

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
Susan Dunavan in Support of
Landowner Intervenors

State of Nebraska)
) ss.
York County)

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

2 A: My name is Susan Dunavan.

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 York 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: William Dunavan.

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

2 A: Yes, five.

3 **Q: Do you have grandchildren?**

4 A: Yes, nine living and two that have passed away.

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

7 A. Yes.

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

11 A: When we purchased our land in 1979 the previous owner requested that the land
12 be kept as pastureland and not be farmed. We were very willing to make this
13 promise as that was our intention all along...to keep the property as pastureland
14 and to increase the varieties of native grasses, flowers, and forbes. This land has
15 become our heritage over the years and is one of the last stands of native prairie in
16 York County. We paid on this land for 30 years, working overtime and our
17 American Dream is now gone. This land is where our children were raised and
18 where our grandchildren come and run and explore. To us this land is priceless.
19 There is an intermittent stream that runs through our property as well as about 6
20 acres of woods. The combination of prairie, stream bed and small forest makes for
21 an immense diversity of plant and animal life. There have been new discoveries in
22 every season over the past 38 years and we hope our family's hard work and love
23 of the land will not be torn apart.

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

25 A: My husband and I own a crop consulting business called Nebraska Crop and Soil
26 Systems. We started the business in 1978 and currently consult with
27 approximately 30 farms in a 45 mile radius of York, Nebraska. My husband is the
28 President and consultant and I am the Secretary, Treasurer, and Chief Investigator
29 for all background work that needs to be done in running a business.

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

2 A: Yes.

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

5 A: Yes.

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

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

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 my 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 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 the their property in
28 preparation or planning of TransCanada's taking of the initial easement area(s),
29 the language here does not require TransCanada to compensate the Landowner if

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

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

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

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

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

- 1 vii. “substantially same condition”
- 2 viii. “an actual or potential hazard”
- 3 ix. “efficient”
- 4 x. “convenient”
- 5 xi. “endangered”
- 6 xii. “obstructed”
- 7 xiii. “injured”
- 8 xiv. “interfered with”
- 9 xv. “impaired”
- 10 xvi. “suitable crossings”
- 11 xvii. “where rock is encountered”
- 12 xviii. “as nearly as practicable”
- 13 xix. “pre-construction position”
- 14 xx. “pre-construction grade”
- 15 xxi. “various engineering factors”

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

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

28 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
29 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.

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

29 A: Yes, it is.

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

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

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

9 A: No, I did not.

10 **Q: Why not?**

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

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

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

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

27 A: No, they have not.

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

4 A: No, they have not.

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

7 A: Yes, I am.

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

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

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

16 A: No, they have not.

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

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

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

1 A: No, it has not.

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

5 A: No, I do not.

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

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

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

12 A: Yes, I do.

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

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

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

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

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

23 A: No, of course not.

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

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

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

2 A: Well, yes I have.

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

7 A: No, of course not.

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

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

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

23 A: I have included this answer in my attached documents.

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. A 2½%

1 detection level for spills is inadequate-a ridiculous safeguard for a pipeline of this
2 magnitude. More concerns are in my attached documents.

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

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

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

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

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

25 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
26 the proposed Keystone XL Pipeline would have a detrimental impact upon the
27 groundwater of not only under my land, but also near and surrounding the pipeline
28 route, and in fact, potentially the entire State of Nebraska. Water is life plain and

1 simple and it is simply too valuable to our State and the country to put at
2 unreasonable risk.

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

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

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

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

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

19 A: Yes, I do. I am significantly concerned about how the existence of the proposed
20 pipeline underneath and across and through my property will negatively affect the
21 fair market value at any point in the future, especially at that point in which I
22 would need to sell the property, or someone in my family would need to sell the
23 property. I do not believe, and certainly would not be willing to pay, the same
24 price for land that had the pipeline located on it, versus land that did not. I hope
25 there is never a point where I'm in a position where I have to sell and have to
26 realize as much value as I can out of my land. But because it is my single largest
27 asset, I'm gravely concerned that the existence of the proposed Keystone XL
28 Pipeline upon my land will affect a buyer's willingness to pay as much as they
29 would've paid and as much as I could've received, if the pipeline were not upon

1 my property. There are just too many risks, unknowns, impacts and uncertainties,
2 not to mention all of the rights you give up by the nature of having the pipeline
3 due to having the easement that we have previously discussed, for any reasonable
4 person to think that the existence of the pipeline would not negatively affect my
5 property's value.

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

8 A: Yes, I have.

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

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

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

17 A: No, I do not.

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

21 A: No, I do not.

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

25 A: No, I do not.

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

29 A: No, I do not.

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

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

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

16 A: First of all, not all jobs are created equally. Most jobs that are created, whether
17 temporary or on a permanent basis, don’t come with a project that has all the
18 potential and foreseeable negative impacts, many of which we have discussed here
19 and other witnesses throughout the course of this hearing have and will discuss. If
20 I decide to hire and employ someone to help me out in my farming or ranching
21 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
22 to my land or my town or my county or my state. And I’ve hired someone who is
23 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
24 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
25 jobs are not created equal. Additionally, I understand from what I’m familiar with
26 from TransCanada’s own statements that the jobs numbers they originally touted
27 were determined to be a minute fraction of the permanent jobs that had been
28 projected. According to their answer to our Interrogatory No. 191, TransCanada
29 has created only thirty-four (34) jobs within Nebraska working specifically on

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

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

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

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

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

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

18 A: I don't believe there is an intelligent route because as I have stated I don't believe
19 this project anywhere within Nebraska is within the public interest. Both the
20 preferred route and the mainline alternative routes are economic liabilities our
21 state cannot risk.

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

25 A: No, I have not. I have shared that which I can think of as of the date I signed this
26 document below but other things may come to me or my memory may be
27 refreshed and I will add and address those things at the time of the Hearing in
28 August and address any additional items at that time as is necessary. Additionally,
29 I have not had an adequate amount of time to receive and review all of

1 TransCanada's answers to our discovery and the discovery of others so it was
2 impossible to competently and completely react to that in my testimony here and I
3 reserve the right to also address anything related to discovery that has not yet
4 concluded as of the date I signed this document below. Lastly, certain documents
5 requested have not yet been produced by TransCanada and therefore I may have
6 additional thoughts on those I will also share at the hearing as needed.

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

10 A: I am respectfully and humbly requesting that the Commissioners think far beyond
11 a temporary job spike that this project may bring to a few counties and beyond the
12 relatively small amount of taxes this proposed foreign pipeline would possibly
13 generate. And, instead think about the perpetual and forever impacts of this
14 pipeline as it would have on the landowners specifically, first and foremost, but
15 also thereby upon the entire state of Nebraska, and to determine that neither the
16 preferred route nor the Keystone mainline alternative route are in the public
17 interest of the citizens of the state of Nebraska.

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

21 A: Yes.

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

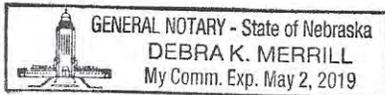
25 A: Yes, they are.

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

Susan Dunavan
Susan Dunavan

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

Debra K. Merrill
Notary Public



Attachment No. 1



S.006
T.009N
R.002W

Susan C. Dunavan
William F. Dunavan

S.007
T.009N
R.002W

IMAGERY: NAIP 2016

0 250 500 Feet



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Susan C. Dunavan
William F. Dunavan

TRACT NO. ML-NE-YK-00600.000
STATE: Nebraska
COUNTY: York
SECTION: 006
TOWNSHIP: 009N
RANGE: 002W

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

Attachment No. 2

The Dunavan Family
Bill, Susan, Sr. Fidelis, Fr. Tom,
Jesse, Jennie, Isaac, Levi, James, Matthew,
Sr. Agnes, Elizabeth, Tommy, Timmy,
Olivia, Daniel, Francis, Theo



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-YK-00600.000

**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**"), **William F. Dunavan and Susan C. Dunavan, husband and wife, as joint tenants**, whose mailing address is 1312 Road 6, York, NE 68467 (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 York, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 80 acres, more or less, situated in the County of York, in the State of Nebraska, being further described as two tracts of land situated in the W1/2 of the SE1/4 of Section 6, T9N, R2W of the 6th P.M., as recorded in Book 169, Page 137 and Book 167, Page 342 in the Deed Records of York 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):

William F. Dunavan

Susan C. Dunavan

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **William F. Dunavan**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

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

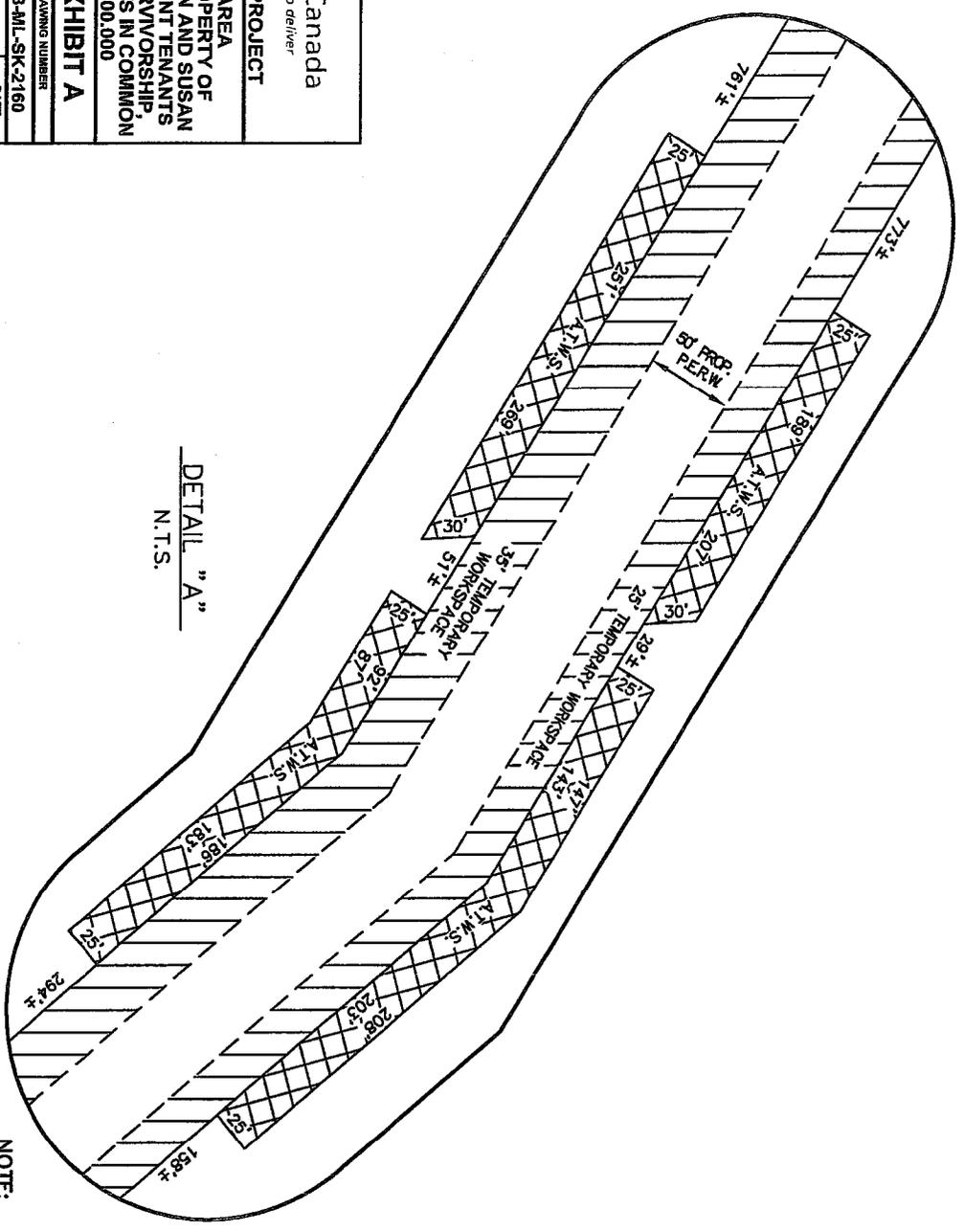
By **Susan C. Dunavan**

Notary Public Signature

Affix Seal Here

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

YORK COUNTY, NEBRASKA
 T-9-N, R-2-W, SECTION 6
 ML-NE-YK-00600.000



DETAIL "A"
 N.T.S.



KEYSTONE XL PROJECT

EASEMENT AREA ACROSS THE PROPERTY OF WILLIAM F. DUNAVAN AND SUSAN C. DUNAVAN, AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP, AND NOT AS TENANTS IN COMMON ML-NE-YK-00600.000

EXHIBIT A

PROJECT:	XL		
APPROVED BY:	DRAWING NUMBER		
SLR	XL-08-ML-SK-2160		
NO.	REVISION		
	DATE		
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/27/14	PB	ALS



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

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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

CASE NO. _____

COMPLAINT

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

PARTIES

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM: NEGLIGENCE

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

SECOND CLAIM: TRESPASS

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

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

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-YK-00600.000

We, William F. Dunavan and Susan C. Dunavan, of York County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Two Hundred Twenty-two Dollars and No Cents (\$1,222.00), 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 York, State of Nebraska:

W/2 SE/4

Section 6, Township 9N, Range 2W

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

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

_____, 20_____.

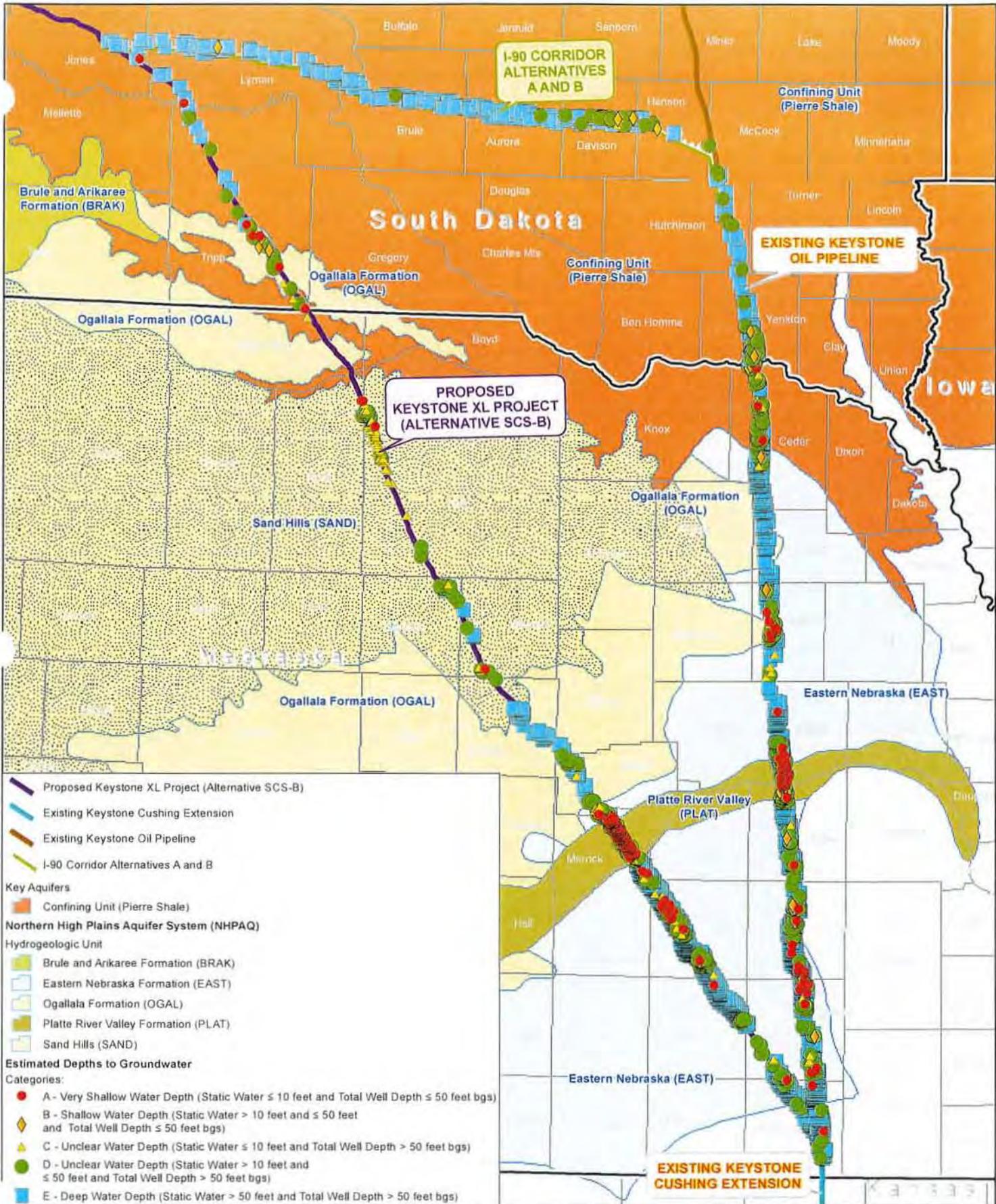
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



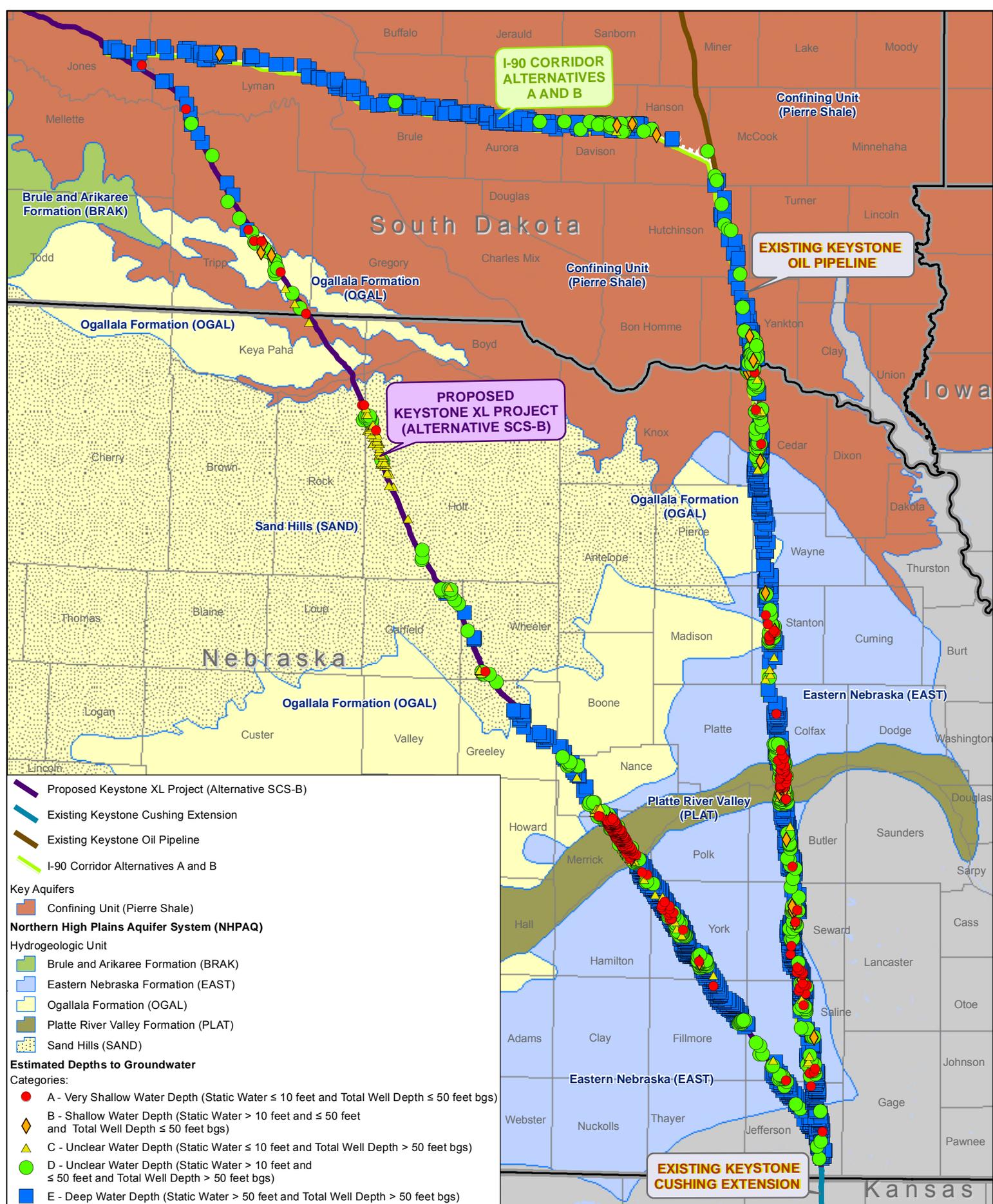
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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



KEYSTONE XL PROJECT

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



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

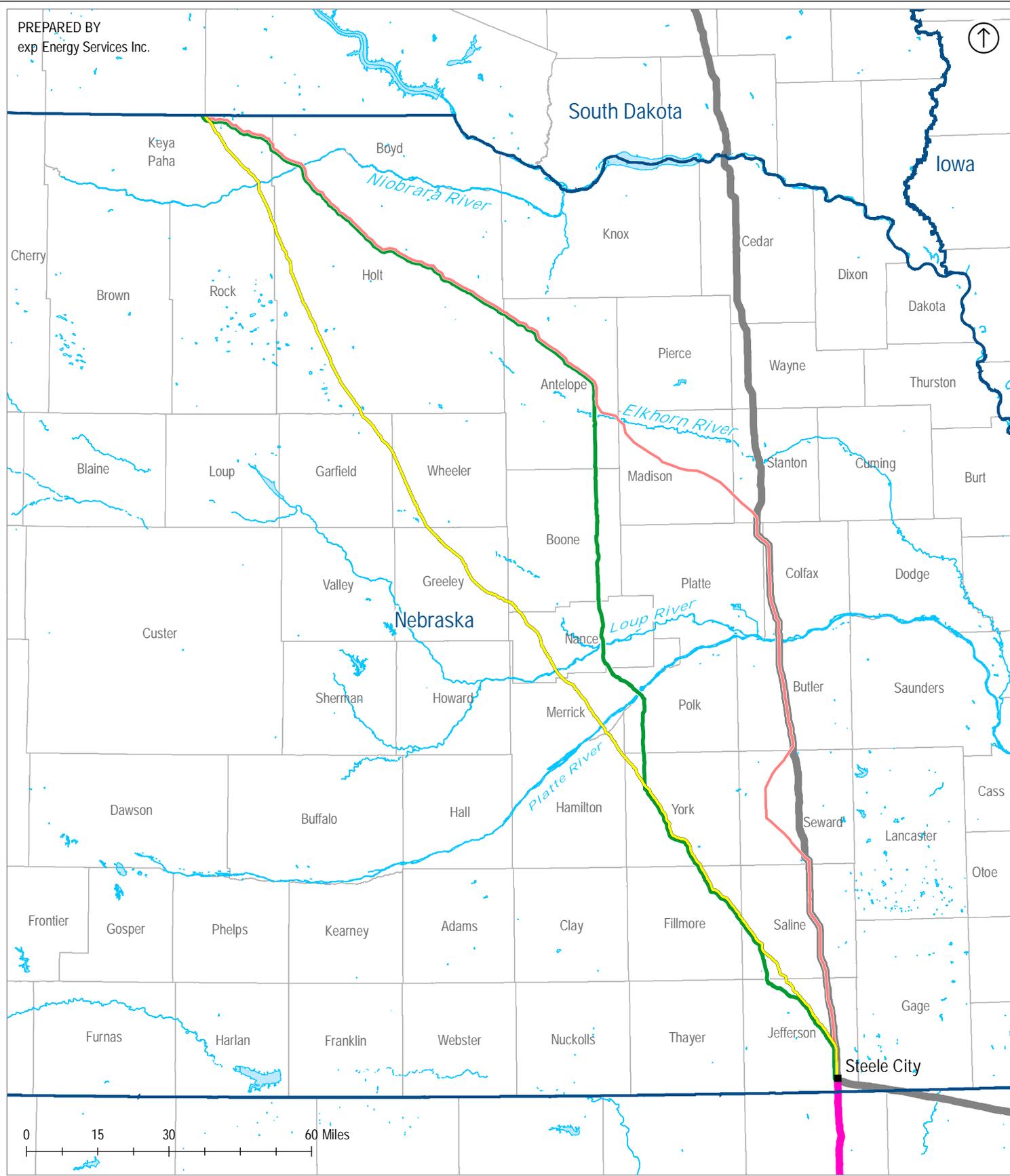
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

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

Attachment No. 7



LEGEND

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

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Attachment No. 8

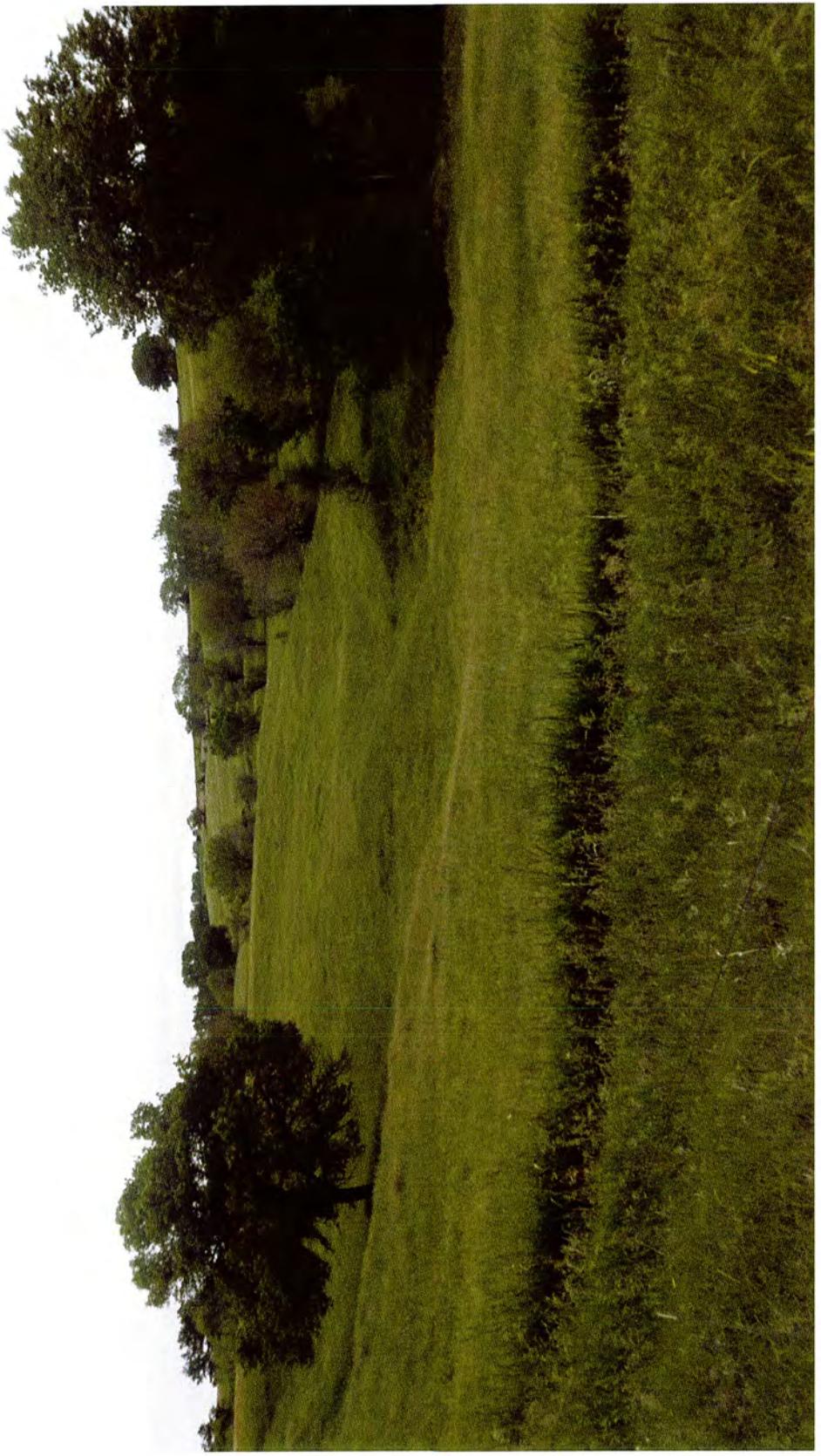
Attachment 8.1

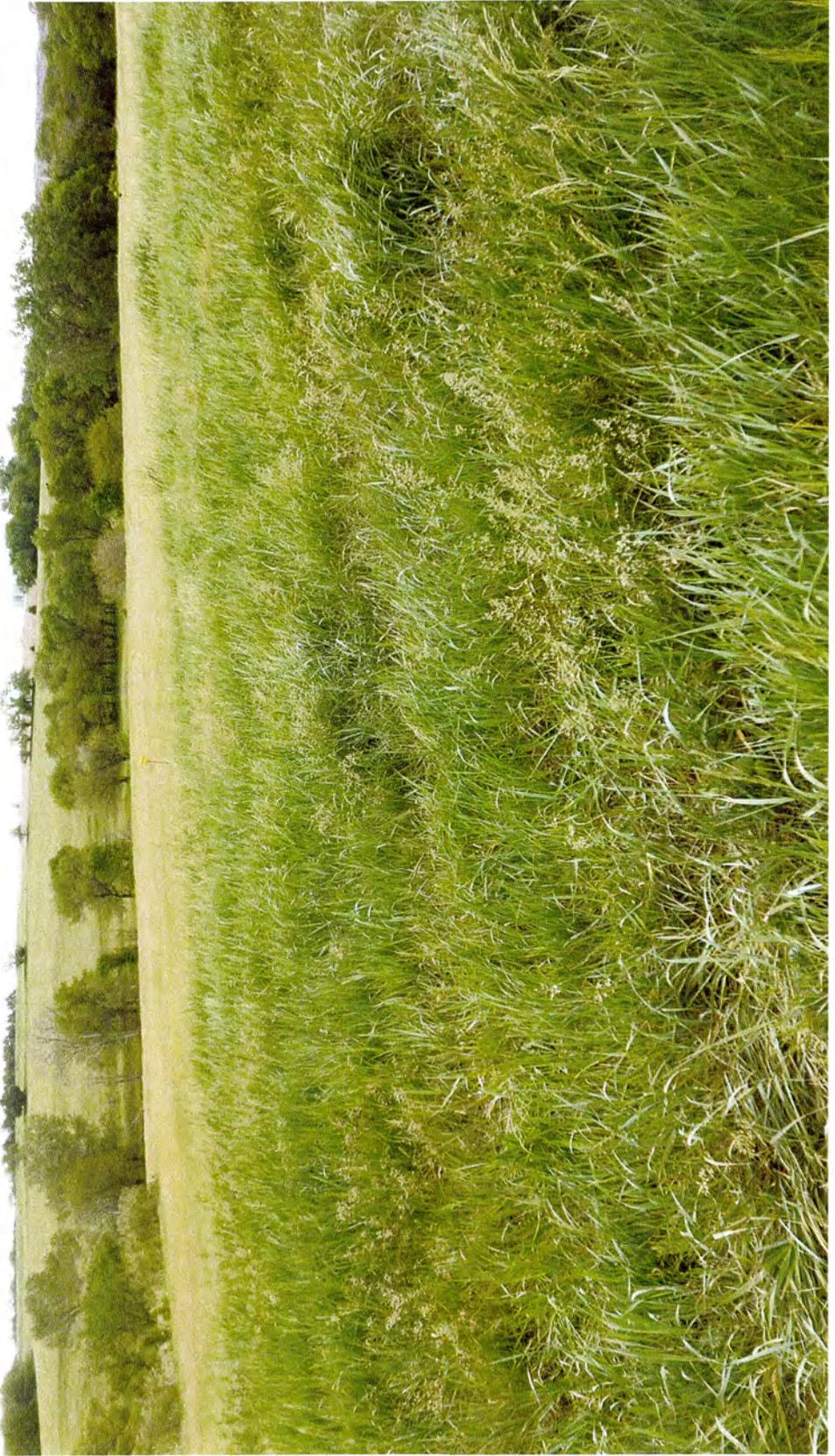
Prairie Plants

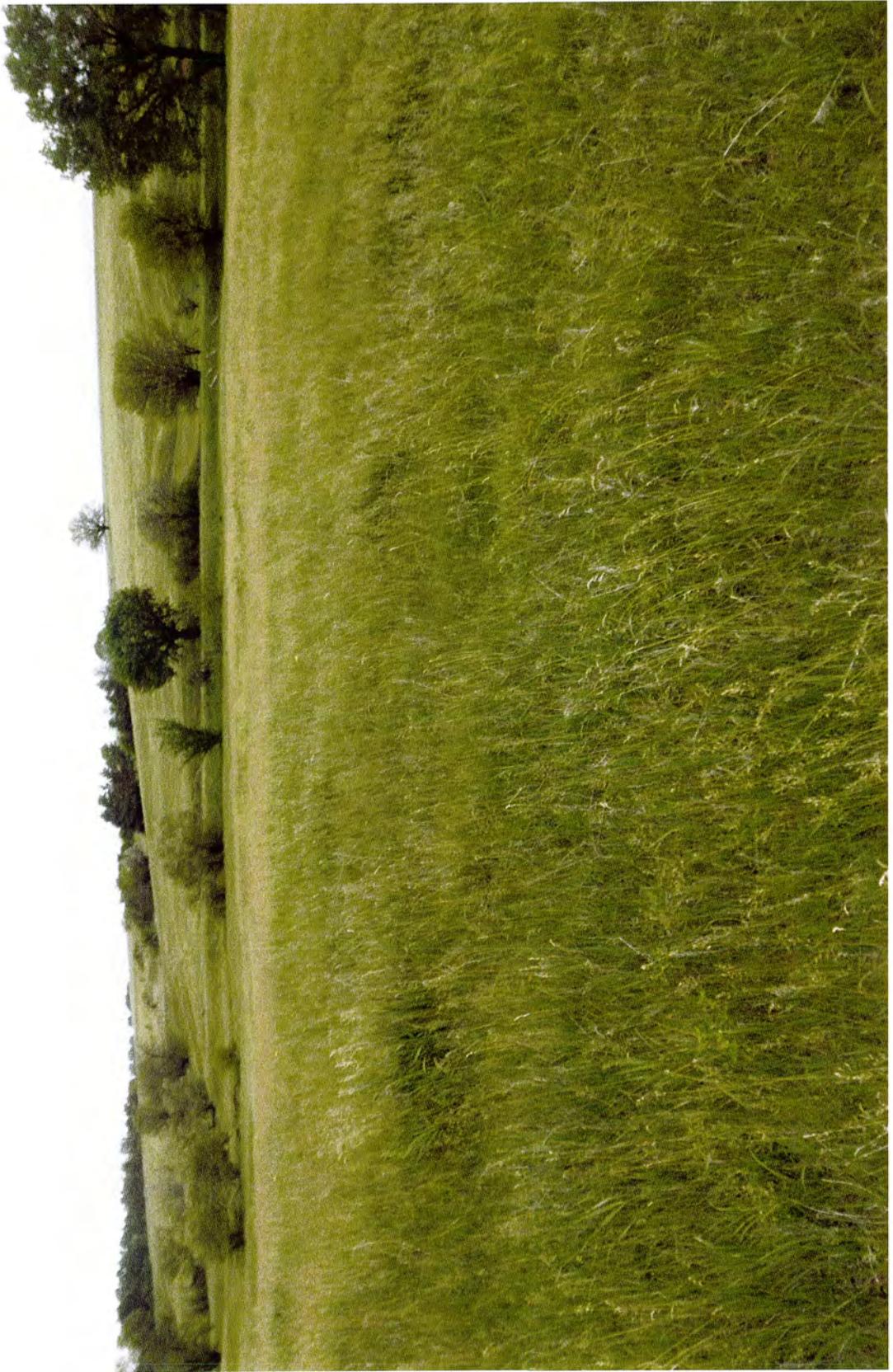


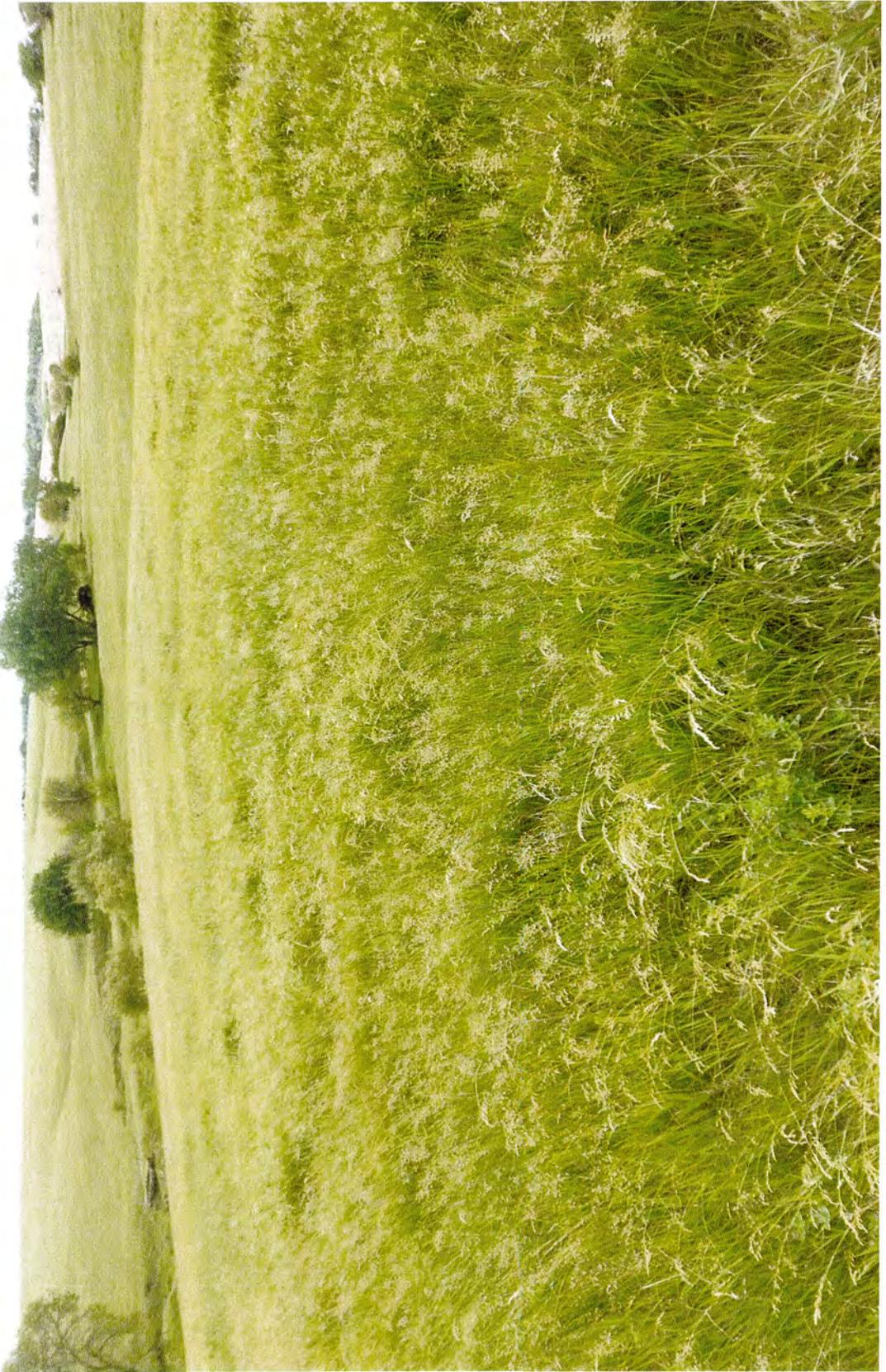


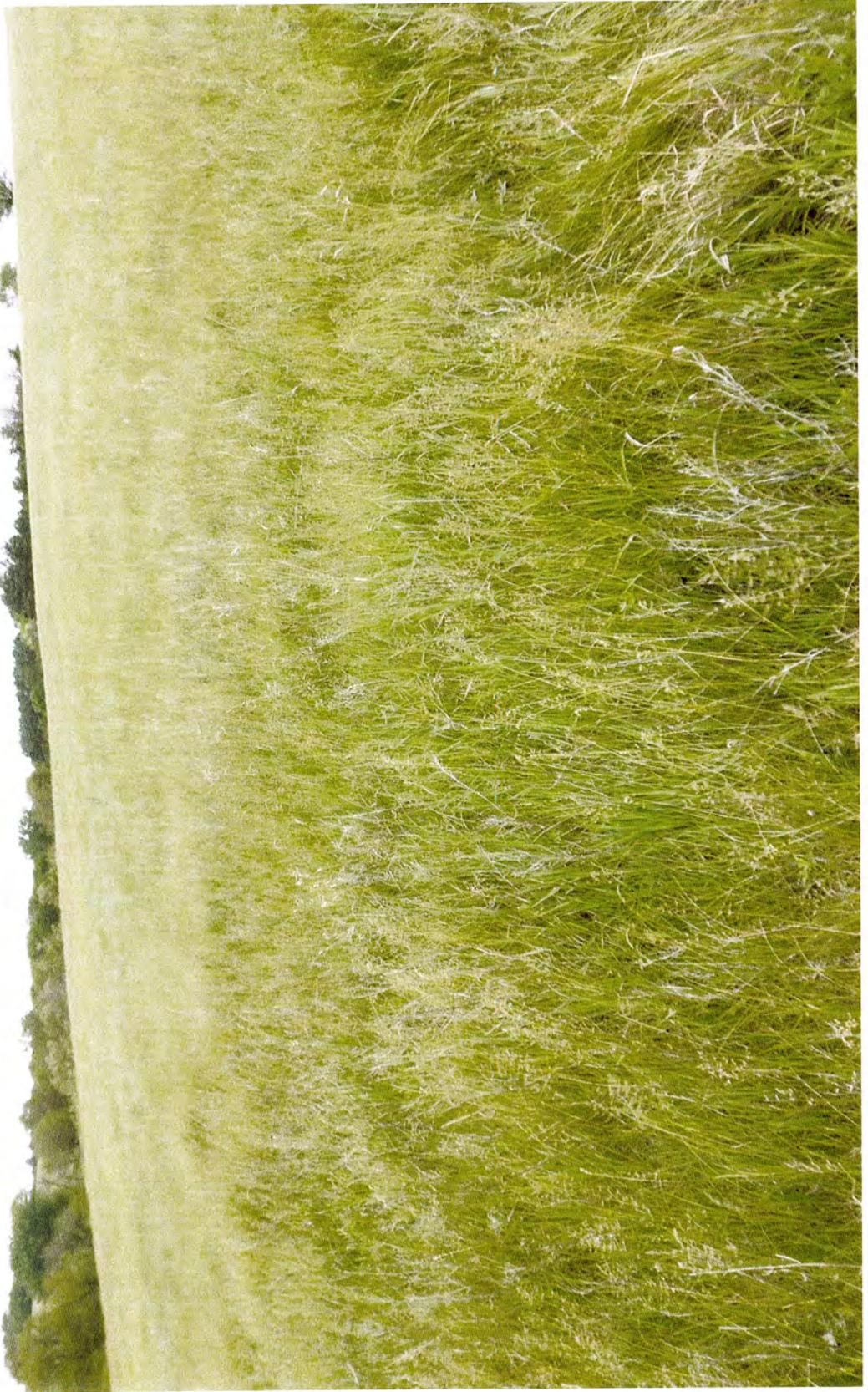












Attachment 8.2

NEGATIVE IMPACTS OF KEYSTONE XL ON THE PROPERTY OF BILL AND SUSAN DUNAVAN

W ½ SE ¼ 6-9-2 YORK COUNTY, NEBRASKA

1. **DESTRUCTION OF NATIVE PRAIRIE:** We have some of the last surviving Native Prairie in York County, Nebraska. When we called the County Assessor years ago at the start of the Keystone XL controversy and asked how much native prairie there was in York County, we were told they did not know there was any. In the Draft Environmental Impact Statement 3.5.2.1 it states, "Native grasslands or prairies are among the most threatened native vegetation communities in the United States". TransCanada's brochures promised to "**RESTORE**" lands impacted by this project. Our easements and the EIS mention the terms "**RESEED, REVEGETATE, RESESTABLISH and RECLAIM** interchangeably. None of these terms define "**RESTORE**". We have over 15 species grass and over 90 species of flowers, forbs and herbs. The EIS Construction/Reclamation Plan for Tall Grass Prairie lists only 6 varieties of grass that will be provided. **This is NOT RESTORATION.** Also the Draft Report for the Nebraska Department of Environmental Quality mentions that "Less than 2% of seed was available or could be obtained in the future from local ecotypes...without availability of local ecotype seed, restoration would be extremely difficult if not impossible".
2. **MANY WELLS NOT DOCUMENTED:** The Keystone Mapping Project has documented wells listed in the Environmental Impact Statement. Looking at the map we saw that our two wells were not identified and neither were our neighbor's wells. If this is the case along the proposed route, there must be innumerable wells that are not documented.
3. **DO WE REALLY CONTINUE TO OWN OUR PROPERTY?** TransCanada states that despite their easements, the property owners will still own their land and can continue to use it. In our case, the diagonal cutting through our property would allow TransCanada to control our land use. Our property has a perfect dam site that we have intended to utilize and we have been told that "Grantor shall not...construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization". This gives control of our entire property to a foreign corporation. An easement of 4-6 acres across takes away control of our entire 80 acre parcel. There shall be no water conservation dam, nor a modern underground cattle watering system, etc.
4. **WHAT WILL BE THE USE OF THE PIPELINE AFTER THE "OIL"?** With oil at or below \$50.00 a barrel and the cost of tar sands extraction needing to be \$80.00 or above to even break even, what is the real motive of this pipeline going over the aquifer? During a Natural Resources Committee hearing on February 9, 2011, Jim Krause, operations director for TransCanada stated "if the pipeline is not needed for oil somewhere down the road and there is no other use for any other product...or maybe by that time in the future, water".
5. **INSURANCE:** Purchasing a \$20,000,000 liability policy annually by a landowner cannot be afforded without continual rents, royalties, percentages, residual payments, etc. The landowner is stuck with a one-time payment and a perpetual liability.

6. PERPETUAL EASEMENT: The easements offered by TransCanada are **FOREVER**. Even for a \pm 50 year project. This should never be allowed.
7. TAXES: The landowner must forever pay property tax on land taken by the easement.
8. SUBCONTRACTORS: All of TransCanada's work seems to be done by subcontractors. We have grave concerns over the supervision of these contractors. With everything being subcontracted, TransCanada does not need to be responsible, need to answer to anyone and there seem to be no penalties, consequences or fines if something is not done correctly.
9. LANDOWNER AGREEMENTS: All of the 7 easement offers we have had do not cover all of our concerns. TransCanada can promise us the world...they can promise they will follow the EIS and the 57 Special Conditions they have agreed to, but if these are not specifically outlined in our easements, there is no way they can actually be enforced and are nothing more than mere suggestions.
10. THREATS TO CONDEMN WITHOUT A PERMIT: Most people enjoy seeing FedEx come up their driveway...not anymore.
11. REALIZING THAT TRANSCANADA IS A FOREIGN (NON U.S.A.) OPERATION FROM BEGINNING TO END:

NEGATIVE IMPACTS OF KEYSTONE XL ON THE PROPERTY OF BILL AND SUSAN DUNAVAN

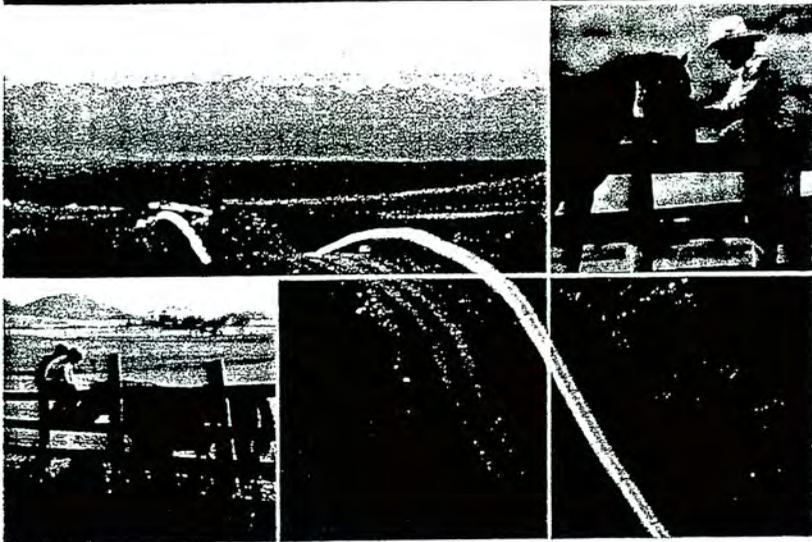
W1/2 se ¼ 6-9-2 YORK COUNTY NEBRASKA

EVIDENCE

1. DESTRUCTION OF NATIVE PRAIRIE:
 - a. TransCanada Brochure stating they will "restore" Prairie
 - b. Plant listing from our property
 - c. Trow Engineering stating they were hired for "Reclamation" survey, not "Restoration"
 - d. Photos of plants on our property can be made available
2. MANY WELLS NOT DOCUMENTED:
 - a. Nebraska Department of Natural Resources list of wells with GPS
 - b. Overlay from local platt book showing numerous residences all with wells, some with cattle windmills all left off report
 - c. Copy of map with DNR wells, made by "Keystone XL Mapping Project"
3. DO WE REALLY CONTINUE TO OWN OUR PROPERTY?:
 - a. Easement language prohibiting dam construction, digging, etc.
4. WHAT WILL BE THE USE OF THE PIPELINE AFTER THE "OIL"?:
 - a. Copy of Business Card of Jim Krause
 - b. Natural Resources Committee Hearing 2-9-2011 with statement of Krause
 - c. Reference to Beck Plan R.W. Beck and Assoc. 1967 for Missouri River Basin
5. INSURANCE:
 - a. No documentation other than current property liability policy. Need bid from Insurance Company for \$20 million policy
6. PERPETUAL EASEMENT:
 - a. See Easement language
7. TAXES:
8. SUBCONTRACTORS:
 - a. Business card of TransCanada spokesman Jeff Rauh.
 - b. Personal observation of Bill Dunavan and others that surveyor's vehicles were inscribed with "International Pegasus" on their doors.
9. LANDOWNER AGREEMENT:
 - a. See Easement (s) Language
 - b. Only terms written into easements can be enforced
10. THREATS TO CONDEMN WITHOUT A PERMIT:
 - a. Copy of Letter from TransCanada dated: 7-21-2010
 - b. Copy of Letter from TransCanada dated: 4-7-2011
 - c. Copy of Letter to Atty. General Bruning and Attorney General's Office Reply dated 8-12-10 and 9-30-10 respectively.
11. REALIZING TRANSCANADA IS A FOREIGN (NON U.S.A.) OPERATION FROM BEGINNING TO END:
 - a. Copy from front page of Lincoln Journal Star with photo of TransCanada explaining the destination of their KXL products 9-4-2011.
12. OTHER EVIDENCE:
 - a. "Cornhusker Economics" Newsletter 2-9-2011 Conclusion, " Considering the potential benefits and costs alluded to above, we do not support the project...supporters have yet to make a clear case that benefits to Nebraska would offset the costs and risks." Richard K. Perrin, Dr. Lilyan Fulginiti, Department of Agricultural Economics.
 - b. 30+ Binders full of well documented information at Susan Dunavan's Office.
 - c. Dunavan Family Photo

Attachment 8.3

What Landowners Can Expect



- We will negotiate in good faith for land rights needed for the Keystone XL project. Fair value will be paid for land rights.
- In more than 50 years of building and operating its pipeline system TransCanada has used eminent domain or right-of-entry procedures very sparingly. We are committed to extending that positive record.
- We will work cooperatively with individual landowners to identify and address issues of crop loss, construction impacts and plans to bring land back to an equivalent productivity capability.
- The Keystone XL Pipeline project will be designed, constructed, operated and maintained in a manner that minimizes impact on landowners and the environment.

Keystone XL Pipeline Project

We are committed to treating all landowners who may be affected by the Keystone XL Pipeline honestly, fairly and respectfully. We recognize that construction of a pipeline on or near land you own raises many questions; it is important that you understand what we are proposing and how you can participate in the process.

The preliminary Keystone XL Pipeline route is based on an analysis of land use, topography and environmental data. Refinements to the route have been – and will be – made based on feedback from landowners, communities and agencies reviewing the proposal, as well as our own detailed environmental and engineering analysis of the route. Even as Keystone XL acquires right-of-way for the pipeline, we will strive to understand and address landowner and community concerns.

Guiding Principles for Landowner Relations

- We seek to develop positive relationships with landowners through open communication, honesty, fairness and mutual respect.
- We plan to keep potentially impacted landowners informed of the project status on an ongoing basis throughout all phases of the project.

About Pipeline Easements:

- A right-of-way easement, negotiated in good faith between the landowner and the pipeline company, would grant Keystone XL the right to construct, operate, and maintain the pipeline. It specifies an easement width within which certain activities are restricted or prohibited, with the primary goal of keeping the pipeline safe. For example, while buildings and excavation are not allowed in the right-of-way, normal farming and cultivation practices are not restricted.
- Canada, the permanent right-of-way width for Keystone XL is generally 20 metres (66 feet) – 10 metres (32 feet) on either side of the pipeline. In addition to the permanent easement lands, temporary working space will be required for the construction phase of the project which will consist of generally 10 metres of additional space

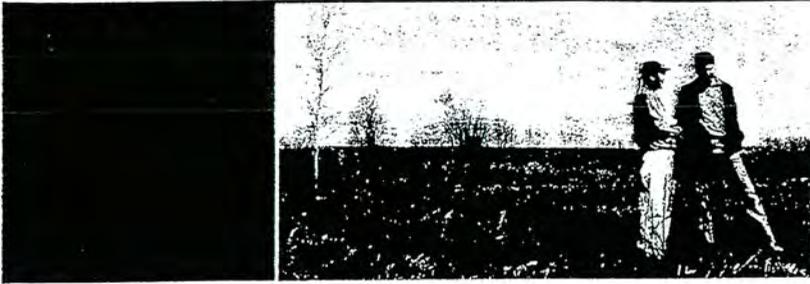
The proposed Keystone XL project is a partnership between TransCanada and ConocoPhillips.

ConocoPhillips

TransCanada
In business to deliver

1. Destruction of Native Prairie
 - a. TransCanada Brochure saying they will "restore" Prairie

What Landowners Can Expect



- In the US, the permanent right-of-way easements will be 50 feet (15 meters) wide, with an additional 60 feet (18 metres) of temporary workspace.
- In Canada and the U.S., additional temporary work space may also be required for road crossings and other unique construction features.
- Keystone XL will work with landowners on specific issues such as crop losses, timber, drainage and irrigation systems, wells, fences, equipment, improvements, and other potential construction impacts in order to return the land to full productivity.
- There are no restrictions for crossing the right-of-way with normal farming equipment. If it is necessary for unusually heavy equipment to cross the right-of-way or to excavate near the right-of-way, we request that the pipeline company be contacted in advance to ensure the safety of landowners, work crews and the pipeline itself.
- The easement document and rights run with the land and are not impacted by changes in land ownership.
- Keystone XL will reclaim disturbed land and return it to its equivalent productivity.
- Keystone XL will be responsible for any taxes assessed against the pipeline. Responsibility for property taxes remains with the landowner.
- It is important that landowners read easement agreements carefully and understand the information they contain.

Next Steps

- Keystone XL will seek to acquire rights from landowners to build, operate and maintain the pipeline, will compensate for construction losses and inconvenience and will restore the land impacted by construction activities.
- The Keystone XL pipeline is proposed to be buried with a minimum of 1.2 metres (4 feet of cover), except in site-specific areas, such as consolidated rock, in which case the pipeline will be buried with at least 0.9 metres (3 feet) of cover.

- Keystone XL is responsible for repair of drain tiles, irrigation, or other buried utilities if damaged during Keystone XL construction.
- Keystone XL will seek to minimize road impact and will be responsible for repair of all impacted roads after construction.

If at any time you have questions about the easement process, we encourage you to contact your local Keystone XL land agent or the Keystone XL Project Office.

Contact

For more information, please call our toll free project number (1.866.717.7473) or use our project-specific email address keystone@transcanada.com

Landowner Inquiries

Canada (toll free) 1.866.412.5263

U.S. (toll free) 1.866.585.7063

Alternatively, you can refer to our website at www.transcanada.com/keystone/kxl or write, attention to:

In Canada

TransCanada Keystone XL Project Team
450 – 1st Street S.W.
Calgary, Alberta
Canada T2P 5H1

In the U.S.

TransCanada Keystone XL Project Team
7505 NW Tiffany Springs Parkway
Northpointe Circle II Suite 400
Kansas City, MO 64153

The proposed Keystone XL project is a partnership between TransCanada and ConocoPhillips.



Attachment 8.4

1. Destruction of Native Prairie

b. Plant listing from our property

GRASSES

Big Bluestem	Creeping Foxtail	Little Bluestem	Switch Grass
Bluegrama	Eastern Gamma Grass	Prairie Cordgrass	Tall Dropseed
Blue Grass	Hairy Grama	Sand Lovegrass	Tall Wheat Grass
Brome Grass	Indian Grass	Sideoats Grama	Virginia Wildrye
Buffalo Grass	Intermediate Wheat Grass	Stink Grass	Western Wheat Grass

FLOWERS AND FORBS

Arrowhead	Ground Cherry	Prairie Coneflower	Umbrella Plant
Birdsfoot trefoil	Ground Plum	Prairie Dogbane	Venus Looking-Glass
Black Sampson	Hairy Vetch	Prairie Mallow	Vetch spp.
Blue Lettuce	Heath Aster	Prairie Phlox	Violet Sorrel
Blue-Eyed Grass	Hoary Vervain	Prairie ragwort	Virginia Creeper
Bull Thistle	Horsetails	Prairie Rose	Virginia Pepperweed
Catnip	Ironweed	Prairie Violets	Virginia Stonecrop
Cocklebur	Knotweed	Purple Coneflower	Water Hemlock
Common Milkweed	Lambsquarters	Purple Prairie Clover	Water Plantain
Louisaina Wormwood	Leadplant	Pussy Toes	Western Yarrow
Mapleleaf Goosefoot	Scouring Rush	Red Clover	White Clover
Milk Vetch	Sedges (many kinds)	White Vervain	White Prairie Clover
Curly Dock	Showy Partirdgepea	White-Eyed Grass	White Sweetclover
Curlycup Gumweed	Motherwort	Whorled Milkweed	Wild Four O'clock
Daisy Fleabane	Mullein	Silky Prairie Clover	Wild Grape
Dayflower	Narrow Leaf Puccoon	Silverleaf Scurf Pea	Wild Onion and Garlic
Dotted Gayfeather	Pale Dock	Slender Gerardia	Wild Rose
Dwarf Milkweed	Partridge Pea	Smartweed	Wild Strawberry
Evening Primrose	Pasque Flower	Snow on the Mountain	Wood Nettle
False Bonset	Pink Poppy Mallow	Spiderwort	Wooly Plantain
False Gromwell	Plains Coreopsis	St. John's Wort	Wooly Verbena
Plains Larkspur	Tall Nettle	Sunflower	Yellow Wood Sorrel
Plains Wild Indigo	Tall Thistle	Tall knotweed	
Goldenrod	Plantain	Yellow Goatsbeard	
Green Sagewort	Prairie Anemone	Yellow Sweet Clover	

Attachment 8.5



Trow Engineering Consultants Inc.

2700 Post Oak Blvd., Suite 400
Houston, Texas 77581

Telephone: (713) 693-6400
Facsimile: (713) 693-6498

June 16, 2010

Ms. Susan Dunavan
1312 Road 6
York, Nebraska 68467

Re: Surveys conducted for Keystone XL Pipeline Project on W ½ of the SE ¼ Section 6-9-2 York County, Nebraska

Dear Ms. Dunavan:

We received your request dated May 5, 2010 to obtain information about surveys associated with the Keystone XL Pipeline Project (Project) that have been conducted on your property. For your reference, please find enclosed a drawing showing the currently proposed pipeline route on your property (Figure 1).

Keystone proposes to construct and operate a crude oil pipeline and related facilities to transport Western Canadian Sedimentary Basin (WCSB) crude oil from an oil supply hub near Hardisty, Alberta, Canada to destinations in the south central United States, including an existing oil terminal in Cushing, Oklahoma and existing delivery points in the Port Arthur and east Houston areas of Texas.

Biological and cultural resource surveys are conducted for the proposed Keystone pipeline route and associated ancillary facilities to ensure compliance with all federal, state and local regulations. A 300 foot wide survey corridor, 150 feet on each side of the proposed pipeline route, was utilized during these surveys. Any proposed re-routes to the centerline that fall outside the 300 foot corridor are also surveyed.

Biological and cultural resource surveys were conducted on your land since the proposed pipeline is routed across your property (Figure 1). Biological surveys are conducted by trained professional biologists to identify wetlands, waterbodies, threatened and endangered species and their habitats and noxious weeds. Crews from AECOM completed a pedestrian biological survey on your property on May 21, 2008. A change in the proposed centerline resulted in a second survey on April 11, 2009. None of the aforementioned biological features were recorded during either field visit to your property.

Reclamation surveys were conducted by trained professional biologists and reclamation specialists to determine the type of vegetation present and develop reclamation plans. Crews from WESTECH Environmental Services, Inc. (WESTECH) completed a pedestrian reclamation survey on your property on September 19, 2009. Vegetation within the proposed right-of-way

1. Destruction of Native Prairie

- c. Trow Engineering stating they were hired for "Reclamation" not "Restoration"



was categorized as moderate to low quality tallgrass prairie that had been invaded by smooth brome and intermediate wheatgrass. The northwest corner of the property appeared to have been previously cultivated and reseeded. Cultivated land occurred to the east and west of the property. Trees were noted south of the centerline. Recorded species included: smooth brome (*Bromus inermis*), little bluestem (*Schizachyrium scoparium*), big bluestem (*Andropogon gerardii*), Indian grass (*Sorghastrum nutans*), switch grass (*Panicum virgatum*), intermediate wheatgrass (*Thinopyrum intermedium*), western wheatgrass (*Pascopyron smithii*), dandelion (*Taraxacum officianale*), vetch (*Vicia sp.*), pussy toes (*Antennaria sp.*), common burdock (*Arctium minus*), whorled milkweed (*Asclepias verticillata*), and common sunflower (*Helianthus annuus*). Other species undoubtedly occur on the property but were not recorded since the intention of the survey was to classify the site for reclamation purposes rather than complete a species inventory. The area was classified within the Tall Grasslands Construction/Reclamation Unit due to the presence of native grass species at the site (Attachment #1). Topsoil salvage depths were specified between 8 and 12 inches due to the relatively deep soils at the site. Problematic noxious weeds were not noted at the site although weedy species, such as dandelion and common burdock occur on or near the proposed right-of-way.

Additionally, aerial raptor surveys were conducted via helicopter over your property on April 7, 2009 by AECOM and April 13, 2010 by WESTECH. The 2009 search corridor was 0.25 miles wide on either side of the proposed pipeline centerline and 1 mile wide on either side of the centerline at major river crossings. The 2010 search corridor was expanded to 1 mile on either side of the centerline. No raptors or raptor nests were sighted on your property during the aerial surveys. Another aerial helicopter survey was conducted over your property on February 10, 2009 to identify bald eagle winter roost sites. The surveys covered an area at least 1 mile upstream and downstream of major waterbody crossings and within all suitable bald eagle nest and winter roost habitat. No bald or golden eagle winter roost sites or bald eagle nests were identified on your property.

Pedestrian cultural resource surveys were conducted on your property on May 20, 2008 and April 14, 2009 by crews from American Resources Group Ltd. Again, the re-route necessitated the second field visit. One historic site was recorded during the pedestrian survey, a railroad bed running north-south through your property. Site 25YK25 is a historic railroad bed of the Burlington Northern Railroad located on an upland ridge slope adjacent to an intermittent tributary of the West Fork Big Blue River. At the time of the cultural resource survey, the railroad bed was found in grass with zero ground surface visibility; no artifacts were recovered from the site. The railroad is illustrated on the 1924 and 1947 historic county atlases. The tracks have since been removed, but gravel and cinders were present. On the basis of archival documentation, the portion of the site recorded within the Project survey corridor does not appear to have the potential to yield additional information important to local or regional history. The site does not meet the National Register of Historic Places criteria of significance and was evaluated as ineligible for listing or nomination. No further archaeological investigation was recommended for the site and the Nebraska State Historical Society concurred with this recommendation in a letter addressed to Elizabeth Orlando of the United States Department of State on March 17, 2009. Please find enclosed a drawing showing this historic railroad and its proximity to the proposed Keystone pipeline route (Figure 2).



Please contact me at jonathan.minton@trow.com should you have further questions regarding the surveys conducted on your property or any questions about the proposed Project.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Minton".

Jonathan Minton

Enclosures

cc: Steve Craycroft (TransCanada)
Michael Schmaltz (TransCanada)
Suzanne Ban (ENTRIX)
Jon Schmidt (Trow)

Attachment 8.6

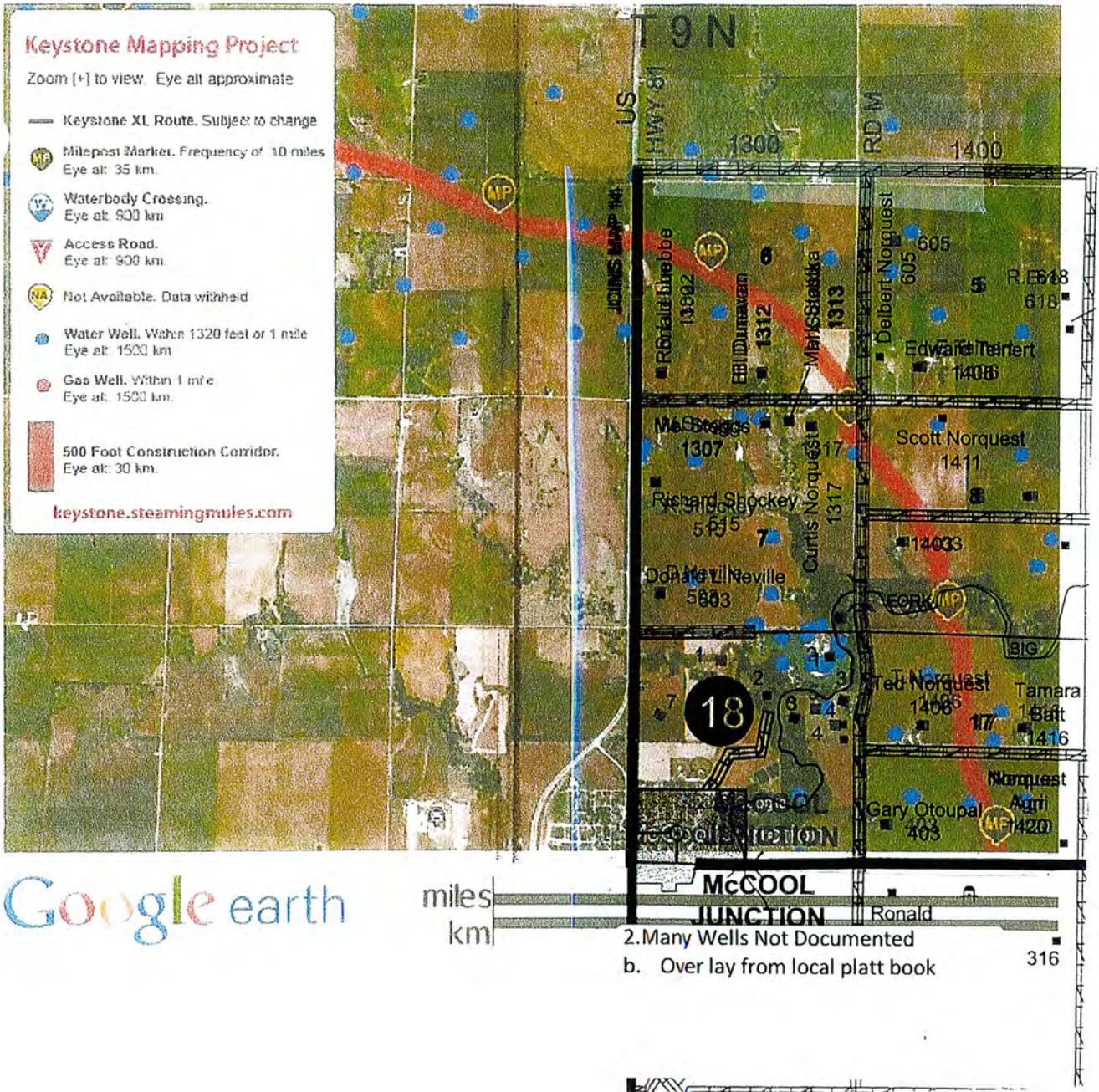
Available Water Well Data within One Mile of the Centerline in Nebraska					
Well ID	Total Well Depth (Feet)	Static Water Level (Feet)	Use	Latitude	Longitude
33685	78	4	Irrigation	40.298858	-97.128610
55201	85	4	Irrigation	40.302412	-97.165644
27339	94	4	Irrigation	40.302455	-97.156787
167639	100	4	Domestic	40.305444	-97.157083
37347	104	4	Irrigation	40.306886	-97.151301
152036	106	4	Irrigation	40.309528	-97.184639
111927	108	4	Irrigation	40.309665	-97.146575
36153	136	4	Irrigation	40.316823	-97.175042
31236	52	5	Irrigation	40.316745	-97.150734
111584	0	5	Irrigation	40.318676	-97.182170
152485	26	5	Domestic	40.320694	-97.170504
74892	31	5	Irrigation	40.324180	-97.194023
74893	32	5	Irrigation	40.324125	-97.184554
117460	34	5	Irrigation	40.324079	-97.176563
171179	35	5	Irrigation	40.327972	-97.203444
25153	36	5	Irrigation	40.329153	-97.156161
5826	36	5	Irrigation	40.331427	-97.194005
120967	38	5	Irrigation	40.331205	-97.170333
201131	40	5	Domestic	40.336000	-97.189639
68097	42	5	Irrigation	40.338831	-97.212793
189303	46	5	Irrigation	40.338694	-97.194111
150524	52	5	Irrigation	40.340173	-97.165520
125535	53	5	Domestic	40.340241	-97.166201
4507	64	5	Irrigation	40.342523	-97.168948
63338	64	5	Irrigation	40.344116	-97.196278
64323	64	5	Irrigation	40.345982	-97.203272
7765	65	5	Irrigation	40.347619	-97.178951
34246	80	5	Irrigation	40.349683	-97.196142
191554	80	5	Domestic	40.349556	-97.184611
170166	123	5	Irrigation	40.350066	-97.193235
37708	26	6	Irrigation	40.351722	-97.209741
92721	27	6	Domestic	40.353060	-97.179226
96294	28	6	Irrigation	40.353681	-97.202636
7422	30	6	Irrigation	40.355338	-97.219279
197624	30	6	Irrigation	40.357028	-97.183944
72376	32	6	Irrigation	40.358976	-97.228781
54795	33	6	Irrigation	40.358919	-97.186011
80753	35	6	Irrigation	40.360766	-97.212270
100286	35	6	Irrigation	40.360772	-97.193112
10797	36	6	Irrigation	40.362607	-97.200269
37264	37	6	Irrigation	40.368204	-97.236823
58027	38	6	Irrigation	40.368046	-97.221699
191450	39	6	Irrigation	40.367805	-97.198362
32985	40	6	Irrigation	40.369174	-97.213108
54516	40	6	Irrigation	40.369784	-97.195398
71159	40	6	Irrigation	40.373502	-97.228776
204381	42	6	Irrigation	40.375444	-97.211694
32682	44	6	Irrigation	40.379233	-97.220457
76356	44	6	Irrigation	40.380709	-97.219280

2. Many Wells Not Documented
 a. Nebraska Dept. of Natural Resources list of wells with GPS

Available Water Well Data within One Mile of the Centerline in Nebraska					
Well ID	Total Well Depth (Feet)	Static Water Level (Feet)	Use	Latitude	Longitude
197482	45	6	Domestic	40.392917	-97.234889
146020	48	6	Domestic	40.394000	-97.231333
166811	49	6	Domestic	40.408439	-97.219041
133782	50	6	Domestic	40.414308	-97.231213
164535	51	6	Domestic	40.433108	-97.293222
172076	53	6	Domestic	40.434388	-97.281194
93213	54	6	Domestic	40.464275	-97.293027
128865	57	6	Domestic	40.474502	-97.311259
74110	58	6	Irrigation	40.529867	-97.366267
63850	60	6	Irrigation	40.538703	-97.349358
43322	65	6	Irrigation	40.541074	-97.394679
83358	70	6	Irrigation	40.542530	-97.382780
33882	80	6	Irrigation	40.542440	-97.353237
32152	102	6	Irrigation	40.546043	-97.391162
83466	104	6	Irrigation	40.546417	-97.382964
60669	121	6	Irrigation	40.548511	-97.386756
124335	147	6	Irrigation	40.549736	-97.392320
171143	24	7	Irrigation	40.549322	-97.372272
35350	33	7	Domestic	40.549756	-97.386508
19317	37	7	Irrigation	40.549861	-97.381900
72588	37	7	Irrigation	40.549914	-97.376283
42353	38	7	Irrigation	40.550651	-97.400601
73978	38	7	Irrigation	40.553429	-97.401758
69809	39	7	Irrigation	40.553459	-97.363763
82123	39	7	Irrigation	40.553942	-97.373264
204484	39	7	Domestic	40.558383	-97.404200
119455	39	7	Irrigation	40.564295	-97.402032
104461	40	7	Irrigation	40.564252	-97.392373
205091	40	7	Domestic	40.566833	-97.395611
206175	40	7	Domestic	40.566778	-97.381000
28045	40	7	Irrigation	40.567753	-97.389931
155976	40	7	Irrigation	40.571576	-97.411245
136865	41	7	Irrigation	40.571389	-97.382927
91267	41	7	Domestic	40.573375	-97.420789
60670	41	7	Irrigation	40.574897	-97.401514
36247	43	7	Irrigation	40.574970	-97.394923
118764	44	7	Irrigation	40.578726	-97.420706
61349	44	7	Irrigation	40.578755	-97.411259
19318	48	7	Irrigation	40.578881	-97.404526
139100	50	7	Irrigation	40.578850	-97.401825
136198	50	7	Irrigation	40.578777	-97.382794
72309	50	7	Irrigation	40.580493	-97.389909
14131	50	7	Irrigation	40.582412	-97.416114
59362	52	7	Irrigation	40.583077	-97.401601
66636	53	7	Irrigation	40.584234	-97.408880
40831	53	7	Irrigation	40.586058	-97.429049
147804	60	7	Irrigation	40.589764	-97.439831
146043	60	7	Irrigation	40.593523	-97.444820
64500	63	7	Irrigation	40.593318	-97.430182

Source DNR, 2011. Available @ <http://dnrdata.dnr.ne.gov/wells/cs/menu.nsf>

- 2.Many Wells Not Documented
- c. Copy of map with DNR wells made by Keystone XL Mapping Project



Attachment 8.7

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Natural Resources Committee
February 09, 2011

JIM KRAUSE: Twenty years. [LB340 LB578 LB629]

SENATOR SMITH: And that contract, of course, would begin the day that they would begin to receive or have they already begun to receive? [LB340 LB578 LB629]

JIM KRAUSE: It's once the people on the far end start to receive the oil, as they have already been doing since June on the first phase of the Keystone pipeline. [LB340 LB578 LB629]

SENATOR SMITH: One year, one year into it at this point. [LB340 LB578 LB629]

JIM KRAUSE: Yeah. Yep. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Since you're in operations, actually how much does this oil heat up because of friction? [LB340 LB578 LB629]

JIM KRAUSE: That's a great question that has been going around a number of times, and as stated earlier in this committee, we provide no heat to the pipe. But you're correct, the pipe does heat up from the friction not only from the pumps, but from the pipe itself. Ultimately, the oil of...the temperature of the pipe and the oil is governed mainly by ground temperature. That has a huge impact on the temperature of the oil. So as the oil comes up to a pump station, it can be very close to what the current ground temperature is four feet below ground. As it exits the station, some of that pumping will heat it up a bit, but it's not like it gets really, really hot and changes the viscosity to a great amount. [LB340 LB578 LB629]

SENATOR HAAR: Now you may not be the person to answer this one, maybe the next person, but if there is decommissioning for whatever purpose, who pays for that and

how are we guaranteed, for example, the landowners? [LB340 LB578 LB629]

JIM KRAUSE: Sure. It's an excellent question and it has come up a few times here. There will be some testimony later that will cover that in detail, but, again, my background and knowledge of this is we're required through a permitting process through PHMSA, the Department of Transportation, we are held liable for reclamation and restoration of any abandoned pipeline. In technical terms, what that would mean, if the pipeline is not needed for oil somewhere down the road and there is no other use for any other product to go through that pipe, let's say gasoline, or maybe by that time in the future, water, then the pipeline needs to be...follow very stringent processes to be taken out of service. Cleaning pigs squeal down the pipeline and remove whatever oil is in the pipe. And then further pigs goes down and clean whatever residue is in there. And then, essentially, the pipe is closed at each end and the inert gas, such as nitrogen, is put into the pipe. The cathodic protection systems on the pipe continue to have the function, by law, to ensure the pipe doesn't corrode. And the nitrogen inside makes sure there's no internal corrosion taking place as well. [LB340 LB578 LB629]

SENATOR HAAR: So, but if some point, because everything eventually wears out, I mean, pipeline will last a lot longer than I will, but if it collapses at some point after it is decommissioned, how...who takes care of that? [LB340 LB578 LB629]

JIM KRAUSE: The owner of the pipeline which is us. [LB340 LB578 LB629]

SENATOR HAAR: And if you're no longer the owner? [LB340 LB578 LB629]

JIM KRAUSE: Whoever takes ownership from us would have to carry on that liability. [LB340 LB578 LB629]

SENATOR HAAR: And if it's abandoned and just, you know, goes through bankruptcy or something, I still...at the end you could come up with someone with a situation where

Attachment 8.8

Western water Resources; Methods to Minimize the Supply

Starting with proposals made in 1950 in the Bureau of Reclamation's United Western Study, preliminary studies were made of even larger interbasin transfers until a moratorium on such studies by federal agencies was legislated in 1968. A summary of these developed by C. C. Warnick and published by the University of Arizona in *Arid Lands in Perspective*, 1969, is included as Table 2. The last project shown on the table is the Texas Water Plan, studied by the Bureau of Reclamation and the Corps of Engineers under a special Congressional authorization between 1967 and 1973. This proposal would have transferred over 10 million acre-feet annually from the Mississippi River or its tributaries to the high plains of Texas and New Mexico to sustain agricultural production after the Ogallala aquifer is pumped out. Cost of water delivered on the high plains was estimated to be well over \$300 an acre-foot with the cost of energy for the 5,000-foot pump lift computed at pre-1973 price levels. Since that report was completed there has been less interest in interbasin transfers.

It is dubious whether any of these plans involving diversions across state lines can be undertaken, even if funds for construction could be made available. No state will be willing to sell its water "birthright" unless the consideration is so high as to increase the cost of the project to such an extent that it would not be economically justified.

International water transfers might have some possibility of being effected if the benefit from water development in the exporting country, which would be Canada, could be made high enough, and since the water for export would probably always flow north into the Arctic unused. However, the environmental disruption would be huge, and if the environmental movement develops in Canada as it has in the United States, it would be very difficult to negotiate the necessary treaty and enact the implementing legislation in the two countries.

Groundwater Management

There are an estimated 180 billion acre-feet of water in underground aquifers within a depth of 2,500 feet under the forty-eight contiguous United States. About one-fourth of this, 46 billion acre-feet, is usable with present technology; this is

Gay, M. M. et al. *Water Resources*

TABLE 2
Summary of Information on Conceptual Plans Proposed for Regional Water Transfer

Project Name	Agency/Company Sponsor Author of Plan	Approximate Date of Proposal	River Basin(s) for Source	River Basin(s) of Use	Countries Involved	States Involved	Proposed Diversion: (a) 10 ⁶ acre-ft/yr; (b) cfs; (c) mgd.
United Western	U.S. Bureau of Reclamation Rep. R. J. Welch-Calif.	1950	Columbia River North Pacific Coastal Streams	Great Basin South Pacific Coastal Plain Colorado River	United States Mexico	11 Western States	6.0 9,100 5,900
California Water Plan	California Department of Water Resources	1957	Northern California Rivers	Central Valley California South Pacific Coastal Plain	United States	California	
Pacific Southwest Water Plan	U.S. Bureau of Reclamation W. I. Palmer	1963	Northern California Streams Colorado River	Lower Colorado River South Pacific Coastal Plain	United States Mexico	California Arizona, Nevada Utah, New Mexico	1.2 1,660 1,070
Snake-Colorado Project	Los Angeles Department of Water & Power S. B. Nelson	1963	Snake River	Colorado River South Pacific Coastal Plain	United States Mexico	Idaho, Nevada Arizona California	2.4 3,320 2,140
North American Power & Water Alliance (NAWAPA)	Ralph M. Parsons Company	1964	Alaskan & Canadian Rivers, with Columbia River	Great Lakes Basin South Pacific Coastal Plain Colorado River Texas High Plains	United States Canada Mexico	Western States Texas Lake States	110.0 152,000 98,000
Yellowstone-Snake-Green Project	T. M. Stetson Consulting Engineer	1964	Yellowstone River Snake River	Green River Colorado River	United States	Montana, Idaho Wyoming, Lower Colorado States	2.0 2,770 1,780

4. What Will be the Use of the Pipeline After the "Oil"?
c. Reference to Beck Plan

TABLE 2 (continued)
Summary of Information on Conceptual Plans Proposed for Regional Water Transfer

Project Name	Agency/Company	Approximate	River Basin(s) for Source	River Basin(s) of Use	Countries Involved	States Involved	Proposed Diversion: (a) 10 ⁶ acre-ft/yr; (b) cfs; (c) mgd.
	Sponsor Author of Plan	Date of Proposal					
Pirkey's Plan Western Water Project	F. Z. Pirkey Consulting Engineer	1964	Columbia River	Colorado River	United States Mexico	Oregon	15.0
				Sacramento River		Washington	20,800
				South Pacific Coastal Plain		California	13,400
						Utah, Arizona Nevada	
Dunn Plan Modified Snake- Colorado Project	W. G. Dunn, Consulting Engineer	1965	Snake & Colum- bia Rivers	Great Basin	United States Mexico	Idaho, Oregon	5.0
				Slope River		Washington	6,900
				South Pacific Coastal Plain		Utah, Arizona	4,450
				Colorado River		Nevada California	
Sierra-Cascade Project	E. F. Miller, Consulting Engineer, Maryland	1965	Columbia River	Oregon Valleys	United States	Oregon, Nevada	7.0
				Central Valley, California		California	9,700
				South Pacific Coastal Plain			6,250
Undersea Aque- duct System	National Engineering Science Company F. C. Lee	1965	North Coast Pacific Rivers	Central Valley	United States	Oregon	11.0
				South Pacific Coastal Plain		California	15,200
							9,800
Southwest Idaho Development Project	U.S. Bureau of Reclamation, Region 1	1966	Payette River Weiser River Bruneau River	Slope River	United States	Idaho	
Canadian Water Export	E. Kuiper	1966	Several Canadian Rivers	Western States (indefinite)	United States Canada	All Western States	150.0
							208,000
							134,000

Central Arizona Project	U.S. Bureau of Reclamation	1948, 1967	Lower Colorado River Basin	Colorado River	United States Mexico	Utah, Nevada	1.2
						Arizona	1,660
						California	1,070
Central North American Water Project C3 NAWP	E. R. Tinney Washington State University, Professor	1967	Canadian Rivers	Great Lakes	United States Canada Mexico	Great Lakes	150.0
				Entire Western States		Western States	208,000
							134,000
Smith Plan	L. G. Smith Consulting Engineer	1967	Liard River McKenzie River	All river basins of 17 western states	United States Canada Mexico	17 Western States	40.0
							55,500
							35,750
Grand Canal Concept	T. W. Kierens Sudbury, Ontario	1965	Great Lakes and St. Lawrence River	Canadian rivers flowing to Hudson Bay	United States	Great Lake States	17.0
							23,600
							15,200
Beck Plan	R. W. Beck Associates	1967	Missouri River	Texas High Plains	United States	South Dakota Nebraska Kansas, Colorado Oklahoma, Texas	10.0 13,800 8,930
West Texas and Eastern New Mexico Import Project	U.S. Bureau of Reclamation & U.S. Corps of Engineers	1967 (1972 due)	Mississippi and Texas Rivers	High Plain of Texas and New Mexico	United States	Oklahoma, Texas	16.5
						New Mexico	22,900
						Louisiana	14,700

Source: C. C. Warnick, "Historical Background and Philosophical Basis of Regional Water Transfer," in *Arid Lands in Perspective*, McGinnies and Goldman, Eds. (Tucson: The University of Arizona Press, 1969), pp. 340-351.

