

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
Randy Thompson in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Lancaster County)

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

2 A: My name is Randy Thompson.

3 **Q: Where do you live?**

4 A: I live in Martell, Nebraska.

5 **Q: How are you familiar with the proposed TransCanada Keystone XL pipeline?**

6 A: From 2004 until her death in May of 2011, I held the Power of Attorney for my
7 mother, Alta Frances Thompson, who owns property in Merrick County Nebraska
8 that was subject to a potential earlier route for the proposed Keystone XL pipeline.
9 I have had many dealings with TransCanada in person and in writing.

10 **Q: Please talk about your overall relationship with TransCanada throughout
11 this entire process?**

12 A: Our relationship with the land agents did not start out being a contentious one but
13 quickly became that way when TransCanada discovered they couldn't force their
14 will upon us.

15 **Q: Please tell us about your initial meeting with TransCanada?**

1 **A:** After several persistent phone calls from a young land agent we reluctantly agreed
2 to have a first meeting with him to discuss a potential project that would affect our
3 property. We politely listened to his proposal and after discovering it would
4 dissect one of our gravity irrigated corn fields and one of our pastures we told him
5 we were not interested. Upon his disclosure that it was a Canadian company
6 wanting to build the pipeline we felt secure in our position and thought that would
7 be the end of it, it turned out to just be the beginning.

8 **Q: What happened after your initial meeting with TransCanada?**

9 **A:** The land agent continued to make unwanted phone calls to me in an attempt to
10 gain permission to survey our land, at one point I told him to go ahead but they
11 were wasting their time because we had no interest in having the pipeline on our
12 property.

13 **Q: What happened after you turned down the TransCanada land agent you**
14 **initially met with?**

15 **A:** After a few months the first land agent was replaced by another agent named Dan
16 and that is when our relationship with them went downhill quickly. Dan was
17 arrogant and much more aggressive in his approach towards us, from the
18 beginning he tried to establish the idea that TransCanada was the one who was
19 going to be calling the shots on our property, not us.

20 **Q: What did you tell the new land agent when he contacted you?**

21 **A:** I immediately informed Dan that we had no interest in the pipeline and we did not
22 want to have any further discussion with them until they had a permit to build the
23 project.

24 **Q: Did the land agent stop contacting you after that?**

25 **A:** With a total disregard for my personal time and privacy Dan continued to call me
26 on a regular basis for a period that would extend over three or four years.

27 **Q: Did TransCanada ever offer you an amount for an easement?**

1 **A:** At one point Dan presented us with an offer from TransCanada for an easement in
2 the amount of approximately \$9,000 to cross eighty acres of our land, he assured
3 us it was the final and best offer we would receive from the company;

4 **Q:** **Did you take the offer?**

5 **A:** No, we rejected the offer

6 **Q:** **Did TransCanada make any additional offers?**

7 **A:** Several months later they offered us \$18,000 with the same assurance that it was
8 their final and best offer.

9 **Q:** **Did you take offer?**

10 **A:** No, it was rejected as well.

11 **Q:** **Did TransCanada make any offers after that?**

12 **A:** On another occasion we received a letter from TransCanada stating they would
13 give us \$2,500.00 if we would give them an option for an easement.

14 **Q:** **Did you take that offer?**

15 **A:** No, I took that as an insult to my intelligence.

16 **Q:** **At any meetings did the land agent ever talk to you about their political
17 power and your rights?**

18 **A:** At one meeting with Dan we were told that because of TransCanada’s political
19 power we were not in a position to stop the pipeline from crossing our property so
20 if we were smart we would fall in line with their demands or we would receive a
21 lot less money in the end. TransCanada and their agents seemed incapable of
22 grasping the idea that money was never the issue we were concerned about with
23 this project; it was the violation of our property rights by a foreign owned
24 company, the disruption of our farming operation, and the potential pollution of
25 our water supply that made us reject their proposals.

26 **Q:** **What happened after that?**

27 **A:** In July of 2010 TransCanada took their bullying tactics to a new level when they
28 mailed us a letter dated July 21, 2010, framing the “facts” as if the KXL pipeline
29 was totally approved and stating they were going to take use eminent domain to

1 take us to court. A true and accurate copy of that letter is here as **Attachment No.**
2 **1.**

3 **Q: Did you respond to the letter?**

4 **A:** I thought their July 2010 claim to eminent domain powers was a fraudulent one so
5 I responded on or about August 8, 2010, and told them to come on with it. A true
6 and accurate copy of that letter is here as **Attachment No. 2.**

7 **Q: What was TransCanada's response?**

8 **A:** They did nothing.

9 **Q: Did TransCanada send any additional letters?**

10 **A:** Yes, in April of 2011 I received another almost identical letter from TransCanada.
11 A true and accurate copy of that letter is here as **Attachment No. 3.**

12 **Q: What was TransCanada's response?**

13 **A:** Once again they did nothing when we refused to be intimidated by their actions.

14 I would like to note that our experience with TransCanada was not a unique one
15 due to a "bad apple" land agent who was overly aggressive. After speaking with
16 other land owners who had similar experiences as mine with different agents
17 assigned to them it has become abundantly clear to me that the agents were
18 instructed to use the same harassing and bullying actions to secure easements from
19 Nebraska land owners who would not willingly accept the terms of TransCanada's
20 proposal. It is no wonder that Nebraska landowners scoff at TransCanada's
21 "friendly neighbor" slogan.

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

24 **A:** Yes. I would like to say I find it impossible to describe to the full extent my
25 experience with TransCanada as they were pursuing an easement across our land.
26 The mental anguish, sleepless nights and uncertainty created by this project could
27 never be conveyed in a few paragraphs written on a piece of paper.

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.

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.**

Randy Thompson
Randy Thompson

Subscribed and Sworn to me before this 1st day of June, 2017.

Sarah L Lahr
Notary Public

State of Nebraska - General Notary
SARAH L LAHR
My Commission Expires
December 3, 2019

July 21, 2010

**ALTA FRANCES THOMPSON
C/O RANDY THOMPSON
1860 W BENNETT RD.
MARTELL, NE 68404**

Re: ML-NE-MR-00390.000

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.

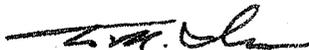
As consideration for granting Keystone these easements, TransCanada is offering you the total sum of \$17,860.50. This sum includes \$9,639.00 for the permanent easement, which represents 100% of the total fee value for the permanent easement, despite the fact the permanent easement encompasses significantly less property rights than the total fee. Additionally, the amount includes \$8,221.50 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,



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

Encl.

Dear Mr. Irons: This letter is in response to your easement proposal made to us in a letter dated July 21, 2010. Please be informed that our position on this matter remains the same as we have discussed with your local representative. We will be willing to negotiate an agreement with you when and if you receive final approval from the U.S. Dept. of State for a permit to construct this project. With the absence of such a permit , we can find no logical reason to advance an easement to you at this time. Whether or not you proceed with unwarranted condemnation proceedings will have to be your determination.

Sincerely,

Randy Thompson

Charles Thompson

Representatives with P.O.A. for Alta Frances Thompson

Dated: August 8, 2010

Subject property located in Merrick Co. Nebraska

April 7, 2011

ALTA FRANCES THOMPSON
C/O RANDY THOMPSON
1860 W BENNETT RD
MARTELL, NE 68404

Re: ML-NE-MR-00390.000

Dear Owner:

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 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 \$17,861. This sum includes \$9,639 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 \$8,222 for 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,



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

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
Dave Troester in Support of Landowner
Intervenors

State of Nebraska)
) ss.
Holt County)

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

2 A: My name is Dave Troester.

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?**

16 A: Farmer.

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

2 A: Sharyn Troester

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

4 A: 2.

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

6 A: 5.

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: How long the land has been in your family?**

11 A: Our family farm has been in our stewardship for many decades. There are corner
12 machines on the land involved, underground tiling, underground cable for the
13 corner machines, and three phase underground wiring for power lines. There is a
14 quonset building used for storage of seed, farm machinery and work areas.
15 Currently, two families reside on land that is on the proposed route that have
16 drinking wells being used.

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

18 A: Yes.

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

21 A: Yes.

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

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

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

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

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

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

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

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

17 A: Yes.

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

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

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

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

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

28 A: No, they have not.

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

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

6 **Q: Did TransCanada define what they meant by “property that is reasonably**
7 **necessary”?**

8 A: No, they did not.

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

11 A: Yes, they did.

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

14 A: Yes, they did.

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

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

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

27 A: No, I do not.

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

1 A: Yes, they did.

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

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

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

14 A: Yes, it is.

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

17 A: Yes, I have.

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

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

25 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
26 **agreement do you have any concerns about any portions of it or any of the**
27 **language either included in the document or missing from the proposed**
28 **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 my land and thereby potentially negatively impacts my community and
4 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 your land. So, if you can start at the beginning of that document and**
10 **let's 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 my
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 me for all of the known and unknown affects and all of the
17 rights I am giving up and for all the things they get to do to my land and for what
18 they will prevent me from doing on my land and they only will pay me one time at
19 the 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 my land forever for use as they see fit so
23 they can make a daily profit from their customers. If I was to lease ground from
24 my neighbor I would typically pay twice a year every year as long as they granted
25 me the rights to use their land. That only makes sense – that is fair. If I was going
26 to rent a house in town I would typically pay monthly, every month until I gave up
27 my right to use that house. By TransCanada getting out on the cheap and paying
28 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
29 revenue collection on the money I would be paid and then pay taxes on and

1 contribute to this state and this country. It is money I would be putting back into
2 my local community both spending and stimulating the local economy and
3 generating more economic activity right here. Instead TransCanada's shareholders
4 keep all that money and it never finds its way to Nebraska.

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

6 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
7 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
8 limited partnership..." and I have no idea who that really is. I have no idea who is
9 forcing this pipeline on us or who the owners of the entities are, or what are the
10 assets backing this limited partnership, or who the general partner is, or who all
11 the limited partners are, and who makes up the ownership of the these partners or
12 the structure or any of the basic things you would want to know and understand if
13 you would want to do business with such an outfit. According to TransCanada's
14 answer to our 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 over 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 your 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 their easement
3 to be transferred or sold to someone or some company or country or who knows
4 what that I don’t know and who we may not want to do business with. This
5 pipeline would be a huge asset for TransCanada and if they can sell to the highest
6 bidder that could have terrible impacts upon all of Nebraska depending upon who
7 may buy it and I don’t know of any safeguards in place for us or the State to veto
8 or have any say so in who may own, operate, or be responsible for this pipeline in
9 the 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 like 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. My land however
25 will, and I want my family or future Nebraska families to have that land as
26 undisturbed as possible and it is not in my interest or the public interest of
27 Nebraska to be forced to give up perpetual and permanent rights in the land for
28 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 my ground
3 until the end of time just sitting there while they are not using it, but I am still
4 prevented from doing on my land and using my land what I 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 my 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 if the 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 accidently 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.

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

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

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

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

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

26 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
27 Easement to any person, company, country, etc. at their sole discretion at anytime
28 to anyone. This also means that any buyer of the easement could do the same to a
29 third buyer and so on forever. There is no change of control or sale provision in

1 place to protect the Landowner or Nebraska or to provide compensation for such
2 change of control or ownership. It is not conducive to the protection of property
3 rights or economic interests to allow unilateral unrestricted sale of the Easement
4 thereby forcing upon the Landowner and our State a new unknown Easement
5 owner.

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

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

- 11 i. "pipeline installation activities"
- 12 ii. "availability of labor and materials"
- 13 iii. "commercially reasonable costs and expenses"
- 14 iv. "reasonably anticipated and foreseeable costs and expenses"
- 15 v. "yield loss damages"
- 16 vi. "diminution in the value of the property"
- 17 vii. "substantially same condition"
- 18 viii. "an actual or potential hazard"
- 19 ix. "efficient"
- 20 x. "convenient"
- 21 xi. "endangered"
- 22 xii. "obstructed"
- 23 xiii. "injured"
- 24 xiv. "interfered with"
- 25 xv. "impaired"
- 26 xvi. "suitable crossings"
- 27 xvii. "where rock is encountered"
- 28 xviii. "as nearly as practicable"
- 29 xix. "pre-construction position"

1 xx. “pre-construction grade”

2 xxi. “various engineering factors”

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

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

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

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

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

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

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

27 **Q: As the owner of the land in question and as the person who knows it better**
28 **than anyone else, do you believe that TransCanada offered you just, or fair,**

1 **compensation for all of what they proposed to take from you so that their tar**
2 **sands pipeline could be located across your 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 I'm giving up, and
5 what we will be prevented from doing in the future and how their pipeline would
6 impact my property for ever and ever.

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

10 A: No, never.

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

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

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

17 A: Yes, it is.

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

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

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

26 A: No, I did not.

27 **Q: Why not?**

28 A; Because I do not believe that it is fair or just to try to get me to agree to a small
29 sum of money when I have no idea how bad the impacts or damages that they, or

1 their contractors, or subcontractors, or other agents or employees, may cause on
2 my land at any time in the future that resulted from the construction or surveying
3 or their activities upon my land.

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

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

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

15 A: No, they have not.

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

19 A: No, they have not.

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

22 A: Yes, I am.

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

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

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

3 A: No, they have not.

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

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

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

17 A: No, it has not.

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

21 A: No, I do not.

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

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

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

28 A: Yes, I do.

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

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

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

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

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

10 A: No, of course not.

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

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

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

18 A: Well, yes I have.

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

23 A: No, of course not.

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

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

1 **Q: At the beginning of your statement, you briefly described your property that**
2 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
3 **give the Commissioners a sense of specifically how you believe the proposed**
4 **Keystone XL Pipeline and its preferred route, which proposes to go across**
5 **your land, how it would in your opinion based on your knowledge,**
6 **experience, and background of your land, affect it.**

7 A: Our land is very sandy and porous. So the installation of the pipeline from
8 TransCanada could threaten our productive land and our valuable water resources.
9 We should not take for granted our valuable asset, and that is water, water for
10 people, animals, crops and recreational use. We cannot magically make water.
11 Water is vital to life.

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

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

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

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

5 A: No, I do not.

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

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

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

16 A: Well yes, of course.

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

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

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

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

6 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 A: Yes, I have.

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

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

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

1 A: No, I do not.

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

5 A: No, I do not.

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

8 A: No, I do not.

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

12 A: No, I do not.

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

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

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

28 A: First of all, not all jobs are created equally. Most jobs that are created, whether
29 temporary or on a permanent basis, don’t come with a project that has all the

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

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

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

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

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

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

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

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

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

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

23 A: Yes. We worry about the tar sands that need strong and damaging chemicals
24 (solvents) that are used to push this dirty liquid through the underground pipeline
25 which will be close to home and drinking wells. Solvents, which are unlike oil,
26 will permeate immediately into water and the only way to remove solvents is to
27 distill it which means the water would be permanently destroyed. We are
28 instructed to be concerned about nitrates in water, shouldn't we worry about the
29 tar sands mixture leaking into the drinking wells people and animals use? When

1 the sandy, porous and permeable land is dug up and disturbed as the pipeline
2 construction would be certainly do, there is little, if any healing process to return
3 the land to its natural productive state. It will be forever changed. Our constitution
4 grants us landowners property rights. Rights that were reserved for the
5 government for the taking of property for specified purpose of “public use” do not
6 apply to this Application or project. The proposed routes should not be approved.
7 The constitution does not say a private company can use eminent domain for its
8 own use and then profit from it. There are strict laws for the government to use
9 eminent domain.

10 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
11 **like the Public Service Commissioners to consider in their review of**
12 **TransCanada’s Application?**

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

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

27 **A:** Yes.

1 **Q: What is it that you are requesting the Public Service Commissioners do in**
2 **regards to TransCanada’s application for the proposed Keystone XL Pipeline**
3 **across Nebraska?**

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

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

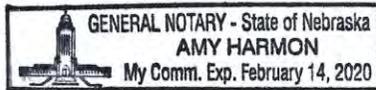
26 A: Yes, they are.

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

Dave Troester
Dave Troester

Subscribed and Sworn to me before this 30th day of May, 2017.

Amy Harmon
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.



S.023
T.029N
R.010W

S.024
T.029N
R.010W

The Estate of Hazel V. Nichols, Deceased
Sharyn Troester

S.026
T.029N
R.010W

S.025
T.029N
R.010W

IMAGERY: NAIP 2016
0 250 500 Feet



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
The Estate of Hazel V. Nichols, Deceased
Sharyn Troester

TRACT NO. ML-NE-HT-30515.000
STATE: Nebraska
COUNTY: Holt
SECTION: 026
TOWNSHIP: 029N
RANGE: 010W

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

May 2017 - X:\Drawings\65858\KEYSTONE_XL\65858_09492581

S. 023
T. 029 N
R. 010 W

S. 024
T. 029 N
R. 010 W



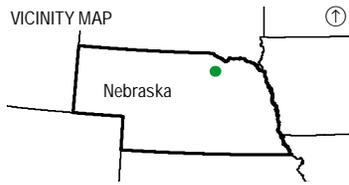
S. 026
T. 029 N
R. 010 W

S. 025
T. 029 N
R. 010 W

David W. Troester

IMAGERY: NAIP 2016

0 90 180 Feet



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
David W. Troester

TRACT NO. ML-NE-HT-30517.000
STATE: Nebraska
COUNTY: Holt
SECTION: 026
TOWNSHIP: 029N
RANGE: 010W

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

PREPARED BY
exp Energy Services Inc.



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
David W. Troester

TRACT NO. ML-NE-HT-30520.000
STATE: Nebraska
COUNTY: Holt
SECTION: 025
TOWNSHIP: 029N
RANGE: 010W

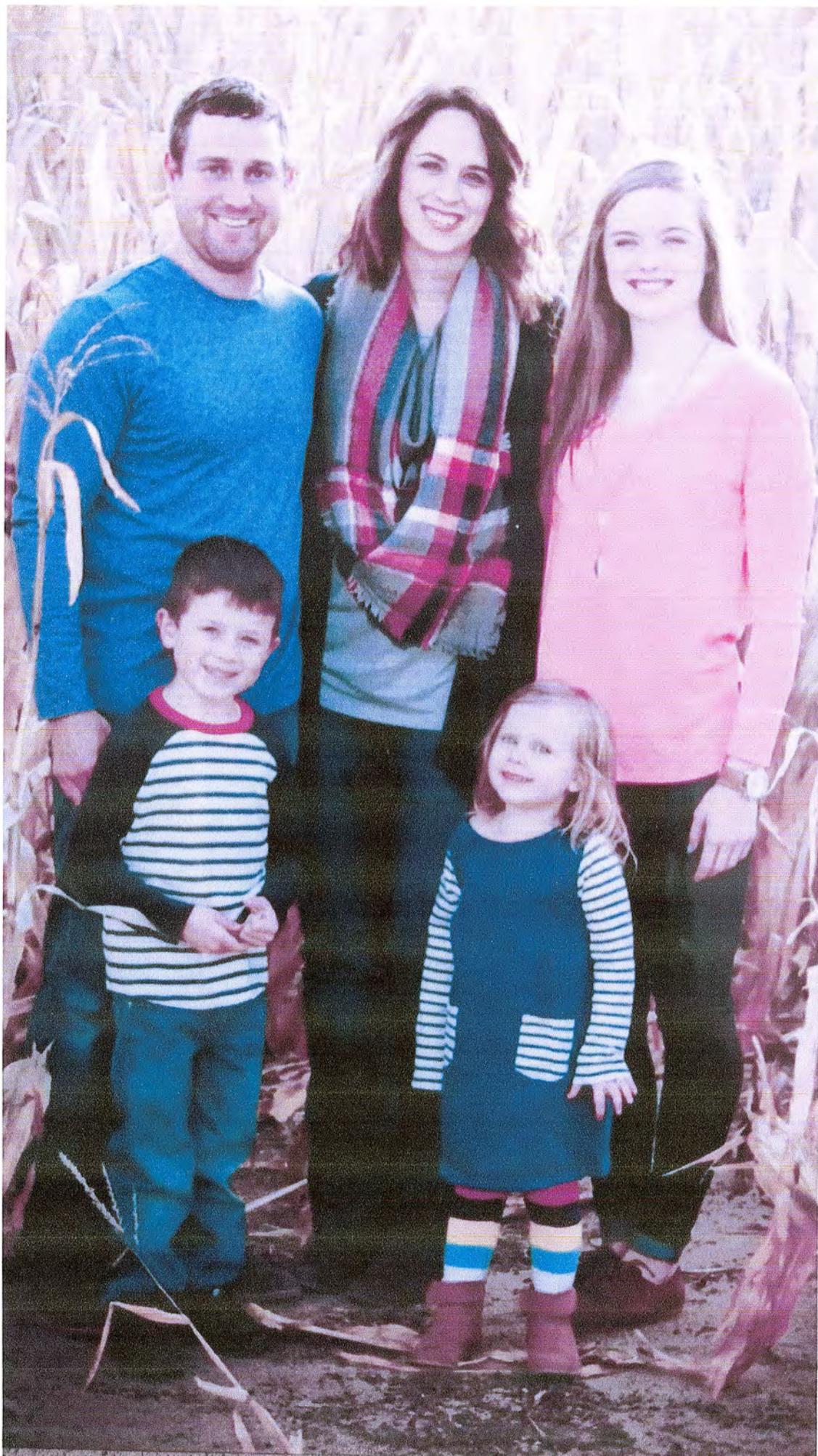
- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\50588\KEYSTONE_XL\9000_9949258

Attachment No. 2



Barbara Great City, Mason City
Bob & Beverly City, son-in-law and daughter



Mr Aaron Ivester, wife Jennifer
Grandchildren

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-30495.000

**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**") **Nichols Family Limited Partnership, a Nebraska limited partnership**, whose mailing address is 119 E. Adams Street, O'Neill, NE 68763 (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 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NE1/4 of Section 22, T29N, R10W of the 6th P.M., as recorded in Book 195, Page 118A 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):

Nichols Family Limited Partnership, a Nebraska limited partnership

By:

Its:

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By _____ of

Nichols Family Limited Partnership, a Nebraska limited partnership, on behalf of the corporation.

Notary Public Signature

Affix Seal Here

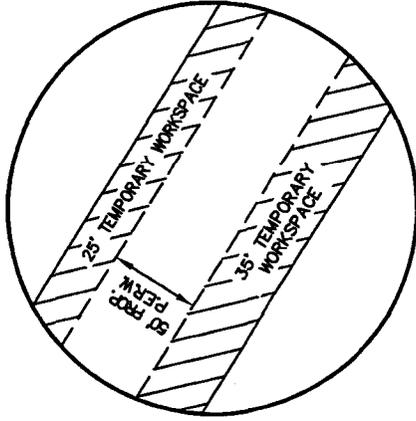
HOLT COUNTY, NEBRASKA
T-29-N, R-10-W, SECTION 22
ML-NE-HT-30495.000

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

SECTION 15
 SECTION 22

NICHOLS FAMILY LIMITED PARTNERSHIP
 VOLUME 195, PAGE 118A
 D.R.H.C.N.

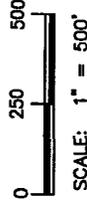
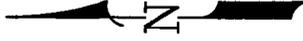
SECTION 23
 SECTION 22



SEE DETAIL "A"

DETAIL "A"
 N.T.S.

VICINITY MAP
 N.T.S.



SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:
 NE/4 OF SECTION 22
 T-29-N, R-10-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: 1,818'±
 AREA OF PERMANENT EASEMENT: 2.1 ACRES
 AREA OF TEMPORARY WORKSPACE: 2.4 ACRES

LEGEND:
 P §
 §
 PROP.
 P.E.R.W.
 D.R.H.C.N.



KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
NICHOLS FAMILY
LIMITED PARTNERSHIP
ML-NE-HT-30495.000

PROJECT: XL EXHIBIT A

APPROVED BY	DRAWING NUMBER		
SLR	XL-08-ML-SK-3355		
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/29/14	JN	ALS



**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-30515.000

**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") **Sharyn L. Troester, as Personal Representative of the Estate of Hazel V. Nichols, Deceased**, whose mailing address is 119 E. Adams Street, O'Neill, NE 68763 (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

Grantor's Initials _____

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 153.66 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the NE1/4 of Section 26, Township 29 North, Range 10 West of the 6th P.M., as recorded in Book 171, Page 432 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):

Estate of Hazel V. Nichols, Deceased

Sharyn L. Troester, as Personal Representative

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **Sharyn L. Troester, as Personal Representative of the Estate of Hazel V. Nichols, Deceased**

Notary Public Signature

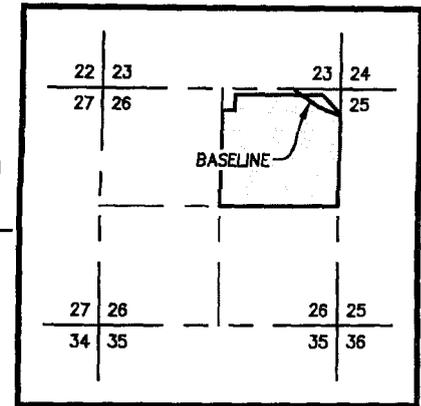
Affix Seal Here

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

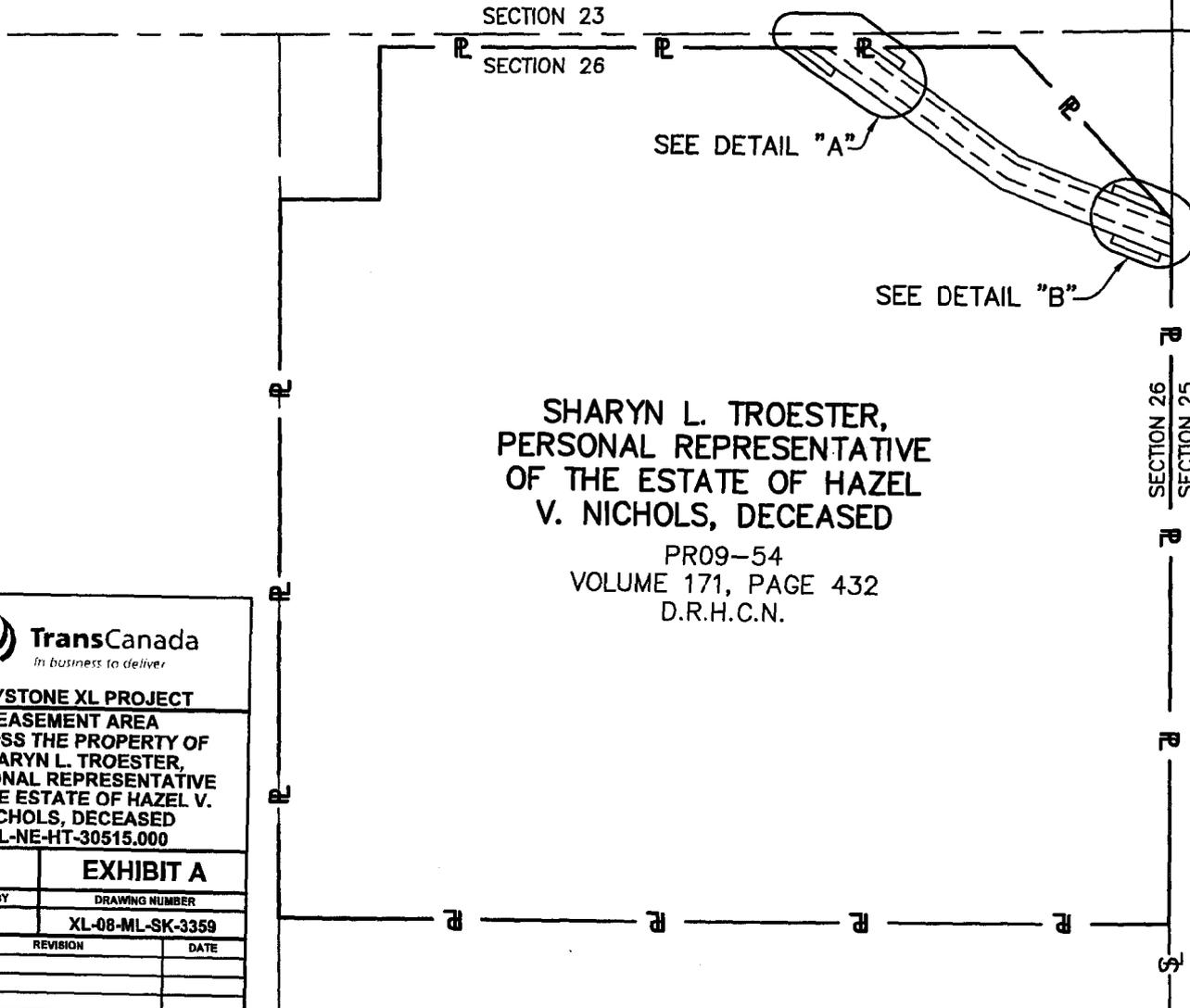
PROPERTY LINE
 SECTION LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY
 DEED RECORDS OF HOLT COUNTY, NEBRASKA

HOLT COUNTY, NEBRASKA

T-29-N, R-10-W, SECTION 26
 ML-NE-HT-30515.000



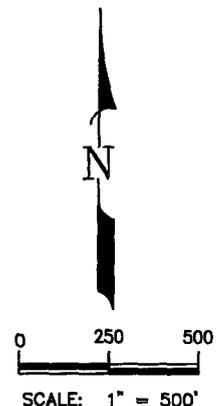
VICINITY MAP
 N.T.S.



SHARYN L. TROESTER,
 PERSONAL REPRESENTATIVE
 OF THE ESTATE OF HAZEL
 V. NICHOLS, DECEASED

PR09-54
 VOLUME 171, PAGE 432
 D.R.H.C.N.

