

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

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

**Direct Testimony of  
Bob Allpress**

State of Nebraska            )  
  ) ss.  
Keya Paha County            )

1   **Q:   Please state your name.**

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

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

6   A:   Yes, I am.

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

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

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

14  A:   Yes.

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

16  A:   Rancher.

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

2 A: Nancy Allpress.

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

4 A: We have three grandsons.

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

7 A. Yes.

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

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

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

17 A: Yes.

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

20 A: Yes.

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

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

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

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

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

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

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

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

17 A: Yes.

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

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

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

3 **Q: What happened next?**

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

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

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

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

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

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

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

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

5 A: No, they have not.

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

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

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

13 A: No, they did not.

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

16 A: Yes, they did.

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

19 A: Yes, they did.

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

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

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

4 A: No, I do not.

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

7 A: Yes, they did.

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

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

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

20 A: Yes, it is.

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

23 A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 A: No.

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

5 A: No.

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

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

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

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

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

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

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

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

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

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

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

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

17 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 xiii. “injured”
- 2 xiv. “interfered with”
- 3 xv. “impaired”
- 4 xvi. “suitable crossings”
- 5 xvii. “where rock is encountered”
- 6 xviii. “as nearly as practicable”
- 7 xix. “pre-construction position”
- 8 xx. “pre-construction grade”
- 9 xxi. “various engineering factors”

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

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

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

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

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

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

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

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

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

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

16 A: No, never.

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

20 A: Yes, they did.

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

23 A: Yes, it is.

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

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

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

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

4 A: No, I did not.

5 **Q: Why not?**

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

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

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

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

22 A: No, they have not.

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

26 A: No, they have not.

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

29 A: Yes, I am.

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

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

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

9 A: No, they have not.

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

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

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

23 A: No, it has not.

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

27 A: No, I do not.

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

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

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

7 A: Yes, I do.

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

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

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

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

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

18 A: No, of course not.

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

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

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

26 A: Well, yes I have.

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

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

3   A:    No, of course not.

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

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

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

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

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

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

5 A: No, I do not.

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

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

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

16 A: Well yes, of course.

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

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

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

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

6 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 A: Yes, I have.

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

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

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

1 A: No, I do not.

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

5 A: No, I do not.

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

9 A: No, I do not.

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

13 A: No, I do not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **Q: What else?**

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

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

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

22 BISMARCK TRIBUNE March 31, 2017

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

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

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

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

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

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

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

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

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

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

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

3   **Q:   What else concerns you?**

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

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

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

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

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

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

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

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

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

6 A: Yes, they are.

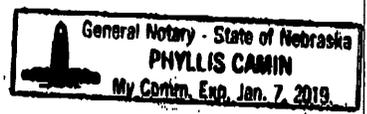
7 **Q: Thank you, I have no further questions at this time and reserve the right to**  
8 **ask you additional questions at the August 2017 Hearing.**



Bob Allpress, Allpress Brothers, LLC

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

Phyllis Camin  
Notary Public



**Attachment No. 1**

PREPARED BY  
exp Energy Services Inc.



S.011  
T.034N  
R.017W

S.012  
T.034N  
R.017W

S.014  
T.034N  
R.017W

S.013  
T.034N  
R.017W

Allpress Brothers, LLC

S.024  
T.034N  
R.017W

S.019  
T.034N  
R.016W



IMAGERY: NAIP 2016



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

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

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

May 2017 - X:\Drawings\50528\KEYSTONE XL\5000\_0995038

PREPARED BY  
exp Energy Services Inc.



S.014  
T.034N  
R.017W

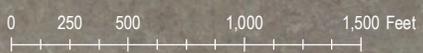
S.013  
T.034N  
R.017W

S.024  
T.034N  
R.017W

S.019  
T.034N  
R.016W

Allpress Brothers., LLC

IMAGERY: NAIP 2016



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

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

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

May 2017 - X:\Drawings\53528\KEYSTONE XL\5300\_0996528

**Attachment No. 2**



Mentor



MINERAL FEEDS  
WAXICINE  
LIVESTOCK

82-86

COPPER HILLS





CABELA'S

161

161

**Attachment No. 3**

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

---

(Above Space for Recorder's Use Only)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR(S):

**Allpress Brothers, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

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

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

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

By \_\_\_\_\_ of

**Allpress Brothers, LLC**, on behalf of the corporation.

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

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

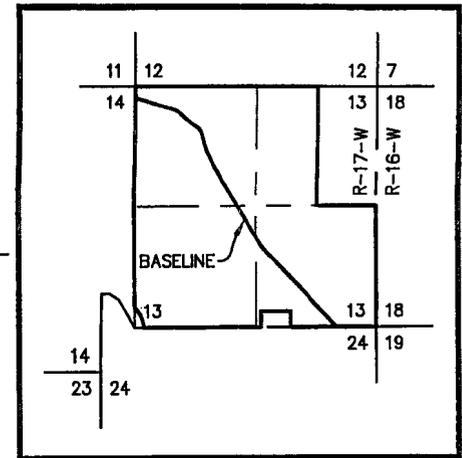
Grantor's Initials \_\_\_\_\_

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

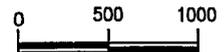
# KEYA PAHA COUNTY, NEBRASKA

T-34-N, R-17-W, SECTION 13

ML-NE-KP-40640.000



VICINITY MAP  
N.T.S.

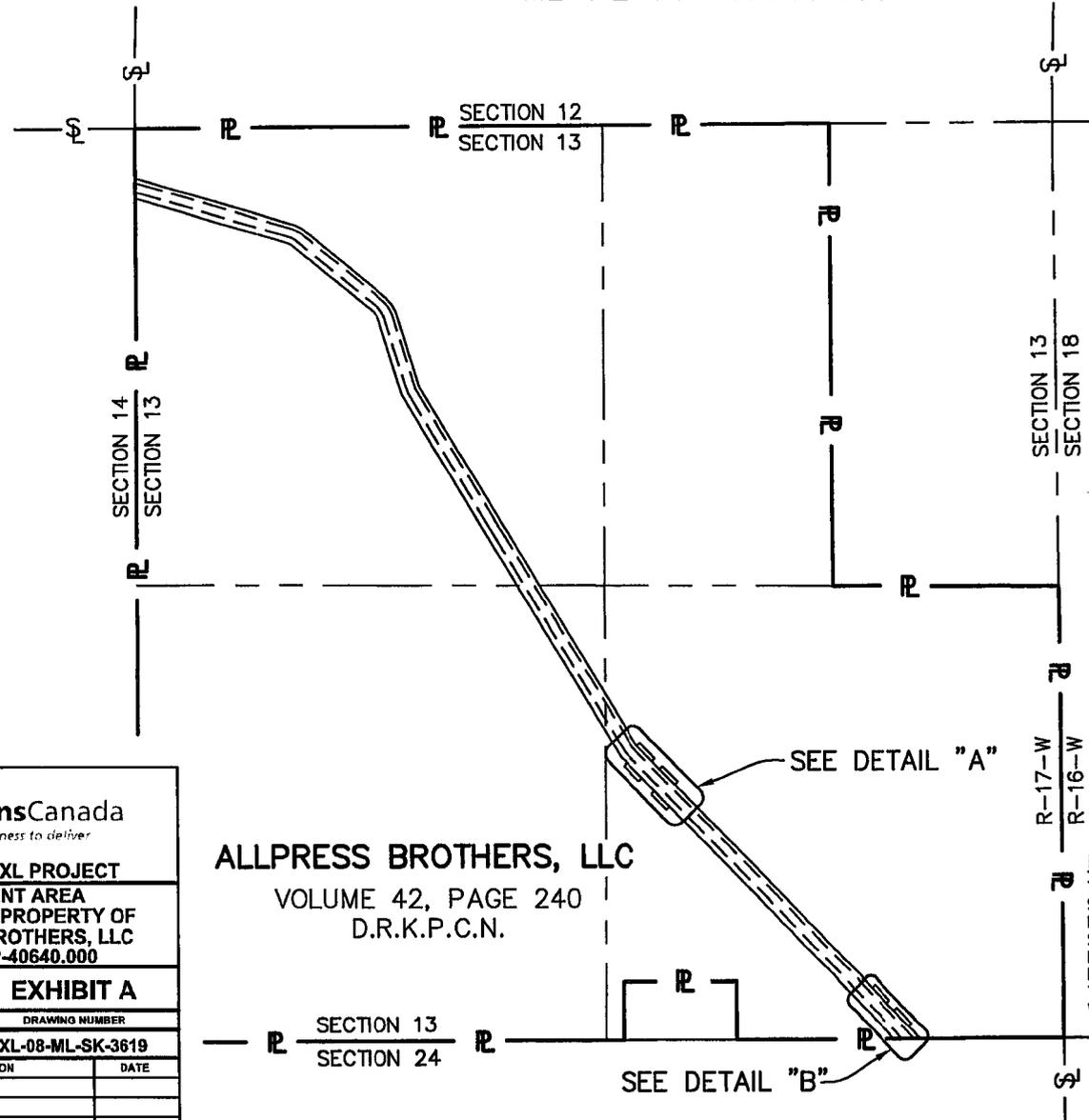


SCALE: 1" = 1,000'

**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.



**ALLPRESS BROTHERS, LLC**

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

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



**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: 1" = 1000'	DATE: 10/27/14	DRAWN BY: JN	CHECKED BY: ALS



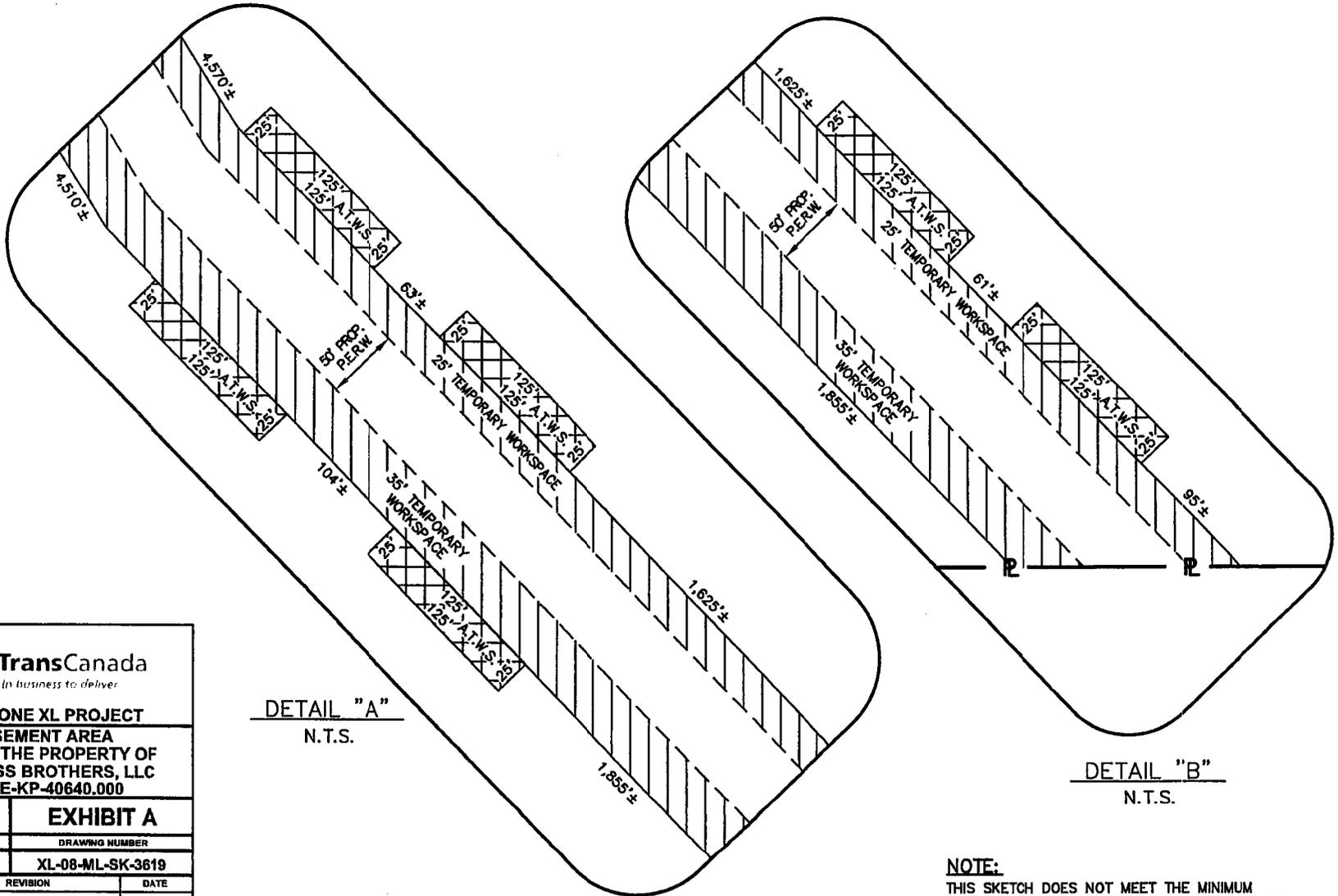
**LEGEND**  
 R. PROPERTY LINE  
 PROP. PROPOSED  
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE  
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY

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

# KEYA PAHA COUNTY, NEBRASKA

T-34-N, R-17-W, SECTION 13

ML-NE-KP-40640.000



DETAIL "A"  
 N.T.S.

DETAIL "B"  
 N.T.S.



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

PROJECT:		<b>EXHIBIT A</b>	
XL	DRAWING NUMBER		
APPROVED BY	SLR		
SLR	XL-08-ML-SK-3619		
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/27/14	JN	ALS



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



**Attachment No. 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

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

CASE NO. \_\_\_\_\_

**COMPLAINT**

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

**PARTIES**

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

**JURISDICTION AND VENUE**

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

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

### GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

### **FIRST CLAIM: NEGLIGENCE**

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

**SECOND CLAIM: TRESPASS**

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

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

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

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

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

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

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

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

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

**JURY DEMAND**

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

ZURICH AMERICAN INSURANCE COMPANY,  
Plaintiff,

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

**Attachment No. 5**

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-KP-40640.000

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

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

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

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

**Section 13, Township 34N, Range 17W**

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

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

\_\_\_\_\_, 20\_\_\_\_.

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

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

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

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

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-KP-40660.000

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

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

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

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

**Section 24, Township 34N, Range 17W**

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

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

\_\_\_\_\_, 20\_\_\_\_.

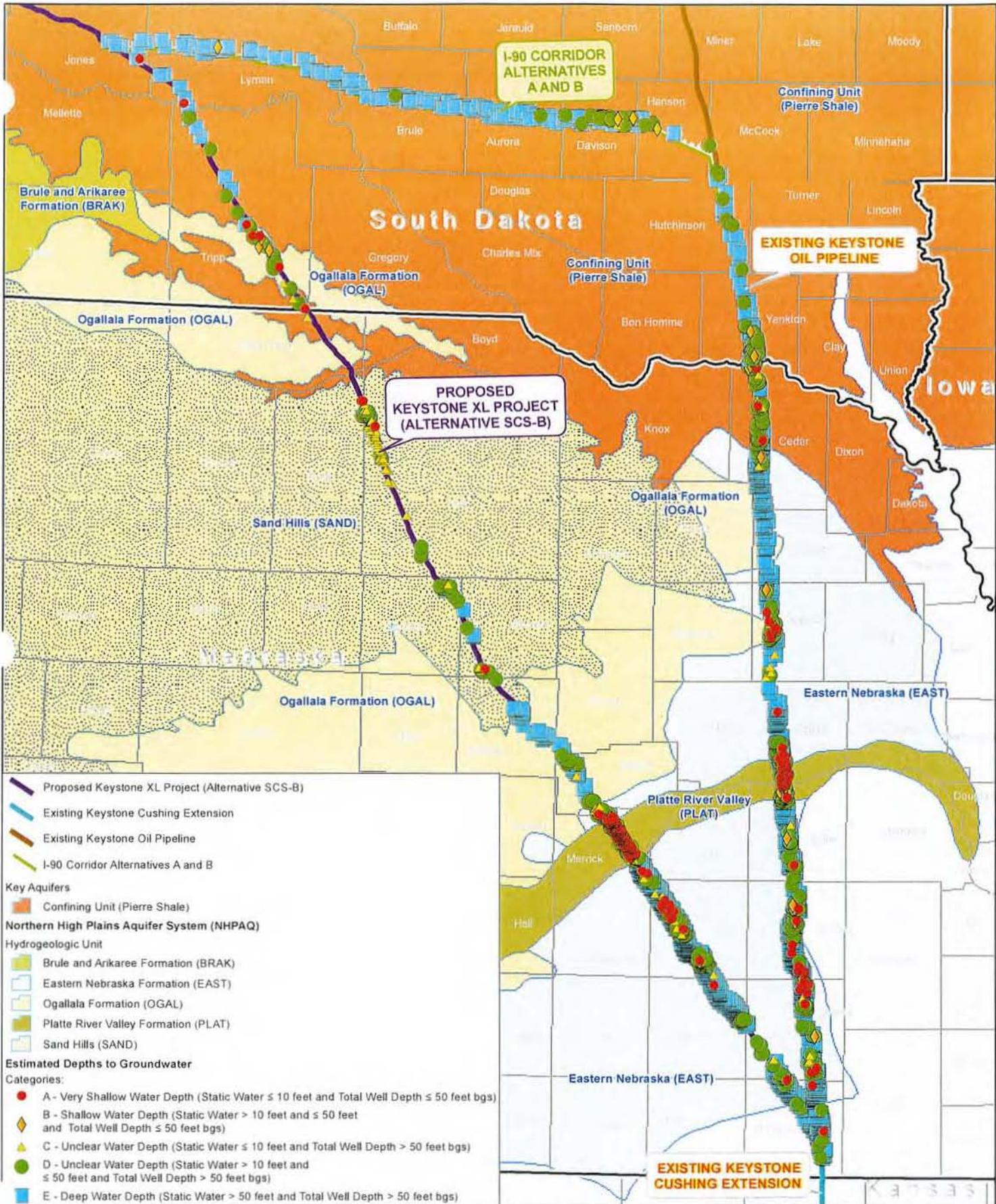
\_\_\_\_\_  
Owner Signature

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

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

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

**Attachment No. 6**



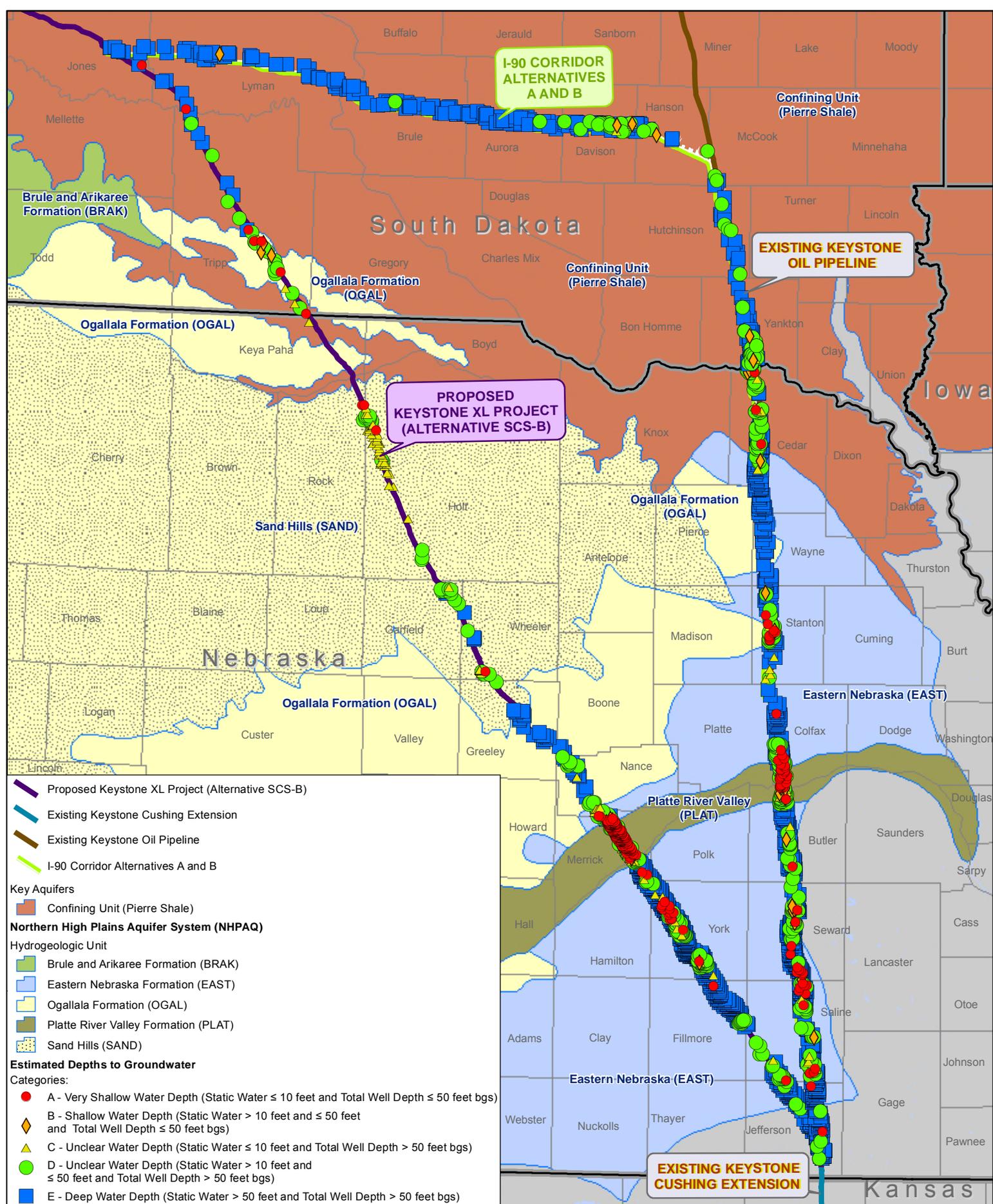
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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



### KEYSTONE XL PROJECT

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



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

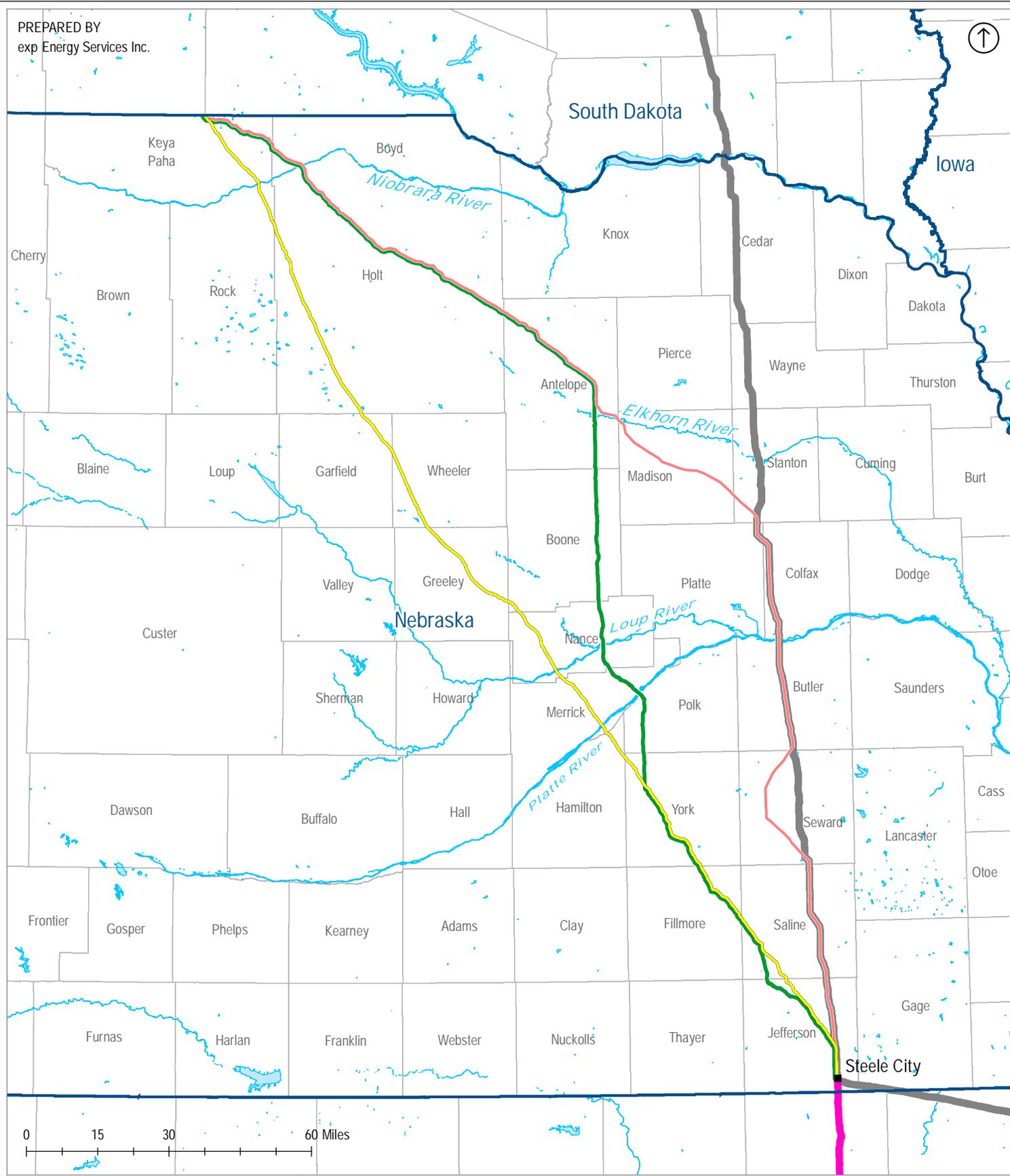
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

### KEYSTONE XL PROJECT

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

**Attachment No. 7**



LEGEND

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

KEYSTONE XL PROJECT

**FIGURE 2.2-2**

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

**Attachment No. 8**



4.22.2017



4.22.2017



4.22.2017







4.22.2017



4.22.2017



4.22.2017

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

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

Direct Testimony of  
Robert Bartels in  
Support of Landowner Intervenors

State of Nebraska            )  
  ) ss.  
Saline County                )

1   **Q:   Please state your name.**

2   A:   My name is Robert Bartels.

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

6   A:   Yes, I am.

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

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

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

14  A:   Yes.

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

1 A: Yes.

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

3 A: Yes.

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

6 A: Yes.

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

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

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

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

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

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

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

3 A: Yes.

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

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

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

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

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

14 A: No, they have not.

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

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

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

22 A: No, they did not.

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

25 A: Yes, they did.

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

28 A: Yes, they did.

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

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

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

12 A: No, I do not.

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

15 A: Yes, they did.

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

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

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

28 A: Yes, it is.

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

3 A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 A: No.

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

13 A: No.

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

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

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

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

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

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

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

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

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

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

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

26 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 iv. “reasonably anticipated and foreseeable costs and expenses”
- 2 v. “yield loss damages”
- 3 vi. “diminution in the value of the property”
- 4 vii. “substantially same condition”
- 5 viii. “an actual or potential hazard”
- 6 ix. “efficient”
- 7 x. “convenient”
- 8 xi. “endangered”
- 9 xii. “obstructed”
- 10 xiii. “injured”
- 11 xiv. “interfered with”
- 12 xv. “impaired”
- 13 xvi. “suitable crossings”
- 14 xvii. “where rock is encountered”
- 15 xviii. “as nearly as practicable”
- 16 xix. “pre-construction position”
- 17 xx. “pre-construction grade”
- 18 xxi. “various engineering factors”

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

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

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

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

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

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

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

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

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

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

26 A: No, never.

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

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

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

4 A: Yes, it is.

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

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

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

13 A: No, I did not.

14 **Q: Why not?**

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

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

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

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

4 A: No, they have not.

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

8 A: No, they have not.

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

11 A: Yes, I am.

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

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

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

20 A: No, they have not.

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

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

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

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

6 A: No, it has not.

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

10 A: No, I do not.

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

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

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

17 A: Yes, I do.

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

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

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

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

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

28 A: No, of course not.

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

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

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

8 A: Well, yes I have.

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

13 A: No, of course not.

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

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

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

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

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

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

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

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

7 A: No, I do not.

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

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

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

18 A: Well yes, of course.

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

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

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

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

8 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 A: Yes, I have.

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

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

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

4 A: No, I do not.

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

8 A: No, I do not.

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

11 A: No, I do not.

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

15 A: No, I do not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 A: Yes, they are.

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

*Robert Bartels*

Robert Bartels

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

Betty S Nickel  
Notary Public



**Attachment No. 1**



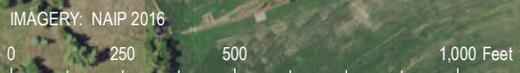
Bartels Farms, Inc.

S.002  
T.005N  
R.001E

S.001  
T.005N  
R.001E

S.011  
T.005N  
R.001E

S.012  
T.005N  
R.001E



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

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

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



S.002  
T.005N  
R.001E

S.001  
T.005N  
R.001E

S.012  
T.005N  
R.001E

Bartels Farms, Inc.

S.011  
T.005N  
R.001E

IMAGERY: NAIP 2016

0 250 500 1,000 Feet



VICINITY MAP



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

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

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

**Attachment No. 2**



**Attachment No. 3**

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

---

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-SA-00255.0OL  
ML-NE-SA-40000.000

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

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

Grantor's Initials \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_.

GRANTOR(S):

**Bartels Farms, Inc., a corporation**

By: \_\_\_\_\_

Its: \_\_\_\_\_

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF NEBRASKA

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

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

By \_\_\_\_\_ of

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

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

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

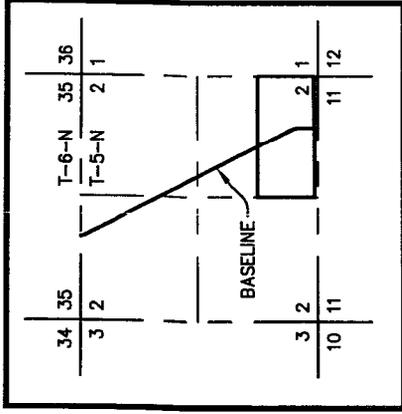
# SALINE COUNTY, NEBRASKA

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

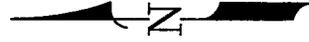
ML-NE-SA-00255.00L

PROPERTY LINE  
SECTION LINE  
PROPOSED  
A.T.W.S.  
P.E.R.W.  
D.R.S.C.N.

ADDITIONAL TEMPORARY WORKSPACE  
PERMANENT EASEMENT & RIGHT OF WAY  
DEED RECORDS OF SALINE COUNTY, NEBRASKA



VICINITY MAP  
N.T.S.



SCALE: 1" = 500'

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

**NOTE:**

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

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

SEE DETAIL "A"

SEE DETAIL "B"

STATE HWY 74

SECTION 2  
SECTION 11

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



KEYSTONE XL PROJECT

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

PROJECT: XL EXHIBIT A

APPROVED BY: SLR DRAWING NUMBER: XL-08-ML-SK-3793

NO.	REVISION	DATE

SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/27/14	PB	ALS



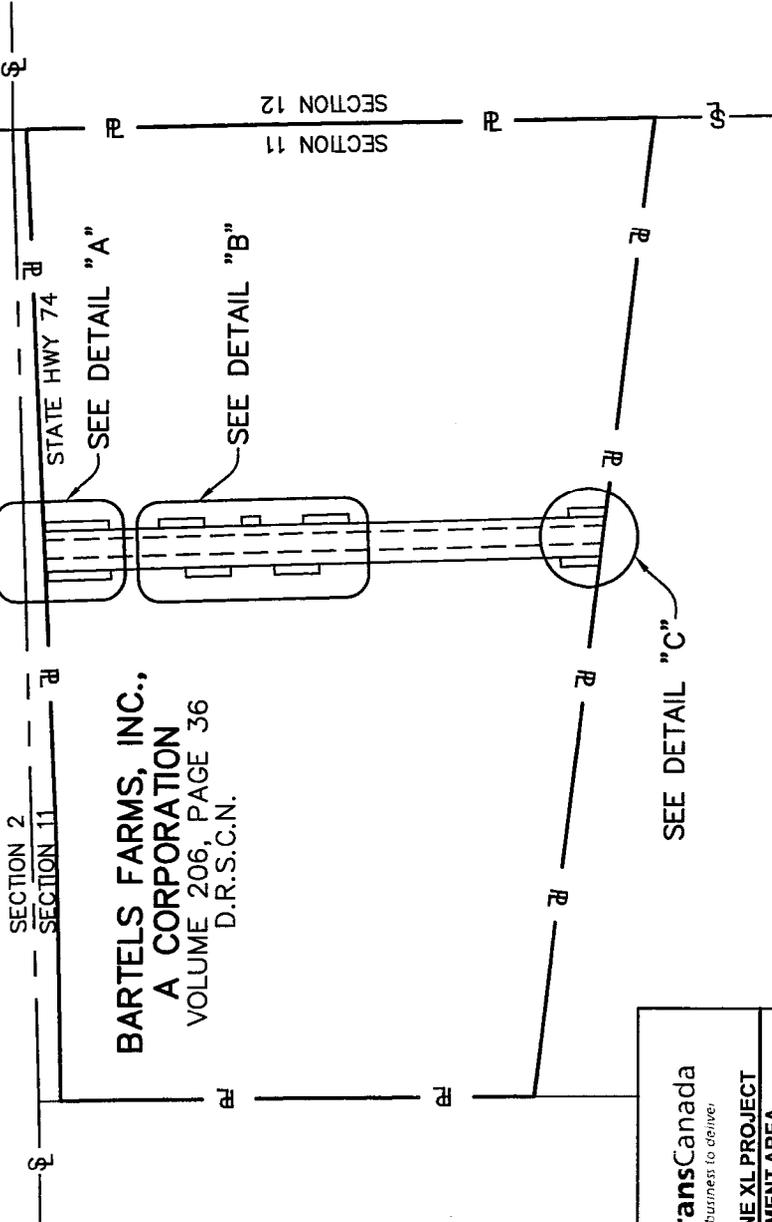


# SALINE COUNTY, NEBRASKA

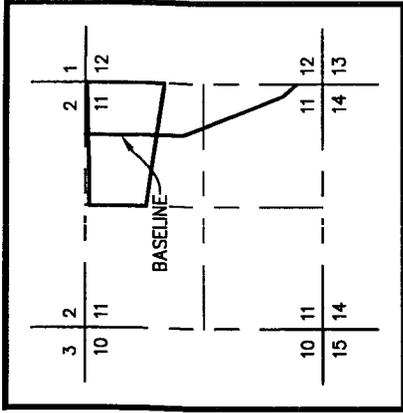
T-5-N, R-1-E, SECTION 11  
ML-NE-SA-40000.000

PROPERTY LINE  
SECTION LINE  
PROPOSED  
A.T.W.S.  
P.E.R.W.  
D.R.S.C.N.

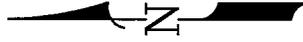
ADDITIONAL TEMPORARY WORKSPACE  
PERMANENT EASEMENT & RIGHT OF WAY  
DEED RECORDS OF SALINE COUNTY, NEBRASKA



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



VICINITY MAP  
N.T.S.



SCALE: 1" = 500'

**TRACT LEGAL DESCRIPTION:**

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

**NOTE:**

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

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

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





**Attachment No. 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

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

CASE NO. \_\_\_\_\_

**COMPLAINT**

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

**PARTIES**

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

**JURISDICTION AND VENUE**

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

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

### GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

### **FIRST CLAIM: NEGLIGENCE**

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

**SECOND CLAIM: TRESPASS**

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

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

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

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

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

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

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

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

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

**JURY DEMAND**

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

ZURICH AMERICAN INSURANCE COMPANY,  
Plaintiff,

By:     /s/ Albert M. Engles    

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

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

**Attachment No. 5**

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

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

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

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

Situated in the County of Saline, State of Nebraska:

**Part of the S/2 SE/4**

**Section 2, Township 5N, Range 1E**

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

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

\_\_\_\_\_, 20\_\_\_\_.

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

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

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

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

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-SA-40000.000

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

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

Situated in the County of Saline, State of Nebraska:

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

**Section 11, Township 5N, Range 1E**

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

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

\_\_\_\_\_, 20\_\_\_\_.

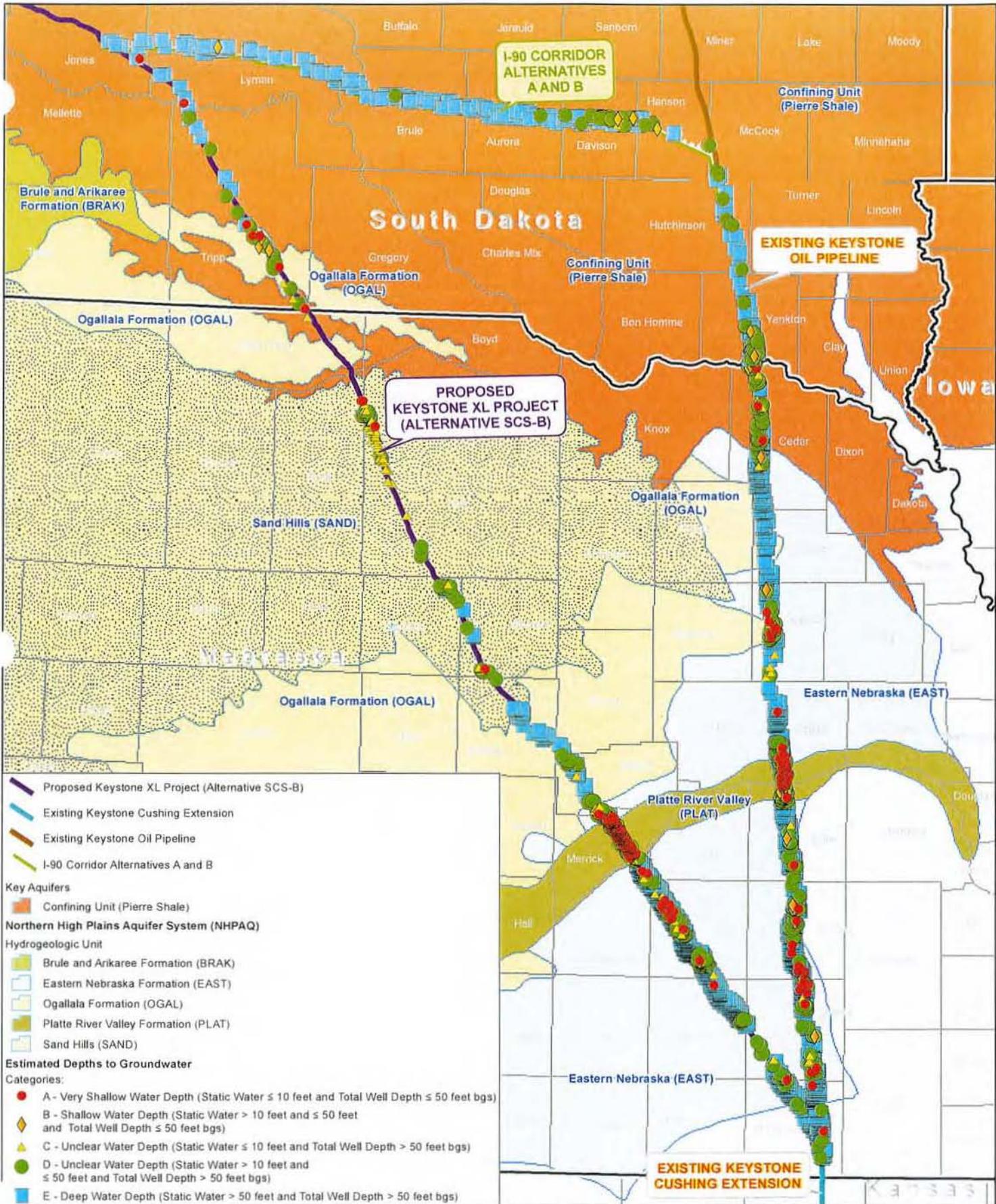
\_\_\_\_\_  
Owner Signature

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

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

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

**Attachment No. 6**



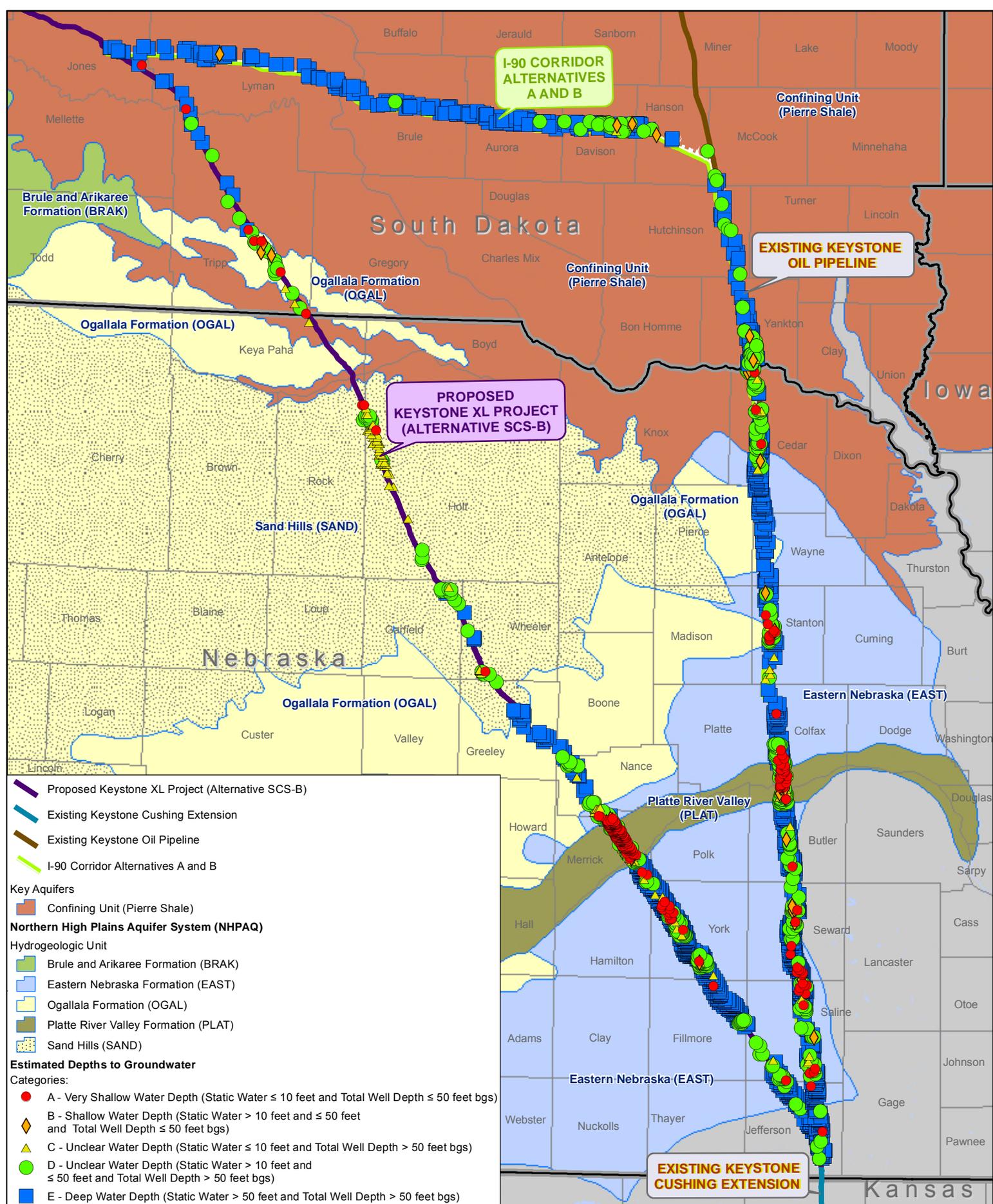
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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



### KEYSTONE XL PROJECT

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



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

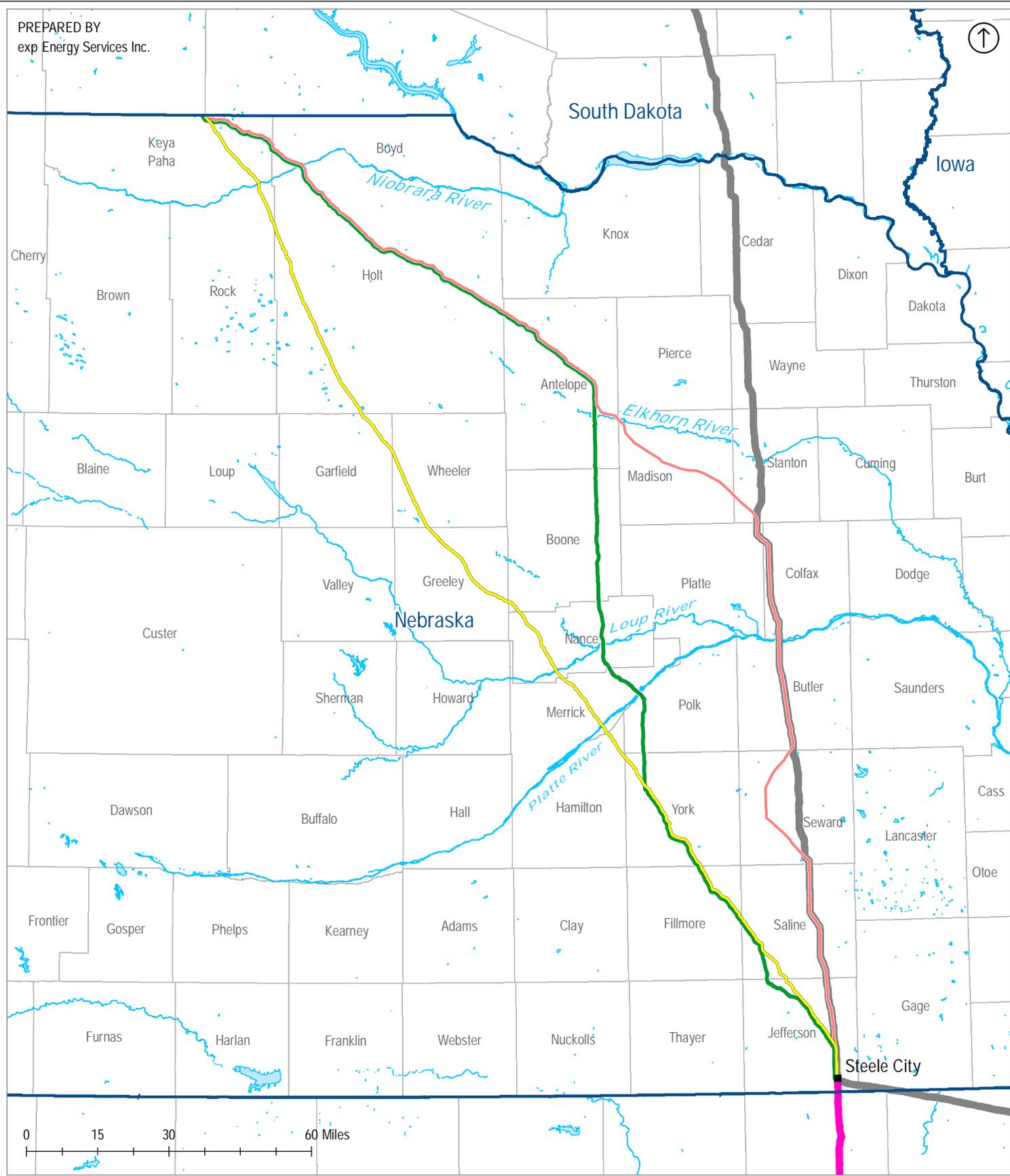
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

### KEYSTONE XL PROJECT

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

**Attachment No. 7**



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

KEYSTONE XL PROJECT

**FIGURE 2.2-2**

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

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

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

State of Nebraska            )  
  ) ss.  
Holt County                 )

1   **Q: Please state your name.**

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

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

6   A: Yes, I am.

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

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

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

14 A: Yes.

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

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

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

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

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

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

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

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

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

11 A. Yes.

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

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

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

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

4   A:   Yes.

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

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

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

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

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

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

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

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

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

5 A: Yes.

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

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

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

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

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

16 A: No, they have not.

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

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

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

24 A: No, they did not.

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

27 A: Yes, they did.

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

1 A: Yes, they did.

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

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

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

14 A: No, I do not.

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

17 A: Yes, they did.

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

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

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

1 A: Yes, it is.

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

4 A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 A: No.

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

13 A: No.

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

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

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

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

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

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

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

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

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

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

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

26 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1           iv. “reasonably anticipated and foreseeable costs and expenses”
- 2           v. “yield loss damages”
- 3           vi. “diminution in the value of the property”
- 4           vii. “substantially same condition”
- 5           viii. “an actual or potential hazard”
- 6           ix. “efficient”
- 7           x. “convenient”
- 8           xi. “endangered”
- 9           xii. “obstructed”
- 10          xiii. “injured”
- 11          xiv. “interfered with”
- 12          xv. “impaired”
- 13          xvi. “suitable crossings”
- 14          xvii. “where rock is encountered”
- 15          xviii. “as nearly as practicable”
- 16          xix. “pre-construction position”
- 17          xx. “pre-construction grade”
- 18          xxi. “various engineering factors”

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

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

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

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

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

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

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

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

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

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

26 A: No, never.

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

1 A: Yes, they did.

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

4 A: Yes, it is.

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

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

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

13 A: No, I did not.

14 **Q: Why not?**

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

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

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

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

4 A: No, they have not.

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

8 A: No, they have not.

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

11 A: Yes, I am.

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

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

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

20 A: No, they have not.

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

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

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

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

6 A: No, it has not.

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

10 A: No, I do not.

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

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

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

17 A: Yes, I do.

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

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

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

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

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

28 A: No, of course not.

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

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

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

8 A: Well, yes I have.

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

13 A: No, of course not.

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

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

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

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

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

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

16 A: No, I do not.

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

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

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

27 A: Well yes, of course.

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

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

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

18 A: Yes, I do.

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

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

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

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

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

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

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

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

21 **Q: Do you have any concerns about the potential impact of the proposed pipeline**  
22 **upon the groundwater over your land, or surrounding lands?**

23 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
24 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
25 groundwater of not only under my land, but also near and surrounding the pipeline  
26 route, and in fact, potentially the entire State of Nebraska. Water is life plain and  
27 simple and it is simply too valuable to our State and the country to put at  
28 unreasonable risk.

1 **Q: Do you have any concern about the potential impact of the proposed pipeline**  
2 **upon the surface water on, or near or around your land?**

3 A: Yes, I have significant concerns that any construction, operation, and/or  
4 maintenance of the proposed Keystone XL Pipeline would have detrimental  
5 impact upon the surface water of not only within my property boundary, but along  
6 and near and surrounding the pipeline route, and in fact, across the state of  
7 Nebraska.

8 **Q: Do you have any concern about the potential impacts of the proposed pipeline**  
9 **upon the wildlife and plants, other than your growing crops on or near your**  
10 **land?**

11 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
12 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
13 wildlife and the plants, not only that are located on or can be found upon my land,  
14 but also near and along the proposed pipeline route.

15 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**  
16 **fair market value of your land?**

17 A: Yes, I do. I am significantly concerned about how the existence of the proposed  
18 pipeline underneath and across and through my property will negatively affect the  
19 fair market value at any point in the future, especially at that point in which I  
20 would need to sell the property, or someone in my family would need to sell the  
21 property. I do not believe, and certainly would not be willing to pay, the same  
22 price for land that had the pipeline located on it, versus land that did not. I hope  
23 there is never a point where I'm in a position where I have to sell and have to  
24 realize as much value as I can out of my land. But because it is my single largest  
25 asset, I'm gravely concerned that the existence of the proposed Keystone XL  
26 Pipeline upon my land will affect a buyer's willingness to pay as much as they  
27 would've paid and as much as I could've received, if the pipeline were not upon  
28 my property. There are just too many risks, unknowns, impacts and uncertainties,  
29 not to mention all of the rights you give up by the nature of having the pipeline

1 due to having the easement that we have previously discussed, for any reasonable  
2 person to think that the existence of the pipeline would not negatively affect my  
3 property's value.

4 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**  
5 **testimony?**

6 A: Yes, I have.

7 **Q: Where have you seen that before?**

8 A: That is a map I think I first saw a couple years ago that shows the Keystone XL  
9 I-90 corridor alternate route of its proposed pipeline through Nebraska and I  
10 believe the portion of the alternative route in Nebraska essentially twins or  
11 parallels Keystone I.

12 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**  
13 **Application, and as found on Attachment No. 7, here to your testimony, is in**  
14 **the public interest of Nebraska?**

15 A: No, I do not.

16 **Q: Do you believe that the Keystone mainline alternative route as shown on**  
17 **Attachment No. 7 included with your testimony here is a major oil pipeline**  
18 **route that is in the public interest of Nebraska?**

19 A: No, I do not.

20 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**  
21 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**  
22 **your testimony, is in the public interest of Nebraska?**

23 A: No, I do not.

24 **Q: Do you believe there is any potential route for the proposed Keystone XL**  
25 **Pipeline across, within, under, or through the State of Nebraska that is in the**  
26 **public interest of the citizens of Nebraska?**

27 A: No, I do not.

28 **Q: Why do you hold that belief?**

1 A: Because there simply is no public interest based on all of the factors that I am  
2 aware and that I have read and that I have studied that this Commission is to  
3 consider that would establish that a for-profit foreign-owned pipeline that simply  
4 crosses Nebraska because we are geographically in the way between where tar  
5 sands are in Canada to where it wants to ship it to in Texas could ever be in the  
6 public interest of Nebraskans. We derive no benefit from this project. It is not for  
7 public use. Nebraska is simply in the way and when all considerations are taken in  
8 there is no net benefit of any kind for Nebraska should this project be placed in our  
9 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
10 the negative impacts and concerns.

11 **Q: What do you think about the applicant, TransCanada’s argument that it’s**  
12 **preferred route for its proposed Keystone XL Pipeline is in the public interest**  
13 **of Nebraska because it may bring temporary jobs during the construction**  
14 **phase to Nebraska?**

15 A: First of all, not all jobs are created equally. Most jobs that are created, whether  
16 temporary or on a permanent basis, don’t come with a project that has all the  
17 potential and foreseeable negative impacts, many of which we have discussed here  
18 and other witnesses throughout the course of this hearing have and will discuss. If  
19 I decide to hire and employ someone to help me out in my farming or ranching  
20 business, I’ve created a job but I haven’t done so at the risk or detrimental impact  
21 to my land or my town or my county or my state. And I’ve hired someone who is  
22 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce  
23 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all  
24 jobs are not created equal. Additionally, I understand from what I’m familiar with  
25 from TransCanada’s own statements that the jobs numbers they originally touted  
26 were determined to be a minute fraction of the permanent jobs that had been  
27 projected. According to their answer to our Interrogatory No. 191, TransCanada  
28 has created only thirty-four (34) jobs within Nebraska working specifically on  
29 behalf of TransCanada and according to their answer to Interrogatory No. 196, as

1 of May 5, 2017 they only employ one (1) temporary working within Nebraska.  
2 Further, according to their answer to Interrogatory No. 199, TransCanada would  
3 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was  
4 constructed on its Preferred Route or its Mainline Alternative Route.

5 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**  
6 **because it would cross your land?**

7 A: No, absolutely not. I am opposed to this project because it is not in the public  
8 interest, neither within my community nor within our state.

9 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**  
10 **was to cross someone else's land?**

11 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have  
12 the fear and anxiety and potential foreseeable risks and negative impacts that this  
13 type of a project carrying this type of product brings foisted upon anyone in this  
14 state or any other state.

15 **Q: Do you think there is any intelligent route for the proposed Keystone XL**  
16 **Pipeline to cross the state of Nebraska?**

17 A: I don't believe there is an intelligent route because as I have stated I don't believe  
18 this project anywhere within Nebraska is within the public interest. However, if  
19 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely  
20 had to go somewhere in the state of Nebraska, the only intelligent route I believe  
21 would be to twin or closely parallel the existing Keystone I Pipeline. Both the  
22 preferred route and the mainline alternative routes are economic liabilities our  
23 state cannot risk.

24 **Q: What do you rely upon to make that statement?**

25 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,  
26 already exists in that area is reason enough as it is not in our best interest or the  
27 public interests to have more major oil pipelines crisscrossing our state. Second,  
28 they have all the infrastructure already there in terms of relationships with the  
29 counties and local officials and first responders along that route. Third, they have

1 already obtained easements from all the landowners along that route and have  
2 relationships with them. Fourth, that route avoids our most sensitive soils, the  
3 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala  
4 Aquifer. Sixth, they have already studied that route and previously offered it as an  
5 alternative. Seventh, it just makes the most sense that as a state we would have  
6 some intelligent policy of energy corridors and co-locating this type of  
7 infrastructure near each other.

8 **Q: Do you have any other concerns you would like to reiterate or can think of at**  
9 **this time you would like the Commissioners to understand?**

10 A: Yes, here comes TransCanada, a rich foreign company threatening to take our land  
11 by eminent domain if we don't sign their easement. A cheap one-time payment to  
12 use our land for whatever they please. They have no feeling for the land, I do.  
13 Many people have been threatened by Eminent Domain and signed the easement.  
14 TransCanada will be stealing our Ogallala Aquifer water and selling it elsewhere.  
15 Ruination of our Nebraska land. And the people they will bring in to build the  
16 pipeline. If this pipeline goes through our land, we cannot borrow money and if we  
17 have a money borrowed we must pay it back immediately. I am debt free now but  
18 if I need to replace an irrigation system I will have to borrow money.

19 **Q: Have you fully expressed each and every opinion, concern, or fact you would**  
20 **like the Public Service Commissioners to consider in their review of**  
21 **TransCanada's Application?**

22 A: No, I have not. I have shared that which I can think of as of the date I signed this  
23 document below but other things may come to me or my memory may be  
24 refreshed and I will add and address those things at the time of the Hearing in  
25 August and address any additional items at that time as is necessary. Additionally,  
26 I have not had an adequate amount of time to receive and review all of  
27 TransCanada's answers to our discovery and the discovery of others so it was  
28 impossible to competently and completely react to that in my testimony here and I  
29 reserve the right to also address anything related to discovery that has not yet

1 concluded as of the date I signed this document below. Lastly, certain documents  
2 requested have not yet been produced by TransCanada and therefore I may have  
3 additional thoughts on those I will also share at the hearing as needed.

4 **Q: What is it that you are requesting the Public Service Commissioners do in**  
5 **regards to TransCanada's application for the proposed Keystone XL Pipeline**  
6 **across Nebraska?**

7 A: I am respectfully and humbly requesting that the Commissioners think far beyond  
8 a temporary job spike that this project may bring to a few counties and beyond the  
9 relatively small amount of taxes this proposed foreign pipeline would possibly  
10 generate. And, instead think about the perpetual and forever impacts of this  
11 pipeline as it would have on the landowners specifically, first and foremost, but  
12 also thereby upon the entire state of Nebraska, and to determine that neither the  
13 preferred route nor the Keystone mainline alternative route are in the public  
14 interest of the citizens of the state of Nebraska. And if the Commissioners were  
15 inclined to modify TransCanada's proposed routes and were to be inclined to grant  
16 an application for a route in Nebraska, that the only potential route that would  
17 make any intelligent sense whatsoever would be twinning or near paralleling of  
18 the proposed KXL with the existing Keystone I pipeline. It simply does not make  
19 sense to add yet another major oil pipeline crisscrossing our state creating new  
20 pumping stations, creating new impacts on additional counties and communities  
21 and going through all of the court processes with myself and other landowners like  
22 me when this applicant already has relationships with the landowners, the towns  
23 and the communities along Keystone I, and that Keystone I is firmly outside of the  
24 sand hills and a significantly further portion away from the heart of the Ogallala  
25 Aquifer than the preferred route or the Keystone mainline alternative route.

26 **Q: Does Attachment No. 8 here contain other documents you are competent to**  
27 **speak about that you wish to be part of your testimony and to discuss in more**  
28 **detail as needed at the August 2017 Hearing?**

29 A: Yes.

1 **Q: Are all of your statements in your testimony provided above true and**  
2 **accurate as of the date you signed this document to the best of your**  
3 **knowledge?**

4 **A: Yes, they are.**

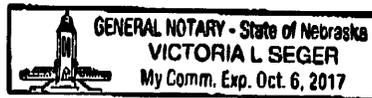
5 **Q: Thank you, I have no further questions at this time and reserve the right to**  
6 **ask you additional questions at the August 2017 Hearing.**

LaVonne Beck Milliron Ranch Corp.  
LaVonne Beck, Milliron Ranch

Subscribed and Sworn to me before this 25 day of May, 2017.

Victoria L Seger

Notary Public



05.25.2017

**Attachment No. 1**

PREPARED BY  
exp Energy Services Inc.



S.030  
T.032 N  
R.014 W

S.029  
T.032 N  
R.014 W

S.028  
T.032 N  
R.014 W

S.031  
T.032 N  
R.014 W

S.032  
T.032 N  
R.014 W

S.033  
T.032 N  
R.014 W

Milliron Ranch Corporation

S.005  
T.031 N  
R.014 W

S.004  
T.031 N  
R.014 W



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
Milliron Ranch Corporation

**TRACT NO.** ML-NE-HT-30140.000  
**STATE:** Nebraska  
**COUNTY:** Holt  
**SECTION:** 032  
**TOWNSHIP:** 032N  
**RANGE:** 014W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\6358\KEYSTONE\_XL\6300\_999536.dwg

**Attachment No. 2**



09/15/2012



**Attachment No. 3**

**Prepared by and after recording  
please return to:**  
TransCanada Keystone Pipeline, LP  
1106 Benjamin Avenue, Suite 600  
Norfolk, NE 68701

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(Above Space for Recorder's Use Only)

Tract No.: ML-NE-HT-30140.000

**EASEMENT AND RIGHT-OF-WAY  
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Milliron Ranch Corporation, a Nebraska Corporation**, whose mailing address is 88703 476<sup>th</sup> Avenue, Atkinson, NE 68713 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on,

under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Holt, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 640 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 32, Township 32 North, Range 14 West of the 6th P.M., as recorded in Book 153, Page 623 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the

negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR(S):

**Milliron Ranch Corporation, a Nebraska Corporation**

\_\_\_\_\_  
By:

\_\_\_\_\_  
Its:

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By \_\_\_\_\_ of

**Milliron Ranch Corporation, a Nebraska Corporation**, on behalf of the corporation.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here





**Attachment No. 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE )  
COMPANY, a New York Corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RICHARD ANDREW, JANE ANDREW, )  
LUKE ANDREW, and BRYCE ANDREW, )  
 )  
Defendants. )

CASE NO. \_\_\_\_\_

**COMPLAINT**

**COMES NOW** Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

**PARTIES**

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

**JURISDICTION AND VENUE**

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

### GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$ , Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

### **FIRST CLAIM: NEGLIGENCE**

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

**SECOND CLAIM: TRESPASS**

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

**WHEREFORE** Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

**JURY DEMAND**

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,  
Plaintiff,

By:     /s/ Albert M. Engles      
ENGLES, KETCHAM, OLSON, & KEITH, P.C.  
1350 Woodmen Tower  
1700 Farnam Street  
Omaha, Nebraska 68102  
(402) 348-0900  
(402) 348-0904 (Facsimile)  
Albert M. Engles, #11194  
Dan H. Ketcham, #18930  
Michael L. Moran, #24042  
James C. Boesen, #24862

**Attachment No. 5**

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-HT-30140.000

We, Milliron Ranch Inc., of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Four Hundred Forty Four Dollars and No Cents (\$2,444.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

**All**

**Section 32, Township 32-N, Range 14-W**

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this\_ day of

\_\_\_\_\_, 20\_\_\_\_.

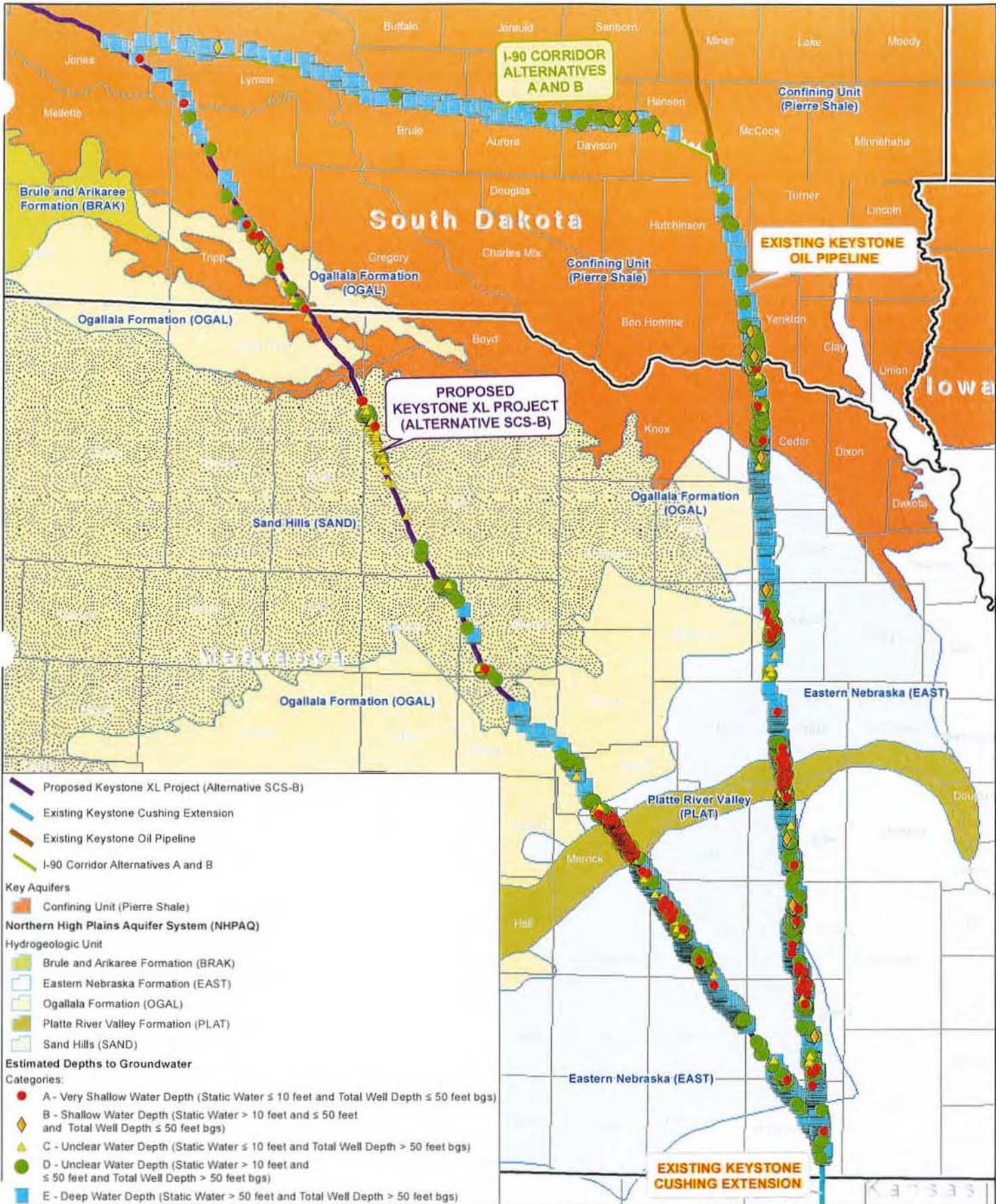
\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

**Attachment No. 6**



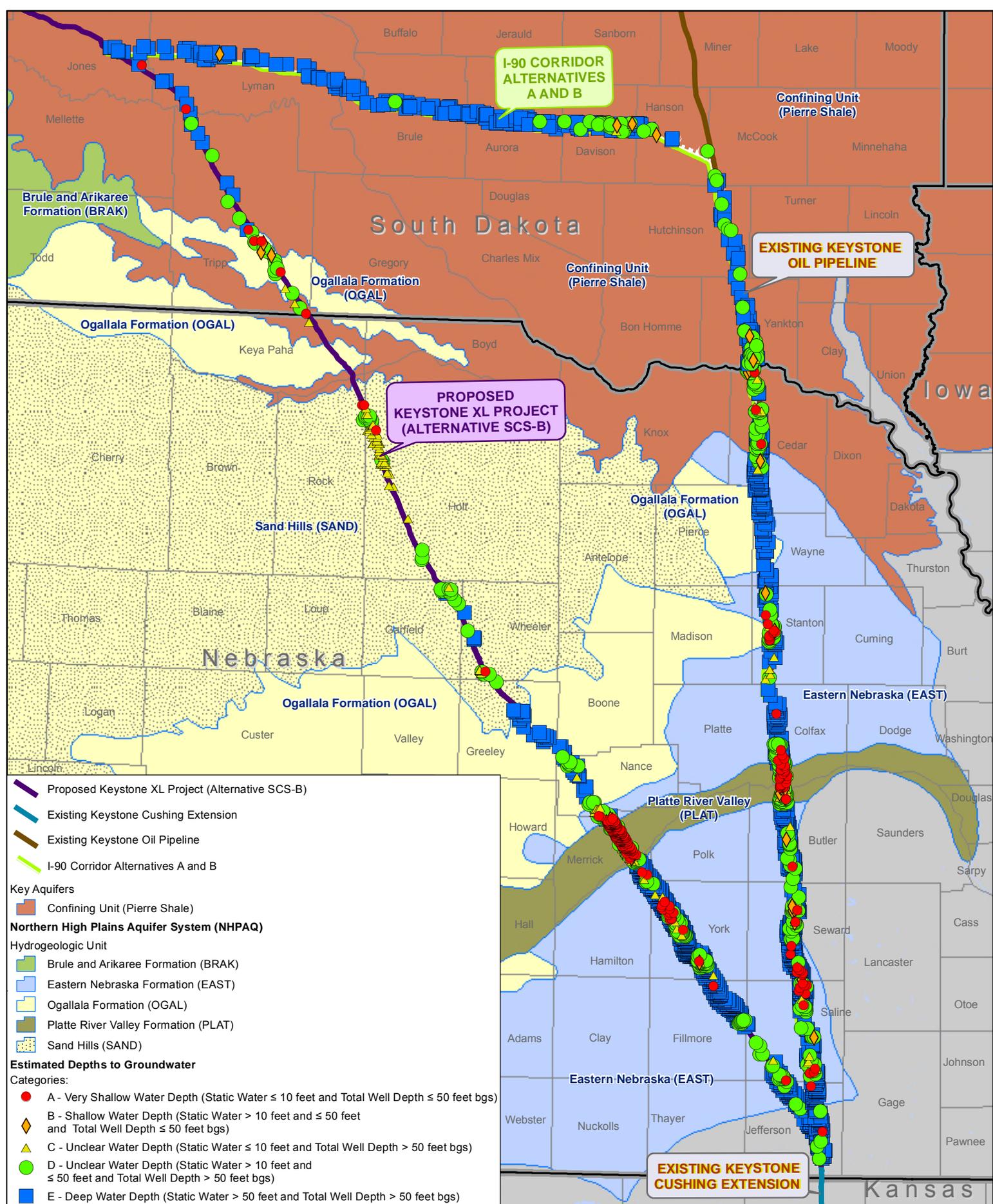
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



### KEYSTONE XL PROJECT

Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

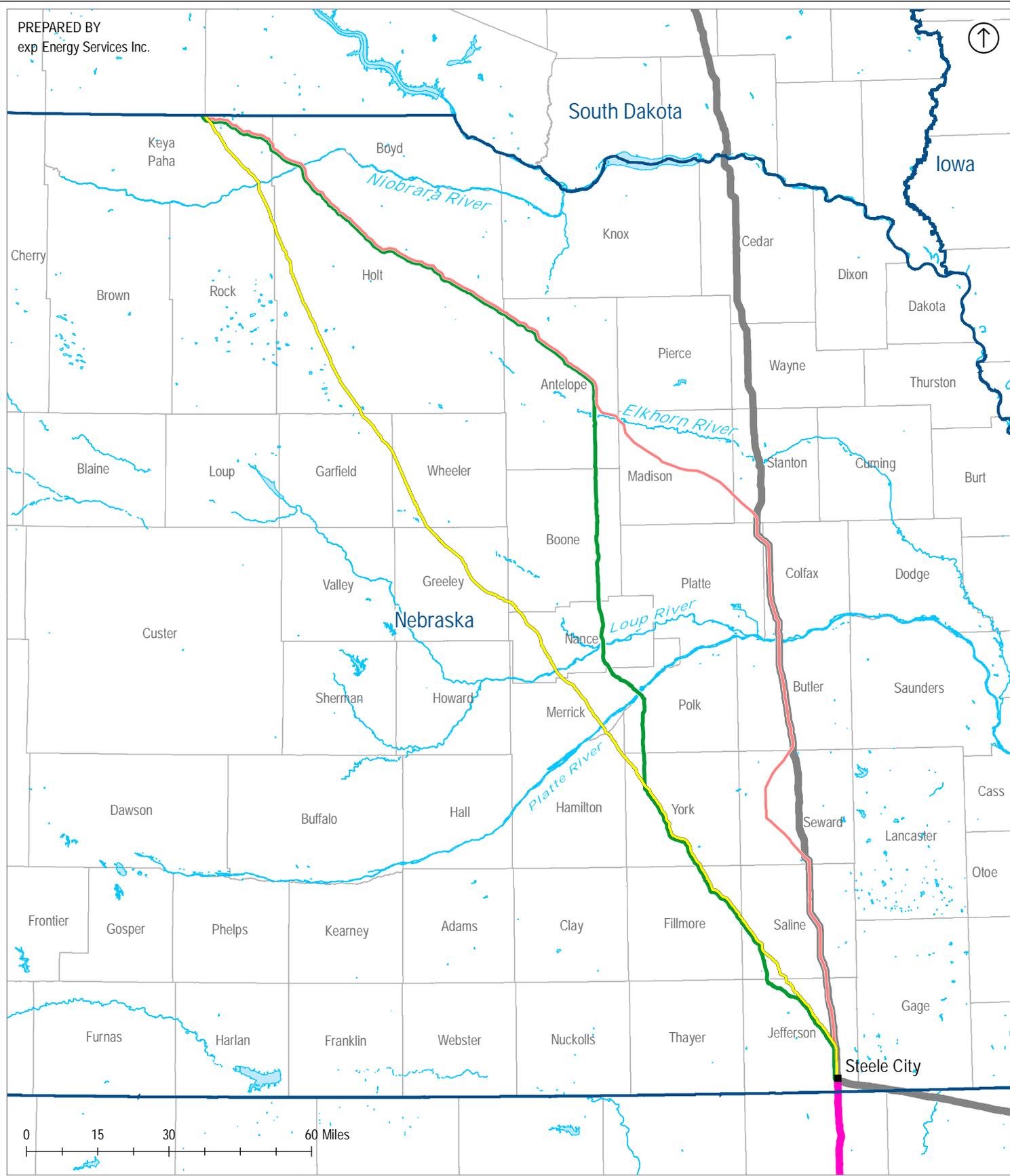
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

### KEYSTONE XL PROJECT

Figure 4.3.3-8  
 I-90 Corridor Alternatives A and B  
 Key Aquifers and Potable Water Wells  
 within 2-mile Corridor

**Attachment No. 7**



LEGEND

	PREFERRED ROUTE		WATERBODY
	SANDHILLS ALTERNATIVE ROUTE		STATE BOUNDARY
	KEYSTONE MAINLINE ALTERNATIVE ROUTE		COUNTY BOUNDARY
	KEYSTONE MAINLINE (PHASE I)		
	KEYSTONE CUSHING EXTENSION (PHASE II)		

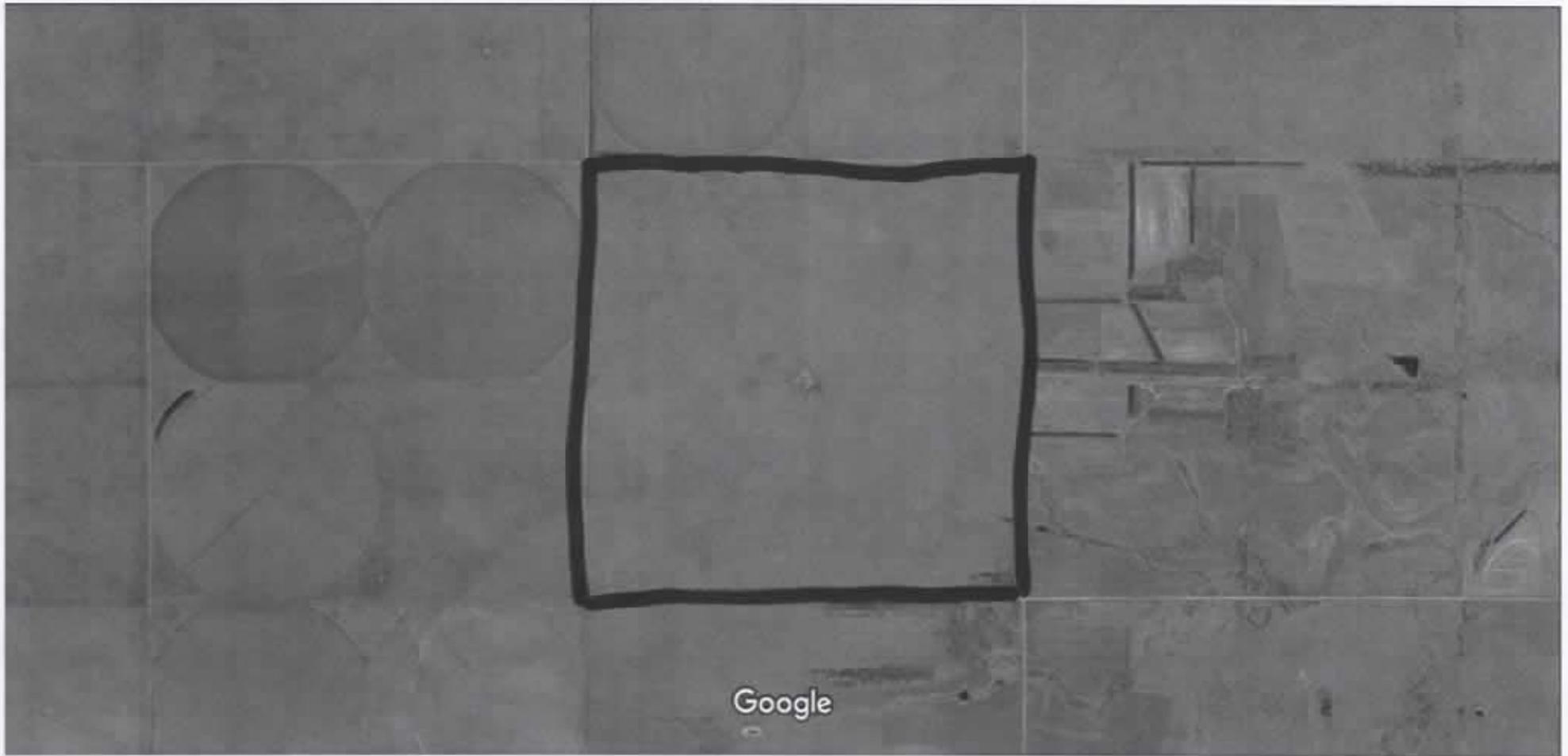
KEYSTONE XL PROJECT

**FIGURE 2.2-2**

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

**Attachment No. 8**

# Google Maps



Imagery ©2017 Google, Map data ©2017 Google 1000 ft

*Milliron Ranch Corp. ~*

*Route crosses northeast corner of  
Section 32 Township 32 Range 14*

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

**TransCanada Keystone Pipeline, LP  
for Route Approval of Keystone XL  
Pipeline Project, Pursuant to *Major Oil  
Pipeline Siting Act***

**Direct Testimony of  
Mia Bergman in Support of Landowner  
Intervenors**

State of Nebraska            )  
  ) ss.  
Antelope County            )

1   **Q:    Please state your name.**

2   A:    My name is Mia Bergman.

3   **Q:    Are you an intervener in the Public Service Commission’s proceedings**  
4       **regarding TransCanada’s application for approval of its proposed Keystone**  
5       **XL tar sands pipeline across Nebraska?**

6   A:    Yes, I am.

7   **Q:    Do you own land in Nebraska, either directly or through an entity of which**  
8       **you are an owner that could be affected by the proposed TransCanada**  
9       **Keystone XL pipeline?**

10  A:    Yes, I do and it is located in Antelope County.

11  **Q:    Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**  
12       **photo(s) of your land in question?**

13  A:    Yes.

14  **Q:    What do you do for a living?**

15  A:    Farmer and R.N.

1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**  
2 **and or your family?**

3 A: Yes.

4 **Q: Do you earn any income from this land?**

5 A: Yes.

6 **Q: Have you depended on the income from your land to support your livelihood**  
7 **or the livelihood of your family?**

8 A: Yes.

9 **Q: Have you ever in the past or have you thought about in the future leasing all**  
10 **or a portion of your land in question here?**

11 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective  
12 tenant may try to negotiate a lower price for my land if it had the pipeline on it and  
13 all the restrictions and risks and potential negative impacts to farming or ranching  
14 operations as opposed to land that did not have those same risks. If I was looking  
15 to lease or rent ground I would pay more for comparable non-pipeline land than I  
16 would for comparable pipeline land and I think most folks would think the same  
17 way. This is another negative economic impact that affects the landowner and the  
18 county and the state and will forever and ever should TransCanada's preferred or  
19 mainline alternative routes be approved. If they were to twin or closely parallel to  
20 Keystone I the vast majority of landowners would be those that already have a  
21 pipeline so there would be considerable less new incremental negative impacts.

