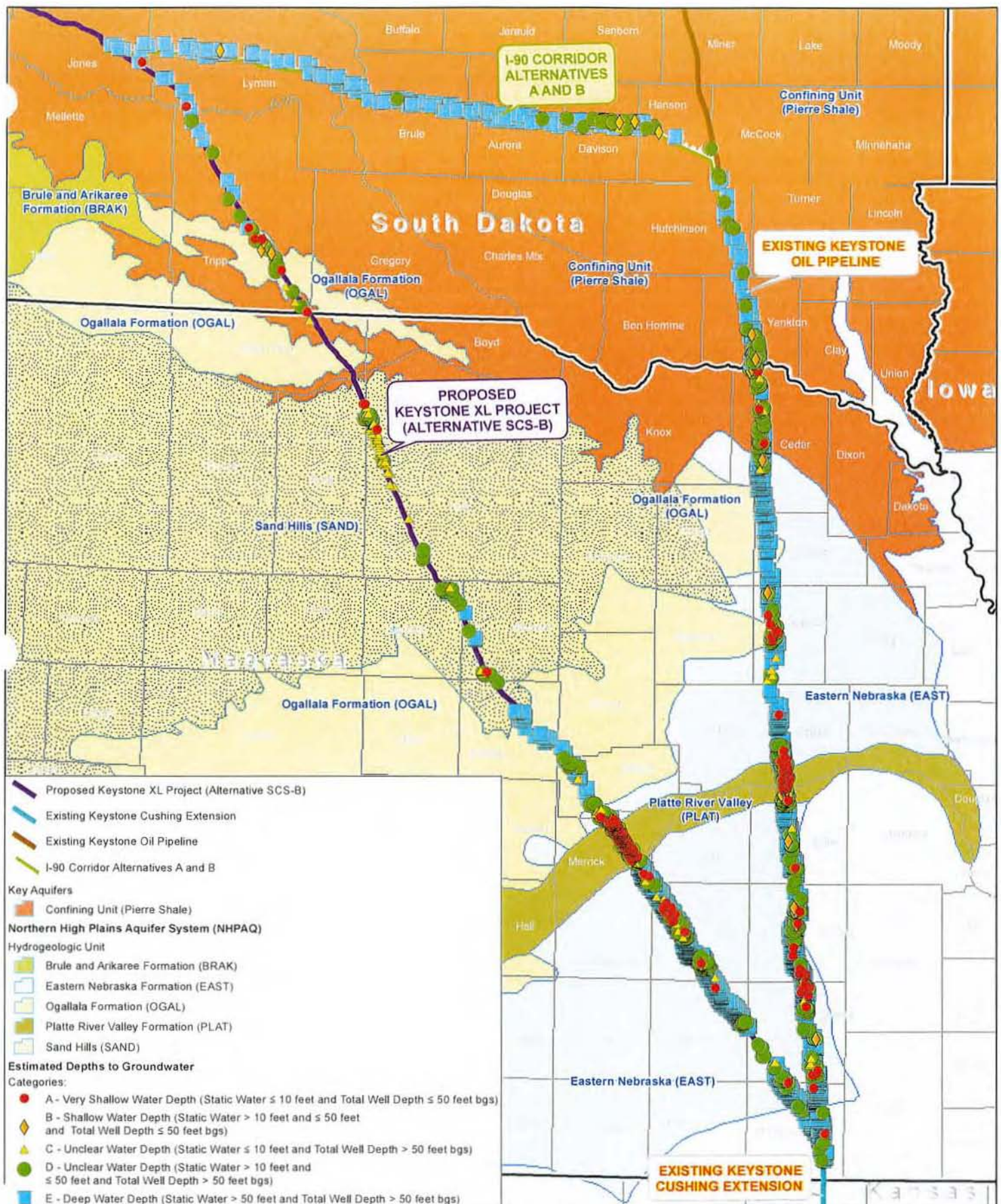
\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
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





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  
Galen Heckenliable**

State of South Dakota       )  
  ) ss.  
Hutchinson County       )

1   **Q:   Please state your name.**

2   A:   My name is Galen Heckenliable.

3   **Q:   Are you familiar with TransCanada's Keystone I pipeline?**

4   A:   Yes, I am.

5   **Q:   How are you familiar with it?**

6   A:   I own land in South Dakota that the Keystone I pipeline passes under.

7   Q:   What is your home address?

8   A:   28615 437th Ave. in Menno, South Dakota.

9   **Q:   Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**  
10       **photo(s) of your land?**

11   A:   Yes.

12   **Q:   Do you earn any income from your land?**

13   A:   Yes.

14   **Q:   Were you able to negotiate fair terms of the TransCanada Easement that**  
15       **governs the rights and responsibility and restrictions of the Keystone I**  
16       **pipeline on you land?**

1 A: No.

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

4 A: Yes.

5 **Q: Have you had any issues with the TransCanada Keystone I pipeline on your**  
6 **property?**

7 A: Yes, I have.

8 **Q: Tell the Commission about that please.**

9 A: On April 2<sup>nd</sup> 2016 TransCanada's Keystone I pipeline suffered damage and failed  
10 in some way and lead to significant impacts to my land. The first person to  
11 discovery the pipeline break was my neighbor. The local Sherriff's department  
12 arrived first and about three hours later TransCanada personnel arrived.

13 **Q: When you arrived on site what happened?**

14 A: TransCanada prevented me from entering upon my property. My mailbox is  
15 located by the highway; I was not even permitted by TransCanada to cross my  
16 own land riding my four-wheeler to get my daily mail. I had to drive an extra 2-3  
17 miles around the section line to get my mail and also travel to my employment.

18 **Q: What next do you remember?**

19 A: I remember there being about 150 workers on my land disturbing my land and  
20 preventing me from enjoying and using my land as I wanted. A TransCanada  
21 representative approached me with an offer of \$1,000 per week to "rent" my land  
22 for all the vehicles and equipment they needed to park and had brought on my  
23 property. I reluctantly accepted their offer as they led me to believe that was all I  
24 could be compensated – so we reached an agreement, or so I thought.

25 **Q: What did TransCanada say about the 50 foot easement they have on your**  
26 **property?**

27 A: I was told that when the pipeline has a problem the Easement contract means  
28 nothing and that TransCanada can go anywhere and do anything they want on my  
29 land during such a pipeline breach. This was very frustrating to me and was

1 exacerbated by the fact they were all over and on my land for three (3) months day  
2 in and day out until July 2<sup>nd</sup> 2016. TransCanada left without paying the promised  
3 verbal compensation of damage to property because they said there was no written  
4 agreement.

5 **Q: What did you do about that?**

6 A: Well, they were intruding on my land first of all and disrupting my life and even  
7 despite that we made a deal for the \$1,000 a week but I knew I was just the little  
8 guy and had no means to fight with a billion dollar company over the agreement  
9 we reached and they breached.

10 **Q: What did you observed about how TransCanada treated your land was the**  
11 **worked on it?**

12 A: I witnessed TransCanada having concrete trucks hauling day and night to the site  
13 and just dumping concrete into the trench. The put about 600 yards of concrete in  
14 the trench. I was told by TransCanada to keep it quiet.

15 **Q: Did you have any other concerns about TransCanada's behavior?**

16 A: Yes. They left the road in terrible condition. The land reclamation process on my  
17 property after cleanup was completed was not good. I wasn't compensated for my  
18 trees that TransCanada removed.

19 **Q: How has your experience with TransCanada informed your understanding of**  
20 **the terms and language in your Easement and Right-of-Way agreement?**

21 A: It is critically important to get an Easement that has terms and language that are  
22 very clear and that the Landowner has an opportunity to negotiate terms that  
23 actually protect their property rights and economic interests.

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

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

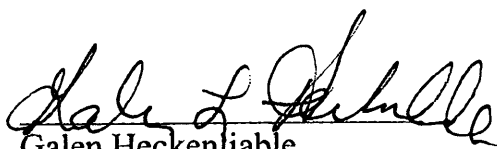
1   **Q:   Do you have any concerns TransCanada’s fitness as an applicant for a major**  
2       **crude oil pipeline in its preferred location, or ultimate location across the**  
3       **state of Nebraska?**

4   A:   Yes, I have significant concerns.

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.**

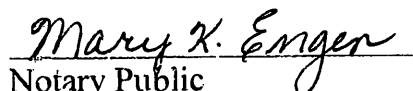


Galen Heckenliable

state of South Dakota

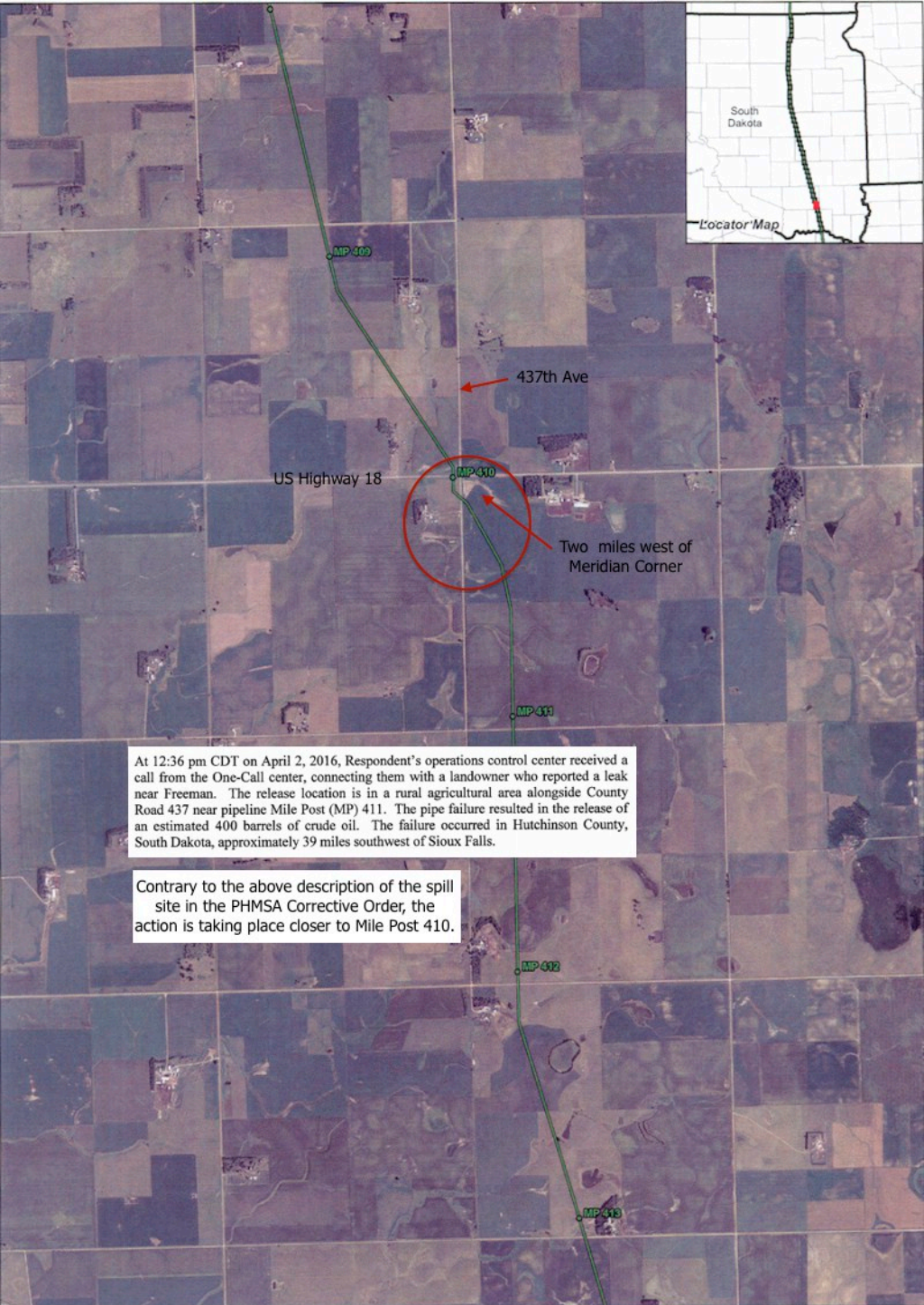
County of Hutchinson

Subscribed and Sworn to me before this 30th day of May, 2017.



Notary Public

my commission expires 10-20-2020



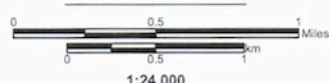
At 12:36 pm CDT on April 2, 2016, Respondent's operations control center received a call from the One-Call center, connecting them with a landowner who reported a leak near Freeman. The release location is in a rural agricultural area alongside County Road 437 near pipeline Mile Post (MP) 411. The pipe failure resulted in the release of an estimated 400 barrels of crude oil. The failure occurred in Hutchinson County, South Dakota, approximately 39 miles southwest of Sioux Falls.

Contrary to the above description of the spill site in the PHMSA Corrective Order, the action is taking place closer to Mile Post 410.

- Legend**
- Valve Site
  - Milepost
  - Centerline
  - Pump Station - Permanent Disturbance
  - Pump Station - Construction Disturbance

### Keystone Pipeline Project

South Dakota Public Utility Commission Application  
- Project Location -  
Map 41 of 46



ATTACHMENT  
#1





**ROAD  
CLOSED**

**KNODEL**  
Contractors









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  
Jill Hipke in Support of Landowner  
Intervenors**

State of Nebraska                    )  
  ) ss.  
Holt County                         )

1   **Q:    Please state your name.**

2   A:    My name is Jill Hipke

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:    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 to 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 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 and ambiguous terms are  
27       as follows:

- 28                i.    "pipeline installation activities"
- 29                ii.   "availability of labor and materials"

- 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: 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. The terms of the  
10 easement must be addressed in order for the Commission to truly consider  
11 property rights, economic interests, the welfare of Nebraska, and the balancing of  
12 the proposed routes against all they will affect and impact.

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

15 A: Yes, I do.

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

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

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

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

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

28 A: Yes, I believe that any construction, operation, and/or maintenance of the  
29 proposed Keystone XL Pipeline would have detrimental impacts upon the natural



resources of my land, and the lands near and surrounding the proposed pipeline route.

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

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the soil of land, as well as land along and surrounding the proposed pipeline route. This includes, but is not limited to, the reasons that we discussed above of disturbing the soil composition and makeup as it has naturally existed for thousands and millions of years during the construction process, and any future maintenance or removal process. I'm gravely concerned about the fertility and the loss of economic ability of my property to grow the crops, or grow the grasses, or grow whatever it is at that time they exist on my property or that I may want to grow in the future, or that a future owner may want to grow. The land will never be the same from as it exists now undisturbed to after it is trenched up for the proposed pipeline.

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

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

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

A: Yes, I have significant concerns that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impact upon the surface water of not only within my property boundary, but along

1 and near and surrounding the pipeline route, and in fact, across the state of  
2 Nebraska.

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

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

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

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

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

1 A: Yes, I have.

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

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

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

10 A: No, I do not.

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

14 A: No, I do not.

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

18 A: No, I do not.

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

22 A: No, I do not.

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

24 A: Because there simply is no public interest based on all of the factors that I am  
25 aware and that I have read and that I have studied that this Commission is to  
26 consider that would establish that a for-profit foreign-owned pipeline that simply  
27 crosses Nebraska because we are geographically in the way between where tar  
28 sands are in Canada to where it wants to ship it to in Texas could ever be in the  
29 public interest of Nebraskans. We derive no benefit from this project. It is not for

1 public use. Nebraska is simply in the way and when all considerations are taken in  
2 there is no net benefit of any kind for Nebraska should this project be placed in our  
3 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
4 the negative impacts and concerns.

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

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

28 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**  
29 **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: Have you fully expressed each and every opinion, concern, or fact you would**  
4 **like the Public Service Commissioners to consider in their review of**  
5 **TransCanada's Application?**

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

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

20 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond  
21 a temporary job spike that this project may bring to a few counties and beyond the  
22 relatively small amount of taxes this proposed foreign pipeline would possibly  
23 generate. And, instead think about the perpetual and forever impacts of this  
24 pipeline as it would have on the landowners specifically, first and foremost, but  
25 also thereby upon the entire state of Nebraska, and to determine that neither the  
26 preferred route nor the Keystone mainline alternative route are in the public  
27 interest of the citizens of the state of Nebraska. And if the Commissioners were  
28 inclined to modify TransCanada's proposed routes and were to be inclined to grant  
29 an application for a route in Nebraska, that the only potential route that would



1 make any intelligent sense whatsoever would be twinning or near paralleling of  
2 the proposed KXL with the existing Keystone I pipeline. The point of including  
3 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been  
4 considered by TransCanada before. It simply does not make sense to add yet  
5 another major oil pipeline crisscrossing our state creating new pumping stations,  
6 creating new impacts on additional counties and communities and going through  
7 all of the court processes with myself and other landowners like me when this  
8 applicant already has relationships with the landowners, the towns and the  
9 communities along Keystone I, and that Keystone I is firmly outside of the sand  
10 hills and a significantly further portion away from the heart of the Ogallala  
11 Aquifer than the preferred route or the Keystone mainline alternative route.

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

15 A: Yes, they are.

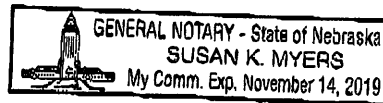
16 **Q: Thank you, I have no further questions at this time and reserve the right to**  
17 **ask you additional questions at the August 2017 Hearing.**

Jill Hipke

*Jill R. Hipke*

Subscribed and Sworn to me before this 30<sup>th</sup> day of May, 2017.

