

Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

Direct Testimony of
Bonny J. Kilmurry in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Holt County)

Q: Please state your name.

A: My name is Bonny J. Kilmurry

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

A: Yes, I am.

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

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

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

A: Yes.

Q: What do you do for a living?

A: Ranching.

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

A: Richard Kilmurry.

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

A: We have 4 children.

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

A: We have 3 grandchildren, 2 step grandchildren.

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

A: Yes.

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

A: Nearly 100 years. Some land has been in Kilmurry family since 1918. Even as a boy Frank Kilmurry did chores. Unlike his father Frank decided against farming and chose ranching. As Frank first started-the drought of the 30's and the dust bowl didn't make this easy. Life had some struggles as money was tight. He married Rosemary Troshynski in 1943. Rosemary taught school for 5 years. Frank Kilmurry's lived on section 33, township 32, range 14 and raised their family. Frank bred Hereford cattle later changed to Angus/Hereford cross. The 7 children attended Celia school and into Atkinson for high school. Kilmurrys were active 4-H members, enjoyed horses, bird watching and gardening. They spent many hours during summer haying and enjoyed fishing. Frank and Rosemary enjoyed visits from relatives and friends, they especially enjoyed 23 grandkids and great grandkids visits. I joined this family in 1976. Richard and I delight in visits from our children and the grandkids.

Q: Do you earn any income from this land?

A: Yes.

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

A: Yes. Importance of this land-so many memories because we too raised our kids on the same acres. Rich with ‘first’ memories. With each improvement our goal was to add value, never diminish the land value. We added wells, fences and dams, by taking care of the ground we rest assured the land will sustain us and our heirs.

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

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

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

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

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

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

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

A: Yes.

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

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

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

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

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

A: No, they have not.

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

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

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

A: No, they did not.

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

A: Yes, they did.

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

A: Yes, they did.

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

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

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

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

A: No, I do not.

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

A: Yes, they did.

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

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

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

A: Yes, it is.

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

A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

Q: What is your next concern?

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

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

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

A: No.

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

A: No.

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

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

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

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

Q: What's next?

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

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

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

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

Q: Okay, what is your next concern?

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

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

A: Yes.

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

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

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

Q: Okay, what is your next concern?

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

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

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

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

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

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

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

Q: What is the next concern you have?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A: Yes, we received an offer from them.

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

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

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

A: No, never.

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

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

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

A: Yes, it is.

Q: What was your understanding of that document?

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

Q: Did you ever sign that document?

A: No, I did not.

Q: Why not?

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

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

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

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

A: No, they have not.

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

A: No, they have not.

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

A: Yes, I am.

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

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

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

A: No, they have not.

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

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

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

A: No, it has not.

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

A: No, I do not.

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

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

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

A: Yes, I do.

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

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

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

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

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

A: No, of course not.

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

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

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

A: Well, yes I have.

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

A: No, of course not.

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

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

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

A: Our property is sandy, porous soil with very little top soil, highly erodible and difficult to mend once top soils are disturbed-exactly why the route 'moved' from the Sand Hills. We are the Sand Hills-the shrunken map is false. These soils are extremely difficult to restore once disturbed. This ground will take years if ever to return to pre pipeline condition. The Ogallala Aquifer sits very near the ground surface. As TransCanada in beds its 36" pipeline in our soil, the pipe will be directly in the high water table. I believe the water will choose a new path and flow following the pipe, thus changing sub irrigated meadows. Changing hay production. Our wells could easily be contaminated, its water refreshes both people and livestock-a food source. Our garden is watered from same source too. Benzene, a component to help tar sands flow is water soluble and cannot be seen,

smelled and has no taste—yet deadly. Our water isn't filtered - directly from aquifer to our glasses. How can I be reassured that its safe to offer to my family, neighbors etc.? The water is very important, without it the land is less productive.

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

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

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

A: No, I do not.

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

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

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

A: Well yes, of course.

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

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

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

A: Yes, I do.

Q: What are some of those concerns?

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

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

Q: Do you have any other environmental concerns?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A: Yes, I have.

Q: Where have you seen that before?

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

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

A: No, I do not.

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

A: No, I do not.

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

A: No, I do not.

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

A: No, I do not.

Q: Why do you hold that belief?

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

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

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

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

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

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

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

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

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

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

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

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

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

A: Yes. Perpetual is a concern, no man-made pipeline will last forever, this is excessive taking. At end of pipeline life-it is TransCanada who has profited and is who needs to pay for its dismantling and disposal fees - Not landowners and not the taxpayers of Nebraska! As landowners we do not have sufficient equipment and/or the know how to safely dismantle the aging pipes. Is TransCanada required to be bonded for spills-since tar sands aren't required to add to spill fund tax? What if any agency insures the bond is in place and current? U.S. tax dollars shouldn't be used for clean-up. Nebraskans will not profit and only get the risks of spills in our ground and in our waterways as well as the Ogallala aquifer.

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

A: No, I have not. I have shared that which I can think of as of the date I signed this document below but other things may come to me or my memory may be refreshed and I will add and address those things at the time of the Hearing in

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

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

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

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

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

A: Yes.

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

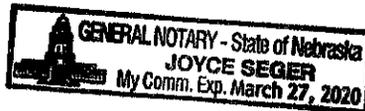
A: Yes, they are.

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

Bonny J. Kilmurry
Bonny J. Kilmurry

Subscribed and Sworn to me before this 31 day of May, 2017.

Joyce Seger
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.



S.011
T.032N
R.015W

S.014
T.032N
R.015W

S.013
T.032N
R.015W

S.018
T.032N
R.014W

Richard M. Kilmurry

S.024
T.032N
R.015W

S.019
T.032N
R.014W

S.023
T.032N
R.015W

IMAGERY © NAIP 2016



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Richard M. Kilmurry

TRACT NO. ML-NE-HT-40280.000
STATE: Nebraska
COUNTY: Holt
SECTION: 013
TOWNSHIP: 032N
RANGE: 015W

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

May 2017 - X:\Drawings\65858\KEYSTONE_XL\65858_00000_000000.dwg

PREPARED BY
exp Energy Services Inc.



Frank W. Kilmurry Family Trust
Rosemary Kilmurry

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S.028
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S.031
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S.032
T.032N
R.014W

S.033
T.032N
R.014W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Frank W. Kilmurry Family Trust
Rosemary Kilmurry

TRACT NO. ML-NE-HT-30130.000
STATE: Nebraska
COUNTY: Holt
SECTION: 029
TOWNSHIP: 032N
RANGE: 014W

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

May 2017 - X:\Drawings\58588\KEYSTONE_XL\9800L_994926.E

PREPARED BY
exp Energy Services Inc.



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S.033
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R.014W

S.034
T.032N
R.014W

Frank W. Kilmurry Family Trust
Rosemary Kilmurry

S.005
T.031N
R.014W

S.004
T.031N
R.014W

S.003
T.031N
R.014W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Frank W. Kilmurry Family Trust
Rosemary Kilmurry

TRACT NO. ML-NE-HT-30145.000
STATE: Nebraska
COUNTY: Holt
SECTION: 033
TOWNSHIP: 032N
RANGE: 014W

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

May 2017 - X:\Drawings\5858\KEYSTONE_XL\9000_999\251

PREPARED BY

exp Energy Services Inc.

S.033
T.032N
R.014W

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R.014W



S.004
T.031N
R.014W

Frank W. Kilmurry Family Trust
Rosemary Kilmurry

S.003
T.031N
R.014W

S.009
T.031N
R.014W

IMAGERY: NAIP 2017
0 250 500 1,000 1,500 Feet

S.010
T.031N
R.014W



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Frank W. Kilmurry Family Trust
Rosemary Kilmurry

TRACT NO. ML-NE-HT-30155.000
STATE: Nebraska
COUNTY: Holt
SECTION: 003
TOWNSHIP: 031N
RANGE: 014W

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

May 2017 - X:\Drawings\58588\KEYSTONE_XL\9002_999\251

Attachment No. 2





----- Original message -----

From: Bonny Kilmurry <bjkilmurry@gmail.com>

Date: 5/19/17 2:30 AM (GMT-05:00)

To: brandy-king@live.com

Cc: Brian Jorde <BJorde@dominalaw.com>

Subject: Fwd:

Grandma Bonny with baby Bonny Rae



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-40280.000

**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**") **Richard M. Kilmurry**, whose mailing address is 47798 888th Road, Atkinson, NE 68713 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through

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

A tract of land containing 480 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SE1/4, SW1/4, and the NW1/4 of Section 13, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 182, Page 681, Book 181, Page 450, and Book 181, Page 424 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):

Richard M. Kilmurry

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **Richard M. Kilmurry**

Notary Public Signature

Affix Seal Here

HOLT COUNTY, NEBRASKA

T-32-N, R-15-W, SECTION 13

ML-NE-HT-40280.000

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

LEGEND
 P
 S
 PROF.
 A.T.W.S.
 P.E.R.W.
 D.R.H.C.N.

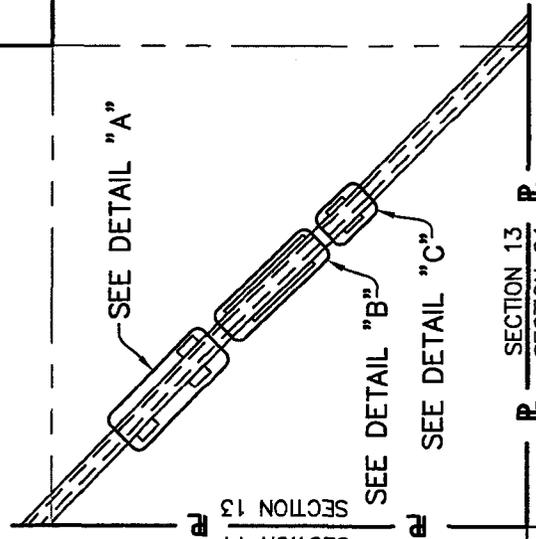
SECTION 12
 SECTION 13

RICHARD M. KILMURRY
 VOLUME 181, PAGE 450
 VOLUME 181, PAGE 424
 VOLUME 182, PAGE 681
 D.R.H.C.N.

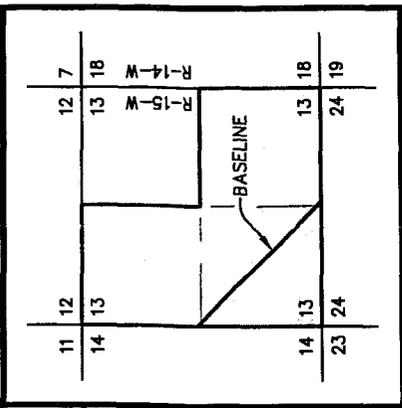
R-14-W
 R-15-W

SECTION 18
 SECTION 13

SECTION 13
 SECTION 24



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 RIGHTS 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.



VICINITY MAP
 N.T.S.



0 500 1000
 SCALE: 1" = 1,000'

TRACT LEGAL DESCRIPTION:
 SE/4, SW/4 AND NW/4 OF
 SECTION 13,
 T-32-N, R-15-W

TOTAL DISTANCE ACROSS PROPERTY: 3,876'±
 AREA OF PERMANENT EASEMENT: 4.4 ACRES
 AREA OF TEMPORARY WORKSPACE: 5.3 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 1.2 ACRES

In business in energy	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
RICHARD M. KILMURRY	
ML-NE-HT-40280.000	
PROJECT:	XL EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3658
NO.	REVISION
	DATE
SCALE	DATE
1" = 1000'	11/04/14
DRAWN BY:	CHECKED BY:
JN	ALS



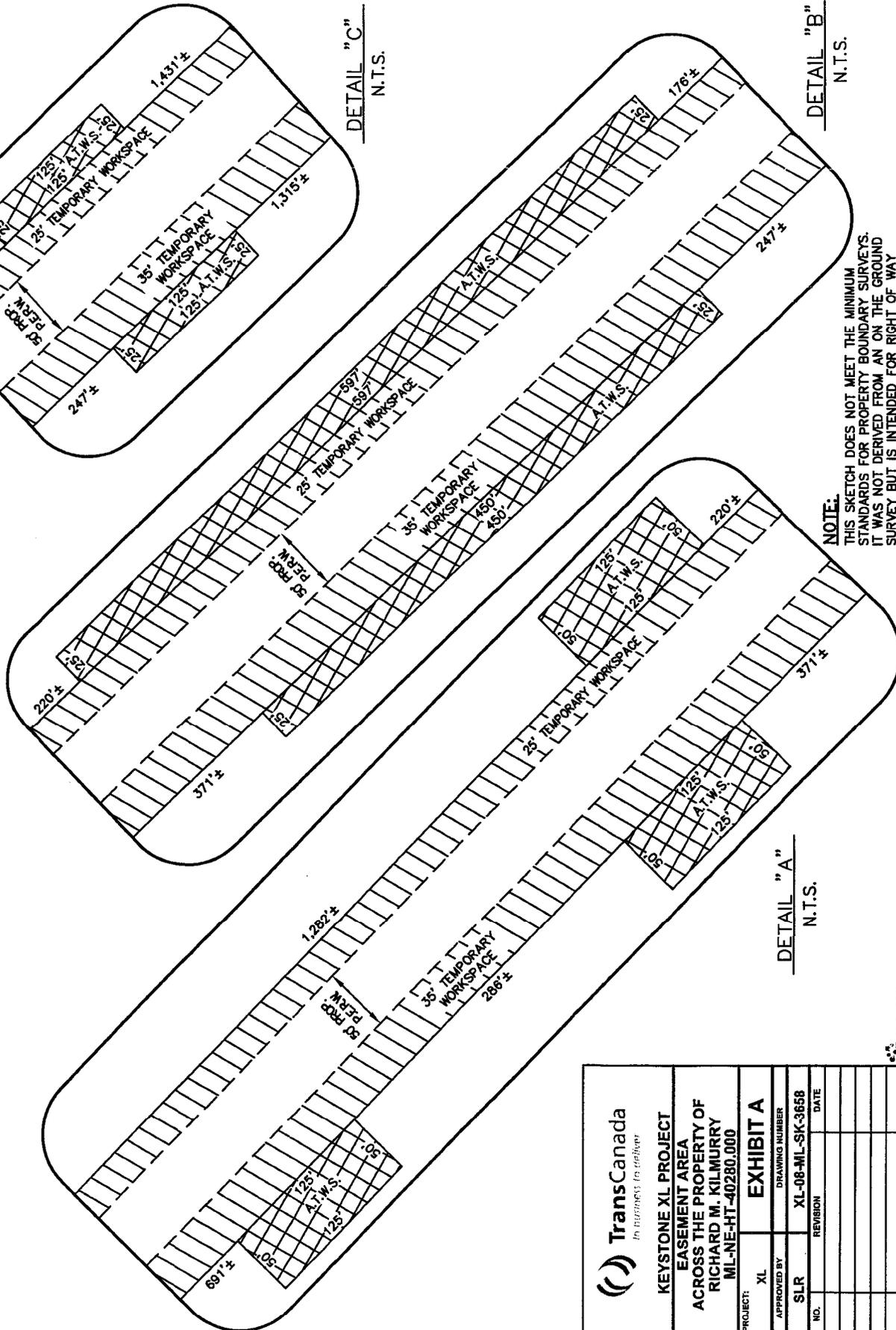
HOLT COUNTY, NEBRASKA

T-32-N, R-15-W, SECTION 13

ML-NE-HT-40280.000

LEGEND:
 PROP. TEMPORARY WORKSPACE
 A.T.W.S. PERMANENT EASEMENT & RIGHT OF WAY

PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY



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

	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
RICHARD M. KILMURRY	
ML-NE-HT-40280.000	
PROJECT:	EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3658
NO.	REVISION
DATE	DATE
SCALE	DATE
N.T.S.	11/04/14
DRAWN BY:	CHECKED BY:
JN	ALS



**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-30130.000
ML-NE-HT-30145.000
ML-NE-HT-30155.000

**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**") **Rosemary Kilmurry, Individually and Rosemary Kilmurry as Trustee of the Frank W. Kilmurry Family Trust**, whose mailing address is 88850 476th Avenue, Atkinson, NE 68713 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter,

Grantor's Initials _____

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 480 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the E1/2 and the NW1/4 of Section 29, Township 32 North, Range 14 West of the 6th P.M., as recorded in Book 192, Page 664 and Book 168, Page 65 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 640 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 33, Township 32 North, Range 14 West of the 6th P.M., as recorded in Book 192, Page 664 and Book 168, Page 65 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 319.19 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the W1/2 of Section 3, Township 31 North, Range 14 West of the 6th P.M., as recorded in Book 192, Page 664 and Book 168, Page 65 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):

Rosemary Kilmurry, Individual

Frank W. Kilmurry Family Trust

Rosemary Kilmurry, Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

Grantor's Initials _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 2014

By Rosemary Kilmurry, Individual

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 2014

By Rosemary Kilmurry, Trustee of the Frank W. Kilmurry Family Trust

Notary Public Signature

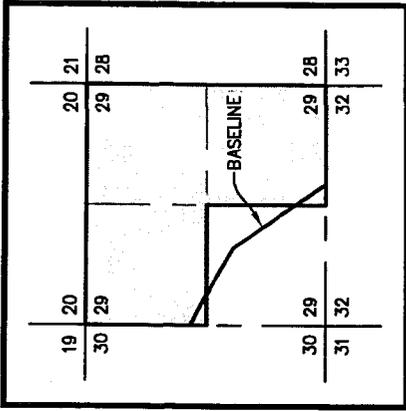
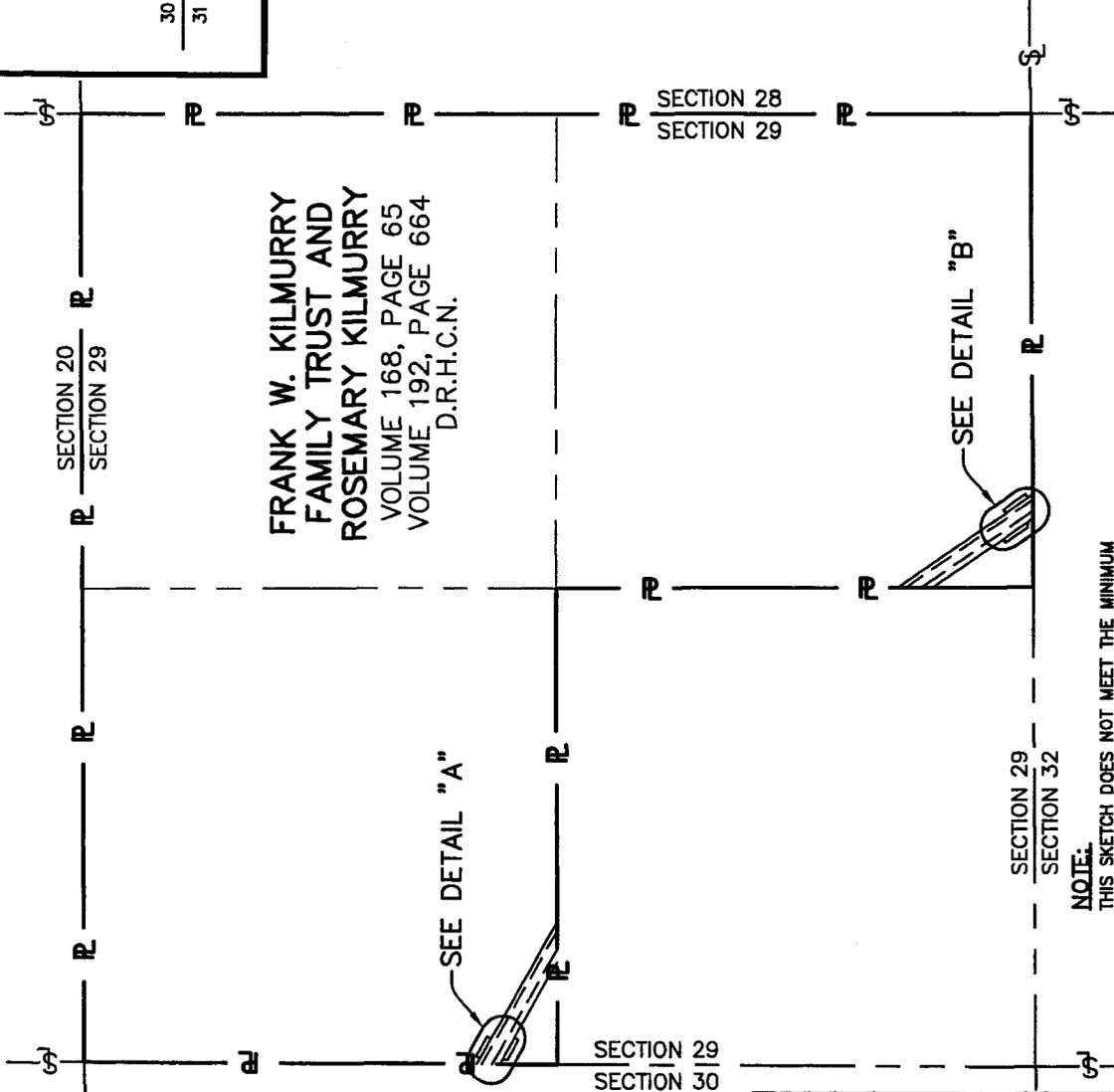
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HOLT COUNTY, NEBRASKA

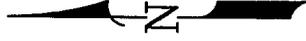
T-32-N, R-14-W, SECTION 29
ML-NE-HT-30130.000

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

LEGEND
P
S
A.T.W.S.
P.P.R.W.
D.R.H.C.N.



VICINITY MAP
N.T.S.



0 500 1000
SCALE: 1" = 1,000'

TRACT LEGAL DESCRIPTION:
E/2, NW/4 OF SECTION 29,
T-32-N, R-14-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: 1,635'±
AREA OF PERMANENT EASEMENT: 1.8 ACRES
AREA OF TEMPORARY WORKSPACE: 2.1 ACRES
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.3 ACRE

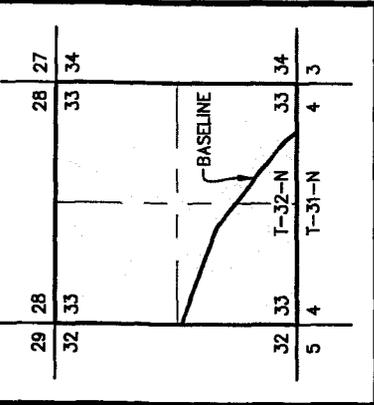
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
FRANK W. KILMURRY FAMILY	
TRUST AND ROSEMARY KILMURRY	
ML-NE-HT-30130.000	
PROJECT:	XL
APPROVED BY:	
SLR	XL-08-ML-SK-3288
NO.	REVISION
SCALE	DATE
1" = 1000'	10/27/14
DRAWN BY	JN
CHECKED BY	ALS



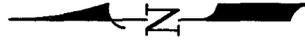
HOLT COUNTY, NEBRASKA

T-32-N, R-14-W, SECTION 33
ML-NE-HT-30145.000

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



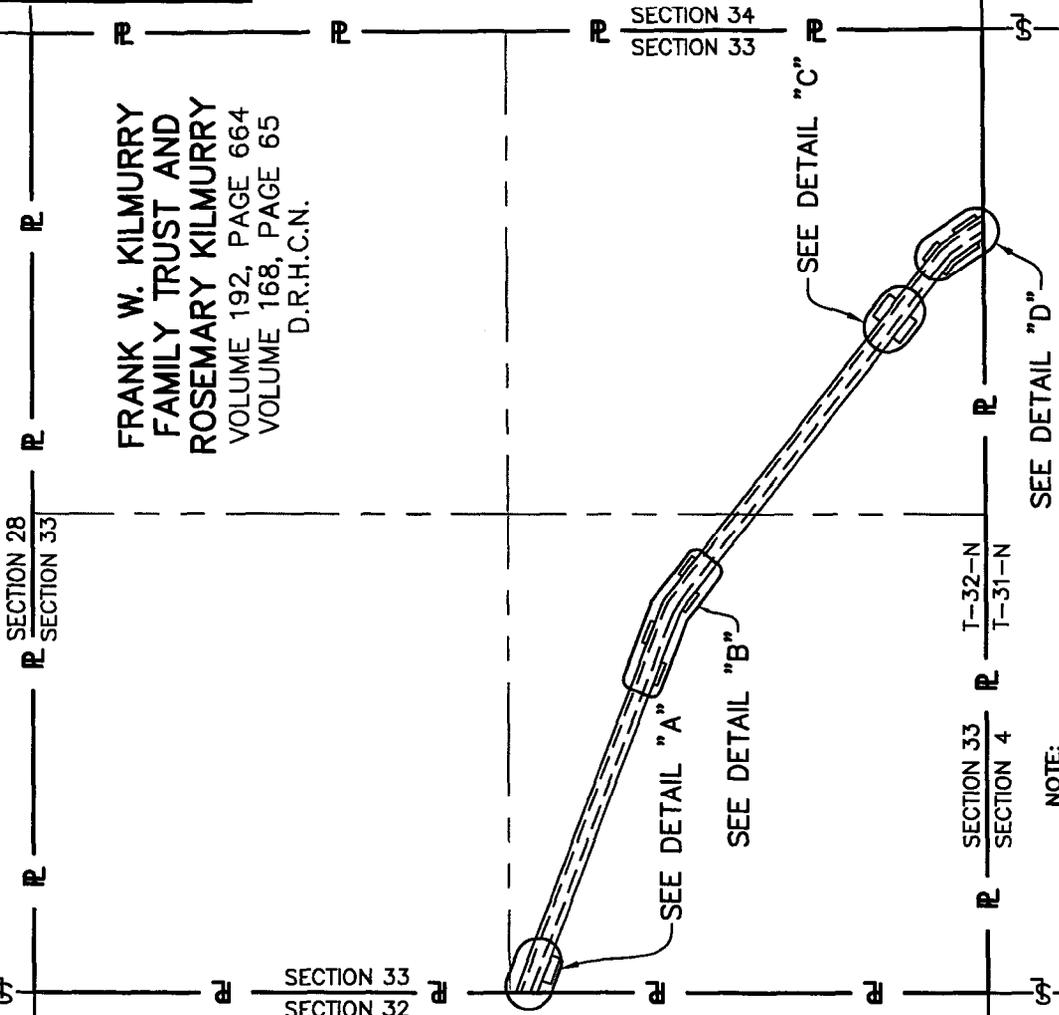
VICINITY MAP
N.T.S.



0 500 1000
SCALE: 1" = 1,000'

TRACT LEGAL DESCRIPTION:
ALL OF SECTION 33,
T-32-N, R-14-W

FRANK W. KILMURRY
FAMILY TRUST AND
ROSEMARY KILMURRY
VOLUME 192, PAGE 664
VOLUME 168, PAGE 65
D.R.H.C.N.



SEE DETAIL "C"

SEE DETAIL "B"

SEE DETAIL "A"

SEE DETAIL "D"

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: 5,016'±
AREA OF PERMANENT EASEMENT: 5.7 ACRES
AREA OF TEMPORARY WORKSPACE: 6.9 ACRES
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 1.1 ACRES

		in business to deliver	
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF FRANK W. KILMURRY FAMILY TRUST AND ROSEMARY KILMURRY ML-NE-HT-30145.000			
PROJECT:	XL	EXHIBIT A	
APPROVED BY		DRAWING NUMBER	
SLR		XL-08-ML-SK-3291	
NO.		REVISION	DATE
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 1000'	11/07/14	JN	ALS



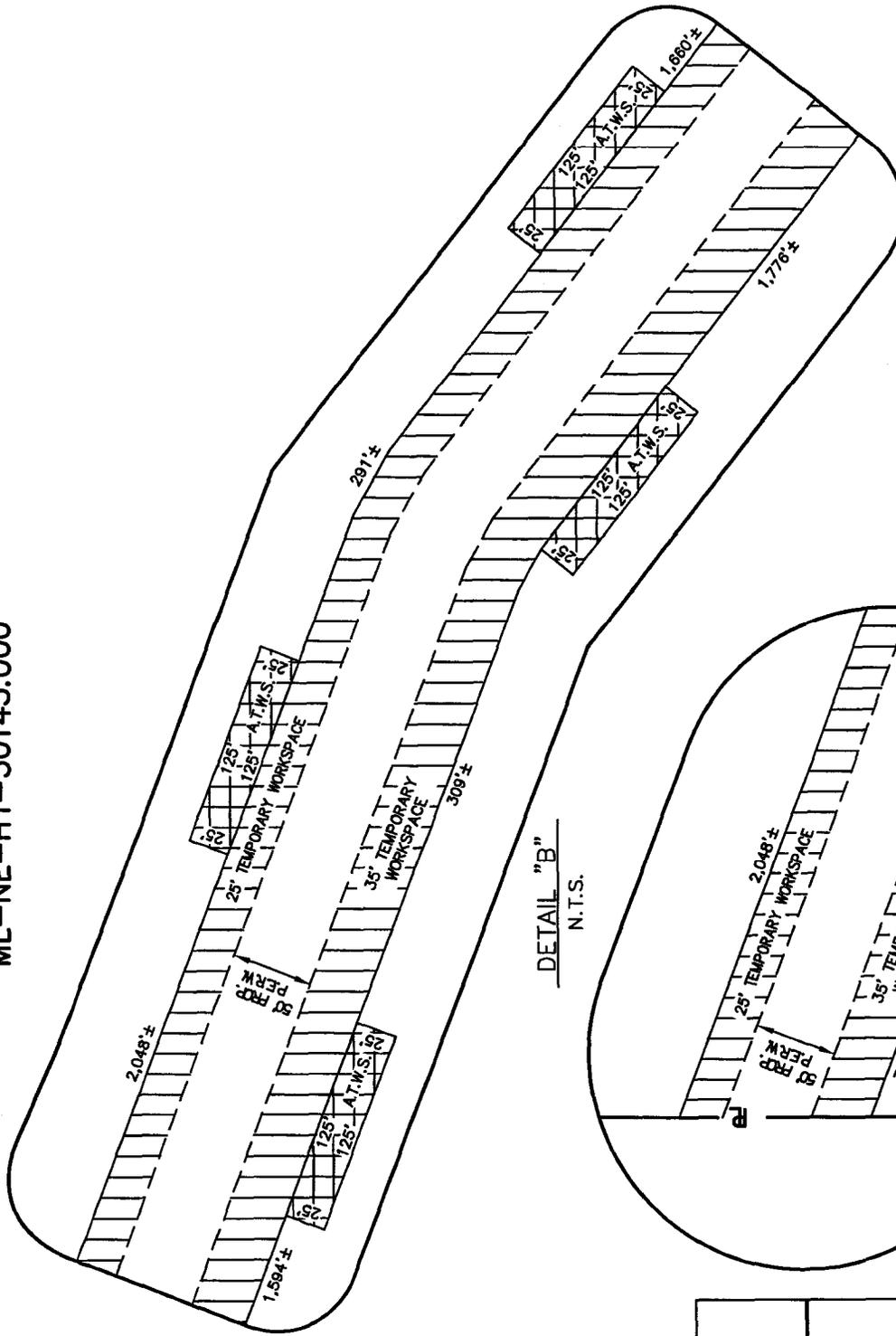
HOLT COUNTY, NEBRASKA

T-32-N, R-14-W, SECTION 33

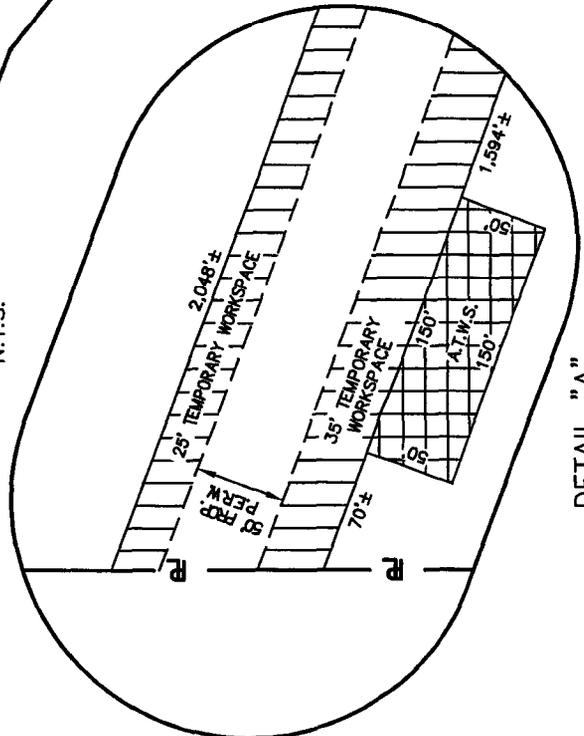
ML-NE-HT-30145.000

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

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



DETAIL "B"
 N.T.S.



DETAIL "A"
 N.T.S.

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

		in business to deliver	
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF			
FRANK W. KILMURRY			
FAMILY TRUST AND			
ROSEMARY KILMURRY			
ML-NE-HT-30145.000			
PROJECT:	XL	EXHIBIT A	
APPROVED BY:	SLR	DRAWING NUMBER:	XL-08-ML-SK-3291
NO.		REVISION:	DATE
SCALE:	N.T.S.	DATE:	11/07/14
DRAWN BY:	JIN	CHECKED BY:	ALS

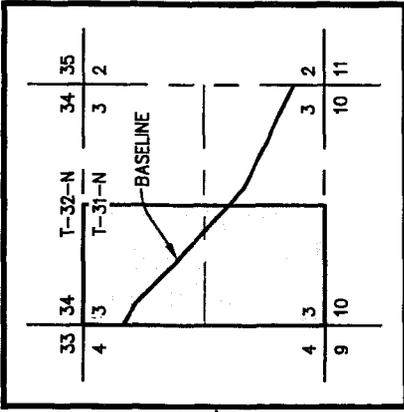
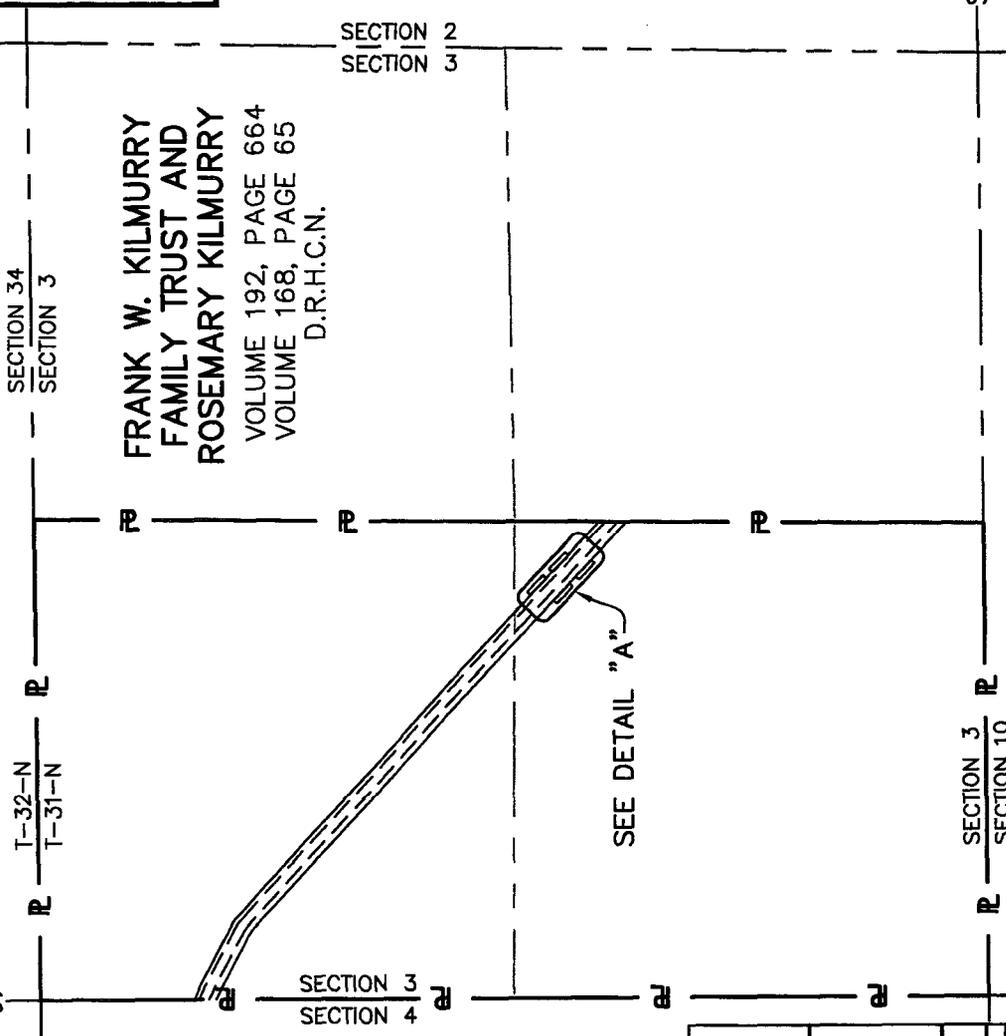


HOLT COUNTY, NEBRASKA

T-31-N, R-14-W, SECTION 3
ML-NE-HT-30155.000

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

LEGEND:
P PROP.
S A.T.W.S.
R P.E.R.W.
D.D.R.H.C.N.



VICINITY MAP
N.T.S.



SCALE: 1" = 1,000'

TRACT LEGAL DESCRIPTION:
W/2 OF SECTION 3,
T-31-N, R-14-W

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

TOTAL DISTANCE ACROSS PROPERTY: 3,474±
AREA OF PERMANENT EASEMENT: 4.0 ACRES
AREA OF TEMPORARY WORKSPACE: 4.8 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.3 ACRE



KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
FRANK W. KILMURRY
FAMILY TRUST AND
ROSEMARY KILMURRY
ML-NE-HT-30155.000

PROJECT: XL EXHIBIT A

APPROVED BY: [Signature]

SLR: XL-08-ML-SK-3293

NO. [] REVISION [] DATE []

SCALE: 1" = 1000'

DATE: 11/07/14

DRAWN BY: JN

CHECKED BY: ALS

SCALE: 1" = 1000'

DATE: 11/07/14

DRAWN BY: JN

CHECKED BY: ALS



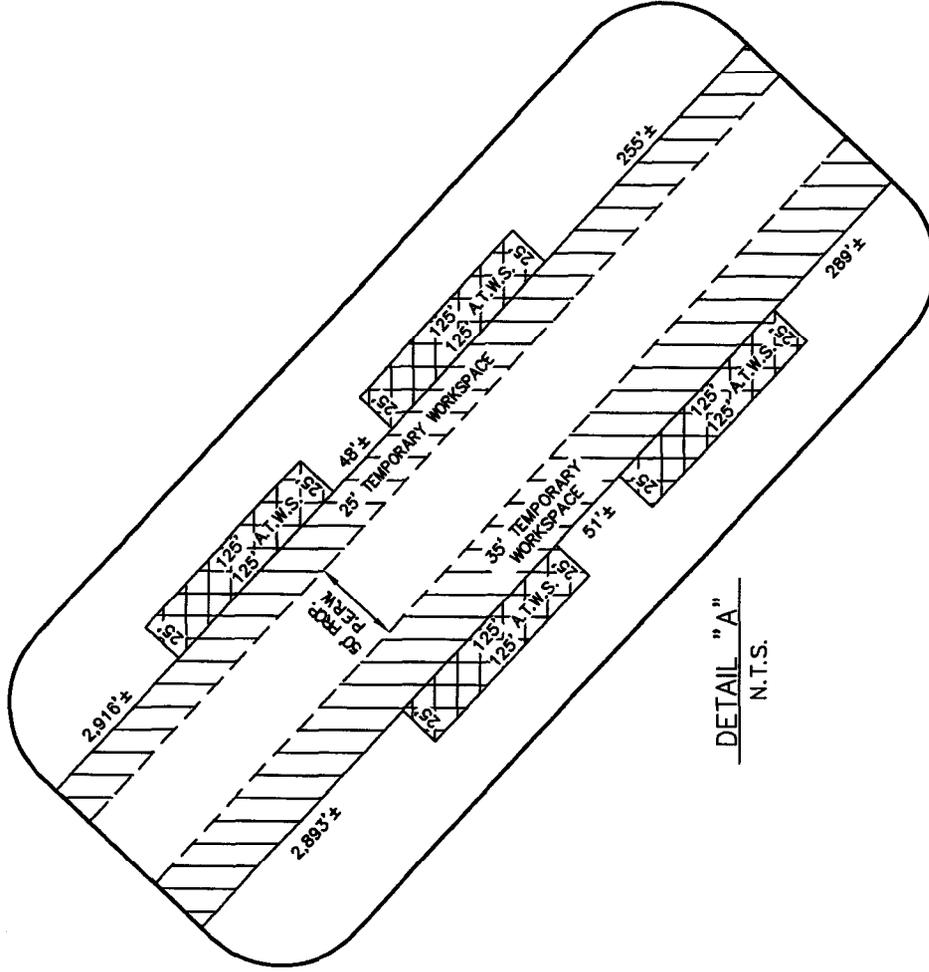
HOLT COUNTY, NEBRASKA

T-31-N, R-14-W, SECTION 3

ML-NE-HT-30155.000

PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY

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



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	
FRANK W. KILMURRY		FAMILY TRUST AND	
ROSEMARY KILMURRY		ML-NE-HT-30155.000	
PROJECT:	XL	EXHIBIT A	
APPROVED BY		DRAWING NUMBER	
SLR		XL-08-ML-SK-3293	
NO.		REVISION	DATE
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	11/07/14	JN	ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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

CASE NO. _____

COMPLAINT

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

PARTIES

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM: NEGLIGENCE

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

SECOND CLAIM: TRESPASS

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

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

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-40280.000

I/we Richard M. Kilmurry, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Eight Hundred Thirty Four Dollars and No Cents (\$2,834.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

SE/4, SW/4 and NW/4

Section 13, 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-30155.000

We, Rosemary Kilmurry and Rosemary Kilmurry, Trustee of the Frank W. Kilmurry Family Trust, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Three Hundred Sixty Six dollars and no cents (\$2,366.00), 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:

W/2

Section 3, Township 31-N, Range 14-W

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

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

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30145.000

We, Rosemary Kilmurry and Rosemary Kilmurry, Trustee of the Frank W. Kilmurry Family Trust, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Thousand Five Hundred Sixty Two Dollars and No Cents (\$3,562.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

All of

Section 33, Township 32-N, Range 14-W

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

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

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30130.000

We, Rosemary Kilmurry and Rosemary Kilmurry, Trustee of the Frank W. Kilmurry Family Trust, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Ninety Two Dollars and No Cents (\$1,092.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

E/2, NW/4

Section 29, Township 32-N, Range 14-W

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

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

_____, 20____.

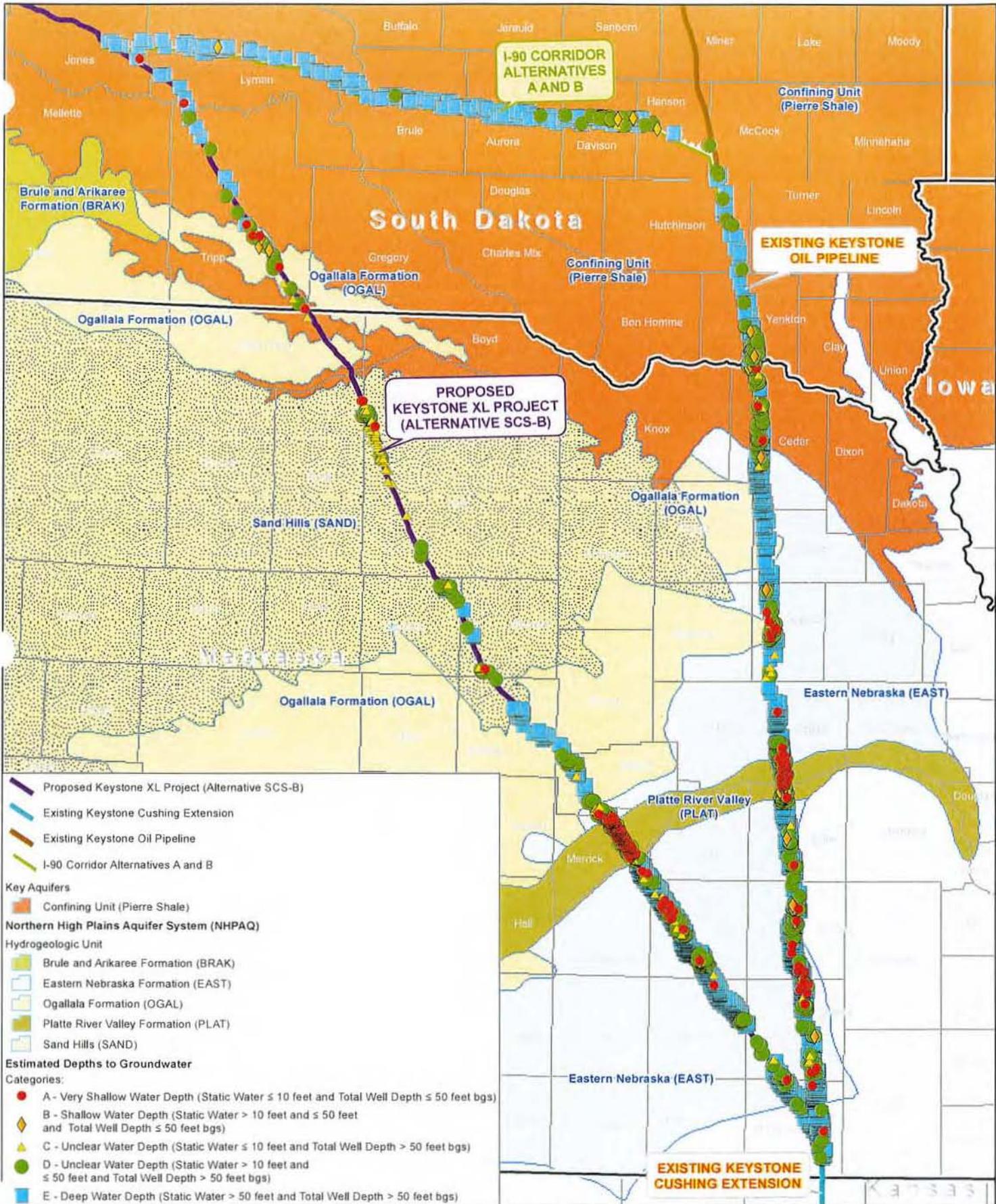
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



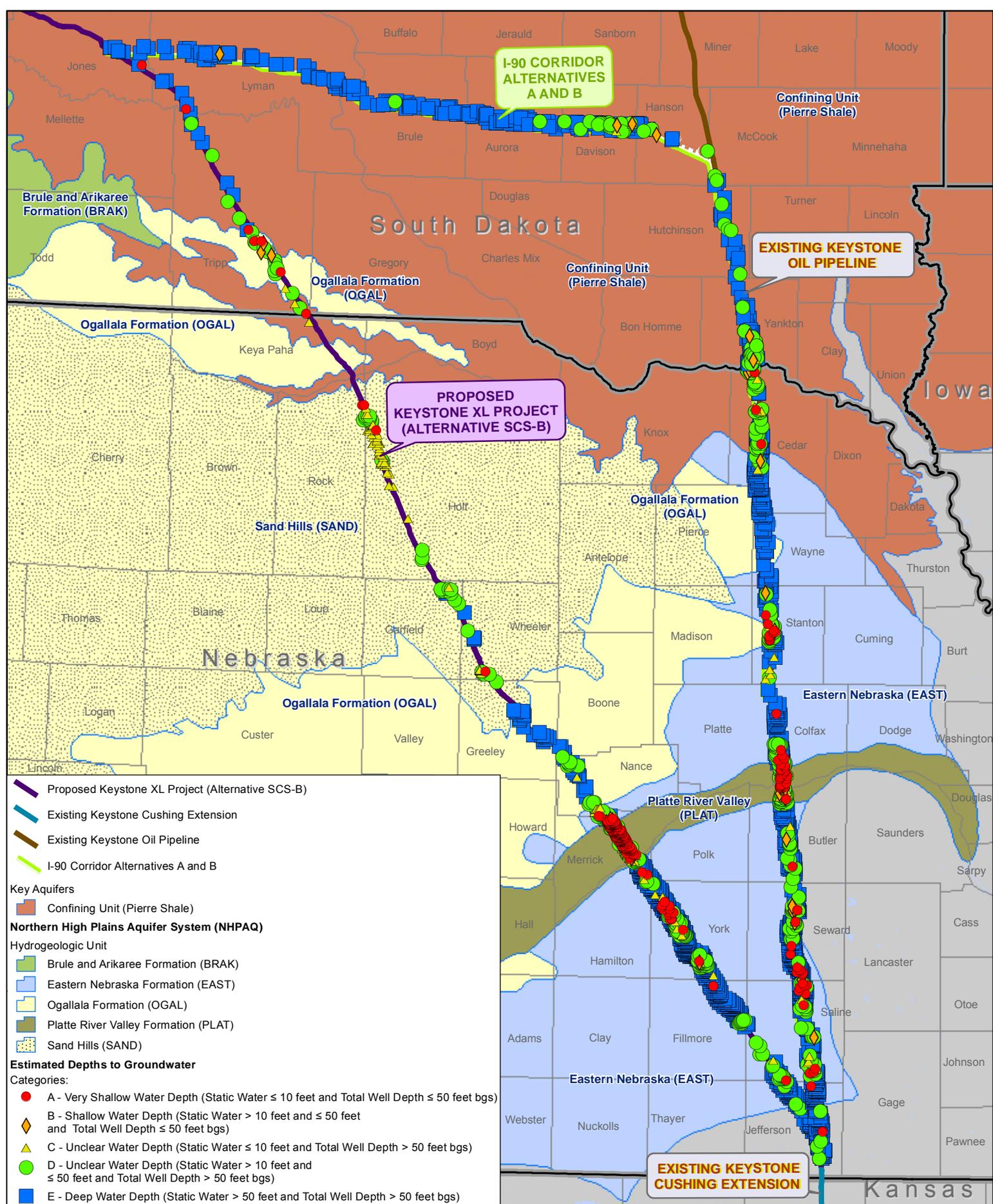
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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



KEYSTONE XL PROJECT

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



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

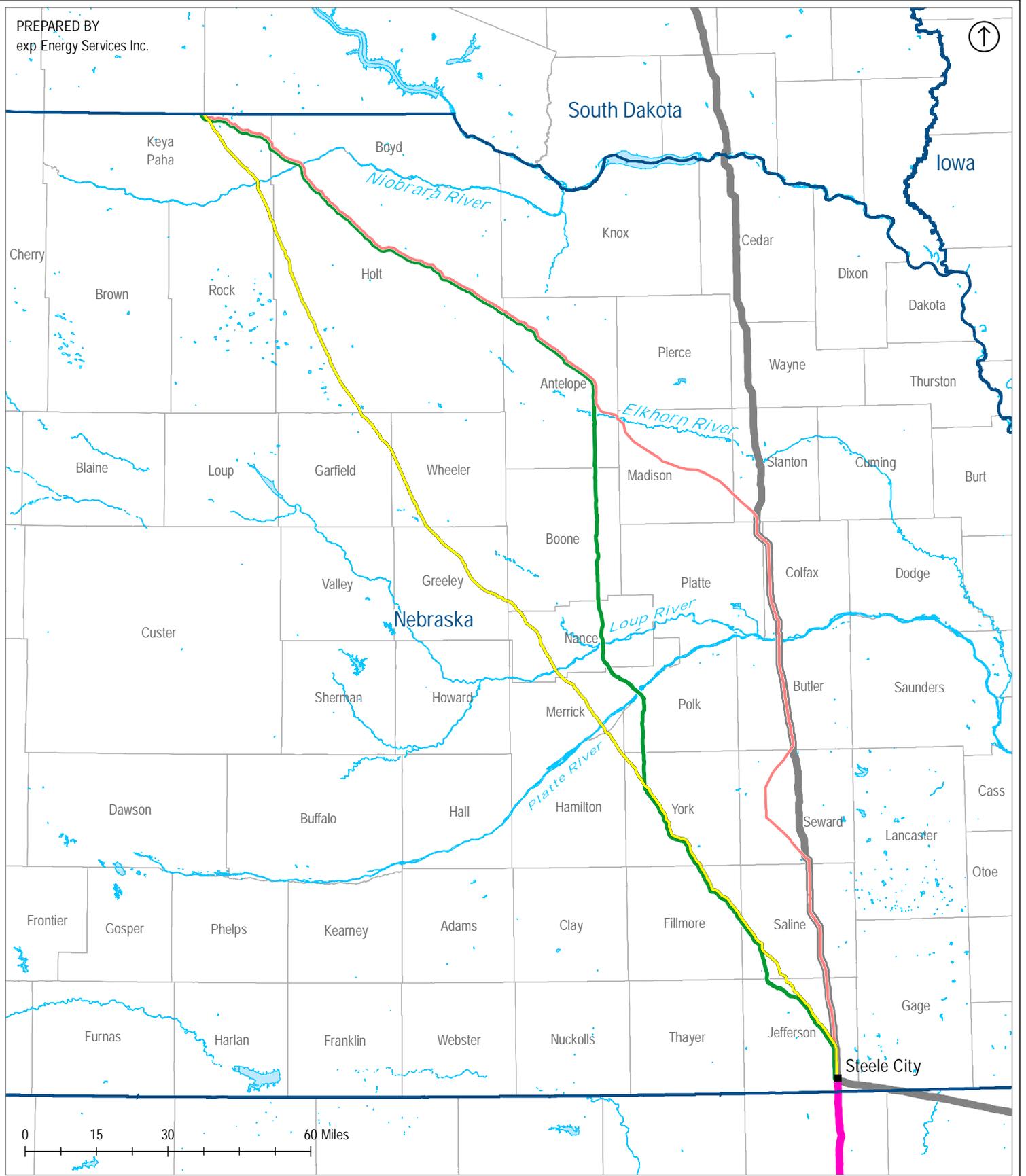
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

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

Attachment No. 7



VICINITY MAP



LEGEND

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

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES



Attachment No. 8

Attachment 8.1

U.S. Not Prepared for Tar Sands Oil Spills, National Study Finds

Report urges new regulations, research, and technology to respond to spills of diluted bitumen.



Photo courtesy Sam LaSusa

Oil gathers in a sheen near the banks of the Kalamazoo River more than a week after a spill of crude oil, including tar sands oil, from Enbridge Inc.'s Line 6B pipeline in 2010. It was the largest inland oil spill in U.S. history. *Click image to enlarge.*

By Codi Kozacek

Circle of Blue

Spills of heavy crude oil from western Canada's tar sands are more difficult to clean up than other types of conventional oil, particularly if the spill occurs in water, a new study by a [high-level committee](#) of experts found. Moreover, current regulations governing emergency response plans for oil spills in the United States are inadequate to address spills of tar sands oil.

[The study](#) by the U.S. National Academies of Sciences, Engineering, and Medicine confirmed what scientists, emergency responders, and conservationists knew anecdotally from a major oil spill that contaminated Michigan's Kalamazoo River in 2010 and another spill in Mayflower, Arkansas in 2013. Tar sands crude, called diluted bitumen, becomes denser and stickier than other types of oil after it spills from a pipeline, sinking to the bottom of rivers, lakes, and estuaries and coating vegetation instead of floating on top of the water.

"[Diluted bitumen] weathers to a denser material, and it's stickier, and that's a problem. It's a distinct problem that makes it different from other crude."

–Diane McKnight,

Chair

Committee on the Effects of Diluted Bitumen on the Environment

"The long-term risk associated with the weathered bitumen is the potential for that [oil] becoming submerged and sinking into water bodies where it gets into the sediments," Diane McKnight, chair of the committee that produced the study and a professor of engineering at the University of Colorado Boulder, told Circle of Blue. "And then those sediments can become resuspended and move further downstream and have consequences not only at the ecosystem level but also in terms of water supply."

“It weathers to a denser material, and it’s stickier, and that’s a problem. It’s a distinct problem that makes it different from other crude.” McKnight added. Weathering is what happens after oil is spilled and exposed to sunlight, water, and other elements. In order to flow through pipelines, tar sands crude oil is mixed with lighter oils, which evaporate during the weathering process. In a matter of days, what is left of the diluted bitumen can sink.

The study’s findings come amid an expansion in unconventional fuels development and transport in North America. Over the past decade, Canada became the world’s fifth largest crude oil producer by developing the Alberta tar sands. U.S. imports of Canadian crude, much of it from tar sands, [increased 58 percent](#) over the past decade, according to the U.S. Energy Information Administration.

Though oil prices are at a seven-year low, and market turbulence is expected to persist for several more years, tar sands developers are working to double the current tar sands oil production — around 2.2 million barrels per day — by 2030. [Pipelines to transport all of the new oil are expanding too](#), producing a greater risk of spills.

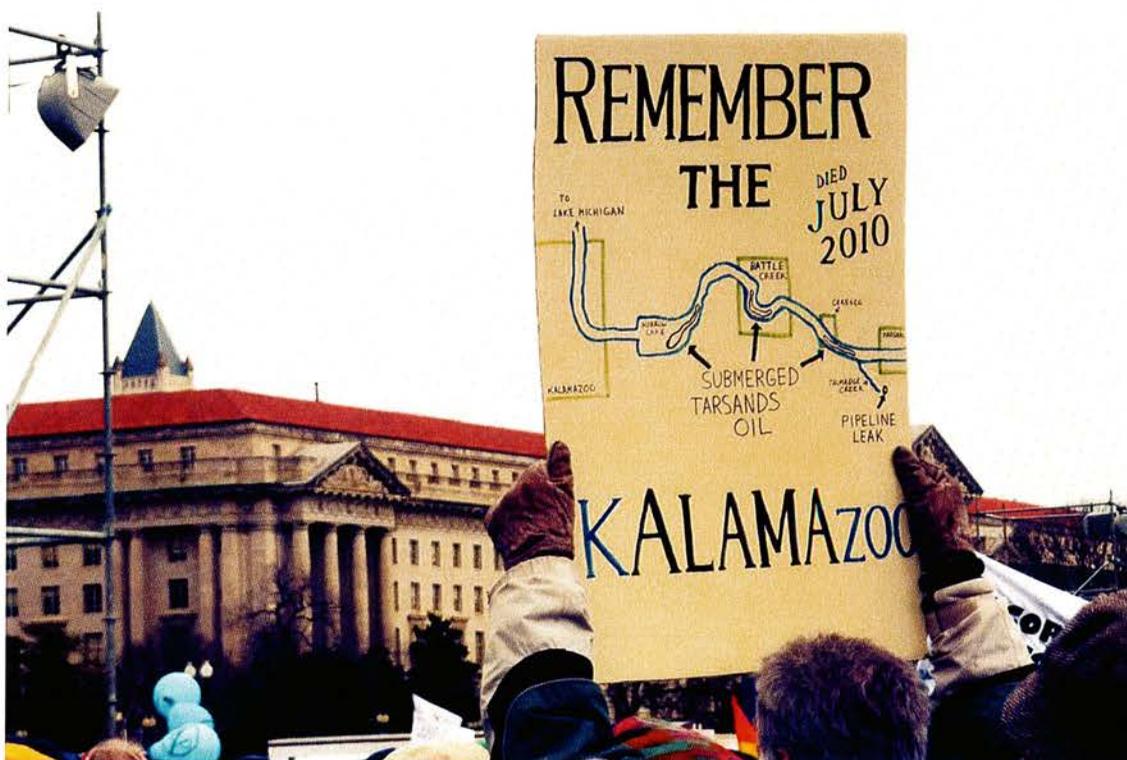


Photo courtesy DCErica via [Flickr Creative Commons](#)

A sign held by a protester at a 2013 climate rally in Washington, D.C. notes the lingering difficulties associated with spills of diluted bitumen –namely that the oil can become submerged in the water. *Click image to enlarge.*

Whether tar sands producers achieve that level of oil supply is not assured. Public pressure is mounting in Canada and the United States to rein in tar sands development due to considerable environmental damage and heavy carbon emissions. U.S. President Barack Obama last month scrapped the Keystone XL pipeline, an 800,000-barrel-per-day project to move crude oil from Canada’s tar sands to Gulf of Mexico refineries. An international movement to divest from fossil fuels and a [legally binding global deal](#) to cut carbon emissions –if it is signed in Paris– could curb demand for tar sands oil.

The National Academies of Sciences, Engineering, and Medicine study adds new data to arguments made by critics of tar sands development.

“The study really confirms a lot of the information that has been out there, there are no real surprises,” Jim Murphy, senior counsel for the National Wildlife Federation, told Circle of Blue. “You don’t want these things to be affirmed because it’s bad news for communities. But the good part about a study like this is hopefully it will prompt some action. Some folks were hiding behind the lack of a study like this, saying we don’t really know. Those excuses have gone away.”

“The chief takeaway is that this is a different oil, it presents different challenges, and responders and regulators simply don’t have the structures in place to deal with the challenges,” he added.

“The chief takeaway is that this is a different oil, it presents different challenges, and responders and regulators simply don’t have the structures in place to deal with the challenges.”

**–Jim Murphy,
Senior Counsel
National Wildlife Federation**

Nonetheless, energy companies are pursuing pipeline expansions, most notably in the Midwest and Great Lakes regions. Enbridge, Canada's largest transporter of crude oil, operates a 3,000-kilometer (1,900-mile) pipeline network, known as the Lakehead System, that carries crude oil from Canada to refineries on the Great Lakes. The Lakehead system, in concert with Enbridge's Canadian main line, is capable of transporting 2.62 million barrels of oil per day. The pipeline responsible for the 2010 oil spill in Kalamazoo was part of the Lakehead system. A link in the Lakehead system ruptured in 2010 and spilled more than 3 million liters (843,000 gallons) of tar sands oil [into southern Michigan's Kalamazoo River](#). It was the largest inland oil spill in U.S. history and its effects still linger because of oil that sank and is embedded in the river's sediments.

Enbridge is currently pursuing [upgrades to its Alberta Clipper pipeline](#), which runs through Minnesota and Wisconsin, in order to boost the line's capacity to 800,000 barrels per day from 450,000 barrels per day. A [second project](#) aims to increase the capacity of Line 61, a pipeline that runs from Wisconsin to Illinois, from 560,000 barrels per day to 1.2 million barrels per day. Opposition to the company's operation of a pipeline that runs beneath the Straits of Mackinac, where Lake Michigan and Lake Huron join, has been especially fierce, though the line does not currently carry tar sands oil.

"I think at the very least we should be saying no to more tar sands through the [Great Lakes] region until we get a firm handle on how to deal with the unique challenges that tar sands spills present," Murphy said. "We should also be taking a hard look, as the president did with the Keystone XL decision, about the other negative impacts of more tar sands oil, like the consequences in Alberta with the habitat destruction there, and also the higher carbon pollution content of the fuel."

The National Academies study concluded that the characteristics of diluted bitumen are "highly problematic for spill response because 1) there are few effective techniques for detection, containment, and recovery of oil that is submerged in the water column, and 2) available techniques for responding to oil that has sunken to the bottom have variable effectiveness depending on the spill conditions."

"Broadly, regulations and agency practices do not take the unique properties of diluted bitumen into account, nor do they encourage effective planning for spills of diluted bitumen," it continued.



Photo courtesy NWFblogs via [Flickr Creative Commons](#)

A tar ball recovered on the edge of a cove in Mayflower, Arkansas, after tar sands crude spilled from ExxonMobil's Pegasus pipeline in 2013. *Click image to enlarge.*

The study's authors made a series of recommendations to help reduce the damage from future tar sands spills, including:

- Update regulations that would require pipeline operators to identify and provide safety sheets for each crude oil transported by the pipeline, catalogue the areas and water bodies that would be most sensitive to a diluted bitumen spill, describe how they would detect and recover sunken oil, provide samples and information about the type of oil spilled to emergency officials, and publicly report the annual volumes and types of crude oil that pass through each pipeline.
- Require the Pipeline and Hazardous Materials Safety Administration (PHMSA), the federal agency that regulates pipelines in the United States, to review spill response

plans in coordination with the U.S. Environmental Protection Agency and U.S. Coast Guard to determine if the plans are capable of responding to diluted bitumen spills.

- Develop methods to detect, contain, and recover oil that sinks to the bottom of water bodies.
- Require government agencies at the federal, state, and local level to use industry-standard names for crude oils when planning spill responses.
- Revise oil classifications used by the U.S. Coast Guard to indicate that diluted bitumen can sink in water.
- Collect data to improve modeling of diluted bitumen oil spills.
- Improve coordination between federal agencies and state and local governments when planning and practicing oil spill response exercises.
- Develop a standard method for determining the adhesion –a measure of how sticky the oil is–of diluted bitumen in the event of a spill.

After the study's release, PHMSA said it would develop a bulletin advising pipeline operators about the recommendations and urge voluntary improvements to their spill response plans. The agency also plans to hold a workshop next spring to hear public input on how to implement the recommendations, coordinate with other federal organizations to “advance the recommendations”, and work with industry representatives to improve spill response planning.

“We appreciate the work the National Academy of Sciences has done over the last few years in analyzing the risks of transporting diluted bitumen, including its effects on transmission pipelines, the environment and oil spill response activities,” Artealia Gilliard, PHMSA spokesperson and director for governmental, international and public affairs, said in a statement. “All pipelines transporting crude oil or any other hazardous liquid are required to meet strict federal safety regulations that work to prevent pipeline failures and to mitigate the consequences of pipeline failures when they occur.”

Attachment 8.2

Ranch had its start during



Young Frank Kilmurry was discouraged.

The year was 1934. Rain had been scarce for several years, and the ground was bone dry. Sand ridges were common on the Kilmurry farm 12 miles north of Atkinson, with some ridges as high as three feet.

Frank recalls seeing a lot of fences on other farms completely covered by the blowing sand.

It was the early days of the "Dirty Thirties" Dust Bowl years, although in those days no one knew exactly how long the dry years would continue.

Frank was a young man who was in the process of helping his dad on the family farm.

"Dad had been farming the place for about ten years or so," Frank recalls. "He tried to raise a crop of small grain and corn. But in those dry years, the land didn't produce much.

