

Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Helen Tanderup in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Antelope County)

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

2 A: My name is Helen Tanderup.

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

6 A: Yes, I am.

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

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

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

14 A: Yes.

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

16 A: Art Tanderup.

EXHIBIT

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

3 A: Yes.

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

5 A: The farm has been in my family for over 100 years.

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

7 A: Yes.

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

10 A: Yes.

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

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

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

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

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

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

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

6 A: Yes.

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

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

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

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

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

17 A: No, they have not.

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

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

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

25 A: No, they did not.

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

28 A: Yes, they did.

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

3 A: Yes, they did.

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

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

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

16 A: No, I do not.

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

19 A: Yes, they did.

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

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

28 **Q:** Is the document included with your testimony here as Attachment No. 3, a
29 true and accurate copy of TransCanada’s proposed Easement and Right-of-

1 Way agreement that they included with their condemnation lawsuit against
2 you?

3 A: Yes, it is.

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

6 A: Yes, I have.

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

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

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

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

22 Q: I would like you to walk the Commissioners through each and every one of
23 your concerns about TransCanada's proposed Easement and Right-of-Way
24 agreement so they can develop an understanding of how that language and
25 the terms of that contract, in your opinion, potentially negatively impacts you
26 and your land. So, if you can start at the beginning of that document and
27 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. 4.**

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

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

Q: What is the next concern you have?

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

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

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner's land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such

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.

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

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

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

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

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

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

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

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

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

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately,

1 the Landowner is without contractual rights to define these terms or determine
2 when rights related to them trigger and what the affects may be.

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

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

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

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

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

16 **A:** Yes, we received an offer from them.

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

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

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

28 **A:** No, never.

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

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

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

7 **A:** Yes, it is.

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

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

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

16 **A:** No, I did not.

17 **Q:** Why not?

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

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

24 **A:** I felt like it was simply another attempt for TransCanada to try to pay very little to
25 shield themselves against known and foreseeable impacts that their pipeline, and
26 the construction of it, would have upon my land. It made me feel that they knew it
27 was in their financial interest to pay me as little as possible to prevent me from
28 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 KXL pipeline poses a significant threat to our farming practices. We have
26 been utilizing no-till conservation practices for the past 13 years. We also plant
27 cover crops to enhance these practices. This improves soil structure, builds
28 microorganisms and organic matter to create healthy soil. Plant root structure goes
29 down to over five feet deep. These conservation practices also prevent soil erosion

1 from wind and weather. When not protected, our sand will drift like snow, creating
2 “blowouts” while destroying productivity. Destroying the earth for pipeline
3 construction would require years of reclamation to bring back to current levels.
4 The heat from the pipe will destroy root structure, causing poor growth and yields.
5 The warm soil will harbor insects and diseases over winter. A buried pipeline will
6 continue to settle the dirt around it, creating potential cave-ins. Irrigation water
7 will wash into the trench area. Pivot tires can become stuck in such a trench line.
8 These trenches also create potential for equipment to fall into. Significant damage
9 can occur to that equipment. If the pipe happens to get damaged from such an
10 accident, it becomes our responsibility. Future farming technologies may be
11 forbidden or severely restricted. Our farm has a large number of trees that protect
12 the land from wind erosion. Many old and newer trees will have to be removed
13 and cannot be replaced. The property value of our farm will be significantly
14 decreased with this pipeline and permanent easement. Land with KXL easements
15 has already sold for less than comparable market value.

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

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

1 that according to their answer to our Interrogatory No. 211, TransCanada only
2 owns and operates one (1) major oil pipeline. They simply do not have the
3 experience with this type of pipeline and that scares me. There are others but that
4 is what I can recollect at this time and if I remember more or my recollection is
5 refreshed I will share those with the Commissioners at the Hearing in August.

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

8 **A:** No, I do not.

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

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

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

19 **A:** Well yes, of course.

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

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

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

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

9 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 A: Yes, I have.

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

27 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
28 I-90 corridor alternate route of its proposed pipeline through Nebraska and I

1 believe the portion of the alternative route in Nebraska essentially twins or
2 parallels Keystone I.

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

5 **A:** No, I do not.

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

9 **A:** No, I do not.

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

13 **A:** No, I do not.

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

17 **A:** No, I do not.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 A: Yes.

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

4 A: Yes. TransCanada refuses to agree to remove this pipeline after its usefulness has
5 expired. They will be leaving a continuous toxic waste dump across Nebraska.
6 The pipe will be significantly deteriorated by then. In other words, this is a disaster
7 waiting to happen. Property rights ensure that private corporations cannot take
8 land via eminent domain unless it is in the public interest. There is no public
9 benefit from this pipeline to the citizens of Nebraska. This is a situation of
10 granting a foreign corporation the right to take land from American citizens. The
11 whole purpose is for corporate gain and greed. TransCanada wants to use eminent
12 domain as a means of "hostile business acquisition." That is not in the public
13 interest. The non-negotiable terms of TransCanada's easement violate good
14 business practices. They provide a one-time payment for a lifetime of risks. The
15 easement takes control of a portion of land down the middle of the farm. It is not
16 like a road or highway where the land is generally at the edge of the property. By
17 putting it through the middle of a property, the landowner provides more security
18 from vandalism or terrorism. The farmer also deals with all the reclamation and
19 productivity issues. In the cases of most spills, it has been a landowner or tenant
20 who has discovered leaks. The company knows that the farmers will be over the
21 easement on a regular basis to observe potential problems. For all the risks and
22 extra work, annual payments should be made to the landowner. Wind energy
23 easements make annual payments to the landowner. No wise businessman would
24 sign TransCanada's easement that offers a lot of risk and no reward. If anything
25 TransCanada should offer a lease not a one-time payment.

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

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

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

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

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

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

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

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

Helen Tanderup
Helen Tanderup

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

Patricia M. Smith
Notary Public

State of Nebraska - General Notary
PATRICIA M. SMITH
My Commission Expires
January 21, 2019

Attachment 8.5

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Who Killed the Finest Soybean Soil?

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A breached sediment barrier at the mouth of a terrace is a violation of Georgia's Soil and Water Commission's Green Book.

© Randy Dowdy



By **Chris Bennett**
Farm Journal
Technology and Issues Editor

[Email](#)

Randy Dowdy says he'll face major yield loss from natural gas pipeline project

As he walked along muddy turnrows under pounding January rains, Randy Dowdy knew part of the topsoil from the farm that birthed the highest soybean yields in world history was gone. His 171.7 bu. soybeans and 521 bu. corn from fall harvest faded far into the past.

Today the topsoil on more than 40 acres has been stripped or flipped and replaced or mixed with fresh dirt. In agriculture, dirt is death and soil is life. Compounding the topsoil loss, 100 acres of wetlands caught much of the fertilizer-heavy slurry as it spilled off Dowdy's Brooks County land in southern Georgia. The reconstruction bill is expected to top \$1 million.

Dowdy signed an easement in 2015 giving Spectra Energy right of way across a mile of his land for the Sabal Trail natural gas pipeline, a 515-mile project running through Alabama, Georgia and Florida. The section of the project on Dowdy's land began after fall harvest and was slated for completion the first week of 2017.

On Dec. 6, Dowdy contacted Sabal Trail management, expressing concern about erosion and emphasizing the sensitivity of his ground. According to Dowdy, he continued to contact management and was assured construction would be done on schedule.

"I texted again Jan. 9 and nothing was done," Dowdy says. "No rebuilt terraces, cover crops or restoration."

The third week of January, the skies opened. Construction was ongoing and Dowdy's unprotected topsoil was exposed to heavy rains. Across a 180-acre farm, two-thirds of the runoff was headed directly for the terraces. Sabal Trail's sediment barriers at the mouth of each terrace acted like corks, backing up water into the fields until the watershed surrendered to gravity, escaping across barriers, over terraces and into a creek. Dowdy's meticulously crafted elixir of protozoa, microbes and organic matter was whisked away. Bon voyage to soil health.

Who is to blame? Dowdy points to Sabal Trail and alleges regulatory violations. Sabal Trail declined interview requests citing privacy concerns. Parent company Spectra Energy didn't respond to phone or email questions.

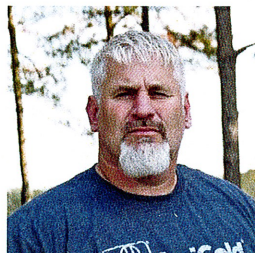
When Dowdy signed the easement, the agreement included a stipulation: Sabal Trail would return all land to its pre-construction condition, both in fertility

and soil deposition.

Dowdy's ground runs at a steep 10% to 12% grade. Cover crops and terraces control water runoff and slow the flow to a 1% grade equivalency. The gas line runs mainly north to south, and Dowdy's terraces run east to west. The gas line breaks through every terrace.

Dowdy says the topsoil disaster was a direct result of Sabal Trail negligence in following the Georgia Soil and Water Commission's Green Book (Manual for Erosion and Sediment Control in Georgia) regulations. "Sediment barriers in concentrated flows of water; no straw covers; no safety sediment fences; and many more violations," Dowdy contends.

At Sabal Trail's request, he provided three restoration estimates. One: costs of topsoil purchase, extraction, hauling, grading, soil health applications and terrace reconstruction. Two: estimation of damage to wetlands. Three: long-term yield loss projections. According to Dowdy, Sabal Trail agreed to pay for topsoil restoration and allowed him to begin the process.



"It's one thing to rebuild terraces, haul in topsoil and straw, plant cover crops and spread chicken litter. It's another thing to gain soil life from dead dirt." - **Randy Dowdy**, Brooks County, Georgia

He hauled in eight to 18 trucks of lower grade topsoil per day and used one excavator, one motor grader, two bulldozers, two tractors and hay blowing equipment for a \$25,000 price tag per day. Before Sabal Trail would write a check, Dowdy was required to sign a release waiving compensation for future yield loss and wetlands damage. "They knew I would spend \$700,000-plus and were squeezing me, but there was no way I would sign," he explains.

In March, Dowdy filed a complaint with the Environmental Protection Division (EPD) of

Georgia. EPD enforces Green Book regulations but only monitors potential construction project violations on a complaint basis: One representative in south Georgia covers nine counties. "We rely on people letting us know about issues. However, we investigate every single complaint we get," says Burt Langley, EPD's director of compliance.

Joe Freeman, environmental compliance officer with EPD, visited the site on March 10 and didn't see any best management practices violations. "Mr. Dowdy has already undertaken the re-terracing of his fields, and the evidence is effectively covered. It may have been different if I'd seen things in December," Freeman says.



While repairing an irrigation line, Randy Dowdy found jumbled soil deposition. "Even the soil that was saved and put back on my land wasn't segregated."

"The only people involved in reviewing compliance with permitting standards are on Sabal Trail's payroll," Dowdy responds. "Isn't that the fox guarding the henhouse? What's the point of having an agency that issues permits if they don't personally police for compliance?"

On March 11, while fixing an irrigation line leak, Dowdy found jumbled soil deposition—a violation of Sabal Trail's agreement. Rance Harrod, irrigation manager at Nashville Tractor, ran an excavator: "I pushed off a couple inches of topsoil and hit at least a 6" layer of a hard clay and blackish dirt mix. The excavator was struggling, and the ground was coming up in chunks."

In succession, Harrod scraped off 2" of topsoil, 6" of hard clay and 10" to 15" of various mixtures before digging into the

expected bright orange Georgia clay. "How do other landowners know this hasn't been done on their land?" Dowdy asks. "Farmers and landowners are just supposed to sign a release and the story is over?"

Dewey Lee, University of Georgia agronomist, says the ramifications of soil disturbance and erosion on Dowdy's ground are incalculable. "It's impossible to replace the positive effects of Randy's management on his soils in a short period of time. Just in the disturbance, you lose aggregation, organic matter, fertility and nutrients," Lee says. "The negative effects are immediate, but of far more concern, the long-term effects could last decades."

Dowdy believes he's facing a lifetime of yield loss on the affected ground due to the negligence of Sabal Trail. He's hauled in more than 1,000 loads of new dirt and expects he needs at least 800 more. In part, the breadbasket topsoil of the world's record soybean yield and some of the highest corn yields is being replaced by a forced substitute.

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Comments

No comments have been posted to this News Article

Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
James “Jim” Tarnick in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Nance County)

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

2 A: My name is James “Jim” Tarnick

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

6 A: Yes, I am.

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

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

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

14 A: Yes.

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

16 A: Farmer.

EXHIBIT

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1 **Q: Do you have any children?**

2 A: Yes.

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

5 A: Yes.

6 **Q: Do you earn any income from your land?**

7 A: Yes.

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

10 A: Yes.

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

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

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

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

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

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

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

6 A: Yes.

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

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

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

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

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

17 A: No, they have not.

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

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

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

25 A: No, they did not.

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

28 A: Yes, they did.

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

3 A: Yes, they did.

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

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

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

16 A: No, I do not.

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

19 A: Yes, they did.

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

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

28 **Q:** Is the document included with your testimony here as Attachment No. 3, a
29 true and accurate copy of TransCanada’s proposed Easement and Right-of-

1 Way agreement that they included with their condemnation lawsuit against
2 you?

3 A: Yes, it is.

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

6 A: Yes, I have.

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

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

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

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

22 Q: I would like you to walk the Commissioners through each and every one of
23 your concerns about TransCanada's proposed Easement and Right-of-Way
24 agreement so they can develop an understanding of how that language and
25 the terms of that contract, in your opinion, potentially negatively impacts you
26 and your land. So, if you can start at the beginning of that document and
27 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 over 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. 4.**

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

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

Q: What is the next concern you have?

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

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

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner's land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such

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.

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

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

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

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

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

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

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

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

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

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately,

1 the Landowner is without contractual rights to define these terms or determine
2 when rights related to them trigger and what the affects may be.

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

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

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

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

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

16 **A:** Yes, we received an offer from them.

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

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

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

28 **A:** No, never.

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

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

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

7 **A:** Yes, it is.

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

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

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

16 **A:** No, I did not.

17 **Q:** Why not?

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

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

24 **A:** I felt like it was simply another attempt for TransCanada to try to pay very little to
25 shield themselves against known and foreseeable impacts that their pipeline, and
26 the construction of it, would have upon my land. It made me feel that they knew it
27 was in their financial interest to pay me as little as possible to prevent me from
28 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. So please share with the
25 Commissioners the characteristics of your land that you believe is important
26 for them to understand, while they evaluate TransCanada's application for a
27 route for its proposed pipeline to cross Nebraska and across your land,
28 specifically.

1 A: The KXL pipeline would intrude on my family, farm and ranch in many ways.
2 The pipeline would run near the well that provides drinking water for my family.
3 Negative impacts to this well is a huge concern. Like the house well, the pipeline
4 would run close to our livestock well. Damage to the well, including
5 contamination or construction problems could cut off access to the well or
6 negatively impact our use of the well and this would lead to sickness or death of
7 my cow herd. The pipeline would run right through my field, where I irrigate with
8 9 different wells that feed a center pivot. There would be disruption of water and
9 electricity, as these lines run throughout the field. Also I am concerned with
10 liability with my tillage and harvest equipment. Where we live the water table can
11 be one (1) foot or even at ground level in a wet year. The pipeline would sit in
12 water and this is a huge concern of point source contamination.

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 folks being threatened that their land would be taken if they didn't follow
20 what TransCanada was saying. I am aware of tactics to get people to sign
21 easements that I don't believe have any place in Nebraska or anywhere such as
22 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
23 landowners and convince them they should sign TransCanada's easement
24 agreements. I am aware of older folks and widows or widowers feeling they had
25 no choice but to sign TransCanada's Easement and they didn't know they could
26 fight or stand up for themselves. From a more practical standpoint, I am worried
27 that according to their answer to our Interrogatory No. 211, TransCanada only
28 owns and operates one (1) major oil pipeline. They simply do not have the
29 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 I-90 corridor alternative route, specifically for the portion
7 of the proposed pipeline within Nebraska as found in Attachment No. 6 to
8 your testimony, is in the public interest of Nebraska?

9 A: No, I do not.

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

13 A: No, I do not.

14 Q: Why do you hold that belief?

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

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

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

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

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

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

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

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

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

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

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

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

25 A: Yes. A pumping station would be located near the farmhouse we live in. Leaks
26 from this station and the noise created are huge concerns to our quality of life and
27 economic interests and property rights.

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

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

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

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

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

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

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

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

James “Jim” Tarnick

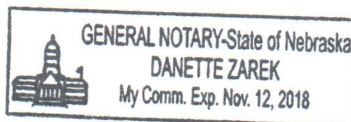
Subscribed and Sworn to me before this _____ day of May, 2017.

Notary Public


James "Jim" Tarnick

Subscribed and Sworn to me before this 2nd day of ^{June}~~May~~, 2017.


Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Andy Grier in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Douglas County)

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

2 A: My name is Andy Grier. I am a member of TMAG Ranch, LLC.

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

6 A: Yes, I am.

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

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

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

14 A: Yes.

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

EXHIBIT

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1 A: I am a Senior Vice President at Burlington Capital, ATAX. I also make
2 management decisions for the land and ranch in question here.

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

4 A: Staci Grier

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

6 A: I have three daughters.

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

9 A: Yes.

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

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

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

15 A: Yes.

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

18 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 A: Yes.

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

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

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

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

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

11 **A:** No, they have not.

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

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

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

19 **A:** No, they did not.

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

22 **A:** Yes, they did.

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

25 **A:** Yes, they did.

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

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

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

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

9 **A:** No, I do not.

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

12 **A:** Yes, they did.

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

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

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

25 **A:** Yes, it is.

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

28 **A:** Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **A:** No.

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

11 **A:** No.

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

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

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

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

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

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

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

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

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

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

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

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

24 A: Yes.

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

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

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

Q: Okay, what is your next concern?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- vii. “substantially same condition”
- viii. “an actual or potential hazard”
- ix. “efficient”
- x. “convenient”
- xi. “endangered”
- xii. “obstructed”
- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

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

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

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

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

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

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

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

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

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

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

22 **A:** No, never.

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

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

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

29 **A:** Yes, it is.

1 **Q: What was your understanding of that document?**
2 **A:** When I read that document in the plain language of that document, it was my
3 understanding that TransCanada was attempting to pay me a very small amount at
4 that time in order for me to agree to give up my rights to be compensated from
5 them in the future related to any damage or impact they may have upon my
6 property “arising out of, in connection with, or alleged to resulted from
7 construction or surveying over, under or on” my land.
8 **Q: Did you ever sign that document?**
9 **A:** No, I did not.
10 **Q: Why not?**
11 **A:** Because I do not believe that it is fair or just to try to get me to agree to a small
12 sum of money when I have no idea how bad the impacts or damages that they, or
13 their contractors, or subcontractors, or other agents or employees, may cause on
14 my land at any time in the future that resulted from the construction or surveying
15 or their activities upon my land.
16 **Q: When you reviewed this document, what did it make you feel?**
17 **A:** I felt like it was simply another attempt for TransCanada to try to pay very little to
18 shield themselves against known and foreseeable impacts that their pipeline, and
19 the construction of it, would have upon my land. It made me feel that they knew it
20 was in their financial interest to pay me as little as possible to prevent me from
21 ever having the opportunity to seek fair compensation again, and that this must be
22 based upon their experience of unhappy landowners and situations in other places
23 where they have built pipelines.
24 **Q: Has TransCanada ever contacted you and specifically asked you if you**
25 **thought their proposed location of their proposed pipeline across your land**
26 **was in your best interest?**
27 **A:** No, they have not.

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

4 A: No, they have not.

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

7 A: Yes, I am.

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

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

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

16 A: No, they have not.

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

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

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

1 A: No, it has not.

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

5 A: No, I do not.

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

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

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

12 A: Yes, I do.

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

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

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

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

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

23 A: No, of course not.

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

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

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

2 A: Well, yes I have.

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

7 A: No, of course not.

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

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

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

23 A: Our land borders the Niobrara River and also has a rolling and wooded topography
24 through the course of the intended route across my property. In addition to the
25 river crossing intersecting a very high bluff on my property, there would be
26 significant wooded area and an additional significant hill crossing through pure
27 timber land. The construction crosses the portion of land directly tied to revenue
28 production and likely will directly impact a year of operations and could infringe

1 on future operational activities. The route also passes within 300-500 yards of the
2 main well that provides potable water for our living quarters at the property.

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

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

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

24 **A:** No, I do not.

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

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

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

7 A: Well yes, of course.

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

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

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

26 A: Yes, I do.

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

28 A: As an affected land owner and Nebraskan, I am concerned that any construction,
29 operation, and/or maintenance of the proposed Keystone XL Pipeline would have

1 a detrimental impact upon the environment of my land specifically, as well as the
2 lands near my land and surrounding the proposed pipeline route.

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

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

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

10 **A:** Yes, I believe that any construction, operation, and/or maintenance of the
11 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
12 resources of my land, and the lands near and surrounding the proposed pipeline
13 route.

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

16 **A:** Yes, I believe that any construction, operation, and/or maintenance of the
17 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
18 land, as well as land along and surrounding the proposed pipeline route. This
19 includes, but is not limited to, the reasons that we discussed above of disturbing
20 the soil composition and makeup as it has naturally existed for thousands and
21 millions of years during the construction process, and any future maintenance or
22 removal process. I'm gravely concerned about the fertility and the loss of
23 economic ability of my property to grow the crops, or grow the grasses, or grow
24 whatever it is at that time they exist on my property or that I may want to grow in
25 the future, or that a future owner may want to grow. The land will never be the
26 same from as it exists now undisturbed to after it is trenched up for the proposed
27 pipeline.

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

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

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

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

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

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

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

23 A: Yes, I do. I am significantly concerned about how the existence of the proposed
24 pipeline underneath and across and through my property will negatively affect the
25 fair market value at any point in the future, especially at that point in which I
26 would need to sell the property, or someone in my family would need to sell the
27 property. I do not believe, and certainly would not be willing to pay, the same
28 price for land that had the pipeline located on it, versus land that did not. I hope
29 there is never a point where I'm in a position where I have to sell and have to

1 realize as much value as I can out of my land. But because it is my single largest
2 asset, I'm gravely concerned that the existence of the proposed Keystone XL
3 Pipeline upon my land will affect a buyer's willingness to pay as much as they
4 would've paid and as much as I could've received, if the pipeline were not upon
5 my property. There are just too many risks, unknowns, impacts and uncertainties,
6 not to mention all of the rights you give up by the nature of having the pipeline
7 due to having the easement that we have previously discussed, for any reasonable
8 person to think that the existence of the pipeline would not negatively affect my
9 property's value.

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

12 A: Yes, I have.

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

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

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

21 A: No, I do not.

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

25 A: No, I do not.

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

29 A: No, I do not.

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

4 **A:** No, I do not.

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

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

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

20 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
21 temporary or on a permanent basis, don’t come with a project that has all the
22 potential and foreseeable negative impacts, many of which we have discussed here
23 and other witnesses throughout the course of this hearing have and will discuss. If
24 I decide to hire and employ someone to help me out in my farming or ranching
25 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
26 to my land or my town or my county or my state. And I’ve hired someone who is
27 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
28 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
29 jobs are not created equal. Additionally, I understand from what I’m familiar with

1 from TransCanada's own statements that the jobs numbers they originally touted
2 were determined to be a minute fraction of the permanent jobs that had been
3 projected. According to their answer to our Interrogatory No. 191, TransCanada
4 has created only thirty-four (34) jobs within Nebraska working specifically on
5 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
6 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
7 Further, according to their answer to Interrogatory No. 199, TransCanada would
8 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
9 constructed on its Preferred Route or its Mainline Alternative Route.

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

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

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

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

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

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

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

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

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

15 A: Yes. Severance decreases the value of the land. The simple presence of the
16 pipeline results in a material reduction in value of the land especially considering
17 the future onerous obligations under the easement and inherent liability assumed
18 by any future owner. As mentioned prior, it is also disruptive to the operational
19 profile of our land impacting its functionality as a vital source of income.

20 Threat to the Ogallala Aquifer. There are many irrigation efforts driven by ground
21 water in our area of Holt/Boyd County as well and I know from drilling a well on
22 our property that the water table is very shallow given our proximity to the
23 Niobrara River. The pipeline will run within a couple hundred yards of our
24 household well water supply forever posing a risk to our domestic water supply.

25 Ranch Operations. I'm very concerned about our ranch operations during the
26 pipeline installation. Given the proposed route over our property, the entire scope
27 of operations including cattle grazing and rotation as well as hay production will
28 likely be curtailed for the balance of one year of operation. We are a small
29 operation that funds our known obligations from this revenue production including

1 real estate taxes and loan payments. Longer term I also agree that I receive a
2 onetime payment yet my heirs could be held responsible for an accident that
3 occurs indefinitely into the future.

4 Abandonment. The easement gives TC the right to abandon the pipeline in place.
5 This creates a tremendous liability for the future family owners of our property.
6 The unquantified future cost risk imposed on me and my heirs seems unfair and
7 uncompensated either now or in the future.

8 Destruction of trees. I have a shelter belt and much wooded area in the path of the
9 pipeline. While a minor issue to some, there is a real potential for a significant
10 destruction and removal of the immediate landscape of our property. Also, the
11 route across our property includes the challenges and risks of the Niobrara River
12 crossing as well as a path over significant hilly terrain and a creek which is likely
13 to radically alter the terrain which is an aesthetic element of value in our property.

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

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

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

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

23 **Q: Does Attachment No. 8 here contain other documents you are competent to**
24 **speak about that you wish to be part of your testimony and to discuss in more**
25 **detail as needed at the August 2017 Hearing? (Note this will be the catch all**
26 **for any other documents you want to attach that we have not specifically**
27 **identified above) [NOT EVERYONE WILL HAVE THIS AND SO THIS Q**
28 **and A would be deleted for those folks]**

29 A: Yes.

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

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

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

Andy Grier

Andy Grier, TMAG Ranch, LLC

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

Nancy L. McBath
Notary Public



*My comm expires
January 7, 2019*

Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Kimberly Hansen in
Support of Landowner Intervenors**

State of Nebraska)
) ss.
Madison County)

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

2 A: My name is Kimberly Hansen. I am a member of Tree Corners Farm, LLC.

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

6 A: Yes, I am.

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

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

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

14 A: Yes.

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

EXHIBIT

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1 A: Yes.

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

3 A: Yes.

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

6 A: Yes.

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

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

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

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

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

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

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

3 **A:** Yes.

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

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

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

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

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

14 **A:** No, they have not.

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

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

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

22 **A:** No, they did not.

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

25 **A:** Yes, they did.

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

28 **A:** Yes, they did.

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

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

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

12 A: No, I do not.

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

15 A: Yes, they did.

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

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

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

28 A: Yes, it is.

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

3 **A:** Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **A:** No.

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

13 **A:** No.

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

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

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

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

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

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

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

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

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

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

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

26 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 28 i. "pipeline installation activities"
- 29 ii. "availability of labor and materials"

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

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

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

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

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

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

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

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

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

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

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

26 **A:** No, never.

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

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

2 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the

3 “Advanced Release of Damage Claims and Indemnity Agreement?”

4 A: Yes, it is.

5 Q: What was your understanding of that document?

6 A: When I read that document in the plain language of that document, it was my

7 understanding that TransCanada was attempting to pay me a very small amount at

8 that time in order for me to agree to give up my rights to be compensated from

9 them in the future related to any damage or impact they may have upon my

10 property “arising out of, in connection with, or alleged to resulted from

11 construction or surveying over, under or on” my land.

12 Q: Did you ever sign that document?

13 A: No, I did not.

14 Q: Why not?

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small

16 sum of money when I have no idea how bad the impacts or damages that they, or

17 their contractors, or subcontractors, or other agents or employees, may cause on

18 my land at any time in the future that resulted from the construction or surveying

19 or their activities upon my land.

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

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to

22 shield themselves against known and foreseeable impacts that their pipeline, and

23 the construction of it, would have upon my land. It made me feel that they knew it

24 was in their financial interest to pay me as little as possible to prevent me from

25 ever having the opportunity to seek fair compensation again, and that this must be

26 based upon their experience of unhappy landowners and situations in other places

27 where they have built pipelines.

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

4 A: No, they have not.

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

8 A: No, they have not.

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

11 A: Yes, I am.

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

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

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

20 A: No, they have not.

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

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

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

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

6 **A:** No, it has not.

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

10 **A:** No, I do not.

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

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

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

17 **A:** Yes, I do.

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

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

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

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

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

28 **A:** No, of course not.

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

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

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

A: Well, yes I have.

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

A: No, of course not.

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

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

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

A: Yes, I have significant concerns. I am aware of landowners being treated unfairly or even bullied around and being made to feel scared that they did not have any options but to sign whatever papers TransCanada told them they had to. I am aware of folks being threatened that their land would be taken if they didn't follow what TransCanada was saying. I am aware of tactics to get people to sign easements that I don't believe have any place in Nebraska or anywhere such as TransCanada or some outfit associated with it hiring a pastor or priest to pray with landowners and convince them they should sign TransCanada's easement

1 agreements. I am aware of older folks and widows or widowers feeling they had
2 no choice but to sign TransCanada's Easement and they didn't know they could
3 fight or stand up for themselves. From a more practical standpoint, I am worried
4 that according to their answer to our Interrogatory No. 211, TransCanada only
5 owns and operates one (1) major oil pipeline. They simply do not have the
6 experience with this type of pipeline and that scares me. There are others but that
7 is what I can recollect at this time and if I remember more or my recollection is
8 refreshed I will share those with the Commissioners at the Hearing in August.

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

11 **A:** No, I do not.

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

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

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

22 **A:** Well yes, of course.

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

24 **A:** The future of this land may not be exactly how it's being use as of this moment,
25 and having the restrictions and limiting my ability to develop my land in certain
26 ways presents a huge negative economic impact on myself, my family, and any
27 potential future owner of the property. You have no idea how I or the future own
28 may want to use this land in the future or the other land across Nebraska
29 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years

1 ago it would have been hard to imagine all the advances that we have now or how
2 things change. Because the Easement is forever and TransCanada gets the rights in
3 my land forever we have to think with a very long term view. By placing their
4 pipeline on under across and through my land that prevents future development
5 which greatly negatively impacts future taxes and tax revenue that could have
6 been generated by the County and State but now will not. When you look at the
7 short blip of economic activity that the two years of temporary construction efforts
8 may bring, that is far outweighed by the perpetual and forever loss of opportunity
9 and restrictions TransCanada is forcing upon us and Nebraska. The terms of the
10 easement must be addressed in order for the Commission to truly consider
11 property rights, economic interests, the welfare of Nebraska, and the balancing of
12 the proposed routes against all they will affect and impact.

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

15 A: Yes, I do.

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

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

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

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

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

28 A: Yes, I believe that any construction, operation, and/or maintenance of the
29 proposed Keystone XL Pipeline would have detrimental impacts upon the natural

resources of my land, and the lands near and surrounding the proposed pipeline route.

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

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the soil of land, as well as land along and surrounding the proposed pipeline route. This includes, but is not limited to, the reasons that we discussed above of disturbing the soil composition and makeup as it has naturally existed for thousands and millions of years during the construction process, and any future maintenance or removal process. I'm gravely concerned about the fertility and the loss of economic ability of my property to grow the crops, or grow the grasses, or grow whatever it is at that time they exist on my property or that I may want to grow in the future, or that a future owner may want to grow. The land will never be the same from as it exists now undisturbed to after it is trenched up for the proposed pipeline.

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

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

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

A: Yes, I have significant concerns that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impact upon the surface water of not only within my property boundary, but along

1 and near and surrounding the pipeline route, and in fact, across the state of
2 Nebraska.

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

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

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

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

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

1 A: Yes, I have.

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

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

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

9 A: No, I do not.

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

13 A: No, I do not.

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

17 A: No, I do not.

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

21 A: No, I do not.

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

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

1 there is no net benefit of any kind for Nebraska should this project be placed in our
2 state. Even if there was some arguable “benefit” it is not enough to outweigh all
3 the negative impacts and concerns.

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

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

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

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

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

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

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

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

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

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

1 some intelligent policy of energy corridors and co-locating this type of
2 infrastructure near each other.

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

5 **A:** Yes. I have concerns first and foremost, what is it really carrying? It the material
6 hazardous or contain explosives? This leads to another concern; the shallow depth
7 of the trench, and our high water table, especially in the Spring, whereas you dig a
8 post hole, and get water. Crop loss is one of many economic concerns, as well as
9 decline in value of both quarters of land it bisects. Soil erosion and contamination
10 of soil are another two factors to consider. Water pollution is a huge worry, for all
11 number of reasons. Diversion of the ground water in fields and subsoil can affect
12 the whole field of crops. Loss of wildlife habitat. They have already lost too much
13 of their living space. The safety of anyone farming the land is in question as well.
14 The aesthetics of the farmland is negatively affected as well.

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

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

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

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

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

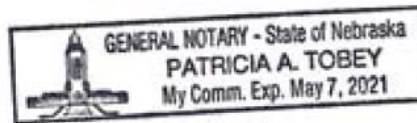
28 A: Yes, they are.

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

Kim Hansen
Kimberly Hansen

Subscribed and Sworn to me before this 27th day of May, 2017.

Patricia A. Tobey
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Terry Van Housen in Support of
Landowner Intervenor**

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.

EXHIBIT

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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.

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

A: Yes.

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

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

Q: Okay, what is your next concern?

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

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

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

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

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

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

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

Q: What is the next concern you have?

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

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

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

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

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

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

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

A: Yes, I have.

Q: Where have you seen that before?

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

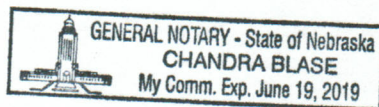
12 A: Yes, they are.

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



Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Gregory Walmer in Support of
Landowner Intervenor**

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?**

EXHIBIT

66

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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"

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

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

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

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

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

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

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

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

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

19 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what 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

owner may want to grow. The land will never be the same from as it exists now undisturbed to after it is trenched up for the proposed pipeline.

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

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

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

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

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

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

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

A: Yes, I do. I am significantly concerned about how the existence of the proposed pipeline underneath and across and through my property will negatively affect the 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



Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Diana Widga in Support of
Landowner Intervenor**

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.

EXHIBIT

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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

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

Q: What is the next concern you have?

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

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

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner's land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such

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.

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

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

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

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

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

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

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

A: There are many terms in the Easement that are either confusing or undefined terms that are without context as to whether or not the Landowner would have any say so in determining what these terms mean or if the evaluation is solely in

TransCanada's control. Some of these vague undefined and ambiguous terms are as follows:

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

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, "yield loss damages" should be specifically defined and spelled out

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?**

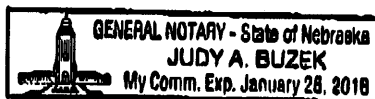
24 A: Yes, they are.

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



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



(Above Space for Recorder's Use Only)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GRANTOR(S):

Allpress Brothers, LLC

By: _____

Its: _____

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By _____ of

Allpress Brothers, LLC, on behalf of the corporation.

Notary Public Signature

Affix Seal Here

LEGEND

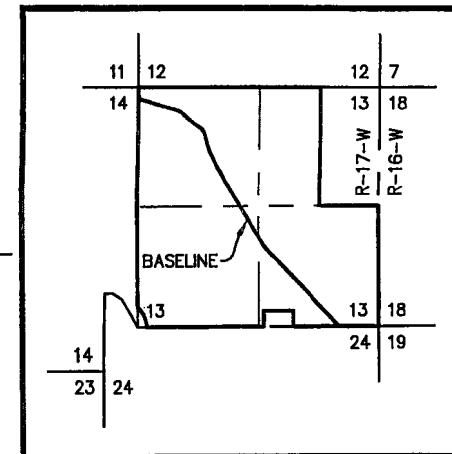
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PROPERTY LINE
 SECTION LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY
 DEED RECORDS OF KEYA PAHA COUNTY, NEBRASKA

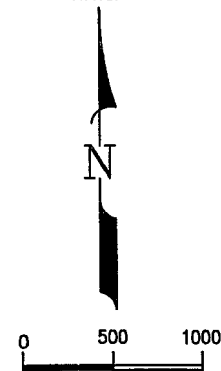
KEYA PAHA COUNTY, NEBRASKA

T-34-N, R-17-W, SECTION 13

ML-NE-KP-40640.000



VICINITY MAP
N.T.S.



SCALE: 1" = 1,000'

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

NOTE:

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

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

ALLPRESS BROTHERS, LLC

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



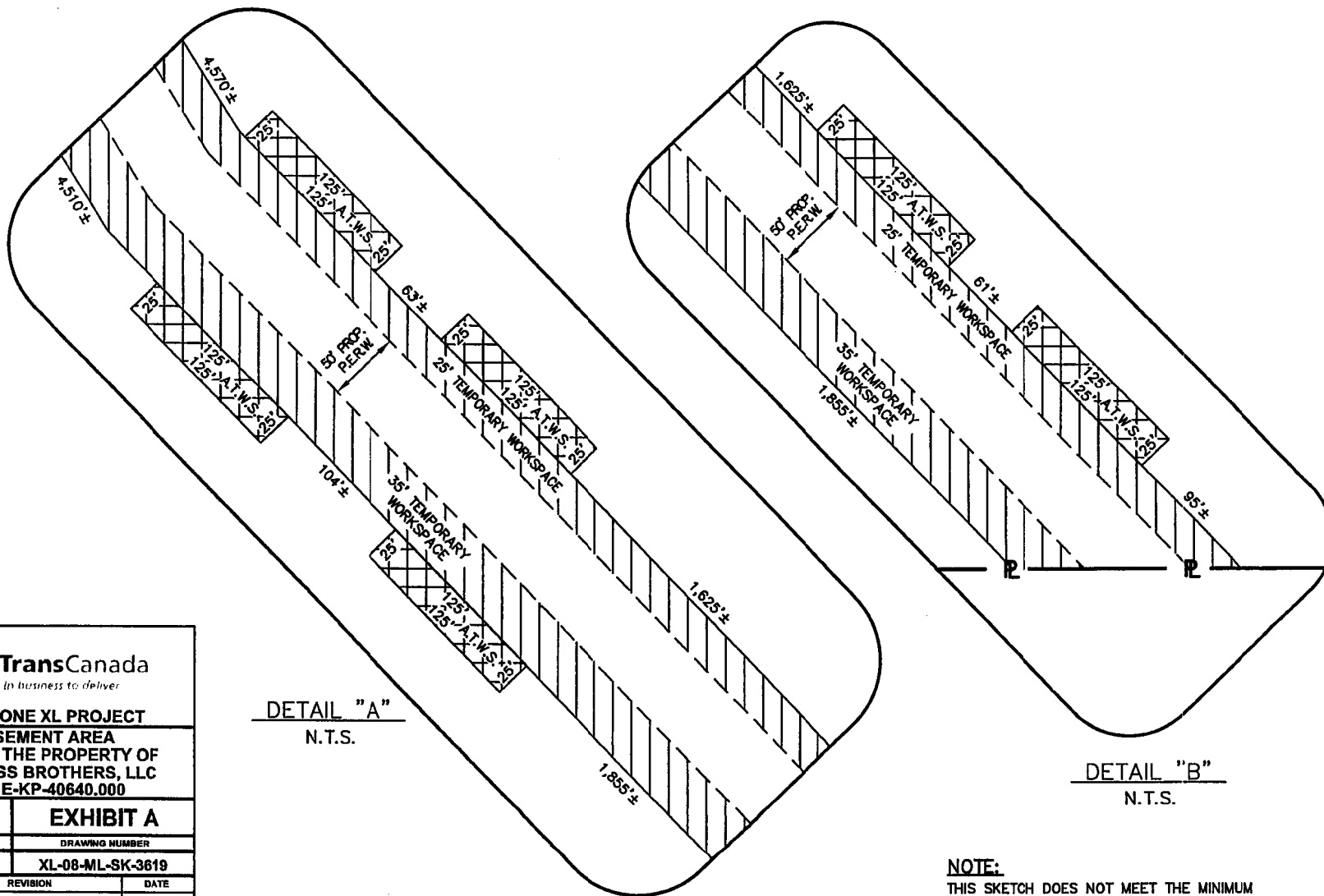
KEYSTONE XL PROJECT

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

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

T-34-N, R-17-W, SECTION 13
ML-NE-KP-40640.000

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



DETAIL "A"
N.T.S.

DETAIL "B"
N.T.S.

NOTE:

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



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

PROJECT:		EXHIBIT A	
XL			
APPROVED BY		DRAWING NUMBER	
SLR		XL-08-ML-SK-3619	
NO.	REVISION		DATE
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/27/14	JN	ALS



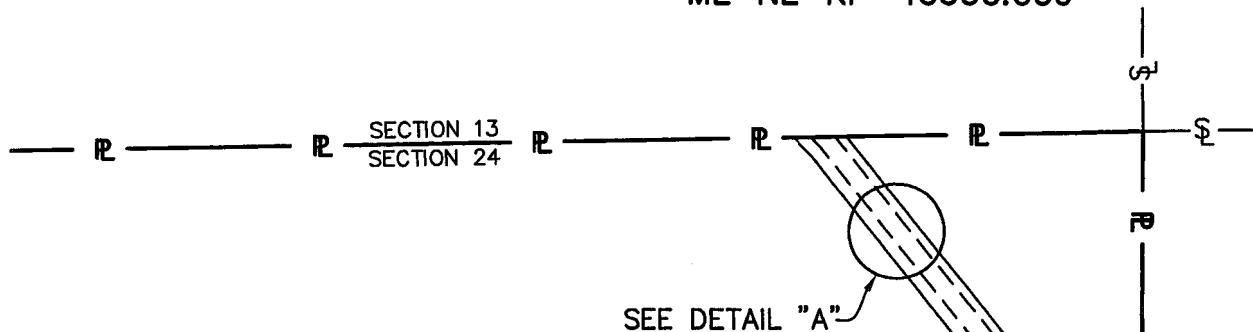
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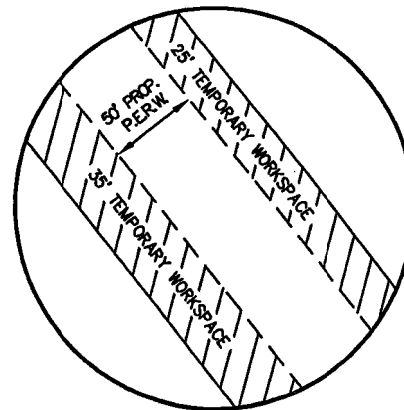
PROPERTY LINE
 SECTION LINE
 PROPOSED
 PERMANENT EASEMENT & RIGHT OF WAY
 DEED RECORDS OF KEYA PAHA COUNTY, NEBRASKA

KEYA PAHA COUNTY, NEBRASKA

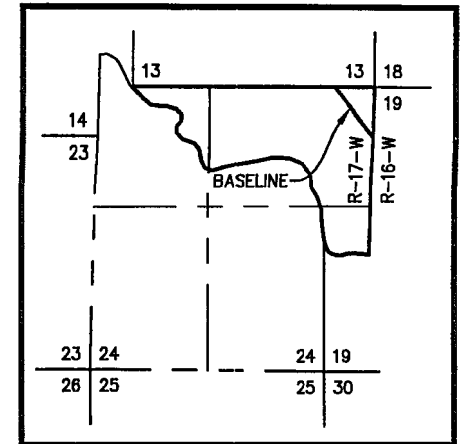
T-34-N, R-17-W, SECTION 24
 ML-NE-KP-40660.000



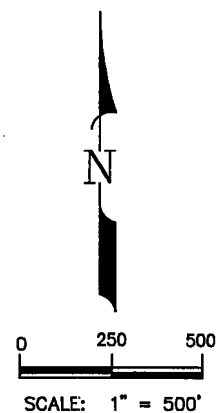
ALLPRESS BROTHERS, LLC
 VOLUME 42, PAGE 240
 D.R.K.P.C.N.



DETAIL "A"
 N.T.S.



VICINITY MAP
 N.T.S.



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

NOTE:

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

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



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

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



TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-KP-40640.000

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

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

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

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

Section 13, Township 34N, Range 17W

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

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

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

EXHIBIT

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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.

EXHIBIT

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GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM: NEGLIGENCE

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

SECOND CLAIM: TRESPASS

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

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

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Lori Collins in
Support of Landowner Intervenors**

State of Texas)
) ss.
Delta County)

- 1 **Q: Please state your name.**
- 2 A: My name is Lori Collins.
- 3 **Q: Where to do you live?**
- 4 A: Cooper, Texas.
- 5 **Q: Do you own land in Texas that the TransCanada Keystone pipeline passes**
6 **through and under?**
- 7 A: Yes, I do.
- 8 **Q: Are you married?**
- 9 A: Yes, to JB Collins.
- 10 **Q: Do you have children?**
- 11 A: Yes, two.
- 12 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
13 **photo(s) of your land TransCanada Keystone pipeline passes through and**
14 **under?**
- 15 A: Yes.
- 16 **Q: What do you do for a living?**

EXHIBIT

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1 A: Ranch and Farm.

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

3 A: Yes.

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

6 A: Yes.

7 **Q: 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: Give the Commissioners a sense of why you have any relevant information**
11 **regarding TransCanada and or the Keystone pipeline.**

12 A: In 2011, TransCanada Keystone Pipeline, L.P. condemned our land for its
13 Keystone I Pipeline and eventually began construction through our land. We
14 experienced numerous health problems and property damage and endured an
15 incredible amount of loss and stress related to the Keystone I pipeline and behaviors
16 of TransCanada.

17 **Q: Is Attachment No. 3 a series of true and accurate copies of pictures you or**
18 **your husband took of the construction and or damage near your home and**
19 **land related to the Keystone Pipeline?**

20 A: Yes.

21 **Q: Is Attachment No. 4 a true and accurate copy of an article in the Texas**
22 **Observer that was written about you and your family's experiences and**
23 **difficulties with TransCanada and the Keystone pipeline?**

24 A: Yes.

25 **Q: Are the quotes, statements, and photos in Attachment No. 4 attributable to**
26 **you or your family true and accurate and consistent with what you and your**
27 **family actually experienced and endured?**

28 A: Yes.

1 **Q:** Are you competent to talk about the experiences you and your family had
2 with TransCanada and do you intend to share those with the Commissioners
3 in more detail at the time of your live testimony?

4 **A:** Yes.

5 **Q:** Is Attachment No. 5 a true and accurate copy of a Timeline you put together
6 regarding some of the events surrounding construction of the Keystone
7 pipeline on and through our land?

8 **A:** Yes.

9 **Q:** What impact if any do you believe the presence of the Keystone pipeline on
10 your land has done to your land's market value?

11 **A:** I believe it has decreased the value. If I had had a choice to not have the pipeline I
12 would have avoided it. I would not knowingly purchase land with a major oil
13 pipeline underneath it. We have still not recovered from all of the damage and
14 negative impacts from the Keystone pipeline.

15 **Q:** Based upon what you have shared with the Commission above and based
16 upon your understanding of TransCanada's proposed Easement terms and
17 agreement for Nebraskans, do you believe those to be reasonable or just,
18 given how you know this company and its pipeline have negatively impacted
19 your family and your land?

20 **A:** No, I do not believe those terms to be reasonable or just.

21 **Q:** Why not?

22 **A:** Our number one problem is that we trusted TransCanada. We trusted what they
23 said and what they said they would do and how they said they would treat us and
24 make things right. We learned a painful lesson and that is we could not trust them.
25 They would say one thing to pacify you and then either do another or not do what
26 they promised. Unless you have all the important details spelled out in your
27 Easement and how TransCanada has to treat you and compensate you and those
28 things, all you have is the document they drafted that favors them and is designed

1 to save them money and your expense. We lived through it and I don't want
2 anyone else to have to experience what we did and what we still are to this day.

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

6 A: Yes.

7 **Q: Is Attachment No. 6, to your testimony here, a true and accurate copy of the**
8 **"Release of Damage Claims" Agreement regarding your land?**

9 A: Yes, it is.

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

11 A: When I read that document I didn't fully understand the consequences. As it was
12 explained to me at the time it was a payment now in advance of the likely damages
13 that would occur during construction. What I did not know or understand at the
14 time was that TransCanada would later argue this document protects them from
15 having to pay out further damages that actually occurred that were above and
16 beyond the amount in this document.

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

18 A: My Husband did.

19 **Q: Why?**

20 A: We thought we had to and that trying to fight what this billion dollar corporation
21 wanted would be futile.

22 **Q: When you review this document now after everything that happened to you,**
23 **your family, and your land, what did it make you feel?**

24 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
25 shield themselves against known and foreseeable impacts that their pipeline, and
26 the construction of it, would have upon my land. It made me feel that they knew it
27 was in their financial interest to pay me as little as possible to prevent me from
28 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: Do you have any concerns TransCanada's fitness as an applicant for a major**
4 **crude oil pipeline in its preferred location, or alternative locations across the**
5 **state of Nebraska?**

6 A: Yes, I have significant concerns. I know how we were treated. I am aware of
7 landowners being treated unfairly and being made to feel scared that they did not
8 have any options but to sign whatever papers TransCanada wanted signed. I am
9 aware of older folks and widows or widowers or single women feeling
10 intimidated.

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

14 A: No, I have not. I have shared that which I can think of as of the date I signed this
15 document below but other things may come to me or my memory may be
16 refreshed and I will add and address those things at the time of the Hearing in
17 August and address any additional items at that time as is necessary.

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

21 A: Yes, they are.

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

Lori Collins
Lori Collins

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

Donna E. King
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
JB Collins in
Support of Landowner Intervenors**

State of Texas)
) ss.
Delta County)

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

2 A: My name is JB Collins.

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

4 A: Cooper, Texas.

5 **Q: Do you own land in Texas that the TransCanada Keystone pipeline passes**
6 **through and under?**

7 A: Yes, I do.

8 **Q: Are you married?**

9 A: Yes, to Lori Collins.

10 **Q: Do you have children?**

11 A: Yes, two.

12 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
13 **photo(s) of your land TransCanada Keystone pipeline passes through and**
14 **under?**

15 A: Yes.

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

EXHIBIT

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1 A: Ranch and Farm.

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

3 A: Yes.

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

6 A: Yes.

7 **Q: 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: Give the Commissioners a sense of why you have any relevant information**
11 **regarding TransCanada and or the Keystone pipeline.**

12 A: In 2011, TransCanada Keystone Pipeline, L.P. condemned our land for its
13 Keystone Pipeline and eventually began construction through our land. We
14 experienced numerous health problems and property damage and endured an
15 incredible amount of loss and stress related to the Keystone pipeline and behaviors
16 of TransCanada.

17 **Q: Is Attachment No. 3 a series of true and accurate copies of pictures you or**
18 **your wife took of the construction and or damage near your home and land**
19 **related to the Keystone Pipeline?**

20 A: Yes.

21 **Q: Is Attachment No. 4 a true and accurate copy of an article in the Texas**
22 **Observer that was written about you and your family's experiences and**
23 **difficulties with TransCanada and the Keystone pipeline?**

24 A: Yes.

25 **Q: Are the quotes, statements, and photos in Attachment No. 4 attributable to**
26 **your or your family true and accurate and consistent with what you and your**
27 **family actually experienced and endured?**

28 A: Yes.

1 **Q: Are you competent to talk about the experiences you and your family had**
2 **with TransCanada and do you intend to share those with the Commissioners**
3 **in more detail at the time of your live testimony?**

4 **A: Yes.**

5 **Q: What impact if any do you believe the presence of the Keystone pipeline on**
6 **your land has done to your land's market value?**

7 A: I believe it has decreased the value. If I had had a choice to not have the pipeline I
8 would have avoided it. I would not knowingly purchase land with a major oil
9 pipeline underneath it. We have still not recovered from all of the damage and
10 negative impacts from the Keystone pipeline. The property damage from
11 construction still impacts us to this day. It has negatively affected my farming and
12 ranching operation.

13 **Q: Based upon what you have shared with the Commission above and based**
14 **upon your understanding of TransCanada's proposed Easement terms and**
15 **agreement for Nebraskans, do you believe those to be reasonable or just,**
16 **given how you know this company and its pipeline have negatively impacted**
17 **your family and your land?**

18 A: No, I do not believe those terms to be reasonable or just.

19 **Q: Why not?**

20 A: Our number one problem is that we trusted TransCanada. We trusted what they
21 said and what they said they would do and how they said they would treat us and
22 make things right. We learned a painful lesson and that is we could not trust them.
23 They would say one thing to pacify you and then either do another or not do what
24 they promised. Unless you have all the important details spelled out in your
25 Easement and how TransCanada has to treat you and compensate you and those
26 things, all you have is the document they drafted that favors them and is designed
27 to save them money and your expense. We lived through it and I don't want
28 anyone else to have to experience what we did and what we still are to this day.

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

4 A: Yes.

5 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
6 **“Release of Damage Claims” Agreement regarding your land?**

7 A: Yes, it is.

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

9 A: When I read that document I didn't fully understand the consequences. As it was
10 explained to me at the time it was a payment now in advance of the likely damages
11 that would occur during construction. What I did not know or understand at the
12 time was that TransCanada would later argue this document protects them from
13 having to pay out further damages that actually occurred that were above and
14 beyond the amount in this document.

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

16 A: Yes.

17 **Q: Why?**

18 A: We thought we had to and that trying to fight what this billion dollar corporation
19 wanted would be futile.

20 **Q: When you review this document now after everything that happened to you,**
21 **your family, and your land, what did it make you feel?**

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

1 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
2 **crude oil pipeline in its preferred location, or alternative locations across the**
3 **state of Nebraska?**

4 A: Yes, I have significant concerns. I know how we were treated. I am aware of
5 landowners being treated unfairly and being made to feel scared that they did not
6 have any options but to sign whatever papers TransCanada wanted signed. I am
7 aware of older folks and widows or widowers or single women feeling
8 intimidated.

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

12 A: No, I have not. I have shared that which I can think of as of the date I signed this
13 document below but other things may come to me or my memory may be
14 refreshed and I will add and address those things at the time of the Hearing in
15 August and address any additional items at that time as is necessary.

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

19 A: Yes, they are.

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


JB Collins
JB Collins

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

Donna E. King
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Galen Heckenliable**

State of South Dakota)
) ss.
Hutchinson County)

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

2 A: My name is Galen Heckenliable.

3 **Q: Are you familiar with TransCanada's Keystone I pipeline?**

4 A: Yes, I am.

5 **Q: How are you familiar with it?**

6 A: I own land in South Dakota that the Keystone I pipeline passes under.

7 Q: What is your home address?

8 A: 28615 437th Ave. in Menno, South Dakota.

9 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
10 **photo(s) of your land?**

11 A: Yes.

12 **Q: Do you earn any income from your land?**

13 A: Yes.

14 **Q: Were you able to negotiate fair terms of the TransCanada Easement that**
15 **governs the rights and responsibility and restrictions of the Keystone I**
16 **pipeline on you land?**

EXHIBIT

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1 A: No.

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

4 A: Yes.

5 **Q: Have you had any issues with the TransCanada Keystone I pipeline on your**
6 **property?**

7 A: Yes, I have.

8 **Q: Tell the Commission about that please.**

9 A: On April 2nd 2016 TransCanada's Keystone I pipeline suffered damage and failed
10 in some way and lead to significant impacts to my land. The first person to
11 discovery the pipeline break was my neighbor. The local Sherriff's department
12 arrived first and about three hours later TransCanada personnel arrived.

13 **Q: When you arrived on site what happened?**

14 A: TransCanada prevented me from entering upon my property. My mailbox is
15 located by the highway; I was not even permitted by TransCanada to cross my
16 own land riding my four-wheeler to get my daily mail. I had to drive an extra 2-3
17 miles around the section line to get my mail and also travel to my employment.

18 **Q: What next do you remember?**

19 A: I remember there being about 150 workers on my land disturbing my land and
20 preventing me from enjoying and using my land as I wanted. A TransCanada
21 representative approached me with an offer of \$1,000 per week to "rent" my land
22 for all the vehicles and equipment they needed to park and had brought on my
23 property. I reluctantly accepted their offer as they led me to believe that was all I
24 could be compensated – so we reached an agreement, or so I thought.

25 **Q: What did TransCanada say about the 50 foot easement they have on your**
26 **property?**

27 A: I was told that when the pipeline has a problem the Easement contract means
28 nothing and that TransCanada can go anywhere and do anything they want on my
29 land during such a pipeline breach. This was very frustrating to me and was

1 exacerbated by the fact they were all over and on my land for three (3) months day
2 in and day out until July 2nd 2016. TransCanada left without paying the promised
3 verbal compensation of damage to property because they said there was no written
4 agreement.

5 **Q: What did you do about that?**

6 A: Well, they were intruding on my land first of all and disrupting my life and even
7 despite that we made a deal for the \$1,000 a week but I knew I was just the little
8 guy and had no means to fight with a billion dollar company over the agreement
9 we reached and they breached.

10 **Q: What did you observed about how TransCanada treated your land was the**
11 **worked on it?**

12 A: I witnessed TransCanada having concrete trucks hauling day and night to the site
13 and just dumping concrete into the trench. The put about 600 yards of concrete in
14 the trench. I was told by TransCanada to keep it quiet.

15 **Q: Did you have any other concerns about TransCanada's behavior?**

16 A: Yes. They left the road in terrible condition. The land reclamation process on my
17 property after cleanup was completed was not good. I wasn't compensated for my
18 trees that TransCanada removed.

19 **Q: How has your experience with TransCanada informed your understanding of**
20 **the terms and language in your Easement and Right-of-Way agreement?**

21 A: It is critically important to get an Easement that has terms and language that are
22 very clear and that the Landowner has an opportunity to negotiate terms that
23 actually protect their property rights and economic interests.

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

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

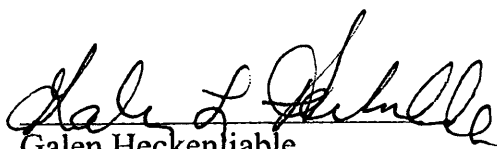
1 **Q: Do you have any concerns TransCanada’s fitness as an applicant for a major**
2 **crude oil pipeline in its preferred location, or ultimate location across the**
3 **state of Nebraska?**

4 A: Yes, I have significant concerns.

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

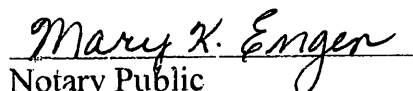
8 A: Yes, they are.

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



Galen Heckenliable
state of South Dakota
County of Hutchinson

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



Notary Public

my commission expires 10-20-2020

Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Randy Thompson in Support of
Landowner Intervenor**

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?**

EXHIBIT

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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

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

**IN THE MATTER OF THE
APPLICATION OF TRANSCANADA
KEYSTONE PIPELINE, LP
FOR ROUTE APPROVAL OF
KEYSTONE XL PIPELINE PROJECT,
PURSUANT TO MAJOR OIL PIPELINE
SITING ACT**

APPLICATION NO: OP-003

**DIRECT TESTIMONY OF
EXPERT LORNE STOCKMAN**

State of Virginia)

) ss.

City of Staunton)

**On Behalf of
Landowner Intervenors
June 6, 2017**



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Attachment LS-3	The Future of the Canadian Oil Sands, Oxford Institute for Energy Studies, February 2016
Attachment LS-4	Crude Oil Forecasts, Markets and Transportation Report, Canadian Association of Petroleum Producers, June 2016
Attachment LS-5	Rystad Energy Data, Breakeven WTI Price for Oil Sands Projects, May 2017
Attachment LS-6	Rystad Energy Data, WTI Futures, May 2017
Attachment LS-7	Understanding Bitumen Pricing, GLJ Petroleum Consultants
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Attachment LS-25	United States Energy Information Agency Data, Crude Oil in Storage in Cushing, Oklahoma, and Petroleum Area Defense District 3 (Gulf Coast Region), May 2017
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I. BACKGROUND AND EXPERIENCE

1Q. Please state your name, position, and business address.

A. My name is Lorne Stockman. I am the Senior Research Analyst at Oil Change International. My business address is 714 G St. SE #202, Washington, DC 20003.

2Q. On whose behalf are you testifying in this case?

A. I am testifying on behalf of the Landowner Intervenors.

3Q. Would you briefly describe your educational and professional background?

A. For the past twenty years I have performed research and written reports on the petroleum and energy industries and economics, with a particular emphasis on the risks faced by investing in projects related to economically marginal crude oil developments. My research experience includes analysis of climate change and energy, the political economy of oil, transitions in energy markets, energy security, and financial risk. I hold a Master's Degree from King's College London. My qualifications may be found in my Curriculum Vitae, attached to this report as Attachment LS-1.

4Q. Are you familiar with the Keystone XL Project (the "Project") and its related application before the Nebraska Public Service Commission ("Commission") pursuant to Neb. 21 Rev. Stat. § 57-1401 *et seq.*?

A. Yes. I have reviewed the Application. If approved, the Project would allow TransCanada Keystone Pipeline, L.P. ("Keystone") to construct, operate, and maintain a 36-inch diameter crude oil pipeline and ancillary facilities. The Project is designed to transport up to 830,000 barrels per day of crude oil from Hardisty, Alberta, Canada, to Steele City, Nebraska. The possible sources of crude oil that would be transported on the Project include oil extracted in Alberta and in the Williston Basin. There are two "onramps" for the Project: one in Hardisty, Alberta, and the other near Baker City, Montana. Oil from these upstream onramps would be transported to Steele City, at which location the Project would connect to an existing 36-inch diameter pipeline that is owned by Keystone and transports crude oil from Steele City to a Keystone terminal near

Cushing, Oklahoma. Upon arrival in Cushing, the crude oil would be delivered to other pipelines that would transport this crude oil to a number of possible locations, including but not limited to oil refineries in Kansas, Oklahoma, Texas, and Louisiana, and to export facilities on the Gulf of Mexico.

The Project would increase Keystone's capacity to transport crude oil from the Tar Sands Region in northern Alberta and conventional oil fields in western Canada. Most of the crude oil transported by the Project would be diluted bitumen or "dilbit." Bitumen is a heavy petroleum oil that is extracted from the Tar Sands Region of Western Canada by surface mining or by *in situ* extraction using wells into which steam is injected. Since bitumen is too viscous to flow through typical crude oil pipelines, to decrease its viscosity bitumen is mixed with a diluent comprised of lighter petroleum oils. The industry uses a variety of substances, such as natural gas condensate and synthetic crude oil, for diluent.

The Project could also transport light crude oil extracted from the Williston Basin in western North Dakota and eastern Montana. This being said, the construction of the Dakota Access Pipeline ("DAPL") has created excess takeaway capacity from the Williston Basin, such that it is unlikely that significant quantities of Williston Basin crude oil would be transported by the Project.

5Q. What is the purpose of your testimony?

- A.** The purpose of my testimony is to provide information with regard to whether the Project is in the "public interest" in accordance with Section 23.07 of the Commission's Major Oil Pipelines permit regulations. Specifically, this testimony contains evidence that Keystone has not committed to construct the Project and the market-related reasons why it is unneeded and unlikely to be built, such that approval of construction of the Project is not in the public interest. In particular, this testimony provides evidence related to the following:
- the relationship between oil price and the development of additional crude oil supply available for export from western Canada;

- an evaluation of western Canadian crude oil historical supply available for export and supply forecasts showing that future supply for export from western Canada will be limited;
- current Canada to U.S. import pipeline capacity and utilization and the potential impact of other proposed import pipelines;
- the record levels of crude oil supply in storage in Oklahoma and the U.S. Gulf Coast and the implications of this glut on demand for additional oil import capacity into this region;
- the lack of growth in domestic consumer demand for petroleum and the current demand trends that will suppress demand growth in the future, and the growth of U.S. crude oil production; and
- the growth in exports of crude oil and petroleum products from the U.S.

6Q. Would you describe your professional experience related to determining need for petroleum infrastructure?

- A.** I have worked as a research analyst on the oil and gas industry for nearly 20 years and have been specifically focused on the North American industry for over ten years. My primary focus in the last ten years has been the Canadian oil sands sector as well as the shifting trends in U.S. supply and demand.

II. THE NEED FOR THE PROPOSED KEYSTONE XL PIPELINE DEPENDS ON GROWTH IN WESTERN CANADIAN CRUDE OIL PRODUCTION, WHICH IS UNLIKELY TO INCREASE SUBSTANTIALLY

7Q What is the commercial basis for the Keystone XL Pipeline?

- A.** The primary commercial basis for the Keystone XL Pipeline is to transport crude oil from Alberta, Canada, to Cushing, Oklahoma, and the U.S. Gulf Coast, and particularly refineries and ports in Texas and Louisiana. It will be needed only if: (a) additional new crude oil supply is available for export in the future; and (b) the capacity of other pipelines and railroads to transport this new supply crude oil supply is insufficient or less economic than the proposed Keystone XL Pipeline. At any given time, there is a limited

demand for crude oil transportation services. Building more pipeline capacity than the total crude oil supply available for transport is uneconomic and needlessly increases the cost of petroleum fuels. Conversely, building too little pipeline capacity can result in the use of more expensive transportation options, such as rail.

8Q Have you examined any data related to the potential for growth of crude oil supply for export from western Canada?

- A. Yes. I have examined the impact of oil price on the rate of development of crude oil extraction projects in western Canada. Specifically, I have reviewed the costs of: (a) developing new extraction operations, (b) transporting western Canadian crude oil to market, (c) refining heavy western Canadian crude oil relative to refining other types of crude oil.

9Q What is the relationship between oil price and the rate of growth of western Canadian crude oil supply?

- A. With regard to the development of new oil extraction projects in Canada, at a minimum the price paid for the crude oil produced by new projects must be high enough to pay for the cost to extract the crude oil from the ground, prepare it for market, ship it to market, and provide a return on investment that is sufficient to attract investors and financiers. Should the combination of these costs be greater than the market price of the particular grade of crude oil produced by a project, then Canadian oil project developers would need to either: (a) build anyway and plan to sell at a loss; or (b) delay or terminate their project development efforts.

Since late 2014, oil prices have slumped and currently remain well below the average breakeven cost required for new oil sands projects to go forward. The price paid for western Canadian crude oil has been too low relative to the cost of building new projects to attract significant new investment in oil extraction and processing facilities, with the result that the Canadian oil industry has not substantially increased the overall supply of crude oil available for export from Canada for over two years. Most in the industry today believe this is a structural market shift characterized by the flexibility of

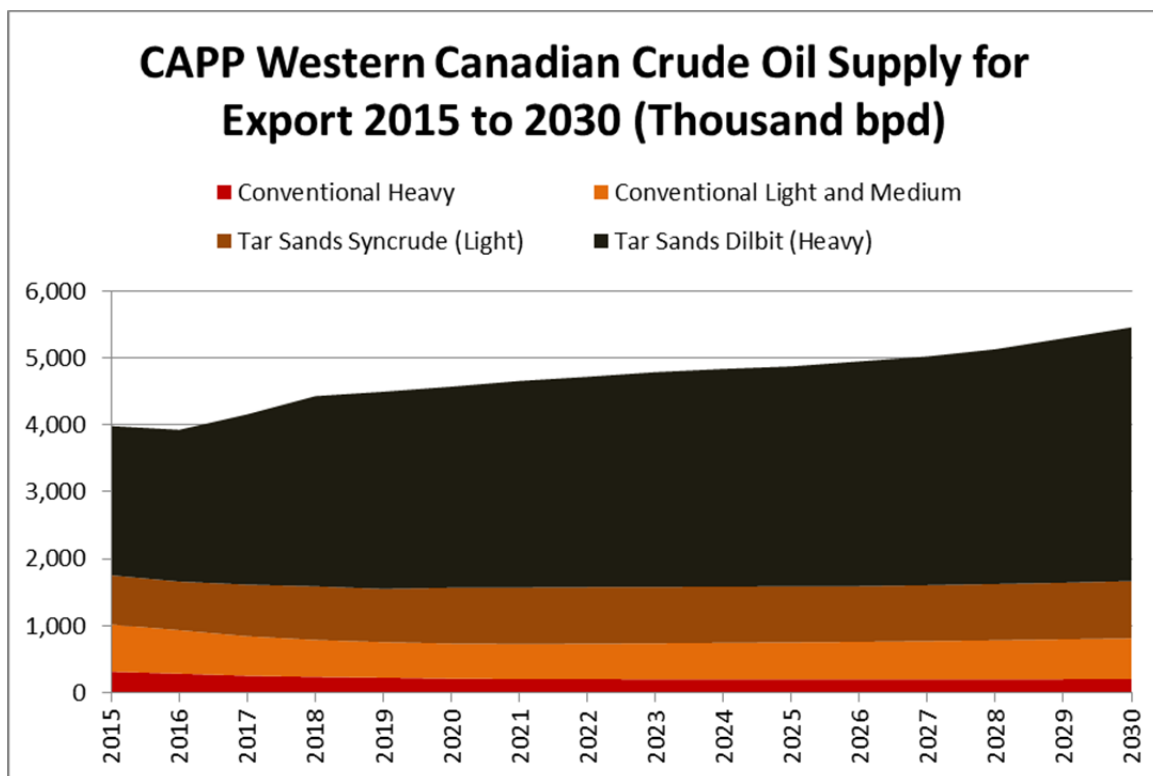
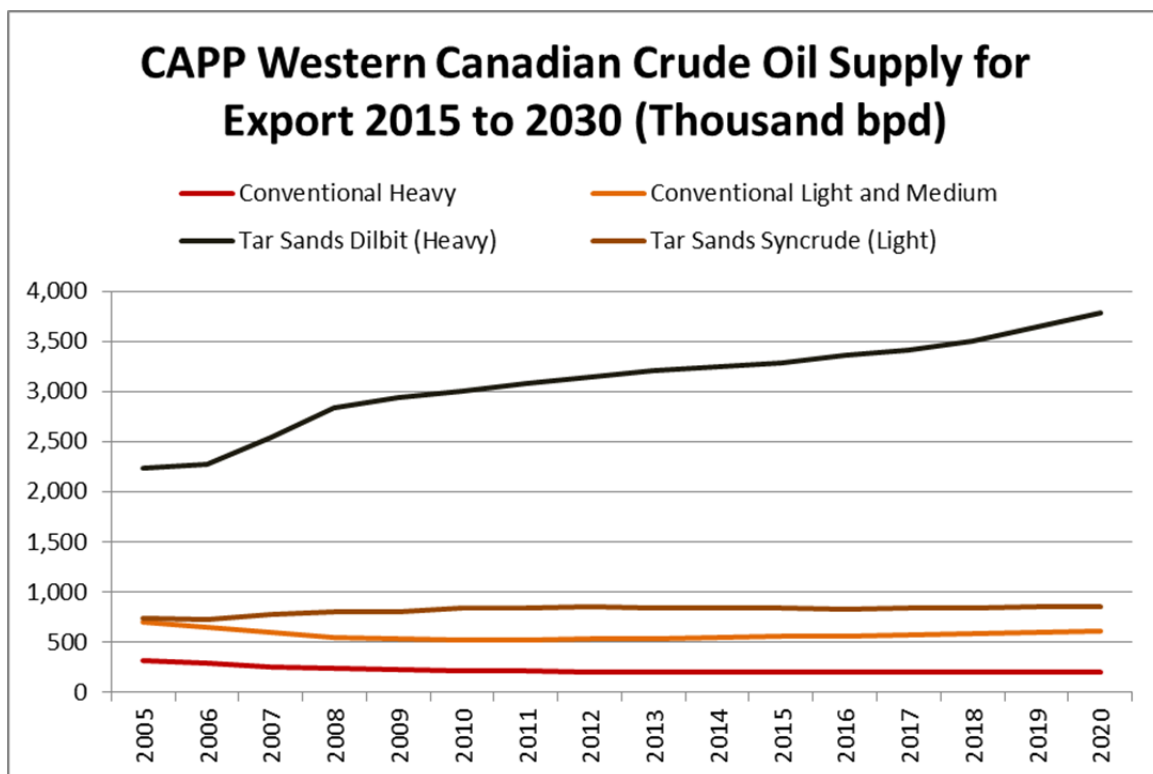
U.S. shale oil production and tepid global demand growth and have labeled the current oil price era as “lower for longer.”