Attachment 8.9

8. Subcontractors:
 - a. Business Card of Jeff Rauh

Jeff Rauh
Keystone Project Representative

An employee of *Neil Palmer & Associates*
an independent contractor to TransCanada

890 Elm Grove Road Office: 262.821.5230
Suite 100 Cell: 262.853.6567
Elm Grove, WI 53122

E-mail: jrauh@neilpalmerllc.com

Contracted to the Keystone Pipeline

Call Before You Dig! For US line locates, call **811**.

Attachment 8.10

9. Landowner Agreement
b. Only terms written into easements
can be enforced

1.56.1: Regarding Mitigation Commitments and Landowner Agreements, in the Draft Report the NDEQ “encourages Keystone to negotiate mutually acceptable agreements with adversely affected landowners to address potential construction and restoration issues.” The Nebraska Draft Evaluation Report, October 2012, Chapter 2 Project Description Overview Section 2.2.1 Right-of way Acquisition Process states:

To construct, operate, and maintain the proposed Nebraska Reroute, Keystone would negotiate easement agreements with landowners along the route. The easement agreements would list the conditions to which the landowners and Keystone both agree, including financial compensation to the landowners in return for granting easements. Compensation would also be made for loss of use during construction, crop loss, loss of nonrenewable or other resources, restrictions on future use of the land, and restoration of any unavoidable damage to personal property during construction. Easement negotiations and final agreements are private business concerns between the landowners and Keystone, and neither DOS nor NDEQ has legal authority or ability to intervene in the proceedings or enforce the conditions of an easement agreement. In most cases, agreements would allow the agricultural uses currently in place to continue within the permanent ROW after pipeline installation.

Attachment 8.11

10. Threats to Condemn without a Permit
a. Letter from TransCanada 7-21-10



July 21, 2010

WILLIAM F. & SUSAN C. DUNAVAN
1312 ROAD 6
YORK, NE 68467

Re: ML-NE-YK-00600.000

Dear Owner:

You by now are aware that TransCanada Keystone Pipeline L.P. ("Keystone") is constructing and will operate a 1,833 mile crude oil pipeline, which will begin in Canada and will cross through approximately 1,073 miles of property in the United States, including Nebraska. As you know, the path of the pipeline will cross a portion of your property.

In order to construct the pipeline, Keystone must acquire a permanent and temporary easement over your property. It is Keystone's strong preference to negotiate a voluntary transfer with each property owner. However, in the event we cannot come to an agreement, Keystone will use eminent domain to acquire the easement, which is authorized pursuant to Nebraska Revised Statute § 57-1101 et. seq.

The description of the proposed permanent and temporary easements is described in the enclosed form of easement and its attachments.

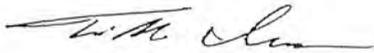
As consideration for granting Keystone these easements, TransCanada is offering you the total sum of _____ This sum includes _____ for the permanent easement, which represents 100% of the total fee value for the permanent easement, despite the fact the permanent easement encompasses significantly less property rights than the total fee. Additionally, the amount includes _____ for the temporary easement which is based upon a rental value of 50% of the fee value per year. Finally, Keystone will provide compensation for any damages that occur during the course of the construction including crop loss and any damages to fences, trees or other improvements.

This letter is Keystone's final offer, and it will remain open for one month after the date of this letter or until you reject it. We believe the amount of the offer is a premium price for your property. Keystone's offer is high because the company prefers to acquire this property through negotiation and to avoid litigation and its associated delays and risks. In order to accept this offer, please have the authorized person(s) execute two original Easement and Right of Way forms before a notary public and return them to me in the enclosed postage pre-paid envelope before the expiration of the one month period. Also enclosed is a W-9 tax form that needs to be completely filled out, signed and returned along with the other forms. We will deliver the agreed upon amount of compensation to you immediately upon our receipt of the signed and notarized documents.

While we hope to acquire this property through negotiation, if we are unable to do so, we will be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property promptly after the expiration of this one month period. In the event that we are forced to invoke the power of eminent domain, this letter and its contents are subject to Nebraska Revised Statute § 27-408 and are not admissible to prove the existence or amount of liability.

Please contact me in the event you have any questions or concerns at (832) 320-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim M. Irons".

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

Encl.

Attachment 8.12



April 7, 2011

WILLIAM F. & SUSAN C. DUNAVAN
1312 ROAD 6
YORK, NE 68467

Re: ML-NE-YK-00600.000

Dear Owners:

The proposed route of a crude oil pipeline, known as Keystone XL, crosses a portion of your property in Nebraska. The project, proposed by Delaware-based TransCanada Keystone Pipeline L.P., responds to U.S. demand for crude oil from refineries seeking a secure and stable supply. The project seeks to create a land-based link between this U.S. demand and growing oil supplies in Canada and in the northern Great Plains states. Oil delivered would reduce the need for imports from Venezuela or the Middle East, significantly improving U.S. energy security.

The federal regulatory review of this proposed project continues and we expect a decision from the federal government in the first half of 2011. To construct the project, we must acquire permanent and temporary easements, and possibly other pipeline and construction related land rights, through the area where this project will be constructed in Canada and in the U.S., including in Nebraska.

Permanent easements provide Keystone limited rights to construct, operate, and maintain the pipeline. Landowners retain all rights of ownership and productive use of the easement area with only those restrictions that ensure the continued integrity and safety of the pipeline. In addition, temporary easements, which are in place only until construction and reclamation are completed, support the construction activities on the permanent easement.

To construct the pipeline, we must acquire a permanent and temporary easement over your property. The proposed permanent easement and temporary easement is described in the enclosed form of easement and its attachments.

It is our strong preference to negotiate a voluntary easement acquisition with each property owner. We have been working with Nebraska landowners since 2008 to understand how best to minimize the impact of this project on individual properties and operations. This process can include multiple visits to the land to address specific routing issues as well as provisions to minimize impacts associated with the construction process. You are receiving this letter because our discussions and negotiations are not progressing to a voluntary settlement in a timely manner.

In such circumstances, property laws in Nebraska and most other jurisdictions allow proponents of projects that are in the broader public interest to use eminent domain to acquire the easement, which is authorized pursuant to Nebraska Revised Statute § 57-1101 et. seq.

It is important to point out that in addition to the easement itself, Keystone's work on your land and the pipeline itself must be in compliance with applicable state and federal rules and regulations. In particular, throughout its route in the U.S., the safe operation of this pipeline is governed by the U.S. Department of Transportation. These requirements include measures required to ensure safety when the pipeline is operating and if it is shut down. Construction methods and techniques are spelled out in detail in the Construction Mitigation and Reclamation Plan, a copy of which you should have received as a part of the Draft Environmental Impact Statement issued by federal agencies reviewing this project (and available on the U.S. Department of State project web site at www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open under "Project Documents"). Additional requirements related to construction may be added as regulatory reviews continue to proceed.

As consideration for granting these easements, we are offering you the total sum of _____ This sum includes _____ for the permanent easement, which is based on 100 per cent of the current, unit fee value (i.e. dollars per acre as determined by an independent market assessment) of similar land in your region, despite the fact the permanent easement grants us significantly fewer property rights than outright ownership. Additionally, the amount includes _____ or the temporary easement which is a rental value based on 50 per cent of the assessed unit fee value. Finally, we will provide compensation for any damages that occur during the course of the construction including crop loss and any damages to fences, trees or other improvements.

We prefer to acquire this property through negotiation and voluntary settlement. We will initiate eminent domain only as a last resort, where good faith efforts have not resulted in a voluntary agreement. Even after initiating this process, we will continue to work to reach a voluntary agreement.

This letter represents our final offer, and will remain open for one month after the date of this letter or until you reject it, whichever is earlier. After that period, we will initiate the eminent domain process. To avoid litigation, we are offering an amount for the easement that exceeds the value of the rights we seek.

To accept this offer, the authorized person(s) must execute two original Easement and Right of Way forms before a notary public and return them to the undersigned in the enclosed postage pre-paid envelope before the expiration of the one month period. Also, the enclosed W-9 tax form needs to be completely filled out, signed and returned along with the other forms. We will deliver the agreed upon amount of compensation to you immediately upon our receipt of the signed and notarized documents. This settlement remains in place regardless of whether Keystone receives its federal permit.

Our strong preference is to reach voluntary agreement and we will continue these efforts regardless of the initiation of legal processes. In the event that we must invoke the power of eminent domain, this letter and its contents are subject to Nebraska Revised Statute § 27-408 and are not admissible to prove the existence or amount of liability.

Please contact me in the event you have any questions or concerns at (832) 320-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim M. Irons". The signature is fluid and cursive, with a prominent flourish at the end.

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

Encl.

cc: Lee H. Hamann, McGrath North Mullin & Kratz, PC LLO
John Hunt, TransCanada

Attachment 8.13

10. Threats to Condemn without a
Permit
c. Copy of letter to Bruning and reply

August 12, 2010
1312 Road 6
York, NE 68467

Jon Bruning
Office of the Attorney General
2115 State Capitol
Lincoln, NE 68509-4604

Dear Mr. Bruning,

I am writing to you over the concern of the TransCanada Keystone XL Pipeline. This pipeline is scheduled to go through our property which consists of native prairie. I am concerned over losing this prairie as well as the dangers of polluting the Ogallala Aquifer. I have written TransCanada asking questions. I have not received any replies from the company. I have not signed any easement papers. I just received a somewhat threatening letter from TransCanada. At first I thought it was the answers to my questions. Instead it was a letter that says unless the easement papers are signed "we will be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property."

My question to you is **can TransCanada threaten us with eminent domain if they have no permits yet and the Environmental Impact Statement agreement has been given to them?**

I am sure I am not the only one receiving these letters. I urge you to use your power to protect the citizens of the State of Nebraska.

Sincerely,

Susan C. Dunavan

Attachment 8.14



STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
TIERONE FAX (402) 471-4725

JON BRUNING
ATTORNEY GENERAL

LIZ EBERLE
CONSTITUENT SERVICES DIRECTOR

September 30, 2010

Susan Dunavan
1312 Road 6
York, NE 68467

Dear Susan:

Thank you for taking time to contact our office. We are sorry to hear about the frustrations you and your family are going through.

We share your concern for preservation of native prairie and the pristine quality of the water stored in the Ogallala Aquifer, and are monitoring the progression of the TransCanada Keystone XL Pipeline in Nebraska. While our office is unable to provide private legal advice, we can confirm that public utilities, under certain circumstances, do have the authority to exercise eminent domain.

Since your property rights may be impacted by the proposed pipeline, we encourage you to speak with someone familiar with real estate law to determine the best course of action. We appreciate your interest and concern in contacting our office.

We appreciate your interest and concern in contacting our office.

Sincerely,

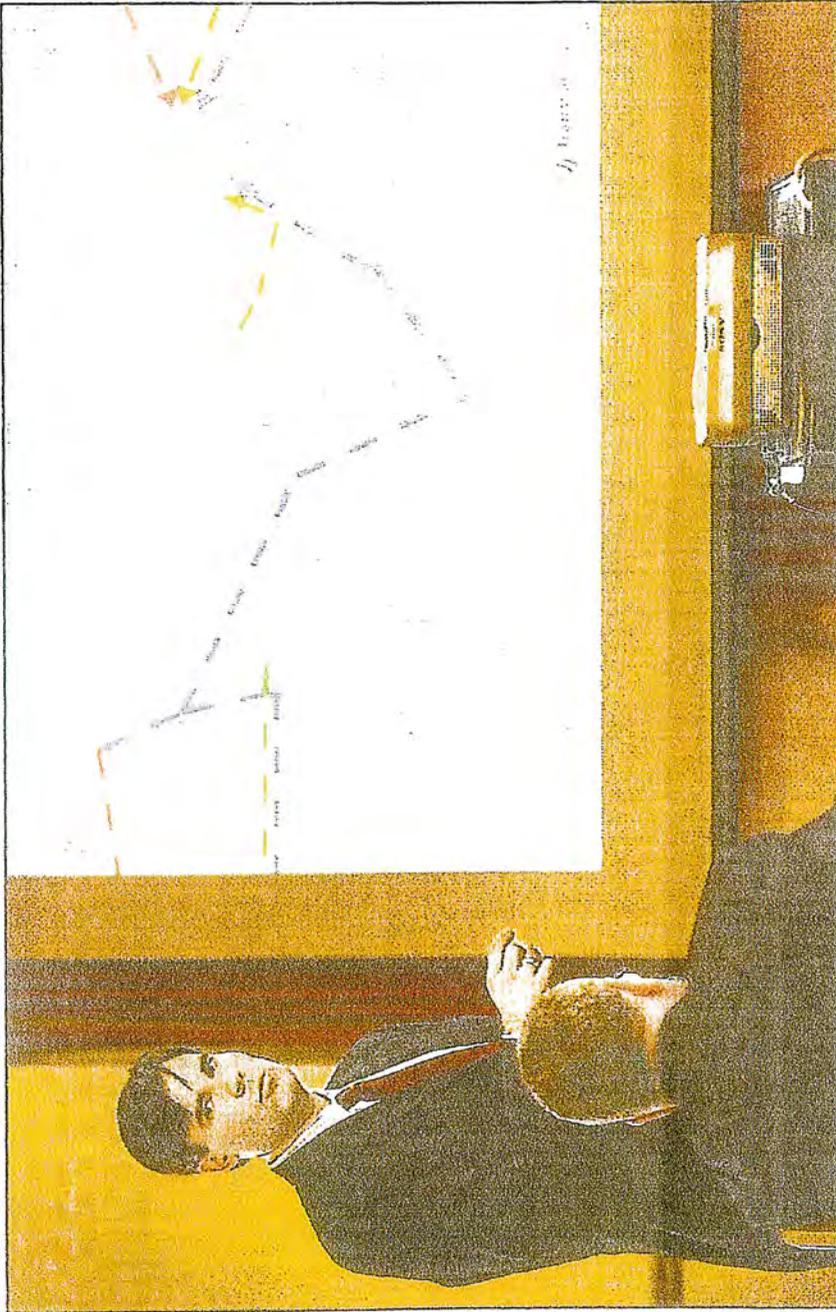
JON BRUNING
Attorney General

Liz Eberle
Constituent Services Director

Attachment 8.15

11. Realizing TransCanada is a Foreign (non U.S.A.) Operation from beginning to end. Lincoln Journal Star 9-4-2011

PIPELINE PRESENTATION



FRANCIS GARDLER/Lincoln Journal Star

Louis Fenyvesi, manager of marketing, supply and oil pipelines for TransCanada, gives a presentation during the briefing for Keystone XL Pipeline at The Cornhusker Marriott on Wednesday morning.

Pointing fingers

Governor asks Obama to deny permit for Keystone XL Pipeline; legislators debate whether



Jeff Rattin, TransCanada's spokesman in Nebraska, runs the PowerPoint presentation for

Attachment 8.16

CORNHUSKER ECONOMICS

UNIVERSITY OF
Nebraska
Lincoln

February 9, 2011

University of Nebraska–Lincoln Extension

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
<http://agecon.unl.edu/cornhuskereconomics>

The Keystone XL Pipeline Project

Market Report	Yr. Ago	4 Wks Ago	2/4/11
Livestock and Products,			
Weekly Average			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight	\$84.58	\$105.29	\$105.50
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb	115.22	147.34	149.05
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb	98.21	126.83	126.32
Choice Boxed Beef, 600-750 lb. Carcass	139.34	165.81	172.40
Western Corn Belt Base Hog Price Carcass, Negotiated	64.08	70.45	80.09
Feeder Pigs, National Direct 50 lbs, FOB	*	*	*
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean	68.59	78.35	88.95
Slaughter Lambs, Ch. & Pr., Heavy, Woolled, South Dakota, Direct	*	161.00	*
National Carcass Lamb Cutout, FOB	243.26	352.13	347.71
Crops,			
Daily Spot Prices			
Wheat, No. 1, H.W. Imperial, bu	3.72	6.87	7.87
Corn, No. 2, Yellow Omaha, bu	3.36	5.68	6.55
Soybeans, No. 1, Yellow Omaha, bu	9.01	13.21	13.91
Grain Sorghum, No. 2, Yellow Dorchester, cwt	5.21	9.46	10.95
Oats, No. 2, Heavy Minneapolis, MN, bu	2.26	3.89	4.15
Feed			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton	135.00	140.00	140.00
Alfalfa, Large Rounds, Good Platte Valley, ton	87.50	72.50	72.50
Grass Hay, Large Rounds, Premium Nebraska, ton	82.50	*	*
Dried Distillers Grains, 10% Moisture, Nebraska Average	104.00	186.00	197.50
Wet Distillers Grains, 65-70% Moisture, Nebraska Average	33.75	65.00	67.25
No Market			

Prior to Canadian Prime Minister Harper's visit to the White House last week, the United States Department of State released the EnSys study¹ of the controversial Keystone XL pipeline project proposed to run through Nebraska's sandhills. The release ignited new debates amid concern that the U.S. Department of State would soon decide whether to grant a permit for the pipeline. The Nebraska Unicameral is considering bills to provide more constraints on pipeline construction. Below is a summary of information about this project that could affect many Nebraskans.

What is Keystone XL?

Actually, it is the XL extension, or Phase IV, that is at issue in Nebraska. This is a 36-inch pipeline to transport Alberta crude oil, primarily from tar sands through Montana, South Dakota, Nebraska and Kansas into Oklahoma, with a capacity of 0.5 million barrels per day (mbd), larger than the other pipelines from Canada. By way of contrast, total U.S. consumption has been about 21 mbd, with imports of 8.5 mbd of which 2.0 are from Canada, 1.3 from Mexico, 1.1 from Saudi Arabia, 0.9 from Venezuela and 0.8 from Nigeria. U.S. ethanol production is nearing 0.9 mbd. The XL extension would enter Nebraska near Burton and exit near Fairbury, following a 357 mile route including five pumping stations.² The total cost of the extension is about \$7 billion.

Who is Behind Keystone XL?

The pipeline would be built and owned by TransCanada Corp., a publicly traded Canadian pipeline and power generating company. TransCanada also owns the Keystone pipeline running from north to south in Eastern Nebraska, with a 0.4 mbd capacity. Another pipeline, the Kinder Morgan Express-Platte extension, crosses the state from west to east and has a capacity of 0.4 mbd. At this point, the U.S. Department of State has final authority to approve the XL extension.



Extension is a Division of the Institute of Agriculture and Natural Resources at the University of Nebraska–Lincoln cooperating with the Counties and the U.S. Department of Agriculture.

University of Nebraska Extension educational programs abide with the non-discrimination policies of the University of Nebraska–Lincoln and the United States Department of Agriculture.

12. Other Evidence

a. "Cornhusker Economics" 2-9-2011

Why Do They Want to Build It?

TransCanada wants to build the pipeline because they expect a satisfactory return on their investment. Oil production in Alberta is scheduled to double, oil that can be shipped into the U.S. at a competitive price. Current pipeline capacity from Canada is adequate for a decade or more, but pipeline configurations have reportedly led to congestion and low prices in the Midwest which could be improved with this construction. The project itself is unlikely to have any significant effect on total world production or consumption. Given current consumption trends, Canada would likely ship its extra production to Asia if the XL extension were not built, resulting in just a geographical reallocation.

The EnSys study, commissioned by the U.S. State Department, estimates that under current trends with the pipeline the U.S. will increase its Canadian imports by 2.6 million barrels per day by 2030. Given that production and imports from Mexico and Venezuela are projected to dwindle, the study concludes that the alternative to Canadian petroleum is an increase in U.S. dependence on imports from the Middle East. These projections assume a continuation of current U.S. energy policies. Opponents of the pipeline point out that the existence of the pipeline would undermine U.S. efforts to replace petroleum consumption with renewable fuels.

Environmental Impacts

The potential Nebraska environmental impacts of the pipeline include scarring of sandhills' landscapes and related wildlife disruptions, but more importantly, the risk of contaminating waterways, soils and perhaps the High Plains Aquifer itself, due to oil spills. TransCanada claims to have adequate plans for remediation of the construction sites and for responding to leaks.³ The adequacy of those plans and the quality of the pipeline components have been challenged by opponents, however.⁴ In July, the Environmental Protection Agency (EPA) called for a more exhaustive environmental impact statement,⁵ which the State Department has not yet received.

The risks of spills is real. Just within the past year the U.S. has experienced pipeline ruptures at Talmadge Creek, Michigan and Red Butte, Utah, damaging several miles of waterways; and pump station leaks occurred at Ft. Greeley and at Prudhoe Bay on the Alaska pipeline.

Much of the opposition to the pipeline derives from opposition to the environmental impacts of tar sands petroleum itself. The California Air Resources Board calculates that its carbon footprint is 30 percent higher than conventional petroleum,⁶ and the mining processes have scarred the landscape in Alberta and polluted waterways and adjacent lands.⁷ Pipeline proponents counter this argument by pointing out that Canada expects to triple its tar sands production for the world market,⁸ regardless of the Keystone XL. Opponents reply that the

U.S. should not collaborate in developing this "dirty" energy source by encouraging its use here. (Canada is the third largest per-capita greenhouse gas polluter, it has exceeded its Kyoto target by 30 percent, and it has recently joined Japan and Russia in opposing the extension of the Kyoto agreement beyond 2012.)

Impact on the Nebraska Economy

Construction and maintenance of the pipeline would contribute an unknown amount of jobs and tax returns to the Nebraska economy. A study by Perryman,⁹ commissioned by TransCanada, estimates that construction and development would contribute 7,551 person-years of temporary jobs in Nebraska, \$9.5 million to state revenues and another \$1.8 million to local government revenues. They estimate the long-term (100 years) present value of increased property taxes at \$152 million. Although we have not carefully assessed the validity of this analysis, some of its assumptions strike us as optimistic. For example, the National Wildlife Federation shows that the employment figures in this report are 65 percent higher than those estimated by the Department of State.¹⁰ The study makes no attempt to evaluate economic losses that might occur because of oil spills, scarred landscapes, water contamination, etc.

Considering the potential benefits and costs alluded to above, we do not support the project. While there is room for disagreement on this policy issue, supporters have yet to make a clear case that benefits to Nebraska would offset the costs and risks.

Richard K. Perrin, (402) 472-9818
Roberts Professor
Dept. of Agricultural Economics
University of Nebraska-Lincoln
rperrin@unl.edu

Lilyan Fulginiti, (402) 472-0651
Professor
Dept. of Agricultural Economics
University of Nebraska-Lincoln
lfulginiti@unl.edu

References:

¹ <http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf/AssmtDrftAcpt.pdf?OpenFileResource>

² [http://www.transcanada.com/docs/Key Projects/TransCanada US Report 06-10-10.pdf](http://www.transcanada.com/docs/Key%20Projects/TransCanada%20US%20Report%2006-10-10.pdf)

³ [http://www.transcanada.com/docs/Key Projects/SandhillsNativeRangeland.pdf](http://www.transcanada.com/docs/Key%20Projects/SandhillsNativeRangeland.pdf)

⁴ See, for example: <http://plainsjustice.org/> and <http://dirtyoilsands.org/dirtyspots/category/keystone-xl/obamas-choice/>

⁵ http://www.downstreamtoday.com/news/article.aspx?a_id=23434

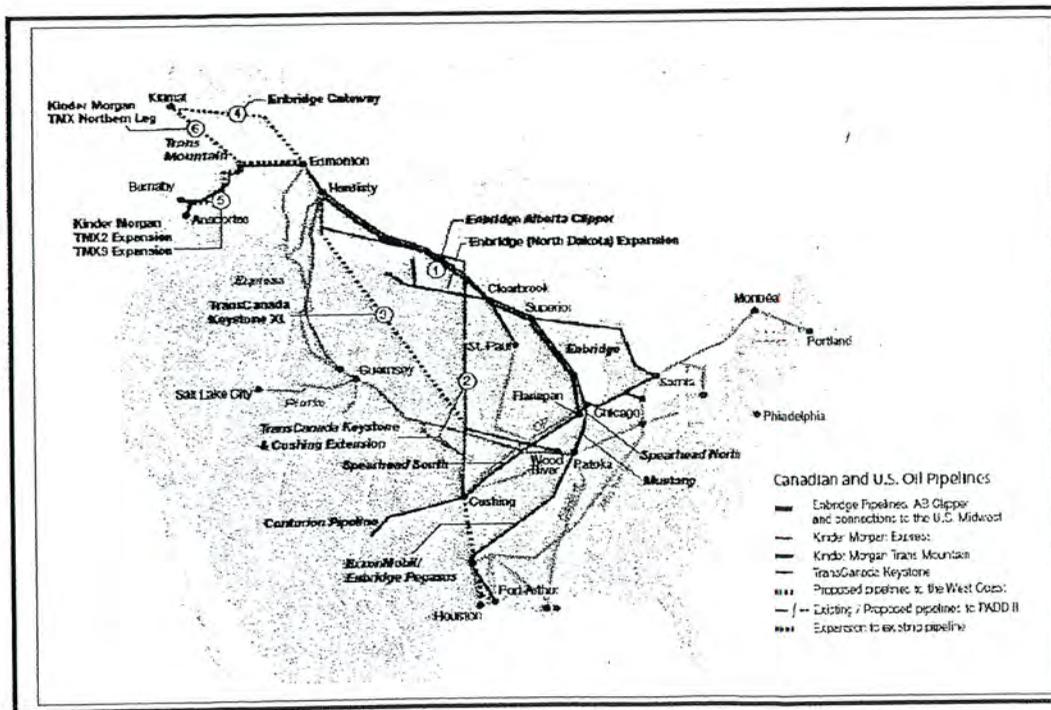
⁶ California Air Resources Board, <http://www.arb.ca.gov/fuels/lcfs/091307oharelcfs.pdf>

⁷ Proceedings of the National Academy of Science, September 14, 2010, Vol. 107 No. 37 16178-16183.

⁸ Natural Resources Canada, <http://www.nrcan-rncan.gc.ca/eneene/sources/pripr/aboapr-eng.php>

⁹ Perryman Group, [http://www.transcanada.com/docs/Key Projects/Perryman Group Nebraska Report.pdf](http://www.transcanada.com/docs/Key%20Projects/Perryman%20Group%20Nebraska%20Report.pdf)
[http://www.transcanada.com/docs/Key Projects/TransCanada US Report 06-10-10.pdf](http://www.transcanada.com/docs/Key%20Projects/TransCanada%20US%20Report%2006-10-10.pdf)

¹⁰ [http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-fuels/-/media/PDFs/Global%20Warming/Tar-Sands/Keystone XL Jobs 11-09-10.ashx](http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-fuels/-/media/PDFs/Global%20Warming/Tar-Sands/Keystone%20XL%20Jobs%2011-09-10.ashx)



Attachment 8.17

12. Other Evidence
b. 30+ Binders full of documentation



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
William Dunavan in Support of
Landowner Intervenors

State of Nebraska)
) ss.
York County)

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

2 A: My name is William Dunavan.

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 York 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: Susan Dunavan.

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

2 A: Yes, five.

3 **Q: Do you have grandchildren?**

4 A: Yes, nine living and two that have passed away.

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

7 A. Yes.

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

11 A: When we purchased our land in 1979 the previous owner requested that the land
12 be kept as pastureland and not be farmed. We were very willing to make this
13 promise as that was our intention all along...to keep the property as pastureland
14 and to increase the varieties of native grasses, flowers, and forbes. This land has
15 become our heritage over the years and is one of the last stands of native prairie in
16 York County. We paid on this land for 30 years, working overtime and our
17 American Dream is now gone. This land is where our children were raised and
18 where our grandchildren come and run and explore. To us this land is priceless.
19 There is an intermittent stream that runs through our property as well as about 6
20 acres of woods. The combination of prairie, stream bed and small forest makes for
21 an immense diversity of plant and animal life. There have been new discoveries in
22 every season over the past 38 years and we hope our family's hard work and love
23 of the land will not be torn apart.

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

25 A: My wife and I own a crop consulting business called Nebraska Crop and Soil
26 Systems. We started the business in 1978 and currently consult with
27 approximately 30 farms in a 45 mile radius of York, Nebraska. I am the President
28 and consultant and my wife is the Secretary, Treasurer, and Chief Investigator for
29 all background work that needs to be done in running a business.

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

2 A: Yes.

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

5 A: Yes.

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

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

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 my 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 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 the their property in
28 preparation or planning of TransCanada's taking of the initial easement area(s),
29 the language here does not require TransCanada to compensate the Landowner if

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

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

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

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

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

- 1 vii. “substantially same condition”
- 2 viii. “an actual or potential hazard”
- 3 ix. “efficient”
- 4 x. “convenient”
- 5 xi. “endangered”
- 6 xii. “obstructed”
- 7 xiii. “injured”
- 8 xiv. “interfered with”
- 9 xv. “impaired”
- 10 xvi. “suitable crossings”
- 11 xvii. “where rock is encountered”
- 12 xviii. “as nearly as practicable”
- 13 xix. “pre-construction position”
- 14 xx. “pre-construction grade”
- 15 xxi. “various engineering factors”

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

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

28 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
29 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.

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

29 A: Yes, it is.

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

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

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

9 A: No, I did not.

10 **Q: Why not?**

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

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

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

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

27 A: No, they have not.

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

4 A: No, they have not.

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

7 A: Yes, I am.

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

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

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

16 A: No, they have not.

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

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

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

1 A: No, it has not.

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

5 A: No, I do not.

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

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

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

12 A: Yes, I do.

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

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

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

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

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

23 A: No, of course not.

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

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

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

2 A: Well, yes I have.

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

7 A: No, of course not.

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

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

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

23 A: I have included this answer in my attached documents.

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. A 2½%

1 detection level for spills is inadequate-a ridiculous safeguard for a pipeline of this
2 magnitude. More concerns are in my attached documents.

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

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

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

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

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

25 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
26 the proposed Keystone XL Pipeline would have a detrimental impact upon the
27 groundwater of not only under my land, but also near and surrounding the pipeline
28 route, and in fact, potentially the entire State of Nebraska. Water is life plain and

1 simple and it is simply too valuable to our State and the country to put at
2 unreasonable risk.

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

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

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

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

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

19 A: Yes, I do. I am significantly concerned about how the existence of the proposed
20 pipeline underneath and across and through my property will negatively affect the
21 fair market value at any point in the future, especially at that point in which I
22 would need to sell the property, or someone in my family would need to sell the
23 property. I do not believe, and certainly would not be willing to pay, the same
24 price for land that had the pipeline located on it, versus land that did not. I hope
25 there is never a point where I'm in a position where I have to sell and have to
26 realize as much value as I can out of my land. But because it is my single largest
27 asset, I'm gravely concerned that the existence of the proposed Keystone XL
28 Pipeline upon my land will affect a buyer's willingness to pay as much as they
29 would've paid and as much as I could've received, if the pipeline were not upon

1 my property. There are just too many risks, unknowns, impacts and uncertainties,
2 not to mention all of the rights you give up by the nature of having the pipeline
3 due to having the easement that we have previously discussed, for any reasonable
4 person to think that the existence of the pipeline would not negatively affect my
5 property's value.

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

8 A: Yes, I have.

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

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

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

17 A: No, I do not.

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

21 A: No, I do not.

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

25 A: No, I do not.

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

29 A: No, I do not.

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

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

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

16 A: First of all, not all jobs are created equally. Most jobs that are created, whether
17 temporary or on a permanent basis, don’t come with a project that has all the
18 potential and foreseeable negative impacts, many of which we have discussed here
19 and other witnesses throughout the course of this hearing have and will discuss. If
20 I decide to hire and employ someone to help me out in my farming or ranching
21 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
22 to my land or my town or my county or my state. And I’ve hired someone who is
23 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
24 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
25 jobs are not created equal. Additionally, I understand from what I’m familiar with
26 from TransCanada’s own statements that the jobs numbers they originally touted
27 were determined to be a minute fraction of the permanent jobs that had been
28 projected. According to their answer to our Interrogatory No. 191, TransCanada
29 has created only thirty-four (34) jobs within Nebraska working specifically on

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

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

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

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

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

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

18 A: I don't believe there is an intelligent route because as I have stated I don't believe
19 this project anywhere within Nebraska is within the public interest. Both the
20 preferred route and the mainline alternative routes are economic liabilities our
21 state cannot risk.

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

25 A: No, I have not. I have shared that which I can think of as of the date I signed this
26 document below but other things may come to me or my memory may be
27 refreshed and I will add and address those things at the time of the Hearing in
28 August and address any additional items at that time as is necessary. Additionally,
29 I have not had an adequate amount of time to receive and review all of

1 TransCanada's answers to our discovery and the discovery of others so it was
2 impossible to competently and completely react to that in my testimony here and I
3 reserve the right to also address anything related to discovery that has not yet
4 concluded as of the date I signed this document below. Lastly, certain documents
5 requested have not yet been produced by TransCanada and therefore I may have
6 additional thoughts on those I will also share at the hearing as needed.

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

10 A: I am respectfully and humbly requesting that the Commissioners think far beyond
11 a temporary job spike that this project may bring to a few counties and beyond the
12 relatively small amount of taxes this proposed foreign pipeline would possibly
13 generate. And, instead think about the perpetual and forever impacts of this
14 pipeline as it would have on the landowners specifically, first and foremost, but
15 also thereby upon the entire state of Nebraska, and to determine that neither the
16 preferred route nor the Keystone mainline alternative route are in the public
17 interest of the citizens of the state of Nebraska.

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

21 A: Yes.

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

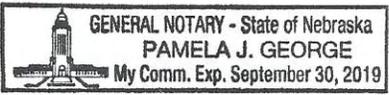
25 A: Yes, they are.

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

William F. Dunavan
William Dunavan

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

Pamela J. George
Notary Public



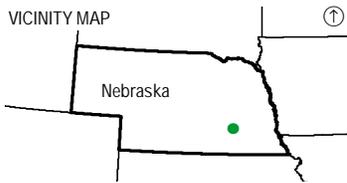
Attachment No. 1



S.006
T.009N
R.002W

Susan C. Dunavan
William F. Dunavan

S.007
T.009N
R.002W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Susan C. Dunavan
William F. Dunavan

TRACT NO. ML-NE-YK-00600.000
STATE: Nebraska
COUNTY: York
SECTION: 006
TOWNSHIP: 009N
RANGE: 002W

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

Attachment No. 2

The Dunavan Family
Bill, Susan, Sr. Fidelis, Fr. Tom,
Jesse, Jennie, Isaac, Levi, James, Matthew,
Sr. Agnes, Elizabeth, Tommy, Timmy,
Olivia, Daniel, Francis, Theo



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-YK-00600.000

**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**"), **William F. Dunavan and Susan C. Dunavan, husband and wife, as joint tenants**, whose mailing address is 1312 Road 6, York, NE 68467 (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 York, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 80 acres, more or less, situated in the County of York, in the State of Nebraska, being further described as two tracts of land situated in the W1/2 of the SE1/4 of Section 6, T9N, R2W of the 6th P.M., as recorded in Book 169, Page 137 and Book 167, Page 342 in the Deed Records of York 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):

William F. Dunavan

Susan C. Dunavan

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **William F. Dunavan**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

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

By **Susan C. Dunavan**

Notary Public Signature

Affix Seal Here

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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

CASE NO. _____

COMPLAINT

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

PARTIES

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM: NEGLIGENCE

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

SECOND CLAIM: TRESPASS

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

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

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-YK-00600.000

We, William F. Dunavan and Susan C. Dunavan, of York County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Two Hundred Twenty-two Dollars and No Cents (\$1,222.00), 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 York, State of Nebraska:

W/2 SE/4

Section 6, Township 9N, Range 2W

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

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

_____, 20_____.

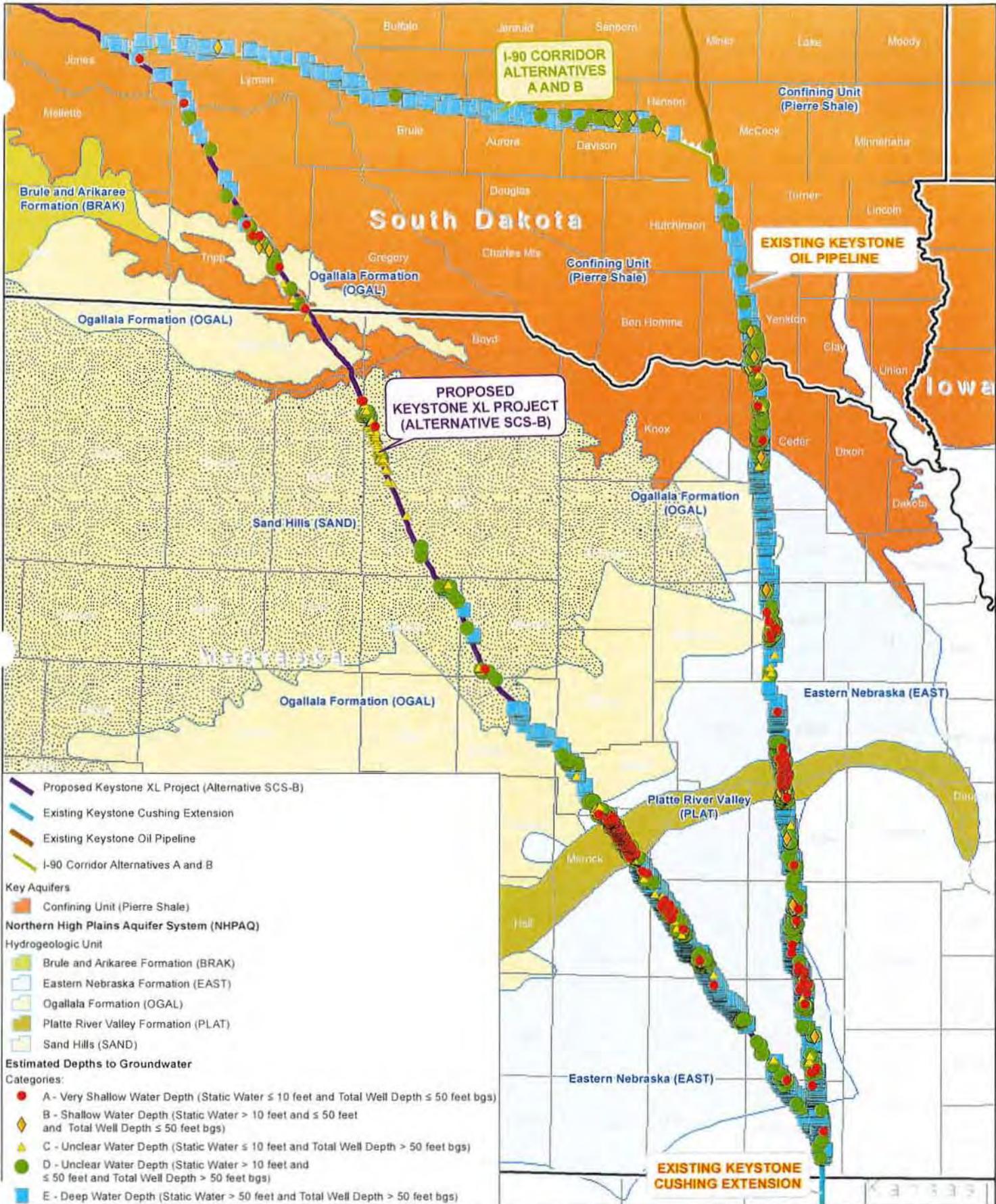
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



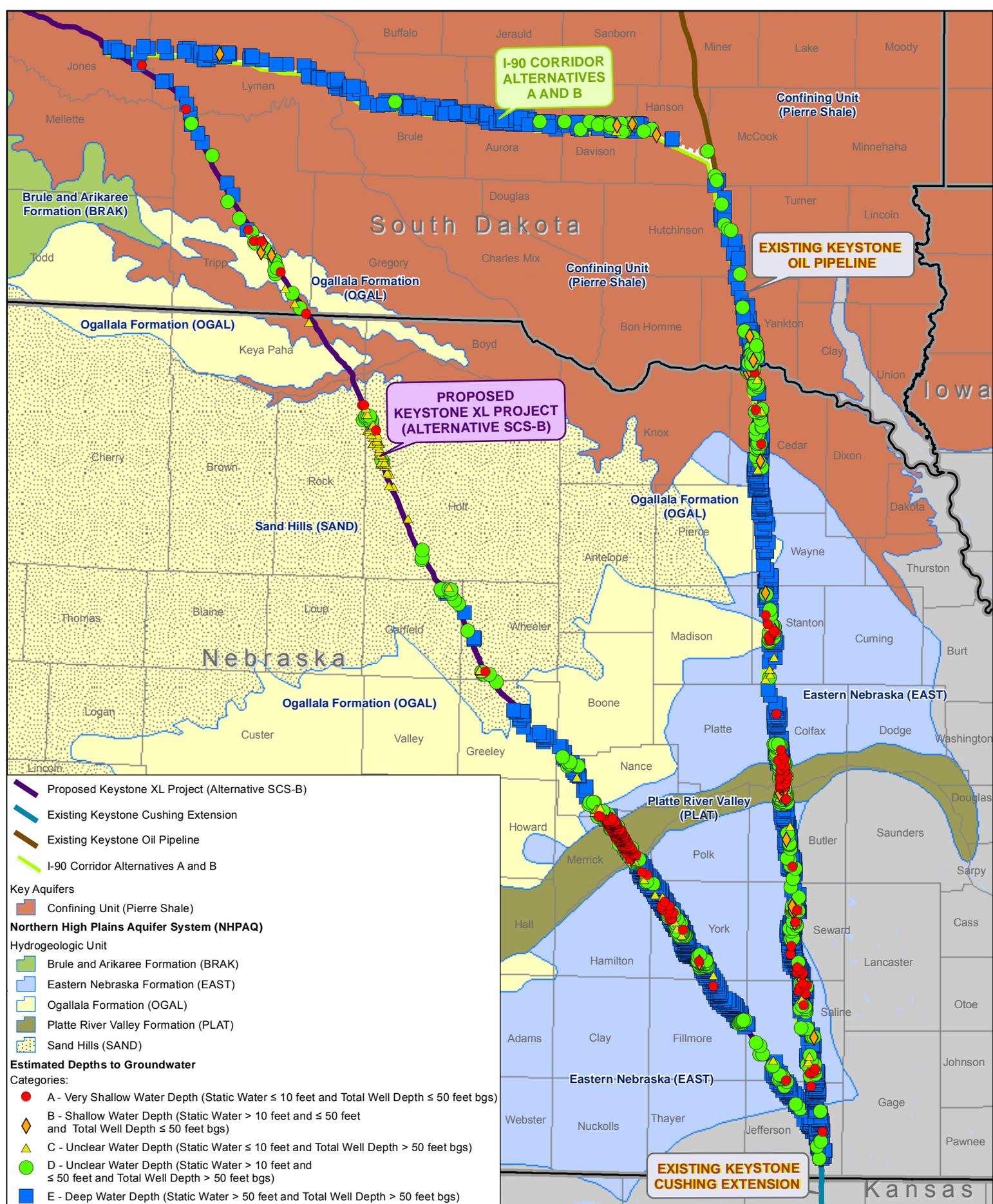
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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



KEYSTONE XL PROJECT

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



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

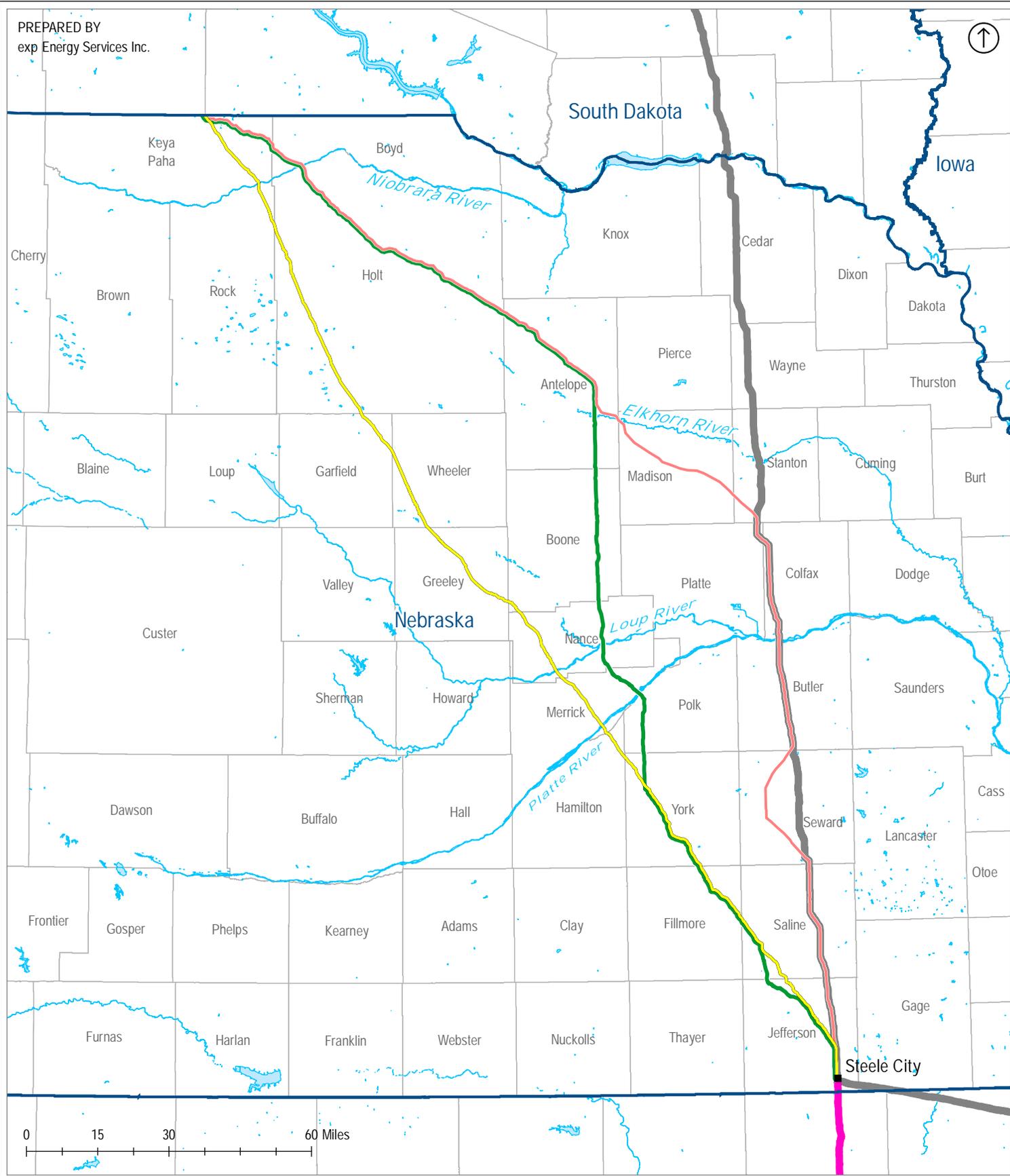
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

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

Attachment No. 7



LEGEND

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

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Attachment No. 8

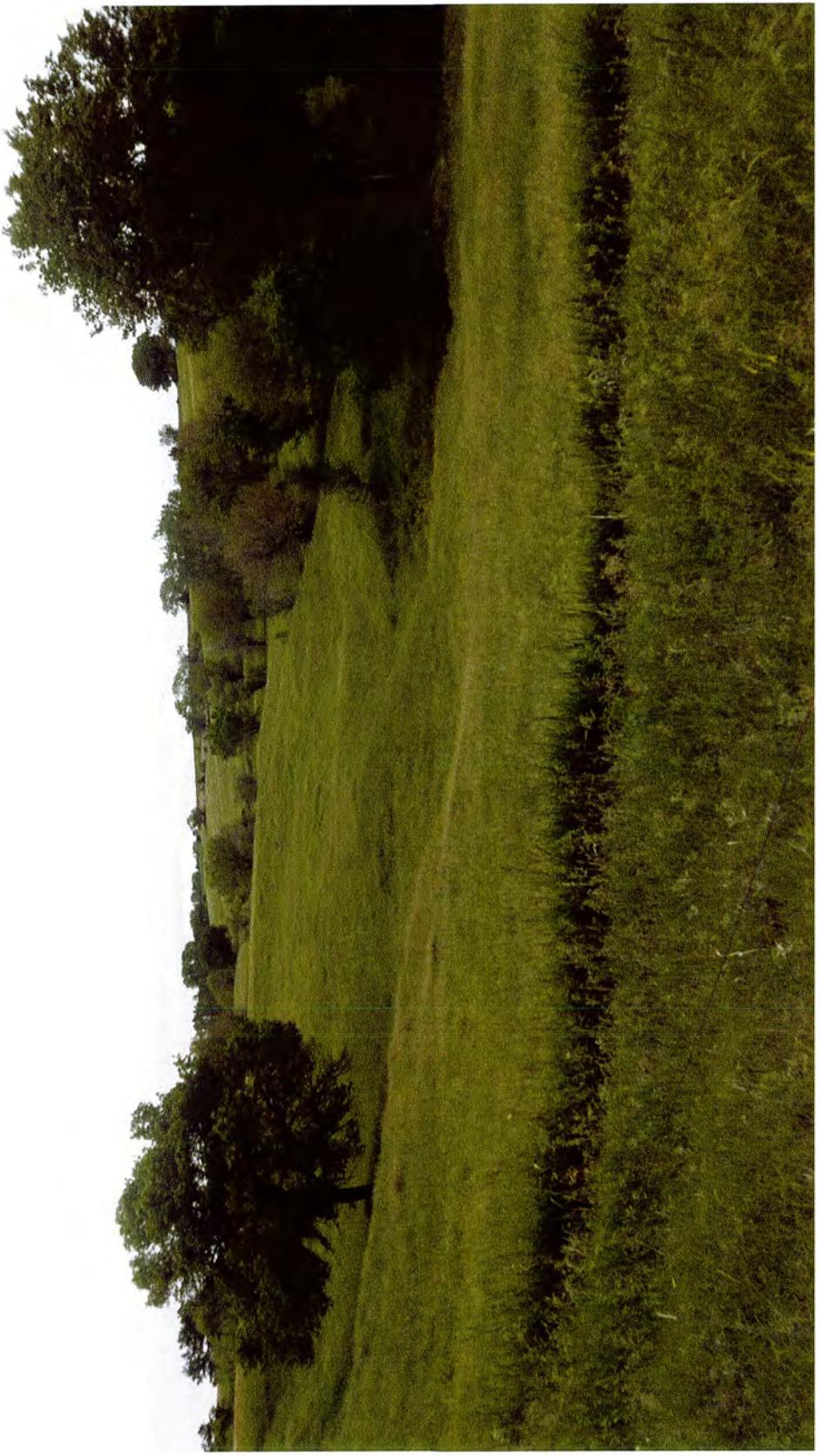
Attachment 8.1

Prairie Plants

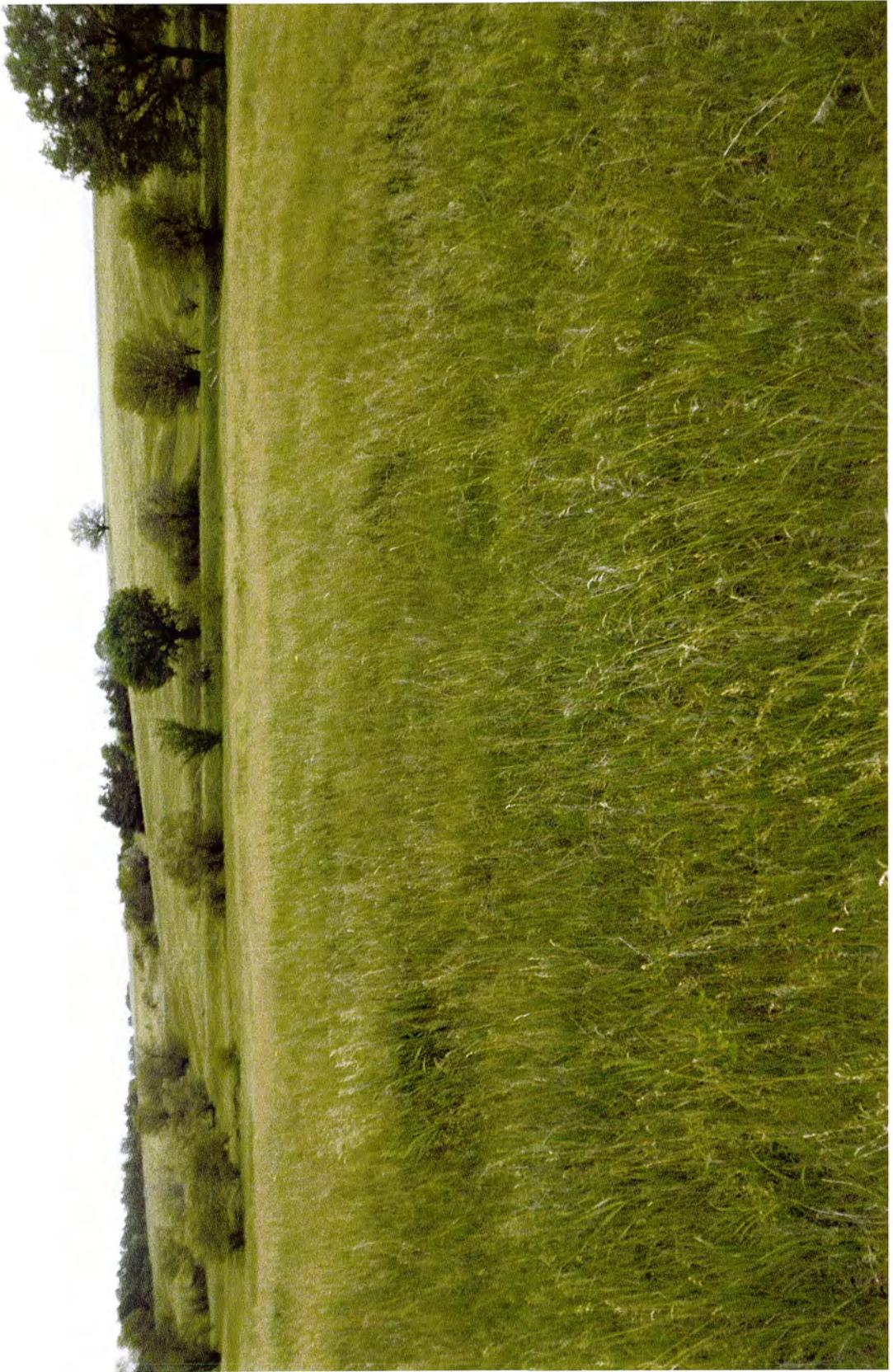


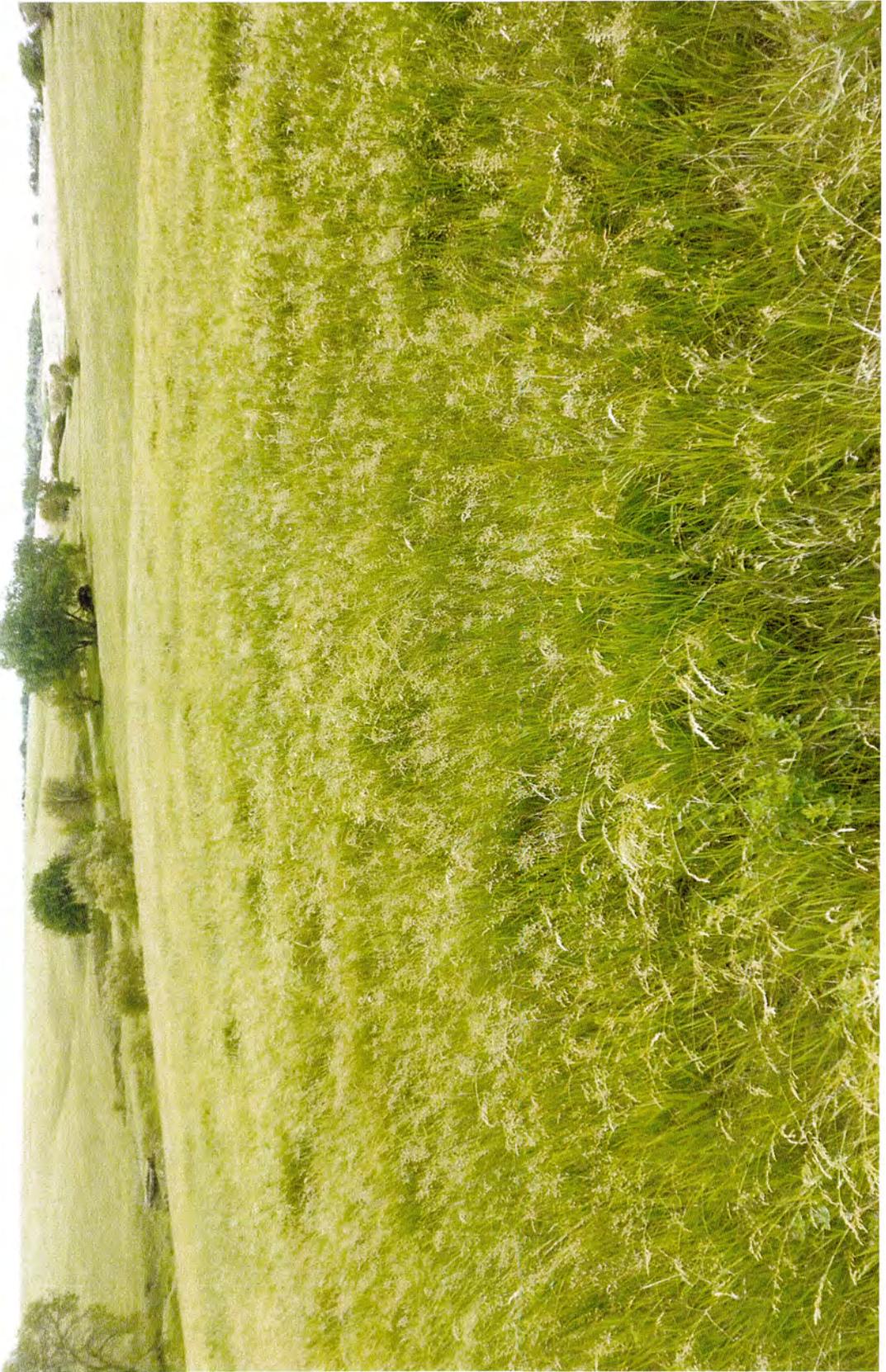














Attachment 8.2

NEGATIVE IMPACTS OF KEYSTONE XL ON THE PROPERTY OF BILL AND SUSAN DUNAVAN

W ½ SE ¼ 6-9-2 YORK COUNTY, NEBRASKA

1. **DESTRUCTION OF NATIVE PRAIRIE:** We have some of the last surviving Native Prairie in York County, Nebraska. When we called the County Assessor years ago at the start of the Keystone XL controversy and asked how much native prairie there was in York County, we were told they did not know there was any. In the Draft Environmental Impact Statement 3.5.2.1 it states, "Native grasslands or prairies are among the most threatened native vegetation communities in the United States". TransCanada's brochures promised to "**RESTORE**" lands impacted by this project. Our easements and the EIS mention the terms "**RESEED, REVEGETATE, RESESTABLISH and RECLAIM** interchangeably. None of these terms define "**RESTORE**". We have over 15 species grass and over 90 species of flowers, forbs and herbs. The EIS Construction/Reclamation Plan for Tall Grass Prairie lists only 6 varieties of grass that will be provided. **This is NOT RESTORATION.** Also the Draft Report for the Nebraska Department of Environmental Quality mentions that "Less than 2% of seed was available or could be obtained in the future from local ecotypes...without availability of local ecotype seed, restoration would be extremely difficult if not impossible".
2. **MANY WELLS NOT DOCUMENTED:** The Keystone Mapping Project has documented wells listed in the Environmental Impact Statement. Looking at the map we saw that our two wells were not identified and neither were our neighbor's wells. If this is the case along the proposed route, there must be innumerable wells that are not documented.
3. **DO WE REALLY CONTINUE TO OWN OUR PROPERTY?** TransCanada states that despite their easements, the property owners will still own their land and can continue to use it. In our case, the diagonal cutting through our property would allow TransCanada to control our land use. Our property has a perfect dam site that we have intended to utilize and we have been told that "Grantor shall not...construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization". This gives control of our entire property to a foreign corporation. An easement of 4-6 acres across takes away control of our entire 80 acre parcel. There shall be no water conservation dam, nor a modern underground cattle watering system, etc.
4. **WHAT WILL BE THE USE OF THE PIPELINE AFTER THE "OIL"?** With oil at or below \$50.00 a barrel and the cost of tar sands extraction needing to be \$80.00 or above to even break even, what is the real motive of this pipeline going over the aquifer? During a Natural Resources Committee hearing on February 9, 2011, Jim Krause, operations director for TransCanada stated "if the pipeline is not needed for oil somewhere down the road and there is no other use for any other product...or maybe by that time in the future, water".
5. **INSURANCE:** Purchasing a \$20,000,000 liability policy annually by a landowner cannot be afforded without continual rents, royalties, percentages, residual payments, etc. The landowner is stuck with a one-time payment and a perpetual liability.

6. PERPETUAL EASEMENT: The easements offered by TransCanada are **FOREVER**. Even for a \pm 50 year project. This should never be allowed.
7. TAXES: The landowner must forever pay property tax on land taken by the easement.
8. SUBCONTRACTORS: All of TransCanada's work seems to be done by subcontractors. We have grave concerns over the supervision of these contractors. With everything being subcontracted, TransCanada does not need to be responsible, need to answer to anyone and there seem to be no penalties, consequences or fines if something is not done correctly.
9. LANDOWNER AGREEMENTS: All of the 7 easement offers we have had do not cover all of our concerns. TransCanada can promise us the world...they can promise they will follow the EIS and the 57 Special Conditions they have agreed to, but if these are not specifically outlined in our easements, there is no way they can actually be enforced and are nothing more than mere suggestions.
10. THREATS TO CONDEMN WITHOUT A PERMIT: Most people enjoy seeing FedEx come up their driveway...not anymore.
11. REALIZING THAT TRANSCANADA IS A FOREIGN (NON U.S.A.) OPERATION FROM BEGINNING TO END:

NEGATIVE IMPACTS OF KEYSTONE XL ON THE PROPERTY OF BILL AND SUSAN DUNAVAN

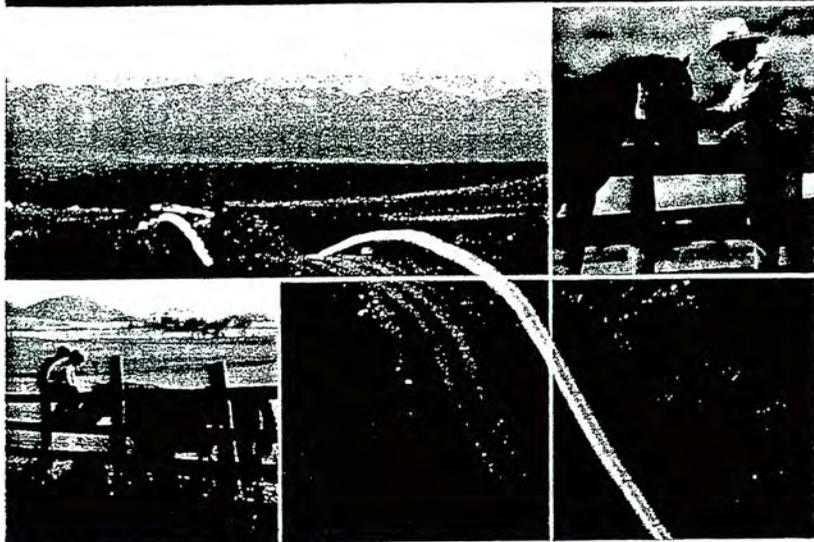
W1/2 se ¼ 6-9-2 YORK COUNTY NEBRASKA

EVIDENCE

1. DESTRUCTION OF NATIVE PRAIRIE:
 - a. TransCanada Brochure stating they will "restore" Prairie
 - b. Plant listing from our property
 - c. Trow Engineering stating they were hired for "Reclamation" survey, not "Restoration"
 - d. Photos of plants on our property can be made available
2. MANY WELLS NOT DOCUMENTED:
 - a. Nebraska Department of Natural Resources list of wells with GPS
 - b. Overlay from local platt book showing numerous residences all with wells, some with cattle windmills all left off report
 - c. Copy of map with DNR wells, made by "Keystone XL Mapping Project"
3. DO WE REALLY CONTINUE TO OWN OUR PROPERTY?:
 - a. Easement language prohibiting dam construction, digging, etc.
4. WHAT WILL BE THE USE OF THE PIPELINE AFTER THE "OIL"?:
 - a. Copy of Business Card of Jim Krause
 - b. Natural Resources Committee Hearing 2-9-2011 with statement of Krause
 - c. Reference to Beck Plan R.W. Beck and Assoc. 1967 for Missouri River Basin
5. INSURANCE:
 - a. No documentation other than current property liability policy. Need bid from Insurance Company for \$20 million policy
6. PERPETUAL EASEMENT:
 - a. See Easement language
7. TAXES:
8. SUBCONTRACTORS:
 - a. Business card of TransCanada spokesman Jeff Rauh.
 - b. Personal observation of Bill Dunavan and others that surveyor's vehicles were inscribed with "International Pegasus" on their doors.
9. LANDOWNER AGREEMENT:
 - a. See Easement (s) Language
 - b. Only terms written into easements can be enforced
10. THREATS TO CONDEMN WITHOUT A PERMIT:
 - a. Copy of Letter from TransCanada dated: 7-21-2010
 - b. Copy of Letter from TransCanada dated: 4-7-2011
 - c. Copy of Letter to Atty. General Bruning and Attorney General's Office Reply dated 8-12-10 and 9-30-10 respectively.
11. REALIZING TRANSCANADA IS A FOREIGN (NON U.S.A.) OPERATION FROM BEGINNING TO END:
 - a. Copy from front page of Lincoln Journal Star with photo of TransCanada explaining the destination of their KXL products 9-4-2011.
12. OTHER EVIDENCE:
 - a. "Cornhusker Economics" Newsletter 2-9-2011 Conclusion, " Considering the potential benefits and costs alluded to above, we do not support the project...supporters have yet to make a clear case that benefits to Nebraska would offset the costs and risks." Richard K. Perrin, Dr. Lilyan Fulginiti, Department of Agricultural Economics.
 - b. 30+ Binders full of well documented information at Susan Dunavan's Office.
 - c. Dunavan Family Photo

Attachment 8.3

What Landowners Can Expect



- We will negotiate in good faith for land rights needed for the Keystone XL project. Fair value will be paid for land rights.
- In more than 50 years of building and operating its pipeline system TransCanada has used eminent domain or right-of-entry procedures very sparingly. We are committed to extending that positive record.
- We will work cooperatively with individual landowners to identify and address issues of crop loss, construction impacts and plans to bring land back to an equivalent productivity capability.
- The Keystone XL Pipeline project will be designed, constructed, operated and maintained in a manner that minimizes impact on landowners and the environment.

Keystone XL Pipeline Project

We are committed to treating all landowners who may be affected by the Keystone XL Pipeline honestly, fairly and respectfully. We recognize that construction of a pipeline on or near land you own raises many questions; it is important that you understand what we are proposing and how you can participate in the process.

The preliminary Keystone XL Pipeline route is based on an analysis of land use, topography and environmental data. Refinements to the route have been – and will be – made based on feedback from landowners, communities and agencies reviewing the proposal, as well as our own detailed environmental and engineering analysis of the route. Even as Keystone XL acquires right-of-way for the pipeline, we will strive to understand and address landowner and community concerns.

Guiding Principles for Landowner Relations

- We seek to develop positive relationships with landowners through open communication, honesty, fairness and mutual respect.
- We plan to keep potentially impacted landowners informed of the project status on an ongoing basis throughout all phases of the project.

About Pipeline Easements:

- A right-of-way easement, negotiated in good faith between the landowner and the pipeline company, would grant Keystone XL the right to construct, operate, and maintain the pipeline. It specifies an easement width within which certain activities are restricted or prohibited, with the primary goal of keeping the pipeline safe. For example, while buildings and excavation are not allowed in the right-of-way, normal farming and cultivation practices are not restricted.
- Canada, the permanent right-of-way width for Keystone XL is generally 20 metres (66 feet) – 10 metres (32 feet) on either side of the pipeline. In addition to the permanent easement lands, temporary working space will be required for the construction phase of the project which will consist of generally 10 metres of additional space

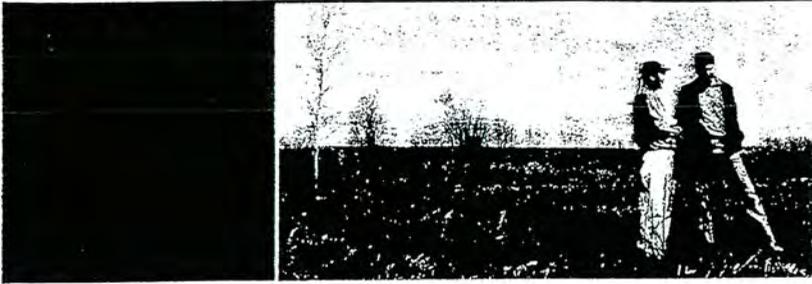
The proposed Keystone XL project is a partnership between TransCanada and ConocoPhillips.

**ConocoPhillips**

 **TransCanada**
In business to deliver

1. Destruction of Native Prairie
 - a. TransCanada Brochure saying they will "restore" Prairie

What Landowners Can Expect



- In the US, the permanent right-of-way easements will be 50 feet (15 meters) wide, with an additional 60 feet (18 metres) of temporary workspace.
- In Canada and the U.S., additional temporary work space may also be required for road crossings and other unique construction features.
- Keystone XL will work with landowners on specific issues such as crop losses, timber, drainage and irrigation systems, wells, fences, equipment, improvements, and other potential construction impacts in order to return the land to full productivity.
- There are no restrictions for crossing the right-of-way with normal farming equipment. If it is necessary for unusually heavy equipment to cross the right-of-way or to excavate near the right-of-way, we request that the pipeline company be contacted in advance to ensure the safety of landowners, work crews and the pipeline itself.
- The easement document and rights run with the land and are not impacted by changes in land ownership.
- Keystone XL will reclaim disturbed land and return it to its equivalent productivity.
- Keystone XL will be responsible for any taxes assessed against the pipeline. Responsibility for property taxes remains with the landowner.
- It is important that landowners read easement agreements carefully and understand the information they contain.

Next Steps

- Keystone XL will seek to acquire rights from landowners to build, operate and maintain the pipeline, will compensate for construction losses and inconvenience and will restore the land impacted by construction activities.
- The Keystone XL pipeline is proposed to be buried with a minimum of 1.2 metres (4 feet of cover), except in site-specific areas, such as consolidated rock, in which case the pipeline will be buried with at least 0.9 metres (3 feet) of cover.

- Keystone XL is responsible for repair of drain tiles, irrigation, or other buried utilities if damaged during Keystone XL construction.
- Keystone XL will seek to minimize road impact and will be responsible for repair of all impacted roads after construction.

If at any time you have questions about the easement process, we encourage you to contact your local Keystone XL land agent or the Keystone XL Project Office.

Contact

For more information, please call our toll free project number (1.866.717.7473) or use our project-specific email address keystone@transcanada.com

Landowner Inquiries

Canada (toll free) 1.866.412.5263

U.S. (toll free) 1.866.585.7063

Alternatively, you can refer to our website at www.transcanada.com/keystone/kxl or write, attention to:

In Canada

TransCanada Keystone XL Project Team
450 – 1st Street S.W.
Calgary, Alberta
Canada T2P 5H1

In the U.S.

TransCanada Keystone XL Project Team
7505 NW Tiffany Springs Parkway
Northpointe Circle II Suite 400
Kansas City, MO 64153

The proposed Keystone XL project is a partnership between TransCanada and ConocoPhillips.



Attachment 8.4

1. Destruction of Native Prairie

b. Plant listing from our property

GRASSES

Big Bluestem	Creeping Foxtail	Little Bluestem	Switch Grass
Bluegrama	Eastern Gamma Grass	Prairie Cordgrass	Tall Dropseed
Blue Grass	Hairy Grama	Sand Lovegrass	Tall Wheat Grass
Brome Grass	Indian Grass	Sideoats Grama	Virginia Wildrye
Buffalo Grass	Intermediate Wheat Grass	Stink Grass	Western Wheat Grass

FLOWERS AND FORBS

Arrowhead	Ground Cherry	Prairie Coneflower	Umbrella Plant
Birdsfoot trefoil	Ground Plum	Prairie Dogbane	Venus Looking-Glass
Black Sampson	Hairy Vetch	Prairie Mallow	Vetch spp.
Blue Lettuce	Heath Aster	Prairie Phlox	Violet Sorrel
Blue-Eyed Grass	Hoary Vervain	Prairie ragwort	Virginia Creeper
Bull Thistle	Horsetails	Prairie Rose	Virginia Pepperweed
Catnip	Ironweed	Prairie Violets	Virginia Stonecrop
Cocklebur	Knotweed	Purple Coneflower	Water Hemlock
Common Milkweed	Lambsquarters	Purple Prairie Clover	Water Plantain
Louisaina Wormwood	Leadplant	Pussy Toes	Western Yarrow
Mapleleaf Goosefoot	Scouring Rush	Red Clover	White Clover
Milk Vetch	Sedges (many kinds)	White Vervain	White Prairie Clover
Curly Dock	Showy Partirdgepea	White-Eyed Grass	White Sweetclover
Curlycup Gumweed	Motherwort	Whorled Milkweed	Wild Four O'clock
Daisy Fleabane	Mullein	Silky Prairie Clover	Wild Grape
Dayflower	Narrow Leaf Puccoon	Silverleaf Scurf Pea	Wild Onion and Garlic
Dotted Gayfeather	Pale Dock	Slender Gerardia	Wild Rose
Dwarf Milkweed	Partridge Pea	Smartweed	Wild Strawberry
Evening Primrose	Pasque Flower	Snow on the Mountain	Wood Nettle
False Bonset	Pink Poppy Mallow	Spiderwort	Wooly Plantain
False Gromwell	Plains Coreopsis	St. John's Wort	Wooly Verbena
Plains Larkspur	Tall Nettle	Sunflower	Yellow Wood Sorrel
Plains Wild Indigo	Tall Thistle	Tall knotweed	
Goldenrod	Plantain	Yellow Goatsbeard	
Green Sagewort	Prairie Anemone	Yellow Sweet Clover	

Attachment 8.5



Trow Engineering Consultants Inc.

2700 Post Oak Blvd., Suite 400
Houston, Texas 77581

Telephone: (713) 693-6400
Facsimile: (713) 693-6498

June 16, 2010

Ms. Susan Dunavan
1312 Road 6
York, Nebraska 68467

Re: Surveys conducted for Keystone XL Pipeline Project on W ½ of the SE ¼ Section 6-9-2 York County, Nebraska

Dear Ms. Dunavan:

We received your request dated May 5, 2010 to obtain information about surveys associated with the Keystone XL Pipeline Project (Project) that have been conducted on your property. For your reference, please find enclosed a drawing showing the currently proposed pipeline route on your property (Figure 1).

Keystone proposes to construct and operate a crude oil pipeline and related facilities to transport Western Canadian Sedimentary Basin (WCSB) crude oil from an oil supply hub near Hardisty, Alberta, Canada to destinations in the south central United States, including an existing oil terminal in Cushing, Oklahoma and existing delivery points in the Port Arthur and east Houston areas of Texas.

Biological and cultural resource surveys are conducted for the proposed Keystone pipeline route and associated ancillary facilities to ensure compliance with all federal, state and local regulations. A 300 foot wide survey corridor, 150 feet on each side of the proposed pipeline route, was utilized during these surveys. Any proposed re-routes to the centerline that fall outside the 300 foot corridor are also surveyed.

Biological and cultural resource surveys were conducted on your land since the proposed pipeline is routed across your property (Figure 1). Biological surveys are conducted by trained professional biologists to identify wetlands, waterbodies, threatened and endangered species and their habitats and noxious weeds. Crews from AECOM completed a pedestrian biological survey on your property on May 21, 2008. A change in the proposed centerline resulted in a second survey on April 11, 2009. None of the aforementioned biological features were recorded during either field visit to your property.

Reclamation surveys were conducted by trained professional biologists and reclamation specialists to determine the type of vegetation present and develop reclamation plans. Crews from WESTECH Environmental Services, Inc. (WESTECH) completed a pedestrian reclamation survey on your property on September 19, 2009. Vegetation within the proposed right-of-way

1. Destruction of Native Prairie

- c. Trow Engineering stating they were hired for "Reclamation" not "Restoration"



was categorized as moderate to low quality tallgrass prairie that had been invaded by smooth brome and intermediate wheatgrass. The northwest corner of the property appeared to have been previously cultivated and reseeded. Cultivated land occurred to the east and west of the property. Trees were noted south of the centerline. Recorded species included: smooth brome (*Bromus inermis*), little bluestem (*Schizachyrium scoparium*), big bluestem (*Andropogon gerardii*), Indian grass (*Sorghastrum nutans*), switch grass (*Panicum virgatum*), intermediate wheatgrass (*Thinopyrum intermedium*), western wheatgrass (*Pascopyron smithii*), dandelion (*Taraxacum officianale*), vetch (*Vicia sp.*), pussy toes (*Antennaria sp.*), common burdock (*Arctium minus*), whorled milkweed (*Asclepias verticillata*), and common sunflower (*Helianthus annuus*). Other species undoubtedly occur on the property but were not recorded since the intention of the survey was to classify the site for reclamation purposes rather than complete a species inventory. The area was classified within the Tall Grasslands Construction/Reclamation Unit due to the presence of native grass species at the site (Attachment #1). Topsoil salvage depths were specified between 8 and 12 inches due to the relatively deep soils at the site. Problematic noxious weeds were not noted at the site although weedy species, such as dandelion and common burdock occur on or near the proposed right-of-way.

Additionally, aerial raptor surveys were conducted via helicopter over your property on April 7, 2009 by AECOM and April 13, 2010 by WESTECH. The 2009 search corridor was 0.25 miles wide on either side of the proposed pipeline centerline and 1 mile wide on either side of the centerline at major river crossings. The 2010 search corridor was expanded to 1 mile on either side of the centerline. No raptors or raptor nests were sighted on your property during the aerial surveys. Another aerial helicopter survey was conducted over your property on February 10, 2009 to identify bald eagle winter roost sites. The surveys covered an area at least 1 mile upstream and downstream of major waterbody crossings and within all suitable bald eagle nest and winter roost habitat. No bald or golden eagle winter roost sites or bald eagle nests were identified on your property.

Pedestrian cultural resource surveys were conducted on your property on May 20, 2008 and April 14, 2009 by crews from American Resources Group Ltd. Again, the re-route necessitated the second field visit. One historic site was recorded during the pedestrian survey, a railroad bed running north-south through your property. Site 25YK25 is a historic railroad bed of the Burlington Northern Railroad located on an upland ridge slope adjacent to an intermittent tributary of the West Fork Big Blue River. At the time of the cultural resource survey, the railroad bed was found in grass with zero ground surface visibility; no artifacts were recovered from the site. The railroad is illustrated on the 1924 and 1947 historic county atlases. The tracks have since been removed, but gravel and cinders were present. On the basis of archival documentation, the portion of the site recorded within the Project survey corridor does not appear to have the potential to yield additional information important to local or regional history. The site does not meet the National Register of Historic Places criteria of significance and was evaluated as ineligible for listing or nomination. No further archaeological investigation was recommended for the site and the Nebraska State Historical Society concurred with this recommendation in a letter addressed to Elizabeth Orlando of the United States Department of State on March 17, 2009. Please find enclosed a drawing showing this historic railroad and its proximity to the proposed Keystone pipeline route (Figure 2).



Please contact me at jonathan.minton@trow.com should you have further questions regarding the surveys conducted on your property or any questions about the proposed Project.