1934, of course, was in the pre-irrigation era. And even if irrigation had been in use in those days, it wouldn't have been of much help to the Kilmurrys. Their farm was north of the water supply aquifer that was to become a boon for farmers closer to Atkinson in years to come.

"Like most farmers in those days, we used horses to do the farming at first," he recalls. But progress marches on, and "We finally got a tractor — a small Farmall... the kind that had to be hand cranked," he recalls. "We were one of the last farms in this area to get a tractor. I believe we got it in about 1933."

However, the handwriting was on the wall, and as Frank grew into manhood he thought to himself that he wasn't going to spend the rest of his life trying to raise crops in an area that was this dry.

In 1934, Frank finally made a decision. He was just taking over the farm from his dad, and thought to himself that it was time to get out of the farm business, and into the ranch business.

Frank knew it wasn't going to be easy, however. The Great Depression was in its fourth year, and money was hard to get...especially so for a young man who had never established credit for himself.

So Frank headed to town to talk with Fred Swingley, at the First National

Bank in Atkinson. (Frank's still banking there to this day.)

Fred listened to the young man, and agreed to loan Frank \$50.00 the first year. Frank paid it back, and by the second year was able to borrow \$100.00. He paid that back, and by the time the third year rolled around, learned the value of establishing credit.

"Fred told me I could borrow what I needed. I had my credit established."

Frank also recalls how he got his first head of cattle.

"The government was buying cattle back then for \$17.50 a head," he said. "I went to a man who raised cattle, and told him I'd pay the same thing if I could pick out the ones I wanted.

"There wasn't any quibbling over price. We both knew \$17.50 was the right amount, but I did get the pick of the herd. So I started by buying eight bred cows. That was the beginning of our present operation."

Today, the Kilmurry operation has grown to a 400-cow operation spread over some 4,760 acres. It is now Kilmurry and Sons, with both boys not only in partnership with their dad, but also operating their own ranches ... of about another 2,000 acres each.

Frank said about 300 of the cows are bred to calve in the spring, while about 100 calve in the fall.

"I've found it a little handier to spread it out like that, rather than having all the calves born at one time," he said.

The calves are put out to pasture, and sold the following January. In the winter months, of course, the farm's haying

operations produce enough to feed during the winter.

Although 1993 was a tough year for many Nebraska cattle raisers, the Kilmurrys escaped that fate that seemed to hit many.

"We didn't lose a single cow this year," Frank says. "It just turned out to be one of those years."

Up until about four years ago, the Kilmurrys raised Hereford and an Angus. They've changed now to mostly Hereford and an Angus.

Like many ranches, the Kilmurrys' basic operation is to raise the herd, pasture and feed them to feed lots.

"I sell mostly to a feed lot," Frank says. "I've been the same man for years. They go there are sold through Atkinson."

Frank is the grandchild of a man who came to Nebraska from O'Neill, north of O'Neill.

Both died before Frank was born. He didn't have the opportunity to know them. Frank himself was born where he lived until he then moved with his parents to a family homestead north of Atkinson in 1923, the family homestead local, where Frank has lived ever since.

As a youngster, Frank did the "chores" while his dad worked. He milked one cow, at

First Western Bank

"We're more than just a bank ... We're your neighbor."

start during dust bowl days!

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operations produce enough hay to keep them fed during the winter months.

Although 1993 was not a good year for many Nebraska cattle producers, the Kilmurrys escaped the scours problem that seemed to hit many ranchers.

"We didn't lose a single calf to scours this year," Frank said. "Actually, it turned out to be one of our better years."

Up until about four or five years ago, the Kilmurrys raised all Herefords. But they've changed now to Black Baldy's, which Frank says is a cross between a Hereford and an Angus.

Like many ranchers in this area, the Kilmurry's basic operation is to breed the herd, pasture and hay them, and sell them to feed lots.

"I sell mostly to a feeder in Iowa," Frank says. "I've been dealing with the same man for years. The ones that don't go there are sold through the sale barn in Atkinson."

...

Frank is the grandson of Irish immigrants who came over from the old country about 1876, and homesteaded north of O'Neill.

Both died before Frank was born, so he didn't have the opportunity to know them. Frank himself was born in O'Neill, where he lived until he was about five; then moved with his parents to the family homestead north of town. Then, in 1923, the family moved to their present local, where Frank has lived ever since.

As a youngster, Frank's job was to do the "chores" while his dad farmed. He milked one cow, at first, and became

familiar with the familiar hand-cranked cream separators common in those days. But surprisingly, Frank didn't mind that part of the chores.

Although he didn't know it then, this one cow -- a short-horned heifer -- was going to be the forerunner of his coming cattle business. But in those days he was more concerned about milking twice a day than thinking about what he'd be doing in future years.

Frank said in those years, the short-horned heifer was a "pretty good milking strain. That's what most of the cows in this area were back then.

Frank also took care of about 100 Plymouth Rock chickens, which produced eggs the family sold for cash.

The Kilmurrys also kept about 15 sows, which produced about 75-80 feeder pigs they sold to a serum buyer in O'Neill.

"The serum was used to prevent cholera," he said. "There was a lot of cholera in the United States in those days, and the serum helped get it under control."

Financially, the family benefited from the sale, too, since buyers paid a premium price for serum feeder pigs.

...

Frank's a product of the rural school system, having attended the one-room Celia school about a mile from his farm.

Frank has one sister, currently living in Rapid City. When she was attending school, though, at St. Joseph's in Atkinson, she had a girlfriend who

would visit the Kilmurry farm periodically.

This girlfriend -- named Rosemary Troshynski -- kind of caught Frank's eye.

The result?

On July 29th this year, Frank and Rosemary Kilmurry are planning to observe their 50th wedding anniversary! It'll be observed during a family reunion before that, however.

When the Kilmurrys get together as they will this summer, there's a gang of them. Frank and Rosemary have seven children, and 22 grandchildren.

The two Kilmurry boys - Richard and Ed - live 15 and 12 miles away on their own spreads. Two of the daughters -- Mrs. Don Slaymaker and Jackie Kilmurry -- still live in the Atkinson area, while three have moved elsewhere. Mrs. Richard Schaaf lives in Omaha; Mrs. Arnie Bogus is in the Farwell area, and Mrs. John Hultberg lives in Garland, Texas, just outside Dallas.

Rosemary -- who incidentally taught school five years -- likes to spend her spare time crocheting and quilting.

Frank? Well, he likes it just fine watching over the ranch, checking the windmills daily. His favorite mode of transportation is still a quarterhorse!

Happy 50th, Frank and Rosemary!

First Western Bank

Just a bank ... We're a good neighbor"

Attachment 8.3

The Keystone XL Tar Sands Pipeline Will Hurt More than Help Job Creation

The total number of jobs the Keystone XL Pipeline would create is far lower than those touted by pipeline proponents. According to the State Department, the pipeline would create 35 permanent full-time jobs¹ and 1,950 construction jobs that would last for two years.² The recent claim that Keystone XL would create 42,000 jobs is based on theoretical estimates of all short-term, indirect effects of spending by the much smaller number of people who would be directly employed.

Keystone XL would likely have negative impacts on job creation. A spill would be detrimental to the agriculture industry and cleanup efforts would be costly. Keystone XL would also undermine the expansion of the clean energy sector, which has proven to be more effective at job creation than the fossil fuel industry.

A tar sands spill from Keystone XL would threaten jobs

In the event of a major pipeline spill, Keystone XL could cost thousands of jobs along its route and require high cleanup expenditures. A study from the University of Nebraska has found that Keystone XL would likely experience 91 major pipeline spills over the project's 50-year lifespan.³

Keystone XL would threaten the agricultural sector, which directly employs more than 500,000 people in the states the pipeline would traverse and which generates billions of dollars in revenue.⁴ 79 percent of the land that would be affected by Keystone XL is agricultural and rangeland.⁵ The pipeline would also run through the Ogallala Aquifer, which supplies 30 percent of the groundwater used for irrigation in the U.S.⁶ Cleaning up tar sands oil spills is both difficult and costly, as witnessed following spills into the Kalamazoo River and in Mayflower, Arkansas.

Keystone XL would impede the growth of the clean energy sector

Business owners have argued that Keystone XL would impose nearly \$100 billion in climate-related costs on the economy.⁷ In addition, Keystone XL would undermine the growth of the clean energy sector. The American Sustainable Business Council, representing more than 200,000 businesses across the country, has called on the administration to reject the pipeline.⁸

The clean energy sector is more conducive to job creation than Keystone XL would be. In the third quarter of last fiscal year, 18,000 new clean energy jobs were created nationwide.⁹ Investments in clean energy create four times as many jobs as the same amount of investment in petroleum-based projects.¹⁰

¹ U.S. State Department, Keystone XL Final SEIS, January 2014, p. 4.10-31.

² U.S. State Department, Keystone XL Final SEIS, January 2014, p. ES-19.

³ John Stansbury, *Analysis of Frequency, Magnitude and Consequence of Worst-Case Spills From the Proposed Keystone XL Pipeline*, Nebraska Water Center, 2011, <http://watercenter.unl.edu/downloads/2011-Worst-case-Keystone-spills-report.pdf>.

⁴ Lara Skinner & Sean Sweeney, *The Impact of Tar Sands Pipeline Spills on Employment and the Economy*, Cornell University Global Labor Institute, 2012, https://www.ilr.cornell.edu/globallaborinstitute/research/upload/GLI_Impact-of-Tar-Sands-Pipeline-Spills.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ Environmental Entrepreneurs, *Letter to Secretary Kerry*, March 7, 2014,

<http://switchboard.nrdc.org/blogs/aswift/E2%20Letter%20Opposing%20the%20Keystone%20XL%20Tar%20Sands%20Oil%20Pipeline.pdf>.

⁸ *Business Leaders Call on Senate to Reject Keystone Pipeline*, American Sustainable Business Council, November 18, 2014,

<http://asbcouncil.org/news/press-release/business-leaders-call-senate-reject-keystone-pipeline#.VKwRumTF-BI>.

⁹ Environmental Entrepreneurs, *Clean Energy Works for Us: Q3 2014 Jobs Report*, 2014, http://cleanenergyworksforum.org/wp-content/uploads/2014/11/2014_Q3_Report_final.pdf.

¹⁰ Robert Pollin et al., *Green Recovery: A Program to Create Good Jobs and Start Building a Low-Carbon Economy*, Political Economy Research Institute, 2008, http://www.peri.umass.edu/fileadmin/pdf/other_publication_types/peri_report.pdf.

Marshall, Michigan Tar Sands Spill into Kalamazoo River - 2010

On July 26, 2010, a pipeline operated by Enbridge Inc. ruptured releasing 843,000 gallons of tar sands diluted bitumen into Talmadge Creek which flows into the Kalamazoo River near Marshall, Michigan. The tar sands spill eventually contaminated 35 miles of the Kalamazoo River.¹ The rupture of this pipeline (called line Line 6B) is the costliest inland oil spill cleanup in U.S. history. Significantly, this spill drew national attention to the fact that tar sands oil sinks in water (unlike conventional oil). Despite more than four years of cleanup efforts overseen by the U.S. Environmental Protection Agency, the Kalamazoo River is still contaminated with tar sands.²

1. **Most expensive inland oil spill in U.S. history:** To date, the cleanup cost has exceeded \$1 billion. Cleanup requires river-bottom dredging to remove the submerged tar sands that have remained since 2010. Even as this expensive and time-consuming process has taken place, there is evidence that dredging and other river-bottom removal techniques may also be leading to a wider spread of the spilled tar sands oil.³ Traditional oil spill clean tools used for conventional oil—like surface skimmers, vacuum trucks, and absorbent booms—are largely ineffective for tar sands because large quantities sink and become submerged oil.⁴
2. **Tar sands oil sinks:** The response and cleanup of the Kalamazoo river spill has confirmed longstanding concerns among scientists and environmental monitors that tar sands do not float like conventional oil if spilled in water.⁵ On the Kalamazoo, this has proved to be the case as the lighter, highly volatile diluting agents quickly evaporated, leaving behind the highly viscous, heavy bitumen, which sunk to the river bottom and has not significantly biodegraded over time. Even the State Department has acknowledged that a spill of tar sands presents different challenges than a conventional oil spill but failed to consider this in its environmental review.⁶
3. **Leak detection technology was ineffective:** The pipeline company operating Line 6B was not the first one to notice the rupture. Despite modern spill detection technology (similar to that proposed for Keystone XL), the rupture was reported by a member of the public 17 hours after the pipeline had ruptured.⁷

Following the spill, residents in the area reported adverse health effects including rashes, headaches, breathing problems and nausea.⁸ The Talmadge Creek ecosystem was also decimated, as wildlife including turtles, birds, mammals, fish and invertebrates were coated in oil and died.⁹

¹ EPA Response to Enbridge Spill in Michigan, updated October 16, 2014, <http://www.epa.gov/enbridgespill/>.

² *Ibid.*

³ Lisa Song, "Cleanup of 2010 Mich. Dilbit Spill Aims to Stop Spread of Submerged Oil," *Inside Climate News*, March 27, 2013, <http://insideclimatenews.org/news/20130327/cleanup-2010-mich-dilbit-spill-aims-stop-spread-submerged-oil>.

⁴ Kari Lydersen, "A Year After Pipeline Spill, Tar Sands Oil Still Plagues a Michigan Community," *On Earth*, July 25, 2011, <http://archive.oneyearth.org/article/tar-sands-oil-plagues-a-michigan-community>.

⁵ Lisa Song, "Dilbit Sinks in Enbridge Oil Spill, but Floats in Its Lab Study," *Inside Climate News*, March 14, 2013, <http://insideclimatenews.org/news/20130314/tar-sands-dilbit-sinks-enbridge-oil-spill-floats-its-lab-study>.

⁶ Final Supplemental Environmental Impact Statement for the Keystone XL Pipeline Project, Chapter 4, Potential Releases, <http://keystonepipeline-xl.state.gov/documents/organization/221189.pdf>.

⁷ Pipeline Accident Report, Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, National Transportation Safety Board, July 10, 2012, <https://www.nts.gov/investigations/summary/PAR1201.html>. Though the pipeline's leak detection system issued alarms consistent with a rupture, operators misinterpreted the alarms and continued to keep the pipeline open as it poured oil into the environment.

⁸ Keith Matheny, "Three years after oil spill, a slow recovery haunts Kalamazoo River," *Detroit Free Press*, June 24, 2013, <http://archive.freep.com/article/20130623/NEWS06/306230059/Kalamazoo-River-oil-spill>.

⁹ *Ibid.*

Mayflower, Arkansas Tar Sands Spill - 2013

On March 29, 2013, ExxonMobil's 95,000 barrel per day Pegasus Pipeline ruptured, sending roughly 5,000 barrels (210,000 gallons) of tar sands diluted bitumen through the community of Mayflower, Arkansas.¹ Some of the spilled tar sands crude flowed through people's yards and down their streets.² While some of the very closest homes to the spill were evacuated, many who lived just a few hundred yards from the spilled diluted bitumen were not – and were exposed to dangerous levels of benzene, along with other pollutants such as octane, cyclohexane, heptane, hexane, toluene, butane, pentane and more.³ Some community members experienced severe headaches, nausea, and respiratory infections following the spill.⁴ Even nearly a year later, residents still were facing headaches, dizziness, nausea and other health challenges – while being told it was safe to live there – so that some have abandoned their homes, unable to find buyers.⁵

The Pegasus pipeline runs from Patoka, Illinois through Missouri and Arkansas to Corsicana and Nederland, Texas.⁶ At the time of the spill, the pipeline was 65 years old, and had been built to transport lighter crudes at lower pressures in the opposite direction—but was reversed in 2006 to transport heavier tar sands diluted bitumen at higher pressures to the Gulf Coast.⁷ Until 2012, Exxon's 90,000 bpd Pegasus pipeline was the only pipeline to move Canadian diluted from the Midwest to the Gulf Coast.

Following the spill, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Corrective Action Order, requiring ExxonMobil to shut down the pipeline until certain conditions were met, and initiated an investigation of the spill. PHMSA found nine probable violations of safety rules that may have contributed to the spill, and ExxonMobil was fined nearly \$2.7 million.⁸ On March 31, 2014 – just over a year after the spill – PHMSA approved ExxonMobil's request to resume operations on the Pegasus Pipeline at a reduced pressure of 80% of the operating pressure at the time of the pipeline failure.⁹

As illustrated by the Mayflower spill and the 2010 tar sands spill into the Kalamazoo River, tar sands is risky to transport, and poses health risks and clean-up challenges when it does spill. Further, the pipeline companies are not doing their jobs to ensure that the communities through which they are transporting tar sands stay safe, and U.S. government regulation of tar sands transport is inadequate. Building more tar sands pipelines like Keystone XL and exacerbating these risks is the wrong path forward.

¹ PHMSA, ExxonMobil Pipeline Incident – Mayflower, Ark., [http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnextoid=1a9ab5676d5cd310VgnVCM100000d2c97898RCRD&vgnnextchannel=d248724dd7d6c010VgnVCM10000080e8a8c0RCRD&vgnnextfint=pr](http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnextoid=1a9ab5676d5cd310VgnVCM100000d2c97898RCRD&vgnnextchannel=d248724dd7d6c010VgnVCM10000080e8a8c0RCRD&vgnnextfint=print)
[int](http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnextoid=1a9ab5676d5cd310VgnVCM100000d2c97898RCRD&vgnnextchannel=d248724dd7d6c010VgnVCM10000080e8a8c0RCRD&vgnnextfint=pr).

² Exxon Pipeline Breaks in Arkansas, YouTube, March 31, 2013, <https://www.youtube.com/watch?v=u30m8U6VP3E#t=12>.

³ Sam Bifling, Ark. Spill Victims on 'Wrong' Side of Fence Left to Fend for Themselves, August 7, 2013, Inside Climate News, <http://insideclimatenews.org/news/20130807/ark-spill-victims-wrong-side-fence-left-fend-themselves>

⁴ Ibid.

⁵ RT, Exxon oil spill town 'deserted land', residents still getting sick, forced to abandon homes, February 11, 2014, <http://rt.com/usa/mayflower-keystone-oil-pipeline-410/>.

⁶ ExxonMobil Pipeline, Central North crude maps, http://www.exxonmobil.com/Images/EMPCo/central_north_crude2.pdf.

⁷ John H. Cushman, Jr., Federal Rules Don't Control Pipeline Reversals Like Exxon's Burst Pegasus, April 3, 2013, Inside Climate News, <http://insideclimatenews.org/news/20130403/federal-rules-dont-control-pipeline-reversals-exxons-burst-pegasus>.

⁸ Timothy Gardner and Alan Raybould, Exxon faces \$2.7 million fine for Arkansas pipeline spill, November 6, 2013, Reuters, <http://www.reuters.com/article/2013/11/07/us-usa-exxon-fine-idUSBRE9A603X20131107>.

⁹ U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Letter to ExxonMobil Pipeline Company, Re: CFP No. 4-2013-5006H, Approval of Restart Plan, Southern Segment of the Pegasus Pipeline, March 31, 2014,

http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_325C1FBC0A971C60C2DC5268CB2676A341960000/filename/420135006H_Approval_of_Restart_Plan_Southern_Segment_REV6_03312014.pdf.

Nebraska and South Dakota State Processes Currently Under Way Regarding the Proposed Keystone XL Tar Sands Pipeline

Nebraska

The U.S. State Department's review of the Keystone XL pipeline has been suspended, awaiting a decision by the Nebraska Supreme Court. Pending the court's ruling, which could come any Friday in 2015, **there is no approved route for the pipeline through Nebraska.**

The case, *Thompson v. Heineman*,¹ hinges on whether the Nebraska Legislature violated the state's constitution when it passed legislation enabling Governor Dave Heineman to approve the pipeline through an expedited process.² The challenged law also gave TransCanada eminent domain rights without having to first secure a federal permit.³

A Nebraska District court agreed with the landowners in a holding issued on February 9, 2014, stating that, as a "common carrier," the pipeline could not be green-lighted by the Governor, but rather only by the Nebraska's Public Service Commission (PSC).⁴ The Nebraska Supreme Court heard oral arguments in the state's appeal on September 5, 2014. A final decision on the case is expected at any time. If the District Court holding is upheld, TransCanada will have to apply to the PSC for a route. The PSC has the authority to propose a new route in a process that is expected to take nine or more months.

South Dakota

TransCanada's permit for building Keystone XL through South Dakota expired in June 2014. The company filed for a re-certification by the South Dakota Public Utilities Commission (PUC) in September 2014.⁵

On October 28, 2014 the PUC granted "intervenor" status to 43 individuals and groups from South Dakota and Nebraska, many of whom who are challenging the construction and purpose of the pipeline. As intervenors, they will have the opportunity to voice their opposition to Keystone XL, participate in the discovery process, and call TransCanada officials to the stand under oath at hearings that will be held early 2015. The final evidentiary hearing is set for May 5 - 6, 2015.⁶ Until the Public Utilities Commission decides whether to grant or decline certification, **Transcanada does NOT have a permitted route through South Dakota.**

Public concern in South Dakota over the proposed pipeline has grown tremendously since the original permit application submitted over four years ago. The unified tribal nations of the Oceti Sakowin, aka the Great Sioux Nation, are challenging the permit on the grounds of treaty rights,⁷ water rights protection and a lack of proper consultation required by federal law.⁸

¹ *Thompson v. Heineman*, No. S-14-000158, (Neb. Supreme Court, filed Apr. 21, 2014).

² *Thompson v. Heineman*, 2014 WL 631609 (Neb. Dist. Ct.) (Trial Order) (2014).

³ Nebraska Legislature, Legislative Bill 1161, Approved by the Governor April 17, 2012, <http://nebraskalegislature.gov/FloorDocs/102/PDF/Slip/LB1161.pdf>.

⁴ *Thompson v. Heineman*, 2014 WL 631609 (Neb. Dist. Ct.) (Trial Order) (2014).

⁵ *Keystone XL Pipeline Updates*, SOUTH DAKOTA PUBLIC UTILITIES COMMISSION, <http://puc.sd.gov/Dockets/HydrocarbonPipeline/keystoneupdate.aspx>.

⁶ Joe Duggan, *Keystone XL opponents will have a chance to be heard in South Dakota*, OMAHA.COM (Oct. 30, 2014), http://www.omaha.com/news/metro/keystone-xl-opponents-will-have-a-chance-to-be-heard/article_1c21b596-392e-5760-90be-af9a34aeeb73.html.

⁷ Tom Poor Bear, *Memo from Oglala Sioux Tribe*, scribd.com (Dec. 9, 2014) <http://www.scribd.com/doc/251533342/Memo-from-Oglala-Sioux-Tribe>.

⁸ Advisory Council on Historic Preservation, <http://www.achp.gov/106summary.html>.

Tribal and Treaty Rights Impacted by the Proposed Keystone XL Tar Sands Pipeline

The Keystone XL tar sands pipeline's proposed route violates basic tenets of Federal Indian Law. The pipeline would infringe upon treaty-protected lands, especially in South Dakota. TransCanada has also failed to properly consult with tribal leaders on plans for the pipeline's construction, violating the U.S. Government's trust obligation toward tribes.¹

Treaty Violation

Although it does not infringe upon reservation land, the current proposed Keystone XL route crosses land protected by treaty. On April 29, 1868, the United States entered into a peace treaty at Fort Laramie with the Oglala Sioux Tribe. The United States agreed in the treaty that all lands west of the Missouri River and within present-day South Dakota would be "set apart for the absolute undisturbed use and occupation" by the tribe and that "no persons ... shall ever be permitted to pass over, settle upon, or reside in the territory described in this article."

The Fort Laramie Treaty's continued enforceability was reinforced in the 1980 Supreme Court case *United States v. Sioux Nation of Indians*.² This decision upheld a Court of Claims ruling that the United States' acquisition of the Black Hills, a region included in the Fort Laramie Treaty, constituted a taking under the 5th Amendment. Accordingly, the Court ruled, the U.S. Government was obligated under the treaty to provide the affected Sioux Tribe with "just compensation."

The Tribal Trust Doctrine and the Duty to Consult

Neither the State Department nor TransCanada have properly consulted with the tribes as required by the federal government's tribal trust responsibility.

The U.S. Government has a trust responsibility to Indian Nations, which is expressed in the Constitution, treaties, statutes, case law, and executive orders. This trust duty, which originally arose from tribes' land cessations, obligates the federal government to protect tribes' unique interests.³ This trust obligation entails a duty to consult with Indian tribes on any activity that would affect their land. This duty is expressed in Executive Order 13175 issued by President Clinton and reinforced by President Obama's Memorandum for the Heads of Executive Departments and Agencies issued on November 5, 2009.

TransCanada has failed to adequately consult with tribes potentially affected by the Keystone XL Pipeline, often claiming that strictly informational meetings have satisfied this requirement. Additionally, TransCanada has sidestepped the consultation process by hiring members of non-local tribes to survey areas that may be of cultural significance to the tribes that actually reside there. This deprives the impacted tribes of any meaningful consultation on Keystone XL's effects on their cultural resources.

The National Historic Preservation Act's Duty to Consult

Pursuant to Section 106 of the National Historic Preservation Act (NHPA), federal agencies must take into account projects' potential effects on locations or objects eligible for inclusion in the National Register prior to authorizing federal spending on that project. Eligible locations or objects may include "[p]roperties of traditional religious and cultural importance to an Indian tribe." Because the Keystone XL pipeline's proposed route runs through traditional tribal lands, the State Department is required to consult with the tribes that have spiritual, cultural, and historical ties to the land along the pipeline route. To date, it has failed to do so.

¹ Memorandum from Tom Poor Bear, Vice President Oglala Sioux Tribe, Dec. 2014, available at <https://www.scribd.com/doc/251533342/Memo-from-Oglala-Sioux-Tribe>.

² 448 U.S. 371.

³ Mary Christina Wood, *Protecting the Attributes of Native Sovereignty: A New Trust Paradigm for Federal Actions Affecting Tribal Lands and Resources*, 1995 UTAH L. REV. 109, 112 (1995).

Challenges associated with Proposed Tar Sands Pipelines

Enbridge's Northern Gateway (525,000 bpd)

Enbridge's proposed Northern Gateway project is a controversial 525,000 barrel per day (bpd) tar sands pipeline across the mountainous terrain and salmon-bearing rivers of north-central British Columbia. In May 2013, the British Columbia government opposed the project in its formal comments to the federal review panel.¹ Polling shows that more than two-thirds of British Columbians oppose the Northern Gateway project.² Moreover, First Nations, with powerful treaty rights which were substantially strengthened by a recent Canadian Supreme Court ruling, have brought a dozen lawsuits against the Northern Gateway project.³ Amid controversies surrounding the project and following a damaging referendum in Kitimat, British Columbia, Northern Gateway's Executive Vice President Janet Holder, the public face for the project, announced her retirement.⁴ In its environmental review of Keystone XL, the State Department considered Northern Gateway too uncertain and speculative to include in its forecast.⁵

Kinder Morgan's TransMountain Pipeline (additional 590,000 bpd)

The expansion of the TransMountain pipeline, another pipeline through British Columbia, would require new permits, the renegotiation of landowner agreements along the route, agreements with First Nations, the dredging of the Vancouver harbor and changes in regulations to allow increased tanker traffic. TransMountain passes through fifteen First Nation's communities and affect many more traditional territories, many of which have stated opposition to the project.⁶ Objections from local political leaders and the public have already prompted the National Energy Board to delay its final report on the project to January 2016.⁷

TransCanada's Energy East Pipeline (1.1 million bpd)

TransCanada's Energy East pipeline would require converting around 3,000 kilometers (1,864 miles) of existing natural gas pipeline and construction of around 1,400 kilometers (870 miles) of new pipe, with the most construction expected in Quebec. While TransCanada only filed its application in late October, 2014, opposition to the project is already significant and growing. Both the governments of Quebec and Ontario have filed as interveners for the project's review.⁸ The impact of building a new pipeline creates a significant hurdle for TransCanada, as Quebec has long touted its pro-environment stance and is not eager to play a role in enabling tar sands expansion plans in Alberta.⁹ At the same time, Ontario's

¹ Argument of the Province of British Columbia Re: Hearing Order OH-4-2011 and File No. OF-Fac-Oil-N304-2010-01 01 Enbridge Northern Gateway Project Application, May 31, 2013, http://www.env.gov.bc.ca/main/docs/2013/BC-Submission-to-NGP-JointReviewPanel_130531.pdf; "B.C. officially opposes Enbridge Northern Gateway pipeline," CBC News, May 31, 2013, <http://www.cbc.ca/news/canada/british-columbia/story/2013/05/31/bc-northern-gateway-rejected.html>.

² "Your Insights on the Northern Gateway Pipeline," *Insights West*, February 4, 2013, <http://www.insightswest.com/news/your-insights-on-the-northern-gateway-pipeline/>.

³ Mychaylo Prystupa, "Janet Holder Quits Northern Gateway Pipeline," *Vancouver Observer*, November 12, 2014, <http://www.vancouverobserver.com/news/janet-holder-quits-northern-gateway-project>.

⁴ *Ibid.*

⁵ State Department, Final SEIS, Jan. 31, 2014, 2.2-34, <http://keystonepipeline-xl.state.gov/documents/organization/221155.pdf>.

⁶ Julie Gordon, "Kinder Morgan Canada pipeline plans hits a mountain of opposition," *Reuters*, October 21, 2014, <http://www.reuters.com/article/2014/10/21/us-canada-pipeline-kinder-morgn-eng-idUSKCN01A15N20141021>.

⁷ Markham Hislop, "Social license: Enbridge, Kinder Morgan losing BC battle," *Beacon News*, November 15, 2014, <http://beaconnews.ca/blog/2014/11/social-licence-enbridge-kinder-morgan/>.

⁸ Shawn McCarthy, "Opposition builds to Energy East," *The Globe and Mail*, October 13, 2014, <http://www.theglobeandmail.com/report-on-business/opposition-builds-to-energy-east-pipeline-plan/article21082836/>.

⁹ Gerrit De Vynck, "TransCanada Eastern Pipeline Draws Opposition: Corporate Canada," *Bloomberg News*, August 6, 2013, <http://www.businessweek.com/news/2013-08-06/transcanada-eastern-pipeline-draws-opposition-corporate-canada>.

Eminent Domain and the Keystone XL tar sands pipeline

The House and Senate bills that would approve the Keystone XL tar sands pipeline in the 114th Congress -- H.R. 3 and S. 1 – do nothing to protect property rights. Despite the clause titled “Private Property Savings Clause,” the bill’s language does nothing to change the flawed eminent domain laws and process that uses eminent domain for private gain, and in fact further legitimizes these unjust processes.¹

TransCanada has used eminent domain on landowners in every state along the proposed pipeline route, except in Nebraska. TransCanada makes frequent threats of using eminent domain on Nebraskans, and has done so since 2010, even though they do not have the current legal ability because of the landowner legal victory last year. That case is now in front of the Nebraska Supreme Court. TransCanada still does not have a route or a permit and therefore cannot use eminent domain in Nebraska.

Eminent domain is a federal and state-by-state legal process for the government to take land for “public purpose.”² Over the years, oil and gas companies have abused eminent domain by seizing land for private use. The use of eminent domain for private gain must have a federal and state-based fix to protect property rights. The House of Representatives attempted to give some fixes to eminent domain in a bill that passed last year, however that bill exempts the Keystone XL pipeline.³

Keystone XL is one example of how a company uses the threat of, and/or the actual use of, eminent domain to secure contracts with landowners to then turn around to elected officials and the general public to show that they have “landowner support.”

One of the many negative impacts of eminent domain on landowners is if Keystone XL were to be denied, in many of the early contracts forced on landowners, there is no clause that states the land is then returned to the property owner. That means TransCanada can then turn around and sell that land easement to another pipeline company and the landowner has no legal say in the matter.

Dave Domina, the lead attorney in the Nebraska case for the landowners, wrote extensively about routing and eminent domain in a memo to all Nebraska elected officials in October 2011. The memo can be found online and has extensive legal citations for further reading.⁴

¹ This section of H.R. 3 states that “Nothing in this Act alters any Federal, State, or local process or condition in effect on the date of enactment of this Act that is necessary to secure access from an owner of private property to construct the pipeline and cross-border facilities described in subsection (a). 114th Congress, 1st Session, H.R. 3, <http://thomas.loc.gov/cgi-bin/query/z?c114:H.R.3>;

² Eminent domain is part of the US Constitution, the Fifth Amendment's takings clause. National Eminent Domain Power, Cornell Law School, http://www.law.cornell.edu/anncon/html/amdt5bfrag4_user.html.

³ H.R. 1944, the Private Property Rights Protection Act passed Feb. 2014, <http://sensenbrenner.house.gov/news/documentsingle.aspx?DocumentID=371032>. Fox News covered the bill <http://www.foxnews.com/us/2012/02/28/house-acts-against-high-court-on-eminent-domain/> as did the Daily Show who brought up the KXL exemption <http://thedailyshow.cc.com/videos/u1knas/little-seizers>.

⁴ Domina Law Group Eminent Domain Memo, <http://www.dominalaw.com/documents/Green-Paper.pdf>.

Attachment 8.4



LOWER NIOBRARA NATURAL RESOURCES DISTRICT

410 Walnut Street • P.O. Box 350
Butte, NE 68722-0350

Phone: (402) 775-2343
Fax: (402) 775-2334

September 17, 2012

TO: Nebraska Department of Environmental Quality

RE: Response to TransCanada's Supplemental Environmental Report (SER) September 5, 2012

A representative group of our District's constituents attended our monthly Board Meeting on September 10, 2012. They expressed their personal concerns about the SER. In particular, in response to the proposed Northern Alternative rerouting of the Keystone XL Pipeline: (1) Sand and porous soils are still being crossed, (2) poisonous coal tar crude oil should not cross the Ogallala Aquifer because any release of will contaminate their immediate area, water supply and land. (3) Why can't the Keystone XL Pipeline be routed parallel to the existing Keystone 1 Pipeline, which is at the easterly edge of the Ogallala Aquifer and sandy soils. They then expressed their appreciation for the District's proactive participation in the proposed pipeline review process.

The Board then challenged the constituents to continue their personal involvement in the process with the goal of protecting their interests as well as Nebraska's most precious natural resource – the High Plains Aquifer System and in particular the underlying Ogallala Aquifer. The Board suggested the constituents could consider writing to and/or meeting with the Nebraska Department of Environmental Quality Staff, Nebraska Legislature and the Nebraska Governor.

The LNNRD Board of Directors re-affirms our reasons for opposing the TransCanada Keystone XL Pipeline as set forth in our letter to NDEQ on May 31, 2012 (attached).

There continues to be enormous interest and competition among oil and natural gas companies to construct new pipelines for conveying both Canada's and the United State's developing crude oil supplies to refineries and ports in the United States and also redistribute petroleum products and natural gas across the United States as markets for demand change.

Oil companies have in the past and will continue in the future to construct new pipelines parallel to existing pipeline corridors (for example the Rockies Express, Platte System, Enbridge, Flanagan South, Pony Express and...) Why? Because the review process for the new pipelines in existing pipeline corridors/right-of-ways is not as rigorous and often subject to less scrutiny. In addition, in most locations other than the heartland of America (including across the mid-section of Nebraska) there is limited land available for new pipelines. The engineering challenges of paralleling existing pipelines have been overcome with improved construction methods and pipeline design. It is also worthy to recognize that as markets for crude and refined oil products and natural gas change the existing pipeline for conveying them are modified to transport crude oil or refined petroleum products instead of natural gas, and vice versa. Therefore, the proposed Keystone XL Pipeline for Canadian tar sands crude may in the future convey another product. In addition TransCanada may sell space in the Keystone XL Pipeline corridor to other oil companies for their new pipeline. Landowners may find in the future, more than one pipeline and types of products being conveyed across their private land easement.

TransCanada will resist to the very end of the process and until Nebraska's decision makers give TransCanada no other choice but to route the Keystone XL Pipeline parallel to and in the same corridor as the existing Keystone 1 Pipeline.

It is very obvious in the SER that TransCanada did not clearly and concisely answer Nebraska Department of Environmental Quality's very specific request in their Feedback Report, Chapter 7, information requested from Keystone, Paragraph 7.5.1, Additional Information Needs Arising From Public Comments on Page 37. Perhaps the most frequently asked question was: "Why didn't Keystone follow the same corridor as its first Keystone Oil Pipeline? Keystone should provide a clear and concise explanation of why the alternative was rejected. Keystone did not follow NDEQ's instructions.

In closing, the LNNRD Board expresses sincere thanks to the Nebraska Department of Environmental Quality Staff for an excellent Feedback Report.

Sincerely,
LNNRD Board of Directors

Attachment: 1



LOWER NIOBRARA NATURAL RESOURCES DISTRICT

410 Walnut Street • P.O. Box 350
Butte, NE 68722-0350

Phone: (402) 775-2343
Fax: (402) 775-2334

May 31, 2012

The LNNRD Board has been unanimously opposed to routing the Keystone XL Pipeline across the Nebraska Sandhills and underlying Ogallala Aquifer since the beginning of the public review process. In the 1980's, NRD's were directed by the Nebraska Legislature to develop Groundwater Management Plans to protect the quality and quantity of groundwater, which is most often described as Nebraska's "most precious natural resource". The Board takes very seriously the protection of these two natural resources which are absolutely essential to Nebraska's present and future agri-business, recreational pursuits, industrial and commercial growth, and municipal/local drinking water supplies in this region. The newly proposed Trans Canada Keystone XL Pipeline route still crosses large areas of Valentine Soils and the Ogallala Aquifer.

Concerns for the Ogallala Aquifer are being pushed aside now that the proposed new route, on paper, avoids the Sandhills. The Board maintains their objections to the re-routing and considers the aquifer just as important to avoid as the Sandhills. The Board also recognizes many pipelines crisscross the aquifer and areas with sandy soils now, but adding the contamination risks associated with tar sands crude to this region of the Ogallala Aquifer and the sandy soil pastures and croplands is not warranted.

The LNNRD Board objects to being forced to accept TransCanada's goal of building the shortest and cheapest pipeline at the risk of detrimental effects to our citizens, private land owners and the water resource they depend on for their livelihoods. A better route for the XL pipeline needs to be chosen!

The Board feels the best route across Nebraska is parallel to the existing Keystone Pipeline. Even though this route may be somewhat longer, the savings accrued from eliminating unknowns and surprises by building in a previously studied and completed ROW are significant. The same emergency response plans, materials, and personnel can be used for both pipelines and additional savings will accrue from co-locating maintenance crew facilities, material storage lots, and sites for pumping stations and storage tanks. There will be significantly less driving to and from points on the pipelines via rural roads.

Across the states of Montana, North Dakota, and South Dakota the proposed route avoids crossing Indian Reservations, wildlife refuges, and environmentally sensitive areas. In Nebraska, the TransCanada proposed route for the XL Pipeline crosses areas that are very sensitive to us: the Ogallala Aquifer and the Sandhills. Nebraskans will be stuck with the consequences of a crude oil pipeline located there. These resources are absolutely critical to Nebraska's jobs and economy, now and in the future. Land owners and producers in Nebraska are frustrated that their concerns continue to fall on deaf ears.

The LNNRD Board of Directors encourages the Nebraska Department of Environmental Quality to declare that the Trans Canada Keystone XL Pipeline newly proposed route does not meet the common good and welfare of the state and will present unacceptable hazards to Nebraska's most precious natural resource, agricultural resources, aesthetics and communities in this region. The LNNRD Board of Directors strongly and unanimously agrees that the most sensible routing alternative, as well as, the quickest alternative for getting on with building the TransCanada XL Pipeline across Nebraska is simply to avoid crossing this region of the Ogallala Aquifer and the Sandhills and locating it parallel and adjacent to the existing Keystone Pipeline.

Sincerely

Lower Niobrara Natural Resources District Board of Directors (unanimously approved 6-4-2012)

Attachment 8.5

A number of complementary leak detection methods and systems would be available within the OCC and would be linked to the SCADA system. Remote monitoring would consist primarily of monitoring pressure and flow data received from pump stations and valve sites that would be fed back to the OCC by the SCADA system. Software based volume balance systems would monitor receipt and delivery volumes and would detect leaks down to approximately 5 percent of pipeline flow rate. Computational Pipeline Monitoring or model based leak detection systems would monitor small pipeline segments on a mass balance basis. These systems would detect leaks down to approximately 1.5 to 2 percent of pipeline flow rate. Computer based, non-real-time, accumulated gain/loss volume trending would assist in identifying seepage releases below the 1.5 to 2 percent by volume detection thresholds. If any of the software-based leak detection methods indicate that a predetermined loss threshold has been exceeded, an alarm would be sent through SCADA and the Controller would take corrective action. The SCADA system would continuously poll all data on the proposed pipeline at an interval of approximately 5 seconds.

In the event of a leak, the operator would shut down operating pumping units and close the isolation valves. It would take approximately 9 minutes to complete the emergency shut-down procedure (shut down operating pumping units) and an additional 3 minutes to close the isolation valves. Some commenters have expressed concern that the Ludden spill on the existing Keystone Oil Pipeline Project (see Table 3.13.1-4) took longer than 12 minutes to shut down. In the case of the May 7, 2011 Ludden spill, the time from 3:51 to 4:26 pm MST was used to verify flow imbalance trends detected by the SCADA system. At 4:26 pm the Keystone Oil Control Center (OCC) received visual verification of a leak from a local farmer, thus confirming that a leak had occurred and system shutdown was immediately initiated. Shutdown was completed by 4:35 pm MST. The elapsed time from leak confirmation through visual verification to complete system shutdown was 9 minutes. The incident emphasizes the importance and difficulty of leak verification in some instances. The incident confirms that the uncertainty in time to shut down for any leak is primarily a function of the time required to verify that a leak has occurred.

In addition to the SCADA and complimentary leak detection systems, direct observation methods including aerial patrols, intermittent maintenance patrols, and public and landowner awareness programs would be implemented to encourage and facilitate the reporting of suspected leaks and events that could suggest a threat to the integrity of the pipeline.

EPA expressed concern that relying solely on pressure drops and aerial surveys to detect leaks may result in smaller leaks going undetected for some time, resulting in potentially large spill volumes. In light of those concerns, EPA requested consideration of additional measures to reduce the risks of undetected leaks. A PHMSA report (2007) addressed the state of leak detection technology and its applicability to pipeline leak detection. External leak detection technology addressed included liquid sensing cables, fiber optic cables, vapor sensing, and acoustic emissions. In that report PHMSA concludes that while external leak detection systems have proven results for underground storage tank systems there are limitations to their applicability to pipeline systems and they are better suited to shorter pipeline segments. Their performance even in limited application is affected by soil conditions, depth to water table, sensor spacing, and leak rate. While it is acknowledged that some external detection methods are more sensitive to small leaks than the SCADA computational approach, the costs are extremely high and the stability and robustness of the systems are highly variable. Therefore, long-term reliability is not assured and the efficacy of these systems for a 1,384-mile long pipeline is questionable.

Relative to additional ground patrols, Keystone responded to a data request from DOS concerning the feasibility of more ground-level inspections. Keystone responded that based on land owner concerns, additional ground-level inspections are not feasible due to potential disruption of normal land use activities (e.g., farming, animal grazing). However, it should be noted that in the normal course of maintenance Keystone would have crews at various places along the proposed Project corridor (e.g.,

Attachment 8.6

Leak Prevention and Detection



Operations Control Center

TransCanada's Keystone XL Pipeline will be remotely controlled from an Operations Control Center where highly trained pipeline controllers monitor the operation of the pipeline and provide 24-hour pipeline monitoring 365 days a year. The pipeline controllers ensure that the pipeline is running safely and efficiently. The control center includes an operational control system, a leak detection system, and a satellite communication network.

Remote control of the pipeline uses a computer case system known as Supervisory Control and Data Acquisition (SCADA) to monitor and control the pipeline system. Data from all sites is read and sent to the Control Center approximately every five seconds.

The SCADA system will include:

- Redundant, fully functional back-up computers and a second control center in case there is a failure in the main control center.
- Automatic functions that will not allow the pressure at any station or anywhere in the pipe to exceed safe values.
- Local safety limits at pump stations that will provide pipeline pressure protection if SCADA communications are interrupted.

In addition to the SCADA system, the pipeline will feature complimentary and overlapping leak detection methods and systems, including:

1. **Remote Monitoring:** Operators at the Operations Control Center monitor, on their computer screens, all of the pressure and flow data received from pump stations and valve sites. Remote monitoring is typically able to detect large leaks immediately so the line can be shutdown and all valves closed, to limit the size of the spill.
2. **Software-based Volume Balance Systems:** This system compares the injection and delivery volumes and provides alarm to the pipeline controller when there is a difference between what is input to the pipe and what is delivered.
3. **Computational Pipeline Monitoring:** The approach, also known as model-based leak detection, uses all the pipeline pressures and flow rates to calculate flow balances on smaller sections of the pipe. This system uses the SCADA data to create a sensitive leak detection model. TransCanada selected leak detection model will be capable of detecting leaks down to a level of approximately 1.5 per-cent - 2 per-cent of pipeline flow rate. In addition, TransCanada will employ an over/short calculation to identify leaks below this threshold.

4. **Direct Observation:** TransCanada will also utilize aerial patrols, conducted 26 times per year—approximately every other week—as well as public and landowner awareness programs designed to encourage and facilitate the reporting of suspected leaks and events that may suggest a threat to the integrity of the pipeline.

Overall, the Keystone XL Pipeline will employ industry best practices and materials to prevent leaks and to detect them if they do occur, so that appropriate actions may be taken. Our number one priority continues to be employee and public safety through all our activities.

Contact Us

For more information, please contact us:

Project Hot Line: 1.866.717.7473
Email: keystone@transcanada.com
Project web page: www.transcanada.com/keystone

Alternatively, you can write to us with attention to:

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

Or

Keystone XL Pipeline
2700 Post Oak Blvd., Suite 400
Houston, TX 77056

1. Introduction

In response to specific concerns raised by the State of Nebraska, TransCanada Keystone Pipeline LP (Keystone) has agreed to reroute its proposed Keystone XL Pipeline Project to avoid the Sandhills region in Nebraska (Nebraska Reroute). This report, which is being provided to the Nebraska Department of Environmental Quality (NDEQ), presents an initial analysis of alternative pipeline corridors that avoid the Sandhills. Each of the "corridors" discussed in this report represents a 2,000-foot-wide area. The statistics presented and maps provided represent the centerline of these 2,000-foot-wide corridors.

KXL Project Overview

The Keystone XL Pipeline Project (hereinafter referred to as the "Keystone XL Project" or the "Project") is a proposed approximate 854-mile, 36-inch diameter pipeline to transport crude oil from Hardisty, Alberta, Canada to Steele City, Nebraska. From That point, the project will connect with the existing Keystone Pipeline Cushing Extension. At the terminus of the Cushing Extension, the oil will be delivered into a new 36-inch pipeline to be constructed as the Keystone Pipeline Gulf Coast Project for transportation to refinery markets in the Gulf Coast area of the United States. The Project will have an initial nominal throughput capacity of 700,000 barrels per day (bpd) and can be expanded to an ultimate nominal capacity of 830,000 bpd through the installation of additional pumping capacity.

Background and Reroute Report Purpose

In September 2008, Keystone filed an application with the U.S. Department of State (DOS) for a Presidential Permit authorizing the construction and operation of the proposed Keystone XL Pipeline Project at the U.S.-Canada border crossing location in Montana. At that time, the proposed project consisted of a 2,232-mile, 36-inch diameter pipeline and appurtenant facilities to transport crude oil from Hardisty, Alberta, Canada to Nederland/Port Arthur, Texas. Upon receipt of that application, DOS led a comprehensive environmental review of all aspects of the original Keystone XL Project. The environmental review culminated August 26, 2011 with the release of the Final Environmental Impact Statement (FEIS) for the project. This review was the most detailed and comprehensive environmental review ever undertaken for a cross border crude oil pipeline. The FEIS concluded that "[t]he analysis of potential impacts associated with construction and normal operation of the proposed Project suggest that there would be no significant impacts to most resources along the proposed Project corridor..." (FEIS at p.3.15-1).

In November 2011, the DOS determined that, in order to make the required National Interest Determination with respect to the original Keystone XL Pipeline Project, it was necessary to conduct an in-depth assessment of potential alternative routes that would avoid the Sandhills region in Nebraska. Pursuant to authorization provided in Nebraska statute LB 4 – as adopted in the Special Legislative Session of November 2011 – the NDEQ also commenced leading the effort to assess alternative routes through Nebraska. The NDEQ also commenced negotiation of a Memorandum of Understanding with DOS, as provided for in LB – 4, in order to collaborate with DOS in the preparation of a Supplemental Environmental Impact Statement. Subsequently, the NDEQ hired a contractor to assist with the route review and published a map delineating the "Sandhills" region that any alternative route must avoid.

In late December 2011, Congress included a provision in the Payroll Tax Cut Extension Act requiring the President to make a decision on the Presidential Permit within 60 days. This Congressional action caused the State Department to suspend its work on an MOU with the NDEQ for the reroute process. This caused the NDEQ to suspend its work with respect to review of alternative routes in the State. In January 2012, the DOS announced its determination that the project – as presented and analyzed at that time – did not serve the national interest. The determination was based not on the merits of the project, but on

	A	B	C	D
1	Pipeline capacity (bpd)	Gallons/day	Leakage at 1.5%	Leakage at 2%
2		(42gal/barrell)	(gpd)	(gpd)
3				
4	700,000	29,400,000	441,000	588,000
5				
6	830,000	34,860,000	522,900	697,200

	A	B	C	D
1	Pipeline capacity (bpd)	Gallons/day	Leakage at 1.5%	Leakage at 2%
2		(42gal/barrell)	(gpd)	(gpd)
3				
4	700,000 Barrels	29,400,000	441,000	588,000
5				
6	830,000	34,860,000	522,900	697,200

700,000 x 42 = 29,400,000 gallons 1.5% = 441,000 gallons leaking a day

2 gallons water is 8.345 lbs so we

used that figure for weight

1.5%
700,000 capacity
leaking
= 441,000 gallons

2%
588,000
x 8
4,704,000
8049

34,860,000
x 8
278,880,000
= 278,880,000 lbs

each semi tanker hold 20,000 lbs

830,000 capacity at 2%
34,860,000
x 8
278,880,000 pounds
14 50,000

111.5 semi tank trucks

Attachment 8.7

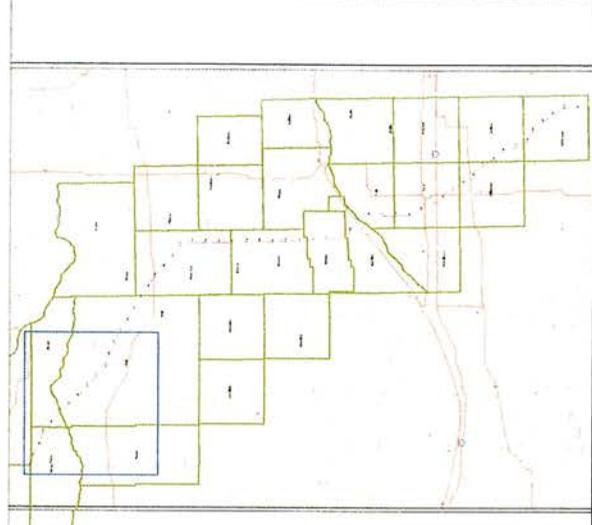
**Table GW-2
Water Well Summary
Nebraska Preferred Route
Keystone XL Pipeline Project**

Nearest Milepost	State/USGS ID	Lateral Distance from PL CL (ft)	Owner	Purpose	Date Completed	Total Depth (ft-bgs)	Static Water Level (ft-bgs)
613.6	205498	379.9	Dewey L & Diane K Peterson	Domestic	6/9/2010	60	25
618.9	194449	985.6	Mertz Mill Ranch LLC	Irrigation	12/1/2008	90	26
619.4	223146	1,786.8	MNS	Irrigation	5/22/2013	100	20
620.3	223149	1,575.0	MNS	Irrigation	5/29/2013	80	18
620.7	220491	1,306.2	MNS	Irrigation	11/21/2012	90	17
620.8	151638	777.2	Scott Land & Cattle LLC	Domestic	6/4/2003	58	14
621.1	215400	1,168.2	MNS	Irrigation	12/22/2011	110	10
621.3	214203	506.9	MNS	Irrigation	12/21/2011	110	17
622.3	110308	1,132.7	Chuck Davis	Livestock	6/4/1997	96	43
622.7	218556	2,346.3	John C Davis	Irrigation	8/18/2012	140	50
625.4	220822	2,512.7	William L Molly & Charles W Hobbs	Irrigation	9/18/2012	13	5
630.4	208962	1,746.3	R Wynn & Jill Hipke	Livestock	11/4/2010	45	9
631.0	191059	2,171.8	OK Properties Inc	Domestic	10/3/2007	47	8
633.5	84455	1,176.8	Lonnie A Breiner	Irrigation	4/22/1992	125	28
633.6	149007	406.0	Lonnie A Breiner	Irrigation	4/11/2003	137	32
633.8	73226	722.6	Lonnie A Breiner	Irrigation	12/12/1980	136	34
633.8	73227	1,245.4	Lonnie A Breiner	Irrigation	12/10/1980	131	21
635.6	216324	2,683.5	Richard Kilmurry	Livestock	11/3/2011	90	23
636.5	211716	973.9	Lonnie A Breiner	Livestock	7/8/2011	84	22
636.7	125503	549.0	Brendan J & Andrea Borer	Irrigation	7/7/2000	85	20
638.0	148893	990.7	Roger & Pam Frickel	Irrigation	11/19/2003	90	30
638.4	106373	1,028.5	Roger & Pam Frickel	Irrigation	6/6/1995	90	34
638.5	106372	486.3	Roger & Pam Frickel	Irrigation	6/7/1995	88	34
638.5	106371	1,250.6	Roger & Pam Frickel	Irrigation	4/8/1995	89	32
638.6	157999	355.0	Roger Frickel	Irrigation	3/28/2004	90	42
639.8	116133	990.1	Frank Kilmurry	Domestic	6/3/1998	33	4
642.3	33482	572.3	Alex Frickel	Irrigation	4/3/1967	84	32
643.0	57845	412.8	Alex Frickel	Irrigation	4/6/1976	91	28
643.4	26800	1,381.7	CNBGH Company	Irrigation	4/1/1959	103	15
643.7	30255	406.2	Galyen Land & Cattle Inc	Irrigation	1/12/1965	90	33
644.4	28549	436.3	Riverview LLP	Irrigation	4/21/1962	101	27
644.4	28550	1,354.8	Riverview LLP	Irrigation	8/3/1977	130	35
644.8	124828	1,422.4	Riverview LLP	Irrigation	4/11/2000	202	33
645.1	38247	414.0	CNBGH Company	Irrigation	4/15/1967	200	36
645.8	38249	614.1	CNBGH Company	Irrigation	4/19/1967	196	37
646.2	79548	1,380.9	Donald L & Joi M Opplinger	Irrigation	3/28/1989	180	39
646.4	126966	155.4	Byron Terry Steskal	Irrigation	8/9/2000	60	26
646.4	166278	515.4	Byron Terry Steskal	Irrigation	3/9/2005	150	41

NOTE:

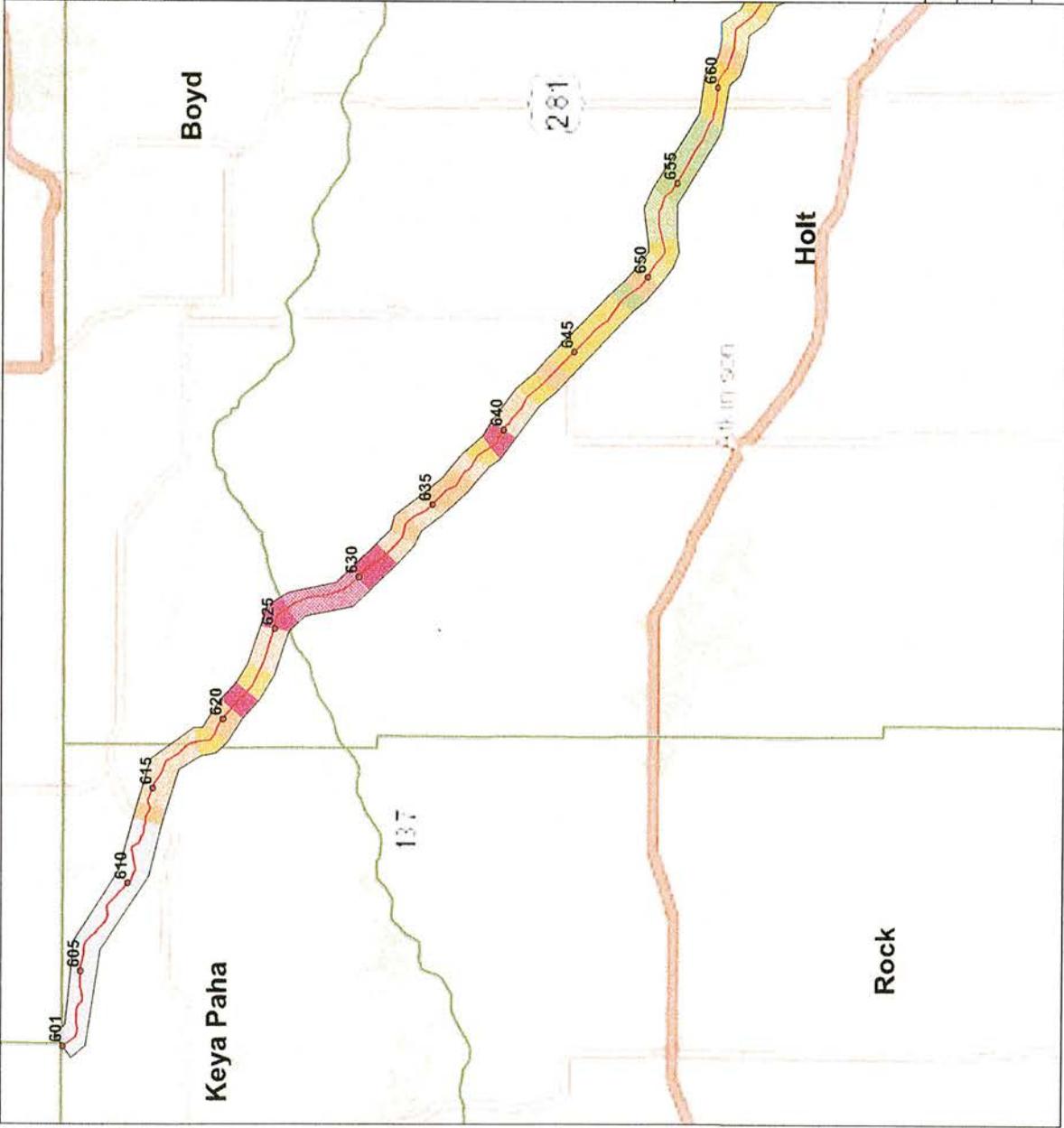
The segment depth to groundwater was derived from the static water levels provided in the March 2014 Water Well Survey performed by Banks Information Solutions with primary emphasis on wells with 1,500 feet of the IFC Route centerline. The representative depth to groundwater for each mile segment was calculated as either the minimum value for the mile segment or the lower limit of the first standard deviation from the minimum value for the mile segment. Where no static data, wells up to 2,500 feet from the centerline were added to the analysis for that segment. Depths to groundwater for segments without groundwater data were inferred from adjacent segments.

OVERVIEW:



KEY:

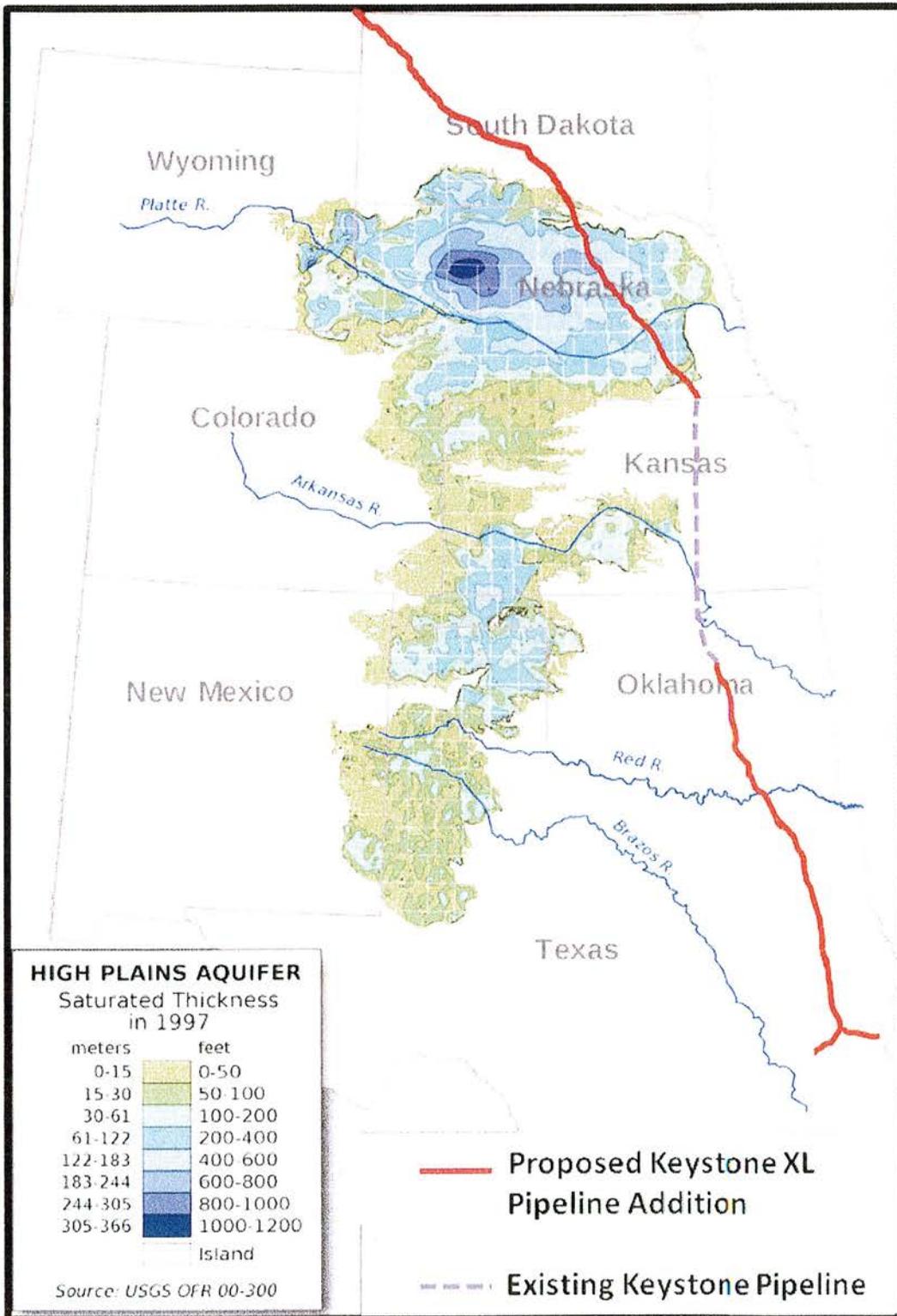
- IFC ROUTE CENTERLINE
- 650 • MILEPOST MARKER (EVERY 5 MILES)
- SEGMENT WITH DEPTH TO GROUNDWATER < 10 ft
- SEGMENT WITH DEPTH TO GROUNDWATER > 10 to 25 ft
- SEGMENT WITH DEPTH TO GROUNDWATER > 25 to 50 ft
- SEGMENT WITH DEPTH TO GROUNDWATER > 50 to 100 ft
- SEGMENT WITH NO DATA AVAILABLE
- SEGMENT WITH ASSUMED DATA
- (MATCHED IN APPLICABLE COLOR)



PROJECT	14454_01		
PREPARED FOR	ES&P		
LOCATION	Keystone XL Pipeline Project, Nebraska Preferred Route		
SHEET	DRAWN BY	REVIEWED BY	DATE
	1 of 1	ILJ	MBP

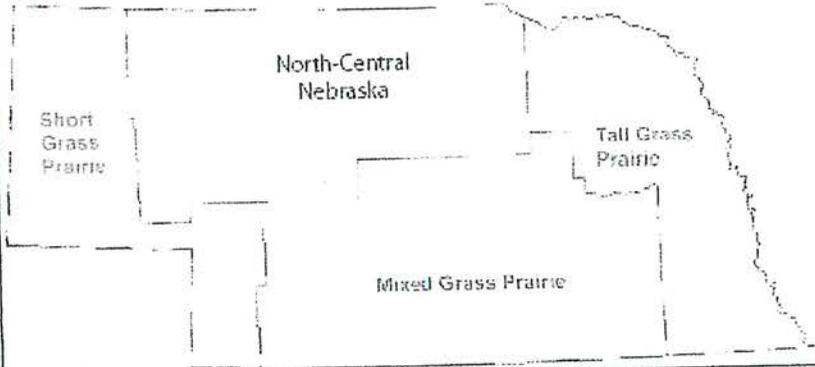


FIGURE GW-01
DEPTH TO GROUNDWATER
MILEPOST 601-660
NEBRASKA PREFERRED ROUTE
KEYSTONE XL PIPELINE PROJECT



Your Environment

This portion of NDEQ's web site is designed to provide the public with information about the environment across the state, as well as to more specific information about the region you live in. You can click on any section of the map below to find more specifics about that region. Or, select any of the "Focus on..." topics at left below, to find out more information about Nebraska's air quality, water quality and waste management issues.

<p>Your Environment By Topic</p> <p>Air Quality</p> <p>Water Quality</p> <p>Waste Management</p> <p>Land Use</p> <p>Energy</p> <p>Other</p>	<p>Your Environment By Region</p>  <p style="text-align: center;">Short Grass Prairie North-Central Nebraska Tall Grass Prairie</p> <p style="text-align: center;">Mixed Grass Prairie</p>	
<p>Select any "Focus on..." topic above to find more information about Air, Water and Land Quality</p>	<p>Select any region above to find out more information about the environment in that area.</p>	
<p>Home</p>	<p>What Can I Do?</p>	<p>Questions and Answers</p>

Nebraska Department of Environmental Quality
 1200 "N" Street, Suite 400
 P.O. Box 98922
 Lincoln, Nebraska 68509
 (402) 471-2186

Your Environment By Region: North-Central A Brief Overview

The North-Central region, is comprised of nearly 20,000 square miles of wind-deposited sand dunes, the largest sand dune formation in the U.S. Below the grass-stabilized sandy surface of this 18 county region lie hundreds of feet of gravel and coarse sand, forming one of the largest aquifers in North America. Many of the approximately 2000 square miles (1.3 million acres) of wetlands in this region are formed where the ground's surface dips below the top of the groundwater aquifer.