The main source of western Canadian oil production is in the province of Alberta, which produces:

- conventional light, medium, and heavy crude oil;
- unconventional light hydrofracked crude oil from shale formations in the Williston Basin; and
- unconventional crude oil from the “oil sands” or “tar sands,” which is exported in the form of synthetic crude oil (“syncrude”) and dilbit.

The petroleum deposit in the tar sands region is comprised of a thick viscous hydrocarbon called bitumen. Attachment LS-2. It is found in generally shallow formations mixed with sand, clay and water. Shallower formations may be exploited via open pit mining, but deeper formations can be accessed only via steam injection technologies. Mined bitumen requires intensive processing to separate the sand and clay from the bitumen. The steamed or “*in situ*” production results in relatively pure bitumen but only after weeks of pumping steam underground to liquefy the bitumen enough to be extracted through production wells. These extraction methods are resource intensive relative to ‘conventional’ methods, with the result that the vast majority of western Canadian oil production is significantly more expensive to extract than ‘conventional’ crude oil. Attachment LS-3.

The following charts of Canadian Association of Petroleum Producers (“CAPP”) data show different views of the same 2016 forecast of western Canadian crude oil supply available for export by type. The data used to generate these charts is from the CAPP June 2016 report on Crude Oil Forecasts, Markets and Transportation (“2016 CAPP Report”), Appendix B.2 Attachment LS-4. Although I do not agree that dilbit extraction will grow to the extent forecast by CAPP, these charts are useful because they show that the industry forecasts that dilbit is the only type of crude oil supply for export that might increase to any significant degree over time.



CAPP updates this report each June. CAPP is a trade association whose member companies produce about 85% of Canada's oil and natural gas. *Id.* In its forecasts, CAPP combines hydrofracked light crude oil with conventional light crude oil.

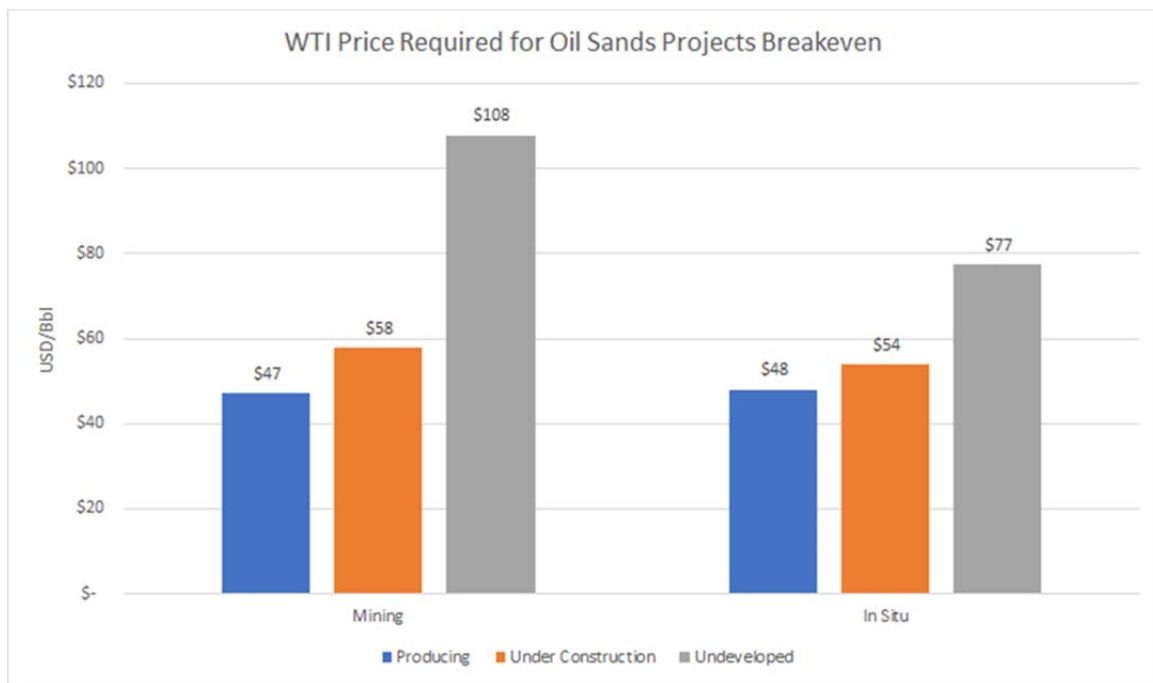
There is no bright line between conventional and unconventional crude oil, but conventional oil is that which can be extracted using traditional vertical oil wells with limited need for more exotic technologies. In comparison, unconventional oil is that which requires significant commitments of technology, money, and energy to extract. Extraction of oil from the tar sands region requires either open pit mining combined with partial refining (upgrading) of the extracted bitumen, or the use of paired horizontal steam injection and extraction wells. Both mining/upgrading and steam extraction are expensive and energy and labor intensive.

Once the bitumen is extracted there is still much that needs to be done to process it into the petroleum products the market requires, primarily gasoline and diesel. Bitumen is too viscous to transport through pipelines, such that it must either be semi-refined (upgraded) into a product called syncrude, or it must be diluted with lighter hydrocarbons, similar to solvents that essentially liquefy the bitumen to create dilbit.

Syncrude production requires that oil companies invest in and construct upgraders, which are expensive and require substantial time to construct. As a general rule, most syncrude is derived from open pit mining, because the mining process itself does not separate the raw bitumen from the sand, clay, and water with which it is mixed in the ground. Instead, the raw bitumen is separated from these other materials by upgraders that also partially refine it into syncrude, which is classified as a light sweet (low sulfur) crude oil. The equipment needed to perform this upgrading is expensive.

The chart below of data provided by Rystad Energy, an independent commercial provider of global energy data, shows that future oil sands mining projects will need a U.S. (WTI equivalent) oil price of \$108 per barrel – just to breakeven. Attachment LS-5. Generating an adequate return on investment would require that oil prices rise to close to \$120 per barrel, or about a 250% increase over the current price of oil. *Id.* This chart is based on the latest May 2017 data from Rystad Energy and already accounts for the cost

savings realized in the sector as a result of the slowdown in activity and consolidation since the oil price crash. *Id.*



Production of dilbit is also expensive. Dilbit is produced using bitumen extracted by *in situ* production technology. The most common *in situ* technology is called ‘steam assisted gravity drainage’ or ‘SAGD’ production. Steam generation requires large amounts of natural gas, which must be transported to the SAGD fields and combusted in steam generators. The produced steam is then forced underground at high pressure to gradually heat the bitumen to the point that it liquefies and flows into an extraction well. The resources needed to extract bitumen by the SAGD method also increase the cost of extracting bitumen to well above the cost of conventional oil production. The chart above shows that future *in situ* projects have a breakeven price of \$77 per barrel (WTI equivalent), well below the current price of crude oil. *Id.*

The USEIA’s WTI spot price data shows that the price of this oil has averaged \$51 since the beginning of the year. Attachment LS-6. At this price level, western Canadian oil extraction projects under development today are likely to begin production making a loss, and currently producing projects are operating at little to no profit. The future of oil prices is of course hard to predict but at the time of writing WTI Futures out

to December 2025 are trading within a range of \$40 to \$65, which indicates that oil market professionals do not anticipate a rapid increase in oil price.



In addition to the foregoing costs of extraction, transporting bitumen to market is expensive because Canadian oil companies must blend the bitumen with diluent to make dilbit. Attachment LS-7. On average only 72% of a barrel of dilbit transported in a pipeline is bitumen. *Id.* This means that Canadian oil companies must buy 0.28 barrels of diluent for each 0.72 barrels of bitumen. *Id.* To get a full barrel of bitumen to market, the oil companies must ship 1.43 barrels of dilbit. *Id.* Making dilbit requires that Canadian oil companies purchase diluent, transport the dilute to the production site via pipeline, and blend the diluent and bitumen in mixers. *Id.* This process also increases the cost of producing dilbit relative to the cost of conventional crude oil.

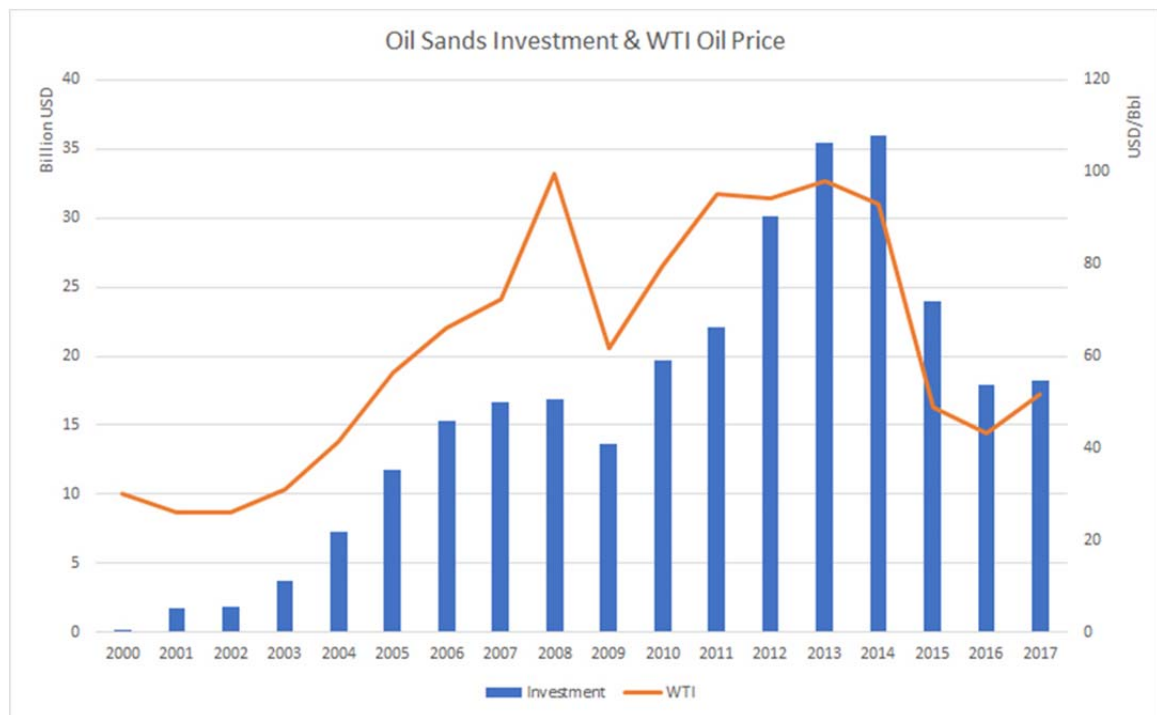
Once a barrel of dilbit arrives at a refinery it requires several additional steps to convert it to useful products, such that only complex refineries can handle it. *Id.* These refineries super-heat the bitumen in expensive refining equipment called “cokers,” add hydrogen to liquefy it, and intensively treat the bitumen to remove the high levels of sulfur, heavy metals and other contaminants that cannot be carried through to the finished petroleum products. *Id.* The intensive and expensive processing required to refine bitumen means that refinery companies will pay less for bitumen than they will for lighter and cleaner sources of feedstock that are less expensive to refine. Thus, dilbit is not only

more expensive to produce than other crude oils, but it is also a lower value product that is worth less per barrel than other types of crude oil.

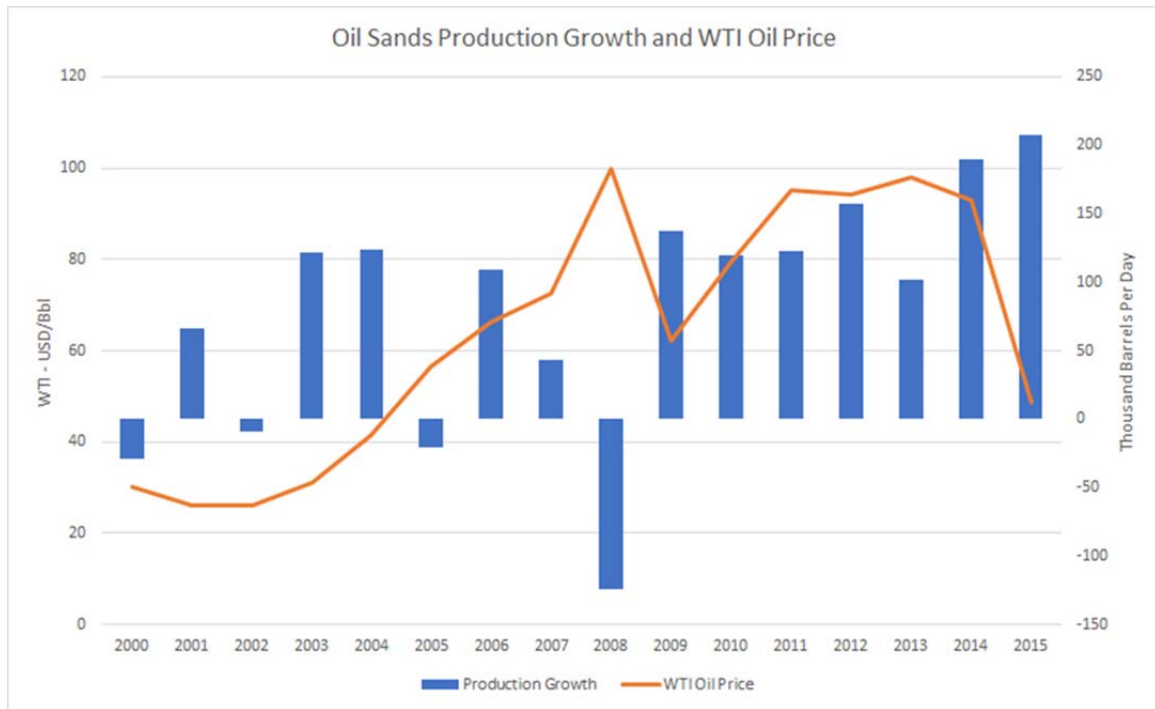
In addition, dilbit is produced only in remote northern Alberta. This means it must be transported very long distances by pipeline or rail to U.S. refineries. The current FERC-approved international joint tariff for transporting dilbit on the Keystone Pipeline from Hardisty, Alberta, to Houston, Texas, is \$7.730 per barrel, though not all shippers are eligible to ship at this discounted price. Attachment LS-8. Similarly, the lowest current FERC tariffs to transport dilbit on Enbridge pipelines (Enbridge Mainline System to Flanagan South to Seaway) between Hardisty and Houston is \$6.7042 per barrel. *Id.* In comparison, the cost of shipping crude oil from west Texas to refineries on the U.S. Gulf Coast is typically about \$2 per barrel or less, depending on the distance (*e.g.*, Magellan Crude Oil Pipeline, L.P., tariff). *Id.* Since refineries base oil purchases on the as-delivered cost of crude oil, U.S. Gulf Coast refineries will buy Canadian crude oil only if its price is discounted so that it can compete with closer crude oil suppliers.

Dilbit's expensive extraction and processing methods, the distance it travels to market, and the lower price it fetches, all mean that global oil prices must be relatively high to make its extraction profitable. As noted above, the current breakeven price is estimated to be \$108 per barrel. In the past, the boom in Canadian tar sands development was caused by historically high oil prices. The relationship between rising oil prices in the first 14 years of this century and investment in oil sands production is very clearly shown chart below of Rystad Energy data showing oil sands investments as of May 2017. Investment amounts include exploration capital expenditures (expex), capital expenditures (capex) and operational expenditures (opex). The WTI price data is from

USEIA. (Attachment LS-9).

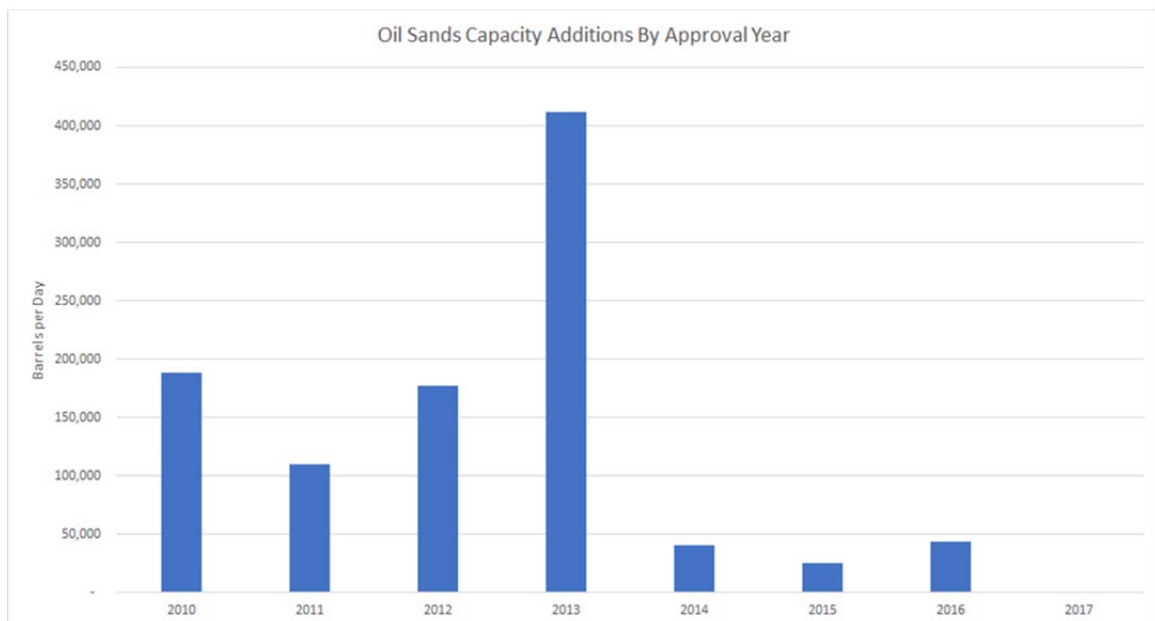


The chart of Rystad Energy data below shows oil sands production growing the most between 2010 and 2015 during the steadiest period of high oil prices, although the lag between investment and production and the economic crash in 2009 make for some anomalies over the long term back to 2000. *Id.* As discussed below, in 2016, growth in oil sands supply available for export was minimal.



10Q Have low oil prices actually impacted oil industry investments in western Canada?

- A. The oil price slump has slowed the development of new oil sands production to a trickle and has thrown into question the future of the sector. The chart below of Rystad Energy data shows the total capacity of all new oil extraction projects sanctioned by the oil industry in western Canada. Attachment LS-10.



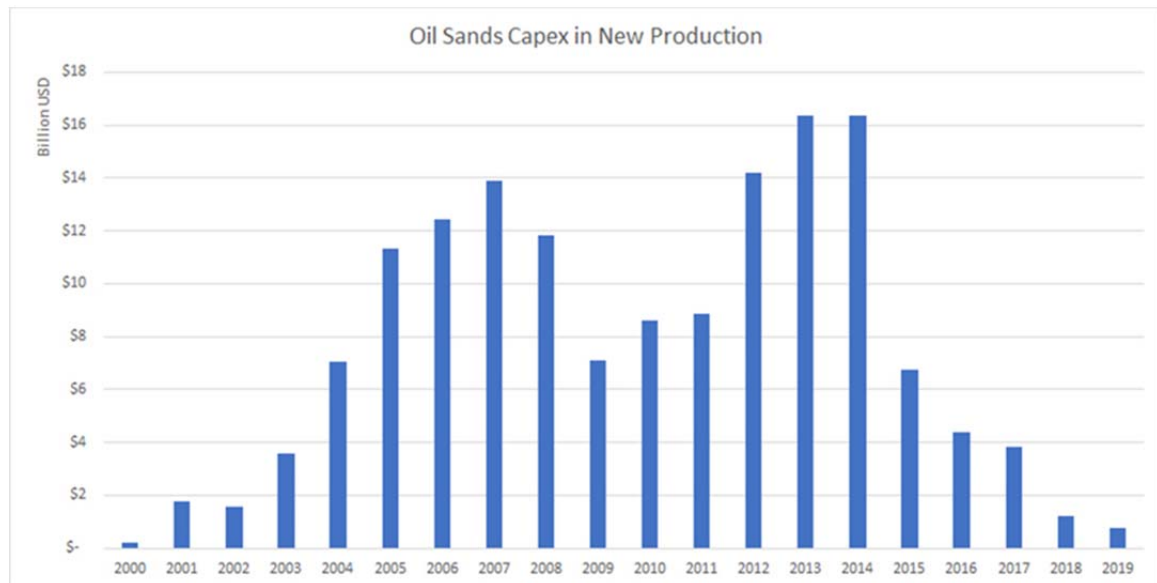
Projects sanctioned before the oil price slump in late 2014 continue to move forward, but since the beginning of 2015 only three minor capacity additions have been sanctioned (a final investment decision by a company). Unless more projects are sanctioned, extraction project construction will peter out before 2020. It is unlikely that new extraction projects will be sanctioned in the foreseeable future.

To understand the state of play with oil sands production growth, one must understand the investment cycle in the sector. Most expansion projects require lengthy construction periods spanning several years. This investment momentum is the key reason production capacity has continued to grow since the oil price collapse. The projects that have come online since late 2014, and those that are still under construction today, were primarily sanctioned before the oil price collapse. The three expansions that have been sanctioned since then are relatively modest incremental expansions of existing projects.

New projects will likely continue to come online through 2020 as remaining under-construction projects are completed, but the exact timing of their production ramp-up is uncertain. Moreover, the net increase in crude oil available for export from western Canada is uncertain, because the output of these new projects will be offset by declining production from older oil fields. Whether any further significant capacity is added after these currently sanctioned projects come online depends on oil prices rising enough to support new development. That currently appears a long way off. While development costs have been cut from the highs of the pre-2015 boom, nonetheless, the U.S. price of oil must be sustained above approximately \$77 per barrel to justify new SAGD projects, and above approximately \$108 per barrel to justify new surface mining projects. At present, oil market supply and demand fundamentals do not justify such high crude oil prices.

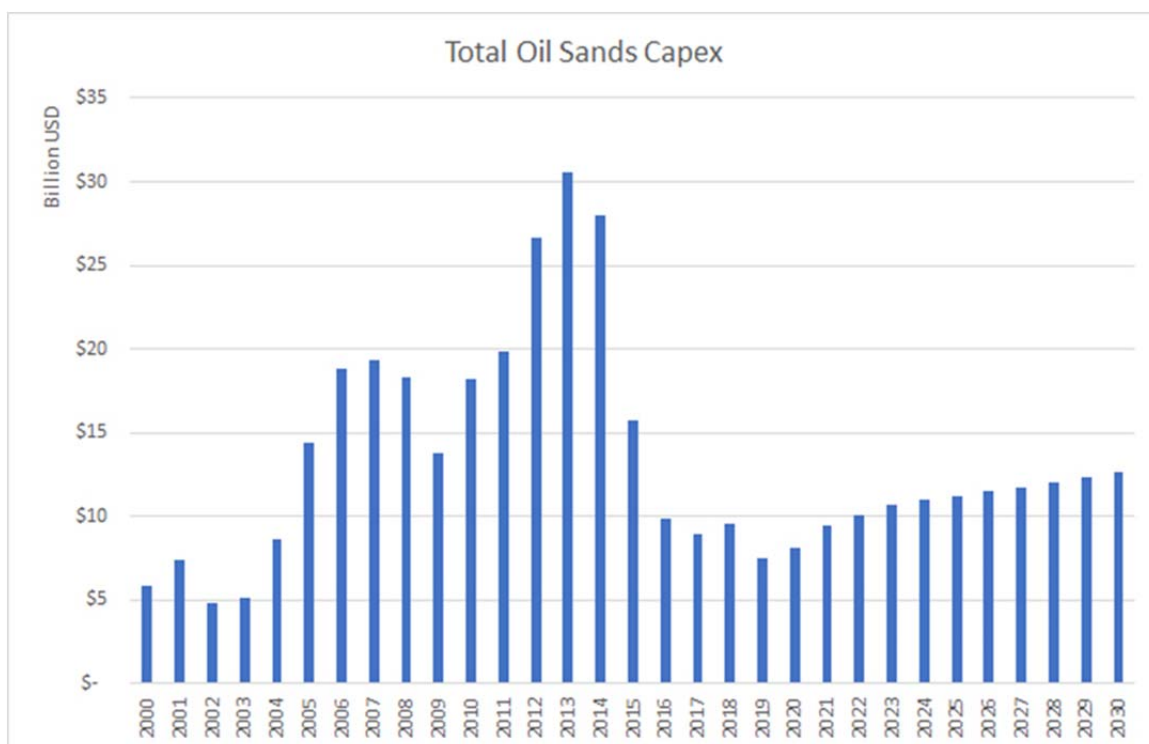
The disparity between the oil price needed to financially justify new oil sands projects on the one hand, and the prevailing oil price and prospects for price recovery on the other, has caused a dearth in investment in the oil sands sector that is today lower than it has been in over a decade. By 2019, investment in new projects in the oil sands is expected to drop to nominal levels. The Rystad Energy data in the chart below shows the

annual capital expenditure (capex) spent on developing new oil sands production capacity since 2000, as well as a forecast of expenditures through 2019. Attachment LS-11.



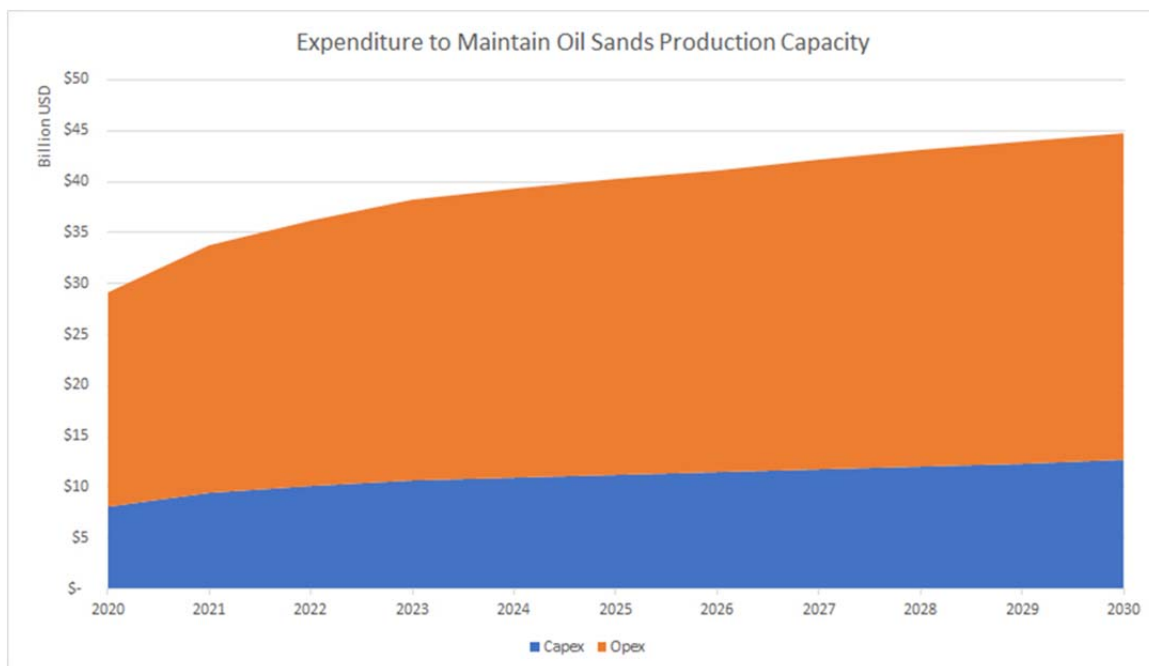
The projected capex shown in this figure beyond 2016 includes only investments in projects that have already been sanctioned. Thus, the Rystad data shows that capex in new extraction projects will end in 2019, indicating that no oil company has committed to build or expand a SAGD facility or surface mine beyond 2019.

This does not mean capex in the sector ceases completely. The chart below of Rystad Energy data shows the total capex spent in the oil sands including capex spent on maintaining production at ongoing projects. Attachment LS-12. This maintenance capex may be spent on, for example, drilling new wells at *in situ* projects within existing project boundaries (infill) in order to replace spent wells and maintain production. The capex shown after 2019 in this figure therefore would all be spent simply to maintain production levels at already producing projects. Therefore, despite projected capex rising from \$8.2 billion in 2020 to \$12.7 billion in 2030, no new production capacity will result from this level of capex.

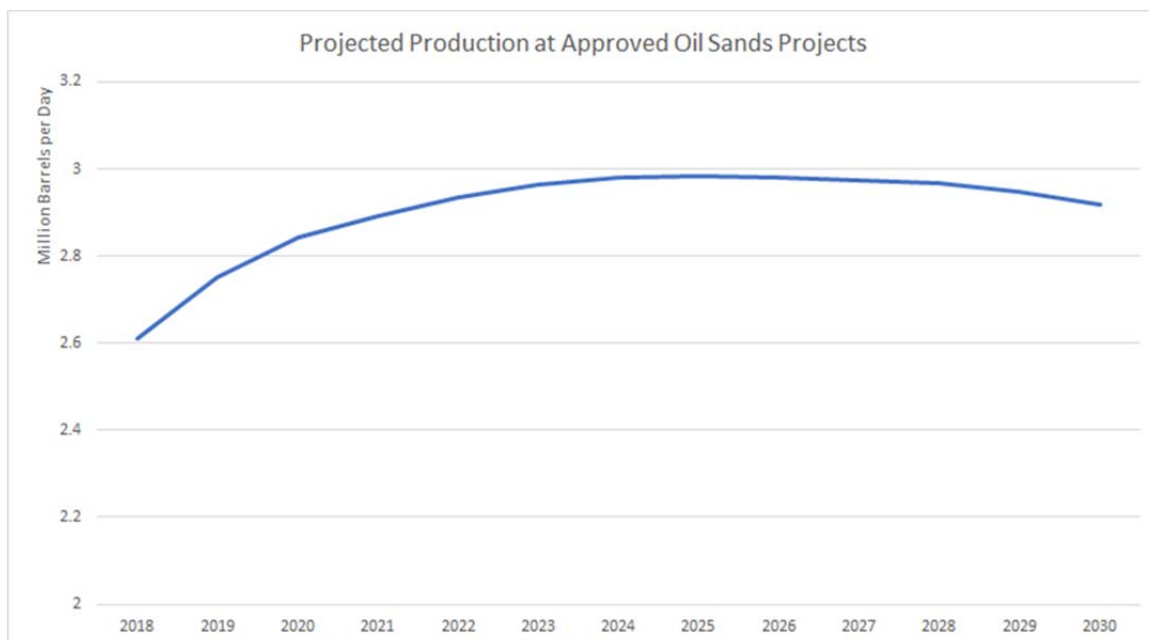


But the capex needed to maintain production is, of course, not the only expenditure required to keep production going. Operational expenditure (opex), which pays salaries, fuel and other supplies, processing, maintenance, and transport costs, is the main expense of continued production.

The chart of Rystad Energy data below shows that opex is projected to rise from \$21 billion to \$31.6 billion between 2020 and 2030. Attachment LS-13. This figure also shows that the total cost of maintaining the currently operational and sanctioned production capacity will rise to \$44.8 billion by 2030.



Further, as the chart of Rystad Energy data below shows, despite this investment, production at the currently approved projects will start to decline from the mid-2020s as reserves deplete. Attachment LS-14.



During this same period, conventional oil fields are projected to decline from 933,000 bpd in 2016 to 811,000 bpd in 2030. CAPP 2016 Report, Attachment LS-4. Therefore,

for western Canadian crude oil production to grow, new capacity additions in the Tar Sands Region will need to more than make up for depletion at existing conventional and unconventional projects, even as billions are spent to squeeze more oil out of these projects.

The lack of profit in oil sands project development has also resulted in major oil company pull-outs from western Canada. The table below shows that in the past year, five U.S. and European oil companies have sold their oil sands assets, while two more are thought to be considering sales. The source material for this table is provided in Attachment LS-15.

Date Announced	Seller	Buyer	Reserves (million Bbls)	Production (Capacity Kbpd)	Sale Net Value (Million USD)
Dec. 2016	Statoil	Athabasca	291	24	443
Apr. 2016	Murphy	Suncor	113	15.6	739
Mar. 2017	Shell	Canadian Natural	3,616	160	7,300
Mar. 2017	Conoco	Cenovus	5,465	280	13,300
Mar. 2017	Marathon	Shell/ Canadian Natural	1,214	50	2,500
Apr. 2017	BP	?	1,026	30	?
Apr. 2017	Chevron	?	1,071	50	?
Total			12,796	610	24,282

Since April 2016, over \$24 billion has changed hands as Statoil ASA (Norway), Murphy Oil Corporation (U.S.), Royal Dutch Shell (Netherlands), ConocoPhillips (U.S.) and Marathon Oil Company (U.S.), sold their oil sands assets. *Id.* Shell, at one time a leading oil sands producer, sold all its oil sands assets but then bought a 50% stake in the assets sold by Marathon. *Id.* This left Shell as a 10% owner of the Albion Sands Project, in

which it once owned a 60% stake. *Id.* Also, Shell retained an interest in Canadian Natural (CNRL) by receiving about 98 million CNRL shares in exchange for its direct ownership interests in oil sands projects, but it was reported in late May that Shell was looking to offload these shares in what could become the largest equity sale in Canadian history. *Id.* CNRL shares dipped on the announcement. *Id.* Any further decline in value at CNRL could also serve to limit that company's ability to make further investments.

ConocoPhillips was also one of the biggest players in the oil sands but sold its entire oil sands business along with other Canadian oil and gas assets to its oil sands project partner Cenovus. *Id.* Cenovus investors were not impressed and its stock fell 13% on the announcement. *Id.* This being said, it has recently been reported that ConocoPhillips is also looking to sell the Cenovus shares it received as part of this sale. *Id.*

Reports in April stated that both BP Global (U.K.) and Chevron Corporation (U.S.) were also considering sales, although these are yet to be officially announced. *Id.* There was some speculation about whether these companies may have missed the boat as the pool of capital available for such sales may have already dried up. *Id.*

The buyers listed above have essentially bought existing production at a discount, which is a less risky way to grow production at those companies compared to sinking capital into new projects. The sales have therefore reduced the pool of capital available for new projects as the number of companies involved in the sector is reduced and those remaining have spent capital on buying the assets of fleeing companies.

Additionally, the CEO of the largest oil sands company, Suncor Energy, recently told investors that his company had no plans for growth beyond that to which it was already committed. Attachment LS-16. CEO Steve Williams told investors at Suncor's end of year results conference in February 2017 that oil sands mining projects "are coming to an end, not just for Suncor but for the industry", that Suncor has "no plans to be going ahead with major capital investment in either mining or *in situ* in the foreseeable future" and that "(w)e have nothing of any materiality in the pipeline around mergers and acquisitions". In other words, the world's leading oil sands company has no plans for

production growth in the foreseeable future. This is one of the clearest indicators that the future of oil sands production is highly uncertain and cannot constitute a source of oil supply that the United States can rely on.

11Q What conclusions do you draw about the future need for oil transportation capacity based on the foregoing information?

- A. Unless oil prices rise modestly, many western Canadian oil production facilities will continue to lose money and the oil industry will struggle to make the new investments that are necessary just to maintain production. Absent a dramatic increase in oil price, development of new oil projects in Western Canada has ended, eliminating the need for any major increase in new crude oil pipeline export capacity from Canada.

III. WESTERN CANADIAN HISTORICAL PRODUCTION AND FORECASTS INDICATE THAT FUTURE INCREASES IN OIL SUPPLY FOR EXPORT WILL BE LIMITED

12Q. Please describe your review of data and forecasts related to crude oil production and supply in western Canada.

- A. I have reviewed both the historical and forecasts of crude oil production and supply in the Western Canadian Sedimentary Basin (WCSB), including forecasts by the CAPP and the NEB. Production is defined as the total volume of crude oil produced in the WCSB. Supply is defined as the amount of this crude oil that is available to sell to distant customers, after taking account of refinery demand in the WCSB.

With regard to the CAPP data and forecasts, I have reviewed the data and forecasts for 2016. Attachment LS-4. This data includes both historical data of actual production and supply and forecasts of production and supply. Section 1.1 of the 2016 CAPP report states that its supply forecasts are based on a survey of its members and describes this survey as follows:

The oil sands component of the forecast is based on CAPP's 2016 survey of all oil sands producers for the following data:

- a) expected production for each project;
- b) upgraded light crude oil production; and
- c) volumes of upgraded crude oil and condensate used as diluent required to move the volumes to market.

This means that the CAPP forecasts are essentially based on the production plans of CAPP's member companies. The survey encompasses conventional crude oil production, bitumen and synthetic crude oil production, and fracked oil production from the Canadian Bakken Formation.

According to the CAPP reports, "supply" is calculated by first estimating total western Canadian production, which is the gross volume of petroleum produced by mines and wells, and then subtracting western Canadian refinery demand for this oil. Thus, the term "supply" is defined as the amount of petroleum available for transport from producing areas in western Canada to customers outside of this region. It does not necessarily mean the volume of crude oil exported to the U.S. or the volume of Canadian crude oil that is actually refined into finished petroleum products in the U.S.

13Q. What conclusions do you draw from your review of the CAPP supply forecasts?

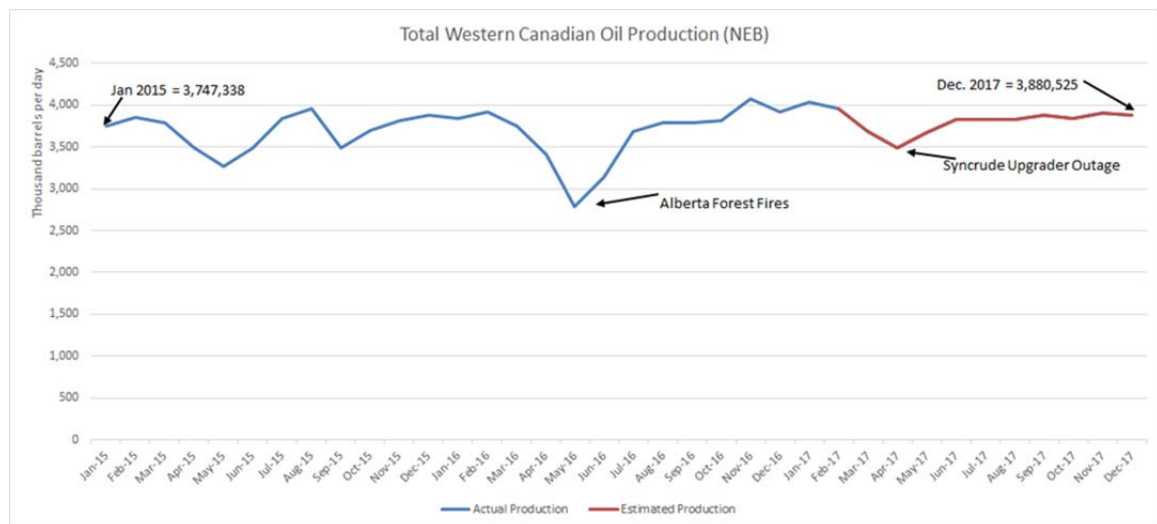
- A.** CAPP makes predictions every year concerning the number of barrels that it believes will be available as supply in subsequent years. The most recent report at the time that my testimony is due is the 2016 CAPP Report. The 2017 CAPP Report will be released in June 2017, such that I reserve the right to update my testimony on direct examination. The 2016 CAPP Report estimates that supply will increase from 3,981,000 barrels per day (bpd) in 2015 to 4,569,000 bpd by 2020, which is an increase of 588,000 bpd, and to 4,872,000 bpd by 2025, which is an increase of 891,000 bpd.

Since the CAPP June 2016 forecasts are based on its member companies' production forecasts from the beginning of 2016, which assumed rising oil prices through 2017, the accuracy of the CAPP 2016 forecasts fail to take into account continued low oil prices and are subject to the systemic bias inherent in these member forecasts. It seems

likely that the CAPP member forecasts are biased by a variety of factors, including their need to satisfy shareholders and attract potential investors. Thus, the CAPP member forecasts are likely biased towards an optimistic assessment of future production. CAPP is a trade association formed to advance the interests of its members. Therefore, it is reasonable to expect that its forecasts of crude oil supply in western Canada would tend toward optimism and would generally be biased toward supporting a need for rapid pipeline development.

14Q. What conclusions do you draw from your review of the National Energy Board of Canada production and supply forecast?

- A. The National Energy Board of Canada (“NEB”) data shows that average western Canadian crude oil production in 2016 averaged 34,199 bpd less than in 2015, due in part to the fires in Alberta. Attachment LS-17. The NEB forecasts that average production in 2017 will be 160,344 bpd higher in 2017 than in 2016, on the expectation that there will be no significant disruption in supply, such as the fires. *Id.* This being said, peak production in 2017 is forecast to be less than the peak in 2016. *Id.* In fact, production in December 2017 is projected to be about the same as during the summer of 2015. *Id.*



Even though the industry expects new production capacity to come online in 2017, the NEB nonetheless forecasts an overall net decline in production during 2017, from 4.04 million bpd in January to 3.88 million bpd in December. Since the NEB’s forecast cannot assume that major unexpected disruptions will occur, such as the 2016

wildfires and outage of the Syncrude upgrader, the forecast must instead assume that some other causes, such as operational issues and/or production depletion at existing projects, will reduce oil production in western Canada. The disparity between the industry's plans for new project capacity relative to the NEB's forecast of falling total western Canadian production suggests that maintaining production in Canada may require more investment than currently planned.

IV. CURRENT AND PROPOSED CANADA TO U.S. IMPORT PIPELINE CAPACITY AND UTILIZATION

15Q. Please describe your review of data related to the current pipeline capacity available to Canadian petroleum producers to export crude oil from western Canada.

A. I have reviewed data on current export pipeline capacity and utilization provided by pipeline companies either online or in filings to the Federal Energy Regulatory Commission ("FERC"). According to Enbridge's 2016 Pipeline System Configuration sheet (Attachment LS-18), the Enbridge Mainline System comprises the following six separate pipelines that cross the border from Canada into the US:

- Enbridge Line 1 236,500 bpd
- Enbridge Line 2a/b 442,200 bpd
- Enbridge Line 3 390,000 bpd
- Enbridge Line 4 795,700 bpd
- Enbridge Line 65 185,600 bpd
- Enbridge Line 67 800,000 bpd

Thus, the total current import capacity of the Mainline System is 2,850,000 bpd. These capacities are the annual nominal capacities of these pipelines, which is the average sustainable transportation rate over a year.

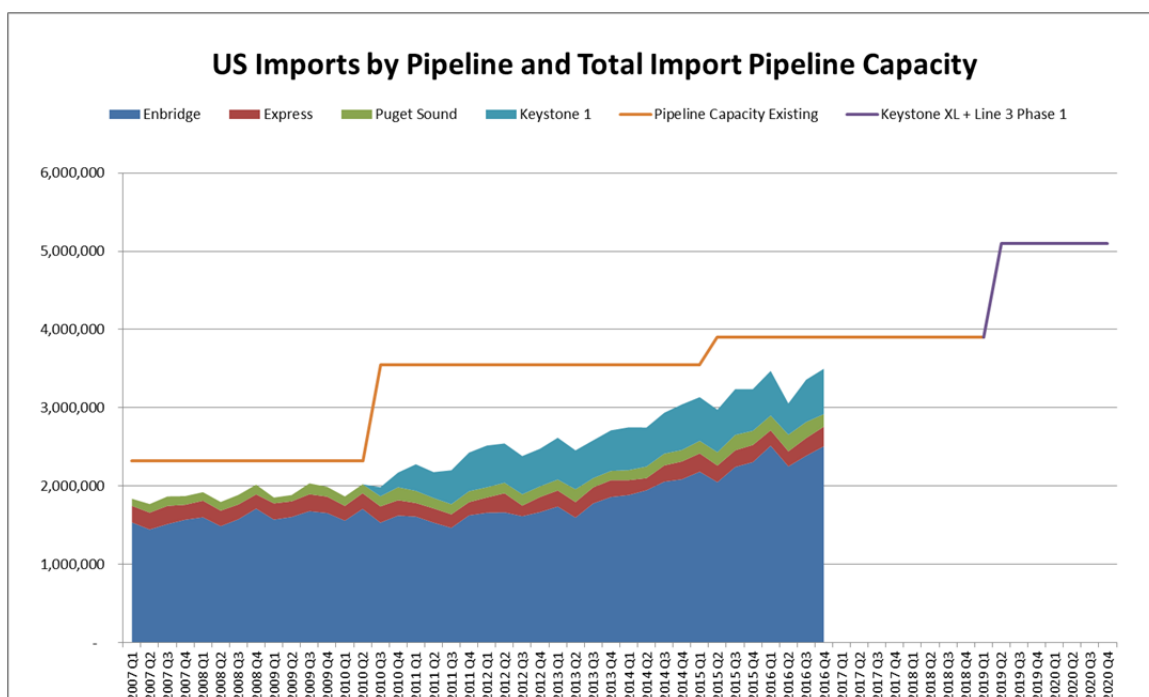
A number of other major pipelines also export crude oil from Canada to the U.S., including:

- Spectra Energy's Express-Platte Pipeline - 280,000 bpd into Montana; approximately 145,000 bpd into Wood River, Illinois, on the Platte Pipeline
- Kinder Morgan's Trans Mountain Pipeline - 300,000 bpd total, with a connection to the 180,000 bpd Puget Sound Pipeline into Washington State and the balance continuing on to Vancouver; and
- TransCanada's Keystone Pipeline - 591,000 bpd.

Id. Thus total pipeline capacity from producing areas in western Canada to the U.S. and British Columbia is 4,021,000 bpd, and of this total volume, pipelines can deliver 3,586,000 bpd into the upper Midwest, from where a number of pipelines provide transportation services to Oklahoma and the Gulf Coast. In addition, it is possible that a relatively small amount of crude oil is or could be imported to the U.S. on smaller pipelines from Canada into Montana, including an 85,000 bpd connection in Glacier County, Montana, between the Rangeland Pipeline and the Rocky Mountain Pipeline System, both owned by Plains All American Pipeline, L.P., for import into PADD 4, comprised of one 12-inch and one 8-inch pipeline. *Id.*

16Q. Please describe your review of data related to the utilization of pipelines used to import oil from Canada to the U.S.

- A.** Actual imports of crude oil by pipeline into the U.S. are reported by pipeline companies to the FERC on quarterly Form 6 Reports. I have reviewed data from these reports from the first quarter of 2007 to the fourth quarter of 2016 (the most recent). FERC collects this data as part of the tariff setting process for these pipelines. Full Form 6 reports are available online at www.ferc.gov in the eLibrary. A spreadsheet that compiles this data for each pipeline is included as Attachment LS-19. The data in the spreadsheet is illustrated in the chart, below.



17Q. What conclusions do you draw from your review of data related to the utilization of existing pipelines that import oil from Canada to the U.S.?

- A. As of the fourth quarter of 2016, existing export pipelines operated at 90% of capacity and had approximately 400,000 bpd of combined unused capacity. *Id.* The pipeline industry generally assumes that operation up to 95% of capacity is within normal operations. This suggests that up to about 200,000 bpd of possible future expansions of supply for export from Canada can be accommodated by existing pipelines. When determining the need for the Keystone XL Pipeline, this unused existing capacity should be taken into account.

18Q. Does underutilization of pipelines have adverse economic impacts?

- A. Construction of excess utility infrastructure absolutely has adverse economic impacts. Costs incurred to permit, construct, and build a pipeline impact the costs of the transportation of the crude oil. These costs are typically included by FERC in crude oil pipeline tariffs.

Increased pipeline tariff costs impact the price of crude oil and refined products. While crude oil and refined product pricing is set by indices, these indices are actually

established by surveys done of various sellers and buyers of the commodity on a monthly basis. These buyers and sellers are surveyed with regard to the price of their oil at various locations that are used as market centers, such as Cushing, Oklahoma. When purchases are negotiated, there are usually “differentials” taken into account that actually apply to the cost of transporting the oil to the nearest market center. These negotiated prices, with the cost of transportation taken into account, are the prices that are reflected in the surveys and ultimately included in the average price of oil for the month. A similar process exists for refined products. Therefore, an increase in transportation costs also increases the market price for crude oil and refined products, such that the oil industry’s cost of doing business is passed on to consumers in the form of fuel price increases.

19Q. Have you reviewed data related to other proposed pipelines that, if built, could transport crude oil from western Canada to other markets?

A. Yes, I have reviewed information about the following competing pipeline projects:

- Kinder Morgan Trans Mountain Expansion Project from Alberta to Vancouver, British Columbia – net increase of 590,000 bpd;
- Enbridge Line 3 Replacement Project from Alberta to Wisconsin – net increase of 370,000 bpd, but up to 525,000 bpd with additional pumps;
- TransCanada Energy East Project from Alberta to St. John, Newfoundland – net increase of 1,100,000 bpd.

Attachment LS-20.

20Q. What conclusions do you make from your review of information related to these proposed pipelines?

A. Should any one of these competing projects be constructed, there would be excess capacity indefinitely, because it is unlikely that enough production growth would occur to fill any of these proposed pipelines. This means that construction of a second new pipeline, such as the Keystone XL Pipeline, would be entirely redundant.

21Q. Is the Keystone XL Pipeline more or less likely to be built than these other pipelines?

- A. Statements made by TransCanada senior management in its May 5, 2017, Earnings Call (transcript attached as Attachment LS-21) indicate that TransCanada has put the Keystone XL Project on hold and that the shippers who originally contracted for capacity on the Project are waiting to see if other competing pipelines will be built.

Specifically, Russell Girling, the CEO of TransCanada stated: ““In addition, we are updating our shipping contracts for the project and we anticipate that the core contract shipper group will be modified somewhat and include the introduction of new shippers and the reductions in volume commitments by other shippers.” *Id.* This statement indicates that TransCanada’s shippers are no longer contractually bound to ship specific volumes of oil on the Project for specific durations in years.

Paul Miller, the Executive Vice-President of TransCanada and President of the Liquids Pipelines subsidiary of TransCanada, stated:

- “The key work streams I guess, there's two primary work streams that being securing the commercial support for Keystone XL and the Nebraska Public Service Commission approval for the route through that state. In regard to the shipping contracts, we're making progress with our existing shipping group, as well as new entrants, as they work through their analysis and the documentation. A lot has changed since we were first denied the permits here in 2015 in regard to crude oil pricing and supply and various competitive alternatives, so they continue to work through that and I anticipate it will take a couple of months yet before we sum up our commercial support.”
- “We will work through Nebraska. We will work through our commercial negotiations with the shippers, and once we have certainty on both, in early 2018 I would anticipate we would start staging the project as far as securing what material we still have to secure as well as the contractors, and that exercise will take upwards of six to nine months. So I would not see construction started until Q3 timeframe of 2018, and construction would take probably little over two years.”
- “We do anticipate, ultimately, while we are targeting to secure the volume – contracted volume we had previously as we move – potentially move forward

with Keystone XL, I do anticipate some of the current shippers will increase their commitments. I also anticipate some of the current shippers may decrease their commitments as they look at their total transportation requirement. I would also anticipate that we will introduce new parties into the shipper group. So the net result of this is we do anticipate to have contractual support similar to what we enjoyed previously, albeit amongst the different shipper group.

- [90% of the capacity is] what we'll be targeting. Our goal is to fully contract XL, as you know, we have to set aside some capacity for the spot shippers and we'll certainly do that. And, our total will – our total remains competitive, notwithstanding the delay and we will with good CapEx, cost management, Russ talked about, we will keep our total in line.”

Id. These statements suggest the following conclusions:

- That senior management admits that the Project shippers may reduce or transfer capacity commitments to potential new shippers indicates that the Project shippers have the option to terminate their contracts.
- That senior management does not expect to resolve its shipper commitments until “early 2018” indicates that its shippers are waiting to re-commit to the Project until after there is greater clarity on the future of the Kinder Morgan Trans Mountain Expansion Project and the Enbridge Line 3 Replacement Project. This timing will also allow the shippers to determine if oil prices will have risen as predicted by some industry analysts, to the degree needed to economically justify new investments in western Canadian oil extraction infrastructure.
- That senior management admits that the Project would not secure remaining material and contractors until early 2018, and would not finish this process until six to nine months later indicates that the construction contracts and remaining procurement contracts for the Project have been terminated.
- Mr. Miller’s self-correction in the following statement is telling: “We do anticipate, ultimately, while we are targeting to secure the volume – contracted volume we had previously as we move – potentially move forward with Keystone XL” (emphasis added.) This correction clarifies that TransCanada is not

currently committed to construct the Project but rather this decision will be made in early 2018.

In sum, it appears from the foregoing statements that the Project is on hold until early 2018, by which time TransCanada and its shippers hope to have sufficient information to decide on whether to construct or terminate the Project. Should the construction of either the Trans Mountain Expansion Project or the Line 3 Replacement Project appear likely, there would be no need for the Keystone XL Pipeline. Thus, it appears that western Canadian crude oil shippers are treating the Keystone XL Project as a possible fallback option if other pipelines are not built, but only if market conditions improve enough to support investment in production growth.

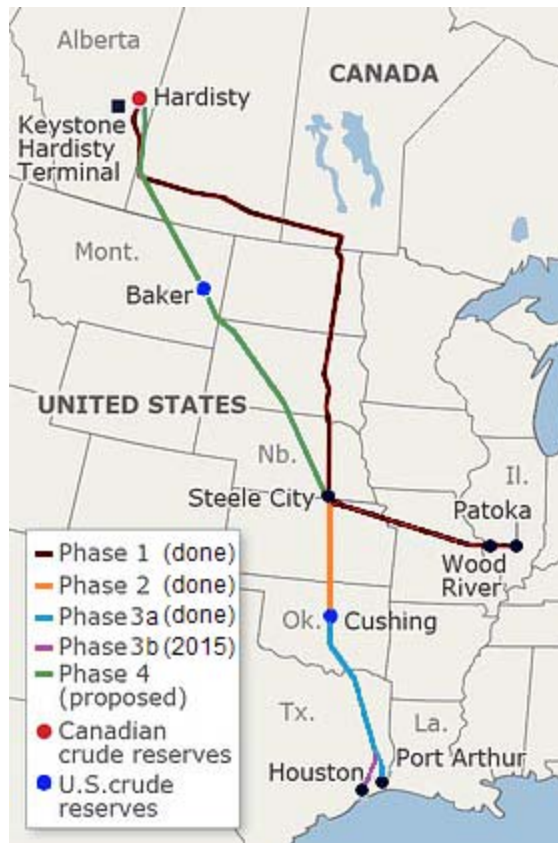
V. KEYSTONE XL WILL EXACERBATE AN ONGOING GLUT OF OIL IN CUSHING AND THE GULF COAST AND IS NOT NEEDED

22Q. Please describe your review of data related to crude oil in storage in Cushing, Oklahoma, and the US Gulf Coast.

- A. I have reviewed: (a) crude oil storage data provided by the USEIA and (b) US crude oil production forecasts by Rystad. In combination, this data shows that oil supply in storage in the major crude oil trading hub of Cushing, Oklahoma, and in the U.S. Gulf Coast, is at record levels constituting a glut, why this has happened, and why constructing the Keystone XL Pipeline will exacerbate this situation.

23Q. Please describe your review of data related to pipeline capacity into and out of Cushing, Oklahoma, and any conclusions you might draw from this review.

- A. There are currently 18 pipelines flowing crude oil into Cushing, with a total capacity of 3.6 million bpd. Attachment LS-22. There are however only 15 pipelines with a capacity of nearly 2.7 million bpd carrying crude out of the storage hub. *Id.* Therefore, the net inbound capacity is 841,000 bpd. *Id.* One of the inbound pipelines into Cushing is the existing “Keystone Extension Pipeline,” which is a 36” crude oil pipeline from Steele City, Nebraska, to Cushing, Oklahoma, with a maximum capacity of 830,000 bpd (identical to the Project). This pipeline is identified at “Phase 2” on the following map.



The Keystone Extension receives crude oil at Steele City only from TransCanada's existing 591,000 bpd Keystone Pipeline (Base Keystone Pipeline), which is identified as "Phase 1" on the above map. The Base Keystone Pipeline continues to Patoka, Illinois. TransCanada has firm contracts for 375,000 bpd of Base Keystone Pipeline capacity for delivery of crude oil to Illinois, 155,000 bpd of contracted capacity for delivery to Cushing, and the remaining 61,000 bpd of capacity is not contractually committed and instead is reserved for uncommitted shippers, such that it could be used for deliveries to either destination. Attachment LS-23. TransCanada's first open season sold 340,000 bpd of capacity to Wood River, Illinois. *Id.* Next, it announced that it had contracted another 35,000 bpd of capacity through negotiations. *Id.* Following an open season for the Keystone Expansion Project to Cushing, TransCanada announced that it had secured a total of 530,000 bpd of committed capacity on the Keystone System, such that shippers entered into contracts for an additional 155,000 bpd during this open season. *Id.* Therefore, assuming that shippers continue to seek delivery of oil to their original contracted destinations, the maximum amount of crude oil that could currently be

transported to Cushing on the Keystone Extension is 215,000 bpd (155,000 bpd plus 61,000 bpd). *Id.*

Should the Project be constructed, TransCanada would operate the 30-inch diameter Base Keystone Pipeline separately from its 36-inch pipeline network that would include the Project, the Keystone Extension Pipeline, and its Gulf Coast Pipeline. This means that if the Project is built, TransCanada could deliver up to 830,000 bpd of crude oil into Cushing, a net increase of at least 615,000 bpd over the current available capacity. This means that, if the Project is built, total inbound pipeline capacity to Cushing would be approximately 4.2 million bpd, as compared to total outbound capacity of 2.7 million bpd, leaving a net inbound capacity of approximately 1.45 million bpd. Additional crude oil supply in this region would likely suppress oil prices further, resulting in suppression of petroleum development in the Tar Sands Region, as well as increased storage of unneeded crude oil in Oklahoma, which is discussed below.

24Q. Please describe your review of data related to pipeline capacity into and out of the US Gulf Coast region, and any conclusions you might draw from this review.

A. For many years the only major crude oil pipeline that transported crude oil from north to south was the Pegasus Pipeline. In recent years, a number of pipelines have been constructed that also transport crude oil to the south (Attachment LS-24), including:

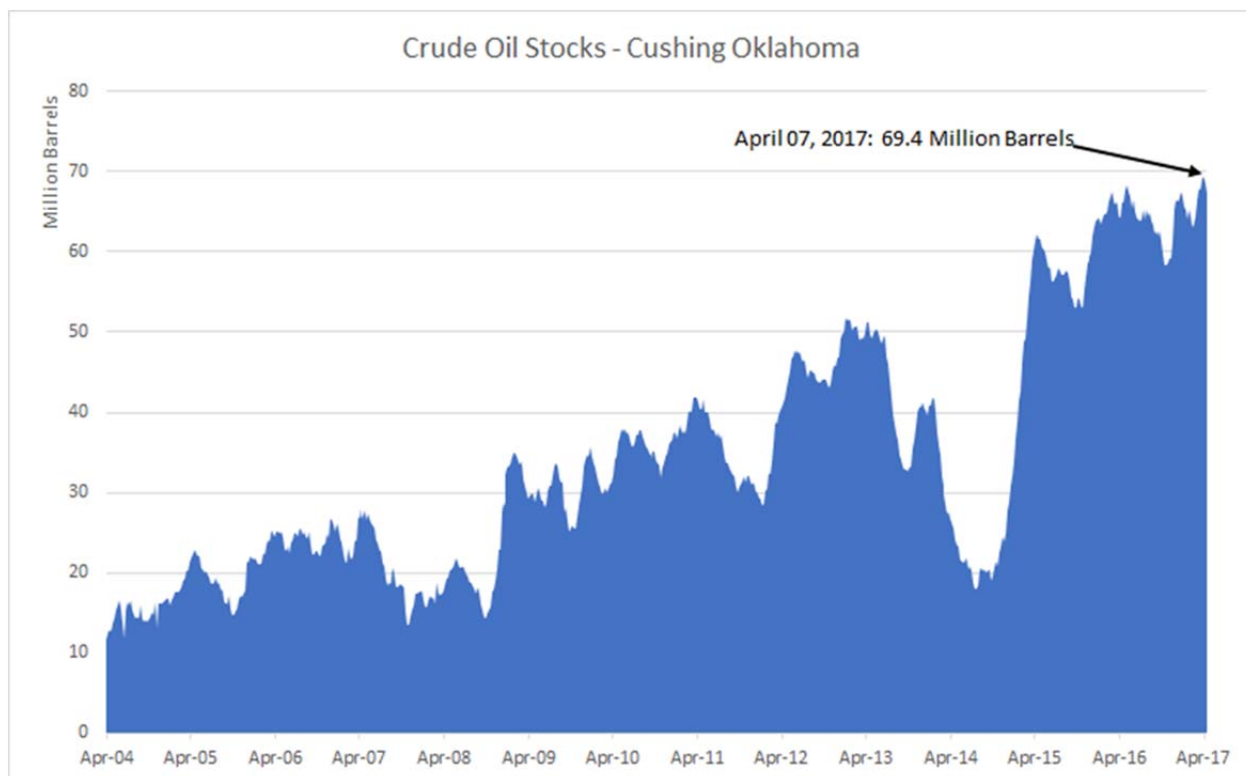
- the Seaway and Seaway Twin Pipelines came online starting in 2012 with a maximum capacity of 850,000 bpd;
- the TransCanada Marketlink (Gulf Coast) Pipeline came online in 2014 with an initial capacity of 400,000 bpd and a maximum capacity of 500,000 bpd; and
- the recently completed Energy Transfer Crude Oil Pipeline (ETCO Pipeline) from the Patoka Terminal in southern Illinois to Nederland, Texas, which has a capacity that is expandable to 450,000 bpd, is expected to start commercial operations in June 2017.

Thus, in the past five years, the crude oil pipeline industry has constructed at least 1.7 million bpd of new capacity from the Midwest to the Gulf Coast. In addition, a large number of pipelines transport oil from fields in Louisiana, New Mexico, Texas, and

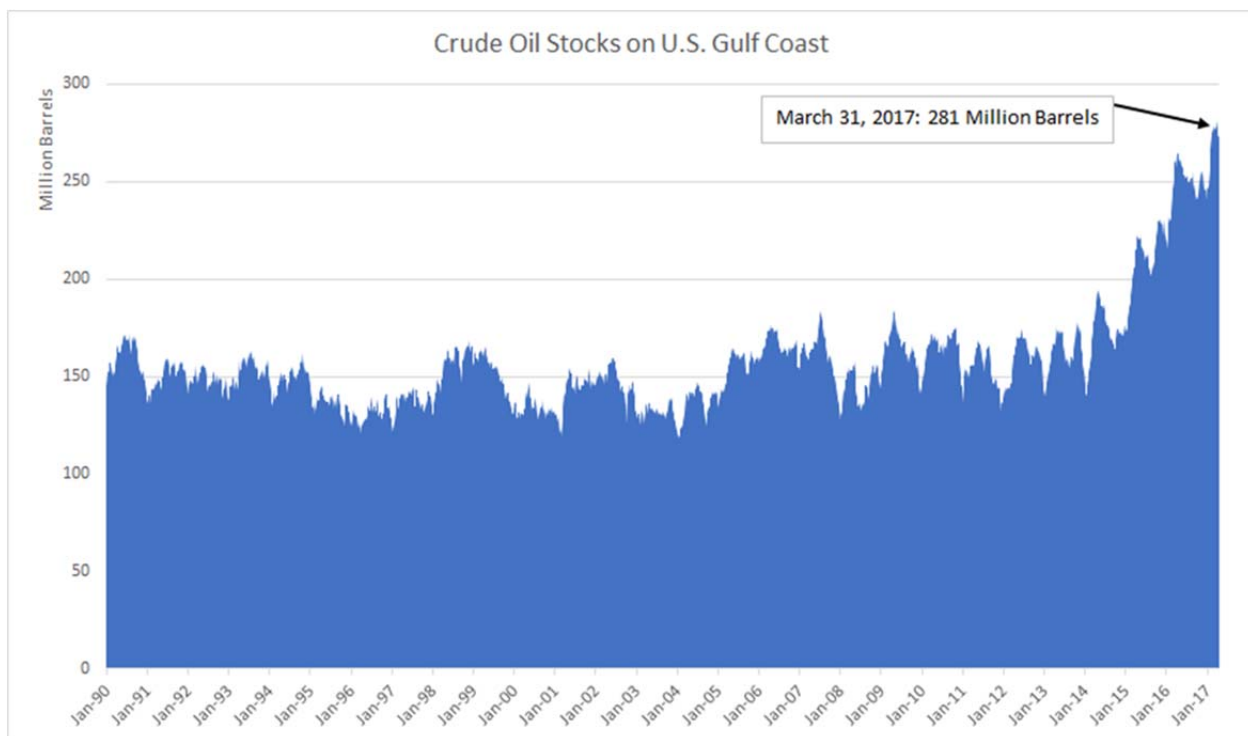
offshore oil locations to US Gulf Coast markets. Further, the US Gulf Coast has the capacity to import crude oil via supertanker from global markets. As a consequence, US Gulf Coast refineries do not need greater access to increased volumes of heavy Canadian crude oil.

25Q. Please describe your review of data related to crude oil storage in the Cushing and US Gulf Coast petroleum markets, and any conclusions you draw from this data?

- A. I have reviewed USEIA data related to crude oil storage in the Cushing and Gulf Coast regions. Attachment LS-25. Crude oil in storage has been building steadily in Cushing and the Gulf Coast since 2015, and has consistently set new records. *Id.* At the beginning of April, Cushing and Gulf Coast crude oil storage combined was in excess of 350 million barrels. *Id.* These are historic highs far in excess of anything previously seen. The USEIA data tracks crude oil storage at Cushing back to 2004. Prior to 2009, there was only rarely more than 25 million barrels stored at the hub. Storage levels surpassed 30 million barrels for the first time in January 2009. From 2015 to date, storage levels have remained consistently over 50 million barrels and in recent months have reached record highs of over 65 million barrels. In the first week of April 2017, a new record was set at 69.42 million barrels. *Id.* At the end of April this had eased only slightly to 66.7 million barrels. *Id.*



On the Gulf Coast, where Keystone XL crude oil would primarily be delivered, storage levels are also at record levels. *Id.* EIA data going back to 1990 shows that until mid-2015, levels fluctuated between 100 and 180 million barrels. *Id.* The 200-million-barrel level was first surpassed in March 2015 and storage levels have remained above that ever since, reaching an all-time high of just under 281 million barrels on March 31, 2017. *Id.* The glut in the Gulf Coast has built even as exports of crude oil have hit record levels. See Section VII, *supra*.



