

Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
James Carlson in
Support of Landowner Intervenors**

State of Nebraska)
) ss.
Polk County)

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

2 A: My name is James “Jim” Carlson. I am the president of C.R.C., Inc.

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, multiple fields and they are located in Polk County. My wife and I own
11 land through Trusts that would be affected and land owned by my corporation
12 C.R.C., Inc. would also be affected.

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

16 A: Yes.

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

2 A: Farmer.

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

4 A: Christine.

5 **Q: Do you have children?**

6 A: Yes.

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

9 A: Yes.

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

13 A: Land has been in the family for over 100 years, hundred and one years to be exact.
14 We are being awarded at the Polk County Fair this summer as Century Family
15 Farm members. The pipeline will be crossing 359 acre center-pivot erected in
16 2017.

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

18 A: Yes.

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

21 A: Yes.

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

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

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

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

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

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

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

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

17 A: Yes.

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

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

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

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

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

28 A: No, they have not.

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

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

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

8 A: No, they did not.

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

11 A: Yes, they did.

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

14 A: Yes, they did.

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

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

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

27 A: No, I do not.

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

1 A: Yes, they did.

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

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

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

14 A: Yes, they are. TransCanada condemned multiple properties.

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

17 A: Yes, I have.

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

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

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

1 A: Yes, I have a number of significant concerns and worries about the document and
2 how the language included and the language not included potentially negatively
3 impacts my land and thereby potentially negatively impacts my community and
4 my state.

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

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

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

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

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

21 A: It is not fair to the landowner, the county, or the State. It is not fair to the
22 landowner because they want to have my land forever for use as they see fit so
23 they can make a daily profit from their customers. If I was to lease ground from
24 my neighbor I would typically pay twice a year every year as long as they granted
25 me the rights to use their land. That only makes sense – that is fair. If I was going
26 to rent a house in town I would typically pay monthly, every month until I gave up
27 my right to use that house. By TransCanada getting out on the cheap and paying
28 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
29 revenue collection on the money I would be paid and then pay taxes on and

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

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

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

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

22 A: No.

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

27 A: No.

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

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

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

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

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

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

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

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

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

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

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

10 A: Yes.

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

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

1 TransCanada and without further provision for compensation for the Landowner is
2 not conducive to protection of property rights.

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

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

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

26 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
27 Nemaha County, Nebraska landowner farmers who accidentally struck two
28 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
29 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged

negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

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

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

Q: What is the next concern you have?

A: The Easement also allows some rights for Landowner but restricts them at the same time and again at the sole and unilateral decision making of TransCanada. TransCanada will determine if the actions of Landowner might in anyway endanger or obstruct or interfere with TransCanada's full use of the Easement or any appurtenances thereon to the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether

1 during growing season or not, to travel “within and along Easement Area on foot
2 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
3 retain the rights to prevent any landowner activity that it thinks may “unreasonably
4 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
5 undefined and unilateral restrictions are not conducive to the protection of
6 property rights or economic interest.

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

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

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

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

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

25 A: There are more vague concepts solely at the determination of TransCanada such as
26 “as nearly as practicable” and “pre-construction position” and “extent reasonably
27 possible.” There is nothing here that defines this or provides a mechanism for
28 documenting or memorializing “pre-construction position” so as to minimize
29 costly legal battles or wasted Landowner time attempting to recreate the soil

1 condition on their fields or pasture. Such unilateral powers would negatively affect
2 Landowners property are not conducive to the protection of property rights or
3 economic interest.

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

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

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

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

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

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

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

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

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

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

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

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

1 xx. “pre-construction grade”

2 xxi. “various engineering factors”

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

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

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

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

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

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

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

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

1 **compensation for all of what they proposed to take from you so that their tar**
2 **sands pipeline could be located across your property?**

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

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

10 A: No, never.

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

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

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

17 A: Yes, it is.

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

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

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

26 A: No, I did not.

27 **Q: Why not?**

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

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

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

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

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

15 A: No, they have not.

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

19 A: No, they have not.

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

22 A: Yes, I am.

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

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

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

3 A: No, they have not.

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

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

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

17 A: No, it has not.

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

21 A: No, I do not.

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

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

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

28 A: Yes, I do.

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

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

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

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

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

10 A: No, of course not.

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

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

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

18 A: Well, yes I have.

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

23 A: No, of course not.

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

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

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

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

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

22 A: No, I do not.

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

27 A: Well yes, of course I do. We would not be able to build many, if any, types of
28 structures directly across or touching the easement, and it would be unwise and I
29 would be uncomfortable to build anything near the easement for fear of being

1 blamed in the future should any damage or difficulty result on my property in
2 regards to the pipeline.

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

4 A: Well yes, of course.

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

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

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 I-90 corridor alternative route, specifically for the portion**
24 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
25 **your testimony, is in the public interest of Nebraska?**

26 A: No, I do not.

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

1 A: No, I do not.

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

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

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

17 A: First of all, not all jobs are created equally. Most jobs that are created, whether
18 temporary or on a permanent basis, don’t come with a project that has all the
19 potential and foreseeable negative impacts, many of which we have discussed here
20 and other witnesses throughout the course of this hearing have and will discuss. If
21 I decide to hire and employ someone to help me out in my farming or ranching
22 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
23 to my land or my town or my county or my state. And I’ve hired someone who is
24 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
25 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
26 jobs are not created equal. Additionally, I understand from what I’m familiar with
27 from TransCanada’s own statements that the jobs numbers they originally touted
28 were determined to be a minute fraction of the permanent jobs that had been
29 projected. According to their answer to our Interrogatory No. 191, TransCanada

1 has created only thirty-four (34) jobs within Nebraska working specifically on
2 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
3 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
4 Further, according to their answer to Interrogatory No. 199, TransCanada would
5 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
6 constructed on its Preferred Route or its Mainline 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?**

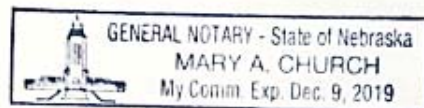
20 **A:** Yes, they are.

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.**

James Carlson
James Carlson

Subscribed and Sworn to me before this 1 day of ^{June}~~May~~, 2017.

Mary A Church
Notary Public



Attachment No. 1



S.035
T.015N
R.004W

C.R.C., Inc.

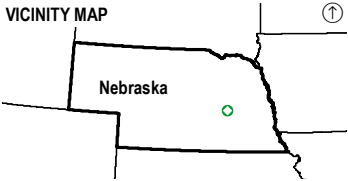
S.002
T.014N
R.004W

IMAGERY: NAIP 2016

0 250 500 1,000 Feet



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
C.R.C., Inc.

TRACT NO. ML-NE-PO-40080.000
STATE: Nebraska
COUNTY: Polk
SECTION: 002
TOWNSHIP: 014N
RANGE: 004W

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

S. 035
T. 015 N
R. 004 W

Christine H. Carlson Living Trust
James D. Carlson Living Trust
Christine H. Carlson
James D. Carlson






S. 003
T. 014 N
R. 004 W

S. 002
T. 014 N
R. 004 W



Christine H. Carlson Living Trust
James D. Carlson Living Trust
Christine H. Carlson
James D. Carlson

TRACT NO.	ML-NE-PO-40100.000
STATE:	Nebraska
COUNTY:	Polk
SECTION:	002
TOWNSHIP:	014N
RANGE:	004W

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

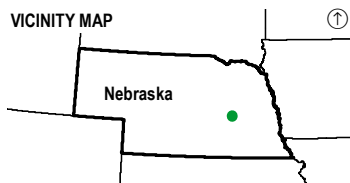
S. 027
T. 015 N
R. 004 W



Christine H. Carlson Living Trust
James D. Carlson Living Trust
Christine H. Carlson
James D. Carlson





S. 035
T. 015 N
R. 004 W

S. 034
T. 015 N
R. 004 W



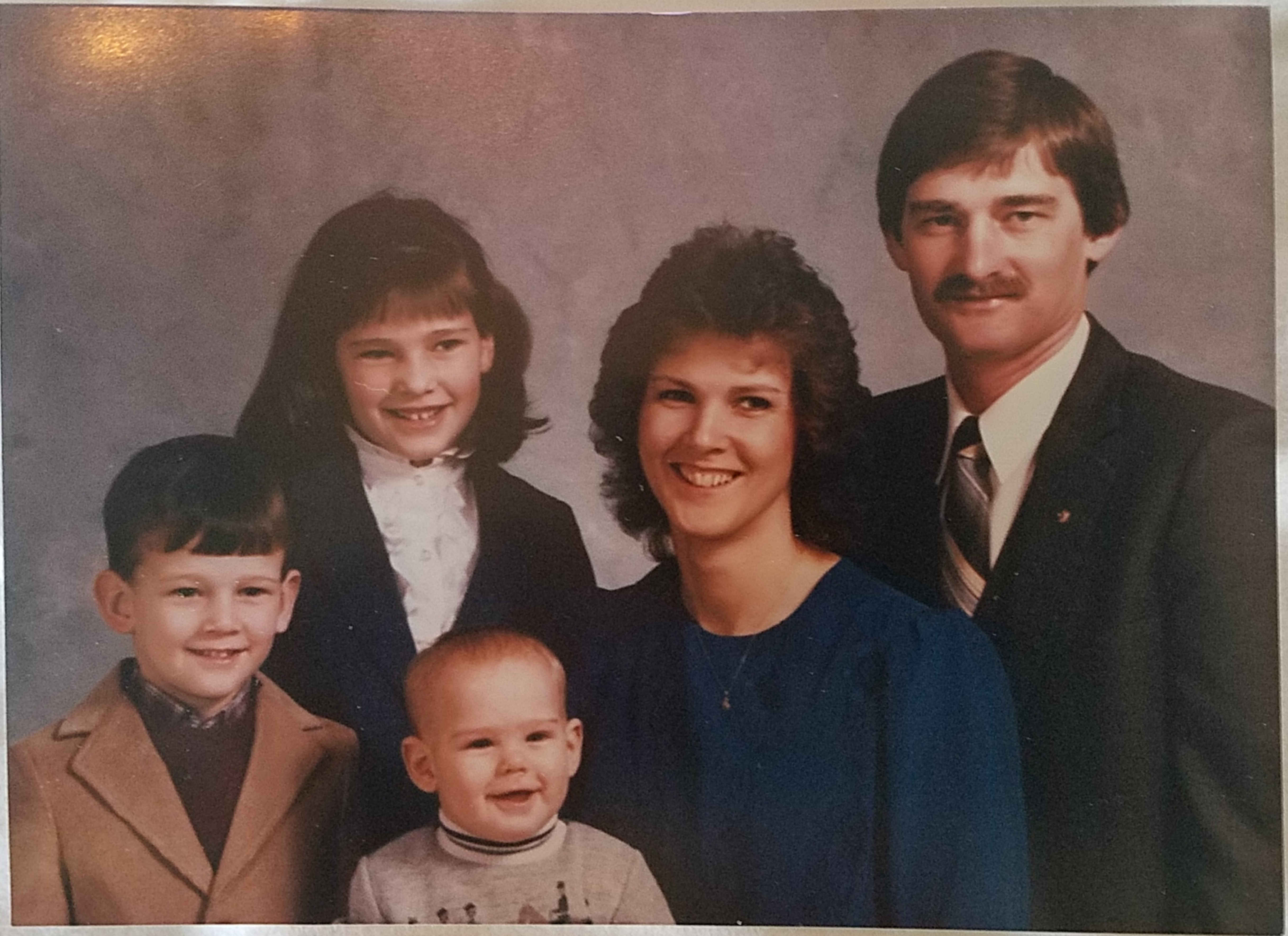
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James D. Carlson Living Trust
Christine H. Carlson
James D. Carlson

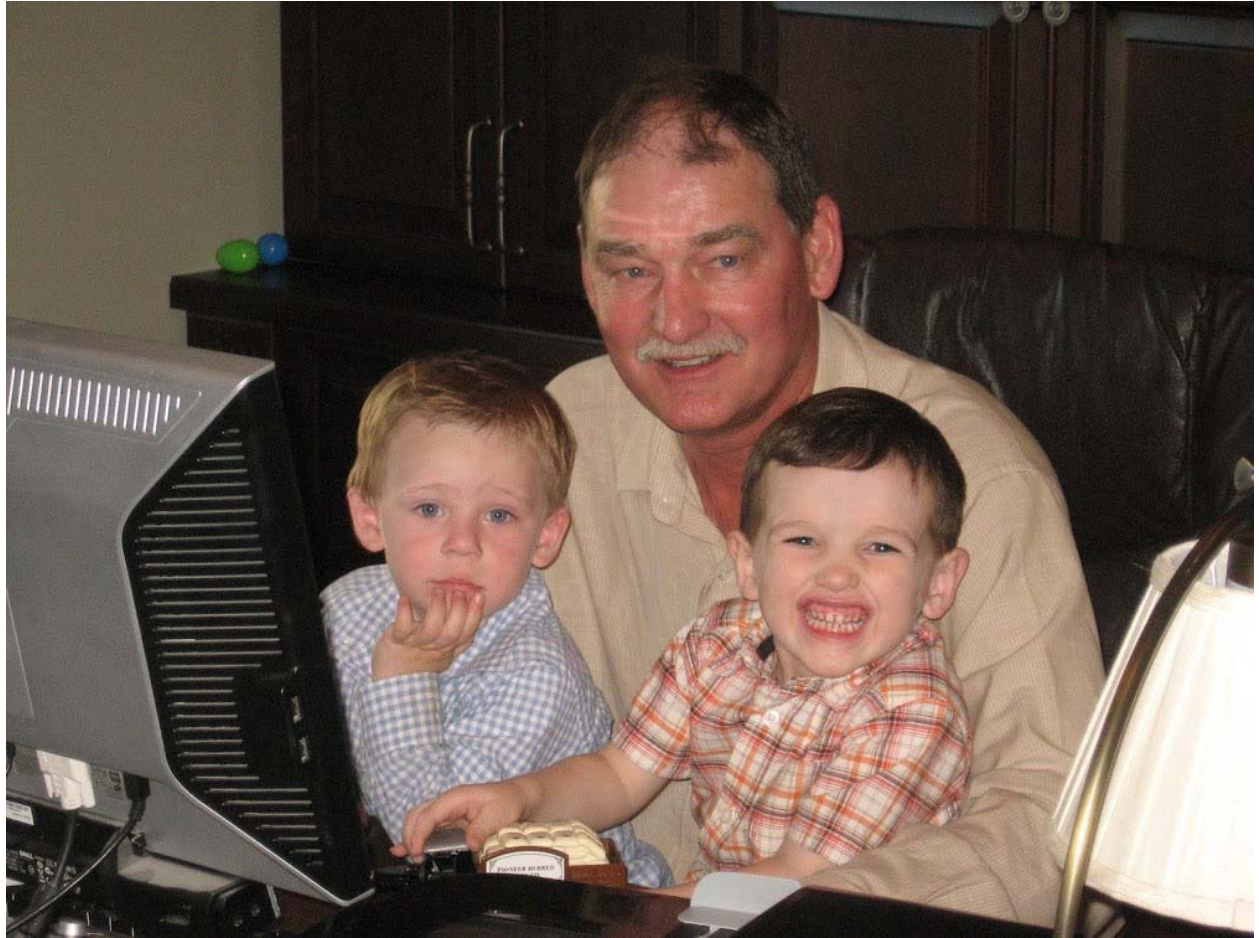
TRACT NO.	ML-NE-PO-40025.000
STATE:	Nebraska
COUNTY:	Polk
SECTION:	035
TOWNSHIP:	015N
RANGE:	004W

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

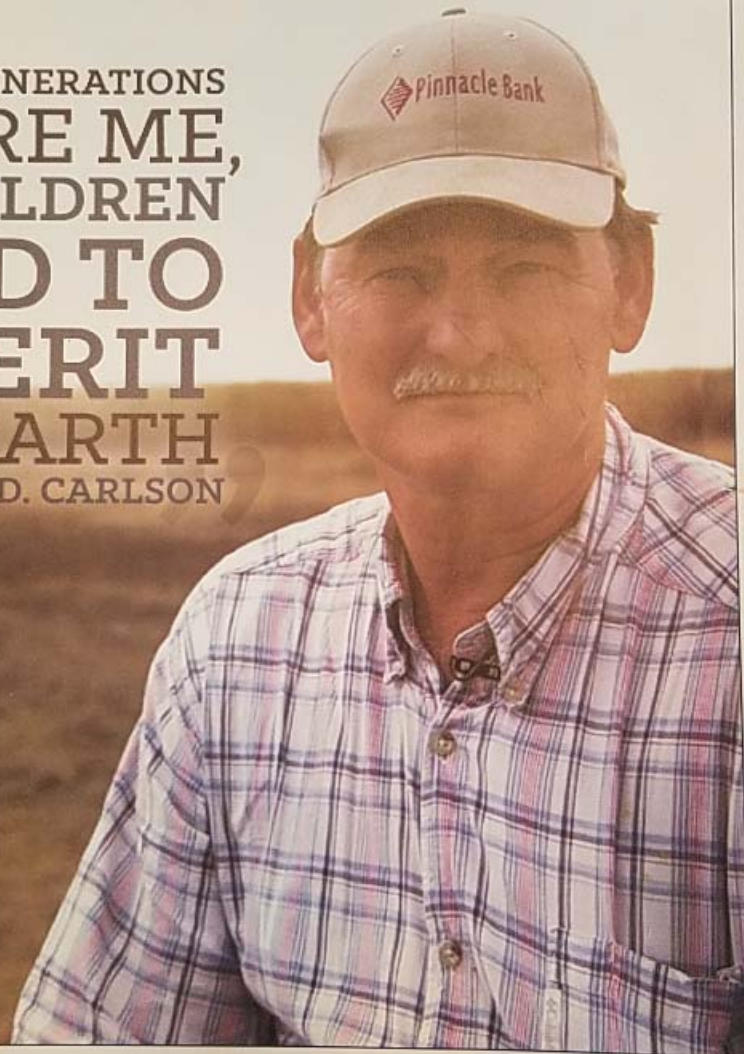
Attachment No. 2







“LIKE FIVE GENERATIONS
BEFORE ME,
MY CHILDREN
NEED TO
INHERIT
THIS EARTH
- JIM D. CARLSON



Attachment No. 3

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

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-PO-40080.000

**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**"), **C.R.C., Inc., a corporation**, whose mailing address is 529 133rd Road, Silver Creek, Nebraska 68663 (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 244 acres, more or less, situated in the County of Polk, in the State of Nebraska, being further described as the E1/2 of Section 2, T14N, R4W of the 6th P.M., as recorded in Book 80, Page 107 in the Deed Records of Polk County, Nebraska; less and except any conveyances heretofore made.

Less and Except: The South Half of the Southeast Quarter of Section 2, Township 14 North, Range 4 West of the 6th P.M., Polk County, Nebraska, as recorded in Book 88, Page 322.

(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):

C.R.C., 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

C.R.C., Inc., a corporation, on behalf of the corporation.

Notary Public Signature

Affix Seal Here


T-14-N, R-4-W, SECTION 2
ML-NE-PO-40080.000

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

C.R.C., INC.
VOLUME 80, PAGE
D.R.P.C.N.

SEE DETAIL "A"

SEE DETAIL "E"

SEE DETAIL "C" 

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:	4,148'±
AREA OF PERMANENT EASEMENT:	4.7 ACRES
AREA OF TEMPORARY WORKSPACE:	5.6 ACRES
L AREA OF TEMPORARY WORKSPACE:	0.6 ACRE

SHEET 1 OF 2



I



TransCanada
In business to deliver

**KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
C.R.C., INC.
ML-NE-PO-40080.000**

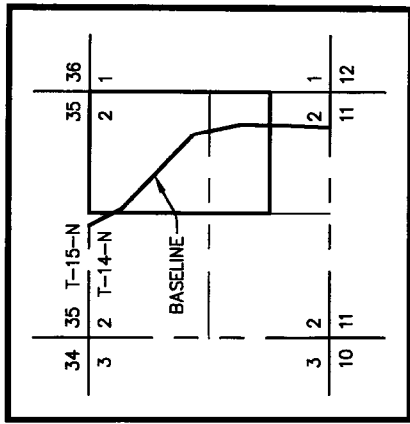
EXHIBIT A

APPROVED BY	DRAWING NUMBER
-------------	----------------

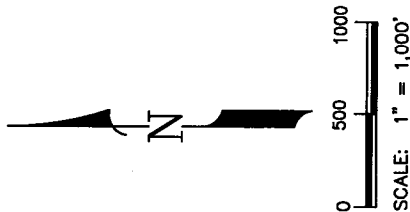
NO.	REVISION	DATE
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SCALE	DATE	DRAWN BY	CHECKED
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10/28/14	PB	ALS
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VICINITY MAP
N.T.S.

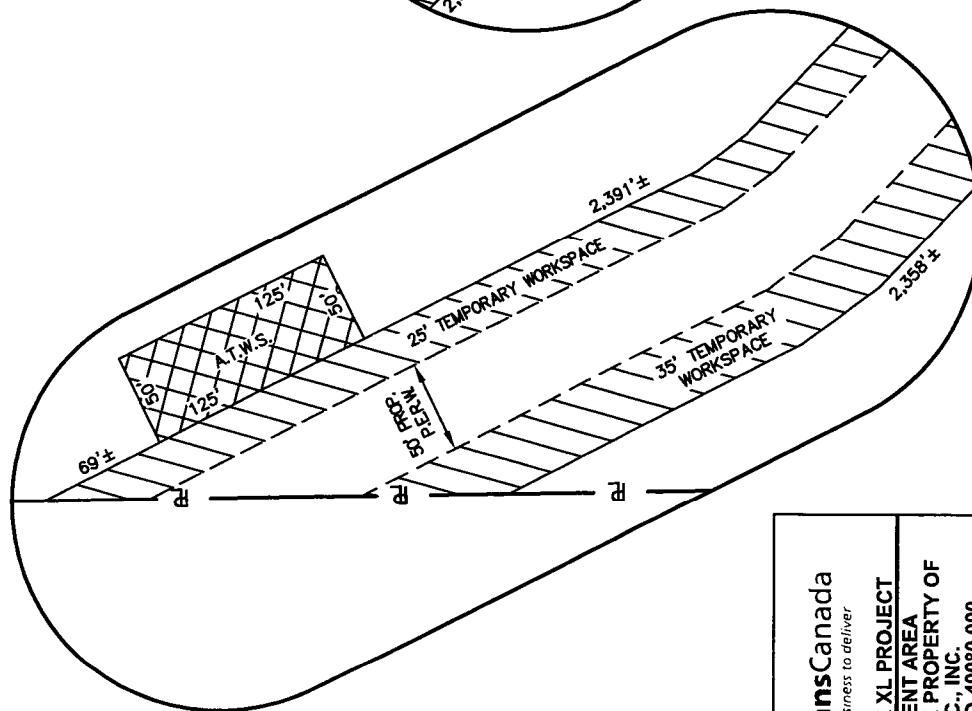


TRACT LEGAL DESCRIPTION:
NE/4, N/2 SE/4 OF SECTION 2,
T-14-N, R-4-W

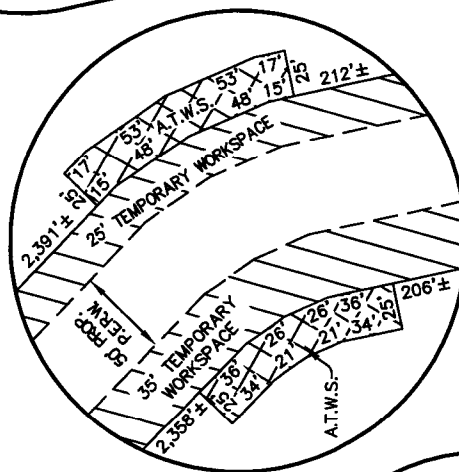
T-14-N, R-4-W, SECTION 2
ML-NE-PO-40080.000

LEGEND

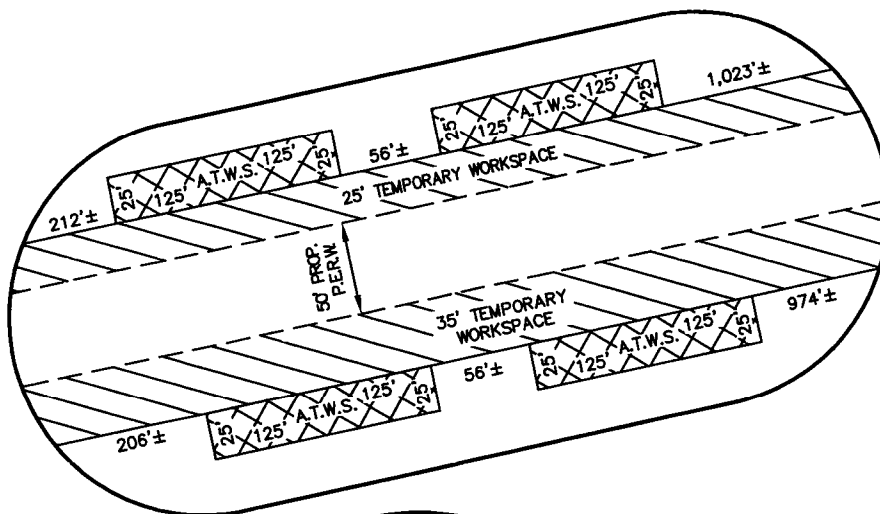
P	PROPERTY LINE
PR	PROPOSED
PROP.	ADDITIONAL TEMPORARY WORKSPACE
A.T.W.S.	PERMANENT EASEMENT & RIGHT OF WAY
P.E.R.W.	



DETAIL "A"
N.T.S.



DETAIL "B"
N.T.S.




DETAIL "C"
N.T.S.

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

SHEET 2 OF 2



 TransCanada <i>In business to deliver</i>		KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF C.R.C., INC. ML-NE-PO-40080.000	
PROJECT: XL		EXHIBIT A	
APPROVED BY		DRAWING NUMBER	
SLR		XL-08-ML-SK-3689	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/28/14	PR	AIS

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

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-PO-40025.000
ML-NE-PO-40100.000

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

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**"), **Christine H. Carlson and James D. Carlson, Trustees of the Christine H. Carlson Living Trust, and James D. Carlson and Christine H. Carlson, Trustees of the James D. Carlson Living Trust**, whose mailing address is 529 133rd Road, Silver Creek, Nebraska 68663 (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 2.80 acres, more or less, situated in the County of Polk, in the State of Nebraska, being further described as a 50' strip along the West side of the NW1/4 of Section 35, T15N, R4W of the 6th P.M., as recorded in Book 97, Page 201 in the Deed Records of Polk County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 82.94 acres, more or less, situated in the County of Polk, in the State of Nebraska, being further described as the N1/2 of the NW1/4 of Section 2, T14N, R4W of the 6th P.M., as recorded in Book 91, Page 549 and Book 91, Page 547 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):

Christine H. Carlson Living Trust

James D. Carlson Living Trust

Christine H. Carlson, Trustee

James D. Carlson, Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

**By Christine H. Carlson, Trustee of the Christine H. Carlson Living Trust, and Christine H. Carlson,
Trustee of the James D. Carlson Living Trust on behalf of said Trusts.**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

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

**By James D. Carlson, Trustee of the Christine H. Carlson Living Trust, and James D. Carlson,
Trustee of the James D. Carlson Living Trust on behalf of said Trusts.**

Notary Public Signature

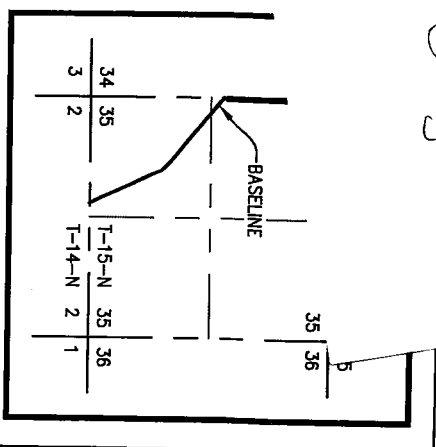
Affix Seal Here

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

POLK COUNTY, NEBRASKA

T-15-N, R-4-W, SECTION 35
ML-NE-PO-40025.000

0.5



VICINITY MAP
N.T.S.

N.T.S.

**CHRISTINE H. CARLSON
AND JAMES D.
CARLSON, TRUSTEES**
VOLUME 97, PAGE 201–202
D.R.P.C.N.

VOLUME 97, PAGE 201--202
D.R.P.C.N.

-SEE DETAIL "A"


DETAIL "A"
N.T.S.

N.T.S.

TRACT LEGAL DESCRIPTION:
IRREGULAR TRACT OF 2.8 ACRES IN
W/2 W/2 NW/4 OF SECTION 35,
T-15-N, R-4-W

0 250 500
SCALE: 1" = 500'

SCALE: 1" = 500'



TransCanada
In business to deliver

In business to deliver

KEYSTONE XL PROJECT

ACROSS THE PROPERTY OF
CHRISTINE H. CARLSON AND
JAMES D. CARLSON, TRUSTEES
ML-NE-PO-40025.000

EXHIBIT A

EXHIBIT A

APPROVED BY	DRAWING NUMBER

SLR	XL-08-ML-SK-377
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NO.	REVISION	DATE
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[illegible][illegible]

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[illegible][illegible]

SCALE	DATE	DRAWN BY	CHECK
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40/50/144	1
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I = 300	10/28/14	PB	ALL
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The new identity of Trow

ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.1 ACRE

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

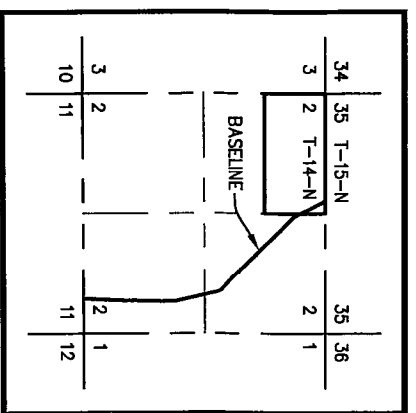
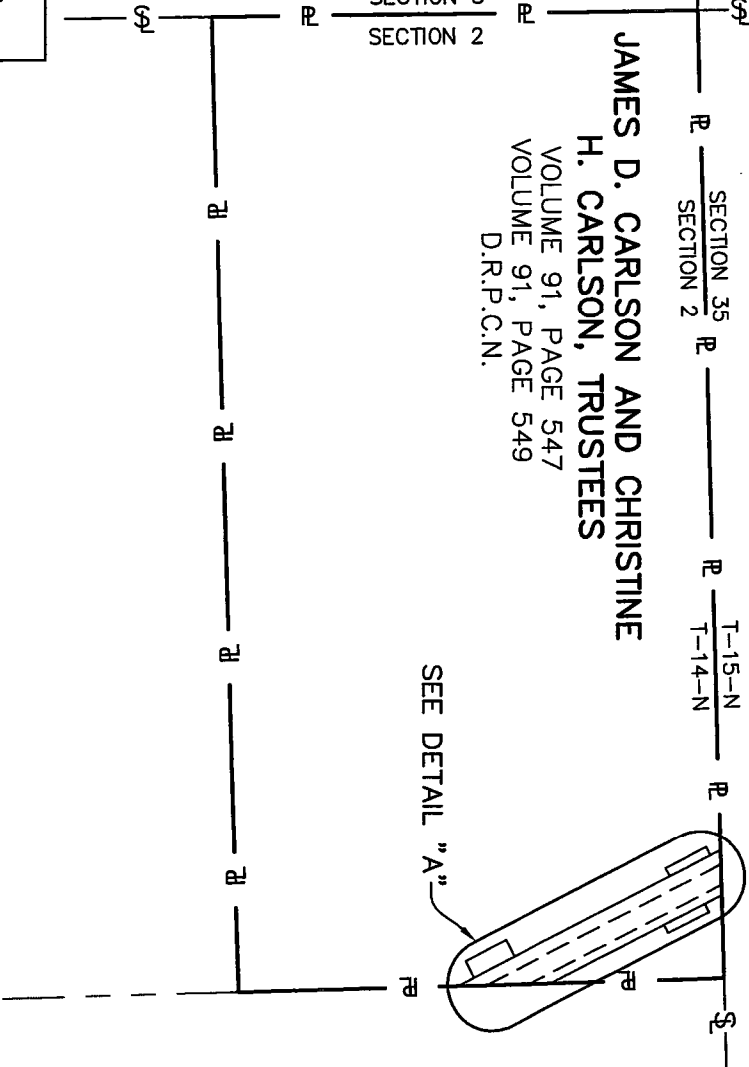
PROPERTY LINE
SECTION LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF POLK COUNTY, NEBRASKA

POLK COUNTY, NEBRASKA

T-14-N, R-4-W, SECTION 2
ML-NE-PO-40100.000

JAMES D. CARLSON AND CHRISTINE
H. CARLSON, TRUSTEES
VOLUME 91, PAGE 547
D.R.P.C.N.

SECTION 3
SECTION 2



INSET MAP
N.T.S.

0 250 500
SCALE: 1" = 500'



In business to deliver

KEYSTONE XL PROJECT

EASEMENT AREA
ACROSS THE PROPERTY OF
JAMES D. CARLSON AND
CHRISTINE H. CARLSON,
TRUSTEES

ML-NE-PO-40100.000

EXHIBIT A

PROJECT:	XL	DRAWING NUMBER
APPROVED BY		XL-08-ML-SK-3688
SLR		REVISION
NO.		DATE
SCALE	DATE	DRAWN BY
1" = 500'	10/28/14	PB
		CHECKED BY
		ALS



The new identity of Trans

SHEET 1 OF 2

ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.3 ACRE

NOTE:

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

TRACT LEGAL DESCRIPTION:
N/2 NW/4 OF SECTION 2,
T-14-N, R-4-W

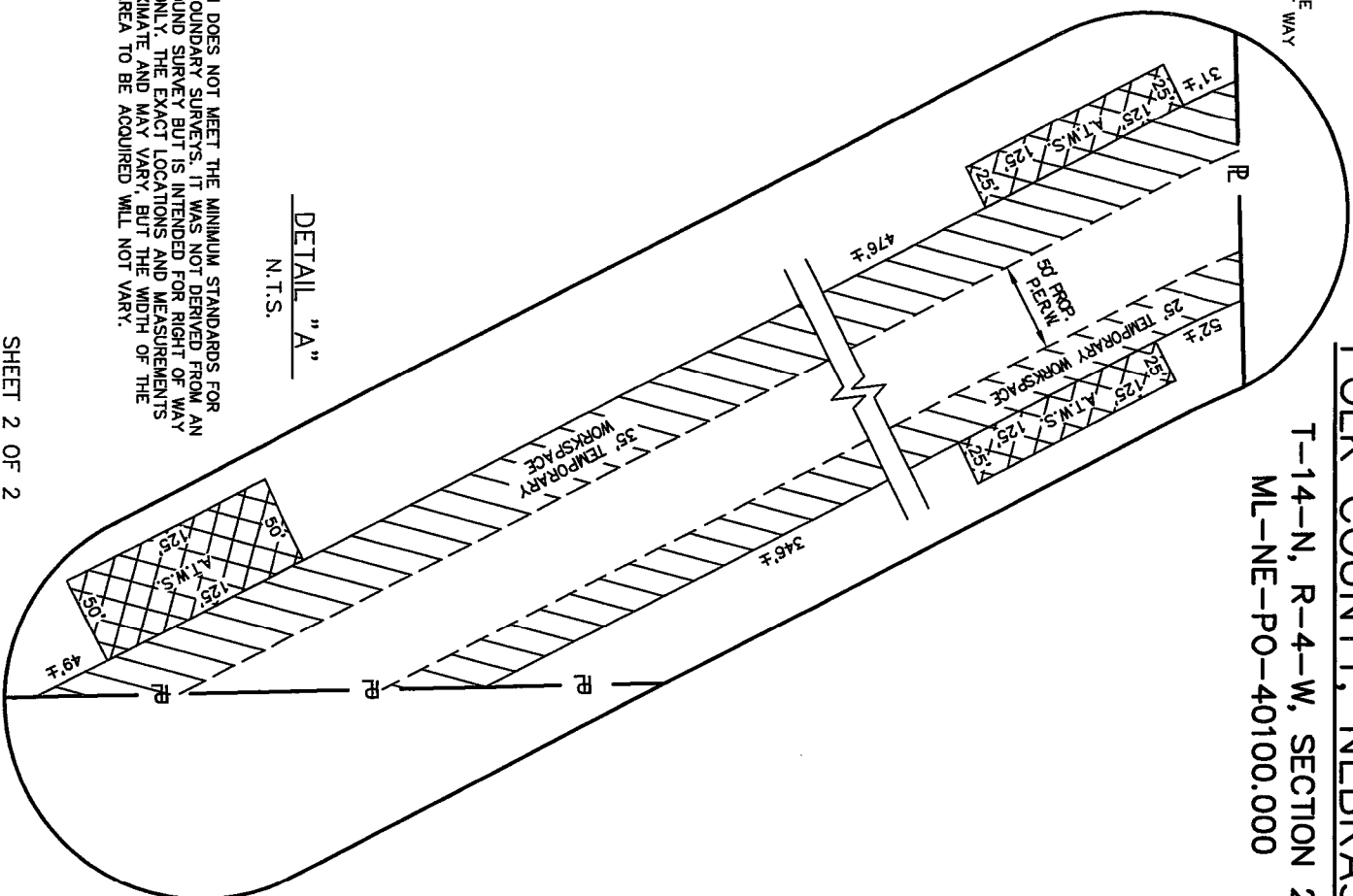
TOTAL DISTANCE ACROSS PROPERTY: 626'±
AREA OF PERMANENT EASEMENT: 0.7 ACRE
AREA OF TEMPORARY WORKSPACE: 0.9 ACRE
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.3 ACRE

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

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

POLK COUNTY, NEBRASKA

T-14-N, R-4-W, SECTION 2
ML-NE-PO-40100.000



KEYSTONE XL PROJECT

EASEMENT AREA
ACROSS THE PROPERTY OF
JAMES D. CARLSON AND
CHRISTINE H. CARLSON,
TRUSTEES

ML-NE-PO-40100.000

PROJECT: XL EXHIBIT A

APPROVED BY: DRAWING NUMBER

SLR XL-08-ML-SK-3688

NO. REVISION DATE

SCALE DATE DRAWN BY PB CHECKED BY

N.T.S. 10/28/14

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.



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-40080.000

We, C.R.C., Inc., a corporation, of Polk County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Eight Thousand Seven Hundred Twenty Dollars and No Cents (\$8,720.00), 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:

NE/4, N/2 of the SE/4

Section 2, Township 14N, 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

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-PO-40100.000

We, Christine H. Carlson and James D. Carlson, Trustees, of Polk County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Five Hundred Twenty Dollars and No Cents (\$1,520.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Polk, State of Nebraska:

N/2 NW/4

Section 2, Township 14N, 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

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-PO-40025.000

We, Christine H. Carlson and James D. Carlson, Trustees, of Polk County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Fifty Four Dollars and No Cents (\$54.00), 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:

50' strip of W side NW/4

Section 35, Township 15N, Range 4W

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

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

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6

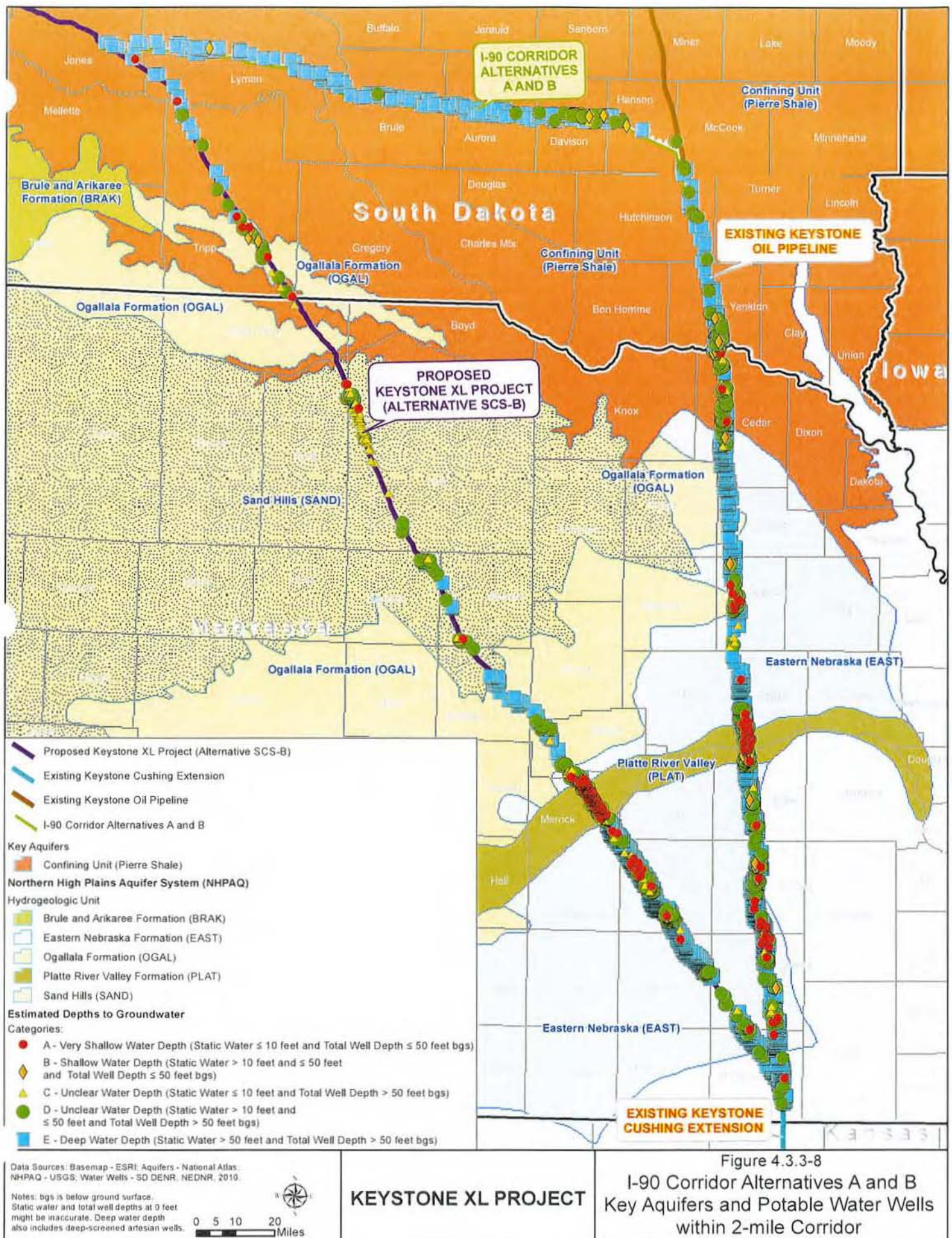


Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



KEYSTONE XL PROJECT

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

Attachment No. 7



VICINITY MAP



LEGEND

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

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Charlayne “Char” Carpenter**

State of Nebraska)
) ss.
Antelope County)

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

2 A: My name is Charlayne Carpenter.

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: Jerry Carpenter.

1 **Q: If you have children how many do you have?**
2 A: 2

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 that would be affected by the KXL pipeline has not been in "the family"
10 very long. Less than 10 years. It has a pivot on it and is very sandy soil. If the
11 route stays the same it will affect the NE corner of the quarter and take out shrubs
12 and trees for the most part but from what we understand the construction width
13 will be much wider than the pipe itself so will probably affect some portion of the
14 field. This corner sits at the intersection of two "sand trails" or minimum
15 maintenance roads. Will KXL replace trees and shrubs that are removed? While
16 we understand that they would not be replaced over top of the pipeline, they could
17 be replaced in other areas of the county. We have already lost many trees in our
18 area of the county because of the NPPD Neligh to Hoskins transmission line
19 project. We don't need to lose more because of a pipeline.

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

21 A: Yes.

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

24 A: Yes.

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

27 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
28 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
29 all the restrictions and risks and potential negative impacts to farming or ranching

1 operations as opposed to land that did not have those same risks. If I was looking
2 to lease or rent ground I would pay more for comparable non-pipeline land than I
3 would for comparable pipeline land and I think most folks would think the same
4 way. This is another negative economic impact that affects the landowner and the
5 county and the state and will forever and ever should TransCanada's preferred or
6 mainline alternative routes be approved. If they were to twin or closely parallel to
7 Keystone I the vast majority of landowners would be those that already have a
8 pipeline so there would be considerable less new incremental negative impacts.

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

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

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

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

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

20 A: Yes.

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

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

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

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

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

3 A: No, they have not.

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

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

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

11 A: No, they did not.

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

14 A: Yes, they did.

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

17 A: Yes, they did.

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

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

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

1 A: No, I do not.

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

4 A: Yes, they did.

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

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

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

17 A: Yes, it is.

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

20 A: Yes, I have.

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

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

28 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
29 **agreement do you have any concerns about any portions of it or any of the**

1 **language either included in the document or missing from the proposed**
2 **document?**

3 A: Yes, I have a number of significant concerns and worries about the document and
4 how the language included and the language not included potentially negatively
5 impacts my land and thereby potentially negatively impacts my community and
6 my state.

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

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

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

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

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

23 A: It is not fair to the landowner, the county, or the State. It is not fair to the
24 landowner because they want to have my land forever for use as they see fit so
25 they can make a daily profit from their customers. If I was to lease ground from
26 my neighbor I would typically pay twice a year every year as long as they granted
27 me the rights to use their land. That only makes sense – that is fair. If I was going
28 to rent a house in town I would typically pay monthly, every month until I gave up
29 my right to use that house. By TransCanada getting out on the cheap and paying

1 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
2 revenue collection on the money I would be paid and then pay taxes on and
3 contribute to this state and this country. It is money I would be putting back into
4 my local community both spending and stimulating the local economy and
5 generating more economic activity right here. Instead TransCanada's shareholders
6 keep all that money and it never finds its way to Nebraska.

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

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

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

24 A: No.

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

29 A: No.

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

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

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

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

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

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

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

21 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
22 data proving there is a perpetual supply of tar sands. I am not aware in
23 TransCanada's application where it proves there is a perpetual necessity for this
24 pipeline. My understanding of energy infrastructure like wind towers is they have
25 a decommission plan and actually take the towers down when they become
26 obsolete or no longer needed. Nothing manmade lasts forever. My land however
27 will, and I want my family or future Nebraska families to have that land as
28 undisturbed as possible and it is not in my interest or the public interest of

1 Nebraska to be forced to give up perpetual and permanent rights in the land for
2 this specific kind of pipeline project.

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

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

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

13 A: Yes.

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

15 A: Here the Easement identifies a 24-month deadline to complete construction of the
16 pipeline but has caveats that are undefined and ambiguous. The 24-month period
17 starts to run from the moment "actual pipeline installation activities" begin on
18 Landowners property. It appears that TransCanada would define this phrase as
19 needed. It would be wise to explain what types of TransCanada action constitutes
20 "installation activity" For instance, would the placement and storage of an
21 excavator or other equipment on or near the Easement property be an activity or
22 would earth have to be moved before the activity requirement is triggered. This
23 vague phrase is likely to lead to future disputes and litigation that is not in the best
24 interest of the welfare of Nebraska and would not protect property interests. The
25 24-months can also be extended in the case of "force majeure." My understanding
26 is that force majeure is often used to insulate a party to a contract when events
27 occur that are completely out of their control. In TransCanada's easement this is
28 expanded to include "without limitation...availability of labor and materials."
29 Extending this language to labor and materials is problematic because these are

1 two variables that TransCanada does have some or significant control over and to
2 allow extension of the 24-month period over events not truly out of the control of
3 TransCanada and without further provision for compensation for the Landowner is
4 not conducive to protection of property rights.

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

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

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

28 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
29 Nemaha County, Nebraska landowner farmers who accidentally struck two

1 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
2 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
3 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
4 copy of the Federal Court Complaint is here as **Attachment No. 4**

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

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

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

26 A: The Easement also allows some rights for Landowner but restricts them at the
27 same time and again at the sole and unilateral decision making of TransCanada.
28 TransCanada will determine if the actions of Landowner might in anyway
29 endanger or obstruct or interfere with TransCanada's full use of the Easement or

1 any appurtenances thereon to the pipeline itself or to their access to the Easement
2 or within the Easement and TransCanada retains the right at any time, whether
3 during growing season or not, to travel “within and along Easement Area on foot
4 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
5 retain the rights to prevent any landowner activity that it thinks may “unreasonably
6 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
7 undefined and unilateral restrictions are not conducive to the protection of
8 property rights or economic interest.

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

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

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

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

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

27 A: There are more vague concepts solely at the determination of TransCanada such as
28 “as nearly as practicable” and “pre-construction position” and “extent reasonably
29 possible.” There is nothing here that defines this or provides a mechanism for

1 documenting or memorializing “pre-construction position” so as to minimize
2 costly legal battles or wasted Landowner time attempting to recreate the soil
3 condition on their fields or pasture. Such unilateral powers would negatively affect
4 Landowners property are not conducive to the protection of property rights or
5 economic interest.

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

7 A: TransCanada maintains the unilateral right to abandon the pipeline and all
8 appurtenances thereto in place on, under, across, or through Nebraska land at any
9 time it chooses. There is no provision for Landowner compensation for such
10 abandonment nor any right for the Landowner to demand removal. Such unilateral
11 powers would negatively affect Landowners property 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: TransCanada has the power to unilaterally move or modify the location of any
15 Easement area whether permanent or temporary at their sole discretion.
16 Regardless, if Landowner has taken prior steps relative to their property in
17 preparation or planning of TransCanada’s taking of the initial easement area(s),
18 the language here does not require TransCanada to compensate the Landowner if
19 they decide to move the easement anywhere on Landowners property. Such
20 unilateral powers would negatively affect Landowners property are not conducive
21 to the protection of property rights or economic interests.

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

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

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

28 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
29 Easement to any person, company, country, etc. at their sole discretion at anytime

1 to anyone. This also means that any buyer of the easement could do the same to a
2 third buyer and so on forever. There is no change of control or sale provision in
3 place to protect the Landowner or Nebraska or to provide compensation for such
4 change of control or ownership. It is not conducive to the protection of property
5 rights or economic interests to allow unilateral unrestricted sale of the Easement
6 thereby forcing upon the Landowner and our State a new unknown Easement
7 owner.

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

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

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

1 xviii. “as nearly as practicable”

2 xix. “pre-construction position”

3 xx. “pre-construction grade”

4 xxi. “various engineering factors”

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

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

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

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

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

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

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

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

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

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

12 A: No, never.

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

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

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

19 A: Yes, it is.

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

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

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

28 A: No, I did not.

29 **Q:** Why not?

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

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

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

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

17 A: No, they have not.

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

21 A: No, they have not.

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

24 A: Yes, I am.

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

27 A: My understanding is that, according to the United States Constitution, that if the
28 government is going to take land for public use, then in that case, or by taking for

1 public use, it can only occur if the private land owner is compensated justly, or
2 fairly.

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

5 A: No, they have not.

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

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

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

19 A: No, it has not.

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

23 A: No, I do not.

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

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

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

1 A: Yes, I do.

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

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

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

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

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

12 A: No, of course not.

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

17 A: No. Like I said, paying property taxes is the law, it's nothing that I expect an
18 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: At the beginning of your statement, you briefly described your property that**
4 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
5 **give the Commissioners a sense of specifically how you believe the proposed**
6 **Keystone XL Pipeline and its preferred route, which proposes to go across**
7 **your land, how it would in your opinion based on your knowledge,**
8 **experience, and background of your land, affect it.**

9 A: Our fear is that future owners of the land, whether that is members of our family
10 or some other party, will be punished by any future farming practices. Farming
11 practices change all the time and who knows what will be in 5, 10, 20 or 50 years.
12 We do not want any repercussions coming back to members of our family for
13 something that future owners of the property may do.

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

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

1 experience with this type of pipeline and that scares me. There are others but that
2 is what I can recollect at this time and if I remember more or my recollection is
3 refreshed I will share those with the Commissioners at the Hearing in August.

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

6 A: No, I do not.

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

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

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

17 A: Well yes, of course.

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

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

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

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

7 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 A: Yes, I have.

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

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

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

4 A: No, I do not.

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

8 A: No, I do not.

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

11 A: No, I do not.

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

15 A: No, I do not.

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

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

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

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

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

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

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

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

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

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

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

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

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

13 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
14 already exists in that area is reason enough as it is not in our best interest or the
15 public interests to have more major oil pipelines crisscrossing our state. Second,
16 they have all the infrastructure already there in terms of relationships with the
17 counties and local officials and first responders along that route. Third, they have
18 already obtained easements from all the landowners long 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: Do you have any other concerns you would like to reiterate or can think of at**
26 **this time you would like the Commissioners to understand?**

27 A: Yes. We also have concerns over the pipeline location in our area of Antelope
28 County because of the development of 169 wind towers that are scheduled to be
29 constructed this year. They have been known to cause vibrations and low

1 frequency noise which interferes with people and their health. Will these same
2 problems cause concerns to the pipeline? And what about all their interconnecting
3 lines to substations and other towers? Antelope County is updating their Zoning
4 Regulations and will not be putting in language for any local control as to buffer
5 zones for any type of pipelines. Without any local control we are at the mercy of
6 the Federal Government. As for the pipeline itself, we have the same concerns as
7 others that are opposed. The KXL is not a public use pipeline. We will not
8 benefit from it. We will not be able to tap into it for some oil. There is a lot of talk
9 about all the jobs it will create. NOT. All the jobs will be professional pipe fitters
10 who will travel with the pipe line as it progressively moves taking the jobs with
11 them. While those workers are in our area they will be using our roads, schools,
12 parks and stores but will not be paying any taxes like the residents of the county
13 do. Any permanent jobs will come long after the construction is over and will
14 only be a handful at most. Where will all these workers live? There isn't enough
15 housing now plus if there are still wind tower works in the area the housing will be
16 even more critical. If they live in campers, will they over take our local
17 campground and drive away the tourists? Will they set up their own little village?
18 There in itself lies other issues. Water, sewage, electric. And what about the
19 contents of the pipeline itself? Is KXL going to come in and train the EMT's,
20 firefighters and landowners in how to handle a leak? If the stuff is as toxic as has
21 been stated then everyone along the route needs to know what to do and how to
22 contain the leak. Where would clean up resources come from? Will there be local
23 clean up stations? Will supplies have to be brought in from other states? How
24 long will that take? There are parcels of land in Antelope County where the
25 ground water lies between 3-5 feet below the surface. What happens if the leak is
26 close to those areas? The roads in Antelope county are already in bad shape. The
27 wind tower construction has caused major damage in the southern half of the
28 county and now they are coming to the central and northern part. Then we are
29 supposed to put up with pipeline construction!!! Get me a helicopter so I don't

1 have to drive over them any more. If they have to put them back to how they
2 found them, we are in deep trouble. The County board thinks all the revenue from
3 the wind towers and the future pipeline will solve all their financial woes. They
4 need to rethink this. In closing, we are opposed for many reasons and are thinking
5 of future generations that will ultimately be the ones to deal with any
6 consequences of leaks and end of use issues. There is more to life than money and
7 it seems that that is the driving factor for a lot of landowners and government
8 bodies.