This region's abundant grasslands and water make it ideal for ranching and wildlife. Land use is primarily rangeland, with cropland/pasture on the plains and dissected plains of the eastern portion of the region. The predominant land use in the region is cattle grazing on large ranches. In one recent year, 535,000 beef cows grazed the grasslands of this productive environment.

Much of the region is sparsely populated. Cities in this region include O'Neill (pop. 3733), Valentine (2820), Ainsworth (1862), Gordon (1756), and Burwell (1130). Rivers originating in or flowing through the Sandhills region include the Niobrara, Snake, South Loup, North Loup, Middle Loup, Loup, Dismal, Calamus, Elkhorn, and Cedar. Ninety percent of annual stream flow in Sandhills rivers originates from spring-fed groundwater.

Although the region is known for high quality water, surface water and groundwater contamination from agricultural chemicals and livestock operations in portions of the region present major challenges in the state's environmental protection efforts. A heavily irrigated area in the eastern portion of the region contains significant nitrate contamination of groundwater, and portions of some of the region's rivers are impaired due to fecal coliform bacteria. NDEQ's Groundwater Management Area program works cooperatively with the state's Natural Resources Districts to address nitrate contamination issues. Fecal coliform bacteria originating from human and livestock sources (wastewater treatment facilities and animal feeding operations) are regulated through the National Pollutant Discharge Elimination System (NPDES) program.

[DEQ NE.gov Home Page](#)

[Statewide Air Quality Assessment](#)

[All Pages](#)

Nebraska Department of Environmental Quality
1200 "N" Street, Suite 400
P.O. Box 98922
Lincoln, Nebraska 68509
(402) 471-2186

Your Environment By Region: Sandhills - (North-Central Nebraska)

The Sandhills region, located in central and north-central Nebraska, covers nearly 20,000 square miles of wind-deposited sand dunes, the largest sand dune formation in the U.S. Below the sandy surface lie hundreds of feet of gravel and coarse sand, forming one of the largest aquifers in North America.

Much of the Sandhills region is sparsely populated. Cities in this region include O'Neill (pop. 3733), Valentine (2820), Ainsworth (1862), Gordon (1756), and Burwell (1130).

[More information](#)



(photo by Melissa Kemling)

Sandhills Regional Statistics

[Water Statistics: Nitrates, Designated Uses](#)

[Air Statistics: Particulates, Emissions](#)

[Waste Statistics: Contamination Sites, Waste to landfills](#)

Regional Topics

[Monitors Help Track Broader Air Trends](#)

[Link to other Statewide and Regional Topics](#)

[Return to Your Environment Main Page](#)

www.DEQ.state.NE.US Home Page

[Security, Privacy & Accessibility Policy](#)

Nebraska.gov

Nebraska Department of Environmental Quality
1200 "N" Street, Suite 400
P.O. Box 98922
Lincoln, Nebraska 68509
(402) 471-2186

3) Sandhills location
& characteristics

Attachment 8.8

Bonny

Nebraska Earthquakes

April 1867 ~~ January 2016

April 24, 1867 ~ Lawrence KS, but felt across much of Nebraska

Nov. 15, 1877 ~ Probably the strongest earthquake in Nebraska history. There were two shocks 45 minutes apart; the second was the strongest. At North Platte, the shock had intensity VII effects, buildings rocked at Lincoln, and walls were damaged at Columbus. The quake was felt across most of Nebraska and portions of Iowa, Kansas, the Dakotas, and northwestern Missouri.

July 28, 1902 ~ Intensity V earthquake occurred near Battle Creek in northeastern Nebraska. The tremor was reported sufficient to rattle dishes and shake bell towers at several points.

Feb 26, 1910 ~ Several small earthquakes shook house (IV-V) in Columbus.

July 30, 1934 ~ Dawes County ~ Chadron ~ Nebraska Panhandle

March 1, 1935 ~ Two earthquakes, 4 minutes apart shook the area near Tecumseh.

April 14, 1961 ~ Beaver City ~ South-central Nebraska

March 28, 1964 ~ 5.1 earthquake in Western Nebraska; causing many cracks in a road 10 miles south of Merriman; steep banks along the Niobrara River tumbled (Intensity VII); plaster fell at Rushville; part of a chimney toppled at Alliance. The quake occurred one day after the disastrous Alaska quake.

Nov.23, 1967 ~ Quake reportedly lasting more than two minutes shakes windows, rattles dishes in north-central Nebraska and south-central South Dakota.

Nov. 9, 1968 ~ Lincoln feels slight effects of a 5.5 magnitude quake centered in southern Illinois.

Oct. 15, 1972 ~ 3.7 magnitude (Intensity V) earthquake in Bassett; also felt in Ainsworth and Newport.

May 13, 1975 ~ 3.5 magnitude 27KM ~ Bartlett and in Holt County ~ Deloit Township 3.5 magnitude 10KM

May 7, 1978 ~ 3.8 magnitude earthquake in Hyannis; quake shook the oak pews and brick building of All Saints Church.

April 8, 1979 ~ 2.8 magnitude earthquake in St. Paul ~ 22KM

June 30, 1979 ~ 3.3 magnitude earthquake in Fairbury ~ 16KM

Oct. 9, 1981 ~ 3.3 magnitude earthquake in St. Paul ~ 8KM

June 3, 1982 ~ 2.24 magnitude earthquake is centered about four miles northeast of Wymore.

Nov. 14, 1982 ~ 4.3 magnitude quake reported along the eastern end of the Nebraska-South Dakota border; Public's reaction ~ thought it was a big explosion ~ near the Gavins Point Hatchery near the dam, windows actually trembled and you could see them move.

Jan. 1, 1987 ~ 3-3.5 magnitude quake centered at Crawford

June 10, 1987 ~ 5 magnitude earthquake centered in Illinois, is felt in Omaha as Press box atop Ak-Sar-Ben grandstand sways

Feb 9, 1989 ~ 4 magnitude quake shakes houses and beds in Cherry County.

July 18, 1990 ~ 3.0 magnitude quake centered near Ord ~ 10KM; rattles dishes and shakes houses.

March 30, 1993 ~ 2.9 magnitude quake centered near Peru; shakes buildings at Peru State College and is felt as far south as Fall City.

Jan. 24, 1994 ~ 3.3 magnitude quake centered 15 miles northwest of Ainsworth; just a week after a disastrous Los Angeles earthquake.

Feb. 6, 1996 ~ 3.6 magnitude quake centered around Bloomfield/Creighton ~ 12KM

Aug. 9, 1997 ~ earthquake at Clarkson in east-central Nebraska

Aug. 19, 1997 ~ 3.4 magnitude quake in Stanton ~ 17KM

Nov. 13, 2001 ~ 3.3 magnitude quake in Cambridge in southwest Nebraska ~ 31KM ~ centered on the NE-KS border between McCook and Oberlin KS.

June 20, 2002 ~ 3.5 magnitude quake was centered near Greeley, 20 miles east of Ord; Reviewed by seismologist and Public report of 16.

Nov. 4, 2002 ~ 4.3 magnitude with 5KM depth ~ quake hits northeast Nebraska in the Saratoga Township NNW of O'Neill and cracking walls, rattling windows and knocking down shelves in Butte (Boyd Co.) ~ U.S. Ecology says it has taken earthquakes into consideration during planning for a proposed nuclear waste dump in Boyd County. The dump was never built.

Feb 14, 2003 ~ 3.3 magnitude quake in Arapahoe ~ 12KM

May 26, 2003 ~ 4.4 magnitude quake shakes parts of western South Dakota and northwestern Nebraska ~ centered about 30 miles northeast of Pine Ridge.

July 16, 2004 ~ 3.3 magnitude quake is centered about 20 miles southeast of Auburn. Tremors felt from Auburn to Brownville and Nemaha and as far north as central Sarpy County. ~

Dec. 17, 2005 ~ 2.5 magnitude with 5.00KM depth quake hits near Newport in northern Rock County.

Feb. 2, 2006 ~ 2.9 magnitude quake (6KM) felt in north-central Nebraska, it was centered 30 miles east of Ainsworth; felt in Bassett. Reviewed by seismologist.

Sept. 7, 2006 ~ 2.6 magnitude quake ~ Gordon NE ~ 19KM ~ Reviewed by seismologist.

April 4, 2007 ~ 2.7 magnitude quake ~ Chadron NE ~ 27KM ~ Reviewed by seismologist.

April 16, 2007 ~ 3.0 magnitude quake ~ Hayes Center ~ 25KM ~ Reviewed by seismologist and public report of 12.

Dec. 16, 2009 ~ 3.5 magnitude quake centered northwest of Auburn is felt throughout Southeast Nebraska.

March 20, 2010 ~ 2.7 magnitude quake ~ 9KM ~ Springview ~ (KeyaPaha Co.) ~ Reviewed by seismologist and public report of 16.

Sept. 2010 ~ 3.0 magnitude quake ~ Oconto NE

Sept. 26, 2010 ~ 3.1 magnitude quake ~ Cozad ~ 27KM ~ Reviewed by seismologist and public reports of 170.

Nov. 18, 2010 ~ 3.3 magnitude quake ~ Schuyler ~ 11KM ~ Reviewed by seismologist and public reports of 128.

March 10, 2011 ~ 2.9 magnitude quake ~ Harrison ~ 25KM ~ Reviewed by seismologist and public reports of 24.

Nov. 14, 2011 ~ 4.0 magnitude quake ~ Chadron ~ 41KM ~ Reviewed by seismologist and public reports of 84.

Nov. 19, 2011 ~ 2.8 magnitude quake ~ Chadron ~ 11KM ~ Reviewed by seismologist.

Aug. 6, 2012 ~ 2.5 magnitude quake ~ Mullen ~ 21KM ~ Reviewed by seismologist and public report of 6.

Oct. 18, 2012 ~ 3.6 magnitude quake ~ Hyannis ~ 28KM ~ Reviewed by seismologist and public report of 50.

Jan. 14, 2014 ~ 2.9 magnitude quake ~ Wymore ~ 10KM ~ Reviewed by seismologist and public report of 40.

June 18, 2015 ~ 3.3 magnitude quake ~ Valentine ~ 15KM ~ Reviewed by seismologist and public report of 8.

Aug. 19, 2015 ~ 3.6 magnitude quake ~ Thedford ~ 34KM ~ Reviewed by seismologist and public report of 18.

Nov. 10, 2015 ~ 3.2 magnitude quake ~ Mullen ~ 52KM ~ Reviewed by seismologist and public report of 2.

Jan. 4, 2016 ~ 3.5 magnitude quake ~ Broken Bow ~ 16KM ~ Reviewed by seismologist and public report of 42.

Attachment 8.9

I am Bonny Kilmurry, an individual intervener on Docket HP14-001, hearing scheduled for July 27 through August 4, 2015. This is my written formal intervener statement. Thank you for allowing me the opportunity to participate in this process.

TransCanada is not the good neighbor it purports to be. Not only does TransCanada exaggerates it's job numbers,¹ the company also has a long history of spreading half-truths about the efficacy and safety of their exiting pipelines and the proposed Keystone XL pipeline.² As a landowner who is affected by the proposed Keystone XL pipeline, I have a financial and emotional interest in the fate of this proposed pipeline; however, what began as gut response is now based on factual research. I can now say, that TransCanada actions are not neighborly, and their actions speak to a blatant disregard of the land and water I seek to preserve.

¹ *Factcheck.org*. "Pipeline Primer." March 10, 2014.
<http://www.factcheck.org/2014/03/pipeline-primer/>

² *Factcheck.org*. "Pipeline Primer." March 10, 2014.
<http://www.factcheck.org/2014/03/pipeline-primer/>

TransCanada exaggerates pipeline safety. Let's look TransCanada's record for the first Keystone pipeline. The company boasted that this project would only have one leak in a seven-year period; however, in its first year of operation twelve were reported.³ In one such leak, a six-story geyser unleashed 21,000 barrels of oils in North Dakota.⁴ Furthermore, there are numerous issues with the southern leg of Keystone I. In one such instance, "a mandatory inspection test revealed a section of the pipeline's wall had corroded 95%, leaving it paper-thin in one area (one-third the thickness of a dime) and dangerously thin in three other places, leading TransCanada to immediately shut it down."⁵ The public was never notified of these issues. TransCanada claims to have speedily dealt with these issues, but I think this is more of a symptom of their lack of neighborliness. If the pipeline was so safe, then why would it leak twelve times in its first

³ Lacy, Stephen. *Climate Progress*. "After 12 Oil Spills in One Year, TransCanada Says Proposed Keystone XL Pipeline Will Be Safest in U.S." August 17, 2011.

<http://thinkprogress.org/climate/2011/08/17/297576/oil-spills-transcanada-keystone-xl-pipeline/>

⁴ O'Connor, Phillip. *St. Louis Post-Dispatch*, "Keystone oil pipeline shut down after leak." May 10, 2011.

http://www.stltoday.com/news/local/metro/article_dae7b66ee0c5-5677-9acd-0773efb0d8d1.html

⁵ Dermansky, Julie. *Desmog*. "Exclusive TransCanada Keystone 1 Pipeline Suffered Major Corrosion Only Two Years In Operation, 95% Worn in One Spot," April 30, 2015.

<http://www.desmogblog.com/2015/04/30/exclusive-transcanada-keystone-1-pipeline-suffered-major-corrosion-only-two-years-operation-95-worn-one-section>

year? If the pipeline was so sturdy, why would TransCanada need to replace major portions of the route in the pipeline's first year of operation?

I also believe that TransCanada has a corporate culture that flouts regulations in favor of profit. Evan Vokes, a former engineer for the company, made a formal complaint about TransCanada's non-compliance of regulations to Canada's National Energy Board (NEB) in 2012. From this formal complaint, the NEB found that "...many of the allegations of regulatory non-compliance identified by the Complainant were verified by TransCanada's internal audit."⁶ By 2014, TransCanada had dealt with their welding issues, however, these problems were only solved after the formal complaint was filed with the NEB.⁷ Prior to contacting the NEB, Vokes had voiced his concern within internal channels at TransCanada. These complaints were simply ignored. This story is not isolated. In March of this year, another individual brought "...a dozen allegations that deal with the

⁶ *CBC News*. "Whistleblower Forced Investigation of TransCanada Pipelines," October 17, 2012.
<http://www.cbc.ca/news/canada/whistleblower-forced-investigation-of-transcanada-pipelines-1.1146204>

⁷ *CBC News*. "TransCanada Whistleblower's Complaints Validated by the NEB," February 25, 2015.
<http://www.cbc.ca/news/canada/edmonton/transcanada-whistleblower-s-complaints-validated-by-neb-1.2550175>

timeliness, quality and reporting of repairs on [TransCanada's] Alberta pipelines" to Canada's NEB.⁸ These allegations are currently under investigation.

I am happy to hear that TransCanada dealt with its prior regulatory allegations; however, it concerns me that TransCanada only dealt with these issues after they were under investigation by the NEB. These instances are not neighborly. The company knows the regulations, and they have a duty to comply. Since these instances are far from isolated, I am concerned that this trend of ignoring regulations will persist with the Keystone XL pipeline.

I am also concerned with TransCanada's treatment of the landowners. Lori Collins from Paris, Texas welcomed TransCanada when the company wanted to place the southern leg of the Keystone XL pipeline across her land.⁹ The men in her family are all oil field worker, and she

⁸ *Canadian Manufacturing*. "NEB Launches New Investigation Into TransCanada Pipeline," March 20, 2015. <http://www.canadianmanufacturing.com/manufacturing/neb-launches-new-investigation-into-transcanadas-pipelines-146415/>

⁹ Elbein, Saul. *Texas Observer*. "Crossing the Line," September 17, 2014. <http://www.texasobserver.org/keystone-xl-transcanada-crossing-line/>

strongly supported the pipeline construction. In 2012, during construction of the pipeline on their land, a backhoe dug up the Collins' septic system. Collins was not concerned because the TransCanada land agent assured her that the company would promptly fix the problem. This did not happen. Instead their house was filled with raw sewage, and the family had to move. A year and a half after this incident the company offered the family \$40,000 to fix the damage, only to backtrack their offer. Finally, nineteen months after the septic destruction, TransCanada settled with the Collins family out of court for \$479,000. The former TransCanada supporter was exhausted, and in an interview with the Texas Observer, Collins said, "... they sucked us dry. They took our home, our livelihood, our work from us."¹⁰

From the construction issues of the first Keystone pipeline, to their regulatory issues in Canada, I see a troubling trend. These examples show that TransCanada is far from neighborly. As a life-long resident of the Sandhills and landowner along the Keystone XL pipeline, I have a vested

¹⁰ Elbein, Saul. *Texas Observer*. "Crossing the Line," September 17, 2014. Web <http://www.texasobserver.org/keystone-xl-transcanada-crossing-line/>

SD PUC Commissioners
HP14-001 Hearing
July 24, 2015

interests in your Commission's decision. As an informed citizen, I am concerned. I see a company that values profits over the livelihoods of South Dakota's citizens. I ask that your Commission takes these facts into consideration, and I thank you for the opportunity to present my findings to you.

Regards,

Bonny Kilmurry

47798 888 Road

Atkinson, Nebraska 68713

bjkilmurry@gmail.com

402.925.5538

Attachment 8.10



April 30, 2013
O'Neill, Nebraska

The Holt County Board of Supervisors met in regular session as per adjournment with all members present. This meeting publicized pursuant to Section 84-1411 R.R.S. 1943. Chairman Tielke convened the meeting at 9:46 A.M. and informed the public of the location of the Open Meeting Poster.

Motion by Hahlbeck, 2nd by Boshart, to approve the minutes of the April 16, 2013 meeting as printed. Voting Aye: Hahlbeck, Butterfield, Boshart, Metschke and Tielke. Voting Nay: None. Abstain: Snyder and Scholz. Motion carried.

The Board reviewed the correspondence received from the Department of Environmental Quality regarding permits issued for Riverview, LLP and a transfer of permit to Elkhorn Farms, Inc. Motion by Boshart, 2nd by Butterfield, to approve the issuance of a special designated license for Angel's Inc. to allow alcohol in the vendors' area outside their licensed premises for their BikeFest promotion on July 26 & 27, 2013. Voting Aye: Snyder, Butterfield, Boshart, Scholz, Metschke, Hahlbeck and Tielke. Voting Nay: None. Motion carried.

The Board reviewed claims on file.

10:15 being the time advertised the meeting was opened up for discussion on the Keystone XL Pipeline that is proposed to come through Holt County. 35 interested landowners along with 3 Keystone XL Pipeline Representatives were present. Time was allowed for the following to speak: Mary Jean Adams, Bob Beelaert, Ernie Fellows, Oliver Horton, Jeff Rauh, Ray Kopecky, Neil Galloway, Bruce Boettcher, Lloyd Addison, Dwain Marcellus, Susan Schaaf, Sue Mitchell, Terry Frisch, Bud Andersen and Susan Luebbe.

Chairman Tielke suggested a motion that Holt County is not opposed to pipelines but is concerned with the tar sands being pumped through Holt County.

RESOLUTION #2013-7
OF THE

HOLT COUNTY BOARD OF SUPERVISORS

Motion by Boshart, 2nd by Metschke, to propose the following Resolution: to oppose all crude oil and or tar sand pipelines across Holt County. Voting Aye: Butterfield, Boshart, Scholz, Metschke, Hahlbeck, Snyder and Tielke. Voting Nay: None. Motion carried.

Attachment 8.11







Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

Direct Testimony of
Richard M. Kilmurry in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Holt County)

Q: Please state your name.

A: My name is Richard M. Kilmurry

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

A: Yes, I am.

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

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

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

A: Yes.

Q: What do you do for a living?

A: Rancher.

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

A: Bonny Kilmurry.

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

A: Yes, we have 4 children. Mike, Michelle, Sarah and Matt.

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

A: We have 3 grandchildren and 2 step grandchildren.

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

A: Yes.

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

A: Nearly 100 years.

Q: Do you earn any income from this land?

A: Yes.

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

A: Yes.

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

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

mainline alternative routes be approved. If they were to twin or closely parallel to Keystone I the vast majority of landowners would be those that already have a pipeline so there would be considerable less new incremental negative impacts.

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

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

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

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

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

A: Yes.

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

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

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

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

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

A: No, they have not.

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

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

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

A: No, they did not.

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

A: Yes, they did.

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

A: Yes, they did.

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

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

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

A: No, I do not.

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

A: Yes, they did.

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

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

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

A: Yes, it is.

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

A: Yes, I have.

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

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

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

A: Yes, I have a number of significant concerns and worries about the document and how the language included and the language not included potentially negatively

impacts my land and thereby potentially negatively impacts my community and my state.

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

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

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

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

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

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

generating more economic activity right here. Instead TransCanada's shareholders keep all that money and it never finds its way to Nebraska.

Q: What is your next concern?

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

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

A: No.

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

A: No.

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

A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter called "Grantee")..." and this concerns me because it would allow my easement to

be transferred or sold to someone or some company or country or who knows what that I don't know and who we may not want to do business with. This pipeline would be a huge asset for TransCanada and if they can sell to the highest bidder that could have terrible impacts upon all of Nebraska depending upon who may buy it and I don't know of any safeguards in place for us or the State to veto or have any say so in who may own, operate, or be responsible for this pipeline in the future.

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

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

Q: What's next?

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

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

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

Q: Okay, what is your next concern?

A: The easement language includes all these things TransCanada can do and it says "...abandoning in place..." so they can just leave this pipeline under my ground

until the end of time just sitting there while they are not using it, but I am still prevented from doing on my land and using my land what I would like. If I owned a gas station I couldn't just leave my underground oil or fuel storage tanks sitting there. It doesn't make sense and it scares me and it is not in my interest or the public interest of Nebraska to allow this.

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

A: Yes.

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

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

Q: Okay, what is your next concern?

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

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

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

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

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

Q: What is the next concern you have?

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

impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

thereby forcing upon the Landowner and our State a new unknown Easement owner.

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

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

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

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

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

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

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

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

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

A: Yes, we received an offer from them.

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

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

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

A: No, never.

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

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

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

A: Yes, it is.

Q: What was your understanding of that document?

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

Q: Did you ever sign that document?

A: No, I did not.

Q: Why not?

A: Because I do not believe that it is fair or just to try to get me to agree to a small sum of money when I have no idea how bad the impacts or damages that they, or their contractors, or subcontractors, or other agents or employees, may cause on

my land at any time in the future that resulted from the construction or surveying or their activities upon my land.

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

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

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

A: No, they have not.

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

A: No, they have not.

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

A: Yes, I am.

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

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

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

A: No, they have not.

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

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

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

A: No, it has not.

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

A: No, I do not.

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

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

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

A: Yes, I do.

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

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

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

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

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

A: No, of course not.

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

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

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

A: Well, yes I have.

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

A: No, of course not.

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

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

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

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

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

A: No, I do not.

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

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

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

A: Well yes, of course.

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

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

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

A: Yes, I do.

Q: What are some of those concerns?

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

Q: Do you have any other environmental concerns?

A: Yes, of course I am concerned about potential breaches of the pipeline, failures in construction and/or maintenance and operation. I am concerned about spills and

leaks that TransCanada has had in the past and will have in the future. This could be catastrophic to my operations or others and to my county and the State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A: Yes, I have.

Q: Where have you seen that before?

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

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

A: No, I do not.

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

A: No, I do not.

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

A: No, I do not.

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

A: No, I do not.

Q: Why do you hold that belief?

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

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

A: First of all, not all jobs are created equally. Most jobs that are created, whether temporary or on a permanent basis, don’t come with a project that has all the potential and foreseeable negative impacts, many of which we have discussed here and other witnesses throughout the course of this hearing have and will discuss. If I decide to hire and employ someone to help me out in my farming or ranching business, I’ve created a job but I haven’t done so at the risk or detrimental impact to my land or my town or my county or my state. And I’ve hired someone who is working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all jobs are not created equal. Additionally, I understand from what I’m familiar with from TransCanada’s own statements that the jobs numbers they originally touted were determined to be a minute fraction of the permanent jobs that had been projected. According to their answer to our Interrogatory No. 191, TransCanada has created only thirty-four (34) jobs within Nebraska working specifically on behalf of TransCanada and according to their answer to Interrogatory No. 196, as

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

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

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

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

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

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

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

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

A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I, already exists in that area is reason enough as it is not in our best interest or the public interests to have more major oil pipelines crisscrossing our state. Second, they have all the infrastructure already there in terms of relationships with the counties and local officials and first responders along that route. Third, they have

already obtained easements from all the landowners along that route and have relationships with them. Fourth, that route avoids our most sensitive soils, the sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala Aquifer. Sixth, they have already studied that route and previously offered it as an alternative. Seventh, it just makes the most sense that as a state we would have some intelligent policy of energy corridors and co-locating this type of infrastructure near each other.

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

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

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

A: I am respectfully and humbly requesting that the Commissioners think far beyond a temporary job spike that this project may bring to a few counties and beyond the relatively small amount of taxes this proposed foreign pipeline would possibly generate. And, instead think about the perpetual and forever impacts of this pipeline as it would have on the landowners specifically, first and foremost, but

also thereby upon the entire state of Nebraska, and to determine that neither the preferred route nor the Keystone mainline alternative route are in the public interest of the citizens of the state of Nebraska. And if the Commissioners were inclined to modify TransCanada's proposed routes and were to be inclined to grant an application for a route in Nebraska, that the only potential route that would make any intelligent sense whatsoever would be twinning or near paralleling of the proposed KXL with the existing Keystone I pipeline. It simply does not make sense to add yet another major oil pipeline crisscrossing our state creating new pumping stations, creating new impacts on additional counties and communities and going through all of the court processes with myself and other landowners like me when this applicant already has relationships with the landowners, the towns and the communities along Keystone I, and that Keystone I is firmly outside of the sand hills and a significantly further portion away from the heart of the Ogallala Aquifer than the preferred route or the Keystone mainline alternative route.

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

A: Yes.

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

A: Yes, they are.

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

Richard M. Kilmurry
Richard M. Kilmurry

Subscribed and Sworn to me before this 31 day of May, 2017.

Joyce Seger
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.



S.011
T.032N
R.015W

S.014
T.032N
R.015W

S.013
T.032N
R.015W

S.018
T.032N
R.014W

Richard M. Kilmurry

S.024
T.032N
R.015W

S.019
T.032N
R.014W

S.023
T.032N
R.015W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Richard M. Kilmurry

TRACT NO. ML-NE-HT-40280.000
STATE: Nebraska
COUNTY: Holt
SECTION: 013
TOWNSHIP: 032N
RANGE: 015W

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

May 2017 - X:\Drawings\65858\KEYSTONE_XL\65858_0000_000000.dwg

PREPARED BY
exp Energy Services Inc.



Frank W. Kilmurry Family Trust
Rosemary Kilmurry

S.030
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R.014W

S.029
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R.014W

S.028
T.032N
R.014W

S.031
T.032N
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S.032
T.032N
R.014W

S.033
T.032N
R.014W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Frank W. Kilmurry Family Trust
Rosemary Kilmurry

TRACT NO. ML-NE-HT-30130.000
STATE: Nebraska
COUNTY: Holt
SECTION: 029
TOWNSHIP: 032N
RANGE: 014W

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

May 2017 - X:\Drawings\65858\KEYSTONE_XL\9800L_999926.E

PREPARED BY
exp Energy Services Inc.



S.029
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S.028
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S.032
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S.033
T.032N
R.014W

S.034
T.032N
R.014W

Frank W. Kilmurry Family Trust
Rosemary Kilmurry

S.005
T.031N
R.014W
IMAGERY: NAIP 2016

S.004
T.031N
R.014W

S.003
T.031N
R.014W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Frank W. Kilmurry Family Trust
Rosemary Kilmurry

TRACT NO. ML-NE-HT-30145.000
STATE: Nebraska
COUNTY: Holt
SECTION: 033
TOWNSHIP: 032N
RANGE: 014W

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

May 2017 - X:\Drawings\65858\KEYSTONE_XL\9002_999\251

PREPARED BY
exp Energy Services Inc.
S.033
T.032N
R.014W

S.034
T.032N
R.014W



S.004
T.031N
R.014W

Frank W. Kilmurry Family Trust
Rosemary Kilmurry

S.003
T.031N
R.014W

IMAGERY: NAIP 2017
S.009
T.031N
R.014W

0 250 500 1,000 1,500 Feet

S.010
T.031N
R.014W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Frank W. Kilmurry Family Trust
Rosemary Kilmurry

TRACT NO. ML-NE-HT-30155.000
STATE: Nebraska
COUNTY: Holt
SECTION: 003
TOWNSHIP: 031N
RANGE: 014W

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

May 2017 - X:\Drawings\5858\KEYSTONE_XL\9002_999\251

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-40280.000

**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**") **Richard M. Kilmurry**, whose mailing address is 47798 888th Road, Atkinson, NE 68713 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through

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

A tract of land containing 480 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SE1/4, SW1/4, and the NW1/4 of Section 13, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 182, Page 681, Book 181, Page 450, and Book 181, Page 424 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):

Richard M. Kilmurry

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **Richard M. Kilmurry**

Notary Public Signature

Affix Seal Here

HOLT COUNTY, NEBRASKA

T-32-N, R-15-W, SECTION 13

ML-NE-HT-40280.000

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

LEGEND
 P
 S
 PROF.
 A.T.W.S.
 P.E.R.W.
 D.R.H.C.N.

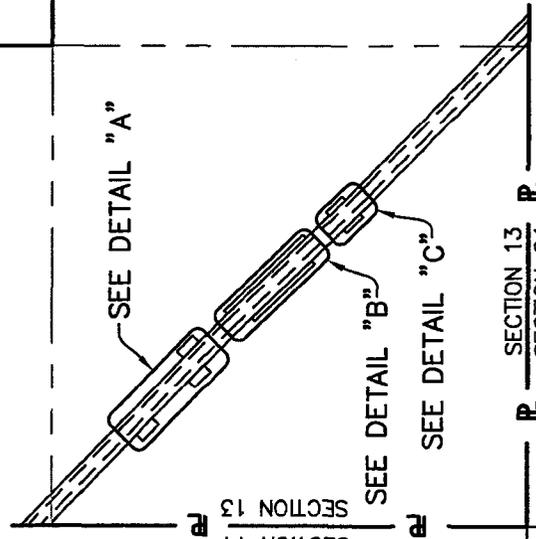
SECTION 12
 SECTION 13

RICHARD M. KILMURRY
 VOLUME 181, PAGE 450
 VOLUME 181, PAGE 424
 VOLUME 182, PAGE 681
 D.R.H.C.N.

R-14-W
 R-15-W

SECTION 18
 SECTION 13

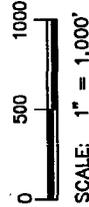
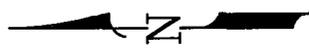
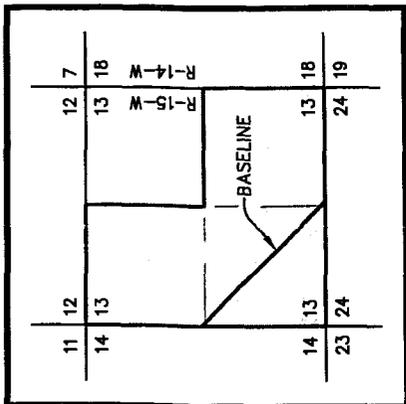
SECTION 13
 SECTION 24



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 RIGHTS OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 3,876'±
 AREA OF PERMANENT EASEMENT: 4.4 ACRES
 AREA OF TEMPORARY WORKSPACE: 5.3 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 1.2 ACRES

SHEET 1 OF 2



TRACT LEGAL DESCRIPTION:
 SE/4, SW/4 AND NW/4 OF
 SECTION 13,
 T-32-N, R-15-W

TransCanada <i>In business in energy</i>	
KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF RICHARD M. KILMURRY ML-NE-HT-40280.000	
PROJECT: XL	EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3658
NO.	REVISION
	DATE
SCALE	DATE
1" = 1000'	11/04/14
DRAWN BY:	CHECKED BY:
JN	ALS



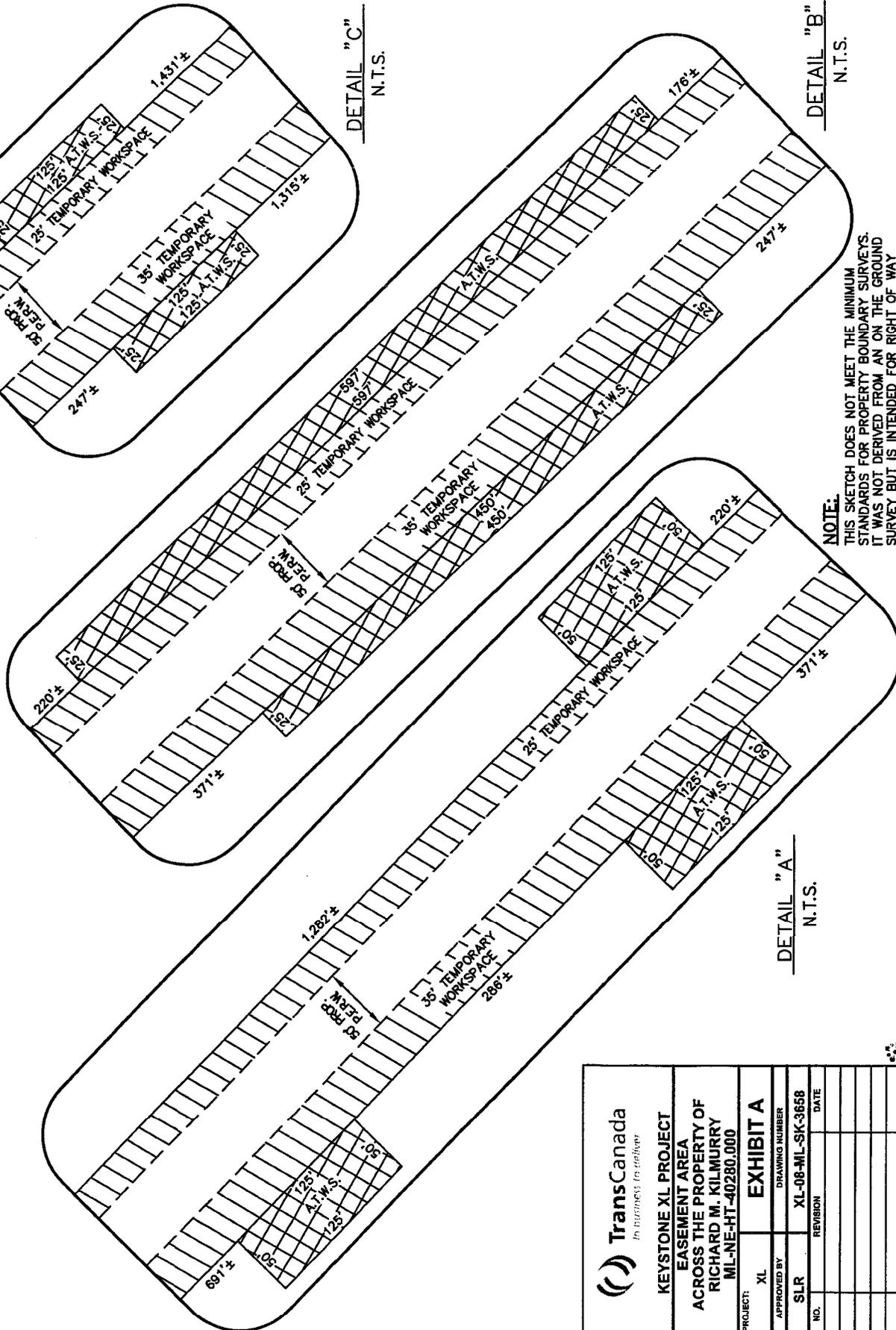
HOLT COUNTY, NEBRASKA

T-32-N, R-15-W, SECTION 13

ML-NE-HT-40280.000

LEGEND:
 PROP. TEMPORARY WORKSPACE
 A.T.W.S. PERMANENT EASEMENT & RIGHT OF WAY

PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY



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.



KEYSTONE XL PROJECT

EASEMENT AREA

ACROSS THE PROPERTY OF

RICHARD M. KILMURRY

ML-NE-HT-40280.000

PROJECT: XL EXHIBIT A

APPROVED BY: SLR

DRAWING NUMBER: XL-08-ML-SK-3658

NO. REVISION DATE

DATE

SCALE: N.T.S.

11/04/14

DRAWN BY: JN

CHECKED BY: ALS



The new standard of Trust

**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-30130.000
ML-NE-HT-30145.000
ML-NE-HT-30155.000

**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**") **Rosemary Kilmurry, Individually and Rosemary Kilmurry as Trustee of the Frank W. Kilmurry Family Trust**, whose mailing address is 88850 476th Avenue, Atkinson, NE 68713 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter,

Grantor's Initials _____

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 480 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the E1/2 and the NW1/4 of Section 29, Township 32 North, Range 14 West of the 6th P.M., as recorded in Book 192, Page 664 and Book 168, Page 65 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 640 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 33, Township 32 North, Range 14 West of the 6th P.M., as recorded in Book 192, Page 664 and Book 168, Page 65 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 319.19 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the W1/2 of Section 3, Township 31 North, Range 14 West of the 6th P.M., as recorded in Book 192, Page 664 and Book 168, Page 65 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):

Rosemary Kilmurry, Individual

Frank W. Kilmurry Family Trust

Rosemary Kilmurry, Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

Grantor's Initials _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 2014

By Rosemary Kilmurry, Individual

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 2014

By Rosemary Kilmurry, Trustee of the Frank W. Kilmurry Family Trust

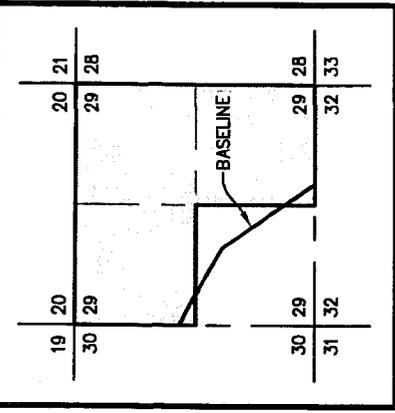
Notary Public Signature

Affix Seal Here

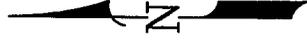
HOLT COUNTY, NEBRASKA

T-32-N, R-14-W, SECTION 29
ML-NE-HT-30130.000

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

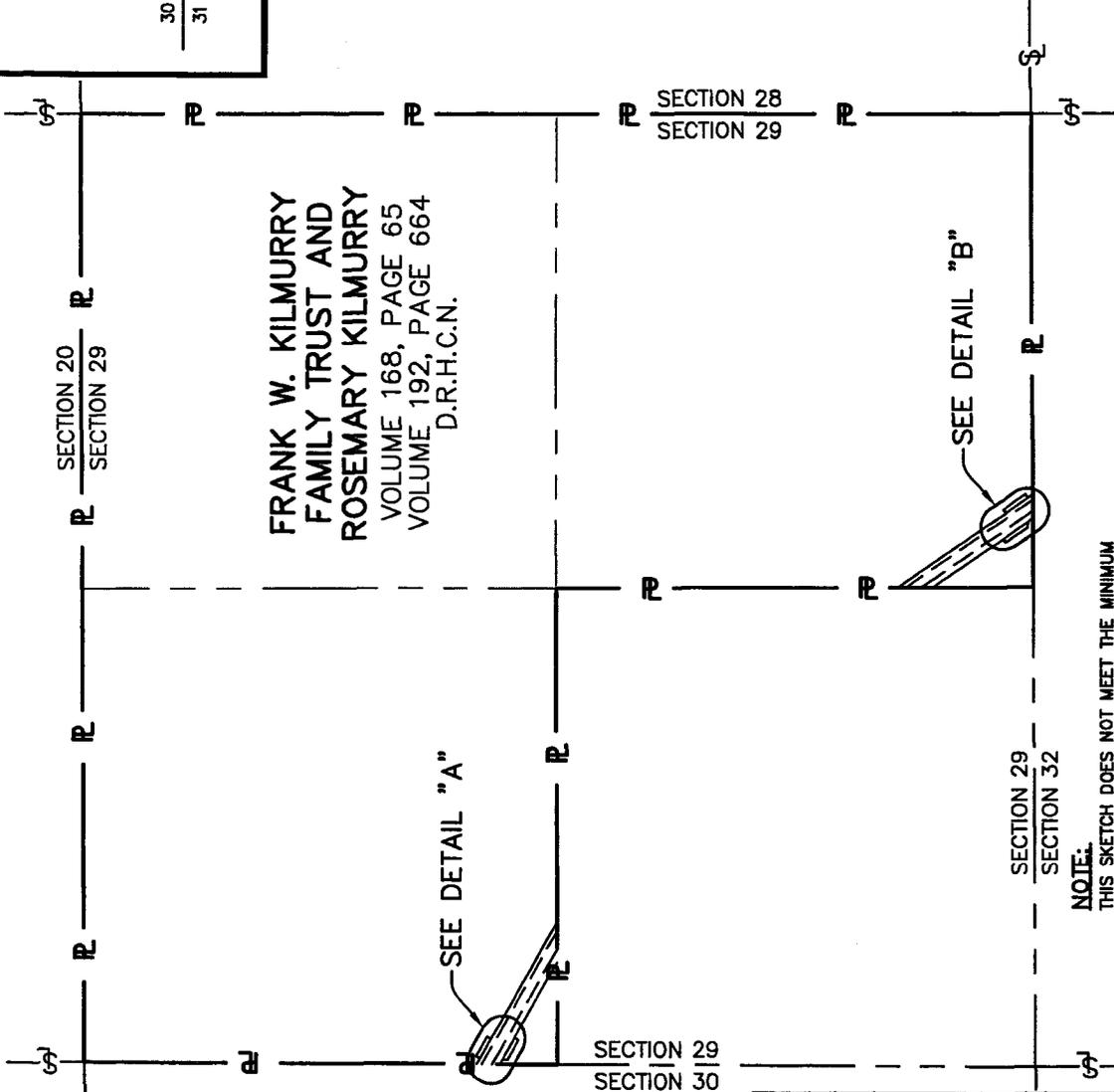


VICINITY MAP
N.T.S.



0 500 1000
SCALE: 1" = 1,000'

TRACT LEGAL DESCRIPTION:
E/2, NW/4 OF SECTION 29,
T-32-N, R-14-W



FRANK W. KILMURRY
FAMILY TRUST AND
ROSEMARY KILMURRY
VOLUME 168, PAGE 65
VOLUME 192, PAGE 664
D.R.H.C.N.

SEE DETAIL "A"

SEE DETAIL "B"

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

TOTAL DISTANCE ACROSS PROPERTY: 1,635'±
AREA OF PERMANENT EASEMENT: 1.8 ACRES
AREA OF TEMPORARY WORKSPACE: 2.1 ACRES
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.3 ACRE

SHEET 1 OF 2

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

KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
FRANK W. KILMURRY FAMILY	
TRUST AND ROSEMARY KILMURRY	
ML-NE-HT-30130.000	
PROJECT:	XL EXHIBIT A
APPROVED BY	DRAWING NUMBER
SLR	XL-09-ML-SK-3288
NO.	REVISION
SCALE	DATE
1" = 1000'	10/27/14
DRAWN BY	CHECKED BY
JN	ALS



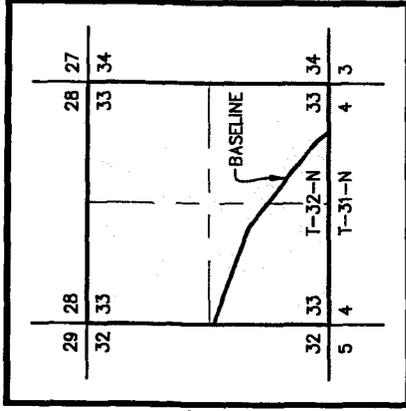
HOLT COUNTY, NEBRASKA

T-32-N, R-14-W, SECTION 33
ML-NE-HT-30145.000

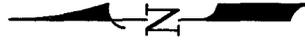
FRANK W. KILMURRY
FAMILY TRUST AND
ROSEMARY KILMURRY
VOLUME 192, PAGE 664
VOLUME 168, PAGE 65
D.R.H.C.N.

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

LEGEND:
P
S
PR
A.T.W.S.
P.E.R.W.
D.R.H.C.N.

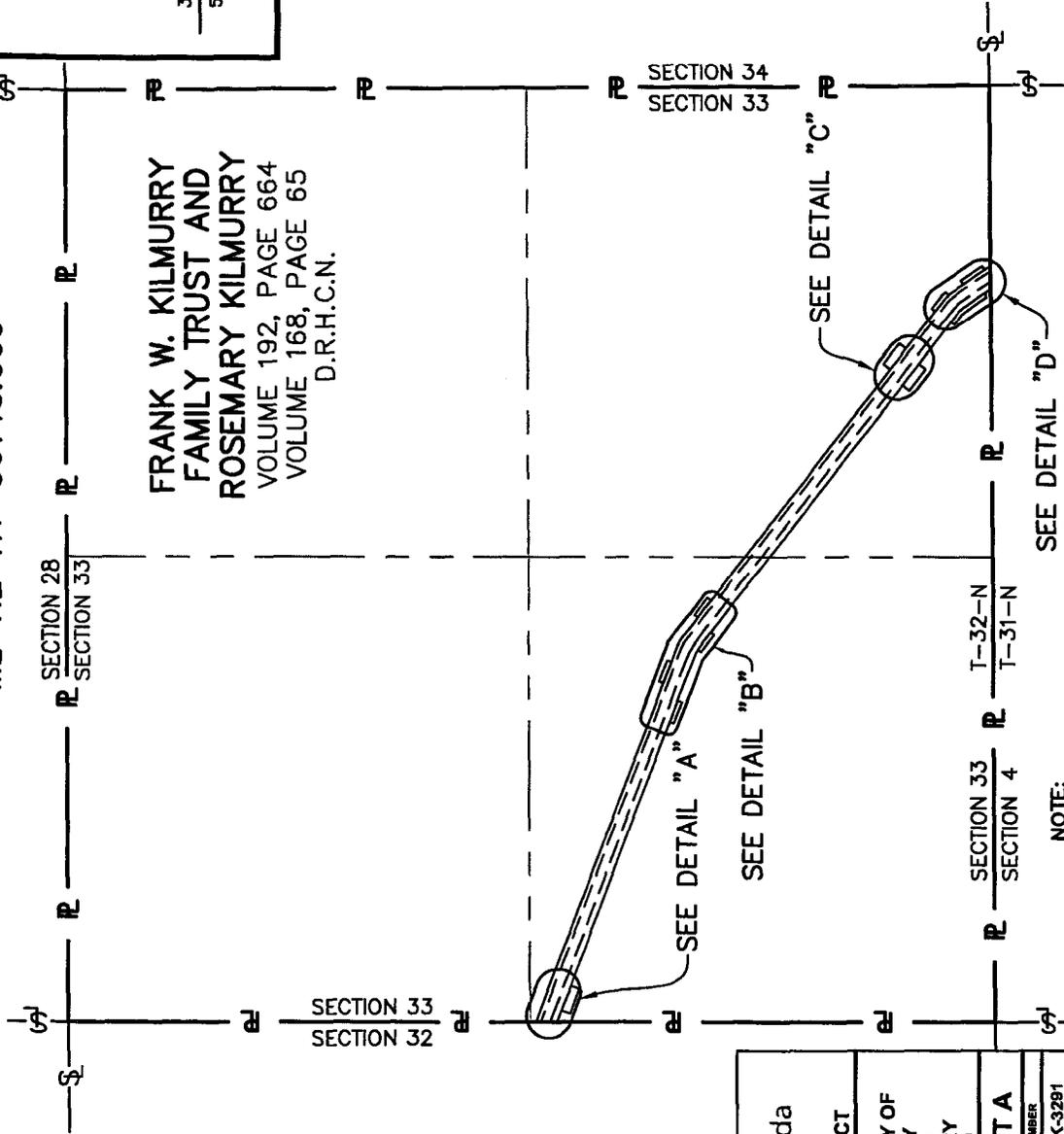


VICINITY MAP
N.T.S.



0 500 1000
SCALE: 1" = 1,000'

TRACT LEGAL DESCRIPTION:
ALL OF SECTION 33,
T-32-N, R-14-W



NOTE:
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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: 5,016'±
AREA OF PERMANENT EASEMENT: 5.7 ACRES
AREA OF TEMPORARY WORKSPACE: 6.9 ACRES
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 1.1 ACRES



KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
FRANK W. KILMURRY
FAMILY TRUST AND
ROSEMARY KILMURRY
ML-NE-HT-30145.000

PROJECT:	XL	EXHIBIT A
APPROVED BY:		DRAWING NUMBER
SLR		XL-08-ML-SK-3291
NO.	REVISION	DATE
SCALE	DATE	CHECKED BY
1" = 1000'	11/07/14	JN
		ALS



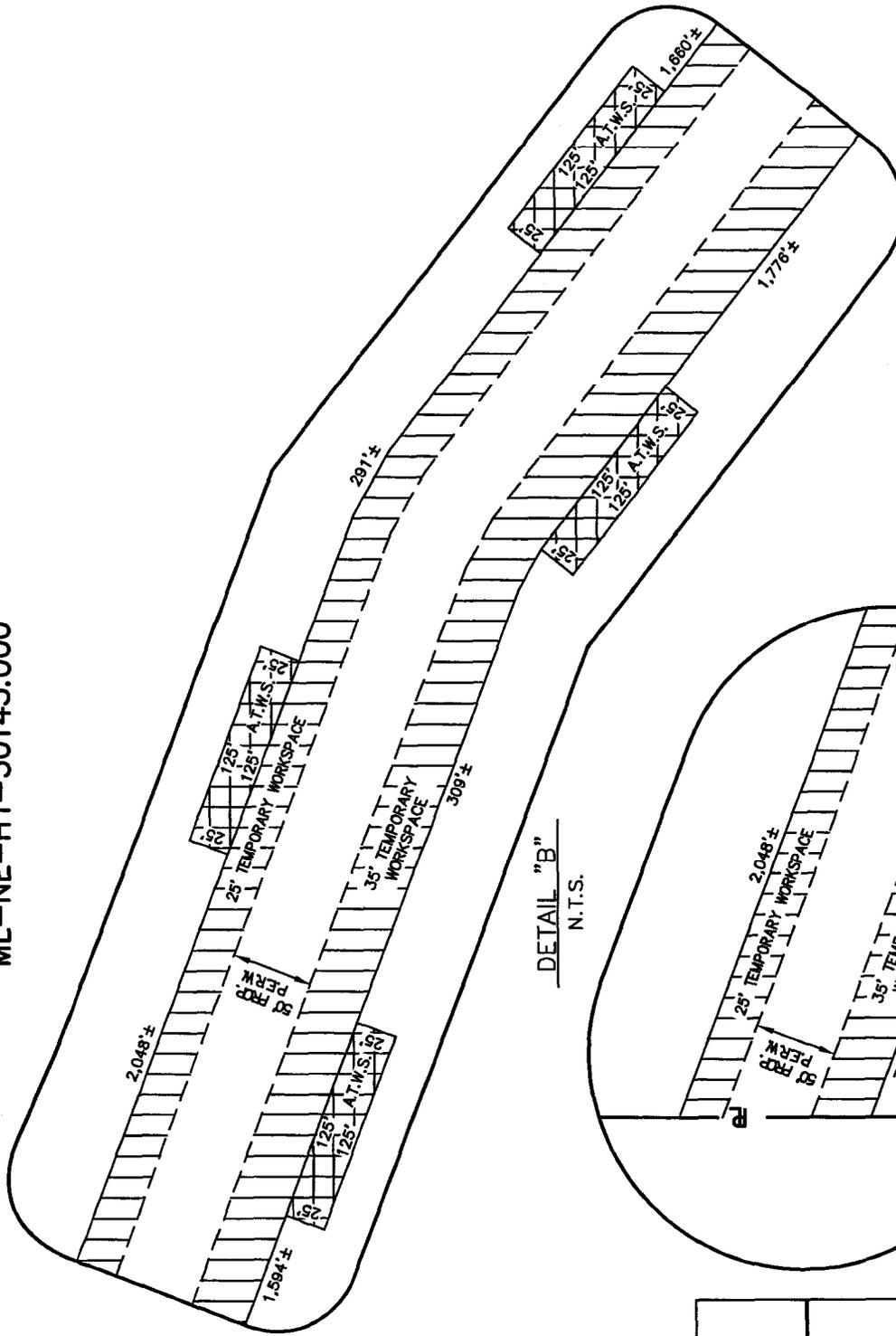
HOLT COUNTY, NEBRASKA

T-32-N, R-14-W, SECTION 33

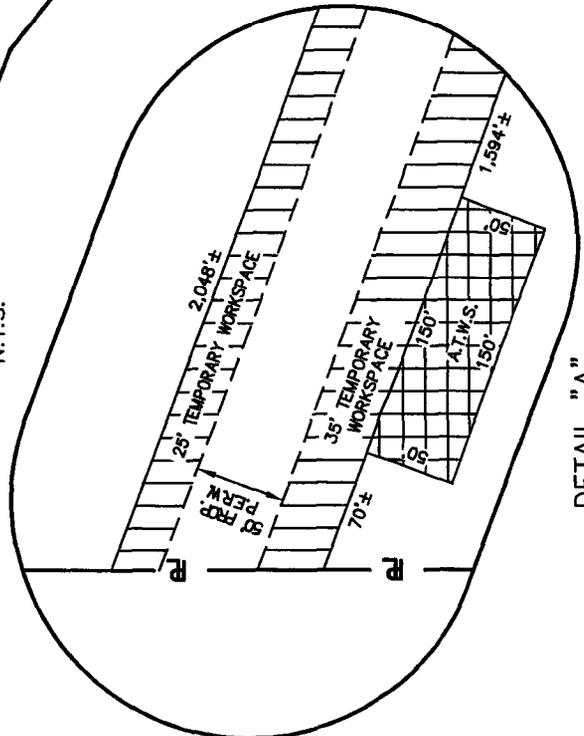
ML-NE-HT-30145.000

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

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



DETAIL "B"
 N.T.S.



DETAIL "A"
 N.T.S.

NOTE:
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		in business to deliver	
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF			
FRANK W. KILMURRY			
FAMILY TRUST AND			
ROSEMARY KILMURRY			
ML-NE-HT-30145.000			
PROJECT:	XL	EXHIBIT A	
APPROVED BY:	SLR	DRAWING NUMBER:	XL-08-ML-SK-3291
NO.		REVISION:	DATE
SCALE:	N.T.S.	DATE:	11/07/14
DRAWN BY:	JN	CHECKED BY:	ALS



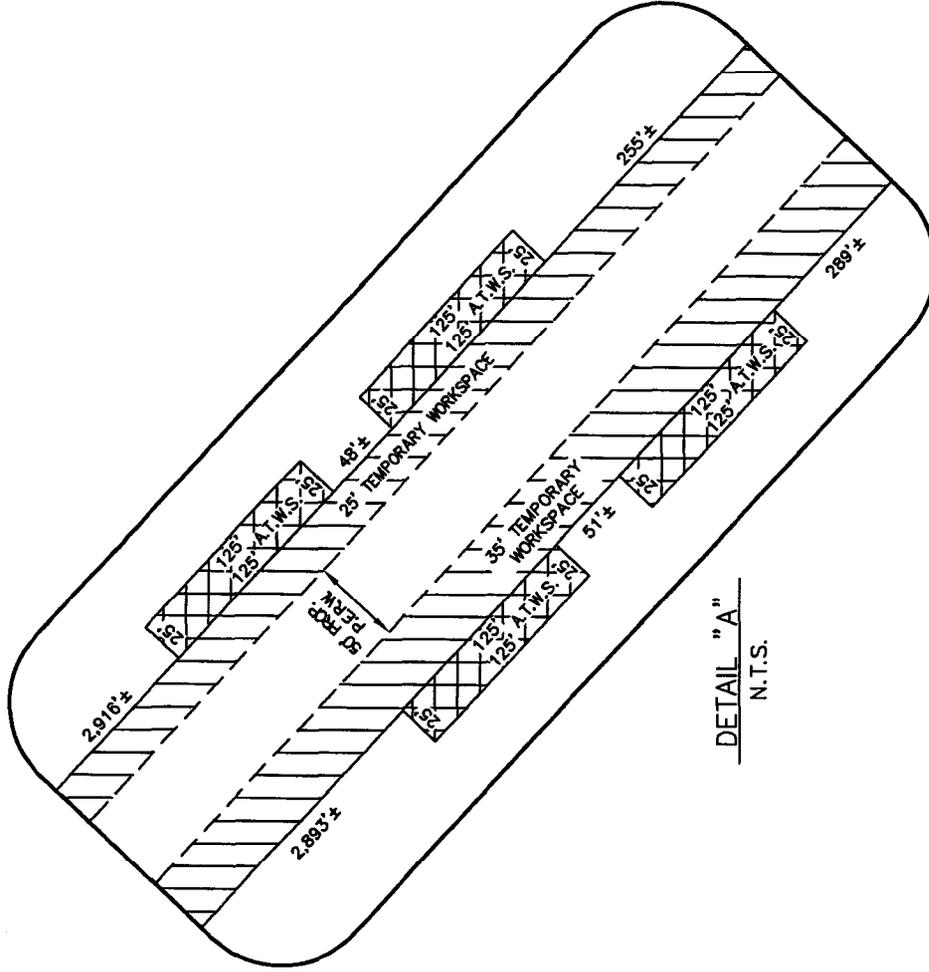
HOLT COUNTY, NEBRASKA

T-31-N, R-14-W, SECTION 3

ML-NE-HT-30155.000

PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY

LEGEND:
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.

		KEYSTONE XL PROJECT	
EASEMENT AREA		ACROSS THE PROPERTY OF	
FRANK W. KILMURRY		FAMILY TRUST AND	
ROSEMARY KILMURRY		ML-NE-HT-30155.000	
PROJECT:	XL	EXHIBIT A	
APPROVED BY		DRAWING NUMBER	
SLR		XL-08-ML-SK-3293	
NO.		REVISION	DATE
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	11/07/14	JN	ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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

CASE NO. _____

COMPLAINT

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

PARTIES

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM: NEGLIGENCE

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

SECOND CLAIM: TRESPASS

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

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

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-40280.000

I/we Richard M. Kilmurry, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Eight Hundred Thirty Four Dollars and No Cents (\$2,834.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

SE/4, SW/4 and NW/4

Section 13, 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-30155.000

We, Rosemary Kilmurry and Rosemary Kilmurry, Trustee of the Frank W. Kilmurry Family Trust, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Three Hundred Sixty Six dollars and no cents (\$2,366.00), 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:

W/2

Section 3, Township 31-N, Range 14-W

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

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

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30145.000

We, Rosemary Kilmurry and Rosemary Kilmurry, Trustee of the Frank W. Kilmurry Family Trust, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Thousand Five Hundred Sixty Two Dollars and No Cents (\$3,562.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

All of

Section 33, Township 32-N, Range 14-W

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

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

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30130.000

We, Rosemary Kilmurry and Rosemary Kilmurry, Trustee of the Frank W. Kilmurry Family Trust, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Ninety Two Dollars and No Cents (\$1,092.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

E/2, NW/4

Section 29, Township 32-N, Range 14-W

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

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

_____, 20____.

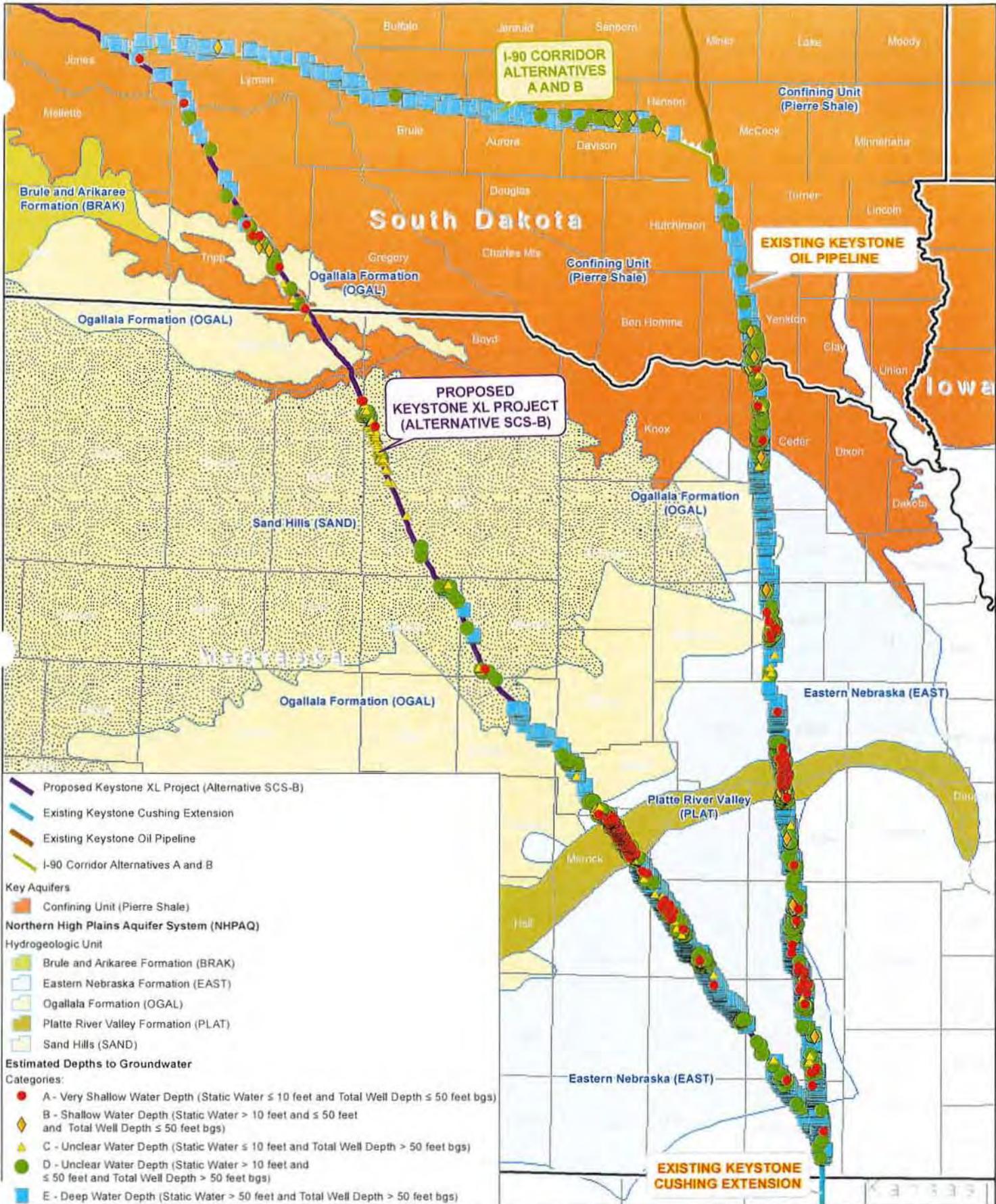
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



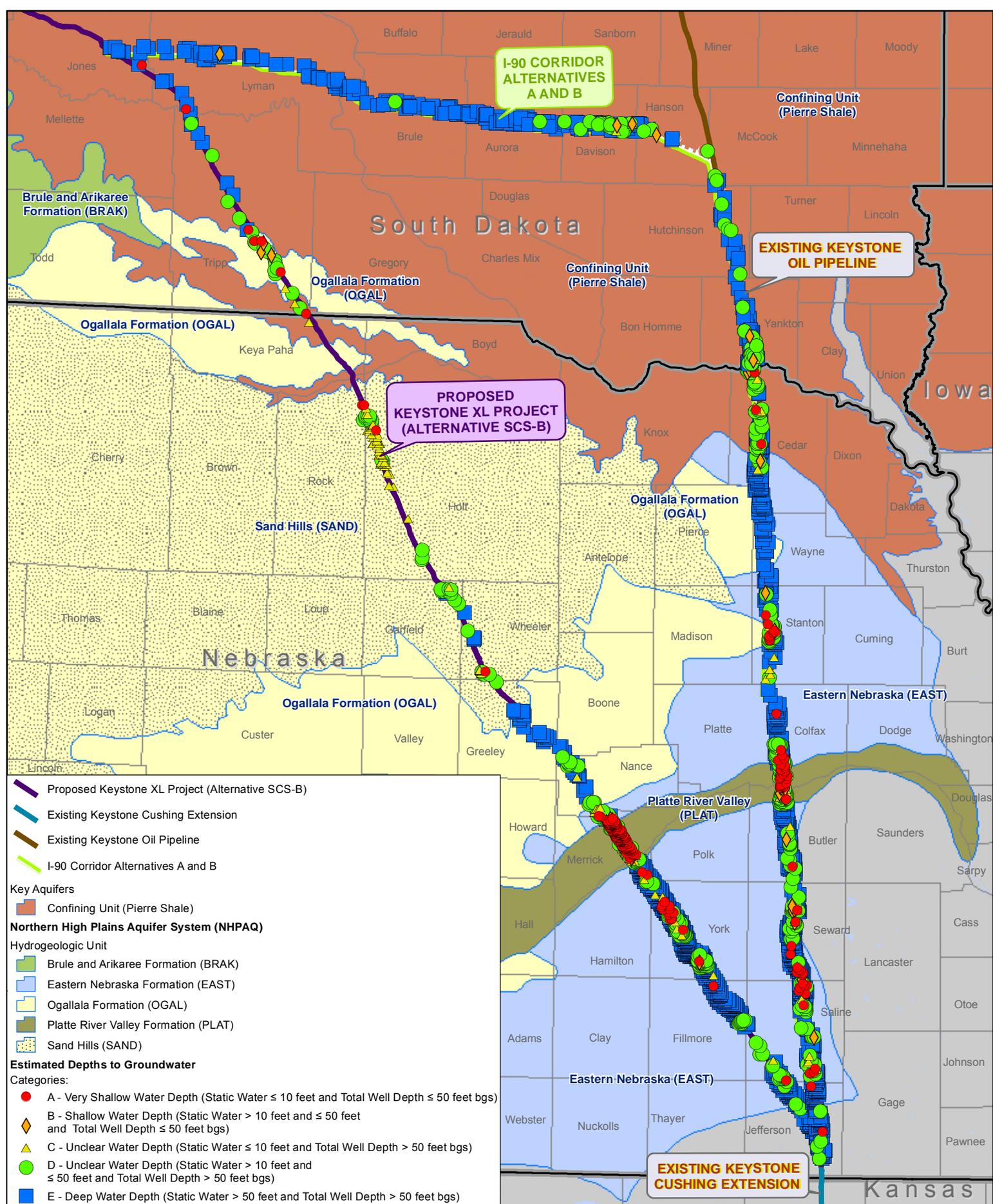
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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



KEYSTONE XL PROJECT

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



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

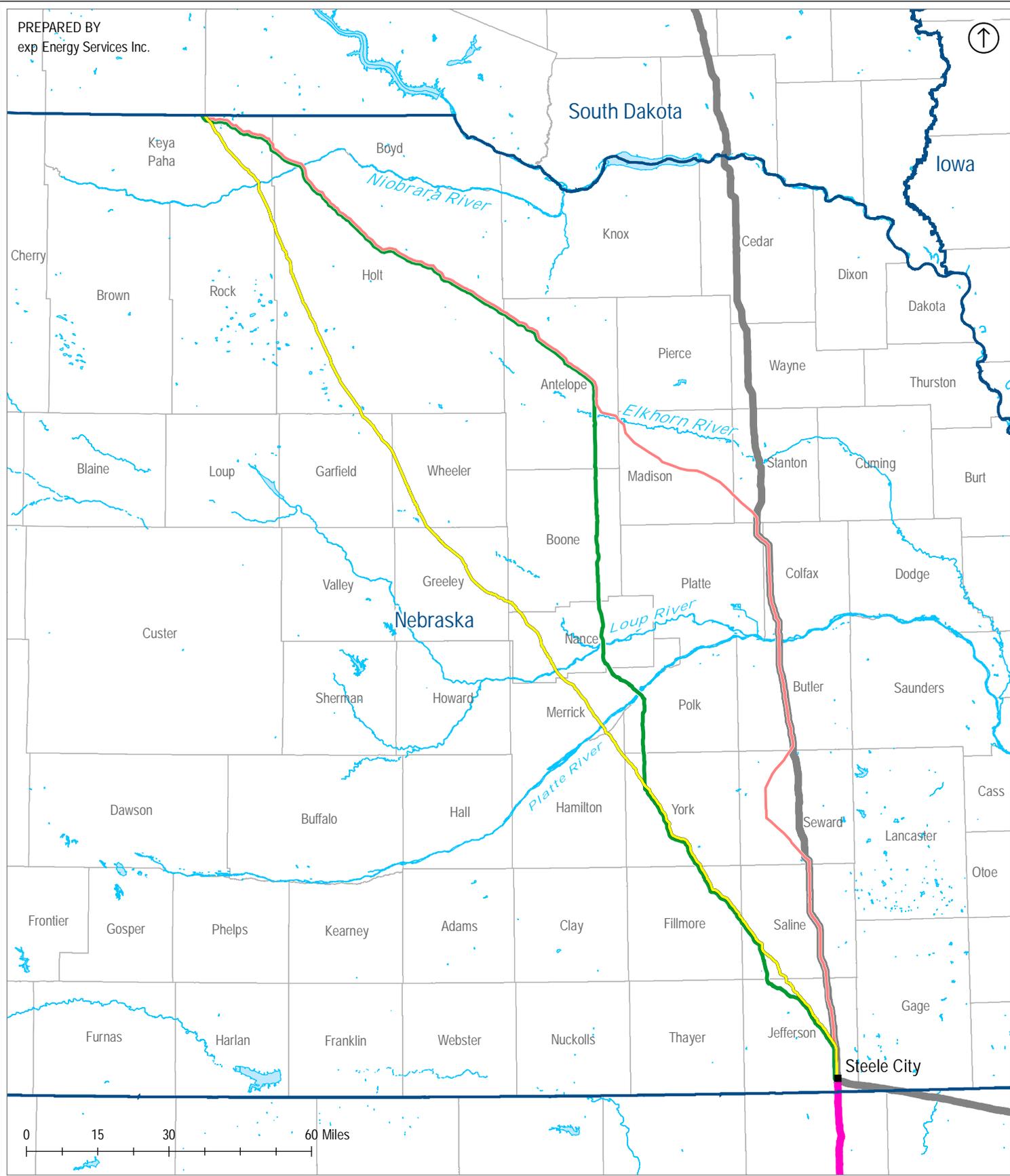
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

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

Attachment No. 7



LEGEND

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

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Attachment No. 8

Attachment 8.1

U.S. Not Prepared for Tar Sands Oil Spills, National Study Finds

Report urges new regulations, research, and technology to respond to spills of diluted bitumen.