Sincerely,

Jonathan Minton

Enclosures

cc: Steve Craycroft (TransCanada)
Michael Schmaltz (TransCanada)
Suzanne Ban (ENTRIX)
Jon Schmidt (Trow)

Attachment 8.6

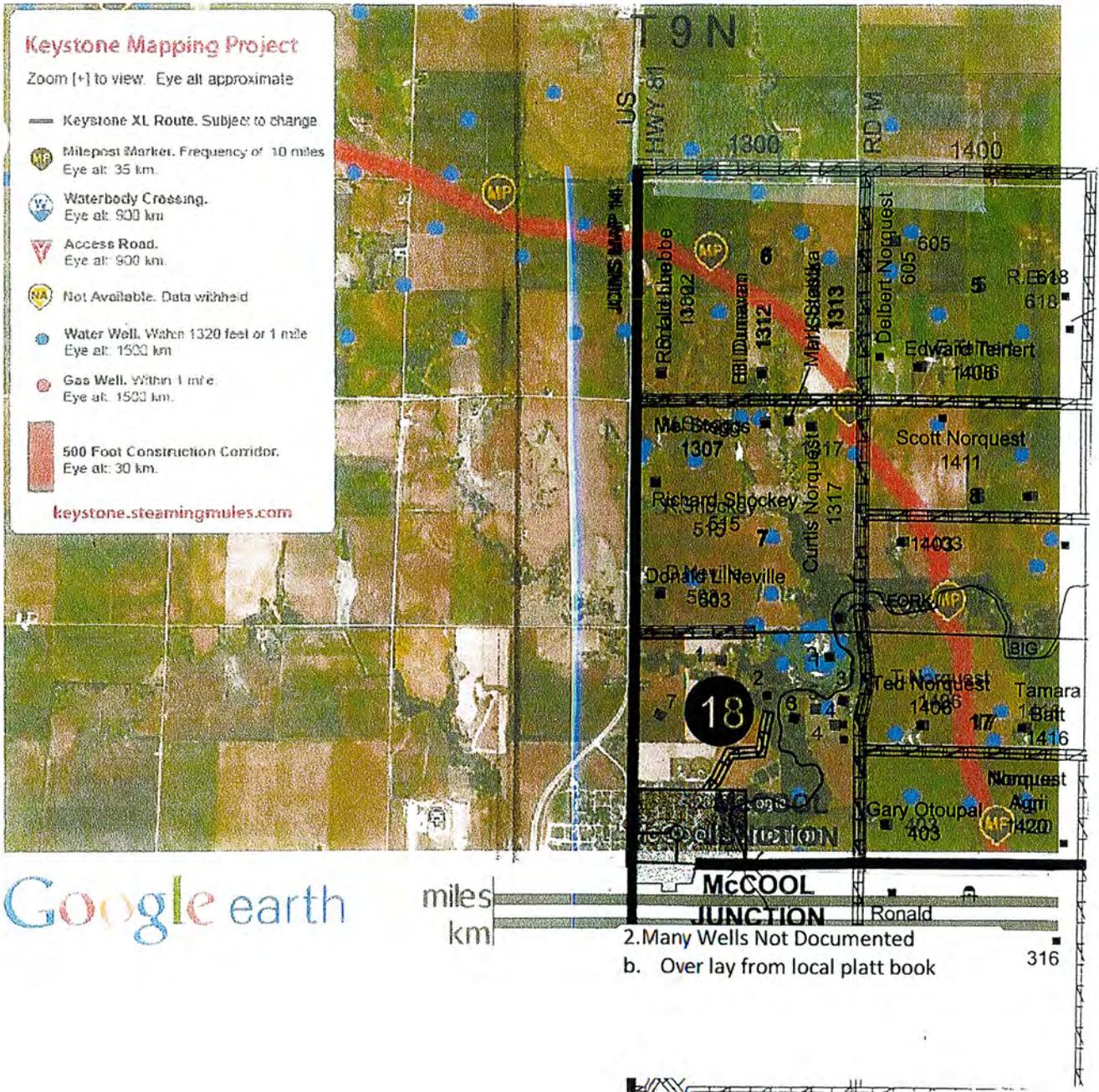
Available Water Well Data within One Mile of the Centerline in Nebraska					
Well ID	Total Well Depth (Feet)	Static Water Level (Feet)	Use	Latitude	Longitude
33685	78	4	Irrigation	40.298858	-97.128610
55201	85	4	Irrigation	40.302412	-97.165644
27339	94	4	Irrigation	40.302455	-97.156787
167639	100	4	Domestic	40.305444	-97.157083
37347	104	4	Irrigation	40.306886	-97.151301
152036	106	4	Irrigation	40.309528	-97.184639
111927	108	4	Irrigation	40.309665	-97.146575
36153	136	4	Irrigation	40.316823	-97.175042
31236	52	5	Irrigation	40.316745	-97.150734
111584	0	5	Irrigation	40.318676	-97.182170
152485	26	5	Domestic	40.320694	-97.170504
74892	31	5	Irrigation	40.324180	-97.194023
74893	32	5	Irrigation	40.324125	-97.184554
117460	34	5	Irrigation	40.324079	-97.176563
171179	35	5	Irrigation	40.327972	-97.203444
25153	36	5	Irrigation	40.329153	-97.156161
5826	36	5	Irrigation	40.331427	-97.194005
120967	38	5	Irrigation	40.331205	-97.170333
201131	40	5	Domestic	40.336000	-97.189639
68097	42	5	Irrigation	40.338831	-97.212793
189303	46	5	Irrigation	40.338694	-97.194111
150524	52	5	Irrigation	40.340173	-97.165520
125535	53	5	Domestic	40.340241	-97.166201
4507	64	5	Irrigation	40.342523	-97.168948
63338	64	5	Irrigation	40.344116	-97.196278
64323	64	5	Irrigation	40.345982	-97.203272
7765	65	5	Irrigation	40.347619	-97.178951
34246	80	5	Irrigation	40.349683	-97.196142
191554	80	5	Domestic	40.349556	-97.184611
170166	123	5	Irrigation	40.350066	-97.193235
37708	26	6	Irrigation	40.351722	-97.209741
92721	27	6	Domestic	40.353060	-97.179226
96294	28	6	Irrigation	40.353681	-97.202636
7422	30	6	Irrigation	40.355338	-97.219279
197624	30	6	Irrigation	40.357028	-97.183944
72376	32	6	Irrigation	40.358976	-97.228781
54795	33	6	Irrigation	40.358919	-97.186011
80753	35	6	Irrigation	40.360766	-97.212270
100286	35	6	Irrigation	40.360772	-97.193112
10797	36	6	Irrigation	40.362607	-97.200269
37264	37	6	Irrigation	40.368204	-97.236823
58027	38	6	Irrigation	40.368046	-97.221699
191450	39	6	Irrigation	40.367805	-97.198362
32985	40	6	Irrigation	40.369174	-97.213108
54516	40	6	Irrigation	40.369784	-97.195398
71159	40	6	Irrigation	40.373502	-97.228776
204381	42	6	Irrigation	40.375444	-97.211694
32682	44	6	Irrigation	40.379233	-97.220457
76356	44	6	Irrigation	40.380709	-97.219280

2. Many Wells Not Documented
 a. Nebraska Dept. of Natural Resources list of wells with GPS

Available Water Well Data within One Mile of the Centerline in Nebraska					
Well ID	Total Well Depth (Feet)	Static Water Level (Feet)	Use	Latitude	Longitude
197482	45	6	Domestic	40.392917	-97.234889
146020	48	6	Domestic	40.394000	-97.231333
166811	49	6	Domestic	40.408439	-97.219041
133782	50	6	Domestic	40.414308	-97.231213
164535	51	6	Domestic	40.433108	-97.293222
172076	53	6	Domestic	40.434388	-97.281194
93213	54	6	Domestic	40.464275	-97.293027
128865	57	6	Domestic	40.474502	-97.311259
74110	58	6	Irrigation	40.529867	-97.366267
63850	60	6	Irrigation	40.538703	-97.349358
43322	65	6	Irrigation	40.541074	-97.394679
83358	70	6	Irrigation	40.542530	-97.382780
33882	80	6	Irrigation	40.542440	-97.353237
32152	102	6	Irrigation	40.546043	-97.391162
83466	104	6	Irrigation	40.546417	-97.382964
60669	121	6	Irrigation	40.548511	-97.386756
124335	147	6	Irrigation	40.549736	-97.392320
171143	24	7	Irrigation	40.549322	-97.372272
35350	33	7	Domestic	40.549756	-97.386508
19317	37	7	Irrigation	40.549861	-97.381900
72588	37	7	Irrigation	40.549914	-97.376283
42353	38	7	Irrigation	40.550651	-97.400601
73978	38	7	Irrigation	40.553429	-97.401758
69809	39	7	Irrigation	40.553459	-97.363763
82123	39	7	Irrigation	40.553942	-97.373264
204484	39	7	Domestic	40.558383	-97.404200
119455	39	7	Irrigation	40.564295	-97.402032
104461	40	7	Irrigation	40.564252	-97.392373
205091	40	7	Domestic	40.566833	-97.395611
206175	40	7	Domestic	40.566778	-97.381000
28045	40	7	Irrigation	40.567753	-97.389931
155976	40	7	Irrigation	40.571576	-97.411245
136865	41	7	Irrigation	40.571389	-97.382927
91267	41	7	Domestic	40.573375	-97.420789
60670	41	7	Irrigation	40.574897	-97.401514
36247	43	7	Irrigation	40.574970	-97.394923
118764	44	7	Irrigation	40.578726	-97.420706
61349	44	7	Irrigation	40.578755	-97.411259
19318	48	7	Irrigation	40.578881	-97.404526
139100	50	7	Irrigation	40.578850	-97.401825
136198	50	7	Irrigation	40.578777	-97.382794
72309	50	7	Irrigation	40.580493	-97.389909
14131	50	7	Irrigation	40.582412	-97.416114
59362	52	7	Irrigation	40.583077	-97.401601
66636	53	7	Irrigation	40.584234	-97.408880
40831	53	7	Irrigation	40.586058	-97.429049
147804	60	7	Irrigation	40.589764	-97.439831
146043	60	7	Irrigation	40.593523	-97.444820
64500	63	7	Irrigation	40.593318	-97.430182

Source DNR, 2011. Available @ <http://dnrdata.dnr.ne.gov/wells/cs/menu.nsf>

- 2.Many Wells Not Documented
- c. Copy of map with DNR wells made by Keystone XL Mapping Project



Attachment 8.7

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Natural Resources Committee
February 09, 2011

JIM KRAUSE: Twenty years. [LB340 LB578 LB629]

SENATOR SMITH: And that contract, of course, would begin the day that they would begin to receive or have they already begun to receive? [LB340 LB578 LB629]

JIM KRAUSE: It's once the people on the far end start to receive the oil, as they have already been doing since June on the first phase of the Keystone pipeline. [LB340 LB578 LB629]

SENATOR SMITH: One year, one year into it at this point. [LB340 LB578 LB629]

JIM KRAUSE: Yeah. Yep. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Since you're in operations, actually how much does this oil heat up because of friction? [LB340 LB578 LB629]

JIM KRAUSE: That's a great question that has been going around a number of times, and as stated earlier in this committee, we provide no heat to the pipe. But you're correct, the pipe does heat up from the friction not only from the pumps, but from the pipe itself. Ultimately, the oil of...the temperature of the pipe and the oil is governed mainly by ground temperature. That has a huge impact on the temperature of the oil. So as the oil comes up to a pump station, it can be very close to what the current ground temperature is four feet below ground. As it exits the station, some of that pumping will heat it up a bit, but it's not like it gets really, really hot and changes the viscosity to a great amount. [LB340 LB578 LB629]

SENATOR HAAR: Now you may not be the person to answer this one, maybe the next person, but if there is decommissioning for whatever purpose, who pays for that and

how are we guaranteed, for example, the landowners? [LB340 LB578 LB629]

JIM KRAUSE: Sure. It's an excellent question and it has come up a few times here. There will be some testimony later that will cover that in detail, but, again, my background and knowledge of this is we're required through a permitting process through PHMSA, the Department of Transportation, we are held liable for reclamation and restoration of any abandoned pipeline. In technical terms, what that would mean, if the pipeline is not needed for oil somewhere down the road and there is no other use for any other product to go through that pipe, let's say gasoline, or maybe by that time in the future, water, then the pipeline needs to be...follow very stringent processes to be taken out of service. Cleaning pigs squeal down the pipeline and remove whatever oil is in the pipe. And then further pigs goes down and clean whatever residue is in there. And then, essentially, the pipe is closed at each end and the inert gas, such as nitrogen, is put into the pipe. The cathodic protection systems on the pipe continue to have the function, by law, to ensure the pipe doesn't corrode. And the nitrogen inside makes sure there's no internal corrosion taking place as well. [LB340 LB578 LB629]

SENATOR HAAR: So, but if some point, because everything eventually wears out, I mean, pipeline will last a lot longer than I will, but if it collapses at some point after it is decommissioned, how...who takes care of that? [LB340 LB578 LB629]

JIM KRAUSE: The owner of the pipeline which is us. [LB340 LB578 LB629]

SENATOR HAAR: And if you're no longer the owner? [LB340 LB578 LB629]

JIM KRAUSE: Whoever takes ownership from us would have to carry on that liability. [LB340 LB578 LB629]

SENATOR HAAR: And if it's abandoned and just, you know, goes through bankruptcy or something, I still...at the end you could come up with someone with a situation where

Attachment 8.8

Western water resources; Mexico to divert water to the U.S.

Starting with proposals made in 1950 in the Bureau of Reclamation's United Western Study, preliminary studies were made of even larger interbasin transfers until a moratorium on such studies by federal agencies was legislated in 1968. A summary of these developed by C. C. Warnick and published by the University of Arizona in *Arid Lands in Perspective*, 1969, is included as Table 2. The last project shown on the table is the Texas Water Plan, studied by the Bureau of Reclamation and the Corps of Engineers under a special Congressional authorization between 1967 and 1973. This proposal would have transferred over 10 million acre-feet annually from the Mississippi River or its tributaries to the high plains of Texas and New Mexico to sustain agricultural production after the Ogallala aquifer is pumped out. Cost of water delivered on the high plains was estimated to be well over \$300 an acre-foot with the cost of energy for the 5,000-foot pump lift computed at pre-1973 price levels. Since that report was completed there has been less interest in interbasin transfers.

It is dubious whether any of these plans involving diversions across state lines can be undertaken, even if funds for construction could be made available. No state will be willing to sell its water "birthright" unless the consideration is so high as to increase the cost of the project to such an extent that it would not be economically justified.

International water transfers might have some possibility of being effected if the benefit from water development in the exporting country, which would be Canada, could be made high enough, and since the water for export would probably always flow north into the Arctic unused. However, the environmental disruption would be huge, and if the environmental movement develops in Canada as it has in the United States, it would be very difficult to negotiate the necessary treaty and enact the implementing legislation in the two countries.

Groundwater Management

There are an estimated 180 billion acre-feet of water in underground aquifers within a depth of 2,500 feet under the forty-eight contiguous United States. About one-fourth of this, 46 billion acre-feet, is usable with present technology; this is

Gay, M. M. et al. *Water Resources*

TABLE 2
Summary of Information on Conceptual Plans Proposed for Regional Water Transfer

Project Name	Agency/Company Sponsor Author of Plan	Approximate Date of Proposal	River Basin(s) for Source	River Basin(s) of Use	Countries Involved	States Involved	Proposed Diversion: (a) 10 ⁶ acre-ft/yr; (b) cfs; (c) mgd.
United Western	U.S. Bureau of Reclamation Rep. R. J. Welch-Calif.	1950	Columbia River North Pacific Coastal Streams	Great Basin South Pacific Coastal Plain Colorado River	United States Mexico	11 Western States	6.0 9,100 5,900
California Water Plan	California Department of Water Resources	1957	Northern California Rivers	Central Valley California South Pacific Coastal Plain	United States	California	
Pacific Southwest Water Plan	U.S. Bureau of Reclamation W. I. Palmer	1963	Northern California Streams Colorado River	Lower Colorado River South Pacific Coastal Plain	United States Mexico	California Arizona, Nevada Utah, New Mexico	1.2 1,660 1,070
Snake-Colorado Project	Los Angeles Department of Water & Power S. B. Nelson	1963	Snake River	Colorado River South Pacific Coastal Plain	United States Mexico	Idaho, Nevada Arizona California	2.4 3,320 2,140
North American Power & Water Alliance (NAWAPA)	Ralph M. Parsons Company	1964	Alaskan & Canadian Rivers, with Columbia River	Great Lakes Basin South Pacific Coastal Plain Colorado River Texas High Plains	United States Canada Mexico	Western States Texas Lake States	110.0 152,000 98,000
Yellowstone-Snake-Green Project	T. M. Stetson Consulting Engineer	1964	Yellowstone River Snake River	Green River Colorado River	United States	Montana, Idaho Wyoming, Lower Colorado States	2.0 2,770 1,780

4. What Will be the Use of the Pipeline After the "Oil"?
c. Reference to Beck Plan

TABLE 2 (continued)
Summary of Information on Conceptual Plans Proposed for Regional Water Transfer

Project Name	Agency/Company	Approximate	River Basin(s) for Source	River Basin(s) of Use	Countries Involved	States Involved	Proposed Diversion: (a) 10 ⁶ acre-ft/yr; (b) cfs; (c) mgd.
	Sponsor Author of Plan	Date of Proposal					
Pirkey's Plan Western Water Project	F. Z. Pirkey Consulting Engineer	1964	Columbia River	Colorado River	United States	Oregon	15.0
				Sacramento River	Mexico	Washington	20,800
				South Pacific Coastal Plain		California	13,400
						Utah, Arizona Nevada	
Dunn Plan Modified Snake- Colorado Project	W. G. Dunn, Consulting Engineer	1965	Snake & Colum- bia Rivers	Great Basin	United States	Idaho, Oregon	5.0
				Slope River	Mexico	Washington	6,900
				South Pacific Coastal Plain		Utah, Arizona	4,450
				Colorado River		Nevada California	
Sierra-Cascade Project	E. F. Miller, Consulting Engineer, Maryland	1965	Columbia River	Oregon Valleys	United States	Oregon, Nevada	7.0
				Central Valley, California		California	9,700
				South Pacific Coastal Plain			6,250
Undersea Aque- duct System	National Engineering Science Company F. C. Lee	1965	North Coast Pacific Rivers	Central Valley	United States	Oregon	11.0
				South Pacific Coastal Plain		California	15,200
							9,800
Southwest Idaho Development Project	U.S. Bureau of Reclamation, Region 1	1966	Payette River Weiser River Bruneau River	Slope River	United States	Idaho	
Canadian Water Export	E. Kuiper	1966	Several Canadian Rivers	Western States (indefinite)	United States	All Western States	150.0
					Canada		208,000
							134,000

Central Arizona Project	U.S. Bureau of Reclamation	1948, 1967	Lower Colorado River Basin	Colorado River	United States	Utah, Nevada	1.2
					Mexico	Arizona	1,660
						California	1,070
Central North American Water Project C3 NAWP	E. R. Tinney Washington State University, Professor	1967	Canadian Rivers	Great Lakes	United States	Great Lakes	150.0
				Entire Western States	Canada	Western States	208,000
					Mexico		134,000
Smith Plan	L. G. Smith Consulting Engineer	1967	Liard River McKenzie River	All river basins of 17 western states	United States	17 Western States	40.0
					Canada		55,500
					Mexico		35,750
Grand Canal Concept	T. W. Kierens Sudbury, Ontario	1965	Great Lakes and St. Lawrence River	Canadian rivers flowing to Hudson Bay	United States	Great Lake States	17.0
							23,600
							15,200
Beck Plan	R. W. Beck Associates	1967	Missouri River	Texas High Plains	United States	South Dakota Nebraska Kansas, Colorado Oklahoma, Texas	10.0 13,800 8,930
West Texas and Eastern New Mexico Import Project	U.S. Bureau of Reclamation & U.S. Corps of Engineers	1967 (1972 due)	Mississippi and Texas Rivers	High Plain of Texas and New Mexico	United States	Oklahoma, Texas New Mexico Louisiana	16.5 22,900 14,700

Source: C. C. Warnick, "Historical Background and Philosophical Basis of Regional Water Transfer," in *Arid Lands in Perspective*, McGinnies and Goldman, Eds. (Tucson: The University of Arizona Press, 1969), pp. 340-351.

Attachment 8.9

8. Subcontractors:
 - a. Business Card of Jeff Rauh

Jeff Rauh
Keystone Project Representative

An employee of *Neil Palmer & Associates*
an independent contractor to TransCanada

890 Elm Grove Road Office: 262.821.5230
Suite 100 Cell: 262.853.6567
Elm Grove, WI 53122

E-mail: jrauh@neilpalmerllc.com

Contracted to the Keystone Pipeline

Call Before You Dig! For US line locates, call **811**.

Attachment 8.10

9. Landowner Agreement
b. Only terms written into easements
can be enforced

1.56.1: Regarding Mitigation Commitments and Landowner Agreements, in the Draft Report the NDEQ “encourages Keystone to negotiate mutually acceptable agreements with adversely affected landowners to address potential construction and restoration issues.” The Nebraska Draft Evaluation Report, October 2012, Chapter 2 Project Description Overview Section 2.2.1 Right-of way Acquisition Process states:

To construct, operate, and maintain the proposed Nebraska Reroute, Keystone would negotiate easement agreements with landowners along the route. The easement agreements would list the conditions to which the landowners and Keystone both agree, including financial compensation to the landowners in return for granting easements. Compensation would also be made for loss of use during construction, crop loss, loss of nonrenewable or other resources, restrictions on future use of the land, and restoration of any unavoidable damage to personal property during construction. Easement negotiations and final agreements are private business concerns between the landowners and Keystone, and neither DOS nor NDEQ has legal authority or ability to intervene in the proceedings or enforce the conditions of an easement agreement. In most cases, agreements would allow the agricultural uses currently in place to continue within the permanent ROW after pipeline installation.

Attachment 8.11

10. Threats to Condemn without a Permit
a. Letter from TransCanada 7-21-10



July 21, 2010

WILLIAM F. & SUSAN C. DUNAVAN
1312 ROAD 6
YORK, NE 68467

Re: ML-NE-YK-00600.000

Dear Owner:

You by now are aware that TransCanada Keystone Pipeline L.P. ("Keystone") is constructing and will operate a 1,833 mile crude oil pipeline, which will begin in Canada and will cross through approximately 1,073 miles of property in the United States, including Nebraska. As you know, the path of the pipeline will cross a portion of your property.

In order to construct the pipeline, Keystone must acquire a permanent and temporary easement over your property. It is Keystone's strong preference to negotiate a voluntary transfer with each property owner. However, in the event we cannot come to an agreement, Keystone will use eminent domain to acquire the easement, which is authorized pursuant to Nebraska Revised Statute § 57-1101 et. seq.

The description of the proposed permanent and temporary easements is described in the enclosed form of easement and its attachments.

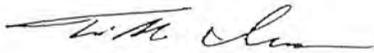
As consideration for granting Keystone these easements, TransCanada is offering you the total sum of _____ This sum includes _____ for the permanent easement, which represents 100% of the total fee value for the permanent easement, despite the fact the permanent easement encompasses significantly less property rights than the total fee. Additionally, the amount includes _____ for the temporary easement which is based upon a rental value of 50% of the fee value per year. Finally, Keystone will provide compensation for any damages that occur during the course of the construction including crop loss and any damages to fences, trees or other improvements.

This letter is Keystone's final offer, and it will remain open for one month after the date of this letter or until you reject it. We believe the amount of the offer is a premium price for your property. Keystone's offer is high because the company prefers to acquire this property through negotiation and to avoid litigation and its associated delays and risks. In order to accept this offer, please have the authorized person(s) execute two original Easement and Right of Way forms before a notary public and return them to me in the enclosed postage pre-paid envelope before the expiration of the one month period. Also enclosed is a W-9 tax form that needs to be completely filled out, signed and returned along with the other forms. We will deliver the agreed upon amount of compensation to you immediately upon our receipt of the signed and notarized documents.

While we hope to acquire this property through negotiation, if we are unable to do so, we will be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property promptly after the expiration of this one month period. In the event that we are forced to invoke the power of eminent domain, this letter and its contents are subject to Nebraska Revised Statute § 27-408 and are not admissible to prove the existence or amount of liability.

Please contact me in the event you have any questions or concerns at (832) 320-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim M. Irons".

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

Encl.

Attachment 8.12



April 7, 2011

WILLIAM F. & SUSAN C. DUNAVAN
1312 ROAD 6
YORK, NE 68467

Re: ML-NE-YK-00600.000

Dear Owners:

The proposed route of a crude oil pipeline, known as Keystone XL, crosses a portion of your property in Nebraska. The project, proposed by Delaware-based TransCanada Keystone Pipeline L.P., responds to U.S. demand for crude oil from refineries seeking a secure and stable supply. The project seeks to create a land-based link between this U.S. demand and growing oil supplies in Canada and in the northern Great Plains states. Oil delivered would reduce the need for imports from Venezuela or the Middle East, significantly improving U.S. energy security.

The federal regulatory review of this proposed project continues and we expect a decision from the federal government in the first half of 2011. To construct the project, we must acquire permanent and temporary easements, and possibly other pipeline and construction related land rights, through the area where this project will be constructed in Canada and in the U.S., including in Nebraska.

Permanent easements provide Keystone limited rights to construct, operate, and maintain the pipeline. Landowners retain all rights of ownership and productive use of the easement area with only those restrictions that ensure the continued integrity and safety of the pipeline. In addition, temporary easements, which are in place only until construction and reclamation are completed, support the construction activities on the permanent easement.

To construct the pipeline, we must acquire a permanent and temporary easement over your property. The proposed permanent easement and temporary easement is described in the enclosed form of easement and its attachments.

It is our strong preference to negotiate a voluntary easement acquisition with each property owner. We have been working with Nebraska landowners since 2008 to understand how best to minimize the impact of this project on individual properties and operations. This process can include multiple visits to the land to address specific routing issues as well as provisions to minimize impacts associated with the construction process. You are receiving this letter because our discussions and negotiations are not progressing to a voluntary settlement in a timely manner.

In such circumstances, property laws in Nebraska and most other jurisdictions allow proponents of projects that are in the broader public interest to use eminent domain to acquire the easement, which is authorized pursuant to Nebraska Revised Statute § 57-1101 et. seq.

It is important to point out that in addition to the easement itself, Keystone's work on your land and the pipeline itself must be in compliance with applicable state and federal rules and regulations. In particular, throughout its route in the U.S., the safe operation of this pipeline is governed by the U.S. Department of Transportation. These requirements include measures required to ensure safety when the pipeline is operating and if it is shut down. Construction methods and techniques are spelled out in detail in the Construction Mitigation and Reclamation Plan, a copy of which you should have received as a part of the Draft Environmental Impact Statement issued by federal agencies reviewing this project (and available on the U.S. Department of State project web site at www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open under "Project Documents"). Additional requirements related to construction may be added as regulatory reviews continue to proceed.

As consideration for granting these easements, we are offering you the total sum of _____ This sum includes _____ for the permanent easement, which is based on 100 per cent of the current, unit fee value (i.e. dollars per acre as determined by an independent market assessment) of similar land in your region, despite the fact the permanent easement grants us significantly fewer property rights than outright ownership. Additionally, the amount includes _____ or the temporary easement which is a rental value based on 50 per cent of the assessed unit fee value. Finally, we will provide compensation for any damages that occur during the course of the construction including crop loss and any damages to fences, trees or other improvements.

We prefer to acquire this property through negotiation and voluntary settlement. We will initiate eminent domain only as a last resort, where good faith efforts have not resulted in a voluntary agreement. Even after initiating this process, we will continue to work to reach a voluntary agreement.

This letter represents our final offer, and will remain open for one month after the date of this letter or until you reject it, whichever is earlier. After that period, we will initiate the eminent domain process. To avoid litigation, we are offering an amount for the easement that exceeds the value of the rights we seek.

To accept this offer, the authorized person(s) must execute two original Easement and Right of Way forms before a notary public and return them to the undersigned in the enclosed postage pre-paid envelope before the expiration of the one month period. Also, the enclosed W-9 tax form needs to be completely filled out, signed and returned along with the other forms. We will deliver the agreed upon amount of compensation to you immediately upon our receipt of the signed and notarized documents. This settlement remains in place regardless of whether Keystone receives its federal permit.

Our strong preference is to reach voluntary agreement and we will continue these efforts regardless of the initiation of legal processes. In the event that we must invoke the power of eminent domain, this letter and its contents are subject to Nebraska Revised Statute § 27-408 and are not admissible to prove the existence or amount of liability.

Please contact me in the event you have any questions or concerns at (832) 320-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim M. Irons". The signature is fluid and cursive, with a prominent initial "T" and a long, sweeping underline.

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

Encl.

cc: Lee H. Hamann, McGrath North Mullin & Kratz, PC LLO
John Hunt, TransCanada

Attachment 8.13

10. Threats to Condemn without a
Permit
c. Copy of letter to Bruning and reply

August 12, 2010
1312 Road 6
York, NE 68467

Jon Bruning
Office of the Attorney General
2115 State Capitol
Lincoln, NE 68509-4604

Dear Mr. Bruning,

I am writing to you over the concern of the TransCanada Keystone XL Pipeline. This pipeline is scheduled to go through our property which consists of native prairie. I am concerned over losing this prairie as well as the dangers of polluting the Ogallala Aquifer. I have written TransCanada asking questions. I have not received any replies from the company. I have not signed any easement papers. I just received a somewhat threatening letter from TransCanada. At first I thought it was the answers to my questions. Instead it was a letter that says unless the easement papers are signed "we will be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property."

My question to you is **can TransCanada threaten us with eminent domain if they have no permits yet and the Environmental Impact Statement agreement has been given to them?**

I am sure I am not the only one receiving these letters. I urge you to use your power to protect the citizens of the State of Nebraska.

Sincerely,

Susan C. Dunavan

Attachment 8.14



STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
TIERONE FAX (402) 471-4725

JON BRUNING
ATTORNEY GENERAL

LIZ EBERLE
CONSTITUENT SERVICES DIRECTOR

September 30, 2010

Susan Dunavan
1312 Road 6
York, NE 68467

Dear Susan:

Thank you for taking time to contact our office. We are sorry to hear about the frustrations you and your family are going through.

We share your concern for preservation of native prairie and the pristine quality of the water stored in the Ogallala Aquifer, and are monitoring the progression of the TransCanada Keystone XL Pipeline in Nebraska. While our office is unable to provide private legal advice, we can confirm that public utilities, under certain circumstances, do have the authority to exercise eminent domain.

Since your property rights may be impacted by the proposed pipeline, we encourage you to speak with someone familiar with real estate law to determine the best course of action. We appreciate your interest and concern in contacting our office.

We appreciate your interest and concern in contacting our office.

Sincerely,

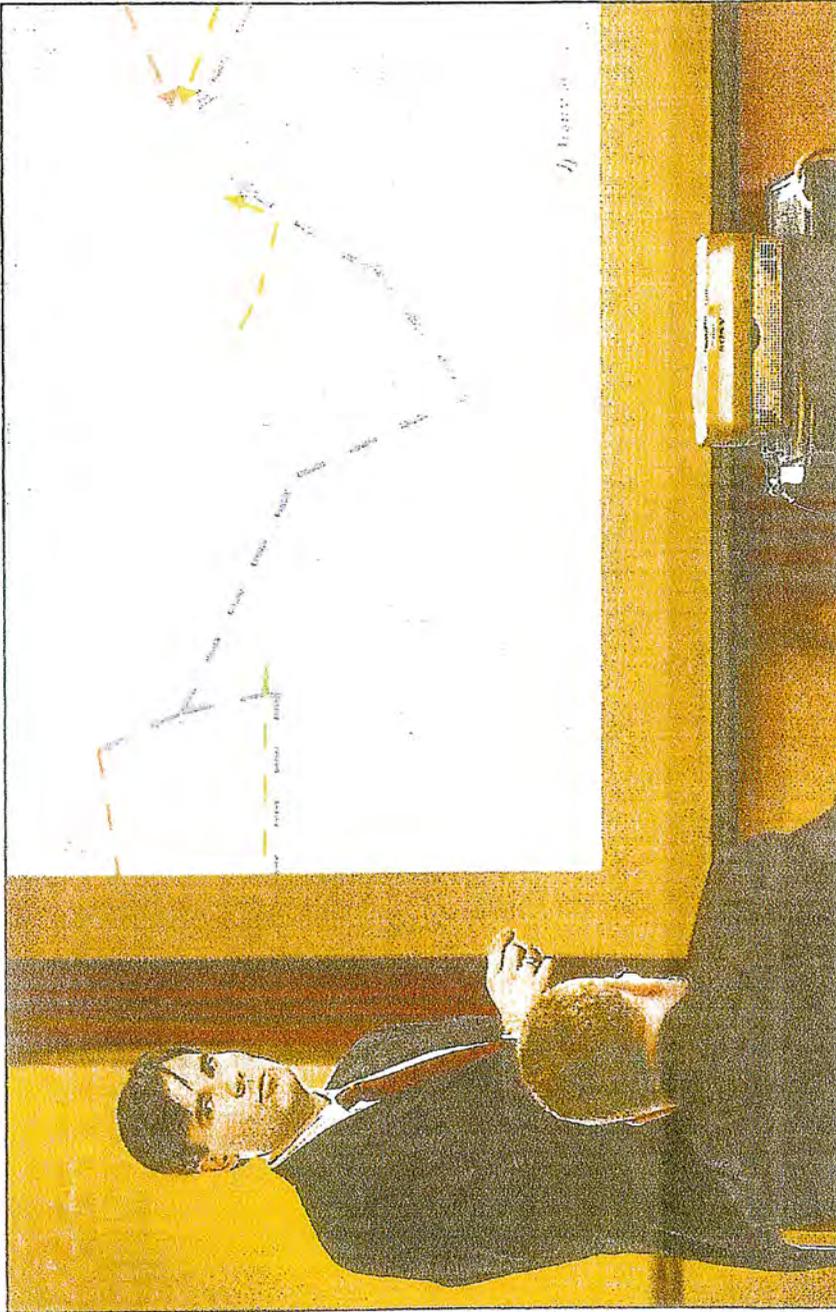
JON BRUNING
Attorney General

Liz Eberle
Constituent Services Director

Attachment 8.15

11. Realizing TransCanada is a Foreign (non U.S.A.) Operation from beginning to end. Lincoln Journal Star 9-4-2011

PIPELINE PRESENTATION



FRANCIS GARDLER/Lincoln Journal Star

Louis Fenyvesi, manager of marketing, supply and oil pipelines for TransCanada, gives a presentation during the briefing for Keystone XL Pipeline at The Cornhusker Marriott on Wednesday morning.

Pointing fingers

Governor asks Obama to deny permit for Keystone XL Pipeline; legislators debate whether



Jeff Rattin, TransCanada's spokesman in Nebraska, runs the PowerPoint presentation for

Attachment 8.16

CORNHUSKER ECONOMICS

UNIVERSITY OF
Nebraska
Lincoln

February 9, 2011

University of Nebraska–Lincoln Extension

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
<http://agecon.unl.edu/cornhuskereconomics>

The Keystone XL Pipeline Project

Market Report	Yr. Ago	4 Wks Ago	2/4/11
Livestock and Products,			
Weekly Average			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight	\$84.58	\$105.29	\$105.50
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb	115.22	147.34	149.05
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb	98.21	126.83	126.32
Choice Boxed Beef, 600-750 lb. Carcass	139.34	165.81	172.40
Western Corn Belt Base Hog Price Carcass, Negotiated	64.08	70.45	80.09
Feeder Pigs, National Direct 50 lbs, FOB	*	*	*
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean	68.59	78.35	88.95
Slaughter Lambs, Ch. & Pr., Heavy, Woolled, South Dakota, Direct	*	161.00	*
National Carcass Lamb Cutout, FOB	243.26	352.13	347.71
Crops,			
Daily Spot Prices			
Wheat, No. 1, H.W. Imperial, bu	3.72	6.87	7.87
Corn, No. 2, Yellow Omaha, bu	3.36	5.68	6.55
Soybeans, No. 1, Yellow Omaha, bu	9.01	13.21	13.91
Grain Sorghum, No. 2, Yellow Dorchester, cwt	5.21	9.46	10.95
Oats, No. 2, Heavy Minneapolis, MN, bu	2.26	3.89	4.15
Feed			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton	135.00	140.00	140.00
Alfalfa, Large Rounds, Good Platte Valley, ton	87.50	72.50	72.50
Grass Hay, Large Rounds, Premium Nebraska, ton	82.50	*	*
Dried Distillers Grains, 10% Moisture, Nebraska Average	104.00	186.00	197.50
Wet Distillers Grains, 65-70% Moisture, Nebraska Average	33.75	65.00	67.25
No Market			

Prior to Canadian Prime Minister Harper's visit to the White House last week, the United States Department of State released the EnSys study¹ of the controversial Keystone XL pipeline project proposed to run through Nebraska's sandhills. The release ignited new debates amid concern that the U.S. Department of State would soon decide whether to grant a permit for the pipeline. The Nebraska Unicameral is considering bills to provide more constraints on pipeline construction. Below is a summary of information about this project that could affect many Nebraskans.

What is Keystone XL?

Actually, it is the XL extension, or Phase IV, that is at issue in Nebraska. This is a 36-inch pipeline to transport Alberta crude oil, primarily from tar sands through Montana, South Dakota, Nebraska and Kansas into Oklahoma, with a capacity of 0.5 million barrels per day (mbd), larger than the other pipelines from Canada. By way of contrast, total U.S. consumption has been about 21 mbd, with imports of 8.5 mbd of which 2.0 are from Canada, 1.3 from Mexico, 1.1 from Saudi Arabia, 0.9 from Venezuela and 0.8 from Nigeria. U.S. ethanol production is nearing 0.9 mbd. The XL extension would enter Nebraska near Burton and exit near Fairbury, following a 357 mile route including five pumping stations.² The total cost of the extension is about \$7 billion.

Who is Behind Keystone XL?

The pipeline would be built and owned by TransCanada Corp., a publicly traded Canadian pipeline and power generating company. TransCanada also owns the Keystone pipeline running from north to south in Eastern Nebraska, with a 0.4 mbd capacity. Another pipeline, the Kinder Morgan Express-Platte extension, crosses the state from west to east and has a capacity of 0.4 mbd. At this point, the U.S. Department of State has final authority to approve the XL extension.



Extension is a Division of the Institute of Agriculture and Natural Resources at the University of Nebraska–Lincoln cooperating with the Counties and the U.S. Department of Agriculture.

University of Nebraska Extension educational programs abide with the non-discrimination policies of the University of Nebraska–Lincoln and the United States Department of Agriculture.

12. Other Evidence

a. "Cornhusker Economics" 2-9-2011

Why Do They Want to Build It?

TransCanada wants to build the pipeline because they expect a satisfactory return on their investment. Oil production in Alberta is scheduled to double, oil that can be shipped into the U.S. at a competitive price. Current pipeline capacity from Canada is adequate for a decade or more, but pipeline configurations have reportedly led to congestion and low prices in the Midwest which could be improved with this construction. The project itself is unlikely to have any significant effect on total world production or consumption. Given current consumption trends, Canada would likely ship its extra production to Asia if the XL extension were not built, resulting in just a geographical reallocation.

The EnSys study, commissioned by the U.S. State Department, estimates that under current trends with the pipeline the U.S. will increase its Canadian imports by 2.6 million barrels per day by 2030. Given that production and imports from Mexico and Venezuela are projected to dwindle, the study concludes that the alternative to Canadian petroleum is an increase in U.S. dependence on imports from the Middle East. These projections assume a continuation of current U.S. energy policies. Opponents of the pipeline point out that the existence of the pipeline would undermine U.S. efforts to replace petroleum consumption with renewable fuels.

Environmental Impacts

The potential Nebraska environmental impacts of the pipeline include scarring of sandhills' landscapes and related wildlife disruptions, but more importantly, the risk of contaminating waterways, soils and perhaps the High Plains Aquifer itself, due to oil spills. TransCanada claims to have adequate plans for remediation of the construction sites and for responding to leaks.³ The adequacy of those plans and the quality of the pipeline components have been challenged by opponents, however.⁴ In July, the Environmental Protection Agency (EPA) called for a more exhaustive environmental impact statement,⁵ which the State Department has not yet received.

The risks of spills is real. Just within the past year the U.S. has experienced pipeline ruptures at Talmadge Creek, Michigan and Red Butte, Utah, damaging several miles of waterways; and pump station leaks occurred at Ft. Greeley and at Prudhoe Bay on the Alaska pipeline.

Much of the opposition to the pipeline derives from opposition to the environmental impacts of tar sands petroleum itself. The California Air Resources Board calculates that its carbon footprint is 30 percent higher than conventional petroleum,⁶ and the mining processes have scarred the landscape in Alberta and polluted waterways and adjacent lands.⁷ Pipeline proponents counter this argument by pointing out that Canada expects to triple its tar sands production for the world market,⁸ regardless of the Keystone XL. Opponents reply that the

U.S. should not collaborate in developing this "dirty" energy source by encouraging its use here. (Canada is the third largest per-capita greenhouse gas polluter, it has exceeded its Kyoto target by 30 percent, and it has recently joined Japan and Russia in opposing the extension of the Kyoto agreement beyond 2012.)

Impact on the Nebraska Economy

Construction and maintenance of the pipeline would contribute an unknown amount of jobs and tax returns to the Nebraska economy. A study by Perryman,⁹ commissioned by TransCanada, estimates that construction and development would contribute 7,551 person-years of temporary jobs in Nebraska, \$9.5 million to state revenues and another \$1.8 million to local government revenues. They estimate the long-term (100 years) present value of increased property taxes at \$152 million. Although we have not carefully assessed the validity of this analysis, some of its assumptions strike us as optimistic. For example, the National Wildlife Federation shows that the employment figures in this report are 65 percent higher than those estimated by the Department of State.¹⁰ The study makes no attempt to evaluate economic losses that might occur because of oil spills, scarred landscapes, water contamination, etc.

Considering the potential benefits and costs alluded to above, we do not support the project. While there is room for disagreement on this policy issue, supporters have yet to make a clear case that benefits to Nebraska would offset the costs and risks.

Richard K. Perrin, (402) 472-9818
Roberts Professor
Dept. of Agricultural Economics
University of Nebraska-Lincoln
rperrin@unl.edu

Lilyan Fulginiti, (402) 472-0651
Professor
Dept. of Agricultural Economics
University of Nebraska-Lincoln
lfulginiti@unl.edu

References:

¹ <http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf/AssmtDrftAcpt.pdf?OpenFileResource>

² [http://www.transcanada.com/docs/Key Projects/TransCanada US Report 06-10-10.pdf](http://www.transcanada.com/docs/Key%20Projects/TransCanada%20US%20Report%2006-10-10.pdf)

³ [http://www.transcanada.com/docs/Key Projects/SandhillsNativeRangeland.pdf](http://www.transcanada.com/docs/Key%20Projects/SandhillsNativeRangeland.pdf)

⁴ See, for example: <http://plainsjustice.org/> and <http://dirtyoilsands.org/dirtyspots/category/keystone-xl/obamas-choice/>

⁵ http://www.downstreamtoday.com/news/article.aspx?a_id=23434

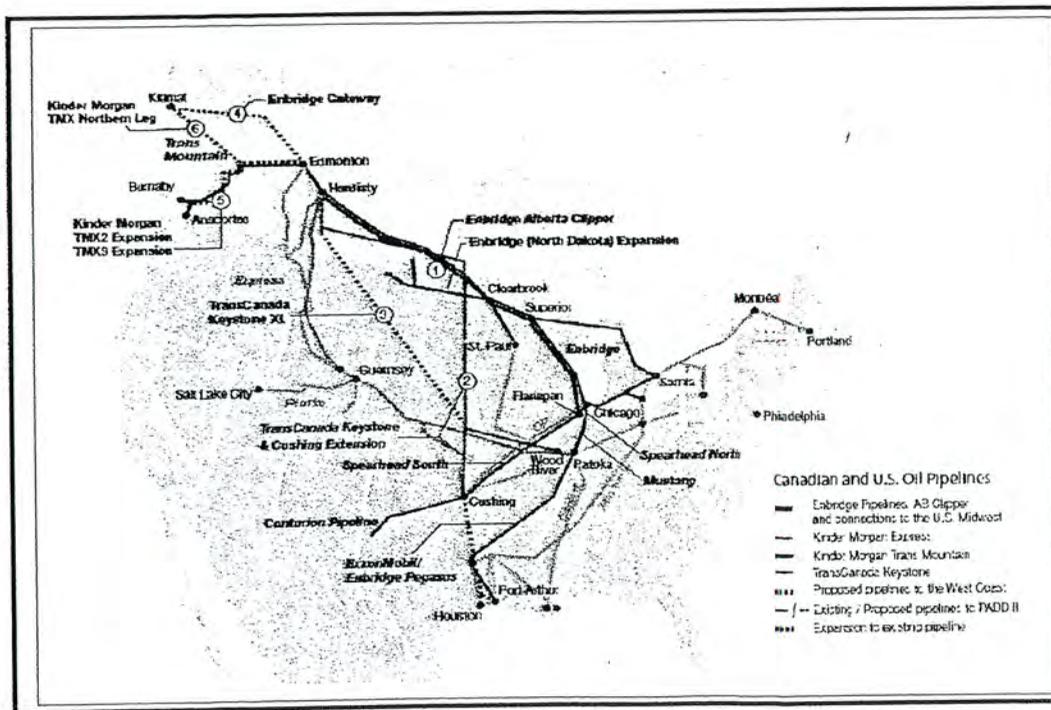
⁶ California Air Resources Board, <http://www.arb.ca.gov/fuels/lcfs/091307oharelcfs.pdf>

⁷ Proceedings of the National Academy of Science, September 14, 2010, Vol. 107 No. 37 16178-16183.

⁸ Natural Resources Canada, <http://www.nrcan-rncan.gc.ca/eneene/sources/pripr/aboapr-eng.php>

⁹ Perryman Group, [http://www.transcanada.com/docs/Key Projects/Perryman Group Nebraska Report.pdf](http://www.transcanada.com/docs/Key%20Projects/Perryman%20Group%20Nebraska%20Report.pdf)
[http://www.transcanada.com/docs/Key Projects/TransCanada US Report 06-10-10.pdf](http://www.transcanada.com/docs/Key%20Projects/TransCanada%20US%20Report%2006-10-10.pdf)

¹⁰ [http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-fuels/-/media/PDFs/Global%20Warming/Tar-Sands/Keystone XL Jobs 11-09-10.ashx](http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-fuels/-/media/PDFs/Global%20Warming/Tar-Sands/Keystone%20XL%20Jobs%2011-09-10.ashx)



Attachment 8.17

12. Other Evidence
b. 30+ Binders full of documentation



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
Joyce Graves in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
York County)

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

2 A: My name is Joyce Graves.

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 York 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: Daniel.

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 and a little history of the land.**

4 A: This land has been in my family for over 150 years.

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

6 A: Yes.

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

9 A: Yes.

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

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

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

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

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

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

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

5 A: Yes.

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

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

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

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

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

16 A: No, they have not.

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

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

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

24 A: No, they did not.

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

27 A: Yes, they did.

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

1 A: Yes, they did.

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

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

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

14 A: No, I do not.

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

17 A: Yes, they did.

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

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

26 **Q: Is the document included with your testimony here as Attachment No. 2, a**
27 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
28 **Way agreement that they included with their condemnation lawsuit against**
29 **you?**

1 A: Yes, it is.

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

4 A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 A: No.

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

13 A: No.

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

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

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

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

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

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

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

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

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

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

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

26 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 A: No, never.

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

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

2 **Q: Is Attachment No. 4, to your testimony here, a true and accurate copy of the**
3 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, it is.

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

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

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

13 A: No, I did not.

14 **Q: Why not?**

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

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

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

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

4 A: No, they have not.

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

8 A: No, they have not.

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

11 A: Yes, I am.

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

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

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

20 A: No, they have not.

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

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

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

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

6 A: No, it has not.

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

10 A: No, I do not.

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

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

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

17 A: Yes, I do.

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

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

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

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

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

28 A: No, of course not.

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

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

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

8 A: Well, yes I have.

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

13 A: No, of course not.

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

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

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

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

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

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

11 A: No, I do not.

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

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

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

22 A: Well yes, of course.

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

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

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

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

12 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **Q: Have you ever seen the document that's marked as Attachment No. 5, to your**
27 **testimony?**

28 A: Yes, I have.

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

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

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

8 A: No, I do not.

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

12 A: No, I do not.

13 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
14 **of the proposed pipeline within Nebraska as found in Attachment No. 5 to**
15 **your testimony, is in the public interest of Nebraska?**

16 A: No, I do not.

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

20 A: No, I do not.

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

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

1 state. Even if there was some arguable “benefit” it is not enough to outweigh all
2 the negative impacts and concerns.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

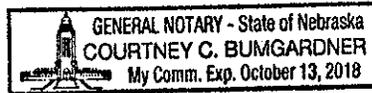
11 A: Yes, they are.

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

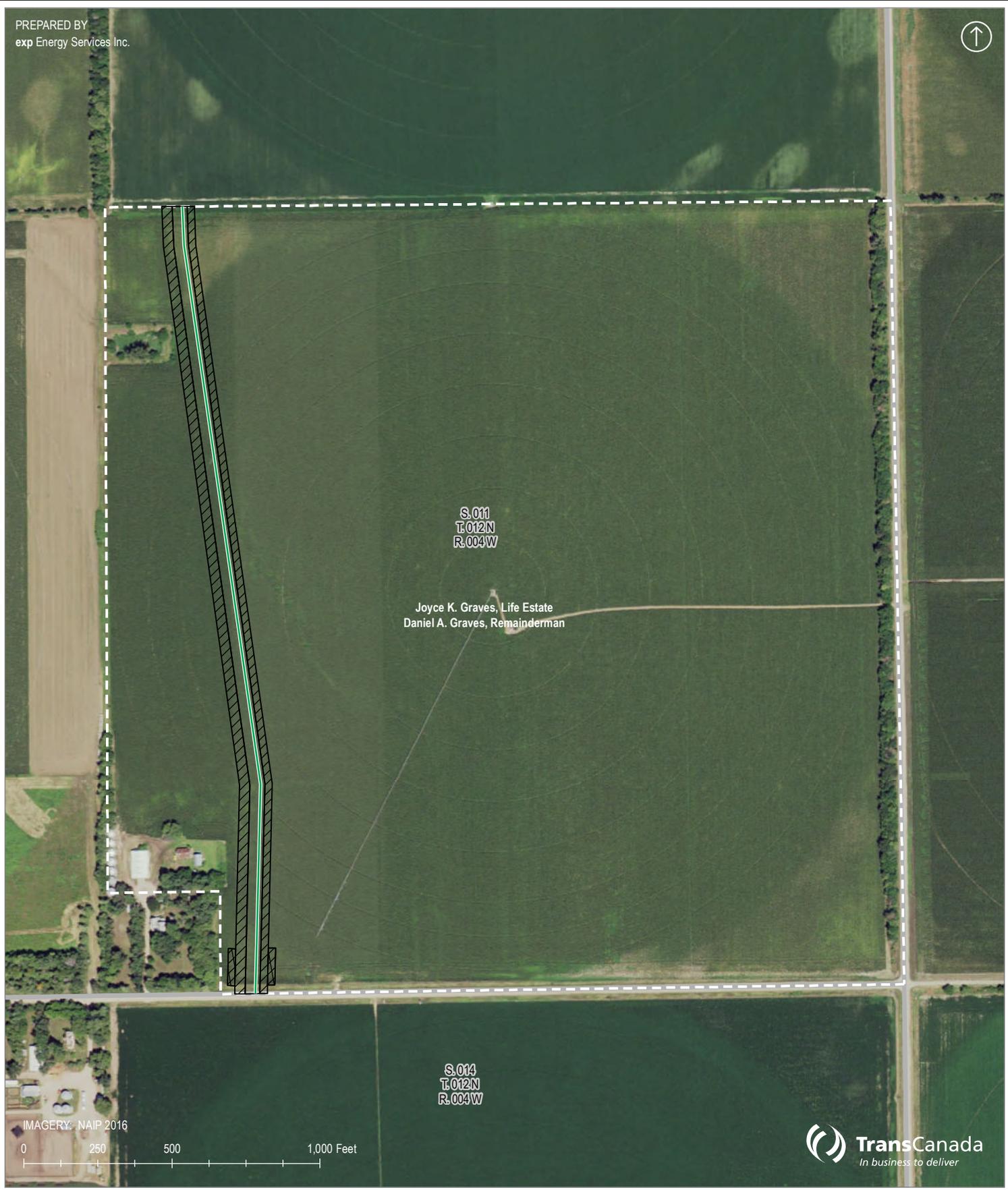
Joyce Graves
Joyce Graves

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

Courtney C Bumgardner
Notary Public



Attachment No. 1



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
 Joyce K. Graves, Life Estate
 Daniel A. Graves, Remainderman

TRACT NO. ML-NE-YK-40140.000
STATE: Nebraska
COUNTY: York
SECTION: 011
TOWNSHIP: 012N
RANGE: 004W

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

Attachment No. 2

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

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-YK-40140.000

**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**"), **Joyce K. Graves, Life Estate and Daniel A. Graves, Remainderman**, whose mailing address is 1608 Road D, Bradshaw, Nebraska 68319 (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 York, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 156.96 acres, more or less, situated in the County of York, in the State of Nebraska, being further described as a part of the SE1/4 of Section 11, T12N, R4W of the 6th P.M., as recorded in Book 8, Page 469 in the Deed Records of York 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):

Joyce K. Graves, Life Estate

Daniel A. Graves, Remainderman

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **Joyce K. Graves, Life Estate**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

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

By **Daniel A. Graves, Remainderman**

Notary Public Signature

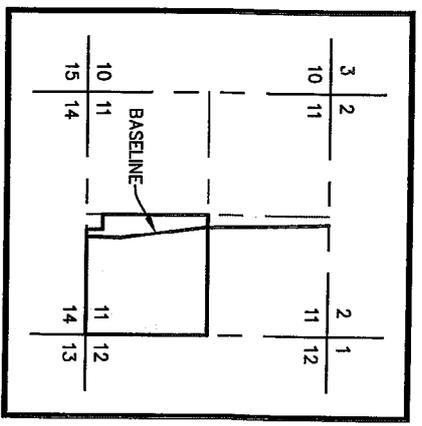
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LEGEND
 P PROPERTY LINE
 SLR SECTION LINE
 PROPOSED ADDITIONAL TEMPORARY WORKSPACE
 A.T.W.S. PERMANENT EASEMENT & RIGHT OF WAY
 P.E.R.W. DEED RECORDS OF YORK COUNTY, NEBRASKA
 D.R.Y.C.N.

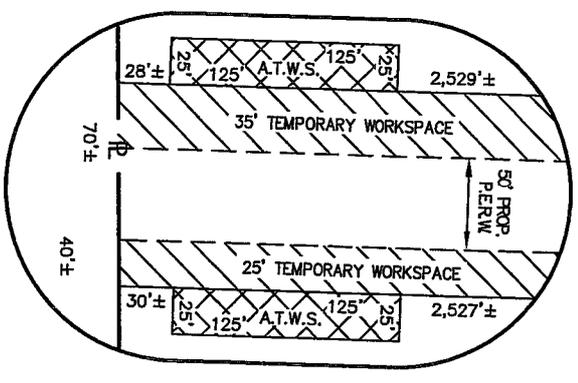
YORK COUNTY, NEBRASKA

T-12-N, R-4-W, SECTION 11
 ML-NE-YK-40140.000

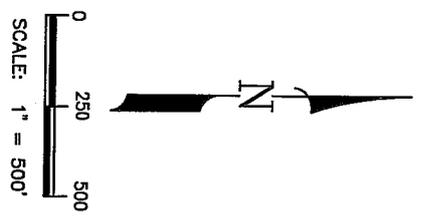
**JOYCE K. GRAVES, LIFE ESTATE
 AND DANIEL A. GRAVES,
 REMAINDERMAN**
 VOLUME 8, PAGE 469
 D.R.Y.C.N.



VICINITY MAP
 N.T.S.



DETAIL "A"
 N.T.S.



TRACT LEGAL DESCRIPTION:
 PART OF THE SE/4
 OF SECTION 11
 T-12-N, R-4-W



TransCanada
In Business to deliver

KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
JOYCE K. GRAVES, LIFE ESTATE
AND DANIEL A. GRAVES,
REMAINDERMAN
 ML-NE-YK-40140.000

PROJECT: XL
 EXHIBIT A

APPROVED BY: [Signature]
 DRAWING NUMBER: XL-08-ML-SK-3724

SLR: [Signature]
 REVISION: [Signature]
 NO.: [Signature]
 DATE: [Signature]

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

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

TOTAL DISTANCE ACROSS PROPERTY: 2,682'±
 AREA OF PERMANENT EASEMENT: 3.1 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.7 ACRES
 ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.1 ACRE



Attachment No. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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

CASE NO. _____

COMPLAINT

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

PARTIES

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM: NEGLIGENCE

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

SECOND CLAIM: TRESPASS

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

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

Attachment No. 4

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-YK-40140.000

We, Joyce K. Graves, Life Estate and Daniel A. Graves, Remainderman, of York County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Five Hundred Twenty Dollars and No Cents (\$5,520.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of York, State of Nebraska:

Part of the SE/4

Section 11, Township 12N, 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_____.

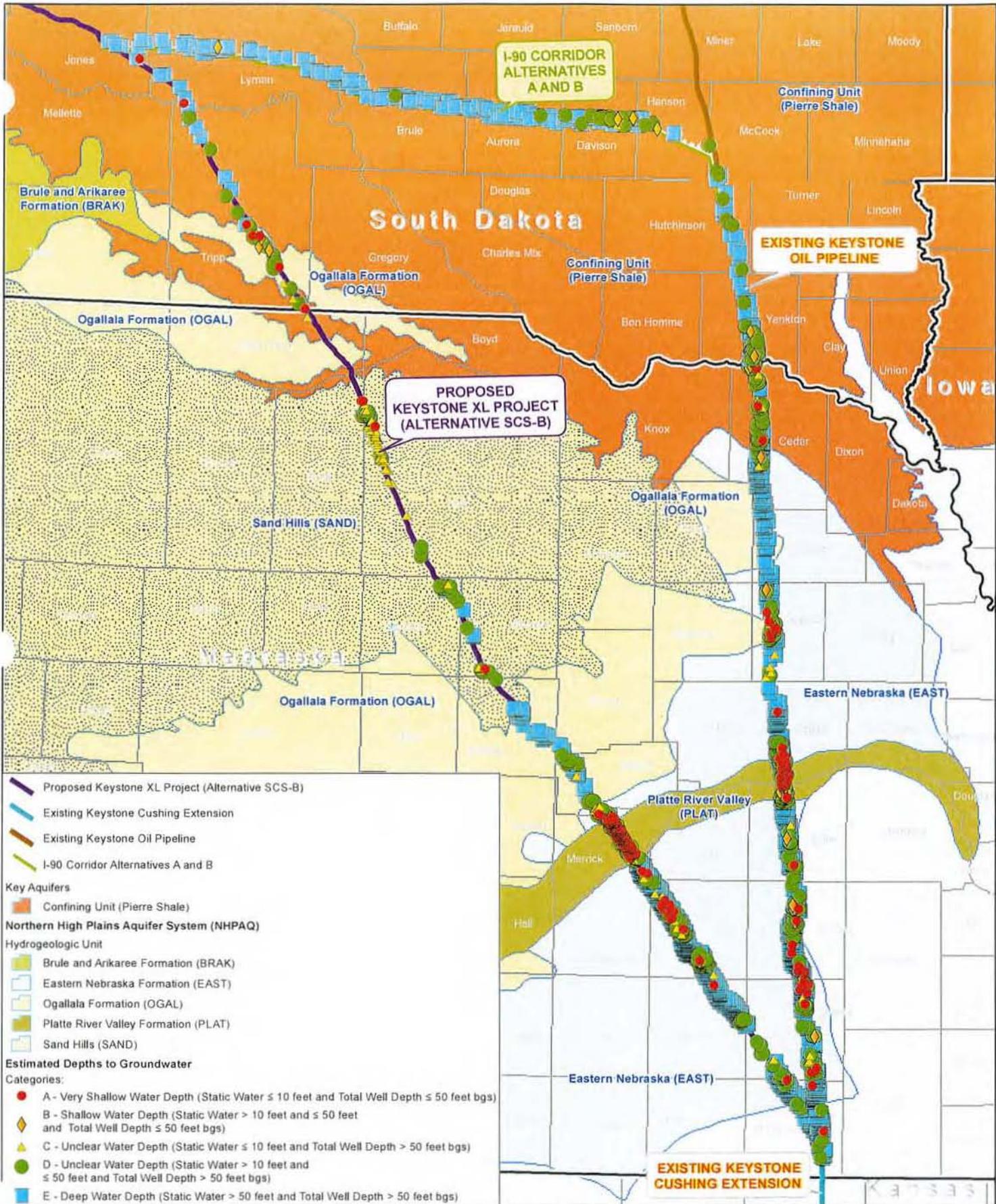
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 5



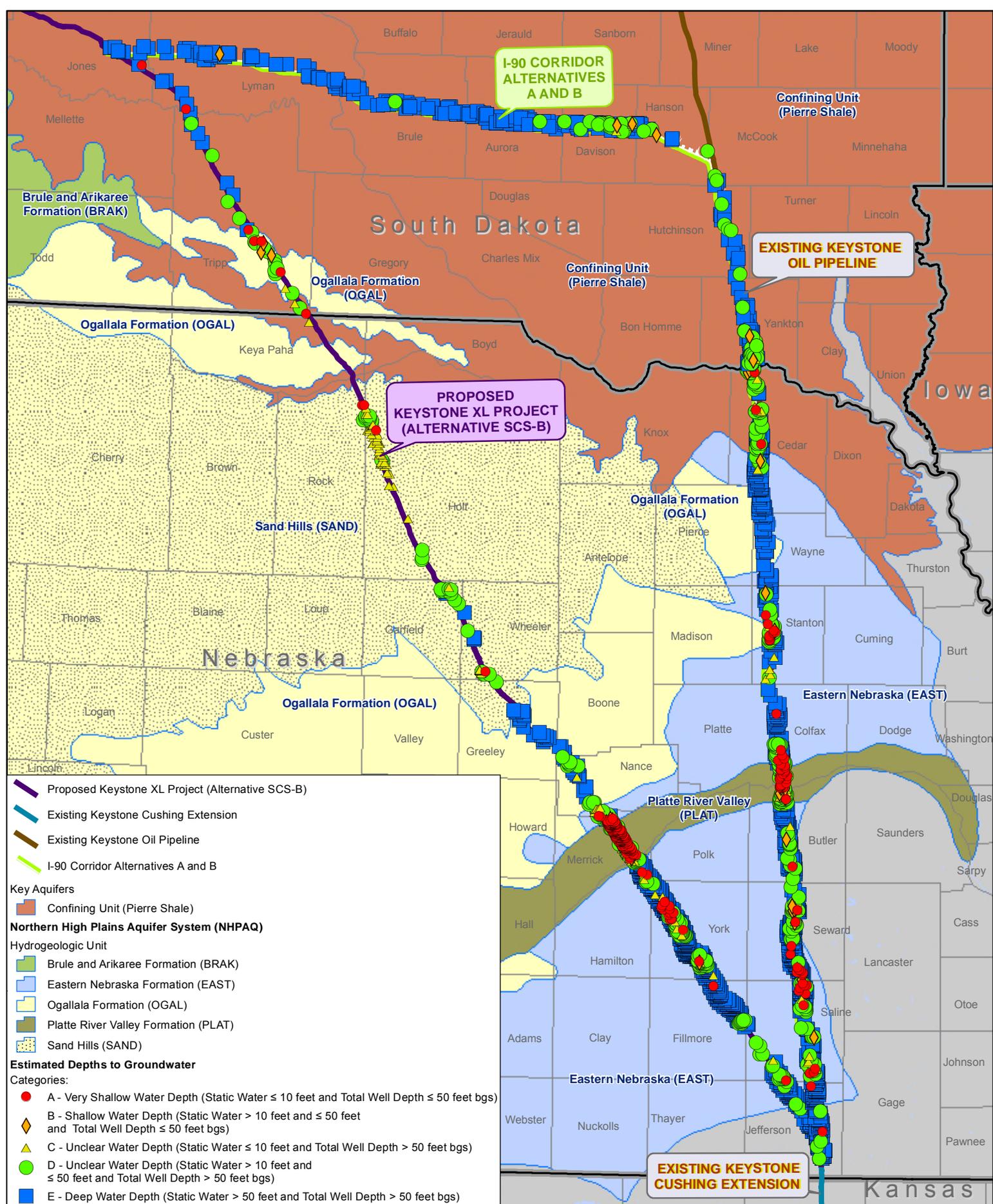
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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



KEYSTONE XL PROJECT

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



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

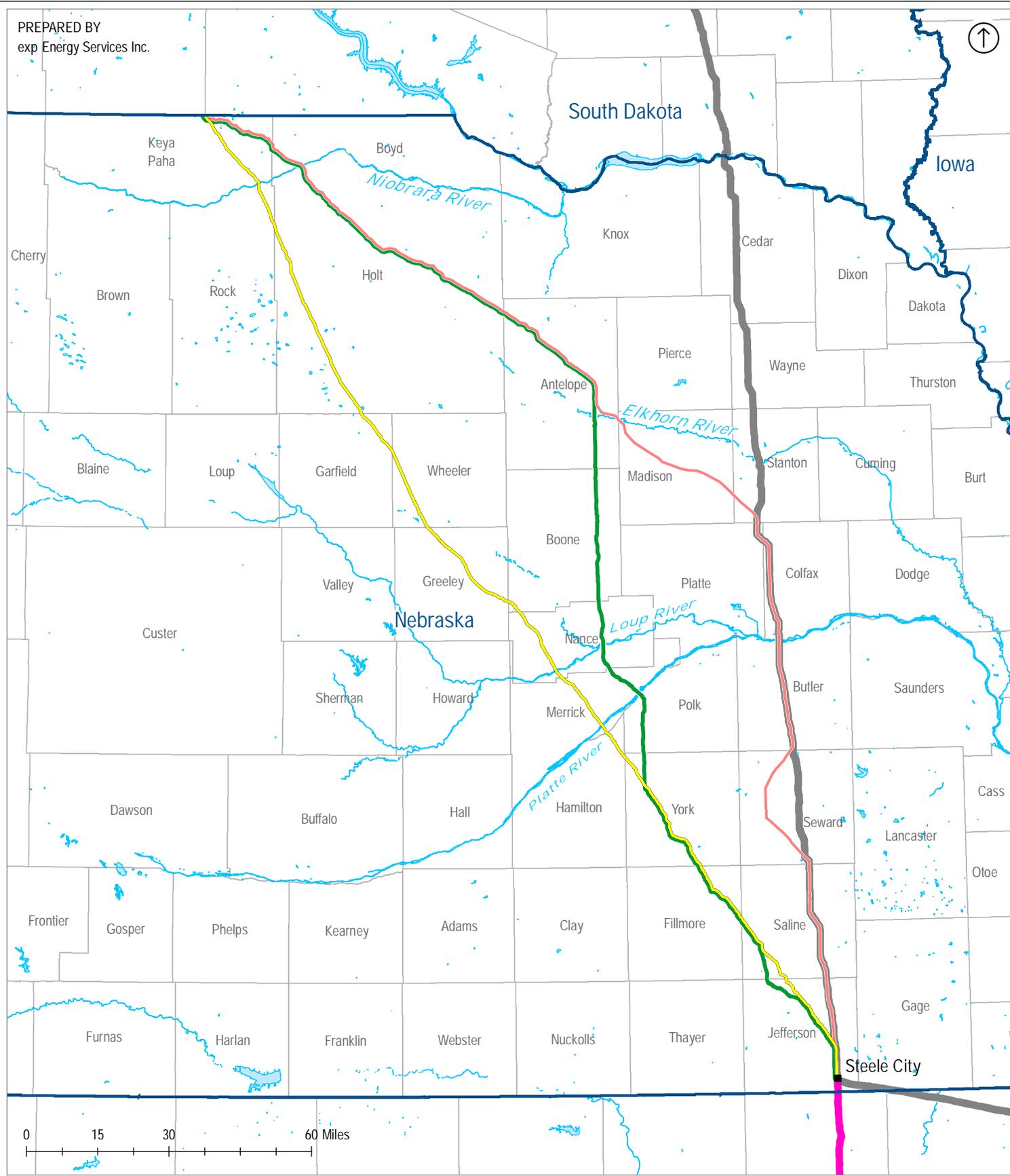
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

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

Attachment No. 6



LEGEND

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

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

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

Direct Testimony of
Andy Grier in Support of Landowner
Intervenors

State of Nebraska)
) ss.
Douglas County)

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

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

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

6 A: Yes, I am.

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

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

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

14 A: Yes.

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

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

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

4 A: Staci Grier

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

6 A: I have three daughters.

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

9 A: Yes.

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

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

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

15 A: Yes.

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

18 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 A: Yes.

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

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

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

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

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

11 A: No, they have not.

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

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

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

19 A: No, they did not.

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

22 A: Yes, they did.

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

25 A: Yes, they did.

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

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

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

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

9 A: No, I do not.

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

12 A: Yes, they did.

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

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

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

25 A: Yes, it is.

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

28 A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 A: No.

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

11 A: No.

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

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

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

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

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

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

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

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

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

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

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

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

24 A: Yes.

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

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

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 interfer[ed] with" TransCanada's use of the Easement Area. Such
18 undefined and unilateral restrictions are not conducive to the protection of
19 property rights or economic interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 vii. “substantially same condition”
- 2 viii. “an actual or potential hazard”
- 3 ix. “efficient”
- 4 x. “convenient”
- 5 xi. “endangered”
- 6 xii. “obstructed”
- 7 xiii. “injured”
- 8 xiv. “interfered with”
- 9 xv. “impaired”
- 10 xvi. “suitable crossings”
- 11 xvii. “where rock is encountered”
- 12 xviii. “as nearly as practicable”
- 13 xix. “pre-construction position”
- 14 xx. “pre-construction grade”
- 15 xxi. “various engineering factors”

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

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

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

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

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

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

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

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

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

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

22 A: No, never.

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

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

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

29 A: Yes, it is.

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

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

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

9 A: No, I did not.

10 **Q: Why not?**

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

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

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

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

27 A: No, they have not.

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

4 A: No, they have not.

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

7 A: Yes, I am.

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

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

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

16 A: No, they have not.

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

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

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

1 A: No, it has not.

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

5 A: No, I do not.

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

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

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

12 A: Yes, I do.

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

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

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

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

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

23 A: No, of course not.

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

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

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

2 A: Well, yes I have.

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

7 A: No, of course not.

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

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

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

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

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

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

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

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

24 A: No, I do not.

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

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

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

7 A: Well yes, of course.

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

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

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

26 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 A: Yes, I have.

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

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

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

21 A: No, I do not.

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

25 A: No, I do not.

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

29 A: No, I do not.

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

4 A: No, I do not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 A: Yes.

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

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

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

Andy Grier

Andy Grier, TMAG Ranch, LLC

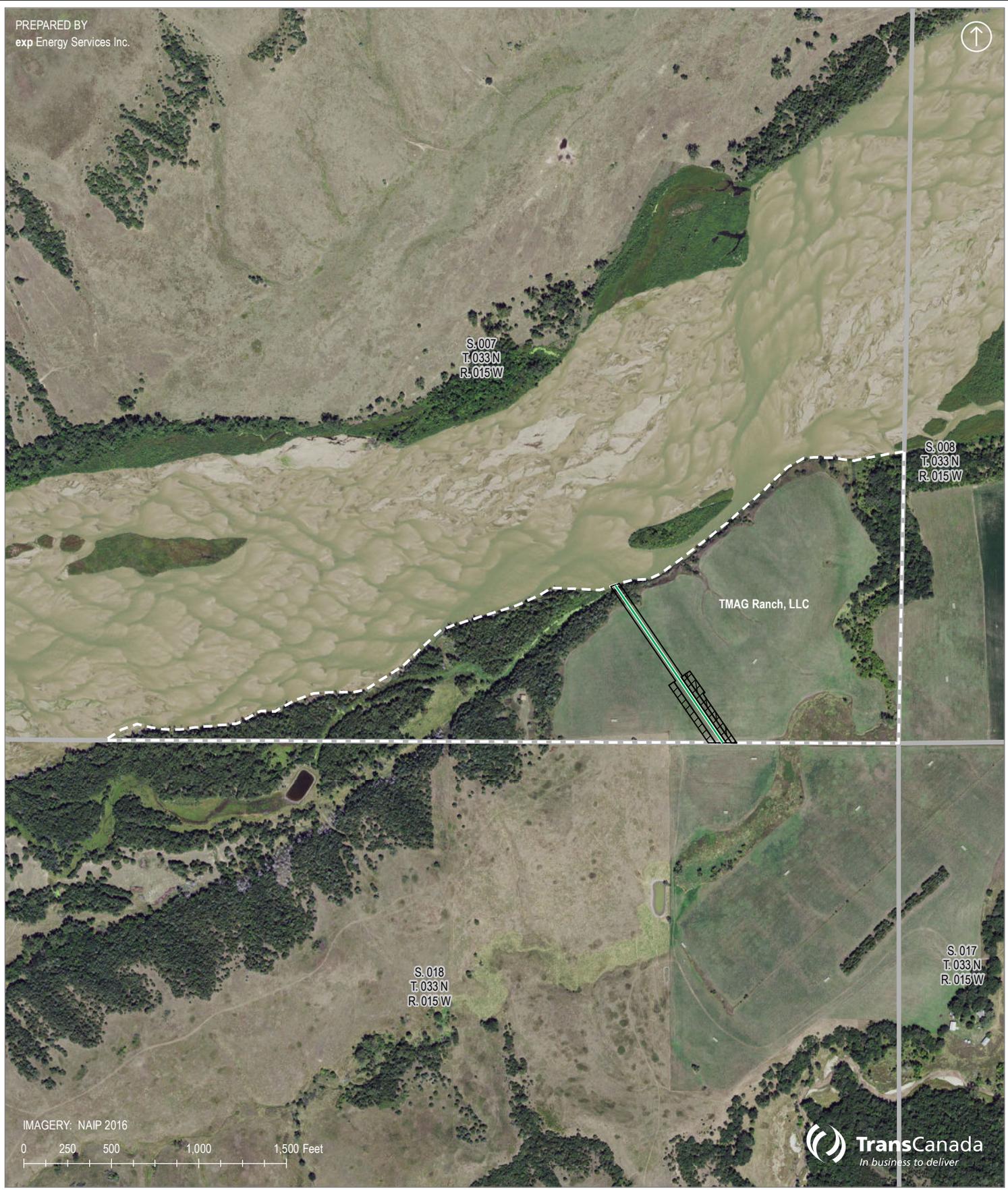
Subscribed and Sworn to me before this 24TH day of May, 2017.

Nancy L. McBath
Notary Public



*My comm expires
January 7, 2019*

Attachment No. 1



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
TMAG Ranch, LLC

TRACT NO. ML-NE-HT-40420.000
STATE: Nebraska
COUNTY: Holt
SECTION: 007
TOWNSHIP: 033N
RANGE: 015W

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

PREPARED BY
exp Energy Services Inc.



S.012
T.033N
R.016W

S.007
T.033N
R.015W

S.008
T.033N
R.015W

TMAG Ranch, LLC

S.018
T.033N
R.015W

S.017
T.033N
R.015W

S.020
T.033N
R.015W

IMAGERY: NAIP 2016



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
TMAG Ranch, LLC

TRACT NO. ML-NE-HT-40380.000
STATE: Nebraska
COUNTY: Holt
SECTION: 018
TOWNSHIP: 033N
RANGE: 015W

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

May 2017 - X:\Drawings\6358\KEYSTONE_XL\6300_9995326

PREPARED BY
exp Energy Services Inc.

S. 007
T. 033 N
R. 015 W

S. 008
T. 033 N
R. 015 W

S. 018
T. 033 N
R. 015 W

TMAG Ranch, LLC

S. 017
T. 033 N
R. 015 W

IMAGERY: NAIP 2016

0 250 500 1,000 Feet



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
TMAG Ranch, LLC

TRACT NO. ML-NE-HT-40440.000
STATE: Nebraska
COUNTY: Holt
SECTION: 017
TOWNSHIP: 033N
RANGE: 015W

- 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-40380.000
ML-NE-HT-40420.000
ML-NE-HT-40440.000

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

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **TMAG Ranch, LLC**, whose mailing address is 916 S. 181st Street, Elkhorn, NE 68022 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other

Grantor's Initials _____

equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Holt, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 362 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NE1/4, NW1/4 of the SE1/4, and SW1/4 of Section 18, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 198, Page 543 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 72.03 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as Lot 7 of Section 7, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 198, Page 543 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NW1/4 of Section 17, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 198, Page 543 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

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

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

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

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

harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

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

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

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

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

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

Grantor's Initials _____

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.
6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.
7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.
8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.
9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.
10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.
11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.
12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.
13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid,

Grantor's Initials _____

Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

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

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

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

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

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

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

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

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

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

GRANTOR(S):

TMAG Ranch, LLC

By: _____

Its: _____

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

Grantor's Initials _____

STATE OF _____

COUNTY OF _____

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

By _____ of

TMAG Ranch, LLC, on behalf of the corporation.

Notary Public Signature

Affix Seal Here

Grantor's Initials _____

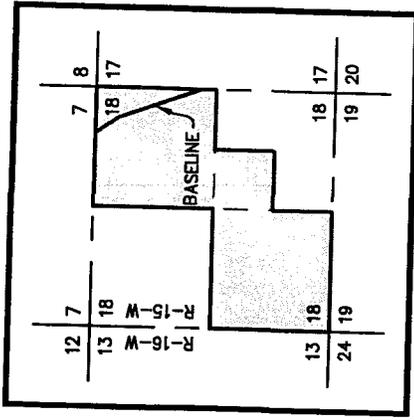
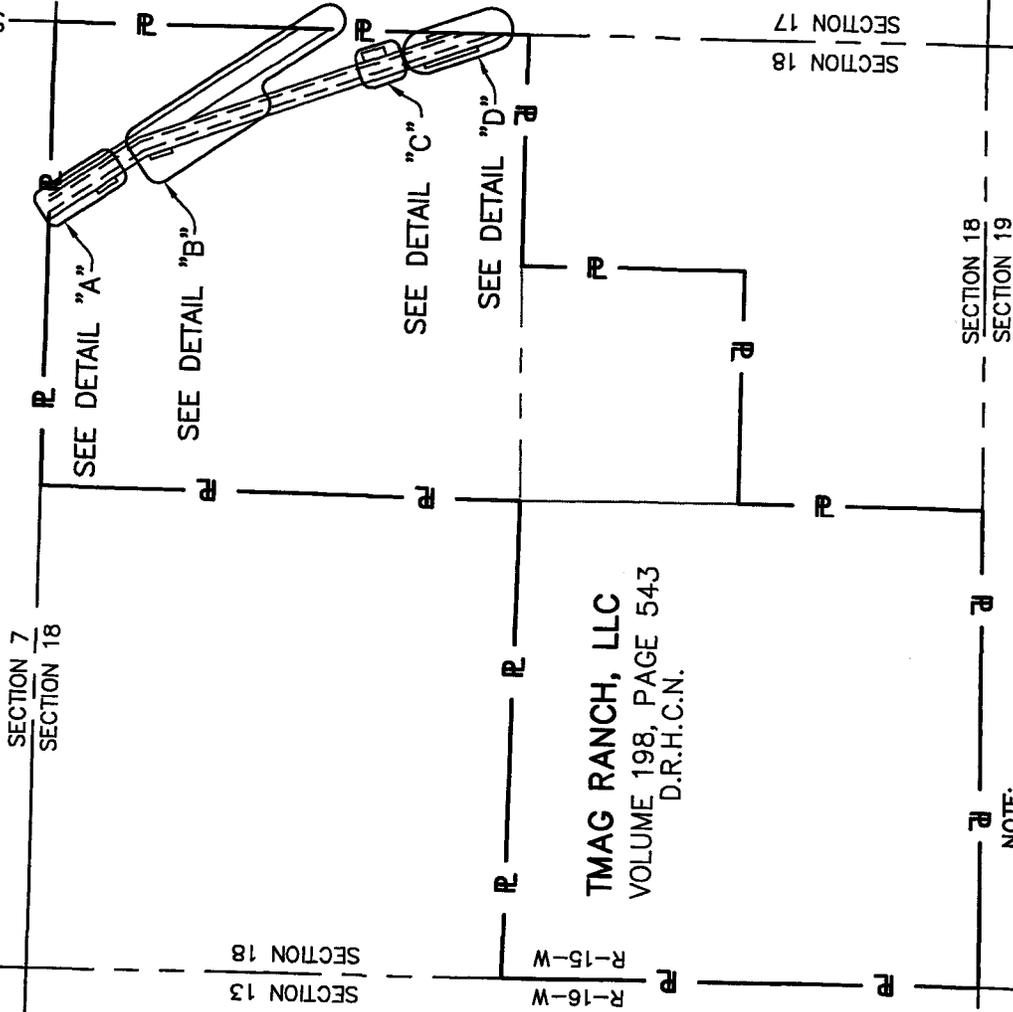
HOLT COUNTY, NEBRASKA

T-33-N, R-15-W, SECTION 18

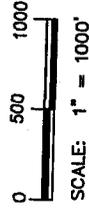
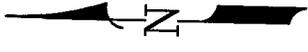
ML-NE-HT-40380.000

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

LEGEND
R-16-W
R-15-W
PROP.
A.T.W.S.
P.E.R.W.
D.R.H.C.N.



VICINITY MAP
N.T.S.



TRACT LEGAL DESCRIPTION:
NE/4, NW/4 SE/4, SW/4 OF
SECTION 18,
T-33-N, R-15-W

TOTAL DISTANCE ACROSS PROPERTY: 2,539'±
AREA OF PERMANENT EASEMENT: 2.9 ACRES
AREA OF TEMPORARY WORKSPACE: 3.5 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 3.1 ACRES

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 1 OF 3



KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
TMAG RANCH, LLC
ML-NE-HT-40380.000

PROJECT:	XL	EXHIBIT A
APPROVED BY	SLR	DRAWING NUMBER
NO.	XL-08-ML-SK-3781	DATE
REVISION		DATE
SCALE	1" = 1000'	11/05/14
DRAWN BY	JN	CHECKED BY
ALS		



HOLT COUNTY, NEBRASKA

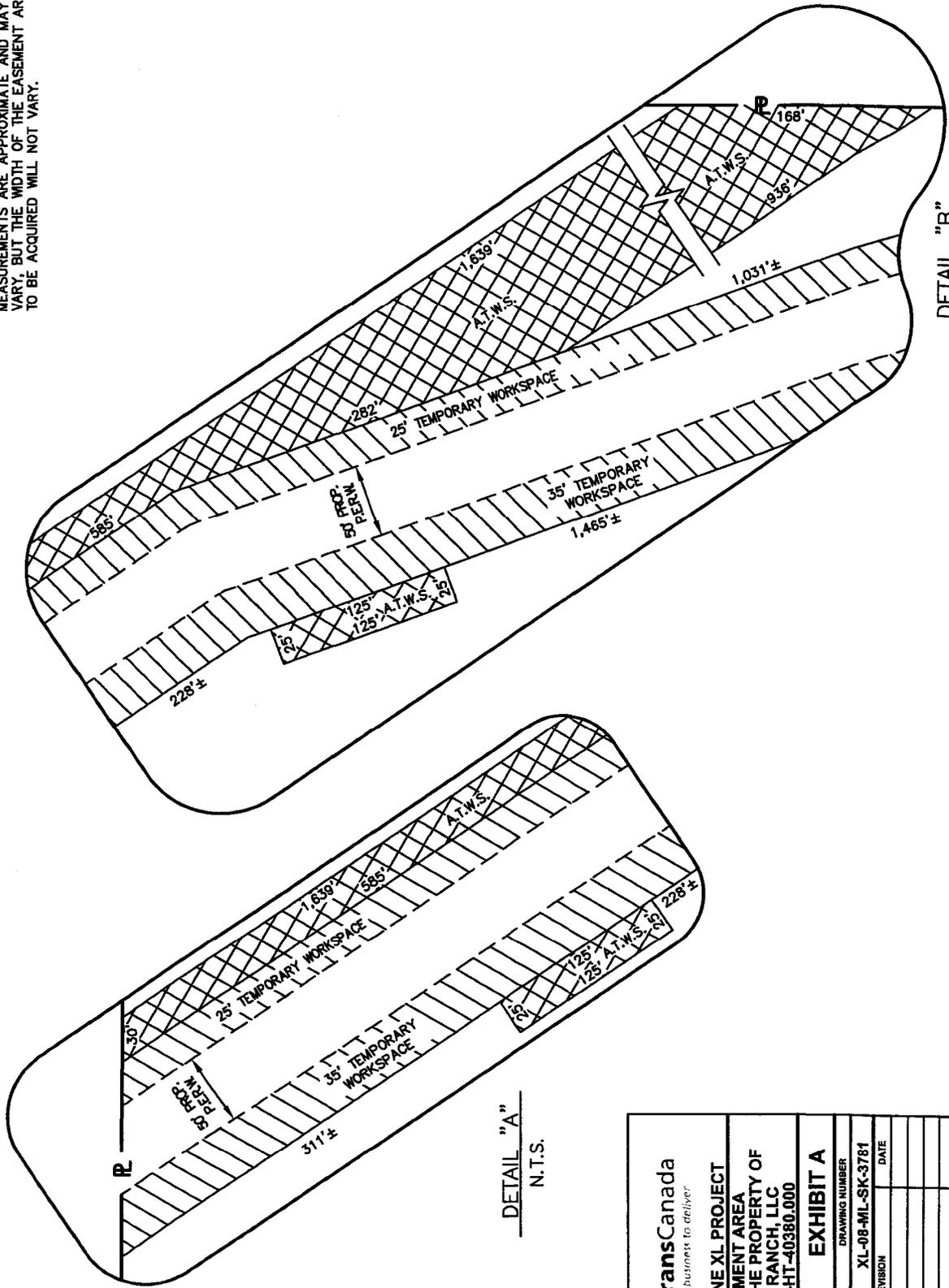
T-33-N, R-15-W, SECTION 18

ML-NE-HT-40380.000

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

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

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



DETAIL "A"
 N.T.S.

DETAIL "B"
 N.T.S.



KEYSTONE XL PROJECT
 EASEMENT AREA
 ACROSS THE PROPERTY OF
 TMAG RANCH, LLC
 ML-NE-HT-40380.000

PROJECT:	XL	EXHIBIT A
APPROVED BY:	SLR	DRAWING NUMBER
NO.	REVISION	DATE
SCALE	N.T.S.	11/05/14
DRAWN BY	JN	CHECKED BY
		ALS



HOLT COUNTY, NEBRASKA

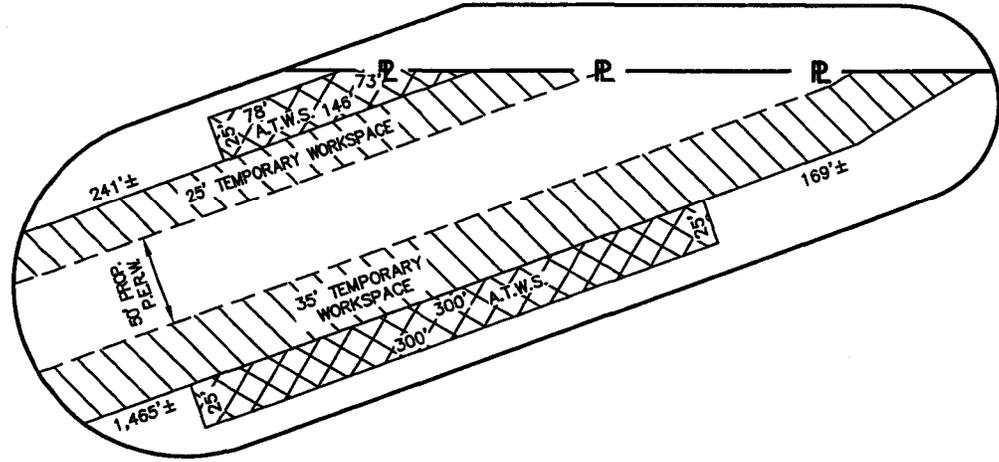
T-33-N, R-15-W, SECTION 18

ML-NE-HT-40380.000

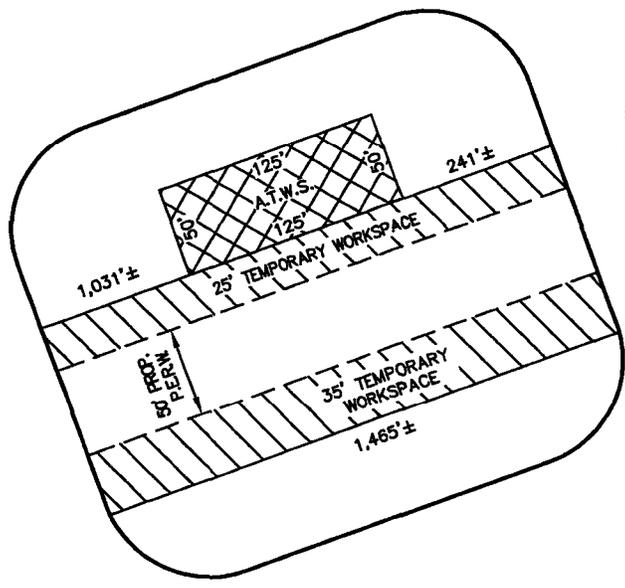
PROPERTY LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY

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

NOTE:
 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 "C"
 N.T.S.



DETAIL "D"
 N.T.S.

 TransCanada <i>In business to deliver</i>	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
TMAG RANCH, LLC	
ML-NE-HT-40380.000	
PROJECT:	EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3781
NO.	REVISION
	DATE
SCALE	DATE
N.T.S.	11/05/14
	CHECKED BY
	JN
	ALS



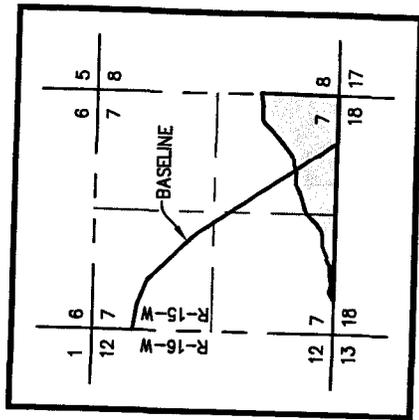
HOLT COUNTY, NEBRASKA

T-33-N, R-15-W, SECTION 7

ML-NE-HT-40420.000

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

LEGEND:
 P
 \$
 PROF.
 A.T.W.S.
 P.E.R.W.
 D.R.H.C.N.