SECTION 26
SECTION 25



TRACT LEGAL DESCRIPTION:
 PART OF THE NE/4 OF SECTION 26,
 T-29-N, R-10-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: 1,120'±
 AREA OF PERMANENT EASEMENT: 1.3 ACRES
 AREA OF TEMPORARY WORKSPACE: 1.6 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.3 ACRES

 TransCanada <i>In business to deliver</i>			
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF SHARYN L. TROESTER, PERSONAL REPRESENTATIVE OF THE ESTATE OF HAZEL V. NICHOLS, DECEASED ML-NE-HT-30515.000			
PROJECT:	EXHIBIT A		
APPROVED BY	DRAWING NUMBER		
SLR	XL-08-ML-SK-3359		
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/30/14	JN	ALS



**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-30517.000
ML-NE-HT-30520.000

**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**") **David W. Troester and Sharyn L. Troester, husband and wife**, whose mailing address is 119 E. Adams Street, O'Neill, NE 68763 (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

Grantor's Initials _____

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 3.27 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the NE1/4 of the NE1/4 of Section 26, Township 29 North, Range 10 West of the 6th P.M., as recorded in Book 190, Page 433 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 313.57 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the N1/2 of Section 25, T29N, R10W of the 6th P.M., as recorded in Book 174, Page 560 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):

David W. Troester

Sharyn L. Troester

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

Grantor's Initials _____

STATE OF _____

COUNTY OF _____

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

By **David W. Troester**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

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

By **Sharyn L. Troester**

Notary Public Signature

Affix Seal Here

LEGEND

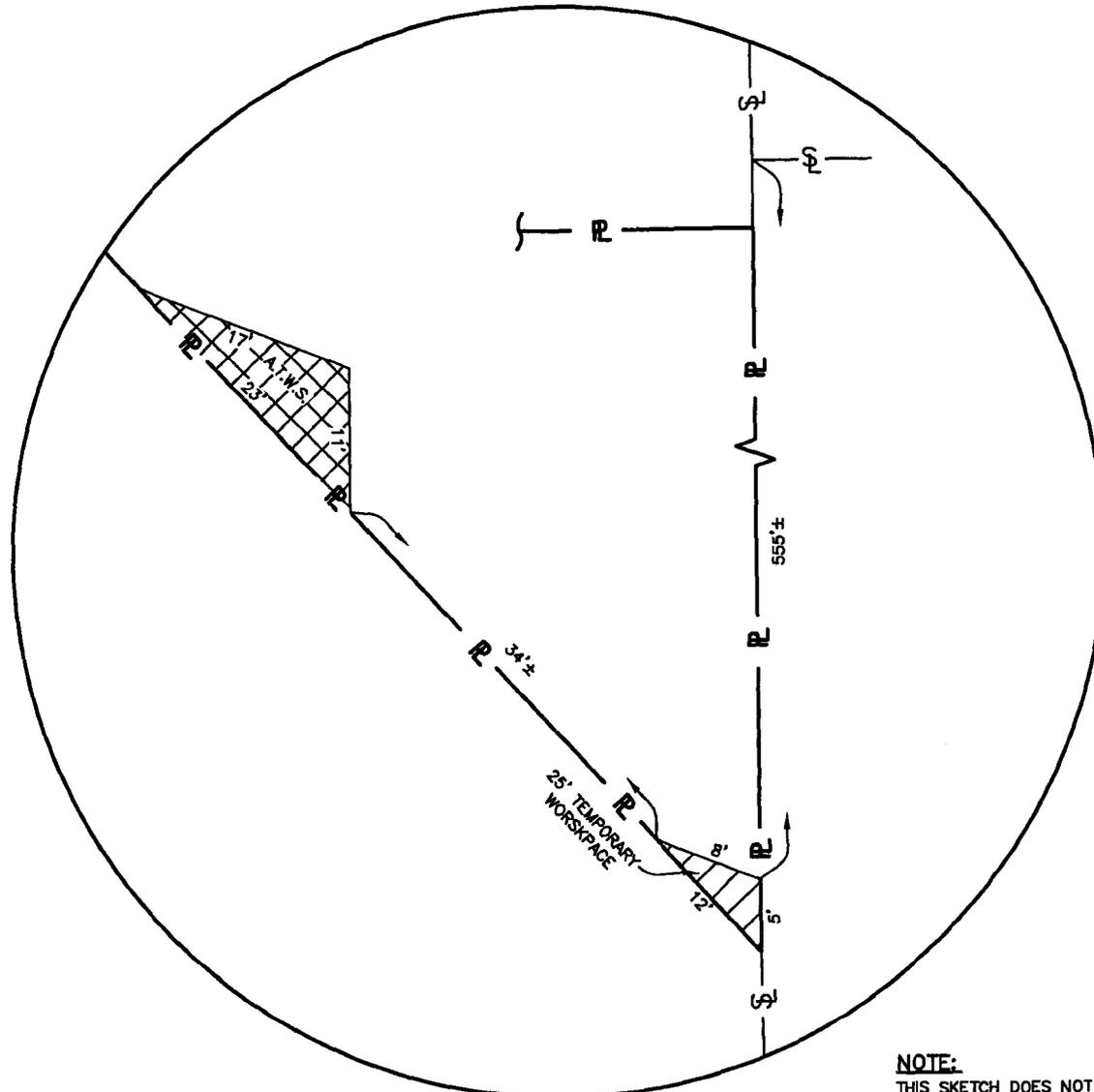
P
S
PROP.
A.T.W.S.
P.E.R.W.

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

HOLT COUNTY, NEBRASKA

T-29-N, R-10-W, SECTION 26

ML-NE-HT-30517.000



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.



KEYSTONE XL PROJECT

**EASEMENT AREA
ACROSS THE PROPERTY OF
DAVID W. TROESTER
ML-NE-HT-30517.000**

PROJECT:		EXHIBIT A	
APPROVED BY		DRAWING NUMBER	
SLR		XL-08-ML-SK-3852	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/30/14	JN	ALS



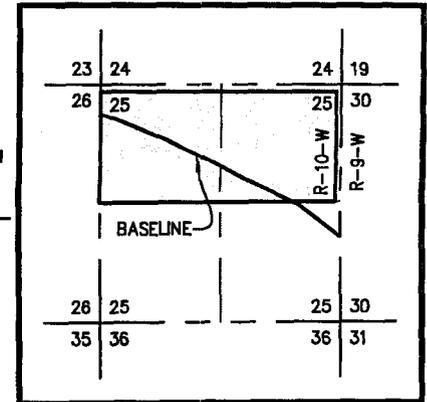
LEGEND
 P. PROPERTY LINE
 S. SECTION LINE
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA

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

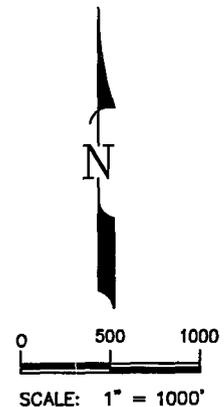
HOLT COUNTY, NEBRASKA

T-29-N, R-10-W, SECTION 25
 ML-NE-HT-30520.000

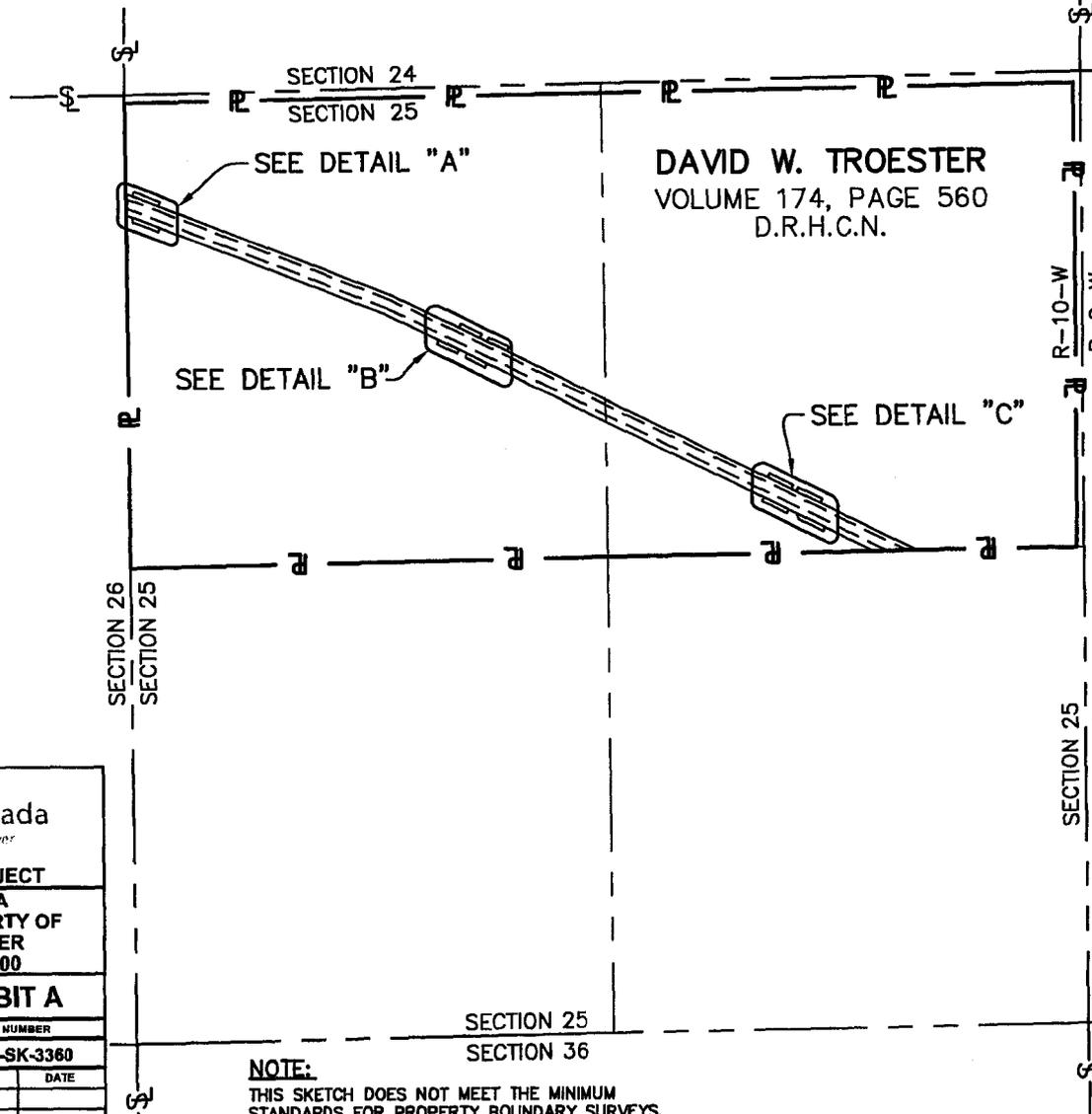
DAVID W. TROESTER
 VOLUME 174, PAGE 560
 D.R.H.C.N.



VICINITY MAP
 N.T.S.



TRACT LEGAL DESCRIPTION:
 PART OF THE N/2 OF SECTION 25,
 T-29-N, R-10-W



KEYSTONE XL PROJECT
 EASEMENT AREA
 ACROSS THE PROPERTY OF
 DAVID W. TROESTER
 ML-NE-HT-30520.000

PROJECT: XL EXHIBIT A

APPROVED BY: SLR DRAWING NUMBER: XL-08-ML-SK-3360

NO.	REVISION	DATE

SCALE	DATE	DRAWN BY	CHECKED BY
1" = 1000'	11/12/14	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.

TOTAL DISTANCE ACROSS PROPERTY: 4,734'±
 AREA OF PERMANENT EASEMENT: 5.4 ACRES
 AREA OF TEMPORARY WORKSPACE: 6.5 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.8 ACRE

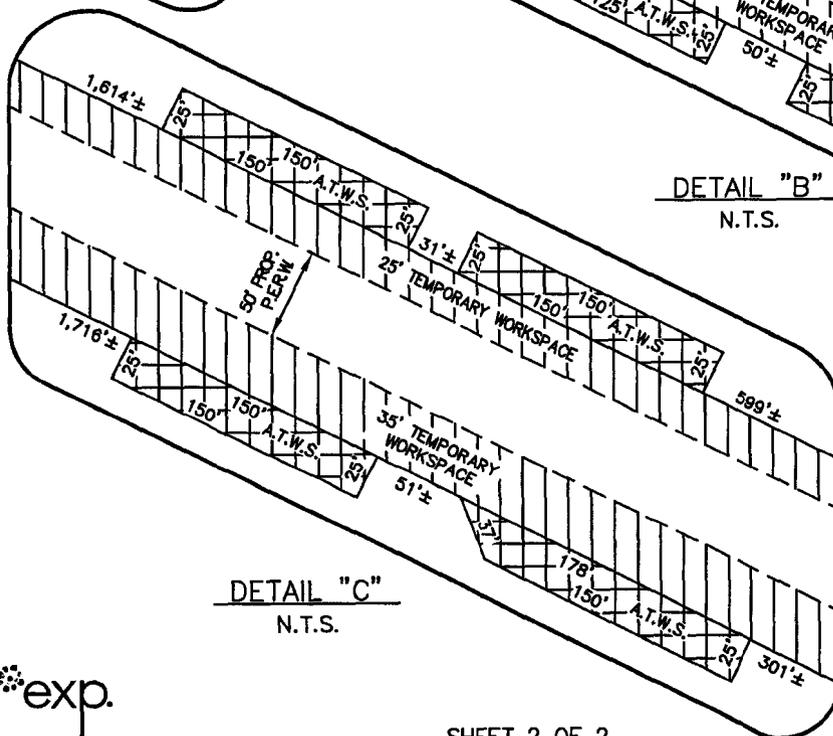
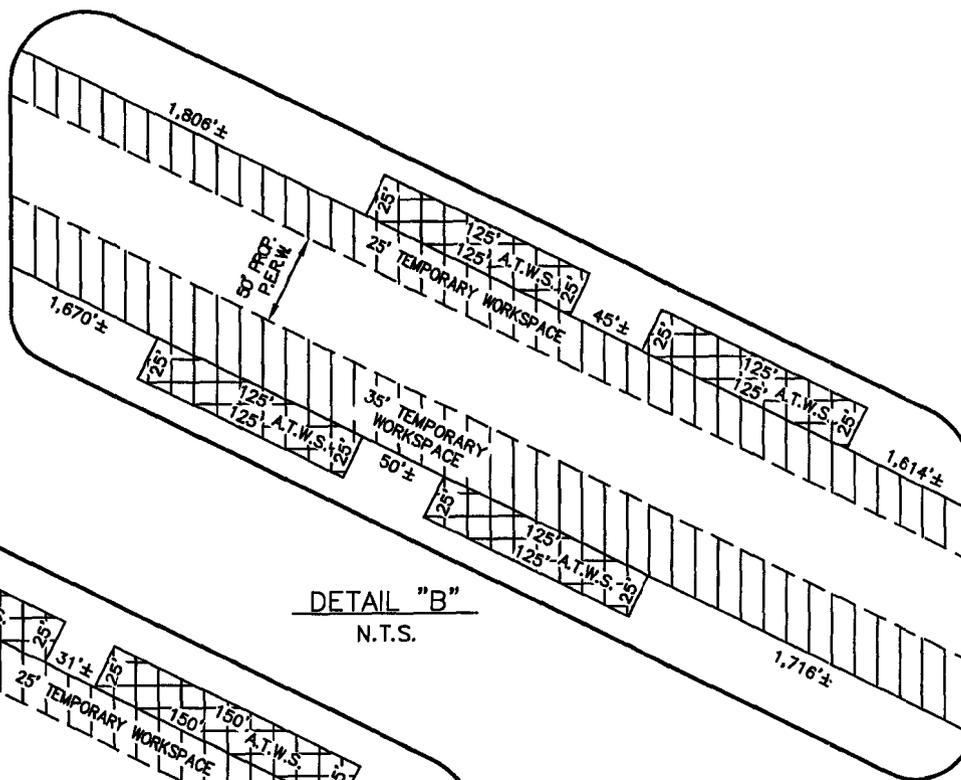
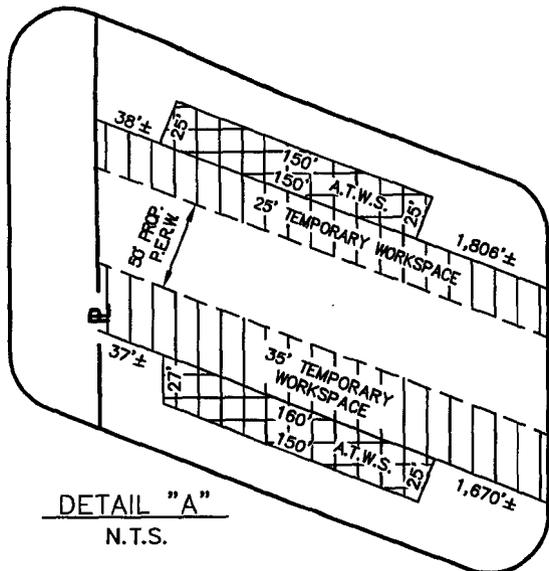
HOLT COUNTY, NEBRASKA

T-29-N, R-10-W, SECTION 25

ML-NE-HT-30520.000

LEGEND

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



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



KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
DAVID W. TROESTER
ML-NE-HT-30520.000

PROJECT:		XL EXHIBIT A	
APPROVED BY:		DRAWING NUMBER	
SLR		XL-08-ML-SK-3360	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	11/12/14	JN	ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

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

PARTIES

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM: NEGLIGENCE

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

SECOND CLAIM: TRESPASS

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30515.000

I/we Sharyn L. Troester, Personal Representative of the Estate of Hazel V. Nichols, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two thousand five hundred sixty and no/100 (\$2,560.00), 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 NE/4

Section 26, Township 29-N, Range 10-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-30495.000

I/we Nichols Family Limited Partnership, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Thousand Six Hundred Dollars and No Cents (\$3,600.00), 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:

NE/4

Section 22, Township 29-N, Range 10-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-30517.000

I/we David W. Troester and Sharyn L. Troester, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Fifty Two Dollars and No Cents (\$52.00), 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 NE/4

Section 26, Township 29-N, Range 10-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-30520.000

I/we David W. Troester and Sharyn L. Troester, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Ten Thousand One Hundred Sixty Dollars and No Cents (\$10,160.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

Part of N/2

Section 25, Township 29-N, Range 10-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____.

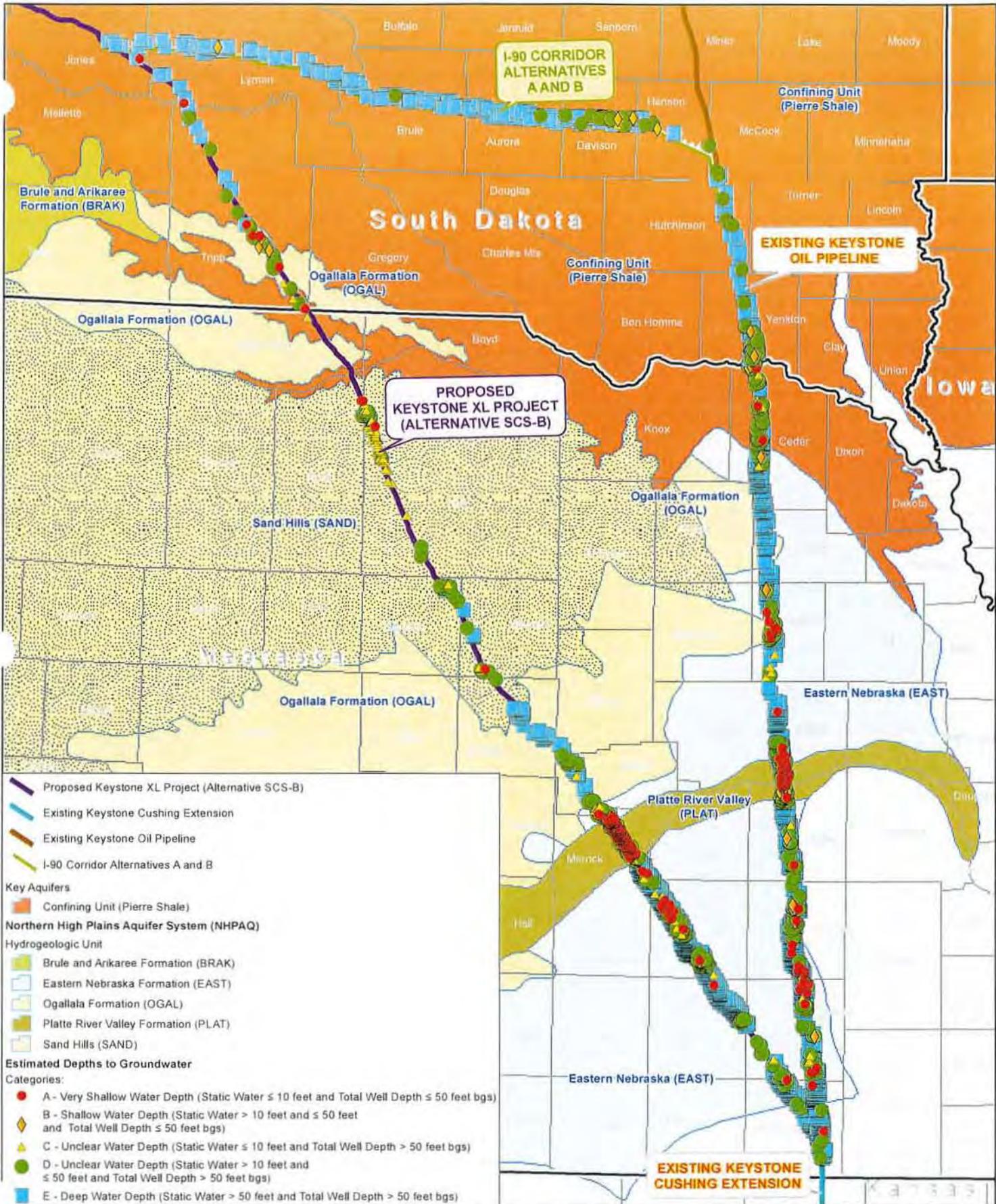
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



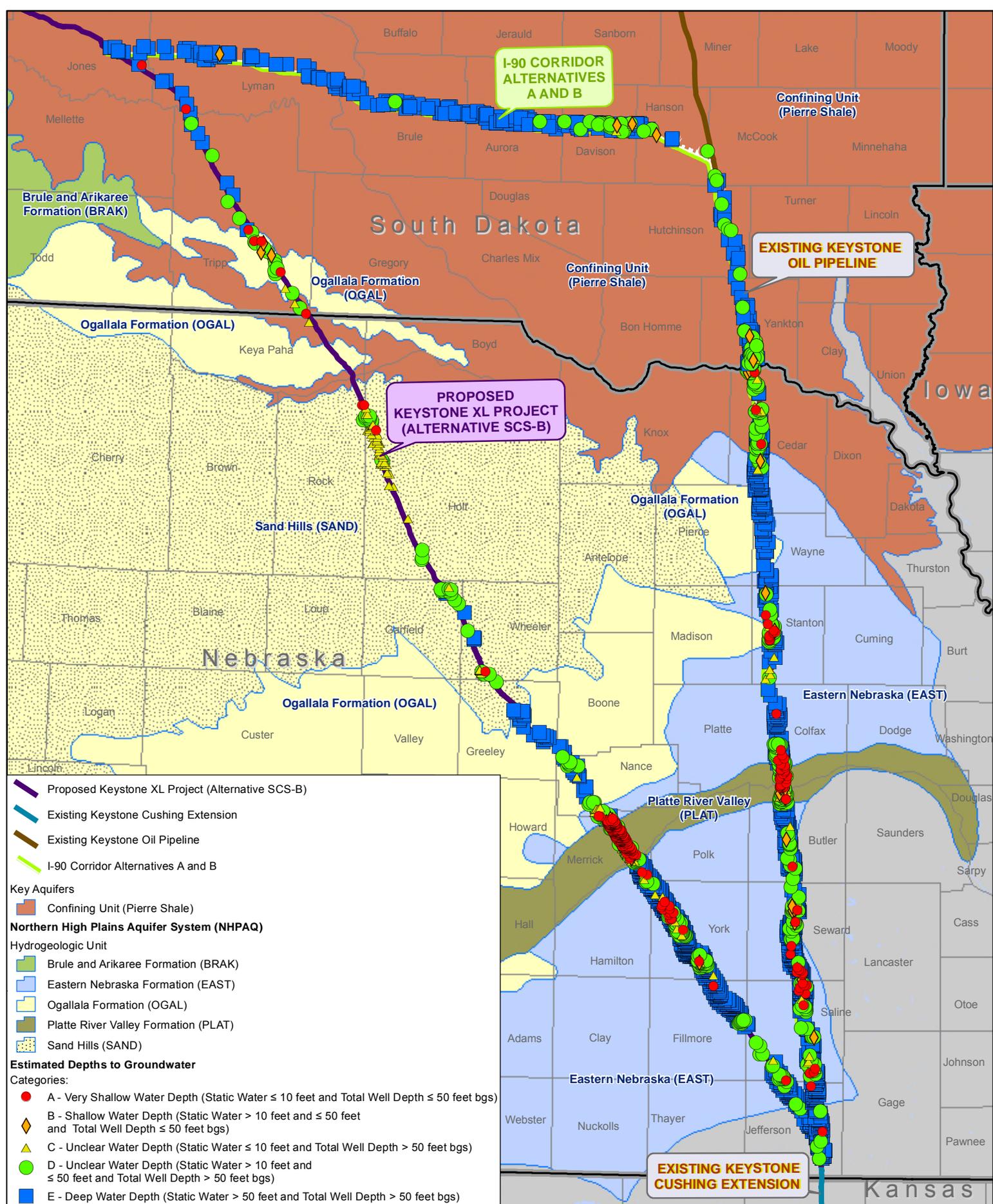
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

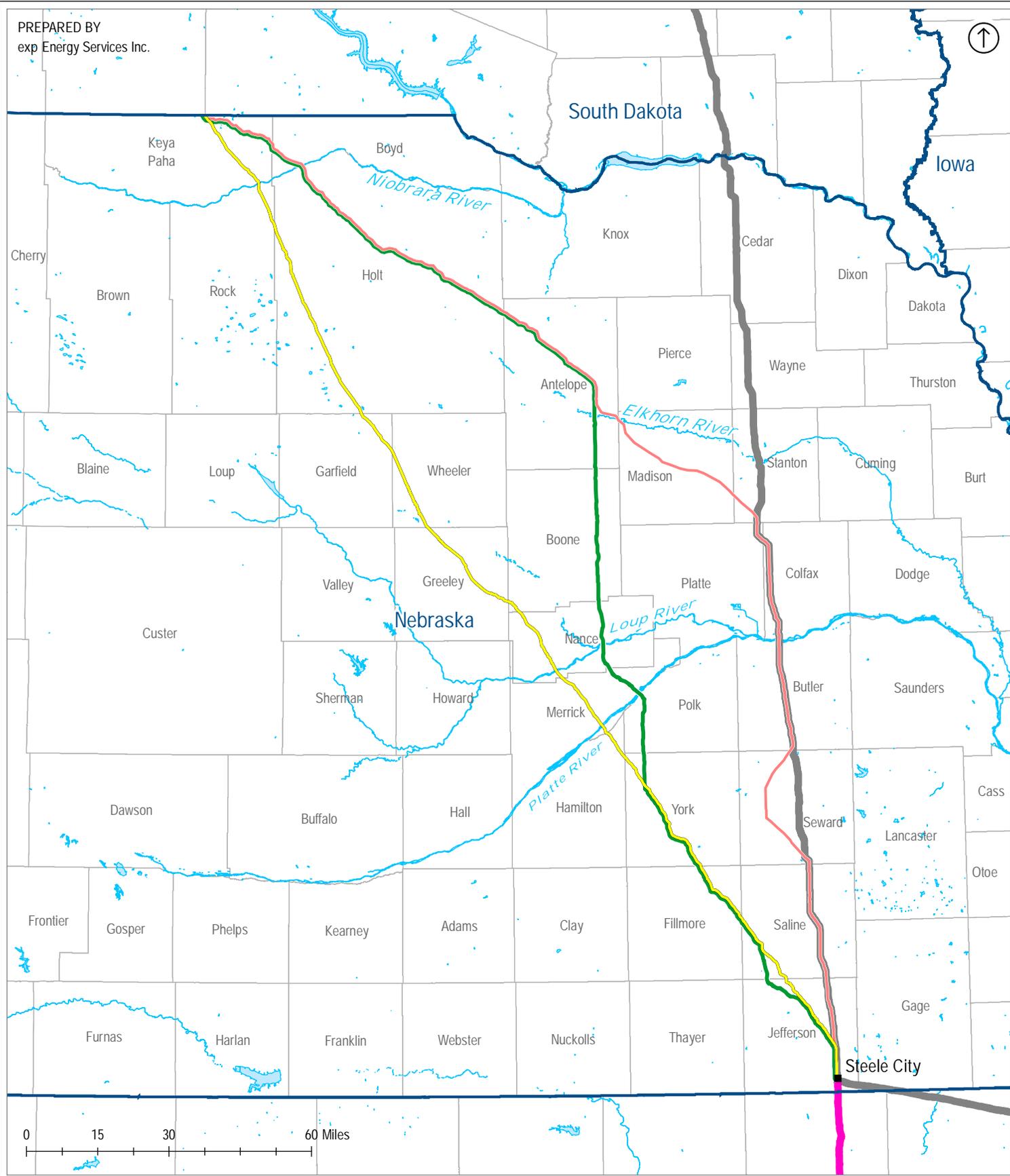
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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

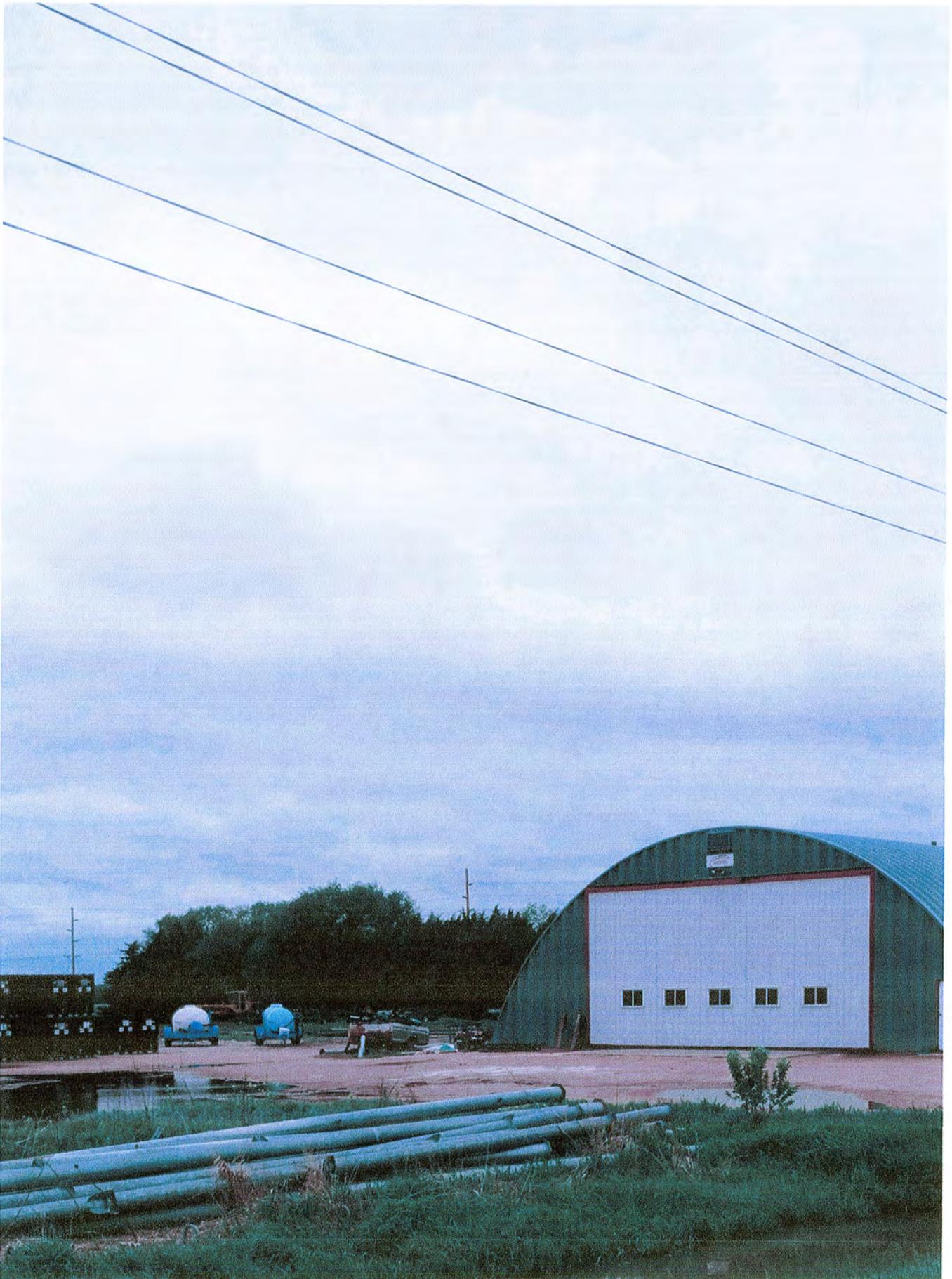
Attachment No. 7



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

KEYSTONE XL PROJECT
FIGURE 2.2-2
PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Attachment No. 8







Before the Nebraska Public Service Commission

In the Matter of the Application

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
Sharyn L. Troester in Support of
Landowner Intervenors**

State of Nebraska)
) ss.
Holt County)

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

2 A: My name is Sharyn L. Troester. I am the sole partner of Nichols Family Limited
3 Partnership and Trustee of Nichols Family 1992 Irrevocable Trust.