Photo courtesy Sam LaSusa

Oil gathers in a sheen near the banks of the Kalamazoo River more than a week after a spill of crude oil, including tar sands oil, from Enbridge Inc.'s Line 6B pipeline in 2010. It was the largest inland oil spill in U.S. history. *Click image to enlarge.*

By Codi Kozacek

Circle of Blue

Spills of heavy crude oil from western Canada's tar sands are more difficult to clean up than other types of conventional oil, particularly if the spill occurs in water, a new study by a [high-level committee](#) of experts found. Moreover, current regulations governing emergency response plans for oil spills in the United States are inadequate to address spills of tar sands oil.

[The study](#) by the U.S. National Academies of Sciences, Engineering, and Medicine confirmed what scientists, emergency responders, and conservationists knew anecdotally from a major oil spill that contaminated Michigan's Kalamazoo River in 2010 and another spill in Mayflower, Arkansas in 2013. Tar sands crude, called diluted bitumen, becomes denser and stickier than other types of oil after it spills from a pipeline, sinking to the bottom of rivers, lakes, and estuaries and coating vegetation instead of floating on top of the water.

"[Diluted bitumen] weathers to a denser material, and it's stickier, and that's a problem. It's a distinct problem that makes it different from other crude."

–Diane McKnight,

Chair

Committee on the Effects of Diluted Bitumen on the Environment

"The long-term risk associated with the weathered bitumen is the potential for that [oil] becoming submerged and sinking into water bodies where it gets into the sediments," Diane McKnight, chair of the committee that produced the study and a professor of engineering at the University of Colorado Boulder, told Circle of Blue. "And then those sediments can become resuspended and move further downstream and have consequences not only at the ecosystem level but also in terms of water supply."

“It weathers to a denser material, and it’s stickier, and that’s a problem. It’s a distinct problem that makes it different from other crude.” McKnight added. Weathering is what happens after oil is spilled and exposed to sunlight, water, and other elements. In order to flow through pipelines, tar sands crude oil is mixed with lighter oils, which evaporate during the weathering process. In a matter of days, what is left of the diluted bitumen can sink.

The study’s findings come amid an expansion in unconventional fuels development and transport in North America. Over the past decade, Canada became the world’s fifth largest crude oil producer by developing the Alberta tar sands. U.S. imports of Canadian crude, much of it from tar sands, [increased 58 percent](#) over the past decade, according to the U.S. Energy Information Administration.

Though oil prices are at a seven-year low, and market turbulence is expected to persist for several more years, tar sands developers are working to double the current tar sands oil production — around 2.2 million barrels per day — by 2030. [Pipelines to transport all of the new oil are expanding too](#), producing a greater risk of spills.

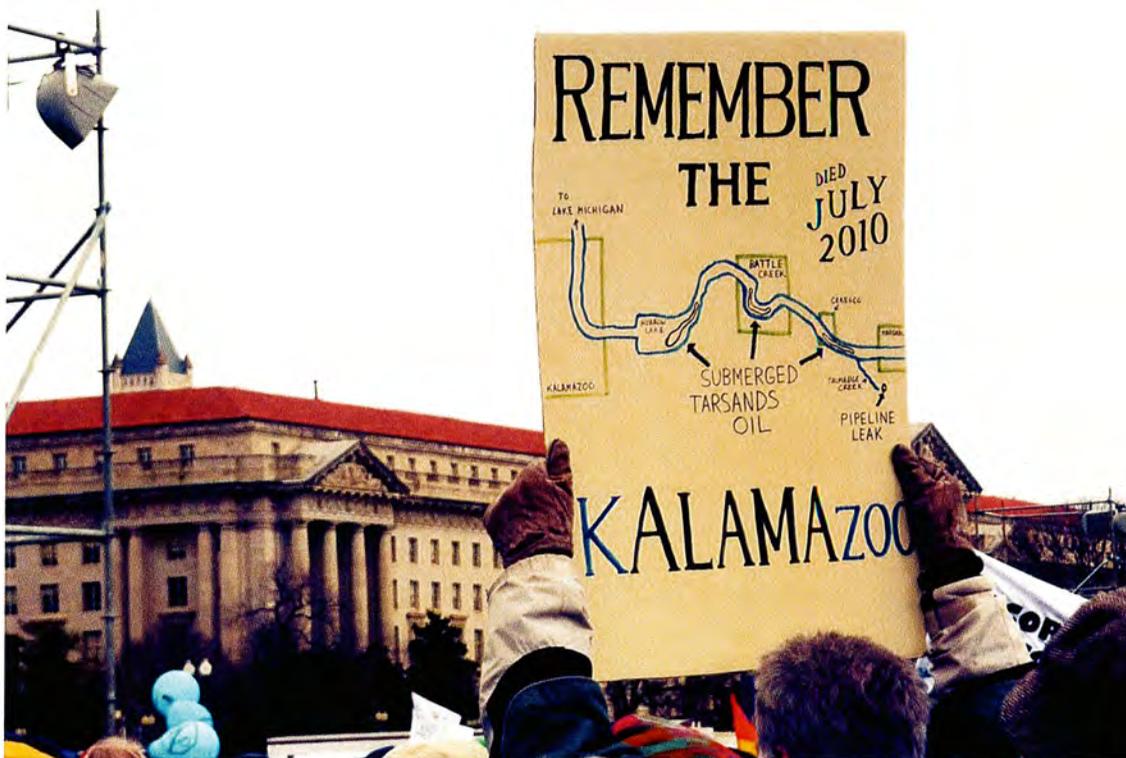


Photo courtesy DCErica via [Flickr Creative Commons](#)

A sign held by a protester at a 2013 climate rally in Washington, D.C. notes the lingering difficulties associated with spills of diluted bitumen –namely that the oil can become submerged in the water. *Click image to enlarge.*

Whether tar sands producers achieve that level of oil supply is not assured. Public pressure is mounting in Canada and the United States to rein in tar sands development due to considerable environmental damage and heavy carbon emissions. U.S. President Barack Obama last month scrapped the Keystone XL pipeline, an 800,000-barrel-per-day project to move crude oil from Canada’s tar sands to Gulf of Mexico refineries. An international movement to divest from fossil fuels and a [legally binding global deal](#) to cut carbon emissions –if it is signed in Paris– could curb demand for tar sands oil.

The National Academies of Sciences, Engineering, and Medicine study adds new data to arguments made by critics of tar sands development.

“The study really confirms a lot of the information that has been out there, there are no real surprises,” Jim Murphy, senior counsel for the National Wildlife Federation, told Circle of Blue. “You don’t want these things to be affirmed because it’s bad news for communities. But the good part about a study like this is hopefully it will prompt some action. Some folks were hiding behind the lack of a study like this, saying we don’t really know. Those excuses have gone away.”

“The chief takeaway is that this is a different oil, it presents different challenges, and responders and regulators simply don’t have the structures in place to deal with the challenges,” he added.

“The chief takeaway is that this is a different oil, it presents different challenges, and responders and regulators simply don't have the structures in place to deal with the challenges.”

**–Jim Murphy,
Senior Counsel
National Wildlife Federation**

Nonetheless, energy companies are pursuing pipeline expansions, most notably in the Midwest and Great Lakes regions. Enbridge, Canada's largest transporter of crude oil, operates a 3,000-kilometer (1,900-mile) pipeline network, known as the Lakehead System, that carries crude oil from Canada to refineries on the Great Lakes. The Lakehead system, in concert with Enbridge's Canadian main line, is capable of transporting 2.62 million barrels of oil per day. The pipeline responsible for the 2010 oil spill in Kalamazoo was part of the Lakehead system. A link in the Lakehead system ruptured in 2010 and spilled more than 3 million liters (843,000 gallons) of tar sands oil [into southern Michigan's Kalamazoo River](#). It was the largest inland oil spill in U.S. history and its effects still linger because of oil that sank and is embedded in the river's sediments.

Enbridge is currently pursuing [upgrades to its Alberta Clipper pipeline](#), which runs through Minnesota and Wisconsin, in order to boost the line's capacity to 800,000 barrels per day from 450,000 barrels per day. A [second project](#) aims to increase the capacity of Line 61, a pipeline that runs from Wisconsin to Illinois, from 560,000 barrels per day to 1.2 million barrels per day. Opposition to the company's operation of a pipeline that runs beneath the Straits of Mackinac, where Lake Michigan and Lake Huron join, has been especially fierce, though the line does not currently carry tar sands oil.

"I think at the very least we should be saying no to more tar sands through the [Great Lakes] region until we get a firm handle on how to deal with the unique challenges that tar sands spills present," Murphy said. "We should also be taking a hard look, as the president did with the Keystone XL decision, about the other negative impacts of more tar sands oil, like the consequences in Alberta with the habitat destruction there, and also the higher carbon pollution content of the fuel."

The National Academies study concluded that the characteristics of diluted bitumen are "highly problematic for spill response because 1) there are few effective techniques for detection, containment, and recovery of oil that is submerged in the water column, and 2) available techniques for responding to oil that has sunken to the bottom have variable effectiveness depending on the spill conditions."

"Broadly, regulations and agency practices do not take the unique properties of diluted bitumen into account, nor do they encourage effective planning for spills of diluted bitumen," it continued.



Photo courtesy NWFblogs via [Flickr Creative Commons](#)

A tar ball recovered on the edge of a cove in Mayflower, Arkansas, after tar sands crude spilled from ExxonMobil's Pegasus pipeline in 2013. *Click image to enlarge.*

The study's authors made a series of recommendations to help reduce the damage from future tar sands spills, including:

- Update regulations that would require pipeline operators to identify and provide safety sheets for each crude oil transported by the pipeline, catalogue the areas and water bodies that would be most sensitive to a diluted bitumen spill, describe how they would detect and recover sunken oil, provide samples and information about the type of oil spilled to emergency officials, and publicly report the annual volumes and types of crude oil that pass through each pipeline.
- Require the Pipeline and Hazardous Materials Safety Administration (PHMSA), the federal agency that regulates pipelines in the United States, to review spill response

plans in coordination with the U.S. Environmental Protection Agency and U.S. Coast Guard to determine if the plans are capable of responding to diluted bitumen spills.

- Develop methods to detect, contain, and recover oil that sinks to the bottom of water bodies.
- Require government agencies at the federal, state, and local level to use industry-standard names for crude oils when planning spill responses.
- Revise oil classifications used by the U.S. Coast Guard to indicate that diluted bitumen can sink in water.
- Collect data to improve modeling of diluted bitumen oil spills.
- Improve coordination between federal agencies and state and local governments when planning and practicing oil spill response exercises.
- Develop a standard method for determining the adhesion –a measure of how sticky the oil is–of diluted bitumen in the event of a spill.

After the study's release, PHMSA said it would develop a bulletin advising pipeline operators about the recommendations and urge voluntary improvements to their spill response plans. The agency also plans to hold a workshop next spring to hear public input on how to implement the recommendations, coordinate with other federal organizations to "advance the recommendations", and work with industry representatives to improve spill response planning.

"We appreciate the work the National Academy of Sciences has done over the last few years in analyzing the risks of transporting diluted bitumen, including its effects on transmission pipelines, the environment and oil spill response activities," Artealia Gilliard, PHMSA spokesperson and director for governmental, international and public affairs, said in a statement. "All pipelines transporting crude oil or any other hazardous liquid are required to meet strict federal safety regulations that work to prevent pipeline failures and to mitigate the consequences of pipeline failures when they occur."

Attachment 8.2

Ranch had its start during



Young Frank Kilmurry was discouraged.

The year was 1934. Rain had been scarce for several years, and the ground was bone dry. Sand ridges were common on the Kilmurry farm 12 miles north of Atkinson, with some ridges as high as three feet.

Frank recalls seeing a lot of fences on other farms completely covered by the blowing sand.

It was the early days of the "Dirty Thirties" Dust Bowl years, although in those days no one knew exactly how long the dry years would continue.

Frank was a young man who was in the process of helping his dad on the family farm.

"Dad had been farming the place for about ten years or so," Frank recalls. "He tried to raise a crop of small grain and corn. But in those dry years, the land didn't produce much.

1934, of course, was in the pre-irrigation era. And even if irrigation had been in use in those days, it wouldn't have been of much help to the Kilmurrys. Their farm was north of the water supply aquifer that was to become a boon for farmers closer to Atkinson in years to come.

"Like most farmers in those days, we used horses to do the farming at first," he recalls. But progress marches on, and "We finally got a tractor — a small Farmall... the kind that had to be hand cranked," he recalls. "We were one of the last farms in this area to get a tractor. I believe we got it in about 1933."

However, the handwriting was on the wall, and as Frank grew into manhood he thought to himself that he wasn't going to spend the rest of his life trying to raise crops in an area that was this dry.

In 1934, Frank finally made a decision. He was just taking over the farm from his dad, and thought to himself that it was time to get out of the farm business, and into the ranch business.

Frank knew it wasn't going to be easy, however. The Great Depression was in its fourth year, and money was hard to get...especially so for a young man who had never established credit for himself.

So Frank headed to town to talk with Fred Swingley, at the First National

Bank in Atkinson. (Frank's still banking there to this day.)

Fred listened to the young man, and agreed to loan Frank \$50.00 the first year. Frank paid it back, and by the second year was able to borrow \$100.00. He paid that back, and by the time the third year rolled around, learned the value of establishing credit.

"Fred told me I could borrow what I needed. I had my credit established."

Frank also recalls how he got his first head of cattle.

"The government was buying cattle back then for \$17.50 a head," he said. "I went to a man who raised cattle, and told him I'd pay the same thing if I could pick out the ones I wanted.

"There wasn't any quibbling over price. We both knew \$17.50 was the right amount, but I did get the pick of the herd. So I started by buying eight bred cows. That was the beginning of our present operation."

Today, the Kilmurry operation has grown to a 400-cow operation spread over some 4,760 acres. It is now Kilmurry and Sons, with both boys not only in partnership with their dad, but also operating their own ranches ... of about another 2,000 acres each.

Frank said about 300 of the cows are bred to calve in the spring, while about 100 calve in the fall.

"I've found it a little handier to spread it out like that, rather than having all the calves born at one time," he said.

The calves are put out to pasture, and sold the following January. In the winter months, of course, the farm's haying

operations produce enough to feed during the winter.

Although 1993 was a tough year for many Nebraska cattle raisers, the Kilmurrys escaped that fate that seemed to hit many.

"We didn't lose a single cow this year," Frank says. "It turned out to be one of the best years."

Up until about four years ago, the Kilmurrys raised Hereford and an Angus cross, which Frank says is the best.

Like many ranches, the Kilmurrys' basic operation is to raise the herd, pasture and feed them to feed lots.

"I sell mostly to a local buyer," Frank says. "I've been in the same man for years. They go there are sold through Atkinson."

Frank is the grandnephew of the man who came to the country about 1876, north of O'Neill.

Both died before Frank was born. He didn't have the opportunity to meet them. Frank himself worked on the farm where he lived until he then moved with his parents to a family homestead north of Atkinson in 1923, the family moved to a local, where Frank has lived ever since.

As a youngster, Frank did the "chores" while his father worked. He milked one cow, at

First Western Bank

"We're more than just a bank ... We're your neighbor."

start during dust bowl days!

in Atkinson. (Frank's still bank-
here to this day.)

ed listened to the young man, and
d to loan Frank \$50.00 the first
Frank paid it back, and by the
d year was able to borrow \$100.00.
id that back, and by the time the
year rolled around, learned the
of establishing credit.

red told me I could borrow what I
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ank also recalls how he got his
ead of cattle.

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Although 1993 was not a good year
for many Nebraska cattle producers, the
Kilmurrys escaped the scours problem
that seemed to hit many ranchers.

"We didn't lose a single calf to scours
this year," Frank said. "Actually, it
turned out to be one of our better years."

Up until about four or five years ago,
the Kilmurrys raised all Herefords. But
they've changed now to Black Baldy's,
which Frank says is a cross between a
Hereford and an Angus.

Like many ranchers in this area, the
Kilmurry's basic operation is to breed
the herd, pasture and hay them, and sell
them to feed lots.

"I sell mostly to a feeder in Iowa,"
Frank says. "I've been dealing with the
same man for years. The ones that don't
go there are sold through the sale barn in
Atkinson."

...

Frank is the grandson of Irish immi-
grants who came over from the old
country about 1876, and homesteaded
north of O'Neill.

Both died before Frank was born, so
he didn't have the opportunity to know
them. Frank himself was born in O'Neill,
where he lived until he was about five;
then moved with his parents to the fam-
ily homestead north of town. Then, in
1923, the family moved to their present
local, where Frank has lived ever since.

As a youngster, Frank's job was to
do the "chores" while his dad farmed.
He milked one cow, at first, and became

familiar with the familiar hand-cranked
cream separators common in those
days. But surprisingly, Frank didn't
mind that part of the chores.

Although he didn't know it then,
this one cow -- a short-horned heifer -
was going to be the forerunner of his
coming cattle business. But in those
days he was more concerned about
milking twice a day than thinking about
what he'd be doing in future years.

Frank said in those years, the short-
horned heifer was a "pretty good milk-
ing strain. That's what most of the
cows in this area were back then.

Frank also took care of about 100
Plymouth Rock chickens, which pro-
duced eggs the family sold for cash.

The Kilmurrys also kept about 15
sows, which produced about 75-80
feeder pigs they sold to a serum buyer
in O'Neill.

"The serum was used to prevent
cholera," he said. "There was a lot of
cholera in the United States in those
days, and the serum helped get it under
control."

Financially, the family benefited
from the sale, too, since buyers paid a
premium price for serum feeder pigs.

...

Frank's a product of the rural school
system, having attended the one-room
Celia school about a mile from his
farm.

Frank has one sister, currently liv-
ing in Rapid City. When she was at-
tending school, though, at St. Joseph's
in Atkinson, she had a girlfriend who

would visit the Kilmurry farm peri-
odically.

This girlfriend -- named Rose-
mary Troshynski -- kind of caught
Frank's eye.

The result?

On July 29th this year, Frank and
Rosemary Kilmurry are planning to
observe their 50th wedding anni-
versary! It'll be observed during a
family reunion before that, how-
ever.

When the Kilmurrys get together
as they will this summer, there's a
gang of them. Frank and Rosemary
have seven children, and 22 grand-
children.

The two Kilmurry boys - Rich-
ard and Ed - live 15 and 12 miles
away on their own spreads. Two of
the daughters -- Mrs. Don Slaymaker
and Jackie Kilmurry -- still live in
the Atkinson area, while three have
moved elsewhere. Mrs. Richard
Schaaf lives in Omaha; Mrs. Arnie
Bogus is in the Farwell area, and
Mrs. John Hultberg lives in Gar-
land, Texas, just outside Dallas.

Rosemary -- who incidentally
taught school five years -- likes to
spend her spare time crocheting and
quilting.

Frank? Well, he likes it just fine
watching over the ranch, checking
the windmills daily. His favorite
mode of transportation is still a
quarterhorse!

Happy 50th, Frank and Rose-
mary!

First Western Bank

Just a bank ... We're a good neighbor"

Attachment 8.3

The Keystone XL Tar Sands Pipeline Will Hurt More than Help Job Creation

The total number of jobs the Keystone XL Pipeline would create is far lower than those touted by pipeline proponents. According to the State Department, the pipeline would create 35 permanent full-time jobs¹ and 1,950 construction jobs that would last for two years.² The recent claim that Keystone XL would create 42,000 jobs is based on theoretical estimates of all short-term, indirect effects of spending by the much smaller number of people who would be directly employed.

Keystone XL would likely have negative impacts on job creation. A spill would be detrimental to the agriculture industry and cleanup efforts would be costly. Keystone XL would also undermine the expansion of the clean energy sector, which has proven to be more effective at job creation than the fossil fuel industry.

A tar sands spill from Keystone XL would threaten jobs

In the event of a major pipeline spill, Keystone XL could cost thousands of jobs along its route and require high cleanup expenditures. A study from the University of Nebraska has found that Keystone XL would likely experience 91 major pipeline spills over the project's 50-year lifespan.³

Keystone XL would threaten the agricultural sector, which directly employs more than 500,000 people in the states the pipeline would traverse and which generates billions of dollars in revenue.⁴ 79 percent of the land that would be affected by Keystone XL is agricultural and rangeland.⁵ The pipeline would also run through the Ogallala Aquifer, which supplies 30 percent of the groundwater used for irrigation in the U.S.⁶ Cleaning up tar sands oil spills is both difficult and costly, as witnessed following spills into the Kalamazoo River and in Mayflower, Arkansas.

Keystone XL would impede the growth of the clean energy sector

Business owners have argued that Keystone XL would impose nearly \$100 billion in climate-related costs on the economy.⁷ In addition, Keystone XL would undermine the growth of the clean energy sector. The American Sustainable Business Council, representing more than 200,000 businesses across the country, has called on the administration to reject the pipeline.⁸

The clean energy sector is more conducive to job creation than Keystone XL would be. In the third quarter of last fiscal year, 18,000 new clean energy jobs were created nationwide.⁹ Investments in clean energy create four times as many jobs as the same amount of investment in petroleum-based projects.¹⁰

¹ U.S. State Department, Keystone XL Final SEIS, January 2014, p. 4.10-31.

² U.S. State Department, Keystone XL Final SEIS, January 2014, p. ES-19.

³ John Stansbury, *Analysis of Frequency, Magnitude and Consequence of Worst-Case Spills From the Proposed Keystone XL Pipeline*, Nebraska Water Center, 2011, <http://watercenter.unl.edu/downloads/2011-Worst-case-Keystone-spills-report.pdf>.

⁴ Lara Skinner & Sean Sweeney, *The Impact of Tar Sands Pipeline Spills on Employment and the Economy*, Cornell University Global Labor Institute, 2012, https://www.ilr.cornell.edu/globallaborinstitute/research/upload/GLI_Impact-of-Tar-Sands-Pipeline-Spills.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ Environmental Entrepreneurs, *Letter to Secretary Kerry*, March 7, 2014,

<http://switchboard.nrdc.org/blogs/aswift/E2%20Letter%20Opposing%20the%20Keystone%20XL%20Tar%20Sands%20Oil%20Pipeline.pdf>.

⁸ *Business Leaders Call on Senate to Reject Keystone Pipeline*, American Sustainable Business Council, November 18, 2014,

<http://asbcouncil.org/news/press-release/business-leaders-call-senate-reject-keystone-pipeline#.VKwRumTF-BI>.

⁹ Environmental Entrepreneurs, *Clean Energy Works for Us: Q3 2014 Jobs Report*, 2014, http://cleanenergyworksforum.org/wp-content/uploads/2014/11/2014_Q3_Report_final.pdf.

¹⁰ Robert Pollin et al., *Green Recovery: A Program to Create Good Jobs and Start Building a Low-Carbon Economy*, Political Economy Research Institute, 2008, http://www.peri.umass.edu/fileadmin/pdf/other_publication_types/peri_report.pdf.

Marshall, Michigan Tar Sands Spill into Kalamazoo River - 2010

On July 26, 2010, a pipeline operated by Enbridge Inc. ruptured releasing 843,000 gallons of tar sands diluted bitumen into Talmadge Creek which flows into the Kalamazoo River near Marshall, Michigan. The tar sands spill eventually contaminated 35 miles of the Kalamazoo River.¹ The rupture of this pipeline (called line Line 6B) is the costliest inland oil spill cleanup in U.S. history. Significantly, this spill drew national attention to the fact that tar sands oil sinks in water (unlike conventional oil). Despite more than four years of cleanup efforts overseen by the U.S. Environmental Protection Agency, the Kalamazoo River is still contaminated with tar sands.²

1. **Most expensive inland oil spill in U.S. history:** To date, the cleanup cost has exceeded \$1 billion. Cleanup requires river-bottom dredging to remove the submerged tar sands that have remained since 2010. Even as this expensive and time-consuming process has taken place, there is evidence that dredging and other river-bottom removal techniques may also be leading to a wider spread of the spilled tar sands oil.³ Traditional oil spill clean tools used for conventional oil—like surface skimmers, vacuum trucks, and absorbent booms—are largely ineffective for tar sands because large quantities sink and become submerged oil.⁴
2. **Tar sands oil sinks:** The response and cleanup of the Kalamazoo river spill has confirmed longstanding concerns among scientists and environmental monitors that tar sands do not float like conventional oil if spilled in water.⁵ On the Kalamazoo, this has proved to be the case as the lighter, highly volatile diluting agents quickly evaporated, leaving behind the highly viscous, heavy bitumen, which sunk to the river bottom and has not significantly biodegraded over time. Even the State Department has acknowledged that a spill of tar sands presents different challenges than a conventional oil spill but failed to consider this in its environmental review.⁶
3. **Leak detection technology was ineffective:** The pipeline company operating Line 6B was not the first one to notice the rupture. Despite modern spill detection technology (similar to that proposed for Keystone XL), the rupture was reported by a member of the public 17 hours after the pipeline had ruptured.⁷

Following the spill, residents in the area reported adverse health effects including rashes, headaches, breathing problems and nausea.⁸ The Talmadge Creek ecosystem was also decimated, as wildlife including turtles, birds, mammals, fish and invertebrates were coated in oil and died.⁹

¹ EPA Response to Enbridge Spill in Michigan, updated October 16, 2014, <http://www.epa.gov/enbridgespill/>.

² *Ibid.*

³ Lisa Song, "Cleanup of 2010 Mich. Dilbit Spill Aims to Stop Spread of Submerged Oil," *Inside Climate News*, March 27, 2013, <http://insideclimatenews.org/news/20130327/cleanup-2010-mich-dilbit-spill-aims-stop-spread-submerged-oil>.

⁴ Kari Lydersen, "A Year After Pipeline Spill, Tar Sands Oil Still Plagues a Michigan Community," *On Earth*, July 25, 2011, <http://archive.oneyearth.org/article/tar-sands-oil-plagues-a-michigan-community>.

⁵ Lisa Song, "Dilbit Sinks in Enbridge Oil Spill, but Floats in Its Lab Study," *Inside Climate News*, March 14, 2013, <http://insideclimatenews.org/news/20130314/tar-sands-dilbit-sinks-enbridge-oil-spill-floats-its-lab-study>.

⁶ Final Supplemental Environmental Impact Statement for the Keystone XL Pipeline Project, Chapter 4, Potential Releases, <http://keystonepipeline-xl.state.gov/documents/organization/221189.pdf>.

⁷ Pipeline Accident Report, Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, National Transportation Safety Board, July 10, 2012, <https://www.nts.gov/investigations/summary/PAR1201.html>. Though the pipeline's leak detection system issued alarms consistent with a rupture, operators misinterpreted the alarms and continued to keep the pipeline open as it poured oil into the environment.

⁸ Keith Matheny, "Three years after oil spill, a slow recovery haunts Kalamazoo River," *Detroit Free Press*, June 24, 2013, <http://archive.freep.com/article/20130623/NEWS06/306230059/Kalamazoo-River-oil-spill>.

⁹ *Ibid.*

Mayflower, Arkansas Tar Sands Spill - 2013

On March 29, 2013, ExxonMobil's 95,000 barrel per day Pegasus Pipeline ruptured, sending roughly 5,000 barrels (210,000 gallons) of tar sands diluted bitumen through the community of Mayflower, Arkansas.¹ Some of the spilled tar sands crude flowed through people's yards and down their streets.² While some of the very closest homes to the spill were evacuated, many who lived just a few hundred yards from the spilled diluted bitumen were not – and were exposed to dangerous levels of benzene, along with other pollutants such as octane, cyclohexane, heptane, hexane, toluene, butane, pentane and more.³ Some community members experienced severe headaches, nausea, and respiratory infections following the spill.⁴ Even nearly a year later, residents still were facing headaches, dizziness, nausea and other health challenges – while being told it was safe to live there – so that some have abandoned their homes, unable to find buyers.⁵

The Pegasus pipeline runs from Patoka, Illinois through Missouri and Arkansas to Corsicana and Nederland, Texas.⁶ At the time of the spill, the pipeline was 65 years old, and had been built to transport lighter crudes at lower pressures in the opposite direction—but was reversed in 2006 to transport heavier tar sands diluted bitumen at higher pressures to the Gulf Coast.⁷ Until 2012, Exxon's 90,000 bpd Pegasus pipeline was the only pipeline to move Canadian diluted from the Midwest to the Gulf Coast.

Following the spill, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Corrective Action Order, requiring ExxonMobil to shut down the pipeline until certain conditions were met, and initiated an investigation of the spill. PHMSA found nine probable violations of safety rules that may have contributed to the spill, and ExxonMobil was fined nearly \$2.7 million.⁸ On March 31, 2014 – just over a year after the spill – PHMSA approved ExxonMobil's request to resume operations on the Pegasus Pipeline at a reduced pressure of 80% of the operating pressure at the time of the pipeline failure.⁹

As illustrated by the Mayflower spill and the 2010 tar sands spill into the Kalamazoo River, tar sands is risky to transport, and poses health risks and clean-up challenges when it does spill. Further, the pipeline companies are not doing their jobs to ensure that the communities through which they are transporting tar sands stay safe, and U.S. government regulation of tar sands transport is inadequate. Building more tar sands pipelines like Keystone XL and exacerbating these risks is the wrong path forward.

¹ PHMSA, ExxonMobil Pipeline Incident – Mayflower, Ark., [http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnextoid=1a9ab5676d5cd310VgnVCM100000d2c97898RCRD&vgnnextchannel=d248724dd7d6c010VgnVCM10000080e8a8c0RCRD&vgnnextfint=pr](http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnextoid=1a9ab5676d5cd310VgnVCM100000d2c97898RCRD&vgnnextchannel=d248724dd7d6c010VgnVCM10000080e8a8c0RCRD&vgnnextfint=print)
[int](http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnextoid=1a9ab5676d5cd310VgnVCM100000d2c97898RCRD&vgnnextchannel=d248724dd7d6c010VgnVCM10000080e8a8c0RCRD&vgnnextfint=pr).

² Exxon Pipeline Breaks in Arkansas, YouTube, March 31, 2013, <https://www.youtube.com/watch?v=u30m8U6VP3E#t=12>.

³ Sam Bifling, Ark. Spill Victims on 'Wrong' Side of Fence Left to Fend for Themselves, August 7, 2013, Inside Climate News, <http://insideclimatenews.org/news/20130807/ark-spill-victims-wrong-side-fence-left-fend-themselves>

⁴ Ibid.

⁵ RT, Exxon oil spill town 'deserted land', residents still getting sick, forced to abandon homes, February 11, 2014, <http://rt.com/usa/mayflower-keystone-oil-pipeline-410/>.

⁶ ExxonMobil Pipeline, Central North crude maps, http://www.exxonmobil.com/Images/EMPCo/central_north_crude2.pdf.

⁷ John H. Cushman, Jr., Federal Rules Don't Control Pipeline Reversals Like Exxon's Burst Pegasus, April 3, 2013, Inside Climate News, <http://insideclimatenews.org/news/20130403/federal-rules-dont-control-pipeline-reversals-exxons-burst-pegasus>.

⁸ Timothy Gardner and Alan Raybould, Exxon faces \$2.7 million fine for Arkansas pipeline spill, November 6, 2013, Reuters, <http://www.reuters.com/article/2013/11/07/us-usa-exxon-fine-idUSBRE9A603X20131107>.

⁹ U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Letter to ExxonMobil Pipeline Company, Re: CFP No. 4-2013-5006H, Approval of Restart Plan, Southern Segment of the Pegasus Pipeline, March 31, 2014,

http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_325C1FBC0A971C60C2DC5268CB2676A341960000/filename/420135006H_Approval_of_Restart_Plan_Southern_Segment_REV6_03312014.pdf.

Nebraska and South Dakota State Processes Currently Under Way Regarding the Proposed Keystone XL Tar Sands Pipeline

Nebraska

The U.S. State Department's review of the Keystone XL pipeline has been suspended, awaiting a decision by the Nebraska Supreme Court. Pending the court's ruling, which could come any Friday in 2015, **there is no approved route for the pipeline through Nebraska.**

The case, *Thompson v. Heineman*,¹ hinges on whether the Nebraska Legislature violated the state's constitution when it passed legislation enabling Governor Dave Heineman to approve the pipeline through an expedited process.² The challenged law also gave TransCanada eminent domain rights without having to first secure a federal permit.³

A Nebraska District court agreed with the landowners in a holding issued on February 9, 2014, stating that, as a "common carrier," the pipeline could not be green-lighted by the Governor, but rather only by the Nebraska's Public Service Commission (PSC).⁴ The Nebraska Supreme Court heard oral arguments in the state's appeal on September 5, 2014. A final decision on the case is expected at any time. If the District Court holding is upheld, TransCanada will have to apply to the PSC for a route. The PSC has the authority to propose a new route in a process that is expected to take nine or more months.

South Dakota

TransCanada's permit for building Keystone XL through South Dakota expired in June 2014. The company filed for a re-certification by the South Dakota Public Utilities Commission (PUC) in September 2014.⁵

On October 28, 2014 the PUC granted "intervenor" status to 43 individuals and groups from South Dakota and Nebraska, many of whom who are challenging the construction and purpose of the pipeline. As intervenors, they will have the opportunity to voice their opposition to Keystone XL, participate in the discovery process, and call TransCanada officials to the stand under oath at hearings that will be held early 2015. The final evidentiary hearing is set for May 5 - 6, 2015.⁶ Until the Public Utilities Commission decides whether to grant or decline certification, **Transcanada does NOT have a permitted route through South Dakota.**

Public concern in South Dakota over the proposed pipeline has grown tremendously since the original permit application submitted over four years ago. The unified tribal nations of the Oceti Sakowin, aka the Great Sioux Nation, are challenging the permit on the grounds of treaty rights,⁷ water rights protection and a lack of proper consultation required by federal law.⁸

¹ *Thompson v. Heineman*, No. S-14-000158, (Neb. Supreme Court, filed Apr. 21, 2014).

² *Thompson v. Heineman*, 2014 WL 631609 (Neb. Dist. Ct.) (Trial Order) (2014).

³ Nebraska Legislature, Legislative Bill 1161, Approved by the Governor April 17, 2012, <http://nebraskalegislature.gov/FloorDocs/102/PDF/Slip/LB1161.pdf>.

⁴ *Thompson v. Heineman*, 2014 WL 631609 (Neb. Dist. Ct.) (Trial Order) (2014).

⁵ *Keystone XL Pipeline Updates*, SOUTH DAKOTA PUBLIC UTILITIES COMMISSION, <http://puc.sd.gov/Dockets/HydrocarbonPipeline/keystoneupdate.aspx>.

⁶ Joe Duggan, *Keystone XL opponents will have a chance to be heard in South Dakota*, OMAHA.COM (Oct. 30, 2014), http://www.omaha.com/news/metro/keystone-xl-opponents-will-have-a-chance-to-be-heard/article_1c21b596-392e-5760-90be-af9a34aeeb73.html.

⁷ Tom Poor Bear, *Memo from Oglala Sioux Tribe*, scribd.com (Dec. 9, 2014) <http://www.scribd.com/doc/251533342/Memo-from-Oglala-Sioux-Tribe>.

⁸ Advisory Council on Historic Preservation, <http://www.achp.gov/106summary.html>.

Tribal and Treaty Rights Impacted by the Proposed Keystone XL Tar Sands Pipeline

The Keystone XL tar sands pipeline's proposed route violates basic tenets of Federal Indian Law. The pipeline would infringe upon treaty-protected lands, especially in South Dakota. TransCanada has also failed to properly consult with tribal leaders on plans for the pipeline's construction, violating the U.S. Government's trust obligation toward tribes.¹

Treaty Violation

Although it does not infringe upon reservation land, the current proposed Keystone XL route crosses land protected by treaty. On April 29, 1868, the United States entered into a peace treaty at Fort Laramie with the Oglala Sioux Tribe. The United States agreed in the treaty that all lands west of the Missouri River and within present-day South Dakota would be "set apart for the absolute undisturbed use and occupation" by the tribe and that "no persons ... shall ever be permitted to pass over, settle upon, or reside in the territory described in this article."

The Fort Laramie Treaty's continued enforceability was reinforced in the 1980 Supreme Court case *United States v. Sioux Nation of Indians*.² This decision upheld a Court of Claims ruling that the United States' acquisition of the Black Hills, a region included in the Fort Laramie Treaty, constituted a taking under the 5th Amendment. Accordingly, the Court ruled, the U.S. Government was obligated under the treaty to provide the affected Sioux Tribe with "just compensation."

The Tribal Trust Doctrine and the Duty to Consult

Neither the State Department nor TransCanada have properly consulted with the tribes as required by the federal government's tribal trust responsibility.

The U.S. Government has a trust responsibility to Indian Nations, which is expressed in the Constitution, treaties, statutes, case law, and executive orders. This trust duty, which originally arose from tribes' land cessations, obligates the federal government to protect tribes' unique interests.³ This trust obligation entails a duty to consult with Indian tribes on any activity that would affect their land. This duty is expressed in Executive Order 13175 issued by President Clinton and reinforced by President Obama's Memorandum for the Heads of Executive Departments and Agencies issued on November 5, 2009.

TransCanada has failed to adequately consult with tribes potentially affected by the Keystone XL Pipeline, often claiming that strictly informational meetings have satisfied this requirement. Additionally, TransCanada has sidestepped the consultation process by hiring members of non-local tribes to survey areas that may be of cultural significance to the tribes that actually reside there. This deprives the impacted tribes of any meaningful consultation on Keystone XL's effects on their cultural resources.

The National Historic Preservation Act's Duty to Consult

Pursuant to Section 106 of the National Historic Preservation Act (NHPA), federal agencies must take into account projects' potential effects on locations or objects eligible for inclusion in the National Register prior to authorizing federal spending on that project. Eligible locations or objects may include "[p]roperties of traditional religious and cultural importance to an Indian tribe." Because the Keystone XL pipeline's proposed route runs through traditional tribal lands, the State Department is required to consult with the tribes that have spiritual, cultural, and historical ties to the land along the pipeline route. To date, it has failed to do so.

¹ Memorandum from Tom Poor Bear, Vice President Oglala Sioux Tribe, Dec. 2014, available at <https://www.scribd.com/doc/251533342/Memo-from-Oglala-Sioux-Tribe>.

² 448 U.S. 371.

³ Mary Christina Wood, *Protecting the Attributes of Native Sovereignty: A New Trust Paradigm for Federal Actions Affecting Tribal Lands and Resources*, 1995 UTAH L. REV. 109, 112 (1995).

Challenges associated with Proposed Tar Sands Pipelines

Enbridge's Northern Gateway (525,000 bpd)

Enbridge's proposed Northern Gateway project is a controversial 525,000 barrel per day (bpd) tar sands pipeline across the mountainous terrain and salmon-bearing rivers of north-central British Columbia. In May 2013, the British Columbia government opposed the project in its formal comments to the federal review panel.¹ Polling shows that more than two-thirds of British Columbians oppose the Northern Gateway project.² Moreover, First Nations, with powerful treaty rights which were substantially strengthened by a recent Canadian Supreme Court ruling, have brought a dozen lawsuits against the Northern Gateway project.³ Amid controversies surrounding the project and following a damaging referendum in Kitimat, British Columbia, Northern Gateway's Executive Vice President Janet Holder, the public face for the project, announced her retirement.⁴ In its environmental review of Keystone XL, the State Department considered Northern Gateway too uncertain and speculative to include in its forecast.⁵

Kinder Morgan's TransMountain Pipeline (additional 590,000 bpd)

The expansion of the TransMountain pipeline, another pipeline through British Columbia, would require new permits, the renegotiation of landowner agreements along the route, agreements with First Nations, the dredging of the Vancouver harbor and changes in regulations to allow increased tanker traffic. TransMountain passes through fifteen First Nation's communities and affect many more traditional territories, many of which have stated opposition to the project.⁶ Objections from local political leaders and the public have already prompted the National Energy Board to delay its final report on the project to January 2016.⁷

TransCanada's Energy East Pipeline (1.1 million bpd)

TransCanada's Energy East pipeline would require converting around 3,000 kilometers (1,864 miles) of existing natural gas pipeline and construction of around 1,400 kilometers (870 miles) of new pipe, with the most construction expected in Quebec. While TransCanada only filed its application in late October, 2014, opposition to the project is already significant and growing. Both the governments of Quebec and Ontario have filed as interveners for the project's review.⁸ The impact of building a new pipeline creates a significant hurdle for TransCanada, as Quebec has long touted its pro-environment stance and is not eager to play a role in enabling tar sands expansion plans in Alberta.⁹ At the same time, Ontario's

¹ Argument of the Province of British Columbia Re: Hearing Order OH-4-2011 and File No. OF-Fac-Oil-N304-2010-01 01 Enbridge Northern Gateway Project Application, May 31, 2013, http://www.env.gov.bc.ca/main/docs/2013/BC-Submission-to-NGP-JointReviewPanel_130531.pdf; "B.C. officially opposes Enbridge Northern Gateway pipeline," CBC News, May 31, 2013, <http://www.cbc.ca/news/canada/british-columbia/story/2013/05/31/bc-northern-gateway-rejected.html>.

² "Your Insights on the Northern Gateway Pipeline," *Insights West*, February 4, 2013, <http://www.insightswest.com/news/your-insights-on-the-northern-gateway-pipeline/>.

³ Mychaylo Prystupa, "Janet Holder Quits Northern Gateway Pipeline," *Vancouver Observer*, November 12, 2014, <http://www.vancouverobserver.com/news/janet-holder-quits-northern-gateway-project>.

⁴ *Ibid.*

⁵ State Department, Final SEIS, Jan. 31, 2014, 2.2-34, <http://keystonepipeline-xl.state.gov/documents/organization/221155.pdf>.

⁶ Julie Gordon, "Kinder Morgan Canada pipeline plans hits a mountain of opposition," *Reuters*, October 21, 2014, <http://www.reuters.com/article/2014/10/21/us-canada-pipeline-kinder-morgn-eng-idUSKCN01A15N20141021>.

⁷ Markham Hislop, "Social license: Enbridge, Kinder Morgan losing BC battle," *Beacon News*, November 15, 2014, <http://beaconnews.ca/blog/2014/11/social-licence-enbridge-kinder-morgan/>.

⁸ Shawn McCarthy, "Opposition builds to Energy East," *The Globe and Mail*, October 13, 2014, <http://www.theglobeandmail.com/report-on-business/opposition-builds-to-energy-east-pipeline-plan/article21082836/>.

⁹ Gerrit De Vynck, "TransCanada Eastern Pipeline Draws Opposition: Corporate Canada," *Bloomberg News*, August 6, 2013, <http://www.businessweek.com/news/2013-08-06/transcanada-eastern-pipeline-draws-opposition-corporate-canada>.

Eminent Domain and the Keystone XL tar sands pipeline

The House and Senate bills that would approve the Keystone XL tar sands pipeline in the 114th Congress -- H.R. 3 and S. 1 – do nothing to protect property rights. Despite the clause titled “Private Property Savings Clause,” the bill’s language does nothing to change the flawed eminent domain laws and process that uses eminent domain for private gain, and in fact further legitimizes these unjust processes.¹

TransCanada has used eminent domain on landowners in every state along the proposed pipeline route, except in Nebraska. TransCanada makes frequent threats of using eminent domain on Nebraskans, and has done so since 2010, even though they do not have the current legal ability because of the landowner legal victory last year. That case is now in front of the Nebraska Supreme Court. TransCanada still does not have a route or a permit and therefore cannot use eminent domain in Nebraska.

Eminent domain is a federal and state-by-state legal process for the government to take land for “public purpose.”² Over the years, oil and gas companies have abused eminent domain by seizing land for private use. The use of eminent domain for private gain must have a federal and state-based fix to protect property rights. The House of Representatives attempted to give some fixes to eminent domain in a bill that passed last year, however that bill exempts the Keystone XL pipeline.³

Keystone XL is one example of how a company uses the threat of, and/or the actual use of, eminent domain to secure contracts with landowners to then turn around to elected officials and the general public to show that they have “landowner support.”

One of the many negative impacts of eminent domain on landowners is if Keystone XL were to be denied, in many of the early contracts forced on landowners, there is no clause that states the land is then returned to the property owner. That means TransCanada can then turn around and sell that land easement to another pipeline company and the landowner has no legal say in the matter.

Dave Domina, the lead attorney in the Nebraska case for the landowners, wrote extensively about routing and eminent domain in a memo to all Nebraska elected officials in October 2011. The memo can be found online and has extensive legal citations for further reading.⁴

¹ This section of H.R. 3 states that “Nothing in this Act alters any Federal, State, or local process or condition in effect on the date of enactment of this Act that is necessary to secure access from an owner of private property to construct the pipeline and cross-border facilities described in subsection (a). 114th Congress, 1st Session, H.R. 3, <http://thomas.loc.gov/cgi-bin/query/z?c114:H.R.3>.”

² Eminent domain is part of the US Constitution, the Fifth Amendment's takings clause. National Eminent Domain Power, Cornell Law School, http://www.law.cornell.edu/anncon/html/amdt5bfrag4_user.html.

³ H.R. 1944, the Private Property Rights Protection Act passed Feb. 2014, <http://sensenbrenner.house.gov/news/documentsingle.aspx?DocumentID=371032>. Fox News covered the bill <http://www.foxnews.com/us/2012/02/28/house-acts-against-high-court-on-eminent-domain/> as did the Daily Show who brought up the KXL exemption <http://thedailyshow.cc.com/videos/u1knas/little-seizers>.

⁴ Domina Law Group Eminent Domain Memo, <http://www.dominalaw.com/documents/Green-Paper.pdf>.

Attachment 8.4



LOWER NIOBRARA NATURAL RESOURCES DISTRICT

410 Walnut Street • P.O. Box 350
Butte, NE 68722-0350

Phone: (402) 775-2343
Fax: (402) 775-2334

September 17, 2012

TO: Nebraska Department of Environmental Quality

RE: Response to TransCanada's Supplemental Environmental Report (SER) September 5, 2012

A representative group of our District's constituents attended our monthly Board Meeting on September 10, 2012. They expressed their personal concerns about the SER. In particular, in response to the proposed Northern Alternative rerouting of the Keystone XL Pipeline: (1) Sand and porous soils are still being crossed, (2) poisonous coal tar crude oil should not cross the Ogallala Aquifer because any release of will contaminate their immediate area, water supply and land, (3) Why can't the Keystone XL Pipeline be routed parallel to the existing Keystone 1 Pipeline, which is at the easterly edge of the Ogallala Aquifer and sandy soils. They then expressed their appreciation for the District's proactive participation in the proposed pipeline review process.

The Board then challenged the constituents to continue their personal involvement in the process with the goal of protecting their interests as well as Nebraska's most precious natural resource – the High Plains Aquifer System and in particular the underlying Ogallala Aquifer. The Board suggested the constituents could consider writing to and/or meeting with the Nebraska Department of Environmental Quality Staff, Nebraska Legislature and the Nebraska Governor.

The LNNRD Board of Directors re-affirms our reasons for opposing the TransCanada Keystone XL Pipeline as set forth in our letter to NDEQ on May 31, 2012 (attached).

There continues to be enormous interest and competition among oil and natural gas companies to construct new pipelines for conveying both Canada's and the United State's developing crude oil supplies to refineries and ports in the United States and also redistribute petroleum products and natural gas across the United States as markets for demand change.

Oil companies have in the past and will continue in the future to construct new pipelines parallel to existing pipeline corridors (for example the Rockies Express, Platte System, Enbridge, Flanagan South, Pony Express and...) Why? Because the review process for the new pipelines in existing pipeline corridors/right-of-ways is not as rigorous and often subject to less scrutiny. In addition, in most locations other than the heartland of America (including across the mid-section of Nebraska) there is limited land available for new pipelines. The engineering challenges of paralleling existing pipelines have been overcome with improved construction methods and pipeline design. It is also worthy to recognize that as markets for crude and refined oil products and natural gas change the existing pipeline for conveying them are modified to transport crude oil or refined petroleum products instead of natural gas, and vice versa. Therefore, the proposed Keystone XL Pipeline for Canadian tar sands crude may in the future convey another product. In addition TransCanada may sell space in the Keystone XL Pipeline corridor to other oil companies for their new pipeline. Landowners may find in the future, more than one pipeline and types of products being conveyed across their private land easement.

TransCanada will resist to the very end of the process and until Nebraska's decision makers give TransCanada no other choice but to route the Keystone XL Pipeline parallel to and in the same corridor as the existing Keystone 1 Pipeline.

It is very obvious in the SER that TransCanada did not clearly and concisely answer Nebraska Department of Environmental Quality's very specific request in their Feedback Report, Chapter 7, information requested from Keystone, Paragraph 7.5.1, Additional Information Needs Arising From Public Comments on Page 37. Perhaps the most frequently asked question was: "Why didn't Keystone follow the same corridor as its first Keystone Oil Pipeline? Keystone should provide a clear and concise explanation of why the alternative was rejected. Keystone did not follow NDEQ's instructions.

In closing, the LNNRD Board expresses sincere thanks to the Nebraska Department of Environmental Quality Staff for an excellent Feedback Report.

Sincerely,
LNNRD Board of Directors

Attachment: 1



LOWER NIOBRARA NATURAL RESOURCES DISTRICT

410 Walnut Street • P.O. Box 350
Butte, NE 68722-0350

Phone: (402) 775-2343
Fax: (402) 775-2334

May 31, 2012

The LNNRD Board has been unanimously opposed to routing the Keystone XL Pipeline across the Nebraska Sandhills and underlying Ogallala Aquifer since the beginning of the public review process. In the 1980's, NRD's were directed by the Nebraska Legislature to develop Groundwater Management Plans to protect the quality and quantity of groundwater, which is most often described as Nebraska's "most precious natural resource". The Board takes very seriously the protection of these two natural resources which are absolutely essential to Nebraska's present and future agri-business, recreational pursuits, industrial and commercial growth, and municipal/local drinking water supplies in this region. The newly proposed Trans Canada Keystone XL Pipeline route still crosses large areas of Valentine Soils and the Ogallala Aquifer.

Concerns for the Ogallala Aquifer are being pushed aside now that the proposed new route, on paper, avoids the Sandhills. The Board maintains their objections to the re-routing and considers the aquifer just as important to avoid as the Sandhills. The Board also recognizes many pipelines crisscross the aquifer and areas with sandy soils now, but adding the contamination risks associated with tar sands crude to this region of the Ogallala Aquifer and the sandy soil pastures and croplands is not warranted.

The LNNRD Board objects to being forced to accept TransCanada's goal of building the shortest and cheapest pipeline at the risk of detrimental effects to our citizens, private land owners and the water resource they depend on for their livelihoods. A better route for the XL pipeline needs to be chosen!

The Board feels the best route across Nebraska is parallel to the existing Keystone Pipeline. Even though this route may be somewhat longer, the savings accrued from eliminating unknowns and surprises by building in a previously studied and completed ROW are significant. The same emergency response plans, materials, and personnel can be used for both pipelines and additional savings will accrue from co-locating maintenance crew facilities, material storage lots, and sites for pumping stations and storage tanks. There will be significantly less driving to and from points on the pipelines via rural roads.

Across the states of Montana, North Dakota, and South Dakota the proposed route avoids crossing Indian Reservations, wildlife refuges, and environmentally sensitive areas. In Nebraska, the TransCanada proposed route for the XL Pipeline crosses areas that are very sensitive to us: the Ogallala Aquifer and the Sandhills. Nebraskans will be stuck with the consequences of a crude oil pipeline located there. These resources are absolutely critical to Nebraska's jobs and economy, now and in the future. Land owners and producers in Nebraska are frustrated that their concerns continue to fall on deaf ears.

The LNNRD Board of Directors encourages the Nebraska Department of Environmental Quality to declare that the Trans Canada Keystone XL Pipeline newly proposed route does not meet the common good and welfare of the state and will present unacceptable hazards to Nebraska's most precious natural resource, agricultural resources, aesthetics and communities in this region. The LNNRD Board of Directors strongly and unanimously agrees that the most sensible routing alternative, as well as, the quickest alternative for getting on with building the TransCanada XL Pipeline across Nebraska is simply to avoid crossing this region of the Ogallala Aquifer and the Sandhills and locating it parallel and adjacent to the existing Keystone Pipeline.

Sincerely

Lower Niobrara Natural Resources District Board of Directors (unanimously approved 6-4-2012)

Attachment 8.5

A number of complementary leak detection methods and systems would be available within the OCC and would be linked to the SCADA system. Remote monitoring would consist primarily of monitoring pressure and flow data received from pump stations and valve sites that would be fed back to the OCC by the SCADA system. Software based volume balance systems would monitor receipt and delivery volumes and would detect leaks down to approximately 5 percent of pipeline flow rate. Computational Pipeline Monitoring or model based leak detection systems would monitor small pipeline segments on a mass balance basis. These systems would detect leaks down to approximately 1.5 to 2 percent of pipeline flow rate. Computer based, non-real-time, accumulated gain/loss volume trending would assist in identifying seepage releases below the 1.5 to 2 percent by volume detection thresholds. If any of the software-based leak detection methods indicate that a predetermined loss threshold has been exceeded, an alarm would be sent through SCADA and the Controller would take corrective action. The SCADA system would continuously poll all data on the proposed pipeline at an interval of approximately 5 seconds.

In the event of a leak, the operator would shut down operating pumping units and close the isolation valves. It would take approximately 9 minutes to complete the emergency shut-down procedure (shut down operating pumping units) and an additional 3 minutes to close the isolation valves. Some commenters have expressed concern that the Ludden spill on the existing Keystone Oil Pipeline Project (see Table 3.13.1-4) took longer than 12 minutes to shut down. In the case of the May 7, 2011 Ludden spill, the time from 3:51 to 4:26 pm MST was used to verify flow imbalance trends detected by the SCADA system. At 4:26 pm the Keystone Oil Control Center (OCC) received visual verification of a leak from a local farmer, thus confirming that a leak had occurred and system shutdown was immediately initiated. Shutdown was completed by 4:35 pm MST. The elapsed time from leak confirmation through visual verification to complete system shutdown was 9 minutes. The incident emphasizes the importance and difficulty of leak verification in some instances. The incident confirms that the uncertainty in time to shut down for any leak is primarily a function of the time required to verify that a leak has occurred.

In addition to the SCADA and complimentary leak detection systems, direct observation methods including aerial patrols, intermittent maintenance patrols, and public and landowner awareness programs would be implemented to encourage and facilitate the reporting of suspected leaks and events that could suggest a threat to the integrity of the pipeline.

EPA expressed concern that relying solely on pressure drops and aerial surveys to detect leaks may result in smaller leaks going undetected for some time, resulting in potentially large spill volumes. In light of those concerns, EPA requested consideration of additional measures to reduce the risks of undetected leaks. A PHMSA report (2007) addressed the state of leak detection technology and its applicability to pipeline leak detection. External leak detection technology addressed included liquid sensing cables, fiber optic cables, vapor sensing, and acoustic emissions. In that report PHMSA concludes that while external leak detection systems have proven results for underground storage tank systems there are limitations to their applicability to pipeline systems and they are better suited to shorter pipeline segments. Their performance even in limited application is affected by soil conditions, depth to water table, sensor spacing, and leak rate. While it is acknowledged that some external detection methods are more sensitive to small leaks than the SCADA computational approach, the costs are extremely high and the stability and robustness of the systems are highly variable. Therefore, long-term reliability is not assured and the efficacy of these systems for a 1,384-mile long pipeline is questionable.

Relative to additional ground patrols, Keystone responded to a data request from DOS concerning the feasibility of more ground-level inspections. Keystone responded that based on land owner concerns, additional ground-level inspections are not feasible due to potential disruption of normal land use activities (e.g., farming, animal grazing). However, it should be noted that in the normal course of maintenance Keystone would have crews at various places along the proposed Project corridor (e.g.,

Attachment 8.6

Leak Prevention and Detection



Operations Control Center

TransCanada's Keystone XL Pipeline will be remotely controlled from an Operations Control Center where highly trained pipeline controllers monitor the operation of the pipeline and provide 24-hour pipeline monitoring 365 days a year. The pipeline controllers ensure that the pipeline is running safely and efficiently. The control center includes an operational control system, a leak detection system, and a satellite communication network.

Remote control of the pipeline uses a computer case system known as Supervisory Control and Data Acquisition (SCADA) to monitor and control the pipeline system. Data from all sites is read and sent to the Control Center approximately every five seconds.

The SCADA system will include:

- Redundant, fully functional back-up computers and a second control center in case there is a failure in the main control center.
- Automatic functions that will not allow the pressure at any station or anywhere in the pipe to exceed safe values.
- Local safety limits at pump stations that will provide pipeline pressure protection if SCADA communications are interrupted.

In addition to the SCADA system, the pipeline will feature complimentary and overlapping leak detection methods and systems, including:

1. **Remote Monitoring:** Operators at the Operations Control Center monitor, on their computer screens, all of the pressure and flow data received from pump stations and valve sites. Remote monitoring is typically able to detect large leaks immediately so the line can be shutdown and all valves closed, to limit the size of the spill.
2. **Software-based Volume Balance Systems:** This system compares the injection and delivery volumes and provides alarm to the pipeline controller when there is a difference between what is input to the pipe and what is delivered.
3. **Computational Pipeline Monitoring:** The approach, also known as model-based leak detection, uses all the pipeline pressures and flow rates to calculate flow balances on smaller sections of the pipe. This system uses the SCADA data to create a sensitive leak detection model. TransCanada selected leak detection model will be capable of detecting leaks down to a level of approximately 1.5 per-cent - 2 per-cent of pipeline flow rate. In addition, TransCanada will employ an over/short calculation to identify leaks below this threshold.

4. **Direct Observation:** TransCanada will also utilize aerial patrols, conducted 26 times per year—approximately every other week—as well as public and landowner awareness programs designed to encourage and facilitate the reporting of suspected leaks and events that may suggest a threat to the integrity of the pipeline.

Overall, the Keystone XL Pipeline will employ industry best practices and materials to prevent leaks and to detect them if they do occur, so that appropriate actions may be taken. Our number one priority continues to be employee and public safety through all our activities.

Contact Us

For more information, please contact us:

Project Hot Line: 1.866.717.7473
Email: keystone@transcanada.com
Project web page: www.transcanada.com/keystone

Alternatively, you can write to us with attention to:

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

Or

Keystone XL Pipeline
2700 Post Oak Blvd., Suite 400
Houston, TX 77056

I. Introduction

In response to specific concerns raised by the State of Nebraska, TransCanada Keystone Pipeline LP (Keystone) has agreed to reroute its proposed Keystone XL Pipeline Project to avoid the Sandhills region in Nebraska (Nebraska Reroute). This report, which is being provided to the Nebraska Department of Environmental Quality (NDEQ), presents an initial analysis of alternative pipeline corridors that avoid the Sandhills. Each of the "corridors" discussed in this report represents a 2,000-foot-wide area. The statistics presented and maps provided represent the centerline of these 2,000-foot-wide corridors.

KXL Project Overview

The Keystone XL Pipeline Project (hereinafter referred to as the "Keystone XL Project" or the "Project") is a proposed approximate 854-mile, 36-inch diameter pipeline to transport crude oil from Hardisty, Alberta, Canada to Steele City, Nebraska. From That point, the project will connect with the existing Keystone Pipeline Cushing Extension. At the terminus of the Cushing Extension, the oil will be delivered into a new 36-inch pipeline to be constructed as the Keystone Pipeline Gulf Coast Project for transportation to refinery markets in the Gulf Coast area of the United States. The Project will have an initial nominal throughput capacity of 700,000 barrels per day (bpd) and can be expanded to an ultimate nominal capacity of 830,000 bpd through the installation of additional pumping capacity.

Background and Reroute Report Purpose

In September 2008, Keystone filed an application with the U.S. Department of State (DOS) for a Presidential Permit authorizing the construction and operation of the proposed Keystone XL Pipeline Project at the U.S.-Canada border crossing location in Montana. At that time, the proposed project consisted of a 2,232-mile, 36-inch diameter pipeline and appurtenant facilities to transport crude oil from Hardisty, Alberta, Canada to Nederland/Port Arthur, Texas. Upon receipt of that application, DOS led a comprehensive environmental review of all aspects of the original Keystone XL Project. The environmental review culminated August 26, 2011 with the release of the Final Environmental Impact Statement (FEIS) for the project. This review was the most detailed and comprehensive environmental review ever undertaken for a cross border crude oil pipeline. The FEIS concluded that "[t]he analysis of potential impacts associated with construction and normal operation of the proposed Project suggest that there would be no significant impacts to most resources along the proposed Project corridor..." (FEIS at p.3.15-1).

In November 2011, the DOS determined that, in order to make the required National Interest Determination with respect to the original Keystone XL Pipeline Project, it was necessary to conduct an in-depth assessment of potential alternative routes that would avoid the Sandhills region in Nebraska. Pursuant to authorization provided in Nebraska statute LB 4 – as adopted in the Special Legislative Session of November 2011 – the NDEQ also commenced leading the effort to assess alternative routes through Nebraska. The NDEQ also commenced negotiation of a Memorandum of Understanding with DOS, as provided for in LB – 4, in order to collaborate with DOS in the preparation of a Supplemental Environmental Impact Statement. Subsequently, the NDEQ hired a contractor to assist with the route review and published a map delineating the "Sandhills" region that any alternative route must avoid.