22 **Q: Do you have similar concerns about selling the land?**

23 A: Well I hope not to have to sell the land in my lifetime but times change and you  
24 never know what is around the corner and yes I am concerned that if another piece  
25 of ground similar to mine were for sale and it did not have the pipeline and mine  
26 did that I would have a lower selling price. I think this would be true for pipeline  
27 ground on both the preferred and mainline alternative routes.

28 **Q: What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years  
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**  
4 **Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Have you reviewed the Easement and Right-of-Way Agreement TransCanada**  
7 **holds against your land?**

8 A: Yes.

9 **Q: Did TransCanada describe what rights it has taken related to their Easement**  
10 **and Right-of-Way on your land?**

11 A: Yes, they did.

12 **Q: What rights did they take?**

13 A: TransCanada stated that the Easement and Right-of-Way will be used to "lay,  
14 relay, operate, and maintain the pipeline and the plant and equipment reasonably  
15 necessary to operate the pipeline, specifically including surveying, laying,  
16 constructing, inspecting, maintaining, operating, repairing, replacing, altering,  
17 reconstructing, removing and abandoning one pipeline, together with all fittings,  
18 cathodic protection equipment, pipeline markers, and all their equipment and  
19 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,  
20 petroleum products, and all by-products thereof."

21 **Q: Did you ever have an opportunity to negotiate any of the Easement and**  
22 **Right-of-Way language or terms?**

23 A: No, I did not.

24 **Q: At the time you reviewed TransCanada's easement and right-of-way**  
25 **agreement, did you understand that they purchased a fee title interest in your**  
26 **property or that they took something else?**

27 A: I understood that they have the power to take both a temporary construction  
28 easement that could last for a certain period of time and then also a permanent  
29 easement which they described to be 50 feet across or in width, and that would run

1 through portion of my property from where a proposed pipeline would enter my  
2 property until where it would exit the property.

3 **Q: Is the document included with your testimony here as Attachment No. 3, a**  
4 **true and accurate copy of TransCanada's Easement and Right-of-Way**  
5 **agreement that affects your property?**

6 A: Yes, it is.

7 **Q: Have you had an opportunity to review TransCanada's proposed Easement**  
8 **and Right-of-Way agreement?**

9 A: Yes, I have.

10 **Q: What is your understanding of the significance of the Easement and Right-of-**  
11 **Way agreement as proposed by TransCanada?**

12 A: My understanding is that this is the document governs all of the rights and  
13 obligations and duties as well as the limitations of what I can and cannot do and  
14 how I and any future landowner and any person I invite to come onto my property  
15 must behave as well as what TransCanada is and is not responsible for and how  
16 they can use my land.

17 **Q: After reviewing TransCanada's Easement and Right-of-Way agreement do**  
18 **you have any concerns about any portions of it or any of the language either**  
19 **included in the document or missing from the proposed document?**

20 A: Yes, I have a number of significant concerns and worries about the document and  
21 how the language included and the language not included potentially negatively  
22 impacts my land and thereby potentially negatively impacts my community and  
23 my state.

24 **Q: I would like you to walk the Commissioners through each and every one of**  
25 **your concerns about TransCanada's proposed Easement and Right-of-Way**  
26 **agreement so they can develop an understanding of how that language and**  
27 **the terms of that contract, in your opinion, negatively impacts you and your**  
28 **land. So, if you can start at the beginning of that document and let's work**  
29 **our way through it, okay?**

1 A: Yes, I'll be happy to express my concerns about TransCanada's Easement and  
2 Right-of-Way agreement and how it negatively could affect my property rights  
3 and my economic interests.

4 **Q: Okay, let's start with your first concern please.**

5 A: The very first sentence talks about consideration or how much money they will  
6 pay to compensate for all of the known and unknown affects and all of the rights  
7 that are being given up and for all the things they get to do to the land and for what  
8 they will prevent me from doing on my land. The problem is they paid the  
9 previous owner one time and I have never received any payment. But even if I had  
10 received the one-time payment, why should a private, foreign company be allowed  
11 to use my land as they see fit? There is no public gain with this project. There  
12 isn't even any gain for landowners whose land this pipe will be crossing. A one-  
13 time payment isn't just or fair compensation for the burden placed upon us and our  
14 State. Where are our rights as landowners who bought and paid for our land with  
15 our hard work? We are the ones that are stuck with all the risk. We may only  
16 receive compensation for the crop loss during the construction of the pipeline; and  
17 who gets to determine what is fair compensation for this? TransCanada? Will they  
18 use our average proven yield to determine what fair compensation is? Will they  
19 use the lowest price of grain at that time? We wouldn't sell our grain for the  
20 lowest price. We would hold on to it and watch the markets to sell for the highest  
21 price. And if this ends up being the case, do we take them to court and acquire  
22 legal expenses to fight for the money that should rightfully be ours? What happens  
23 if this affects our yield enough that our average proven yield is affected and thus  
24 also affects any possible crop insurance pay-out if we were to have inclement  
25 weather that affected our yield for any of the fields that we farm.

26 **Q: Explain to the Commissioners why that is a problem.**

27 A: It is not fair to the landowner, the county, or the State. It is not fair to the  
28 landowner because they want to have my land forever for use as they see fit so  
29 they can make a daily profit from their customers. If I was to lease ground from

1 my neighbor I would typically pay twice a year every year as long as they granted  
2 me the rights to use their land. That only makes sense – that is fair. If I was going  
3 to rent a house in town I would typically pay monthly, every month until I gave up  
4 my right to use that house. By TransCanada getting out on the cheap and paying  
5 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax  
6 revenue collection on the money I would be paid and then pay taxes on and  
7 contribute to this state and this country. It is money I would be putting back into  
8 my local community both spending and stimulating the local economy and  
9 generating more economic activity right here. Instead TransCanada’s shareholders  
10 keep that money. Nebraska's main economy is agriculture. Why should our main  
11 economic interests be jeopardized for a foreign company with minimal, if any,  
12 benefit to Nebraska or the Country?

13 **Q: What is your next concern?**

14 A: The first paragraph goes on to say Grantor, which is me the landowner, “does  
15 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a  
16 limited partnership...” and I have no idea who that really is. I have no idea who is  
17 forcing this pipeline on us or who the owners of the entities are, or what are the  
18 assets backing this limited partnership, or who the general partner is, or who all  
19 the limited partners are, and who makes up the ownership of the these partners or  
20 the structure or any of the basic things you would want to know and understand if  
21 you would want to do business with such an outfit. According to TransCanada’s  
22 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited  
23 liability company called TransCanada Keystone Pipeline GP, LLC is the general  
24 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so  
25 basically nothing. That is really scary since the general partner has the liability but  
26 virtually none of the ownership and who knows if it has any other assets.

27 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**  
28 **percent clear on exactly who could become the owner of about 275 miles of**  
29 **Nebraska land?**

1 A: No.

2 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**  
3 **percent clear on exactly who will be operating and responsible for**  
4 **approximately 275 miles of tar sands pipeline underneath and through**  
5 **Nebraska land?**

6 A: No.

7 **Q: Okay, let's continue please with your concerns of the impacts upon your land**  
8 **and the State of Nebraska of TransCanada's easement terms.**

9 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter  
10 called "Grantee")..." and this concerns me because it would allow the easement to  
11 be transferred or sold to someone or some company or country or who knows what  
12 that I don't know and who we may not want to do business with. This pipeline  
13 would be a huge asset for TransCanada and if they can sell to the highest bidder  
14 that could have terrible impacts upon all of Nebraska depending upon who may  
15 buy it and I don't know of any safeguards in place for us or the State to veto or  
16 have any say so in who may own, operate, or be responsible for this pipeline in the  
17 future.

18 **Q: Do you think that type of uncertainty and lack of control over a major piece**  
19 **of infrastructure crossing our State is in the public interest?**

20 A: No, certainly not, in fact, just the opposite.

21 **Q: What's next?**

22 A: Then it says "...a perpetual permanent easement and right-of-way..." and this  
23 really concerns me. Why does the easement and right-of-way have to be perpetual  
24 and permanent? That is the question myself and my family want an answer to.  
25 Perpetual to me is forever and that doesn't make sense.

26 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

27 A: For many reasons but mostly because the tar sands are finite. I am unaware of any  
28 data proving there is a perpetual supply of tar sands. I am not aware in  
29 TransCanada's application where it proves there is a perpetual necessity for this

1 pipeline. My understanding of energy infrastructure like wind towers is they have  
2 a decommission plan and actually take the towers down when they become  
3 obsolete or no longer needed. Nothing manmade lasts forever. My land however  
4 will, and I want my family or future Nebraska families to have that land as  
5 undisturbed as possible and it is not in my interest or the public interest of  
6 Nebraska to be forced to give up perpetual and permanent rights in the land for  
7 this specific kind of pipeline project.

8 **Q: Okay, what is your next concern?**

9 A: The easement language includes all these things TransCanada can do and it says  
10 "...abandoning in place..." so they can just leave this pipeline under my ground  
11 until the end of time just sitting there while they are not using it, but I am still  
12 prevented from doing on my land and using my land what I would like. If I owned  
13 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting  
14 there. It doesn't make sense and it scares me and it is not in my interest or the  
15 public interest of Nebraska to allow this.

16 **Q: So now on the second page of the Easement what are your concerns?**

17 A: Here the Easement identifies a 24-month deadline to complete construction of the  
18 pipeline but has caveats that are undefined and ambiguous. The 24-month period  
19 starts to run from the moment "actual pipeline installation activities" begin on  
20 Landowners property. It appears that TransCanada would define this phrase as  
21 needed. It would be wise to explain what types of TransCanada action constitutes  
22 "installation activity" For instance, would the placement and storage of an  
23 excavator or other equipment on or near the Easement property be an activity or  
24 would earth have to be moved before the activity requirement is triggered. This  
25 vague phrase is likely to lead to future disputes and litigation that is not in the best  
26 interest of the welfare of Nebraska and would not protect property interests. The  
27 24-months can also be extended in the case of "force majeure." My understanding  
28 is that force majeure is often used to insulate a party to a contract when events  
29 occur that are completely out of their control. In TransCanada's easement this is

1 expanded to include “without limitation...availability of labor and materials.”  
2 Extending this language to labor and materials is problematic because these are  
3 two variables that TransCanada does have some or significant control over and to  
4 allow extension of the 24-month period over events not truly out of the control of  
5 TransCanada and without further provision for compensation for the Landowner is  
6 not conducive to protection of property rights.

7 **Q: Okay, what is your next concern?**

8 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of  
9 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially  
10 reasonable costs and expenses” will pay for damages caused but then limits  
11 TransCanada’s liability to certain circumstances. There is no definition of  
12 “commercially reasonable” and no stated right that the Landowner would get to  
13 determine the amounts of cost or expense that is “commercially reasonable.”  
14 TransCanada excepts out from their liability any damages that are caused by  
15 Landowner’s negligence or the negligence of anyone ever acting on the behalf of  
16 Landowner. It is understandable that if the Landowner were to willfully and  
17 intentionally cause damages to the pipeline that Landowner should be liable.  
18 However, anything short of willful misconduct should be the liability of  
19 TransCanada who is subjecting the pipeline on the Landowner and who is making  
20 a daily profit from that pipeline. When evaluating the impact on property rights of  
21 this provision, you must consider the potentially extremely expensive fight a  
22 Landowner would have over this question of whether or not damage was an act of  
23 negligence. Putting this kind of potential liability upon the Landowner is  
24 incredibly problematic and is detrimental to the protection of property rights. I  
25 don’t think this unilateral power which I can’t do anything about as the landowner  
26 is in the best economic interest of the land in question or the State of Nebraska for  
27 landowners to be treated that way.

28 **Q: Is there any specific event or example you are aware of that makes this**  
29 **concern more real for you?**

1 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against  
2 Nemaha County, Nebraska landowner farmers who accidentally struck two  
3 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of  
4 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged  
5 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate  
6 copy of the Federal Court Complaint is here as **Attachment No. 4**

7 **Q: What is your next concern with the Easement language?**

8 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as  
9 they choose unless 1) any Landowner use interferes in any way with  
10 TransCanada's exercise of any of its rights within the Easement, or 2)  
11 TransCanada decides to take any action on the property it deems necessary to  
12 prevent injury, endangerment or interference with anything TransCanada deems  
13 necessary to do on the property. Landowner is also forbidden from excavating  
14 without prior authorization by TransCanada. So my understanding is that  
15 TransCanada will unilaterally determine what Landowner can and can't do based  
16 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada  
17 could also completely deny my request to excavate. Further, TransCanada retains  
18 all "privileges necessary or convenient for the full use of the rights" granted to  
19 them in the Easement. Again, TransCanada unilaterally can decide to the  
20 detriment of the property rights of Landowner what TransCanada believes is  
21 necessary or convenient for it. And there is no option for any additional  
22 compensation to landowner for any right exercised by TransCanada that leads to  
23 the removal of trees or plants or vegetation or buildings or structures or facilities  
24 owned by Landowner of any kind. Such undefined and unilateral restrictions and  
25 rights without having to compensate Landowner for such further destruction or  
26 losses are not conducive to the protection of property rights or economic interest.

27 **Q: What is the next concern you have?**

28 A: The Easement also allows some rights for Landowner but restricts them at the  
29 same time and again at the sole and unilateral decision making of TransCanada.

1 TransCanada will determine if the actions of Landowner might in anyway  
2 endanger or obstruct or interfere with TransCanada’s full use of the Easement or  
3 any appurtenances thereon to the pipeline itself or to their access to the Easement  
4 or within the Easement and TransCanada retains the right at any time, whether  
5 during growing season or not, to travel “within and along Easement Area on foot  
6 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will  
7 retain the rights to prevent any landowner activity that it thinks may “unreasonably  
8 impair[ed] or interfe[ed] with” TransCanada’s use of the Easement Area. Such  
9 undefined and unilateral restrictions are not conducive to the protection of  
10 property rights or economic interest.

11 **Q: What is the next concern you have with the Easement language?**

12 A: The Easement allows TransCanada sole discretion to burn or chip or bury under  
13 Landowner’s land any debris of any kind without any input or power of  
14 Landowner to demand an alternative method or location of debris disposal. Such  
15 unilateral powers would negatively affect Landowners property are not conducive  
16 to the protection of property rights or economic interest.

17 **Q: What is the next concern you have with the Easement language?**

18 A: Again, undefined terms leave a lot of room for confusion. What does the phrase  
19 “where rock is encountered” mean and why does TransCanada solely get to  
20 determine whether or not this phrase is triggered. This phrase could be used to  
21 justify installing the pipeline 24 inches beneath the surface. The ability to use this  
22 provision to minimal locate the pipeline at a depth of 24 inches could negatively  
23 affect Landowners property are not conducive to the protection of property rights.  
24 A shallow pipeline is much more likely to become a danger and liability in the  
25 future given farming operations and buried irrigation lines and other factors  
26 common to the current typical agricultural uses of the land in question impacted  
27 by TransCanada’s preferred pipeline route.

28 **Q: What is the next concern you have with the Easement language?**

1 A: There are more vague concepts solely at the determination of TransCanada such as  
2 “as nearly as practicable” and “pre-construction position” and “extent reasonably  
3 possible.” There is nothing here that defines this or provides a mechanism for  
4 documenting or memorializing “pre-construction position” so as to minimize  
5 costly legal battles or wasted Landowner time attempting to recreate the soil  
6 condition on their fields or pasture. Such unilateral powers would negatively affect  
7 Landowners property are not conducive to the protection of property rights or  
8 economic interest.

9 **Q: What is the next concern you have with the Easement language?**

10 A: TransCanada maintains the unilateral right to abandon the pipeline and all  
11 appurtenances thereto in place on, under, across, or through Nebraska land at any  
12 time it chooses. There is no provision for Landowner compensation for such  
13 abandonment nor any right for the Landowner to demand removal. Such unilateral  
14 powers would negatively affect Landowners property are not conducive to the  
15 protection of property rights or economic interest.

16 **Q: What is the next concern you have with the Easement language?**

17 A: TransCanada has the power to unilaterally move or modify the location of any  
18 Easement area whether permanent or temporary at their sole discretion.  
19 Regardless, if Landowner has taken prior steps relative the their property in  
20 preparation or planning of TransCanada’s taking of the initial easement area(s),  
21 the language here does not require TransCanada to compensate the Landowner if  
22 they decide to move the easement anywhere on Landowners property. Such  
23 unilateral powers would negatively affect Landowners property are not conducive  
24 to the protection of property rights or economic interests.

25 **Q: What is the next concern you have with the Easement language?**

26 A: The Easement requires that all of the burdens and restrictions upon Landowner to  
27 transfer and be applicable to any future owner of the Land in question without the  
28 ability of the future Landowner to modify or negotiation any of the language in  
29 question to which it will be held to comply.

1 **Q: What is the next concern you have with the Easement language?**

2 A: The Easement allows TransCanada to assign, transfer, or sell any part of the  
3 Easement to any person, company, country, etc. at their sole discretion at any time  
4 to anyone. This also means that any buyer of the easement could do the same to a  
5 third buyer and so on forever. There is no change of control or sale provision in  
6 place to protect the Landowner or Nebraska or to provide compensation for such  
7 change of control or ownership. It is not conducive to the protection of property  
8 rights or economic interests to allow unilateral unrestricted sale of the Easement  
9 thereby forcing upon the Landowner and our State a new unknown Easement  
10 owner.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are many terms in the Easement that are either confusing or undefined terms  
13 that are without context as to whether or not the Landowner would have any say  
14 so in determining what these terms mean or if the evaluation is solely in  
15 TransCanada's control. Some of these vague undefined terms are as follows:

- 16 i. "pipeline installation activities"
- 17 ii. "availability of labor and materials"
- 18 iii. "commercially reasonable costs and expenses"
- 19 iv. "reasonably anticipated and foreseeable costs and expenses"
- 20 v. "yield loss damages"
- 21 vi. "diminution in the value of the property"
- 22 vii. "substantially same condition"
- 23 viii. "an actual or potential hazard"
- 24 ix. "efficient"
- 25 x. "convenient"
- 26 xi. "endangered"
- 27 xii. "obstructed"
- 28 xiii. "injured"
- 29 xiv. "interfered with"

- 1 xv. “impaired”
- 2 xvi. “suitable crossings”
- 3 xvii. “where rock is encountered”
- 4 xviii. “as nearly as practicable”
- 5 xix. “pre-construction position”
- 6 xx. “pre-construction grade”
- 7 xxi. “various engineering factors”

8 Each one of these above terms and phrases as read in the context of the Easement  
9 could be problematic in many ways. Notably, undefined terms tend to only get  
10 definition in further legal proceedings after a dispute arises and the way the  
11 Easement is drafted, TransCanada has sole power to determine when and if a  
12 particular situation conforms with or triggers rights affected by these terms. For  
13 instance, “yield loss damages” should be specifically defined and spelled out  
14 exactly how the landowner is to be compensated and in what events on the front  
15 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,  
16 the Landowner is without contractual rights to define these terms or determine  
17 when rights related to them trigger and what the affects may be. Worse yet, I am  
18 stuck with these now and I had no say so in this Easement language at all and no  
19 way to renegotiate or fight for what protections to my property rights and  
20 economic interests. This is wrong.

21 **Q: Do you have any other concerns about the Easement language that you can**  
22 **think of at this time?**

23 A: I reserve the right to discuss any additional concerns that I think of at the time of  
24 my live testimony in August.

25 **Q: Based upon what you have shared with the Commission above regarding**  
26 **TransCanada’s proposed Easement terms and agreement, do you believe**  
27 **those to be reasonable or just, under the circumstances of the pipeline’s**  
28 **impact upon you and your land?**

1 A: No, I do not believe those terms to be reasonable or just for the reasons that we  
2 discussed previously.

3 **Q: As the owner of the land in question and as the person who knows it better**  
4 **than anyone else, do you believe that TransCanada offered you just, or fair,**  
5 **compensation for all of what they proposed to take from you so that their tar**  
6 **sands pipeline could be located across your property?**

7 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just  
8 offer for all the potential impacts and effects and the rights that I'm giving up, and  
9 what we will be prevented from doing in the future and how their pipeline would  
10 impact my property for ever and ever.

11 **Q: Has TransCanada at any time offered to compensate you annually, such as**  
12 **wind farm projects do, for the existence of their potential tar sands pipeline**  
13 **across your property.**

14 A: No, never.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you**  
16 **thought their proposed location of their proposed pipeline across your land**  
17 **was in your best interest?**

18 A: No, they have not.

19 **Q: Has TransCanada ever contacted you and specifically asked you if you**  
20 **thought their proposed location of their proposed pipeline across your land**  
21 **was in the public interest of the State of Nebraska?**

22 A: No, they have not.

23 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**  
24 **Takings Clause?**

25 A: Yes, I am.

26 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**  
27 **an American citizens property?**

28 A: My understanding is that, according to the United States Constitution, that if the  
29 government is going to take land for public use, then in that case, or by taking for

1 public use, it can only occur if the private land owner is compensated justly, or  
2 fairly.

3 **Q: Has TransCanada ever contacted you specially to explain the way in which**  
4 **the public could use its proposed Keystone XL Pipeline?**

5 A: No, they have not.

6 **Q: Can you think of any way in which the public, that is the citizens of the State**  
7 **of Nebraska, can directly use the proposed TransCanada Keystone XL**  
8 **Pipeline, as it dissects the State of Nebraska?**

9 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the  
10 public benefits from this pipeline in any way, how they can use it any way, or how  
11 it's in the public interest in any way. By looking at the map, it is quite clear to me  
12 that the only reason it's proposed to come through Nebraska, is that because we  
13 are geographically in the way from between where the privately-owned Tar Sands  
14 are located to where TransCanada wants to ship the Tar Sands to refineries in  
15 Houston, Texas.

16 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**  
17 **crude petroleum, or oil and petroleum by-products that you would like to**  
18 **ship in its pipeline?**

19 A: No, it has not.

20 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**  
21 **products that you, at this time or any time in the future, would desire to place**  
22 **for transport within the proposed TransCanada Keystone XL Pipeline?**

23 A: No, I do not.

24 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**  
25 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**  
26 **products within the proposed TransCanada Keystone XL Pipeline?**

27 A: No, I do not. I've never heard of such a person or company like that.

28 **Q: Do you pay property taxes for the land that would be affected and impacted**  
29 **at the proposed TransCanada Keystone XL Pipeline?**

1 A: Yes, I do.

2 **Q: Why do you pay property taxes on that land?**

3 A: Because that is the law. The law requires us to pay the property taxes as the owner  
4 of that property.

5 **Q: Because you follow the law and pay property taxes, do you believe you  
6 deserve any special consideration or treatment apart from any other person  
7 or company that pays property taxes?**

8 A: Well no, of course not. It's the law to pay property taxes if you own property. It's  
9 just what you do.

10 **Q: Do you believe the fact that you pay property taxes entitles you to special  
11 treatment of any kind, or special rights of any kind?**

12 A: No, of course not.

13 **Q: Do you believe the fact that you pay property taxes on your land would be  
14 enough to qualify you to have the power of eminent domain to take land of  
15 your neighbors or other people in your county, or other people across the  
16 state of Nebraska?**

17 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that  
18 I expect an award for or any type of special consideration.

19 **Q: Have you at any time ever employed any person other than yourself?**

20 A: Well, yes I have.

21 **Q: Do you believe that the fact that you have, at some point in your life,  
22 employed one or more other persons entitle you to any special treatment or  
23 consideration above and beyond any other Nebraskan that has also employed  
24 one or more persons?**

25 A: No, of course not.

26 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer  
27 have at one point employed another person within this state, entitles you to  
28 preferential treatment or consideration of any kind?**

1 A: No, of course not. If I choose to employ someone that decision is up to me. I  
2 don't deserve any special treatment or consideration for that fact.

3 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**  
4 **crude oil pipeline in its preferred location, or ultimate location across the**  
5 **state of Nebraska?**

6 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly  
7 or even bullied around and being made to feel scared that they did not have any  
8 options but to sign whatever papers TransCanada told them they had to. I am  
9 aware of folks being threatened that their land would be taken if they didn't follow  
10 what TransCanada was saying. I am aware of tactics to get people to sign  
11 easements that I don't believe have any place in Nebraska or anywhere such as  
12 TransCanada or some outfit associated with it hiring a pastor or priest to pray with  
13 landowners and convince them they should sign TransCanada's easement  
14 agreements. I am aware of older folks and widows or widowers feeling they had  
15 no choice but to sign TransCanada's Easement and they didn't know they could  
16 fight or stand up for themselves. From a more practical standpoint, I am worried  
17 that according to their answer to Landowners Interrogatory No. 211, TransCanada  
18 only owns and operates one (1) major oil pipeline. They simply do not have the  
19 experience with this type of pipeline and that scares me. There are others but that  
20 is what I can recollect at this time and if I remember more or my recollection is  
21 refreshed I will share those with the Commissioners at the Hearing in August.

22 **Q: Do you believe TransCanada's method of compensation to the landowner is**  
23 **reasonable or just?**

24 A: No, I do not.

25 **Q: Do you have any concern about limitations that the construction of this**  
26 **proposed pipeline across your affected land would prevent construction of**  
27 **future structures upon the portion of your land affected by the proposed**  
28 **easement and immediately surrounding areas?**

1 A: Well yes, of course I do. We would not be able to build many, if any, types of  
2 structures directly across or touching the easement, and it would be unwise and I  
3 would be uncomfortable to build anything near the easement for fear of being  
4 blamed in the future should any damage or difficulty result on my property in  
5 regards to the pipeline.

6 **Q: Do you think such a restriction would impact you economically?**

7 A: Well yes, of course.

8 **Q: How do you think such a restriction would impact you economically?**

9 A: The future of this land may not be exactly how it's being used as of this moment,  
10 and having the restrictions and limiting my ability to develop my land in certain  
11 ways presents a huge negative economic impact on myself, my family, and any  
12 potential future owner of the property. You have no idea how I or the future owner  
13 may want to use this land in the future or the other land across Nebraska  
14 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years  
15 ago it would have been hard to imagine all the advances that we have now or how  
16 things change. Because the Easement is forever and TransCanada gets the rights in  
17 my land forever we have to think with a very long term view. By placing their  
18 pipeline on under across and through my land that prevents future development  
19 which greatly negatively impacts future taxes and tax revenue that could have  
20 been generated by the County and State but now will not. When you look at the  
21 short blip of economic activity that the two years of temporary construction efforts  
22 may bring, that is far outweighed by the perpetual and forever loss of opportunity  
23 and restrictions TransCanada is forcing upon us and Nebraska.

24 **Q: Do you have any concerns about the environmental impact of the proposed  
25 pipeline?**

26 A: Yes, I do.

27 **Q: What are some of those concerns?**

28 A: As an affected land owner and Nebraskan, I am concerned that any construction,  
29 operation, and/or maintenance of the proposed Keystone XL Pipeline would have

1 a detrimental impact upon the environment of my land specifically, as well as the  
2 lands near my land and surrounding the proposed pipeline route.

3 **Q: Do you have any other related environmental concerns?**

4 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in  
5 construction and/or maintenance and operation. I am concerned about spills and  
6 leaks that TransCanada has had in the past and will have in the future. This could  
7 be catastrophic to my operations or others and to my county and the State. Also, I  
8 concerned about removal of topsoil with construction, the quality of the pipe being  
9 used, and the quality of the leak monitoring system. What will be the effects on  
10 the bodies of water and Ogallala Aquifer? How will they clean up a spill out of  
11 water, when it has been stated that nobody knows how to effectively clean up a  
12 spill of tar sands. This is evidenced by the spill in the Kalamazoo River. How  
13 will a spill affect irrigating our crops? Will crops even grow with the chemicals in  
14 the water? Is TransCanada responsible for our crop loss and/or decrease in yield  
15 after a spill?

16 **Q: Okay, what else?**

17 A: I am an RN, and within the past year we had a water contamination issue in the  
18 city that I work in. This greatly affected how we did patient care; we had to  
19 change several things for a period of time to be able to take care of our patient's  
20 properly. It also affected several businesses in town. Some had to shut down their  
21 kitchens, soda machines, coffee machines due to concern about the water being  
22 contaminated. This had to have resulted in a profit loss and extra expenses to  
23 operate for these businesses. This could also cause job loss, unrelated to  
24 agriculture. Will TransCanada pay for all costs of a spill or will they try to put that  
25 on me or others like the are allowed to according to their one-sided Easement  
26 language? Including expenses to neighboring landowners that might be affected?  
27 What will be the effects on the ground? How will spills or leaks be detected?  
28 Based on past experience we have learned they often aren't detected very quickly,  
29 if at all, by TransCanada's monitoring system.

1 Will our grain even be marketable after a spill near our farm? Or will it be turned  
2 down or receive less money due to possible contamination? How will my family  
3 be able to live after a spill? What will we drink? How will we prepare food?  
4 How will we bathe, wash clothes, wash dishes, grow a garden? So many things  
5 we do on a daily basis revolve around water, how do we live once it is  
6 contaminated? Is TransCanada responsible to make sure I have safe water and the  
7 cost involved? How do we raise poultry and livestock with contaminated water?  
8 How do we take care of our pets? Our lives are based around agriculture and  
9 water is a necessity, how will we still be able to farm and support ourselves if we  
10 aren't able to farm because of a spill. We will lose many ag related jobs, just to  
11 gain a few permanent jobs this pipeline will create. What will the effects on  
12 wildlife and plants be? Who will pay for the expenses to help protect and preserve  
13 these species once they are in danger from a spill?

14 **Q: What else?**

15 A: A spill in the Ogallala Aquifer has the potential to affect SO many people's water  
16 source. There are so many places around the world that don't have safe drinking  
17 water. The people that live there suffer, and lack of safe water costs many people  
18 their lives. In a place where we are so fortunate to have safe drinking water, why  
19 would anyone want to put it at risk? In fact, it seems a perfect way to cripple the  
20 United States if a foreign country wanted to. This statement is cited from  
21 water.org: "The water crisis is the #1 global risk based on impact to society (as a  
22 measure of devastation), as announced by the World Economic Forum in January  
23 2015." I believe this statement to be true.

24 **Q: Do you have any thoughts regarding if there would be an impact upon the  
25 natural resources on or near your property due to the proposed pipeline?**

26 A: Yes, I believe that any construction, operation, and/or maintenance of the  
27 proposed Keystone XL Pipeline would have detrimental impacts upon the natural  
28 resources of my land, and the lands near and surrounding the proposed pipeline  
29 route.

1 **Q: Do you have any worries about potential impacts from the proposed pipeline**  
2 **to the soil of your land, or land near you?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the  
4 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of  
5 land, as well as land along and surrounding the proposed pipeline route. This  
6 includes, but is not limited to, the reasons that we discussed above of disturbing  
7 the soil composition and makeup as it has naturally existed for thousands and  
8 millions of years during the construction process, and any future maintenance or  
9 removal process. I'm gravely concerned about the fertility and the loss of  
10 economic ability of my property to grow the crops, or grow the grasses, or grow  
11 whatever it is at that time they exist on my property or that I may want to grow in  
12 the future, or that a future owner may want to grow. The land will never be the  
13 same from as it exists now undisturbed to after it is trenched up for the proposed  
14 pipeline.

15 **Q: Do you have any concerns about the potential impact of the proposed pipeline**  
16 **upon the groundwater over your land, or surrounding lands?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
19 groundwater of not only under my land, but also near and surrounding the pipeline  
20 route, and in fact, potentially the entire State of Nebraska. Water is life plain and  
21 simple and it is simply too valuable to our State and the country to put at  
22 unreasonable risk.

23 **Q: Do you have any concern about the potential impact of the proposed pipeline**  
24 **upon the surface water on, or near or around your land?**

25 A: Yes, I have significant concerns that any construction, operation, and/or  
26 maintenance of the proposed Keystone XL Pipeline would have detrimental  
27 impact upon the surface water of not only within my property boundary, but along  
28 and near and surrounding the pipeline route, and in fact, across the state of  
29 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**  
2 **upon the wildlife and plants, other than your growing crops on or near your**  
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
6 wildlife and the plants, not only that are located on or can be found upon my land,  
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**  
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed  
11 pipeline underneath and across and through my property will negatively affect the  
12 fair market value at any point in the future, especially at that point in which I  
13 would need to sell the property, or someone in my family would need to sell the  
14 property. I do not believe, and certainly would not be willing to pay, the same  
15 price for land that had the pipeline located on it, versus land that did not. I hope  
16 there is never a point where I'm in a position where I have to sell and have to  
17 realize as much value as I can out of my land. But because it is my single largest  
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL  
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they  
20 would've paid and as much as I could've received, if the pipeline were not upon  
21 my property. There are just too many risks, unknowns, impacts and uncertainties,  
22 not to mention all of the rights you give up by the nature of having the pipeline  
23 due to having the easement that we have previously discussed, for any reasonable  
24 person to think that the existence of the pipeline would not negatively affect my  
25 property's value.

26 **Q: Do you believe there is any potential route for the proposed Keystone XL**  
27 **Pipeline across, within, under, or through the State of Nebraska that is in the**  
28 **public interest of the citizens of Nebraska?**

29 A: No, I do not.

1 **Q: Why do you hold that belief?**

2 A: Because there simply is no public interest based on all of the factors that I am  
3 aware and that I have read and that I have studied that this Commission is to  
4 consider that would establish that a for-profit foreign-owned pipeline that simply  
5 crosses Nebraska because we are geographically in the way between where tar  
6 sands are in Canada to where it wants to ship it to in Texas could ever be in the  
7 public interest of Nebraskans. We derive no benefit from this project. It is not for  
8 public use. Nebraska is simply in the way and when all considerations are taken in  
9 there is no net benefit of any kind for Nebraska should this project be placed in our  
10 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
11 the negative impacts and concerns.

12 **Q: What do you think about the applicant, TransCanada’s argument that it’s**  
13 **preferred route for its proposed Keystone XL Pipeline is in the public interest**  
14 **of Nebraska because it may bring temporary jobs during the construction**  
15 **phase to Nebraska?**

16 A: First of all, not all jobs are created equally. Most jobs that are created, whether  
17 temporary or on a permanent basis, don’t come with a project that has all the  
18 potential and foreseeable negative impacts, many of which we have discussed here  
19 and other witnesses throughout the course of this hearing have and will discuss. If  
20 I decide to hire and employ someone to help me out in my farming or ranching  
21 business, I’ve created a job but I haven’t done so at the risk or detrimental impact  
22 to my land or my town or my county or my state. And I’ve hired someone who is  
23 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce  
24 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all  
25 jobs are not created equal. Additionally, I understand from what I’m familiar with  
26 from TransCanada’s own statements that the jobs numbers they originally touted  
27 were determined to be a minute fraction of the permanent jobs that had been  
28 projected. According to their answer to Landowners’ Interrogatory No. 191,  
29 TransCanada has created only thirty-four (34) jobs within Nebraska working

1 specifically on behalf of TransCanada and according to their answer to  
2 Interrogatory No. 196, as of May 5, 2017 they only employ one (1) temporary  
3 working within Nebraska. Further, according to their answer to Interrogatory No.  
4 199, TransCanada would only employ six to ten (6 to 10) new individuals if the  
5 proposed Keystone XL was constructed on its Preferred Route or its Mainline  
6 Alternative Route.

7 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**  
8 **because it would cross your land?**

9 A: No, absolutely not. I am opposed to this project because it is not in the public  
10 interest, neither within my community nor within our state.

11 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**  
12 **was to cross someone else's land?**

13 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have  
14 the fear and anxiety and potential foreseeable risks and negative impacts that this  
15 type of a project carrying this type of product brings foisted upon anyone in this  
16 state or any other state.

17 **Q: Do you think there is any intelligent route for the proposed Keystone XL**  
18 **Pipeline to cross the state of Nebraska?**

19 A: I don't believe there is an intelligent route because as I have stated I don't believe  
20 this project anywhere within Nebraska is within the public interest. However, if  
21 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely  
22 had to go somewhere in the state of Nebraska, the only intelligent route I believe  
23 would be to twin or closely parallel the existing Keystone I Pipeline. Both the  
24 preferred route and the mainline alternative routes are economic liabilities our  
25 state cannot risk.

26 **Q: What do you rely upon to make that statement?**

27 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,  
28 already exists in that area is reason enough as it is not in our best interest or the  
29 public interests to have more major oil pipelines crisscrossing our state. Second,

1 they have all the infrastructure already there in terms of relationships with the  
2 counties and local officials and first responders along that route. Third, they have  
3 already obtained easements from all the landowners along that route and have  
4 relationships with them. Fourth, that route avoids our most sensitive soils, the  
5 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala  
6 Aquifer. Sixth, they have already studied that route and previously offered it as an  
7 alternative. Seventh, it just makes the most sense that as a state we would have  
8 some intelligent policy of energy corridors and co-locating this type of  
9 infrastructure near each other.

10 **Q: Have you fully expressed each and every opinion, concern, or fact you would**  
11 **like the Public Service Commissioners to consider in their review of**  
12 **TransCanada's Application?**

13 **A:** No, I have not. I have shared that which I can think of as of the date I signed this  
14 document below but other things may come to me or my memory may be  
15 refreshed and I will add and address those things at the time of the Hearing in  
16 August and address any additional items at that time as is necessary. Additionally,  
17 I have not had an adequate amount of time to receive and review all of  
18 TransCanada's answers to our discovery and the discovery of others so it was  
19 impossible to competently and completely react to that in my testimony here and I  
20 reserve the right to also address anything related to discovery that has not yet  
21 concluded as of the date I signed this document below. Lastly, certain documents  
22 requested have not yet been produced by TransCanada and therefore I may have  
23 additional thoughts on those I will also share at the hearing as needed.

24 **Q: What is it that you are requesting the Public Service Commissioners do in**  
25 **regards to TransCanada's application for the proposed Keystone XL Pipeline**  
26 **across Nebraska?**

27 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond  
28 a temporary job spike that this project may bring to a few counties and beyond the  
29 relatively small amount of taxes this proposed foreign pipeline would possibly

1 generate. And, instead think about the perpetual and forever impacts of this  
2 pipeline as it would have on the landowners specifically, first and foremost, but  
3 also thereby upon the entire state of Nebraska, and to determine that neither the  
4 preferred route nor the Keystone mainline alternative route are in the public  
5 interest of the citizens of the state of Nebraska. And if the Commissioners were  
6 inclined to modify TransCanada's proposed routes and were to be inclined to grant  
7 an application for a route in Nebraska, that the only potential route that would  
8 make any intelligent sense whatsoever would be twinning or near paralleling of  
9 the proposed KXL with the existing Keystone I pipeline. It simply does not make  
10 sense to add yet another major oil pipeline crisscrossing our state creating new  
11 pumping stations, creating new impacts on additional counties and communities  
12 and going through all of the court processes with myself and other landowners like  
13 me when this applicant already has relationships with the landowners, the towns  
14 and the communities along Keystone I, and that Keystone I is firmly outside of the  
15 sand hills and a significantly further portion away from the heart of the Ogallala  
16 Aquifer than the preferred route or the Keystone mainline alternative route.

17 **Q: Are all of your statements in your testimony provided above true and**  
18 **accurate as of the date you signed this document to the best of your**  
19 **knowledge?**

20 A: Yes, they are.

21 **Q: Thank you, I have no further questions at this time and reserve the right to**  
22 **ask you additional questions at the August 2017 Hearing.**

Mia Bergman  
Mia Bergman

Subscribed and Sworn to me before this 25<sup>th</sup> day of May, 2017.

Nathan Schwager  
Notary Public



**Attachment No. 1**



866 Rd

513th Ave

513th Ave

513th Ave

513th Ave

513th Ave

865th Rd

513th Ave

513th Ave

513th Ave

Schleusener Reservoir

**Attachment No. 2**



**Attachment No. 3**

STATE OF NEBRASKA } <sup>INDEXED</sup> SS  
AWNELOPE COUNTY }  
Entered on the Numerical Index and Filed for Record  
the 24 day of September A.D. 20 13  
at 11:15 o'clock A. M. Recorded in book 5A  
of Miscellaneous Page 552  
Carol Peterson County Clerk

**Prepared by and after recording  
please return to:**  
TransCanada Keystone Pipeline, LP  
1106 Benjamin Avenue, Suite 600  
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

ML-NE-AT-30055.000  
ML-NE-AT-30056.000  
ML-NE-AT-30057.000

**EASEMENT AND RIGHT-OF-WAY  
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**"), **Rodney W. Deck and Kim Deck, husband and wife**, whose mailing address is 85589 567 Avenue, Winside, NE 68790 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 717 Texas Street, Houston, Texas 77002, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all

Grantor's Initials

R.D.  
K.D.

[1]

ML-NE-AT-30055.000  
ML-NE-AT-30056.000  
ML-NE-AT-30057.000

other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Antelope, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 92 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the SW1/4 and the S1/2 NW1/4 of Section 27, T28N, R8W of the 6<sup>th</sup> P.M., as recorded in Book 123, Page 371 and Book 123, Page 646 in the Deed Records of Antelope, County, Nebraska; less and except any conveyances heretofore made.

**Less and Except:** A tract of land located in part of the South One Half of the Northwest Quarter and part of the Southwest Quarter of Section 27, Township 28 North, Range 8 West of the 6<sup>th</sup> P.M., Antelope County, Nebraska, more particularly described as follows: Commencing at the Southwest corner of the Southwest Quarter of Section 27, and assuming the South line of said Southwest Quarter to have a bearing of S 89°39'07" E; thence S 89°39'07" E, 1403.00 feet; thence N 0°14'12" W and parallel to the West line of said Southwest Quarter, 3160.00 feet; thence N 89°39'07" W, 387.79 feet, to point of beginning; thence N 89°39'07" W, 915.90 feet; thence S 36°03'16" E, 43.24 feet; thence S 71°03'20" E, 195.36 feet; thence S 78°33'35" E, 188.68 feet; thence S 71°05'36" E, 207.07 feet; thence S 62°54'42" E, 186.95 feet; thence S 60°14'24" E, 20830 feet; thence N 03°19'48" W, 386.52 feet, to the point of beginning, containing 3.74 acres, more or less, as recorded in Book 127, Page 742; **less and except** a tract of land located in part of the South One Half of the Northwest Quarter and part of the Southwest Quarter of Section 27, Township 28 North, Range 8 West of the 6<sup>th</sup> P.M., Antelope County, Nebraska, more particularly described as follows: Commencing at the Southwest corner of the Southwest Quarter, and assuming the South line of said Southwest Quarter to have a bearing of S 89°39'07" E; thence S 89°39'07" E and on said South line 1403.00 feet; thence N 0°14'12" W and parallel to the West line of said Southwest Quarter, 3160.00 feet to the point of beginning; thence S 0°14'12" E and parallel to the West line of said Southwest Quarter, 1128.27 feet; thence N 26°25'05" W, 831.59 feet; thence N 3°19'48" W, 386.52 feet; thence S 89°39'07" E and parallel to the South line of said Southwest Quarter, 387.79 feet to the point of beginning, containing 6.37 acres, more or less, as recorded in Book 126, Page 199; and **less and except** a tract of land described in Book 123, Page 646.

A tract of land containing 6.39 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as a part of the SW1/4 of Section 27, Township 28 North, Range 8 West of the 6<sup>th</sup> P.M., as recorded in Book 126, Page 189 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 2.81 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as a part of the SW1/4 of Section 27, Township 28 North, Range 8 West of the 6<sup>th</sup> P.M., as recorded in Book 127, Page 741 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the

Grantor's Initials

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"Temporary Work Space"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by

Grantor's Initials RD

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Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic

Grantor's Initials

R. O.  
XD

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protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

Grantor's Initials

R. D.  
KD

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19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the 16<sup>th</sup> day of September, 2013.

GRANTOR(S):

Rodney W. Deck  
Rodney W. Deck

Kim Deck  
Kim Deck

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

Grantor's Initials R.W.  
KD

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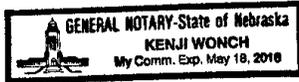
Acknowledgement of Individual

STATE OF NEBRASKA

COUNTY OF Madison

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of Sept. 2013

By **Rodney W. Deck**



Kenji Wonch  
Notary Public Signature

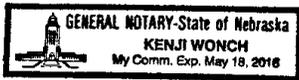
Affix Seal Here

STATE OF NEBRASKA

COUNTY OF Madison

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of Sept. 2013

By **Kim Deck**



Kenji Wonch  
Notary Public Signature

Affix Seal Here

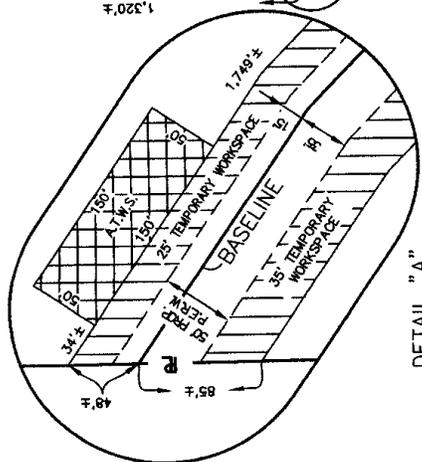
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KD

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**ANTELOPE COUNTY, NEBRASKA**  
**T-28-N, R-8-W, SECTION 27**  
**ML-NE-AT-30055.000**

**LEGEND:**  
 P PROPERTY LINE  
 S SECTION LINE  
 P PROP. PROPOSED  
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE  
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY  
 D.R.A.C.N. DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA



**DETAIL "A"**  
 N.T.S.

**RODNEY W. DECK**  
 W/2 SW/4  
 VOLUME 123, PAGE 371  
 VOLUME 123, PAGE 646  
 D.R.A.C.N.

SEE DETAIL "A"

BASELINE  
 50' WIDE P.E.R.W.

1723'±

214'±

SECTION 27

SECTION 28

SECTION 29

SECTION 30

SECTION 31

SECTION 32

SECTION 33

SECTION 34

SECTION 35

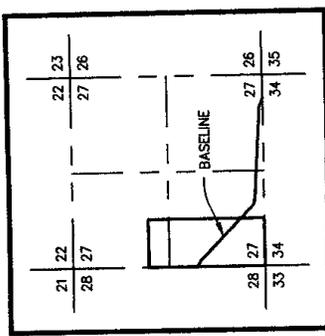
SECTION 36

SECTION 37

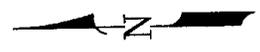
SECTION 38

SECTION 39

SECTION 40



**VICINITY MAP**  
 N.T.S.



0 250 500  
 SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:  
 W/2 SW/4, S/2 SW/4 NW/4  
 OF SECTION 27,  
 T-28-N, R-8-W

**NOTE:**

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS IT WAS NOT DERIVED FROM AN ON-THE-GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY.

TOTAL DISTANCE ACROSS PROPERTY: 1,937'±  
 AREA OF PERMANENT EASEMENT: 2.2 ACRES  
 AREA OF TEMPORARY WORKSPACE: 2.7 ACRES  
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.2 ACRE

**TransCanada**  
 In business to deliver

**KEYSTONE XL PROJECT**  
**EASEMENT AREA**  
**ACROSS THE PROPERTY OF**  
**RODNEY W. DECK**  
**ML-NE-AT-30055.000**

**PROJECT:** XL  
**EXHIBIT A**

APPROVED BY	DRAWING NUMBER
DJS	XL-08-ML-SK-3392
NO.	REVISION
1	REVISED WORKSPACE LINE CHANGE
2	PANEL BOUNDARY & BUMP UPDATE
3	BOOK AND PAGE UPDATE
4	BOOK AND PAGE UPDATE

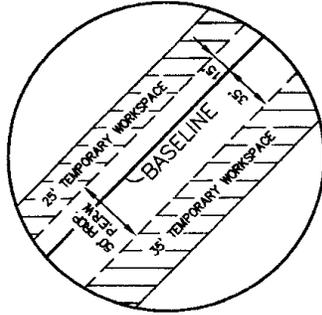
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	07/05/12	PB	SM



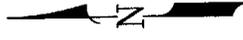
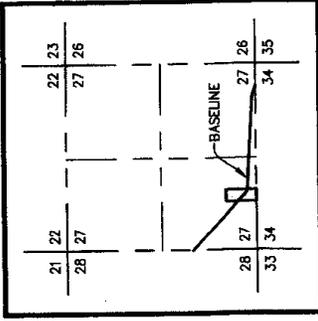
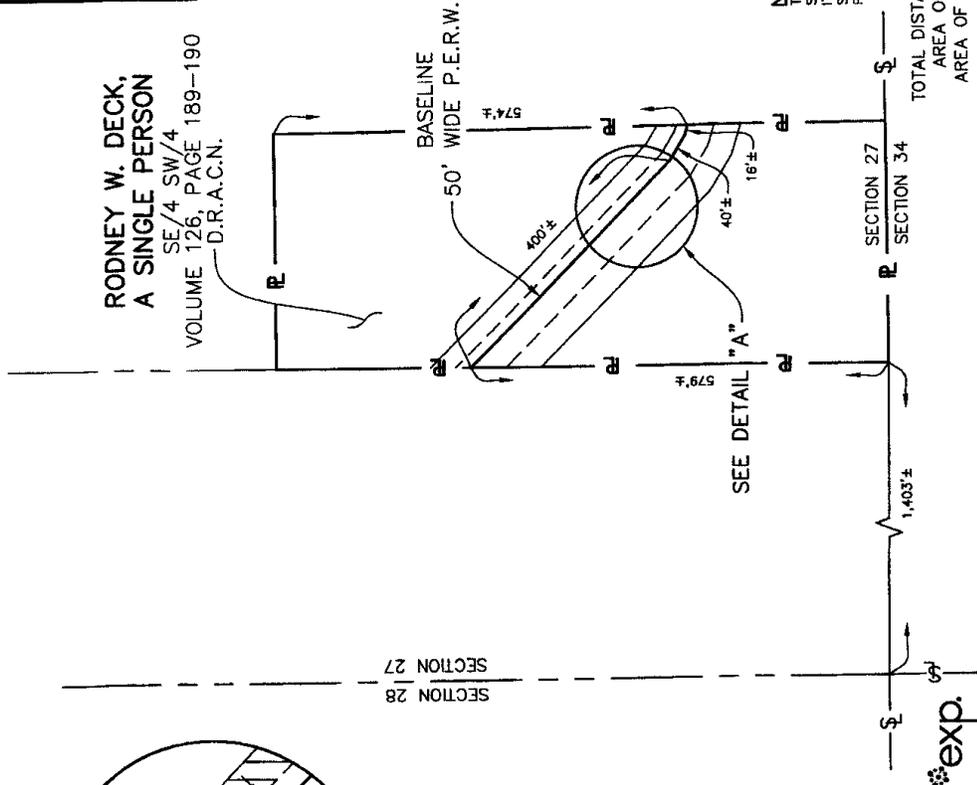
**ANTELOPE COUNTY, NEBRASKA**  
**T-28-N, R-8-W, SECTION 27**  
**ML-NE-AT-30056.000**

LEGEND:  
 PROPERTY LINE  
 SECTION LINE  
 PROPOSED  
 P.E.R.W.  
 D.R.A.C.N.

PERMANENT EASEMENT & RIGHT OF WAY  
 DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA



RODNEY W. DECK,  
 A SINGLE PERSON  
 SE/4 SW/4  
 VOLUME 126, PAGE 189-190  
 D.R.A.C.N.



TRACT LEGAL DESCRIPTION:  
 IN A TRACT OF LAND LOCATED IN  
 T-28-N, R-8-W

NOTE:  
 THIS SKETCH DOES NOT MEET THE MINIMUM  
 STANDARDS FOR PROPERTY BOUNDARY SURVEYS  
 IT WAS NOT DERIVED FROM AN ON-THE-GROUND  
 SURVEY BUT IS INTENDED FOR RIGHT OF WAY  
 PURPOSES ONLY.

TOTAL DISTANCE ACROSS PROPERTY: 456'±  
 AREA OF PERMANENT EASEMENT: 0.5 ACRE  
 AREA OF TEMPORARY WORKSPACE: 0.6 ACRE

<b>TransCanada</b> <i>In business to deliver</i>	
KEYSTONE XL PROJECT	
EASEMENT AREA ACROSS THE PROPERTY OF RODNEY W. DECK, A SINGLE PERSON ML-NE-AT-30056.000	
PROJECT	XL EXHIBIT A
APPROVED BY	DRAWING NUMBER
JMP	XL-JOB-ML-9K-3802
NO.	REVISION
	DATE
SCALE	DATE
1" = 200'	04/19/13
DRAWN BY	SM
CHECKED BY	JN

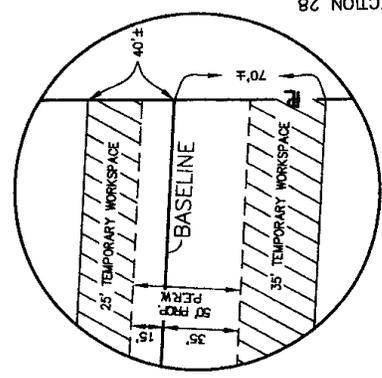


R.D. XS

**ANTELOPE COUNTY, NEBRASKA**  
**T-28-N, R-8-W, SECTION 27**  
**ML-NE-AT-30057.000**

PROPERTY LINE  
 SECTION LINE  
 PROPOSED  
 PERMANENT EASEMENT & RIGHT OF WAY  
 DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA

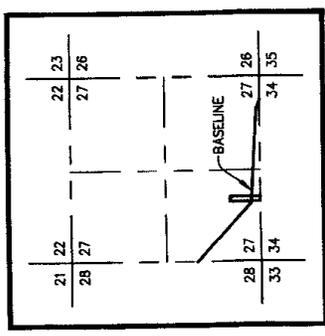
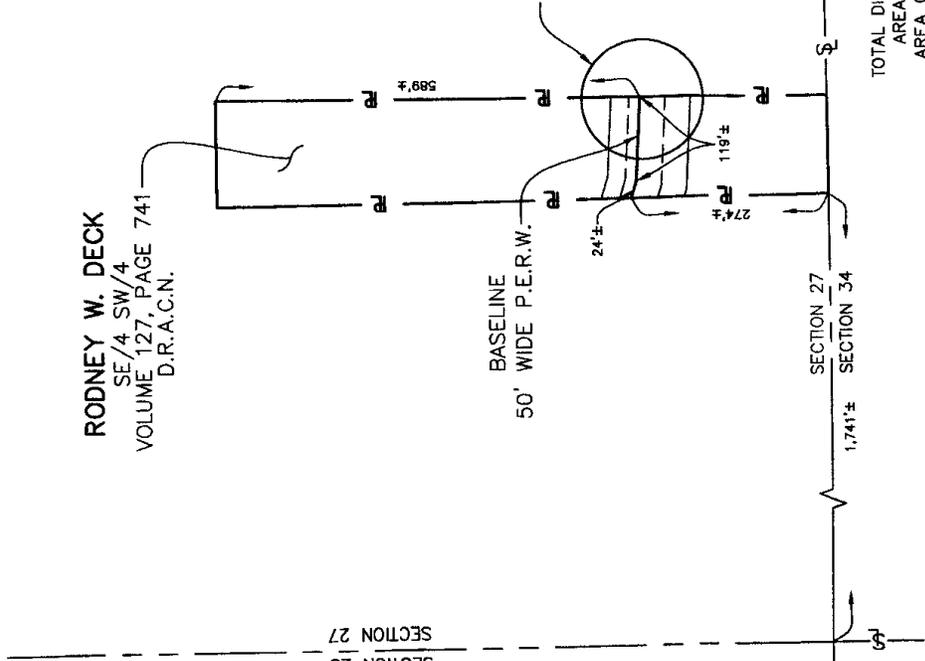
LEGEND:  
 8  
 3  
 PROP.  
 P.E.R.W.  
 D.R.A.C.N.



DETAIL "A"  
 N.T.S.

**RODNEY W. DECK**  
 SE/4 SW/4  
 VOLUME 127, PAGE 741  
 D.R.A.C.N.

BASELINE  
 50' WIDE P.E.R.W.



VICINITY MAP  
 N.T.S.

<b>TransCanada</b> <i>in business to deliver</i>	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
RODNEY W. DECK	
ML-NE-AT-30057.000	
PROJECT:	XL
APPROVED BY:	JMP
DRAWING NUMBER:	XL-08-ML-SK-3003
REVISION:	
NO.	
DATE	
SCALE:	1" = 200'
DATE:	04/20/13
DRAWN BY:	JN
CHECKED BY:	SM

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.

TRACT LEGAL DESCRIPTION:  
 A TRACT OF LAND LOCATED IN THE SW/4 OF SECTION 27, T-28-N, R-8-W

TOTAL DISTANCE ACROSS PROPERTY: 143'±  
 AREA OF PERMANENT EASEMENT: 0.2 ACRE  
 AREA OF TEMPORARY WORKSPACE: 0.2 ACRE

R.P. KD

**Attachment No. 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE )  
COMPANY, a New York Corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RICHARD ANDREW, JANE ANDREW, )  
LUKE ANDREW, and BRYCE ANDREW, )  
 )  
Defendants. )

CASE NO. \_\_\_\_\_

**COMPLAINT**

**COMES NOW** Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

**PARTIES**

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

**JURISDICTION AND VENUE**

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

### GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$ , Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

### **FIRST CLAIM: NEGLIGENCE**

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

### **SECOND CLAIM: TRESPASS**

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

**WHEREFORE** Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

### **JURY DEMAND**

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,  
Plaintiff,

By:     /s/ Albert M. Engles      
ENGLES, KETCHAM, OLSON, & KEITH, P.C.  
1350 Woodmen Tower  
1700 Farnam Street  
Omaha, Nebraska 68102  
(402) 348-0900  
(402) 348-0904 (Facsimile)  
Albert M. Engles, #11194  
Dan H. Ketcham, #18930  
Michael L. Moran, #24042  
James C. Boesen, #24862

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

**TransCanada Keystone Pipeline, LP  
for Route Approval of Keystone XL  
Pipeline Project, Pursuant to *Major Oil  
Pipeline Siting Act***

**Direct Testimony of  
Karen Berry in Support of Landowner  
Intervenors**

State of Nebraska            )  
  ) ss.  
Antelope County            )

1   **Q:    Please state your name.**

2   A:    My name is Karen Berry

3   **Q:    Are you an intervener in the Public Service Commission’s proceedings**  
4       **regarding TransCanada’s application for approval of its proposed Keystone**  
5       **XL tar sands pipeline across Nebraska?**

6   A:    Yes, I am.

7   **Q:    Do you own land in Nebraska, either directly or through an entity of which**  
8       **you are an owner that could be affected by the proposed TransCanada**  
9       **Keystone XL pipeline?**

10  A:    Yes, I do and it is located in Antelope County.

11  **Q:    Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**  
12       **photo(s) of your land in question here with the area of the proposed KXL**  
13       **pipeline depicted?**

14  A:    Yes.

15  **Q:    If you are you married tell us your spouse’s name please?**

16  A:    **John Pollack**

1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**  
2 **and or your family?**

3 A: Yes.

4 **Q: For the land that would be affected and impacted by the proposed KXL tar**  
5 **sands pipeline give the Commissioners a sense how long the land has been in**  
6 **your family and a little history of the land.**

7 **A:** The land has been in the Berry family since the 1950s, and it was put into Karen's  
8 ownership in the mid to late 1970s. The soil is very sandy and porous. However,  
9 due to a high water table, there is a permanent moist area running though the  
10 middle of the property. This area has not been farmed for several decades,  
11 because farm equipment tended to get stuck, and wet weather prevents a good  
12 crop. The pictures I have attached are from this area, which is now beautiful and  
13 somewhat secluded. I enjoy visiting this area, and wants it to be preserved.  
14 The remaining farmland has proved unusually productive for dryland farming,  
15 because the high water table puts adequate water into the root zone of  
16 plantings. There is a danger that the digging that accompanies the pipeline will  
17 disrupt the hydrology of the area, easing the drainage and dropping the water  
18 table, to the detriment of dryland farming. Conversely, blocking drainage as it  
19 crosses the wet area could have a damming effect. There is no guarantee in the  
20 easement against pipeline-induced changes in the water table, or monitoring of any  
21 changes.

22 **Q: Do you earn any income from this land?**

23 A: Yes.

24 **Q: Have you depended on the income from your land to support your livelihood**  
25 **or the livelihood of your family?**

26 A: Yes.

27 **Q: Have you ever in the past or have you thought about in the future leasing all**  
28 **or a portion of your land in question here?**

1 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective  
2 tenant may try to negotiate a lower price for my land if it had the pipeline on it and  
3 all the restrictions and risks and potential negative impacts to farming or ranching  
4 operations as opposed to land that did not have those same risks. If I was looking  
5 to lease or rent ground I would pay more for comparable non-pipeline land than I  
6 would for comparable pipeline land and I think most folks would think the same  
7 way. This is another negative economic impact that affects the landowner and the  
8 county and the state and will forever and ever should TransCanada's preferred or  
9 mainline alternative routes be approved. If they were to twin or closely parallel to  
10 Keystone I the vast majority of landowners would be those that already have a  
11 pipeline so there would be considerable less new incremental negative impacts.

12 **Q: Do you have similar concerns about selling the land?**

13 A: Well I hope not to have to sell the land in my lifetime but times change and you  
14 never know what is around the corner and yes I am concerned that if another piece  
15 of ground similar to mine were for sale and it did not have the pipeline and mine  
16 did that I would have a lower selling price. I think this would be true for pipeline  
17 ground on both the preferred and mainline alternative routes.

18 **Q: What is your intent with your land after you die?**

19 A: Like I said I hope not to have to sell and I hope that it stays in the family for years  
20 to come but I have thought about getting out if this pipeline were to come through.

21 **Q: Are you aware that the preferred route of TransCanada's Keystone XL  
22 Pipeline would cross the land described above and owned by you?**

23 A: Yes.

24 **Q: Were you or an entity for which you are a member, shareholder, or director  
25 previously sued by TransCanada Keystone Pipeline, LP?**

26 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a  
27 petition for condemnation against our land so it could place its proposed pipeline  
28 within an easement that it wanted to take from us on our land.

29 **Q: Did you defend yourself and your land in that condemnation action?**

1 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees  
2 and expenses in our resistance of TransCanada’s lawsuit against us.

3 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees  
4 incurred?**

5 A: No, they have not.

6 **Q: In its lawsuit against you, did TransCanada identify the amount of your  
7 property that it wanted to take for its proposed pipeline?**

8 A: The lawsuit against us stated they would take the amount of property that is  
9 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant  
10 and equipment reasonably necessary to operate the pipeline.

11 **Q: Did TransCanada define what they meant by “property that is reasonably  
12 necessary”?**

13 A: No, they did not.

14 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain  
15 property portion of your land?**

16 A: Yes, they did.

17 **Q: Did TransCanada describe what rights it proposed to take related to the  
18 eminent domain property on your land?**

19 A: Yes, they did.

20 **Q: What rights that they proposed to take did they describe?**

21 A: TransCanada stated that the eminent domain property will be used to “lay, relay,  
22 operate, and maintain the pipeline and the plant and equipment reasonably  
23 necessary to operate the pipeline, specifically including surveying, laying,  
24 constructing, inspecting, maintaining, operating, repairing, replacing, altering,  
25 reconstructing, removing and abandoning one pipeline, together with all fittings,  
26 cathodic protection equipment, pipeline markers, and all their equipment and  
27 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,  
28 petroleum products, and all by-products thereof.”

1 **Q: Prior to filing an eminent domain lawsuit to take your land that**  
2 **TransCanada identified, do you believe they attempted to negotiate in good**  
3 **faith with you?**

4 A: No, I do not.

5 **Q: Did TransCanada at any time approach you with or deliver to you their**  
6 **proposed easement and right-of-way agreement?**

7 A: Yes, they did.

8 **Q: At the time you reviewed TransCanada's easement and right-of-way**  
9 **agreement, did you understand that they would be purchasing a fee title**  
10 **interest in your property or that they were taking something else?**

11 A: I understood that they proposed to have the power to take both a temporary  
12 construction easement that could last for a certain period of time and then also a  
13 permanent easement which they described to be 50 feet across or in width, and  
14 that would run the entire portion of my property from where a proposed pipeline  
15 would enter my property until where it would exit the property.

16 **Q: Is the document included with your testimony here as Attachment No. 3, a**  
17 **true and accurate copy of TransCanada's proposed Easement and Right-of-**  
18 **Way agreement that they included with their condemnation lawsuit against**  
19 **you?**

20 A: Yes, it is.

21 **Q: Have you had an opportunity to review TransCanada's proposed Easement**  
22 **and Right-of-Way agreement?**

23 A: Yes, I have.

24 **Q: What is your understanding of the significance of the Easement and Right-of-**  
25 **Way agreement as proposed by TransCanada?**

26 A: My understanding is that this is the document that will govern all of the rights and  
27 obligations and duties as well as the limitations of what I can and cannot do and  
28 how I and any future landowner and any person I invite to come onto my property

1 must behave as well as what TransCanada is and is not responsible for and how  
2 they can use my land.

3 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**  
4 **agreement do you have any concerns about any portions of it or any of the**  
5 **language either included in the document or missing from the proposed**  
6 **document?**

7 A: Yes, I have a number of significant concerns and worries about the document and  
8 how the language included and the language not included potentially negatively  
9 impacts my land and thereby potentially negatively impacts my community and  
10 my state.

11 **Q: I would like you to walk the Commissioners through each and every one of**  
12 **your concerns about TransCanada's proposed Easement and Right-of-Way**  
13 **agreement so they can develop an understanding of how that language and**  
14 **the terms of that contract, in your opinion, potentially negatively impacts you**  
15 **and your land. So, if you can start at the beginning of that document and**  
16 **let's work our way through it, okay?**

17 A: Yes, I'll be happy to express my concerns about TransCanada's proposed  
18 Easement and Right-of-Way agreement and how it negatively could affect my  
19 property rights and my economic interests.

20 **Q. Okay, let's start with your first concern please.**

21 A: The very first sentence talks about consideration or how much money they will  
22 pay to compensate me for all of the known and unknown effects and all of the  
23 rights I am giving up and for all the things they get to do to my land and for what  
24 they will prevent me from doing on my land and they only will pay me one time at  
25 the signing of the easement agreement. That is a huge problem.

26 **Q: Explain to the Commissioners why that is a problem.**

27 A: It is not fair to the landowner, the county, or the State. It is not fair to the  
28 landowner because they want to have my land forever for use as they see fit so  
29 they can make a daily profit from their customers. If I was to lease ground from

1 my neighbor I would typically pay twice a year every year as long as they granted  
2 me the rights to use their land. That only makes sense – that is fair. If I was going  
3 to rent a house in town I would typically pay monthly, every month until I gave up  
4 my right to use that house. By TransCanada getting out on the cheap and paying  
5 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax  
6 revenue collection on the money I would be paid and then pay taxes on and  
7 contribute to this state and this country. It is money I would be putting back into  
8 my local community both spending and stimulating the local economy and  
9 generating more economic activity right here. Instead TransCanada’s shareholders  
10 keep all that money and it never finds its way to Nebraska.

11 **Q: What is your next concern?**

12 A: The first paragraph goes on to say Grantor, which is me the landowner, “does  
13 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a  
14 limited partnership...” and I have no idea who that really is. I have no idea who is  
15 forcing this pipeline on us or who the owners of the entities are, or what are the  
16 assets backing this limited partnership, or who the general partner is, or who all  
17 the limited partners are, and who makes up the ownership of these partners or the  
18 structure or any of the basic things you would want to know and understand if you  
19 would want to do business with such an outfit. According to TransCanada’s  
20 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited  
21 liability company called TransCanada Keystone Pipeline GP, LLC is the general  
22 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so  
23 basically nothing. That is really scary since the general partner has the liability but  
24 virtually none of the ownership and who knows if it has any other assets.

25 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**  
26 **percent clear on exactly who could become the owner of over 275 miles of**  
27 **Nebraska land?**

28 A: No.

1 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**  
2 **percent clear on exactly who will be operating and responsible for**  
3 **approximately 275 miles of tar sands pipeline underneath and through**  
4 **Nebraska land?**

5 A: No.

6 **Q: Okay, let's continue please with your concerns of the impacts upon your land**  
7 **and the State of Nebraska of TransCanada's easement terms.**

8 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter  
9 called "Grantee")..." and this concerns me because it would allow my easement to  
10 be transferred or sold to someone or some company or country or who knows what  
11 that I don't know and who we may not want to do business with. This pipeline  
12 would be a huge asset for TransCanada and if they can sell to the highest bidder  
13 that could have terrible impacts upon all of Nebraska depending upon who may  
14 buy it and I don't know of any safeguards in place for us or the State to veto or  
15 have any say so in who may own, operate, or be responsible for this pipeline in the  
16 future.

17 **Q: Do you think that type of uncertainty and lack of control over a major piece**  
18 **of infrastructure crossing our State is in the public interest?**

19 A: No, certainly not, in fact, just the opposite.

20 **Q: What's next?**

21 A: Then it says "...a perpetual permanent easement and right-of-way..." and this  
22 really concerns me. Why does the easement and right-of-way have to be perpetual  
23 and permanent? That is the question myself and my family want an answer to.  
24 Perpetual to me is like forever and that doesn't make sense.

25 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

26 A: For many reasons but mostly because the tar sands are finite. I am unaware of any  
27 data proving there is a perpetual supply of tar sands. I am not aware in  
28 TransCanada's application where it proves there is a perpetual necessity for this  
29 pipeline. My understanding of energy infrastructure like wind towers is they have

1 a decommission plan and actually take the towers down when they become  
2 obsolete or no longer needed. Nothing manmade lasts forever. My land however  
3 will, and I want my family or future Nebraska families to have that land as  
4 undisturbed as possible and it is not in my interest or the public interest of  
5 Nebraska to be forced to give up perpetual and permanent rights in the land for  
6 this specific kind of pipeline project.

7 **Q: Okay, what is your next concern?**

8 A: The easement language includes all these things TransCanada can do and it says  
9 "...abandoning in place..." so they can just leave this pipeline under my ground  
10 until the end of time just sitting there while they are not using it, but I am still  
11 prevented from doing on my land and using my land what I would like. If I owned  
12 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting  
13 there. It doesn't make sense and it scares me and it is not in my interest or the  
14 public interest of Nebraska to allow this.

15 **Q: Now it looks like we are ready to go to the second page of the Easement is that  
16 right?**

17 A: Yes.

18 **Q: So now on the second page of the Easement what are your concerns?**

19 A: Here the Easement identifies a 24-month deadline to complete construction of the  
20 pipeline but has caveats that are undefined and ambiguous. The 24-month period  
21 starts to run from the moment "actual pipeline installation activities" begin on  
22 Landowners property. It appears that TransCanada would define this phrase as  
23 needed. It would be wise to explain what types of TransCanada action constitutes  
24 "installation activity" For instance, would the placement and storage of an  
25 excavator or other equipment on or near the Easement property be an activity or  
26 would earth have to be moved before the activity requirement is triggered. This  
27 vague phrase is likely to lead to future disputes and litigation that is not in the best  
28 interest of the welfare of Nebraska and would not protect property interests. The  
29 24-months can also be extended in the case of "force majeure." My understanding

1 is that force majeure is often used to insulate a party to a contract when events  
2 occur that are completely out of their control. In TransCanada's easement this is  
3 expanded to include "without limitation...availability of labor and materials."  
4 Extending this language to labor and materials is problematic because these are  
5 two variables that TransCanada does have some or significant control over and to  
6 allow extension of the 24-month period over events not truly out of the control of  
7 TransCanada and without further provision for compensation for the Landowner is  
8 not conducive to protection of property rights.

9 **Q: Okay, what is your next concern?**

10 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of  
11 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially  
12 reasonable costs and expenses" will pay for damages caused but then limits  
13 TransCanada's liability to certain circumstances. There is no definition of  
14 "commercially reasonable" and no stated right that the Landowner would get to  
15 determine the amounts of cost or expense that is "commercially reasonable."  
16 TransCanada excepts out from their liability any damages that are caused by  
17 Landowner's negligence or the negligence of anyone ever acting on the behalf of  
18 Landowner. It is understandable that if the Landowner were to willfully and  
19 intentionally cause damages to the pipeline that Landowner should be liable.  
20 However, anything short of willful misconduct should be the liability of  
21 TransCanada who is subjecting the pipeline on the Landowner and who is making  
22 a daily profit from that pipeline. When evaluating the impact on property rights of  
23 this provision, you must consider the potentially extremely expensive fight a  
24 Landowner would have over this question of whether or not damage was an act of  
25 negligence. Putting this kind of potential liability upon the Landowner is  
26 incredibly problematic and is detrimental to the protection of property rights. I  
27 don't think this unilateral power which I can't do anything about as the landowner  
28 is in the best economic interest of the land in question or the State of Nebraska for  
29 landowners to be treated that way.

1 **Q: Is there any specific event or example you are aware of that makes this**  
2 **concern more real for you?**

3 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against  
4 Nemaha County, Nebraska landowner farmers who accidentally struck two  
5 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of  
6 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged  
7 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate  
8 copy of the Federal Court Complaint is here as **Attachment No. 4.**

9 **Q: What is your next concern with the Easement language?**

10 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as  
11 they choose unless 1) any Landowner use interferes in any way with  
12 TransCanada's exercise of any of its rights within the Easement, or 2)  
13 TransCanada decides to take any action on the property it deems necessary to  
14 prevent injury, endangerment or interference with anything TransCanada deems  
15 necessary to do on the property. Landowner is also forbidden from excavating  
16 without prior authorization by TransCanada. So my understanding is that  
17 TransCanada will unilaterally determine what Landowner can and can't do based  
18 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada  
19 could also completely deny my request to excavate. Further, TransCanada retains  
20 all "privileges necessary or convenient for the full use of the rights" granted to  
21 them in the Easement. Again, TransCanada unilaterally can decide to the  
22 detriment of the property rights of Landowner what TransCanada believes is  
23 necessary or convenient for it. And there is no option for any additional  
24 compensation to landowner for any right exercised by TransCanada that leads to  
25 the removal of trees or plants or vegetation or buildings or structures or facilities  
26 owned by Landowner of any kind. Such undefined and unilateral restrictions and  
27 rights without having to compensate Landowner for such further destruction or  
28 losses are not conducive to the protection of property rights or economic interest.