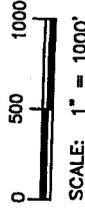
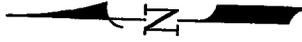
VICINITY MAP
 N.T.S.

SECTION 12
 SECTION 7
 SECTION 6
 SECTION 7
 SECTION 8

R-16-W
 R-15-W

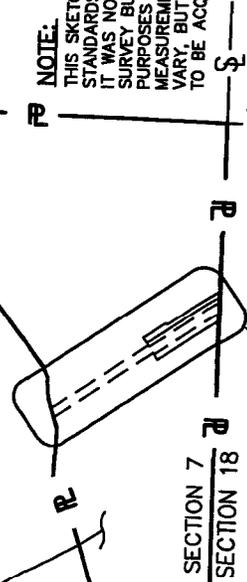
BOYD COUNTY
 HOLT COUNTY

TMAG RANCH, LLC
 VOLUME 198, PAGE 543
 D.R.H.C.N.



TRACT LEGAL DESCRIPTION:
 LOT 7 OF SECTION 7,
 T-33-N, R-15-W

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



SEE DETAIL "A"

TOTAL DISTANCE ACROSS PROPERTY: 1,094'±
 AREA OF PERMANENT EASEMENT: 1.2 ACRES
 AREA OF TEMPORARY WORKSPACE: 0.6 ACRE
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.3 ACRE

SHEET 1 OF 2

		in business to deliver	
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF			
TMAG RANCH, LLC			
ML-NE-HT-40420.000			
PROJECT:	XL	EXHIBIT A	
APPROVED BY:	SLR	DRAWING NUMBER	XL-08-ML-SK-3771
NO.		REVISION	
		DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 1000'	11/05/14	JN	ALS

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 The new identity of Traw

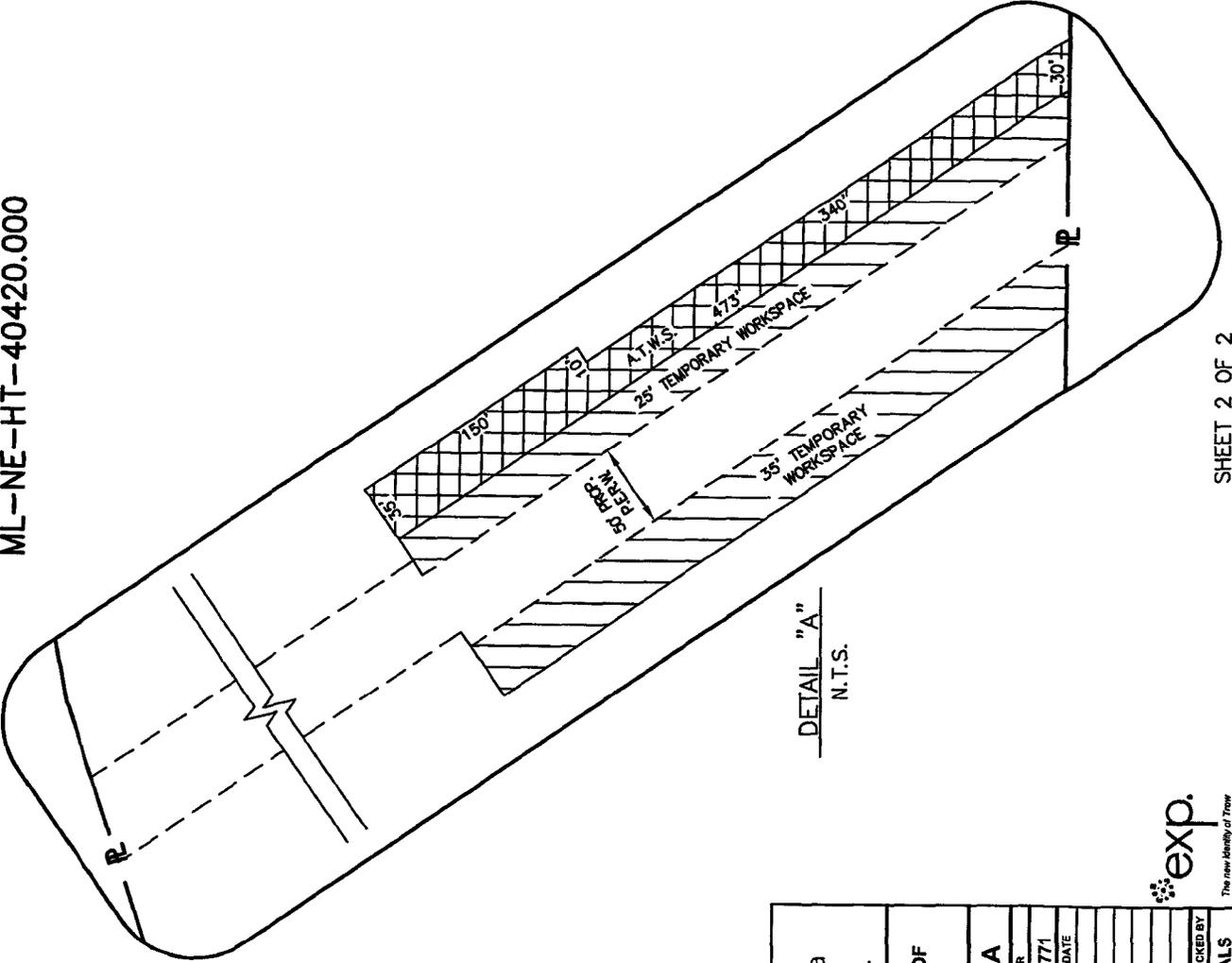
HOLT COUNTY, NEBRASKA

T-33-N, R-15-W, SECTION 7

ML-NE-HT-40420.000

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

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



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

 TransCanada <i>In business to deliver</i>	
KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF TMAG RANCH, LLC ML-NE-HT-40420.000	
PROJECT	EXHIBIT A
APPROVED BY	DRAWING NUMBER
SLR	XL-08-ML-SK-3771
NO.	REVISION
DATE	DATE
SCALE	N.T.S.
DATE	11/05/14
DRAWN BY	JN
CHECKED BY	ALS



HOLT COUNTY, NEBRASKA

T-33-N, R-15-W, SECTION 17

ML-NE-HT-40440.000

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

LEGEND
P
S
PROP.
A.T.W.S.
P.E.R.W.
D.R.H.C.N.

SECTION 8
SECTION 17

SECTION 17
SECTION 18

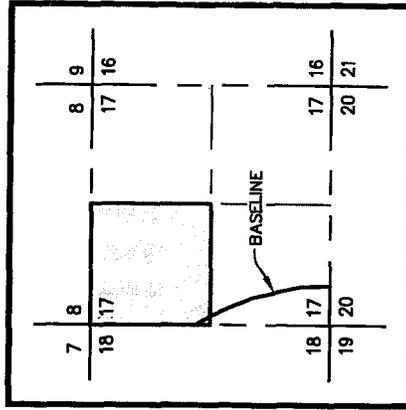
TMAG RANCH, LLC
VOLUME 198, PAGE 543
D.R.H.C.N.

SEE DETAIL "A"

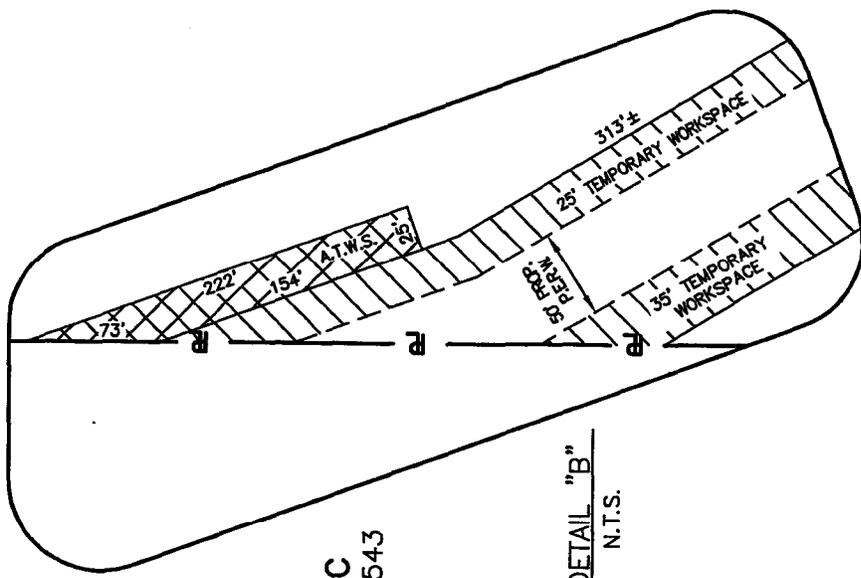
DETAIL "A"
N.T.S.

DETAIL "B"
N.T.S.

SEE DETAIL "B"



TRACT LEGAL DESCRIPTION:
NW/4 OF SECTION 17,
T-33-N, R-15-W



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

TOTAL DISTANCE ACROSS PROPERTY: 340'±
AREA OF PERMANENT EASEMENT: 0.4 ACRE
AREA OF TEMPORARY WORKSPACE: 0.4 ACRE
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.4 ACRE

KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
TMAG RANCH, LLC	
ML-NE-HT-40440.000	
PROJECT:	XL
APPROVED BY:	EXHIBIT A
SLR:	DRAWING NUMBER
NO.:	XL-08-ML-SK-3772
REVISION:	DATE
SCALE:	1" = 500'
DATE:	11/05/14
DRAWN BY:	JN
CHECKED BY:	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-HT-40440.000

I/we TMAG Ranch, LLC, of Douglas County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Hundred Twelve Dollars and No Cents (\$312.00), 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:

NW/4

Section 17, Township 33-N, Range 15-W

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

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of _____, 20_____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-40420.000

I/we TMAG Ranch, LLC, of Douglas County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Hundred Forty Six Dollars and No Cents (\$546.00), 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:

Lot 7

Section 7, Township 33-N, Range 15-W

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

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of _____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-40380.000

I/we TMAG Ranch, LLC, of Douglas County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Four Hundred Seventy Dollars and No Cents (\$2,470.00), 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 amage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

NE/4, NW/4 of the SE/4, SW/4

Section 18, Township 33-N, Range 15-W

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

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of _____, 20____.

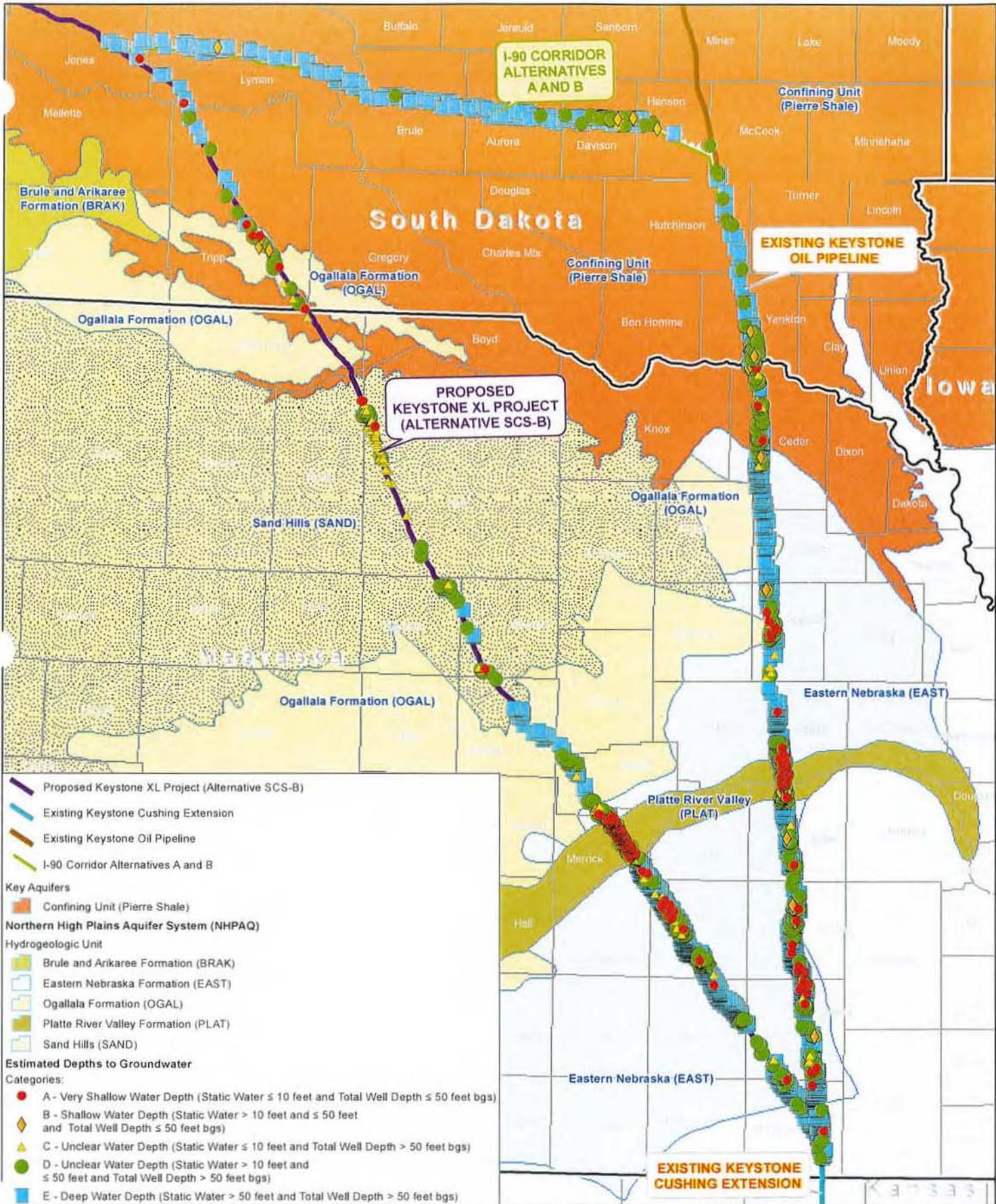
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



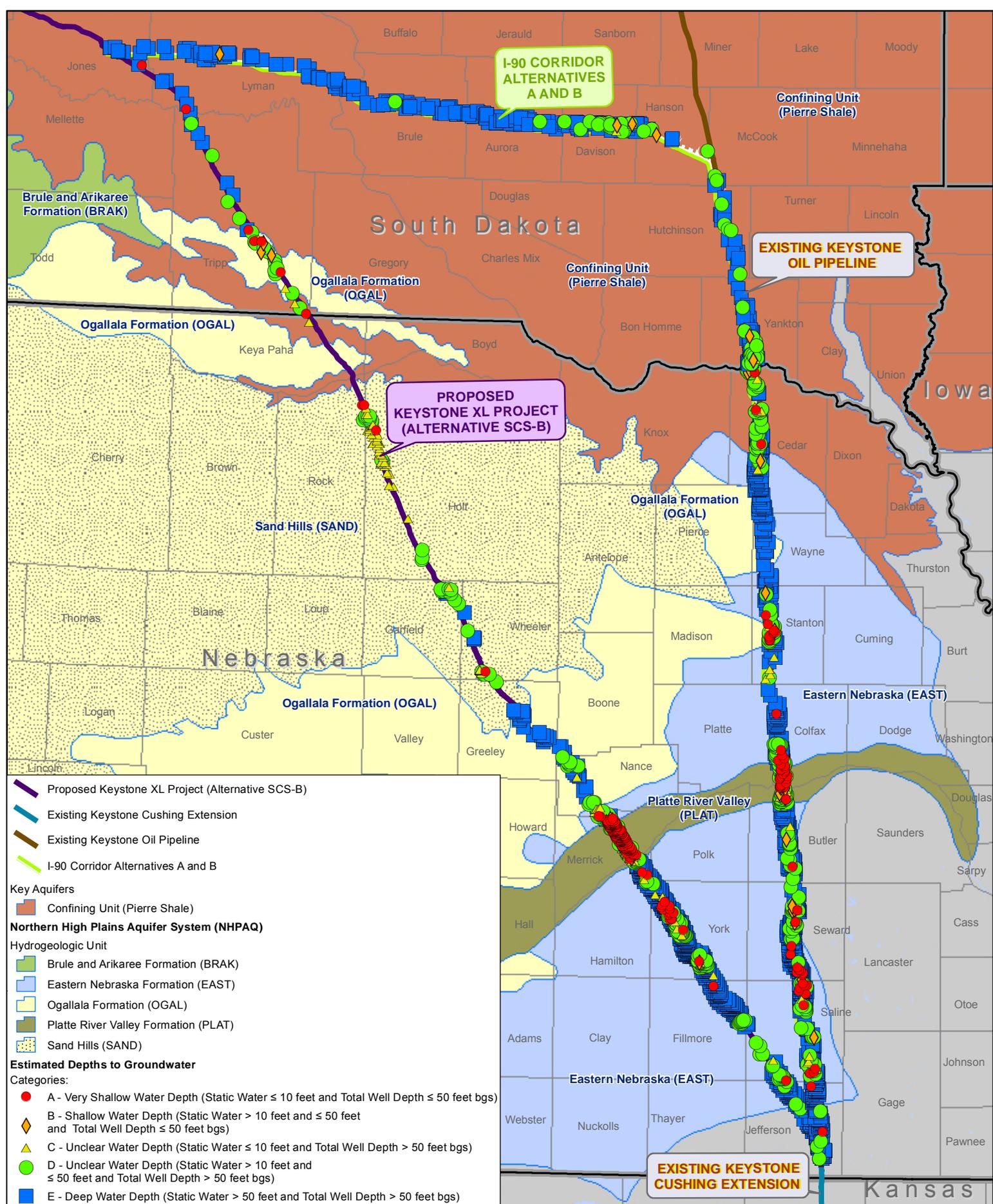
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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



KEYSTONE XL PROJECT

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



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

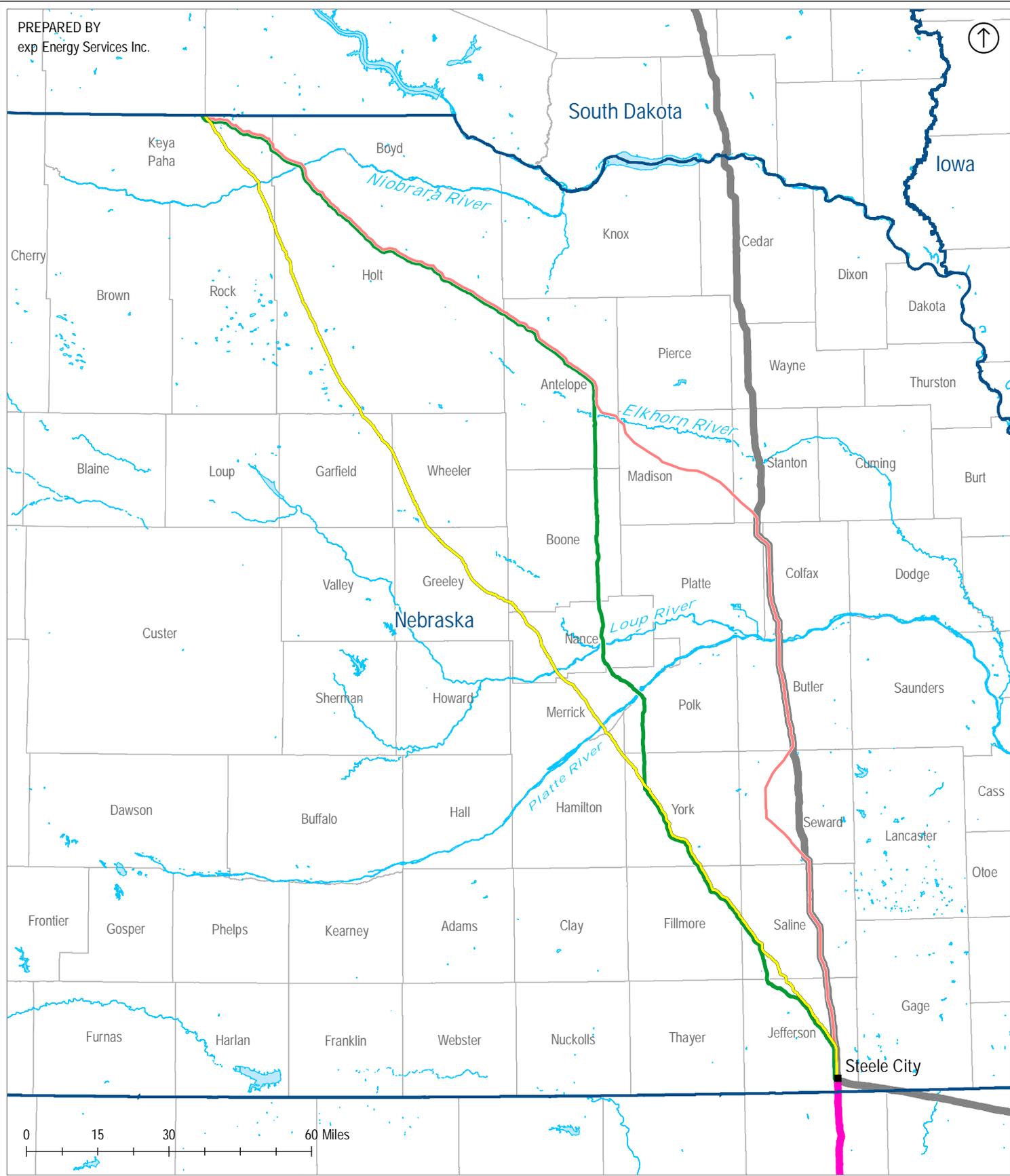
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

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

Attachment No. 7



LEGEND

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

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

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
Patricia Grosserode in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Boone County)

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

2 A: My name is Patricia Grosserode.

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 Boone County.

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

14 A: Yes.

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

1 A: Yes.

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

3 A: The land was purchased by my family in 1972.

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

5 A: Yes.

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

8 A: Yes.

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

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

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

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

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

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

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

5 A: Yes.

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

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

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

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

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

16 A: No, they have not.

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

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

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

24 A: No, they did not.

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

27 A: Yes, they did.

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

1 A: Yes, they did.

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

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

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

14 A: No, I do not.

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

17 A: Yes, they did.

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

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

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

1 A: Yes, it is.

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

4 A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 A: No.

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

13 A: No.

14 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
15 **and the State of Nebraska of TransCanada's easement terms.**

16 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow their easement
18 to be transferred or sold to someone or some company or country or who knows
19 what that I don't know and who we may not want to do business with. This
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest
21 bidder that could have terrible impacts upon all of Nebraska depending upon who
22 may buy it and I don't know of any safeguards in place for us or the State to veto
23 or have any say so in who may own, operate, or be responsible for this pipeline in
24 the future.

25 **Q: Do you think that type of uncertainty and lack of control over a major piece**
26 **of infrastructure crossing our State is in the public interest?**

27 A: No, certainly not, in fact, just the opposite.

28 **Q: What's next?**

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that
25 right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

1 TransCanada who is subjecting the pipeline on the Landowner and who is making
2 a daily profit from that pipeline. When evaluating the impact on property rights of
3 this provision, you must consider the potentially extremely expensive fight a
4 Landowner would have over this question of whether or not damage was an act of
5 negligence. Putting this kind of potential liability upon the Landowner is
6 incredibly problematic and is detrimental to the protection of property rights. I
7 don't think this unilateral power which I can't do anything about as the landowner
8 is in the best economic interest of the land in question or the State of Nebraska for
9 landowners to be treated that way.

10 **Q: Is there any specific event or example you are aware of that makes this**
11 **concern more real for you?**

12 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
13 Nemaha County, Nebraska landowner farmers who accidentally struck two
14 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
15 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
16 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
17 copy of the Federal Court Complaint is here as **Attachment No. 4.**

18 **Q: What is your next concern with the Easement language?**

19 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
20 they choose unless 1) any Landowner use interferes in any way with
21 TransCanada's exercise of any of its rights within the Easement, or 2)
22 TransCanada decides to take any action on the property it deems necessary to
23 prevent injury, endangerment or interference with anything TransCanada deems
24 necessary to do on the property. Landowner is also forbidden from excavating
25 without prior authorization by TransCanada. So my understanding is that
26 TransCanada will unilaterally determine what Landowner can and can't do based
27 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
28 could also completely deny my request to excavate. Further, TransCanada retains
29 all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada’s full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel “within and along Easement Area on foot
17 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may “unreasonably
19 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner’s land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative to their property in
2 preparation or planning of TransCanada’s taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at any time
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada’s control. Some of these vague undefined terms are as follows:

- 27 i. “pipeline installation activities”
- 28 ii. “availability of labor and materials”
- 29 iii. “commercially reasonable costs and expenses”

- 1 iv. “reasonably anticipated and foreseeable costs and expenses”
- 2 v. “yield loss damages”
- 3 vi. “diminution in the value of the property”
- 4 vii. “substantially same condition”
- 5 viii. “an actual or potential hazard”
- 6 ix. “efficient”
- 7 x. “convenient”
- 8 xi. “endangered”
- 9 xii. “obstructed”
- 10 xiii. “injured”
- 11 xiv. “interfered with”
- 12 xv. “impaired”
- 13 xvi. “suitable crossings”
- 14 xvii. “where rock is encountered”
- 15 xviii. “as nearly as practicable”
- 16 xix. “pre-construction position”
- 17 xx. “pre-construction grade”
- 18 xxi. “various engineering factors”

19 Each one of these above terms and phrases as read in the context of the Easement
20 could be problematic in many ways. Notably, undefined terms tend to only get
21 definition in further legal proceedings after a dispute arises and the way the
22 Easement is drafted, TransCanada has sole power to determine when and if a
23 particular situation conforms with or triggers rights affected by these terms. For
24 instance, “yield loss damages” should be specifically defined and spelled out
25 exactly how the landowner is to be compensated and in what events on the front
26 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
27 the Landowner is without contractual rights to define these terms or determine
28 when rights related to them trigger and what the affects may be.

1 **Q: Do you have any other concerns about the Easement language that you can**
2 **think of at this time?**

3 A: I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q: Based upon what you have shared with the Commission above regarding**
6 **TransCanada's proposed Easement terms and agreement, do you believe**
7 **those to be reasonable or just, under the circumstances of the pipeline's**
8 **impact upon you and your land?**

9 A: No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q: Did TransCanada ever offer you financial compensation for the rights that**
12 **they sought to obtain in your land, and for what they sought to prevent you**
13 **and any future land owner of your property from doing in the future?**

14 A: Yes, we received an offer from them.

15 **Q: As the owner of the land in question and as the person who knows it better**
16 **than anyone else, do you believe that TransCanada offered you just, or fair,**
17 **compensation for all of what they proposed to take from you so that their tar**
18 **sands pipeline could be located across your property?**

19 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q: Has TransCanada at any time offered to compensate you annually, such as**
24 **wind farm projects do, for the existence of their potential tar sands pipeline**
25 **across your property.**

26 A: No, never.

27 **Q: At any time did TransCanada present you with or request that you, as the**
28 **owner of the land in question, sign and execute a document called, "Advanced**
29 **Release of Damage Claims and Indemnity Agreement?"**

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
3 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, it is.

5 **Q: What was your understanding of that document?**

6 A: When I read that document in the plain language of that document, it was my
7 understanding that TransCanada was attempting to pay me a very small amount at
8 that time in order for me to agree to give up my rights to be compensated from
9 them in the future related to any damage or impact they may have upon my
10 property “arising out of, in connection with, or alleged to resulted from
11 construction or surveying over, under or on” my land.

12 **Q: Did you ever sign that document?**

13 A: No, I did not.

14 **Q: Why not?**

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small
16 sum of money when I have no idea how bad the impacts or damages that they, or
17 their contractors, or subcontractors, or other agents or employees, may cause on
18 my land at any time in the future that resulted from the construction or surveying
19 or their activities upon my land.

20 **Q: When you reviewed this document, what did it make you feel?**

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
22 shield themselves against known and foreseeable impacts that their pipeline, and
23 the construction of it, would have upon my land. It made me feel that they knew it
24 was in their financial interest to pay me as little as possible to prevent me from
25 ever having the opportunity to seek fair compensation again, and that this must be
26 based upon their experience of unhappy landowners and situations in other places
27 where they have built pipelines.

1 **Q: Has TransCanada ever contacted you and specifically asked you if you**
2 **thought their proposed location of their proposed pipeline across your land**
3 **was in your best interest?**

4 A: No, they have not.

5 **Q: Has TransCanada ever contacted you and specifically asked you if you**
6 **thought their proposed location of their proposed pipeline across your land**
7 **was in the public interest of the State of Nebraska?**

8 A: No, they have not.

9 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
10 **Takings Clause?**

11 A: Yes, I am.

12 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
13 **an American citizens property?**

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 **Q: Has TransCanada ever contacted you specially to explain the way in which**
19 **the public could use its proposed Keystone XL Pipeline?**

20 A: No, they have not.

21 **Q: Can you think of any way in which the public, that is the citizens of the State**
22 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
23 **Pipeline, as it dissects the State of Nebraska?**

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
4 crude petroleum, or oil and petroleum by-products that you would like to
5 ship in its pipeline?**

6 A: No, it has not.

7 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
8 products that you, at this time or any time in the future, would desire to place
9 for transport within the proposed TransCanada Keystone XL Pipeline?**

10 A: No, I do not.

11 **Q: Do you know anyone in the state of Nebraska who would be able to ship any
12 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
13 products within the proposed TransCanada Keystone XL Pipeline?**

14 A: No, I do not. I've never heard of such a person or company like that.

15 **Q: Do you pay property taxes for the land that would be affected and impacted
16 at the proposed TransCanada Keystone XL Pipeline?**

17 A: Yes, I do.

18 **Q: Why do you pay property taxes on that land?**

19 A: Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q: Because you follow the law and pay property taxes, do you believe you
22 deserve any special consideration or treatment apart from any other person
23 or company that pays property taxes?**

24 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q: Do you believe the fact that you pay property taxes entitles you to special
27 treatment of any kind, or special rights of any kind?**

28 A: No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**
2 **enough to qualify you to have the power of eminent domain to take land of**
3 **your neighbors or other people in your county, or other people across the**
4 **state of Nebraska?**

5 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q: Have you at any time ever employed any person other than yourself?**

8 A: Well, yes I have.

9 **Q: Do you believe that the fact that you have, at some point in your life,**
10 **employed one or more other persons entitle you to any special treatment or**
11 **consideration above and beyond any other Nebraskan that has also employed**
12 **one or more persons?**

13 A: No, of course not.

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
15 **have at one point employed another person within this state, entitles you to**
16 **preferential treatment or consideration of any kind?**

17 A: No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q: At the beginning of your statement, you briefly described your property that**
20 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
21 **give the Commissioners a sense of specifically how you believe the proposed**
22 **Keystone XL Pipeline and its preferred route, which proposes to go across**
23 **your land, how it would in your opinion based on your knowledge,**
24 **experience, and background of your land, affect it. So please share with the**
25 **Commissioners the characteristics of your land that you believe is important**
26 **for them to understand, while they evaluate TransCanada's application for a**
27 **route for its proposed pipeline to cross Nebraska and across your land,**
28 **specifically.**

1 A: As a farmer, ownership of land is very important. It is our income, it is our way of
2 life and it is our legacy. The fact that a foreign company such as TransCanada can
3 come through my property and use it for as many years as they want and then do
4 what they will after they are finished with it is inconceivable to me. I think it is a
5 privacy issue that they can come on this land whenever they want even though we
6 still own the land. Land ownership is just that; we own the land.

7 **Q: What else concerns you?**

8 A: I am worried about the leaks. It does happen. It is not a matter of “IF” it will leak
9 but “WHEN”. I have a well that is used for water for the center pivot. A leak
10 would damage the water and in turn ruin the crops. A lot of you may think that dirt
11 is just dirt, but soil is one of the most valuable assets a farmer can have. The better
12 & richer the soil is, the better the crops it will produce. Any kind of leak and
13 disruption is unacceptable. This makes me wonder: Who will clean up the leak and
14 make restitution for the lost profits? There are so many things that affect the land
15 which are caused by Mother Nature. Things pertaining to my land should be my
16 decision and not a foreign company taking a piece of my land for their own gain. I
17 am proud to be a farmer.

18 **Q: Do you have any concerns TransCanada’s fitness as an applicant for a major
19 crude oil pipeline in its preferred location, or ultimate location across the
20 state of Nebraska?**

21 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
22 or even bullied around and being made to feel scared that they did not have any
23 options but to sign whatever papers TransCanada told them they had to. I am
24 aware of folks being threatened that their land would be taken if they didn’t follow
25 what TransCanada was saying. I am aware of tactics to get people to sign
26 easements that I don’t believe have any place in Nebraska or anywhere such as
27 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
28 landowners and convince them they should sign TransCanada’s easement
29 agreements. I am aware of older folks and widows or widowers feeling they had

1 no choice but to sign TransCanada's Easement and they didn't know they could
2 fight or stand up for themselves. From a more practical standpoint, I am worried
3 that according to their answer to our Interrogatory No. 211, TransCanada only
4 owns and operates one (1) major oil pipeline. They simply do not have the
5 experience with this type of pipeline and that scares me. There are others but that
6 is what I can recollect at this time and if I remember more or my recollection is
7 refreshed I will share those with the Commissioners at the Hearing in August.

8 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
9 **landowner is reasonable or just?**

10 A: No, I do not.

11 **Q: Do you have any concern about limitations that the construction of this**
12 **proposed pipeline across your affected land would prevent construction of**
13 **future structures upon the portion of your land affected by the proposed**
14 **easement and immediately surrounding areas?**

15 A: Well yes, of course I do. We would not be able to build many, if any, types of
16 structures directly across or touching the easement, and it would be unwise and I
17 would be uncomfortable to build anything near the easement for fear of being
18 blamed in the future should any damage or difficulty result on my property in
19 regards to the pipeline.

20 **Q: Do you think such a restriction would impact you economically?**

21 A: Well yes, of course.

22 **Q: How do you think such a restriction would impact you economically?**

23 A: The future of this land may not be exactly how it's being use as of this moment,
24 and having the restrictions and limiting my ability to develop my land in certain
25 ways presents a huge negative economic impact on myself, my family, and any
26 potential future owner of the property. You have no idea how I or the future own
27 may want to use this land in the future or the other land across Nebraska
28 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
29 ago it would have been hard to imagine all the advances that we have now or how

1 things change. Because the Easement is forever and TransCanada gets the rights in
2 my land forever we have to think with a very long term view. By placing their
3 pipeline on under across and through my land that prevents future development
4 which greatly negatively impacts future taxes and tax revenue that could have
5 been generated by the County and State but now will not. When you look at the
6 short blip of economic activity that the two years of temporary construction efforts
7 may bring, that is far outweighed by the perpetual and forever loss of opportunity
8 and restrictions TransCanada is forcing upon us and 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 or 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.

22 **Q: Do you have any thoughts regarding if there would be an impact upon the**
23 **natural resources on or near your property due to the proposed pipeline?**

24 A: Yes, I believe that any construction, operation, and/or maintenance of the
25 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
26 resources of my land, and the lands near and surrounding the proposed pipeline
27 route.

28 **Q: Do you have any worries about potential impacts from the proposed pipeline**
29 **to the soil of your land, or land near you?**

1 A: Yes, I believe that any construction, operation, and/or maintenance of the
2 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
3 land, as well as land along and surrounding the proposed pipeline route. This
4 includes, but is not limited to, the reasons that we discussed above of disturbing
5 the soil composition and makeup as it has naturally existed for thousands and
6 millions of years during the construction process, and any future maintenance or
7 removal process. I'm gravely concerned about the fertility and the loss of
8 economic ability of my property to grow the crops, or grow the grasses, or grow
9 whatever it is at that time they exist on my property or that I may want to grow in
10 the future, or that a future owner may want to grow. The land will never be the
11 same from as it exists now undisturbed to after it is trenched up for the proposed
12 pipeline.

13 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
14 **upon the groundwater over your land, or surrounding lands?**

15 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
16 the proposed Keystone XL Pipeline would have a detrimental impact upon the
17 groundwater of not only under my land, but also near and surrounding the pipeline
18 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
19 simple and it is simply too valuable to our State and the country to put at
20 unreasonable risk.

21 **Q: Do you have any concern about the potential impact of the proposed pipeline**
22 **upon the surface water on, or near or around your land?**

23 A: Yes, I have significant concerns that any construction, operation, and/or
24 maintenance of the proposed Keystone XL Pipeline would have detrimental
25 impact upon the surface water of not only within my property boundary, but along
26 and near and surrounding the pipeline route, and in fact, across the state of
27 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
2 **upon the wildlife and plants, other than your growing crops on or near your**
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the
6 wildlife and the plants, not only that are located on or can be found upon my land,
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed
11 pipeline underneath and across and through my property will negatively affect the
12 fair market value at any point in the future, especially at that point in which I
13 would need to sell the property, or someone in my family would need to sell the
14 property. I do not believe, and certainly would not be willing to pay, the same
15 price for land that had the pipeline located on it, versus land that did not. I hope
16 there is never a point where I'm in a position where I have to sell and have to
17 realize as much value as I can out of my land. But because it is my single largest
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they
20 would've paid and as much as I could've received, if the pipeline were not upon
21 my property. There are just too many risks, unknowns, impacts and uncertainties,
22 not to mention all of the rights you give up by the nature of having the pipeline
23 due to having the easement that we have previously discussed, for any reasonable
24 person to think that the existence of the pipeline would not negatively affect my
25 property's value.

26 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
27 **testimony?**

28 A: Yes, I have.

29 **Q: Where have you seen that before?**

1 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
2 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
3 believe the portion of the alternative route in Nebraska essentially twins or
4 parallels Keystone I.

5 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
6 **Application, and as found on Attachment No. 7, here to your testimony, is in**
7 **the public interest of Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe that the Keystone mainline alternative route as shown on**
10 **Attachment No. 7 included with your testimony here is a major oil pipeline**
11 **route that is in the public interest of Nebraska?**

12 A: No, I do not.

13 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
14 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

15 A: No, I do not.

16 **Q: Do you believe there is any potential route for the proposed Keystone XL**
17 **Pipeline across, within, under, or through the State of Nebraska that is in the**
18 **public interest of the citizens of Nebraska?**

19 A: No, I do not.

20 **Q: Why do you hold that belief?**

21 A: Because there simply is no public interest based on all of the factors that I am
22 aware and that I have read and that I have studied that this Commission is to
23 consider that would establish that a for-profit foreign-owned pipeline that simply
24 crosses Nebraska because we are geographically in the way between where tar
25 sands are in Canada to where it wants to ship it to in Texas could ever be in the
26 public interest of Nebraskans. We derive no benefit from this project. It is not for
27 public use. Nebraska is simply in the way and when all considerations are taken in
28 there is no net benefit of any kind for Nebraska should this project be placed in our

1 state. Even if there was some arguable “benefit” it is not enough to outweigh all
2 the negative impacts and concerns.

3 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
4 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
5 **of Nebraska because it may bring temporary jobs during the construction**
6 **phase to Nebraska?**

7 A: First of all, not all jobs are created equally. Most jobs that are created, whether
8 temporary or on a permanent basis, don’t come with a project that has all the
9 potential and foreseeable negative impacts, many of which we have discussed here
10 and other witnesses throughout the course of this hearing have and will discuss. If
11 I decide to hire and employ someone to help me out in my farming or ranching
12 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
13 to my land or my town or my county or my state. And I’ve hired someone who is
14 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
15 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
16 jobs are not created equal. Additionally, I understand from what I’m familiar with
17 from TransCanada’s own statements that the jobs numbers they originally touted
18 were determined to be a minute fraction of the permanent jobs that had been
19 projected. According to their answer to our Interrogatory No. 191, TransCanada
20 has created only thirty-four (34) jobs within Nebraska working specifically on
21 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
22 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
23 Further, according to their answer to Interrogatory No. 199, TransCanada would
24 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
25 constructed on its Preferred Route or its Mainline Alternative Route.

26 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
27 **because it would cross your land?**

28 A: No, absolutely not. I am opposed to this project because it is not in the public
29 interest, neither within my community nor within our state.

1 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
2 **was to cross someone else's land?**

3 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
4 the fear and anxiety and potential foreseeable risks and negative impacts that this
5 type of a project carrying this type of product brings foisted upon anyone in this
6 state or any other state.

7 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
8 **Pipeline to cross the state of Nebraska?**

9 A: I don't believe there is an intelligent route because as I have stated I don't believe
10 this project anywhere within Nebraska is within the public interest. However, if
11 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
12 had to go somewhere in the state of Nebraska, the only intelligent route I believe
13 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
14 preferred route and the mainline alternative routes are economic liabilities our
15 state cannot risk.

16 **Q: What do you rely upon to make that statement?**

17 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
18 already exists in that area is reason enough as it is not in our best interest or the
19 public interests to have more major oil pipelines crisscrossing our state. Second,
20 they have all the infrastructure already there in terms of relationships with the
21 counties and local officials and first responders along that route. Third, they have
22 already obtained easements from all the landowners long that route and have
23 relationships with them. Fourth, that route avoids our most sensitive soils, the
24 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
25 Aquifer. Sixth, they have already studied that route and previously offered it as an
26 alternative. Seventh, it just makes the most sense that as a state we would have
27 some intelligent policy of energy corridors and co-locating this type of
28 infrastructure near each other.

1 **Q: Do you have any other concerns you would like to reiterate or can think of at**
2 **this time you would like the Commissioners to understand?**

3 **A:** Yes. If the pipeline would happen to go through it would greatly affect my ability
4 to make my living. The work on the pipeline would stop any working of the land.
5 Also, we have a center pivot on this land. The amount of land that would be used
6 to put in the pipeline will make us keep reversing the pivot path to work around it.
7 This is an added cost of electricity.

8 Another concern is referencing the erosion of the land. This land is very hilly &
9 dirt can wash away from the pipe. I don't think they are burying it deep enough.
10 When I work the land, I am afraid I will hit the pipe with the disc. At that point,
11 I would be liable for the spill and could lose everything to pay for it.

12 I feel it will be very difficult to produce a crop when the pipe goes as the ground is
13 too hot. Any crop planted here would dry up due to heat from the pipe.

14 In closing, I would rather see that the land be undisturbed. The ground will never
15 be put back like it was & takes years to get it back to the way it was.

16 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
17 **like the Public Service Commissioners to consider in their review of**
18 **TransCanada's Application?**

19 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
20 document below but other things may come to me or my memory may be
21 refreshed and I will add and address those things at the time of the Hearing in
22 August and address any additional items at that time as is necessary. Additionally,
23 I have not had an adequate amount of time to receive and review all of
24 TransCanada's answers to our discovery and the discovery of others so it was
25 impossible to competently and completely react to that in my testimony here and I
26 reserve the right to also address anything related to discovery that has not yet
27 concluded as of the date I signed this document below. Lastly, certain documents
28 requested have not yet been produced by TransCanada and therefore I may have
29 additional thoughts on those I will also share at the hearing as needed.

1 **Q: Does Attachment No. 8 here contain other documents you are competent to**
2 **speak about that you wish to be part of your testimony and to discuss in more**
3 **detail as needed at the August 2017 Hearing?**

4 A: Yes.

5 **Q: What is it that you are requesting the Public Service Commissioners do in**
6 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
7 **across Nebraska?**

8 A: I am respectfully and humbly requesting that the Commissioners think far beyond
9 a temporary job spike that this project may bring to a few counties and beyond the
10 relatively small amount of taxes this proposed foreign pipeline would possibly
11 generate. And, instead think about the perpetual and forever impacts of this
12 pipeline as it would have on the landowners specifically, first and foremost, but
13 also thereby upon the entire state of Nebraska, and to determine that neither the
14 preferred route nor the Keystone mainline alternative route are in the public
15 interest of the citizens of the state of Nebraska. And if the Commissioners were
16 inclined to modify TransCanada's proposed routes and were to be inclined to grant
17 an application for a route in Nebraska, that the only potential route that would
18 make any intelligent sense whatsoever would be twinning or near paralleling of
19 the proposed KXL with the existing Keystone I pipeline. It simply does not make
20 sense to add yet another major oil pipeline crisscrossing our state creating new
21 pumping stations, creating new impacts on additional counties and communities
22 and going through all of the court processes with myself and other landowners like
23 me when this applicant already has relationships with the landowners, the towns
24 and the communities along Keystone I, and that Keystone I is firmly outside of the
25 sand hills and a significantly further portion away from the heart of the Ogallala
26 Aquifer than the preferred route or the Keystone mainline alternative route.

27 **Q: Are all of your statements in your testimony provided above true and**
28 **accurate as of the date you signed this document to the best of your**
29 **knowledge?**

1 A: Yes, they are.

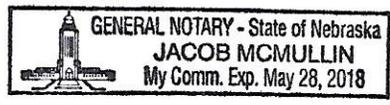
2 **Q: Thank you, I have no further questions at this time and reserve the right to**
3 **ask you additional questions at the August 2017 Hearing.**

Patricia Grosserode
Patricia Grosserode

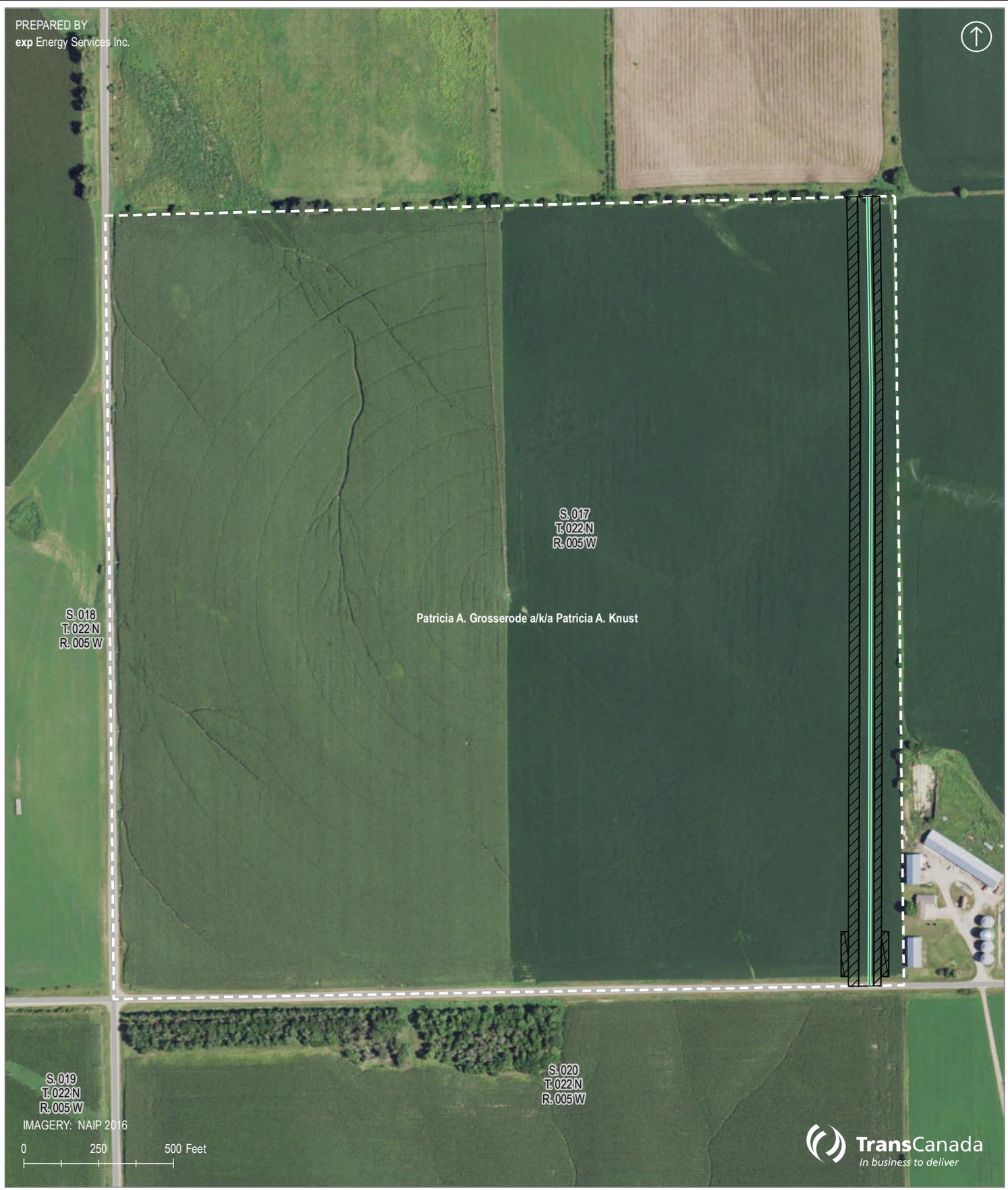
Subscribed and Sworn to me before this 26th day of May, 2017.

Jacob McMullin
Notary Public

State of Nebraska
County of Lancaster



Attachment No. 1



S.018
T.022N
R.005W

S.017
T.022N
R.005W

Patricia A. Grosserode a/k/a Patricia A. Knust

S.019
T.022N
R.005W

S.020
T.022N
R.005W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Patricia A. Grosserode a/k/a Patricia A. Knust

TRACT NO. ML-NE-BO-30035.000
STATE: Nebraska
COUNTY: Boone
SECTION: 017
TOWNSHIP: 022N
RANGE: 005W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

Attachment No. 2

KNUST FAMILY
REUNION
AUG 7, 2016





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-30035.000

**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**"), **Patricia A. Knust a/k/a Patricia Grosserode and Steve Grosserode, wife and husband**, whose mailing address is 6220 L. Street, Lincoln, Nebraska 68510 (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

Grantor's Initials _____

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 SW1/4 of Section 17, T22N, R5W of the 6th P.M., as recorded in Book 85, Page 523 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):

Patricia A. Knust a/k/a Patricia Grosserode

Steve Grosserode

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Patricia A. Knust a/k/a Patricia Grosserode**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Steve Grosserode**

Notary Public Signature

Affix Seal Here

LEGEND
 R PROPERTY LINE
 P PROPOSED SECTION LINE
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.B.C.N. DEED RECORDS OF BOONE COUNTY, NEBRASKA

BOONE COUNTY, NEBRASKA
 T-22-N, R-5-W, SECTION 17
 ML-NE-BO-30035.000

PATRICIA A. KNUST
 VOLUME 85, PAGE 523
 D.R.B.C.N.

TransCanada
In business to deliver

KEYSTONE XL PROJECT
 EASEMENT AREA
 ACROSS THE PROPERTY OF
 PATRICIA A. KNUST
 ML-NE-BO-30035.000

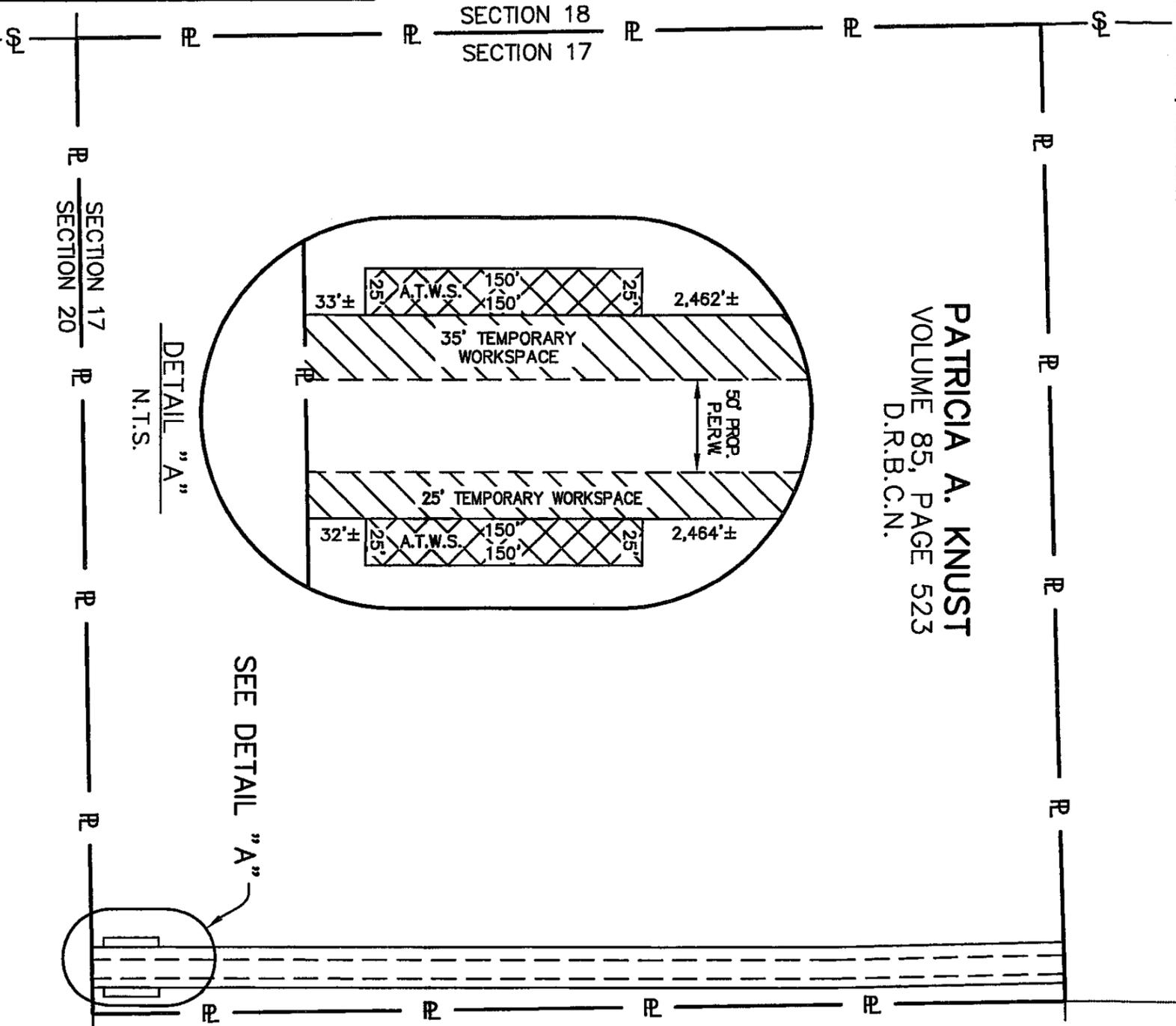
PROJECT: XL
 EXHIBIT A

APPROVED BY: [Signature]
 DRAWING NUMBER: XL-08-ML-SK-3480

SLR NO. [] REVISION [] DATE []

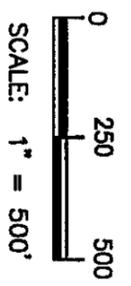
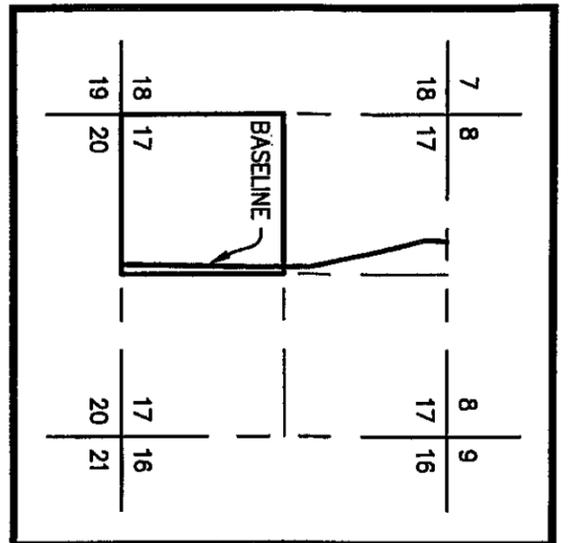
NO. [] REVISION [] DATE []

SCALE: 1" = 500'
 DATE: 10/28/14
 DRAWN BY: PB
 CHECKED BY: ALS



DETAIL "A"
 N.T.S.

SEE DETAIL "A"



TRACT LEGAL DESCRIPTION:
 SW/4 OF SECTION 17,
 T-22-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.

TOTAL DISTANCE ACROSS PROPERTY: 2,645'±
 AREA OF PERMANENT EASEMENT: 3.0 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.6 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.2 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-30035.000

We, Patricia A. Knust a/k/a Patricia Grosserode and Steve Grosserode, wife and husband, of Boone County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Four Hundred Forty Dollars and No Cents (\$5,440.00), 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:

SW1/4

Section 17, Township 22N, Range 5W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this _____ day of

_____, 20_____.

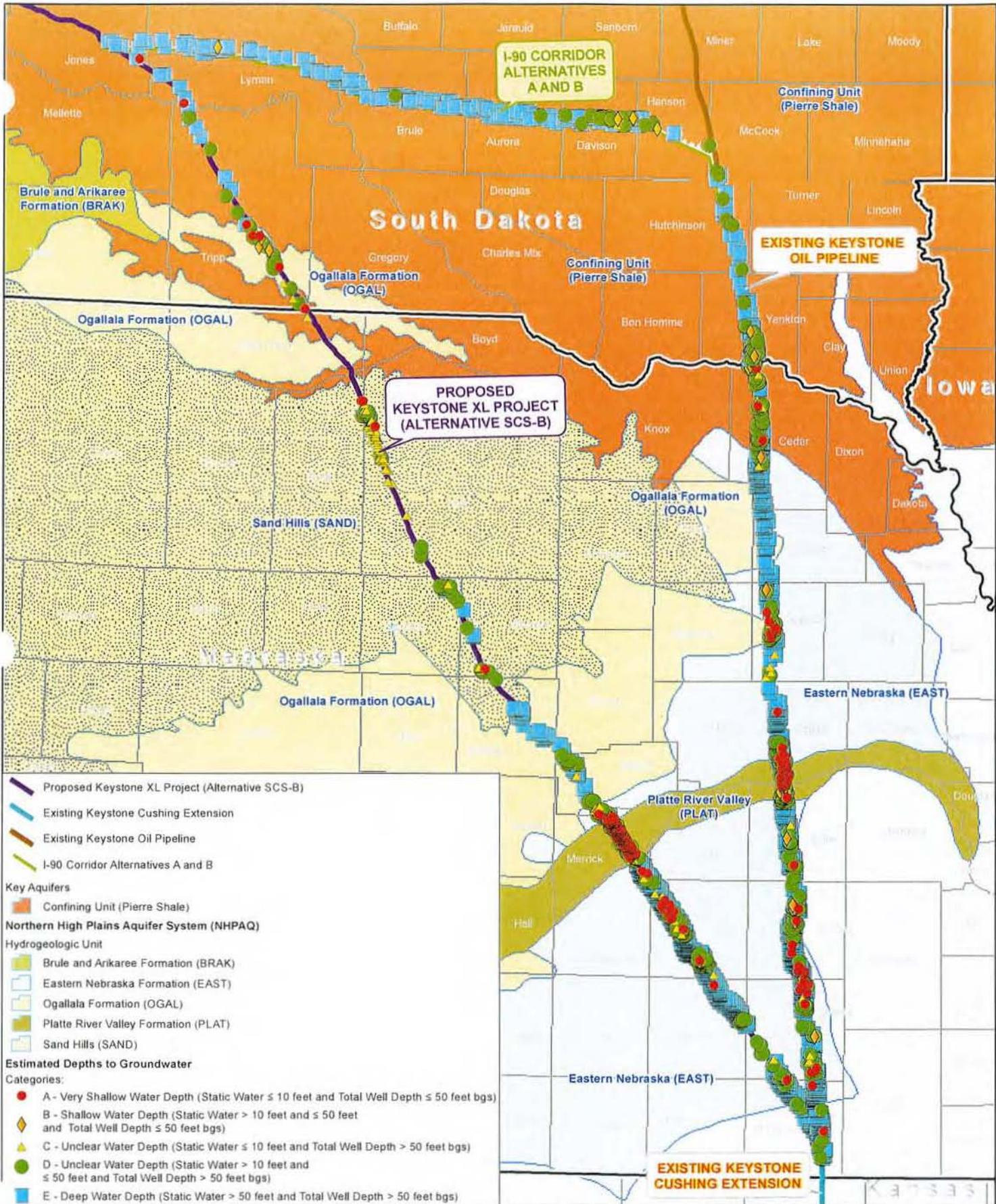
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



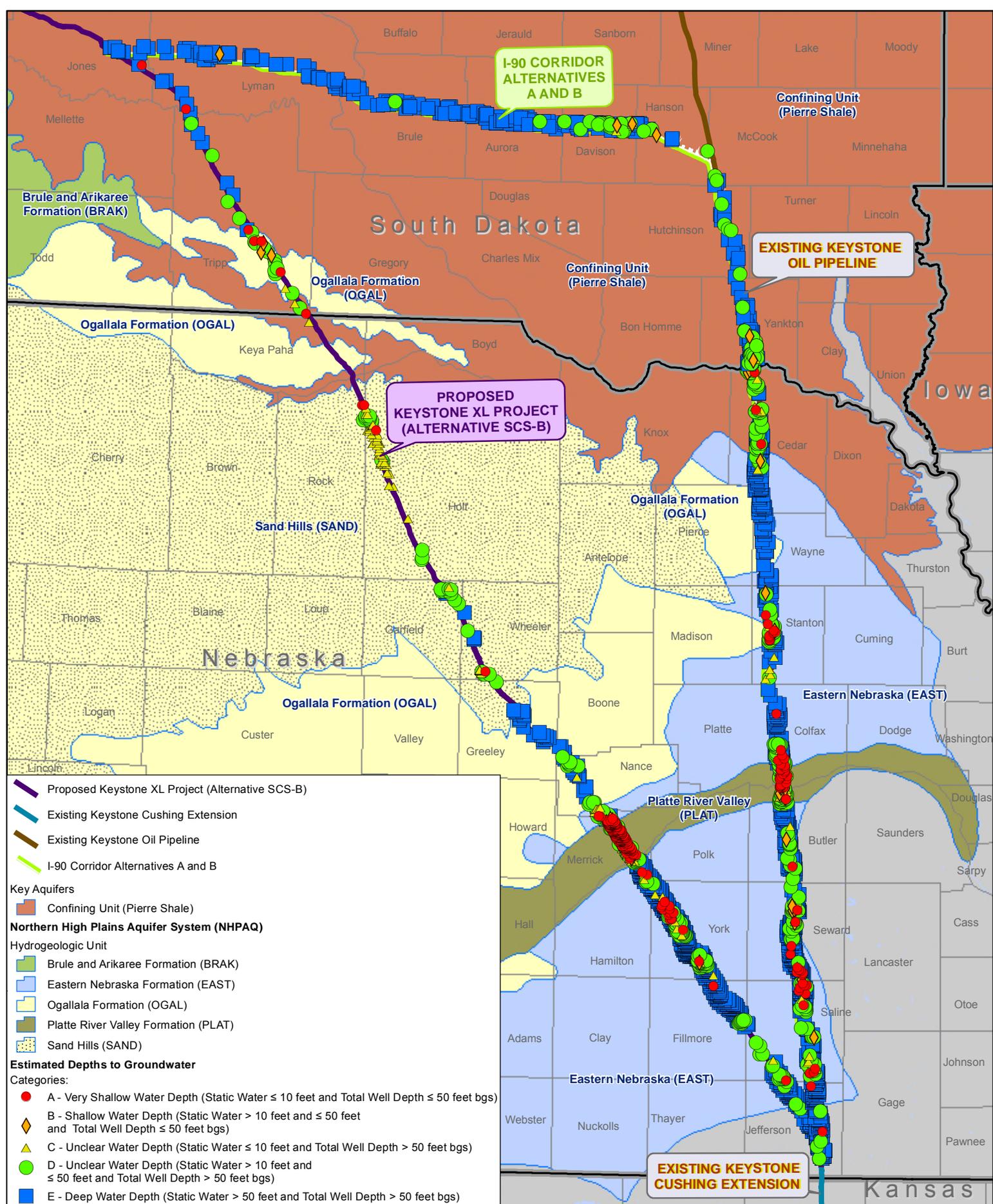
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

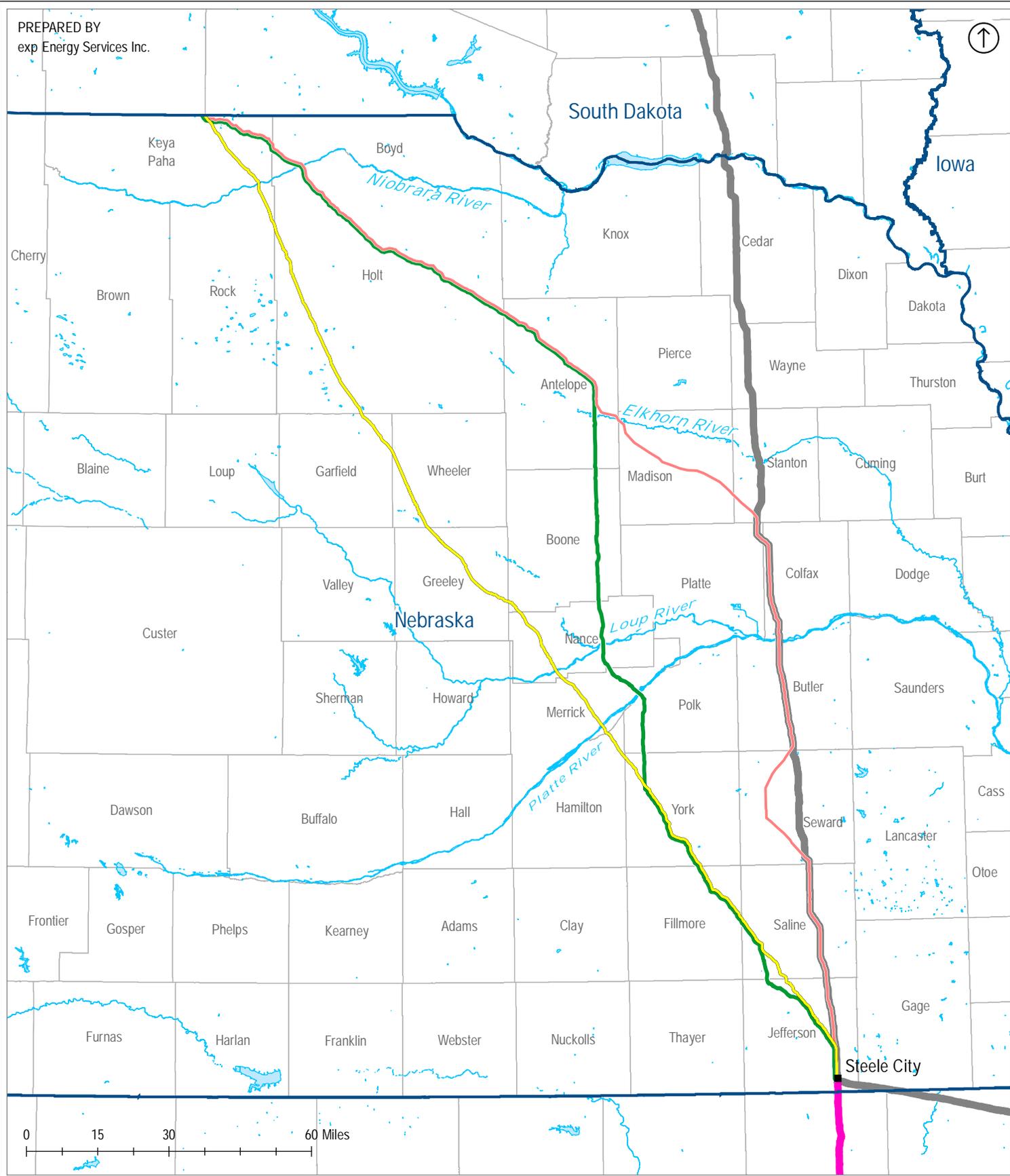
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

Figure 4.3.3-8
 I-90 Corridor Alternatives A and B
 Key Aquifers and Potable Water Wells
 within 2-mile Corridor

Attachment No. 7



LEGEND

	PREFERRED ROUTE		WATERBODY
	SANDHILLS ALTERNATIVE ROUTE		STATE BOUNDARY
	KEYSTONE MAINLINE ALTERNATIVE ROUTE		COUNTY BOUNDARY
	KEYSTONE MAINLINE (PHASE I)		
	KEYSTONE CUSHING EXTENSION (PHASE II)		

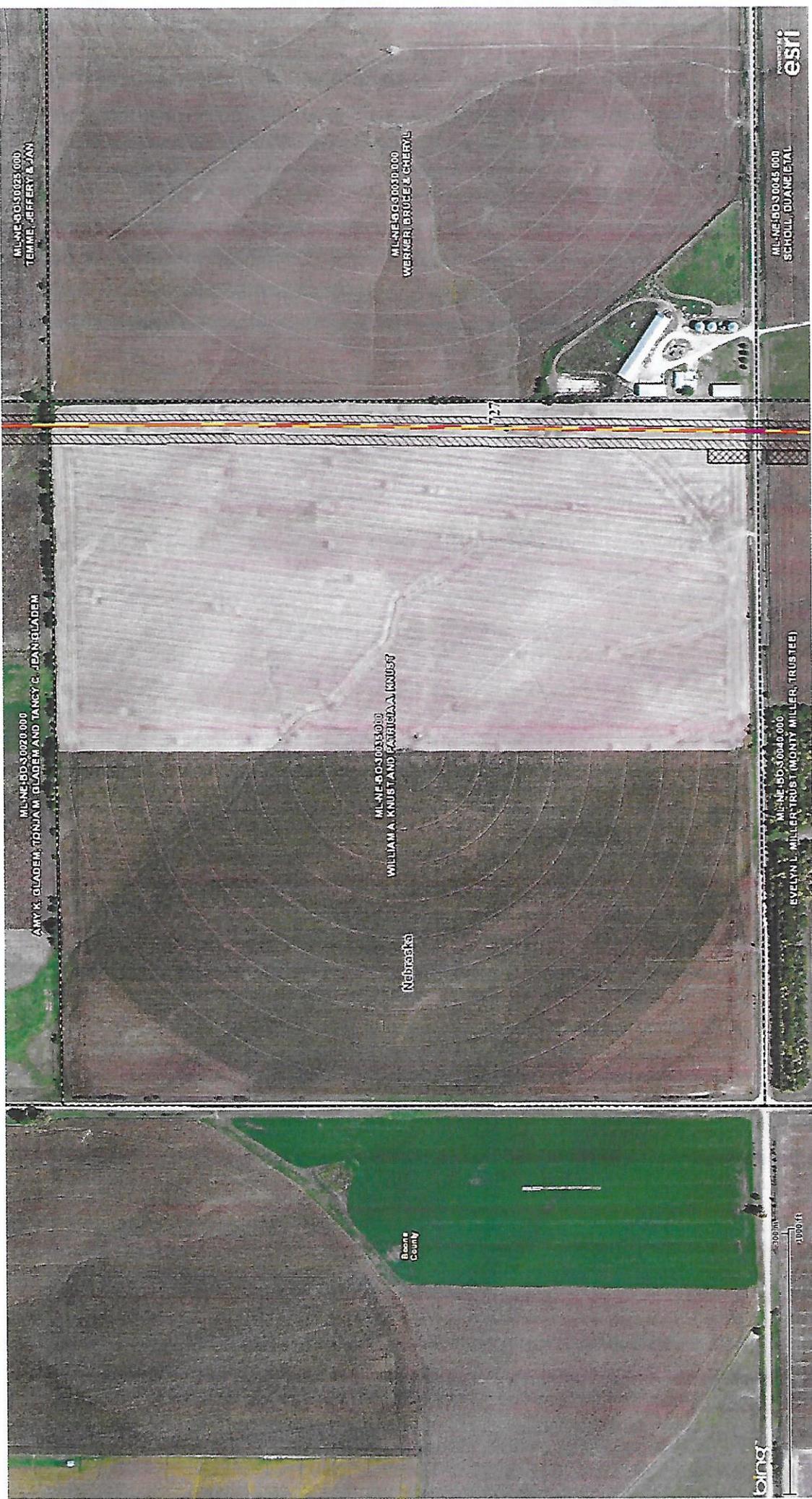
KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Attachment No. 8

ML-NE-BO-30035.000



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
Rick Hammond in Support of
Landowner Intervenors

State of Nebraska)
) ss.
York County)

1 **Q: Please state your name.**

2 A: My name is Rick Hammond.

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: No, but I am a tenant of Terri Harrington who is a Landowner Intervenor and my
7 sister-in-law. I farm her land that would be affected by the proposed preferred
8 pipeline route of TransCanada. Her land is located in York County.

9 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
10 **photo(s) of the land in question here with the area of the proposed KXL**
11 **pipeline depicted?**

12 A: Yes.

13 **Q: What do you do for a living?**

14 A: I am Farmer.

15 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
16 **and or your family?**

1 A: Yes.

2 **Q: For the land that would be affected and impacted by the proposed KXL tar**
3 **sands pipeline give the Commissioners a sense how long the land has been in**
4 **your family.**

5 A: The land has been in my wife's family for generations. Collectively, we built a
6 solar clean energy barn on the proposed route. We have had land worked with
7 heavy machinery before and it has always caused it to be much less tillable and
8 productive. The value of the land would be decreased by having all the natural
9 flora and fauna disturbed and the heavy equipment would destroy and compact the
10 soil.

11 **Q: Do you earn any income from this land?**

12 A: Yes.

13 **Q: Have you depended on the income from the land to support your livelihood or**
14 **the livelihood of your family?**

15 A: Yes.

16 **Q: Do you have concerns about your sister-in-law being able to selling the land?**

17 A: Well I hope she never has to sell the land but as a farmer who has bought land
18 before and attended auctions and who is familiar with what factors you consider
19 when bidding on farm land, I am concerned that if another piece of ground similar
20 to hers was for sale at the same time and it did not have the pipeline and hers did
21 that she 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: Have you thought about whether or not you would be willing to pay the same**
24 **rental payments for the land if the proposed route is approve and the KXL**
25 **pipeline goes through the land as you are today without it?**

26 A: Yes, I have thought of it and that concerns me. The owner is my sister-in-law
27 which makes that even more difficult but as a business owner and farmer I have to
28 also control my costs and risks the best I can. For instance, if there are damages to
29 crops and loss in yields, I need to take that real possibility into account. I need to

1 factor in the likelihood of deferred payment or no payment or even budgeting in
2 legal expenses to fight about damages caused by the pipeline. These are all real
3 world things that have and do occur. I just don't know if I could agree to carry on
4 with the same payment arrangements if the land were to change so dramatically as
5 it would if a major oil pipeline is present.

6 **Q: Was your sister-in-law or an entity for which she is a member, shareholder,**
7 **or director previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, in 2015. TransCanada Keystone Pipeline LP sued her by filing a petition for
9 condemnation against her land so it could place its proposed pipeline within an
10 easement that it wanted to take from her.

11 **Q: Did she defend herself and the land in that condemnation action?**

12 A: Yes. She hired lawyers to defend and protect us and we helped with the legal fees
13 and expenses actually incurred in her and our collective resistance of
14 TransCanada's lawsuit.

15 **Q: Has TransCanada reimbursed her or you for any of the expenses or costs for**
16 **fees incurred?**

17 A: No, they have not.

18 **Q: Did TransCanada describe what rights it proposed to take related to the**
19 **eminent domain property on the land?**

20 A: Yes, they did.

21 **Q: What rights that they proposed to take did they describe?**

22 A: TransCanada stated that the eminent domain property will be used to "lay, relay,
23 operate, and maintain the pipeline and the plant and equipment reasonably
24 necessary to operate the pipeline, specifically including surveying, laying,
25 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
26 reconstructing, removing and abandoning one pipeline, together with all fittings,
27 cathodic protection equipment, pipeline markers, and all their equipment and
28 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
29 petroleum products, and all by-products thereof."

1 **Q: Prior to filing an eminent domain lawsuit, do you believe TransCanada**
2 **attempted to negotiate in good faith?**

3 A: No, I do not.

4 **Q: Have you ever reviewed TransCanada's proposed easement and right-of-way**
5 **agreement?**

6 A: Yes.

7 **Q: At the time you reviewed TransCanada's easement and right-of-way**
8 **agreement, did you understand that they would be purchasing a fee title**
9 **interest in the property or that they were taking something else?**

10 A: I understood that they proposed to have the power to take both a temporary
11 construction easement that could last for a certain period of time and then also a
12 permanent easement which they described to be 50 feet across or in width, and
13 that would run the entire portion of the property from where a proposed pipeline
14 would enter the property until where it would exit the property.

15 **Q: Is the document included with your testimony here as Attachment No. 3, a**
16 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
17 **Way agreement that they included with their condemnation lawsuit?**

18 A: Yes, it is.

19 **Q: What is your understanding of the significance of the Easement and Right-of-**
20 **Way agreement as proposed by TransCanada?**

21 A: My understanding is that this is the document that will govern all of the rights and
22 obligations and duties as well as the limitations of what can and cannot be done
23 and how I and any future landowner and any person I invite to come onto the
24 property must behave as well as what TransCanada is and is not responsible for
25 and how they can use the land.

26 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
27 **agreement do you have any concerns about any portions of it or any of the**
28 **language either included in the document or missing from the proposed**
29 **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 the land, my rights, and thereby potentially negatively impacts my
4 community and 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 the land. So, if you can start at the beginning of that document and let's**
10 **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 the
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 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 Terri
29 would be paid and then pay taxes on and contribute to this state and this country. It

1 is money she would be putting back into the local community both spending and
2 stimulating the local economy and generating more economic activity right here.
3 Instead TransCanada's shareholders keep the money and it never finds its way to
4 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 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 the 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 we 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 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. The land however
25 will, if we are all smart about this, and I want my family or future Nebraska
26 families to have that land as undisturbed as possible and it is not in my interest or
27 the public interest of Nebraska to be forced to give up perpetual and permanent
28 rights in the land for 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 the ground
3 until the end of time just sitting there while they are not using it, but we are still
4 prevented from doing on the land and using the land as we 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 our 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 in Landowner were to willfully and
13 intentionally cause damages to the pipeline that Landowner should be liable.
14 However, anything short of willful misconduct should be the liability of
15 TransCanada who is subjecting the pipeline on the Landowner and who is making
16 a daily profit from that pipeline. When evaluating the impact on property rights of
17 this provision, you must consider the potentially extremely expensive fight a
18 Landowner would have over this question of whether or not damage was an act of
19 negligence. Putting this kind of potential liability upon the Landowner is
20 incredibly problematic and is detrimental to the protection of property rights. I
21 don’t think this unilateral power which I can’t do anything about as the landowner
22 is in the best economic interest of the land in question or the State of Nebraska for
23 landowners to be treated that way.

24 **Q: Is there any specific event or example you are aware of that makes this**
25 **concern more real for you?**

26 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
27 Nemaha County, Nebraska landowner farmers who accidentally struck two
28 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
29 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged

1 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
2 copy of the Federal Court Complaint is here as **Attachment No. 4.**

3 **Q: What is your next concern with the Easement language?**

4 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
5 they choose unless 1) any Landowner use interferes in any way with
6 TransCanada's exercise of any of its rights within the Easement, or 2)
7 TransCanada decides to take any action on the property it deems necessary to
8 prevent injury, endangerment or interference with anything TransCanada deems
9 necessary to do on the property. Landowner is also forbidden from excavating
10 without prior authorization by TransCanada. So my understanding is that
11 TransCanada will unilaterally determine what Landowner can and can't do based
12 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
13 could also completely deny my request to excavate. Further, TransCanada retains
14 all "privileges necessary or convenient for the full use of the rights" granted to
15 them in the Easement. Again, TransCanada unilaterally can decide to the
16 detriment of the property rights of Landowner what TransCanada believes is
17 necessary or convenient for it. And there is no option for any additional
18 compensation to landowner for any right exercised by TransCanada that leads to
19 the removal of trees or plants or vegetation or buildings or structures or facilities
20 owned by Landowner of any kind. Such undefined and unilateral restrictions and
21 rights without having to compensate Landowner for such further destruction or
22 losses are not conducive to the protection of property rights or economic interest.

23 **Q: What is the next concern you have?**

24 A: The Easement also allows some rights for Landowner but restricts them at the
25 same time and again at the sole and unilateral decision making of TransCanada.
26 TransCanada will determine if the actions of Landowner might in anyway
27 endanger or obstruct or interfere with TransCanada's full use of the Easement or
28 any appurtenances thereon to the pipeline itself or to their access to the Easement
29 or within the Easement and TransCanada retains the right at any time, whether

1 during growing season or not, to travel “within and along Easement Area on foot
2 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
3 retain the rights to prevent any landowner activity that it thinks may “unreasonably
4 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
5 undefined and unilateral restrictions are not conducive to the protection of
6 property rights or economic interest.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
9 Landowner’s land any debris of any kind without any input or power of
10 Landowner to demand an alternative method or location of debris disposal. Such
11 unilateral powers would negatively affect Landowners property are not conducive
12 to the protection of property rights or economic interest.

13 **Q: What is the next concern you have with the Easement language?**

14 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
15 “where rock is encountered” mean and why does TransCanada solely get to
16 determine whether or not this phrase is triggered. This phrase could be used to
17 justify installing the pipeline 24 inches beneath the surface. The ability to use this
18 provision to minimal locate the pipeline at a depth of 24 inches could negatively
19 affect Landowners property are not conducive to the protection of property rights.
20 A shallow pipeline is much more likely to become a danger and liability in the
21 future given farming operations and buried irrigation lines and other factors
22 common to the current typical agricultural uses of the land in question impacted
23 by TransCanada’s preferred pipeline route.

24 **Q: What is the next concern you have with the Easement language?**

25 A: There are more vague concepts solely at the determination of TransCanada such as
26 “as nearly as practicable” and “pre-construction position” and “extent reasonably
27 possible.” There is nothing here that defines this or provides a mechanism for
28 documenting or memorializing “pre-construction position” so as to minimize
29 costly legal battles or wasted Landowner time attempting to recreate the soil

1 condition on their fields or pasture. Such unilateral powers would negatively affect
2 Landowners property are not conducive to the protection of property rights or
3 economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: TransCanada maintains the unilateral right to abandon the pipeline and all
6 appurtenances thereto in place on, under, across, or through Nebraska land at any
7 time it chooses. There is no provision for Landowner compensation for such
8 abandonment nor any right for the Landowner to demand removal. Such unilateral
9 powers would negatively affect Landowners property are not conducive to the
10 protection of property rights or economic interest. As a lawyer I understand the
11 importance of terms, of the fine print of contracts, and there simply must be
12 language that requires TransCanada to pay for any leaks and damage and to
13 remove the pipeline when it is no longer used. They should have to pay dearly for
14 what they are doing. The possibility of contamination is too great to leave it in the
15 ground for our heirs to deal with.

16 **Q: What is the next concern you have with the Easement language?**

17 A: TransCanada has the power to unilaterally move or modify the location of any
18 Easement area whether permanent or temporary at their sole discretion.
19 Regardless, if Landowner has taken prior steps relative the their property in
20 preparation or planning of TransCanada's taking of the initial easement area(s),
21 the language here does not require TransCanada to compensate the Landowner if
22 they decide to move the easement anywhere on Landowners property. Such
23 unilateral powers would negatively affect Landowners property are not conducive
24 to the protection of property rights or economic interests.

25 **Q: What is the next concern you have with the Easement language?**

26 A: The Easement requires that all of the burdens and restrictions upon Landowner to
27 transfer and be applicable to any future owner of the Land in question without the
28 ability of the future Landowner to modify or negotiation any of the language in
29 question to which it will be held to comply.

1 **Q: What is the next concern you have with the Easement language?**

2 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
3 Easement to any person, company, country, etc. at their sole discretion at anytime
4 to anyone. This also means that any buyer of the easement could do the same to a
5 third buyer and so on forever. There is no change of control or sale provision in
6 place to protect the Landowner or Nebraska or to provide compensation for such
7 change of control or ownership. It is not conducive to the protection of property
8 rights or economic interests to allow unilateral unrestricted sale of the Easement
9 thereby forcing upon the Landowner and our State a new unknown Easement
10 owner.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are many terms in the Easement that are either confusing or undefined terms
13 that are without context as to whether or not the Landowner would have any say
14 so in determining what these terms mean or if the evaluation is solely in
15 TransCanada's control. Some of these vague undefined terms are as follows:

- 16 i. "pipeline installation activities"
- 17 ii. "availability of labor and materials"
- 18 iii. "commercially reasonable costs and expenses"
- 19 iv. "reasonably anticipated and foreseeable costs and expenses"
- 20 v. "yield loss damages"
- 21 vi. "diminution in the value of the property"
- 22 vii. "substantially same condition"
- 23 viii. "an actual or potential hazard"
- 24 ix. "efficient"
- 25 x. "convenient"
- 26 xi. "endangered"
- 27 xii. "obstructed"
- 28 xiii. "injured"
- 29 xiv. "interfered with"

- 1 xv. “impaired”
- 2 xvi. “suitable crossings”
- 3 xvii. “where rock is encountered”
- 4 xviii. “as nearly as practicable”
- 5 xix. “pre-construction position”
- 6 xx. “pre-construction grade”
- 7 xxi. “various engineering factors”

8 Each one of these above terms and phrases as read in the context of the Easement
9 could be problematic in many ways. Notably, undefined terms tend to only get
10 definition in further legal proceedings after a dispute arises and the way the
11 Easement is drafted, TransCanada has sole power to determine when and if a
12 particular situation conforms with or triggers rights affected by these terms. For
13 instance, “yield loss damages” should be specifically defined and spelled out
14 exactly how the landowner is to be compensated and in what events on the front
15 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
16 the Landowner is without contractual rights to define these terms or determine
17 when rights related to them trigger and what the affects may be.