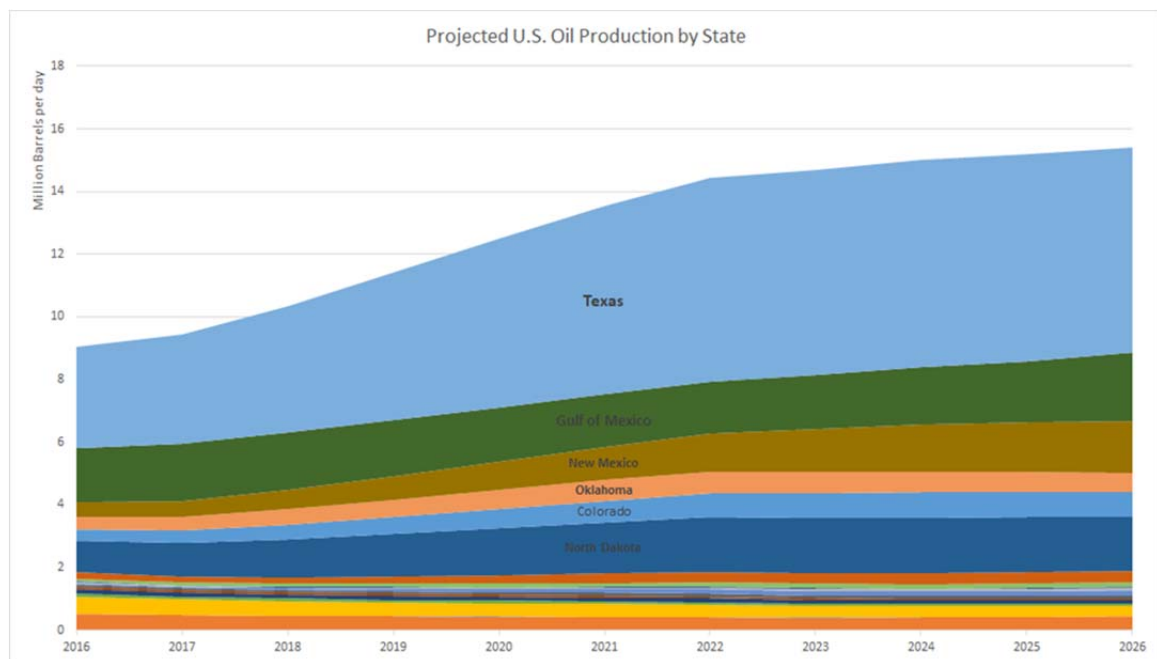
This crude oil storage data indicates that the Cushing and Gulf Coast markets are currently oversupplied with crude oil, such that there is no current need for additional inbound crude oil pipeline capacity into these markets.

26Q. What reasons exist for these record amounts of crude oil in storage, and what are the implications of this stored oil on whether or not additional crude oil supplies are likely to be needed in the Cushing and Gulf Coast markets?

A. The record amounts of oil in storage in the Cushing and Gulf Coast markets are an indicator of a lack of demand for new crude oil supply to this region. The amount of oil in storage has increased because global oil production has exceeded global oil demand. As a result, some of the world's oil has ended up in storage tanks. The fact that supply growth has exceeded demand growth is suppressing oil prices. It is possible that eventually lower oil prices will result in lower oil production and higher oil prices, but so far this has not happened to the degree necessary to increase oil price to a profitable level for Canadian tar sands producers. Instead, the recent marginal increase in oil price has resulted in increased U.S. production from fracked oil fields, which increased production has, in turn, continued the oil glut and kept oil prices too low for increased Canadian

production. Since Canadian oil producers have some of the highest production costs in the world, increased production in Canada cannot happen until other lower cost oil producers are no longer able to increase their production to meet global oil demand. As long as lower cost producers can increase production to meet global demand, they will prevent new Canadian production from coming online.

The Gulf Coast refiners are well positioned to take advantage of oil supply from many of the world's suppliers and have no pressing requirement for additional access to Canadian supply. In fact, a look at projections for where production growth will likely come from in the coming decade suggests that the bulk of new supplies will come from producers in Texas, the Gulf of Mexico and other U.S. producers. Projections from Rystad Energy (Attachment LS-26) suggests that the U.S. will see substantial oil production growth in the coming decade.



The state with the most potential growth is Texas. Other leading areas include the Gulf of Mexico, the states of New Mexico, Oklahoma and Colorado, as well as North Dakota. The ongoing glut of oil in the Gulf Coast is only likely to continue as more U.S. supply dominates the market. Therefore, the potential for production growth from Canada is marginal and most at risk from lower oil prices.

This would indicate that Gulf Coast refiners have access to growing domestic sources of crude oil and that the ongoing glut of oil in this region is only likely to continue. While North Dakota is not a neighboring state, it is now directly connected to the Houston, Port Arthur markets via the Dakota Access and Energy Transfer Crude Oil Pipelines.

As long as the Gulf Coast market, the largest refining market in the U.S. and the world, remains well supplied with domestic and lower-cost overseas imported oil, the prospects of oil prices rising to support production growth in the Tar Sands Region are slim.

VI. THE KEYSTONE XL PIPELINE IS NOT NEEDED BECAUSE DOMESTIC DEMAND FOR CRUDE OIL AND PETROLEUM PRODUCTS HAS BEEN STABLE AND IS NOT LIKELY TO GROW AND DOMESTIC CRUDE OIL PRODUCTION HAS FAR EXCEEDED ANY DEMAND GROWTH

27Q. Please describe your review of data related to consumer demand for refined petroleum products.

- A.** I have reviewed USEIA data related to consumer demand in Nebraska, the Midwest (PADD 2), the Gulf Coast (PADD 3), and the U.S. as a whole for refined petroleum products. Specifically, I have reviewed both the EIA's "Prime Supplier Sales Volumes" monthly data and the USEIA "product supplied" data, both from January 1983 to March 2017. Attachment LS-27.

The prime supplier data shows wholesale sales of refined petroleum products into local markets. Spreadsheets of data for Nebraska, PADD 2, PADD 3, and the U.S. as a whole and their USEIA explanatory notes for its demand survey are also included in Attachment LS-27. *Id.* The types of products reported in the "prime supplier" data include motor gasoline, aviation gasoline, jet fuel, propane, distillate and kerosene (diesel fuel), and residual fuel oil. PADD 2 states include North Dakota, South Dakota, Minnesota, Nebraska, Kansas, Oklahoma, Missouri, Iowa, Wisconsin, Illinois, Indiana, Michigan, Ohio, Kentucky and Tennessee. PADD 3 includes the states of New Mexico, Texas, Arkansas, Louisiana, Mississippi and Alabama. In addition, I have reviewed the USEIA "product supplied" dataset, which shows total sales of both fuel and non-fuel

petroleum products supplied to US markets. These reports are the basis of my research on recent consumer demand trends.

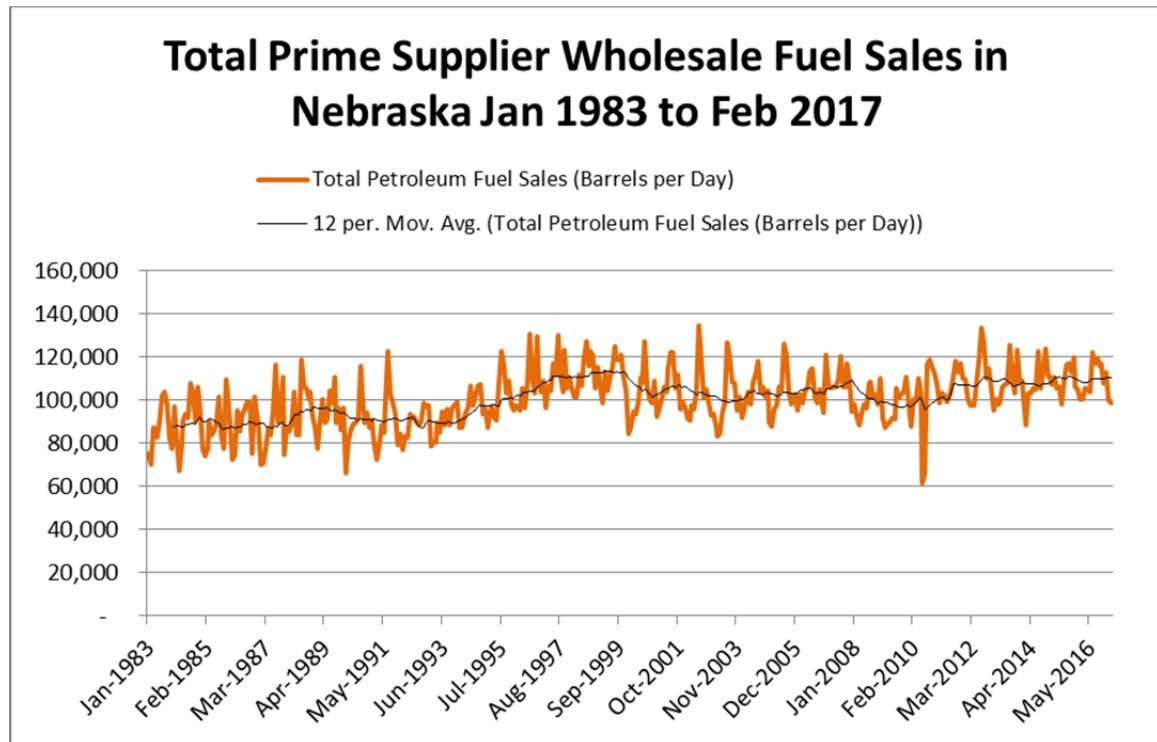
The EIA defines “prime supplier” as a “firm that produces, imports, or transports selected petroleum products across State boundaries and local marketing areas, and sells the product to local distributors, local retailers, or end users.” According to the EIA “Definitions, Sources and Explanatory Notes” webpage for this data, the source for this data is EIA Form EIA-782C survey, “Monthly Report of Prime Supplier Sales of Petroleum Products Sold for Local Consumption.” The Explanatory Notes for this data clarify that the “C” survey is intended to identify the sale of petroleum products into local markets. According to the EIA “Definitions, Sources and Explanatory Notes” website for the EIA’s “product supplied” data, this data is also intended to report on all refinery output and not just sales for domestic consumption in specific regions. The “prime supplier” data focuses on consumer fuel sales and does not include specialty petroleum products, such as lubricants, and it also does not include natural gas liquids. In contrast, the USEIA product supplied data shows sales of all types of petroleum products, including those such as natural gas liquids that may be refined into fuels or used for other industrial processes.

The USEIA product supplied data shows the total volume of all types of petroleum products supplied to domestic buyers, including petroleum fuels, lubricants, waxes, petroleum coke, asphalt, and natural gas liquids. It is more comprehensive than the USEIA “prime supplier” data, but is not provided for individual states. I have reviewed the product supplied data for the US as a whole as well as data for PADDs 2 and 3. Although this data shows demand by domestic buyers, it is possible that some exported petrochemical products produced by U.S. petrochemical plants, such as materials used in plastics production, are included in this data.

28Q. What conclusions do you reach based on your review of data related to consumer demand in Nebraska for refined petroleum fuels?

- A. Focusing in on the state of Nebraska, EIA data shows that the year with the highest petroleum fuel demand was 1998 at 112,636.5 bpd. *Id.* After reaching the peak, there

was a decline in total refined petroleum products consumed, and for the past five years petroleum fuel demand in Nebraska has been stable at just under the record set by the historical high. *Id.* The following chart illustrates historical Nebraska demand for refined petroleum products. *Id.*

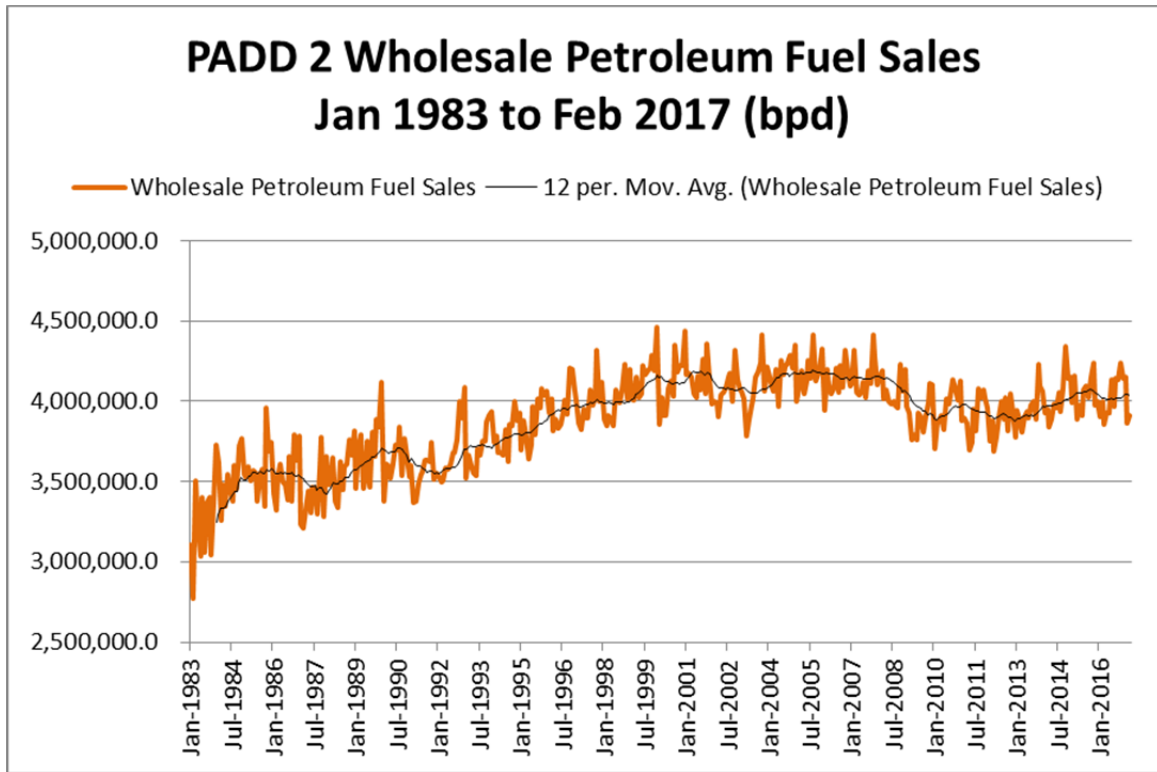


There is no indication that sales of petroleum products in Nebraska are currently increasing. Instead, sales of petroleum products to Nebraska consumers have been stable for the past five years and remain below record levels set almost 20 years ago.

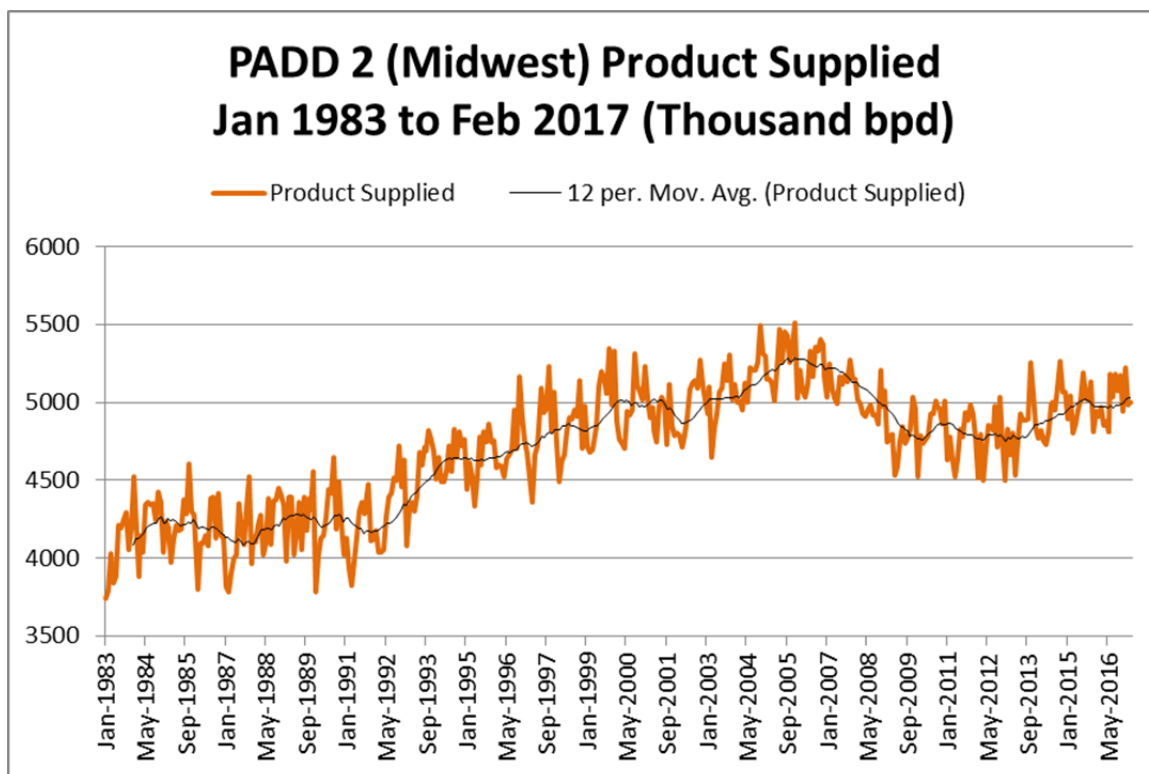
29Q. What conclusions do you reach based on your review of data related to demand in PADD 2 for petroleum products?

- A. Expanding the review of the prime supplier data to PADD 2, the average consumer demand for refined petroleum fuels in the entire region also peaked in 2004 at an annual average sales demand of 4,183,000 bpd. *Id.* Since then it dropped below 4 Mbpd and then rose slightly but has been stable for the past 3 years at approximately 4 Mbpd. *Id.* The total increase in demand in PADD 2 between 2012 and 2016 was about 170,000 bpd,

but this increase occurred before 2014. *Id.* The following chart illustrates PADD 2 demand for refined petroleum products. *Id.*

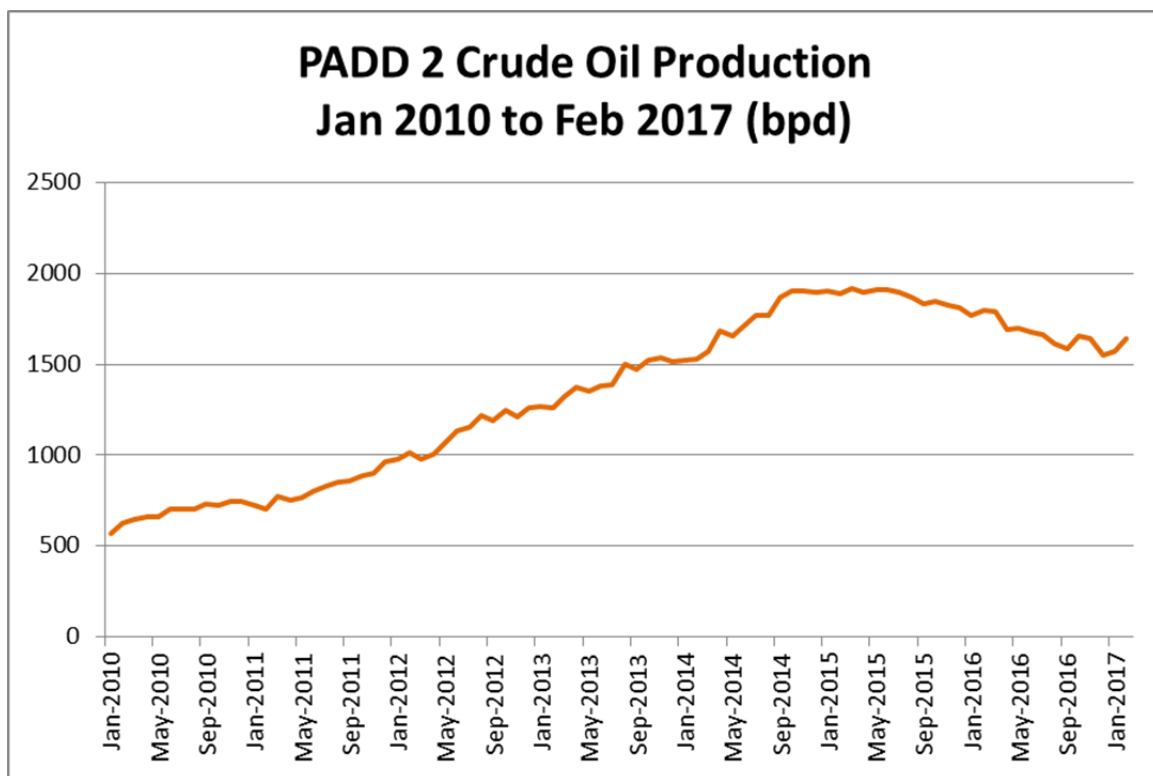


The USEIA product supplied data also shows that total petroleum products supplied in PADD 2 has been stable since 2014.



Thus, demand for petroleum fuels in PADD 2 is not growing and is well below historical peaks.

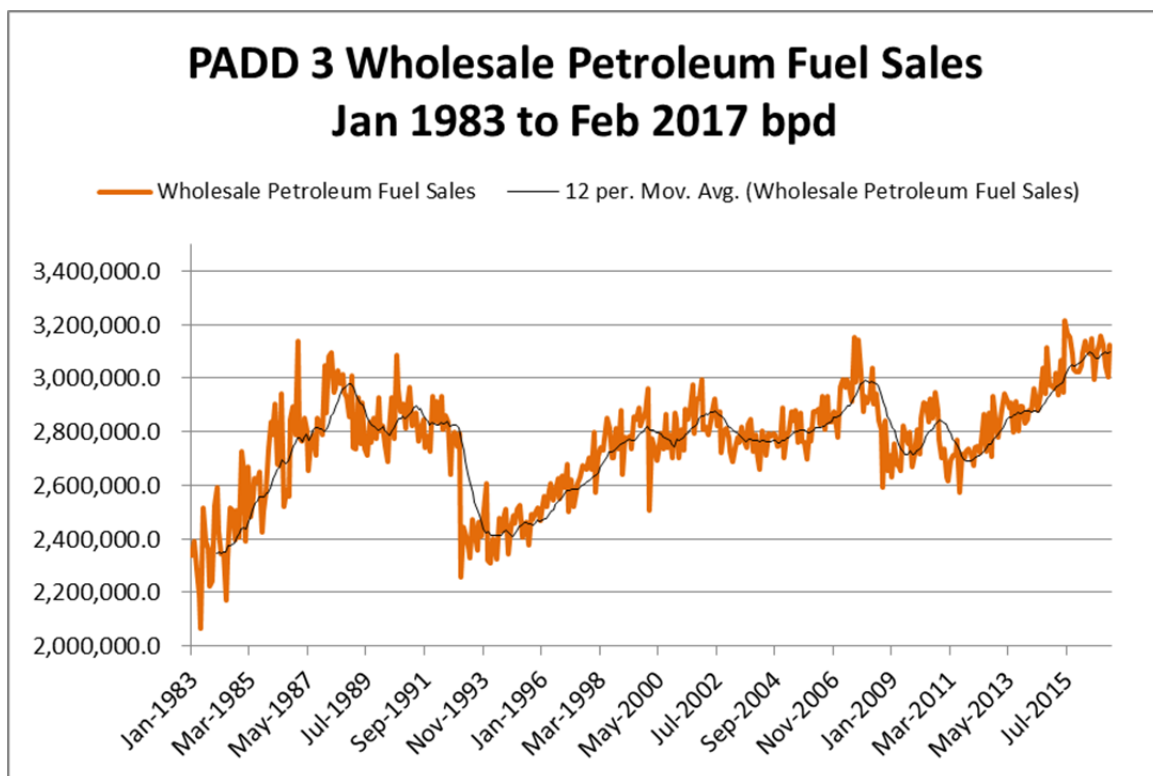
The modest 170,000 bpd increase in petroleum demand in PADD 2 since 2012 should be viewed in the context of crude oil production in this region during this same period (PADD 2 crude oil production data provided in Attachment LS-28. In 2012, average crude oil production in PADD 2 was 1,121,000 bpd, and in 2016 average crude oil production was 1,678,000 bpd, an increase of 557,000 bpd. *Id.* This being said, crude oil production since 2010 has increased by about 1 million bpd. *Id.* Thus, increased crude oil production in PADD has far outstripped the modest increase in demand since 2012.



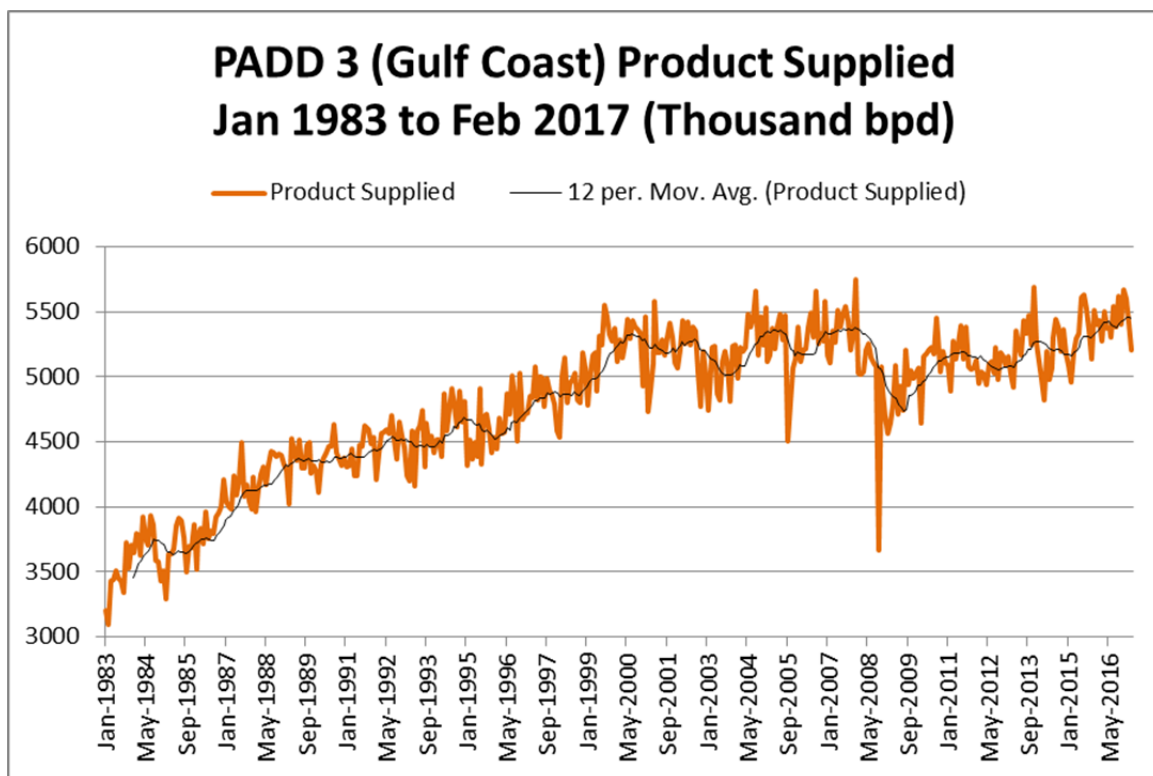
PADD 2 petroleum demand does not itself justify additional import pipeline capacity from Canada.

30Q. What conclusions do you reach based on your review of data related to demand in PADD 3 for petroleum products?

- A. The USEIA prime supplier data shows that PADD 3 demand for petroleum fuel increased by about 300,000 bpd between 2012 and 2016. Attachment LS-27. This is an average growth rate during this period of just under 3% per year, but the rate dropped to 1.4% in 2016. *Id.*

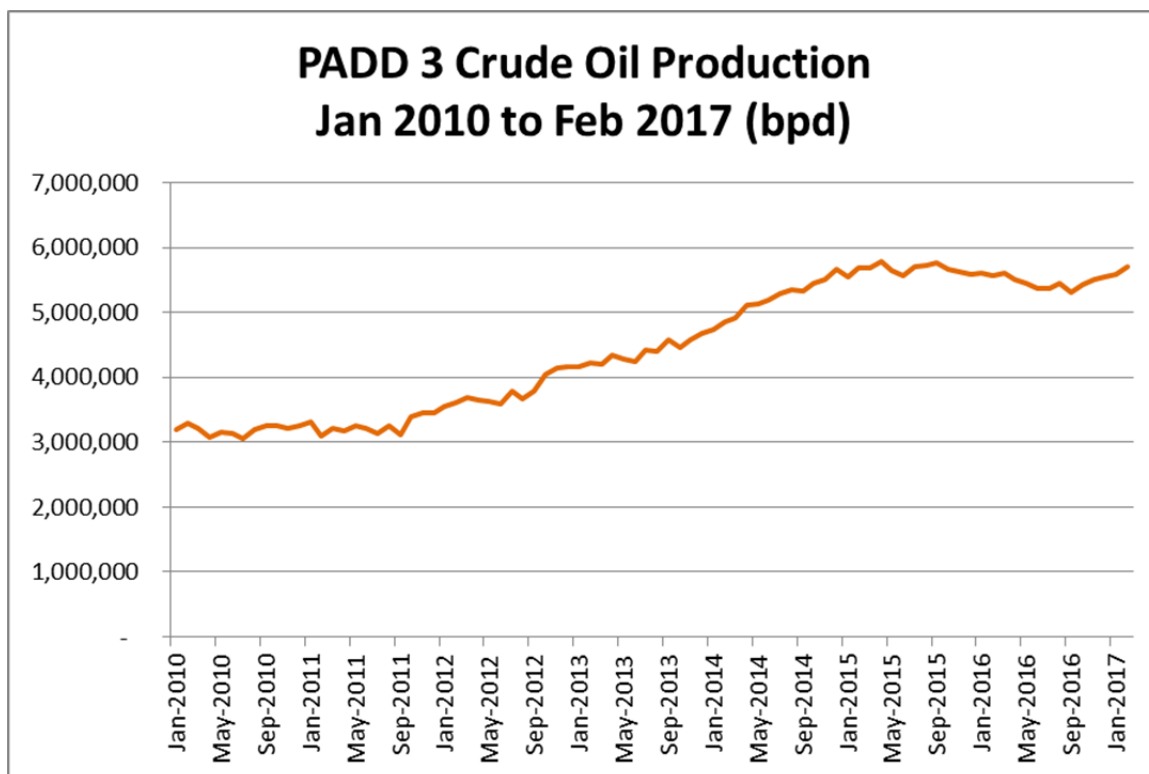


The USEIA product supplied data shows a similar trend with total product supplied increasing by about 387,000 bpd from 2012 to 2016, by an average of 1.9% per year, though the volume supplied has been stable since mid-2015. *Id.*



Likely, much of this increased demand is related to fuel demand by the fracking industry in PADD 3. Fracked wells require substantial amounts of fuel during both the fracking process and ongoing operations.

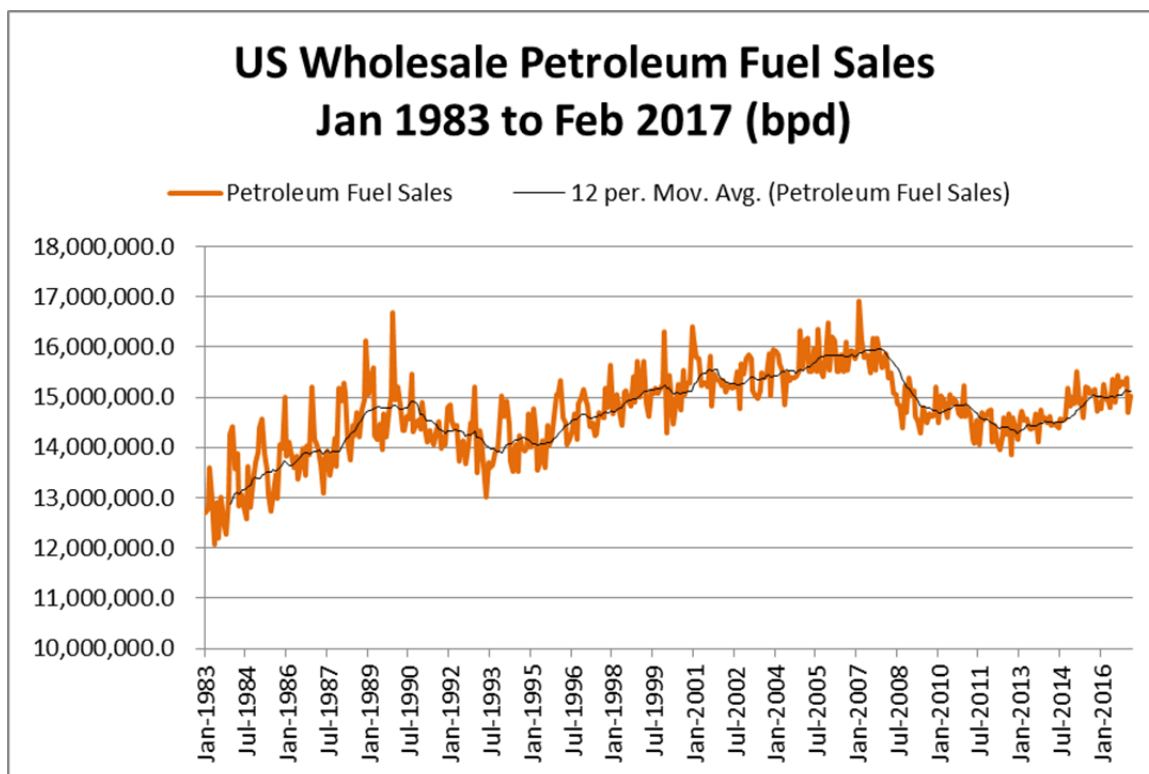
The increase in petroleum demand in PADD 3 should be viewed in the context of crude oil production during this period. In 2012, average crude oil production in PADD 3 was 3,775,917 bpd, and in 2016 average crude oil production was 5,472,500 bpd, an increase of 1,696,583 bpd. Attachment LS-28.



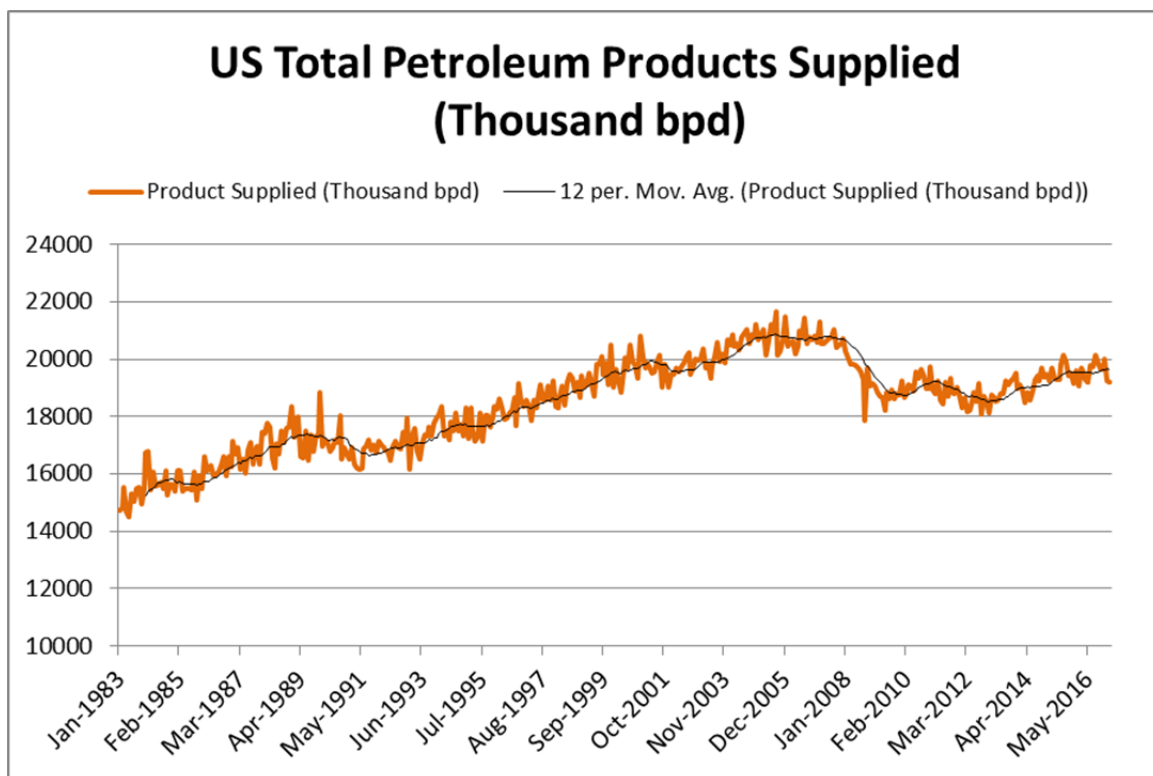
Thus, while PADD 3 refined petroleum fuel consumption increased by a bit over 300,000 bpd between 2012 and 2016, and total product supplied increased by 387,000 bpd during this same period, crude oil production increased by 1,700,000 bpd. It is clear that refineries in PADD 3 did not need Canadian crude oil to meet increased PADD 3 domestic fuel demand.

31Q. What conclusions do you reach based on your review of data related to consumer demand in the U.S. as a whole for refined petroleum products?

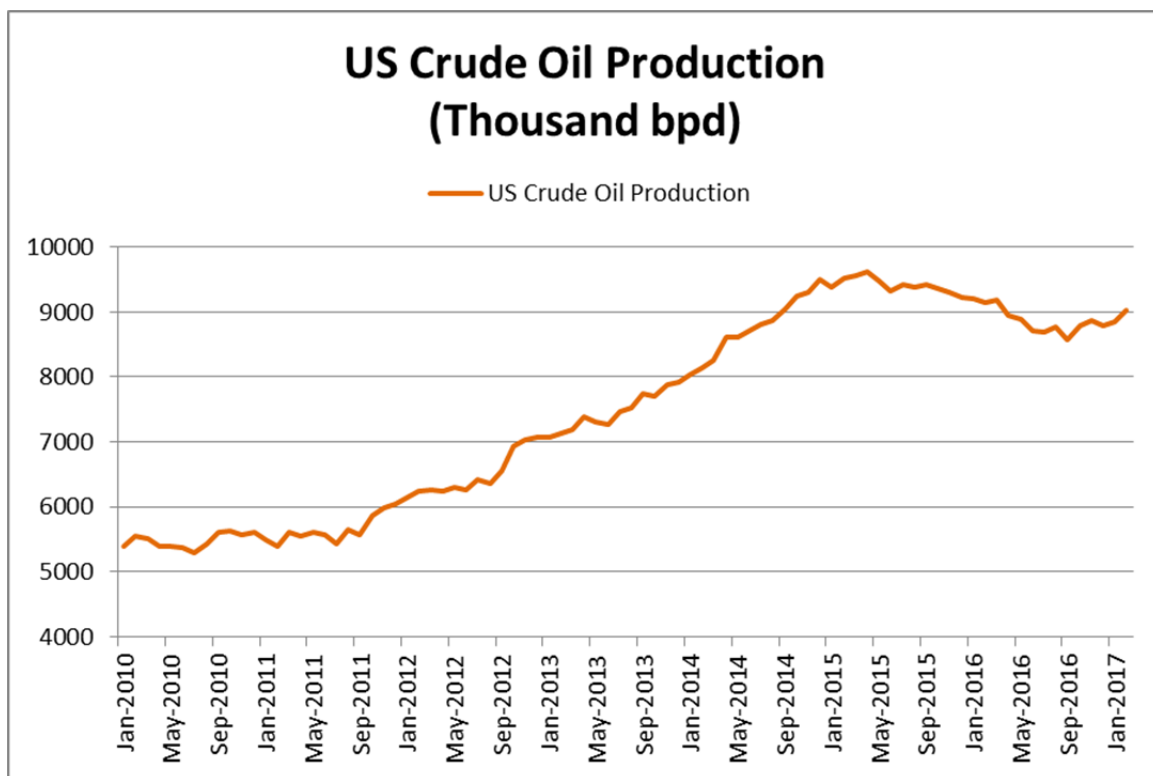
- A. The EIA prime supplier data shows that 2007 was the peak year for average annual wholesale petroleum fuel sales in the U.S. as a whole, at 15,948,542 bpd. Attachment LS-27. In comparison, sales in 2016 averaged 15,137,539.7, which is 5.1% less than the record high. *Id.* Although the volume of petroleum fuel sales increased when oil prices started dropping in late 2014, they have been stable since late 2014. *Id.* Thus, this data shows that US consumer demand for petroleum fuels has not been increasing. The following chart illustrates total U.S. demand for refined petroleum products. *Id.*



The USEIA’s “product supplied” data for the entire U.S. data shows that total U.S. demand for petroleum products peaked in 2005 at 20,799,300 bpd. *Id.* In 2016, US demand for petroleum products averaged 19,631,600 bpd, which is 5.6% below the peak year. *Id.* This data is similar to the trends shown in the prime supplier data. Total product supplied in the U.S. has been stable since mid-2015. Since 2012, total product supplied has increased by about 228,000 bpd, or on average about 60,000 bpd per year, representing an average growth rate of about 0.3%, but all of this increase happened before 2015. *Id.* Thus, total U.S. demand for petroleum products is not increasing.

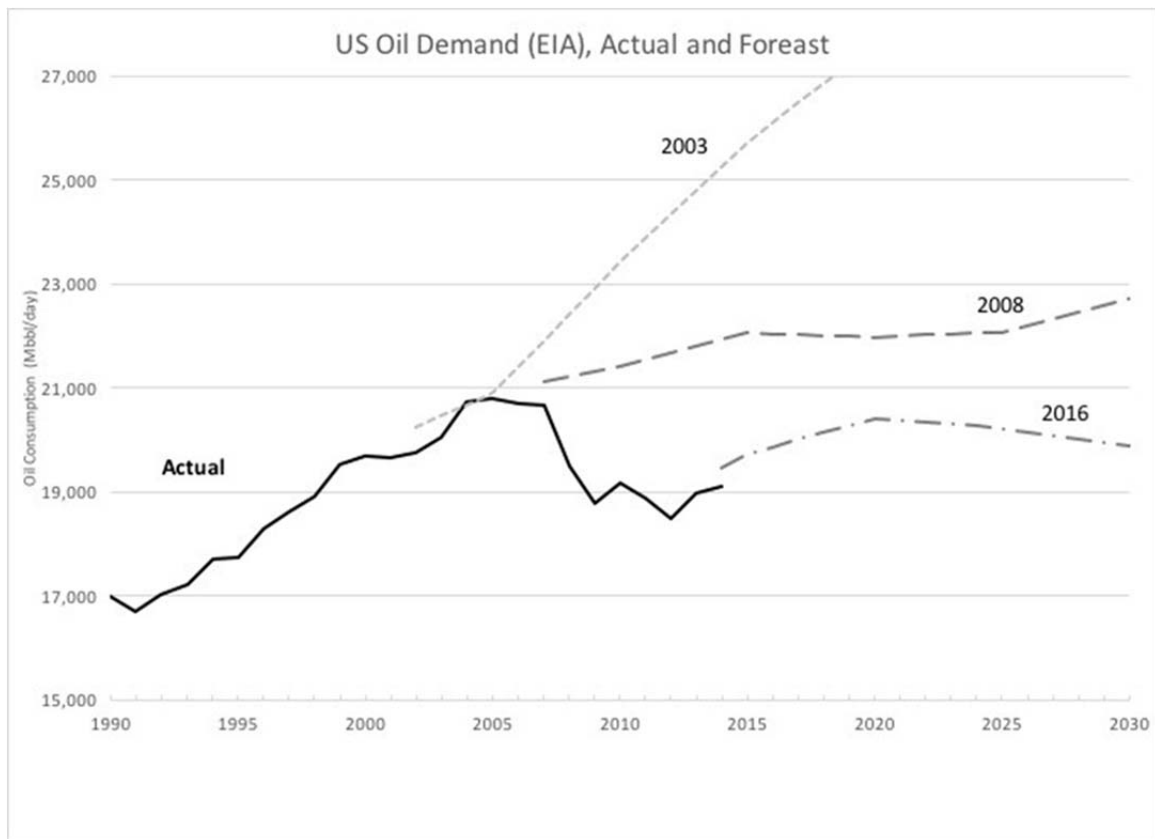


But, this increase in demand should be viewed in light of the net increase in US crude oil production during this time. The following chart of USEIA crude oil production data shows that total US crude oil production increased by an average of 478,000 bpd each year during this period – even accounting for the drop in production since 2015. Attachment LS-28. This is more than double the growth of total US petroleum product demand during this same time.



32Q. Have you reviewed any information related to future petroleum demand?

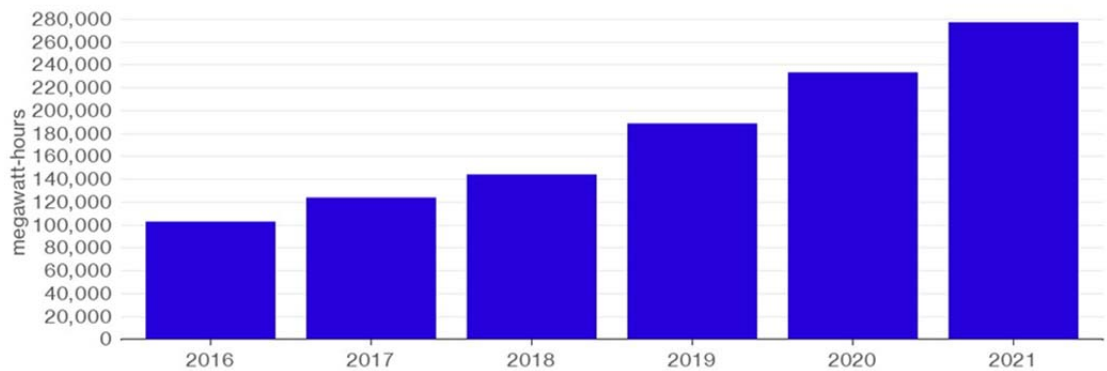
- A.** Yes, I am aware of growing evidence that U.S. oil demand will cease to grow in the near future. The following charts shows how USEIA petroleum demand forecasts have changed over the past 14 years. Attachment LS-29.



There is a growing convergence of expert opinion that a peak in global demand for oil is now in sight. An accelerating energy market disruption from electric vehicle technology, rapidly improving vehicle fuel efficiency, regulatory measures to address climate change, and the increased adoption of ridesharing and autonomous vehicle technology, are expected to contribute to a peak and decline in U.S. oil demand. Energy market and auto industry analysts are increasingly predicting a rapid, exponential increase in the uptake of Electric Vehicles (EVs), rather than slow linear growth. The expected pattern of sudden technological disruption has been seen in recent years in the sudden and widespread adoption of smart phones, and more recently in the dramatic fall in the cost of solar photovoltaic (PV) panels. There is now compelling evidence that EV adoption is following a similar pattern as a result of the rapid decline in the cost of batteries as manufacturing economies of scale are reached. The following charts show forecasts of battery manufacturing capacity and costs. Attachment LS-30.

Battery Boom

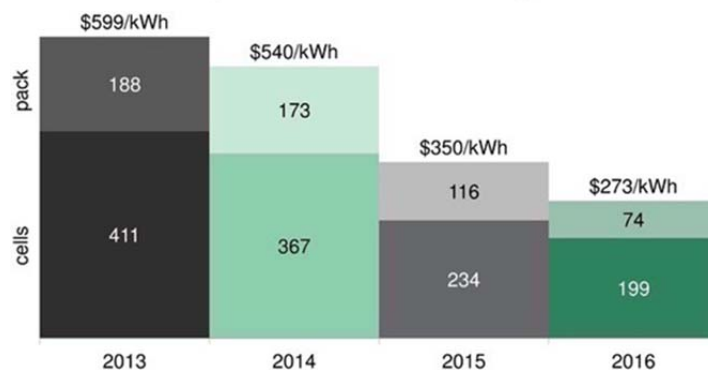
Global battery manufacturing capacity is set to more than double by 2021



Source: Bloomberg New Energy Finance

Bloomberg

Battery Prices Are Falling Fast



A sudden transition in transportation could mean that EVs could overtake internal combustion engines rapidly. Investment Bank UBS predicts that EVs will reach price parity with standard internal combustion models next year, far earlier than had been previously assumed. Attachment LS-31. This is also the finding of a new report from Bloomberg New Energy Finance. *Id.* Price parity is widely seen as the tipping point at which consumers rapidly shift towards buying EVs over traditional internal combustion engines. An analysis from Carbon Tracker Initiative and Imperial College modelled potential EV penetration using up-to-date cost estimates, with no regulatory change, and projected EVs would account for 55% of global passenger vehicles by 2040. *Id.*

After years of reluctance, vehicle manufacturers are now announcing aggressive plans for the electrification of their product lines. *Id.* Driven by growing competition

from Tesla Motors, major U.S. carmakers Ford and GM have both announced new strategies embracing electrification of passenger vehicles. *Id.* VW plans to sell 1 million EVs by 2025, Volvo has said it will stop developing diesel engines and focus on electric drivetrains, and a number of new electric vehicle manufacturers are competing for market share in China. *Id.* Tesla's Model S is already outselling all other luxury sedans in the U.S. and plans to sell 500,000 of its new Model 3 cars by the end of 2018. *Id.* Energy consultancy Wood McKenzie estimates that U.S. gasoline demand will reach a peak in 2018 as result of dramatic vehicle efficiency improvements, and continue to improve thereafter due to a shift to hybrid and electric drivetrains. *Id.* The USEIA Annual Energy Outlook 2017 predicts declining U.S. energy use from light-duty vehicles between 2018-2040. *Id.* Their model forecasts that gasoline consumption from light duty vehicles is expected to drop from 8.7 million barrels per day in 2017 to 7.5 over just the next 8 years. *Id.* Passenger cars in 2015 averaged 31 miles per gallon (on-road mpg), with improved fleet-wide standards already adopted by the industry, this number is expected to reach 45mpg by 2025. *Id.* Energy efficiency improvements in vehicles are expected to progress faster than the average increase in miles travelled each year. *Id.*

Emerging technological and social trends are facilitating rapid uptake of urban car sharing, ride sharing, and a shift towards vehicle automation. These interconnected changes have the potential to further reduce oil demand by reducing private car ownership, facilitating further design efficiency improvements, and improving driver fuel economy performance. These trends are expected to increase the average number of passengers per vehicle, allowing the average per person distance travelled to increase without increasing the absolute distance vehicle travel. Improving the efficiency of passenger vehicles to move people over time.

If oil prices rise to a level needed to re-start the boom in tar sands production (\$77 per barrel for SAGD projects and \$108 per barrel for mining projects), these prices would once again drive down fuel demand, in large part because poorer consumers could not afford to drive as much. Reduced consumer demand would, in turn, once again, force the price of crude oil down to affordable levels, which would be too low to support tar sands production.

Various energy industry players are debating the projected timing of peak oil demand, but many now acknowledge that it is a question of when, not if it will occur. The uncertainty around timing depends primarily around assumptions on the speed at which EVs replace internal combustion engine technology in vehicles, as well as the degree to which growth occurs in the non-transportation petrochemical industry. Major oil companies now acknowledge an impending end to growth in global oil demand. Royal Dutch Shell and Statoil have predicted that peak global oil demand could come within the next decade. Total SA has said that it now expects a peak in global oil demand by the 2030s, as a result of EVs accounting for a third of new-car sales by the end of the next decade.

As the rate of increase in petroleum demand slows and then falls, the need for new petroleum infrastructure, such as crude oil pipelines, is ending. Investment in the Keystone XL Pipeline is likely to be wasted.

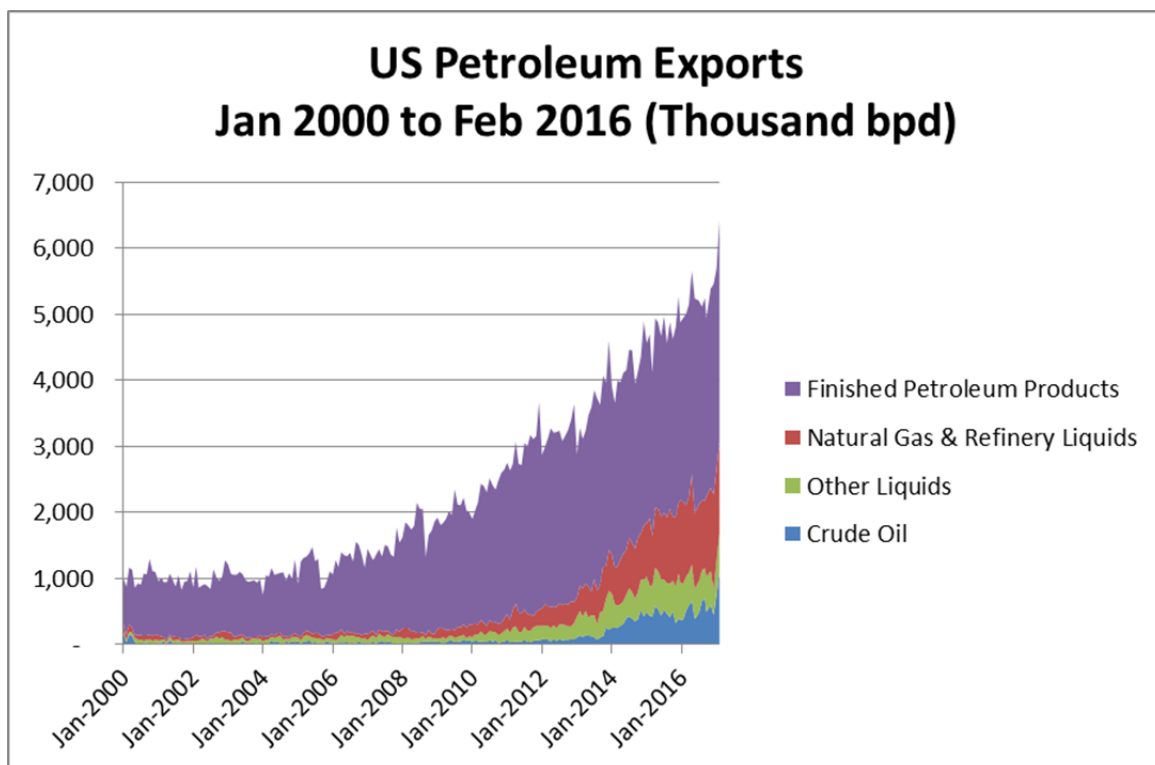
VII. THE KEYSTONE XL PIPELINE IS NOT NEEDED BY NEBRASKA OR THE U.S., BECAUSE IT WILL BE USED TO INCREASE EXPORTS TO FOREIGN MARKETS

33Q. Have you reviewed data related to U.S. exports of all types of petroleum?

- A. I have reviewed the USEIA data related to exports of crude oil and petroleum products from the U.S. and PADD 3, and for specific ports on the Gulf Coast. Attachments LS-32 and 33.

34Q. What does the USEIA data show?

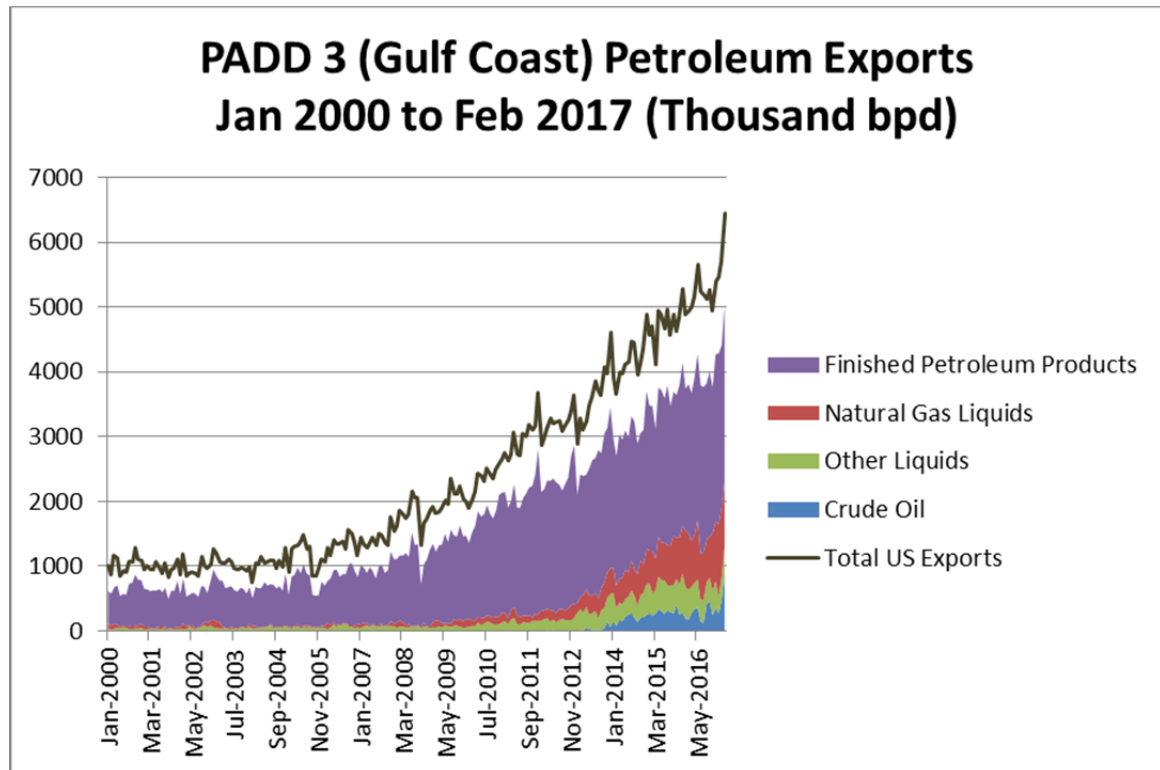
- A. Exports of crude oil and petroleum products from the U.S. have grown by over 5 million bpd since 2006, primarily in the form of finished petroleum products. Attachments LS-32. In February 2017, total exports spiked to 6,443,000 bpd, a month-over-month increase of 752,000 bpd over January 2017, and a year-over-year increase of 1.5 million bpd relative to February 2016. *Id.* About half of this increase was exports of crude oil and most of the rest was of refined petroleum products. *Id.*



Since crude oil is blended during refining, exported finished petroleum products and the “other liquids” category (partially refined products) are likely produced from a mix of domestic and imported oil. The exported crude oil and natural gas liquids are produced from wells in the U.S. and do not include exports of crude oil transshipped through the U.S. from Canada.

The USEIA divides the United States into five regions for analysis of petroleum industry data. These regions are called Petroleum Administration for Defense Districts or PADDs. PADD 3 comprises Gulf Coast states including Texas, Louisiana, Mississippi, Alabama, as well as Arkansas and New Mexico, and is generally considered as the Gulf Coast region. PADD 3 has the largest refining capacity of all the PADDs, primarily located in Texas and Louisiana, and is in fact one of the largest refining centers in the world, with over 8 % of global refining capacity. In February 2017, exports from the PADD 3 accounted for 78% of total exports from the U.S. *Id.* Of this, PADD 3 exports accounted for 80% of finished petroleum products, 78% of exported crude oil, 73% of exported natural gas liquids, and 79 % of other liquids. *Id.* In 2016, nearly 40 % of PADD 3 refining capacity was dedicated to product export. *Id.* With an annual average

of 3.6 million barrels per day (BPD) of products exported in 2016, the PADD 3 region's exports have grown more than threefold since 2006. *Id.* The export spike in February 2017 is 730 % higher than average exports in 2006. The following chart shows PADD 3 petroleum exports relative to total petroleum exports from the U.S. *Id.*

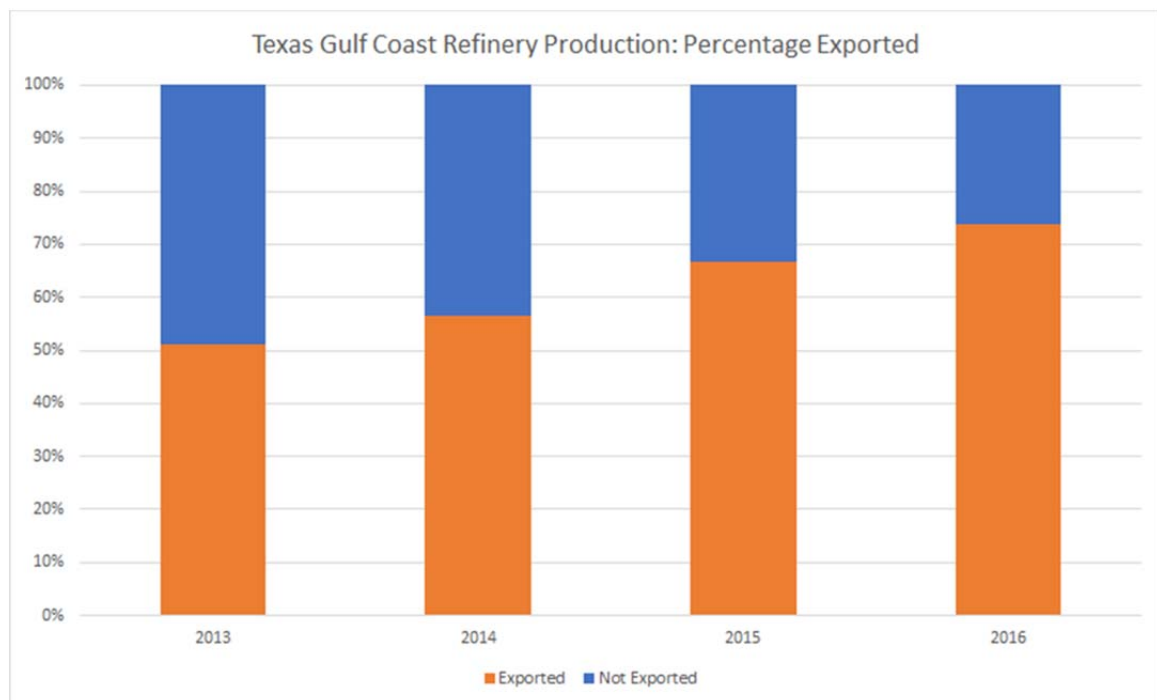


The data clearly shows that petroleum product exports from the wider Gulf Coast region have grown over 400 % since 2006, with 2016 average exports being 444 % higher than 2006 average exports. *Id.* The export spike in February 2017 is 730 % higher than average exports in 2006. *Id.*

However, breaking that data down to the Texas Gulf Coast sub-region reveals that the very region Keystone XL would serve is leading the export drive, with the majority of production exported. Data requested from EIA on exports by Gulf Coast port enables a correlation with EIA website data for refinery production by refinery sub-region. Attachment LS-33. This port-specific data provides a closer look at exports from the ports of Houston/Galveston and Port Arthur, those most relevant for Keystone XL.

Keystone XL would deliver crude oil to a terminal in Nederland, Texas. This terminal is located north of Port Arthur, where several large refineries are also located. Nederland is east of Houston, where several refineries are located on the eastern side of the city. TransCanada recently completed a pipeline linking the Nederland Terminal to Houston, with a view to accessing refineries in the Houston and Texas City area. I studied petroleum product export data from the ports of Port Arthur, Houston and Galveston. These last two are presented together in the EIA data and capture exports from Houston, Galveston and Texas City refineries. Petroleum product exports from these ports represent a much higher proportion of the sub-region's refinery production than in the wider PADD 3 region. *Id.*

The data indicates that many of the refineries in the Port Arthur, Houston, Texas City and Galveston area are exporting most of their production. *Id.* In 2016, exports from these ports accounted for 74 % of Texas Gulf Coast refinery production, up from 51% in 2013. *Id.*



In 2016, finished gasoline exports accounted for 87% of the finished gasoline produced in the region's refineries. *Id.* Including all gasoline additives and ethanol refined and

blended in the region, exports account for 64% of gasoline related products. *Id.* Diesel exports account for 46% of the diesel produced in the region's refineries. *Id.*

Key Products (thousand BPD)	Exports	Production	Percentage Exported
Finished Gasoline	353	407	87%
Finished Gasoline + Blending Agents	491	762	64%
Diesel	578	1,260	46%

The high proportion of refinery product exports from this region indicate that Keystone XL would primarily serve a refining market that is focused on exports. These refineries are not serving U.S. energy needs, but rather global markets for petroleum products.

The State of Nebraska would bear the risks of hosting the pipeline without any clear benefit for the state or the nation. The project therefore serves the interests of the companies profiting from the extraction, transportation, refining and export of the crude carried by the project and not the wider American public.

VIII. THE PUBLIC INTEREST AND PUBLIC BENEFITS OF THE PROPOSED KEYSTONE XL PIPELINE

35Q. Based on your review of information about the Project, what conclusions do you draw about whether or not construction of the Keystone XL Pipeline in any route is in the public interest?

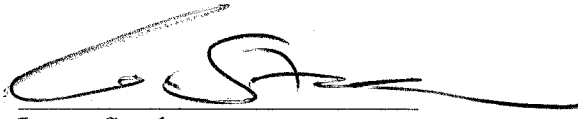
- A.** A pipeline that is not needed is not in the public interest, regardless of where it is built. The evidence shows that western Canadian oil economics does not currently support expansion of oil extraction facilities in Canada, and therefore also does not support construction of new crude oil pipeline export pipeline capacity from Canada. Moreover, trends in crude oil price and increasingly affordable transportation alternatives to internal combustion engines indicate that the long-term prospects for the oil industry are bleak, particularly for the Canadian tar sands industry because it is the high-cost producer in the

1018 global oil market. Even if there is a short-lived near-term need for increased export
1019 capacity from Canada that cannot be met via existing crude oil transportation capacity,
1020 there is a substantial risk that a different pipeline will be permitted to meet any limited
1021 demand and that such pipeline would not serve stagnant consumer demand in Nebraska
1022 or the U.S., but rather would be used to grow the oil industry's skyrocketing overseas
1023 exports. As such, there is no public benefit to imposing a route for the Keystone XL
1024 Pipeline on landowners in Nebraska, and the Keystone XL Pipeline is not in the public
1025 interest.

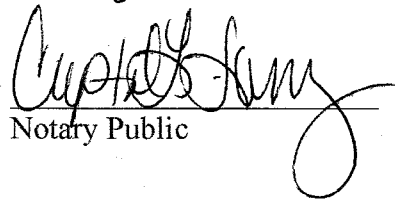
1026 **36Q. Does this conclude your testimony?**

1027 **A.** Yes, subject to updates to account for more recent data that should be available between
1028 the date of this testimony and the date of my testimony at the forthcoming Nebraska
1029 Public Service Commission hearing.

1030


Lorne Stockman

Subscribed and Sworn to before me
this 10th day of June, 2017.


Notary Public

CRYSTAL LYNN LAMOY
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7695368
My Commission Expires May 31, 2020

[Seal]

1031

Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Expert Shaun “Sean” Sweeney**

State of New York)
) ss.
New York County)

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

2 A: My name is Shaun “Sean” Sweeney.

3 **Q: Mr. Sweeney is Attachment No. 1 to this sworn statement a true and accurate**
4 **copy of your most recent CV or Resume?**

5 A: Yes it is.

6 **Q: Briefly describe for the Commissioners please your educational background**
7 **starting with your undergraduate work and all degrees and any relevant**
8 **certifications earned or held by you.**

9 A: I have a Bachelor of Arts in Sociology and Industrial Relations (1985) and a Ph.D.
10 in the same area, also from the University of Bath, awarded 1991

11 **Q: Tell the Commissioners about your relevant work experience over that past**
12 **ten (10) years and about your current employment.**

13 A: For almost 8 of the last 10 years I was Senior Extension Faculty at Cornell
14 University’s School of Industrial and Labor Relations. I founded and co-directed
15 the Cornell Global Labor Institute for most of that time. In early 2015 I started the
16 International Program for Labor, Climate and Environment at the Murphy

EXHIBIT

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exhibitsticker.com

1 Institute, City University of New York. I have done policy-related work for unions
2 from a number of different countries on energy, transportation, and environmental
3 issues, including green jobs. I have also worked with the UN's Environment
4 Program (UNEP)

5 **Q: Is Attachment No. 2 to this sworn statement a copy of a Report entitled "Pipe**
6 **Dreams? Jobs Gained, Jobs Lost by the Construction of Keystone XL?"**

7 A: Yes it is.

8 **Q: Are you the author or co-author of this Report?**

9 A: Yes I am. I am a co-author

10 **Q: Are the contents and the findings of this Report true and accurate to the best**
11 **of your knowledge?**

12 A: Yes they are.

13 **Q: Does this Report include an analysis of potential jobs, both permanent and**
14 **temporary, likely created by the proposed Keystone XL pipeline?**

15 A: Yes it does.

16 **Q: Is this Report published by Cornell Universities ILR School Global Labor**
17 **Institute?**

18 A: Yes it is.

19 **Q: What exactly is the ILR School Global Labor Institute and what type of work**
20 **does it do?**

21 A: The ILR School Global Labor Institute was established in 2005 to help unions deal
22 with the challenges posed by changes in the political economy and their impact on
23 worker's rights and protections. It also attempted to develop trade union policy on
24 alternatives to what some call neoliberalism.

25 **Q: Are you competent to testify as to the contents of the attached Report and all**
26 **of the source material and data that forms the basis of this Report?**

27 A: Yes.

1 **Q:** Although you completed this Report in approximately September 2011, have
2 you become aware since that time of any data or facts that would suggest
3 your Report's findings or ultimate conclusions are incorrect?

4 **A:** No.

5 **Q:** Have you reviewed TransCanada's answers or responses to the Landowner
6 Intervenor's discovery requests related to jobs and employment some of
7 which are included here in Attachment No. 3?

8 **A:** Yes, they support our findings and I will incorporate those responses into my
9 testimony at the Hearing as needed.

10 **Q:** Is Attachment No. 4 to this sworn statement a copy of a Report entitled "The
11 Impact of Tar Sands Pipeline Spills on Employment and the Economy?"

12 **A:** Yes it is.

13 **Q:** Are you the author or co-author of this Report?