29 **Q: What is the next concern you have?**

1 A: The Easement also allows some rights for Landowner but restricts them at the  
2 same time and again at the sole and unilateral decision making of TransCanada.  
3 TransCanada will determine if the actions of Landowner might in anyway  
4 endanger or obstruct or interfere with TransCanada’s full use of the Easement or  
5 any appurtenances thereon to the pipeline itself or to their access to the Easement  
6 or within the Easement and TransCanada retains the right at any time, whether  
7 during growing season or not, to travel “within and along Easement Area on foot  
8 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will  
9 retain the rights to prevent any landowner activity that it thinks may “unreasonably  
10 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such  
11 undefined and unilateral restrictions are not conducive to the protection of  
12 property rights or economic interest.

13 **Q: What is the next concern you have with the Easement language?**

14 A: The Easement allows TransCanada sole discretion to burn or chip or bury under  
15 Landowner’s land any debris of any kind without any input or power of  
16 Landowner to demand an alternative method or location of debris disposal. Such  
17 unilateral powers would negatively affect Landowners property are not conducive  
18 to the protection of property rights or economic interest.

19 **Q: What is the next concern you have with the Easement language?**

20 A: Again, undefined terms leave a lot of room for confusion. What does the phrase  
21 “where rock is encountered” mean and why does TransCanada solely get to  
22 determine whether or not this phrase is triggered. This phrase could be used to  
23 justify installing the pipeline 24 inches beneath the surface. The ability to use this  
24 provision to minimal locate the pipeline at a depth of 24 inches could negatively  
25 affect Landowners property and is not conducive to the protection of property  
26 rights. A shallow pipeline is much more likely to become a danger and liability in  
27 the future given farming operations and buried irrigation lines and other factors  
28 common to the current typical agricultural uses of the land in question impacted  
29 by TransCanada’s preferred pipeline route.

1 **Q: What is the next concern you have with the Easement language?**

2 A: There are more vague concepts solely at the determination of TransCanada such as  
3 “as nearly as practicable” and “pre-construction position” and “extent reasonably  
4 possible.” There is nothing here that defines this or provides a mechanism for  
5 documenting or memorializing “pre-construction position” so as to minimize  
6 costly legal battles or wasted Landowner time attempting to recreate the soil  
7 condition on their fields or pasture. Such unilateral powers would negatively affect  
8 Landowners property are not conducive to the protection of property rights or  
9 economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: TransCanada maintains the unilateral right to abandon the pipeline and all  
12 appurtenances thereto in place on, under, across, or through Nebraska land at any  
13 time it chooses. There is no provision for Landowner compensation for such  
14 abandonment nor any right for the Landowner to demand removal. Such unilateral  
15 powers would negatively affect Landowners property and are not conducive to the  
16 protection of property rights or economic interest.

17 **Q: What is the next concern you have with the Easement language?**

18 A: TransCanada has the power to unilaterally move or modify the location of any  
19 Easement area whether permanent or temporary at their sole discretion.  
20 Regardless, if Landowner has taken prior steps relative to their property in  
21 preparation or planning of TransCanada’s taking of the initial easement area(s),  
22 the language here does not require TransCanada to compensate the Landowner if  
23 they decide to move the easement anywhere on Landowners property. Such  
24 unilateral powers would negatively affect Landowners property and are not  
25 conducive to the protection of property rights or economic interests.

26 **Q: What is the next concern you have with the Easement language?**

27 A: The Easement requires that all of the burdens and restrictions upon Landowner to  
28 transfer and be applicable to any future owner of the Land in question without the

1 ability of the future Landowner to modify or negotiate any of the language in  
2 question to which it will be held to comply.

3 **Q: What is the next concern you have with the Easement language?**

4 A: The Easement allows TransCanada to assign, transfer, or sell any part of the  
5 Easement to any person, company, country, etc. at their sole discretion at any time  
6 to anyone. This also means that any buyer of the easement could do the same to a  
7 third buyer and so on forever. There is no change of control or sale provision in  
8 place to protect the Landowner or Nebraska or to provide compensation for such  
9 change of control or ownership. It is not conducive to the protection of property  
10 rights or economic interests to allow unilateral unrestricted sale of the Easement  
11 thereby forcing upon the Landowner and our State a new unknown Easement  
12 owner.

13 **Q: What is the next concern you have with the Easement language?**

14 A: There are many terms in the Easement that are either confusing or undefined terms  
15 that are without context as to whether or not the Landowner would have any say  
16 so in determining what these terms mean or if the evaluation is solely in  
17 TransCanada's control. Some of these vague undefined terms are as follows:

- 18 i. "pipeline installation activities"
- 19 ii. "availability of labor and materials"
- 20 iii. "commercially reasonable costs and expenses"
- 21 iv. "reasonably anticipated and foreseeable costs and expenses"
- 22 v. "yield loss damages"
- 23 vi. "diminution in the value of the property"
- 24 vii. "substantially same condition"
- 25 viii. "an actual or potential hazard"
- 26 ix. "efficient"
- 27 x. "convenient"
- 28 xi. "endangered"
- 29 xii. "obstructed"

- 1 xiii. “injured”
- 2 xiv. “interfered with”
- 3 xv. “impaired”
- 4 xvi. “suitable crossings”
- 5 xvii. “where rock is encountered”
- 6 xviii. “as nearly as practicable”
- 7 xix. “pre-construction position”
- 8 xx. “pre-construction grade”
- 9 xxi. “various engineering factors”

10 Each one of these above terms and phrases as read in the context of the Easement  
11 could be problematic in many ways. Notably, undefined terms tend to only get  
12 definition in further legal proceedings after a dispute arises and the way the  
13 Easement is drafted, TransCanada has sole power to determine when and if a  
14 particular situation conforms with or triggers rights affected by these terms. For  
15 instance, “yield loss damages” should be specifically defined and spelled out  
16 exactly how the landowner is to be compensated and in what events on the front  
17 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,  
18 the Landowner is without contractual rights to define these terms or determine  
19 when rights related to them trigger and what the affects may be.

20 **Q: Do you have any other concerns about the Easement language that you can**  
21 **think of at this time?**

22 A: I reserve the right to discuss any additional concerns that I think of at the time of  
23 my live testimony in August.

24 **Q: Based upon what you have shared with the Commission above regarding**  
25 **TransCanada’s proposed Easement terms and agreement, do you believe**  
26 **those to be reasonable or just, under the circumstances of the pipeline’s**  
27 **impact upon you and your land?**

28 A: No, I do not believe those terms to be reasonable or just for the reasons that we  
29 discussed previously.

1 **Q: Did TransCanada ever offer you financial compensation for the rights that**  
2 **they sought to obtain in your land, and for what they sought to prevent you**  
3 **and any future land owner of your property from doing in the future?**

4 A: Yes, we received an offer from them.

5 **Q: As the owner of the land in question and as the person who knows it better**  
6 **than anyone else, do you believe that TransCanada offered you just, or fair,**  
7 **compensation for all of what they proposed to take from you so that their tar**  
8 **sands pipeline could be located across your property?**

9 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just  
10 offer for all the potential impacts and effects and the rights that I'm giving up, and  
11 what I we will be prevented from doing in the future and how their pipeline would  
12 impact my property for ever and ever.

13 **Q: Has TransCanada at any time offered to compensate you annually, such as**  
14 **wind farm projects do, for the existence of their potential tar sands pipeline**  
15 **across your property.**

16 A: No, never.

17 **Q: At any time did TransCanada present you with or request that you, as the**  
18 **owner of the land in question, sign and execute a document called, "Advanced**  
19 **Release of Damage Claims and Indemnity Agreement?"**

20 A: Yes, they did and it was included in the County Court lawsuit against us.

21 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**  
22 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

23 A: Yes, it is.

24 **Q: What was your understanding of that document?**

25 A: When I read that document in the plain language of that document, it was my  
26 understanding that TransCanada was attempting to pay me a very small amount at  
27 that time in order for me to agree to give up my rights to be compensated from  
28 them in the future related to any damage or impact they may have upon my

1 property “arising out of, in connection with, or alleged to resulted from  
2 construction or surveying over, under or on” my land.

3 **Q: Did you ever sign that document?**

4 A: No, I did not.

5 **Q: Why not?**

6 A; Because I do not believe that it is fair or just to try to get me to agree to a small  
7 sum of money when I have no idea how bad the impacts or damages that they, or  
8 their contractors, or subcontractors, or other agents or employees, may cause on  
9 my land at any time in the future that resulted from the construction or surveying  
10 or their activities upon my land.

11 **Q: When you reviewed this document, what did it make you feel?**

12 A: I felt angry because it was simply another attempt for TransCanada to try to pay  
13 very little to shield themselves against known and foreseeable impacts that their  
14 pipeline, and the construction of it, would have upon my land. It made me feel  
15 that they knew it was in their financial interest to pay me as little as possible to  
16 prevent me from ever having the opportunity to seek fair compensation again, and  
17 that this must be based upon their experience of unhappy landowners and  
18 situations in other places where they have built pipelines.

19 **Q: Has TransCanada ever contacted you and specifically asked you if you  
20 thought their proposed location of their proposed pipeline across your land  
21 was in your best interest?**

22 A: No, they have not.

23 **Q: Has TransCanada ever contacted you and specifically asked you if you  
24 thought their proposed location of their proposed pipeline across your land  
25 was in the public interest of the State of Nebraska?**

26 A: No, they have not.

27 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the  
28 Takings Clause?**

29 A: Yes, I am.

1 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**  
2 **an American citizens property?**

3 A: My understanding is that, according to the United States Constitution, that if the  
4 government is going to take land for public use, then in that case, or by taking for  
5 public use, it can only occur if the private land owner is compensated justly, or  
6 fairly.

7 **Q: Has TransCanada ever contacted you specially to explain the way in which**  
8 **the public could use its proposed Keystone XL Pipeline?**

9 A: No, they have not.

10 **Q: Can you think of any way in which the public, that is the citizens of the State**  
11 **of Nebraska, can directly use the proposed TransCanada Keystone XL**  
12 **Pipeline, as it dissects the State of Nebraska?**

13 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the  
14 public benefits from this pipeline in any way, how they can use it any way, or how  
15 it's in the public interest in any way. By looking at the map, it is quite clear to me  
16 that the only reason it's proposed to come through Nebraska, is that because we  
17 are geographically in the way from between where the privately-owned Tar Sands  
18 are located to where TransCanada wants to ship the Tar Sands to refineries in  
19 Houston, Texas.

20 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**  
21 **crude petroleum, or oil and petroleum by-products that you would like to**  
22 **ship in its pipeline?**

23 A: No, it has not.

24 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**  
25 **products that you, at this time or any time in the future, would desire to place**  
26 **for transport within the proposed TransCanada Keystone XL Pipeline?**

27 A: No, I do not.

1 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**  
2 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**  
3 **products within the proposed TransCanada Keystone XL Pipeline?**

4 A: No, I do not. I've never heard of such a person or company like that.

5 **Q: Do you pay property taxes for the land that would be affected and impacted**  
6 **at the proposed TransCanada Keystone XL Pipeline?**

7 A: Yes, I do.

8 **Q: Why do you pay property taxes on that land?**

9 A: Because that is the law. The law requires us to pay the property taxes as the owner  
10 of that property.

11 **Q: Because you follow the law and pay property taxes, do you believe you**  
12 **deserve any special consideration or treatment apart from any other person**  
13 **or company that pays property taxes?**

14 A: Well no, of course not. It's the law to pay property taxes if you own property. It's  
15 just what you do.

16 **Q: Do you believe the fact that you pay property taxes entitles you to special**  
17 **treatment of any kind, or special rights of any kind?**

18 A: No, of course not.

19 **Q: Do you believe the fact that you pay property taxes on your land would be**  
20 **enough to qualify you to have the power of eminent domain to take land of**  
21 **your neighbors or other people in your county, or other people across the**  
22 **state of Nebraska?**

23 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that  
24 I expect an award for or any type of special consideration.

25 **Q: Have you at any time ever employed any person other than yourself?**

26 A: Well, yes I have.

27 **Q: Do you believe that the fact that you have, at some point in your life,**  
28 **employed one or more other persons entitle you to any special treatment or**

1           **consideration above and beyond any other Nebraskan that has also employed**  
2           **one or more persons?**

3   A:   No, of course not.

4   **Q:   Do you believe that the fact that you, as a Nebraska land owner and taxpayer**  
5           **have at one point employed another person within this state, entitles you to**  
6           **preferential treatment or consideration of any kind?**

7   A:   No, of course not. If I choose to employ someone that decision is up to me. I  
8           don't deserve any special treatment or consideration for that fact.

9   **Q:   At the beginning of your statement, you briefly described your property that**  
10           **would be impacted by the potential Keystone XL Pipeline. I would like you to**  
11           **give the Commissioners a sense of specifically how you believe the proposed**  
12           **Keystone XL Pipeline and its preferred route, which proposes to go across**  
13           **your land, how it would in your opinion based on your knowledge,**  
14           **experience, and background of your land, affect it. So please share with the**  
15           **Commissioners the characteristics of your land that you believe is important**  
16           **for them to understand, while they evaluate TransCanada's application for a**  
17           **route for its proposed pipeline to cross Nebraska and across your land,**  
18           **specifically.**

19   A:   The terms of the easement essentially guarantee that the pipe and its remaining  
20           contents will be left in the ground "as is." In this case, this would mean depositing  
21           the contents directly into the water table, or excavating the pipe in an area where it  
22           is difficult to operate machinery, entailing additional expense. This is in no way  
23           compensated by the terms of the easement. The terms of the easement must be  
24           addressed in order for the Commission to truly consider property rights, economic  
25           interests, the welfare of Nebraska, and the balancing of the proposed routes against  
26           all they will affect and impact.

27   **Q:   Do you have any concerns TransCanada's fitness as an applicant for a major**  
28           **crude oil pipeline in its preferred location, or ultimate location across the**  
29           **state of Nebraska?**

1 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly  
2 or even bullied around and being made to feel scared that they did not have any  
3 options but to sign whatever papers TransCanada told them they had to. I am  
4 aware of folks being threatened that their land would be taken if they didn't follow  
5 what TransCanada was saying. I am aware of tactics to get people to sign  
6 easements that I don't believe have any place in Nebraska or anywhere such as  
7 TransCanada or some outfit associated with it hiring a pastor or priest to pray with  
8 landowners and convince them they should sign TransCanada's easement  
9 agreements. I am aware of older folks and widows or widowers feeling they had  
10 no choice but to sign TransCanada's Easement and they didn't know they could  
11 fight or stand up for themselves. From a more practical standpoint, I am worried  
12 that according to their answer to our Interrogatory No. 211, TransCanada only  
13 owns and operates one (1) major oil pipeline. They simply do not have the  
14 experience with this type of pipeline and that scares me. There are others but that  
15 is what I can recollect at this time and if I remember more or my recollection is  
16 refreshed I will share those with the Commissioners at the Hearing in August.

17 **Q: Do you believe TransCanada's proposed method of compensation to you as a**  
18 **landowner is reasonable or just?**

19 A: No, I do not.

20 **Q: Do you have any concern about limitations that the construction of this**  
21 **proposed pipeline across your affected land would prevent construction of**  
22 **future structures upon the portion of your land affected by the proposed**  
23 **easement and immediately surrounding areas?**

24 A: Well yes, of course I do. We would not be able to build many, if any, types of  
25 structures directly across or touching the easement, and it would be unwise and I  
26 would be uncomfortable to build anything near the easement for fear of being  
27 blamed in the future should any damage or difficulty result on my property in  
28 regards to the pipeline.

29 **Q: Do you think such a restriction would impact you economically?**

1 A: Well yes, of course.

2 **Q: How do you think such a restriction would impact you economically?**

3 A: The future of this land may not be exactly how it's being used as of this moment,  
4 and having the restrictions and limiting my ability to develop my land in certain  
5 ways presents a huge negative economic impact on myself, my family, and any  
6 potential future owner of the property. You have no idea how I or the future owner  
7 may want to use this land in the future or the other land across Nebraska  
8 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years  
9 ago it would have been hard to imagine all the advances that we have now or how  
10 things change. Because the Easement is forever and TransCanada gets the rights in  
11 my land forever we have to think with a very long term view. By placing their  
12 pipeline on under across and through my land that prevents future development  
13 which greatly negatively impacts future taxes and tax revenue that could have  
14 been generated by the County and State but now will not. When you look at the  
15 short blip of economic activity that the two years of temporary construction efforts  
16 may bring, that is far outweighed by the perpetual and forever loss of opportunity  
17 and restrictions TransCanada is forcing upon us and Nebraska.

18 **Q: Do you have any concerns about the environmental impact of the proposed**  
19 **pipeline?**

20 A: Yes, I do.

21 **Q: What are some of those concerns?**

22 A: As an affected land owner and Nebraskan, I am concerned that any construction,  
23 operation, and/or maintenance of the proposed Keystone XL Pipeline would have  
24 a detrimental impact upon the environment of my land specifically, as well as the  
25 lands near my land and surrounding the proposed pipeline route.

26 **Q: Do you have any other environmental concerns?**

27 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in  
28 construction and/or maintenance and operation. I am concerned about spills and

1 leaks that TransCanada has had in the past and will have in the future. This could  
2 be catastrophic to my operations or others and to my county and the State.

3 **Q: Do you have any thoughts regarding if there would be an impact upon the**  
4 **natural resources on or near your property due to the proposed pipeline?**

5 A: Yes, I believe that any construction, operation, and/or maintenance of the  
6 proposed Keystone XL Pipeline would have detrimental impacts upon the natural  
7 resources of my land, and the lands near and surrounding the proposed pipeline  
8 route.

9 **Q: Do you have any worries about potential impacts from the proposed pipeline**  
10 **to the soil of your land, or land near you?**

11 A: Yes, I believe that any construction, operation, and/or maintenance of the  
12 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of  
13 land, as well as land along and surrounding the proposed pipeline route. This  
14 includes, but is not limited to, the reasons that we discussed above of disturbing  
15 the soil composition and makeup as it has naturally existed for thousands and  
16 millions of years during the construction process, and any future maintenance or  
17 removal process. I'm gravely concerned about the fertility and the loss of  
18 economic ability of my property to grow the crops, or grow the grasses, or grow  
19 whatever it is at that time they exist on my property or that I may want to grow in  
20 the future, or that a future owner may want to grow. The land will never be the  
21 same from as it exists now undisturbed to after it is trenched up for the proposed  
22 pipeline.

23 **Q: Do you have any concerns about the potential impact of the proposed pipeline**  
24 **upon the groundwater over your land, or surrounding lands?**

25 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
26 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
27 groundwater of not only under my land, but also near and surrounding the pipeline  
28 route, and in fact, potentially the entire State of Nebraska. Water is life plain and

1 simple and it is simply too valuable to our State and the country to put at  
2 unreasonable risk.

3 **Q: Do you have any concern about the potential impact of the proposed pipeline**  
4 **upon the surface water on, or near or around your land?**

5 A: Yes, I have significant concerns that any construction, operation, and/or  
6 maintenance of the proposed Keystone XL Pipeline would have detrimental  
7 impact upon the surface water of not only within my property boundary, but along  
8 and near and surrounding the pipeline route, and in fact, across the state of  
9 Nebraska.

10 **Q: Do you have any concern about the potential impacts of the proposed pipeline**  
11 **upon the wildlife and plants, other than your growing crops on or near your**  
12 **land?**

13 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
14 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
15 wildlife and the plants, not only that are located on or can be found upon my land,  
16 but also near and along the proposed pipeline route.

17 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**  
18 **fair market value of your land?**

19 A: Yes, I do. I am significantly concerned about how the existence of the proposed  
20 pipeline underneath and across and through my property will negatively affect the  
21 fair market value at any point in the future, especially at that point in which I  
22 would need to sell the property, or someone in my family would need to sell the  
23 property. I do not believe, and certainly would not be willing to pay, the same  
24 price for land that had the pipeline located on it, versus land that did not. I hope  
25 there is never a point where I'm in a position where I have to sell and have to  
26 realize as much value as I can out of my land. But because it is my single largest  
27 asset, I'm gravely concerned that the existence of the proposed Keystone XL  
28 Pipeline upon my land will affect a buyer's willingness to pay as much as they  
29 would've paid and as much as I could've received, if the pipeline were not upon

1 my property. There are just too many risks, unknowns, impacts and uncertainties,  
2 not to mention all of the rights you give up by the nature of having the pipeline  
3 due to having the easement that we have previously discussed, for any reasonable  
4 person to think that the existence of the pipeline would not negatively affect my  
5 property's value.

6 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your  
7 testimony?**

8 A: Yes, I have.

9 **Q: Where have you seen that before?**

10 A: That is a map I think I first saw a couple years ago that shows the Keystone XL  
11 I-90 corridor alternate route of its proposed pipeline through Nebraska and I  
12 believe the portion of the alternative route in Nebraska essentially twins or  
13 parallels Keystone I.

14 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its  
15 Application, and as found on Attachment No. 7, here to your testimony, is in  
16 the public interest of Nebraska?**

17 A: No, I do not.

18 **Q: Do you believe that the Keystone mainline alternative route as shown on  
19 Attachment No. 7 included with your testimony here is a major oil pipeline  
20 route that is in the public interest of Nebraska?**

21 A: No, I do not.

22 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion  
23 of the proposed pipeline within Nebraska as found in Attachment No. 6 to  
24 your testimony, is in the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe there is any potential route for the proposed Keystone XL  
27 Pipeline across, within, under, or through the State of Nebraska that is in the  
28 public interest of the citizens of Nebraska?**

29 A: No, I do not.

1 **Q: Why do you hold that belief?**

2 A: Because there simply is no public interest based on all of the factors that I am  
3 aware and that I have read and that I have studied that this Commission is to  
4 consider that would establish that a for-profit foreign-owned pipeline that simply  
5 crosses Nebraska because we are geographically in the way between where tar  
6 sands are in Canada to where it wants to ship it to in Texas could ever be in the  
7 public interest of Nebraskans. We derive no benefit from this project. It is not for  
8 public use. Nebraska is simply in the way and when all considerations are taken in  
9 there is no net benefit of any kind for Nebraska should this project be placed in our  
10 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
11 the negative impacts and concerns.

12 **Q: What do you think about the applicant, TransCanada’s argument that it’s**  
13 **preferred route for its proposed Keystone XL Pipeline is in the public interest**  
14 **of Nebraska because it may bring temporary jobs during the construction**  
15 **phase to Nebraska?**

16 A: First of all, not all jobs are created equally. Most jobs that are created, whether  
17 temporary or on a permanent basis, don’t come with a project that has all the  
18 potential and foreseeable negative impacts, many of which we have discussed here  
19 and other witnesses throughout the course of this hearing have and will discuss. If  
20 I decide to hire and employ someone to help me out in my farming or ranching  
21 business, I’ve created a job but I haven’t done so at the risk or detrimental impact  
22 to my land or my town or my county or my state. And I’ve hired someone who is  
23 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce  
24 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all  
25 jobs are not created equal. Additionally, I understand from what I’m familiar with  
26 from TransCanada’s own statements that the jobs numbers they originally touted  
27 were determined to be a minute fraction of the permanent jobs that had been  
28 projected. According to their answer to our Interrogatory No. 191, TransCanada  
29 has created only thirty-four (34) jobs within Nebraska working specifically on

1           behalf of TransCanada and according to their answer to Interrogatory No. 196, as  
2           of May 5, 2017 they only employ one (1) temporary working within Nebraska.  
3           Further, according to their answer to Interrogatory No. 199, TransCanada would  
4           only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was  
5           constructed on its Preferred Route or its Mainline Alternative Route.

6   **Q:   Are you opposed to the preferred route of the proposed KXL Pipeline simply**  
7   **because it would cross your land?**

8   A:   No, absolutely not. I am opposed to this project because it is not in the public  
9       interest, neither within my community nor within our state.

10 **Q:   Would you be happier if instead of crossing your land, this proposed pipeline**  
11 **was to cross someone else's land?**

12 A:   No, absolutely not. I would get no joy in having a fellow citizen of my state have  
13       the fear and anxiety and potential foreseeable risks and negative impacts that this  
14       type of a project carrying this type of product brings foisted upon anyone in this  
15       state or any other state.

16 **Q:   Do you think there is any intelligent route for the proposed Keystone XL**  
17 **Pipeline to cross the state of Nebraska?**

18 A:   I don't believe there is an intelligent route because as I have stated I don't believe  
19       this project anywhere within Nebraska is within the public interest. However, if  
20       you are presenting a hypothetical that if this proposed KXL Pipeline absolutely  
21       had to go somewhere in the state of Nebraska, the only intelligent route I believe  
22       would be to twin or closely parallel the existing Keystone I Pipeline. Both the  
23       preferred route and the mainline alternative routes are economic liabilities our  
24       state cannot risk.

25 **Q:   What do you rely upon to make that statement?**

26 A:   Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,  
27       already exists in that area is reason enough as it is not in our best interest or the  
28       public interests to have more major oil pipelines crisscrossing our state. Second,  
29       they have all the infrastructure already there in terms of relationships with the

1 counties and local officials and first responders along that route. Third, they have  
2 already obtained easements from all the landowners along that route and have  
3 relationships with them. Fourth, that route avoids our most sensitive soils, the  
4 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala  
5 Aquifer. Sixth, they have already studied that route and previously offered it as an  
6 alternative. Seventh, it just makes the most sense that as a state we would have  
7 some intelligent policy of energy corridors and co-locating this type of  
8 infrastructure near each other.

9 **Q: Have you fully expressed each and every opinion, concern, or fact you would**  
10 **like the Public Service Commissioners to consider in their review of**  
11 **TransCanada's Application?**

12 **A:** No, I have not. I have shared that which I can think of as of the date I signed this  
13 document below but other things may come to me or my memory may be  
14 refreshed and I will add and address those things at the time of the Hearing in  
15 August and address any additional items at that time as is necessary. Additionally,  
16 I have not had an adequate amount of time to receive and review all of  
17 TransCanada's answers to our discovery and the discovery of others so it was  
18 impossible to competently and completely react to that in my testimony here and I  
19 reserve the right to also address anything related to discovery that has not yet  
20 concluded as of the date I signed this document below. Lastly, certain documents  
21 requested have not yet been produced by TransCanada and therefore I may have  
22 additional thoughts on those I will also share at the hearing as needed.

23 **Q: What is it that you are requesting the Public Service Commissioners do in**  
24 **regards to TransCanada's application for the proposed Keystone XL Pipeline**  
25 **across Nebraska?**

26 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond  
27 a temporary job spike that this project may bring to a few counties and beyond the  
28 relatively small amount of taxes this proposed foreign pipeline would possibly  
29 generate. And, instead think about the perpetual and forever impacts of this

1 pipeline as it would have on the landowners specifically, first and foremost, but  
2 also thereby upon the entire state of Nebraska, and to determine that neither the  
3 preferred route nor the Keystone mainline alternative route are in the public  
4 interest of the citizens of the state of Nebraska. And if the Commissioners were  
5 inclined to modify TransCanada's proposed routes and were to be inclined to grant  
6 an application for a route in Nebraska, that the only potential route that would  
7 make any intelligent sense whatsoever would be twinning or near paralleling of  
8 the proposed KXL with the existing Keystone I pipeline. It simply does not make  
9 sense to add yet another major oil pipeline crisscrossing our state creating new  
10 pumping stations, creating new impacts on additional counties and communities  
11 and going through all of the court processes with myself and other landowners like  
12 me when this applicant already has relationships with the landowners, the towns  
13 and the communities along Keystone I, and that Keystone I is firmly outside of the  
14 sand hills and a significantly further portion away from the heart of the Ogallala  
15 Aquifer than the preferred route or the Keystone mainline alternative route.

16 **Q: Does Attachment No. 8 here contain other documents you are competent to**  
17 **speak about that you wish to be part of your testimony and to discuss in more**  
18 **detail as needed at the August 2017 Hearing?**

19 A: Yes.

20 **Q: Are all of your statements in your testimony provided above true and**  
21 **accurate as of the date you signed this document to the best of your**  
22 **knowledge?**

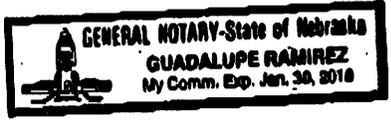
23 A: Yes, they are.

24 **Q: Thank you, I have no further questions at this time and reserve the right to**  
25 **ask you additional questions at the August 2017 Hearing.**

Karen Berry  
Karen Berry

Subscribed and Sworn to me before this 30<sup>th</sup> day of May, 2017.

Guadalupe Ramirez  
Notary Public



**Attachment No. 1**



Karen G. Berry

S.035  
T.028N  
R.008W

S.036  
T.028N  
R.008W

S.002  
T.027N  
R.008W  
IMAGERY: NAIP 2015  
0 250 500 Feet

S.001  
T.027N  
R.008W



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
Karen G. Berry

**TRACT NO.** ML-NE-AT-30110.000  
**STATE:** Nebraska  
**COUNTY:** Antelope  
**SECTION:** 036  
**TOWNSHIP:** 028N  
**RANGE:** 008W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

**Attachment No. 2**



**Attachment No. 3**

**Prepared by and after recording  
please return to:**  
TransCanada Keystone Pipeline, LP  
1106 Benjamin Avenue, Suite 600  
Norfolk, NE 68701

---

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-AT-30110.000

**EASEMENT AND RIGHT-OF-WAY  
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Karen G. Berry**, whose mailing address is 904 McCoy Lane, Neligh, NE 68756 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip

of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Antelope, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 79 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the W1/2 of the SW1/4 of Section 36, T28N, R8W of the 6th P.M., as recorded in Book 95, Page 557 and Book 95, Page 423 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the

negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR(S):

\_\_\_\_\_  
**Karen G. Berry**

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Karen G. Berry**

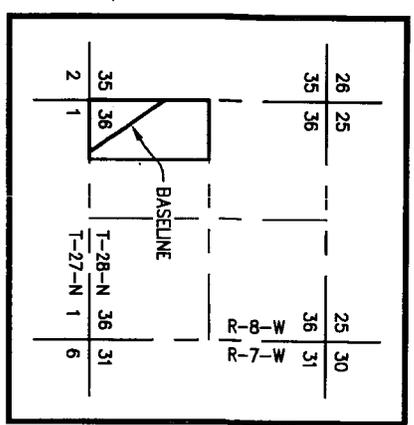
\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

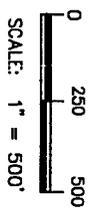
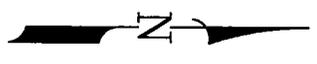
**LEGEND**  
 R PROPERTY LINE  
 S SECTION LINE  
 \$ PROPOSED  
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE  
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY  
 D.R.A.C.N. DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA

**ANTELOPE COUNTY, NEBRASKA**  
**T-28-N, R-8-W, SECTION 36**  
**ML-NE-AT-30110.000**

**BERRY, KAREN**  
 VOLUME 95, PAGE 557  
 VOLUME 95, PAGE 423  
 D.R.A.C.N.

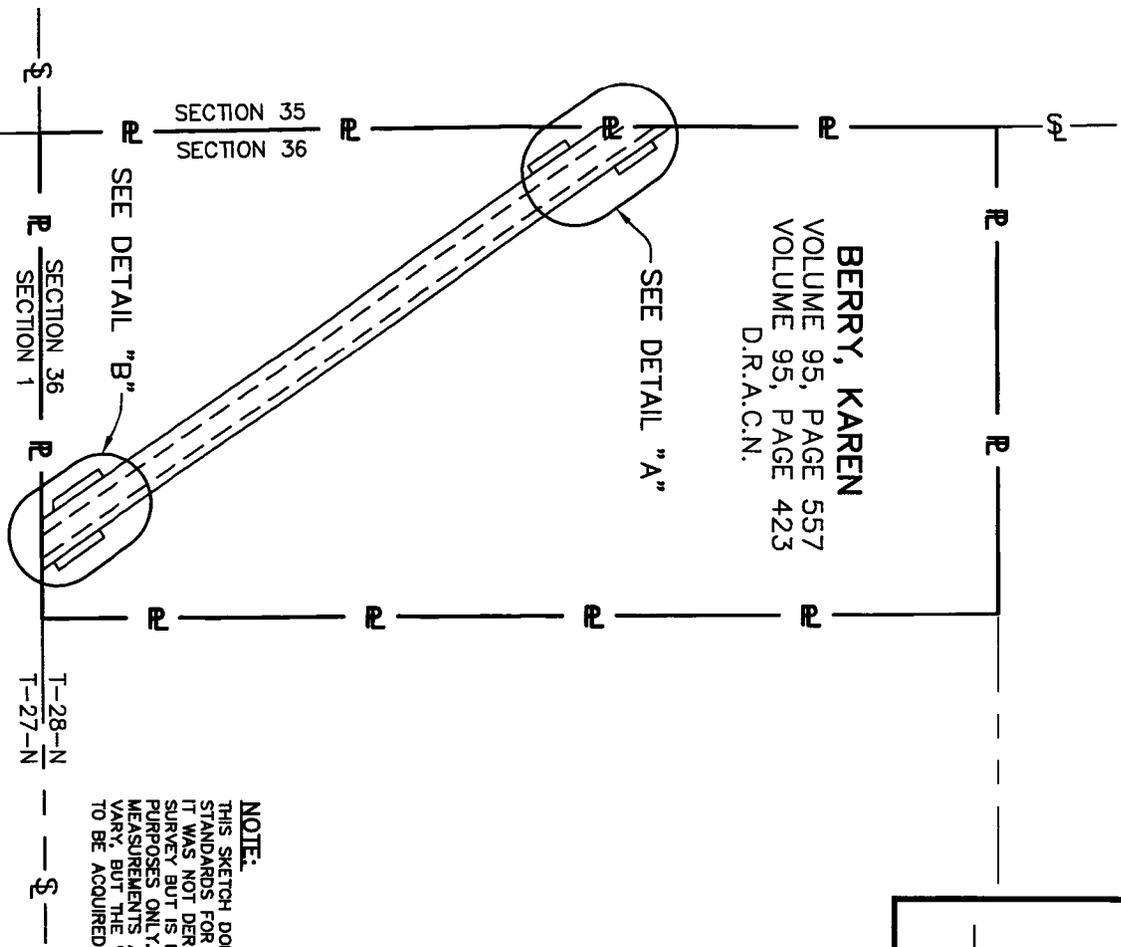


**VICINITY MAP**  
 N.T.S.



**TRACT LEGAL DESCRIPTION:**  
 W/2 SW/4 OF SECTION 36,  
 T-28-N, R-8-W

**NOTE:**  
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.





**TransCanada**  
*In business to deliver*

**KEYSTONE XL PROJECT**  
**EASEMENT AREA**  
**ACROSS THE PROPERTY OF**  
**BERRY, KAREN**  
**ML-NE-AT-30110.000**

PROJECT: **XL**      **EXHIBIT A**

APPROVED BY: \_\_\_\_\_      DRAWING NUMBER: \_\_\_\_\_

SLR: \_\_\_\_\_      XL-08-ML-SK-3399

NO. \_\_\_\_\_      REVISION: \_\_\_\_\_      DATE: \_\_\_\_\_

SCALE: \_\_\_\_\_      DATE: \_\_\_\_\_      DRAWN BY: \_\_\_\_\_      CHECKED BY: \_\_\_\_\_

1" = 500'      11/05/14      JN      ALS



SHEET 1 OF 2

AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.3 ACRE

TOTAL DISTANCE ACROSS PROPERTY: 2,012'±

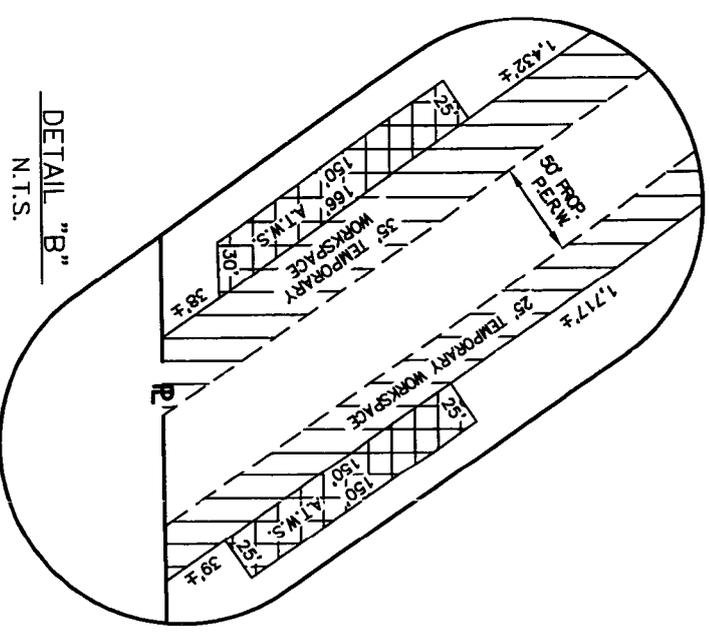
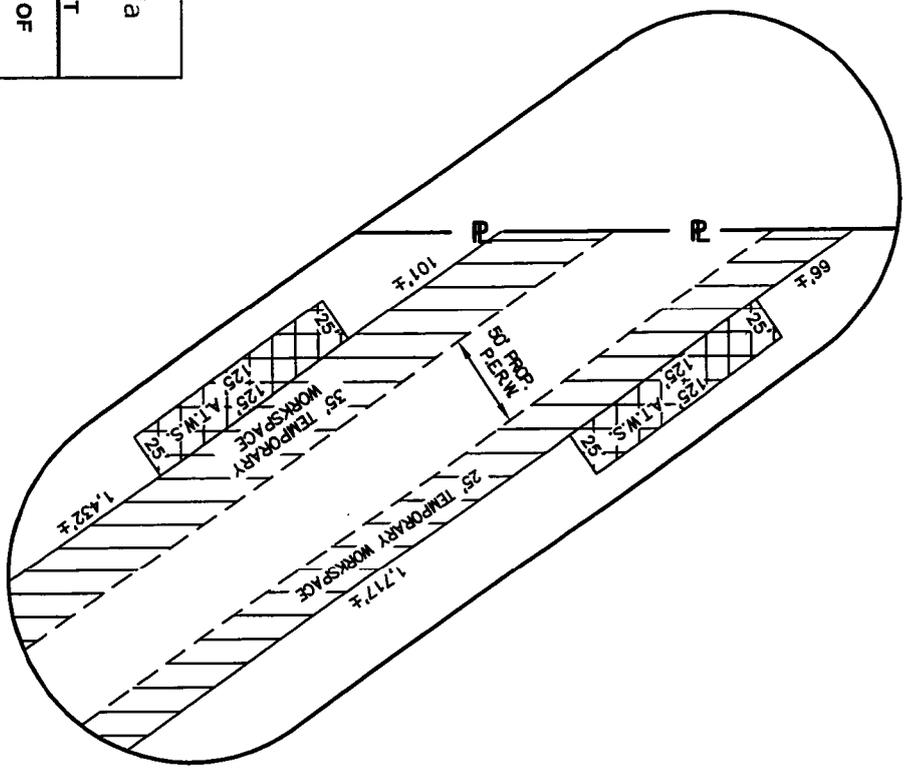
AREA OF PERMANENT EASEMENT: 2.3 ACRES

AREA OF TEMPORARY WORKSPACE: 2.7 ACRES

**LEGEND**  
 P PROPERTY LINE  
 R PROP. A.T.W.S.  
 F.L.R.W.  
 PROPOSED  
 ADDITIONAL TEMPORARY WORKSPACE  
 PERMANENT EASEMENT & RIGHT OF WAY

**ANTELOPE COUNTY, NEBRASKA**

T-28-N, R-8-W, SECTION 36  
 ML-NE-AT-30110.000



DETAIL "A"  
 N.T.S.

DETAIL "B"  
 N.T.S.



In business to deliver

**KEYSTONE XL PROJECT**  
**EASEMENT AREA**  
**ACROSS THE PROPERTY OF**  
**BERRY, KAREN**  
 ML-NE-AT-30110.000

PROJECT: XL EXHIBIT A

APPROVED BY: DRAWING NUMBER

SLR: XL-08-ML-SK-3399

NO. REVISION DATE

SCALE DATE DRAWN BY CHECKED BY

1" = 500' 11/05/14 JN ALS



The new identity of Tru

**NOTE:**  
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

**Attachment No. 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE )  
COMPANY, a New York Corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RICHARD ANDREW, JANE ANDREW, )  
LUKE ANDREW, and BRYCE ANDREW, )  
 )  
Defendants. )

CASE NO. \_\_\_\_\_

**COMPLAINT**

**COMES NOW** Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

**PARTIES**

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

**JURISDICTION AND VENUE**

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

### GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$ , Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

### **FIRST CLAIM: NEGLIGENCE**

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

**SECOND CLAIM: TRESPASS**

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

**WHEREFORE** Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

**JURY DEMAND**

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,  
Plaintiff,

By:     /s/ Albert M. Engles      
ENGLES, KETCHAM, OLSON, & KEITH, P.C.  
1350 Woodmen Tower  
1700 Farnam Street  
Omaha, Nebraska 68102  
(402) 348-0900  
(402) 348-0904 (Facsimile)  
Albert M. Engles, #11194  
Dan H. Ketcham, #18930  
Michael L. Moran, #24042  
James C. Boesen, #24862

**Attachment No. 5**

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-AT-30110.000

I, Karen G. Berry, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Eight Hundred Sixty Two Dollars and No Cents (\$2,862.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Antelope, State of Nebraska:

**W/2 SW/4**

**Section 36, Township 28N, Range 8W**

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I have hereunto set our hands on this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_.

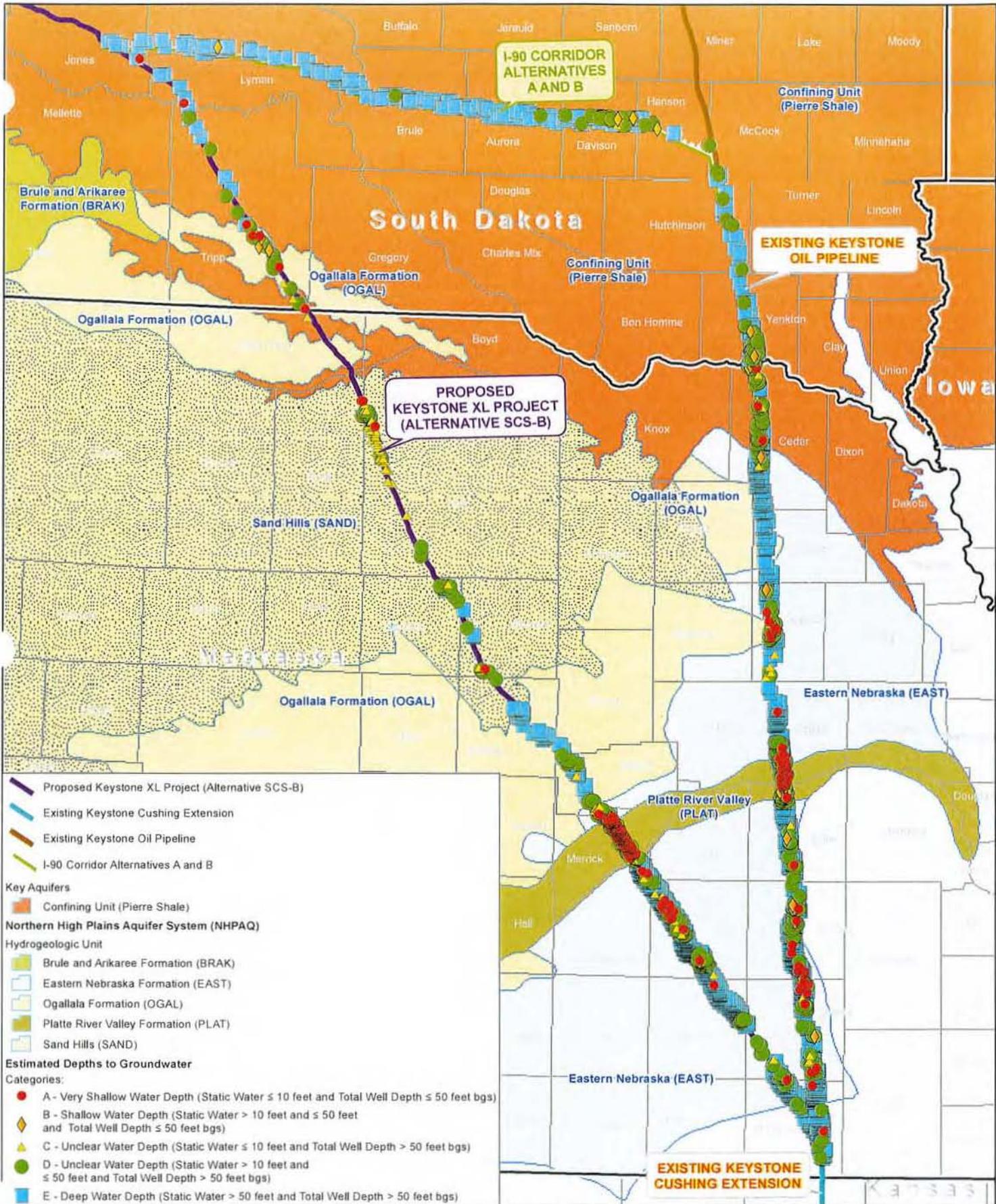
\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

**Attachment No. 6**



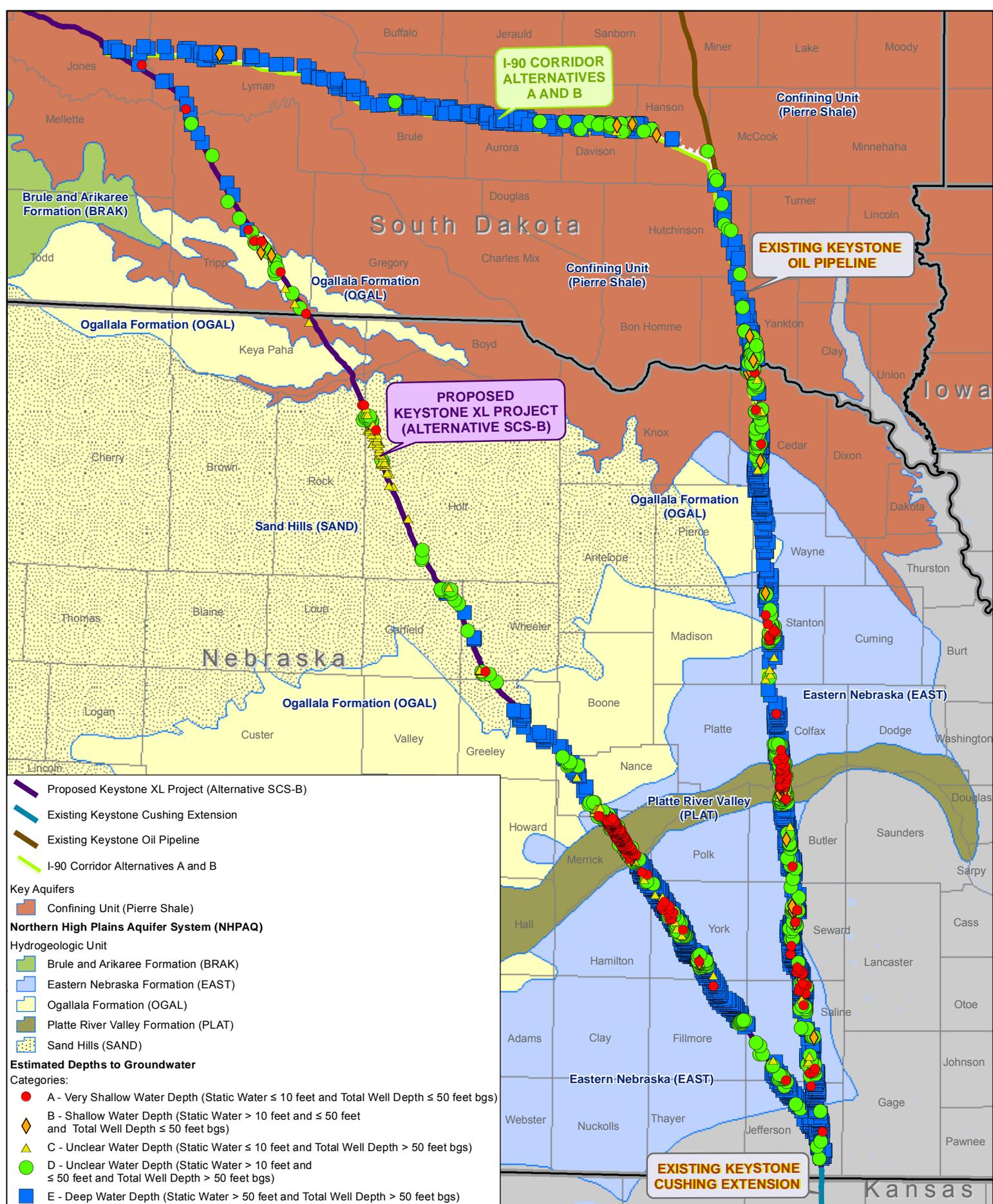
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



### KEYSTONE XL PROJECT

Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

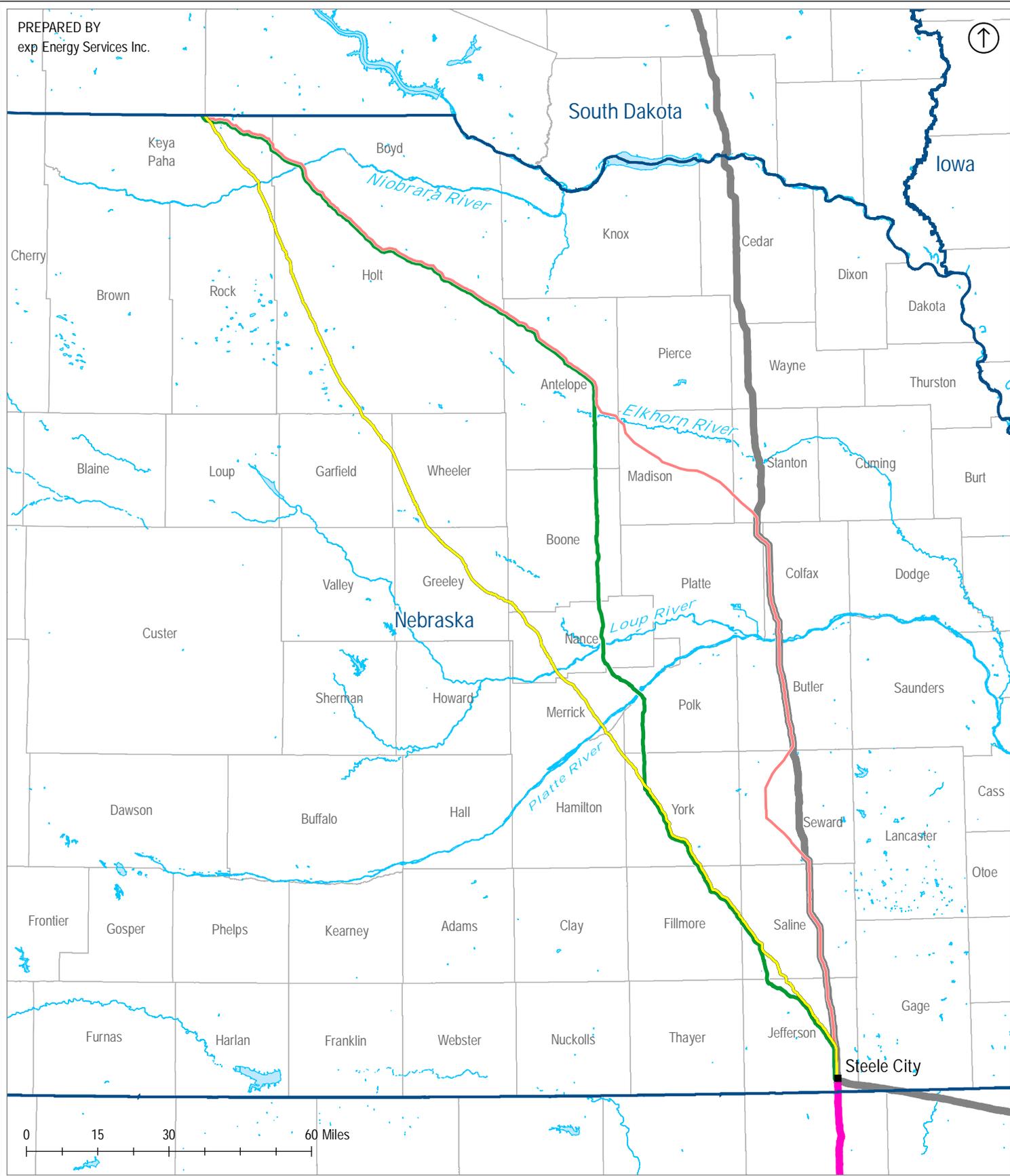
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

### KEYSTONE XL PROJECT

Figure 4.3.3-8  
 I-90 Corridor Alternatives A and B  
 Key Aquifers and Potable Water Wells  
 within 2-mile Corridor

**Attachment No. 7**



LEGEND	
	PREFERRED ROUTE
	SANDHILLS ALTERNATIVE ROUTE
	KEYSTONE MAINLINE ALTERNATIVE ROUTE
	KEYSTONE MAINLINE (PHASE I)
	KEYSTONE CUSHING EXTENSION (PHASE II)
	WATERBODY
	STATE BOUNDARY
	COUNTY BOUNDARY

KEYSTONE XL PROJECT

**FIGURE 2.2-2**

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

**Attachment No. 8**



Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

**TransCanada Keystone Pipeline, LP  
for Route Approval of Keystone XL  
Pipeline Project, Pursuant to *Major Oil  
Pipeline Siting Act***

**Direct Testimony of  
Johnnie Bialas in Support of  
Landowner Intervenors**

State of Nebraska            )  
  ) ss.  
Nance County                )

1   **Q:    Please state your name.**

2   A:    My name is Johnnie Bialas.

3   **Q:    Are you an intervener in the Public Service Commission’s proceedings**  
4       **regarding TransCanada’s application for approval of its proposed Keystone**  
5       **XL tar sands pipeline across Nebraska?**

6   A:    Yes, I am.

7   **Q:    Do you own land in Nebraska, either directly or through an entity of which**  
8       **you are an owner that could be affected by the proposed TransCanada**  
9       **Keystone XL pipeline?**

10 A:    Yes, I do and it is located in Nance County.

11 **Q:    Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**  
12 **photo(s) of your land in question here with the area of the proposed KXL**  
13 **pipeline depicted?**

14 A:    Yes.

15 **Q:    If you are you married tell us your spouse’s name please?**

16 A:    Maxine Bialas

1 **Q: How long the land has been in your family?**

2 A: Our farm has been in the Bialas family for 100 years.

3 **Q: Do you earn any income from this land?**

4 A: Yes.

5 **Q: Have you depended on the income from your land to support your livelihood**  
6 **or the livelihood of your family?**

7 A: Yes.

8 **Q: Have you ever in the past or have you thought about in the future leasing all**  
9 **or a portion of your land in question here?**

10 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective  
11 tenant may try to negotiate a lower price for my land if it had the pipeline on it and  
12 all the restrictions and risks and potential negative impacts to farming or ranching  
13 operations as opposed to land that did not have those same risks. If I was looking  
14 to lease or rent ground I would pay more for comparable non-pipeline land than I  
15 would for comparable pipeline land and I think most folks would think the same  
16 way. This is another negative economic impact that affects the landowner and the  
17 county and the state and will forever and ever should TransCanada's preferred or  
18 mainline alternative routes be approved. If they were to twin or closely parallel to  
19 Keystone I the vast majority of landowners would be those that already have a  
20 pipeline so there would be considerable less new incremental negative impacts.

21 **Q: Do you have similar concerns about selling the land?**

22 A: Well I hope not to have to sell the land in my lifetime but times change and you  
23 never know what is around the corner and yes I am concerned that if another piece  
24 of ground similar to mine were for sale and it did not have the pipeline and mine  
25 did that I would have a lower selling price. I think this would be true for pipeline  
26 ground on both the preferred and mainline alternative routes.

27 **Q: What is your intent with your land after you die?**

28 A: Like I said I hope not to have to sell and I hope that it stays in the family for years  
29 to come but I have thought about getting out if this pipeline were to come through.

1 **Q: Are you aware that the preferred route of TransCanada’s Keystone XL**  
2 **Pipeline would cross the land described above and owned by you?**

3 A: Yes.

4 **Q: Were you or an entity for which you are a member, shareholder, or director**  
5 **previously sued by TransCanada Keystone Pipeline, LP?**

6 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a  
7 petition for condemnation against our land so it could place its proposed pipeline  
8 within an easement that it wanted to take from us on our land.

9 **Q: Did you defend yourself and your land in that condemnation action?**

10 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees  
11 and expenses in our resistance of TransCanada’s lawsuit against us.

12 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**  
13 **incurred?**

14 A: No, they have not.

15 **Q: In its lawsuit against you, did TransCanada identify the amount of your**  
16 **property that it wanted to take for its proposed pipeline?**

17 A: The lawsuit against us stated they would take the amount of property that is  
18 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant  
19 and equipment reasonably necessary to operate the pipeline.

20 **Q: Did TransCanada define what they meant by “property that is reasonably**  
21 **necessary”?**

22 A: No, they did not.

23 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**  
24 **property portion of your land?**

25 A: Yes, they did.

26 **Q: Did TransCanada describe what rights it proposed to take related to the**  
27 **eminent domain property on your land?**

28 A: Yes, they did.

29 **Q: What rights that they proposed to take did they describe?**

1 A: TransCanada stated that the eminent domain property will be used to “lay, relay,  
2 operate, and maintain the pipeline and the plant and equipment reasonably  
3 necessary to operate the pipeline, specifically including surveying, laying,  
4 constructing, inspecting, maintaining, operating, repairing, replacing, altering,  
5 reconstructing, removing and abandoning one pipeline, together with all fittings,  
6 cathodic protection equipment, pipeline markers, and all their equipment and  
7 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,  
8 petroleum products, and all by-products thereof.”

9 **Q: Prior to filing an eminent domain lawsuit to take your land that**  
10 **TransCanada identified, do you believe they attempted to negotiate in good**  
11 **faith with you?**

12 A: No, I do not.

13 **Q: Did TransCanada at any time approach you with or deliver to you their**  
14 **proposed easement and right-of-way agreement?**

15 A: Yes, they did.

16 **Q: At the time you reviewed TransCanada’s easement and right-of-way**  
17 **agreement, did you understand that they would be purchasing a fee title**  
18 **interest in your property or that they were taking something else?**

19 A: I understood that they proposed to have the power to take both a temporary  
20 construction easement that could last for a certain period of time and then also a  
21 permanent easement which they described to be 50 feet across or in width, and  
22 that would run the entire portion of my property from where a proposed pipeline  
23 would enter my property until where it would exit the property.

24 **Q: Is the document included with your testimony here as Attachment No. 2, a**  
25 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**  
26 **Way agreement that they included with their condemnation lawsuit against**  
27 **you?**

28 A: Yes, it is.

1 **Q: Have you had an opportunity to review TransCanada’s proposed Easement**  
2 **and Right-of-Way agreement?**

3 A: Yes, I have.

4 **Q: What is your understanding of the significance of the Easement and Right-of-**  
5 **Way agreement as proposed by TransCanada?**

6 A: My understanding is that this is the document that will govern all of the rights and  
7 obligations and duties as well as the limitations of what I can and cannot do and  
8 how I and any future landowner and any person I invite to come onto my property  
9 must behave as well as what TransCanada is and is not responsible for and how  
10 they can use my land.

11 **Q: After reviewing TransCanada’s proposed Easement and Right-of-Way**  
12 **agreement do you have any concerns about any portions of it or any of the**  
13 **language either included in the document or missing from the proposed**  
14 **document?**

15 A: Yes, I have a number of significant concerns and worries about the document and  
16 how the language included and the language not included potentially negatively  
17 impacts my land and thereby potentially negatively impacts my community and  
18 my state.

19 **Q: I would like you to walk the Commissioners through each and every one of**  
20 **your concerns about TransCanada’s proposed Easement and Right-of-Way**  
21 **agreement so they can develop an understanding of how that language and**  
22 **the terms of that contract, in your opinion, potentially negatively impacts you**  
23 **and your land. So, if you can start at the beginning of that document and**  
24 **let’s work our way through it, okay?**

25 A: Yes, I’ll be happy to express my concerns about TransCanada’s proposed  
26 Easement and Right-of-Way agreement and how it negatively could affect my  
27 property rights and my economic interests.

28 **Q. Okay, let’s start with your first concern please.**

1 A: The very first sentence talks about consideration or how much money they will  
2 pay to compensate me for all of the known and unknown affects and all of the  
3 rights I am giving up and for all the things they get to do to my land and for what  
4 they will prevent me from doing on my land and they only will pay me one time at  
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the  
8 landowner because they want to have my land forever for use as they see fit so  
9 they can make a daily profit from their customers. If I was to lease ground from  
10 my neighbor I would typically pay twice a year every year as long as they granted  
11 me the rights to use their land. That only makes sense – that is fair. If I was going  
12 to rent a house in town I would typically pay monthly, every month until I gave up  
13 my right to use that house. By TransCanada getting out on the cheap and paying  
14 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax  
15 revenue collection on the money I would be paid and then pay taxes on and  
16 contribute to this state and this country. It is money I would be putting back into  
17 my local community both spending and stimulating the local economy and  
18 generating more economic activity right here. Instead TransCanada’s shareholders  
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, “does  
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a  
23 limited partnership...” and I have no idea who that really is. I have no idea who is  
24 forcing this pipeline on us or who the owners of the entities are, or what are the  
25 assets backing this limited partnership, or who the general partner is, or who all  
26 the limited partners are, and who makes up the ownership of the these partners or  
27 the structure or any of the basic things you would want to know and understand if  
28 you would want to do business with such an outfit. According to TransCanada’s  
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general  
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so  
3 basically nothing. That is really scary since the general partner has the liability but  
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**  
6 **percent clear on exactly who could become the owner of over 275 miles of**  
7 **Nebraska land?**

8 A: No.

9 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**  
10 **percent clear on exactly who will be operating and responsible for**  
11 **approximately 275 miles of tar sands pipeline underneath and through**  
12 **Nebraska land?**

13 A: No.

14 **Q: Okay, let's continue please with your concerns of the impacts upon your land**  
15 **and the State of Nebraska of TransCanada's easement terms.**

16 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter  
17 called "Grantee")..." and this concerns me because it would allow their easement  
18 to be transferred or sold to someone or some company or country or who knows  
19 what that I don't know and who we may not want to do business with. This  
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest  
21 bidder that could have terrible impacts upon all of Nebraska depending upon who  
22 may buy it and I don't know of any safeguards in place for us or the State to veto  
23 or have any say so in who may own, operate, or be responsible for this pipeline in  
24 the future.

25 **Q: Do you think that type of uncertainty and lack of control over a major piece**  
26 **of infrastructure crossing our State is in the public interest?**

27 A: No, certainly not, in fact, just the opposite.

28 **Q: What's next?**

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this  
2 really concerns me. Why does the easement and right-of-way have to be perpetual  
3 and permanent? That is the question myself and my family want an answer to.  
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any  
7 data proving there is a perpetual supply of tar sands. I am not aware in  
8 TransCanada's application where it proves there is a perpetual necessity for this  
9 pipeline. My understanding of energy infrastructure like wind towers is they have  
10 a decommission plan and actually take the towers down when they become  
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however  
12 will, and I want my family or future Nebraska families to have that land as  
13 undisturbed as possible and it is not in my interest or the public interest of  
14 Nebraska to be forced to give up perpetual and permanent rights in the land for  
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says  
18 "...abandoning in place..." so they can just leave this pipeline under my ground  
19 until the end of time just sitting there while they are not using it, but I am still  
20 prevented from doing on my land and using my land what I would like. If I owned  
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting  
22 there. It doesn't make sense and it scares me and it is not in my interest or the  
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that  
25 right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the  
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on  
2 Landowners property. It appears that TransCanada would define this phrase as  
3 needed. It would be wise to explain what types of TransCanada action constitutes  
4 “installation activity” For instance, would the placement and storage of an  
5 excavator or other equipment on or near the Easement property be an activity or  
6 would earth have to be moved before the activity requirement is triggered. This  
7 vague phrase is likely to lead to future disputes and litigation that is not in the best  
8 interest of the welfare of Nebraska and would not protect property interests. The  
9 24-months can also be extended in the case of “force majeure.” My understanding  
10 is that force majeure is often used to insulate a party to a contract when events  
11 occur that are completely out of their control. In TransCanada’s easement this is  
12 expanded to include “without limitation...availability of labor and materials.”  
13 Extending this language to labor and materials is problematic because these are  
14 two variables that TransCanada does have some or significant control over and to  
15 allow extension of the 24-month period over events not truly out of the control of  
16 TransCanada and without further provision for compensation for the Landowner is  
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of  
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially  
21 reasonable costs and expenses” will pay for damages caused but then limits  
22 TransCanada’s liability to certain circumstances. There is no definition of  
23 “commercially reasonable” and no stated right that the Landowner would get to  
24 determine the amounts of cost or expense that is “commercially reasonable.”  
25 TransCanada excepts out from their liability any damages that are caused by  
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of  
27 Landowner. It is understandable that if the Landowner were to willfully and  
28 intentionally cause damages to the pipeline that Landowner should be liable.  
29 However, anything short of willful misconduct should be the liability of

1 TransCanada who is subjecting the pipeline on the Landowner and who is making  
2 a daily profit from that pipeline. When evaluating the impact on property rights of  
3 this provision, you must consider the potentially extremely expensive fight a  
4 Landowner would have over this question of whether or not damage was an act of  
5 negligence. Putting this kind of potential liability upon the Landowner is  
6 incredibly problematic and is detrimental to the protection of property rights. I  
7 don't think this unilateral power which I can't do anything about as the landowner  
8 is in the best economic interest of the land in question or the State of Nebraska for  
9 landowners to be treated that way.

10 **Q: Is there any specific event or example you are aware of that makes this**  
11 **concern more real for you?**

12 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against  
13 Nemaha County, Nebraska landowner farmers who accidentally struck two  
14 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of  
15 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged  
16 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate  
17 copy of the Federal Court Complaint is here as **Attachment No. 3**.

18 **Q: What is your next concern with the Easement language?**

19 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as  
20 they choose unless 1) any Landowner use interferes in any way with  
21 TransCanada's exercise of any of its rights within the Easement, or 2)  
22 TransCanada decides to take any action on the property it deems necessary to  
23 prevent injury, endangerment or interference with anything TransCanada deems  
24 necessary to do on the property. Landowner is also forbidden from excavating  
25 without prior authorization by TransCanada. So my understanding is that  
26 TransCanada will unilaterally determine what Landowner can and can't do based  
27 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada  
28 could also completely deny my request to excavate. Further, TransCanada retains  
29 all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the  
2 detriment of the property rights of Landowner what TransCanada believes is  
3 necessary or convenient for it. And there is no option for any additional  
4 compensation to landowner for any right exercised by TransCanada that leads to  
5 the removal of trees or plants or vegetation or buildings or structures or facilities  
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and  
7 rights without having to compensate Landowner for such further destruction or  
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the  
11 same time and again at the sole and unilateral decision making of TransCanada.  
12 TransCanada will determine if the actions of Landowner might in anyway  
13 endanger or obstruct or interfere with TransCanada’s full use of the Easement or  
14 any appurtenances thereon to the pipeline itself or to their access to the Easement  
15 or within the Easement and TransCanada retains the right at any time, whether  
16 during growing season or not, to travel “within and along Easement Area on foot  
17 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will  
18 retain the rights to prevent any landowner activity that it thinks may “unreasonably  
19 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such  
20 undefined and unilateral restrictions are not conducive to the protection of  
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under  
24 Landowner’s land any debris of any kind without any input or power of  
25 Landowner to demand an alternative method or location of debris disposal. Such  
26 unilateral powers would negatively affect Landowners property are not conducive  
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase  
2 “where rock is encountered” mean and why does TransCanada solely get to  
3 determine whether or not this phrase is triggered. This phrase could be used to  
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this  
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively  
6 affect Landowners property are not conducive to the protection of property rights.  
7 A shallow pipeline is much more likely to become a danger and liability in the  
8 future given farming operations and buried irrigation lines and other factors  
9 common to the current typical agricultural uses of the land in question impacted  
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as  
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably  
14 possible.” There is nothing here that defines this or provides a mechanism for  
15 documenting or memorializing “pre-construction position” so as to minimize  
16 costly legal battles or wasted Landowner time attempting to recreate the soil  
17 condition on their fields or pasture. Such unilateral powers would negatively affect  
18 Landowners property are not conducive to the protection of property rights or  
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all  
22 appurtenances thereto in place on, under, across, or through Nebraska land at any  
23 time it chooses. There is no provision for Landowner compensation for such  
24 abandonment nor any right for the Landowner to demand removal. Such unilateral  
25 powers would negatively affect Landowners property are not conducive to the  
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any  
29 Easement area whether permanent or temporary at their sole discretion.

1           Regardless, if Landowner has taken prior steps relative the their property in  
2           preparation or planning of TransCanada’s taking of the initial easement area(s),  
3           the language here does not require TransCanada to compensate the Landowner if  
4           they decide to move the easement anywhere on Landowners property. Such  
5           unilateral powers would negatively affect Landowners property are not conducive  
6           to the protection of property rights or economic interests.

7   **Q:    What is the next concern you have with the Easement language?**

8   A:    The Easement requires that all of the burdens and restrictions upon Landowner to  
9           transfer and be applicable to any future owner of the Land in question without the  
10          ability of the future Landowner to modify or negotiate any of the language in  
11          question to which it will be held to comply.

12 **Q:    What is the next concern you have with the Easement language?**

13 A:    The Easement allows TransCanada to assign, transfer, or sell any part of the  
14          Easement to any person, company, country, etc. at their sole discretion at any time  
15          to anyone. This also means that any buyer of the easement could do the same to a  
16          third buyer and so on forever. There is no change of control or sale provision in  
17          place to protect the Landowner or Nebraska or to provide compensation for such  
18          change of control or ownership. It is not conducive to the protection of property  
19          rights or economic interests to allow unilateral unrestricted sale of the Easement  
20          thereby forcing upon the Landowner and our State a new unknown Easement  
21          owner.

22 **Q:    What is the next concern you have with the Easement language?**

23 A:    There are many terms in the Easement that are either confusing or undefined terms  
24          that are without context as to whether or not the Landowner would have any say  
25          so in determining what these terms mean or if the evaluation is solely in  
26          TransCanada’s control. Some of these vague undefined terms are as follows:

- 27           i. “pipeline installation activities”
- 28           ii. “availability of labor and materials”
- 29           iii. “commercially reasonable costs and expenses”

- 1 iv. “reasonably anticipated and foreseeable costs and expenses”
- 2 v. “yield loss damages”
- 3 vi. “diminution in the value of the property”
- 4 vii. “substantially same condition”
- 5 viii. “an actual or potential hazard”
- 6 ix. “efficient”
- 7 x. “convenient”
- 8 xi. “endangered”
- 9 xii. “obstructed”
- 10 xiii. “injured”
- 11 xiv. “interfered with”
- 12 xv. “impaired”
- 13 xvi. “suitable crossings”
- 14 xvii. “where rock is encountered”
- 15 xviii. “as nearly as practicable”
- 16 xix. “pre-construction position”
- 17 xx. “pre-construction grade”
- 18 xxi. “various engineering factors”

19 Each one of these above terms and phrases as read in the context of the Easement  
20 could be problematic in many ways. Notably, undefined terms tend to only get  
21 definition in further legal proceedings after a dispute arises and the way the  
22 Easement is drafted, TransCanada has sole power to determine when and if a  
23 particular situation conforms with or triggers rights affected by these terms. For  
24 instance, “yield loss damages” should be specifically defined and spelled out  
25 exactly how the landowner is to be compensated and in what events on the front  
26 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,  
27 the Landowner is without contractual rights to define these terms or determine  
28 when rights related to them trigger and what the affects may be.

1 **Q: Do you have any other concerns about the Easement language that you can**  
2 **think of at this time?**

3 A: I reserve the right to discuss any additional concerns that I think of at the time of  
4 my live testimony in August.

5 **Q: Based upon what you have shared with the Commission above regarding**  
6 **TransCanada's proposed Easement terms and agreement, do you believe**  
7 **those to be reasonable or just, under the circumstances of the pipeline's**  
8 **impact upon you and your land?**

9 A: No, I do not believe those terms to be reasonable or just for the reasons that we  
10 discussed previously.

11 **Q: Did TransCanada ever offer you financial compensation for the rights that**  
12 **they sought to obtain in your land, and for what they sought to prevent you**  
13 **and any future land owner of your property from doing in the future?**

14 A: Yes, we received an offer from them.

15 **Q: As the owner of the land in question and as the person who knows it better**  
16 **than anyone else, do you believe that TransCanada offered you just, or fair,**  
17 **compensation for all of what they proposed to take from you so that their tar**  
18 **sands pipeline could be located across your property?**

19 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just  
20 offer for all the potential impacts and effects and the rights that I'm giving up, and  
21 what we will be prevented from doing in the future and how their pipeline would  
22 impact my property for ever and ever.

23 **Q: Has TransCanada at any time offered to compensate you annually, such as**  
24 **wind farm projects do, for the existence of their potential tar sands pipeline**  
25 **across your property.**

26 A: No, never.

27 **Q: At any time did TransCanada present you with or request that you, as the**  
28 **owner of the land in question, sign and execute a document called, "Advanced**  
29 **Release of Damage Claims and Indemnity Agreement?"**

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 **Q: Is Attachment No. 4, to your testimony here, a true and accurate copy of the**  
3 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, it is.

5 **Q: What was your understanding of that document?**

6 A: When I read that document in the plain language of that document, it was my  
7 understanding that TransCanada was attempting to pay me a very small amount at  
8 that time in order for me to agree to give up my rights to be compensated from  
9 them in the future related to any damage or impact they may have upon my  
10 property “arising out of, in connection with, or alleged to resulted from  
11 construction or surveying over, under or on” my land.

12 **Q: Did you ever sign that document?**

13 A: No, I did not.

14 **Q: Why not?**

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small  
16 sum of money when I have no idea how bad the impacts or damages that they, or  
17 their contractors, or subcontractors, or other agents or employees, may cause on  
18 my land at any time in the future that resulted from the construction or surveying  
19 or their activities upon my land.

20 **Q: When you reviewed this document, what did it make you feel?**

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to  
22 shield themselves against known and foreseeable impacts that their pipeline, and  
23 the construction of it, would have upon my land. It made me feel that they knew it  
24 was in their financial interest to pay me as little as possible to prevent me from  
25 ever having the opportunity to seek fair compensation again, and that this must be  
26 based upon their experience of unhappy landowners and situations in other places  
27 where they have built pipelines.

1 **Q: Has TransCanada ever contacted you and specifically asked you if you**  
2 **thought their proposed location of their proposed pipeline across your land**  
3 **was in your best interest?**

4 A: No, they have not.

5 **Q: Has TransCanada ever contacted you and specifically asked you if you**  
6 **thought their proposed location of their proposed pipeline across your land**  
7 **was in the public interest of the State of Nebraska?**

8 A: No, they have not.

9 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**  
10 **Takings Clause?**

11 A: Yes, I am.

12 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**  
13 **an American citizens property?**

14 A: My understanding is that, according to the United States Constitution, that if the  
15 government is going to take land for public use, then in that case, or by taking for  
16 public use, it can only occur if the private land owner is compensated justly, or  
17 fairly.

18 **Q: Has TransCanada ever contacted you specially to explain the way in which**  
19 **the public could use its proposed Keystone XL Pipeline?**

20 A: No, they have not.

21 **Q: Can you think of any way in which the public, that is the citizens of the State**  
22 **of Nebraska, can directly use the proposed TransCanada Keystone XL**  
23 **Pipeline, as it dissects the State of Nebraska?**

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the  
25 public benefits from this pipeline in any way, how they can use it any way, or how  
26 it's in the public interest in any way. By looking at the map, it is quite clear to me  
27 that the only reason it's proposed to come through Nebraska, is that because we  
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in  
2 Houston, Texas.

3 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,  
4 crude petroleum, or oil and petroleum by-products that you would like to  
5 ship in its pipeline?**

6 A: No, it has not.

7 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-  
8 products that you, at this time or any time in the future, would desire to place  
9 for transport within the proposed TransCanada Keystone XL Pipeline?**

10 A: No, I do not.

11 **Q: Do you know anyone in the state of Nebraska who would be able to ship any  
12 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-  
13 products within the proposed TransCanada Keystone XL Pipeline?**

14 A: No, I do not. I've never heard of such a person or company like that.

15 **Q: Do you pay property taxes for the land that would be affected and impacted  
16 at the proposed TransCanada Keystone XL Pipeline?**

17 A: Yes, I do.

18 **Q: Why do you pay property taxes on that land?**

19 A: Because that is the law. The law requires us to pay the property taxes as the owner  
20 of that property.

21 **Q: Because you follow the law and pay property taxes, do you believe you  
22 deserve any special consideration or treatment apart from any other person  
23 or company that pays property taxes?**

24 A: Well no, of course not. It's the law to pay property taxes if you own property. It's  
25 just what you do.

26 **Q: Do you believe the fact that you pay property taxes entitles you to special  
27 treatment of any kind, or special rights of any kind?**

28 A: No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**  
2 **enough to qualify you to have the power of eminent domain to take land of**  
3 **your neighbors or other people in your county, or other people across the**  
4 **state of Nebraska?**

5 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that  
6 I expect an award for or any type of special consideration.

7 **Q: Have you at any time ever employed any person other than yourself?**

8 A: Well, yes I have.

9 **Q: Do you believe that the fact that you have, at some point in your life,**  
10 **employed one or more other persons entitle you to any special treatment or**  
11 **consideration above and beyond any other Nebraskan that has also employed**  
12 **one or more persons?**

13 A: No, of course not.

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**  
15 **have at one point employed another person within this state, entitles you to**  
16 **preferential treatment or consideration of any kind?**

17 A: No, of course not. If I choose to employ someone that decision is up to me. I  
18 don't deserve any special treatment or consideration for that fact.