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?**

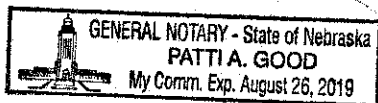
23 A: Yes, they are.

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.**

Charlayne Carpenter
Charlayne Carpenter

Subscribed and Sworn to me before this 26th day of May, 2017.

Patti A. Good
Notary Public



Attachment No. 1



S.015
T.026N
R.006W

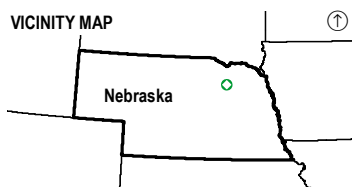
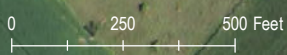
S.014
T.026N
R.006W

S.023
T.026N
R.006W

Charlayne Carpenter
Jerry Carpenter

S.022
T.026N
R.006W

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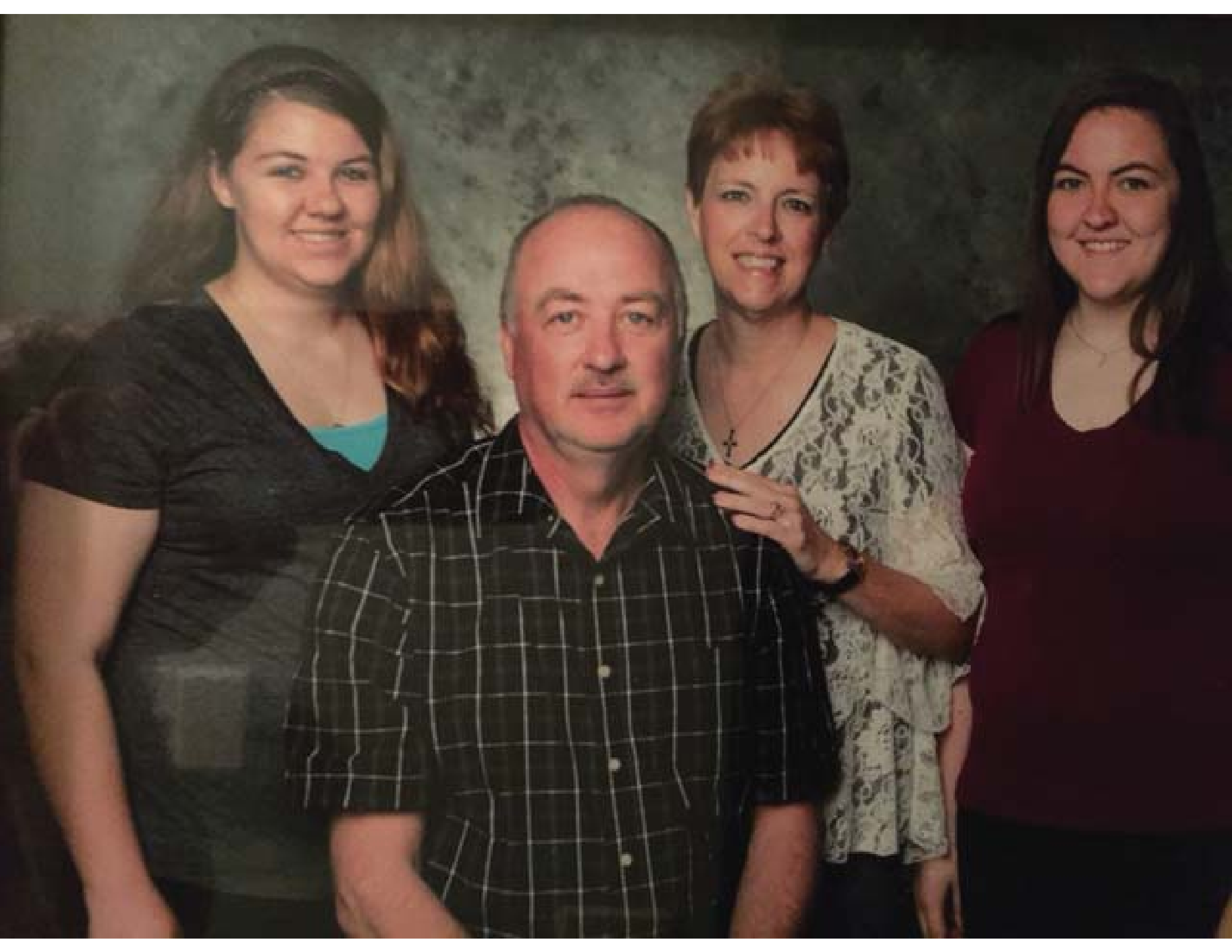


KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Charlayne Carpenter
Jerry Carpenter

TRACT NO. ML-NE-AT-30300.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 022
TOWNSHIP: 026N
RANGE: 006W

- 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-30300.000

**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**") **Jerry Carpenter and Charlayne Carpenter, husband and wife, as joint tenants**, whose mailing address is 85247 526 Avenue, 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 157.40 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NE1/4 of Section 22, Township 26 North, Range 6 West of the 6th P.M., as recorded in Book 125, Page 738 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):

Jerry Carpenter

Charlayne Carpenter

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **Jerry Carpenter**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

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

By **Charlayne Carpenter**

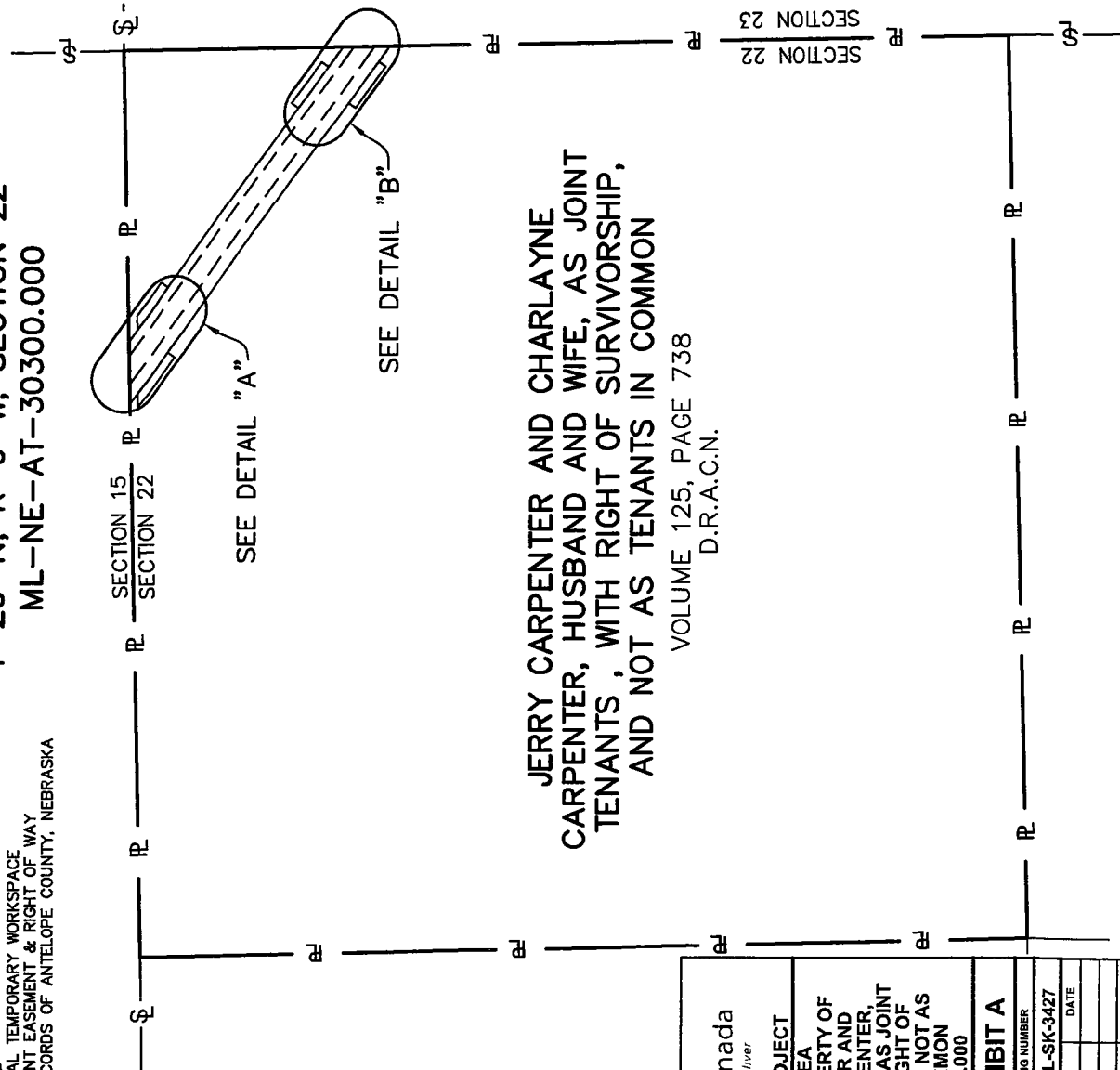
Notary Public Signature

Affix Seal Here

T-26-N, R-6-W, SECTION 22
ML-NE-AT-30300.000

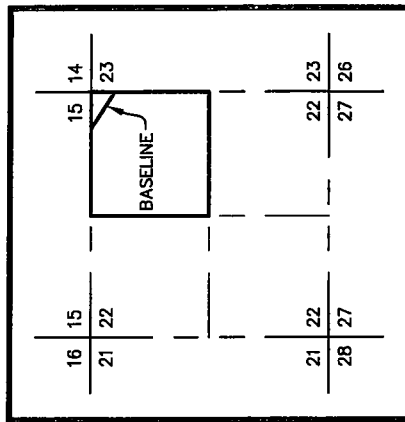
PROPERTY LINE
SECTION LINE
PROPOSED
ADDITIONAL TEMP
PERMANENT EAS
DEED RECORDS

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

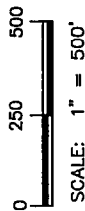
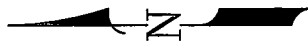


JERRY CARPENTER AND CHARLAYNE CARPENTER, HUSBAND AND WIFE, AS JOINT TENANTS, WITH RIGHT OF SURVIVORSHIP, AND NOT AS TENANTS IN COMMON

VOLUME 125, PAGE 738
D.R.A.C.N.



VICINITY MAP
N.T.S.



TRACT LEGAL DESCRIPTION:
NE/4 OF SECTION 22,
T-26-N. R-6-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:	1.142'±
AREA OF PERMANENT EASEMENT:	1.3 ACRES
AREA OF TEMPORARY WORKSPACE:	1.6 ACRES
ADDITIONAL TEMPORARY WORKSPACE:	0.3 ACRE

SHEET 1 OF 2



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TransCanada
In business to deliver

KEYSTONE XL PROJECT

EASEMENT AREA

ACROSS THE PROPERTY OF
JERRY CARPENTER AND
CHARLAYNE CARPENTER,
HUSBAND AND WIFE, AS JOINT
TENANTS, WITH RIGHT OF
SURVIVORSHIP, AND NOT AS
TENANTS IN COMMON
ML-NEAT-30300.000

PROJECT:	YI	EXHIBIT A
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APPROVED BY	DRAWING NUMBER
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NO.	SLR	XL-08-ML-SK-3427	REVISION	DATE
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NO.	REVISION	DATE
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1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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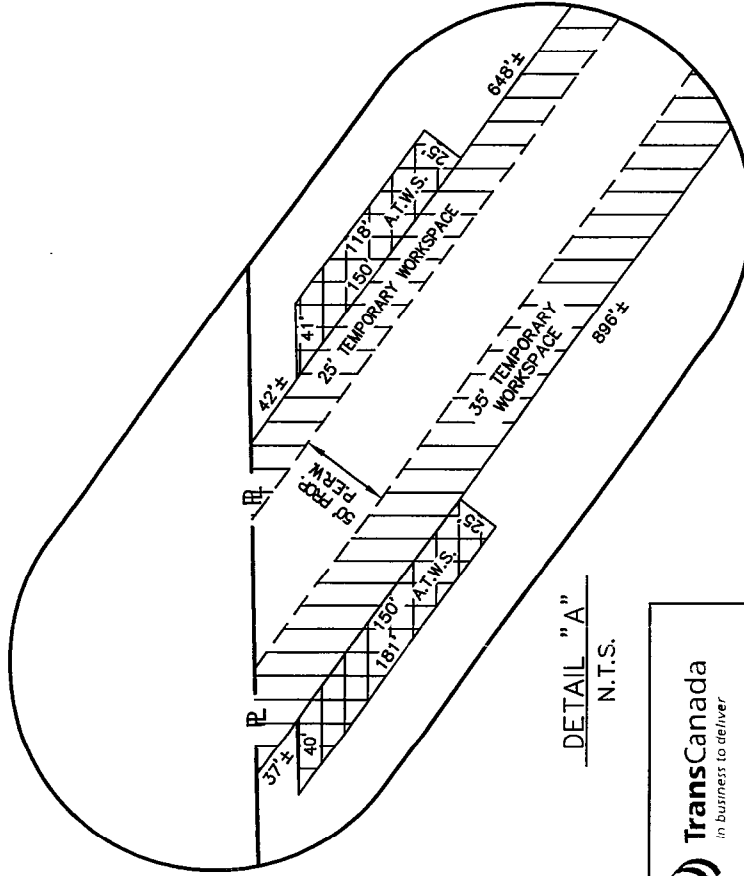
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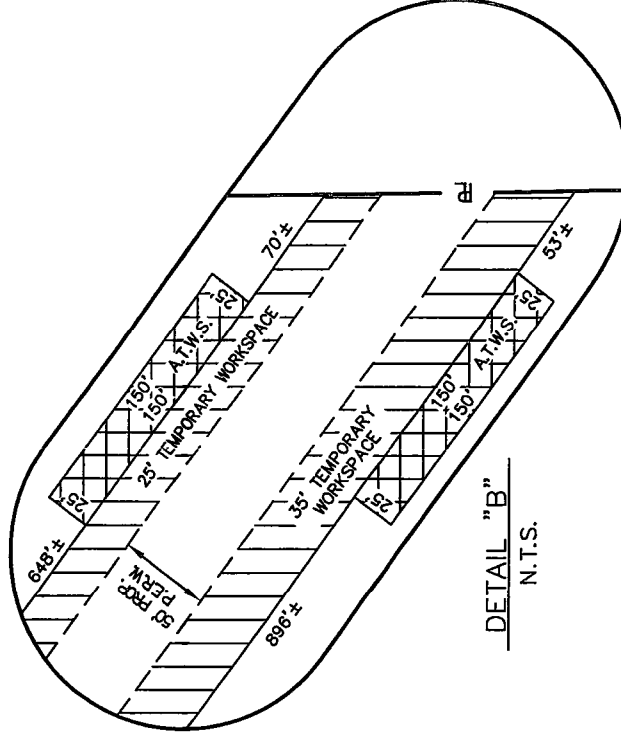
ANTELOPE COUNTY, NEBRASKA

T-26-N, R-6-W, SECTION 22
ML-NE-AT-30300.000

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




DETAIL "A"
N.T.S.



DETAIL "B"
N.T.S.

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 JERRY CARPENTER AND CHARLAYNE CARPENTER, HUSBAND AND WIFE, AS JOINT TENANTS, WITH RIGHT OF SURVIVORSHIP, AND NOT AS TENANTS IN COMMON ML-NE-AT-30300.000			
PROJECT:		EXHIBIT A	
APPROVED BY	XL	DRAWING NUMBER	
SLR		XL-08-ML-SK-3427	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/31/14	PB	ALS

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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-30300.000

We, Jerry Carpenter and Charlayne Carpenter, husband and wife, as joint tenants, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Five Hundred Sixty Dollars and No Cents (\$2,560.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Antelope, State of Nebraska:

NE/4

Section 22, Township 26N, Range 6W

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

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

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6

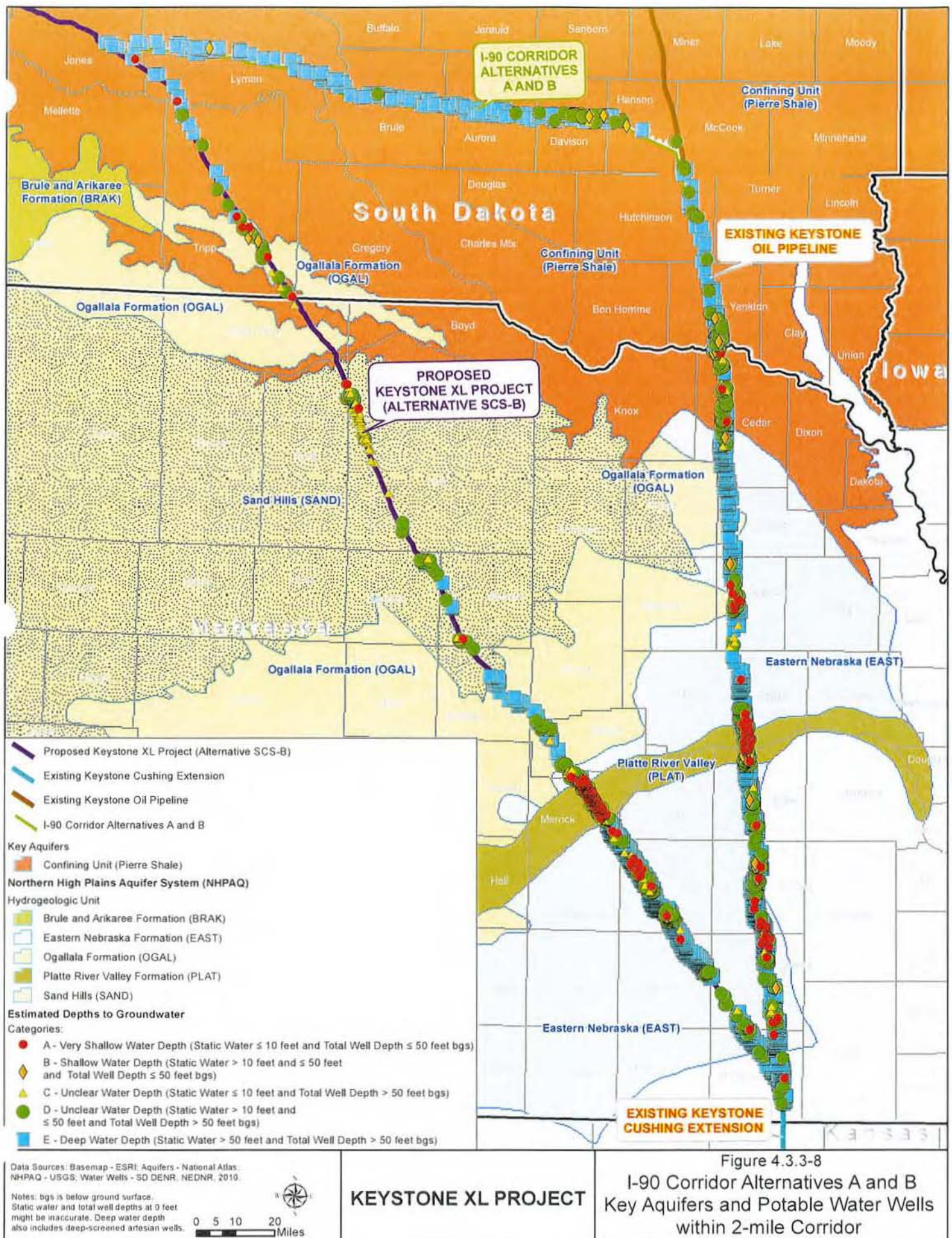


Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



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

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

0 5 10 20 Miles

KEYSTONE XL PROJECT

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

Attachment No. 7



VICINITY MAP



LEGEND

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

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Jerry Carpenter in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Antelope County)

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

2 A: My name is Jerry Carpenter

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: Charlayne Carpenter

1 **Q: If you have children how many do you have?**
2 A: 2

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 that would be affected by the KXL pipeline has not been in "the family"
10 very long. Less than 10 years. It has a pivot on it and is very sandy soil. If the
11 route stays the same it will affect the NE corner of the quarter and take out shrubs
12 and trees for the most part but from what we understand the construction width
13 will be much wider than the pipe itself so will probably affect some portion of the
14 field. This corner sits at the intersection of two "sand trails" or minimum
15 maintenance roads. Will KXL replace trees and shrubs that are removed? While
16 we understand that they would not be replaced over top of the pipeline, they could
17 be replaced in other areas of the county. We have already lost many trees in our
18 area of the county because of the NPPD Neligh to Hoskins transmission line
19 project. We don't need to lose more because of a pipeline.

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

21 A: Yes.

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

24 A: Yes.

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

27 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
28 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
29 all the restrictions and risks and potential negative impacts to farming or ranching

1 operations as opposed to land that did not have those same risks. If I was looking
2 to lease or rent ground I would pay more for comparable non-pipeline land than I
3 would for comparable pipeline land and I think most folks would think the same
4 way. This is another negative economic impact that affects the landowner and the
5 county and the state and will forever and ever should TransCanada's preferred or
6 mainline alternative routes be approved. If they were to twin or closely parallel to
7 Keystone I the vast majority of landowners would be those that already have a
8 pipeline so there would be considerable less new incremental negative impacts.

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

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

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

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

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

20 A: Yes.

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

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

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

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

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

3 A: No, they have not.

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

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

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

11 A: No, they did not.

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

14 A: Yes, they did.

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

17 A: Yes, they did.

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

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

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

1 A: No, I do not.

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

4 A: Yes, they did.

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

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

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

17 A: Yes, it is.

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

20 A: Yes, I have.

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

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

28 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
29 **agreement do you have any concerns about any portions of it or any of the**

1 **language either included in the document or missing from the proposed**
2 **document?**

3 A: Yes, I have a number of significant concerns and worries about the document and
4 how the language included and the language not included potentially negatively
5 impacts my land and thereby potentially negatively impacts my community and
6 my state.

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

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

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

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

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

23 A: It is not fair to the landowner, the county, or the State. It is not fair to the
24 landowner because they want to have my land forever for use as they see fit so
25 they can make a daily profit from their customers. If I was to lease ground from
26 my neighbor I would typically pay twice a year every year as long as they granted
27 me the rights to use their land. That only makes sense – that is fair. If I was going
28 to rent a house in town I would typically pay monthly, every month until I gave up
29 my right to use that house. By TransCanada getting out on the cheap and paying

1 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
2 revenue collection on the money I would be paid and then pay taxes on and
3 contribute to this state and this country. It is money I would be putting back into
4 my local community both spending and stimulating the local economy and
5 generating more economic activity right here. Instead TransCanada's shareholders
6 keep all that money and it never finds its way to Nebraska.

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

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

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

24 A: No.

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

29 A: No.

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

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

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

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

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

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

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

21 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
22 data proving there is a perpetual supply of tar sands. I am not aware in
23 TransCanada's application where it proves there is a perpetual necessity for this
24 pipeline. My understanding of energy infrastructure like wind towers is they have
25 a decommission plan and actually take the towers down when they become
26 obsolete or no longer needed. Nothing manmade lasts forever. My land however
27 will, and I want my family or future Nebraska families to have that land as
28 undisturbed as possible and it is not in my interest or the public interest of

1 Nebraska to be forced to give up perpetual and permanent rights in the land for
2 this specific kind of pipeline project.

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

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

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

13 A: Yes.

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

15 A: Here the Easement identifies a 24-month deadline to complete construction of the
16 pipeline but has caveats that are undefined and ambiguous. The 24-month period
17 starts to run from the moment "actual pipeline installation activities" begin on
18 Landowners property. It appears that TransCanada would define this phrase as
19 needed. It would be wise to explain what types of TransCanada action constitutes
20 "installation activity" For instance, would the placement and storage of an
21 excavator or other equipment on or near the Easement property be an activity or
22 would earth have to be moved before the activity requirement is triggered. This
23 vague phrase is likely to lead to future disputes and litigation that is not in the best
24 interest of the welfare of Nebraska and would not protect property interests. The
25 24-months can also be extended in the case of "force majeure." My understanding
26 is that force majeure is often used to insulate a party to a contract when events
27 occur that are completely out of their control. In TransCanada's easement this is
28 expanded to include "without limitation...availability of labor and materials."
29 Extending this language to labor and materials is problematic because these are

1 two variables that TransCanada does have some or significant control over and to
2 allow extension of the 24-month period over events not truly out of the control of
3 TransCanada and without further provision for compensation for the Landowner is
4 not conducive to protection of property rights.

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

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

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

28 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
29 Nemaha County, Nebraska landowner farmers who accidentally struck two

1 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
2 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
3 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
4 copy of the Federal Court Complaint is here as **Attachment No. 4**

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

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

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

26 A: The Easement also allows some rights for Landowner but restricts them at the
27 same time and again at the sole and unilateral decision making of TransCanada.
28 TransCanada will determine if the actions of Landowner might in anyway
29 endanger or obstruct or interfere with TransCanada's full use of the Easement or

1 any appurtenances thereon to the pipeline itself or to their access to the Easement
2 or within the Easement and TransCanada retains the right at any time, whether
3 during growing season or not, to travel “within and along Easement Area on foot
4 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
5 retain the rights to prevent any landowner activity that it thinks may “unreasonably
6 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
7 undefined and unilateral restrictions are not conducive to the protection of
8 property rights or economic interest.

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

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

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

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

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

27 A: There are more vague concepts solely at the determination of TransCanada such as
28 “as nearly as practicable” and “pre-construction position” and “extent reasonably
29 possible.” There is nothing here that defines this or provides a mechanism for

1 documenting or memorializing “pre-construction position” so as to minimize
2 costly legal battles or wasted Landowner time attempting to recreate the soil
3 condition on their fields or pasture. Such unilateral powers would negatively affect
4 Landowners property are not conducive to the protection of property rights or
5 economic interest.

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

7 A: TransCanada maintains the unilateral right to abandon the pipeline and all
8 appurtenances thereto in place on, under, across, or through Nebraska land at any
9 time it chooses. There is no provision for Landowner compensation for such
10 abandonment nor any right for the Landowner to demand removal. Such unilateral
11 powers would negatively affect Landowners property 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: TransCanada has the power to unilaterally move or modify the location of any
15 Easement area whether permanent or temporary at their sole discretion.
16 Regardless, if Landowner has taken prior steps relative to their property in
17 preparation or planning of TransCanada’s taking of the initial easement area(s),
18 the language here does not require TransCanada to compensate the Landowner if
19 they decide to move the easement anywhere on Landowners property. Such
20 unilateral powers would negatively affect Landowners property are not conducive
21 to the protection of property rights or economic interests.

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

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

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

28 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
29 Easement to any person, company, country, etc. at their sole discretion at anytime

1 to anyone. This also means that any buyer of the easement could do the same to a
2 third buyer and so on forever. There is no change of control or sale provision in
3 place to protect the Landowner or Nebraska or to provide compensation for such
4 change of control or ownership. It is not conducive to the protection of property
5 rights or economic interests to allow unilateral unrestricted sale of the Easement
6 thereby forcing upon the Landowner and our State a new unknown Easement
7 owner.

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

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

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

1 xviii. “as nearly as practicable”

2 xix. “pre-construction position”

3 xx. “pre-construction grade”

4 xxi. “various engineering factors”

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

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

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

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

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

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

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

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

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

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

12 A: No, never.

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

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

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

19 A: Yes, it is.

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

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

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

28 A: No, I did not.

29 **Q:** Why not?

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

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

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

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

17 A: No, they have not.

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

21 A: No, they have not.

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

24 A: Yes, I am.

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

27 A: My understanding is that, according to the United States Constitution, that if the
28 government is going to take land for public use, then in that case, or by taking for

1 public use, it can only occur if the private land owner is compensated justly, or
2 fairly.

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

5 A: No, they have not.

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

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

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

19 A: No, it has not.

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

23 A: No, I do not.

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

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

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

1 A: Yes, I do.

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

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

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

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

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

12 A: No, of course not.

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

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

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

20 A: Well, yes I have.

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

25 A: No, of course not.

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

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

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

9 A: Our fear is that future owners of the land, whether that is members of our family
10 or some other party, will be punished by any future farming practices. Farming
11 practices change all the time and who knows what will be in 5, 10, 20 or 50 years.
12 We do not want any repercussions coming back to members of our family for
13 something that future owners of the property may do.

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

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

1 experience with this type of pipeline and that scares me. There are others but that
2 is what I can recollect at this time and if I remember more or my recollection is
3 refreshed I will share those with the Commissioners at the Hearing in August.

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

6 A: No, I do not.

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

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

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

17 A: Well yes, of course.

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

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

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

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

7 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 A: Yes, I have.

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

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

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

4 A: No, I do not.

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

8 A: No, I do not.

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

11 A: No, I do not.

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

15 A: No, I do not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 A: Yes. We also have concerns over the pipeline location in our area of Antelope
28 County because of the development of 169 wind towers that are scheduled to be
29 constructed this year. They have been known to cause vibrations and low

1 frequency noise which interferes with people and their health. Will these same
2 problems cause concerns to the pipeline? And what about all their interconnecting
3 lines to substations and other towers? Antelope County is updating their Zoning
4 Regulations and will not be putting in language for any local control as to buffer
5 zones for any type of pipelines. Without any local control we are at the mercy of
6 the Federal Government. As for the pipeline itself, we have the same concerns as
7 others that are opposed. The KXL is not a public use pipeline. We will not
8 benefit from it. We will not be able to tap into it for some oil. There is a lot of talk
9 about all the jobs it will create. NOT. All the jobs will be professional pipe fitters
10 who will travel with the pipe line as it progressively moves taking the jobs with
11 them. While those workers are in our area they will be using our roads, schools,
12 parks and stores but will not be paying any taxes like the residents of the county
13 do. Any permanent jobs will come long after the construction is over and will
14 only be a handful at most. Where will all these workers live? There isn't enough
15 housing now plus if there are still wind tower works in the area the housing will be
16 even more critical. If they live in campers, will they over take our local
17 campground and drive away the tourists? Will they set up their own little village?
18 There in itself lies other issues. Water, sewage, electric. And what about the
19 contents of the pipeline itself? Is KXL going to come in and train the EMT's,
20 firefighters and landowners in how to handle a leak? If the stuff is as toxic as has
21 been stated then everyone along the route needs to know what to do and how to
22 contain the leak. Where would clean up resources come from? Will there be local
23 clean up stations? Will supplies have to be brought in from other states? How
24 long will that take? There are parcels of land in Antelope County where the
25 ground water lies between 3-5 feet below the surface. What happens if the leak is
26 close to those areas? The roads in Antelope county are already in bad shape. The
27 wind tower construction has caused major damage in the southern half of the
28 county and now they are coming to the central and northern part. Then we are
29 supposed to put up with pipeline construction!!! Get me a helicopter so I don't

1 have to drive over them any more. If they have to put them back to how they
2 found them, we are in deep trouble. The County board thinks all the revenue from
3 the wind towers and the future pipeline will solve all their financial woes. They
4 need to rethink this. In closing, we are opposed for many reasons and are thinking
5 of future generations that will ultimately be the ones to deal with any
6 consequences of leaks and end of use issues. There is more to life than money and
7 it seems that that is the driving factor for a lot of landowners and government
8 bodies.

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?**

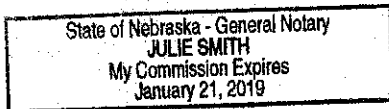
23 A: Yes, they are.

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.**


Jerry Carpenter
Jerry Carpenter

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

Julie Smith
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.



S.015
T.026N
R.006W

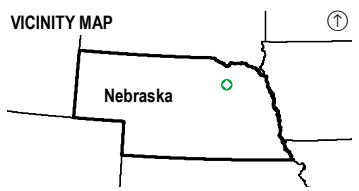
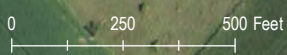
S.014
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S.023
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R.006W

Charlayne Carpenter
Jerry Carpenter

S.022
T.026N
R.006W

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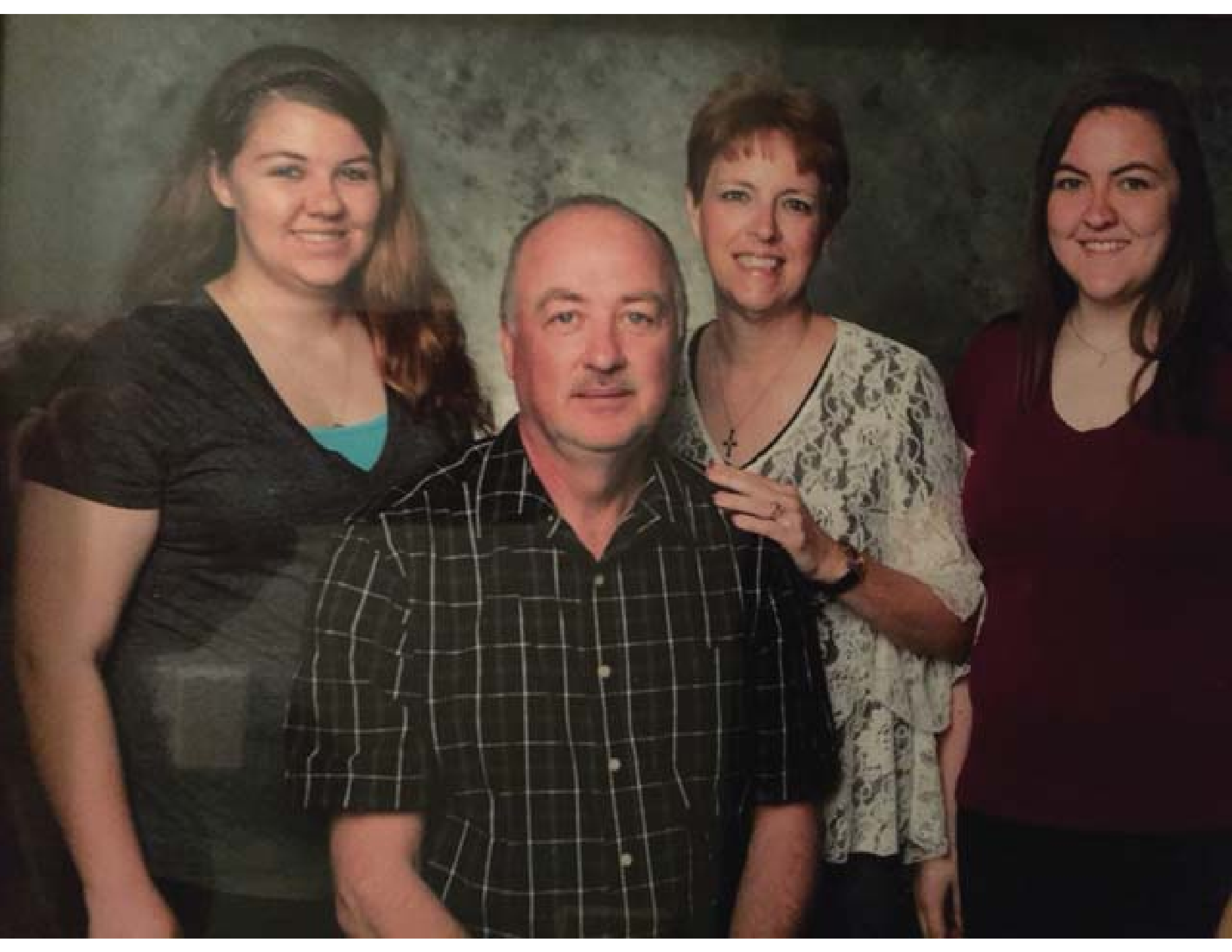
KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Charlayne Carpenter
Jerry Carpenter

TRACT NO. ML-NE-AT-30300.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 022
TOWNSHIP: 026N
RANGE: 006W

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

May 2017 - X:\Drawings\50300\KEYSTONE_XL\5000_0099\5030

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-30300.000

**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**") **Jerry Carpenter and Charlayne Carpenter, husband and wife, as joint tenants**, whose mailing address is 85247 526 Avenue, 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 157.40 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NE1/4 of Section 22, Township 26 North, Range 6 West of the 6th P.M., as recorded in Book 125, Page 738 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):

Jerry Carpenter

Charlayne Carpenter

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **Jerry Carpenter**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

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

By **Charlayne Carpenter**

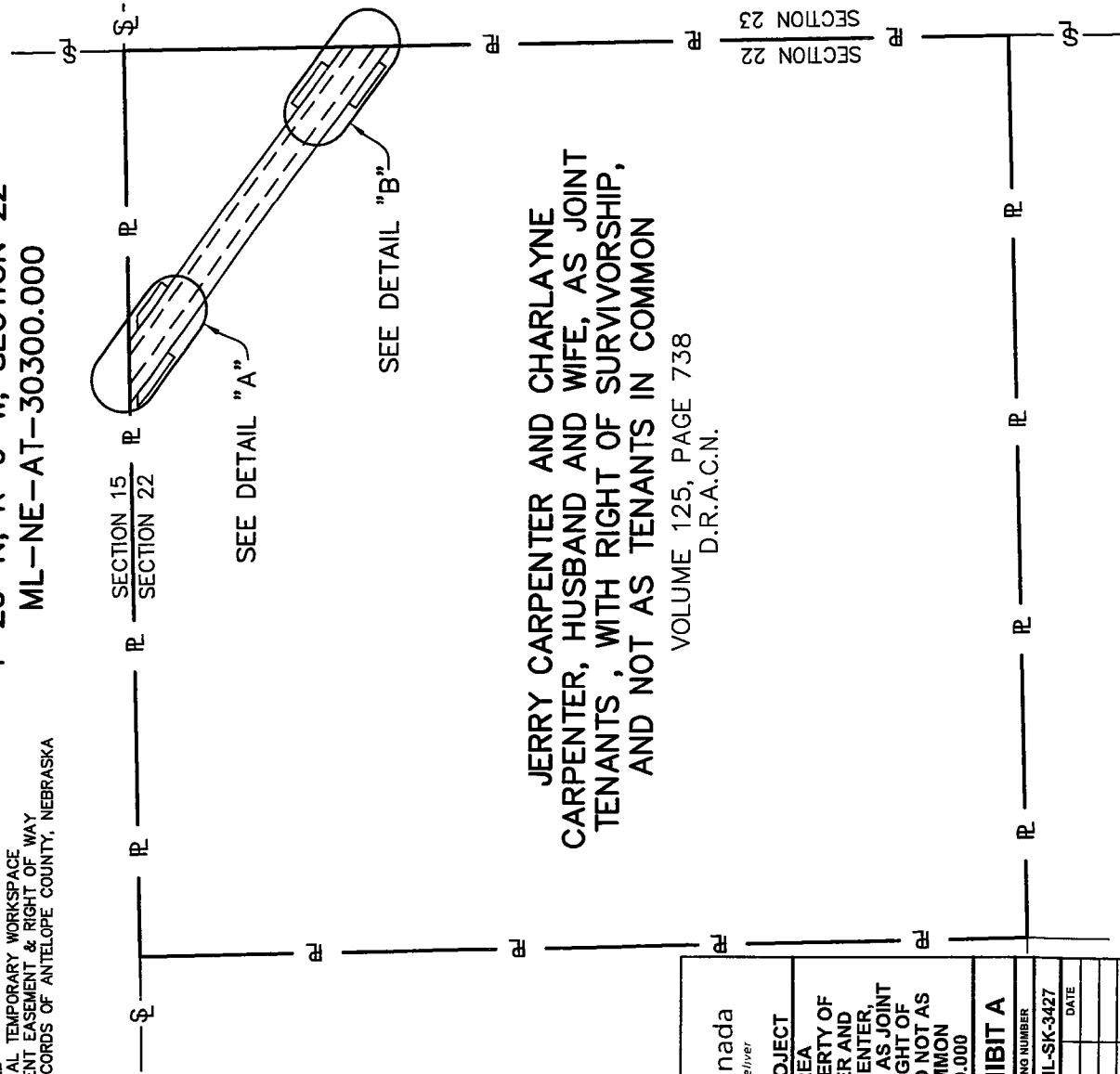
Notary Public Signature

Affix Seal Here

T-26-N, R-6-W, SECTION 22
ML-NE-AT-30300.000

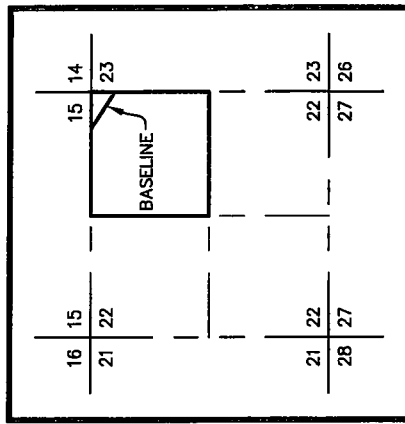
PROPERTY LINE
SECTION LINE
PROPOSED
ADDITIONAL TEMP
PERMANENT EAS
DEED RECORDS

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

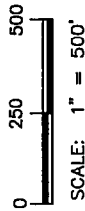
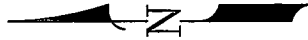


JERRY CARPENTER AND CHARLAYNE CARPENTER, HUSBAND AND WIFE, AS JOINT TENANTS, WITH RIGHT OF SURVIVORSHIP, AND NOT AS TENANTS IN COMMON

VOLUME 125, PAGE 738
D.R.A.C.N.



VICINITY MAP
N.T.S.



TRACT LEGAL DESCRIPTION:
NE/4 OF SECTION 22,
T-26-N. R-6-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: 1,142'±
 AREA OF PERMANENT EASEMENT: 1.3 ACRES
 AREA OF TEMPORARY WORKSPACE: 1.6 ACRES
 ADDITIONAL TEMPORARY WORKSPACE: 0.3 ACRE

SHEET 1 OF 2



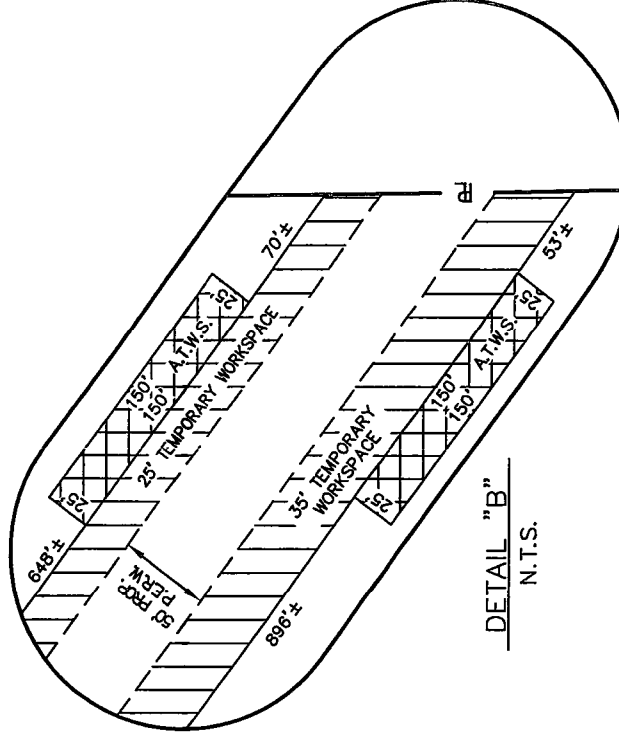
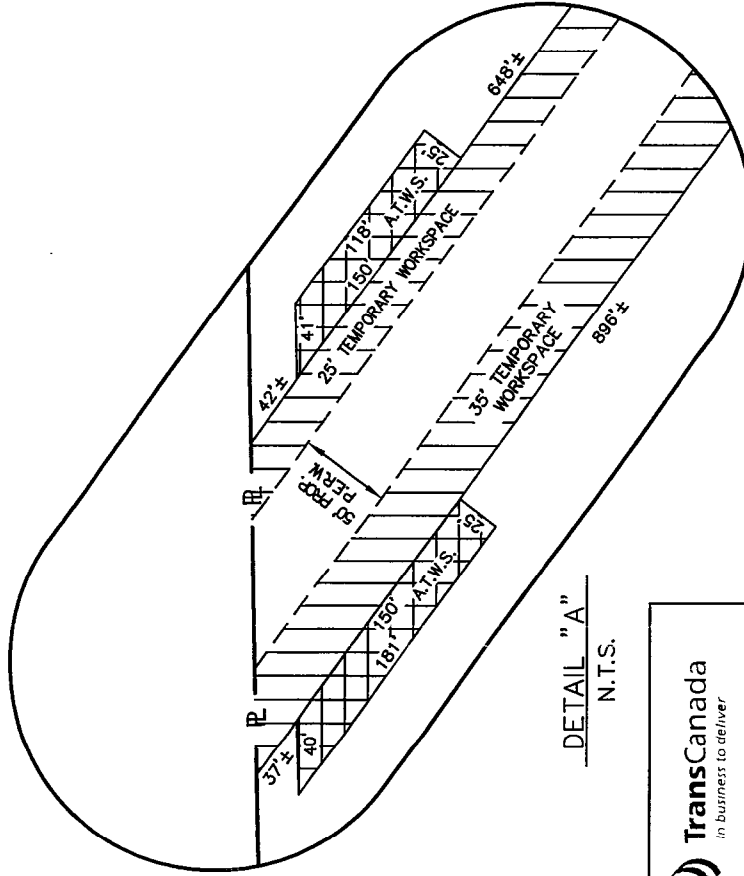
The new Identity of Tron

 TransCanada <i>in business to deliver</i>	KEYSTONE XL PROJECT		EASEMENT AREA		EXHIBIT A	
	<p>ACROSS THE PROPERTY OF JERRY CARPENTER AND CHARLAYNE CARPENTER, HUSBAND AND WIFE, AS JOINT TENANTS, WITH RIGHT OF SURVIVORSHIP, AND NOT AS TENANTS IN COMMON M/L-NE-AT-30300.000</p>		PROJECT:		XL	
			APPROVED BY		SUR	
			DRAWING NUMBER		XL-08-ML-SK-3427	
			NO.		REVISION	DATE
SCALE		DATE		DRAWN BY		CHECKED BY
1" = 500'		10/31/14		PB		ALS


ANTELOPE COUNTY, NEBRASKA

T-26-N, R-6-W, SECTION 22
ML-NE-AT-30300.000

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



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

 TransCanada in business to deliver		KEYSTONE XL PROJECT	
		EASEMENT AREA	
ACROSS THE PROPERTY OF JERRY CARPENTER AND CHARLAYNE CARPENTER, HUSBAND AND WIFE, AS JOINT TENANTS, WITH RIGHT OF SURVIVORSHIP, AND NOT AS TENANTS IN COMMON			
ML-NE-AT-30300.000			
PROJECT:		EXHIBIT A	
APPROVED BY	DRAWING NUMBER		
SLR	XL-08-ML-SK-3427		
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/31/14	PB	ALS

 The new identity of Tron

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Plaintiff,

v.

RICHARD ANDREW, JANE ANDREW,
LUKE ANDREW, and BRYCE ANDREW,

Defendants.

CASE NO. _____

COMPLAINT

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

PARTIES

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM: NEGLIGENCE

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

SECOND CLAIM: TRESPASS

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

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

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-AT-30300.000

We, Jerry Carpenter and Charlayne Carpenter, husband and wife, as joint tenants, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Five Hundred Sixty Dollars and No Cents (\$2,560.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Antelope, State of Nebraska:

NE/4

Section 22, Township 26N, Range 6W

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

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

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6

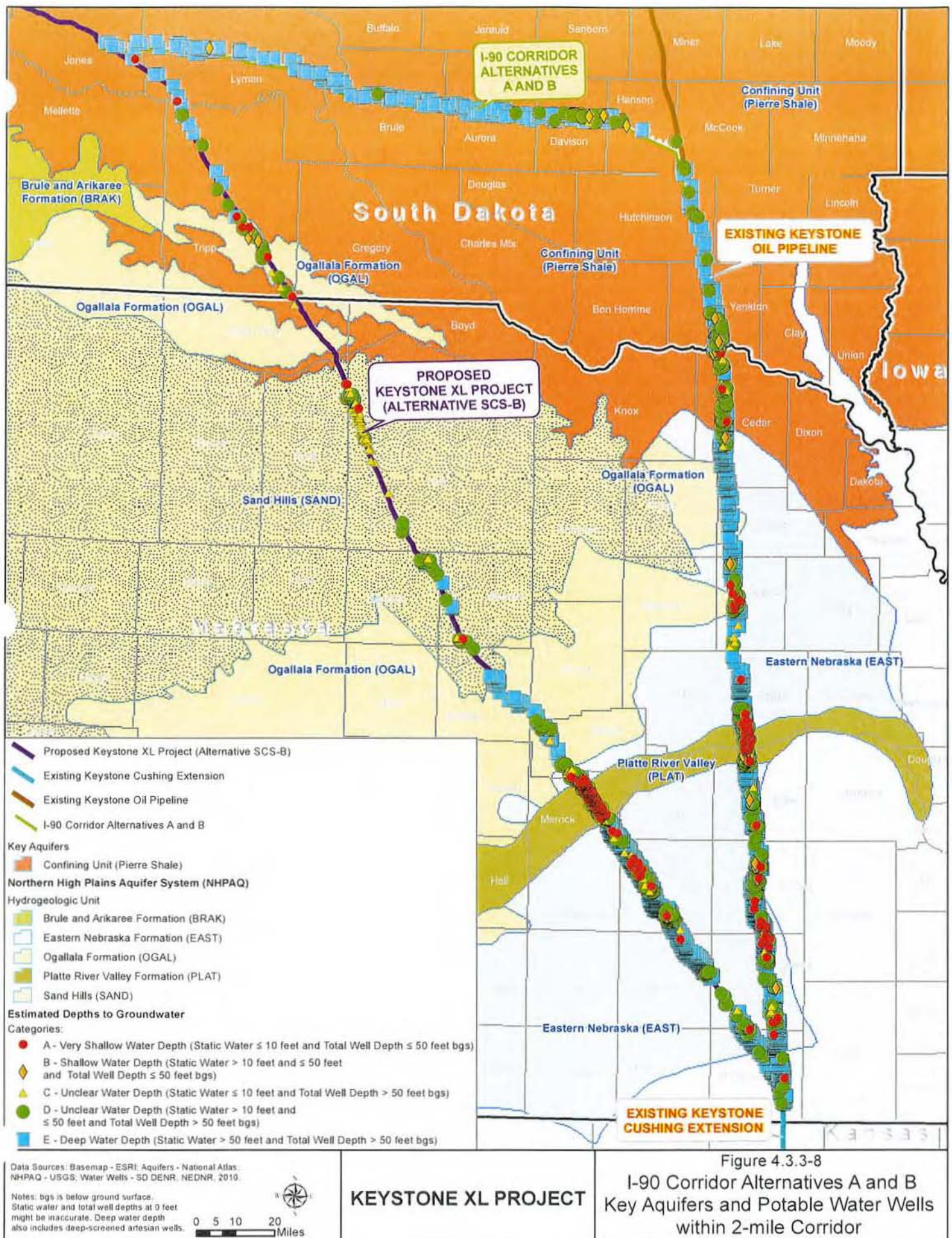


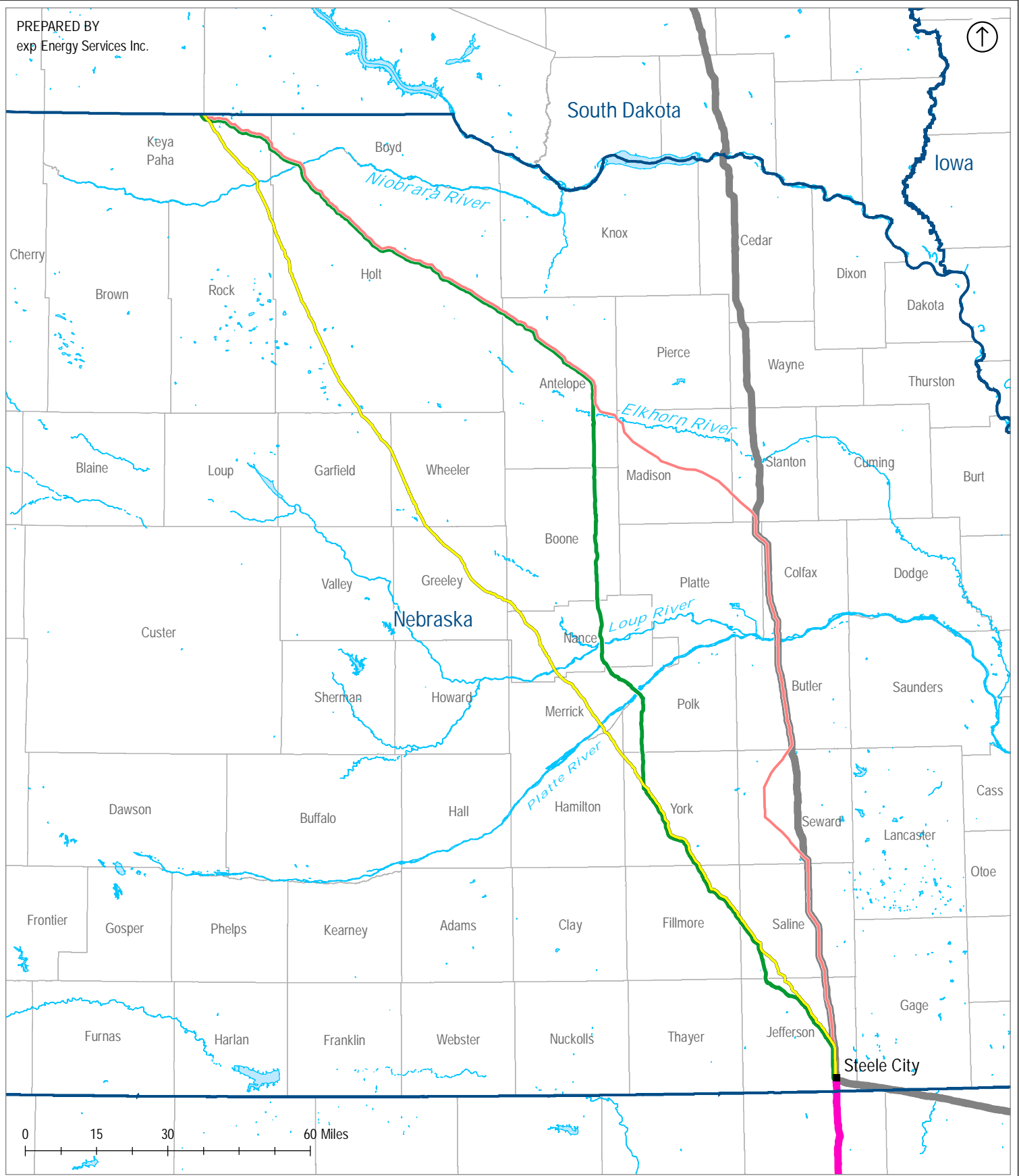
Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



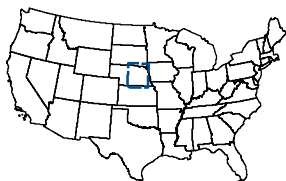
KEYSTONE XL PROJECT

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

Attachment No. 7



VICINITY MAP



LEGEND

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

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Tammy Cheatum in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Antelope County)

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

2 A: My name is Tammy Cheatum.

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: Teacher & Farmer.