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

7 A: Yes, I am.

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

11 A: Yes, I do and it is located in Holt County.

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

15 A: Yes.

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

1 A: Farmer.

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

3 A: Dave Troester

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

5 A: 2.

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

7 A: 5.

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

10 A: Yes.

11 **Q: How long the land has been in your family?**

12 A: Our family farm has been in our stewardship for many decades. There are corner
13 machines on the land involved, underground tiling, underground cable for the
14 corner machines, and three phase underground wiring for power lines. There is a
15 quonset building used for storage of seed, farm machinery and work areas.
16 Currently, two families reside on land that is on the proposed route that have
17 drinking wells being used.

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

19 A: Yes.

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

22 A: Yes.

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

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

1 would for comparable pipeline land and I think most folks would think the same
2 way. This is another negative economic impact that affects the landowner and the
3 county and the state and will forever and ever should TransCanada's preferred or
4 mainline alternative routes be approved. If they were to twin or closely parallel to
5 Keystone I the vast majority of landowners would be those that already have a
6 pipeline so there would be considerable less new incremental negative impacts.

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

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

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

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

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

18 A: Yes.

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

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

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

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

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

29 A: No, they have not.

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

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

6 **Q: Did TransCanada define what they meant by “property that is reasonably**
7 **necessary”?**

8 A: No, they did not.

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

11 A: Yes, they did.

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

14 A: Yes, they did.

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

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

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

27 A: No, I do not.

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

1 A: Yes, they did.

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

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

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

14 A: Yes, it is.

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

17 A: Yes, I have.

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

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

25 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
26 **agreement do you have any concerns about any portions of it or any of the**
27 **language either included in the document or missing from the proposed**
28 **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 my land and thereby potentially negatively impacts my community and
4 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 your land. So, if you can start at the beginning of that document and**
10 **let's 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 my
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 me for all of the known and unknown affects and all of the
17 rights I am giving up and for all the things they get to do to my land and for what
18 they will prevent me from doing on my land and they only will pay me one time at
19 the 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 my land forever for use as they see fit so
23 they can make a daily profit from their customers. If I was to lease ground from
24 my neighbor I would typically pay twice a year every year as long as they granted
25 me the rights to use their land. That only makes sense – that is fair. If I was going
26 to rent a house in town I would typically pay monthly, every month until I gave up
27 my right to use that house. By TransCanada getting out on the cheap and paying
28 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
29 revenue collection on the money I would be paid and then pay taxes on and

1 contribute to this state and this country. It is money I would be putting back into
2 my local community both spending and stimulating the local economy and
3 generating more economic activity right here. Instead TransCanada's shareholders
4 keep all that money and it never finds its way to Nebraska.

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

6 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
7 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
8 limited partnership..." and I have no idea who that really is. I have no idea who is
9 forcing this pipeline on us or who the owners of the entities are, or what are the
10 assets backing this limited partnership, or who the general partner is, or who all
11 the limited partners are, and who makes up the ownership of the these partners or
12 the structure or any of the basic things you would want to know and understand if
13 you would want to do business with such an outfit. According to TransCanada's
14 answer to our 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 over 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 your 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 their easement
3 to be transferred or sold to someone or some company or country or who knows
4 what that I don’t know and who we may not want to do business with. This
5 pipeline would be a huge asset for TransCanada and if they can sell to the highest
6 bidder that could have terrible impacts upon all of Nebraska depending upon who
7 may buy it and I don’t know of any safeguards in place for us or the State to veto
8 or have any say so in who may own, operate, or be responsible for this pipeline in
9 the 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 like 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. My land however
25 will, and I want my family or future Nebraska families to have that land as
26 undisturbed as possible and it is not in my interest or the public interest of
27 Nebraska to be forced to give up perpetual and permanent rights in the land for
28 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 my ground
3 until the end of time just sitting there while they are not using it, but I am still
4 prevented from doing on my land and using my land what I 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 my 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 if 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.

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

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

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

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

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

26 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
27 Easement to any person, company, country, etc. at their sole discretion at anytime
28 to anyone. This also means that any buyer of the easement could do the same to a
29 third buyer and so on forever. There is no change of control or sale provision in

1 place to protect the Landowner or Nebraska or to provide compensation for such
2 change of control or ownership. It is not conducive to the protection of property
3 rights or economic interests to allow unilateral unrestricted sale of the Easement
4 thereby forcing upon the Landowner and our State a new unknown Easement
5 owner.

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

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

- 11 i. "pipeline installation activities"
- 12 ii. "availability of labor and materials"
- 13 iii. "commercially reasonable costs and expenses"
- 14 iv. "reasonably anticipated and foreseeable costs and expenses"
- 15 v. "yield loss damages"
- 16 vi. "diminution in the value of the property"
- 17 vii. "substantially same condition"
- 18 viii. "an actual or potential hazard"
- 19 ix. "efficient"
- 20 x. "convenient"
- 21 xi. "endangered"
- 22 xii. "obstructed"
- 23 xiii. "injured"
- 24 xiv. "interfered with"
- 25 xv. "impaired"
- 26 xvi. "suitable crossings"
- 27 xvii. "where rock is encountered"
- 28 xviii. "as nearly as practicable"
- 29 xix. "pre-construction position"

1 xx. “pre-construction grade”

2 xxi. “various engineering factors”

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

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

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

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

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

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

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

27 **Q: As the owner of the land in question and as the person who knows it better**
28 **than anyone else, do you believe that TransCanada offered you just, or fair,**

1 **compensation for all of what they proposed to take from you so that their tar**
2 **sands pipeline could be located across your 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 I'm giving up, and
5 what we will be prevented from doing in the future and how their pipeline would
6 impact my property for ever and ever.

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

10 A: No, never.

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

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

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

17 A: Yes, it is.

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

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

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

26 A: No, I did not.

27 **Q: Why not?**

28 A; Because I do not believe that it is fair or just to try to get me to agree to a small
29 sum of money when I have no idea how bad the impacts or damages that they, or

1 their contractors, or subcontractors, or other agents or employees, may cause on
2 my land at any time in the future that resulted from the construction or surveying
3 or their activities upon my land.

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

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

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

15 A: No, they have not.

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

19 A: No, they have not.

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

22 A: Yes, I am.

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

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

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

3 A: No, they have not.

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

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

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

17 A: No, it has not.

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

21 A: No, I do not.

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

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

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

28 A: Yes, I do.

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

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

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

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

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

10 A: No, of course not.

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

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

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

18 A: Well, yes I have.

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

23 A: No, of course not.

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

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

1 **Q: At the beginning of your statement, you briefly described your property that**
2 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
3 **give the Commissioners a sense of specifically how you believe the proposed**
4 **Keystone XL Pipeline and its preferred route, which proposes to go across**
5 **your land, how it would in your opinion based on your knowledge,**
6 **experience, and background of your land, affect it.**

7 A: Our land is very sandy and porous. So the installation of the pipeline from
8 TransCanada could threaten our productive land and our valuable water resources.
9 We should not take for granted our valuable asset, and that is water, water for
10 people, animals, crops and recreational use. We cannot magically make water.
11 Water is vital to life.

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

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

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

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

5 A: No, I do not.

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

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

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

16 A: Well yes, of course.

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

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

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

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

6 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 A: Yes, I have.

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

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

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

1 A: No, I do not.

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

5 A: No, I do not.

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

8 A: No, I do not.

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

12 A: No, I do not.

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

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

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

28 A: First of all, not all jobs are created equally. Most jobs that are created, whether
29 temporary or on a permanent basis, don’t come with a project that has all the

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

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

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

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

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

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

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

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

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

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

23 A: Yes. We worry about the tar sands that need strong and damaging chemicals
24 (solvents) that are used to push this dirty liquid through the underground pipeline
25 which will be close to home and drinking wells. Solvents, which are unlike oil,
26 will permeate immediately into water and the only way to remove solvents is to
27 distill it which means the water would be permanently destroyed. We are
28 instructed to be concerned about nitrates in water, shouldn't we worry about the
29 tar sands mixture leaking into the drinking wells people and animals use? When

1 the sandy, porous and permeable land is dug up and disturbed as the pipeline
2 construction would be certainly do, there is little, if any healing process to return
3 the land to its natural productive state. It will be forever changed. Our constitution
4 grants us landowners property rights. Rights that were reserved for the
5 government for the taking of property for specified purpose of “public use” do not
6 apply to this Application or project. The proposed routes should not be approved.
7 The constitution does not say a private company can use eminent domain for its
8 own use and then profit from it. There are strict laws for the government to use
9 eminent domain.

10 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
11 **like the Public Service Commissioners to consider in their review of**
12 **TransCanada’s Application?**

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

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

27 **A:** Yes.

1 **Q: What is it that you are requesting the Public Service Commissioners do in**
2 **regards to TransCanada’s application for the proposed Keystone XL Pipeline**
3 **across Nebraska?**

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

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

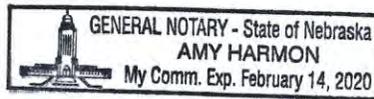
26 A: Yes, they are.

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

Sharyn L. Troester
Sharyn L. Troester

Subscribed and Sworn to me before this 30th day of May, 2017.

Amy Harmon
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.



S.023
T.029N
R.010W

S.024
T.029N
R.010W

The Estate of Hazel V. Nichols, Deceased
Sharyn Troester

S.026
T.029N
R.010W

S.025
T.029N
R.010W

IMAGERY: NAIP 2016
0 250 500 Feet



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
The Estate of Hazel V. Nichols, Deceased
Sharyn Troester

TRACT NO. ML-NE-HT-30515.000
STATE: Nebraska
COUNTY: Holt
SECTION: 026
TOWNSHIP: 029N
RANGE: 010W

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

May 2017 - X:\Drawings\65858\KEYSTONE_XL\65858_09492581

S. 023
T. 029 N
R. 010 W

S. 024
T. 029 N
R. 010 W



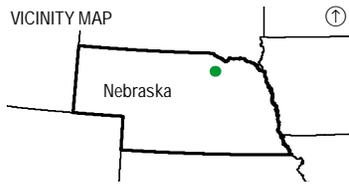
David W. Troester

S. 026
T. 029 N
R. 010 W

S. 025
T. 029 N
R. 010 W

IMAGERY: NAIP 2016

0 90 180 Feet

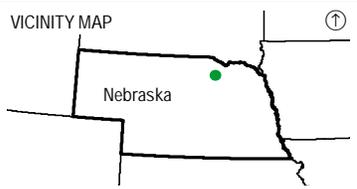


KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
David W. Troester

TRACT NO. ML-NE-HT-30517.000
STATE: Nebraska
COUNTY: Holt
SECTION: 026
TOWNSHIP: 029N
RANGE: 010W

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

PREPARED BY
exp Energy Services Inc.



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
David W. Troester

TRACT NO. ML-NE-HT-30520.000
STATE: Nebraska
COUNTY: Holt
SECTION: 025
TOWNSHIP: 029N
RANGE: 010W

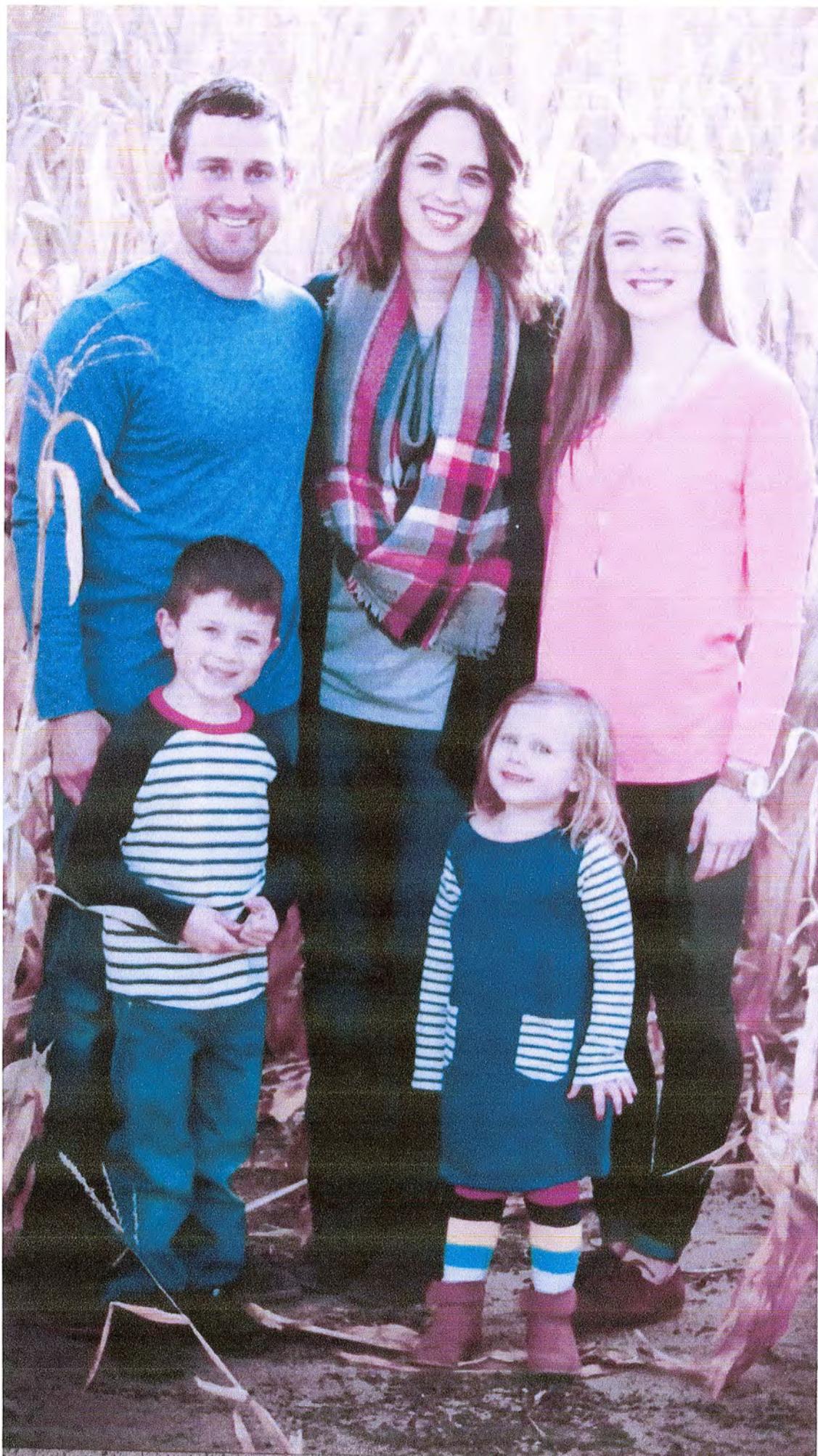
- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\50588\KEYSTONE_XL\9000_9949258

Attachment No. 2



Barbara Great City, Mason City
Bob & Beverly City, son-in-law and daughter



Mr Aaron Ivester, wife Jennifer
Grandchildren

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-30495.000

**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**") **Nichols Family Limited Partnership, a Nebraska limited partnership**, whose mailing address is 119 E. Adams Street, O'Neill, NE 68763 (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 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NE1/4 of Section 22, T29N, R10W of the 6th P.M., as recorded in Book 195, Page 118A 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):

Nichols Family Limited Partnership, a Nebraska limited partnership

By:

Its:

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By _____ of

Nichols Family Limited Partnership, a Nebraska limited partnership, on behalf of the corporation.

Notary Public Signature

Affix Seal Here

**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-30515.000

**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**") **Sharyn L. Troester, as Personal Representative of the Estate of Hazel V. Nichols, Deceased**, whose mailing address is 119 E. Adams Street, O'Neill, NE 68763 (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

Grantor's Initials _____

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 153.66 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the NE1/4 of Section 26, Township 29 North, Range 10 West of the 6th P.M., as recorded in Book 171, Page 432 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):

Estate of Hazel V. Nichols, Deceased

Sharyn L. Troester, as Personal Representative

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **Sharyn L. Troester, as Personal Representative of the Estate of Hazel V. Nichols, Deceased**

Notary Public Signature

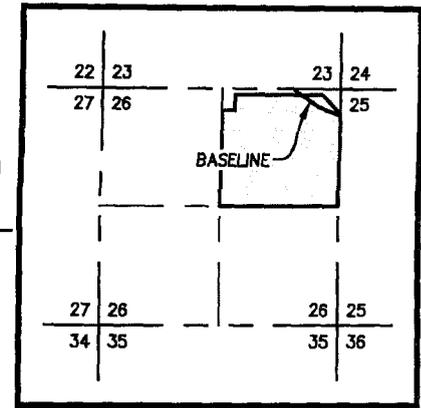
Affix Seal Here

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

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

HOLT COUNTY, NEBRASKA

T-29-N, R-10-W, SECTION 26
 ML-NE-HT-30515.000



VICINITY MAP
 N.T.S.



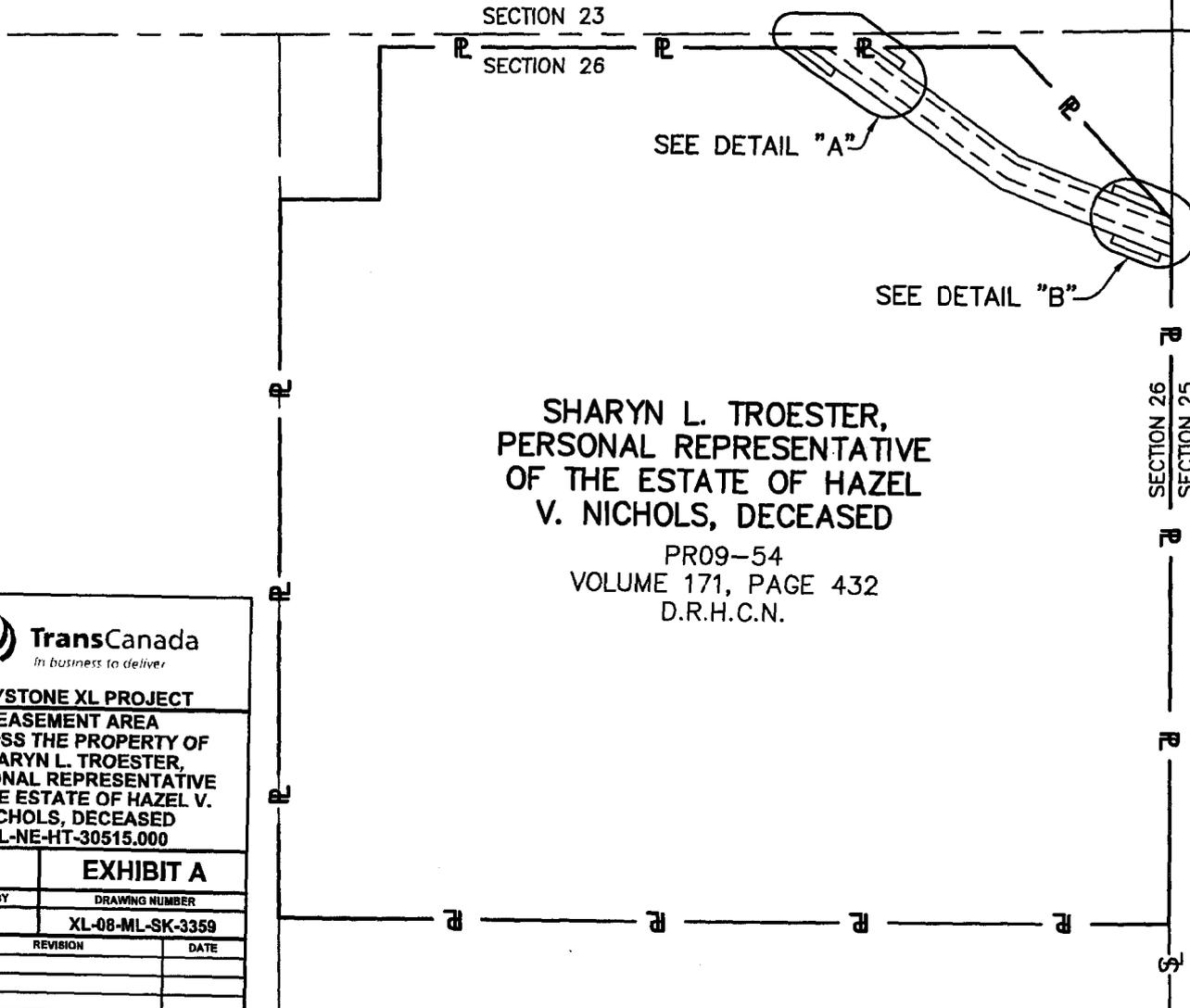
0 250 500
 SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:
 PART OF THE NE/4 OF SECTION 26,
 T-29-N, R-10-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: 1,120'±
 AREA OF PERMANENT EASEMENT: 1.3 ACRES
 AREA OF TEMPORARY WORKSPACE: 1.6 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.3 ACRE



SHARYN L. TROESTER,
 PERSONAL REPRESENTATIVE
 OF THE ESTATE OF HAZEL
 V. NICHOLS, DECEASED

PR09-54
 VOLUME 171, PAGE 432
 D.R.H.C.N.



KEYSTONE XL PROJECT

**EASEMENT AREA
 ACROSS THE PROPERTY OF
 SHARYN L. TROESTER,
 PERSONAL REPRESENTATIVE
 OF THE ESTATE OF HAZEL V.
 NICHOLS, DECEASED
 ML-NE-HT-30515.000**

PROJECT:		XL EXHIBIT A	
APPROVED BY	DRAWING NUMBER		
SLR	XL-08-ML-SK-3359		
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/30/14	JN	ALS



**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-30517.000
ML-NE-HT-30520.000

**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**") **David W. Troester and Sharyn L. Troester, husband and wife**, whose mailing address is 119 E. Adams Street, O'Neill, NE 68763 (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

Grantor's Initials _____

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 3.27 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the NE1/4 of the NE1/4 of Section 26, Township 29 North, Range 10 West of the 6th P.M., as recorded in Book 190, Page 433 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 313.57 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the N1/2 of Section 25, T29N, R10W of the 6th P.M., as recorded in Book 174, Page 560 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):

David W. Troester

Sharyn L. Troester

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

Grantor's Initials _____

STATE OF _____

COUNTY OF _____

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

By **David W. Troester**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

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

By **Sharyn L. Troester**

Notary Public Signature

Affix Seal Here

LEGEND

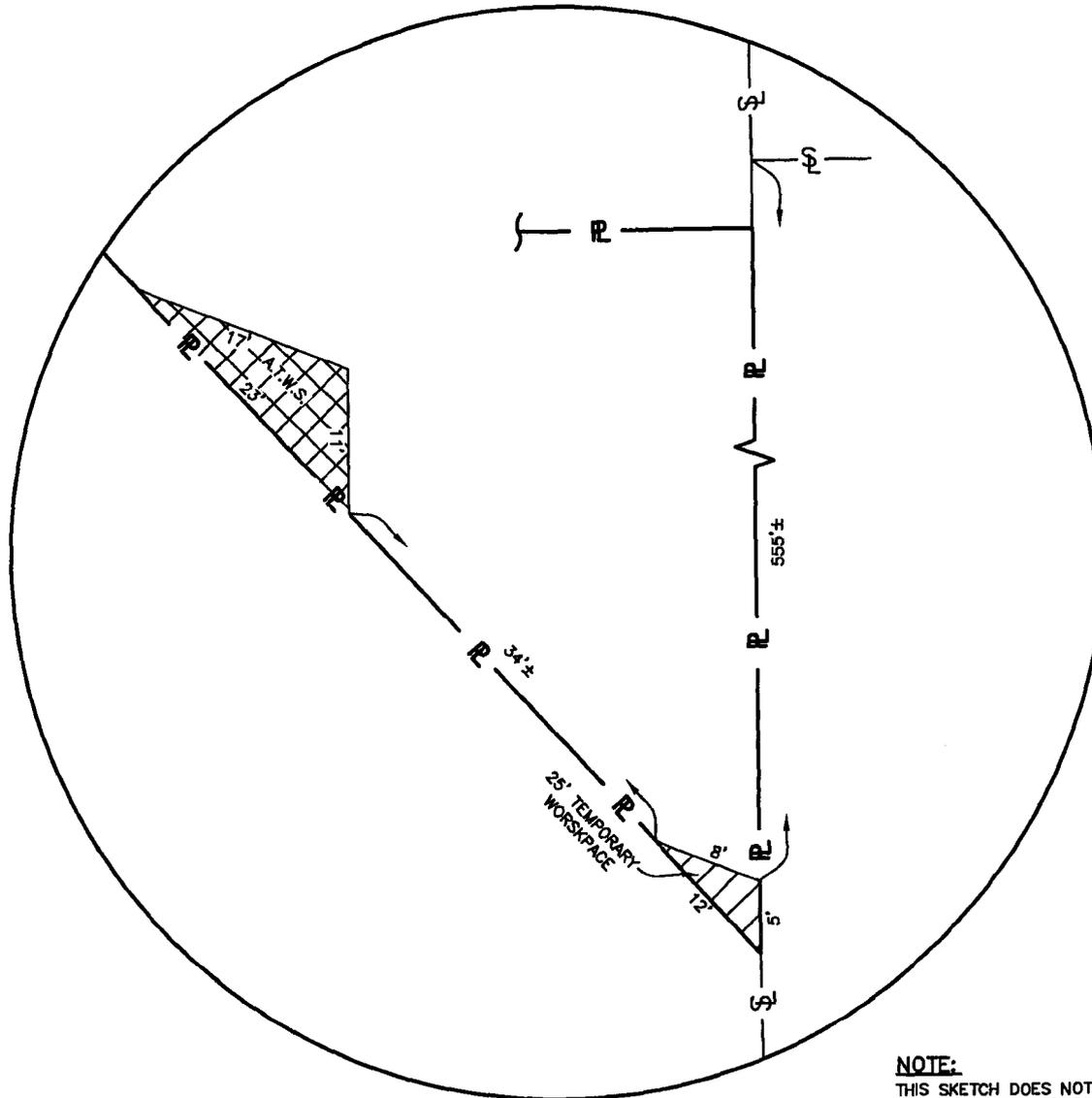
P
 §
 PROP.
 A.T.W.S.
 P.E.R.W.

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

HOLT COUNTY, NEBRASKA

T-29-N, R-10-W, SECTION 26

ML-NE-HT-30517.000



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.



KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
DAVID W. TROESTER
ML-NE-HT-30517.000

PROJECT:		EXHIBIT A	
APPROVED BY		DRAWING NUMBER	
SLR		XL-08-ML-SK-3852	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/30/14	JN	ALS



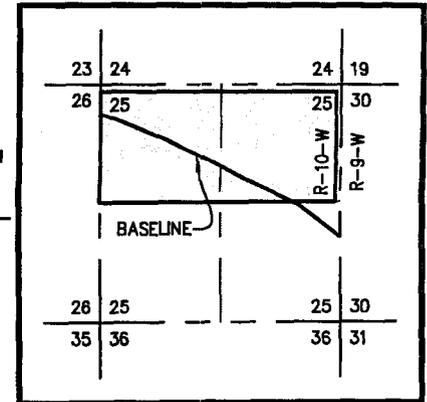
LEGEND
 P. PROPERTY LINE
 S. SECTION LINE
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA

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

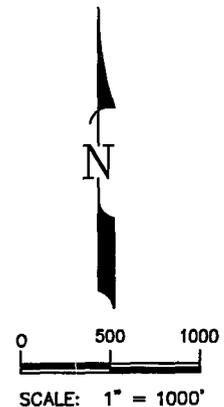
HOLT COUNTY, NEBRASKA

T-29-N, R-10-W, SECTION 25
 ML-NE-HT-30520.000

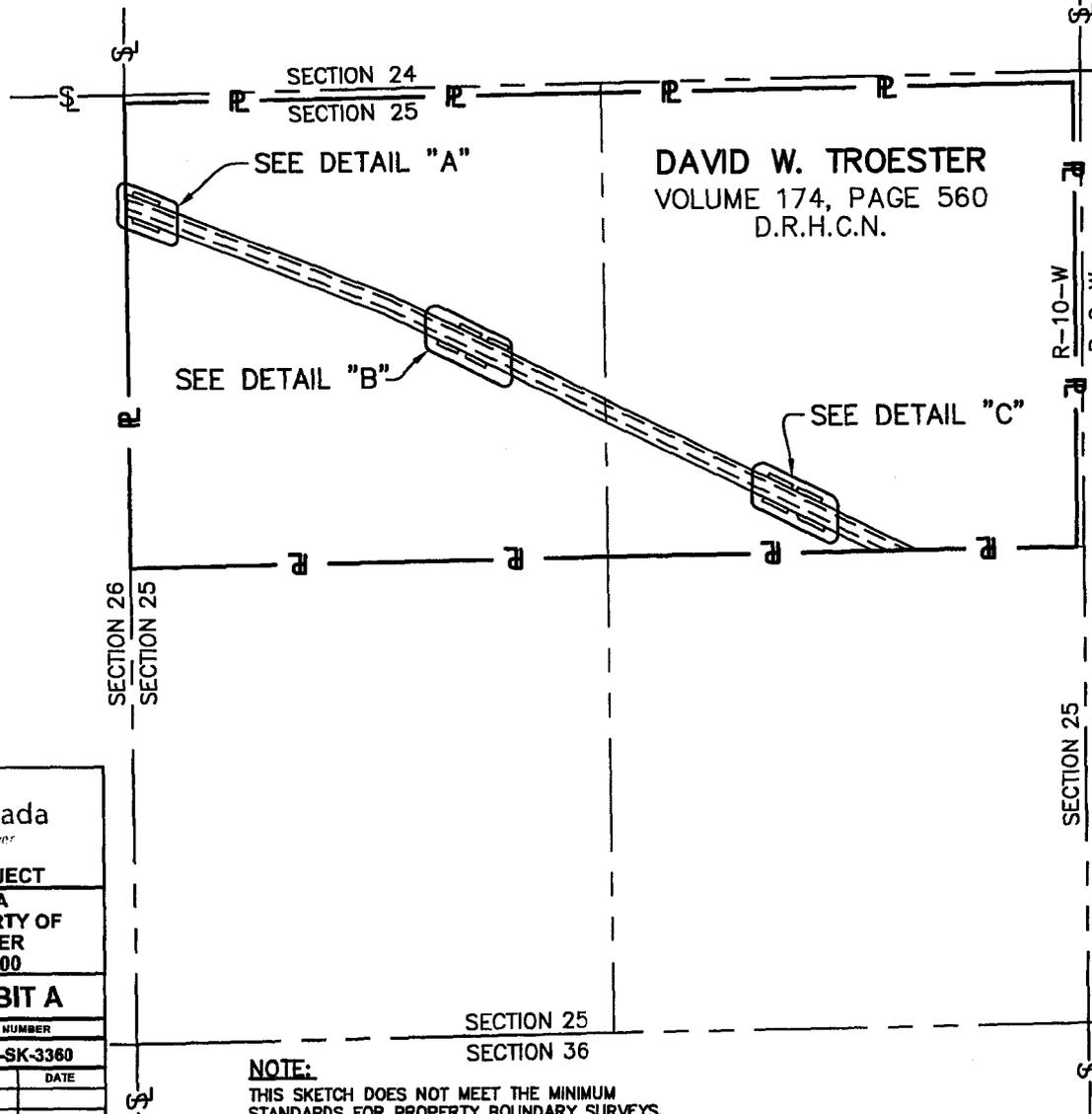
DAVID W. TROESTER
 VOLUME 174, PAGE 560
 D.R.H.C.N.



VICINITY MAP
 N.T.S.



TRACT LEGAL DESCRIPTION:
 PART OF THE N/2 OF SECTION 25,
 T-29-N, R-10-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: 4,734'±
 AREA OF PERMANENT EASEMENT: 5.4 ACRES
 AREA OF TEMPORARY WORKSPACE: 6.5 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.8 ACRE



KEYSTONE XL PROJECT
 EASEMENT AREA
 ACROSS THE PROPERTY OF
 DAVID W. TROESTER
 ML-NE-HT-30520.000

PROJECT:		EXHIBIT A	
APPROVED BY:		DRAWING NUMBER	
SLR		XL-08-ML-SK-3360	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 1000'	11/12/14	JN	ALS



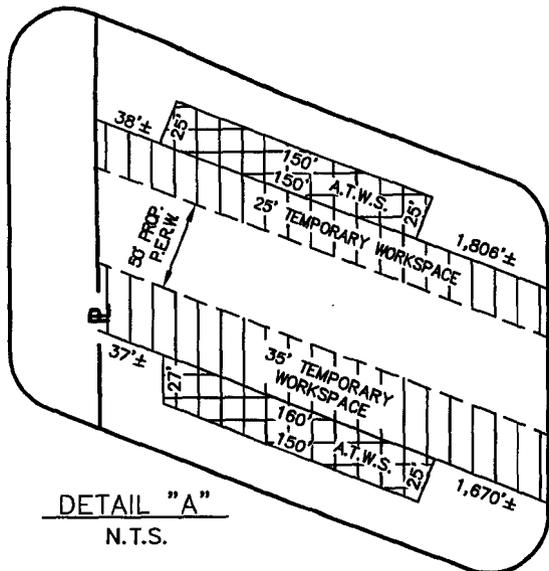
HOLT COUNTY, NEBRASKA

T-29-N, R-10-W, SECTION 25

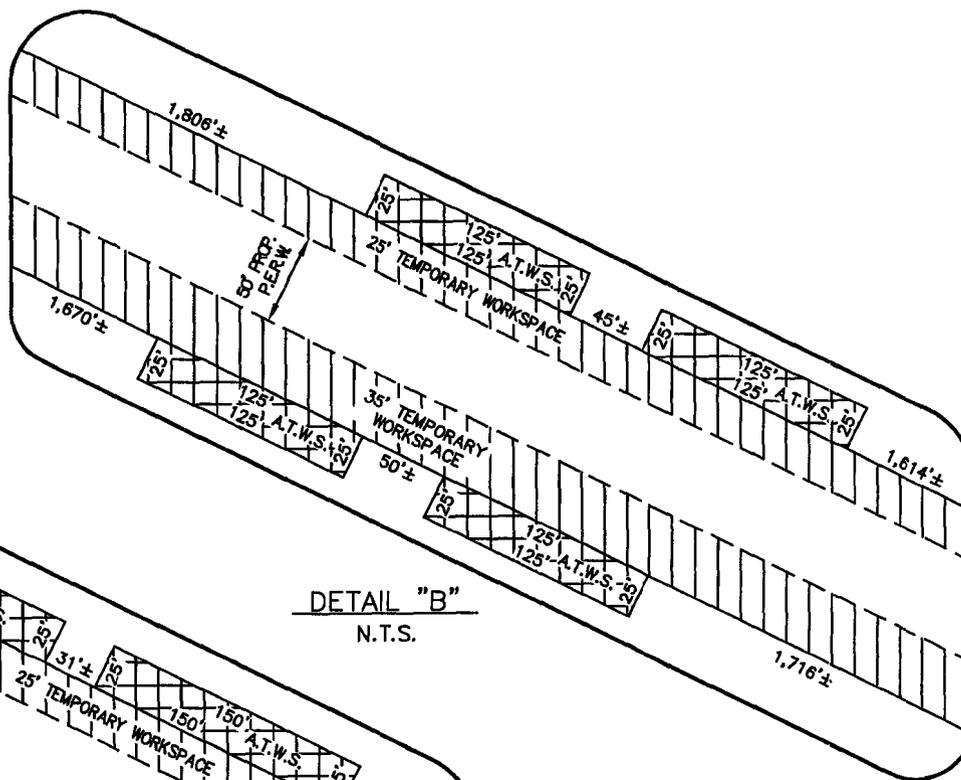
ML-NE-HT-30520.000

LEGEND

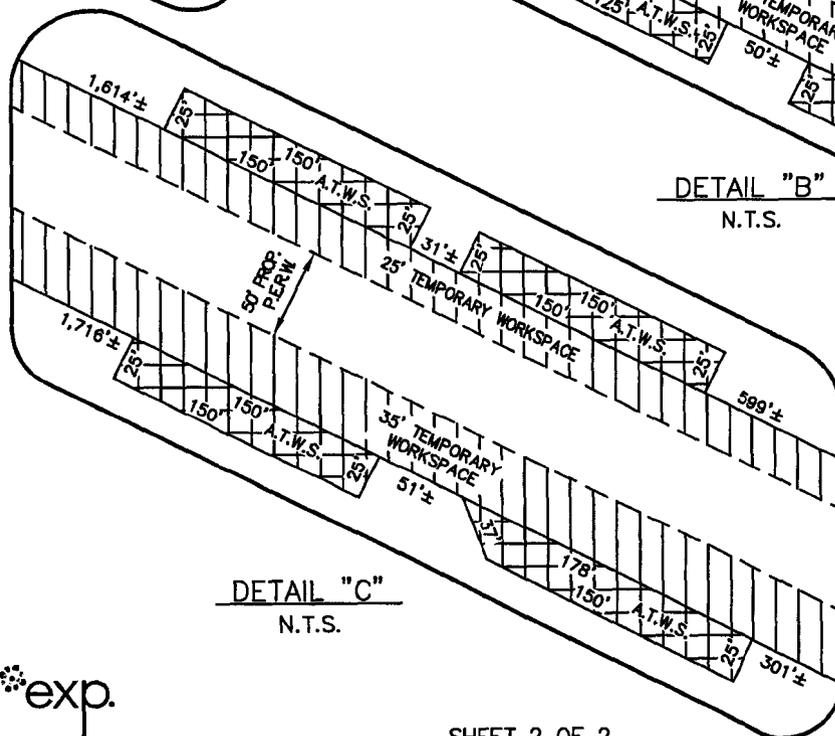
- P. PROPERTY LINE
- PROP. PROPOSED
- A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
- P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



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.



KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
DAVID W. TROESTER
ML-NE-HT-30520.000

PROJECT:		EXHIBIT A	
APPROVED BY:		DRAWING NUMBER	
SLR		XL-08-ML-SK-3360	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	11/12/14	JN	ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

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

PARTIES

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM: NEGLIGENCE

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

SECOND CLAIM: TRESPASS

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30515.000

I/we Sharyn L. Troester, Personal Representative of the Estate of Hazel V. Nichols, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two thousand five hundred sixty and no/100 (\$2,560.00), 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 NE/4

Section 26, Township 29-N, Range 10-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-30495.000

I/we Nichols Family Limited Partnership, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Thousand Six Hundred Dollars and No Cents (\$3,600.00), 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:

NE/4

Section 22, Township 29-N, Range 10-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-30517.000

I/we David W. Troester and Sharyn L. Troester, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Fifty Two Dollars and No Cents (\$52.00), 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 NE/4

Section 26, Township 29-N, Range 10-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-30520.000

I/we David W. Troester and Sharyn L. Troester, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Ten Thousand One Hundred Sixty Dollars and No Cents (\$10,160.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

Part of N/2

Section 25, Township 29-N, Range 10-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____.

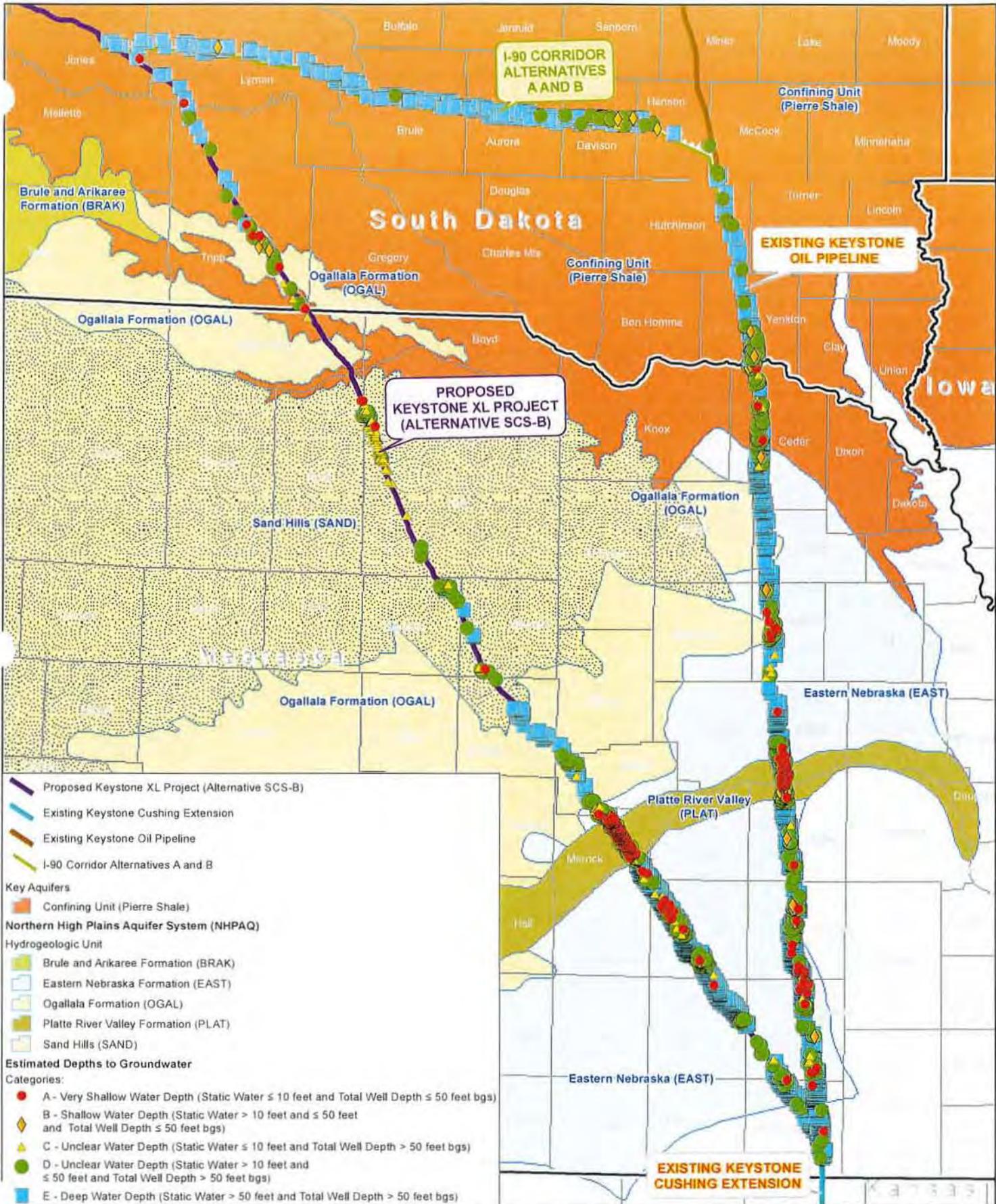
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



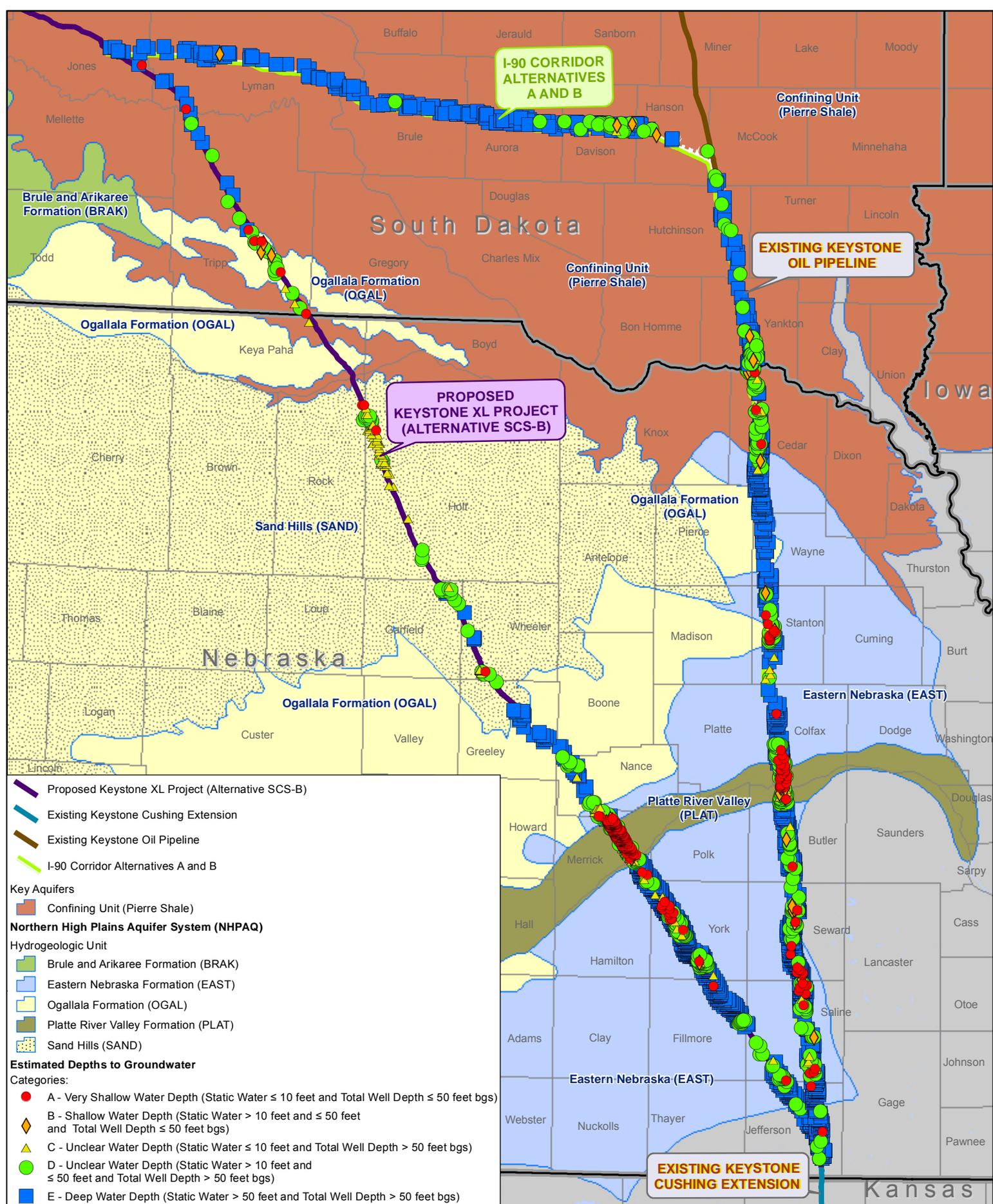
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

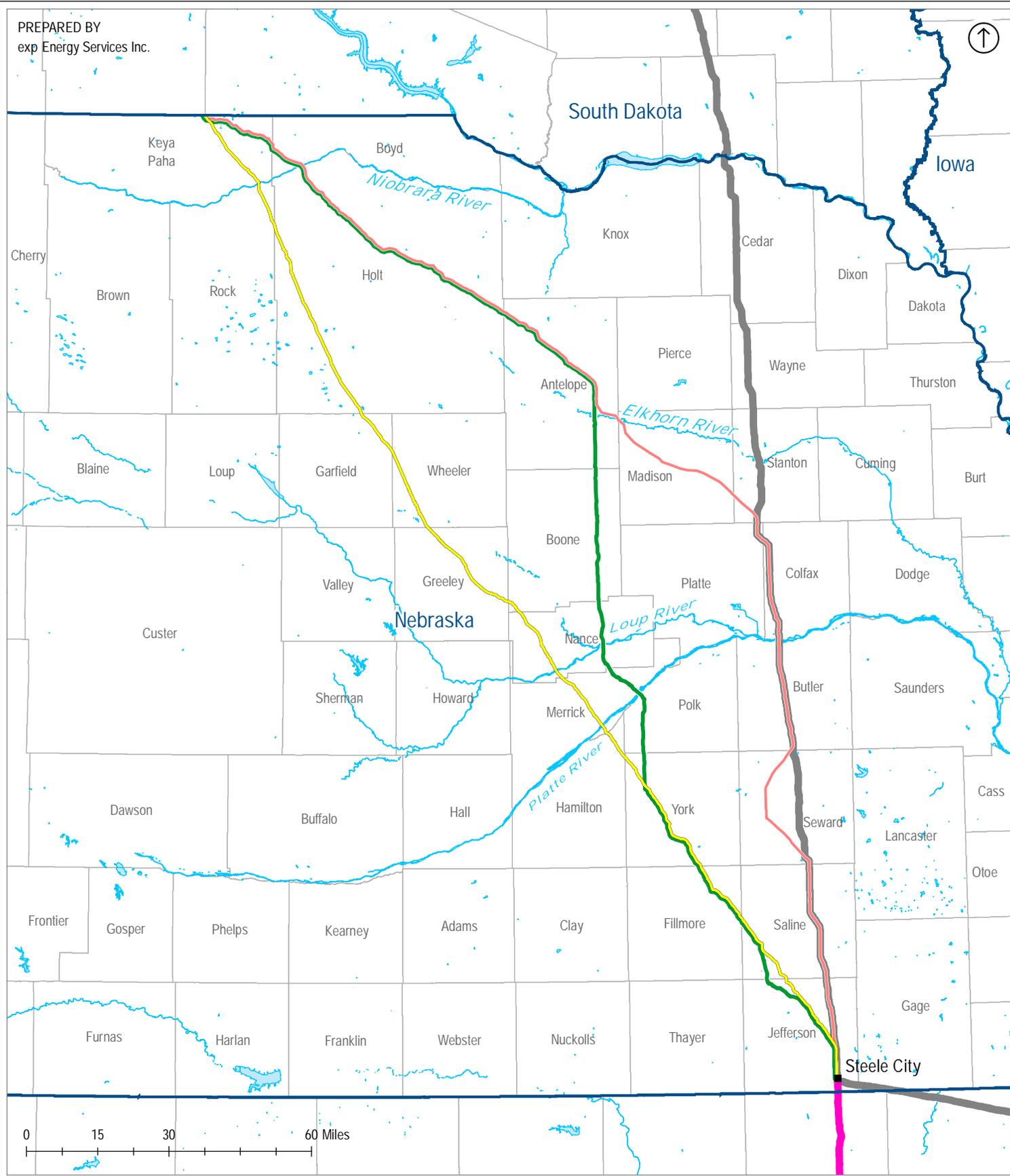
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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



LEGEND

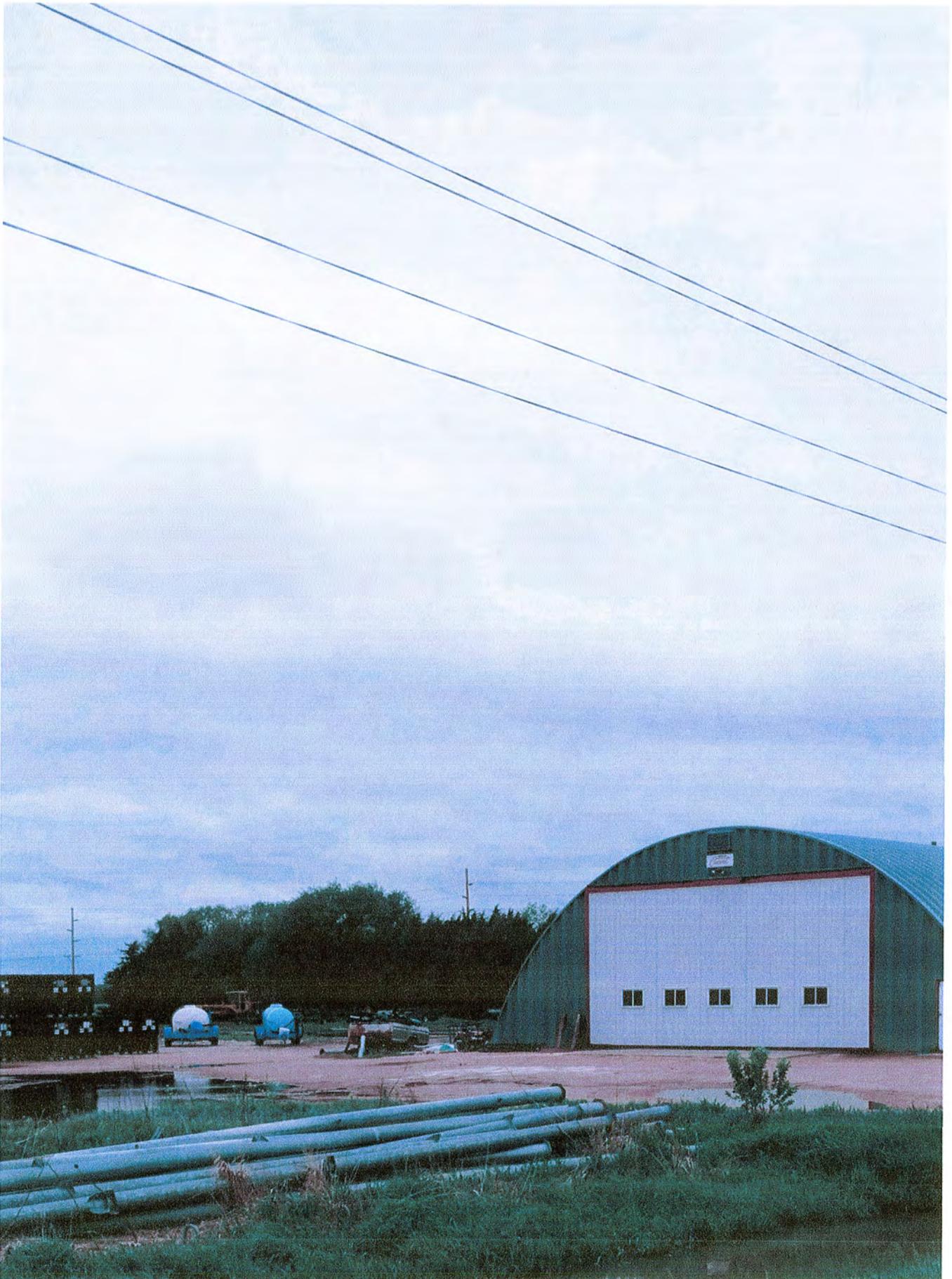
	PREFERRED ROUTE		WATERBODY
	SANDHILLS ALTERNATIVE ROUTE		STATE BOUNDARY
	KEYSTONE MAINLINE ALTERNATIVE ROUTE		COUNTY BOUNDARY
	KEYSTONE MAINLINE (PHASE I)		
	KEYSTONE CUSHING EXTENSION (PHASE II)		

KEYSTONE XL PROJECT

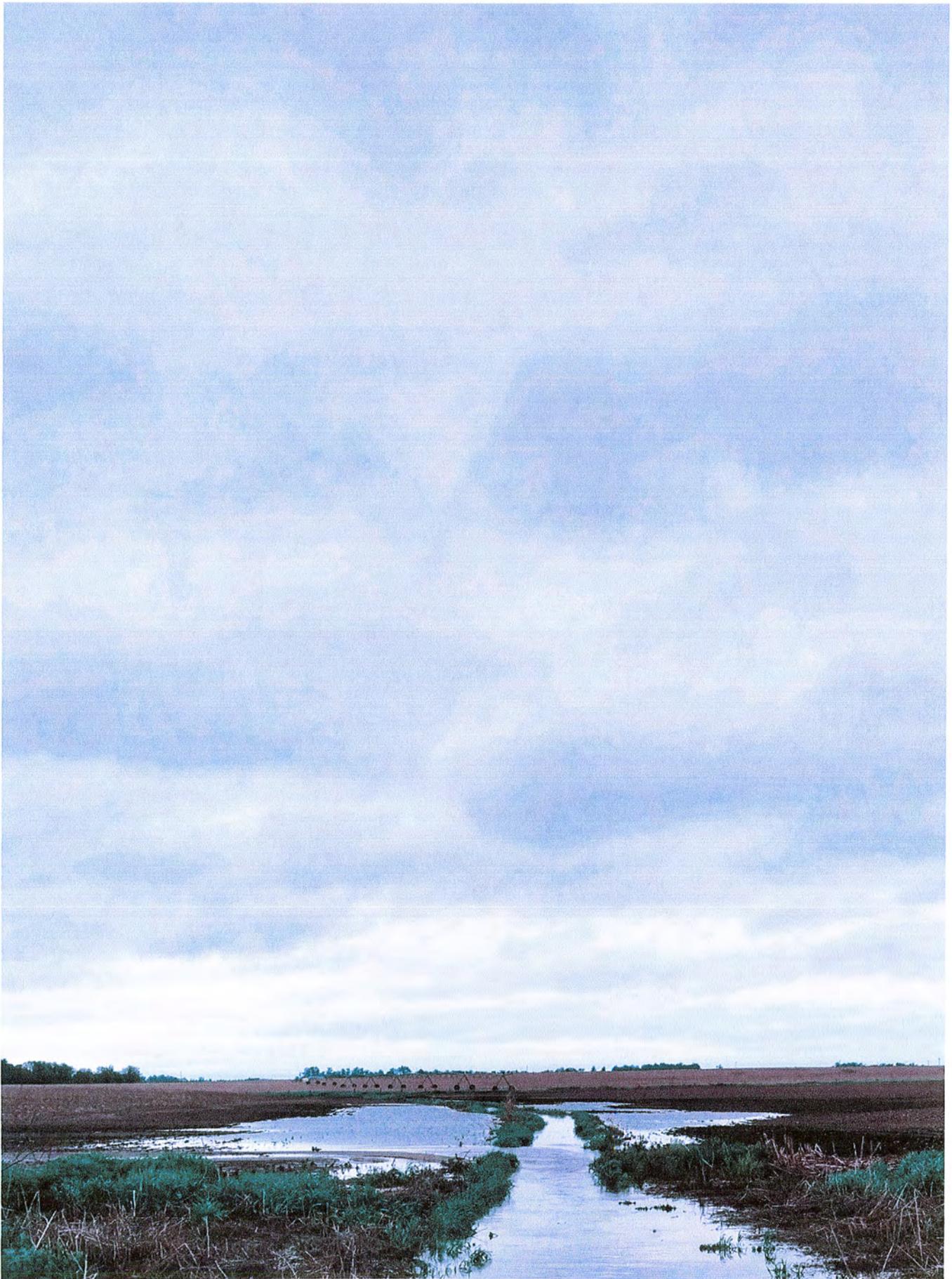
FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Attachment No. 8







Before the Nebraska Public Service Commission

In the Matter of the Application

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
Terry Van Housen in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Polk County)

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

2 A: My name is Terry Van Housen.

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

6 A: Yes, I am.

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

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

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

14 A: Yes.

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

16 A: Operate a 10,000 head cattle feeding operation.

1 **Q: If you are you married tell us your spouse's name please?**
2 A: Yes, Rebecca she goes by Becky.