Notary Public



*Susan K Myers*

**Attachment No. 1**

PREPARED BY  
exp Energy Services Inc.

S.029  
T.033 N  
R.015 W

S.028  
T.033 N  
R.015 W

S.032  
T.033 N  
R.015 W

S.033  
T.033 N  
R.015 W  
Jill Hipke  
R. Wynn Hipke

Jill Hipke  
R. Wynn Hipke

S.005  
T.032 N  
R.015 W

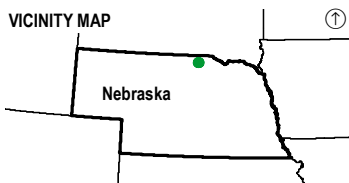
S.004  
T.032 N  
R.015 W

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

Jill Hipke  
R. Wynn Hipke

TRACT NO. ML-NE-HT-40100.000  
STATE: Nebraska  
COUNTY: Holt  
SECTION: 033  
TOWNSHIP: 033N  
RANGE: 015W

 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

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(Above Space for Recorder's Use Only)

Tract No.: ML-NE-HT-40100.000

**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**") **R. Wynn Hipke and Jill Renee Hipke, husband and wife, as joint tenants**, whose mailing address is 89450 469<sup>th</sup> Avenue, 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 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 440 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the W1/2, W1/2 of the NE1/4, and the NE1/4 of the SE1/4 of Section 33, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 188, Page 29, Book 180, Page 131, and Book 179, Page 742 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):

\_\_\_\_\_  
R. Wynn Hipke

\_\_\_\_\_  
Jill Renee Hipke

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

# HOLT COUNTY, NEBRASKA

## T-33-N, R-15-W, SECTION 33

### ML-NE-HT-40100.000


LEGEND:  
 P PROPERTY LINE  
 S SECTION LINE  
 A.T.W.S. PROPOSED  
 P.E.R.W. TEMPORARY WORKSPACE  
 D.R.H.C.N. PERMANENT EASEMENT & RIGHT OF WAY  
 DEED RECORDS OF HOLT COUNTY, NEBRASKA

SEE DETAIL "A"

SECTION 28  
SECTION 33

SECTION 32  
SECTION 33

SECTION 33  
SECTION 34

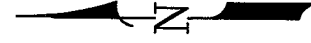
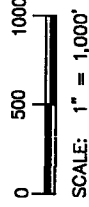
 <b>TransCanada</b> <i>In business to deliver</i>		<b>KEYSTONE XL PROJECT</b>	
<b>EASEMENT AREA</b> ACROSS THE PROPERTY OF R. WYNN HIPKE AND JILL RENEE HIPKE ML-NE-HT-40100.000		<b>EXHIBIT A</b>	
APPROVED BY	SLR	DRAWING NUMBER	XL-08-ML-SK-3649
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 1000'	11/04/14	JN	ALS

**exp.**  
*The new identity of Tron*

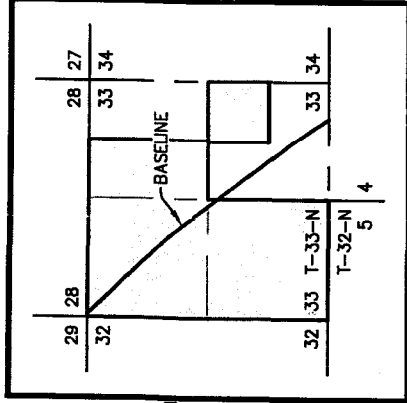
TOTAL DISTANCE ACROSS PROPERTY: 3,824'±  
 AREA OF PERMANENT EASEMENT: 4.4 ACRES  
 AREA OF TEMPORARY WORKSPACE: 5.3 ACRES  
 ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.1 ACRE

**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.

R. WYNN HIPKE AND  
 JILL RENEE HIPKE  
 VOLUME 188, PAGE 29  
 VOLUME 180, PAGE 131  
 VOLUME 179, PAGE 742  
 D.R.H.C.N.

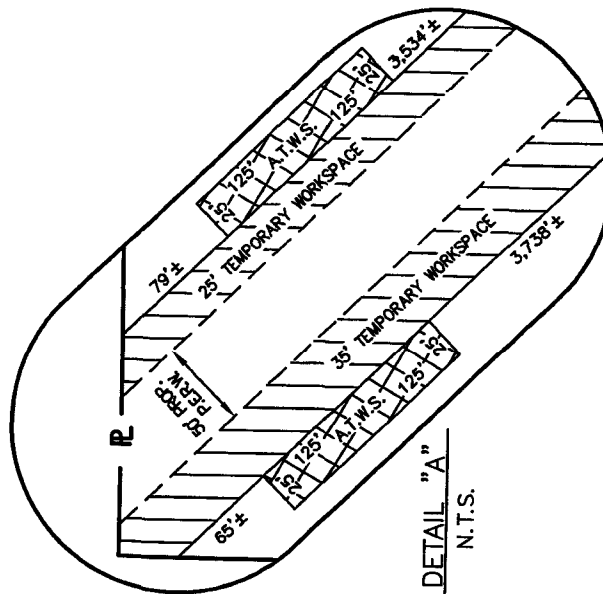


VICINITY MAP  
 N.T.S.



ML-NE-HT-40100.000

**LEGEND**  
R PROP.  
A.T.W.S.  
P.E.R.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.

[illegible]



**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-HT-40100.000

I/we R. Wynn Hipke and Jill Renee Hipke, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Five Hundred Forty Eight Dollars and No Cents (\$2,548.00), 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 amage 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:

**W/2, W/2NE/4, NE/4 SE/4**

**Section 33, Township 33-N, Range 15-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, 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. 5**

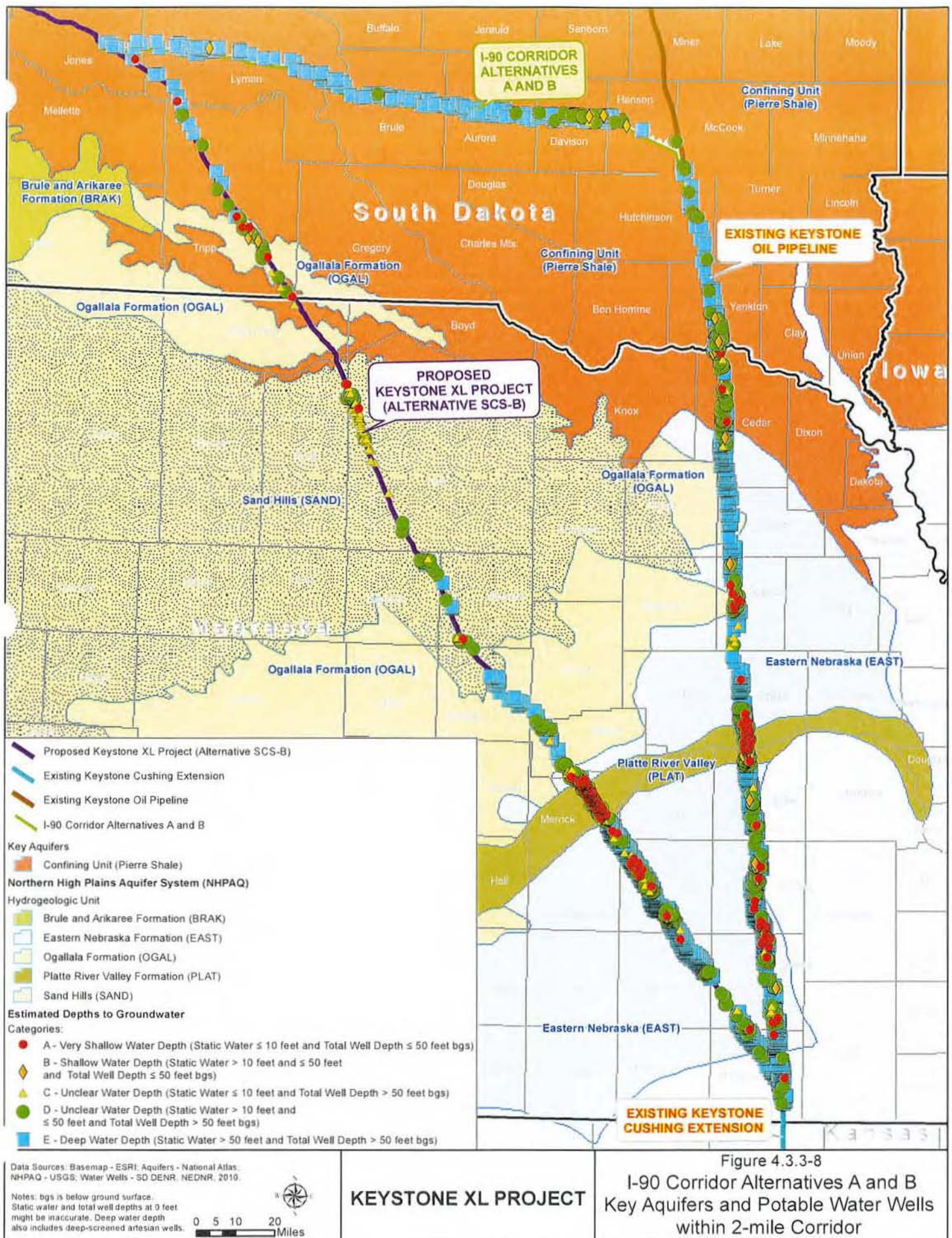


Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor



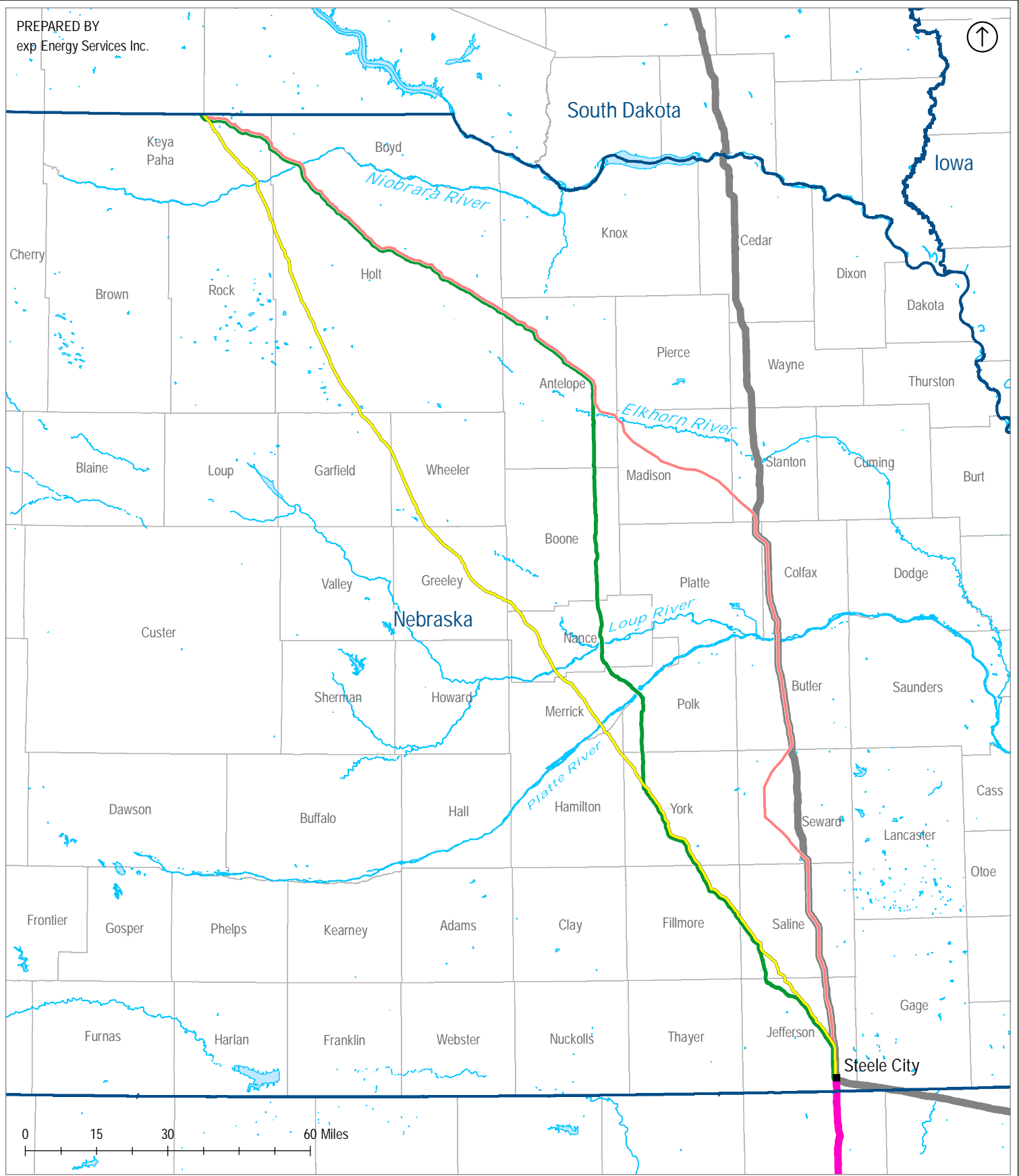


## KEYSTONE XL PROJECT

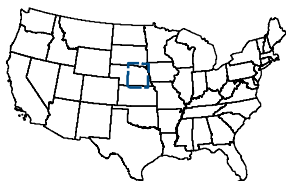
Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor

**Attachment No. 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  
Lloyd Hipke in Support of Landowner  
Intervenors**

State of Nebraska                    )  
  ) ss.  
Holt County                         )

1   **Q:    Please state your name.**

2   A:    My name is Lloyd Hipke.

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 47121 894<sup>th</sup> RD, Stuart, NE 68780 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 background and pasture cattle. I farm corn and forage crops for our cattle and  
2 put up hay and alfalfa. Trucking livestock and agricultural products supplements  
3 my income.

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

5 A: Vencille.

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

7 A: We have 3 Sons. Cody, his wife and daughter live on the same place as us in a  
8 second house. Paul, Logan, their wives and our other 4 Grandchildren live within  
9 the close vicinity of our Home place.

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

11 A: We have five Grandchildren.

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

14 A. Yes. Since this picture was taken we have two more Grandbabies.

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

18 A: Over 45 years. I inherited this land from my Dad and Mom. It is where I have  
19 lived since returning from Military Service in 1973, some 43 years ago. It is the  
20 base for my Ranching, Farming and Trucking operations.

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

22 A: Yes.

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

25 A: Yes. Besides me and my wife, this land helps support our 3 sons, who are  
26 employed by us. All 3 of our sons have returned to work for us after attending  
27 college. Cody served in the Army before he went to College. So they all moved  
28 away from home for a while and have all decided this is where they wanted to  
29 come back to settle to make their living and raise their families. I feel beings they

1 have made this commitment that it is our obligation to preserve and protect our  
2 land for them and their offspring and future generations of our family.

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

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

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

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

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

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

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

28 A: Yes.

**Q: Please describe your property that would be impacted by the potential TransCanada's Keystone XL Pipeline?**

A: This is my Home place, where all the buildings and facilities are located. This pipeline would cross both farmland and pastureland. It comes within a few feet of our house well. The pipeline would dissect springs of water that flow into a dam where all of our water for our cattle operation comes from. We background and pasture over 1000 head of cattle per year and a leak into these springs or the dam would be devastating to my operation. The reason we use the dam for watering cattle is because we cannot get a well with sufficient volume to support the number of cattle we run. Good wells are hard to get in our area. Water is essential to our operation and we need to protect it to stay in business.

**Q: Where on your property does the proposed route run through?**

A: The proposed route comes within a few feet of our domestic well and would be located in the recharge field that supplies our drinking water. Water flows from West to East and the proposed pipeline would be located West of this well. So if there ever was a leak, the natural flow of water would bring the contamination right into our drinking water.

**Q: Will this affect how you go about your lives on a daily basis?**

A: We don't feel we could ever feel safe about drinking or bathing in this water in the future years without daily or at least weekly testing of the water in the event of an underground compromise of the pipe (a leak that would go undetected below the surface).

**Q: Is this well private or public?**

A: This is a private well.

**Q: Was this well registered when TransCanada chose the route?**

A: It was not registered as it was not required back in the day this well was drilled. When Trans Canada chose this route I'm sure they did not take it into account.

**Q: Did you notify TransCanada upon learning that the well was on their route?**

1    **A:**    When we learned that this well was on their route we called Trans Canada and  
2           invited them to inspect the location of the well on the maps and from the road.

3    **Q:**    **When did you notify TransCanada?**

4    **A:**    This was sometime in February 2013.

5    **Q:**    **Do you remember the name(s) of the land agents that visited you that day?**

6    **A:**    Yes, and we still possess two Company cards given to us from Brock Taylor &  
7           Van Shepardson who were land agents on behalf of TransCanada here that day.

8    **Q:**    **How many other people were at the meeting?**

9    **A:**    There were close to 10 people at this meeting and we know that at least one of  
10          them was an Engineer, however he did not give us his card. We thought by them  
11          actually "seeing" our well they might vary the route away from the well and we  
12          did show them on the maps a better route, which they briefly went to see.

13   **Q:**    **Did you receive any correspondence from TransCanada after the meeting?**

14   **A:**    Later, after this meeting we received two other mail correspondences

15   **Q:**    **What were enclosed with the two correspondences?**

16   **A:**    Potential route maps from TransCanada

17   **Q:**    **Did the routes vary to avoid the well?**

18   **A:**    They did not vary the route at all to avoid this well.