In late December 2011, Congress included a provision in the Payroll Tax Cut Extension Act requiring the President to make a decision on the Presidential Permit within 60 days. This Congressional action caused the State Department to suspend its work on an MOU with the NDEQ for the reroute process. This caused the NDEQ to suspend its work with respect to review of alternative routes in the State. In January 2012, the DOS announced its determination that the project – as presented and analyzed at that time – did not serve the national interest. The determination was based not on the merits of the project, but on

	A	B	C	D
1	Pipeline capacity (bpd)	Gallons/day	Leakage at 1.5%	Leakage at 2%
2		(42gal/barrell)	(gpd)	(gpd)
3				
4	700,000	29,400,000	441,000	588,000
5				
6	830,000	34,860,000	522,900	697,200

	A	B	C	D
1	Pipeline capacity (bpd)	Gallons/day	Leakage at 1.5%	Leakage at 2%
2		(42gal/barrell)	(gpd)	(gpd)
3				
4	700,000 barrels	29,400,000	441,000	588,000
5				
6	830,000	34,860,000	522,900	697,200

700,000 x 42 = 29,400,000 gallons 1.5% = 441,000 gallons
 830,000 x 42 = 34,860,000 gallons 2% = 697,200 gallons
 leaking a day

against water 8 LBS 50 we

used that figure for weight

1.5% 700,000 capacity

- 441,000 gallons

= 8 LBS per gallon

3,528,000 = weight

$\frac{3,528,000}{8}$

= 441,000 semi trucks

2%

588,000

x 8

4,704,000

$\frac{4,704,000}{8}$

588,000

each semi tanker truck 50,000 lbs

830,000 capacity of 42 gal

34,860,000

x 8

278,880,000 pounds

$\frac{278,880,000}{50,000}$

5,577.6 semi tank trucks

Attachment 8.7

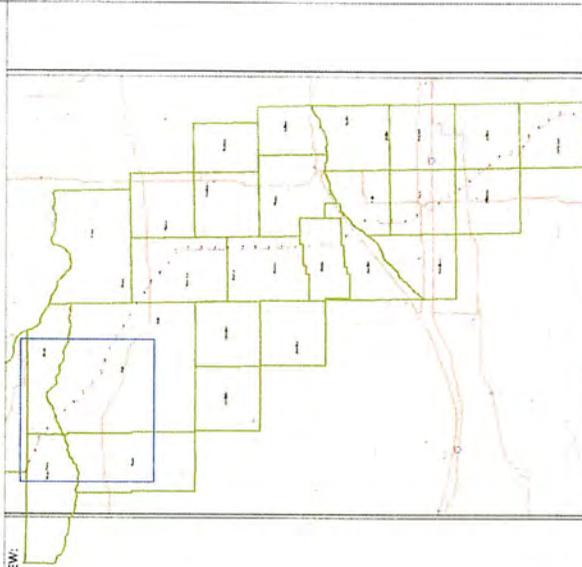
Table GW-2
Water Well Summary
Nebraska Preferred Route
Keystone XL Pipeline Project

Nearest Milepost	State/USGS ID	Lateral Distance from PL CL (ft)	Owner	Purpose	Date Completed	Total Depth (ft-bgs)	Static Water Level (ft-bgs)
613.6	205498	379.9	Dewey L & Diane K Peterson	Domestic	6/9/2010	60	25
618.9	194449	985.6	Mertz Mill Ranch LLC	Irrigation	12/1/2008	90	26
619.4	223146	1,786.8	MNS	Irrigation	5/22/2013	100	20
620.3	223149	1,575.0	MNS	Irrigation	5/29/2013	80	18
620.7	220491	1,306.2	MNS	Irrigation	11/21/2012	90	17
620.8	151638	777.2	Scott Land & Cattle LLC	Domestic	6/4/2003	58	14
621.1	215400	1,168.2	MNS	Irrigation	12/22/2011	110	10
621.3	214203	506.9	MNS	Irrigation	12/21/2011	110	17
622.3	110308	1,132.7	Chuck Davis	Livestock	6/4/1997	96	43
622.7	218556	2,346.3	John C Davis	Irrigation	8/18/2012	140	50
625.4	220822	2,512.7	William L Molly & Charles W Hobbs	Irrigation	9/18/2012	13	5
630.4	208962	1,746.3	R Wynn & Jill Hipke	Livestock	11/4/2010	45	9
631.0	191059	2,171.8	OK Properties Inc	Domestic	10/3/2007	47	8
633.5	84455	1,176.8	Lonnie A Breiner	Irrigation	4/22/1992	125	28
633.6	149007	406.0	Lonnie A Breiner	Irrigation	4/11/2003	137	32
633.8	73226	722.6	Lonnie A Breiner	Irrigation	12/12/1980	136	34
633.8	73227	1,245.4	Lonnie A Breiner	Irrigation	12/10/1980	131	21
635.6	216324	2,683.5	Richard Kilmurry	Livestock	11/3/2011	90	23
636.5	211716	973.9	Lonnie A Breiner	Livestock	7/8/2011	84	22
636.7	125503	549.0	Brendan J & Andrea Borer	Irrigation	7/7/2000	85	20
638.0	148893	990.7	Roger & Pam Frickel	Irrigation	11/19/2003	90	30
638.4	106373	1,028.5	Roger & Pam Frickel	Irrigation	6/6/1995	90	34
638.5	106372	486.3	Roger & Pam Frickel	Irrigation	6/7/1995	88	34
638.5	106371	1,250.6	Roger & Pam Frickel	Irrigation	4/8/1995	89	32
638.6	157999	355.0	Roger Frickel	Irrigation	3/28/2004	90	42
639.8	116133	990.1	Frank Kilmurry	Domestic	6/3/1998	33	4
642.3	33482	572.3	Alex Frickel	Irrigation	4/3/1967	84	32
643.0	57845	412.8	Alex Frickel	Irrigation	4/6/1976	91	28
643.4	26800	1,381.7	CNBGH Company	Irrigation	4/1/1959	103	15
643.7	30255	406.2	Galyen Land & Cattle Inc	Irrigation	1/12/1965	90	33
644.4	28549	436.3	Riverview LLP	Irrigation	4/21/1962	101	27
644.4	28550	1,354.8	Riverview LLP	Irrigation	8/3/1977	130	35
644.8	124828	1,422.4	Riverview LLP	Irrigation	4/11/2000	202	33
645.1	38247	414.0	CNBGH Company	Irrigation	4/15/1967	200	36
645.8	38249	614.1	CNBGH Company	Irrigation	4/19/1967	196	37
646.2	79548	1,380.9	Donald L & Joi M Opplinger	Irrigation	3/28/1989	180	39
646.4	126966	155.4	Byron Terry Steskal	Irrigation	8/9/2000	60	26
646.4	166278	515.4	Byron Terry Steskal	Irrigation	3/9/2005	150	41

NOTE:

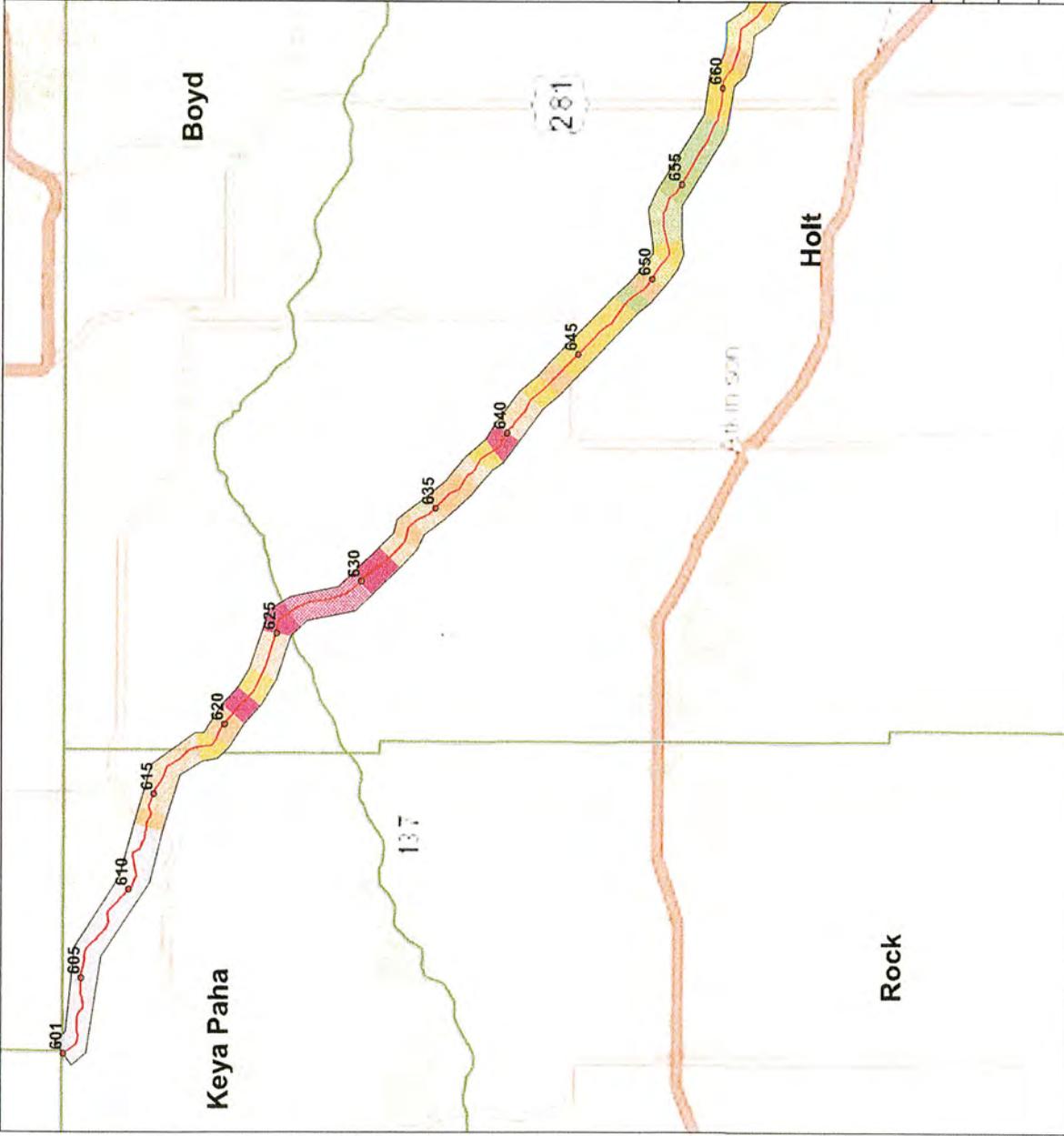
The segment depth to groundwater was derived from the static water levels provided in the March 2014 Water Well Survey performed by Banks Information Solutions with primary emphasis on wells with 1,500 feet of the IFC Route centerline. The representative depth to groundwater for each mile segment was calculated as either the minimum value for the mile segment or the lower limit of the first standard deviation from the minimum value for the mile segment. If no static water level data was available for the mile segment, the centerline were added to the analysis for that segment. Depths to groundwater for segments without groundwater data were inferred from adjacent segments.

OVERVIEW:



KEY:

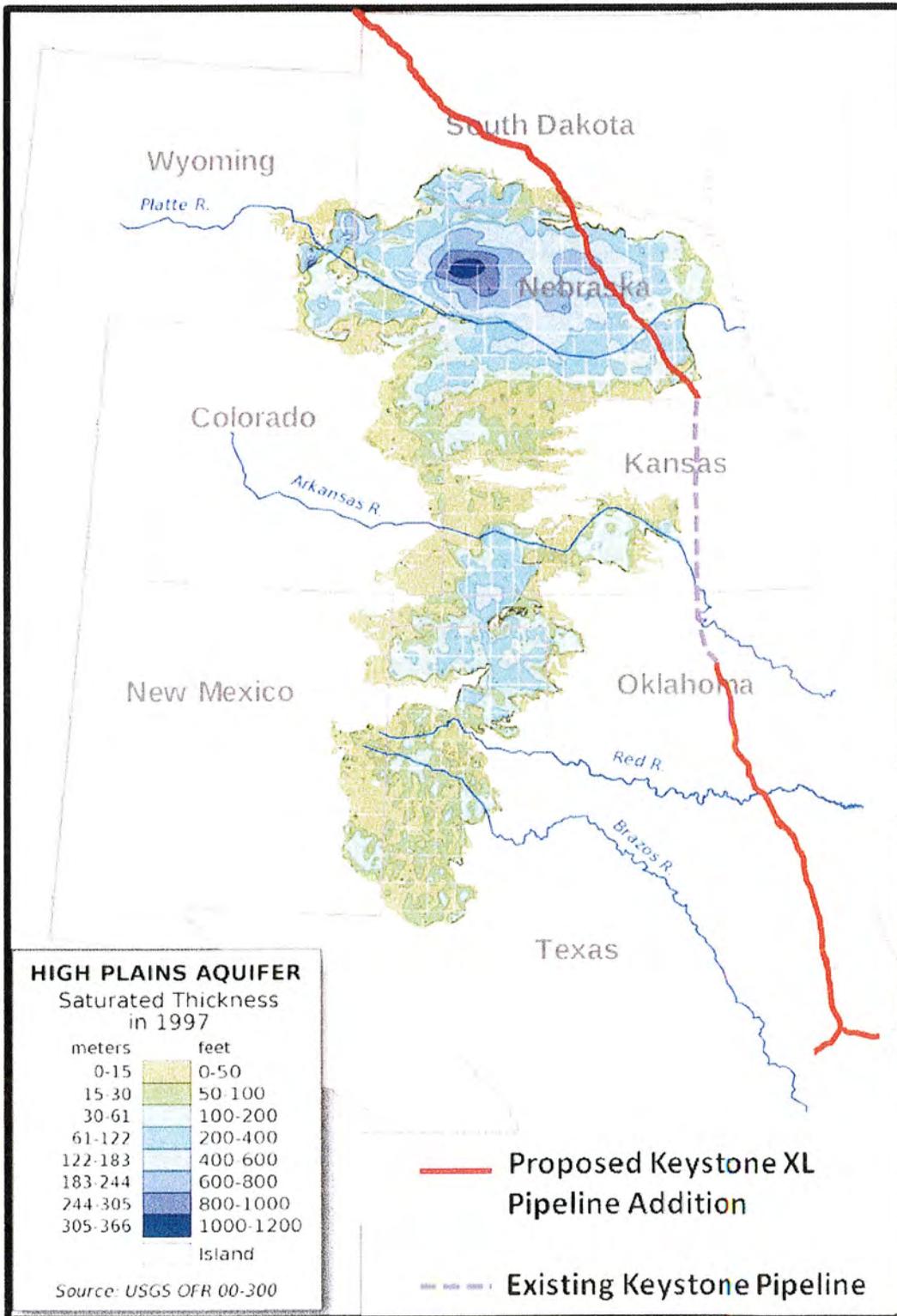
- IFC ROUTE CENTERLINE
- 650 MILEPOST MARKER (EVERY 5 MILES)
- SEGMENT WITH DEPTH TO GROUNDWATER $\leq 10'$
- SEGMENT WITH DEPTH TO GROUNDWATER >10 to $25'$
- SEGMENT WITH DEPTH TO GROUNDWATER >25 to $50'$
- SEGMENT WITH DEPTH TO GROUNDWATER >50 to $100'$
- SEGMENT WITH DEPTH TO GROUNDWATER $>100'$
- SEGMENT WITH NO DATA AVAILABLE
- SEGMENT WITH UNRESOLVED DATA
- MATCHED IN APPLICABLE COLOR



PROJECT	14404_01
PREPARED FOR	EXP
LOCATION	Keystone XL Pipeline Project Nebraska Preferred Route
SHEET	1 of 1
DRAWN BY	TLJ
REVIEWED BY	MBP
DATE	4-7-2014

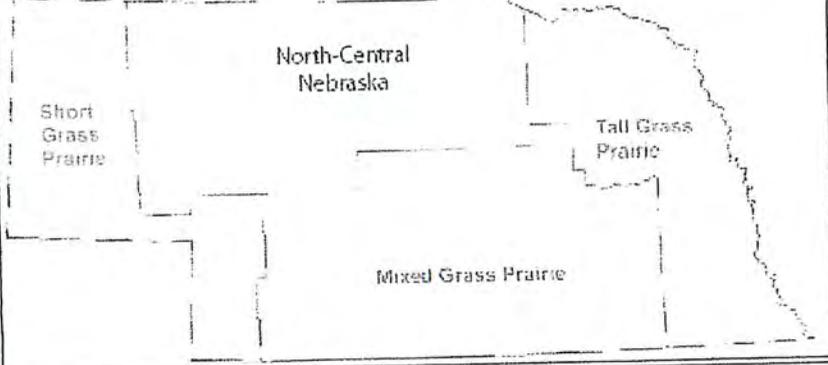


FIGURE GW-01
DEPTH TO GROUNDWATER
MILEPOST 601-660
NEBRASKA PREFERRED ROUTE
KEYSTONE XL PIPELINE PROJECT



Your Environment

This portion of NDEQ's web site is designed to provide the public with information about the environment across the state, as well as to more specific information about the region you live in. You can click on any section of the map below to find more specifics about that region. Or, select any of the "Focus on..." topics at left below, to find out more information about Nebraska's air quality, water quality and waste management issues.

<p>Your Environment By Topic</p> <p>Air Quality</p> <p>Water Quality</p> <p>Land Quality</p> <p>Waste Management</p>	<p>Your Environment By Region</p> 	
<p>Select any "Focus on..." topic above to find more information about Air, Water and Land Quality</p>	<p>Select any region above to find out more information about the environment in that area.</p>	
<p>Home</p>	<p>What Can I Do?</p>	<p>Questions and Answers</p>

Nebraska Department of Environmental Quality
 1200 "N" Street, Suite 400
 P.O. Box 98922
 Lincoln, Nebraska 68509
 (402) 471-2186

Your Environment By Region: North-Central A Brief Overview

The North-Central region, is comprised of nearly 20,000 square miles of wind-deposited sand dunes, the largest sand dune formation in the U.S. Below the grass-stabilized sandy surface of this 18 county region lie hundreds of feet of gravel and coarse sand, forming one of the largest aquifers in North America. Many of the approximately 2000 square miles (1.3 million acres) of wetlands in this region are formed where the ground's surface dips below the top of the groundwater aquifer.



(Photo by Melissa Nemling)

This region's abundant grasslands and water make it ideal for ranching and wildlife. Land use is primarily rangeland, with cropland/pasture on the plains and dissected plains of the eastern portion of the region. The predominant land use in the region is cattle grazing on large ranches. In one recent year, 535,000 beef cows grazed the grasslands of this productive environment.

Much of the region is sparsely populated. Cities in this region include O'Neill (pop. 3733), Valentine (2820), Ainsworth (1862), Gordon (1756), and Burwell (1130). Rivers originating in or flowing through the Sandhills region include the Niobrara, Snake, South Loup, North Loup, Middle Loup, Loup, Dismal, Calamus, Elkhorn, and Cedar. Ninety percent of annual stream flow in Sandhills rivers originates from spring-fed groundwater.

Although the region is known for high quality water, surface water and groundwater contamination from agricultural chemicals and livestock operations in portions of the region present major challenges in the state's environmental protection efforts. A heavily irrigated area in the eastern portion of the region contains significant nitrate contamination of groundwater, and portions of some of the region's rivers are impaired due to fecal coliform bacteria. NDEQ's Groundwater Management Area program works cooperatively with the state's Natural Resources Districts to address nitrate contamination issues. Fecal coliform bacteria originating from human and livestock sources (wastewater treatment facilities and animal feeding operations) are regulated through the National Pollutant Discharge Elimination System (NPDES) program.

[DEQ NE.gov Home Page](#)

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P.O. Box 98922
Lincoln, Nebraska 68509
(402) 471-2186

Your Environment By Region: Sandhills - (North-Central Nebraska)

The Sandhills region, located in central and north-central Nebraska, covers nearly 20,000 square miles of wind-deposited sand dunes, the largest sand dune formation in the U.S. Below the sandy surface lie hundreds of feet of gravel and coarse sand, forming one of the largest aquifers in North America.

Much of the Sandhills region is sparsely populated. Cities in this region include O'Neill (pop. 3733), Valentine (2820), Ainsworth (1862), Gordon (1756), and Burwell (1130).

[More information](#)



(photo by Melissa Kemling)

Sandhills Regional Statistics

[Water Statistics: Nitrates, Designated Uses](#)
[Air Statistics: Particulates, Emissions](#)
[Waste Statistics: Contamination Sites, Waste to landfills](#)

Regional Topics

[Monitors Help Track Broader Air Trends](#)

[Link to other Statewide and Regional Topics](#)

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3) Sandhills location
& characteristics

Attachment 8.8

Bonny

Nebraska Earthquakes

April 1867 ~~ January 2016

April 24, 1867 ~ Lawrence KS, but felt across much of Nebraska

Nov. 15, 1877 ~ Probably the strongest earthquake in Nebraska history. There were two shocks 45 minutes apart; the second was the strongest. At North Platte, the shock had intensity VII effects, buildings rocked at Lincoln, and walls were damaged at Columbus. The quake was felt across most of Nebraska and portions of Iowa, Kansas, the Dakotas, and northwestern Missouri.

July 28, 1902 ~ Intensity V earthquake occurred near Battle Creek in northeastern Nebraska. The tremor was reported sufficient to rattle dishes and shake bell towers at several points.

Feb 26, 1910 ~ Several small earthquakes shook house (IV-V) in Columbus.

July 30, 1934 ~ Dawes County ~ Chadron ~ Nebraska Panhandle

March 1, 1935 ~ Two earthquakes, 4 minutes apart shook the area near Tecumseh.

April 14, 1961 ~ Beaver City ~ South-central Nebraska

March 28, 1964 ~ 5.1 earthquake in Western Nebraska; causing many cracks in a road 10 miles south of Merriman; steep banks along the Niobrara River tumbled (Intensity VII); plaster fell at Rushville; part of a chimney toppled at Alliance. The quake occurred one day after the disastrous Alaska quake.

Nov.23, 1967 ~ Quake reportedly lasting more than two minutes shakes windows, rattles dishes in north-central Nebraska and south-central South Dakota.

Nov. 9, 1968 ~ Lincoln feels slight effects of a 5.5 magnitude quake centered in southern Illinois.

Oct. 15, 1972 ~ 3.7 magnitude (Intensity V) earthquake in Bassett; also felt in Ainsworth and Newport.

May 13, 1975 ~ 3.5 magnitude 27KM ~ Bartlett and in Holt County ~ Deloit Township 3.5 magnitude 10KM

May 7, 1978 ~ 3.8 magnitude earthquake in Hyannis; quake shook the oak pews and brick building of All Saints Church.

April 8, 1979 ~ 2.8 magnitude earthquake in St. Paul ~ 22KM

June 30, 1979 ~ 3.3 magnitude earthquake in Fairbury ~ 16KM

Oct. 9, 1981 ~ 3.3 magnitude earthquake in St. Paul ~ 8KM

June 3, 1982 ~ 2.24 magnitude earthquake is centered about four miles northeast of Wymore.

Nov. 14, 1982 ~ 4.3 magnitude quake reported along the eastern end of the Nebraska-South Dakota border; Public's reaction ~ thought it was a big explosion ~ near the Gavins Point Hatchery near the dam, windows actually trembled and you could see them move.

Jan. 1, 1987 ~ 3-3.5 magnitude quake centered at Crawford

June 10, 1987 ~ 5 magnitude earthquake centered in Illinois, is felt in Omaha as Press box atop Ak-Sar-Ben grandstand sways

Feb 9, 1989 ~ 4 magnitude quake shakes houses and beds in Cherry County.

July 18, 1990 ~ 3.0 magnitude quake centered near Ord ~ 10KM; rattles dishes and shakes houses.

March 30, 1993 ~ 2.9 magnitude quake centered near Peru; shakes buildings at Peru State College and is felt as far south as Fall City.

Jan. 24, 1994 ~ 3.3 magnitude quake centered 15 miles northwest of Ainsworth; just a week after a disastrous Los Angeles earthquake.

Feb. 6, 1996 ~ 3.6 magnitude quake centered around Bloomfield/Creighton ~ 12KM

Aug. 9, 1997 ~ earthquake at Clarkson in east-central Nebraska

Aug. 19, 1997 ~ 3.4 magnitude quake in Stanton ~ 17KM

Nov. 13, 2001 ~ 3.3 magnitude quake in Cambridge in southwest Nebraska ~ 31KM ~ centered on the NE-KS border between McCook and Oberlin KS.

June 20, 2002 ~ 3.5 magnitude quake was centered near Greeley, 20 miles east of Ord; Reviewed by seismologist and Public report of 16.

Nov. 4, 2002 ~ 4.3 magnitude with 5KM depth ~ quake hits northeast Nebraska in the Saratoga Township NNW of O'Neill and cracking walls, rattling windows and knocking down shelves in Butte (Boyd Co.) ~ U.S. Ecology says it has taken earthquakes into consideration during planning for a proposed nuclear waste dump in Boyd County. The dump was never built.

Feb 14, 2003 ~ 3.3 magnitude quake in Arapahoe ~ 12KM

May 26, 2003 ~ 4.4 magnitude quake shakes parts of western South Dakota and northwestern Nebraska ~ centered about 30 miles northeast of Pine Ridge.

July 16, 2004 ~ 3.3 magnitude quake is centered about 20 miles southeast of Auburn. Tremors felt from Auburn to Brownville and Nemaha and as far north as central Sarpy County. ~

Dec. 17, 2005 ~ 2.5 magnitude with 5.00KM depth quake hits near Newport in northern Rock County.

Feb. 2, 2006 ~ 2.9 magnitude quake (6KM) felt in north-central Nebraska, it was centered 30 miles east of Ainsworth; felt in Bassett. Reviewed by seismologist.

Sept. 7, 2006 ~ 2.6 magnitude quake ~ Gordon NE ~ 19KM ~ Reviewed by seismologist.

April 4, 2007 ~ 2.7 magnitude quake ~ Chadron NE ~ 27KM ~ Reviewed by seismologist.

April 16, 2007 ~ 3.0 magnitude quake ~ Hayes Center ~ 25KM ~ Reviewed by seismologist and public report of 12.

Dec. 16, 2009 ~ 3.5 magnitude quake centered northwest of Auburn is felt throughout Southeast Nebraska.

March 20, 2010 ~ 2.7 magnitude quake ~ 9KM ~ Springview ~ (KeyaPaha Co.) ~ Reviewed by seismologist and public report of 16.

Sept. 2010 ~ 3.0 magnitude quake ~ Oconto NE

Sept. 26, 2010 ~ 3.1 magnitude quake ~ Cozad ~ 27KM ~ Reviewed by seismologist and public reports of 170.

Nov. 18, 2010 ~ 3.3 magnitude quake ~ Schuyler ~ 11KM ~ Reviewed by seismologist and public reports of 128.

March 10, 2011 ~ 2.9 magnitude quake ~ Harrison ~ 25KM ~ Reviewed by seismologist and public reports of 24.

Nov. 14, 2011 ~ 4.0 magnitude quake ~ Chadron ~ 41KM ~ Reviewed by seismologist and public reports of 84.

Nov. 19, 2011 ~ 2.8 magnitude quake ~ Chadron ~ 11KM ~ Reviewed by seismologist.

Aug. 6, 2012 ~ 2.5 magnitude quake ~ Mullen ~ 21KM ~ Reviewed by seismologist and public report of 6.

Oct. 18, 2012 ~ 3.6 magnitude quake ~ Hyannis ~ 28KM ~ Reviewed by seismologist and public report of 50.

Jan. 14, 2014 ~ 2.9 magnitude quake ~ Wymore ~ 10KM ~ Reviewed by seismologist and public report of 40.

June 18, 2015 ~ 3.3 magnitude quake ~ Valentine ~ 15KM ~ Reviewed by seismologist and public report of 8.

Aug. 19, 2015 ~ 3.6 magnitude quake ~ Thedford ~ 34KM ~ Reviewed by seismologist and public report of 18.

Nov. 10, 2015 ~ 3.2 magnitude quake ~ Mullen ~ 52KM ~ Reviewed by seismologist and public report of 2.

Jan. 4, 2016 ~ 3.5 magnitude quake ~ Broken Bow ~ 16KM ~ Reviewed by seismologist and public report of 42.

Attachment 8.9

I am Bonny Kilmurry, an individual intervener on Docket HP14-001, hearing scheduled for July 27 through August 4, 2015. This is my written formal intervener statement. Thank you for allowing me the opportunity to participate in this process.

TransCanada is not the good neighbor it purports to be. Not only does TransCanada exaggerates it's job numbers,¹ the company also has a long history of spreading half-truths about the efficacy and safety of their exiting pipelines and the proposed Keystone XL pipeline.² As a landowner who is affected by the proposed Keystone XL pipeline, I have a financial and emotional interest in the fate of this proposed pipeline; however, what began as gut response is now based on factual research. I can now say, that TransCanada actions are not neighborly, and their actions speak to a blatant disregard of the land and water I seek to preserve.

¹ *Factcheck.org*. "Pipeline Primer." March 10, 2014.
<http://www.factcheck.org/2014/03/pipeline-primer/>

² *Factcheck.org*. "Pipeline Primer." March 10, 2014.
<http://www.factcheck.org/2014/03/pipeline-primer/>

TransCanada exaggerates pipeline safety. Let's look TransCanada's record for the first Keystone pipeline. The company boasted that this project would only have one leak in a seven-year period; however, in its first year of operation twelve were reported.³ In one such leak, a six-story geyser unleashed 21,000 barrels of oils in North Dakota.⁴ Furthermore, there are numerous issues with the southern leg of Keystone I. In one such instance, "a mandatory inspection test revealed a section of the pipeline's wall had corroded 95%, leaving it paper-thin in one area (one-third the thickness of a dime) and dangerously thin in three other places, leading TransCanada to immediately shut it down."⁵ The public was never notified of these issues. TransCanada claims to have speedily dealt with these issues, but I think this is more of a symptom of their lack of neighborliness. If the pipeline was so safe, then why would it leak twelve times in its first

³ Lacy, Stephen. *Climate Progress*. "After 12 Oil Spills in One Year, TransCanada Says Proposed Keystone XL Pipeline Will Be Safest in U.S." August 17, 2011.

<http://thinkprogress.org/climate/2011/08/17/297576/oil-spills-transcanada-keystone-xl-pipeline/>

⁴ O'Connor, Phillip. *St. Louis Post-Dispatch*, "Keystone oil pipeline shut down after leak." May 10, 2011.

http://www.stltoday.com/news/local/metro/article_dae7b66ee0c5-5677-9acd-0773efb0d8d1.html

⁵ Dermansky, Julie. *Desmog*. "Exclusive TransCanada Keystone 1 Pipeline Suffered Major Corrosion Only Two Years In Operation, 95% Worn in One Spot," April 30, 2015.

<http://www.desmogblog.com/2015/04/30/exclusive-transcanada-keystone-1-pipeline-suffered-major-corrosion-only-two-years-operation-95-worn-one-section>

year? If the pipeline was so sturdy, why would TransCanada need to replace major portions of the route in the pipeline's first year of operation?

I also believe that TransCanada has a corporate culture that flouts regulations in favor of profit. Evan Vokes, a former engineer for the company, made a formal complaint about TransCanada's non-compliance of regulations to Canada's National Energy Board (NEB) in 2012. From this formal complaint, the NEB found that "...many of the allegations of regulatory non-compliance identified by the Complainant were verified by TransCanada's internal audit."⁶ By 2014, TransCanada had dealt with their welding issues, however, these problems were only solved after the formal complaint was filed with the NEB.⁷ Prior to contacting the NEB, Vokes had voiced his concern within internal channels at TransCanada. These complaints were simply ignored. This story is not isolated. In March of this year, another individual brought "...a dozen allegations that deal with the

⁶ *CBC News*. "Whistleblower Forced Investigation of TransCanada Pipelines," October 17, 2012.
<http://www.cbc.ca/news/canada/whistleblower-forced-investigation-of-transcanada-pipelines-1.1146204>

⁷ *CBC News*. "TransCanada Whistleblower's Complaints Validated by the NEB," February 25, 2015.
<http://www.cbc.ca/news/canada/edmonton/transcanada-whistleblower-s-complaints-validated-by-neb-1.2550175>

timeliness, quality and reporting of repairs on [TransCanada's] Alberta pipelines" to Canada's NEB.⁸ These allegations are currently under investigation.

I am happy to hear that TransCanada dealt with its prior regulatory allegations; however, it concerns me that TransCanada only dealt with these issues after they were under investigation by the NEB. These instances are not neighborly. The company knows the regulations, and they have a duty to comply. Since these instances are far from isolated, I am concerned that this trend of ignoring regulations will persist with the Keystone XL pipeline.

I am also concerned with TransCanada's treatment of the landowners. Lori Collins from Paris, Texas welcomed TransCanada when the company wanted to place the southern leg of the Keystone XL pipeline across her land.⁹ The men in her family are all oil field worker, and she

⁸ *Canadian Manufacturing*. "NEB Launches New Investigation Into TransCanada Pipeline," March 20, 2015.
<http://www.canadianmanufacturing.com/manufacturing/neb-launches-new-investigation-into-transcanadas-pipelines-146415/>

⁹ Elbein, Saul. *Texas Observer*. "Crossing the Line," September 17, 2014.
<http://www.texasobserver.org/keystone-xl-transcanada-crossing-line/>

strongly supported the pipeline construction. In 2012, during construction of the pipeline on their land, a backhoe dug up the Collins' septic system. Collins was not concerned because the TransCanada land agent assured her that the company would promptly fix the problem. This did not happen. Instead their house was filled with raw sewage, and the family had to move. A year and a half after this incident the company offered the family \$40,000 to fix the damage, only to backtrack their offer. Finally, nineteen months after the septic destruction, TransCanada settled with the Collins family out of court for \$479,000. The former TransCanada supporter was exhausted, and in an interview with the Texas Observer, Collins said, "... they sucked us dry. They took our home, our livelihood, our work from us."¹⁰

From the construction issues of the first Keystone pipeline, to their regulatory issues in Canada, I see a troubling trend. These examples show that TransCanada is far from neighborly. As a life-long resident of the Sandhills and landowner along the Keystone XL pipeline, I have a vested

¹⁰ Elbein, Saul. *Texas Observer*. "Crossing the Line," September 17, 2014. Web <http://www.texasobserver.org/keystone-xl-transcanada-crossing-line/>

SD PUC Commissioners
HP14-001 Hearing
July 24, 2015

interests in your Commission's decision. As an informed citizen, I am concerned. I see a company that values profits over the livelihoods of South Dakota's citizens. I ask that your Commission takes these facts into consideration, and I thank you for the opportunity to present my findings to you.

Regards,

Bonny Kilmurry

47798 888 Road

Atkinson, Nebraska 68713

bjkilmurry@gmail.com

402.925.5538

Attachment 8.10



April 30, 2013
O'Neill, Nebraska

The Holt County Board of Supervisors met in regular session as per adjournment with all members present. This meeting publicized pursuant to Section 84-1411 R.R.S. 1943. Chairman Tielke convened the meeting at 9:46 A.M. and informed the public of the location of the Open Meeting Poster.

Motion by Hahlbeck, 2nd by Boshart, to approve the minutes of the April 16, 2013 meeting as printed. Voting Aye: Hahlbeck, Butterfield, Boshart, Metschke and Tielke. Voting Nay: None. Abstain: Snyder and Scholz. Motion carried.

The Board reviewed the correspondence received from the Department of Environmental Quality regarding permits issued for Riverview, LLP and a transfer of permit to Elkhorn Farms, Inc. Motion by Boshart, 2nd by Butterfield, to approve the issuance of a special designated license for Angel's Inc. to allow alcohol in the vendors' area outside their licensed premises for their BikeFest promotion on July 26 & 27, 2013. Voting Aye: Snyder, Butterfield, Boshart, Scholz, Metschke, Hahlbeck and Tielke. Voting Nay: None. Motion carried.

The Board reviewed claims on file.

10:15 being the time advertised the meeting was opened up for discussion on the Keystone XL Pipeline that is proposed to come through Holt County. 35 interested landowners along with 3 Keystone XL Pipeline Representatives were present. Time was allowed for the following to speak: Mary Jean Adams, Bob Beelaert, Ernie Fellows, Oliver Horton, Jeff Rauh, Ray Kopecky, Neil Galloway, Bruce Boettcher, Lloyd Addison, Dwain Marcellus, Susan Schaaf, Sue Mitchell, Terry Frisch, Bud Andersen and Susan Luebbe.

Chairman Tielke suggested a motion that Holt County is not opposed to pipelines but is concerned with the tar sands being pumped through Holt County.

RESOLUTION #2013-7
OF THE

HOLT COUNTY BOARD OF SUPERVISORS

Motion by Boshart, 2nd by Metschke, to propose the following Resolution: to oppose all crude oil and or tar sand pipelines across Holt County. Voting Aye: Butterfield, Boshart, Scholz, Metschke, Hahlbeck, Snyder and Tielke. Voting Nay: None. Motion carried.

Attachment 8.11







Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

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

**Direct Testimony of
Robert Krutz in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Antelope County)

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

2 A: My name is Robert Krutz.

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

6 A: Yes, I am.

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

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

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

14 A: Yes.

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

16 A: Beverly Krutz.

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

3 **Q: How long the land has been in your family?**
4 A: I have owned the land for 17 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 over 275 miles of**
7 **Nebraska land?**

8 A: No.

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

13 A: No.

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

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

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

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

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

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

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

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

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

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

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

26 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 A: No, never.

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

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

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

4 A: Yes, it is.

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

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

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

13 A: No, I did not.

14 **Q: Why not?**

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

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

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

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

4 A: No, they have not.

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

8 A: No, they have not.

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

11 A: Yes, I am.

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

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

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

20 A: No, they have not.

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

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

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

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

6 A: No, it has not.

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

10 A: No, I do not.

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

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

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

17 A: Yes, I do.

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

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

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

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

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

28 A: No, of course not.

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

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

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

8 A: Well, yes I have.

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

13 A: No, of course not.

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

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

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

1 A: The ground is primarily sandy soil and the pipeline company, who are not
2 stewards of the land, would destroy the native grasses and it would not return it to
3 the natural state of native grasses. It is also a high water table area; if the pipeline
4 would leak water would be contaminated. The windmill is the only source of water
5 for the ground. It would cost too much to buy water to water livestock. By
6 scraping off the top soil it is easier for noxious weeds to get a foothold on the
7 ground and it will be very costly to control them. This would be a yearly cost for
8 me to try to keep the noxious weeds under control. I am a farmer and a steward of
9 the land.

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

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

1 **Q: Do you believe TransCanada’s proposed method of compensation to you as a**
2 **landowner is reasonable or just?**

3 A: No, I do not.

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

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

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

14 A: Well yes, of course.

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

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

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 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 during the construction process, and any future maintenance or

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

21 A: Yes, I have.

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

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

27 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
28 **Application, and as found on Attachment No. 6, 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. 6 included with your testimony here is a major oil pipeline**
4 **route that is in the public interest of Nebraska?**

5 A: No, I do not.

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

9 A: No, I do not.

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

13 A: No, I do not.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 A: Yes. After my passing, the land will be left to my children and spouse and any
26 future grandchildren. TransCanada cannot guarantee that the sandy soils will be
27 back to their original condition due to the fact of disrupting the ground and the
28 land will erode because of the lost cover that the company takes from the land. I
29 will lose income due to the erosion that will be caused by the destruction of the

1 land. The pasture is a source of income for my farming operation. If this pipeline
2 is constructed I would lose rental income for that season and possibly for future
3 years. I have concerns that this is a foreign company crossing our borders and they
4 are not showing how they are going to use this product here in the United States
5 and have not disclosed what is exactly being transported within the pipeline. Cattle
6 drink 35 gallons of water a day and if I have to purchase and haul water for the
7 cattle I will be out of business and it will be unrealistic for me to have cattle.

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

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

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

25 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
26 a temporary job spike that this project may bring to a few counties and beyond the
27 relatively small amount of taxes this proposed foreign pipeline would possibly
28 generate. And, instead think about the perpetual and forever impacts of this
29 pipeline as it would have on the landowners specifically, first and foremost, but

1 also thereby upon the entire state of Nebraska, and to determine that neither the
2 preferred route nor the Keystone mainline alternative route are in the public
3 interest of the citizens of the state of Nebraska. And if the Commissioners were
4 inclined to modify TransCanada's proposed routes and were to be inclined to grant
5 an application for a route in Nebraska, that the only potential route that would
6 make any intelligent sense whatsoever would be twinning or near paralleling of
7 the proposed KXL with the existing Keystone I pipeline. It simply does not make
8 sense to add yet another major oil pipeline crisscrossing our state creating new
9 pumping stations, creating new impacts on additional counties and communities
10 and going through all of the court processes with myself and other landowners like
11 me when this applicant already has relationships with the landowners, the towns
12 and the communities along Keystone I, and that Keystone I is firmly outside of the
13 sand hills and a significantly further portion away from the heart of the Ogallala
14 Aquifer than the preferred route or the Keystone mainline alternative route.

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

18 A: Yes, they are.

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

Robert Kintz,
Robert Kintz

Subscribed and sworn to the before this 26th day of May, 2011.

Stan Clayton
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.

S. 027
T. 028 N
R. 008 W

S. 026
T. 028 N
R. 008 W



Beverly J. Krutz
Robert R. Krutz

S. 034
T. 028 N
R. 008 W

S. 035
T. 028 N
R. 008 W

IMAGERY: NAIP 2016



S. 003
T. 027 N
R. 008 W

S. 002
T. 027 N
R. 008 W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Beverly J. Krutz
Robert R. Krutz

TRACT NO. ML-NE-AT-30075.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 034
TOWNSHIP: 028N
RANGE: 008W

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

May 2017 - X:\Drawings\6358\KEYSTONE_XL\6300_999536.dwg

Attachment No. 2

**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-30075.000

**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**") **Robert R. Krutz and Beverly J. Krutz**, whose mailing address is 86450 514 Avenue, Orchard, NE 68764 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or

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

A tract of land containing 314.20 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the E1/2 of Section 34, Township 28 North, Range 8 West of the 6th P.M., as recorded in Book 120, Page 539 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):

Robert R. Krutz

Beverly J. Krutz

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **Robert R. Krutz**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

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

By **Beverly J. Krutz**

Notary Public Signature

Affix Seal Here

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-AT-30075.000

We, Robert R. Krutz and Beverly J. Krutz, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Hundred Twenty Dollars and No Cents (\$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 Antelope, State of Nebraska:

E/2

Section 34, Township 28N, Range 8W

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

IN WITNESS WHEREOF, we have hereunto set our hands on this _____ day of _____, 20____.

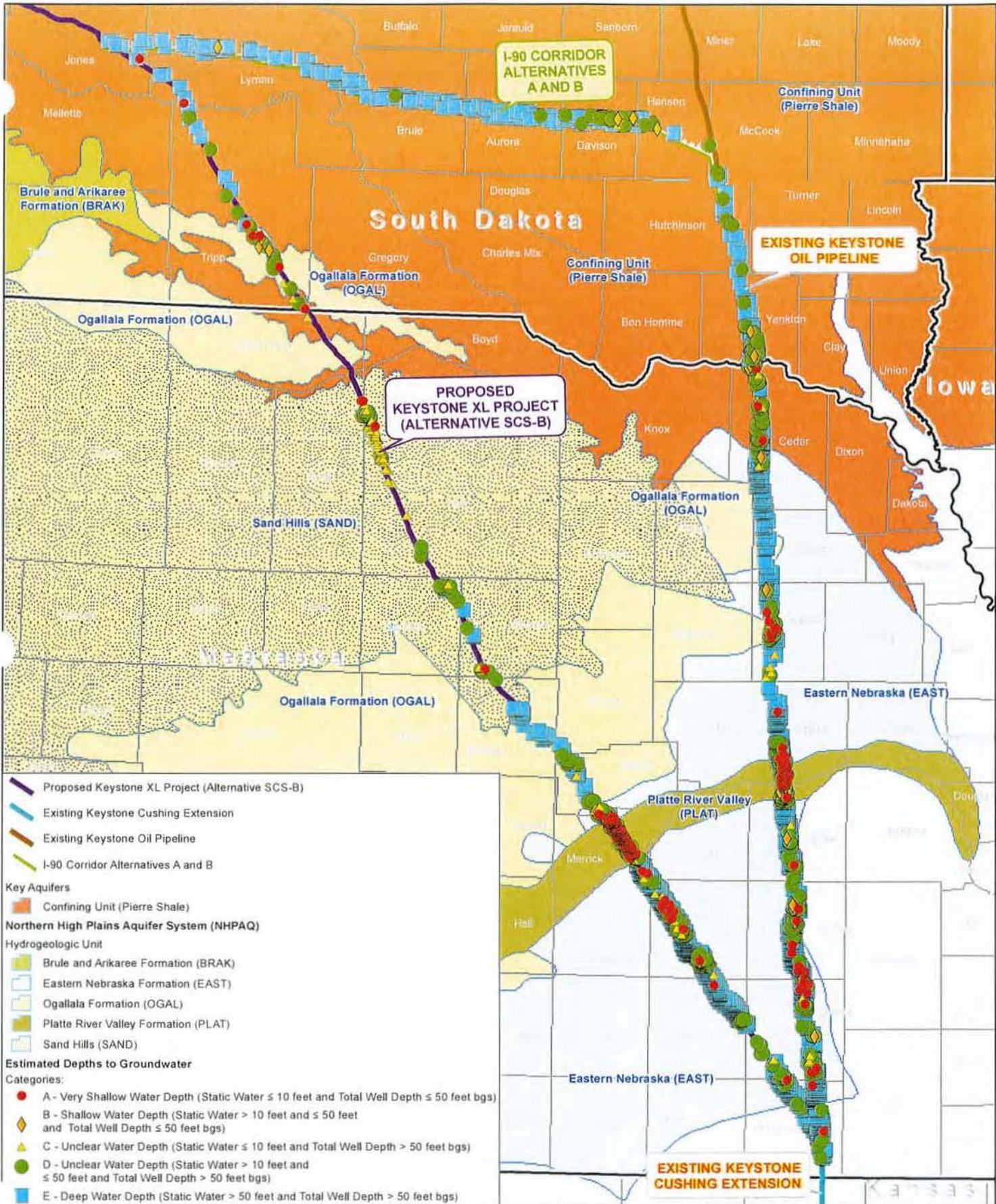
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 5



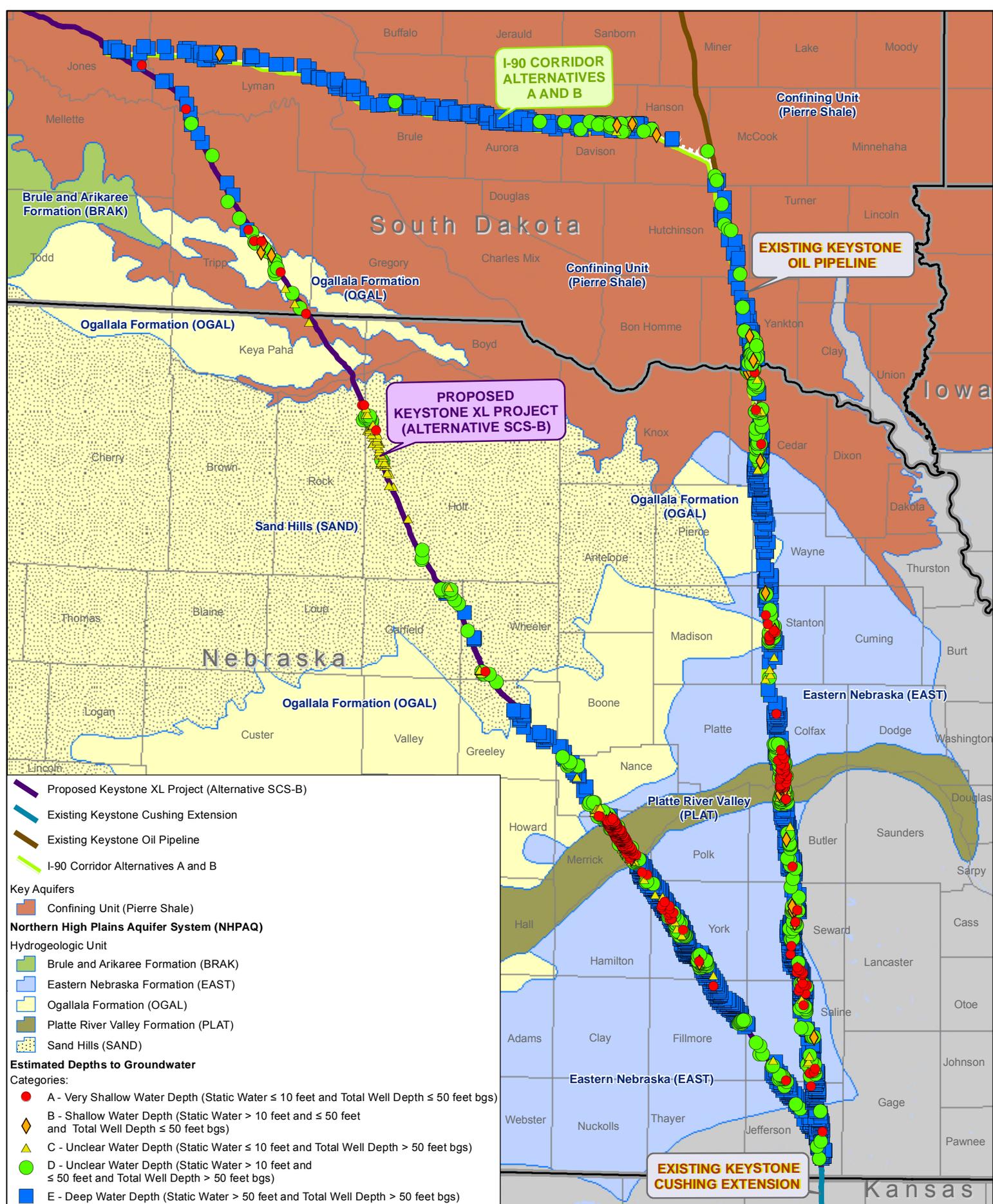
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

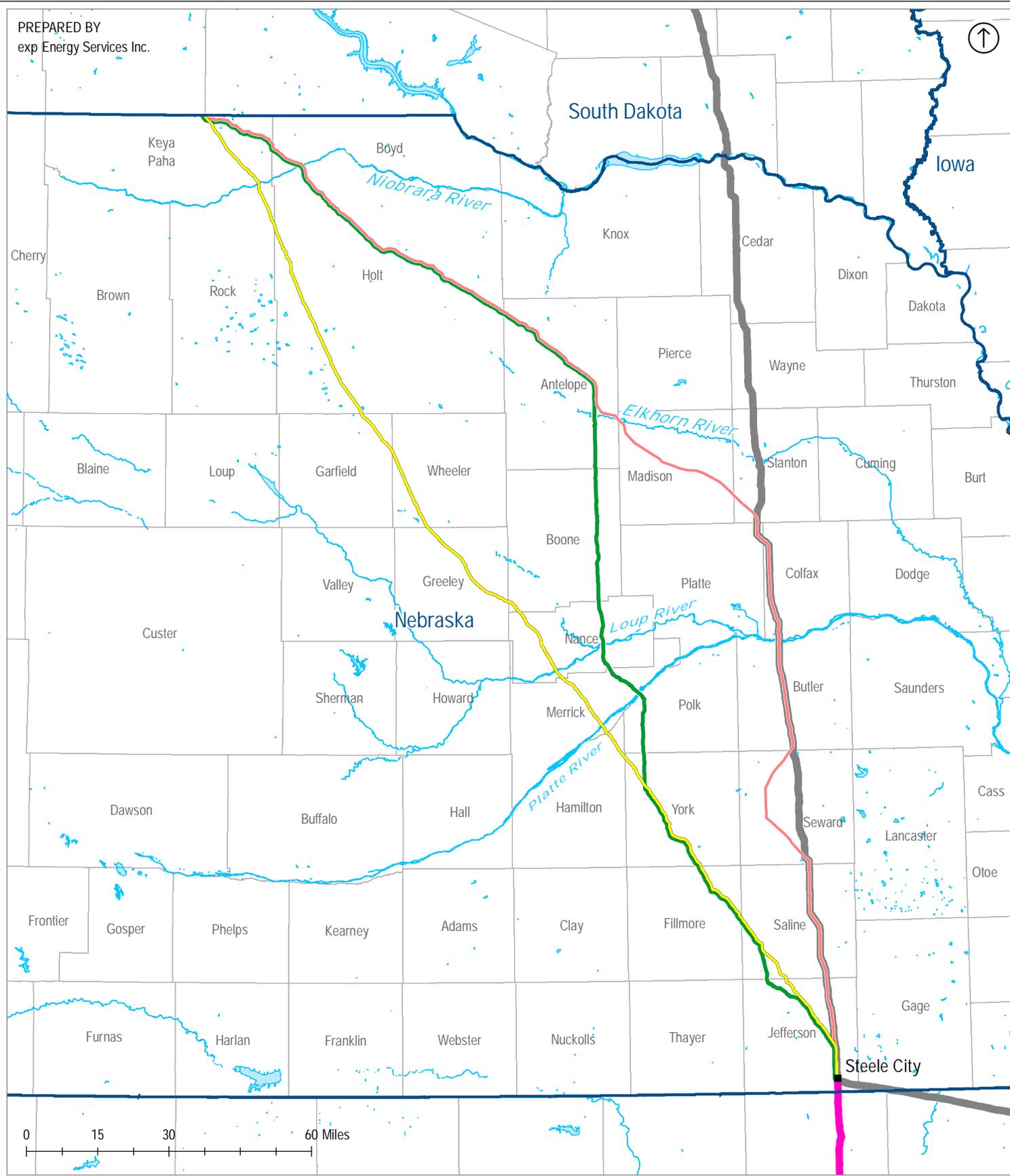
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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
Donald Loseke in Support of Landowner
Intervenors**

State of Arizona)
) ss.
Maricopa County)

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

2 A: My name is Donald Loseke.

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: If you are you married tell us your spouse’s name please?**

16 A: Wanda Loseke.

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

3 A: Yes.

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

5 A: The land was purchased by father Hugo Loseke in the 1950's and the rest in 1960.

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

7 A: Yes.

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

10 A: Yes.

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

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

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

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

1 **Q: What is your intent with your land after you die?**
2 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
3 to come but I have thought about getting out if this pipeline were to come through.
4 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
5 **Pipeline would cross the land described above and owned by you?**
6 A: Yes.
7 **Q: Were you or an entity for which you are a member, shareholder, or director**
8 **previously sued by TransCanada Keystone Pipeline, LP?**
9 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
10 petition for condemnation against our land so it could place its proposed pipeline
11 within an easement that it wanted to take from us on our land.
12 **Q: Did you defend yourself and your land in that condemnation action?**
13 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
14 and expenses in our resistance of TransCanada's lawsuit against us.
15 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
16 **incurred?**
17 A: No, they have not.
18 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
19 **property that it wanted to take for its proposed pipeline?**
20 A: The lawsuit against us stated they would take the amount of property that is
21 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
22 and equipment reasonably necessary to operate the pipeline.
23 **Q: Did TransCanada define what they meant by "property that is reasonably**
24 **necessary"?**
25 A: No, they did not.
26 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
27 **property portion of your land?**
28 A: Yes, they did.

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

3 A: Yes, they did.

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

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

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

16 A: No, I do not.

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

19 A: Yes, they did.

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

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

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

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

3 A: Yes, it is.

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

6 A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

25 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
26 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
27 limited partnership..." and I have no idea who that really is. I have no idea who is
28 forcing this pipeline on us or who the owners of the entities are, or what are the
29 assets backing this limited partnership, or who the general partner is, or who all

1 the limited partners are, and who makes up the ownership of the these partners or
2 the structure or any of the basic things you would want to know and understand if
3 you would want to do business with such an outfit. According to TransCanada's
4 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
5 liability company called TransCanada Keystone Pipeline GP, LLC is the general
6 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
7 basically nothing. That is really scary since the general partner has the liability but
8 virtually none of the ownership and who knows if it has any other assets.

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

12 A: No.

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

17 A: No.

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

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

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

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

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

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

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

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

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

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

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

1 A: Yes.

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

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

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

23 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
24 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
25 reasonable costs and expenses” will pay for damages caused but then limits
26 TransCanada’s liability to certain circumstances. There is no definition of
27 “commercially reasonable” and no stated right that the Landowner would get to
28 determine the amounts of cost or expense that is “commercially reasonable.”
29 TransCanada excepts out from their liability any damages that are caused by

1 Landowner's negligence or the negligence of anyone ever acting on the behalf of
2 Landowner. It is understandable that if the Landowner were to willfully and
3 intentionally cause damages to the pipeline that Landowner should be liable.
4 However, anything short of willful misconduct should be the liability of
5 TransCanada who is subjecting the pipeline on the Landowner and who is making
6 a daily profit from that pipeline. When evaluating the impact on property rights of
7 this provision, you must consider the potentially extremely expensive fight a
8 Landowner would have over this question of whether or not damage was an act of
9 negligence. Putting this kind of potential liability upon the Landowner is
10 incredibly problematic and is detrimental to the protection of property rights. I
11 don't think this unilateral power which I can't do anything about as the landowner
12 is in the best economic interest of the land in question or the State of Nebraska for
13 landowners to be treated that way.

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

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

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

23 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
24 they choose unless 1) any Landowner use interferes in any way with
25 TransCanada's exercise of any of its rights within the Easement, or 2)
26 TransCanada decides to take any action on the property it deems necessary to
27 prevent injury, endangerment or interference with anything TransCanada deems
28 necessary to do on the property. Landowner is also forbidden from excavating
29 without prior authorization by TransCanada. So my understanding is that

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

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

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

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

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

1 unilateral powers would negatively affect Landowners property are not conducive
2 to the protection of property rights or economic interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 exactly how the landowner is to be compensated and in what events on the front
2 end. I can't afford to fight over this after the damage has occurred. Unfortunately,
3 the Landowner is without contractual rights to define these terms or determine
4 when rights related to them trigger and what the affects may be.

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

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

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

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

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

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

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

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

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

1 A: No, never.

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

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

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

8 A: Yes, it is.

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

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

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

17 A: No, I did not.

18 **Q: Why not?**

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

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

25 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
26 shield themselves against known and foreseeable impacts that their pipeline, and
27 the construction of it, would have upon my land. It made me feel that they knew it
28 was in their financial interest to pay me as little as possible to prevent me from
29 ever having the opportunity to seek fair compensation again, and that this must be

1 based upon their experience of unhappy landowners and situations in other places
2 where they have built pipelines.

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

6 A: No, they have not.

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

10 A: No, they have not.

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

13 A: Yes, I am.

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

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

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

22 A: No, they have not.

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

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

1 are geographically in the way from between where the privately-owned Tar Sands
2 are located to where TransCanada wants to ship the Tar Sands to refineries in
3 Houston, Texas.

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

7 A: No, it has not.

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

11 A: No, I do not.

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

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

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

18 A: Yes, I do.

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

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

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

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

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

29 A: No, of course not.

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

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

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

8 A: Well, yes I have.

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

13 A: No, of course not.

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

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

19 **Q: At the beginning of your statement, you briefly described your property that**
20 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
21 **give the Commissioners a sense of specifically how you believe the proposed**
22 **Keystone XL Pipeline and its preferred route, which proposes to go across**
23 **your land, how it would in your opinion based on your knowledge,**
24 **experience, and background of your land, affect it. 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: We need to remember that this is not oil that they are wanting to put through this
2 pipeline, it is almost 50% tar sands and diluted with benzene and other toxic
3 chemicals to make this mixture flow. Benzene is a very toxic substance that can be
4 very harmful if you get in contact with it. It will also be heated and this will cause
5 this area of our land to be warm all the time. We need freezing and thawing of this
6 land to keep it in the best shape for our use to raise corn and soybeans. KXL
7 wants to get an easement right through the middle of our farm for one mile. This
8 land is listed as highly erodible by the USDA and is subject to erosion. We farm
9 this land according to the lay of the land and take measures to keep this land from
10 eroding the best that we can. This pipeline will go up and down the hills with no
11 thought as to what a very hard rain will do and what erosion will occur. Canada
12 has not even given KXL a permit to go to a west coast port in Canada to transport
13 this mixture so why should we even consider giving them a permit to cross our
14 Ogallala aquifer and the entire state with the chance of polluting the one and only
15 big resource that we have. If this is allowed to pass we should get an annual
16 payment for the right to use our land. In a few years the State of Nebraska will get
17 very little taxes from this pipeline. Boone County will get very little in tax revenue
18 as they will have no pumping stations or permanent structures to tax. According
19 to language in the easement the land owner can be held responsible for damage to
20 this pipe if they think leak could have been caused by the landowner. KXL will
21 sue you into eternity trying to prove that it is your fault rather than theirs. It is our
22 understanding that this pipe will only be buried 4 feet deep. We have had hard
23 rains that have eroded our pivot tracks deeper than that. This pipeline is of no
24 benefit to the State of Nebraska and only will benefit a foreign corporation to
25 profit from its use. The jobs that this will create are temporary in nature and no
26 more than 6 to 10 permanent jobs will be created in Nebraska.

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

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

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

19 A: No, I do not.

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

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

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

1 A: Well yes, of course.

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

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

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

20 A: Yes, I do.

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

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

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

27 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
28 construction and/or maintenance and operation. I am concerned about spills and

1 leaks that TransCanada has had in the past and will have in the future. This could
2 be catastrophic to my operations or others and to my county and the State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 A: Yes, I have.

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

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

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

17 A: No, I do not.

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

29 A: No, I do not.

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

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

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

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

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

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

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

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

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

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

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

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

26 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
27 already exists in that area is reason enough as it is not in our best interest or the
28 public interests to have more major oil pipelines crisscrossing our state. Second,
29 they have all the infrastructure already there in terms of relationships with the

1 counties and local officials and first responders along that route. Third, they have
2 already obtained easements from all the landowners along that route and have
3 relationships with them. Fourth, that route avoids our most sensitive soils, the
4 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
5 Aquifer. Sixth, they have already studied that route and previously offered it as an
6 alternative. Seventh, it just makes the most sense that as a state we would have
7 some intelligent policy of energy corridors and co-locating this type of
8 infrastructure near each other.

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

11 A: Yes. If this is allowed to pass we should get an annual payment for the right to use
12 our land. In a few years the State of Nebraska will get very little taxes from this
13 pipeline. Boone County will get very little in tax revenue as they will have no
14 pumping stations or permanent structures to tax. According to language in the
15 easement the land owner can be held responsible for damage to this pipe if they
16 think leak could have been caused by the landowner. KXL will sue you into
17 eternity trying to prove that it is your fault rather than theirs. It is our
18 understanding that this pipe will only be buried 4 feet deep. We have had hard
19 rains that have eroded our pivot tracks deeper than that. This pipeline is of no
20 benefit to the State of Nebraska and only will benefit a foreign corporation to
21 profit from its use. The jobs that this will create are temporary in nature and no
22 more than 35 jobs will be created for this entire project.

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.

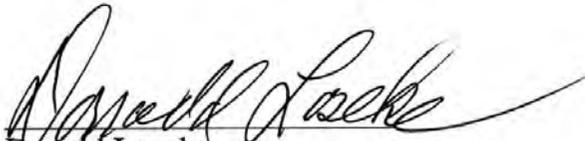
8 **Q: What is it that you are requesting the Public Service Commissioners do in**
9 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
10 **across Nebraska?**

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. It simply does not make
23 sense to add yet another major oil pipeline crisscrossing our state creating new
24 pumping stations, creating new impacts on additional counties and communities
25 and going through all of the court processes with myself and other landowners like
26 me when this applicant already has relationships with the landowners, the towns
27 and the communities along Keystone I, and that Keystone I is firmly outside of the
28 sand hills and a significantly further portion away from the heart of the Ogallala
29 Aquifer than the preferred route or the Keystone mainline alternative route.

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

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

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


Donald Loseke

Subscribed and Sworn to me before this 25th day of May, 2017.


Notary Public

 JEANNINE M KINCADE
Notary Public-State of Arizona
Maricopa County
My Comm. Exp. Dec. 4, 2020

Attachment No. 1

PREPARED BY
exp Energy Services Inc.



S.006
T.018N
R.005W

S.005
T.018N
R.005W

S.004
T.018N
R.005W

Donald C. Loseke Revocable Trust dated September 27, 2005
Wanda G. Loseke Revocable Trust dated September 27, 2005
Donald C. Loseke
Wanda G. Loseke

S.008
T.018N
R.005W

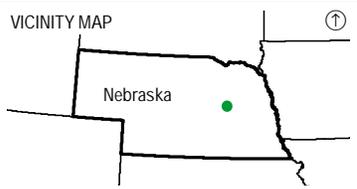
S.007
T.018N
R.005W

S.009
T.018N
R.005W

S.013
T.018N
R.005W

S.017
T.018N
R.005W

S.016
T.018N
R.005W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Donald C. Loseke Revocable Trust dated September 27, 2005
Wanda G. Loseke Revocable Trust dated September 27, 2005
Donald C. Loseke
Wanda G. Loseke

TRACT NO. ML-NE-BO-30375.000
STATE: Nebraska
COUNTY: Boone
SECTION: 008
TOWNSHIP: 018N
RANGE: 005W

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

May 2017 - X:\Drawings\50858\KEYSTONE_XL\9000_9949258

Attachment No. 2





Attachment No. 3

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

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-BO-30375.000

**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**"), **Donald C. Loseke, Trustee of the Donald C. Loseke Revocable Trust dated September 27, 2005, and Wanda G. Loseke, Trustee of the Wanda G. Loseke Revocable Trust dated September 27, 2005**, whose mailing address is 22025 N. Desperado Drive, Sun City West, Arizona 85375-2883 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission

lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Boone, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 600 acres, more or less, situated in the County of Boone, in the State of Nebraska, being further described as the SW1/4, NW1/4, SE1/4, S1/2 NE1/4, and the NW1/4 NE1/4 of Section 8, Township 18 North, Range 5 West of the 6th P.M., as recorded in Book 109, Page 591 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):

Donald C. Loseke Revocable Trust dated September 27, 2005

Donald C. Loseke, Trustee

Wanda G. Loseke Revocable Trust dated September 27, 2005

Wanda G. Loseke, Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **Donald C. Loseke, Trustee of the Donald C. Loseke Revocable Trust dated September 27, 2005**
on behalf of said Trust.