3 **Q: If you have children how many do you have?**
4 A: Two, a son and a daughter.

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: How long the land has been in your family?**
9 A: We started farming this ground in 1985 for an older couple from Polk County. In
10 1991 we bought the ground.

11 **Q: Do you earn any income from this land?**
12 A: Yes.

13 **Q: Have you depended on the income from your land to support your livelihood**
14 **or the livelihood of your family?**
15 A: Yes.

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

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

1 A: Well I hope not to have to sell the land in my lifetime but times change and you
2 never know what is around the corner and yes I am concerned that if another piece
3 of ground similar to mine were for sale and it did not have the pipeline and mine
4 did that I would have a lower selling price.

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

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

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

10 A: Yes.

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

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

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

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

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

21 A: No, they have not.

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

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

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

29 A: No, they did not.

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

3 A: Yes, they did.

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

6 A: Yes, they did.

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

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

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

19 A: No, I do not.

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

22 A: Yes, they did.

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

26 A: I understood that they proposed to have the power to take both a temporary
27 construction easement that could last for a certain period of time and then also a
28 permanent easement which they described to be 50 feet across or in width, and

1 that would run the entire portion of my property from where a proposed pipeline
2 would enter my property until where it would exit the property.

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

7 A: Yes, it is.

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

10 A: Yes, I have.

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

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

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

22 A: Yes, I have a number of significant concerns and worries about the document and
23 how the language included and the language not included potentially negatively
24 impacts my land and thereby potentially negatively impacts my community and
25 my state.

26 **Q: I would like you to walk the Commissioners through each and every one of**
27 **your concerns about TransCanada's proposed Easement and Right-of-Way**
28 **agreement so they can develop an understanding of how that language and**
29 **the terms of that contract, in your opinion, potentially negatively impacts you**

1 **and your land. So, if you can start at the beginning of that document and**
2 **let's work our way through it, okay?**

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

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

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

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

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

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

27 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
28 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
29 limited partnership..." and I have no idea who that really is. I have no idea who is

1 forcing this pipeline on us or who the owners of the entities are, or what are the
2 assets backing this limited partnership, or who the general partner is, or who all
3 the limited partners are, and who makes up the ownership of the these partners or
4 the structure or any of the basic things you would want to know and understand if
5 you would want to do business with such an outfit. According to TransCanada's
6 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
7 liability company called TransCanada Keystone Pipeline GP, LLC is the general
8 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
9 basically nothing. That is really scary since the general partner has the liability but
10 virtually none of the ownership and who knows if it has any other assets.

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

14 A: No.

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

19 A: No.

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

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

1 or have any say so in who may own, operate, or be responsible for this pipeline in
2 the future.

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

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

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

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

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

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

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

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

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

3 A: Yes.

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

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

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

25 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
26 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
27 reasonable costs and expenses” will pay for damages caused but then limits
28 TransCanada’s liability to certain circumstances. There is no definition of
29 “commercially reasonable” and no stated right that the Landowner would get to

1 determine the amounts of cost or expense that is “commercially reasonable.”
2 TransCanada excepts out from their liability any damages that are caused by
3 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
4 Landowner. It is understandable that if the Landowner were to willfully and
5 intentionally cause damages to the pipeline that Landowner should be liable.
6 However, anything short of willful misconduct should be the liability of
7 TransCanada who is subjecting the pipeline on the Landowner and who is making
8 a daily profit from that pipeline. When evaluating the impact on property rights of
9 this provision, you must consider the potentially extremely expensive fight a
10 Landowner would have over this question of whether or not damage was an act of
11 negligence. Putting this kind of potential liability upon the Landowner is
12 incredibly problematic and is detrimental to the protection of property rights. I
13 don’t think this unilateral power which I can’t do anything about as the landowner
14 is in the best economic interest of the land in question or the State of Nebraska for
15 landowners to be treated that way.

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

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

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

25 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
26 they choose unless 1) any Landowner use interferes in any way with
27 TransCanada’s exercise of any of its rights within the Easement, or 2)
28 TransCanada decides to take any action on the property it deems necessary to
29 prevent injury, endangerment or interference with anything TransCanada deems

1 necessary to do on the property. Landowner is also forbidden from excavating
2 without prior authorization by TransCanada. So my understanding is that
3 TransCanada will unilaterally determine what Landowner can and can't do based
4 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
5 could also completely deny my request to excavate. Further, TransCanada retains
6 all "privileges necessary or convenient for the full use of the rights" granted to
7 them in the Easement. Again, TransCanada unilaterally can decide to the
8 detriment of the property rights of Landowner what TransCanada believes is
9 necessary or convenient for it. And there is no option for any additional
10 compensation to landowner for any right exercised by TransCanada that leads to
11 the removal of trees or plants or vegetation or buildings or structures or facilities
12 owned by Landowner of any kind. Such undefined and unilateral restrictions and
13 rights without having to compensate Landowner for such further destruction or
14 losses are not conducive to the protection of property rights or economic interest.

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

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

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

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

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

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

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

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

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

27 A: TransCanada maintains the unilateral right to abandon the pipeline and all
28 appurtenances thereto in place on, under, across, or through Nebraska land at any
29 time it chooses. There is no provision for Landowner compensation for such

1 abandonment nor any right for the Landowner to demand removal. Such unilateral
2 powers would negatively affect Landowners property are not conducive to the
3 protection of property rights or economic interest.

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

5 A: TransCanada has the power to unilaterally move or modify the location of any
6 Easement area whether permanent or temporary at their sole discretion.
7 Regardless, if Landowner has taken prior steps relative to their property in
8 preparation or planning of TransCanada's taking of the initial easement area(s),
9 the language here does not require TransCanada to compensate the Landowner if
10 they decide to move the easement anywhere on Landowners property. Such
11 unilateral powers would negatively affect Landowners property are not conducive
12 to the protection of property rights or economic interests.

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

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

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

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

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

1 A: There are many terms in the Easement that are either confusing or undefined terms
2 that are without context as to whether or not the Landowner would have any say
3 so in determining what these terms mean or if the evaluation is solely in
4 TransCanada's control. Some of these vague undefined and ambiguous terms are
5 as follows:

- 6 i. "pipeline installation activities"
- 7 ii. "availability of labor and materials"
- 8 iii. "commercially reasonable costs and expenses"
- 9 iv. "reasonably anticipated and foreseeable costs and expenses"
- 10 v. "yield loss damages"
- 11 vi. "diminution in the value of the property"
- 12 vii. "substantially same condition"
- 13 viii. "an actual or potential hazard"
- 14 ix. "efficient"
- 15 x. "convenient"
- 16 xi. "endangered"
- 17 xii. "obstructed"
- 18 xiii. "injured"
- 19 xiv. "interfered with"
- 20 xv. "impaired"
- 21 xvi. "suitable crossings"
- 22 xvii. "where rock is encountered"
- 23 xviii. "as nearly as practicable"
- 24 xix. "pre-construction position"
- 25 xx. "pre-construction grade"
- 26 xxi. "various engineering factors"

27 Each one of these above terms and phrases as read in the context of the Easement
28 could be problematic in many ways. Notably, undefined terms tend to only get
29 definition in further legal proceedings after a dispute arises and the way the

1 Easement is drafted, TransCanada has sole power to determine when and if a
2 particular situation conforms with or triggers rights affected by these terms. For
3 instance, “yield loss damages” should be specifically defined and spelled out
4 exactly how the landowner is to be compensated and in what events on the front
5 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
6 the Landowner is without contractual rights to define these terms or determine
7 when rights related to them trigger and what the affects may be.

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

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

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

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

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

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

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

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

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

4 A: No, never.

5 **Q: At any time did TransCanada present you with or request that you, as the**
6 **owner of the land in question, sign and execute a document called, “Advanced**
7 **Release of Damage Claims and Indemnity Agreement?”**

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

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

11 A: Yes, it is.

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

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

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

20 A: No, I did not.

21 **Q: Why not?**

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

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

28 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
29 shield themselves against known and foreseeable impacts that their pipeline, and

1 the construction of it, would have upon my land. It made me feel that they knew it
2 was in their financial interest to pay me as little as possible to prevent me from
3 ever having the opportunity to seek fair compensation again, and that this must be
4 based upon their experience of unhappy landowners and situations in other places
5 where they have built pipelines.

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

9 A: No, they have not.

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

13 A: No, they have not.

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

16 A: Yes, I am.

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

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

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

25 A: No, they have not.

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

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

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

11 A: No, it has not.

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

15 A: No, I do not.

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

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

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

22 A: Yes, I do.

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

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

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

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

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

5 A: No, of course not.

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

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

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

13 A: Well, yes I have.

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

18 A: No, of course not.

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

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

24 **Q: At the beginning of your statement, you briefly described your property that**
25 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
26 **give the Commissioners a sense of specifically how you believe the proposed**
27 **Keystone XL Pipeline and its preferred route, which proposes to go across**
28 **your land, how it would in your opinion based on your knowledge,**
29 **experience, and background of your land, affect it.**

1 A: Our water comes for our feed yard comes from the Ogallala Aquifer. Not only do
2 we, as humans, need clean drinking water, those animals need clean drinking
3 water. I built this feed yard from the ground up over the past 40 years with the
4 help of my family. Any chance of a leak in that pipeline, (that's proposed to go
5 over the Ogallala Aquifer; one of the nation's largest fresh water supplies) would
6 contaminate the water my cattle drink and contaminate the water that waters my
7 corn to feed my cattle. We have worked far too hard to get our business where it
8 is today. Please don't let this pipeline come through our land! We cannot
9 jeopardize our clean water supply. We also farm parcels of ground with 6
10 irrigation wells being affected by this pipeline.

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

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

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

3 A: No, I do not.

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

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

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

14 A: Well yes, of course.

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

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

1 and restrictions TransCanada is forcing upon us and Nebraska. The terms of the
2 easement must be addressed in order for the Commission to truly consider
3 property rights, economic interests, the welfare of Nebraska, and the balancing of
4 the proposed routes against all they will affect and impact.

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

7 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 A: Yes, I have.

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

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

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

4 A: No, I do not.

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

8 A: No, I do not.

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

11 A: No, I do not.

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

15 A: No, I do not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 A: I am respectfully and humbly requesting that the Commissioners think far beyond
14 a temporary job spike that this project may bring to a few counties and beyond the
15 relatively small amount of taxes this proposed foreign pipeline would possibly
16 generate. And, instead think about the perpetual and forever impacts of this
17 pipeline as it would have on the landowners specifically, first and foremost, but
18 also thereby upon the entire state of Nebraska, and to determine that neither the
19 preferred route nor the Keystone mainline alternative route are in the public
20 interest of the citizens of the state of Nebraska. And if the Commissioners were
21 inclined to modify TransCanada's proposed routes and were to be inclined to grant
22 an application for a route in Nebraska, that the only potential route that would
23 make any intelligent sense whatsoever would be twinning or near paralleling of
24 the proposed KXL with the existing Keystone I pipeline. The point of including
25 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been
26 considered by TransCanada before. It simply does not make sense to add yet
27 another major oil pipeline crisscrossing our state creating new pumping stations,
28 creating new impacts on additional counties and communities and going through
29 all of the court processes with myself and other landowners like me when this

1 applicant already has relationships with the landowners, the towns and the
2 communities along Keystone I, and that Keystone I is firmly outside of the sand
3 hills and a significantly further portion away from the heart of the Ogallala
4 Aquifer than the preferred route or the Keystone mainline alternative route.

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

8 A: Yes.

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

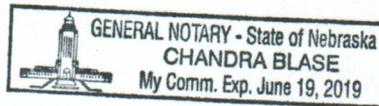
12 A: Yes, they are.

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

Terry J. Van Housen
Type Landowner Name Here

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

Chandra Blase
Notary Public



Attachment No. 1



S.011
T.013N
R.004W

Rebecca Lynn Van Housen
Terry James Van Housen

S.014
T.013N
R.004W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Rebecca Lynn Van Housen
Terry James Van Housen

TRACT NO. ML-NE-PO-40540.000
STATE: Nebraska
COUNTY: Polk
SECTION: 011
TOWNSHIP: 013N
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

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-PO-40540.000

**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**"), **Terry James Van Housen and Rebecca Lynn Van Housen, husband and wife, as joint tenants**, whose mailing address is 777 123rd Road, Stromsburg, Nebraska 68666 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip

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

A tract of land containing 80 acres, more or less, situated in the County of Polk, in the State of Nebraska, being further described as the S1/2 of the SE1/4 of Section 11, Township 13 North, Range 4 West of the 6th P.M., as recorded in Book 94, Page 590 in the Deed Records of Polk County, Nebraska; less and except any conveyances heretofore made.

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

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

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

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

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

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee

harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.
3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.
4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.
5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.
6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.
7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.
9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.
10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.
11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.
12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.
13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.
14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

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

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

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

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

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

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

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

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

GRANTOR(S):

Terry James Van Housen

Rebecca Lynn Van Housen

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **Terry James Van Housen**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

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

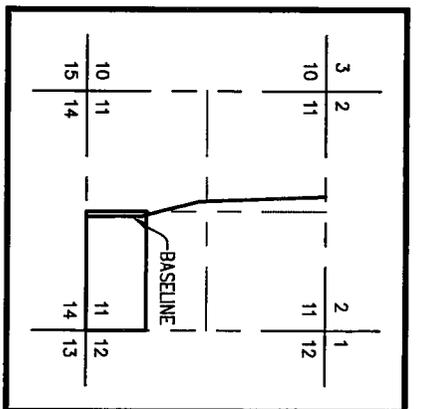
By **Rebecca Lynn Van Housen**

Notary Public Signature

Affix Seal Here

LEGEND
 R₂ PROPERTY LINE
 § PROPOSED SECTION LINE
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.P.C.N. DEED RECORDS OF POLK COUNTY, NEBRASKA

POLK COUNTY, NEBRASKA
 T-13-N, R-4-W, SECTION 11
 ML-NE-PO-40540.000



VICINITY MAP
 N.T.S.

TERRY JAMES VAN HOUSEN
 AND REBECCA LYNN VAN
 HOUSEN, HUSBAND AND WIFE,
 AS JOINT TENANTS AND NOT
 AS TENANTS IN COMMON
 VOLUME 94, PAGE 590
 D.R.P.C.N.

SEE DETAIL "A"

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: 1,344'±

AREA OF PERMANENT EASEMENT: 1.5 ACRES

AREA OF TEMPORARY WORKSPACE: 1.8 ACRES

AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.4 ACRE



KEYSTONE XL PROJECT

EASEMENT AREA
 ACROSS THE PROPERTY OF
 TERRY JAMES VAN HOUSEN
 AND REBECCA LYNN VAN
 HOUSEN, HUSBAND AND WIFE,
 AS JOINT TENANTS AND NOT AS
 TENANTS IN COMMON
 ML-NE-PO-40540.000

PROJECT:	XL	EXHIBIT A
APPROVED BY:		DRAWING NUMBER
SLR	XL-08-ML-SK-3707	DATE
NO.	REVISION	DATE
SCALE	DATE	DRAWN BY
1" = 500'	10/28/14	PB
		CHECKED BY
		ALS



TRACT LEGAL DESCRIPTION:
 S/2 SE/4 OF SECTION 11,
 T-13-N, R-4-W



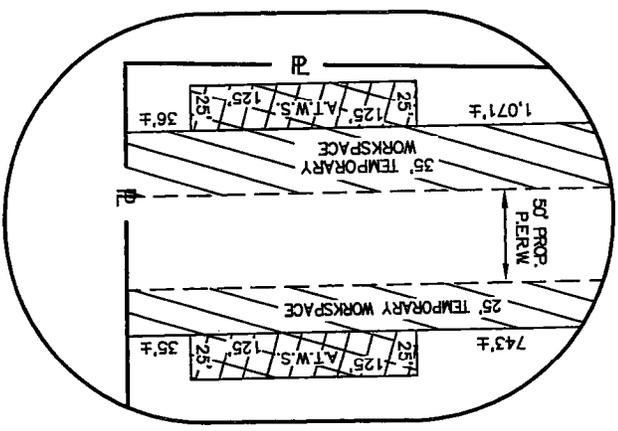
LEGEND
 R. PROPERTY LINE
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY

POLK COUNTY, NEBRASKA
 T-13-N, R-4-W, SECTION 11
 ML-NE-PO-40540.000

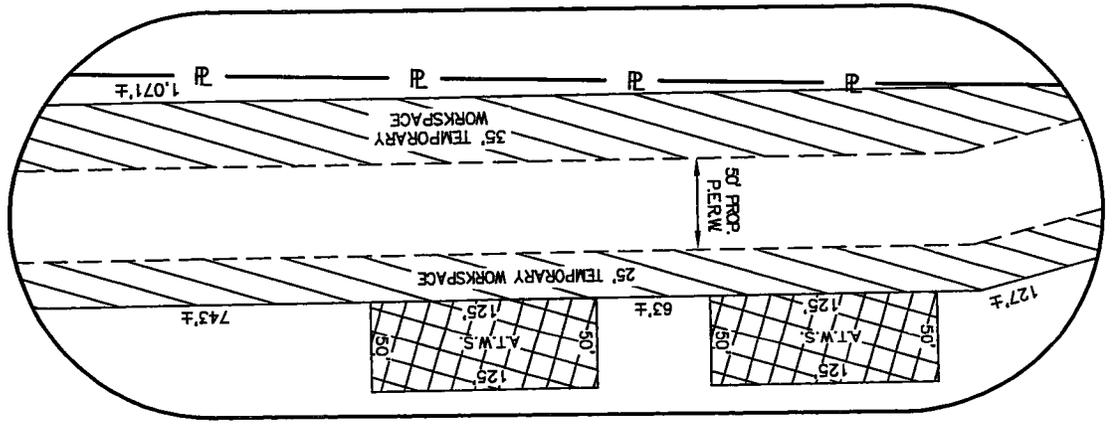


KEYSTONE XL PROJECT
 EASEMENT AREA
 ACROSS THE PROPERTY OF
 TERRY JAMES VAN HOUSEN
 AND REBECCA LYNN VAN
 HOUSEN, HUSBAND AND WIFE,
 AS JOINT TENANTS AND NOT AS
 TENANTS IN COMMON
 ML-NE-PO-40540.000

PROJECT:	XL	EXHIBIT A
APPROVED BY:		DRAWING NUMBER
SLR	XL-08-ML-SK-3707	
NO.	REVISION	DATE
SCALE	DATE	DRAWN BY
N.T.S.	10/28/14	PB
		CHECKED BY
		ALS



DETAIL "B"
 N.T.S.



DETAIL "A"
 N.T.S.

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



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

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

PARTIES

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM: NEGLIGENCE

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

SECOND CLAIM: TRESPASS

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-PO-40540.000

We, Terry James Van Housen and Rebecca Lynn Van Housen, of Polk County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Nine Hundred Sixty Dollars and No Cents (\$2,960.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Polk, State of Nebraska:

S/2 SE/4

Section 11, Township 13N, Range 4W

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

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

_____, 20____.

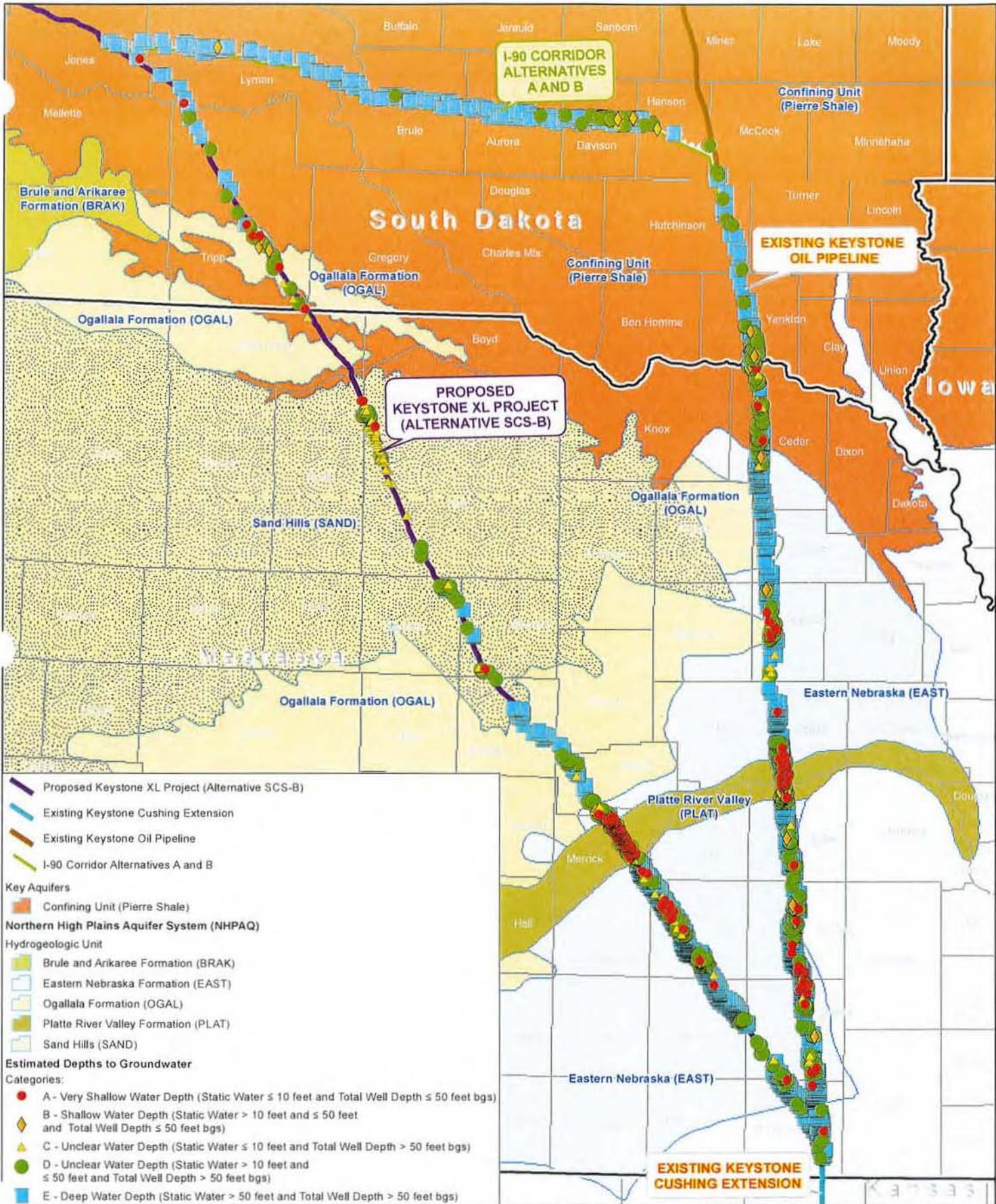
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



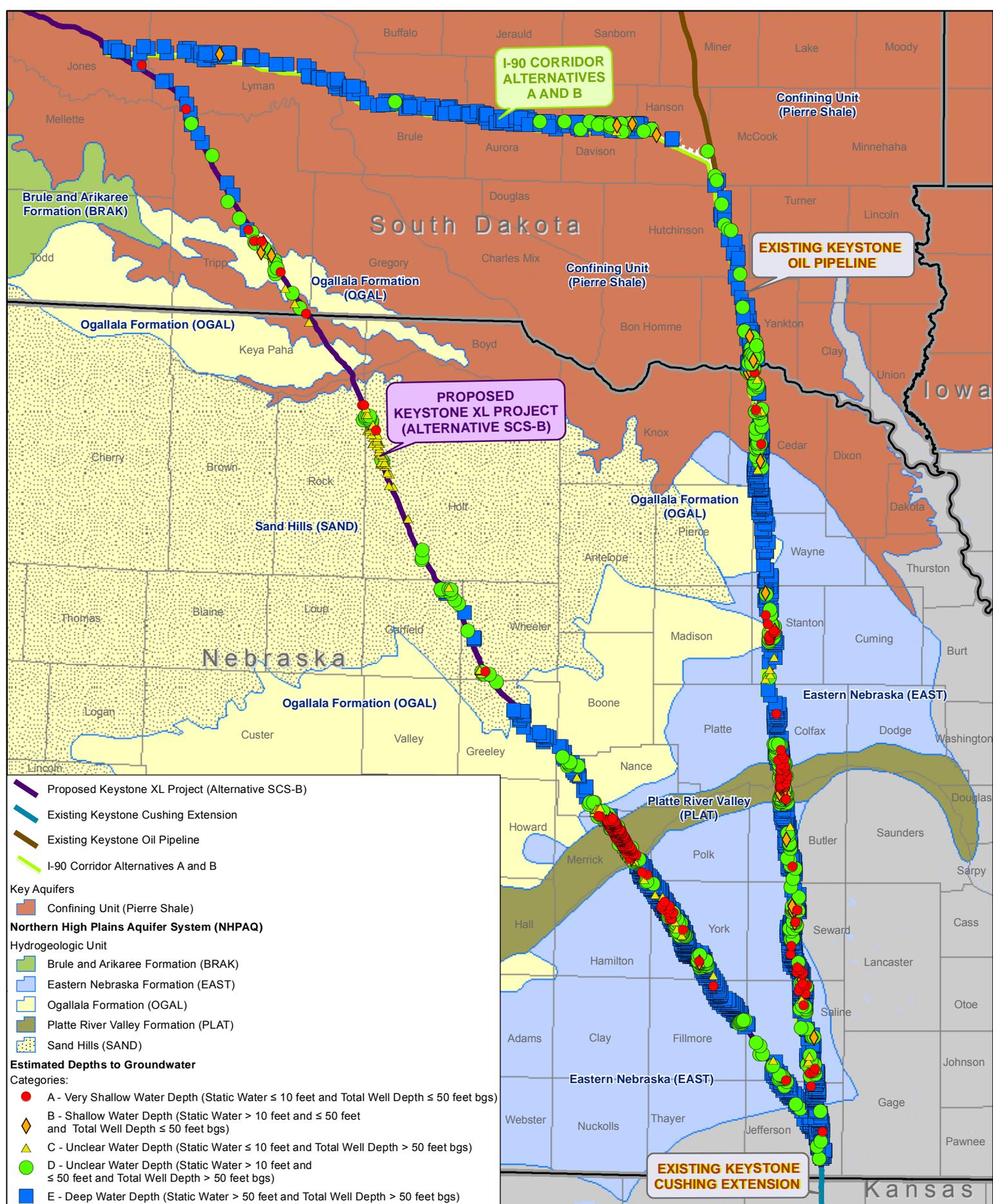
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

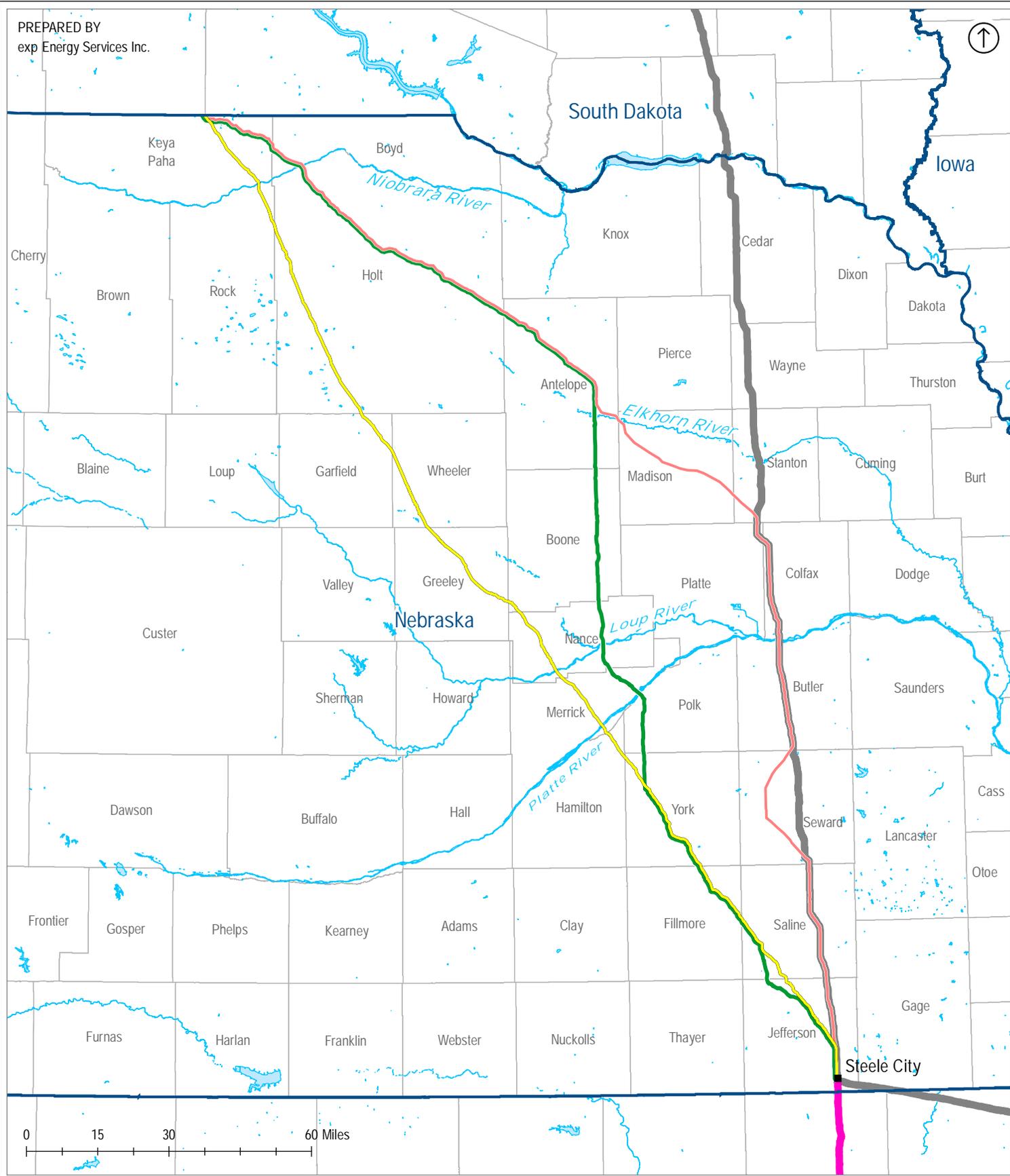
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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



LEGEND

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

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
Gregory Walmer in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Antelope County)

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

2 A: My name is Gregory Walmer.

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 Section 8, Township 27N, Range 7W Antelope
11 County.