14 **A:** Yes I am. I am a co-author

15 **Q:** Are the contents and the findings of this Report true and accurate to the best
16 of your knowledge?

17 **A:** Yes they are.

18 **Q:** Although you completed this Report in approximately March 2012, have you
19 become aware since that time of any data or facts that would suggest your
20 Report's findings or ultimate conclusions are incorrect?

21 **A:** No.

22 **Q:** As of today's date, do you stand by your findings and conclusion as detailed
23 in in your Reports?

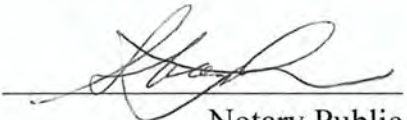
24 **A:** Yes I do and I incorporate the Reports into my testimony.

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.



Shaun "Sean" Sweeney

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


Notary Public

Stacey Neuman
Commissioner of Deeds
City of New York No. 2-13210
Kings County
Commission Expires 12/1/2017

Attachment No. 2

The background of the entire page is a photograph of large, dark industrial pipes running parallel into the distance. The scene is set at sunset or sunrise, with a warm orange and yellow sky and a large, dark, billowing cloud on the right. In the far background, industrial structures and power lines are visible.

PIPE DREAMS?

**JOBS GAINED, JOBS LOST
BY THE CONSTRUCTION OF KEYSTONE XL**

A REPORT BY CORNELL UNIVERSITY GLOBAL LABOR INSTITUTE



**Cornell University
ILR School
Global Labor Institute**



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the goodman group, ltd.

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SEPTEMBER 2011



INTRODUCTION

The purpose of this briefing paper is to examine claims made by TransCanada Corporation and the American Petroleum Institute that, if constructed, TransCanada's proposed Keystone XL (KXL) pipeline will generate enough employment to kick-start important sections of the US economy through the creation of tens of thousands—perhaps even hundreds of thousands—of good, well-paying jobs for American workers.

This briefing paper raises a number of questions regarding the jobs claims promoted by the industry, questions that are serious enough to generate a high level of skepticism regarding the value of KXL as an important source of American jobs. With national unemployment levels presently (September 2011) around 9%, and the real unemployment figures considerably higher, jobs are desperately needed both to sustain families and to help the broader economy. However, it is our assessment—based on the publicly available data—that the construction of KXL will create far fewer jobs in the US than its proponents have claimed and may actually destroy more jobs than it generates.

The results presented below should also cast doubt on the recent claim made by American Petroleum Institute that the oil industry could create more than a million jobs over the next decade—if the US government would open public lands, beaches, oceans, to unlimited oil drilling. If the industry's jobs estimates made in the context of KXL are any indication, then this broader claim should be scrutinized very carefully indeed.

MAIN FINDINGS

The main points in this briefing paper can be summarized as follows:

- » The industry's US jobs claims are linked to a \$7 billion KXL project budget. However, the budget for KXL that will have a bearing on US jobs figures is dramatically lower—only around \$3 to \$4 billion. A lower project budget means fewer jobs.
- » The project will create no more than 2,500–4,650 temporary direct construction jobs for two years, according to TransCanada's own data supplied to the State Department.
- » The company's claim that KXL will create 20,000 direct construction and manufacturing jobs in the U.S is not substantiated.
- » There is strong evidence to suggest that a large portion of the primary material input for KXL—steel pipe—will not even be produced in the United States. A substantial amount of pipe has already been manufactured in advance of pipeline permit issuance.
- » The industry's claim that KXL will create 119,000 total jobs (direct, indirect, and induced) is based on a flawed and poorly documented study commissioned by TransCanada (The Perryman Group study). Perryman wrongly includes over \$1 billion in spending and over 10,000 person-years of employment for a section of the Keystone project in Kansas and Oklahoma that is not part of KXL and has already been built.
- » KXL will not be a major source of US jobs, nor will it play any substantial role at all in putting Americans back to work. Even if the Perryman figures were accurate, and all of the workers for the next phase of the project were hired immediately, the US seasonally adjusted unemployment rate would remain at 9.1%—exactly where it is now.
- » KXL will divert Tar Sands oil now supplying Midwest refineries, so it can be sold at higher prices to the Gulf Coast and export markets. As a result, consumers in the Midwest could be paying 10 to 20 cents more per gallon for gasoline and diesel fuel. These additional costs (estimated to total \$2–4 billion) will suppress other spending and will therefore cost jobs.

- » Pipeline spills incur costs and therefore kill jobs. Clean-up operations and permanent pipeline spill damage will divert public and private funds away from productive economic activity. In 2010 US pipeline spills and explosions killed 22 people, released over 170,000 barrels of petroleum into the environment, and caused \$1 billion dollars worth of damage in the United States.
- » Rising carbon emissions and other pollutants from the heavy crude transported by Keystone XL will also incur increased health care costs. Emissions also increase both the risk and costs of further climate instability.
- » By helping to lock in US dependence on fossil fuels, Keystone XL will impede progress toward green and sustainable economic renewal and will have a chilling effect on green investments and green jobs creation. The green economy has already generated 2.7 million jobs in the US and could generate many more.

A NOTE ON ENERGY INDEPENDENCE AND "ETHICAL OIL"

This paper is primarily concerned about jobs, but the findings below also shine light on another claim made by the industry—that KXL will get the US further on the road to energy independence. The idea of energy independence clearly resonates with the American public, and the paid advertisements depicting Canadian Tar Sands as the source of "ethical oil" (and therefore a better option than oil from dictatorships like Saudi Arabia) plays to that sentiment. But KXL is a global project driven by global oil interests. Tar Sands development has attracted investment capital from oil multinationals—with Chinese corporations' stake getting bigger all the time.¹ If approved, KXL will be almost certainly be constructed by temporary labor working with steel made in Canada and India. Much of the Tar Sands oil will be refined in Port Arthur, Texas, where the refinery is half-owned by Saudi Aramco, the state-owned oil company of Saudi Arabia.² And a good portion of the oil that will gush down the KXL will, according to some studies, probably end up being finally consumed beyond the territorial United States.³ Indeed, the oil industry is also trying to build another pipeline, Enbridge's proposed Northern Gateway, to carry Tar Sands oil across British Columbia for export to Asian markets, although this pipeline also faces serious public opposition. Clearly, Tar Sands oil and energy independence really do not belong in the same sentence.

1. Diouhy, Jennifer. "China Invests Billions in Canada Oil Sands," Houston Chronicle, September 19, 2011. <http://www.chron.com/business/article/China-invests-billions-in-oil-sands-2176114.php>

2. Harder, Amy. "US Oil Giants Poised to Gain on Keystone Pipeline," National Journal, August 5, 2011. <http://www.nationaljournal.com/energy/u-s-oil-giants-poised-to-gain-on-keystone-pipeline-20110804>

3. Droitsch, Danielle. "The Link between Keystone XL and Canadian Oilsands Production," Pembina Institute, April 2011.

TRANSCANADA WILL SPEND \$3 TO \$4 BILLION IN THE US, NOT \$7 BILLION AS CLAIMED

A serious question surrounds the exact size of the KXL project in monetary terms. The industry's US jobs estimates refer to the **total** \$7 billion budget—so there is a clear association between this number and the jobs a \$7 billion project might produce. The State Department's FEIS job and tax revenue projections are also based on \$7 billion in expenditures.¹ However, the part of the budget for KXL that will have a bearing on US jobs figures is much lower—only around \$3 to \$4 billion. A lower budget means fewer jobs.

The Keystone Project Budget Analysis Chart provides a graphic illustration of how the Keystone budget is broken down and how the KXL US budget is revised from TransCanada's \$7 billion claim to the more relevant \$3 to \$4 billion.

In its Presidential Permit Application for KXL, TransCanada stated that, "The capital cost of the US portion of the Project, from the US-Canada border to the Gulf Coast is estimated to be US \$5.443 billion."² KXL US (the portion of the KXL project within the US) is **not** a \$7 billion project. Rather, KXL US plus KXL Canada (the portion within Canada) are *together* a \$7 billion project.

As shown on the Budget Analysis Chart, KXL Canada costs \$1.6 billion.³ Therefore, approximately 23% of KXL's \$7 billion total cost is for the Canadian portion of the pipeline. Within the US, the KXL project budget is \$5.4 billion, not \$7 billion.⁴ Therefore approximately 23% of the \$7 billion total cost of KXL is for the Canadian portion of the pipeline.

Moreover, all of the above figures are estimates of costs from project start to finish. So all these figures also substantially overestimate how much now remains to be spent. Construction has not yet started on KXL, but there have already been several years of activities preparing for possible construction. According to TransCanada's interim financial statement released on July 28, 2011, the capital cost of the larger Keystone project (made up of the segments already completed and KXL) is \$13 billion. Of this \$13 billion, \$7.9 billion had

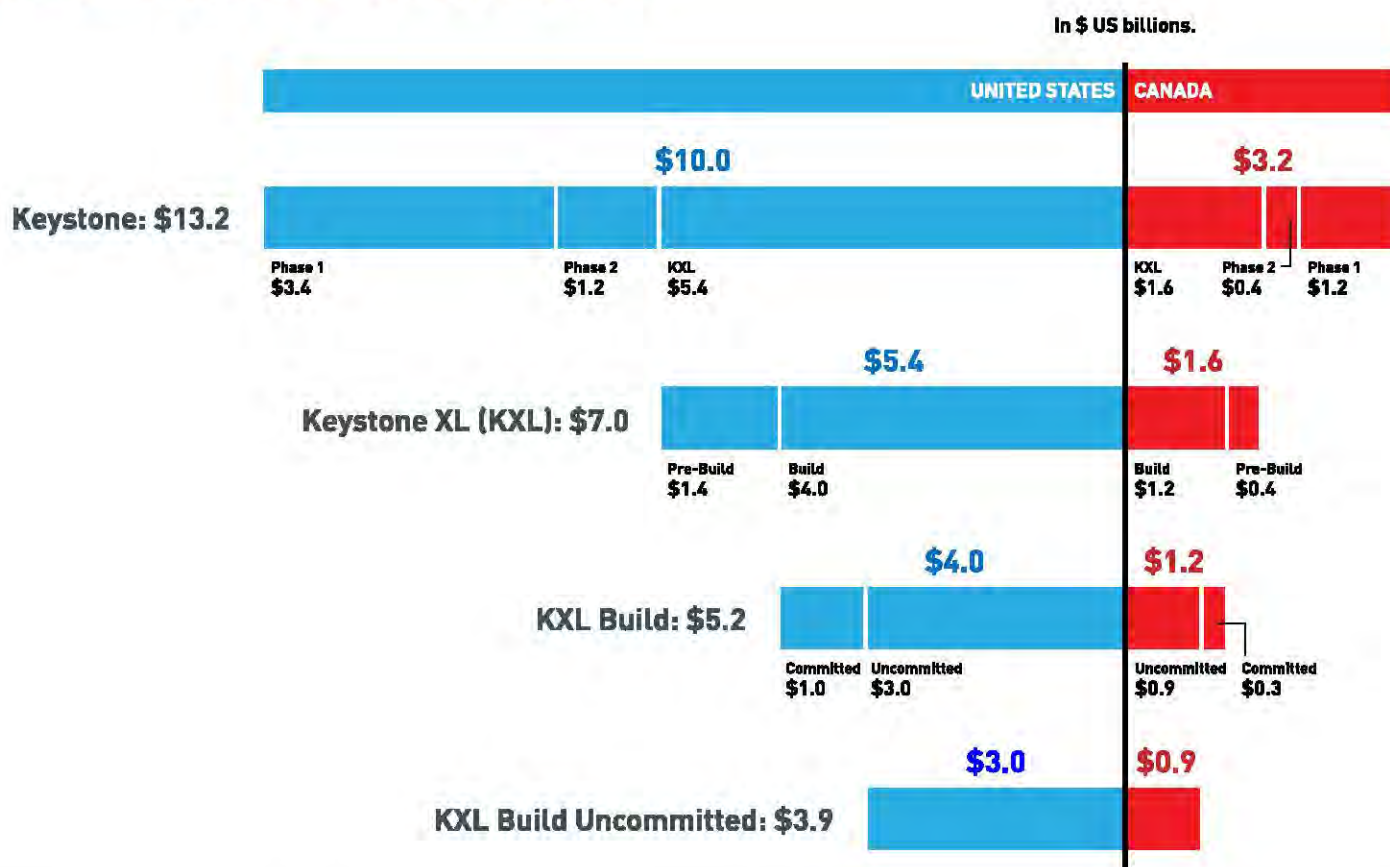
1 US State Department's Final Environmental Impact Statement (FEIS), Socioeconomics, pp. 3.10-58, 3.10-91. <http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open>

2 Letter from TransCanada to the US Department of State regarding the Keystone XL Application, September 19, 2008. <http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf/presidentialpermitapplication.pdf?OpenFileResource>

3 In its Canadian NEB Application for KXL, TransCanada states, "The capital cost of the Project is currently estimated to be approximately \$1.7 billion". TransCanada Keystone Pipeline GP Ltd., Keystone XL Pipeline Section 52 Application, submitted on February 27, 2009, p. 1. <https://www.neb.gc.ca/lr-eng/livelink.exe?func=ll&objid=549164&objAction=Open> The above cost estimate is in Canadian dollars. The exchange rate between US and Canadian currencies has fluctuated throughout the Keystone project and is currently near parity. For the purposes of this Budget Analysis, the above KXL Canada cost estimate (CAD\$1.7 billion) has been converted to US \$1.6 billion, which together with the cost of KXL US (\$5.4 billion) equals \$7 billion (the cost for KXL reported by TransCanada). It should be understood that this Budget Analysis is based on the information made public by TransCanada and may thus be somewhat approximate.

4 As discussed in footnote 1, the State Department's FEIS estimates US property tax revenues for KXL based on an assumed \$7 billion project cost. So in effect, the FEIS is assuming that KXL will be paying US property taxes for the entire project, including the portion in Canada. Even those evaluating the KXL project for the US Federal Government do not seem to have ready access to accurate cost estimates for the US portion of the project.

KEYSTONE PROJECT BUDGET ANALYSIS



already been invested by June 30, 2011. Of the \$7.9 already invested, US \$1.7 billion is related to KXL.⁵ So prior to any actual construction, about 25% of the KXL budget has already been expended for activities including design, permitting, and materials procurement.⁶

In other words, for the entire \$13 billion Keystone project, \$6.2 billion has already been spent to complete earlier phases of the project that are now in service. The entire budget for just the KXL project is \$7 billion, but \$1.7 billion of this has already been spent as of mid-year 2011. So remaining KXL spending (as of mid-year 2011) was only \$5.3 billion in both US and Canada.

The Budget Analysis assumes ongoing spending, so a total of \$1.8 billion has now been expended; remaining KXL spending is \$5.2 billion. And as explained above, only 77% of the KXL project costs are within the US. Thus, the remaining KXL spending within the US is now \$4 billion.

Moreover, TransCanada's financial statements also reveal that it has already made commitments to spend (or has already spent) almost 40% of the total KXL budget as of year-end 2010. At that time, the remaining budget (not already committed) was only

5 TransCanada, Second Quarterly Report, July 28, 2011, p. 31 (PDF p. 39) http://www.transcanada.com/docs/Investor_Centre/2011_q2_english_corp.pdf

6 The accounting for KXL costs already incurred presumably includes a wide range of activities in support of permitting, such as the Perryman Group study.

\$4.4 billion for the entire KXL project and could now be as low as \$3.9 billion.⁷ And for the approximately 77% of project costs within the US, the remaining budget (not already committed) could now be as low as \$3 billion. Thus, the incremental spending within the US that is actually associated with building KXL may be less than half of the industry's \$7 billion figure.

These figures essentially mean that TransCanada's claim that KXL is a \$7 billion stimulus to the US economy is misleading on three levels. First, \$1.6 billion will be spent on the Canadian portion of the pipeline, drawing largely on Canadian material and labor inputs. Second, at least \$1.8 billion of the \$7 billion has already been spent, mostly on design, permitting, and material inputs. Third, in addition to the \$1.8 billion already spent, another \$1.3 billion of KXL costs may already be committed. These committed costs may be incurred regardless of whether the project is actually constructed.

Therefore, we calculate that the actual spending relevant to the US economy, and the figure from which US new job creation projections should be calculated, is around \$3 to \$4 billion, not \$7 billion.⁸ Once again, see the Keystone Project Budget Analysis Chart for a step-by-step illustration of how the \$3 to \$4 billion KXL US budget is derived from TransCanada's original and misleading \$7 billion claim.

Money already spent in the past few years, plus money budgeted for the Canadian part of KXL, should not be presented as though it were part of future US-related spending pending the approval of the project. The money is gone and the work has been done (or soon will be). This spending will lead to few if any new jobs in the US. Likewise, some (and possibly all) of the money committed, but not yet spent, will be spent even if KXL is not built and should therefore not be considered in the analysis of the incremental spending that will occur should the project be approved.

7 As of year-end 2010, TransCanada had already spent \$1.4 billion and was committed to spend another \$1.2 billion on KXL. TransCanada, 2010 Annual Report, p. 33 http://www.transcanada.com/docs/investor_centre/2010_TCC_AR_Eng.pdf. By mid-year 2011, costs already spent had risen by \$0.3 billion (to \$1.7 billion) for KXL. See footnote

8 Calculation based on the data provided above: \$7 billion total KXL project cost, \$1.6 billion for Canadian portion of KXL, \$1.8 billion now already expended, and \$3 billion already committed as of now. So US share of KXL costs is 77% = $((\$7.0 - \$1.6) / \$7.0)$. It follows then that the US share of not yet expended KXL costs = $(\$7.0 - \$1.6) * .77\%$. And US share of KXL costs not yet expended or committed = $(\$7.0 - \$1.8 - \$1.3) * .77\%$.

KXL WILL GENERATE 2,500-4,650 CONSTRUCTION JOBS

A calculation of the direct jobs that might be created by KXL can begin with an examination of the jobs on-site to build and inspect the pipeline. The project will create no more than 2,500-4,650 temporary direct construction jobs for two years, according to TransCanada's own data supplied to the State Department.⁹

The State Department's FEIS considers each component of construction labor, and provides jobs data for the construction spreads, pump stations, and tank farms:

- » Construction of the pipeline is planned to occur in 17 construction spreads or completed lengths (Table 3.10.1-13). Ten spreads are planned along the proposed Steele City Segment, six spreads along the proposed Gulf Coast Segment, and one spread along the proposed Houston Lateral. Final spread configurations and construction schedules could result in shorter spreads.
- » Approximately 500 to 600 construction and inspection personnel would work on each spread, except for the proposed Houston Lateral which would require approximately 250 workers. Each spread would require 6 to 9 months to complete. Construction of new pump stations would require 20 to 30 additional workers at each site. Construction of all pump stations would be completed in 18 to 24 months. Tank farm construction would require approximately 30 to 40 construction personnel over a period of 15 to 18 months.¹⁰

Based on jobs information provided by TransCanada for the FEIS, KXL US on-site construction and inspection creates only 5,060-9,250 person-years of employment (1 person-year = 1 person working full time for 1 year). This is equivalent to 2,500-4,650 jobs per year over two years.

On-site construction labor thus accounts for only a small share (about 5-10%) of overall KXL US project costs.¹¹ Stated another way, KXL US on-site employment is only about 1-2 person-years per \$1 million project cost.¹²

9 US State Department's Final Environmental Impact Statement (FEIS), Socioeconomics, Section. 3.10-53, 54. <http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open>. Calculation based on jobs information provided by TransCanada for the FEIS.

10 FEIS, Socioeconomics, op.cit. Section 3.10-53, 54.

11 For the low end of the range, assumptions are 5,060 person-years of employment and an average cost of \$50,000 per person-year; labor cost totals \$253 million, which is 4.7% of KXL US project cost (\$5.4 billion). For the high end of the range, assumptions are 9,250 person-years of employment and an average cost of \$60,000 per person-year; labor cost totals \$555 million, which is 10.3% of KXL US project cost. The FEIS (Socioeconomics, op.cit. Section 3.10-57) estimated KXL labor cost of \$349- 419 million, which is within the range calculated above.

12 5,040 person-years /\$5,400 million = 0.93 person-years per \$1 million; 9,250 person-years/\$5,400 million = 1.71 person-years per \$1 million.

MOST JOBS CREATED WILL BE TEMPORARY AND NON-LOCAL

The number of jobs that could be created by the construction of KXL is by no means insignificant. But the overall impact of these jobs should not be overstated. TransCanada's submission to Canada's National Energy Board (NEB) led to the Board stating:

The Board finds that the socio-economic impacts of the Keystone XL Project will be of a **temporary nature and limited to the relatively short duration of pipeline construction without significant long term effect on the surrounding communities.**¹³ (Emphasis added)

In its application to the NEB, TransCanada stated:

Total direct and indirect construction employment that will amount to about 5310 person- months of employment and an estimated \$58 million in wages and salaries. This includes the Hardisty B terminal, pipeline and eight pump stations and their associated power lines... **Construction is short term, workers' families are not expected to move into the area** and area medical facilities are adequate to deal with any on-the-job injuries.¹⁴ (Emphasis added)

In the US, construction jobs will be created in the 6 states along the pipeline's route. Based on the FEIS estimates, there would also be between 3 and 7 person-years of construction labor per mile of new pipeline construction in 5 states—Montana, South Dakota, Nebraska, Oklahoma and Texas. There would also be about 60-120 person-years of construction labor to upgrade the existing Keystone pipeline in Kansas.¹⁵

The State Department's FEIS states that "the proposed Project has the potential to generate substantial direct and indirect economic benefits for local and regional economies along the pipeline route." However, the report also estimates that just 500 to 900 workers are expected to be hired locally—roughly 10-15% of the total workers hired.¹⁶ In some states, this could mean that the number of local workers hired for the project could be fewer than 100.

Based on data provided by TransCanada to the State Department, only between 506 and 1,387 workers would be hired locally.¹⁷ A state-by-state breakdown indicates that KXL

¹³ National Energy Board (NEB), "Reasons for Decision," March 2010, p.77.

¹⁴ TransCanada Keystone Pipeline GP Ltd., "Keystone XL Pipeline Section 52 Application, Section 14: Environmental and Socio-Economic," pp.25-6.

¹⁵ The Keystone project has already built a 36-inch pipeline through Kansas. The KXL project will make use of this existing segment (commissioned in February 2011) from Steele City, Nebraska, to Cushing, Oklahoma. There will be no new pipeline added within Kansas, but the KXL project does include adding two new pump stations along the existing pipeline in Kansas.

¹⁶ FEIS, Socioeconomics, op.cit. Section 3.10-57.

¹⁷ For the purposes of this calculation, it is assumed that the average duration of employment is one year. So number of person-years equals number of workers.

will create between 93 and 257 jobs for residents in Montana; 121-333 jobs in South Dakota; 90-248 jobs in Nebraska; 6-18 jobs in Kansas; 41-113 jobs in Oklahoma; and 156-470 jobs in Texas.¹⁸

Information provided by TransCanada regarding the construction of Keystone Phase 1 further indicates that KXL is likely to provide only a limited number of jobs to residents along the pipeline's route. Responding to an inquiry made to TransCanada by the South Dakota Public Utilities Commission, TransCanada officially reported that during the construction of Keystone Phase 1 it employed a total of 2,580 workers in South Dakota, but only 282 workers (11%) of the workers were residents of the state. This included 20 workers in supervision, 3 welders, 32 truck drivers, 27 equipment operators, 110 laborers, and 90 construction managers, surveyors or inspectors.¹⁹

Building KXL US would require only a modest amount of on-site construction and inspection workers and for only a short period. Moreover, local hiring would be tiny, because it is only a small proportion (10–15 %) of a small number of total jobs.

So to the extent that the KXL US project could have significant employment impacts, these jobs would have to be off-site. Thus, it is important to also consider the labor requirements associated with the materials and supplies which are inputs to the KXL US project.

¹⁸ Similar results were calculated by National Wildlife Foundation based on information provided by TransCanada to the DEIS. Factsheet: http://www.nwf.org/-/media/PDFs/Global%20Warming/Tar-Sands/Keystone_XL_Jobs_11-09-10.ashx

¹⁹ TransCanada Keystone Pipeline, LP's Objections and Responses to Dakota Rural Action's First Set of Interrogatories and Request for Documents, Case #: HP09-001, August 24, 2009. <http://www.puc.sd.gov/commission/dockets/hydrocarbonpipeline/2009/hp09-001/091809aff.pdf>



KXL STEEL MANUFACTURED OUTSIDE THE UNITED STATES

TransCanada claims that **“The \$7 billion (KXL) pipeline project is expected to directly create more than 20,000 high-wage manufacturing jobs and construction jobs in 2011-2012 across the US, stimulating significant additional economic activity.”**²⁰ This claim is misleading and erroneous on a number of levels.

First, as discussed above, the budget for KXL US that relates to incremental US employment is \$3 to \$4 billion and not the \$7 billion claimed by the proponents. Second, TransCanada and other KXL proponents are giving the impression that KXL will create a high number of manufacturing jobs. This is simply not true. The main manufacturing activity related to pipeline construction is the manufacture of the steel pipe. The 36-inch steel pipe is the largest single materials input for KXL. This is literally the pipe in the pipeline. In general, pipeline construction is not a manufacturing-intensive activity even if the steel itself is also being manufactured onshore.

This section will present strong evidence that:

- (a) almost half (and perhaps more) of the primary material input for KXL—steel pipe—will not even be produced in the United States;
- (b) based on the experience of Phases 1 and 2, the final processing work for KXL will probably be performed in the US with most of the steel and pipe sourced from outside of the US (notably India and South Korea).²¹

In making a case for the thousands of manufacturing jobs offered by KXL, TransCanada provides the assurances that “approximately 75% of the pipe for the US portion of the proposed Project would be purchased from North American pipe manufacturing facilities and that regardless of the country of origin, it would purchase pipe only from qualified pipe suppliers and trading houses.”²² However, there is strong evidence to suggest that almost half of the primary material input for KXL—steel pipe—will not even be produced in the United States.

²⁰ TransCanada's website (viewed Sept. 19, 2011). http://www.transcanada.com/economic_benefits.html

²¹ Beyond the evidence discussed below regarding the off-shoring of the steel pipe manufacturing, we note that the Perryman study does not substantiate the claim that KXL will result in a high level of manufacturing jobs. This finding is consistent with other recent studies of employment impacts associated with major pipeline projects. The Perryman study estimates large employment impacts for KXL construction, but only a small portion of these added jobs are in manufacturing industries. Perryman Group, *The Impact of Developing the Keystone XL Pipeline Project on Business Activity in the US*, June 2010, pp. 44-51. http://www.transcanada.com/economic_benefits.html. A study projected that 4,000 manufacturing jobs will be created in Canada for a similar-sized pipeline construction project (the proposed Northern Gateway Project), assuming the steel is made in Canada. Enbridge Northern Gateway Project (Volume 6C: Environmental and Socio-Economic Assessment (ES)-Human Environment, Section 4: Socio Economic Condition, pp.4-7, 4-12 to 4-19. [https://www.neb.gc.ca/lil-eng/livelink.exe/fetch/2000/90464/90552/384192/620327/624798/620129/B3-16_-_Vol_6C_-_Gateway_Application_-_Human_Environment_ESA_\(Part_1_of_3\)_-_A1ToG6_.pdf?nodeid=620083&vernum=0](https://www.neb.gc.ca/lil-eng/livelink.exe/fetch/2000/90464/90552/384192/620327/624798/620129/B3-16_-_Vol_6C_-_Gateway_Application_-_Human_Environment_ESA_(Part_1_of_3)_-_A1ToG6_.pdf?nodeid=620083&vernum=0)

²² FEIS, op.cit. Volume 1, Project Description, Page 2-26. <http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open>

KXL will require over 800,000 tons of carbon steel pipe.²³ TransCanada has contracted with an Indian multi-national company, the Mumbai-based Welspun Corp Limited, and a Russian company, Evraz, to manufacture steel pipe for KXL.²⁴ In fact, a significant portion of the \$1.7 billion already invested in KXL by TransCanada has likely been used towards the manufacture and import of the pipe. Clearly, this is an investment that is for the most part generating economic activity and job creation *outside* of the US. TransCanada's claims that US manufacturing would reap considerable benefits from the project need to be viewed in the light of these data.

Of this writing, TransCanada has not received the Presidential Permit that is required to construct the KXL pipeline, but has already signed contracts for almost 50% of the steel pipe for the project.²⁵ The Russian company, Evraz, will manufacture about 40% of KXL pipe in its Camrose and Regina mills in Canada. This information is based on Evraz's own contract announcements and their contracts with Bredero Shaw, the company coating the KXL pipes.²⁶

The Indian company, Welspun, is likely to be manufacturing the rest of the pipe for the KXL project. To date, Welspun has manufactured and imported almost 10% of the pipe for KXL. Shipping and customs records show that TransCanada imported over 70,000 tons of carbon steel pipe from Welspun through the Port of New Orleans since April 2011.²⁷ The pipe TransCanada has imported from Welspun since April 2011 meets the specifications for KXL (36 inch diameter) and has been imported after the completion of Keystone Phase 2, which also used 36 inch pipe. It therefore seems likely that the rest of the pipe needed for KXL will probably be manufactured in Welspun's Indian plants and then shipped to the U.S for final processing (double jointing and coating) or manufactured in Welspun's Arkansas plant, which imports raw coiled steel and other production inputs (notably from India and South Korea.)²⁸ These arrangements allow TransCanada to state that "approximately 75% of the pipe for the US portion of the proposed project would be purchased from North American pipe manufacturing facilities."²⁹ This claim is misleading on two levels. Firstly, it is possible to purchase from a North American facility, but this does not necessarily mean that the steel was produced in those facilities. Secondly, the jobs created in Canada—while important to the Canadian economy—should not then be pitched as "American jobs" to the media and the American public.³⁰

23 KXL would require about 830,000 tons of pipe based on engineering calculations for KXL characteristics (length, pipe specifications, and prevalence of zones requiring heavier pipe). KXL requirements of 880,000 tons have been reported in industry publications. AMM Keystone XL Pipeline Doubts Mount, Metal Bulletin, April 13, 2011. <http://www.metalbulletin.com/Article/2807225/AMM-Keystone-XL-pipeline-doubts-mount.html>

24 Evraz News, September 24, 2009. http://www.evraz.com/press/?ID=10351&PAGEN_1=9. For Welspun, data pertaining to TransCanada's Keystone imports were obtained through industry tracking of US imports and export by consignee, product, and origin, etc.

25 Since 2011, TransCanada has imported 70,000 tons of carbon steel pipe from Welspun. This is approximately 8.5 percent of pipe needed for Keystone XL. In addition, Evraz will manufacture 40%.

26 Metal Bulletin, *op cit*; Bredero Shaw, Pipe Coating Solutions, Volume 2, 2010. http://www.brederoshaw.com/literature/newsletter/PipeCoatingSolutions_NA_2010_2.pdf

27 Data pertaining to TransCanada's Keystone imports were obtained through industry tracking of US imports and export by consignee, product, and origin, etc.

28 Customs Data show raw steel imports of hot rolled steel coils, mild steel, and other production inputs from India, South Korea and other countries.

29 FEIS, Project Description, Section 2-26., *op. cit.*

30 The work in Canada may yield some employment benefits to the US if US-based suppliers are involved—but the numbers are likely to be small.

TransCanada's decision to contract steel pipe for KXL from outside of the US is consistent with past practice. TransCanada imported almost all of the steel pipe needed for the US portion of Keystone Phase 1 (Hardesty, Alberta to Patoka, Illinois) from Welspun's plants in India.³¹ In fact, when Welspun was sued by Kinder Morgan for producing substandard steel that led to pipeline leaks and spills: the Indian company that supplied the steel, ArcelorMittal, was also sued.³² The rest of the pipe for Phase 1 was manufactured by Evraz in its Canadian mills and by Berg Steel Corporation, which has pipe mills both within and outside of North America.³³ TransCanada has and continues to import pipe components (such as valves) from various multi-national corporations like Orion Spa, Valvitalia and subsidiaries of Welspun.³⁴

Regarding issues of the quality of the steel used for KXL (see section on oil spills, below), in 2011 TransCanada agreed to 57 new pipe safety specifications demanded by the US Pipeline and Hazardous Materials Safety Administration (PHMSA). The company was responding to the leaks and spills that had occurred following the construction of TransCanada's Phase 1 and Phase 2 pipelines. It is unclear how TransCanada plans to meet these new specifications for KXL US. Nor is it clear if and how the State Department is monitoring where TransCanada is producing the pipe for KXL US or whether the pipe meets PHMSA's specifications. Import records show that TransCanada had already imported close to 10% of the pipe for KXL in early 2011.³⁵ It is likely that much of the steel pipe for KXL has already been manufactured; the pipe has to be produced substantially before major construction activity begins in order to allow time for double jointing, pipe coating and transport to the construction location.

All in all, the claims made by KXL proponents that the project will generate thousands of manufacturing jobs are unsubstantiated and misleading. If a significant proportion of the pipe is fabricated outside the US, this further decreases positive US employment impacts. Even the steel pipe fabricated within the US is made from imported steel, which further decreases positive US employment impacts. Furthermore, the evidence also suggests that only final processing work is likely to be done in the US, and that other pipe components are also being imported. This further reduces any potential US manufacturing jobs impacts.

Finally, there is evidence to suggest that TransCanada could be offshoring safety concerns, as well as jobs. The fact that the steel and steel pipe are being imported from outside the US has a safety impact in an area that has already been prone to catastrophic accidents. As indicated above, the KXL project will be subject to more stringent safety specifications.

31 In an interview with World Pipelines Magazine, Welspun explains that one of its main advantages is its global capacity to produce pipe: "Welspun used its global capacity to produce the pipe and related services to meet the demanding schedule required for the project [Keystone]. One of Welspun's greatest strengths is its global capacity, in India and the US. Multiple helically spiral welded pipe mills in India produced the bare pipe for the Keystone project and over 20 ocean going vessels supplied by Thorsten Shipping transported the bare pipe from the India port of Mundra to the US through the Ports of New Orleans and Houston." (<http://www.welspunpipes.us.com/userfiles/file/Editorial%20-%20Worldpipelines%20Magazine%20-%20Aug%2009.pdf>; Welspun Annual Report FY 2007-08, p. 10 <http://welspunpipes.us.com/userfiles/file/WGSRL%20Annual%20Report%202007-08.pdf>)

32 http://plainsjustice.org/files/Keystone_XL/Steel/Letter_re_TransCanada_Use_of_Substandard_Steel_2010-06-28.pdf; <http://plainsjustice.org/files/SubstandardSteelReport.pdf> Kinder Morgan Louisiana Pipeline LLC v. Welspun Gujarat Stahl Rohren Ltd., 752 F. Supp. 2d 772 (S.D. Tex. 2010).

33 Berg Spiral Pipe Corp website <http://www.bergpipe.com/130-1-Project-List.html>; Bredero Shaw Pearlman, op. cit.

34 Data pertaining to TransCanada's Keystone imports were obtained through industry tracking of US imports and export by consignee, product, and origin, etc. See Excel table in appendix.

35 See footnote 28.

However, it is unclear how TransCanada will meet these new specifications or how they will be monitored by US authorities, particularly if a major portion of the manufacturing is off-shore (and a significant amount of the pipe has already been produced). Moreover, the Indian company, Welspun, which is likely to be the largest steel pipe manufacturer for the project, is currently being sued for the sales of defective pipelines and has been repeatedly found to produce substandard steel. These safety concerns will be discussed in more detail in the “Oil Spills” section below.

CONSTRUCTION SERVICES: ENGINEERING/DESIGN/TECHNICAL/ SUPPORT

The study by the Perryman Group (discussed in more detail below) includes KXL pipeline construction jobs created from direct expenditures as well as a broader range of spin off jobs (direct jobs off-site, plus indirect and induced) from those expenditures.³⁶ Perryman's numbers include jobs in the 6 states along the pipeline's route as well as the job impact to the rest of the United States. Perryman anticipates that just over 40% of the total US employment would occur in Texas. On its face, this is not surprising. Over a quarter of the KXL US pipeline route is within Texas, and the Gulf Coast is a global center for a broad range of activities relating to the oil industry. The highly populous and industrialized Gulf Coast region (notably Texas) could provide a substantial amount of the overall construction labor and other inputs for KXL construction. Data from the Perryman study also suggests that the other 5 states along the pipeline's route would account for roughly one third of total national US employment impacts from KXL construction.³⁷

The Perryman study is based on expenditure and sourcing data provided by TransCanada, and none of that information has been disclosed or subject to independent review. The Perryman results (notably the high number of jobs estimated overall, and especially in Texas) are a strong indication that the Perryman study is assuming a high level of US content for KXL project sourcing. Put more simply, TransCanada and Perryman are claiming that materials, supplies, and services for KXL construction will in large part be provided by suppliers in Texas and elsewhere in the US, and that these KXL suppliers will in turn rely in large part on other US suppliers.

The previous section of this paper addressed the sourcing of the 36-inch steel pipe that is the largest single materials input for KXL—literally the pipe in the pipeline. But it should also be emphasized that a project like KXL includes very substantial expenditures for a wide variety of engineering, design, and other technical and support services. The US (and especially Texas) has traditionally been a global center for oil and gas industry support activities, including both materials and services.

But with the growth of the Tar Sands and related activities, Canada (and especially Alberta) has emerged as another global center for the oil and gas industry. And as would be expected, TransCanada (which is based in Calgary, Alberta) has very extensive and strong relationships with Canadian suppliers of pipeline materials and services. And Canadian suppliers have played a large role in all phases of the Keystone project.

³⁶ Perryman Keystone XL, 2010, op. cit.

³⁷ Perryman Keystone XL, 2010, op. cit. pp. 44-51. The remaining jobs would be in the rest of US outside of the 6 pipeline states.

Moreover, it should be emphasized that logistics are a major consideration in pipeline construction and operations. Put simply, much of the KXL pipeline route (including the portion within the northern US, as well as in Canada) is closer to Alberta than to Texas.

The Perryman analysis assumes that KXL construction will have large impacts within the US and especially within Texas. But in reality, KXL sourcing will have a large component of suppliers from Canada as well as from outside North America.

PERRYMAN STUDY DEEPLY FLAWED AND PROVIDES NO SOUND BASIS FOR JOBS CLAIMS

The industry's claim that Keystone XL will create a total of 119,000 jobs is based on a deeply flawed and poorly documented study commissioned by TransCanada (The Perryman Group study). The Perryman study includes jobs from KXL construction (and possibly operations) in its calculation of overall employment impacts, estimated at close to 119,000 person years.³⁸ The Perryman study jobs estimates are claimed to incorporate a broad range of economic spin-offs (direct, indirect, and induced jobs).³⁹

At the outset, the Perryman study lays out how this type of job study should be conducted:

There are two essential steps in conducting an input-output analysis once the system is operational. The first major endeavor is to accurately define the levels of direct activity to be evaluated.⁴⁰

[...]

the estimated costs of the pipeline and supporting facilities were provided by TransCanada and are consistent with available market information. The estimates are fully adjusted for both (1) the construction materials likely to be acquired from foreign sources and (2) the aspects of construction within individual states which do not reflect spending in the local areas.⁴¹

[...]

an important first step in quantifying the total economic impact of the pipeline expansion project is estimation of the direct outlays. As noted, approximate mileage and costs in various areas was provided by the developer, as well as the location and costs associated with collateral infrastructure. The Perryman Group used these estimates to define the direct activity associated with the project in the US and in each state along the route, which includes direct expenditures in construction and development of the pipeline as well as the corresponding multiplier effects associated with those expenditures.⁴²

[...]

The second step is the simulation of the input-output system to measure overall economic effects. In the case of a prospective evaluation, it is necessary to first calculate reasonable estimates of the direct activity.⁴³

³⁸ Perryman Keystone XL, 2010, op. cit.

³⁹ Perryman Keystone XL, 2010, op. cit. pp. 38-39.

⁴⁰ Perryman Keystone XL, 2010, op. cit. p. 37.

⁴¹ Perryman Keystone XL, 2010, op. cit. pp. 21-22.

⁴² Perryman Keystone XL, 2010, op. cit. p. 22.

⁴³ Perryman Keystone XL, 2010, op. cit. p. 37.

However, by Perryman's own standards for conducting a quality job study, as cited above, the Perryman report fails on three major counts:

- (a) Most importantly, Perryman fails to define the project that is being analyzed.
- (b) Secondly, Perryman fails to properly define the overall cost of the project, as well as project-related spending.
- (c) Related to point (b), Perryman provides no input data from TransCanada.

Regarding the last point (c), Perryman states that he received this data from TransCanada, but nowhere in the report does he provide the TransCanada input data (for construction expenditures and sourcing of inputs). Perryman does not even present summary detail as to the essentials regarding inputs (such as a breakdown of expenditures into major categories and assumptions regarding whether major inputs such as steel pipe are imported or sourced domestically or imported). Nor does the Perryman report provide adequate detail as to the nature of the job impacts estimated (such as a breakdown between direct, indirect, and induced). In fact, the lack of adequate data and detail render the report so opaque as to make meaningful review impossible.

Regarding points (a) and (b), the Perryman study's failure to be transparent, and to meet the standards of a quality jobs study, extends to even the most fundamental aspects. As a starting point, any jobs study for a proposed project must clearly define the project being analyzed and how much it is assumed to cost.

Despite its official title, the Perryman study results are not restricted to the Impact of the Proposed Keystone Expansion ("Keystone XL") Pipeline Project. Instead, in addition to the costs of the KXL segments, the project budget analyzed in the Perryman study also includes over \$1 billion in costs for portions of the Keystone pipeline that are already constructed and operating. Specifically, the Perryman study redefines the KXL project to include Keystone Phase 2, a 298 mile 36-inch pipeline from Steele City, Nebraska to Cushing, Oklahoma that was built in 2010 and fully in-service as of February 2011.⁴⁴

The Perryman study was issued in June 2010 when Keystone Phase 2 was already under construction and would soon be completed. Jobs relating to building Phase 2 are not relevant to the current review of the KXL project and in any event have now already been created. Moreover, Phase 2 is not part of the KXL project as defined in the Presidential Permit application submitted in September 2008 and under review by Department of State throughout the period of the Perryman study and currently.⁴⁵ So it is simply misleading for TransCanada to claim that the Perryman study is based on the impacts of the now proposed KXL project. Instead, the Perryman study is based on a substantially larger project. And this helps to explain why the estimated job impacts are so high and so hard to reconcile with the other available information regarding likely job impacts for the KXL project. So with respect to point (a), Perryman has failed to properly define the scope of the project that is being analyzed. The project reviewed in the Perryman study is not the same as the project that is being reviewed for the Presidential Permit Process.

⁴⁴ Perryman Keystone XL, 2010, op. cit. pp. 10-11.

⁴⁵ Phase 2 is part of the original Keystone project that was subject to a separate Department of State review, culminating in the issuance of a Presidential Permit in 2008. As explained in footnote 15, the KXL project does include the addition of two pump stations in Kansas along the existing Phase 2 pipeline.

Likewise, with respect to point (b), the Perryman study fails to be transparent about the cost of the project being analyzed, as well as the details of project-related spending. In analyses of employment impacts, it is standard practice to provide results in terms of multipliers. In particular, a useful summary metric is jobs per dollar (person-years of employment per \$1 million of project-related spending). Multipliers facilitate comparison of results within and across studies. With results expressed in terms of multipliers, projects (and other activities) with differing levels of spending can be compared to determine relative intensity of impacts. Projects with higher jobs per dollar are more labor-intensive.

The Perryman study does not present any of its results in terms of multipliers, and as a result it is difficult to compare the Perryman results with those of other studies. But the more basic problem is that the Perryman study fails to provide the amount of project-related spending being assumed. To calculate jobs per dollar, data must be provided for both jobs and dollars (the numerator and the denominator). The Perryman study does provide many results for jobs, but never makes clear what amount of dollars are being assumed in determining the job impacts. So in mathematical terms, the Perryman study provides lots of numbers for the numerator, but is notably silent as to the associated denominator. Again, according to the citations above from the Perryman study, it recognizes (at least in theory) the importance of defining multipliers for a quality job study.⁴⁶ In practice, however, no multiplier data have been reported in the study.

The only KXL cost data from TransCanada provided in the Perryman report is a single mention of the oft-cited \$7 billion figure.⁴⁷ By itself, this utter paucity of cost data is highly unusual for a study estimating job impacts. Typically, cost data are front and center in such a study. Job impacts for a project can only be meaningfully considered in the context of project-related expenditures. The mention of the \$7 billion figure (which includes costs within Canada) raises concerns as to whether the Perryman study is properly differentiating between KXL project costs in the US and Canada. The Perryman report does not provide documentation as to the amount of project costs being assumed, so it cannot be determined if costs within Canada are estimated to have jobs impacts within the US.

Finally, given that the Perryman report provided no cost data, the only way to gain some insight into the Perryman study project cost assumptions was via review of the state-level reports accompanying (but not acknowledged within) the main Perryman study. Through the addition of project cost data that are chopped up into each of the state-level reports, it was revealed that Perryman wrongly includes over \$1 billion in spending for a section of the Keystone project in Kansas and Oklahoma that is not part of KXL, and has already been built. These reports demonstrate that the project costs assumed for KXL in each of

⁴⁶ See footnote 42.

⁴⁷ Perryman Keystone XL, 2010, op. cit. p. 1.

the 6 states along the combined KXL/Keystone Phase 2 route total \$6.6 billion.⁴⁸ So the project costs assumed in the Perryman study exceed the costs now estimated for the KXL project in the US (\$5.4 billion) by over \$1 billion. Put another way, the project analyzed in the Perryman study is at least 20% larger (more costly) than the actual KXL project.

So even if the Perryman study does not include the cost of KXL in Canada, it still assumes total costs near the \$7 billion figure. The Perryman study manages to achieve this result by adding in the already built Keystone Phase 2 pipeline to be part of an analysis which (on its face) purports to quantify solely the impacts of the Keystone XL project (not yet built).

A review of the state-level reports reveals that the Perryman study assumes substantial expenditures in every county along the entire Keystone Phase 2 route through Nebraska, Kansas, and Oklahoma.⁴⁹ As a result, the Perryman study assumes \$1 billion in capital costs and 6,721 person-years of employment in Kansas,⁵⁰ where all pipeline construction has already been completed.⁵¹ Likewise, the Perryman study assumes \$0.845 billion in capital costs and 14,440 person-years of employment in Oklahoma, based on almost 240 pipeline miles for the combined XL and Phase 2 routing.⁵² Phase 2 accounts for over a third of this total, so about a third of the impacts estimated by Perryman for Oklahoma are for Phase 2 and not KXL. Thus, the inclusion of Phase 2 has increased the Perryman estimates of project costs by over \$1 billion and the employment estimates for Kansas and Oklahoma by more than 10,000 person-years.

Moreover, the Perryman results include the impacts in each state from pipeline expenditures in other states. In particular, the very large impacts estimated for Texas likely reflect an assumption that this state will provide substantial amounts of inputs for the pipeline construction in other states. Thus, by including Phase 2 and increasing overall project costs by more than 20%, the Perryman study has also increased the employment estimated in Texas and all other states.

A reasonable estimate would be that the Perryman study results are in the order of 20% higher owing to the inclusion of Phase 2 costs. And this helps to explain why the Perryman results are so high relative to what would reasonably be expected for a pipeline project with the costs and characteristics of KXL.

48 Capital costs assumed in Perryman analysis (\$6.5615 billion): Montana \$1.0 billion, South Dakota \$0.8165 billion, Nebraska \$1.3 billion, Kansas \$1.0 billion, Oklahoma \$0.845, Texas \$1.6 billion (p. 1, all cites below)
http://www.transcanada.com/docs/Key_Projects/perryman_group_montana_report.pdf
http://www.transcanada.com/docs/Key_Projects/perryman_group_south_dakota_report.pdf
http://www.transcanada.com/docs/Key_Projects/Perryman_Group_Nebraska_Report.pdf http://www.transcanada.com/docs/Key_Projects/perryman_group_kansas_report.pdf
http://www.transcanada.com/docs/Key_Projects/perryman_group_oklahoma_report.pdf
http://www.transcanada.com/docs/Key_Projects/perryman_group_texas_report.pdf

49 http://www.transcanada.com/docs/Key_Projects/Perryman_Group_Nebraska_Report.pdf, pp. 4, 9; http://www.transcanada.com/docs/Key_Projects/perryman_group_kansas_report.pdf, p. 4, 8; http://www.transcanada.com/docs/Key_Projects/perryman_group_oklahoma_report.pdf, p. 4, 9

50 Perryman Keystone XL, 2010, op. cit. pp. 10-11, 24.

51 As explained in footnote 46, the KXL project does include the addition of two pump stations in Kansas along the existing Phase 2 pipeline. Given the paucity of documentation in the Perryman study, it is not possible to determine how these two pump stations have been accounted for. But in any event, the cost of these two pump stations would be small relative to the \$1.0 billion in capital costs assumed by the Perryman study for Kansas.

52 Perryman Keystone XL, 2010, op. cit. pp. 10-11, 24.

In conclusion, the industry's claim that KXL will create 119,000 total jobs (direct, indirect, and induced) jobs is based on a flawed and poorly documented study, which fails to apply its own standards for conducting a quality job study. Most notably, Perryman wrongly includes over \$1 billion in spending and over 10,000 person-years of employment for a section of the Keystone project in Kansas and Oklahoma that is not part of KXL and has already been built.

TOTAL (DIRECT, INDIRECT, AND INDUCED) JOBS FROM KEYSTONE XL

As discussed above, the state-level reports accompanying the main Perryman study indicate that the Perryman study assumes total project capital costs of \$6.6 billion.⁵³ On this basis, the Perryman results can now be expressed as a multiplier. The Perryman study total employment impacts for project construction and development (119,000 person-years) are equivalent to 18.1 person-years of employment per \$1 million of project capital cost.⁵⁴

The Keystone XL Job Analysis Chart-Higher Estimate: Perryman Multiplier provides a graphic illustration of how the Perryman Multiplier (18 person-years per \$1 million) is applied to Keystone US budgets ranging from \$6.6 billion (Phase 2 + KXL) to the more relevant \$3 to \$4 billion.

It cannot be ruled out that a pipeline construction project could result in total job impacts approaching 18 person-years per \$1 million. But given the nature of pipeline projects in general, and the specific characteristics of the KXL project, a lower multiplier should be assumed for evaluating the KXL project employment impacts. In the context of the current briefing paper, it is not practical to undertake a full independent analysis of KXL job impacts.

Fortunately, the job projections submitted by developers of other major pipeline projects provide a useful guide for estimating potential impacts for KXL.⁵⁵ On this basis, for the purposes of estimating total employment impacts, it is reasonable to assume a multiplier of approximately 11 person-years per \$1 million pipeline project capital costs. So for the KXL total US capital costs (\$5.4 billion), total employment impacts would be in the order of 59,000 person-years, or roughly half of the results estimated by the Perryman study.

The Keystone XL Job Analysis Chart-Lower Estimate: Independent Assessment Multiplier provides a graphic illustration of how the Independent Assessment Multiplier is applied to KXL US budgets ranging from \$5.4 billion (KXL) to the more relevant \$3 to \$4 billion.

This independent estimate of potential job impacts for KXL is lower than that estimated by Perryman for two major reasons. First, the KXL project spending assumed is \$5.4 billion (the actual budget for the project in the US), rather than the \$6.6 billion figure assumed

53 See footnote 49.

54 Monetary results in the Perryman study are typically expressed in terms of constant 2009 dollars. Given the paucity of documentation, it is unclear whether the project capital cost data presented in the Perryman study state-level reports are also in terms of constant 2009 dollars. Given the approximate nature of this analysis and currently very low inflation rates, a reasonable working assumption is that these cost data (and the resulting multiplier) are in 2009 dollars.

55 For example, see the analysis submitted for the Enbridge Northern Gateway Project (Volume 6C: Environmental and Socio-Economic Assessment (ES)-Human Environment, Section 4: Socio Economic Condition. [https://www.neb.gc.ca/il-eng/livelink.exe/fetch/2000/90464/90552/384192/620327/624798/620129/B3-16_-_Vol_6C_-_Gateway_Application_-_Human_Environment_ESA_\(Part_1_of_3\)_-_A1ToG6_.pdf?nodeid=620083&vernum=0](https://www.neb.gc.ca/il-eng/livelink.exe/fetch/2000/90464/90552/384192/620327/624798/620129/B3-16_-_Vol_6C_-_Gateway_Application_-_Human_Environment_ESA_(Part_1_of_3)_-_A1ToG6_.pdf?nodeid=620083&vernum=0)

KEYSTONE XL JOB ANALYSIS: HIGHER ESTIMATE PERRYMAN MULTIPLIER (18 PERSON-YEARS PER \$1 MILLION)



in the Perryman study (with Keystone Phase 2 added in). Second, in this independent estimate, the multiplier assumed is approximately 11 person-years per \$1 million capital costs, rather than the approximately 18 person-years per \$1 million estimated by the Perryman study. Given the opaque nature of the Perryman model and the absence of any disclosure regarding the TransCanada expenditure and sourcing data utilized by Perryman, it is impossible to determine why the Perryman results are so high.⁵⁶ By contrast, analyses based on higher quality studies and standard economic models estimate multipliers substantially lower than those assumed by Perryman. Hence, an alternative approach (i.e., using an independent assessment multiplier), yielding lower job estimates, is a much more reliable guide for evaluation and policymaking in regard to the KXL project.

The Perryman study's findings cannot be relied upon because there is no way of knowing how they were arrived at. The Perryman study is based on a proprietary economic analysis model.⁵⁷ There is basically no disclosure of the data that were input into the model, nor a useful level of detail as to how the outputs were determined. This does not allow for any meaningful independent review or validation of the Perryman findings. The results from the Perryman study do not usefully inform serious public debate concerning the KXL project and should be disregarded.

With the proper context now provided, it is possible to present estimates of job impacts that are relevant for the actual decisions that need to be made concerning the KXL

⁵⁶ One possibility is that the Perryman results for project construction also include impacts relating to project operations. The Perryman study is so opaque that it cannot be readily determined what types and amount of project expenditures were assumed in calculating the overall results. In particular, the Perryman study estimates a substantial amount of overall employment impacts (118,925 person-years) associated with project construction and development. But it cannot be determined what these results are based on in terms of project costs for construction and operations. This failure to clearly distinguish between project constructions and operations was also noted in the review of the Perryman study as part of the FEIS (Socioeconomics, op.cit. Section 3.10-80-3.10-81).

⁵⁷ The Perryman model, christened the US Multi-Regional Impact Assessment System (USMRIAS), is opaque. Perryman claims that the model "was developed and is maintained by The Perryman Group. This model has been used in hundreds of diverse applications across the country and has an excellent reputation for accuracy and credibility. In addition, the model has been in operation and continually updated for over two decades." The Perryman Group, *The Economic and Fiscal Effects of Expanding Alcoholic Beverage Sales in the City of Dallas*, July 2010. <http://www.scribd.com/doc/34378536/The-Economic-and-Fiscal-Effects-of-Expanding-Alcoholic-Beverage-Sales-in-the-City-of-Dallas> This is not a verifiable claim.

KEYSTONE XL JOB ANALYSIS: LOWER ESTIMATE
INDEPENDENT ASSESSMENT MULTIPLIER (11 PERSON-YEARS PER \$1 MILLION)



project. The job estimate developed above (approximately 59,000 person-years of total employment impacts) is based on the KXL total US capital costs (\$5.4 billion). But as discussed above (in the KXL Budget section), a very substantial part of the KXL budget is already spent, and another major portion is already committed.

So in evaluating the impacts of KXL construction, it is now relevant to evaluate only the uncommitted jobs associated with building KXL. Money already spent is sunk costs and any associated jobs have already happened (or soon will happen) regardless of whether KXL is built. Likewise, to the extent KXL costs are already committed and not avoidable, the jobs associated with these costs will occur in any event.⁵⁸

Thus, the incremental US spending associated with KXL project construction is only about \$3 to \$4 billion. Given a multiplier of 11 person-years per \$1 million, this translates into total employment impacts of 33,000 to 44,000 person-years.⁵⁹ So a reasonable estimate of the total incremental US jobs from KXL construction is about one-third of the figure estimated in the Perryman study and used by industry to advocate for the construction of KXL.

Moreover, any job impacts associated with KXL construction would be spread over 2 and more likely 3 years.⁶⁰ So the annual impacts are at most about 22,000 person-years of employment per year, for two years.⁶¹ But the annual impacts could also be as low as 11,000 person-years per year, for three years.⁶²

58 In practice, there would be a variety of considerations in determining the job impacts associated with project costs that are committed, but not yet spent. If in fact the committed expense will be incurred regardless of whether the project is constructed, then it might be fully appropriate to consider any job impacts from the committed expense as a constant that need not be taken into account. Put more simply, if the jobs will happen in any event, they should not be a factor in evaluating whether to proceed with construction. On the other hand, in the event that KXL is not constructed, TransCanada would presumably seek to minimize costs by attempting to renegotiate commitments, as well as by reusing or reselling whatever was being obtained via the commitments. So it is conceivable that some material intended for use in KXL would then be repurposed for other projects and that would serve to reduce future procurement and associated jobs.

59 Approximately \$3 to \$4 billion x 11 person-years per \$1 million = 33,000-44,000.

60 The construction period for KXL would be at least 2 years and possibly longer. Moreover, there will be some time lags for effects to ripple through the economy. And much of the total employment impacts being estimated are for these ripple effects (indirect and induced jobs), as opposed to the direct on-site construction labor whose timing is tied to the actual construction. So even if KXL construction proceeds on a highly accelerated and compressed schedule, associated employment impacts will be spread over at least 2 years. And a scenario where job impacts are spread over at least 3 years is more realistic.

61 See footnote 59.

62 See footnote 59.

Either way, the potential job impacts associated with KXL construction are quite small, both absolutely and certainly relative to the employment levels estimated by the Perryman study. In comparing these results with those from the Perryman study, it is useful to keep in mind that even results based on the Perryman study would be much lower, once they are adjusted for more realistic project cost assumptions.

Starting with the Perryman study total employment estimated for project construction (119,000 person-years), the Perryman results can be adjusted for more realistic project cost assumptions. Also starting with the \$6.6 billion in project costs assumed by Perryman,⁶³ and adjusting for the \$5.4 billion project cost for KXL in the US, the adjusted Perryman result is about 97,000 person-years. Next, instead of assuming a \$4 billion KXL US project cost not yet spent, the adjusted Perryman result drops to about 72,000 person-years. And finally, assuming a \$3 billion KXL US cost not yet spent or committed, the adjusted Perryman results drops again to 54,000 person-years.

So even if it is assumed the Perryman study provides a reasonable estimate of job impacts per dollar spent on pipeline construction (i.e. 18 person-years per \$1 million), total job impact will be much lower than the Perryman results once a more realistic budget is assumed for project construction. And whatever is estimated for total employment impacts, it must be spread over the relevant period in order to meaningfully estimate annual impacts. For KXL construction, the relevant period is at least two and perhaps more likely three years.⁶⁴

In this context, it is also important to consider that almost all of the jobs (direct, indirect and induced) associated with Keystone XL will, of course, also be temporary. The operating costs for KXL are very minimal, and based on the figures provided by TransCanada for the Canadian section of the pipeline, the new permanent US pipeline jobs in the US number as few as 50.⁶⁵ The other operating expenditures (for materials, supplies, services, electric power, property taxes, etc.) would comprise the bulk of operating expenses and would also have some job impacts. So considering a broad range of spin-offs, operating expenditures would have job impacts in the order of around 1,000 per year.⁶⁶

It is unfortunate that the numbers generated by TransCanada, the industry, and the Perryman study have been subject to so little scrutiny, because they clearly inflate the projections for the numbers of direct, indirect, and long-term induced jobs that KXL might expect to create. What is being offered by the proponents is advocacy to build support for KXL, rather than serious research aimed to inform public debate and responsible decision making. By repeating inflated numbers, the supporters of KXL approval are doing an injustice to the American public in that expectations are raised for jobs that simply cannot be met. These numbers—hundreds of thousands of jobs!—then get packaged as if KXL were a major jobs program capable of registering some kind of significant impact on unemployment levels and the overall economy. This is plainly untrue.

⁶³ See footnote 48.

⁶⁴ See footnote 60.

⁶⁵ Calculated based on information provided by TransCanada that approximately 864 km pipeline would create 17 permanent jobs in Canada. Source: National Energy Board's Hearing with TransCanada on April 8, 2008, p.96, line 961.

⁶⁶ Pipeline operating costs, such as electric power supply for pump stations, generally have relatively small job impacts. Operating costs include property and other taxes. Depending upon the amount of taxes assumed and the modeling of impacts associated with taxes, job impacts for pipeline operating expenditures could be somewhat higher or lower than the estimate provided. As discussed in the remainder of this paper, the adverse impacts associated with KXL could be very sizable and more than offset any benefits in terms of tax revenues.

KXL WILL HAVE MINOR IMPACT ON UNEMPLOYMENT LEVELS

When the direct, indirect and induced jobs created by KXL are examined in the light of the US economy as a whole, claims that Keystone XL will be both a major source of jobs and play an important role in putting unemployed Americans back to work are misleading. According to Perryman, the lion's share of state-by-state employment estimated for KXL will go to Texas (over 40%) and the other states will gain small numbers of construction jobs.⁶⁷ Based on the current unemployment rates for the pipeline states, these jobs could have a small impact on local unemployment levels. Using Perryman's own numbers, we calculate an average reduction in the levels of pipeline state unemployment of under 0.2%—a very modest reduction indeed.

None of this alters the fact that, even if Perryman's total job figures (119,000) were correct, and all the workers expected to be hired in the next phase of the project were hired tomorrow (so roughly 40,000 for three years), the US unemployment would remain where it is today—at 9.1 per cent.⁶⁸ The US economy needs to create more than 90,000 jobs per month just to keep up with the growing labor force.⁶⁹ It needs to generate 8 million jobs in order to get the US unemployment down to where it was at the onset of the recession.⁷⁰ And while it is true that construction and manufacturing have been hit hard by the 2008 recession, these are areas of the economy that have reduced unemployment substantially over the past 12 months. In August 2011 the unemployment level for construction workers was 13.5%, down from 17.0% a year ago. Manufacturing unemployment had also fallen to 8.9%, slightly below the 9.1% average for the workforce as a whole.⁷¹ In an economy that has lost millions of jobs since the onset of the recession in 2008, KXL jobs amount to a tiny drop in a very deep bucket.

67 Perryman, op. cit, p. 24. Also see: http://www.transcanada.com/docs/Key_Projects/perryman_group_texas_report.pdf, p.2.

68 Bureau of Labor Statistics (BLS), The Employment Situation, August 2011. <http://www.bls.gov/news.release/pdf/empst.pdf>

69 Baker, Dean. "Zero Job Growth in August, as Unemployment Rate Remains Stable," Center for Economic and Policy Research, September 2, 2011. <http://www.cepr.net/index.php/data-bytes/jobs-bytes/zero-job-growth-in-august-as-unemployment-rate-remains-stable>

70 Fieldhouse, Andrew and Irons, John. "More Economic Support is Desperately Needed, Economic Policy Institute," June 23, 2011. http://www.epi.org/publication/more_economic_support_is_desperately_needed/; calculated using BLS data from November 2007 and August 2011.

71 BLS, op.cit.

FOUR WAYS KEYSTONE XL COULD BE A JOB KILLER

The industry-generated jobs data are highly questionable and ultimately misleading. But this is only part of the problem. These industry-generated data attempt only to tell the positive side of the KXL jobs story. There is evidence to suggest that the effects of KXL construction could very well lead to more jobs being lost than are created. In this section, we show four ways that jobs can be destroyed or prevented by KXL—higher petroleum prices, environmental damage such as spills, the impact of emissions on health and climate instability, and the chilling effect KXL approval could have on the emerging green economy.

HIGHER FUEL PRICES IN 15 STATES

According to TransCanada, KXL will increase the price of heavy crude oil in the Midwest by almost \$2 to \$4 billion annually, and escalating for several years.⁷² It will do this by diverting major volumes of Tar Sands oil now supplying the Midwest refineries, so it can be sold at higher prices to the Gulf Coast and export markets. As a result, consumers in the Midwest could be paying 10 to 20 cents more per gallon for gasoline and diesel fuel, adding up to \$5 billion to the annual US fuel bill.⁷³ Further, the KXL pipeline will do nothing to insulate the US from oil price volatility.⁷⁴

Even one year of fuel price increases as a result of KXL could cancel out some or all of the jobs created by KXL, based on the (more accurate) \$3 to 4 billion budget for KXL (the remaining cost to build within the US). Higher fuel prices due to KXL would have broad adverse impacts. Gasoline is a significant cost for most Americans, and especially for those with lower incomes and/or residing in rural areas. Moreover, refined oil products (notably gasoline and diesel) are very widely used throughout the economy (especially in agriculture and commercial transportation). So higher fuel prices due to KXL would ripple through the economy and impact a very broad range of people and businesses.

The benefits of KXL construction and operations would be narrowly concentrated. A relatively small number of workers and businesses would be directly involved in providing labor and other inputs to pipeline construction and operations. Likewise, the other potential costs and benefits from KXL would not be shared equally across US regions and states. In particular, the Midwest region could be a loser due to KXL, while the Gulf Coast (and particularly Texas) could be a winner.

72 National Energy Board (Canada), Reasons for Decision, TransCanada Keystone Pipeline GP Ltd, OH-1-2009, March 2010 <https://www.neb-one.gc.ca/l-eng/livelink.exe?func=ll&objId=604441&objAction=browse> pp. 21-22; Verleger, Phil, "If gas prices go up further, blame Canada," Star Tribune, May 13, 2011, <http://www.startribune.com/opinion/otherviews/117832183.html?source=error>

73 Verleger, Phil, op cit.

74 Verleger, Phil, op cit.

The impact of higher Midwest fuel prices due to KXL would be concentrated in that region. But there will certainly be some spillover of effects to other regions, especially since the Midwest is a large region with strong economic linkages to other areas of the US. KXL would deliver Tar Sands output (and other crude oil) to the Gulf Coast. In contrast to potential impacts in the Midwest oil market, KXL is less likely to increase Gulf Coast fuel prices and could even lead to somewhat lower prices. Overall, the potential costs and benefits from KXL would not be shared equally. Higher fuel prices due to KXL would result in a broad set of losers, while KXL construction and operations would mainly benefit a much narrower group of winners.

JOBS LOST THROUGH ENVIRONMENTAL DAMAGE

The industry has ignored or dismissed fears that the KXL pipeline will have a serious impact on our environment through inland spills or spills into fresh water supplies (principally the Ogallala Aquifer) or through increases in greenhouse gas emissions (GHGs) and other forms of pollution. In so doing, it has no need to acknowledge that environmental damage is invariably a job killer. Cleaning up spills and other environmental damage may create some jobs, but only at the expense of jobs in other parts of the economy.

THE COST OF OIL SPILLS

The economic and non-economic damage caused by oil spills are given scant attention by TransCanada or supporters of KXL. But they need to be considered as part of the hefty price our economy and our environment would have to pay if KXL is constructed. In 2010, pipeline spills and explosions in the US killed 22 people, released more than 170,000 barrels of petroleum, and caused \$1 billion dollars in damage.⁷⁵ The history of other pipelines indicates that spills from KXL are inevitable. Over thirty spills have occurred with the Keystone pipeline (Phase 1 and 2) in its first year of operation in Canada and the United States.⁷⁶ According to the State Department's FEIS, Keystone has experienced 14 leaks on US territory in just its first year of operation.⁷⁷ This is despite the fact that the Keystone pipeline was described as meeting or exceeding "world-class safety and environmental standards."⁷⁸ In Canada, 19 spills had been reported from Keystone as of June 2011.

Concerns generated by the actual spill history of Keystone and similar pipelines are further reinforced by an independent study conducted by Dr. John S. Stansbury of the University of Nebraska. Stansbury's study examined the likely frequency, magnitude and consequences of spills from KXL. It concluded that TransCanada's claim that spills would be rare—just 11 significant spills over a 50 year period—was not consistent with the available

75 PHMSA Pipeline Safety Program website (viewed 9.27.11) <http://primis.phmsa.dot.gov/comm/reports/safety/PSI.html>

76 <http://primis.phmsa.dot.gov/comm/reports/safety/PSI.html>, Natural Resources Defense Council, Sierra Club, Oil Change, International, Dakota Resource Council, September 2011, "The Keystone XL Tar Sands Pipeline Is Not in the National Interest."