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

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

By **Wanda G. Loseke, Trustee of the Wanda G. Loseke Revocable Trust dated September 27, 2005**
on behalf of said Trust.

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-BO-30375.000

We, Donald C. Loseke, Trustee of the Donald C. Loseke Revocable Trust dated September 27, 2005, and Wanda G. Loseke, Trustee of the Wanda G. Loseke Revocable Trust dated September 27, 2005, of Boone County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Eight Thousand Five Hundred Twelve Dollars and No Cents (\$8,512.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Boone, State of Nebraska:

SE/4, SW/4, NW/4, S/2 NE/4, NW/4 NE/4

Section 8, Township 18N, Range 5W

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

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

_____, 20_____.

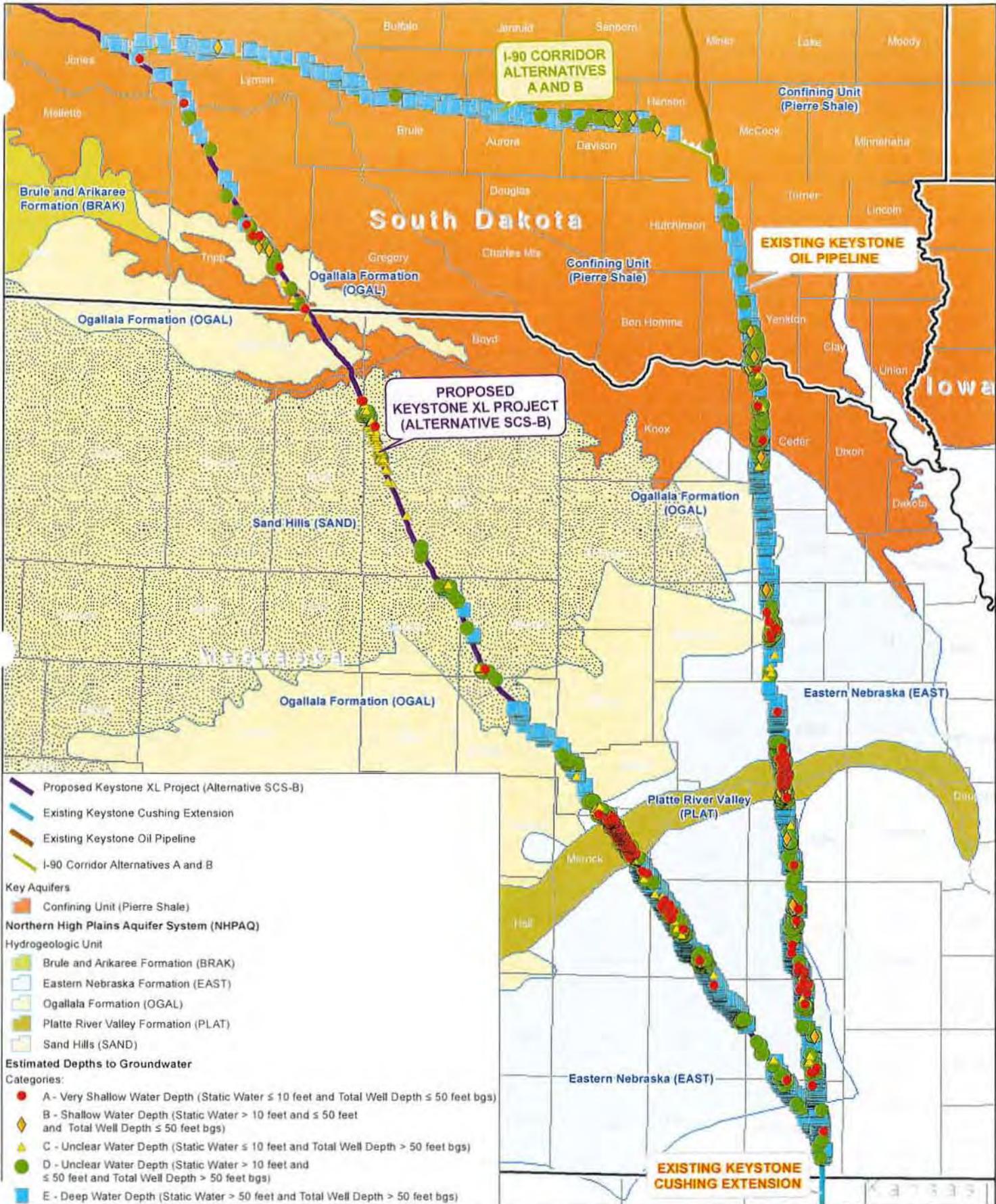
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



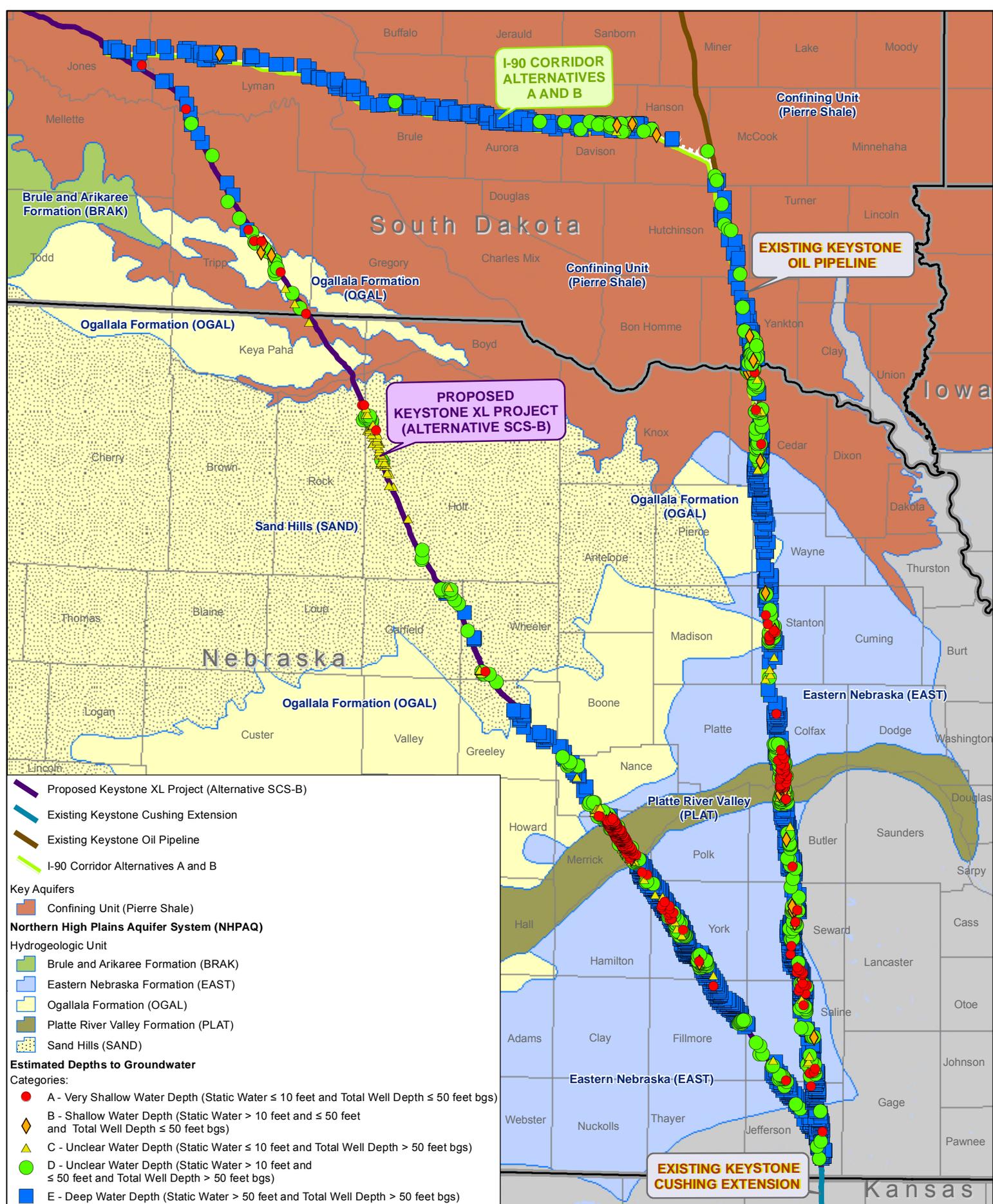
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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



KEYSTONE XL PROJECT

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



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

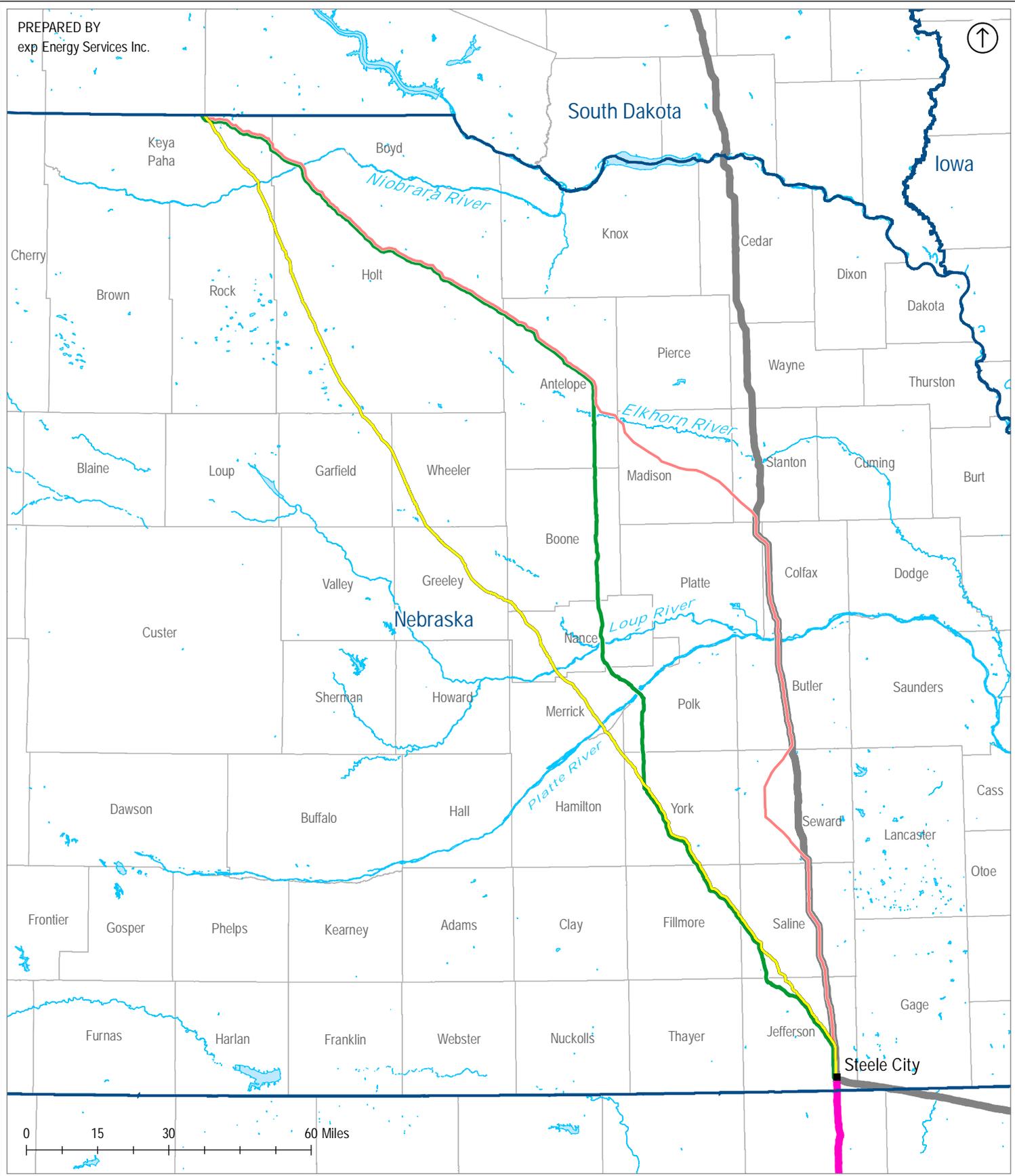
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

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

Attachment No. 7



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

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

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

Direct Testimony of
Frankie Maughan in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Antelope County)

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

2 A: My name is Frankie Maughan.

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

6 A: Yes, I am.

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

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

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

14 A: Yes.

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

16 A: Sandra Maughan.

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

3 A: Yes.

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

5 A: We bought this land in 1989.

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

7 A: Yes.

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

10 A: Yes.

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

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

24 **Q: Do you have similar concerns about selling the land?**

25 A: Well I hope not to have to sell the land in my lifetime but times change and you
26 never know what is around the corner and yes I am concerned that if another piece
27 of ground similar to mine were for sale and it did not have the pipeline and mine
28 did that I would have a lower selling price. I think this would be true for pipeline
29 ground on both the preferred and mainline alternative routes.

1 **Q: What is your intent with your land after you die?**

2 A: Like I said I hope not to have to sell and I hope that it stays in the family for years

3 to come but I have thought about getting out if this pipeline were to come through.

4 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**

5 **Pipeline would cross the land described above and owned by you?**

6 A: Yes.

7 **Q: Were you or an entity for which you are a member, shareholder, or director**

8 **previously sued by TransCanada Keystone Pipeline, LP?**

9 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a

10 petition for condemnation against our land so it could place its proposed pipeline

11 within an easement that it wanted to take from us on our land.

12 **Q: Did you defend yourself and your land in that condemnation action?**

13 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees

14 and expenses in our resistance of TransCanada's lawsuit against us.

15 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**

16 **incurred?**

17 A: No, they have not.

18 **Q: In its lawsuit against you, did TransCanada identify the amount of your**

19 **property that it wanted to take for its proposed pipeline?**

20 A: The lawsuit against us stated they would take the amount of property that is

21 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant

22 and equipment reasonably necessary to operate the pipeline.

23 **Q: Did TransCanada define what they meant by "property that is reasonably**

24 **necessary"?**

25 A: No, they did not.

26 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**

27 **property portion of your land?**

28 A: Yes, they did.

1 **Q: Did TransCanada describe what rights it proposed to take related to the**
2 **eminent domain property on your land?**

3 A: Yes, they did.

4 **Q: What rights that they proposed to take did they describe?**

5 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
6 operate, and maintain the pipeline and the plant and equipment reasonably
7 necessary to operate the pipeline, specifically including surveying, laying,
8 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
9 reconstructing, removing and abandoning one pipeline, together with all fittings,
10 cathodic protection equipment, pipeline markers, and all their equipment and
11 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
12 petroleum products, and all by-products thereof.”

13 **Q: Prior to filing an eminent domain lawsuit to take your land that**
14 **TransCanada identified, do you believe they attempted to negotiate in good**
15 **faith with you?**

16 A: No, I do not.

17 **Q: Did TransCanada at any time approach you with or deliver to you their**
18 **proposed easement and right-of-way agreement?**

19 A: Yes, they did.

20 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
21 **agreement, did you understand that they would be purchasing a fee title**
22 **interest in your property or that they were taking something else?**

23 A: I understood that they proposed to have the power to take both a temporary
24 construction easement that could last for a certain period of time and then also a
25 permanent easement which they described to be 50 feet across or in width, and
26 that would run the entire portion of my property from where a proposed pipeline
27 would enter my property until where it would exit the property.

28 **Q: Is the document included with your testimony here as Attachment No. 3, a**
29 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**

1 **Way agreement that they included with their condemnation lawsuit against**
2 **you?**

3 A: Yes, it is.

4 **Q: Have you had an opportunity to review TransCanada’s proposed Easement**
5 **and Right-of-Way agreement?**

6 A: Yes, I have.

7 **Q: What is your understanding of the significance of the Easement and Right-of-**
8 **Way agreement as proposed by TransCanada?**

9 A: My understanding is that this is the document that will govern all of the rights and
10 obligations and duties as well as the limitations of what I can and cannot do and
11 how I and any future landowner and any person I invite to come onto my property
12 must behave as well as what TransCanada is and is not responsible for and how
13 they can use my land.

14 **Q: After reviewing TransCanada’s proposed Easement and Right-of-Way**
15 **agreement do you have any concerns about any portions of it or any of the**
16 **language either included in the document or missing from the proposed**
17 **document?**

18 A: Yes, I have a number of significant concerns and worries about the document and
19 how the language included and the language not included potentially negatively
20 impacts my land and thereby potentially negatively impacts my community and
21 my state.

22 **Q: I would like you to walk the Commissioners through each and every one of**
23 **your concerns about TransCanada’s proposed Easement and Right-of-Way**
24 **agreement so they can develop an understanding of how that language and**
25 **the terms of that contract, in your opinion, potentially negatively impacts you**
26 **and your land. So, if you can start at the beginning of that document and**
27 **let’s work our way through it, okay?**

1 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
2 Easement and Right-of-Way agreement and how it negatively could affect my
3 property rights and my economic interests.

4 **Q: Okay, let's start with your first concern please.**

5 A: The very first sentence talks about consideration or how much money they will
6 pay to compensate me for all of the known and unknown affects and all of the
7 rights I am giving up and for all the things they get to do to my land and for what
8 they will prevent me from doing on my land and they only will pay me one time at
9 the signing of the easement agreement. That is a huge problem.

10 **Q: Explain to the Commissioners why that is a problem.**

11 A: It is not fair to the landowner, the county, or the State. It is not fair to the
12 landowner because they want to have my land forever for use as they see fit so
13 they can make a daily profit from their customers. If I was to lease ground from
14 my neighbor I would typically pay twice a year every year as long as they granted
15 me the rights to use their land. That only makes sense – that is fair. If I was going
16 to rent a house in town I would typically pay monthly, every month until I gave up
17 my right to use that house. By TransCanada getting out on the cheap and paying
18 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
19 revenue collection on the money I would be paid and then pay taxes on and
20 contribute to this state and this country. It is money I would be putting back into
21 my local community both spending and stimulating the local economy and
22 generating more economic activity right here. Instead TransCanada's shareholders
23 keep all that money and it never finds its way to Nebraska.

24 **Q: What is your next concern?**

25 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
26 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
27 limited partnership..." and I have no idea who that really is. I have no idea who is
28 forcing this pipeline on us or who the owners of the entities are, or what are the
29 assets backing this limited partnership, or who the general partner is, or who all

1 the limited partners are, and who makes up the ownership of the these partners or
2 the structure or any of the basic things you would want to know and understand if
3 you would want to do business with such an outfit. According to TransCanada's
4 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
5 liability company called TransCanada Keystone Pipeline GP, LLC is the general
6 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
7 basically nothing. That is really scary since the general partner has the liability but
8 virtually none of the ownership and who knows if it has any other assets.

9 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
10 **percent clear on exactly who could become the owner of over 275 miles of**
11 **Nebraska land?**

12 A: No.

13 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
14 **percent clear on exactly who will be operating and responsible for**
15 **approximately 275 miles of tar sands pipeline underneath and through**
16 **Nebraska land?**

17 A: No.

18 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
19 **and the State of Nebraska of TransCanada's easement terms.**

20 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
21 called "Grantee")..." and this concerns me because it would allow their easement
22 to be transferred or sold to someone or some company or country or who knows
23 what that I don't know and who we may not want to do business with. This
24 pipeline would be a huge asset for TransCanada and if they can sell to the highest
25 bidder that could have terrible impacts upon all of Nebraska depending upon who
26 may buy it and I don't know of any safeguards in place for us or the State to veto
27 or have any say so in who may own, operate, or be responsible for this pipeline in
28 the future.

1 **Q: Do you think that type of uncertainty and lack of control over a major piece**
2 **of infrastructure crossing our State is in the public interest?**

3 A: No, certainly not, in fact, just the opposite.

4 **Q: What's next?**

5 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
6 really concerns me. Why does the easement and right-of-way have to be perpetual
7 and permanent? That is the question myself and my family want an answer to.
8 Perpetual to me is like forever and that doesn't make sense.

9 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

10 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
11 data proving there is a perpetual supply of tar sands. I am not aware in
12 TransCanada's application where it proves there is a perpetual necessity for this
13 pipeline. My understanding of energy infrastructure like wind towers is they have
14 a decommission plan and actually take the towers down when they become
15 obsolete or no longer needed. Nothing manmade lasts forever. My land however
16 will, and I want my family or future Nebraska families to have that land as
17 undisturbed as possible and it is not in my interest or the public interest of
18 Nebraska to be forced to give up perpetual and permanent rights in the land for
19 this specific kind of pipeline project.

20 **Q: Okay, what is your next concern?**

21 A: The easement language includes all these things TransCanada can do and it says
22 "...abandoning in place..." so they can just leave this pipeline under my ground
23 until the end of time just sitting there while they are not using it, but I am still
24 prevented from doing on my land and using my land what I would like. If I owned
25 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
26 there. It doesn't make sense and it scares me and it is not in my interest or the
27 public interest of Nebraska to allow this.

28 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
29 **right?**

1 A: Yes.

2 **Q: So now on the second page of the Easement what are your concerns?**

3 A: Here the Easement identifies a 24-month deadline to complete construction of the
4 pipeline but has caveats that are undefined and ambiguous. The 24-month period
5 starts to run from the moment “actual pipeline installation activities” begin on
6 Landowners property. It appears that TransCanada would define this phrase as
7 needed. It would be wise to explain what types of TransCanada action constitutes
8 “installation activity” For instance, would the placement and storage of an
9 excavator or other equipment on or near the Easement property be an activity or
10 would earth have to be moved before the activity requirement is triggered. This
11 vague phrase is likely to lead to future disputes and litigation that is not in the best
12 interest of the welfare of Nebraska and would not protect property interests. The
13 24-months can also be extended in the case of “force majeure.” My understanding
14 is that force majeure is often used to insulate a party to a contract when events
15 occur that are completely out of their control. In TransCanada’s easement this is
16 expanded to include “without limitation...availability of labor and materials.”
17 Extending this language to labor and materials is problematic because these are
18 two variables that TransCanada does have some or significant control over and to
19 allow extension of the 24-month period over events not truly out of the control of
20 TransCanada and without further provision for compensation for the Landowner is
21 not conducive to protection of property rights.

22 **Q: Okay, what is your next concern?**

23 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
24 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
25 reasonable costs and expenses” will pay for damages caused but then limits
26 TransCanada’s liability to certain circumstances. There is no definition of
27 “commercially reasonable” and no stated right that the Landowner would get to
28 determine the amounts of cost or expense that is “commercially reasonable.”
29 TransCanada excepts out from their liability any damages that are caused by

1 Landowner's negligence or the negligence of anyone ever acting on the behalf of
2 Landowner. It is understandable that if the Landowner were to willfully and
3 intentionally cause damages to the pipeline that Landowner should be liable.
4 However, anything short of willful misconduct should be the liability of
5 TransCanada who is subjecting the pipeline on the Landowner and who is making
6 a daily profit from that pipeline. When evaluating the impact on property rights of
7 this provision, you must consider the potentially extremely expensive fight a
8 Landowner would have over this question of whether or not damage was an act of
9 negligence. Putting this kind of potential liability upon the Landowner is
10 incredibly problematic and is detrimental to the protection of property rights. I
11 don't think this unilateral power which I can't do anything about as the landowner
12 is in the best economic interest of the land in question or the State of Nebraska for
13 landowners to be treated that way.

14 **Q: Is there any specific event or example you are aware of that makes this**
15 **concern more real for you?**

16 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
17 Nemaha County, Nebraska landowner farmers who accidentally struck two
18 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
19 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
20 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
21 copy of the Federal Court Complaint is here as **Attachment No. 4**.

22 **Q: What is your next concern with the Easement language?**

23 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
24 they choose unless 1) any Landowner use interferes in any way with
25 TransCanada's exercise of any of its rights within the Easement, or 2)
26 TransCanada decides to take any action on the property it deems necessary to
27 prevent injury, endangerment or interference with anything TransCanada deems
28 necessary to do on the property. Landowner is also forbidden from excavating
29 without prior authorization by TransCanada. So my understanding is that

1 TransCanada will unilaterally determine what Landowner can and can't do based
2 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
3 could also completely deny my request to excavate. Further, TransCanada retains
4 all "privileges necessary or convenient for the full use of the rights" granted to
5 them in the Easement. Again, TransCanada unilaterally can decide to the
6 detriment of the property rights of Landowner what TransCanada believes is
7 necessary or convenient for it. And there is no option for any additional
8 compensation to landowner for any right exercised by TransCanada that leads to
9 the removal of trees or plants or vegetation or buildings or structures or facilities
10 owned by Landowner of any kind. Such undefined and unilateral restrictions and
11 rights without having to compensate Landowner for such further destruction or
12 losses are not conducive to the protection of property rights or economic interest.

13 **Q: What is the next concern you have?**

14 A: The Easement also allows some rights for Landowner but restricts them at the
15 same time and again at the sole and unilateral decision making of TransCanada.
16 TransCanada will determine if the actions of Landowner might in anyway
17 endanger or obstruct or interfere with TransCanada's full use of the Easement or
18 any appurtenances thereon to the pipeline itself or to their access to the Easement
19 or within the Easement and TransCanada retains the right at any time, whether
20 during growing season or not, to travel "within and along Easement Area on foot
21 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
22 retain the rights to prevent any landowner activity that it thinks may "unreasonably
23 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
24 undefined and unilateral restrictions are not conducive to the protection of
25 property rights or economic interest.

26 **Q: What is the next concern you have with the Easement language?**

27 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
28 Landowner's land any debris of any kind without any input or power of
29 Landowner to demand an alternative method or location of debris disposal. Such

1 unilateral powers would negatively affect Landowners property are not conducive
2 to the protection of property rights or economic interest.

3 **Q: What is the next concern you have with the Easement language?**

4 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
5 “where rock is encountered” mean and why does TransCanada solely get to
6 determine whether or not this phrase is triggered. This phrase could be used to
7 justify installing the pipeline 24 inches beneath the surface. The ability to use this
8 provision to minimal locate the pipeline at a depth of 24 inches could negatively
9 affect Landowners property are not conducive to the protection of property rights.
10 A shallow pipeline is much more likely to become a danger and liability in the
11 future given farming operations and buried irrigation lines and other factors
12 common to the current typical agricultural uses of the land in question impacted
13 by TransCanada’s preferred pipeline route.

14 **Q: What is the next concern you have with the Easement language?**

15 A: There are more vague concepts solely at the determination of TransCanada such as
16 “as nearly as practicable” and “pre-construction position” and “extent reasonably
17 possible.” There is nothing here that defines this or provides a mechanism for
18 documenting or memorializing “pre-construction position” so as to minimize
19 costly legal battles or wasted Landowner time attempting to recreate the soil
20 condition on their fields or pasture. Such unilateral powers would negatively affect
21 Landowners property are not conducive to the protection of property rights or
22 economic interest.

23 **Q: What is the next concern you have with the Easement language?**

24 A: TransCanada maintains the unilateral right to abandon the pipeline and all
25 appurtenances thereto in place on, under, across, or through Nebraska land at any
26 time it chooses. There is no provision for Landowner compensation for such
27 abandonment nor any right for the Landowner to demand removal. Such unilateral
28 powers would negatively affect Landowners property are not conducive to the
29 protection of property rights or economic interest.

1 **Q: What is the next concern you have with the Easement language?**

2 A: TransCanada has the power to unilaterally move or modify the location of any
3 Easement area whether permanent or temporary at their sole discretion.
4 Regardless, if Landowner has taken prior steps relative the their property in
5 preparation or planning of TransCanada's taking of the initial easement area(s),
6 the language here does not require TransCanada to compensate the Landowner if
7 they decide to move the easement anywhere on Landowners property. Such
8 unilateral powers would negatively affect Landowners property are not conducive
9 to the protection of property rights or economic interests.

10 **Q: What is the next concern you have with the Easement language?**

11 A: The Easement requires that all of the burdens and restrictions upon Landowner to
12 transfer and be applicable to any future owner of the Land in question without the
13 ability of the future Landowner to modify or negotiate any of the language in
14 question to which it will be held to comply.

15 **Q: What is the next concern you have with the Easement language?**

16 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
17 Easement to any person, company, country, etc. at their sole discretion at anytime
18 to anyone. This also means that any buyer of the easement could do the same to a
19 third buyer and so on forever. There is no change of control or sale provision in
20 place to protect the Landowner or Nebraska or to provide compensation for such
21 change of control or ownership. It is not conducive to the protection of property
22 rights or economic interests to allow unilateral unrestricted sale of the Easement
23 thereby forcing upon the Landowner and our State a new unknown Easement
24 owner.

25 **Q: What is the next concern you have with the Easement language?**

26 A: There are many terms in the Easement that are either confusing or undefined terms
27 that are without context as to whether or not the Landowner would have any say
28 so in determining what these terms mean or if the evaluation is solely in
29 TransCanada's control. Some of these vague undefined terms are as follows:

- 1 i. “pipeline installation activities”
- 2 ii. “availability of labor and materials”
- 3 iii. “commercially reasonable costs and expenses”
- 4 iv. “reasonably anticipated and foreseeable costs and expenses”
- 5 v. “yield loss damages”
- 6 vi. “diminution in the value of the property”
- 7 vii. “substantially same condition”
- 8 viii. “an actual or potential hazard”
- 9 ix. “efficient”
- 10 x. “convenient”
- 11 xi. “endangered”
- 12 xii. “obstructed”
- 13 xiii. “injured”
- 14 xiv. “interfered with”
- 15 xv. “impaired”
- 16 xvi. “suitable crossings”
- 17 xvii. “where rock is encountered”
- 18 xviii. “as nearly as practicable”
- 19 xix. “pre-construction position”
- 20 xx. “pre-construction grade”
- 21 xxi. “various engineering factors”

22 Each one of these above terms and phrases as read in the context of the Easement
23 could be problematic in many ways. Notably, undefined terms tend to only get
24 definition in further legal proceedings after a dispute arises and the way the
25 Easement is drafted, TransCanada has sole power to determine when and if a
26 particular situation conforms with or triggers rights affected by these terms. For
27 instance, “yield loss damages” should be specifically defined and spelled out
28 exactly how the landowner is to be compensated and in what events on the front
29 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,

1 the Landowner is without contractual rights to define these terms or determine
2 when rights related to them trigger and what the affects may be.

3 **Q: Do you have any other concerns about the Easement language that you can**
4 **think of at this time?**

5 A: I reserve the right to discuss any additional concerns that I think of at the time of
6 my live testimony in August.

7 **Q: Based upon what you have shared with the Commission above regarding**
8 **TransCanada's proposed Easement terms and agreement, do you believe**
9 **those to be reasonable or just, under the circumstances of the pipeline's**
10 **impact upon you and your land?**

11 A: No, I do not believe those terms to be reasonable or just for the reasons that we
12 discussed previously.

13 **Q: Did TransCanada ever offer you financial compensation for the rights that**
14 **they sought to obtain in your land, and for what they sought to prevent you**
15 **and any future land owner of your property from doing in the future?**

16 A: Yes, we received an offer from them.

17 **Q: As the owner of the land in question and as the person who knows it better**
18 **than anyone else, do you believe that TransCanada offered you just, or fair,**
19 **compensation for all of what they proposed to take from you so that their tar**
20 **sands pipeline could be located across your property?**

21 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
22 offer for all the potential impacts and effects and the rights that I'm giving up, and
23 what we will be prevented from doing in the future and how their pipeline would
24 impact my property for ever and ever.

25 **Q: Has TransCanada at any time offered to compensate you annually, such as**
26 **wind farm projects do, for the existence of their potential tar sands pipeline**
27 **across your property.**

28 A: No, never.

1 **Q: At any time did TransCanada present you with or request that you, as the**
2 **owner of the land in question, sign and execute a document called, “Advanced**
3 **Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, they did and it was included in the County Court lawsuit against us.

5 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
6 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

7 A: Yes, it is.

8 **Q: What was your understanding of that document?**

9 A: When I read that document in the plain language of that document, it was my
10 understanding that TransCanada was attempting to pay me a very small amount at
11 that time in order for me to agree to give up my rights to be compensated from
12 them in the future related to any damage or impact they may have upon my
13 property “arising out of, in connection with, or alleged to resulted from
14 construction or surveying over, under or on” my land.

15 **Q: Did you ever sign that document?**

16 A: No, I did not.

17 **Q: Why not?**

18 A; Because I do not believe that it is fair or just to try to get me to agree to a small
19 sum of money when I have no idea how bad the impacts or damages that they, or
20 their contractors, or subcontractors, or other agents or employees, may cause on
21 my land at any time in the future that resulted from the construction or surveying
22 or their activities upon my land.

23 **Q: When you reviewed this document, what did it make you feel?**

24 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
25 shield themselves against known and foreseeable impacts that their pipeline, and
26 the construction of it, would have upon my land. It made me feel that they knew it
27 was in their financial interest to pay me as little as possible to prevent me from
28 ever having the opportunity to seek fair compensation again, and that this must be

1 based upon their experience of unhappy landowners and situations in other places
2 where they have built pipelines.

3 **Q: Has TransCanada ever contacted you and specifically asked you if you**
4 **thought their proposed location of their proposed pipeline across your land**
5 **was in your best interest?**

6 A: No, they have not.

7 **Q: Has TransCanada ever contacted you and specifically asked you if you**
8 **thought their proposed location of their proposed pipeline across your land**
9 **was in the public interest of the State of Nebraska?**

10 A: No, they have not.

11 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
12 **Takings Clause?**

13 A: Yes, I am.

14 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
15 **an American citizens property?**

16 A: My understanding is that, according to the United States Constitution, that if the
17 government is going to take land for public use, then in that case, or by taking for
18 public use, it can only occur if the private land owner is compensated justly, or
19 fairly.

20 **Q: Has TransCanada ever contacted you specially to explain the way in which**
21 **the public could use its proposed Keystone XL Pipeline?**

22 A: No, they have not.

23 **Q: Can you think of any way in which the public, that is the citizens of the State**
24 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
25 **Pipeline, as it dissects the State of Nebraska?**

26 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
27 public benefits from this pipeline in any way, how they can use it any way, or how
28 it's in the public interest in any way. By looking at the map, it is quite clear to me
29 that the only reason it's proposed to come through Nebraska, is that because we

1 are geographically in the way from between where the privately-owned Tar Sands
2 are located to where TransCanada wants to ship the Tar Sands to refineries in
3 Houston, Texas.

4 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
5 crude petroleum, or oil and petroleum by-products that you would like to
6 ship in its pipeline?**

7 A: No, it has not.

8 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
9 products that you, at this time or any time in the future, would desire to place
10 for transport within the proposed TransCanada Keystone XL Pipeline?**

11 A: No, I do not.

12 **Q: Do you know anyone in the state of Nebraska who would be able to ship any
13 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
14 products within the proposed TransCanada Keystone XL Pipeline?**

15 A: No, I do not. I've never heard of such a person or company like that.

16 **Q: Do you pay property taxes for the land that would be affected and impacted
17 at the proposed TransCanada Keystone XL Pipeline?**

18 A: Yes, I do.

19 **Q: Why do you pay property taxes on that land?**

20 A: Because that is the law. The law requires us to pay the property taxes as the owner
21 of that property.

22 **Q: Because you follow the law and pay property taxes, do you believe you
23 deserve any special consideration or treatment apart from any other person
24 or company that pays property taxes?**

25 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
26 just what you do.

27 **Q: Do you believe the fact that you pay property taxes entitles you to special
28 treatment of any kind, or special rights of any kind?**

29 A: No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**
2 **enough to qualify you to have the power of eminent domain to take land of**
3 **your neighbors or other people in your county, or other people across the**
4 **state of Nebraska?**

5 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q: Have you at any time ever employed any person other than yourself?**

8 A: Well, yes I have.

9 **Q: Do you believe that the fact that you have, at some point in your life,**
10 **employed one or more other persons entitle you to any special treatment or**
11 **consideration above and beyond any other Nebraskan that has also employed**
12 **one or more persons?**

13 A: No, of course not.

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
15 **have at one point employed another person within this state, entitles you to**
16 **preferential treatment or consideration of any kind?**

17 A: No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q: At the beginning of your statement, you briefly described your property that**
20 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
21 **give the Commissioners a sense of specifically how you believe the proposed**
22 **Keystone XL Pipeline and its preferred route, which proposes to go across**
23 **your land, how it would in your opinion based on your knowledge,**
24 **experience, and background of your land, affect it.**

25 A: We attended an information meeting with TransCanada one time. During the
26 questioning I asked if there was a spill if they would put in the contract that they
27 would clean it. They told me they wouldn't do that but that the State and Federal
28 Government would make them do that. We got to hearing about the leaks in
29 Keystone 1 and were not impressed with their "safe pipeline". Not only from the

1 spill aspect but just the worry about a potential spill can drive the land value down.
2 We could have our property value plummet. We have a sandy loam soil here the
3 back section and where this proposed pipe would go is loose sand over the
4 Ogallala Aquifer. I've concerns about our water here also we have a natural spring
5 just a short distance from where they have mapped. Our land has a shelterbelt on it
6 which is very well established the pipeline would tear out a large chunk of that and
7 we also have a natural gully right by the proposed pipeline route. We have
8 contracts with Invenergy to place wind towers also in that area and they pay
9 annually and per tower on your land not just one time and then take your land
10 forever. We believe in progression of the right kind.

11 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
12 **crude oil pipeline in its preferred location, or ultimate location across the**
13 **state of Nebraska?**

14 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
15 or even bullied around and being made to feel scared that they did not have any
16 options but to sign whatever papers TransCanada told them they had to. I am
17 aware of folks being threatened that their land would be taken if they didn't follow
18 what TransCanada was saying. I am aware of tactics to get people to sign
19 easements that I don't believe have any place in Nebraska or anywhere such as
20 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
21 landowners and convince them they should sign TransCanada's easement
22 agreements. I am aware of older folks and widows or widowers feeling they had
23 no choice but to sign TransCanada's Easement and they didn't know they could
24 fight or stand up for themselves. From a more practical standpoint, I am worried
25 that according to their answer to our Interrogatory No. 211, TransCanada only
26 owns and operates one (1) major oil pipeline. They simply do not have the
27 experience with this type of pipeline and that scares me. There are others but that
28 is what I can recollect at this time and if I remember more or my recollection is
29 refreshed I will share those with the Commissioners at the Hearing in August.

1 **Q: Do you believe TransCanada’s proposed method of compensation to you as a**
2 **landowner is reasonable or just?**

3 A: No, I do not.

4 **Q: Do you have any concern about limitations that the construction of this**
5 **proposed pipeline across your affected land would prevent construction of**
6 **future structures upon the portion of your land affected by the proposed**
7 **easement and immediately surrounding areas?**

8 A: Well yes, of course I do. We would not be able to build many, if any, types of
9 structures directly across or touching the easement, and it would be unwise and I
10 would be uncomfortable to build anything near the easement for fear of being
11 blamed in the future should any damage or difficulty result on my property in
12 regards to the pipeline.

13 **Q: Do you think such a restriction would impact you economically?**

14 A: Well yes, of course.

15 **Q: How do you think such a restriction would impact you economically?**

16 A: The future of this land may not be exactly how it’s being used as of this moment,
17 and having the restrictions and limiting my ability to develop my land in certain
18 ways presents a huge negative economic impact on myself, my family, and any
19 potential future owner of the property. You have no idea how I or the future owner
20 may want to use this land in the future or the other land across Nebraska
21 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
22 ago it would have been hard to imagine all the advances that we have now or how
23 things change. Because the Easement is forever and TransCanada gets the rights in
24 my land forever we have to think with a very long term view. By placing their
25 pipeline on under across and through my land that prevents future development
26 which greatly negatively impacts future taxes and tax revenue that could have
27 been generated by the County and State but now will not. When you look at the
28 short blip of economic activity that the two years of temporary construction efforts

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 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 during the construction process, and any future maintenance or

1 removal process. I'm gravely concerned about the fertility and the loss of
2 economic ability of my property to grow the crops, or grow the grasses, or grow
3 whatever it is at that time they exist on my property or that I may want to grow in
4 the future, or that a future owner may want to grow. The land will never be the
5 same from as it exists now undisturbed to after it is trenched up for the proposed
6 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 in Nebraska essentially twins or
26 parallels Keystone I.

27 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
28 **Application, and as found on Attachment No. 7, here to your testimony, is in**
29 **the public interest of Nebraska?**

1 A: No, I do not.

2 **Q: Do you believe that the Keystone mainline alternative route as shown on**
3 **Attachment No. 7 included with your testimony here is a major oil pipeline**
4 **route that is in the public interest of Nebraska?**

5 A: No, I do not.

6 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
7 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe there is any potential route for the proposed Keystone XL**
10 **Pipeline across, within, under, or through the State of Nebraska that is in the**
11 **public interest of the citizens of Nebraska?**

12 A: No, I do not.

13 **Q: Why do you hold that belief?**

14 A: Because there simply is no public interest based on all of the factors that I am
15 aware and that I have read and that I have studied that this Commission is to
16 consider that would establish that a for-profit foreign-owned pipeline that simply
17 crosses Nebraska because we are geographically in the way between where tar
18 sands are in Canada to where it wants to ship it to in Texas could ever be in the
19 public interest of Nebraskans. We derive no benefit from this project. It is not for
20 public use. Nebraska is simply in the way and when all considerations are taken in
21 there is no net benefit of any kind for Nebraska should this project be placed in our
22 state. Even if there was some arguable “benefit” it is not enough to outweigh all
23 the negative impacts and concerns.

24 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
25 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
26 **of Nebraska because it may bring temporary jobs during the construction**
27 **phase to Nebraska?**

28 A: First of all, not all jobs are created equally. Most jobs that are created, whether
29 temporary or on a permanent basis, don’t come with a project that has all the

1 potential and foreseeable negative impacts, many of which we have discussed here
2 and other witnesses throughout the course of this hearing have and will discuss. If
3 I decide to hire and employ someone to help me out in my farming or ranching
4 business, I've created a job but I haven't done so at the risk or detrimental impact
5 to my land or my town or my county or my state. And I've hired someone who is
6 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
7 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
8 jobs are not created equal. Additionally, I understand from what I'm familiar with
9 from TransCanada's own statements that the jobs numbers they originally touted
10 were determined to be a minute fraction of the permanent jobs that had been
11 projected. According to their answer to our Interrogatory No. 191, TransCanada
12 has created only thirty-four (34) jobs within Nebraska working specifically on
13 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
14 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
15 Further, according to their answer to Interrogatory No. 199, TransCanada would
16 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
17 constructed on its Preferred Route or its Mainline Alternative Route.

18 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
19 **because it would cross your land?**

20 A: No, absolutely not. I am opposed to this project because it is not in the public
21 interest, neither within my community nor within our state.

22 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
23 **was to cross someone else's land?**

24 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
25 the fear and anxiety and potential foreseeable risks and negative impacts that this
26 type of a project carrying this type of product brings foisted upon anyone in this
27 state or any other state.

28 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
29 **Pipeline to cross the state of Nebraska?**

1 A: I don't believe there is an intelligent route because as I have stated I don't believe
2 this project anywhere within Nebraska is within the public interest. However, if
3 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
4 had to go somewhere in the state of Nebraska, the only intelligent route I believe
5 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
6 preferred route and the mainline alternative routes are economic liabilities our
7 state cannot risk.

8 **Q: What do you rely upon to make that statement?**

9 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
10 already exists in that area is reason enough as it is not in our best interest or the
11 public interests to have more major oil pipelines crisscrossing our state. Second,
12 they have all the infrastructure already there in terms of relationships with the
13 counties and local officials and first responders along that route. Third, they have
14 already obtained easements from all the landowners along that route and have
15 relationships with them. Fourth, that route avoids our most sensitive soils, the
16 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
17 Aquifer. Sixth, they have already studied that route and previously offered it as an
18 alternative. Seventh, it just makes the most sense that as a state we would have
19 some intelligent policy of energy corridors and co-locating this type of
20 infrastructure near each other.

21 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
22 **like the Public Service Commissioners to consider in their review of**
23 **TransCanada's Application?**

24 A: No, I have not. I have shared that which I can think of as of the date I signed this
25 document below but other things may come to me or my memory may be
26 refreshed and I will add and address those things at the time of the Hearing in
27 August and address any additional items at that time as is necessary. Additionally,
28 I have not had an adequate amount of time to receive and review all of
29 TransCanada's answers to our discovery and the discovery of others so it was

1 impossible to competently and completely react to that in my testimony here and I
2 reserve the right to also address anything related to discovery that has not yet
3 concluded as of the date I signed this document below. Lastly, certain documents
4 requested have not yet been produced by TransCanada and therefore I may have
5 additional thoughts on those I will also share at the hearing as needed.

6 **Q: What is it that you are requesting the Public Service Commissioners do in**
7 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
8 **across Nebraska?**

9 A: I am respectfully and humbly requesting that the Commissioners think far beyond
10 a temporary job spike that this project may bring to a few counties and beyond the
11 relatively small amount of taxes this proposed foreign pipeline would possibly
12 generate. And, instead think about the perpetual and forever impacts of this
13 pipeline as it would have on the landowners specifically, first and foremost, but
14 also thereby upon the entire state of Nebraska, and to determine that neither the
15 preferred route nor the Keystone mainline alternative route are in the public
16 interest of the citizens of the state of Nebraska. And if the Commissioners were
17 inclined to modify TransCanada's proposed routes and were to be inclined to grant
18 an application for a route in Nebraska, that the only potential route that would
19 make any intelligent sense whatsoever would be twinning or near paralleling of
20 the proposed KXL with the existing Keystone I pipeline. It simply does not make
21 sense to add yet another major oil pipeline crisscrossing our state creating new
22 pumping stations, creating new impacts on additional counties and communities
23 and going through all of the court processes with myself and other landowners like
24 me when this applicant already has relationships with the landowners, the towns
25 and the communities along Keystone I, and that Keystone I is firmly outside of the
26 sand hills and a significantly further portion away from the heart of the Ogallala
27 Aquifer than the preferred route or the Keystone mainline alternative route.

1 **Q: Are all of your statements in your testimony provided above true and**
2 **accurate as of the date you signed this document to the best of your**
3 **knowledge?**

4 **A: Yes, they are.**

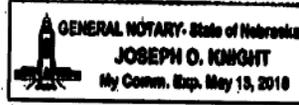
5 **Q: Thank you, I have no further questions at this time and reserve the right to**
6 **ask you additional questions at the August 2017 Hearing.**

Signed Frankie Maughan
Frankie Maughan

Sandra L. Maughan
Sandra L. Maughan

On 5-31-17, Frankie Maughan + Sandra L. Maughan appeared before me and signed this form in front of me.

Notary: Joseph O. Knight



Attachment No. 1

PREPARED BY
exp Energy Services Inc.



S.006
T.025N
R.005W

S.005
T.025N
R.005W

S.004
T.025N
R.005W

Frankie Maughan Jr.

S.008
T.025N
R.005W

S.007
T.025N
R.005W

S.009
T.025N
R.005W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Frankie Maughan Jr.

TRACT NO. ML-NE-AT-30375.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 008
TOWNSHIP: 025N
RANGE: 005W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Property Line
- Section Line

May 2017 - X:\Drawings\63528\KEYSTONE_XL\600_999526

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-30375.000

**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**") **Frankie Maughan a/k/a Frankie Maughan, Jr. and Sandra Lee Maughan, husband and wife**, whose mailing address is 85070 529 Avenue, Neligh, NE 68756 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of

crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Antelope, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 317.98 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the N1/2 of Section 8, T25N, R5W of the 6th P.M., as recorded in Book 111, Page 121 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):

Frankie Maughan a/k/a Frankie Maughan, Jr.

Sandra Lee Maughan

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Frankie Maughan a/k/a Frankie Maughan, Jr.**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Sandra Lee Maughan**

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-AT-30375.000

We, Frankie Maughan a/k/a Frankie Maughan, Jr. and Sandra Lee Maughan, husband and wife, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Two Hundred Eighty Dollars and No Cents (\$5,280.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Antelope, State of Nebraska:

N/2

Section 8, Township 25N, Range 5W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this _____ day of _____, 20____.

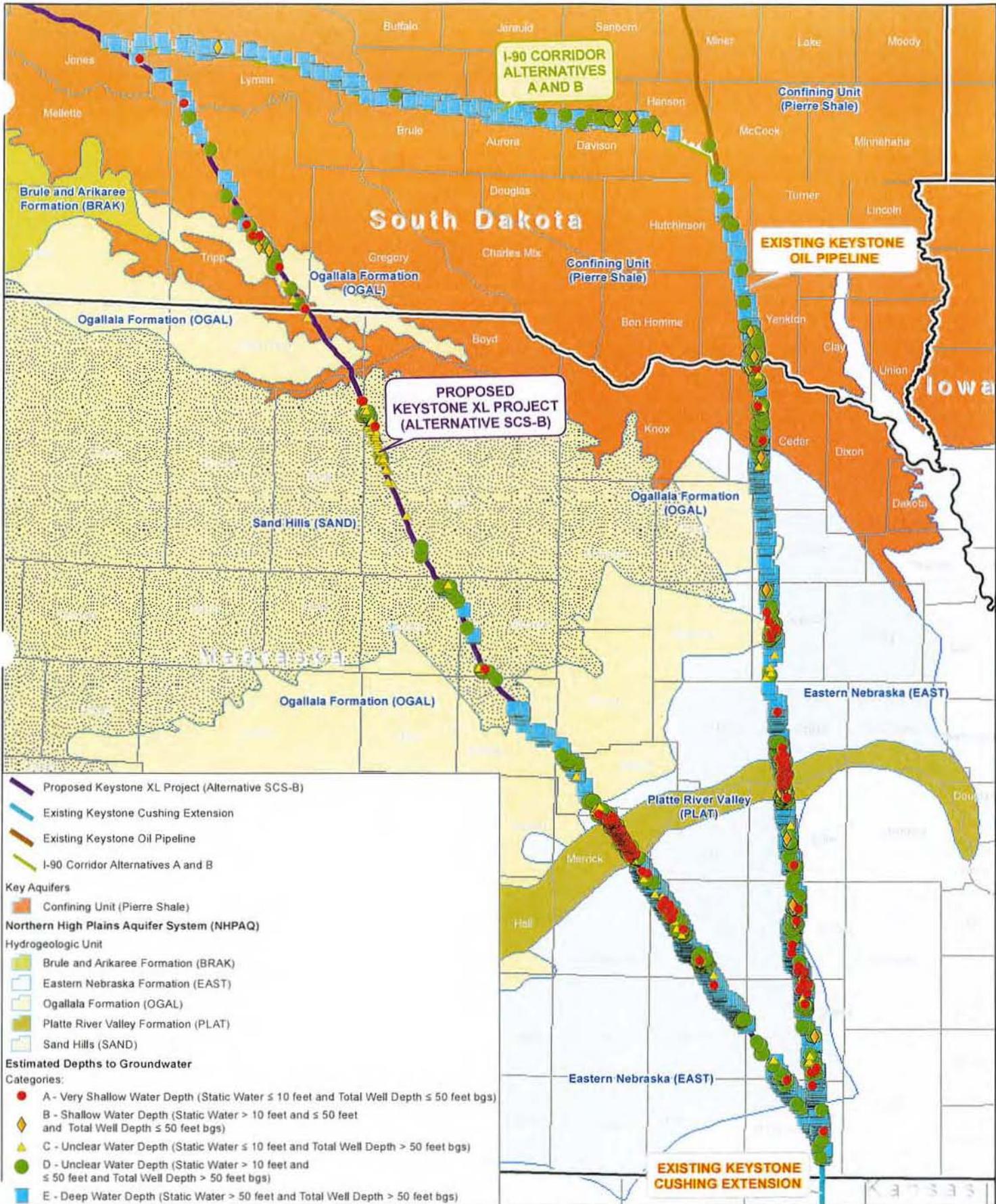
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



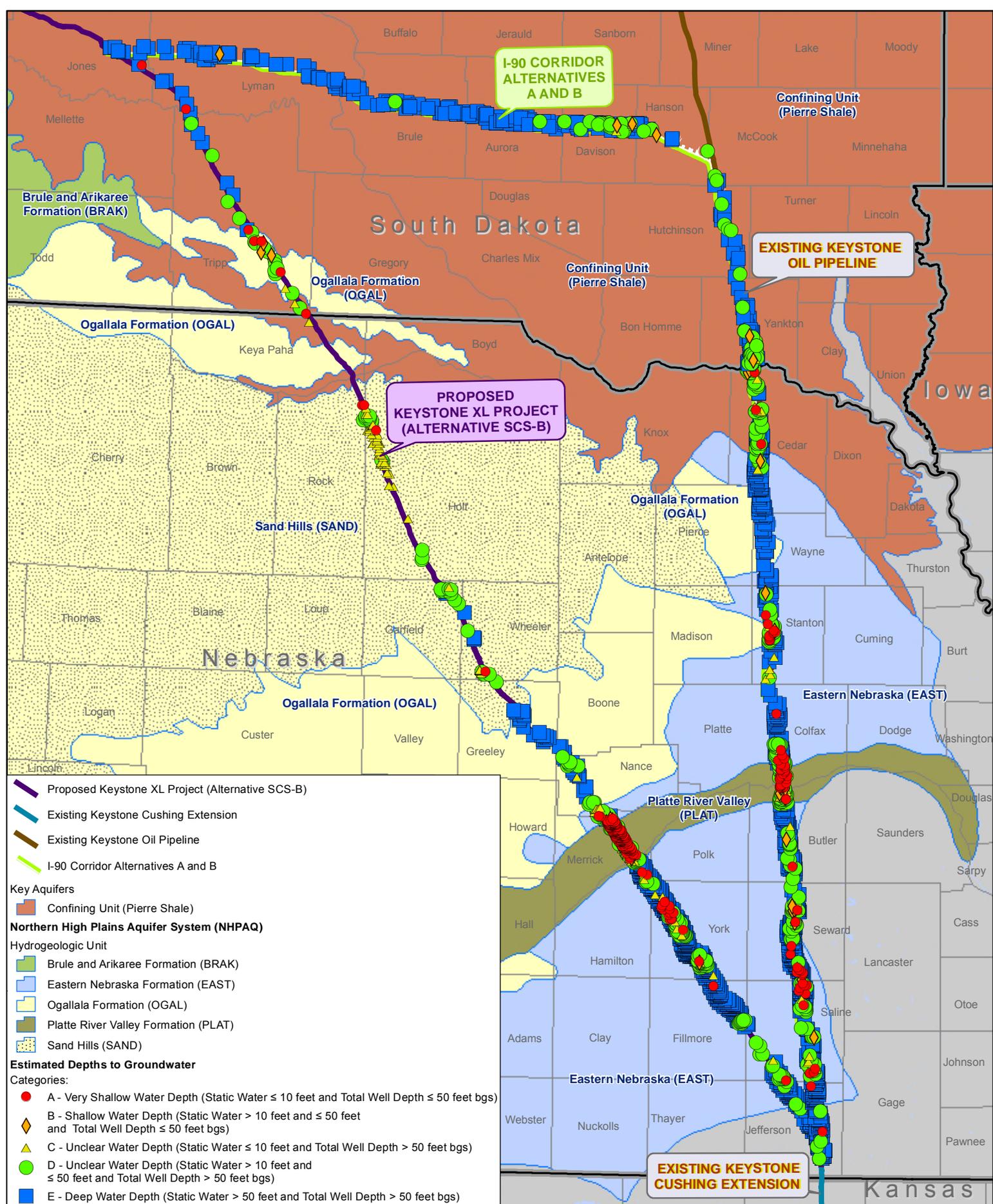
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

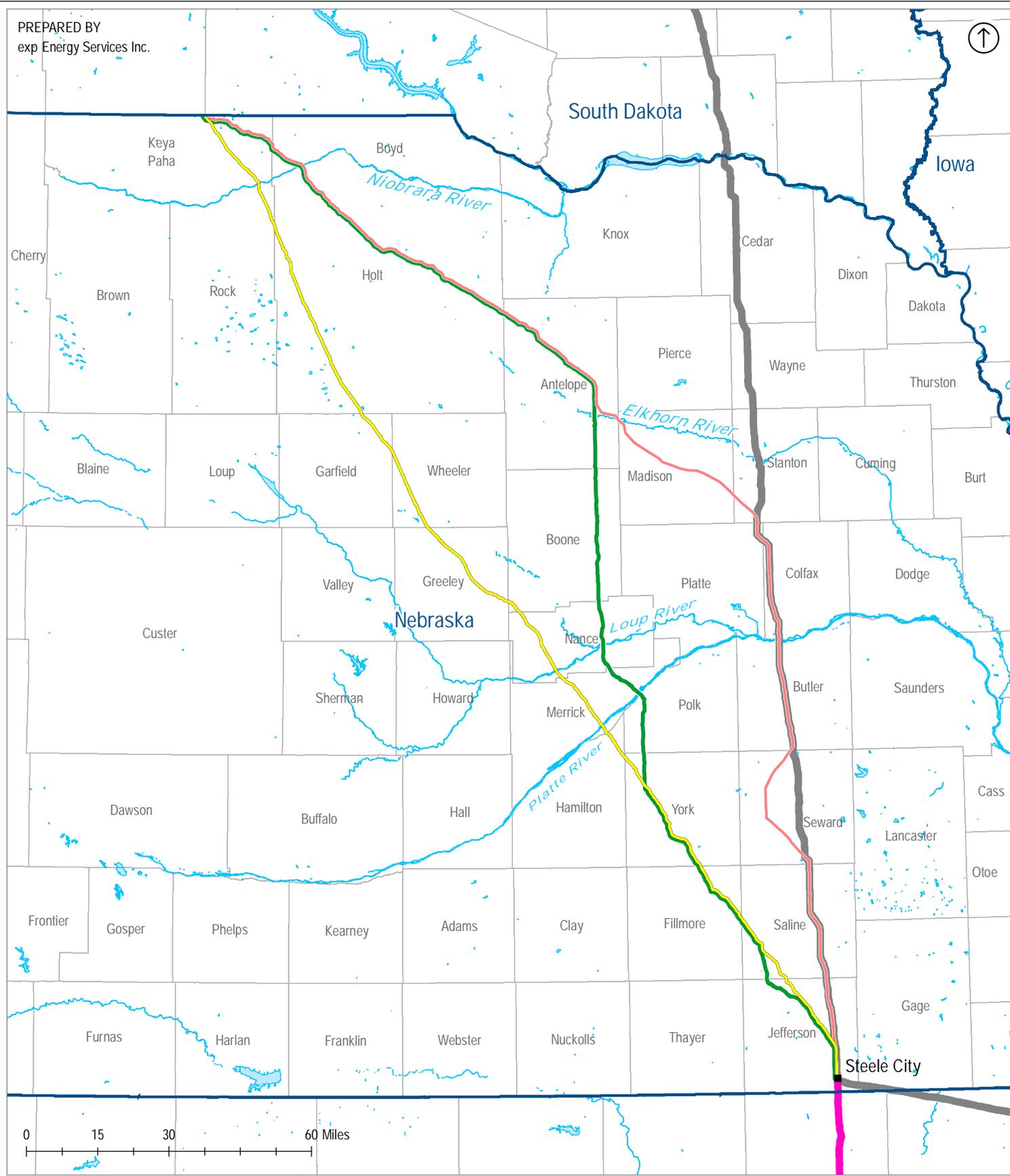
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

Figure 4.3.3-8
 I-90 Corridor Alternatives A and B
 Key Aquifers and Potable Water Wells
 within 2-mile Corridor

Attachment No. 7



LEGEND	
	PREFERRED ROUTE
	SANDHILLS ALTERNATIVE ROUTE
	KEYSTONE MAINLINE ALTERNATIVE ROUTE
	KEYSTONE MAINLINE (PHASE I)
	KEYSTONE CUSHING EXTENSION (PHASE II)
	WATERBODY
	STATE BOUNDARY
	COUNTY BOUNDARY

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

**Direct Testimony of
Earl Miller in
Support of Landowner Intervenors**

State of Nebraska)
) ss.
Knox County)

1 **Q: Please state your name.**

2 A: My name is Earl Miller.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse’s name please?**

16 A: Beverly Miller.

1 **Q: If you have children how many do you have?**
2 A: We have 3 daughters.
3 **Q: If you have grandchildren how many do you have?**
4 A: We have 5 grandchildren and 4 great-grandchildren.
5 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
6 **and or your family?**
7 A. Yes.
8 **Q: How long the land has been in your family?**
9 A: We have owned this land for over 40 years.
10 **Q: Do you earn any income from this land?**
11 A: Yes.
12 **Q: Have you depended on the income from your land to support your livelihood**
13 **or the livelihood of your family?**
14 A: Yes.
15 **Q: Have you ever in the past or have you thought about in the future leasing all**
16 **or a portion of your land in question here?**
17 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
18 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
19 all the restrictions and risks and potential negative impacts to farming or ranching
20 operations as opposed to land that did not have those same risks. If I was looking
21 to lease or rent ground I would pay more for comparable non-pipeline land than I
22 would for comparable pipeline land and I think most folks would think the same
23 way. This is another negative economic impact that affects the landowner and the
24 county and the state and will forever and ever should TransCanada's preferred or
25 mainline alternative routes be approved. If they were to twin or closely parallel to
26 Keystone I the vast majority of landowners would be those that already have a
27 pipeline so there would be considerable less new incremental negative impacts.
28 **Q: Do you have similar concerns about selling the land?**

1 A: Well I hope not to have to sell the land in my lifetime but times change and you
2 never know what is around the corner and yes I am concerned that if another piece
3 of ground similar to mine were for sale and it did not have the pipeline and mine
4 did that I would have a lower selling price. I think this would be true for pipeline
5 ground on both the preferred and mainline alternative routes.

6 **Q: What is your intent with your land after you die?**

7 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
8 to come but I have thought about getting out if this pipeline were to come through.

9 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
10 Pipeline would cross the land described above and owned by you?**

11 A: Yes.

12 **Q: Were you or an entity for which you are a member, shareholder, or director
13 previously sued by TransCanada Keystone Pipeline, LP?**

14 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
15 petition for condemnation against our land so it could place its proposed pipeline
16 within an easement that it wanted to take from us on our land.

17 **Q: Did you defend yourself and your land in that condemnation action?**

18 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
19 and expenses in our resistance of TransCanada's lawsuit against us.

20 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
21 incurred?**

22 A: No, they have not.

23 **Q: In its lawsuit against you, did TransCanada identify the amount of your
24 property that it wanted to take for its proposed pipeline?**

25 A: The lawsuit against us stated they would take the amount of property that is
26 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
27 and equipment reasonably necessary to operate the pipeline.

28 **Q: Did TransCanada define what they meant by "property that is reasonably
29 necessary"?**

1 A: No, they did not.

2 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
3 **property portion of your land?**

4 A: Yes, they did.

5 **Q: Did TransCanada describe what rights it proposed to take related to the**
6 **eminent domain property on your land?**

7 A: Yes, they did.

8 **Q: What rights that they proposed to take did they describe?**

9 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
10 operate, and maintain the pipeline and the plant and equipment reasonably
11 necessary to operate the pipeline, specifically including surveying, laying,
12 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
13 reconstructing, removing and abandoning one pipeline, together with all fittings,
14 cathodic protection equipment, pipeline markers, and all their equipment and
15 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
16 petroleum products, and all by-products thereof.”

17 **Q: Prior to filing an eminent domain lawsuit to take your land that**
18 **TransCanada identified, do you believe they attempted to negotiate in good**
19 **faith with you?**

20 A: No, I do not.

21 **Q: Did TransCanada at any time approach you with or deliver to you their**
22 **proposed easement and right-of-way agreement?**

23 A: Yes, they did.

24 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
25 **agreement, did you understand that they would be purchasing a fee title**
26 **interest in your property or that they were taking something else?**

27 A: I understood that they proposed to have the power to take both a temporary
28 construction easement that could last for a certain period of time and then also a
29 permanent easement which they described to be 50 feet across or in width, and

1 that would run the entire portion of my property from where a proposed pipeline
2 would enter my property until where it would exit the property.

3 **Q: Is the document included with your testimony here as Attachment No. 3, a**
4 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
5 **Way agreement that they included with their condemnation lawsuit against**
6 **you?**

7 A: Yes, it is.

8 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
9 **and Right-of-Way agreement?**

10 A: Yes, I have.

11 **Q: What is your understanding of the significance of the Easement and Right-of-**
12 **Way agreement as proposed by TransCanada?**

13 A: My understanding is that this is the document that will govern all of the rights and
14 obligations and duties as well as the limitations of what I can and cannot do and
15 how I and any future landowner and any person I invite to come onto my property
16 must behave as well as what TransCanada is and is not responsible for and how
17 they can use my land.

18 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
19 **agreement do you have any concerns about any portions of it or any of the**
20 **language either included in the document or missing from the proposed**
21 **document?**

22 A: Yes, I have a number of significant concerns and worries about the document and
23 how the language included and the language not included potentially negatively
24 impacts my land and thereby potentially negatively impacts my community and
25 my state.

26 **Q: I would like you to walk the Commissioners through each and every one of**
27 **your concerns about TransCanada's proposed Easement and Right-of-Way**
28 **agreement so they can develop an understanding of how that language and**
29 **the terms of that contract, in your opinion, potentially negatively impacts you**

1 **and your land. So, if you can start at the beginning of that document and**
2 **let's work our way through it, okay?**

3 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
4 Easement and Right-of-Way agreement and how it negatively could affect my
5 property rights and my economic interests.

6 **Q: Okay, let's start with your first concern please.**

7 A: The very first sentence talks about consideration or how much money they will
8 pay to compensate me for all of the known and unknown affects and all of the
9 rights I am giving up and for all the things they get to do to my land and for what
10 they will prevent me from doing on my land and they only will pay me one time at
11 the signing of the easement agreement. That is a huge problem.