19 **Q: At the beginning of your statement, you briefly described your property that**  
20 **would be impacted by the potential Keystone XL Pipeline. I would like you to**  
21 **give the Commissioners a sense of specifically how you believe the proposed**  
22 **Keystone XL Pipeline and its preferred route, which proposes to go across**  
23 **your land, how it would in your opinion based on your knowledge,**  
24 **experience, and background of your land, affect it. So please share with the**  
25 **Commissioners the characteristics of your land that you believe is important**  
26 **for them to understand, while they evaluate TransCanada's application for a**  
27 **route for its proposed pipeline to cross Nebraska and across your land,**  
28 **specifically.**

1 A: The water level at our farm is high. We cannot have a basement under our house.  
2 The water that we drink is 8 (eight) feet deep. If the oil were to spill or leak it  
3 would poison our drinking water and kill us. The water hole in our pasture was  
4 dug by N.R.D. and the cattle drink from it. TransCanada wants the pipeline to go  
5 right by the water hole.

6 **Q: Do you have any concerns TransCanada's fitness as an applicant for a**  
7 **major crude oil pipeline in its preferred location, or ultimate location across**  
8 **the state of Nebraska?**

9 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly  
10 or even bullied around and being made to feel scared that they did not have any  
11 options but to sign whatever papers TransCanada told them they had to. I am  
12 aware of folks being threatened that their land would be taken if they didn't follow  
13 what TransCanada was saying. I am aware of tactics to get people to sign  
14 easements that I don't believe have any place in Nebraska or anywhere such as  
15 TransCanada or some outfit associated with it hiring a pastor or priest to pray with  
16 landowners and convince them they should sign TransCanada's easement  
17 agreements. I am aware of older folks and widows or widowers feeling they had  
18 no choice but to sign TransCanada's Easement and they didn't know they could  
19 fight or stand up for themselves. From a more practical standpoint, I am worried  
20 that according to their answer to our Interrogatory No. 211, TransCanada only  
21 owns and operates one (1) major oil pipeline. They simply do not have the  
22 experience with this type of pipeline and that scares me. There are others but that  
23 is what I can recollect at this time and if I remember more or my recollection is  
24 refreshed I will share those with the Commissioners at the Hearing in August.

25 **Q: Do you believe TransCanada's proposed method of compensation to you as a**  
26 **landowner is reasonable or just?**

27 A: No, I do not.

28 **Q: Do you have any concern about limitations that the construction of this**  
29 **proposed pipeline across your affected land would prevent construction of**

1 **future structures upon the portion of your land affected by the proposed**  
2 **easement and immediately surrounding areas?**

3 A: Well yes, of course I do. We would not be able to build many, if any, types of  
4 structures directly across or touching the easement, and it would be unwise and I  
5 would be uncomfortable to build anything near the easement for fear of being  
6 blamed in the future should any damage or difficulty result on my property in  
7 regards to the pipeline.

8 **Q: Do you think such a restriction would impact you economically?**

9 A: Well yes, of course.

10 **Q: How do you think such a restriction would impact you economically?**

11 A: The future of this land may not be exactly how it's being use as of this moment,  
12 and having the restrictions and limiting my ability to develop my land in certain  
13 ways presents a huge negative economic impact on myself, my family, and any  
14 potential future owner of the property. You have no idea how I or the future own  
15 may want to use this land in the future or the other land across Nebraska  
16 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years  
17 ago it would have been hard to imagine all the advances that we have now or how  
18 things change. Because the Easement is forever and TransCanada gets the rights in  
19 my land forever we have to think with a very long term view. By placing their  
20 pipeline on under across and through my land that prevents future development  
21 which greatly negatively impacts future taxes and tax revenue that could have  
22 been generated by the County and State but now will not. When you look at the  
23 short blip of economic activity that the two years of temporary construction efforts  
24 may bring, that is far outweighed by the perpetual and forever loss of opportunity  
25 and restrictions TransCanada is forcing upon us and Nebraska.

26 **Q: Do you have any concerns about the environmental impact of the proposed**  
27 **pipeline?**

28 A: Yes, I do.

29 **Q: What are some of those concerns?**

1 A: As an affected land owner and Nebraskan, I am concerned that any construction,  
2 operation, and/or maintenance of the proposed Keystone XL Pipeline would have  
3 a detrimental impact upon the environment of my land specifically, as well as the  
4 lands near my land and surrounding the proposed pipeline route.

5 **Q: Do you have any other environmental concerns?**

6 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in  
7 construction and/or maintenance and operation. I am concerned about spills and  
8 leaks that TransCanada has had in the past and will have in the future. This could  
9 be catastrophic to my operations or others and to my county and the State.

10 **Q: Do you have any thoughts regarding if there would be an impact upon the  
11 natural resources on or near your property due to the proposed pipeline?**

12 A: Yes, I believe that any construction, operation, and/or maintenance of the  
13 proposed Keystone XL Pipeline would have detrimental impacts upon the natural  
14 resources of my land, and the lands near and surrounding the proposed pipeline  
15 route.

16 **Q: Do you have any worries about potential impacts from the proposed pipeline  
17 to the soil of your land, or land near you?**

18 A: Yes, I believe that any construction, operation, and/or maintenance of the  
19 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of  
20 land, as well as land along and surrounding the proposed pipeline route. This  
21 includes, but is not limited to, the reasons that we discussed above of disturbing  
22 the soil composition and makeup as it has naturally existed for thousands and  
23 millions of years during the construction process, and any future maintenance or  
24 removal process. I'm gravely concerned about the fertility and the loss of  
25 economic ability of my property to grow the crops, or grow the grasses, or grow  
26 whatever it is at that time they exist on my property or that I may want to grow in  
27 the future, or that a future owner may want to grow. The land will never be the  
28 same from as it exists now undisturbed to after it is trenched up for the proposed  
29 pipeline.

1 **Q: Do you have any concerns about the potential impact of the proposed pipeline**  
2 **upon the groundwater over your land, or surrounding lands?**

3 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
4 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
5 groundwater of not only under my land, but also near and surrounding the pipeline  
6 route, and in fact, potentially the entire State of Nebraska. Water is life plain and  
7 simple and it is simply too valuable to our State and the country to put at  
8 unreasonable risk.

9 **Q: Do you have any concern about the potential impact of the proposed pipeline**  
10 **upon the surface water on, or near or around your land?**

11 A: Yes, I have significant concerns that any construction, operation, and/or  
12 maintenance of the proposed Keystone XL Pipeline would have detrimental  
13 impact upon the surface water of not only within my property boundary, but along  
14 and near and surrounding the pipeline route, and in fact, across the state of  
15 Nebraska.

16 **Q: Do you have any concern about the potential impacts of the proposed pipeline**  
17 **upon the wildlife and plants, other than your growing crops on or near your**  
18 **land?**

19 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
20 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
21 wildlife and the plants, not only that are located on or can be found upon my land,  
22 but also near and along the proposed pipeline route.

23 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**  
24 **fair market value of your land?**

25 A: Yes, I do. I am significantly concerned about how the existence of the proposed  
26 pipeline underneath and across and through my property will negatively affect the  
27 fair market value at any point in the future, especially at that point in which I  
28 would need to sell the property, or someone in my family would need to sell the  
29 property. I do not believe, and certainly would not be willing to pay, the same

1 price for land that had the pipeline located on it, versus land that did not. I hope  
2 there is never a point where I'm in a position where I have to sell and have to  
3 realize as much value as I can out of my land. But because it is my single largest  
4 asset, I'm gravely concerned that the existence of the proposed Keystone XL  
5 Pipeline upon my land will affect a buyer's willingness to pay as much as they  
6 would've paid and as much as I could've received, if the pipeline were not upon  
7 my property. There are just too many risks, unknowns, impacts and uncertainties,  
8 not to mention all of the rights you give up by the nature of having the pipeline  
9 due to having the easement that we have previously discussed, for any reasonable  
10 person to think that the existence of the pipeline would not negatively affect my  
11 property's value.

12 **Q: Have you ever seen the document that's marked as Attachment No. 5, to your**  
13 **testimony?**

14 A: Yes, I have.

15 **Q: Where have you seen that before?**

16 A: That is a map I think I first saw a couple years ago that shows what was called the  
17 Keystone XL I-90 corridor alternate route of its proposed pipeline through  
18 Nebraska and I believe the portion of the alternative route in Nebraska essentially  
19 twins or parallels Keystone I.

20 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**  
21 **Application, and as found on Attachment No. 6, here to your testimony, is in**  
22 **the public interest of Nebraska?**

23 A: No, I do not.

24 **Q: Do you believe that the Keystone mainline alternative route as shown on**  
25 **Attachment No. 6 included with your testimony here is a major oil pipeline**  
26 **route that is in the public interest of Nebraska?**

27 A: No, I do not.

28 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**  
29 **in Attachment No. 5 to your testimony, is in the public interest of Nebraska?**

1 A: No, I do not.

2 **Q: Do you believe there is any potential route for the proposed Keystone XL**  
3 **Pipeline across, within, under, or through the State of Nebraska that is in the**  
4 **public interest of the citizens of Nebraska?**

5 A: No, I do not.

6 **Q: Why do you hold that belief?**

7 A: Because there simply is no public interest based on all of the factors that I am  
8 aware and that I have read and that I have studied that this Commission is to  
9 consider that would establish that a for-profit foreign-owned pipeline that simply  
10 crosses Nebraska because we are geographically in the way between where tar  
11 sands are in Canada to where it wants to ship it to in Texas could ever be in the  
12 public interest of Nebraskans. We derive no benefit from this project. It is not for  
13 public use. Nebraska is simply in the way and when all considerations are taken in  
14 there is no net benefit of any kind for Nebraska should this project be placed in our  
15 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
16 the negative impacts and concerns.

17 **Q: What do you think about the applicant, TransCanada’s argument that it’s**  
18 **preferred route for its proposed Keystone XL Pipeline is in the public interest**  
19 **of Nebraska because it may bring temporary jobs during the construction**  
20 **phase to Nebraska?**

21 A: First of all, not all jobs are created equally. Most jobs that are created, whether  
22 temporary or on a permanent basis, don’t come with a project that has all the  
23 potential and foreseeable negative impacts, many of which we have discussed here  
24 and other witnesses throughout the course of this hearing have and will discuss. If  
25 I decide to hire and employ someone to help me out in my farming or ranching  
26 business, I’ve created a job but I haven’t done so at the risk or detrimental impact  
27 to my land or my town or my county or my state. And I’ve hired someone who is  
28 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce  
29 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all

1 jobs are not created equal. Additionally, I understand from what I'm familiar with  
2 from TransCanada's own statements that the jobs numbers they originally touted  
3 were determined to be a minute fraction of the permanent jobs that had been  
4 projected. According to their answer to our Interrogatory No. 191, TransCanada  
5 has created only thirty-four (34) jobs within Nebraska working specifically on  
6 behalf of TransCanada and according to their answer to Interrogatory No. 196, as  
7 of May 5, 2017 they only employ one (1) temporary working within Nebraska.  
8 Further, according to their answer to Interrogatory No. 199, TransCanada would  
9 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was  
10 constructed on its Preferred Route or its Mainline Alternative Route.

11 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**  
12 **because it would cross your land?**

13 A: No, absolutely not. I am opposed to this project because it is not in the public  
14 interest, neither within my community nor within our state.

15 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**  
16 **was to cross someone else's land?**

17 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have  
18 the fear and anxiety and potential foreseeable risks and negative impacts that this  
19 type of a project carrying this type of product brings foisted upon anyone in this  
20 state or any other state.

21 **Q: Do you think there is any intelligent route for the proposed Keystone XL**  
22 **Pipeline to cross the state of Nebraska?**

23 A: I don't believe there is an intelligent route because as I have stated I don't believe  
24 this project anywhere within Nebraska is within the public interest. However, if  
25 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely  
26 had to go somewhere in the state of Nebraska, the only intelligent route I believe  
27 would be to twin or closely parallel the existing Keystone I Pipeline. Both the  
28 preferred route and the mainline alternative routes are economic liabilities our  
29 state cannot risk.

1 **Q: What do you rely upon to make that statement?**

2 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,  
3 already exists in that area is reason enough as it is not in our best interest or the  
4 public interests to have more major oil pipelines crisscrossing our state. Second,  
5 they have all the infrastructure already there in terms of relationships with the  
6 counties and local officials and first responders along that route. Third, they have  
7 already obtained easements from all the landowners long that route and have  
8 relationships with them. Fourth, that route avoids our most sensitive soils, the  
9 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala  
10 Aquifer. Sixth, they have already studied that route and previously offered it as an  
11 alternative. Seventh, it just makes the most sense that as a state we would have  
12 some intelligent policy of energy corridors and co-locating this type of  
13 infrastructure near each other.

14 **Q: Have you fully expressed each and every opinion, concern, or fact you would**  
15 **like the Public Service Commissioners to consider in their review of**  
16 **TransCanada's Application?**

17 A: No, I have not. I have shared that which I can think of as of the date I signed this  
18 document below but other things may come to me or my memory may be  
19 refreshed and I will add and address those things at the time of the Hearing in  
20 August and address any additional items at that time as is necessary. Additionally,  
21 I have not had an adequate amount of time to receive and review all of  
22 TransCanada's answers to our discovery and the discovery of others so it was  
23 impossible to competently and completely react to that in my testimony here and I  
24 reserve the right to also address anything related to discovery that has not yet  
25 concluded as of the date I signed this document below. Lastly, certain documents  
26 requested have not yet been produced by TransCanada and therefore I may have  
27 additional thoughts on those I will also share at the hearing as needed.

1 **Q: What is it that you are requesting the Public Service Commissioners do in**  
2 **regards to TransCanada's application for the proposed Keystone XL Pipeline**  
3 **across Nebraska?**

4 A: I am respectfully and humbly requesting that the Commissioners think far beyond  
5 a temporary job spike that this project may bring to a few counties and beyond the  
6 relatively small amount of taxes this proposed foreign pipeline would possibly  
7 generate. And, instead think about the perpetual and forever impacts of this  
8 pipeline as it would have on the landowners specifically, first and foremost, but  
9 also thereby upon the entire state of Nebraska, and to determine that neither the  
10 preferred route nor the Keystone mainline alternative route are in the public  
11 interest of the citizens of the state of Nebraska. And if the Commissioners were  
12 inclined to modify TransCanada's proposed routes and were to be inclined to grant  
13 an application for a route in Nebraska, that the only potential route that would  
14 make any intelligent sense whatsoever would be twinning or near paralleling of  
15 the proposed KXL with the existing Keystone I pipeline. It simply does not make  
16 sense to add yet another major oil pipeline crisscrossing our state creating new  
17 pumping stations, creating new impacts on additional counties and communities  
18 and going through all of the court processes with myself and other landowners like  
19 me when this applicant already has relationships with the landowners, the towns  
20 and the communities along Keystone I, and that Keystone I is firmly outside of the  
21 sand hills and a significantly further portion away from the heart of the Ogallala  
22 Aquifer than the preferred route or the Keystone mainline alternative route.

23 **Q: Are all of your statements in your testimony provided above true and**  
24 **accurate as of the date you signed this document to the best of your**  
25 **knowledge?**

26 A: Yes, they are.

27 **Q: Thank you, I have no further questions at this time and reserve the right to**  
28 **ask you additional questions at the August 2017 Hearing.**

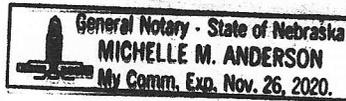
Johnnie Bialas

Johnnie Bialas

Subscribed and Sworn to me before this 27<sup>th</sup> day of May, 2017.

Michelle M Anderson

Notary Public



**Attachment No. 1**



Johnnie P. Bialas and Maxine M. Bialas Revocable Living Trust  
Johnnie P. Bialas  
Maxine M. Bialas

S. 016  
T. 016 N  
R. 005 W

S. 017  
T. 016 N  
R. 005 W

S. 020  
T. 016 N  
R. 005 W

S. 021  
T. 016 N  
R. 005 W



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
Johnnie P. Bialas and Maxine M. Bialas Revocable Living Trust  
Johnnie P. Bialas  
Maxine M. Bialas

**TRACT NO.** ML-NE-NA-30135.000  
**STATE:** Nebraska  
**COUNTY:** Nance  
**SECTION:** 016  
**TOWNSHIP:** 016N  
**RANGE:** 005W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

**Attachment No. 2**

**Prepared by and after recording  
please return to:**  
TransCanada Keystone Pipeline, LP  
1106 Benjamin Avenue, Suite 600  
Norfolk, NE 68701

---

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-NA-30135.000

**EASEMENT AND RIGHT-OF-WAY  
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**"), **Johnnie P. Bialas and Maxine M. Bialas, Trustees of the Johnnie P. Bialas and Maxine M. Bialas Revocable Living Trust**, whose mailing address is 30298 S. 550th Street, Fullerton, Nebraska 68638 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or

through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Easement Area") located on real property situated in the County of Nance, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 160 acres, more or less, situated in the County of Nance, in the State of Nebraska, being further described as the SW1/4 of Section 16, T16N, R5W of the 6th P.M., as recorded in Book 82, Page 401 in the Deed Records of Nance County, Nebraska; less and except any conveyances heretofore made.

(the "Property"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "Initial Construction Period"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "Temporary Work Space"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the

negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR(S):

**Johnnie P. Bialas and Maxine M. Bialas Revocable Living Trust**

\_\_\_\_\_  
**Johnnie P. Bialas, Trustee**

\_\_\_\_\_  
**Maxine M. Bialas, Trustee**

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Johnnie P. Bialas, Trustee of the Johnnie P. Bialas and Maxine M. Bialas Revocable Living Trust** on behalf of said Trust.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Maxine M. Bialas, Trustee of the Johnnie P. Bialas and Maxine M. Bialas Revocable Living Trust** on behalf of said Trust.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

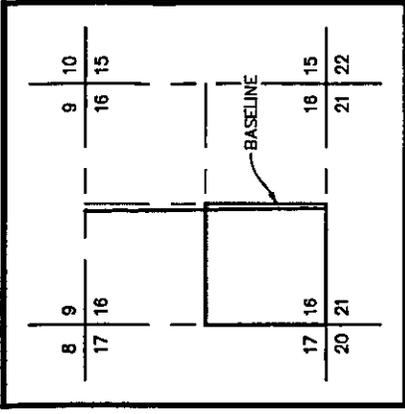
# NANCE COUNTY, NEBRASKA

T-16-N, R-5-W, SECTION 16

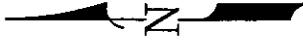
ML-NE-NA-30135.000

PROPERTY LINE  
SECTION LINE  
PROPOSED  
ADDITIONAL TEMPORARY WORKSPACE  
PERMANENT EASEMENT & RIGHT OF WAY  
DEED RECORDS OF NANCE COUNTY, NEBRASKA

LEGEND:  
P  
S  
PROP.  
A.T.W.S.  
P.E.R.W.  
D.R.N.C.N.

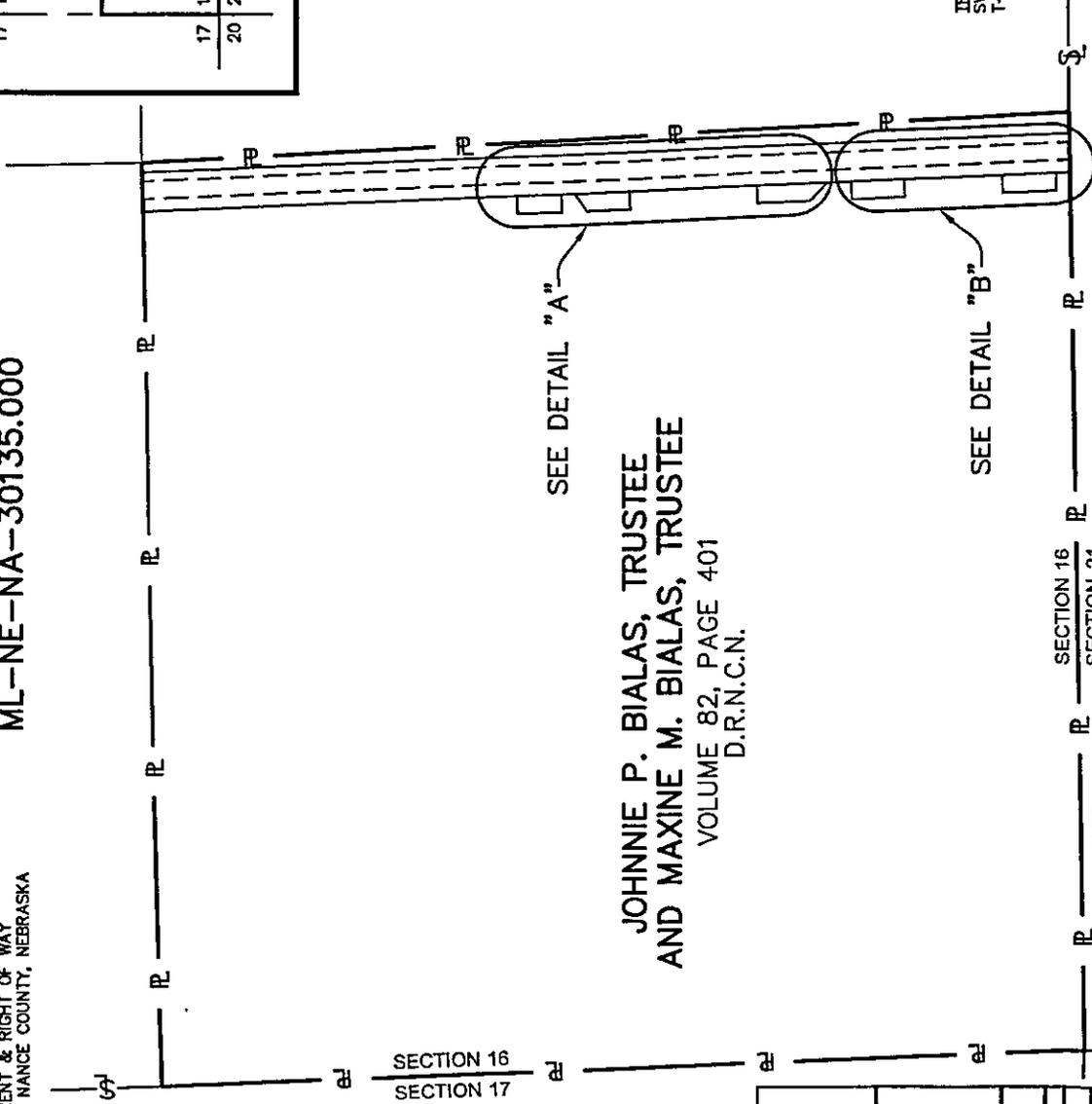


VICINITY MAP  
N.T.S.



0 250 500  
SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:  
SW/4 OF SECTION 16,  
T-16-N, R-5-W



SEE DETAIL "A"

JOHNNIE P. BIALAS, TRUSTEE  
AND MAXINE M. BIALAS, TRUSTEE

VOLUME 82, PAGE 401  
D.R.N.C.N.

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: 2,631'±  
AREA OF PERMANENT EASEMENT: 3.0 ACRES  
AREA OF TEMPORARY WORKSPACE: 3.6 ACRES  
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.9 ACRE

SHEET 1 OF 2



KEYSTONE XL PROJECT  
EASEMENT AREA  
ACROSS THE PROPERTY OF  
JOHNNIE P. BIALAS,  
TRUSTEE AND MAXINE M.  
BIALAS, TRUSTEE  
ML-NE-NA-30135.000

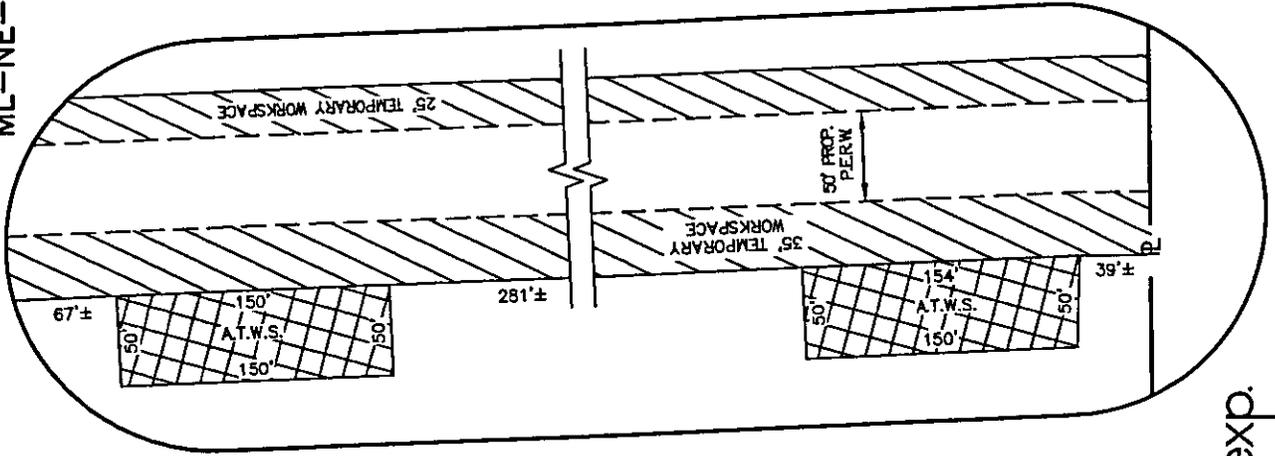
PROJECT:	XL	EXHIBIT A
APPROVED BY:	SLR	DRAWING NUMBER
NO.		XL-08-ML-SK-3552
		REVISION
		DATE

SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/28/14	PB	ALS

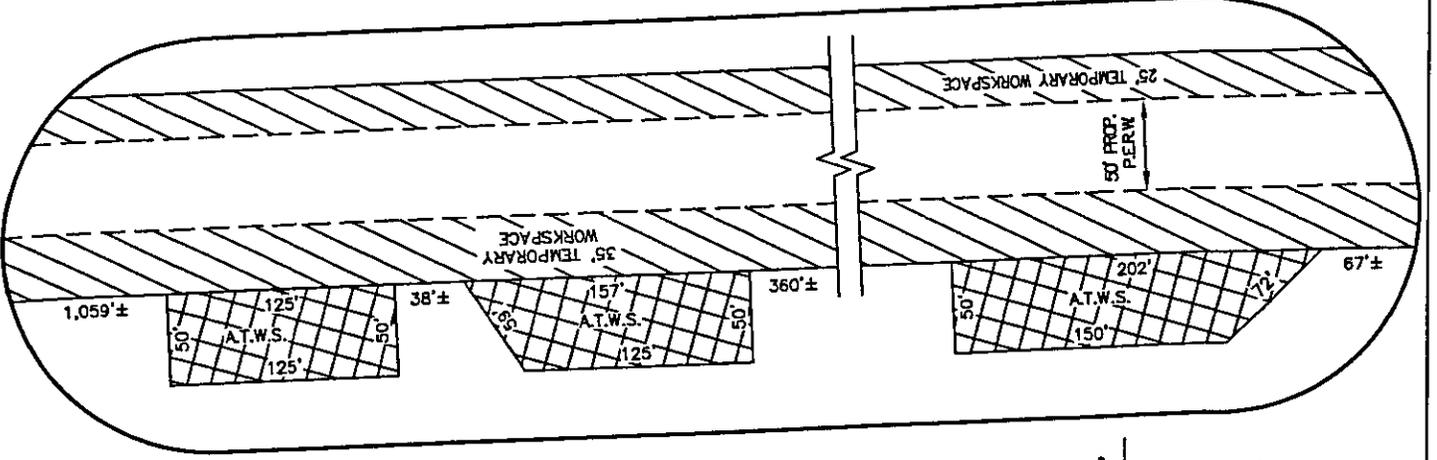


**NANCE COUNTY, NEBRASKA**  
**T-16-N, R-5-W, SECTION 16**  
**ML-NE-NA-30135.000**

**LEGEND**  
 PL PROPERTY LINE  
 PR PROPOSED  
 ATWS A.T.W.S.  
 PERW P.E.R.W.



**DETAIL "B"**  
 N.T.S.



**DETAIL "A"**  
 N.T.S.

**NOTE:**  
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.



**KEYSTONE XL PROJECT**  
**EASEMENT AREA**  
**ACROSS THE PROPERTY OF**  
**JOHNNIE P. BIALAS,**  
**TRUSTEE AND MAXINE M.**  
**BIALAS, TRUSTEE**  
**ML-NE-NA-30135.000**

PROJECT:	XL	<b>EXHIBIT A</b>
APPROVED BY:	SLR	DRAWING NUMBER
NO.		XL-08-ML-SK-3552
REVISION		DATE
SCALE	DATE	DRAWN BY
N.T.S.	10/28/14	PB
		CHECKED BY
		ALS



The new identity of Enbridge

**Attachment No. 3**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE )  
COMPANY, a New York Corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RICHARD ANDREW, JANE ANDREW, )  
LUKE ANDREW, and BRYCE ANDREW, )  
 )  
Defendants. )

CASE NO. \_\_\_\_\_

**COMPLAINT**

**COMES NOW** Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

**PARTIES**

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

**JURISDICTION AND VENUE**

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

### GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$ , Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

### **FIRST CLAIM: NEGLIGENCE**

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

### **SECOND CLAIM: TRESPASS**

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

**WHEREFORE** Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

### **JURY DEMAND**

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,  
Plaintiff,

By:     /s/ Albert M. Engles      
ENGLES, KETCHAM, OLSON, & KEITH, P.C.  
1350 Woodmen Tower  
1700 Farnam Street  
Omaha, Nebraska 68102  
(402) 348-0900  
(402) 348-0904 (Facsimile)  
Albert M. Engles, #11194  
Dan H. Ketcham, #18930  
Michael L. Moran, #24042  
James C. Boesen, #24862

**Attachment No. 4**

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-NA-30135.000

We, Johnnie P. Bialas and Maxine M. Bialas, Trustees, of Nance County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Five Hundred Ninety Four Dollars and No Cents (\$2,594.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Nance, State of Nebraska:

**SW/4**

**Section 16, Township 16N, Range 5W**

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this day of

\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

**Attachment No. 5**



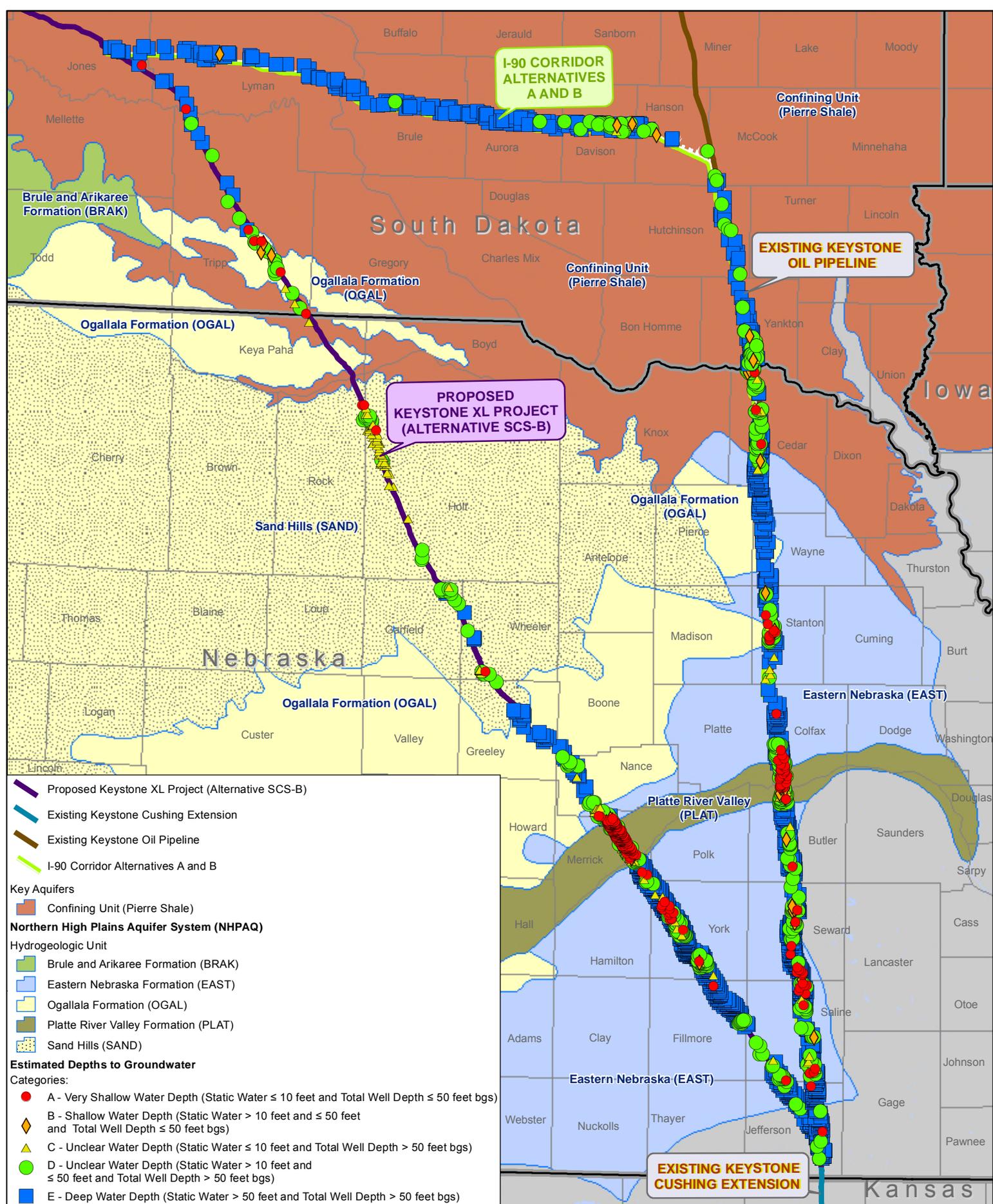
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



### KEYSTONE XL PROJECT

Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

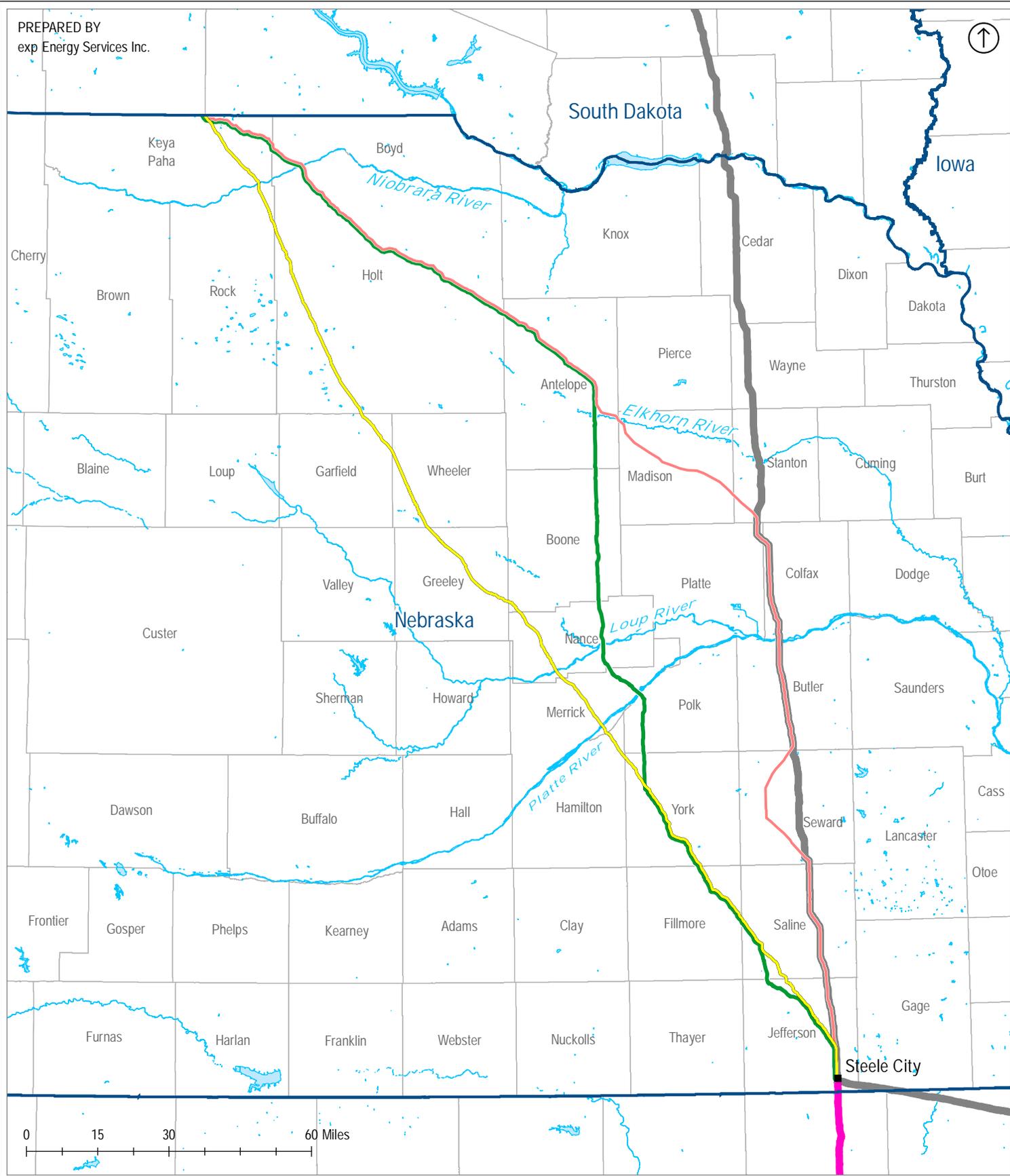
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

### KEYSTONE XL PROJECT

Figure 4.3.3-8  
 I-90 Corridor Alternatives A and B  
 Key Aquifers and Potable Water Wells  
 within 2-mile Corridor

**Attachment No. 6**



LEGEND

	PREFERRED ROUTE		WATERBODY
	SANDHILLS ALTERNATIVE ROUTE		STATE BOUNDARY
	KEYSTONE MAINLINE ALTERNATIVE ROUTE		COUNTY BOUNDARY
	KEYSTONE MAINLINE (PHASE I)		
	KEYSTONE CUSHING EXTENSION (PHASE II)		

KEYSTONE XL PROJECT  
**FIGURE 2.2-2**  
PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

**TransCanada Keystone Pipeline, LP  
for Route Approval of Keystone XL  
Pipeline Project, Pursuant to *Major Oil  
Pipeline Siting Act***

**Direct Testimony of  
Cheri Blocher in Support of Landowner  
Intervenors**

State of Nebraska            )  
  ) ss.  
Antelope County            )

1   **Q:    Please state your name.**

2   A:    My name is Cheri Blocher

3   **Q:    Are you an intervener in the Public Service Commission’s proceedings**  
4       **regarding TransCanada’s application for approval of its proposed Keystone**  
5       **XL tar sands pipeline across Nebraska?**

6   A:    Yes, I am.

7   **Q:    Do you own land in Nebraska, either directly or through an entity of which**  
8       **you are an owner that could be affected by the proposed TransCanada**  
9       **Keystone XL pipeline?**

10  A:    Yes, I do and it is located in Antelope County.

11  **Q:    Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**  
12       **photo(s) of your land in question here with the area of the proposed KXL**  
13       **pipeline depicted?**

14  A:    Yes.

15  **Q:    What do you do for a living?**

16  A:    Farmer.

1 **Q: If you are you married tell us your spouse's name please?**

2 A: Michael Blocher.

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**  
4 **and or your family?**

5 A: Yes.

6 **Q: For the land that would be affected and impacted by the proposed KXL tar**  
7 **sands pipeline give the Commissioners a sense how long the land has been in**  
8 **your family and a little history of the land.**

9 A: Our land in Antelope County where my I was born, has been in my family all  
10 sixty-five years of my life. Here we are carrying on the tradition of raising corn,  
11 soy beans, and American Quarter Horses began by my late father and mother.

12 **Q: Do you earn any income from this land?**

13 A: Yes.

14 **Q: Have you depended on the income from your land to support your livelihood**  
15 **or the livelihood of your family?**

16 A: Yes.

17 **Q: Have you ever in the past or have you thought about in the future leasing all**  
18 **or a portion of your land in question here?**

19 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective  
20 tenant may try to negotiate a lower price for my land if it had the pipeline on it and  
21 all the restrictions and risks and potential negative impacts to farming or ranching  
22 operations as opposed to land that did not have those same risks. If I was looking  
23 to lease or rent ground I would pay more for comparable non-pipeline land than I  
24 would for comparable pipeline land and I think most folks would think the same  
25 way. This is another negative economic impact that affects the landowner and the  
26 county and the state and will forever and ever should TransCanada's preferred or  
27 mainline alternative routes be approved. If they were to twin or closely parallel to  
28 Keystone I the vast majority of landowners would be those that already have a  
29 pipeline so there would be considerable less new incremental negative impacts.

1 **Q: Do you have similar concerns about selling the land?**

2 A: Well I hope not to have to sell the land in my lifetime but times change and you  
3 never know what is around the corner and yes I am concerned that if another piece  
4 of ground similar to mine were for sale and it did not have the pipeline and mine  
5 did that I would have a lower selling price. I think this would be true for pipeline  
6 ground on both the preferred and mainline alternative routes.

7 **Q: What is your intent with your land after you die?**

8 A: Like I said I hope not to have to sell and I hope that it stays in the family for years  
9 to come but I have thought about getting out if this pipeline were to come through.

10 **Q: Are you aware that the preferred route of TransCanada's Keystone XL  
11 Pipeline would cross the land described above and owned by you?**

12 A: Yes.

13 **Q: Were you or an entity for which you are a member, shareholder, or director  
14 previously sued by TransCanada Keystone Pipeline, LP?**

15 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a  
16 petition for condemnation against our land so it could place its proposed pipeline  
17 within an easement that it wanted to take from us on our land.

18 **Q: Did you defend yourself and your land in that condemnation action?**

19 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees  
20 and expenses in our resistance of TransCanada's lawsuit against us.

21 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees  
22 incurred?**

23 A: No, they have not.

24 **Q: In its lawsuit against you, did TransCanada identify the amount of your  
25 property that it wanted to take for its proposed pipeline?**

26 A: The lawsuit against us stated they would take the amount of property that is  
27 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant  
28 and equipment reasonably necessary to operate the pipeline.

1 **Q: Did TransCanada define what they meant by “property that is reasonably**  
2 **necessary”?**

3 A: No, they did not.

4 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**  
5 **property portion of your land?**

6 A: Yes, they did.

7 **Q: Did TransCanada describe what rights it proposed to take related to the**  
8 **eminent domain property on your land?**

9 A: Yes, they did.

10 **Q: What rights that they proposed to take did they describe?**

11 A: TransCanada stated that the eminent domain property will be used to “lay, relay,  
12 operate, and maintain the pipeline and the plant and equipment reasonably  
13 necessary to operate the pipeline, specifically including surveying, laying,  
14 constructing, inspecting, maintaining, operating, repairing, replacing, altering,  
15 reconstructing, removing and abandoning one pipeline, together with all fittings,  
16 cathodic protection equipment, pipeline markers, and all their equipment and  
17 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,  
18 petroleum products, and all by-products thereof.”

19 **Q: Prior to filing an eminent domain lawsuit to take your land that**  
20 **TransCanada identified, do you believe they attempted to negotiate in good**  
21 **faith with you?**

22 A: No, I do not.

23 **Q: Did TransCanada at any time approach you with or deliver to you their**  
24 **proposed easement and right-of-way agreement?**

25 A: Yes, they did.

26 **Q: At the time you reviewed TransCanada’s easement and right-of-way**  
27 **agreement, did you understand that they would be purchasing a fee title**  
28 **interest in your property or that they were taking something else?**

1 A: I understood that they proposed to have the power to take both a temporary  
2 construction easement that could last for a certain period of time and then also a  
3 permanent easement which they described to be 50 feet across or in width, and  
4 that would run the entire portion of my property from where a proposed pipeline  
5 would enter my property until where it would exit the property.

6 **Q: Is the document included with your testimony here as Attachment No. 3, a**  
7 **true and accurate copy of TransCanada's proposed Easement and Right-of-**  
8 **Way agreement that they included with their condemnation lawsuit against**  
9 **you?**

10 A: Yes, it is.

11 **Q: Have you had an opportunity to review TransCanada's proposed Easement**  
12 **and Right-of-Way agreement?**

13 A: Yes, I have.

14 **Q: What is your understanding of the significance of the Easement and Right-of-**  
15 **Way agreement as proposed by TransCanada?**

16 A: My understanding is that this is the document that will govern all of the rights and  
17 obligations and duties as well as the limitations of what I can and cannot do and  
18 how I and any future landowner and any person I invite to come onto my property  
19 must behave as well as what TransCanada is and is not responsible for and how  
20 they can use my land.

21 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**  
22 **agreement do you have any concerns about any portions of it or any of the**  
23 **language either included in the document or missing from the proposed**  
24 **document?**

25 A: Yes, I have a number of significant concerns and worries about the document and  
26 how the language included and the language not included potentially negatively  
27 impacts my land and thereby potentially negatively impacts my community and  
28 my state.

1 **Q: I would like you to walk the Commissioners through each and every one of**  
2 **your concerns about TransCanada’s proposed Easement and Right-of-Way**  
3 **agreement so they can develop an understanding of how that language and**  
4 **the terms of that contract, in your opinion, potentially negatively impacts you**  
5 **and your land. So, if you can start at the beginning of that document and**  
6 **let’s work our way through it, okay?**

7 A: Yes, I’ll be happy to express my concerns about TransCanada’s proposed  
8 Easement and Right-of-Way agreement and how it negatively could affect my  
9 property rights and my economic interests.

10 **Q. Okay, let’s start with your first concern please.**

11 A: The very first sentence talks about consideration or how much money they will  
12 pay to compensate me for all of the known and unknown affects and all of the  
13 rights I am giving up and for all the things they get to do to my land and for what  
14 they will prevent me from doing on my land and they only will pay me one time at  
15 the signing of the easement agreement. That is a huge problem.

16 **Q: Explain to the Commissioners why that is a problem.**

17 A: It is not fair to the landowner, the county, or the State. It is not fair to the  
18 landowner because they want to have my land forever for use as they see fit so  
19 they can make a daily profit from their customers. If I was to lease ground from  
20 my neighbor I would typically pay twice a year every year as long as they granted  
21 me the rights to use their land. That only makes sense – that is fair. If I was going  
22 to rent a house in town I would typically pay monthly, every month until I gave up  
23 my right to use that house. By TransCanada getting out on the cheap and paying  
24 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax  
25 revenue collection on the money I would be paid and then pay taxes on and  
26 contribute to this state and this country. It is money I would be putting back into  
27 my local community both spending and stimulating the local economy and  
28 generating more economic activity right here. Instead TransCanada’s shareholders  
29 keep all that money and it never finds its way to Nebraska.

1 **Q: What is your next concern?**

2 A: The first paragraph goes on to say Grantor, which is me the landowner, “does  
3 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a  
4 limited partnership...” and I have no idea who that really is. I have no idea who is  
5 forcing this pipeline on us or who the owners of the entities are, or what are the  
6 assets backing this limited partnership, or who the general partner is, or who all  
7 the limited partners are, and who makes up the ownership of the these partners or  
8 the structure or any of the basic things you would want to know and understand if  
9 you would want to do business with such an outfit. According to TransCanada’s  
10 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited  
11 liability company called TransCanada Keystone Pipeline GP, LLC is the general  
12 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so  
13 basically nothing. That is really scary since the general partner has the liability but  
14 virtually none of the ownership and who knows if it has any other assets.

15 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**  
16 **percent clear on exactly who could become the owner of over 275 miles of**  
17 **Nebraska land?**

18 A: No.

19 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**  
20 **percent clear on exactly who will be operating and responsible for**  
21 **approximately 275 miles of tar sands pipeline underneath and through**  
22 **Nebraska land?**

23 A: No.

24 **Q: Okay, let’s continue please with your concerns of the impacts upon your land**  
25 **and the State of Nebraska of TransCanada’s easement terms.**

26 A: Yes, so the next sentence talks about “...its successors and assigns (hereinafter  
27 called “Grantee”)...” and this concerns me because it would allow the easement to  
28 be transferred or sold to someone or some company or country or who knows what  
29 that I don’t know and who we may not want to do business with. This pipeline

1 would be a huge asset for TransCanada and if they can sell to the highest bidder  
2 that could have terrible impacts upon all of Nebraska depending upon who may  
3 buy it and I don't know of any safeguards in place for us or the State to veto or  
4 have any say so in who may own, operate, or be responsible for this pipeline in the  
5 future.

6 **Q: Do you think that type of uncertainty and lack of control over a major piece**  
7 **of infrastructure crossing our State is in the public interest?**

8 A: No, certainly not, in fact, just the opposite.

9 **Q: What's next?**

10 A: Then it says "...a perpetual permanent easement and right-of-way..." and this  
11 really concerns me. Why does the easement and right-of-way have to be perpetual  
12 and permanent? That is the question myself and my family want an answer to.  
13 Perpetual to me is like forever and that doesn't make sense.

14 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

15 A: For many reasons but mostly because the tar sands are finite. I am unaware of any  
16 data proving there is a perpetual supply of tar sands. I am not aware in  
17 TransCanada's application where it proves there is a perpetual necessity for this  
18 pipeline. My understanding of energy infrastructure like wind towers is they have  
19 a decommission plan and actually take the towers down when they become  
20 obsolete or no longer needed. Nothing manmade lasts forever. My land however  
21 will, and I want my family or future Nebraska families to have that land as  
22 undisturbed as possible and it is not in my interest or the public interest of  
23 Nebraska to be forced to give up perpetual and permanent rights in the land for  
24 this specific kind of pipeline project.

25 **Q: Okay, what is your next concern?**

26 A: The easement language includes all these things TransCanada can do and it says  
27 "...abandoning in place..." so they can just leave this pipeline under my ground  
28 until the end of time just sitting there while they are not using it, but I am still  
29 prevented from doing on my land and using my land what I would like. If I owned

1 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting  
2 there. It doesn't make sense and it scares me and it is not in my interest or the  
3 public interest of Nebraska to allow this.

4 **Q: Now it looks like we are ready to go to the second page of the Easement is that**  
5 **right?**

6 A: Yes.

7 **Q: So now on the second page of the Easement what are your concerns?**

8 A: Here the Easement identifies a 24-month deadline to complete construction of the  
9 pipeline but has caveats that are undefined and ambiguous. The 24-month period  
10 starts to run from the moment "actual pipeline installation activities" begin on  
11 Landowners property. It appears that TransCanada would define this phrase as  
12 needed. It would be wise to explain what types of TransCanada action constitutes  
13 "installation activity" For instance, would the placement and storage of an  
14 excavator or other equipment on or near the Easement property be an activity or  
15 would earth have to be moved before the activity requirement is triggered. This  
16 vague phrase is likely to lead to future disputes and litigation that is not in the best  
17 interest of the welfare of Nebraska and would not protect property interests. The  
18 24-months can also be extended in the case of "force majeure." My understanding  
19 is that force majeure is often used to insulate a party to a contract when events  
20 occur that are completely out of their control. In TransCanada's easement this is  
21 expanded to include "without limitation...availability of labor and materials."  
22 Extending this language to labor and materials is problematic because these are  
23 two variables that TransCanada does have some or significant control over and to  
24 allow extension of the 24-month period over events not truly out of the control of  
25 TransCanada and without further provision for compensation for the Landowner is  
26 not conducive to protection of property rights.

27 **Q: Okay, what is your next concern?**

28 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of  
29 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially

1 reasonable costs and expenses” will pay for damages caused but then limits  
2 TransCanada’s liability to certain circumstances. There is no definition of  
3 “commercially reasonable” and no stated right that the Landowner would get to  
4 determine the amounts of cost or expense that is “commercially reasonable.”  
5 TransCanada excepts out from their liability any damages that are caused by  
6 Landowner’s negligence or the negligence of anyone ever acting on the behalf of  
7 Landowner. It is understandable that if the Landowner were to willfully and  
8 intentionally cause damages to the pipeline that Landowner should be liable.  
9 However, anything short of willful misconduct should be the liability of  
10 TransCanada who is subjecting the pipeline on the Landowner and who is making  
11 a daily profit from that pipeline. When evaluating the impact on property rights of  
12 this provision, you must consider the potentially extremely expensive fight a  
13 Landowner would have over this question of whether or not damage was an act of  
14 negligence. Putting this kind of potential liability upon the Landowner is  
15 incredibly problematic and is detrimental to the protection of property rights. I  
16 don’t think this unilateral power which I can’t do anything about as the landowner  
17 is in the best economic interest of the land in question or the State of Nebraska for  
18 landowners to be treated that way.

19 **Q: Is there any specific event or example you are aware of that makes this**  
20 **concern more real for you?**

21 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against  
22 Nemaha County, Nebraska landowner farmers who accidentally struck two  
23 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of  
24 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged  
25 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate  
26 copy of the Federal Court Complaint is here as **Attachment No. 4.**

27 **Q: What is your next concern with the Easement language?**

28 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as  
29 they choose unless 1) any Landowner use interferes in any way with

1 TransCanada's exercise of any of its rights within the Easement, or 2)  
2 TransCanada decides to take any action on the property it deems necessary to  
3 prevent injury, endangerment or interference with anything TransCanada deems  
4 necessary to do on the property. Landowner is also forbidden from excavating  
5 without prior authorization by TransCanada. So my understanding is that  
6 TransCanada will unilaterally determine what Landowner can and can't do based  
7 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada  
8 could also completely deny my request to excavate. Further, TransCanada retains  
9 all "privileges necessary or convenient for the full use of the rights" granted to  
10 them in the Easement. Again, TransCanada unilaterally can decide to the  
11 detriment of the property rights of Landowner what TransCanada believes is  
12 necessary or convenient for it. And there is no option for any additional  
13 compensation to landowner for any right exercised by TransCanada that leads to  
14 the removal of trees or plants or vegetation or buildings or structures or facilities  
15 owned by Landowner of any kind. Such undefined and unilateral restrictions and  
16 rights without having to compensate Landowner for such further destruction or  
17 losses are not conducive to the protection of property rights or economic interest.

18 **Q: What is the next concern you have?**

19 A: The Easement also allows some rights for Landowner but restricts them at the  
20 same time and again at the sole and unilateral decision making of TransCanada.  
21 TransCanada will determine if the actions of Landowner might in anyway  
22 endanger or obstruct or interfere with TransCanada's full use of the Easement or  
23 any appurtenances thereon of the pipeline itself or to their access to the Easement  
24 or within the Easement and TransCanada retains the right at any time, whether  
25 during growing season or not, to travel "within and along Easement Area on foot  
26 or in vehicle or machinery..." Further at TransCanada's sole discretion it will  
27 retain the rights to prevent any landowner activity that it thinks may "unreasonably  
28 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such

1 undefined and unilateral restrictions are not conducive to the protection of  
2 property rights or economic interest.

3 **Q: What is the next concern you have with the Easement language?**

4 A: The Easement allows TransCanada sole discretion to burn or chip or bury under  
5 Landowner's land any debris of any kind without any input or power of  
6 Landowner to demand an alternative method or location of debris disposal. Such  
7 unilateral powers would negatively affect Landowners property are not conducive  
8 to the protection of property rights or economic interest.

9 **Q: What is the next concern you have with the Easement language?**

10 A: Again, undefined terms leave a lot of room for confusion. What does the phrase  
11 "where rock is encountered" mean and why does TransCanada solely get to  
12 determine whether or not this phrase is triggered. This phrase could be used to  
13 justify installing the pipeline 24 inches beneath the surface. The ability to use this  
14 provision to minimal locate the pipeline at a depth of 24 inches could negatively  
15 affect Landowners property are not conducive to the protection of property rights.  
16 A shallow pipeline is much more likely to become a danger and liability in the  
17 future given farming operations and buried irrigation lines and other factors  
18 common to the current typical agricultural uses of the land in question impacted  
19 by TransCanada's preferred pipeline route.

20 **Q: What is the next concern you have with the Easement language?**

21 A: There are more vague concepts solely at the determination of TransCanada such as  
22 "as nearly as practicable" and "pre-construction position" and "extent reasonably  
23 possible." There is nothing here that defines this or provides a mechanism for  
24 documenting or memorializing "pre-construction position" so as to minimize  
25 costly legal battles or wasted Landowner time attempting to recreate the soil  
26 condition on their fields or pasture. Such unilateral powers would negatively affect  
27 Landowners property are not conducive to the protection of property rights or  
28 economic interest.

29 **Q: What is the next concern you have with the Easement language?**

1 A: TransCanada maintains the unilateral right to abandon the pipeline and all  
2 appurtenances thereto in place on, under, across, or through Nebraska land at any  
3 time it chooses. There is no provision for Landowner compensation for such  
4 abandonment nor any right for the Landowner to demand removal. Such unilateral  
5 powers would negatively affect Landowners property are not conducive to the  
6 protection of property rights or economic interest.

7 **Q: What is the next concern you have with the Easement language?**

8 A: TransCanada has the power to unilaterally move or modify the location of any  
9 Easement area whether permanent or temporary at their sole discretion.  
10 Regardless, if Landowner has taken prior steps relative to their property in  
11 preparation or planning of TransCanada's taking of the initial easement area(s),  
12 the language here does not require TransCanada to compensate the Landowner if  
13 they decide to move the easement anywhere on Landowners property. Such  
14 unilateral powers would negatively affect Landowners property are not conducive  
15 to the protection of property rights or economic interests.

16 **Q: What is the next concern you have with the Easement language?**

17 A: The Easement requires that all of the burdens and restrictions upon Landowner to  
18 transfer and be applicable to any future owner of the Land in question without the  
19 ability of the future Landowner to modify or negotiate any of the language in  
20 question to which it will be held to comply.

21 **Q: What is the next concern you have with the Easement language?**

22 A: The Easement allows TransCanada to assign, transfer, or sell any part of the  
23 Easement to any person, company, country, etc. at their sole discretion at anytime  
24 to anyone. This also means that any buyer of the easement could do the same to a  
25 third buyer and so on forever. There is no change of control or sale provision in  
26 place to protect the Landowner or Nebraska or to provide compensation for such  
27 change of control or ownership. It is not conducive to the protection of property  
28 rights or economic interests to allow unilateral unrestricted sale of the Easement

1 thereby forcing upon the Landowner and our State a new unknown Easement  
2 owner.

3 **Q: What is the next concern you have with the Easement language?**

4 A: There are many terms in the Easement that are either confusing or undefined terms  
5 that are without context as to whether or not the Landowner would have any say  
6 so in determining what these terms mean or if the evaluation is solely in  
7 TransCanada's control. Some of these vague undefined terms are as follows:

- 8 i. "pipeline installation activities"
- 9 ii. "availability of labor and materials"
- 10 iii. "commercially reasonable costs and expenses"
- 11 iv. "reasonably anticipated and foreseeable costs and expenses"
- 12 v. "yield loss damages"
- 13 vi. "diminution in the value of the property"
- 14 vii. "substantially same condition"
- 15 viii. "an actual or potential hazard"
- 16 ix. "efficient"
- 17 x. "convenient"
- 18 xi. "endangered"
- 19 xii. "obstructed"
- 20 xiii. "injured"
- 21 xiv. "interfered with"
- 22 xv. "impaired"
- 23 xvi. "suitable crossings"
- 24 xvii. "where rock is encountered"
- 25 xviii. "as nearly as practicable"
- 26 xix. "pre-construction position"
- 27 xx. "pre-construction grade"
- 28 xxi. "various engineering factors"

1 Each one of these above terms and phrases as read in the context of the Easement  
2 could be problematic in many ways. Notably, undefined terms tend to only get  
3 definition in further legal proceedings after a dispute arises and the way the  
4 Easement is drafted, TransCanada has sole power to determine when and if a  
5 particular situation conforms with or triggers rights affected by these terms. For  
6 instance, “yield loss damages” should be specifically defined and spelled out  
7 exactly how the landowner is to be compensated and in what events on the front  
8 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,  
9 the Landowner is without contractual rights to define these terms or determine  
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**  
12 **think of at this time?**

13 A: I reserve the right to discuss any additional concerns that I think of at the time of  
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**  
16 **TransCanada’s proposed Easement terms and agreement, do you believe**  
17 **those to be reasonable or just, under the circumstances of the pipeline’s**  
18 **impact upon you and your land?**

19 A: No, I do not believe those terms to be reasonable or just for the reasons that we  
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**  
22 **they sought to obtain in your land, and for what they sought to prevent you**  
23 **and any future land owner of your property from doing in the future?**

24 A: Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**  
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**  
27 **compensation for all of what they proposed to take from you so that their tar**  
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just  
2 offer for all the potential impacts and effects and the rights that I'm giving up, and  
3 what we will be prevented from doing in the future and how their pipeline would  
4 impact my property for ever and ever.

5 **Q: Has TransCanada at any time offered to compensate you annually, such as**  
6 **wind farm projects do, for the existence of their potential tar sands pipeline**  
7 **across your property.**

8 A: No, never.

9 **Q: At any time did TransCanada present you with or request that you, as the**  
10 **owner of the land in question, sign and execute a document called, "Advanced**  
11 **Release of Damage Claims and Indemnity Agreement?"**

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**  
14 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

15 A: Yes, it is.

16 **Q: What was your understanding of that document?**

17 A: When I read that document in the plain language of that document, it was my  
18 understanding that TransCanada was attempting to pay me a very small amount at  
19 that time in order for me to agree to give up my rights to be compensated from  
20 them in the future related to any damage or impact they may have upon my  
21 property "arising out of, in connection with, or alleged to resulted from  
22 construction or surveying over, under or on" my land.

23 **Q: Did you ever sign that document?**

24 A: No, I did not.

25 **Q: Why not?**

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small  
27 sum of money when I have no idea how bad the impacts or damages that they, or  
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying  
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to  
5 shield themselves against known and foreseeable impacts that their pipeline, and  
6 the construction of it, would have upon my land. It made me feel that they knew it  
7 was in their financial interest to pay me as little as possible to prevent me from  
8 ever having the opportunity to seek fair compensation again, and that this must be  
9 based upon their experience of unhappy landowners and situations in other places  
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you  
12 thought their proposed location of their proposed pipeline across your land  
13 was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you  
16 thought their proposed location of their proposed pipeline across your land  
17 was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the  
20 Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of  
23 an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the  
25 government is going to take land for public use, then in that case, or by taking for  
26 public use, it can only occur if the private land owner is compensated justly, or  
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which  
29 the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 **Q: Can you think of any way in which the public, that is the citizens of the State**  
3 **of Nebraska, can directly use the proposed TransCanada Keystone XL**  
4 **Pipeline, as it dissects the State of Nebraska?**

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the  
6 public benefits from this pipeline in any way, how they can use it any way, or how  
7 it's in the public interest in any way. By looking at the map, it is quite clear to me  
8 that the only reason it's proposed to come through Nebraska, is that because we  
9 are geographically in the way from between where the privately-owned Tar Sands  
10 are located to where TransCanada wants to ship the Tar Sands to refineries in  
11 Houston, Texas.

12 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**  
13 **crude petroleum, or oil and petroleum by-products that you would like to**  
14 **ship in its pipeline?**

15 A: No, it has not.

16 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**  
17 **products that you, at this time or any time in the future, would desire to place**  
18 **for transport within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not.

20 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**  
21 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**  
22 **products within the proposed TransCanada Keystone XL Pipeline?**

23 A: No, I do not. I've never heard of such a person or company like that.

24 **Q: Do you pay property taxes for the land that would be affected and impacted**  
25 **at the proposed TransCanada Keystone XL Pipeline?**

26 A: Yes, I do.

27 **Q: Why do you pay property taxes on that land?**

28 A: Because that is the law. The law requires us to pay the property taxes as the owner  
29 of that property.

1 **Q: Because you follow the law and pay property taxes, do you believe you**  
2 **deserve any special consideration or treatment apart from any other person**  
3 **or company that pays property taxes?**

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's  
5 just what you do.

6 **Q: Do you believe the fact that you pay property taxes entitles you to special**  
7 **treatment of any kind, or special rights of any kind?**

8 A: No, of course not.

9 **Q: Do you believe the fact that you pay property taxes on your land would be**  
10 **enough to qualify you to have the power of eminent domain to take land of**  
11 **your neighbors or other people in your county, or other people across the**  
12 **state of Nebraska?**

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that  
14 I expect an award for or any type of special consideration.

15 **Q: Have you at any time ever employed any person other than yourself?**

16 A: Well, yes I have.

17 **Q: Do you believe that the fact that you have, at some point in your life,**  
18 **employed one or more other persons entitle you to any special treatment or**  
19 **consideration above and beyond any other Nebraskan that has also employed**  
20 **one or more persons?**

21 A: No, of course not.

22 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**  
23 **have at one point employed another person within this state, entitles you to**  
24 **preferential treatment or consideration of any kind?**

25 A: No, of course not. If I choose to employ someone that decision is up to me. I  
26 don't deserve any special treatment or consideration for that fact.

27 **Q: At the beginning of your statement, you briefly described your property that**  
28 **would be impacted by the potential Keystone XL Pipeline. I would like you to**  
29 **give the Commissioners a sense of specifically how you believe the proposed**

1 **Keystone XL Pipeline and its preferred route, which proposes to go across**  
2 **your land, how it would in your opinion based on your knowledge,**  
3 **experience, and background of your land, affect it. So please share with the**  
4 **Commissioners the characteristics of your land that you believe is important**  
5 **for them to understand, while they evaluate TransCanada's application for a**  
6 **route for its proposed pipeline to cross Nebraska and across your land,**  
7 **specifically.**

8 A: The current proposed route of the Keystone XL pipeline would cross a half mile of  
9 our land consisting of equal parts pasture and row crop. It has been categorized  
10 highly erodible by the U.S. Farm Service Agency. This means that any disturbance  
11 to the ground results in constant monitoring and maintenance to protect it from  
12 severe and catastrophic erosion. We would have to prevent and repair any damage  
13 for as long the pipeline is there. According to the easement we would be forced to  
14 sign, that could be forever since TransCanada is not responsible to remove it nor  
15 return the land to its original state.

16 **Q: What else?**

17 A: Also according to the forced easement, we could be liable for damages and clean-  
18 up when the pipeline leaks, resulting in permanent toxic contamination.

19 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**  
20 **crude oil pipeline in its preferred location, or ultimate location across the**  
21 **state of Nebraska?**

22 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly  
23 or even bullied around and being made to feel scared that they did not have any  
24 options but to sign whatever papers TransCanada told them they had to. I am  
25 aware of folks being threatened that their land would be taken if they didn't follow  
26 what TransCanada was saying. I am aware of tactics to get people to sign  
27 easements that I don't believe have any place in Nebraska or anywhere such as  
28 TransCanada or some outfit associated with it hiring a pastor or priest to pray with  
29 landowners and convince them they should sign TransCanada's easement

1 agreements. I am aware of older folks and widows or widowers feeling they had  
2 no choice but to sign TransCanada's Easement and they didn't know they could  
3 fight or stand up for themselves. From a more practical standpoint, I am worried  
4 that according to their answer to our Interrogatory No. 211, TransCanada only  
5 owns and operates one (1) major oil pipeline. They simply do not have the  
6 experience with this type of pipeline and that scares me. There are others but that  
7 is what I can recollect at this time and if I remember more or my recollection is  
8 refreshed I will share those with the Commissioners at the Hearing in August.

9 **Q: Do you believe TransCanada's proposed method of compensation to you as a**  
10 **landowner is reasonable or just?**

11 A: No, I do not.

12 **Q: Do you have any concern about limitations that the construction of this**  
13 **proposed pipeline across your affected land would prevent construction of**  
14 **future structures upon the portion of your land affected by the proposed**  
15 **easement and immediately surrounding areas?**

16 A: Well yes, of course I do. We would not be able to build many, if any, types of  
17 structures directly across or touching the easement, and it would be unwise and I  
18 would be uncomfortable to build anything near the easement for fear of being  
19 blamed in the future should any damage or difficulty result on my property in  
20 regards to the pipeline.

21 **Q: Do you think such a restriction would impact you economically?**

22 A: Well yes, of course.

23 **Q: How do you think such a restriction would impact you economically?**

24 A: The future of this land may not be exactly how it's being used as of this moment,  
25 and having the restrictions and limiting my ability to develop my land in certain  
26 ways presents a huge negative economic impact on myself, my family, and any  
27 potential future owner of the property. You have no idea how I or the future owner  
28 may want to use this land in the future or the other land across Nebraska  
29 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years

1 ago it would have been hard to imagine all the advances that we have now or how  
2 things change. Because the Easement is forever and TransCanada gets the rights in  
3 my land forever we have to think with a very long term view. By placing their  
4 pipeline on under across and through my land that prevents future development  
5 which greatly negatively impacts future taxes and tax revenue that could have  
6 been generated by the County and State but now will not. When you look at the  
7 short blip of economic activity that the two years of temporary construction efforts  
8 may bring, that is far outweighed by the perpetual and forever loss of opportunity  
9 and restrictions TransCanada is forcing upon us and Nebraska.

10 **Q: Do you have any concerns about the environmental impact of the proposed**  
11 **pipeline?**

12 A: Yes, I do.

13 **Q: What are some of those concerns?**

14 A: As an affected land owner and Nebraskan, I am concerned that any construction,  
15 operation, and/or maintenance of the proposed Keystone XL Pipeline would have  
16 a detrimental impact upon the environment of my land specifically, as well as the  
17 lands near my land and surrounding the proposed pipeline route.

18 **Q: Do you have any other environmental concerns?**

19 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in  
20 construction and/or maintenance and operation. I am concerned about spills and  
21 leaks that TransCanada has had in the past and will have in the future. This could  
22 be catastrophic to my operations or others and to my county and the State.

23 **Q: Do you have any thoughts regarding if there would be an impact upon the**  
24 **natural resources on or near your property due to the proposed pipeline?**

25 A: Yes, I believe that any construction, operation, and/or maintenance of the  
26 proposed Keystone XL Pipeline would have detrimental impacts upon the natural  
27 resources of my land, and the lands near and surrounding the proposed pipeline  
28 route.

1 **Q: Do you have any worries about potential impacts from the proposed pipeline**  
2 **to the soil of your land, or land near you?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the  
4 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of  
5 land, as well as land along and surrounding the proposed pipeline route. This  
6 includes, but is not limited to, the reasons that we discussed above of disturbing  
7 the soil composition and makeup as it has naturally existed for thousands and  
8 millions of years during the construction process, and any future maintenance or  
9 removal process. I'm gravely concerned about the fertility and the loss of  
10 economic ability of my property to grow the crops, or grow the grasses, or grow  
11 whatever it is at that time they exist on my property or that I may want to grow in  
12 the future, or that a future owner may want to grow. The land will never be the  
13 same from as it exists now undisturbed to after it is trenched up for the proposed  
14 pipeline.

15 **Q: Do you have any concerns about the potential impact of the proposed pipeline**  
16 **upon the groundwater over your land, or surrounding lands?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
19 groundwater of not only under my land, but also near and surrounding the pipeline  
20 route, and in fact, potentially the entire State of Nebraska. Water is life plain and  
21 simple and it is simply too valuable to our State and the country to put at  
22 unreasonable risk.

23 **Q: Do you have any concern about the potential impact of the proposed pipeline**  
24 **upon the surface water on, or near or around your land?**

25 A: Yes, I have significant concerns that any construction, operation, and/or  
26 maintenance of the proposed Keystone XL Pipeline would have detrimental  
27 impact upon the surface water of not only within my property boundary, but along  
28 and near and surrounding the pipeline route, and in fact, across the state of  
29 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**  
2 **upon the wildlife and plants, other than your growing crops on or near your**  
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
6 wildlife and the plants, not only that are located on or can be found upon my land,  
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**  
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed  
11 pipeline underneath and across and through my property will negatively affect the  
12 fair market value at any point in the future, especially at that point in which I  
13 would need to sell the property, or someone in my family would need to sell the  
14 property. I do not believe, and certainly would not be willing to pay, the same  
15 price for land that had the pipeline located on it, versus land that did not. I hope  
16 there is never a point where I'm in a position where I have to sell and have to  
17 realize as much value as I can out of my land. But because it is my single largest  
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL  
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they  
20 would've paid and as much as I could've received, if the pipeline were not upon  
21 my property. There are just too many risks, unknowns, impacts and uncertainties,  
22 not to mention all of the rights you give up by the nature of having the pipeline  
23 due to having the easement that we have previously discussed, for any reasonable  
24 person to think that the existence of the pipeline would not negatively affect my  
25 property's value.

26 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**  
27 **testimony?**

28 A: Yes, I have.

29 **Q: Where have you seen that before?**

1 A: That is a map I think I first saw a couple years ago that shows the Keystone XL  
2 I-90 corridor alternate route of its proposed pipeline through Nebraska and I  
3 believe the portion of the alternative route shown here within Nebraska essentially  
4 twins or parallels Keystone I. That is why this is included, to show TransCanada  
5 has looked at the possibility of twinning which I believe is feasible.

6 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**  
7 **Application, and as found on Attachment No. 7, here to your testimony, is in**  
8 **the public interest of Nebraska?**

9 A: No, I do not.

10 **Q: Do you believe that the Keystone mainline alternative route as shown on**  
11 **Attachment No. 7 included with your testimony here is a major oil pipeline**  
12 **route that is in the public interest of Nebraska?**

13 A: No, I do not.

14 **Q: Do you believe the Nebraska portion of the I-90 corridor alternative route,**  
15 **specifically for the portion of the proposed pipeline within Nebraska as found**  
16 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

17 A: No, I do not.

18 **Q: Do you believe there is any potential route for the proposed Keystone XL**  
19 **Pipeline across, within, under, or through the State of Nebraska that is in the**  
20 **public interest of the citizens of Nebraska?**

21 A: No, I do not.

22 **Q: Why do you hold that belief?**

23 A: Because there simply is no public interest based on all of the factors that I am  
24 aware and that I have read and that I have studied that this Commission is to  
25 consider that would establish that a for-profit foreign-owned pipeline that simply  
26 crosses Nebraska because we are geographically in the way between where tar  
27 sands are in Canada to where it wants to ship it to in Texas could ever be in the  
28 public interest of Nebraskans. We derive no benefit from this project. It is not for  
29 public use. Nebraska is simply in the way and when all considerations are taken in

1 there is no net benefit of any kind for Nebraska should this project be placed in our  
2 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
3 the negative impacts and concerns.

4 **Q: What do you think about the applicant, TransCanada’s argument that it’s**  
5 **preferred route for its proposed Keystone XL Pipeline is in the public interest**  
6 **of Nebraska because it may bring temporary jobs during the construction**  
7 **phase to Nebraska?**

8 A: First of all, not all jobs are created equally. Most jobs that are created, whether  
9 temporary or on a permanent basis, don’t come with a project that has all the  
10 potential and foreseeable negative impacts, many of which we have discussed here  
11 and other witnesses throughout the course of this hearing have and will discuss. If  
12 I decide to hire and employ someone to help me out in my farming or ranching  
13 business, I’ve created a job but I haven’t done so at the risk or detrimental impact  
14 to my land or my town or my county or my state. And I’ve hired someone who is  
15 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce  
16 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all  
17 jobs are not created equal. Additionally, I understand from what I’m familiar with  
18 from TransCanada’s own statements that the jobs numbers they originally touted  
19 were determined to be a minute fraction of the permanent jobs that had been  
20 projected. According to their answer to our Interrogatory No. 191, TransCanada  
21 has created only thirty-four (34) jobs within Nebraska working specifically on  
22 behalf of TransCanada and according to their answer to Interrogatory No. 196, as  
23 of May 5, 2017 they only employ one (1) temporary working within Nebraska.  
24 Further, according to their answer to Interrogatory No. 199, TransCanada would  
25 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was  
26 constructed on its Preferred Route or its Mainline Alternative Route.

27 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**  
28 **because it would cross your land?**

1 A: No, absolutely not. I am opposed to this project because it is not in the public  
2 interest, neither within my community nor within our state.

3 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**  
4 **was to cross someone else's land?**

5 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have  
6 the fear and anxiety and potential foreseeable risks and negative impacts that this  
7 type of a project carrying this type of product brings foisted upon anyone in this  
8 state or any other state.

9 **Q: Do you think there is any intelligent route for the proposed Keystone XL**  
10 **Pipeline to cross the state of Nebraska?**

11 A: I don't believe there is an intelligent route because as I have stated I don't believe  
12 this project anywhere within Nebraska is within the public interest. However, if  
13 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely  
14 had to go somewhere in the state of Nebraska, the only intelligent route I believe  
15 would be to twin or closely parallel the existing Keystone I Pipeline. Both the  
16 preferred route and the mainline alternative routes are economic liabilities our  
17 state cannot risk.

18 **Q: What do you rely upon to make that statement?**

19 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,  
20 already exists in that area is reason enough as it is not in our best interest or the  
21 public interests to have more major oil pipelines crisscrossing our state. Second,  
22 they have all the infrastructure already there in terms of relationships with the  
23 counties and local officials and first responders along that route. Third, they have  
24 already obtained easements from all the landowners along that route and have  
25 relationships with them. Fourth, that route avoids our most sensitive soils, the  
26 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala  
27 Aquifer. Sixth, they have already studied that route and previously offered it as an  
28 alternative. Seventh, it just makes the most sense that as a state we would have

1 some intelligent policy of energy corridors and co-locating this type of  
2 infrastructure near each other.