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

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 parents purchased this land about 50 years ago. I was the oldest of four
10 children at the age of four. My parents were our protectors. They worked tireless
11 hours to develop the land and provide for us. It was all of our way of life. I
12 remember one quarter of land had two-line irrigation while the other was dry land.
13 We cleared some trees, picked up sticks and raised corn and alfalfa while being
14 dairy and pig operators. We were able to purchase irrigation for each quarter.
15 After sixteen years of farming, my dad was killed in a car accident right on the
16 road by our farm. My mom continued to operate the farm and had my husband
17 farm the land. Her wish was to do everything she could to pass the farm on to my
18 siblings and me. Many times we told her that she could sell it because we wanted
19 her to live comfortably. She refused. Cancer took my mom seven years ago, so
20 now this land has been passed on to the second generation. As the oldest, I am
21 filling the shoes of the protector for my brother and two sisters. Yes, we are older
22 and can take care of ourselves, but they still look to me to make decisions about
23 the farm. My husband has now farmed this land longer than my dad had the
24 opportunity to do. These two quarters are our livelihood, but we also have to have
25 outside jobs to help support it. We rotate corn and soybeans on the two quarters.
26 The property taxes are paid each year and will be paid long after we are gone. Yet,
27 the pipeline owners will be finished paying taxes to Nebraska in just fifteen years.

28 **Q: Do you earn any income from this land?**
29 A: Yes.

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

3 A: Yes.

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

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

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

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

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

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

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

28 A: Yes.

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

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

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

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

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

11 A: No, they have not.

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

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

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

19 A: No, they did not.

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

22 A: Yes, they did.

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

25 A: Yes, they did.

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

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

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

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

9 A: No, I do not.

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

12 A: Yes, they did.

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

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

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

25 A: Yes, it is.

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

28 A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 A: No.

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

11 A: No.

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

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

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

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

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

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

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

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

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

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

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

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

24 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 A: No, never.

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

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

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

29 A: Yes, it is.

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

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

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

9 A: No, I did not.

10 **Q: Why not?**

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

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

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

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

27 A: No, they have not.

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

4 A: No, they have not.

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

7 A: Yes, I am.

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

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

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

16 A: No, they have not.

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

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

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

1 A: No, it has not.

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

5 A: No, I do not.

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

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

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

12 A: Yes, I do.

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

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

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

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

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

23 A: No, of course not.

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

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

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

2 A: Well, yes I have.

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

7 A: No, of course not.

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

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

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

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

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

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

5 A: No, I do not.

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

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

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

16 A: Well yes, of course.

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

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

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

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

6 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 A: Yes, I have.

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

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

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

1 A: No, I do not.

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

5 A: No, I do not.

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

8 A: No, I do not.

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

12 A: No, I do not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 A: Yes. We have elected officials from inside the state of Nebraska to help protect
24 our state's well-being. You have a duty to do what is best for the citizens who live
25 in Nebraska. We are looking to you to protect us as landowners and citizens of
26 Nebraska. We are directly affected by the huge decision that is being placed before
27 you. Eminent domain being pursued for this project is being requested by a
28 private, for-profit company. Are you willing to give that authority to this company
29 knowing that they could easily turn around and sell it to another company? Canada

1 is a friendly neighbor. What if they entity who purchases the pipeline is North
2 Korea, China, Russia....would they be friendly? Why would you want to
3 jeopardize our state and our landowners for this possibility? Can we be certain that
4 this project is in the public interest of Nebraska or the rest of the United States, for
5 that matter? As with an interstate, a railroad or electricity, the citizens have access
6 to these entities. This pipeline has one goal...to transport tar sands to the gulf
7 where it will be put on the global market. There is less than half of the product that
8 would stay in the United States. Yet, landowners assume the liability and risk to
9 their land. We have a one-time payment; no removal of the pipe when/if the
10 pipeline ceases to operate; and the liability of damage to the pipeline. I have heard
11 and read many reports of people claiming that this is the safest pipeline; the risk is
12 minimal; I would welcome the chance to have it cross my land; etc. When I gave
13 reasons for wanting to do something to my parents that every other kid was doing,
14 they told me, "if they jumped off of a cliff, would you follow?" I guess I am not
15 ready to "jump off of the cliff" just because this seems like the right thing to do
16 according to most people. The Public Service Commission has the responsibility
17 to our state of Nebraska. Be our protectors. Give us reasons to believe in the
18 people whom we have elected. Be our voice. Give us the opportunity to pass on
19 our legacy. Use eminent domain for the way it was designed! These proposed
20 routes do not make sense.

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

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

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

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

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

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?

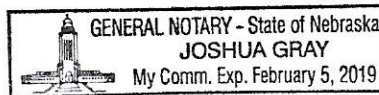
4 **A:** Yes, they are.

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.

Jimmy Cheatum
Tammy Cheatum

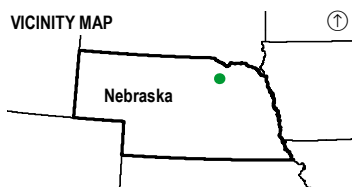
Subscribed and Sworn to me before this 31 day of May, 2017.

Joshua Gray
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
CHP 4 Farms, LLC

TRACT NO. ML-NE-AT-30015.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 019
TOWNSHIP: 028N
RANGE: 008W

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

May 2017 - X:\Drawings\558\BA KEYSSTONE XL\55800_9999\558

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-30015.000

**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**") **CHP 4 Farms, LLC, a Nebraska Limited Liability Company**, whose mailing address is 621 Harrison Street, Orchard, NE 68764 (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 310.04 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the N1/2 of Section 19, T28N, R8W of the 6th P.M., as recorded in Book 128, Page 447 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):

CHP 4 Farms, LLC, a Nebraska Limited Liability Company

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

CHP 4 Farms, LLC, a Nebraska Limited Liability Company, on behalf of said Corporation

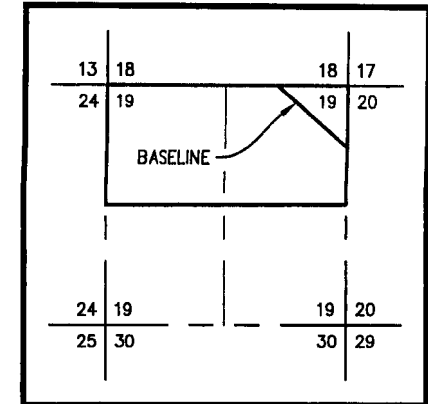
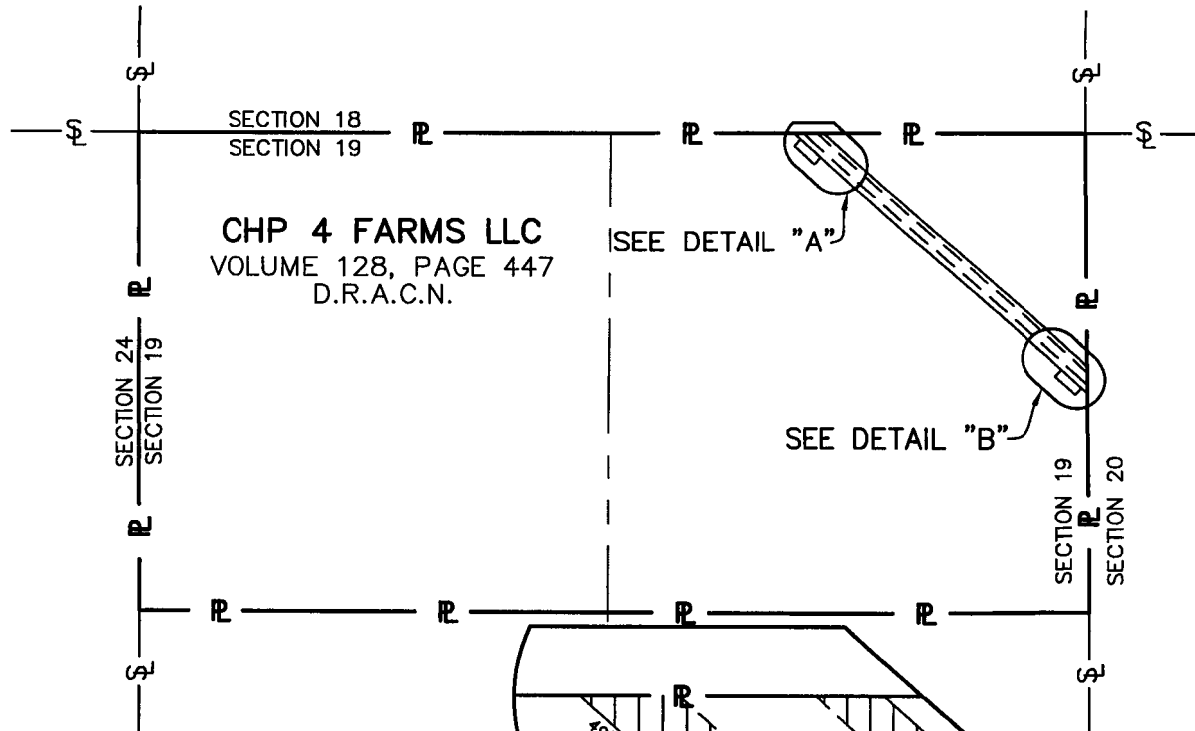
Notary Public Signature

Affix Seal Here

PL
§
PROP.
A.T.W.S.
P.E.R.W.
D.R.A.C.N.

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

T-28-N, R-8-W, SECTION 19
ML-NE-AT-30015.000



VICINITY MAP
N.T.S.



SCALE: 1" = 1000'

TRACT LEGAL DESCRIPTION:
N/2 OF SECTION 19,
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.

TOTAL DISTANCE ACROSS PROPERTY:	1,986'±
AREA OF PERMANENT EASEMENT:	2.3 ACRES
AREA OF TEMPORARY WORKSPACE:	2.8 ACRES
ADDITIONAL TEMPORARY WORKSPACE:	0.3 ACRE



**KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
CHP 4 FARMS LLC
ML-NE-AT-30015.000**

PROJECT:	EXHIBIT A
XI	

APPROVED BY	DRAWING NUMBER
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SLR	XL-08-ML-SK-3384
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NO.	REVISION	DATE
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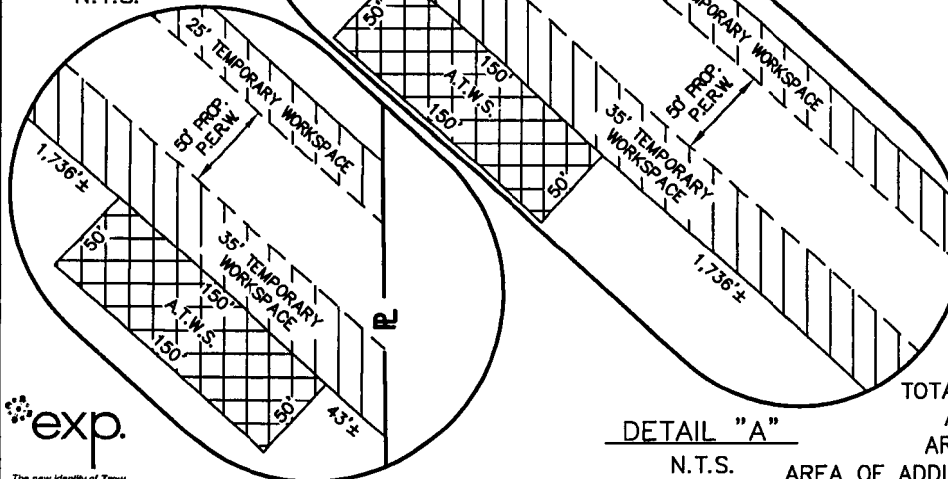
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SCALE	IN A YEAR	BEHIND THE	CUSTOMER
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SCALE	DATE	DRAWN BY	CHECKED
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" = 1000'	11/05/14	JN	ALS
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DETAIL "B"
N.T.S.



DETAIL "A"
N.T.S.



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-30015.000

We, CHP 4 Farms, LLC, a Nebraska Limited Liability Company, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Four Thousand Three Hundred Twenty Dollars and No Cents (\$4,320.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Antelope, State of Nebraska:

N/2

Section 19, 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, we have hereunto set our hands on this _____ day of _____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6

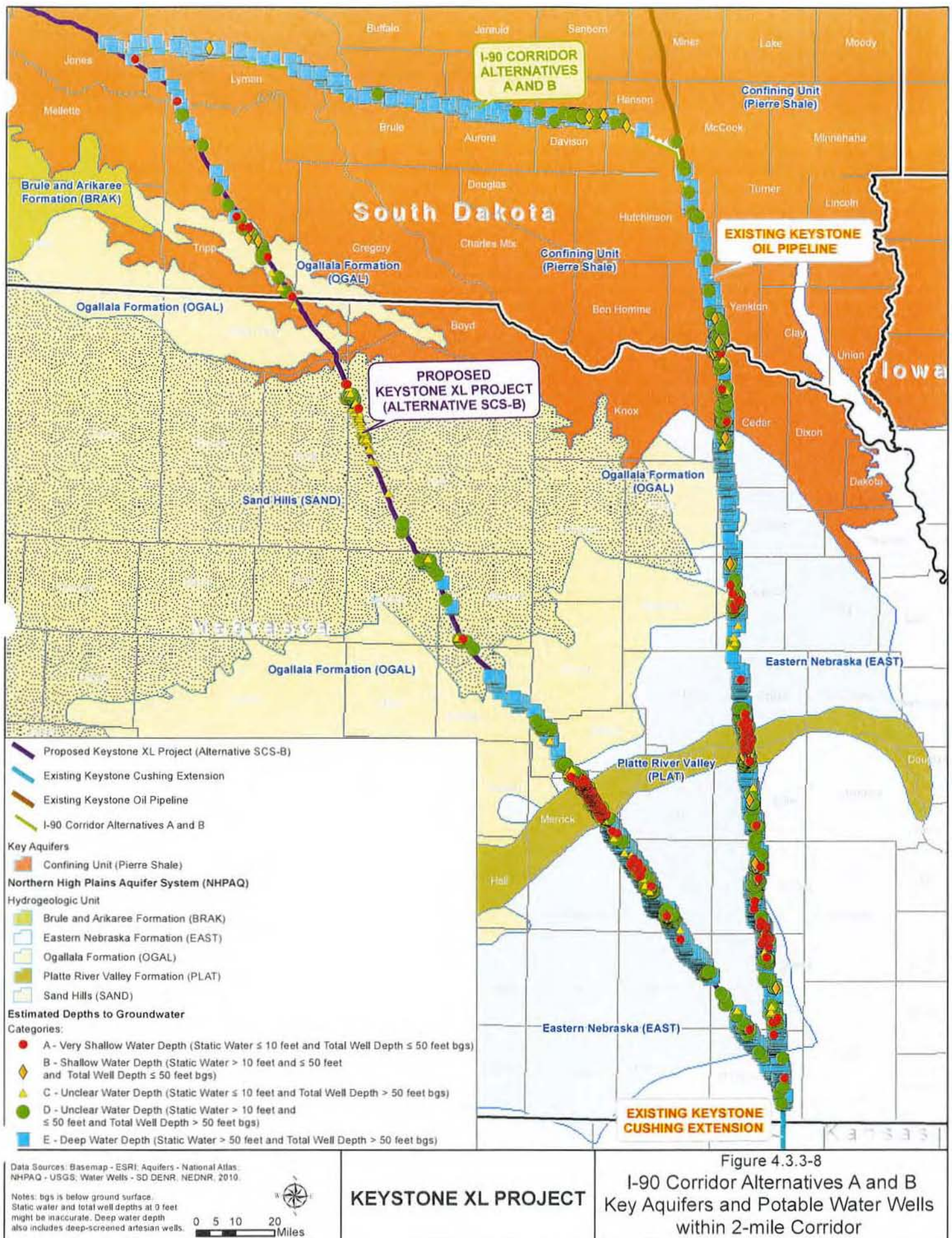


Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



KEYSTONE XL PROJECT

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

Attachment No. 7



VICINITY MAP



LEGEND

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

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Tim Choat in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Boone County)

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

2 A: My name is Tim Choat. I am the Trustee of a Trust that own land affected by this
3 Application.

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

7 A: Yes, I am.

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

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

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

15 A: Yes.

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

1 A: Farmer.

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

3 A: Kathy Choat.

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

6 A: Yes.

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

10 A: Owned the land for 50 years. My Father purchased the farm from my Great Aunts
11 family in 1966. He spent his entire life as a good steward to the land – practicing
12 soil and erosion conservation in order to leave the ground in pristine condition for
13 future generations. Boone County FSA office has classified this farm as HEL
14 (highly erodible land) ground.

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

16 A: Yes.

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

19 A: Yes.

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

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

1 mainline alternative routes be approved. If they were to twin or closely parallel to
2 Keystone I the vast majority of landowners would be those that already have a
3 pipeline so there would be considerable less new incremental negative impacts.

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

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

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

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

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

15 A: Yes.

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

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

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

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

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

26 A: No, they have not.

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

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

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

6 A: No, they did not.

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

9 A: Yes, they did.

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

12 A: Yes, they did.

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

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

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

25 A: No, I do not.

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

28 A: Yes, they did.

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

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

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

13 A: Yes, it is.

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

16 A: Yes, I have.

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

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

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

28 A: 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 the easement to

1 be transferred or sold to someone or some company or country or who knows what
2 that I don't know and who we may not want to do business with. This pipeline
3 would be a huge asset for TransCanada and if they can sell to the highest bidder
4 that could have terrible impacts upon all of Nebraska depending upon who may
5 buy it and I don't know of any safeguards in place for us or the State to veto or
6 have any say so in who may own, operate, or be responsible for this pipeline in the
7 future.

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

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

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

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

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

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

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

28 A: The easement language includes all these things TransCanada can do and it says
29 "...abandoning in place..." so they can just leave this pipeline under my ground

1 until the end of time just sitting there while they are not using it, but I am still
2 prevented from doing on my land and using my land what I would like. If I owned
3 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
4 there. It doesn't make sense and it scares me and it is not in my interest or the
5 public interest of Nebraska to allow this.

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

8 A: Yes.

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

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

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

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

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

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

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

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

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

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

1 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
2 undefined and unilateral restrictions are not conducive to the protection of
3 property rights or economic interest.

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

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

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

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

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

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

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

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

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 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.

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: My Father and I worked diligently to improve this farm. On the attached map, by
9 #1 and #2 in **Attachment No. 8** hereto, there are dams in place to control the run-
10 off water. If you notice the light brown areas on the map between the dams, these
11 are steep slopes that require careful and specific farming practices; the area that
12 TC wants to use goes directly on top of the flattest most productive table of this
13 farm. #3 is the irrigation well for the center pivot – less than a quarter (¼) mile
14 from the proposed pipeline. #4 is a submersible well – approximately 85 to 90 feet
15 from the center of the proposed pipeline. This farm sits on top of a ridge that
16 divides 3 valleys - one to the north, one to the west and one to the south. With that
17 being said, the table where the proposed pipeline would go is at the very top,
18 subjected to the very highest risk of erosion along with all the tillage, irrigation
19 risks and foreseeable problems. Hypothetically, over time, the soil erodes away
20 and the pipeline is now buried by only a foot or two and let's say they stop the
21 flow due to a problem and it is January with subzero temps; the line freezes and
22 the pipe expands with 2 elbows?? This is called 'coefficient of linear expansion'!
23 If this line leaks or ruptures in any direction, it will flow over several landowners'
24 ground – who is liable? And beyond just the spill or rupture event what about all
25 the collateral negative impacts?

26 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
27 **crude oil pipeline in its preferred location, or ultimate location across the**
28 **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 portion of the proposed pipeline within Nebraska as found**
23 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

24 A: No, I do not.

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

28 A: No, I do not.

29 **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. Decreased land value is a concern. TransCanada wants to correct their line by
11 installing 2 elbows. In my opinion, this increases my risk of leaks and failure – 3
12 fold. Current pivot system crosses the proposed pipeline with 5 towers. The
13 landowners on Keystone 1 had trouble with gravity irrigation and center pivots
14 failing and getting stuck over the top of the pipeline due to not packing the soil
15 back in trench properly. Abandonment by TransCanada is a liability to my family
16 and all future generations. If this pipeline is installed, will it adversely affect my
17 farm blanket insurance policy or my ability to borrow operating money? I learned
18 how to cultivate and operate farm equipment as a young boy on this ground. I have
19 helped my Father irrigate and develop this farm my whole life and I have tried to
20 do my very best to follow in my Father's footsteps, to be a good steward to the
21 land – even more so in the past 6 years, with the passing of my Father. As Trustee,
22 it is not only my duty, but also my responsibility to continue the good farming
23 practices, just as my Father did his entire life. With all these stated potential
24 problems, surely there is a better location, away from the aquifer and our farm.

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

6 A: Yes.

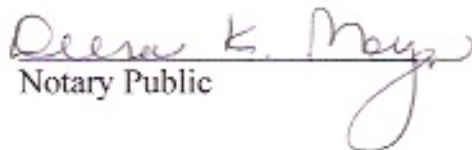
7 **Q: Are all of your statements in your testimony provided above true and**
8 **accurate as of the date you signed this document to the best of your**
9 **knowledge?**

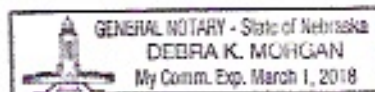
10 A: Yes, they are.

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


Tim Choat

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

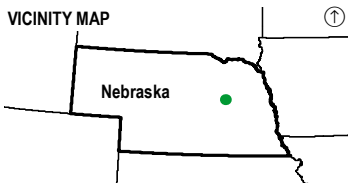

Notary Public



Attachment No. 1



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Shirley E. Choat Living Trust dated March 5, 2014
Testamentary Trust of Gary L. Choat, Deceased
Timothy L. Choat

TRACT NO. ML-NE-BO-30275.000
STATE: Nebraska
COUNTY: Boone
SECTION: 032
TOWNSHIP: 020N
RANGE: 005W

- 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-BO-30275.000

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**"), **Timothy L. Choat, Trustee of the Shirley E. Choat Living Trust Dated March 5, 2014, and Timothy L. Choat, Trustee of the Testamentary Trust set forth in the Last Will and Testament of Gary L. Choat, Deceased**, whose mailing address is 3020 State Hwy 56, St. Edward, Nebraska 68660 (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 Boone, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 160 acres, more or less, situated in the County of Boone, in the State of Nebraska, being further described as the SE1/4 of Section 32, Township 20 North, Range 5 West of the 6th P.M., as recorded in Book 116, Page 646 and Book 114, Page 61 in the Deed Records of Boone County, Nebraska; less and except any conveyances heretofore made.

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

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

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee

harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____, 20____.

GRANTOR(S):

Shirley E. Choat Living Trust Dated March 5, 2014

Timothy L. Choat, Trustee

Testamentary Trust set forth in the Last Will and Testament of Gary L. Choat, Deceased

Timothy L. Choat, Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By Timothy L. Choat, Trustee of the Shirley E. Choat Living Trust Dated March 5, 2014 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 Timothy L. Choat, Trustee of the Testamentary Trust set forth in the Last Will and Testament of Gary L. Choat, Deceased on behalf of said Trust.

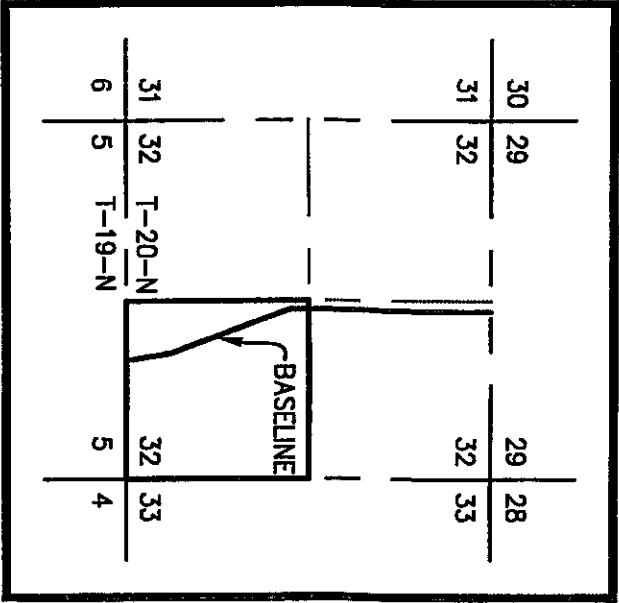
Notary Public Signature

Affix Seal Here

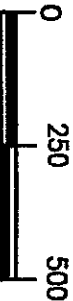
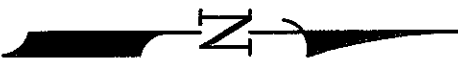
LEGEND
PROPERTY LINE
SECTION LINE
PROPOSED
AND OTHERS
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF BOONE COUNTY, NEBRASKA

BOONE COUNTY, NEBRASKA
T-20-N, R-5-W, SECTION 32
ML-NE-BO-30275.000

TIMOTHY L. CHOAT, TRUSTEE
VOLUME 114, PAGE 61-62
VOLUME 116, PAGE 646
D.R.B.C.N.



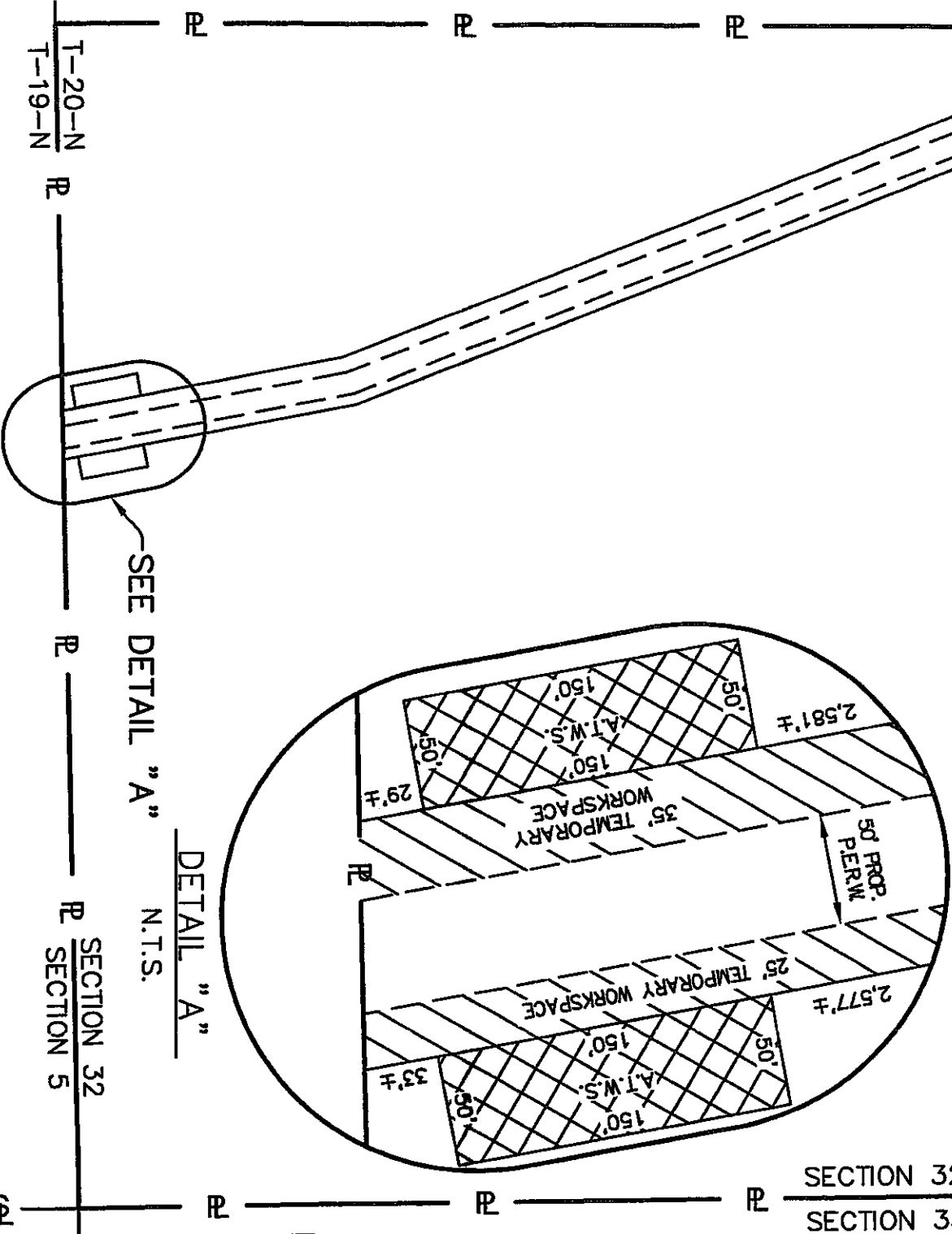
VICINITY MAP
N.T.S.



SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:
SE/4 OF SECTION 32,
T-20-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.




SEE DETAIL "A"

DETAIL "A"

N.T.S.

SECTION 32
SECTION 5

T-20-N
T-19-N

 TransCanada <i>In business to deliver</i>	
KEYSTONE XL PROJECT	
EASEMENT AREA ACROSS THE PROPERTY OF TIMOTHY L. CHOAT, TRUSTEE ML-NE-BO-30275.000	
PROJECT:	EXHIBIT A
APPROVED BY	DRAWING NUMBER
SLR	XL-08-ML-SK-3508
NO.	REVISION
DATE	DATE
SCALE	DATE
1" = 500'	10/28/14
PB	ALS



TOTAL DISTANCE ACROSS PROPERTY: 2,760'±
AREA OF PERMANENT EASEMENT: 3.2 ACRES
AREA OF TEMPORARY WORKSPACE: 3.8 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.3 ACRE

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Plaintiff,

v.

RICHARD ANDREW, JANE ANDREW,
LUKE ANDREW, and BRYCE ANDREW,

Defendants.

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-BO-30275.000

I, Timothy L. Choat, Trustee of the Shirley E. Choat Living Trust Dated March 5, 2014, and Timothy L. Choat, Trustee of the Testamentary Trust set forth in the Last Will and Testament of Gary L. Choat, Deceased, of Boone County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Eight Hundred Forty Dollars and No Cents (\$5,840.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Boone, State of Nebraska:

SE/4

Section 32, Township 20N, 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, I have hereunto set our hands on this _____ day of _____, 20____.

Owner Signature

Owner/Owner Representative Name

Attachment No. 6

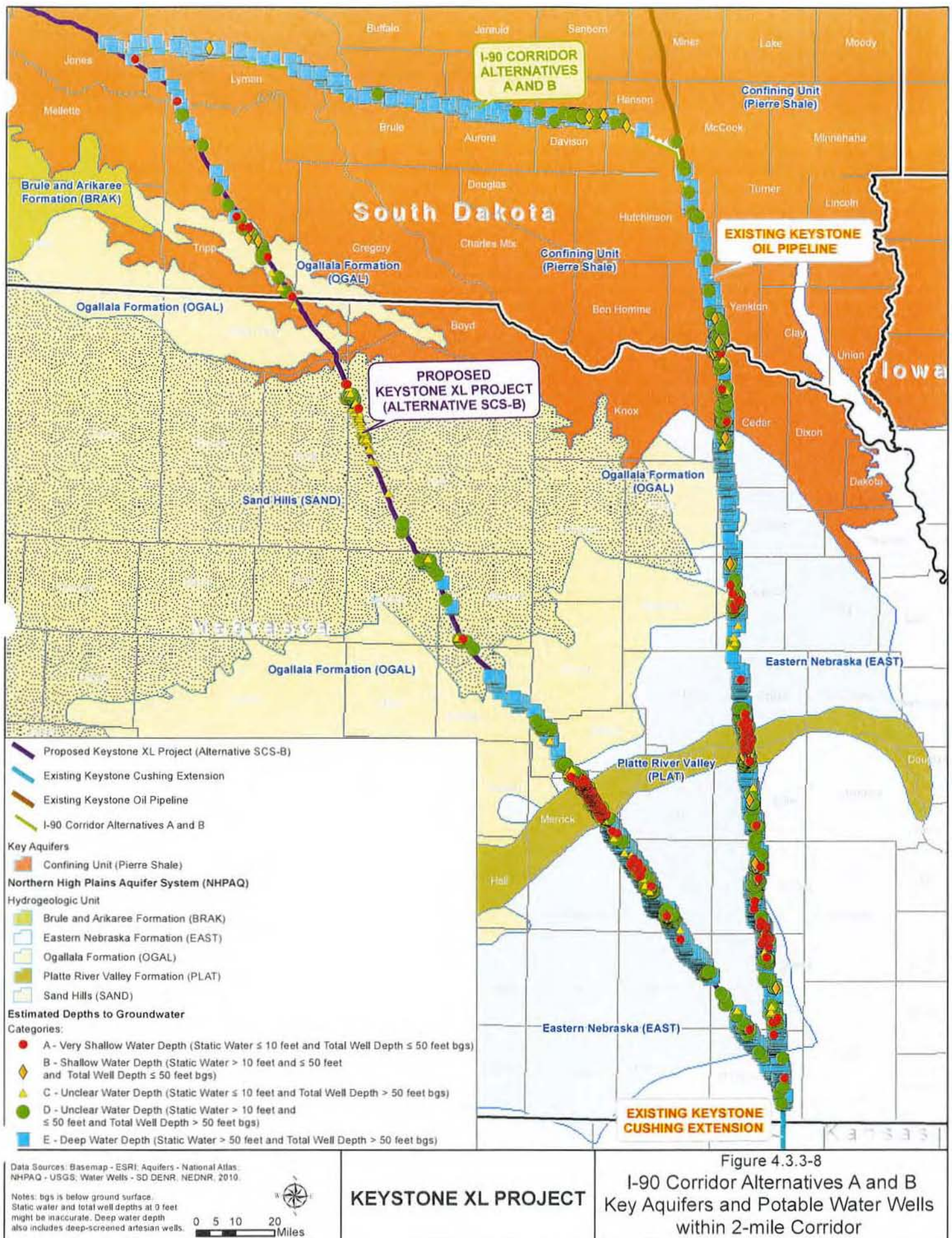


Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor

Attachment No. 7



VICINITY MAP



LEGEND

- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Attachment No. 8

Boony Co.
Webbsters

PALESTINE 30/275,000
CHINA 64M

Figure 1

Figure 1

RESUME

RESUME

Temperature (°C)	Rate of reaction
0	0.0
10	0.2
20	0.4
30	0.7
40	1.0
50	0.9
60	0.8
70	0.75
80	0.7
90	0.65
100	0.6

MEASUREMENTS ONLY INCLUDE ACREAGE UNDER THE PROPERTY BOUNDARIES OF
CROOK, GARY

ANNUAL POTENTIAL TOTAL IMPACTED AREA: 58.63 ± 10%

ACCOUNT NUMBER	AL-MED-33276-000
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[illegible]

2000-0001	0001
2000-0002	0002

END

INTEGRATED LABORATORY
SOLUTIONS

☐ **Prevalence** is the proportion of the population that has a disease at a particular point in time.

Potentially Affected Final Irrigation

AP	U.S. AIR FORCE	YOUNG	2000
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[illegible]

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

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George J. Borjas
 George J. Borjas is a senior research advisor at the Center for Globalization and Trade Policy, Brookings Institution.


Endowment Fund
U.S.A.

100

• **PLANNING • PARTIAL**

• **RESEARCH** • **INNOVATION**

11/11/2017	01:10
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• **Allegory** = Symbolic story

1151 1152

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
Larry Cleary in Support of Landowner
Intervenors

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Larry Cleary.

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: Irene Brown Cleary – Deceased 8/15/1999

1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A. Yes.

4 **Q: How long the land has been in your family?**

5 A: Over 100 years, since 1892. Moved to this property with my parents at age 7; A
6 tornado in 1990, moved our house from the foundation, we rebuilt full new
7 basement, rebuilt house, and enlarged home. I'm still living in that home and I am
8 alone since Irene's death. This land is very important to me, it is not my livelihood
9 but it also hold sentimental value and memories of my parents and our marriage.

10 **Q: Do you earn any income from this land?**

11 A: Yes.

12 **Q: Have you depended on the income from your land to support your livelihood**
13 **or the livelihood of your family?**

14 A: Yes.

15 **Q: Have you ever in the past or have you thought about in the future leasing all**
16 **or a portion of your land in question here?**

17 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
18 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
19 all the restrictions and risks and potential negative impacts to farming or ranching
20 operations as opposed to land that did not have those same risks. If I was looking
21 to lease or rent ground I would pay more for comparable non-pipeline land than I
22 would for comparable pipeline land and I think most folks would think the same
23 way. This is another negative economic impact that affects the landowner and the
24 county and the state and will forever and ever should TransCanada's preferred or
25 mainline alternative routes be approved. If they were to twin or closely parallel to
26 Keystone I the vast majority of landowners would be those that already have a
27 pipeline so there would be considerable less new incremental negative impacts.

28 **Q: Do you have similar concerns about selling the land?**

1 A: Well I hope not to have to sell the land in my lifetime but times change and you
2 never know what is around the corner and yes I am concerned that if another piece
3 of ground similar to mine were for sale and it did not have the pipeline and mine
4 did that I would have a lower selling price. I think this would be true for pipeline
5 ground on both the preferred and mainline alternative routes.

6 **Q: What is your intent with your land after you die?**

7 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
8 to come but I have thought about getting out if this pipeline were to come through.

9 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
10 **Pipeline would cross the land described above and owned by you?**

11 A: Yes.

12 **Q: Were you or an entity for which you are a member, shareholder, or director**
13 **previously sued by TransCanada Keystone Pipeline, LP?**

14 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
15 petition for condemnation against our land so it could place its proposed pipeline
16 within an easement that it wanted to take from us on our land.

17 **Q: Did you defend yourself and your land in that condemnation action?**

18 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
19 and expenses in our resistance of TransCanada's lawsuit against us.

20 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
21 **incurred?**

22 A: No, they have not.

23 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
24 **property that it wanted to take for its proposed pipeline?**

25 A: The lawsuit against us stated they would take the amount of property that is
26 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
27 and equipment reasonably necessary to operate the pipeline.

28 **Q: Did TransCanada define what they meant by "property that is reasonably**
29 **necessary"?**

1 A: No, they did not.

2 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
3 **property portion of your land?**

4 A: Yes, they did.

5 **Q: Did TransCanada describe what rights it proposed to take related to the**
6 **eminent domain property on your land?**

7 A: Yes, they did.

8 **Q: What rights that they proposed to take did they describe?**

9 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
10 operate, and maintain the pipeline and the plant and equipment reasonably
11 necessary to operate the pipeline, specifically including surveying, laying,
12 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
13 reconstructing, removing and abandoning one pipeline, together with all fittings,
14 cathodic protection equipment, pipeline markers, and all their equipment and
15 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
16 petroleum products, and all by-products thereof.”

17 **Q: Prior to filing an eminent domain lawsuit to take your land that**
18 **TransCanada identified, do you believe they attempted to negotiate in good**
19 **faith with you?**

20 A: No, I do not.

21 **Q: Did TransCanada at any time approach you with or deliver to you their**
22 **proposed easement and right-of-way agreement?**

23 A: Yes, they did.

24 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
25 **agreement, did you understand that they would be purchasing a fee title**
26 **interest in your property or that they were taking something else?**

27 A: I understood that they proposed to have the power to take both a temporary
28 construction easement that could last for a certain period of time and then also a
29 permanent easement which they described to be 50 feet across or in width, and

1 that would run the entire portion of my property from where a proposed pipeline
2 would enter my property until where it would exit the property.

3 **Q: Is the document included with your testimony here as Attachment No. 3, a**
4 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
5 **Way agreement that they included with their condemnation lawsuit against**
6 **you?**

7 A: Yes, it is.

8 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
9 **and Right-of-Way agreement?**

10 A: Yes, I have.

11 **Q: What is your understanding of the significance of the Easement and Right-of-**
12 **Way agreement as proposed by TransCanada?**

13 A: My understanding is that this is the document that will govern all of the rights and
14 obligations and duties as well as the limitations of what I can and cannot do and
15 how I and any future landowner and any person I invite to come onto my property
16 must behave as well as what TransCanada is and is not responsible for and how
17 they can use my land.

18 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
19 **agreement do you have any concerns about any portions of it or any of the**
20 **language either included in the document or missing from the proposed**
21 **document?**

22 A: Yes, I have a number of significant concerns and worries about the document and
23 how the language included and the language not included potentially negatively
24 impacts my land and thereby potentially negatively impacts my community and
25 my state.

26 **Q: I would like you to walk the Commissioners through each and every one of**
27 **your concerns about TransCanada's proposed Easement and Right-of-Way**
28 **agreement so they can develop an understanding of how that language and**
29 **the terms of that contract, in your opinion, potentially negatively impacts you**

1 **and your land. So, if you can start at the beginning of that document and**
2 **let's work our way through it, okay?**

3 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
4 Easement and Right-of-Way agreement and how it negatively could affect my
5 property rights and my economic interests.

6 **Q: Okay, let's start with your first concern please.**

7 A: The very first sentence talks about consideration or how much money they will
8 pay to compensate me for all of the known and unknown affects and all of the
9 rights I am giving up and for all the things they get to do to my land and for what
10 they will prevent me from doing on my land and they only will pay me one time at
11 the signing of the easement agreement. That is a huge problem.

12 **Q: Explain to the Commissioners why that is a problem.**

13 A: It is not fair to the landowner, the county, or the State. It is not fair to the
14 landowner because they want to have my land forever for use as they see fit so
15 they can make a daily profit from their customers. If I was to lease ground from
16 my neighbor I would typically pay twice a year every year as long as they granted
17 me the rights to use their land. That only makes sense – that is fair. If I was going
18 to rent a house in town I would typically pay monthly, every month until I gave up
19 my right to use that house. By TransCanada getting out on the cheap and paying
20 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
21 revenue collection on the money I would be paid and then pay taxes on and
22 contribute to this state and this country. It is money I would be putting back into
23 my local community both spending and stimulating the local economy and
24 generating more economic activity right here. Instead TransCanada's shareholders
25 keep all that money and it never finds its way to Nebraska.

26 **Q: What is your next concern?**

27 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
28 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
29 limited partnership..." and I have no idea who that really is. I have no idea who is

1 forcing this pipeline on us or who the owners of the entities are, or what are the
2 assets backing this limited partnership, or who the general partner is, or who all
3 the limited partners are, and who makes up the ownership of the these partners or
4 the structure or any of the basic things you would want to know and understand if
5 you would want to do business with such an outfit. According to TransCanada's
6 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
7 liability company called TransCanada Keystone Pipeline GP, LLC is the general
8 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
9 basically nothing. That is really scary since the general partner has the liability but
10 virtually none of the ownership and who knows if it has any other assets.

11 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
12 **percent clear on exactly who could become the owner of about 275 miles of**
13 **Nebraska land?**

14 A: No.

15 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
16 **percent clear on exactly who will be operating and responsible for**
17 **approximately 275 miles of tar sands pipeline underneath and through**
18 **Nebraska land?**

19 A: No.

20 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
21 **and the State of Nebraska of TransCanada's easement terms.**

22 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
23 called "Grantee")..." and this concerns me because it would allow their easement
24 to be transferred or sold to someone or some company or country or who knows
25 what that I don't know and who we may not want to do business with. This
26 pipeline would be a huge asset for TransCanada and if they can sell to the highest
27 bidder that could have terrible impacts upon all of Nebraska depending upon who
28 may buy it and I don't know of any safeguards in place for us or the State to veto

1 or have any say so in who may own, operate, or be responsible for this pipeline in
2 the future.

3 **Q: Do you think that type of uncertainty and lack of control over a major piece**
4 **of infrastructure crossing our State is in the public interest?**

5 A: No, certainly not, in fact, just the opposite.

6 **Q: What's next?**

7 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
8 really concerns me. Why does the easement and right-of-way have to be perpetual
9 and permanent? That is the question myself and my family want an answer to.
10 Perpetual to me is like forever and that doesn't make sense.

11 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

12 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
13 data proving there is a perpetual supply of tar sands. I am not aware in
14 TransCanada's application where it proves there is a perpetual necessity for this
15 pipeline. My understanding of energy infrastructure like wind towers is they have
16 a decommission plan and actually take the towers down when they become
17 obsolete or no longer needed. Nothing manmade lasts forever. My land however
18 will, and I want my family or future Nebraska families to have that land as
19 undisturbed as possible and it is not in my interest or the public interest of
20 Nebraska to be forced to give up perpetual and permanent rights in the land for
21 this specific kind of pipeline project.

22 **Q: Okay, what is your next concern?**

23 A: The easement language includes all these things TransCanada can do and it says
24 "...abandoning in place..." so they can just leave this pipeline under my ground
25 until the end of time just sitting there while they are not using it, but I am still
26 prevented from doing on my land and using my land what I would like. If I owned
27 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
28 there. It doesn't make sense and it scares me and it is not in my interest or the
29 public interest of Nebraska to allow this.

1 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
2 **right?**

3 A: Yes.

4 **Q: So now on the second page of the Easement what are your concerns?**

5 A: Here the Easement identifies a 24-month deadline to complete construction of the
6 pipeline but has caveats that are undefined and ambiguous. The 24-month period
7 starts to run from the moment “actual pipeline installation activities” begin on
8 Landowners property. It appears that TransCanada would define this phrase as
9 needed. It would be wise to explain what types of TransCanada action constitutes
10 “installation activity” For instance, would the placement and storage of an
11 excavator or other equipment on or near the Easement property be an activity or
12 would earth have to be moved before the activity requirement is triggered. This
13 vague phrase is likely to lead to future disputes and litigation that is not in the best
14 interest of the welfare of Nebraska and would not protect property interests. The
15 24-months can also be extended in the case of “force majeure.” My understanding
16 is that force majeure is often used to insulate a party to a contract when events
17 occur that are completely out of their control. In TransCanada’s easement this is
18 expanded to include “without limitation...availability of labor and materials.”
19 Extending this language to labor and materials is problematic because these are
20 two variables that TransCanada does have some or significant control over and to
21 allow extension of the 24-month period over events not truly out of the control of
22 TransCanada and without further provision for compensation for the Landowner is
23 not conducive to protection of property rights.

24 **Q: Okay, what is your next concern?**

25 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
26 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
27 reasonable costs and expenses” will pay for damages caused but then limits
28 TransCanada’s liability to certain circumstances. There is no definition of
29 “commercially reasonable” and no stated right that the Landowner would get to

determine the amounts of cost or expense that is “commercially reasonable.” TransCanada excepts out from their liability any damages that are caused by Landowner’s negligence or the negligence of anyone ever acting on the behalf of Landowner. It is understandable that if the Landowner were to willfully and intentionally cause damages to the pipeline that Landowner should be liable. However, anything short of willful misconduct should be the liability of TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don’t think this unilateral power which I can’t do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4**.

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada’s exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems

1 necessary to do on the property. Landowner is also forbidden from excavating
2 without prior authorization by TransCanada. So my understanding is that
3 TransCanada will unilaterally determine what Landowner can and can't do based
4 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
5 could also completely deny my request to excavate. Further, TransCanada retains
6 all "privileges necessary or convenient for the full use of the rights" granted to
7 them in the Easement. Again, TransCanada unilaterally can decide to the
8 detriment of the property rights of Landowner what TransCanada believes is
9 necessary or convenient for it. And there is no option for any additional
10 compensation to landowner for any right exercised by TransCanada that leads to
11 the removal of trees or plants or vegetation or buildings or structures or facilities
12 owned by Landowner of any kind. Such undefined and unilateral restrictions and
13 rights without having to compensate Landowner for such further destruction or
14 losses are not conducive to the protection of property rights or economic interest.

15 **Q: What is the next concern you have?**

16 A: The Easement also allows some rights for Landowner but restricts them at the
17 same time and again at the sole and unilateral decision making of TransCanada.
18 TransCanada will determine if the actions of Landowner might in anyway
19 endanger or obstruct or interfere with TransCanada's full use of the Easement or
20 any appurtenances thereon to the pipeline itself or to their access to the Easement
21 or within the Easement and TransCanada retains the right at any time, whether
22 during growing season or not, to travel "within and along Easement Area on foot
23 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
24 retain the rights to prevent any landowner activity that it thinks may "unreasonably
25 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
26 undefined and unilateral restrictions are not conducive to the protection of
27 property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
2 Landowner's land any debris of any kind without any input or power of
3 Landowner to demand an alternative method or location of debris disposal. Such
4 unilateral powers would negatively affect Landowners property are not conducive
5 to the protection of property rights or economic interest.

6 **Q: What is the next concern you have with the Easement language?**

7 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
8 "where rock is encountered" mean and why does TransCanada solely get to
9 determine whether or not this phrase is triggered. This phrase could be used to
10 justify installing the pipeline 24 inches beneath the surface. The ability to use this
11 provision to minimal locate the pipeline at a depth of 24 inches could negatively
12 affect Landowners property are not conducive to the protection of property rights.
13 A shallow pipeline is much more likely to become a danger and liability in the
14 future given farming operations and buried irrigation lines and other factors
15 common to the current typical agricultural uses of the land in question impacted
16 by TransCanada's preferred pipeline route.

17 **Q: What is the next concern you have with the Easement language?**

18 A: There are more vague concepts solely at the determination of TransCanada such as
19 "as nearly as practicable" and "pre-construction position" and "extent reasonably
20 possible." There is nothing here that defines this or provides a mechanism for
21 documenting or memorializing "pre-construction position" so as to minimize
22 costly legal battles or wasted Landowner time attempting to recreate the soil
23 condition on their fields or pasture. Such unilateral powers would negatively affect
24 Landowners property are not conducive to the protection of property rights or
25 economic interest.

26 **Q: What is the next concern you have with the Easement language?**

27 A: TransCanada maintains the unilateral right to abandon the pipeline and all
28 appurtenances thereto in place on, under, across, or through Nebraska land at any
29 time it chooses. There is no provision for Landowner compensation for such

1 abandonment nor any right for the Landowner to demand removal. Such unilateral
2 powers would negatively affect Landowners property are not conducive to the
3 protection of property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: TransCanada has the power to unilaterally move or modify the location of any
6 Easement area whether permanent or temporary at their sole discretion.
7 Regardless, if Landowner has taken prior steps relative the their property in
8 preparation or planning of TransCanada's taking of the initial easement area(s),
9 the language here does not require TransCanada to compensate the Landowner if
10 they decide to move the easement anywhere on Landowners property. Such
11 unilateral powers would negatively affect Landowners property are not conducive
12 to the protection of property rights or economic interests.

13 **Q: What is the next concern you have with the Easement language?**

14 A: The Easement requires that all of the burdens and restrictions upon Landowner to
15 transfer and be applicable to any future owner of the Land in question without the
16 ability of the future Landowner to modify or negotiate any of the language in
17 question to which it will be held to comply.

18 **Q: What is the next concern you have with the Easement language?**

19 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
20 Easement to any person, company, country, etc. at their sole discretion at any time
21 to anyone. This also means that any buyer of the easement could do the same to a
22 third buyer and so on forever. There is no change of control or sale provision in
23 place to protect the Landowner or Nebraska or to provide compensation for such
24 change of control or ownership. It is not conducive to the protection of property
25 rights or economic interests to allow unilateral unrestricted sale of the Easement
26 thereby forcing upon the Landowner and our State a new unknown Easement
27 owner.

28 **Q: What is the next concern you have with the Easement language?**

1 A: There are many terms in the Easement that are either confusing or undefined terms
2 that are without context as to whether or not the Landowner would have any say
3 so in determining what these terms mean or if the evaluation is solely in
4 TransCanada's control. Some of these vague undefined terms are as follows:

- 5 i. "pipeline installation activities"
- 6 ii. "availability of labor and materials"
- 7 iii. "commercially reasonable costs and expenses"
- 8 iv. "reasonably anticipated and foreseeable costs and expenses"
- 9 v. "yield loss damages"
- 10 vi. "diminution in the value of the property"
- 11 vii. "substantially same condition"
- 12 viii. "an actual or potential hazard"
- 13 ix. "efficient"
- 14 x. "convenient"
- 15 xi. "endangered"
- 16 xii. "obstructed"
- 17 xiii. "injured"
- 18 xiv. "interfered with"
- 19 xv. "impaired"
- 20 xvi. "suitable crossings"
- 21 xvii. "where rock is encountered"
- 22 xviii. "as nearly as practicable"
- 23 xix. "pre-construction position"
- 24 xx. "pre-construction grade"
- 25 xxi. "various engineering factors"

26 Each one of these above terms and phrases as read in the context of the Easement
27 could be problematic in many ways. Notably, undefined terms tend to only get
28 definition in further legal proceedings after a dispute arises and the way the
29 Easement is drafted, TransCanada has sole power to determine when and if a

1 particular situation conforms with or triggers rights affected by these terms. For
2 instance, “yield loss damages” should be specifically defined and spelled out
3 exactly how the landowner is to be compensated and in what events on the front
4 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
5 the Landowner is without contractual rights to define these terms or determine
6 when rights related to them trigger and what the affects may be.

7 **Q: Do you have any other concerns about the Easement language that you can**
8 **think of at this time?**

9 A: I reserve the right to discuss any additional concerns that I think of at the time of
10 my live testimony in August.

11 **Q: Based upon what you have shared with the Commission above regarding**
12 **TransCanada’s proposed Easement terms and agreement, do you believe**
13 **those to be reasonable or just, under the circumstances of the pipeline’s**
14 **impact upon you and your land?**

15 A: No, I do not believe those terms to be reasonable or just for the reasons that we
16 discussed previously.

17 **Q: Did TransCanada ever offer you financial compensation for the rights that**
18 **they sought to obtain in your land, and for what they sought to prevent you**
19 **and any future land owner of your property from doing in the future?**

20 A: Yes, we received an offer from them.

21 **Q: As the owner of the land in question and as the person who knows it better**
22 **than anyone else, do you believe that TransCanada offered you just, or fair,**
23 **compensation for all of what they proposed to take from you so that their tar**
24 **sands pipeline could be located across your property?**

25 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
26 offer for all the potential impacts and effects and the rights that I’m giving up, and
27 what we will be prevented from doing in the future and how their pipeline would
28 impact my property for ever and ever.

