

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION) APPLICATION NO. OP-0003
OF TRANSCANADA KEYSTONE)
PIPELINE, LP FOR ROUTE APPROVAL)
OF THE KEYSTONE XL PIPELINE)
PROJECT PURSUANT TO THE MAJOR)
OIL PIPELINE SITING ACT)
_____)

REBUTTAL TESTIMONY OF
MICHAEL B. PORTNOY

STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

1 **Q: Mr. Portnoy, are you the same person that testified on February 8, 2017 in**
2 **support of the Application?**

3 A: Yes.

4 **Q: Have you read the testimony of Dr. Hayes in opposition to the Preferred Route**
5 **and stating that the State’s natural resources will be “significantly damaged” due**
6 **to soil impermeability which will occur in Nebraska as a result of the construction**
7 **of the Keystone XL Pipeline along the Preferred Route?**

8 A: Yes.

9 **Q: Do you agree with Dr. Hayes?**

10 A: No.

11 **Q: Why not?**

12 A: Because irrevocable soil compaction will not occur along the Preferred Route, and
13 because the Preferred Route is such a minor area of land within the entire State of
14 Nebraska that, even if soil impermeability was unrelieved, it would not constitute a
15 “significant” damage.

16 **Q: Why do you say irrevocable soil compaction will not occur along the Preferred**
17 **Route?**

18 A: The CMRP contains specific mitigation measures to relieve any soil compaction in
19 section 4.11.1. These methods, including deep ripping, are the widely accepted
20 measures to relieved soil compaction. The studies Dr. Hayes relies upon for his
21 conclusions of the problem of compaction were from pipeline projects which occurred
22 before the industry began to use all of these measures.

23 **Q: What if, despite the best efforts at mitigation, there is still soil compaction?**

24 A: I do not agree that mitigation will be unsuccessful, but assuming your hypothetical is
25 true, the Preferred Route represents approximately 0.02%, or less, of the total acres of
26 land used for farms and ranches in Nebraska. As a matter of relative comparisons, the
27 scope of possible damage cannot be said to be a significant amount of the total relevant
28 land in Nebraska.

29 **Q: Have you read the testimony of Mr. Trungale in opposition to the application**
30 **which states that simply placing a pipeline with a shallow aquifer could alter the**
31 **flow paths which could result in irreversible and irretrievable irreparable impacts**
32 **on local springs?**

33 A: Yes.

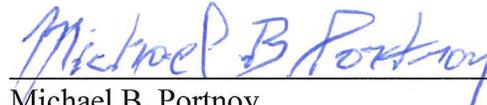
34 **Q: Do you agree with him?**

35 A: No.

36 **Q: Why do you disagree?**

37 A: Because the areas of shallow ground water along the Preferred Route are associated
38 with existing surface water, namely rivers, creeks, and streams. Along the Preferred

39 Route, the pipeline will cross the surface water in the direction of the flow of ground
40 waters, such that the pipeline and the ground water will be moving parallel to each
41 other. As a result, the flow of ground water will not change due to the existence of the
42 pipeline.



Michael B. Portnoy

Subscribed and sworn to before me this 12th day of July, 2017.



Notary Public