3 **Q: Do you have any other concerns you would like to reiterate or can think of at**  
4 **this time you would like the Commissioners to understand?**

5 **A:** Yes. For a one-time fee this forced easement would give TransCanada the use of  
6 our land forever. They are free to sell it at any time to anyone (foreign or  
7 domestic), or to simply walk away at a time of their choosing, leaving a  
8 dangerous, corroding, toxic structure for which they would not be held  
9 responsible. This would not only devalue our property but could cause its  
10 condemnation, rendering it useless to anyone. It is incomprehensible that a one-  
11 time fee could be considered just compensation for this.

12 **Q: Have you fully expressed each and every opinion, concern, or fact you would**  
13 **like the Public Service Commissioners to consider in their review of**  
14 **TransCanada's Application?**

15 **A:** No, I have not. I have shared that which I can think of as of the date I signed this  
16 document below but other things may come to me or my memory may be  
17 refreshed and I will add and address those things at the time of the Hearing in  
18 August and address any additional items at that time as is necessary. Additionally,  
19 I have not had an adequate amount of time to receive and review all of  
20 TransCanada's answers to our discovery and the discovery of others so it was  
21 impossible to competently and completely react to that in my testimony here and I  
22 reserve the right to also address anything related to discovery that has not yet  
23 concluded as of the date I signed this document below. Lastly, certain documents  
24 requested have not yet been produced by TransCanada and therefore I may have  
25 additional thoughts on those I will also share at the hearing as needed.

26 **Q: What is it that you are requesting the Public Service Commissioners do in**  
27 **regards to TransCanada's application for the proposed Keystone XL Pipeline**  
28 **across Nebraska?**

1 A: I am respectfully and humbly requesting that the Commissioners think far beyond  
2 a temporary job spike that this project may bring to a few counties and beyond the  
3 relatively small amount of taxes this proposed foreign pipeline would possibly  
4 generate. And, instead think about the perpetual and forever impacts of this  
5 pipeline as it would have on the landowners specifically, first and foremost, but  
6 also thereby upon the entire state of Nebraska, and to determine that neither the  
7 preferred route nor the Keystone mainline alternative route are in the public  
8 interest of the citizens of the state of Nebraska. And if the Commissioners were  
9 inclined to modify TransCanada's proposed routes and were to be inclined to grant  
10 an application for a route in Nebraska, that the only potential route that would  
11 make any intelligent sense whatsoever would be twinning or near paralleling of  
12 the proposed KXL with the existing Keystone I pipeline. It simply does not make  
13 sense to add yet another major oil pipeline crisscrossing our state creating new  
14 pumping stations, creating new impacts on additional counties and communities  
15 and going through all of the court processes with myself and other landowners like  
16 me when this applicant already has relationships with the landowners, the towns  
17 and the communities along Keystone I, and that Keystone I is firmly outside of the  
18 sand hills and a significantly further portion away from the heart of the Ogallala  
19 Aquifer than the preferred route or the Keystone mainline alternative route.

20 **Q: Are all of your statements in your testimony provided above true and**  
21 **accurate as of the date you signed this document to the best of your**  
22 **knowledge?**

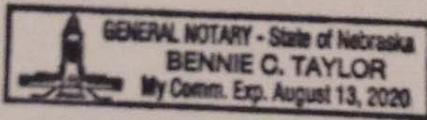
23 A: Yes, they are.

24 **Q: Thank you, I have no further questions at this time and reserve the right to**  
25 **ask you additional questions at the August 2017 Hearing.**

Cheri Blocher  
Cheri Blocher

Subscribed and Sworn to me before this 30th day of May, 2017.

Bennie C. Taylor  
Notary Public



**Attachment No. 1**

PREPARED BY  
exp Energy Services Inc.



S.030  
T.023N  
R.005W

S.029  
T.023N  
R.005W

S.031  
T.023N  
R.005W

Cheri G. Blocher  
Michael J. Blocher

S.032  
T.023N  
R.005W



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
Cheri G. Blocher  
Michael J. Blocher

**TRACT NO.** ML-NE-AT-30645.000  
**STATE:** Nebraska  
**COUNTY:** Antelope  
**SECTION:** 032  
**TOWNSHIP:** 023N  
**RANGE:** 005W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\63528\KEYSTONE XL\B002\_999526.dwg

**Attachment No. 2**



**Attachment No. 3**

**Prepared by and after recording  
please return to:**  
TransCanada Keystone Pipeline, LP  
1106 Benjamin Avenue, Suite 600  
Norfolk, NE 68701

---

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-AT-30645.000

**EASEMENT AND RIGHT-OF-WAY  
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Cheri G. Blocher and Michael J. Blocher, wife and husband**, whose mailing address is 83474 529 Avenue, Oakdale, NE 68761 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and

petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Antelope, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 160.82 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NW1/4 of Section 32, T23N, R5W of the 6th P.M., as recorded in Book 130, Page 98 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the

negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR(S):

\_\_\_\_\_  
**Cheri G. Blocher**

\_\_\_\_\_  
**Michael J. Blocher**

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Cheri G. Blocher**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Michael J. Blocher**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

# ANTELOPE COUNTY, NEBRASKA

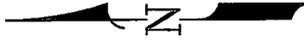
T-23-N, R-5-W, SECTION 32  
ML-NE-AT-30645.000

PROPERTY LINE  
SECTION LINE  
PROPOSED  
ADDITIONAL TEMPORARY WORKSPACE  
PERMANENT EASEMENT & RIGHT OF WAY  
DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA

SEE DETAIL "A"

CHERI G. BLOCHER AND  
MICHAEL J. BLOCHER  
VOLUME 130, PAGE 98  
D.R.A.C.N.

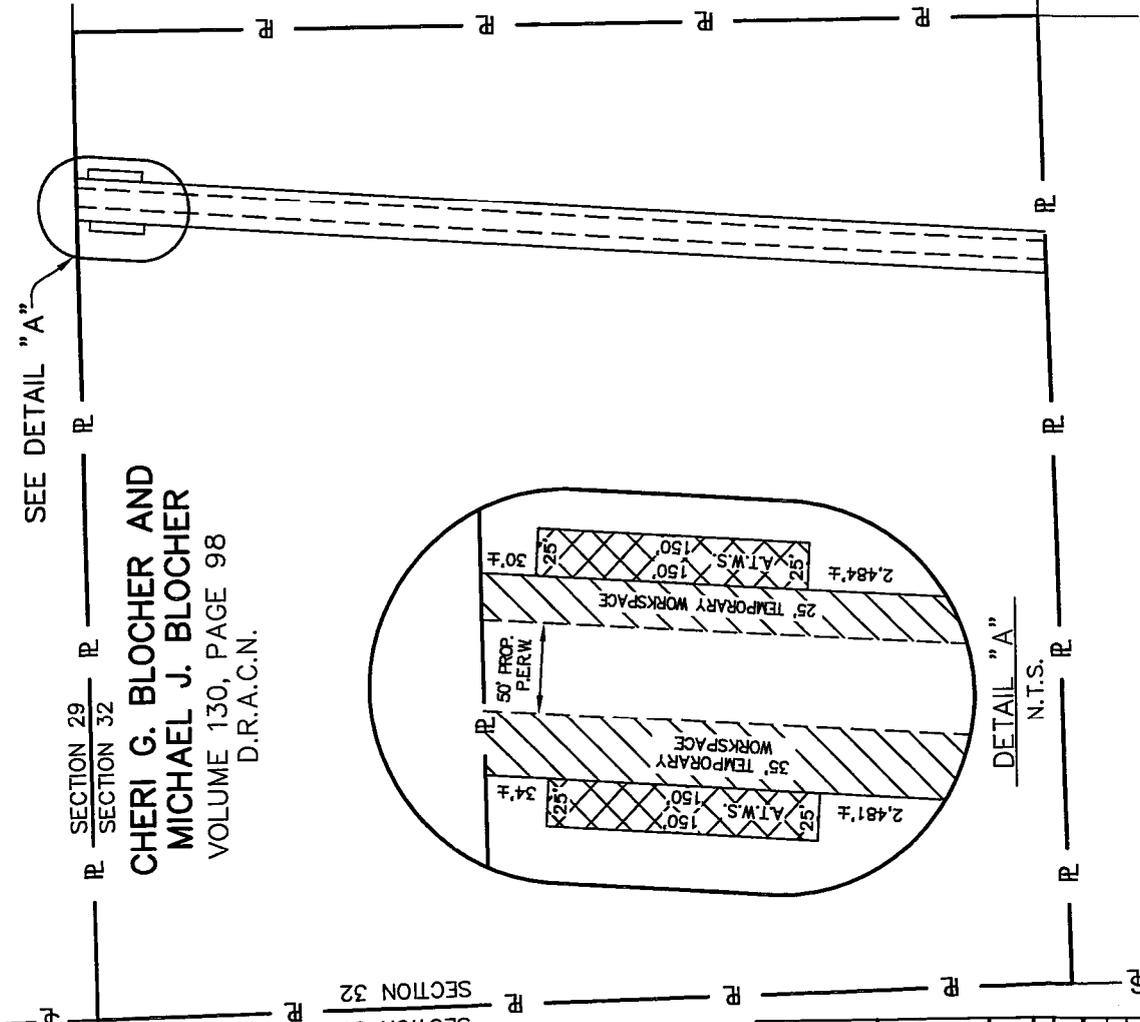
VICINITY MAP  
N.T.S.



SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:  
NW/4 OF SECTION 32,  
T-23-N, R-5-W

**NOTE:**  
THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.



DETAIL "A"  
N.T.S.

TOTAL DISTANCE ACROSS PROPERTY: 2,664'±  
AREA OF PERMANENT EASEMENT: 3.1 ACRES  
AREA OF TEMPORARY WORKSPACE: 3.7 ACRES  
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.2 ACRE

LEGEND:  
P PROPERTY LINE  
S SECTION LINE  
P PROP.  
A.T.W.S.  
P.E.R.W.  
D.R.A.C.N.



KEYSTONE XL PROJECT  
EASEMENT AREA  
ACROSS THE PROPERTY OF  
CHERI G. BLOCHER AND  
MICHAEL J. BLOCHER  
ML-NE-AT-30645.000

PROJECT:	XL	EXHIBIT A	
APPROVED BY:		DRAWING NUMBER	
SLR		XL-08-ML-SK-3474	
NO.		REVISION	
		DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/28/14	PB	ALS



**Attachment No. 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE )  
COMPANY, a New York Corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RICHARD ANDREW, JANE ANDREW, )  
LUKE ANDREW, and BRYCE ANDREW, )  
 )  
Defendants. )

CASE NO. \_\_\_\_\_

**COMPLAINT**

**COMES NOW** Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

**PARTIES**

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

**JURISDICTION AND VENUE**

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

### GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$ , Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

### **FIRST CLAIM: NEGLIGENCE**

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

### **SECOND CLAIM: TRESPASS**

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

**WHEREFORE** Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

### **JURY DEMAND**

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,  
Plaintiff,

By:     /s/ Albert M. Engles      
ENGLES, KETCHAM, OLSON, & KEITH, P.C.  
1350 Woodmen Tower  
1700 Farnam Street  
Omaha, Nebraska 68102  
(402) 348-0900  
(402) 348-0904 (Facsimile)  
Albert M. Engles, #11194  
Dan H. Ketcham, #18930  
Michael L. Moran, #24042  
James C. Boesen, #24862

**Attachment No. 5**

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-AT-30645.000

We, Cheri G. Blocher and Michael J. Blocher, wife and husband, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Eight Hundred Twenty Dollars and No Cents (\$1,820.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Antelope, State of Nebraska:

**NW/4**

**Section 32, Township 23N, Range 5W**

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

**Attachment No. 6**



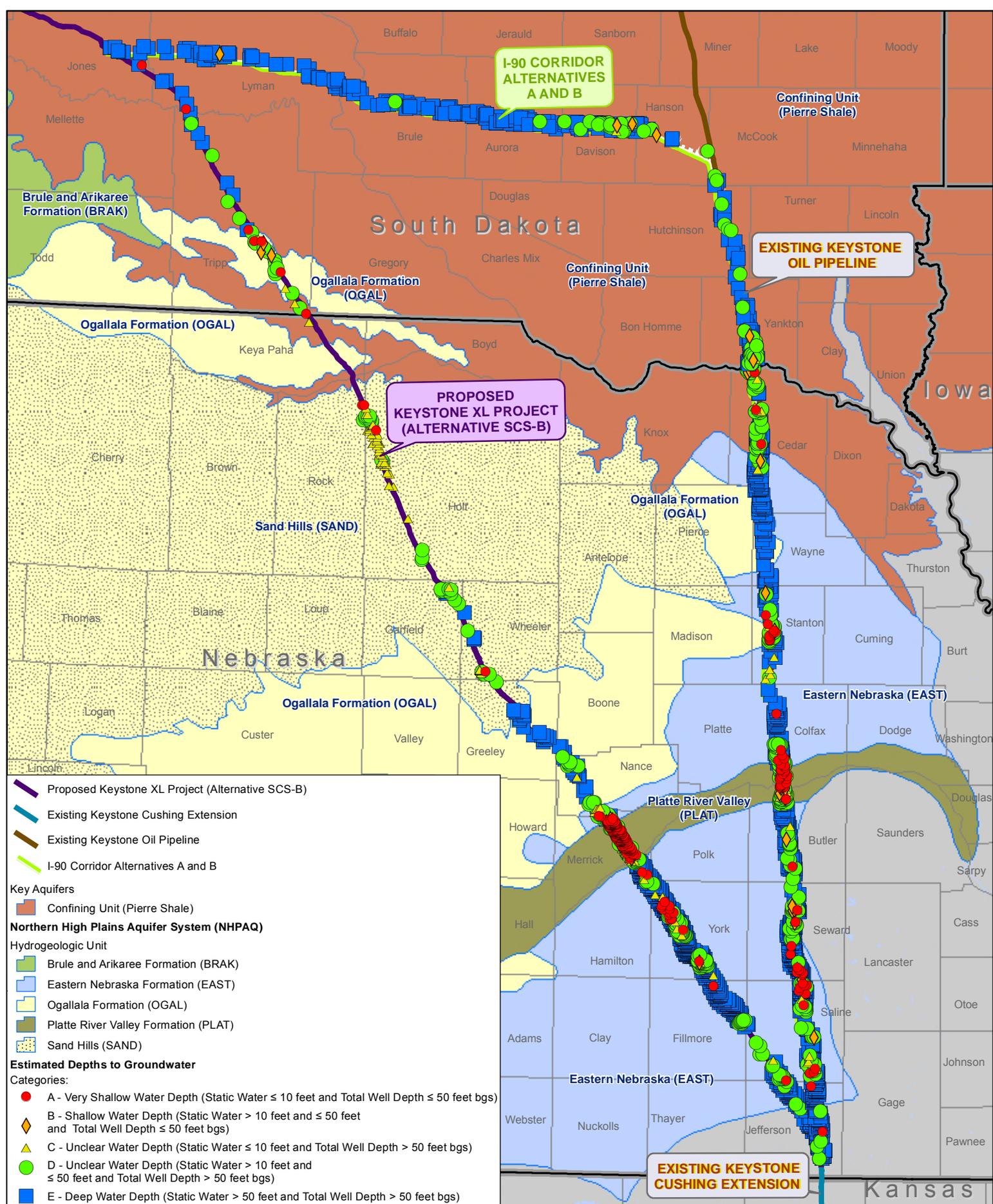
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



### KEYSTONE XL PROJECT

Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

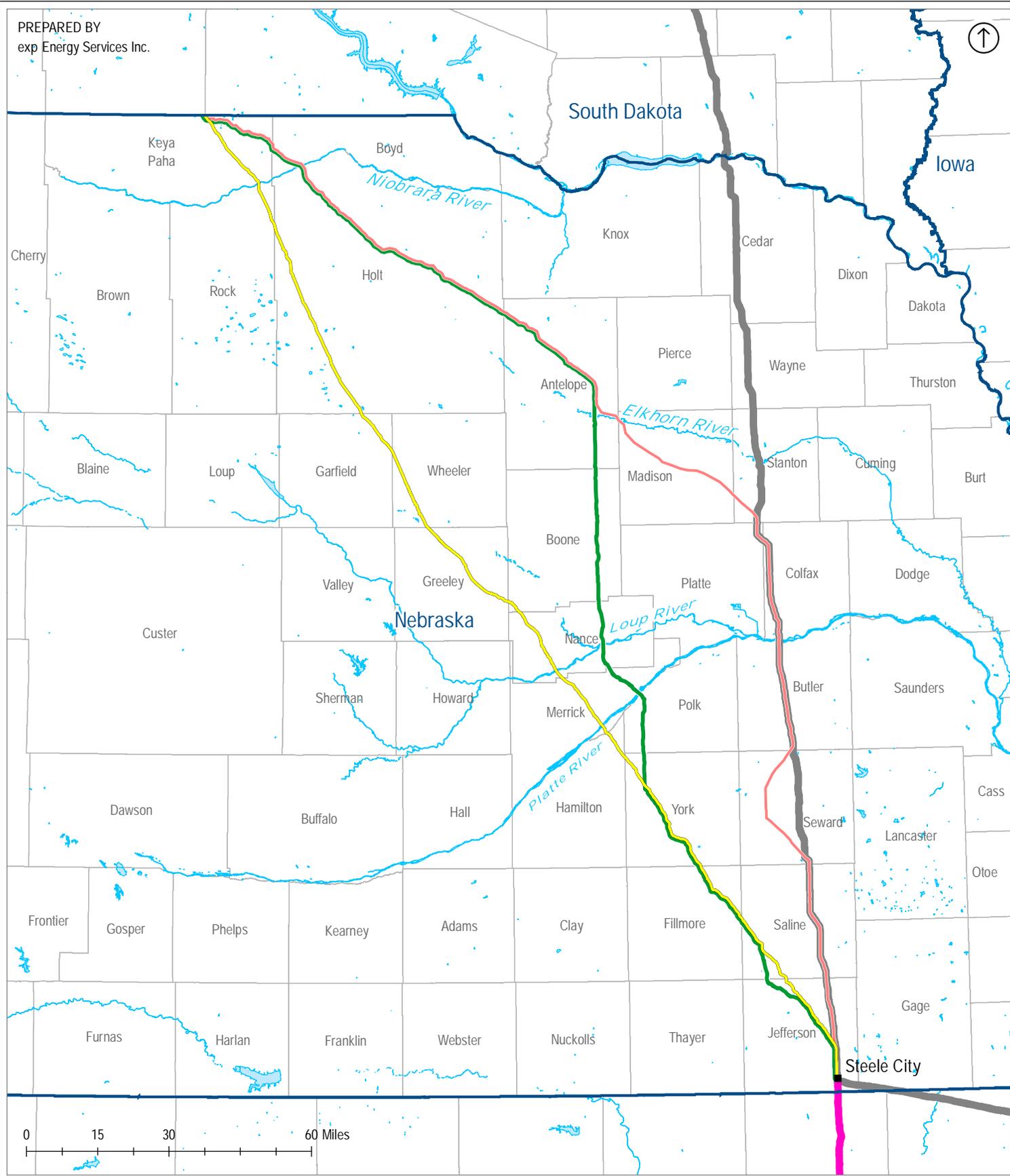
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

### KEYSTONE XL PROJECT

Figure 4.3.3-8  
 I-90 Corridor Alternatives A and B  
 Key Aquifers and Potable Water Wells  
 within 2-mile Corridor

**Attachment No. 7**



**LEGEND**

	PREFERRED ROUTE		WATERBODY
	SANDHILLS ALTERNATIVE ROUTE		STATE BOUNDARY
	KEYSTONE MAINLINE ALTERNATIVE ROUTE		COUNTY BOUNDARY
	KEYSTONE MAINLINE (PHASE I)		
	KEYSTONE CUSHING EXTENSION (PHASE II)		

**KEYSTONE XL PROJECT**  
**FIGURE 2.2-2**  
PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP  
for Route Approval of Keystone XL  
Pipeline Project, Pursuant to *Major Oil  
Pipeline Siting Act*

Direct Testimony of  
Michael Blocher in Support of  
Landowner Intervenors

State of Nebraska            )  
  ) ss.  
Antelope County            )

1   **Q:    Please state your name.**

2   A:    My name is Michael Blocher

3   **Q:    Are you an intervener in the Public Service Commission’s proceedings**  
4       **regarding TransCanada’s application for approval of its proposed Keystone**  
5       **XL tar sands pipeline across Nebraska?**

6   A:    Yes, I am.

7   **Q:    Do you own land in Nebraska, either directly or through an entity of which**  
8       **you are an owner that could be affected by the proposed TransCanada**  
9       **Keystone XL pipeline?**

10  A:    Yes, I do and it is located in Antelope County.

11  **Q:    Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**  
12       **photo(s) of your land in question here with the area of the proposed KXL**  
13       **pipeline depicted?**

14  A:    Yes.

15  **Q:    What do you do for a living?**

16  A:    Farmer.

1 **Q: If you are you married tell us your spouse's name please?**

2 A: Cheri Blocher.

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**  
4 **and or your family?**

5 A: Yes.

6 **Q: For the land that would be affected and impacted by the proposed KXL tar**  
7 **sands pipeline give the Commissioners a sense how long the land has been in**  
8 **your family and a little history of the land.**

9 A: Our land in Antelope County where my wife was born, has been in her family all  
10 sixty-five years of her life. Here we are carrying on the tradition of raising corn,  
11 soy beans, and American Quarter Horses began by her late father and mother.

12 **Q: Do you earn any income from this land?**

13 A: Yes.

14 **Q: Have you depended on the income from your land to support your livelihood**  
15 **or the livelihood of your family?**

16 A: Yes.

17 **Q: Have you ever in the past or have you thought about in the future leasing all**  
18 **or a portion of your land in question here?**

19 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective  
20 tenant may try to negotiate a lower price for my land if it had the pipeline on it and  
21 all the restrictions and risks and potential negative impacts to farming or ranching  
22 operations as opposed to land that did not have those same risks. If I was looking  
23 to lease or rent ground I would pay more for comparable non-pipeline land than I  
24 would for comparable pipeline land and I think most folks would think the same  
25 way. This is another negative economic impact that affects the landowner and the  
26 county and the state and will forever and ever should TransCanada's preferred or  
27 mainline alternative routes be approved. If they were to twin or closely parallel to  
28 Keystone I the vast majority of landowners would be those that already have a  
29 pipeline so there would be considerable less new incremental negative impacts.

1 **Q: Do you have similar concerns about selling the land?**

2 A: Well I hope not to have to sell the land in my lifetime but times change and you  
3 never know what is around the corner and yes I am concerned that if another piece  
4 of ground similar to mine were for sale and it did not have the pipeline and mine  
5 did that I would have a lower selling price. I think this would be true for pipeline  
6 ground on both the preferred and mainline alternative routes.

7 **Q: What is your intent with your land after you die?**

8 A: Like I said I hope not to have to sell and I hope that it stays in the family for years  
9 to come but I have thought about getting out if this pipeline were to come through.

10 **Q: Are you aware that the preferred route of TransCanada's Keystone XL  
11 Pipeline would cross the land described above and owned by you?**

12 A: Yes.

13 **Q: Were you or an entity for which you are a member, shareholder, or director  
14 previously sued by TransCanada Keystone Pipeline, LP?**

15 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a  
16 petition for condemnation against our land so it could place its proposed pipeline  
17 within an easement that it wanted to take from us on our land.

18 **Q: Did you defend yourself and your land in that condemnation action?**

19 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees  
20 and expenses in our resistance of TransCanada's lawsuit against us.

21 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees  
22 incurred?**

23 A: No, they have not.

24 **Q: In its lawsuit against you, did TransCanada identify the amount of your  
25 property that it wanted to take for its proposed pipeline?**

26 A: The lawsuit against us stated they would take the amount of property that is  
27 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant  
28 and equipment reasonably necessary to operate the pipeline.

1 **Q: Did TransCanada define what they meant by “property that is reasonably**  
2 **necessary”?**

3 A: No, they did not.

4 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**  
5 **property portion of your land?**

6 A: Yes, they did.

7 **Q: Did TransCanada describe what rights it proposed to take related to the**  
8 **eminent domain property on your land?**

9 A: Yes, they did.

10 **Q: What rights that they proposed to take did they describe?**

11 A: TransCanada stated that the eminent domain property will be used to “lay, relay,  
12 operate, and maintain the pipeline and the plant and equipment reasonably  
13 necessary to operate the pipeline, specifically including surveying, laying,  
14 constructing, inspecting, maintaining, operating, repairing, replacing, altering,  
15 reconstructing, removing and abandoning one pipeline, together with all fittings,  
16 cathodic protection equipment, pipeline markers, and all their equipment and  
17 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,  
18 petroleum products, and all by-products thereof.”

19 **Q: Prior to filing an eminent domain lawsuit to take your land that**  
20 **TransCanada identified, do you believe they attempted to negotiate in good**  
21 **faith with you?**

22 A: No, I do not.

23 **Q: Did TransCanada at any time approach you with or deliver to you their**  
24 **proposed easement and right-of-way agreement?**

25 A: Yes, they did.

26 **Q: At the time you reviewed TransCanada’s easement and right-of-way**  
27 **agreement, did you understand that they would be purchasing a fee title**  
28 **interest in your property or that they were taking something else?**

1 A: I understood that they proposed to have the power to take both a temporary  
2 construction easement that could last for a certain period of time and then also a  
3 permanent easement which they described to be 50 feet across or in width, and  
4 that would run the entire portion of my property from where a proposed pipeline  
5 would enter my property until where it would exit the property.

6 **Q: Is the document included with your testimony here as Attachment No. 3, a**  
7 **true and accurate copy of TransCanada's proposed Easement and Right-of-**  
8 **Way agreement that they included with their condemnation lawsuit against**  
9 **you?**

10 A: Yes, it is.

11 **Q: Have you had an opportunity to review TransCanada's proposed Easement**  
12 **and Right-of-Way agreement?**

13 A: Yes, I have.

14 **Q: What is your understanding of the significance of the Easement and Right-of-**  
15 **Way agreement as proposed by TransCanada?**

16 A: My understanding is that this is the document that will govern all of the rights and  
17 obligations and duties as well as the limitations of what I can and cannot do and  
18 how I and any future landowner and any person I invite to come onto my property  
19 must behave as well as what TransCanada is and is not responsible for and how  
20 they can use my land.

21 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**  
22 **agreement do you have any concerns about any portions of it or any of the**  
23 **language either included in the document or missing from the proposed**  
24 **document?**

25 A: Yes, I have a number of significant concerns and worries about the document and  
26 how the language included and the language not included potentially negatively  
27 impacts my land and thereby potentially negatively impacts my community and  
28 my state.

1 **Q: I would like you to walk the Commissioners through each and every one of**  
2 **your concerns about TransCanada’s proposed Easement and Right-of-Way**  
3 **agreement so they can develop an understanding of how that language and**  
4 **the terms of that contract, in your opinion, potentially negatively impacts you**  
5 **and your land. So, if you can start at the beginning of that document and**  
6 **let’s work our way through it, okay?**

7 A: Yes, I’ll be happy to express my concerns about TransCanada’s proposed  
8 Easement and Right-of-Way agreement and how it negatively could affect my  
9 property rights and my economic interests.

10 **Q. Okay, let’s start with your first concern please.**

11 A: The very first sentence talks about consideration or how much money they will  
12 pay to compensate me for all of the known and unknown affects and all of the  
13 rights I am giving up and for all the things they get to do to my land and for what  
14 they will prevent me from doing on my land and they only will pay me one time at  
15 the signing of the easement agreement. That is a huge problem.

16 **Q: Explain to the Commissioners why that is a problem.**

17 A: It is not fair to the landowner, the county, or the State. It is not fair to the  
18 landowner because they want to have my land forever for use as they see fit so  
19 they can make a daily profit from their customers. If I was to lease ground from  
20 my neighbor I would typically pay twice a year every year as long as they granted  
21 me the rights to use their land. That only makes sense – that is fair. If I was going  
22 to rent a house in town I would typically pay monthly, every month until I gave up  
23 my right to use that house. By TransCanada getting out on the cheap and paying  
24 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax  
25 revenue collection on the money I would be paid and then pay taxes on and  
26 contribute to this state and this country. It is money I would be putting back into  
27 my local community both spending and stimulating the local economy and  
28 generating more economic activity right here. Instead TransCanada’s shareholders  
29 keep all that money and it never finds its way to Nebraska.

1 **Q: What is your next concern?**

2 A: The first paragraph goes on to say Grantor, which is me the landowner, “does  
3 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a  
4 limited partnership...” and I have no idea who that really is. I have no idea who is  
5 forcing this pipeline on us or who the owners of the entities are, or what are the  
6 assets backing this limited partnership, or who the general partner is, or who all  
7 the limited partners are, and who makes up the ownership of the these partners or  
8 the structure or any of the basic things you would want to know and understand if  
9 you would want to do business with such an outfit. According to TransCanada’s  
10 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited  
11 liability company called TransCanada Keystone Pipeline GP, LLC is the general  
12 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so  
13 basically nothing. That is really scary since the general partner has the liability but  
14 virtually none of the ownership and who knows if it has any other assets.

15 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**  
16 **percent clear on exactly who could become the owner of over 275 miles of**  
17 **Nebraska land?**

18 A: No.

19 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**  
20 **percent clear on exactly who will be operating and responsible for**  
21 **approximately 275 miles of tar sands pipeline underneath and through**  
22 **Nebraska land?**

23 A: No.

24 **Q: Okay, let’s continue please with your concerns of the impacts upon your land**  
25 **and the State of Nebraska of TransCanada’s easement terms.**

26 A: Yes, so the next sentence talks about “...its successors and assigns (hereinafter  
27 called “Grantee”)...” and this concerns me because it would allow the easement to  
28 be transferred or sold to someone or some company or country or who knows what  
29 that I don’t know and who we may not want to do business with. This pipeline

1 would be a huge asset for TransCanada and if they can sell to the highest bidder  
2 that could have terrible impacts upon all of Nebraska depending upon who may  
3 buy it and I don't know of any safeguards in place for us or the State to veto or  
4 have any say so in who may own, operate, or be responsible for this pipeline in the  
5 future.

6 **Q: Do you think that type of uncertainty and lack of control over a major piece**  
7 **of infrastructure crossing our State is in the public interest?**

8 A: No, certainly not, in fact, just the opposite.

9 **Q: What's next?**

10 A: Then it says "...a perpetual permanent easement and right-of-way..." and this  
11 really concerns me. Why does the easement and right-of-way have to be perpetual  
12 and permanent? That is the question myself and my family want an answer to.  
13 Perpetual to me is like forever and that doesn't make sense.

14 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

15 A: For many reasons but mostly because the tar sands are finite. I am unaware of any  
16 data proving there is a perpetual supply of tar sands. I am not aware in  
17 TransCanada's application where it proves there is a perpetual necessity for this  
18 pipeline. My understanding of energy infrastructure like wind towers is they have  
19 a decommission plan and actually take the towers down when they become  
20 obsolete or no longer needed. Nothing manmade lasts forever. My land however  
21 will, and I want my family or future Nebraska families to have that land as  
22 undisturbed as possible and it is not in my interest or the public interest of  
23 Nebraska to be forced to give up perpetual and permanent rights in the land for  
24 this specific kind of pipeline project.

25 **Q: Okay, what is your next concern?**

26 A: The easement language includes all these things TransCanada can do and it says  
27 "...abandoning in place..." so they can just leave this pipeline under my ground  
28 until the end of time just sitting there while they are not using it, but I am still  
29 prevented from doing on my land and using my land what I would like. If I owned

1 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting  
2 there. It doesn't make sense and it scares me and it is not in my interest or the  
3 public interest of Nebraska to allow this.

4 **Q: Now it looks like we are ready to go to the second page of the Easement is that**  
5 **right?**

6 A: Yes.

7 **Q: So now on the second page of the Easement what are your concerns?**

8 A: Here the Easement identifies a 24-month deadline to complete construction of the  
9 pipeline but has caveats that are undefined and ambiguous. The 24-month period  
10 starts to run from the moment "actual pipeline installation activities" begin on  
11 Landowners property. It appears that TransCanada would define this phrase as  
12 needed. It would be wise to explain what types of TransCanada action constitutes  
13 "installation activity" For instance, would the placement and storage of an  
14 excavator or other equipment on or near the Easement property be an activity or  
15 would earth have to be moved before the activity requirement is triggered. This  
16 vague phrase is likely to lead to future disputes and litigation that is not in the best  
17 interest of the welfare of Nebraska and would not protect property interests. The  
18 24-months can also be extended in the case of "force majeure." My understanding  
19 is that force majeure is often used to insulate a party to a contract when events  
20 occur that are completely out of their control. In TransCanada's easement this is  
21 expanded to include "without limitation...availability of labor and materials."  
22 Extending this language to labor and materials is problematic because these are  
23 two variables that TransCanada does have some or significant control over and to  
24 allow extension of the 24-month period over events not truly out of the control of  
25 TransCanada and without further provision for compensation for the Landowner is  
26 not conducive to protection of property rights.

27 **Q: Okay, what is your next concern?**

28 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of  
29 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially

1 reasonable costs and expenses” will pay for damages caused but then limits  
2 TransCanada’s liability to certain circumstances. There is no definition of  
3 “commercially reasonable” and no stated right that the Landowner would get to  
4 determine the amounts of cost or expense that is “commercially reasonable.”  
5 TransCanada excepts out from their liability any damages that are caused by  
6 Landowner’s negligence or the negligence of anyone ever acting on the behalf of  
7 Landowner. It is understandable that if the Landowner were to willfully and  
8 intentionally cause damages to the pipeline that Landowner should be liable.  
9 However, anything short of willful misconduct should be the liability of  
10 TransCanada who is subjecting the pipeline on the Landowner and who is making  
11 a daily profit from that pipeline. When evaluating the impact on property rights of  
12 this provision, you must consider the potentially extremely expensive fight a  
13 Landowner would have over this question of whether or not damage was an act of  
14 negligence. Putting this kind of potential liability upon the Landowner is  
15 incredibly problematic and is detrimental to the protection of property rights. I  
16 don’t think this unilateral power which I can’t do anything about as the landowner  
17 is in the best economic interest of the land in question or the State of Nebraska for  
18 landowners to be treated that way.

19 **Q: Is there any specific event or example you are aware of that makes this**  
20 **concern more real for you?**

21 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against  
22 Nemaha County, Nebraska landowner farmers who accidentally struck two  
23 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of  
24 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged  
25 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate  
26 copy of the Federal Court Complaint is here as **Attachment No. 4.**

27 **Q: What is your next concern with the Easement language?**

28 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as  
29 they choose unless 1) any Landowner use interferes in any way with

1 TransCanada’s exercise of any of its rights within the Easement, or 2)  
2 TransCanada decides to take any action on the property it deems necessary to  
3 prevent injury, endangerment or interference with anything TransCanada deems  
4 necessary to do on the property. Landowner is also forbidden from excavating  
5 without prior authorization by TransCanada. So my understanding is that  
6 TransCanada will unilaterally determine what Landowner can and can’t do based  
7 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada  
8 could also completely deny my request to excavate. Further, TransCanada retains  
9 all “privileges necessary or convenient for the full use of the rights” granted to  
10 them in the Easement. Again, TransCanada unilaterally can decide to the  
11 detriment of the property rights of Landowner what TransCanada believes is  
12 necessary or convenient for it. And there is no option for any additional  
13 compensation to landowner for any right exercised by TransCanada that leads to  
14 the removal of trees or plants or vegetation or buildings or structures or facilities  
15 owned by Landowner of any kind. Such undefined and unilateral restrictions and  
16 rights without having to compensate Landowner for such further destruction or  
17 losses are not conducive to the protection of property rights or economic interest.

18 **Q: What is the next concern you have?**

19 A: The Easement also allows some rights for Landowner but restricts them at the  
20 same time and again at the sole and unilateral decision making of TransCanada.  
21 TransCanada will determine if the actions of Landowner might in anyway  
22 endanger or obstruct or interfere with TransCanada’s full use of the Easement or  
23 any appurtenances thereon to the pipeline itself or to their access to the Easement  
24 or within the Easement and TransCanada retains the right at any time, whether  
25 during growing season or not, to travel “within and along Easement Area on foot  
26 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will  
27 retain the rights to prevent any landowner activity that it thinks may “unreasonably  
28 impair[ed] or interfe[ed] with” TransCanada’s use of the Easement Area. Such

1 undefined and unilateral restrictions are not conducive to the protection of  
2 property rights or economic interest.

3 **Q: What is the next concern you have with the Easement language?**

4 A: The Easement allows TransCanada sole discretion to burn or chip or bury under  
5 Landowner's land any debris of any kind without any input or power of  
6 Landowner to demand an alternative method or location of debris disposal. Such  
7 unilateral powers would negatively affect Landowners property are not conducive  
8 to the protection of property rights or economic interest.

9 **Q: What is the next concern you have with the Easement language?**

10 A: Again, undefined terms leave a lot of room for confusion. What does the phrase  
11 "where rock is encountered" mean and why does TransCanada solely get to  
12 determine whether or not this phrase is triggered. This phrase could be used to  
13 justify installing the pipeline 24 inches beneath the surface. The ability to use this  
14 provision to minimal locate the pipeline at a depth of 24 inches could negatively  
15 affect Landowners property are not conducive to the protection of property rights.  
16 A shallow pipeline is much more likely to become a danger and liability in the  
17 future given farming operations and buried irrigation lines and other factors  
18 common to the current typical agricultural uses of the land in question impacted  
19 by TransCanada's preferred pipeline route.

20 **Q: What is the next concern you have with the Easement language?**

21 A: There are more vague concepts solely at the determination of TransCanada such as  
22 "as nearly as practicable" and "pre-construction position" and "extent reasonably  
23 possible." There is nothing here that defines this or provides a mechanism for  
24 documenting or memorializing "pre-construction position" so as to minimize  
25 costly legal battles or wasted Landowner time attempting to recreate the soil  
26 condition on their fields or pasture. Such unilateral powers would negatively affect  
27 Landowners property are not conducive to the protection of property rights or  
28 economic interest.

29 **Q: What is the next concern you have with the Easement language?**

1 A: TransCanada maintains the unilateral right to abandon the pipeline and all  
2 appurtenances thereto in place on, under, across, or through Nebraska land at any  
3 time it chooses. There is no provision for Landowner compensation for such  
4 abandonment nor any right for the Landowner to demand removal. Such unilateral  
5 powers would negatively affect Landowners property are not conducive to the  
6 protection of property rights or economic interest.

7 **Q: What is the next concern you have with the Easement language?**

8 A: TransCanada has the power to unilaterally move or modify the location of any  
9 Easement area whether permanent or temporary at their sole discretion.  
10 Regardless, if Landowner has taken prior steps relative to their property in  
11 preparation or planning of TransCanada's taking of the initial easement area(s),  
12 the language here does not require TransCanada to compensate the Landowner if  
13 they decide to move the easement anywhere on Landowners property. Such  
14 unilateral powers would negatively affect Landowners property are not conducive  
15 to the protection of property rights or economic interests.

16 **Q: What is the next concern you have with the Easement language?**

17 A: The Easement requires that all of the burdens and restrictions upon Landowner to  
18 transfer and be applicable to any future owner of the Land in question without the  
19 ability of the future Landowner to modify or negotiate any of the language in  
20 question to which it will be held to comply.

21 **Q: What is the next concern you have with the Easement language?**

22 A: The Easement allows TransCanada to assign, transfer, or sell any part of the  
23 Easement to any person, company, country, etc. at their sole discretion at anytime  
24 to anyone. This also means that any buyer of the easement could do the same to a  
25 third buyer and so on forever. There is no change of control or sale provision in  
26 place to protect the Landowner or Nebraska or to provide compensation for such  
27 change of control or ownership. It is not conducive to the protection of property  
28 rights or economic interests to allow unilateral unrestricted sale of the Easement

1           thereby forcing upon the Landowner and our State a new unknown Easement  
2           owner.

3   **Q:   What is the next concern you have with the Easement language?**

4   A:   There are many terms in the Easement that are either confusing or undefined terms  
5       that are without context as to whether or not the Landowner would have any say  
6       so in determining what these terms mean or if the evaluation is solely in  
7       TransCanada's control. Some of these vague undefined terms are as follows:

- 8           i.   “pipeline installation activities”
- 9           ii. “availability of labor and materials”
- 10          iii. “commercially reasonable costs and expenses”
- 11          iv. “reasonably anticipated and foreseeable costs and expenses”
- 12          v.   “yield loss damages”
- 13          vi. “diminution in the value of the property”
- 14          vii. “substantially same condition”
- 15          viii. “an actual or potential hazard”
- 16          ix.  “efficient”
- 17          x.   “convenient”
- 18          xi.  “endangered”
- 19          xii. “obstructed”
- 20          xiii. “injured”
- 21          xiv. “interfered with”
- 22          xv.  “impaired”
- 23          xvi. “suitable crossings”
- 24          xvii. “where rock is encountered”
- 25          xviii. “as nearly as practicable”
- 26          xix. “pre-construction position”
- 27          xx.  “pre-construction grade”
- 28          xxi. “various engineering factors”

1 Each one of these above terms and phrases as read in the context of the Easement  
2 could be problematic in many ways. Notably, undefined terms tend to only get  
3 definition in further legal proceedings after a dispute arises and the way the  
4 Easement is drafted, TransCanada has sole power to determine when and if a  
5 particular situation conforms with or triggers rights affected by these terms. For  
6 instance, “yield loss damages” should be specifically defined and spelled out  
7 exactly how the landowner is to be compensated and in what events on the front  
8 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,  
9 the Landowner is without contractual rights to define these terms or determine  
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**  
12 **think of at this time?**

13 A: I reserve the right to discuss any additional concerns that I think of at the time of  
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**  
16 **TransCanada’s proposed Easement terms and agreement, do you believe**  
17 **those to be reasonable or just, under the circumstances of the pipeline’s**  
18 **impact upon you and your land?**

19 A: No, I do not believe those terms to be reasonable or just for the reasons that we  
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**  
22 **they sought to obtain in your land, and for what they sought to prevent you**  
23 **and any future land owner of your property from doing in the future?**

24 A: Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**  
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**  
27 **compensation for all of what they proposed to take from you so that their tar**  
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just  
2 offer for all the potential impacts and effects and the rights that I'm giving up, and  
3 what we will be prevented from doing in the future and how their pipeline would  
4 impact my property for ever and ever.

5 **Q: Has TransCanada at any time offered to compensate you annually, such as**  
6 **wind farm projects do, for the existence of their potential tar sands pipeline**  
7 **across your property.**

8 A: No, never.

9 **Q: At any time did TransCanada present you with or request that you, as the**  
10 **owner of the land in question, sign and execute a document called, "Advanced**  
11 **Release of Damage Claims and Indemnity Agreement?"**

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**  
14 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

15 A: Yes, it is.

16 **Q: What was your understanding of that document?**

17 A: When I read that document in the plain language of that document, it was my  
18 understanding that TransCanada was attempting to pay me a very small amount at  
19 that time in order for me to agree to give up my rights to be compensated from  
20 them in the future related to any damage or impact they may have upon my  
21 property "arising out of, in connection with, or alleged to resulted from  
22 construction or surveying over, under or on" my land.

23 **Q: Did you ever sign that document?**

24 A: No, I did not.

25 **Q: Why not?**

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small  
27 sum of money when I have no idea how bad the impacts or damages that they, or  
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying  
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to  
5 shield themselves against known and foreseeable impacts that their pipeline, and  
6 the construction of it, would have upon my land. It made me feel that they knew it  
7 was in their financial interest to pay me as little as possible to prevent me from  
8 ever having the opportunity to seek fair compensation again, and that this must be  
9 based upon their experience of unhappy landowners and situations in other places  
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you  
12 thought their proposed location of their proposed pipeline across your land  
13 was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you  
16 thought their proposed location of their proposed pipeline across your land  
17 was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the  
20 Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of  
23 an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the  
25 government is going to take land for public use, then in that case, or by taking for  
26 public use, it can only occur if the private land owner is compensated justly, or  
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which  
29 the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 **Q: Can you think of any way in which the public, that is the citizens of the State**  
3 **of Nebraska, can directly use the proposed TransCanada Keystone XL**  
4 **Pipeline, as it dissects the State of Nebraska?**

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the  
6 public benefits from this pipeline in any way, how they can use it any way, or how  
7 it's in the public interest in any way. By looking at the map, it is quite clear to me  
8 that the only reason it's proposed to come through Nebraska, is that because we  
9 are geographically in the way from between where the privately-owned Tar Sands  
10 are located to where TransCanada wants to ship the Tar Sands to refineries in  
11 Houston, Texas.

12 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**  
13 **crude petroleum, or oil and petroleum by-products that you would like to**  
14 **ship in its pipeline?**

15 A: No, it has not.

16 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**  
17 **products that you, at this time or any time in the future, would desire to place**  
18 **for transport within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not.

20 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**  
21 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**  
22 **products within the proposed TransCanada Keystone XL Pipeline?**

23 A: No, I do not. I've never heard of such a person or company like that.

24 **Q: Do you pay property taxes for the land that would be affected and impacted**  
25 **at the proposed TransCanada Keystone XL Pipeline?**

26 A: Yes, I do.

27 **Q: Why do you pay property taxes on that land?**

28 A: Because that is the law. The law requires us to pay the property taxes as the owner  
29 of that property.

1 **Q: Because you follow the law and pay property taxes, do you believe you**  
2 **deserve any special consideration or treatment apart from any other person**  
3 **or company that pays property taxes?**

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's  
5 just what you do.

6 **Q: Do you believe the fact that you pay property taxes entitles you to special**  
7 **treatment of any kind, or special rights of any kind?**

8 A: No, of course not.

9 **Q: Do you believe the fact that you pay property taxes on your land would be**  
10 **enough to qualify you to have the power of eminent domain to take land of**  
11 **your neighbors or other people in your county, or other people across the**  
12 **state of Nebraska?**

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that  
14 I expect an award for or any type of special consideration.

15 **Q: Have you at any time ever employed any person other than yourself?**

16 A: Well, yes I have.

17 **Q: Do you believe that the fact that you have, at some point in your life,**  
18 **employed one or more other persons entitle you to any special treatment or**  
19 **consideration above and beyond any other Nebraskan that has also employed**  
20 **one or more persons?**

21 A: No, of course not.

22 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**  
23 **have at one point employed another person within this state, entitles you to**  
24 **preferential treatment or consideration of any kind?**

25 A: No, of course not. If I choose to employ someone that decision is up to me. I  
26 don't deserve any special treatment or consideration for that fact.

27 **Q: At the beginning of your statement, you briefly described your property that**  
28 **would be impacted by the potential Keystone XL Pipeline. I would like you to**  
29 **give the Commissioners a sense of specifically how you believe the proposed**

1 **Keystone XL Pipeline and its preferred route, which proposes to go across**  
2 **your land, how it would in your opinion based on your knowledge,**  
3 **experience, and background of your land, affect it. So please share with the**  
4 **Commissioners the characteristics of your land that you believe is important**  
5 **for them to understand, while they evaluate TransCanada's application for a**  
6 **route for its proposed pipeline to cross Nebraska and across your land,**  
7 **specifically.**

8 A: The current proposed route of the Keystone XL pipeline would cross a half mile of  
9 our land consisting of equal parts pasture and row crop. It has been categorized  
10 highly erodible by the U.S. Farm Service Agency. This means that any disturbance  
11 to the ground results in constant monitoring and maintenance to protect it from  
12 severe and catastrophic erosion. We would have to prevent and repair any damage  
13 for as long the pipeline is there. According to the easement we would be forced to  
14 sign, that could be forever since TransCanada is not responsible to remove it nor  
15 return the land to its original state.

16 **Q: What else?**

17 A: Also according to the forced easement, we could be liable for damages and clean-  
18 up when the pipeline leaks, resulting in permanent toxic contamination.

19 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**  
20 **crude oil pipeline in its preferred location, or ultimate location across the**  
21 **state of Nebraska?**

22 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly  
23 or even bullied around and being made to feel scared that they did not have any  
24 options but to sign whatever papers TransCanada told them they had to. I am  
25 aware of folks being threatened that their land would be taken if they didn't follow  
26 what TransCanada was saying. I am aware of tactics to get people to sign  
27 easements that I don't believe have any place in Nebraska or anywhere such as  
28 TransCanada or some outfit associated with it hiring a pastor or priest to pray with  
29 landowners and convince them they should sign TransCanada's easement

1 agreements. I am aware of older folks and widows or widowers feeling they had  
2 no choice but to sign TransCanada's Easement and they didn't know they could  
3 fight or stand up for themselves. From a more practical standpoint, I am worried  
4 that according to their answer to our Interrogatory No. 211, TransCanada only  
5 owns and operates one (1) major oil pipeline. They simply do not have the  
6 experience with this type of pipeline and that scares me. There are others but that  
7 is what I can recollect at this time and if I remember more or my recollection is  
8 refreshed I will share those with the Commissioners at the Hearing in August.

9 **Q: Do you believe TransCanada's proposed method of compensation to you as a**  
10 **landowner is reasonable or just?**

11 A: No, I do not.

12 **Q: Do you have any concern about limitations that the construction of this**  
13 **proposed pipeline across your affected land would prevent construction of**  
14 **future structures upon the portion of your land affected by the proposed**  
15 **easement and immediately surrounding areas?**

16 A: Well yes, of course I do. We would not be able to build many, if any, types of  
17 structures directly across or touching the easement, and it would be unwise and I  
18 would be uncomfortable to build anything near the easement for fear of being  
19 blamed in the future should any damage or difficulty result on my property in  
20 regards to the pipeline.

21 **Q: Do you think such a restriction would impact you economically?**

22 A: Well yes, of course.

23 **Q: How do you think such a restriction would impact you economically?**

24 A: The future of this land may not be exactly how it's being used as of this moment,  
25 and having the restrictions and limiting my ability to develop my land in certain  
26 ways presents a huge negative economic impact on myself, my family, and any  
27 potential future owner of the property. You have no idea how I or the future owner  
28 may want to use this land in the future or the other land across Nebraska  
29 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years

1 ago it would have been hard to imagine all the advances that we have now or how  
2 things change. Because the Easement is forever and TransCanada gets the rights in  
3 my land forever we have to think with a very long term view. By placing their  
4 pipeline on under across and through my land that prevents future development  
5 which greatly negatively impacts future taxes and tax revenue that could have  
6 been generated by the County and State but now will not. When you look at the  
7 short blip of economic activity that the two years of temporary construction efforts  
8 may bring, that is far outweighed by the perpetual and forever loss of opportunity  
9 and restrictions TransCanada is forcing upon us and Nebraska.

10 **Q: Do you have any concerns about the environmental impact of the proposed**  
11 **pipeline?**

12 A: Yes, I do.

13 **Q: What are some of those concerns?**

14 A: As an affected land owner and Nebraskan, I am concerned that any construction,  
15 operation, and/or maintenance of the proposed Keystone XL Pipeline would have  
16 a detrimental impact upon the environment of my land specifically, as well as the  
17 lands near my land and surrounding the proposed pipeline route.

18 **Q: Do you have any other environmental concerns?**

19 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in  
20 construction and/or maintenance and operation. I am concerned about spills and  
21 leaks that TransCanada has had in the past and will have in the future. This could  
22 be catastrophic to my operations or others and to my county and the State.

23 **Q: Do you have any thoughts regarding if there would be an impact upon the**  
24 **natural resources on or near your property due to the proposed pipeline?**

25 A: Yes, I believe that any construction, operation, and/or maintenance of the  
26 proposed Keystone XL Pipeline would have detrimental impacts upon the natural  
27 resources of my land, and the lands near and surrounding the proposed pipeline  
28 route.

1 **Q: Do you have any worries about potential impacts from the proposed pipeline**  
2 **to the soil of your land, or land near you?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the  
4 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of  
5 land, as well as land along and surrounding the proposed pipeline route. This  
6 includes, but is not limited to, the reasons that we discussed above of disturbing  
7 the soil composition and makeup as it has naturally existed for thousands and  
8 millions of years during the construction process, and any future maintenance or  
9 removal process. I'm gravely concerned about the fertility and the loss of  
10 economic ability of my property to grow the crops, or grow the grasses, or grow  
11 whatever it is at that time they exist on my property or that I may want to grow in  
12 the future, or that a future owner may want to grow. The land will never be the  
13 same from as it exists now undisturbed to after it is trenched up for the proposed  
14 pipeline.

15 **Q: Do you have any concerns about the potential impact of the proposed pipeline**  
16 **upon the groundwater over your land, or surrounding lands?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
19 groundwater of not only under my land, but also near and surrounding the pipeline  
20 route, and in fact, potentially the entire State of Nebraska. Water is life plain and  
21 simple and it is simply too valuable to our State and the country to put at  
22 unreasonable risk.

23 **Q: Do you have any concern about the potential impact of the proposed pipeline**  
24 **upon the surface water on, or near or around your land?**

25 A: Yes, I have significant concerns that any construction, operation, and/or  
26 maintenance of the proposed Keystone XL Pipeline would have detrimental  
27 impact upon the surface water of not only within my property boundary, but along  
28 and near and surrounding the pipeline route, and in fact, across the state of  
29 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**  
2 **upon the wildlife and plants, other than your growing crops on or near your**  
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
6 wildlife and the plants, not only that are located on or can be found upon my land,  
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**  
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed  
11 pipeline underneath and across and through my property will negatively affect the  
12 fair market value at any point in the future, especially at that point in which I  
13 would need to sell the property, or someone in my family would need to sell the  
14 property. I do not believe, and certainly would not be willing to pay, the same  
15 price for land that had the pipeline located on it, versus land that did not. I hope  
16 there is never a point where I'm in a position where I have to sell and have to  
17 realize as much value as I can out of my land. But because it is my single largest  
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL  
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they  
20 would've paid and as much as I could've received, if the pipeline were not upon  
21 my property. There are just too many risks, unknowns, impacts and uncertainties,  
22 not to mention all of the rights you give up by the nature of having the pipeline  
23 due to having the easement that we have previously discussed, for any reasonable  
24 person to think that the existence of the pipeline would not negatively affect my  
25 property's value.

26 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**  
27 **testimony?**

28 A: Yes, I have.

29 **Q: Where have you seen that before?**

1 A: That is a map I think I first saw a couple years ago that shows the Keystone XL  
2 I-90 corridor alternate route of its proposed pipeline through Nebraska and I  
3 believe the portion of the alternative route shown here within Nebraska essentially  
4 twins or parallels Keystone I. That is why this is included, to show TransCanada  
5 has looked at the possibility of twinning which I believe is feasible.

6 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**  
7 **Application, and as found on Attachment No. 7, here to your testimony, is in**  
8 **the public interest of Nebraska?**

9 A: No, I do not.

10 **Q: Do you believe that the Keystone mainline alternative route as shown on**  
11 **Attachment No. 7 included with your testimony here is a major oil pipeline**  
12 **route that is in the public interest of Nebraska?**

13 A: No, I do not.

14 **Q: Do you believe the Nebraska portion of the I-90 corridor alternative route,**  
15 **specifically for the portion of the proposed pipeline within Nebraska as found**  
16 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

17 A: No, I do not.

18 **Q: Do you believe there is any potential route for the proposed Keystone XL**  
19 **Pipeline across, within, under, or through the State of Nebraska that is in the**  
20 **public interest of the citizens of Nebraska?**

21 A: No, I do not.

22 **Q: Why do you hold that belief?**

23 A: Because there simply is no public interest based on all of the factors that I am  
24 aware and that I have read and that I have studied that this Commission is to  
25 consider that would establish that a for-profit foreign-owned pipeline that simply  
26 crosses Nebraska because we are geographically in the way between where tar  
27 sands are in Canada to where it wants to ship it to in Texas could ever be in the  
28 public interest of Nebraskans. We derive no benefit from this project. It is not for  
29 public use. Nebraska is simply in the way and when all considerations are taken in

1 there is no net benefit of any kind for Nebraska should this project be placed in our  
2 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
3 the negative impacts and concerns.

4 **Q: What do you think about the applicant, TransCanada’s argument that it’s**  
5 **preferred route for its proposed Keystone XL Pipeline is in the public interest**  
6 **of Nebraska because it may bring temporary jobs during the construction**  
7 **phase to Nebraska?**

8 A: First of all, not all jobs are created equally. Most jobs that are created, whether  
9 temporary or on a permanent basis, don’t come with a project that has all the  
10 potential and foreseeable negative impacts, many of which we have discussed here  
11 and other witnesses throughout the course of this hearing have and will discuss. If  
12 I decide to hire and employ someone to help me out in my farming or ranching  
13 business, I’ve created a job but I haven’t done so at the risk or detrimental impact  
14 to my land or my town or my county or my state. And I’ve hired someone who is  
15 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce  
16 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all  
17 jobs are not created equal. Additionally, I understand from what I’m familiar with  
18 from TransCanada’s own statements that the jobs numbers they originally touted  
19 were determined to be a minute fraction of the permanent jobs that had been  
20 projected. According to their answer to our Interrogatory No. 191, TransCanada  
21 has created only thirty-four (34) jobs within Nebraska working specifically on  
22 behalf of TransCanada and according to their answer to Interrogatory No. 196, as  
23 of May 5, 2017 they only employ one (1) temporary working within Nebraska.  
24 Further, according to their answer to Interrogatory No. 199, TransCanada would  
25 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was  
26 constructed on its Preferred Route or its Mainline Alternative Route.

27 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**  
28 **because it would cross your land?**

1 A: No, absolutely not. I am opposed to this project because it is not in the public  
2 interest, neither within my community nor within our state.

3 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**  
4 **was to cross someone else's land?**

5 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have  
6 the fear and anxiety and potential foreseeable risks and negative impacts that this  
7 type of a project carrying this type of product brings foisted upon anyone in this  
8 state or any other state.

9 **Q: Do you think there is any intelligent route for the proposed Keystone XL**  
10 **Pipeline to cross the state of Nebraska?**

11 A: I don't believe there is an intelligent route because as I have stated I don't believe  
12 this project anywhere within Nebraska is within the public interest. However, if  
13 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely  
14 had to go somewhere in the state of Nebraska, the only intelligent route I believe  
15 would be to twin or closely parallel the existing Keystone I Pipeline. Both the  
16 preferred route and the mainline alternative routes are economic liabilities our  
17 state cannot risk.

18 **Q: What do you rely upon to make that statement?**

19 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,  
20 already exists in that area is reason enough as it is not in our best interest or the  
21 public interests to have more major oil pipelines crisscrossing our state. Second,  
22 they have all the infrastructure already there in terms of relationships with the  
23 counties and local officials and first responders along that route. Third, they have  
24 already obtained easements from all the landowners along that route and have  
25 relationships with them. Fourth, that route avoids our most sensitive soils, the  
26 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala  
27 Aquifer. Sixth, they have already studied that route and previously offered it as an  
28 alternative. Seventh, it just makes the most sense that as a state we would have

1 some intelligent policy of energy corridors and co-locating this type of  
2 infrastructure near each other.

3 **Q: Do you have any other concerns you would like to reiterate or can think of at**  
4 **this time you would like the Commissioners to understand?**

5 **A:** Yes. For a one-time fee this forced easement would give TransCanada the use of  
6 our land forever. They are free to sell it at any time to anyone (foreign or  
7 domestic), or to simply walk away at a time of their choosing, leaving a  
8 dangerous, corroding, toxic structure for which they would not be held  
9 responsible. This would not only devalue our property but could cause its  
10 condemnation, rendering it useless to anyone. It is incomprehensible that a one-  
11 time fee could be considered just compensation for this.

12 **Q: Have you fully expressed each and every opinion, concern, or fact you would**  
13 **like the Public Service Commissioners to consider in their review of**  
14 **TransCanada's Application?**

15 **A:** No, I have not. I have shared that which I can think of as of the date I signed this  
16 document below but other things may come to me or my memory may be  
17 refreshed and I will add and address those things at the time of the Hearing in  
18 August and address any additional items at that time as is necessary. Additionally,  
19 I have not had an adequate amount of time to receive and review all of  
20 TransCanada's answers to our discovery and the discovery of others so it was  
21 impossible to competently and completely react to that in my testimony here and I  
22 reserve the right to also address anything related to discovery that has not yet  
23 concluded as of the date I signed this document below. Lastly, certain documents  
24 requested have not yet been produced by TransCanada and therefore I may have  
25 additional thoughts on those I will also share at the hearing as needed.

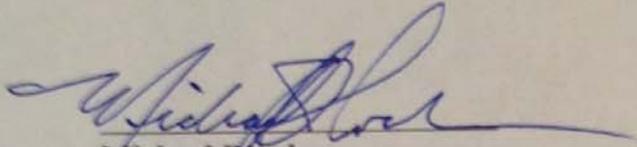
26 **Q: What is it that you are requesting the Public Service Commissioners do in**  
27 **regards to TransCanada's application for the proposed Keystone XL Pipeline**  
28 **across Nebraska?**

1 A: I am respectfully and humbly requesting that the Commissioners think far beyond  
2 a temporary job spike that this project may bring to a few counties and beyond the  
3 relatively small amount of taxes this proposed foreign pipeline would possibly  
4 generate. And, instead think about the perpetual and forever impacts of this  
5 pipeline as it would have on the landowners specifically, first and foremost, but  
6 also thereby upon the entire state of Nebraska, and to determine that neither the  
7 preferred route nor the Keystone mainline alternative route are in the public  
8 interest of the citizens of the state of Nebraska. And if the Commissioners were  
9 inclined to modify TransCanada's proposed routes and were to be inclined to grant  
10 an application for a route in Nebraska, that the only potential route that would  
11 make any intelligent sense whatsoever would be twinning or near paralleling of  
12 the proposed KXL with the existing Keystone I pipeline. It simply does not make  
13 sense to add yet another major oil pipeline crisscrossing our state creating new  
14 pumping stations, creating new impacts on additional counties and communities  
15 and going through all of the court processes with myself and other landowners like  
16 me when this applicant already has relationships with the landowners, the towns  
17 and the communities along Keystone I, and that Keystone I is firmly outside of the  
18 sand hills and a significantly further portion away from the heart of the Ogallala  
19 Aquifer than the preferred route or the Keystone mainline alternative route.

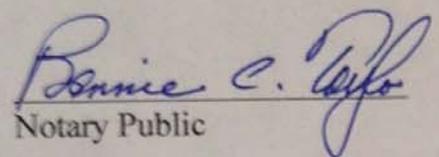
20 **Q: Are all of your statements in your testimony provided above true and**  
21 **accurate as of the date you signed this document to the best of your**  
22 **knowledge?**

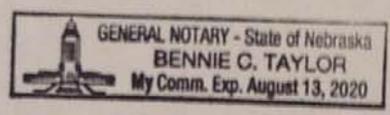
23 A: Yes, they are.

24 **Q: Thank you, I have no further questions at this time and reserve the right to**  
25 **ask you additional questions at the August 2017 Hearing.**

  
Michael Blocher

Subscribed and Sworn to me before this 30th day of May, 2017.

  
Notary Public



**Attachment No. 1**

PREPARED BY  
exp Energy Services Inc.



S.030  
T.023N  
R.005W

S.029  
T.023N  
R.005W

S.031  
T.023N  
R.005W

Cheri G. Blocher  
Michael J. Blocher

S.032  
T.023N  
R.005W



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
Cheri G. Blocher  
Michael J. Blocher

**TRACT NO.** ML-NE-AT-30645.000  
**STATE:** Nebraska  
**COUNTY:** Antelope  
**SECTION:** 032  
**TOWNSHIP:** 023N  
**RANGE:** 005W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\63528\KEYSTONE XL\B002\_999526.dwg

**Attachment No. 2**



**Attachment No. 3**

**Prepared by and after recording  
please return to:**  
TransCanada Keystone Pipeline, LP  
1106 Benjamin Avenue, Suite 600  
Norfolk, NE 68701

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(Above Space for Recorder's Use Only)

Tract No.: ML-NE-AT-30645.000

**EASEMENT AND RIGHT-OF-WAY  
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Cheri G. Blocher and Michael J. Blocher, wife and husband**, whose mailing address is 83474 529 Avenue, Oakdale, NE 68761 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and

petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Antelope, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 160.82 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NW1/4 of Section 32, T23N, R5W of the 6th P.M., as recorded in Book 130, Page 98 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the

negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR(S):

\_\_\_\_\_  
**Cheri G. Blocher**

\_\_\_\_\_  
**Michael J. Blocher**

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Cheri G. Blocher**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Michael J. Blocher**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

# ANTELOPE COUNTY, NEBRASKA

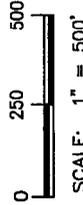
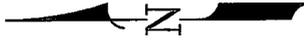
T-23-N, R-5-W, SECTION 32  
ML-NE-AT-30645.000

PROPERTY LINE  
SECTION LINE  
PROPOSED  
ADDITIONAL TEMPORARY WORKSPACE  
PERMANENT EASEMENT & RIGHT OF WAY  
DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA

SEE DETAIL "A"

CHERI G. BLOCHER AND  
MICHAEL J. BLOCHER  
VOLUME 130, PAGE 98  
D.R.A.C.N.

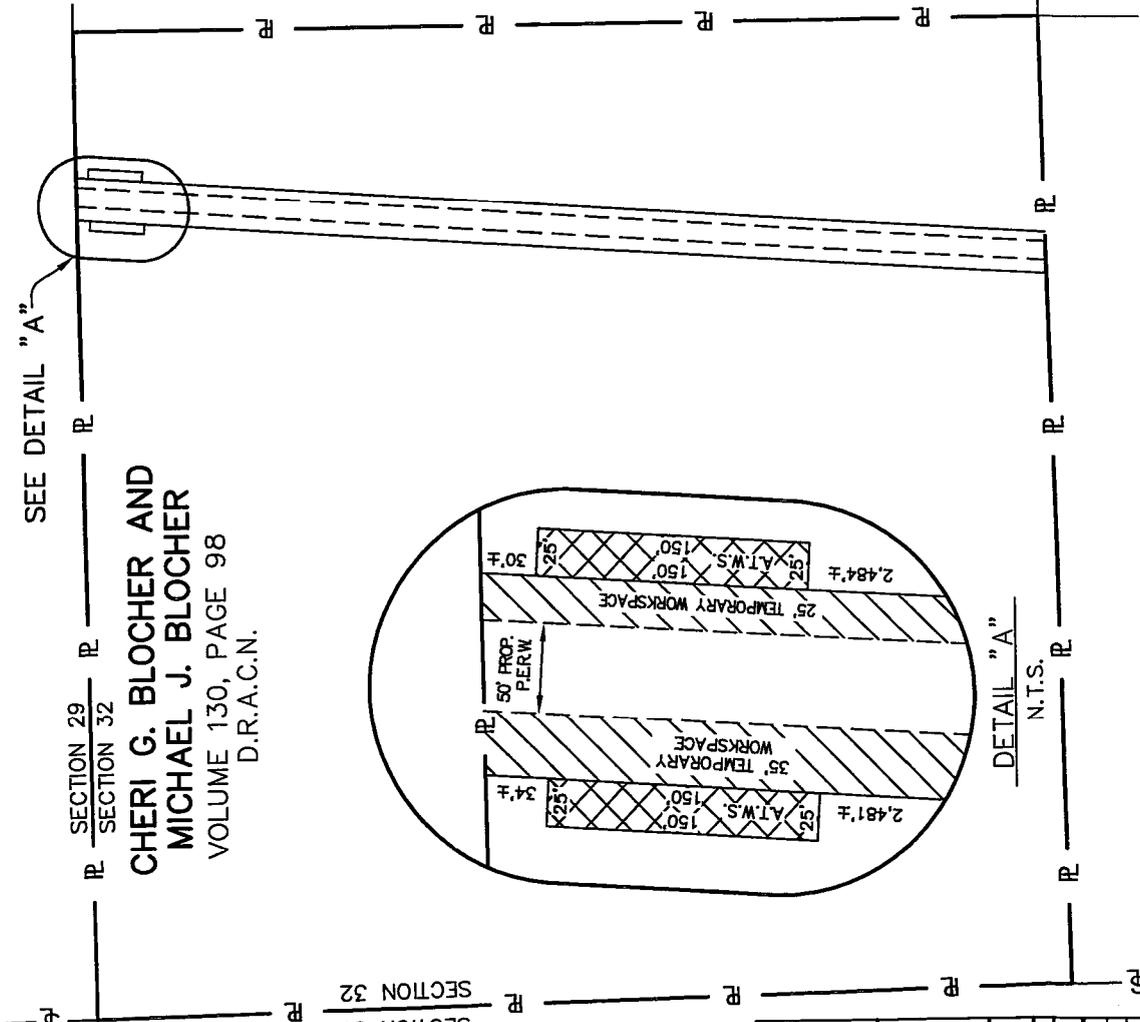
VICINITY MAP  
N.T.S.



SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:  
NW/4 OF SECTION 32,  
T-23-N, R-5-W

**NOTE:**  
THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.



DETAIL "A"  
N.T.S.

TOTAL DISTANCE ACROSS PROPERTY: 2,664'±  
AREA OF PERMANENT EASEMENT: 3.1 ACRES  
AREA OF TEMPORARY WORKSPACE: 3.7 ACRES  
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.2 ACRE

**LEGEND**  
P PROPERTY LINE  
S SECTION LINE  
§ PROPOSED  
A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE  
P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY  
D.R.A.C.N. DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA



KEYSTONE XL PROJECT  
EASEMENT AREA  
ACROSS THE PROPERTY OF  
CHERI G. BLOCHER AND  
MICHAEL J. BLOCHER  
ML-NE-AT-30645.000

PROJECT:	XL	EXHIBIT A
APPROVED BY:		DRAWING NUMBER
SLR		XL-08-ML-SK-3474
NO.		REVISION
		DATE
SCALE	DATE	DRAWN BY
1" = 500'	10/28/14	PB
		CHECKED BY
		ALS



**Attachment No. 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE )  
COMPANY, a New York Corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RICHARD ANDREW, JANE ANDREW, )  
LUKE ANDREW, and BRYCE ANDREW, )  
 )  
Defendants. )

CASE NO. \_\_\_\_\_

**COMPLAINT**

**COMES NOW** Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

**PARTIES**

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

**JURISDICTION AND VENUE**

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

### GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$ , Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

### **FIRST CLAIM: NEGLIGENCE**

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

**SECOND CLAIM: TRESPASS**

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

**WHEREFORE** Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

**JURY DEMAND**

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,  
Plaintiff,

By:     /s/ Albert M. Engles      
ENGLES, KETCHAM, OLSON, & KEITH, P.C.  
1350 Woodmen Tower  
1700 Farnam Street  
Omaha, Nebraska 68102  
(402) 348-0900  
(402) 348-0904 (Facsimile)  
Albert M. Engles, #11194  
Dan H. Ketcham, #18930  
Michael L. Moran, #24042  
James C. Boesen, #24862

**Attachment No. 5**

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-AT-30645.000

We, Cheri G. Blocher and Michael J. Blocher, wife and husband, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Eight Hundred Twenty Dollars and No Cents (\$1,820.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Antelope, State of Nebraska:

**NW/4**

**Section 32, Township 23N, Range 5W**

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_.

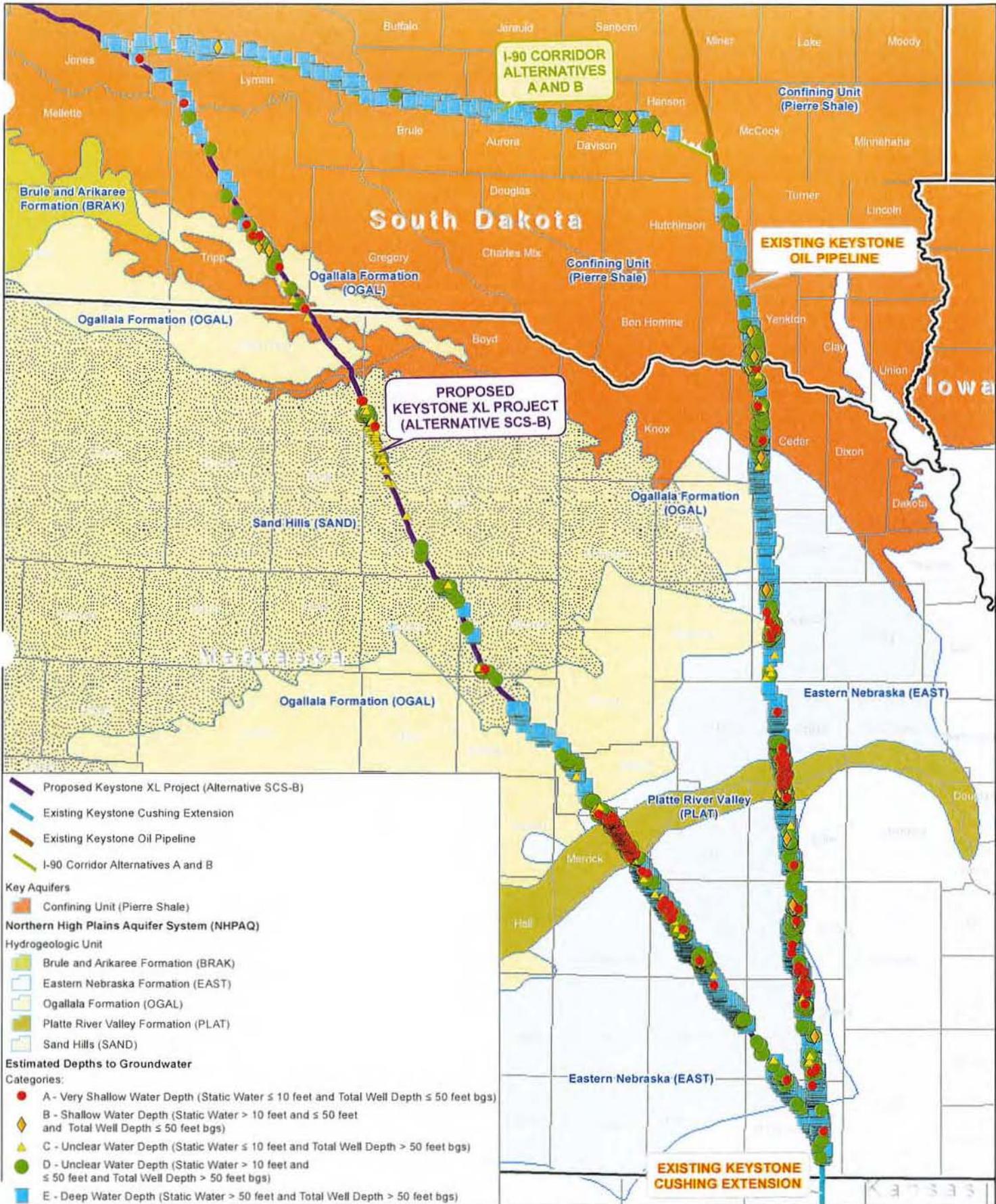
\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

**Attachment No. 6**



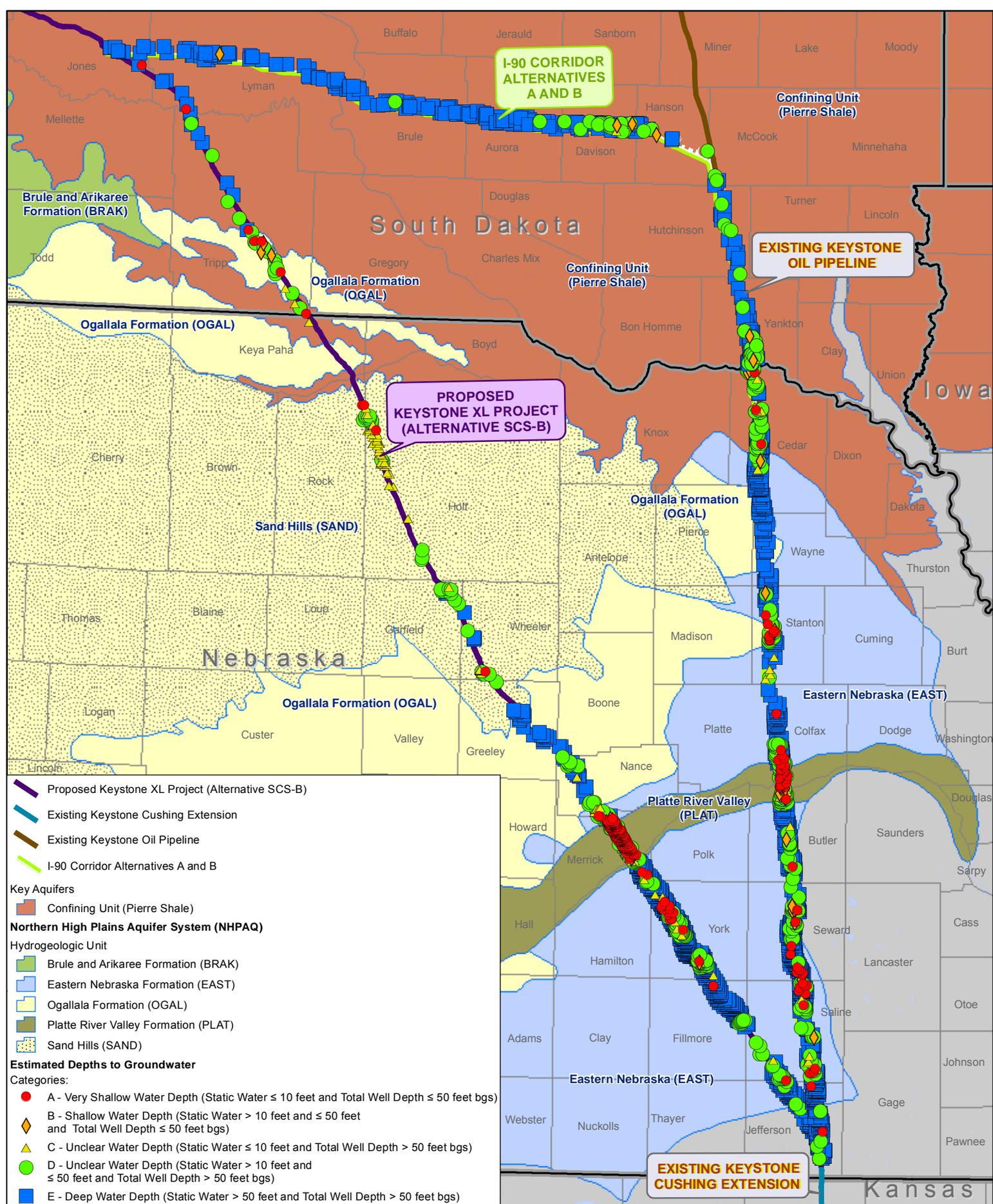
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



### KEYSTONE XL PROJECT

Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

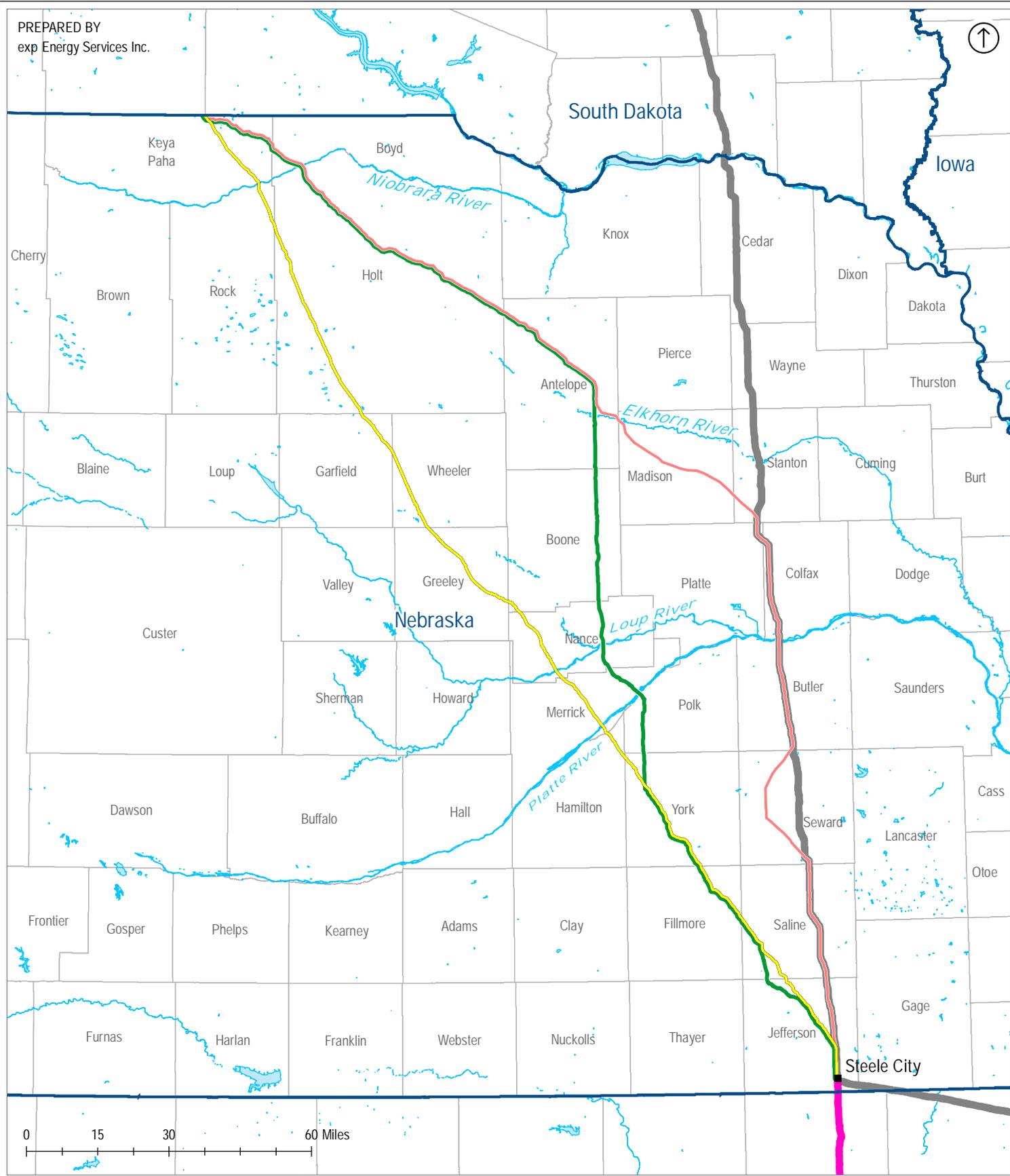
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

### KEYSTONE XL PROJECT

Figure 4.3.3-8  
 I-90 Corridor Alternatives A and B  
 Key Aquifers and Potable Water Wells  
 within 2-mile Corridor

**Attachment No. 7**



LEGEND	
	PREFERRED ROUTE
	SANDHILLS ALTERNATIVE ROUTE
	KEYSTONE MAINLINE ALTERNATIVE ROUTE
	KEYSTONE MAINLINE (PHASE I)
	KEYSTONE CUSHING EXTENSION (PHASE II)
	WATERBODY
	STATE BOUNDARY
	COUNTY BOUNDARY

KEYSTONE XL PROJECT

**FIGURE 2.2-2**

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP  
for Route Approval of Keystone XL  
Pipeline Project, Pursuant to *Major Oil  
Pipeline Siting Act*

Direct Testimony of  
Bonnie Brauer in Support of Landowner  
Intervenors

State of Indiana )  
 ) ss.  
Boone County )

1 **Q: Please state your name.**

2 A: My name is Bonnie Brauer.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**  
4 **regarding TransCanada's application for approval of its proposed Keystone**  
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**  
8 **you are an owner that could be affected by the proposed TransCanada**  
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Polk County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**  
12 **photo(s) of your land in question here with the area of the proposed KXL**  
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you have children how many do you have?**

16 A: 2

1 **Q: If you have grandchildren how many do you have?**

2 A: 6

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**  
4 **and or your family?**

5 A: Yes.

6 **Q: How long the land has been in your family?**

7 A: My brother, Leonard Skoglund, and I inherited the land from our Great Aunt Edith  
8 Benson, the sister of our maternal grandfather, who had no children. She was a  
9 Swedish immigrant who, along with her husband Ed, took advantage of the  
10 Homestead Act of 1862 which gave 160 acres to those who build a home on it and  
11 farm it for at least 5 years. Thus we each have 80 acres that is farmed jointly by a  
12 third party.