12 **Q: Explain to the Commissioners why that is a problem.**

13 A: It is not fair to the landowner, the county, or the State. It is not fair to the
14 landowner because they want to have my land forever for use as they see fit so
15 they can make a daily profit from their customers. If I was to lease ground from
16 my neighbor I would typically pay twice a year every year as long as they granted
17 me the rights to use their land. That only makes sense – that is fair. If I was going
18 to rent a house in town I would typically pay monthly, every month until I gave up
19 my right to use that house. By TransCanada getting out on the cheap and paying
20 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
21 revenue collection on the money I would be paid and then pay taxes on and
22 contribute to this state and this country. It is money I would be putting back into
23 my local community both spending and stimulating the local economy and
24 generating more economic activity right here. Instead TransCanada's shareholders
25 keep all that money and it never finds its way to Nebraska.

26 **Q: What is your next concern?**

27 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
28 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
29 limited partnership..." and I have no idea who that really is. I have no idea who is

1 forcing this pipeline on us or who the owners of the entities are, or what are the
2 assets backing this limited partnership, or who the general partner is, or who all
3 the limited partners are, and who makes up the ownership of the these partners or
4 the structure or any of the basic things you would want to know and understand if
5 you would want to do business with such an outfit. According to TransCanada's
6 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
7 liability company called TransCanada Keystone Pipeline GP, LLC is the general
8 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
9 basically nothing. That is really scary since the general partner has the liability but
10 virtually none of the ownership and who knows if it has any other assets.

11 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
12 **percent clear on exactly who could become the owner of over 275 miles of**
13 **Nebraska land?**

14 A: No.

15 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
16 **percent clear on exactly who will be operating and responsible for**
17 **approximately 275 miles of tar sands pipeline underneath and through**
18 **Nebraska land?**

19 A: No.

20 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
21 **and the State of Nebraska of TransCanada's easement terms.**

22 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
23 called "Grantee")..." and this concerns me because it would allow their easement
24 to be transferred or sold to someone or some company or country or who knows
25 what that I don't know and who we may not want to do business with. This
26 pipeline would be a huge asset for TransCanada and if they can sell to the highest
27 bidder that could have terrible impacts upon all of Nebraska depending upon who
28 may buy it and I don't know of any safeguards in place for us or the State to veto

1 or have any say so in who may own, operate, or be responsible for this pipeline in
2 the future.

3 **Q: Do you think that type of uncertainty and lack of control over a major piece**
4 **of infrastructure crossing our State is in the public interest?**

5 A: No, certainly not, in fact, just the opposite.

6 **Q: What's next?**

7 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
8 really concerns me. Why does the easement and right-of-way have to be perpetual
9 and permanent? That is the question myself and my family want an answer to.
10 Perpetual to me is like forever and that doesn't make sense.

11 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

12 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
13 data proving there is a perpetual supply of tar sands. I am not aware in
14 TransCanada's application where it proves there is a perpetual necessity for this
15 pipeline. My understanding of energy infrastructure like wind towers is they have
16 a decommission plan and actually take the towers down when they become
17 obsolete or no longer needed. Nothing manmade lasts forever. My land however
18 will, and I want my family or future Nebraska families to have that land as
19 undisturbed as possible and it is not in my interest or the public interest of
20 Nebraska to be forced to give up perpetual and permanent rights in the land for
21 this specific kind of pipeline project.

22 **Q: Okay, what is your next concern?**

23 A: The easement language includes all these things TransCanada can do and it says
24 "...abandoning in place..." so they can just leave this pipeline under my ground
25 until the end of time just sitting there while they are not using it, but I am still
26 prevented from doing on my land and using my land what I would like. If I owned
27 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
28 there. It doesn't make sense and it scares me and it is not in my interest or the
29 public interest of Nebraska to allow this.

1 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
2 **right?**

3 A: Yes.

4 **Q: So now on the second page of the Easement what are your concerns?**

5 A: Here the Easement identifies a 24-month deadline to complete construction of the
6 pipeline but has caveats that are undefined and ambiguous. The 24-month period
7 starts to run from the moment “actual pipeline installation activities” begin on
8 Landowners property. It appears that TransCanada would define this phrase as
9 needed. It would be wise to explain what types of TransCanada action constitutes
10 “installation activity” For instance, would the placement and storage of an
11 excavator or other equipment on or near the Easement property be an activity or
12 would earth have to be moved before the activity requirement is triggered. This
13 vague phrase is likely to lead to future disputes and litigation that is not in the best
14 interest of the welfare of Nebraska and would not protect property interests. The
15 24-months can also be extended in the case of “force majeure.” My understanding
16 is that force majeure is often used to insulate a party to a contract when events
17 occur that are completely out of their control. In TransCanada’s easement this is
18 expanded to include “without limitation...availability of labor and materials.”
19 Extending this language to labor and materials is problematic because these are
20 two variables that TransCanada does have some or significant control over and to
21 allow extension of the 24-month period over events not truly out of the control of
22 TransCanada and without further provision for compensation for the Landowner is
23 not conducive to protection of property rights.

24 **Q: Okay, what is your next concern?**

25 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
26 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
27 reasonable costs and expenses” will pay for damages caused but then limits
28 TransCanada’s liability to certain circumstances. There is no definition of
29 “commercially reasonable” and no stated right that the Landowner would get to

1 determine the amounts of cost or expense that is “commercially reasonable.”
2 TransCanada excepts out from their liability any damages that are caused by
3 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
4 Landowner. It is understandable that if the Landowner were to willfully and
5 intentionally cause damages to the pipeline that Landowner should be liable.
6 However, anything short of willful misconduct should be the liability of
7 TransCanada who is subjecting the pipeline on the Landowner and who is making
8 a daily profit from that pipeline. When evaluating the impact on property rights of
9 this provision, you must consider the potentially extremely expensive fight a
10 Landowner would have over this question of whether or not damage was an act of
11 negligence. Putting this kind of potential liability upon the Landowner is
12 incredibly problematic and is detrimental to the protection of property rights. I
13 don’t think this unilateral power which I can’t do anything about as the landowner
14 is in the best economic interest of the land in question or the State of Nebraska for
15 landowners to be treated that way.

16 **Q: Is there any specific event or example you are aware of that makes this**
17 **concern more real for you?**

18 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
19 Nemaha County, Nebraska landowner farmers who accidentally struck two
20 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
21 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
22 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
23 copy of the Federal Court Complaint is here as **Attachment No. 4.**

24 **Q: What is your next concern with the Easement language?**

25 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
26 they choose unless 1) any Landowner use interferes in any way with
27 TransCanada’s exercise of any of its rights within the Easement, or 2)
28 TransCanada decides to take any action on the property it deems necessary to
29 prevent injury, endangerment or interference with anything TransCanada deems

1 necessary to do on the property. Landowner is also forbidden from excavating
2 without prior authorization by TransCanada. So my understanding is that
3 TransCanada will unilaterally determine what Landowner can and can't do based
4 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
5 could also completely deny my request to excavate. Further, TransCanada retains
6 all "privileges necessary or convenient for the full use of the rights" granted to
7 them in the Easement. Again, TransCanada unilaterally can decide to the
8 detriment of the property rights of Landowner what TransCanada believes is
9 necessary or convenient for it. And there is no option for any additional
10 compensation to landowner for any right exercised by TransCanada that leads to
11 the removal of trees or plants or vegetation or buildings or structures or facilities
12 owned by Landowner of any kind. Such undefined and unilateral restrictions and
13 rights without having to compensate Landowner for such further destruction or
14 losses are not conducive to the protection of property rights or economic interest.

15 **Q: What is the next concern you have?**

16 A: The Easement also allows some rights for Landowner but restricts them at the
17 same time and again at the sole and unilateral decision making of TransCanada.
18 TransCanada will determine if the actions of Landowner might in anyway
19 endanger or obstruct or interfere with TransCanada's full use of the Easement or
20 any appurtenances thereon to the pipeline itself or to their access to the Easement
21 or within the Easement and TransCanada retains the right at any time, whether
22 during growing season or not, to travel "within and along Easement Area on foot
23 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
24 retain the rights to prevent any landowner activity that it thinks may "unreasonably
25 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
26 undefined and unilateral restrictions are not conducive to the protection of
27 property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
2 Landowner's land any debris of any kind without any input or power of
3 Landowner to demand an alternative method or location of debris disposal. Such
4 unilateral powers would negatively affect Landowners property are not conducive
5 to the protection of property rights or economic interest.

6 **Q: What is the next concern you have with the Easement language?**

7 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
8 "where rock is encountered" mean and why does TransCanada solely get to
9 determine whether or not this phrase is triggered. This phrase could be used to
10 justify installing the pipeline 24 inches beneath the surface. The ability to use this
11 provision to minimal locate the pipeline at a depth of 24 inches could negatively
12 affect Landowners property are not conducive to the protection of property rights.
13 A shallow pipeline is much more likely to become a danger and liability in the
14 future given farming operations and buried irrigation lines and other factors
15 common to the current typical agricultural uses of the land in question impacted
16 by TransCanada's preferred pipeline route.

17 **Q: What is the next concern you have with the Easement language?**

18 A: There are more vague concepts solely at the determination of TransCanada such as
19 "as nearly as practicable" and "pre-construction position" and "extent reasonably
20 possible." There is nothing here that defines this or provides a mechanism for
21 documenting or memorializing "pre-construction position" so as to minimize
22 costly legal battles or wasted Landowner time attempting to recreate the soil
23 condition on their fields or pasture. Such unilateral powers would negatively affect
24 Landowners property are not conducive to the protection of property rights or
25 economic interest.

26 **Q: What is the next concern you have with the Easement language?**

27 A: TransCanada maintains the unilateral right to abandon the pipeline and all
28 appurtenances thereto in place on, under, across, or through Nebraska land at any
29 time it chooses. There is no provision for Landowner compensation for such

1 abandonment nor any right for the Landowner to demand removal. Such unilateral
2 powers would negatively affect Landowners property are not conducive to the
3 protection of property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: TransCanada has the power to unilaterally move or modify the location of any
6 Easement area whether permanent or temporary at their sole discretion.
7 Regardless, if Landowner has taken prior steps relative to their property in
8 preparation or planning of TransCanada's taking of the initial easement area(s),
9 the language here does not require TransCanada to compensate the Landowner if
10 they decide to move the easement anywhere on Landowners property. Such
11 unilateral powers would negatively affect Landowners property are not conducive
12 to the protection of property rights or economic interests.

13 **Q: What is the next concern you have with the Easement language?**

14 A: The Easement requires that all of the burdens and restrictions upon Landowner to
15 transfer and be applicable to any future owner of the Land in question without the
16 ability of the future Landowner to modify or negotiate any of the language in
17 question to which it will be held to comply.

18 **Q: What is the next concern you have with the Easement language?**

19 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
20 Easement to any person, company, country, etc. at their sole discretion at any time
21 to anyone. This also means that any buyer of the easement could do the same to a
22 third buyer and so on forever. There is no change of control or sale provision in
23 place to protect the Landowner or Nebraska or to provide compensation for such
24 change of control or ownership. It is not conducive to the protection of property
25 rights or economic interests to allow unilateral unrestricted sale of the Easement
26 thereby forcing upon the Landowner and our State a new unknown Easement
27 owner.

28 **Q: What is the next concern you have with the Easement language?**

1 A: There are many terms in the Easement that are either confusing or undefined terms
2 that are without context as to whether or not the Landowner would have any say
3 so in determining what these terms mean or if the evaluation is solely in
4 TransCanada's control. Some of these vague undefined terms are as follows:

- 5 i. "pipeline installation activities"
- 6 ii. "availability of labor and materials"
- 7 iii. "commercially reasonable costs and expenses"
- 8 iv. "reasonably anticipated and foreseeable costs and expenses"
- 9 v. "yield loss damages"
- 10 vi. "diminution in the value of the property"
- 11 vii. "substantially same condition"
- 12 viii. "an actual or potential hazard"
- 13 ix. "efficient"
- 14 x. "convenient"
- 15 xi. "endangered"
- 16 xii. "obstructed"
- 17 xiii. "injured"
- 18 xiv. "interfered with"
- 19 xv. "impaired"
- 20 xvi. "suitable crossings"
- 21 xvii. "where rock is encountered"
- 22 xviii. "as nearly as practicable"
- 23 xix. "pre-construction position"
- 24 xx. "pre-construction grade"
- 25 xxi. "various engineering factors"

26 Each one of these above terms and phrases as read in the context of the Easement
27 could be problematic in many ways. Notably, undefined terms tend to only get
28 definition in further legal proceedings after a dispute arises and the way the
29 Easement is drafted, TransCanada has sole power to determine when and if a

1 particular situation conforms with or triggers rights affected by these terms. For
2 instance, “yield loss damages” should be specifically defined and spelled out
3 exactly how the landowner is to be compensated and in what events on the front
4 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
5 the Landowner is without contractual rights to define these terms or determine
6 when rights related to them trigger and what the affects may be.

7 **Q: Do you have any other concerns about the Easement language that you can**
8 **think of at this time?**

9 A: I reserve the right to discuss any additional concerns that I think of at the time of
10 my live testimony in August.

11 **Q: Based upon what you have shared with the Commission above regarding**
12 **TransCanada’s proposed Easement terms and agreement, do you believe**
13 **those to be reasonable or just, under the circumstances of the pipeline’s**
14 **impact upon you and your land?**

15 A: No, I do not believe those terms to be reasonable or just for the reasons that we
16 discussed previously.

17 **Q: Did TransCanada ever offer you financial compensation for the rights that**
18 **they sought to obtain in your land, and for what they sought to prevent you**
19 **and any future land owner of your property from doing in the future?**

20 A: Yes, we received an offer from them.

21 **Q: As the owner of the land in question and as the person who knows it better**
22 **than anyone else, do you believe that TransCanada offered you just, or fair,**
23 **compensation for all of what they proposed to take from you so that their tar**
24 **sands pipeline could be located across your property?**

25 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
26 offer for all the potential impacts and effects and the rights that I’m giving up, and
27 what we will be prevented from doing in the future and how their pipeline would
28 impact my property for ever and ever.

1 **Q: Has TransCanada at any time offered to compensate you annually, such as**
2 **wind farm projects do, for the existence of their potential tar sands pipeline**
3 **across your property.**

4 A: No, never.

5 **Q: At any time did TransCanada present you with or request that you, as the**
6 **owner of the land in question, sign and execute a document called, “Advanced**
7 **Release of Damage Claims and Indemnity Agreement?”**

8 A: Yes, they did and it was included in the County Court lawsuit against us.

9 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
10 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

11 A: Yes, it is.

12 **Q: What was your understanding of that document?**

13 A: When I read that document in the plain language of that document, it was my
14 understanding that TransCanada was attempting to pay me a very small amount at
15 that time in order for me to agree to give up my rights to be compensated from
16 them in the future related to any damage or impact they may have upon my
17 property “arising out of, in connection with, or alleged to resulted from
18 construction or surveying over, under or on” my land.

19 **Q: Did you ever sign that document?**

20 A: No, I did not.

21 **Q: Why not?**

22 A; Because I do not believe that it is fair or just to try to get me to agree to a small
23 sum of money when I have no idea how bad the impacts or damages that they, or
24 their contractors, or subcontractors, or other agents or employees, may cause on
25 my land at any time in the future that resulted from the construction or surveying
26 or their activities upon my land.

27 **Q: When you reviewed this document, what did it make you feel?**

28 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
29 shield themselves against known and foreseeable impacts that their pipeline, and

1 the construction of it, would have upon my land. It made me feel that they knew it
2 was in their financial interest to pay me as little as possible to prevent me from
3 ever having the opportunity to seek fair compensation again, and that this must be
4 based upon their experience of unhappy landowners and situations in other places
5 where they have built pipelines.

6 **Q: Has TransCanada ever contacted you and specifically asked you if you**
7 **thought their proposed location of their proposed pipeline across your land**
8 **was in your best interest?**

9 A: No, they have not.

10 **Q: Has TransCanada ever contacted you and specifically asked you if you**
11 **thought their proposed location of their proposed pipeline across your land**
12 **was in the public interest of the State of Nebraska?**

13 A: No, they have not.

14 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
15 **Takings Clause?**

16 A: Yes, I am.

17 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
18 **an American citizens property?**

19 A: My understanding is that, according to the United States Constitution, that if the
20 government is going to take land for public use, then in that case, or by taking for
21 public use, it can only occur if the private land owner is compensated justly, or
22 fairly.

23 **Q: Has TransCanada ever contacted you specially to explain the way in which**
24 **the public could use its proposed Keystone XL Pipeline?**

25 A: No, they have not.

26 **Q: Can you think of any way in which the public, that is the citizens of the State**
27 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
28 **Pipeline, as it dissects the State of Nebraska?**

1 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
2 public benefits from this pipeline in any way, how they can use it any way, or how
3 it's in the public interest in any way. By looking at the map, it is quite clear to me
4 that the only reason it's proposed to come through Nebraska, is that because we
5 are geographically in the way from between where the privately-owned Tar Sands
6 are located to where TransCanada wants to ship the Tar Sands to refineries in
7 Houston, Texas.

8 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
9 crude petroleum, or oil and petroleum by-products that you would like to
10 ship in its pipeline?**

11 A: No, it has not.

12 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
13 products that you, at this time or any time in the future, would desire to place
14 for transport within the proposed TransCanada Keystone XL Pipeline?**

15 A: No, I do not.

16 **Q: Do you know anyone in the state of Nebraska who would be able to ship any
17 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
18 products within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not. I've never heard of such a person or company like that.

20 **Q: Do you pay property taxes for the land that would be affected and impacted
21 at the proposed TransCanada Keystone XL Pipeline?**

22 A: Yes, I do.

23 **Q: Why do you pay property taxes on that land?**

24 A: Because that is the law. The law requires us to pay the property taxes as the owner
25 of that property.

26 **Q: Because you follow the law and pay property taxes, do you believe you
27 deserve any special consideration or treatment apart from any other person
28 or company that pays property taxes?**

1 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
2 just what you do.

3 **Q: Do you believe the fact that you pay property taxes entitles you to special**
4 **treatment of any kind, or special rights of any kind?**

5 A: No, of course not.

6 **Q: Do you believe the fact that you pay property taxes on your land would be**
7 **enough to qualify you to have the power of eminent domain to take land of**
8 **your neighbors or other people in your county, or other people across the**
9 **state of Nebraska?**

10 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
11 I expect an award for or any type of special consideration.

12 **Q: Have you at any time ever employed any person other than yourself?**

13 A: Well, yes I have.

14 **Q: Do you believe that the fact that you have, at some point in your life,**
15 **employed one or more other persons entitle you to any special treatment or**
16 **consideration above and beyond any other Nebraskan that has also employed**
17 **one or more persons?**

18 A: No, of course not.

19 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
20 **have at one point employed another person within this state, entitles you to**
21 **preferential treatment or consideration of any kind?**

22 A: No, of course not. If I choose to employ someone that decision is up to me. I
23 don't deserve any special treatment or consideration for that fact.

24 **Q: At the beginning of your statement, you briefly described your property that**
25 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
26 **give the Commissioners a sense of specifically how you believe the proposed**
27 **Keystone XL Pipeline and its preferred route, which proposes to go across**
28 **your land, how it would in your opinion based on your knowledge,**
29 **experience, and background of your land, affect it.**

1 A: I own 840 acres of native grassland in Holt County. This land has been the same
2 for Nebraska cattlemen for over 100 years. It has even been reported to host
3 whooping cranes on their annual migration. My own cow-calf operation has been
4 peacefully grazing these slews and gravel knobs, and drinking the fresh spring
5 water for 40 years. They graze the land half of the year. We also use the land for
6 winter feed. We planned to develop a gravel pit right where the easement would
7 be. The pipeline will cut the value of our land in half and stop our pit plan.
8 TransCanada proposes dissecting the tract of land, crossing 3 of my 8 quarters of
9 ground.

10 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
11 **crude oil pipeline in its preferred location, or ultimate location across the**
12 **state of Nebraska?**

13 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
14 or even bullied around and being made to feel scared that they did not have any
15 options but to sign whatever papers TransCanada told them they had to. I am
16 aware of folks being threatened that their land would be taken if they didn't follow
17 what TransCanada was saying. I am aware of tactics to get people to sign
18 easements that I don't believe have any place in Nebraska or anywhere such as
19 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
20 landowners and convince them they should sign TransCanada's easement
21 agreements. I am aware of older folks and widows or widowers feeling they had
22 no choice but to sign TransCanada's Easement and they didn't know they could
23 fight or stand up for themselves. From a more practical standpoint, I am worried
24 that according to their answer to our Interrogatory No. 211, TransCanada only
25 owns and operates one (1) major oil pipeline. They simply do not have the
26 experience with this type of pipeline and that scares me. There are others but that
27 is what I can recollect at this time and if I remember more or my recollection is
28 refreshed I will share those with the Commissioners at the Hearing in August.

1 **Q: Do you believe TransCanada’s proposed method of compensation to you as a**
2 **landowner is reasonable or just?**

3 A: No, I do not.

4 **Q: Do you have any concern about limitations that the construction of this**
5 **proposed pipeline across your affected land would prevent construction of**
6 **future structures upon the portion of your land affected by the proposed**
7 **easement and immediately surrounding areas?**

8 A: Well yes, of course I do. We would not be able to build many, if any, types of
9 structures directly across or touching the easement, and it would be unwise and I
10 would be uncomfortable to build anything near the easement for fear of being
11 blamed in the future should any damage or difficulty result on my property in
12 regards to the pipeline.

13 **Q: Do you think such a restriction would impact you economically?**

14 A: Well yes, of course.

15 **Q: How do you think such a restriction would impact you economically?**

16 A: The future of this land may not be exactly how it’s being used as of this moment,
17 and having the restrictions and limiting my ability to develop my land in certain
18 ways presents a huge negative economic impact on myself, my family, and any
19 potential future owner of the property. You have no idea how I or the future owner
20 may want to use this land in the future or the other land across Nebraska
21 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
22 ago it would have been hard to imagine all the advances that we have now or how
23 things change. Because the Easement is forever and TransCanada gets the rights in
24 my land forever we have to think with a very long term view. By placing their
25 pipeline on under across and through my land that prevents future development
26 which greatly negatively impacts future taxes and tax revenue that could have
27 been generated by the County and State but now will not. When you look at the
28 short blip of economic activity that the two years of temporary construction efforts

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 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 during the construction process, and any future maintenance or

1 removal process. I'm gravely concerned about the fertility and the loss of
2 economic ability of my property to grow the crops, or grow the grasses, or grow
3 whatever it is at that time they exist on my property or that I may want to grow in
4 the future, or that a future owner may want to grow. The land will never be the
5 same from as it exists now undisturbed to after it is trenched up for the proposed
6 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 in Nebraska essentially twins or
26 parallels Keystone I.

27 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
28 **Application, and as found on Attachment No. 7, here to your testimony, is in**
29 **the public interest of Nebraska?**

1 A: No, I do not.

2 **Q: Do you believe that the Keystone mainline alternative route as shown on**
3 **Attachment No. 7 included with your testimony here is a major oil pipeline**
4 **route that is in the public interest of Nebraska?**

5 A: No, I do not.

6 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
7 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe there is any potential route for the proposed Keystone XL**
10 **Pipeline across, within, under, or through the State of Nebraska that is in the**
11 **public interest of the citizens of Nebraska?**

12 A: No, I do not.

13 **Q: Why do you hold that belief?**

14 A: Because there simply is no public interest based on all of the factors that I am
15 aware and that I have read and that I have studied that this Commission is to
16 consider that would establish that a for-profit foreign-owned pipeline that simply
17 crosses Nebraska because we are geographically in the way between where tar
18 sands are in Canada to where it wants to ship it to in Texas could ever be in the
19 public interest of Nebraskans. We derive no benefit from this project. It is not for
20 public use. Nebraska is simply in the way and when all considerations are taken in
21 there is no net benefit of any kind for Nebraska should this project be placed in our
22 state. Even if there was some arguable “benefit” it is not enough to outweigh all
23 the negative impacts and concerns.

24 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
25 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
26 **of Nebraska because it may bring temporary jobs during the construction**
27 **phase to Nebraska?**

28 A: First of all, not all jobs are created equally. Most jobs that are created, whether
29 temporary or on a permanent basis, don’t come with a project that has all the

1 potential and foreseeable negative impacts, many of which we have discussed here
2 and other witnesses throughout the course of this hearing have and will discuss. If
3 I decide to hire and employ someone to help me out in my farming or ranching
4 business, I've created a job but I haven't done so at the risk or detrimental impact
5 to my land or my town or my county or my state. And I've hired someone who is
6 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
7 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
8 jobs are not created equal. Additionally, I understand from what I'm familiar with
9 from TransCanada's own statements that the jobs numbers they originally touted
10 were determined to be a minute fraction of the permanent jobs that had been
11 projected. According to their answer to our Interrogatory No. 191, TransCanada
12 has created only thirty-four (34) jobs within Nebraska working specifically on
13 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
14 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
15 Further, according to their answer to Interrogatory No. 199, TransCanada would
16 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
17 constructed on its Preferred Route or its Mainline Alternative Route.

18 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
19 **because it would cross your land?**

20 A: No, absolutely not. I am opposed to this project because it is not in the public
21 interest, neither within my community nor within our state.

22 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
23 **was to cross someone else's land?**

24 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
25 the fear and anxiety and potential foreseeable risks and negative impacts that this
26 type of a project carrying this type of product brings foisted upon anyone in this
27 state or any other state.

28 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
29 **Pipeline to cross the state of Nebraska?**

1 A: I don't believe there is an intelligent route because as I have stated I don't believe
2 this project anywhere within Nebraska is within the public interest. However, if
3 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
4 had to go somewhere in the state of Nebraska, the only intelligent route I believe
5 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
6 preferred route and the mainline alternative routes are economic liabilities our
7 state cannot risk.

8 **Q: What do you rely upon to make that statement?**

9 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
10 already exists in that area is reason enough as it is not in our best interest or the
11 public interests to have more major oil pipelines crisscrossing our state. Second,
12 they have all the infrastructure already there in terms of relationships with the
13 counties and local officials and first responders along that route. Third, they have
14 already obtained easements from all the landowners along that route and have
15 relationships with them. Fourth, that route avoids our most sensitive soils, the
16 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
17 Aquifer. Sixth, they have already studied that route and previously offered it as an
18 alternative. Seventh, it just makes the most sense that as a state we would have
19 some intelligent policy of energy corridors and co-locating this type of
20 infrastructure near each other.

21 **Q: Do you have any other concerns you would like to reiterate or can think of at
22 this time you would like the Commissioners to understand?**

23 A: Yes. My biggest concern with this project is that my ground is composed of native
24 grasses above about 4 feet of gravel. At that 4 foot mark I hit water because this
25 spring-fed ground is the head of the Red Bird Creek. Disruption of this virgin
26 prairie cannot be restored. Furthermore, any pipe of this size would be sitting in
27 water. This project is bad for me, bad for my county and bad for our environment.

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.**

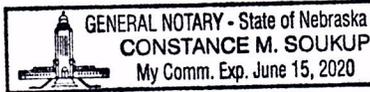
State of Nebraska
County Of Holt

Earl A Miller
Earl Miller

Subscribed and Sworn to me before this 26 day of May, 2017.

Constance M Soukup
Notary Public Constance M Soukup

Residing At O'Neill, NE



Attachment No. 1



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Beverly Miller
Earl Miller

TRACT NO. ML-NE-HT-30402.000
STATE: Nebraska
COUNTY: Holt
SECTION: 027
TOWNSHIP: 030N
RANGE: 011W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Property Line
- Section Line



S.027
T.030 N
R.011 W

S.026
T.030 N
R.011 W

S.034
T.030 N
R.011 W

Beverly Miller
Earl Miller

S.035
T.030 N
R.011 W

S.003
T.029 N
R.011 W

S.002
T.029 N
R.011 W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Beverly Miller
Earl Miller

TRACT NO. ML-NE-HT-30410.000
STATE: Nebraska
COUNTY: Holt
SECTION: 034
TOWNSHIP: 030N
RANGE: 011W

- 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-30402.000
ML-NE-HT-30410.000

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**") **Earl R. Miller and Beverly A. Miller, husband and wife, as joint tenants**, whose mailing address is 88316 510th Ave, O'Neill, NE 68763 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection

Grantor's Initials _____

equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Easement Area") located on real property situated in the County of Holt, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SE1/4 of Section 27, T30N, R11W of the 6th P.M., as recorded in Book 185, Page 62 and Book 174, Page 389 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 320 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the E1/2 of Section 34, T30N, R11W of the 6th P.M., as recorded in Book 185, Page 62 and Book 174, Page 389 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.

Grantor's Initials _____

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):

Earl R. Miller

Beverly A. Miller

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

Grantor's Initials _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Earl R. Miller**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Beverly A. Miller**

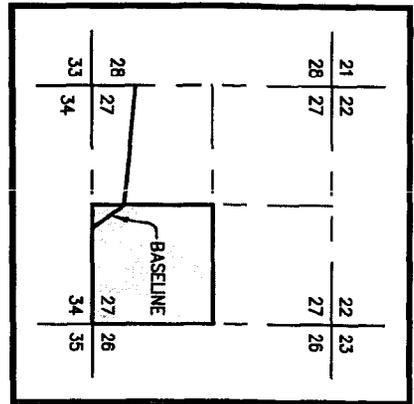
Notary Public Signature

Affix Seal Here

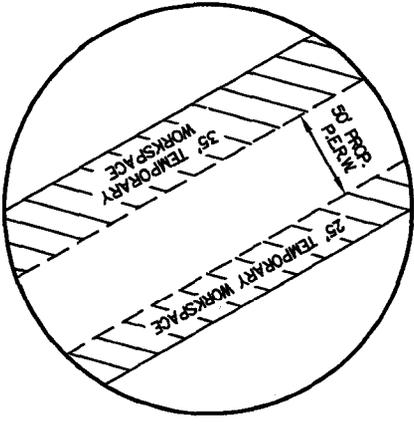
Grantor's Initials _____

LEGEND
 R PROPERTY LINE
 \$ PROP. SECTION LINE
 P.E.R.W. PROPOSED PERMANENT EASEMENT & RIGHT OF WAY
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA

HOLT COUNTY, NEBRASKA
 T-30-N, R-11-W, SECTION 27
 ML-NE-HT-30402.000



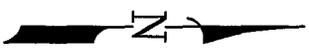
**EARL R. MILLER AND
 BEVERLY A. MILLER**
 VOLUME 185, PAGE 62
 VOLUME 174, PAGE 389
 D.R.H.C.N.



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.

TRACT LEGAL DESCRIPTION:
 SE 1/4 OF SECTION 27,
 T-30-N, R-11-W

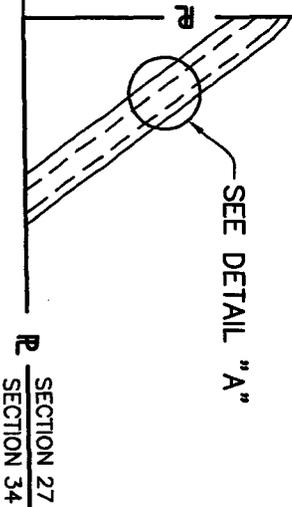


TransCanada
In business to deliver

KEYSTONE XL PROJECT
 EASEMENT AREA
 ACROSS THE PROPERTY OF
 EARL R. MILLER AND
 BEVERLY A. MILLER
 ML-NE-HT-30402.000

PROJECT: XL
EXHIBIT A

APPROVED BY: [Signature] DRAWING NUMBER: XL-08-ML-SK-3770
 NO. REVISION DATE



SECTION 27
 SECTION 34

TOTAL DISTANCE ACROSS PROPERTY: 859'±
 AREA OF PERMANENT EASEMENT: 1.0 ACRE
 AREA OF TEMPORARY WORKSPACE: 1.1 ACRES

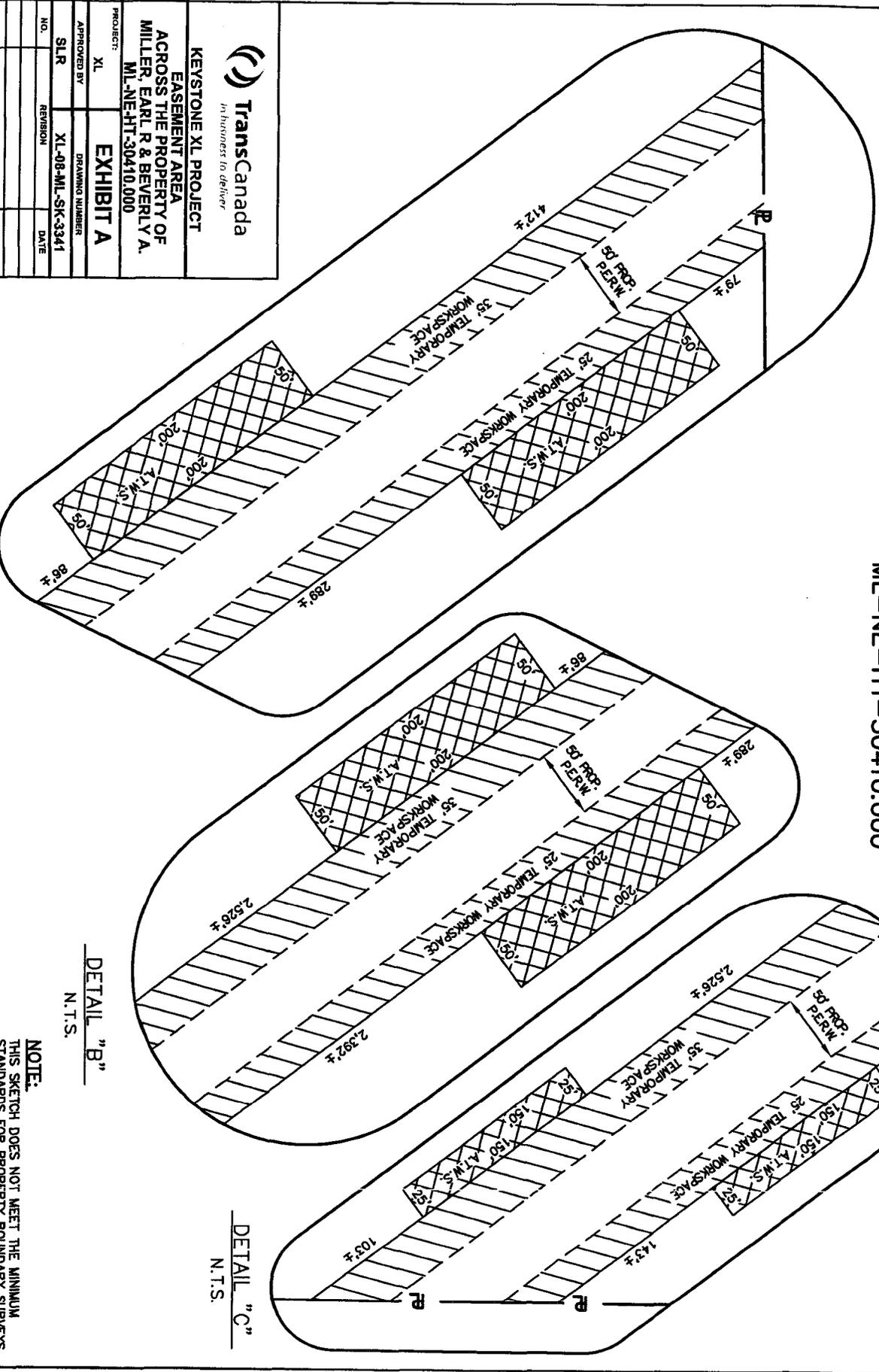
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/29/14	JN	ALS



LEGEND
 P.P. PROPERTY LINE
 A.T.W.S. PROPOSED ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY

HOLT COUNTY, NEBRASKA

T-30-N, R-11-W, SECTION 34
 ML-NE-HT-30410.000



DETAIL "A"

N.T.S.

DETAIL "B"

N.T.S.

DETAIL "C"

N.T.S.

TransCanada
In Business In Deliver

KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
MILLER, EARL R & BEVERLY A.
 ML-NE-HT-30410.000

Project: **XL** **EXHIBIT A**

APPROVED BY: _____ DRAWING NUMBER: **XL-08-ML-SK-3341**

SLR: _____ REVISION: _____ DATE: _____

NO. _____

SCALE: _____ DATE: _____ DRAWN BY: **JM** CHECKED BY: **ALS**

N.T.S. 10/29/14



DETAIL "A"
 N.T.S.
 SHEET 2 OF 2

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30410.000

I/we Earl R. Miller and Beverly A. Miller, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Six Hundred Twenty Six Dollars and No Cents (\$2,626.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

E/2

Section 34, Township 30-N, Range 11-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-30402.000

I/we Earl R. Miller and Beverly A. Miller, of Holt 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:

SE/4

Section 27, Township 30-N, Range 11-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_____.

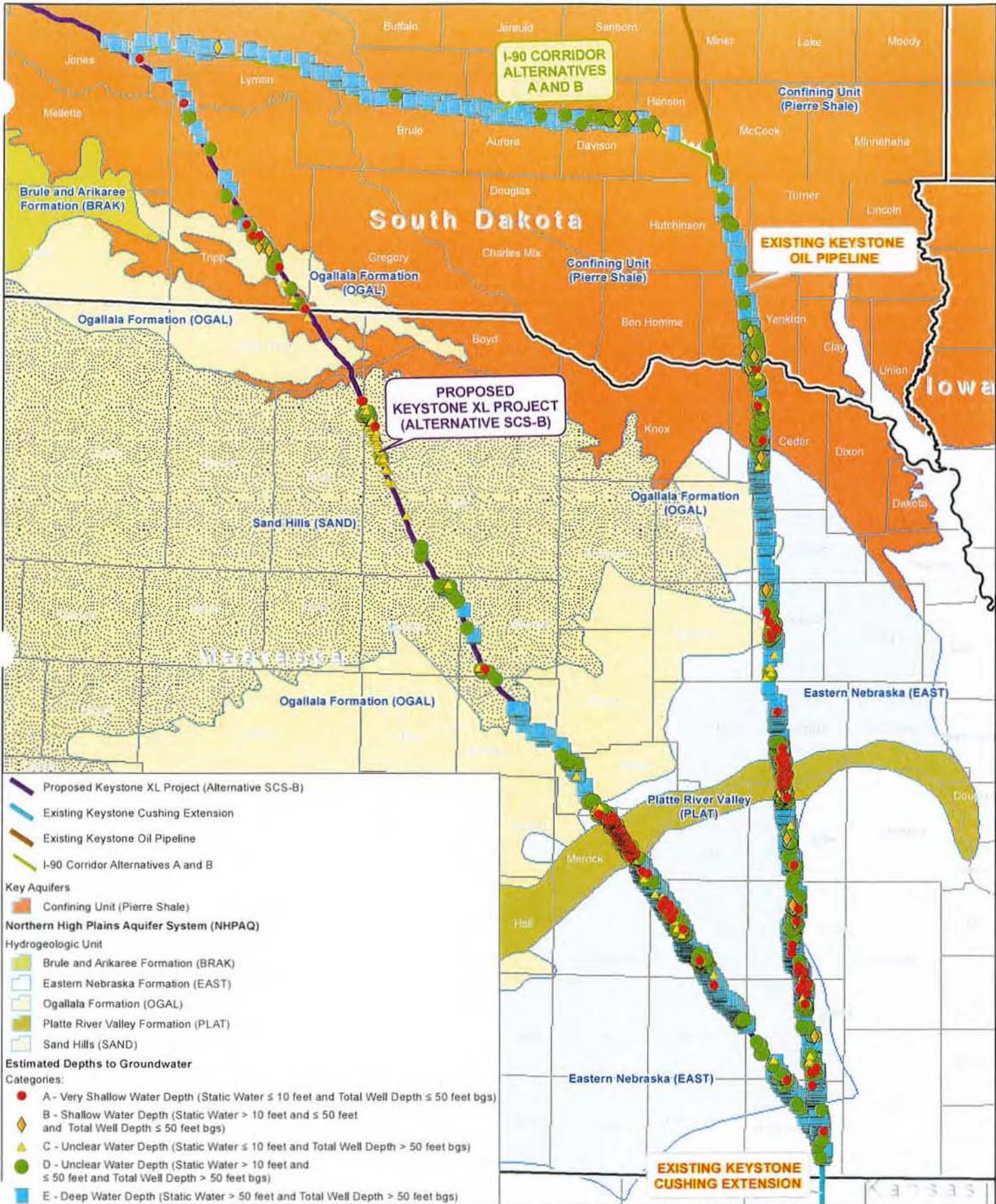
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



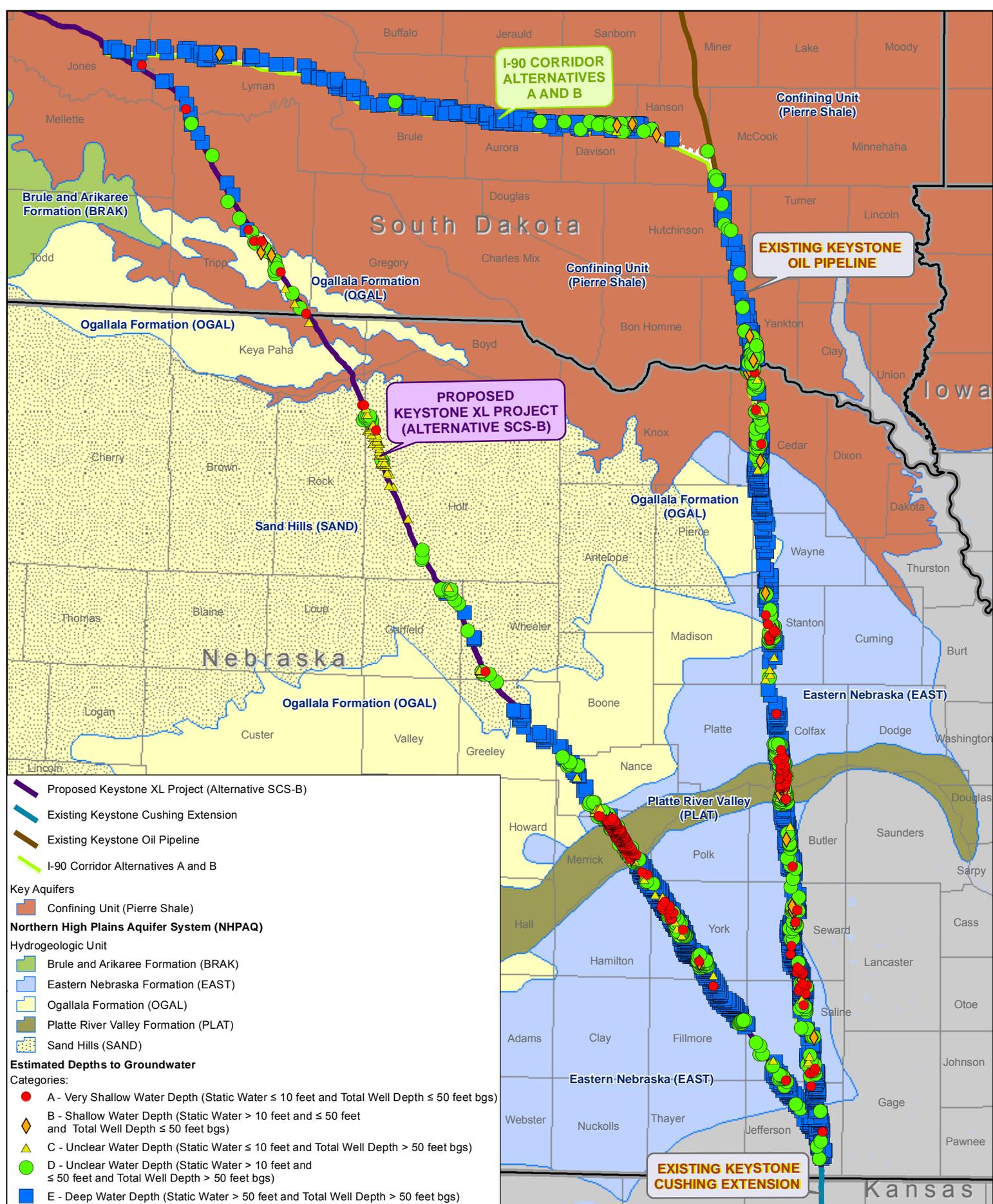
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

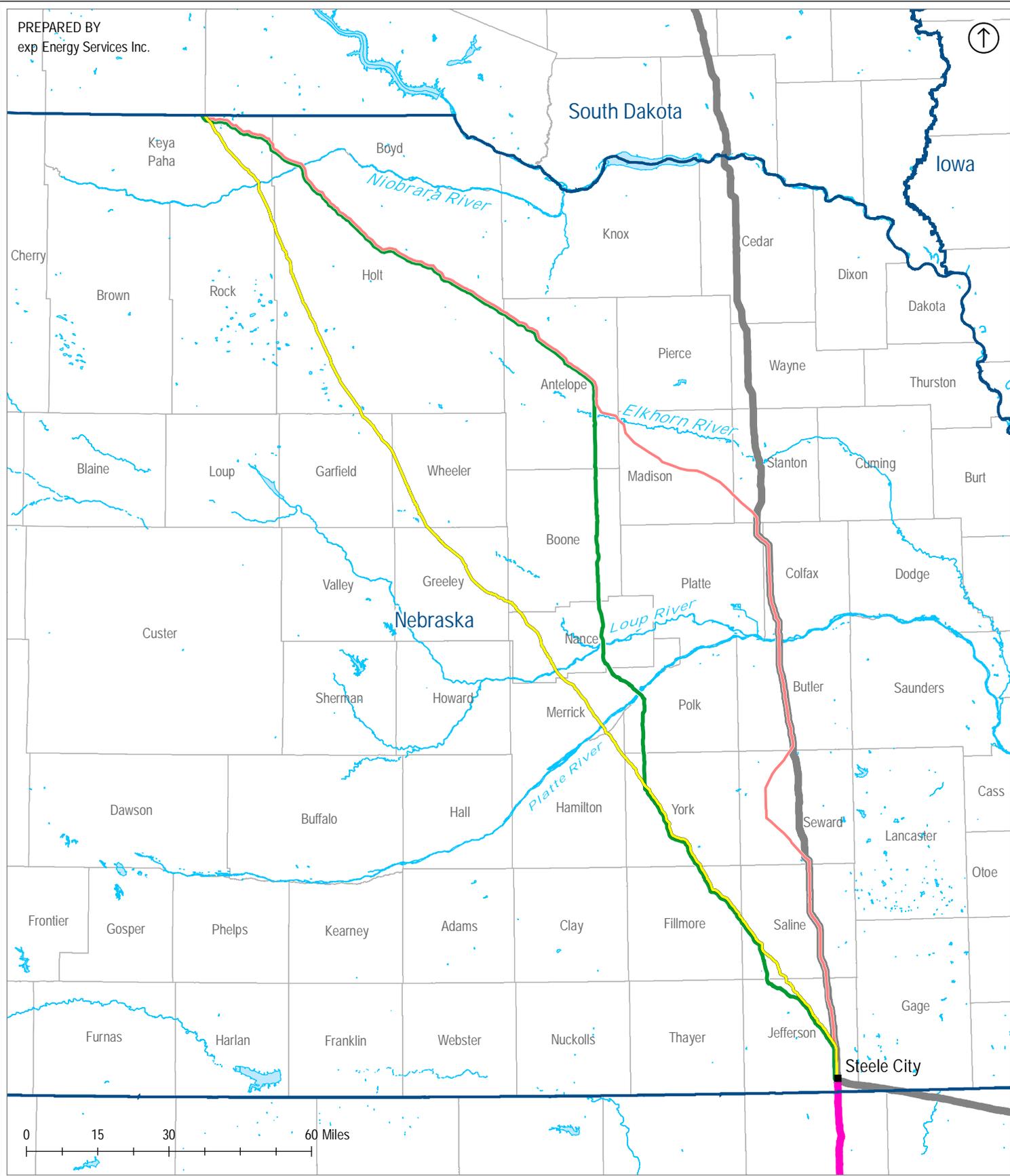
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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
	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
Glen A. Miller in
Support of Landowner Intervenors

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Glen A. Miller.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Rancher.

1 **Q: If you are you married tell us your spouse's name please?**
2 A: **Edna Miller**
3 **Q: If you have children how many do you have?**
4 A: 4 living – one who farms with us.
5 **Q: If you have grandchildren how many do you have?**
6 A: 5.
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: How long the land has been in your family.**
11 A: Approximately 20 years. The land was owned by our bachelor neighbor. Our sons
12 spent a lot of time at his farm growing up. He was like family to us and after his
13 death we acquired the land. It is used in conjunction with our cow-calf operation.
14 We intend to leave the land to our children after we die.
15 **Q: Do you earn any income from this land?**
16 A: Yes.
17 **Q: Have you depended on the income from your land to support your livelihood**
18 **or the livelihood of your family?**
19 A: Yes.
20 **Q: Have you ever in the past or have you thought about in the future leasing all**
21 **or a portion of your land in question here?**
22 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
23 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
24 all the restrictions and risks and potential negative impacts to farming or ranching
25 operations as opposed to land that did not have those same risks. If I was looking
26 to lease or rent ground I would pay more for comparable non-pipeline land than I
27 would for comparable pipeline land and I think most folks would think the same
28 way. This is another negative economic impact that affects the landowner and the
29 county and the state and will forever and ever should TransCanada's preferred or

1 mainline alternative routes be approved. If they were to twin or closely parallel to
2 Keystone I the vast majority of landowners would be those that already have a
3 pipeline so there would be considerable less new incremental negative impacts.

4 **Q: Do you have similar concerns about selling the land?**

5 A: Well I hope not to have to sell the land in my lifetime but times change and you
6 never know what is around the corner and yes I am concerned that if another piece
7 of ground similar to mine were for sale and it did not have the pipeline and mine
8 did that I would have a lower selling price. I think this would be true for pipeline
9 ground on both the preferred and mainline alternative routes.

10 **Q: What is your intent with your land after you die?**

11 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
12 to come but I have thought about getting out if this pipeline were to come through.

13 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
14 Pipeline would cross the land described above and owned by you?**

15 A: Yes.

16 **Q: Were you or an entity for which you are a member, shareholder, or director
17 previously sued by TransCanada Keystone Pipeline, LP?**

18 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
19 petition for condemnation against our land so it could place its proposed pipeline
20 within an easement that it wanted to take from us on our land.

21 **Q: Did you defend yourself and your land in that condemnation action?**

22 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
23 and expenses in our resistance of TransCanada's lawsuit against us.

24 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
25 incurred?**

26 A: No, they have not.

27 **Q: In its lawsuit against you, did TransCanada identify the amount of your
28 property that it wanted to take for its proposed pipeline?**

1 A: The lawsuit against us stated they would take the amount of property that is
2 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
3 and equipment reasonably necessary to operate the pipeline.

4 **Q: Did TransCanada define what they meant by “property that is reasonably
5 necessary”?**

6 A: No, they did not.

7 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain
8 property portion of your land?**

9 A: Yes, they did.

10 **Q: Did TransCanada describe what rights it proposed to take related to the
11 eminent domain property on your land?**

12 A: Yes, they did.

13 **Q: What rights that they proposed to take did they describe?**

14 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
15 operate, and maintain the pipeline and the plant and equipment reasonably
16 necessary to operate the pipeline, specifically including surveying, laying,
17 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
18 reconstructing, removing and abandoning one pipeline, together with all fittings,
19 cathodic protection equipment, pipeline markers, and all their equipment and
20 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
21 petroleum products, and all by-products thereof.”

22 **Q: Prior to filing an eminent domain lawsuit to take your land that
23 TransCanada identified, do you believe they attempted to negotiate in good
24 faith with you?**

25 A: No, I do not.

26 **Q: Did TransCanada at any time approach you with or deliver to you their
27 proposed easement and right-of-way agreement?**

28 A: Yes, they did.

1 **Q: At the time you reviewed TransCanada's easement and right-of-way**
2 **agreement, did you understand that they would be purchasing a fee title**
3 **interest in your property or that they were taking something else?**

4 A: I understood that they proposed to have the power to take both a temporary
5 construction easement that could last for a certain period of time and then also a
6 permanent easement which they described to be 50 feet across or in width, and
7 that would run the entire portion of my property from where a proposed pipeline
8 would enter my property until where it would exit the property.

9 **Q: Is the document included with your testimony here as Attachment No. 3, a**
10 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
11 **Way agreement that they included with their condemnation lawsuit against**
12 **you?**

13 A: Yes, it is.

14 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
15 **and Right-of-Way agreement?**

16 A: Yes, I have.

17 **Q: What is your understanding of the significance of the Easement and Right-of-**
18 **Way agreement as proposed by TransCanada?**

19 A: My understanding is that this is the document that will govern all of the rights and
20 obligations and duties as well as the limitations of what I can and cannot do and
21 how I and any future landowner and any person I invite to come onto my property
22 must behave as well as what TransCanada is and is not responsible for and how
23 they can use my land.

24 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
25 **agreement do you have any concerns about any portions of it or any of the**
26 **language either included in the document or missing from the proposed**
27 **document?**

28 A: Yes, I have a number of significant concerns and worries about the document and
29 how the language included and the language not included potentially negatively

1 impacts my land and thereby potentially negatively impacts my community and
2 my state.

3 **Q: I would like you to walk the Commissioners through each and every one of**
4 **your concerns about TransCanada's proposed Easement and Right-of-Way**
5 **agreement so they can develop an understanding of how that language and**
6 **the terms of that contract, in your opinion, potentially negatively impacts you**
7 **and your land. So, if you can start at the beginning of that document and**
8 **let's work our way through it, okay?**

9 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
10 Easement and Right-of-Way agreement and how it negatively could affect my
11 property rights and my economic interests.

12 **Q. Okay, let's start with your first concern please.**

13 A: The very first sentence talks about consideration or how much money they will
14 pay to compensate me for all of the known and unknown affects and all of the
15 rights I am giving up and for all the things they get to do to my land and for what
16 they will prevent me from doing on my land and they only will pay me one time at
17 the signing of the easement agreement. That is a huge problem.

18 **Q: Explain to the Commissioners why that is a problem.**

19 A: It is not fair to the landowner, the county, or the State. It is not fair to the
20 landowner because they want to have my land forever for use as they see fit so
21 they can make a daily profit from their customers. If I was to lease ground from
22 my neighbor I would typically pay twice a year every year as long as they granted
23 me the rights to use their land. That only makes sense – that is fair. If I was going
24 to rent a house in town I would typically pay monthly, every month until I gave up
25 my right to use that house. By TransCanada getting out on the cheap and paying
26 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
27 revenue collection on the money I would be paid and then pay taxes on and
28 contribute to this state and this country. It is money I would be putting back into
29 my local community both spending and stimulating the local economy and

1 generating more economic activity right here. Instead TransCanada's shareholders
2 keep all that money and it never finds its way to Nebraska.

3 **Q: What is your next concern?**

4 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
5 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
6 limited partnership..." and I have no idea who that really is. I have no idea who is
7 forcing this pipeline on us or who the owners of the entities are, or what are the
8 assets backing this limited partnership, or who the general partner is, or who all
9 the limited partners are, and who makes up the ownership of the these partners or
10 the structure or any of the basic things you would want to know and understand if
11 you would want to do business with such an outfit. According to TransCanada's
12 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
13 liability company called TransCanada Keystone Pipeline GP, LLC is the general
14 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
15 basically nothing. That is really scary since the general partner has the liability but
16 virtually none of the ownership and who knows if it has any other assets.

17 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
18 **percent clear on exactly who could become the owner of over 275 miles of**
19 **Nebraska land?**

20 A: No.

21 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
22 **percent clear on exactly who will be operating and responsible for**
23 **approximately 275 miles of tar sands pipeline underneath and through**
24 **Nebraska land?**

25 A: No.

26 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
27 **and the State of Nebraska of TransCanada's easement terms.**

28 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
29 called "Grantee")..." and this concerns me because it would allow 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 are not conducive to the protection of property rights.
17 A shallow pipeline is much more likely to become a danger and liability in the
18 future given farming operations and buried irrigation lines and other factors
19 common to the current typical agricultural uses of the land in question impacted
20 by TransCanada’s preferred pipeline route.

21 **Q: What is the next concern you have with the Easement language?**

22 A: There are more vague concepts solely at the determination of TransCanada such as
23 “as nearly as practicable” and “pre-construction position” and “extent reasonably
24 possible.” There is nothing here that defines this or provides a mechanism for
25 documenting or memorializing “pre-construction position” so as to minimize
26 costly legal battles or wasted Landowner time attempting to recreate the soil
27 condition on their fields or pasture. Such unilateral powers would negatively affect
28 Landowners property are not conducive to the protection of property rights or
29 economic interest.

1 **Q: What is the next concern you have with the Easement language?**

2 A: TransCanada maintains the unilateral right to abandon the pipeline and all
3 appurtenances thereto in place on, under, across, or through Nebraska land at any
4 time it chooses. There is no provision for Landowner compensation for such
5 abandonment nor any right for the Landowner to demand removal. Such unilateral
6 powers would negatively affect Landowners property are not conducive to the
7 protection of property rights or economic interest.

8 **Q: What is the next concern you have with the Easement language?**

9 A: TransCanada has the power to unilaterally move or modify the location of any
10 Easement area whether permanent or temporary at their sole discretion.
11 Regardless, if Landowner has taken prior steps relative to their property in
12 preparation or planning of TransCanada's taking of the initial easement area(s),
13 the language here does not require TransCanada to compensate the Landowner if
14 they decide to move the easement anywhere on Landowners property. Such
15 unilateral powers would negatively affect Landowners property are not conducive
16 to the protection of property rights or economic interests.

17 **Q: What is the next concern you have with the Easement language?**

18 A: The Easement requires that all of the burdens and restrictions upon Landowner to
19 transfer and be applicable to any future owner of the Land in question without the
20 ability of the future Landowner to modify or negotiate any of the language in
21 question to which it will be held to comply.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
24 Easement to any person, company, country, etc. at their sole discretion at anytime
25 to anyone. This also means that any buyer of the easement could do the same to a
26 third buyer and so on forever. There is no change of control or sale provision in
27 place to protect the Landowner or Nebraska or to provide compensation for such
28 change of control or ownership. It is not conducive to the protection of property
29 rights or economic interests to allow unilateral unrestricted sale of the Easement

1 thereby forcing upon the Landowner and our State a new unknown Easement
2 owner.

3 **Q: What is the next concern you have with the Easement language?**

4 A: There are many terms in the Easement that are either confusing or undefined terms
5 that are without context as to whether or not the Landowner would have any say
6 so in determining what these terms mean or if the evaluation is solely in
7 TransCanada's control. Some of these vague undefined and ambiguous terms are
8 as follows:

- 9 i. "pipeline installation activities"
- 10 ii. "availability of labor and materials"
- 11 iii. "commercially reasonable costs and expenses"
- 12 iv. "reasonably anticipated and foreseeable costs and expenses"
- 13 v. "yield loss damages"
- 14 vi. "diminution in the value of the property"
- 15 vii. "substantially same condition"
- 16 viii. "an actual or potential hazard"
- 17 ix. "efficient"
- 18 x. "convenient"
- 19 xi. "endangered"
- 20 xii. "obstructed"
- 21 xiii. "injured"
- 22 xiv. "interfered with"
- 23 xv. "impaired"
- 24 xvi. "suitable crossings"
- 25 xvii. "where rock is encountered"
- 26 xviii. "as nearly as practicable"
- 27 xix. "pre-construction position"
- 28 xx. "pre-construction grade"
- 29 xxi. "various engineering factors"

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, “yield loss damages” should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 A: I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada’s proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline’s**
18 **impact upon you and your land?**

19 A: No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 A: Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 **Q: Has TransCanada at any time offered to compensate you annually, such as**
6 **wind farm projects do, for the existence of their potential tar sands pipeline**
7 **across your property.**

8 A: No, never.

9 **Q: At any time did TransCanada present you with or request that you, as the**
10 **owner of the land in question, sign and execute a document called, "Advanced**
11 **Release of Damage Claims and Indemnity Agreement?"**

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
14 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

15 A: Yes, it is.

16 **Q: What was your understanding of that document?**

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 **Q: Did you ever sign that document?**

24 A: No, I did not.

25 **Q: Why not?**

26 A; Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you
12 thought their proposed location of their proposed pipeline across your land
13 was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you
16 thought their proposed location of their proposed pipeline across your land
17 was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
20 Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of
23 an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which
29 the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 **Q: Can you think of any way in which the public, that is the citizens of the State**
3 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
4 **Pipeline, as it dissects the State of Nebraska?**

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
13 **crude petroleum, or oil and petroleum by-products that you would like to**
14 **ship in its pipeline?**

15 A: No, it has not.

16 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
17 **products that you, at this time or any time in the future, would desire to place**
18 **for transport within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not.

20 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
21 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
22 **products within the proposed TransCanada Keystone XL Pipeline?**

23 A: No, I do not. I've never heard of such a person or company like that.

24 **Q: Do you pay property taxes for the land that would be affected and impacted**
25 **at the proposed TransCanada Keystone XL Pipeline?**

26 A: Yes, I do.

27 **Q: Why do you pay property taxes on that land?**

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q: Because you follow the law and pay property taxes, do you believe you**
2 **deserve any special consideration or treatment apart from any other person**
3 **or company that pays property taxes?**

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q: Do you believe the fact that you pay property taxes entitles you to special**
7 **treatment of any kind, or special rights of any kind?**

8 A: No, of course not.

9 **Q: Do you believe the fact that you pay property taxes on your land would be**
10 **enough to qualify you to have the power of eminent domain to take land of**
11 **your neighbors or other people in your county, or other people across the**
12 **state of Nebraska?**

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q: Have you at any time ever employed any person other than yourself?**

16 A: Well, yes I have.

17 **Q: Do you believe that the fact that you have, at some point in your life,**
18 **employed one or more other persons entitle you to any special treatment or**
19 **consideration above and beyond any other Nebraskan that has also employed**
20 **one or more persons?**

21 A: No, of course not.

22 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
23 **have at one point employed another person within this state, entitles you to**
24 **preferential treatment or consideration of any kind?**

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q: At the beginning of your statement, you briefly described your property that**
28 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
29 **give the Commissioners a sense of specifically how you believe the proposed**

1 **Keystone XL Pipeline and its preferred route, which proposes to go across**
2 **your land, how it would in your opinion based on your knowledge,**
3 **experience, and background of your land, affect it. So please share with the**
4 **Commissioners the characteristics of your land that you believe is important**
5 **for them to understand, while they evaluate TransCanada's application for a**
6 **route for its proposed pipeline to cross Nebraska and across your land,**
7 **specifically.**

8 A: On the E ½ E ½ the pipeline would cross below a dam on a neighbor's adjoining
9 land and thru a swamp and running springs. A leak would impact the drinking
10 water on this pasture. On the NE ¼ of 13-28-9 the pipeline would cross a running
11 creek before entering our land. This is the source of water for our pasture. It is
12 vital to our farming operation. The terrain is hilly and sandy soil.

13 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
14 **crude oil pipeline in its preferred location, or ultimate location across the**
15 **state of Nebraska?**

16 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
17 or even bullied around and being made to feel scared that they did not have any
18 options but to sign whatever papers TransCanada told them they had to. I am
19 aware of folks being threatened that their land would be taken if they didn't follow
20 what TransCanada was saying. I am aware of tactics to get people to sign
21 easements that I don't believe have any place in Nebraska or anywhere such as
22 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
23 landowners and convince them they should sign TransCanada's easement
24 agreements. I am aware of older folks and widows or widowers feeling they had
25 no choice but to sign TransCanada's Easement and they didn't know they could
26 fight or stand up for themselves. From a more practical standpoint, I am worried
27 that according to their answer to our Interrogatory No. 211, TransCanada only
28 owns and operates one (1) major oil pipeline. They simply do not have the
29 experience with this type of pipeline and that scares me. There are others but that

1 is what I can recollect at this time and if I remember more or my recollection is
2 refreshed I will share those with the Commissioners at the Hearing in August.

3 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
4 **landowner is reasonable or just?**

5 A: No, I do not.

6 **Q: Do you have any concern about limitations that the construction of this**
7 **proposed pipeline across your affected land would prevent construction of**
8 **future structures upon the portion of your land affected by the proposed**
9 **easement and immediately surrounding areas?**

10 A: Well yes, of course I do. We would not be able to build many, if any, types of
11 structures directly across or touching the easement, and it would be unwise and I
12 would be uncomfortable to build anything near the easement for fear of being
13 blamed in the future should any damage or difficulty result on my property in
14 regards to the pipeline.

15 **Q: Do you think such a restriction would impact you economically?**

16 A: Well yes, of course.

17 **Q: How do you think such a restriction would impact you economically?**

18 A: The future of this land may not be exactly how it's being used as of this moment,
19 and having the restrictions and limiting my ability to develop my land in certain
20 ways presents a huge negative economic impact on myself, my family, and any
21 potential future owner of the property. You have no idea how I or the future owner
22 may want to use this land in the future or the other land across Nebraska
23 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
24 ago it would have been hard to imagine all the advances that we have now or how
25 things change. Because the Easement is forever and TransCanada gets the rights in
26 my land forever we have to think with a very long term view. By placing their
27 pipeline on under across and through my land that prevents future development
28 which greatly negatively impacts future taxes and tax revenue that could have
29 been generated by the County and State but now will not. When you look at the

1 short blip of economic activity that the two years of temporary construction efforts
2 may bring, that is far outweighed by the perpetual and forever loss of opportunity
3 and restrictions TransCanada is forcing upon us and Nebraska. The terms of the
4 easement must be addressed in order for the Commission to truly consider
5 property rights, economic interests, the welfare of Nebraska, and the balancing of
6 the proposed routes against all they will affect and impact.

7 **Q: Do you have any concerns about the environmental impact of the proposed**
8 **pipeline?**

9 A: Yes, I do.

10 **Q: What are some of those concerns?**

11 A: As an affected land owner and Nebraskan, I am concerned that any construction,
12 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
13 a detrimental impact upon the environment of my land specifically, as well as the
14 lands near my land and surrounding the proposed pipeline route.