18 **Q: Do you have any other concerns about the Easement language that you can**
19 **think of at this time?**

20 A: I reserve the right to discuss any additional concerns that I think of at the time of
21 my live testimony in August.

22 **Q: Based upon what you have shared with the Commission above regarding**
23 **TransCanada’s proposed Easement terms and agreement, do you believe**
24 **those to be reasonable or just, under the circumstances of the pipeline’s**
25 **impact upon you or the land?**

26 A: No, I do not believe those terms to be reasonable or just for the reasons that we
27 discussed previously.

28 **Q: As the farmer of the land in question and as the person who knows it better**
29 **than anyone else, do you believe that TransCanada offered a just, or fair,**

1 **compensation for all of what they proposed to take so that their tar sands**
2 **pipeline could be located across the 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 are being given up,
5 and what will be prevented from doing in the future and how their pipeline would
6 impact the property forever and ever.

7 **Q: Has TransCanada at any time offered annual compensation, such as wind**
8 **farm projects do, for the existence of their potential tar sands pipeline across**
9 **the property.**

10 A: No, never.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you**
12 **thought their proposed location of their proposed pipeline across the land was**
13 **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 the land was**
17 **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: Have you at any time ever employed any person other than yourself?**

25 A: Well, yes I have.

26 **Q: Do you believe that the fact that you have, at some point in your life,**
27 **employed one or more other persons entitle you to any special treatment or**
28 **consideration above and beyond any other Nebraskan that has also employed**
29 **one or more persons?**

1 A: No, of course not.

2 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
3 **have at one point employed another person within this state, entitles you to**
4 **preferential treatment or consideration of any kind?**

5 A: No, of course not. If I choose to employ someone that decision is up to me. I
6 don't deserve any special treatment or consideration for that fact.

7 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
8 **crude oil pipeline in its preferred location, or ultimate location across the**
9 **state of Nebraska?**

10 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
11 or even bullied around and being made to feel scared that they did not have any
12 options but to sign whatever papers TransCanada told them they had to. I am
13 aware of folks being threatened that their land would be taken if they didn't follow
14 what TransCanada was saying. I am aware of tactics to get people to sign
15 easements that I don't believe have any place in Nebraska or anywhere such as
16 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
17 landowners and convince them they should sign TransCanada's easement
18 agreements. I am aware of older folks and widows or widowers feeling they had
19 no choice but to sign TransCanada's Easement and they didn't know they could
20 fight or stand up for themselves. From a more practical standpoint, I am worried
21 that according to their answer to Interrogatory No. 211, TransCanada only owns
22 and operates one (1) major oil pipeline. They simply do not have the experience
23 with this type of pipeline and that scares me. There are others but that is what I can
24 recollect at this time and if I remember more or my recollection is refreshed I will
25 share those with the Commissioners at the Hearing in August.

26 **Q: Do you have any concern about limitations that the construction of this**
27 **proposed pipeline across your affected land would prevent construction of**
28 **future structures upon the portion of the land affected by the proposed**
29 **easement and immediately surrounding areas?**

1 A: Well yes, of course I do. We would not be able to build many, if any, types of
2 structures directly across or touching the easement, and it would be unwise and I
3 would be uncomfortable to build anything near the easement for fear of being
4 blamed in the future should any damage or difficulty result on the property in
5 regards to the pipeline.

6 **Q: Do you think such a restriction would have economic impacts?**

7 A: Well yes, of course.

8 **Q: How do you think such a restriction would impact you economically?**

9 A: The future of this land may not be exactly how it's being used as of this moment,
10 and having the restrictions and limiting my ability to develop the land in certain
11 ways presents a huge negative economic impact on myself, my family, and any
12 potential future farmer or owner of the property. Fifty years ago it would have
13 been hard to imagine all the advances that we have now or how things change.
14 Because the Easement is forever and TransCanada gets the rights in the land
15 forever we have to think with a very long term view. By placing their pipeline on
16 under across and through the land that prevents future development which greatly
17 negatively impacts future taxes and tax revenue that could have been generated by
18 the County and State but now will not. When you look at the short blip of
19 economic activity that the two years of temporary construction efforts may bring,
20 that is far outweighed by the perpetual and forever loss of opportunity and
21 restrictions TransCanada is forcing upon us and Nebraska.

22 **Q: Do you have any concerns about the environmental impact of the proposed
23 pipeline?**

24 A: Yes, I do.

25 **Q: What are some of those concerns?**

26 A: I am concerned that any construction, operation, and/or maintenance of the
27 proposed Keystone XL Pipeline would have a detrimental impact upon the
28 environment of the land specifically, as well as the lands near this land and
29 surrounding the proposed pipeline route.

1 **Q: Do you have any other environmental concerns?**

2 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
3 construction and/or maintenance and operation. I am concerned about spills and
4 leaks that TransCanada has had in the past and will have in the future. This could
5 be catastrophic to my operations or others and to my county and the State.

6 **Q: Do you have any thoughts regarding if there would be an impact upon the
7 natural resources on or near your property due to the proposed pipeline?**

8 A: Yes, I believe that any construction, operation, and/or maintenance of the
9 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
10 resources of the land, and the lands near and surrounding the proposed pipeline
11 route.

12 **Q: Do you have any worries about potential impacts from the proposed pipeline
13 to the soil of the land, or land near you?**

14 A: Yes, I believe that any construction, operation, and/or maintenance of the
15 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
16 land, as well as land along and surrounding the proposed pipeline route. This
17 includes, but is not limited to, the reasons that we discussed above of disturbing
18 the soil composition and makeup as it has naturally existed for thousands and
19 millions of years during the construction process, and any future maintenance or
20 removal process. I'm gravely concerned about the fertility and the loss of
21 economic ability of the property to grow the crops, or grow the grasses, or grow
22 whatever it is at that time they exist on the property or that I may want to grow in
23 the future, or that a future owner may want to grow. The land will never be the
24 same from as it exists now undisturbed to after it is trenched up for the proposed
25 pipeline.

26 **Q: Do you have any concerns about the potential impact of the proposed pipeline
27 upon the groundwater over the land, or surrounding lands?**

28 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
29 the proposed Keystone XL Pipeline would have a detrimental impact upon the

1 groundwater of not only under the land, but also near and surrounding the pipeline
2 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
3 simple and it is simply too valuable to our State and the country to put at
4 unreasonable risk.

5 **Q: Do you have any concern about the potential impact of the proposed pipeline**
6 **upon the surface water on, or near or around the land?**

7 A: Yes, I have significant concerns that any construction, operation, and/or
8 maintenance of the proposed Keystone XL Pipeline would have detrimental
9 impact upon the surface water of not only within the property boundary, but along
10 and near and surrounding the pipeline route, and in fact, across the state of
11 Nebraska.

12 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
13 **upon the wildlife and plants, other than your growing crops on or near the**
14 **land?**

15 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
16 the proposed Keystone XL Pipeline would have a detrimental impact upon the
17 wildlife and the plants, not only that are located on or can be found upon the land,
18 but also near and along the proposed pipeline route.

19 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
20 **fair market value of the land?**

21 A: Yes, I do. I am significantly concerned about how the existence of the proposed
22 pipeline underneath and across and through the property will negatively affect the
23 fair market value at any point in the future, especially at that point in which
24 someone in my family would need to sell the property. I do not believe, and
25 certainly would not be willing to pay, the same price for land that had the pipeline
26 located on it, versus land that did not. There are just too many risks, unknowns,
27 impacts and uncertainties, not to mention all of the rights you give up by the
28 nature of having the pipeline due to having the easement that we have previously

1 discussed, for any reasonable person to think that the existence of the pipeline
2 would not negatively affect the property's value.

3 **Q: Have you ever seen the document that's marked as Attachment No. 5, to your**
4 **testimony?**

5 A: Yes, I have.

6 **Q: Where have you seen that before?**

7 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
8 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
9 believe the portion of the alternative route in Nebraska essentially twins or
10 parallels Keystone I.

11 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
12 **in Attachment No. 5 to your testimony, is in the public interest of Nebraska?**

13 A: No, I do not.

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. 6, 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. 6 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 there is any potential route for the proposed Keystone XL**
23 **Pipeline across, within, under, or through the State of Nebraska that is in the**
24 **public interest of the citizens of Nebraska?**

25 A: No, I do not.

26 **Q: Why do you hold that belief?**

27 A: Because there simply is no public interest based on all of the factors that I am
28 aware and that I have read and that I have studied that this Commission is to
29 consider that would establish that a for-profit foreign-owned pipeline that simply

1 crosses Nebraska because we are geographically in the way between where tar
2 sands are in Canada to where it wants to ship it to in Texas could ever be in the
3 public interest of Nebraskans. We derive no benefit from this project. It is not for
4 public use. Nebraska is simply in the way and when all considerations are taken in
5 there is no net benefit of any kind for Nebraska should this project be placed in our
6 state. Even if there was some arguable “benefit” it is not enough to outweigh all
7 the negative impacts and concerns.

8 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
9 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
10 **of Nebraska because it may bring temporary jobs during the construction**
11 **phase to Nebraska?**

12 A: First of all, not all jobs are created equally. Most jobs that are created, whether
13 temporary or on a permanent basis, don’t come with a project that has all the
14 potential and foreseeable negative impacts, many of which we have discussed here
15 and other witnesses throughout the course of this hearing have and will discuss. If
16 I decide to hire and employ someone to help me out in my farming or ranching
17 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
18 to the land or my town or my county or my state. And I’ve hired someone who is
19 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
20 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
21 jobs are not created equal. Additionally, I understand from what I’m familiar with
22 from TransCanada’s own statements that the jobs numbers they originally touted
23 were determined to be a minute fraction of the permanent jobs that had been
24 projected. According to their answer to our Interrogatory No. 191, TransCanada
25 has created only thirty-four (34) jobs within Nebraska working specifically on
26 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
27 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
28 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 the 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 the 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. I would never buy land with an oil pipeline running under it. You could
9 never have underground sprinklers or irrigation which may be the wave of the
10 future. We could never put a home on the land because we can't excavate so it
11 stops us from freely using the land as we might wish to in the future. My heirs
12 will be affected for many decades to come and in a manner that is not even
13 foreseeable at present. Dirty oil flowing under the land and the contamination of
14 the land by putting something completely unnatural under the soil and then having
15 it placed right above the valuable and pristine Ogallala aquifer decreases the value
16 of the land. It is my understanding that pipelines leak and leak without detection
17 many times. How will the Ogallala aquifer ever be cleaned up if there is a leak?

18 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
19 **like the Public Service Commissioners to consider in their review of**
20 **TransCanada's Application?**

21 A: No, I have not. I have shared that which I can think of as of the date I signed this
22 document below but other things may come to me or my memory may be
23 refreshed and I will add and address those things at the time of the Hearing in
24 August and address any additional items at that time as is necessary. Additionally,
25 I have not had an adequate amount of time to receive and review all of
26 TransCanada's answers to our discovery and the discovery of others so it was
27 impossible to competently and completely react to that in my testimony here and I
28 reserve the right to also address anything related to discovery that has not yet
29 concluded as of the date I signed this document below. Lastly, certain documents

1 requested have not yet been produced by TransCanada and therefore I may have
2 additional thoughts on those I will also share at the hearing as needed.

3 **Q: What is it that you are requesting the Public Service Commissioners do in**
4 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
5 **across Nebraska?**

6 A: I am respectfully and humbly requesting that the Commissioners think far beyond
7 a temporary job spike that this project may bring to a few counties and beyond the
8 relatively small amount of taxes this proposed foreign pipeline would possibly
9 generate. And, instead think about the perpetual and forever impacts of this
10 pipeline as it would have on the landowners specifically, first and foremost, but
11 also thereby upon the entire state of Nebraska, and to determine that neither the
12 preferred route nor the Keystone mainline alternative route are in the public
13 interest of the citizens of the state of Nebraska. And if the Commissioners were
14 inclined to modify TransCanada's proposed routes and were to be inclined to grant
15 an application for a route in Nebraska, that the only potential route that would
16 make any intelligent sense whatsoever would be twinning or near paralleling of
17 the proposed KXL with the existing Keystone I pipeline. It simply does not make
18 sense to add yet another major oil pipeline crisscrossing our state creating new
19 pumping stations, creating new impacts on additional counties and communities
20 and going through all of the court processes with myself and other landowners like
21 me when this applicant already has relationships with the landowners, the towns
22 and the communities along Keystone I, and that Keystone I is firmly outside of the
23 sand hills and a significantly further portion away from the heart of the Ogallala
24 Aquifer than the preferred route or the Keystone mainline alternative route.

25 **Q: Are all of your statements in your testimony provided above true and**
26 **accurate as of the date you signed this document to the best of your**
27 **knowledge?**

28 A: Yes, they are.

1 **Q: Thank you, I have no further questions at this time and reserve the right to**
2 **ask you additional questions at the August 2017 Hearing.**

Rick Hammond
Rick Hammond

Subscribed and Sworn to me before this 30th day of May, 2017.

Karen D. Nelson
Notary Public



Attachment No. 1



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Terri Harrington Trust Agreement dated July 14, 1998
Terri Harrington

TRACT NO. ML-NE-YK-40200.000
STATE: Nebraska
COUNTY: York
SECTION: 014
TOWNSHIP: 012N
RANGE: 004W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

Attachment No. 2





PROTECTED

Thank You President Obama

#NDXL



PROTECTED

Thank You Neil Young Willie Nelson

#NDXL Daryl Hannah





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-YK-40200.000

**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**"), **Terri Harrington, Trustee under Trust Agreement dated July 14, 1998**, whose mailing address is 12316 E. Bates Circle, Aurora, Colorado 80014 (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 York, 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 York, in the State of Nebraska, being further described as the SE1/4 of Section 14, T12N, R4W of the 6th P.M., as recorded in Book 189, Page 190 in the Deed Records of York 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):

**Terri Harrington, Trustee under Trust Agreement
dated July 14, 1998**

Terri Harrington, Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Terri Harrington, Trustee under Trust Agreement dated July 14, 1998** on behalf of said Trust.

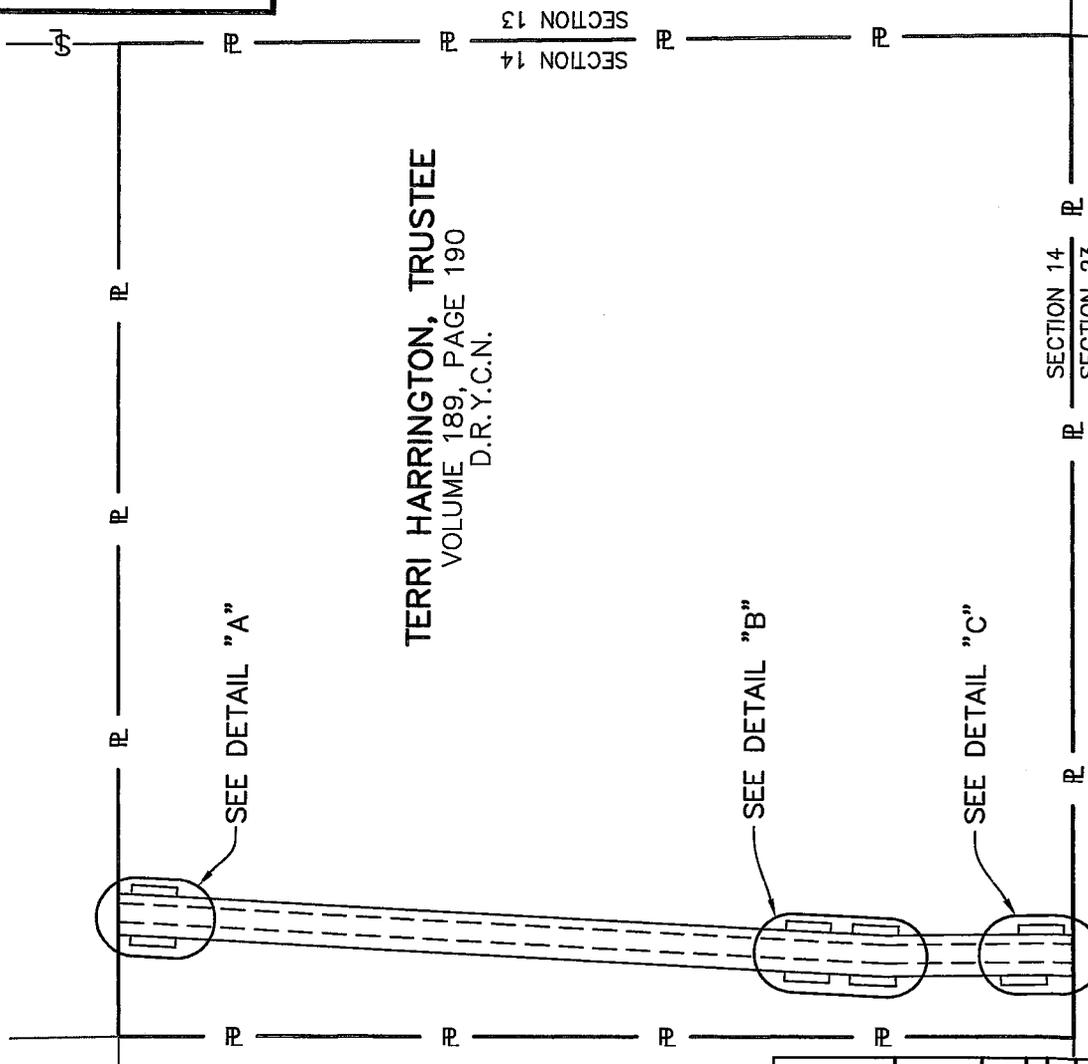
Notary Public Signature

Affix Seal Here

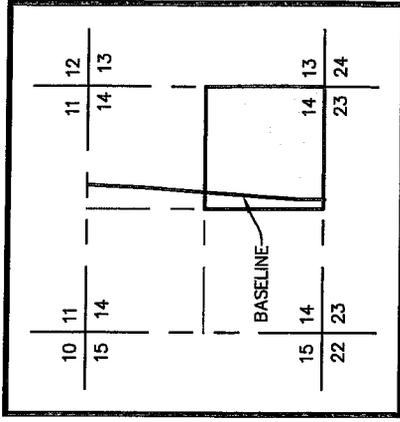
YORK COUNTY, NEBRASKA
T-12-N, R-4-W, SECTION 14
ML-NE-YK-40200.000

PROPERTY LINE
 SECTION LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY
 DEED RECORDS OF YORK COUNTY, NEBRASKA

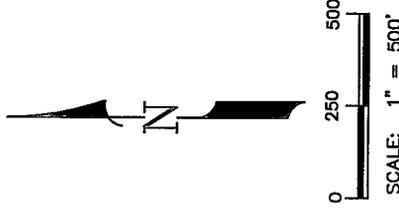
LEGEND
 P PROP.
 S A.T.W.S.
 P.E.R.W.
 D.R.Y.C.N.



TERRI HARRINGTON, TRUSTEE
 VOLUME 189, PAGE 190
 D.R. Y.C.N.



VICINITY MAP
 N.T.S.



TRACT LEGAL DESCRIPTION:
 SE/4 OF SECTION 14, T-12-N, R-4-W

SECTION 14
 SECTION 23

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: 2,650'±
 AREA OF PERMANENT EASEMENT: 3.0 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.6 ACRES
 ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.6 ACRE



KEYSTONE XL PROJECT

EASEMENT AREA
 ACROSS THE PROPERTY OF
 TERRI HARRINGTON, TRUSTEE
 ML-NE-YK-40200.000

PROJECT: XL EXHIBIT A

APPROVED BY: SLR DRAWING NUMBER: XL-08-ML-SK-3726

NO. REVISION DATE

SCALE: 1" = 500'

DATE: 10/27/14

DRAWN BY: PB

CHECKED BY: ALS

DATE: 10/27/14

CHECKED BY: ALS



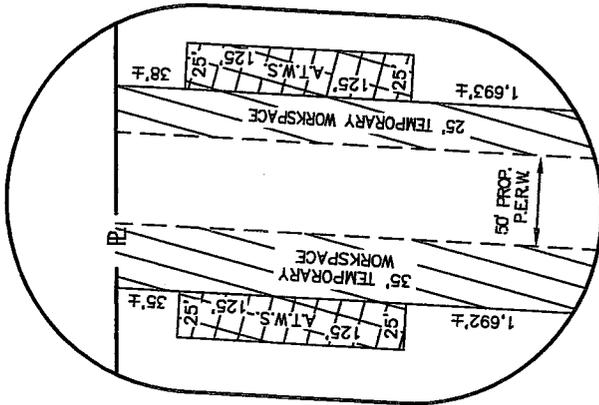
YORK COUNTY, NEBRASKA

T-12-N, R-4-W, SECTION 14

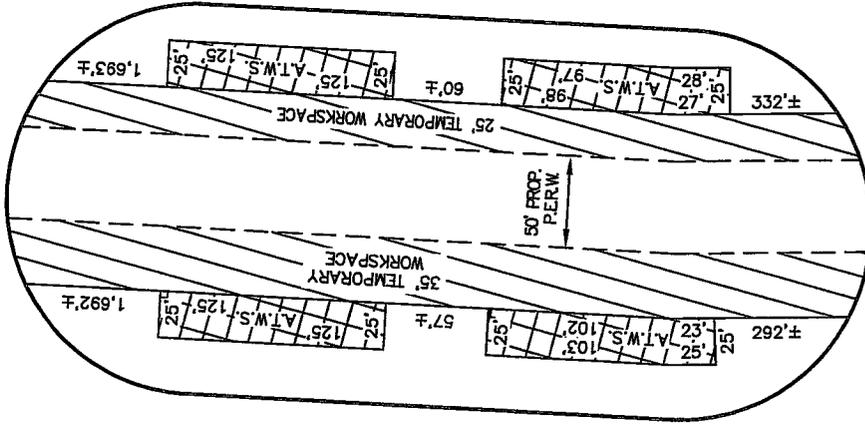
ML-NE-YK-40200.000

PROPERTY LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY

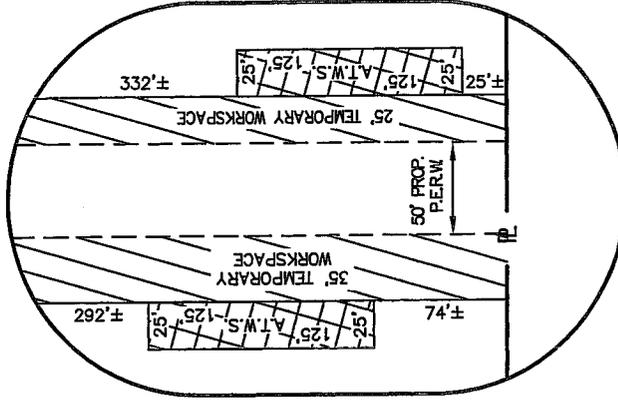
LEGEND
 PL
 PROP.
 A.T.W.S.
 P.E.R.W.



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.

		In business to deliver	
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF			
TERRI HARRINGTON, TRUSTEE			
ML-NE-YK-40200.000			
PROJECT:	XL	EXHIBIT A	
APPROVED BY:	SLR	DRAWING NUMBER:	XL-08-ML-SK-3726
NO.	REVISION	DATE	
SCALE:	N.T.S.	DATE:	10/27/14
DRAWN BY:	PB	CHECKED BY:	ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

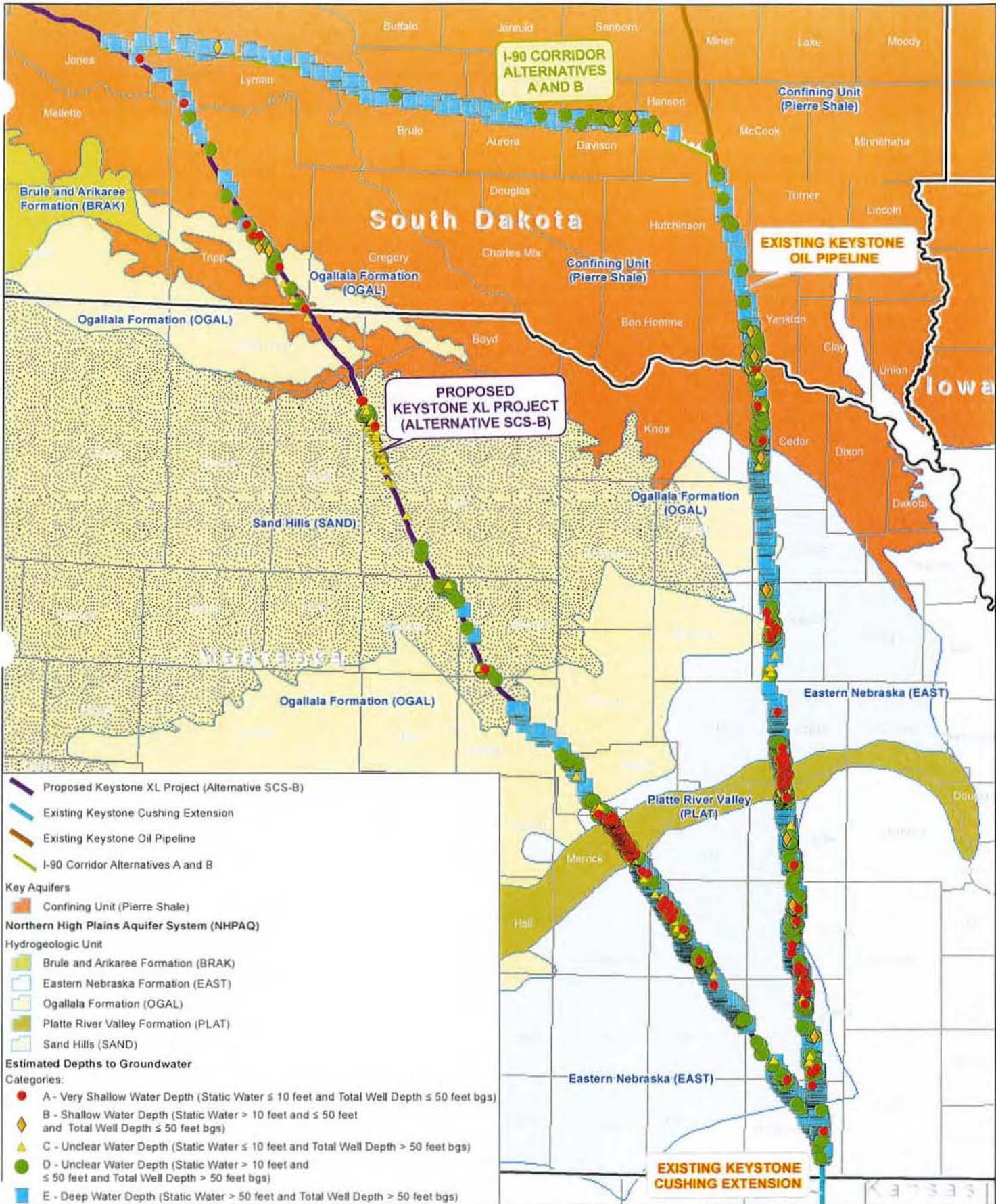
JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 5



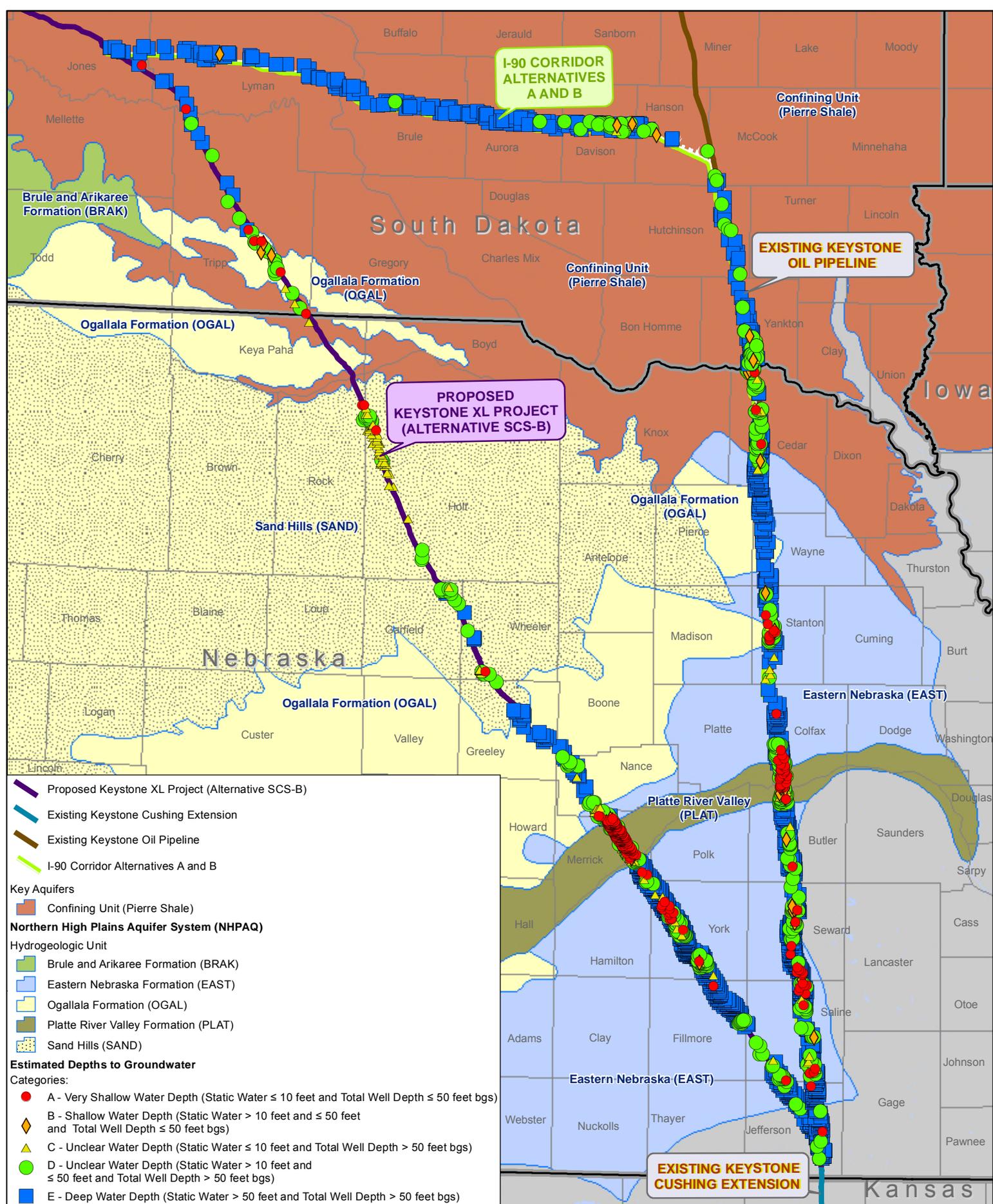
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

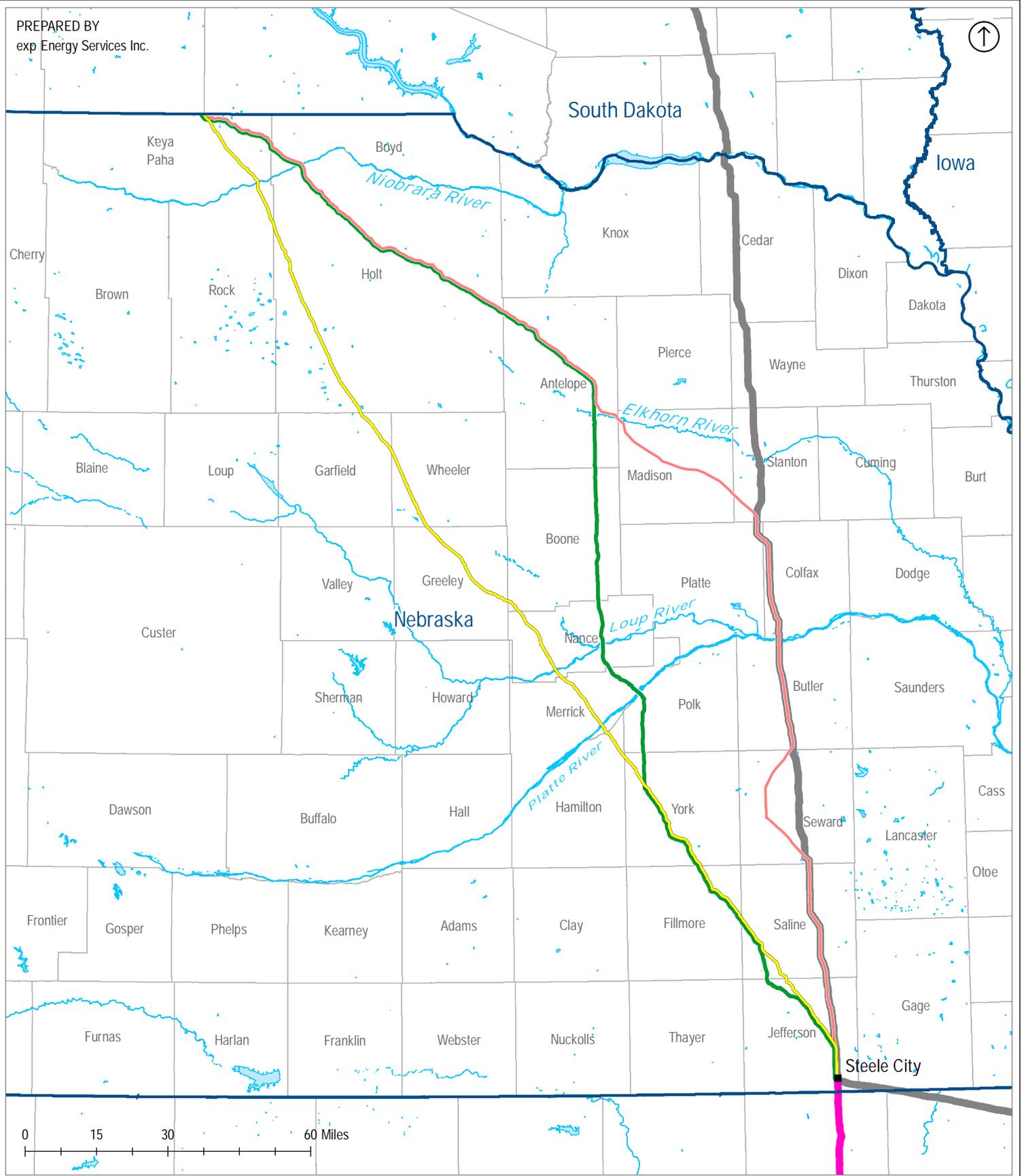
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

Figure 4.3.3-8
 I-90 Corridor Alternatives A and B
 Key Aquifers and Potable Water Wells
 within 2-mile Corridor

Attachment No. 6



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

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
Kimberly Hansen in
Support of Landowner Intervenors

State of Nebraska)
) ss.
Madison County)

1 **Q: Please state your name.**

2 A: My name is Kimberly Hansen. I am a member of Tree Corners Farm, LLC.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
16 **and or your family?**

1 A: Yes.

2 **Q: Do you earn any income from this land?**

3 A: Yes.

4 **Q: Have you depended on the income from your land to support your livelihood**
5 **or the livelihood of your family?**

6 A: Yes.

7 **Q: Have you ever in the past or have you thought about in the future leasing all**
8 **or a portion of your land in question here?**

9 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
10 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
11 all the restrictions and risks and potential negative impacts to farming or ranching
12 operations as opposed to land that did not have those same risks. If I was looking
13 to lease or rent ground I would pay more for comparable non-pipeline land than I
14 would for comparable pipeline land and I think most folks would think the same
15 way. This is another negative economic impact that affects the landowner and the
16 county and the state and will forever and ever should TransCanada's preferred or
17 mainline alternative routes be approved. If they were to twin or closely parallel to
18 Keystone I the vast majority of landowners would be those that already have a
19 pipeline so there would be considerable less new incremental negative impacts.

20 **Q: Do you have similar concerns about selling the land?**

21 A: Well I hope not to have to sell the land in my lifetime but times change and you
22 never know what is around the corner and yes I am concerned that if another piece
23 of ground similar to mine were for sale and it did not have the pipeline and mine
24 did that I would have a lower selling price. I think this would be true for pipeline
25 ground on both the preferred and mainline alternative routes.

26 **Q: What is your intent with your land after you die?**

27 A: Like I said I hope not to have to sell and I hope that it stay in the family for years
28 to come but I have thought about getting out if this pipeline were to come through.

1 **Q: Are you aware that the preferred route of TransCanada’s Keystone XL**
2 **Pipeline would cross the land described above and owned by you?**

3 A: Yes.

4 **Q: Were you or an entity for which you are a member, shareholder, or director**
5 **previously sued by TransCanada Keystone Pipeline, LP?**

6 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
7 petition for condemnation against our land so it could place its proposed pipeline
8 within an easement that it wanted to take from us on our land.

9 **Q: Did you defend yourself and your land in that condemnation action?**

10 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
11 and expenses in our resistance of TransCanada’s lawsuit against us.

12 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
13 **incurred?**

14 A: No, they have not.

15 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
16 **property that it wanted to take for its proposed pipeline?**

17 A: The lawsuit against us stated they would take the amount of property that is
18 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
19 and equipment reasonably necessary to operate the pipeline.

20 **Q: Did TransCanada define what they meant by “property that is reasonably**
21 **necessary”?**

22 A: No, they did not.

23 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
24 **property portion of your land?**

25 A: Yes, they did.

26 **Q: Did TransCanada describe what rights it proposed to take related to the**
27 **eminent domain property on your land?**

28 A: Yes, they did.

29 **Q: What rights that they proposed to take did they describe?**

1 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
2 operate, and maintain the pipeline and the plant and equipment reasonably
3 necessary to operate the pipeline, specifically including surveying, laying,
4 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
5 reconstructing, removing and abandoning one pipeline, together with all fittings,
6 cathodic protection equipment, pipeline markers, and all their equipment and
7 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
8 petroleum products, and all by-products thereof.”

9 **Q: Prior to filing an eminent domain lawsuit to take your land that**
10 **TransCanada identified, do you believe they attempted to negotiate in good**
11 **faith with you?**

12 A: No, I do not.

13 **Q: Did TransCanada at any time approach you with or deliver to you their**
14 **proposed easement and right-of-way agreement?**

15 A: Yes, they did.

16 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
17 **agreement, did you understand that they would be purchasing a fee title**
18 **interest in your property or that they were taking something else?**

19 A: I understood that they proposed to have the power to take both a temporary
20 construction easement that could last for a certain period of time and then also a
21 permanent easement which they described to be 50 feet across or in width, and
22 that would run the entire portion of my property from where a proposed pipeline
23 would enter my property until where it would exit the property.

24 **Q: Is the document included with your testimony here as Attachment No. 3, a**
25 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
26 **Way agreement that they included with their condemnation lawsuit against**
27 **you?**

28 A: Yes, it is.

1 **Q: Have you had an opportunity to review TransCanada’s proposed Easement**
2 **and Right-of-Way agreement?**

3 A: Yes, I have.

4 **Q: What is your understanding of the significance of the Easement and Right-of-**
5 **Way agreement as proposed by TransCanada?**

6 A: My understanding is that this is the document that will govern all of the rights and
7 obligations and duties as well as the limitations of what I can and cannot do and
8 how I and any future landowner and any person I invite to come onto my property
9 must behave as well as what TransCanada is and is not responsible for and how
10 they can use my land.

11 **Q: After reviewing TransCanada’s proposed Easement and Right-of-Way**
12 **agreement do you have any concerns about any portions of it or any of the**
13 **language either included in the document or missing from the proposed**
14 **document?**

15 A: Yes, I have a number of significant concerns and worries about the document and
16 how the language included and the language not included potentially negatively
17 impacts my land and thereby potentially negatively impacts my community and
18 my state.

19 **Q: I would like you to walk the Commissioners through each and every one of**
20 **your concerns about TransCanada’s proposed Easement and Right-of-Way**
21 **agreement so they can develop an understanding of how that language and**
22 **the terms of that contract, in your opinion, potentially negatively impacts you**
23 **and your land. So, if you can start at the beginning of that document and**
24 **let’s work our way through it, okay?**

25 A: Yes, I’ll be happy to express my concerns about TransCanada’s proposed
26 Easement and Right-of-Way agreement and how it negatively could affect my
27 property rights and my economic interests.

28 **Q. Okay, let’s start with your first concern please.**

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada’s shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership...” and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada’s
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
6 **percent clear on exactly who could become the owner of about 275 miles of**
7 **Nebraska land?**

8 A: No.

9 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
10 **percent clear on exactly who will be operating and responsible for**
11 **approximately 275 miles of tar sands pipeline underneath and through**
12 **Nebraska land?**

13 A: No.

14 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
15 **and the State of Nebraska of TransCanada's easement terms.**

16 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow their easement
18 to be transferred or sold to someone or some company or country or who knows
19 what that I don't know and who we may not want to do business with. This
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest
21 bidder that could have terrible impacts upon all of Nebraska depending upon who
22 may buy it and I don't know of any safeguards in place for us or the State to veto
23 or have any say so in who may own, operate, or be responsible for this pipeline in
24 the future.

25 **Q: Do you think that type of uncertainty and lack of control over a major piece**
26 **of infrastructure crossing our State is in the public interest?**

27 A: No, certainly not, in fact, just the opposite.

28 **Q: What's next?**

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that
25 right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

1 TransCanada who is subjecting the pipeline on the Landowner and who is making
2 a daily profit from that pipeline. When evaluating the impact on property rights of
3 this provision, you must consider the potentially extremely expensive fight a
4 Landowner would have over this question of whether or not damage was an act of
5 negligence. Putting this kind of potential liability upon the Landowner is
6 incredibly problematic and is detrimental to the protection of property rights. I
7 don't think this unilateral power which I can't do anything about as the landowner
8 is in the best economic interest of the land in question or the State of Nebraska for
9 landowners to be treated that way.

10 **Q: Is there any specific event or example you are aware of that makes this**
11 **concern more real for you?**

12 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
13 Nemaha County, Nebraska landowner farmers who accidentally struck two
14 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
15 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
16 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
17 copy of the Federal Court Complaint is here as **Attachment No. 4.**

18 **Q: What is your next concern with the Easement language?**

19 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
20 they choose unless 1) any Landowner use interferes in any way with
21 TransCanada's exercise of any of its rights within the Easement, or 2)
22 TransCanada decides to take any action on the property it deems necessary to
23 prevent injury, endangerment or interference with anything TransCanada deems
24 necessary to do on the property. Landowner is also forbidden from excavating
25 without prior authorization by TransCanada. So my understanding is that
26 TransCanada will unilaterally determine what Landowner can and can't do based
27 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
28 could also completely deny my request to excavate. Further, TransCanada retains
29 all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative to their property in
2 preparation or planning of TransCanada’s taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at anytime
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada’s control. Some of these vague undefined and ambiguous terms are
27 as follows:

- 28 i. “pipeline installation activities”
- 29 ii. “availability of labor and materials”

- 1 iii. “commercially reasonable costs and expenses”
- 2 iv. “reasonably anticipated and foreseeable costs and expenses”
- 3 v. “yield loss damages”
- 4 vi. “diminution in the value of the property”
- 5 vii. “substantially same condition”
- 6 viii. “an actual or potential hazard”
- 7 ix. “efficient”
- 8 x. “convenient”
- 9 xi. “endangered”
- 10 xii. “obstructed”
- 11 xiii. “injured”
- 12 xiv. “interfered with”
- 13 xv. “impaired”
- 14 xvi. “suitable crossings”
- 15 xvii. “where rock is encountered”
- 16 xviii. “as nearly as practicable”
- 17 xix. “pre-construction position”
- 18 xx. “pre-construction grade”
- 19 xxi. “various engineering factors”

20 Each one of these above terms and phrases as read in the context of the Easement
21 could be problematic in many ways. Notably, undefined terms tend to only get
22 definition in further legal proceedings after a dispute arises and the way the
23 Easement is drafted, TransCanada has sole power to determine when and if a
24 particular situation conforms with or triggers rights affected by these terms. For
25 instance, “yield loss damages” should be specifically defined and spelled out
26 exactly how the landowner is to be compensated and in what events on the front
27 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
28 the Landowner is without contractual rights to define these terms or determine
29 when rights related to them trigger and what the affects may be.

1 **Q: Do you have any other concerns about the Easement language that you can**
2 **think of at this time?**

3 A: I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q: Based upon what you have shared with the Commission above regarding**
6 **TransCanada's proposed Easement terms and agreement, do you believe**
7 **those to be reasonable or just, under the circumstances of the pipeline's**
8 **impact upon you and your land?**

9 A: No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q: Did TransCanada ever offer you financial compensation for the rights that**
12 **they sought to obtain in your land, and for what they sought to prevent you**
13 **and any future land owner of your property from doing in the future?**

14 A: Yes, we received an offer from them.

15 **Q: As the owner of the land in question and as the person who knows it better**
16 **than anyone else, do you believe that TransCanada offered you just, or fair,**
17 **compensation for all of what they proposed to take from you so that their tar**
18 **sands pipeline could be located across your property?**

19 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q: Has TransCanada at any time offered to compensate you annually, such as**
24 **wind farm projects do, for the existence of their potential tar sands pipeline**
25 **across your property.**

26 A: No, never.

27 **Q: At any time did TransCanada present you with or request that you, as the**
28 **owner of the land in question, sign and execute a document called, "Advanced**
29 **Release of Damage Claims and Indemnity Agreement?"**

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
3 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, it is.

5 **Q: What was your understanding of that document?**

6 A: When I read that document in the plain language of that document, it was my
7 understanding that TransCanada was attempting to pay me a very small amount at
8 that time in order for me to agree to give up my rights to be compensated from
9 them in the future related to any damage or impact they may have upon my
10 property “arising out of, in connection with, or alleged to resulted from
11 construction or surveying over, under or on” my land.

12 **Q: Did you ever sign that document?**

13 A: No, I did not.

14 **Q: Why not?**

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small
16 sum of money when I have no idea how bad the impacts or damages that they, or
17 their contractors, or subcontractors, or other agents or employees, may cause on
18 my land at any time in the future that resulted from the construction or surveying
19 or their activities upon my land.

20 **Q: When you reviewed this document, what did it make you feel?**

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
22 shield themselves against known and foreseeable impacts that their pipeline, and
23 the construction of it, would have upon my land. It made me feel that they knew it
24 was in their financial interest to pay me as little as possible to prevent me from
25 ever having the opportunity to seek fair compensation again, and that this must be
26 based upon their experience of unhappy landowners and situations in other places
27 where they have built pipelines.

1 **Q: Has TransCanada ever contacted you and specifically asked you if you**
2 **thought their proposed location of their proposed pipeline across your land**
3 **was in your best interest?**

4 A: No, they have not.

5 **Q: Has TransCanada ever contacted you and specifically asked you if you**
6 **thought their proposed location of their proposed pipeline across your land**
7 **was in the public interest of the State of Nebraska?**

8 A: No, they have not.

9 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
10 **Takings Clause?**

11 A: Yes, I am.

12 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
13 **an American citizens property?**

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 **Q: Has TransCanada ever contacted you specially to explain the way in which**
19 **the public could use its proposed Keystone XL Pipeline?**

20 A: No, they have not.

21 **Q: Can you think of any way in which the public, that is the citizens of the State**
22 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
23 **Pipeline, as it dissects the State of Nebraska?**

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
4 crude petroleum, or oil and petroleum by-products that you would like to
5 ship in its pipeline?**

6 A: No, it has not.

7 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
8 products that you, at this time or any time in the future, would desire to place
9 for transport within the proposed TransCanada Keystone XL Pipeline?**

10 A: No, I do not.

11 **Q: Do you know anyone in the state of Nebraska who would be able to ship any
12 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
13 products within the proposed TransCanada Keystone XL Pipeline?**

14 A: No, I do not. I've never heard of such a person or company like that.

15 **Q: Do you pay property taxes for the land that would be affected and impacted
16 at the proposed TransCanada Keystone XL Pipeline?**

17 A: Yes, I do.

18 **Q: Why do you pay property taxes on that land?**

19 A: Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q: Because you follow the law and pay property taxes, do you believe you
22 deserve any special consideration or treatment apart from any other person
23 or company that pays property taxes?**

24 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q: Do you believe the fact that you pay property taxes entitles you to special
27 treatment of any kind, or special rights of any kind?**

28 A: No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**
2 **enough to qualify you to have the power of eminent domain to take land of**
3 **your neighbors or other people in your county, or other people across the**
4 **state of Nebraska?**

5 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q: Have you at any time ever employed any person other than yourself?**

8 A: Well, yes I have.

9 **Q: Do you believe that the fact that you have, at some point in your life,**
10 **employed one or more other persons entitle you to any special treatment or**
11 **consideration above and beyond any other Nebraskan that has also employed**
12 **one or more persons?**

13 A: No, of course not.

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
15 **have at one point employed another person within this state, entitles you to**
16 **preferential treatment or consideration of any kind?**

17 A: No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
20 **crude oil pipeline in its preferred location, or ultimate location across the**
21 **state of Nebraska?**

22 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
23 or even bullied around and being made to feel scared that they did not have any
24 options but to sign whatever papers TransCanada told them they had to. I am
25 aware of folks being threatened that their land would be taken if they didn't follow
26 what TransCanada was saying. I am aware of tactics to get people to sign
27 easements that I don't believe have any place in Nebraska or anywhere such as
28 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
29 landowners and convince them they should sign TransCanada's easement

1 agreements. I am aware of older folks and widows or widowers feeling they had
2 no choice but to sign TransCanada's Easement and they didn't know they could
3 fight or stand up for themselves. From a more practical standpoint, I am worried
4 that according to their answer to our Interrogatory No. 211, TransCanada only
5 owns and operates one (1) major oil pipeline. They simply do not have the
6 experience with this type of pipeline and that scares me. There are others but that
7 is what I can recollect at this time and if I remember more or my recollection is
8 refreshed I will share those with the Commissioners at the Hearing in August.

9 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
10 **landowner is reasonable or just?**

11 A: No, I do not.

12 **Q: Do you have any concern about limitations that the construction of this**
13 **proposed pipeline across your affected land would prevent construction of**
14 **future structures upon the portion of your land affected by the proposed**
15 **easement and immediately surrounding areas?**

16 A: Well yes, of course I do. We would not be able to build many, if any, types of
17 structures directly across or touching the easement, and it would be unwise and I
18 would be uncomfortable to build anything near the easement for fear of being
19 blamed in the future should any damage or difficulty result on my property in
20 regards to the pipeline.

21 **Q: Do you think such a restriction would impact you economically?**

22 A: Well yes, of course.

23 **Q: How do you think such a restriction would impact you economically?**

24 A: The future of this land may not be exactly how it's being use as of this moment,
25 and having the restrictions and limiting my ability to develop my land in certain
26 ways presents a huge negative economic impact on myself, my family, and any
27 potential future owner of the property. You have no idea how I or the future own
28 may want to use this land in the future or the other land across Nebraska
29 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years

1 ago it would have been hard to imagine all the advances that we have now or how
2 things change. Because the Easement is forever and TransCanada gets the rights in
3 my land forever we have to think with a very long term view. By placing their
4 pipeline on under across and through my land that prevents future development
5 which greatly negatively impacts future taxes and tax revenue that could have
6 been generated by the County and State but now will not. When you look at the
7 short blip of economic activity that the two years of temporary construction efforts
8 may bring, that is far outweighed by the perpetual and forever loss of opportunity
9 and restrictions TransCanada is forcing upon us and Nebraska. The terms of the
10 easement must be addressed in order for the Commission to truly consider
11 property rights, economic interests, the welfare of Nebraska, and the balancing of
12 the proposed routes against all they will affect and impact.

13 **Q: Do you have any concerns about the environmental impact of the proposed**
14 **pipeline?**

15 A: Yes, I do.

16 **Q: What are some of those concerns?**

17 A: As an affected land owner and Nebraskan, I am concerned that any construction,
18 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
19 a detrimental impact upon the environment of my land specifically, as well as the
20 lands near my land and surrounding the proposed pipeline route.

21 **Q: Do you have any other environmental concerns?**

22 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
23 construction and/or maintenance and operation. I am concerned about spills and
24 leaks that TransCanada has had in the past and will have in the future. This could
25 be catastrophic to my operations or others and to my county and the State.

26 **Q: Do you have any thoughts regarding if there would be an impact upon the**
27 **natural resources on or near your property due to the proposed pipeline?**

28 A: Yes, I believe that any construction, operation, and/or maintenance of the
29 proposed Keystone XL Pipeline would have detrimental impacts upon the natural

1 resources of my land, and the lands near and surrounding the proposed pipeline
2 route.

3 **Q: Do you have any worries about potential impacts from the proposed pipeline**
4 **to the soil of your land, or land near you?**

5 A: Yes, I believe that any construction, operation, and/or maintenance of the
6 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
7 land, as well as land along and surrounding the proposed pipeline route. This
8 includes, but is not limited to, the reasons that we discussed above of disturbing
9 the soil composition and makeup as it has naturally existed for thousands and
10 millions of years during the construction process, and any future maintenance or
11 removal process. I'm gravely concerned about the fertility and the loss of
12 economic ability of my property to grow the crops, or grow the grasses, or grow
13 whatever it is at that time they exist on my property or that I may want to grow in
14 the future, or that a future owner may want to grow. The land will never be the
15 same from as it exists now undisturbed to after it is trenched up for the proposed
16 pipeline.

17 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
18 **upon the groundwater over your land, or surrounding lands?**

19 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
20 the proposed Keystone XL Pipeline would have a detrimental impact upon the
21 groundwater of not only under my land, but also near and surrounding the pipeline
22 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
23 simple and it is simply too valuable to our State and the country to put at
24 unreasonable risk.

25 **Q: Do you have any concern about the potential impact of the proposed pipeline**
26 **upon the surface water on, or near or around your land?**

27 A: Yes, I have significant concerns that any construction, operation, and/or
28 maintenance of the proposed Keystone XL Pipeline would have detrimental
29 impact upon the surface water of not only within my property boundary, but along

1 and near and surrounding the pipeline route, and in fact, across the state of
2 Nebraska.

3 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
4 **upon the wildlife and plants, other than your growing crops on or near your**
5 **land?**

6 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
7 the proposed Keystone XL Pipeline would have a detrimental impact upon the
8 wildlife and the plants, not only that are located on or can be found upon my land,
9 but also near and along the proposed pipeline route.

10 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
11 **fair market value of your land?**

12 A: Yes, I do. I am significantly concerned about how the existence of the proposed
13 pipeline underneath and across and through my property will negatively affect the
14 fair market value at any point in the future, especially at that point in which I
15 would need to sell the property, or someone in my family would need to sell the
16 property. I do not believe, and certainly would not be willing to pay, the same
17 price for land that had the pipeline located on it, versus land that did not. I hope
18 there is never a point where I'm in a position where I have to sell and have to
19 realize as much value as I can out of my land. But because it is my single largest
20 asset, I'm gravely concerned that the existence of the proposed Keystone XL
21 Pipeline upon my land will affect a buyer's willingness to pay as much as they
22 would've paid and as much as I could've received, if the pipeline were not upon
23 my property. There are just too many risks, unknowns, impacts and uncertainties,
24 not to mention all of the rights you give up by the nature of having the pipeline
25 due to having the easement that we have previously discussed, for any reasonable
26 person to think that the existence of the pipeline would not negatively affect my
27 property's value.

28 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
29 **testimony?**

1 A: Yes, I have.

2 **Q: Where have you seen that before?**

3 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
4 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
5 believe the portion of the alternative route in Nebraska essentially twins or
6 parallels Keystone I.

7 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found
8 in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

9 A: No, I do not.

10 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its
11 Application, and as found on Attachment No. 7, here to your testimony, is in
12 the public interest of Nebraska?**

13 A: No, I do not.

14 **Q: Do you believe that the Keystone mainline alternative route as shown on
15 Attachment No. 7 included with your testimony here is a major oil pipeline
16 route that is in the public interest of Nebraska?**

17 A: No, I do not.

18 **Q: Do you believe there is any potential route for the proposed Keystone XL
19 Pipeline across, within, under, or through the State of Nebraska that is in the
20 public interest of the citizens of Nebraska?**

21 A: No, I do not.

22 **Q: Why do you hold that belief?**

23 A: Because there simply is no public interest based on all of the factors that I am
24 aware and that I have read and that I have studied that this Commission is to
25 consider that would establish that a for-profit foreign-owned pipeline that simply
26 crosses Nebraska because we are geographically in the way between where tar
27 sands are in Canada to where it wants to ship it to in Texas could ever be in the
28 public interest of Nebraskans. We derive no benefit from this project. It is not for
29 public use. Nebraska is simply in the way and when all considerations are taken in

1 there is no net benefit of any kind for Nebraska should this project be placed in our
2 state. Even if there was some arguable “benefit” it is not enough to outweigh all
3 the negative impacts and concerns.

4 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
5 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
6 **of Nebraska because it may bring temporary jobs during the construction**
7 **phase to Nebraska?**

8 A: First of all, not all jobs are created equally. Most jobs that are created, whether
9 temporary or on a permanent basis, don’t come with a project that has all the
10 potential and foreseeable negative impacts, many of which we have discussed here
11 and other witnesses throughout the course of this hearing have and will discuss. If
12 I decide to hire and employ someone to help me out in my farming or ranching
13 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
14 to my land or my town or my county or my state. And I’ve hired someone who is
15 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
16 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
17 jobs are not created equal. Additionally, I understand from what I’m familiar with
18 from TransCanada’s own statements that the jobs numbers they originally touted
19 were determined to be a minute fraction of the permanent jobs that had been
20 projected. According to their answer to our Interrogatory No. 191, TransCanada
21 has created only thirty-four (34) jobs within Nebraska working specifically on
22 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
23 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
24 Further, according to their answer to Interrogatory No. 199, TransCanada would
25 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
26 constructed on its Preferred Route or its Mainline Alternative Route.

27 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
28 **because it would cross your land?**

1 A: No, absolutely not. I am opposed to this project because it is not in the public
2 interest, neither within my community nor within our state.

3 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
4 **was to cross someone else's land?**

5 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
6 the fear and anxiety and potential foreseeable risks and negative impacts that this
7 type of a project carrying this type of product brings foisted upon anyone in this
8 state or any other state.

9 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
10 **Pipeline to cross the state of Nebraska?**

11 A: I don't believe there is an intelligent route because as I have stated I don't believe
12 this project anywhere within Nebraska is within the public interest. However, if
13 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
14 had to go somewhere in the state of Nebraska, the only intelligent route I believe
15 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
16 preferred route and the mainline alternative routes are economic liabilities our
17 state cannot risk.

18 **Q: What do you rely upon to make that statement?**

19 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
20 already exists in that area is reason enough as it is not in our best interest or the
21 public interests to have more major oil pipelines crisscrossing our state. Second,
22 they have all the infrastructure already there in terms of relationships with the
23 counties and local officials and first responders along that route. Third, they have
24 already obtained easements from all the landowners along that route and have
25 relationships with them. Fourth, that route avoids our most sensitive soils, the
26 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
27 Aquifer. Sixth, they have already studied that route and previously offered it as an
28 alternative. Seventh, it just makes the most sense that as a state we would have

1 some intelligent policy of energy corridors and co-locating this type of
2 infrastructure near each other.

3 **Q: Do you have any other concerns you would like to reiterate or can think of at**
4 **this time you would like the Commissioners to understand?**

5 A: Yes. I have concerns first and foremost, what is it really carrying? It the material
6 hazardous or contain explosives? This leads to another concern; the shallow depth
7 of the trench, and our high water table, especially in the Spring, whereas you dig a
8 post hole, and get water. Crop loss is one of many economic concerns, as well as
9 decline in value of both quarters of land it bisects. Soil erosion and contamination
10 of soil are another two factors to consider. Water pollution is a huge worry, for all
11 number of reasons. Diversion of the ground water in fields and subsoil can affect
12 the whole field of crops. Loss of wildlife habitat. They have already lost too much
13 of their living space. The safety of anyone farming the land is in question as well.
14 The aesthetics of the farmland is negatively affected as well.

15 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
16 **like the Public Service Commissioners to consider in their review of**
17 **TransCanada's Application?**

18 A: No, I have not. I have shared that which I can think of as of the date I signed this
19 document below but other things may come to me or my memory may be
20 refreshed and I will add and address those things at the time of the Hearing in
21 August and address any additional items at that time as is necessary. Additionally,
22 I have not had an adequate amount of time to receive and review all of
23 TransCanada's answers to our discovery and the discovery of others so it was
24 impossible to competently and completely react to that in my testimony here and I
25 reserve the right to also address anything related to discovery that has not yet
26 concluded as of the date I signed this document below. Lastly, certain documents
27 requested have not yet been produced by TransCanada and therefore I may have
28 additional thoughts on those I will also share at the hearing as needed.

1 **Q: What is it that you are requesting the Public Service Commissioners do in**
2 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
3 **across Nebraska?**

4 A: I am respectfully and humbly requesting that the Commissioners think far beyond
5 a temporary job spike that this project may bring to a few counties and beyond the
6 relatively small amount of taxes this proposed foreign pipeline would possibly
7 generate. And, instead think about the perpetual and forever impacts of this
8 pipeline as it would have on the landowners specifically, first and foremost, but
9 also thereby upon the entire state of Nebraska, and to determine that neither the
10 preferred route nor the Keystone mainline alternative route are in the public
11 interest of the citizens of the state of Nebraska. And if the Commissioners were
12 inclined to modify TransCanada's proposed routes and were to be inclined to grant
13 an application for a route in Nebraska, that the only potential route that would
14 make any intelligent sense whatsoever would be twinning or near paralleling of
15 the proposed KXL with the existing Keystone I pipeline. The point of including
16 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been
17 considered by TransCanada before. It simply does not make sense to add yet
18 another major oil pipeline crisscrossing our state creating new pumping stations,
19 creating new impacts on additional counties and communities and going through
20 all of the court processes with myself and other landowners like me when this
21 applicant already has relationships with the landowners, the towns and the
22 communities along Keystone I, and that Keystone I is firmly outside of the sand
23 hills and a significantly further portion away from the heart of the Ogallala
24 Aquifer than the preferred route or the Keystone mainline alternative route.

25 **Q: Are all of your statements in your testimony provided above true and**
26 **accurate as of the date you signed this document to the best of your**
27 **knowledge?**

28 A: Yes, they are.

1 **Q: Thank you, I have no further questions at this time and reserve the right to**
2 **ask you additional questions at the August 2017 Hearing.**

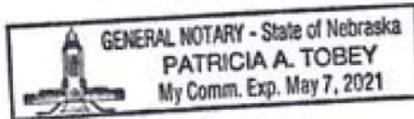
Kim Hansen

Kimberly Hansen

Subscribed and Sworn to me before this 27th day of May, 2017.

Patricia A. Tobey

Notary Public



Attachment No. 1



S. 025
T. 026N
R. 006W

Tree Corners Farm LLC

IMAGERY: NAIP 2016
0 250 500 1,000 Feet



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Tree Corners Farm LLC

TRACT NO. ML-NE-AT-30330.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 025
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-30330.000
ML-NE-AT-30340.000

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**") **Tree Corners Farm, LLC, a Nebraska limited liability company**, whose mailing address is 621 Roland Street, Norfolk, NE 68701 (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-

Grantor's Initials _____

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 77.86 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the N1/2 of the SE1/4 of Section 25, T26N, R6W of the 6th P.M., as recorded in Book 127, Page 9 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 392.24 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NE1/4, E1/2 of the SW1/4, and a part of the SE1/4 of Section 30, Township 26 North, Range 5 West of the 6th P.M., as recorded in Book 127, Page 9 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):

Tree Corners Farm, LLC, a Nebraska limited liability company

By: _____

Its: _____

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20____

By _____ of

Tree Corners Farm, LLC, a Nebraska limited liability company, on behalf of the corporation.

Notary Public Signature

Affix Seal Here

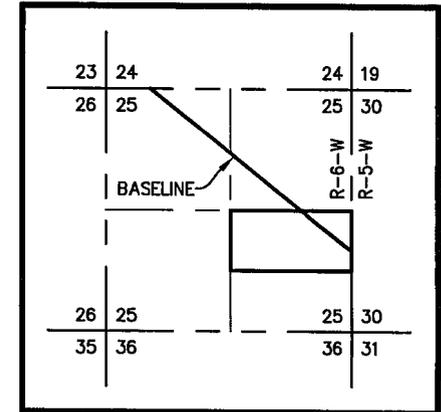
LEGEND

P
 S
 PROP.
 A.T.W.S.
 P.E.R.W.
 D.R.A.C.N.

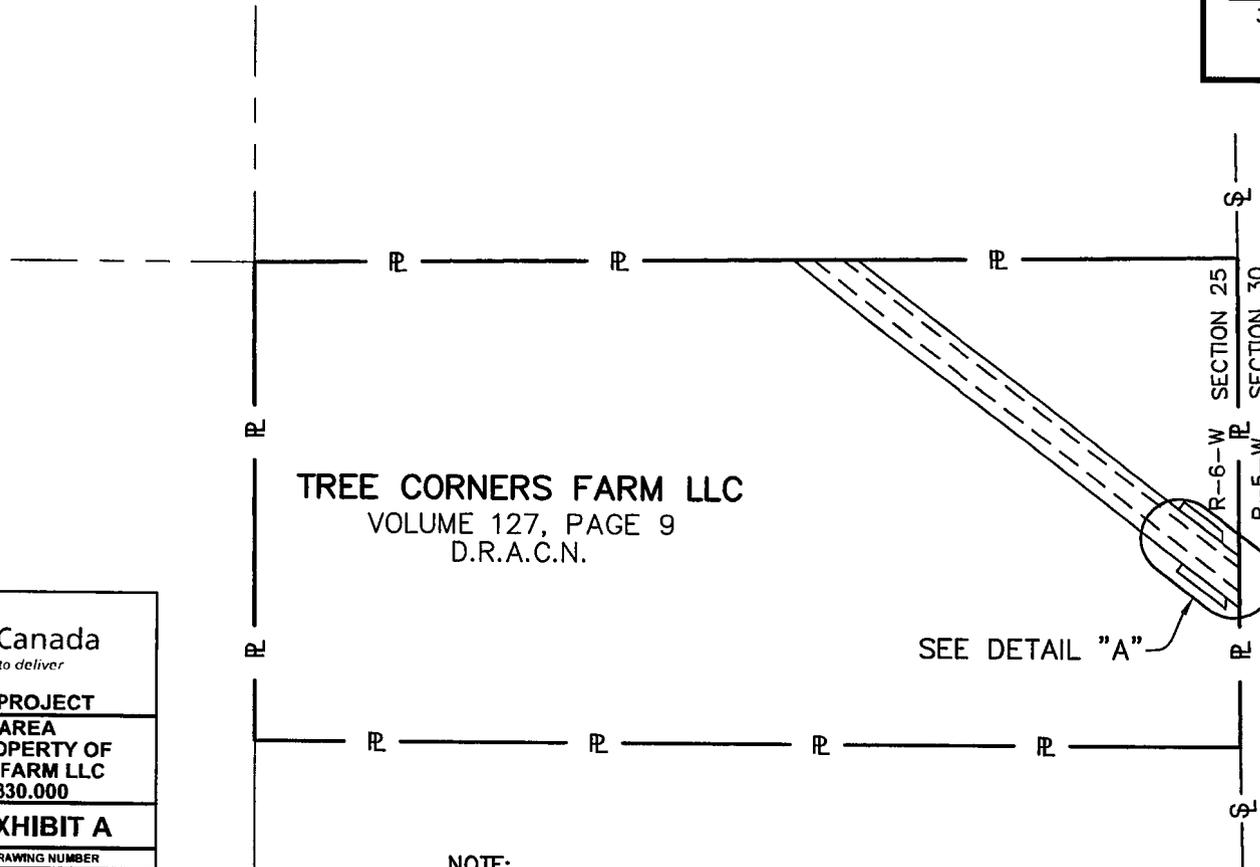
PROPERTY LINE
 SECTION LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY
 DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA

ANTELOPE COUNTY, NEBRASKA

T-26-N, R-6-W, SECTION 25
ML-NE-AT-30330.000

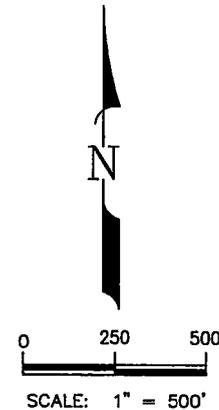


VICINITY MAP
N.T.S.



TREE CORNERS FARM LLC
VOLUME 127, PAGE 9
D.R.A.C.N.

SEE DETAIL "A"



TRACT LEGAL DESCRIPTION:
N/2 SE/4 OF SECTION 25,
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: 1,383'±
 AREA OF PERMANENT EASEMENT: 1.6 ACRES
 AREA OF TEMPORARY WORKSPACE: 2.0 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.2 ACRE

<p>TransCanada <i>In business to deliver</i></p>			
<p>KEYSTONE XL PROJECT</p>			
<p>EASEMENT AREA ACROSS THE PROPERTY OF TREE CORNERS FARM LLC ML-NE-AT-30330.000</p>			
PROJECT:	EXHIBIT A		
APPROVED BY:	DRAWING NUMBER		
SLR	XL-08-ML-SK-3432		
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	11/07/14	PB	ALS



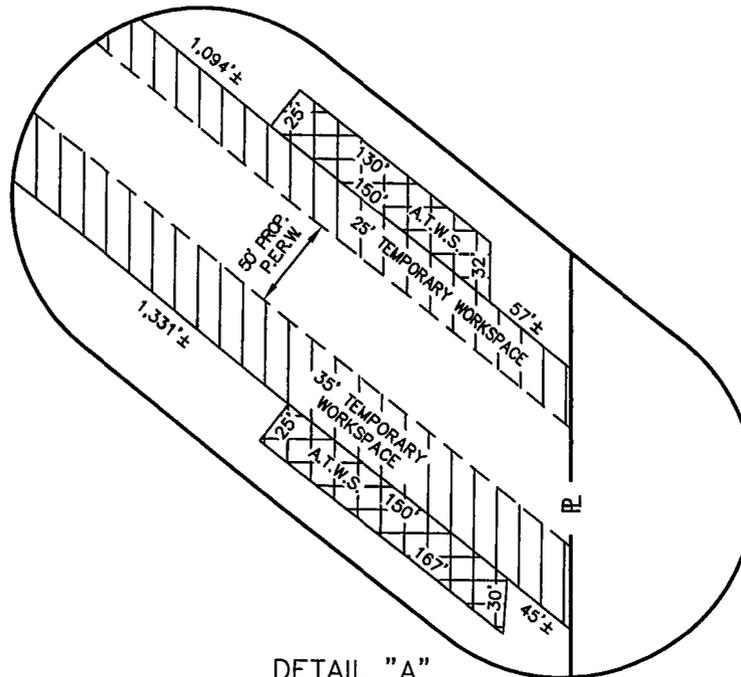
LEGEND

P. PROPERTY LINE
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY

ANTELOPE COUNTY, NEBRASKA

T-26-N, R-6-W, SECTION 25

ML-NE-AT-30330.000



DETAIL "A"
 N.T.S.



KEYSTONE XL PROJECT

**EASEMENT AREA
 ACROSS THE PROPERTY OF
 TREE CORNERS FARM LLC
 ML-NE-AT-30330.000**

PROJECT:		EXHIBIT A	
APPROVED BY		DRAWING NUMBER	
SLR		XL-08-ML-SK-3432	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	11/07/14	PB	ALS



NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-AT-30340.000

We, Tree Corners Farm, LLC, a Nebraska limited liability company, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Four Hundred Eighty Dollars and No Cents (\$2,480.00), 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, E/2 SW/4, SE/4 Less a Portion of the SE/4 SE/4

Section 30, Township 26N, Range 5W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this _____ day of

_____, 20_____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-AT-30330.000

We, Tree Corners Farm, LLC, a Nebraska limited liability company, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Thousand Forty Dollars and No Cents (\$3,040.00), 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 SE/4

Section 25, 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_____.

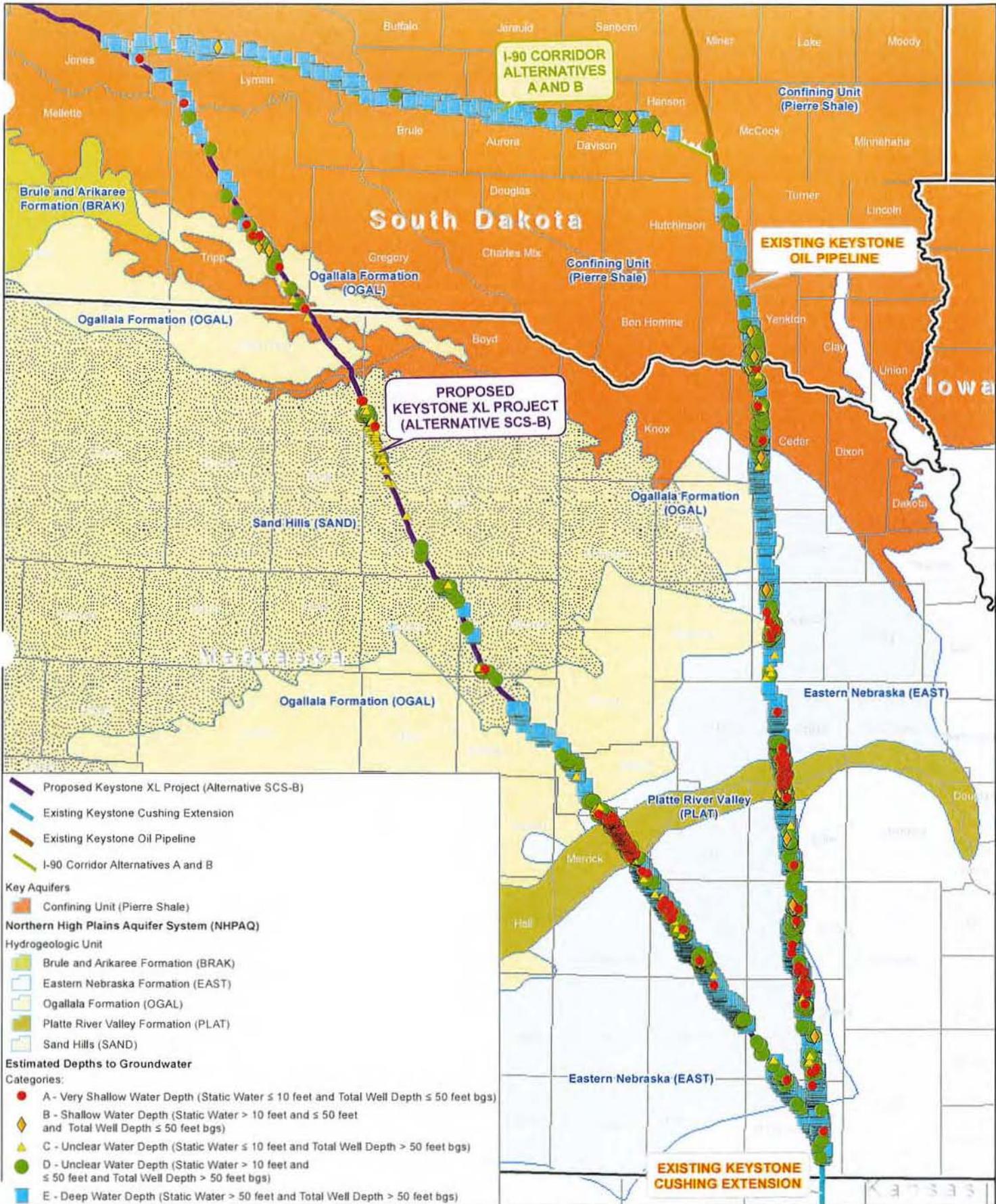
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



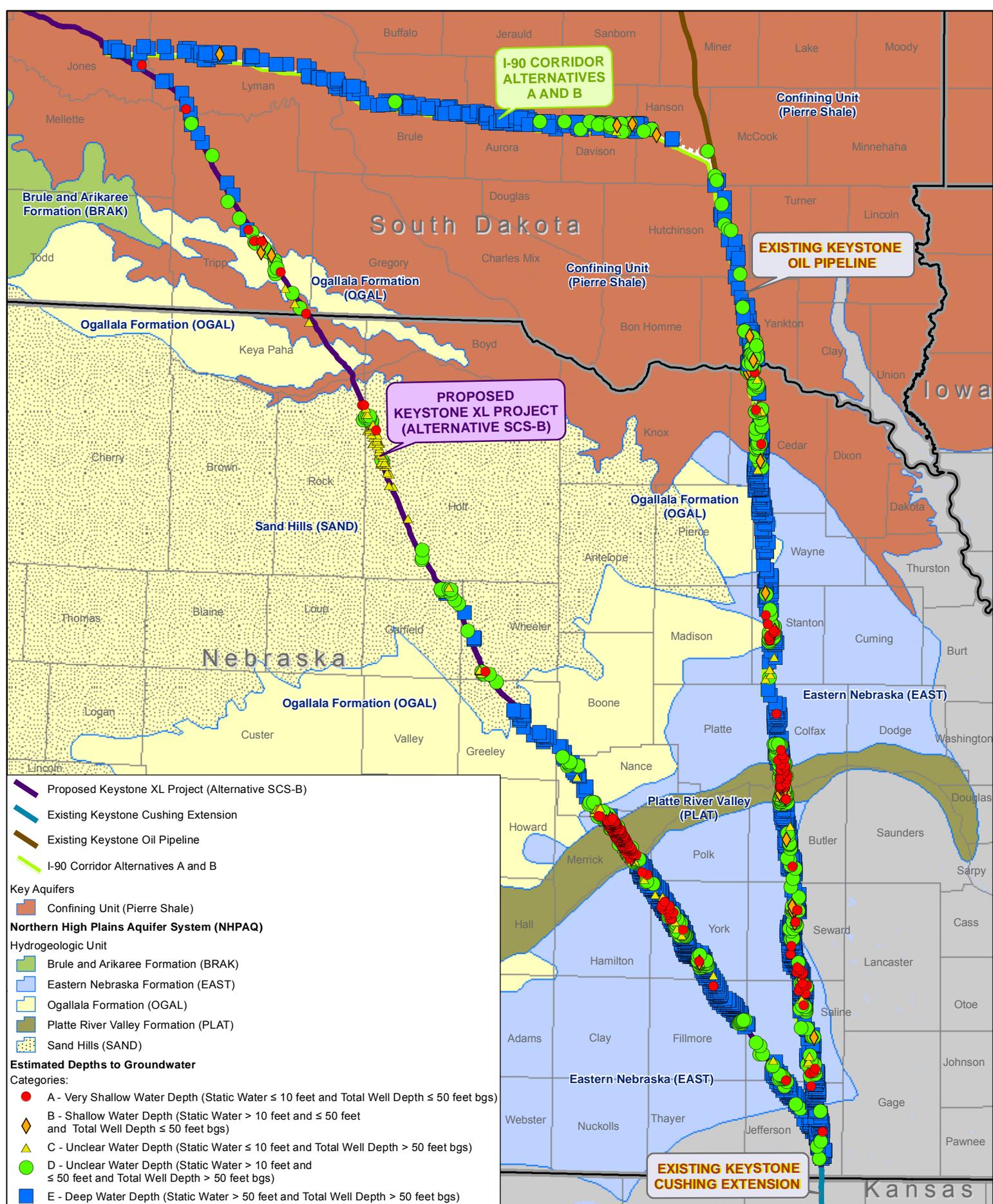
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

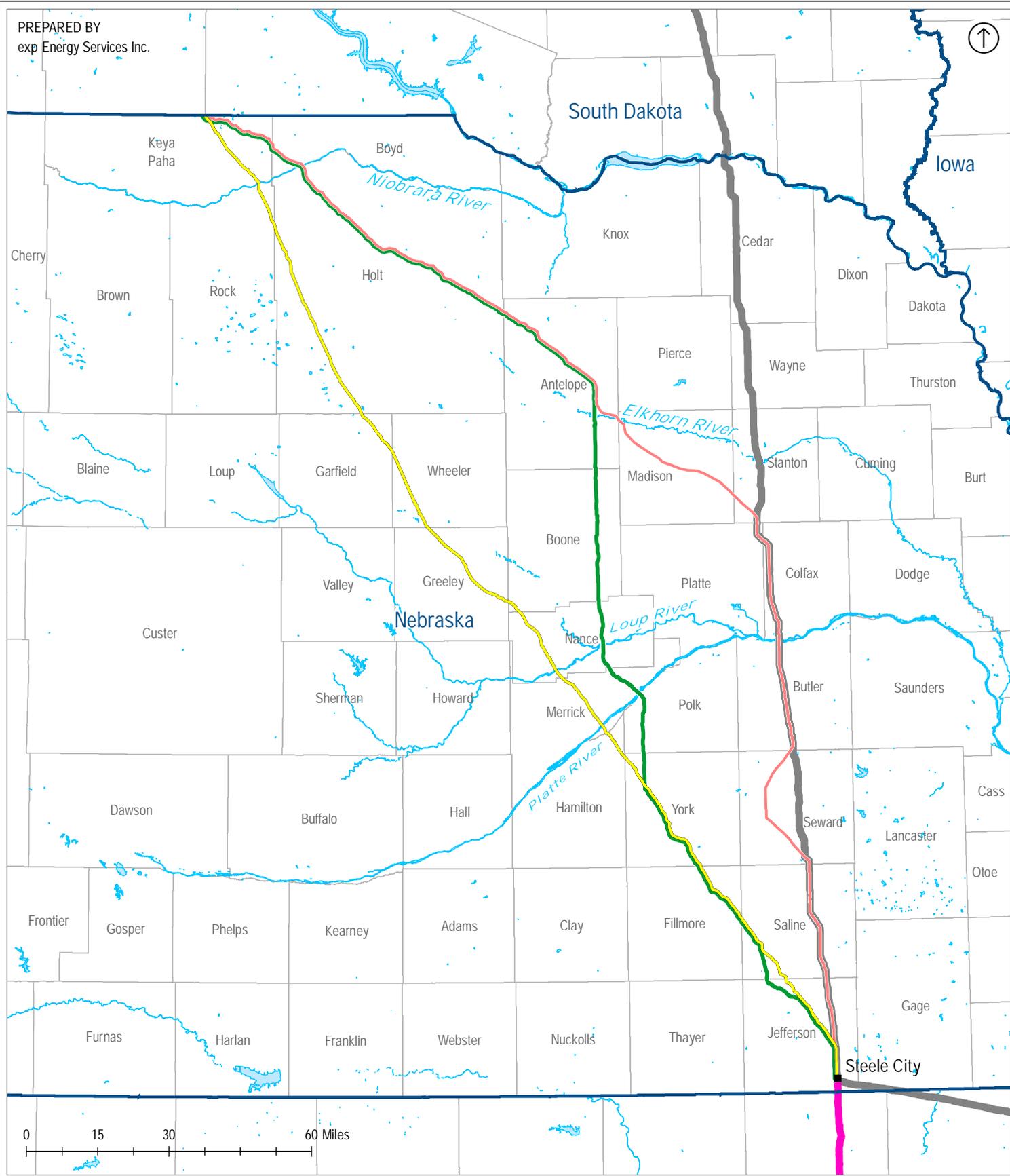
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

Figure 4.3.3-8
 I-90 Corridor Alternatives A and B
 Key Aquifers and Potable Water Wells
 within 2-mile Corridor

Attachment No. 7



LEGEND	
	PREFERRED ROUTE
	SANDHILLS ALTERNATIVE ROUTE
	KEYSTONE MAINLINE ALTERNATIVE ROUTE
	KEYSTONE MAINLINE (PHASE I)
	KEYSTONE CUSHING EXTENSION (PHASE II)
	WATERBODY
	STATE BOUNDARY
	COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act*

Direct Testimony of
Terri Harrington in Support of
Landowner Intervenors

State of Colorado)
) ss.
Denver County)

1 **Q: Please state your name.**

2 A: My name is Terri Harrington.

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 York 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: I am a lawyer.

1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A: Yes.

4 **Q: For the land that would be affected and impacted by the proposed KXL tar**
5 **sands pipeline give the Commissioners a sense how long the land has been in**
6 **your family and a little history of the land.**

7 A: My land has been in my family for generations. My family has built a solar clean
8 energy barn on the proposed route. We have had land worked with heavy
9 machinery before and it has always caused it to be much less tillable and
10 productive. The value of my land would be decreased by having all the natural
11 flora and fauna disturbed and the heavy equipment would destroy and compact
12 the soil.