19   **Q:**    **Did you contact another agency to speak with them about the well issue?**

20   **A:**    Yes, the Nebraska Department of Environmental Quality.

21   **Q:**    **What did the NDEQ tell you?**

22   **A:**    We were told TransCanada would probably just drill us a new well.

23   **Q:**    **Even if that were true, does drilling a new well cause a problem for your**  
24          **land?**

25   **A:**    Yes. The problem with drilling a new well is that it is near impossible to get a  
26          "Good" well in our area, North of Stuart as any well man from this area will  
27          testify, so we don't feel that is an option and certainly not an acceptable option. It  
28          is too risky to sacrifice what we have now that we know is good and working.



1 **Q: Has TransCanada contacted you, since your initial meeting, about an**  
2 **alternate route away from the well?**

3 **A:** To this day we have not seen any evidence or heard from TransCanada that they  
4 have varied their route away from our well.

5 **Q: Is the well currently registered?**

6 **A:** Just recently we filed papers to register the well but have not received  
7 confirmation from the State that it is done. How many other unregistered wells  
8 does this proposed route not take into consideration?

9 **Q: Does the proposed route affect the water for your cattle as well?**

10 **A:** The proposed route dissects vital springs of water that flows into a dam that we  
11 use to water our cattle with.

12 **Q: How many feeder cattle use the vital springs as their source of water?**

13 **A:** There are times when our feedlot numbers are up to 1000 head of feeder cattle that  
14 use from this water source.

15 **Q: What happens to your cattle operation if the springs of water get**  
16 **contaminated?**

17 **A:** If the springs of water that fill this dam becomes disrupted or contaminated our  
18 Cattle operation will be compromised to the point of non-existence.

19 **Q: Are there other springs of water that your cattle drink out of?**

20 **A:** There are other springs of water farther out in the pastures that are dissected as  
21 well and these flow into creeks & streams that our pasture cattle water out of.

22 **Q: How does the proposed route cut across your land?**

23 It is a diagonal cut across our land.

24 **Q: Does that raise any concerns to you?**

25 **A:** Yes, this also concerns us as to the use of ALL of the pastureland if they require  
26 the fencing out of the pipeline, either for the "healing" process of new grasses  
27 planted or to permanently keep cattle away from the pipeline.

28 **Q: How many pastures will the route affect?**

29 **A:** Two separate pastures

1   **Q:   How will they be affected?**

2   **A:**   They would be cut across diagonally and the land not on the side of the water  
3       source would become useless without a water source. The land would take a lot of  
4       years to "heal" and be back to full potential, probably just to be dug up again in the  
5       event of a leak or pipe replacement. We will lose use of a lot of our pasture land  
6       and that means lost productive ground and lost income. And this will be forever  
7       after TransCanada is long gone. Remember they want us to sign an easement that  
8       is "Perpetual" and to their "assigns or successors" which means FOREVER!

9   **Q:   Does the pipeline run through any objects that will affect your land?**

10  **A:**   Out in the pastureland are huge rocks which the proposed route would cross  
11       thru. It is to our understanding that TransCanada would not have to bury the pipe  
12       as deep thru these areas.

13  **Q:   Do you have any concerns about this?**

14  **A:**   This concerns us as to the heating up of the soil because the pipe is nearer to the  
15       surface and the "healing" of the land so that it could ever be pastured again. The  
16       inability of the land to heal will be followed by erosion on the  
17       uneven surfaces. Also these rocks are constantly moving and emerging so the  
18       possibility of them pushing into the pipe causing a rupture is possible, esp. during  
19       an earthquake (we've felt them out here before!).

20  **Q:   Will the value of your land decrease with the pipeline running through it?**

21  **A:**   We have concerns as to the devaluation of our land. We have heard about banking  
22       institutions that are not loaning money and devaluing land on this proposed route.

23  **Q:   How does this affect the financial stability of your family and business?**

24  **A:**   This greatly affects our Financial as this land is the soul of our operation, where all  
25       the buildings and feedlots are located (our Homeplace). Our hope is to pass this  
26       land on down to our three sons but their Financials too will FOREVER devalued.

27  **Q:   Do you have any concerns as to the safety of the pipeline?**

28  **A:**   There are multiple concerns for us as to the Safety of this pipeline

1 **Q: Do you have any concerns that TransCanada may abandon the pipeline when**  
2 **it is completed?**

3 **A:** Yes, this is extremely concerning about the ability for TransCanada to abandon the  
4 dirty pipe in the ground whenever they want.

5 **Q: What are your concerns?**

6 **A:** We can't afford to take it out. They probably wouldn't even let us if we could.  
7 And they are not offering to pay for their luxury of leaving it in place.

8 **Q: Do you have any concerns that the pipeline may contaminate your neighbors**  
9 **land?**

10 **A:** We are concerned about Liability issues if the pipeline on our land contaminates  
11 our neighbors land. We cannot afford the Insurance or the cleanup costs if there is  
12 a leak on our land that affects our neighbors or our land. We should not have to be  
13 liable for Trans Canada's operation of this pipeline. I'm sure there will be  
14 more concerns about this pipeline as we go forward, but these are the main ones I  
15 have at this time.

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

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

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

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

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

26 **A:** No, they have not.

27 **Q: In its lawsuit against you, did TransCanada identify the amount of your**  
28 **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: I have a number of significant concerns and worries about the document and how  
29 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 a monthly, bi-annual, or at least an annual loss in  
27 tax 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 is not conducive to the protection of property rights. A  
17 shallow pipeline is much more likely to become a danger and liability in the future  
18 given farming operations and buried irrigation lines and other factors common to  
19 the current typical agricultural uses of the land in question impacted by  
20 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 the 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 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: 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 any type of structures  
25 directly across or touching the easement, and it would be unwise and I would be  
26 uncomfortable to build anything near the easement for fear of being blamed in the  
27 future should any damage or difficulty result on my property in regards to the  
28 pipeline. What if I would want to expand my feedlot operation? I may be putting

1 in more feedlots or a Hoop building. This area would be where I would consider  
2 doing that.

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

4 A: Well yes, of course. It restricts both me and my successors from expanding  
5 operations.

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

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

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

24 A: Yes, I do.

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

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

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

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

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

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

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

14 A: Yes, I believe that any construction, operation, and/or maintenance of the  
15 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of  
16 land, as well as land along and surrounding the proposed pipeline route. This  
17 includes, but is not limited to, the reasons that we discussed above of disturbing  
18 the soil composition and makeup as it has naturally existed for thousands and  
19 millions of years. This disruption could be during the construction process, and  
20 any future maintenance or removal process. I'm gravely concerned about the  
21 fertility and the loss of economic ability of my property to grow the crops, or grow  
22 the grasses, or grow whatever it is at that time they exist on my property or that I  
23 may want to grow in the future, or that a future owner may want to grow. The  
24 land will never be the same as it exists now, undisturbed, to after it is trenched up  
25 for the proposed pipeline.

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

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 groundwater of not only under my land, but also near and surrounding the pipeline  
2 route, and in fact, potentially the entire State of Nebraska. Water is life plain and  
3 simple and it is simply too valuable to our State and the country to put at  
4 unreasonable risk.

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

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

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

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

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

21 A: Yes, I do. I am significantly concerned about how the existence of the proposed  
22 pipeline underneath and across and through my property will negatively affect the  
23 fair market value at any point in the future, especially at that point in which I  
24 would need to sell the property, or someone in my family would need to sell the  
25 property. I do not believe, and certainly would not be willing to pay, the same  
26 price for land that had the pipeline located on it, versus land that did not. I hope  
27 there is never a point where I'm in a position where I have to sell and have to  
28 realize as much value as I can out of my land. But because it is my single largest  
29 asset, I'm gravely concerned that the existence of the proposed Keystone XL

1 Pipeline upon my land will affect a buyer's willingness to pay as much as they  
2 would've paid and as much as I could've received, if the pipeline were not upon  
3 my property. There are just too many risks, unknowns, impacts and uncertainties,  
4 not to mention all of the rights you give up by the nature of having the pipeline  
5 due to having the easement that we have previously discussed, for any reasonable  
6 person to think that the existence of the pipeline would not negatively affect my  
7 property's value.

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

10 A: Yes, I have.

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

12 A: That is a map I think I first saw a couple years ago that shows the Keystone XL  
13 I-90 corridor alternate route of its proposed pipeline through Nebraska and I  
14 believe the portion of the alternative route shown here that is within Nebraska  
15 essentially twins or parallels Keystone I.

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

19 A: No, I do not.

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

23 A: No, I do not.

24 **Q: Do you believe the portion of what has been previously called the I-90**  
25 **corridor alternative route, specifically for the portion of the proposed**  
26 **pipeline within Nebraska as found in Attachment No. 6 to your testimony, is**  
27 **in the public interest of Nebraska?**

28 A: No, I do not.



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

4 A: No, I do not.

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

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

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

20 A: First of all, not all jobs are created equally. Most jobs that are created, whether  
21 temporary or on a permanent basis, don’t come with a project that has all the  
22 potential and foreseeable negative impacts, many of which we have discussed here  
23 and other witnesses throughout the course of this hearing have and will discuss. If  
24 I decide to hire and employ someone to help me out in my farming or ranching  
25 business, I’ve created a job but I haven’t done so at the risk or detrimental impact  
26 to my land or my town or my county or my state. And I’ve hired someone who is  
27 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce  
28 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all  
29 jobs are not created equal. Additionally, I understand from what I’m familiar with

1 from TransCanada's own statements that the jobs numbers they originally touted  
2 were determined to be a minute fraction of the permanent jobs that had been  
3 projected. According to their answer to our Interrogatory No. 191, TransCanada  
4 has created only thirty-four (34) jobs within Nebraska working specifically on  
5 behalf of TransCanada and according to their answer to Interrogatory No. 196, as  
6 of May 5, 2017 they only employ one (1) temporary working within Nebraska.  
7 Further, according to their answer to Interrogatory No. 199, TransCanada would  
8 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was  
9 constructed on its Preferred Route or its Mainline Alternative Route.

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

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

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

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

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

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

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

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

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

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

27 **Q: What is it that you are requesting the Public Service Commissioners do in**  
28 **regards to TransCanada's application for the proposed Keystone XL Pipeline**  
29 **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. The point of including  
13 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been  
14 considered by TransCanada before. It simply does not make sense to add yet  
15 another major oil pipeline crisscrossing our state creating new pumping stations,  
16 creating new impacts on additional counties and communities and going through  
17 all of the court processes with myself and other landowners like me when this  
18 applicant already has relationships with the landowners, the towns and the  
19 communities along Keystone I, and that Keystone I is firmly outside of the sand  
20 hills and a significantly further portion away from the heart of the Ogallala  
21 Aquifer than the preferred route or the Keystone mainline alternative route.

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

25 A: Yes.

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

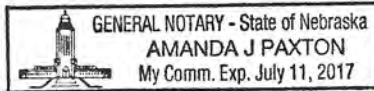
29 A: Yes, they are.

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.

Lloyd J Hipke  
Lloyd Hipke

Subscribed and Sworn to me before this 30<sup>th</sup> day of May, 2017.

Amanda J Paxton  
Notary Public





**Attachment No. 1**

PREPARED BY  
exp Energy Services Inc.

S.033  
T.033N  
R.015W



Lloyd Hipke

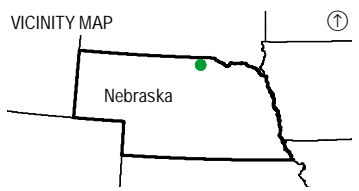
S.004  
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R.015W

S.009  
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S.010  
T.032N  
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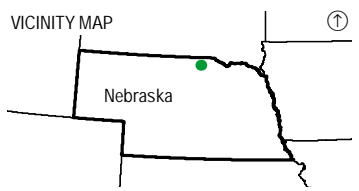
KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY  
Lloyd Hipke

TRACT NO. ML-NE-HT-40180.000  
STATE: Nebraska  
COUNTY: Holt  
SECTION: 004  
TOWNSHIP: 032N  
RANGE: 015W

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

May 2017 - X:\Drawings\50888\KEYSTONE\_XL\50888\_004\0381





KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY  
Lloyd Hipke

TRACT NO. ML-NE-HT-40200.000  
STATE: Nebraska  
COUNTY: Holt  
SECTION: 003  
TOWNSHIP: 032N  
RANGE: 015W

- 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

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(Above Space for Recorder's Use Only)

Tract No.: ML-NE-HT-40180.000  
ML-NE-HT-40200.000

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**") **Lloyd Hipke a/k/a Lloyd Z. Hipke and Vencille Hipke a/k/a Vincille Marie Hipke, husband and wife**, whose mailing address is 47121 894<sup>th</sup> 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 markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to

Grantor's Initials \_\_\_\_\_

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 349.89 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the E1/2 and the NE1/4 of the NW1/4, except North 25 acres of Section 4, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 200, Page 638, Book 180, Page 128 and Book 179, Page 743 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

**Less and Except:** A tract of land containing 2.30 acres, more or less, and being out of the NE1/4 of Section 4, Township 32 North, Range 15 West of the 6<sup>th</sup> P.M., Holt County, Nebraska, and being more particularly described as follows: Commencing at the Northeast Corner of said Section 4; thence West 1100 feet to the point of beginning; thence South 500 feet; thence West 200 feet; thence North 500 feet; thence East 200 feet to the point of beginning, as recorded in Book 175 and Page 271.

A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SW1/4 of Section 3, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 182, Page 189 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):

\_\_\_\_\_  
**Lloyd Hipke a/k/a Lloyd Z. Hipke**

\_\_\_\_\_  
**Vencille Hipke a/k/a Vincille Marie Hipke**

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]



STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Lloyd Hipke a/k/a Lloyd Z. Hipke**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Vencille Hipke a/k/a Vincille Marie Hipke**

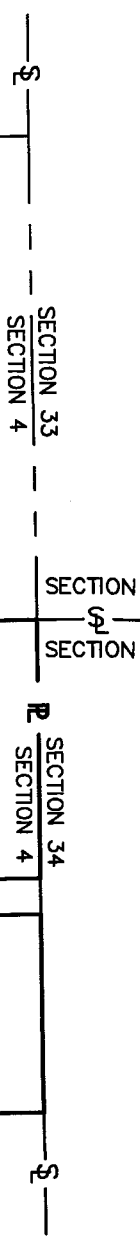
\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

**LEGEND**  
 R. PROPERTY LINE  
 P. 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-15-W, SECTION 4  
 ML-NE-HT-40180.000

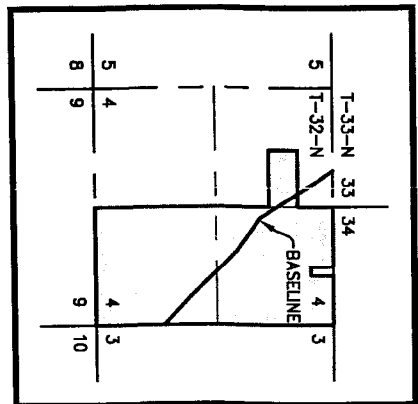


**LLOYD HIPKE**

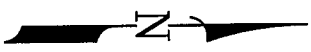
VOLUME 200, PAGE 638  
 VOLUME 180, PAGE 128  
 VOLUME 179, PAGE 743  
 D.R.H.C.N.

SEE DETAIL "A"

SEE DETAIL "B"



VICINITY MAP  
 N.T.S.