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

15 A: Yes.

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

1 A: I raise corn and soybeans, feed cattle and I'm a commodity broker.

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

3 A: Suzanne Walmer.

4 **Q: Do you have children?**

5 A: Yes.

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

7 A: Yes.

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

10 A: Yes.

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

14 **A:** This land has been in my family over 100 years. The land was homesteaded in the
15 1880's by my great grandfather and great grandmother Charles and Mary Johnston.
16 The farmhouse where I currently live was built by my grandparents Jim and Edna
17 Johnston in the early 1900's. They farmed the land until the death of my
18 grandfather Jim in 1949. Shortly after that my parents Wayne and Joanne
19 (Johnston) Walmer moved to the farm and they farmed the land until the death of
20 my father Wayne in 1981. I moved to the farm in 1982 and have lived here ever
21 since. My mother was honored to receive the Nebraska Pioneer Farm Award in
22 1989. She received a plaque inscribed as follows: "The Knights of AK-SAR-BEN
23 are honored to recognize the Johnston Homestead for long and meritorious service
24 to agriculture, as exemplified by continued ownership within the family of the
25 same Nebraska farm for 100 years or more. Nebraska has been enriched by the
26 courageous pioneer spirit and loyalty to the land exhibited by members of this
27 family, down through the years." I am filled with a sense of pride and
28 accomplishment when I think of the perseverance required by my ancestors to

1 keep the land in the family all these years. I am grateful to them for that legacy
2 and hope to continue that legacy for my children and grandchildren.

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

4 A: Yes.

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

7 A: Yes.

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

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

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

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

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

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

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

3 A: Yes.

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

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

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

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

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

14 A: No, they have not.

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

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

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

22 A: No, they did not.

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

25 A: Yes, they did.

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

28 A: Yes, they did.

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

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

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

12 A: No, I do not.

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

15 A: Yes, they did.

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

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

24 **Q: Is the document included with your testimony here as Attachment No. 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 my easement to
18 be transferred or sold to someone or some company or country or who knows what
19 that I don't know and who we may not want to do business with. This pipeline
20 would be a huge asset for TransCanada and if they can sell to the highest bidder
21 that could have terrible impacts upon all of Nebraska depending upon who may
22 buy it and I don't know of any safeguards in place for us or the State to veto or
23 have any say so in who may own, operate, or be responsible for this pipeline in the
24 future.

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

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

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

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

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

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

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

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

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

26 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 iv. “reasonably anticipated and foreseeable costs and expenses”
- 2 v. “yield loss damages”
- 3 vi. “diminution in the value of the property”
- 4 vii. “substantially same condition”
- 5 viii. “an actual or potential hazard”
- 6 ix. “efficient”
- 7 x. “convenient”
- 8 xi. “endangered”
- 9 xii. “obstructed”
- 10 xiii. “injured”
- 11 xiv. “interfered with”
- 12 xv. “impaired”
- 13 xvi. “suitable crossings”
- 14 xvii. “where rock is encountered”
- 15 xviii. “as nearly as practicable”
- 16 xix. “pre-construction position”
- 17 xx. “pre-construction grade”
- 18 xxi. “various engineering factors”

19 Each one of these above terms and phrases as read in the context of the Easement
20 could be problematic in many ways. Notably, undefined terms tend to only get
21 definition in further legal proceedings after a dispute arises and the way the
22 Easement is drafted, TransCanada has sole power to determine when and if a
23 particular situation conforms with or triggers rights affected by these terms. For
24 instance, “yield loss damages” should be specifically defined and spelled out
25 exactly how the landowner is to be compensated and in what events on the front
26 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
27 the Landowner is without contractual rights to define these terms or determine
28 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 I will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

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

26 A: No, never.

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

1 A: Yes, they did.

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

4 A: Yes, it is.

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

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

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

13 A: No, I did not.

14 **Q: Why not?**

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

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

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

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

4 A: No, they have not.

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

8 A: No, they have not.

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

11 A: Yes, I am.

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

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

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

20 A: No, they have not.

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

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

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

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

6 A: No, it has not.

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

10 A: No, I do not.

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

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

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

17 A: Yes, I do.

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

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

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

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

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

28 A: No, of course not.

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

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

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

8 A: Well, yes I have.

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

13 A: No, of course not.

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

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

19 **Q: 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: Part of the land is center pivot irrigated cropland. The predominant soil types are
2 Thurman loamy fine sand and Boelus loamy fine sand. The cropland is rotated
3 between corn and soybeans. Usually two years corn and then one year beans. We
4 are fortunate to have excellent water in the area. Drawing from the Ogallala
5 Aquifer irrigation wells on the farm are capable of pumping 850-1000 g/p/m. This
6 is very important on our sandy soils as water holding capacity is low and the crop
7 can become stressed quickly with hot, dry and windy conditions. Timing of
8 irrigation is critical. However with proper irrigation the land is very productive
9 200+ bushel/acre corn and 60+ bushel/acre soybeans are not uncommon. The other
10 portion of the land impacted by the pipeline is in CRP. The pipeline would also go
11 through a shelterbelt on the property which was planted in the 1930's and two
12 cedar tree rows that my father planted in the 1960's.

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

16 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
17 or even bullied around and being made to feel scared that they did not have any
18 options but to sign whatever papers TransCanada told them they had to. I am
19 aware of older folks and widows or widowers feeling they had no choice but to
20 sign TransCanada's Easement and they didn't know they could fight or stand up
21 for themselves. From a more practical standpoint, I am worried that according to
22 their answer to our Interrogatory No. 211, TransCanada only owns and operates
23 one (1) major oil pipeline. They simply do not have the experience with this type
24 of pipeline and that scares me. There are others but that is what I can recollect at
25 this time and if I remember more or my recollection is refreshed I will share those
26 with the Commissioners at the Hearing in August.

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

29 A: No, I do not.

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

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

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

11 A: Well yes, of course.

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

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

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

1 A: Yes, I do.

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

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

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

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

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

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

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

20 A: Yes, I believe that any construction, operation, and/or maintenance of the
21 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
22 land, as well as land along and surrounding the proposed pipeline route. This
23 includes, but is not limited to, the reasons that we discussed above of disturbing
24 the soil composition and makeup as it has naturally existed for thousands of years
25 during the construction process, and any future maintenance or removal process.
26 I'm gravely concerned about the fertility and the loss of economic ability of my
27 property to grow the crops, or grow the grasses, or grow whatever it is at that time
28 they exist on my property or that I may want to grow in the future, or that a future

1 owner may want to grow. The land will never be the same from as it exists now
2 undisturbed to after it is trenched up for the proposed pipeline.

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

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

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

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

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

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

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

27 A: Yes, I do. I am significantly concerned about how the existence of the proposed
28 pipeline underneath and across and through my property will negatively affect the
29 fair market value at any point in the future, especially at that point in which I

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

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

16 A: Yes, I have.

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

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

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

25 A: No, I do not.

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

29 A: No, I do not.

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

4 A: No, I do not.

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

8 A: No, I do not.

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

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

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

24 A: First of all, not all jobs are created equally. Most jobs that are created, whether
25 temporary or on a permanent basis, don’t come with a project that has all the
26 potential and foreseeable negative impacts, many of which we have discussed here
27 and other witnesses throughout the course of this hearing have and will discuss. If
28 I decide to hire and employ someone to help me out in my farming or ranching
29 business, I’ve created a job but I haven’t done so at the risk or detrimental impact

1 to my land or my town or my county or my state. And I've hired someone who is
2 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
3 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
4 jobs are not created equal. Additionally, I understand from what I'm familiar with
5 from TransCanada's own statements that the jobs numbers they originally touted
6 were determined to be a minute fraction of the permanent jobs that had been
7 projected. According to their answer to our Interrogatory No. 191, TransCanada
8 has created only thirty-four (34) jobs within Nebraska working specifically on
9 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
10 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
11 Further, according to their answer to Interrogatory No. 199, TransCanada would
12 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
13 constructed on its Preferred Route or its Mainline Alternative Route.

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

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

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

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

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

26 A: I don't believe there is an intelligent route because as I have stated I don't believe
27 this project anywhere within Nebraska is within the public interest. However, if
28 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
29 had to go somewhere in the state of Nebraska, the only intelligent route I believe

1 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
2 preferred route and the mainline alternative routes are economic liabilities our
3 state cannot risk.

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

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

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

19 A: Yes. I'm very concerned about farming over the pipeline. Language in the
20 Easement states "Grantor shall not excavate or otherwise alter the ground
21 elevation." Does this include normal tillage practices? What about irrigation
22 systems crossing the pipeline? It seems to me that this is language that could be
23 used against the landowner in the future if an accident occurs. I receive a one-time
24 payment yet my heirs could be held responsible for an accident that occurs 50
25 years from now. The easement gives TransCanada the right to abandon the
26 pipeline in place. This creates a tremendous liability for my children and
27 grandchildren and I urge the Commissioners to think long and hard if this is in
28 Nebraska's interest. I am also concerned about the severance damages that would
29 impact my land. Severance decreases the value of the land. Examples: railroad

1 right of way and electrical transmission poles through property devalue the land
2 because it is impossible or more costly to develop for irrigation. Although the
3 pipeline is underground I can see it being an obstacle of a future technology no
4 one has even thought of yet. The railroad that runs through my property was
5 constructed in the 1890's. I doubt anyone at that time had envisioned a center
6 pivot. On my property TransCanada plans to install a mainline valve. This is an
7 above ground structure which would surely devalue the land because it is a
8 physical barrier to any future irrigation development. This above ground structure
9 would also increase the possibility of an accident which according to the terms of
10 the easement I could be held liable for. The threat the proposed preferred route and
11 first half of the mainline alternative route pose to the Ogallala Aquifer is
12 significant. There are 2398 Nebraska wells within one mile of the proposed
13 preferred route. Compare that to other states Montana 523 wells and South Dakota
14 only 105. If the proposed preferred route of the KXL pipeline is approved, it
15 would go through one of the most densely irrigated areas of Nebraska. Three out
16 of every four quarters in Antelope County are irrigated. The relevant Map is in
17 Attachment No. 8. Each purple circle is an irrigated quarter. As you can see
18 Antelope County is mostly purple. Similar to Antelope County, Holt County is
19 also heavily irrigated and the local economy dependent on dependable clean water
20 from the Ogallala Aquifer. Moving this pipeline, if it is to be approved, out of Holt
21 and Antelope counties is crucial for the long-term welfare of Nebraska.

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. And if the Commissioners were
18 inclined to modify TransCanada's proposed routes and were to be inclined to grant
19 an application for a route in Nebraska, that the only potential route that would
20 make any intelligent sense whatsoever would be twinning or near paralleling of
21 the proposed KXL with the existing Keystone I pipeline. It simply does not make
22 sense to add yet another major oil pipeline crisscrossing our state creating new
23 pumping stations, creating new impacts on additional counties and communities
24 and going through all of the court processes with myself and other landowners like
25 me when this applicant already has relationships with the landowners, the towns
26 and the communities along Keystone I, and that Keystone I is firmly outside of the
27 sand hills and a significantly further portion away from the heart of the Ogallala
28 Aquifer than the preferred route or the Keystone mainline alternative route.

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: 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.**

Gregory Walmer
Gregory Walmer

Subscribed and Sworn to me before this 25th day of May, 2017.

Nathan Schwager
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.



S.006
T.027N
R.007W

S.005
T.027N
R.007W

Joanne Walmer, Life Estate
Gregory Walmer, Remainderman

S.007
T.027N
R.007W

S.008
T.027N
R.007W

S.009
T.027N
R.007W

Joanne Walmer, Life Estate
Gregory Walmer, Remainderman

S.018
T.027N
R.007W

S.017
T.027N
R.007W

S.016
T.027N
R.007W

IMAGERY: NAIP 2016



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Joanne Walmer, Life Estate
Gregory Walmer, Remainderman

TRACT NO. ML-NE-AT-30145.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 008
TOWNSHIP: 027N
RANGE: 007W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Access Road (Temp.)
- Property Line

May 2017 - X:\Drawings\5058\KEYSTONE_XL\5000_8995038

Attachment No. 2



Attachment No. 3

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

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-AT-30155.000

**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**") **Cottonwood Ridge LLC, a Nebraska Limited Liability Company**, whose mailing address is 51756 Highway 20, Royal, NE 68773 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and

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

A tract of land containing 120 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the North 120 acres of the NW1/4 of Section 17, Township 27 North, Range 7 West of the 6th P.M., as recorded in Book 126, Page 45 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):

Cottonwood Ridge 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

Cottonwood Ridge LLC, a Nebraska Limited Liability Company on behalf of the corporation.

Notary Public Signature

Affix Seal Here

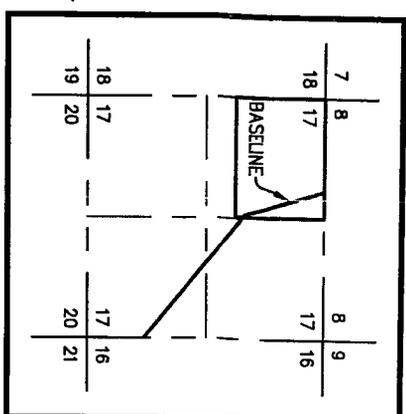
LEGEND
 P PROPERTY LINE
 § SECTION LINE
 R PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.A.C.N. DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA

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

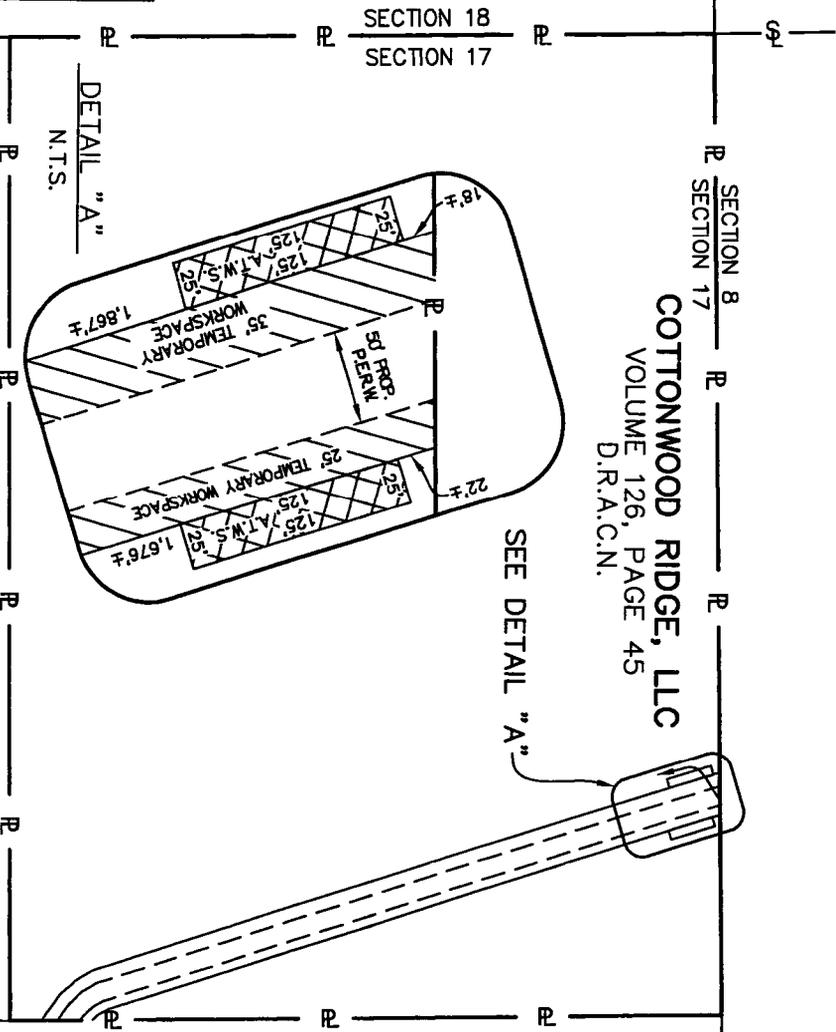
ANTELOPE COUNTY, NEBRASKA

T-27-N, R-7-W, SECTION 17
 ML-NE-AT-30155.000

COTTONWOOD RIDGE, LLC
 VOLUME 126, PAGE 45
 D.R.A.C.N.



VICINITY MAP
 N.T.S.



DETAIL "A"
 N.T.S.



TRACT LEGAL DESCRIPTION:
 N 120AC OF NW/4 OF SECTION 17,
 T-27-N, R-7-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: 1,892'±
 AREA OF PERMANENT EASEMENT: 2.2 ACRES
 AREA OF TEMPORARY WORKSPACE: 2.7 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.1 ACRE



TransCanada
In business to deliver

KEYSTONE XL PROJECT
 EASEMENT AREA
 ACROSS THE PROPERTY OF
 COTTONWOOD RIDGE, LLC
 ML-NE-AT-30155.000

PROJECT: XL
 EXHIBIT A

APPROVED BY: _____ DRAWING NUMBER: XL-08-ML-SK-3408
 SLR: _____
 NO. _____ REVISION: _____ DATE: _____

SCALE: 1" = 500'
 DATE: 11/03/14
 DRAWN BY: PB
 CHECKED BY: ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

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

PARTIES

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM: NEGLIGENCE

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

SECOND CLAIM: TRESPASS

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

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

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-AT-30145.000

We, Joanne Walmer, Life Estate and Gregory Walmer, Remainderman, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Thousand Eight Hundred Thirty Four Dollars and No Cents (\$3,834.00), 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:

Part of the NE/4, SW/4, and Part of the E/2 NW/4

Section 8, Township 27N, Range 7W

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_____.

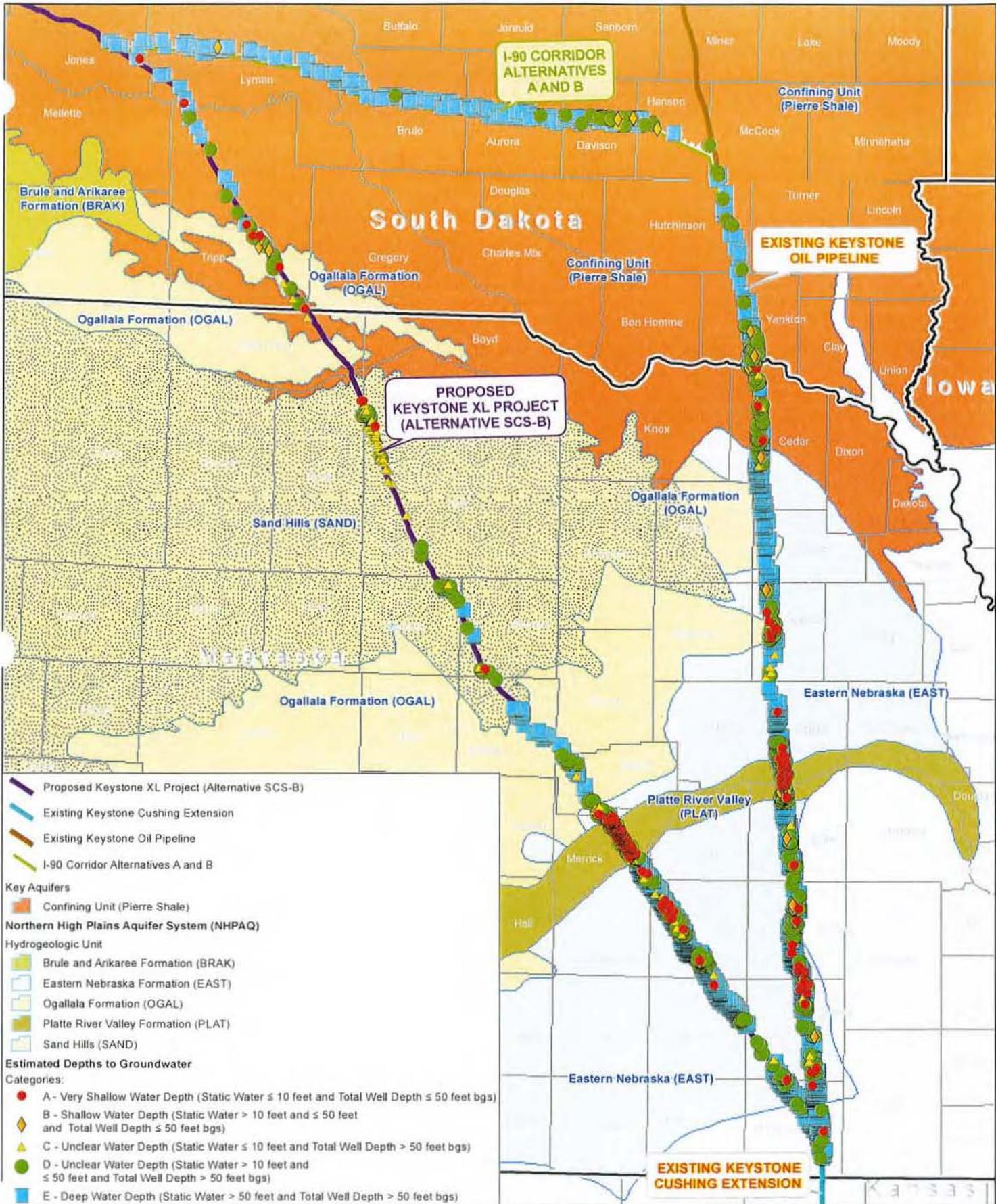
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



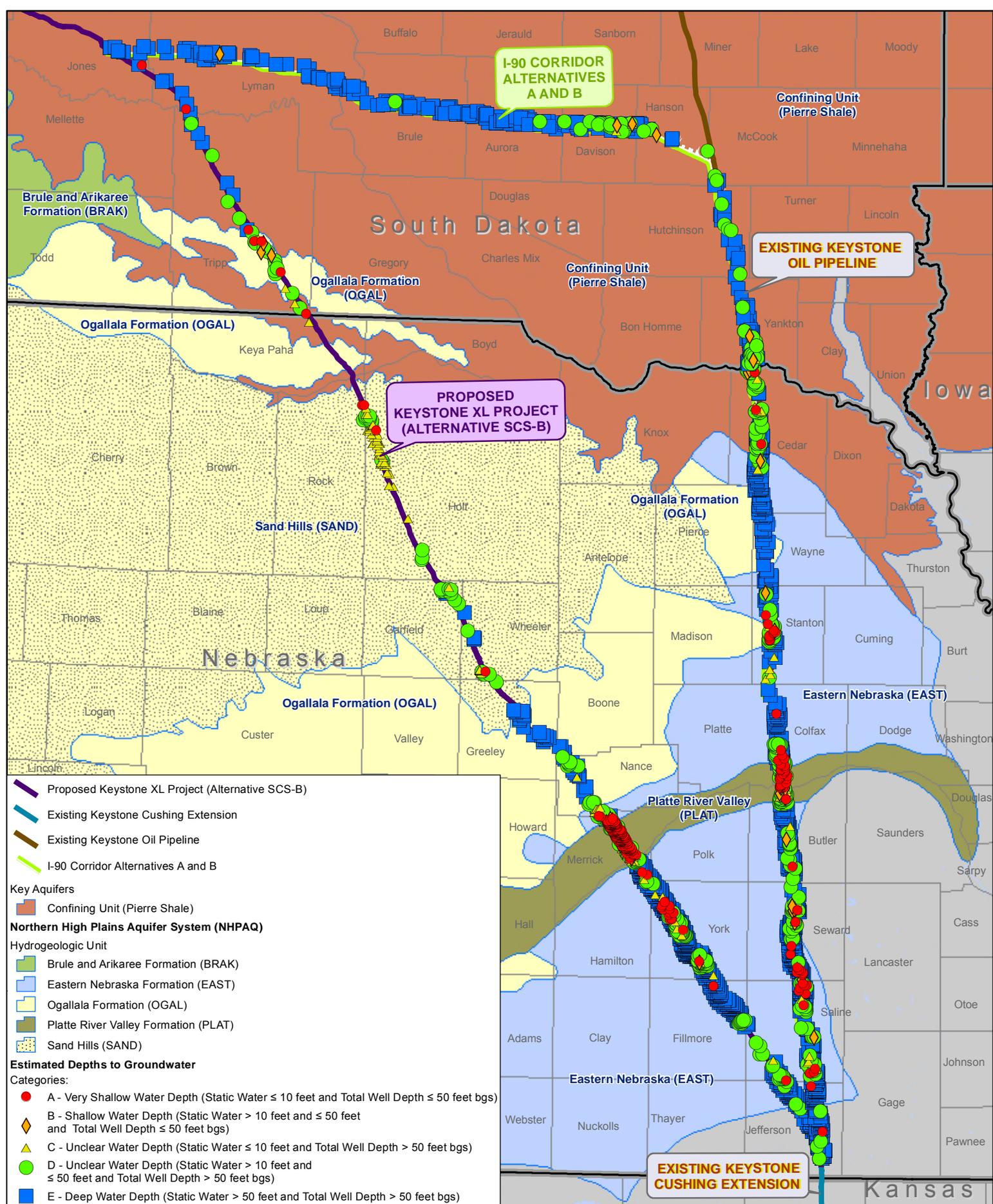
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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



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

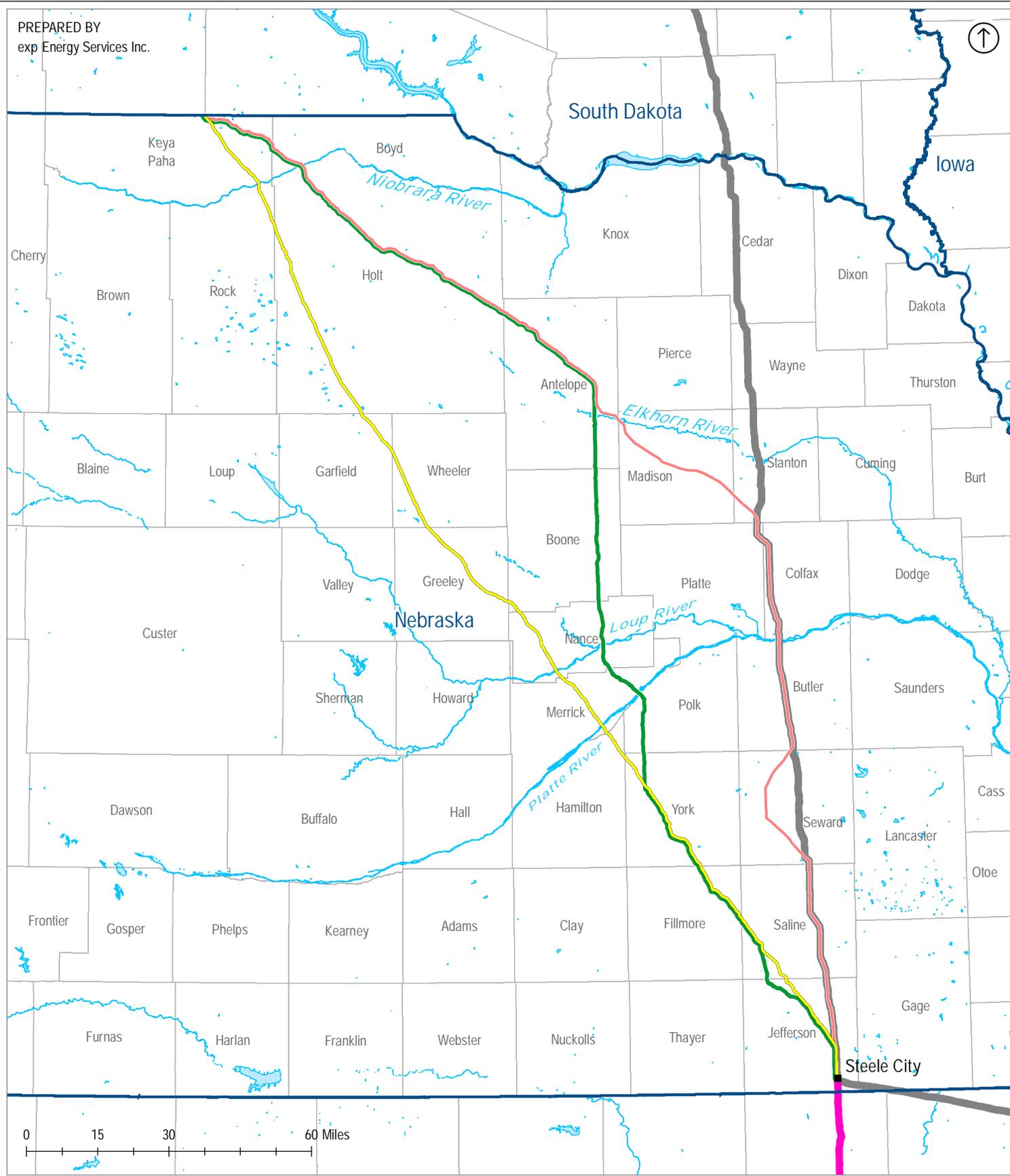
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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