13 **Q: Do you earn any income from this land?**

14 A: Yes.

15 **Q: Have you depended on the income from your land to support your livelihood**
16 **or the livelihood of your family?**

17 A: Yes.

18 **Q: Have you ever in the past or have you thought about in the future leasing all**
19 **or a portion of your land in question here?**

20 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
21 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
22 all the restrictions and risks and potential negative impacts to farming or ranching
23 operations as opposed to land that did not have those same risks. If I was looking
24 to lease or rent ground I would pay more for comparable non-pipeline land than I
25 would for comparable pipeline land and I think most folks would think the same
26 way. This is another negative economic impact that affects the landowner and the
27 county and the state and will forever and ever should TransCanada's preferred or
28 mainline alternative routes be approved. If they were to twin or closely parallel to

1 Keystone I the vast majority of landowners would be those that already have a
2 pipeline so there would be considerable less new incremental negative impacts.

3 **Q: Do you have similar concerns about selling the land?**

4 A: Well I hope not to have to sell the land in my lifetime but times change and you
5 never know what is around the corner and yes I am concerned that if another piece
6 of ground similar to mine were for sale and it did not have the pipeline and mine
7 did that I would have a lower selling price. I think this would be true for pipeline
8 ground on both the preferred and mainline alternative routes.

9 **Q: What is your intent with your land after you die?**

10 A: Like I said I hope not to have to sell and I hope that it stay in the family for years
11 to come but I have thought about getting out if this pipeline were to come through.

12 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
13 Pipeline would cross the land described above and owned by you?**

14 A: Yes.

15 **Q: Were you or an entity for which you are a member, shareholder, or director
16 previously sued by TransCanada Keystone Pipeline, LP?**

17 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
18 petition for condemnation against our land so it could place its proposed pipeline
19 within an easement that it wanted to take from us on our land.

20 **Q: Did you defend yourself and your land in that condemnation action?**

21 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
22 and expenses in our resistance of TransCanada's lawsuit against us.

23 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
24 incurred?**

25 A: No, they have not.

26 **Q: In its lawsuit against you, did TransCanada identify the amount of your
27 property that it wanted to take for its proposed pipeline?**

1 A: The lawsuit against us stated they would take the amount of property that is
2 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
3 and equipment reasonably necessary to operate the pipeline.

4 **Q: Did TransCanada define what they meant by “property that is reasonably
5 necessary”?**

6 A: No, they did not.

7 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain
8 property portion of your land?**

9 A: Yes, they did.

10 **Q: Did TransCanada describe what rights it proposed to take related to the
11 eminent domain property on your land?**

12 A: Yes, they did.

13 **Q: What rights that they proposed to take did they describe?**

14 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
15 operate, and maintain the pipeline and the plant and equipment reasonably
16 necessary to operate the pipeline, specifically including surveying, laying,
17 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
18 reconstructing, removing and abandoning one pipeline, together with all fittings,
19 cathodic protection equipment, pipeline markers, and all their equipment and
20 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
21 petroleum products, and all by-products thereof.”

22 **Q: Prior to filing an eminent domain lawsuit to take your land that
23 TransCanada identified, do you believe they attempted to negotiate in good
24 faith with you?**

25 A: No, I do not.

26 **Q: Did TransCanada at any time approach you with or deliver to you their
27 proposed easement and right-of-way agreement?**

28 A: Yes, they did.

1 **Q: At the time you reviewed TransCanada's easement and right-of-way**
2 **agreement, did you understand that they would be purchasing a fee title**
3 **interest in your property or that they were taking something else?**

4 A: I understood that they proposed to have the power to take both a temporary
5 construction easement that could last for a certain period of time and then also a
6 permanent easement which they described to be 50 feet across or in width, and
7 that would run the entire portion of my property from where a proposed pipeline
8 would enter my property until where it would exit the property.

9 **Q: Is the document included with your testimony here as Attachment No. 3, a**
10 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
11 **Way agreement that they included with their condemnation lawsuit against**
12 **you?**

13 A: Yes, it is.

14 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
15 **and Right-of-Way agreement?**

16 A: Yes, I have.

17 **Q: What is your understanding of the significance of the Easement and Right-of-**
18 **Way agreement as proposed by TransCanada?**

19 A: My understanding is that this is the document that will govern all of the rights and
20 obligations and duties as well as the limitations of what I can and cannot do and
21 how I and any future landowner and any person I invite to come onto my property
22 must behave as well as what TransCanada is and is not responsible for and how
23 they can use my land.

24 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
25 **agreement do you have any concerns about any portions of it or any of the**
26 **language either included in the document or missing from the proposed**
27 **document?**

28 A: Yes, I have a number of significant concerns and worries about the document and
29 how the language included and the language not included potentially negatively

1 impacts my land and thereby potentially negatively impacts my community and
2 my state.

3 **Q: I would like you to walk the Commissioners through each and every one of**
4 **your concerns about TransCanada's proposed Easement and Right-of-Way**
5 **agreement so they can develop an understanding of how that language and**
6 **the terms of that contract, in your opinion, potentially negatively impacts you**
7 **and your land. So, if you can start at the beginning of that document and**
8 **let's work our way through it, okay?**

9 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
10 Easement and Right-of-Way agreement and how it negatively could affect my
11 property rights and my economic interests.

12 **Q. Okay, let's start with your first concern please.**

13 A: The very first sentence talks about consideration or how much money they will
14 pay to compensate me for all of the known and unknown affects and all of the
15 rights I am giving up and for all the things they get to do to my land and for what
16 they will prevent me from doing on my land and they only will pay me one time at
17 the signing of the easement agreement. That is a huge problem.

18 **Q: Explain to the Commissioners why that is a problem.**

19 A: It is not fair to the landowner, the county, or the State. It is not fair to the
20 landowner because they want to have my land forever for use as they see fit so
21 they can make a daily profit from their customers. If I was to lease ground from
22 my neighbor I would typically pay twice a year every year as long as they granted
23 me the rights to use their land. That only makes sense – that is fair. If I was going
24 to rent a house in town I would typically pay monthly, every month until I gave up
25 my right to use that house. By TransCanada getting out on the cheap and paying
26 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
27 revenue collection on the money I would be paid and then pay taxes on and
28 contribute to this state and this country. It is money I would be putting back into
29 my local community both spending and stimulating the local economy and

1 generating more economic activity right here. Instead TransCanada's shareholders
2 keep all that money and it never finds its way to Nebraska.

3 **Q: What is your next concern?**

4 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
5 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
6 limited partnership..." and I have no idea who that really is. I have no idea who is
7 forcing this pipeline on us or who the owners of the entities are, or what are the
8 assets backing this limited partnership, or who the general partner is, or who all
9 the limited partners are, and who makes up the ownership of the these partners or
10 the structure or any of the basic things you would want to know and understand if
11 you would want to do business with such an outfit. According to TransCanada's
12 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
13 liability company called TransCanada Keystone Pipeline GP, LLC is the general
14 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
15 basically nothing. That is really scary since the general partner has the liability but
16 virtually none of the ownership and who knows if it has any other assets.

17 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
18 **percent clear on exactly who could become the owner of about 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 my 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. As a lawyer I understand the
8 importance of terms, of the fine print of contracts, and there simply must be
9 language that requires TransCanada to pay for any leaks and damage and to
10 remove the pipeline when it is no longer used. They should have to pay dearly for
11 what they are doing. The possibility of contamination is too great to leave it in the
12 ground for our heirs to deal with.

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 the 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 negotiation 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 any time

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 I 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.

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: Do you have any concerns TransCanada's fitness as an applicant for a major**
4 **crude oil pipeline in its preferred location, or ultimate location across the**
5 **state of Nebraska?**

6 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
7 or even bullied around and being made to feel scared that they did not have any
8 options but to sign whatever papers TransCanada told them they had to. I am
9 aware of folks being threatened that their land would be taken if they didn't follow
10 what TransCanada was saying. I am aware of tactics to get people to sign
11 easements that I don't believe have any place in Nebraska or anywhere such as
12 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
13 landowners and convince them they should sign TransCanada's easement
14 agreements. I am aware of older folks and widows or widowers feeling they had
15 no choice but to sign TransCanada's Easement and they didn't know they could
16 fight or stand up for themselves. From a more practical standpoint, I am worried
17 that according to their answer to our Interrogatory No. 211, TransCanada only
18 owns and operates one (1) major oil pipeline. They simply do not have the
19 experience with this type of pipeline and that scares me. There are others but that
20 is what I can recollect at this time and if I remember more or my recollection is
21 refreshed I will share those with the Commissioners at the Hearing in August.

22 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
23 **landowner is reasonable or just?**

24 A: No, I do not.

25 **Q: Do you have any concern about limitations that the construction of this**
26 **proposed pipeline across your affected land would prevent construction of**
27 **future structures upon the portion of your land affected by the proposed**
28 **easement and immediately surrounding areas?**

1 A: Well yes, of course I do. We would not be able to build many, if any, types of
2 structures directly across or touching the easement, and it would be unwise and I
3 would be uncomfortable to build anything near the easement for fear of being
4 blamed in the future should any damage or difficulty result on my property in
5 regards to the pipeline.

6 **Q: Do you think such a restriction would impact you economically?**

7 A: Well yes, of course.

8 **Q: How do you think such a restriction would impact you economically?**

9 A: The future of this land may not be exactly how it's being used as of this moment,
10 and having the restrictions and limiting my ability to develop my land in certain
11 ways presents a huge negative economic impact on myself, my family, and any
12 potential future owner of the property. You have no idea how I or the future owner
13 may want to use this land in the future or the other land across Nebraska
14 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
15 ago it would have been hard to imagine all the advances that we have now or how
16 things change. Because the Easement is forever and TransCanada gets the rights in
17 my land forever we have to think with a very long term view. By placing their
18 pipeline on under across and through my land that prevents future development
19 which greatly negatively impacts future taxes and tax revenue that could have
20 been generated by the County and State but now will not. When you look at the
21 short blip of economic activity that the two years of temporary construction efforts
22 may bring, that is far outweighed by the perpetual and forever loss of opportunity
23 and restrictions TransCanada is forcing upon us and Nebraska.

24 **Q: Do you have any concerns about the environmental impact of the proposed
25 pipeline?**

26 A: Yes, I do.

27 **Q: What are some of those concerns?**

28 A: As an affected land owner and Nebraskan, I am concerned that any construction,
29 operation, and/or maintenance of the proposed Keystone XL Pipeline would have

1 a detrimental impact upon the environment of my land specifically, as well as the
2 lands near my land and surrounding the proposed pipeline route.

3 **Q: Do you have any other environmental concerns?**

4 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
5 construction and/or maintenance and operation. I am concerned about spills and
6 leaks that TransCanada has had in the past and will have in the future. This could
7 be catastrophic to my operations or others and to my county and the State.

8 **Q: Do you have any thoughts regarding if there would be an impact upon the
9 natural resources on or near your property due to the proposed pipeline?**

10 A: Yes, I believe that any construction, operation, and/or maintenance of the
11 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
12 resources of my land, and the lands near and surrounding the proposed pipeline
13 route.

14 **Q: Do you have any worries about potential impacts from the proposed pipeline
15 to the soil of your land, or land near you?**

16 A: Yes, I believe that any construction, operation, and/or maintenance of the
17 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
18 land, as well as land along and surrounding the proposed pipeline route. This
19 includes, but is not limited to, the reasons that we discussed above of disturbing
20 the soil composition and makeup as it has naturally existed for thousands and
21 millions of years during the construction process, and any future maintenance or
22 removal process. I'm gravely concerned about the fertility and the loss of
23 economic ability of my property to grow the crops, or grow the grasses, or grow
24 whatever it is at that time they exist on my property or that I may want to grow in
25 the future, or that a future owner may want to grow. The land will never be the
26 same from as it exists now undisturbed to after it is trenched up for the proposed
27 pipeline.

28 **Q: Do you have any concerns about the potential impact of the proposed pipeline
29 upon the groundwater over your land, or surrounding lands?**

1 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
2 the proposed Keystone XL Pipeline would have a detrimental impact upon the
3 groundwater of not only under my land, but also near and surrounding the pipeline
4 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
5 simple and it is simply too valuable to our State and the country to put at
6 unreasonable risk.

7 **Q: Do you have any concern about the potential impact of the proposed pipeline**
8 **upon the surface water on, or near or around your land?**

9 A: Yes, I have significant concerns that any construction, operation, and/or
10 maintenance of the proposed Keystone XL Pipeline would have detrimental
11 impact upon the surface water of not only within my property boundary, but along
12 and near and surrounding the pipeline route, and in fact, across the state of
13 Nebraska.

14 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
15 **upon the wildlife and plants, other than your growing crops on or near your**
16 **land?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 wildlife and the plants, not only that are located on or can be found upon my land,
20 but also near and along the proposed pipeline route.

21 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
22 **fair market value of your land?**

23 A: Yes, I do. I am significantly concerned about how the existence of the proposed
24 pipeline underneath and across and through my property will negatively affect the
25 fair market value at any point in the future, especially at that point in which I
26 would need to sell the property, or someone in my family would need to sell the
27 property. I do not believe, and certainly would not be willing to pay, the same
28 price for land that had the pipeline located on it, versus land that did not. I hope
29 there is never a point where I'm in a position where I have to sell and have to

1 realize as much value as I can out of my land. But because it is my single largest
2 asset, I'm gravely concerned that the existence of the proposed Keystone XL
3 Pipeline upon my land will affect a buyer's willingness to pay as much as they
4 would've paid and as much as I could've received, if the pipeline were not upon
5 my property. There are just too many risks, unknowns, impacts and uncertainties,
6 not to mention all of the rights you give up by the nature of having the pipeline
7 due to having the easement that we have previously discussed, for any reasonable
8 person to think that the existence of the pipeline would not negatively affect my
9 property's value.

10 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
11 **testimony?**

12 A: Yes, I have.

13 **Q: Where have you seen that before?**

14 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
15 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
16 believe the portion of the alternative route in Nebraska essentially twins or
17 parallels Keystone I.

18 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
19 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
20 **your testimony, is in the public interest of Nebraska?**

21 A: No, I do not.

22 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
23 **Application, and as found on Attachment No. 7, here to your testimony, is in**
24 **the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe that the Keystone mainline alternative route as shown on**
27 **Attachment No. 7 included with your testimony here is a major oil pipeline**
28 **route that is in the public interest of Nebraska?**

29 A: No, I do not.

1 **Q: Do you believe there is any potential route for the proposed Keystone XL**
2 **Pipeline across, within, under, or through the State of Nebraska that is in the**
3 **public interest of the citizens of Nebraska?**

4 A: No, I do not.

5 **Q: Why do you hold that belief?**

6 A: Because there simply is no public interest based on all of the factors that I am
7 aware and that I have read and that I have studied that this Commission is to
8 consider that would establish that a for-profit foreign-owned pipeline that simply
9 crosses Nebraska because we are geographically in the way between where tar
10 sands are in Canada to where it wants to ship it to in Texas could ever be in the
11 public interest of Nebraskans. We derive no benefit from this project. It is not for
12 public use. Nebraska is simply in the way and when all considerations are taken in
13 there is no net benefit of any kind for Nebraska should this project be placed in our
14 state. Even if there was some arguable “benefit” it is not enough to outweigh all
15 the negative impacts and concerns.

16 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
17 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
18 **of Nebraska because it may bring temporary jobs during the construction**
19 **phase to Nebraska?**

20 A: First of all, not all jobs are created equally. Most jobs that are created, whether
21 temporary or on a permanent basis, don’t come with a project that has all the
22 potential and foreseeable negative impacts, many of which we have discussed here
23 and other witnesses throughout the course of this hearing have and will discuss. If
24 I decide to hire and employ someone to help me out in my farming or ranching
25 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
26 to my land or my town or my county or my state. And I’ve hired someone who is
27 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
28 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
29 jobs are not created equal. Additionally, I understand from what I’m familiar with

1 from TransCanada's own statements that the jobs numbers they originally touted
2 were determined to be a minute fraction of the permanent jobs that had been
3 projected. According to their answer to our Interrogatory No. 191, TransCanada
4 has created only thirty-four (34) jobs within Nebraska working specifically on
5 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
6 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
7 Further, according to their answer to Interrogatory No. 199, TransCanada would
8 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
9 constructed on its Preferred Route or its Mainline Alternative Route.

10 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
11 **because it would cross your land?**

12 A: No, absolutely not. I am opposed to this project because it is not in the public
13 interest, neither within my community nor within our state.

14 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
15 **was to cross someone else's land?**

16 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
17 the fear and anxiety and potential foreseeable risks and negative impacts that this
18 type of a project carrying this type of product brings foisted upon anyone in this
19 state or any other state.

20 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
21 **Pipeline to cross the state of Nebraska?**

22 A: I don't believe there is an intelligent route because as I have stated I don't believe
23 this project anywhere within Nebraska is within the public interest. However, if
24 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
25 had to go somewhere in the state of Nebraska, the only intelligent route I believe
26 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
27 preferred route and the mainline alternative routes are economic liabilities our
28 state cannot risk.

29 **Q: What do you rely upon to make that statement?**

1 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
2 already exists in that area is reason enough as it is not in our best interest or the
3 public interests to have more major oil pipelines crisscrossing our state. Second,
4 they have all the infrastructure already there in terms of relationships with the
5 counties and local officials and first responders along that route. Third, they have
6 already obtained easements from all the landowners along that route and have
7 relationships with them. Fourth, that route avoids our most sensitive soils, the
8 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
9 Aquifer. Sixth, they have already studied that route and previously offered it as an
10 alternative. Seventh, it just makes the most sense that as a state we would have
11 some intelligent policy of energy corridors and co-locating this type of
12 infrastructure near each other.

13 **Q: Do you have any other concerns you would like to reiterate or can think of at**
14 **this time you would like the Commissioners to understand?**

15 A: Yes. I would never buy land with a pipeline running under it. You could never
16 have underground sprinklers or irrigation which may be the wave of the future.
17 We could never put a home on the land because we can't excavate so it stops us
18 from freely using the land as we might wish to in the future. My heirs will be
19 affected for many decades to come and in a manner that is not even foreseeable at
20 present. Dirty oil flowing under my land and the contamination of the land by
21 putting something completely unnatural under the soil and then having it placed
22 right above the valuable and pristine Ogallala aquifer decreases the value of my
23 land. It is my understanding that pipelines leak and leak without detection many
24 times. How will the Ogallala aquifer ever be cleaned up if there is a leak?

25 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
26 **like the Public Service Commissioners to consider in their review of**
27 **TransCanada's Application?**

28 A: No, I have not. I have shared that which I can think of as of the date I signed this
29 document below but other things may come to me or my memory may be

1 refreshed and I will add and address those things at the time of the Hearing in
2 August and address any additional items at that time as is necessary. Additionally,
3 I have not had an adequate amount of time to receive and review all of
4 TransCanada's answers to our discovery and the discovery of others so it was
5 impossible to competently and completely react to that in my testimony here and I
6 reserve the right to also address anything related to discovery that has not yet
7 concluded as of the date I signed this document below. Lastly, certain documents
8 requested have not yet been produced by TransCanada and therefore I may have
9 additional thoughts on those I will also share at the hearing as needed.

10 **Q: What is it that you are requesting the Public Service Commissioners do in**
11 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
12 **across Nebraska?**

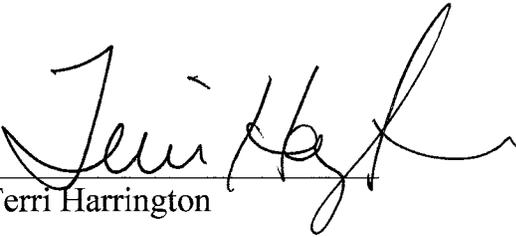
13 A: I am respectfully and humbly requesting that the Commissioners think far beyond
14 a temporary job spike that this project may bring to a few counties and beyond the
15 relatively small amount of taxes this proposed foreign pipeline would possibly
16 generate. And, instead think about the perpetual and forever impacts of this
17 pipeline as it would have on the landowners specifically, first and foremost, but
18 also thereby upon the entire state of Nebraska, and to determine that neither the
19 preferred route nor the Keystone mainline alternative route are in the public
20 interest of the citizens of the state of Nebraska. And if the Commissioners were
21 inclined to modify TransCanada's proposed routes and were to be inclined to grant
22 an application for a route in Nebraska, that the only potential route that would
23 make any intelligent sense whatsoever would be twinning or near paralleling of
24 the proposed KXL with the existing Keystone I pipeline. It simply does not make
25 sense to add yet another major oil pipeline crisscrossing our state creating new
26 pumping stations, creating new impacts on additional counties and communities
27 and going through all of the court processes with myself and other landowners like
28 me when this applicant already has relationships with the landowners, the towns
29 and the communities along Keystone I, and that Keystone I is firmly outside of the

1 sand hills and a significantly further portion away from the heart of the Ogallala
2 Aquifer than the preferred route or the Keystone mainline alternative route.

3 **Q: Are all of your statements in your testimony provided above true and**
4 **accurate as of the date you signed this document to the best of your**
5 **knowledge?**

6 A: Yes, they are.

7 **Q: Thank you, I have no further questions at this time and reserve the right to**
8 **ask you additional questions at the August 2017 Hearing.**


Terri Harrington

Subscribed and Sworn to me before this 24th day of May, 2017.


Notary Public

TRACY HOLBROOK
NOTARY PUBLIC
STATE OF COLORADO
Notary ID 20064045841
My Commission Expires 11/08/2018

Attachment No. 1



S.014
T.012N
R.004W

Terri Harrington Trust Agreement dated July 14, 1998
Terri Harrington

S.023
T.012N
R.004W

IMAGERY: NAIP 2016

0 250 500 1,000 Feet



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Terri Harrington Trust Agreement dated July 14, 1998
Terri Harrington

TRACT NO. ML-NE-YK-40200.000
STATE: Nebraska
COUNTY: York
SECTION: 014
TOWNSHIP: 012N
RANGE: 004W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

Attachment No. 2





Attachment No. 3

**Prepared by and after recording
please return to:**
TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-YK-40200.000

**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**"), **Terri Harrington, Trustee under Trust Agreement dated July 14, 1998**, whose mailing address is 12316 E. Bates Circle, Aurora, Colorado 80014 (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 York, 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 York, in the State of Nebraska, being further described as the SE1/4 of Section 14, T12N, R4W of the 6th P.M., as recorded in Book 189, Page 190 in the Deed Records of York 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):

**Terri Harrington, Trustee under Trust Agreement
dated July 14, 1998**

Terri Harrington, Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Terri Harrington, Trustee under Trust Agreement dated July 14, 1998** on behalf of said Trust.

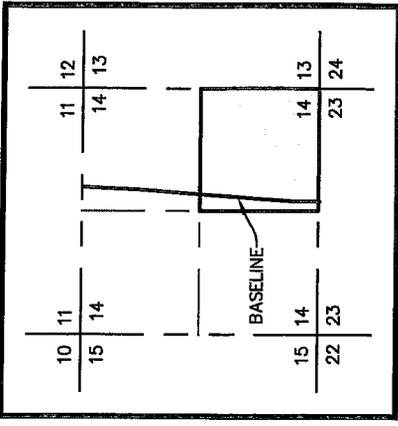
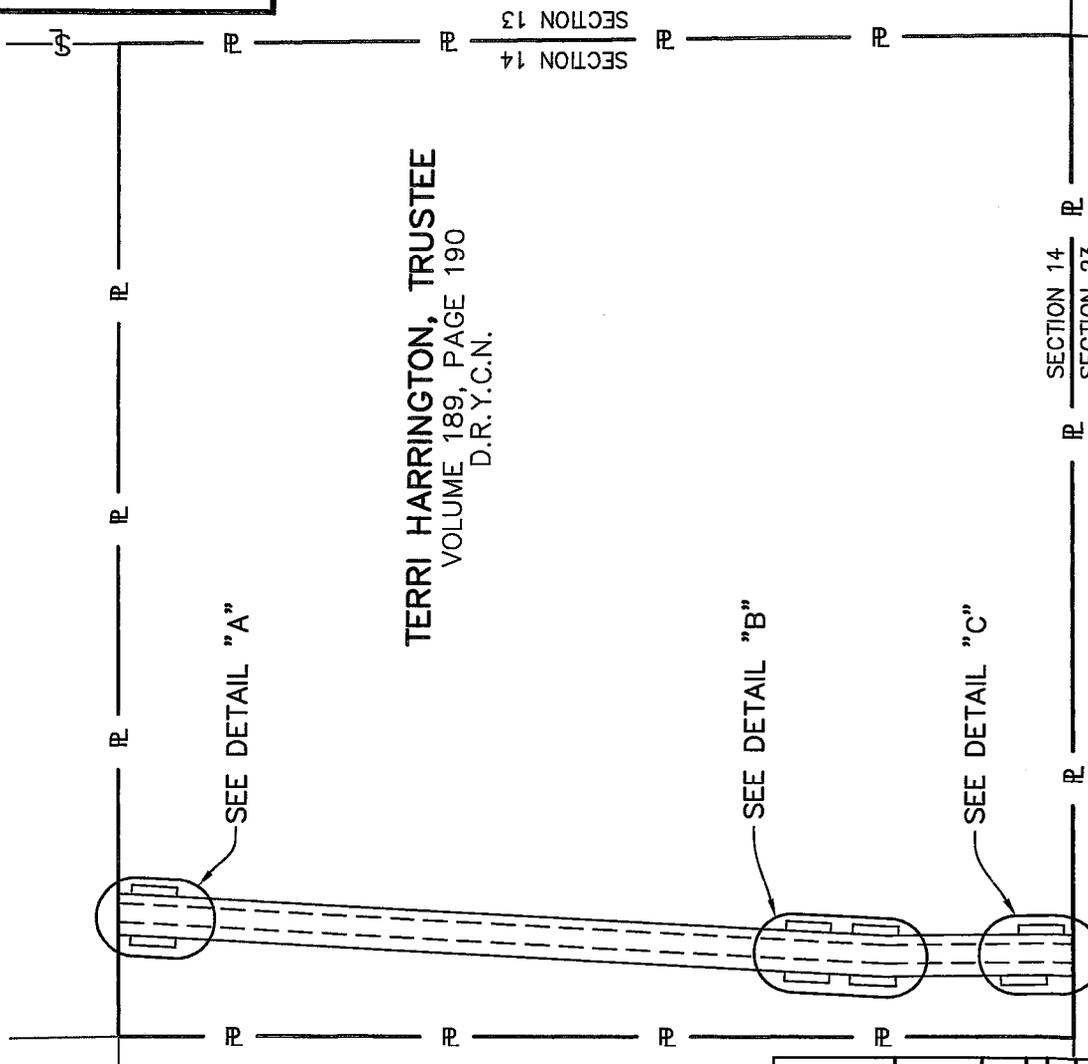
Notary Public Signature

Affix Seal Here

YORK COUNTY, NEBRASKA
T-12-N, R-4-W, SECTION 14
ML-NE-YK-40200.000

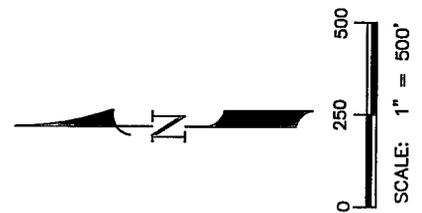
PROPERTY LINE
 SECTION LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY
 DEED RECORDS OF YORK COUNTY, NEBRASKA

LEGEND
 P PROP.
 S A.T.W.S.
 P.E.R.W.
 D.R.Y.C.N.



VICINITY MAP
 N.T.S.

TERRI HARRINGTON, TRUSTEE
 VOLUME 189, PAGE 190
 D.R. Y.C.N.



TRACT LEGAL DESCRIPTION:
 SE/4 OF SECTION 14, T-12-N, R-4-W

	
In business to deliver	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
TERRI HARRINGTON, TRUSTEE	
ML-NE-YK-40200.000	
PROJECT:	XL EXHIBIT A
APPROVED BY	DRAWING NUMBER
SLR	XL-08-ML-SK-3726
NO.	REVISION
DATE	DATE
SCALE	DATE
1" = 500'	10/27/14
CHECKED BY	DRAWN BY
ALS	PB

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: 2,650'±
 AREA OF PERMANENT EASEMENT: 3.0 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.6 ACRES
 ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.6 ACRE



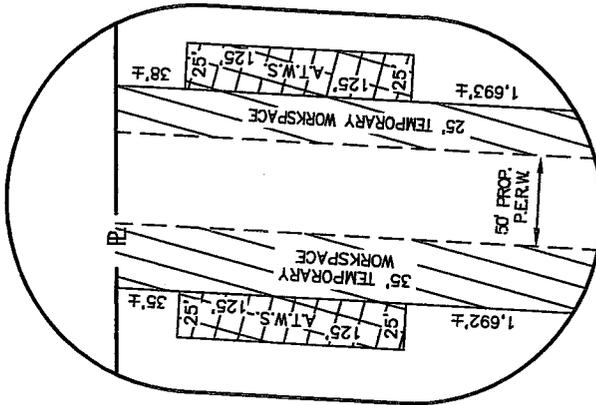
YORK COUNTY, NEBRASKA

T-12-N, R-4-W, SECTION 14

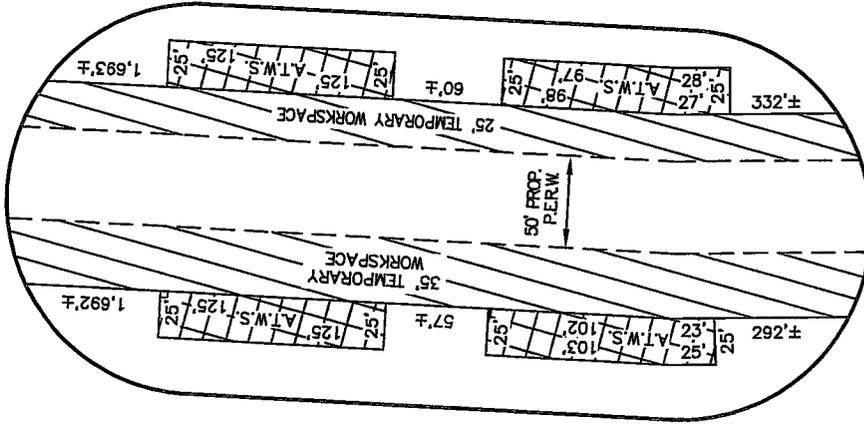
ML-NE-YK-40200.000

PROPERTY LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY

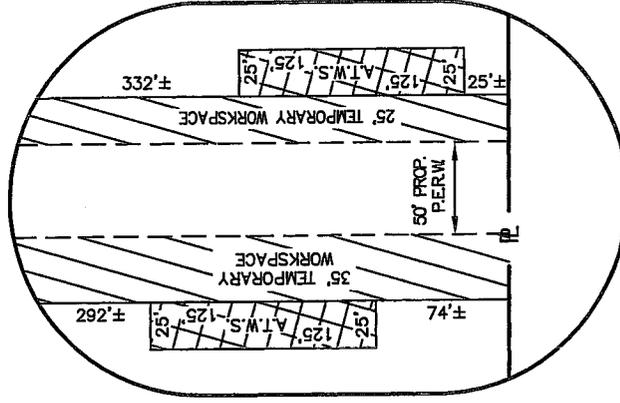
LEGEND
 PL
 PROP.
 A.T.W.S.
 P.E.R.W.



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.

		In business to deliver	
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF			
TERRI HARRINGTON, TRUSTEE			
ML-NE-YK-40200.000			
PROJECT:	XL	EXHIBIT A	
APPROVED BY:	SLR	DRAWING NUMBER:	XL-08-ML-SK-3726
NO.	REVISION	DATE	
SCALE:	N.T.S.	DATE:	10/27/14
DRAWN BY:	PB	CHECKED BY:	ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-YK-40200.000

I, Terri Harrington, Trustee, of Arapahoe County, in the State of Colorado, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Seven Hundred Sixty Dollars and No Cents (\$5,760.00), 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 York, State of Nebraska:

SE/4

Section 14, Township 12N, Range 4W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I have hereunto set our hands on this__ day of

_____, 20____.

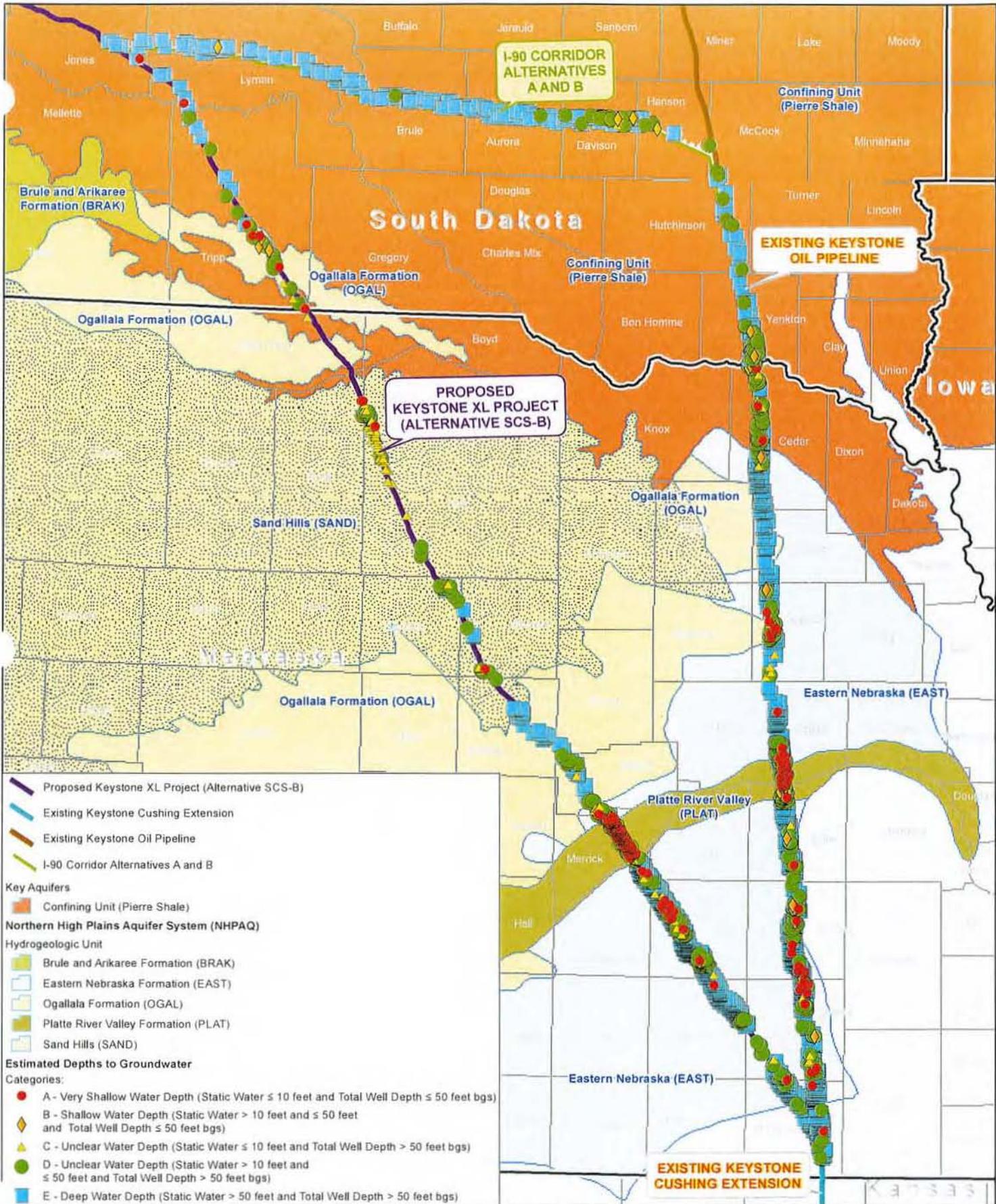
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



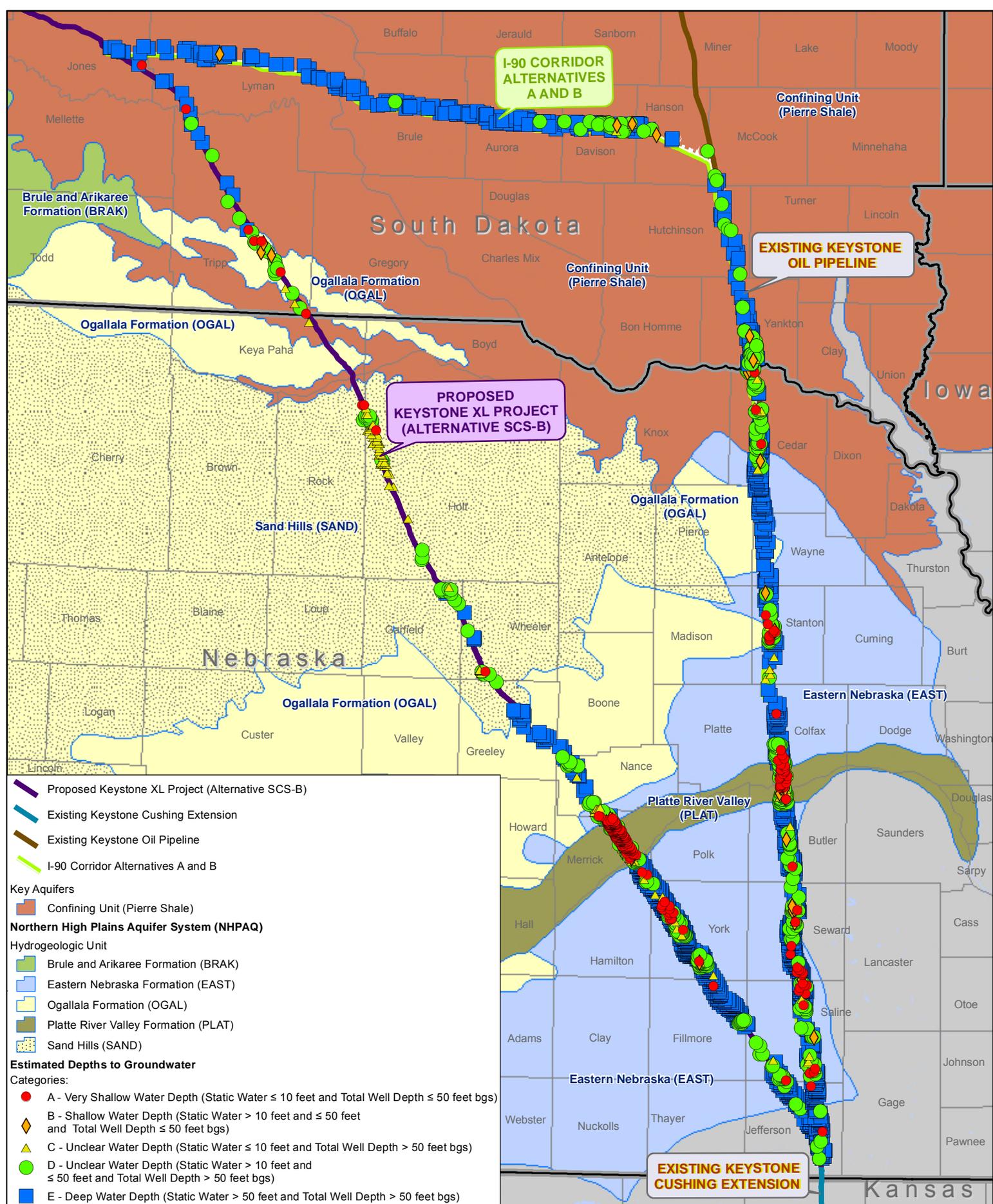
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

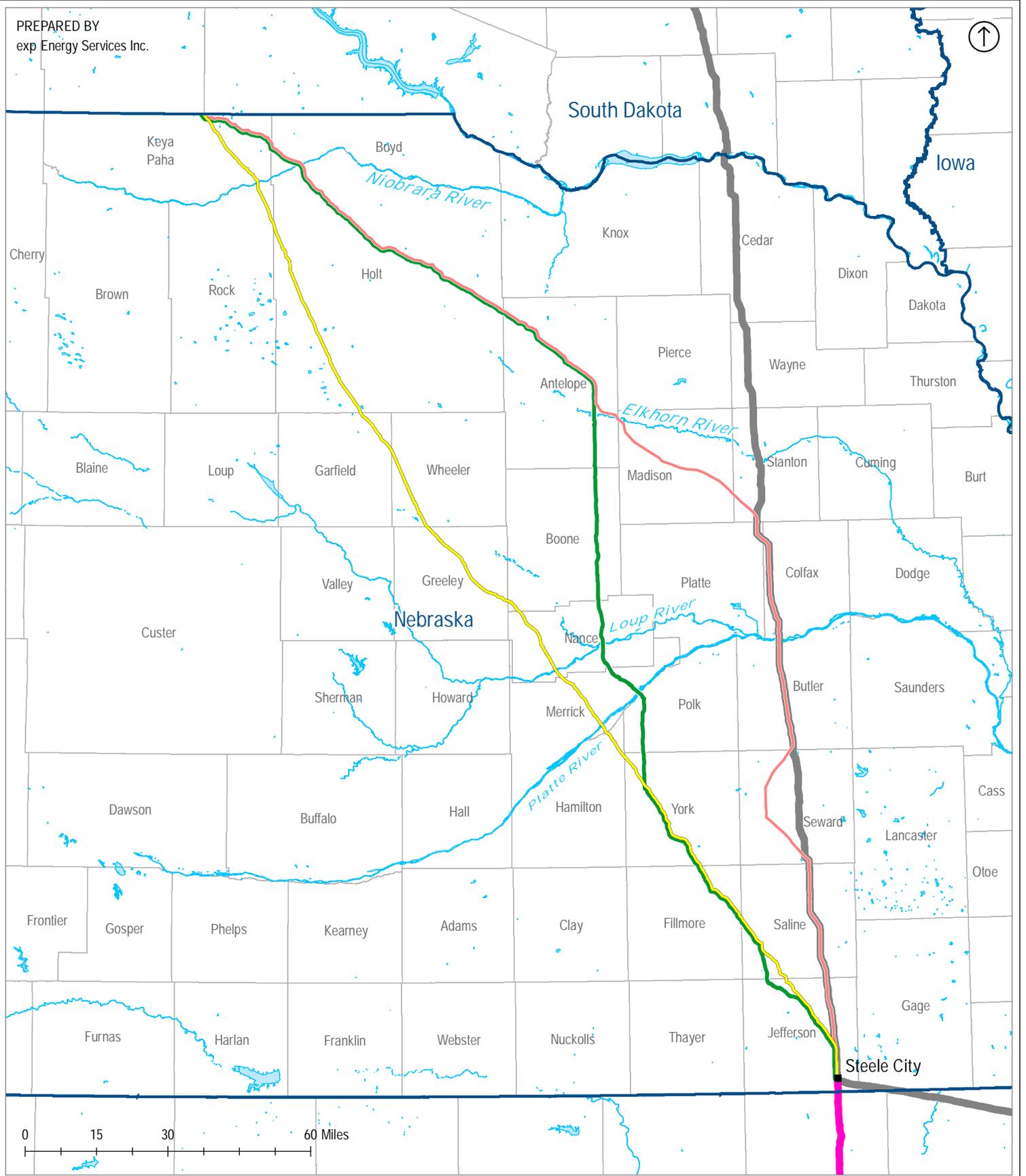
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

Figure 4.3.3-8
 I-90 Corridor Alternatives A and B
 Key Aquifers and Potable Water Wells
 within 2-mile Corridor

Attachment No. 7



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



1 A: No.

2 **Q: Have you depended on the income from your land to support your livelihood**
3 **or the livelihood of your family?**

4 A: Yes.

5 **Q: Have you had any issues with the TransCanada Keystone I pipeline on your**
6 **property?**

7 A: Yes, I have.

8 **Q: Tell the Commission about that please.**

9 A: On April 2nd 2016 TransCanada's Keystone I pipeline suffered damage and failed
10 in some way and lead to significant impacts to my land. The first person to
11 discovery the pipeline break was my neighbor. The local Sherriff's department
12 arrived first and about three hours later TransCanada personnel arrived.

13 **Q: When you arrived on site what happened?**

14 A: TransCanada prevented me from entering upon my property. My mailbox is
15 located by the highway; I was not even permitted by TransCanada to cross my
16 own land riding my four-wheeler to get my daily mail. I had to drive an extra 2-3
17 miles around the section line to get my mail and also travel to my employment.

18 **Q: What next do you remember?**

19 A: I remember there being about 150 workers on my land disturbing my land and
20 preventing me from enjoying and using my land as I wanted. A TransCanada
21 representative approached me with an offer of \$1,000 per week to "rent" my land
22 for all the vehicles and equipment they needed to park and had brought on my
23 property. I reluctantly accepted their offer as they led me to believe that was all I
24 could be compensated – so we reached an agreement, or so I thought.

25 **Q: What did TransCanada say about the 50 foot easement they have on your**
26 **property?**

27 A: I was told that when the pipeline has a problem the Easement contract means
28 nothing and that TransCanada can go anywhere and do anything they want on my
29 land during such a pipeline breach. This was very frustrating to me and was

1 exacerbated by the fact they were all over and on my land for three (3) months day
2 in and day out until July 2nd 2016. TransCanada left without paying the promised
3 verbal compensation of damage to property because they said there was no written
4 agreement.

5 **Q: What did you do about that?**

6 A: Well, they were intruding on my land first of all and disrupting my life and even
7 despite that we made a deal for the \$1,000 a week but I knew I was just the little
8 guy and had no means to fight with a billion dollar company over the agreement
9 we reached and they breached.

10 **Q: What did you observed about how TransCanada treated your land was the**
11 **worked on it?**

12 A: I witnessed TransCanada having concrete trucks hauling day and night to the site
13 and just dumping concrete into the trench. The put about 600 yards of concrete in
14 the trench. I was told by TransCanada to keep it quiet.

15 **Q: Did you have any other concerns about TransCanada's behavior?**

16 A: Yes. They left the road in terrible condition. The land reclamation process on my
17 property after cleanup was completed was not good. I wasn't compensated for my
18 trees that TransCanada removed.

19 **Q: How has your experience with TransCanada informed your understanding of**
20 **the terms and language in your Easement and Right-of-Way agreement?**

21 A: It is critically important to get an Easement that has terms and language that are
22 very clear and that the Landowner has an opportunity to negotiate terms that
23 actually protect their property rights and economic interests.

24 **Q: Do you have any other concerns about the Easement language that you can**
25 **think of at this time?**

26 A: I reserve the right to discuss any additional concerns that I think of at the time of
27 my live testimony in August.

1 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
2 **crude oil pipeline in its preferred location, or ultimate location across the**
3 **state of Nebraska?**

4 A: Yes, I have significant concerns.

5 **Q: Are all of your statements in your testimony provided above true and**
6 **accurate as of the date you signed this document to the best of your**
7 **knowledge?**

8 A: Yes, they are.

9 **Q: Thank you, I have no further questions at this time and reserve the right to**
10 **ask you additional questions at the August 2017 Hearing.**

Galen L. Heckenliable

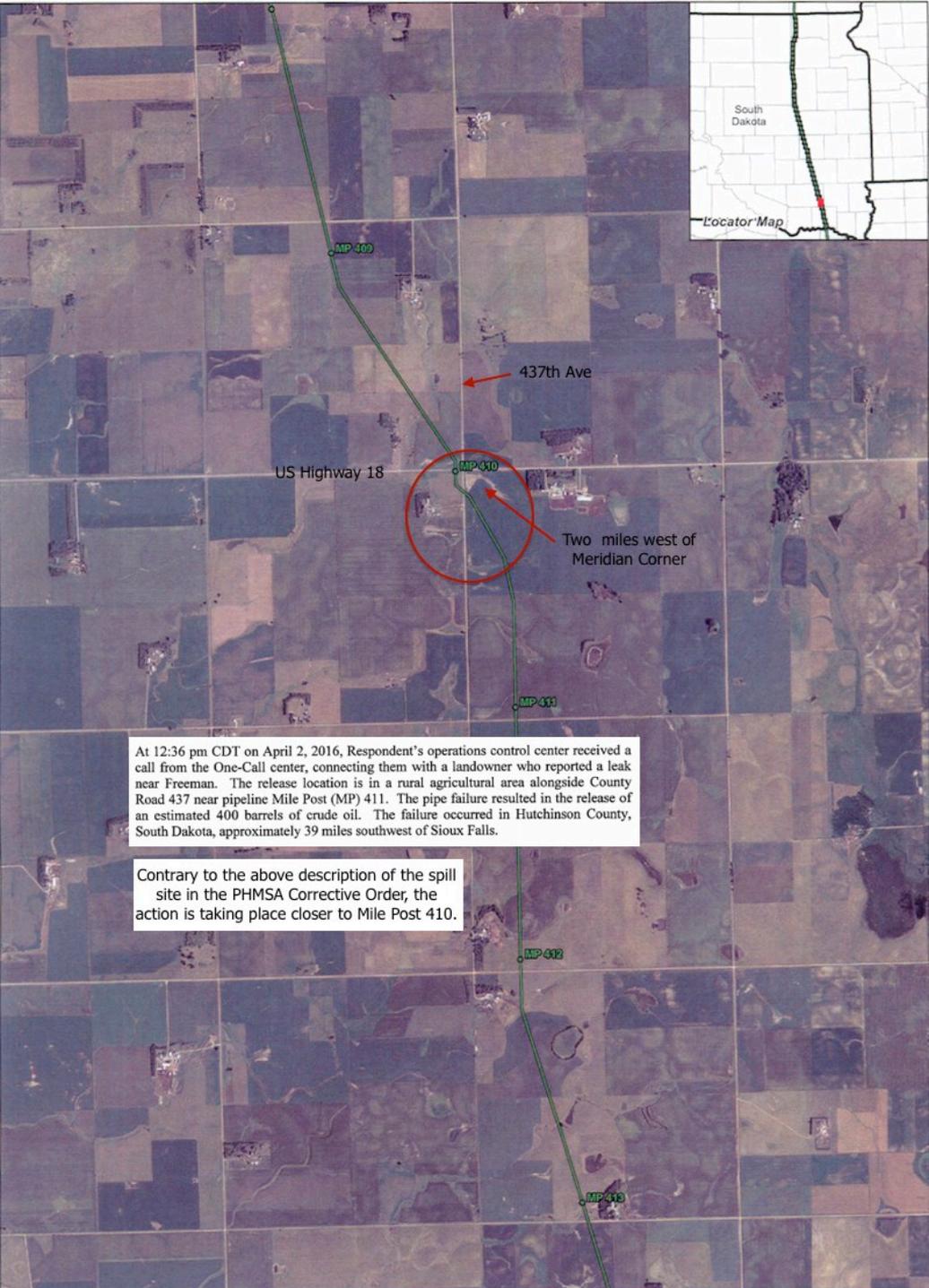
Galen Heckenliable
state of South Dakota
County of Hutchinson

Subscribed and Sworn to me before this 30th day of May, 2017.

Mary K. Engen

Notary Public

my commission expires 10-20-2020



At 12:36 pm CDT on April 2, 2016, Respondent's operations control center received a call from the One-Call center, connecting them with a landowner who reported a leak near Freeman. The release location is in a rural agricultural area alongside County Road 437 near pipeline Mile Post (MP) 411. The pipe failure resulted in the release of an estimated 400 barrels of crude oil. The failure occurred in Hutchinson County, South Dakota, approximately 39 miles southwest of Sioux Falls.

Contrary to the above description of the spill site in the PHMSA Corrective Order, the action is taking place closer to Mile Post 410.

- Legend**
- Valve Site
 - Milepost
 - Centerline
 - Pump Station - Permanent Disturbance
 - Pump Station - Construction Disturbance

Keystone Pipeline Project

South Dakota Public Utility Commission Application
 - Project Location -
 Map 41 of 46



1:24,000

ATTACHMENT
 #1



**ROAD
CLOSED**

KNODEL
Contractors







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
Jill Hipke in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Jill Hipke

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: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
16 **and or your family?**

1 A: Yes.

2 **Q: Do you earn any income from this land?**

3 A: Yes.

4 **Q: Have you depended on the income from your land to support your livelihood**
5 **or the livelihood of your family?**

6 A: Yes.

7 **Q: Have you ever in the past or have you thought about in the future leasing all**
8 **or a portion of your land in question here?**

9 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
10 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
11 all the restrictions and risks and potential negative impacts to farming or ranching
12 operations as opposed to land that did not have those same risks. If I was looking
13 to lease or rent ground I would pay more for comparable non-pipeline land than I
14 would for comparable pipeline land and I think most folks would think the same
15 way. This is another negative economic impact that affects the landowner and the
16 county and the state and will forever and ever should TransCanada's preferred or
17 mainline alternative routes be approved. If they were to twin or closely parallel to
18 Keystone I the vast majority of landowners would be those that already have a
19 pipeline so there would be considerable less new incremental negative impacts.

20 **Q: Do you have similar concerns about selling the land?**

21 A: Well I hope not to have to sell the land in my lifetime but times change and you
22 never know what is around the corner and yes I am concerned that if another piece
23 of ground similar to mine were for sale and it did not have the pipeline and mine
24 did that I would have a lower selling price. I think this would be true for pipeline
25 ground on both the preferred and mainline alternative routes.

26 **Q: What is your intent with your land after you die?**

27 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
28 to come but I have thought about getting out if this pipeline were to come through.

1 **Q: Are you aware that the preferred route of TransCanada’s Keystone XL**
2 **Pipeline would cross the land described above and owned by you?**

3 A: Yes.

4 **Q: Were you or an entity for which you are a member, shareholder, or director**
5 **previously sued by TransCanada Keystone Pipeline, LP?**

6 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
7 petition for condemnation against our land so it could place its proposed pipeline
8 within an easement that it wanted to take from us on our land.

9 **Q: Did you defend yourself and your land in that condemnation action?**

10 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
11 and expenses in our resistance of TransCanada’s lawsuit against us.

12 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
13 **incurred?**

14 A: No, they have not.

15 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
16 **property that it wanted to take for its proposed pipeline?**

17 A: The lawsuit against us stated they would take the amount of property that is
18 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
19 and equipment reasonably necessary to operate the pipeline.

20 **Q: Did TransCanada define what they meant by “property that is reasonably**
21 **necessary”?**

22 A: No, they did not.

23 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
24 **property portion of your land?**

25 A: Yes, they did.

26 **Q: Did TransCanada describe what rights it proposed to take related to the**
27 **eminent domain property on your land?**

28 A: Yes, they did.

29 **Q: What rights that they proposed to take did they describe?**

1 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
2 operate, and maintain the pipeline and the plant and equipment reasonably
3 necessary to operate the pipeline, specifically including surveying, laying,
4 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
5 reconstructing, removing and abandoning one pipeline, together with all fittings,
6 cathodic protection equipment, pipeline markers, and all their equipment and
7 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
8 petroleum products, and all by-products thereof.”

9 **Q: Prior to filing an eminent domain lawsuit to take your land that**
10 **TransCanada identified, do you believe they attempted to negotiate in good**
11 **faith with you?**

12 A: No, I do not.

13 **Q: Did TransCanada at any time approach you with or deliver to you their**
14 **proposed easement and right-of-way agreement?**

15 A: Yes, they did.

16 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
17 **agreement, did you understand that they would be purchasing a fee title**
18 **interest in your property or that they were taking something else?**

19 A: I understood that they proposed to have the power to take both a temporary
20 construction easement that could last for a certain period of time and then also a
21 permanent easement which they described to be 50 feet across or in width, and
22 that would run the entire portion of my property from where a proposed pipeline
23 would enter my property until where it would exit the property.

24 **Q: Is the document included with your testimony here as Attachment No. 3, a**
25 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
26 **Way agreement that they included with their condemnation lawsuit against**
27 **you?**

28 A: Yes, it is.

1 **Q: Have you had an opportunity to review TransCanada’s proposed Easement**
2 **and Right-of-Way agreement?**

3 A: Yes, I have.

4 **Q: What is your understanding of the significance of the Easement and Right-of-**
5 **Way agreement as proposed by TransCanada?**

6 A: My understanding is that this is the document that will govern all of the rights and
7 obligations and duties as well as the limitations of what I can and cannot do and
8 how I and any future landowner and any person I invite to come onto my property
9 must behave as well as what TransCanada is and is not responsible for and how
10 they can use my land.

11 **Q: After reviewing TransCanada’s proposed Easement and Right-of-Way**
12 **agreement do you have any concerns about any portions of it or any of the**
13 **language either included in the document or missing from the proposed**
14 **document?**

15 A: Yes, I have a number of significant concerns and worries about the document and
16 how the language included and the language not included potentially negatively
17 impacts my land and thereby potentially negatively impacts my community and
18 my state.

19 **Q: I would like you to walk the Commissioners through each and every one of**
20 **your concerns about TransCanada’s proposed Easement and Right-of-Way**
21 **agreement so they can develop an understanding of how that language and**
22 **the terms of that contract, in your opinion, potentially negatively impacts you**
23 **and your land. So, if you can start at the beginning of that document and**
24 **let’s work our way through it, okay?**

25 A: Yes, I’ll be happy to express my concerns about TransCanada’s proposed
26 Easement and Right-of-Way agreement and how it negatively could affect my
27 property rights and my economic interests.

28 **Q. Okay, let’s start with your first concern please.**

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada’s shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership...” and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada’s
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
6 **percent clear on exactly who could become the owner of over 275 miles of**
7 **Nebraska land?**

8 A: No.

9 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
10 **percent clear on exactly who will be operating and responsible for**
11 **approximately 275 miles of tar sands pipeline underneath and through**
12 **Nebraska land?**

13 A: No.

14 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
15 **and the State of Nebraska of TransCanada's easement terms.**

16 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow their easement
18 to be transferred or sold to someone or some company or country or who knows
19 what that I don't know and who we may not want to do business with. This
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest
21 bidder that could have terrible impacts upon all of Nebraska depending upon who
22 may buy it and I don't know of any safeguards in place for us or the State to veto
23 or have any say so in who may own, operate, or be responsible for this pipeline in
24 the future.

25 **Q: Do you think that type of uncertainty and lack of control over a major piece**
26 **of infrastructure crossing our State is in the public interest?**

27 A: No, certainly not, in fact, just the opposite.

28 **Q: What's next?**

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that
25 right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

1 TransCanada who is subjecting the pipeline on the Landowner and who is making
2 a daily profit from that pipeline. When evaluating the impact on property rights of
3 this provision, you must consider the potentially extremely expensive fight a
4 Landowner would have over this question of whether or not damage was an act of
5 negligence. Putting this kind of potential liability upon the Landowner is
6 incredibly problematic and is detrimental to the protection of property rights. I
7 don't think this unilateral power which I can't do anything about as the landowner
8 is in the best economic interest of the land in question or the State of Nebraska for
9 landowners to be treated that way.

10 **Q: Is there any specific event or example you are aware of that makes this**
11 **concern more real for you?**

12 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
13 Nemaha County, Nebraska landowner farmers who accidentally struck two
14 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
15 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
16 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
17 copy of the Federal Court Complaint is here as **Attachment No. 4.**

18 **Q: What is your next concern with the Easement language?**

19 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
20 they choose unless 1) any Landowner use interferes in any way with
21 TransCanada's exercise of any of its rights within the Easement, or 2)
22 TransCanada decides to take any action on the property it deems necessary to
23 prevent injury, endangerment or interference with anything TransCanada deems
24 necessary to do on the property. Landowner is also forbidden from excavating
25 without prior authorization by TransCanada. So my understanding is that
26 TransCanada will unilaterally determine what Landowner can and can't do based
27 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
28 could also completely deny my request to excavate. Further, TransCanada retains
29 all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative to their property in
2 preparation or planning of TransCanada’s taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at anytime
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada’s control. Some of these vague undefined and ambiguous terms are
27 as follows:

- 28 i. “pipeline installation activities”
- 29 ii. “availability of labor and materials”

- 1 iii. “commercially reasonable costs and expenses”
- 2 iv. “reasonably anticipated and foreseeable costs and expenses”
- 3 v. “yield loss damages”
- 4 vi. “diminution in the value of the property”
- 5 vii. “substantially same condition”
- 6 viii. “an actual or potential hazard”
- 7 ix. “efficient”
- 8 x. “convenient”
- 9 xi. “endangered”
- 10 xii. “obstructed”
- 11 xiii. “injured”
- 12 xiv. “interfered with”
- 13 xv. “impaired”
- 14 xvi. “suitable crossings”
- 15 xvii. “where rock is encountered”
- 16 xviii. “as nearly as practicable”
- 17 xix. “pre-construction position”
- 18 xx. “pre-construction grade”
- 19 xxi. “various engineering factors”

20 Each one of these above terms and phrases as read in the context of the Easement
21 could be problematic in many ways. Notably, undefined terms tend to only get
22 definition in further legal proceedings after a dispute arises and the way the
23 Easement is drafted, TransCanada has sole power to determine when and if a
24 particular situation conforms with or triggers rights affected by these terms. For
25 instance, “yield loss damages” should be specifically defined and spelled out
26 exactly how the landowner is to be compensated and in what events on the front
27 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
28 the Landowner is without contractual rights to define these terms or determine
29 when rights related to them trigger and what the affects may be.

1 **Q: Do you have any other concerns about the Easement language that you can**
2 **think of at this time?**

3 A: I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q: Based upon what you have shared with the Commission above regarding**
6 **TransCanada's proposed Easement terms and agreement, do you believe**
7 **those to be reasonable or just, under the circumstances of the pipeline's**
8 **impact upon you and your land?**

9 A: No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q: Did TransCanada ever offer you financial compensation for the rights that**
12 **they sought to obtain in your land, and for what they sought to prevent you**
13 **and any future land owner of your property from doing in the future?**

14 A: Yes, we received an offer from them.

15 **Q: As the owner of the land in question and as the person who knows it better**
16 **than anyone else, do you believe that TransCanada offered you just, or fair,**
17 **compensation for all of what they proposed to take from you so that their tar**
18 **sands pipeline could be located across your property?**

19 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q: Has TransCanada at any time offered to compensate you annually, such as**
24 **wind farm projects do, for the existence of their potential tar sands pipeline**
25 **across your property.**

26 A: No, never.

27 **Q: At any time did TransCanada present you with or request that you, as the**
28 **owner of the land in question, sign and execute a document called, "Advanced**
29 **Release of Damage Claims and Indemnity Agreement?"**

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
3 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, it is.

5 **Q: What was your understanding of that document?**

6 A: When I read that document in the plain language of that document, it was my
7 understanding that TransCanada was attempting to pay me a very small amount at
8 that time in order for me to agree to give up my rights to be compensated from
9 them in the future related to any damage or impact they may have upon my
10 property “arising out of, in connection with, or alleged to resulted from
11 construction or surveying over, under or on” my land.

12 **Q: Did you ever sign that document?**

13 A: No, I did not.

14 **Q: Why not?**

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small
16 sum of money when I have no idea how bad the impacts or damages that they, or
17 their contractors, or subcontractors, or other agents or employees, may cause on
18 my land at any time in the future that resulted from the construction or surveying
19 or their activities upon my land.

20 **Q: When you reviewed this document, what did it make you feel?**

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
22 shield themselves against known and foreseeable impacts that their pipeline, and
23 the construction of it, would have upon my land. It made me feel that they knew it
24 was in their financial interest to pay me as little as possible to prevent me from
25 ever having the opportunity to seek fair compensation again, and that this must be
26 based upon their experience of unhappy landowners and situations in other places
27 where they have built pipelines.

1 **Q: Has TransCanada ever contacted you and specifically asked you if you**
2 **thought their proposed location of their proposed pipeline across your land**
3 **was in your best interest?**

4 A: No, they have not.

5 **Q: Has TransCanada ever contacted you and specifically asked you if you**
6 **thought their proposed location of their proposed pipeline across your land**
7 **was in the public interest of the State of Nebraska?**

8 A: No, they have not.

9 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
10 **Takings Clause?**

11 A: Yes, I am.

12 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
13 **an American citizens property?**

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 **Q: Has TransCanada ever contacted you specially to explain the way in which**
19 **the public could use its proposed Keystone XL Pipeline?**

20 A: No, they have not.

21 **Q: Can you think of any way in which the public, that is the citizens of the State**
22 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
23 **Pipeline, as it dissects the State of Nebraska?**

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
4 crude petroleum, or oil and petroleum by-products that you would like to
5 ship in its pipeline?**

6 A: No, it has not.

7 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
8 products that you, at this time or any time in the future, would desire to place
9 for transport within the proposed TransCanada Keystone XL Pipeline?**

10 A: No, I do not.

11 **Q: Do you know anyone in the state of Nebraska who would be able to ship any
12 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
13 products within the proposed TransCanada Keystone XL Pipeline?**

14 A: No, I do not. I've never heard of such a person or company like that.

15 **Q: Do you pay property taxes for the land that would be affected and impacted
16 at the proposed TransCanada Keystone XL Pipeline?**

17 A: Yes, I do.

18 **Q: Why do you pay property taxes on that land?**

19 A: Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q: Because you follow the law and pay property taxes, do you believe you
22 deserve any special consideration or treatment apart from any other person
23 or company that pays property taxes?**

24 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q: Do you believe the fact that you pay property taxes entitles you to special
27 treatment of any kind, or special rights of any kind?**

28 A: No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**
2 **enough to qualify you to have the power of eminent domain to take land of**
3 **your neighbors or other people in your county, or other people across the**
4 **state of Nebraska?**

5 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q: Have you at any time ever employed any person other than yourself?**

8 A: Well, yes I have.

9 **Q: Do you believe that the fact that you have, at some point in your life,**
10 **employed one or more other persons entitle you to any special treatment or**
11 **consideration above and beyond any other Nebraskan that has also employed**
12 **one or more persons?**

13 A: No, of course not.

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
15 **have at one point employed another person within this state, entitles you to**
16 **preferential treatment or consideration of any kind?**

17 A: No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
20 **crude oil pipeline in its preferred location, or ultimate location across the**
21 **state of Nebraska?**

22 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
23 or even bullied around and being made to feel scared that they did not have any
24 options but to sign whatever papers TransCanada told them they had to. I am
25 aware of folks being threatened that their land would be taken if they didn't follow
26 what TransCanada was saying. I am aware of tactics to get people to sign
27 easements that I don't believe have any place in Nebraska or anywhere such as
28 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
29 landowners and convince them they should sign TransCanada's easement

1 agreements. I am aware of older folks and widows or widowers feeling they had
2 no choice but to sign TransCanada's Easement and they didn't know they could
3 fight or stand up for themselves. From a more practical standpoint, I am worried
4 that according to their answer to our Interrogatory No. 211, TransCanada only
5 owns and operates one (1) major oil pipeline. They simply do not have the
6 experience with this type of pipeline and that scares me. There are others but that
7 is what I can recollect at this time and if I remember more or my recollection is
8 refreshed I will share those with the Commissioners at the Hearing in August.

9 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
10 **landowner is reasonable or just?**

11 A: No, I do not.

12 **Q: Do you have any concern about limitations that the construction of this**
13 **proposed pipeline across your affected land would prevent construction of**
14 **future structures upon the portion of your land affected by the proposed**
15 **easement and immediately surrounding areas?**

16 A: Well yes, of course I do. We would not be able to build many, if any, types of
17 structures directly across or touching the easement, and it would be unwise and I
18 would be uncomfortable to build anything near the easement for fear of being
19 blamed in the future should any damage or difficulty result on my property in
20 regards to the pipeline.

21 **Q: Do you think such a restriction would impact you economically?**

22 A: Well yes, of course.

23 **Q: How do you think such a restriction would impact you economically?**

24 A: The future of this land may not be exactly how it's being used as of this moment,
25 and having the restrictions and limiting my ability to develop my land in certain
26 ways presents a huge negative economic impact on myself, my family, and any
27 potential future owner of the property. You have no idea how I or the future owner
28 may want to use this land in the future or the other land across Nebraska
29 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years

1 ago it would have been hard to imagine all the advances that we have now or how
2 things change. Because the Easement is forever and TransCanada gets the rights in
3 my land forever we have to think with a very long term view. By placing their
4 pipeline on under across and through my land that prevents future development
5 which greatly negatively impacts future taxes and tax revenue that could have
6 been generated by the County and State but now will not. When you look at the
7 short blip of economic activity that the two years of temporary construction efforts
8 may bring, that is far outweighed by the perpetual and forever loss of opportunity
9 and restrictions TransCanada is forcing upon us and Nebraska. The terms of the
10 easement must be addressed in order for the Commission to truly consider
11 property rights, economic interests, the welfare of Nebraska, and the balancing of
12 the proposed routes against all they will affect and impact.

13 **Q: Do you have any concerns about the environmental impact of the proposed**
14 **pipeline?**

15 A: Yes, I do.

16 **Q: What are some of those concerns?**

17 A: As an affected land owner and Nebraskan, I am concerned that any construction,
18 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
19 a detrimental impact upon the environment of my land specifically, as well as the
20 lands near my land and surrounding the proposed pipeline route.

21 **Q: Do you have any other environmental concerns?**

22 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
23 construction and/or maintenance and operation. I am concerned about spills and
24 leaks that TransCanada has had in the past and will have in the future. This could
25 be catastrophic to my operations or others and to my county and the State.

26 **Q: Do you have any thoughts regarding if there would be an impact upon the**
27 **natural resources on or near your property due to the proposed pipeline?**

28 A: Yes, I believe that any construction, operation, and/or maintenance of the
29 proposed Keystone XL Pipeline would have detrimental impacts upon the natural

1 resources of my land, and the lands near and surrounding the proposed pipeline
2 route.

3 **Q: Do you have any worries about potential impacts from the proposed pipeline**
4 **to the soil of your land, or land near you?**

5 A: Yes, I believe that any construction, operation, and/or maintenance of the
6 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
7 land, as well as land along and surrounding the proposed pipeline route. This
8 includes, but is not limited to, the reasons that we discussed above of disturbing
9 the soil composition and makeup as it has naturally existed for thousands and
10 millions of years during the construction process, and any future maintenance or
11 removal process. I'm gravely concerned about the fertility and the loss of
12 economic ability of my property to grow the crops, or grow the grasses, or grow
13 whatever it is at that time they exist on my property or that I may want to grow in
14 the future, or that a future owner may want to grow. The land will never be the
15 same from as it exists now undisturbed to after it is trenched up for the proposed
16 pipeline.

17 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
18 **upon the groundwater over your land, or surrounding lands?**

19 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
20 the proposed Keystone XL Pipeline would have a detrimental impact upon the
21 groundwater of not only under my land, but also near and surrounding the pipeline
22 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
23 simple and it is simply too valuable to our State and the country to put at
24 unreasonable risk.

25 **Q: Do you have any concern about the potential impact of the proposed pipeline**
26 **upon the surface water on, or near or around your land?**

27 A: Yes, I have significant concerns that any construction, operation, and/or
28 maintenance of the proposed Keystone XL Pipeline would have detrimental
29 impact upon the surface water of not only within my property boundary, but along

1 and near and surrounding the pipeline route, and in fact, across the state of
2 Nebraska.

3 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
4 **upon the wildlife and plants, other than your growing crops on or near your**
5 **land?**

6 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
7 the proposed Keystone XL Pipeline would have a detrimental impact upon the
8 wildlife and the plants, not only that are located on or can be found upon my land,
9 but also near and along the proposed pipeline route.

10 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
11 **fair market value of your land?**

12 A: Yes, I do. I am significantly concerned about how the existence of the proposed
13 pipeline underneath and across and through my property will negatively affect the
14 fair market value at any point in the future, especially at that point in which I
15 would need to sell the property, or someone in my family would need to sell the
16 property. I do not believe, and certainly would not be willing to pay, the same
17 price for land that had the pipeline located on it, versus land that did not. I hope
18 there is never a point where I'm in a position where I have to sell and have to
19 realize as much value as I can out of my land. But because it is my single largest
20 asset, I'm gravely concerned that the existence of the proposed Keystone XL
21 Pipeline upon my land will affect a buyer's willingness to pay as much as they
22 would've paid and as much as I could've received, if the pipeline were not upon
23 my property. There are just too many risks, unknowns, impacts and uncertainties,
24 not to mention all of the rights you give up by the nature of having the pipeline
25 due to having the easement that we have previously discussed, for any reasonable
26 person to think that the existence of the pipeline would not negatively affect my
27 property's value.

28 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
29 **testimony?**

1 A: Yes, I have.

2 **Q: Where have you seen that before?**

3 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
4 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
5 believe the portion of the alternative route in Nebraska essentially twins or
6 parallels Keystone I.

7 **Q: Do you believe the portion of the proposed pipeline route within Nebraska as
8 found in Attachment No. 6 to your testimony, is in the public interest of
9 Nebraska?**

10 A: No, I do not.

11 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its
12 Application, and as found on Attachment No. 7, here to your testimony, is in
13 the public interest of Nebraska?**

14 A: No, I do not.

15 **Q: Do you believe that the Keystone mainline alternative route as shown on
16 Attachment No. 7 included with your testimony here is a major oil pipeline
17 route that 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 was
27 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: Have you fully expressed each and every opinion, concern, or fact you would**
4 **like the Public Service Commissioners to consider in their review of**
5 **TransCanada's Application?**

6 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
7 document below but other things may come to me or my memory may be
8 refreshed and I will add and address those things at the time of the Hearing in
9 August and address any additional items at that time as is necessary. Additionally,
10 I have not had an adequate amount of time to receive and review all of
11 TransCanada's answers to our discovery and the discovery of others so it was
12 impossible to competently and completely react to that in my testimony here and I
13 reserve the right to also address anything related to discovery that has not yet
14 concluded as of the date I signed this document below. Lastly, certain documents
15 requested have not yet been produced by TransCanada and therefore I may have
16 additional thoughts on those I will also share at the hearing as needed.

17 **Q: What is it that you are requesting the Public Service Commissioners do in**
18 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
19 **across Nebraska?**

20 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
21 a temporary job spike that this project may bring to a few counties and beyond the
22 relatively small amount of taxes this proposed foreign pipeline would possibly
23 generate. And, instead think about the perpetual and forever impacts of this
24 pipeline as it would have on the landowners specifically, first and foremost, but
25 also thereby upon the entire state of Nebraska, and to determine that neither the
26 preferred route nor the Keystone mainline alternative route are in the public
27 interest of the citizens of the state of Nebraska. And if the Commissioners were
28 inclined to modify TransCanada's proposed routes and were to be inclined to grant
29 an application for a route in Nebraska, that the only potential route that would

1 make any intelligent sense whatsoever would be twinning or near paralleling of
2 the proposed KXL with the existing Keystone I pipeline. The point of including
3 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been
4 considered by TransCanada before. It simply does not make sense to add yet
5 another major oil pipeline crisscrossing our state creating new pumping stations,
6 creating new impacts on additional counties and communities and going through
7 all of the court processes with myself and other landowners like me when this
8 applicant already has relationships with the landowners, the towns and the
9 communities along Keystone I, and that Keystone I is firmly outside of the sand
10 hills and a significantly further portion away from the heart of the Ogallala
11 Aquifer than the preferred route or the Keystone mainline alternative route.

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.

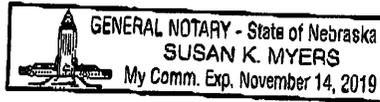
16 **Q: Thank you, I have no further questions at this time and reserve the right to**
17 **ask you additional questions at the August 2017 Hearing.**

Jill Hipke

Jill R. Hipke

Subscribed and Sworn to me before this 30th day of May, 2017.

Notary Public



Susan K Myers

Attachment No. 1

PREPARED BY
exp Energy Services Inc.



S.029
T.033 N
R.015 W

S.028
T.033 N
R.015 W

S.032
T.033 N
R.015 W

S.033
T.033 N
R.015 W
Jill Hipke
R. Wynn Hipke

Jill Hipke
R. Wynn Hipke

S.005
T.032 N
R.015 W

S.004
T.032 N
R.015 W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Jill Hipke
R. Wynn Hipke

TRACT NO. ML-NE-HT-40100.000
STATE: Nebraska
COUNTY: Holt
SECTION: 033
TOWNSHIP: 033N
RANGE: 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\6358\KEYSTONE_XL\600_999536

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-HT-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**") **R. Wynn Hipke and Jill Renee Hipke, husband and wife, as joint tenants**, whose mailing address is 89450 469th Avenue, Stuart, NE 68780 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline 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 440 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the W1/2, W1/2 of the NE1/4, and the NE1/4 of the SE1/4 of Section 33, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 188, Page 29, Book 180, Page 131, and Book 179, Page 742 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):

R. Wynn Hipke

Jill Renee Hipke

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

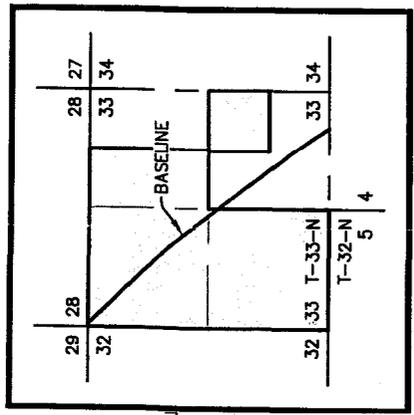
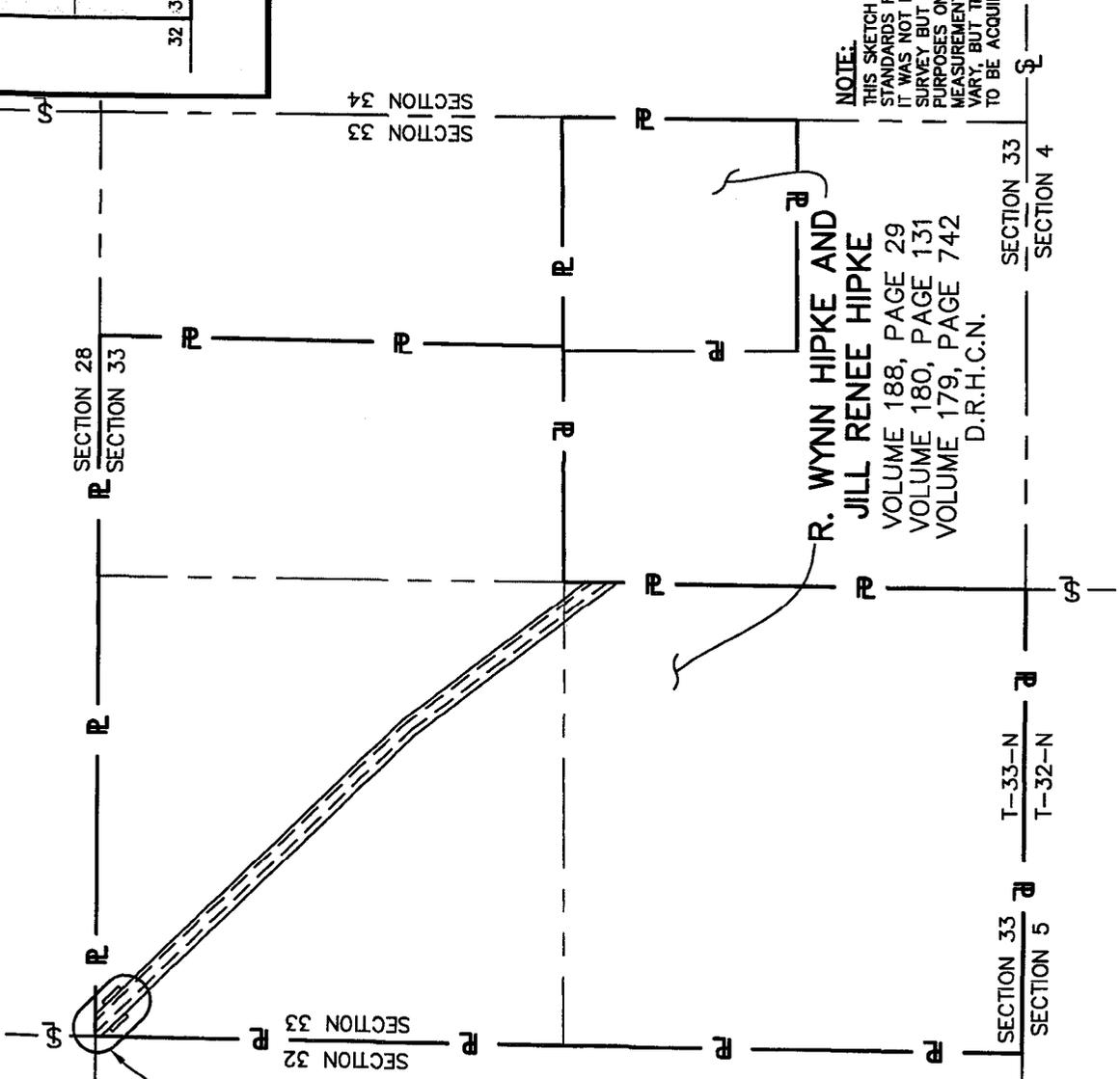
HOLT COUNTY, NEBRASKA

T-33-N, R-15-W, SECTION 33

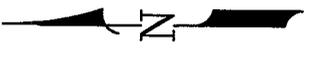
ML-NE-HT-40100.000

LEGEND:
 P PROPERTY LINE
 S SECTION LINE
 PR 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

SEE DETAIL "A"



VICINITY MAP
N.T.S.



SCALE: 1" = 1,000'

TRACT LEGAL DESCRIPTION:
 W/2, W/2 NE/4, NE/4 SE/4 OF
 SECTION 33, T-33-N, R-15-W

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

R. WYNN HIPKE AND
 JILL RENEE HIPKE
 VOLUME 188, PAGE 29
 VOLUME 180, PAGE 131
 VOLUME 179, PAGE 742
 D.R.H.C.N.

TransCanada <i>In business to deliver.</i>	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
R. WYNN HIPKE AND	
JILL RENEE HIPKE	
ML-NE-HT-40100.000	
PROJECT:	XL EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3649
NO.	REVISION
DATE	DATE
SCALE	DATE
1" = 1000'	11/04/14
CHECKED BY:	JN
DRAWN BY:	ALS

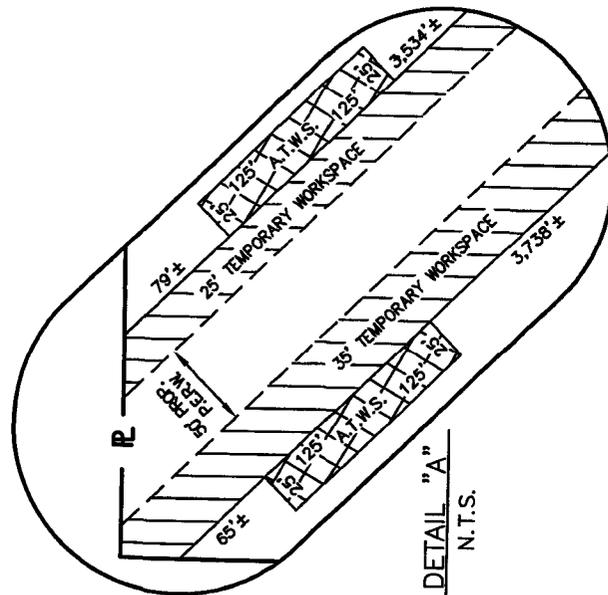
TOTAL DISTANCE ACROSS PROPERTY: 3,824'±
 AREA OF PERMANENT EASEMENT: 4.4 ACRES
 AREA OF TEMPORARY WORKSPACE: 5.3 ACRES
 ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.1 ACRE



HOLT COUNTY, NEBRASKA

T-33-N, R-15-W, SECTION 33
ML-NE-HT-40100.000

LEGEND
 P PROPERTY LINE
 PR PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



DETAIL "A"
N.T.S.

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

 TransCanada <i>in business to deliver.</i>	
KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF R. WYNN HIPKE AND JILL RENEE HIPKE ML-NE-HT-40100.000	
PROJECT:	XL EXHIBIT A
APPROVED BY:	SLR
DRAWING NUMBER:	XL-08-ML-SK-3649
NO.	REVISION
DATE	DATE
SCALE	N.T.S.
CHECKED BY:	JN
DRAWN BY:	JN
CHECKED BY:	ALS



Attachment No. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 4

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-40100.000

I/we R. Wynn Hipke and Jill Renee Hipke, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Five Hundred Forty Eight Dollars and No Cents (\$2,548.00), 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 amage 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:

W/2, W/2NE/4, NE/4 SE/4

Section 33, Township 33-N, Range 15-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_____.