0 500 1000  
 SCALE: 1" = 1,000'

TRACT LEGAL DESCRIPTION:  
 PART OF THE E/2 AND THE  
 NE/4 NW/4 EXCEPT NORTH 25  
 ACRES OF SECTION 4,  
 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: 4.356'±  
 AREA OF PERMANENT EASEMENT: 5.0 ACRES  
 AREA OF TEMPORARY WORKSPACE: 6.0 ACRES  
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.6 ACRE



**TransCanada**  
*In Business to Deliver*

**KEYSTONE XL PROJECT**  
**EASEMENT AREA**  
**ACROSS THE PROPERTY OF**  
**LLOYD HIPKE**  
**ML-NE-HT-40180.000**

PROJECT: **XL** **EXHIBIT A**

APPROVED BY: **SLR** DRAWING NUMBER: **XL-08-ML-SK-3652**

NO. **REVISION** DATE

SCALE: **1" = 1000'**

DATE: **11/04/14** DRAWN BY: **JN** CHECKED BY: **ALS**



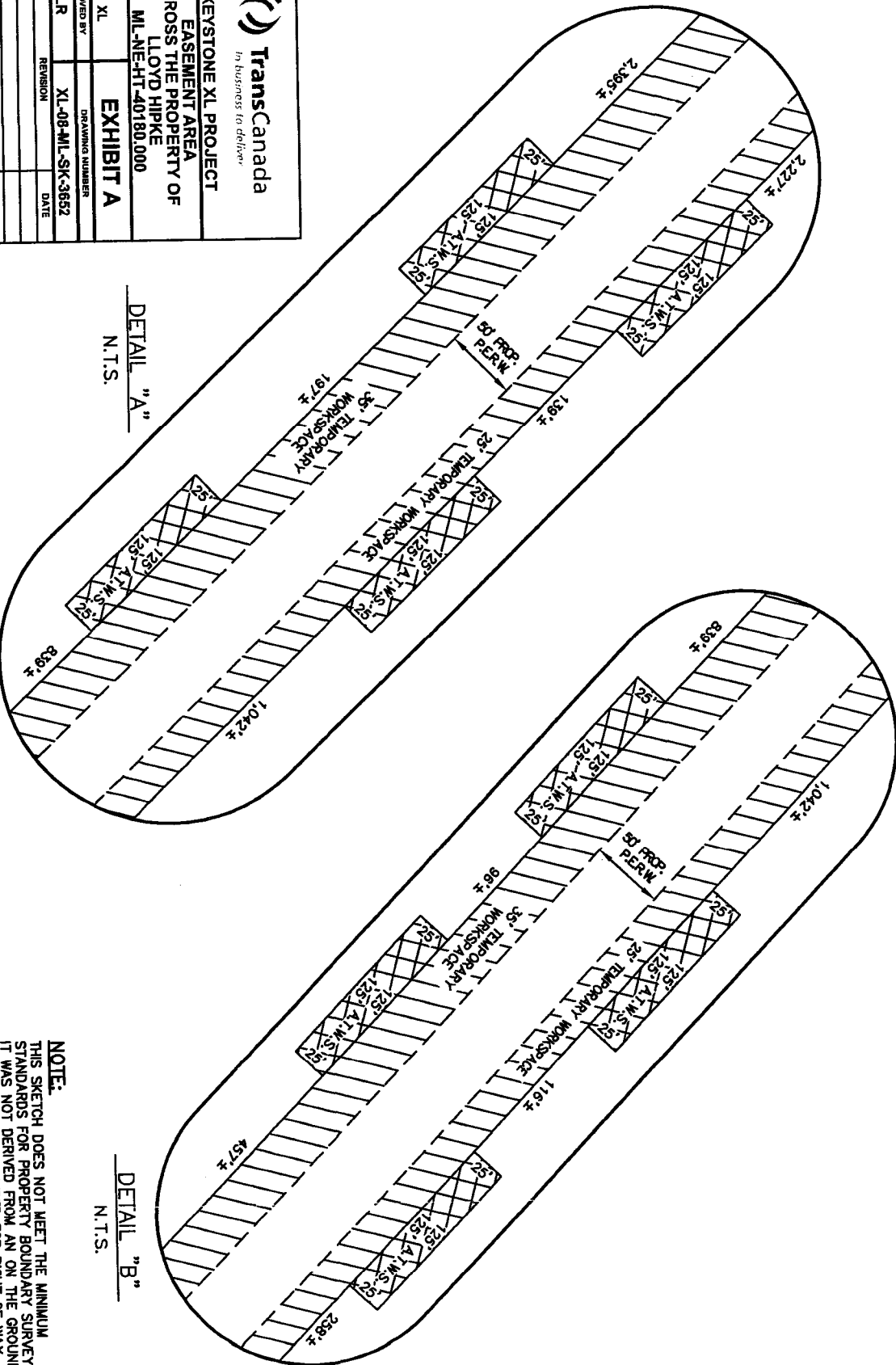
LEGEND  
PROP.  
A.T.W.S.  
P.E.R.W.

PROPOSED  
TEMPORARY WORKSPACE  
ADDITIONAL  
PERMANENT EASEMENT & RIGHT OF WAY

# HOLT COUNTY, NEBRASKA

## T-32-N, R-15-W, SECTION 4

### ML-NE-HT-40180.000



DETAIL "A"  
N.T.S.

DETAIL "B"  
N.T.S.



In business to deliver

KEYSTONE XL PROJECT  
EASEMENT AREA  
ACROSS THE PROPERTY OF  
LLOYD HIPKE  
ML-NE-HT-40180.000

PROJECT:	XL	EXHIBIT A
APPROVED BY:	SLR	DRAWING NUMBER
NO.	REVISION	DATE
SCALE	DATE	DRAWN BY
N.T.S.	11/04/14	JN
		ALS



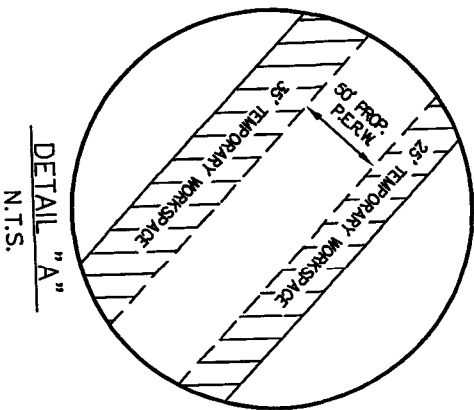
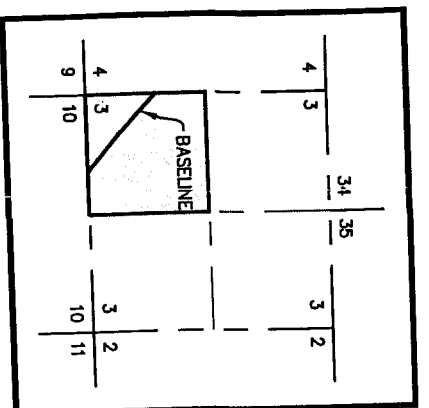
**NOTE:**  
THIS SKETCH DOES NOT MEET THE MINIMUM  
STANDARDS FOR PROPERTY BOUNDARY SURVEYS.  
IT WAS NOT DERIVED FROM AN ON THE GROUND  
SURVEY BUT IS INTENDED FOR RIGHT OF WAY  
PURPOSES ONLY. THE EXACT LOCATIONS AND  
MEASUREMENTS ARE APPROXIMATE AND MAY  
VARY, BUT THE WIDTH OF THE EASEMENT AREA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

LEGEND  
 R- PROPERTY LINE  
 S- SECTION LINE  
 P- PROPOSED PERMANENT EASEMENT & RIGHT OF WAY  
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA

# HOLT COUNTY, NEBRASKA

## T-32-N, R-15-W, SECTION 3

### ML-NE-HT-40200.000



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.

LLOYD Z. HIPKE  
 VOLUME 182, PAGE 189  
 D.R.H.C.N.



TRACT LEGAL DESCRIPTION:  
 SW 1/4 OF SECTION 3,  
 T-32-N, R-15-W

In business to deliver	
KEYSTONE XL PROJECT	
EASEMENT AREA ACROSS THE PROPERTY OF LLOYD Z. HIPKE	
ML-NE-HT-40200.000	
PROJECT: XL	EXHIBIT A
APPROVED BY	DRAWING NUMBER
SLR	XL-08-MI-SK-3653
NO.	REVISION
DATE	DATE
SCALE	DATE
1" = 500'	11/04/14
JN	ALS
CHECKED BY	

TOTAL DISTANCE ACROSS PROPERTY: 2,309'±  
 AREA OF PERMANENT EASEMENT: 2.6 ACRES  
 AREA OF TEMPORARY WORKSPACE: 3.1 ACRES

exp.  
 The new identity of TransCanada

**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-40200.000

I/we Lloyd Z. Hipke and Vencille M. Hipke, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Four Hundred Eighty Two Dollars and No Cents (\$1,482.00), 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:

**SW/4**

**Section 3, Township 32-N, Range 15-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, 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-40180.000

I/we Lloyd Z. Hipke and Vencille M. Hipke, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Thousand Sixteen Dollars and No Cents (\$3,016.00), 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:

**Part of the E/2, Part of the NE/4 of the NW/4**

**Section 4, Township 32-N, Range 15-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, I/we have hereunto set our hands on this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_.

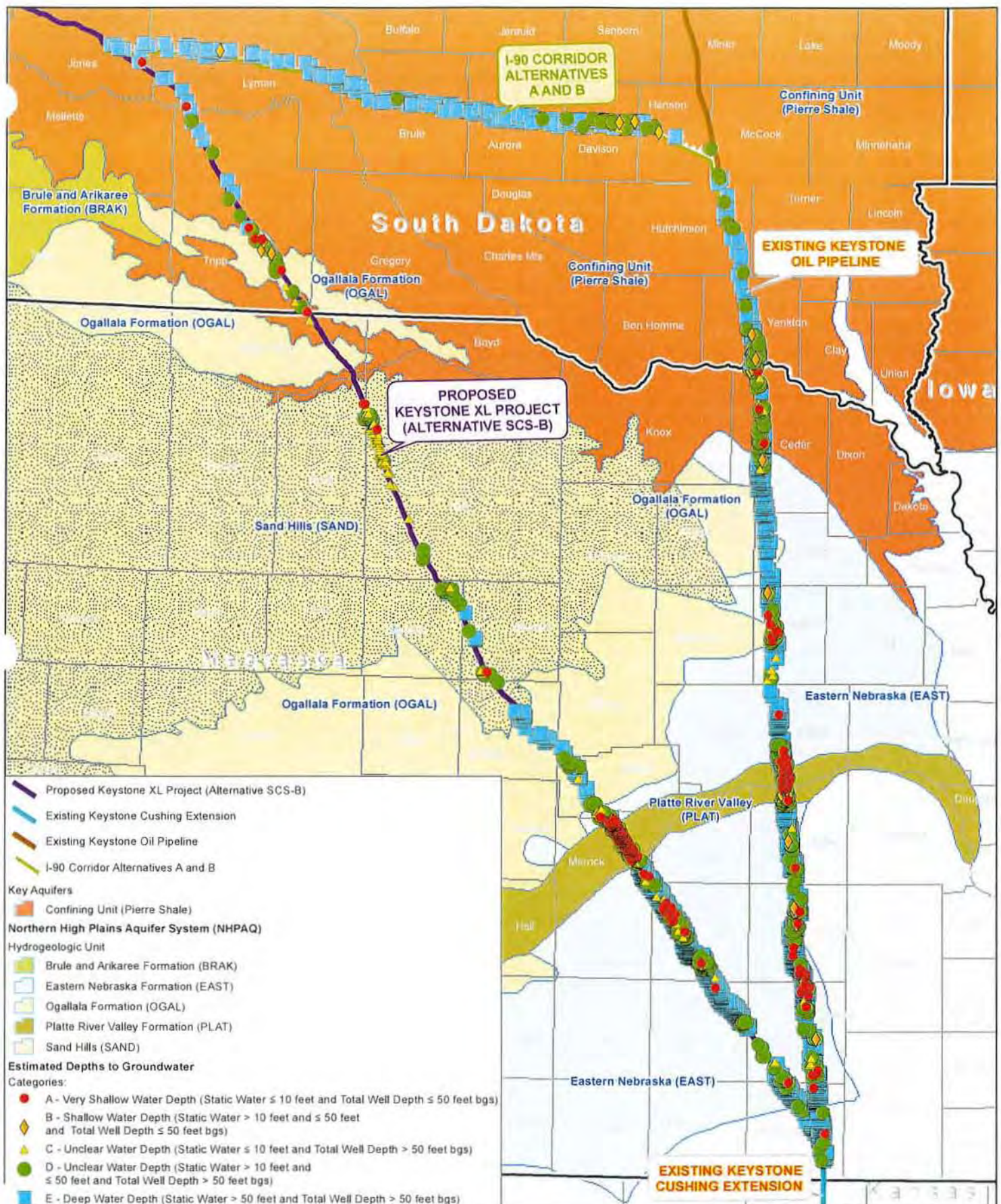
\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

**Attachment No. 6**



## 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**



11/11/2011 11:11 AM

8:17 AM

100%



11/11/2011

Google







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  
R. Wynn Hipke in Support of  
Landowner Intervenor**

State of Nebraska                    )  
  ) ss.  
Holt County                         )

1   **Q:    Please state your name.**

2   A:    My name is R. Wynn Hipke

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

16 A:    Yes.



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

3   A:    Yes.

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

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

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

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

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

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

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

28   A:    Yes.

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

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

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

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

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

11 A: No, they have not.

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

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

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

19 A: No, they did not.

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

22 A: Yes, they did.

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

25 A: Yes, they did.

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

27 A: TransCanada stated that the eminent domain property will be used to "lay, relay,  
28 operate, and maintain the pipeline and the plant and equipment reasonably  
29 necessary to operate the pipeline, specifically including surveying, laying,

1 constructing, inspecting, maintaining, operating, repairing, replacing, altering,  
2 reconstructing, removing and abandoning one pipeline, together with all fittings,  
3 cathodic protection equipment, pipeline markers, and all their equipment and  
4 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,  
5 petroleum products, and all by-products thereof.”

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

9 A: No, I do not.

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

12 A: Yes, they did.

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

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

21 **Q: Is the document included with your testimony here as Attachment No. 2, a**  
22 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**  
23 **Way agreement that they included with their condemnation lawsuit against**  
24 **you?**

25 A: Yes, it is.

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

28 A: Yes, I have.

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

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

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

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

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

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

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

26 A: The very first sentence talks about consideration or how much money they will  
27 pay to compensate me for all of the known and unknown affects and all of the  
28 rights I am giving up and for all the things they get to do to my land and for what

1 they will prevent me from doing on my land and they only will pay me one time at  
2 the signing of the easement agreement. That is a huge problem.

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

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

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

18 A: The first paragraph goes on to say Grantor, which is me the landowner, "does  
19 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a  
20 limited partnership..." and I have no idea who that really is. I have no idea who is  
21 forcing this pipeline on us or who the owners of the entities are, or what are the  
22 assets backing this limited partnership, or who the general partner is, or who all  
23 the limited partners are, and who makes up the ownership of the these partners or  
24 the structure or any of the basic things you would want to know and understand if  
25 you would want to do business with such an outfit. According to TransCanada's  
26 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited  
27 liability company called TransCanada Keystone Pipeline GP, LLC is the general  
28 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so

1 basically nothing. That is really scary since the general partner has the liability but  
2 virtually none of the ownership and who knows if it has any other assets.

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

6 A: No.

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

11 A: No.

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

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

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

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

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

27 A: Then it says "...a perpetual permanent easement and right-of-way..." and this  
28 really concerns me. Why does the easement and right-of-way have to be perpetual

1 and permanent? That is the question myself and my family want an answer to.  
2 Perpetual to me is like forever and that doesn't make sense.

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

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

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

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

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

24 A: Yes.

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

26 A: Here the Easement identifies a 24-month deadline to complete construction of the  
27 pipeline but has caveats that are undefined and ambiguous. The 24-month period  
28 starts to run from the moment "actual pipeline installation activities" begin on  
29 Landowners property. It appears that TransCanada would define this phrase as



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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 A: Again, undefined terms leave a lot of room for confusion. What does the phrase  
28 "where rock is encountered" mean and why does TransCanada solely get to  
29 determine whether or not this phrase is triggered. This phrase could be used to

1 justify installing the pipeline 24 inches beneath the surface. The ability to use this  
2 provision to minimal locate the pipeline at a depth of 24 inches could negatively  
3 affect Landowners property are not conducive to the protection of property rights.  
4 A shallow pipeline is much more likely to become a danger and liability in the  
5 future given farming operations and buried irrigation lines and other factors  
6 common to the current typical agricultural uses of the land in question impacted  
7 by TransCanada's preferred pipeline route.

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

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

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

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

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

25 A: TransCanada has the power to unilaterally move or modify the location of any  
26 Easement area whether permanent or temporary at their sole discretion.  
27 Regardless, if Landowner has taken prior steps relative to their property in  
28 preparation or planning of TransCanada's taking of the initial easement area(s),  
29 the language here does not require TransCanada to compensate the Landowner if

1 they decide to move the easement anywhere on Landowners property. Such  
2 unilateral powers would negatively affect Landowners property are not conducive  
3 to the protection of property rights or economic interests.

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

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

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

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

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

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

- 25 i. "pipeline installation activities"
- 26 ii. "availability of labor and materials"
- 27 iii. "commercially reasonable costs and expenses"
- 28 iv. "reasonably anticipated and foreseeable costs and expenses"
- 29 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.

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

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

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

7 A: No, I do not believe those terms to be reasonable or just for the reasons that we  
8 discussed previously.

9 **Q: Did TransCanada ever offer you financial compensation for the rights that**  
10 **they sought to obtain in your land, and for what they sought to prevent you**  
11 **and any future land owner of your property from doing in the future?**

12 A: Yes, we received an offer from them.

13 **Q: As the owner of the land in question and as the person who knows it better**  
14 **than anyone else, do you believe that TransCanada offered you just, or fair,**  
15 **compensation for all of what they proposed to take from you so that their tar**  
16 **sands pipeline could be located across your property?**

17 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just  
18 offer for all the potential impacts and effects and the rights that I'm giving up, and  
19 what we will be prevented from doing in the future and how their pipeline would  
20 impact my property for ever and ever.

21 **Q: Has TransCanada at any time offered to compensate you annually, such as**  
22 **wind farm projects do, for the existence of their potential tar sands pipeline**  
23 **across your property.**

24 A: No, never.

25 **Q: At any time did TransCanada present you with or request that you, as the**  
26 **owner of the land in question, sign and execute a document called, "Advanced**  
27 **Release of Damage Claims and Indemnity Agreement?"**

28 A: Yes, they did and it was included in the County Court lawsuit against us.



1 **Q: Is Attachment No. 4, to your testimony here, a true and accurate copy of the**  
2 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

3 A: Yes, it is.

4 **Q: What was your understanding of that document?**

5 A: When I read that document in the plain language of that document, it was my  
6 understanding that TransCanada was attempting to pay me a very small amount at  
7 that time in order for me to agree to give up my rights to be compensated from  
8 them in the future related to any damage or impact they may have upon my  
9 property “arising out of, in connection with, or alleged to resulted from  
10 construction or surveying over, under or on” my land.