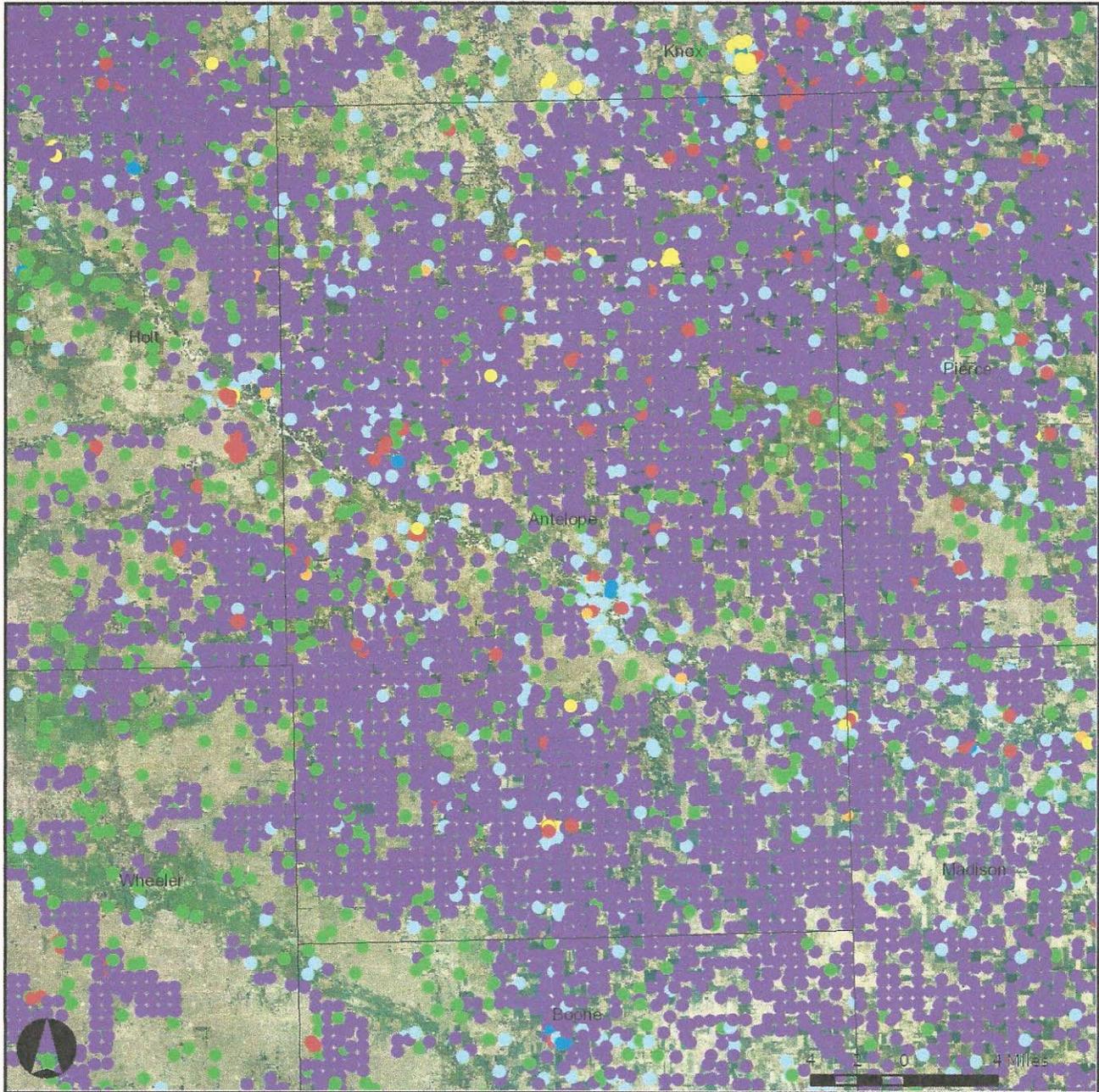


LEGEND	
	PREFERRED ROUTE
	SANDHILLS ALTERNATIVE ROUTE
	KEYSTONE MAINLINE ALTERNATIVE ROUTE
	KEYSTONE MAINLINE (PHASE I)
	KEYSTONE CUSHING EXTENSION (PHASE II)
	WATERBODY
	STATE BOUNDARY
	COUNTY BOUNDARY

KEYSTONE XL PROJECT
FIGURE 2.2-2
PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Attachment No. 8

Map



Counties with labels



Wells by Use

- All Other Uses
- Commercial
- Domestic

Wells by Use (continued)

- Groundwater Heat Exch.
- Irrigation
- Groundwater Quality
- Livestock

State Bounds



Find a Problem

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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
Diana Widga in Support of
Landowner Intervenors**

State of Nebraska)
) ss.
Polk County)

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

2 A: My name is Diana Widga.

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: I am the wife of Donald Widga, affected landowner, and his Power of Attorney.

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: Our land is located in Polk County.

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

14 A: Yes.

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

16 A: Farmer.

1 **Q: How long the land has been in your family?**

2 **A:** This farm was homesteaded by Don's great-grandfather in 1880 and has always
3 been a Widga farm. I am hoping we can pass it on to our children and
4 grandchildren. Except for Don's service time in the Navy, he has lived on this
5 farm all his life and his ancestors and he has cared for the soil and its crops.

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

7 **A:** Yes. Our living comes from the farming of this ground – growing corn and
8 soybeans

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

11 **A:** Yes.

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

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

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

26 **A:** We hope not to have to sell the land in my lifetime but times change and you
27 never know what is around the corner and yes I am concerned that if another piece
28 of ground similar to mine were for sale and it did not have the pipeline and mine

1 did that I would have a lower selling price. I think this would be true for pipeline
2 ground on both the preferred and mainline alternative routes.

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

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

6 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
7 Pipeline would cross the land described above and owned by you?**

8 A: Yes.

9 **Q: Were you or an entity for which you are a member, shareholder, or director
10 previously sued by TransCanada Keystone Pipeline, LP?**

11 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued Don by filing a
12 petition for condemnation against our land so it could place its proposed pipeline
13 within an easement that it wanted to take from us on our land.

14 **Q: Did you defend yourself and your land in that condemnation action?**

15 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
16 and expenses in our resistance of TransCanada's lawsuit against us.

17 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
18 incurred?**

19 A: No, they have not.

20 **Q: In its lawsuit against you, did TransCanada identify the amount of your
21 property that it wanted to take for its proposed pipeline?**

22 A: The lawsuit against us stated they would take the amount of property that is
23 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
24 and equipment reasonably necessary to operate the pipeline.

25 **Q: Did TransCanada define what they meant by "property that is reasonably
26 necessary"?**

27 A: No, they did not.

28 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain
29 property portion of your land?**

1 A: Yes, they did.

2 **Q: Did TransCanada describe what rights it proposed to take related to the**
3 **eminent domain property on your land?**

4 A: Yes, they did.

5 **Q: What rights that they proposed to take did they describe?**

6 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
7 operate, and maintain the pipeline and the plant and equipment reasonably
8 necessary to operate the pipeline, specifically including surveying, laying,
9 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
10 reconstructing, removing and abandoning one pipeline, together with all fittings,
11 cathodic protection equipment, pipeline markers, and all their equipment and
12 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
13 petroleum products, and all by-products thereof.”

14 **Q: Prior to filing an eminent domain lawsuit to take your land that**
15 **TransCanada identified, do you believe they attempted to negotiate in good**
16 **faith with you?**

17 A: No, I do not.

18 **Q: Did TransCanada at any time approach you with or deliver to you their**
19 **proposed easement and right-of-way agreement?**

20 A: Yes, they did.

21 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
22 **agreement, did you understand that they would be purchasing a fee title**
23 **interest in your property or that they were taking something else?**

24 A: I understood that they proposed to have the power to take both a temporary
25 construction easement that could last for a certain period of time and also a
26 permanent easement which they described to be 50 feet across or in width, and
27 that would run the entire portion of my property from where a proposed pipeline
28 would enter my property until where it would exit the property.

1 **Q: Is the document included with your testimony here as Attachment No. 2, a**
2 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
3 **Way agreement that they included with their condemnation lawsuit against**
4 **you?**

5 A: Yes, it is.

6 **Q: Have you had an opportunity to review TransCanada’s proposed Easement**
7 **and Right-of-Way agreement?**

8 A: Yes, I have.

9 **Q: What is your understanding of the significance of the Easement and Right-of-**
10 **Way agreement as proposed by TransCanada?**

11 A: My understanding is that this is the document that will govern all of the rights and
12 obligations and duties as well as the limitations of what I can and cannot do and
13 how I and any future landowner and any person I invite to come onto my property
14 must behave as well as what TransCanada is and is not responsible for and how
15 they can use my land.

16 **Q: After reviewing TransCanada’s proposed Easement and Right-of-Way**
17 **agreement do you have any concerns about any portions of it or any of the**
18 **language either included in the document or missing from the proposed**
19 **document?**

20 A: Yes, I have a number of significant concerns and worries about the document and
21 how the language included and the language not included potentially negatively
22 impacts my land and thereby potentially negatively impacts my community and
23 my state.

24 **Q: I would like you to walk the Commissioners through each and every one of**
25 **your concerns about TransCanada’s proposed Easement and Right-of-Way**
26 **agreement so they can develop an understanding of how that language and**
27 **the terms of that contract, in your opinion, potentially negatively impacts you**
28 **and your land. So, if you can start at the beginning of that document and**
29 **let’s work our way through it, okay?**

1 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
2 Easement and Right-of-Way agreement and how it negatively could affect my
3 property rights and my economic interests.

4 **Q: Okay, let's start with your first concern please.**

5 A: The very first sentence talks about consideration or how much money they will
6 pay to compensate me for all of the known and unknown affects and all of the
7 rights I am giving up and for all the things they get to do to my land and for what
8 they will prevent me from doing on my land and they only will pay me one time at
9 the signing of the easement agreement. That is a huge problem.

10 **Q: Explain to the Commissioners why that is a problem.**

11 A: It is not fair to the landowner, the county, or the State. It is not fair to the
12 landowner because they want to have my land forever for use as they see fit so
13 they can make a daily profit from their customers. If I was to lease ground from
14 my neighbor I would typically pay twice a year every year as long as they granted
15 me the rights to use their land. That only makes sense – that is fair. If I was going
16 to rent a house in town I would typically pay monthly, every month until I gave up
17 my right to use that house. By TransCanada getting out on the cheap and paying
18 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
19 revenue collection on the money I would be paid and then pay taxes on and
20 contribute to this state and this country. It is money I would be putting back into
21 my local community both spending and stimulating the local economy and
22 generating more economic activity right here. Instead TransCanada's shareholders
23 keep all that money and it never finds its way to Nebraska.

24 **Q: What is your next concern?**

25 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
26 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
27 limited partnership..." and I have no idea who that really is. I have no idea who is
28 forcing this pipeline on us or who the owners of the entities are, or what are the
29 assets backing this limited partnership, or who the general partner is, or who all

1 the limited partners are, and who makes up the ownership of the these partners or
2 the structure or any of the basic things you would want to know and understand if
3 you would want to do business with such an outfit. According to TransCanada's
4 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
5 liability company called TransCanada Keystone Pipeline GP, LLC is the general
6 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
7 basically nothing. That is really scary since the general partner has the liability but
8 virtually none of the ownership and who knows if it has any other assets.

9 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
10 **percent clear on exactly who could become the owner of about 275 miles of**
11 **Nebraska land?**

12 A: No.

13 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
14 **percent clear on exactly who will be operating and responsible for**
15 **approximately 275 miles of tar sands pipeline underneath and through**
16 **Nebraska land?**

17 A: No.

18 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
19 **and the State of Nebraska of TransCanada's easement terms.**

20 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
21 called "Grantee")..." and this concerns me because it would allow their easement
22 to be transferred or sold to someone or some company or country or who knows
23 what that I don't know and who we may not want to do business with. This
24 pipeline would be a huge asset for TransCanada and if they can sell to the highest
25 bidder that could have terrible impacts upon all of Nebraska depending upon who
26 may buy it and I don't know of any safeguards in place for us or the State to veto
27 or have any say so in who may own, operate, or be responsible for this pipeline in
28 the future.

1 **Q: Do you think that type of uncertainty and lack of control over a major piece**
2 **of infrastructure crossing our State is in the public interest?**

3 A: No, certainly not, in fact, just the opposite.

4 **Q: What's next?**

5 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
6 really concerns me. Why does the easement and right-of-way have to be perpetual
7 and permanent? That is the question myself and my family want an answer to.
8 Perpetual to me is like forever and that doesn't make sense.

9 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

10 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
11 data proving there is a perpetual supply of tar sands. I am not aware in
12 TransCanada's application where it proves there is a perpetual necessity for this
13 pipeline. My understanding of energy infrastructure like wind towers is they have
14 a decommission plan and actually take the towers down when they become
15 obsolete or no longer needed. Nothing manmade lasts forever. My land however
16 will, and I want my family or future Nebraska families to have that land as
17 undisturbed as possible and it is not in my interest or the public interest of
18 Nebraska to be forced to give up perpetual and permanent rights in the land for
19 this specific kind of pipeline project.

20 **Q: Okay, what is your next concern?**

21 A: The easement language includes all these things TransCanada can do and it says
22 "...abandoning in place..." so they can just leave this pipeline under my ground
23 until the end of time just sitting there while they are not using it, but I am still
24 prevented from doing on my land and using my land what I would like. If I owned
25 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
26 there. It doesn't make sense and it scares me and it is not in my interest or the
27 public interest of Nebraska to allow this.

28 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
29 **right?**

1 A: Yes.

2 **Q: So now on the second page of the Easement what are your concerns?**

3 A: Here the Easement identifies a 24-month deadline to complete construction of the
4 pipeline but has caveats that are undefined and ambiguous. The 24-month period
5 starts to run from the moment “actual pipeline installation activities” begin on
6 Landowners property. It appears that TransCanada would define this phrase as
7 needed. It would be wise to explain what types of TransCanada action constitutes
8 “installation activity” For instance, would the placement and storage of an
9 excavator or other equipment on or near the Easement property be an activity or
10 would earth have to be moved before the activity requirement is triggered. This
11 vague phrase is likely to lead to future disputes and litigation that is not in the best
12 interest of the welfare of Nebraska and would not protect property interests. The
13 24-months can also be extended in the case of “force majeure.” My understanding
14 is that force majeure is often used to insulate a party to a contract when events
15 occur that are completely out of their control. In TransCanada’s easement this is
16 expanded to include “without limitation...availability of labor and materials.”
17 Extending this language to labor and materials is problematic because these are
18 two variables that TransCanada does have some or significant control over and to
19 allow extension of the 24-month period over events not truly out of the control of
20 TransCanada and without further provision for compensation for the Landowner is
21 not conducive to protection of property rights.

22 **Q: Okay, what is your next concern?**

23 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
24 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
25 reasonable costs and expenses” will pay for damages caused but then limits
26 TransCanada’s liability to certain circumstances. There is no definition of
27 “commercially reasonable” and no stated right that the Landowner would get to
28 determine the amounts of cost or expense that is “commercially reasonable.”
29 TransCanada excepts out from their liability any damages that are caused by

1 Landowner's negligence or the negligence of anyone ever acting on the behalf of
2 Landowner. It is understandable that if the Landowner were to willfully and
3 intentionally cause damages to the pipeline that Landowner should be liable.
4 However, anything short of willful misconduct should be the liability of
5 TransCanada who is subjecting the pipeline on the Landowner and who is making
6 a daily profit from that pipeline. When evaluating the impact on property rights of
7 this provision, you must consider the potentially extremely expensive fight a
8 Landowner would have over this question of whether or not damage was an act of
9 negligence. Putting this kind of potential liability upon the Landowner is
10 incredibly problematic and is detrimental to the protection of property rights. I
11 don't think this unilateral power which I can't do anything about as the landowner
12 is in the best economic interest of the land in question or the State of Nebraska for
13 landowners to be treated that way.

14 **Q: Is there any specific event or example you are aware of that makes this**
15 **concern more real for you?**

16 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
17 Nemaha County, Nebraska landowner farmers who accidentally struck two
18 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
19 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
20 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
21 copy of the Federal Court Complaint is here as **Attachment No. 3**.

22 **Q: What is your next concern with the Easement language?**

23 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
24 they choose unless 1) any Landowner use interferes in any way with
25 TransCanada's exercise of any of its rights within the Easement, or 2)
26 TransCanada decides to take any action on the property it deems necessary to
27 prevent injury, endangerment or interference with anything TransCanada deems
28 necessary to do on the property. Landowner is also forbidden from excavating
29 without prior authorization by TransCanada. So my understanding is that

1 TransCanada will unilaterally determine what Landowner can and can't do based
2 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
3 could also completely deny my request to excavate. Further, TransCanada retains
4 all "privileges necessary or convenient for the full use of the rights" granted to
5 them in the Easement. Again, TransCanada unilaterally can decide to the
6 detriment of the property rights of Landowner what TransCanada believes is
7 necessary or convenient for it. And there is no option for any additional
8 compensation to landowner for any right exercised by TransCanada that leads to
9 the removal of trees or plants or vegetation or buildings or structures or facilities
10 owned by Landowner of any kind. Such undefined and unilateral restrictions and
11 rights without having to compensate Landowner for such further destruction or
12 losses are not conducive to the protection of property rights or economic interest.

13 **Q: What is the next concern you have?**

14 A: The Easement also allows some rights for Landowner but restricts them at the
15 same time and again gives the sole and unilateral decision making to
16 TransCanada. TransCanada will determine if the actions of Landowner might in
17 anyway endanger or obstruct or interfere with TransCanada's full use of the
18 Easement or any appurtenances thereon to the pipeline itself or to their access to
19 the Easement or within the Easement and TransCanada retains the right at any
20 time, whether during growing season or not, to travel "within and along Easement
21 Area on foot or in vehicle or machinery..." Further at TransCanada's sole
22 discretion it will retain the rights to prevent any landowner activity that it thinks
23 may "unreasonably impair[ed] or interfere[ed] with" TransCanada's use of the
24 Easement Area. Such undefined and unilateral restrictions are not conducive to the
25 protection of property rights or economic interest.

26 **Q: What is the next concern you have with the Easement language?**

27 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
28 Landowner's land any debris of any kind without any input or power of
29 Landowner to demand an alternative method or location of debris disposal. Such

1 unilateral powers would negatively affect Landowners property are not conducive
2 to the protection of property rights or economic interest.

3 **Q: What is the next concern you have with the Easement language?**

4 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
5 “where rock is encountered” mean and why does TransCanada solely get to
6 determine whether or not this phrase is triggered. This phrase could be used to
7 justify installing the pipeline 24 inches beneath the surface. The ability to use this
8 provision to minimal locate the pipeline at a depth of 24 inches could negatively
9 affect Landowners property are not conducive to the protection of property rights.
10 A shallow pipeline is much more likely to become a danger and liability in the
11 future given farming operations and buried irrigation lines and other factors
12 common to the current typical agricultural uses of the land in question impacted
13 by TransCanada’s preferred pipeline route.

14 **Q: What is the next concern you have with the Easement language?**

15 A: There are more vague concepts solely at the determination of TransCanada such as
16 “as nearly as practicable” and “pre-construction position” and “extent reasonably
17 possible.” There is nothing here that defines this or provides a mechanism for
18 documenting or memorializing “pre-construction position” so as to minimize
19 costly legal battles or wasted Landowner time attempting to recreate the soil
20 condition on their fields or pasture. Such unilateral powers would negatively affect
21 Landowners property are not conducive to the protection of property rights or
22 economic interest.

23 **Q: What is the next concern you have with the Easement language?**

24 A: TransCanada maintains the unilateral right to abandon the pipeline and all
25 appurtenances thereto in place on, under, across, or through Nebraska land at any
26 time it chooses. There is no provision for Landowner compensation for such
27 abandonment nor any right for the Landowner to demand removal. Such unilateral
28 powers would negatively affect Landowners property are not conducive to the
29 protection of property rights or economic interest.

1 **Q: What is the next concern you have with the Easement language?**

2 A: TransCanada has the power to unilaterally move or modify the location of any
3 Easement area whether permanent or temporary at their sole discretion.
4 Regardless, if Landowner has taken prior steps relative to their property in
5 preparation or planning of TransCanada's taking of the initial easement area(s),
6 the language here does not require TransCanada to compensate the Landowner if
7 they decide to move the easement anywhere on Landowners property. Such
8 unilateral powers would negatively affect Landowners property are not conducive
9 to the protection of property rights or economic interests.

10 **Q: What is the next concern you have with the Easement language?**

11 A: The Easement requires that all of the burdens and restrictions upon Landowner to
12 transfer and be applicable to any future owner of the Land in question without the
13 ability of the future Landowner to modify or negotiate any of the language in
14 question to which it will be held to comply.

15 **Q: What is the next concern you have with the Easement language?**

16 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
17 Easement to any person, company, country, etc. at their sole discretion at anytime
18 to anyone. This also means that any buyer of the easement could do the same to a
19 third buyer and so on forever. There is no change of control or sale provision in
20 place to protect the Landowner or Nebraska or to provide compensation for such
21 change of control or ownership. It is not conducive to the protection of property
22 rights or economic interests to allow unilateral unrestricted sale of the Easement
23 thereby forcing upon the Landowner and our State a new unknown Easement
24 owner.

25 **Q: What is the next concern you have with the Easement language?**

26 A: There are many terms in the Easement that are either confusing or undefined terms
27 that are without context as to whether or not the Landowner would have any say
28 so in determining what these terms mean or if the evaluation is solely in

1 TransCanada’s control. Some of these vague undefined and ambiguous terms are
2 as follows:

- 3 i. “pipeline installation activities”
- 4 ii. “availability of labor and materials”
- 5 iii. “commercially reasonable costs and expenses”
- 6 iv. “reasonably anticipated and foreseeable costs and expenses”
- 7 v. “yield loss damages”
- 8 vi. “diminution in the value of the property”
- 9 vii. “substantially same condition”
- 10 viii. “an actual or potential hazard”
- 11 ix. “efficient”
- 12 x. “convenient”
- 13 xi. “endangered”
- 14 xii. “obstructed”
- 15 xiii. “injured”
- 16 xiv. “interfered with”
- 17 xv. “impaired”
- 18 xvi. “suitable crossings”
- 19 xvii. “where rock is encountered”
- 20 xviii. “as nearly as practicable”
- 21 xix. “pre-construction position”
- 22 xx. “pre-construction grade”
- 23 xxi. “various engineering factors”

24 Each one of these above terms and phrases as read in the context of the Easement
25 could be problematic in many ways. Notably, undefined terms tend to only get
26 definition in further legal proceedings after a dispute arises and the way the
27 Easement is drafted, TransCanada has sole power to determine when and if a
28 particular situation conforms with or triggers rights affected by these terms. For
29 instance, “yield loss damages” should be specifically defined and spelled out

1 exactly how the landowner is to be compensated and in what events on the front
2 end. I can't afford to fight over this after the damage has occurred. Unfortunately,
3 the Landowner is without contractual rights to define these terms or determine
4 when rights related to them trigger and what the affects may be.

5 **Q: Do you have any other concerns about the Easement language that you can**
6 **think of at this time?**

7 A: I reserve the right to discuss any additional concerns that I think of at the time of
8 my live testimony in August.

9 **Q: Based upon what you have shared with the Commission above regarding**
10 **TransCanada's proposed Easement terms and agreement, do you believe**
11 **those to be reasonable or just, under the circumstances of the pipeline's**
12 **impact upon you and your land?**

13 A: No, I do not believe those terms to be reasonable or just for the reasons that we
14 discussed previously.

15 **Q: Did TransCanada ever offer you financial compensation for the rights that**
16 **they sought to obtain in your land, and for what they sought to prevent you**
17 **and any future land owner of your property from doing in the future?**

18 A: Yes, we received an offer from them.

19 **Q: As the owner of the land in question and as the person who knows it better**
20 **than anyone else, do you believe that TransCanada offered you just, or fair,**
21 **compensation for all of what they proposed to take from you so that their tar**
22 **sands pipeline could be located across your property?**

23 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
24 offer for all the potential impacts and effects and the rights that I'm giving up, and
25 what we will be prevented from doing in the future and how their pipeline would
26 impact my property for ever and ever.

27 **Q: Has TransCanada at any time offered to compensate you annually, such as**
28 **wind farm projects do, for the existence of their potential tar sands pipeline**
29 **across your property.**

1 A: No, never.

2 **Q: At any time did TransCanada present you with or request that you, as the**
3 **owner of the land in question, sign and execute a document called, “Advanced**
4 **Release of Damage Claims and Indemnity Agreement?”**

5 A: Yes, they did and it was included in the County Court lawsuit against us.

6 **Q: Is Attachment No. 4, to your testimony here, a true and accurate copy of the**
7 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

8 A: Yes, it is.

9 **Q: What was your understanding of that document?**

10 A: When I read that document in the plain language of that document, it was my
11 understanding that TransCanada was attempting to pay me a very small amount at
12 that time in order for me to agree to give up my rights to be compensated from
13 them in the future related to any damage or impact they may have upon my
14 property “arising out of, in connection with, or alleged to resulted from
15 construction or surveying over, under or on” my land.

16 **Q: Did you ever sign that document?**

17 A: No, I did not.

18 **Q: Why not?**

19 A; Because I do not believe that it is fair or just to try to get me to agree to a small
20 sum of money when I have no idea how bad the impacts or damages that they, or
21 their contractors, or subcontractors, or other agents or employees, may cause on
22 my land at any time in the future that resulted from the construction or surveying
23 or their activities upon my land.

24 **Q: When you reviewed this document, what did it make you feel?**

25 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
26 shield themselves against known and foreseeable impacts that their pipeline, and
27 the construction of it, would have upon my land. It made me feel that they knew it
28 was in their financial interest to pay me as little as possible to prevent me from
29 ever having the opportunity to seek fair compensation again, and that this must be

1 based upon their experience of unhappy landowners and situations in other places
2 where they have built pipelines.

3 **Q: Has TransCanada ever contacted you and specifically asked you if you**
4 **thought their proposed location of their proposed pipeline across your land**
5 **was in your best interest?**

6 A: No, they have not.

7 **Q: Has TransCanada ever contacted you and specifically asked you if you**
8 **thought their proposed location of their proposed pipeline across your land**
9 **was in the public interest of the State of Nebraska?**

10 A: No, they have not.

11 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
12 **Takings Clause?**

13 A: Yes, I am.

14 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
15 **an American citizens property?**

16 A: My understanding is that, according to the United States Constitution, that if the
17 government is going to take land for public use, then in that case, or by taking for
18 public use, it can only occur if the private land owner is compensated justly, or
19 fairly.

20 **Q: Has TransCanada ever contacted you specially to explain the way in which**
21 **the public could use its proposed Keystone XL Pipeline?**

22 A: No, they have not.

23 **Q: Can you think of any way in which the public, that is the citizens of the State**
24 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
25 **Pipeline, as it dissects the State of Nebraska?**

26 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
27 public benefits from this pipeline in any way, how they can use it any way, or how
28 it's in the public interest in any way. By looking at the map, it is quite clear to me
29 that the only reason it's proposed to come through Nebraska, is that because we

1 are geographically in the way from between where the privately-owned Tar Sands
2 are located to where TransCanada wants to ship the Tar Sands to refineries in
3 Houston, Texas.

4 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
5 crude petroleum, or oil and petroleum by-products that you would like to
6 ship in its pipeline?**

7 A: No, it has not.

8 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
9 products that you, at this time or any time in the future, would desire to place
10 for transport within the proposed TransCanada Keystone XL Pipeline?**

11 A: No, I do not.

12 **Q: Do you know anyone in the state of Nebraska who would be able to ship any
13 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
14 products within the proposed TransCanada Keystone XL Pipeline?**

15 A: No, I do not. I've never heard of such a person or company like that.

16 **Q: Do you pay property taxes for the land that would be affected and impacted
17 at the proposed TransCanada Keystone XL Pipeline?**

18 A: Yes, I do.

19 **Q: Why do you pay property taxes on that land?**

20 A: Because that is the law. The law requires us to pay the property taxes as the owner
21 of that property.

22 **Q: Because you follow the law and pay property taxes, do you believe you
23 deserve any special consideration or treatment apart from any other person
24 or company that pays property taxes?**

25 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
26 just what you do.

27 **Q: Do you believe the fact that you pay property taxes entitles you to special
28 treatment of any kind, or special rights of any kind?**

29 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.**

25 A: The original path for the Keystone pipeline was changed because it crossed the
26 Ogallala Aquifer. The current proposed route, however, also crosses the Ogallala
27 Aquifer, plus it crosses the Platte River and would go through very densely
28 irrigated areas of Nebraska. The proposed pipeline would go within a few feet of

1 the irrigation well on my farm. It is important for the safety of our water that a
2 better choice be made for a pipeline route.

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. The terms of the
24 easement must be addressed in order for the Commission to truly consider
25 property rights, economic interests, the welfare of Nebraska, and the balancing of
26 the proposed routes against all they will affect and impact.

27 **Q: Do you have any concerns about the environmental impact of the proposed
28 pipeline?**

29 A: Yes, I do.

1 **Q: What are some of those concerns?**

2 A: As an affected land owner and Nebraskan, I am concerned that any construction,
3 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
4 a detrimental impact upon the environment of my land specifically, as well as the
5 lands near my land and surrounding the proposed pipeline route.

6 **Q: Do you have any other environmental concerns?**

7 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
8 construction and/or maintenance and operation. I am concerned about spills and
9 leaks that TransCanada has had in the past and will have in the future. This could
10 be catastrophic to my operations or others and to my county and the State.

11 **Q: Do you have any thoughts regarding if there would be an impact upon the
12 natural resources on or near your property due to the proposed pipeline?**

13 A: Yes, I believe that any construction, operation, and/or maintenance of the
14 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
15 resources of my land, and the lands near and surrounding the proposed pipeline
16 route.