1 **Q: Has TransCanada at any time offered to compensate you annually, such as**
2 **wind farm projects do, for the existence of their potential tar sands pipeline**
3 **across your property.**

4 A: No, never.

5 **Q: At any time did TransCanada present you with or request that you, as the**
6 **owner of the land in question, sign and execute a document called, “Advanced**
7 **Release of Damage Claims and Indemnity Agreement?”**

8 A: Yes, they did and it was included in the County Court lawsuit against us.

9 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
10 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

11 A: Yes, it is.

12 **Q: What was your understanding of that document?**

13 A: When I read that document in the plain language of that document, it was my
14 understanding that TransCanada was attempting to pay me a very small amount at
15 that time in order for me to agree to give up my rights to be compensated from
16 them in the future related to any damage or impact they may have upon my
17 property “arising out of, in connection with, or alleged to resulted from
18 construction or surveying over, under or on” my land.

19 **Q: Did you ever sign that document?**

20 A: No, I did not.

21 **Q: Why not?**

22 A; Because I do not believe that it is fair or just to try to get me to agree to a small
23 sum of money when I have no idea how bad the impacts or damages that they, or
24 their contractors, or subcontractors, or other agents or employees, may cause on
25 my land at any time in the future that resulted from the construction or surveying
26 or their activities upon my land.

27 **Q: When you reviewed this document, what did it make you feel?**

28 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
29 shield themselves against known and foreseeable impacts that their pipeline, and

1 the construction of it, would have upon my land. It made me feel that they knew it
2 was in their financial interest to pay me as little as possible to prevent me from
3 ever having the opportunity to seek fair compensation again, and that this must be
4 based upon their experience of unhappy landowners and situations in other places
5 where they have built pipelines.

6 **Q: Has TransCanada ever contacted you and specifically asked you if you**
7 **thought their proposed location of their proposed pipeline across your land**
8 **was in your best interest?**

9 A: No, they have not.

10 **Q: Has TransCanada ever contacted you and specifically asked you if you**
11 **thought their proposed location of their proposed pipeline across your land**
12 **was in the public interest of the State of Nebraska?**

13 A: No, they have not.

14 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
15 **Takings Clause?**

16 A: Yes, I am.

17 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
18 **an American citizens property?**

19 A: My understanding is that, according to the United States Constitution, that if the
20 government is going to take land for public use, then in that case, or by taking for
21 public use, it can only occur if the private land owner is compensated justly, or
22 fairly.

23 **Q: Has TransCanada ever contacted you specially to explain the way in which**
24 **the public could use its proposed Keystone XL Pipeline?**

25 A: No, they have not.

26 **Q: Can you think of any way in which the public, that is the citizens of the State**
27 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
28 **Pipeline, as it dissects the State of Nebraska?**

1 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
2 public benefits from this pipeline in any way, how they can use it any way, or how
3 it's in the public interest in any way. By looking at the map, it is quite clear to me
4 that the only reason it's proposed to come through Nebraska, is that because we
5 are geographically in the way from between where the privately-owned Tar Sands
6 are located to where TransCanada wants to ship the Tar Sands to refineries in
7 Houston, Texas.

8 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
9 **crude petroleum, or oil and petroleum by-products that you would like to**
10 **ship in its pipeline?**

11 A: No, it has not.

12 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
13 **products that you, at this time or any time in the future, would desire to place**
14 **for transport within the proposed TransCanada Keystone XL Pipeline?**

15 A: No, I do not.

16 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
17 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
18 **products within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not. I've never heard of such a person or company like that.

20 **Q: Do you pay property taxes for the land that would be affected and impacted**
21 **at the proposed TransCanada Keystone XL Pipeline?**

22 A: Yes, I do.

23 **Q: Why do you pay property taxes on that land?**

24 A: Because that is the law. The law requires us to pay the property taxes as the owner
25 of that property.

26 **Q: Because you follow the law and pay property taxes, do you believe you**
27 **deserve any special consideration or treatment apart from any other person**
28 **or company that pays property taxes?**

1 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
2 just what you do.

3 **Q: Do you believe the fact that you pay property taxes entitles you to special**
4 **treatment of any kind, or special rights of any kind?**

5 A: No, of course not.

6 **Q: Do you believe the fact that you pay property taxes on your land would be**
7 **enough to qualify you to have the power of eminent domain to take land of**
8 **your neighbors or other people in your county, or other people across the**
9 **state of Nebraska?**

10 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
11 I expect an award for or any type of special consideration.

12 **Q: Have you at any time ever employed any person other than yourself?**

13 A: Well, yes I have.

14 **Q: Do you believe that the fact that you have, at some point in your life,**
15 **employed one or more other persons entitle you to any special treatment or**
16 **consideration above and beyond any other Nebraskan that has also employed**
17 **one or more persons?**

18 A: No, of course not.

19 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
20 **have at one point employed another person within this state, entitles you to**
21 **preferential treatment or consideration of any kind?**

22 A: No, of course not. If I choose to employ someone that decision is up to me. I
23 don't deserve any special treatment or consideration for that fact.

24 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
25 **crude oil pipeline in its preferred location, or ultimate location across the**
26 **state of Nebraska?**

27 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
28 or even bullied around and being made to feel scared that they did not have any
29 options but to sign whatever papers TransCanada told them they had to. I am

1 aware of folks being threatened that their land would be taken if they didn't follow
2 what TransCanada was saying. I am aware of tactics to get people to sign
3 easements that I don't believe have any place in Nebraska or anywhere such as
4 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
5 landowners and convince them they should sign TransCanada's easement
6 agreements. I am aware of older folks and widows or widowers feeling they had
7 no choice but to sign TransCanada's Easement and they didn't know they could
8 fight or stand up for themselves. From a more practical standpoint, I am worried
9 that according to their answer to our Interrogatory No. 211, TransCanada only
10 owns and operates one (1) major oil pipeline. They simply do not have the
11 experience with this type of pipeline and that scares me. There are others but that
12 is what I can recollect at this time and if I remember more or my recollection is
13 refreshed I will share those with the Commissioners at the Hearing in August.

14 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
15 **landowner is reasonable or just?**

16 A: No, I do not.

17 **Q: Do you have any concern about limitations that the construction of this**
18 **proposed pipeline across your affected land would prevent construction of**
19 **future structures upon the portion of your land affected by the proposed**
20 **easement and immediately surrounding areas?**

21 A: Well yes, of course I do. We would not be able to build many, if any, types of
22 structures directly across or touching the easement, and it would be unwise and I
23 would be uncomfortable to build anything near the easement for fear of being
24 blamed in the future should any damage or difficulty result on my property in
25 regards to the pipeline.

26 **Q: Do you think such a restriction would impact you economically?**

27 A: Well yes, of course.

28 **Q: How do you think such a restriction would impact you economically?**

1 A: The future of this land may not be exactly how it's being used as of this moment,
2 and having the restrictions and limiting my ability to develop my land in certain
3 ways presents a huge negative economic impact on myself, my family, and any
4 potential future owner of the property. You have no idea how I or the future owner
5 may want to use this land in the future or the other land across Nebraska
6 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
7 ago it would have been hard to imagine all the advances that we have now or how
8 things change. Because the Easement is forever and TransCanada gets the rights in
9 my land forever we have to think with a very long term view. By placing their
10 pipeline on under across and through my land that prevents future development
11 which greatly negatively impacts future taxes and tax revenue that could have
12 been generated by the County and State but now will not. When you look at the
13 short blip of economic activity that the two years of temporary construction efforts
14 may bring, that is far outweighed by the perpetual and forever loss of opportunity
15 and restrictions TransCanada is forcing upon us and Nebraska.

16 **Q: Do you have any concerns about the environmental impact of the proposed**
17 **pipeline?**

18 A: Yes, I do.

19 **Q: What are some of those concerns?**

20 A: As an affected land owner and Nebraskan, I am concerned that any construction,
21 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
22 a detrimental impact upon the environment of my land specifically, as well as the
23 lands near my land and surrounding the proposed pipeline route.

24 **Q: Do you have any other environmental concerns?**

25 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
26 construction and/or maintenance and operation. I am concerned about spills and
27 leaks that TransCanada has had in the past and will have in the future. This could
28 be catastrophic to my operations or others and to my county and the State.

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 the portion of the proposed pipeline within Nebraska as found**
13 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

14 A: No, I do not.

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 there is any potential route for the proposed Keystone XL**
24 **Pipeline across, within, under, or through the State of Nebraska that is in the**
25 **public interest of the citizens of Nebraska?**

26 A: No, I do not.

27 **Q: Why do you hold that belief?**

28 A: Because there simply is no public interest based on all of the factors that I am
29 aware and that I have read and that I have studied that this Commission is to

1 consider that would establish that a for-profit foreign-owned pipeline that simply
2 crosses Nebraska because we are geographically in the way between where tar
3 sands are in Canada to where it wants to ship it to in Texas could ever be in the
4 public interest of Nebraskans. We derive no benefit from this project. It is not for
5 public use. Nebraska is simply in the way and when all considerations are taken in
6 there is no net benefit of any kind for Nebraska should this project be placed in our
7 state. Even if there was some arguable “benefit” it is not enough to outweigh all
8 the negative impacts and concerns.

9 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
10 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
11 **of Nebraska because it may bring temporary jobs during the construction**
12 **phase to Nebraska?**

13 A: First of all, not all jobs are created equally. Most jobs that are created, whether
14 temporary or on a permanent basis, don’t come with a project that has all the
15 potential and foreseeable negative impacts, many of which we have discussed here
16 and other witnesses throughout the course of this hearing have and will discuss. If
17 I decide to hire and employ someone to help me out in my farming or ranching
18 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
19 to my land or my town or my county or my state. And I’ve hired someone who is
20 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
21 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
22 jobs are not created equal. Additionally, I understand from what I’m familiar with
23 from TransCanada’s own statements that the jobs numbers they originally touted
24 were determined to be a minute fraction of the permanent jobs that had been
25 projected. According to their answer to our Interrogatory No. 191, TransCanada
26 has created only thirty-four (34) jobs within Nebraska working specifically on
27 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
28 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
29 Further, according to their answer to Interrogatory No. 199, TransCanada would

1 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
2 constructed on its Preferred Route or its Mainline Alternative Route.

3 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
4 **because it would cross your land?**

5 A: No, absolutely not. I am opposed to this project because it is not in the public
6 interest, neither within my community nor within our state.

7 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
8 **was to cross someone else's land?**

9 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
10 the fear and anxiety and potential foreseeable risks and negative impacts that this
11 type of a project carrying this type of product brings foisted upon anyone in this
12 state or any other state.

13 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
14 **Pipeline to cross the state of Nebraska?**

15 A: I don't believe there is an intelligent route because as I have stated I don't believe
16 this project anywhere within Nebraska is within the public interest. However, if
17 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
18 had to go somewhere in the state of Nebraska, the only intelligent route I believe
19 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
20 preferred route and the mainline alternative routes are economic liabilities our
21 state cannot risk.

22 **Q: What do you rely upon to make that statement?**

23 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
24 already exists in that area is reason enough as it is not in our best interest or the
25 public interests to have more major oil pipelines crisscrossing our state. Second,
26 they have all the infrastructure already there in terms of relationships with the
27 counties and local officials and first responders along that route. Third, they have
28 already obtained easements from all the landowners along that route and have
29 relationships with them. Fourth, that route avoids our most sensitive soils, the

1 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
2 Aquifer. Sixth, they have already studied that route and previously offered it as an
3 alternative. Seventh, it just makes the most sense that as a state we would have
4 some intelligent policy of energy corridors and co-locating this type of
5 infrastructure near each other.

6 **Q: Do you have any other concerns you would like to reiterate or can think of at**
7 **this time you would like the Commissioners to understand?**

8 A: Yes. TransCanada refuses to agree to remove this pipeline after its usefulness has
9 expired. They will be leaving a continuous toxic waste dump across Nebraska.
10 The pipe will be significantly deteriorated by then. In other words, this is a disaster
11 waiting to happen. Property rights ensure that private corporations cannot take
12 land via eminent domain unless it is in the public interest. There is no public
13 benefit from this pipeline to the citizens of Nebraska. This is a situation of
14 granting a foreign corporation the right to take land from American citizens. The
15 whole purpose is for corporate gain and greed. TransCanada wants to use eminent
16 domain as a means of “hostile business acquisition.” That is not in the public
17 interest. The non-negotiable terms of TransCanada’s easement violate good
18 business practices. They provide a one-time payment for a lifetime of risks. The
19 easement takes control of a portion of land down the middle of the farm. It is not
20 like a road or highway where the land is generally at the edge of the property. By
21 putting it through the middle of a property, the landowner provides more security
22 from vandalism or terrorism. The farmer also deals with all the reclamation and
23 productivity issues. In the cases of most spills, it has been a landowner or tenant
24 who has discovered leaks. The company knows that the farmers will be over the
25 easement on a regular basis to observe potential problems. For all the risks and
26 extra work, annual payments should be made to the landowner. Wind energy
27 easements make annual payments to the landowner. No wise businessman would
28 sign TransCanada’s easement that offers a lot of risk and no reward. If anything
29 TransCanada should offer a lease not a one-time payment.

1 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
2 **like the Public Service Commissioners to consider in their review of**
3 **TransCanada's Application?**

4 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
5 document below but other things may come to me or my memory may be
6 refreshed and I will add and address those things at the time of the Hearing in
7 August and address any additional items at that time as is necessary. Additionally,
8 I have not had an adequate amount of time to receive and review all of
9 TransCanada's answers to our discovery and the discovery of others so it was
10 impossible to competently and completely react to that in my testimony here and I
11 reserve the right to also address anything related to discovery that has not yet
12 concluded as of the date I signed this document below. Lastly, certain documents
13 requested have not yet been produced by TransCanada and therefore I may have
14 additional thoughts on those I will also share at the hearing as needed.

15 **Q: What is it that you are requesting the Public Service Commissioners do in**
16 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
17 **across Nebraska?**

18 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
19 a temporary job spike that this project may bring to a few counties and beyond the
20 relatively small amount of taxes this proposed foreign pipeline would possibly
21 generate. And, instead think about the perpetual and forever impacts of this
22 pipeline as it would have on the landowners specifically, first and foremost, but
23 also thereby upon the entire state of Nebraska, and to determine that neither the
24 preferred route nor the Keystone mainline alternative route are in the public
25 interest of the citizens of the state of Nebraska. And if the Commissioners were
26 inclined to modify TransCanada's proposed routes and were to be inclined to grant
27 an application for a route in Nebraska, that the only potential route that would
28 make any intelligent sense whatsoever would be twinning or near paralleling of
29 the proposed KXL with the existing Keystone I pipeline. It simply does not make

1 sense to add yet another major oil pipeline crisscrossing our state creating new
2 pumping stations, creating new impacts on additional counties and communities
3 and going through all of the court processes with myself and other landowners like
4 me when this applicant already has relationships with the landowners, the towns
5 and the communities along Keystone I, and that Keystone I is firmly outside of the
6 sand hills and a significantly further portion away from the heart of the Ogallala
7 Aquifer than the preferred route or the Keystone mainline alternative route.

8 **Q: 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: Are all of your statements in your testimony provided above true and**
13 **accurate as of the date you signed this document to the best of your**
14 **knowledge?**

15 A: Yes, they are.

16 **Q: Thank you, I have no further questions at this time and reserve the right to**
17 **ask you additional questions at the August 2017 Hearing.**

State of Nebraska
County Of Holt

The foregoing instrument was acknowledged before me on the 25th day of May, 2017.

by Larry D Cleary

Larry D Cleary
Larry D Cleary

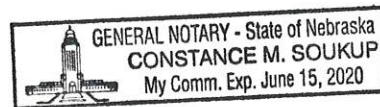
Subscribed and Sworn to me before this 25th day of May, 2017.

Constance M Soukup
Notary Public

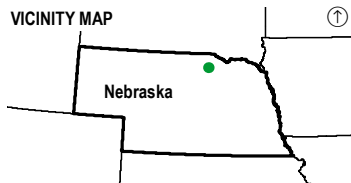
Notary Public of the State of Nebraska

Residing at O'Neill, NE

My commission expires 6-15-2020



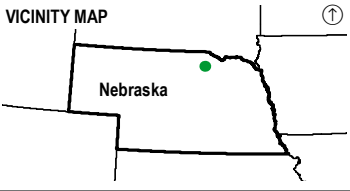
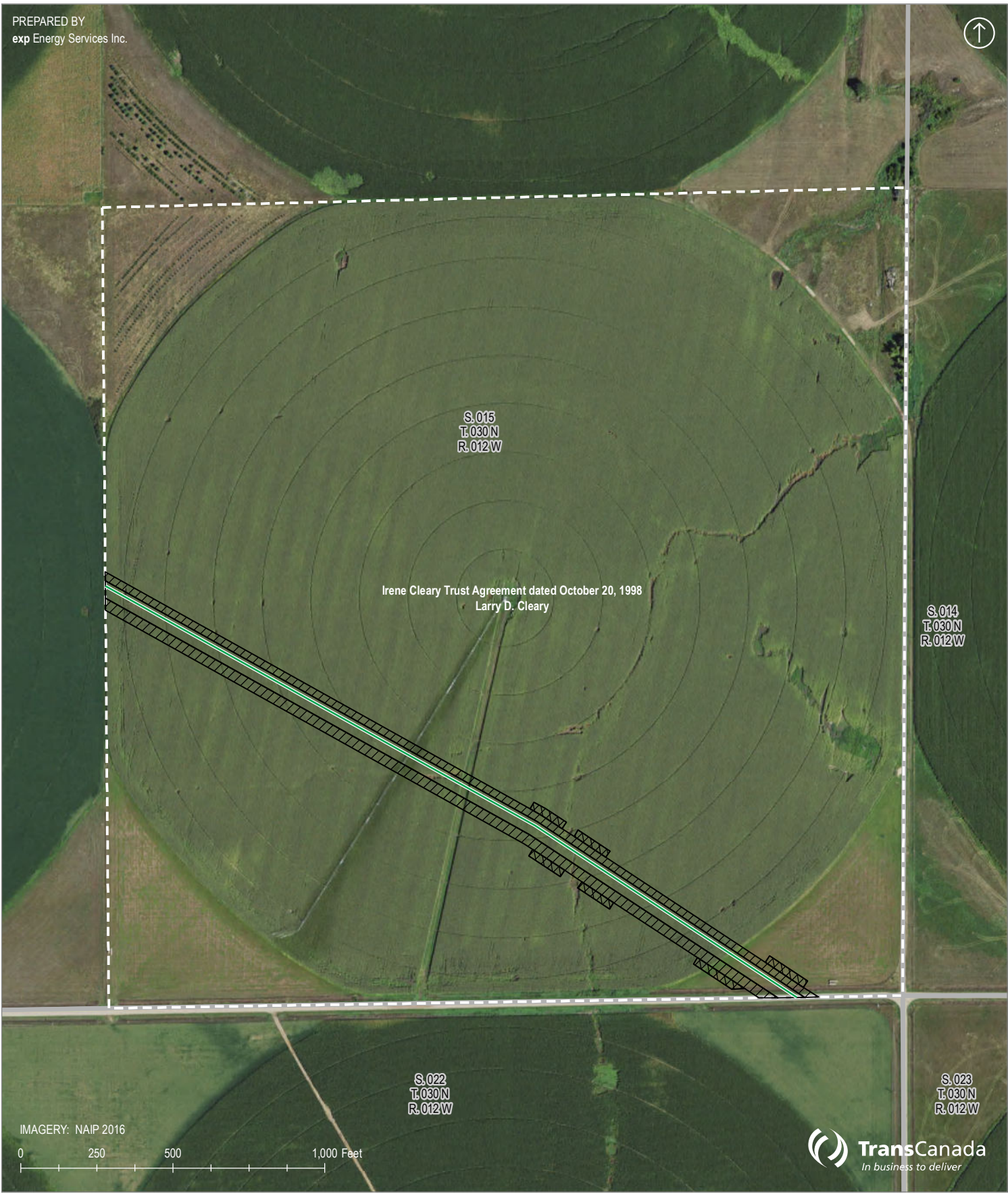
Attachment No. 1



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Irene Cleary Trust Agreement dated October 20, 1998
Larry D. Cleary

TRACT NO. ML-NE-HT-30285.000
STATE: Nebraska
COUNTY: Holt
SECTION: 008
TOWNSHIP: 030N
RANGE: 012W

Proposed Centerline
Perm. Easement
Temp. Easement
Add. Temp. Worksp.
Property Line
Section Line



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Irene Cleary Trust Agreement dated October 20, 1998
Larry D. Cleary

TRACT NO. ML-NE-HT-30315.000
STATE: Nebraska
COUNTY: Holt
SECTION: 015
TOWNSHIP: 030N
RANGE: 012W

- 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-HT-30285.000
ML-NE-HT-30315.000

**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**") **Larry D. Cleary, Trustee of the Irene Cleary Trust Agreement dated October 20, 1998**, whose mailing address is 87973 488th Avenue, O'Neill, NE 68763 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic

Grantor's Initials _____

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 240 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the E1/2 of the SW1/4 and the SE1/4 of Section 8, T30N, R12W of the 6th P.M., as recorded in Book 187, Page 182 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SE1/4 of Section 15, T30N, R12W of the 6th P.M., as recorded in Book 187, Page 182 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):

**Irene Cleary Trust Agreement dated October 20,
1998**

Larry D. Cleary, Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Larry D. Cleary**, Trustee of the Irene Cleary Trust Agreement dated October 20, 1998 on behalf of said Trust.

Notary Public Signature

Affix Seal Here

Grantor's Initials _____

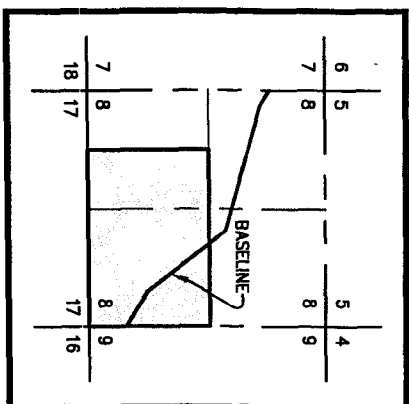
LEGEND
 R PROPERTY LINE
 P PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA

HOLT COUNTY, NEBRASKA

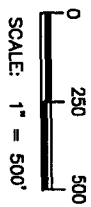
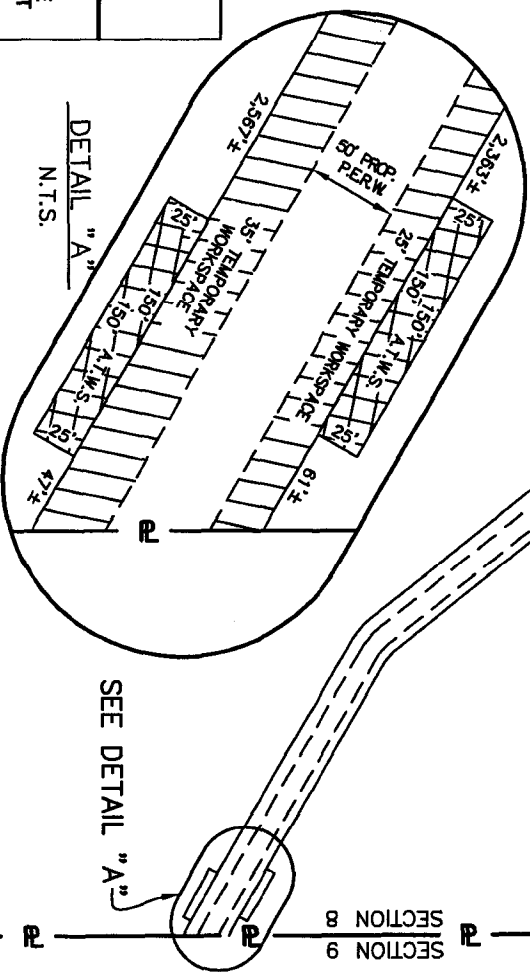
T-30-N, R-12-W, SECTION 8

ML-NE-HT-30285.000

LARRY D. CLEARY, TRUSTEE
 OF THE IRENE CLEARY
 TRUST AGREEMENT DATED
 OCTOBER 20, 1998
 VOLUME 187, PAGE 182
 D.R.H.C.N.




VICINITY MAP
 N.T.S.



TRACT LEGAL DESCRIPTION:
 E/2 SW/4, SE/4 OF SECTION 8,
 T-30-N, R-12-W

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM
 STANDARDS FOR PROPERTY BOUNDARY SURVEYS.
 IT WAS NOT DERIVED FROM AN ON THE GROUND
 SURVEY BUT IS INTENDED FOR RIGHT OF WAY
 PURPOSES ONLY. THE EXACT LOCATIONS AND
 MEASUREMENTS ARE APPROXIMATE AND MAY
 VARY, BUT THE WIDTH OF THE EASEMENT AREA
 TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 2,643'±
 AREA OF PERMANENT EASEMENT: 3.1 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.7 ACRES
 ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.2 ACRE

	
In business to deliver	
TransCanada	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
LARRY D. CLEARY, TRUSTEE	
OF THE IRENE CLEARY TRUST	
AGREEMENT DATED	
OCTOBER 20, 1998	
ML-NE-HT-30285.000	
PROJECT:	EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3319
NO.	REVISION
	DATE
SCALE	DATE
1" = 500'	10/28/14
	JN
	ALS



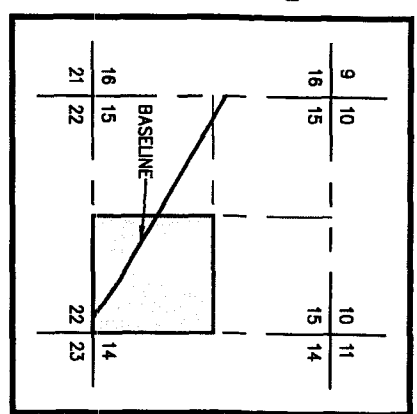
LEGEND
 R- PROPERTY LINE
 P- PROPOSED SECTION LINE
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA

HOLT COUNTY, NEBRASKA

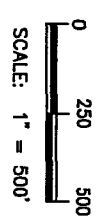
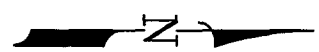
T-30-N, R-12-W, SECTION 15
 ML-NE-HT-30315.000

LARRY D. CLEARY, TRUSTEE OF THE
 IRENE CLEARY TRUST AGREEMENT
 DATED OCTOBER 20, 1998

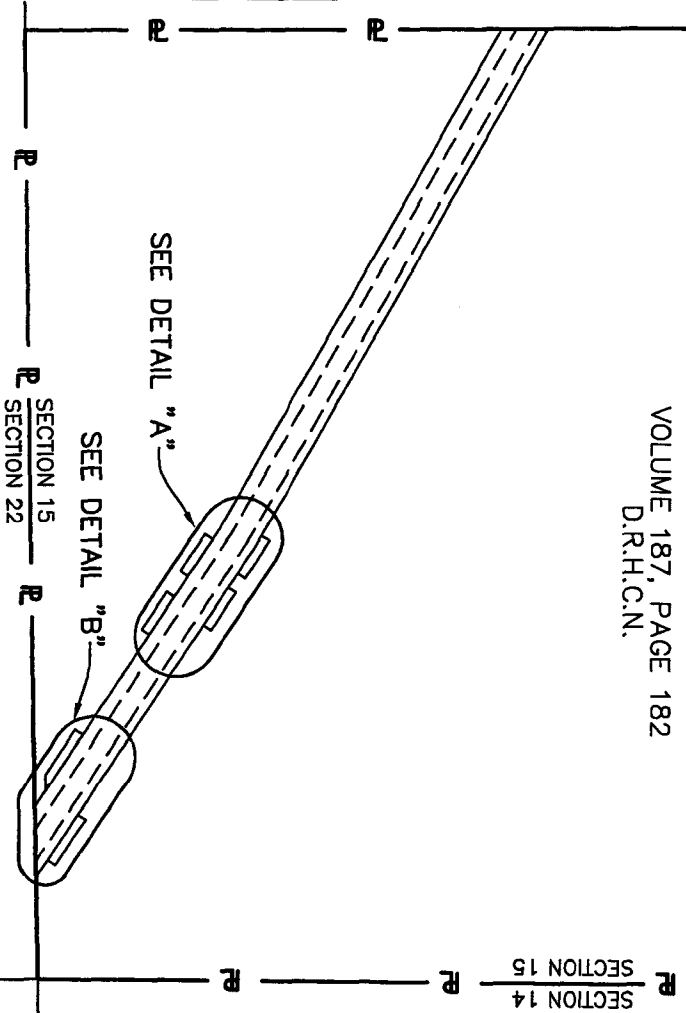
VOLUME 187, PAGE 182
 D.R.H.C.N.



LOCALITY MAP
 N.T.S.




TRACT LEGAL DESCRIPTION:
 SE 1/4 OF SECTION 15
 T-30-N, R-12-W



NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 2,648±
 AREA OF PERMANENT EASEMENT: 3.0 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.6 ACRES
 ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.5 ACRE

	
In business to improve	
TransCanada	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
LARRY D. CLEARY, TRUSTEE	
OF THE IRENE CLEARY	
TRUST AGREEMENT DATED	
OCTOBER 20, 1998	
ML-NE-HT-30315.000	
PROJECT:	XL
APPROVED BY:	EXHIBIT A
SLR	DRAWING NUMBER
NO.	XL-08-ML-SK-3323
REVISION	DATE
SCALE	DATE
1" = 500'	10/28/14
	JN
	ALS

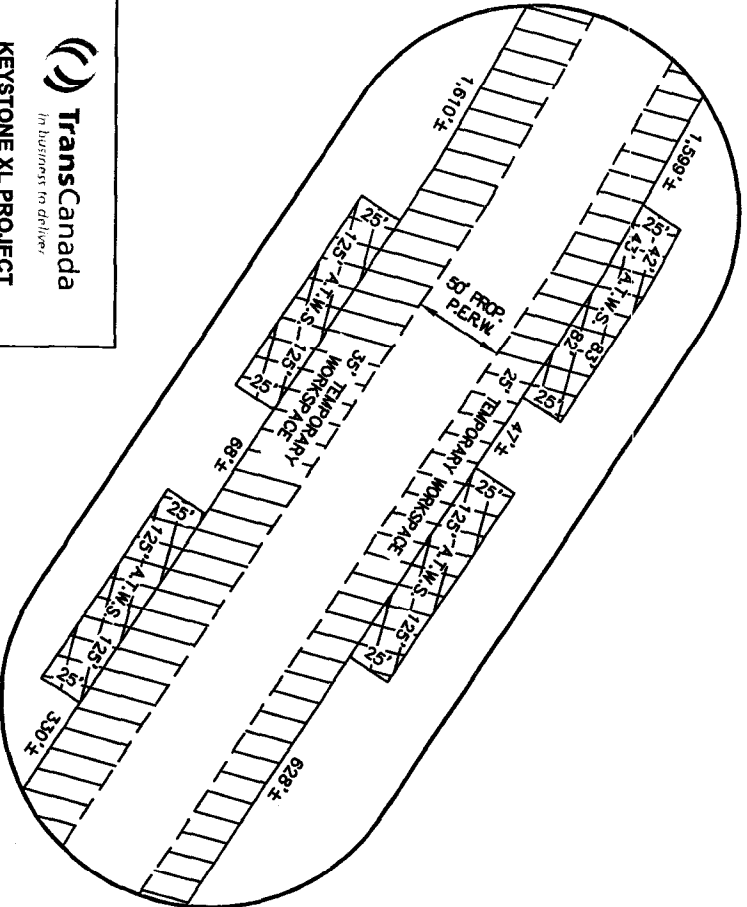


LEGEND
R
PROPOSED
A.T.W.S.
P.E.R.W.

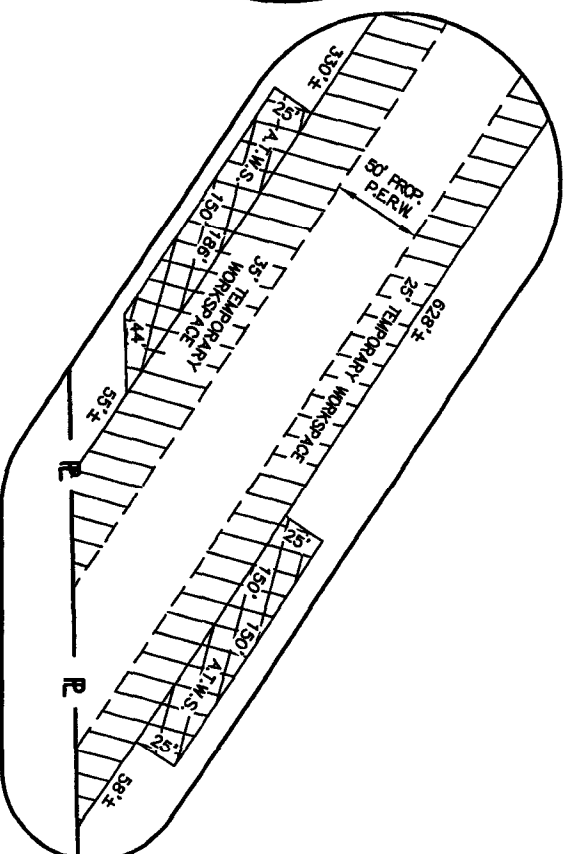
PROPERTY LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY

HOLT COUNTY, NEBRASKA

T-30-N, R-12-W, SECTION 15
ML-NE-HT-30315.000



DETAIL "A"
N.T.S.



DETAIL "B"
N.T.S.



TransCanada
In business to deliver

KEYSTONE XL PROJECT

EASEMENT AREA
ACROSS THE PROPERTY OF
LARRY D. CLEARY, TRUSTEE
OF THE IRENE CLEARY
TRUST AGREEMENT DATED
OCTOBER 20, 1998
ML-NE-HT-30315.000

PROJECT:	XL	EXHIBIT A
APPROVED BY:		DRAWING NUMBER
SLR	XL-08-ML-SK-3323	
NO.	REVISION	DATE
SCALE	DATE	DRAWN BY
N.T.S.	10/28/14	JN
		ALS



The new identity of Trans

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-HT-30285.000

I, Larry D. Cleary, Trustee, of Holt 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 Holt, State of Nebraska:

E/2 of the SW/4 & SE/4

Section 8, Township 30-N, Range 12-W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I 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-30315.000

I, Larry D. Cleary, Trustee, of Holt 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 Holt, State of Nebraska:

SE/4

Section 15, Township 30-N, Range 12-W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I have hereunto set our hands on this__ day of

_____, 20____.

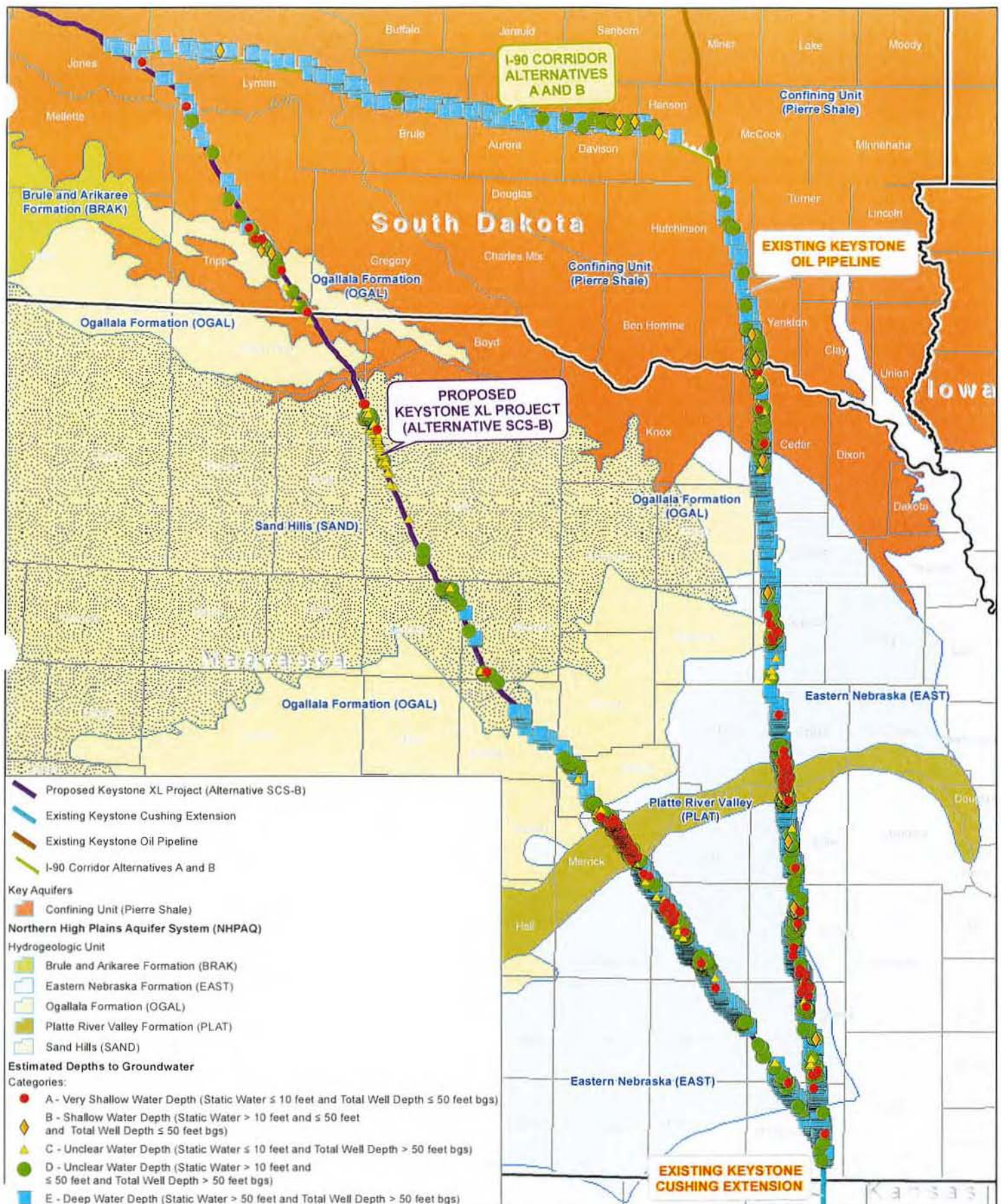
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor

Attachment No. 7



VICINITY MAP



LEGEND

- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Attachment No. 8

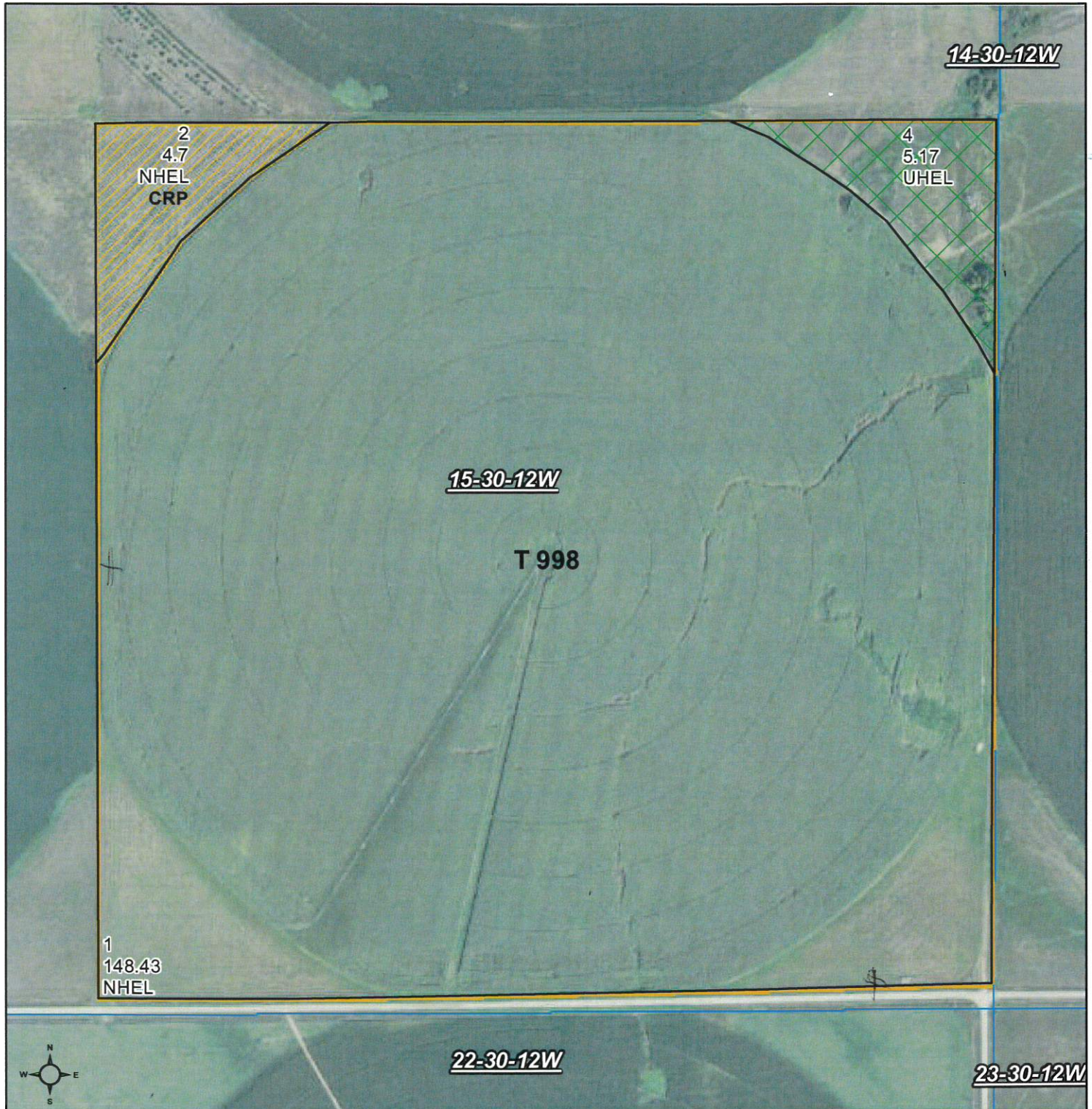


United States
Department of
Agriculture

Farm Service Agency
Holt County, Nebraska

SE 15-30-12

Farm 9201
Tract 998



Common Land Unit
Cropland
Non-Cropland
CRP
Tract Boundary
PLSS

Wetland Determination Identifiers

- Restricted Use
- ▼ Limited Restrictions
- Exempt from Conservation Compliance Provisions

2016 NAIP Imagery

Tract Cropland Total: 153.13 acres

2017 Program Year

Map Created January 19, 2017

1 inch = 400 feet

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).

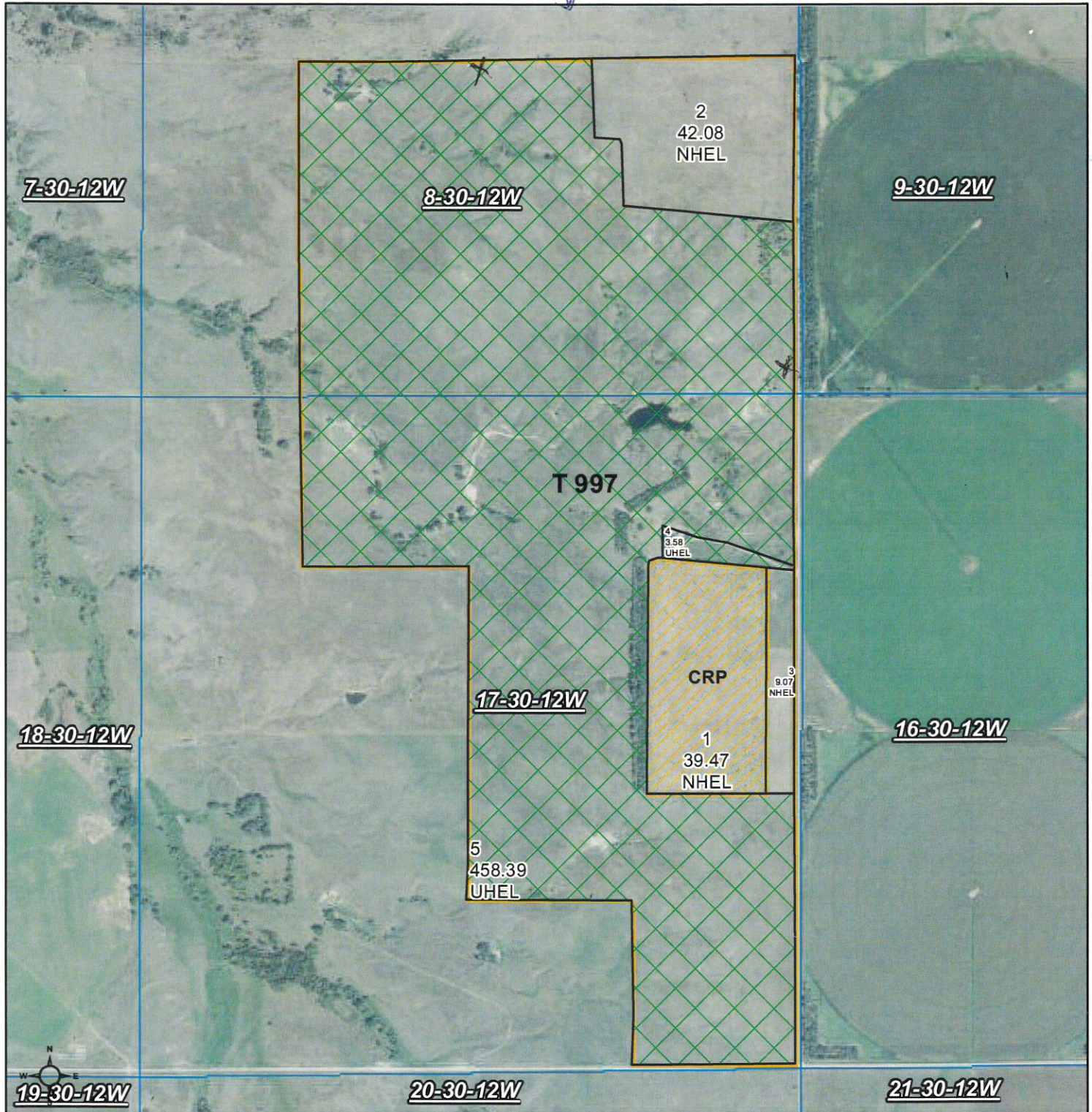


United States
Department of
Agriculture

Farm Service Agency
Holt County, Nebraska

SE 8-30-12

Farm 9201
Tract 997



Common Land Unit

Cropland	CRP
Non-Cropland	Tract Boundary
PLSS	

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

2016 NAIP Imagery

Tract Cropland Total: 90.62 acres

2017 Program Year

Map Created January 19, 2017

1 inch = 1,061 feet

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
JB Collins in
Support of Landowner Intervenors**

State of Texas)
) ss.
Delta County)

1 **Q: Please state your name.**

2 A: My name is JB Collins.

3 **Q: Where to do you live?**

4 A: Cooper, Texas.

5 **Q: Do you own land in Texas that the TransCanada Keystone pipeline passes**
6 **through and under?**

7 A: Yes, I do.

8 **Q: Are you married?**

9 A: Yes, to Lori Collins.

10 **Q: Do you have children?**

11 A: Yes, two.

12 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
13 **photo(s) of your land TransCanada Keystone pipeline passes through and**
14 **under?**

15 A: Yes.

16 **Q: What do you do for a living?**

1 A: Ranch and Farm.

2 **Q: Do you earn any income from your land?**

3 A: Yes.

4 **Q: Have you depended on the income from your land to support your livelihood**
5 **or the livelihood of your family?**

6 A: Yes.

7 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
8 **and or your family?**

9 A: Yes.

10 **Q: Give the Commissioners a sense of why you have any relevant information**
11 **regarding TransCanada and or the Keystone pipeline.**

12 A: In 2011, TransCanada Keystone Pipeline, L.P. condemned our land for its
13 Keystone Pipeline and eventually began construction through our land. We
14 experienced numerous health problems and property damage and endured an
15 incredible amount of loss and stress related to the Keystone pipeline and behaviors
16 of TransCanada.

17 **Q: Is Attachment No. 3 a series of true and accurate copies of pictures you or**
18 **your wife took of the construction and or damage near your home and land**
19 **related to the Keystone Pipeline?**

20 A: Yes.

21 **Q: Is Attachment No. 4 a true and accurate copy of an article in the Texas**
22 **Observer that was written about you and your family's experiences and**
23 **difficulties with TransCanada and the Keystone pipeline?**

24 A: Yes.

25 **Q: Are the quotes, statements, and photos in Attachment No. 4 attributable to**
26 **your or your family true and accurate and consistent with what you and your**
27 **family actually experienced and endured?**

28 A: Yes.

1 **Q: Are you competent to talk about the experiences you and your family had**
2 **with TransCanada and do you intend to share those with the Commissioners**
3 **in more detail at the time of your live testimony?**

4 **A: Yes.**

5 **Q: What impact if any do you believe the presence of the Keystone pipeline on**
6 **your land has done to your land's market value?**

7 A: I believe it has decreased the value. If I had had a choice to not have the pipeline I
8 would have avoided it. I would not knowingly purchase land with a major oil
9 pipeline underneath it. We have still not recovered from all of the damage and
10 negative impacts from the Keystone pipeline. The property damage from
11 construction still impacts us to this day. It has negatively affected my farming and
12 ranching operation.

13 **Q: Based upon what you have shared with the Commission above and based**
14 **upon your understanding of TransCanada's proposed Easement terms and**
15 **agreement for Nebraskans, do you believe those to be reasonable or just,**
16 **given how you know this company and its pipeline have negatively impacted**
17 **your family and your land?**

18 A: No, I do not believe those terms to be reasonable or just.

19 **Q: Why not?**

20 A: Our number one problem is that we trusted TransCanada. We trusted what they
21 said and what they said they would do and how they said they would treat us and
22 make things right. We learned a painful lesson and that is we could not trust them.
23 They would say one thing to pacify you and then either do another or not do what
24 they promised. Unless you have all the important details spelled out in your
25 Easement and how TransCanada has to treat you and compensate you and those
26 things, all you have is the document they drafted that favors them and is designed
27 to save them money and your expense. We lived through it and I don't want
28 anyone else to have to experience what we did and what we still are to this day.

1 **Q: At any time did TransCanada present you with or request that you, as the**
2 **owner of the land in question, sign and execute a document called, “Release of**
3 **Damage Claims” Agreement?**

4 A: Yes.

5 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
6 **“Release of Damage Claims” Agreement regarding your land?**

7 A: Yes, it is.

8 **Q: What was your understanding of that document?**

9 A: When I read that document I didn't fully understand the consequences. As it was
10 explained to me at the time it was a payment now in advance of the likely damages
11 that would occur during construction. What I did not know or understand at the
12 time was that TransCanada would later argue this document protects them from
13 having to pay out further damages that actually occurred that were above and
14 beyond the amount in this document.

15 **Q: Did you ever sign that document?**

16 A: Yes.

17 **Q: Why?**

18 A: We thought we had to and that trying to fight what this billion dollar corporation
19 wanted would be futile.

20 **Q: When you review this document now after everything that happened to you,**
21 **your family, and your land, what did it make you feel?**

22 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
23 shield themselves against known and foreseeable impacts that their pipeline, and
24 the construction of it, would have upon my land. It made me feel that they knew it
25 was in their financial interest to pay me as little as possible to prevent me from
26 ever having the opportunity to seek fair compensation again, and that this must be
27 based upon their experience of unhappy landowners and situations in other places
28 where they have built pipelines.

1 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
2 **crude oil pipeline in its preferred location, or alternative locations across the**
3 **state of Nebraska?**

4 A: Yes, I have significant concerns. I know how we were treated. I am aware of
5 landowners being treated unfairly and being made to feel scared that they did not
6 have any options but to sign whatever papers TransCanada wanted signed. I am
7 aware of older folks and widows or widowers or single women feeling
8 intimidated.

9 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
10 **like the Public Service Commissioners to consider in their review of**
11 **TransCanada's Application?**

12 A: No, I have not. I have shared that which I can think of as of the date I signed this
13 document below but other things may come to me or my memory may be
14 refreshed and I will add and address those things at the time of the Hearing in
15 August and address any additional items at that time as is necessary.

16 **Q: Are all of your statements in your testimony provided above true and**
17 **accurate as of the date you signed this document to the best of your**
18 **knowledge?**

19 A: Yes, they are.

20 **Q: Thank you, I have no further questions at this time and reserve the right to**
21 **ask you additional questions at the August 2017 Hearing.**

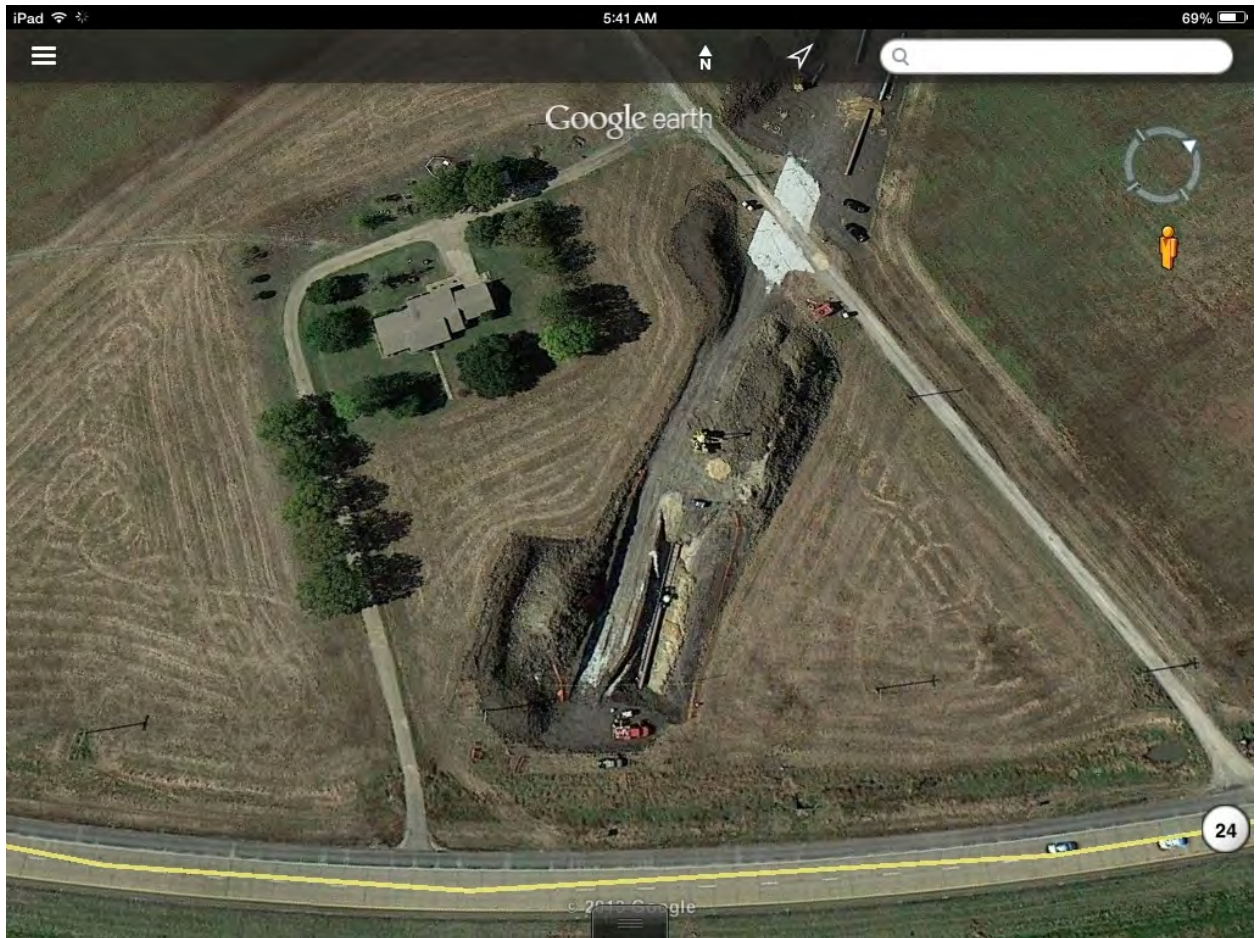

JB Collins
JB Collins

Subscribed and Sworn to me before this 2nd day of June, 2017.