77 FEIS, Section 3.01-103. See also US Department of Transportation, Pipeline and Hazardous Materials Safety Administration. Corrective Action Order, CPF No. 3-2011-5006H. June 3, 2011. http://blog.nwf.org/wildlifepromise/files/2011/06/320115006H_CAO_06032011.pdf

78 Think Progress, "After 12 Oil Spills in One Year, TransCanada Says Proposed Keystone XL Pipeline will be Safest in US," August 17, 2011 citing <http://thinkprogress.org/comm/2011/08/17/297576/oil-spills-transcanadakeystone-xl-pipeline/>. See also: Natural Resources Defense Council, Sierra Club, Oil Change, International, Dakota Resource Council September 2011, "The Keystone XL Tar Sands Pipeline Is Not in the National Interest"

historical data pertaining to pipeline spills (which point to a much higher spill rate).
Moreover:

(A) more realistic assessment of expected frequency of significant spills is 0.00109 spills per year per mile (from the historical data (PHMSA, 2009)) resulting in 91 major spills over a 50 year design life of the pipeline.⁷⁹

Concerns regarding spills could be even further heightened by the fact that TransCanada is contracting with a company (Welspun) that has been found to produce substandard steel.⁸⁰ TransCanada used imported Welspun steel for Phase 1 of the Keystone project and, as noted above, the pipeline has had 14 spills in its first year of operation. Prior to building Phase 1, TransCanada assured landowners and government officials that a spill would only occur once every 20 years. The latest leaks in Keystone Phase 1 spurred the PHMSA to order a shut down of the pipeline until a “corrective action order” was addressed. PHMSA ordered this “corrective action order” due to pipe expansions it had detected. Pipe expansions occur when low strength, low integrity, or poor quality steel is used. Under normal circumstances, it takes about 46 years of use before pipe expansions occur.⁸¹

Welspun’s use of substandard steel has also been an issue in other pipeline projects. Welspun is currently being sued by two Kinder Morgan Energy Partner subsidiaries for fraudulent sales practices and the sale of defective steel pipe.⁸² PHMSA has ordered Boardwalk Pipeline Partners and Kinder Morgan Energy Partner to replace hundreds of pipe joints along their pipelines after an investigation revealed numerous “expansion anomalies” indicating the use of low quality steel. Approximately 80 percent of the steel Boardwalk Pipeline Partners and Kinder Morgan Energy Partner used in their pipelines was purchased from Welspun.⁸³

Certainly, the environmental damage of a “worst case scenario” spill from KXL would be very extensive, particularly affecting Midwest residents’ livelihoods in agriculture, tourism, and many other economic sectors. Stansbury’s study notes, “(T)he benzene released by a Keystone XL worst-case spill to groundwater in the Sandhills region of Nebraska would be sufficient to contaminate 4.9 billion gallons of water at concentrations exceeding the safe drinking water levels.” Such a spill “would pose serious health risks to people using that groundwater for drinking water and irrigation.”⁸⁴

Pipeline spills are also known to carry with them a hefty price tag. Cleaning up spills creates jobs, but few would maintain that this is a good way to fight unemployment. Moreover, the costs to the companies and to the public purse will simply divert money from other parts of the economy. For example, the costs of an 800,000 gallon oil spill (July 2010) into the Kalamazoo River from the Enbridge pipeline are expected to exceed

79 Analysis of Frequency, Magnitude and Consequence of Worst Case Spills From the Proposed Keystone XL Pipeline John Stansbury, Ph.D., P.E. <http://watercenter.unl.edu/downloads/2011-Worst-case-Keystone-spills-report.pdf>

80 Plains Justice. Request for Investigation of Possible Use Of Substandard Steel in the Keystone Pipeline, June 28, 2010 Via Email. http://plainsjustice.org/files/Keystone_XL/Steel/Letter_re_TransCanada_Use_of_Substandard_Steel_2010-06-28.pdf.

81 Lefebvre, Ben. “US Tightens Scrutiny on TransCanada’s Keystone Pipeline. Dow Jones Newswires,” June 7, 2011. <http://www.smartmoney.com/news/ON/?story=ON-20110607-000362&cid=1127>

82 11th Judicial District Court of Harris County, Texas. No.2009–54103.

83 Stansbury, op cit, p. 2

84 Stansbury, op cit, p. 2

\$500 million, excluding the costs of insurance payments and compensation.⁸⁵ And the clean-up operation itself has yet to be completed.⁸⁶ At the height of the Kalamazoo clean-up effort, more than 2,500 EPA, state, local and Enbridge personnel and contractors worked on cleanup efforts along 35 miles of impacted river and shoreline. Over one year later the EPA has more than 500 people deployed on cleanup efforts in the area.⁸⁷ In addition to the spill into the Kalamazoo, Enbridge spent an additional \$45 million on costs related to a spill in Romeoville, Illinois, in September 2010. Enbridge's 2010 annual report states that the company lost \$16 million in revenue from the transfer of oil while the pipelines were shut down. Both spill cleanups and pipeline repairs contributed to an overall operating loss of \$24.7 million, according to the company's 2010 Annual Report.⁸⁸ According to the EPA, the July 2011 rupture at ExxonMobil's Silvertip oil pipeline spilled at least 1,000 barrels of crude oil into the Yellowstone River. More than 1,000 people were involved in cleaning up the spill, an effort that is estimated to cost \$42.6 million.⁸⁹

ECONOMIC COSTS RELATED TO AIR POLLUTION AND CARBON EMISSIONS

It is a well known fact that if emissions rise, air quality deteriorates, and health problems increase. Respiratory and other illnesses reduce both labor productivity and labor market participation, as well as the educational performance of those exposed to airborne particulates. The American Lung Association has documented how the health impacts from oil-generated NO_x, SO_x, Hg and other air toxics are a serious drain on the US economy.⁹⁰ People who are sick underperform as workers and suffer economically. These negatives also ripple through the economy in the form of increased costs for health care and rehabilitation.

If constructed, KXL will clearly add to these health-related costs and social problems. KXL is part of an industry plan to make Port Arthur into an international refining hub, where heavy sour crude from tar sands is processed for export. The processing of tar sands crude emits more toxic chemicals than processing of conventional sweet crude, and this will take place in an area where residents are already exposed to high levels of pollution. High rates of asthma and cancer and other illnesses in the Port Arthur area act as a drain on the economy and cause suffering for thousands of residents.

Aside from the human and economic costs of increased emissions related to poor air quality, it is now widely accepted that rising emissions lead to climate instability and this, in turn, results in an increase in economy-damaging, extreme weather events. As the Stern

85 Zoe, Clark. "Oil Spill Cost Enbridge Energy 550 Million," Michigan Radio online. <http://michiganradio.org/post/oil-spill-cost-enbridge-energy-550-million-2010>

86 US Environmental Protection Agency website, EPA's Response to the Enbridge Oil Spill (Viewed 9.21.11). <http://www.epa.gov/enbridgespill/index.html>. According to the EPA, "After a year of extensive cleanup work in the Kalamazoo River system, the (EPA) has identified pockets of submerged oil in three areas covering approximately 200 acres that require cleanup."

87 US Environmental Protection Agency website, One Year Later: More Work Necessary to Clean Up Submerged Oil in Michigan's Kalamazoo River System (Viewed 9.21.11). <http://epa.gov/enbridgespill/>

88 Enbridge Corporation, Annual Report 2010, pp. 78, 92, 160-1. http://ar.enbridge.com/ar2010/assets/Downloads/2010_Enbridge-Inc-Annual-Report.pdf. Killian, Chris. "Enbridge plans 'accelerated' pipeline inspection process in 2011," mlive.com, April 6, 2011. http://www.mlive.com/news/kalamazoo/index.ssf/2011/04/enbridge_plans_accelerated_pip.html

89 National Geographic, op.cit.

90 American Lung Association, <http://www.lungassoc.org>



Review⁹¹ made clear five years ago, if emissions continue to rise according to a "business as usual" scenario, climate change is likely to have an impact on the global economy equivalent to the combined effect of the two World Wars of the 20th Century and the Great Depression. According to Stern, as much as 20 percent of global GDP could be wiped out.

Extreme weather events are already having a serious impact on jobs and livelihoods in many parts of the world. In 2011, killer tornados, droughts and forest fires, record-breaking temperatures and rainfall have wreaked havoc across the US. There are those who believe that these events have nothing to do with GHG emissions, but no one can deny that climate scientists have warned that rising emissions will lead to climate disruption, and climate disruption is today increasingly obvious. The damage caused by just one event—Hurricane Irene—has been estimated to exceed \$7 billion.⁹² The drought in Texas—the worst one-year drought in the history of the state—has inflicted damage thus far totaling \$5.2 billion.⁹³

91 Stern, Nicholas. (2006). "Stern Review on The Economics of Climate Change (pre-publication edition). Executive Summary", HM Treasury, London. Archived from the original on 2010-01-31 <https://www.webcitation.org/5nCeYUk>. Retrieved 2010-01

92 Williams Walsh, Mary. "Irene Adds to a Bad Year for Insurance Industry," August 28, 2011. <http://www.nytimes.com/2011/08/29/business/irene-damage-may-hit-7-billion-adding-to-insurer-woes.html?pagewanted=all>

93 Fernandez, Manny. "Sacrifices and Restrictions as Central Texas Town Copes With Drought," New York Times, September 6, 2011 http://www.nytimes.com/2011/09/07/us/07drought.html?_r=3&scp=4&sq=cost%20of%20drought&st=fire&sub=cat

How will KXL increase the level of GHG emissions? Firstly, KXL is an important part of an industry plan to expand the oil industry's exploitation of dirty, unconventional high carbon fuels. This planned expansion will have a very serious impact on emissions levels. Indisputably, the energy used in the Tar Sands extraction process has already made a huge contribution to Canada's CO₂ emissions. Producing one barrel of oil from the Tar Sands produces three times the amount of GHGs produced from conventional oil, making the overall GHG lifecycle of a barrel of tar sands oil considerably higher than conventional oil.⁹⁴ KXL will connect the Tar Sands to heavy crude refineries in the Gulf and open the Tar Sands to more extraction to meet the rising global demand for oil. This will lead to more "upstream" GHG emissions in Alberta. Furthermore, emissions generated from the manufacture of more than 800,000 tons of steel for the KXL pipeline are also significant. As a rule of thumb, one ton of steel produces one ton of CO₂, which adds up to more than 800,000 tons of CO₂—more than the annual national emissions levels of scores of smaller countries.⁹⁵ And because Tar Sands oil is difficult to upgrade and refine, it will generate more emissions from refineries than regular crude oil. Lastly, if fully utilized, the KXL pipeline would add an additional 27 million metric tons of carbon dioxide equivalent (MMTCo₂e) annually to emissions from average U.S. crude.⁹⁶

It is important to note that KXL is being proposed at a time when, given the scientific evidence, the public discourse should be about how to reduce emissions substantially. Slowing down the levels at which GHGs are being released into the atmosphere is simply not enough. US transport emissions presently total around 27 percent of national CO₂ emissions, and emissions from transport are growing faster than emissions from any other economic sector (this is true both globally and nationally).⁹⁷ The US will never be able to make the kind of emissions reductions that the scientific evidence suggest are necessary without aggressively tackling the rising levels of emissions from its transportation sector. If US transport emissions were viewed as a separate country, emissions from this sector would rank number four—behind China, the US and Russia.⁹⁸

However, there are alternatives for transport and the economy as a whole. The President's own *Blueprint for a Clean Energy Future* describes how the US can reduce oil use by about 3.7 million barrels a day by 2025.⁹⁹ From the perspective of both job creation and environmental protection, this is a far better choice and consistent with the national interests of the US.

94 Weber, Bob. "Alberta's Oilsands: Well-managed Necessity or Ecological Disaster?" Moose Jaw Times Herald- Canada, December 2009. <http://www.mjtimes.sk.ca/Canada—World/Business/2009-12-10/article-243834/Albertas-oilsands-well-managed-necessity-or-ecological-disaster%3F/>

95 Dume, Belle, "Steel by-product could sequester carbon dioxide," Environmental Research Web, December 5, 2008. <http://environmentalresearchweb.org/cws/article/news/36966>. Rogers, Simon and Evans, Lisa. "World carbon dioxide emissions data by country: China speeds ahead of the rest," The Guardian, January 31, 2011. <http://www.guardian.co.uk/news/datablog/2011/jan/31/world-carbon-dioxide-emissions-country-data-co2>

96 Environmental Protection Agency. Comments on Draft Environmental Impact Statement. July 16, 2010. [http://yosemite.epa.gov/oeca/webdis.nsf/%28PDFView%29/20100126/\\$file/20100126.PDF?OpenElement](http://yosemite.epa.gov/oeca/webdis.nsf/%28PDFView%29/20100126/$file/20100126.PDF?OpenElement)

97 Environmental Protection Agency, Greenhouse Gas Emissions from Transportation <http://www.epa.gov/oms/climate/basicinfo.htm>

98 Union of Concerned Scientists, "Each Country's Share of CO₂ Emissions. Information from EIA 2008. http://www.ucsusa.org/global_warming/science_and_impacts/science/each-countrys-share-of-co2.html

99 White House, *Blueprint for a Secure Energy Future*, March 2011. http://www.whitehouse.gov/sites/default/files/blueprint_secure_energy_future.pdf

KEYSTONE XL'S IMPACT ON THE GREEN ECONOMY AND GREEN JOBS

It is also important to consider the jobs that may not be created as a result of KXL. Many believe its approval will likely have a chilling effect on those in the private sector and in public policy who have positioned themselves on the cutting edge of the green economy. Small business organizations such as the Green Chamber of Commerce and the Green Business Network (representing more than 5,000 enterprises) agree that KXL will impede progress toward green and sustainable economic renewal.¹⁰⁰ The level of green investments is also influenced by the degree of political will to reduce global warming pollution. The approval of KXL and an acceleration in the use of Tar Sands oil sends a clear and disturbing message: not only is Canada not serious about reaching its (already unachievable) Kyoto targets, but the US Administration is reneging on its stated commitment to provide leadership in the global effort to combat climate change.

The possibility of KXL construction amounts to a sword hanging over the prospects of a vibrant green economy and green jobs. The approval of the project will send a clear signal that North America will build its economic future economy on dirty fuel, and not on clean energy. The negative impact on jobs is potentially enormous. A string of studies have been released that point to the growth and future potential of green jobs and other economic and social dividends resulting from climate and environmental protection policies.¹⁰¹ However, the prospect of green businesses flourishing in the future is to a large extent contingent upon how private investors and public officials interpret which way the economic winds are blowing. If the world's largest economy locks in a long-term dependence on fossil fuels—and exceptionally dirty fuels at that—then green investments (and therefore green jobs) will surely suffer.

Moreover, a recent study conducted by Political Economy Research Institute (PERI) at the University of Massachusetts concludes that oil generates barely one fourth of the number of jobs created by green investments for the same amount of investment.¹⁰² Green infrastructure programs create more jobs per dollar spent because they are less capital intensive, are more labor intensive, and stimulate domestic industries and services. A post-recession study conducted by the Brookings Institute, *Sizing the Clean Economy: A National and Regional Green Jobs Assessment*,¹⁰³ details how today the clean economy employs 2.7 million American workers across a diverse group of industries. This figure is already greater than the number of people employed by the entire fossil fuel sector. In the past year clean-tech has outperformed the national rate of job creation by some distance. The clean economy also offers more opportunities and better pay (13 percent higher) for low- and middle-skilled workers than the national economy as a whole.¹⁰⁴

100 Letter from Green Chamber of Commerce to president Obama <http://greenchamberofcommerce.net/2011/09/01/small-businesses-urge-president-to-reject-keystone-xl-pipeline/>. See also Green Business Network <http://greenbusinessnetwork.org/news/announcements/item/394-tell-president-obama-stop-the-tar-sands-oil-pipeline.html>

101 United Nations Environment Program, Green Jobs: Towards Decent Work in a Sustainable Low Carbon World, September 2008. http://www.unep.org/labour_environment/features/greenjobs-report.asp. See also: Blue Green Alliance, Rebuilding Green: The American Recovery and Reinvestment Act and the Green Economy, 2011

102 Robert Pollin, Green Recovery: A Program to Create Good Jobs and Start Building a Low-Carbon Economy, University of Massachusetts Amherst PERI, September 2008. http://www.peri.umass.edu/green_recovery/

103 Muro, Mark et al. Sizing the Clean Economy: A National and Regional Green Jobs Assessment, 2011. http://www.brookings.edu/reports/2011/0713_clean_economy.aspx

104 Muro op.cit

JOBS LOST IN CANADA

We have identified four ways by which KXL can threaten existing jobs or prevent the creation of new ones. However, there has been little discussion at all with regard to the impact KXL might have on Canadian jobs. The extraction of Tar Sands oil has generated 75,000 jobs in Alberta.¹ While these jobs are not all good jobs by any means, and they have brought with them a number of social problems and costs, the Tar Sands remains a large employer. Increased production from the Tar Sands will generate more jobs, but even here the picture is complicated by the fact that KXL will allow the upgrading and refining of Tar Sands oil to be "offshored" to the US and, in principle, even beyond the border of US

As recently as 2008, a dozen new or expansion "upgrader" projects were planned for the Fort McMurray and Industrial Heartland areas (just outside of Edmonton) of Alberta. The Industrial Heartland Association calculated that the 8 upgraders would create approximately 22,000 construction and 12,000 permanent jobs in the region.² These upgraders would not only provide much needed jobs in the region, but also lay the foundation for Alberta to manufacture refined petroleum products such as gasoline, diesel and petrochemicals, and thus retain much of the value added from Tar Sands production. While a few of these upgrader projects have gone forward, the vast majority of them were postponed or cancelled due to the global recession. The current and proposed pipelines to the US further reduce the likelihood that these upgraders will be built, as companies will now look to exporting Tar Sands oil to US upgraders and refineries. According to the Alberta Federation of Labour, "The size and number of these US refineries and American-bound pipelines is significant because it means that US oil refiners will have the capacity to absorb all expected increases in Alberta's oil sands production over the next 10 years."³ Keystone XL will further eliminate the need for upgrading facilities in Alberta, thus ending the possibility of diversifying Alberta's energy economy and the thousands of potential construction and permanent jobs in those facilities.

1 Canadian Association of Petroleum Producers, Oil Sands Fact Book, June 2011. <http://issuu.com/capp/docs/oilsands-factbook?mode=embed&layout=http%3A%2F%2Fskin.issuu.com%2F%2Fflight%2Flayout.xml&showFlipBtn=true&autoFlip=true&autoFlipTime=6000>

2 Alberta's Industrial Heartland Association, Presentation: Alberta's Industrial Heartland Oilsands 101 Update, June 23, 2007, p. 15-18; 31.

3 Alberta Federation of Labour, Lost Down the Pipeline, March 2009.

CONCLUSION: EMPLOYMENT POTENTIAL FROM KXL IS LITTLE TO NONE; DECISION SHOULD BE BASED ON OTHER FACTORS

Of this writing, TransCanada, the American Petroleum Institute, and other proponents of KXL are touting the job-creation potential of the pipeline. Jobs have thus become an important part of the case for Presidential approval of KXL. The data presented in this briefing paper should put this issue to rest. The industry's capacity to frame the KXL decision as a jobs issue has been amply demonstrated in recent months, but decision-makers should be absolutely clear that the industry's job numbers are not based on reliable research; not informed by past experience; and completely fail to consider the large number of jobs that could be endangered by the construction of KXL.

To highlight some of the main points made in this paper:

- » The construction of KXL will create far fewer jobs in the US than its proponents have claimed and may actually destroy more jobs than it generates.
- » The industry's US job claims, and even the State Department's analysis, are linked to a \$7 billion KXL project budget. However, the budget for KXL that will have a bearing on US jobs figures is dramatically lower—only around \$3 to \$4 billion.
- » The claim that KXL will create 20,000 direct construction and manufacturing jobs in the US is unsubstantiated. There is strong evidence to suggest that a large portion of the primary material input for KXL—steel pipe—will not even be produced in the US
- » The industry's job projections fail to consider the large number of jobs that could be lost by construction of KXL. This includes jobs lost due to consumers in the Midwest paying 10 to 20 cents more per gallon of gasoline and diesel fuel. These additional costs (\$2 to \$4 billion) will suppress other spending and cost jobs. Furthermore, pipeline spills, pollution and increased greenhouse gas emissions incur significant human health and economic costs, thus eliminating jobs.

Put simply, KXL's job creation potential is relatively small, and could be completely outweighed by the project's potential to destroy jobs through rising fuel costs, spill damage and clean up operations, air pollution and increased GHG emissions.

As noted above, it is unfortunate that the numbers generated by TransCanada, the industry, and the Perryman study have been subject to so little scrutiny, because they clearly inflate the projections for the numbers of direct, indirect, and long-term induced jobs that KXL might expect to create. What is being offered by the proponents is advocacy to build support for KXL, rather than serious research aimed to inform public debate and responsible decision making. By repeating inflated job numbers, the supporters of KXL

approval are doing an injustice to the American public in that expectations are raised for jobs that simply cannot be met. These numbers—hundreds of thousands of jobs—then get packaged as if KXL were a major jobs program capable of registering some kind of significant impact on unemployment levels and the overall economy. This is plainly untrue.



Cornell University
ILR School
Global Labor Institute

About the GLI

The GLI is part of Cornell University's School for Industrial and Labor Relations (ILR), the leading U.S. university program specializing in labor relations. Through research, education and training and policy development, the GLI works with trade unions in the U.S. and internationally to develop solutions to major social, economic and environmental challenges. The goal of the Institute is to help union officers, staff and activists gain a deeper understanding of the policies and institutions that shape today's world, assist in bringing unionists based in different countries into contact with each other for meaningful discussion on strategy and policy, and facilitate dialogue between unions, civil society organizations and movements committed to global justice.



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Attachment No. 4



THE IMPACT OF TAR SANDS PIPELINE SPILLS ON EMPLOYMENT AND THE ECONOMY

A REPORT BY CORNELL UNIVERSITY GLOBAL LABOR INSTITUTE

LARA SKINNER, PH.D AND SEAN SWEENEY, PH.D
CORNELL UNIVERSITY GLOBAL LABOR INSTITUTE



Cornell University
ILR School
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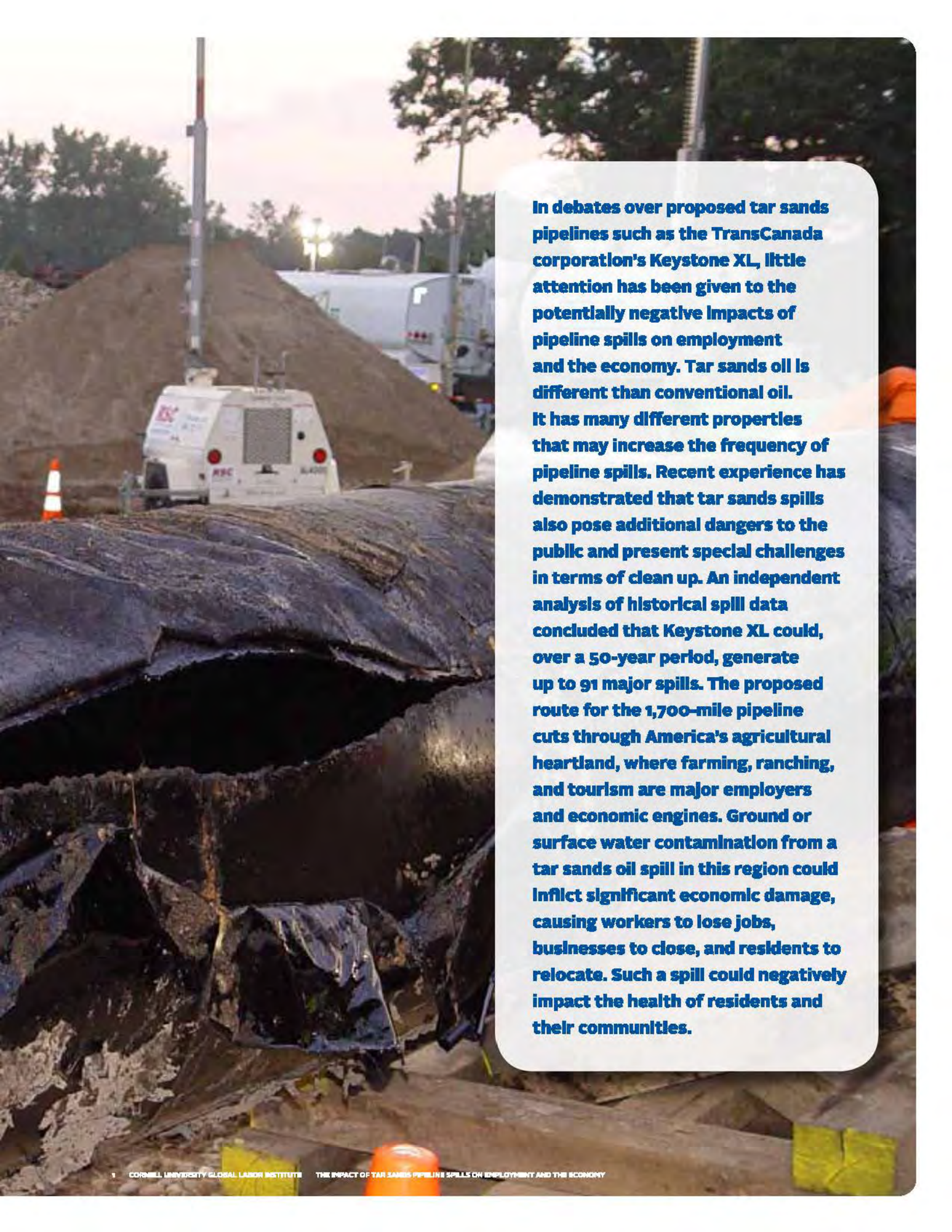
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Cornell University
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In debates over proposed tar sands pipelines such as the TransCanada corporation's Keystone XL, little attention has been given to the potentially negative impacts of pipeline spills on employment and the economy. Tar sands oil is different than conventional oil. It has many different properties that may increase the frequency of pipeline spills. Recent experience has demonstrated that tar sands spills also pose additional dangers to the public and present special challenges in terms of clean up. An independent analysis of historical spill data concluded that Keystone XL could, over a 50-year period, generate up to 91 major spills. The proposed route for the 1,700-mile pipeline cuts through America's agricultural heartland, where farming, ranching, and tourism are major employers and economic engines. Ground or surface water contamination from a tar sands oil spill in this region could inflict significant economic damage, causing workers to lose jobs, businesses to close, and residents to relocate. Such a spill could negatively impact the health of residents and their communities.

ABOUT THIS REPORT

This report examines the potentially negative impacts of tar sands oil spills on employment and the economy. It draws attention to economic sectors at risk from a tar sands pipeline spill, particularly in the six states along Keystone XL's proposed route—Montana, South Dakota, Nebraska, Kansas, Oklahoma, and Texas. This report also shows how Michigan's Kalamazoo River spill in 2010—to date the largest tar sands oil spill in the U.S.—caused significant economic damage and negatively impacted the quality of life of local communities.

The information was collected from employment and economic data in the pipeline states, as well as from interviews with businesspeople, landowners, farmers, and ranchers who live and work along the proposed route for the Keystone XL or near the Kalamazoo River oil spill.

MAIN FINDINGS

- » The negative impacts on employment and the economy of tar sands pipelines have largely been ignored. To date, a comprehensive spills risk assessment for the proposed Keystone XL pipeline has not been conducted. Such an assessment would provide an independent review of both the risk of spills and their economic consequences.
- » The Keystone XL pipeline would cut through America's breadbasket. Agricultural land and rangeland comprise 79 percent of the land that would be affected by the proposed Keystone XL pipeline. It would cross more than 1,700 bodies of water, including the Missouri and Yellowstone rivers and the Ogallala and Carrizo-Wilcox aquifers. The Ogallala Aquifer alone supplies 30 percent of the groundwater used for irrigation in the U.S. It also supplies two million people with drinking water.
- » Farming, ranching, and tourism are major sources of employment along the Keystone XL pipeline's proposed route. Water contamination resulting from a Keystone XL spill, or the cumulative effect of spills over the lifetime of the pipeline, would have significant economic costs and could result in job loss in these sectors. Approximately 571,000 workers are directly employed in the agricultural sector in the six states along the Keystone XL corridor. Total agricultural output for these states is about \$76 billion annually.
- » Many of the land areas and bodies of water that Keystone XL will cross provide recreational opportunities vital to the tourism industry. Keystone XL would traverse 90.5 miles of recreation and special interest areas, including federal public lands, state parks and forests, and national historic trails. About 780,000 workers are employed in the tourism sector in the states along the Keystone XL pipeline. Tourism spending in these states totaled more than \$67 billion in 2009.

BETWEEN 2007 AND 2010, PIPELINES TRANSPORTING TAR SANDS OIL IN THE NORTHERN MIDWEST HAVE SPILLED THREE TIMES MORE OIL PER MILE THAN THE U.S. NATIONAL AVERAGE FOR CONVENTIONAL CRUDE.

SINCE THE FIRST KEYSTONE PIPELINE BEGAN OPERATION IN JUNE 2010, AT LEAST 35 SPILLS HAVE OCCURRED IN THE UNITED STATES AND CANADA. IN ITS FIRST YEAR, THE SPILL FREQUENCY FOR KEYSTONE'S U.S. SEGMENT WAS 100 TIMES HIGHER THAN TRANSCANADA FORECAST.

- » There is strong evidence that tar sands pipeline spills occur more frequently than spills from pipelines carrying conventional crude oil because of the diluted bitumen's toxic, corrosive, and heavy composition. Tar sands oil spills have the potential to be more damaging than conventional crude oil spills because they are more difficult and more costly to clean up, and because they have the potential to pose more serious health risks. Therefore both the frequency and particular nature of the spills have negative economic implications.
- » The largest tar sands oil spill in the U.S. occurred on the Kalamazoo River in Michigan in 2010. This spill affected the health of hundreds of residents, displaced residents, hurt businesses, and caused a loss of jobs. The Kalamazoo spill is the most expensive tar sands pipeline oil spill in U.S. history, with overall costs estimated at \$725 million.
- » According to the U.S. State Department, the six states along the pipeline route are expected to gain a total of 20 permanent pipeline operation jobs. Meanwhile, the agricultural and tourism sectors are already a major employer in these states. Potential job losses to these sectors resulting from one or more spills from Keystone XL could be considerable.
- » Renewable energy provides a safer route to creating new jobs and a sustainable environment. The U.S. is leading the world in renewable energy investments, and employment in this sector has expanded in recent years.

INTRODUCTION

Tar sands oil is transported through pipelines as diluted bitumen, a mixture of bitumen (raw tar sands) and light natural gas liquids or other volatile petroleum products. Spills from pipelines transporting diluted bitumen, conventional oil, and other hazardous liquids happen frequently—but their impact on workers, businesses, and communities is not widely recognized. Between 2002 and 2011, there were more than 3,700 pipeline spills in the U.S.¹ In 2010 alone, U.S. pipeline spills and explosions released more than 173,000 barrels of hazardous liquids into the environment and caused \$1.1 billion in damage.²

Over the past decade, the amount of diluted bitumen passing through U.S. pipelines has rapidly increased. In 1999, the U.S. on average imported 165,000 barrels of tar sands oil per day from Canada.³ By 2010, that number had risen to about 600,000 barrels per day.⁴ In 2019, the Alberta Energy Resources Conservation Board expects as many as 1.5 million barrels of diluted bitumen oil will be imported by the U.S. every day.⁵

There is evidence that pipelines transporting diluted bitumen tar sands oil have a higher frequency of spills than pipelines carrying conventional crude. Between 2007 and 2010, pipelines transporting diluted bitumen tar sands oil in the northern Midwest spilled three times more oil per mile than the national average for conventional crude oil.⁶ The relatively high spill record of pipelines transporting diluted bitumen has raised concerns about the spill potential of Keystone XL and other proposed tar sands pipelines.⁷ Diluted bitumen is heavier, more corrosive, and contains more toxic chemicals and compounds than conventional crude oil. There is also evidence that tar sands pipeline spills inflict more damage than spills from conventional crude pipelines. Tar sands oil spills are more difficult to clean up, and the diluted bitumen's toxic and corrosive qualities may increase the overall negative impacts to the economy and public health.

TRANSCANADA'S KEYSTONE XL PIPELINE

TransCanada is the Canadian oil pipeline company that in 2008 applied for a permit from the U.S. government to construct the Keystone XL tar sands pipeline. This proposal has attracted a high level of public attention and sparked a sharp debate about the economic and environmental implications of transporting additional tar sands into the U.S. If constructed, Keystone XL will transport more than 830,000 barrels of tar sands oil per day from Alberta, Canada, to heavy crude oil refineries in Texas. The 1,700-mile pipeline will pass through six U.S. states—Montana, South Dakota, Nebraska, Kansas, Oklahoma, and Texas. The pipeline will also cross 1,748 bodies of water, including the Missouri and Yellowstone rivers, and the Ogallala and Carrizo-Wilcox aquifers.⁸ While TransCanada's application to build Keystone XL has been denied, the company announced on February 27, 2012, that it expects to reapply for a presidential permit.⁹

TransCanada has claimed that Keystone XL will be the "safest pipeline in the U.S."¹⁰ However, since the initial Keystone 1 pipeline began operation in June 2010, at least 35 spills have occurred in the U.S. and Canada.¹¹ In its first year, the U.S. section of Keystone 1 had a spill frequency 100 times greater than TransCanada forecast.¹² In June 2011, federal pipeline safety regulators determined Keystone 1 was a hazard to public safety and issued TransCanada a Corrective Action Order.¹³



THE POTENTIAL IMPACT OF TAR SANDS SPILLS ON JOBS AND THE ECONOMY

In the debates on tar sands pipelines taking place in the U.S. and Canada, little attention has been given either to the risk of pipeline spills or to their economic impact. In the case of Keystone XL, discussion has mostly focused on the pipeline's potential to create jobs. Scant attention has been given to how *existing* jobs and economic sectors would be impacted from Keystone XL leaks and spills. A comprehensive and independent spill risk assessment for the Keystone XL pipeline has yet to be conducted. Such an assessment is needed in order to thoroughly consider both the risk of spills and their economic consequences, including negative impacts on employment.¹⁴

Major sources of employment along the proposed pipeline route—particularly farming, ranching, and tourism—depend on a clean supply of water. Contamination resulting from a Keystone XL spill, or the cumulative effects of spills over the lifetime of the pipeline, would generate significant economic costs and could result in job loss in these sectors. About 571,000 workers are directly employed in the agricultural sector in the six states along the Keystone XL corridor. The total agricultural output for these states is \$76.3 billion.¹⁵ Moreover, tourism spending totaled more than \$67 billion in 2009 and tourism employed about 780,000 people.¹⁶

TRANSCANADA INFLATES KEYSTONE XL JOB NUMBERS

TransCanada has stated that pipeline construction would create 20,000 direct construction and manufacturing jobs in the U.S.¹⁷ The Cornell Global Labor Institute (GLI) examined data TransCanada submitted to the State Department. GLI estimated between 2,500 to 4,650 temporary, direct jobs would be created per year by pipeline construction over a two-year span.¹⁸ The State Department's evaluation of Keystone XL's job-creation potential produced similar results.¹⁹

TransCanada's claim that 7,000 U.S. manufacturing jobs would be created by the construction of the pipeline is unsubstantiated. The project's main material input is steel pipe, and as of

September 2011 TransCanada had manufactured approximately 50 percent of the pipe in India and Canada.²⁰ TransCanada also states that Keystone XL would generate 119,000 "person years" of employment, which includes direct, indirect, and induced jobs.²¹ GLI estimates that construction of Keystone XL would create between 33,000 and 44,000 person years of employment. This is between 30 and 40 percent of the job numbers estimated by TransCanada.²² The State Department's Report to Congress in January 2012 following the presidential denial of the permit also concluded that TransCanada's numbers were inflated.²³

THE POTENTIAL IMPACT OF SPILLS ON AGRICULTURE AND TOURISM

A preliminary analysis of the major employers and the economic profiles of the six states along the proposed pipeline route suggests that significant leaks or spills from Keystone XL could negatively impact employment and the economy—particularly in the agriculture and tourism sectors. The 2010 Enbridge pipeline tar sands spill into the Kalamazoo River incurred significant economic costs and degraded the quality of life in surrounding communities. There appears to be a considerable risk of similar spills with Keystone XL and other tar sands pipelines.

KEYSTONE XL CROSSES 1,748 BODIES OF WATER, FOUR MAJOR RIVERS AND OGALLALA AQUIFER IN NEBRASKA AND CARRIZO-WILCOX AQUIFER IN TEXAS

A leak or a spill into a body of water close to the proposed Keystone XL could contaminate drinking water for residents and livestock, and it could also contaminate irrigation water for farmers' crops. TransCanada's proposed route for Keystone XL had the pipeline crossing a section of the Ogallala Aquifer, which alone supplies 30 percent of U.S. groundwater used for irrigation. The aquifer also supplies two million people with drinking water.²⁴

A study conducted by Dr. John Stansbury at the University of Nebraska estimated that 91 significant Keystone XL spills can be expected over 50 years.²⁵ The study also considered the potential damage caused by a worst-case scenario spill into the aquifer:

“...[T]he benzene released by a Keystone XL worst-case spill to groundwater in the Sandhills region of Nebraska would be sufficient to contaminate 4.9 billion gallons of water at concentrations exceeding the safe drinking water levels. [The spill] would pose serious health risks to people using that groundwater for drinking water and irrigation.”²⁶

A major spill from Keystone XL could extend hundreds of miles into major rivers, impacting drinking water intakes, aquatic wildlife, and recreation areas for hundreds of thousands of people, with the potential to affect cities like Omaha, Nebraska, and Kansas City, Missouri.²⁷

AGRICULTURE IS A MAJOR EMPLOYER IN THE PIPELINE STATES

Contamination from a Keystone XL spill could have a negative effect on individuals and businesses that depend on farming and ranching. Agricultural land (4,656 acres) and rangeland (11,122 acres) comprise 79 percent of the land area affected by the proposed Keystone XL pipeline.²⁸ The farms and ranches along this corridor depend on clean water. Concerns about water contamination from a pipeline spill prompted the National Farmers Union and its affiliates in Nebraska, Montana, South Dakota, and Kansas to oppose the Keystone XL pipeline.²⁹ In 2011, ExxonMobil's oil pipeline ruptured and spilled into the Yellowstone River in Montana, contaminating 3,200 acres, much of which was farmland and ranchland.³⁰ Property owners in the spill area have filed a class-action suit for damage to their land and businesses.³¹

In Nebraska, 93 percent of the total land area affected by the pipeline is utilized for farming. The Keystone XL pipeline would carve a 255-mile strip through dozens of Nebraska farms.³² The Keystone XL pipeline would also cross numerous waterways, including two rivers, the Niobrara and the Elkhorn, that are sources

Despite TransCanada's assurances, we know there will be leaks and spills. All pipelines have some sort of leak during their operating lifetimes. It is not a matter of if, it is a matter of when, how often, and how much leakage there will be...When a leak happens, it will be [the farmers'] drinking water, their livestock water supply, and their irrigation supply that will be contaminated. Their economic well-being is directly impacted by spills and leaks...³³ [In addition], 'temporary' loss of agricultural productivity of the land is acknowledged. At issue are topsoil degradation, soil compaction, and introduction of rock.³⁴

**—JOHN K. HANSEN,
PRESIDENT, NEBRASKA FARMERS UNION**

"We are landowners along the proposed Keystone XL pipeline route and downstream from the Missouri and Yellowstone river crossings who are concerned about the impact that another spill would have on our families' health, water quality, and ability to make a living on the land in Montana."³⁵

**—REPRESENTATIVES OF THE NORTHERN PLAINS
PIPELINES LANDOWNERS GROUP**





Tourism is the second-largest industry in South Dakota. In 2006, travelers spent nearly \$865 million across the state... The state also has a strong agricultural base. It is the largest industry in the state. South Dakota routinely ranks among the top 10 states for the production of hay, sunflowers, rye, honey, soybeans, corn, wheat, and cattle.³⁷

—SOUTH DAKOTA DEPARTMENT OF TOURISM

“My family farms and ranches organically on 1000 acres of land, most all of which is just downhill and downstream of the proposed pipeline. We have a lot of surface water that runs through our property, down to the Cedar River. So if a leak or spill were to happen at the point where the pipe crosses our farm, it would affect us very badly. I have 5 grandchildren on my farm that I would like to be able to work here, farming and agri-tourism, but if something happens with this pipeline, they won't have that opportunity.”³⁶

**—JIM KNOPIK,
ORGANIC FARMER, NEBRASKA**

of drinking water for people and for livestock, and used for crop irrigation.³⁸ Both of these rivers eventually join the Missouri River, also a major resource for communities, farmers, ranchers, and the tourism industry. According to the U.S. State Department, the states along the pipeline corridor are expected to gain a total of 20 permanent pipeline operation jobs from Keystone XL.³⁹ Meanwhile, the agricultural sector is already a major employer and an economic engine in these states. The extent of the potential damage to this sector resulting from one or more spills from Keystone XL would of course depend on the size and location of any given spill. But if a major source of water was to become contaminated, or became inaccessible due to clean-up operations, the damage could be considerable.

THE CONSTRUCTION PHASE OF THE KEYSTONE XL PIPELINE WOULD DISRUPT FARMERS AND RANCHERS

Pipeline construction would bring its own disruptions to farmers and ranchers along the proposed route.⁴⁰ Bulldozers and backhoes would be deployed to scrape and flatten the land, and then dig a trench to lay the pipe. This process would take weeks. It would disrupt farms that produce soybeans, wheat, and other crops.⁴¹ Once the pipe is laid, farmers would have to begin restoring the land in order to replant and harvest crops in the affected area. The process of laying the pipe is particularly worrisome for organic farmers who risk losing their organic certification if chemicals, such as those from machinery fuel, contaminate their soil.⁴² Moreover, after their land is disturbed and compacted by heavy machinery, organic farmers cannot use chemicals to restore their cropland.⁴³ To maintain their organic certification, these farmers can only use natural methods to return a healthy mix of nutrients to their soil.⁴⁴

KEYSTONE XL WILL CROSS LAND AND BODIES OF WATER THAT SUSTAIN THE RECREATIONAL TOURISM INDUSTRY

Many of the bodies of water that Keystone XL is expected to cross provide recreational activities that are important to the tourism industry. Land and waterways can be inaccessible for months or years following a spill. For example, 35 miles of the Kalamazoo River remain closed more than 18 months after the 2010 spill.⁴⁵ Fishing, canoeing, kayaking, and other recreational activities have ceased on the contaminated section of river.

Keystone XL will cross approximately 90.5 miles of recreational and special interest areas in Montana, South Dakota, Nebraska, Oklahoma, and Texas.⁴⁶ These areas include state and federal public lands, recreational waters, state parks and forests, national historic trails, wildlife refuges, and wildlife management areas.⁴⁷ Keystone XL will also cross six historic trails (including Lewis and Clark, Pony Express, Oregon, and El Camino Real de los Tejas) and two scenic byways that draw tourists from around the world (Big Sky Back Country Byway and Historic Route 66).⁴⁸

In the six states along the pipeline route, travel expenditures by visitors totaled \$67 billion in 2010, and approximately 780,000 workers are employed in the tourism sector.⁴⁹

AGRICULTURE IN THE PIPELINE STATES

TEXAS IS RANKED

NO. 2

IN THE U.S. FOR
AGRICULTURAL
SALES⁵⁰

570,921 WORKERS

ARE DIRECTLY EMPLOYED IN THE
AGRICULTURAL SECTOR IN THE
SIX PIPELINE STATES⁵¹

MORE THAN

75,000

KANSANS ARE
DIRECTLY
EMPLOYED
IN THE
AGRICULTURAL
SECTOR⁵²

THERE ARE
507,900
FARMS
IN THE
PIPELINE STATES⁵³

ONE IN EVERY THREE

NEBRASKA JOBS
IS RELATED TO
AGRICULTURE⁵⁴

NEBRASKA'S LARGEST
INDUSTRY IS
AGRICULTURE⁵⁵

TOTAL AGRICULTURAL
OUTPUT OF THE
PIPELINE STATES IS

\$76.3 BILLION⁵⁶

IN NEBRASKA,
EVERY \$1
IN AGRICULTURAL
EXPORTS
GENERATES
\$1.36
IN ADDITIONAL
ECONOMIC
ACTIVITIES⁵⁷

IN KANSAS
IN 2010, TOTAL
AGRICULTURAL
OUTPUT WAS
MORE THAN
\$15 MILLION⁵⁸

WHEN A SPILL HAPPENS: SOCIAL AND ECONOMIC DISRUPTION ALONG THE KALAMAZOO RIVER

The largest-ever U.S. tar sands oil spill occurred on July 25, 2010. The Enbridge corporation's Lakehead Pipeline System 6B ruptured about one mile from the town of Marshall, Michigan.⁵⁹ Despite multiple alarms and warning signals, operators did not shut down the 30 inch diameter pipeline until almost 12 hours after the spill began.⁶⁰ It took an additional six hours to identify the spill's location.⁶¹ During this time more than one million gallons leaked from a 6.5 foot gash, the cause of which remains unknown.⁶² The spill originated in an open field, but the oil flowed into Talmadge Creek and eventually traveled about 40 miles downstream along the Kalamazoo River to Morrow Lake.

The Kalamazoo spill has been especially difficult and expensive to clean up because it consisted of diluted bitumen. Conventional oil spill response techniques rely on containing oil on the surface of bodies of water. In the case of the Kalamazoo spill, as the diluted bitumen flowed down the Kalamazoo, the two main tar sands oil materials—bitumen and diluents—separated, leaving the heavier bitumen to sink.⁶³ As of February 2012, tar sands oil remains submerged in multiple locations. The cleanup, which was originally projected by Enbridge to cost between \$300 million and \$400 million, is now projected to cost \$725 million.⁶⁴ The river remains closed and the cleanup is expected to continue through 2012. Officials have acknowledged that some bitumen will remain on the riverbed indefinitely.⁶⁵

RESIDENTS SUFFER HEALTH PROBLEMS

Immediately following the spill, people living near Talmadge Creek and the Kalamazoo River started reporting “strong, noxious odors and associated health symptoms” to their local public health departments.⁶⁶ Air-quality monitoring found elevated levels of benzene at multiple locations along the river during the first week after the spill.⁶⁷ For several weeks residents were not informed that the oil spilled was actually diluted bitumen.⁶⁸

According to a 2010 report by the Michigan Department of Community Health, between July 26 and September 4, health care providers identified 145 patients who had reported illness or symptoms associated with exposure to the oil spill.⁶⁹ One patient exhibited eight related symptoms and was classified by medical personnel as having “major” effects (defined here as symptoms that can cause disability or are life-threatening).⁷⁰ In addition, the Michigan Department of Community Health and the Calhoun County Public Health Department conducted a door-to-door survey, which included 550 people from four communities and one workplace along the river. Fifty-eight percent of the people included in the survey reported adverse health effects.⁷¹ The most common symptoms reported in the surveys and in hospital visits included headaches, respiratory problems, and nausea.⁷² Local and state health departments, together with Enbridge and the Environmental Protection Agency, continue to monitor the air, water, and soil quality along impacted areas.⁷³ However, there are currently no plans to study or monitor the spill's long-term health impacts. Similarly, there are no plans to calculate the economic costs related to residents' health problems.



"With all our regrets, we are sad to inform you that Shady Bend Campground is Permanently Closed [d]ue to the Oil Spill, July 27, 2010. We would like to thank all of you who have camped, canoe[d] or tub[ed] with us the past 22 seasons...It was a very difficult decision for us to make but not knowing when we could open again our choice was to sell our home, liquidate Shady Bend and move on to the next chapter of our lives."⁷⁴

**—MARK, DIANE, MELISSA, AND BRANDI LEBLANC
SHADY BEND CAMPGROUND**

DISRUPTIONS TO RESIDENTS AND BUSINESSES

Following the spill, Enbridge developed a home buyout program for residents living directly along Talmadge Creek and the Kalamazoo River. The home purchasing program was offered to people whose properties were located in an area identified as the "red zone," or within 200 feet of the affected waterways. About 200 homes were identified for this program, which expired one year after the spill.⁷⁵ Enbridge purchased at least 130 homes, 114 homes in Calhoun County and 16 in Kalamazoo County.⁷⁶ However, the majority of homes in those two communities are located more than 200 feet from the river and generally these homes were not included in the home buyout program. Unless they also served as a residence, commercial and industrial properties along the river were also excluded.⁷⁷

Some residents have expressed concerns regarding how both the spill itself and the home buyout program will impact property values.⁷⁸ As of February 2012, only one property has been resold, so the long-term impact on the real estate market remains unclear.⁷⁹ The long-term quality of life impact on a small community with a relatively large number of displaced residents is also unknown.

The impact of the Kalamazoo spill on businesses was not severe because most of the affected properties were residences. Had the spill occurred closer to commercial properties, the damage to businesses would likely have been more serious. However, the spill caused some business closures and job losses. A local campsite was forced to close, as was a daycare center. The daycare center employed about 12 people; the campsite was family-owned.

Debra Miller is a Ceresco resident whose small business survived the spill but suffered negative impacts. Her family-run carpet store, which opened in 1989, is less than four miles from the source of the spill, and close to a dam on the Kalamazoo River that served as an oil collection site. Miller estimates that

RISKS OF TAR SANDS OIL PIPELINE SPILLS

Unlike the more viscous and free-flowing conventional crude oil, the tar sands oil that Keystone XL will carry is a rougher mixture of raw tar sands plus natural gas liquids or other volatile petroleum products. Diluted bitumen contains higher concentrations of hazardous materials and toxins than are found in conventional crude oil, and it is also more abrasive and corrosive.⁸⁰ Tar sands pipelines also transport oil under high pressure and at high temperatures. This means a small rupture can produce a large spill and cause significant damage. Once exposed to oxygen, the highly flammable volatile chemicals used to dilute bitumen increase the risk of explosion.⁸¹

Diluted bitumen tar sands pipeline leaks are more difficult to detect than conventional oil leaks. As diluted bitumen flows through a pipeline, pressure changes within the pipeline can result

in the formation of gas bubbles that can impede the oil's flow. Sometimes these gas bubbles send faulty signals to detection systems. Because of this phenomenon, real leaks may go unnoticed by operators if they assume the leaks are gas bubbles.⁸² Moreover, if a spill occurs in a remote area, it could take a long time for the necessary equipment to be transported to the site of the spill.⁸³

Diluted bitumen's viscosity presents unique challenges. In the case of conventional oil spills, the crude oil floats on water and can be skimmed from the surface of rivers and streams. Diluted bitumen is similarly lighter than water, but when exposed to the air the diluents quickly evaporate, leaving heavy bitumen that then sinks beneath the surface. This was the case with the Kalamazoo River spill.⁸⁴



“Enbridge compensated us for the initial shutdown of our business, but we are concerned about the long-term impact that the spill has had on our business... One-and-a-half years later our business is still suffering financially and dealing with the problems created by the spill is taking a serious toll on my available time. The area is still a construction zone, which deters customers. I also suspect that some customers feel that the smell and toxins from the spill somehow affected the carpets, even though it hasn't. All I know is this is the worst year we've ever had.”³³⁸⁵

—DEBRA MILLER, CARPET STORE OWNER

because of the spill her business profits are 35 percent lower than their pre-spill levels. In the months immediately following the spill, workers required regular access of Miller's property in order to conduct cleanup operations. Miller said that more than 100 cleanup workers came onto her property with trucks and equipment, blocking the roads and preventing public access to both her office and her warehouse. The business was also closed for 13 weeks to facilitate cleanup efforts.⁸⁶

The experience of Kalamazoo residents and businesses provides an insight into some of the ways a community can be affected by a tar sands pipeline spill. Pipeline spills are not just an environmental concern. Pipeline spills can also result in significant economic and employment costs, although the systematic tracking of the social, health, and economic impacts of pipeline spills is not required by law. Leaks and spills from Keystone XL and other tar sands and conventional crude pipelines could put existing jobs at risk. In order to determine the full economic, employment, and social impacts of the proposed Keystone XL pipeline and similar pipelines, both the risks and their potential economic and social impacts should be given careful consideration.

“Many people in my community did not want to sell their homes, but felt they had no choice since the spill was negatively impacting the health of their families and they were worried about the decrease in property value...There are many streets that now have five or six empty homes on the side of the road near the river, while the people on the other side are still living there, as they were not offered the buyout program.”³³⁸⁷

—SUSAN CONNOLLY, RESIDENT OF MARSHALL, MICHIGAN

ALTERNATE ROUTE—RENEWABLE ENERGY AND THE CLEAN ECONOMY

AMERICA LEADS THE RENEWABLES REVOLUTION

In 2011, the U.S. eclipsed China to become the world's leading investor in renewable energy. The U.S. now leads the world in wind power generation. In the last four years, more than a third of the nation's new power capacity has come from wind. Solar power has also grown—by nearly 50 percent annually since 2005. This includes a 70 percent growth rate in the first half of 2011, despite the sluggish economy.⁸⁰ Nine in ten Americans say developing clean and renewable energy sources should be a priority for the President and Congress.⁸¹

Investing in renewable and clean energy creates jobs. For every

\$1 million invested, 16.7 jobs are created. By contrast, \$1 million invested in fossil fuels generates 5.3 jobs.⁸² A \$150 billion investment in the fossil fuel industry would create about 788,000 jobs. That same investment in clean energy would create more than 2.5 million jobs.⁸³

The jobs advantage renewable energy has over fossil fuels is demonstrated by a comparison between the coal and wind industries. Coal currently provides 49 percent of the nation's electricity, and it employs about 80,000 people in mining.⁸⁴ Wind currently

**CLEAN ENERGY
JOBS PAY
ABOUT
13 PERCENT
MORE
THAN JOBS IN
THE BROADER
ECONOMY⁸⁵**

generates 1 percent of the nation's electricity, and it already employs about 85,000 people. Today more than 400 facilities in the U.S. manufacture wind turbine components.⁸⁶



A CLEAN ENERGY ECONOMY TRANSLATES TO MORE JOBS

The renewable energy industry is growing at twice the rate of the overall economy. Today the clean energy economy employs 2.7 million workers overall.⁹⁵ Between 2003 and 2010—a time when many industries were cutting jobs—clean energy economy employers added 500,000 jobs.⁹⁶ In contrast, the top five oil companies generated \$546 billion in profits between 2005 and 2010, but reduced their combined U.S. workforce by 11,200.⁹⁷

Renewable energy's job creation potential has barely been tapped. Realizing this potential will require proper policy decisions.

IN THE U.S.,
WIND
CURRENTLY
EMPLOYS
85,000
WORKERS, AND
SOLAR
EMPLOYS
100,000⁹⁸

For example, extending the Treasury Grant Program under the American Reinvestment and Recovery Act would create an

additional 55,000 jobs in wind and 45,000 in solar.⁹⁹

Other countries have demonstrated the economic effects on the energy sector when clean energy is encouraged. Germany is one example. In 2010, more than 370,000 people were employed in renewable energy in Germany. That almost equals the number of jobs in the country's largest manufacturing industry (automobiles).¹⁰⁰

A major commitment to clean and renewable energy in the U.S. would lead to a cleaner environment and job growth.

NORTHERN GATEWAY

Keystone XL is one of several tar sands pipelines that has the potential to put at risk both public health and jobs in agriculture and tourism. In Canada, pipeline company Enbridge has proposed the 730-mile Northern Gateway tar sands pipeline, which would transport an average of 525,000 barrels of tar sands oil per day from Alberta to the Pacific Coast.¹⁰¹ The pipeline would cross more than 750 rivers and streams and pass through the headwaters of three of the continent's most important watersheds—the Mackenzie, the Fraser, and the Skeena.¹⁰² The pipeline would follow the Morice River to the Coast Mountains, cross the headwaters of the Zymoetz River, and then follow

the Kitimat River down to the coastal town of Kitimat. At Kitimat, a tank farm at the edge of the water would facilitate the transfer of oil to holding tanks and then into large oil supertankers. These supertankers would then traverse 100 miles of inner-coastal waters. Although not discussed in detail in this report, the Northern Gateway pipeline crosses numerous rivers and water bodies that are the source for the multi-billion dollar Pacific Northwest fishing industry. A tar sands oil pipeline spill could contaminate these waters, negatively impacting one of the region's largest industries, and the many jobs and livelihoods linked to this industry.

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ABOUT THE GLI

The GLI is part of Cornell University's School for Industrial and Labor Relations (ILR), the leading U.S. university program specializing in labor relations. Through research, education and training and policy development, the GLI works with trade unions in the U.S. and internationally to develop solutions to major social, economic and environmental challenges. The goal of the Institute is to help union officers, staff and activists gain a deeper understanding of the policies and institutions that shape today's world, assist in bringing unionists based in different countries into contact with each other for meaningful discussion on strategy and policy, and facilitate dialogue between unions, civil society organizations and movements committed to global justice.



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Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Expert Joseph P. Suntum
in Support of Landowner Intervenors**

State of Maryland)
) ss.
Montgomery County)

Q: Please state your name.

A: My name is Joseph P. Suntum.

Q: Mr. Suntum is Attachment No. 1 to this sworn statement a true and accurate copy of your most recent CV or Resume?

A: Yes it is.

Q: Does your CV describe your educational background and relevant professional experiences?

A: Yes.

Q: Is Attachment No. 2 to this sworn statement a copy of your Expert Report in this matter?"

A: Yes it is.

Q: What were you asked to do?

A. I was asked to review TransCanada's proposed Easement and Right of Way Agreements that were provided to the Landowner Intervenors in this matter and to review them for any language, terms, or provisions that may be problematic for the Landowner, and/or the local and state government of Nebraska. My understanding is that the Public Service Commission is reviewing an Application for Permit of a preferred route for the proposed Keystone XL pipeline across Nebraska and that TransCanada must prove their proposed preferred route is in the public interest of Nebraska. Because an Easement and Right of Way Agreement is the controlling contract between a condemnor, here TransCanada, and the Landowner and

EXHIBIT

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1 because it governs the rights, responsibilities, and restrictions of both parties, I was asked to
2 evaluate the form Agreement proposed to be used by TransCanada in terms of its impacts on
3 property rights, economic interests, and the public interest.

4 **Q: How many years have you been a licensed lawyer?**

5 A: 35 years.

6 **Q: In those years have you had the opportunity to review many contracts and agreements.**

7 A: Yes.

8 **Q: Would you say you have reviewed hundreds of contracts and agreements?**

9 A: Yes, certainly.

10 **Q: What type of law, if any, do you specialize in?**

11 A: I focus my practice on Eminent domain and condemnation.

12 **Q: Can you briefly explain what condemnation and eminent domain is please?**

13 A: Eminent Domain is the power of the sovereign to take privately owned property for a public
14 use. Both the United States' constitution and the constitution of most, if not all, States require
15 the payment of just compensation to the property owner for the property rights being taken
16 and the damage caused, if any, to the remainder of the landowner's property. The limitation
17 on the government's use of eminent domain in our federal constitution is in the Fifth
18 Amendment in a clause commonly known as the "takings clause." The exact language of the
19 takings clause is "nor shall private property be taken for public use, without just
20 compensation."

21 **Q: Is that language from the takings clause of the federal constitution also found in state**
22 **constitutions?**

23 A: In my experience the language found in state constitutions is often identical or very close to
24 the federal language.

25 **Q: Did you familiarize yourself for the relevant language within the Nebraska state**
26 **constitution?**

27 A: Yes I did.

28 **Q: And what is that language?**

29 A: Article 1 Section 21 of the Nebraska Constitution states "The property of no person shall be
30 taken or damaged for public use without just compensation therefor."

31 **Q: Okay, and so what is condemnation then?**

32 A: Condemnation is the process of the exercise of the power of eminent domain. This is the
33 process where the property in question is condemned or taken. Typically there is an effort to

1 negotiate a voluntary purchase of the needed property rights from the landowner. If the
2 Landowner and the Condemnor cannot reach agreement, the condemnor may file a
3 condemnation action in which the compensation to be paid to the landowner will be
4 determined.

5 **Q: Will the court review the condemnor's right to take the property in question?**

6 A: The decision whether to condemn—and whether the subject property is necessary for a
7 public use—is a legislative decision, which the courts generally will not overrule, unless the
8 decision is arbitrary or capricious, or failed to meet applicable legislative prerequisites.
9 Consequently, once the legislature has authorized the exercise of eminent domain the
10 landowner's sole remedy is limited to receiving just compensation for the taking. The court
11 will not modify the terms of an approved easement agreement. Consequently, the scope and
12 terms of any easement to be condemned by TransCanada must be set by the PSC.

13 **Q: What is the Easement and Right-of-Way Agreement in the context of condemnation?**

14 A: An Easement and Right of Way Agreement is the document which states the rights and
15 obligations of both the Grantee (the condemning authority or entity) and the Grantor
16 (landowner). An easement should clearly spell out all the rights and obligations of both
17 parties with respect to the use of the subject property.

18 **Q: If you were to estimate the number of easements you have reviewed or negotiated in**
19 **your professional role as a lawyer working in condemnation over the length of your**
20 **career would that be hundreds?**

21 A: Yes, hundreds of easements and right of way agreements.

22 **Q: In Attachment No. 2 to your sworn testimony, your Expert Report, did you come to any**
23 **professional opinions about TransCanada's proposed Easement and Right-of-Way**
24 **Agreement language?**

25 A: Yes, I did.

26 **Q: Are those opinions held by you with a reasonable degree of professional certainty based**
27 **upon your education, background, training, and relevant work experiences?**

28 A: Yes they are, and I incorporate my Report and the opinions therein into my testimony as
29 though set forth fully herein.

30

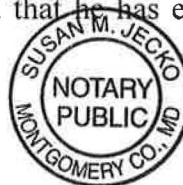

Joseph P. Suntum

Subscribed and Sworn to before me this 6th day of June, 2017.

STATE OF MARYLAND)
) to wit:
COUNTY OF Montgomery)

I HEREBY CERTIFY that on this 6th day of June, before me, the subscriber, a Notary Public, in and for the State and County aforesaid, personally appeared Joseph P. Suntum, and acknowledged that he has executed the foregoing for the purposes therein contained as his act and deed.

WITNESS my hand and Notarial Seal.



SUSAN M. JECKO
Notary Public, State of Maryland
County of Montgomery
My Commission Expires October 18, 2017

My Commission Expires: 10/18/2017

Susan M. Jecko
Notary Public

Attachment No. 1

JOSEPH P. SUNTUM

Current Practice 1988-Present

Miller, Miller & Canby, Chtd., 200-B Monroe Street, Rockville, Maryland

- Managing Shareholder (1997 – 2007)
- Principal, Litigation Department

AV Preeminent Rating with Martindale Hubbell – www.Martindale.com

Selected to Maryland Super Lawyers 2007 – www.SuperLawyers.com

Successfully tried both murder cases and multi-million dollar civil actions

Personal practice focuses on civil trial and appellate work concerning real estate, and focused primarily on eminent domain and condemnation.

Previous Professional Experience

Office of the Public Defender, Montgomery County, Maryland, 1983-1988

Circuit Court for Baltimore City, Maryland, 1982-1983

- Law Clerk to the Honorable Elsbeth Levy Bothe

Educational Background

University of Maryland School of Law - J.D., 1982

University of Maryland B.S., 1979

University of Montana 1975-1977

Associations

Maryland Attorney Member of the Owners Counsel of America

Bar Association Memberships/Activities/Positions

Character Committee of the Court of Appeals for the 6th Judicial Circuit (1992-1997)

Bar Association for Montgomery County, Maryland (Secretary 1996-1997; Executive Committee 1997-1999; Legal Services Task Force 1998; Long-Range Planning Committee 1995, 1997, 2007)

Montgomery County Bar Foundation (Board of Directors 2005-2009)

Maryland State Bar Association (Cost of Litigation Task Force 1999-2000)

Alan J. Goldstein Inn of Court (Master; Treasurer, 1997-1998; Secretary, 1998-2000)

Montgomery Inns of Court (Barrister, early 1990s)

Reported Cases:

Montgomery County v. Phillips, 445 Md. 55 (2015)

Boland v. Boland, 423 Md. 296 (2011);

Boland v. Boland, 194 Md. App. 477 (2010) *cert. granted* 417 Md. 500 (2011);

Lasater v. Guttman, 194 Md. App. 431 (2010);

Circuit City Stores, Inc. v. Rockville Pike Joint Venture Ltd. Partnership, 376 Md. 331 (2003);

8621 Ltd. Partnership v. LDG, Inc., 169 Md. App. 214 (2006);

Golub v. Cohen, 138 Md. App. 508 (2001);

Buxton v. Buxton, 363 Md. 634 (2001);

Schochet v. State, 320 Md. 714 (1990);

State v. Calhoun, 306 Md. 692 (1986);

State v. Tichnell, 306 Md. 428 (1986).

Attachment No. 2

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
For Route Approval of Keystone XL
Pipeline Project, Pursuant to *MOPSA***

Intervenors:

**Susan Dunavan and William Dunavan,
Bartels Farms, Inc.
Johnnie Bialas and Maxine Bialas,
Bonnie Brauer,
James Carlson and Christine Carlson,
Timothy Choat, Gary Choat Farms LLC,
and Shirley Choat Farms, LLC,
CRC, Inc.,
Daniel A. Graves and Joyce K. Graves,
Patricia A. Grosserode a/k/a Patricia A.
Knust,
Terri Harrington,
Donald C. Loseke and Wanda G. Loseke,
Arla Naber and Bryce Naber,
Mary Jane Nyberg,
Kenneth Prososki and Karen Prososki,
Edythe Sayer,
Dan Shotkoski and Clifford Shotkoski,
Leonard Skoglund and Joyce Skoglund,
John F. Small and Ginette M. Small,
Deborah Ann Stieren and Mary Lou Robak,
Jim Tarnick,
Terry J. Van Housen and Rebecca Lynn
Van Housen,
Donald D. Widga,
Byron Terry “Stix” Steskal and Diana
Steskal,
Allpress Brothers, LLC,
Germaine G. Berry,
Karen G. Berry,
Cheri G. Blocher and Michael J. Blocher,
L.A. Breiner and Sandra K. Breiner,**

**Application No: OP-003
(Filed by Applicant on 2/16/17)**

**Report of
Joseph P. Suntum
Expert Witness
In Support of
Landowner Intervenors**

**Jerry Carpenter and Charlayne Carpenter,
CHP 4 Farms, LLC,
Larry D. Cleary,
Jeanne Crumly and Ronald C. Crumly,
Ken Dittrich,
Lloyd Z. Hipke and Vencille M. Hipke.
R. Wynn Hipke and Jill Hipke,
Richard Kilmurry and Bonnie Kilmurry,
Rosemary Kilmurry,
Beverly Krutz and Robert Krutz,
LJM Farm, LLC,
Carol Manganaro,
Frankie Maughan and Sandra Maughan,
Beverly Miller and Earl Miller,
Edna Miller and Glen Miller,
Milliron Ranch, LLC,
Frank C. Morrison and Lynn H. Morrison,
Larry D. Mudloff, J.D. Mudloff, and Lori
Mudloff,
Constance Myers a/k/a Constance Ramold,
Nicholas Family Limited Partnership,
Ann A. Pongratz and Richard J. Pongratz,
Donald Rech,
Schultz Brothers Farms, Inc.,
Connie Smith and Verdon Smith,
Joshua R. Stelling,
Richard Stelling and Darlene Stelling,
Todd Stelling and Lisa Stelling,
Arthur R. Tanderup and Helen J.
Tanderup,
TMAG Ranch, LLC,
Tree Corners Farm, LLC,
Dave Troester and Sharyn Troester,
and
Gregory Walmer and Joanne Walmer,**

Intervenors,

Credentials & Representative Cases

1. My name is Joseph P. Suntum. I am a lawyer practicing law with the law firm Miller, Miller, and Canby, Chartered in Rockville, Maryland. I was admitted to the Maryland Bar in 1982. I have been with the firm of Miller, Miller & Canby since 1988. The firm is based in Rockville, Maryland, although my eminent domain practice is State-wide. I am a principal in the firm and the Eminent Domain

Practice Group Leader. My first year of practice was spent clerking for The Honorable Elsbeth Levy Bothe of the Circuit Court for Baltimore City, Maryland. I then served four years as an Assistant Public Defender for the State of Maryland in the Montgomery County, Maryland office. My area of practice since 1988 has been in litigation handling matters in a wide variety of subject areas, but primarily in real estate related disputes and eminent domain. For the last dozen years or so I have focused my practice primarily in the field of eminent domain, principally representing property owners and defending their property rights and entitlement to full just compensation when their property is taken. I am the Owners' Counsel of America member attorney for the State of Maryland. The Owners' Counsel of America is a national network of experienced condemnation attorneys who represent property owners against federal, state and local governments, as well as other entities granted eminent domain authority. Membership in the Owners' Counsel of America is selective and restricted to one member attorney per state.

2. Through my work in the field of eminent domain, as well as in general real estate litigation matters, I have reviewed many dozens of easements in real property. An easement is the controlling document which establishes the rights and responsibilities of the grantee and the landowner, including how the grantee may use the owner's property, and the limitations imposed upon the owner's use of the property once the easement is given, or, in the case of eminent domain, taken. A full and complete understanding of the terms of an easement is required to evaluate the impact of the easement on the owner's property rights and the value of the property.
3. A true and accurate copy of my current CV or Resume is attached as Exhibit 1 to this Report.

Overview

4. On February 16, 2017, TransCanada Keystone Pipeline, LP, ("TransCanada") submitted to the Nebraska Public Service Commission ("PSC") an Application for approval of its preferred crude oil pipeline route across Nebraska.¹ This submission was made pursuant to Nebraska's Major Oil Pipeline Siting Act ("MOPSA")². TransCanada is requesting that the PSC find that TransCanada's proposed crude oil pipeline route is in the public interest of Nebraska and

¹<http://www.psc.nebraska.gov/natgas/Keystone/20170216%20KXL%20PSC%20Application%20with%20Attachments.pdf>

² Nebraska Revised Statutes Sections 57-1401 to 57-1413

Nebraskans and that, therefore, TransCanada should be able to act under *Neb. Rev. Stat. § 57-1101* and exercise the statutorily-specified power of eminent domain against the owners of land along its preferred route.