11 **Q: Did you ever sign that document?**

12 A: No, I did not.

13 **Q: Why not?**

14 A; Because I do not believe that it is fair or just to try to get me to agree to a small  
15 sum of money when I have no idea how bad the impacts or damages that they, or  
16 their contractors, or subcontractors, or other agents or employees, may cause on  
17 my land at any time in the future that resulted from the construction or surveying  
18 or their activities upon my land.

19 **Q: When you reviewed this document, what did it make you feel?**

20 A: I felt like it was simply another attempt for TransCanada to try to pay very little to  
21 shield themselves against known and foreseeable impacts that their pipeline, and  
22 the construction of it, would have upon my land. It made me feel that they knew it  
23 was in their financial interest to pay me as little as possible to prevent me from  
24 ever having the opportunity to seek fair compensation again, and that this must be  
25 based upon their experience of unhappy landowners and situations in other places  
26 where they have built pipelines.

27 **Q: Has TransCanada ever contacted you and specifically asked you if you**  
28 **thought their proposed location of their proposed pipeline across your land**  
29 **was in your best interest?**

1 A: No, they have not.

2 **Q: Has TransCanada ever contacted you and specifically asked you if you**  
3 **thought their proposed location of their proposed pipeline across your land**  
4 **was in the public interest of the State of Nebraska?**

5 A: No, they have not.

6 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**  
7 **Takings Clause?**

8 A: Yes, I am.

9 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**  
10 **an American citizens property?**

11 A: My understanding is that, according to the United States Constitution, that if the  
12 government is going to take land for public use, then in that case, or by taking for  
13 public use, it can only occur if the private land owner is compensated justly, or  
14 fairly.

15 **Q: Has TransCanada ever contacted you specially to explain the way in which**  
16 **the public could use its proposed Keystone XL Pipeline?**

17 A: No, they have not.

18 **Q: Can you think of any way in which the public, that is the citizens of the State**  
19 **of Nebraska, can directly use the proposed TransCanada Keystone XL**  
20 **Pipeline, as it dissects the State of Nebraska?**

21 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the  
22 public benefits from this pipeline in any way, how they can use it any way, or how  
23 it's in the public interest in any way. By looking at the map, it is quite clear to me  
24 that the only reason it's proposed to come through Nebraska, is that because we  
25 are geographically in the way from between where the privately-owned Tar Sands  
26 are located to where TransCanada wants to ship the Tar Sands to refineries in  
27 Houston, Texas.

1   **Q:   Has TransCanada ever contacted you and asked you if you had any tar sands,**  
2       **crude petroleum, or oil and petroleum by-products that you would like to**  
3       **ship in its pipeline?**

4   A:   No, it has not.

5   **Q:   Do you have any tar sands, crude petroleum, or oil and petroleum by-**  
6       **products that you, at this time or any time in the future, would desire to place**  
7       **for transport within the proposed TransCanada Keystone XL Pipeline?**

8   A:   No, I do not.

9   **Q:   Do you know anyone in the state of Nebraska who would be able to ship any**  
10       **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**  
11       **products within the proposed TransCanada Keystone XL Pipeline?**

12   A:   No, I do not. I've never heard of such a person or company like that.

13   **Q:   Do you pay property taxes for the land that would be affected and impacted**  
14       **at the proposed TransCanada Keystone XL Pipeline?**

15   A:   Yes, I do.

16   **Q:   Why do you pay property taxes on that land?**

17   A:   Because that is the law. The law requires us to pay the property taxes as the owner  
18       of that property.

19   **Q:   Because you follow the law and pay property taxes, do you believe you**  
20       **deserve any special consideration or treatment apart from any other person**  
21       **or company that pays property taxes?**

22   A:   Well no, of course not. It's the law to pay property taxes if you own property. It's  
23       just what you do.

24   **Q:   Do you believe the fact that you pay property taxes entitles you to special**  
25       **treatment of any kind, or special rights of any kind?**

26   A:   No, of course not.

27   **Q:   Do you believe the fact that you pay property taxes on your land would be**  
28       **enough to qualify you to have the power of eminent domain to take land of**

1        **your neighbors or other people in your county, or other people across the**  
2        **state of Nebraska?**

3    A:    Well, of course not. Like I said, paying property taxes is the law, it's nothing that  
4        I expect an award for or any type of special consideration.

5    **Q:    Have you at any time ever employed any person other than yourself?**

6    A:    Well, yes I have.

7    **Q:    Do you believe that the fact that you have, at some point in your life,**  
8        **employed one or more other persons entitle you to any special treatment or**  
9        **consideration above and beyond any other Nebraskan that has also employed**  
10       **one or more persons?**

11   A:    No, of course not.

12   **Q:    Do you believe that the fact that you, as a Nebraska land owner and taxpayer**  
13       **have at one point employed another person within this state, entitles you to**  
14       **preferential treatment or consideration of any kind?**

15   A:    No, of course not. If I choose to employ someone that decision is up to me. I  
16        don't deserve any special treatment or consideration for that fact.

17   **Q:    Do you have any concerns TransCanada's fitness as an applicant for a major**  
18       **crude oil pipeline in its preferred location, or ultimate location across the**  
19       **state of Nebraska?**

20   A:    Yes, I have significant concerns. I am aware of landowners being treated unfairly  
21        or even bullied around and being made to feel scared that they did not have any  
22        options but to sign whatever papers TransCanada told them they had to. I am  
23        aware of folks being threatened that their land would be taken if they didn't follow  
24        what TransCanada was saying. I am aware of tactics to get people to sign  
25        easements that I don't believe have any place in Nebraska or anywhere such as  
26        TransCanada or some outfit associated with it hiring a pastor or priest to pray with  
27        landowners and convince them they should sign TransCanada's easement  
28        agreements. I am aware of older folks and widows or widowers feeling they had  
29        no choice but to sign TransCanada's Easement and they didn't know they could

1 fight or stand up for themselves. From a more practical standpoint, I am worried  
2 that according to their answer to our Interrogatory No. 211, TransCanada only  
3 owns and operates one (1) major oil pipeline. They simply do not have the  
4 experience with this type of pipeline and that scares me. There are others but that  
5 is what I can recollect at this time and if I remember more or my recollection is  
6 refreshed I will share those with the Commissioners at the Hearing in August.

7 **Q: Do you believe TransCanada's proposed method of compensation to you as a**  
8 **landowner is reasonable or just?**

9 A: No, I do not.

10 **Q: Do you have any concern about limitations that the construction of this**  
11 **proposed pipeline across your affected land would prevent construction of**  
12 **future structures upon the portion of your land affected by the proposed**  
13 **easement and immediately surrounding areas?**

14 A: Well yes, of course I do. We would not be able to build many, if any, types of  
15 structures directly across or touching the easement, and it would be unwise and I  
16 would be uncomfortable to build anything near the easement for fear of being  
17 blamed in the future should any damage or difficulty result on my property in  
18 regards to the pipeline.

19 **Q: Do you think such a restriction would impact you economically?**

20 A: Well yes, of course.

21 **Q: How do you think such a restriction would impact you economically?**

22 A: The future of this land may not be exactly how it's being used as of this moment,  
23 and having the restrictions and limiting my ability to develop my land in certain  
24 ways presents a huge negative economic impact on myself, my family, and any  
25 potential future owner of the property. You have no idea how I or the future owner  
26 may want to use this land in the future or the other land across Nebraska  
27 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years  
28 ago it would have been hard to imagine all the advances that we have now or how  
29 things change. Because the Easement is forever and TransCanada gets the rights in

1 my land forever we have to think with a very long term view. By placing their  
2 pipeline on under across and through my land that prevents future development  
3 which greatly negatively impacts future taxes and tax revenue that could have  
4 been generated by the County and State but now will not. When you look at the  
5 short blip of economic activity that the two years of temporary construction efforts  
6 may bring, that is far outweighed by the perpetual and forever loss of opportunity  
7 and restrictions TransCanada is forcing upon us and Nebraska. The terms of the  
8 easement must be addressed in order for the Commission to truly consider  
9 property rights, economic interests, the welfare of Nebraska, and the balancing of  
10 the proposed routes against all they will affect and impact.

11 **Q: Do you have any concerns about the environmental impact of the proposed**  
12 **pipeline?**

13 A: Yes, I do.

14 **Q: What are some of those concerns?**

15 A: As an affected land owner and Nebraskan, I am concerned that any construction,  
16 operation, and/or maintenance of the proposed Keystone XL Pipeline would have  
17 a detrimental impact upon the environment of my land specifically, as well as the  
18 lands near my land and surrounding the proposed pipeline route.

19 **Q: Do you have any other environmental concerns?**

20 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in  
21 construction and/or maintenance and operation. I am concerned about spills and  
22 leaks that TransCanada has had in the past and will have in the future. This could  
23 be catastrophic to my operations or others and to my county and the State.

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: Have you ever seen the document that's marked as Attachment No. 5, 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 in Nebraska essentially twins or  
4 parallels Keystone I.

5 **Q: Do you believe the portion of the proposed pipeline route within Nebraska as**  
6 **found in Attachment No. 5 to your testimony, is in the public interest of**  
7 **Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**  
10 **Application, and as found on Attachment No. 6, here to your testimony, is in**  
11 **the public interest of Nebraska?**

12 A: No, I do not.

13 **Q: Do you believe that the Keystone mainline alternative route as shown on**  
14 **Attachment No. 6 included with your testimony here is a major oil pipeline**  
15 **route that is in the public interest of Nebraska?**

16 A: No, I do not.

17 **Q: Do you believe there is any potential route for the proposed Keystone XL**  
18 **Pipeline across, within, under, or through the State of Nebraska that is in the**  
19 **public interest of the citizens of Nebraska?**

20 A: No, I do not.

21 **Q: Why do you hold that belief?**

22 A: Because there simply is no public interest based on all of the factors that I am  
23 aware and that I have read and that I have studied that this Commission is to  
24 consider that would establish that a for-profit foreign-owned pipeline that simply  
25 crosses Nebraska because we are geographically in the way between where tar  
26 sands are in Canada to where it wants to ship it to in Texas could ever be in the  
27 public interest of Nebraskans. We derive no benefit from this project. It is not for  
28 public use. Nebraska is simply in the way and when all considerations are taken in  
29 there is no net benefit of any kind for Nebraska should this project be placed in our

1 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
2 the negative impacts and concerns.

3 **Q: What do you think about the applicant, TransCanada’s argument that it’s**  
4 **preferred route for its proposed Keystone XL Pipeline is in the public interest**  
5 **of Nebraska because it may bring temporary jobs during the construction**  
6 **phase to Nebraska?**

7 A: First of all, not all jobs are created equally. Most jobs that are created, whether  
8 temporary or on a permanent basis, don’t come with a project that has all the  
9 potential and foreseeable negative impacts, many of which we have discussed here  
10 and other witnesses throughout the course of this hearing have and will discuss. If  
11 I decide to hire and employ someone to help me out in my farming or ranching  
12 business, I’ve created a job but I haven’t done so at the risk or detrimental impact  
13 to my land or my town or my county or my state. And I’ve hired someone who is  
14 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce  
15 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all  
16 jobs are not created equal. Additionally, I understand from what I’m familiar with  
17 from TransCanada’s own statements that the jobs numbers they originally touted  
18 were determined to be a minute fraction of the permanent jobs that had been  
19 projected. According to their answer to our Interrogatory No. 191, TransCanada  
20 has created only thirty-four (34) jobs within Nebraska working specifically on  
21 behalf of TransCanada and according to their answer to Interrogatory No. 196, as  
22 of May 5, 2017 they only employ one (1) temporary working within Nebraska.  
23 Further, according to their answer to Interrogatory No. 199, TransCanada would  
24 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was  
25 constructed on its Preferred Route or its Mainline Alternative Route.

26 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**  
27 **because it would cross your land?**

28 A: No, absolutely not. I am opposed to this project because it is not in the public  
29 interest, neither within my community nor within our state.

1 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**  
2 **was to cross someone else's land?**

3 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have  
4 the fear and anxiety and potential foreseeable risks and negative impacts that this  
5 type of a project carrying this type of product brings foisted upon anyone in this  
6 state or any other state.

7 **Q: Do you think there is any intelligent route for the proposed Keystone XL**  
8 **Pipeline to cross the state of Nebraska?**

9 A: I don't believe there is an intelligent route because as I have stated I don't believe  
10 this project anywhere within Nebraska is within the public interest. However, if  
11 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely  
12 had to go somewhere in the state of Nebraska, the only intelligent route I believe  
13 would be to twin or closely parallel the existing Keystone I Pipeline. Both the  
14 preferred route and the mainline alternative routes are economic liabilities our  
15 state cannot risk.

16 **Q: What do you rely upon to make that statement?**

17 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,  
18 already exists in that area is reason enough as it is not in our best interest or the  
19 public interests to have more major oil pipelines crisscrossing our state. Second,  
20 they have all the infrastructure already there in terms of relationships with the  
21 counties and local officials and first responders along that route. Third, they have  
22 already obtained easements from all the landowners along that route and have  
23 relationships with them. Fourth, that route avoids our most sensitive soils, the  
24 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala  
25 Aquifer. Sixth, they have already studied that route and previously offered it as an  
26 alternative. Seventh, it just makes the most sense that as a state we would have  
27 some intelligent policy of energy corridors and co-locating this type of  
28 infrastructure near each other.

1 **Q: Have you fully expressed each and every opinion, concern, or fact you would**  
2 **like the Public Service Commissioners to consider in their review of**  
3 **TransCanada's Application?**

4 **A:** No, I have not. I have shared that which I can think of as of the date I signed this  
5 document below but other things may come to me or my memory may be  
6 refreshed and I will add and address those things at the time of the Hearing in  
7 August and address any additional items at that time as is necessary. Additionally,  
8 I have not had an adequate amount of time to receive and review all of  
9 TransCanada's answers to our discovery and the discovery of others so it was  
10 impossible to competently and completely react to that in my testimony here and I  
11 reserve the right to also address anything related to discovery that has not yet  
12 concluded as of the date I signed this document below. Lastly, certain documents  
13 requested have not yet been produced by TransCanada and therefore I may have  
14 additional thoughts on those I will also share at the hearing as needed.

15 **Q: What is it that you are requesting the Public Service Commissioners do in**  
16 **regards to TransCanada's application for the proposed Keystone XL Pipeline**  
17 **across Nebraska?**

18 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond  
19 a temporary job spike that this project may bring to a few counties and beyond the  
20 relatively small amount of taxes this proposed foreign pipeline would possibly  
21 generate. And, instead think about the perpetual and forever impacts of this  
22 pipeline as it would have on the landowners specifically, first and foremost, but  
23 also thereby upon the entire state of Nebraska, and to determine that neither the  
24 preferred route nor the Keystone mainline alternative route are in the public  
25 interest of the citizens of the state of Nebraska. And if the Commissioners were  
26 inclined to modify TransCanada's proposed routes and were to be inclined to grant  
27 an application for a route in Nebraska, that the only potential route that would  
28 make any intelligent sense whatsoever would be twinning or near paralleling of  
29 the proposed KXL with the existing Keystone I pipeline. The point of including

1 Attachment No. 5 is to show that twinning Keystone I within Nebraska has been  
2 considered by TransCanada before. It simply does not make sense to add yet  
3 another major oil pipeline crisscrossing our state creating new pumping stations,  
4 creating new impacts on additional counties and communities and going through  
5 all of the court processes with myself and other landowners like me when this  
6 applicant already has relationships with the landowners, the towns and the  
7 communities along Keystone I, and that Keystone I is firmly outside of the sand  
8 hills and a significantly further portion away from the heart of the Ogallala  
9 Aquifer than the preferred route or the Keystone mainline alternative route.

10 **Q: Are all of your statements in your testimony provided above true and**  
11 **accurate as of the date you signed this document to the best of your**  
12 **knowledge?**

13 **A:** Yes, they are.

14 **Q: Thank you, I have no further questions at this time and reserve the right to**  
15 **ask you additional questions at the August 2017 Hearing.**

R. Wynn Hipke  
R. Wynn Hipke

Subscribed and Sworn to me before this 30<sup>th</sup> day of May, 2017.

Nathan Wabs  
Notary Public





**Attachment No. 1**

PREPARED BY  
exp Energy Services Inc.