Donna E. King
Notary Public



Attachment No. 1



Attachment No. 2





Attachment No. 3

















OUR FROUNT YARD

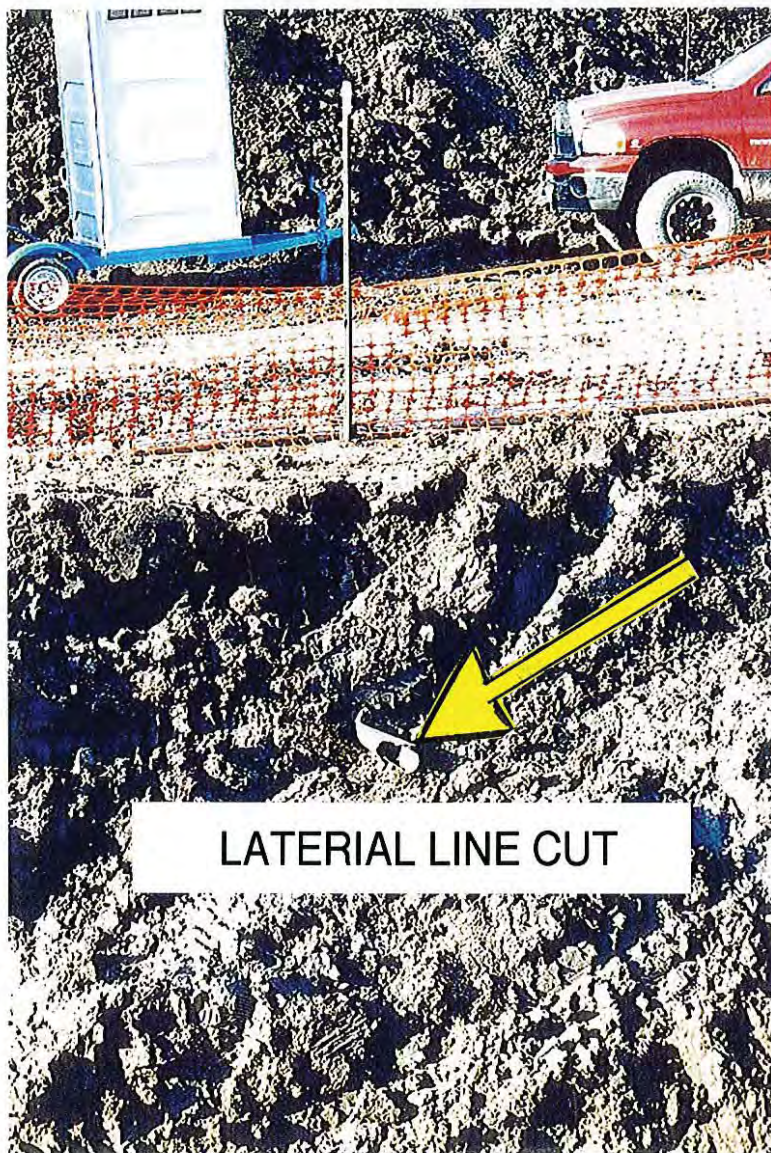




LATERAL LINES DEMOLISHED



SEE
ENLARGED
BELOW



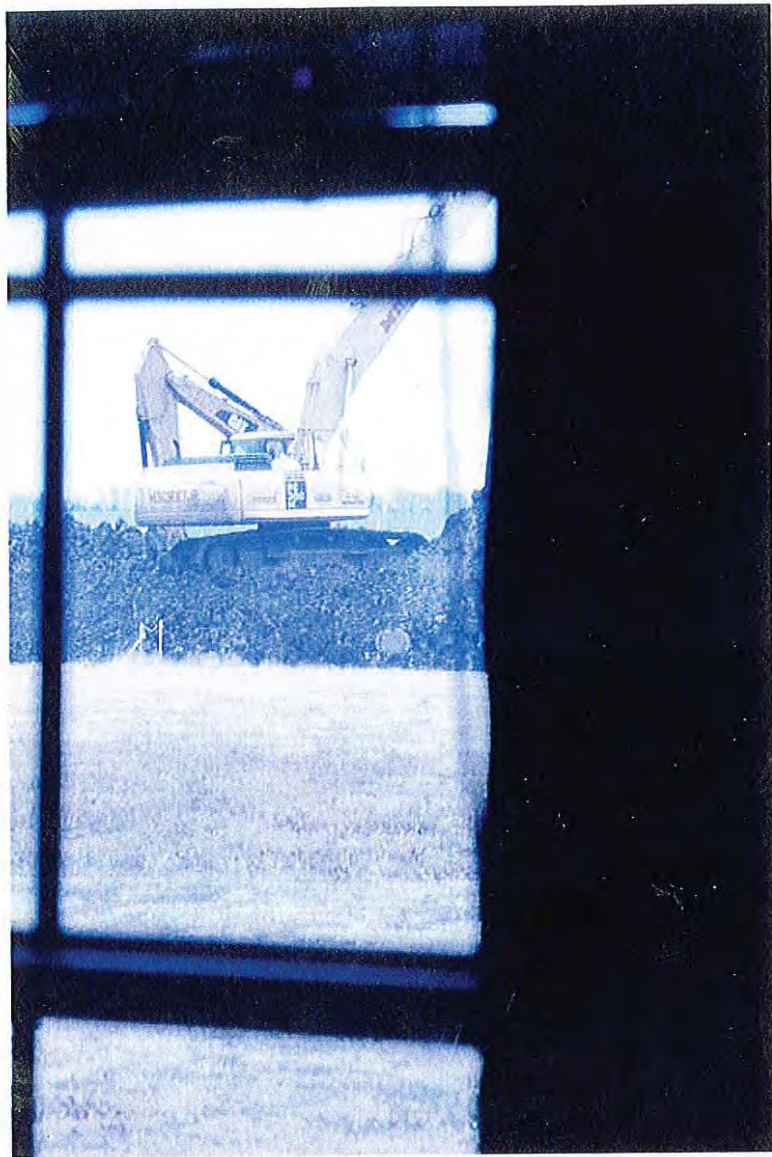
LATERAL LINE CUT





SEPTIC TANK BEING PUMPED









CONSTRUCTION DEBRIS ON RIDEAWAY





EXCESS TOPSOIL TO BE SPREAD

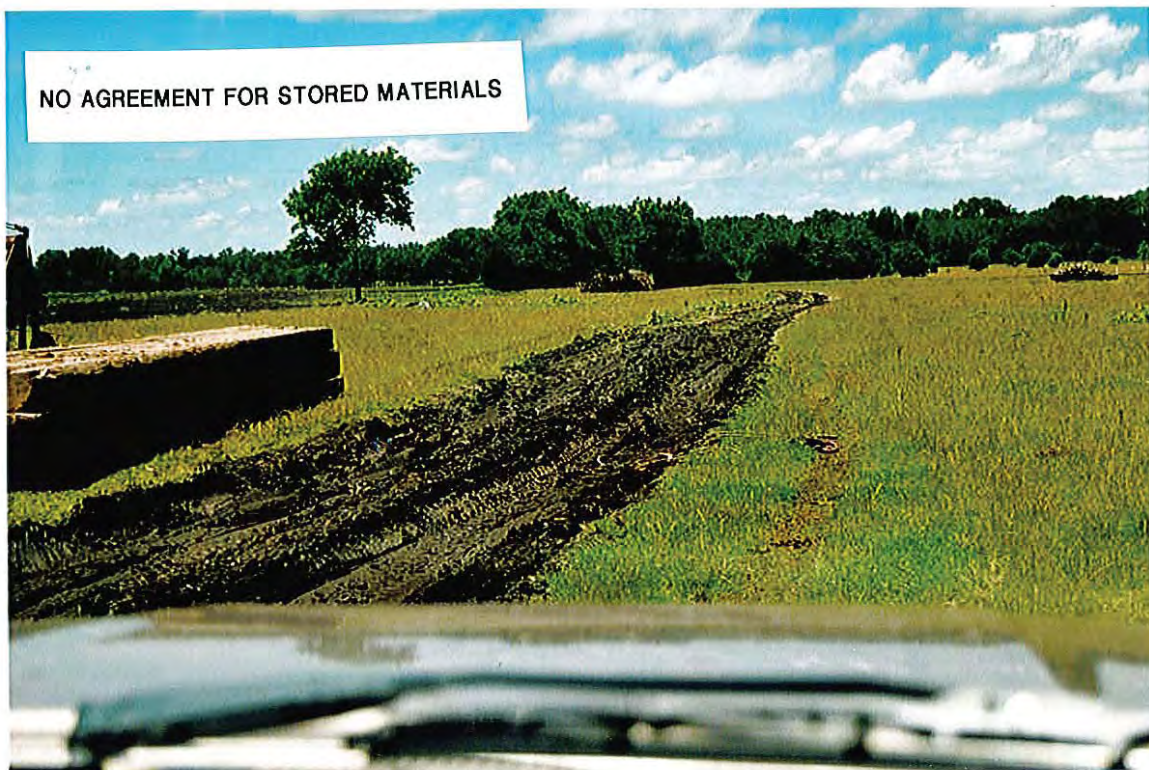




DAMAGES TO TEMP. ACCESS ROAD



DAMAGES TO TEMP. ACCESS ROAD



DAMAGES TO TEMP. ACCESS ROAD

July 14, 2013



September 1, 2013

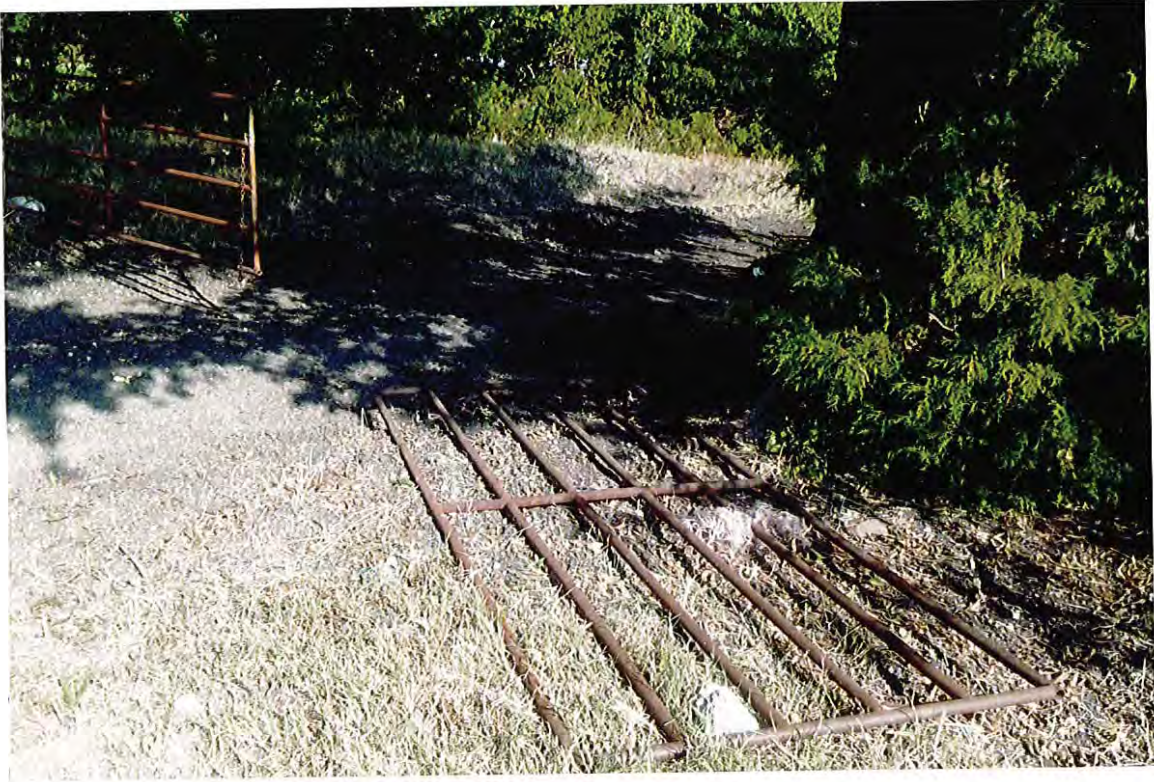
FINAL GRADING AND TRASH REMOVAL NOT COMPLETE



September 1, 2013



DAMAGED GATE



DAMAGED CULVERT



September 1, 2013

DAMAGED BERMUDA GRASS HAYFIELD



Attachment No. 4



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Crossing the Line

When the Keystone XL pipeline came through Lori Collins' farm in Paris, Texas, she welcomed it—until her house flooded with sewage.

by Saul Elbein

[@saul_elbein](#)

Published

Wed, Sep 17, 2014
at 8:00 am CST



Lori Collins in front of her house. *MICHAEL STRAVATO*

The trouble for Lori Collins and her family started the day in early October 2012 when

a backhoe plunged into the earth. Lori walked outside her farmhouse, in the East Texas bottomlands south of Paris, to see that her septic system had been torn from the ground to make way for a pipeline. She saw the piping scattered in the dirt on the side of a great trench—the future home of the controversial

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Keystone XL pipeline, which could eventually stretch from northern Alberta, Canada, to the Texas Gulf Coast, carrying diluted bitumen to refineries that will transform it into crude oil.

TransCanada Corporation's construction of the Texas section of the Keystone pipeline has been met with [angry protests](#) from environmentalists and some landowners. But the Collins family, and Lori in particular, was happy to see the pipeline come through their property. The money was good, but there were personal reasons, too. Big-haired, blonde and brassy, Lori grew up as the only daughter in a family of oilfield workers. In the TransCanada contractors she saw a reflection of her two brothers, pipefitters who lived their lives as nomads on various lines across the country, working hard and living hard. (One of her brothers died from a gunshot in a hotel room in Oklahoma, where he was working on a pipeline project. The crime was never solved.) So when the work crews arrived she drove out to the pipeline easement in her Suburban and, during the day—while her children were at school and her husband, J.B., was out in the fields—she fed them home-cooked beans, cornbread and cobbler. When the worker-safety supervisors yelled at them for letting a civilian without protective gear onto the construction site, they scrounged her up a flame-retardant jumpsuit and TransCanada helmet.

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So perhaps it's a potent metaphor for the project that for a year and a half, TransCanada left a family inundated in its own shit.

Then came that October day in 2012 when Lori walked outside to find considerable damage to her septic system. Like many rural families, the Collinses pumped their sewage to a central tank, and from there it went into smaller pipes that drained waste into their fields. It was these lines, which drained into the fields, that TransCanada had ripped from the ground to clear the pipeline route. So Lori went to the construction site and found a supervisor. She showed him the damage; he promised that he would tell his supervisor and that they would fix it promptly.



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Lori was not, at that point, too concerned. TransCanada owns more than 42,000 miles of oil and natural gas pipelines that spread across the continent from Canada to Mexico, crossing the land of thousands of private owners. In promotional videos and media statements, TransCanada’s representatives tout their devotion to landowners. The company line, repeated in press and ad copy, is that people like the Collinses are “not just landowners, they’re valued neighbors.” The company even produced a series of [promotional videos](#) showing farmers and TransCanada land agents walking through rolling fields of grain: pipeline easements, lovingly restored by the company. The series is called “Good Neighbors.”

During the next two years, that “Good Neighbors” line would become, for Lori Collins and others like her, a bitter joke. A few days after her family’s septic system was destroyed, construction crews piled all the dirt they had dug up on top of the remaining pipe, the one draining the Collinses’ septic tank, effectively plugging it. The family watched helplessly as raw sewage flooded back into the house, soaking the carpets and walls and leaving black mold in its wake. For a year and a half—as their foundation slid toward the growing fetid lake of sewage in their front yard, as they got sick, as disposing of their own waste became a daily problem—the Collins family relentlessly and unsuccessfully tried to get someone to fix the damage. “We trusted them,” Lori Collins told me. “That was

the biggest mistake we ever made.”

For the last four years, the country has fought over the future of the remainder of the Keystone XL pipeline. Much of the national political debate over the Keystone XL—and whether the Obama administration should grant the pipeline final approval—has centered on the project’s impact on climate change (extracting and burning the Alberta bitumen will unleash an enormous amount of carbon into the atmosphere). But there’s been another fight, happening all along the planned route, over what damage the pipeline and its contents will do to the land and, more important, the extent to which TransCanada can be trusted to [repair it](#). To these questions, TransCanada has said, essentially: Trust us. Another common company talking point: “It’ll be the safest pipeline ever built on U.S. soil.”

And so the question of how TransCanada has treated the places where it has actually gotten to build its pipeline—mostly in Texas and Oklahoma—should be very relevant to those parts of the country where the pipeline is still being debated. In East Texas, where the pipeline is finished and functioning, the company has operated with feudal disregard for property rights, driving once-sympathetic landowners into the arms of the growing network of anti-Keystone activists.

So perhaps it serves as a potent metaphor for the project as a whole that for a year and a half, TransCanada left a family inundated in its own shit.



J.B. Collins rolls out hay for his cows on his property near Paris. *MICHAEL STRAVATO*

J.B. and Lori Collins met on the dance floor of a bar in Paris, Texas, in the early 1990s. Lori was new in town, having come to Paris in the wake of a bad marriage in Fort Worth, looking for a new start. One night she saw J.B. across the dance floor. Tall and quiet, J.B. had fled the oil bust of the early 1980s for construction jobs up and down the East Coast, then had come back to join his father working the family farm. Lori sent a friend to invite him over to dance. But Lori was in high demand that night, twisting across the floor with other men, and J.B. couldn't get close. He left with a sense of disappointment. When he saw her again, a week later at a Chinese restaurant in town, she was having dinner. He marched up and asked for that dance. They met at the same bar a few days later, and two years after that they were married.

They moved into a farmhouse that J.B.'s grandparents had

built. For Lori, who grew up in a broken home, and whose first marriage had been a failure, the house became a refuge. “It was the first home I ever had,” she said. And for a long time, things were good, even idyllic. J.B. grew hay and raised cattle and mined gravel from the North Sulphur River, which traversed their property. Lori kept house and cooked. They had two kids soon after getting married, and Lori became a self-described “super PTA-mom.”

The company line, repeated in press and ad copy, is that people like the Collinses are “not just landowners, they’re valued neighbors.”

What the Collinses didn’t know then was that their lives were about to be changed by the decisions of powerful men thousands of miles to the north.

In the mid-2000s, rising oil prices and new extraction technologies combined to bring a boom to the bitumen mines of the Athabasca, in northern Alberta. Bitumen is a petroleum product, like road tar, that can, with a great deal of effort and energy, be converted to synthetic crude oil. Suddenly northern Alberta was a flurry of work and investment, sucking in capital

from as far away as Norway and China.

Northern Alberta is remote, and the bitumen was trapped in the center of the continent. For those investments to pay off, the bitumen had to get to market. In boardrooms in Calgary and Edmonton, oil executives drew up competing pipeline plans to move the bitumen to refineries.

TransCanada's Keystone XL was just one of these plans. The route the company finally submitted to the U.S. Department of State for approval sliced through the middle of the country on its way to refinery complexes on the Texas Gulf Coast—complexes that had already spent \$20 billion upgrading to handle bitumen. The planned route cut straight through the Collinses' land.

In 2010, the first land agent came to the Collinses' house to secure their property for the pipeline easement. The Collinses were pleased to hear a pipeline was coming through because, aside from all the usual arguments about boosting North American energy independence, it meant easy money. In the early negotiations, J.B. tried to sell TransCanada *more* land for temporary work space. As they sat around the kitchen table, the agent showed them the pipeline route.

And that's when they saw it: The route crossed right through their septic system. When they brought this up, Lori says, the agent said there was nothing they could do. That was the way

the engineers had laid the route, and no one could change it. “But [the agent] promised that anything they tore up in that right of way, they would come out and fix it bigger and better,” Lori said.

Thus mollified, the Collinses agreed to the route. Not that they had much choice. To outside appearances, those three people sitting around the kitchen table were having an actual “negotiation,” with the land agent there to sell the Collinses on the pipeline, to win them over to the project. To outside appearances, the Collins family could have said no.

But TransCanada, like all oil pipeline companies doing business in Texas, had the ultimate trump card: eminent domain. At any time, the company could go to court and take whatever route it wanted. The law required TransCanada to pay fair market value for the land, but that was all—landowners had no say in where the pipeline was going to go.

That meant there was nothing forcing TransCanada to cut deals with landowners. Those who wanted a different route, or a different price, or a different contract, had no option but to take to court a company that earned \$1.6 billion in 2013. That’s a staggeringly expensive proposition. David Holland, a prosperous Beaumont trial lawyer, has already spent more than \$150,000 challenging TransCanada’s taking of his land by eminent domain. Obviously, few ranchers could afford to do that, which is why, Holland’s lawyer told me, there’s so little

litigation against the company. “Most people do the best they can with whatever offer they can get,” he said.

The land agent at the Collinses’ house worked on salary, not commission. She had no incentive to sell them on the pipeline. She didn’t need one, because she hadn’t been sent to persuade. She had been sent to say: This thing is coming. Best get on board before you get crushed.

The Collinses’ subsequent dealings with land agents reflected that unwillingness to compromise. At first, the agent offered the Collinses \$72,000 for the easement and temporary workspace. The family asked to think it over but heard nothing for six months. Then suddenly there were two new land agents at their door. The new agents said the old one had been moved down the line and that the original offer had been far too high. The best TransCanada could offer was \$40,000. When the Collinses pushed back, the response wasn’t subtle. “They said, ‘Look, we tried to work with you,’” J.B. Collins recalled. “‘If you won’t be reasonable, they’re going to take you to eminent domain. They’ll make an example of you. You’ll get a lot less money.’” The Collinses went back and forth with the land agents until they received a letter in the mail summoning them to an eminent domain hearing. “We were gutted,” Lori says. “We thought we were still negotiating, and they just took [the land].”

The family didn’t bother to get a lawyer. “The lawyers they

had were bigger than any lawyers we could buy,” J.B. said. The one lawyer he talked to in Paris said that if they tried to fight, TransCanada would “drain us dry” on legal fees and then take the property anyway. He advised that if they’d been offered any money at all, they might as well take it.

At the hearing at the Paris courthouse, the TransCanada lawyer lowballed them. He asked the jury to grant the Collinses just \$8,000 for the land the company was taking.

But J.B. and Lori were lucky. The first land agent had written the offer for \$72,000 on a piece of paper. When the Collinses submitted it, J.B. said, the TransCanada lawyer went ashen. “He said, ‘Well, I didn’t know about that,’” J.B. said. ““Can we knock it down to \$70,000, so I can show my bosses I did something, and then we can all get out of here?’”

The Collinses left elated, feeling like they had won. They went home and waited for the project to start.



Bare soil above the buried Keystone XL pipeline where it crosses the Collinses' cattle pasture. *MICHAEL STRAVATO*

What the Collinses would discover was that TransCanada, practically speaking, was not building the pipeline.

It helps to think of the company less as a pipeline operator and more as a management corporation presiding over a bewildering array of subcontractors. If you think of it as a feudal arrangement in medieval Europe (or on HBO's *Game of Thrones*), with a remote lord sending vassals to do his bidding, you wouldn't be far off. TransCanada employees didn't dig trenches or lay pipe; they contracted that work out.

“You all are screwed. The company is going to take your land, promise you everything in the

world, but they won't come through.”

So when that backhoe blade had its fatal appointment with the Collinses' septic system—as it had been clear for two years that it would—and Lori went out looking for someone to fix it, she was dealing with TransCanada's contractors. The land agents who had come to sign up the Collinses worked with Universal Field Services (UFS), out of Oklahoma. The construction workers came from Michels Corp., out of Wisconsin. There were safety inspectors from UniversalPegasus and Quality Integrated Systems. There were surveyor contractors, security contractors, all separate companies, all doing different jobs, all sharing (or not) information among themselves through a confusing chain of command.

While these workers wore TransCanada uniforms and helmets, they didn't work directly for TransCanada. The Keystone XL project could be thought of as a giant anthill, each ant doing its job, none with any view of, or power over, the grand design. There was no great guiding hand making sure that things happened, no one with whom the buck clearly stopped.

This was a problem for people all along the route. Mark Brantley, a county commissioner in Delta County, where the

Collinses live, told me he had spent a year trying to get TransCanada to fix a county road near the Collins place that heavy trucks had damaged. He found it impossible. Land agents he was working with kept disappearing; the ones who took their place didn't know the situation. One agent suggested the county pay for the repairs and have TransCanada reimburse them. Only when Brantley started threatening to take repair costs out of the bond that TransCanada had filed with the county would he get his calls returned. "No one wants to say that I am the person that you need to deal with, I'll make this happen for you," he said.

The amorphous structure left the Collinses in an uncomfortable bind, watching workers mill around busily while their problems were ignored and their house fell apart.

Rendered as a list, the story reads as black comedy:

A few days after the backhoe tore out their septic system, the Collinses' toilets began taking longer and longer to drain. Lori reported this to a supervisor. He told her that the septic damage had nothing to do with her toilets.

A month after the damage, the day before Thanksgiving, the septic system backed up through the bathrooms and the laundry room drain, flooding half the house with fetid brown water. Lori was cooking for the family, and when she saw the rising water, she laid down in bed and cried in sheer frustration. She

and J.B. soaked the sewage up with heavy quilts and a wet-dry vacuum and dumped it outside. They held a last-minute Thanksgiving dinner at a friend's house.

The next week, the house flooded again. The Collinses called TransCanada's help line; the company sent another backhoe operator to dig out the end of their septic system. This brought the Collinses a few days of relief but also opened a reeking pool in their front yard, which Lori sardonically calls "my dogs' swimming pool." To keep the dogs out, construction workers covered the hole with plywood. This remained, the Collinses said, the only help they got from anyone on the project.

The larger problem, a safety inspector finally explained to the Collinses in December 2012, sometime after the second flood, was a sort of construction catch-22. The workers couldn't repair the septic system because it was under that big pile of topsoil. They couldn't move the topsoil because there was no space left on the easement or temporary work site they had purchased from the Collinses to put it. They couldn't move off the work site because they hadn't done an environmental impact statement, which would have been required before performing work on additional land. The inspector asked the family to be patient. Once the pipeline was installed and the topsoil shoveled back on top of it, he said, their septic system would be fixed.

So they waited. As Lori told me, over and over, “We trusted them.” The Collinses had a complicated, intimate relationship with the oil and construction businesses. They knew the industry well enough to know its warts, to know that sometimes bad things happened. They could be patient.

And so they began a ritual of daily sewage management unfamiliar to most people in the developed world. At the beginning of 2013, J.B. Collins bought a water pump and the family began pumping sewage from the clogged septic system into the fields. If they pumped it daily and were careful with how they used water, they could use their drains and toilets. And a quarter-mile down the road was J.B.’s father’s house, where the old man was slowly dying of cancer. The bathrooms there worked fine, and Lori would send the kids there to use the toilets after they came home from school.

Most days, they could manage. But one mistake—a carelessly timed toilet flush by one of the kids while Lori was running the wash—and brown water would start bubbling out of the drains. They began to plan their entire day around the septic system. They became reluctant to venture too far from home, or to leave the house unattended. Lori stopped going to her kids’ sporting events. She couldn’t risk it.

“It was like having an 800-pound gorilla in the back yard,” J.B. said. “Before you do anything, well, you got somebody back there—that messed-up septic system—and you wonder, what’re

you going to do about it today?”

At the end of January 2013, the Keystone XL was installed and the pile of dirt on top of it had vanished. The workers Lori had cooked for moved on down the line. “I about danced in the yard,” Lori said. She expected that finally the septic system would be fixed quickly.

But then, J.B. said, a week after the construction was finished, a Michels Corp. land agent inspected the damage. He pointed to where the hoe had pulled piping from off the easement. He told J.B. they were only responsible for damage *on* the easement. In frustration, J.B. called the agent’s boss, Mike Brouillette. “I expressed my frustration on how Michels and TransCanada kept avoiding dealing with the problem of repairing our septic system,” J.B. wrote me. “Mike told me he had just left the office but he would contact [me] the following Monday.”

Every time J.B. called from then on, he got Brouillette’s voicemail. J.B. never heard from Brouillette again.

Certain messages, though, got a response. At one point, during difficult negotiations over a valve site TransCanada wanted to install, Lori, in something of a snit, lost her temper. At that moment, 100 miles south in Winnsboro and Nacogdoches, protesters from the Tar Sands Blockade were locked to construction equipment in the path of the pipeline. “I said, ‘I

could make a call and have [the protesters] come up here,’”
Lori said.

The next day, a security guard—an off-duty constable hired by Michels Corp., the construction firm—showed up. The guard told Lori that protesters were coming “in busloads.” They laughed and waited for protesters who never came.



Lori Collins uses an inhaler to address respiratory problems that began after mold appeared in her home. *MICHAEL STRAVATO*

The next six months passed in a repetitive cycle—the Collinses pumping out their sewage, asking for help and being promised remedies that never arrived. Their lives changed. They had been entertainers; now they stopped inviting people to their house. Their kids were too embarrassed to invite friends to a house that smelled like sewage. Through it all they waited.

As they waited, their house and property fell apart around them. The foundation slid toward the sewage pool in their front yard. The pipeline easement remained a black scar across their land where nothing grew except weeds, which then spread to the cropland next to it. Construction trucks tore up their roads. Worst of all, inside their walls black mold was blossoming. Lori, who spent the most time in the house, started to have asthma attacks and migraine headaches. But everyone in the family was affected.

It wasn't just the septic system so much as a dozen other small indignities that made the Collinses feel, as Lori said, "like the land wasn't even ours anymore."

There were the contractors trespassing on their land and the trucks rumbling down their private roads. Workers were on their land seven days a week, leaving gates open, letting cattle out. Then there were the guards. TransCanada and Michels Corp. had hired entire sheriffs' departments to work as security, protecting the equipment from thieves and activists. Security is a common part of construction, but the off-duty cops patrolling the Collinses' land made them feel like they were on occupied territory. Uniformed police posted up on the valve site above their house. The feeling got worse when uniformed off-duty cops twice detained their son, once on their property, once on a public county road.

Under the pressure, the Collinses, to their horror, found

themselves changing. “I feel gullible now,” Lori said. “I don’t want to think, every time I meet someone, deal with someone, that I have to think the worst of them all the time. Now my son has said to me, ‘Mom, why do you always think the glass is half empty now? Why do you always say you can’t trust people?’ I hate that my son says that about me now. And I have [TransCanada] to thank for that.”

With the number of different players, it wasn’t clear who was responsible for any of this. But by June 2013—about eight months after the initial damage to the Collinses’ septic system—word of the Collinses’ situation reached Calgary, Alberta, and the office of Andrew Craig, TransCanada’s Nebraska-born senior land agent, the head honcho of all things landowner-related.

Craig told me that, as he had understood it, the Collinses’ situation had been “non-critical. If they hadn’t been able to flush their toilets,” he explained, “then that would have been critical.” But since J.B. Collins had been willing to keep pumping out the septic system until TransCanada could fix the problem for good, Craig had kept the situation on the back burner.

It’s impossible to know, of course, what Craig had been told by the people under him. For his part, Craig told me that the reason that TransCanada had routed the Keystone XL across the Collinses’ septic system was because the family had asked

it to, hoping to save a copse of pecan trees. When I ran this by J.B. Collins, he snorted. “He’s all screwed up,” he said. “We don’t have any pecan trees near the line. There were some trees we wanted to save, but they took them.”

Finally, in October 2013, more than a year after the septic system was first damaged, Derek Montgomery, a bona fide TransCanada agent, met with the Collinses. By then, the Collinses didn’t even live in their house anymore. They had found out about the mold shortly after the death of J.B.’s father. They took his house off the market and moved into it in a rush, leaving almost all of their possessions behind in the old house.

The Collinses gave Montgomery an estimate of a little more than \$40,000, which would have covered all the damage to the septic system, the drywall and carpets, the land and roads. At that point, they still thought the mold could be controlled. At first, the Collinses said, Montgomery balked at that number. But then they took him to the house to see the crooked floors, the bowed facade, the sewage pool. As Lori tells it, he walked back to one of the UFS guys to ask him, “This is supposed to be a [expletive] finished product?” Then he turned back around and told Lori that TransCanada would pay the full claim.

Lori cried on his shoulder in pure relief. “I asked him, ‘How can I trust what you’re saying, with everything that’s happened?’ He said, ‘Well, I didn’t know about all this. But I

am going to take care of it.’”

He and J.B. Collins stood in front of the house and shook on the deal, and then Montgomery got in his pickup and drove off.

But of course things didn’t end there. Two days later, J.B. was out plowing when Hank Waldrop, one of the UFS agents who had spoken with Montgomery, drove up. He told J.B. that Andrew Craig, the head TransCanada land agent, had rolled back the offer to about \$30,000. “But we shook,” J.B. remembers saying in disbelief. “I’m sorry,” Waldrop told him. “But if you want more, you’re going to have to take TransCanada to court.”

This was the final straw for the Collinses. “At that point,” Lori said, she realized that “they were just going to give us crumbs. ‘Just go ahead and take what we give you and be glad.’”



Covering her mouth and nose to keep from inhaling mold, Lori Collins enters her home to retrieve her son's athletic shoes for school. *MICHAEL STRAVATO*

It wasn't just the Collinses who felt that way. As TransCanada's network of oil pipelines has spread throughout the country, landowners on the Keystone system from Texas to Canada spoke of land men who bullied them into signing easement agreements with threats of eminent domain or bait-and-switch contracts; of contractor work crews who trashed their land and roads; of having to fight the company to get anything fixed.

"The runaround is common," Brian Jorde told me. Jorde is an attorney with Nebraska's Domina Law Group, which has played a key role in the fight to keep the Keystone XL out of that state. Through its work representing Nebraska landowners, the Domina group has repeatedly come up against the same problems that the Collinses saw. "What's happening in Texas is a warning for everyone in the north," Jorde said.

That conduct has led to organized resistance along the route. In Texas, it took the form of open confrontations in which protesters locked themselves to construction equipment or—in one well-publicized instance—suspended themselves from treehouses in the path of the pipeline. The protesters were young urban activists, but they acted with the permission and support of landowners like the Collinses: people who felt like they had been shafted by TransCanada and wanted to strike back.

“I feel gullible now. My son has said to me,
‘Mom, why do you always think the glass is
half empty now?’”

The protests in Texas were part of a larger movement that spidered up the pipeline route. At the center was Nebraska, where a coalition of farmers and environmental activists have [fought a multipronged legal and public relations battle](#) that has, so far, kept the Keystone XL out of Nebraska.

Over and over along the route, in conversations with landowners about TransCanada, I heard variants of, “Excuse me, but I thought this was America.” There’s a certain way that Americans—specifically white, landowning Americans—are used to being treated by corporations, and while it may not have broken the law, TransCanada didn’t treat people that way.

While the landowners’ concerns differ, there is one thing they all share: the impotent rage Lori referenced when she talked about “giving us crumbs.” Not only can they buy your land for a pipeline without negotiation or even consent, but then they

can do whatever they want with it. If they trash your land or your home, and if you want to do anything about it, you have to sue them.

TransCanada's people never really seemed to understand that rage. They still don't. Company men like land agent Andrew Craig contend that they're providing a service, they've always followed the law, and they're doing their best to make landowners happy.

"If people have to spend an undue amount of time dealing with our project, we try to make that right with them," Craig told me, in reference to the Collins case. "With a thousand landowners, 99 percent are going to be real easy to get along with, we can put the property back to a condition they're happy with, we'll get these people back to whatever it takes. But there's a small group like that who sometimes look at a project like this as an opportunity to get a lot of income."

After Craig said that there was a long, awkward silence on the line. I imagined his press handler kicking him under the table. Craig hastened to tell me that he didn't think the Collinses were in it for the money. "But there are some landowners in the area opposed to Keystone, use of fossil fuels, use of eminent domain," he said. "And I see trends in areas where you have outspoken project opponents who try and rally the troops. And whether you have that here I don't know, but we certainly see that."

TransCanada is, in other words, a victim of the greedy and the ideologically opposed. I have little doubt that Craig believes this, although it strains credulity to think that what motivates people to sue or fight TransCanada is greed. Given the amount of money it costs to sue the company and the track record of those who have tried, that would be a stupid bet indeed.

But the outside-agitators line helps explain why, as resistance has grown, TransCanada and its subsidiaries have so often responded with force. There were the high-dollar lawyers at every county zoning hearing in Nebraska where farmers tried to apply zoning regulations to the pipeline. There were the [protests outside Nacogdoches](#), where uniformed police working for TransCanada broke up protests with pepper spray. There are scattered stories along the route of men in trucks stopping passers by on public roads who, like the Collinses' son, came too close to the pipeline route. The company even briefed the Nebraska State Police and FBI on the activists who led the actions in Texas and on "aggressive/abusive landowners" in Nebraska.

Then there was the spying on activists. About 30 miles north of the Collins place is [Julia Trigg Crawford's farm](#). Crawford's story sounds like the Collinses', minus the sewage. She had just moved up from Houston to take over her dad's farm when she was threatened with eminent domain. Crawford family members were so scared they tried to sign off on an easement, but the clock had run out. TransCanada took the land and

Crawford became an implacable opponent of the project, taking a suit against TransCanada (funded largely with small donations) as far as the Texas Supreme Court.

Ever since Crawford has become active, there have been off-duty cops at the valve site across the street from her house. In and of itself, this is not suspicious—it is often cheaper for companies to pay a guard \$30 an hour than to continuously replace stolen diesel and batteries. But one of the off-duty cops—whom Crawford won over after months of diligently taking him coffee and kolaches—told me that around the time of the most intense protests, Michels had given the guards a video camera and instructed them to tape Crawford’s comings and goings.

It was hard to know what to make of that. On a bitterly cold February night the guard and I sat in his car while he smoked cigarettes and drank the coffee Crawford had brought him. The equipment is gone from the valve site now; there was not anything to protect. I asked why he was still there.

He shrugged. “That’s what we’re trying to figure out,” he said. “There’s nothing out here.” He thought for a minute. “Well, I’m prone to conspiracy theories. You know what I mean? I believe things no one should believe. But I think we’re here because of her. I think they want to pressure her.”

But Crawford didn’t feel pressured. My very presence in the

car—a meeting arranged by her—seemed ample proof of that.

It's this human element that TransCanada and its subsidiaries have consistently missed. TransCanada didn't take people like Crawford and Lori Collins into account, because no energy company, thus far, has had to. The power was all on one side.

“If they'd taken all the money they spent producing ads about being good neighbors and actually been good neighbors,” said David Domina, head of the Domina Law Group, “the pipeline would have been finished a year ago.”

In Texas it is finished. Despite the opposition of people like Crawford, the Keystone pipeline is now in the ground carrying bitumen beneath the soil of East Texas. But thanks to cases like the Collinses', the opposition network in Nebraska has made inroads into Texas. TransCanada pushed the Collinses right into this network's orbit. The company did damage that no settlement could undo.

In the Collins case, there was dissension even among the UFS land agents working for TransCanada. One, speaking on condition of anonymity, said he quit soon after TransCanada reneged on the deal with J.B.; he wouldn't talk much about his time with the company but said that what happened to the Collinses was “the straw that broke the camel's back.”

According to Lori, another UFS agent said the company had no intention of fixing the sewage problem. He gave her Julia Trigg

Crawford's name and number.

Crawford came to the Collins home in November 2013. She took video of the bubbling sewage pit, of a floor so uneven it looked, she later said, like a "fun house." It isn't clear that TransCanada knew she had made contact with the Collinses, though the company was watching her and had stationed off-duty cops above the Collins house. That's relevant because a little over a week after Crawford's visit, a TransCanada representative offered to pay the Collinses the full settlement amount, with the disputed \$10,000 thrown in as an "inconvenience fee."

To get the money, the Collinses would have to sign a liability waiver and non-disclosure agreement, forbidding them to talk about what had happened. "That's just standard business practice," Craig said. "Everyone in the industry does it."

That may be so, but it shattered whatever faith the Collinses had left in the company. Two weeks later, Waldrop, the UFS land man, offered the Collinses \$25,000, no strings attached, plus a temporary living allowance of \$5,000 a month. He promised that their house would be restored to better than it had been before.

The Collinses recorded that meeting. Waldrop advises them to take the money. Lori balks. She says TransCanada should have to pay for what it did. Waldrop's response sums up why

landowners often have trouble holding the company accountable.

“TransCanada is a word,” he said. “It’s not a person, not an activity. There’s no one that this responsibility is going to fall on their shoulders and it’s going to ruin their career or anything.”

“It’s like the Mafia coming up and saying, ‘Hey, take this money, trust us,’” J.B. Collins said. “And we’re like, ‘Wait, what happens, [if] we take this money? What happens down the road?’ We didn’t even know the full amount of the damages, and they said, ‘Just take this money right now.’” Anyway, he said, the house was totaled. “It’s like you have a junk car and someone offers to fix it. Well, I don’t want the car. It’s broken.”

In February 2014, the Collinses retained David Domina’s Nebraska law firm for their suit against TransCanada. When I met them early that month, Jane Kleebe, one of the Nebraska organizers, was serving as their press liaison. Brian Jorde was their lawyer. As soon as he got involved, Jorde told me, TransCanada’s brass started responding. “Their offers suddenly went up 800 percent over what they had been before,” he said.

In May 2014, the company settled with the Collinses for \$479,000. Lori told me the money doesn’t make up for her family’s suffering; they only settled because they were

exhausted and badly needed the money. “If I had the backing, I would have fought them all the way,” Lori said. “But they sucked us dry. They took our home, our livelihood, our work from us.”

Talking to the Collinses made me think of a principle in medical malpractice—that the doctors who get sued aren’t necessarily the ones who mess up the worst or have the deepest pockets. It’s the ones who never say they’re sorry. That’s what TransCanada and its affiliates had been categorically unwilling to do, leaving the Collinses with nothing but their pain and loss. The money doesn’t make that go away. And it hasn’t kept Lori Collins, the woman who once delivered cobbler to pipeline workers, from becoming an activist.

In May, while settlement negotiations were wrapping up, Lori got on a plane with Julia Trigg Crawford and flew to Washington, D.C., for an anti-pipeline rally. When she got back she was speaking in the catchphrases of the national anti-Keystone movement, talking about defending “farmers and ranchers” and protecting “our land and water.” For the first time, she’d met others affected by the pipeline and organizing against it: Nebraska farmers, South Dakota Sioux, Canadian ranchers. She was impressed by what she saw.

But she also felt a sense of doom. On her last day in D.C., she spoke in front of a crowd about what had happened to her family. The words burned through her, and when she sat down

she cried like a baby. “Some of the other people in the congregation came up and hugged me,” she said, “and I was shaken because it was ripping me inside out.”

She had looked out at the people listening to her, “all these people fighting for their land and livelihood,” festive in their movement shirts and tribal attire, and she thought, “You all are screwed. The company is going to take your land, promise you everything in the world, but they won’t come through.’ Those people will never know life as they’ve known it before,” she said. “It’ll just be them and their paradise that’s turned into hell.”

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Attachment No. 5

**TRANSCANADA KEYSTONE PIPELINE, LP
RELEASE OF DAMAGE CLAIMS**

Tract No. ML-TX-DE-00006.000-00006.OVS-00008.000

I/we J. B. Collins, Trustee of the J. B. Collins Revocable Trust of 7762 Highway 24 North, Cooper, Texas 75432, in the State of Texas

Acknowledge receipt of Seven Thousand Three Hundred Ninety-Five Dollars and No Cents (\$7395.00), now paid to me/us by TransCanada Keystone Pipeline, LP (hereinafter the "Company"), in full payment and settlement, for all damages listed on the Field Damage Report Form attached hereto. In consideration of said payment, I/we and my/our heirs, executors, administrators and assigns, do hereby release and forever discharge the 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 the Company, which I/we ever had, have now, or which I/we or my/our insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to the damage items listed on the Field Damage Report, arising out of or in connection with, resulting or alleged to have resulted from, surveying, construction, and operations over, under, or on the following lands (hereinafter collectively referred to as the "Lands"):

That certain tract of land situated in A-206, J. F. Keller Survey, Delta County, Texas, being more particularly described in that certain Warranty Deed from J. B. Collins, Trustee of the J. B. Collins Revocable Trust recorded in Volume 307, Page 769 in the Official Public Records of Delta County, Texas; less and except any conveyances heretofore made.

It is further understood and agreed that this Release does not cover any damages which may hereafter arise which are caused by or related to any actions or operations of the Company, its servants, agents, employees, officers, contractors, subcontractors, successors, or assigns, which may be undertaken after the date hereof, across, over, under, or on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on the 11th day of November, 2013.



J. B. Collins, Trustee

RELEASE FOR JB COLLINS REVOCABLE TRUST ONLY.

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Lori Collins in
Support of Landowner Intervenors**

State of Texas)
) ss.
Delta County)

1 **Q: Please state your name.**

2 A: My name is Lori Collins.

3 **Q: Where to do you live?**

4 A: Cooper, Texas.

5 **Q: Do you own land in Texas that the TransCanada Keystone pipeline passes**
6 **through and under?**

7 A: Yes, I do.

8 **Q: Are you married?**

9 A: Yes, to JB Collins.

10 **Q: Do you have children?**

11 A: Yes, two.

12 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
13 **photo(s) of your land TransCanada Keystone pipeline passes through and**
14 **under?**

15 A: Yes.

16 **Q: What do you do for a living?**

1 A: Ranch and Farm.

2 **Q: Do you earn any income from your land?**

3 A: Yes.

4 **Q: Have you depended on the income from your land to support your livelihood**
5 **or the livelihood of your family?**

6 A: Yes.

7 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
8 **and or your family?**

9 A: Yes.

10 **Q: Give the Commissioners a sense of why you have any relevant information**
11 **regarding TransCanada and or the Keystone pipeline.**

12 A: In 2011, TransCanada Keystone Pipeline, L.P. condemned our land for its
13 Keystone I Pipeline and eventually began construction through our land. We
14 experienced numerous health problems and property damage and endured an
15 incredible amount of loss and stress related to the Keystone I pipeline and behaviors
16 of TransCanada.

17 **Q: Is Attachment No. 3 a series of true and accurate copies of pictures you or**
18 **your husband took of the construction and or damage near your home and**
19 **land related to the Keystone Pipeline?**

20 A: Yes.

21 **Q: Is Attachment No. 4 a true and accurate copy of an article in the Texas**
22 **Observer that was written about you and your family's experiences and**
23 **difficulties with TransCanada and the Keystone pipeline?**

24 A: Yes.

25 **Q: Are the quotes, statements, and photos in Attachment No. 4 attributable to**
26 **your or your family true and accurate and consistent with what you and your**
27 **family actually experienced and endured?**

28 A: Yes.

1 **Q:** Are you competent to talk about the experiences you and your family had
2 with TransCanada and do you intend to share those with the Commissioners
3 in more detail at the time of your live testimony?

4 **A:** Yes.

5 **Q:** Is Attachment No. 5 a true and accurate copy of a Timeline you put together
6 regarding some of the events surrounding construction of the Keystone
7 pipeline on and through our land?

8 **A:** Yes.

9 **Q:** What impact if any do you believe the presence of the Keystone pipeline on
10 your land has done to your land's market value?

11 **A:** I believe it has decreased the value. If I had had a choice to not have the pipeline I
12 would have avoided it. I would not knowingly purchase land with a major oil
13 pipeline underneath it. We have still not recovered from all of the damage and
14 negative impacts from the Keystone pipeline.

15 **Q:** Based upon what you have shared with the Commission above and based
16 upon your understanding of TransCanada's proposed Easement terms and
17 agreement for Nebraskans, do you believe those to be reasonable or just,
18 given how you know this company and its pipeline have negatively impacted
19 your family and your land?

20 **A:** No, I do not believe those terms to be reasonable or just.

21 **Q:** Why not?

22 **A:** Our number one problem is that we trusted TransCanada. We trusted what they
23 said and what they said they would do and how they said they would treat us and
24 make things right. We learned a painful lesson and that is we could not trust them.
25 They would say one thing to pacify you and then either do another or not do what
26 they promised. Unless you have all the important details spelled out in your
27 Easement and how TransCanada has to treat you and compensate you and those
28 things, all you have is the document they drafted that favors them and is designed

1 to save them money and your expense. We lived through it and I don't want
2 anyone else to have to experience what we did and what we still are to this day.

3 **Q: At any time did TransCanada present you with or request that you, as the**
4 **owner of the land in question, sign and execute a document called, "Release of**
5 **Damage Claims" Agreement?**

6 A: Yes.

7 **Q: Is Attachment No. 6, to your testimony here, a true and accurate copy of the**
8 **"Release of Damage Claims" Agreement regarding your land?**

9 A: Yes, it is.

10 **Q: What was your understanding of that document?**

11 A: When I read that document I didn't fully understand the consequences. As it was
12 explained to me at the time it was a payment now in advance of the likely damages
13 that would occur during construction. What I did not know or understand at the
14 time was that TransCanada would later argue this document protects them from
15 having to pay out further damages that actually occurred that were above and
16 beyond the amount in this document.

17 **Q: Did you ever sign that document?**

18 A: My Husband did.

19 **Q: Why?**

20 A: We thought we had to and that trying to fight what this billion dollar corporation
21 wanted would be futile.

22 **Q: When you review this document now after everything that happened to you,**
23 **your family, and your land, what did it make you feel?**

24 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
25 shield themselves against known and foreseeable impacts that their pipeline, and
26 the construction of it, would have upon my land. It made me feel that they knew it
27 was in their financial interest to pay me as little as possible to prevent me from
28 ever having the opportunity to seek fair compensation again, and that this must be

1 based upon their experience of unhappy landowners and situations in other places
2 where they have built pipelines.

3 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
4 **crude oil pipeline in its preferred location, or alternative locations across the**
5 **state of Nebraska?**

6 A: Yes, I have significant concerns. I know how we were treated. I am aware of
7 landowners being treated unfairly and being made to feel scared that they did not
8 have any options but to sign whatever papers TransCanada wanted signed. I am
9 aware of older folks and widows or widowers or single women feeling
10 intimidated.

11 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
12 **like the Public Service Commissioners to consider in their review of**
13 **TransCanada's Application?**

14 A: No, I have not. I have shared that which I can think of as of the date I signed this
15 document below but other things may come to me or my memory may be
16 refreshed and I will add and address those things at the time of the Hearing in
17 August and address any additional items at that time as is necessary.

18 **Q: Are all of your statements in your testimony provided above true and**
19 **accurate as of the date you signed this document to the best of your**
20 **knowledge?**

21 A: Yes, they are.

22 **Q: Thank you, I have no further questions at this time and reserve the right to**
23 **ask you additional questions at the August 2017 Hearing.**

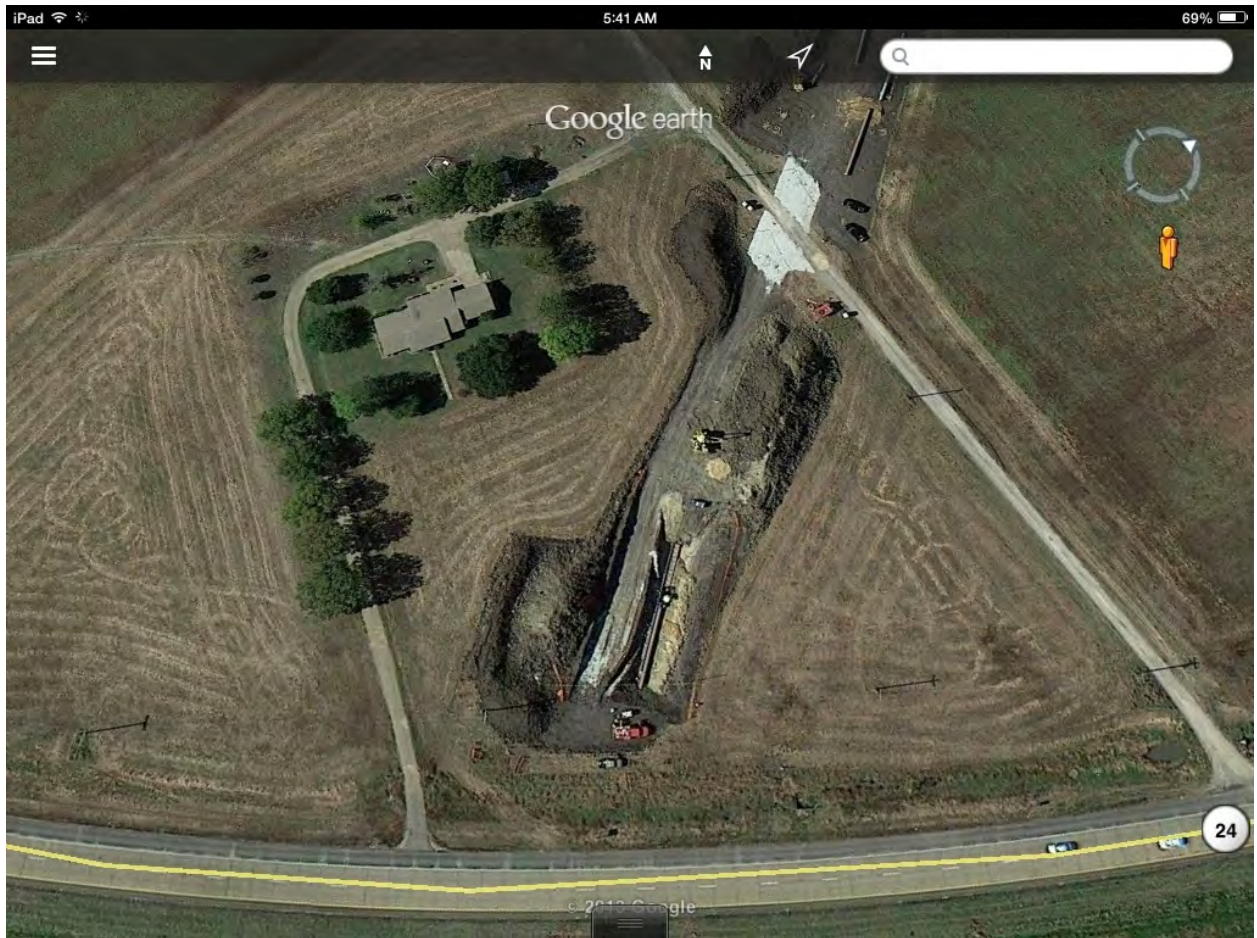
Lori Collins
Lori Collins

Subscribed and Sworn to me before this 2nd day of June, 2017.