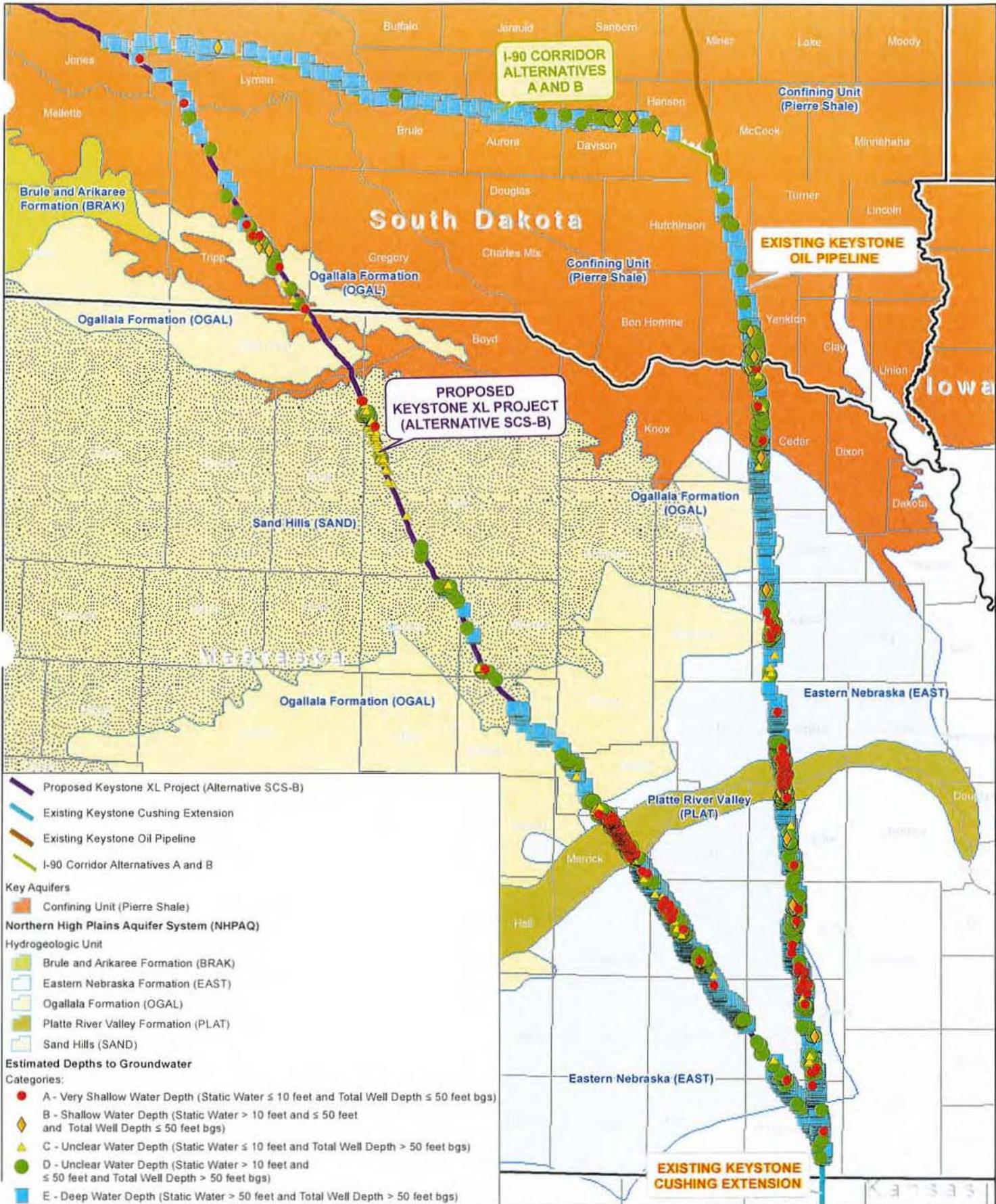
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 5



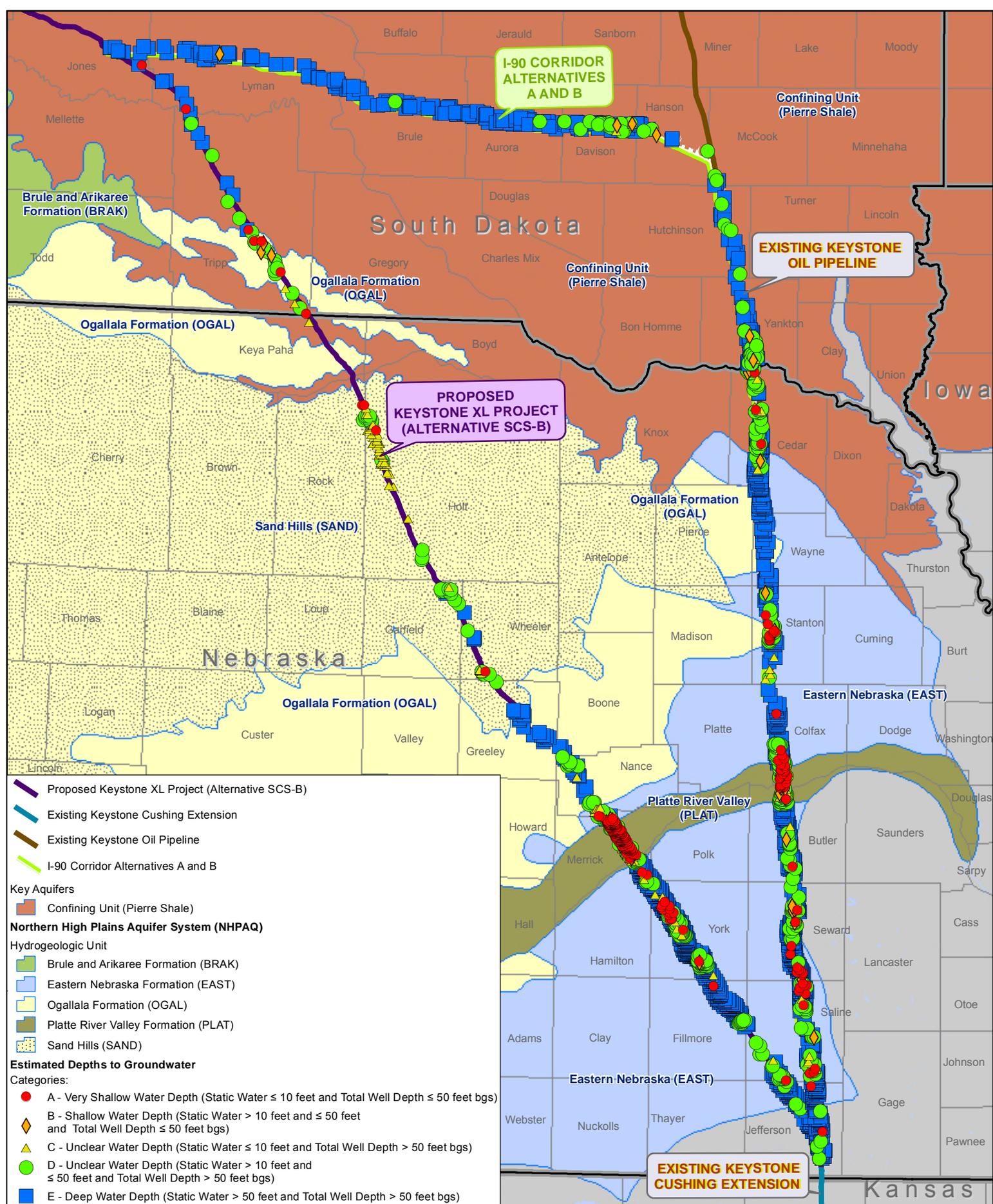
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

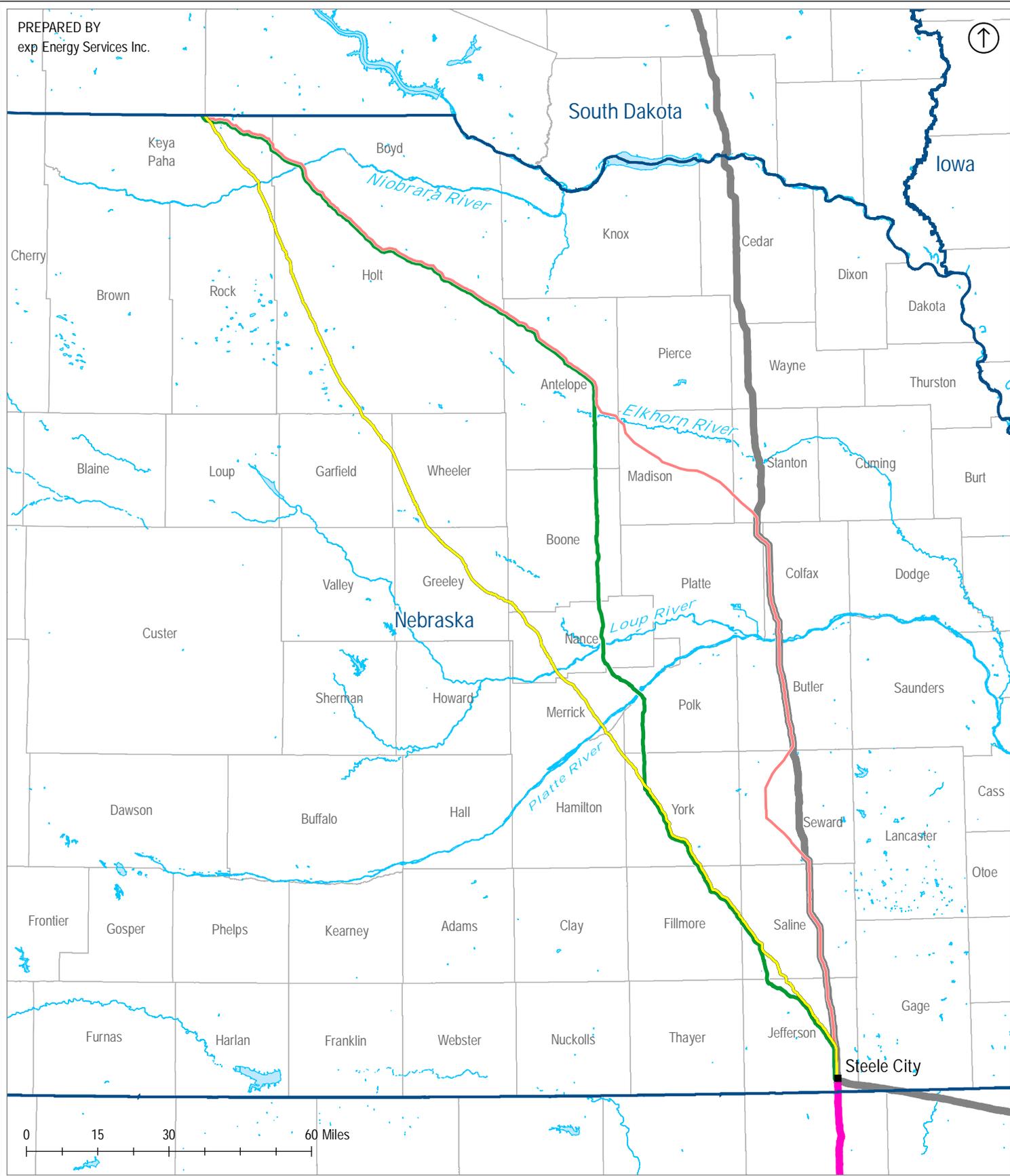
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

Figure 4.3.3-8
 I-90 Corridor Alternatives A and B
 Key Aquifers and Potable Water Wells
 within 2-mile Corridor

Attachment No. 6



LEGEND	
	PREFERRED ROUTE
	SANDHILLS ALTERNATIVE ROUTE
	KEYSTONE MAINLINE ALTERNATIVE ROUTE
	KEYSTONE MAINLINE (PHASE I)
	KEYSTONE CUSHING EXTENSION (PHASE II)
	WATERBODY
	STATE BOUNDARY
	COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

**Direct Testimony of
Lloyd Hipke in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Lloyd Hipke.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located at 47121 894th RD, Stuart, NE 68780 in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

1 A: I background and pasture cattle. I farm corn and forage crops for our cattle and
2 put up hay and alfalfa. Trucking livestock and agricultural products supplements
3 my income.

4 **Q: If you are married tell us your spouse's name please?**

5 A: Vencille.

6 **Q: If you have children how many do you have?**

7 A: We have 3 Sons. Cody, his wife and daughter live on the same place as us in a
8 second house. Paul, Logan, their wives and our other 4 Grandchildren live within
9 the close vicinity of our Home place.

10 **Q: If you have grandchildren how many do you have?**

11 A: We have five Grandchildren.

12 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you
13 and or your family?**

14 A. Yes. Since this picture was taken we have two more Grandbabies.

15 **Q: For the land that would be affected and impacted by the proposed KXL tar
16 sands pipeline give the Commissioners a sense how long the land has been in
17 your family and a little history of the land.**

18 A: Over 45 years. I inherited this land from my Dad and Mom. It is where I have
19 lived since returning from Military Service in 1973, some 43 years ago. It is the
20 base for my Ranching, Farming and Trucking operations.

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. Besides me and my wife, this land helps support our 3 sons, who are
26 employed by us. All 3 of our sons have returned to work for us after attending
27 college. Cody served in the Army before he went to College. So they all moved
28 away from home for a while and have all decided this is where they wanted to
29 come back to settle to make their living and raise their families. I feel beings they

1 have made this commitment that it is our obligation to preserve and protect our
2 land for them and their offspring and future generations of our family.

3 **Q: Have you ever in the past or have you thought about in the future leasing all
4 or a portion of your land in question here?**

5 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
6 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
7 all the restrictions and risks and potential negative impacts to farming or ranching
8 operations as opposed to land that did not have those same risks. If I was looking
9 to lease or rent ground I would pay more for comparable non-pipeline land than I
10 would for comparable pipeline land and I think most folks would think the same
11 way. This is another negative economic impact that affects the landowner and the
12 county and the state and will forever and ever, should TransCanada's preferred or
13 mainline alternative routes be approved. If they were to twin or closely parallel to
14 Keystone I the vast majority of landowners would be those that already have a
15 pipeline so there would be considerable less new incremental negative impacts.

16 **Q: Do you have similar concerns about selling the land?**

17 A: Well I hope not to have to sell the land in my lifetime but times change and you
18 never know what is around the corner and yes I am concerned that if another piece
19 of ground similar to mine were for sale and it did not have the pipeline and mine
20 did that I would have a lower selling price. I think this would be true for pipeline
21 ground on both the preferred and mainline alternative routes.

22 **Q: What is your intent with your land after you die?**

23 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
24 to come, but I have thought about getting out if this pipeline were to come
25 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: Please describe your property that would be impacted by the potential**
2 **TransCanada's Keystone XL Pipeline?**

3 A: This is my Home place, where all the buildings and facilities are located. This
4 pipeline would cross both farmland and pastureland. It comes within a few feet of
5 our house well. The pipeline would dissect springs of water that flow into a dam
6 where all of our water for our cattle operation comes from. We background and
7 pasture over 1000 head of cattle per year and a leak into these springs or the dam
8 would be devastating to my operation. The reason we use the dam for watering
9 cattle is because we cannot get a well with sufficient volume to support the
10 number of cattle we run. Good wells are hard to get in our area. Water is essential
11 to our operation and we need to protect it to stay in business.

12 **Q: Where on your property does the proposed route run through?**

13 A: The proposed route comes within a few feet of our domestic well and would be
14 located in the recharge field that supplies our drinking water. Water flows from
15 West to East and the proposed pipeline would be located West of this well. So if
16 there ever was a leak, the natural flow of water would bring the contamination
17 right into our drinking water.

18 **Q: Will this affect how you go about your lives on a daily basis?**

19 A: We don't feel we could ever feel safe about drinking or bathing in this water in the
20 future years without daily or at least weekly testing of the water in the event of an
21 underground compromise of the pipe (a leak that would go undetected below the
22 surface).

23 **Q: Is this well private or public?**

24 A: This is a private well.

25 **Q: Was this well registered when TransCanada chose the route?**

26 A: It was not registered as it was not required back in the day this well was drilled.
27 When Trans Canada chose this route I'm sure they did not take it into account.

28 **Q: Did you notify TransCanada upon learning that the well was on their route?**

1 **A:** When we learned that this well was on their route we called Trans Canada and
2 invited them to inspect the location of the well on the maps and from the road.

3 **Q:** **When did you notify TransCanada?**

4 **A:** This was sometime in February 2013.

5 **Q:** **Do you remember the name(s) of the land agents that visited you that day?**

6 **A:** Yes, and we still possess two Company cards given to us from Brock Taylor &
7 Van Shepardson who were land agents on behalf of TransCanada here that day.

8 **Q:** **How many other people were at the meeting?**

9 **A:** There were close to 10 people at this meeting and we know that at least one of
10 them was an Engineer, however he did not give us his card. We thought by them
11 actually "seeing" our well they might vary the route away from the well and we
12 did show them on the maps a better route, which they briefly went to see.

13 **Q:** **Did you receive any correspondence from TransCanada after the meeting?**

14 **A:** Later, after this meeting we received two other mail correspondences

15 **Q:** **What were enclosed with the two correspondences?**

16 **A:** Potential route maps from TransCanada

17 **Q:** **Did the routes vary to avoid the well?**

18 **A:** They did not vary the route at all to avoid this well.

19 **Q:** **Did you contact another agency to speak with them about the well issue?**

20 **A:** Yes, the Nebraska Department of Environmental Quality.

21 **Q:** **What did the NDEQ tell you?**

22 **A:** We were told TransCanada would probably just drill us a new well.

23 **Q:** **Even if that were true, does drilling a new well cause a problem for your**
24 **land?**

25 **A:** Yes. The problem with drilling a new well is that it is near impossible to get a
26 "Good" well in our area, North of Stuart as any well man from this area will
27 testify, so we don't feel that is an option and certainly not an acceptable option. It
28 is too risky to sacrifice what we have now that we know is good and working.

1 **Q: Has TransCanada contacted you, since your initial meeting, about an**
2 **alternate route away from the well?**

3 **A:** To this day we have not seen any evidence or heard from TransCanada that they
4 have varied their route away from our well.

5 **Q: Is the well currently registered?**

6 **A:** Just recently we filed papers to register the well but have not received
7 confirmation from the State that it is done. How many other unregistered wells
8 does this proposed route not take into consideration?

9 **Q: Does the proposed route affect the water for your cattle as well?**

10 **A:** The proposed route dissects vital springs of water that flows into a dam that we
11 use to water our cattle with.

12 **Q: How many feeder cattle use the vital springs as their source of water?**

13 **A:** There are times when our feedlot numbers are up to 1000 head of feeder cattle that
14 use from this water source.

15 **Q: What happens to your cattle operation if the springs of water get**
16 **contaminated?**

17 **A:** If the springs of water that fill this dam becomes disrupted or contaminated our
18 Cattle operation will be compromised to the point of non-existence.

19 **Q: Are there other springs of water that your cattle drink out of?**

20 **A:** There are other springs of water farther out in the pastures that are dissected as
21 well and these flow into creeks & streams that our pasture cattle water out of.

22 **Q: How does the proposed route cut across your land?**

23 It is a diagonal cut across our land.

24 **Q: Does that raise any concerns to you?**

25 **A:** Yes, this also concerns us as to the use of ALL of the pastureland if they require
26 the fencing out of the pipeline, either for the "healing" process of new grasses
27 planted or to permanently keep cattle away from the pipeline.

28 **Q: How many pastures will the route affect?**

29 **A:** Two separate pastures

- 1 **Q: How will they be affected?**
- 2 **A:** They would be cut across diagonally and the land not on the side of the water
3 source would become useless without a water source. The land would take a lot of
4 years to "heal" and be back to full potential, probably just to be dug up again in the
5 event of a leak or pipe replacement. We will lose use of a lot of our pasture land
6 and that means lost productive ground and lost income. And this will be forever
7 after TransCanada is long gone. Remember they want us to sign an easement that
8 is "Perpetual" and to their "assigns or successors" which means FOREVER!
- 9 **Q: Does the pipeline run through any objects that will affect your land?**
- 10 **A:** Out in the pastureland are huge rocks which the proposed route would cross
11 thru. It is to our understanding that TransCanada would not have to bury the pipe
12 as deep thru these areas.
- 13 **Q: Do you have any concerns about this?**
- 14 **A:** This concerns us as to the heating up of the soil because the pipe is nearer to the
15 surface and the "healing" of the land so that it could ever be pastured again. The
16 inability of the land to heal will be followed by erosion on the
17 uneven surfaces. Also these rocks are constantly moving and emerging so the
18 possibility of them pushing into the pipe causing a rupture is possible, esp. during
19 an earthquake (we've felt them out here before!).
- 20 **Q: Will the value of your land decrease with the pipeline running through it?**
- 21 **A:** We have concerns as to the devaluation of our land. We have heard about banking
22 institutions that are not loaning money and devaluing land on this proposed route.
- 23 **Q: How does this affect the financial stability of your family and business?**
- 24 **A:** This greatly affects our Financial as this land is the soul of our operation, where all
25 the buildings and feedlots are located (our Homeplace). Our hope is to pass this
26 land on down to our three sons but their Financials too will FOREVER devalued.
- 27 **Q: Do you have any concerns as to the safety of the pipeline?**
- 28 **A:** There are multiple concerns for us as to the Safety of this pipeline

1 **Q: Do you have any concerns that TransCanada may abandon the pipeline when**
2 **it is completed?**

3 **A:** Yes, this is extremely concerning about the ability for TransCanada to abandon the
4 dirty pipe in the ground whenever they want.

5 **Q: What are your concerns?**

6 **A:** We can't afford to take it out. They probably wouldn't even let us if we could.
7 And they are not offering to pay for their luxury of leaving it in place.

8 **Q: Do you have any concerns that the pipeline may contaminate your neighbors**
9 **land?**

10 **A:** We are concerned about Liability issues if the pipeline on our land contaminates
11 our neighbors land. We cannot afford the Insurance or the cleanup costs if there is
12 a leak on our land that affects our neighbors or our land. We should not have to be
13 liable for Trans Canada's operation of this pipeline. I'm sure there will be
14 more concerns about this pipeline as we go forward, but these are the main ones I
15 have at this time.

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: I have a number of significant concerns and worries about the document and how
29 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 a monthly, bi-annual, or at least an annual loss in
27 tax revenue collection on the money I would be paid and then pay taxes on and
28 contribute to this state and this country. It is money I would be putting back into
29 my local community both spending and stimulating the local economy and

1 generating more economic activity right here. Instead TransCanada's shareholders
2 keep all that money and it never finds its way to Nebraska.

3 **Q: What is your next concern?**

4 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
5 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
6 limited partnership..." and I have no idea who that really is. I have no idea who is
7 forcing this pipeline on us or who the owners of the entities are, or what are the
8 assets backing this limited partnership, or who the general partner is, or who all
9 the limited partners are, and who makes up the ownership of the these partners or
10 the structure or any of the basic things you would want to know and understand if
11 you would want to do business with such an outfit. According to TransCanada's
12 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
13 liability company called TransCanada Keystone Pipeline GP, LLC is the general
14 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
15 basically nothing. That is really scary since the general partner has the liability but
16 virtually none of the ownership and who knows if it has any other assets.

17 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
18 **percent clear on exactly who could become the owner of over 275 miles of**
19 **Nebraska land?**

20 A: No.

21 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
22 **percent clear on exactly who will be operating and responsible for**
23 **approximately 275 miles of tar sands pipeline underneath and through**
24 **Nebraska land?**

25 A: No.

26 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
27 **and the State of Nebraska of TransCanada's easement terms.**

28 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
29 called "Grantee")..." and this concerns me because it would allow their easement

1 to be transferred or sold to someone or some company or country or who knows
2 what that I don't know and who we may not want to do business with. This
3 pipeline would be a huge asset for TransCanada and if they can sell to the highest
4 bidder that could have terrible impacts upon all of Nebraska depending upon who
5 may buy it and I don't know of any safeguards in place for us or the State to veto
6 or have any say so in who may own, operate, or be responsible for this pipeline in
7 the future.

8 **Q: Do you think that type of uncertainty and lack of control over a major piece**
9 **of infrastructure crossing our State is in the public interest?**

10 A: No, certainly not, in fact, just the opposite.

11 **Q: What's next?**

12 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
13 really concerns me. Why does the easement and right-of-way have to be perpetual
14 and permanent? That is the question myself and my family want an answer to.
15 Perpetual to me is like forever and that doesn't make sense.

16 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

17 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
18 data proving there is a perpetual supply of tar sands. I am not aware in
19 TransCanada's application where it proves there is a perpetual necessity for this
20 pipeline. My understanding of energy infrastructure like wind towers is they have
21 a decommission plan and actually take the towers down when they become
22 obsolete or no longer needed. Nothing manmade lasts forever. My land however
23 will, and I want my family or future Nebraska families to have that land as
24 undisturbed as possible and it is not in my interest or the public interest of
25 Nebraska to be forced to give up perpetual and permanent rights in the land for
26 this specific kind of pipeline project.

27 **Q: Okay, what is your next concern?**

28 A: The easement language includes all these things TransCanada can do and it says
29 "...abandoning in place..." so they can just leave this pipeline under my ground

1 until the end of time just sitting there while they are not using it, but I am still
2 prevented from doing on my land and using my land what I would like. If I owned
3 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
4 there. It doesn't make sense and it scares me and it is not in my interest or the
5 public interest of Nebraska to allow this.

6 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
7 **right?**

8 A: Yes.

9 **Q: So now on the second page of the Easement what are your concerns?**

10 A: Here the Easement identifies a 24-month deadline to complete construction of the
11 pipeline but has caveats that are undefined and ambiguous. The 24-month period
12 starts to run from the moment "actual pipeline installation activities" begin on
13 Landowners property. It appears that TransCanada would define this phrase as
14 needed. It would be wise to explain what types of TransCanada action constitutes
15 "installation activity" For instance, would the placement and storage of an
16 excavator or other equipment on or near the Easement property be an activity or
17 would earth have to be moved before the activity requirement is triggered. This
18 vague phrase is likely to lead to future disputes and litigation that is not in the best
19 interest of the welfare of Nebraska and would not protect property interests. The
20 24-months can also be extended in the case of "force majeure." My understanding
21 is that force majeure is often used to insulate a party to a contract when events
22 occur that are completely out of their control. In TransCanada's easement this is
23 expanded to include "without limitation...availability of labor and materials."
24 Extending this language to labor and materials is problematic because these are
25 two variables that TransCanada does have some or significant control over and to
26 allow extension of the 24-month period over events not truly out of the control of
27 TransCanada and without further provision for compensation for the Landowner is
28 not conducive to protection of property rights.

29 **Q: Okay, what is your next concern?**

1 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
2 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
3 reasonable costs and expenses” will pay for damages caused but then limits
4 TransCanada’s liability to certain circumstances. There is no definition of
5 “commercially reasonable” and no stated right that the Landowner would get to
6 determine the amounts of cost or expense that is “commercially reasonable.”
7 TransCanada excepts out from their liability any damages that are caused by
8 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
9 Landowner. It is understandable that if the Landowner were to willfully and
10 intentionally cause damages to the pipeline that Landowner should be liable.
11 However, anything short of willful misconduct should be the liability of
12 TransCanada who is subjecting the pipeline on the Landowner and who is making
13 a daily profit from that pipeline. When evaluating the impact on property rights of
14 this provision, you must consider the potentially extremely expensive fight a
15 Landowner would have over this question of whether or not damage was an act of
16 negligence. Putting this kind of potential liability upon the Landowner is
17 incredibly problematic and is detrimental to the protection of property rights. I
18 don’t think this unilateral power which I can’t do anything about as the landowner
19 is in the best economic interest of the land in question or the State of Nebraska for
20 landowners to be treated that way.

21 **Q: Is there any specific event or example you are aware of that makes this**
22 **concern more real for you?**

23 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
24 Nemaha County, Nebraska landowner farmers who accidentally struck two
25 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
26 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
27 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
28 copy of the Federal Court Complaint is here as **Attachment No. 4.**

29 **Q: What is your next concern with the Easement language?**

1 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
2 they choose unless 1) any Landowner use interferes in any way with
3 TransCanada's exercise of any of its rights within the Easement, or 2)
4 TransCanada decides to take any action on the property it deems necessary to
5 prevent injury, endangerment or interference with anything TransCanada deems
6 necessary to do on the property. Landowner is also forbidden from excavating
7 without prior authorization by TransCanada. So my understanding is that
8 TransCanada will unilaterally determine what Landowner can and can't do based
9 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
10 could also completely deny my request to excavate. Further, TransCanada retains
11 all "privileges necessary or convenient for the full use of the rights" granted to
12 them in the Easement. Again, TransCanada unilaterally can decide to the
13 detriment of the property rights of Landowner what TransCanada believes is
14 necessary or convenient for it. And there is no option for any additional
15 compensation to landowner for any right exercised by TransCanada that leads to
16 the removal of trees or plants or vegetation or buildings or structures or facilities
17 owned by Landowner of any kind. Such undefined and unilateral restrictions and
18 rights without having to compensate Landowner for such further destruction or
19 losses are not conducive to the protection of property rights or economic interest.

20 **Q: What is the next concern you have?**

21 A: The Easement also allows some rights for Landowner but restricts them at the
22 same time and again at the sole and unilateral decision making of TransCanada.
23 TransCanada will determine if the actions of Landowner might in anyway
24 endanger or obstruct or interfere with TransCanada's full use of the Easement or
25 any appurtenances thereon to the pipeline itself or to their access to the Easement
26 or within the Easement and TransCanada retains the right at any time, whether
27 during growing season or not, to travel "within and along Easement Area on foot
28 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
29 retain the rights to prevent any landowner activity that it thinks may "unreasonably

1 impair[ed] or 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 is not conducive to the protection of property rights. A
17 shallow pipeline is much more likely to become a danger and liability in the future
18 given farming operations and buried irrigation lines and other factors common to
19 the current typical agricultural uses of the land in question impacted by
20 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 the 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 against us.

13 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
14 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

15 A: Yes, it is.

16 **Q: What was your understanding of that document?**

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 **Q: Did you ever sign that document?**

24 A: No, I did not.

25 **Q: Why not?**

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you
12 thought their proposed location of their proposed pipeline across your land
13 was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you
16 thought their proposed location of their proposed pipeline across your land
17 was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
20 Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of
23 an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which
29 the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 **Q: Can you think of any way in which the public, that is the citizens of the State**
3 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
4 **Pipeline, as it dissects the State of Nebraska?**

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
13 **crude petroleum, or oil and petroleum by-products that you would like to**
14 **ship in its pipeline?**

15 A: No, it has not.

16 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
17 **products that you, at this time or any time in the future, would desire to place**
18 **for transport within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not.

20 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
21 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
22 **products within the proposed TransCanada Keystone XL Pipeline?**

23 A: No, I do not. I've never heard of such a person or company like that.

24 **Q: Do you pay property taxes for the land that would be affected and impacted**
25 **at the proposed TransCanada Keystone XL Pipeline?**

26 A: Yes, I do.

27 **Q: Why do you pay property taxes on that land?**

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q: Because you follow the law and pay property taxes, do you believe you**
2 **deserve any special consideration or treatment apart from any other person**
3 **or company that pays property taxes?**

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q: Do you believe the fact that you pay property taxes entitles you to special**
7 **treatment of any kind, or special rights of any kind?**

8 A: No, of course not.

9 **Q: Do you believe the fact that you pay property taxes on your land would be**
10 **enough to qualify you to have the power of eminent domain to take land of**
11 **your neighbors or other people in your county, or other people across the**
12 **state of Nebraska?**

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q: Have you at any time ever employed any person other than yourself?**

16 A: Well, yes I have.

17 **Q: Do you believe that the fact that you have, at some point in your life,**
18 **employed one or more other persons entitle you to any special treatment or**
19 **consideration above and beyond any other Nebraskan that has also employed**
20 **one or more persons?**

21 A: No, of course not.

22 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
23 **have at one point employed another person within this state, entitles you to**
24 **preferential treatment or consideration of any kind?**

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
28 **crude oil pipeline in its preferred location, or ultimate location across the**
29 **state of Nebraska?**

1 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
2 or even bullied around and being made to feel scared that they did not have any
3 options but to sign whatever papers TransCanada told them they had to. I am
4 aware of folks being threatened that their land would be taken if they didn't follow
5 what TransCanada was saying. I am aware of tactics to get people to sign
6 easements that I don't believe have any place in Nebraska or anywhere, such as
7 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
8 landowners and convince them they should sign TransCanada's easement
9 agreements. I am aware of older folks and widows or widowers feeling they had
10 no choice but to sign TransCanada's Easement and they didn't know they could
11 fight or stand up for themselves. From a more practical standpoint, I am worried
12 that according to their answer to our Interrogatory No. 211, TransCanada only
13 owns and operates one (1) major oil pipeline. They simply do not have the
14 experience with this type of pipeline and that scares me. There are others but that
15 is what I can recollect at this time and if I remember more or my recollection is
16 refreshed I will share those with the Commissioners at the Hearing in August.

17 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
18 **landowner is reasonable or just?**

19 A: No, I do not.

20 **Q: Do you have any concern about limitations that the construction of this**
21 **proposed pipeline across your affected land would prevent construction of**
22 **future structures upon the portion of your land affected by the proposed**
23 **easement and immediately surrounding areas?**

24 A: Well yes, of course I do. We would not be able to build any type of structures
25 directly across or touching the easement, and it would be unwise and I would be
26 uncomfortable to build anything near the easement for fear of being blamed in the
27 future should any damage or difficulty result on my property in regards to the
28 pipeline. What if I would want to expand my feedlot operation? I may be putting

1 in more feedlots or a Hoop building. This area would be where I would consider
2 doing that.

3 **Q: Do you think such a restriction would impact you economically?**

4 A: Well yes, of course. It restricts both me and my successors from expanding
5 operations.

6 **Q: How do you think such a restriction would impact you economically?**

7 A: The future of this land may not be exactly how it's being used as of this moment,
8 and having the restrictions and limiting my ability to develop my land in certain
9 ways presents a huge negative economic impact on myself, my family, and any
10 potential future owner of the property. You have no idea how I or the future owner
11 may want to use this land in the future or the other land across Nebraska
12 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
13 ago it would have been hard to imagine all the advances that we have now or how
14 things change. Because the Easement is forever and TransCanada gets the rights in
15 my land forever we have to think with a very long term view. By placing their
16 pipeline on under across and through my land that prevents future development
17 which greatly negatively impacts future taxes and tax revenue that could have
18 been generated by the County and State but now will not. When you look at the
19 short blip of economic activity that the two years of temporary construction efforts
20 may bring, that is far outweighed by the perpetual and forever loss of opportunity
21 and restrictions TransCanada is forcing upon us and Nebraska.

22 **Q: Do you have any concerns about the environmental impact of the proposed
23 pipeline?**

24 A: Yes, I do.

25 **Q: What are some of those concerns?**

26 A: As an affected land owner and Nebraskan, I am concerned that any construction,
27 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
28 a detrimental impact upon the environment of my land specifically, as well as the
29 lands near my land and surrounding the proposed pipeline route.

1 **Q: Do you have any other environmental concerns?**

2 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
3 construction and/or maintenance and operation. I am concerned about spills and
4 leaks that TransCanada has had in the past and will have in the future. This could
5 be catastrophic to my operations or others and to my county and the State.

6 **Q: Do you have any thoughts regarding if there would be an impact upon the
7 natural resources on or near your property due to the proposed pipeline?**

8 A: Yes, I believe that any construction, operation, and/or maintenance of the
9 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
10 resources of my land, and the lands near and surrounding the proposed pipeline
11 route.

12 **Q: Do you have any worries about potential impacts from the proposed pipeline
13 to the soil of your land, or land near you?**

14 A: Yes, I believe that any construction, operation, and/or maintenance of the
15 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
16 land, as well as land along and surrounding the proposed pipeline route. This
17 includes, but is not limited to, the reasons that we discussed above of disturbing
18 the soil composition and makeup as it has naturally existed for thousands and
19 millions of years. This disruption could be during the construction process, and
20 any future maintenance or removal process. I'm gravely concerned about the
21 fertility and the loss of economic ability of my property to grow the crops, or grow
22 the grasses, or grow whatever it is at that time they exist on my property or that I
23 may want to grow in the future, or that a future owner may want to grow. The
24 land will never be the same as it exists now, undisturbed, to after it is trenched up
25 for the proposed pipeline.

26 **Q: Do you have any concerns about the potential impact of the proposed pipeline
27 upon the groundwater over your land, or surrounding lands?**

28 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
29 the proposed Keystone XL Pipeline would have a detrimental impact upon the

1 groundwater of not only under my land, but also near and surrounding the pipeline
2 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
3 simple and it is simply too valuable to our State and the country to put at
4 unreasonable risk.

5 **Q: Do you have any concern about the potential impact of the proposed pipeline**
6 **upon the surface water on, or near or around your land?**

7 A: Yes, I have significant concerns that any construction, operation, and/or
8 maintenance of the proposed Keystone XL Pipeline would have detrimental
9 impact upon the surface water of not only within my property boundary, but along
10 and near and surrounding the pipeline route, and in fact, across the state of
11 Nebraska.

12 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
13 **upon the wildlife and plants, other than your growing crops on or near your**
14 **land?**

15 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
16 the proposed Keystone XL Pipeline would have a detrimental impact upon the
17 wildlife and the plants, not only that are located on or can be found upon my land,
18 but also near and along the proposed pipeline route.

19 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
20 **fair market value of your land?**

21 A: Yes, I do. I am significantly concerned about how the existence of the proposed
22 pipeline underneath and across and through my property will negatively affect the
23 fair market value at any point in the future, especially at that point in which I
24 would need to sell the property, or someone in my family would need to sell the
25 property. I do not believe, and certainly would not be willing to pay, the same
26 price for land that had the pipeline located on it, versus land that did not. I hope
27 there is never a point where I'm in a position where I have to sell and have to
28 realize as much value as I can out of my land. But because it is my single largest
29 asset, I'm gravely concerned that the existence of the proposed Keystone XL

1 Pipeline upon my land will affect a buyer's willingness to pay as much as they
2 would've paid and as much as I could've received, if the pipeline were not upon
3 my property. There are just too many risks, unknowns, impacts and uncertainties,
4 not to mention all of the rights you give up by the nature of having the pipeline
5 due to having the easement that we have previously discussed, for any reasonable
6 person to think that the existence of the pipeline would not negatively affect my
7 property's value.

8 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
9 **testimony?**

10 A: Yes, I have.

11 **Q: Where have you seen that before?**

12 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
13 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
14 believe the portion of the alternative route shown here that is within Nebraska
15 essentially twins or parallels Keystone I.

16 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
17 **Application, and as found on Attachment No. 7, here to your testimony, is in**
18 **the public interest of Nebraska?**

19 A: No, I do not.

20 **Q: Do you believe that the Keystone mainline alternative route as shown on**
21 **Attachment No. 7 included with your testimony here is a major oil pipeline**
22 **route that is in the public interest of Nebraska?**

23 A: No, I do not.

24 **Q: Do you believe the portion of what has been previously called the I-90**
25 **corridor alternative route, specifically for the portion of the proposed**
26 **pipeline within Nebraska as found in Attachment No. 6 to your testimony, is**
27 **in the public interest of Nebraska?**

28 A: No, I do not.

1 **Q: Do you believe there is any potential route for the proposed Keystone XL**
2 **Pipeline across, within, under, or through the State of Nebraska that is in the**
3 **public interest of the citizens of Nebraska?**

4 A: No, I do not.

5 **Q: Why do you hold that belief?**

6 A: Because there simply is no public interest based on all of the factors that I am
7 aware and that I have read and that I have studied that this Commission is to
8 consider that would establish that a for-profit foreign-owned pipeline that simply
9 crosses Nebraska because we are geographically in the way between where tar
10 sands are in Canada to where it wants to ship it to in Texas could ever be in the
11 public interest of Nebraskans. We derive no benefit from this project. It is not for
12 public use. Nebraska is simply in the way and when all considerations are taken in
13 there is no net benefit of any kind for Nebraska should this project be placed in our
14 state. Even if there was some arguable “benefit” it is not enough to outweigh all
15 the negative impacts and concerns.

16 **Q: What do you think about the applicant, TransCanada’s argument that its**
17 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
18 **of Nebraska because it may bring temporary jobs during the construction**
19 **phase to Nebraska?**

20 A: First of all, not all jobs are created equally. Most jobs that are created, whether
21 temporary or on a permanent basis, don’t come with a project that has all the
22 potential and foreseeable negative impacts, many of which we have discussed here
23 and other witnesses throughout the course of this hearing have and will discuss. If
24 I decide to hire and employ someone to help me out in my farming or ranching
25 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
26 to my land or my town or my county or my state. And I’ve hired someone who is
27 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
28 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
29 jobs are not created equal. Additionally, I understand from what I’m familiar with

1 from TransCanada's own statements that the jobs numbers they originally touted
2 were determined to be a minute fraction of the permanent jobs that had been
3 projected. According to their answer to our Interrogatory No. 191, TransCanada
4 has created only thirty-four (34) jobs within Nebraska working specifically on
5 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
6 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
7 Further, according to their answer to Interrogatory No. 199, TransCanada would
8 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
9 constructed on its Preferred Route or its Mainline Alternative Route.

10 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
11 **because it would cross your land?**

12 A: No, absolutely not. I am opposed to this project because it is not in the public
13 interest, neither within my community nor within our state.

14 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
15 **was to cross someone else's land?**

16 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
17 the fear and anxiety and potential foreseeable risks and negative impacts that this
18 type of a project carrying this type of product brings forced upon anyone in this
19 state or any other state.

20 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
21 **Pipeline to cross the state of Nebraska?**

22 A: I don't believe there is an intelligent route because as I have stated I don't believe
23 this project anywhere within Nebraska is within the public interest. However, if
24 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
25 had to go somewhere in the state of Nebraska, the only intelligent route I believe
26 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
27 preferred route and the mainline alternative routes are economic liabilities our
28 state cannot risk.

29 **Q: What do you rely upon to make that statement?**

1 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
2 already exists in that area is reason enough as it is not in our best interest or the
3 public interests to have more major oil pipelines crisscrossing our state. Second,
4 they have all the infrastructure already there in terms of relationships with the
5 counties and local officials and first responders along that route. Third, they have
6 already obtained easements from all the landowners along that route and have
7 relationships with them. Fourth, that route avoids our most sensitive soils, the
8 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
9 Aquifer. Sixth, they have already studied that route and previously offered it as an
10 alternative. Seventh, it just makes the most sense that as a state we would have
11 some intelligent policy of energy corridors and co-locating this type of
12 infrastructure near each other.

13 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
14 **like the Public Service Commissioners to consider in their review of**
15 **TransCanada's Application?**

16 A: No, I have not. I have shared that which I can think of as of the date I signed this
17 document below but other things may come to me or my memory may be
18 refreshed and I will add and address those things at the time of the Hearing in
19 August and address any additional items at that time as is necessary. Additionally,
20 I have not had an adequate amount of time to receive and review all of
21 TransCanada's answers to our discovery and the discovery of others so it was
22 impossible to competently and completely react to that in my testimony here and I
23 reserve the right to also address anything related to discovery that has not yet
24 concluded as of the date I signed this document below. Lastly, certain documents
25 requested have not yet been produced by TransCanada and therefore I may have
26 additional thoughts on those I will also share at the hearing as needed.

27 **Q: What is it that you are requesting the Public Service Commissioners do in**
28 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
29 **across Nebraska?**

1 A: I am respectfully and humbly requesting that the Commissioners think far beyond
2 a temporary job spike that this project may bring to a few counties and beyond the
3 relatively small amount of taxes this proposed foreign pipeline would possibly
4 generate. And, instead think about the perpetual and forever impacts of this
5 pipeline as it would have on the landowners specifically, first and foremost, but
6 also thereby upon the entire state of Nebraska, and to determine that neither the
7 preferred route nor the Keystone mainline alternative route are in the public
8 interest of the citizens of the state of Nebraska. And if the Commissioners were
9 inclined to modify TransCanada's proposed routes and were to be inclined to grant
10 an application for a route in Nebraska, that the only potential route that would
11 make any intelligent sense whatsoever would be twinning or near paralleling of
12 the proposed KXL with the existing Keystone I pipeline. The point of including
13 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been
14 considered by TransCanada before. It simply does not make sense to add yet
15 another major oil pipeline crisscrossing our state creating new pumping stations,
16 creating new impacts on additional counties and communities and going through
17 all of the court processes with myself and other landowners like me when this
18 applicant already has relationships with the landowners, the towns and the
19 communities along Keystone I, and that Keystone I is firmly outside of the sand
20 hills and a significantly further portion away from the heart of the Ogallala
21 Aquifer than the preferred route or the Keystone mainline alternative route.

22 **Q: Does Attachment No. 8 here contain other documents you are competent to**
23 **speak about that you wish to be part of your testimony and to discuss in more**
24 **detail as needed at the August 2017 Hearing?**

25 A: Yes.

26 **Q: Are all of your statements in your testimony provided above true and**
27 **accurate as of the date you signed this document to the best of your**
28 **knowledge?**

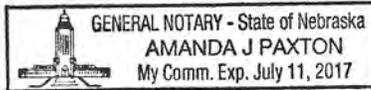
29 A: Yes, they are.

1 **Q: Thank you, I have no further questions at this time and reserve the right to**
2 **ask you additional questions at the August 2017 Hearing.**

Lloyd J Hipke
Lloyd Hipke

Subscribed and Sworn to me before this 30th day of May, 2017.

Amanda J Paxton
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.

S.033
T.033N
R.015W



Lloyd Hipke

S.004
T.032N
R.015W

S.003
T.032N
R.015W

S.009
T.032N
R.015W

S.010
T.032N
R.015W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Lloyd Hipke

TRACT NO. ML-NE-HT-40180.000
STATE: Nebraska
COUNTY: Holt
SECTION: 004
TOWNSHIP: 032N
RANGE: 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\50588\KEYSTONE_XL\5000_0949258



Lloyd Hipke

S.003
T.032N
R.015W

S.004
T.032N
R.015W

S.009
T.032N
R.015W
IMAGERY: NAIP 2016

S.010
T.032N
R.015W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Lloyd Hipke

TRACT NO. ML-NE-HT-40200.000
STATE: Nebraska
COUNTY: Holt
SECTION: 003
TOWNSHIP: 032N
RANGE: 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Property Line
- Section Line

Attachment No. 2



PROTECTED
Pres. OBAMA
2008

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-40180.000
ML-NE-HT-40200.000

**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**") **Lloyd Hipke a/k/a Lloyd Z. Hipke and Vencille Hipke a/k/a Vincille Marie Hipke, husband and wife**, whose mailing address is 47121 894th Road, Stuart, NE 68780 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to

Grantor's Initials _____

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 349.89 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the E1/2 and the NE1/4 of the NW1/4, except North 25 acres of Section 4, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 200, Page 638, Book 180, Page 128 and Book 179, Page 743 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

Less and Except: A tract of land containing 2.30 acres, more or less, and being out of the NE1/4 of Section 4, Township 32 North, Range 15 West of the 6th P.M., Holt County, Nebraska, and being more particularly described as follows: Commencing at the Northeast Corner of said Section 4; thence West 1100 feet to the point of beginning; thence South 500 feet; thence West 200 feet; thence North 500 feet; thence East 200 feet to the point of beginning, as recorded in Book 175 and Page 271.

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 SW1/4 of Section 3, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 182, Page 189 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):

Lloyd Hipke a/k/a Lloyd Z. Hipke

Vencille Hipke a/k/a Vincille Marie Hipke

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Lloyd Hipke a/k/a Lloyd Z. Hipke**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

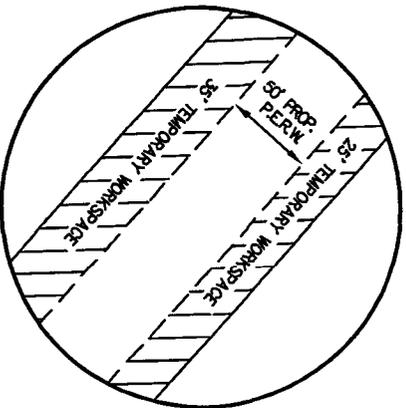
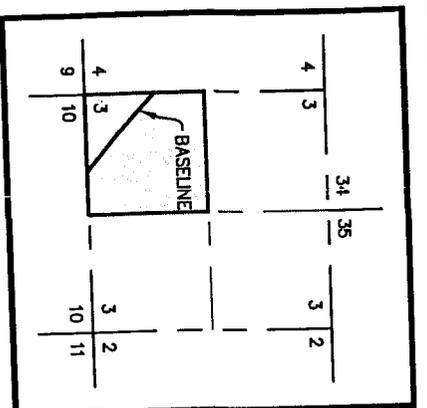
By **Vencille Hipke a/k/a Vincille Marie Hipke**

Notary Public Signature

Affix Seal Here

LEGEND
 R PROPERTY LINE
 S PROPOSED SECTION LINE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA

HOLT COUNTY, NEBRASKA
T-32-N, R-15-W, SECTION 3
ML-NE-HT-40200.000



DETAIL "A"
 N.T.S.

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.



KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
LLOYD Z. HIPKE
ML-NE-HT-40200.000

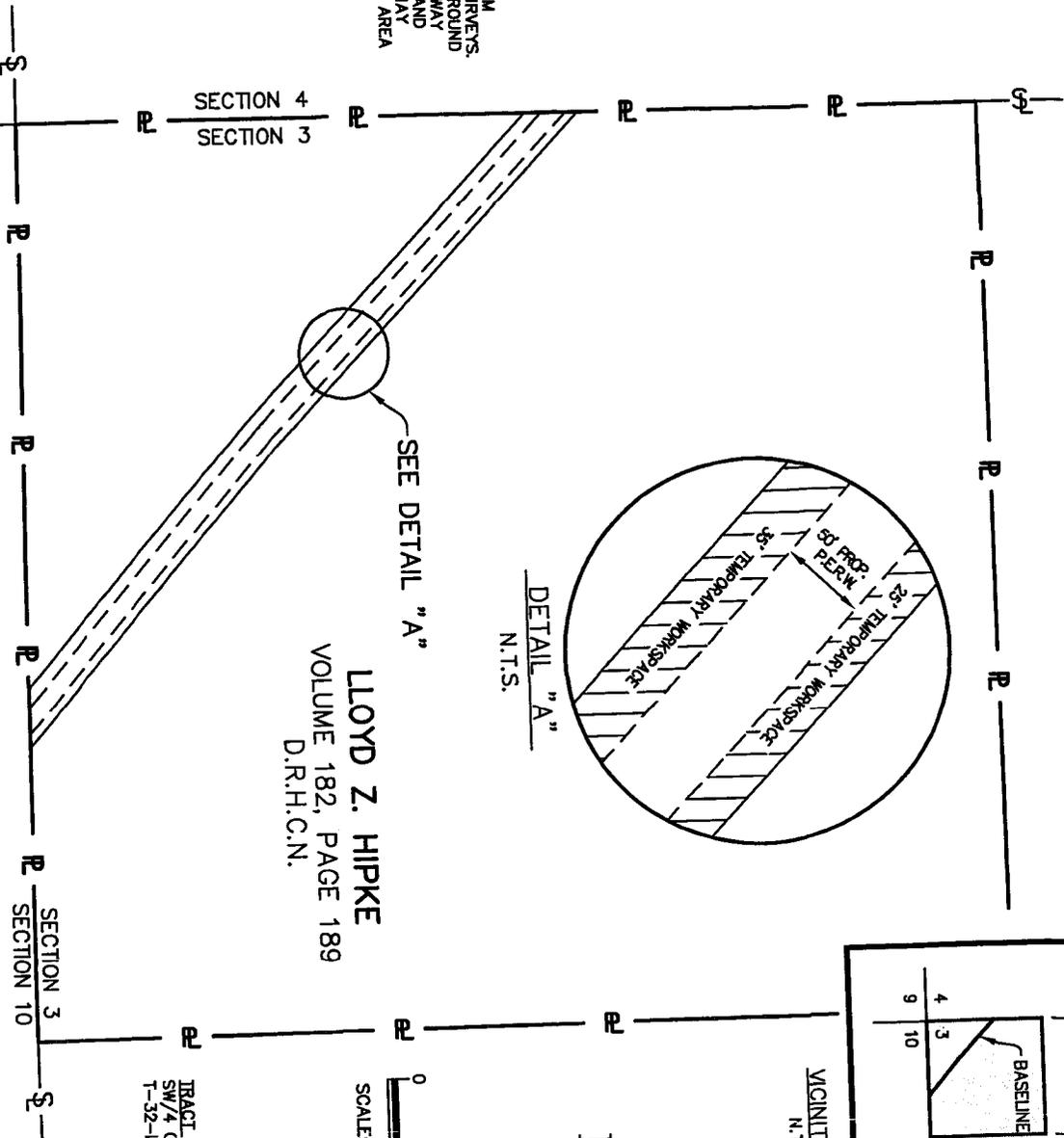
PROJECT: XL **EXHIBIT A**

APPROVED BY: _____ DRAWING NUMBER: XL-08-MI-SK-3653

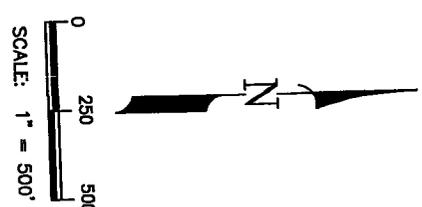
NO. _____ REVISION: _____ DATE: _____

SCALE: _____ DATE: _____ DRAWN BY: JIN CHECKED BY: ALS

1" = 500' 11/04/14 JIN ALS



LLOYD Z. HIPKE
 VOLUME 182, PAGE 189
 D.R.H.C.N.



TRACT LEGAL DESCRIPTION:
 SW/4 OF SECTION 3,
 T-32-N, R-15-W

TOTAL DISTANCE ACROSS PROPERTY: 2,309'±
 AREA OF PERMANENT EASEMENT: 2.6 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.1 ACRES



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-40200.000

I/we Lloyd Z. Hipke and Vencille M. Hipke, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Four Hundred Eighty Two Dollars and No Cents (\$1,482.00), 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:

SW/4

Section 3, Township 32-N, Range 15-W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-40180.000

I/we Lloyd Z. Hipke and Vencille M. Hipke, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Thousand Sixteen Dollars and No Cents (\$3,016.00), 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 E/2, Part of the NE/4 of the NW/4

Section 4, Township 32-N, Range 15-W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of _____, 20____.

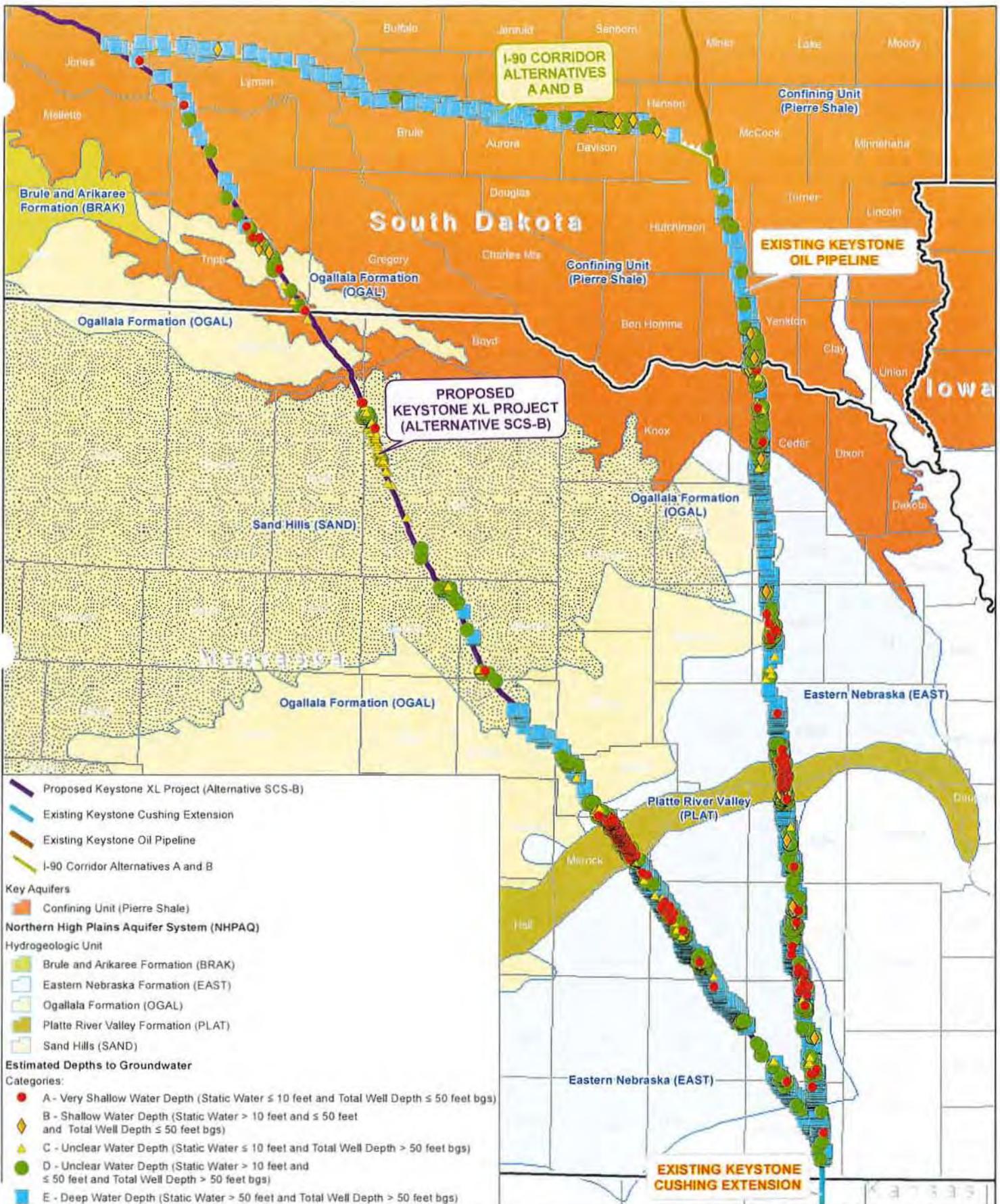
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



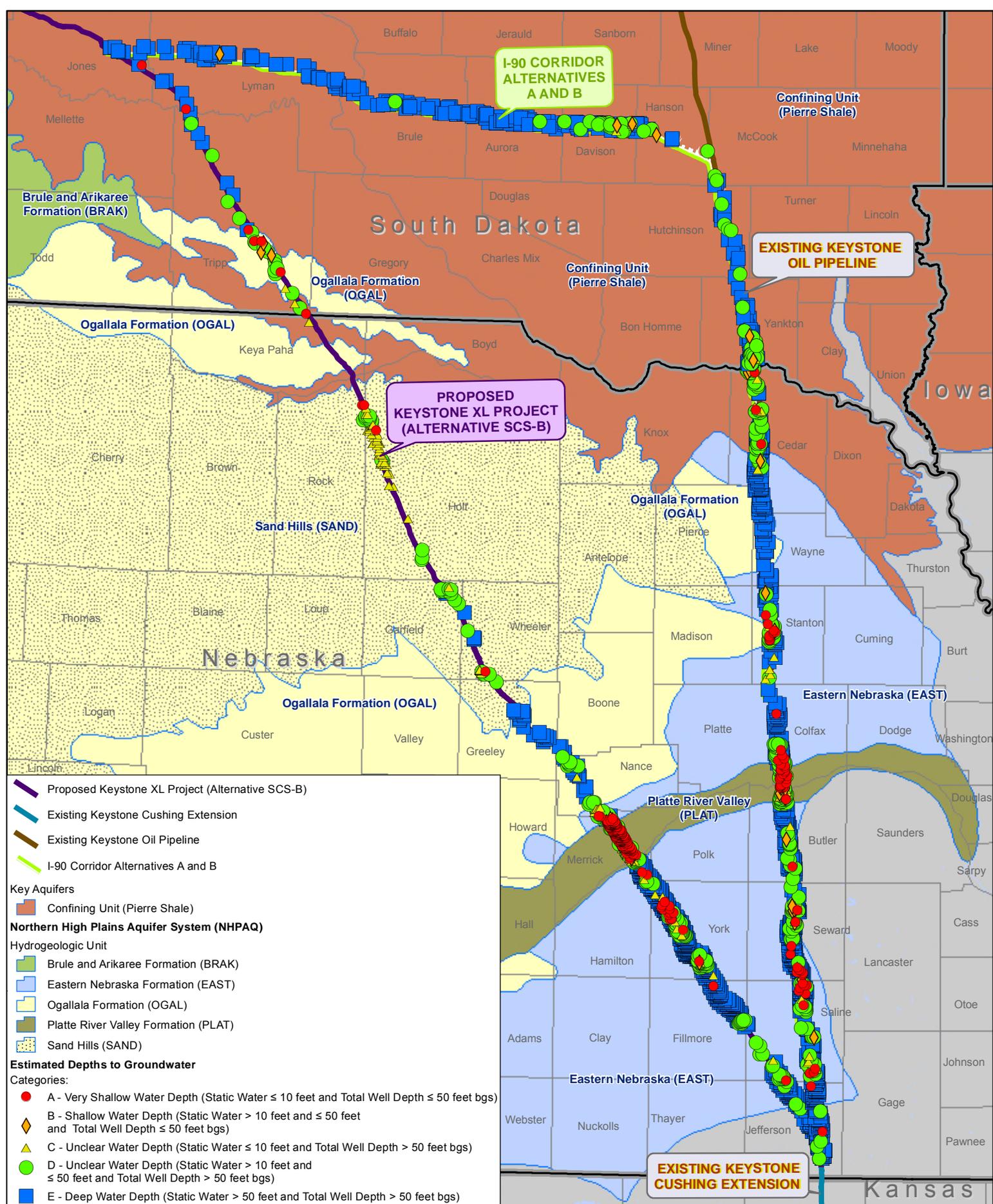
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

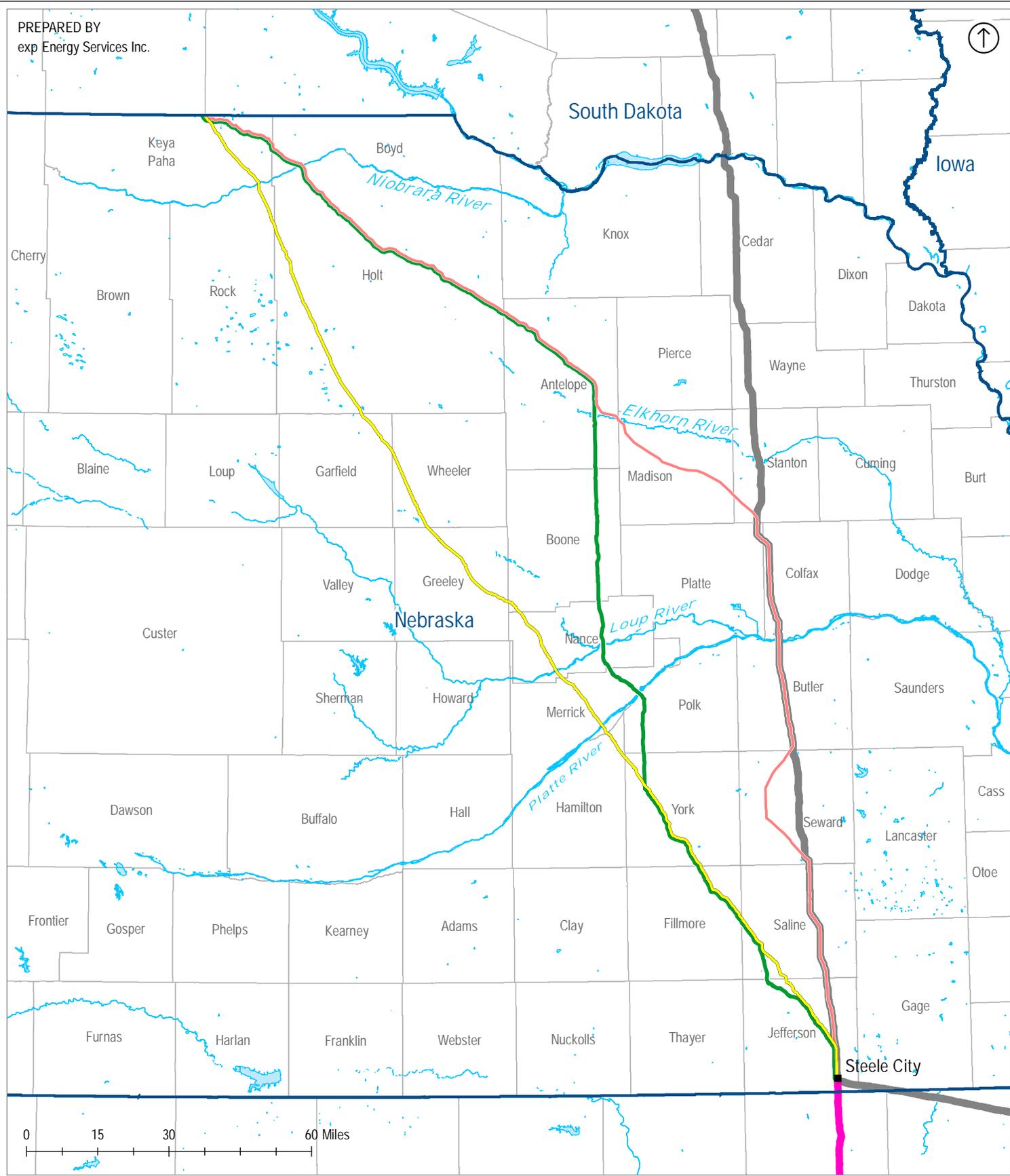
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

Figure 4.3.3-8
 I-90 Corridor Alternatives A and B
 Key Aquifers and Potable Water Wells
 within 2-mile Corridor

Attachment No. 7



LEGEND

	PREFERRED ROUTE		WATERBODY
	SANDHILLS ALTERNATIVE ROUTE		STATE BOUNDARY
	KEYSTONE MAINLINE ALTERNATIVE ROUTE		COUNTY BOUNDARY
	KEYSTONE MAINLINE (PHASE I)		
	KEYSTONE CUSHING EXTENSION (PHASE II)		

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Attachment No. 8



Google





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
R. Wynn Hipke in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is R. Wynn Hipke

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: Do you earn any income from this land?**

16 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. 2, 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 their easement
16 to be transferred or sold to someone or some company or country or who knows
17 what that I don't know and who we may not want to do business with. This
18 pipeline would be a huge asset for TransCanada and if they can sell to the highest
19 bidder that could have terrible impacts upon all of Nebraska depending upon who
20 may buy it and I don't know of any safeguards in place for us or the State to veto
21 or have any say so in who may own, operate, or be responsible for this pipeline in
22 the 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. 3.**

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 and ambiguous terms are
24 as follows:

- 25 i. "pipeline installation activities"
- 26 ii. "availability of labor and materials"
- 27 iii. "commercially reasonable costs and expenses"
- 28 iv. "reasonably anticipated and foreseeable costs and expenses"
- 29 v. "yield loss damages"

- 1 vi. “diminution in the value of the property”
- 2 vii. “substantially same condition”
- 3 viii. “an actual or potential hazard”
- 4 ix. “efficient”
- 5 x. “convenient”
- 6 xi. “endangered”
- 7 xii. “obstructed”
- 8 xiii. “injured”
- 9 xiv. “interfered with”
- 10 xv. “impaired”
- 11 xvi. “suitable crossings”
- 12 xvii. “where rock is encountered”
- 13 xviii. “as nearly as practicable”
- 14 xix. “pre-construction position”
- 15 xx. “pre-construction grade”
- 16 xxi. “various engineering factors”

17 Each one of these above terms and phrases as read in the context of the Easement
18 could be problematic in many ways. Notably, undefined terms tend to only get
19 definition in further legal proceedings after a dispute arises and the way the
20 Easement is drafted, TransCanada has sole power to determine when and if a
21 particular situation conforms with or triggers rights affected by these terms. For
22 instance, “yield loss damages” should be specifically defined and spelled out
23 exactly how the landowner is to be compensated and in what events on the front
24 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
25 the Landowner is without contractual rights to define these terms or determine
26 when rights related to them trigger and what the affects may be.

27 **Q: Do you have any other concerns about the Easement language that you can**
28 **think of at this time?**

1 A: I reserve the right to discuss any additional concerns that I think of at the time of
2 my live testimony in August.

3 **Q: Based upon what you have shared with the Commission above regarding**
4 **TransCanada’s proposed Easement terms and agreement, do you believe**
5 **those to be reasonable or just, under the circumstances of the pipeline’s**
6 **impact upon you and your land?**

7 A: No, I do not believe those terms to be reasonable or just for the reasons that we
8 discussed previously.

9 **Q: Did TransCanada ever offer you financial compensation for the rights that**
10 **they sought to obtain in your land, and for what they sought to prevent you**
11 **and any future land owner of your property from doing in the future?**

12 A: Yes, we received an offer from them.

13 **Q: As the owner of the land in question and as the person who knows it better**
14 **than anyone else, do you believe that TransCanada offered you just, or fair,**
15 **compensation for all of what they proposed to take from you so that their tar**
16 **sands pipeline could be located across your property?**

17 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
18 offer for all the potential impacts and effects and the rights that I’m giving up, and
19 what we will be prevented from doing in the future and how their pipeline would
20 impact my property for ever and ever.

21 **Q: Has TransCanada at any time offered to compensate you annually, such as**
22 **wind farm projects do, for the existence of their potential tar sands pipeline**
23 **across your property.**

24 A: No, never.

25 **Q: At any time did TransCanada present you with or request that you, as the**
26 **owner of the land in question, sign and execute a document called, “Advanced**
27 **Release of Damage Claims and Indemnity Agreement?”**

28 A: Yes, they did and it was included in the County Court lawsuit against us.

1 **Q: Is Attachment No. 4, to your testimony here, a true and accurate copy of the**
2 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

3 A: Yes, it is.

4 **Q: What was your understanding of that document?**

5 A: When I read that document in the plain language of that document, it was my
6 understanding that TransCanada was attempting to pay me a very small amount at
7 that time in order for me to agree to give up my rights to be compensated from
8 them in the future related to any damage or impact they may have upon my
9 property “arising out of, in connection with, or alleged to resulted from
10 construction or surveying over, under or on” my land.

11 **Q: Did you ever sign that document?**

12 A: No, I did not.

13 **Q: Why not?**

14 A; Because I do not believe that it is fair or just to try to get me to agree to a small
15 sum of money when I have no idea how bad the impacts or damages that they, or
16 their contractors, or subcontractors, or other agents or employees, may cause on
17 my land at any time in the future that resulted from the construction or surveying
18 or their activities upon my land.

19 **Q: When you reviewed this document, what did it make you feel?**

20 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
21 shield themselves against known and foreseeable impacts that their pipeline, and
22 the construction of it, would have upon my land. It made me feel that they knew it
23 was in their financial interest to pay me as little as possible to prevent me from
24 ever having the opportunity to seek fair compensation again, and that this must be
25 based upon their experience of unhappy landowners and situations in other places
26 where they have built pipelines.

27 **Q: Has TransCanada ever contacted you and specifically asked you if you**
28 **thought their proposed location of their proposed pipeline across your land**
29 **was in your best interest?**

1 A: No, they have not.

2 **Q: Has TransCanada ever contacted you and specifically asked you if you**
3 **thought their proposed location of their proposed pipeline across your land**
4 **was in the public interest of the State of Nebraska?**

5 A: No, they have not.

6 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
7 **Takings Clause?**

8 A: Yes, I am.

9 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
10 **an American citizens property?**

11 A: My understanding is that, according to the United States Constitution, that if the
12 government is going to take land for public use, then in that case, or by taking for
13 public use, it can only occur if the private land owner is compensated justly, or
14 fairly.

15 **Q: Has TransCanada ever contacted you specially to explain the way in which**
16 **the public could use its proposed Keystone XL Pipeline?**

17 A: No, they have not.

18 **Q: Can you think of any way in which the public, that is the citizens of the State**
19 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
20 **Pipeline, as it dissects the State of Nebraska?**

21 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
22 public benefits from this pipeline in any way, how they can use it any way, or how
23 it's in the public interest in any way. By looking at the map, it is quite clear to me
24 that the only reason it's proposed to come through Nebraska, is that because we
25 are geographically in the way from between where the privately-owned Tar Sands
26 are located to where TransCanada wants to ship the Tar Sands to refineries in
27 Houston, Texas.

1 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
2 **crude petroleum, or oil and petroleum by-products that you would like to**
3 **ship in its pipeline?**

4 A: No, it has not.

5 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
6 **products that you, at this time or any time in the future, would desire to place**
7 **for transport within the proposed TransCanada Keystone XL Pipeline?**

8 A: No, I do not.

9 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
10 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
11 **products within the proposed TransCanada Keystone XL Pipeline?**

12 A: No, I do not. I've never heard of such a person or company like that.

13 **Q: Do you pay property taxes for the land that would be affected and impacted**
14 **at the proposed TransCanada Keystone XL Pipeline?**

15 A: Yes, I do.

16 **Q: Why do you pay property taxes on that land?**

17 A: Because that is the law. The law requires us to pay the property taxes as the owner
18 of that property.

19 **Q: Because you follow the law and pay property taxes, do you believe you**
20 **deserve any special consideration or treatment apart from any other person**
21 **or company that pays property taxes?**

22 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
23 just what you do.

24 **Q: Do you believe the fact that you pay property taxes entitles you to special**
25 **treatment of any kind, or special rights of any kind?**

26 A: No, of course not.

27 **Q: Do you believe the fact that you pay property taxes on your land would be**
28 **enough to qualify you to have the power of eminent domain to take land of**

1 **your neighbors or other people in your county, or other people across the**
2 **state of Nebraska?**

3 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
4 I expect an award for or any type of special consideration.

5 **Q: Have you at any time ever employed any person other than yourself?**

6 A: Well, yes I have.

7 **Q: Do you believe that the fact that you have, at some point in your life,**
8 **employed one or more other persons entitle you to any special treatment or**
9 **consideration above and beyond any other Nebraskan that has also employed**
10 **one or more persons?**

11 A: No, of course not.

12 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
13 **have at one point employed another person within this state, entitles you to**
14 **preferential treatment or consideration of any kind?**

15 A: No, of course not. If I choose to employ someone that decision is up to me. I
16 don't deserve any special treatment or consideration for that fact.

17 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
18 **crude oil pipeline in its preferred location, or ultimate location across the**
19 **state of Nebraska?**

20 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
21 or even bullied around and being made to feel scared that they did not have any
22 options but to sign whatever papers TransCanada told them they had to. I am
23 aware of folks being threatened that their land would be taken if they didn't follow
24 what TransCanada was saying. I am aware of tactics to get people to sign
25 easements that I don't believe have any place in Nebraska or anywhere such as
26 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
27 landowners and convince them they should sign TransCanada's easement
28 agreements. I am aware of older folks and widows or widowers feeling they had
29 no choice but to sign TransCanada's Easement and they didn't know they could

1 fight or stand up for themselves. From a more practical standpoint, I am worried
2 that according to their answer to our Interrogatory No. 211, TransCanada only
3 owns and operates one (1) major oil pipeline. They simply do not have the
4 experience with this type of pipeline and that scares me. There are others but that
5 is what I can recollect at this time and if I remember more or my recollection is
6 refreshed I will share those with the Commissioners at the Hearing in August.

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 myself, my family, and any
25 potential future owner of the property. You have no idea how I or the future owner
26 may want to use this land in the future or the other land across Nebraska
27 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
28 ago it would have been hard to imagine all the advances that we have now or how
29 things change. Because the Easement is forever and TransCanada gets the rights in

1 my land forever we have to think with a very long term view. By placing their
2 pipeline on under across and through my land that prevents future development
3 which greatly negatively impacts future taxes and tax revenue that could have
4 been generated by the County and State but now will not. When you look at the
5 short blip of economic activity that the two years of temporary construction efforts
6 may bring, that is far outweighed by the perpetual and forever loss of opportunity
7 and restrictions TransCanada is forcing upon us and Nebraska. The terms of the
8 easement must be addressed in order for the Commission to truly consider
9 property rights, economic interests, the welfare of Nebraska, and the balancing of
10 the proposed routes against all they will affect and impact.

11 **Q: Do you have any concerns about the environmental impact of the proposed**
12 **pipeline?**

13 A: Yes, I do.

14 **Q: What are some of those concerns?**

15 A: As an affected land owner and Nebraskan, I am concerned that any construction,
16 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
17 a detrimental impact upon the environment of my land specifically, as well as the
18 lands near my land and surrounding the proposed pipeline route.

19 **Q: Do you have any other environmental concerns?**

20 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
21 construction and/or maintenance and operation. I am concerned about spills and
22 leaks that TransCanada has had in the past and will have in the future. This could
23 be catastrophic to my operations or others and to my county and the State.

24 **Q: Do you have any thoughts regarding if there would be an impact upon the**
25 **natural resources on or near your property due to the proposed pipeline?**

26 A: Yes, I believe that any construction, operation, and/or maintenance of the
27 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
28 resources of my land, and the lands near and surrounding the proposed pipeline
29 route.

1 **Q: Do you have any worries about potential impacts from the proposed pipeline**
2 **to the soil of your land, or land near you?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
5 land, as well as land along and surrounding the proposed pipeline route. This
6 includes, but is not limited to, the reasons that we discussed above of disturbing
7 the soil composition and makeup as it has naturally existed for thousands and
8 millions of years during the construction process, and any future maintenance or
9 removal process. I'm gravely concerned about the fertility and the loss of
10 economic ability of my property to grow the crops, or grow the grasses, or grow
11 whatever it is at that time they exist on my property or that I may want to grow in
12 the future, or that a future owner may want to grow. The land will never be the
13 same from as it exists now undisturbed to after it is trenched up for the proposed
14 pipeline.

15 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
16 **upon the groundwater over your land, or surrounding lands?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 groundwater of not only under my land, but also near and surrounding the pipeline
20 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
21 simple and it is simply too valuable to our State and the country to put at
22 unreasonable risk.

23 **Q: Do you have any concern about the potential impact of the proposed pipeline**
24 **upon the surface water on, or near or around your land?**

25 A: Yes, I have significant concerns that any construction, operation, and/or
26 maintenance of the proposed Keystone XL Pipeline would have detrimental
27 impact upon the surface water of not only within my property boundary, but along
28 and near and surrounding the pipeline route, and in fact, across the state of
29 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
2 **upon the wildlife and plants, other than your growing crops on or near your**
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the
6 wildlife and the plants, not only that are located on or can be found upon my land,
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed
11 pipeline underneath and across and through my property will negatively affect the
12 fair market value at any point in the future, especially at that point in which I
13 would need to sell the property, or someone in my family would need to sell the
14 property. I do not believe, and certainly would not be willing to pay, the same
15 price for land that had the pipeline located on it, versus land that did not. I hope
16 there is never a point where I'm in a position where I have to sell and have to
17 realize as much value as I can out of my land. But because it is my single largest
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they
20 would've paid and as much as I could've received, if the pipeline were not upon
21 my property. There are just too many risks, unknowns, impacts and uncertainties,
22 not to mention all of the rights you give up by the nature of having the pipeline
23 due to having the easement that we have previously discussed, for any reasonable
24 person to think that the existence of the pipeline would not negatively affect my
25 property's value.

26 **Q: Have you ever seen the document that's marked as Attachment No. 5, to your**
27 **testimony?**

28 A: Yes, I have.

29 **Q: Where have you seen that before?**

1 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
2 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
3 believe the portion of the alternative route in Nebraska essentially twins or
4 parallels Keystone I.

5 **Q: Do you believe the portion of the proposed pipeline route within Nebraska as**
6 **found in Attachment No. 5 to your testimony, is in the public interest of**
7 **Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
10 **Application, and as found on Attachment No. 6, here to your testimony, is in**
11 **the public interest of Nebraska?**

12 A: No, I do not.

13 **Q: Do you believe that the Keystone mainline alternative route as shown on**
14 **Attachment No. 6 included with your testimony here is a major oil pipeline**
15 **route that is in the public interest of Nebraska?**

16 A: No, I do not.

17 **Q: Do you believe there is any potential route for the proposed Keystone XL**
18 **Pipeline across, within, under, or through the State of Nebraska that is in the**
19 **public interest of the citizens of Nebraska?**

20 A: No, I do not.

21 **Q: Why do you hold that belief?**

22 A: Because there simply is no public interest based on all of the factors that I am
23 aware and that I have read and that I have studied that this Commission is to
24 consider that would establish that a for-profit foreign-owned pipeline that simply
25 crosses Nebraska because we are geographically in the way between where tar
26 sands are in Canada to where it wants to ship it to in Texas could ever be in the
27 public interest of Nebraskans. We derive no benefit from this project. It is not for
28 public use. Nebraska is simply in the way and when all considerations are taken in
29 there is no net benefit of any kind for Nebraska should this project be placed in our

1 state. Even if there was some arguable “benefit” it is not enough to outweigh all
2 the negative impacts and concerns.

3 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
4 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
5 **of Nebraska because it may bring temporary jobs during the construction**
6 **phase to Nebraska?**

7 A: First of all, not all jobs are created equally. Most jobs that are created, whether
8 temporary or on a permanent basis, don’t come with a project that has all the
9 potential and foreseeable negative impacts, many of which we have discussed here
10 and other witnesses throughout the course of this hearing have and will discuss. If
11 I decide to hire and employ someone to help me out in my farming or ranching
12 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
13 to my land or my town or my county or my state. And I’ve hired someone who is
14 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
15 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
16 jobs are not created equal. Additionally, I understand from what I’m familiar with
17 from TransCanada’s own statements that the jobs numbers they originally touted
18 were determined to be a minute fraction of the permanent jobs that had been
19 projected. According to their answer to our Interrogatory No. 191, TransCanada
20 has created only thirty-four (34) jobs within Nebraska working specifically on
21 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
22 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
23 Further, according to their answer to Interrogatory No. 199, TransCanada would
24 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
25 constructed on its Preferred Route or its Mainline Alternative Route.

26 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
27 **because it would cross your land?**

28 A: No, absolutely not. I am opposed to this project because it is not in the public
29 interest, neither within my community nor within our state.

1 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
2 **was to cross someone else's land?**

3 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
4 the fear and anxiety and potential foreseeable risks and negative impacts that this
5 type of a project carrying this type of product brings foisted upon anyone in this
6 state or any other state.

7 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
8 **Pipeline to cross the state of Nebraska?**

9 A: I don't believe there is an intelligent route because as I have stated I don't believe
10 this project anywhere within Nebraska is within the public interest. However, if
11 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
12 had to go somewhere in the state of Nebraska, the only intelligent route I believe
13 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
14 preferred route and the mainline alternative routes are economic liabilities our
15 state cannot risk.

16 **Q: What do you rely upon to make that statement?**

17 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
18 already exists in that area is reason enough as it is not in our best interest or the
19 public interests to have more major oil pipelines crisscrossing our state. Second,
20 they have all the infrastructure already there in terms of relationships with the
21 counties and local officials and first responders along that route. Third, they have
22 already obtained easements from all the landowners along that route and have
23 relationships with them. Fourth, that route avoids our most sensitive soils, the
24 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
25 Aquifer. Sixth, they have already studied that route and previously offered it as an
26 alternative. Seventh, it just makes the most sense that as a state we would have
27 some intelligent policy of energy corridors and co-locating this type of
28 infrastructure near each other.

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. The point of including

1 Attachment No. 5 is to show that twinning Keystone I within Nebraska has been
2 considered by TransCanada before. It simply does not make sense to add yet
3 another major oil pipeline crisscrossing our state creating new pumping stations,
4 creating new impacts on additional counties and communities and going through
5 all of the court processes with myself and other landowners like me when this
6 applicant already has relationships with the landowners, the towns and the
7 communities along Keystone I, and that Keystone I is firmly outside of the sand
8 hills and a significantly further portion away from the heart of the Ogallala
9 Aquifer than the preferred route or the Keystone mainline alternative route.

10 **Q: Are all of your statements in your testimony provided above true and**
11 **accurate as of the date you signed this document to the best of your**
12 **knowledge?**

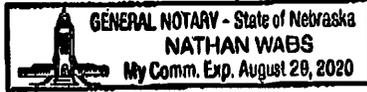
13 A: Yes, they are.

14 **Q: Thank you, I have no further questions at this time and reserve the right to**
15 **ask you additional questions at the August 2017 Hearing.**

R. Wynn Hipke
R. Wynn Hipke

Subscribed and Sworn to me before this 30th day of May, 2017.

Nathan Wabs
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.