S.029  
T.033 N  
R.015 W

S.028  
T.033 N  
R.015 W

S.032  
T.033 N  
R.015 W

S.033  
T.033 N  
R.015 W  
Jill Hipke  
R. Wynn Hipke

Jill Hipke  
R. Wynn Hipke

S.005  
T.032 N  
R.015 W

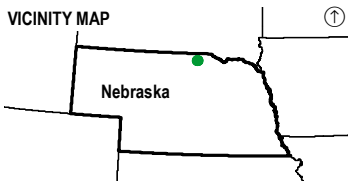
S.004  
T.032 N  
R.015 W

IMAGERY: NAIP 2016

0 250 500 1,000 1,500 Feet



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY

Jill Hipke  
R. Wynn Hipke

TRACT NO. ML-NE-HT-40100.000  
STATE: Nebraska  
COUNTY: Holt  
SECTION: 033  
TOWNSHIP: 033N  
RANGE: 015W

- 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-HT-40100.000

**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**") **R. Wynn Hipke and Jill Renee Hipke, husband and wife, as joint tenants**, whose mailing address is 89450 469<sup>th</sup> Avenue, 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 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 440 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the W1/2, W1/2 of the NE1/4, and the NE1/4 of the SE1/4 of Section 33, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 188, Page 29, Book 180, Page 131, and Book 179, Page 742 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):

\_\_\_\_\_  
R. Wynn Hipke

\_\_\_\_\_  
Jill Renee Hipke

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

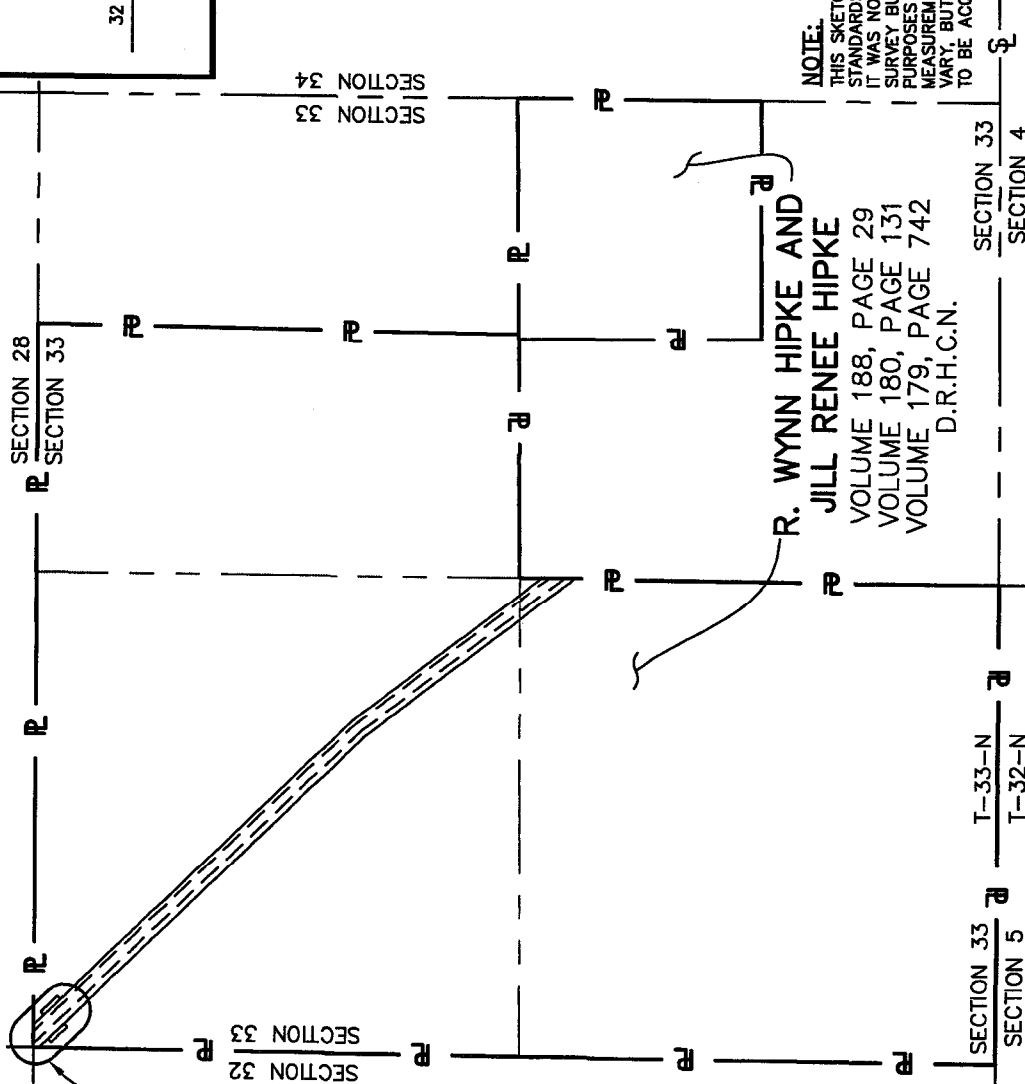
# HOLT COUNTY, NEBRASKA

## T-33-N, R-15-W, SECTION 33

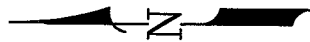
### ML-NE-HT-40100.000

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  
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA

SEE DETAIL "A"



VICINITY MAP  
N.T.S.



0 500 1000  
SCALE: 1" = 1,000'

TRACT LEGAL DESCRIPTION:  
 W/2, W/2 NE/4, NE/4 SE/4 OF  
 SECTION 33, T-33-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.

R. WYNN HIPKE AND  
 JILL RENEE HIPKE  
 VOLUME 188, PAGE 29  
 VOLUME 180, PAGE 131  
 VOLUME 179, PAGE 742  
 D.R.H.C.N.

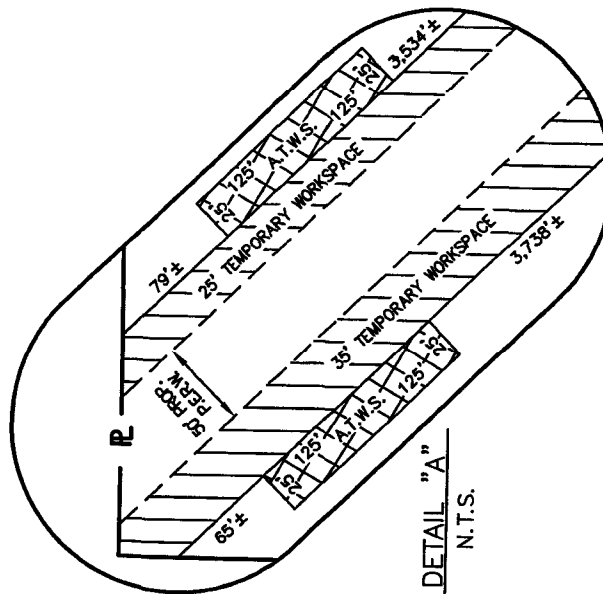
<b>TransCanada</b> <i>In business to deliver</i>	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
R. WYNN HIPKE AND	
JILL RENEE HIPKE	
ML-NE-HT-40100.000	
PROJECT:	EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3649
NO.	REVISION
DATE	DATE
SCALE	1" = 1000'
DATE	11/04/14
DRAWN BY	JN
CHECKED BY	ALS

exp.  
The new identity of Tron

TOTAL DISTANCE ACROSS PROPERTY: 3,824'±  
 AREA OF PERMANENT EASEMENT: 4.4 ACRES  
 AREA OF TEMPORARY WORKSPACE: 5.3 ACRES  
 ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.1 ACRE

ML-NE-HT-40100.000

**LEGEND**  
R PROP.  
A.T.W.S.  
P.E.R.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.

[illegible]

**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-HT-40100.000

I/we R. Wynn Hipke and Jill Renee Hipke, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Five Hundred Forty Eight Dollars and No Cents (\$2,548.00), 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 amage 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:

**W/2, W/2NE/4, NE/4 SE/4**

**Section 33, Township 33-N, Range 15-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, 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. 5**



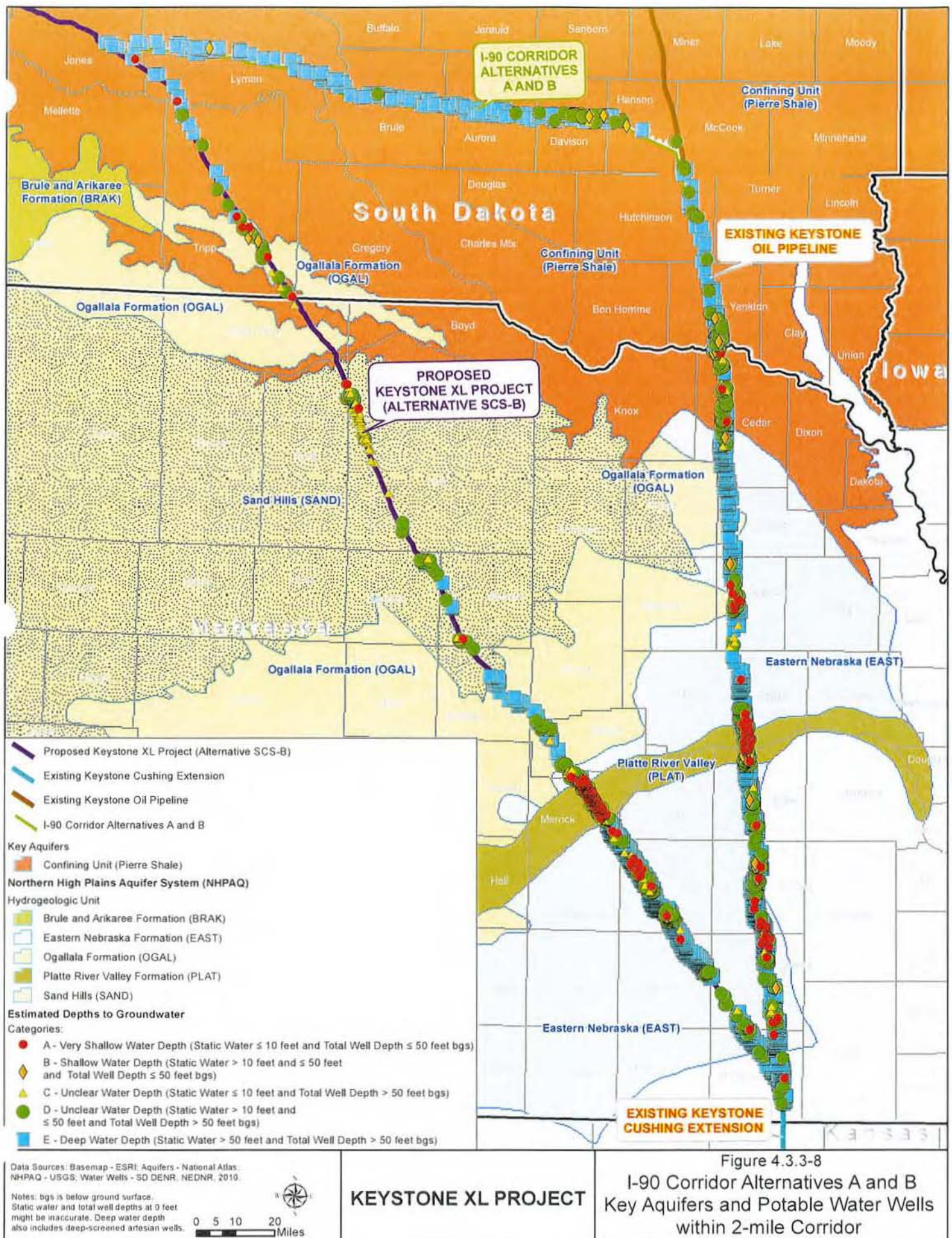


Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor



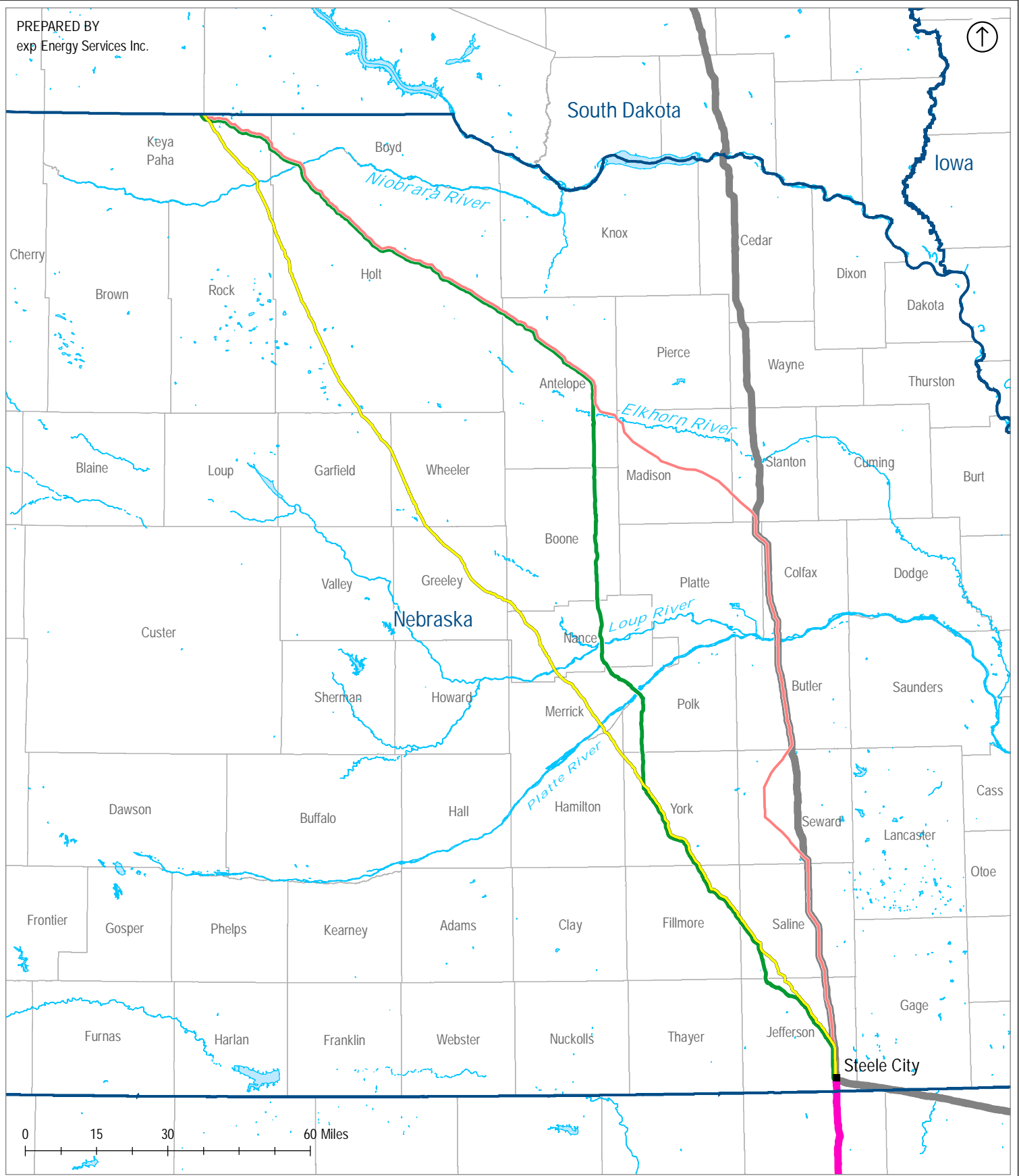


## KEYSTONE XL PROJECT

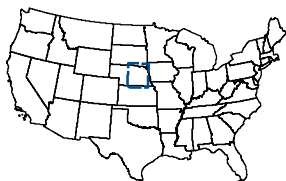
Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor



**Attachment No. 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

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  
Vencille Hipke in Support of Landowner  
Intervenors**

State of Nebraska                    )  
  ) ss.  
Holt County                         )

1   **Q:    Please state your name.**

2   A:    My name is Vencille Hipke.

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 47121 894<sup>th</sup> RD, Stuart, NE 68780 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 ranch and farm with my husband and 3 sons and I am in charge of all the  
2 bookwork.

3 **Q: If you are you married tell us your spouse's name please?**

4 A: Yes, going on 39 years to Lloyd.

5 **Q: If you have children how many do you have?**

6 A: We have 3 Sons. Cody, his wife and their daughter live on the same place as us.  
7 Paul and Logan, their wives and families are within the close vicinity of our Home  
8 place.

9 **Q: If you have grandchildren how many do you have?**

10 A: We have five Grandchildren.

11 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you  
12 and or your family?**

13 A. Yes. Since this picture was taken we have 2 more Grandbabies and one on the  
14 way.

15 **Q: For the land that would be affected and impacted by the proposed KXL tar  
16 sands pipeline give the Commissioners a sense how long the land has been in  
17 your family and a little history of the land.**

18 A: I have lived on this place my entire Adult life, going on 39 years now. My  
19 husband and I have worked hard and put in a lot of long hours to develop this  
20 "Home" place into a thriving business. I do not take lightly to anyone invading or  
21 changing our property or the way we operate it. We have always respected the  
22 land and have tried to preserve its delicate topsoil by leaving all the native grasses  
23 as is by not tearing it up. To heal our land after any form of tillage would take  
24 many years to regrow back to its natural state.

25 **Q: Do you earn any income from this land?**

26 A: Yes.

27 **Q: Have you depended on the income from your land to support your livelihood  
28 or the livelihood of your family?**

1 A: Yes. Besides me and my husband, this land helps support our 3 sons, who are  
2 employed by us. All 3 sons have returned to work for us on this land after  
3 attending college (one serving in the Army before college). They have all left  
4 home for a while and have all decided this is where they wanted to come back to  
5 settle and make a living and their homes. I feel it our obligation to preserve our  
6 land for them and their offspring and future generations.

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: Please describe your property that would be impacted by the potential**  
5 **TransCanada's Keystone XL Pipeline?**

6 A: This is my Home place, where all the buildings and facilities are located. This  
7 pipeline would cross both farmland and pastureland. It comes within a few feet of  
8 our house well. The pipeline would dissect springs of water that flow into a dam  
9 where all of our water for our cattle operation comes from. We background and  
10 pasture over 1000 head of cattle per year and a leak into these springs or the dam  
11 would be devastating to my operation. The reason we use the dam for watering  
12 cattle is because we cannot get a well with sufficient volume to support the  
13 number of cattle we run. Good wells are hard to get in our area. Water is essential  
14 to our operation and we need to protect it to stay in business.