13 **Q: Do you earn any income from this land?**

14 A: Yes.

15 **Q: Have you depended on the income from your land to support your livelihood**  
16 **or the livelihood of your family?**

17 A: Yes.

18 **Q: Have you ever in the past or have you thought about in the future leasing all**  
19 **or a portion of your land in question here?**

20 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective  
21 tenant may try to negotiate a lower price for my land if it had the pipeline on it and  
22 all the restrictions and risks and potential negative impacts to farming or ranching  
23 operations as opposed to land that did not have those same risks. If I was looking  
24 to lease or rent ground I would pay more for comparable non-pipeline land than I  
25 would for comparable pipeline land and I think most folks would think the same  
26 way. This is another negative economic impact that affects the landowner and the  
27 county and the state and will forever and ever should TransCanada's preferred or  
28 mainline alternative routes be approved. If they were to twin or closely parallel to

1 Keystone I the vast majority of landowners would be those that already have a  
2 pipeline so there would be considerable less new incremental negative impacts.

3 **Q: Do you have similar concerns about selling the land?**

4 A: Well I hope not to have to sell the land in my lifetime but times change and you  
5 never know what is around the corner and yes I am concerned that if another piece  
6 of ground similar to mine were for sale and it did not have the pipeline and mine  
7 did that I would have a lower selling price. I think this would be true for pipeline  
8 ground on both the preferred and mainline alternative routes.

9 **Q: What is your intent with your land after you die?**

10 A: Like I said I hope not to have to sell and I hope that it stays in the family for years  
11 to come but I have thought about getting out if this pipeline were to come through.

12 **Q: Are you aware that the preferred route of TransCanada's Keystone XL  
13 Pipeline would cross the land described above and owned by you?**

14 A: Yes.

15 **Q: Were you or an entity for which you are a member, shareholder, or director  
16 previously sued by TransCanada Keystone Pipeline, LP?**

17 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a  
18 petition for condemnation against our land so it could place its proposed pipeline  
19 within an easement that it wanted to take from us on our land.

20 **Q: Did you defend yourself and your land in that condemnation action?**

21 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees  
22 and expenses in our resistance of TransCanada's lawsuit against us.

23 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees  
24 incurred?**

25 A: No, they have not.

26 **Q: In its lawsuit against you, did TransCanada identify the amount of your  
27 property that it wanted to take for its proposed pipeline?**

1 A: The lawsuit against us stated they would take the amount of property that is  
2 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant  
3 and equipment reasonably necessary to operate the pipeline.

4 **Q: Did TransCanada define what they meant by “property that is reasonably  
5 necessary”?**

6 A: No, they did not.

7 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain  
8 property portion of your land?**

9 A: Yes, they did.

10 **Q: Did TransCanada describe what rights it proposed to take related to the  
11 eminent domain property on your land?**

12 A: Yes, they did.

13 **Q: What rights that they proposed to take did they describe?**

14 A: TransCanada stated that the eminent domain property will be used to “lay, relay,  
15 operate, and maintain the pipeline and the plant and equipment reasonably  
16 necessary to operate the pipeline, specifically including surveying, laying,  
17 constructing, inspecting, maintaining, operating, repairing, replacing, altering,  
18 reconstructing, removing and abandoning one pipeline, together with all fittings,  
19 cathodic protection equipment, pipeline markers, and all their equipment and  
20 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,  
21 petroleum products, and all by-products thereof.”

22 **Q: Prior to filing an eminent domain lawsuit to take your land that  
23 TransCanada identified, do you believe they attempted to negotiate in good  
24 faith with you?**

25 A: No, I do not.

26 **Q: Did TransCanada at any time approach you with or deliver to you their  
27 proposed easement and right-of-way agreement?**

28 A: Yes, they did.

1 **Q: At the time you reviewed TransCanada's easement and right-of-way**  
2 **agreement, did you understand that they would be purchasing a fee title**  
3 **interest in your property or that they were taking something else?**

4 A: I understood that they proposed to have the power to take both a temporary  
5 construction easement that could last for a certain period of time and then also a  
6 permanent easement which they described to be 50 feet across or in width, and  
7 that would run the entire portion of my property from where a proposed pipeline  
8 would enter my property until where it would exit the property.

9 **Q: Is the document included with your testimony here as Attachment No. 3, a**  
10 **true and accurate copy of TransCanada's proposed Easement and Right-of-**  
11 **Way agreement that they included with their condemnation lawsuit against**  
12 **you?**

13 A: Yes, it is.

14 **Q: Have you had an opportunity to review TransCanada's proposed Easement**  
15 **and Right-of-Way agreement?**

16 A: Yes, I have.

17 **Q: What is your understanding of the significance of the Easement and Right-of-**  
18 **Way agreement as proposed by TransCanada?**

19 A: My understanding is that this is the document that will govern all of the rights and  
20 obligations and duties as well as the limitations of what I can and cannot do and  
21 how I and any future landowner and any person I invite to come onto my property  
22 must behave as well as what TransCanada is and is not responsible for and how  
23 they can use my land.

24 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**  
25 **agreement do you have any concerns about any portions of it or any of the**  
26 **language either included in the document or missing from the proposed**  
27 **document?**

28 A: Yes, I have a number of significant concerns and worries about the document and  
29 how the language included and the language not included potentially negatively

1 impacts my land and thereby potentially negatively impacts my community and  
2 my state.

3 **Q: I would like you to walk the Commissioners through each and every one of**  
4 **your concerns about TransCanada's proposed Easement and Right-of-Way**  
5 **agreement so they can develop an understanding of how that language and**  
6 **the terms of that contract, in your opinion, potentially negatively impacts you**  
7 **and your land. So, if you can start at the beginning of that document and**  
8 **let's work our way through it, okay?**

9 A: Yes, I'll be happy to express my concerns about TransCanada's proposed  
10 Easement and Right-of-Way agreement and how it negatively could affect my  
11 property rights and my economic interests.

12 **Q. Okay, let's start with your first concern please.**

13 A: The very first sentence talks about consideration or how much money they will  
14 pay to compensate me for all of the known and unknown affects and all of the  
15 rights I am giving up and for all the things they get to do to my land and for what  
16 they will prevent me from doing on my land and they only will pay me one time at  
17 the signing of the easement agreement. That is a huge problem.

18 **Q: Explain to the Commissioners why that is a problem.**

19 A: It is not fair to the landowner, the county, or the State. It is not fair to the  
20 landowner because they want to have my land forever for use as they see fit so  
21 they can make a daily profit from their customers. If I was to lease ground from  
22 my neighbor I would typically pay twice a year every year as long as they granted  
23 me the rights to use their land. That only makes sense – that is fair. If I was going  
24 to rent a house in town I would typically pay monthly, every month until I gave up  
25 my right to use that house. By TransCanada getting out on the cheap and paying  
26 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax  
27 revenue collection on the money I would be paid and then pay taxes on and  
28 contribute to this state and this country. It is money I would be putting back into  
29 my local community both spending and stimulating the local economy and

1 generating more economic activity right here. Instead TransCanada's shareholders  
2 keep all that money and it never finds its way to Nebraska.

3 **Q: What is your next concern?**

4 A: The first paragraph goes on to say Grantor, which is me the landowner, "does  
5 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a  
6 limited partnership..." and I have no idea who that really is. I have no idea who is  
7 forcing this pipeline on us or who the owners of the entities are, or what are the  
8 assets backing this limited partnership, or who the general partner is, or who all  
9 the limited partners are, and who makes up the ownership of the these partners or  
10 the structure or any of the basic things you would want to know and understand if  
11 you would want to do business with such an outfit. According to TransCanada's  
12 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited  
13 liability company called TransCanada Keystone Pipeline GP, LLC is the general  
14 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so  
15 basically nothing. That is really scary since the general partner has the liability but  
16 virtually none of the ownership and who knows if it has any other assets.

17 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred  
18 percent clear on exactly who could become the owner of over 275 miles of  
19 Nebraska land?**

20 A: No.

21 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred  
22 percent clear on exactly who will be operating and responsible for  
23 approximately 275 miles of tar sands pipeline underneath and through  
24 Nebraska land?**

25 A: No.

26 **Q: Okay, let's continue please with your concerns of the impacts upon your land  
27 and the State of Nebraska of TransCanada's easement terms.**

28 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter  
29 called "Grantee")..." and this concerns me because it would allow their easement

1 to be transferred or sold to someone or some company or country or who knows  
2 what that I don't know and who we may not want to do business with. This  
3 pipeline would be a huge asset for TransCanada and if they can sell to the highest  
4 bidder that could have terrible impacts upon all of Nebraska depending upon who  
5 may buy it and I don't know of any safeguards in place for us or the State to veto  
6 or have any say so in who may own, operate, or be responsible for this pipeline in  
7 the future.

8 **Q: Do you think that type of uncertainty and lack of control over a major piece**  
9 **of infrastructure crossing our State is in the public interest?**

10 A: No, certainly not, in fact, just the opposite.

11 **Q: What's next?**

12 A: Then it says "...a perpetual permanent easement and right-of-way..." and this  
13 really concerns me. Why does the easement and right-of-way have to be perpetual  
14 and permanent? That is the question myself and my family want an answer to.  
15 Perpetual to me is like forever and that doesn't make sense.

16 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

17 A: For many reasons but mostly because the tar sands are finite. I am unaware of any  
18 data proving there is a perpetual supply of tar sands. I am not aware in  
19 TransCanada's application where it proves there is a perpetual necessity for this  
20 pipeline. My understanding of energy infrastructure like wind towers is they have  
21 a decommission plan and actually take the towers down when they become  
22 obsolete or no longer needed. Nothing manmade lasts forever. My land however  
23 will, and I want my family or future Nebraska families to have that land as  
24 undisturbed as possible and it is not in my interest or the public interest of  
25 Nebraska to be forced to give up perpetual and permanent rights in the land for  
26 this specific kind of pipeline project.

27 **Q: Okay, what is your next concern?**

28 A: The easement language includes all these things TransCanada can do and it says  
29 "...abandoning in place..." so they can just leave this pipeline under my ground

1 until the end of time just sitting there while they are not using it, but I am still  
2 prevented from doing on my land and using my land what I would like. If I owned  
3 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting  
4 there. It doesn't make sense and it scares me and it is not in my interest or the  
5 public interest of Nebraska to allow this.

6 **Q: Now it looks like we are ready to go to the second page of the Easement is that**  
7 **right?**

8 A: Yes.

9 **Q: So now on the second page of the Easement what are your concerns?**

10 A: Here the Easement identifies a 24-month deadline to complete construction of the  
11 pipeline but has caveats that are undefined and ambiguous. The 24-month period  
12 starts to run from the moment "actual pipeline installation activities" begin on  
13 Landowners property. It appears that TransCanada would define this phrase as  
14 needed. It would be wise to explain what types of TransCanada action constitutes  
15 "installation activity" For instance, would the placement and storage of an  
16 excavator or other equipment on or near the Easement property be an activity or  
17 would earth have to be moved before the activity requirement is triggered. This  
18 vague phrase is likely to lead to future disputes and litigation that is not in the best  
19 interest of the welfare of Nebraska and would not protect property interests. The  
20 24-months can also be extended in the case of "force majeure." My understanding  
21 is that force majeure is often used to insulate a party to a contract when events  
22 occur that are completely out of their control. In TransCanada's easement this is  
23 expanded to include "without limitation...availability of labor and materials."  
24 Extending this language to labor and materials is problematic because these are  
25 two variables that TransCanada does have some or significant control over and to  
26 allow extension of the 24-month period over events not truly out of the control of  
27 TransCanada and without further provision for compensation for the Landowner is  
28 not conducive to protection of property rights.

29 **Q: Okay, what is your next concern?**

1 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of  
2 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially  
3 reasonable costs and expenses” will pay for damages caused but then limits  
4 TransCanada’s liability to certain circumstances. There is no definition of  
5 “commercially reasonable” and no stated right that the Landowner would get to  
6 determine the amounts of cost or expense that is “commercially reasonable.”  
7 TransCanada excepts out from their liability any damages that are caused by  
8 Landowner’s negligence or the negligence of anyone ever acting on the behalf of  
9 Landowner. It is understandable that if the Landowner were to willfully and  
10 intentionally cause damages to the pipeline that Landowner should be liable.  
11 However, anything short of willful misconduct should be the liability of  
12 TransCanada who is subjecting the pipeline on the Landowner and who is making  
13 a daily profit from that pipeline. When evaluating the impact on property rights of  
14 this provision, you must consider the potentially extremely expensive fight a  
15 Landowner would have over this question of whether or not damage was an act of  
16 negligence. Putting this kind of potential liability upon the Landowner is  
17 incredibly problematic and is detrimental to the protection of property rights. I  
18 don’t think this unilateral power which I can’t do anything about as the landowner  
19 is in the best economic interest of the land in question or the State of Nebraska for  
20 landowners to be treated that way.

21 **Q: Is there any specific event or example you are aware of that makes this**  
22 **concern more real for you?**

23 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against  
24 Nemaha County, Nebraska landowner farmers who accidentally struck two  
25 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of  
26 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged  
27 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate  
28 copy of the Federal Court Complaint is here as **Attachment No. 4.**

29 **Q: What is your next concern with the Easement language?**

1 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as  
2 they choose unless 1) any Landowner use interferes in any way with  
3 TransCanada's exercise of any of its rights within the Easement, or 2)  
4 TransCanada decides to take any action on the property it deems necessary to  
5 prevent injury, endangerment or interference with anything TransCanada deems  
6 necessary to do on the property. Landowner is also forbidden from excavating  
7 without prior authorization by TransCanada. So my understanding is that  
8 TransCanada will unilaterally determine what Landowner can and can't do based  
9 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada  
10 could also completely deny my request to excavate. Further, TransCanada retains  
11 all "privileges necessary or convenient for the full use of the rights" granted to  
12 them in the Easement. Again, TransCanada unilaterally can decide to the  
13 detriment of the property rights of Landowner what TransCanada believes is  
14 necessary or convenient for it. And there is no option for any additional  
15 compensation to landowner for any right exercised by TransCanada that leads to  
16 the removal of trees or plants or vegetation or buildings or structures or facilities  
17 owned by Landowner of any kind. Such undefined and unilateral restrictions and  
18 rights without having to compensate Landowner for such further destruction or  
19 losses are not conducive to the protection of property rights or economic interest.

20 **Q: What is the next concern you have?**

21 A: The Easement also allows some rights for Landowner but restricts them at the  
22 same time and again at the sole and unilateral decision making of TransCanada.  
23 TransCanada will determine if the actions of Landowner might in anyway  
24 endanger or obstruct or interfere with TransCanada's full use of the Easement or  
25 any appurtenances thereon to the pipeline itself or to their access to the Easement  
26 or within the Easement and TransCanada retains the right at any time, whether  
27 during growing season or not, to travel "within and along Easement Area on foot  
28 or in vehicle or machinery..." Further at TransCanada's sole discretion it will  
29 retain the rights to prevent any landowner activity that it thinks may "unreasonably

1 impair[ed] or interfe[ed] with” TransCanada’s use of the Easement Area. Such  
2 undefined and unilateral restrictions are not conducive to the protection of  
3 property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: The Easement allows TransCanada sole discretion to burn or chip or bury under  
6 Landowner’s land any debris of any kind without any input or power of  
7 Landowner to demand an alternative method or location of debris disposal. Such  
8 unilateral powers would negatively affect Landowners property are not conducive  
9 to the protection of property rights or economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: Again, undefined terms leave a lot of room for confusion. What does the phrase  
12 “where rock is encountered” mean and why does TransCanada solely get to  
13 determine whether or not this phrase is triggered. This phrase could be used to  
14 justify installing the pipeline 24 inches beneath the surface. The ability to use this  
15 provision to minimal locate the pipeline at a depth of 24 inches could negatively  
16 affect Landowners property are not conducive to the protection of property rights.  
17 A shallow pipeline is much more likely to become a danger and liability in the  
18 future given farming operations and buried irrigation lines and other factors  
19 common to the current typical agricultural uses of the land in question impacted  
20 by TransCanada’s preferred pipeline route.

21 **Q: What is the next concern you have with the Easement language?**

22 A: There are more vague concepts solely at the determination of TransCanada such as  
23 “as nearly as practicable” and “pre-construction position” and “extent reasonably  
24 possible.” There is nothing here that defines this or provides a mechanism for  
25 documenting or memorializing “pre-construction position” so as to minimize  
26 costly legal battles or wasted Landowner time attempting to recreate the soil  
27 condition on their fields or pasture. Such unilateral powers would negatively affect  
28 Landowners property are not conducive to the protection of property rights or  
29 economic interest.

1 **Q: What is the next concern you have with the Easement language?**

2 A: TransCanada maintains the unilateral right to abandon the pipeline and all  
3 appurtenances thereto in place on, under, across, or through Nebraska land at any  
4 time it chooses. There is no provision for Landowner compensation for such  
5 abandonment nor any right for the Landowner to demand removal. Such unilateral  
6 powers would negatively affect Landowners property are not conducive to the  
7 protection of property rights or economic interest.

8 **Q: What is the next concern you have with the Easement language?**

9 A: TransCanada has the power to unilaterally move or modify the location of any  
10 Easement area whether permanent or temporary at their sole discretion.  
11 Regardless, if Landowner has taken prior steps relative to their property in  
12 preparation or planning of TransCanada's taking of the initial easement area(s),  
13 the language here does not require TransCanada to compensate the Landowner if  
14 they decide to move the easement anywhere on Landowners property. Such  
15 unilateral powers would negatively affect Landowners property are not conducive  
16 to the protection of property rights or economic interests.

17 **Q: What is the next concern you have with the Easement language?**

18 A: The Easement requires that all of the burdens and restrictions upon Landowner to  
19 transfer and be applicable to any future owner of the Land in question without the  
20 ability of the future Landowner to modify or negotiate any of the language in  
21 question to which it will be held to comply.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada to assign, transfer, or sell any part of the  
24 Easement to any person, company, country, etc. at their sole discretion at anytime  
25 to anyone. This also means that any buyer of the easement could do the same to a  
26 third buyer and so on forever. There is no change of control or sale provision in  
27 place to protect the Landowner or Nebraska or to provide compensation for such  
28 change of control or ownership. It is not conducive to the protection of property  
29 rights or economic interests to allow unilateral unrestricted sale of the Easement

1           thereby forcing upon the Landowner and our State a new unknown Easement  
2           owner.

3   **Q:   What is the next concern you have with the Easement language?**

4   A:   There are many terms in the Easement that are either confusing or undefined terms  
5       that are without context as to whether or not the Landowner would have any say  
6       so in determining what these terms mean or if the evaluation is solely in  
7       TransCanada’s control. Some of these vague undefined and ambiguous terms are  
8       as follows:

- 9           i.   “pipeline installation activities”
- 10          ii. “availability of labor and materials”
- 11          iii. “commercially reasonable costs and expenses”
- 12          iv. “reasonably anticipated and foreseeable costs and expenses”
- 13          v.   “yield loss damages”
- 14          vi. “diminution in the value of the property”
- 15          vii. “substantially same condition”
- 16          viii. “an actual or potential hazard”
- 17          ix.  “efficient”
- 18          x.   “convenient”
- 19          xi.  “endangered”
- 20          xii. “obstructed”
- 21          xiii. “injured”
- 22          xiv. “interfered with”
- 23          xv.  “impaired”
- 24          xvi. “suitable crossings”
- 25          xvii. “where rock is encountered”
- 26          xviii. “as nearly as practicable”
- 27          xix. “pre-construction position”
- 28          xx.  “pre-construction grade”
- 29          xxi. “various engineering factors”

1 Each one of these above terms and phrases as read in the context of the Easement  
2 could be problematic in many ways. Notably, undefined terms tend to only get  
3 definition in further legal proceedings after a dispute arises and the way the  
4 Easement is drafted, TransCanada has sole power to determine when and if a  
5 particular situation conforms with or triggers rights affected by these terms. For  
6 instance, “yield loss damages” should be specifically defined and spelled out  
7 exactly how the landowner is to be compensated and in what events on the front  
8 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,  
9 the Landowner is without contractual rights to define these terms or determine  
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**  
12 **think of at this time?**

13 A: I reserve the right to discuss any additional concerns that I think of at the time of  
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**  
16 **TransCanada’s proposed Easement terms and agreement, do you believe**  
17 **those to be reasonable or just, under the circumstances of the pipeline’s**  
18 **impact upon you and your land?**

19 A: No, I do not believe those terms to be reasonable or just for the reasons that we  
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**  
22 **they sought to obtain in your land, and for what they sought to prevent you**  
23 **and any future land owner of your property from doing in the future?**

24 A: Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**  
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**  
27 **compensation for all of what they proposed to take from you so that their tar**  
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just  
2 offer for all the potential impacts and effects and the rights that I'm giving up, and  
3 what we will be prevented from doing in the future and how their pipeline would  
4 impact my property for ever and ever.

5 **Q: Has TransCanada at any time offered to compensate you annually, such as**  
6 **wind farm projects do, for the existence of their potential tar sands pipeline**  
7 **across your property.**

8 A: No, never.

9 **Q: At any time did TransCanada present you with or request that you, as the**  
10 **owner of the land in question, sign and execute a document called, "Advanced**  
11 **Release of Damage Claims and Indemnity Agreement?"**

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**  
14 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

15 A: Yes, it is.

16 **Q: What was your understanding of that document?**

17 A: When I read that document in the plain language of that document, it was my  
18 understanding that TransCanada was attempting to pay me a very small amount at  
19 that time in order for me to agree to give up my rights to be compensated from  
20 them in the future related to any damage or impact they may have upon my  
21 property "arising out of, in connection with, or alleged to resulted from  
22 construction or surveying over, under or on" my land.

23 **Q: Did you ever sign that document?**

24 A: No, I did not.

25 **Q: Why not?**

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small  
27 sum of money when I have no idea how bad the impacts or damages that they, or  
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying  
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to  
5 shield themselves against known and foreseeable impacts that their pipeline, and  
6 the construction of it, would have upon my land. It made me feel that they knew it  
7 was in their financial interest to pay me as little as possible to prevent me from  
8 ever having the opportunity to seek fair compensation again, and that this must be  
9 based upon their experience of unhappy landowners and situations in other places  
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you  
12 thought their proposed location of their proposed pipeline across your land  
13 was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you  
16 thought their proposed location of their proposed pipeline across your land  
17 was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the  
20 Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of  
23 an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the  
25 government is going to take land for public use, then in that case, or by taking for  
26 public use, it can only occur if the private land owner is compensated justly, or  
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which  
29 the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 **Q: Can you think of any way in which the public, that is the citizens of the State**  
3 **of Nebraska, can directly use the proposed TransCanada Keystone XL**  
4 **Pipeline, as it dissects the State of Nebraska?**

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the  
6 public benefits from this pipeline in any way, how they can use it any way, or how  
7 it's in the public interest in any way. By looking at the map, it is quite clear to me  
8 that the only reason it's proposed to come through Nebraska, is that because we  
9 are geographically in the way from between where the privately-owned Tar Sands  
10 are located to where TransCanada wants to ship the Tar Sands to refineries in  
11 Houston, Texas.

12 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**  
13 **crude petroleum, or oil and petroleum by-products that you would like to**  
14 **ship in its pipeline?**

15 A: No, it has not.

16 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**  
17 **products that you, at this time or any time in the future, would desire to place**  
18 **for transport within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not.

20 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**  
21 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**  
22 **products within the proposed TransCanada Keystone XL Pipeline?**

23 A: No, I do not. I've never heard of such a person or company like that.

24 **Q: Do you pay property taxes for the land that would be affected and impacted**  
25 **at the proposed TransCanada Keystone XL Pipeline?**

26 A: Yes, I do.

27 **Q: Why do you pay property taxes on that land?**

28 A: Because that is the law. The law requires us to pay the property taxes as the owner  
29 of that property.

1 **Q: Because you follow the law and pay property taxes, do you believe you**  
2 **deserve any special consideration or treatment apart from any other person**  
3 **or company that pays property taxes?**

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's  
5 just what you do.

6 **Q: Do you believe the fact that you pay property taxes entitles you to special**  
7 **treatment of any kind, or special rights of any kind?**

8 A: No, of course not.

9 **Q: Do you believe the fact that you pay property taxes on your land would be**  
10 **enough to qualify you to have the power of eminent domain to take land of**  
11 **your neighbors or other people in your county, or other people across the**  
12 **state of Nebraska?**

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that  
14 I expect an award for or any type of special consideration.

15 **Q: Have you at any time ever employed any person other than yourself?**

16 A: Well, yes I have.

17 **Q: Do you believe that the fact that you have, at some point in your life,**  
18 **employed one or more other persons entitle you to any special treatment or**  
19 **consideration above and beyond any other Nebraskan that has also employed**  
20 **one or more persons?**

21 A: No, of course not.

22 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**  
23 **have at one point employed another person within this state, entitles you to**  
24 **preferential treatment or consideration of any kind?**

25 A: No, of course not. If I choose to employ someone that decision is up to me. I  
26 don't deserve any special treatment or consideration for that fact.

27 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**  
28 **crude oil pipeline in its preferred location, or ultimate location across the**  
29 **state of Nebraska?**

1 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly  
2 or even bullied around and being made to feel scared that they did not have any  
3 options but to sign whatever papers TransCanada told them they had to. I am  
4 aware of folks being threatened that their land would be taken if they didn't follow  
5 what TransCanada was saying. I am aware of tactics to get people to sign  
6 easements that I don't believe have any place in Nebraska or anywhere such as  
7 TransCanada or some outfit associated with it hiring a pastor or priest to pray with  
8 landowners and convince them they should sign TransCanada's easement  
9 agreements. I am aware of older folks and widows or widowers feeling they had  
10 no choice but to sign TransCanada's Easement and they didn't know they could  
11 fight or stand up for themselves. From a more practical standpoint, I am worried  
12 that according to their answer to our Interrogatory No. 211, TransCanada only  
13 owns and operates one (1) major oil pipeline. They simply do not have the  
14 experience with this type of pipeline and that scares me. There are others but that  
15 is what I can recollect at this time and if I remember more or my recollection is  
16 refreshed I will share those with the Commissioners at the Hearing in August.

17 **Q: Do you believe TransCanada's proposed method of compensation to you as a**  
18 **landowner is reasonable or just?**

19 A: No, I do not.

20 **Q: Do you have any concern about limitations that the construction of this**  
21 **proposed pipeline across your affected land would prevent construction of**  
22 **future structures upon the portion of your land affected by the proposed**  
23 **easement and immediately surrounding areas?**

24 A: Well yes, of course I do. We would not be able to build many, if any, types of  
25 structures directly across or touching the easement, and it would be unwise and I  
26 would be uncomfortable to build anything near the easement for fear of being  
27 blamed in the future should any damage or difficulty result on my property in  
28 regards to the pipeline.

29 **Q: Do you think such a restriction would impact you economically?**

1 A: Well yes, of course.

2 **Q: How do you think such a restriction would impact you economically?**

3 A: The future of this land may not be exactly how it's being used as of this moment,  
4 and having the restrictions and limiting my ability to develop my land in certain  
5 ways presents a huge negative economic impact on myself, my family, and any  
6 potential future owner of the property. You have no idea how I or the future owner  
7 may want to use this land in the future or the other land across Nebraska  
8 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years  
9 ago it would have been hard to imagine all the advances that we have now or how  
10 things change. Because the Easement is forever and TransCanada gets the rights in  
11 my land forever we have to think with a very long term view. By placing their  
12 pipeline on under across and through my land that prevents future development  
13 which greatly negatively impacts future taxes and tax revenue that could have  
14 been generated by the County and State but now will not. When you look at the  
15 short blip of economic activity that the two years of temporary construction efforts  
16 may bring, that is far outweighed by the perpetual and forever loss of opportunity  
17 and restrictions TransCanada is forcing upon us and Nebraska. The terms of the  
18 easement must be addressed in order for the Commission to truly consider  
19 property rights, economic interests, the welfare of Nebraska, and the balancing of  
20 the proposed routes against all they will affect and impact.

21 **Q: Do you have any concerns about the environmental impact of the proposed**  
22 **pipeline?**

23 A: Yes, I do.

24 **Q: What are some of those concerns?**

25 A: As an affected land owner and Nebraskan, I am concerned that any construction,  
26 operation, and/or maintenance of the proposed Keystone XL Pipeline would have  
27 a detrimental impact upon the environment of my land specifically, as well as the  
28 lands near my land and surrounding the proposed pipeline route.

29 **Q: Do you have any other environmental concerns?**

1 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in  
2 construction and/or maintenance and operation. I am concerned about spills and  
3 leaks that TransCanada has had in the past and will have in the future. This could  
4 be catastrophic to my operations or others and to my county and the State.

5 **Q: Do you have any thoughts regarding if there would be an impact upon the**  
6 **natural resources on or near your property due to the proposed pipeline?**

7 A: Yes, I believe that any construction, operation, and/or maintenance of the  
8 proposed Keystone XL Pipeline would have detrimental impacts upon the natural  
9 resources of my land, and the lands near and surrounding the proposed pipeline  
10 route.

11 **Q: Do you have any worries about potential impacts from the proposed pipeline**  
12 **to the soil of your land, or land near you?**

13 A: Yes, I believe that any construction, operation, and/or maintenance of the  
14 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of  
15 land, as well as land along and surrounding the proposed pipeline route. This  
16 includes, but is not limited to, the reasons that we discussed above of disturbing  
17 the soil composition and makeup as it has naturally existed for thousands and  
18 millions of years during the construction process, and any future maintenance or  
19 removal process. I'm gravely concerned about the fertility and the loss of  
20 economic ability of my property to grow the crops, or grow the grasses, or grow  
21 whatever it is at that time they exist on my property or that I may want to grow in  
22 the future, or that a future owner may want to grow. The land will never be the  
23 same from as it exists now undisturbed to after it is trenched up for the proposed  
24 pipeline.

25 **Q: Do you have any concerns about the potential impact of the proposed pipeline**  
26 **upon the groundwater over your land, or surrounding lands?**

27 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
28 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
29 groundwater of not only under my land, but also near and surrounding the pipeline

1 route, and in fact, potentially the entire State of Nebraska. Water is life plain and  
2 simple and it is simply too valuable to our State and the country to put at  
3 unreasonable risk.

4 **Q: Do you have any concern about the potential impact of the proposed pipeline**  
5 **upon the surface water on, or near or around your land?**

6 A: Yes, I have significant concerns that any construction, operation, and/or  
7 maintenance of the proposed Keystone XL Pipeline would have detrimental  
8 impact upon the surface water of not only within my property boundary, but along  
9 and near and surrounding the pipeline route, and in fact, across the state of  
10 Nebraska.

11 **Q: Do you have any concern about the potential impacts of the proposed pipeline**  
12 **upon the wildlife and plants, other than your growing crops on or near your**  
13 **land?**

14 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
15 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
16 wildlife and the plants, not only that are located on or can be found upon my land,  
17 but also near and along the proposed pipeline route.

18 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**  
19 **fair market value of your land?**

20 A: Yes, I do. I am significantly concerned about how the existence of the proposed  
21 pipeline underneath and across and through my property will negatively affect the  
22 fair market value at any point in the future, especially at that point in which I  
23 would need to sell the property, or someone in my family would need to sell the  
24 property. I do not believe, and certainly would not be willing to pay, the same  
25 price for land that had the pipeline located on it, versus land that did not. I hope  
26 there is never a point where I'm in a position where I have to sell and have to  
27 realize as much value as I can out of my land. But because it is my single largest  
28 asset, I'm gravely concerned that the existence of the proposed Keystone XL  
29 Pipeline upon my land will affect a buyer's willingness to pay as much as they

1 would've paid and as much as I could've received, if the pipeline were not upon  
2 my property. There are just too many risks, unknowns, impacts and uncertainties,  
3 not to mention all of the rights you give up by the nature of having the pipeline  
4 due to having the easement that we have previously discussed, for any reasonable  
5 person to think that the existence of the pipeline would not negatively affect my  
6 property's value.

7 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**  
8 **testimony?**

9 A: Yes, I have.

10 **Q: Where have you seen that before?**

11 A: That is a map I think I first saw a couple years ago that shows the Keystone XL  
12 I-90 corridor alternate route of its proposed pipeline through Nebraska and I  
13 believe the portion of the alternative route in Nebraska essentially twins or  
14 parallels Keystone I.

15 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**  
16 **Application, and as found on Attachment No. 7, here to your testimony, is in**  
17 **the public interest of Nebraska?**

18 A: No, I do not.

19 **Q: Do you believe that the Keystone mainline alternative route as shown on**  
20 **Attachment No. 7 included with your testimony here is a major oil pipeline**  
21 **route that is in the public interest of Nebraska?**

22 A: No, I do not.

23 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**  
24 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe there is any potential route for the proposed Keystone XL**  
27 **Pipeline across, within, under, or through the State of Nebraska that is in the**  
28 **public interest of the citizens of Nebraska?**

29 A: No, I do not.

1 **Q: Why do you hold that belief?**

2 A: Because there simply is no public interest based on all of the factors that I am  
3 aware and that I have read and that I have studied that this Commission is to  
4 consider that would establish that a for-profit foreign-owned pipeline that simply  
5 crosses Nebraska because we are geographically in the way between where tar  
6 sands are in Canada to where it wants to ship it to in Texas could ever be in the  
7 public interest of Nebraskans. We derive no benefit from this project. It is not for  
8 public use. Nebraska is simply in the way and when all considerations are taken in  
9 there is no net benefit of any kind for Nebraska should this project be placed in our  
10 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
11 the negative impacts and concerns.

12 **Q: What do you think about the applicant, TransCanada’s argument that it’s**  
13 **preferred route for its proposed Keystone XL Pipeline is in the public interest**  
14 **of Nebraska because it may bring temporary jobs during the construction**  
15 **phase to Nebraska?**

16 A: First of all, not all jobs are created equally. Most jobs that are created, whether  
17 temporary or on a permanent basis, don’t come with a project that has all the  
18 potential and foreseeable negative impacts, many of which we have discussed here  
19 and other witnesses throughout the course of this hearing have and will discuss. If  
20 I decide to hire and employ someone to help me out in my farming or ranching  
21 business, I’ve created a job but I haven’t done so at the risk or detrimental impact  
22 to my land or my town or my county or my state. And I’ve hired someone who is  
23 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce  
24 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all  
25 jobs are not created equal. Additionally, I understand from what I’m familiar with  
26 from TransCanada’s own statements that the jobs numbers they originally touted  
27 were determined to be a minute fraction of the permanent jobs that had been  
28 projected. According to their answer to our Interrogatory No. 191, TransCanada  
29 has created only thirty-four (34) jobs within Nebraska working specifically on

1           behalf of TransCanada and according to their answer to Interrogatory No. 196, as  
2           of May 5, 2017 they only employ one (1) temporary working within Nebraska.  
3           Further, according to their answer to Interrogatory No. 199, TransCanada would  
4           only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was  
5           constructed on its Preferred Route or its Mainline Alternative Route.

6   **Q:    Are you opposed to the preferred route of the proposed KXL Pipeline simply**  
7   **because it would cross your land?**

8   A:    No, absolutely not. I am opposed to this project because it is not in the public  
9        interest, neither within my community nor within our state.

10 **Q:    Would you be happier if instead of crossing your land, this proposed pipeline**  
11 **was to cross someone else's land?**

12 A:    No, absolutely not. I would get no joy in having a fellow citizen of my state have  
13        the fear and anxiety and potential foreseeable risks and negative impacts that this  
14        type of a project carrying this type of product brings foisted upon anyone in this  
15        state or any other state.

16 **Q:    Do you think there is any intelligent route for the proposed Keystone XL**  
17 **Pipeline to cross the state of Nebraska?**

18 A:    I don't believe there is an intelligent route because as I have stated I don't believe  
19        this project anywhere within Nebraska is within the public interest. However, if  
20        you are presenting a hypothetical that if this proposed KXL Pipeline absolutely  
21        had to go somewhere in the state of Nebraska, the only intelligent route I believe  
22        would be to twin or closely parallel the existing Keystone I Pipeline. Both the  
23        preferred route and the mainline alternative routes are economic liabilities our  
24        state cannot risk.

25 **Q:    What do you rely upon to make that statement?**

26 A:    Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,  
27        already exists in that area is reason enough as it is not in our best interest or the  
28        public interests to have more major oil pipelines crisscrossing our state. Second,  
29        they have all the infrastructure already there in terms of relationships with the

1 counties and local officials and first responders along that route. Third, they have  
2 already obtained easements from all the landowners along that route and have  
3 relationships with them. Fourth, that route avoids our most sensitive soils, the  
4 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala  
5 Aquifer. Sixth, they have already studied that route and previously offered it as an  
6 alternative. Seventh, it just makes the most sense that as a state we would have  
7 some intelligent policy of energy corridors and co-locating this type of  
8 infrastructure near each other.

9 **Q: Do you have any other concerns you would like to reiterate or can think of at**  
10 **this time you would like the Commissioners to understand?**

11 **A:** Yes. We have concerns on potential harm to our property from a TransCanada  
12 pipeline leak or break or rupture and not only to the leak itself but all the  
13 surrounding activities required to address that issue and remediate.

14 **Q: Have you fully expressed each and every opinion, concern, or fact you would**  
15 **like the Public Service Commissioners to consider in their review of**  
16 **TransCanada's Application?**

17 **A:** No, I have not. I have shared that which I can think of as of the date I signed this  
18 document below but other things may come to me or my memory may be  
19 refreshed and I will add and address those things at the time of the Hearing in  
20 August and address any additional items at that time as is necessary. Additionally,  
21 I have not had an adequate amount of time to receive and review all of  
22 TransCanada's answers to our discovery and the discovery of others so it was  
23 impossible to competently and completely react to that in my testimony here and I  
24 reserve the right to also address anything related to discovery that has not yet  
25 concluded as of the date I signed this document below. Lastly, certain documents  
26 requested have not yet been produced by TransCanada and therefore I may have  
27 additional thoughts on those I will also share at the hearing as needed.

1 **Q: What is it that you are requesting the Public Service Commissioners do in**  
2 **regards to TransCanada's application for the proposed Keystone XL Pipeline**  
3 **across Nebraska?**

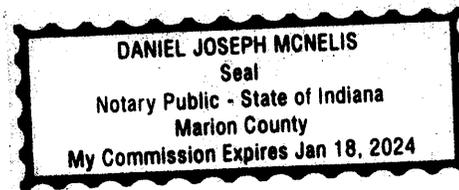
4 A: I am respectfully and humbly requesting that the Commissioners think far beyond  
5 a temporary job spike that this project may bring to a few counties and beyond the  
6 relatively small amount of taxes this proposed foreign pipeline would possibly  
7 generate. And, instead think about the perpetual and forever impacts of this  
8 pipeline as it would have on the landowners specifically, first and foremost, but  
9 also thereby upon the entire state of Nebraska, and to determine that neither the  
10 preferred route nor the Keystone mainline alternative route are in the public  
11 interest of the citizens of the state of Nebraska. And if the Commissioners were  
12 inclined to modify TransCanada's proposed routes and were to be inclined to grant  
13 an application for a route in Nebraska, that the only potential route that would  
14 make any intelligent sense whatsoever would be twinning or near paralleling of  
15 the proposed KXL with the existing Keystone I pipeline. The point of including  
16 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been  
17 considered by TransCanada before. It simply does not make sense to add yet  
18 another major oil pipeline crisscrossing our state creating new pumping stations,  
19 creating new impacts on additional counties and communities and going through  
20 all of the court processes with myself and other landowners like me when this  
21 applicant already has relationships with the landowners, the towns and the  
22 communities along Keystone I, and that Keystone I is firmly outside of the sand  
23 hills and a significantly further portion away from the heart of the Ogallala  
24 Aquifer than the preferred route or the Keystone mainline alternative route.

25 **Q: Are all of your statements in your testimony provided above true and**  
26 **accurate as of the date you signed this document to the best of your**  
27 **knowledge?**

28 A: Yes, they are.

1 **Q: Thank you, I have no further questions at this time and reserve the right to**  
2 **ask you additional questions at the August 2017 Hearing.**

Bonnie Brauer  
Bonnie Brauer



Subscribed and Sworn to me before this 26<sup>th</sup> day of May, 2017.

Daniel Joseph McNelis  
Notary Public

**Attachment No. 1**



S.026  
T.013N  
R.004W

Revocable Trust Agreement of Bonnie L. Brauer dated May 17, 2007  
Skoglund Family Trust dated August 4, 2006  
Bonnie L. Brauer  
Joyce E. Skoglund  
Leonard E. Skoglund

S.035  
T.013N  
R.004W



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
 Revocable Trust Agreement of Bonnie L. Brauer dated May 17, 2007  
 Skoglund Family Trust dated August 4, 2006  
 Bonnie L. Brauer  
 Joyce E. Skoglund  
 Leonard E. Skoglund

**TRACT NO.** ML-NE-PO-40780.000  
**STATE:** Nebraska  
**COUNTY:** Polk  
**SECTION:** 035  
**TOWNSHIP:** 013N  
**RANGE:** 004W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

**Attachment No. 2**



04/16/2017

**Attachment No. 3**

**Prepared by and after recording  
please return to:**  
TransCanada Keystone Pipeline, LP  
1106 Benjamin Avenue, Suite 600  
Norfolk, NE 68701

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(Above Space for Recorder's Use Only)

Tract No.: ML-NE-PO-40780.000

**EASEMENT AND RIGHT-OF-WAY  
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**"), **Bonnie L. Brauer, Trustee of the Revocable Trust Agreement of Bonnie L. Brauer dated May 17, 2007, and Leonard E. Skoglund and Joyce E. Skoglund, Co-Trustees of the Skoglund Family Trust dated August 4, 2006**, whose mailing address is 3415 Country Hill Drive, Fairfax, Virginia 22030 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission

lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Polk, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 160 acres, more or less, situated in the County of Polk, in the State of Nebraska, being further described as the NW1/4 of Section 35, Township 13 North, Range 4 West of the 6th P.M., as recorded in Book 94, Page 422 and Book 93, Page 422 in the Deed Records of Polk County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee

harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR(S):

**Revocable Trust Agreement of Bonnie L. Brauer  
dated May 17, 2007**

\_\_\_\_\_  
**Bonnie L. Brauer, Trustee**

**Skoglund Family Trust dated August 4, 2006**

\_\_\_\_\_  
**Leonard E. Skoglund, Co-Trustee**

\_\_\_\_\_  
**Joyce E. Skoglund, Co-Trustee**

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Joyce E. Skoglund, Co-Trustee of the Skoglund Family Trust dated August 4, 2006** on behalf of said Trust.

\_\_\_\_\_  
Notary Public Signature

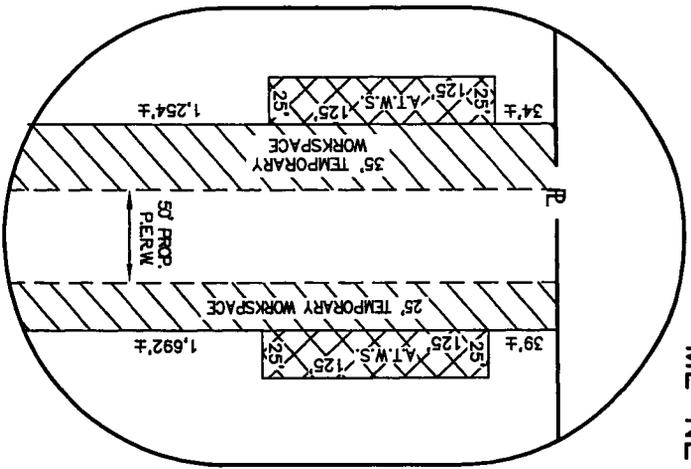
\_\_\_\_\_  
Affix Seal Here



LEGEND  
 R. et al  
 PROP.  
 A.T.W.S.  
 P.E.R.W.

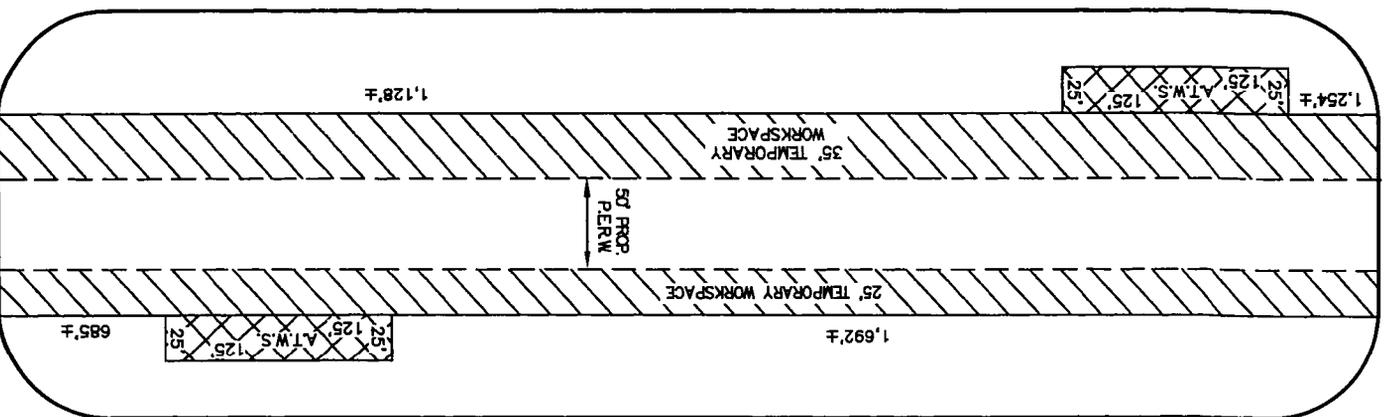
PROPERTY LINE  
 AND OTHERS  
 PROPOSED  
 ADDITIONAL TEMPORARY WORKSPACE  
 PERMANENT EASEMENT & RIGHT OF WAY

**POLK COUNTY, NEBRASKA**  
**T-13-N, R-4-W, SECTION 35**  
**ML-NE-PO-40780.000**



DETAIL "A"  
 N.T.S.

DETAIL "B"  
 N.T.S.



*In Service to "Give"*

**KEYSTONE XL PROJECT**  
**EASEMENT AREA**  
**ACROSS THE PROPERTY OF**  
**LEONARD E. SKOGLUND, et al**  
**ML-NE-PO-40780.000**

PROJECT: **XL EXHIBIT A**

APPROVED BY: \_\_\_\_\_ DRAWING NUMBER: \_\_\_\_\_

SLR: \_\_\_\_\_ XL-08-ML-SK-3716

NO. \_\_\_\_\_ REVISION: \_\_\_\_\_ DATE: \_\_\_\_\_

SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/27/14	PB	ALS



The new identity of Flow

**NOTE:**  
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR  
 PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON  
 THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY  
 PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE  
 APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT  
 AREA TO BE ACQUIRED WILL NOT VARY.

**Attachment No. 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE )  
COMPANY, a New York Corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RICHARD ANDREW, JANE ANDREW, )  
LUKE ANDREW, and BRYCE ANDREW, )  
 )  
Defendants. )

CASE NO. \_\_\_\_\_

**COMPLAINT**

**COMES NOW** Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

**PARTIES**

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

**JURISDICTION AND VENUE**

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

### GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$ , Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

### **FIRST CLAIM: NEGLIGENCE**

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

**SECOND CLAIM: TRESPASS**

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

**WHEREFORE** Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

**JURY DEMAND**

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,  
Plaintiff,

By:     /s/ Albert M. Engles      
ENGLES, KETCHAM, OLSON, & KEITH, P.C.  
1350 Woodmen Tower  
1700 Farnam Street  
Omaha, Nebraska 68102  
(402) 348-0900  
(402) 348-0904 (Facsimile)  
Albert M. Engles, #11194  
Dan H. Ketcham, #18930  
Michael L. Moran, #24042  
James C. Boesen, #24862

**Attachment No. 5**

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-PO-40780.000

We, Bonnie L. Brauer, Trustee, Leonard E. Skoglund and Joyce E. Skoglund, Co-Trustees, of Polk County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Six Hundred Eighty Dollars and No Cents (\$5,680.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Polk, State of Nebraska:

**NW/4**

**Section 35, Township 13N, Range 4W**

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this day of

\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

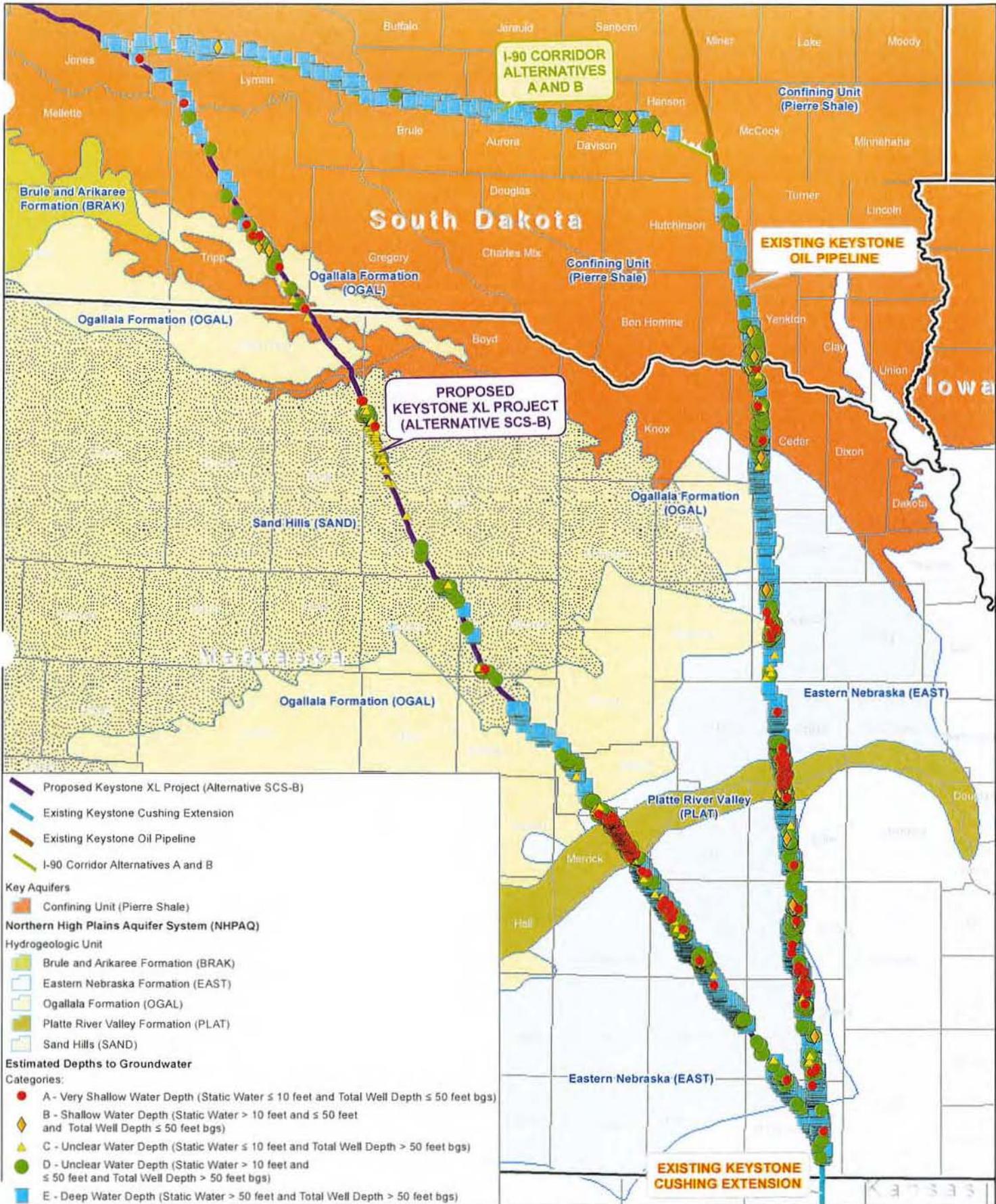
\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

**Attachment No. 6**



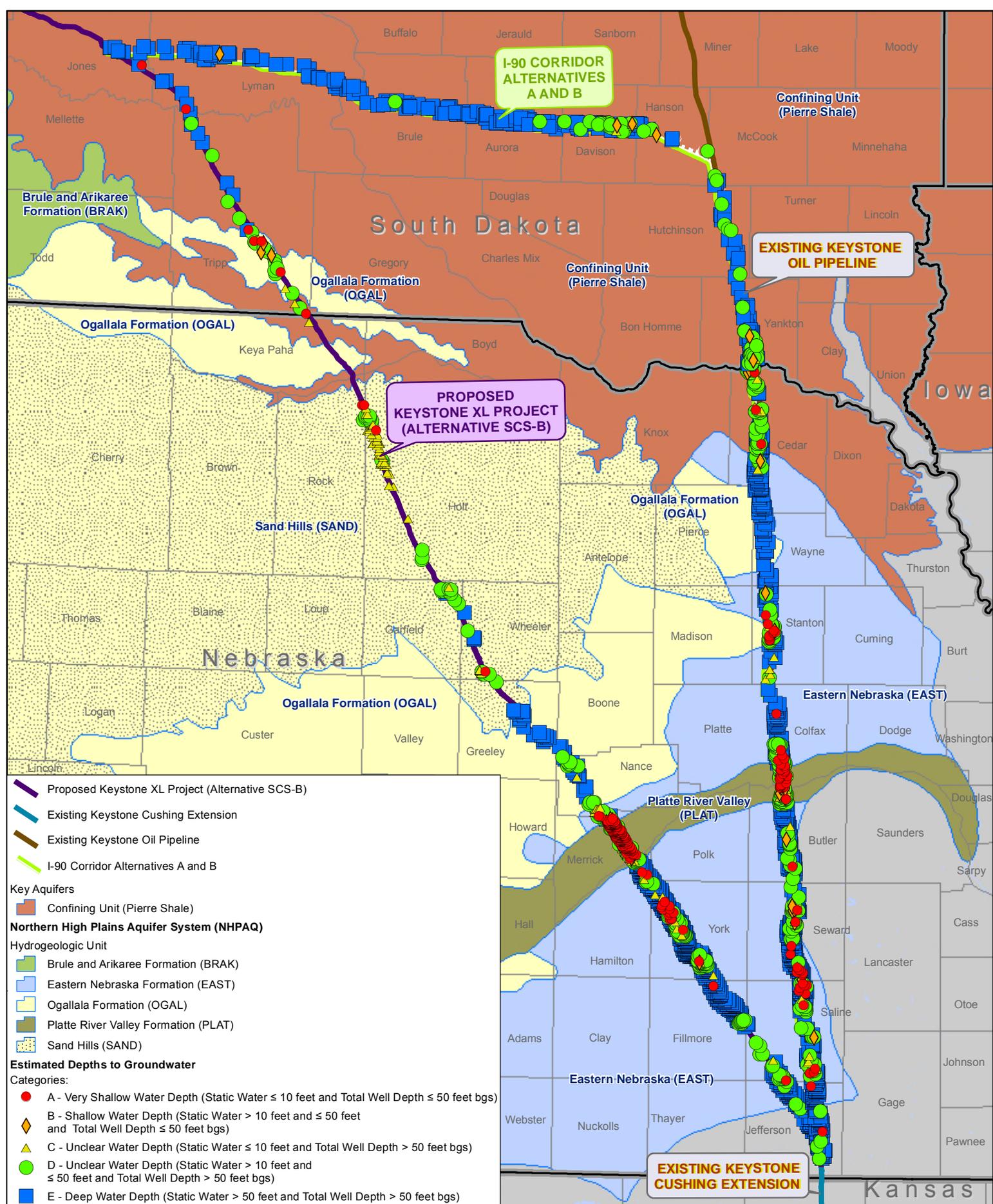
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



### KEYSTONE XL PROJECT

Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

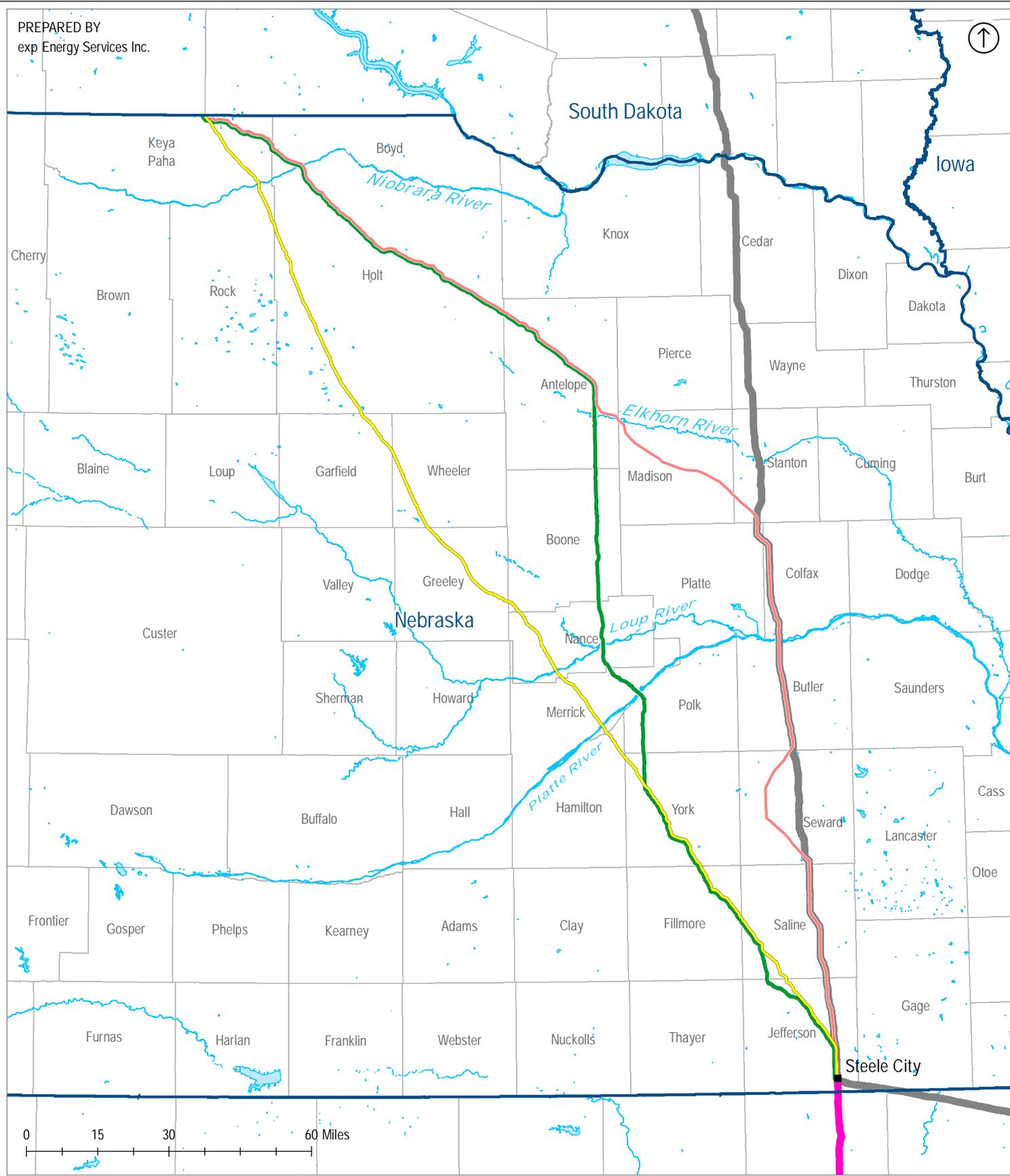
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

### KEYSTONE XL PROJECT

Figure 4.3.3-8  
 I-90 Corridor Alternatives A and B  
 Key Aquifers and Potable Water Wells  
 within 2-mile Corridor

**Attachment No. 7**



LEGEND	
	PREFERRED ROUTE
	SANDHILLS ALTERNATIVE ROUTE
	KEYSTONE MAINLINE ALTERNATIVE ROUTE
	KEYSTONE MAINLINE (PHASE I)
	KEYSTONE CUSHING EXTENSION (PHASE II)
	WATERBODY
	STATE BOUNDARY
	COUNTY BOUNDARY

KEYSTONE XL PROJECT

**FIGURE 2.2-2**

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES



1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**  
2 **and or your family?**

3 A: Yes.

4 **Q: Do you earn any income from this land?**

5 A: Yes.

6 **Q: Have you depended on the income from your land to support your livelihood**  
7 **or the livelihood of your family?**

8 A: Yes.

9 **Q: Have you ever in the past or have you thought about in the future leasing all**  
10 **or a portion of your land in question here?**

11 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective  
12 tenant may try to negotiate a lower price for my land if it had the pipeline on it and  
13 all the restrictions and risks and potential negative impacts to farming or ranching  
14 operations as opposed to land that did not have those same risks. If I was looking  
15 to lease or rent ground I would pay more for comparable non-pipeline land than I  
16 would for comparable pipeline land and I think most folks would think the same  
17 way. This is another negative economic impact that affects the landowner and the  
18 county and the state and will forever and ever should TransCanada's preferred or  
19 mainline alternative routes be approved. If they were to twin or closely parallel to  
20 Keystone I the vast majority of landowners would be those that already have a  
21 pipeline so there would be considerable less new incremental negative impacts.

22 **Q: Do you have similar concerns about selling the land?**

23 A: Well I hope not to have to sell the land in my lifetime but times change and you  
24 never know what is around the corner and yes I am concerned that if another piece  
25 of ground similar to mine were for sale and it did not have the pipeline and mine  
26 did that I would have a lower selling price. I think this would be true for pipeline  
27 ground on both the preferred and mainline alternative routes.

28 **Q: What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years  
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL  
4 Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Were you or an entity for which you are a member, shareholder, or director  
7 previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a  
9 petition for condemnation against our land so it could place its proposed pipeline  
10 within an easement that it wanted to take from us on our land.

11 **Q: Did you defend yourself and your land in that condemnation action?**

12 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees  
13 and expenses in our resistance of TransCanada's lawsuit against us.

14 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees  
15 incurred?**

16 A: No, they have not.

17 **Q: In its lawsuit against you, did TransCanada identify the amount of your  
18 property that it wanted to take for its proposed pipeline?**

19 A: The lawsuit against us stated they would take the amount of property that is  
20 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant  
21 and equipment reasonably necessary to operate the pipeline.

22 **Q: Did TransCanada define what they meant by "property that is reasonably  
23 necessary"?**

24 A: No, they did not.

25 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain  
26 property portion of your land?**

27 A: Yes, they did.

28 **Q: Did TransCanada describe what rights it proposed to take related to the  
29 eminent domain property on your land?**

1 A: Yes, they did.

2 **Q: What rights that they proposed to take did they describe?**

3 A: TransCanada stated that the eminent domain property will be used to “lay, relay,  
4 operate, and maintain the pipeline and the plant and equipment reasonably  
5 necessary to operate the pipeline, specifically including surveying, laying,  
6 constructing, inspecting, maintaining, operating, repairing, replacing, altering,  
7 reconstructing, removing and abandoning one pipeline, together with all fittings,  
8 cathodic protection equipment, pipeline markers, and all their equipment and  
9 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,  
10 petroleum products, and all by-products thereof.”

11 **Q: Prior to filing an eminent domain lawsuit to take your land that**  
12 **TransCanada identified, do you believe they attempted to negotiate in good**  
13 **faith with you?**

14 A: No, I do not.

15 **Q: Did TransCanada at any time approach you with or deliver to you their**  
16 **proposed easement and right-of-way agreement?**

17 A: Yes, they did.

18 **Q: At the time you reviewed TransCanada’s easement and right-of-way**  
19 **agreement, did you understand that they would be purchasing a fee title**  
20 **interest in your property or that they were taking something else?**

21 A: I understood that they proposed to have the power to take both a temporary  
22 construction easement that could last for a certain period of time and then also a  
23 permanent easement which they described to be 50 feet across or in width, and  
24 that would run the entire portion of my property from where a proposed pipeline  
25 would enter my property until where it would exit the property.

26 **Q: Is the document included with your testimony here as Attachment No. 3, a**  
27 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**  
28 **Way agreement that they included with their condemnation lawsuit against**  
29 **you?**

1 A: Yes, it is.

2 **Q: Have you had an opportunity to review TransCanada's proposed Easement**  
3 **and Right-of-Way agreement?**

4 A: Yes, I have.

5 **Q: What is your understanding of the significance of the Easement and Right-of-**  
6 **Way agreement as proposed by TransCanada?**

7 A: My understanding is that this is the document that will govern all of the rights and  
8 obligations and duties as well as the limitations of what I can and cannot do and  
9 how I and any future landowner and any person I invite to come onto my property  
10 must behave as well as what TransCanada is and is not responsible for and how  
11 they can use my land.

12 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**  
13 **agreement do you have any concerns about any portions of it or any of the**  
14 **language either included in the document or missing from the proposed**  
15 **document?**

16 A: Yes, I have a number of significant concerns and worries about the document and  
17 how the language included and the language not included potentially negatively  
18 impacts my land and thereby potentially negatively impacts my community and  
19 my state.

20 **Q: I would like you to walk the Commissioners through each and every one of**  
21 **your concerns about TransCanada's proposed Easement and Right-of-Way**  
22 **agreement so they can develop an understanding of how that language and**  
23 **the terms of that contract, in your opinion, potentially negatively impacts you**  
24 **and your land. So, if you can start at the beginning of that document and**  
25 **let's work our way through it, okay?**

26 A: Yes, I'll be happy to express my concerns about TransCanada's proposed  
27 Easement and Right-of-Way agreement and how it negatively could affect my  
28 property rights and my economic interests.

29 **Q. Okay, let's start with your first concern please.**

1 A: The very first sentence talks about consideration or how much money they will  
2 pay to compensate me for all of the known and unknown affects and all of the  
3 rights I am giving up and for all the things they get to do to my land and for what  
4 they will prevent me from doing on my land and they only will pay me one time at  
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the  
8 landowner because they want to have my land forever for use as they see fit so  
9 they can make a daily profit from their customers. If I was to lease ground from  
10 my neighbor I would typically pay twice a year every year as long as they granted  
11 me the rights to use their land. That only makes sense – that is fair. If I was going  
12 to rent a house in town I would typically pay monthly, every month until I gave up  
13 my right to use that house. By TransCanada getting out on the cheap and paying  
14 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax  
15 revenue collection on the money I would be paid and then pay taxes on and  
16 contribute to this state and this country. It is money I would be putting back into  
17 my local community both spending and stimulating the local economy and  
18 generating more economic activity right here. Instead TransCanada’s shareholders  
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, “does  
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a  
23 limited partnership...” and I have no idea who that really is. I have no idea who is  
24 forcing this pipeline on us or who the owners of the entities are, or what are the  
25 assets backing this limited partnership, or who the general partner is, or who all  
26 the limited partners are, and who makes up the ownership of the these partners or  
27 the structure or any of the basic things you would want to know and understand if  
28 you would want to do business with such an outfit. According to TransCanada’s  
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general  
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so  
3 basically nothing. That is really scary since the general partner has the liability but  
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**  
6 **percent clear on exactly who could become the owner of over 275 miles of**  
7 **Nebraska land?**

8 A: No.

9 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**  
10 **percent clear on exactly who will be operating and responsible for**  
11 **approximately 275 miles of tar sands pipeline underneath and through**  
12 **Nebraska land?**

13 A: No.

14 **Q: Okay, let's continue please with your concerns of the impacts upon your land**  
15 **and the State of Nebraska of TransCanada's easement terms.**

16 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter  
17 called "Grantee")..." and this concerns me because it would allow their easement  
18 to be transferred or sold to someone or some company or country or who knows  
19 what that I don't know and who we may not want to do business with. This  
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest  
21 bidder that could have terrible impacts upon all of Nebraska depending upon who  
22 may buy it and I don't know of any safeguards in place for us or the State to veto  
23 or have any say so in who may own, operate, or be responsible for this pipeline in  
24 the future.

25 **Q: Do you think that type of uncertainty and lack of control over a major piece**  
26 **of infrastructure crossing our State is in the public interest?**

27 A: No, certainly not, in fact, just the opposite.

28 **Q: What's next?**

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this  
2 really concerns me. Why does the easement and right-of-way have to be perpetual  
3 and permanent? That is the question myself and my family want an answer to.  
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any  
7 data proving there is a perpetual supply of tar sands. I am not aware in  
8 TransCanada's application where it proves there is a perpetual necessity for this  
9 pipeline. My understanding of energy infrastructure like wind towers is they have  
10 a decommission plan and actually take the towers down when they become  
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however  
12 will, and I want my family or future Nebraska families to have that land as  
13 undisturbed as possible and it is not in my interest or the public interest of  
14 Nebraska to be forced to give up perpetual and permanent rights in the land for  
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says  
18 "...abandoning in place..." so they can just leave this pipeline under my ground  
19 until the end of time just sitting there while they are not using it, but I am still  
20 prevented from doing on my land and using my land what I would like. If I owned  
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting  
22 there. It doesn't make sense and it scares me and it is not in my interest or the  
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that  
25 right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the  
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on  
2 Landowners property. It appears that TransCanada would define this phrase as  
3 needed. It would be wise to explain what types of TransCanada action constitutes  
4 “installation activity” For instance, would the placement and storage of an  
5 excavator or other equipment on or near the Easement property be an activity or  
6 would earth have to be moved before the activity requirement is triggered. This  
7 vague phrase is likely to lead to future disputes and litigation that is not in the best  
8 interest of the welfare of Nebraska and would not protect property interests. The  
9 24-months can also be extended in the case of “force majeure.” My understanding  
10 is that force majeure is often used to insulate a party to a contract when events  
11 occur that are completely out of their control. In TransCanada’s easement this is  
12 expanded to include “without limitation...availability of labor and materials.”  
13 Extending this language to labor and materials is problematic because these are  
14 two variables that TransCanada does have some or significant control over and to  
15 allow extension of the 24-month period over events not truly out of the control of  
16 TransCanada and without further provision for compensation for the Landowner is  
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of  
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially  
21 reasonable costs and expenses” will pay for damages caused but then limits  
22 TransCanada’s liability to certain circumstances. There is no definition of  
23 “commercially reasonable” and no stated right that the Landowner would get to  
24 determine the amounts of cost or expense that is “commercially reasonable.”  
25 TransCanada excepts out from their liability any damages that are caused by  
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of  
27 Landowner. It is understandable that if the Landowner were to willfully and  
28 intentionally cause damages to the pipeline that Landowner should be liable.  
29 However, anything short of willful misconduct should be the liability of

1 TransCanada who is subjecting the pipeline on the Landowner and who is making  
2 a daily profit from that pipeline. When evaluating the impact on property rights of  
3 this provision, you must consider the potentially extremely expensive fight a  
4 Landowner would have over this question of whether or not damage was an act of  
5 negligence. Putting this kind of potential liability upon the Landowner is  
6 incredibly problematic and is detrimental to the protection of property rights. I  
7 don't think this unilateral power which I can't do anything about as the landowner  
8 is in the best economic interest of the land in question or the State of Nebraska for  
9 landowners to be treated that way.