S.029
T.033 N
R.015 W

S.028
T.033 N
R.015 W

S.032
T.033 N
R.015 W

S.033
T.033 N
R.015 W
Jill Hipke
R. Wynn Hipke

Jill Hipke
R. Wynn Hipke

S.005
T.032 N
R.015 W

S.004
T.032 N
R.015 W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Jill Hipke
R. Wynn Hipke

TRACT NO. ML-NE-HT-40100.000
STATE: Nebraska
COUNTY: Holt
SECTION: 033
TOWNSHIP: 033N
RANGE: 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawing\6358\KEYSTONE_XL\600_999536

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-HT-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**") **R. Wynn Hipke and Jill Renee Hipke, husband and wife, as joint tenants**, whose mailing address is 89450 469th Avenue, Stuart, NE 68780 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline 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 440 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the W1/2, W1/2 of the NE1/4, and the NE1/4 of the SE1/4 of Section 33, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 188, Page 29, Book 180, Page 131, and Book 179, Page 742 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):

R. Wynn Hipke

Jill Renee Hipke

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

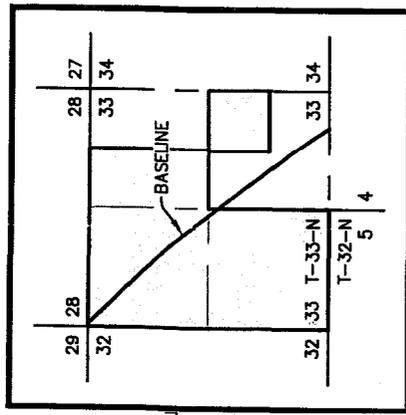
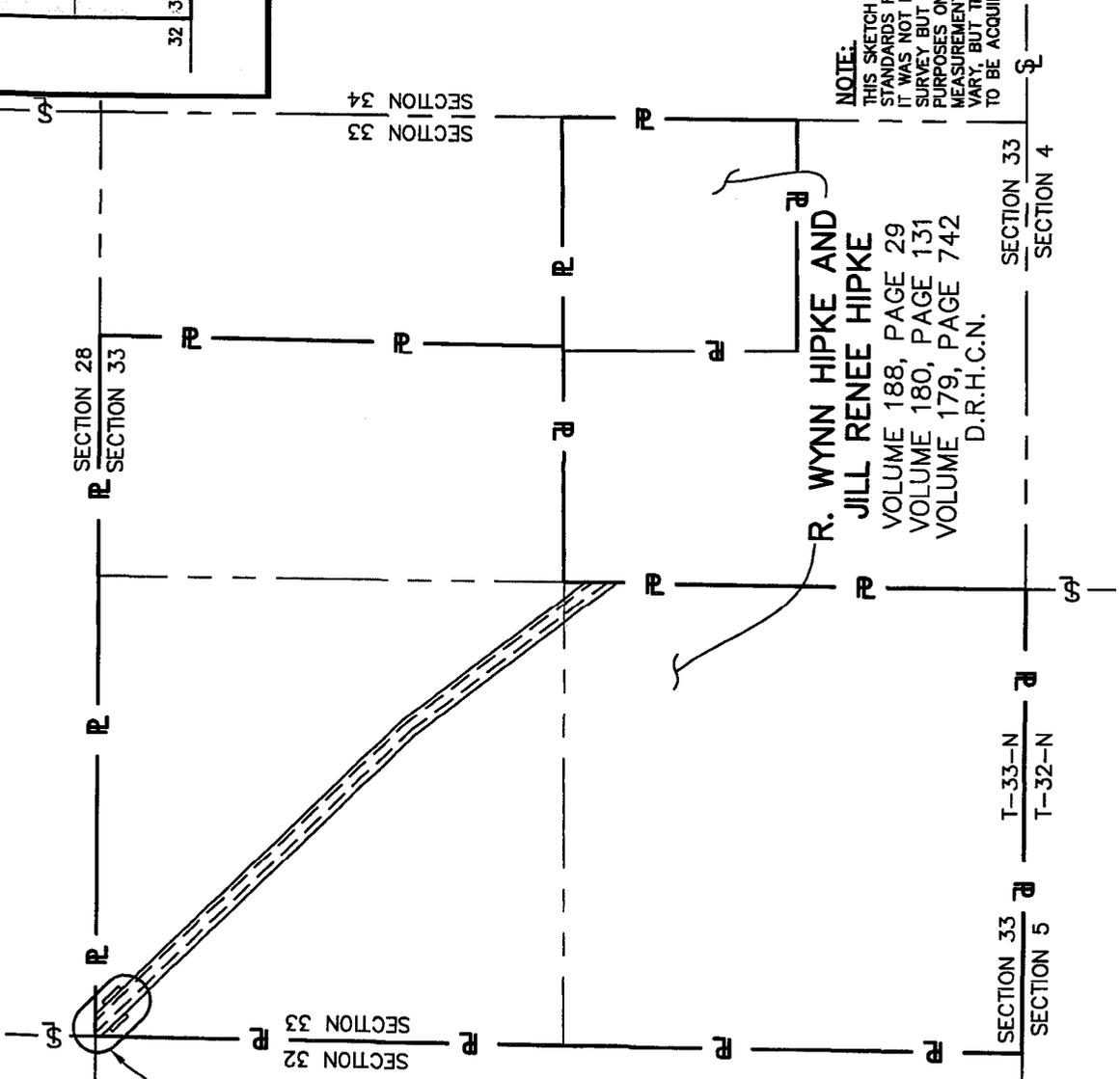
HOLT COUNTY, NEBRASKA

T-33-N, R-15-W, SECTION 33

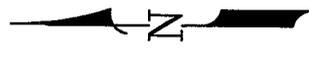
ML-NE-HT-40100.000

LEGEND:
 P PROPERTY LINE
 S SECTION LINE
 PR 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

SEE DETAIL "A"



VICINITY MAP
N.T.S.



SCALE: 1" = 1,000'

TRACT LEGAL DESCRIPTION:
 W/2, W/2 NE/4, NE/4 SE/4 OF
 SECTION 33, T-33-N, R-15-W

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

R. WYNN HIPKE AND
 JILL RENEE HIPKE
 VOLUME 188, PAGE 29
 VOLUME 180, PAGE 131
 VOLUME 179, PAGE 742
 D.R.H.C.N.

TransCanada <i>In business to deliver.</i>	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
R. WYNN HIPKE AND	
JILL RENEE HIPKE	
ML-NE-HT-40100.000	
PROJECT:	XL EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3649
NO.	REVISION
DATE	DATE
SCALE	DATE
1" = 1000'	11/04/14
DRAWN BY:	CHECKED BY:
JN	ALS

TOTAL DISTANCE ACROSS PROPERTY: 3,824'±
 AREA OF PERMANENT EASEMENT: 4.4 ACRES
 AREA OF TEMPORARY WORKSPACE: 5.3 ACRES
 ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.1 ACRE



Attachment No. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 4

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-40100.000

I/we R. Wynn Hipke and Jill Renee Hipke, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Five Hundred Forty Eight Dollars and No Cents (\$2,548.00), 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 amage 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:

W/2, W/2NE/4, NE/4 SE/4

Section 33, Township 33-N, Range 15-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____.

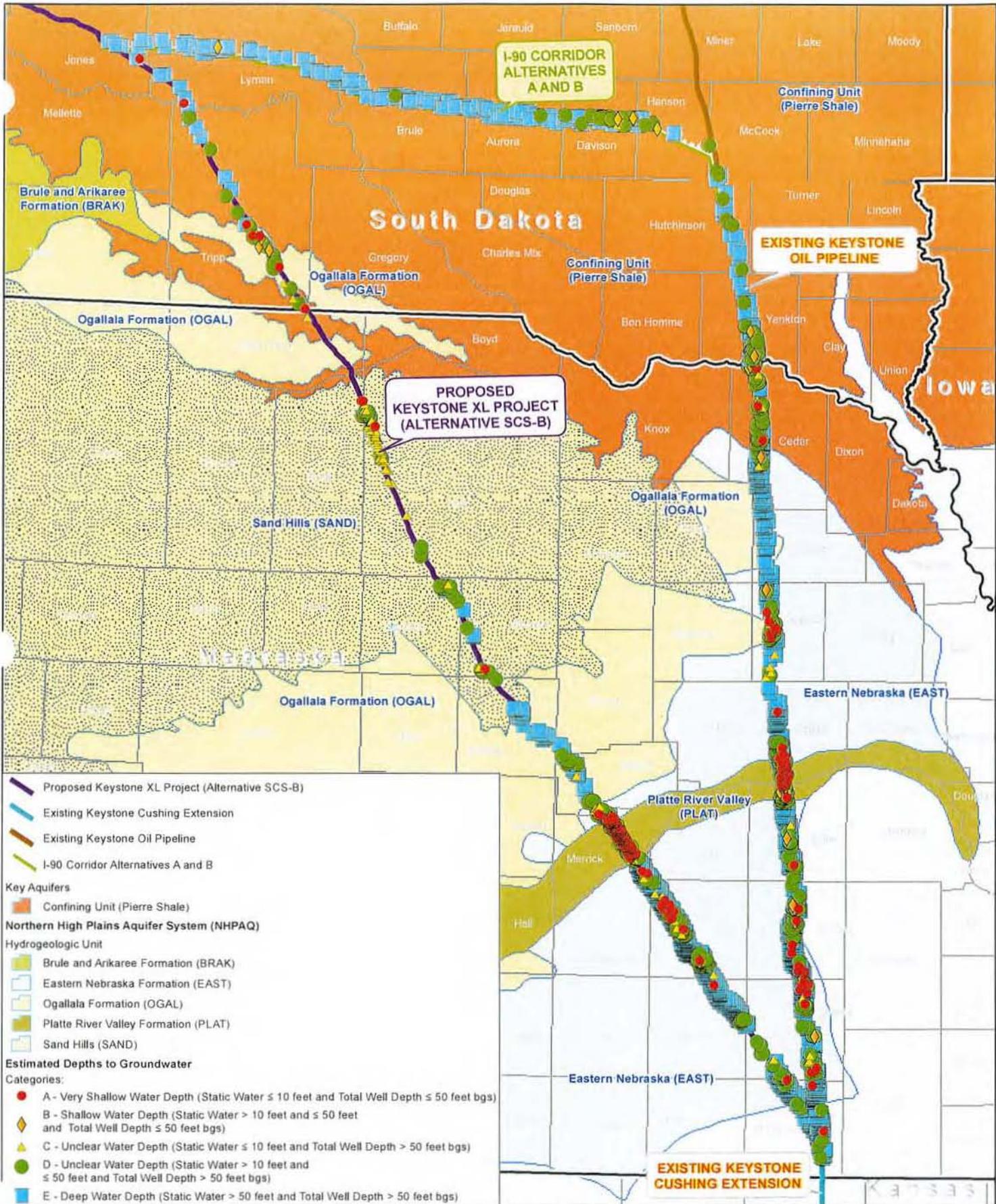
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 5



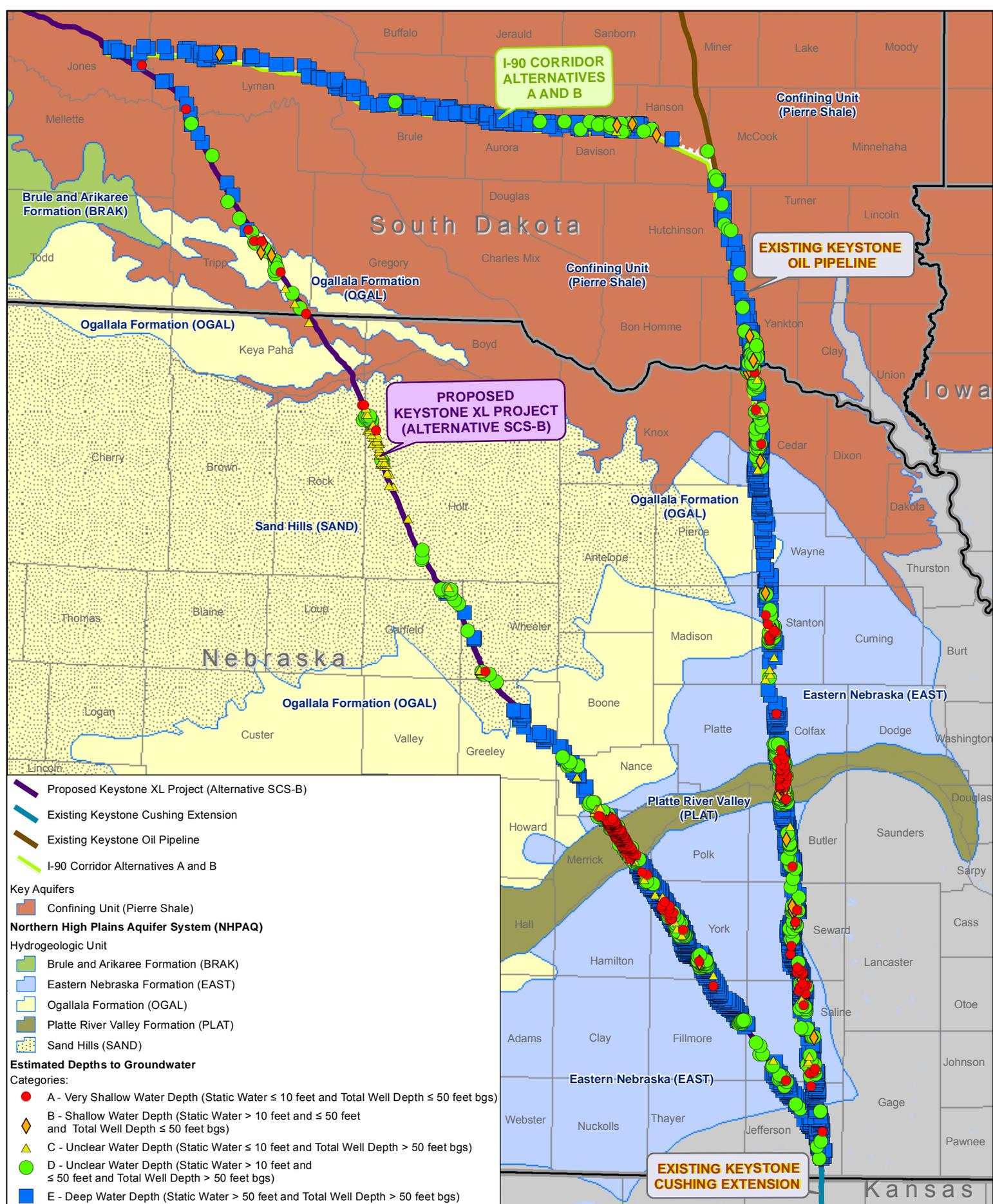
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

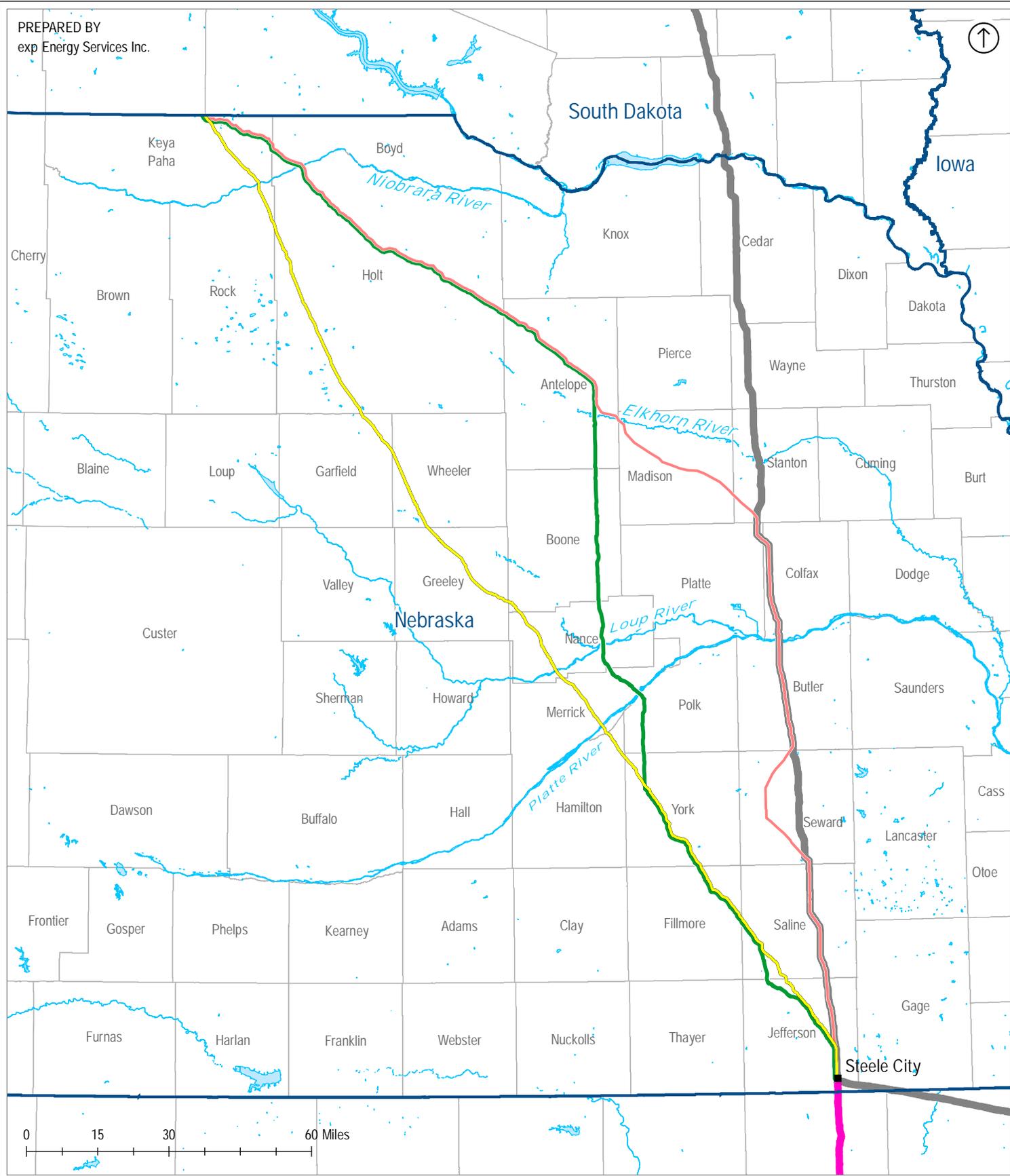
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

Figure 4.3.3-8
 I-90 Corridor Alternatives A and B
 Key Aquifers and Potable Water Wells
 within 2-mile Corridor

Attachment No. 6



LEGEND	
	PREFERRED ROUTE
	SANDHILLS ALTERNATIVE ROUTE
	KEYSTONE MAINLINE ALTERNATIVE ROUTE
	KEYSTONE MAINLINE (PHASE I)
	KEYSTONE CUSHING EXTENSION (PHASE II)
	WATERBODY
	STATE BOUNDARY
	COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act*

Direct Testimony of
Vencille Hipke in Support of Landowner
Intervenors

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Vencille Hipke.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located at 47121 894th RD, Stuart, NE 68780 in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

1 A: I ranch and farm with my husband and 3 sons and I am in charge of all the
2 bookwork.

3 **Q: If you are you married tell us your spouse's name please?**

4 A: Yes, going on 39 years to Lloyd.

5 **Q: If you have children how many do you have?**

6 A: We have 3 Sons. Cody, his wife and their daughter live on the same place as us.
7 Paul and Logan, their wives and families are within the close vicinity of our Home
8 place.

9 **Q: If you have grandchildren how many do you have?**

10 A: We have five Grandchildren.

11 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you
12 and or your family?**

13 A. Yes. Since this picture was taken we have 2 more Grandbabies and one on the
14 way.

15 **Q: For the land that would be affected and impacted by the proposed KXL tar
16 sands pipeline give the Commissioners a sense how long the land has been in
17 your family and a little history of the land.**

18 A: I have lived on this place my entire Adult life, going on 39 years now. My
19 husband and I have worked hard and put in a lot of long hours to develop this
20 "Home" place into a thriving business. I do not take lightly to anyone invading or
21 changing our property or the way we operate it. We have always respected the
22 land and have tried to preserve its delicate topsoil by leaving all the native grasses
23 as is by not tearing it up. To heal our land after any form of tillage would take
24 many years to regrow back to its natural state.

25 **Q: Do you earn any income from this land?**

26 A: Yes.

27 **Q: Have you depended on the income from your land to support your livelihood
28 or the livelihood of your family?**

1 A: Yes. Besides me and my husband, this land helps support our 3 sons, who are
2 employed by us. All 3 sons have returned to work for us on this land after
3 attending college (one serving in the Army before college). They have all left
4 home for a while and have all decided this is where they wanted to come back to
5 settle and make a living and their homes. I feel it our obligation to preserve our
6 land for them and their offspring and future generations.

7 **Q: Have you ever in the past or have you thought about in the future leasing all
8 or a portion of your land in question here?**

9 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
10 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
11 all the restrictions and risks and potential negative impacts to farming or ranching
12 operations as opposed to land that did not have those same risks. If I was looking
13 to lease or rent ground I would pay more for comparable non-pipeline land than I
14 would for comparable pipeline land and I think most folks would think the same
15 way. This is another negative economic impact that affects the landowner and the
16 county and the state and will forever and ever should TransCanada's preferred or
17 mainline alternative routes be approved. If they were to twin or closely parallel to
18 Keystone I the vast majority of landowners would be those that already have a
19 pipeline so there would be considerable less new incremental negative impacts.

20 **Q: Do you have similar concerns about selling the land?**

21 A: Well I hope not to have to sell the land in my lifetime but times change and you
22 never know what is around the corner and yes I am concerned that if another piece
23 of ground similar to mine were for sale and it did not have the pipeline and mine
24 did that I would have a lower selling price. I think this would be true for pipeline
25 ground on both the preferred and mainline alternative routes.

26 **Q: What is your intent with your land after you die?**

27 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
28 to come but I have thought about getting out if this pipeline were to come through.

1 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
2 **Pipeline would cross the land described above and owned by you?**

3 A: Yes.

4 **Q: Please describe your property that would be impacted by the potential**
5 **TransCanada's Keystone XL Pipeline?**

6 A: This is my Home place, where all the buildings and facilities are located. This
7 pipeline would cross both farmland and pastureland. It comes within a few feet of
8 our house well. The pipeline would dissect springs of water that flow into a dam
9 where all of our water for our cattle operation comes from. We background and
10 pasture over 1000 head of cattle per year and a leak into these springs or the dam
11 would be devastating to my operation. The reason we use the dam for watering
12 cattle is because we cannot get a well with sufficient volume to support the
13 number of cattle we run. Good wells are hard to get in our area. Water is essential
14 to our operation and we need to protect it to stay in business.

15 **Q: Where on your property does the proposed route run through?**

16 A: The proposed route comes within a few feet of our domestic well and would be
17 located in the recharge fields that supplies our drinking water. Beings the water
18 flows from West to East and the proposed pipeline is on the West side of this well
19 there is a possibility of any leak to naturally flow right into our well. I am not
20 certain if the well will be disturbed during construction process, it is that close.

21 **Q: Will this affect how you go about your lives on a daily basis?**

22 A: We don't feel we could ever feel safe about drinking or bathing in this water in the
23 future years without daily or at least weekly testing of the water in the event of an
24 underground compromise of the pipe (a leak that would go undetected below the
25 surface).

26 **Q: Is this well private or public?**

27 A: This is a private well.

28 **Q: Was this well registered when TransCanada chose the route?**

1 A: It was not registered as that was not required back in the day this well was
2 drilled. When Trans Canada chose this route I'm sure they did not take it into
3 account.

4 **Q: Did you notify TransCanada upon learning that the well was on their route?**

5 A: Upon learning that this well was on their route we called Trans Canada and invited
6 them to inspect the location of the well on the maps and from the road.

7 **Q: When did you notify TransCanada?**

8 A: This was sometime in February 2013.

9 **Q: Do you remember the name(s) of the land agents that visited you that day?**

10 A: Yes, and we still possess two Company cards given to us from Brock Taylor &
11 Van Shepardson who were land agents on behalf of TransCanada here that day.

12 **Q: How many other people were at the meeting?**

13 A: There were close to 10 people at this meeting and we know that at least one of
14 them was an Engineer, however he did not give us his card. We thought by them
15 actually "seeing" our well they might vary the route away from the well and we
16 did show them on the maps a better route, which they briefly went to see.

17 **Q: Did you receive any correspondence from TransCanada after the meeting?**

18 A: Later, after this meeting we received two other mail correspondences

19 **Q: What were enclosed with the two correspondences?**

20 A: Potential route maps from TransCanada

21 **Q: Did the routes vary to avoid the well?**

22 A: They did not vary the route at all to avoid this well.

23 **Q: Did you contact another agency to speak with them about the well issue?**

24 A: Yes, the Nebraska Department of Environmental Quality.

25 **Q: What did the NDEQ tell you?**

26 A: We were told TransCanada would probably just drill us a new well.

27 **Q: Even if that were true, does drilling a new well cause a problem for your**
28 **land?**

1 **A:** Yes. But the problem with drilling a new well is that it is near impossible to get a
2 "Good" well in our area, North of Stuart as any well man from this area will
3 testify, so we don't feel that is an option and certainly not an acceptable option. It
4 is too risky to sacrifice what we have now that we know is good and working.

5 **Q: Has TransCanada contacted you, since your initial meeting, about an**
6 **alternate route away from the well?**

7 **A:** To this day we have not seen any evidence or heard from TransCanada that they
8 have varied their route away from our well.

9 **Q: Is the well currently registered?**

10 **A:** Just recently we filed papers to register the well but have not received
11 confirmation from the State that it is done. How many other unregistered wells do
12 this proposed route not take into consideration?

13 **Q: Does the proposed route affect the water for your cattle as well?**

14 **A:** The proposed route dissects vital springs of water that flows into a dam that we
15 use to water our cattle with.

16 **Q: How many feeder cattle use the vital springs as their source of water?**

17 **A:** There are times when our feedlot numbers are up to 1000 head of feeder cattle that
18 use from this water source.

19 **Q: What happens to your cattle operation if the springs of water get**
20 **contaminated?**

21 **A:** If the springs of water that fill this dam becomes disrupted or contaminated our
22 Cattle operation will be compromised to the point of non-existence.

23 **Q: Are there other springs of water that your cattle drink out of?**

24 **A:** There are other springs of water farther out in the pastures that are dissected as
25 well and these flow into creeks & streams that our pasture cattle water out of.

26 **Q: How does the proposed route cut across your land?**

27 It is a diagonal cut across of our land

28 **Q: Does that raise any concerns to you?**

1 **A:** Yes, this also concerns us as to the use of ALL of the pastureland if they require
2 the fencing out of the pipeline, either for the "healing" process of new grasses
3 planted or to permanently keep cattle away from the pipeline.

4 **Q: How many pastures will the route affect?**

5 **A:** Two separate pastures

6 **Q: How will they be affected?**

7 **A:** They would be cut across diagonally and the land not on the side of the water
8 source would become useless without a water source. The lands would take a lot
9 of years to "heal" and be back to full potential, probably just to be dug up again in
10 the event of a leak or pipe replacement. We will lose use of a lot of our pasture
11 land and that means lost productive ground and lost income. This is a big
12 headache for us after TransCanada is long gone. Remember they want us to sign
13 an easement that is "Perpetual" and to their "assigns or successors" which means
14 FOREVER!

15 **Q: Does the pipeline run through any objects that will affect your land?**

16 **A:** Out in the pastureland are huge rocks which the proposed route would cross
17 thru. It is to our understanding that TransCanada would not have to bury the pipe
18 as deep thru these areas.

19 **Q: Do you have any concerns about this?**

20 **A:** This concerns us as to the heating up of the soil by the pipe being nearer to the
21 surface and the "healing" of the land so that it could ever be pastured again. The
22 inability of the land to heal will be followed by erosion on the
23 uneven surfaces. Also these rocks are constantly moving and emerging so the
24 possibility of them pushing into the pipe causing a rupture is possible, esp. during
25 an earthquake (we've felt them out here before!).

26 **Q: Will the value of your land decrease with the pipeline running through it?**

27 **A:** We have concerns as to the devaluation of our land. We have heard about
28 Banking institutions that are not loaning money and devaluing land on this
29 proposed route.

1 **Q: How does this affect the financial stability of your family and business?**

2 **A:** This greatly affects our Financial as this land is the soul of our operation, where all
3 the buildings and feedlots are located (our Homeplace). Our hope is to pass this
4 land on down to our three sons but they too will have deflated values on their
5 Financials FOREVER!

6 **Q: Do you have any concerns as to the safety of the pipeline?**

7 **A:** There are multiple concerns for us as to the Safety of this pipeline

8 **Q: Do you have any concerns that TransCanada may abandon the pipeline when**
9 **it is completed?**

10 **A:** Yes, this is extremely concerning about the ability for TransCanada to abandon the
11 dirty pipe in the ground whenever they want.

12 **Q: What are your concerns?**

13 **A:** We can't afford to take it out. They probably wouldn't even let us if we could.
14 And they are not offering to pay for their luxury of leaving it in place.

15 **Q: Do you have any concerns that the pipeline may contaminate your neighbors**
16 **land?**

17 **A:** We are concerned about Liability issues if the pipeline on our land contaminates
18 our neighbors land. We cannot afford Insurance or the cleanup costs if there is a
19 leak on our land and it affects our neighbors land and we get sued. We should not
20 have to be liable for Trans Canada's operation of this pipeline. I'm sure there will
21 be more concerns about this pipeline as we go forward, but these are the main ones
22 I have at this time.

23 **Q: Were you or an entity for which you are a member, shareholder, or director**
24 **previously sued by TransCanada Keystone Pipeline, LP?**

25 **A:** Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
26 petition for condemnation against our land so it could place its proposed pipeline
27 within an easement that it wanted to take from us on our land.

28 **Q: Did you defend yourself and your land in that condemnation action?**

1 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
2 and expenses in our resistance of TransCanada’s lawsuit against us.

3 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
4 incurred?**

5 A: No, they have not.

6 **Q: In its lawsuit against you, did TransCanada identify the amount of your
7 property that it wanted to take for its proposed pipeline?**

8 A: The lawsuit against us stated they would take the amount of property that is
9 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
10 and equipment reasonably necessary to operate the pipeline.

11 **Q: Did TransCanada define what they meant by “property that is reasonably
12 necessary”?**

13 A: No, they did not.

14 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain
15 property portion of your land?**

16 A: Yes, they did.

17 **Q: Did TransCanada describe what rights it proposed to take related to the
18 eminent domain property on your land?**

19 A: Yes, they did.

20 **Q: What rights that they proposed to take did they describe?**

21 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
22 operate, and maintain the pipeline and the plant and equipment reasonably
23 necessary to operate the pipeline, specifically including surveying, laying,
24 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
25 reconstructing, removing and abandoning one pipeline, together with all fittings,
26 cathodic protection equipment, pipeline markers, and all their equipment and
27 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
28 petroleum products, and all by-products thereof.”

1 **Q: Prior to filing an eminent domain lawsuit to take your land that**
2 **TransCanada identified, do you believe they attempted to negotiate in good**
3 **faith with you?**

4 A: No, I do not.

5 **Q: Did TransCanada at any time approach you with or deliver to you their**
6 **proposed easement and right-of-way agreement?**

7 A: Yes, they did.

8 **Q: At the time you reviewed TransCanada's easement and right-of-way**
9 **agreement, did you understand that they would be purchasing a fee title**
10 **interest in your property or that they were taking something else?**

11 A: I understood that they proposed to have the power to take both a temporary
12 construction easement that could last for a certain period of time and then also a
13 permanent easement which they described to be 50 feet across or in width, and
14 that would run the entire portion of my property from where a proposed pipeline
15 would enter my property until where it would exit the property.

16 **Q: Is the document included with your testimony here as Attachment No. 3, a**
17 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
18 **Way agreement that they included with their condemnation lawsuit against**
19 **you?**

20 A: Yes, it is.

21 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
22 **and Right-of-Way agreement?**

23 A: Yes, I have.

24 **Q: What is your understanding of the significance of the Easement and Right-of-**
25 **Way agreement as proposed by TransCanada?**

26 A: My understanding is that this is the document that will govern all of the rights and
27 obligations and duties as well as the limitations of what I can and cannot do and
28 how I and any future landowner and any person I invite to come onto my property

1 must behave as well as what TransCanada is and is not responsible for and how
2 they can use my land.

3 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
4 **agreement do you have any concerns about any portions of it or any of the**
5 **language either included in the document or missing from the proposed**
6 **document?**

7 A: I have a number of significant concerns and worries about the document and how
8 the language included and the language not included potentially negatively
9 impacts my land and thereby potentially negatively impacts my community and
10 my state.

11 **Q: I would like you to walk the Commissioners through each and every one of**
12 **your concerns about TransCanada's proposed Easement and Right-of-Way**
13 **agreement so they can develop an understanding of how that language and**
14 **the terms of that contract, in your opinion, potentially negatively impacts you**
15 **and your land. So, if you can start at the beginning of that document and**
16 **let's work our way through it, okay?**

17 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
18 Easement and Right-of-Way agreement and how it negatively could affect my
19 property rights and my economic interests.

20 **Q. Okay, let's start with your first concern please.**

21 A: The very first sentence talks about consideration or how much money they will
22 pay to compensate me for all of the known and unknown affects and all of the
23 rights I am giving up and for all the things they get to do to my land and for what
24 they will prevent me from doing on my land and they only will pay me one time at
25 the signing of the easement agreement. That is a huge problem.

26 **Q: Explain to the Commissioners why that is a problem.**

27 A: It is not fair to the landowner, the county, or the State. It is not fair to the
28 landowner because they want to have my land forever for use as they see fit so
29 they can make a daily profit from their customers. If I was to lease ground from

1 my neighbor I would typically pay twice a year every year as long as they granted
2 me the rights to use their land. That only makes sense – that is fair. If I was going
3 to rent a house in town I would typically pay monthly, every month until I gave up
4 my right to use that house. By TransCanada getting out on the cheap and paying
5 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax
6 revenue collection on the money I would be paid and then pay taxes on and
7 contribute to this state and this country. It is money I would be putting back into
8 my local community both spending and stimulating the local economy and
9 generating more economic activity right here. Instead TransCanada’s shareholders
10 keep all that money and it never finds its way to Nebraska.

11 **Q: What is your next concern?**

12 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
13 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
14 limited partnership...” and I have no idea who that really is. I have no idea who is
15 forcing this pipeline on us or who the owners of the entities are, or what are the
16 assets backing this limited partnership, or who the general partner is, or who all
17 the limited partners are, and who makes up the ownership of the these partners or
18 the structure or any of the basic things you would want to know and understand if
19 you would want to do business with such an outfit. According to TransCanada’s
20 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
21 liability company called TransCanada Keystone Pipeline GP, LLC is the general
22 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
23 basically nothing. That is really scary since the general partner has the liability but
24 virtually none of the ownership and who knows if it has any other assets.

25 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
26 **percent clear on exactly who could become the owner of over 275 miles of**
27 **Nebraska land?**

28 A: No.

1 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
2 **percent clear on exactly who will be operating and responsible for**
3 **approximately 275 miles of tar sands pipeline underneath and through**
4 **Nebraska land?**

5 A: No.

6 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
7 **and the State of Nebraska of TransCanada's easement terms.**

8 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
9 called "Grantee")..." and this concerns me because it would allow their easement
10 to be transferred or sold to someone or some company or country or who knows
11 what that I don't know and who we may not want to do business with. This
12 pipeline would be a huge asset for TransCanada and if they can sell to the highest
13 bidder that could have terrible impacts upon all of Nebraska depending upon who
14 may buy it and I don't know of any safeguards in place for us or the State to veto
15 or have any say so in who may own, operate, or be responsible for this pipeline in
16 the future.

17 **Q: Do you think that type of uncertainty and lack of control over a major piece**
18 **of infrastructure crossing our State is in the public interest?**

19 A: No, certainly not, in fact, just the opposite.

20 **Q: What's next?**

21 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
22 really concerns me. Why does the easement and right-of-way have to be perpetual
23 and permanent? That is the question myself and my family want an answer to.
24 Perpetual to me is like forever and that doesn't make sense.

25 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

26 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
27 data proving there is a perpetual supply of tar sands. I am not aware in
28 TransCanada's application where it proves there is a perpetual necessity for this
29 pipeline. My understanding of energy infrastructure like wind towers is they have

1 a decommission plan and actually take the towers down when they become
2 obsolete or no longer needed. Nothing manmade lasts forever. My land however
3 will, and I want my family or future Nebraska families to have that land as
4 undisturbed as possible and it is not in my interest or the public interest of
5 Nebraska to be forced to give up perpetual and permanent rights in the land for
6 this specific kind of pipeline project.

7 **Q: Okay, what is your next concern?**

8 A: The easement language includes all these things TransCanada can do and it says
9 "...abandoning in place..." so they can just leave this pipeline under my ground
10 until the end of time just sitting there while they are not using it, but I am still
11 prevented from doing on my land and using my land what I would like. If I owned
12 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
13 there. It doesn't make sense and it scares me and it is not in my interest or the
14 public interest of Nebraska to allow this.

15 **Q: Now it looks like we are ready to go to the second page of the Easement is that
16 right?**

17 A: Yes.

18 **Q: So now on the second page of the Easement what are your concerns?**

19 A: Here the Easement identifies a 24-month deadline to complete construction of the
20 pipeline but has caveats that are undefined and ambiguous. The 24-month period
21 starts to run from the moment "actual pipeline installation activities" begin on
22 Landowners property. It appears that TransCanada would define this phrase as
23 needed. It would be wise to explain what types of TransCanada action constitutes
24 "installation activity" For instance, would the placement and storage of an
25 excavator or other equipment on or near the Easement property be an activity or
26 would earth have to be moved before the activity requirement is triggered. This
27 vague phrase is likely to lead to future disputes and litigation that is not in the best
28 interest of the welfare of Nebraska and would not protect property interests. The
29 24-months can also be extended in the case of "force majeure." My understanding

1 is that force majeure is often used to insulate a party to a contract when events
2 occur that are completely out of their control. In TransCanada's easement this is
3 expanded to include "without limitation...availability of labor and materials."
4 Extending this language to labor and materials is problematic because these are
5 two variables that TransCanada does have some or significant control over and to
6 allow extension of the 24-month period over events not truly out of the control of
7 TransCanada and without further provision for compensation for the Landowner is
8 not conducive to protection of property rights.

9 **Q: Okay, what is your next concern?**

10 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
11 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially
12 reasonable costs and expenses" will pay for damages caused but then limits
13 TransCanada's liability to certain circumstances. There is no definition of
14 "commercially reasonable" and no stated right that the Landowner would get to
15 determine the amounts of cost or expense that is "commercially reasonable."
16 TransCanada excepts out from their liability any damages that are caused by
17 Landowner's negligence or the negligence of anyone ever acting on the behalf of
18 Landowner. It is understandable that if the Landowner were to willfully and
19 intentionally cause damages to the pipeline that Landowner should be liable.
20 However, anything short of willful misconduct should be the liability of
21 TransCanada who is subjecting the pipeline on the Landowner and who is making
22 a daily profit from that pipeline. When evaluating the impact on property rights of
23 this provision, you must consider the potentially extremely expensive fight a
24 Landowner would have over this question of whether or not damage was an act of
25 negligence. Putting this kind of potential liability upon the Landowner is
26 incredibly problematic and is detrimental to the protection of property rights. I
27 don't think this unilateral power which I can't do anything about as the landowner
28 is in the best economic interest of the land in question or the State of Nebraska for
29 landowners to be treated that way.

1 **Q: Is there any specific event or example you are aware of that makes this**
2 **concern more real for you?**

3 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
4 Nemaha County, Nebraska landowner farmers who accidentally struck two
5 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
6 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
7 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
8 copy of the Federal Court Complaint is here as **Attachment No. 4.**

9 **Q: What is your next concern with the Easement language?**

10 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
11 they choose unless 1) any Landowner use interferes in any way with
12 TransCanada's exercise of any of its rights within the Easement, or 2)
13 TransCanada decides to take any action on the property it deems necessary to
14 prevent injury, endangerment or interference with anything TransCanada deems
15 necessary to do on the property. Landowner is also forbidden from excavating
16 without prior authorization by TransCanada. So my understanding is that
17 TransCanada will unilaterally determine what Landowner can and can't do based
18 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
19 could also completely deny my request to excavate. Further, TransCanada retains
20 all "privileges necessary or convenient for the full use of the rights" granted to
21 them in the Easement. Again, TransCanada unilaterally can decide to the
22 detriment of the property rights of Landowner what TransCanada believes is
23 necessary or convenient for it. And there is no option for any additional
24 compensation to landowner for any right exercised by TransCanada that leads to
25 the removal of trees or plants or vegetation or buildings or structures or facilities
26 owned by Landowner of any kind. Such undefined and unilateral restrictions and
27 rights without having to compensate Landowner for such further destruction or
28 losses are not conducive to the protection of property rights or economic interest.

29 **Q: What is the next concern you have?**

1 A: The Easement also allows some rights for Landowner but restricts them at the
2 same time and again at the sole and unilateral decision making of TransCanada.
3 TransCanada will determine if the actions of Landowner might in anyway
4 endanger or obstruct or interfere with TransCanada’s full use of the Easement or
5 any appurtenances thereon to the pipeline itself or to their access to the Easement
6 or within the Easement and TransCanada retains the right at any time, whether
7 during growing season or not, to travel “within and along Easement Area on foot
8 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
9 retain the rights to prevent any landowner activity that it thinks may “unreasonably
10 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
11 undefined and unilateral restrictions are not conducive to the protection of
12 property rights or economic interest.

13 **Q: What is the next concern you have with the Easement language?**

14 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
15 Landowner’s land any debris of any kind without any input or power of
16 Landowner to demand an alternative method or location of debris disposal. Such
17 unilateral powers would negatively affect Landowners property are not conducive
18 to the protection of property rights or economic interest.

19 **Q: What is the next concern you have with the Easement language?**

20 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
21 “where rock is encountered” mean and why does TransCanada solely get to
22 determine whether or not this phrase is triggered. This phrase could be used to
23 justify installing the pipeline 24 inches beneath the surface. The ability to use this
24 provision to minimal locate the pipeline at a depth of 24 inches could negatively
25 affect Landowners property are not conducive to the protection of property rights.
26 A shallow pipeline is much more likely to become a danger and liability in the
27 future given farming operations and buried irrigation lines and other factors
28 common to the current typical agricultural uses of the land in question impacted
29 by TransCanada’s preferred pipeline route.

1 **Q: What is the next concern you have with the Easement language?**

2 A: There are more vague concepts solely at the determination of TransCanada such as
3 “as nearly as practicable” and “pre-construction position” and “extent reasonably
4 possible.” There is nothing here that defines this or provides a mechanism for
5 documenting or memorializing “pre-construction position” so as to minimize
6 costly legal battles or wasted Landowner time attempting to recreate the soil
7 condition on their fields or pasture. Such unilateral powers would negatively affect
8 Landowners property are not conducive to the protection of property rights or
9 economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: TransCanada maintains the unilateral right to abandon the pipeline and all
12 appurtenances thereto in place on, under, across, or through Nebraska land at any
13 time it chooses. There is no provision for Landowner compensation for such
14 abandonment nor any right for the Landowner to demand removal. Such unilateral
15 powers would negatively affect Landowners property are not conducive to the
16 protection of property rights or economic interest.

17 **Q: What is the next concern you have with the Easement language?**

18 A: TransCanada has the power to unilaterally move or modify the location of any
19 Easement area whether permanent or temporary at their sole discretion.
20 Regardless, if Landowner has taken prior steps relative the their property in
21 preparation or planning of TransCanada’s taking of the initial easement area(s),
22 the language here does not require TransCanada to compensate the Landowner if
23 they decide to move the easement anywhere on Landowners property. Such
24 unilateral powers would negatively affect Landowners property are not conducive
25 to the protection of property rights or economic interests.

26 **Q: What is the next concern you have with the Easement language?**

27 A: The Easement requires that all of the burdens and restrictions upon Landowner to
28 transfer and be applicable to any future owner of the Land in question without the

1 ability of the future Landowner to modify or negotiate any of the language in
2 question to which it will be held to comply.

3 **Q: What is the next concern you have with the Easement language?**

4 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
5 Easement to any person, company, country, etc. at their sole discretion at any time
6 to anyone. This also means that any buyer of the easement could do the same to a
7 third buyer and so on forever. There is no change of control or sale provision in
8 place to protect the Landowner or Nebraska or to provide compensation for such
9 change of control or ownership. It is not conducive to the protection of property
10 rights or economic interests to allow unilateral unrestricted sale of the Easement
11 thereby forcing upon the Landowner and our State a new unknown Easement
12 owner.

13 **Q: What is the next concern you have with the Easement language?**

14 A: There are many terms in the Easement that are either confusing or undefined terms
15 that are without context as to whether or not the Landowner would have any say
16 so in determining what these terms mean or if the evaluation is solely in
17 TransCanada's control. Some of these vague undefined terms are as follows:

- 18 i. "pipeline installation activities"
- 19 ii. "availability of labor and materials"
- 20 iii. "commercially reasonable costs and expenses"
- 21 iv. "reasonably anticipated and foreseeable costs and expenses"
- 22 v. "yield loss damages"
- 23 vi. "diminution in the value of the property"
- 24 vii. "substantially same condition"
- 25 viii. "an actual or potential hazard"
- 26 ix. "efficient"
- 27 x. "convenient"
- 28 xi. "endangered"
- 29 xii. "obstructed"

- 1 xiii. “injured”
- 2 xiv. “interfered with”
- 3 xv. “impaired”
- 4 xvi. “suitable crossings”
- 5 xvii. “where rock is encountered”
- 6 xviii. “as nearly as practicable”
- 7 xix. “pre-construction position”
- 8 xx. “pre-construction grade”
- 9 xxi. “various engineering factors”

10 Each one of these above terms and phrases as read in the context of the Easement
11 could be problematic in many ways. Notably, undefined terms tend to only get
12 definition in further legal proceedings after a dispute arises and the way the
13 Easement is drafted, TransCanada has sole power to determine when and if a
14 particular situation conforms with or triggers rights affected by these terms. For
15 instance, “yield loss damages” should be specifically defined and spelled out
16 exactly how the landowner is to be compensated and in what events on the front
17 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
18 the Landowner is without contractual rights to define these terms or determine
19 when rights related to them trigger and what the affects may be.

20 **Q: Do you have any other concerns about the Easement language that you can**
21 **think of at this time?**

22 A: I reserve the right to discuss any additional concerns that I think of at the time of
23 my live testimony in August.

24 **Q: Based upon what you have shared with the Commission above regarding**
25 **TransCanada’s proposed Easement terms and agreement, do you believe**
26 **those to be reasonable or just, under the circumstances of the pipeline’s**
27 **impact upon you and your land?**

28 A: No, I do not believe those terms to be reasonable or just for the reasons that we
29 discussed previously.

1 **Q: Did TransCanada ever offer you financial compensation for the rights that**
2 **they sought to obtain in your land, and for what they sought to prevent you**
3 **and any future land owner of your property from doing in the future?**

4 A: Yes, we received an offer from them.

5 **Q: As the owner of the land in question and as the person who knows it better**
6 **than anyone else, do you believe that TransCanada offered you just, or fair,**
7 **compensation for all of what they proposed to take from you so that their tar**
8 **sands pipeline could be located across your property?**

9 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
10 offer for all the potential impacts and effects and the rights that I'm giving up, and
11 what 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.

20 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
21 **crude petroleum, or oil and petroleum by-products that you would like to**
22 **ship in its pipeline?**

23 A: No, it has not.

24 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
25 **products that you, at this time or any time in the future, would desire to place**
26 **for transport within the proposed TransCanada Keystone XL Pipeline?**

27 A: No, I do not.

1 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
2 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
3 **products within the proposed TransCanada Keystone XL Pipeline?**

4 A: No, I do not. I've never heard of such a person or company like that.

5 **Q: Do you pay property taxes for the land that would be affected and impacted**
6 **at the proposed TransCanada Keystone XL Pipeline?**

7 A: Yes, I do.

8 **Q: Why do you pay property taxes on that land?**

9 A: Because that is the law. The law requires us to pay the property taxes as the owner
10 of that property.

11 **Q: Because you follow the law and pay property taxes, do you believe you**
12 **deserve any special consideration or treatment apart from any other person**
13 **or company that pays property taxes?**

14 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
15 just what you do.

16 **Q: Do you believe the fact that you pay property taxes entitles you to special**
17 **treatment of any kind, or special rights of any kind?**

18 A: No, of course not.

19 **Q: Do you believe the fact that you pay property taxes on your land would be**
20 **enough to qualify you to have the power of eminent domain to take land of**
21 **your neighbors or other people in your county, or other people across the**
22 **state of Nebraska?**

23 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
24 I expect an award for or any type of special consideration.

25 **Q: Have you at any time ever employed any person other than yourself?**

26 A: Well, yes I have.

27 **Q: Do you believe that the fact that you have, at some point in your life,**
28 **employed one or more other persons entitle you to any special treatment or**

1 **consideration above and beyond any other Nebraskan that has also employed**
2 **one or more persons?**

3 A: No, of course not.

4 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
5 **have at one point employed another person within this state, entitles you to**
6 **preferential treatment or consideration of any kind?**

7 A: No, of course not. If I choose to employ someone that decision is up to me. I
8 don't deserve any special treatment or consideration for that fact.

9 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
10 **crude oil pipeline in its preferred location, or ultimate location across the**
11 **state of Nebraska?**

12 A: Yes, I have significant concerns. 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 our Interrogatory No. 211, TransCanada only
24 owns and operates one (1) major oil pipeline. They simply do not have the
25 experience with this type of pipeline and that scares me. There are others but that
26 is what I can recollect at this time and if I remember more or my recollection is
27 refreshed I will share those with the Commissioners at the Hearing in August.

28 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
29 **landowner is reasonable or just?**

1 A: No, I do not.

2 **Q: Do you have any concern about limitations that the construction of this**
3 **proposed pipeline across your affected land would prevent construction of**
4 **future structures upon the portion of your land affected by the proposed**
5 **easement and immediately surrounding areas?**

6 A: Well yes, of course I do. We would not be able to build any types of structures
7 directly across or touching the easement and it would be unwise and I would be
8 uncomfortable to build anything near the easement for fear of being blamed in the
9 future should any damage or difficulty result on my property in regards to the
10 pipeline. What if we would like to expand our feedlot operation? We are
11 researching installing a hoop building and this area might be where it would need
12 to go.

13 **Q: Do you think such a restriction would impact you economically?**

14 A: Well yes, of course. It restricts both me and my successors from growing and
15 expanding.

16 **Q: How do you think such a restriction would impact you economically?**

17 A: The future of this land may not be exactly how it's being used as of this moment,
18 and having the restrictions and limiting my ability to develop my land in certain
19 ways presents a huge negative economic impact on myself, my family, and any
20 potential future owner of the property. You have no idea how I or the future owner
21 may want to use this land in the future or the other land across Nebraska
22 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
23 ago it would have been hard to imagine all the advances that we have now or how
24 things change. Because the Easement is forever and TransCanada gets the rights in
25 my land forever we have to think with a very long term view. By placing their
26 pipeline on under across and through my land that prevents future development
27 which greatly negatively impacts future taxes and tax revenue that could have
28 been generated by the County and State but now will not. When you look at the
29 short blip of economic activity that the two years of temporary construction efforts

1 may bring, that is far outweighed by the perpetual and forever loss of opportunity
2 and restrictions TransCanada is forcing upon us and Nebraska.

3 **Q: Do you have any concerns about the environmental impact of the proposed**
4 **pipeline?**

5 A: Yes, I do.

6 **Q: What are some of those concerns?**

7 A: As an affected land owner and Nebraskan, I am concerned that any construction,
8 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
9 a detrimental impact upon the environment of my land specifically, as well as the
10 lands near my land and surrounding the proposed pipeline route.

11 **Q: Do you have any other environmental concerns?**

12 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
13 construction and/or maintenance and operation. I am concerned about spills and
14 leaks that TransCanada has had in the past and will have in the future. This could
15 be catastrophic to my operations or others and to my county and the State.

16 **Q: Do you have any thoughts regarding if there would be an impact upon the**
17 **natural resources on or near your property due to the proposed pipeline?**

18 A: Yes, I believe that any construction, operation, and/or maintenance of the
19 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
20 resources of my land, and the lands near and surrounding the proposed pipeline
21 route.

22 **Q: Do you have any worries about potential impacts from the proposed pipeline**
23 **to the soil of your land, or land near you?**

24 A: Yes, I believe that any construction, operation, and/or maintenance of the
25 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
26 our land, as well as land along and surrounding the proposed pipeline route. This
27 includes, but is not limited to, the reasons that we discussed above of disturbing
28 the soil composition and makeup as it has naturally existed for thousands and
29 millions of years. This disruption could be during the construction process and/or

1 any future maintenance or removal process. I'm gravely concerned about the
2 fertility and the loss of economic ability of my property to grow the crops, or grow
3 the grasses, or grow whatever it is at that time they exist on my property or that I
4 may want to grow in the future, or that a future owner may want to grow. The
5 land will never be the same as it exists now, undisturbed, after it is trenched up for
6 the proposed pipeline.

7 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
8 **upon the groundwater over your land, or surrounding lands?**

9 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
10 the proposed Keystone XL Pipeline would have a detrimental impact upon the
11 groundwater of not only under my land, but also near and surrounding the pipeline
12 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
13 simple and it is simply too valuable to our State and the country to put at
14 unreasonable risk.

15 **Q: Do you have any concern about the potential impact of the proposed pipeline**
16 **upon the surface water on, or near or around your land?**

17 A: Yes, I have significant concerns that any construction, operation, and/or
18 maintenance of the proposed Keystone XL Pipeline would have detrimental
19 impact upon the surface water of not only within my property boundary, but along
20 and near and surrounding the pipeline route, and in fact, across the state of
21 Nebraska.

22 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
23 **upon the wildlife and plants, other than your growing crops on or near your**
24 **land?**

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 wildlife and the plants, not only that are located on or can be found upon my land,
28 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 shown here that is within Nebraska
26 essentially twins or 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 what has been previously called the I-90**
7 **corridor alternative route, specifically for the portion of the proposed**
8 **pipeline within Nebraska as found in Attachment No. 6 to your testimony, is**
9 **in the public interest of Nebraska?**

10 A: No, I do not.

11 **Q: Do you believe there is any potential route for the proposed Keystone XL**
12 **Pipeline across, within, under, or through the State of Nebraska that is in the**
13 **public interest of the citizens of Nebraska?**

14 A: No, I do not.

15 **Q: Why do you hold that belief?**

16 A: Because there simply is no public interest based on all of the factors that I am
17 aware and that I have read and that I have studied that this Commission is to
18 consider that would establish that a for-profit foreign-owned pipeline that simply
19 crosses Nebraska because we are geographically in the way between where tar
20 sands are in Canada to where it wants to ship it to in Texas could ever be in the
21 public interest of Nebraskans. We derive no benefit from this project. It is not for
22 public use. Nebraska is simply in the way and when all considerations are taken in
23 there is no net benefit of any kind for Nebraska should this project be placed in our
24 state. Even if there was some arguable “benefit” it is not enough to outweigh all
25 the negative impacts and concerns.

26 **Q: What do you think about the applicant, TransCanada’s argument that its**
27 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
28 **of Nebraska because it may bring temporary jobs during the construction**
29 **phase to Nebraska?**

1 A: First of all, not all jobs are created equally. Most jobs that are created, whether
2 temporary or on a permanent basis, don't come with a project that has all the
3 potential and foreseeable negative impacts, many of which we have discussed here
4 and other witnesses throughout the course of this hearing have and will discuss. If
5 I decide to hire and employ someone to help me out in my farming or ranching
6 business, I've created a job but I haven't done so at the risk or detrimental impact
7 to my land or my town or my county or my state. And I've hired someone who is
8 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
9 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
10 jobs are not created equal. Additionally, I understand from what I'm familiar with
11 from TransCanada's own statements that the jobs numbers they originally touted
12 were determined to be a minute fraction of the permanent jobs that had been
13 projected. According to their answer to our Interrogatory No. 191, TransCanada
14 has created only thirty-four (34) jobs within Nebraska working specifically on
15 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
16 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
17 Further, according to their answer to Interrogatory No. 199, TransCanada would
18 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
19 constructed on its Preferred Route or its Mainline Alternative Route.

20 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
21 **because it would cross your land?**

22 A: No, absolutely not. I am opposed to this project because it is not in the public
23 interest, neither within my community nor within our state.

24 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
25 **was to cross someone else's land?**

26 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
27 the fear and anxiety and potential foreseeable risks and negative impacts that this
28 type of a project carrying this type of product brings forced upon anyone in this
29 state or any other state.

1 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
2 **Pipeline to cross the state of Nebraska?**

3 A: I don't believe there is an intelligent route because as I have stated I don't believe
4 this project anywhere within Nebraska is within the public interest. However, if
5 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
6 had to go somewhere in the state of Nebraska, the only intelligent route I believe
7 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
8 preferred route and the mainline alternative routes are economic liabilities our
9 state cannot risk.

10 **Q: What do you rely upon to make that statement?**

11 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
12 already exists in that area is reason enough as it is not in our best interest or the
13 public interests to have more major oil pipelines crisscrossing our state. Second,
14 they have all the infrastructure already there in terms of relationships with the
15 counties and local officials and first responders along that route. Third, they have
16 already obtained easements from all the landowners along that route and have
17 relationships with them. Fourth, that route avoids our most sensitive soils, the
18 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
19 Aquifer. Sixth, they have already studied that route and previously offered it as an
20 alternative. Seventh, it just makes the most sense that as a state we would have
21 some intelligent policy of energy corridors and co-locating this type of
22 infrastructure near each other.

23 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
24 **like the Public Service Commissioners to consider in their review of**
25 **TransCanada's Application?**

26 A: No, I have not. I have shared that which I can think of as of the date I signed this
27 document below but other things may come to me or my memory may be
28 refreshed and I will add and address those things at the time of the Hearing in
29 August and address any additional items at that time as is necessary. Additionally,

1 I have not had an adequate amount of time to receive and review all of
2 TransCanada's answers to our discovery and the discovery of others so it was
3 impossible to competently and completely react to that in my testimony here and I
4 reserve the right to also address anything related to discovery that has not yet
5 concluded as of the date I signed this document below. Lastly, certain documents
6 requested have not yet been produced by TransCanada and therefore I may have
7 additional thoughts on those I will also share at the hearing as needed.

8 **Q: What is it that you are requesting the Public Service Commissioners do in**
9 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
10 **across Nebraska?**

11 A: I am respectfully and humbly requesting that the Commissioners think far beyond
12 a temporary job spike that this project may bring to a few counties and beyond the
13 relatively small amount of taxes this proposed foreign pipeline would possibly
14 generate. And, instead think about the perpetual and forever impacts of this
15 pipeline as it would have on the landowners specifically, first and foremost, but
16 also thereby upon the entire state of Nebraska, and to determine that neither the
17 preferred route nor the Keystone mainline alternative route are in the public
18 interest of the citizens of the state of Nebraska. And if the Commissioners were
19 inclined to modify TransCanada's proposed routes and were to be inclined to grant
20 an application for a route in Nebraska, that the only potential route that would
21 make any intelligent sense whatsoever would be twinning or near paralleling of
22 the proposed KXL with the existing Keystone I pipeline. The point of including
23 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been
24 considered by TransCanada before. It simply does not make sense to add yet
25 another major oil pipeline crisscrossing our state creating new pumping stations,
26 creating new impacts on additional counties and communities and going through
27 all of the court processes with myself and other landowners like me when this
28 applicant already has relationships with the landowners, the towns and the
29 communities along Keystone I, and that Keystone I is firmly outside of the sand

1 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.

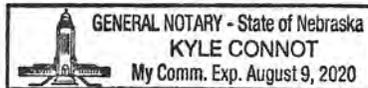
11 **Q: Thank you, I have no further questions at this time and reserve the right to**
12 **ask you additional questions at the August 2017 Hearing.**

Vencille Hipke

Vencille Hipke

Subscribed and Sworn to me before this 30 day of May, 2017.

[Signature]
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.

S.033
T.033N
R.015W



Lloyd Hipke

S.004
T.032N
R.015W

S.003
T.032N
R.015W

S.009
T.032N
R.015W

S.010
T.032N
R.015W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Lloyd Hipke

TRACT NO. ML-NE-HT-40180.000
STATE: Nebraska
COUNTY: Holt
SECTION: 004
TOWNSHIP: 032N
RANGE: 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\50588\KEYSTONE_XL\9000_9949258



S.004
T.032N
R.015W

S.003
T.032N
R.015W

Lloyd Hipke

S.009
T.032N
R.015W

S.010
T.032N
R.015W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Lloyd Hipke

TRACT NO. ML-NE-HT-40200.000
STATE: Nebraska
COUNTY: Holt
SECTION: 003
TOWNSHIP: 032N
RANGE: 015W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Property Line
- Section Line

Attachment No. 2



PROTECTED
by Free OGAFTA

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-40180.000
ML-NE-HT-40200.000

**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**") **Lloyd Hipke a/k/a Lloyd Z. Hipke and Vencille Hipke a/k/a Vincille Marie Hipke, husband and wife**, whose mailing address is 47121 894th Road, Stuart, NE 68780 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to

Grantor's Initials _____

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 349.89 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the E1/2 and the NE1/4 of the NW1/4, except North 25 acres of Section 4, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 200, Page 638, Book 180, Page 128 and Book 179, Page 743 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

Less and Except: A tract of land containing 2.30 acres, more or less, and being out of the NE1/4 of Section 4, Township 32 North, Range 15 West of the 6th P.M., Holt County, Nebraska, and being more particularly described as follows: Commencing at the Northeast Corner of said Section 4; thence West 1100 feet to the point of beginning; thence South 500 feet; thence West 200 feet; thence North 500 feet; thence East 200 feet to the point of beginning, as recorded in Book 175 and Page 271.

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 SW1/4 of Section 3, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 182, Page 189 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):

Lloyd Hipke a/k/a Lloyd Z. Hipke

Vencille Hipke a/k/a Vincille Marie Hipke

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Lloyd Hipke a/k/a Lloyd Z. Hipke**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Vencille Hipke a/k/a Vincille Marie Hipke**

Notary Public Signature

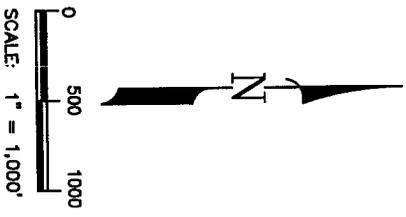
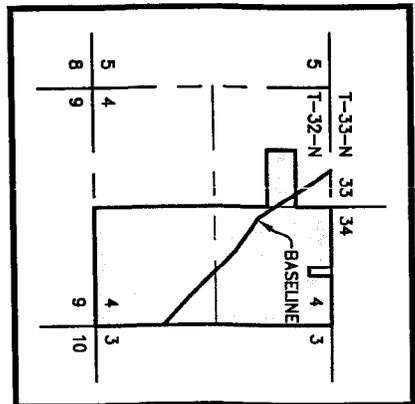
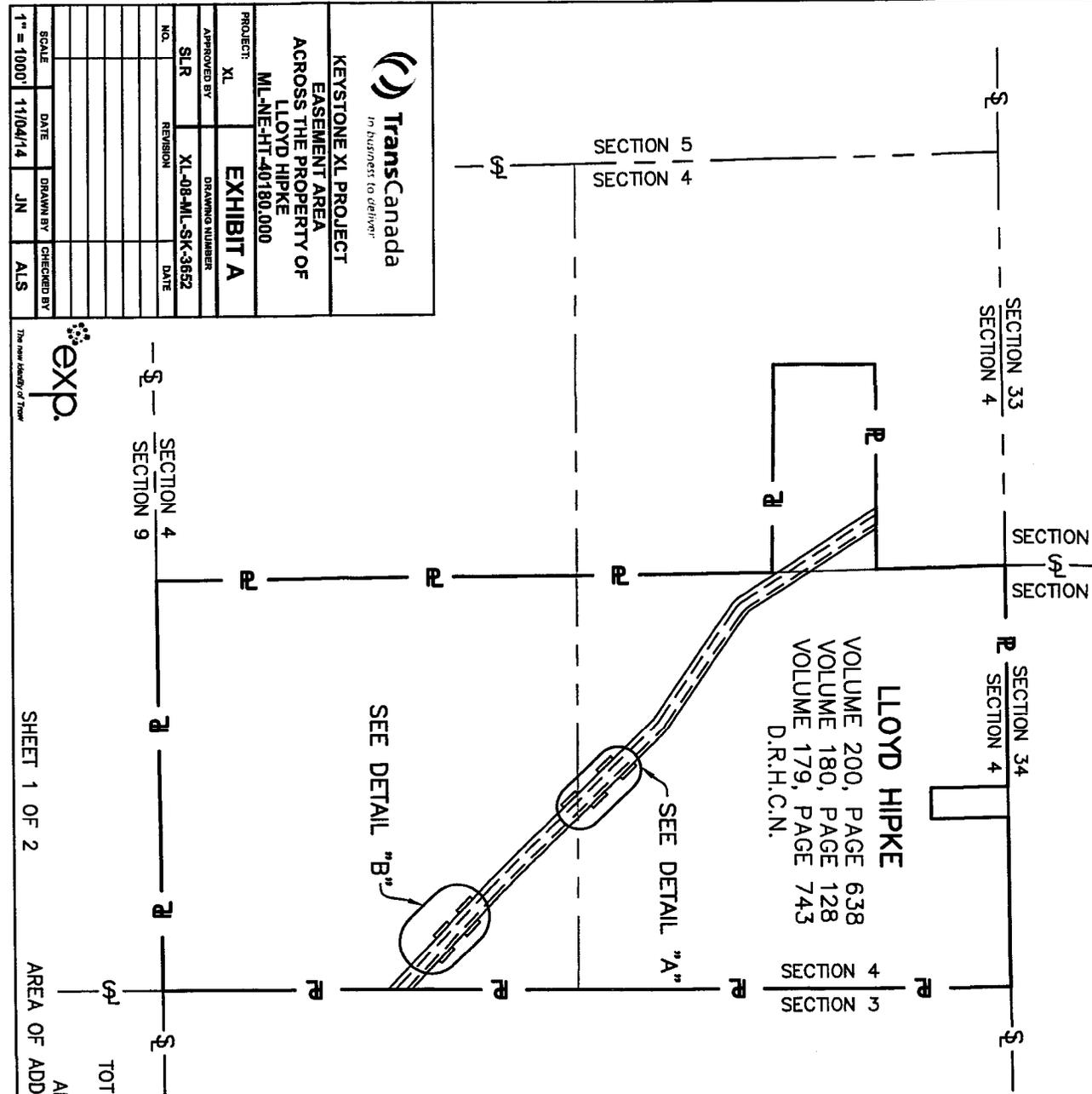
Affix Seal Here

LEGEND
 R PROPERTY LINE
 § 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-32-N, R-15-W, SECTION 4
 ML-NE-HT-40180.000

LLOYD HIPKE
 VOLUME 200, PAGE 638
 VOLUME 180, PAGE 128
 VOLUME 179, PAGE 743
 D.R.H.C.N.



TRACT LEGAL DESCRIPTION:
 PART OF THE E/2 AND THE
 NE/4 NW/4 EXCEPT NORTH 25
 ACRES OF SECTION 4,
 T-32-N, R-15-W

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM
 STANDARDS FOR PROPERTY BOUNDARY SURVEYS.
 IT WAS NOT DERIVED FROM AN ON-THE-GROUND
 SURVEY BUT IS INTENDED FOR RIGHT-OF-WAY
 PURPOSES ONLY. THE EXACT LOCATIONS AND
 MEASUREMENTS ARE APPROXIMATE AND MAY
 VARY, BUT THE WIDTH OF THE EASEMENT AREA
 TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 4.356'±
 AREA OF PERMANENT EASEMENT: 5.0 ACRES
 AREA OF TEMPORARY WORKSPACE: 6.0 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.6 ACRE

TransCanada
In Business to Deliver

KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
LLOYD HIPKE
ML-NE-HT-40180.000

EXHIBIT A

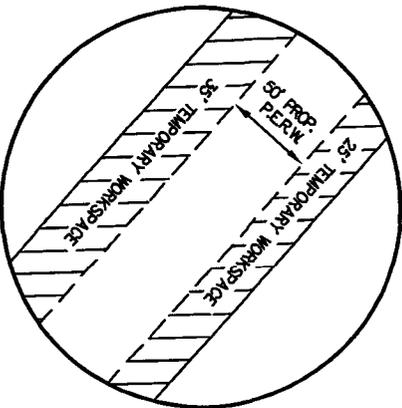
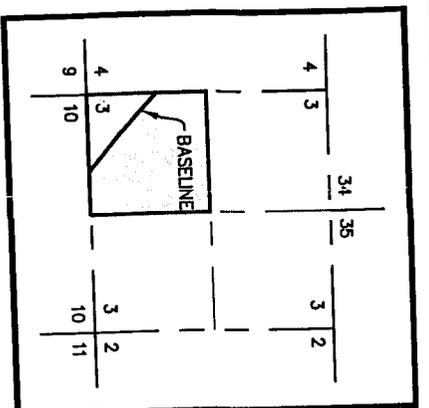
PROJECT: XL
 DRAWING NUMBER: XL-08-ML-SK-3652
 APPROVED BY: SLR
 REVISION: XL-08-ML-SK-3652
 NO. REVISION DATE

SCALE	DATE	DRAWN BY	CHECKED BY
1" = 1000'	11/04/14	JN	ALS



LEGEND
 R PROPERTY LINE
 S PROPOSED SECTION LINE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA

HOLT COUNTY, NEBRASKA
T-32-N, R-15-W, SECTION 3
ML-NE-HT-40200.000



DETAIL "A"
 N.T.S.

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.



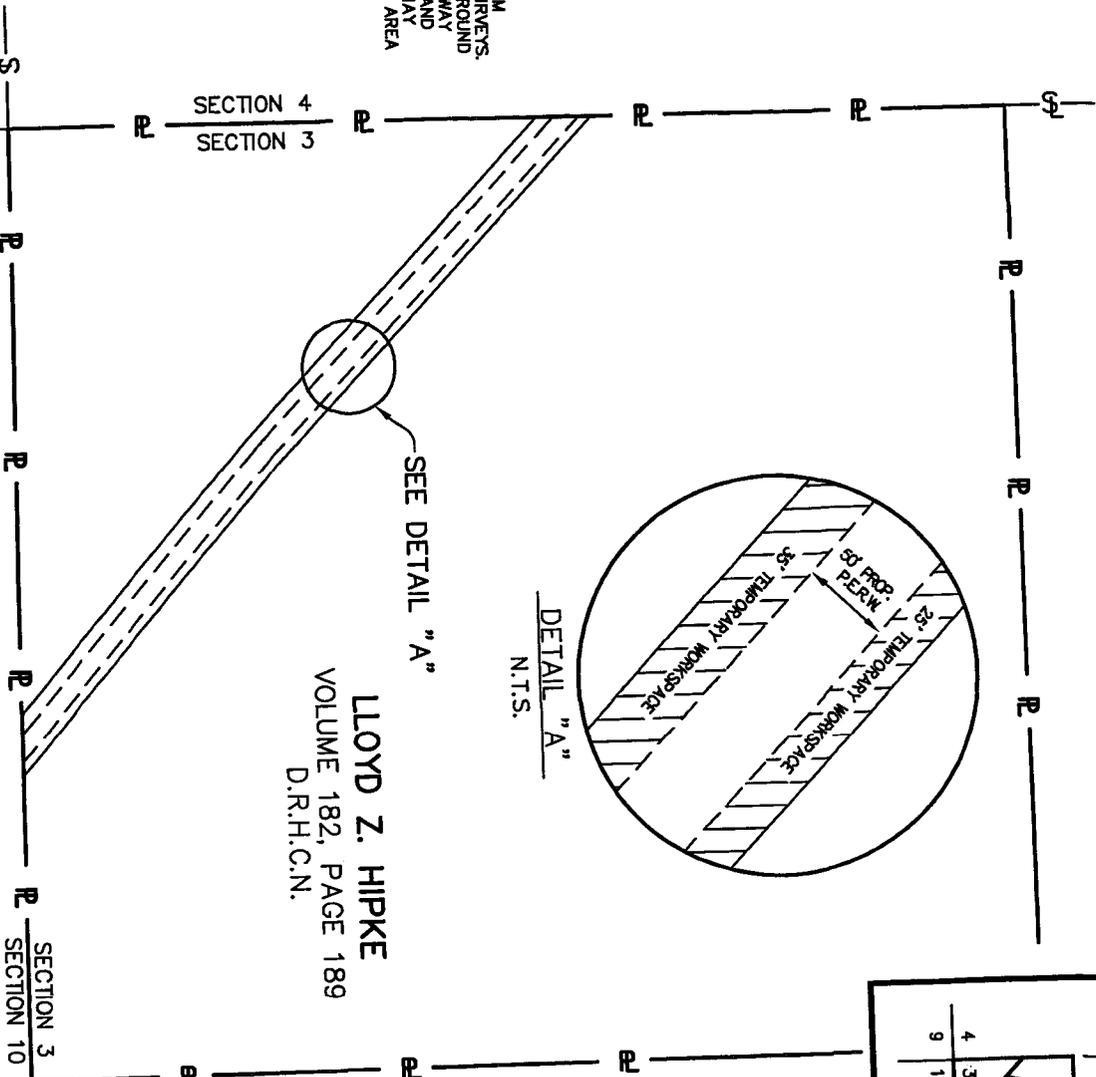
KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
LLOYD Z. HIPKE
ML-NE-HT-40200.000

PROJECT: XL
EXHIBIT A

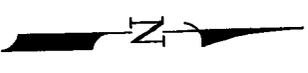
APPROVED BY: [Signature]
 DRAWING NUMBER: XL-08-MI-SK-3653

NO. [] REVISION [] DATE []

SCALE: 1" = 500'
 DATE: 11/04/14
 DRAWN BY: JN
 CHECKED BY: ALS



LLOYD Z. HIPKE
 VOLUME 182, PAGE 189
 D.R.H.C.N.



VICINITY MAP
 N.T.S.

TRACT LEGAL DESCRIPTION:
 SW/4 OF SECTION 3,
 T-32-N, R-15-W

TOTAL DISTANCE ACROSS PROPERTY: 2,309'±
 AREA OF PERMANENT EASEMENT: 2.6 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.1 ACRES



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-40200.000

I/we Lloyd Z. Hipke and Vencille M. Hipke, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Four Hundred Eighty Two Dollars and No Cents (\$1,482.00), 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:

SW/4

Section 3, Township 32-N, Range 15-W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-40180.000

I/we Lloyd Z. Hipke and Vencille M. Hipke, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Thousand Sixteen Dollars and No Cents (\$3,016.00), 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 E/2, Part of the NE/4 of the NW/4

Section 4, Township 32-N, Range 15-W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I/we have hereunto set our hands on this _____ day of _____, 20____.

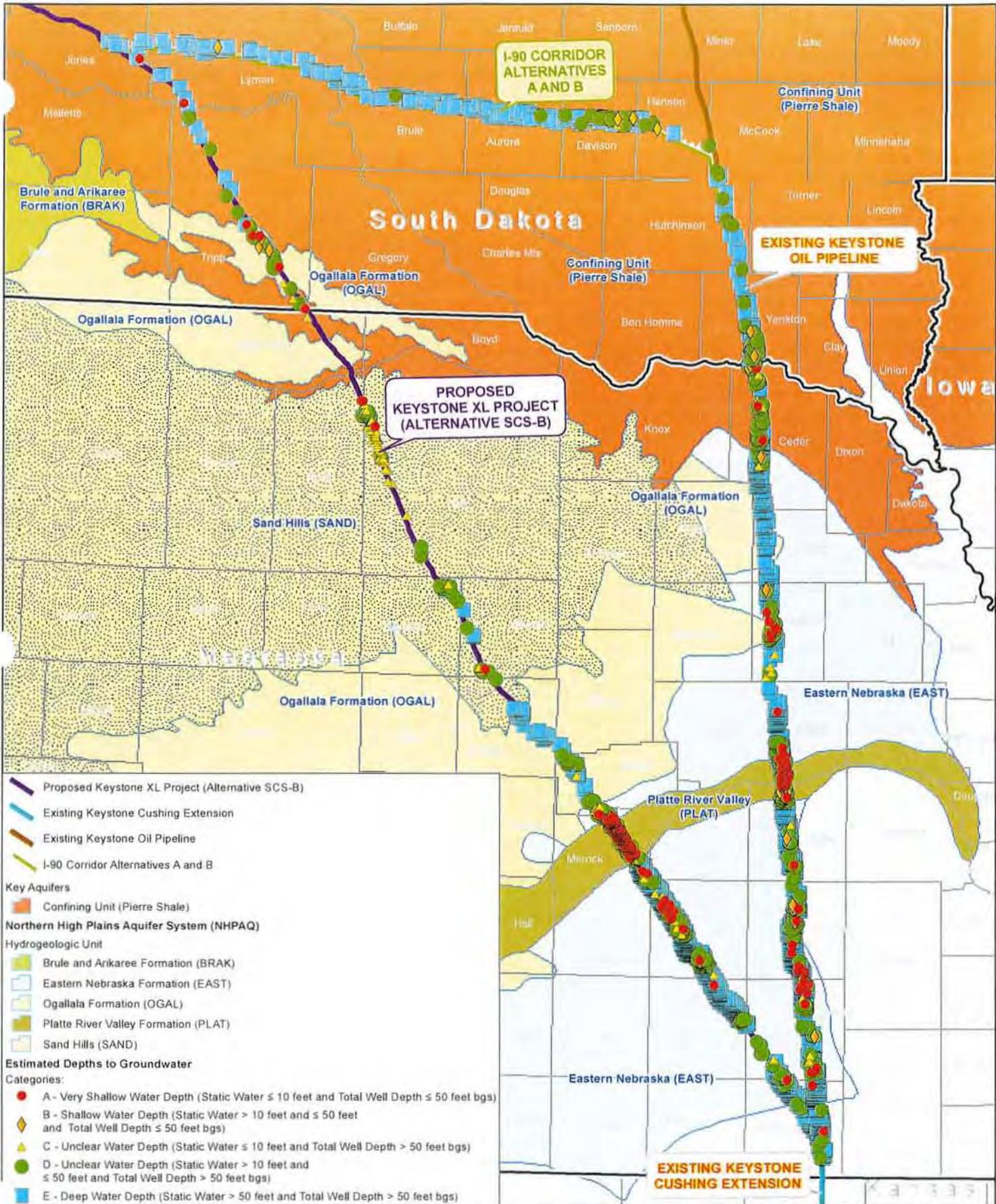
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



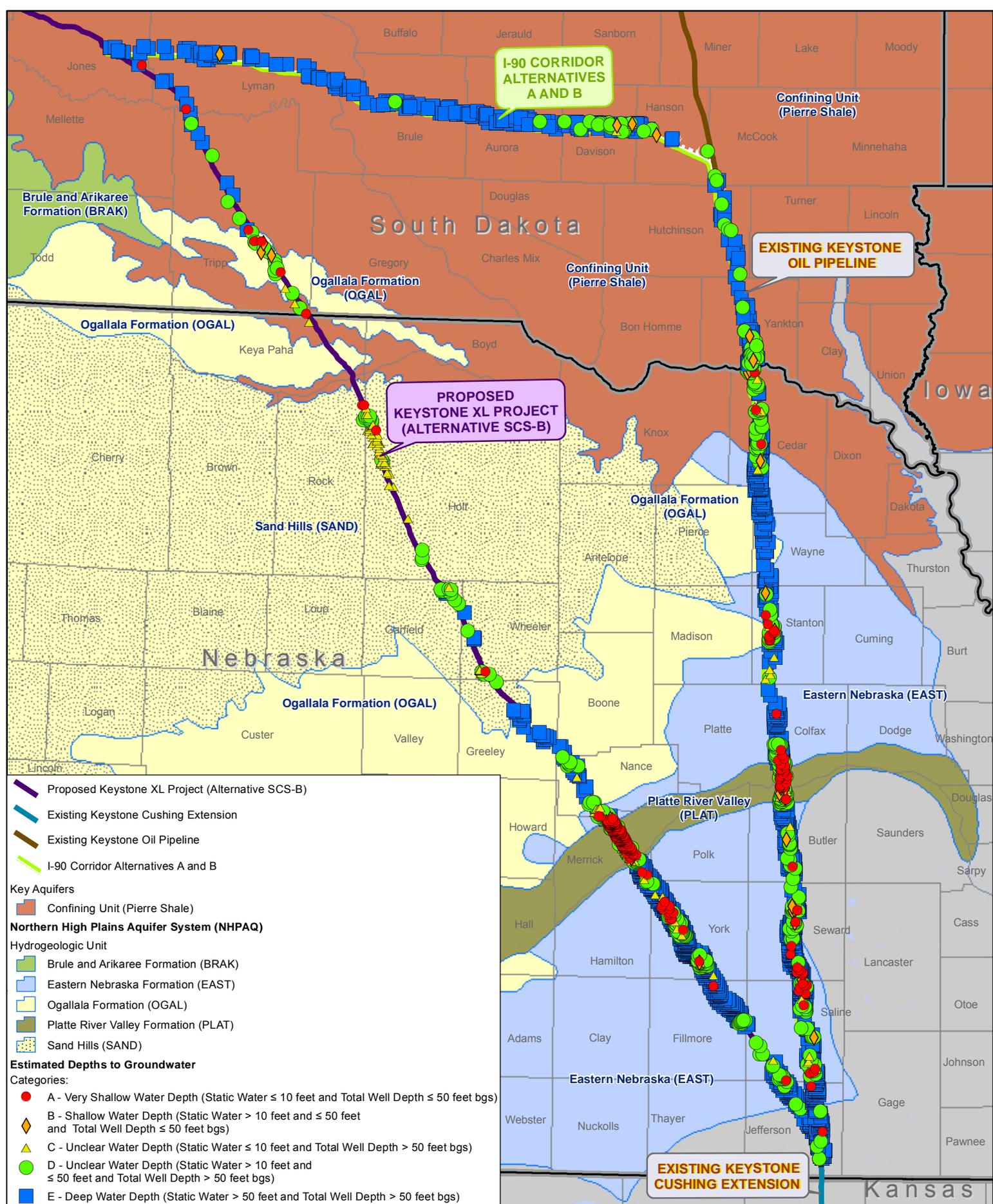
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

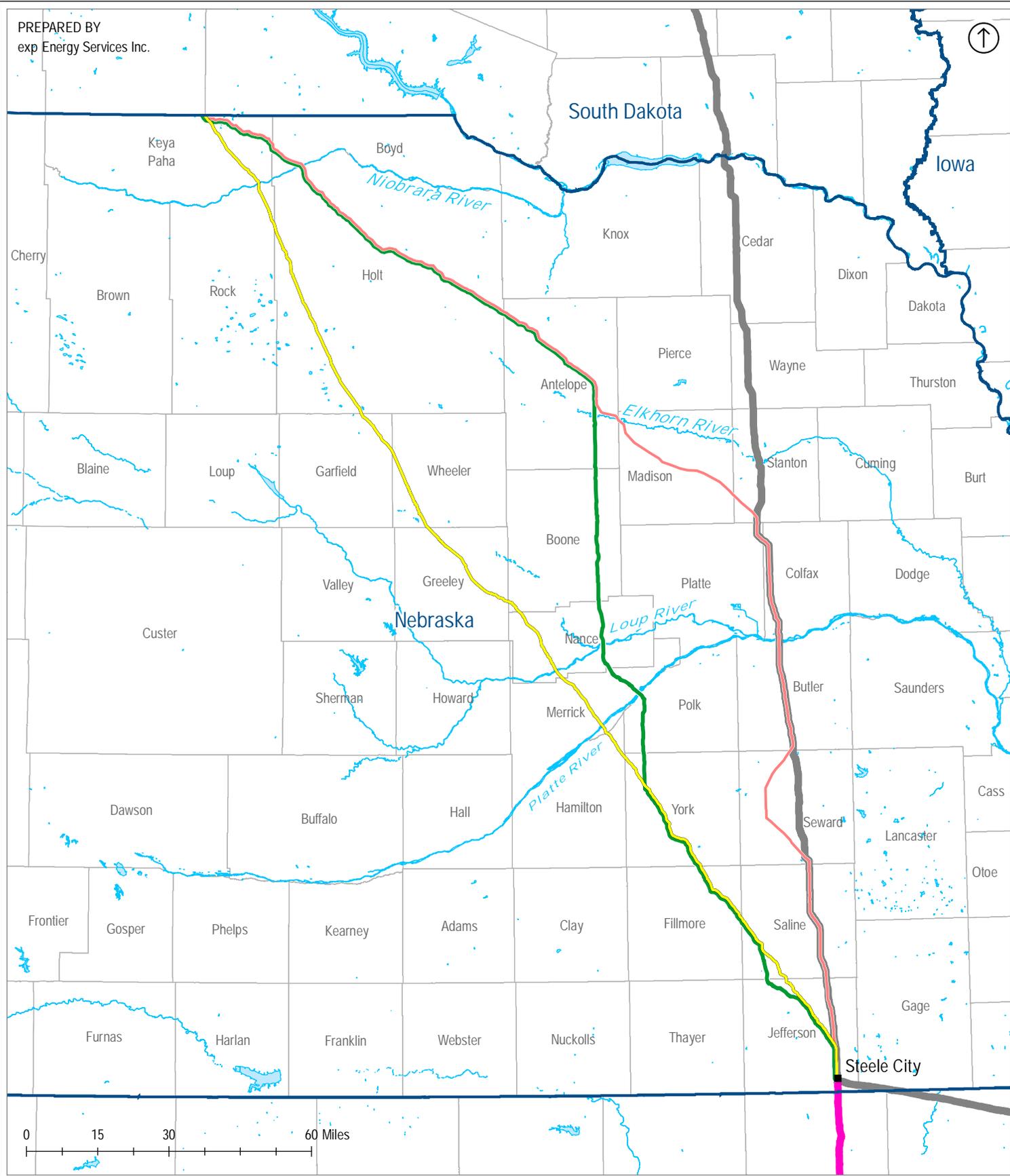
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

Figure 4.3.3-8
 I-90 Corridor Alternatives A and B
 Key Aquifers and Potable Water Wells
 within 2-mile Corridor

Attachment No. 7



LEGEND

	PREFERRED ROUTE		WATERBODY
	SANDHILLS ALTERNATIVE ROUTE		STATE BOUNDARY
	KEYSTONE MAINLINE ALTERNATIVE ROUTE		COUNTY BOUNDARY
	KEYSTONE MAINLINE (PHASE I)		
	KEYSTONE CUSHING EXTENSION (PHASE II)		

KEYSTONE XL PROJECT
FIGURE 2.2-2
PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Attachment No. 8



Google