Donna E. King
Notary Public



Attachment No. 1



Attachment No. 2





Attachment No. 3

















OUR FROUNT YARD

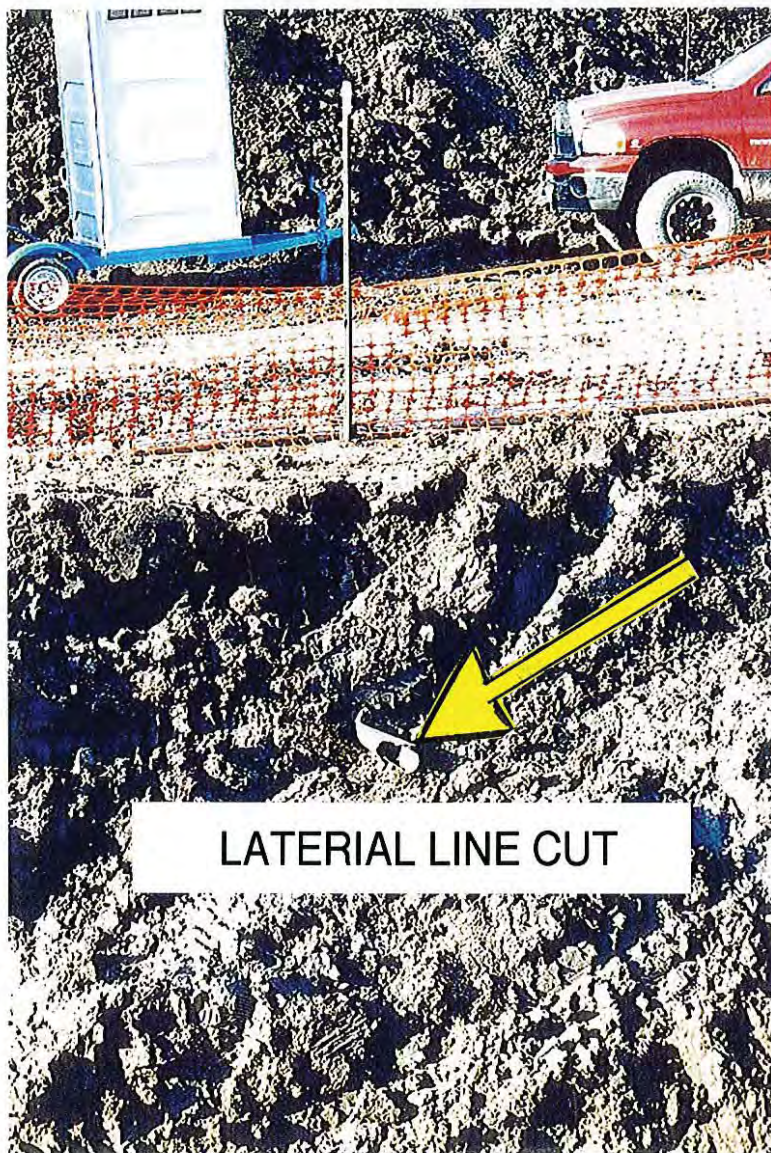




LATERAL LINES DEMOLISHED



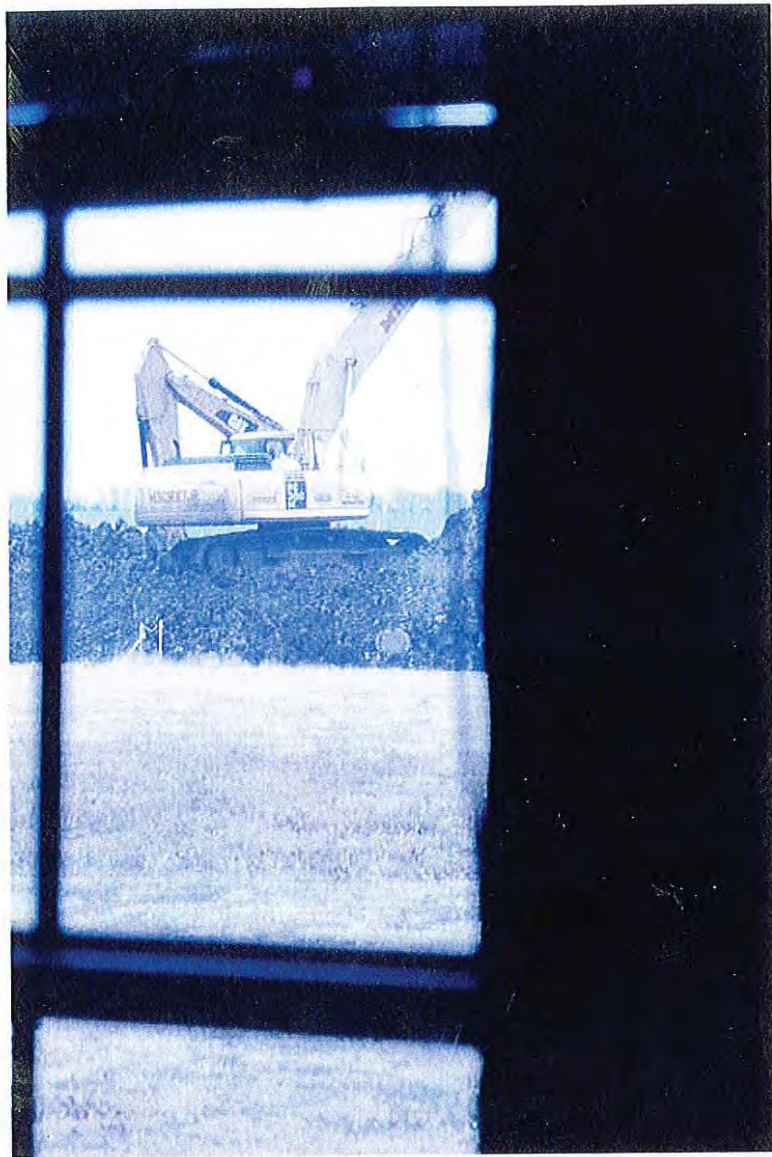
SEE
ENLARGED
BELOW





SEPTIC TANK BEING PUMPED









CONSTRUCTION DEBRIS ON RIDEAWAY





EXCESS TOPSOIL TO BE SPREAD

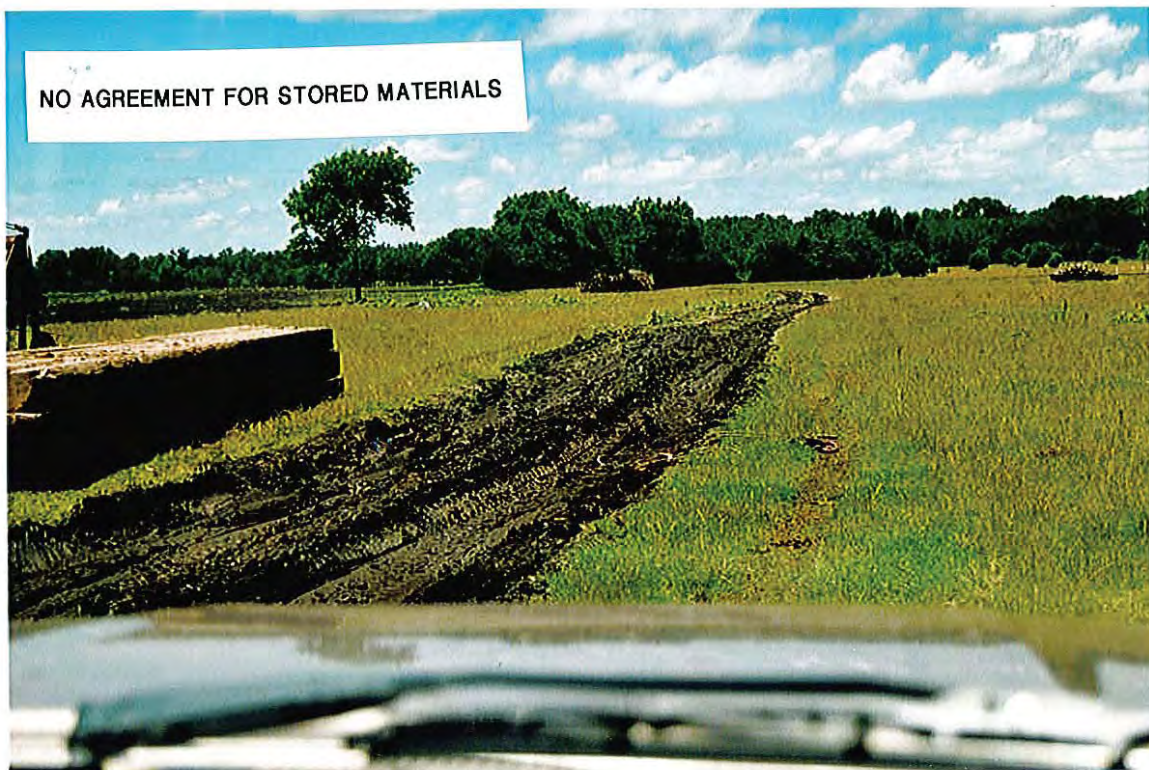




DAMAGES TO TEMP. ACCESS ROAD



DAMAGES TO TEMP. ACCESS ROAD



DAMAGES TO TEMP. ACCESS ROAD

July 14, 2013



September 1, 2013

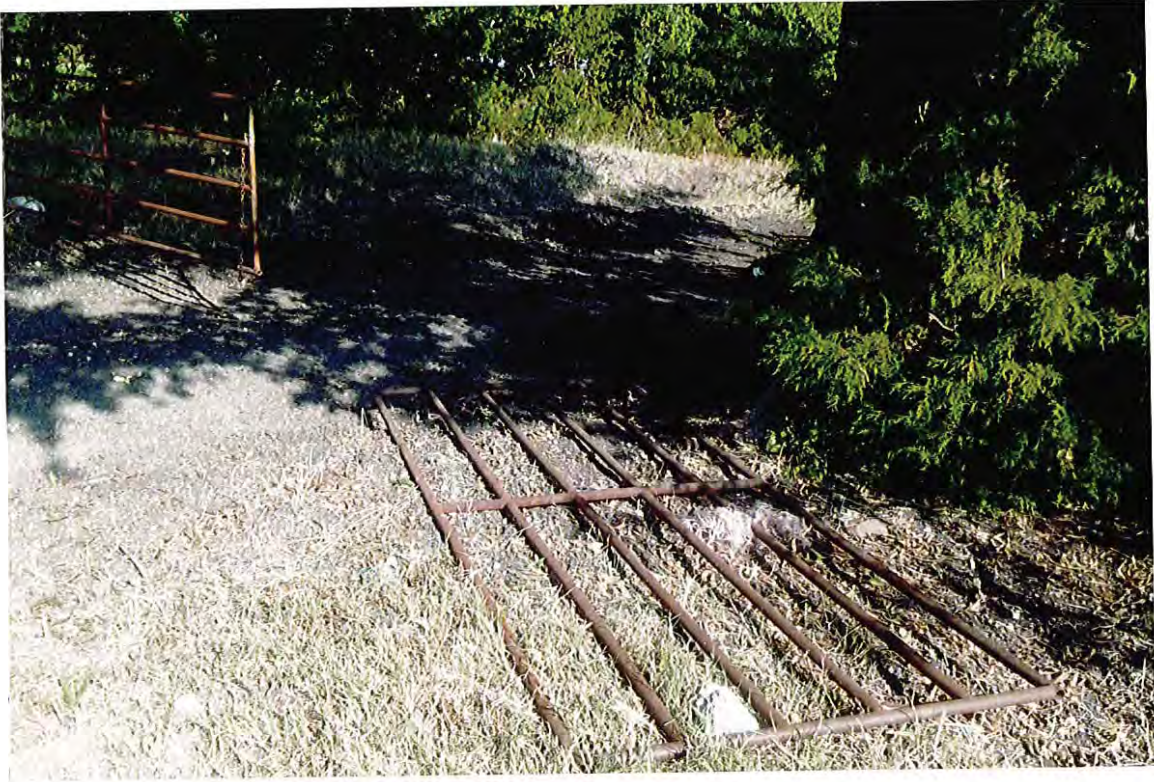
FINAL GRADING AND TRASH REMOVAL NOT COMPLETE



September 1, 2013



DAMAGED GATE



DAMAGED CULVERT



September 1, 2013

DAMAGED BERMUDA GRASS HAYFIELD



Attachment No. 4



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Crossing the Line

When the Keystone XL pipeline came through Lori Collins' farm in Paris, Texas, she welcomed it—until her house flooded with sewage.

by Saul Elbein

[@saul_elbein](#)

Published

Wed, Sep 17, 2014
at 8:00 am CST



Lori Collins in front of her house. *MICHAEL STRAVATO*

The trouble for Lori Collins and her family started the day in early October 2012 when

a backhoe plunged into the earth. Lori walked outside her farmhouse, in the East Texas bottomlands south of Paris, to see that her septic system had been torn from the ground to make way for a pipeline. She saw the piping scattered in the dirt on the side of a great trench—the future home of the controversial

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Keystone XL pipeline, which could eventually stretch from northern Alberta, Canada, to the Texas Gulf Coast, carrying diluted bitumen to refineries that will transform it into crude oil.

TransCanada Corporation's construction of the Texas section of the Keystone pipeline has been met with [angry protests](#) from environmentalists and some landowners. But the Collins family, and Lori in particular, was happy to see the pipeline come through their property. The money was good, but there were personal reasons, too. Big-haired, blonde and brassy, Lori grew up as the only daughter in a family of oilfield workers. In the TransCanada contractors she saw a reflection of her two brothers, pipefitters who lived their lives as nomads on various lines across the country, working hard and living hard. (One of her brothers died from a gunshot in a hotel room in Oklahoma, where he was working on a pipeline project. The crime was never solved.) So when the work crews arrived she drove out to the pipeline easement in her Suburban and, during the day—while her children were at school and her husband, J.B., was out in the fields—she fed them home-cooked beans, cornbread and cobbler. When the worker-safety supervisors yelled at them for letting a civilian without protective gear onto the construction site, they scrounged her up a flame-retardant jumpsuit and TransCanada helmet.

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So perhaps it's a potent metaphor for the project that for a year and a half, TransCanada left a family inundated in its own shit.

Then came that October day in 2012 when Lori walked outside to find considerable damage to her septic system. Like many rural families, the Collinses pumped their sewage to a central tank, and from there it went into smaller pipes that drained waste into their fields. It was these lines, which drained into the fields, that TransCanada had ripped from the ground to clear the pipeline route. So Lori went to the construction site and found a supervisor. She showed him the damage; he promised that he would tell his supervisor and that they would fix it promptly.



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Lori was not, at that point, too concerned. TransCanada owns more than 42,000 miles of oil and natural gas pipelines that spread across the continent from Canada to Mexico, crossing the land of thousands of private owners. In promotional videos and media statements, TransCanada’s representatives tout their devotion to landowners. The company line, repeated in press and ad copy, is that people like the Collinses are “not just landowners, they’re valued neighbors.” The company even produced a series of [promotional videos](#) showing farmers and TransCanada land agents walking through rolling fields of grain: pipeline easements, lovingly restored by the company. The series is called “Good Neighbors.”

During the next two years, that “Good Neighbors” line would become, for Lori Collins and others like her, a bitter joke. A few days after her family’s septic system was destroyed, construction crews piled all the dirt they had dug up on top of the remaining pipe, the one draining the Collinses’ septic tank, effectively plugging it. The family watched helplessly as raw sewage flooded back into the house, soaking the carpets and walls and leaving black mold in its wake. For a year and a half—as their foundation slid toward the growing fetid lake of sewage in their front yard, as they got sick, as disposing of their own waste became a daily problem—the Collins family relentlessly and unsuccessfully tried to get someone to fix the damage. “We trusted them,” Lori Collins told me. “That was

the biggest mistake we ever made.”

For the last four years, the country has fought over the future of the remainder of the Keystone XL pipeline. Much of the national political debate over the Keystone XL—and whether the Obama administration should grant the pipeline final approval—has centered on the project’s impact on climate change (extracting and burning the Alberta bitumen will unleash an enormous amount of carbon into the atmosphere). But there’s been another fight, happening all along the planned route, over what damage the pipeline and its contents will do to the land and, more important, the extent to which TransCanada can be trusted to [repair it](#). To these questions, TransCanada has said, essentially: Trust us. Another common company talking point: “It’ll be the safest pipeline ever built on U.S. soil.”

And so the question of how TransCanada has treated the places where it has actually gotten to build its pipeline—mostly in Texas and Oklahoma—should be very relevant to those parts of the country where the pipeline is still being debated. In East Texas, where the pipeline is finished and functioning, the company has operated with feudal disregard for property rights, driving once-sympathetic landowners into the arms of the growing network of anti-Keystone activists.

So perhaps it serves as a potent metaphor for the project as a whole that for a year and a half, TransCanada left a family inundated in its own shit.



J.B. Collins rolls out hay for his cows on his property near Paris. *MICHAEL STRAVATO*

J.B. and Lori Collins met on the dance floor of a bar in Paris, Texas, in the early 1990s. Lori was new in town, having come to Paris in the wake of a bad marriage in Fort Worth, looking for a new start. One night she saw J.B. across the dance floor. Tall and quiet, J.B. had fled the oil bust of the early 1980s for construction jobs up and down the East Coast, then had come back to join his father working the family farm. Lori sent a friend to invite him over to dance. But Lori was in high demand that night, twisting across the floor with other men, and J.B. couldn't get close. He left with a sense of disappointment. When he saw her again, a week later at a Chinese restaurant in town, she was having dinner. He marched up and asked for that dance. They met at the same bar a few days later, and two years after that they were married.

They moved into a farmhouse that J.B.'s grandparents had

built. For Lori, who grew up in a broken home, and whose first marriage had been a failure, the house became a refuge. “It was the first home I ever had,” she said. And for a long time, things were good, even idyllic. J.B. grew hay and raised cattle and mined gravel from the North Sulphur River, which traversed their property. Lori kept house and cooked. They had two kids soon after getting married, and Lori became a self-described “super PTA-mom.”

The company line, repeated in press and ad copy, is that people like the Collinses are “not just landowners, they’re valued neighbors.”

What the Collinses didn’t know then was that their lives were about to be changed by the decisions of powerful men thousands of miles to the north.

In the mid-2000s, rising oil prices and new extraction technologies combined to bring a boom to the bitumen mines of the Athabasca, in northern Alberta. Bitumen is a petroleum product, like road tar, that can, with a great deal of effort and energy, be converted to synthetic crude oil. Suddenly northern Alberta was a flurry of work and investment, sucking in capital

from as far away as Norway and China.

Northern Alberta is remote, and the bitumen was trapped in the center of the continent. For those investments to pay off, the bitumen had to get to market. In boardrooms in Calgary and Edmonton, oil executives drew up competing pipeline plans to move the bitumen to refineries.

TransCanada's Keystone XL was just one of these plans. The route the company finally submitted to the U.S. Department of State for approval sliced through the middle of the country on its way to refinery complexes on the Texas Gulf Coast—complexes that had already spent \$20 billion upgrading to handle bitumen. The planned route cut straight through the Collinses' land.

In 2010, the first land agent came to the Collinses' house to secure their property for the pipeline easement. The Collinses were pleased to hear a pipeline was coming through because, aside from all the usual arguments about boosting North American energy independence, it meant easy money. In the early negotiations, J.B. tried to sell TransCanada *more* land for temporary work space. As they sat around the kitchen table, the agent showed them the pipeline route.

And that's when they saw it: The route crossed right through their septic system. When they brought this up, Lori says, the agent said there was nothing they could do. That was the way

the engineers had laid the route, and no one could change it. “But [the agent] promised that anything they tore up in that right of way, they would come out and fix it bigger and better,” Lori said.

Thus mollified, the Collinses agreed to the route. Not that they had much choice. To outside appearances, those three people sitting around the kitchen table were having an actual “negotiation,” with the land agent there to sell the Collinses on the pipeline, to win them over to the project. To outside appearances, the Collins family could have said no.

But TransCanada, like all oil pipeline companies doing business in Texas, had the ultimate trump card: eminent domain. At any time, the company could go to court and take whatever route it wanted. The law required TransCanada to pay fair market value for the land, but that was all—landowners had no say in where the pipeline was going to go.

That meant there was nothing forcing TransCanada to cut deals with landowners. Those who wanted a different route, or a different price, or a different contract, had no option but to take to court a company that earned \$1.6 billion in 2013. That’s a staggeringly expensive proposition. David Holland, a prosperous Beaumont trial lawyer, has already spent more than \$150,000 challenging TransCanada’s taking of his land by eminent domain. Obviously, few ranchers could afford to do that, which is why, Holland’s lawyer told me, there’s so little

litigation against the company. “Most people do the best they can with whatever offer they can get,” he said.

The land agent at the Collinses’ house worked on salary, not commission. She had no incentive to sell them on the pipeline. She didn’t need one, because she hadn’t been sent to persuade. She had been sent to say: This thing is coming. Best get on board before you get crushed.

The Collinses’ subsequent dealings with land agents reflected that unwillingness to compromise. At first, the agent offered the Collinses \$72,000 for the easement and temporary workspace. The family asked to think it over but heard nothing for six months. Then suddenly there were two new land agents at their door. The new agents said the old one had been moved down the line and that the original offer had been far too high. The best TransCanada could offer was \$40,000. When the Collinses pushed back, the response wasn’t subtle. “They said, ‘Look, we tried to work with you,’” J.B. Collins recalled. “‘If you won’t be reasonable, they’re going to take you to eminent domain. They’ll make an example of you. You’ll get a lot less money.’” The Collinses went back and forth with the land agents until they received a letter in the mail summoning them to an eminent domain hearing. “We were gutted,” Lori says. “We thought we were still negotiating, and they just took [the land].”

The family didn’t bother to get a lawyer. “The lawyers they

had were bigger than any lawyers we could buy,” J.B. said. The one lawyer he talked to in Paris said that if they tried to fight, TransCanada would “drain us dry” on legal fees and then take the property anyway. He advised that if they’d been offered any money at all, they might as well take it.

At the hearing at the Paris courthouse, the TransCanada lawyer lowballed them. He asked the jury to grant the Collinses just \$8,000 for the land the company was taking.

But J.B. and Lori were lucky. The first land agent had written the offer for \$72,000 on a piece of paper. When the Collinses submitted it, J.B. said, the TransCanada lawyer went ashen. “He said, ‘Well, I didn’t know about that,’” J.B. said. ““Can we knock it down to \$70,000, so I can show my bosses I did something, and then we can all get out of here?’”

The Collinses left elated, feeling like they had won. They went home and waited for the project to start.



Bare soil above the buried Keystone XL pipeline where it crosses the Collinses' cattle pasture. *MICHAEL STRAVATO*

What the Collinses would discover was that TransCanada, practically speaking, was not building the pipeline.

It helps to think of the company less as a pipeline operator and more as a management corporation presiding over a bewildering array of subcontractors. If you think of it as a feudal arrangement in medieval Europe (or on HBO's *Game of Thrones*), with a remote lord sending vassals to do his bidding, you wouldn't be far off. TransCanada employees didn't dig trenches or lay pipe; they contracted that work out.

“You all are screwed. The company is going to take your land, promise you everything in the

world, but they won't come through.”

So when that backhoe blade had its fatal appointment with the Collinses' septic system—as it had been clear for two years that it would—and Lori went out looking for someone to fix it, she was dealing with TransCanada's contractors. The land agents who had come to sign up the Collinses worked with Universal Field Services (UFS), out of Oklahoma. The construction workers came from Michels Corp., out of Wisconsin. There were safety inspectors from UniversalPegasus and Quality Integrated Systems. There were surveyor contractors, security contractors, all separate companies, all doing different jobs, all sharing (or not) information among themselves through a confusing chain of command.

While these workers wore TransCanada uniforms and helmets, they didn't work directly for TransCanada. The Keystone XL project could be thought of as a giant anthill, each ant doing its job, none with any view of, or power over, the grand design. There was no great guiding hand making sure that things happened, no one with whom the buck clearly stopped.

This was a problem for people all along the route. Mark Brantley, a county commissioner in Delta County, where the

Collinses live, told me he had spent a year trying to get TransCanada to fix a county road near the Collins place that heavy trucks had damaged. He found it impossible. Land agents he was working with kept disappearing; the ones who took their place didn't know the situation. One agent suggested the county pay for the repairs and have TransCanada reimburse them. Only when Brantley started threatening to take repair costs out of the bond that TransCanada had filed with the county would he get his calls returned. "No one wants to say that I am the person that you need to deal with, I'll make this happen for you," he said.

The amorphous structure left the Collinses in an uncomfortable bind, watching workers mill around busily while their problems were ignored and their house fell apart.

Rendered as a list, the story reads as black comedy:

A few days after the backhoe tore out their septic system, the Collinses' toilets began taking longer and longer to drain. Lori reported this to a supervisor. He told her that the septic damage had nothing to do with her toilets.

A month after the damage, the day before Thanksgiving, the septic system backed up through the bathrooms and the laundry room drain, flooding half the house with fetid brown water. Lori was cooking for the family, and when she saw the rising water, she laid down in bed and cried in sheer frustration. She

and J.B. soaked the sewage up with heavy quilts and a wet-dry vacuum and dumped it outside. They held a last-minute Thanksgiving dinner at a friend's house.

The next week, the house flooded again. The Collinses called TransCanada's help line; the company sent another backhoe operator to dig out the end of their septic system. This brought the Collinses a few days of relief but also opened a reeking pool in their front yard, which Lori sardonically calls "my dogs' swimming pool." To keep the dogs out, construction workers covered the hole with plywood. This remained, the Collinses said, the only help they got from anyone on the project.

The larger problem, a safety inspector finally explained to the Collinses in December 2012, sometime after the second flood, was a sort of construction catch-22. The workers couldn't repair the septic system because it was under that big pile of topsoil. They couldn't move the topsoil because there was no space left on the easement or temporary work site they had purchased from the Collinses to put it. They couldn't move off the work site because they hadn't done an environmental impact statement, which would have been required before performing work on additional land. The inspector asked the family to be patient. Once the pipeline was installed and the topsoil shoveled back on top of it, he said, their septic system would be fixed.

So they waited. As Lori told me, over and over, “We trusted them.” The Collinses had a complicated, intimate relationship with the oil and construction businesses. They knew the industry well enough to know its warts, to know that sometimes bad things happened. They could be patient.

And so they began a ritual of daily sewage management unfamiliar to most people in the developed world. At the beginning of 2013, J.B. Collins bought a water pump and the family began pumping sewage from the clogged septic system into the fields. If they pumped it daily and were careful with how they used water, they could use their drains and toilets. And a quarter-mile down the road was J.B.’s father’s house, where the old man was slowly dying of cancer. The bathrooms there worked fine, and Lori would send the kids there to use the toilets after they came home from school.

Most days, they could manage. But one mistake—a carelessly timed toilet flush by one of the kids while Lori was running the wash—and brown water would start bubbling out of the drains. They began to plan their entire day around the septic system. They became reluctant to venture too far from home, or to leave the house unattended. Lori stopped going to her kids’ sporting events. She couldn’t risk it.

“It was like having an 800-pound gorilla in the back yard,” J.B. said. “Before you do anything, well, you got somebody back there—that messed-up septic system—and you wonder, what’re

you going to do about it today?”

At the end of January 2013, the Keystone XL was installed and the pile of dirt on top of it had vanished. The workers Lori had cooked for moved on down the line. “I about danced in the yard,” Lori said. She expected that finally the septic system would be fixed quickly.

But then, J.B. said, a week after the construction was finished, a Michels Corp. land agent inspected the damage. He pointed to where the hoe had pulled piping from off the easement. He told J.B. they were only responsible for damage *on* the easement. In frustration, J.B. called the agent’s boss, Mike Brouillette. “I expressed my frustration on how Michels and TransCanada kept avoiding dealing with the problem of repairing our septic system,” J.B. wrote me. “Mike told me he had just left the office but he would contact [me] the following Monday.”

Every time J.B. called from then on, he got Brouillette’s voicemail. J.B. never heard from Brouillette again.

Certain messages, though, got a response. At one point, during difficult negotiations over a valve site TransCanada wanted to install, Lori, in something of a snit, lost her temper. At that moment, 100 miles south in Winnsboro and Nacogdoches, protesters from the Tar Sands Blockade were locked to construction equipment in the path of the pipeline. “I said, ‘I

could make a call and have [the protesters] come up here,’”
Lori said.

The next day, a security guard—an off-duty constable hired by Michels Corp., the construction firm—showed up. The guard told Lori that protesters were coming “in busloads.” They laughed and waited for protesters who never came.



Lori Collins uses an inhaler to address respiratory problems that began after mold appeared in her home. *MICHAEL STRAVATO*

The next six months passed in a repetitive cycle—the Collinses pumping out their sewage, asking for help and being promised remedies that never arrived. Their lives changed. They had been entertainers; now they stopped inviting people to their house. Their kids were too embarrassed to invite friends to a house that smelled like sewage. Through it all they waited.

As they waited, their house and property fell apart around them. The foundation slid toward the sewage pool in their front yard. The pipeline easement remained a black scar across their land where nothing grew except weeds, which then spread to the cropland next to it. Construction trucks tore up their roads. Worst of all, inside their walls black mold was blossoming. Lori, who spent the most time in the house, started to have asthma attacks and migraine headaches. But everyone in the family was affected.

It wasn't just the septic system so much as a dozen other small indignities that made the Collinses feel, as Lori said, "like the land wasn't even ours anymore."

There were the contractors trespassing on their land and the trucks rumbling down their private roads. Workers were on their land seven days a week, leaving gates open, letting cattle out. Then there were the guards. TransCanada and Michels Corp. had hired entire sheriffs' departments to work as security, protecting the equipment from thieves and activists. Security is a common part of construction, but the off-duty cops patrolling the Collinses' land made them feel like they were on occupied territory. Uniformed police posted up on the valve site above their house. The feeling got worse when uniformed off-duty cops twice detained their son, once on their property, once on a public county road.

Under the pressure, the Collinses, to their horror, found

themselves changing. “I feel gullible now,” Lori said. “I don’t want to think, every time I meet someone, deal with someone, that I have to think the worst of them all the time. Now my son has said to me, ‘Mom, why do you always think the glass is half empty now? Why do you always say you can’t trust people?’ I hate that my son says that about me now. And I have [TransCanada] to thank for that.”

With the number of different players, it wasn’t clear who was responsible for any of this. But by June 2013—about eight months after the initial damage to the Collinses’ septic system—word of the Collinses’ situation reached Calgary, Alberta, and the office of Andrew Craig, TransCanada’s Nebraska-born senior land agent, the head honcho of all things landowner-related.

Craig told me that, as he had understood it, the Collinses’ situation had been “non-critical. If they hadn’t been able to flush their toilets,” he explained, “then that would have been critical.” But since J.B. Collins had been willing to keep pumping out the septic system until TransCanada could fix the problem for good, Craig had kept the situation on the back burner.

It’s impossible to know, of course, what Craig had been told by the people under him. For his part, Craig told me that the reason that TransCanada had routed the Keystone XL across the Collinses’ septic system was because the family had asked

it to, hoping to save a copse of pecan trees. When I ran this by J.B. Collins, he snorted. “He’s all screwed up,” he said. “We don’t have any pecan trees near the line. There were some trees we wanted to save, but they took them.”

Finally, in October 2013, more than a year after the septic system was first damaged, Derek Montgomery, a bona fide TransCanada agent, met with the Collinses. By then, the Collinses didn’t even live in their house anymore. They had found out about the mold shortly after the death of J.B.’s father. They took his house off the market and moved into it in a rush, leaving almost all of their possessions behind in the old house.

The Collinses gave Montgomery an estimate of a little more than \$40,000, which would have covered all the damage to the septic system, the drywall and carpets, the land and roads. At that point, they still thought the mold could be controlled. At first, the Collinses said, Montgomery balked at that number. But then they took him to the house to see the crooked floors, the bowed facade, the sewage pool. As Lori tells it, he walked back to one of the UFS guys to ask him, “This is supposed to be a [expletive] finished product?” Then he turned back around and told Lori that TransCanada would pay the full claim.

Lori cried on his shoulder in pure relief. “I asked him, ‘How can I trust what you’re saying, with everything that’s happened?’ He said, ‘Well, I didn’t know about all this. But I

am going to take care of it.’”

He and J.B. Collins stood in front of the house and shook on the deal, and then Montgomery got in his pickup and drove off.

But of course things didn’t end there. Two days later, J.B. was out plowing when Hank Waldrop, one of the UFS agents who had spoken with Montgomery, drove up. He told J.B. that Andrew Craig, the head TransCanada land agent, had rolled back the offer to about \$30,000. “But we shook,” J.B. remembers saying in disbelief. “I’m sorry,” Waldrop told him. “But if you want more, you’re going to have to take TransCanada to court.”

This was the final straw for the Collinses. “At that point,” Lori said, she realized that “they were just going to give us crumbs. ‘Just go ahead and take what we give you and be glad.’”



Covering her mouth and nose to keep from inhaling mold, Lori Collins enters her home to retrieve her son's athletic shoes for school. *MICHAEL STRAVATO*

It wasn't just the Collinses who felt that way. As TransCanada's network of oil pipelines has spread throughout the country, landowners on the Keystone system from Texas to Canada spoke of land men who bullied them into signing easement agreements with threats of eminent domain or bait-and-switch contracts; of contractor work crews who trashed their land and roads; of having to fight the company to get anything fixed.

"The runaround is common," Brian Jorde told me. Jorde is an attorney with Nebraska's Domina Law Group, which has played a key role in the fight to keep the Keystone XL out of that state. Through its work representing Nebraska landowners, the Domina group has repeatedly come up against the same problems that the Collinses saw. "What's happening in Texas is a warning for everyone in the north," Jorde said.

That conduct has led to organized resistance along the route. In Texas, it took the form of open confrontations in which protesters locked themselves to construction equipment or—in one well-publicized instance—suspended themselves from treehouses in the path of the pipeline. The protesters were young urban activists, but they acted with the permission and support of landowners like the Collinses: people who felt like they had been shafted by TransCanada and wanted to strike back.

“I feel gullible now. My son has said to me,
‘Mom, why do you always think the glass is
half empty now?’”

The protests in Texas were part of a larger movement that spidered up the pipeline route. At the center was Nebraska, where a coalition of farmers and environmental activists have [fought a multipronged legal and public relations battle](#) that has, so far, kept the Keystone XL out of Nebraska.

Over and over along the route, in conversations with landowners about TransCanada, I heard variants of, “Excuse me, but I thought this was America.” There’s a certain way that Americans—specifically white, landowning Americans—are used to being treated by corporations, and while it may not have broken the law, TransCanada didn’t treat people that way.

While the landowners’ concerns differ, there is one thing they all share: the impotent rage Lori referenced when she talked about “giving us crumbs.” Not only can they buy your land for a pipeline without negotiation or even consent, but then they

can do whatever they want with it. If they trash your land or your home, and if you want to do anything about it, you have to sue them.

TransCanada's people never really seemed to understand that rage. They still don't. Company men like land agent Andrew Craig contend that they're providing a service, they've always followed the law, and they're doing their best to make landowners happy.

"If people have to spend an undue amount of time dealing with our project, we try to make that right with them," Craig told me, in reference to the Collins case. "With a thousand landowners, 99 percent are going to be real easy to get along with, we can put the property back to a condition they're happy with, we'll get these people back to whatever it takes. But there's a small group like that who sometimes look at a project like this as an opportunity to get a lot of income."

After Craig said that there was a long, awkward silence on the line. I imagined his press handler kicking him under the table. Craig hastened to tell me that he didn't think the Collinses were in it for the money. "But there are some landowners in the area opposed to Keystone, use of fossil fuels, use of eminent domain," he said. "And I see trends in areas where you have outspoken project opponents who try and rally the troops. And whether you have that here I don't know, but we certainly see that."

TransCanada is, in other words, a victim of the greedy and the ideologically opposed. I have little doubt that Craig believes this, although it strains credulity to think that what motivates people to sue or fight TransCanada is greed. Given the amount of money it costs to sue the company and the track record of those who have tried, that would be a stupid bet indeed.

But the outside-agitators line helps explain why, as resistance has grown, TransCanada and its subsidiaries have so often responded with force. There were the high-dollar lawyers at every county zoning hearing in Nebraska where farmers tried to apply zoning regulations to the pipeline. There were the [protests outside Nacogdoches](#), where uniformed police working for TransCanada broke up protests with pepper spray. There are scattered stories along the route of men in trucks stopping passers by on public roads who, like the Collinses' son, came too close to the pipeline route. The company even briefed the Nebraska State Police and FBI on the activists who led the actions in Texas and on "aggressive/abusive landowners" in Nebraska.

Then there was the spying on activists. About 30 miles north of the Collins place is [Julia Trigg Crawford's farm](#). Crawford's story sounds like the Collinses', minus the sewage. She had just moved up from Houston to take over her dad's farm when she was threatened with eminent domain. Crawford family members were so scared they tried to sign off on an easement, but the clock had run out. TransCanada took the land and

Crawford became an implacable opponent of the project, taking a suit against TransCanada (funded largely with small donations) as far as the Texas Supreme Court.

Ever since Crawford has become active, there have been off-duty cops at the valve site across the street from her house. In and of itself, this is not suspicious—it is often cheaper for companies to pay a guard \$30 an hour than to continuously replace stolen diesel and batteries. But one of the off-duty cops—whom Crawford won over after months of diligently taking him coffee and kolaches—told me that around the time of the most intense protests, Michels had given the guards a video camera and instructed them to tape Crawford’s comings and goings.

It was hard to know what to make of that. On a bitterly cold February night the guard and I sat in his car while he smoked cigarettes and drank the coffee Crawford had brought him. The equipment is gone from the valve site now; there was not anything to protect. I asked why he was still there.

He shrugged. “That’s what we’re trying to figure out,” he said. “There’s nothing out here.” He thought for a minute. “Well, I’m prone to conspiracy theories. You know what I mean? I believe things no one should believe. But I think we’re here because of her. I think they want to pressure her.”

But Crawford didn’t feel pressured. My very presence in the

car—a meeting arranged by her—seemed ample proof of that.

It's this human element that TransCanada and its subsidiaries have consistently missed. TransCanada didn't take people like Crawford and Lori Collins into account, because no energy company, thus far, has had to. The power was all on one side.

“If they'd taken all the money they spent producing ads about being good neighbors and actually been good neighbors,” said David Domina, head of the Domina Law Group, “the pipeline would have been finished a year ago.”

In Texas it is finished. Despite the opposition of people like Crawford, the Keystone pipeline is now in the ground carrying bitumen beneath the soil of East Texas. But thanks to cases like the Collinses', the opposition network in Nebraska has made inroads into Texas. TransCanada pushed the Collinses right into this network's orbit. The company did damage that no settlement could undo.

In the Collins case, there was dissension even among the UFS land agents working for TransCanada. One, speaking on condition of anonymity, said he quit soon after TransCanada reneged on the deal with J.B.; he wouldn't talk much about his time with the company but said that what happened to the Collinses was “the straw that broke the camel's back.”

According to Lori, another UFS agent said the company had no intention of fixing the sewage problem. He gave her Julia Trigg

Crawford's name and number.

Crawford came to the Collins home in November 2013. She took video of the bubbling sewage pit, of a floor so uneven it looked, she later said, like a “fun house.” It isn't clear that TransCanada knew she had made contact with the Collinses, though the company was watching her and had stationed off-duty cops above the Collins house. That's relevant because a little over a week after Crawford's visit, a TransCanada representative offered to pay the Collinses the full settlement amount, with the disputed \$10,000 thrown in as an “inconvenience fee.”

To get the money, the Collinses would have to sign a liability waiver and non-disclosure agreement, forbidding them to talk about what had happened. “That's just standard business practice,” Craig said. “Everyone in the industry does it.”

That may be so, but it shattered whatever faith the Collinses had left in the company. Two weeks later, Waldrop, the UFS land man, offered the Collinses \$25,000, no strings attached, plus a temporary living allowance of \$5,000 a month. He promised that their house would be restored to better than it had been before.

The Collinses recorded that meeting. Waldrop advises them to take the money. Lori balks. She says TransCanada should have to pay for what it did. Waldrop's response sums up why

landowners often have trouble holding the company accountable.

“TransCanada is a word,” he said. “It’s not a person, not an activity. There’s no one that this responsibility is going to fall on their shoulders and it’s going to ruin their career or anything.”

“It’s like the Mafia coming up and saying, ‘Hey, take this money, trust us,’” J.B. Collins said. “And we’re like, ‘Wait, what happens, [if] we take this money? What happens down the road?’ We didn’t even know the full amount of the damages, and they said, ‘Just take this money right now.’” Anyway, he said, the house was totaled. “It’s like you have a junk car and someone offers to fix it. Well, I don’t want the car. It’s broken.”

In February 2014, the Collinses retained David Domina’s Nebraska law firm for their suit against TransCanada. When I met them early that month, Jane Kleebe, one of the Nebraska organizers, was serving as their press liaison. Brian Jorde was their lawyer. As soon as he got involved, Jorde told me, TransCanada’s brass started responding. “Their offers suddenly went up 800 percent over what they had been before,” he said.

In May 2014, the company settled with the Collinses for \$479,000. Lori told me the money doesn’t make up for her family’s suffering; they only settled because they were

exhausted and badly needed the money. “If I had the backing, I would have fought them all the way,” Lori said. “But they sucked us dry. They took our home, our livelihood, our work from us.”

Talking to the Collinses made me think of a principle in medical malpractice—that the doctors who get sued aren’t necessarily the ones who mess up the worst or have the deepest pockets. It’s the ones who never say they’re sorry. That’s what TransCanada and its affiliates had been categorically unwilling to do, leaving the Collinses with nothing but their pain and loss. The money doesn’t make that go away. And it hasn’t kept Lori Collins, the woman who once delivered cobbler to pipeline workers, from becoming an activist.

In May, while settlement negotiations were wrapping up, Lori got on a plane with Julia Trigg Crawford and flew to Washington, D.C., for an anti-pipeline rally. When she got back she was speaking in the catchphrases of the national anti-Keystone movement, talking about defending “farmers and ranchers” and protecting “our land and water.” For the first time, she’d met others affected by the pipeline and organizing against it: Nebraska farmers, South Dakota Sioux, Canadian ranchers. She was impressed by what she saw.


But she also felt a sense of doom. On her last day in D.C., she spoke in front of a crowd about what had happened to her family. The words burned through her, and when she sat down

she cried like a baby. “Some of the other people in the congregation came up and hugged me,” she said, “and I was shaken because it was ripping me inside out.”

She had looked out at the people listening to her, “all these people fighting for their land and livelihood,” festive in their movement shirts and tribal attire, and she thought, “You all are screwed. The company is going to take your land, promise you everything in the world, but they won’t come through.’ Those people will never know life as they’ve known it before,” she said. “It’ll just be them and their paradise that’s turned into hell.”

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Attachment No. 5

TIMELINE OF EVENTS INVOLVING THE TRANS-CANADA PIPELINE **and the COLLINS FAMILY FARM and HOME**

October 10, 2012 Michel's pipeline construction started work activities in our front yard.

October 15, 2012 Michel's backhoe tore out the lateral lines and damaged our septic system.

October 20, 2012 Michel's pushed up a large pile of topsoil on the remaining septic system.

October 29, 2012 Aaron Prior, with Universal Field Services, met with Lori Collins about septic system Damage and toilets flushing slow. Mr. Prior said the pipeline had nothing to do with Our toilets.

November 4, 2012 Ronnie Henson, landman for Michel's, drove up to our back door 8:00 Sunday morning. He said that Aaron Pryor had requested that he check out the problem with the septic system. After showing the pieces of septic lines in the pile of topsoil, and describing how the trackhoe had pulled out the lines like spaghetti going back to our house, Ronnie said they were only responsible for damages on the ride-a-way. Ronnie said he would report the damage to his boss Mike Brouillette.

November 12, 2012 Started road bore under Hwy 24 in front of our house.

November 28, 2012 Thanksgiving Day, We had to move Thanksgiving Dinner to another house because our toilets were backing up.

November 29, 2012 Septic system backed up and flooded bathrooms and laundry room. Kids was home for thanksgiving break.

December 3, 2012 Bathroom #2 overflowed. Later that day Michels had a trackhoe to open the end of the septic line to relieve sewage backup.

January 4, 2013 We paid a plumber to dig up and remove the lid of our septic tank, then hired N.E Texas disposal to pump out tank.

January 5, 2013 Signed valvesite agreement. Chad Thomas with UNIVERSAL FIELD SERVICES Said he would tell his boss Jeremy Capuccio about our septic system problem.

January 8, 2013 Pumped septic second time. \$250.00

January 8, 2013 Purchased 2" waterpump to pump tank out myself. \$618.23

January 15, 2013 Phone line pulled apart ground level by house foundation.

February 1, 2013 Ronnie Henson and what appeared to be a plumber drove up the ride-a-way in front of our house. I was plowing in a nearby field and stop to find out what they were doing. Ronnie had an attitude and told me that he was only responsible for repair the damaged septic line on the ride-a-way. I told Ronnie that anyone working on a septic system had to be licensed by the state of Texas. I then called Mike Brouillette and expressed my frustration on how Michels and Transcanada kept avoiding dealing with problem of repairing our septic system. Mike told me he had just left the office but he would contact the following Monday. I never heard from Mike Brouillette again. Every time I would call, I would get his voicemail.

February 12, 2013 Haul trucks using road not in access road agreement. (see picture)

July 14, 2013 Michels haul truck damaged road going through pasture Sunday morning after receiving a 2" rain 2 hours before. The driver was quoted "I knew it rained, but they told me to drop this load anyway"

September 27, 2013 Hank Waldrop with UNIVERSAL FIELD SERVICES said a meeting was scheduled for October 8, 2013 with Derek Montgomery, Transcanada and to have all paper work ready because this is the man that can make decisions.

September 30, 2013 LMS Restoration discovered mold growing inside walls and along baseboards around the two bathrooms.

October 2, 2013 Hank Waldrop called several times the past few days. His intent was to make sure that I was going to be prepared for the upcoming meeting. He said he wanted a septic system crew working when "His boss showed up." I told Hank that my family and I have been dealing with the pipeline for over a year now with little response, and I don't intend to jump because a Transcanada executive wants to meet with us.

October 8,2013 Meeting with Derek Montgomery, Chad Thomas and Hank Waldrop to discuss settlement on damages. After Derek walked and saw for himself the magnitude of the damages , he turned to Chad and said "Are you kidding me" Derek then turned to my wife Lori and said "Yes, we will pay for everything you asked for" We shook hands and Derek said we should expect a check from Canada between 10 to 15 days.

October 10, 2013 I was working on a plow when Hank drove up. He told me that Andrew Craig with trans-canada had changed his mind about the settlement that we shook hands on and offered a lessor amount. He stated he was authorized to write that check then, if I accept, and if I didn't I would have to take them to court.

November 14,2013 Derek Montgomery called and said TransCanada changed their mind and would pay the amount previously agreed on, if a release was signed.

November 22, 2013 Moved out of house due to Doctors orders.

December 2, 2013 Derek Montgomery called and offered to pay \$25,000.00 with no release. Pay \$5000.00 a month until our house is repaired by a national restoration company.

December 5,2013 Family is seeking medical attention for coughing , upper respiratory ailment and skin irritation.

Attachment No. 6

**TRANSCANADA KEYSTONE PIPELINE, LP
RELEASE OF DAMAGE CLAIMS**

Tract No. ML-TX-DE-00006.000-00006.OVS-00008.000

I/we J. B. Collins, Trustee of the J. B. Collins Revocable Trust of 7762 Highway 24 North, Cooper, Texas 75432, in the State of Texas

Acknowledge receipt of Seven Thousand Three Hundred Ninety-Five Dollars and No Cents (\$7395.00), now paid to me/us by TransCanada Keystone Pipeline, LP (hereinafter the "Company"), in full payment and settlement, for all damages listed on the Field Damage Report Form attached hereto. In consideration of said payment, I/we and my/our heirs, executors, administrators and assigns, do hereby release and forever discharge the 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 the Company, which I/we ever had, have now, or which I/we or my/our insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to the damage items listed on the Field Damage Report, arising out of or in connection with, resulting or alleged to have resulted from, surveying, construction, and operations over, under, or on the following lands (hereinafter collectively referred to as the "Lands"):

That certain tract of land situated in A-206, J. F. Keller Survey, Delta County, Texas, being more particularly described in that certain Warranty Deed from J. B. Collins, Trustee of the J. B. Collins Revocable Trust recorded in Volume 307, Page 769 in the Official Public Records of Delta County, Texas; less and except any conveyances heretofore made.

It is further understood and agreed that this Release does not cover any damages which may hereafter arise which are caused by or related to any actions or operations of the Company, its servants, agents, employees, officers, contractors, subcontractors, successors, or assigns, which may be undertaken after the date hereof, across, over, under, or on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on the 11th day of November, 2013.



J. B. Collins, Trustee

RELEASE FOR JB COLLINS REVOCABLE TRUST ONLY.

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Jeanne Crumly in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Jeanne Crumly.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: My husband Ron and I farm and ranch in rural Holt County.

1 **Q: If you are you married tell us your spouse's name please?**

2 A: Ron.

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: My husband Ron and I farm and ranch in Holt County on land that the proposed
10 route would dissect. While I am only a 25 year resident of this land, Ron
11 represents the 4th generation and is working with and training the 5th and 6th
12 generations to love and work and steward this land. *In fact, his mother's*
13 *grandfather, Nicholas Grass, selected his homestead spot specifically because of a*
14 *pond that holds clear water year-round. That pond still waters our cattle. Our*
15 *land value is directly proportional to availability of clean water.* Over 100 years
16 of successful management of Holt County sand makes Ron a specialist is what
17 works and what does not on this sandy, fragile soil. This knowledge and
18 experience as well as years of interaction with TransCanada and its endless
19 draggle of representatives has convinced us that this project is inconvenient,
20 unwise, and unnecessary. We request the Commission deny this route.

21 **Q: Do you earn any income from this land?**

22 A: Yes.

23 **Q: Have you depended on the income from your land to support your livelihood**
24 **or the livelihood of your family?**

25 A: Yes.

26 **Q: Have you ever in the past or have you thought about in the future leasing all**
27 **or a portion of your land in question here?**

28 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
29 tenant may try to negotiate a lower price for my land if it had the pipeline on it and

1 all the restrictions and risks and potential negative impacts to farming or ranching
2 operations as opposed to land that did not have those same risks. If I was looking
3 to lease or rent ground I would pay more for comparable non-pipeline land than I
4 would for comparable pipeline land, and I think most folks would think the same
5 way. This is another negative economic impact that affects the landowner and the
6 county and the state and will forever and ever should TransCanada's preferred or
7 mainline alternative routes be approved. If they were to twin or closely parallel to
8 Keystone I, the vast majority of landowners would be those that already have a
9 pipeline so there would be considerable less new incremental negative impacts.

10 **Q: Do you have similar concerns about selling the land?**

11 A: Well, I hope not to have to sell the land in my lifetime but times change and you
12 never know what is around the corner, and yes, I am concerned that if another
13 piece of ground similar to mine were for sale and it did not have the pipeline and
14 mine did that I would have a lower selling price. I think this would be true for
15 pipeline ground on both the preferred and mainline alternative routes.

16 **Q: What is your intent with your land after you die?**

17 A: Like I said, I hope not to have to sell and I hope that it stays in the family for years
18 to come, but I have thought about getting out if this pipeline were to come
19 through.

20 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
21 Pipeline would cross the land described above and owned by you?**

22 A: Yes.

23 **Q: Are you aware that TransCanada claims its proposed preferred KXL route is
24 not in the Sandhills?**

25 A: Yes.

26 **Q: What do you think about that?**

27 A: *There are maps that refute this claim and suggest that we are in the Sandhills, but*
28 *that is another argument. What is undisputable is that we share much of the*
29 *vulnerability of what is classic sandhills, namely highly sandy and highly*

1 *permeable soil. That makes this ground particularly challenging to farm.* Today's
2 farming practice represents 100+ years of learning how to manage a uniquely
3 fragile ecosystem: exceedingly sandy soil, harsh and unpredictable weather
4 including erratic rain and harsh winds, as well as dramatic extremes in
5 temperature. These very challenges along with the asset of subsurface moisture
6 are what made Holt County the epicenter of experimentation with irrigation
7 systems in the early 1960s. But as we have learned, innovation never comes
8 without cost. While irrigation, particularly center-pivot irrigation, was a game
9 changer for agriculture in our area, failure to appreciate the risk on highly
10 permeable soil resulted in a dangerous nitrate contamination which greatly
11 challenges us today. Dramatic changes in ag practices such as no-till farming,
12 changed application practices, and modifications of the terrain, such as buffer
13 strips along waterways are making headway but many homes, ours included, are
14 condemned to use filtered or bottled water because well water is too compromised.
15 This is the situation that brings me here today. Loud and public proclamations
16 asserted that the current proposed route was 'safe' because it was moved 'off the
17 Sandhills'. I am here to challenge that claim. The maps used to mark that original
18 line included our farm which was designated Sandhills. The very month that
19 move was made and the governor claim to have moved the line off the Sandhills,
20 that same DEQ site had posted a different map with a changed designation as to
21 the boundaries of the Sandhills. Whether our land is designated Sandhills or not is
22 not the point, however. Much of what makes the Sandhills a poor location for this
23 pipe exists despite this designation. Our soil has been tested and shown to be over
24 80% sand. This creates a permeability that makes subsurface water contamination
25 particularly risky. The nitrate contamination is proof of that vulnerability. That,
26 combined with a relatively high water-table, about 40 feet on average but as
27 shallow as 10 feet across much of the proposed line, makes contamination
28 unavoidable in the event of a spill. In the case of nitrate contamination, while not
29 healthy, work arounds exist. In contrast, there is no work around in the event of a

1 pipeline leak. With the proposed route running less than 400 yards from our house.
2 Our irrigation well is within 200 yards of that route. Contamination of that or our
3 domestic well would not be reversible. That same risk exists across this proposed
4 route. *Consider that by their own admission, the system can not detect a leak*
5 *smaller than 2%. How long would it take to detect a leak in the Missouri River, or*
6 *the Niobrara, or the Platte. How long would it be before a “localized leak”*
7 *became a catastrophe for our state?*

8 **Q: Were you or an entity for which you are a member, shareholder, or director**
9 **previously sued by TransCanada Keystone Pipeline, LP?**

10 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
11 petition for condemnation against our land so it could place its proposed pipeline
12 within an easement that it wanted to take from us on our land.