15 **Q: Where on your property does the proposed route run through?**

16 A: The proposed route comes within a few feet of our domestic well and would be  
17 located in the recharge fields that supplies our drinking water. Beings the water  
18 flows from West to East and the proposed pipeline is on the West side of this well  
19 there is a possibility of any leak to naturally flow right into our well. I am not  
20 certain if the well will be disturbed during construction process, it is that close.

21 **Q: Will this affect how you go about your lives on a daily basis?**

22 A: We don't feel we could ever feel safe about drinking or bathing in this water in the  
23 future years without daily or at least weekly testing of the water in the event of an  
24 underground compromise of the pipe (a leak that would go undetected below the  
25 surface).

26 **Q: Is this well private or public?**

27 A: This is a private well.

28 **Q: Was this well registered when TransCanada chose the route?**

1 A: It was not registered as that was not required back in the day this well was  
2 drilled. When Trans Canada chose this route I'm sure they did not take it into  
3 account.

4 **Q: Did you notify TransCanada upon learning that the well was on their route?**

5 A: Upon learning that this well was on their route we called Trans Canada and invited  
6 them to inspect the location of the well on the maps and from the road.

7 **Q: When did you notify TransCanada?**

8 A: This was sometime in February 2013.

9 **Q: Do you remember the name(s) of the land agents that visited you that day?**

10 A: Yes, and we still possess two Company cards given to us from Brock Taylor &  
11 Van Shepardson who were land agents on behalf of TransCanada here that day.

12 **Q: How many other people were at the meeting?**

13 A: There were close to 10 people at this meeting and we know that at least one of  
14 them was an Engineer, however he did not give us his card. We thought by them  
15 actually "seeing" our well they might vary the route away from the well and we  
16 did show them on the maps a better route, which they briefly went to see.

17 **Q: Did you receive any correspondence from TransCanada after the meeting?**

18 A: Later, after this meeting we received two other mail correspondences

19 **Q: What were enclosed with the two correspondences?**

20 A: Potential route maps from TransCanada

21 **Q: Did the routes vary to avoid the well?**

22 A: They did not vary the route at all to avoid this well.

23 **Q: Did you contact another agency to speak with them about the well issue?**

24 A: Yes, the Nebraska Department of Environmental Quality.

25 **Q: What did the NDEQ tell you?**

26 A: We were told TransCanada would probably just drill us a new well.

27 **Q: Even if that were true, does drilling a new well cause a problem for your**  
28 **land?**



1    **A:**    Yes. But the problem with drilling a new well is that it is near impossible to get a  
2           "Good" well in our area, North of Stuart as any well man from this area will  
3           testify, so we don't feel that is an option and certainly not an acceptable option. It  
4           is too risky to sacrifice what we have now that we know is good and working.

5    **Q:**    **Has TransCanada contacted you, since your initial meeting, about an**  
6           **alternate route away from the well?**

7    **A:**    To this day we have not seen any evidence or heard from TransCanada that they  
8           have varied their route away from our well.

9    **Q:**    **Is the well currently registered?**

10   **A:**    Just recently we filed papers to register the well but have not received  
11          confirmation from the State that it is done. How many other unregistered wells do  
12          this proposed route not take into consideration?

13   **Q:**    **Does the proposed route affect the water for your cattle as well?**

14   **A:**    The proposed route dissects vital springs of water that flows into a dam that we  
15          use to water our cattle with.

16   **Q:**    **How many feeder cattle use the vital springs as their source of water?**

17   **A:**    There are times when our feedlot numbers are up to 1000 head of feeder cattle that  
18          use from this water source.

19   **Q:**    **What happens to your cattle operation if the springs of water get**  
20          **contaminated?**

21   **A:**    If the springs of water that fill this dam becomes disrupted or contaminated our  
22          Cattle operation will be compromised to the point of non-existence.

23   **Q:**    **Are there other springs of water that your cattle drink out of?**

24   **A:**    There are other springs of water farther out in the pastures that are dissected as  
25          well and these flow into creeks & streams that our pasture cattle water out of.

26   **Q:**    **How does the proposed route cut across your land?**

27          It is a diagonal cut across of our land

28   **Q:**    **Does that raise any concerns to you?**

1    **A:**    Yes, this also concerns us as to the use of ALL of the pastureland if they require  
2           the fencing out of the pipeline, either for the "healing" process of new grasses  
3           planted or to permanently keep cattle away from the pipeline.

4    **Q:**    **How many pastures will the route affect?**

5    **A:**    Two separate pastures

6    **Q:**    **How will they be affected?**

7    **A:**    They would be cut across diagonally and the land not on the side of the water  
8           source would become useless without a water source. The lands would take a lot  
9           of years to "heal" and be back to full potential, probably just to be dug up again in  
10          the event of a leak or pipe replacement. We will lose use of a lot of our pasture  
11          land and that means lost productive ground and lost income. This is a big  
12          headache for us after TransCanada is long gone. Remember they want us to sign  
13          an easement that is "Perpetual" and to their "assigns or successors" which means  
14          FOREVER!

15   **Q:**    **Does the pipeline run through any objects that will affect your land?**

16   **A:**    Out in the pastureland are huge rocks which the proposed route would cross  
17          thru. It is to our understanding that TransCanada would not have to bury the pipe  
18          as deep thru these areas.

19   **Q:**    **Do you have any concerns about this?**

20   **A:**    This concerns us as to the heating up of the soil by the pipe being nearer to the  
21          surface and the "healing" of the land so that it could ever be pastured again. The  
22          inability of the land to heal will be followed by erosion on the  
23          uneven surfaces. Also these rocks are constantly moving and emerging so the  
24          possibility of them pushing into the pipe causing a rupture is possible, esp. during  
25          an earthquake (we've felt them out here before!).

26   **Q:**    **Will the value of your land decrease with the pipeline running through it?**

27   **A:**    We have concerns as to the devaluation of our land. We have heard about  
28          Banking institutions that are not loaning money and devaluing land on this  
29          proposed route.

1   **Q:   How does this affect the financial stability of your family and business?**

2   **A:**   This greatly affects our Financial as this land is the soul of our operation, where all  
3       the buildings and feedlots are located (our Homeplace). Our hope is to pass this  
4       land on down to our three sons but they too will have deflated values on their  
5       Financials FOREVER!

6   **Q:   Do you have any concerns as to the safety of the pipeline?**

7   **A:**   There are multiple concerns for us as to the Safety of this pipeline

8   **Q:   Do you have any concerns that TransCanada may abandon the pipeline when**  
9       **it is completed?**

10  **A:**   Yes, this is extremely concerning about the ability for TransCanada to abandon the  
11       dirty pipe in the ground whenever they want.

12  **Q:   What are your concerns?**

13  **A:**   We can't afford to take it out. They probably wouldn't even let us if we could.  
14       And they are not offering to pay for their luxury of leaving it in place.

15  **Q:   Do you have any concerns that the pipeline may contaminate your neighbors**  
16       **land?**

17  **A:**   We are concerned about Liability issues if the pipeline on our land contaminates  
18       our neighbors land. We cannot afford Insurance or the cleanup costs if there is a  
19       leak on our land and it affects our neighbors land and we get sued. We should not  
20       have to be liable for Trans Canada's operation of this pipeline. I'm sure there will  
21       be more concerns about this pipeline as we go forward, but these are the main ones  
22       I have at this time.

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: I have a number of significant concerns and worries about the document and how  
8 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 their easement  
10 to be transferred or sold to someone or some company or country or who knows  
11 what that I don't know and who we may not want to do business with. This  
12 pipeline would be a huge asset for TransCanada and if they can sell to the highest  
13 bidder that could have terrible impacts upon all of Nebraska depending upon who  
14 may buy it and I don't know of any safeguards in place for us or the State to veto  
15 or have any say so in who may own, operate, or be responsible for this pipeline in  
16 the 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 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 the 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 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 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 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 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. I am aware of landowners being treated unfairly  
13       or even bullied around and being made to feel scared that they did not have any  
14       options but to sign whatever papers TransCanada told them they had to. I am  
15       aware of folks being threatened that their land would be taken if they didn't follow  
16       what TransCanada was saying. I am aware of tactics to get people to sign  
17       easements that I don't believe have any place in Nebraska or anywhere, such as  
18       TransCanada or some outfit associated with it hiring a pastor or priest to pray with  
19       landowners and convince them they should sign TransCanada's easement  
20       agreements. I am aware of older folks and widows or widowers feeling they had  
21       no choice but to sign TransCanada's Easement and they didn't know they could  
22       fight or stand up for themselves. From a more practical standpoint, I am worried  
23       that according to their answer to our Interrogatory No. 211, TransCanada only  
24       owns and operates one (1) major oil pipeline. They simply do not have the  
25       experience with this type of pipeline and that scares me. There are others but that  
26       is what I can recollect at this time and if I remember more or my recollection is  
27       refreshed I will share those with the Commissioners at the Hearing in August.

28   **Q:    Do you believe TransCanada's proposed method of compensation to you as a**  
29       **landowner is reasonable or just?**

1 A: No, I do not.

2 **Q: Do you have any concern about limitations that the construction of this**  
3 **proposed pipeline across your affected land would prevent construction of**  
4 **future structures upon the portion of your land affected by the proposed**  
5 **easement and immediately surrounding areas?**

6 A: Well yes, of course I do. We would not be able to build any types of structures  
7 directly across or touching the easement and it would be unwise and I would be  
8 uncomfortable to build anything near the easement for fear of being blamed in the  
9 future should any damage or difficulty result on my property in regards to the  
10 pipeline. What if we would like to expand our feedlot operation? We are  
11 researching installing a hoop building and this area might be where it would need  
12 to go.

13 **Q: Do you think such a restriction would impact you economically?**

14 A: Well yes, of course. It restricts both me and my successors from growing and  
15 expanding.

16 **Q: How do you think such a restriction would impact you economically?**

17 A: The future of this land may not be exactly how it's being used as of this moment,  
18 and having the restrictions and limiting my ability to develop my land in certain  
19 ways presents a huge negative economic impact on myself, my family, and any  
20 potential future owner of the property. You have no idea how I or the future owner  
21 may want to use this land in the future or the other land across Nebraska  
22 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years  
23 ago it would have been hard to imagine all the advances that we have now or how  
24 things change. Because the Easement is forever and TransCanada gets the rights in  
25 my land forever we have to think with a very long term view. By placing their  
26 pipeline on under across and through my land that prevents future development  
27 which greatly negatively impacts future taxes and tax revenue that could have  
28 been generated by the County and State but now will not. When you look at the  
29 short blip of economic activity that the two years of temporary construction efforts



1 may bring, that is far outweighed by the perpetual and forever loss of opportunity  
2 and restrictions TransCanada is forcing upon us and Nebraska.

3 **Q: Do you have any concerns about the environmental impact of the proposed**  
4 **pipeline?**

5 A: Yes, I do.

6 **Q: What are some of those concerns?**

7 A: As an affected land owner and Nebraskan, I am concerned that any construction,  
8 operation, and/or maintenance of the proposed Keystone XL Pipeline would have  
9 a detrimental impact upon the environment of my land specifically, as well as the  
10 lands near my land and surrounding the proposed pipeline route.

11 **Q: Do you have any other environmental concerns?**

12 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in  
13 construction and/or maintenance and operation. I am concerned about spills and  
14 leaks that TransCanada has had in the past and will have in the future. This could  
15 be catastrophic to my operations or others and to my county and the State.

16 **Q: Do you have any thoughts regarding if there would be an impact upon the**  
17 **natural resources on or near your property due to the proposed pipeline?**

18 A: Yes, I believe that any construction, operation, and/or maintenance of the  
19 proposed Keystone XL Pipeline would have detrimental impacts upon the natural  
20 resources of my land, and the lands near and surrounding the proposed pipeline  
21 route.

22 **Q: Do you have any worries about potential impacts from the proposed pipeline**  
23 **to the soil of your land, or land near you?**

24 A: Yes, I believe that any construction, operation, and/or maintenance of the  
25 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of  
26 our land, as well as land along and surrounding the proposed pipeline route. This  
27 includes, but is not limited to, the reasons that we discussed above of disturbing  
28 the soil composition and makeup as it has naturally existed for thousands and  
29 millions of years. This disruption could be during the construction process and/or

1 any future maintenance or removal process. I'm gravely concerned about the  
2 fertility and the loss of economic ability of my property to grow the crops, or grow  
3 the grasses, or grow whatever it is at that time they exist on my property or that I  
4 may want to grow in the future, or that a future owner may want to grow. The  
5 land will never be the same as it exists now, undisturbed, after it is trenched up for  
6 the proposed pipeline.

7 **Q: Do you have any concerns about the potential impact of the proposed pipeline**  
8 **upon the groundwater over your land, or surrounding lands?**

9 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
10 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
11 groundwater of not only under my land, but also near and surrounding the pipeline  
12 route, and in fact, potentially the entire State of Nebraska. Water is life plain and  
13 simple and it is simply too valuable to our State and the country to put at  
14 unreasonable risk.

15 **Q: Do you have any concern about the potential impact of the proposed pipeline**  
16 **upon the surface water on, or near or around your land?**

17 A: Yes, I have significant concerns that any construction, operation, and/or  
18 maintenance of the proposed Keystone XL Pipeline would have detrimental  
19 impact upon the surface water of not only within my property boundary, but along  
20 and near and surrounding the pipeline route, and in fact, across the state of  
21 Nebraska.

22 **Q: Do you have any concern about the potential impacts of the proposed pipeline**  
23 **upon the wildlife and plants, other than your growing crops on or near your**  
24 **land?**

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 wildlife and the plants, not only that are located on or can be found upon my land,  
28 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 shown here that is within Nebraska  
26 essentially twins or 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 portion of what has been previously called the I-90**  
7 **corridor alternative route, specifically for the portion of the proposed**  
8 **pipeline within Nebraska as found in Attachment No. 6 to your testimony, is**  
9 **in the public interest of Nebraska?**

10 A: No, I do not.

11 **Q: Do you believe there is any potential route for the proposed Keystone XL**  
12 **Pipeline across, within, under, or through the State of Nebraska that is in the**  
13 **public interest of the citizens of Nebraska?**

14 A: No, I do not.

15 **Q: Why do you hold that belief?**

16 A: Because there simply is no public interest based on all of the factors that I am  
17 aware and that I have read and that I have studied that this Commission is to  
18 consider that would establish that a for-profit foreign-owned pipeline that simply  
19 crosses Nebraska because we are geographically in the way between where tar  
20 sands are in Canada to where it wants to ship it to in Texas could ever be in the  
21 public interest of Nebraskans. We derive no benefit from this project. It is not for  
22 public use. Nebraska is simply in the way and when all considerations are taken in  
23 there is no net benefit of any kind for Nebraska should this project be placed in our  
24 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
25 the negative impacts and concerns.

26 **Q: What do you think about the applicant, TransCanada’s argument that its**  
27 **preferred route for its proposed Keystone XL Pipeline is in the public interest**  
28 **of Nebraska because it may bring temporary jobs during the construction**  
29 **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 forced 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: 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: What is it that you are requesting the Public Service Commissioners do in**  
9 **regards to TransCanada's application for the proposed Keystone XL Pipeline**  
10 **across Nebraska?**

11 A: I am respectfully and humbly requesting that the Commissioners think far beyond  
12 a temporary job spike that this project may bring to a few counties and beyond the  
13 relatively small amount of taxes this proposed foreign pipeline would possibly  
14 generate. And, instead think about the perpetual and forever impacts of this  
15 pipeline as it would have on the landowners specifically, first and foremost, but  
16 also thereby upon the entire state of Nebraska, and to determine that neither the  
17 preferred route nor the Keystone mainline alternative route are in the public  
18 interest of the citizens of the state of Nebraska. And if the Commissioners were  
19 inclined to modify TransCanada's proposed routes and were to be inclined to grant  
20 an application for a route in Nebraska, that the only potential route that would  
21 make any intelligent sense whatsoever would be twinning or near paralleling of  
22 the proposed KXL with the existing Keystone I pipeline. The point of including  
23 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been  
24 considered by TransCanada before. It simply does not make sense to add yet  
25 another major oil pipeline crisscrossing our state creating new pumping stations,  
26 creating new impacts on additional counties and communities and going through  
27 all of the court processes with myself and other landowners like me when this  
28 applicant already has relationships with the landowners, the towns and the  
29 communities along Keystone I, and that Keystone I is firmly outside of the sand



1 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: Does Attachment No. 8 here contain other documents you are competent to**  
4 **speak about that you wish to be part of your testimony and to discuss in more**  
5 **detail as needed at the August 2017 Hearing?**

6 A: Yes.

7 **Q: Are all of your statements in your testimony provided above true and**  
8 **accurate as of the date you signed this document to the best of your**  
9 **knowledge?**

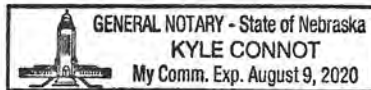
10 A: Yes, they are.

11 **Q: Thank you, I have no further questions at this time and reserve the right to**  
12 **ask you additional questions at the August 2017 Hearing.**

Vencille Hipke  
Vencille Hipke

Subscribed and Sworn to me before this 30 day of May, 2017.

[Signature]  
Notary Public



**Attachment No. 1**

PREPARED BY  
exp Energy Services Inc.