5. According to the provisions of MOPSA, one of the purposes of the Act is to “Ensure the welfare of Nebraskans, including protection of property rights, aesthetic values, and economic interests.”³
6. When addressing the question of “protection of property rights” in a context where PSC approval of TransCanada’s Application would trigger TransCanada’s ability to exercise eminent domain powers over the land of private citizens of Nebraska, the PSC should carefully analyze the proposed Easement and Right of Way Agreement that would define the rights and responsibilities of TransCanada in regards to the Nebraska land it would place its pipeline on, under, across, and through.
7. This Report is designed to assist the PSC with their evaluation of whether or not TransCanada’s proposed Easement and Right of Way Agreement in fact “ensures the welfare of Nebraskans, including protection of property rights...” and therefore, whether or not approval of TransCanada’s preferred route is in the public interest. This report and opinion does not address the amount of just compensation that will be due to the landowner for any property rights taken.
8. My ultimate conclusion is that TransCanada’s proposed Easement and Right of Way Agreement does not protect the property rights of Nebraska citizens, here primarily the Landowner Intervenor whose property rights would be directly affected should TransCanada’s preferred route application be approved, and, consequently approval of the proposed route is not in the public interest of Nebraska or Nebraskans.
9. In the event that the PSC votes to approve TransCanada’s application, the specific terms of the easement to be taken should be determined by the PSC and TransCanada should be prohibited from using its granted authority of eminent domain to solicit greater or more disadvantageous terms from Nebraska landowners.
10. I reserve the right to amend or modify this Report should information or facts become known to me that were not known as of the date this report was prepared.

³ <http://nebraskalegislature.gov/laws/statutes.php?statute=57-1402> (1)(a)

Documents, Data, and/or Evidence Referenced or Reviewed

11. In preparation of this Report and my opinions expressed herein, I have reviewed the following:
- a. Portions of TransCanada's February 16, 2017 Application to the PSC⁴
 - b. The Major Oil Pipeline Siting Act⁵
 - c. *Neb. Rev. Stat.* § 57-1101⁶
 - d. The Oil Pipeline Reclamation Act⁷
 - e. *Neb. Rev. Stat.* §§ 76-701 thru 76-726 – Eminent Domain
 - f. Pertinent Nebraska case law and constitutional provisions
 - g. An exemplar of Nebraska County Court files for the Condemnation lawsuits filed against Nebraska landowners by TransCanada on or about January 20th, 2015.
 - h. An exemplar Easement and Right of Way Agreement proposed by TransCanada to be used for easements across Nebraska land (Attached as Exhibit 2)
 - i. TransCanada's Keystone XL Project Map Figure 2.2-2 and Figure 4.3.3-B I-90 Corridor Alternative A and B Key Aquifers and Potable Water Wells within 2-mile Corridor (Attached as Exhibit 3)

My Assignment

12. I was contacted by Brian Jorde, lawyer for Landowner Intervenors. I was asked to review an exemplar Easement and Right of Way Agreement as drafted by TransCanada and attached to their Condemnation Petition in its 2015 lawsuits against each of the Nebraska Landowner Intervenors to determine what the impact on the landowners' property rights the proposed easement would have based on applicable real estate law and the proposed easement's language, terms, and provisions. My analysis and opinions herein focus on the question of protection of landowner property rights and their entitlement to just compensation should the proposed easements be condemned.

⁴<http://www.psc.nebraska.gov/natgas/Keystone/20170216%20KXL%20PSC%20Application%20with%20Attachments.pdf>

⁵ Nebraska Revised Statutes Sections 57-1401 to 57-1413

⁶ <http://nebraskalegislature.gov/laws/statutes.php?statute=57-1101>

⁷ Nebraska Revised Statutes Sections 76-3301 to 76-3308

Foundational Concepts

13. **Eminent Domain** as set forth in *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015):

- a. A citizen's property may not be taken against his or her will, except through the sovereign powers of taxation and eminent domain, both of which must be for a public purpose.
- b. Eminent domain is the State's inherent power to take private property for a public use.
- c. The State's eminent domain power resides in the Legislature and exists independently of the Nebraska Constitution. But the constitution has limited the power of eminent domain, and the Legislature can limit its use further through statutory enactments.
- d. Under *Neb. Const. art. I, § 21*, the State can take private property only for a public use and only if it pays just compensation.
- e. Only the Legislature can authorize a private or public entity to exercise the State's power of eminent domain.
- f. Under the Nebraska Constitution's limitation on the power of eminent domain, pipeline carriers can take private property only for a public use. That minimally means that a pipeline carrier must be providing a public service by offering to transport the commodities of others who could use its service, even if they are limited in number.

Importantly, *Neb. Rev. Stat. § 57-1101*, provides that only “so much of any lot, land, real estate, right-of-way, or other property *as may be reasonably necessary for the laying, relaying, operation, and maintenance of any such pipeline or the location of any plant or equipment necessary to operate such pipeline, shall have the right to acquire the same for such purpose through the exercise of the power of eminent domain....*” (Emphasis added). Thus, to the extent TransCanada’s proposed Easement and Right of Way Agreement seeks to acquire broader rights in Nebraskan landowners’ property than is reasonably necessary to lay, operate or maintain the subject pipeline, its easement and proposed route for the pipeline violate Nebraska law and are not in the public interest of Nebraska or Nebraskans.

14. Condemnation – *Village of Memphis v. Frahm*, 287 Neb. 427, 843 N.W.2d 608 (2014):

- a. “A condemnation proceeding is ‘the exercise of eminent domain by a governmental entity.’” *Pinnacle Enters. v. City of Papillion*, 286 Neb. 322, 332–33, 836 N.W.2d 588, 596 (2013).
- b. The legislature controls the authority to exercise the power of eminent domain. The power may be delegated. The Nebraska legislature, with *Neb. Rev. Stat. § 57-1101*, delegated specified, limited eminent domain authority to companies such as TransCanada that engage in transporting crude oil in interstate commerce through or across the State of Nebraska or intrastate within the State. But the delegation is restricted, as noted above, and it is in the public interest of Nebraska and Nebraskans that the exercise of this power by a foreign, for-profit corporation over the citizens of Nebraska be strictly controlled by the PSC.

15. Easement

An easement conveys a property interest in real property and sets forth the rights of the Grantor (fee simple owner) and Grantee (easement owner). The owner of fee simple title to the property is the servient tenant, as its ownership is subject to the superior rights of the easement owner. The easement owner is the dominant tenant, as its rights to use the property as authorized by the easement is superior to that of the fee simple property owner. For example, an easement for ingress and egress will prohibit the fee simple owner from doing anything with the subject property that would interfere with the easement owner’s use of the property for ingress or egress. Thus, the grant—or taking by eminent domain—of an easement in otherwise freely held real property will necessarily, significantly and negatively affect the fee owner’s property rights in the subject land.

Kovanda v. Vavra, 10 Neb. App. 486 633, N.W.2d 576 (2001):

- a. An easement is usually defined as a right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with the general property right of the owner.... The owner of the easement may make use of it only for the special purpose that gave rise to the easement itself. (Citation omitted.) *Paloucek v. Adams*, 153 Neb. 744, 747, 45 N.W.2d 895, 897 (1951).
- b. “The servient owner of land subject to an easement may make such use of it as he sees fit, subject only to the right of the dominant owner of

the easement to use it for the purposes out of which the right arose.” *Jurgensen v. Ainscow*, 155 Neb. 701, 710, 53 N.W.2d 196, 201 (1952) (involving prescriptive easement).

- c. “The servient owner may make any use of it that he cares to make so long as he does not interfere with the rights of the dominant owner of the easement.” *Paloucek*, 153 Neb. at 747, 45 N.W.2d at 897.

TransCanada’s Proposed Easement and Right of Way Agreement

An exemplar copy of the form Easement and Right of Way Agreement proffered by TransCanada to Nebraska landowners in its 2015 litigation is attached as Exhibit 2 (“TransCanada’s Form Easement”). As discussed below, approval of TransCanada’s Form Easement is not in the public interest of the landowners, Nebraskans, or the State of Nebraska.

Initially, TransCanada’s Form Easement provides that it is perpetual and permanent.⁸ A permanent easement exceeds the grant of eminent domain authority and is not in the interest of Nebraska or the affected landowners. As noted above, *Neb. Rev. Stat.* § 57-1101 grants eminent domain authority to companies engaged in the business of transporting or conveying crude oil, petroleum, gases or other products either intrastate or interstate through or across the State of Nebraska. Further, *Neb. Rev. Stat.* § 57-1101 provides that only “so much of any lot, land, real estate, right-of-way, or other property as may be reasonably necessary for the laying, relaying, operation, and maintenance of any *such* pipeline or the location of any plant or equipment necessary to operate *such* pipeline,” may be taken by eminent domain. At a minimum, any easement taken by TransCanada should be only for so long as it is used for the purpose for which eminent domain authority was granted. The easement should, by its express terms, terminate automatically when such use ceases.

TransCanada’s Form Easement states affirmatively that it is for “the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline...” and provides for the express exclusion of just one specified non-permitted use, namely, the right to construct or operate above-ground high voltage electrical transmission lines. The implication that one specified use is prohibited implies that other unstated, but

⁸ TransCanada’s Form Easement, opening paragraph.

unauthorized, uses may be permitted. The easement should expressly state that it may be used *solely* for the purpose authorized.

TransCanada's Form Easement provides⁹ that TransCanada, or its successors and assigns, may abandon the pipeline in place when its use ceases. This right exceeds TransCanada's limited right of eminent domain and should be excluded. Obviously, TransCanada inserted this "right" into its form easement to avoid the cost of restoring Nebraska landowners' property to its pre-existing condition when its use of the easement—and the easement itself—terminates. The grant of eminent authority from the legislature to TransCanada did not authorize the passing of this cost to Nebraska landowners and it is not in the interest of Nebraska or Nebraskans. At a minimum, if the PSC determines that TransCanada's authority extends this distance, the easement should expressly provide that just compensation to the landowners should be calculated based upon the assumption that the pipeline will be abandoned in place and that Nebraska landowners should be compensated for the impact such abandonment will have on the value of their property and the damages that will result, or the costs to avoid that damage should be paid by TransCanada to the landowners as an element of just compensation.

TransCanada's Form Easement¹⁰ initially sets a limited period of 24 months to occupy property outside the described easement area as "Temporary Work Space" to construct and install the pipeline. But the easement continues to provide caveats to that time limitation, which renders the actual time that the landowners' property will be occupied and disturbed by TransCanada unknown. The just compensation to be paid for the use of the landowners' property for construction activities is tied to the duration of such activities. TransCanada's obligation to pay the landowners their constitutional right to just compensation requires that if a longer period of use of the property is necessitated—for whatever reason—TransCanada should be required to pay the landowner additional compensation for that extended period. The right of eminent domain does not give the condemnor the right to use private property without just compensation even if the need to use the property results from "force majeure."

TransCanada's Form Easement¹¹ limits TransCanada's liability for all costs and expenses that result from its, or anyone acting on its behalf, use of the Easement Area or Temporary Work Space. It also seeks to impose liability on Nebraska landowners. Neither of these efforts are authorized by Nebraska's grant of eminent domain authority to TransCanada. Further, if TransCanada seeks to impose liability for negligence upon

⁹ Id.

¹⁰ Id. In first paragraph following the legal description of the subject property.

¹¹ TransCanada's Form Easement at ¶ 1.

Nebraska landowners—an insurable risk—the cost to insure against that risk for the duration of the easement should be an element of just compensation paid to Nebraska landowners.¹²

TransCanada’s Form Easement¹³ provides broad discretion to TransCanada concerning its maintenance of the easement area and its authority to prohibit use of the easement area by the landowner. In order for the landowner to receive full just compensation for the property rights taken by TransCanada, including, but not limited to such discretionary rights in the future, the grant of approval by the PSC, if given, should require that just compensation be determined assuming TransCanada’s exercise of all its discretion to the fullest extent against the landowners’ interest. Otherwise, TransCanada would be permitted to take actions in the future for which the landowner never received just compensation.

TransCanada’s Form Easement¹⁴ permits TransCanada to install its pipeline, if necessary, less than 48” below the surface, but it does not require TransCanada in such event, to otherwise support and protect the pipeline sufficiently to allow the landowners’ surface use of the property to continue without disturbance. In other words, the minimum depth of 48” is presumed to be sufficient to permit the landowner to farm, drive and otherwise use the property over the pipeline after the pipeline is installed. If for any reason the pipeline is installed at a depth less than 48” the landowners’ use of the property—and thus its value—will be diminished without the receipt of just compensation. The easement should require TransCanada to support any pipeline installed to a depth of less than 48” to provide as much support as otherwise would be provided by a 48” depth.

TransCanada’s Form Easement¹⁵ states that the easement area depicted on the attached exhibit is merely approximate. The taking of an interest in real property and the consequent impact on the title to the property and its use demands precision. The exhibits attached to any easement should describe the burdened land with specificity and be surveyed, in order that the land records and the Nebraska landowners’ title to, and use of, the remaining property not be impacted. Further, once the easement area is established

¹² This risk is not unjustified. One need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. (A true and accurate copy of the Federal Court Complaint is here as Exhibit 4)

¹³ See, e.g. ¶ 3 TransCanada’s Form Easement.

¹⁴ ¶ 7 TransCanada’s Form Easement.

¹⁵ ¶ 13 TransCanada’s Form Easement.

and just compensation based on that established location is determined, TransCanada must not be permitted to relocate the easement area at its discretion without a corresponding obligation to pay additional compensation. The proposed easement seeks to limit the landowners' right to just compensation as a result of a relocated easement to "only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location." But the impact of an easement on the fair market value of the landowners' property may be affected by more than just the size of the easement area. It may be substantially affected by its location—even if the size in comparison to the original easement is the same. TransCanada's attempt to limit the landowners' rights to just compensation should not be permitted.

TransCanada's Form Easement provides for the exercise of discretion with respect to numerous issues that may occur in the future. Such vagueness and discretion, albeit unavoidable, puts the landowner at a great economic disadvantage vis-à-vis TransCanada with respect to any dispute that may arise between the parties. The easement should provide for the recovery by the landowner of the landowners' costs and expenses, including attorneys' fees, in the event the landowner prevails in any dispute with TransCanada, or its successors and assigns, concerning the parties' respective rights under the easement.

The first sentence of the Easement discusses amount of compensation that the Landowner is to receive in consideration for property rights being taken. The specific terms of the easement agreement will impact the landowner's rights in the property and, therefore, the amount of just compensation due to the landowner. Consequently, the PSC should review all the terms of the proposed Easement and Right-of-Way Agreement to understand how the Easement will affect the land burdened by the easement, as well as adjacent property through which the easement runs, in order to protect the property rights of the landowner to the extent possible. The PSC should also limit the scope of the easement to those rights needed by TransCanada to install and maintain the subject pipeline.

Unequal Bargaining Power

The power of eminent domain is an awesome power. Delegation of such power to a foreign, for-profit company to be exercised against the citizens of Nebraska should not be undertaken lightly. And the delegation should be strictly limited to that expressly authorized by the legislature. A condemnor is obligated to negotiate with an owner prior to filing an action to condemn the required property rights. It is critical for the PSC to recognize that the parties do not have equal bargaining power. An owner does not have the right to refuse the grant of the desired property rights. Rather, the condemnor has the authority to condemn the required property rights if the owner refuses to convey them voluntarily.

Government condemnors are answerable to the electorate. A foreign, for-profit company such as TransCanada is not. Rather, the only limitations placed upon its exercise of the power of eminent domain delegated to it is that imposed by the grant—and the PSC. It is my experience—confirmed in discussions with other eminent domain attorneys—that such companies regularly present owners with easements containing provisions and rights far beyond those authorized by the legislature. Many unwitting owners reasonably believe that resisting such easements will be futile because the company will sue them and take the easement by eminent domain if they refuse. It is incumbent upon the legislature—and here the PSC—to protect the property rights of Nebraska landowners by conditioning any approval of any pipeline route on the use of an easement only on terms that have been approved by the Commission. And any easement previously granted with terms contrary to those approved by the PSC should be void as obtained by abuse of the granted eminent domain authority.

Following is a redlined copy of TransCanada's Form Easement, which represents the minimum the PSC should require be used in the event of any approval by the PSC of any pipeline route for the KXL pipeline and the exercise by TransCanada of eminent domain.

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

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-HT-40380.000
ML-NE-HT-40420.000
ML-NE-HT-40440.000

EASEMENT AND RIGHT- OF-WAY AGREEMENT

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "Agreement"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "Consideration") [LANDOWNER], whose mailing address is _____ (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"), an ~~perpetual permanent~~ easement and right-of-way (the "Easement") for the sole 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 described herein (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 or any use other than as set forth herein), 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:

[Legal Description of Entire Property]

(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 property, 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 gross 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 maximum use of Grantee's rights hereunder 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 and the Grantee's use thereof, 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 gross 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. In such event, Grantee will install temporary fencing outside the easement area, as requested by Grantor, at Grantee's expense, until the original fencing is replaced as required above, in order to prevent cattle, horses and/or other livestock located on the Property from straying. 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. With respect to fencing, it is agreed that installation of gates to provide Grantee access to the easement area shall not constitute an interference with Grantee's pipeline or its easement rights.

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. In the event the pipeline is installed to a depth less than 48" below current grade level, Grantee shall support and stabilize the pipeline and its installation to provide equal or greater support as would be provided by 48" depth.

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, or equivalent grade 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 and compensate Grantor for any diminution in value to the Property or damage that such abandonment will cause.

~~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.~~

13. If Grantee authorization or approval is required herein for any action of Grantor, such authorization or approval may not be unreasonably withheld.

14. Should Grantor prevail in any litigation brought to enforce its rights under this Agreement, Grantee shall pay all costs and expenses, including reasonable attorneys' fees, incurred by Grantor in such effort.

154. 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 gross negligence, ~~recklessness~~, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

165. 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.

176. 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.

187. 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.

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

2049. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

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

224. 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 _____

GRANTOR:

Conclusion and Opinions

For all of the foregoing reasons discussed above it is my opinion that TransCanada's proposed Easement and Right-of-Way Agreement is not in the public interest of Nebraska or Nebraskans and therefore does not promote the welfare of Nebraska or protect Nebraskan landowners' property rights. All of my opinions expressed in this Report are held by me with a reasonable degree of professional certainty based upon my education, background, training, and decades of relevant work experiences dealing with easement language and contractual terms and provisions.

June 6, 2017



Joseph P. Suntum

EXHIBIT #1

JOSEPH P. SUNTUM

Current Practice 1988-Present

Miller, Miller & Canby, Chtd., 200-B Monroe Street, Rockville, Maryland
- Managing Shareholder (1997 – 2007)
- Principal, Litigation Department

AV Preeminent Rating with Martindale Hubbell – www.Martindale.com
Selected to Maryland Super Lawyers 2007 – www.SuperLawyers.com
Successfully tried both murder cases and multi-million dollar civil actions

Personal practice focuses on civil trial and appellate work concerning real estate, and focused primarily on eminent domain and condemnation.

Previous Professional Experience

Office of the Public Defender, Montgomery County, Maryland, 1983-1988
Circuit Court for Baltimore City, Maryland, 1982-1983
- Law Clerk to the Honorable Elsbeth Levy Bothe

Educational Background

University of Maryland School of Law - J.D., 1982
University of Maryland B.S., 1979
University of Montana 1975-1977

Associations

Maryland Attorney Member of the Owners Counsel of America

Bar Association Memberships/Activities/Positions

Character Committee of the Court of Appeals for the 6th Judicial Circuit (1992-1997)
Bar Association for Montgomery County, Maryland (Secretary 1996-1997; Executive Committee 1997-1999; Legal Services Task Force 1998; Long-Range Planning Committee 1995, 1997, 2007)
Montgomery County Bar Foundation (Board of Directors 2005-2009)
Maryland State Bar Association (Cost of Litigation Task Force 1999-2000)
Alan J. Goldstein Inn of Court (Master; Treasurer, 1997-1998; Secretary, 1998-2000)
Montgomery Inns of Court (Barrister, early 1990s)

Reported Cases:

Montgomery County v. Phillips, 445 Md. 55 (2015)
Boland v. Boland, 423 Md. 296 (2011);
Boland v. Boland, 194 Md. App. 477 (2010) *cert. granted* 417 Md. 500 (2011);
Lasater v. Guttman, 194 Md. App. 431 (2010);
Circuit City Stores, Inc. v. Rockville Pike Joint Venture Ltd. Partnership, 376 Md. 331 (2003);
8621 Ltd. Partnership v. LDG, Inc., 169 Md. App. 214 (2006);
Golub v. Cohen, 138 Md. App. 508 (2001);
Buxton v. Buxton, 363 Md. 634 (2001);
Schochet v. State, 320 Md. 714 (1990);
State v. Calhoun, 306 Md. 692 (1986);
State v. Tichnell, 306 Md. 428 (1986).

JOSEPH P. SUNTUM

Current Practice 1988-Present

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Reported Cases:

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Golub v. Cohen, 138 Md. App. 508 (2001);
Buxton v. Buxton, 363 Md. 634 (2001);
Schochet v. State, 320 Md. 714 (1990);
State v. Calhoun, 306 Md. 692 (1986);
State v. Tichnell, 306 Md. 428 (1986).

EXHIBIT #2

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

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-HT-40380.000
ML-NE-HT-40420.000
ML-NE-HT-40440.000

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

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **TMAG Ranch, LLC**, whose mailing address is 916 S. 181st Street, Elkhorn, NE 68022 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other

Grantor's Initials _____

equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Holt, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 362 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NE1/4, NW1/4 of the SE1/4, and SW1/4 of Section 18, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 198, Page 543 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 72.03 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as Lot 7 of Section 7, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 198, Page 543 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NW1/4 of Section 17, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 198, Page 543 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

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

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

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

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

harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

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

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

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

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

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

Grantor's Initials _____

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.
6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.
7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.
8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.
9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.
10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.
11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.
12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.
13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid,

Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

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

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

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

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

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

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

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

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

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

GRANTOR(S):

TMAG Ranch, LLC

By: _____

Its: _____

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

Grantor's Initials _____

STATE OF _____

COUNTY OF _____

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

By _____ of

TMAG Ranch, LLC, on behalf of the corporation.

Notary Public Signature

Affix Seal Here

Grantor's Initials _____

HOLT COUNTY, NEBRASKA

T-33-N, R-15-W, SECTION 18

ML-NE-HT-40380.000

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

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

SECTION 7
SECTION 18

SECTION 13
SECTION 18

R-15-W
R-16-W

TMAG RANCH, LLC
VOLUME 198, PAGE 543
D.R.H.C.N.

SEE DETAIL "A"

SEE DETAIL "B"

SEE DETAIL "C"

SEE DETAIL "D"

SECTION 17
SECTION 18

SECTION 18
SECTION 19

NOTE:

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

exp.

The new identity of Trans

TransCanada
In business to deliver

KEYSTONE XL PROJECT

EASEMENT AREA
ACROSS THE PROPERTY OF
TMAG RANCH, LLC
ML-NE-HT-40380.000

PROJECT: XL EXHIBIT A

APPROVED BY: SLR

DRAWING NUMBER: XL-08-ML-SK-3781

REVISION: DATE

SCALE: 1" = 1000'

DATE: 11/05/14

DRAWN BY: JN

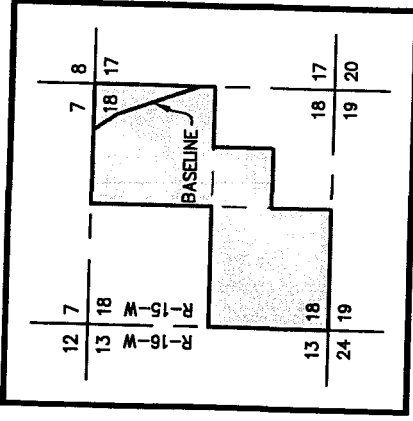
CHECKED BY: ALS

SCALE: 1" = 1000'

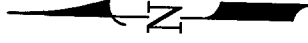
DATE: 11/05/14

DRAWN BY: JN

CHECKED BY: ALS



VICINITY MAP
N.T.S.



0 500 1000
SCALE: 1" = 1000'

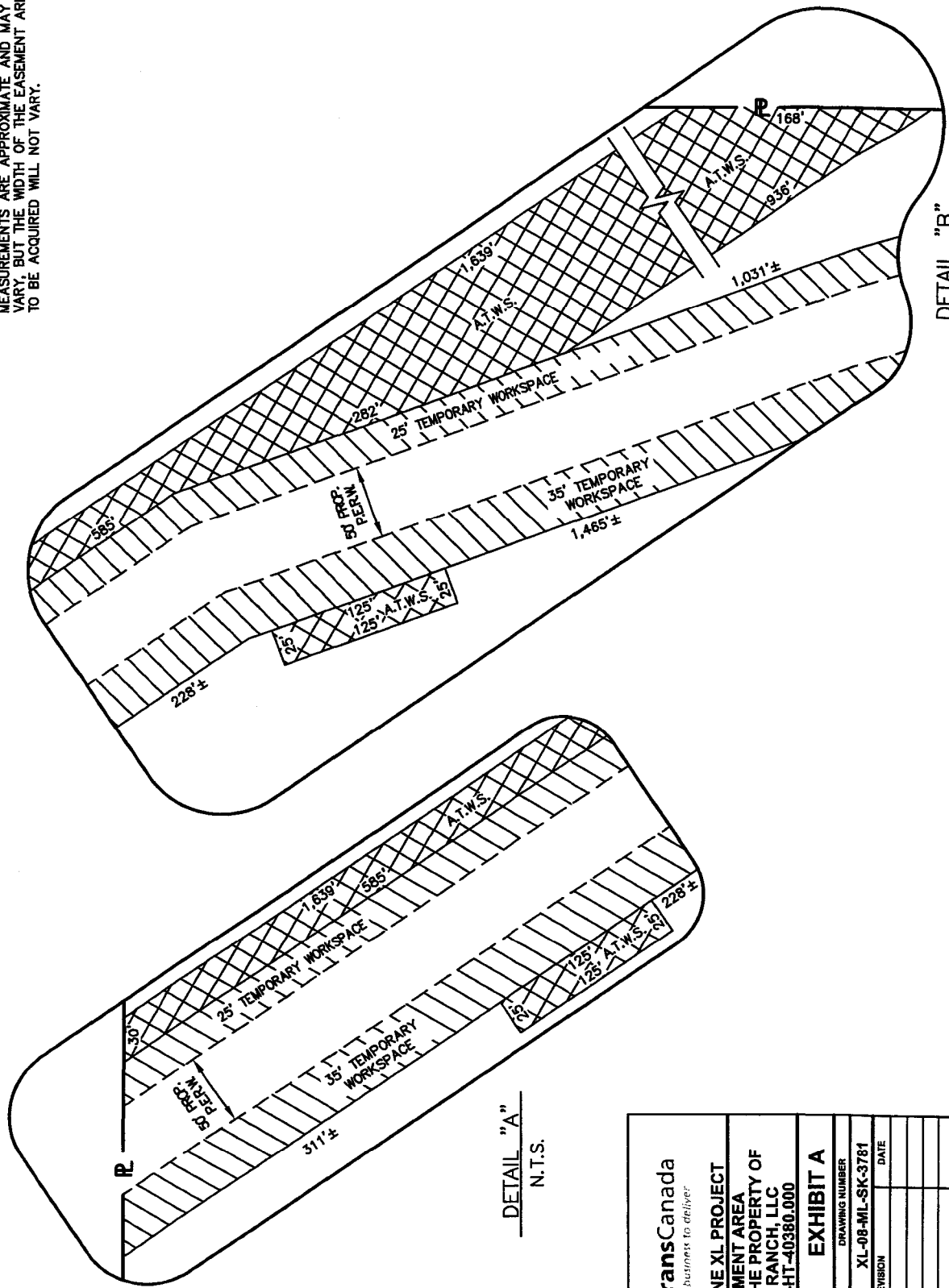
TRACT LEGAL DESCRIPTION:
NE 1/4, NW 1/4 SE 1/4, SW 1/4 OF
SECTION 18,
T-33-N, R-15-W

TOTAL DISTANCE ACROSS PROPERTY: 2,539'±
AREA OF PERMANENT EASEMENT: 2.9 ACRES
AREA OF TEMPORARY WORKSPACE: 3.5 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 3.1 ACRES

SHEET 1 OF 3

**T-33-N, R-15-W, SECTION 18
ML-NE-HT-40380.000**

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



DETAIL "B"
N.T.S.

SHEET 2 OF 3



The new identity of Tron



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KEYSTONE XL PROJECT

**EASEMENT AREA
ACROSS THE PROPERTY OF
TMAG RANCH, LLC
ML-NE-HT-40380.000**

EXHIBIT A

DRAWING NUMBER

L-08-ML-SK-3781

DATE	
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[illegible]

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DRAWN BY	CHECKED
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JN	ALS
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HOLT COUNTY, NEBRASKA

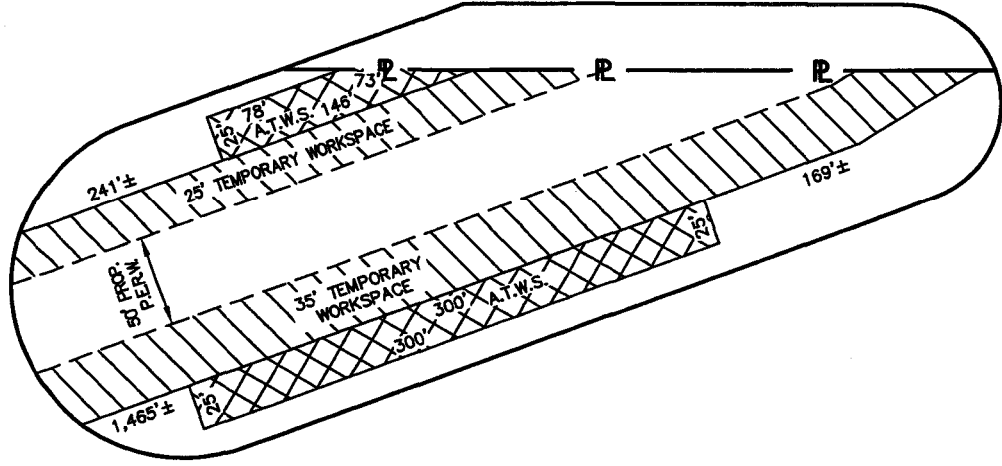
T-33-N, R-15-W, SECTION 18

ML-NE-HT-40380.000

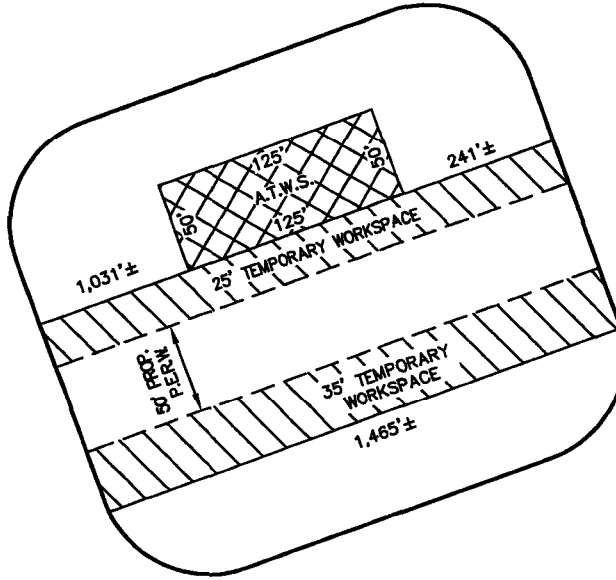
PROPERTY LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY

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


NOTE:
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DETAIL "D"
 N.T.S.



DETAIL "C"
 N.T.S.

		TransCanada <i>In business to deliver</i>	
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF			
TIMAG RANCH, LLC			
ML-NE-HT-40380.000			
PROJECT:	XL	EXHIBIT A	
APPROVED BY	SLR	DRAWING NUMBER	
		XL-08-ML-SK-3781	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	11/05/14	JN	ALS

exp.
 The new identity of Trans

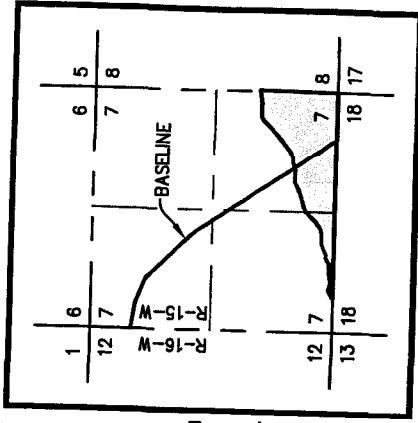
LEGEND

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

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

HOLT COUNTY, NEBRASKA

T-33-N, R-15-W, SECTION 7
ML-NE-HT-40420.000



VICINITY MAP
N.T.S.

SECTION 7
SECTION 8

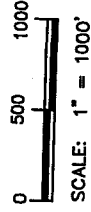
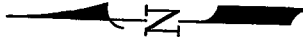
SECTION 6
SECTION 7

SECTION 7
SECTION 12

R-15-W
R-16-W

BOYD COUNTY
HOLT COUNTY

TMAG RANCH, LLC
VOLUME 198, PAGE 543
D.R.H.C.N.



TRACT LEGAL DESCRIPTION:
LOT 7 OF SECTION 7,
T-33-N, R-15-W


NOTE:

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

SEE DETAIL "A"

TOTAL DISTANCE ACROSS PROPERTY: 1,094'±
AREA OF PERMANENT EASEMENT: 1.2 ACRES
AREA OF TEMPORARY WORKSPACE: 0.6 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.3 ACRES

SHEET 1 OF 2

		TransCanada <i>In business to deliver</i>	
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF			
TMAG RANCH, LLC			
ML-NE-HT-40420.000			
PROJECT:	XL	EXHIBIT A	
APPROVED BY		DRAWING NUMBER	
SLR		XL-08-ML-SK-3771	
NO.		REVISION	
		DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 1000'	11/05/14	JN	ALS

exp.
The new identity of Trans

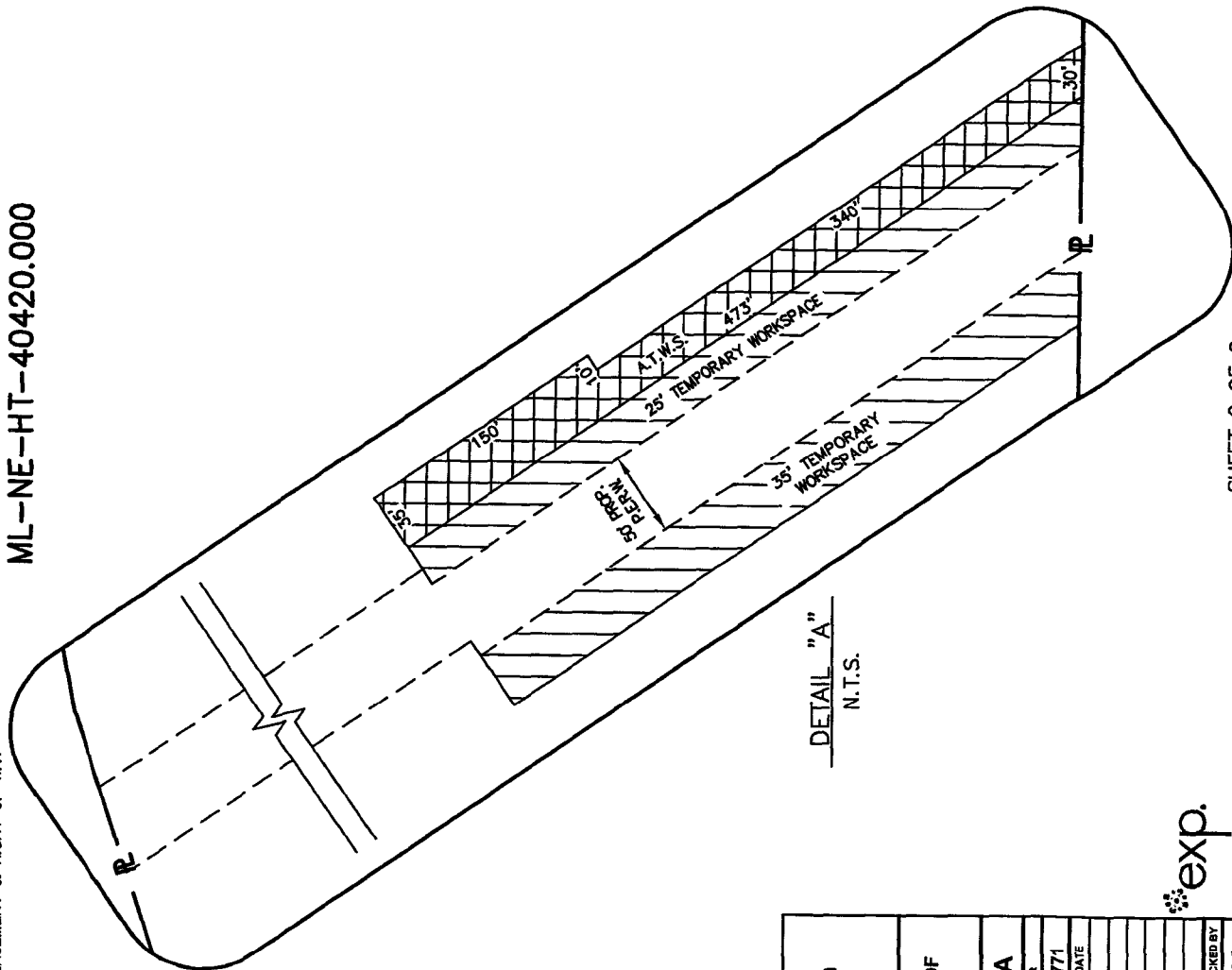
HOLT COUNTY, NEBRASKA

T-33-N, R-15-W, SECTION 7

ML-NE-HT-40420.000

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

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



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

SHEET 2 OF 2

TransCanada <i>In business to deliver</i>		KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF TMAH RANCH, LLC ML-NE-HT-40420.000	
PROJECT	XL	EXHIBIT A	
APPROVED BY	SLR	DRAWING NUMBER	XL-08-ML-SK-3771
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	11/05/14	JN	ALS

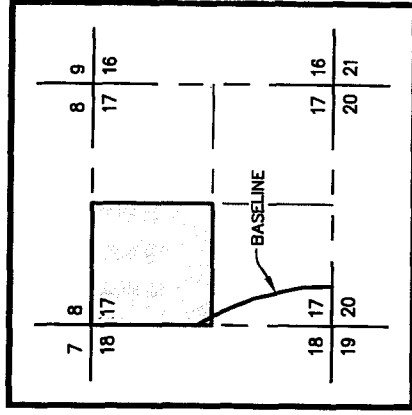
exp.
 The new identity of Tron

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

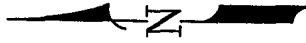
HOLT COUNTY, NEBRASKA

T-33-N, R-15-W, SECTION 17

ML-NE-HT-40440.000



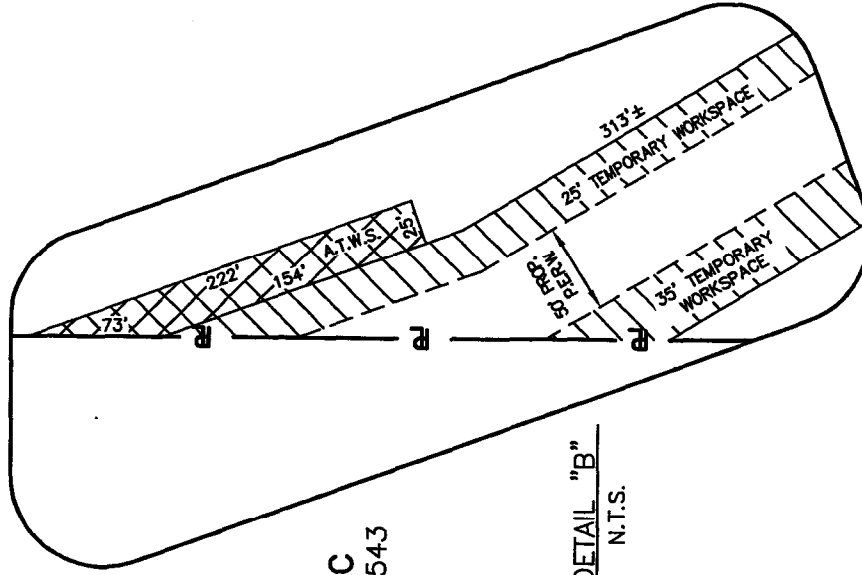
VICINITY MAP
 N.T.S.



0 250 500
 SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:
 NW/4 OF SECTION 17,
 T-33-N, R-15-W

SECTION 8
 SECTION 17



TMAG RANCH, LLC
 VOLUME 198, PAGE 543
 D.R.H.C.N.

DETAIL "B"
 N.T.S.

SEE DETAIL "A"

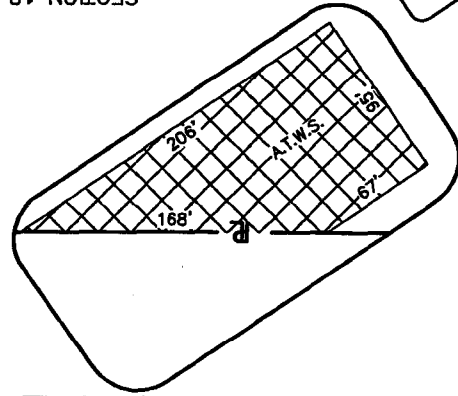
SEE DETAIL "B"

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: 340'±
 AREA OF PERMANENT EASEMENT: 0.4 ACRE
 AREA OF TEMPORARY WORKSPACE: 0.4 ACRE
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.4 ACRE

SECTION 17
 SECTION 18



DETAIL "A"
 N.T.S.

TransCanada In business to deliver		KEYSTONE XL PROJECT	
EASEMENT AREA		EXHIBIT A	
ACROSS THE PROPERTY OF		DRAWING NUMBER	
TMAG RANCH, LLC		XL-08-ML-SK-3772	
ML-NE-HT-40440.000		DATE	
PROJECT:	XL	REVISION	DATE
APPROVED BY	SLR	NO.	DATE
SCALE	1" = 500'	11/05/14	JN
CHECKED BY	ALS	DATE	SCALE

exp.
 The new identity of Trans

EXHIBIT #3



VICINITY MAP



LEGEND

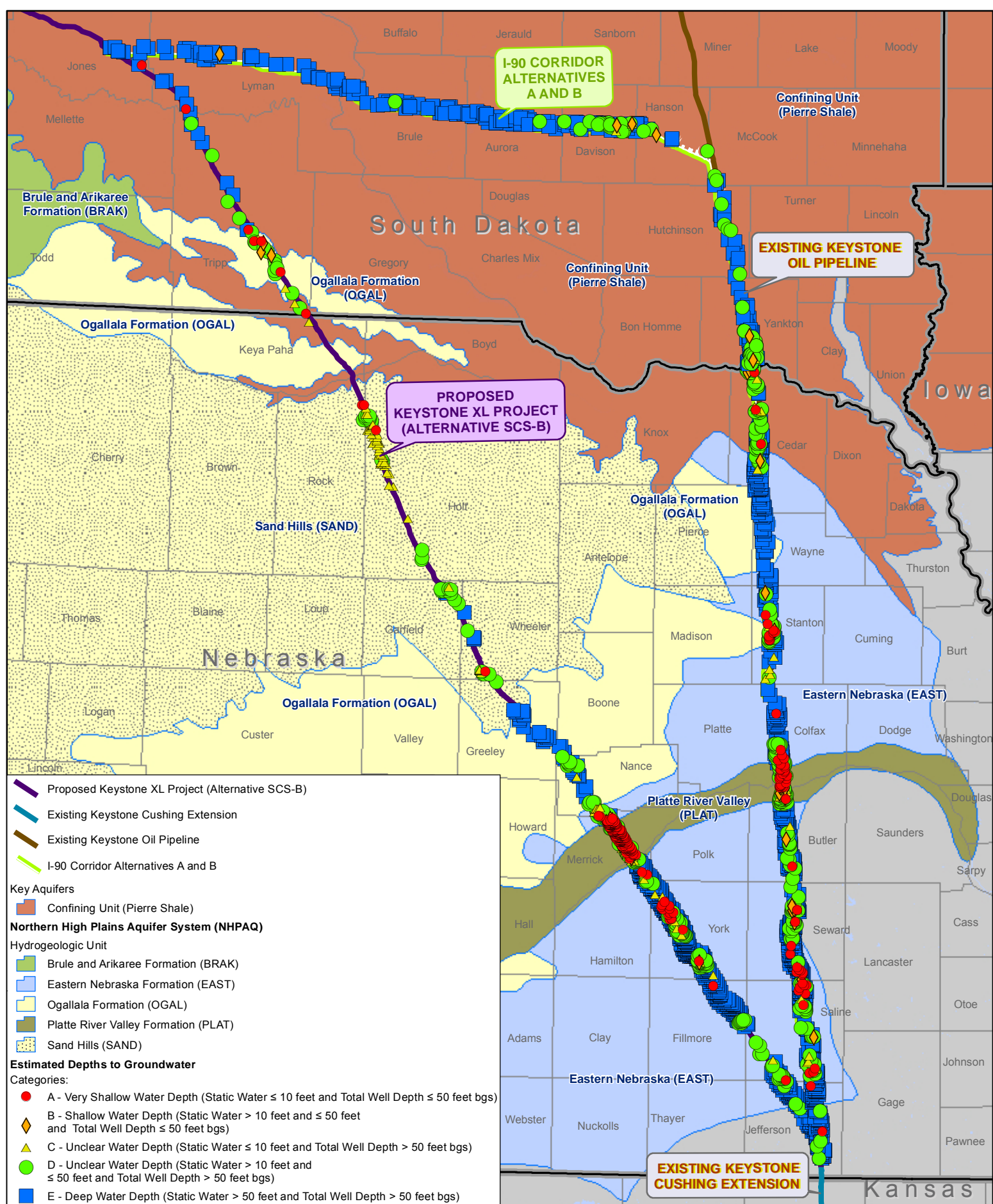
- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES





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

EXHIBIT #4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Plaintiff,

v.

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

Defendants.

CASE NO. _____

COMPLAINT

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

PARTIES

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Expert Michael O'Hara
in Support of Landowner Intervenor**

State of Nebraska)
) ss.
Douglas County)

1 **Q: Please state your name.**

2 A: My name is Michael O'Hara.

3 **Q: Mr. O'Hara is Attachment No. 1 to this sworn statement a true and accurate**
4 **copy of your most recent CV or Resume?**

5 A: Yes it is.

6 **Q: Does your CV describe your educational background and relevant**
7 **professional experiences?**

8 A: Yes.

9 **Q: Is Attachment No. 2 to this sworn statement a copy of your Expert Report in**
10 **this matter?**

11 A: Yes it is.

12 **Q: What were you asked to do?**

13 A. I was asked to analyze several items: first, I analyzed the impact of the proposed
14 KXL pipeline within Nebraska upon property taxes, income taxes, and sale/use
15 taxes; second, I analyzed what economic opportunities are likely to be disrupted or
16 precluded by the existence of the pipeline in the location of the proposed route

EXHIBIT

78

exhibitster.com

1 over the next 50 years; third, I analyzed economic advantages and consequences,
2 and whether the proposed use of the pipeline route by the Applicant more
3 appropriately resemble and approximate a route requiring a real estate interest in
4 the form of a lease, or in the form of an easement; fourth, I analyzed what are the
5 economic consequences of TransCanada's use of an easement, as contrasted with a
6 lease, to acquire and occupy the proposed route over the course of 50 years and
7 upon removal of the depleted pipeline; fifth, I analyzed what are the likely
8 economic consequences upon Nebraska and its counties for any enhancements in
9 budgetary expenses attributable to a) pipeline construction and b) pipeline
10 maintenance; sixth I analyzed the economic study and report of TransCanada
11 economist, Professor Ernie Goss.

12 **Q: In Attachment No. 2 to your sworn testimony, your Expert Report, did you**
13 **come to any professional opinions about TransCanada's proposed KXL**
14 **pipeline's potential impact on taxes within Nebraska?**

15 A: Yes, I did.

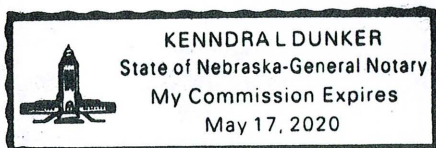
16 **Q: Are those opinions and the others held by you as found in your report given**
17 **with a reasonable degree of professional certainty based upon your education,**
18 **background, training, and relevant work experiences?**

19 A: Yes they are, and I incorporate my Report and the opinions therein into my
20 testimony as though set forth fully herein.

Michael J. O'Hara

Michael O'Hara

Subscribed and Sworn to before me this 6th day of June, 2017.



[Signature]
Notary Public

Attachment No. 1

Resume Focused on Last Ten Years

Name: Michael J. O'Hara, J.D., Ph.D.
Employer: University of Nebraska at Omaha
College of Business Administration
Finance, Banking, and Real Estate Department
Academic Rank: Professor
Graduate Faculty Status: Yes
Continuous Appointment: Yes

Higher Education

<u>Degree</u>	<u>Institution</u>	<u>Date</u>	<u>Primary Subject Fields</u>
Ph.D. Economics	Univ. of Nebraska- Lincoln	1983	Public Utilities Regulation of Business
Juris Doctor (Law)	Univ. of Nebraska- Lincoln	1978	Regulation of Business

The J.D. is my terminal degree for my UNO academic appointment.

Professional Experience (since joining academe)

1981 - Present	College of Business Administration, University of Nebraska at Omaha. Instruction and research in the areas of law and economics, with a current research emphasis on forensic economics. Instructor, 1981. Assistant Professor, 1982 - 1988. Elected to Member, Graduate Faculty, 1986. Associate Professor, 1988 - 2001. Elected to Fellow, Graduate Faculty, Spring 2000. Professor, 2001 - present. Economics Department, 1981. Law and Society Department, 1982 - 1996; Fall 1996, Chair. Finance, Banking, and Law Department, 1997 - 2012. Finance, Banking, and Real Estate Department, 2012 - present.
2016 - present	founding officer of Felicity Fund, Inc., now only a shareholder. FFI's business model is materially different than either PGSi or TOI, but is in the money transfer field.
2014 - 2016	Member, Board of Directors, Prosperitas Global Services, Inc. (d.b.a., PGSi). Treasurer, 2014 - 2016. PGSi has closed. PGSi was a Nebraska corporation, a start-up pursuing a novel business model for international money transfers.
2012 - 2016	Co-Editor, <i>The Earnings Analyst</i> (TEA). TEA is the scholarly journal of the American Rehabilitation Economics Association (AREA). AREA desired to expand the coverage of TEA and welcomed CPDE's invitation to cooperate in the production of TEA. As Co-Editor O'Hara focuses upon commercial damages.
2012 - 2016	Member, Board of Directors, Association of Regulatory Boards of

	Optometry. Also, various committees of ARBO. Secretary, 2015 - 2016.
2011 - present	Member, Judicial Council and Resolutions Committee of ARBO. ARBO is the Association of Regulatory Boards of Optometry.
2011 - present	Collegium of Pecuniary Damages Experts (CPDE). CPDE is a 501(c)(3) professional association incorporated in Nevada. As Secretary I serve as voting ex officio on the Board of Directors. As noted above, I also serve as the CPDE appointed Co-Editor of AREA's journal TEA. Secretary, 2011-2014; Vice President, 2014; President 2015; Past President 2016. Re-elected Secretary in 2017.
2010 - present	Member, Board of Directors, Nebraska Economics and Business Association. President-Elect, Oct 2012 & Oct. 2016; President, Oct. 2013; Past President, Oct. 2014.
2010 - 2012	Member, OE Tracker Committee of ARBO. This committee supervises ARBO's web registry of continuing education accomplishment in satisfaction of licensing requirements specified by individual State regulatory Boards.
2009 - present	Member, Board of Optometry. Appointed by the Nebraska Board of Health. The Board of Optometry oversees licensure and scope of practice enforcement. Secretary, February 2010 - present. Reappointed November 2014.
2002 - 2009	Member, Board of Directors, Ole Holding Corporation. A Nevada for-profit corporation that was in its start up phase to provide financial services to the Spanish speaking communities of the USA and their ancestral homelands. Since second round financing in 2009 serving on spin off corporation's (i.e., Transactions Ole, Inc.'s) Advisory Board rather than its Board of Directors. Doors closed in 2012, sold to the Delaware corporation TOI Pay in December 2016.
2005 - 2007	Editor, <i>Journal of Legal Economics</i> . <i>JLE</i> is the journal of AAEFE. <i>JLE</i> focuses upon the proof of monetary damages in the context of litigation.
2002 - 2007	Member, Board of Directors, American Academy of Economic and Financial Experts (AAEFE). A national professional association that is a 501(c)(3).
2000 - 2003	Member, Board of Directors, Concord Center (f.k.a. The Community Mediation Center). A 501(c)(3) not-for-profit corporation with five employees that contracts with the Nebraska Supreme Court to develop and foster mediation services in the most populated counties of eastern Nebraska. Chair of the Fund Raising Committee, 2000. Co-Secretary, 2000-01 (authored complete revision of Bylaws), Vice President, 2001-03. www.concord-center.com
1996 - 1999	Member, LR 455 (1996) Advisory Group. LR 455 is an in-depth study of electric utility deregulation in the USA and its implications for Nebraska's 100% publicly owned electric utility industry. This three year study was completed December 1999. March 1998, presentation on price discrimination. June 1998, detailed questions on impact of deregulation on consumers.

- 1989 - 1994 Member, Board of Directors, Omaha Public Power District (www.OPPD.com). A vertically integrated electric utility serving 13 counties in southeast Nebraska with (then) \$400 million in annual revenues. Secretary, 1990-1992; Vice Chair, 1993. I was a very active member, including (1) being the Board's representative on the task force studying the economic viability of the District's nuclear program; (2) shepherding the restructuring of the District's cost-based rate redesign; and (3) initiating the District's tree planting program.
- 1991-1992 Interim Director, UNO CBA International Center for Telecommunications Management (ICTM). Complete managerial responsibility for a research center with two research associates and 5 FTE of support staff. Responsible for encouraging UNO faculty to adopt telecommunications research topics and for encouraging grant writing. Drafted \$2.6 million, three-year EPSCoR proposal; associates drafted two proposals: \$100,000 and \$50,000; all proposals dealt with the economic development benefits of telecommunications infrastructure. ICTM has been disbanded and reformed into UNO's newest College of Information Science and Technology and its Center for Management of Information Technology (CMIT). I was instrumental in redirecting the emphasis of ICTM away from telephony and towards CMIT's emphasis on information technology.
- 1985-1988 Member, Nebraska Power Review Board (www.nprb.state.ne.us). Vice Chair, 1987. PRB regulates Nebraska's 100% publicly owned electric utility industry by controlling the service territories and capacity additions, but not rates. I led a major revision of the PRB's rules and regulations.
- 1979-1981 Legislative Aide III, Public Works Committee (now split into Natural Resources and Transportation Committees), Nebraska Legislature. Analysis and drafting of legislation related to utilities, highways, and common carriers. I coordinated a comprehensive examination of the structure of Nebraska's publicly-owned electric industry.
- 1979 Research Assistant, Southeast Nebraska Health Systems Agency. Assembled, analyzed, and managed data concerning supply and demand for health delivery systems. (Four months, full-time).
- 1978-1979 Teaching Assistant, Department of Economics, University of Nebraska-Lincoln. Instructional responsibilities for introductory macroeconomics.

Primary Teaching Fields

Law

Business Law Fundamentals, LAWS 3930
 Legal and Ethical Applications, LAWS 3940
 Legal, Ethical, and Social Environment, BSAD 8010
 Valuation of Intellectual Property, BSAD 8620

Economics

Principles of Economics: Microeconomics; ECON 2200
Managerial Economics; BSAD 8100/ECON 8210

Research and Creative Activity

Articles and Book Chapters (all listed)

- "Valuation of Naming Rights", chapter 12 in *The Principles of Sports Marketing* textbook edited by Gary Bernstein; chapter co-author is Greg Ashley of Bellevue University.
- "Learned Hand's False Efficiency", *The Earning Analyst*, volume 14, 2014.
- "Financial Management Fees in Damage Claims", Graham Mitenko and Michael J. O'Hara, *The Earnings Analyst* (TEA), volume XII, 2012.
- "Pecuniary Damage", Michael J. O'Hara, *The Earnings Analyst* (TEA), volume XI, 2010.
- "*Post Hoc Ergo?: A Reply to Craig Marxsen's 'Fabricating the Doomsday Crisis'*", Christopher Decker and Michael J. O'Hara, *B>Quest*, 2010. Invited Commentary.
- "Contracting with a Co-Author", Michael J. O'Hara and Graham Mitenko, *Economics & Business Journal: Inquiries & Perspectives*, volume 2, Number 1, October 2009.
- "Digest of Selected Articles: Usufructs". Michael J. O'Hara. *Real Estate Law Journal*, volume 37, number 2, Fall 2008.
- "Assessing the Mobility of Value of Tenure to a Faculty Member". Graham Mitenko and Michael J. O'Hara, *Economics & Business Journal: Inquiries & Perspectives*, volume 1, issue 1, October 2008.
- "The Expert Opinion: An Interview on Intellectual Property Law with Michael J. O'Hara, J.D., Ph.D." Interview by Dan Peak. *Journal of information Technology Cases and Applications*, volume 7, issue 1, 2005.
- "Governing for Genuine Profit" *Vanderbilt Journal of Transnational Law*, 2003, vol. 36, p. 1366. (Proceedings version published as Working Paper #533 of the University of Michigan's William Davidson Institute.) Invited. Solo authored.
- "Scope of Discovery of an Expert's Work Product", *Journal of Legal Economics*, 2002, vol. 10, no. 2, pp. 37-54. Double blind refereed. Jointly authored with Dr. Graham Mitenko of UNO CBA.
- "Precedence and Forensic Economics" \$1640, pages 16-15 through 16-18, in *Determining Economic Damages*, Drs. Gerald D. Martin and Ted Vavoulis, James Publishing, Costa Mesa: CA, 2002.
- "Intellectual property and information technology" *International Encyclopedia of Business & Management*. October 2001. Invited and double blind refereed. Jointly authored with Dr. Dan Peak of the University of North Texas.
- "Quandary of Who Owns the Content of Distance Education" *Journal of Information Systems Education*, volume 11 & 12, 2000. Refereed. Jointly authored with Dr. D. Peak of UNO IS&T's ISQA.
- "Intellectual Property" in International Encyclopedia of Business Management's

- Handbook of Information Technology in Business*. Malin Zeleny, Editor. October 1999. Refereed. Jointly authored with Dr. D. Peak of UNO IS&T's ISQA. (Now under revision for second edition. Dr. Peak now of University of North Texas.)
- "UNO versus ZAP," chapter in *Negotiation Simulation Exercises: Simulations with Teaching Notes* Fall 1998. Center for Dispute Resolution, Willamette University College of Law, Salem, Oregon.
- "Internship and Consulting Engagements: Management of the University's Liability," *Journal of Management Issues*, Vol. 12, #1, Spring 1999. Refereed. Jointly authored with Dr. D. Peak of UNO CMIT.
- "Practical Liability Issues of Information Technology Education: Internship and Consulting Engagements," *Informing Science: The International Journal of an Emerging Discipline*. Volume 1, Number 2, Winter 1998, pp. 43-51. Refereed. Jointly authored with Dr. D. Peak of UNO CMIT.
- "Rural Intrastate Air Service Systems," *Regional Science Perspectives*, 24 (1), 3-22, (January, 1994). Refereed. Jointly authored with C. Bayer and Dr. G. Mitenko, both of UNO CBA.
- "The Effects of Ownership and Investment upon the Performance of Franchise Systems," *American Economist*, Vol. XXXIV, Spring 1990. Refereed. Jointly authored with Dr. F. W. Musgrave of Ithaca College and Dr. W. L. Thomas of the State University of New York at Oneonta.
- "Retroactive Application of State Laws Regulating Franchise Relationships," *Franchise Law Journal*, Vol. 7, No. 3, Winter 1987. Refereed.
- "The Importance of the *Guidelines for Vertical Restraints*: with an Emphasis on Franchising," *Capitol University Law Review*. Vol. 15, No. 4, 1986. Refereed.
- "The Economic Expert in the Antitrust Arena," *Antitrust Law and Economics Review*. Vol. 12, No. 2, 1980. Refereed.

Proceedings (none is last ten years)

Papers Presented and Other Publications (only last ten years)

- "An Expert's Report", Michael J. O'Hara, Collegium of Pecuniary Damages Experts (CPDE), Las Vegas, NV, March 2017 (updated version of AEF 2017 paper).
- "Expert's Report", Michael J. O'Hara, Academy of Economics and Finance (AEF), Charleston, SC, February 2017.
- "Carpets Match the Drapes: Idioms in the Classroom", Michael J. O'Hara, Academy of Economics and Finance (AEF) Teacher Training Program (TTP), Charleston, SC, February 2017.
- "Quandaries", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), San Juan, Puerto Rico, August 2016.
- "Carpets Match the Drapes", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), San Juan, Puerto Rico, August 2016.
- "Retainer Agreements / Fee Schedules, Document Production, E&O Insurance & Expert Liability", Michael J. O'Hara and Graham Mitenko, Collegium of Pecuniary

Damages Experts (CPDE), Las Vegas, Nevada, March 2016.

"Tasks of an Expert Witness", Michael J. O'Hara, Academy of Economics and Finance (AEF), Pensacola, Florida, February 2016.

"Environmentally Preferential Purchasing Survey Results", Michael J. O'Hara, Canadian Academy of Legal Studies in Business (CanALSB), Toronto, May 2015.

"Ethics for Pecuniary Damage Experts", Michael J. O'Hara, Collegium of Pecuniary Damages Experts (CPDE), Las Vegas, Nevada, March 2015.

"Greenwashing", Michael J. O'Hara, Academy of Economics and Finance (AEF), Jacksonville, Florida, February 2015.

"EPP Survey Results", Michael J. O'Hara, Academy of Economics and Finance (AEF), Jacksonville, Florida, February 2015. "Stigma Effects on Valuation", Michael J. O'Hara, Academy of Economics and Finance (AEF), Chattanooga, Tennessee, February 2014.

"Ethical Issues and Assessment", Michael J. O'Hara, Association of Government Accountants, Omaha, Nebraska, October 2013.

"RRR via Brownfields", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), Boston, Massachusetts, August 2013.

"'Random' Regulation in Nebraska", Academy of Economics and Finance (AEF), February 2012, Mobile, Alabama.

"Learned Hand's False Efficiency", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), Kansas City, Missouri, August 2012. An **updated version** presented to the Nebraska Economics and Business Association (NEBA), October 2012, Lincoln, NE.

"Entrepreneurship: the T of STEM", Michael J. O'Hara, Nebraska Economics and Business Association (NEBA), October 2012, Lincoln, NE.

"A Clearinghouse for Forensic Economics", Michael J. O'Hara Collegium of Pecuniary Damage Experts (CPDE), Las Vegas, Nevada, March 2012.

"A Baker's Big Top Ten List of Recent Cases of Interest to FEs", Michael J. O'Hara, Collegium of Pecuniary Damage Experts (CPDE), Las Vegas, Nevada, March 2012.

"A Steep Learning Curve", Nebraska Economics and Business Association (NEBA), October 2011, Norfolk, Nebraska. Co-authored with Graham Mitenko. A revised version presented at the Academy of Economics and Finance (AEF) in February 2012 in Charleston, South Carolina.

"Mitigation of Wrongful Termination Damages", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2011, New Orleans, Louisiana.

"A Modest Proposal for Inclusion of Financial Management Fees", Graham Mitenko and Michael J. O'Hara, presented both to the Academy of Economics and Finance (AEF) in February 2011 in Jacksonville, Florida as well as to the Collegium of Pecuniary Damages Experts (CPDE) in March 2011 in Las Vegas, Nevada.

"Scope of Practice: As Seen Through Medicated Contact Lenses", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2010, Richmond, Virginia.

"Subrogation", Michael J. O'Hara, Academy of Economics and Finance (AEF), February 2010, Houston, Texas.

"Pay Day Loans", Michael J. O'Hara, Smart Money Week, Omaha, Nebraska.

- "Wrongful Death and Personal Injury Damages in Nebraska", Michael J. O'Hara, Nebraska Economics and Business Association (NEBA), October 30, 2009, Omaha, Nebraska
- "Wrongful Death and Personal Injury Damages in Nebraska", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2009, Denver, Colorado.
- "Honey, They Shrunk the Honey", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2009, Denver, Colorado.
- "Pecuniary Value", Michael J. O'Hara, Collegium of Pecuniary Damages Experts (CPDE), April 2009, Las Vegas, Nevada.
- "Fiduciary Trust and Personal Banking", Graham Mitenko, Michael J. O'Hara, and Susan Eldridge. Academy of Economics and Finance (AEF), February 2009, Pensacola, Florida.
- "Contracting with a Co-Author", Michael J. O'Hara, Graham Mitenko, and Janet West. Academy of Economics and Finance (AEF), February 2009, Pensacola, Florida.
- "Contract for a Co-Author", Michael J. O'Hara and Graham Mitenko. Nebraska Economics and Business Association (NEBA), October 2008, Crete, Nebraska. (Revised and submitted to the *Economics and Business Journal* using the AEF revision noted above.)
- "Rack the Value", Michael J. O'Hara. First version presented at the Academy of Legal Studies in Business (ALSB), August 2008, Long Beach, California. Second version presented at the Nebraska Economics and Business Association (NEBA), October 2008, Crete, Nebraska
- "The Retirement Conundrum", Graham Mitenko and Michael J. O'Hara, Academy of Economics and Finance (AEF), February 2008, Nashville, Tennessee.
- "Faculty Retirement Variables", Graham Mitenko and Michael J. O'Hara, Nebraska Economics and Business Association (NEBA), October 2007, Hastings, Nebraska.
- "Trespasser or Implied Invitee: *Apis Mellifera*". Michael J. O'Hara. Academy of Legal Studies in Business (ALSB), August 2007, Indianapolis, Indiana.
- "Creeping Up the Ladder to the 'Best and Safest' Risk-Free Return". Graham Mitenko and Michael J. O'Hara, American Academy of Economic and Financial Experts (AAEFE), March 2007, Las Vegas, Nevada.
- "Applying Geometric Returns During Interest Rate Changes". Graham Mitenko and Michael J. O'Hara, Academy of Economics and Finance (AEF), February 2007, Jacksonville, Florida.

Other Creative Activity (all)

Economics Ph.D. Dissertation: *The Nebraska Power Review Board: Regulating a Publicly-Owned Electric Utility Industry*. December 1983. Advisor: Dr. J. R. Felton.

Introduction to Legal and Economic Analysis, self published textbook for BSAD 8010. Initial draft during Spring 2004, first hardbound copy Summer 2004; second hardbound copy Fall 2004, third hardbound copy Spring 2005.

SERVICE TO PROFESSION AND DISCIPLINE

Supervision of Major Student Research Projects

IN PROGRESS:

Member, Ph.D. Dissertation Supervisory Committee, Alicia Buttner, Psychology.

LIKELY TOPIC: canine interaction with humans and measurement of canine stress. January 2012 - present.

Member, Ph.D. Dissertation Supervisory Committee, Penny Westphal, Criminal Justice, course work in progress.

COMPLETED (last ten years):

Rachel Ouranda, pursuing an MBA, BSAD 8900, TOPIC: "Valuing a Website".

Member, UNO Department of Psychology Masters Thesis Supervisory Committee, Kathryn "Kitty" Dybdall, TOPIC: "Measuring Stress and Social Behaviors in Domestic Cats at a Local Humane Society", May 2011.

Member, Supervisory Committee for Education Ph.D. Dissertation by Gary Ogden Harper, *An Interpretive Biography of Saint Nicholas: Applying Contextual Analysis to the Historical and Mythological Evolution of Santa Claus to Create New Teaching and Learning Paradigms*, August 2009.

Chair, MBA Thesis Supervisory Committee, Deepak Gupta, *A Lost Profits Estimate for Information Technology Start-ups*, May 2009.

Editorial Board Membership and/or Service as a Reviewer:

EDITORIAL DUTIES

The Earnings Analyst, 2011 - 2016,

Co-Editor O'Hara appointed by CPDE;

Editor Bob Male appointed by AREA.

Economics & Business Journal, 2009 - present. Book Review Editor.

CPDE *Compendium*, 2009 - present. Co-editor of newsletter with Bob Male.

Business Quest, 2012 - present. Member of Editorial Board.

Journal of Legal Economics, Editor, 2005 - 2007.

REVIEWER DUTIES

Academy of Legal Studies in Business

American Business Law Journal, Staff Reviewer, 2006 - present.

Annual Meeting *Proceedings*, 1995 - present.

Discussant, Distinguished Papers, 1996, 1997, 1999 - 2002, 2004.

Journal of Legal Studies in Business, reviewer, 2001 - present.

Journal of Business Ethics, reviewer, 2009 - present.

Midwest Law Journal, reviewer, 2008 - present.

Journal of Legal Economics, reviewer, 2000 - 2005; then Editor 2005 through 2007.

Journal of Management Issues, reviewer, 1988 - 2002.

The Earnings Analyst, reviewer 2016 - present; was Co-Editor 2011 - 2016.