13 **Q: Did you defend yourself and your land in that condemnation action?**

14 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
15 and expenses in our resistance of TransCanada’s lawsuit against us.

16 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
17 **incurred?**

18 A: No, they have not. In fact, in court in Holt County, Judge Allen Brodbeck asked
19 the TransCanada lawyers what they thought should happen to the landowners who
20 had spend all this money for legal fees, “So, what, you’re just going to hang the
21 landowners out to dry?” TransCanada had no response. That is this wonderful
22 working relationship we have had with this company.

23 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
24 **property that it wanted to take for its proposed pipeline?**

25 A: The lawsuit against us stated they would take the amount of property that is
26 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
27 and equipment reasonably necessary to operate the pipeline.

28 **Q: Did TransCanada define what they meant by “property that is reasonably**
29 **necessary”?**

1 A: No, they did not.

2 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
3 **property portion of your land?**

4 A: Yes, they did.

5 **Q: Did TransCanada describe what rights it proposed to take related to the**
6 **eminent domain property on your land?**

7 A: Yes, they did.

8 **Q: What rights that they proposed to take did they describe?**

9 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
10 operate, and maintain the pipeline and the plant and equipment reasonably
11 necessary to operate the pipeline, specifically including surveying, laying,
12 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
13 reconstructing, removing and abandoning one pipeline, together with all fittings,
14 cathodic protection equipment, pipeline markers, and all their equipment and
15 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
16 petroleum products, and all by-products thereof.”

17 **Q: Prior to filing an eminent domain lawsuit to take your land that**
18 **TransCanada identified, do you believe they attempted to negotiate in good**
19 **faith with you?**

20 A: No, I do not.

21 **Q: Did TransCanada at any time approach you with or deliver to you their**
22 **proposed easement and right-of-way agreement?**

23 A: Yes, they did.

24 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
25 **agreement, did you understand that they would be purchasing a fee title**
26 **interest in your property or that they were taking something else?**

27 A: I understood that they proposed to have the power to take both a temporary
28 construction easement that could last for a certain period of time and then also a
29 permanent easement which they described to be 50 feet across or in width, and

1 that would run the entire portion of my property from where a proposed pipeline
2 would enter my property until where it would exit the property.

3 **Q: Is the document included with your testimony here as Attachment No. 3, a**
4 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
5 **Way agreement that they included with their condemnation lawsuit against**
6 **you?**

7 A: Yes, it is.

8 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
9 **and Right-of-Way agreement?**

10 A: Yes, I have.

11 **Q: What is your understanding of the significance of the Easement and Right-of-**
12 **Way agreement as proposed by TransCanada?**

13 A: My understanding is that this is the document that will govern all of the rights and
14 obligations and duties as well as the limitations of what I can and cannot do and
15 how I and any future landowner and any person I invite to come onto my property
16 must behave as well as what TransCanada is and is not responsible for and how
17 they can use my land.

18 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
19 **agreement do you have any concerns about any portions of it or any of the**
20 **language either included in the document or missing from the proposed**
21 **document?**

22 A: Yes, I have a number of significant concerns and worries about the document and
23 how the language included and the language not included potentially negatively
24 impacts my land and thereby potentially negatively impacts my community and
25 my state.

26 **Q: I would like you to walk the Commissioners through each and every one of**
27 **your concerns about TransCanada's proposed Easement and Right-of-Way**
28 **agreement so they can develop an understanding of how that language and**
29 **the terms of that contract, in your opinion, potentially negatively impacts you**

1 **and your land. So, if you can start at the beginning of that document and**
2 **let's work our way through it, okay?**

3 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
4 Easement and Right-of-Way agreement and how it negatively could affect my
5 property rights and my economic interests.

6 **Q: Okay, let's start with your first concern please.**

7 A: The very first sentence talks about consideration or how much money they will
8 pay to compensate me for all of the known and unknown affects and all of the
9 rights I am giving up and for all the things they get to do to my land and for what
10 they will prevent me from doing on my land and they only will pay me one time at
11 the signing of the easement agreement. That is a huge problem.

12 **Q: Explain to the Commissioners why that is a problem.**

13 A: It is not fair to the landowner, the county, or the State. It is not fair to the
14 landowner because they want to have my land forever for use as they see fit so
15 they can make a daily profit from their customers. We engage in various leases
16 with neighbors for land around us. In our rent agreements we typically pay twice a
17 year, every year as long as they grant me the rights to use their land. The wind
18 farm a few miles north of our front door is a project that provides jobs and
19 produces energy independence for our state, pays the landowners annually for the
20 life of the project. That only makes sense – that is fair. If I were going to rent a
21 house in town, I would typically pay monthly, every month until I gave up my
22 right to use that house. By TransCanada getting out on the cheap and paying once
23 in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
24 revenue collection on the money I would be paid and then pay taxes on and
25 contribute to this state and this country. It is money I would be putting back into
26 my local community both spending and stimulating the local economy and
27 generating more economic activity right here. Instead TransCanada's shareholders
28 keep all that money and it never finds its way to Nebraska.

29 **Q: What is your next concern?**

1 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
2 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
3 limited partnership...” and I have no idea who that really is. I have no idea who is
4 forcing this pipeline on us or who the owners of the entities are, or what are the
5 assets backing this limited partnership, or who the general partner is, or who all
6 the limited partners are, and who makes up the ownership of the these partners or
7 the structure or any of the basic things you would want to know and understand if
8 you would want to do business with such an outfit. According to TransCanada’s
9 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
10 liability company called TransCanada Keystone Pipeline GP, LLC is the general
11 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
12 basically nothing. That is really scary since the general partner has the liability but
13 virtually none of the ownership and who knows if it has any other assets.

14 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
15 **percent clear on exactly who could become the owner of over 275 miles of**
16 **Nebraska land?**

17 A: No.

18 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
19 **percent clear on exactly who will be operating and responsible for**
20 **approximately 275 miles of tar sands pipeline underneath and through**
21 **Nebraska land?**

22 A: No.

23 **Q: Okay, let’s continue please with your concerns of the impacts upon your land**
24 **and the State of Nebraska of TransCanada’s easement terms.**

25 A: Yes, so the next sentence talks about “...its successors and assigns (hereinafter
26 called “Grantee”)...” and this concerns me because it would allow their easement
27 to be transferred or sold to someone or some company or country or who knows
28 what that I don’t know and who we may not want to do business with. This
29 pipeline would be a huge asset for TransCanada and if they can sell to the highest

1 bidder that could have terrible impacts upon all of Nebraska depending upon who
2 may buy it and I don't know of any safeguards in place for us or the State to veto
3 or have any say so in who may own, operate, or be responsible for this pipeline in
4 the future.

5 **Q: Do you think that type of uncertainty and lack of control over a major piece**
6 **of infrastructure crossing our State is in the public interest?**

7 A: No, certainly not, in fact, just the opposite.

8 **Q: What's next?**

9 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
10 really concerns me. Why does the easement and right-of-way have to be perpetual
11 and permanent? That is the question my family and I want an answer to. Perpetual
12 to me is like forever and that doesn't make sense. That same wind farm just
13 shouting distance from our house offers a 20 year easement. This pipeline project
14 is supposed to be a 50-year project. Why is the easement not aligned with that?

15 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

16 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
17 data proving there is a perpetual supply of tar sands. I am not aware in
18 TransCanada's application where it proves there is a perpetual necessity for this
19 pipeline. My understanding of energy infrastructure like wind towers is they have
20 a decommission plan and actually take the towers down when they become
21 obsolete or no longer needed. Nothing manmade lasts forever. My land however
22 will, and I want my family or future Nebraska families to have that land as
23 undisturbed as possible and it is not in my interest or the public interest of
24 Nebraska to be forced to give up perpetual and permanent rights in the land for
25 this specific kind of pipeline project.

26 **Q: Okay, what is your next concern?**

27 A: The easement language includes all these things TransCanada can do and it says
28 "...abandoning in place..." so they can just leave this pipeline under my ground
29 until the end of time just sitting there while they are not using it, but I am still

1 prevented from doing on my land and using my land what I would like. If I owned
2 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
3 there. It doesn't make sense and it scares me and it is not in my interest or the
4 public interest of Nebraska to allow this.

5 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
6 **right?**

7 A: Yes.

8 **Q: So now on the second page of the Easement what are your concerns?**

9 A: Here the Easement identifies a 24-month deadline to complete construction of the
10 pipeline but has caveats that are undefined and ambiguous. The 24-month period
11 starts to run from the moment "actual pipeline installation activities" begin on
12 Landowners property. It appears that TransCanada would define this phrase as
13 needed. It would be wise to explain what types of TransCanada action constitutes
14 "installation activity" For instance, would the placement and storage of an
15 excavator or other equipment on or near the Easement property be an activity or
16 would earth have to be moved before the activity requirement is triggered. This
17 vague phrase is likely to lead to future disputes and litigation that is not in the best
18 interest of the welfare of Nebraska and would not protect property interests. The
19 24-months can also be extended in the case of "force majeure." My understanding
20 is that force majeure is often used to insulate a party to a contract when events
21 occur that are completely out of their control. In TransCanada's easement this is
22 expanded to include "without limitation...availability of labor and materials."
23 Extending this language to labor and materials is problematic because these are
24 two variables that TransCanada does have some or significant control over and to
25 allow extension of the 24-month period over events not truly out of the control of
26 TransCanada and without further provision for compensation for the Landowner is
27 not conducive to protection of property rights.

28 **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 that I can’t do anything about as the landowner is
19 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. The landowner is also forbidden from excavating
7 without prior authorization by TransCanada. So my understanding is that
8 TransCanada will unilaterally determine what Landowner can and can't do based
9 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
10 could also completely deny my request to excavate. Further, TransCanada retains
11 all "privileges necessary or convenient for the full use of the rights" granted to
12 them in the Easement. Again, TransCanada unilaterally can decide to the
13 detriment of the property rights of Landowner what TransCanada believes is
14 necessary or convenient for it. And there is no option for any additional
15 compensation to landowner for any right exercised by TransCanada that leads to
16 the removal of trees or plants or vegetation or buildings or structures or facilities
17 owned by Landowner of any kind. Such undefined and unilateral restrictions and
18 rights without having to compensate Landowner for such further destruction or
19 losses are not conducive to the protection of property rights or economic interest.

20 **Q: What is the next concern you have?**

21 A: The Easement also allows some rights for Landowner but restricts them at the
22 same time and again at the sole and unilateral decision making of TransCanada.
23 TransCanada will determine if the actions of Landowner might in anyway
24 endanger or obstruct or interfere with TransCanada's full use of the Easement or
25 any appurtenances thereon to the pipeline itself or to their access to the Easement
26 or within the Easement and TransCanada retains the right at any time, whether
27 during growing season or not, to travel "within and along Easement Area on foot
28 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
29 retain the rights to prevent any landowner activity that it thinks may "unreasonably

1 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
2 undefined and unilateral restrictions are not conducive to the protection of
3 property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
6 Landowner’s land any debris of any kind without any input or power of
7 Landowner to demand an alternative method or location of debris disposal. Such
8 unilateral powers would negatively affect Landowners property are not conducive
9 to the protection of property rights or economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
12 “where rock is encountered” mean and why does TransCanada solely get to
13 determine whether or not this phrase is triggered. This phrase could be used to
14 justify installing the pipeline 24 inches beneath the surface. The ability to use this
15 provision to minimal locate the pipeline at a depth of 24 inches could negatively
16 affect Landowners property are not conducive to the protection of property rights.
17 A shallow pipeline is much more likely to become a danger and liability in the
18 future given farming operations and buried irrigation lines and other factors
19 common to the current typical agricultural uses of the land in question impacted
20 by TransCanada’s preferred pipeline route. ***note here: Here is where my son-
21 in-law says that industry standard would require that any pipeline must lie below
22 the frost line. Anything higher greatly increases the vulnerability of the pipeline to
23 damage from freeze and thaw? What industry standard are they adhering to if this
24 is acceptable? He says that this is nothing more than going it on the cheap!

25 **Q: What is the next concern you have with the Easement language?**

26 A: There are more vague concepts solely at the determination of TransCanada such as
27 “as nearly as practicable” and “pre-construction position” and “extent reasonably
28 possible.” There is nothing here that defines this or provides a mechanism for
29 documenting or memorializing “pre-construction position” so as to minimize

1 costly legal battles or wasted Landowner time attempting to recreate the soil
2 condition on their fields or pasture. Such unilateral powers would negatively affect
3 Landowners property are not conducive to the protection of property rights or
4 economic interest.

5 **Q: What is the next concern you have with the Easement language?**

6 A: TransCanada maintains the unilateral right to abandon the pipeline and all
7 appurtenances thereto in place on, under, across, or through Nebraska land at any
8 time it chooses. There is no provision for Landowner compensation for such
9 abandonment nor any right for the Landowner to demand removal. Such unilateral
10 powers would negatively affect Landowners property are not conducive to the
11 protection of property rights or economic interest.

12 **Q: What is the next concern you have with the Easement language?**

13 A: TransCanada has the power to unilaterally move or modify the location of any
14 Easement area whether permanent or temporary at their sole discretion.
15 Regardless, if Landowner has taken prior steps relative the their property in
16 preparation or planning of TransCanada's taking of the initial easement area(s),
17 the language here does not require TransCanada to compensate the Landowner if
18 they decide to move the easement anywhere on Landowners property. Such
19 unilateral powers would negatively affect Landowners property are not conducive
20 to the protection of property rights or economic interests.

21 **Q: What is the next concern you have with the Easement language?**

22 A: The Easement requires that all of the burdens and restrictions upon Landowner to
23 transfer and be applicable to any future owner of the Land in question without the
24 ability of the future Landowner to modify or negotiate any of the language in
25 question to which it will be held to comply.

26 **Q: What is the next concern you have with the Easement language?**

27 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
28 Easement to any person, company, country, etc. at their sole discretion at anytime
29 to anyone. This also means that any buyer of the easement could do the same to a

1 third buyer and so on forever. There is no change of control or sale provision in
2 place to protect the Landowner or Nebraska or to provide compensation for such
3 change of control or ownership. It is not conducive to the protection of property
4 rights or economic interests to allow unilateral unrestricted sale of the Easement
5 thereby forcing upon the Landowner and our State a new unknown Easement
6 owner.

7 **Q: What is the next concern you have with the Easement language?**

8 A: This project represents an enormous inconvenience to our operation. The
9 proposed route crosses about 400 yards from both our domestic and irrigation
10 well. Any degree of leak within this area runs the risk of contaminating both our
11 drinking and our irrigating water. Like I said earlier, this route transects land that
12 is both highly erodible and highly permeable. A close examination of the route,
13 particularly the portion that has shown the highest level of resistance, reveals
14 Nebraska's highest density of irrigation wells. What this means is that our
15 farming operations are fully reliant on available, dependable water sources for
16 irrigation. Because of the high permeability, in our case at least 80% sand, water
17 quickly, returns to the aquifer. In the early days of the irrigation boom, the risks
18 related to this were neither fully appreciated nor understood. The result was
19 nitrate contamination that is still battled today. Today's operations include a
20 whole host of modifications to remediate and prevent further contamination. In
21 our case, we practice a number of changes in application practices. Furthermore,
22 partnership with state and local agencies assist us in creating such things as buffer
23 strips along waterways to prevent runoff contamination into flowing water. The
24 paradox of our geography is that in a space as small as 5 acres, we can have some
25 crops burn and other crops drown. In some places we have installed tile lines to
26 help equalize water and better manage particularly tricky spots. One of these
27 places is also the proposed route. Tiling land is an extremely expensive
28 undertaking and disruption of that space can compromise the entire project.
29 Furthermore, tile lines occasionally require maintenance. Current easement

1 language would require permission from the pipeline company to even dig in our
2 own land, impeding our ability to manage our land at will.

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: What is the next concern you have with the Easement language?**

12 A: Irrigation is the lifeblood of modern agriculture in our area. TransCanada, in
13 current easement language, claims the right to enter our property at will and to
14 have us shut down our irrigation for its own needs. Anyone who knows hot
15 Nebraska dry winds knows that a day or two with irrigation restriction can make
16 the difference between a profit and a loss for a farmer. In none of our negotiations
17 has TransCanada demonstrated concerns or reliable assurances that they would be
18 a reliable partner.

19 **Q: Do you have any other concerns about the Easement language that you can**
20 **think of at this time?**

21 A: I reserve the right to discuss any additional concerns that I think of at the time of
22 my live testimony in August.

23 **Q: Based upon what you have shared with the Commission above regarding**
24 **TransCanada’s proposed Easement terms and agreement, do you believe**
25 **those to be reasonable or just, under the circumstances of the pipeline’s**
26 **impact upon you and your land?**

27 A: No, I do not believe those terms to be reasonable or just for the reasons that we
28 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 offers from them.

5 **Q: As the owner of the land in question and as the person who knows it better**
6 **than anyone else, do you believe that TransCanada offered you just, or fair,**
7 **compensation for all of what they proposed to take from you so that their tar**
8 **sands pipeline could be located across your property?**

9 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
10 offer for all the potential impacts and effects and the rights that I'm giving up, and
11 what we will be prevented from doing in the future and how their pipeline would
12 impact my property for ever and ever.

13 **Q: Has TransCanada at any time offered to compensate you annually, such as**
14 **wind farm projects do, for the existence of their potential tar sands pipeline**
15 **across your property.**

16 A: No, never.

17 **Q: At any time did TransCanada present you with or request that you, as the**
18 **owner of the land in question, sign and execute a document called, "Advanced**
19 **Release of Damage Claims and Indemnity Agreement?"**

20 A: Yes, they did and it was included in the County Court lawsuit against us.

21 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
22 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

23 A: Yes, it is.

24 **Q: What was your understanding of that document?**

25 A: When I read that document in the plain language of that document, it was my
26 understanding that TransCanada was attempting to pay me a very small amount at
27 that time in order for me to agree to give up my rights to be compensated from
28 them in the future related to any damage or impact they may have upon my

1 property “arising out of, in connection with, or alleged to resulted from
2 construction or surveying over, under or on” my land.

3 **Q: Did you ever sign that document?**

4 A: No, I did not.

5 **Q: Why not?**

6 A; Because I do not believe that it is fair or just to try to get me to agree to a small
7 sum of money when I have no idea how bad the impacts or damages that they, or
8 their contractors, or subcontractors, or other agents or employees, may cause on
9 my land at any time in the future that resulted from the construction or surveying
10 or their activities upon my land.

11 **Q: When you reviewed this document, what did it make you feel?**

12 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
13 shield themselves against known and foreseeable impacts that their pipeline, and
14 the construction of it, would have upon my land. It made me feel that they knew it
15 was in their financial interest to pay me as little as possible to prevent me from
16 ever having the opportunity to seek fair compensation again, and that this must be
17 based upon their experience of unhappy landowners and situations in other places
18 where they have built pipelines.

19 **Q: Has TransCanada ever contacted you and specifically asked you if you
20 thought their proposed location of their proposed pipeline across your land
21 was in your best interest?**

22 A: No, they have not.

23 **Q: Has TransCanada ever contacted you and specifically asked you if you
24 thought their proposed location of their proposed pipeline across your land
25 was in the public interest of the State of Nebraska?**

26 A: No, they have not.

27 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
28 Takings Clause?**

29 A: Yes, I am.

1 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
2 **an American citizens property?**

3 A: My understanding is that, according to the United States Constitution, that if the
4 government is going to take land for public use, then in that case, or by taking for
5 public use, it can only occur if the private land owner is compensated justly, or
6 fairly.

7 **Q: Has TransCanada ever contacted you specially to explain the way in which**
8 **the public could use its proposed Keystone XL Pipeline?**

9 A: No, they have not.

10 **Q: Can you think of any way in which the public, that is the citizens of the State**
11 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
12 **Pipeline, as it dissects the State of Nebraska?**

13 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
14 public benefits from this pipeline in any way, how they can use it any way, or how
15 it's in the public interest in any way. By looking at the map, it is quite clear to me
16 that the only reason it's proposed to come through Nebraska, is that because we
17 are geographically in the way from between where the privately-owned Tar Sands
18 are located to where TransCanada wants to ship the Tar Sands to refineries in
19 Houston, Texas. No, in fact TransCanada paid a great deal of attention to the
20 concept of eminent domain, but it was never used in the sense of accountability to
21 the public or public interest. Rather, TransCanada used it as a threat, agree with
22 our offer or we will just condemn your land. In fact, in this case, it became a tool
23 to diminish public safety, because TransCanada always implied that they could set
24 the terms that benefitted them and we were a mere obstacle. That is not in our best
25 interest, nor in the interest of the public.

26 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
27 **crude petroleum, or oil and petroleum by-products that you would like to**
28 **ship in its pipeline?**

29 A: No, it has not.

1 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
2 **products that you, at this time or any time in the future, would desire to place**
3 **for transport within the proposed TransCanada Keystone XL Pipeline?**

4 A: No, I do not.

5 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
6 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
7 **products within the proposed TransCanada Keystone XL Pipeline?**

8 A: No, I do not. I've never heard of such a person or company as that.

9 **Q: Do you pay property taxes for the land that would be affected and impacted**
10 **at the proposed TransCanada Keystone XL Pipeline?**

11 A: Yes, I do.

12 **Q: Why do you pay property taxes on that land?**

13 A: Because that is the law. The law requires us to pay the property taxes as the owner
14 of that property.

15 **Q: Because you follow the law and pay property taxes, do you believe you**
16 **deserve any special consideration or treatment apart from any other person**
17 **or company that pays property taxes?**

18 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
19 just what you do.

20 **Q: Do you believe the fact that you pay property taxes entitles you to special**
21 **treatment of any kind, or special rights of any kind?**

22 A: No, of course not.

23 **Q: Do you believe the fact that you pay property taxes on your land would be**
24 **enough to qualify you to have the power of eminent domain to take land of**
25 **your neighbors or other people in your county, or other people across the**
26 **state of Nebraska?**

27 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
28 I expect an award for or any type of special consideration.

29 **Q: Have you at any time ever employed any person other than yourself?**

1 A: Well, yes I have.

2 **Q: Do you believe that the fact that you have, at some point in your life,**
3 **employed one or more other persons entitle you to any special treatment or**
4 **consideration above and beyond any other Nebraskan that has also employed**
5 **one or more persons?**

6 A: No, of course not.

7 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
8 **have at one point employed another person within this state, entitles you to**
9 **preferential treatment or consideration of any kind?**

10 A: No, of course not. If I choose to employ someone that decision is up to me. I
11 don't deserve any special treatment or consideration for that fact.

12 **Q: At the beginning of your statement, you briefly described your property that**
13 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
14 **give the Commissioners a sense of specifically how you believe the proposed**
15 **Keystone XL Pipeline and its preferred route, which proposes to go across**
16 **your land, how it would in your opinion based on your knowledge,**
17 **experience, and background of your land, affect it.**

18 A: On a personal level, this project represents an enormous risk and enormous
19 inconvenience to our operation. As I said before, the proposed route crosses about
20 400 yards from both our domestic and irrigation well. Here is the risk. Any
21 degree of leak within this area runs the risk of contaminating both our drinking
22 and our irrigating water. This route transects land that is both highly erodible and
23 highly permeable. That close examination of the route, particularly the portion
24 that has shown the highest level of resistance, reveals Nebraska's highest density
25 of irrigation wells. What this means is that our farming operations are fully reliant
26 on available, dependable water sources for irrigation. Because of that high
27 permeability, remember that in our case at least 80% sand, water quickly returns to
28 the aquifer. Earliest fertilizer application processes resulted in nitrate
29 contamination that is still battled today. Note also that further east, as along

1 Keystone 1, heavier ground does not contend with these issues. Today, our
2 operation includes modifications to remediate and prevent further contamination.
3 We apply fertilizers differently. Better well monitoring, a moratorium on wells
4 and things like buffer strips along waterways to prevent runoff contamination into
5 flowing water all work together to protect what we recognize as a most vital
6 national resource.

7 There are also operation-threatening inconveniences. On one of our quarters,
8 particularly, we have those tile lines I talked about before. This input alone cost
9 us well over \$100,000 only a few years ago. This spring we had an enormous
10 amount of rain and despite the tile lines, we had spots failing to drain. We
11 contacted our tile man and waited for an opening in his schedule. He called one
12 afternoon and could come within a hour. He arrived, did considerable digging,
13 found roots that were blocking the lines and fixed them. In spring planting, timing
14 is everything. He was able to come and attend to an issue that allowed us to get
15 back in the field before the next rain. Had the pipeline been in place, we would
16 have been compelled to wait for approval from some remote, foreign company to
17 attend to issues on our own land. Current easement language would require
18 permission from the pipeline company to even dig in our own land, impeding our
19 ability to manage our land at will.

20 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
21 **crude oil pipeline in its preferred location, or ultimate location across the**
22 **state of Nebraska?**

23 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
24 or even bullied around and being made to feel scared that they did not have any
25 options but to sign whatever papers TransCanada told them they had to. I am
26 aware of folks being threatened that their land would be taken if they didn't follow
27 what TransCanada was saying. I am aware of tactics to get people to sign
28 easements that I don't believe have any place in Nebraska or anywhere such as
29 TransCanada or some outfit associated with it hiring a pastor or priest to pray with

1 landowners and convince them they should sign TransCanada's easement
2 agreements. I am aware of older folks and widows or widowers feeling they had
3 no choice but to sign TransCanada's Easement and they didn't know they could
4 fight or stand up for themselves. From a more practical standpoint, I am worried
5 that according to their answer to our Interrogatory No. 211, TransCanada only
6 owns and operates one (1) major oil pipeline. They simply do not have the
7 experience with this type of pipeline and that scares me. There are others but that
8 is what I can recollect at this time and if I remember more or my recollection is
9 refreshed I will share those with the Commissioners at the Hearing in August.

10 **Q: Were you ever at any meetings with TransCanada employees or**
11 **representatives where you formulated a concern about the kinds of things**
12 **TransCanada was saying?**

13 A: Yes.

14 **Q: Tell the Commissioners what you recall about that.**

15 A: The firmness of my rejection of this project came during our last meeting with
16 TransCanada. We had respectfully attended every informational meeting offered.
17 Most were held at the Blarney Stone restaurant in O'Neill. One spokesman was
18 usually accompanied by a coterie of company men. Each meeting took a different
19 angle. At various meetings we had been told, "the trouble with these people
20 (landowners) was that they over-thought this issue". We had been told the \$8,900
21 offer was fair because "it was the going rate for land". On this final meeting, the
22 spokesman came armed with a library of books to convince us that there was
23 nothing in the pipes that was harmful. The material being transported was all
24 naturally occurring elements and presented no risk. My husband Ron, a biology
25 major, explained our situation, a pipe 400 yards from our well and our home. He
26 then asked, "What if there is a leak that gets into our well?" The TC spokesman
27 smiled and said, "Well, you just pump that out on the land and it will naturally
28 break down in the soil. No problem!" This absurdity was the final straw. With us,
29 as with most of us in this lawsuit, this company has squandered its credibility.

1 They will say and do anything to have their way. How could we as a citizen, more
2 importantly as a state, trust anything that this company says or does. How could
3 our state even consider aligning itself with a foreign, for-profit company over the
4 best interests of its own citizens? The point of this is more than talking about a
5 spill or leak. It is to highlight the way TransCanada would treat and talk to
6 landowners and spread information that is clearly untrue and misleading.

7 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
8 **landowner is reasonable or just?**

9 A: No, I do not.

10 **Q: Do you have any concern about limitations that the construction of this**
11 **proposed pipeline across your affected land would prevent construction of**
12 **future structures upon the portion of your land affected by the proposed**
13 **easement and immediately surrounding areas?**

14 A: Well yes, of course I do. We would not be able to build many, if any, types of
15 structures directly across or touching the easement, and it would be unwise and I
16 would be uncomfortable to build anything near the easement for fear of being
17 blamed in the future should any damage or difficulty result on my property in
18 regards to the pipeline.

19 **Q: Do you think such a restriction would impact you economically?**

20 A: Well yes, of course.

21 **Q: How do you think such a restriction would impact you economically?**

22 A: The future of this land may not be exactly how it's being used as of this moment,
23 and having the restrictions and limiting my ability to develop my land in certain
24 ways presents a huge negative economic impact on my husband and me, my
25 family, and any potential future owner of the property. You have no idea how we
26 or the future owner may want to use this land in the future or the other land across
27 Nebraska potentially affected by the proposed Keystone XL tar sands pipeline.
28 Fifty years ago it would have been hard to imagine all the advances that we have
29 now or how things change. Because the Easement is forever and TransCanada gets

1 the rights in my land forever we have to think with a very long term view. By
2 placing their pipeline on, under, across, and through my land that prevents future
3 development which greatly negatively impacts future taxes and tax revenue that
4 could have been generated by the County and State but now will not. When you
5 look at the short blip of economic activity that the two years of temporary
6 construction efforts may bring, that is far outweighed by the perpetual and forever
7 loss of opportunity and restrictions TransCanada is forcing upon us and upon
8 Nebraska.

9 **Q: Do you have any concerns about the environmental impact of the proposed**
10 **pipeline?**

11 A: Yes, I do.

12 **Q: What are some of those concerns?**

13 A: As an affected land owner and Nebraskan, I am concerned that any construction,
14 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
15 a detrimental impact upon the environment of my land specifically, as well as the
16 lands near my land and surrounding the proposed pipeline route.

17 **Q: Do you have any other environmental concerns?**

18 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
19 construction and/or maintenance and operation. I am concerned about spills and
20 leaks that TransCanada has had in the past and will have in the future. This could
21 be catastrophic to my operations or others and to my county and the State. We
22 farmers and ranchers carry the collective wisdom of the generations that came
23 before us. All innovation must be undertaken or rejected based on an examination
24 of the risks versus the rewards. In our case, a leak like that in Freeman SD or even
25 the smaller leaks along Keystone 1 could permanently taint our water.

26 **Q: Do you have any thoughts regarding if there would be an impact upon the**
27 **natural resources on or near your property due to the proposed pipeline?**

28 A: Yes, I believe that any construction, operation, and/or maintenance of the
29 proposed Keystone XL Pipeline would have detrimental impacts upon the natural

resources of my land, and the lands near and surrounding the proposed pipeline route.

Q: Do you have any worries about potential impacts from the proposed pipeline to the soil of your land, or land near you?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the soil of land, as well as land along and surrounding the proposed pipeline route. This includes, but is not limited to, the reasons that we discussed above of disturbing the soil composition and makeup as it has naturally existed for thousands and millions of years during the construction process, and any future maintenance or removal process. I'm gravely concerned about the fertility and the loss of economic ability of my property to grow the crops, or grow the grasses, or grow whatever it is at that time they exist on my property or that I may want to grow in the future, or that a future owner may want to grow. The land will never be the same as it exists now undisturbed after it is trenched up for the proposed pipeline.

Q: Do you have any concerns about the potential impact of the proposed pipeline upon the groundwater over your land, or surrounding lands?

A: Yes, I'm very concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the groundwater of not only under my land, but also near and surrounding the pipeline route, and in fact, potentially the entire State of Nebraska. Water is life plain and simple and it is simply too valuable to our State and the country to put at unreasonable risk.

Q: Do you have any concern about the potential impact of the proposed pipeline upon the surface water on, or near or around your land?

A: Yes, I have significant concerns that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impact upon the surface water of not only within my property boundary, but along and near and surrounding the pipeline route, and in fact, across the state of

1 Nebraska. In one of our quarters, the pipe would be a few feet below a waterway
2 that drains into the Niobrara River.

3 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
4 **upon the wildlife and plants, other than your growing crops on or near your**
5 **land?**

6 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
7 the proposed Keystone XL Pipeline would have a detrimental impact upon the
8 wildlife and the plants, not only that are located on or can be found upon my land,
9 but also near and along the proposed pipeline route.

10 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
11 **fair market value of your land?**

12 A: Yes, I do. I am significantly concerned about how the existence of the proposed
13 pipeline underneath and across and through my property will negatively affect the
14 fair market value at any point in the future, especially at that point in which I
15 would need to sell the property, or someone in my family would need to sell the
16 property. I do not believe, and certainly would not be willing to pay, the same
17 price for land that had the pipeline located on it, versus land that did not. I hope
18 there is never a point where I'm in a position where I have to sell and have to
19 realize as much value as I can out of my land. But because it is my single largest
20 asset, I'm gravely concerned that the existence of the proposed Keystone XL
21 Pipeline upon my land will affect a buyer's willingness to pay as much as they
22 would've paid and as much as I could've received, if the pipeline were not upon
23 my property. There are just too many risks, unknowns, impacts and uncertainties,
24 not to mention all of the rights you give up by the nature of having the pipeline
25 due to having the easement that we have previously discussed, for any reasonable
26 person to think that the existence of the pipeline would not negatively affect my
27 property's value.

28 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
29 **testimony?**

1 A: Yes, I have.

2 **Q: Where have you seen that before?**

3 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
4 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
5 believe the portion of the alternative route in Nebraska essentially twins or
6 parallels Keystone I.

7 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
8 **Application, and as found on Attachment No. 7, here to your testimony, is in**
9 **the public interest of Nebraska?**

10 A: No, I do not.

11 **Q: Do you believe that the Keystone mainline alternative route as shown on**
12 **Attachment No. 7 included with your testimony here is a major oil pipeline**
13 **route that is in the public interest of Nebraska?**

14 A: No, I do not.

15 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
16 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
17 **your testimony, is in the public interest of Nebraska?**

18 A: No, I do not.

19 **Q: Do you believe there is any potential route for the proposed Keystone XL**
20 **Pipeline across, within, under, or through the State of Nebraska that is in the**
21 **public interest of the citizens of Nebraska?**

22 A: No, I do not.

23 **Q: Why do you hold that belief?**

24 A: Because there simply is no public interest based on all of the factors that I am
25 aware and that I have read and that I have studied that this Commission is to
26 consider that would establish that a for-profit foreign-owned pipeline that simply
27 crosses Nebraska because we are geographically in the way between where tar
28 sands are in Canada to where it wants to ship it to in Texas could ever be in the
29 public interest of Nebraskans. We derive no benefit from this project. It is not for

1 public use. Nebraska is simply in the way and when all considerations are taken in
2 there is no net benefit of any kind for Nebraska should this project be placed in our
3 state. Even if there was some arguable “benefit” it is not enough to outweigh all
4 the negative impacts and concerns.

5 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
6 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
7 **of Nebraska because it may bring temporary jobs during the construction**
8 **phase to Nebraska?**

9 A: First of all, not all jobs are created equally. Most jobs that are created, whether
10 temporary or on a permanent basis, don’t come with a project that has all the
11 potential and foreseeable negative impacts, many of which we have discussed here
12 and other witnesses throughout the course of this hearing have and will discuss. If
13 I decide to hire and employ someone to help me out in my farming or ranching
14 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
15 to my land or my town or my county or my state. And I’ve hired someone who is
16 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
17 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
18 jobs are not created equal. Additionally, I understand from what I’m familiar with
19 from TransCanada’s own statements that the jobs numbers they originally touted
20 were determined to be a minute fraction of the permanent jobs that had been
21 projected. According to their answer to our Interrogatory No. 191, TransCanada
22 has created only thirty-four (34) jobs within Nebraska working specifically on
23 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
24 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
25 Further, according to their answer to Interrogatory No. 199, TransCanada would
26 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL
27 were constructed on its Preferred Route or its Mainline Alternative Route.

28 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
29 **because it would cross your land?**

1 A: No, absolutely not. I am opposed to this project because it is not in the public
2 interest, neither within my community nor within our state.

3 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
4 **was to cross someone else's land?**

5 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
6 the fear and anxiety and potential foreseeable risks and negative impacts that this
7 type of a project carrying this type of product brings foisted upon anyone in this
8 state or any other state.

9 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
10 **Pipeline to cross the state of Nebraska?**

11 A: I don't believe there is an intelligent route because as I have stated I don't believe
12 this project anywhere within Nebraska is within the public interest. However, if
13 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
14 had to go somewhere in the state of Nebraska, the only intelligent route I believe
15 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
16 preferred route and the mainline alternative routes are economic liabilities our
17 state cannot risk.

18 **Q: What do you rely upon to make that statement?**

19 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
20 already exists in that area is reason enough as it is not in our best interest or the
21 public interests to have more major oil pipelines crisscrossing our state. Second,
22 they have all the infrastructure already there in terms of relationships with the
23 counties and local officials and first responders along that route. Third, they have
24 already obtained easements from all the landowners along that route and have
25 relationships with them. Fourth, that route avoids our most sensitive soils, the
26 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
27 Aquifer. Sixth, they have already studied that route and previously offered it as an
28 alternative. Seventh, it just makes the most sense that as a state we would have

1 some intelligent policy of energy corridors and co-locating this type of
2 infrastructure near each other.

3 **Q: Do you have any other concerns you would like to reiterate or can think of at**
4 **this time you would like the Commissioners to understand?**

5 A: Yes. I attended a presentation on human trafficking. A question was raised about
6 man camps with the proposed KXL. I have grave concerns about this and am
7 familiar with issues that arose from wind tower man camps.

8 **Q: Anything else?**

9 A: Yes. For us, this pipeline project would be at best inconvenient, and at the worst, a
10 disaster for our operation, but your consideration goes beyond this one family.
11 Your greater concern should be how this project fits Nebraska interests, is it a wise
12 thing to do for our state? My answer to this is 'NO'. The fault in this proposed
13 route is evident in the case of just one landowner, us. But multiply our concerns
14 and apply them across the state. From Antelope County north to the South Dakota
15 line, the route is fraught with challenges and risks. Much of this land, despite the
16 claim that the route has been moved out of the Sandhills, still carries all of the
17 risks presented but the earlier route. In fact, DEQ maps prior to 2011 showed that
18 our land IS Sandhills. While it is not within your jurisdiction to debate the safety
19 of the construction, it is most certainly within your responsibility to consider the
20 safety of the route. Sandhills soil or associated highly, permeable soil makes
21 potential and inevitable leaks, even small ones, particularly problematic.
22 Complicate that with our high water tables and our aquifer. Our land would see a
23 pipe actually sitting in water. This has been the case for many who have testified
24 against this project. Statistics assure us that leaks will happen. TransCanada
25 attempts to dismiss this reality with the thin claim that "any leak would only be
26 local". What does that mean? Furthermore, the Coast Guard recently concluded
27 that technology does not exist to clean the aquifer in the event of a leak. Wouldn't
28 the wise thing be to move this route off the aquifer to eliminate the risk altogether?
29 So, this route is inconvenient for us and it is unwise for Nebraskans. Most

1 importantly, “Is this necessary?” As landowners, we have come into negotiation
2 countless times where our land was needed for some larger purpose. On the road
3 to Ashfall Fossil Beds, the state of Nebraska notified us several years ago that the
4 road coming to Ashfall was going to be rerouted and that it would cut through our
5 land. Discussions with Cap Dierks, our then state senator, convinced us of the
6 benefit to tourism in Northeast Nebraska as well as the improved safety to drivers.
7 Amicable discussions resulted in the rerouting through our land but
8 accommodations were implemented that we needed for our operation. More
9 recently, we were approached about a proposed power line project that would
10 come onto our land and that would require removal of trees. While it was not
11 ideal for us, we agreed because it was clearly a project that met the criteria of
12 ‘public good’. Negotiations were honest, open and respectful and our needs and
13 wishes were written into the project. A third project included a gas pipeline that
14 was installed along one of our fields. Again, we negotiated, saw the necessity, and
15 presented our needs. The line was installed and we were treated fairly. In the case
16 of the Keystone XL Pipeline, it doesn’t produce safer roads for Nebraska citizens,
17 it does not generate power for our citizenry, it does nothing for the public good
18 that would warrant the power to use eminent domain to take my land. It is a for
19 profit project. You have the capacity to confirm that this route is not convenient,
20 it is not wise, and it is not necessary.

21 **Q: Any other concerns?**

22 A: In the case of the Keystone XL Pipeline, contrast it with the easements I just
23 explained to you. Unlike those examples this project doesn’t produce safer roads
24 for Nebraska citizens; it does not generate power for our citizenry; it does nothing
25 for the public good that would warrant the power to use eminent domain to take
26 my land. It is a for profit project.

27 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
28 **like the Public Service Commissioners to consider in their review of**
29 **TransCanada’s Application?**

1 A: No, I have not. I have shared that which I can think of as of the date I signed this
2 document below but other things may come to me or my memory may be
3 refreshed and I will add and address those things at the time of the Hearing in
4 August and address any additional items at that time as is necessary. Additionally,
5 I have not had an adequate amount of time to receive and review all of
6 TransCanada's answers to our discovery and the discovery of others so it was
7 impossible to competently and completely react to that in my testimony here and I
8 reserve the right to also address anything related to discovery that has not yet
9 concluded as of the date I signed this document below. Lastly, certain documents
10 requested have not yet been produced by TransCanada and therefore I may have
11 additional thoughts on those I will also share at the hearing as needed.

12 **Q: What is it that you are requesting the Public Service Commissioners do in**
13 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
14 **across Nebraska?**

15 A: I am respectfully and humbly requesting that the Commissioners think far beyond
16 a temporary job spike that this project may bring to a few counties and beyond the
17 relatively small amount of taxes this proposed foreign pipeline would possibly
18 generate. And, instead think about the perpetual and forever impacts of this
19 pipeline as it would have on the landowners specifically, first and foremost, but
20 also thereby upon the entire state of Nebraska, and to determine that neither the
21 preferred route nor the Keystone mainline alternative route are in the public
22 interest of the citizens of the state of Nebraska. And if the Commissioners were
23 inclined to modify TransCanada's proposed routes and were to be inclined to grant
24 an application for a route in Nebraska, that the only potential route that would
25 make any intelligent sense whatsoever would be twinning or near paralleling of
26 the proposed KXL with the existing Keystone I pipeline. It simply does not make
27 sense to add yet another major oil pipeline crisscrossing our state creating new
28 pumping stations, creating new impacts on additional counties and communities
29 and going through all of the court processes with us and other landowners like us

1 when this applicant already has relationships with the landowners, the towns and
2 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: Anything else?**

6 A: Real wisdom is the clear understanding of our strengths and our weaknesses. For
7 an ag state such as Nebraska, our challenge is the large expanse of marginal soil.
8 This challenge has been mitigated because of our most incredible resource, the
9 Ogallala Aquifer. With the invention of technology that allows us to utilize this
10 resource, we have been able to transform our agriculture in a few decades. But
11 this resource is a precious gift, one that will only become more valuable in the
12 future. Our water IS our future, here in Nebraska. Risking that gift for the false
13 promise of a few jobs, for the claim of energy independence or a boon to our tax
14 income. The jobs claims have been proven false. Foreign tar sands transported
15 through our state to be exported to China makes the energy independence claim
16 laughable. Even the few years of a small tax boost is quickly offset with the
17 longer-range cost of removal of abandoned equipment, a cost that falls on the
18 landowner. When considering your stand on this issue, I would ask you to
19 envision with me the view from my front yard. We have hosted journalists from
20 all over the world: from France, from Great Britain, from Canada, journalists from
21 New York, from Washington D.C., and from Los Angeles. World class
22 photographers have walked and photographed this pipeline route and the people
23 along it, yet not one Nebraska journalist has visited us to see our concerns. Not
24 one state or national elected representative has sat down with us to hear our
25 perspective. Though TransCanada would have you believe that we are
26 environmental terrorists, radicals, just look at us. We are grandmothers and
27 grandfathers, moms and dads that love our land and know our land. We are
28 specialists in our sphere and we urge you to not just listen, but hear the appeal we
29 make here for all Nebraskans, current and future.

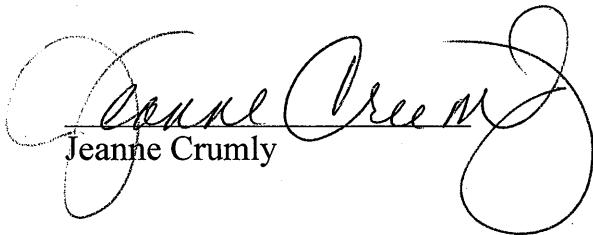
1 **Q:** Does Attachment No. 8 here contain other documents you are competent to
2 speak about that you wish to be part of your testimony and to discuss in more
3 detail as needed at the August 2017 Hearing?

4 **A:** Yes.


5 **Q:** Are all of your statements in your testimony provided above true and
6 accurate as of the date you signed this document to the best of your
7 knowledge?

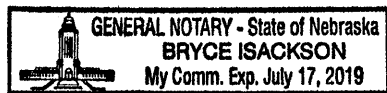
8 **A:** Yes, they are.

9 **Q:** Thank you, I have no further questions at this time and reserve the right to
10 ask you additional questions at the August 2017 Hearing.

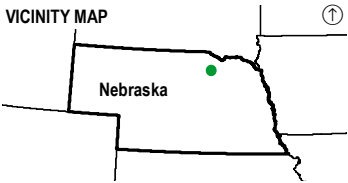

Jeanne Crumly

Subscribed and Sworn to me before this 25th day of May, 2017.


Notary Public



Attachment No. 1



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Ronald C. Crumly

TRACT NO. ML-NE-HT-30525.000
STATE: Nebraska
COUNTY: Holt
SECTION: 025
TOWNSHIP: 029N
RANGE: 010W

- 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-HT-30510.000
ML-NE-HT-30525.000

**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**") **Ronald C. Crumly a/k/a Ron Crumly and Jeanne M. Crumly, husband and wife**, whose mailing address is 50396 871st Road, Page, NE 68766 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection

Grantor's Initials _____

equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Holt, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 150.71 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the SE1/4 of Section 23, Township 29 North, Range 10 West of the 6th P.M., as recorded in Book 195, Page 572 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 157.75 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SE1/4 of Section 25, T29N, R10W of the 6th P.M., as recorded in Book 178, Page 383 and Book 154, Page 362 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

Less and Except: The East 330 feet of the South 190 feet of the Southeast Quarter of Section 25, Township 29 North, Range 10 West of the 6th P.M., Holt County, Nebraska, as recorded in Book 183, Page 118.

(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):

Ronald C. Crumly a/k/a Ron Crumly

Jeanne M. Crumly

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Ronald C. Crumly a/k/a Ron Crumly**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Jeanne M. Crumly**

Notary Public Signature

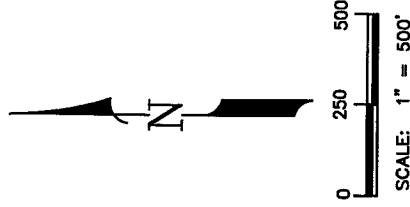
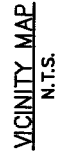
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Grantor's Initials _____

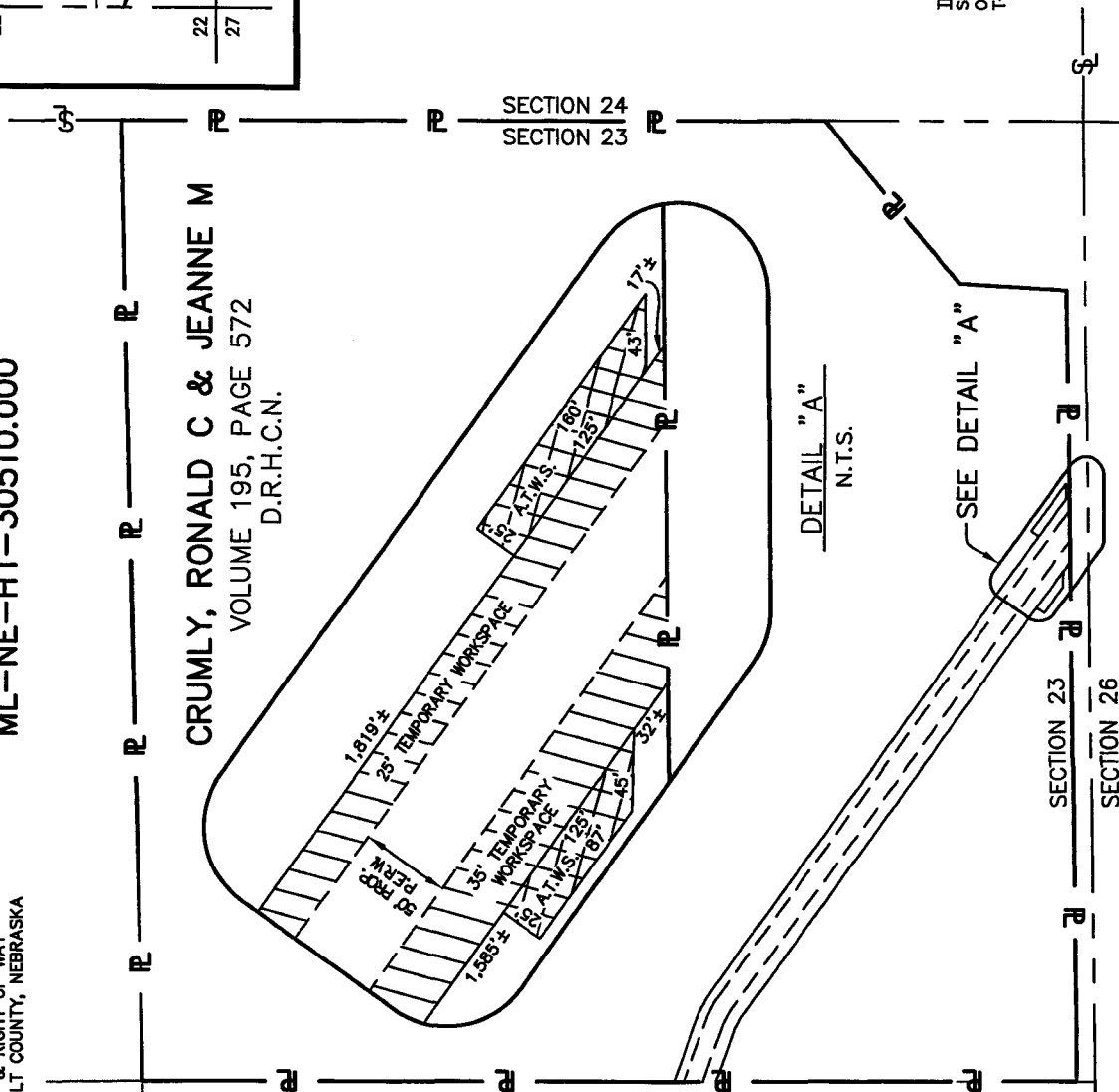
T-29-N, R-10-W, SECTION 23
ML-NE-HT-30510.000

PROPERTY LINE	SECTION LINE	PROPOSED	ADDITIONAL TEMP	PERMANENT EAS	DEED RECORDS
R	\$	PROP.	A.T.W.S.	P.E.R.W.	D.R.H.C.N.

CRUMLY, RONALD C & JEANNE M
VOLUME 195, PAGE 572
D.R.H.C.N.



TRACT LEGAL DESCRIPTION:
SE/4 EXC. ROW & EXC. 6.02 AC.
OF SECTION 23,
T-29-N, R-10-W




NOTE: THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY:	1,881'±
AREA OF PERMANENT EASEMENT:	2.1 ACRES
AREA OF TEMPORARY WORKSPACE:	2.5 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE:	0.1 ACRE



The new identity of Trow

 TransCanada <i>In business to deliver</i>			
KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF CRUMLEY, RONALD C & JEANNE M ML-NE-HT-30510.000			
PROJECT:		XL	EXHIBIT A
APPROVED BY		DRAWING NUMBER	
SLR		XL-08-ML-SK-3358	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/29/14	JN	ALS

HOLT COUNTY, NEBRASKA

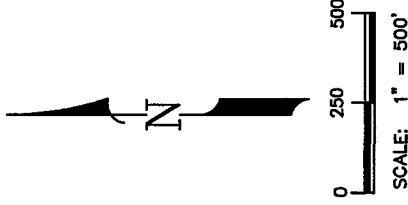
T-29-N, R-10-W, SECTION 25

ML-NE-HT-30525.000

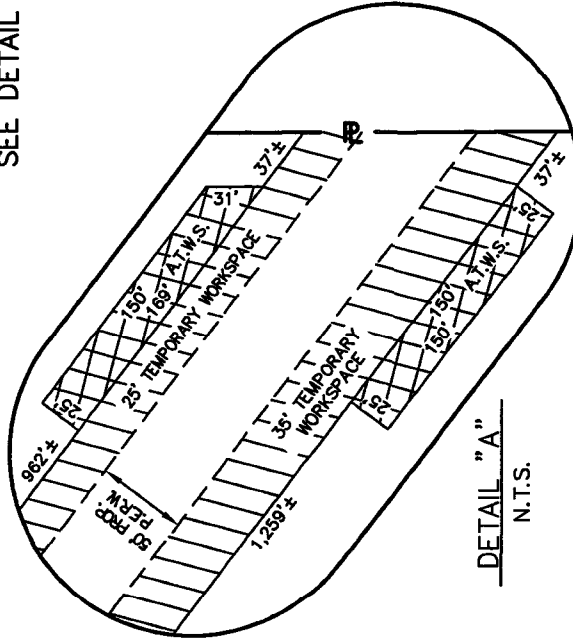
LEGEND
P PROPERTY LINE
S SECTION LINE
PROF. PROPOSED
A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA

RONALD C. CRUMLY
VOLUME 154, PAGE 362
VOLUME 178, PAGE 383
D.R.H.C.N.

VICINITY MAP
N.T.S.



SEE DETAIL "A"



DETAIL "A"
N.T.S.

TRACT LEGAL DESCRIPTION:
PART OF THE SE 1/4 OF SECTION 25,
T-29-N, R-10-W

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

exp.
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TOTAL DISTANCE ACROSS PROPERTY: 1,269'±
AREA OF PERMANENT EASEMENT: 1.5 ACRES
AREA OF TEMPORARY WORKSPACE: 1.8 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.2 ACRE



KEYSTONE XL PROJECT

EASEMENT AREA
ACROSS THE PROPERTY OF
RONALD C. CRUMLY
ML-NE-HT-30525.000

PROJECT: XL EXHIBIT A

APPROVED BY: SLR
DRAWING NUMBER: XL-08-ML-SK-3361
DATE: _____

NO. _____
REVISION: _____

SCALE: 1" = 500'

DATE: 10/31/14

DRAWN BY: 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-30510.000

I/we Ronald C. Crumly and Jeanne M. Crumly, of Holt County, in the State of Nebraska,
(hereinafter "Grantor") acknowledge receipt of:

Three Thousand Seven Hundred Sixty Dollars and No Cents (\$3,760.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

Part of the SE/4

Section 23, Township 29-N, Range 10-W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of _____, 20____.