17 **Q: Do you have any worries about potential impacts from the proposed pipeline
18 to the soil of your land, or land near you?**

19 A: Yes, I believe that any construction, operation, and/or maintenance of the
20 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
21 land, as well as land along and surrounding the proposed pipeline route. This
22 includes, but is not limited to, the reasons that we discussed above of disturbing
23 the soil composition and makeup as it has naturally existed for thousands and
24 millions of years during the construction process, and any future maintenance or
25 removal process. I'm gravely concerned about the fertility and the loss of
26 economic ability of my property to grow the crops, or grow the grasses, or grow
27 whatever it is at that time they exist on my property or that I may want to grow in
28 the future, or that a future owner may want to grow. The land will never be the

1 same from as it exists now undisturbed to after it is trenched up for the proposed
2 pipeline.

3 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
4 **upon the groundwater over your land, or surrounding lands?**

5 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
6 the proposed Keystone XL Pipeline would have a detrimental impact upon the
7 groundwater of not only under my land, but also near and surrounding the pipeline
8 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
9 simple and it is simply too valuable to our State and the country to put at
10 unreasonable risk.

11 **Q: Do you have any concern about the potential impact of the proposed pipeline**
12 **upon the surface water on, or near or around your land?**

13 A: Yes, I have significant concerns that any construction, operation, and/or
14 maintenance of the proposed Keystone XL Pipeline would have detrimental
15 impact upon the surface water of not only within my property boundary, but along
16 and near and surrounding the pipeline route, and in fact, across the state of
17 Nebraska.

18 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
19 **upon the wildlife and plants, other than your growing crops on or near your**
20 **land?**

21 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
22 the proposed Keystone XL Pipeline would have a detrimental impact upon the
23 wildlife and the plants, not only that are located on or can be found upon my land,
24 but also near and along the proposed pipeline route.

25 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
26 **fair market value of your land?**

27 A: Yes, I do. I am significantly concerned about how the existence of the proposed
28 pipeline underneath and across and through my property will negatively affect the
29 fair market value at any point in the future, especially at that point in which I

1 would need to sell the property, or someone in my family would need to sell the
2 property. I do not believe, and certainly would not be willing to pay, the same
3 price for land that had the pipeline located on it, versus land that did not. I hope
4 there is never a point where I'm in a position where I have to sell and have to
5 realize as much value as I can out of my land. But because it is my single largest
6 asset, I'm gravely concerned that the existence of the proposed Keystone XL
7 Pipeline upon my land will affect a buyer's willingness to pay as much as they
8 would've paid and as much as I could've received, if the pipeline were not upon
9 my property. There are just too many risks, unknowns, impacts and uncertainties,
10 not to mention all of the rights you give up by the nature of having the pipeline
11 due to having the easement that we have previously discussed, for any reasonable
12 person to think that the existence of the pipeline would not negatively affect my
13 property's value.

14 **Q: Have you ever seen the document that's marked as Attachment No. 5, to your**
15 **testimony?**

16 A: Yes, I have.

17 **Q: Where have you seen that before?**

18 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
19 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
20 believe the portion of the alternative route in Nebraska essentially twins or
21 parallels Keystone I.

22 **Q: Do you believe the portion of the proposed pipeline route within Nebraska as**
23 **found in Attachment No. 5 to your testimony, is in the public interest of**
24 **Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
27 **Application, and as found on Attachment No. 6, here to your testimony, is in**
28 **the public interest of Nebraska?**

29 A: No, I do not.

1 **Q: Do you believe that the Keystone mainline alternative route as shown on**
2 **Attachment No. 6 included with your testimony here is a major oil pipeline**
3 **route that is in the public interest of Nebraska?**

4 A: No, I do not.

5 **Q: Do you believe there is any potential route for the proposed Keystone XL**
6 **Pipeline across, within, under, or through the State of Nebraska that is in the**
7 **public interest of the citizens of Nebraska?**

8 A: No, I do not.

9 **Q: Why do you hold that belief?**

10 A: Because there simply is no public interest based on all of the factors that I am
11 aware and that I have read and that I have studied that this Commission is to
12 consider that would establish that a for-profit foreign-owned pipeline that simply
13 crosses Nebraska because we are geographically in the way between where tar
14 sands are in Canada to where it wants to ship it to in Texas could ever be in the
15 public interest of Nebraskans. We derive no benefit from this project. It is not for
16 public use. Nebraska is simply in the way and when all considerations are taken in
17 there is no net benefit of any kind for Nebraska should this project be placed in our
18 state. Even if there was some arguable “benefit” it is not enough to outweigh all
19 the negative impacts and concerns.

20 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
21 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
22 **of Nebraska because it may bring temporary jobs during the construction**
23 **phase to Nebraska?**

24 A: First of all, not all jobs are created equally. Most jobs that are created, whether
25 temporary or on a permanent basis, don’t come with a project that has all the
26 potential and foreseeable negative impacts, many of which we have discussed here
27 and other witnesses throughout the course of this hearing have and will discuss. If
28 I decide to hire and employ someone to help me out in my farming or ranching
29 business, I’ve created a job but I haven’t done so at the risk or detrimental impact

1 to my land or my town or my county or my state. And I've hired someone who is
2 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
3 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
4 jobs are not created equal. Additionally, I understand from what I'm familiar with
5 from TransCanada's own statements that the jobs numbers they originally touted
6 were determined to be a minute fraction of the permanent jobs that had been
7 projected. According to their answer to our Interrogatory No. 191, TransCanada
8 has created only thirty-four (34) jobs within Nebraska working specifically on
9 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
10 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
11 Further, according to their answer to Interrogatory No. 199, TransCanada would
12 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
13 constructed on its Preferred Route or its Mainline Alternative Route.

14 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
15 **because it would cross your land?**

16 A: No, absolutely not. I am opposed to this project because it is not in the public
17 interest, neither within my community nor within our state.

18 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
19 **was to cross someone else's land?**

20 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
21 the fear and anxiety and potential foreseeable risks and negative impacts that this
22 type of a project carrying this type of product brings foisted upon anyone in this
23 state or any other state.

24 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
25 **Pipeline to cross the state of Nebraska?**

26 A: I don't believe there is an intelligent route because as I have stated I don't believe
27 this project anywhere within Nebraska is within the public interest. However, if
28 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
29 had to go somewhere in the state of Nebraska, the only intelligent route I believe

1 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
2 preferred route and the mainline alternative routes are economic liabilities our
3 state cannot risk.

4 **Q: What do you rely upon to make that statement?**

5 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
6 already exists in that area is reason enough as it is not in our best interest or the
7 public interests to have more major oil pipelines crisscrossing our state. Second,
8 they have all the infrastructure already there in terms of relationships with the
9 counties and local officials and first responders along that route. Third, they have
10 already obtained easements from all the landowners along that route and have
11 relationships with them. Fourth, that route avoids our most sensitive soils, the
12 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
13 Aquifer. Sixth, they have already studied that route and previously offered it as an
14 alternative. Seventh, it just makes the most sense that as a state we would have
15 some intelligent policy of energy corridors and co-locating this type of
16 infrastructure near each other.

17 **Q: Do you have any other concerns you would like to reiterate or can think of at
18 this time you would like the Commissioners to understand?**

19 A: Yes. Land valuation will undoubtedly be decreased. The chance of a leak and
20 contamination to the soil and water supply is a threat to this generation and future
21 generations. The responsibility to the landowner regarding accidents/leaks/major
22 spills puts a great deal of liability on the landowner. The fact that I would receive
23 a one-time payment and yet I or my heirs could be held responsible for an
24 accident, leak or major spill that could occur at any time is a real concern. Crop
25 insurance, as any insurance, is costly. Would an insurance company that offers
26 crop insurance be willing to take the risk on pipeline ground? Would I be able to
27 afford it or would it be at too high a premium? This is a real concern. My entire
28 crop could be destroyed by hail but, if I couldn't get the crop insured my entire
29 income for that year would be lost. The easement as written gives TransCanada

1 the right to abandon the pipeline in place. This creates a huge liability for me or
2 my heirs. Should the Ogallala Aquifer water supply and the soil be contaminated it
3 could keep the affected farm ground unusable for many years. If crop and
4 livestock are affected then, also, the people of Nebraska would be affected – not
5 only for their drinking water and products produced on Nebraska farms but, it
6 would in turn affect the State’s economy. It is important to the economy of our
7 State that a better choice be made for a pipeline route.

8 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
9 **like the Public Service Commissioners to consider in their review of**
10 **TransCanada’s Application?**

11 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
12 document below but other things may come to me or my memory may be
13 refreshed and I will add and address those things at the time of the Hearing in
14 August and address any additional items at that time as is necessary. Additionally,
15 I have not had an adequate amount of time to receive and review all of
16 TransCanada’s answers to our discovery and the discovery of others so it was
17 impossible to competently and completely react to that in my testimony here and I
18 reserve the right to also address anything related to discovery that has not yet
19 concluded as of the date I signed this document below. Lastly, certain documents
20 requested have not yet been produced by TransCanada and therefore I may have
21 additional thoughts on those I will also share at the hearing as needed.

22 **Q: What is it that you are requesting the Public Service Commissioners do in**
23 **regards to TransCanada’s application for the proposed Keystone XL Pipeline**
24 **across Nebraska?**

25 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
26 a temporary job spike that this project may bring to a few counties and beyond the
27 relatively small amount of taxes this proposed foreign pipeline would possibly
28 generate. And, instead think about the perpetual and forever impacts of this
29 pipeline as it would have on the landowners specifically, first and foremost, but

1 also thereby upon the entire state of Nebraska, and to determine that neither the
2 preferred route nor the Keystone mainline alternative route are in the public
3 interest of the citizens of the state of Nebraska. And if the Commissioners were
4 inclined to modify TransCanada's proposed routes and were to be inclined to grant
5 an application for a route in Nebraska, that the only potential route that would
6 make any intelligent sense whatsoever would be twinning or near paralleling of
7 the proposed KXL with the existing Keystone I pipeline. The point of including
8 Attachment No. 5 is to show that twinning Keystone I within Nebraska has been
9 considered by TransCanada before. It simply does not make sense to add yet
10 another major oil pipeline crisscrossing our state creating new pumping stations,
11 creating new impacts on additional counties and communities and going through
12 all of the court processes with myself and other landowners like me when this
13 applicant already has relationships with the landowners, the towns and the
14 communities along Keystone I, and that Keystone I is firmly outside of the sand
15 hills and a significantly further portion away from the heart of the Ogallala
16 Aquifer than the preferred route or the Keystone mainline alternative route.

17 **Q: Does Attachment No. 7 here contain other documents you are competent to**
18 **speak about that you wish to be part of your testimony and to discuss in more**
19 **detail as needed at the August 2017 Hearing?**

20 A: Yes.

21 **Q: Are all of your statements in your testimony provided above true and**
22 **accurate as of the date you signed this document to the best of your**
23 **knowledge?**

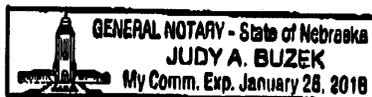
24 A: Yes, they are.

25 **Q: Thank you, I have no further questions at this time and reserve the right to**
26 **ask you additional questions at the August 2017 Hearing.**

Donald Widga, by Aiana Widga, POA
Donald Widga

Subscribed and Sworn to before me this 26th day of May, 2017.
2017.

Judy A. Buzek
Notary Public



Attachment No. 1



S.002
T.013N
R.004W

Donald D. Widga

S.011
T.013N
R.004W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Donald D. Widga

TRACT NO. ML-NE-PO-40440.000
STATE: Nebraska
COUNTY: Polk
SECTION: 002
TOWNSHIP: 013N
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

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-PO-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**"), **Donald D. Widga, also known as Donald Widga**, whose mailing address is 12632 F. Road, Polk, Nebraska 68654 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A,

which is attached hereto and made a part hereof (the "Easement Area") located on real property situated in the County of Polk, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 160 acres, more or less, situated in the County of Polk, in the State of Nebraska, being further described as the N1/2 of the SE1/4 and the E1/2 of the SW1/4 of Section 2, T13N, R4W of the 6th P.M., as recorded in Book 91, Page 456, Book 88, Page 192, and Book 73, Page 307 in the Deed Records of Polk County, Nebraska; less and except any conveyances heretofore made.

(the "Property"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "Initial Construction Period"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "Temporary Work Space"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the

negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____, 20____.

GRANTOR(S):

Donald D. Widga

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Donald D. Widga, also known as Donald Widga**

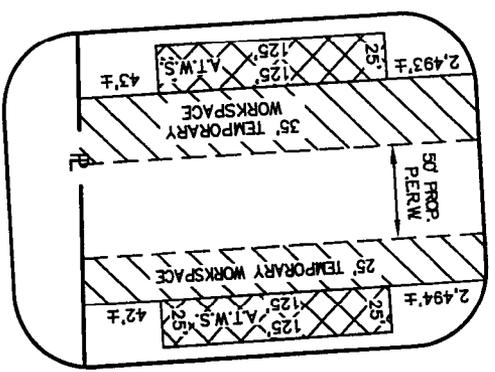
Notary Public Signature

Affix Seal Here

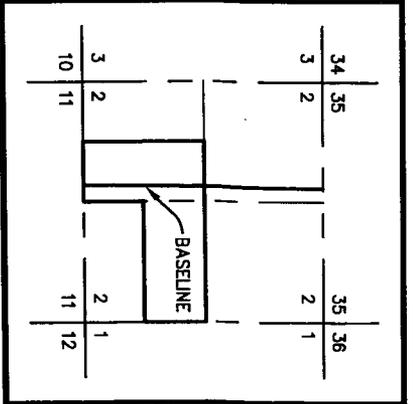
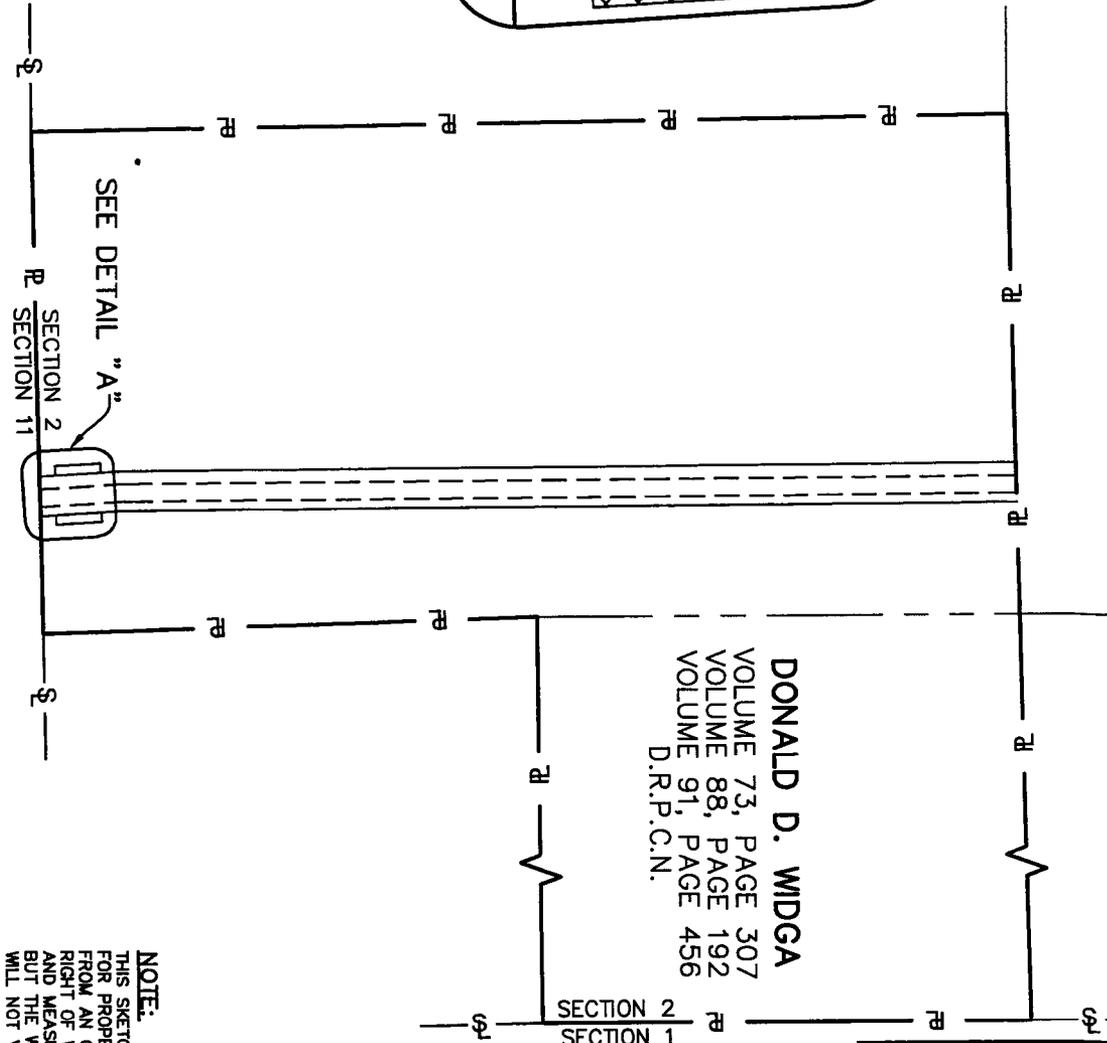
LEGEND
 R PROPERTY LINE
 P PROPOSED SECTION LINE
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.P.C.N. DEED RECORDS OF POLK COUNTY, NEBRASKA

POLK COUNTY, NEBRASKA

T-13-N, R-4-W, SECTION 2
ML-NE-PO-40440.000



DETAIL "A"
 N.T.S.



TransCanada
In business to deliver

KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
DONALD D. WIDGA
ML-NE-PO-40440.000

PROJECT: XL
 EXHIBIT A

APPROVED BY: [Signature]
 DRAWING NUMBER: XL-08-ML-SK-3704

SLR: [Signature]
 REVISION: [Signature]

NO. [] DATE []

SCALE: 1" = 500'
 DATE: 10/28/14
 DRAWN BY: PB
 CHECKED BY: ALS

TOTAL DISTANCE ACROSS PROPERTY: 2,662'±
AREA OF PERMANENT EASEMENT: 3.1 ACRES
AREA OF TEMPORARY WORKSPACE: 3.7 ACRES
AREA OF ADDITIONAL 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.

TRACT LEGAL DESCRIPTION:
 E/2 SW/4, N/2 SE/4 OF
 SECTION 2, T-13-N, R-4-W



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-PO-40440.000

I, Donald D. Widga, of Polk 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 Polk, State of Nebraska:

N/2 SE/4, E/2 SW/4

Section 2, Township 13N, Range 4W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I have hereunto set our hands on this__ day of

_____, 20_____.

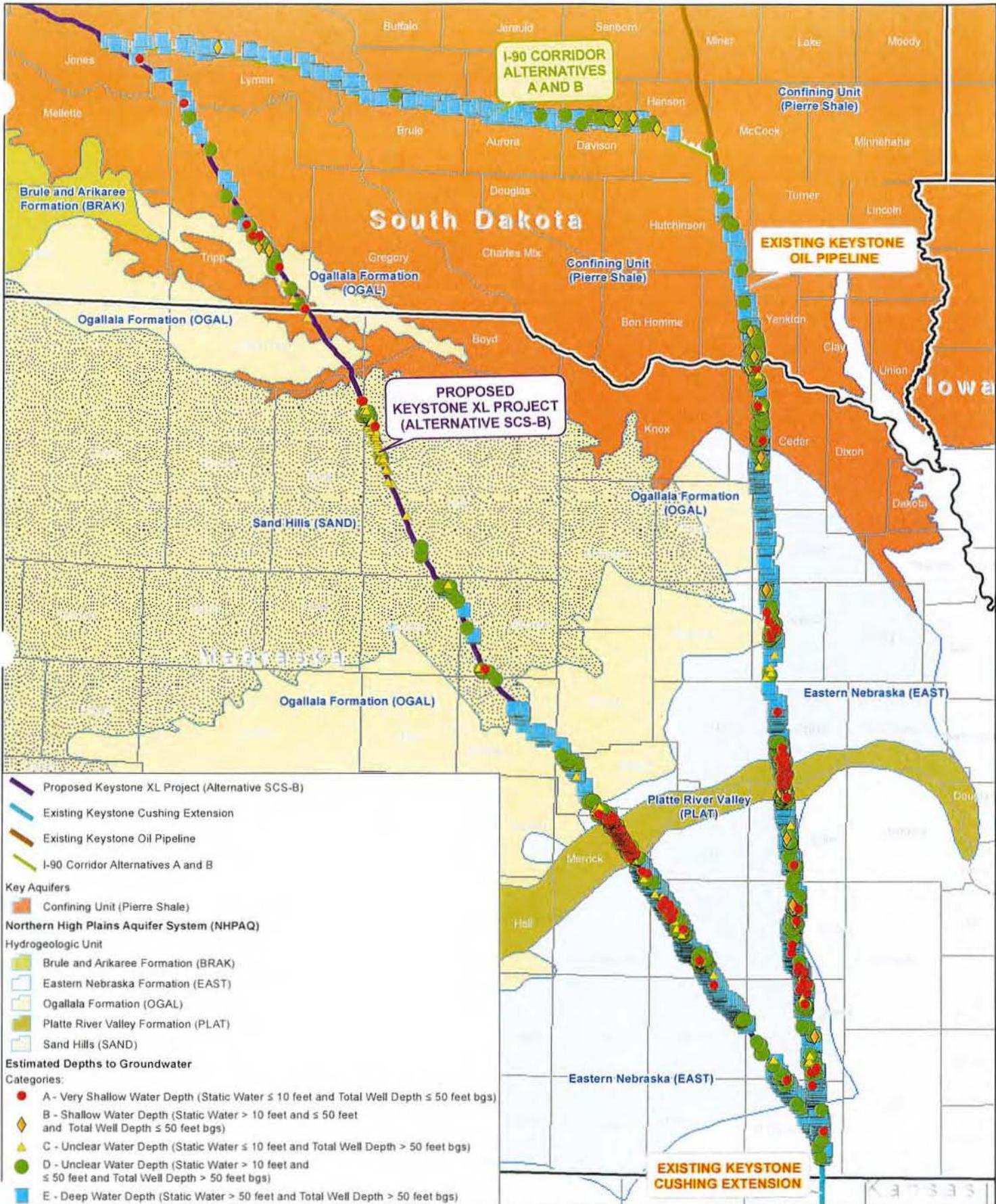
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 5



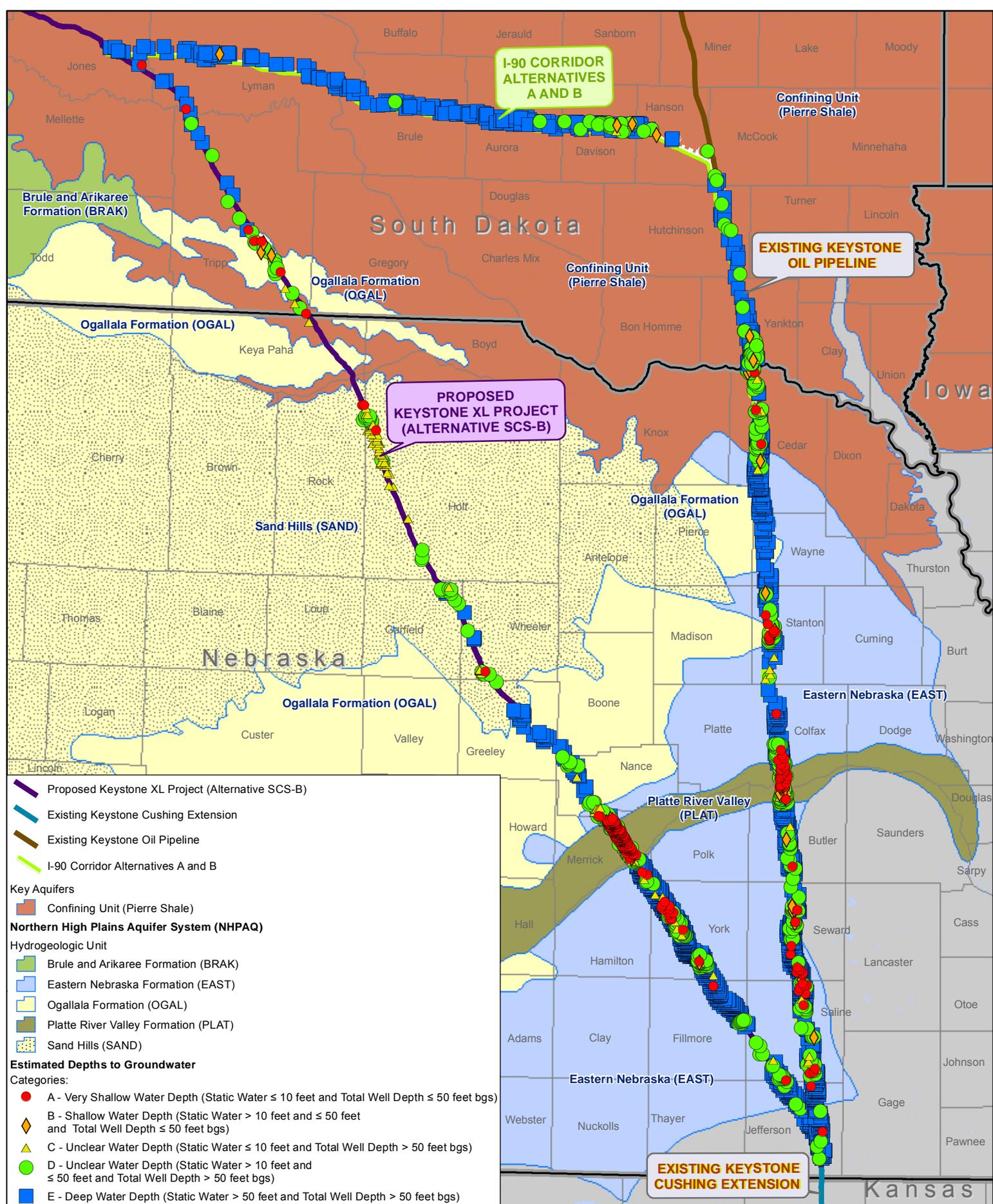
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

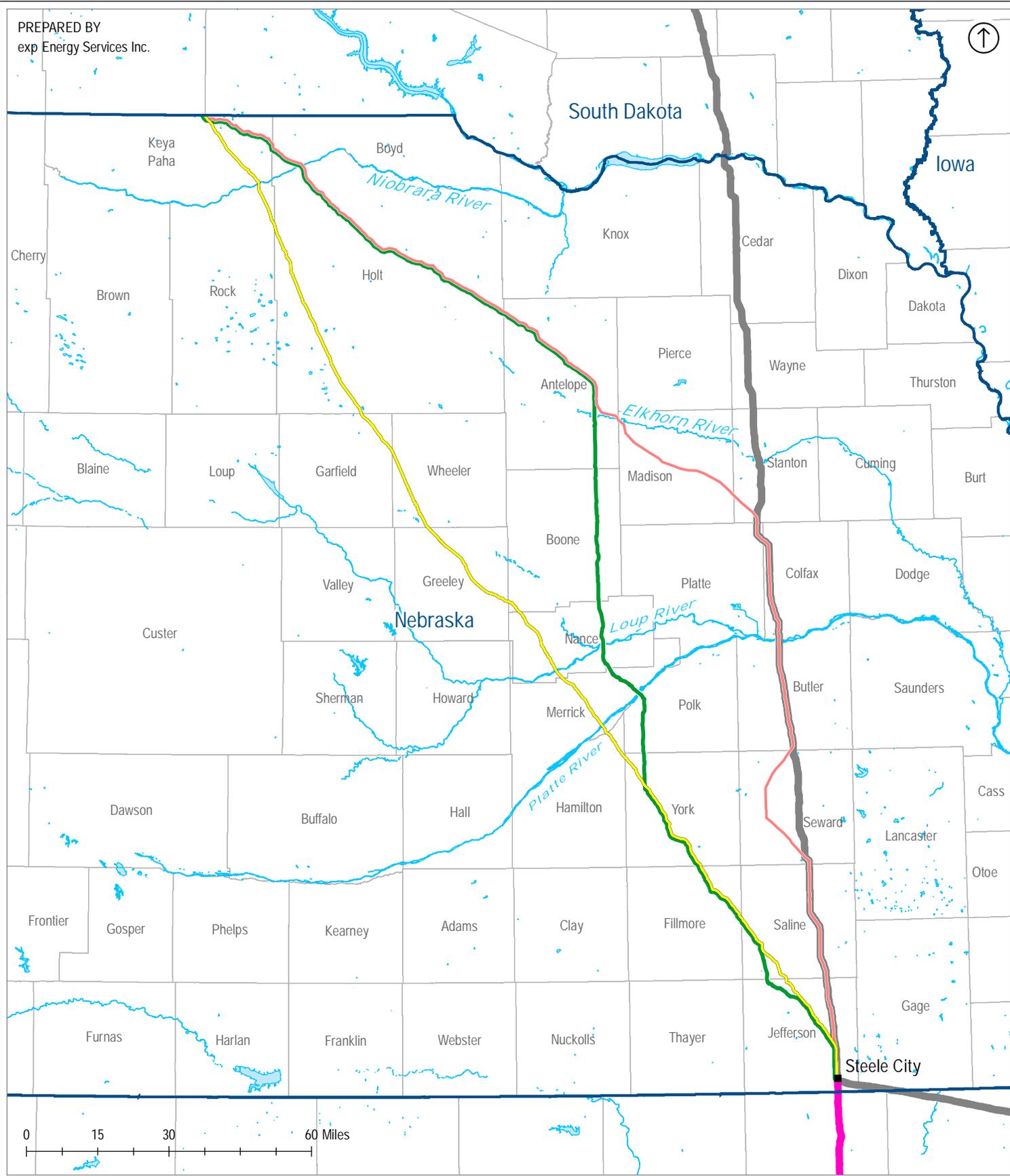
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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. 6



LEGEND

	PREFERRED ROUTE		WATERBODY
	SANDHILLS ALTERNATIVE ROUTE		STATE BOUNDARY
	KEYSTONE MAINLINE ALTERNATIVE ROUTE		COUNTY BOUNDARY
	KEYSTONE MAINLINE (PHASE I)		
	KEYSTONE CUSHING EXTENSION (PHASE II)		

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Attachment No. 7