10 **Q: Is there any specific event or example you are aware of that makes this**  
11 **concern more real for you?**

12 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against  
13 Nemaha County, Nebraska landowner farmers who accidentally struck two  
14 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of  
15 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged  
16 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate  
17 copy of the Federal Court Complaint is here as **Attachment No. 4.**

18 **Q: What is your next concern with the Easement language?**

19 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as  
20 they choose unless 1) any Landowner use interferes in any way with  
21 TransCanada's exercise of any of its rights within the Easement, or 2)  
22 TransCanada decides to take any action on the property it deems necessary to  
23 prevent injury, endangerment or interference with anything TransCanada deems  
24 necessary to do on the property. Landowner is also forbidden from excavating  
25 without prior authorization by TransCanada. So my understanding is that  
26 TransCanada will unilaterally determine what Landowner can and can't do based  
27 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada  
28 could also completely deny my request to excavate. Further, TransCanada retains  
29 all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the  
2 detriment of the property rights of Landowner what TransCanada believes is  
3 necessary or convenient for it. And there is no option for any additional  
4 compensation to landowner for any right exercised by TransCanada that leads to  
5 the removal of trees or plants or vegetation or buildings or structures or facilities  
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and  
7 rights without having to compensate Landowner for such further destruction or  
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the  
11 same time and again at the sole and unilateral decision making of TransCanada.  
12 TransCanada will determine if the actions of Landowner might in anyway  
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or  
14 any appurtenances thereon to the pipeline itself or to their access to the Easement  
15 or within the Easement and TransCanada retains the right at any time, whether  
16 during growing season or not, to travel "within and along Easement Area on foot  
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will  
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably  
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such  
20 undefined and unilateral restrictions are not conducive to the protection of  
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under  
24 Landowner's land any debris of any kind without any input or power of  
25 Landowner to demand an alternative method or location of debris disposal. Such  
26 unilateral powers would negatively affect Landowners property are not conducive  
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase  
2 “where rock is encountered” mean and why does TransCanada solely get to  
3 determine whether or not this phrase is triggered. This phrase could be used to  
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this  
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively  
6 affect Landowners property are not conducive to the protection of property rights.  
7 A shallow pipeline is much more likely to become a danger and liability in the  
8 future given farming operations and buried irrigation lines and other factors  
9 common to the current typical agricultural uses of the land in question impacted  
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as  
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably  
14 possible.” There is nothing here that defines this or provides a mechanism for  
15 documenting or memorializing “pre-construction position” so as to minimize  
16 costly legal battles or wasted Landowner time attempting to recreate the soil  
17 condition on their fields or pasture. Such unilateral powers would negatively affect  
18 Landowners property are not conducive to the protection of property rights or  
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all  
22 appurtenances thereto in place on, under, across, or through Nebraska land at any  
23 time it chooses. There is no provision for Landowner compensation for such  
24 abandonment nor any right for the Landowner to demand removal. Such unilateral  
25 powers would negatively affect Landowners property are not conducive to the  
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any  
29 Easement area whether permanent or temporary at their sole discretion.

1           Regardless, if Landowner has taken prior steps relative the their property in  
2           preparation or planning of TransCanada’s taking of the initial easement area(s),  
3           the language here does not require TransCanada to compensate the Landowner if  
4           they decide to move the easement anywhere on Landowners property. Such  
5           unilateral powers would negatively affect Landowners property are not conducive  
6           to the protection of property rights or economic interests.

7   **Q:    What is the next concern you have with the Easement language?**

8   A:    The Easement requires that all of the burdens and restrictions upon Landowner to  
9           transfer and be applicable to any future owner of the Land in question without the  
10          ability of the future Landowner to modify or negotiate any of the language in  
11          question to which it will be held to comply.

12 **Q:    What is the next concern you have with the Easement language?**

13 A:    The Easement allows TransCanada to assign, transfer, or sell any part of the  
14          Easement to any person, company, country, etc. at their sole discretion at any time  
15          to anyone. This also means that any buyer of the easement could do the same to a  
16          third buyer and so on forever. There is no change of control or sale provision in  
17          place to protect the Landowner or Nebraska or to provide compensation for such  
18          change of control or ownership. It is not conducive to the protection of property  
19          rights or economic interests to allow unilateral unrestricted sale of the Easement  
20          thereby forcing upon the Landowner and our State a new unknown Easement  
21          owner.

22 **Q:    What is the next concern you have with the Easement language?**

23 A:    There are many terms in the Easement that are either confusing or undefined terms  
24          that are without context as to whether or not the Landowner would have any say  
25          so in determining what these terms mean or if the evaluation is solely in  
26          TransCanada’s control. Some of these vague undefined terms are as follows:

- 27           i. “pipeline installation activities”
- 28           ii. “availability of labor and materials”
- 29           iii. “commercially reasonable costs and expenses”

- 1                   iv. “reasonably anticipated and foreseeable costs and expenses”
- 2                   v. “yield loss damages”
- 3                   vi. “diminution in the value of the property”
- 4                   vii. “substantially same condition”
- 5                   viii. “an actual or potential hazard”
- 6                   ix. “efficient”
- 7                   x. “convenient”
- 8                   xi. “endangered”
- 9                   xii. “obstructed”
- 10                  xiii. “injured”
- 11                  xiv. “interfered with”
- 12                  xv. “impaired”
- 13                  xvi. “suitable crossings”
- 14                  xvii. “where rock is encountered”
- 15                  xviii. “as nearly as practicable”
- 16                  xix. “pre-construction position”
- 17                  xx. “pre-construction grade”
- 18                  xxi. “various engineering factors”

19                  Each one of these above terms and phrases as read in the context of the Easement  
20                  could be problematic in many ways. Notably, undefined terms tend to only get  
21                  definition in further legal proceedings after a dispute arises and the way the  
22                  Easement is drafted, TransCanada has sole power to determine when and if a  
23                  particular situation conforms with or triggers rights affected by these terms. For  
24                  instance, “yield loss damages” should be specifically defined and spelled out  
25                  exactly how the landowner is to be compensated and in what events on the front  
26                  end. I can’t afford to fight over this after the damage has occurred. Unfortunately,  
27                  the Landowner is without contractual rights to define these terms or determine  
28                  when rights related to them trigger and what the affects may be.

1 **Q: Do you have any other concerns about the Easement language that you can**  
2 **think of at this time?**

3 A: I reserve the right to discuss any additional concerns that I think of at the time of  
4 my live testimony in August.

5 **Q: Based upon what you have shared with the Commission above regarding**  
6 **TransCanada's proposed Easement terms and agreement, do you believe**  
7 **those to be reasonable or just, under the circumstances of the pipeline's**  
8 **impact upon you and your land?**

9 A: No, I do not believe those terms to be reasonable or just for the reasons that we  
10 discussed previously.

11 **Q: Did TransCanada ever offer you financial compensation for the rights that**  
12 **they sought to obtain in your land, and for what they sought to prevent you**  
13 **and any future land owner of your property from doing in the future?**

14 A: Yes, we received an offer from them.

15 **Q: As the owner of the land in question and as the person who knows it better**  
16 **than anyone else, do you believe that TransCanada offered you just, or fair,**  
17 **compensation for all of what they proposed to take from you so that their tar**  
18 **sands pipeline could be located across your property?**

19 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just  
20 offer for all the potential impacts and effects and the rights that I'm giving up, and  
21 what we will be prevented from doing in the future and how their pipeline would  
22 impact my property for ever and ever.

23 **Q: Has TransCanada at any time offered to compensate you annually, such as**  
24 **wind farm projects do, for the existence of their potential tar sands pipeline**  
25 **across your property.**

26 A: No, never.

27 **Q: At any time did TransCanada present you with or request that you, as the**  
28 **owner of the land in question, sign and execute a document called, "Advanced**  
29 **Release of Damage Claims and Indemnity Agreement?"**

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**  
3 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, it is.

5 **Q: What was your understanding of that document?**

6 A: When I read that document in the plain language of that document, it was my  
7 understanding that TransCanada was attempting to pay me a very small amount at  
8 that time in order for me to agree to give up my rights to be compensated from  
9 them in the future related to any damage or impact they may have upon my  
10 property “arising out of, in connection with, or alleged to resulted from  
11 construction or surveying over, under or on” my land.

12 **Q: Did you ever sign that document?**

13 A: No, I did not.

14 **Q: Why not?**

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small  
16 sum of money when I have no idea how bad the impacts or damages that they, or  
17 their contractors, or subcontractors, or other agents or employees, may cause on  
18 my land at any time in the future that resulted from the construction or surveying  
19 or their activities upon my land.

20 **Q: When you reviewed this document, what did it make you feel?**

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to  
22 shield themselves against known and foreseeable impacts that their pipeline, and  
23 the construction of it, would have upon my land. It made me feel that they knew it  
24 was in their financial interest to pay me as little as possible to prevent me from  
25 ever having the opportunity to seek fair compensation again, and that this must be  
26 based upon their experience of unhappy landowners and situations in other places  
27 where they have built pipelines.

1 **Q: Has TransCanada ever contacted you and specifically asked you if you**  
2 **thought their proposed location of their proposed pipeline across your land**  
3 **was in your best interest?**

4 A: No, they have not.

5 **Q: Has TransCanada ever contacted you and specifically asked you if you**  
6 **thought their proposed location of their proposed pipeline across your land**  
7 **was in the public interest of the State of Nebraska?**

8 A: No, they have not.

9 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**  
10 **Takings Clause?**

11 A: Yes, I am.

12 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**  
13 **an American citizens property?**

14 A: My understanding is that, according to the United States Constitution, that if the  
15 government is going to take land for public use, then in that case, or by taking for  
16 public use, it can only occur if the private land owner is compensated justly, or  
17 fairly.

18 **Q: Has TransCanada ever contacted you specially to explain the way in which**  
19 **the public could use its proposed Keystone XL Pipeline?**

20 A: No, they have not.

21 **Q: Can you think of any way in which the public, that is the citizens of the State**  
22 **of Nebraska, can directly use the proposed TransCanada Keystone XL**  
23 **Pipeline, as it dissects the State of Nebraska?**

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the  
25 public benefits from this pipeline in any way, how they can use it any way, or how  
26 it's in the public interest in any way. By looking at the map, it is quite clear to me  
27 that the only reason it's proposed to come through Nebraska, is that because we  
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in  
2 Houston, Texas.

3 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,  
4 crude petroleum, or oil and petroleum by-products that you would like to  
5 ship in its pipeline?**

6 A: No, it has not.

7 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-  
8 products that you, at this time or any time in the future, would desire to place  
9 for transport within the proposed TransCanada Keystone XL Pipeline?**

10 A: No, I do not.

11 **Q: Do you know anyone in the state of Nebraska who would be able to ship any  
12 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-  
13 products within the proposed TransCanada Keystone XL Pipeline?**

14 A: No, I do not. I've never heard of such a person or company like that.

15 **Q: Do you pay property taxes for the land that would be affected and impacted  
16 at the proposed TransCanada Keystone XL Pipeline?**

17 A: Yes, I do.

18 **Q: Why do you pay property taxes on that land?**

19 A: Because that is the law. The law requires us to pay the property taxes as the owner  
20 of that property.

21 **Q: Because you follow the law and pay property taxes, do you believe you  
22 deserve any special consideration or treatment apart from any other person  
23 or company that pays property taxes?**

24 A: Well no, of course not. It's the law to pay property taxes if you own property. It's  
25 just what you do.

26 **Q: Do you believe the fact that you pay property taxes entitles you to special  
27 treatment of any kind, or special rights of any kind?**

28 A: No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**  
2 **enough to qualify you to have the power of eminent domain to take land of**  
3 **your neighbors or other people in your county, or other people across the**  
4 **state of Nebraska?**

5 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that  
6 I expect an award for or any type of special consideration.

7 **Q: Have you at any time ever employed any person other than yourself?**

8 A: Well, yes I have.

9 **Q: Do you believe that the fact that you have, at some point in your life,**  
10 **employed one or more other persons entitle you to any special treatment or**  
11 **consideration above and beyond any other Nebraskan that has also employed**  
12 **one or more persons?**

13 A: No, of course not.

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**  
15 **have at one point employed another person within this state, entitles you to**  
16 **preferential treatment or consideration of any kind?**

17 A: No, of course not. If I choose to employ someone that decision is up to me. I  
18 don't deserve any special treatment or consideration for that fact.

19 **Q: At the beginning of your statement, you briefly described your property that**  
20 **would be impacted by the potential Keystone XL Pipeline. I would like you to**  
21 **give the Commissioners a sense of specifically how you believe the proposed**  
22 **Keystone XL Pipeline and its preferred route, which proposes to go across**  
23 **your land, how it would in your opinion based on your knowledge,**  
24 **experience, and background of your land, affect it. So please share with the**  
25 **Commissioners the characteristics of your land that you believe is important**  
26 **for them to understand, while they evaluate TransCanada's application for a**  
27 **route for its proposed pipeline to cross Nebraska and across your land,**  
28 **specifically.**

1 A: Our farms with electric irrigation systems have schedules of on and off time to  
2 irrigate so what will happen when the pipeline uses a lot of our electricity? Also  
3 our roads are not good enough for the large trucks and heavy equipment needed to  
4 put the pipeline in. all the extra people will also tax our law enforcement people.  
5 We don't need more temporary jobs, which it won't provide anyway; we just need  
6 someone who will work – every paper is full of help wanted ads.

7 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**  
8 **crude oil pipeline in its preferred location, or ultimate location across the**  
9 **state of Nebraska?**

10 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly  
11 or even bullied around and being made to feel scared that they did not have any  
12 options but to sign whatever papers TransCanada told them they had to. I am  
13 aware of folks being threatened that their land would be taken if they didn't follow  
14 what TransCanada was saying. I am aware of tactics to get people to sign  
15 easements that I don't believe have any place in Nebraska or anywhere such as  
16 TransCanada or some outfit associated with it hiring a pastor or priest to pray with  
17 landowners and convince them they should sign TransCanada's easement  
18 agreements. I am aware of older folks and widows or widowers feeling they had  
19 no choice but to sign TransCanada's Easement and they didn't know they could  
20 fight or stand up for themselves. From a more practical standpoint, I am worried  
21 that according to their answer to our Interrogatory No. 211, TransCanada only  
22 owns and operates one (1) major oil pipeline. They simply do not have the  
23 experience with this type of pipeline and that scares me. There are others but that  
24 is what I can recollect at this time and if I remember more or my recollection is  
25 refreshed I will share those with the Commissioners at the Hearing in August.

26 **Q: Do you believe TransCanada's proposed method of compensation to you as a**  
27 **landowner is reasonable or just?**

28 A: No, I do not.

1 **Q: Do you have any concern about limitations that the construction of this**  
2 **proposed pipeline across your affected land would prevent construction of**  
3 **future structures upon the portion of your land affected by the proposed**  
4 **easement and immediately surrounding areas?**

5 A: Well yes, of course I do. We would not be able to build many, if any, types of  
6 structures directly across or touching the easement, and it would be unwise and I  
7 would be uncomfortable to build anything near the easement for fear of being  
8 blamed in the future should any damage or difficulty result on my property in  
9 regards to the pipeline.

10 **Q: Do you think such a restriction would impact you economically?**

11 A: Well yes, of course.

12 **Q: How do you think such a restriction would impact you economically?**

13 A: The future of this land may not be exactly how it's being used as of this moment,  
14 and having the restrictions and limiting my ability to develop my land in certain  
15 ways presents a huge negative economic impact on myself, my family, and any  
16 potential future owner of the property. You have no idea how I or the future owner  
17 may want to use this land in the future or the other land across Nebraska  
18 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years  
19 ago it would have been hard to imagine all the advances that we have now or how  
20 things change. Because the Easement is forever and TransCanada gets the rights in  
21 my land forever we have to think with a very long term view. By placing their  
22 pipeline on under across and through my land that prevents future development  
23 which greatly negatively impacts future taxes and tax revenue that could have  
24 been generated by the County and State but now will not. When you look at the  
25 short blip of economic activity that the two years of temporary construction efforts  
26 may bring, that is far outweighed by the perpetual and forever loss of opportunity  
27 and restrictions TransCanada is forcing upon us and Nebraska.

28 **Q: Do you have any concerns about the environmental impact of the proposed**  
29 **pipeline?**

1 A: Yes, I do.

2 **Q: What are some of those concerns?**

3 A: As an affected land owner and Nebraskan, I am concerned that any construction,  
4 operation, and/or maintenance of the proposed Keystone XL Pipeline would have  
5 a detrimental impact upon the environment of my land specifically, as well as the  
6 lands near my land and surrounding the proposed pipeline route.

7 **Q: Do you have any other environmental concerns?**

8 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in  
9 construction and/or maintenance and operation. I am concerned about spills and  
10 leaks that TransCanada has had in the past and will have in the future. This could  
11 be catastrophic to my operations or others and to my county and the State.

12 **Q: Do you have any thoughts regarding if there would be an impact upon the  
13 natural resources on or near your property due to the proposed pipeline?**

14 A: Yes, I believe that any construction, operation, and/or maintenance of the  
15 proposed Keystone XL Pipeline would have detrimental impacts upon the natural  
16 resources of my land, and the lands near and surrounding the proposed pipeline  
17 route.

18 **Q: Do you have any worries about potential impacts from the proposed pipeline  
19 to the soil of your land, or land near you?**

20 A: Yes, I believe that any construction, operation, and/or maintenance of the  
21 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of  
22 land, as well as land along and surrounding the proposed pipeline route. This  
23 includes, but is not limited to, the reasons that we discussed above of disturbing  
24 the soil composition and makeup as it has naturally existed for thousands and  
25 millions of years during the construction process, and any future maintenance or  
26 removal process. I'm gravely concerned about the fertility and the loss of  
27 economic ability of my property to grow the crops, or grow the grasses, or grow  
28 whatever it is at that time they exist on my property or that I may want to grow in  
29 the future, or that a future owner may want to grow. The land will never be the

1 same from as it exists now undisturbed to after it is trenched up for the proposed  
2 pipeline.

3 **Q: Do you have any concerns about the potential impact of the proposed pipeline**  
4 **upon the groundwater over your land, or surrounding lands?**

5 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
6 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
7 groundwater of not only under my land, but also near and surrounding the pipeline  
8 route, and in fact, potentially the entire State of Nebraska. Water is life plain and  
9 simple and it is simply too valuable to our State and the country to put at  
10 unreasonable risk.

11 **Q: Do you have any concern about the potential impact of the proposed pipeline**  
12 **upon the surface water on, or near or around your land?**

13 A: Yes, I have significant concerns that any construction, operation, and/or  
14 maintenance of the proposed Keystone XL Pipeline would have detrimental  
15 impact upon the surface water of not only within my property boundary, but along  
16 and near and surrounding the pipeline route, and in fact, across the state of  
17 Nebraska.

18 **Q: Do you have any concern about the potential impacts of the proposed pipeline**  
19 **upon the wildlife and plants, other than your growing crops on or near your**  
20 **land?**

21 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
22 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
23 wildlife and the plants, not only that are located on or can be found upon my land,  
24 but also near and along the proposed pipeline route.

25 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**  
26 **fair market value of your land?**

27 A: Yes, I do. I am significantly concerned about how the existence of the proposed  
28 pipeline underneath and across and through my property will negatively affect the  
29 fair market value at any point in the future, especially at that point in which I

1 would need to sell the property, or someone in my family would need to sell the  
2 property. I do not believe, and certainly would not be willing to pay, the same  
3 price for land that had the pipeline located on it, versus land that did not. I hope  
4 there is never a point where I'm in a position where I have to sell and have to  
5 realize as much value as I can out of my land. But because it is my single largest  
6 asset, I'm gravely concerned that the existence of the proposed Keystone XL  
7 Pipeline upon my land will affect a buyer's willingness to pay as much as they  
8 would've paid and as much as I could've received, if the pipeline were not upon  
9 my property. There are just too many risks, unknowns, impacts and uncertainties,  
10 not to mention all of the rights you give up by the nature of having the pipeline  
11 due to having the easement that we have previously discussed, for any reasonable  
12 person to think that the existence of the pipeline would not negatively affect my  
13 property's value.

14 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**  
15 **testimony?**

16 A: Yes, I have.

17 **Q: Where have you seen that before?**

18 A: That is a map I think I first saw a couple years ago that shows the Keystone XL  
19 I-90 corridor alternate route of its proposed pipeline through Nebraska and I  
20 believe the portion of the alternative route in Nebraska essentially twins or  
21 parallels Keystone I.

22 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**  
23 **Application, and as found on Attachment No. 7, here to your testimony, is in**  
24 **the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe that the Keystone mainline alternative route as shown on**  
27 **Attachment No. 7 included with your testimony here is a major oil pipeline**  
28 **route that is in the public interest of Nebraska?**

29 A: No, I do not.

1 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**  
2 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

3 A: No, I do not.

4 **Q: Do you believe there is any potential route for the proposed Keystone XL**  
5 **Pipeline across, within, under, or through the State of Nebraska that is in the**  
6 **public interest of the citizens of Nebraska?**

7 A: No, I do not.

8 **Q: Why do you hold that belief?**

9 A: Because there simply is no public interest based on all of the factors that I am  
10 aware and that I have read and that I have studied that this Commission is to  
11 consider that would establish that a for-profit foreign-owned pipeline that simply  
12 crosses Nebraska because we are geographically in the way between where tar  
13 sands are in Canada to where it wants to ship it to in Texas could ever be in the  
14 public interest of Nebraskans. We derive no benefit from this project. It is not for  
15 public use. Nebraska is simply in the way and when all considerations are taken in  
16 there is no net benefit of any kind for Nebraska should this project be placed in our  
17 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
18 the negative impacts and concerns.

19 **Q: What do you think about the applicant, TransCanada’s argument that it’s**  
20 **preferred route for its proposed Keystone XL Pipeline is in the public interest**  
21 **of Nebraska because it may bring temporary jobs during the construction**  
22 **phase to Nebraska?**

23 A: First of all, not all jobs are created equally. Most jobs that are created, whether  
24 temporary or on a permanent basis, don’t come with a project that has all the  
25 potential and foreseeable negative impacts, many of which we have discussed here  
26 and other witnesses throughout the course of this hearing have and will discuss. If  
27 I decide to hire and employ someone to help me out in my farming or ranching  
28 business, I’ve created a job but I haven’t done so at the risk or detrimental impact  
29 to my land or my town or my county or my state. And I’ve hired someone who is

1 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce  
2 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all  
3 jobs are not created equal. Additionally, I understand from what I'm familiar with  
4 from TransCanada's own statements that the jobs numbers they originally touted  
5 were determined to be a minute fraction of the permanent jobs that had been  
6 projected. According to their answer to our Interrogatory No. 191, TransCanada  
7 has created only thirty-four (34) jobs within Nebraska working specifically on  
8 behalf of TransCanada and according to their answer to Interrogatory No. 196, as  
9 of May 5, 2017 they only employ one (1) temporary working within Nebraska.  
10 Further, according to their answer to Interrogatory No. 199, TransCanada would  
11 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was  
12 constructed on its Preferred Route or its Mainline Alternative Route.

13 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**  
14 **because it would cross your land?**

15 A: No, absolutely not. I am opposed to this project because it is not in the public  
16 interest, neither within my community nor within our state.

17 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**  
18 **was to cross someone else's land?**

19 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have  
20 the fear and anxiety and potential foreseeable risks and negative impacts that this  
21 type of a project carrying this type of product brings foisted upon anyone in this  
22 state or any other state.

23 **Q: Do you think there is any intelligent route for the proposed Keystone XL**  
24 **Pipeline to cross the state of Nebraska?**

25 A: I don't believe there is an intelligent route because as I have stated I don't believe  
26 this project anywhere within Nebraska is within the public interest. However, if  
27 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely  
28 had to go somewhere in the state of Nebraska, the only intelligent route I believe  
29 would be to twin or closely parallel the existing Keystone I Pipeline. Both the

1 preferred route and the mainline alternative routes are economic liabilities our  
2 state cannot risk.

3 **Q: What do you rely upon to make that statement?**

4 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,  
5 already exists in that area is reason enough as it is not in our best interest or the  
6 public interests to have more major oil pipelines crisscrossing our state. Second,  
7 they have all the infrastructure already there in terms of relationships with the  
8 counties and local officials and first responders along that route. Third, they have  
9 already obtained easements from all the landowners along that route and have  
10 relationships with them. Fourth, that route avoids our most sensitive soils, the  
11 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala  
12 Aquifer. Sixth, they have already studied that route and previously offered it as an  
13 alternative. Seventh, it just makes the most sense that as a state we would have  
14 some intelligent policy of energy corridors and co-locating this type of  
15 infrastructure near each other.

16 **Q: Do you have any other concerns you would like to reiterate or can think of at  
17 this time you would like the Commissioners to understand?**

18 A: Yes. The pipeline still crosses the sand hills and the aquifer, which is Nebraska's  
19 greatest resource. Millions of people rely on this good water and it would be a  
20 great disaster if pollution occurred. The soil here is very sandy and once the top  
21 soil and ground cover is disturbed you never get it back to natural. It will blow and  
22 wash; we have fought blow-outs for years.

23 **Q: Have you fully expressed each and every opinion, concern, or fact you would  
24 like the Public Service Commissioners to consider in their review of  
25 TransCanada's Application?**

26 A: No, I have not. I have shared that which I can think of as of the date I signed this  
27 document below but other things may come to me or my memory may be  
28 refreshed and I will add and address those things at the time of the Hearing in  
29 August and address any additional items at that time as is necessary. Additionally,

1 I have not had an adequate amount of time to receive and review all of  
2 TransCanada's answers to our discovery and the discovery of others so it was  
3 impossible to competently and completely react to that in my testimony here and I  
4 reserve the right to also address anything related to discovery that has not yet  
5 concluded as of the date I signed this document below. Lastly, certain documents  
6 requested have not yet been produced by TransCanada and therefore I may have  
7 additional thoughts on those I will also share at the hearing as needed.

8 **Q: Does Attachment No. 8 here contain other documents you are competent to**  
9 **speak about that you wish to be part of your testimony and to discuss in more**  
10 **detail as needed at the August 2017 Hearing?**

11 A: Yes.

12 **Q: What is it that you are requesting the Public Service Commissioners do in**  
13 **regards to TransCanada's application for the proposed Keystone XL Pipeline**  
14 **across Nebraska?**

15 A: I am respectfully and humbly requesting that the Commissioners think far beyond  
16 a temporary job spike that this project may bring to a few counties and beyond the  
17 relatively small amount of taxes this proposed foreign pipeline would possibly  
18 generate. And, instead think about the perpetual and forever impacts of this  
19 pipeline as it would have on the landowners specifically, first and foremost, but  
20 also thereby upon the entire state of Nebraska, and to determine that neither the  
21 preferred route nor the Keystone mainline alternative route are in the public  
22 interest of the citizens of the state of Nebraska. And if the Commissioners were  
23 inclined to modify TransCanada's proposed routes and were to be inclined to grant  
24 an application for a route in Nebraska, that the only potential route that would  
25 make any intelligent sense whatsoever would be twinning or near paralleling of  
26 the proposed KXL with the existing Keystone I pipeline. It simply does not make  
27 sense to add yet another major oil pipeline crisscrossing our state creating new  
28 pumping stations, creating new impacts on additional counties and communities  
29 and going through all of the court processes with myself and other landowners like

1 me when this applicant already has relationships with the landowners, the towns  
2 and the communities along Keystone I, and that Keystone I is firmly outside of the  
3 sand hills and a significantly further portion away from the heart of the Ogallala  
4 Aquifer than the preferred route or the Keystone mainline alternative route.

5 **Q: Are all of your statements in your testimony provided above true and**  
6 **accurate as of the date you signed this document to the best of your**  
7 **knowledge?**

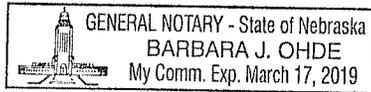
8 A: Yes, they are.

9 **Q: Thank you, I have no further questions at this time and reserve the right to**  
10 **ask you additional questions at the August 2017 Hearing.**

Lonnie Breiner  
Lonnie Breiner

Subscribed and Sworn to me before this 30 day of May, 2017.

Barbara J. Ohde  
Notary Public



**Attachment No. 1**

PREPARED BY  
exp Energy Services Inc.



S. 010  
T. 032N  
R. 015W

S. 011  
T. 032N  
R. 015W

L. A. Breiner

S. 015  
T. 032N  
R. 015W

S. 014  
T. 032N  
R. 015W

L. A. Breiner

S. 013  
T. 032N  
R. 015W

S. 022  
T. 032N  
R. 015W

S. 023  
T. 032N  
R. 015W

S. 024  
T. 032N  
R. 015W



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
L. A. Breiner

**TRACT NO.** ML-NE-HT-30100.000  
**STATE:** Nebraska  
**COUNTY:** Holt  
**SECTION:** 014  
**TOWNSHIP:** 032N  
**RANGE:** 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Property Line
- Section Line

May 2017 - X:\Drawings\5058\KEYSTONE XL\5000\_999526

PREPARED BY  
exp Energy Services Inc.



S.014  
T.032N  
R.015W

S.013  
T.032N  
R.015W

S.018  
T.032N  
R.014W

S.023  
T.032N  
R.015W

S.024  
T.032N  
R.015W

S.019  
T.032N  
R.014W

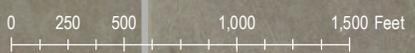
L. A. Breiner  
Sandra Breiner

S.026  
T.032N  
R.015W

S.025  
T.032N  
R.015W

S.030  
T.032N  
R.014W

IMAGERY: NAIP 2016



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
L. A. Breiner  
Sandra Breiner

**TRACT NO.** ML-NE-HT-30110.000  
**STATE:** Nebraska  
**COUNTY:** Holt  
**SECTION:** 024  
**TOWNSHIP:** 032N  
**RANGE:** 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Access Road (Temp.)
- Property Line

May 2017 - X:\Drawings\6358\KEYSTONE XL\6300\_999526

PREPARED BY  
exp Energy Services Inc.



S.004  
T.032N  
R.015W

S.003  
T.032N  
R.015W

S.009  
T.032N  
R.015W

S.010  
T.032N  
R.015W

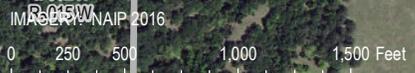
S.011  
T.032N  
R.015W

S.016  
T.032N  
R.015W

S.015  
T.032N  
R.015W

S.014  
T.032N  
R.015W

L. A. Breiner



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
L. A. Breiner

**TRACT NO.** ML-NE-HT-40220.000  
**STATE:** Nebraska  
**COUNTY:** Holt  
**SECTION:** 010  
**TOWNSHIP:** 032N  
**RANGE:** 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\5358\KEYSTONE\_XL\9002\_9995326

**Attachment No. 2**



**Attachment No. 3**

**Prepared by and after recording  
please return to:**  
TransCanada Keystone Pipeline, LP  
1106 Benjamin Avenue, Suite 600  
Norfolk, NE 68701

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(Above Space for Recorder's Use Only)

Tract No.: ML-NE-HT-30100.000  
ML-NE-HT-30110.000  
ML-NE-HT-40220.000

**EASEMENT AND RIGHT-OF-WAY  
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **L. A. Breiner and Sandra K. Breiner, husband and wife**, whose mailing address is 47224 889<sup>th</sup> Road, Stuart, NE 68780 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline

Grantor's Initials \_\_\_\_\_

markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Easement Area") located on real property situated in the County of Holt, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 327.61 acres , more or less, situated in the County of Holt, in the State of Nebraska, being further described as All of Section 14, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 179, Page 195 in the Deed Records of Holt County , Nebraska.

**Less and Except:** An irregular tract of land located in Section 14, Township 32 North, Range 15 West of the 6<sup>th</sup> P.M., and Holt county , Nebraska, and more particularly described as follows : Beginning at the Southwest corner of said Section 14; thence N 88 59' 37" E (assumed bearing) on the South line of Section 14, a distance of 2363.46 feet; thence N 44 55' 46" W, a distance of 412.49 feet ; thence N 01 38' 36" E, a distance of 26.70 feet; thence N 44 17' 52" E, a distance of 395.70 feet to a non-tangential curve concave Westerly having a radius of 1449.62 feet; thence Northerly on said curve an arc distance of 2279.25 feet through an angle of 90 05' 14"; thence N 88 47' 12" E, a distance of 749.32 feet to a non-tangential curve concave Westerly having a radius of 1434.63 feet; thence Northerly on said curve an arc distance of 3371.96 feet through an angle of 134 40' 07" to the north line of said Section 14; thence S 88 54' 45" W, on said North line of Section 14, a distance of 2166.37 feet; thence S 01 00' 39" E, a distance of 1253.14 feet to a non-tangential curve concave Easterly having a radius of 1482.14 feet; thence Southerly on said curve an arc distance of 967.34 feet through an angle of 37 23' 42"; thence S 42 04' 17" E, a distance of 170.26 feet; thence N 89 49' 42" W, a distance of 511.66 feet; thence S 78 09' 16" W, a distance of 235,96 feet; thence S 63 51' 41" W, a distance of 365.24 feet; thence S 55 58' 59" W, a distance of 717.07 feet to the West line of said Section 14; thence S 00 57' 23" E on said West line of Section 14, a distance of 2421.51 feet to the point of beginning, of which the West 33 feet is occupied by a public road, referred to as (Survey Tract B), as recorded in Book 199, Page 9.

A tract of land containing 507.52 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 10, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 179, Page 195 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

**Less and Except:** An irregular tract of land located in Section 10, T32N, R15W of the 6<sup>th</sup> P.M., Holt County, Nebraska, described as follows: Beginning at the Southeast corner of said Section 10, thence S89° 26' 00" W (assumed bearing) on the south line of said Section 10, a distance of 2377.73 feet; thence N 45° 23' 53" W, a distance of 161.16 feet; thence N 35° 58' 23" W, a distance of 256.12 feet; thence N 16° 37' 13" W, a distance of 182.11 feet; thence N 01° 47' 23" W, a distance of 1117.67 feet; thence N 33° 18' 07" E, a distance of 120.12 feet; thence N 54° 19' 00" E, a distance of 1018.88 feet; thence N 70° 22' 41" E, a distance of 239.64 feet; thence N 80° 02' 11" E, a distance of 104.08 feet; thence N 89° 18' 05" E, a distance of 185.48 feet to a non-tangential curve concave southerly having a radius of 2224.95 feet; thence on said curve an arc distance of 561.99 feet through an angle of 14° 28' 20"; thence S 68° 25' 19" E, a distance of 371.44 feet; thence S 57° 26' 08" E, a distance of 167.84 feet; thence S 54° 15' 09" E, a distance of 319.07 feet to the east line of said Section 10; thence S 00° 51' 47" E on said east line of Section 10, a distance of 1856.88 feet to the point of beginning, of which the east 33 feet is occupied by a public, as recorded in Book 199, Page 9.

A tract of land containing 640 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 24, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 202, Page 501 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR(S):

\_\_\_\_\_  
**L. A. Breiner**

\_\_\_\_\_  
**Sandra K. Breiner**

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **L. A. Breiner**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Sandra K. Breiner**

\_\_\_\_\_  
Notary Public Signature

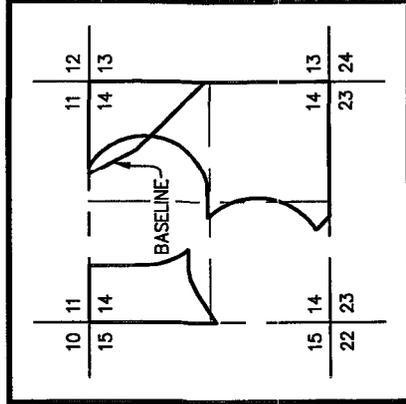
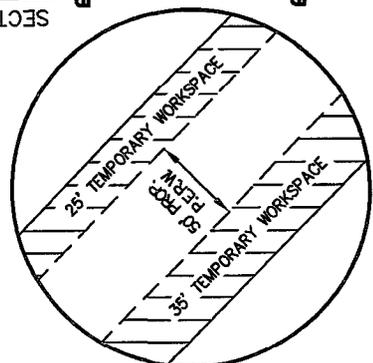
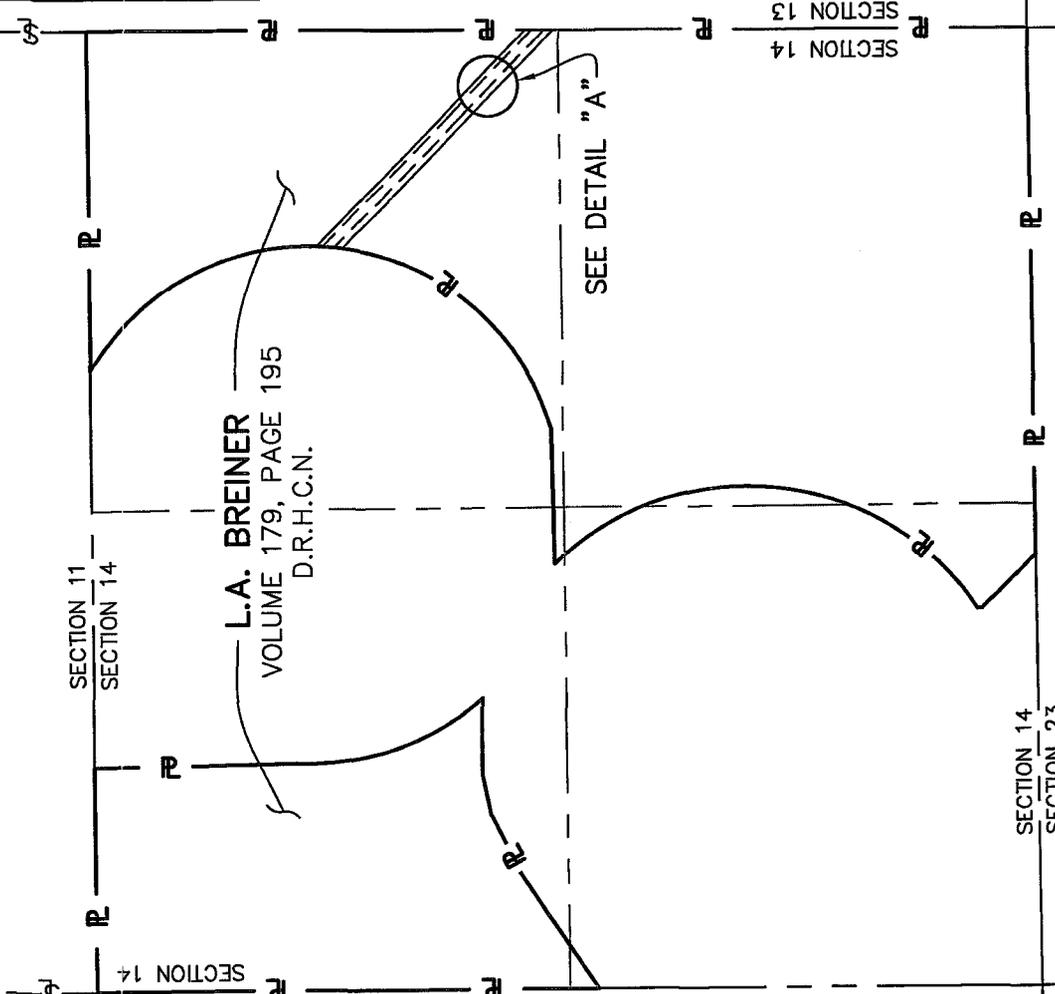
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Grantor's Initials \_\_\_\_\_

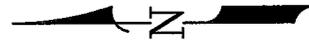
# HOLT COUNTY, NEBRASKA

T-32-N, R-15-W, SECTION 14  
ML-NE-HT-30100.000

**LEGEND**  
 P PROPERTY LINE  
 S SECTION LINE  
 T TEMPORARY WORKSPACE  
 W WORKSPACE  
 A ADDITIONAL TEMPORARY WORKSPACE  
 T.W.S. TEMPORARY WORKSPACE & RIGHT OF WAY  
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY  
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA



VICINITY MAP  
N.T.S.



TRACT LEGAL DESCRIPTION:  
IRREGULAR TRACT IN SECTION 14,  
T-32-N, R-15-W

**NOTE:**  
THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 1,664'±  
AREA OF PERMANENT EASEMENT: 1.9 ACRES  
AREA OF TEMPORARY WORKSPACE: 2.3 ACRES  
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.0 ACRE

		<b>TransCanada</b> <i>In business to deliver</i>	
<b>KEYSTONE XL PROJECT</b>			
<b>EASEMENT AREA</b>			
<b>ACROSS THE PROPERTY OF</b>			
<b>L.A. BREINER</b>			
<b>ML-NE-HT-30100.000</b>			
PROJECT:	XL	<b>EXHIBIT A</b>	
APPROVED BY:	SLR	DRAWING NUMBER:	XL-08-ML-SK-3282
NO.	REVISION	DATE	
SCALE:	1" = 1000'	DATE:	11/10/14
DRAWN BY:	JN	CHECKED BY:	ALS



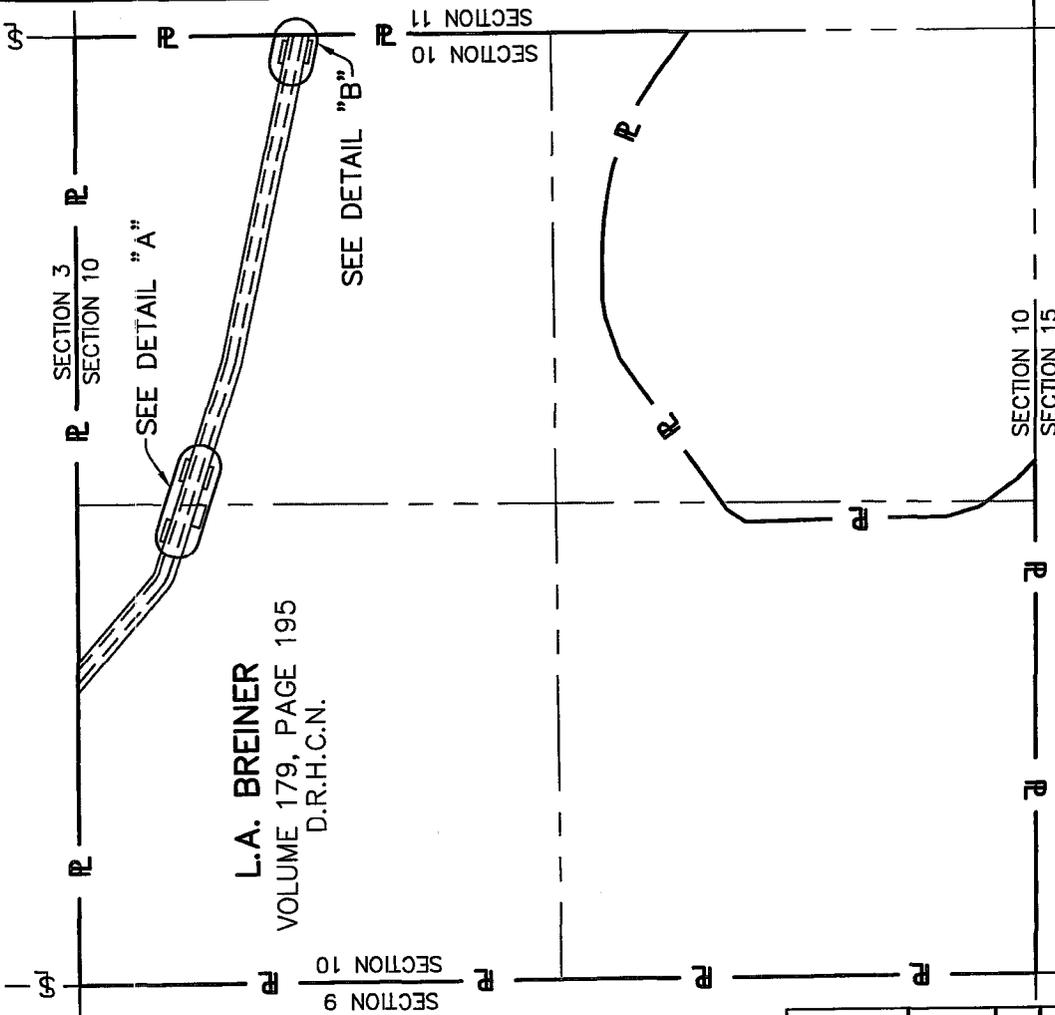


# HOLT COUNTY, NEBRASKA

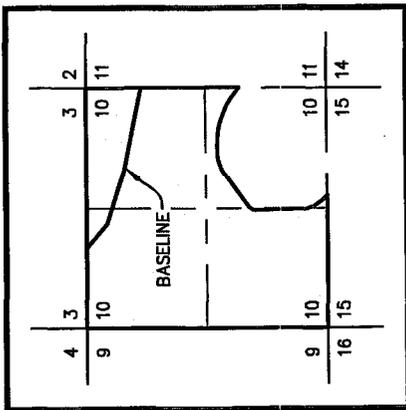
T-32-N, R-15-W, SECTION 10  
ML-NE-HT-40220.000

PROPERTY LINE  
SECTION LINE  
PROPOSED  
ADDITIONAL TEMPORARY WORKSPACE  
PERMANENT EASEMENT & RIGHT OF WAY  
DEED RECORDS OF HOLT COUNTY, NEBRASKA

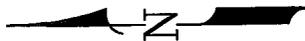
LEGEND  
P  
S  
A.T.W.S.  
P.E.R.W.  
D.R.H.C.N.



L.A. BREINER  
VOLUME 179, PAGE 195  
D.R.H.C.N.



VICINITY MAP  
N.T.S.



0 500 1000  
SCALE: 1" = 1,000'

TRACT LEGAL DESCRIPTION:  
N/2 SW/4, SE/4 EXCLUDING  
APPROXIMATELY 133 ACRES OF  
SECTION 10,  
T-32-N, R-15-W

NOTE:  
THIS SKETCH DOES NOT MEET THE MINIMUM  
STANDARDS FOR PROPERTY BOUNDARY SURVEYS.  
IT WAS NOT DERIVED FROM AN ON THE GROUND  
SURVEY BUT IS INTENDED FOR RIGHT OF WAY  
PURPOSES ONLY. THE EXACT LOCATIONS AND  
MEASUREMENTS ARE APPROXIMATE AND MAY  
VARY, BUT THE WIDTH OF THE EASEMENT AREA  
TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 3,784'±  
AREA OF PERMANENT EASEMENT: 4.4 ACRES  
AREA OF TEMPORARY WORKSPACE: 5.3 ACRES  
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.5 ACRE

		KEYSTONE XL PROJECT	
EASEMENT AREA		ACROSS THE PROPERTY OF	
L.A. BREINER		ML-NE-HT-40220.000	
PROJECT:	XL	EXHIBIT A	
APPROVED BY:		DRAWING NUMBER	XL-08-ML-SK-3654
SLR		REVISION	DATE
NO.			
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 1000'	11/04/14	JN	ALS

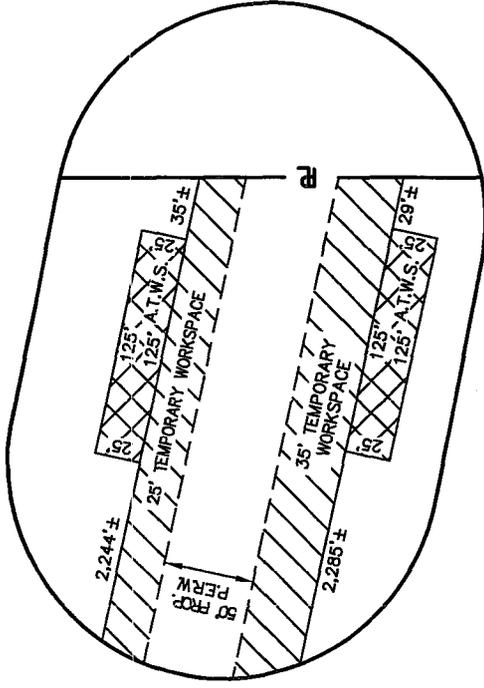


# HOLT COUNTY, NEBRASKA

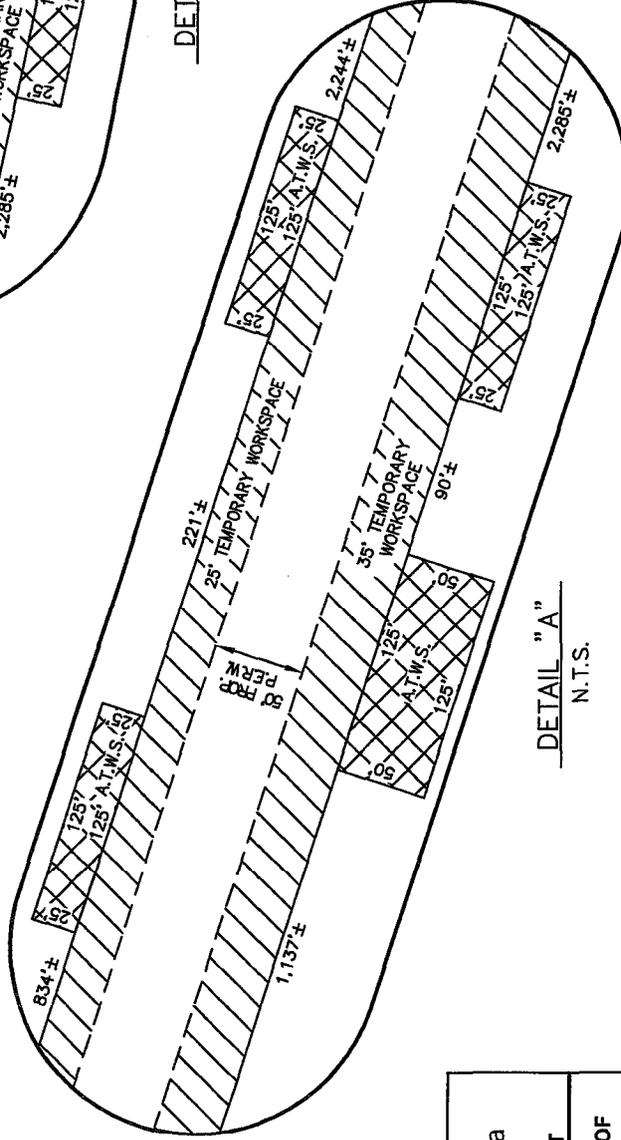
## T-32-N, R-15-W, SECTION 10

### ML-NE-HT-40220.000

LEGEND:  
 P PROPERTY LINE  
 PROP. PROPOSED  
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE  
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



DETAIL "B"  
N.T.S.



DETAIL "A"  
N.T.S.

**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  
 L.A. BREINER  
 ML-NE-HT-40220.000

PROJECT	XL	EXHIBIT A
APPROVED BY		DRAWING NUMBER
SLR	XL-08-ML-SK-3654	DATE
NO.	REVISION	DATE
SCALE	DATE	DRAWN BY
N.T.S.	11/04/14	JN
		CHECKED BY
		ALS



**Attachment No. 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE )  
COMPANY, a New York Corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RICHARD ANDREW, JANE ANDREW, )  
LUKE ANDREW, and BRYCE ANDREW, )  
 )  
Defendants. )

CASE NO. \_\_\_\_\_

**COMPLAINT**

**COMES NOW** Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

**PARTIES**

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

**JURISDICTION AND VENUE**

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

### GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$ , Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

### **FIRST CLAIM: NEGLIGENCE**

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

**SECOND CLAIM: TRESPASS**

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

**WHEREFORE** Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

**JURY DEMAND**

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,  
Plaintiff,

By:     /s/ Albert M. Engles      
ENGLES, KETCHAM, OLSON, & KEITH, P.C.  
1350 Woodmen Tower  
1700 Farnam Street  
Omaha, Nebraska 68102  
(402) 348-0900  
(402) 348-0904 (Facsimile)  
Albert M. Engles, #11194  
Dan H. Ketcham, #18930  
Michael L. Moran, #24042  
James C. Boesen, #24862

**Attachment No. 5**

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-HT-40220.000

I/we L. A. Breiner and Sandra K. Breiner, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Four thousand Five Hundred Fifteen Dollars and No Cents (\$4,515.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

**N/2, SW/4, Part of SE/4**

**Section 10, Township 32N, Range 15W**

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-HT-30110.000

I/we L.A. and Sandra K. Breiner, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Nine Hundred Sixty Four Dollars and No Cents (\$2,964.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

**All**

**Section 24, Township 32N, Range 15W**

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-HT-30100.000

I/we L.A. and Sandra K. Breiner, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Ninety Two Dollars and No Cents (\$1,092.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

**Irregular Tract**

**Section 14, Township 32N, Range 15W**

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_.

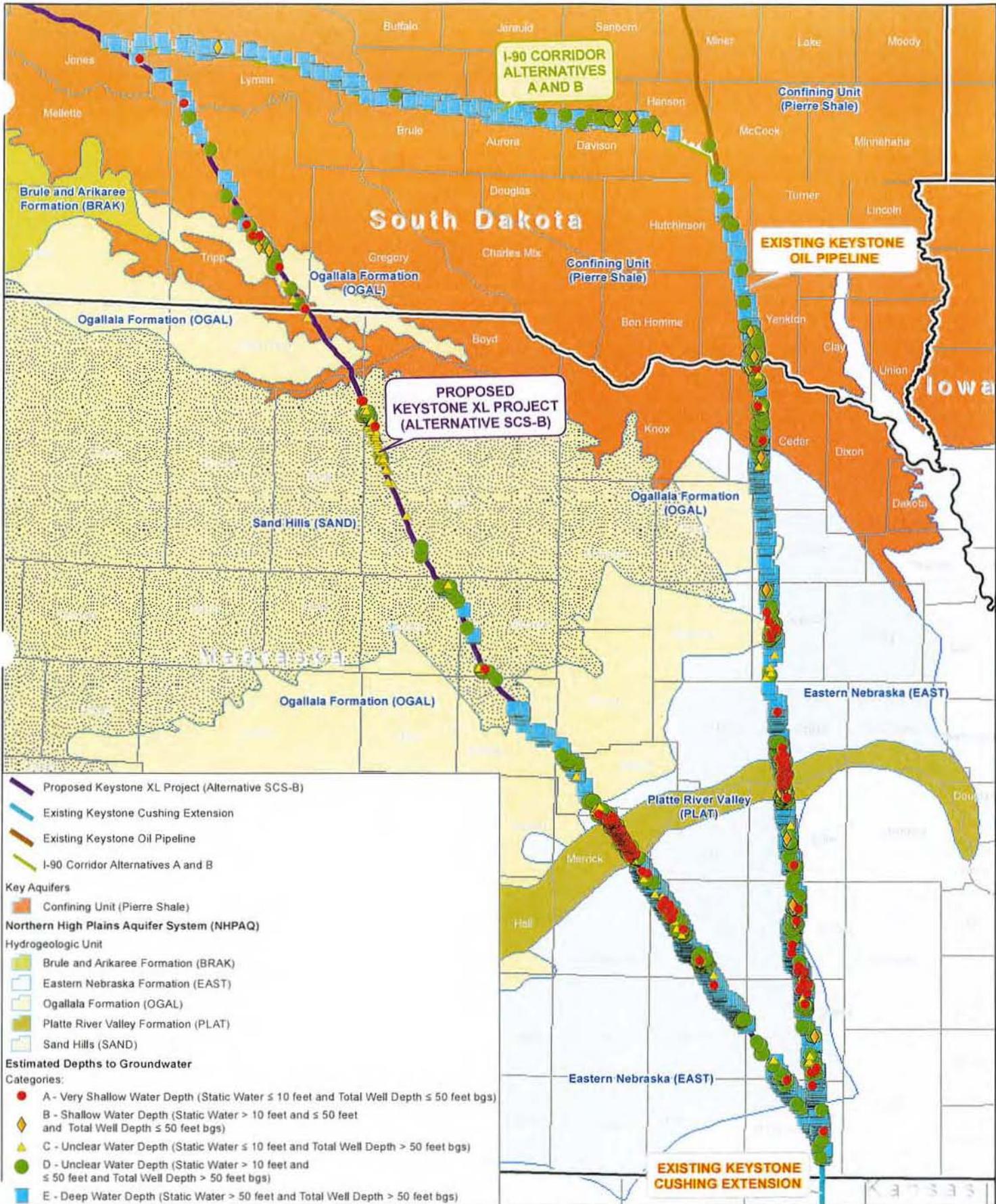
\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

**Attachment No. 6**



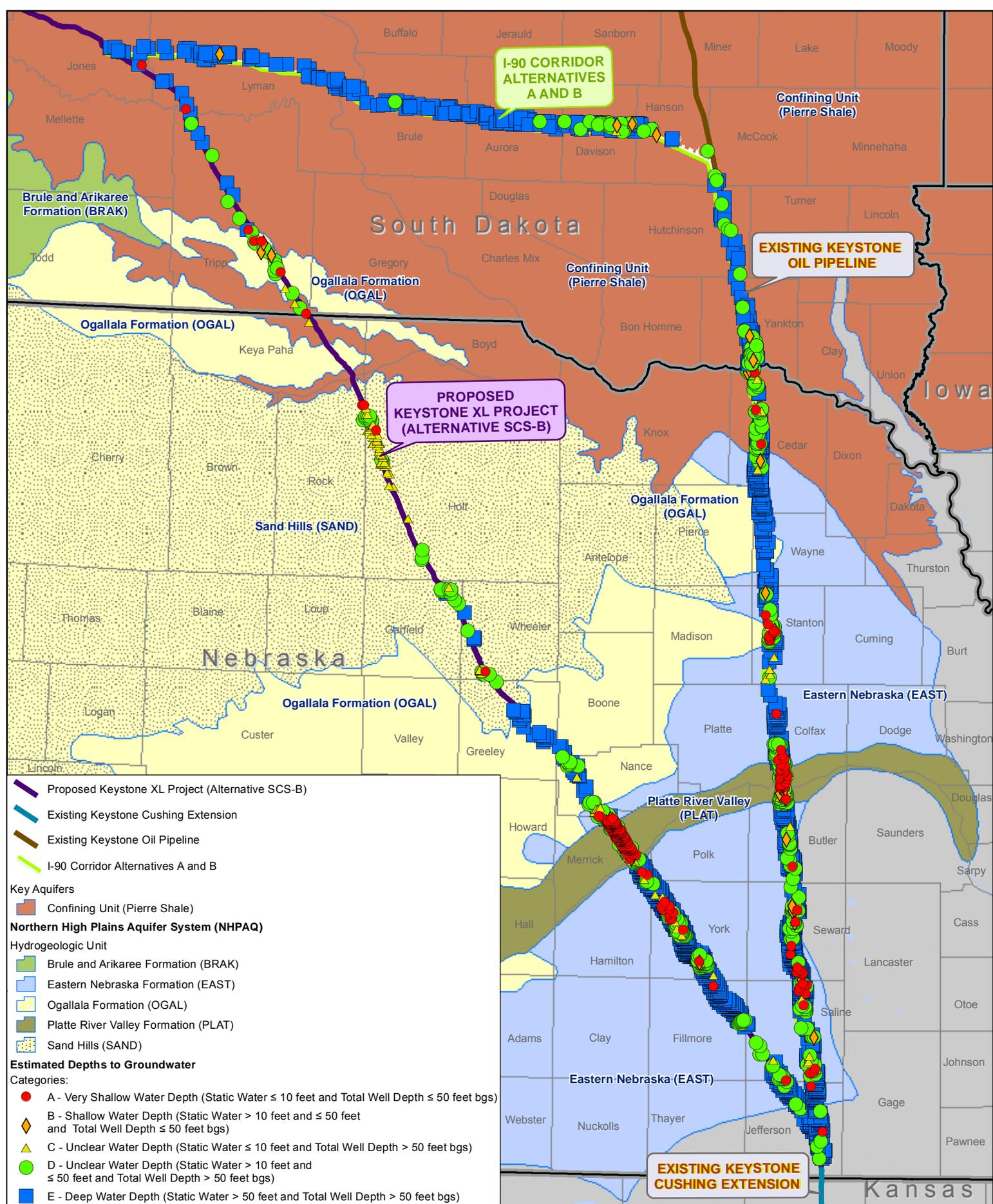
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



### KEYSTONE XL PROJECT

Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

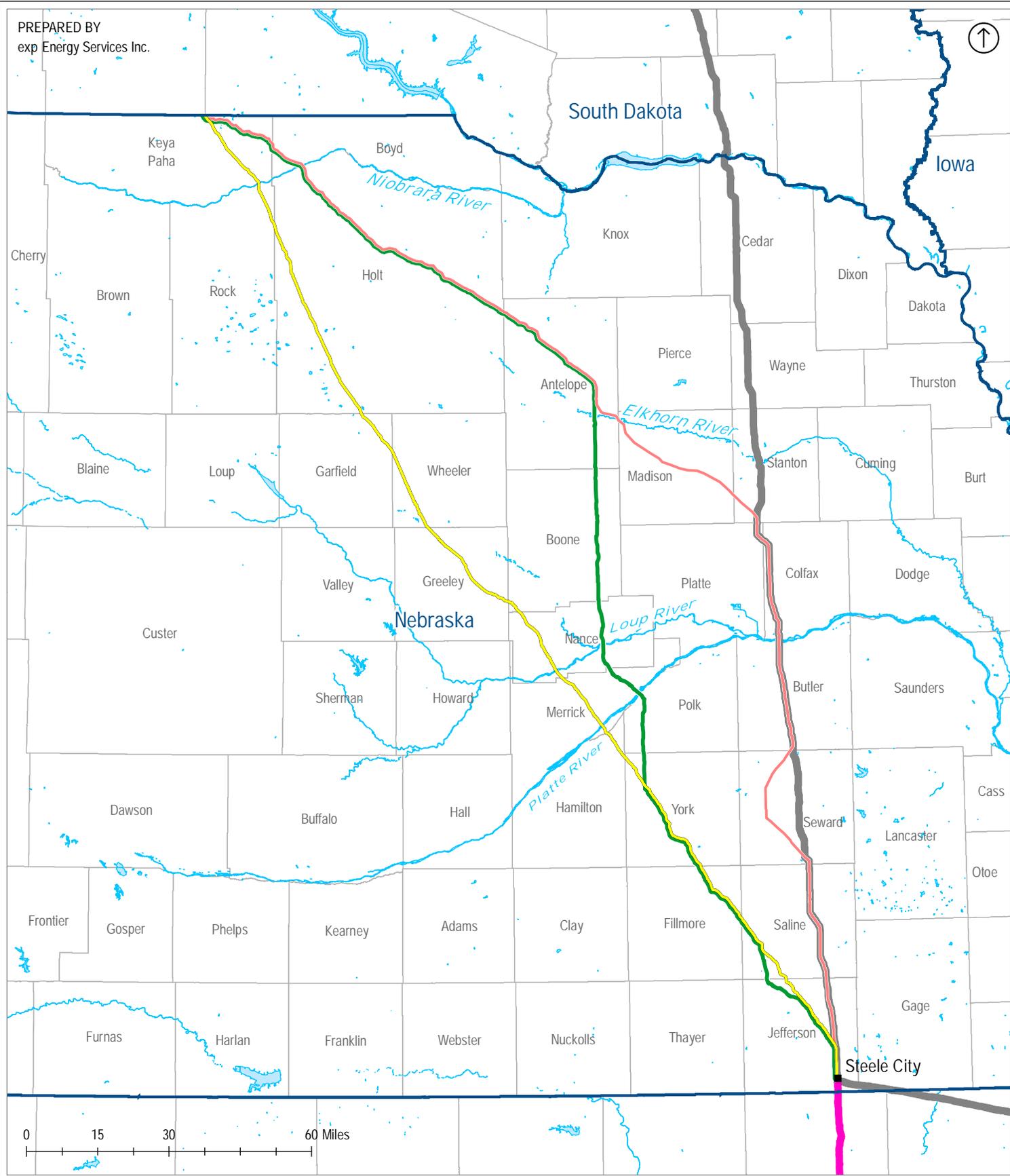
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

### KEYSTONE XL PROJECT

Figure 4.3.3-8  
 I-90 Corridor Alternatives A and B  
 Key Aquifers and Potable Water Wells  
 within 2-mile Corridor

**Attachment No. 7**

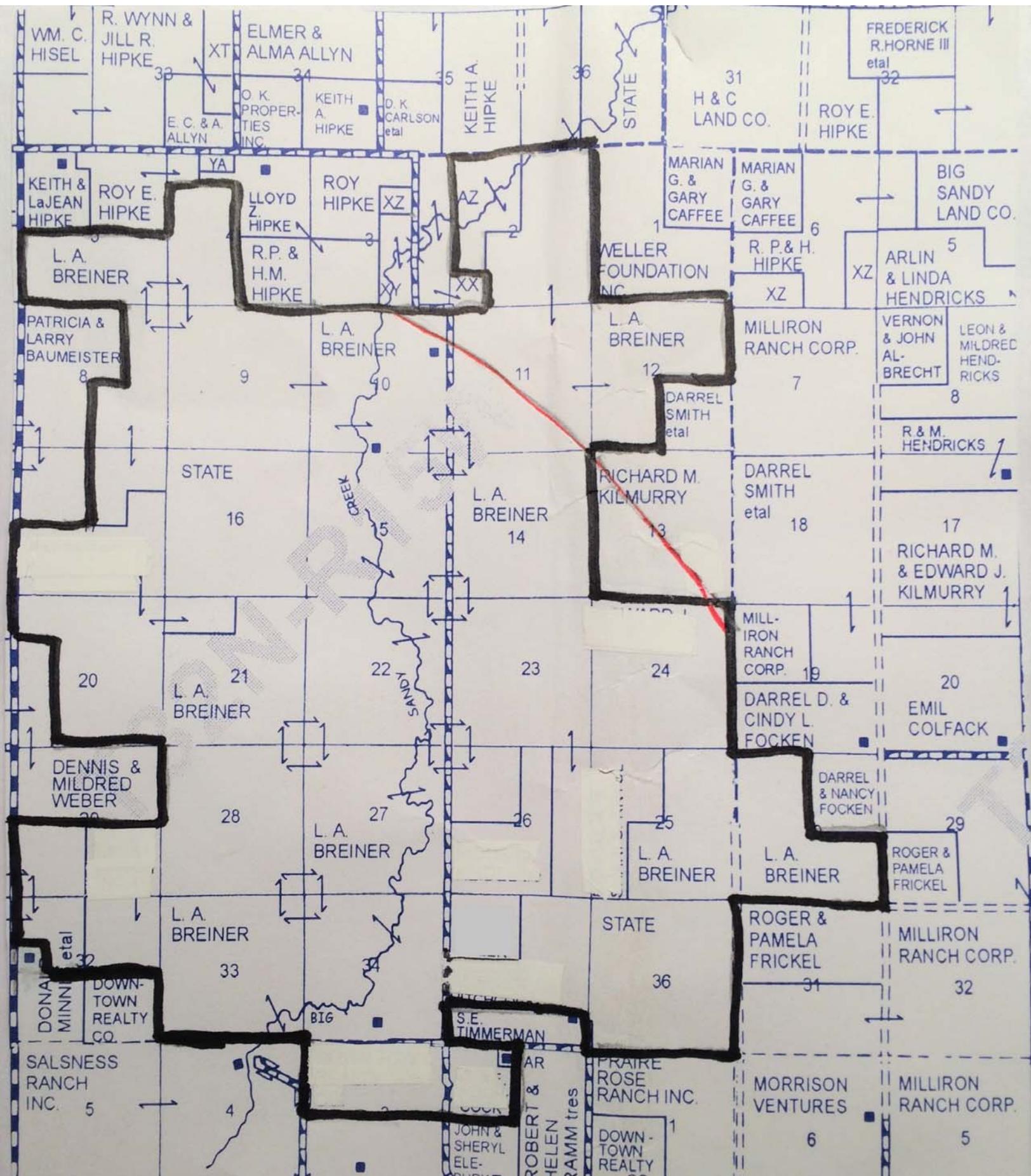


**LEGEND**

PREFERRED ROUTE	WATERBODY
SANDHILLS ALTERNATIVE ROUTE	STATE BOUNDARY
KEYSTONE MAINLINE ALTERNATIVE ROUTE	COUNTY BOUNDARY
KEYSTONE MAINLINE (PHASE I)	
KEYSTONE CUSHING EXTENSION (PHASE II)	

**KEYSTONE XL PROJECT**  
**FIGURE 2.2-2**  
PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

**Attachment No. 8**



Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP  
for Route Approval of Keystone XL  
Pipeline Project, Pursuant to *Major Oil  
Pipeline Siting Act*

Direct Testimony of  
Sandra Breiner in Support of  
Landowner Intervenors

State of Nebraska            )  
  ) ss.  
Holt County                    )

1   **Q: Please state your name.**

2   A: My name is Sandra Breiner.

3   **Q: Are you an intervener in the Public Service Commission’s proceedings**  
4       **regarding TransCanada’s application for approval of its proposed Keystone**  
5       **XL tar sands pipeline across Nebraska?**

6   A: Yes, I am.

7   **Q: Do you own land in Nebraska, either directly or through an entity of which**  
8       **you are an owner that could be affected by the proposed TransCanada**  
9       **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**  
12 **photo(s) of your land in question here with the area of the proposed KXL**  
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse’s name please?**

16 A: Lonnie “L.A.” Breiner.

1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**  
2 **and or your family?**

3 A: Yes.

4 **Q: Do you earn any income from this land?**

5 A: Yes.

6 **Q: Have you depended on the income from your land to support your livelihood**  
7 **or the livelihood of your family?**

8 A: Yes.

9 **Q: Have you ever in the past or have you thought about in the future leasing all**  
10 **or a portion of your land in question here?**

11 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective  
12 tenant may try to negotiate a lower price for my land if it had the pipeline on it and  
13 all the restrictions and risks and potential negative impacts to farming or ranching  
14 operations as opposed to land that did not have those same risks. If I was looking  
15 to lease or rent ground I would pay more for comparable non-pipeline land than I  
16 would for comparable pipeline land and I think most folks would think the same  
17 way. This is another negative economic impact that affects the landowner and the  
18 county and the state and will forever and ever should TransCanada's preferred or  
19 mainline alternative routes be approved. If they were to twin or closely parallel to  
20 Keystone I the vast majority of landowners would be those that already have a  
21 pipeline so there would be considerable less new incremental negative impacts.

22 **Q: Do you have similar concerns about selling the land?**

23 A: Well I hope not to have to sell the land in my lifetime but times change and you  
24 never know what is around the corner and yes I am concerned that if another piece  
25 of ground similar to mine were for sale and it did not have the pipeline and mine  
26 did that I would have a lower selling price. I think this would be true for pipeline  
27 ground on both the preferred and mainline alternative routes.

28 **Q: What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years  
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL  
4 Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Were you or an entity for which you are a member, shareholder, or director  
7 previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a  
9 petition for condemnation against our land so it could place its proposed pipeline  
10 within an easement that it wanted to take from us on our land.

11 **Q: Did you defend yourself and your land in that condemnation action?**

12 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees  
13 and expenses in our resistance of TransCanada's lawsuit against us.

14 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees  
15 incurred?**

16 A: No, they have not.

17 **Q: In its lawsuit against you, did TransCanada identify the amount of your  
18 property that it wanted to take for its proposed pipeline?**

19 A: The lawsuit against us stated they would take the amount of property that is  
20 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant  
21 and equipment reasonably necessary to operate the pipeline.

22 **Q: Did TransCanada define what they meant by "property that is reasonably  
23 necessary"?**

24 A: No, they did not.

25 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain  
26 property portion of your land?**

27 A: Yes, they did.

28 **Q: Did TransCanada describe what rights it proposed to take related to the  
29 eminent domain property on your land?**

1 A: Yes, they did.

2 **Q: What rights that they proposed to take did they describe?**

3 A: TransCanada stated that the eminent domain property will be used to “lay, relay,  
4 operate, and maintain the pipeline and the plant and equipment reasonably  
5 necessary to operate the pipeline, specifically including surveying, laying,  
6 constructing, inspecting, maintaining, operating, repairing, replacing, altering,  
7 reconstructing, removing and abandoning one pipeline, together with all fittings,  
8 cathodic protection equipment, pipeline markers, and all their equipment and  
9 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,  
10 petroleum products, and all by-products thereof.”

11 **Q: Prior to filing an eminent domain lawsuit to take your land that**  
12 **TransCanada identified, do you believe they attempted to negotiate in good**  
13 **faith with you?**

14 A: No, I do not.

15 **Q: Did TransCanada at any time approach you with or deliver to you their**  
16 **proposed easement and right-of-way agreement?**

17 A: Yes, they did.

18 **Q: At the time you reviewed TransCanada’s easement and right-of-way**  
19 **agreement, did you understand that they would be purchasing a fee title**  
20 **interest in your property or that they were taking something else?**

21 A: I understood that they proposed to have the power to take both a temporary  
22 construction easement that could last for a certain period of time and then also a  
23 permanent easement which they described to be 50 feet across or in width, and  
24 that would run the entire portion of my property from where a proposed pipeline  
25 would enter my property until where it would exit the property.

26 **Q: Is the document included with your testimony here as Attachment No. 3, a**  
27 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**  
28 **Way agreement that they included with their condemnation lawsuit against**  
29 **you?**

1 A: Yes, it is.

2 **Q: Have you had an opportunity to review TransCanada’s proposed Easement**  
3 **and Right-of-Way agreement?**

4 A: Yes, I have.

5 **Q: What is your understanding of the significance of the Easement and Right-of-**  
6 **Way agreement as proposed by TransCanada?**

7 A: My understanding is that this is the document that will govern all of the rights and  
8 obligations and duties as well as the limitations of what I can and cannot do and  
9 how I and any future landowner and any person I invite to come onto my property  
10 must behave as well as what TransCanada is and is not responsible for and how  
11 they can use my land.

12 **Q: After reviewing TransCanada’s proposed Easement and Right-of-Way**  
13 **agreement do you have any concerns about any portions of it or any of the**  
14 **language either included in the document or missing from the proposed**  
15 **document?**

16 A: Yes, I have a number of significant concerns and worries about the document and  
17 how the language included and the language not included potentially negatively  
18 impacts my land and thereby potentially negatively impacts my community and  
19 my state.

20 **Q: I would like you to walk the Commissioners through each and every one of**  
21 **your concerns about TransCanada’s proposed Easement and Right-of-Way**  
22 **agreement so they can develop an understanding of how that language and**  
23 **the terms of that contract, in your opinion, potentially negatively impacts you**  
24 **and your land. So, if you can start at the beginning of that document and**  
25 **let’s work our way through it, okay?**

26 A: Yes, I’ll be happy to express my concerns about TransCanada’s proposed  
27 Easement and Right-of-Way agreement and how it negatively could affect my  
28 property rights and my economic interests.

29 **Q. Okay, let’s start with your first concern please.**

1 A: The very first sentence talks about consideration or how much money they will  
2 pay to compensate me for all of the known and unknown affects and all of the  
3 rights I am giving up and for all the things they get to do to my land and for what  
4 they will prevent me from doing on my land and they only will pay me one time at  
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the  
8 landowner because they want to have my land forever for use as they see fit so  
9 they can make a daily profit from their customers. If I was to lease ground from  
10 my neighbor I would typically pay twice a year every year as long as they granted  
11 me the rights to use their land. That only makes sense – that is fair. If I was going  
12 to rent a house in town I would typically pay monthly, every month until I gave up  
13 my right to use that house. By TransCanada getting out on the cheap and paying  
14 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax  
15 revenue collection on the money I would be paid and then pay taxes on and  
16 contribute to this state and this country. It is money I would be putting back into  
17 my local community both spending and stimulating the local economy and  
18 generating more economic activity right here. Instead TransCanada’s shareholders  
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, “does  
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a  
23 limited partnership...” and I have no idea who that really is. I have no idea who is  
24 forcing this pipeline on us or who the owners of the entities are, or what are the  
25 assets backing this limited partnership, or who the general partner is, or who all  
26 the limited partners are, and who makes up the ownership of the these partners or  
27 the structure or any of the basic things you would want to know and understand if  
28 you would want to do business with such an outfit. According to TransCanada’s  
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general  
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so  
3 basically nothing. That is really scary since the general partner has the liability but  
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**  
6 **percent clear on exactly who could become the owner of over 275 miles of**  
7 **Nebraska land?**

8 A: No.

9 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**  
10 **percent clear on exactly who will be operating and responsible for**  
11 **approximately 275 miles of tar sands pipeline underneath and through**  
12 **Nebraska land?**

13 A: No.

14 **Q: Okay, let's continue please with your concerns of the impacts upon your land**  
15 **and the State of Nebraska of TransCanada's easement terms.**

16 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter  
17 called "Grantee")..." and this concerns me because it would allow their easement  
18 to be transferred or sold to someone or some company or country or who knows  
19 what that I don't know and who we may not want to do business with. This  
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest  
21 bidder that could have terrible impacts upon all of Nebraska depending upon who  
22 may buy it and I don't know of any safeguards in place for us or the State to veto  
23 or have any say so in who may own, operate, or be responsible for this pipeline in  
24 the future.

25 **Q: Do you think that type of uncertainty and lack of control over a major piece**  
26 **of infrastructure crossing our State is in the public interest?**

27 A: No, certainly not, in fact, just the opposite.

28 **Q: What's next?**

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this  
2 really concerns me. Why does the easement and right-of-way have to be perpetual  
3 and permanent? That is the question myself and my family want an answer to.  
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any  
7 data proving there is a perpetual supply of tar sands. I am not aware in  
8 TransCanada's application where it proves there is a perpetual necessity for this  
9 pipeline. My understanding of energy infrastructure like wind towers is they have  
10 a decommission plan and actually take the towers down when they become  
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however  
12 will, and I want my family or future Nebraska families to have that land as  
13 undisturbed as possible and it is not in my interest or the public interest of  
14 Nebraska to be forced to give up perpetual and permanent rights in the land for  
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says  
18 "...abandoning in place..." so they can just leave this pipeline under my ground  
19 until the end of time just sitting there while they are not using it, but I am still  
20 prevented from doing on my land and using my land what I would like. If I owned  
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting  
22 there. It doesn't make sense and it scares me and it is not in my interest or the  
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that  
25 right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the  
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on  
2 Landowners property. It appears that TransCanada would define this phrase as  
3 needed. It would be wise to explain what types of TransCanada action constitutes  
4 “installation activity” For instance, would the placement and storage of an  
5 excavator or other equipment on or near the Easement property be an activity or  
6 would earth have to be moved before the activity requirement is triggered. This  
7 vague phrase is likely to lead to future disputes and litigation that is not in the best  
8 interest of the welfare of Nebraska and would not protect property interests. The  
9 24-months can also be extended in the case of “force majeure.” My understanding  
10 is that force majeure is often used to insulate a party to a contract when events  
11 occur that are completely out of their control. In TransCanada’s easement this is  
12 expanded to include “without limitation...availability of labor and materials.”  
13 Extending this language to labor and materials is problematic because these are  
14 two variables that TransCanada does have some or significant control over and to  
15 allow extension of the 24-month period over events not truly out of the control of  
16 TransCanada and without further provision for compensation for the Landowner is  
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of  
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially  
21 reasonable costs and expenses” will pay for damages caused but then limits  
22 TransCanada’s liability to certain circumstances. There is no definition of  
23 “commercially reasonable” and no stated right that the Landowner would get to  
24 determine the amounts of cost or expense that is “commercially reasonable.”  
25 TransCanada excepts out from their liability any damages that are caused by  
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of  
27 Landowner. It is understandable that if the Landowner were to willfully and  
28 intentionally cause damages to the pipeline that Landowner should be liable.  
29 However, anything short of willful misconduct should be the liability of

1 TransCanada who is subjecting the pipeline on the Landowner and who is making  
2 a daily profit from that pipeline. When evaluating the impact on property rights of  
3 this provision, you must consider the potentially extremely expensive fight a  
4 Landowner would have over this question of whether or not damage was an act of  
5 negligence. Putting this kind of potential liability upon the Landowner is  
6 incredibly problematic and is detrimental to the protection of property rights. I  
7 don't think this unilateral power which I can't do anything about as the landowner  
8 is in the best economic interest of the land in question or the State of Nebraska for  
9 landowners to be treated that way.