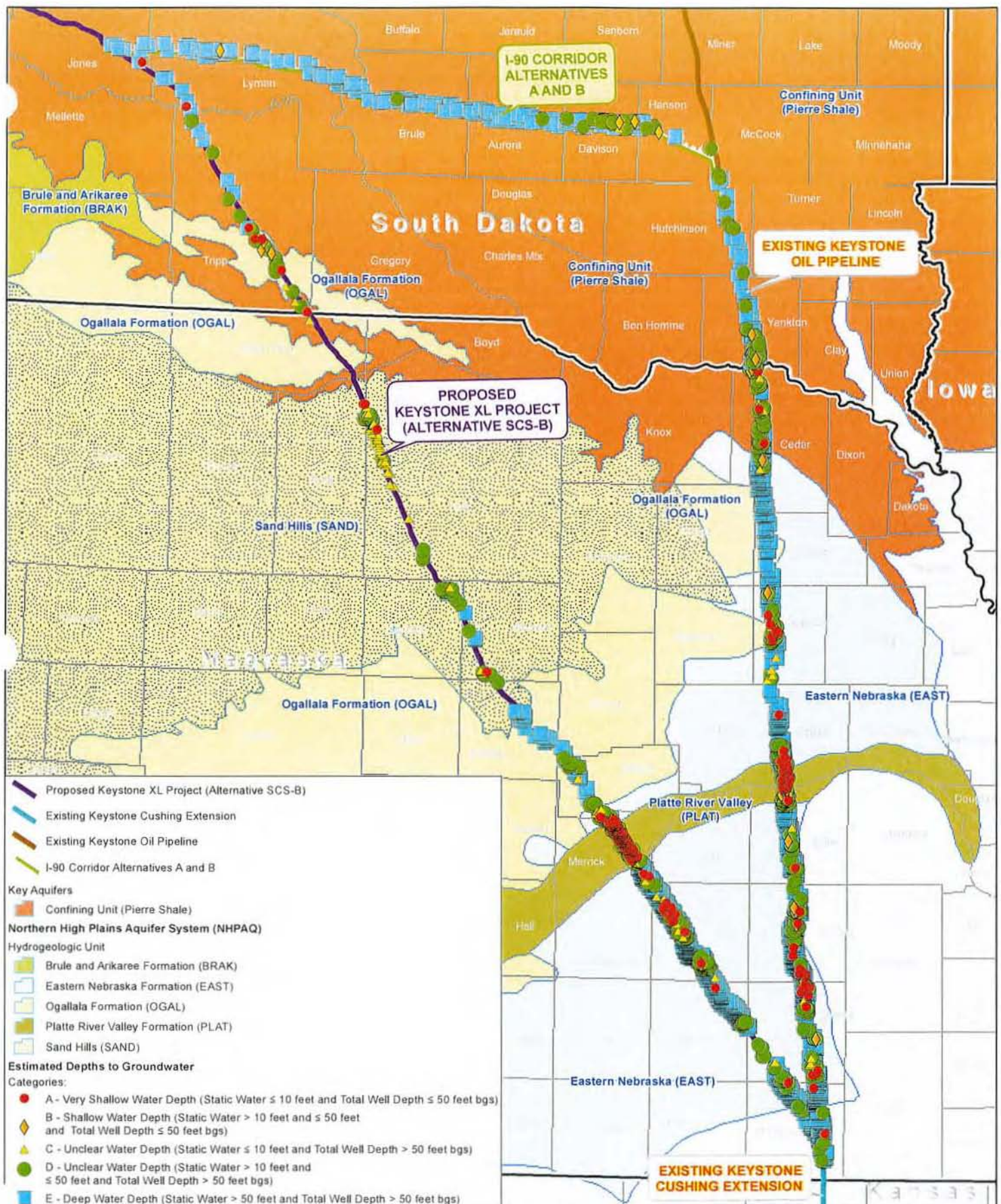
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor

Attachment No. 7



VICINITY MAP



LEGEND

- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES



Attachment No. 8

Report Number
13-092-2032 v2



Page 1 of 2

This report supersedes all prior reports for the following reason(s): split report

Mail to:

**BRUCE BOETTCHER
86061 EDGEWATER AVE
BASSETT NE 68714**

REPORT OF ANALYSIS

For: (29021) BRUCE BOETTCHER
(402)244-5348

GRAIN SIZE TESTING

Date Reported: 04/02/13
Date Received: 03/27/13
Date Sampled: Not Supplied
Time Sampled: Not Supplied

Lab number: 2114598 Sample ID: A

Analysis	Level Found	Units	Detection Limit	Method	Analyst-Date	Verified-Date
Grain Size-Complete	see attached			ASTM D422	mjs-04/02	mjs-04/02

For questions contact

John Torpy
Technical Director
torpy@midwestlabs.com (402)829-9880



13611 "B" Street • Omaha, Nebraska 68144-3693 • (402) 334-7770 • FAX (402) 334-9121
www.midwestlabs.com

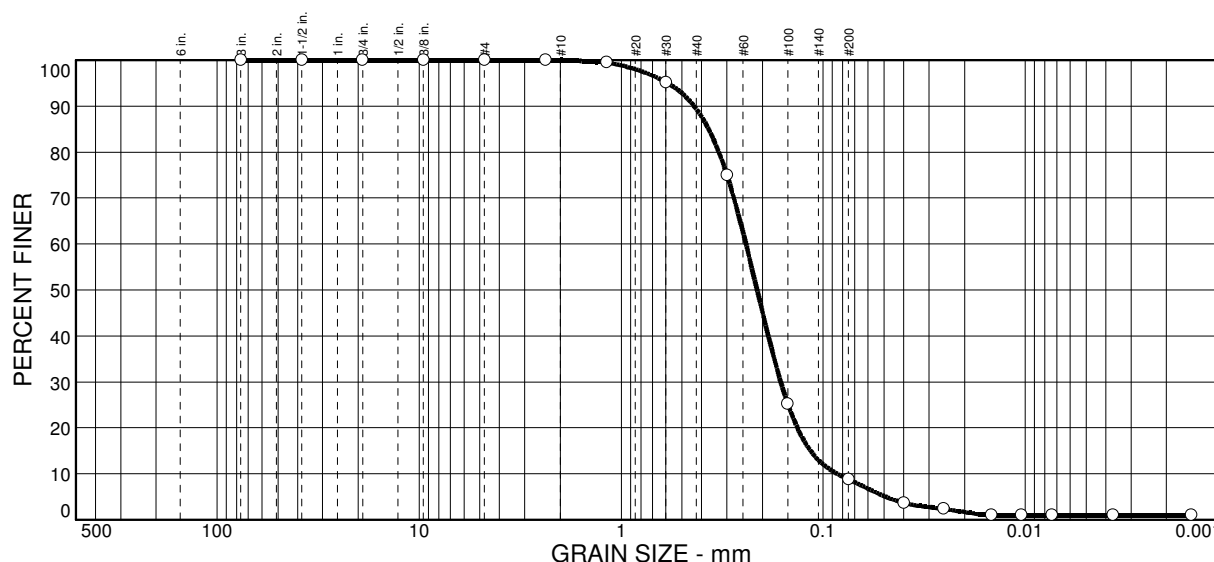
John Torpy

Particle Size Distribution Report

Project:
Client: BRUCE BOETTCHER

Report No.: 13-092-2032

Sample No: 2114598
Location: A

Source of Sample:
Date: 04/02/13
Elev./Depth:


% COBBLES	% GRAVEL		% SAND			% FINES	
	CRS.	FINE	CRS.	MEDIUM	FINE	SILT	CLAY
0.0	0.0	0.0	0.1	10.6	80.5	7.8	1.0

SIEVE SIZE	PERCENT FINER	SPEC.* PERCENT	PASS? (X=NO)
3 in.	100.0		
1.5 in.	100.0		
.75 in.	100.0		
.375 in.	100.0		
#4	100.0		
#8	100.0		
#16	99.6		
#30	95.2		
#50	75.0		
#100	25.2		
#200	8.8		

Soil Description		
Atterberg Limits		
PL=	LL=	PI=
Coefficients		
D ₈₅ = 0.370	D ₆₀ = 0.242	D ₅₀ = 0.213
D ₃₀ = 0.163	D ₁₅ = 0.116	D ₁₀ = 0.0854
C _u = 2.83	C _c = 1.28	
Classification		
USCS=	AASHTO=	
Remarks		

* (no specification provided)

Figure

Report Number
13-092-2032A v2



Page 1 of 2

This report supersedes all prior reports for the following reason(s): split report

Mail to:

**BRUCE BOETTCHER
86061 EDGEWATER AVE
BASSETT NE 68714**

REPORT OF ANALYSIS

For: (29021) BRUCE BOETTCHER
(402)244-5348

GRAIN SIZE TESTING

Date Reported: 04/02/13
Date Received: 03/27/13
Date Sampled: Not Supplied
Time Sampled: Not Supplied

Lab number: 2114599 Sample ID: B

Analysis	Level Found	Units	Detection Limit	Method	Analyst-Date	Verified-Date
Grain Size-Complete	see attached			ASTM D422	mjs-04/02	mjs-04/02

For questions contact

John Torpy
Technical Director
torpy@midwestlabs.com (402)829-9880



13611 "B" Street • Omaha, Nebraska 68144-3693 • (402) 334-7770 • FAX (402) 334-9121
www.midwestlabs.com

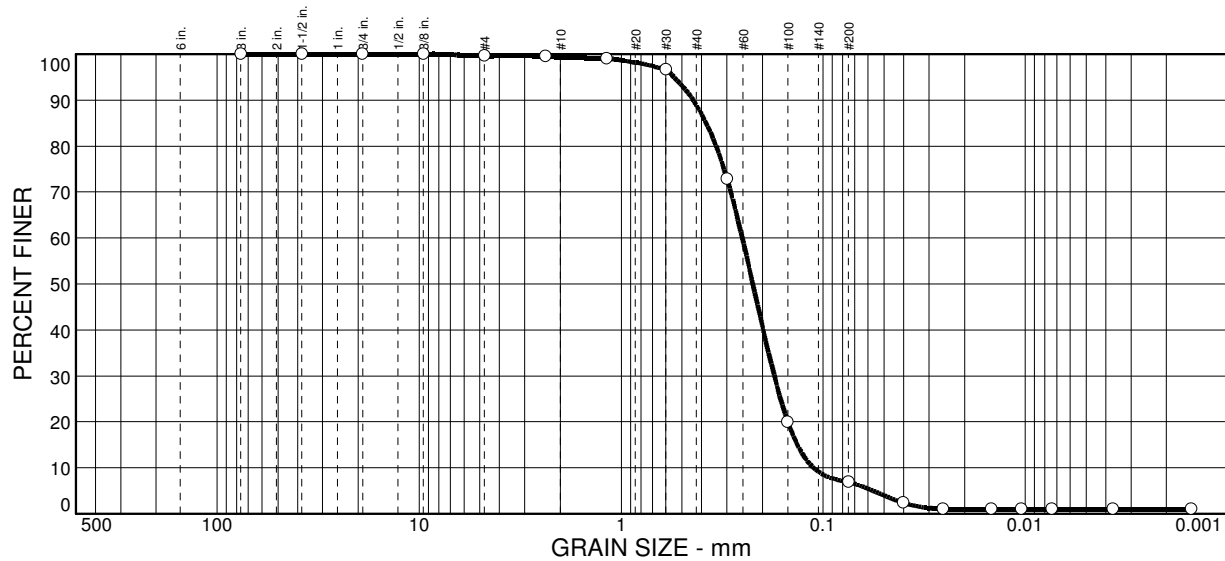
John Torpy

Particle Size Distribution Report

Project:
Client: BRUCE BOETTCHER

Report No.: 13-092-2032A

Sample No: 2114599
Location: B

Source of Sample:
Date: 04/02/13
Elev./Depth:


% COBBLES	% GRAVEL		% SAND			% FINES	
	CRS.	FINE	CRS.	MEDIUM	FINE	SILT	CLAY
0.0	0.0	0.3	0.3	10.5	82.0	5.9	1.0

SIEVE SIZE	PERCENT FINER	SPEC.* PERCENT	PASS? (X=NO)
3 in.	100.0		
1.5 in.	100.0		
.75 in.	100.0		
.375 in.	100.0		
#4	99.7		
#8	99.5		
#16	99.1		
#30	96.7		
#50	72.9		
#100	20.0		
#200	6.9		

Soil Description		
Atterberg Limits PL= LL= PI=		
Coefficients D ₈₅ = 0.380 D ₆₀ = 0.252 D ₅₀ = 0.224 D ₃₀ = 0.175 D ₁₅ = 0.134 D ₁₀ = 0.112 C _u = 2.26 C _c = 1.09		
Classification USCS= AASHTO=		
Remarks		

* (no specification provided)

Figure

Report Number
13-092-2032B v2



Page 1 of 3

This report supersedes all prior reports for the following reason(s): split report

Mail to:

**BRUCE BOETTCHER
86061 EDGEWATER AVE
BASSETT NE 68714**

REPORT OF ANALYSIS

For: (29021) BRUCE BOETTCHER
(402)244-5348

GRAIN SIZE TESTING

Date Reported: 04/02/13
Date Received: 03/27/13
Date Sampled: Not Supplied
Time Sampled: Not Supplied

Lab number: 2114600 Sample ID: C

Analysis	Level Found	Units	Detection Limit	Method	Analyst-Date	Verified-Date
Grain Size-Complete	see attached			ASTM D422	mjs-04/02	mjs-04/02

For questions contact

John Torpy
Technical Director
torpy@midwestlabs.com (402)829-9880



13611 "B" Street • Omaha, Nebraska 68144-3693 • (402) 334-7770 • FAX (402) 334-9121
www.midwestlabs.com

John Torpy

Particle Size Distribution Report

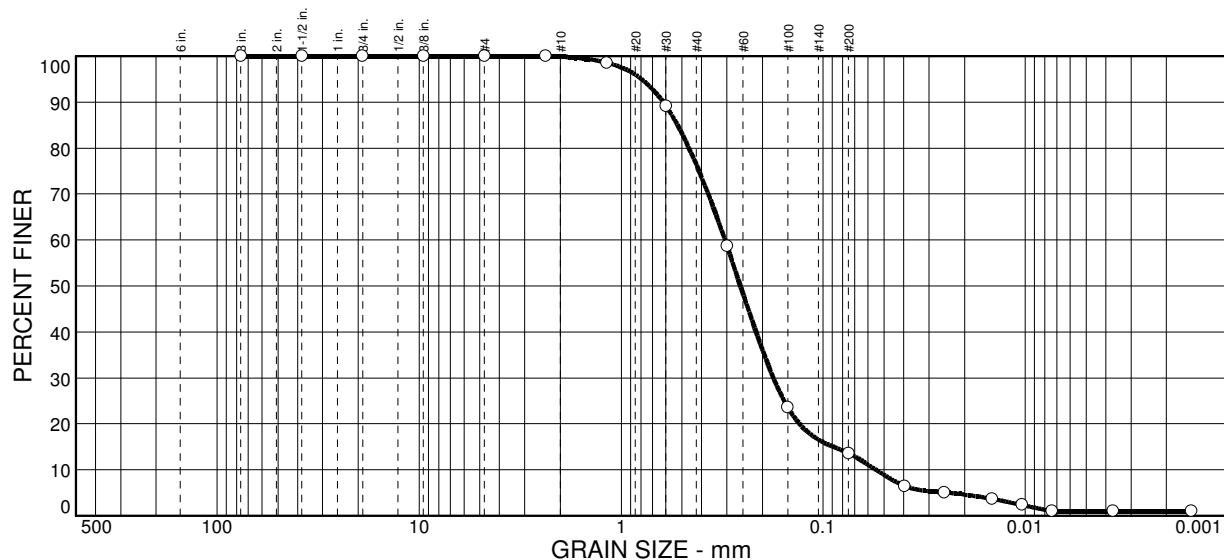
Project:
Client: BRUCE BOETTCHER

Report No.: 13-092-2032B

Sample No: 2114600
Location: C

Source of Sample:

Date: 04/02/13
Elev./Depth:



% COBBLES	% GRAVEL		% SAND			% FINES	
	CRS.	FINE	CRS.	MEDIUM	FINE	SILT	CLAY
0.0	0.0	0.0	0.1	23.5	62.8	12.6	1.0

SIEVE SIZE	PERCENT FINER	SPEC.* PERCENT	PASS? (X=NO)
3 in.	100.0		
1.5 in.	100.0		
.75 in.	100.0		
.375 in.	100.0		
#4	100.0		
#8	100.0		
#16	98.6		
#30	89.1		
#50	58.7		
#100	23.6		
#200	13.6		

Soil Description		
Atterberg Limits		
PL=	LL=	PI=
Coefficients		
D ₈₅ = 0.527	D ₆₀ = 0.307	D ₅₀ = 0.257
D ₃₀ = 0.177	D ₁₅ = 0.0890	D ₁₀ = 0.0550
C _u = 5.59	C _c = 1.85	
Classification		
USCS=	AASHTO=	
Remarks		

* (no specification provided)

Figure

Particle Size Distribution Report

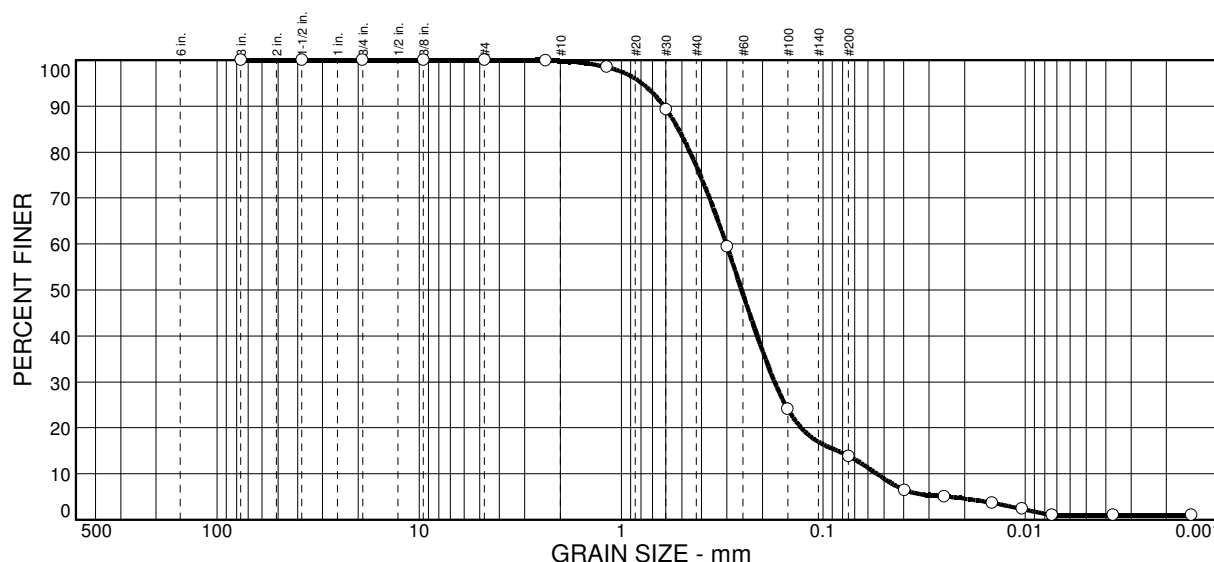
Project:
Report No.: 13-092-2032B

Client: BRUCE BOETTCHER

Sample No: 2114600 DUP

Source of Sample:
Date: 04/02/13

Location: C DUP

Elev./Depth:


% COBBLES	% GRAVEL		% SAND			% FINES	
	CRS.	FINE	CRS.	MEDIUM	FINE	SILT	CLAY
0.0	0.0	0.0	0.2	22.9	63.0	12.9	1.0

SIEVE SIZE	PERCENT FINER	SPEC.* PERCENT	PASS? (X=NO)
3 in.	100.0		
1.5 in.	100.0		
.75 in.	100.0		
.375 in.	100.0		
#4	100.0		
#8	99.9		
#16	98.5		
#30	89.3		
#50	59.5		
#100	24.1		
#200	13.9		

Soil Description		
Atterberg Limits		
PL=	LL=	PI=
Coefficients		
D ₈₅ = 0.522	D ₆₀ = 0.303	D ₅₀ = 0.254
D ₃₀ = 0.174	D ₁₅ = 0.0852	D ₁₀ = 0.0544
C _u = 5.57	C _c = 1.85	
Classification		
USCS=	AASHTO=	
Remarks		

* (no specification provided)

Figure

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Seth Davis in Support of
Landowner Intervenors**

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Seth Davis. I am the grandson of Germaine Berry. I am the nephew of
3 Karen Berry.

4 **Q: Are you an intervener in the Public Service Commission's proceedings**
5 **regarding TransCanada's application for approval of its proposed Keystone**
6 **XL tar sands pipeline across Nebraska?**

7 A: No, but I am a tenant of Germaine Berry who is a Landowner Intervenor. I farm
8 her land that would be affected by the proposed preferred pipeline route of
9 TransCanada. That land is located in Antelope County.

10 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
11 **photo(s) of the land in question here with the area of the proposed KXL**
12 **pipeline depicted?**

13 A: Yes.

14 **Q: What do you do for a living?**

15 A: I am Farmer.

1 **Q: For the land that would be affected and impacted by the proposed KXL tar**
2 **sands pipeline give the Commissioners a sense how long the land has been in**
3 **your family.**

4 **A:** The land has been in the Berry family since the 1950s. The soil is very sandy and
5 porous. However, due to a high water table, there is a permanent moist area
6 running through the middle of the property. This area has not been farmed for
7 several decades, because farm equipment tended to get stuck, and wet weather
8 prevents a good crop. The farmland has proved unusually productive for dryland
9 farming, because the high water table puts adequate water into the root zone of
10 plantings. There is a danger that the digging that accompanies the pipeline will
11 disrupt the hydrology of the area, easing the drainage and dropping the water
12 table, to the detriment of dryland farming. Conversely, blocking drainage as it
13 crosses the wet area could have a damming effect. There is no guarantee in the
14 easement against pipeline-induced changes in the water table, or monitoring of any
15 changes.

16 **Q: Do you earn any income from this land?**

17 **A:** Yes.

18 **Q: Have you depended on the income from the land to support your livelihood or**
19 **the livelihood of your family?**

20 **A:** Yes.

21 **Q: Do you have concerns about your grandmother being able to selling the land?**

22 **A:** Well I hope she never has to sell the land but as a farmer who is familiar with what
23 factors you consider when bidding on farm land, I am concerned that if another
24 piece of ground similar to hers was for sale at the same time and it did not have the
25 pipeline and hers did that she would have a lower selling price. I think this would
26 be true for pipeline ground on both the preferred and mainline alternative routes.

27 **Q: Have you thought about whether or not you would be willing to pay the same**
28 **rental payments for the land if the proposed route is approve and the KXL**
29 **pipeline goes through the land as you are today without it?**

1 A: Yes, I have thought of it and that concerns me. As a business owner and farmer I
2 have to also control my costs and risks the best I can. For instance, if there are
3 damages to crops and loss in yields, I need to take that real possibility into
4 account. I need to factor in the likelihood of deferred payment or no payment or
5 even budgeting in legal expenses to fight about damages caused by the pipeline.
6 These are all real world things that have and do occur. I just don't know if I could
7 agree to carry on with the same payment arrangements if the land were to change
8 so dramatically as it would if a major oil pipeline is present.

9 **Q: Was your grandmother or an entity for which she is a member, shareholder,**
10 **or director previously sued by TransCanada Keystone Pipeline, LP?**

11 A: Yes, in 2015. TransCanada Keystone Pipeline LP sued her by filing a petition for
12 condemnation against her land so it could place its proposed pipeline within an
13 easement that it wanted to take from her.

14 **Q: Did she defend herself and the land in that condemnation action?**

15 A: Yes and lawyers were hired to assist.

16 **Q: Has TransCanada reimbursed her for any of the expenses or costs for fees**
17 **incurred?**

18 A: No, they have not.

19 **Q: Did TransCanada describe what rights it proposed to take related to the**
20 **eminent domain property on the land?**

21 A: Yes, they did.

22 **Q: What rights that they proposed to take did they describe?**

23 A: TransCanada stated that the eminent domain property will be used to "lay, relay,
24 operate, and maintain the pipeline and the plant and equipment reasonably
25 necessary to operate the pipeline, specifically including surveying, laying,
26 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
27 reconstructing, removing and abandoning one pipeline, together with all fittings,
28 cathodic protection equipment, pipeline markers, and all their equipment and

1 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
2 petroleum products, and all by-products thereof.”

3 **Q: Prior to filing an eminent domain lawsuit, do you believe TransCanada**
4 **attempted to negotiate in good faith?**

5 A: No, I do not.

6 **Q: Have you ever reviewed TransCanada’s proposed easement and right-of-way**
7 **agreement?**

8 A: Yes.

9 **Q: Have you reviewed TransCanada’s easement and right-of-way agreement,**
10 **did if so, what did you understand that they would be purchasing - a fee title**
11 **interest in the property or that they were taking something else?**

12 A: I understood that they proposed to have the power to take both a temporary
13 construction easement that could last for a certain period of time and then also a
14 permanent easement which they described to be 50 feet across or in width, and
15 that would run the entire portion of the property from where a proposed pipeline
16 would enter the property until where it would exit the property.

17 **Q: Is the document included with your testimony here as Attachment No. 2, a**
18 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
19 **Way agreement that they included with their condemnation lawsuit?**

20 A: Yes, it is.

21 **Q: What is your understanding of the significance of the Easement and Right-of-**
22 **Way agreement as proposed by TransCanada?**

23 A: My understanding is that this is the document that will govern all of the rights and
24 obligations and duties as well as the limitations of what can and cannot be done
25 and how I and any landowner and any person I invite to come onto the property
26 must behave as well as what TransCanada is and is not responsible for and how
27 they can use the land.

28 **Q: After reviewing TransCanada’s proposed Easement and Right-of-Way**
29 **agreement do you have any concerns about any portions of it or any of the**

1 **language either included in the document or missing from the proposed**
2 **document?**

3 A: Yes, I have a number of significant concerns and worries about the document and
4 how the language included and the language not included potentially negatively
5 impacts the land, my rights, and thereby potentially negatively impacts my
6 community and my state.

7 **Q: I would like you to walk the Commissioners through each and every one of**
8 **your concerns about TransCanada's proposed Easement and Right-of-Way**
9 **agreement so they can develop an understanding of how that language and**
10 **the terms of that contract, in your opinion, potentially negatively impacts you**
11 **and the land. So, if you can start at the beginning of that document and let's**
12 **work our way through it, okay?**

13 A: Yes.

14 **Q. Let's start with your first concern please.**

15 A: The very first sentence talks about consideration or how much money they will
16 pay to compensate for all of the known and unknown affects and all of the rights
17 being given up and for all the things they get to do to the land and for what they
18 will prevent us from doing on the land and they only will pay a one time at the
19 signing of the easement agreement. That is a huge problem.

20 **Q: Explain to the Commissioners why that is a problem.**

21 A: It is not fair to the landowner, the county, or the State. It is not fair to the
22 landowner because they want to have the land forever for use as they see fit so
23 they can make a daily profit from their customers. As a tenant, I lease the ground
24 and I pay twice a year every year so periodically and annually. That only makes
25 sense – that is fair. If I was going to rent a house in town I would typically pay
26 monthly, every month until I gave up my right to use that house. By TransCanada
27 getting out on the cheap and paying once in today's dollars that is monthly, bi-
28 annual, or at least an annual loss in tax revenue collection on the money the
29 landowner would be paid and then pay taxes on and contribute to this state and

1 this country. It is money the landowner would be putting back into the local
2 community both spending and stimulating the local economy and generating more
3 economic activity right here. Instead TransCanada's shareholders keep the money
4 and it never finds its way to Nebraska.

5 **Q: What is your next concern?**

6 A: The first paragraph goes on to say Grantor, which is the landowner, "does hereby
7 grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a limited
8 partnership..." and I have no idea who that really is. I have no idea who is forcing
9 this pipeline on us or who the owners of the entities are, or what are the assets
10 backing this limited partnership, or who the general partner is, or who all the
11 limited partners are, and who makes up the ownership of the these partners or the
12 structure or any of the basic things you would want to know and understand if you
13 would want to do business with such an outfit. According to TransCanada's
14 answer to Interrogatory No. 28, as of the date I signed this testimony, a limited
15 liability company called TransCanada Keystone Pipeline GP, LLC is the general
16 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
17 basically nothing. That is really scary since my understanding is the general
18 partner has the liability but virtually none of the ownership and who knows if it
19 has any other assets.

20 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
21 **percent clear on exactly who could become the owner of about 275 miles of**
22 **Nebraska land?**

23 A: No.

24 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
25 **percent clear on exactly who will be operating and responsible for**
26 **approximately 275 miles of tar sands pipeline underneath and through**
27 **Nebraska land?**

28 A: No.

1 **Q: Okay, let's continue please with your concerns of the impacts upon the land**
2 **and the State of Nebraska of TransCanada's easement terms.**

3 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
4 called "Grantee")..." and this concerns me because it would allow the easement to
5 be transferred or sold to someone or some company or country or who knows what
6 that we don't know and who we may not want to do business with. This pipeline
7 would be a huge asset for TransCanada and if they can sell to the highest bidder
8 that could have terrible impacts upon all of Nebraska depending upon who may
9 buy it and I don't know of any safeguards in place for us or the State to veto or
10 have any say so in who may own, operate, or be responsible for this pipeline in the
11 future.

12 **Q: Do you think that type of uncertainty and lack of control over a major piece**
13 **of infrastructure crossing our State is in the public interest?**

14 A: No, certainly not, in fact, just the opposite.

15 **Q: What's next?**

16 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
17 really concerns me. Why does the easement and right-of-way have to be perpetual
18 and permanent? That is the question my family and I want an answer to. Perpetual
19 to me is forever and that doesn't make sense.

20 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

21 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
22 data proving there is a perpetual supply of tar sands. I am not aware in
23 TransCanada's application where it proves there is a perpetual necessity for this
24 pipeline. My understanding of energy infrastructure like wind towers is they have
25 a decommission plan and actually take the towers down when they become
26 obsolete or no longer needed. Nothing manmade lasts forever. The land however
27 will, if we are all smart about this, and I want my family or future Nebraska
28 families to have that land as undisturbed as possible and it is not in my interest or

1 the public interest of Nebraska to be forced to give up perpetual and permanent
2 rights in the land for this specific kind of pipeline project.

3 **Q: Okay, what is your next concern?**

4 A: The easement language includes all these things TransCanada can do and it says
5 "...abandoning in place..." so they can just leave this pipeline under the ground
6 until the end of time just sitting there while they are not using it, but we are still
7 prevented from doing on the land and using the land as we would like. If I owned
8 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
9 there. It doesn't make sense and it scares me and it is not in our interest or the
10 public interest of Nebraska to allow this.

11 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
12 **right?**

13 A: Yes.

14 **Q: So now on the second page of the Easement what are your concerns?**

15 A: Here the Easement identifies a 24-month deadline to complete construction of the
16 pipeline but has caveats that are undefined and ambiguous. The 24-month period
17 starts to run from the moment "actual pipeline installation activities" begin on
18 Landowners property. It appears that TransCanada would define this phrase as
19 needed. It would be wise to explain what types of TransCanada action constitutes
20 "installation activity" For instance, would the placement and storage of an
21 excavator or other equipment on or near the Easement property be an activity or
22 would earth have to be moved before the activity requirement is triggered. This
23 vague phrase is likely to lead to future disputes and litigation that is not in the best
24 interest of the welfare of Nebraska and would not protect property interests. The
25 24-months can also be extended in the case of "force majeure." My understanding
26 is that force majeure is often used to insulate a party to a contract when events
27 occur that are completely out of their control. In TransCanada's easement this is
28 expanded to include "without limitation...availability of labor and materials."
29 Extending this language to labor and materials is problematic because these are

1 two variables that TransCanada does have some or significant control over and to
2 allow extension of the 24-month period over events not truly out of the control of
3 TransCanada and without further provision for compensation for the Landowner is
4 not conducive to protection of property rights.

5 **Q: Okay, what is your next concern?**

6 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
7 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
8 reasonable costs and expenses” will pay for damages caused but then limits
9 TransCanada’s liability to certain circumstances. There is no definition of
10 “commercially reasonable” and no stated right that the Landowner would get to
11 determine the amounts of cost or expense that is “commercially reasonable.”
12 TransCanada excepts out from their liability any damages that are caused by
13 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
14 Landowner. It is understandable that if the Landowner were to willfully and
15 intentionally cause damages to the pipeline that Landowner should be liable.
16 However, anything short of willful misconduct should be the liability of
17 TransCanada who is subjecting the pipeline on the Landowner and who is making
18 a daily profit from that pipeline. When evaluating the impact on property rights of
19 this provision, you must consider the potentially extremely expensive fight a
20 Landowner would have over this question of whether or not damage was an act of
21 negligence. Putting this kind of potential liability upon the Landowner is
22 incredibly problematic and is detrimental to the protection of property rights. I
23 don’t think this unilateral power which I can’t do anything about as the landowner
24 is in the best economic interest of the land in question or the State of Nebraska for
25 landowners to be treated that way.

26 **Q: Is there any specific event or example you are aware of that makes this**
27 **concern more real for you?**

28 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
29 Nemaha County, Nebraska landowner farmers who accidentally struck two

1 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
2 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
3 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
4 copy of the Federal Court Complaint is here as **Attachment No. 3.**

5 **Q: What is your next concern with the Easement language?**

6 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
7 they choose unless 1) any Landowner use interferes in any way with
8 TransCanada's exercise of any of its rights within the Easement, or 2)
9 TransCanada decides to take any action on the property it deems necessary to
10 prevent injury, endangerment or interference with anything TransCanada deems
11 necessary to do on the property. Landowner is also forbidden from excavating
12 without prior authorization by TransCanada. So my understanding is that
13 TransCanada will unilaterally determine what Landowner can and can't do based
14 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
15 could also completely deny my request to excavate. Further, TransCanada retains
16 all "privileges necessary or convenient for the full use of the rights" granted to
17 them in the Easement. Again, TransCanada unilaterally can decide to the
18 detriment of the property rights of Landowner what TransCanada believes is
19 necessary or convenient for it. And there is no option for any additional
20 compensation to landowner for any right exercised by TransCanada that leads to
21 the removal of trees or plants or vegetation or buildings or structures or facilities
22 owned by Landowner of any kind. Such undefined and unilateral restrictions and
23 rights without having to compensate Landowner for such further destruction or
24 losses are not conducive to the protection of property rights or economic interest.

25 **Q: What is the next concern you have?**

26 A: The Easement also allows some rights for Landowner but restricts them at the
27 same time and again at the sole and unilateral decision making of TransCanada.
28 TransCanada will determine if the actions of Landowner might in anyway
29 endanger or obstruct or interfere with TransCanada's full use of the Easement or

1 any appurtenances thereon to the pipeline itself or to their access to the Easement
2 or within the Easement and TransCanada retains the right at any time, whether
3 during growing season or not, to travel “within and along Easement Area on foot
4 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
5 retain the rights to prevent any landowner activity that it thinks may “unreasonably
6 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
7 undefined and unilateral restrictions are not conducive to the protection of
8 property rights or economic interest.

9 **Q: What is the next concern you have with the Easement language?**

10 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
11 Landowner’s land any debris of any kind without any input or power of
12 Landowner to demand an alternative method or location of debris disposal. Such
13 unilateral powers would negatively affect Landowners property are not conducive
14 to the protection of property rights or economic interest.

15 **Q: What is the next concern you have with the Easement language?**

16 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
17 “where rock is encountered” mean and why does TransCanada solely get to
18 determine whether or not this phrase is triggered. This phrase could be used to
19 justify installing the pipeline 24 inches beneath the surface. The ability to use this
20 provision to minimal locate the pipeline at a depth of 24 inches could negatively
21 affect Landowners property are not conducive to the protection of property rights.
22 A shallow pipeline is much more likely to become a danger and liability in the
23 future given farming operations and buried irrigation lines and other factors
24 common to the current typical agricultural uses of the land in question impacted
25 by TransCanada’s preferred pipeline route.

26 **Q: What is the next concern you have with the Easement language?**

27 A: There are more vague concepts solely at the determination of TransCanada such as
28 “as nearly as practicable” and “pre-construction position” and “extent reasonably
29 possible.” There is nothing here that defines this or provides a mechanism for

1 documenting or memorializing “pre-construction position” so as to minimize
2 costly legal battles or wasted Landowner time attempting to recreate the soil
3 condition on their fields or pasture. Such unilateral powers would negatively affect
4 Landowners property are not conducive to the protection of property rights or
5 economic interest.

6 **Q: What is the next concern you have with the Easement language?**

7 A: TransCanada maintains the unilateral right to abandon the pipeline and all
8 appurtenances thereto in place on, under, across, or through Nebraska land at any
9 time it chooses. There is no provision for Landowner compensation for such
10 abandonment nor any right for the Landowner to demand removal. Such unilateral
11 powers would negatively affect Landowners property are not conducive to the
12 protection of property rights or economic interest. As a lawyer I understand the
13 importance of terms, of the fine print of contracts, and there simply must be
14 language that requires TransCanada to pay for any leaks and damage and to
15 remove the pipeline when it is no longer used. They should have to pay dearly for
16 what they are doing. The possibility of contamination is too great to leave it in the
17 ground for our heirs to deal with.

18 **Q: What is the next concern you have with the Easement language?**

19 A: TransCanada has the power to unilaterally move or modify the location of any
20 Easement area whether permanent or temporary at their sole discretion.
21 Regardless, if Landowner has taken prior steps relative the their property in
22 preparation or planning of TransCanada’s taking of the initial easement area(s),
23 the language here does not require TransCanada to compensate the Landowner if
24 they decide to move the easement anywhere on Landowners property. Such
25 unilateral powers would negatively affect Landowners property are not conducive
26 to the protection of property rights or economic interests.

27 **Q: What is the next concern you have with the Easement language?**

28 A: The Easement requires that all of the burdens and restrictions upon Landowner to
29 transfer and be applicable to any future owner of the Land in question without the

1 ability of the future Landowner to modify or negotiation 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 anytime
6 to anyone. This also means that any buyer of the easement could do the same to a
7 third buyer and so on forever. There is no change of control or sale provision in
8 place to protect the Landowner or Nebraska or to provide compensation for such
9 change of control or ownership. It is not conducive to the protection of property
10 rights or economic interests to allow unilateral unrestricted sale of the Easement
11 thereby forcing upon the Landowner and our State a new unknown Easement
12 owner.

13 **Q: What is the next concern you have with the Easement language?**

14 A: There are many terms in the Easement that are either confusing or undefined terms
15 that are without context as to whether or not the Landowner would have any say
16 so in determining what these terms mean or if the evaluation is solely in
17 TransCanada's control. Some of these vague undefined terms are as follows:

- 18 i. "pipeline installation activities"
- 19 ii. "availability of labor and materials"
- 20 iii. "commercially reasonable costs and expenses"
- 21 iv. "reasonably anticipated and foreseeable costs and expenses"
- 22 v. "yield loss damages"
- 23 vi. "diminution in the value of the property"
- 24 vii. "substantially same condition"
- 25 viii. "an actual or potential hazard"
- 26 ix. "efficient"
- 27 x. "convenient"
- 28 xi. "endangered"
- 29 xii. "obstructed"

- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada’s proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline’s impact upon you or the land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

1 **Q: As the farmer of the land in question and as the person who knows it better**
2 **than anyone else, do you believe that TransCanada offered a just, or fair,**
3 **compensation for all of what they proposed to take so that their tar sands**
4 **pipeline could be located across the property?**

5 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
6 offer for all the potential impacts and effects and the rights that are being given up,
7 and what will be prevented from doing in the future and how their pipeline would
8 impact the property forever and ever.

9 **Q: Has TransCanada at any time offered annual compensation, such as wind**
10 **farm projects do, for the existence of their potential tar sands pipeline across**
11 **the property.**

12 A: No, never.

13 **Q: Has TransCanada ever contacted you and specifically asked you if you**
14 **thought their proposed location of their proposed pipeline across the land was**
15 **in your best interest?**

16 A: No, they have not.

17 **Q: Has TransCanada ever contacted you and specifically asked you if you**
18 **thought their proposed location of their proposed pipeline across the land was**
19 **in the public interest of the State of Nebraska?**

20 A: No, they have not.

21 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
22 **Takings Clause?**

23 A: Yes, I am.

24 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
25 **an American citizens property?**

26 A: My understanding is that, according to the United States Constitution, that if the
27 government is going to take land for public use, then in that case, or by taking for
28 public use, it can only occur if the private land owner is compensated justly, or
29 fairly.

1 **Q: Has TransCanada ever contacted you specially to explain the way in which**
2 **the public could use its proposed Keystone XL Pipeline?**

3 A: No, they have not.

4 **Q: Can you think of any way in which the public, that is the citizens of the State**
5 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
6 **Pipeline, as it dissects the State of Nebraska?**

7 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
8 public benefits from this pipeline in any way, how they can use it any way, or how
9 it's in the public interest in any way. By looking at the map, it is quite clear to me
10 that the only reason it's proposed to come through Nebraska, is that because we
11 are geographically in the way from between where the privately-owned Tar Sands
12 are located to where TransCanada wants to ship the Tar Sands to refineries in
13 Houston, Texas.

14 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
15 **crude petroleum, or oil and petroleum by-products that you would like to**
16 **ship in its pipeline?**

17 A: No, it has not.

18 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
19 **products that you, at this time or any time in the future, would desire to place**
20 **for transport within the proposed TransCanada Keystone XL Pipeline?**

21 A: No, I do not.

22 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
23 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
24 **products within the proposed TransCanada Keystone XL Pipeline?**

25 A: No, I do not. I've never heard of such a person or company like that.

26 **Q: Have you at any time ever employed any person other than yourself?**

27 A: Well, yes I have.

28 **Q: Do you believe that the fact that you have, at some point in your life,**
29 **employed one or more other persons entitle you to any special treatment or**

1 **consideration above and beyond any other Nebraskan that has also employed**
2 **one or more persons?**

3 A: No, of course not.

4 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
5 **have at one point employed another person within this state, entitles you to**
6 **preferential treatment or consideration of any kind?**

7 A: No, of course not. If I choose to employ someone that decision is up to me. I
8 don't deserve any special treatment or consideration for that fact.

9 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
10 **crude oil pipeline in its preferred location, or ultimate location across the**
11 **state of Nebraska?**

12 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
13 or even bullied around and being made to feel scared that they did not have any
14 options but to sign whatever papers TransCanada told them they had to. I am
15 aware of folks being threatened that their land would be taken if they didn't follow
16 what TransCanada was saying. I am aware of tactics to get people to sign
17 easements that I don't believe have any place in Nebraska or anywhere such as
18 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
19 landowners and convince them they should sign TransCanada's easement
20 agreements. I am aware of older folks and widows or widowers feeling they had
21 no choice but to sign TransCanada's Easement and they didn't know they could
22 fight or stand up for themselves. From a more practical standpoint, I am worried
23 that according to their answer to Interrogatory No. 211, TransCanada only owns
24 and operates one (1) major oil pipeline. They simply do not have the experience
25 with this type of pipeline and that scares me. There are others but that is what I can
26 recollect at this time and if I remember more or my recollection is refreshed I will
27 share those with the Commissioners at the Hearing in August.

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 the 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 the property in
7 regards to the pipeline.

8 **Q: Do you think such a restriction would have economic impacts?**

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 used as of this moment,
12 and having the restrictions and limiting my ability to develop the land in certain
13 ways presents a huge negative economic impact on myself, my family, and any
14 potential future farmer or owner of the property. Fifty years ago it would have
15 been hard to imagine all the advances that we have now or how things change.
16 Because the Easement is forever and TransCanada gets the rights in the land
17 forever we have to think with a very long term view. By placing their pipeline on
18 under across and through the land that prevents future development which greatly
19 negatively impacts future taxes and tax revenue that could have been generated by
20 the County and State but now will not. When you look at the short blip of
21 economic activity that the two years of temporary construction efforts may bring,
22 that is far outweighed by the perpetual and forever loss of opportunity and
23 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: I am concerned that any construction, operation, and/or maintenance of the
29 proposed Keystone XL Pipeline would have a detrimental impact upon the

environment of the land specifically, as well as the lands near this land and surrounding the proposed pipeline route.

Q: Do you have any other environmental concerns?

A: Yes, of course I am concerned about potential breaches of the pipeline, failures in construction and/or maintenance and operation. I am concerned about spills and leaks that TransCanada has had in the past and will have in the future. This could be catastrophic to my operations or others and to my county and the State.

Q: Do you have any thoughts regarding if there would be an impact upon the natural resources on or near your property due to the proposed pipeline?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impacts upon the natural resources of the land, and the lands near and surrounding the proposed pipeline route.

Q: Do you have any worries about potential impacts from the proposed pipeline to the soil of the land in question, or land near you?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the soil of land, as well as land along and surrounding the proposed pipeline route. This includes, but is not limited to, the reasons that we discussed above of disturbing the soil composition and makeup as it has naturally existed for thousands and millions of years during the construction process, and any future maintenance or removal process. I'm gravely concerned about the fertility and the loss of economic ability of the property to grow the crops, or grow the grasses, or grow whatever it is at that time they exist on the property or that I may want to grow in the future, or that a future owner may want to grow. The land will never be the same from as it exists now undisturbed to after it is trenched up for the proposed pipeline.

Q: Do you have any concerns about the potential impact of the proposed pipeline upon the groundwater over the land, or surrounding lands?

1 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
2 the proposed Keystone XL Pipeline would have a detrimental impact upon the
3 groundwater of not only under the land, but also near and surrounding the pipeline
4 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
5 simple and it is simply too valuable to our State and the country to put at
6 unreasonable risk.

7 **Q: Do you have any concern about the potential impact of the proposed pipeline**
8 **upon the surface water on, or near or around the land?**

9 A: Yes, I have significant concerns that any construction, operation, and/or
10 maintenance of the proposed Keystone XL Pipeline would have detrimental
11 impact upon the surface water of not only within the property boundary, but along
12 and near and surrounding the pipeline route, and in fact, across the state of
13 Nebraska.

14 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
15 **upon the wildlife and plants, other than your growing crops on or near the**
16 **land?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 wildlife and the plants, not only that are located on or can be found upon the land,
20 but also near and along the proposed pipeline route.

21 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
22 **fair market value of the land?**

23 A: Yes, I do. I am significantly concerned about how the existence of the proposed
24 pipeline underneath and across and through the property will negatively affect the
25 fair market value at any point in the future, especially at that point in which
26 someone in my family would need to sell the property. I do not believe, and
27 certainly would not be willing to pay, the same price for land that had the pipeline
28 located on it, versus land that did not. There are just too many risks, unknowns,
29 impacts and uncertainties, not to mention all of the rights you give up by the

1 nature of having the pipeline due to having the easement that we have previously
2 discussed, for any reasonable person to think that the existence of the pipeline
3 would not negatively affect the property's value.

4 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
5 **Application, and as found on Attachment No. 4, here to your testimony, is in**
6 **the public interest of Nebraska?**

7 A: No, I do not.

8 **Q: Do you believe that the Keystone mainline alternative route as shown on**
9 **Attachment No. 4 included with your testimony here is a major oil pipeline**
10 **route that 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 the 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 the 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 the 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: Do you have any other concerns you would like to reiterate or can think of at**
26 **this time you would like the Commissioners to understand?**

27 A: Yes. I would never buy land with an oil pipeline running under it. You could
28 never have underground sprinklers or irrigation which may be the wave of the
29 future. We could never put a home on the land because we can't excavate so it

1 stops us from freely using the land as we might wish to in the future. My family
2 will be affected for many decades to come and in a manner that is not even
3 foreseeable at present. Dirty oil flowing under the land and the contamination of
4 the land by putting something completely unnatural under the soil and then having
5 it placed right above the valuable and pristine Ogallala aquifer decreases the value
6 of the land. It is my understanding that pipelines leak and leak without detection
7 many times. How will the Ogallala aquifer ever be cleaned up if there is a leak?

8 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
9 **like the Public Service Commissioners to consider in their review of**
10 **TransCanada's Application?**

11 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
12 document below but other things may come to me or my memory may be
13 refreshed and I will add and address those things at the time of the Hearing in
14 August and address any additional items at that time as is necessary. Additionally,
15 I have not had an adequate amount of time to receive and review all of
16 TransCanada's answers to our discovery and the discovery of others so it was
17 impossible to competently and completely react to that in my testimony here and I
18 reserve the right to also address anything related to discovery that has not yet
19 concluded as of the date I signed this document below. Lastly, certain documents
20 requested have not yet been produced by TransCanada and therefore I may have
21 additional thoughts on those I will also share at the hearing as needed.

22 **Q: What is it that you are requesting the Public Service Commissioners do in**
23 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
24 **across Nebraska?**

25 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
26 a temporary job spike that this project may bring to a few counties and beyond the
27 relatively small amount of taxes this proposed foreign pipeline would possibly
28 generate. And, instead think about the perpetual and forever impacts of this
29 pipeline as it would have on the landowners specifically, first and foremost, but

1 also thereby upon the entire state of Nebraska, and to determine that neither the
2 preferred route nor the Keystone mainline alternative route are in the public
3 interest of the citizens of the state of Nebraska. And if the Commissioners were
4 inclined to modify TransCanada's proposed routes and were to be inclined to grant
5 an application for a route in Nebraska, that the only potential route that would
6 make any intelligent sense whatsoever would be twinning or near paralleling of
7 the proposed KXL with the existing Keystone I pipeline. It simply does not make
8 sense to add yet another major oil pipeline crisscrossing our state creating new
9 pumping stations, creating new impacts on additional counties and communities
10 and going through all of the court processes with myself and other landowners like
11 me when this applicant already has relationships with the landowners, the towns
12 and the communities along Keystone I, and that Keystone I is firmly outside of the
13 sand hills and a significantly further portion away from the heart of the Ogallala
14 Aquifer than the preferred route or the Keystone mainline alternative route.

15 **Q: Are all of your statements in your testimony provided above true and**
16 **accurate as of the date you signed this document to the best of your**
17 **knowledge?**

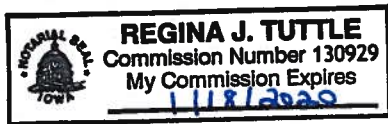
18 **A:** Yes, they are.

19 **Q: Thank you, I have no further questions at this time and reserve the right to**
20 **ask you additional questions at the August 2017 Hearing.**

Seth Davis, POA for Germaine G. Berry
Seth Davis, Power of Attorney for Germaine G. Berry

Subscribed and Sworn to me before this 6th day of June, 2017.

Regina J. Tuttle
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.



S.008
T.027N
R.007W

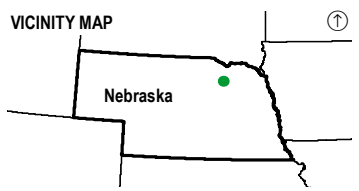
S.009
T.027N
R.007W

S.016
T.027N
R.007W

Germaine G. Berry

S.017
T.027N
R.007W

IMAGERY: NAIP 2016



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Germaine G. Berry

TRACT NO. ML-NE-AT-30165.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 017
TOWNSHIP: 027N
RANGE: 007W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Access Road (Temp.)
- Property Line
- Section Line

May 2017 - X:\Drawings\55838\KEYSTONE_XL\55002_9999326.dwg

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-AT-30165.000

**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**") **Germaine 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 159.62 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NE1/4 of Section 17, Township 27 North, Range 7 West of the 6th P.M., as recorded in Book 104, Page 59 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):

Germaine G. Berry

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20____

By **Germaine G. Berry**

Notary Public Signature

Affix Seal Here

LEGEND
 R
 S
 PROP.
 P.E.R.W.
 D.R.A.C.N.

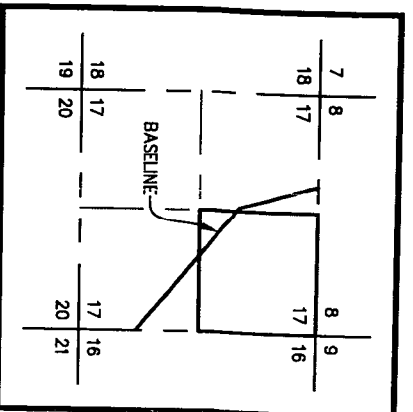
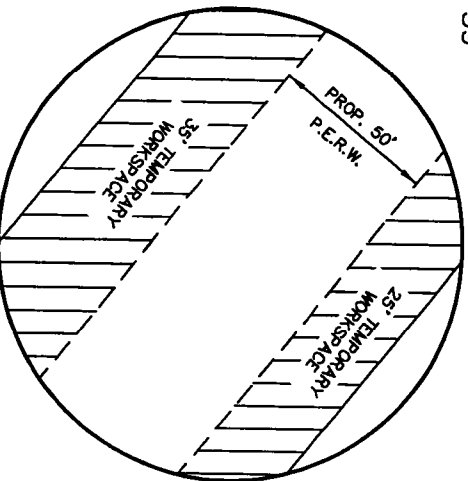
PROPERTY LINE
 SECTION LINE
 PROPOSED
 PERMANENT EASEMENT & RIGHT OF WAY
 DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA

T-27-N, R-7-W, SECTION 17
 ML-NE-AT-30165.000

ANTELOPE COUNTY, NEBRASKA

BERRY, GERMAINE G
 VOLUME 104, PAGE 59
 D.R.A.C.N.

SECTION 8
 SECTION 17




SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:
 NE 1/4 OF SECTION 17,
 T-27-N, R-7-W

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM
 STANDARDS FOR PROPERTY BOUNDARY SURVEYS.
 IT WAS NOT DERIVED FROM AN ON THE GROUND
 SURVEY BUT IS INTENDED FOR RIGHT OF WAY
 PURPOSES ONLY. THE EXACT LOCATIONS AND
 MEASUREMENTS ARE APPROXIMATE AND MAY
 VARY, BUT THE WIDTH OF THE EASEMENT AREA
 TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 1.314'±
 AREA OF PERMANENT EASEMENT: 1.5 ACRES
 AREA OF TEMPORARY WORKSPACE: 1.8 ACRES

	
In business to deliver	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
BERRY, GERMAINE G	
ML-NE-AT-30165.000	
PROJECT:	EXHIBIT A
XL	
APPROVED BY	DRAWING NUMBER
SLR	XL-08-ML-SK-3407
NO.	REVISION
	DATE
SCALE	DATE
1" = 500'	11/03/14
	PB
	ALS
	CHECKED BY

exp.
 The new identity of TransCanada

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.

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Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 4



VICINITY MAP



LEGEND

- PREFERRED ROUTE
- SANDHILLS ALTERNATIVE ROUTE
- KEYSTONE MAINLINE ALTERNATIVE ROUTE
- KEYSTONE MAINLINE (PHASE I)
- KEYSTONE CUSHING EXTENSION (PHASE II)
- WATERBODY
- STATE BOUNDARY
- COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO
ALTERNATIVE ROUTES