S.033  
T.033N  
R.015W



Lloyd Hipke

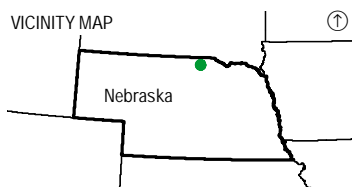
S.004  
T.032N  
R.015W

S.003  
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R.015W

S.009  
T.032N  
R.015W

S.010  
T.032N  
R.015W

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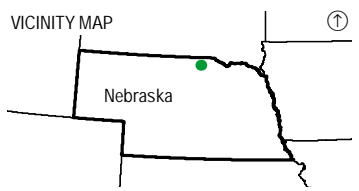
KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY  
Lloyd Hipke

TRACT NO. ML-NE-HT-40180.000  
STATE: Nebraska  
COUNTY: Holt  
SECTION: 004  
TOWNSHIP: 032N  
RANGE: 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\50888\KEYSTONE\_XL\50888\_004\0381





KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY  
Lloyd Hipke

TRACT NO. ML-NE-HT-40200.000  
STATE: Nebraska  
COUNTY: Holt  
SECTION: 003  
TOWNSHIP: 032N  
RANGE: 015W

- 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

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(Above Space for Recorder's Use Only)

Tract No.: ML-NE-HT-40180.000  
ML-NE-HT-40200.000

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**") **Lloyd Hipke a/k/a Lloyd Z. Hipke and Vencille Hipke a/k/a Vincille Marie Hipke, husband and wife**, whose mailing address is 47121 894<sup>th</sup> 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 markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to

Grantor's Initials \_\_\_\_\_

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 349.89 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the E1/2 and the NE1/4 of the NW1/4, except North 25 acres of Section 4, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 200, Page 638, Book 180, Page 128 and Book 179, Page 743 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

**Less and Except:** A tract of land containing 2.30 acres, more or less, and being out of the NE1/4 of Section 4, Township 32 North, Range 15 West of the 6<sup>th</sup> P.M., Holt County, Nebraska, and being more particularly described as follows: Commencing at the Northeast Corner of said Section 4; thence West 1100 feet to the point of beginning; thence South 500 feet; thence West 200 feet; thence North 500 feet; thence East 200 feet to the point of beginning, as recorded in Book 175 and Page 271.

A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SW1/4 of Section 3, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 182, Page 189 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):

\_\_\_\_\_  
**Lloyd Hipke a/k/a Lloyd Z. Hipke**

\_\_\_\_\_  
**Vencille Hipke a/k/a Vincille Marie Hipke**

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]



STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Lloyd Hipke a/k/a Lloyd Z. Hipke**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Vencille Hipke a/k/a Vincille Marie Hipke**

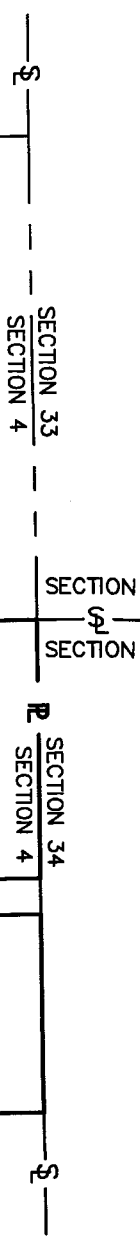
\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

**LEGEND**  
 R. PROPERTY LINE  
 P. 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-15-W, SECTION 4  
 ML-NE-HT-40180.000

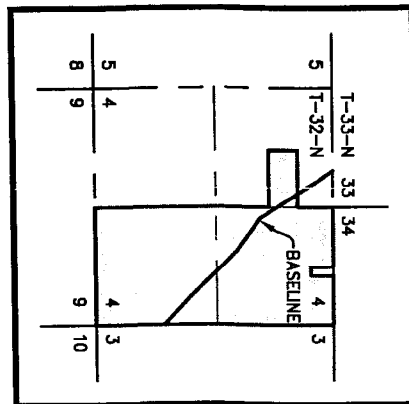


**LLOYD HIPKE**

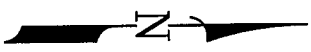
VOLUME 200, PAGE 638  
 VOLUME 180, PAGE 128  
 VOLUME 179, PAGE 743  
 D.R.H.C.N.

SEE DETAIL "A"

SEE DETAIL "B"



VICINITY MAP  
 N.T.S.




0 500 1000  
 SCALE: 1" = 1,000'

**TRACT LEGAL DESCRIPTION:**  
 PART OF THE E/2 AND THE  
 NE/4 NW/4 EXCEPT NORTH 25  
 ACRES OF SECTION 4,  
 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: 4.356'±  
 AREA OF PERMANENT EASEMENT: 5.0 ACRES  
 AREA OF TEMPORARY WORKSPACE: 6.0 ACRES  
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.6 ACRE



**TransCanada**  
*In Business to Deliver*

**KEYSTONE XL PROJECT**  
**EASEMENT AREA**  
**ACROSS THE PROPERTY OF**  
**LLOYD HIPKE**  
**ML-NE-HT-40180.000**

**PROJECT:** XL  
**EXHIBIT A**

**APPROVED BY:** **SLR**  
**DRAWING NUMBER:** XL-08-ML-SK-3652

**NO.:** **REVISION:** **DATE:**

**SCALE:** **DATE:** **DRAWN BY:** **CHECKED BY:**

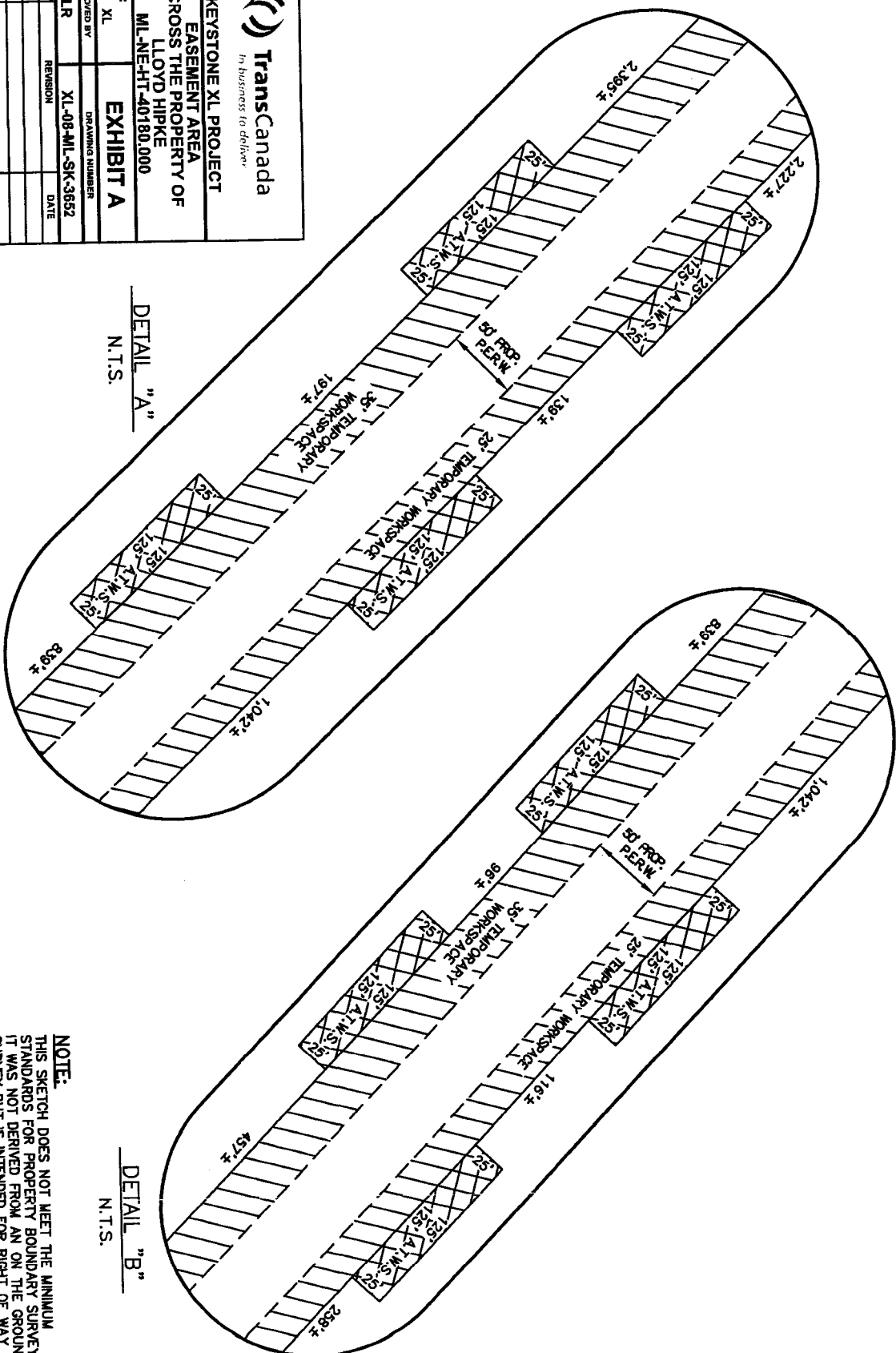
**1" = 1000'** **11/04/14** **JN** **ALS**



**PROPOSED  
ADDITIONAL TEMPORARY WORKSPACE  
PERMANENT EASEMENT & RIGHT OF WAY**

HOLT COUNTY, NEBRASKA

T-32-N, R-15-W, SECTION 4  
ML-NE-HT-40180.000



DETAIL "B"  
N.T.S.

DETAIL  
N.T.S.



**TransCanada**  
*in business to deliver*

## **KEYSTONE XL PROJECT**

**EASEMENT AREA**

**LLOYD HIPKE**

**ML-NE-HT-40180.000**

PROJECT: XL  
**EXHIBIT A**

APPROVED BY	DRAWING NUMBER
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SLR	XL-08-ML-SK-365
-----	-----------------

NO.	REVISION	DATE
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[illegible]

SCALE	DATE	DRAWN BY	CHECKED
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N.T.S.	11/04/14	JN	AI
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exp.

**The new identity of Tron**

**SHEET 2 OF 2**

**NOTE:**

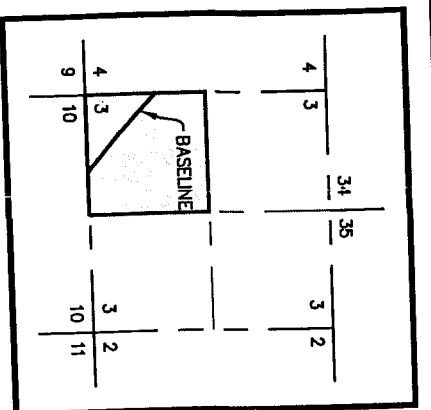
THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT-OF-WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

LEGEND  
 R- PROPERTY LINE  
 S- SECTION LINE  
 P- PROPOSED PERMANENT EASEMENT & RIGHT OF WAY  
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA

# HOLT COUNTY, NEBRASKA

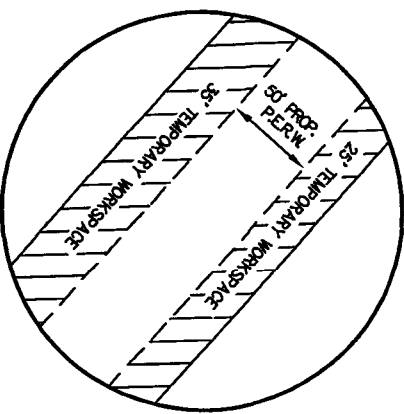
## T-32-N, R-15-W, SECTION 3

### ML-NE-HT-40200.000



VICINITY MAP  
 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.

LLOYD Z. HIPKE  
 VOLUME 182, PAGE 189  
 D.R.H.C.N.



TRACT LEGAL DESCRIPTION:  
 SW 1/4 OF SECTION 3,  
 T-32-N, R-15-W

	
In business to deliver	
KEYSTONE XL PROJECT	
EASEMENT AREA ACROSS THE PROPERTY OF LLOYD Z. HIPKE	
ML-NE-HT-40200.000	
PROJECT: XL	EXHIBIT A
APPROVED BY	DRAWING NUMBER
SLR	XL-08-MI-SK-3653
NO.	REVISION
DATE	DATE
SCALE	DATE
1" = 500'	11/04/14
JN	ALS
CHECKED BY	

TOTAL DISTANCE ACROSS PROPERTY: 2,309'±  
 AREA OF PERMANENT EASEMENT: 2.6 ACRES  
 AREA OF TEMPORARY WORKSPACE: 3.1 ACRES

exp.

The new identity of TransCanada

**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-40200.000

I/we Lloyd Z. Hipke and Vencille M. Hipke, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Four Hundred Eighty Two Dollars and No Cents (\$1,482.00), 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:

**SW/4**

**Section 3, Township 32-N, Range 15-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, 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-40180.000

I/we Lloyd Z. Hipke and Vencille M. Hipke, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Thousand Sixteen Dollars and No Cents (\$3,016.00), 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:

**Part of the E/2, Part of the NE/4 of the NW/4**

**Section 4, Township 32-N, Range 15-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, I/we have hereunto set our hands on this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Owner Signature

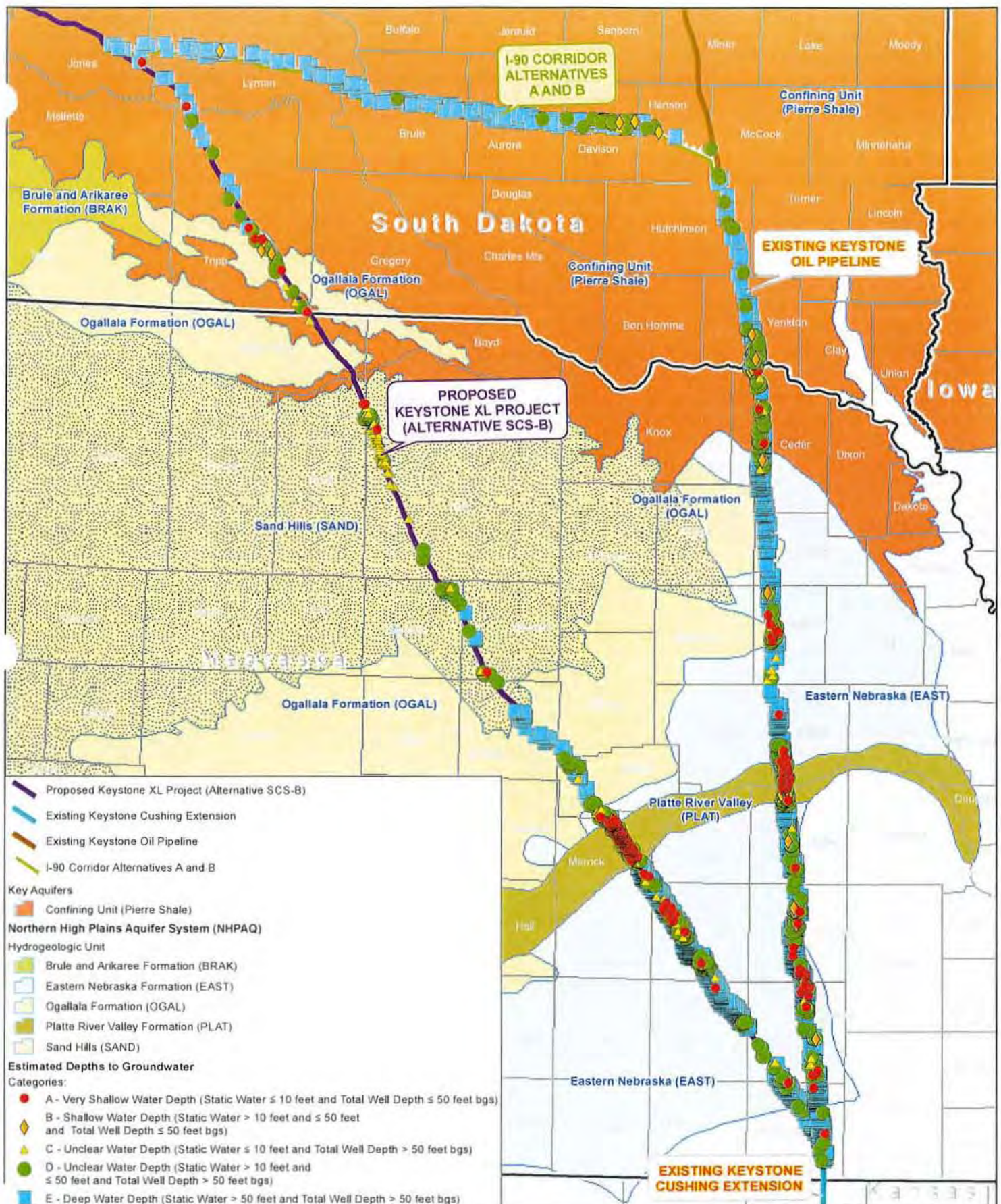
\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

**Attachment No. 6**





## 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**



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100%



11/11/2011

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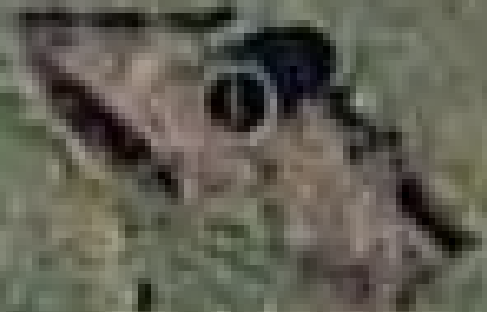
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