10 **Q: Is there any specific event or example you are aware of that makes this**  
11 **concern more real for you?**

12 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against  
13 Nemaha County, Nebraska landowner farmers who accidentally struck two  
14 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of  
15 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged  
16 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate  
17 copy of the Federal Court Complaint is here as **Attachment No. 4.**

18 **Q: What is your next concern with the Easement language?**

19 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as  
20 they choose unless 1) any Landowner use interferes in any way with  
21 TransCanada's exercise of any of its rights within the Easement, or 2)  
22 TransCanada decides to take any action on the property it deems necessary to  
23 prevent injury, endangerment or interference with anything TransCanada deems  
24 necessary to do on the property. Landowner is also forbidden from excavating  
25 without prior authorization by TransCanada. So my understanding is that  
26 TransCanada will unilaterally determine what Landowner can and can't do based  
27 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada  
28 could also completely deny my request to excavate. Further, TransCanada retains  
29 all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the  
2 detriment of the property rights of Landowner what TransCanada believes is  
3 necessary or convenient for it. And there is no option for any additional  
4 compensation to landowner for any right exercised by TransCanada that leads to  
5 the removal of trees or plants or vegetation or buildings or structures or facilities  
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and  
7 rights without having to compensate Landowner for such further destruction or  
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the  
11 same time and again at the sole and unilateral decision making of TransCanada.  
12 TransCanada will determine if the actions of Landowner might in anyway  
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or  
14 any appurtenances thereon to the pipeline itself or to their access to the Easement  
15 or within the Easement and TransCanada retains the right at any time, whether  
16 during growing season or not, to travel "within and along Easement Area on foot  
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will  
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably  
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such  
20 undefined and unilateral restrictions are not conducive to the protection of  
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under  
24 Landowner's land any debris of any kind without any input or power of  
25 Landowner to demand an alternative method or location of debris disposal. Such  
26 unilateral powers would negatively affect Landowners property are not conducive  
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase  
2 “where rock is encountered” mean and why does TransCanada solely get to  
3 determine whether or not this phrase is triggered. This phrase could be used to  
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this  
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively  
6 affect Landowners property are not conducive to the protection of property rights.  
7 A shallow pipeline is much more likely to become a danger and liability in the  
8 future given farming operations and buried irrigation lines and other factors  
9 common to the current typical agricultural uses of the land in question impacted  
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as  
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably  
14 possible.” There is nothing here that defines this or provides a mechanism for  
15 documenting or memorializing “pre-construction position” so as to minimize  
16 costly legal battles or wasted Landowner time attempting to recreate the soil  
17 condition on their fields or pasture. Such unilateral powers would negatively affect  
18 Landowners property are not conducive to the protection of property rights or  
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all  
22 appurtenances thereto in place on, under, across, or through Nebraska land at any  
23 time it chooses. There is no provision for Landowner compensation for such  
24 abandonment nor any right for the Landowner to demand removal. Such unilateral  
25 powers would negatively affect Landowners property are not conducive to the  
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any  
29 Easement area whether permanent or temporary at their sole discretion.

1           Regardless, if Landowner has taken prior steps relative the their property in  
2           preparation or planning of TransCanada’s taking of the initial easement area(s),  
3           the language here does not require TransCanada to compensate the Landowner if  
4           they decide to move the easement anywhere on Landowners property. Such  
5           unilateral powers would negatively affect Landowners property are not conducive  
6           to the protection of property rights or economic interests.

7   **Q:    What is the next concern you have with the Easement language?**

8   A:    The Easement requires that all of the burdens and restrictions upon Landowner to  
9           transfer and be applicable to any future owner of the Land in question without the  
10          ability of the future Landowner to modify or negotiate any of the language in  
11          question to which it will be held to comply.

12 **Q:    What is the next concern you have with the Easement language?**

13 A:    The Easement allows TransCanada to assign, transfer, or sell any part of the  
14          Easement to any person, company, country, etc. at their sole discretion at any time  
15          to anyone. This also means that any buyer of the easement could do the same to a  
16          third buyer and so on forever. There is no change of control or sale provision in  
17          place to protect the Landowner or Nebraska or to provide compensation for such  
18          change of control or ownership. It is not conducive to the protection of property  
19          rights or economic interests to allow unilateral unrestricted sale of the Easement  
20          thereby forcing upon the Landowner and our State a new unknown Easement  
21          owner.

22 **Q:    What is the next concern you have with the Easement language?**

23 A:    There are many terms in the Easement that are either confusing or undefined terms  
24          that are without context as to whether or not the Landowner would have any say  
25          so in determining what these terms mean or if the evaluation is solely in  
26          TransCanada’s control. Some of these vague undefined terms are as follows:

- 27           i. “pipeline installation activities”
- 28           ii. “availability of labor and materials”
- 29           iii. “commercially reasonable costs and expenses”

- 1                   iv. “reasonably anticipated and foreseeable costs and expenses”
- 2                   v. “yield loss damages”
- 3                   vi. “diminution in the value of the property”
- 4                   vii. “substantially same condition”
- 5                   viii. “an actual or potential hazard”
- 6                   ix. “efficient”
- 7                   x. “convenient”
- 8                   xi. “endangered”
- 9                   xii. “obstructed”
- 10                  xiii. “injured”
- 11                  xiv. “interfered with”
- 12                  xv. “impaired”
- 13                  xvi. “suitable crossings”
- 14                  xvii. “where rock is encountered”
- 15                  xviii. “as nearly as practicable”
- 16                  xix. “pre-construction position”
- 17                  xx. “pre-construction grade”
- 18                  xxi. “various engineering factors”

19                  Each one of these above terms and phrases as read in the context of the Easement  
20                  could be problematic in many ways. Notably, undefined terms tend to only get  
21                  definition in further legal proceedings after a dispute arises and the way the  
22                  Easement is drafted, TransCanada has sole power to determine when and if a  
23                  particular situation conforms with or triggers rights affected by these terms. For  
24                  instance, “yield loss damages” should be specifically defined and spelled out  
25                  exactly how the landowner is to be compensated and in what events on the front  
26                  end. I can’t afford to fight over this after the damage has occurred. Unfortunately,  
27                  the Landowner is without contractual rights to define these terms or determine  
28                  when rights related to them trigger and what the affects may be.

1 **Q: Do you have any other concerns about the Easement language that you can**  
2 **think of at this time?**

3 A: I reserve the right to discuss any additional concerns that I think of at the time of  
4 my live testimony in August.

5 **Q: Based upon what you have shared with the Commission above regarding**  
6 **TransCanada's proposed Easement terms and agreement, do you believe**  
7 **those to be reasonable or just, under the circumstances of the pipeline's**  
8 **impact upon you and your land?**

9 A: No, I do not believe those terms to be reasonable or just for the reasons that we  
10 discussed previously.

11 **Q: Did TransCanada ever offer you financial compensation for the rights that**  
12 **they sought to obtain in your land, and for what they sought to prevent you**  
13 **and any future land owner of your property from doing in the future?**

14 A: Yes, we received an offer from them.

15 **Q: As the owner of the land in question and as the person who knows it better**  
16 **than anyone else, do you believe that TransCanada offered you just, or fair,**  
17 **compensation for all of what they proposed to take from you so that their tar**  
18 **sands pipeline could be located across your property?**

19 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just  
20 offer for all the potential impacts and effects and the rights that I'm giving up, and  
21 what we will be prevented from doing in the future and how their pipeline would  
22 impact my property for ever and ever.

23 **Q: Has TransCanada at any time offered to compensate you annually, such as**  
24 **wind farm projects do, for the existence of their potential tar sands pipeline**  
25 **across your property.**

26 A: No, never.

27 **Q: At any time did TransCanada present you with or request that you, as the**  
28 **owner of the land in question, sign and execute a document called, "Advanced**  
29 **Release of Damage Claims and Indemnity Agreement?"**

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**  
3 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, it is.

5 **Q: What was your understanding of that document?**

6 A: When I read that document in the plain language of that document, it was my  
7 understanding that TransCanada was attempting to pay me a very small amount at  
8 that time in order for me to agree to give up my rights to be compensated from  
9 them in the future related to any damage or impact they may have upon my  
10 property “arising out of, in connection with, or alleged to resulted from  
11 construction or surveying over, under or on” my land.

12 **Q: Did you ever sign that document?**

13 A: No, I did not.

14 **Q: Why not?**

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small  
16 sum of money when I have no idea how bad the impacts or damages that they, or  
17 their contractors, or subcontractors, or other agents or employees, may cause on  
18 my land at any time in the future that resulted from the construction or surveying  
19 or their activities upon my land.

20 **Q: When you reviewed this document, what did it make you feel?**

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to  
22 shield themselves against known and foreseeable impacts that their pipeline, and  
23 the construction of it, would have upon my land. It made me feel that they knew it  
24 was in their financial interest to pay me as little as possible to prevent me from  
25 ever having the opportunity to seek fair compensation again, and that this must be  
26 based upon their experience of unhappy landowners and situations in other places  
27 where they have built pipelines.

1 **Q: Has TransCanada ever contacted you and specifically asked you if you**  
2 **thought their proposed location of their proposed pipeline across your land**  
3 **was in your best interest?**

4 A: No, they have not.

5 **Q: Has TransCanada ever contacted you and specifically asked you if you**  
6 **thought their proposed location of their proposed pipeline across your land**  
7 **was in the public interest of the State of Nebraska?**

8 A: No, they have not.

9 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**  
10 **Takings Clause?**

11 A: Yes, I am.

12 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**  
13 **an American citizens property?**

14 A: My understanding is that, according to the United States Constitution, that if the  
15 government is going to take land for public use, then in that case, or by taking for  
16 public use, it can only occur if the private land owner is compensated justly, or  
17 fairly.

18 **Q: Has TransCanada ever contacted you specially to explain the way in which**  
19 **the public could use its proposed Keystone XL Pipeline?**

20 A: No, they have not.

21 **Q: Can you think of any way in which the public, that is the citizens of the State**  
22 **of Nebraska, can directly use the proposed TransCanada Keystone XL**  
23 **Pipeline, as it dissects the State of Nebraska?**

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the  
25 public benefits from this pipeline in any way, how they can use it any way, or how  
26 it's in the public interest in any way. By looking at the map, it is quite clear to me  
27 that the only reason it's proposed to come through Nebraska, is that because we  
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in  
2 Houston, Texas.

3 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,  
4 crude petroleum, or oil and petroleum by-products that you would like to  
5 ship in its pipeline?**

6 A: No, it has not.

7 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-  
8 products that you, at this time or any time in the future, would desire to place  
9 for transport within the proposed TransCanada Keystone XL Pipeline?**

10 A: No, I do not.

11 **Q: Do you know anyone in the state of Nebraska who would be able to ship any  
12 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-  
13 products within the proposed TransCanada Keystone XL Pipeline?**

14 A: No, I do not. I've never heard of such a person or company like that.

15 **Q: Do you pay property taxes for the land that would be affected and impacted  
16 at the proposed TransCanada Keystone XL Pipeline?**

17 A: Yes, I do.

18 **Q: Why do you pay property taxes on that land?**

19 A: Because that is the law. The law requires us to pay the property taxes as the owner  
20 of that property.

21 **Q: Because you follow the law and pay property taxes, do you believe you  
22 deserve any special consideration or treatment apart from any other person  
23 or company that pays property taxes?**

24 A: Well no, of course not. It's the law to pay property taxes if you own property. It's  
25 just what you do.

26 **Q: Do you believe the fact that you pay property taxes entitles you to special  
27 treatment of any kind, or special rights of any kind?**

28 A: No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**  
2 **enough to qualify you to have the power of eminent domain to take land of**  
3 **your neighbors or other people in your county, or other people across the**  
4 **state of Nebraska?**

5 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that  
6 I expect an award for or any type of special consideration.

7 **Q: Have you at any time ever employed any person other than yourself?**

8 A: Well, yes I have.

9 **Q: Do you believe that the fact that you have, at some point in your life,**  
10 **employed one or more other persons entitle you to any special treatment or**  
11 **consideration above and beyond any other Nebraskan that has also employed**  
12 **one or more persons?**

13 A: No, of course not.

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**  
15 **have at one point employed another person within this state, entitles you to**  
16 **preferential treatment or consideration of any kind?**

17 A: No, of course not. If I choose to employ someone that decision is up to me. I  
18 don't deserve any special treatment or consideration for that fact.

19 **Q: At the beginning of your statement, you briefly described your property that**  
20 **would be impacted by the potential Keystone XL Pipeline. I would like you to**  
21 **give the Commissioners a sense of specifically how you believe the proposed**  
22 **Keystone XL Pipeline and its preferred route, which proposes to go across**  
23 **your land, how it would in your opinion based on your knowledge,**  
24 **experience, and background of your land, affect it. So please share with the**  
25 **Commissioners the characteristics of your land that you believe is important**  
26 **for them to understand, while they evaluate TransCanada's application for a**  
27 **route for its proposed pipeline to cross Nebraska and across your land,**  
28 **specifically.**

1 A: Our farms with electric irrigation systems have schedules of on and off time to  
2 irrigate so what will happen when the pipeline uses a lot of our electricity? Also  
3 our roads are not good enough for the large trucks and heavy equipment needed to  
4 put the pipeline in. all the extra people will also tax our law enforcement people.  
5 We don't need more temporary jobs, which it won't provide anyway; we just need  
6 someone who will work – every paper is full of help wanted ads.

7 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**  
8 **crude oil pipeline in its preferred location, or ultimate location across the**  
9 **state of Nebraska?**

10 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly  
11 or even bullied around and being made to feel scared that they did not have any  
12 options but to sign whatever papers TransCanada told them they had to. I am  
13 aware of folks being threatened that their land would be taken if they didn't follow  
14 what TransCanada was saying. I am aware of tactics to get people to sign  
15 easements that I don't believe have any place in Nebraska or anywhere such as  
16 TransCanada or some outfit associated with it hiring a pastor or priest to pray with  
17 landowners and convince them they should sign TransCanada's easement  
18 agreements. I am aware of older folks and widows or widowers feeling they had  
19 no choice but to sign TransCanada's Easement and they didn't know they could  
20 fight or stand up for themselves. From a more practical standpoint, I am worried  
21 that according to their answer to our Interrogatory No. 211, TransCanada only  
22 owns and operates one (1) major oil pipeline. They simply do not have the  
23 experience with this type of pipeline and that scares me. There are others but that  
24 is what I can recollect at this time and if I remember more or my recollection is  
25 refreshed I will share those with the Commissioners at the Hearing in August.

26 **Q: Do you believe TransCanada's proposed method of compensation to you as a**  
27 **landowner is reasonable or just?**

28 A: No, I do not.

1 **Q: Do you have any concern about limitations that the construction of this**  
2 **proposed pipeline across your affected land would prevent construction of**  
3 **future structures upon the portion of your land affected by the proposed**  
4 **easement and immediately surrounding areas?**

5 A: Well yes, of course I do. We would not be able to build many, if any, types of  
6 structures directly across or touching the easement, and it would be unwise and I  
7 would be uncomfortable to build anything near the easement for fear of being  
8 blamed in the future should any damage or difficulty result on my property in  
9 regards to the pipeline.

10 **Q: Do you think such a restriction would impact you economically?**

11 A: Well yes, of course.

12 **Q: How do you think such a restriction would impact you economically?**

13 A: The future of this land may not be exactly how it's being used as of this moment,  
14 and having the restrictions and limiting my ability to develop my land in certain  
15 ways presents a huge negative economic impact on myself, my family, and any  
16 potential future owner of the property. You have no idea how I or the future owner  
17 may want to use this land in the future or the other land across Nebraska  
18 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years  
19 ago it would have been hard to imagine all the advances that we have now or how  
20 things change. Because the Easement is forever and TransCanada gets the rights in  
21 my land forever we have to think with a very long term view. By placing their  
22 pipeline on under across and through my land that prevents future development  
23 which greatly negatively impacts future taxes and tax revenue that could have  
24 been generated by the County and State but now will not. When you look at the  
25 short blip of economic activity that the two years of temporary construction efforts  
26 may bring, that is far outweighed by the perpetual and forever loss of opportunity  
27 and restrictions TransCanada is forcing upon us and Nebraska.

28 **Q: Do you have any concerns about the environmental impact of the proposed**  
29 **pipeline?**

1 A: Yes, I do.

2 **Q: What are some of those concerns?**

3 A: As an affected land owner and Nebraskan, I am concerned that any construction,  
4 operation, and/or maintenance of the proposed Keystone XL Pipeline would have  
5 a detrimental impact upon the environment of my land specifically, as well as the  
6 lands near my land and surrounding the proposed pipeline route.

7 **Q: Do you have any other environmental concerns?**

8 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in  
9 construction and/or maintenance and operation. I am concerned about spills and  
10 leaks that TransCanada has had in the past and will have in the future. This could  
11 be catastrophic to my operations or others and to my county and the State.

12 **Q: Do you have any thoughts regarding if there would be an impact upon the  
13 natural resources on or near your property due to the proposed pipeline?**

14 A: Yes, I believe that any construction, operation, and/or maintenance of the  
15 proposed Keystone XL Pipeline would have detrimental impacts upon the natural  
16 resources of my land, and the lands near and surrounding the proposed pipeline  
17 route.

18 **Q: Do you have any worries about potential impacts from the proposed pipeline  
19 to the soil of your land, or land near you?**

20 A: Yes, I believe that any construction, operation, and/or maintenance of the  
21 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of  
22 land, as well as land along and surrounding the proposed pipeline route. This  
23 includes, but is not limited to, the reasons that we discussed above of disturbing  
24 the soil composition and makeup as it has naturally existed for thousands and  
25 millions of years during the construction process, and any future maintenance or  
26 removal process. I'm gravely concerned about the fertility and the loss of  
27 economic ability of my property to grow the crops, or grow the grasses, or grow  
28 whatever it is at that time they exist on my property or that I may want to grow in  
29 the future, or that a future owner may want to grow. The land will never be the

1 same from as it exists now undisturbed to after it is trenched up for the proposed  
2 pipeline.

3 **Q: Do you have any concerns about the potential impact of the proposed pipeline**  
4 **upon the groundwater over your land, or surrounding lands?**

5 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
6 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
7 groundwater of not only under my land, but also near and surrounding the pipeline  
8 route, and in fact, potentially the entire State of Nebraska. Water is life plain and  
9 simple and it is simply too valuable to our State and the country to put at  
10 unreasonable risk.

11 **Q: Do you have any concern about the potential impact of the proposed pipeline**  
12 **upon the surface water on, or near or around your land?**

13 A: Yes, I have significant concerns that any construction, operation, and/or  
14 maintenance of the proposed Keystone XL Pipeline would have detrimental  
15 impact upon the surface water of not only within my property boundary, but along  
16 and near and surrounding the pipeline route, and in fact, across the state of  
17 Nebraska.

18 **Q: Do you have any concern about the potential impacts of the proposed pipeline**  
19 **upon the wildlife and plants, other than your growing crops on or near your**  
20 **land?**

21 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of  
22 the proposed Keystone XL Pipeline would have a detrimental impact upon the  
23 wildlife and the plants, not only that are located on or can be found upon my land,  
24 but also near and along the proposed pipeline route.

25 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**  
26 **fair market value of your land?**

27 A: Yes, I do. I am significantly concerned about how the existence of the proposed  
28 pipeline underneath and across and through my property will negatively affect the  
29 fair market value at any point in the future, especially at that point in which I

1 would need to sell the property, or someone in my family would need to sell the  
2 property. I do not believe, and certainly would not be willing to pay, the same  
3 price for land that had the pipeline located on it, versus land that did not. I hope  
4 there is never a point where I'm in a position where I have to sell and have to  
5 realize as much value as I can out of my land. But because it is my single largest  
6 asset, I'm gravely concerned that the existence of the proposed Keystone XL  
7 Pipeline upon my land will affect a buyer's willingness to pay as much as they  
8 would've paid and as much as I could've received, if the pipeline were not upon  
9 my property. There are just too many risks, unknowns, impacts and uncertainties,  
10 not to mention all of the rights you give up by the nature of having the pipeline  
11 due to having the easement that we have previously discussed, for any reasonable  
12 person to think that the existence of the pipeline would not negatively affect my  
13 property's value.

14 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**  
15 **testimony?**

16 A: Yes, I have.

17 **Q: Where have you seen that before?**

18 A: That is a map I think I first saw a couple years ago that shows the Keystone XL  
19 I-90 corridor alternate route of its proposed pipeline through Nebraska and I  
20 believe the portion of the alternative route in Nebraska essentially twins or  
21 parallels Keystone I.

22 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**  
23 **Application, and as found on Attachment No. 7, here to your testimony, is in**  
24 **the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe that the Keystone mainline alternative route as shown on**  
27 **Attachment No. 7 included with your testimony here is a major oil pipeline**  
28 **route that is in the public interest of Nebraska?**

29 A: No, I do not.

1 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**  
2 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

3 A: No, I do not.

4 **Q: Do you believe there is any potential route for the proposed Keystone XL**  
5 **Pipeline across, within, under, or through the State of Nebraska that is in the**  
6 **public interest of the citizens of Nebraska?**

7 A: No, I do not.

8 **Q: Why do you hold that belief?**

9 A: Because there simply is no public interest based on all of the factors that I am  
10 aware and that I have read and that I have studied that this Commission is to  
11 consider that would establish that a for-profit foreign-owned pipeline that simply  
12 crosses Nebraska because we are geographically in the way between where tar  
13 sands are in Canada to where it wants to ship it to in Texas could ever be in the  
14 public interest of Nebraskans. We derive no benefit from this project. It is not for  
15 public use. Nebraska is simply in the way and when all considerations are taken in  
16 there is no net benefit of any kind for Nebraska should this project be placed in our  
17 state. Even if there was some arguable “benefit” it is not enough to outweigh all  
18 the negative impacts and concerns.

19 **Q: What do you think about the applicant, TransCanada’s argument that it’s**  
20 **preferred route for its proposed Keystone XL Pipeline is in the public interest**  
21 **of Nebraska because it may bring temporary jobs during the construction**  
22 **phase to Nebraska?**

23 A: First of all, not all jobs are created equally. Most jobs that are created, whether  
24 temporary or on a permanent basis, don’t come with a project that has all the  
25 potential and foreseeable negative impacts, many of which we have discussed here  
26 and other witnesses throughout the course of this hearing have and will discuss. If  
27 I decide to hire and employ someone to help me out in my farming or ranching  
28 business, I’ve created a job but I haven’t done so at the risk or detrimental impact  
29 to my land or my town or my county or my state. And I’ve hired someone who is

1 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce  
2 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all  
3 jobs are not created equal. Additionally, I understand from what I'm familiar with  
4 from TransCanada's own statements that the jobs numbers they originally touted  
5 were determined to be a minute fraction of the permanent jobs that had been  
6 projected. According to their answer to our Interrogatory No. 191, TransCanada  
7 has created only thirty-four (34) jobs within Nebraska working specifically on  
8 behalf of TransCanada and according to their answer to Interrogatory No. 196, as  
9 of May 5, 2017 they only employ one (1) temporary working within Nebraska.  
10 Further, according to their answer to Interrogatory No. 199, TransCanada would  
11 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was  
12 constructed on its Preferred Route or its Mainline Alternative Route.

13 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**  
14 **because it would cross your land?**

15 A: No, absolutely not. I am opposed to this project because it is not in the public  
16 interest, neither within my community nor within our state.

17 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**  
18 **was to cross someone else's land?**

19 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have  
20 the fear and anxiety and potential foreseeable risks and negative impacts that this  
21 type of a project carrying this type of product brings foisted upon anyone in this  
22 state or any other state.

23 **Q: Do you think there is any intelligent route for the proposed Keystone XL**  
24 **Pipeline to cross the state of Nebraska?**

25 A: I don't believe there is an intelligent route because as I have stated I don't believe  
26 this project anywhere within Nebraska is within the public interest. However, if  
27 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely  
28 had to go somewhere in the state of Nebraska, the only intelligent route I believe  
29 would be to twin or closely parallel the existing Keystone I Pipeline. Both the

1 preferred route and the mainline alternative routes are economic liabilities our  
2 state cannot risk.

3 **Q: What do you rely upon to make that statement?**

4 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,  
5 already exists in that area is reason enough as it is not in our best interest or the  
6 public interests to have more major oil pipelines crisscrossing our state. Second,  
7 they have all the infrastructure already there in terms of relationships with the  
8 counties and local officials and first responders along that route. Third, they have  
9 already obtained easements from all the landowners along that route and have  
10 relationships with them. Fourth, that route avoids our most sensitive soils, the  
11 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala  
12 Aquifer. Sixth, they have already studied that route and previously offered it as an  
13 alternative. Seventh, it just makes the most sense that as a state we would have  
14 some intelligent policy of energy corridors and co-locating this type of  
15 infrastructure near each other.

16 **Q: Do you have any other concerns you would like to reiterate or can think of at  
17 this time you would like the Commissioners to understand?**

18 A: Yes. The pipeline still crosses the sand hills and the aquifer, which is Nebraska's  
19 greatest resource. Millions of people rely on this good water and it would be a  
20 great disaster if pollution occurred. The soil here is very sandy and once the top  
21 soil and ground cover is disturbed you never get it back to natural. It will blow and  
22 wash; we have fought blow-outs for years.

23 **Q: Have you fully expressed each and every opinion, concern, or fact you would  
24 like the Public Service Commissioners to consider in their review of  
25 TransCanada's Application?**

26 A: No, I have not. I have shared that which I can think of as of the date I signed this  
27 document below but other things may come to me or my memory may be  
28 refreshed and I will add and address those things at the time of the Hearing in  
29 August and address any additional items at that time as is necessary. Additionally,

1 I have not had an adequate amount of time to receive and review all of  
2 TransCanada's answers to our discovery and the discovery of others so it was  
3 impossible to competently and completely react to that in my testimony here and I  
4 reserve the right to also address anything related to discovery that has not yet  
5 concluded as of the date I signed this document below. Lastly, certain documents  
6 requested have not yet been produced by TransCanada and therefore I may have  
7 additional thoughts on those I will also share at the hearing as needed.

8 **Q: Does Attachment No. 8 here contain other documents you are competent to**  
9 **speak about that you wish to be part of your testimony and to discuss in more**  
10 **detail as needed at the August 2017 Hearing?**

11 A: Yes.

12 **Q: What is it that you are requesting the Public Service Commissioners do in**  
13 **regards to TransCanada's application for the proposed Keystone XL Pipeline**  
14 **across Nebraska?**

15 A: I am respectfully and humbly requesting that the Commissioners think far beyond  
16 a temporary job spike that this project may bring to a few counties and beyond the  
17 relatively small amount of taxes this proposed foreign pipeline would possibly  
18 generate. And, instead think about the perpetual and forever impacts of this  
19 pipeline as it would have on the landowners specifically, first and foremost, but  
20 also thereby upon the entire state of Nebraska, and to determine that neither the  
21 preferred route nor the Keystone mainline alternative route are in the public  
22 interest of the citizens of the state of Nebraska. And if the Commissioners were  
23 inclined to modify TransCanada's proposed routes and were to be inclined to grant  
24 an application for a route in Nebraska, that the only potential route that would  
25 make any intelligent sense whatsoever would be twinning or near paralleling of  
26 the proposed KXL with the existing Keystone I pipeline. It simply does not make  
27 sense to add yet another major oil pipeline crisscrossing our state creating new  
28 pumping stations, creating new impacts on additional counties and communities  
29 and going through all of the court processes with myself and other landowners like

1 me when this applicant already has relationships with the landowners, the towns  
2 and the communities along Keystone I, and that Keystone I is firmly outside of the  
3 sand hills and a significantly further portion away from the heart of the Ogallala  
4 Aquifer than the preferred route or the Keystone mainline alternative route.

5 **Q: Are all of your statements in your testimony provided above true and**  
6 **accurate as of the date you signed this document to the best of your**  
7 **knowledge?**

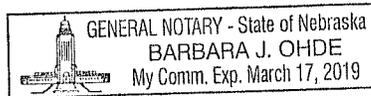
8 A: Yes, they are.

9 **Q: Thank you, I have no further questions at this time and reserve the right to**  
10 **ask you additional questions at the August 2017 Hearing.**

Sandra Breiner  
Sandra Breiner

Subscribed and Sworn to me before this 30 day of May, 2017.

Barbara J. Ohde  
Notary Public



**Attachment No. 1**

PREPARED BY  
exp Energy Services Inc.



S.010  
T.032N  
R.015W

S.011  
T.032N  
R.015W

L. A. Breiner

S.015  
T.032N  
R.015W

S.014  
T.032N  
R.015W

S.013  
T.032N  
R.015W

L. A. Breiner

S.022  
T.032N  
R.015W

S.023  
T.032N  
R.015W

S.024  
T.032N  
R.015W



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
L. A. Breiner

**TRACT NO.** ML-NE-HT-30100.000  
**STATE:** Nebraska  
**COUNTY:** Holt  
**SECTION:** 014  
**TOWNSHIP:** 032N  
**RANGE:** 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Property Line
- Section Line

May 2017 - X:\Drawings\5058\KEYSTONE XL\5000\_9995056

PREPARED BY  
exp Energy Services Inc.



S.014  
T.032N  
R.015W

S.013  
T.032N  
R.015W

S.018  
T.032N  
R.014W

S.023  
T.032N  
R.015W

S.024  
T.032N  
R.015W

S.019  
T.032N  
R.014W

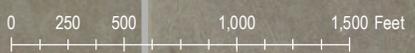
L. A. Breiner  
Sandra Breiner

S.026  
T.032N  
R.015W

S.025  
T.032N  
R.015W

S.030  
T.032N  
R.014W

IMAGERY: NAIP 2016



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
L. A. Breiner  
Sandra Breiner

**TRACT NO.** ML-NE-HT-30110.000  
**STATE:** Nebraska  
**COUNTY:** Holt  
**SECTION:** 024  
**TOWNSHIP:** 032N  
**RANGE:** 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Access Road (Temp.)
- Property Line

May 2017 - X:\Drawings\6358\KEYSTONE XL\6000\_9995356

PREPARED BY  
exp Energy Services Inc.



S.004  
T.032N  
R.015W

S.003  
T.032N  
R.015W

S.009  
T.032N  
R.015W

S.010  
T.032N  
R.015W

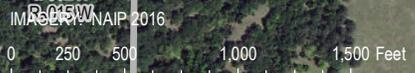
S.011  
T.032N  
R.015W

S.016  
T.032N  
R.015W

S.015  
T.032N  
R.015W

S.014  
T.032N  
R.015W

L. A. Breiner



**KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY**  
L. A. Breiner

**TRACT NO.** ML-NE-HT-40220.000  
**STATE:** Nebraska  
**COUNTY:** Holt  
**SECTION:** 010  
**TOWNSHIP:** 032N  
**RANGE:** 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\5358\KEYSTONE\_XL\9002\_9995326

**Attachment No. 2**



**Attachment No. 3**

**Prepared by and after recording  
please return to:**  
TransCanada Keystone Pipeline, LP  
1106 Benjamin Avenue, Suite 600  
Norfolk, NE 68701

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(Above Space for Recorder's Use Only)

Tract No.: ML-NE-HT-30100.000  
ML-NE-HT-30110.000  
ML-NE-HT-40220.000

**EASEMENT AND RIGHT-OF-WAY  
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **L. A. Breiner and Sandra K. Breiner, husband and wife**, whose mailing address is 47224 889<sup>th</sup> Road, Stuart, NE 68780 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline

Grantor's Initials \_\_\_\_\_

markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Easement Area") located on real property situated in the County of Holt, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 327.61 acres , more or less, situated in the County of Holt, in the State of Nebraska, being further described as All of Section 14, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 179, Page 195 in the Deed Records of Holt County , Nebraska.

**Less and Except:** An irregular tract of land located in Section 14, Township 32 North, Range 15 West of the 6<sup>th</sup> P.M., and Holt county , Nebraska, and more particularly described as follows : Beginning at the Southwest corner of said Section 14; thence N 88 59' 37" E (assumed bearing) on the South line of Section 14, a distance of 2363.46 feet; thence N 44 55' 46" W, a distance of 412.49 feet ; thence N 01 38' 36" E, a distance of 26.70 feet; thence N 44 17' 52" E, a distance of 395.70 feet to a non-tangential curve concave Westerly having a radius of 1449.62 feet; thence Northerly on said curve an arc distance of 2279.25 feet through an angle of 90 05' 14"; thence N 88 47' 12" E, a distance of 749.32 feet to a non-tangential curve concave Westerly having a radius of 1434.63 feet; thence Northerly on said curve an arc distance of 3371.96 feet through an angle of 134 40' 07" to the north line of said Section 14; thence S 88 54' 45" W, on said North line of Section 14, a distance of 2166.37 feet; thence S 01 00' 39" E, a distance of 1253.14 feet to a non-tangential curve concave Easterly having a radius of 1482.14 feet; thence Southerly on said curve an arc distance of 967.34 feet through an angle of 37 23' 42"; thence S 42 04' 17"E, a distance of 170.26 feet; thence N 89 49' 42" W, a distance of 511.66 feet; thence S 78 09' 16" W, a distance of 235,96 feet; thence S 63 51' 41" W, a distance of 365.24 feet; thence S 55 58' 59" W, a distance of 717.07 feet to the West line of said Section 14; thence S 00 57' 23" E on said West line of Section 14, a distance of 2421.51 feet to the point of beginning, of which the West 33 feet is occupied by a public road, referred to as (Survey Tract B), as recorded in Book 199, Page 9.

A tract of land containing 507.52 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 10, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 179, Page 195 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

**Less and Except:** An irregular tract of land located in Section 10, T32N, R15W of the 6<sup>th</sup> P.M., Holt County, Nebraska, described as follows: Beginning at the Southeast corner of said Section 10, thence S89° 26' 00" W (assumed bearing) on the south line of said Section 10, a distance of 2377.73 feet; thence N 45° 23' 53" W, a distance of 161.16 feet; thence N 35° 58' 23" W, a distance of 256.12 feet; thence N 16° 37' 13" W, a distance of 182.11 feet; thence N 01° 47' 23" W, a distance of 1117.67 feet; thence N 33° 18' 07" E, a distance of 120.12 feet; thence N 54° 19' 00" E, a distance of 1018.88 feet; thence N 70° 22' 41" E, a distance of 239.64 feet; thence N 80° 02' 11" E, a distance of 104.08 feet; thence N 89° 18' 05" E, a distance of 185.48 feet to a non-tangential curve concave southerly having a radius of 2224.95 feet; thence on said curve an arc distance of 561.99 feet through an angle of 14° 28' 20"; thence S 68° 25' 19" E, a distance of 371.44 feet; thence S 57° 26' 08" E, a distance of 167.84 feet; thence S 54° 15' 09" E, a distance of 319.07 feet to the east line of said Section 10; thence S 00° 51' 47" E on said east line of Section 10, a distance of 1856.88 feet to the point of beginning, of which the east 33 feet is occupied by a public, as recorded in Book 199, Page 9.

A tract of land containing 640 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 24, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 202, Page 501 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR(S):

\_\_\_\_\_  
**L. A. Breiner**

\_\_\_\_\_  
**Sandra K. Breiner**

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **L. A. Breiner**

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Affix Seal Here

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

By **Sandra K. Breiner**

\_\_\_\_\_  
Notary Public Signature

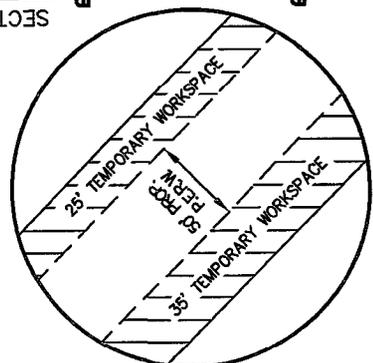
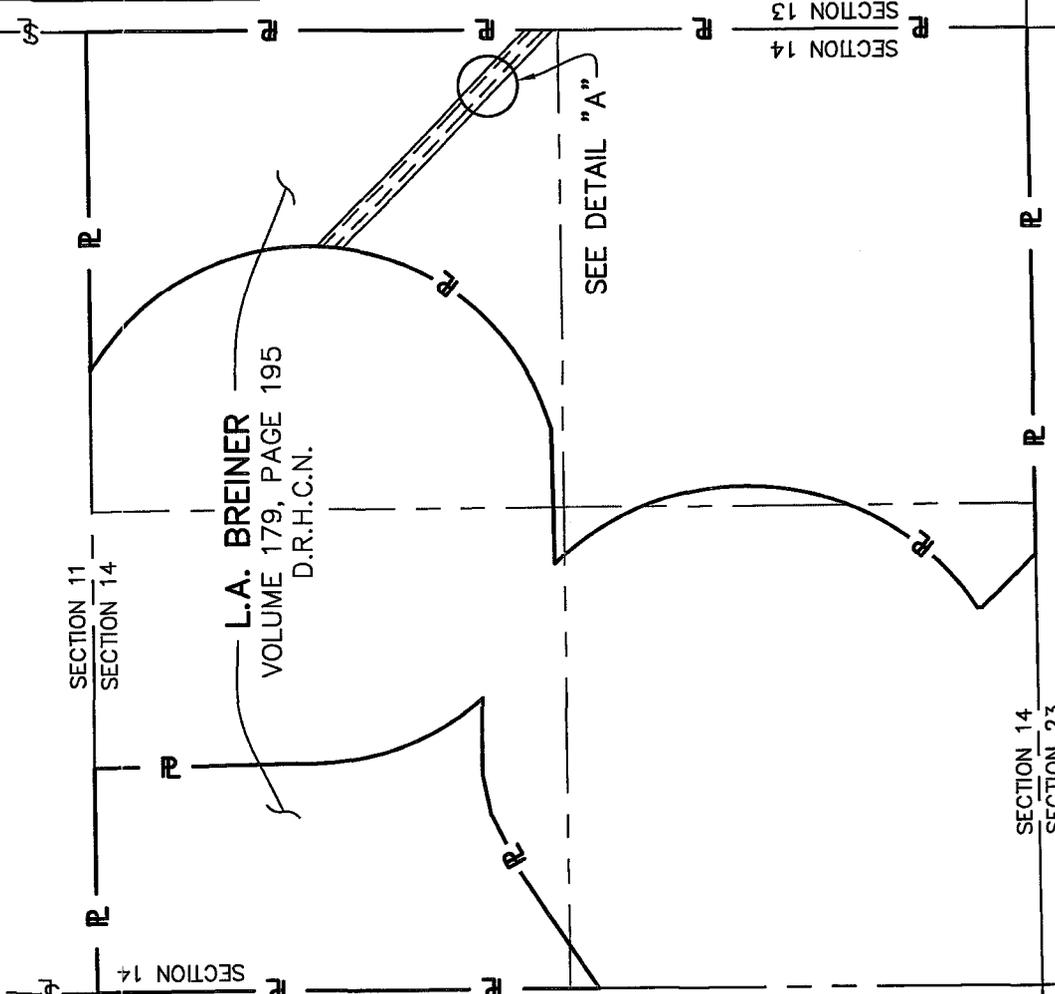
\_\_\_\_\_  
Affix Seal Here

Grantor's Initials \_\_\_\_\_

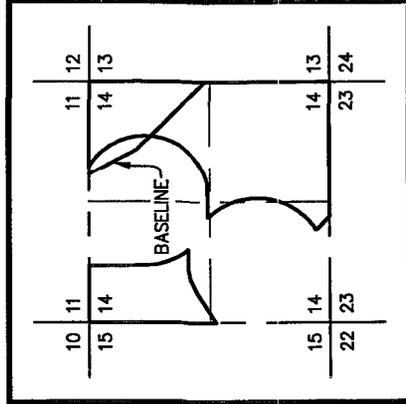
# HOLT COUNTY, NEBRASKA

T-32-N, R-15-W, SECTION 14  
ML-NE-HT-30100.000

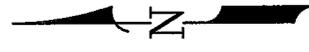
**LEGEND**  
 P PROPERTY LINE  
 S SECTION LINE  
 T TEMPORARY WORKSPACE  
 W WORKSPACE  
 A ADDITIONAL TEMPORARY WORKSPACE  
 R RIGHT OF WAY  
 D DEED RECORDS OF HOLT COUNTY, NEBRASKA  
 N.T.S. NOT TO SCALE



DETAIL "A"  
N.T.S.



VICINITY MAP  
N.T.S.



TRACT LEGAL DESCRIPTION:  
IRREGULAR TRACT IN SECTION 14,  
T-32-N, R-15-W

**NOTE:**  
THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 1,664'±  
AREA OF PERMANENT EASEMENT: 1.9 ACRES  
AREA OF TEMPORARY WORKSPACE: 2.3 ACRES  
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.0 ACRE

		<b>TransCanada</b> <i>In business to deliver</i>	
<b>KEYSTONE XL PROJECT</b>			
<b>EASEMENT AREA</b>			
<b>ACROSS THE PROPERTY OF</b>			
<b>L.A. BREINER</b>			
<b>ML-NE-HT-30100.000</b>			
PROJECT:	XL	<b>EXHIBIT A</b>	
APPROVED BY:	SLR	DRAWING NUMBER:	XL-08-ML-SK-3282
NO.		REVISION	DATE
SCALE:	1" = 1000'	DATE:	11/10/14
DRAWN BY:	JN	CHECKED BY:	ALS



# HOLT COUNTY, NEBRASKA

T-32-N, R-15-W, SECTION 24

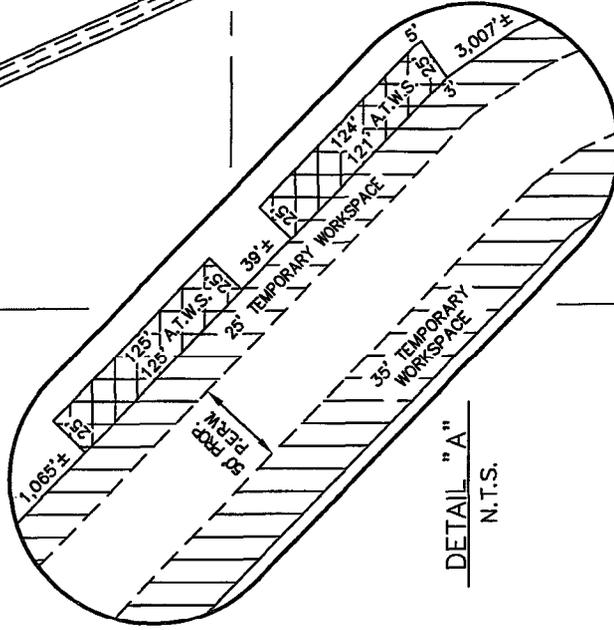
ML-NE-HT-30110.000

PROPERTY LINE  
SECTION LINE  
PROPOSED  
ADDITIONAL TEMPORARY WORKSPACE  
PERMANENT EASEMENT & RIGHT OF WAY  
DEED RECORDS OF HOLT COUNTY, NEBRASKA

LEGEND  
P  
S  
PROP.  
A.T.W.S.  
P.E.R.W.  
D.R.H.C.N.

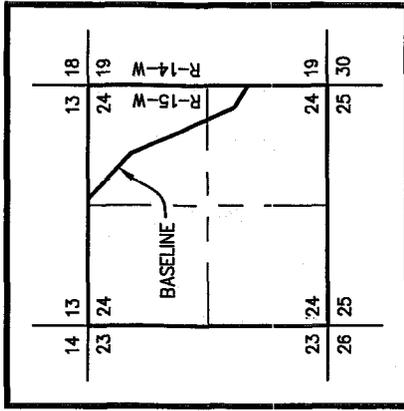
SECTION 13  
SECTION 24  
L.A. BREINER AND  
SANDRA K. BREINER  
VOLUME 202, PAGE 501  
D.R.H.C.N.

SEE DETAIL "A"



DETAIL "A"  
N.T.S.

VICINITY MAP  
N.T.S.



0 500 1000  
SCALE: 1" = 1,000'

TRACT LEGAL DESCRIPTION:  
ALL OF SECTION 24,  
T-32-N, R-15-W

**NOTE:**  
THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 4,434'±  
AREA OF PERMANENT EASEMENT: 5.1 ACRES  
AREA OF TEMPORARY WORKSPACE: 6.2 ACRES  
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.1 ACRE

KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF			
L.A. BREINER AND			
SANDRA K. BREINER			
ML-NE-HT-30110.000			
PROJECT:	XL EXHIBIT A		
APPROVED BY:	DRAWING NUMBER		
SLR	XL-08-ML-SK-3659		
NO.	REVISION		
	DATE		
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 1000'	10/27/14	JN	ALS

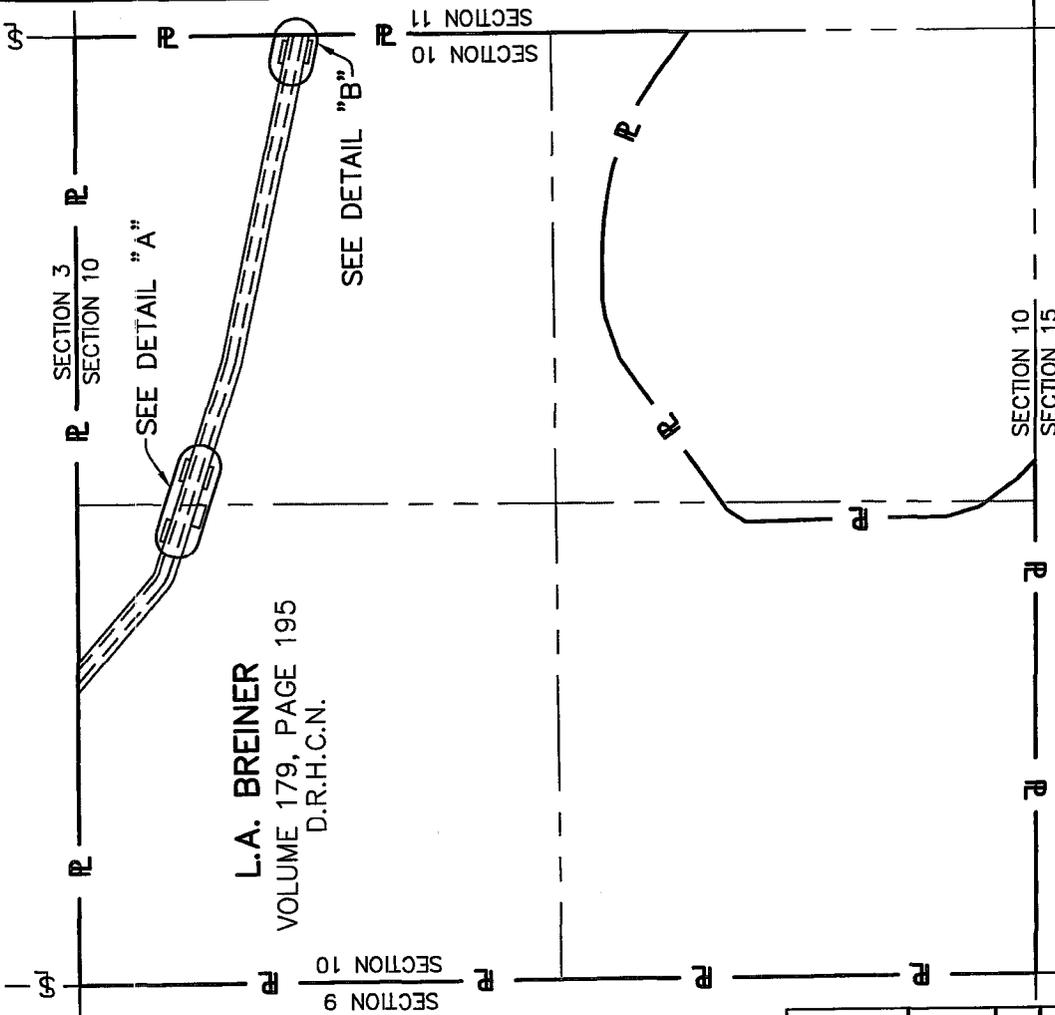


# HOLT COUNTY, NEBRASKA

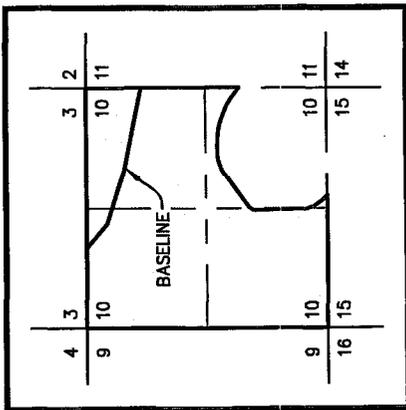
T-32-N, R-15-W, SECTION 10  
ML-NE-HT-40220.000

PROPERTY LINE  
SECTION LINE  
PROPOSED  
ADDITIONAL TEMPORARY WORKSPACE  
PERMANENT EASEMENT & RIGHT OF WAY  
DEED RECORDS OF HOLT COUNTY, NEBRASKA

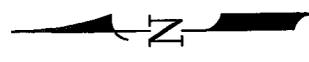
LEGEND  
P  
S  
PROF.  
A.T.W.S.  
P.E.R.W.  
D.R.H.C.N.



L.A. BREINER  
VOLUME 179, PAGE 195  
D.R.H.C.N.



VICINITY MAP  
N.T.S.



TRACT LEGAL DESCRIPTION:  
N/2 SW/4, SE/4 EXCLUDING  
APPROXIMATELY 133 ACRES OF  
SECTION 10,  
T-32-N, R-15-W

**NOTE:**  
THIS SKETCH DOES NOT MEET THE MINIMUM  
STANDARDS FOR PROPERTY BOUNDARY SURVEYS.  
IT WAS NOT DERIVED FROM AN ON THE GROUND  
SURVEY BUT IS INTENDED FOR RIGHT OF WAY  
PURPOSES ONLY. THE EXACT LOCATIONS AND  
MEASUREMENTS ARE APPROXIMATE AND MAY  
VARY, BUT THE WIDTH OF THE EASEMENT AREA  
TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 3,784'±  
AREA OF PERMANENT EASEMENT: 4.4 ACRES  
AREA OF TEMPORARY WORKSPACE: 5.3 ACRES  
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.5 ACRE

KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF			
L.A. BREINER			
ML-NE-HT-40220.000			
PROJECT:	XL EXHIBIT A		
APPROVED BY:	DRAWING NUMBER		
SLR	XL-08-ML-SK-3654		
NO.	REVISION		
	DATE		
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 1000'	11/04/14	JN	ALS

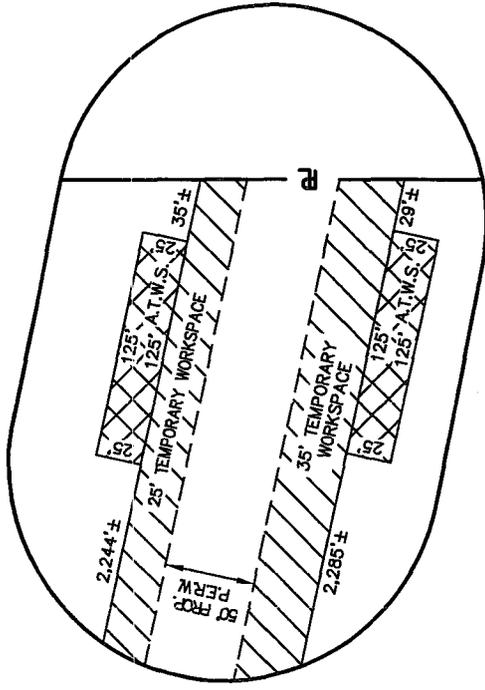


# HOLT COUNTY, NEBRASKA

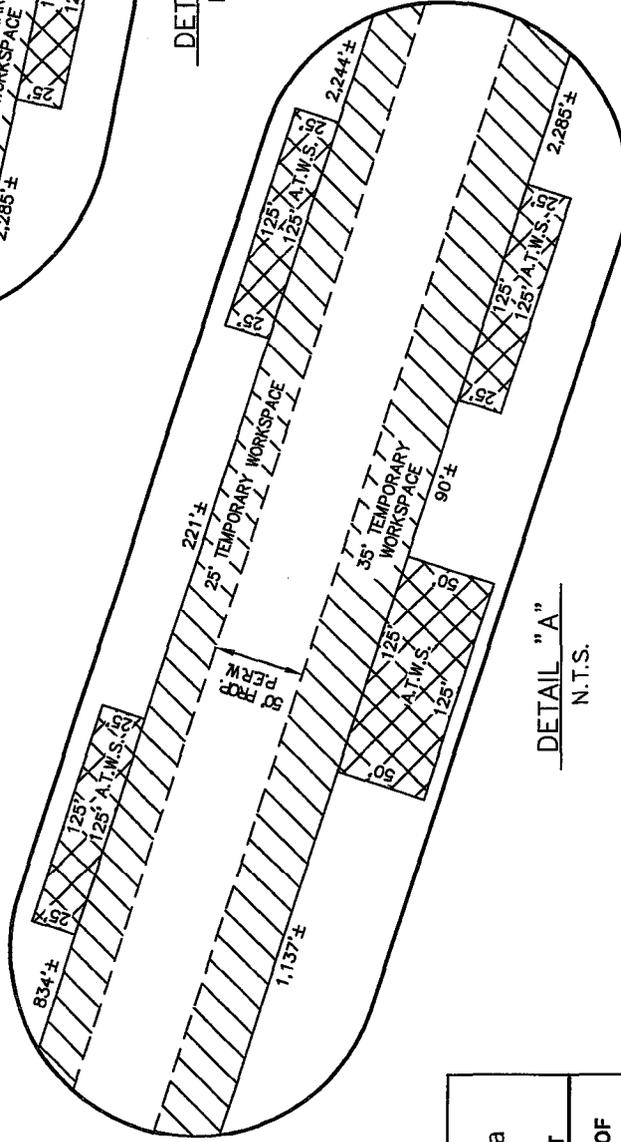
## T-32-N, R-15-W, SECTION 10

### ML-NE-HT-40220.000

LEGEND:  
 P PROPERTY LINE  
 PROP. PROPOSED  
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE  
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



DETAIL "B"  
N.T.S.



DETAIL "A"  
N.T.S.

**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  
 L.A. BREINER  
 ML-NE-HT-40220.000

PROJECT	XL	EXHIBIT A
APPROVED BY		DRAWING NUMBER
SLR		XL-08-ML-SK-3654
NO.		REVISION
		DATE
SCALE	DATE	DRAWN BY
N.T.S.	11/04/14	JN
		CHECKED BY
		ALS



**Attachment No. 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE )  
COMPANY, a New York Corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RICHARD ANDREW, JANE ANDREW, )  
LUKE ANDREW, and BRYCE ANDREW, )  
 )  
Defendants. )

CASE NO. \_\_\_\_\_

**COMPLAINT**

**COMES NOW** Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

**PARTIES**

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

**JURISDICTION AND VENUE**

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

### GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$ , Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

### **FIRST CLAIM: NEGLIGENCE**

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

**SECOND CLAIM: TRESPASS**

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

**WHEREFORE** Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

**JURY DEMAND**

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,  
Plaintiff,

By:     /s/ Albert M. Engles      
ENGLES, KETCHAM, OLSON, & KEITH, P.C.  
1350 Woodmen Tower  
1700 Farnam Street  
Omaha, Nebraska 68102  
(402) 348-0900  
(402) 348-0904 (Facsimile)  
Albert M. Engles, #11194  
Dan H. Ketcham, #18930  
Michael L. Moran, #24042  
James C. Boesen, #24862

**Attachment No. 5**

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-HT-40220.000

I/we L. A. Breiner and Sandra K. Breiner, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Four thousand Five Hundred Fifteen Dollars and No Cents (\$4,515.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

**N/2, SW/4, Part of SE/4**

**Section 10, Township 32N, Range 15W**

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-HT-30110.000

I/we L.A. and Sandra K. Breiner, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Nine Hundred Sixty Four Dollars and No Cents (\$2,964.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

**All**

**Section 24, Township 32N, Range 15W**

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

**TRANSCANADA KEYSTONE PIPELINE, LP**

**ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT**

Tract No. : ML-NE-HT-30100.000

I/we L.A. and Sandra K. Breiner, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Ninety Two Dollars and No Cents (\$1,092.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

**Irregular Tract**

**Section 14, Township 32N, Range 15W**

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_.

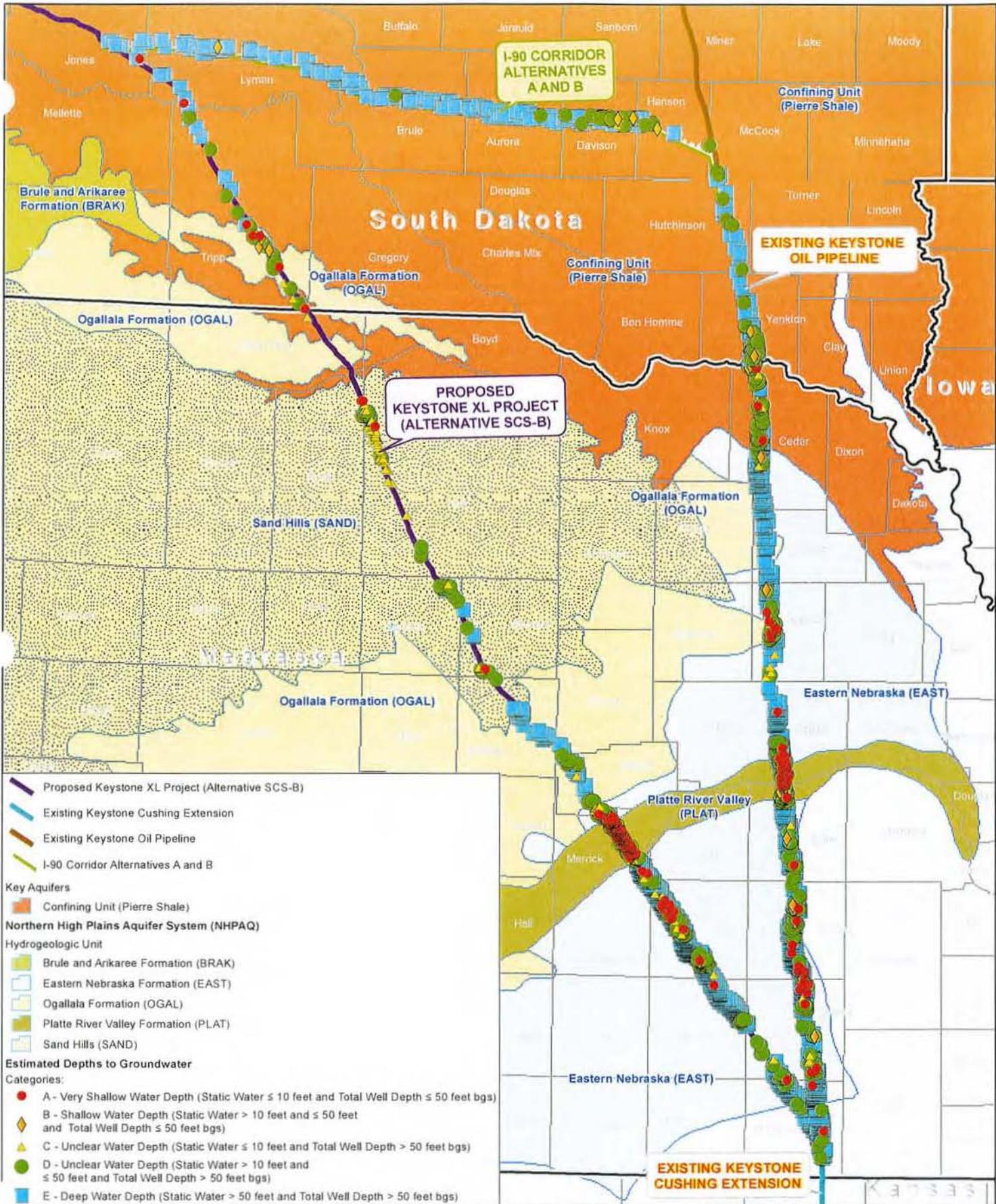
\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Owner/Owner Representative Name

\_\_\_\_\_  
Owner/Owner Representative Name

**Attachment No. 6**



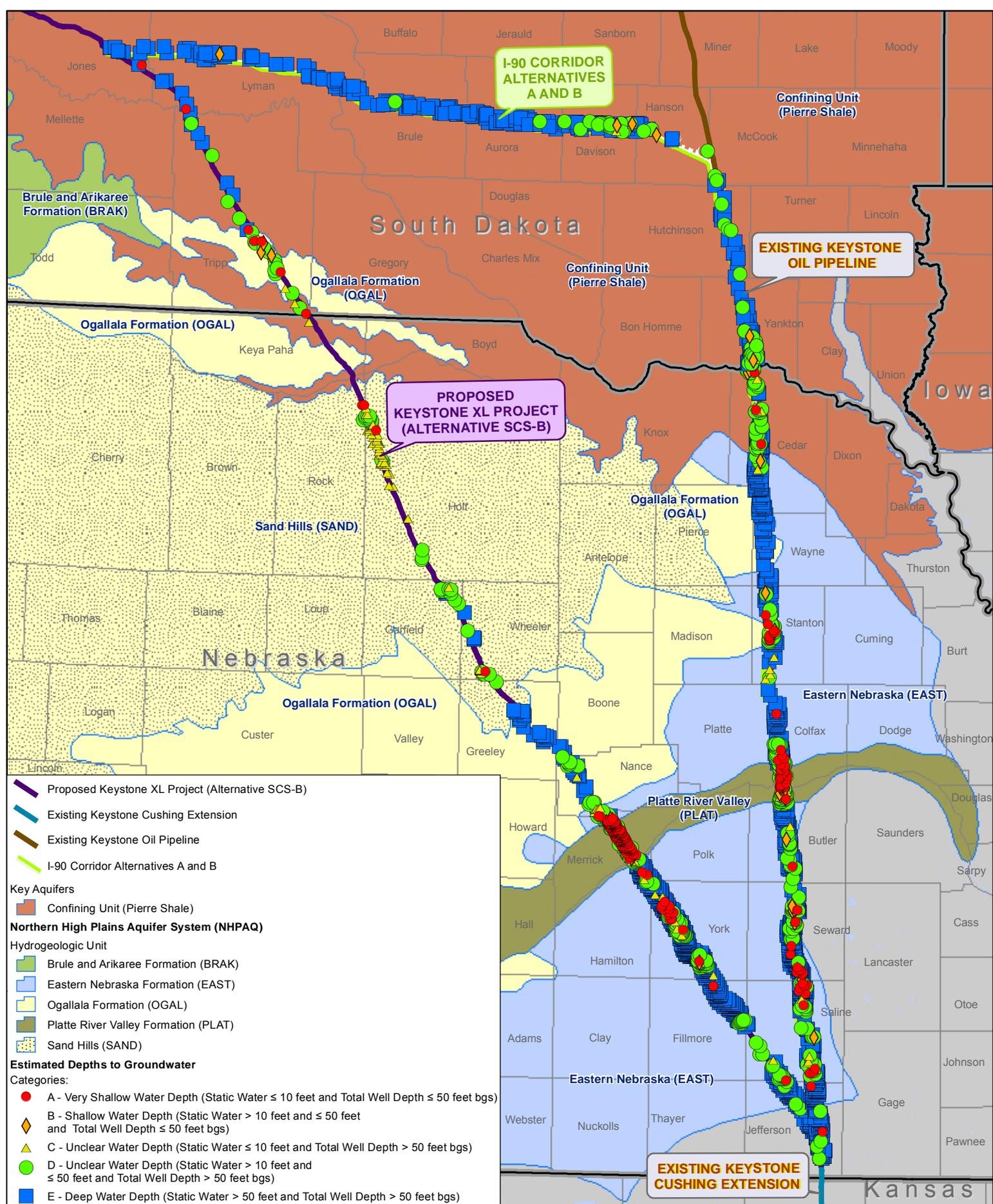
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



### KEYSTONE XL PROJECT

Figure 4.3.3-8  
I-90 Corridor Alternatives A and B  
Key Aquifers and Potable Water Wells  
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

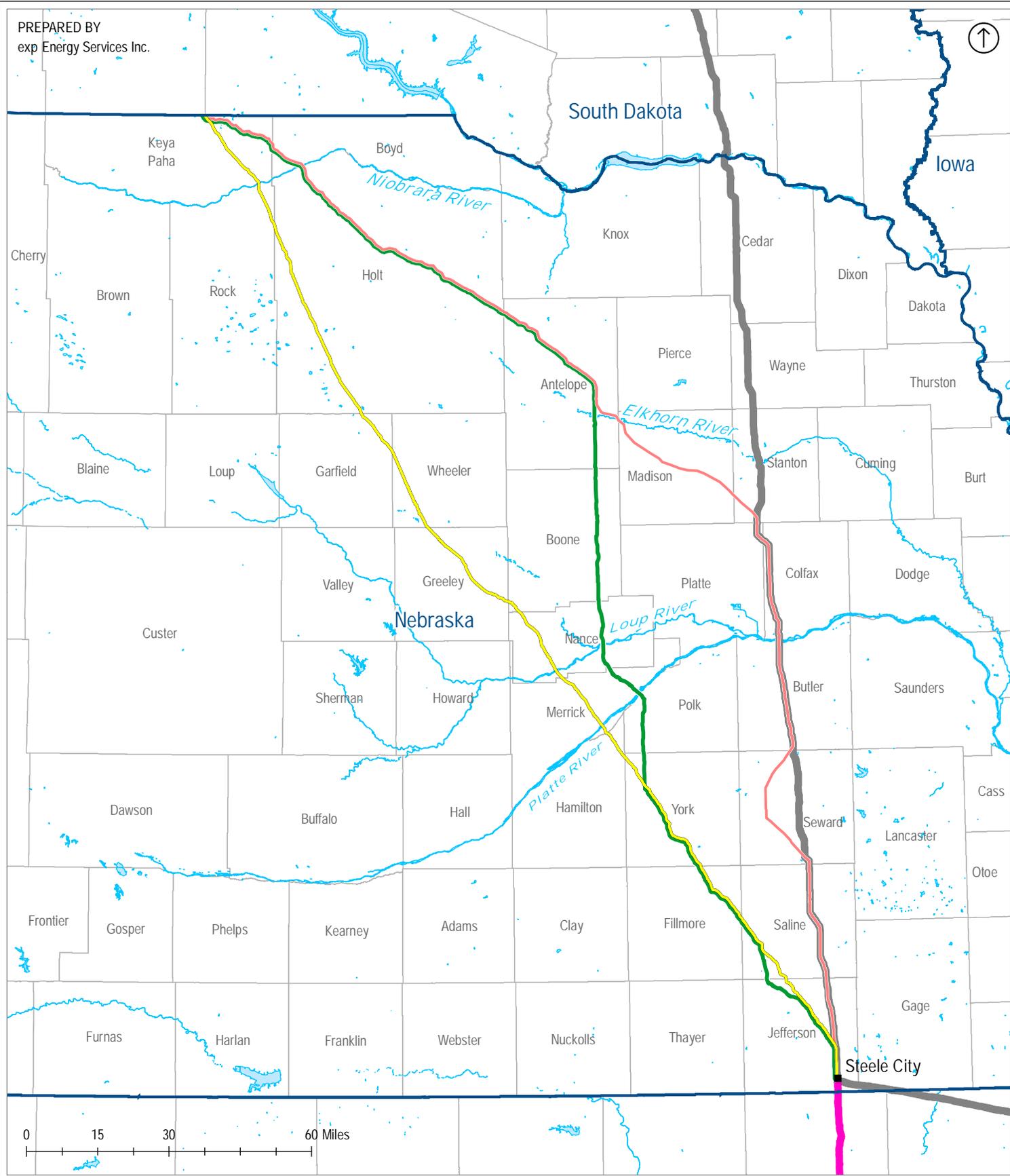
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

### KEYSTONE XL PROJECT

Figure 4.3.3-8  
 I-90 Corridor Alternatives A and B  
 Key Aquifers and Potable Water Wells  
 within 2-mile Corridor

**Attachment No. 7**

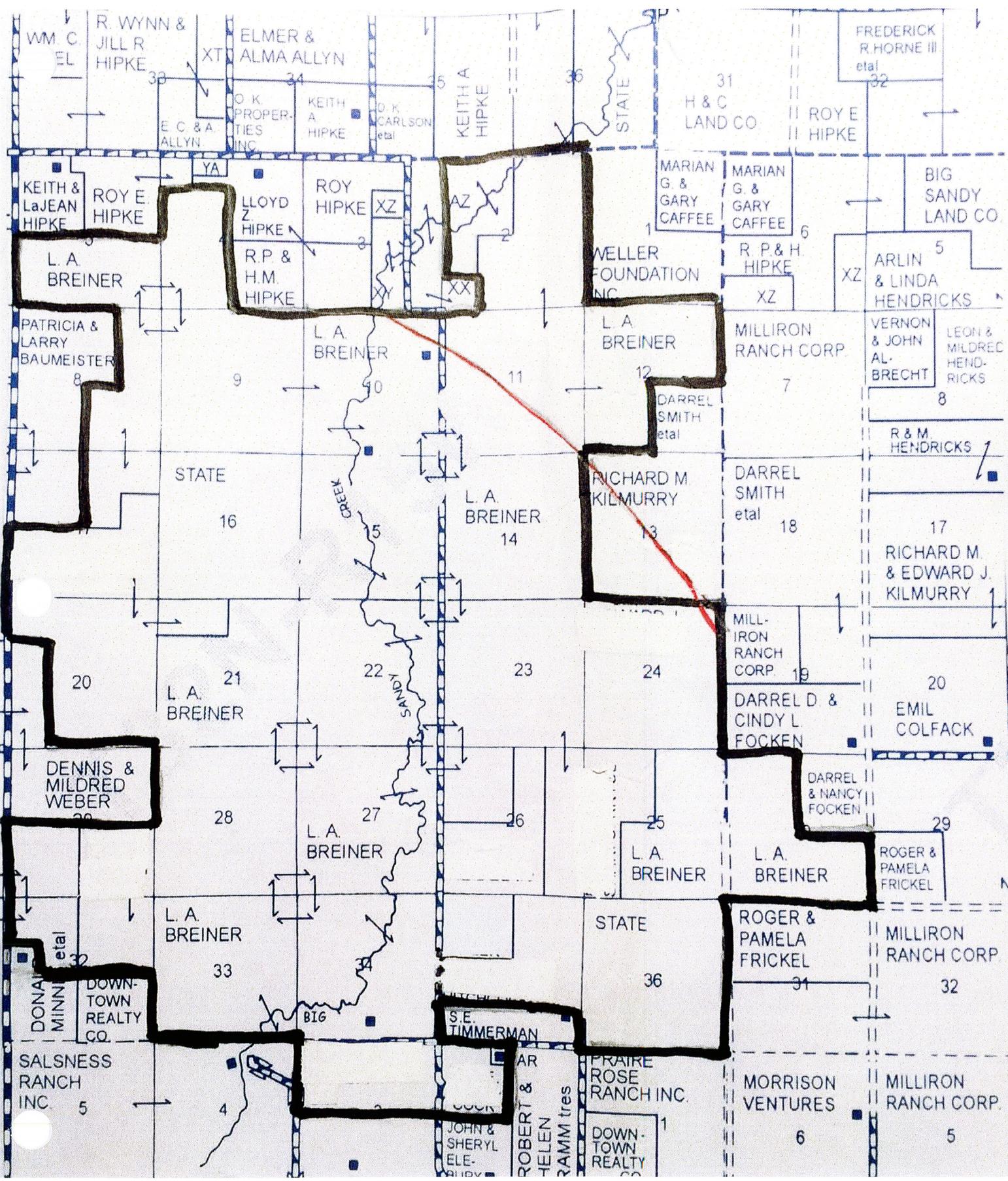


**LEGEND**

	PREFERRED ROUTE		WATERBODY
	SANDHILLS ALTERNATIVE ROUTE		STATE BOUNDARY
	KEYSTONE MAINLINE ALTERNATIVE ROUTE		COUNTY BOUNDARY
	KEYSTONE MAINLINE (PHASE I)		
	KEYSTONE CUSHING EXTENSION (PHASE II)		

**KEYSTONE XL PROJECT**  
**FIGURE 2.2-2**  
PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

**Attachment No. 8**



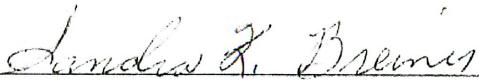
**Attachment 8.1**

Sandra Breiner  
47224 889<sup>th</sup> RD  
Stuart NE 68780

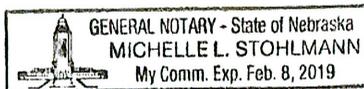
To Whom It May Concern,

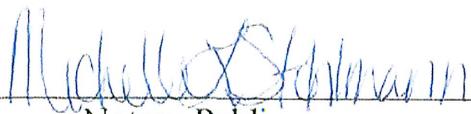
I, Sandra Breiner met with Diana Steskal on Sunday, March 19<sup>th</sup>, 2017 at our resident of 47224 899<sup>th</sup> RD, Stuart NE 68780. I took her on a tour of our property, which lies in the proposed preferred route of the Keystone XL pipeline route. Diana took photos of the blow outs and the sandy soil on the property, we visited about the concerns of land reclamation.

Dated this the 20 day March 2017

  
\_\_\_\_\_  
Signature of Affiant

Sworn to subscribed before me, this 20<sup>th</sup> day March 2017



  
\_\_\_\_\_  
Notary Public

**Attachment 8.2**

March 19, 2017

#1



#2



March 17, 2017

#13



#14

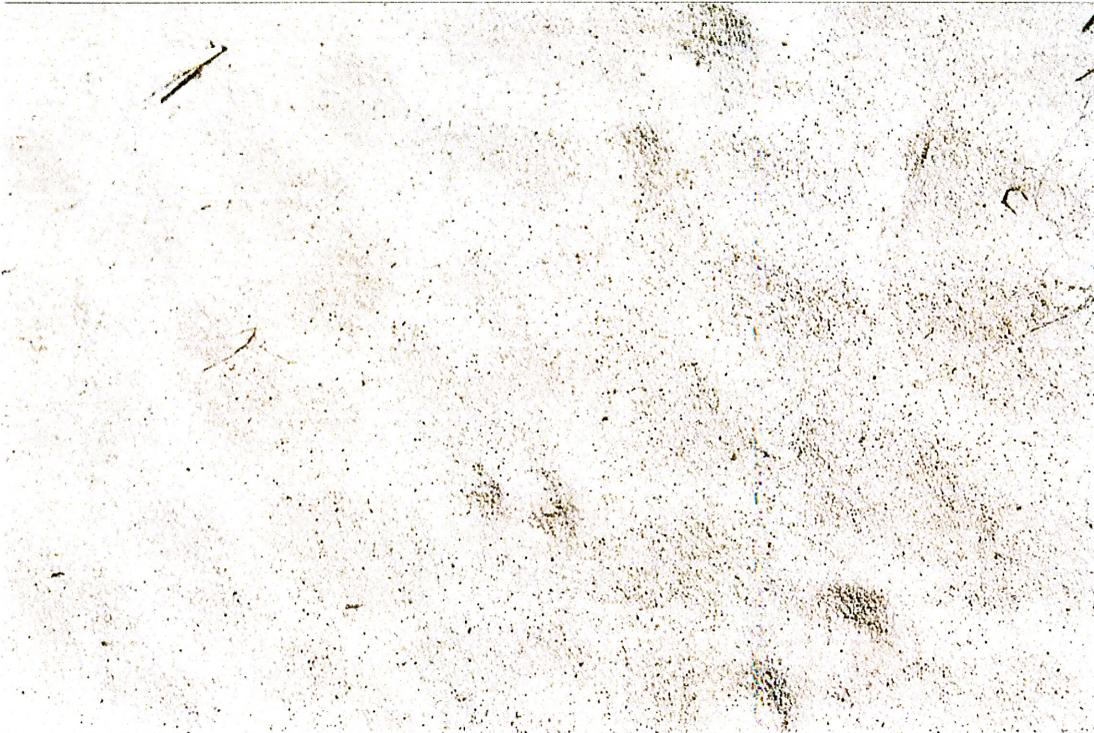


March 19, 2017

#5



#6



March 19, 2000

17



18



March 19, 2017

#9



#10



March 19, 2017

#11



#12



#13



#14



**Attachment 8.3**

Blow outs are a big problem when ranching in the sandhills. When the ground cover is disturbed, wind keeps making the blowout worse and it takes a lifetime of work to get it healed up again, if you ever do.

Sander Breiner  
Breiner Ranch