Membership in Professional Organizations (some no longer are active):

Primarily Law Related

Academy of Legal Studies in Business (ALSB)
American Bar Association (ABA)
American Intellectual Property Law Association (AIPLA)
American Association for Justice (AAJ, f.k.a., ATLA)
Nebraska Bar Association
Nebraska Trial Lawyers Association (NTLA)

Primarily Economics Related

Collegium of Pecuniary Damage Experts (CPDE), Founding member 2009.
Secretary and Member, Board of Directors, March 2011 - present.
Co-Editor, *The Earnings Analyst*.
Nebraska Economics and Business Association (NEBA)
President-Elect, 2012; President, 2013, Past President, 2014.
Board of Directors, 2010 - present.
Book Review Editor, *Economics & Business Journal*, 2009 - present.
National Association of Forensic Economists (NAFE)
Ad Hoc Membership Committee, 2003-2004.
American Economics Association (AEA)
Academy of Economics and Finance (AEF)
American Academy of Economic and Financial Experts (AAEFE)
Board of Directors, 2002 - 2007.
Editor, *Journal of Legal Economics*, 2005 - 2007.
National Association of Business Economics (NABE)
Missouri Valley Economics Association (MVEA)
Omaha Green Coalition.

Primarily Service Related

Omicron Delta Epsilon (Economics Honorary) Life Member
Beta Gamma Sigma (Business Honorary) Life Member
President of Local Chapter, 1988-1991

University Service (last ten years)

College

Faculty Advisor, 2012 - 2017. G-BASIS student group (Green Businesses Advancing Strategic Integration of Sustainability).
Green Team, 2011 - 2017. The UNO CBA Green Team is pursuing sustainability in college operations.
Ad Hoc Coordinator of CBA's AACSB Reaffirmation of Accreditation, 2003 - 2011. UNO CBA successfully reaccredited in 2011.
CBA External Relations Council, Aug. 2009 - 2011.

CBA Personnel Advisory Council, 2004 - Aug. 2010.
CBA Strategic Planning Council, 2005 - Aug. 2009.
Graduate Program Committee; Chair, 1991-1993; Member, 1989-1993; as well as sabbatical replacement member during Spring 1999 and Spring 2010.

University

UNO Budget Advisory Committee; Member 2012 - present.
Faculty Advisor, UNO student group, G-BASIS, whose membership is focused on CBA, Fall 2011 - 2017. As part of UNO's and as part of CBA's sustainability efforts I lead reactivation of a defunct student group (i.e., Ecology NOW), which the new members renamed G-BASIS (i.e., green businesses advancing strategic integration of sustainability).
UoN Executive Graduate Council, Aug. 2010 - July 2013; also 2000.
UNO Graduate Council, March 1998 - August 2000; and August 2004 - August 2007; August 2010 - 2014.
Committee "A" (Policy), August 2004 - August 2007; August 2010 - present.
CO-Chair of Committee "A", 2011; 2012.
Student Appeal Committee, 1999-2000; August 2010 - August 2011.
Program Review Committee, 2010, Geography/Geology.
Committee "C" (Personnel), March 1998-August 2000.
UNO Student Publications Board (i.e., publisher of the *Gateway*), August 2010 - July 2014.
UNO Priorities Committee: STEM. In Fall 2011 UNO has chosen five priority areas and formed committees to assemble resources and develop an implementation plan for those priorities. STEM (science, technology, engineering, and mathematics) is one of those five.
UNO Facilities Planning Committee; Member 2003 - 2012.
Academic Freedom and Tenure Committee; Member, 1996 - 2002; 2003 - 2010; Chair, 1998 - 2002. Presided over May 1998 trial resulting in dismissal, after 34 years with UNO, of Professor Gordon Becker (Psychology). Re-elected 1999. Presided over May 2000 trial affirming the denial of tenure for Dr. Jeffrey Johnson (Aviation). Presided over August 2006 trial affirming the denial of tenure for Dr. Pamela Owens (Philosophy and Religion). Re-election in October 2006.
Technology Transfer Committee; Member, 1996 - 2007. Committee formed upon my suggestion to Chancellor. Functions transferred to UNMC's and UNL's intellectual property offices.

AWARDS AND HONORS (last ten years)

CBA Summer Teaching Fellowship (2017): "B-law for Start-ups".
CBA Summer Research Fellowship (2015): Business Case re Brownfields.
CBA Summer Research Fellowship (2013): Greenwashing.
UNO Professional Development Leave (2013): "Law & Econ of Pollution Prevention".
CBA Summer Teaching Fellowship (2012): "Creating LAWS 4630 / BSAD 8636 'Brownfields in Sustainable Systems'".

(all) DEPOSITIONS and TESTIMONIES: Rule 26

January 2016

McGowan v. Platte Valley Medical Group
CI 1 00589; District Court of Buffalo County, Nebraska
Retained by Defendant. Wrongful discharge; mitigation of damages.
Deposition: January 8, 2016.
Trial: none; settled in March 2016.
Attorney: Kate Jones, Kutak, Rock, LLP, Omaha Nebraska.

April 2006:

Koenig v. CBIZ Benefits & Insurance Services, Inc.
8:04 CV 486 (D. Neb. 2005)
Retained by Defendant. Covenant not to compete; lost profits.
Deposition: none
Trial: none, case settled week prior to trial date of October 10, 2006
Attorney: Alan Rupe, Kutak Rock, LLP, Wichita, Kansas;
Kutak Rock's Omaha office contact was attorney Janis Winterhof.

July 2004:

Eunice M. Foster-Holland v. Roberts Dairy Company, LLC
8:03 CV469 (D. Neb. 2004)
Retained by Defendant. Title VII.
Deposition: none
Trial: none
Attorney: Angela Lisec, Blackwell Sanders Peper Martin LLP, Omaha, Nebraska

MAY 2001:

Nash Finch v. Rubloff Hastings
4:00 CV206 (D. Neb. 2000).
Retained by Plaintiff. Lost Profits.
Deposition: none.
Trial: testimony on February 5, 2002.
Attorney: Pamela Dahlquist, Kutak Rock, LLP, Omaha, Nebraska

MARCH 2001:

Nebraska On-Ramp, Inc. v. US West Communications, Inc.
8:99 CV284 (D. Neb. 1999)
Retained by Defendant. Lost Profits.
Deposition: March 23, 2001.
Trial: none, case settled, prior to trial, week of 1-1-2002.
Attorney: Richard Jeffries, Kutak Rock LLP, Omaha, Nebraska.

Attachment No. 2

Michael J. O'Hara, J.D., Ph.D.

6010 South 146 Street

Omaha NE 68137

mohara@isovox.com

Professor

College of Business Administration

University of Nebraska at Omaha

Omaha NE 68182

402 - 554 - 2823

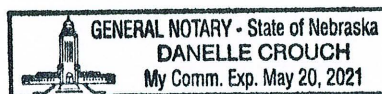
Nebraska

Douglas County ss.

I, Michael J. O'Hara, do swear under oath that the report that follows is based on my personal and professional education, training, knowledge, investigation and experience. I have applied regularly recognized research and analytical methodologies, and used to generally recognized and accepted economic and finance analytical processes to reason through, and reach, the conclusions expressed below. The contents of this report are known to me personally and my conclusions represent my professional work product. I am prepared to testify about these matters.


Michael J. O'Hara

Subscribed and sworn to before me on June 6th, 2017 by Michael J O'Hara.




Notary Public

Report: TransCanada Keystone XL Pipeline -- Nebraska Route

My name is Michael J O'Hara. My professional resume or curriculum vitae is attached to this Report as **Attachment 1**. It sets forth my credentials. The subject matter of this report is within the scope of my professional expertise.

I used methods of analysis, testing and deduction commonly used in generally accepted by economists engaged in the study of similar subjects in the United States and around the world. For example, these methods can be seen as used in applied in many publications of the Organisation for Economic Cooperation & Development (OECD). OECD is an international organization headquartered in Paris, France with a staff of 2500 persons and annual publications of approximately 250 titles per year, substantially all of which are about economics, and other matters designed to improve the economic and social well-being of the people around the world The OECD is one of the world's foremost economic organizations. It was organized by the United States, Canada and 18 European nations in 1960.

The methods I use or also recognized by many publications in my view, including, but not limited to publications of the *Congressional Budget Office* of the United States Congress, the

Office of Management & Budget of the United States, and publications by numerous economists employed by the Federal Reserve System and the regional Federal Reserve Banks.

Documents Reviewed

I had access to, and I reviewed or consulted the following publications during the course of my work:

1. 2017 TransCanada KXL pipeline Co., LTD Application filed with the Nebraska PSC.
2. NE PSC Testimony of TransCanada Witness Barnett
3. NE PSC Testimony of TransCanada Witness Beaver
4. NE PSC Testimony of TransCanada Witness Fuhrer
5. NE PSC Testimony of TransCanada Witness Goss
6. NE PSC Testimony of TransCanada Witness Kothari
7. NE PSC Testimony of TransCanada Witness Palmer
8. NE PSC Testimony of TransCanada Witness Portnoy
9. NE PSC Testimony of TransCanada Witness Schmidt
10. TransCanada Proposed Easement Form
11. Route Map
12. Summary, Names, Number of Property Owners
13. List of Counties and Governing Bodies
14. Environmental Impact Statement
15. IRS Pub 946, How to Depreciate Property
16. Statement of Ethical Principles & principles of Professional Practice, Nat'l Ass'n of Forensic Economists
17. L. Malm, Taxplainer: State & Local Impact of Keystone Pipeline (January 2017).
18. Neb Rev Stat § 57-1401 et seq. & PSC Reg. Tile 291, Ch. 9 of Neb Admin Code.
19. Article, 10-Year Treasury Constant Maturity Rate, Federal Reserve Bank of St. Louis, June 1, 2010.
20. 350 Neb Admin Code Real Property Valuation, Assessment Regulations
21. L Stockman, Keystone XL Benefits from Taxpayer Subsidies, Oil Change Int'l (Oct 2012).
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26. Prototype TransCanada Easement Instrument

27. IMPLAN's "General Information About Multipliers" at http://support.implan.com/index.php?option=com_content&view=article&id=212:212&catid=222:222
28. Business Dictionary, <http://www.businessdictionary.com/definition/lease>.
29. Land use planning for pipelines: A guidelines for local authorities, developers, and pipeline operators, ISBN 1-55436-826-X. (Canadian Standards Association 2004). www.cepa.com/wp-content/.../11/CSA-Plus-663-Land-Use-Planning-For-Pipelines.pdf
30. Guidelines for Property Development, , American Petroleum Institute Pub. Prod # DOGP04 (2011). www.chevronpipeline.com/pdf/Guidelines_for_Property_Development.pdf
31. The American Railway Engineering Association Specifications, pertinent parts at <https://www.cn.ca/-/media/Files/Delivering.../pipeline-specs-form-US-0510-en.pdf?...>
32. Gen Admin Order of Indiana Utility Reg. Comm'n 2007-1.
33. Indiana Agricultural Impact Mitigation Agreement April 2008 Agreement governing the Rockies Express Pipeline-East Project.
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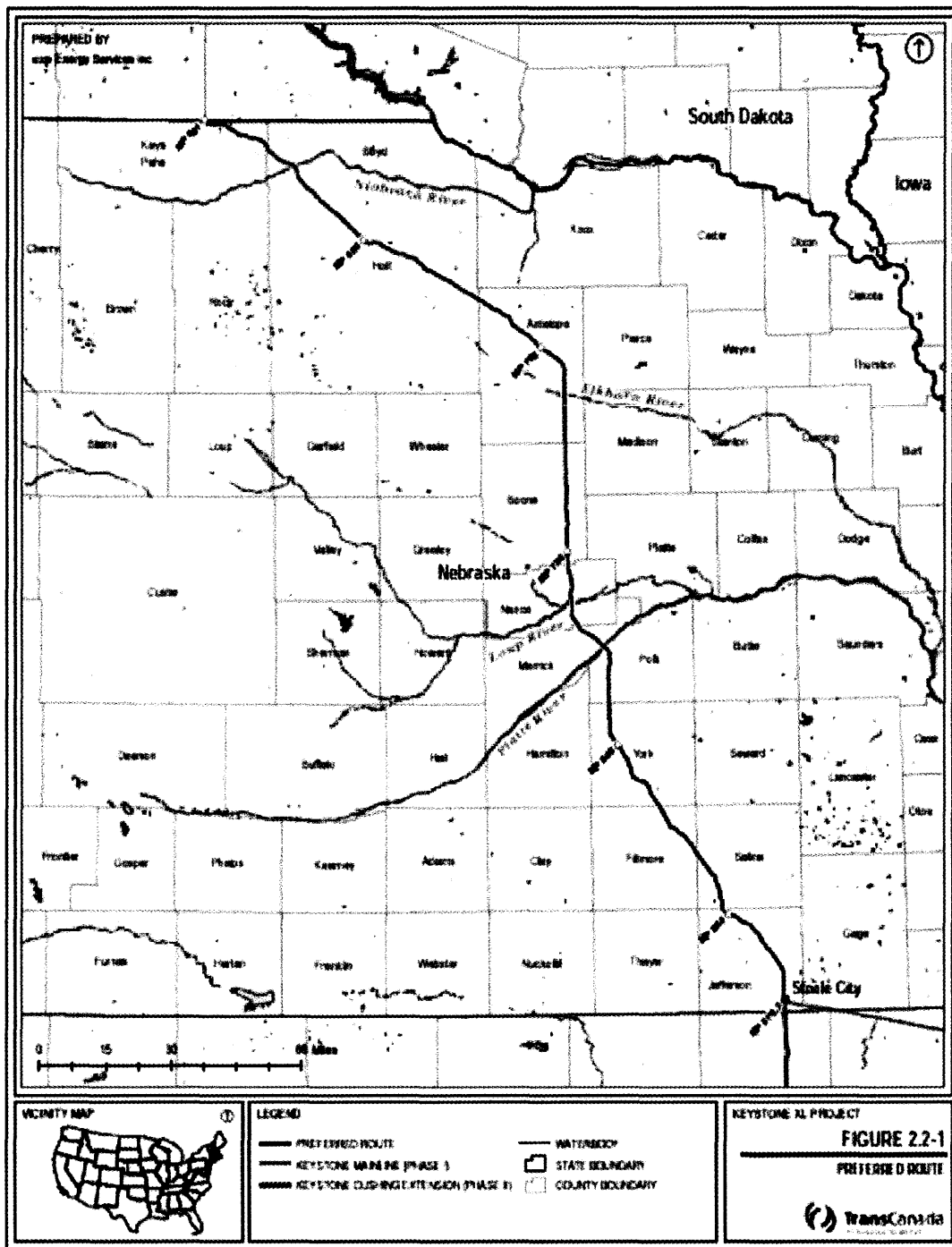
The Proposed Pipeline Route

As the Applicant for Nebraska Public Service Commission's approval of a proposed route for its proposed KXL major crude oil pipeline, TransCanada Pipeline Co. LP proposes the three routes, one being preferred. By its description, TransCanada says this "preferred route, would start at the Nebraska border in Keya Paha County near pipeline milepost 601. It would run across the southwest corner of Boyd County, cross Holt County, enter Antelope County and turn southward. From there, it would continue through Boone, Nance, Merrick, Polk, York, Fillmore and Saline Counties."

The preferred route, hereinafter the route, across Nebraska is 275.2 miles long; it would require 5 pump stations.

This means the route crosses approximately 1,102 quarter-sections of land. Virtually all this land is used for production agricultural purposes. The predominant ag use is row crop farming. The second most common use is forage production. In many instances the land will dissect farms, and in some instances it will divide center pivot irrigation pivot points from irrigation wells, and residences from domestic wells.

The route is mapped by TransCanada as:



Scope of Engagement

I am engaged by Domina Law Group PC to provide professional services for a fee amount that will not exceed \$15,000. My hourly rate is \$300. Travel time is billed. Expenses are charged without markup in addition. They do not include data bases available to me through public sources without charge.

I am engaged to respond to these specific eight (8) questions:

1. What is the impact of the proposed KXL pipeline, along the proposed route, on property tax revenues in Nebraska, assuming current rates, over 20 years? 50 years,?
2. What is the impact of the proposed KXL pipeline, along the proposed route, on Nebraska income tax revenues, assuming current rates, over 20 years? 50 years?
3. What is the impact of the proposed KXL pipeline, along the proposed route, on sales/use tax revenues, assuming current rates, over 20 years? 50 years?
4. What economic opportunities are likely to be disrupted or precluded by the existence of the pipeline in the location of the proposed route over the next 20 years? 50 years?
5. In terms of its economic advantages and consequences, does the proposed use of the pipeline route by the Applicant more appropriately resemble and approximate a route requiring a real estate interest in the form of a lease, or in the form of an easement?
6. What is the economic consequence of TransCanada's use of an easement, as contrasted with a lease to acquire and occupy the proposed route over the course of 20 years? 50 years? In the case of removal of the depleted pipeline?
7. What are the likely economic consequences upon Nebraska and its counties for any enhancements in expenses attributable to a) pipeline construction? b) pipeline maintenance?
8. What is my analysis of the economic study and report of TransCanada economist, Dr. Ernie Goss?

Analysis

I. What is the impact of the proposed KXL pipeline, along the proposed route, on property tax revenues in Nebraska, assuming current rates, over 20 years? 50 years?

1. Research publications concerning the impact of crude oil pipelines on property values differ in results depending on one critical variable: whether the study was undertaken before, or after, a significant leak, spill, or release in the general vicinity of the real estate under consideration. Published studies examining real estate values after major oil spills disclose significant adverse impacts on real estate values. And, values tend to decline where cleanup costs have been incurred and the landowner participation in those costs has been required, either through direct payments, or loss of use of the real estate. There are many such studies. They were compiled in 2014 in *Pipelines and Property Values: A Review of the Academic Literature* Nadlan Consulting 2014) (<https://apps.neb-one.gc.ca/REGDOCS/File/Download/2480459>). This compendium notes that post-spill or leak consequences range from an adverse impact upon real estate ranging from minus 6.5% to minus 25%. *Id.*
2. TransCanada has experienced major spills along its Keystone I pipeline. An April 2016 Release in South Dakota caused major cleanup expenses. News of spills of this kind certainly reached Nebraska on a regular basis. They generate awareness of risks associated with land ownership on an oil pipeline route. Values of real estate are derived economically from a combination of benefits and risks from ownership. At its simplest level, Nebraska dryland sells for less money than Nebraska irrigated row crop land for two (2) reasons: 1) there is a greater risk of crop failure due to drought on dry land; and (2) the production potential is lower on dryland.
3. Farms and ranches dissected by a crude oil pipeline bear a greater risk of disruption to operations and crop disturbance, and, therefore, partial crop failure due to potential oil releases or leaks from a pipeline. They also bear the risk that production potential is lower because the pipeline Company will use its easement for ingress, egress, repairs, replacement, disruption, disturbance of operations, and other levels of interference and complexity.
4. Property values along the proposed route are likely to decline in comparison with nearby properties not along the route, on a progressively increasing basis as the pipeline ages. The compendium of publications on this subject, noted above, illustrates this is so. A declining values occurs because it is widely recognized that “pipelines are likely to corrode and leak”. Economists generally recognize, and accommodate in economic analysis, risks that are generally accepted. The risks of corrosion, leaks, aging and debilitation of a pipeline are so well recognized that they were articulated in a publication of the American Bar Association distributed for general readership by American lawyers and also public readership. See, Charles Brownman, *Hazardous Liquids Pipelines — Reg. & Due Diligence*

(apps.americanbar.org/buslaw/committees/CL400000pub/newsletter/.../brownman.pdf)

5. In Nebraska, it is probable that a body of information sufficient to support demonstrable differences in value sufficient for the purposes of real estate appraisal and appraisers will not exist for at least a decade, and the complete impact will not be fully known until after the state has experienced one or more major spills. A spill is virtually certain to occur as noted above. A professional judgment must be assigned the probable adverse impact on property values from the presence of the pipeline. This judgment can only be based on the literature and past experience.
6. Assuming the adjustment is at a midpoint between the demonstrated values declines in the studies noted above (which focused principally on housing or residential properties and must be extrapolated farmland) it is reasonable to forecast a **15% negative difference** between the market value of land on the pipeline route and the market value of comparable land that is remote from the route. This decline in values will produce a decline in property taxes of commensurate amounts since the Nebraska property taxes of function of the “actual value” of real estate.
7. The effect of this adverse consequence will be, assuming the 15% negative difference, the equivalent of removing from taxation altogether approximately 165 for sections of Nebraska farmland. ($1,102 \text{ quarters} \times 15\% = 165.3$). Using an eastern Boyd County quarter section randomly selected only for illustration with a land and improvement value of \$687,000, the 2017 property taxes on this parcel are \$7,155.

If, hypothetically, this is the approximate average value of land across Nebraska by the proposed KXL pipeline, this represents a loss of ($165 \times \$7,155 =$) **\$1,180,575 in real estate taxes per year.**

This loss would be reasonably forecast as perpetual and potentially escalating after the 10th year and as spills and information of consequences of spills become better known. Indeed, as is discussed below, if landowners must bear the cost of removal of the abandoned line, and environmental remediation and cleanup, in the decade nearest the end of the pipeline’s life, the values of land on the pipeline route could collapse.

8. **Enhanced Environmental Assessment Costs.** The TransCanada Application fails to recognize, or admit, that environmental hazards are present as a result of the implantation of crude oil pipe lines anywhere in the United States, even before oil leaks or releases are detected. The presence of the pipeline is a *recognized environmental condition (REC)* for purposes of the technical aspects of Phase I & II Environmental Site Assessments undertaken to ascertain the presence or absence of conditions requiring remediation under State and Federal environmental laws, including, but not limited to, 42 U.S.C. §9601, the *Comprehensive Environmental Response Cleanup Liability Act (CERCLA)*. This is a well-documented and recognized concern, and increased expense, and a cause for diminution in value of real estate. Technical aspects

are explained in readable publications such as Z Hejzlar, *Technical Aspects of Phase I/II Environmental Site Assessments* (ASTM MNL43).

9. The financial impact of this enhanced cost will require experience to be fully appreciated, and value. No data for similar pipelines has been identified as a reliable foundation for projecting this cost. But reasonably prudent economic forecasting must inherently, and responsibly note its nearly certain probability of occurrence. Determination of an appropriate reserve, as a condition for issuance of route approval would be a reasonable and prudent course.
10. The Applicant's application Appendix H on page 22 contains Table 3.6a authored by Professor Goss. Dr. Goss notes nearly 100% of KXL's pipeline assets are fully depreciated at the end of 15 years; and Dr. Goss provides forecasts for the first 15 years of operation. Dr. Goss does not provide any information on the pattern of KXL investments into the pipeline other than to display the vast majority of property tax obligations initiating in the forecasted 2 years of construction immediately prior to the forecasted 15 years of operation. Accordingly, implicitly, all KXL pipeline assets are fully depreciated by the end of that 15th year (i.e., 2034). Accordingly, it is easy to **forecast KXL's property tax obligations owed to each and every county in each and every one of the years 2035 through 2069 (i.e., 50th year of operation): it is a grand total of \$0.** That is, the total property taxes obligations Dr. Goss forecasts for the first 15 years of operations is identical to the totals for first 20 years and for the first 50 years.
11. In summary, I am reasonably certain that, in economic terms, construction of the proposed pipeline along the proposed route will produce a significant net decrease in property taxes over the life of the pipeline.

II. What is the impact of the proposed KXL pipeline, along the proposed route, on Nebraska income tax revenues, assuming current rates, over 20 years? 50 years?

12. Nebraska imposes state taxes personal and corporate income. The State's revenues increase as the incomes of its residents increase. More corn production, for example, means more income. And rental of land for use by another to make money generates both rental income and income from the tenant's operations.
13. Table 1 of this report by O'Hara extrapolates Goss' jobs forecast and income forecast to cover 50 years of operation. This Table 1 adds income taxes. The labor related income taxes paid over the first 20 years would be (in discounted to 2015 dollars) \$518,576,343; and over the first 50 years \$1,202,142,284; with the 20 year average being \$25,928,817 and the 50 year average being \$24,042,846. That reduction in the average is not a typo, it is the result of declining jobs.
14. Table 2 of this report addresses income from leases instead of easements and includes income taxes. KXL uses easements which do not involve rental income to landowners. Landowners lose rental income in the amount of \$4,950,000 in first year of operations (i.e., 2020), which escalates at 2% per year. Nebraska in turn then loses income tax revenues in the first year of \$346,500. Over the first 20 years the discounted dollars income tax loss for Nebraska is \$4,843,144 and over the first 50 years that loss of income tax revenues is \$14,320,027.

III. What is the impact of the proposed KXL pipeline, along the proposed route, on sales/use tax revenues, assuming current rates, over 20 years? 50 years?

15. Table 3 of this report extrapolates beyond Goss' sales/use tax obligations out to cover the periods of first 20 years of operations and first 50 years of operation.
16. The total sales/use taxes owed by KXL (given Goss' assumptions) are \$82,709,188 and \$138,477,315, over the first 20 years of operations and 50 years, respectively.
17. Note that the average sales/use taxes owed decline over the 50 year period compared with the 20 year period. Over the 20 year period KXL's average sales/use tax obligation will be \$4,135,459 while the 50 year average drops to become \$2,769,546.
18. TransCanada will be obligated to pay significant sales/use taxes. However TransCanada might obtain major reductions in these tax obligations through various business incentive programs. Dr. Goss did not address this issue.

IV. What economic opportunities are likely to be disrupted or precluded by the existence of the pipeline in the location of the proposed route over the next 50 years?

19. The proposed pipeline route will dissect Nebraska along an irregular route. This dissection will diminish or preclude certain economic opportunities. Increased construction costs, instruction complexities, risks associated with proximity to the pipeline, etc., will have a disruptive impact.
20. The proposed pipeline route ignores all county zoning and land use restrictions. It does not observe setbacks from structures or property lines. The proposed route does not respect either the existing need, or potential need for future pipelines. Nothing in the plan for this route would accommodate existing or future pipelines by constructing them in close proximity together to create a court or and minimize crisscrossing and chopping up the State. Canadians have given these matters national consideration in order to protect future options with current planning. This was done more than a decade ago. *Land use planning for pipelines: A guidelines for local authorities, developers, and pipeline operators*, ISBN 1-55436-826-X. (Canadian Standards Association 2004).
21. As noted previously, county land use controls are ignored by the proposed route. It appears as though they only consistently applied at land-use control over the are the decisions of TransCanada itself. There are no apparent respect by KXL for setbacks.
22. Landowners who have pipelines on or near their property require information. The proposed route passes, principally through agricultural property. Some state agencies require an *Agricultural Impact Mitigation Agreement* with the pipeline company. Illinois is one such State. In Indiana, a General Administrative Order was issued by its Utility Regulatory Commission. The 13 page Order establishes specific conditions to be masked to assure compatibility with agricultural uses, and uses of wet soils or soils commonly displaying wet conditions. *Gen Admin Order of Indiana Utility Reg. Comm'n* 2007-1. An example of an Indiana *Agricultural Impact Mitigation Agreement* can be seen by examining the April 2008 Agreement governing the Rockies Express Pipeline-East Project. This Project involves a 42-inch natural gas pipeline crossing, nine (9) Indiana Counties.
23. The *Pipeline Safety Trust* has published a general guideline outlining many concerns and documenting considerations. Each consideration involved potential economic costs. These costs have not been accounted for, assessed or considered in the TransCanada application. *Pipeline Information for Landowners*, Pipeline Safety Trust, <http://pstrust.org/about-pipelines1/pipelines-for-landowners/>.
24. As the route map above demonstrates, in many instances the pipeline will not follow section lines and will not run north-south, or east-west, but will cross much of Nebraska

at an angle that is not consistent with the State's current basic road system. These angles also are not generally consistent with the State's system of requiring that utility easements be built on property lines.

25. This crisscrossing presents construction cost concerns for future structures that may intersect the route and require crossings above or below the proposed pipeline. The frequency or intensity of these potential uses has not been forecasted by TransCanada or its economist. Insufficient data is found in the documents to disclose that number might be.
26. Industry data establishes guidelines for crossing crude oil pipe lines. Generally, crossings are asked to be at 90° angles, where they must occur. The KXL easement requires crossing to be at no less than a 45° angle. *Guidelines for Property Development*, , American Petroleum Institute Pub. Prod # DOGP04 (2011). Meeting the requirements of these guidelines will involve costs. Commonly, really well made crossings will require culverts, concrete boxes, or bridges. *Id.* Railroad crossings over pipelines must conform with criteria of the *American Railway Engineering Association Specifications*; these Specifications include highly specific criteria. These include heightened minimum criteria for the pipe itself. *Id.*
27. Nothing in the TransCanada submissions evaluates the economic, economic forecasting, or engineering concerns associated with these compliance requirements. In addition, nothing submitted evaluates how often the enhanced cost of such compliance will preclude, or complicate, or heighten the risk due to more cost, associated with future projects in the State. Projects thwarted, or built only with the increased costs of planning, planning approval, and construction, are likely to range from construction of new improvements for center pivot irrigation of a farm to building of highway by the State, and many more.
28. It is my opinion that, without accounting for this subject matter, Nebraska would undertake great risks, without commensurate rewards, upon approving the proposed route. Accordingly, from the perspective of economics, it is not reasonably prudent to approve this route under the circumstances.

V. In terms of its economic advantages and consequences, does the proposed use of the pipeline route by the Applicant more appropriately resemble and approximate a route requiring a real estate interest in the form of a lease, or in the form of an easement?

29. This analysis is constrained to economics. It considers legal definitions supplied by Domina Law Group pc llo from the sources in Nebraska law indicated below. These definitions are:

1. Lease.

"lease is a species of contract for the possession and profits of land and tenements, either for life, or for a certain period of time, or during the pleasure of the parties; and the essential elements of a contract must be present,"

Krance v. Faeh, 215 Neb. 242, 245, 338 N.W.2d 55, 57 (1983).

2: Real Property.

"(5) Real property shall mean any estate or interest in land, including all buildings, fixtures and improvements thereon and all rights-of-way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, used or enjoyed with said land, or any part thereof;"

Neb. Rev. Stat. § 76-1001.

3: Easement.

"The possessor of land subject to an easement created by a conveyance is privileged to make such uses of the servient tenement as are not inconsistent with the provisions of the creating conveyance. An easement is usually defined as a right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with the general property right of the owner. The owner of the easement may make use of it only for the special purpose that gave rise to the easement itself."

R & S Investments v. Auto Auctions, Ltd., 15 Neb. App. 267, 278, 725 N.W.2d 871, 880 (2006), citing *Kovanda v Vavra*, 10 Neb. App. 486, 633 N.W.2d 576 (2001), citing 28A C.J.S. *Easements* § 165(a) at 380 (1996).

4: Wind Agreement.

"(2) Wind agreement means a right, whether or not stated in the form of a

restriction, easement, covenant, or condition, in any deed, wind easement, wind option, or lease or lease option securing land for the study or production of wind-generated energy or any other instrument executed by or on behalf of any owner of land or air space for the purpose of allowing another party to study the potential for, or to develop, a wind energy conversion system as defined in section 66-909.02 on the land or in the air space."

Neb. Rev. Stat. § 76-3001.

5: Construction of Instruments

"In the construction of every instrument creating or conveying, or authorizing or requiring the creation or conveyance of any real estate, or interest therein, it shall be the duty of the courts of justice to carry into effect the true intent of the parties, so far as such intent can be collected from the whole instrument, and so far as such intent is consistent with the rules of law."

Neb. Rev. Stat. § 76-205.

6. Leases with Easements

Leases can actually contain grants of easements with in them.

Eng v Olsen, 99 Neb 183, 155 N.W. 796 (1915).

30. The proposed KXL pipeline route is intended to be used for a finite purpose and a finite time. The projects duration is to match the KXL pipeline. The pipeline is being built to transport bitumen, which is essentially viscous tar, from open pit mining locations in northern Alberta through Nebraska, southward.
31. Nothing about the pipeline project or purpose is "perpetual". Economists generally perceived leases as functioning for a finite term of years. Though this is not a component of the statutory definition, it appears in general economic sources as commonplace as *Business Dictionary*, a source identifying terms commonly used in business and economics. <http://www.businessdictionary.com/definition/lease.html>
32. Wind agreements are of interest. They routinely permit the lessee to use the leased property for a defined term of years, and purpose while regulating access and use by the owner. Wind agreements are seldom called "easements". They routinely provide for annual rents and are used by the owner to generate annual income. They interfere with the right of the owner to use the leased real estate to generate an income. The TransCanada instrument more closely approximates a Wind Agreements based upon what is asked of the landowner.

33. Ratios of rent to value, or income to rent, or cash flow to rent, are all different economic measures of the amount to be paid to the owner by the party using less than all the ownership interests as a tenant or other user. Under any of these scenarios, the owner of Nebraska real estate permitting another party to use a portion of the real estate, resulting in its dissection and interference with his overall use, we expect a rate of return for that use, annually. The amount of the return could vary with the market and economy from year to year and with the amount of intrusion or intensity of use in any given year. Restrictions on the owner's use must also be considered. These are all economic considerations, and they form the true bases for determining whether an instrument, by whatever name it may be known, is truly in the character of a lease, or an easement.
34. TransCanada proposes to use the document it calls an "easement" and it proposes to acquire these easements by condemnation or through negotiations involving only a single, upfront payment for acquisition of a "perpetual" right to use the strip of land that dissects the farms of landowners, interferes with the rights of the landowners to use the premises to generate income, but permits TransCanada to use the land for this purpose.
35. Fundamentally, TransCanada proposes to use property owned by another, but to make that property subservient to TransCanada's needs and interests, while making only a single advance payment to do so. TransCanada proposes that the KXL easements are perpetual and run with the land, i.e., they are permanent servitudes upon title. Generally, leases are the products of agreements between parties. Sometimes easements are obtained by agreement and sometimes they are not. Generally, either of these or an agreement is transferable or economic purposes and, for the purposes of economists, either may be revocable or not.
36. Sometimes, easements are used where possession is to be shared; but leases also are used for these purposes. The economic pricing of a lease depends on the extent and value of the interests transferred and the duration of the transfer. The economic pricing of an easement depends on the extent to which the easement invades the interests of the titleholder and renders his title subservient person obtaining the easement.
37. TransCanada, in its easement, restricts use of the surface above its pipeline, acquires an exclusive right to enter upon the land and access its easement and pipeline, and the right to preclude the landowner from crossing the pipeline, either under generalized, or select circumstances.
38. A lease commonly requires the tenant to return the leased premises to the landlord in the same condition in which they were found at the commencement of the lease. An easement does not do so. This important difference permits TransCanada to escape or attempt to escape the costs of exhausted pipeline removal and soils remediation. Across the entire length of the proposed KXL pipeline, this cost could be tens of billions of dollars. In Nebraska, where 275 miles of the line will be placed under

TransCanada's proposal, the removal process could involve several billion dollars. These costs must be borne by either Nebraska landowners, or Nebraska and its political subdivisions, under the terms of the proposed TransCanada easement. Economically, TransCanada's insistence upon a perpetual easement hints at TransCanada's current intent to abandon in place.

39. Under all these circumstances, it must be concluded that the route TransCanada proposes to use across Nebraska will be governed by the legal documents, proposed by TransCanada that more closely resemble leases than easements; but are called easements.

40. It is my opinion that the Nebraska Public Service Commission route approval should, at a minimum:

(a) conditioned on real estate instruments used to secure land from landowners be in the nature of leases requiring reasonable annual rents;

(b) conditioned on removal of the pipeline when it is exhausted at the expense of TransCanada or its successor;

and

(c) conditioned on any PSC permit renewal requirements include proof of financial responsibility to pay the costs of pipeline removal.

41. It is my opinion that, without accounting for this subject matter, Nebraska would undertake great risks, without commensurate rewards, upon approving the proposed route. Accordingly, from the perspective of economics, it is not reasonably prudent to approve this route under the circumstances.

VI. What is the economic consequence of TransCanada's use of an easement, as contrasted with a lease, to acquire and occupy the proposed route over the course of 50 years and upon removal of the depleted pipeline?

42. TransCanada proposes to use a real interest acquisition instrument it calls an "easement". See section V, above. The instrument will a) provide only a single payment for the landowner despite use of the real estate by TransCanada to make money on a daily and annual basis; b) permit abandonment of the pipeline "in situ" or in the ground, at the end of the pipeline's utility; c) cause additional costs when land is sold due to needs for Environmental Site Assessments (ESAs).

43. The TransCanada route is far more similar to a tenant's interest in a property for income production purposes, than an easement taken for a public utility. In the latter case, a utility acquires property rights for a purpose that is likely to serve the property owner or neighbors with the necessary product (water, electricity, transportation, telephone) or service (fire protection, police protection, parks, recreation, etc.).

44. Easements are appropriate for such purposes because a) there is no profit motive, b) the acquiring party is a government entity responsible to the public, including the landowner affected, c) an array of laws protect the relationship between the landowner and the government differently from the manner in which the legal process can be used in proceedings between the landowner and a private company, d) the government cannot be sold to a 3rd party buyer, though the private condemning authority certainly can be sold to an unknown party with whom the landowner would prefer not to have a relationship, e) the landowner has no redress in the form of a voice concerning a change in management as is the case in the electoral process and its ability to impact the leadership and direction of a government agency or entity, and/or f) it is highly unlikely, the government would impose the burden of cleanup of government activity on the private landowner, but the TransCanada lease does so.

45. Leased on a reasonable basis, the possession and use interests sought by TransCanada along the route would be likely to command of value equal to at least 2 times the rental value of a typical Nebraska site for a wind turbine used to generate electricity. Over 275 miles, it is reasonable to expect that at least 550 wind turbines, theoretically, could be placed. Rental rates in eastern Nebraska, and Western I suggest an approximate average price of \$9,000 per turbine at the outset, and to 2% annual escalation in rents. Using the base price only, this amounts to annual rents of \$4,950,000 per year, escalating at 2% or \$99,000 of additional rental income denied landowners after the 1st year.

46. At the current 7% Nebraska state income tax rate, the income tax generated on \$4,950,000, in the 1st year, would be **\$346,500**. If it is assumed that the annual rents would turn over in the Nebraska economy just twice after rents are paid, this annual tax revenue would be, in the first year, $(\$346,500 \times 3 =)$ **\$1,039,500**. **This magnitude of annual income tax revenues are lost permanently if TransCanada is permitted**

to acquire its ownership interests with an easement. (Note: Dr. Goss mentions multipliers many times in his report; but, never gives a numerical value for any of the multiple multipliers he asserts he has used. The IMPLAN website states the expected multipliers at the county level are between 1 and 2; at the state level between 2 and 3; and at the national level between 2 and 7. http://support.implan.com/index.php?option=com_content&view=article&id=212:212&catid=222:222)

47. This calculation is simplistic but designed to illustrate that imposition of a condition that TransCanada utilize a reasonable acquisition instrument, i.e., a lease and not an easement, is most likely to produce positive financial circumstances for Nebraska landowners and tax advantages for the State.
48. There is an additional factor concerning the easement v. lease, circumstance that affects Nebraska tax revenues. Based on Canadian studies recently undertaken, it is reasonable to estimate that the cost to remove the pipeline when it is no longer in use is likely to exceed, in current dollars, the cost of implanting or installing the line by at least 200%. If individual property owners are required to route pipeline from 1,102 distinct quarter sections of Nebraska land, for example, there will be little opportunity to achieve economies of scale that could be achieved in an removal process that would be conducted on a broad scale basis. TransCanada's removal estimate is likely less than 25% of the probable cost to Nebraska landowners.
49. Based on Canadian studies if conducted on a broad scale, the removal cost is estimated at about \$1.9 million per mile. The proposed easement permits abandoning the pipeline *in situ*, thus leaving it to Nebraska to clean up later. When this expense is incurred tax revenues will be greatly demanded, and contributions to taxes from adversely affected real estate, including all 1,102 quarter sections of affected land will be largely depleted of value and unable to contribute taxes or generate income.
50. The PSC approving the KXL application without imposing appropriate conditions will cause tax losses on all fronts: property taxes, income taxes, sales taxes, and it is likely to generate massive public private environmental response and cleanup liabilities. These can be avoided with the lease in which the tenant is required to remediate the land following removal of the pipeline, and maintenance of the sinking fund from the outset of the construction, to assure the funding is available for removal and remediation at the predictable future date. See, <http://www.ogj.com/articles/print/volume-112/issue-9/special-report-pipeline-economics/crude-oil-pipeline-growth-revenues-surge-construction-costs-mount.html>
51. TransCanada proposes to install a pipeline to carry caustic materials across the state, with the right to abandon the pipeline in place when it is exhausted. This approach will leave it to a future generation of Nebraskans to cleanup TransCanada's remains.

52. In economic terms, unless a verifiable reserve is required to be posted by TransCanada, and it is required to prove financial responsibility intermittently to establish that it has the financial ability in a reserve set aside for the purpose of doing so, to pay for the removal of the pipeline and remediation of all sites within Nebraska, where construction occurs to support the proposed pipeline along the proposed route and to return Nebraska's land and resources to their pre-construction status.

VII. What are the likely economic consequences upon Nebraska and its counties for any enhancements in budgetary expenses attributable to a) pipeline construction? b) pipeline maintenance?

53. **During Construction.** Other parts of this paper demonstrate that local governments will incur additional expenses as a result of the process of constructing the pipeline. Demands on schools, law enforcement services, judicial services, either other elements of public service will be exacerbated during the construction. Not been accounted for by TransCanada.
54. **After Construction.** Ongoing maintenance expenses will be associated with the pipeline. Local governments and the State will have to shoulder these expenses. For example, at every road crossing, increased shoulder and ditch, and road surface maintenance will be mandatory; some of the service may require specialized equipment and personnel with special training. Loadbearing capacities of pipeline crossing points, erosion around pipelines as they penetrate through and under ditches and roads and other public services, will all be exacerbated.
55. Utility services will require additional budgetary accommodations and costs. Many of these, including power, water and sewer are publicly owned. Others, such as telephone, and fiber-optic cable are owned by regulated industries. Electronic and telephone transmission lines, and particularly underground lines will require accommodation and additional maintenance on an ongoing basis. Other industries and companies regulated by the Nebraska Public Service Commission will have increased costs where their facilities pass over, under, or around the proposed pipeline; and, in some contexts then requiring the PSC to approve rate increases.
56. Ultimately, these costs will affect revenues and local governments and utilities. They are likely to produce rate increases in amounts proportionate to the complexities created by the pipeline.
57. These cannot be budgeted without more information than TransCanada has furnished as the number of such crossings, or needs to accommodate existing facilities, has not been told definitively. It is reasonably economically certain, however, that these costs will be incurred and will be substantial. It is also reasonably certain that these costs will substantially increase any tax benefits generated by construction or operation of the KXL pipeline along the route proposed in Nebraska.
58. **Enhanced Environmental Assessment Costs.** As noted previously, the TransCanada Application fails to recognize, or admit, that environmental hazards are present as a result of the implantation of crude oil pipe lines anywhere in the United States, even before oil leaks or releases are detected. The mere presence of the pipeline is a *recognized environmental condition (REC)* for purposes of the technical aspects of Phase I & II Environmental Site Assessments. This is a widely recognized concern, and increased expense, and a cause for diminution in value of real estate.

59. The financial impact of this enhanced cost will require experience to be fully appreciated, and value. No data set for similar pipelines has been identified as a reliable foundation for projecting this cost. But reasonably prudent economic forecasting must inherently, and responsibly note its near certain probability of occurrence.
60. It is my opinion that, without taking steps to investigate, and to ameliorate the risks of this subject matter, Nebraska would undertake great risks, without commensurate rewards, upon approving the proposed route. Accordingly, from the perspective of economics, it is not reasonably prudent to approve this route under the circumstances.

VIII. What is my analysis of the economic study and report of TransCanada economist, Professor Ernie Goss?

61. I carefully reviewed the economic analysis of Dr. Ernie Goss, Prof., Creighton University. His report is entitled "The Socioeconomic Impact of the Keystone XL Pipeline on the State of Nebraska and its Counties" and appears as application Appendix H. The report contains a number of analytical, economic and econometric deficiencies. They included these:

59.1 Dr. Goss makes several suggestions about taxes that are flawed. These are among the most prominent:

- The Goss report does not account for the federal, state and local tax benefits and "incentives" that drive down project cost and could diminish Goss' estimated tax "benefits" in other areas. This include a) investment credits; b) depreciation to offset gross income; c) refineries tax credits estimated at \$1 Billion to \$1.8 Billion.
- The Goss report mere acknowledges depreciation, but does not account for the fact that any initial property tax liability due for the pipeline will depreciated out over a term much shorter than life of the project.
- Citing a newspaper story, Goss reports the depreciation period is 15 years. This is incorrect. It should be 20 years v. 15 years.
- The Goss report does not consider, or calculate, the decline in real estate values to the approximate 1,102 quarter sections of Nebraska land that will be impaired by the pipeline. It fails to consider the impact on tax obligations of property owners whose land is reduced in fair market value because it is does not account for the direct decline in values and corresponding decline in tax revenues.
- The Goss report fails to consider the escalated demand on public services and exacerbated costs.
- The Goss report presumes that it has been determined that the KXL pipeline is "in the public interest". I am informed that in eminent domain terms what is "in the public interest" is a judicial question that every landowner is entitled to raise; both for the PSC to decide and for the county appointed appraisers to decide. If this is the case, the report makes a major presumptive error.
- The Goss report fails to appreciate, or account for, the removal costs for the line.

- The Goss report includes no provision for enhanced costs, and probable deductions to reduce taxes payable by Nebraska landowners if forced to bear pipeline removal and remediation costs.
 - The Goss report fails to consider the need for, or to provide for, the public cost for Nebraska government and taxpayers if forced to bear pipeline removal and remediation costs, or the amount of reserves required for this cost.
 - The Goss report fails to provide for the ability to replicate its calculations.
 - Parts of the Goss report allocations of costs of the pipeline by county and hint at a county by county benefit but fails to note that the expenditures accounted for will occur principally, or perhaps even exclusively, outside the county. See, e.g., p 10, Chart, Table 1:1.
 - The Goss report suggests the pipeline will encourage visitors to purchase in Nebraska, but suggests no rationale why the pipeline will become a tourist attraction or attraction to visitors.
 - The Goss report fails consider tax losses due to increased deductions incurred or claimed by Nebraska taxpayers for Phase I & II Environmental Site Assessments (ESAs) in connection with the rental or sale of real estate, and it fails to account for remediation expenses necessarily accomplished in order to render real estate leasable or salable. These extra costs and complications are often guided by the American Society of Testing & Materials, *ASTM E 1527-00: Environmental Site Assessments: Phase I ESA Process*. (One automatic complexity in this process is passage of an oil pipeline over an aquifer; this is a necessary investigative issue in a Phase I ESA. *Id.*)
 - The Goss report uses a discount rate that is highly vulnerable to serious economic doubt and is more probably than not erroneous. This discount rate impacts all of Goss' projections.
- 59.2 The Goss Report focuses on tax revenues and jobs, and it determines gross revenue volume but does not deduct predictable costs that will be incurred by Nebraska to accommodate any temporary increase in jobs. See my comments concerning the lack of a social, economic analysis below. In addition to the absence of the socioeconomic analysis as explained below, the Goss Report fails to net from gross projected revenues any sums necessary to calculate the net economic impact. Accordingly, the report is really only one half of an economic analysis – it considers the revenue side, but not the expenses side.

- 59.3 The Goss Report equates econometrics with socioeconomics, but it contains no socioeconomic analysis. Both the Major Oil Pipeline Siting Act (MOPSA) at 57-1407(d) and the PSC's own MOPSA regulations at Title 291, Chapter 9, section 023.7D require analysis of both social issues and economic issues. A "socioeconomic" analysis necessarily considers the secondary consequences and impacts of predictable human behaviors in the course of an activity involving economic consequences and secondary economic consequences due to the social interaction engendered by the primary component of the economic activity. Goss' sole evaluation of secondary effects is his use of economic multipliers.

As but one example of a secondary social consequence, an itinerant population may involve a larger criminal element than a fixed population. The increased crime is a socioeconomic consequence.

An itinerant population consisting predominantly of young males may consume more alcohol than a fixed population of the same number. This is likely to produce more arrests for alcohol related offenses, more costs, and it constitutes a socioeconomic consequence. The same can be true of a number of public health considerations, temporary impacts on schools and school districts, and temporary demands on other social services.

The Goss report does not consider these matters. Simply stated, by definition, is not a socioeconomic analysis.

Conclusion

62. I am reasonably professionally certain about each and all the opinions formed and expressed above. They represent my opinions, and I am prepared to testify about them.


Michael J. O'Hara J.D., PhD.

TABLE 1. O'Hara extrapolation of Goss' labor and labor income to 50 years

BASED UPON Dr. Goss' "THE SOCIOECONOMIC IMPACT OF THE KEYSTONE XL PIPELINE ON THE STATE OF NEBRASKA AND ITS COUNTIES"

Note particularly, page 16, "Table 3.2: Impact of Keystone XL on state of Nebraska output, 2018 - 2035 (discounted to 2015 dollars)"

Goss forecasted			Goss forecasted	O'Hara extrapolated	O'Hara extrapolated	Goss forecasted	Goss forecasted	Goss forecasted	O'Hara extrapolation	O'Hara extraopolated	O'Hara extrapolated	O'Hara estimated
jobs	calendar	operation	jobs	jobs	annual jobs	discounted	per job	op. job	op. job	per job	discounted	income taxes
	year	year	growth rate	growth rate		labor income	labor income	income growth	income growth	labor income	labor income	at 4.03%
3,784.1	2018					\$ 177,587,209	\$ 46,930					\$ 7,156,765
3,010.2	2019					\$ 148,971,147	\$ 49,489					\$ 6,003,537
347.2	2020	1				\$ 22,012,944	\$ 63,401					\$ 887,122
448.6	2021	2	29.205%			\$ 31,104,696	\$ 69,337	9%				\$ 1,253,519
433.4	2022	3	-3.388%			\$ 30,415,167	\$ 70,178	1.21%				\$ 1,225,731
419.0	2023	4	-3.323%			\$ 29,766,068	\$ 71,041	1.23%				\$ 1,199,573
405.2	2024	5	-3.294%			\$ 29,156,461	\$ 71,956	1.29%				\$ 1,175,005
392.1	2025	6	-3.233%			\$ 28,578,946	\$ 72,887	1.29%				\$ 1,151,732
379.8	2026	7	-3.137%			\$ 28,052,102	\$ 73,860	1.34%				\$ 1,130,500
368.1	2027	8	-3.081%			\$ 27,555,605	\$ 74,859	1.35%				\$ 1,110,491
357.0	2028	9	-3.015%			\$ 27,095,110	\$ 75,897	1.39%				\$ 1,091,933
346.6	2029	10	-2.913%			\$ 26,669,810	\$ 76,947	1.38%				\$ 1,074,793
336.8	2030	11	-2.827%			\$ 26,278,923	\$ 78,025	1.40%				\$ 1,059,041
321.7	2031	12	-4.483%			\$ 25,460,548	\$ 79,144	1.43%				\$ 1,026,060
307.6	2032	13	-4.383%			\$ 24,694,730	\$ 80,282	1.44%				\$ 995,198
294.5	2033	14	-4.259%			\$ 23,978,620	\$ 81,421	1.42%				\$ 966,338
282.3	2034	15	-4.143%			\$ 23,309,503	\$ 82,570	1.41%				\$ 939,373
135.4	2035	16	-52.037%	-3.50%	273.4	\$ 11,342,401	\$ 83,770	1.45%		\$ 83,770	\$ 22,901,420	\$ 922,927
727.6	2036	17		-3.50%	263.8				1.36%	\$ 86,785	\$ 22,895,350	\$ 922,683
	2037	18		-3.50%	254.6				1.36%	\$ 89,910	\$ 22,889,397	\$ 922,443
	2038	19		-3.50%	245.7				1.36%	\$ 93,146	\$ 22,883,446	\$ 922,203
	2039	20		-3.50%	237.1				1.36%	\$ 96,500	\$ 22,877,496	\$ 921,963
	2040	21		-3.50%	228.8				1.36%	\$ 99,974	\$ 22,871,548	\$ 921,723
	2041	22		-3.50%	220.8				1.36%	\$ 103,573	\$ 22,865,602	\$ 921,484
	2042	23		-3.50%	213.0				1.36%	\$ 107,301	\$ 22,859,657	\$ 921,244
	2043	24		-3.50%	205.6				1.36%	\$ 111,164	\$ 22,853,713	\$ 921,005
	2044	25		-3.50%	198.4				1.36%	\$ 115,166	\$ 22,847,771	\$ 920,765
	2045	26		-3.50%	191.4				1.36%	\$ 119,312	\$ 22,841,831	\$ 920,526
	2046	27		-3.50%	184.7				1.36%	\$ 123,607	\$ 22,835,892	\$ 920,286
	2047	28		-3.50%	178.3				1.36%	\$ 128,057	\$ 22,829,954	\$ 920,047
	2048	29		-3.50%	172.0				1.36%	\$ 132,667	\$ 22,824,019	\$ 919,808
	2049	30		-3.50%	166.0				1.36%	\$ 137,443	\$ 22,818,084	\$ 919,569
	2050	31		-3.50%	160.2				1.36%	\$ 142,391	\$ 22,812,152	\$ 919,330
	2051	32		-3.50%	154.6				1.36%	\$ 147,517	\$ 22,806,221	\$ 919,091
	2052	33		-3.50%	149.2				1.36%	\$ 152,828	\$ 22,800,291	\$ 918,852
	2053	34		-3.50%	144.0				1.36%	\$ 158,330	\$ 22,794,363	\$ 918,613
	2054	35		-3.50%	138.9				1.36%	\$ 164,029	\$ 22,788,436	\$ 918,374
	2055	36		-3.50%	134.1				1.36%	\$ 169,934	\$ 22,782,511	\$ 918,135
	2056	37		-3.50%	129.4				1.36%	\$ 176,052	\$ 22,776,588	\$ 917,896
	2057	38		-3.50%	124.8				1.36%	\$ 182,390	\$ 22,770,666	\$ 917,658
	2058	39		-3.50%	120.5				1.36%	\$ 188,956	\$ 22,764,746	\$ 917,419
	2059	40		-3.50%	116.3				1.36%	\$ 195,758	\$ 22,758,827	\$ 917,181
	2060	41		-3.50%	112.2				1.36%	\$ 202,806	\$ 22,752,910	\$ 916,942
	2061	42		-3.50%	108.3				1.36%	\$ 210,107	\$ 22,746,994	\$ 916,704
	2062	43		-3.50%	104.5				1.36%	\$ 217,671	\$ 22,741,080	\$ 916,466
	2063	44		-3.50%	100.8				1.36%	\$ 225,507	\$ 22,735,167	\$ 916,227
	2064	45		-3.50%	97.3				1.36%	\$ 233,625	\$ 22,729,256	\$ 915,989
	2065	46		-3.50%	93.9				1.36%	\$ 242,035	\$ 22,723,346	\$ 915,751
	2066	47		-3.50%	90.6				1.36%	\$ 250,749	\$ 22,717,438	\$ 915,513
	2067	48		-3.50%	87.4				1.36%	\$ 259,776	\$ 22,711,532	\$ 915,275
	2068	49		-3.50%	84.4				1.36%	\$ 269,128	\$ 22,705,627	\$ 915,037
	2069	50		-3.50%	81.4				1.36%	\$ 278,816	\$ 22,699,723	\$ 914,799
CONSTRUCTION plus OPERATION: Total Jobs first 20 years					13,508.7	CONSTRUCTION plus OPERATION: Total first 20 years					\$ 1,528,700,640	\$ 33,136,965
CONSTRUCTION plus OPERATION: Ave. Jobs first 20 years					675.4	CONSTRUCTION plus OPERATION: Average first 20 years					\$ 76,435,032	\$ 61,606,636
OPERATION: Total Job Years First 20 Years					6,714.4	OPERATION: Total Years First 20 Years					\$ 518,576,343	\$ 21,820,350
OPERATION: Total Job Years First 50 Years					11,006.2	OPERATION: Total Years First 50 Years					\$ 1,202,142,284	\$ 48,446,334
OPERATION: Average Job Years First 20 Years					335.7	OPERATION: Average First 20 Years					\$ 25,928,817	\$ 1,091,017.50
OPERATION: Average Job Years First 50 Years					220.1	OPERATION: Average First 50 Years					\$ 24,042,846	\$ 968,926.68

NOTES:

- Goss year 2018 and year 2035 each is a half year; the former ending Dec. 31 and latter ending June 30. Jobs in 2035 doubled in adjacent O'Hara column.
- Goss forecasted a decay process in KXL spawned jobs. The low annual job growth rate was minus 2.83% and the high was minus 4.48%.
Over the 12 years 2022 through 2034 the average job loss rate Goss forecasts is minus 3.79%.
O'Hara extrapolated from year 2035 to 2069 using a job loss rate of minus 3.50%
- The total of the jobs column in Goss' Table 3.1 does not make sense as a total.
If a total of data in the column it ought read 12,369.6; if a total only of the operation years, then it ought read 5,575.3.
The 727.6 is an annual average; when the individual years range from a high of nearly 3,800 at the beginning and a low of about 270 jobs at the end.
The 727.6 is the sum of construction plus operation jobs divided by 16 years (recall, the first and last years are half years).
That spread over that time line make use of the average incorrect.
- Goss discount factor uses an estimated 2015 interest rate of 3.88% that then is raised by the power of the number of years.
A discount factor is divided into a value in a future year to reduce that future value to present value. The "present" used by Goss was 2015.
- Goss' forecasted annual growth in labor income during the operation phase over the 12 years 2022 through 2035 is a positive 1.36%.
But, Goss has it start low at 1.21% and grow (roughly continuously in +0.002 increments) to positive 1.45%
O'Hara extrapolates using the average of positive 1.36%.
- Goss labor income in Table 3.1 is discounted to 2015 dollars.
O'Hara calculation of Goss' per job income as well as per job income growth rate also are discounted to 2015 dollars.
- Goss' operation jobs forecast in 2021 has the peak at 448.6 jobs and with an per job income of \$69,377. For discounting, Goss uses 3.88%.
Discounting those 2021 dollars to 2017 dollars yields \$61,944. Which requires \$2,496 (or, 4.03%) in Nebraska income taxes for a married filer in Omaha.
See, <https://smartasset.com/taxes/nebraska-tax-calculator>

TABLE 2: O'Hara estimate of lease income and taxes

The KXL pipeline crosses 1,102 quarter sections; most of it production agriculture.

The KXL pipeline has route of 275.2 miles in length and a minimum of 50 feet in width; or 1,668 acres of right-of-way.

That is, $[(5,280 * 275.2 * 50) / 43,560] = 1,667.879$.

The cash rental of an acre depends on its type of ag production. From a UNL Ag Econ report for 2017,

	North	Central	South	AVERAGE			
Dryland	\$ 56	\$ 89	\$ 74	\$ 73			
Gravity Irrig.	\$ 165	\$ 220	\$ 205	\$ 197		KXL acres	1,668
Pivot Irrig.	\$ 21	\$ 230	\$ 225	\$ 159		Ave. ag rent	\$ 103
Pasture	\$ 25	\$ 34	\$ 35	\$ 31		Neb. ag. rent due from KXL	\$ 171,804 annually
Cow-Calf pair	\$ 61	\$ 55	\$ 47	\$ 55			
AVERAGE	\$ 66	\$ 126	\$ 117	\$ 103			

See, <http://agecon.unl.edu/cornhusker-economics/2017/2017-trends-nebraska-farmland-markets>

The above table shows the minimum a landowner would accept to pull that land out of agricultural production.

The above minimum is not the rental that a landowner would accept from KXL in a arm's length transaction.

The landowner will insist upon a rent that recognizes the tenant's production opportunities.

For a comparable to a oil pipeline we can use an average wind contract, which also is on a lease basis.

Routinely, wind agreements require annual \$9,000 lease payment that escalate at 2% per year.

With 275 miles of right-of-way, and assuming pipeline displacement of 2 wind turbines per mile,

KXL would expect be expected to lease 550 wind turbine locations.

Thus, $550 * \$9,000 = \$4,950,000$ of annual wind rental income is lost to Nebraskans.

The lost rental income translates into lost Nebraska income tax revenues.

Since the lost rental income when captured would be added to existing income from ag operations,

the relevant tax rate is the top rate of 7%.

Using the lost wind rental income of \$4,950,000 and the tax rate of 7%,

Nebraska loses \$346,500 in tax revenue in the first year: escalating at 2% per year thereafter.

Accordingly, discounting to 2015 dollars (so as to be comparable to all Goss tables),

over the first 20 years of operations Nebraska loses \$ 4,843,144 of income tax revenues;
and

over the first 50 years of operations Nebraska loses \$ 14,320,027 of income tax revenues.

TABLE 3: O'Hara extrapolate sale taxes over 20 years and 50 years

calendar year	operations year	Goss estimated sales	Goss estimated sales growth	O'Hara extrapolation using -3.46%	O'Hara extrapolation of sales	O'Hara estimates sales tax at 5.5%
2018		\$ 494,516,390				
2019		\$ 396,479,550				
2020	1	\$ 70,521,484				\$ 3,878,682
2021	2	\$ 95,592,734	35.6%			\$ 5,257,600
2022	3	\$ 92,969,203	-2.7%			\$ 5,113,306
2023	4	\$ 90,483,962	-2.7%			\$ 4,976,618
2024	5	\$ 88,133,671	-2.6%			\$ 4,847,352
2025	6	\$ 85,893,578	-2.5%			\$ 4,724,147
2026	7	\$ 83,825,045	-2.4%			\$ 4,610,377
2027	8	\$ 81,860,499	-2.3%			\$ 4,502,327
2028	9	\$ 80,018,468	-2.3%			\$ 4,401,016
2029	10	\$ 78,296,072	-2.2%			\$ 4,306,284
2030	11	\$ 76,690,512	-2.1%			\$ 4,217,978
2031	12	\$ 73,861,298	-3.7%			\$ 4,062,371
2032	13	\$ 71,216,031	-3.6%			\$ 3,916,882
2033	14	\$ 68,744,730	-3.5%			\$ 3,780,960
2034	15	\$ 66,437,895	-3.4%			\$ 3,654,084
2035	16	\$ 32,143,252	-51.6%	-3.46%	\$ 64,139,144	\$ 3,527,653
2036	17			-3.46%	\$ 61,919,929	\$ 3,405,596
2037	18			-3.46%	\$ 59,777,500	\$ 3,287,762
2038	19			-3.46%	\$ 57,709,198	\$ 3,174,006
2039	20			-3.46%	\$ 55,712,460	\$ 3,064,185
2040	21			-3.46%	\$ 53,784,809	\$ 2,958,164
2041	22			-3.46%	\$ 51,923,855	\$ 2,855,812
2042	23			-3.46%	\$ 50,127,289	\$ 2,757,001
2043	24			-3.46%	\$ 48,392,885	\$ 2,661,609
2044	25			-3.46%	\$ 46,718,491	\$ 2,569,517
2045	26			-3.46%	\$ 45,102,031	\$ 2,480,612
2046	27			-3.46%	\$ 43,541,501	\$ 2,394,783
2047	28			-3.46%	\$ 42,034,965	\$ 2,311,923
2048	29			-3.46%	\$ 40,580,555	\$ 2,231,931
2049	30			-3.46%	\$ 39,176,468	\$ 2,154,706
2050	31			-3.46%	\$ 37,820,962	\$ 2,080,153
2051	32			-3.46%	\$ 36,512,357	\$ 2,008,180
2052	33			-3.46%	\$ 35,249,030	\$ 1,938,697
2053	34			-3.46%	\$ 34,029,413	\$ 1,871,618
2054	35			-3.46%	\$ 32,851,995	\$ 1,806,860
2055	36			-3.46%	\$ 31,715,316	\$ 1,744,342
2056	37			-3.46%	\$ 30,617,966	\$ 1,683,988
2057	38			-3.46%	\$ 29,558,585	\$ 1,625,722
2058	39			-3.46%	\$ 28,535,858	\$ 1,569,472
2059	40			-3.46%	\$ 27,548,517	\$ 1,515,168
2060	41			-3.46%	\$ 26,595,338	\$ 1,462,744
2061	42			-3.46%	\$ 25,675,140	\$ 1,412,133
2062	43			-3.46%	\$ 24,786,780	\$ 1,363,273
2063	44			-3.46%	\$ 23,929,157	\$ 1,316,104
2064	45			-3.46%	\$ 23,101,208	\$ 1,270,566
2065	46			-3.46%	\$ 22,301,907	\$ 1,226,605
2066	47			-3.46%	\$ 21,530,261	\$ 1,184,164
2067	48			-3.46%	\$ 20,785,314	\$ 1,143,192
2068	49			-3.46%	\$ 20,066,142	\$ 1,103,638
2069	50			-3.46%	\$ 19,371,853	\$ 1,065,452
20 year TOTAL sales tax						\$ 82,709,188
50 year TOTAL sales tax						\$ 138,477,315
AVERAGE sales tax over 20 years						\$ 4,135,459
AVERAGE sales tax over 50 years						\$ 2,769,546

NOTES:

1. Goss assumes sales in Nebraska, not just the 12 counties with the pipeline; and assumes zero construction sales in 2020 and later.
2. Recall, Goss' year 2018 and year 2034 are half years; the former ending Dec. 31 and the latter ending June 30.
3. Goss' estimated sales grow at an average of an annual decline of 2.76% over the 13 year period of 2022 through 2034; but, the last five years averaged 3.46% declines. In this table O'Hara uses the 3.46% decline.
4. Goss' table used discounted to 2015 dollars. This table preserves that.

Attachment 1

VITA FOCUSED ON LAST TEN YEARS

Name: Michael J. O'Hara, J.D., Ph.D.
Employer: University of Nebraska at Omaha
College of Business Administration
Finance, Banking, and Real Estate Department
Academic Rank: Professor
Graduate Faculty Status: Yes
Continuous Appointment: Yes

Higher Education

Degree	Institution	Date	Primary Subject Fields
Ph.D.	Univ. of Nebraska-Lincoln	1983	Public Utilities Regulation of Business
Juris Doctor (Law)	Univ. of Neb.-Lincoln	1978	Regulations of Business

The J.D. is my terminal degree for my UNO academic appointment.

Professional Experience (since joining academe)

1981 - Present College of Business Administration, University of Nebraska at Omaha. Instruction and research in the areas of law and economics, with a current research emphasis on forensic economics. Instructor, 1981. Assistant Professor, 1982 - 1988. Elected to Member, Graduate Faculty, 1986. Associate Professor, 1988 - 2001. Elected to Fellow, Graduate Faculty, Spring 2000. Professor, 2001 - present. Economics Department, 1981. Law and Society Department, 1982 - 1996; Fall 1996, Chair. Finance, Banking, and Law Department, 1997 - 2012. Finance, Banking, and Real Estate Department, 2012 - present.

2016 - present founding officer of Felicity Fund, Inc., now only a shareholder. FFI's business model is materially different than either PGSi or TOI, but is in the money transfer field.

2014 - 2016 Member, Board of Directors, Prosperitas Global Services, Inc. (d.b.a., PGSi). Treasurer, 2014 - 2016. PGSi has closed. PGSi was a Nebraska corporation, a start-up pursuing a novel business model for international money transfers.

2012 - 2016 Co-Editor, *The Earnings Analyst* (TEA). TEA is the scholarly journal of the American Rehabilitation Economics Association (AREA). AREA desired to expand the coverage of TEA and

welcomed CPDE's invitation to cooperate in the production of TEA. As Co-Editor O'Hara focuses upon commercial damages.

2012 - '2016 Member, Board of Directors, Association of Regulatory Boards of Optometry. Also, various committees of ARBO. Secretary, 2015 - 2016.

2011 - present Member, Judicial Council and Resolutions Committee of ARBO. ARBO is the Association of Regulatory Boards of Optometry.

2011 - present Collegium of Pecuniary Damages Experts (CPDE). CPDE is a 501(c)(3) professional association incorporate in Nevada. As Secretary I serve as voting ex officio on the Board of Directors. As noted above, I also served as the CPDE appointed Co-Editor of AREA's journal TEA 2013-2016. Secretary, 2011-2014; Vice Pres., 2014, Pres., 2015; Past Pres., 2016. Re-elected Secretary in 2017.

2010 - present Member, Board of Directors, Nebraska Economics and Business Association. President-Elect, Oct 2012 & Oct. 2016; President, Oct. 2013; Past President, Oct.2014; Pres. Elect, Oct. 2016.

2010 - 2012 Member, OE Tracker Committee of ARBO. This committee supervises ARBO's web registry of continuing education accomplishment in satisfaction of licensing requirements specified by individual State regulatory Boards.

2009 - present Member, Board of Optometry. Appointed by the Nebraska Board of Health. The Board of Optometry oversees licensure and scope of practice enforcement. Secretary, February 2010 - present. Reappointed November 2014.

2002 - 2009 Member, Board of Directors, Ole Holding Corporation. A Nevada for-profit corporation that was in its start-up phase to provide financial services to the Spanish speaking communities of the USA and their ancestral homelands. Since second round financing in 2009 serving on spin off corporation's (i.e., Transactions Ole, Inc.'s) Advisory Board rather than its Board of Directors. Doors closed in 2012, sold to the Delaware corporation TOI Pay in December 2016. 2005 - 2007
Editor, *Journal of Legal Economics*. *JLE* is the journal of AAEFE. *JLE* focuses upon the proof of monetary damages in the context of litigation.

2002 - 2007 Member, Board of Directors, American Academy of Economic and Financial Experts (AAEFE). A national professional association that is a 501(c)(3).

2000 - 2003 Member, Board of Directors, Concord Center (f.k.a. The Community Mediation Center). A 501(c)(3) not-for-profit corporation with five employees that contracts with the Nebraska Supreme Court to develop and foster mediation services in the most populated counties of eastern Nebraska. Chair of the Fund Raising Committee, 2000. Co-Secretary, 2000-01 (authored complete revision of Bylaws), Vice President, 2001-03. www.concord-center.com

1996 - 1999	Member, LR 455 (1996) Advisory Group. LR 455 is an in-depth study of electric utility deregulation in the USA and its implications for Nebraska's 100% publicly owned electric utility industry. This three year study was completed December 1999. March 1998, presentation on price discrimination. June 1998, detailed questions on impact of deregulation on consumers.
1989 - 1994	Member, Board of Directors, Omaha Public Power District (www.OPPD.com). A vertically integrated electric utility serving 13 counties in southeast Nebraska with (then) \$400 million in annual revenues. Secretary, 1990-1992; Vice Chair, 1993. I was a very active member, including (1) being the Board's representative on the task force studying the economic viability of the District's nuclear program; (2) shepherding the restructuring of the District's cost-based rate redesign; and (3) initiating the District's tree planting program.
1991-1992	Interim Director, UNO CBA International Center for Telecommunications Management (ICTM). Complete managerial responsibility for a research center with two research associates and 5 FTE of support staff. Responsible for encouraging UNO faculty to adopt telecommunications research topics and for encouraging grant writing. Drafted \$2.6 million, three-year EPSCoR proposal; associates drafted two proposals: \$100,000 and \$50,000; all proposals dealt with the economic development benefits of telecommunications infrastructure. ICTM has been disbanded and reformed into UNO's newest College of Information Science and Technology and its Center for Management of Information Technology (CMIT). I was instrumental in redirecting the emphasis of ICTM away from telephony and towards CMIT's emphasis on information technology.
1985-1988	Member, Nebraska Power Review Board (www.nprb.state.ne.us). Vice Chair, 1987. PRB regulates Nebraska's 100% publicly owned electric utility industry by controlling the service territories and capacity additions, but not rates. I led a major revision of the PRB's rules and regulations.
1979-1981	Legislative Aide III, Public Works Committee (now split into Natural Resources and Transportation Committees), Nebraska Legislature. Analysis and drafting of legislation related to utilities, highways, and common carriers. I coordinated a comprehensive examination of the structure of Nebraska's publicly-owned electric industry.
1979	Research Assistant, Southeast Nebraska Health Systems Agency. Assembled, analyzed, and managed data concerning supply and demand for health delivery systems. (Four months, full-time).
	1978-1979 Teaching Assistant, Department of Economics,

University of Nebraska-Lincoln. Instructional responsibilities for introductory macroeconomics.

Primary Teaching Fields

Law

Business Law Fundamentals, LAWS 3930
Legal and Ethical Applications, LAWS 3940
Legal, Ethical, and Social Environment, BSAD 8010
Valuation of Intellectual Property, BSAD 8620

Economics

Principles of Economics: Microeconomics; ECON 2200
Managerial Economics; BSAD 8100/ECON 8210

Research and Creative Activity

Articles and Book Chapters (all listed)

- "Valuation of Naming Rights", chapter 12 in *The Principles of Sports Marketing* textbook edited by Gary Bernstein; chapter co-author is Greg Ashley of Bellevue University.
- "Learned Hand's False Efficiency", *The Earning Analyst*, volume 14, 2014.
- "Financial Management Fees in Damage Claims", Graham Mitenko and Michael J. O'Hara, *The Earnings Analyst* (TEA), volume XII, 2012.
- "Pecuniary Damage", Michael J. O'Hara, *The Earnings Analyst* (TEA), volume XI, 2010.
- "*Post Hoc Ergo?*: A Reply to Craig Marxsen's 'Fabricating the Doomsday Crisis'", Christopher Decker and Michael J. O'Hara, *B>Quest*, 2010. Invited Commentary.
- "Contracting with a Co-Author", Michael J. O'Hara and Graham Mitenko, *Economics & Business Journal: Inquiries & Perspectives*, volume 2, Number 1, October 2009.
- "Digest of Selected Articles: Usufructs". Michael J. O'Hara. *Real Estate Law Journal*, volume 37, number 2, Fall 2008.
- "Assessing the Mobility of Value of Tenure to a Faculty Member". Graham Mitenko and Michael J. O'Hara, *Economics & Business Journal: Inquiries & Perspectives*, volume 1, issue 1, October 2008.
- "The Expert Opinion: An Interview on Intellectual Property Law with Michael J. O'Hara, J.D., Ph.D." Interview by Dan Peak. *Journal of information Technology Cases and Applications*, volume 7, issue 1, 2005.
- "Governing for Genuine Profit" *Vanderbilt Journal of Transnational Law*, 2003, vol. 36, p. 1366. (Proceedings version published as Working Paper #533 of the University of Michigan's William Davidson Institute.) Invited. Solo authored.

- "Scope of Discovery of an Expert's Work Product", *Journal of Legal Economics*, 2002, vol. 10, no. 2, pp. 37-54. Double blind refereed. Jointly authored with Dr. Graham Mitenko of UNO CBA.
- "Precedence and Forensic Economics" §1640, pages 16-15 through 16-18, in *Determining Economic Damages*, Drs. Gerald D. Martin and Ted Vavoulis, James Publishing, Costa Mesa: CA, 2002.
- "Intellectual property and information technology" *International Encyclopedia of Business & Management*. October 2001. Invited and double blind refereed. Jointly authored with Dr. Dan Peak of the University of North Texas.
- "Quandary of Who Owns the Content of Distance Education" *Journal of Information Systems Education*, volume 11 & 12, 2000. Refereed. Jointly authored with Dr. D. Peak of UNO IS&T's ISQA.
- "Intellectual Property" in *International Encyclopedia of Business Management's Handbook of Information Technology in Business*. Malin Zeleny, Editor. October 1999. Refereed. Jointly authored with Dr. D. Peak of UNO IS&T's ISQA. (Now under revision for second edition. Dr. Peak now of University of North Texas.)
- "UNO versus ZAP," chapter in *Negotiation Simulation Exercises: Simulations with Teaching Notes* Fall 1998. Center for Dispute Resolution, Willamette University College of Law, Salem, Oregon.
- "Internship and Consulting Engagements: Management of the University's Liability," *Journal of Management Issues*, Vol. 12, #1, Spring 1999. Refereed. Jointly authored with Dr. D. Peak of UNO CMIT.
- "Practical Liability Issues of Information Technology Education: Internship and Consulting Engagements," *Informing Science: The International Journal of an Emerging Discipline*. Volume 1, Number 2, Winter 1998, pp. 43-51. Refereed. Jointly authored with Dr. D. Peak of UNO CMIT.
- "Rural Intrastate Air Service Systems," *Regional Science Perspectives*, 24 (1), 3-22, (January, 1994). Refereed. Jointly authored with C. Bayer and Dr. G. Mitenko, both of UNO CBA.
- "The Effects of Ownership and Investment upon the Performance of Franchise Systems," *American Economist*, Vol. XXXIV, Spring 1990. Refereed. Jointly authored with Dr. F. W. Musgrave of Ithaca College and Dr. W. L. Thomas of the State University of New York at Oneonta.
- "Retroactive Application of State Laws Regulating Franchise Relationships," *Franchise Law Journal*, Vol. 7, No. 3, Winter 1987. Refereed.
- "The Importance of the Guidelines for Vertical Restraints: with an Emphasis on Franchising," *Capitol University Law Review*. Vol. 15, No. 4, 1986. Refereed.
- "The Economic Expert in the Antitrust Arena," *Antitrust Law and Economics Review*. Vol. 12, No. 2, 1980. Refereed.

Proceedings (none is last ten years)

Papers Presented and Other Publications (only last ten years)

- "An Expert's Report", Michael J. O'Hara, Collegium of Pecuniary Damages Experts (CPDE), Las Vegas, NV, March 2017 (updated version of AEF 2017 paper).
- "Expert's Report", Michael J. O'Hara, Academy of Economics and Finance (AEF), Charleston, SC, February 2017.
- "Carpets Match the Drapes: Idioms in the Classroom", Michael J. O'Hara, Academy of Economics and Finance (AEF) Teacher Training Program (TTP), Charleston, SC, February 2017.
- "Quandaries", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), San Juan, Puerto Rico, August 2016.
- "Carpets Match the Drapes", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), San Juan, Puerto Rico, August 2016.
- "Retainer Agreements / Fee Schedules, Document Production, E&O Insurance & Expert Liability", Michael J. O'Hara and Graham Mitenko, Collegium of Pecuniary Damages Experts (CPDE), Las Vegas, Nevada, March 2016.
- "Tasks of an Expert Witness", Michael J. O'Hara, Academy of Economics and Finance (AEF), Pensacola, Florida, February 2016.
- "Environmentally Preferential Purchasing Survey Results", Michael J. O'Hara, Canadian Academy of Legal Studies in Business (CanALSB), Toronto, May 2015.
- "Ethics for Pecuniary Damage Experts", Michael J. O'Hara, Collegium of Pecuniary Damages Experts (CPDE), Las Vegas, Nevada, March 2015.
- "Greenwashing", Michael J. O'Hara, Academy of Economics and Finance (AEF), Jacksonville, Florida, February 2015.
- "EPP Survey Results", Michael J. O'Hara, Academy of Economics and Finance (AEF), Jacksonville, Florida, February 2015. "Stigma Effects on Valuation", Michael J. O'Hara, Academy of Economics and Finance (AEF), Chattanooga, Tennessee, February 2014.
- "Ethical Issues and Assessment", Michael J. O'Hara, Association of Government Accountants, Omaha, Nebraska, October 2013.
- "RRR via Brownfields", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), Boston, Massachusetts, August 2013.
- "'Random' Regulation in Nebraska", Academy of Economics and Finance (AEF), February 2012, Mobile, Alabama.
- "Learned Hand's False Efficiency", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), Kansas City, Missouri, August 2012. **An updated version** presented to the Nebraska Economics and Business Association (NEBA), October 2012, Lincoln, NE.
- "Entrepreneurship: the T of STEM", Michael J. O'Hara, Nebraska Economics and Business Association (NEBA), October 2012, Lincoln, NE.
- "A Clearinghouse for Forensic Economics", Michael J. O'Hara Collegium of Pecuniary Damage Experts (CPDE), Las Vegas, Nevada, March 2012.

- "A Baker's Big Top Ten List of Recent Cases of Interest to FEs", Michael J. O'Hara, Collegium of Pecuniary Damage Experts (CPDE), Las Vegas, Nevada, March 2012.
- "A Steep Learning Curve", Nebraska Economics and Business Association (NEBA), October 2011, Norfolk, Nebraska. Co-authored with Graham Mitenko. A revised version presented at the Academy of Economics and Finance (AEF) in February 2012 in Charleston, South Carolina.
- "Mitigation of Wrongful Termination Damages", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2011, New Orleans, Louisiana.
- "A Modest Proposal for Inclusion of Financial Management Fees", Graham Mitenko and Michael J. O'Hara, presented both to the Academy of Economics and Finance (AEF) in February 2011 in Jacksonville, Florida as well as to the Collegium of Pecuniary Damages Experts (CPDE) in March 2011 in Las Vegas, Nevada.
- "Scope of Practice: As Seen Through Medicated Contact Lenses", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2010, Richmond, Virginia.
- "Subrogation", Michael J. O'Hara, Academy of Economics and Finance (AEF), February 2010, Houston, Texas.
- "Pay Day Loans", Michael J. O'Hara, Smart Money Week, Omaha, Nebraska.
- "Wrongful Death and Personal Injury Damages in Nebraska", Michael J. O'Hara, Nebraska Economics and Business Association (NEBA), October 30, 2009, Omaha, Nebraska
- "Wrongful Death and Personal Injury Damages in Nebraska", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2009, Denver, Colorado.
- "Honey, They Shrunk the Honey", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2009, Denver, Colorado.
- "Pecuniary Value", Michael J. O'Hara, Collegium of Pecuniary Damages Experts (CPDE), April 2009, Las Vegas, Nevada.
- "Fiduciary Trust and Personal Banking", Graham Mitenko, Michael J. O'Hara, and Susan Eldridge. Academy of Economics and Finance (AEF), February 2009, Pensacola, Florida.
- "Contracting with a Co-Author", Michael J. O'Hara, Graham Mitenko, and Janet West. Academy of Economics and Finance (AEF), February 2009, Pensacola, Florida.
- "Contract for a Co-Author", Michael J. O'Hara and Graham Mitenko. Nebraska Economics and Business Association (NEBA), October 2008, Crete, Nebraska. (Revised and submitted to the *Economics and Business Journal* using the AEF revision noted above.)
- "Rack the Value", Michael J. O'Hara. First version presented at the Academy of Legal Studies in Business (ALSB), August 2008, Long Beach, California. Second version presented at the Nebraska Economics and Business Association (NEBA), October 2008, Crete, Nebraska
- "The Retirement Conundrum", Graham Mitenko and Michael J. O'Hara, Academy of Economics and Finance (AEF), February 2008, Nashville, Tennessee.
- "Faculty Retirement Variables", Graham Mitenko and Michael J. O'Hara, Nebraska Economics and Business Association (NEBA), October 2007, Hastings, Nebraska.
- "Trespasser or Implied Invitee: *Apis Mellifera*". Michael J. O'Hara. Academy of Legal Studies in Business (ALSB), August 2007, Indianapolis, Indiana.

"Creeping Up the Ladder to the "Best and Safest" Risk-Free Return". Graham Mitenko and Michael J. O'Hara, American Academy of Economic and Financial Experts (AAEFE), March 2007, Las Vegas, Nevada.

"Applying Geometric Returns During Interest Rate Changes". Graham Mitenko and Michael J. O'Hara, Academy of Economics and Finance (AEF), February 2007, Jacksonville, Florida.

Other Creative Activity (all)

Economics Ph.D. Dissertation: *The Nebraska Power Review Board: Regulating a Publicly-Owned Electric Utility Industry*. December 1983. Advisor: Dr. J. R. Felton.

Introduction to Legal and Economic Analysis, self published textbook for BSAD 8010. Initial draft during Spring 2004, first hardbound copy Summer 2004; second hardbound copy Fall 2004, third hardbound copy Spring 2005.

SERVICE TO PROFESSION AND DISCIPLINE

Supervision of Major Student Research Projects

IN PROGRESS:

Member, Ph.D. Dissertation Supervisory Committee, Alicia Buttner, Psychology.
LIKELY TOPIC: canine interaction with humans and measurement of canine stress. January 2012 - present.

Member, Ph.D. Dissertation Supervisory Committee, Penny Westphal, Criminal Justice, course work in progress.

COMPLETED (last ten years):

Rachel Ouranda, pursuing an MBA, BSAD 8900, TOPIC: "Valuing a Website".
Member, UNO Department of Psychology Masters Thesis Supervisory Committee, Kathryn "Kitty" Dybdall, TOPIC: "Measuring Stress and Social Behaviors in Domestic Cats at a Local Humane Society", May 2011.
Member, Supervisory Committee for Education Ph.D. Dissertation by Gary Ogden Harper, *An Interpretive Biography of Saint Nicholas: Applying Contextual Analysis to the Historical and Mythological Evolution of Santa Claus to Create New Teaching and Learning Paradigms*, August 2009.
Chair, MBA Thesis Supervisory Committee, Deepak Gupta, *A Lost Profits Estimate for Information Technology Start-ups*, May 2009.

Editorial Board Membership and/or Service as a Reviewer:

EDITORIAL DUTIES

The Earnings Analyst, 2011 - 2016,

Co-Editor O'Hara appointed by CPDE;

Co-Editor Bob Male appointed by AREA.

Economics & Business Journal, 2009 - present. Book Review Editor.

CPDE Compendium, 2009 - present. Co-editor of newsletter with Bob Male.

Business Quest, 2012 - present. Member of Editorial Board.

Journal of Legal Economics, Editor, 2005 - 2007.

REVIEWER DUTIES

Academy of Legal Studies in Business

American Business Law Journal, Staff Reviewer, 2006 - present.

Annual Meeting Proceedings, 1995 - present.

Discussant, Distinguished Papers, 1996, 1997, 1999 - 2002, 2004.

Journal of Legal Studies in Business, reviewer, 2001 - present.

Journal of Business Ethics, reviewer, 2009 - present.

Midwest Law Journal, reviewer, 2008 - present.

Journal of Legal Economics, reviewer, 2000 - 2005; then Editor 2005 through 2007.

Journal of Management Issues, reviewer, 1988 - 2002.

The Earnings Analyst, reviewer 2016 - present; was Co-Editor 2011 - 2016.

Membership in Professional Organizations (some no longer are active):

Primarily Law Related

Academy of Legal Studies in Business (ALSB)

American Bar Association (ABA)

American Intellectual Property Law Association (AIPLA)

American Association for Justice (AAJ, f.k.a., ATLA)

Nebraska Bar Association

Nebraska Trial Lawyers Association (NTLA)

Primarily Economics Related

Collegium of Pecuniary Damage Experts (CPDE), Founding member 2009.

Secretary and Member, Board of Directors, March 2011 - present.

Co-Editor, *The Earnings Analyst*.

Nebraska Economics and Business Association (NEBA)

President-Elect, 2012; President, 2013, Past President, 2014; Pres. Elect, 2016.

Board of Directors, 2010 - present.

Book Review Editor, *Economics & Business Journal*, 2009 - present.

National Association of Forensic Economists (NAFE)

Ad Hoc Membership Committee, 2003-2004.

American Economics Association (AEA)

Academy of Economics and Finance (AEF)

American Academy of Economic and Financial Experts (AAEFE)
Board of Directors, 2002 - 2007.
Editor, *Journal of Legal Economics*, 2005 - 2007.
National Association of Business Economics (NABE)
Missouri Valley Economics Association (MVEA)
Omaha Green Coalition.

Primarily Service Related

Omicron Delta Epsilon (Economics Honorary) Life Member
Beta Gamma Sigma (Business Honorary) Life Member
President of Local Chapter, 1988-1991

University Service (last ten years)

College

Faculty Advisor, 2012 - 2017. G-BASIS student group (Green Businesses Advancing Strategic Integration of Sustainability).
Green Team, 2011 - 2017. The UNO CBA Green Team is pursuing sustainability in college operations.
Ad Hoc Coordinator of CBA's AACSB Reaffirmation of Accreditation, 2003 - 2011.
UNO CBA successfully reaccredited in 2011.
CBA External Relations Council, Aug. 2009 - 2011.
CBA Personnel Advisory Council, 2004 - Aug. 2010.
CBA Strategic Planning Council, 2005 - Aug. 2009.
Graduate Program Committee; Chair, 1991-1993; Member, 1989-1993; as well as sabbatical replacement member during Spring 1999 and Spring 2010.

University

UNO Budget Advisory Committee; Member 2012 - present.
Faculty Advisor, UNO student group, G-BASIS, whose membership is focused on CBA, Fall 2011 - 2017. As part of UNO's and as part of CBA's sustainability efforts I lead reactivation of a defunct student group (i.e., Ecology NOW), which the new members renamed G-BASIS (i.e., green businesses advancing strategic integration of sustainability).
UoN Executive Graduate Council, Aug. 2010 - July 2013; also 2000.
UNO Graduate Council, March 1998 - August 2000; and August 2004 - August 2007; August 2010 - 2014.
Committee "A" (Policy), August 2004 - August 2007; August 2010 - present.
Co-Chair of Committee "A", 2011; 2012.
Student Appeal Committee, 1999-2000; August 2010 - August 2011.
Program Review Committee, 2010, Geography/Geology.
Committee "C" (Personnel), March 1998-August 2000.

UNO Student Publications Board (i.e., publisher of the *Gateway*), August 2010 - July 2014.

UNO Priorities Committee: STEM. In Fall 2011 UNO has chosen five priority areas and formed committees to assemble resources and develop an implementation plan for those priorities. STEM (science, technology, engineering, and mathematics) is one of those five.

UNO Facilities Planning Committee; Member 2003 - 2012.

Academic Freedom and Tenure Committee; Member, 1996 - 2002; 2003 - 2010; Chair, 1998 - 2002.

Presided over May 1998 trial resulting in dismissal, after 34 years with UNO, of Professor Gordon Becker (Psychology). Re-elected 1999.

Presided over May 2000 trial affirming the denial of tenure for Dr. Jeffrey Johnson (Aviation). Presided over August 2006 trial affirming the denial of tenure for Dr. Pamela Owens (Philosophy and Religion). Re-election in October 2006.

Technology Transfer Committee; Member, 1996 - 2007. Committee formed upon my suggestion to Chancellor. Functions transferred to UNMC's and UNL's intellectual property offices.

AWARDS AND HONORS (last ten years)

CBA Summer Teaching Fellowship (2017): "B-law for Start-ups".

CBA Summer Research Fellowship (2015): Business Case re Brownfields.

CBA Summer Research Fellowship (2013): Greenwashing.

UNO Professional Development Leave (2013): "Law & Econ of Pollution Prevention".

CBA Summer Teaching Fellowship (2012): "Creating LAWS 4630 / BSAD 8636 'Brownfields in Sustainable Systems'".

Rule 26 (all) Depositions

January 2016

McGowan v. Platte Valley Medical Group

CI 1 00589; District Court of Buffalo County, Nebraska

Retained by Defendant. Wrongful discharge; mitigation of damages.

Deposition: January 8, 2016.

Trial: none; settled in March 2016.

Attorney: Kate Jones, Kutak, Rock, LLP, Omaha Nebraska.

April 2006:

Koenig v. CBIZ Benefits & Insurance Services, Inc.

8:04 CV 486 (D. Neb. 2005)

Retained by Defendant. Covenant not to compete; lost profits.

Deposition: none

Trial: none, case settled week prior to trial date of October 10, 2006

Attorney: Alan Rupe, Kutak Rock, LLP, Wichita, Kansas;

Kutak Rock's Omaha office contact was attorney Janis Winterhof.

July 2004:

Eunice M. Foster-Holland v. Roberts Dairy Company, LLC

8:03 CV469 (D. Neb. 2004)

Retained by Defendant. Title VII.

Deposition: none

Trial: none

Attorney: Angela Lisec, Blackwell Sanders Peper Martin LLP, Omaha, Nebraska

MAY 2001:

Nash Finch v. Rubloff Hastings

4:00 CV206 (D. Neb. 2000).

Retained by Plaintiff. Lost Profits.

Deposition: none.

Trial: testimony on February 5, 2002.

Attorney: Pamela Dahlquist, Kutak Rock, LLP, Omaha, Nebraska

MARCH 2001:

Nebraska On-Ramp, Inc. v. US West Communications, Inc.

8:99 CV284 (D. Neb. 1999)

Retained by Defendant. Lost Profits.

Deposition: March 23, 2001.

Trial: none, case settled, prior to trial, week of 1-1-2002.

Attorney: Richard Jeffries, Kutak Rock LLP, Omaha, Nebraska.

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline LP
For Route Approval of Keystone XL
Pipeline Project, Pursuant to *MOPSA***

Intervenors:

Susan Dunavan and William Dunavan, et al

Intervenors.

**Application No: OP-003
(Filed by Applicant on 2/16/17)**

**Landowner Intervenors'
Trial Exhibit List**

Landowner Intervenors' Trial Exhibit List

The Landowner Intervenors' respectfully submit the following list of exhibits that may be offered at trial:

Trial Ex. #	Deposition Ex. #	Applicant Class.	Landowner Class.	DESCRIPTION OF EXHIBIT Classifications: A = No objections; B = Waive foundation, authenticity, & identification only; C = All Objections Reserved.	Offered	Objection	Received	Not Received
				<u>VOLUME #1</u>				
1			A	Allpress, Bob Sworn Testimony				
			A	Ex 1 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 1 Attach #2- Family Photo(s)				
			A	Ex 1 Attach #3- Easement & ROW Agreement				
			A	Ex 1 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 1 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 1 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 1 Attach #7 - Keystone XL Project Map				

EXHIBIT

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Trial Ex. #	Deposition Ex. #	Applicant Class.	Landowner Class.	DESCRIPTION OF EXHIBIT Classifications: A = No objections; B = Waive foundation, authenticity, & identification only; C = All Objections Reserved.	Offered	Objection	Received	Not Received
				Figure 2.2-2				
			A	Ex 1 Attach #8 – Land Photos				
2			A	Bartels, Bob Sworn Testimony				
			A	Ex 2 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 2 Attach #2- Family Photo(s)				
			A	Ex 2 Attach #3- Easement & ROW Agreement				
			A	Ex 2 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 2 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 2 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 2 Attach #7 - Keystone XL Project Map Figure 2.2-2				
3			A	Bergman, Mia Sworn Testimony				
			A	Ex 3 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 3 Attach #2- Family Photo(s)				
			A	Ex 3 Attach #3- Easement & ROW Agreement				
			A	Ex 3 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
4			A	Berry, Karen Sworn Testimony				
			A	Ex 4 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 4 Attach #2- Family Photo(s)				
			A	Ex 4 Attach #3- Easement & ROW Agreement				
			A	Ex 4 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 4 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 4 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 4 Attach #7 - Keystone XL Project Map Figure 2.2-2				

Trial Ex. #	Deposition Ex. #	Applicant Class.	Landowner Class.	DESCRIPTION OF EXHIBIT Classifications: A = No objections; B = Waive foundation, authenticity, & identification only; C = All Objections Reserved.	Offered	Objection	Received	Not Received
				Ex 4 Attach #8 – Land Photo				
5			A	Bialas, Johnnie Sworn Testimony				
			A	Ex 5 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 5 Attach #2- Easement & ROW Agreement				
			A	Ex 5 Attach #3 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 5 Attach #4 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 5 Attach #5 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 5 Attach #6 - Keystone XL Project Map Figure 2.2-2				
6			A	Blocher, Cheri Sworn Testimony				
			A	Ex 6 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 6 Attach #2- Family Photo(s)				
			A	Ex 6 Attach #3- Easement & ROW Agreement				
			A	Ex 6 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 6 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 6 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 6 Attach #7 - Keystone XL Project Map Figure 2.2-2				
7			A	Blocher, Michael Sworn Testimony				
			A	Ex 7 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 7 Attach #2- Family Photo(s)				
			A	Ex 7 Attach #3- Easement & ROW Agreement				
			A	Ex 7 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 7 Attach #5 - Release of Damages Claims & Indemnity Agreement				

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			A	Ex 7 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 7 Attach #7 - Keystone XL Project Map Figure 2.2-2				
8			A	Brauer, Bonnie Sworn Testimony				
			A	Ex 8 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 8 Attach #2- Family Photo(s)				
			A	Ex 8 Attach #3- Easement & ROW Agreement				
			A	Ex 8 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 8 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 8 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 8 Attach #7 - Keystone XL Project Map Figure 2.2-2				
9			A	Breiner, L.A. Sworn Testimony				
			A	Ex 9 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 9 Attach #2- Family Photo(s)				
			A	Ex 9 Attach #3- Easement & ROW Agreement				
			A	Ex 9 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 9 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 9 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 9 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 9 Attach #8 – Plat Map of Breiner Land				
10			A	Breiner, Sandra Sworn Testimony				
			A	Ex 10 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 10 Attach #2- Family Photo(s)				

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			A	Ex 10 Attach #3- Easement & ROW Agreement				
			A	Ex 10 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 10 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 10 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 10 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 10 Attach #8 – Plat Map of Breiner Land				
			A	Ex 10 Attach #8.1 – 3/20/17 Sandra Breiner Affidavit re Photos				
			A	Ex 10 Attach #8.2 - 3/20/17 Photos of Breiner Land				
			A	Ex 10 Attach #8.3 – Sandra Statement re Blow outs				
				<u>VOLUME #2</u>				
11			A	Carlson, James Sworn Testimony				
			A	Ex 11 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 11 Attach #2- Family Photo(s)				
			A	Ex 11 Attach #3- Easement & ROW Agreement				
			A	Ex 11 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 11 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 11 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 11 Attach #7 - Keystone XL Project Map Figure 2.2-2				
12			A	Carpenter, Jerry Sworn Testimony				
			A	Ex 12 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 12 Attach #2- Family Photo(s)				
			A	Ex 12 Attach #3- Easement & ROW Agreement				

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			A	Ex 12 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 12 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 12 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 12 Attach #7 - Keystone XL Project Map Figure 2.2-2				
13			A	Carpenter, Charlayne Sworn Testimony				
			A	Ex 13 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 13 Attach #2- Family Photo(s)				
			A	Ex 13 Attach #3- Easement & ROW Agreement				
			A	Ex 13 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 13 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 13 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 13 Attach #7 - Keystone XL Project Map Figure 2.2-2				
14			A	Choat, Tim Sworn Testimony				
			A	Ex 14 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 14 Attach #2- Family Photo(s)				
			A	Ex 14 Attach #3- Easement & ROW Agreement				
			A	Ex 14 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 14 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 14 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 14 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 14 Attach #8 – Aerial Choat Land				

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15			A	Cheatum, Tammy (CHP 4) Sworn Testimony				
			A	Ex 15 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 15 Attach #2- Family Photo(s)				
			A	Ex 15 Attach #3- Easement & ROW Agreement				
			A	Ex 15 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 15 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 15 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 15 Attach #7 - Keystone XL Project Map Figure 2.2-2				
16			A	Cleary, Larry Sworn Testimony				
			A	Ex 16 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 16 Attach #2- Family Photo(s)				
			A	Ex 16 Attach #3- Easement & ROW Agreement				
			A	Ex 16 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 16 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 16 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 16 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 16 Attach #8 – FSA Aerial – NAIP Imagery				
17			A	Crumly, Jeanne Sworn Testimony				
			A	Ex 17 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 17 Attach #2- Family Photo(s)				
			A	Ex 17 Attach #3- Easement & ROW Agreement				
			A	Ex 17 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 17 Attach #5 - Release of Damages Claims &				

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				Indemnity Agreement				
			A	Ex 17 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 17 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 17 Attach #8 – Midwest Lab Report				
18			A	Davis, Seth Sworn Testimony				
			A	Ex 18 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 18 Attach #2- Easement & ROW Agreement				
			A	Ex 18 Attach #3 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 18 Attach #4 - Keystone XL Project Map Figure 2.2-2				
				<u>VOLUME #3</u>				
19			A	Dunavan, William Sworn Testimony				
			A	Ex 19 Attach #1 - Affected Land Aerial Map(s)				
				Ex 19 Attach #2- Family Photo(s)				
			A	Ex 19 Attach #3- Easement & ROW Agreement				
			A	Ex 19 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 19 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 19 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 19 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 19 Attach #8.1 – Photos Dunavan Prairie Plants				
			A	Ex 19 Attach #8.2 – Dunavan Property Negative Impacts of KXL				
			A	Ex 19 Attach #8.3 – TransCanada What Landowner Can Expect				
			A	Ex 19 Attach #8.4 – Dunavan Property List of				

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				Native Grasses				
			A	Ex 19 Attach #8.5 – Trow Engineering Letter to Dunavan re KXL Survey				
			A	Ex 19 Attach #8.6 – Available Water Well Data within One Mile of KXL Centerline				
			A	Ex 19 Attach #8.7 – 2/9/11 - Transcript Natural Resources Committee Hearing				
			A	Ex 19 Attach #8.8 – Conceptual Plans for Regional Water Transfer				
			A	Ex 19 Attach #8.9 – Jeff Rauh Business Card				
			A	Ex 19 Attach #8.10 – Easement Language				
			A	Ex 19 Attach #8.11 – 7/21/10 TransCanada Letter to Dunavan				
			A	Ex 19 Attach #8.12 – 4/7/11 TransCanada Letter to Dunavan				
			A	Ex 19 Attach #8.13 – 8/12/10 – Dunavan Letter NE Attorney General Bruning				
			A	Ex 19 Attach #8.14 – 9/30/10 NE Attorney General Bruning Letter Dunavan				
			A	Ex 19 Attach #8.15 – News Article Re Pipeline Presentation				
			A	Ex 19 Attach #8.16 – 2/9/11 Cornhusker Economics Paper re KXL				
			A	Ex 19 Attach #8.17 – Photo Susan Dunavan and KXL Research Binders				
20			A	Dunavan, Susan Sworn Testimony				
			A	Ex 20 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 20 Attach #2- Family Photo(s)				
			A	Ex 20 Attach #3- Easement & ROW Agreement				
			A	Ex 20 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 20 Attach #5 - Release of Damages Claims & Indemnity Agreement				

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			A	Ex 20 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 20 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 20 Attach #8.1 – Photos Dunavan Prairie Plants				
			A	Ex 20 Attach #8.2 – Dunavan Property Negative Impacts of KXL				
			A	Ex 20 Attach #8.3 – TransCanada What Landowner Can Expect				
			A	Ex 20 Attach #8.4 – Dunavan Property List of Native Grasses				
			A	Ex 20 Attach #8.5 – Trow Engineering Letter to Dunavan re KXL Survey				
			A	Ex 20 Attach #8.6 – Available Water Well Data within One Mile of KXL Centerline				
			A	Ex 20 Attach #8.7 – 2/9/11 - Transcript Natural Resources Committee Hearing				
			A	Ex 20 Attach #8.8 – Conceptual Plans for Regional Water Transfer				
			A	Ex 20 Attach #8.9 – Jeff Rauh Business Card				
			A	Ex 20 Attach #8.10 – Easement Language				
			A	Ex 20 Attach #8.11 – 7/21/10 TransCanada Letter to Dunavan				
			A	Ex 20 Attach #8.12 – 4/7/11 TransCanada Letter to Dunavan				
			A	Ex 20 Attach #8.13 – 8/12/10 – Dunavan Letter NE Attorney General Bruning				
			A	Ex 20 Attach #8.14 – 9/30/10 NE Attorney General Bruning Letter Dunavan				
			A	Ex 20 Attach #8.15 – News Article Re Pipeline Presentation				
			A	Ex 20 Attach #8.16 – 2/9/11 Cornhusker				

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				Economics Paper re KXL				
			A	Ex 20 Attach #8.17 – Photo Susan Dunavan and KXL Research Binders				
21			A	Graves, Joyce Sworn Testimony				
			A	Ex 21 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 21 Attach #2- Easement & ROW Agreement				
			A	Ex 21 Attach #3 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 21 Attach #4 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 21 Attach #5 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 21 Attach #6 - Keystone XL Project Map Figure 2.2-2				
22			A	Grosserode, Patricia Sworn Testimony				
			A	Ex 22 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 22 Attach #2- Family Photo(s)				
			A	Ex 22 Attach #3- Easement & ROW Agreement				
			A	Ex 22 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 22 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 22 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 22 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 22 Attach #8 – Aerial of Land				
23			A	Harrington, Terri Sworn Testimony				
			A	Ex 23 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 23 Attach #2- Family Photo(s)				
			A	Ex 23 Attach #3- Easement & ROW Agreement				
			A	Ex 23 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i>				

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				Complaint				
			A	Ex 23 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 23 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 23 Attach #7 - Keystone XL Project Map Figure 2.2-2				
24			A	Hammond, Rick Sworn Testimony				
			A	Ex 24 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 24 Attach #2- Family Photo(s)				
			A	Ex 24 Attach #3- Easement & ROW Agreement				
			A	Ex 24 Attach #4 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 24 Attach #5 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 24 Attach #6 - Keystone XL Project Map Figure 2.2-2				
25			A	Hipke, Lloyd Sworn Testimony				
			A	Ex 25 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 25 Attach #2- Family Photo(s)				
			A	Ex 25 Attach #3- Easement & ROW Agreement				
			A	Ex 25 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 25 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 25 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 25 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 25 Attach #8 – Aerial Photos Land				
26			A	Hipke, Vencille Sworn Testimony				
			A	Ex 26 Attach #1 - Affected Land Aerial Map(s)				

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			A	Ex 26 Attach #2- Family Photo(s)				
			A	Ex 26 Attach #3- Easement & ROW Agreement				
			A	Ex 26 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 26 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 26 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 26 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 26 Attach #8 – Aerial Photos Land				
				<u>VOLUME #4</u>				
27			A	Hipke, R. Wynn Sworn Testimony				
			A	Ex 27 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 27 Attach #2- Easement & ROW Agreement				
			A	Ex 27 Attach #3 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 27 Attach #4 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 27 Attach #5 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 27 Attach #6 - Keystone XL Project Map Figure 2.2-2				
28			A	Hipke, Jill Sworn Testimony				
			A	Ex 28 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 28 Attach #2- Easement & ROW Agreement				
			A	Ex 28 Attach #3 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 28 Attach #4 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 28 Attach #5 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 28 Attach #6 - Keystone XL Project Map				

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				Figure 2.2-2				
29			A	Kilmurry, Richard Sworn Testimony				
			A	Ex 29 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 29 Attach #2- Family Photo(s)				
			A	Ex 29 Attach #3- Easement & ROW Agreement				
			A	Ex 29 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 29 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 29 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 29 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 29 Attach #8.1 – U.S. Not Prepared for Tar Sands Oil Spills				
			A	Ex 29 Attach #8.2 – Kilmurry Ranch News Article				
			A	Ex 29 Attach #8.3 - KXL Will Hurt More than Help Job Creation				
			A	Ex 29 Attach #8.4 – 9/17/12 Lower Niobrara NRD Letter to NDEQ				
			A	Ex 29 Attach #8.5 – Page 3.13-60 from KXL Final EIS				
			A	Ex 29 Attach #8.6 – TransCanada Leak Prevention and Detection and Leak Analysis				
			A	Ex 29 Attach #8.7 – Water Well Summary Table GW-2 from TC Application & Related Documents				
			A	Ex 29 Attach #8.8 – Nebraska Earthquakes				
			A	Ex 29 Attach #8.9 – Bonny Kilmurry Testimony SD PUC Hearing 7/24/15				
			A	Ex 29 Attach #8.10 – Holt Co. Board of Supervisors Resolution #2013-7 Opposing Crude				

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				Classifications: A = No objections; B = Waive foundation, authenticity, & identification only; C = All Objections Reserved.				
				Oil and or Tar Sand pipelines across Holt County				
			A	Ex 29 Attach #8.11 – Photos Sandy and Porous Soils				
30			A	Kilmurry, Bonny Sworn Testimony				
			A	Ex 30 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 30 Attach #2- Family Photo(s)				
			A	Ex 30 Attach #3- Easement & ROW Agreement				
			A	Ex 30 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 30 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 30 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 30 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 30 Attach #8.1 – U.S. Not Prepared for Tar Sands Oil Spills				
			A	Ex 30 Attach #8.2 – Kilmurry Ranch News Article				
			A	Ex 30 Attach #8.3 - KXL Will Hurt More than Help Job Creation				
			A	Ex 30 Attach #8.4 – 9/17/12 Lower Niobrara NRD Letter to NDEQ				
			A	Ex 30 Attach #8.5 – Page 3.13-60 from KXL Final EIS				
			A	Ex 30 Attach #8.6 – TransCanada Leak Prevention and Detection and Leak Analysis				
			A	Ex 30 Attach #8.7 – Water Well Summary Table GW-2 from TC Application & Related Documents				
			A	Ex 30 Attach #8.8 – Nebraska Earthquakes				
			A	Ex 30 Attach #8.9 – Bonny Kilmurry Testimony SD PUC Hearing 7/24/15				

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			A	Ex 30 Attach #8.10 – Holt Co. Board of Supervisors Resolution #2013-7 Opposing Crude Oil and or Tar Sand pipelines across Holt County				
			A	Ex 30 Attach #8.11 – Photos Sandy and Porous Soils				
31			A	Krutz, Robert Sworn Testimony				
			A	Ex 31 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 31 Attach #2- Easement & ROW Agreement				
			A	Ex 31 Attach #3 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 31 Attach #4 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 31 Attach #5 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 31 Attach #6 - Keystone XL Project Map Figure 2.2-2				
32			A	Mudloff, Larry Sworn Testimony				
			A	Ex 32 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 32 Attach #2- Family Photo(s)				
			A	Ex 32 Attach #3- Easement & ROW Agreement				
			A	Ex 32 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 32 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 32 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 32 Attach #7 - Keystone XL Project Map Figure 2.2-2				
33			A	Mudloff, Lori Sworn Testimony				
			A	Ex 33 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 33 Attach #2- Family Photo(s)				
			A	Ex 33 Attach #3- Easement & ROW Agreement				
			A	Ex 33 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i>				

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				Complaint				
			A	Ex 33 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 33 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 33 Attach #7 - Keystone XL Project Map Figure 2.2-2				
				<u>VOLUME #5</u>				
34			A	Mudloff, James “JD” (LJM Farms) Sworn Testimony				
			A	Ex 34 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 34 Attach #2- Family Photo(s)				
			A	Ex 34 Attach #3- Easement & ROW Agreement				
			A	Ex 34 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 34 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 34 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 34 Attach #7 - Keystone XL Project Map Figure 2.2-2				
35			A	Loseke, Donald Sworn Testimony				
			A	Ex 35 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 35 Attach #2- Family Photo(s)				
			A	Ex 35 Attach #3- Easement & ROW Agreement				
			A	Ex 35 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 35 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 35 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 35 Attach #7 - Keystone XL Project Map Figure 2.2-2				

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				Classifications: A = No objections; B = Waive foundation, authenticity, & identification only; C = All Objections Reserved.				
36			A	Maughan, Frankie Sworn Testimony				
			A	Ex 36 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 36 Attach #2- Family Photo(s)				
			A	Ex 36 Attach #3- Easement & ROW Agreement				
			A	Ex 36 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 36 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 36 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 36 Attach #7 - Keystone XL Project Map Figure 2.2-2				
37			A	Miller, Earl Sworn Testimony				
			A	Ex 37 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 37 Attach #2- Family Photo(s)				
			A	Ex 37 Attach #3- Easement & ROW Agreement				
			A	Ex 37 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 37 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 37 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 37 Attach #7 - Keystone XL Project Map Figure 2.2-2				
38			A	Miller, Glen Sworn Testimony				
			A	Ex 38 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 38 Attach #2- Family Photo(s)				
			A	Ex 38 Attach #3- Easement & ROW Agreement				
			A	Ex 38 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 38 Attach #5 - Release of Damages Claims & Indemnity Agreement				

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			A	Ex 38 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 38 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 38 Attach #8 – FSA Aerial – NAIP Imagery				
39			A	Lavonne Beck (Milliron Ranch) Sworn Testimony				
			A	Ex 39 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 39 Attach #2- Family Photo(s)				
			A	Ex 39 Attach #3- Easement & ROW Agreement				
			A	Ex 39 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 39 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 39 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 39 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 39 Attach #8 – Aerial Photo of Land				
40			A	Morrison, Frank Sworn Testimony				
			A	Ex 40 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 40 Attach #2- Easement & ROW Agreement				
			A	Ex 40 Attach #3 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 40 Attach #4 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 40 Attach #5 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 40 Attach #6- Keystone XL Project Map Figure 2.2-2				
41			A	Myers, Constance Sworn Testimony				
			A	Ex 41 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 41 Attach #2- Family Photo(s)				

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			A	Ex 41 Attach #3- Easement & ROW Agreement				
			A	Ex 41 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 41 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 41 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 41 Attach #7 - Keystone XL Project Map Figure 2.2-2				
42			A	Naber, Bryce Sworn Testimony				
			A	Ex 42 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 42 Attach #2- Family Photo(s)				
			A	Ex 42 Attach #3- Easement & ROW Agreement				
			A	Ex 42 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 42 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 42 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 42 Attach #7 - Keystone XL Project Map Figure 2.2-2				
				<u>VOLUME #6</u>				
43			A	Troester, Dave Sworn Testimony				
			A	Ex 43 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 43 Attach #2- Family Photo(s)				
			A	Ex 43 Attach #3- Easement & ROW Agreement				
			A	Ex 43 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 43 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 43 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 43 Attach #7 - Keystone XL Project Map				

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				Figure 2.2-2				
			A	Ex 43 Attach #8 – Land Photos				
44			A	Troester, Sharyn Sworn Testimony				
			A	Ex 44 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 44 Attach #2- Family Photo(s)				
			A	Ex 44 Attach #3- Easement & ROW Agreement				
			A	Ex 44 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 44 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 44 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 44 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 44 Attach #8 – Land Photos				
45			A	Nyberg, Mary Jane Sworn Testimony				
			A	Ex 45 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 45 Attach #2- Family Photo(s)				
			A	Ex 45 Attach #3- Easement & ROW Agreement				
			A	Ex 45 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 45 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 45 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 45 Attach #7 - Keystone XL Project Map Figure 2.2-2				
46			A	Pongratz, Richard Sworn Testimony				
			A	Ex 46 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 46 Attach #2- Family Photo(s)				
			A	Ex 46 Attach #3- Easement & ROW Agreement				
			A	Ex 46 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i>				

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				Complaint				
			A	Ex 46 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 46 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 46 Attach #7 - Keystone XL Project Map Figure 2.2-2				
47			A	Pongratz, Ann Sworn Testimony				
			A	Ex 47 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 47 Attach #2- Family Photo(s)				
			A	Ex 47 Attach #3- Easement & ROW Agreement				
			A	Ex 47 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 47 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 47 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 47 Attach #7 - Keystone XL Project Map Figure 2.2-2				
48			A	Proski, Kenneth Sworn Testimony				
			A	Ex 48 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 48 Attach #2- Family Photo(s)				
			A	Ex 48 Attach #3- Easement & ROW Agreement				
			A	Ex 48 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 48 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 48 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 48 Attach #7 - Keystone XL Project Map Figure 2.2-2				
49			A	Rech, Donald Sworn Testimony				
			A	Ex 49 Attach #1 - Affected Land Aerial Map(s)				

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			A	Ex 49 Attach #2- Family Photo(s)				
			A	Ex 49 Attach #3- Easement & ROW Agreement				
			A	Ex 49 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 49 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 49 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 49 Attach #7 - Keystone XL Project Map Figure 2.2-2				
50			A	Sayer, Tim Sworn Testimony				
			A	Ex 50 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 50 Attach #2- Easement & ROW Agreement				
			A	Ex 50 Attach #3 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 50 Attach #4 - Keystone XL Project Map Figure 2.2-2				
51			A	Sayer, Edyth Sworn Testimony				
			A	Ex 51 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 51 Attach #2- Easement & ROW Agreement				
			A	Ex 51 Attach #3 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 51 Attach #4 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 51 Attach #5 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 51 Attach #6 - Keystone XL Project Map Figure 2.2-2				
52			A	Shotkoski, Dan Sworn Testimony				
			A	Ex 52 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 52 Attach #2- Family Photo(s)				
			A	Ex 52 Attach #3- Easement & ROW Agreement				
			A	Ex 52 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i>				

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				Complaint				
			A	Ex 52 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 52 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 52 Attach #7 - Keystone XL Project Map Figure 2.2-2				
				<u>VOLUME #7</u>				
53			A	Smith, Verdon Sworn Testimony				
			A	Ex 53 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 53 Attach #2- Easement & ROW Agreement				
			A	Ex 53 Attach #3- 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 53 Attach #4 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 53 Attach #5 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 53 Attach #6 - Keystone XL Project Map Figure 2.2-2				
54			A	Smith, Connie Sworn Testimony				
			A	Ex 54 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 54 Attach #2- Easement & ROW Agreement				
			A	Ex 54 Attach #3- 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 54 Attach #4 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 54 Attach #5 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 54 Attach #6 - Keystone XL Project Map Figure 2.2-2				
55			A	Stelling, Joshua Sworn Testimony				
			A	Ex 55 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 55 Attach #2- Family Photo(s)				

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			A	Ex 55 Attach #3- Easement & ROW Agreement				
			A	Ex 55 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 55 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 55 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 55 Attach #7 - Keystone XL Project Map Figure 2.2-2				
56			A	Stelling, Richard Sworn Testimony				
			A	Ex 56 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 56 Attach #2- Family Photo(s)				
			A	Ex 56 Attach #3- Easement & ROW Agreement				
			A	Ex 56 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 56 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 56 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 56 Attach #7 - Keystone XL Project Map Figure 2.2-2				
57			A	Stelling, Todd Sworn Testimony				
			A	Ex 57 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 57 Attach #2- Family Photo(s)				
			A	Ex 57 Attach #3- Easement & ROW Agreement				
			A	Ex 57 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 57 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 57 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 57 Attach #7 - Keystone XL Project Map Figure 2.2-2				

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58			A	Steskal, Byron Sworn Testimony				
			A	Ex 58 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 58 Attach #2- Family Photo(s)				
			A	Ex 58 Attach #3- Easement & ROW Agreement				
			A	Ex 58 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 58 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 58 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 58 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 58 Attach #8.1 – Nebraska Agricultural Facts				
			A	Ex 58 Attach #8.2 - Diana Written Statement				
			A	Ex 58 Attach #8.3 – Soil Map Information Steskal Land				
			A	Ex 58 Attach #8.4 – Steskal Irrigation System				
			A	Ex 58 Attach #8.5 – Soil Inventory Info & Maps				
			A	Ex 58 Attach #8.6 – Sandhills and Aquifer Info				
			A	Ex 58 Attach #8.7 – NDEQ Data re Sandhills				
			A	Ex 58 Attach #8.8 – Summary of Supplemental FEIS				
			A	Ex 58 Attach #8.9 – Breiner Ranch Soil and Land Summary and Photos				
			A	Ex 58 Attach #8.10 – Land Reclamation Report – Galen Heckenliable Land				
			A	Ex 58 Attach #8.11 - Land Reclamation Report – Mike and Sue Gibson Land				
			A	Ex 58 Attach #8.12 – Land Reclamation of the Bison Pipeline				
			A	Ex 58 Attach #8.13 – Size and Thickness of Pipeline Visual				
			A	Ex 58 Attach #8.14 – Northern Plains Resource				

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				Council – Recommendations re KXL				
			A	Ex 58 Attach #8.15 – Steskal Farm Soil Summary				
			A	Ex 58 Attach #8.16 – 5/25/17 Sand and Gravel Pit Adjacent to Steskal Land - Photos				
			A	Ex 58 Attach #8.17 – Crop and Soil Info with Photos				
			A	Ex 58 Attach #8.18 – Land Photos				
				<u>VOLUME #8</u>				
59			A	Steskal, Diane Sworn Testimony				
			A	Ex 59 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 59 Attach #2- Family Photo(s)				
			A	Ex 59 Attach #3- Easement & ROW Agreement				
			A	Ex 59 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 59 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 59 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 59 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 59 Attach #8.1 – Nebraska Agricultural Facts				
			A	Ex 59 Attach #8.2 - Diana Written Statement				
			A	Ex 59 Attach #8.3 – Soil Map Information Steskal Land				
			A	Ex 59 Attach #8.4 – Steskal Irrigation System				
			A	Ex 59 Attach #8.5 – Soil Inventory Info & Maps				
			A	Ex 59 Attach #8.6 – Sandhills and Aquifer Info				
			A	Ex 59 Attach #8.7 – NDEQ Data re Sandhills				
			A	Ex 59 Attach #8.8 – Summary of Supplemental FEIS				
			A	Ex 59 Attach #8.9 – Breiner Ranch Soil and Land Summary and Photos				

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			A	Ex 59 Attach #8.10 – Land Reclamation Report – Galen Heckenliable Land				
			A	Ex 59 Attach #8.11 - Land Reclamation Report – Mike and Sue Gibson Land				
			A	Ex 59 Attach #8.12 – Land Reclamation of the Bison Pipeline				
			A	Ex 59 Attach #8.13 – Size and Thickness of Pipeline Visual				
			A	Ex 59 Attach #8.14 – Northern Plains Resource Council – Recommendations re KXL				
			A	Ex 59 Attach #8.15 – Steskal Farm Soil Summary				
			A	Ex 59 Attach #8.16 – 5/25/17 Sand and Gravel Pit Adjacent to Steskal Land - Photos				
			A	Ex 59 Attach #8.17 – Crop and Soil Info with Photos				
			A	Ex 59 Attach #8.18 – Land Photos				
60			A	Tanderup, Arthur Sworn Testimony				
			A	Ex 60 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 60 Attach #2- Family Photo(s)				
			A	Ex 60 Attach #3- Easement & ROW Agreement				
			A	Ex 60 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 60 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 60 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 60 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 60 Attach #8.1 – Tanderup Soil Map				
			A	Ex 60 Attach #8.2 – Tanderup Soil Inventory Report				
			A	Ex 60 Attach #8.3 – Tanderup Soil Descriptions				
			A	Ex 60 Attach #8.4 – Tanderup Irrigation Info				

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			A	Ex 60 Attach #8.5 – 4/22/17 – Article Who Killed the Finest Soybean?				
			A	Ex 60 Attach #8.6 – Tanderup Blow out info				
61			A	Tanderup, Helen Sworn Testimony				
			A	Ex 61 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 61 Attach #2- Family Photo(s)				
			A	Ex 61 Attach #3- Easement & ROW Agreement				
			A	Ex 61 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 61 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 61 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 61 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 61 Attach #8.1 – Tanderup Soil Map				
			A	Ex 61 Attach #8.2 – Tanderup Soil Inventory Report				
			A	Ex 61 Attach #8.3 – Tanderup Soil Descriptions				
			A	Ex 61 Attach #8.4 – Tanderup Irrigation Info				
			A	Ex 61 Attach #8.5 – 4/22/17 – Article Who Killed the Finest Soybean?				
62			A	Tarnick, Jim Sworn Testimony				
			A	Ex 62 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 62 Attach #2- Family Photo(s)				
			A	Ex 62 Attach #3- Easement & ROW Agreement				
			A	Ex 62 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 62 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 62 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				

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			A	Ex 62 Attach #7 - Keystone XL Project Map Figure 2.2-2				
63			A	Grier, Andy (TMAG Ranch, LLC) Sworn Testimony				
			A	Ex 63 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 63 Attach #2- Family Photo(s)				
			A	Ex 63 Attach #3- Easement & ROW Agreement				
			A	Ex 63 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 63 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 63 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 63 Attach #7 - Keystone XL Project Map Figure 2.2-2				
64			A	Hansen, Kimberly Tree (Corners Farm) Sworn Testimony				
			A	Ex 64 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 64 Attach #2- Family Photo(s)				
			A	Ex 64 Attach #3- Easement & ROW Agreement				
			A	Ex 64 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 64 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 64 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 64 Attach #7 - Keystone XL Project Map Figure 2.2-2				
				<u>VOLUME #9</u>				
65			A	Van Housen, Terry & Rebecca Sworn Testimony				
			A	Ex 65 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 65 Attach #2- Family Photo(s)				

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			A	Ex 65 Attach #3- Easement & ROW Agreement				
			A	Ex 65 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 65 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 65 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 65 Attach #7 - Keystone XL Project Map Figure 2.2-2				
66			A	Walmer, Gary & Joanne Sworn Testimony				
			A	Ex 66 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 66 Attach #2- Family Photo(s)				
			A	Ex 66 Attach #3- Easement & ROW Agreement				
			A	Ex 66 Attach #4 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 66 Attach #5 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 66 Attach #6 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 66 Attach #7 - Keystone XL Project Map Figure 2.2-2				
			A	Ex 66 Attach #8 – Well Map				
67			A	Widga, Diana Sworn Testimony				
			A	Ex 67 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 67 Attach #2- Easement & ROW Agreement				
			A	Ex 67 Attach #3 - 11/3/15 - <i>Zurich v. Andrew</i> Complaint				
			A	Ex 67 Attach #4 - Release of Damages Claims & Indemnity Agreement				
			A	Ex 67 Attach #5 - Keystone XL Project Maps Figures 4.3.3-8 (KXL002000)				
			A	Ex 67 Attach #6 - Keystone XL Project Map Figure 2.2-2				

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			A	Ex 67 Attach #7 – Photo of Widga Land				
68			A	Collins, Lori Sworn Testimony				
			A	Ex 68 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 68 Attach #2- Family Photo(s)				
			A	Ex 68 Attach #3- Land Photos				
			A	Ex 68 Attach #4 – Texas Observer News Article				
			A	Ex 68 Attach #5 - Timeline				
			A	Ex 68 Attach #6 - Release of Damages Claims & Indemnity Agreement				
69			A	Collins, JB Sworn Testimony				
			A	Ex 68 Attach #1 - Affected Land Aerial Map(s)				
			A	Ex 68 Attach #2- Family Photo(s)				
			A	Ex 68 Attach #3- Land Photos				
			A	Ex 68 Attach #4 – Texas Observer News Article				
			A	Ex 68 Attach #5 - Release of Damages Claims & Indemnity Agreement				
70			A	Heckenliable, Galen Sworn Testimony				
			A	Ex 68 Attach #1 - Land Photos				
71			A	Thompson, Randy Sworn Testimony				
			A	Ex 71 Attach #1 - 7/21/10 TC Letter Thompson				
			A	Ex 71 Attach #2 - 8/8/10 Thompson Letter TC				
			A	Ex 71 Attach #3 - 4/7/11 TC Letter Thompson				
72			A	Schaffer, Amy Sworn Testimony				
				Ex 72 Attach #1 – PowerPoint				
				<u>VOLUME #10</u>				
73			A	Stockman, Lorne Sworn Testimony				
				Ex 73 Attach #1 - CV				
				Ex 73 Attach #2 - Oil Sands 101: Process Overview, Oil Sands Magazine				
				Ex 73 Attach #3 - The Future of the Canadian Oil Sands, Oxford Institute for Energy Studies, February 2016				

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				Classifications: A = No objections; B = Waive foundation, authenticity, & identification only; C = All Objections Reserved.				
				Ex 73 Attach #4 - Crude Oil Forecasts, Markets and Transportation Report, Canadian Association of Petroleum Producers, June 2016				
				Ex 73 Attach #5 - Rystad Energy Data, Breakeven WTI Price for Oil Sands Projects, May 2017				
				Ex 73 Attach #6 - Rystad Energy Data, WTI Futures, May 2017				
				Ex 73 Attach #7 - Understanding Bitumen Pricing, GLJ Petroleum Consultants				
				Ex 73 Attach #8 - Federal Energy Regulatory Commission Tariffs for Enbridge and TransCanada for Transportation from Alberta to U.S. Gulf Coast				
				Ex 73 Attach #9 - Rystad Energy Data, Oil Sands Investment, May 2017; USEIA Data WTI Price, May 2017				
				Ex 73 Attach #10 - Rystad Energy Data, Oil Sands Capacity Additions by Approval Year, May 2017				
				Ex 73 Attach #11 - Rystad Energy Data, Oil Sands Capacity Additions by Approval Year, May 2017				
				Ex 73 Attach #12 - Rystad Energy Data, Total Oil Sands Capex, May 2017				
				Ex 73 Attach #13 - Rystad Energy Data, Expenditures to Maintain Oil Sands Production Capacity, May 2017				
				Ex 73 Attach #14 - Rystad Energy Data, Projected Production at Approved Oil Sands Projects, May 2017				
				Ex 73 Attach #15 - Press Reports on Sales of Oil Sands Assets				
				Ex 73 Attach #16 - Five Statements from Suncor CEO Steve Williams About the Future				

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				of the Oilsands, JWN Energy Intelligence, March 29, 2017				
				Ex 73 Attach #17 - National Energy Board of Canada Data, Total Western Canadian Historical and Forecast Crude Oil Production for January 2015 to December 2017				
				Ex 73 Attach #18 - Mainline System Configuration, Enbridge Energy, Limited Partnership, 2017; Pipeline Company Websites Showing Crude Oil Transportation Capacity				
				Ex 73 Attach #19 - Spreadsheet of Federal Energy Regulatory Commission Form 6 Report Crude Oil Volume Data for Pipelines from Canada into the U.S., 2007 to 2016				
				Ex 73 Attach #20 - Pipeline Developer Websites Showing Proposed Crude Oil Transportation Capacity for New Pipelines from Western Canada to Export Markets				
				Ex 73 Attach #21 - TransCanada Earnings Call Transcript, May 5, 2017				
				Ex 73 Attach #22 - Keystone XL, Dakota Access Could Cause Bottlenecks at U.S. Mid-Continent Storage Hubs, Shift Crude Prices, February 14, 2017				
				Ex 73 Attach #23 - TransCanada Press Statements on Base Keystone and Keystone Extension Capacity Sales				
				Ex 73 Attach #24 - Documents Showing Crude Oil Transportation Capacity for Recently Constructed Crude Oil Pipelines from the Midwest to the Gulf Coast				
				Ex 73 Attach #25 - United States Energy Information Agency Data, Crude Oil in Storage in Cushing, Oklahoma, and Petroleum Area Defense District 3 (Gulf Coast Region), May				

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				2017				
				Ex 73 Attach #26 - Rystad Energy Data, Projected U.S. Crude Oil Production by State, May 2017				
				Ex 73 Attach #27 - United States Energy Information Agency Data, Prime Supplier and Product Supplied Data for Nebraska, Petroleum Area Defense Districts 2 and 3 and the U.S., and Explanatory Notes, May 2017				
				Ex 73 Attach #28 - United States Energy Information Agency Data, Field Production of Crude Oil for Petroleum Area Defense Districts 2 and 3 and the U.S., May 2017				
				Ex 73 Attach #29 - Chart of United States Energy Information Agency Data and Forecasts from There Is No Such Thing As Peak Oil Demand, Oil Price.com, March 28, 2017				
				Ex 73 Attach #30 - Press Reports on Forecasts of Battery Manufacturing Capacity and Costs				
				Ex 73 Attach #31 - Press Reports on Expansion of Electric Vehicle Markets and Vehicle Fuel Usage				
				Ex 73 Attach #32 - United States Energy Information Agency Data, Petroleum Area Defense Districts 3 and U.S. Petroleum Export Volume, May 2017				
				Ex 73 Attach #33 - United States Energy Information Agency Data, Petroleum Export Volumes from Specific Petroleum Area Defense Districts 3 Ports				
				<u>VOLUME #11</u>				
74			A	Sweeney, Shaun Sworn Testimony				
			A	Ex 74 Attach #1 - CV				
			A	Ex 74 Attach #2 – Pipe Dreams? Jobs Gained, Jobs Lost By The Construction of Keystone XL				

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			A	Ex 74 Attach #3 – Select TransCanada Discovery Responses				
			A	Ex 74 Attach #4 – The Impact of Tar Sands Pipeline Spills On Employment And The Economy				
75			A	Suntum, Joseph Sworn Testimony				
			A	Ex 75 Attach #1 - CV				
			A	Ex 75 Attach #2 – Expert Report				
			A	Ex 75 Attach #2 Ex #1 – CV				
			A	Ex 75 Attach #2 Ex #2 – Exemplar Easement				
			A	Ex 75 Attach #2 Ex #3 - Project Maps				
			A	Ex 75 Attach #2 Ex #4 – Federal Lawsuit <i>Zurich v. Andrew</i>				
76			A	O’Hara, Michael Sworn Testimony				
			A	Ex 76 Attach #1 - CV				
			A	Ex 76 Attach #2 – Expert Report				
77			A	IRS Pub 946 , How to Depreciate Property				
78			A	<i>Statement of Ethical Principles & principles of Professional Practice</i> , Nat’l Ass’n of Forensic Economists				
79			A	L. Malm, <i>Taxplainer: State & Local Impact of Keystone Pipeline</i> (January 2017)				
80			A	Article, 10-Year Treasury Constant Maturity Rate, Federal Reserve Bank of St. Louis, June 1, 2010.				
81			A	350 Neb Admin Code Real Property Valuation, Assessment Regulations				
82			A	L Stockman, <i>Keystone XL Benefits from Taxpayer Subsidies</i> , <i>Oil Change Int’l</i> (Oct 2012)				
83			A	<i>ASTM E 1527-00: Environmental Site Assessments: Phase I ESA Process.</i>				
84			A	Z Hejzlar, <i>Technical Aspects of Phase I/II Environmental Site Assessments</i> (ASTM MNL43).				

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85			A	<i>Charles Brownman, Hazardous Liquids Pipelines – Reg. & Due Diligence</i> (apps.americanbar.org/buslaw/committees/CL400000pub/newsletter/.../brownman.pdf)				
86			A	<i>C E Smith, Crude Oil Pipeline Growth Revenue Surge, Oil & Gas Journal,</i> http://www.ogj.com/articles/print/volume-112/issue-9/special-report-pipeline-economics/crude-oil-pipeline-growth-revenues-surge-construction-costs-mount.html				
87			A	<i>Prototype Exemplar TransCanada Easement Instrument</i>				
88			A	<i>Land use planning for pipelines: A guidelines for local authorities, developers, and pipeline operators, ISBN 1-55436-826-X. (Canadian Standards Association 2004).</i> www.cepa.com/wp-content/.../11/CSA-Plus-663-Land-Use-Planning-For-Pipelines.pdf				
89			A	<i>Guidelines for Property Development, American Petroleum Institute Pub. Prod # DOGP04 (2011).</i> www.chevronpipeline.com/pdf/Guidelines_for_Property_Development.pdf				
90			A	<i>The American Railway Engineering Association Specifications – Pipeline Specifications</i>				
91			A	<i>Gen Admin Order of Indiana Utility Reg. Comm'n 2007-1. (13)</i>				
92			A	<i>Indiana Agricultural Impact Mitigation Agreement April 2008 Agreement governing the Rockies Express Pipeline-East Project.(18)</i>				
93			A	<i>Pipeline Information for Landowners, Pipeline Safety Trust, http://pstrust.org/about-pipelines1/pipelines-for-landowners/</i>				
94			A	<i>2/9/11 Cornhusker Economics – The Keystone XL Pipeline Project (4)</i>				
				<u>VOLUME #12</u>				

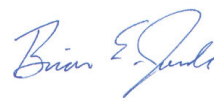
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95			A	TC Template Haul Route Agreement				
96			A	10/29/10 Nebraska TC Easement Example				
97			A	August 2004 - Setbacks and Zoning for Natural Gas and Hazardous Liquid Transmission Pipelines				
98			A	4/16/14 - Nobel Peace Prize Laureates urge Obama to make the right choice and reject the Keystone XL tar sands pipeline				
99			A	4/22/17 – Article Who Killed the Finest Soybean Soil? https://www.agweb.com/article/who-killed-the-finest-soybean-soil-naa-chris-bennett/#.WQXyyyZVUBU.mailto				
100			A	Certified Copy of 2/9/11 - Transcript Natural Resources Committee Hearing				
101			A	TransCanada Website – What Can Landowners Expect?				
102			A	6/7/17 - TransCanada Website – Our Commitment to Nebraska				
103			A	6/7/17 - TransCanada Website – PSC FAQ's				
104			A	6/7/17 - TransCanada Website – Proposed KXL Route				
105			A	6/7/17 - TransCanada Website – Working With Landowners				
106			A	6/7/17 - TransCanada Website – Benefits for Nebraska				
107			A	6/7/17 - TransCanada Website – Keeping Nebraska Safe				
108			A	2/7/12 – Refinery subsidies linked to the Keystone XL tar sands pipeline, Lorne Stockman (http://priceofoil.org/content/uploads/2012/02/Refinery-Expensing_OCI.ET_.pdf)				

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109			A	2011 KXL EIS Figure 3.3.1-3 Water Wells (KXL001412)				
110			A	2014 KXL SEIS Figure 3.3.2-4 Water Wells (KXL009614)				
111			A	2013 KXL NDEQ Evaluation Figure E.2-5 (KXL017460)				
112			A	2014 KXL SEIS Figure 3.2 Soils (KXL009588)				
113			A	NDEQ Figure E.2-1 Soil Association Along Proposed NE Route				
114			A	9/17/12 - Lower Niobrara NRD Letter to NDEQ				
115			A	Northern Plains Resource Council – Recommendations re KXL https://www.northernplains.org/wp-content/uploads/2013/06/PipelineSafetyBooklet.pdf				
116			A	Soils Map (USDA-NRCS) per Affected Property w/ Key Describing Each Soil Type				
117			A	Soil Inventory Report per Affected Property				
118			A	Soil Map Unit Description per County				
119			A	NE Dept. Natural Resources Registered Wells Data Retrieval per County				
120			A	DNR Well Map per County				
121				Select Admissions of Applicant				
122				Select Interrogatory Answers of Applicant				
				<u>NO VOLUME#</u>				
123			A	Physical Soil sample from Select Landowners				
124			A	Demonstrative #1 – Collage of Landowners				
125			A	Demonstrative #2 – Pipe Diameter				
126			A	Demonstrative #3 - TBD				
127			A	Demonstrative #4 - TBD				
128			A	Demonstrative #5 - TBD				
				*Landowner Intervenor and Each of Them				

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				reserve the right to add, amended, remove exhibits from and to this Exhibit List. Please note Applicant has not yet produced all materials sought in discovery and therefore Landowner Intervenor cannot assess which of those unproduced documents it may utilize as evidence at the time of the Hearing. Additionally much could occur between June 7, 2017 to and through the time of the Hearing in August 7 -11, 2017 and any other relevant information will be added to this exhibit list.				
				*Discovery is ongoing. Depositions may occur. Exhibits may be added throughout this process.				
				*Any Exhibit necessary for Surrebutal				
				*Any Exhibit submitted by any other Intervenor				

June 7, 2017.

Susan Dunavan, et al., Intervenor,

By: 
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Certificate of Service

Pursuant to 291 *Neb Admin Code* § 015.01(b), a copy of the foregoing is served upon all Intervenors of record to this proceeding or their attorneys of record as follows:

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McGrath North Mullin & Kratz, PC LLO	Patrick D. Pepper	First National Tower Ste 3700 1601 Doddge Street	Omaha	NE	68102	ppepper@mcgrathnorth.com

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Brian E. Jorde