15 **Q: Do you have any other environmental concerns?**

16 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
17 construction and/or maintenance and operation. I am concerned about spills and
18 leaks that TransCanada has had in the past and will have in the future. This could
19 be catastrophic to my operations or others and to my county and the State.

20 **Q: Do you have any thoughts regarding if there would be an impact upon the**
21 **natural resources on or near your property due to the proposed pipeline?**

22 A: Yes, I believe that any construction, operation, and/or maintenance of the
23 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
24 resources of my land, and the lands near and surrounding the proposed pipeline
25 route.

26 **Q: Do you have any worries about potential impacts from the proposed pipeline**
27 **to the soil of your land, or land near you?**

28 A: Yes, I believe that any construction, operation, and/or maintenance of the
29 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of

1 land, as well as land along and surrounding the proposed pipeline route. This
2 includes, but is not limited to, the reasons that we discussed above of disturbing
3 the soil composition and makeup as it has naturally existed for thousands and
4 millions of years during the construction process, and any future maintenance or
5 removal process. I'm gravely concerned about the fertility and the loss of
6 economic ability of my property to grow the crops, or grow the grasses, or grow
7 whatever it is at that time they exist on my property or that I may want to grow in
8 the future, or that a future owner may want to grow. The land will never be the
9 same from as it exists now undisturbed to after it is trenched up for the proposed
10 pipeline.

11 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
12 **upon the groundwater over your land, or surrounding lands?**

13 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
14 the proposed Keystone XL Pipeline would have a detrimental impact upon the
15 groundwater of not only under my land, but also near and surrounding the pipeline
16 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
17 simple and it is simply too valuable to our State and the country to put at
18 unreasonable risk.

19 **Q: Do you have any concern about the potential impact of the proposed pipeline**
20 **upon the surface water on, or near or around your land?**

21 A: Yes, I have significant concerns that any construction, operation, and/or
22 maintenance of the proposed Keystone XL Pipeline would have detrimental
23 impact upon the surface water of not only within my property boundary, but along
24 and near and surrounding the pipeline route, and in fact, across the state of
25 Nebraska.

26 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
27 **upon the wildlife and plants, other than your growing crops on or near your**
28 **land?**

1 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
2 the proposed Keystone XL Pipeline would have a detrimental impact upon the
3 wildlife and the plants, not only that are located on or can be found upon my land,
4 but also near and along the proposed pipeline route.

5 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
6 **fair market value of your land?**

7 A: Yes, I do. I am significantly concerned about how the existence of the proposed
8 pipeline underneath and across and through my property will negatively affect the
9 fair market value at any point in the future, especially at that point in which I
10 would need to sell the property, or someone in my family would need to sell the
11 property. I do not believe, and certainly would not be willing to pay, the same
12 price for land that had the pipeline located on it, versus land that did not. I hope
13 there is never a point where I'm in a position where I have to sell and have to
14 realize as much value as I can out of my land. But because it is my single largest
15 asset, I'm gravely concerned that the existence of the proposed Keystone XL
16 Pipeline upon my land will affect a buyer's willingness to pay as much as they
17 would've paid and as much as I could've received, if the pipeline were not upon
18 my property. There are just too many risks, unknowns, impacts and uncertainties,
19 not to mention all of the rights you give up by the nature of having the pipeline
20 due to having the easement that we have previously discussed, for any reasonable
21 person to think that the existence of the pipeline would not negatively affect my
22 property's value.

23 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
24 **testimony?**

25 A: Yes, I have.

26 **Q: Where have you seen that before?**

27 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
28 I-90 corridor alternate route of its proposed pipeline through Nebraska and I

1 believe the portion of the alternative route in Nebraska essentially twins or
2 parallels Keystone I.

3 **Q: Do you believe that TransCanada’s preferred route as found on page 5 of its**
4 **Application, and as found on Attachment No. 7, here to your testimony, is in**
5 **the public interest of Nebraska?**

6 A: No, I do not.

7 **Q: Do you believe that the Keystone mainline alternative route as shown on**
8 **Attachment No. 7 included with your testimony here is a major oil pipeline**
9 **route that is in the public interest of Nebraska?**

10 A: No, I do not.

11 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
12 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

13 A: No, I do not.

14 **Q: Do you believe there is any potential route for the proposed Keystone XL**
15 **Pipeline across, within, under, or through the State of Nebraska that is in the**
16 **public interest of the citizens of Nebraska?**

17 A: No, I do not.

18 **Q: Why do you hold that belief?**

19 A: Because there simply is no public interest based on all of the factors that I am
20 aware and that I have read and that I have studied that this Commission is to
21 consider that would establish that a for-profit foreign-owned pipeline that simply
22 crosses Nebraska because we are geographically in the way between where tar
23 sands are in Canada to where it wants to ship it to in Texas could ever be in the
24 public interest of Nebraskans. We derive no benefit from this project. It is not for
25 public use. Nebraska is simply in the way and when all considerations are taken in
26 there is no net benefit of any kind for Nebraska should this project be placed in our
27 state. Even if there was some arguable “benefit” it is not enough to outweigh all
28 the negative impacts and concerns.

1 **Q: What do you think about the applicant, TransCanada's argument that it's**
2 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
3 **of Nebraska because it may bring temporary jobs during the construction**
4 **phase to Nebraska?**

5 A: First of all, not all jobs are created equally. Most jobs that are created, whether
6 temporary or on a permanent basis, don't come with a project that has all the
7 potential and foreseeable negative impacts, many of which we have discussed here
8 and other witnesses throughout the course of this hearing have and will discuss. If
9 I decide to hire and employ someone to help me out in my farming or ranching
10 business, I've created a job but I haven't done so at the risk or detrimental impact
11 to my land or my town or my county or my state. And I've hired someone who is
12 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
13 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
14 jobs are not created equal. Additionally, I understand from what I'm familiar with
15 from TransCanada's own statements that the jobs numbers they originally touted
16 were determined to be a minute fraction of the permanent jobs that had been
17 projected. According to their answer to our Interrogatory No. 191, TransCanada
18 has created only thirty-four (34) jobs within Nebraska working specifically on
19 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
20 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
21 Further, according to their answer to Interrogatory No. 199, TransCanada would
22 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
23 constructed on its Preferred Route or its Mainline Alternative Route.

24 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
25 **because it would cross your land?**

26 A: No, absolutely not. I am opposed to this project because it is not in the public
27 interest, neither within my community nor within our state.

28 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
29 **was to cross someone else's land?**

1 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
2 the fear and anxiety and potential foreseeable risks and negative impacts that this
3 type of a project carrying this type of product brings foisted upon anyone in this
4 state or any other state.

5 **Q: Do you think there is any intelligent route for the proposed Keystone XL
6 Pipeline to cross the state of Nebraska?**

7 A: I don't believe there is an intelligent route because as I have stated I don't believe
8 this project anywhere within Nebraska is within the public interest. However, if
9 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
10 had to go somewhere in the state of Nebraska, the only intelligent route I believe
11 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
12 preferred route and the mainline alternative routes are economic liabilities our
13 state cannot risk.

14 **Q: What do you rely upon to make that statement?**

15 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
16 already exists in that area is reason enough as it is not in our best interest or the
17 public interests to have more major oil pipelines crisscrossing our state. Second,
18 they have all the infrastructure already there in terms of relationships with the
19 counties and local officials and first responders along that route. Third, they have
20 already obtained easements from all the landowners along that route and have
21 relationships with them. Fourth, that route avoids our most sensitive soils, the
22 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
23 Aquifer. Sixth, they have already studied that route and previously offered it as an
24 alternative. Seventh, it just makes the most sense that as a state we would have
25 some intelligent policy of energy corridors and co-locating this type of
26 infrastructure near each other.

27 **Q: Do you have any other concerns you would like to reiterate or can think of at
28 this time you would like the Commissioners to understand?**

1 A: Yes. We are deeply concerned about our underground water being contaminated
2 by a leak. Our damage to the land would be minimum compared to most of the
3 other landowners. We are also concerned about the conditions of the easement.

4 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
5 **like the Public Service Commissioners to consider in their review of**
6 **TransCanada's Application?**

7 A: No, I have not. I have shared that which I can think of as of the date I signed this
8 document below but other things may come to me or my memory may be
9 refreshed and I will add and address those things at the time of the Hearing in
10 August and address any additional items at that time as is necessary. Additionally,
11 I have not had an adequate amount of time to receive and review all of
12 TransCanada's answers to our discovery and the discovery of others so it was
13 impossible to competently and completely react to that in my testimony here and I
14 reserve the right to also address anything related to discovery that has not yet
15 concluded as of the date I signed this document below. Lastly, certain documents
16 requested have not yet been produced by TransCanada and therefore I may have
17 additional thoughts on those I will also share at the hearing as needed.

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: What is it that you are requesting the Public Service Commissioners do in**
23 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
24 **across Nebraska?**

25 A: I am respectfully and humbly requesting that the Commissioners think far beyond
26 a temporary job spike that this project may bring to a few counties and beyond the
27 relatively small amount of taxes this proposed foreign pipeline would possibly
28 generate. And, instead think about the perpetual and forever impacts of this
29 pipeline as it would have on the landowners specifically, first and foremost, but

1 also thereby upon the entire state of Nebraska, and to determine that neither the
2 preferred route nor the Keystone mainline alternative route are in the public
3 interest of the citizens of the state of Nebraska. And if the Commissioners were
4 inclined to modify TransCanada's proposed routes and were to be inclined to grant
5 an application for a route in Nebraska, that the only potential route that would
6 make any intelligent sense whatsoever would be twinning or near paralleling of
7 the proposed KXL with the existing Keystone I pipeline. The point of including
8 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been
9 considered by TransCanada before. It simply does not make sense to add yet
10 another major oil pipeline crisscrossing our state creating new pumping stations,
11 creating new impacts on additional counties and communities and going through
12 all of the court processes with myself and other landowners like me when this
13 applicant already has relationships with the landowners, the towns and the
14 communities along Keystone I, and that Keystone I is firmly outside of the sand
15 hills and a significantly further portion away from the heart of the Ogallala
16 Aquifer than the preferred route or the Keystone mainline alternative route.

17 **Q: Are all of your statements in your testimony provided above true and**
18 **accurate as of the date you signed this document to the best of your**
19 **knowledge?**

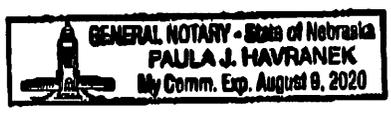
20 A: Yes, they are.

21 **Q: Thank you, I have no further questions at this time and reserve the right to**
22 **ask you additional questions at the August 2017 Hearing.**

Glen A. Miller
Glen A. Miller

Subscribed and Sworn to me before this 27 day of May, 2017.

Paula J. Havranek
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.

S.002
T.028N
R.009W

S.001
T.028N
R.009W



S.011
T.028N
R.009W

Edna Miller
Glen Miller

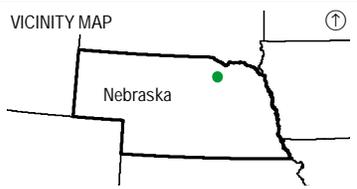
S.012
T.028N
R.009W

IMAGERY: NAIP 2016

0 250 500 1,000 1,500 Feet

S.014
T.028N
R.009W

S.013
T.028N
R.009W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Edna Miller
Glen Miller

TRACT NO. ML-NE-HT-30610.000
STATE: Nebraska
COUNTY: Holt
SECTION: 011
TOWNSHIP: 028N
RANGE: 009W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\5858\KEYSTONE_XL\9002_999\256



S.012
T.028 N
R.009 W

S.007
T.028 N
R.008 W

S.018
T.028 N
R.008 W

S.013
T.028 N
R.009 W

Edna Miller
Glen Miller

IMAGERY: NAIP 2016



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Edna Miller
Glen Miller

TRACT NO. ML-NE-HT-30630.000
STATE: Nebraska
COUNTY: Holt
SECTION: 013
TOWNSHIP: 028N
RANGE: 009W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

Attachment No. 2



MILLER
FARM



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-30610.000
ML-NE-HT-30630.000

**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**") **Glen A. Miller and Edna Miller, husband and wife, as joint tenants**, whose mailing address is 86922 509th Ave, Page, NE 68766 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection 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 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the E1/2 of the E1/2 of Section 11, Township 28 North, Range 9 West of the 6th P.M., as recorded in Book 186, Page 351 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 NE1/4 of Section 13, T28N, R9W of the 6th P.M., as recorded in Book 186, Page 352 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

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Glen A. Miller**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Edna Miller**

Notary Public Signature

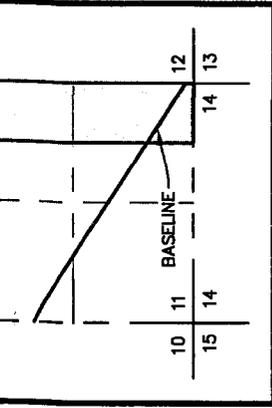
Affix Seal Here

HOLT COUNTY, NEBRASKA

T-28-N, R-9-W, SECTION 11
ML-NE-HT-30610.000

LEGEND:
R \$
P
S
PROPOSED
A.T.W.S.
P.E.R.W.
D.R.H.C.N.

PROPERTY LINE
SECTION LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF HOLT COUNTY, NEBRASKA

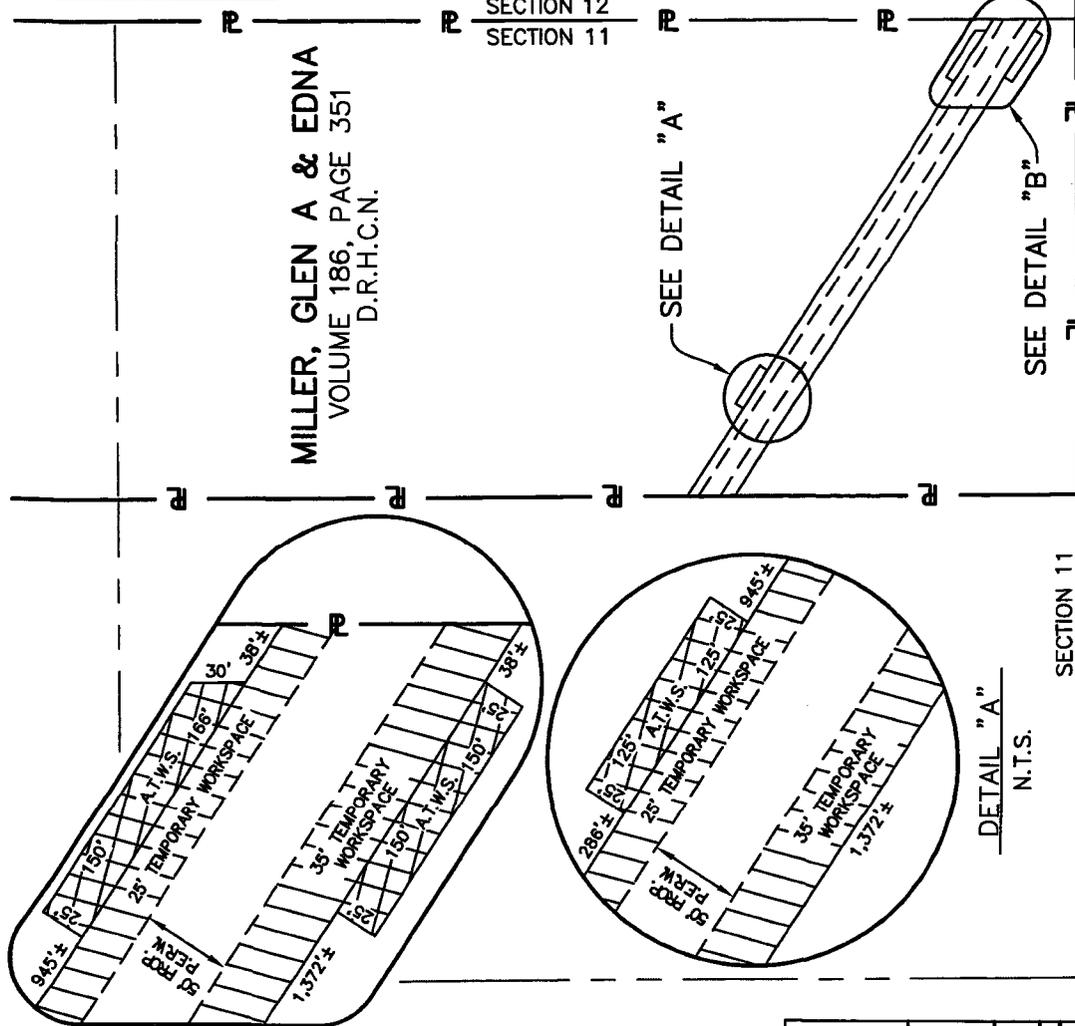


VICINITY MAP
N.T.S.

MILLER, GLEN A & EDNA
VOLUME 186, PAGE 351
D.R.H.C.N.



TRACT LEGAL DESCRIPTION:
E/2 E/2 OF SECTION 11,
T-28-N, R-9-W



DETAIL "B"
N.T.S.

DETAIL "A"
N.T.S.

SEE DETAIL "A"

SEE DETAIL "B"

SECTION 11
SECTION 14

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 1,561'±
AREA OF PERMANENT EASEMENT: 1.8 ACRES
AREA OF TEMPORARY WORKSPACE: 2.1 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.2 ACRE

		KEYSTONE XL PROJECT	
EASEMENT AREA		ACROSS THE PROPERTY OF MILLER, GLEN A & EDNA ML-NE-HT-30610.000	
PROJECT:	XL	EXHIBIT A	
APPROVED BY:	SLR	DRAWING NUMBER	XL-08-ML-SK-3376
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	11/03/14	JN	ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30630.000

I/we Glen A. Miller and Edna Miller, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Hundred Seventy Two Dollars and No Cents (\$572.00), 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:

NE/4

Section 13, Township 28-N, Range 9-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-30610.000

I/we Glen A. Miller and Edna Miller, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Sixty Six Dollars and No Cents (\$1,066.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

E/2 E/2

Section 11, Township 28-N, Range 9-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_____.

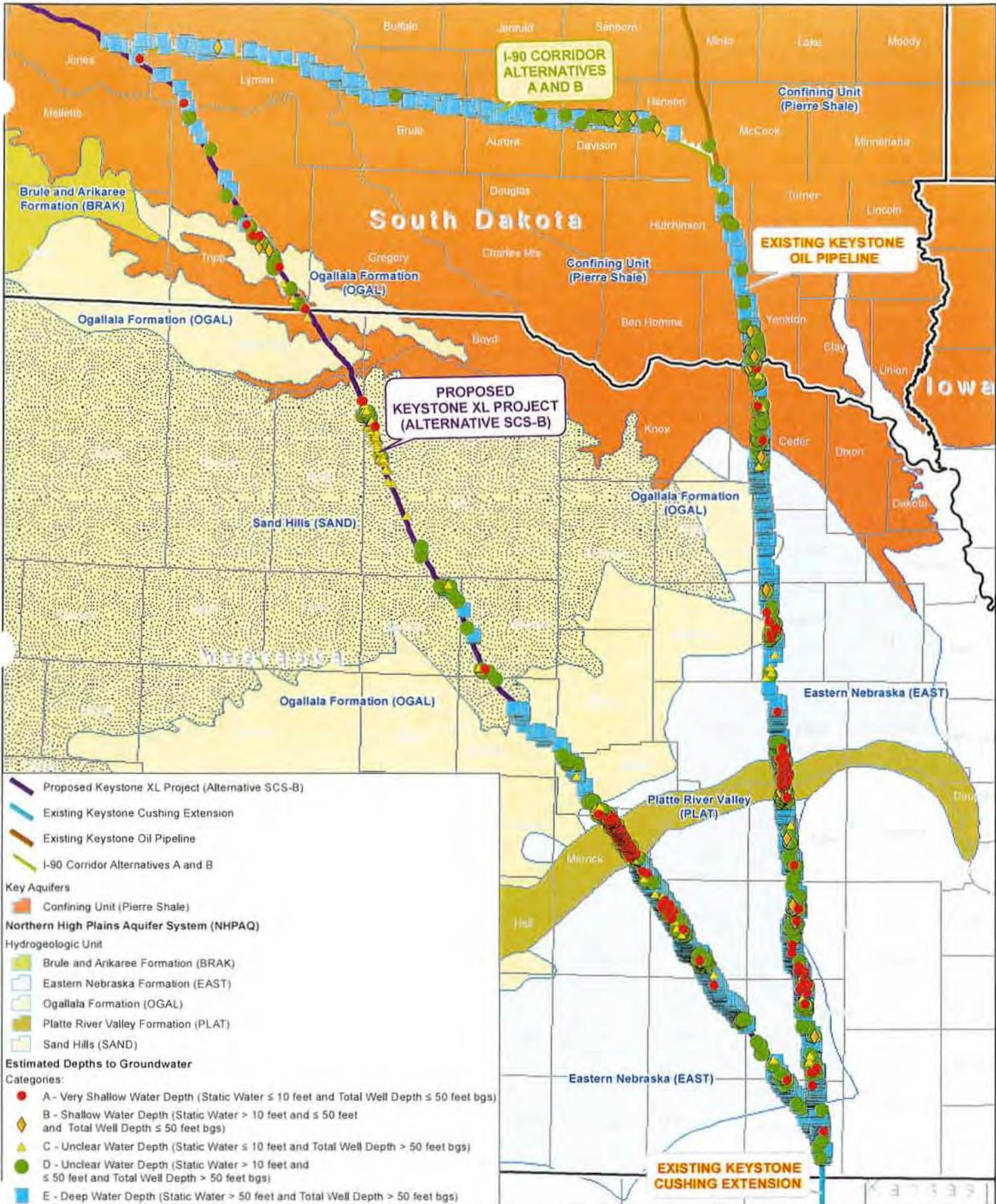
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



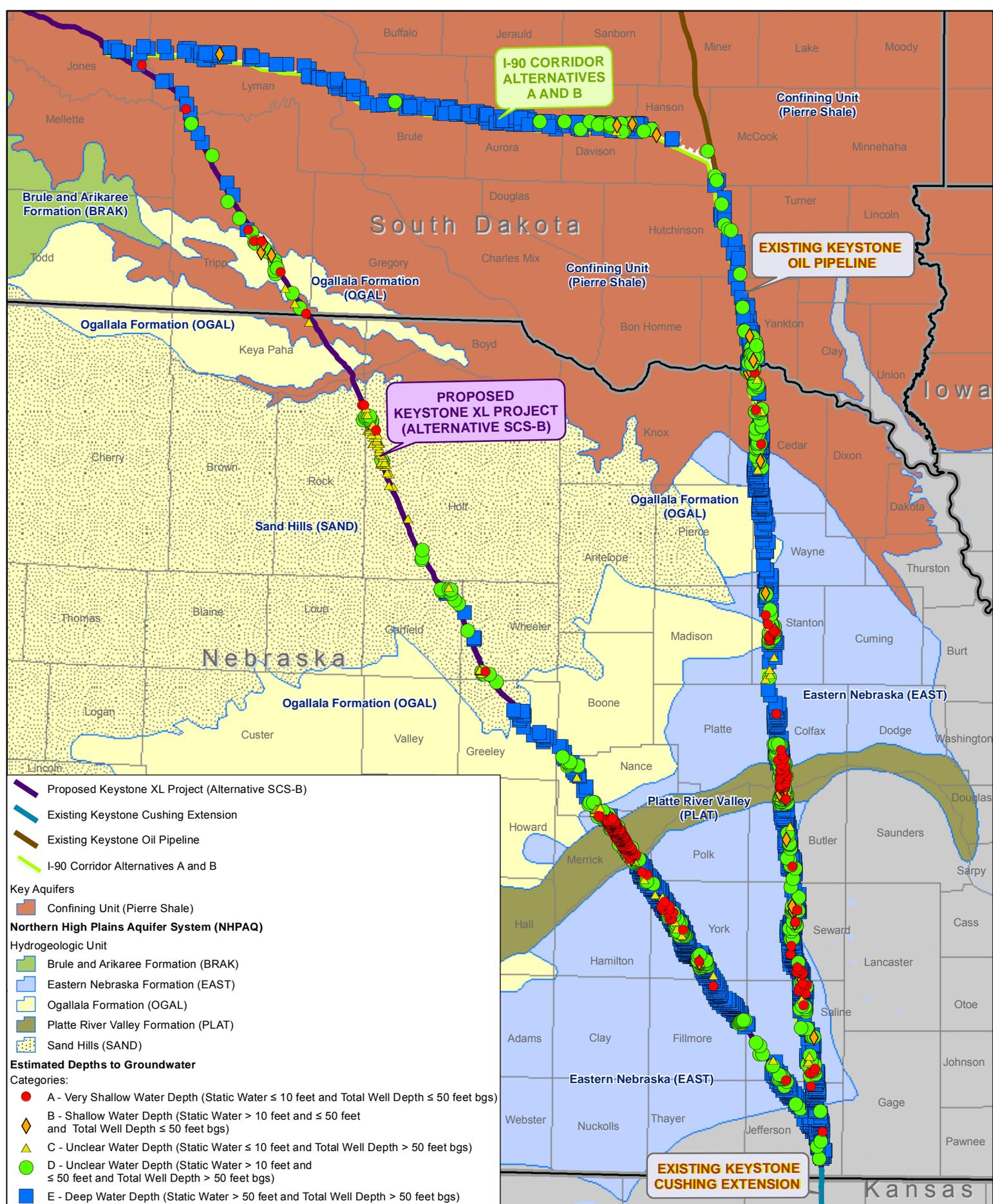
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

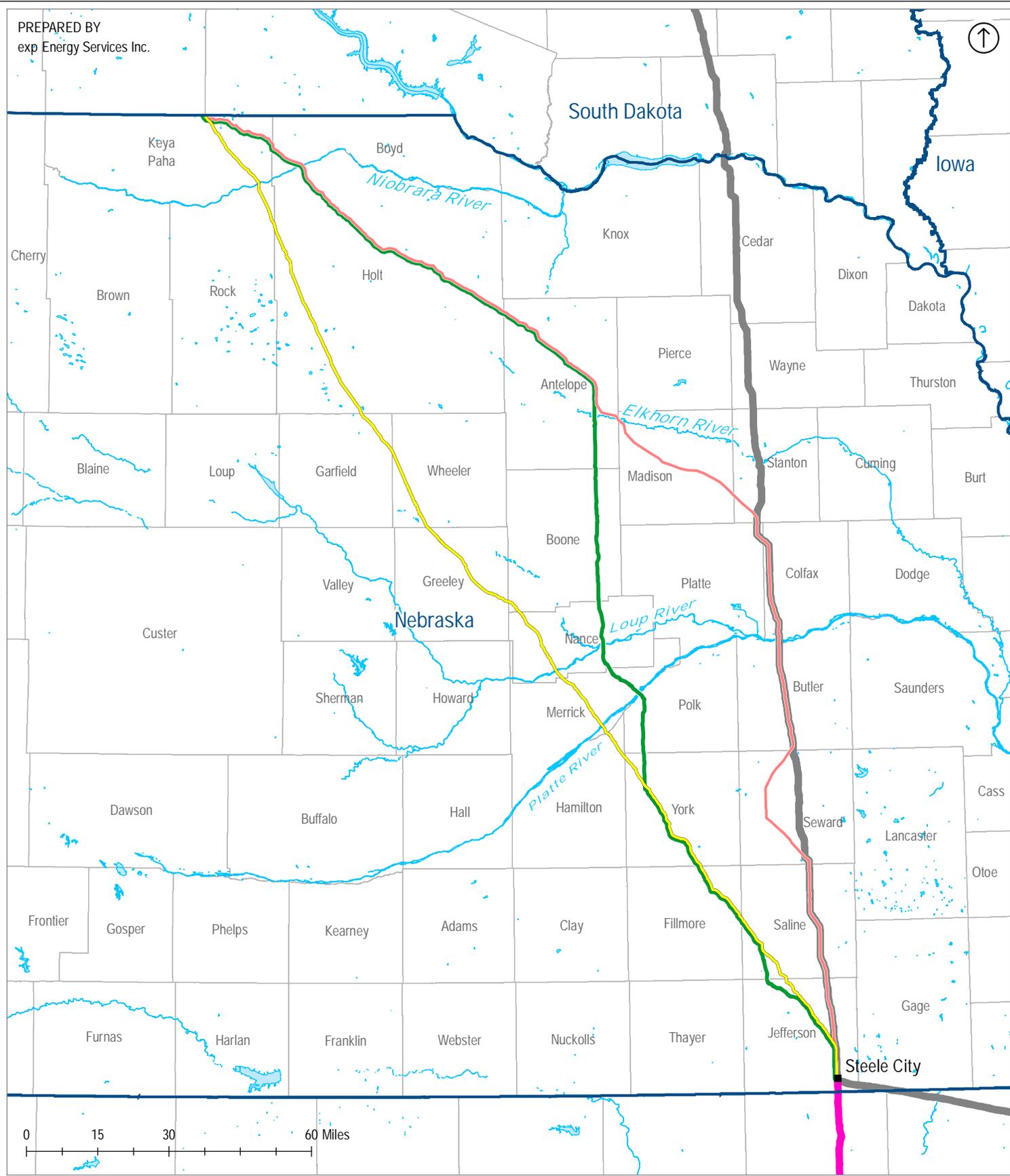
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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

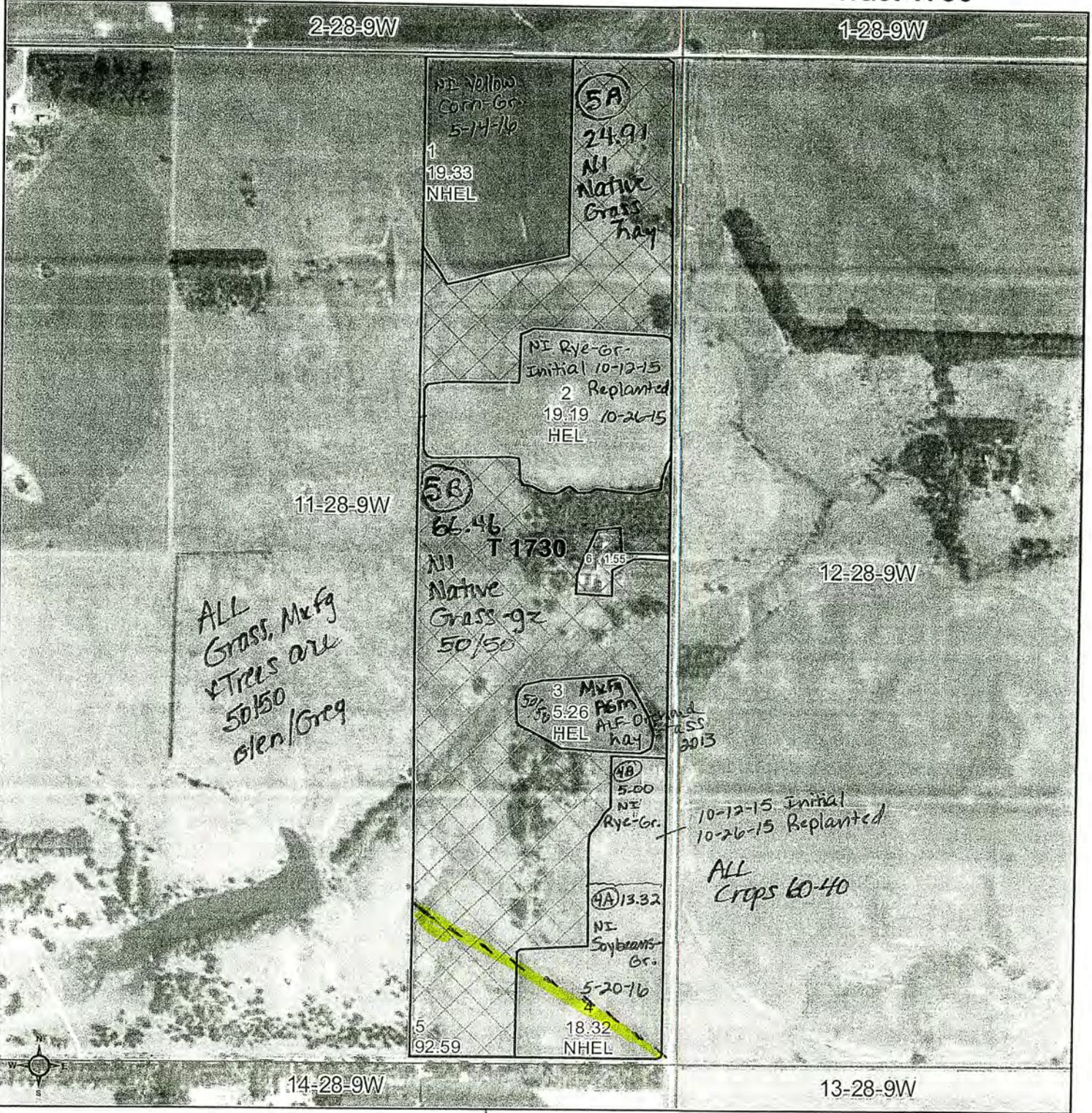
	PREFERRED ROUTE		WATERBODY
	SANDHILLS ALTERNATIVE ROUTE		STATE BOUNDARY
	KEYSTONE MAINLINE ALTERNATIVE ROUTE		COUNTY BOUNDARY
	KEYSTONE MAINLINE (PHASE I)		
	KEYSTONE CUSHING EXTENSION (PHASE II)		

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Attachment No. 8



ALL Grass, Mxfg & Trees are 50/50 Glen/Greg

10-12-15 Initial
10-26-15 Replanted
ALL Crops 60-40

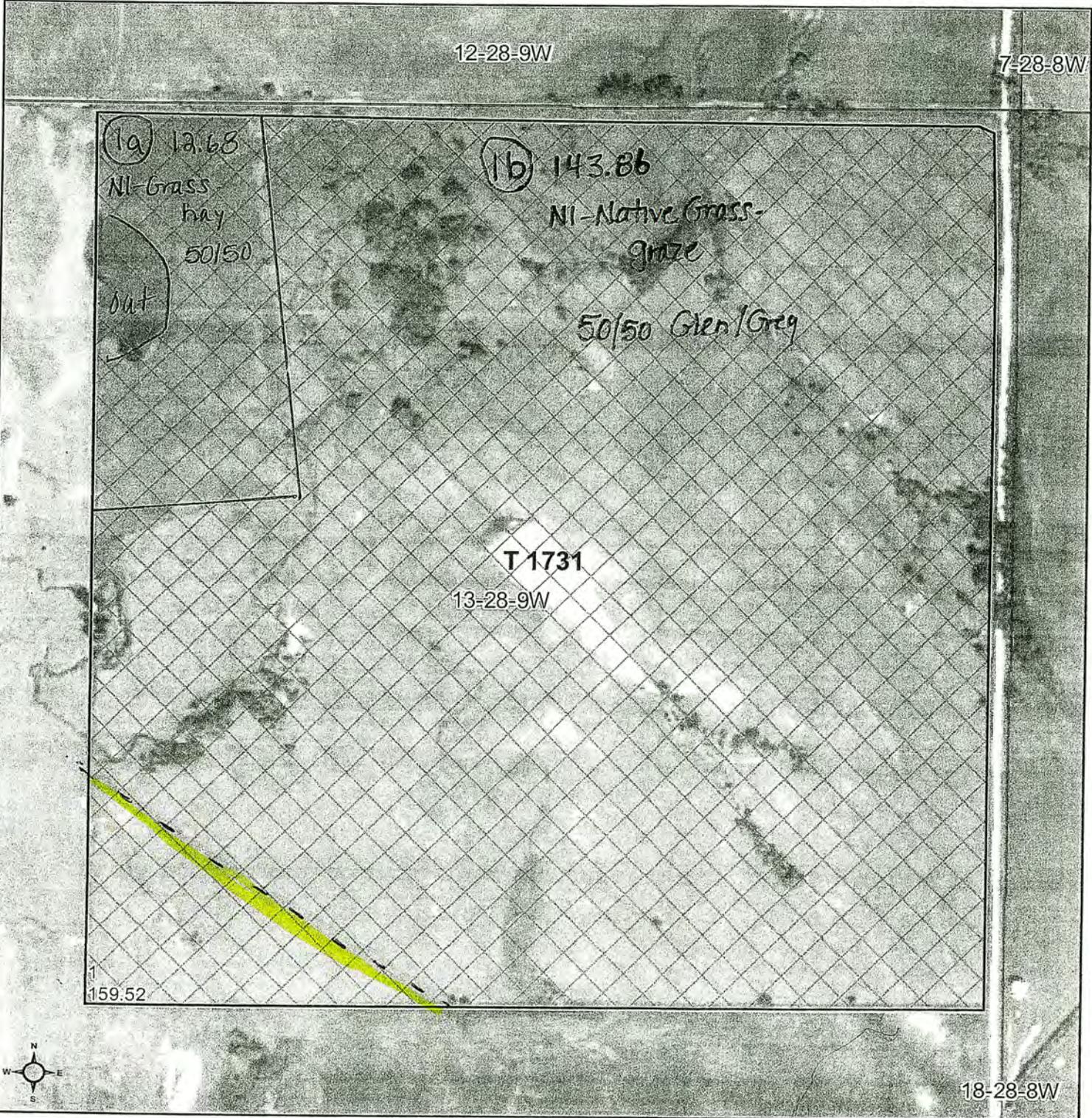
John's Place
2014 NAIP Imagery

2016 Program Year
Map Created April 29, 2016
1 inch = 698 feet

Tract Cropland Total: 62.10 acres

- Common Land Unit**
- Cropland
 - Wetland
 - Non-Cropland
- Tract Boundary**
- PLSS
 - Wetland Determination Identifiers
- Restricted Use
 - Limited Restrictions
 - Exempt from Conservation Compliance Provisions

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).



- Common Land Unit PLSS
- Non-Cropland
- Wetland Determination Identifiers
- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

2014 NAIP Imagery

2016 Program Year
Map Created April 29, 2016
1 inch = 400 feet

Tract Cropland Total: 0.00 acres

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).

Before the Nebraska Public Service Commission

In the Matter of the Application

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
Frank Morrison in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Frank Morrison.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Farmer.

1 **Q: If you are you married tell us your spouse's name please?**

2 A: Lynn Morrison.

3 **Q: For the land that would be affected and impacted by the proposed KXL tar**
4 **sands pipeline give the Commissioners a sense how long the land has been in**
5 **your family and a little history of the land.**

6 A: My family has been farming land in Antelope County since it was homesteaded in
7 1883 by his great grandfather. One quarter of their ground in that the line will go
8 through has been owned by Frank's family since the mid 1960's. The other
9 quarter of ground has been owned since 1999. There are irrigation pivots on both
10 of these properties.

11 **Q: Do you earn any income from this land?**

12 A: Yes.

13 **Q: Have you depended on the income from your land to support your livelihood**
14 **or the livelihood of your family?**

15 A: Yes.

16 **Q: Have you ever in the past or have you thought about in the future leasing all**
17 **or a portion of your land in question here?**

18 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
19 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
20 all the restrictions and risks and potential negative impacts to farming or ranching
21 operations as opposed to land that did not have those same risks. If I was looking
22 to lease or rent ground I would pay more for comparable non-pipeline land than I
23 would for comparable pipeline land and I think most folks would think the same
24 way. This is another negative economic impact that affects the landowner and the
25 county and the state and will forever and ever should TransCanada's preferred or
26 mainline alternative routes be approved. If they were to twin or closely parallel to
27 Keystone I the vast majority of landowners would be those that already have a
28 pipeline so there would be considerable less new incremental negative impacts.

29 **Q: Do you have similar concerns about selling the land?**

1 A: Well I hope not to have to sell the land in my lifetime but times change and you
2 never know what is around the corner and yes I am concerned that if another piece
3 of ground similar to mine were for sale and it did not have the pipeline and mine
4 did that I would have a lower selling price. I think this would be true for pipeline
5 ground on both the preferred and mainline alternative routes.

6 **Q: What is your intent with your land after you die?**

7 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
8 to come but I have thought about getting out if this pipeline were to come through.

9 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
10 Pipeline would cross the land described above and owned by you?**

11 A: Yes.

12 **Q: Were you or an entity for which you are a member, shareholder, or director
13 previously sued by TransCanada Keystone Pipeline, LP?**

14 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
15 petition for condemnation against our land so it could place its proposed pipeline
16 within an easement that it wanted to take from us on our land.

17 **Q: Did you defend yourself and your land in that condemnation action?**

18 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
19 and expenses in our resistance of TransCanada's lawsuit against us.

20 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
21 incurred?**

22 A: No, they have not.

23 **Q: In its lawsuit against you, did TransCanada identify the amount of your
24 property that it wanted to take for its proposed pipeline?**

25 A: The lawsuit against us stated they would take the amount of property that is
26 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
27 and equipment reasonably necessary to operate the pipeline.

28 **Q: Did TransCanada define what they meant by "property that is reasonably
29 necessary"?**

1 A: No, they did not.

2 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
3 **property portion of your land?**

4 A: Yes, they did.

5 **Q: Did TransCanada describe what rights it proposed to take related to the**
6 **eminent domain property on your land?**

7 A: Yes, they did.

8 **Q: What rights that they proposed to take did they describe?**

9 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
10 operate, and maintain the pipeline and the plant and equipment reasonably
11 necessary to operate the pipeline, specifically including surveying, laying,
12 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
13 reconstructing, removing and abandoning one pipeline, together with all fittings,
14 cathodic protection equipment, pipeline markers, and all their equipment and
15 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
16 petroleum products, and all by-products thereof.”

17 **Q: Prior to filing an eminent domain lawsuit to take your land that**
18 **TransCanada identified, do you believe they attempted to negotiate in good**
19 **faith with you?**

20 A: No, I do not.

21 **Q: Did TransCanada at any time approach you with or deliver to you their**
22 **proposed easement and right-of-way agreement?**

23 A: Yes, they did.

24 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
25 **agreement, did you understand that they would be purchasing a fee title**
26 **interest in your property or that they were taking something else?**

27 A: I understood that they proposed to have the power to take both a temporary
28 construction easement that could last for a certain period of time and then also a
29 permanent easement which they described to be 50 feet across or in width, and

1 that would run the entire portion of my property from where a proposed pipeline
2 would enter my property until where it would exit the property.

3 **Q: Is the document included with your testimony here as Attachment No. 2, a**
4 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
5 **Way agreement that they included with their condemnation lawsuit against**
6 **you?**

7 A: Yes, it is.

8 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
9 **and Right-of-Way agreement?**

10 A: Yes, I have.

11 **Q: What is your understanding of the significance of the Easement and Right-of-**
12 **Way agreement as proposed by TransCanada?**

13 A: My understanding is that this is the document that will govern all of the rights and
14 obligations and duties as well as the limitations of what I can and cannot do and
15 how I and any future landowner and any person I invite to come onto my property
16 must behave as well as what TransCanada is and is not responsible for and how
17 they can use my land.

18 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
19 **agreement do you have any concerns about any portions of it or any of the**
20 **language either included in the document or missing from the proposed**
21 **document?**

22 A: Yes, I have a number of significant concerns and worries about the document and
23 how the language included and the language not included potentially negatively
24 impacts my land and thereby potentially negatively impacts my community and
25 my state.

26 **Q: I would like you to walk the Commissioners through each and every one of**
27 **your concerns about TransCanada's proposed Easement and Right-of-Way**
28 **agreement so they can develop an understanding of how that language and**
29 **the terms of that contract, in your opinion, potentially negatively impacts you**

1 **and your land. So, if you can start at the beginning of that document and**
2 **let's work our way through it, okay?**

3 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
4 Easement and Right-of-Way agreement and how it negatively could affect my
5 property rights and my economic interests.

6 **Q: Okay, let's start with your first concern please.**

7 A: The very first sentence talks about consideration or how much money they will
8 pay to compensate me for all of the known and unknown affects and all of the
9 rights I am giving up and for all the things they get to do to my land and for what
10 they will prevent me from doing on my land and they only will pay me one time at
11 the signing of the easement agreement. That is a huge problem.

12 **Q: Explain to the Commissioners why that is a problem.**

13 A: It is not fair to the landowner, the county, or the State. It is not fair to the
14 landowner because they want to have my land forever for use as they see fit so
15 they can make a daily profit from their customers. If I was to lease ground from
16 my neighbor I would typically pay twice a year every year as long as they granted
17 me the rights to use their land. That only makes sense – that is fair. If I was going
18 to rent a house in town I would typically pay monthly, every month until I gave up
19 my right to use that house. By TransCanada getting out on the cheap and paying
20 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
21 revenue collection on the money I would be paid and then pay taxes on and
22 contribute to this state and this country. It is money I would be putting back into
23 my local community both spending and stimulating the local economy and
24 generating more economic activity right here. Instead TransCanada's shareholders
25 keep all that money and it never finds its way to Nebraska.

26 **Q: What is your next concern?**

27 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
28 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
29 limited partnership..." and I have no idea who that really is. I have no idea who is

1 forcing this pipeline on us or who the owners of the entities are, or what are the
2 assets backing this limited partnership, or who the general partner is, or who all
3 the limited partners are, and who makes up the ownership of the these partners or
4 the structure or any of the basic things you would want to know and understand if
5 you would want to do business with such an outfit. According to TransCanada's
6 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
7 liability company called TransCanada Keystone Pipeline GP, LLC is the general
8 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
9 basically nothing. That is really scary since the general partner has the liability but
10 virtually none of the ownership and who knows if it has any other assets.

11 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
12 **percent clear on exactly who could become the owner of over 275 miles of**
13 **Nebraska land?**

14 A: No.

15 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
16 **percent clear on exactly who will be operating and responsible for**
17 **approximately 275 miles of tar sands pipeline underneath and through**
18 **Nebraska land?**

19 A: No.

20 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
21 **and the State of Nebraska of TransCanada's easement terms.**

22 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
23 called "Grantee")..." and this concerns me because it would allow their easement
24 to be transferred or sold to someone or some company or country or who knows
25 what that I don't know and who we may not want to do business with. This
26 pipeline would be a huge asset for TransCanada and if they can sell to the highest
27 bidder that could have terrible impacts upon all of Nebraska depending upon who
28 may buy it and I don't know of any safeguards in place for us or the State to veto

1 or have any say so in who may own, operate, or be responsible for this pipeline in
2 the future.

3 **Q: Do you think that type of uncertainty and lack of control over a major piece**
4 **of infrastructure crossing our State is in the public interest?**

5 A: No, certainly not, in fact, just the opposite.

6 **Q: What's next?**

7 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
8 really concerns me. Why does the easement and right-of-way have to be perpetual
9 and permanent? That is the question myself and my family want an answer to.
10 Perpetual to me is like forever and that doesn't make sense.

11 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

12 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
13 data proving there is a perpetual supply of tar sands. I am not aware in
14 TransCanada's application where it proves there is a perpetual necessity for this
15 pipeline. My understanding of energy infrastructure like wind towers is they have
16 a decommission plan and actually take the towers down when they become
17 obsolete or no longer needed. Nothing manmade lasts forever. My land however
18 will, and I want my family or future Nebraska families to have that land as
19 undisturbed as possible and it is not in my interest or the public interest of
20 Nebraska to be forced to give up perpetual and permanent rights in the land for
21 this specific kind of pipeline project.

22 **Q: Okay, what is your next concern?**

23 A: The easement language includes all these things TransCanada can do and it says
24 "...abandoning in place..." so they can just leave this pipeline under my ground
25 until the end of time just sitting there while they are not using it, but I am still
26 prevented from doing on my land and using my land what I would like. If I owned
27 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
28 there. It doesn't make sense and it scares me and it is not in my interest or the
29 public interest of Nebraska to allow this.

1 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
2 **right?**

3 A: Yes.

4 **Q: So now on the second page of the Easement what are your concerns?**

5 A: Here the Easement identifies a 24-month deadline to complete construction of the
6 pipeline but has caveats that are undefined and ambiguous. The 24-month period
7 starts to run from the moment “actual pipeline installation activities” begin on
8 Landowners property. It appears that TransCanada would define this phrase as
9 needed. It would be wise to explain what types of TransCanada action constitutes
10 “installation activity” For instance, would the placement and storage of an
11 excavator or other equipment on or near the Easement property be an activity or
12 would earth have to be moved before the activity requirement is triggered. This
13 vague phrase is likely to lead to future disputes and litigation that is not in the best
14 interest of the welfare of Nebraska and would not protect property interests. The
15 24-months can also be extended in the case of “force majeure.” My understanding
16 is that force majeure is often used to insulate a party to a contract when events
17 occur that are completely out of their control. In TransCanada’s easement this is
18 expanded to include “without limitation...availability of labor and materials.”
19 Extending this language to labor and materials is problematic because these are
20 two variables that TransCanada does have some or significant control over and to
21 allow extension of the 24-month period over events not truly out of the control of
22 TransCanada and without further provision for compensation for the Landowner is
23 not conducive to protection of property rights.

24 **Q: Okay, what is your next concern?**

25 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
26 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
27 reasonable costs and expenses” will pay for damages caused but then limits
28 TransCanada’s liability to certain circumstances. There is no definition of
29 “commercially reasonable” and no stated right that the Landowner would get to

1 determine the amounts of cost or expense that is “commercially reasonable.”
2 TransCanada excepts out from their liability any damages that are caused by
3 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
4 Landowner. It is understandable that if the Landowner were to willfully and
5 intentionally cause damages to the pipeline that Landowner should be liable.
6 However, anything short of willful misconduct should be the liability of
7 TransCanada who is subjecting the pipeline on the Landowner and who is making
8 a daily profit from that pipeline. When evaluating the impact on property rights of
9 this provision, you must consider the potentially extremely expensive fight a
10 Landowner would have over this question of whether or not damage was an act of
11 negligence. Putting this kind of potential liability upon the Landowner is
12 incredibly problematic and is detrimental to the protection of property rights. I
13 don’t think this unilateral power which I can’t do anything about as the landowner
14 is in the best economic interest of the land in question or the State of Nebraska for
15 landowners to be treated that way.

16 **Q: Is there any specific event or example you are aware of that makes this**
17 **concern more real for you?**

18 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
19 Nemaha County, Nebraska landowner farmers who accidently struck two
20 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
21 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
22 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
23 copy of the Federal Court Complaint is here as **Attachment No. 3**.

24 **Q: What is your next concern with the Easement language?**

25 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
26 they choose unless 1) any Landowner use interferes in any way with
27 TransCanada’s exercise of any of its rights within the Easement, or 2)
28 TransCanada decides to take any action on the property it deems necessary to
29 prevent injury, endangerment or interference with anything TransCanada deems

1 necessary to do on the property. Landowner is also forbidden from excavating
2 without prior authorization by TransCanada. So my understanding is that
3 TransCanada will unilaterally determine what Landowner can and can't do based
4 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
5 could also completely deny my request to excavate. Further, TransCanada retains
6 all "privileges necessary or convenient for the full use of the rights" granted to
7 them in the Easement. Again, TransCanada unilaterally can decide to the
8 detriment of the property rights of Landowner what TransCanada believes is
9 necessary or convenient for it. And there is no option for any additional
10 compensation to landowner for any right exercised by TransCanada that leads to
11 the removal of trees or plants or vegetation or buildings or structures or facilities
12 owned by Landowner of any kind. Such undefined and unilateral restrictions and
13 rights without having to compensate Landowner for such further destruction or
14 losses are not conducive to the protection of property rights or economic interest.

15 **Q: What is the next concern you have?**

16 A: The Easement also allows some rights for Landowner but restricts them at the
17 same time and again at the sole and unilateral decision making of TransCanada.
18 TransCanada will determine if the actions of Landowner might in anyway
19 endanger or obstruct or interfere with TransCanada's full use of the Easement or
20 any appurtenances thereon to the pipeline itself or to their access to the Easement
21 or within the Easement and TransCanada retains the right at any time, whether
22 during growing season or not, to travel "within and along Easement Area on foot
23 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
24 retain the rights to prevent any landowner activity that it thinks may "unreasonably
25 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
26 undefined and unilateral restrictions are not conducive to the protection of
27 property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
2 Landowner's land any debris of any kind without any input or power of
3 Landowner to demand an alternative method or location of debris disposal. Such
4 unilateral powers would negatively affect Landowners property are not conducive
5 to the protection of property rights or economic interest.

6 **Q: What is the next concern you have with the Easement language?**

7 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
8 "where rock is encountered" mean and why does TransCanada solely get to
9 determine whether or not this phrase is triggered. This phrase could be used to
10 justify installing the pipeline 24 inches beneath the surface. The ability to use this
11 provision to minimal locate the pipeline at a depth of 24 inches could negatively
12 affect Landowners property are not conducive to the protection of property rights.
13 A shallow pipeline is much more likely to become a danger and liability in the
14 future given farming operations and buried irrigation lines and other factors
15 common to the current typical agricultural uses of the land in question impacted
16 by TransCanada's preferred pipeline route.

17 **Q: What is the next concern you have with the Easement language?**

18 A: There are more vague concepts solely at the determination of TransCanada such as
19 "as nearly as practicable" and "pre-construction position" and "extent reasonably
20 possible." There is nothing here that defines this or provides a mechanism for
21 documenting or memorializing "pre-construction position" so as to minimize
22 costly legal battles or wasted Landowner time attempting to recreate the soil
23 condition on their fields or pasture. Such unilateral powers would negatively affect
24 Landowners property are not conducive to the protection of property rights or
25 economic interest.

26 **Q: What is the next concern you have with the Easement language?**

27 A: TransCanada maintains the unilateral right to abandon the pipeline and all
28 appurtenances thereto in place on, under, across, or through Nebraska land at any
29 time it chooses. There is no provision for Landowner compensation for such

1 abandonment or any right for the Landowner to demand removal. Such unilateral
2 powers would negatively affect Landowners property are not conducive to the
3 protection of property rights or economic interest. The potential environmental
4 impact on the farm ground as my family plans on continuing to farm through
5 future generations of Morrison's is a concern. I am also concerned in case the
6 lines are abandoned and not removed since the low grade oil, solvents, and
7 corrosive actions would diminish the value of the property and risk contamination
8 for future generations.

9 **Q: What is the next concern you have with the Easement language?**

10 A: TransCanada has the power to unilaterally move or modify the location of any
11 Easement area whether permanent or temporary at their sole discretion.
12 Regardless, if Landowner has taken prior steps relative the their property in
13 preparation or planning of TransCanada's taking of the initial easement area(s),
14 the language here does not require TransCanada to compensate the Landowner if
15 they decide to move the easement anywhere on Landowners property. Such
16 unilateral powers would negatively affect Landowners property are not conducive
17 to the protection of property rights or economic interests.

18 **Q: What is the next concern you have with the Easement language?**

19 A: The Easement requires that all of the burdens and restrictions upon Landowner to
20 transfer and be applicable to any future owner of the Land in question without the
21 ability of the future Landowner to modify or negotiate any of the language in
22 question to which it will be held to comply.

23 **Q: What is the next concern you have with the Easement language?**

24 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
25 Easement to any person, company, country, etc. at their sole discretion at anytime
26 to anyone. This also means that any buyer of the easement could do the same to a
27 third buyer and so on forever. There is no change of control or sale provision in
28 place to protect the Landowner or Nebraska or to provide compensation for such
29 change of control or ownership. It is not conducive to the protection of property

1 rights or economic interests to allow unilateral unrestricted sale of the Easement
2 thereby forcing upon the Landowner and our State a new unknown Easement
3 owner.

4 **Q: What is the next concern you have with the Easement language?**

5 A: There are many terms in the Easement that are either confusing or undefined terms
6 that are without context as to whether or not the Landowner would have any say
7 so in determining what these terms mean or if the evaluation is solely in
8 TransCanada's control. Some of these vague undefined terms are as follows:

- 9 i. "pipeline installation activities"
- 10 ii. "availability of labor and materials"
- 11 iii. "commercially reasonable costs and expenses"
- 12 iv. "reasonably anticipated and foreseeable costs and expenses"
- 13 v. "yield loss damages"
- 14 vi. "diminution in the value of the property"
- 15 vii. "substantially same condition"
- 16 viii. "an actual or potential hazard"
- 17 ix. "efficient"
- 18 x. "convenient"
- 19 xi. "endangered"
- 20 xii. "obstructed"
- 21 xiii. "injured"
- 22 xiv. "interfered with"
- 23 xv. "impaired"
- 24 xvi. "suitable crossings"
- 25 xvii. "where rock is encountered"
- 26 xviii. "as nearly as practicable"
- 27 xix. "pre-construction position"
- 28 xx. "pre-construction grade"
- 29 xxi. "various engineering factors"

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, “yield loss damages” should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 A: I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada’s proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline’s**
18 **impact upon you and your land?**

19 A: No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 A: Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 **Q: Has TransCanada at any time offered to compensate you annually, such as**
6 **wind farm projects do, for the existence of their potential tar sands pipeline**
7 **across your property.**

8 A: No, never.

9 **Q: At any time did TransCanada present you with or request that you, as the**
10 **owner of the land in question, sign and execute a document called, "Advanced**
11 **Release of Damage Claims and Indemnity Agreement?"**

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 **Q: Is Attachment No. 4, to your testimony here, a true and accurate copy of the**
14 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

15 A: Yes, it is.

16 **Q: What was your understanding of that document?**

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 **Q: Did you ever sign that document?**

24 A: No, I did not.

25 **Q: Why not?**

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you
12 thought their proposed location of their proposed pipeline across your land
13 was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you
16 thought their proposed location of their proposed pipeline across your land
17 was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
20 Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of
23 an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which
29 the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 **Q: Can you think of any way in which the public, that is the citizens of the State**
3 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
4 **Pipeline, as it dissects the State of Nebraska?**

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
13 **crude petroleum, or oil and petroleum by-products that you would like to**
14 **ship in its pipeline?**

15 A: No, it has not.

16 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
17 **products that you, at this time or any time in the future, would desire to place**
18 **for transport within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not.

20 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
21 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
22 **products within the proposed TransCanada Keystone XL Pipeline?**

23 A: No, I do not. I've never heard of such a person or company like that.

24 **Q: Do you pay property taxes for the land that would be affected and impacted**
25 **at the proposed TransCanada Keystone XL Pipeline?**

26 A: Yes, I do.

27 **Q: Why do you pay property taxes on that land?**

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q: Because you follow the law and pay property taxes, do you believe you**
2 **deserve any special consideration or treatment apart from any other person**
3 **or company that pays property taxes?**

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q: Do you believe the fact that you pay property taxes entitles you to special**
7 **treatment of any kind, or special rights of any kind?**

8 A: No, of course not.

9 **Q: Do you believe the fact that you pay property taxes on your land would be**
10 **enough to qualify you to have the power of eminent domain to take land of**
11 **your neighbors or other people in your county, or other people across the**
12 **state of Nebraska?**

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q: Have you at any time ever employed any person other than yourself?**

16 A: Well, yes I have.

17 **Q: Do you believe that the fact that you have, at some point in your life,**
18 **employed one or more other persons entitle you to any special treatment or**
19 **consideration above and beyond any other Nebraskan that has also employed**
20 **one or more persons?**

21 A: No, of course not.

22 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
23 **have at one point employed another person within this state, entitles you to**
24 **preferential treatment or consideration of any kind?**

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
28 **crude oil pipeline in its preferred location, or ultimate location across the**
29 **state of Nebraska?**

1 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
2 or even bullied around and being made to feel scared that they did not have any
3 options but to sign whatever papers TransCanada told them they had to. I am
4 aware of folks being threatened that their land would be taken if they didn't follow
5 what TransCanada was saying. I am aware of tactics to get people to sign
6 easements that I don't believe have any place in Nebraska or anywhere such as
7 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
8 landowners and convince them they should sign TransCanada's easement
9 agreements. I am aware of older folks and widows or widowers feeling they had
10 no choice but to sign TransCanada's Easement and they didn't know they could
11 fight or stand up for themselves. From a more practical standpoint, I am worried
12 that according to their answer to our Interrogatory No. 211, TransCanada only
13 owns and operates one (1) major oil pipeline. They simply do not have the
14 experience with this type of pipeline and that scares me. There are others but that
15 is what I can recollect at this time and if I remember more or my recollection is
16 refreshed I will share those with the Commissioners at the Hearing in August.

17 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
18 **landowner is reasonable or just?**

19 A: No, I do not.

20 **Q: Do you have any concern about limitations that the construction of this**
21 **proposed pipeline across your affected land would prevent construction of**
22 **future structures upon the portion of your land affected by the proposed**
23 **easement and immediately surrounding areas?**

24 A: Well yes, of course I do. We would not be able to build many, if any, types of
25 structures directly across or touching the easement, and it would be unwise and I
26 would be uncomfortable to build anything near the easement for fear of being
27 blamed in the future should any damage or difficulty result on my property in
28 regards to the pipeline.

29 **Q: Do you think such a restriction would impact you economically?**

1 A: Well yes, of course.

2 **Q: How do you think such a restriction would impact you economically?**

3 A: The future of this land may not be exactly how it's being used as of this moment,
4 and having the restrictions and limiting my ability to develop my land in certain
5 ways presents a huge negative economic impact on myself, my family, and any
6 potential future owner of the property. You have no idea how I or the future owner
7 may want to use this land in the future or the other land across Nebraska
8 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
9 ago it would have been hard to imagine all the advances that we have now or how
10 things change. Because the Easement is forever and TransCanada gets the rights in
11 my land forever we have to think with a very long term view. By placing their
12 pipeline on under across and through my land that prevents future development
13 which greatly negatively impacts future taxes and tax revenue that could have
14 been generated by the County and State but now will not. When you look at the
15 short blip of economic activity that the two years of temporary construction efforts
16 may bring, that is far outweighed by the perpetual and forever loss of opportunity
17 and restrictions TransCanada is forcing upon us and Nebraska.

18 **Q: Do you have any concerns about the environmental impact of the proposed**
19 **pipeline?**

20 A: Yes, I do.

21 **Q: What are some of those concerns?**

22 A: As an affected land owner and Nebraskan, I am concerned that any construction,
23 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
24 a detrimental impact upon the environment of my land specifically, as well as the
25 lands near my land and surrounding the proposed pipeline route.

26 **Q: Do you have any other environmental concerns?**

27 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
28 construction and/or maintenance and operation. I am concerned about spills and

1 leaks that TransCanada has had in the past and will have in the future. This could
2 be catastrophic to my operations or others and to my county and the State.

3 **Q: Do you have any thoughts regarding if there would be an impact upon the**
4 **natural resources on or near your property due to the proposed pipeline?**

5 A: Yes, I believe that any construction, operation, and/or maintenance of the
6 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
7 resources of my land, and the lands near and surrounding the proposed pipeline
8 route.

9 **Q: Do you have any worries about potential impacts from the proposed pipeline**
10 **to the soil of your land, or land near you?**

11 A: Yes, I believe that any construction, operation, and/or maintenance of the
12 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
13 land, as well as land along and surrounding the proposed pipeline route. This
14 includes, but is not limited to, the reasons that we discussed above of disturbing
15 the soil composition and makeup as it has naturally existed for thousands and
16 millions of years during the construction process, and any future maintenance or
17 removal process. I'm gravely concerned about the fertility and the loss of
18 economic ability of my property to grow the crops, or grow the grasses, or grow
19 whatever it is at that time they exist on my property or that I may want to grow in
20 the future, or that a future owner may want to grow. The land will never be the
21 same from as it exists now undisturbed to after it is trenched up for the proposed
22 pipeline.

23 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
24 **upon the groundwater over your land, or surrounding lands?**

25 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
26 the proposed Keystone XL Pipeline would have a detrimental impact upon the
27 groundwater of not only under my land, but also near and surrounding the pipeline
28 route, and in fact, potentially the entire State of Nebraska. Water is life plain and

1 simple and it is simply too valuable to our State and the country to put at
2 unreasonable risk.

3 **Q: Do you have any concern about the potential impact of the proposed pipeline**
4 **upon the surface water on, or near or around your land?**

5 A: Yes, I have significant concerns that any construction, operation, and/or
6 maintenance of the proposed Keystone XL Pipeline would have detrimental
7 impact upon the surface water of not only within my property boundary, but along
8 and near and surrounding the pipeline route, and in fact, across the state of
9 Nebraska.

10 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
11 **upon the wildlife and plants, other than your growing crops on or near your**
12 **land?**

13 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
14 the proposed Keystone XL Pipeline would have a detrimental impact upon the
15 wildlife and the plants, not only that are located on or can be found upon my land,
16 but also near and along the proposed pipeline route.

17 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
18 **fair market value of your land?**

19 A: Yes, I do. I am significantly concerned about how the existence of the proposed
20 pipeline underneath and across and through my property will negatively affect the
21 fair market value at any point in the future, especially at that point in which I
22 would need to sell the property, or someone in my family would need to sell the
23 property. I do not believe, and certainly would not be willing to pay, the same
24 price for land that had the pipeline located on it, versus land that did not. I hope
25 there is never a point where I'm in a position where I have to sell and have to
26 realize as much value as I can out of my land. But because it is my single largest
27 asset, I'm gravely concerned that the existence of the proposed Keystone XL
28 Pipeline upon my land will affect a buyer's willingness to pay as much as they
29 would've paid and as much as I could've received, if the pipeline were not upon

1 my property. There are just too many risks, unknowns, impacts and uncertainties,
2 not to mention all of the rights you give up by the nature of having the pipeline
3 due to having the easement that we have previously discussed, for any reasonable
4 person to think that the existence of the pipeline would not negatively affect my
5 property's value.

6 **Q: Have you ever seen the document that's marked as Attachment No. 5, 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. 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 the I-90 corridor alternative route, specifically for the portion**
23 **of the proposed pipeline within Nebraska as found in Attachment No. 5 to**
24 **your testimony, is in the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe there is any potential route for the proposed Keystone XL**
27 **Pipeline across, within, under, or through the State of Nebraska that is in the**
28 **public interest of the citizens of Nebraska?**

29 A: No, I do not.

1 **Q: Why do you hold that belief?**

2 A: Because there simply is no public interest based on all of the factors that I am
3 aware and that I have read and that I have studied that this Commission is to
4 consider that would establish that a for-profit foreign-owned pipeline that simply
5 crosses Nebraska because we are geographically in the way between where tar
6 sands are in Canada to where it wants to ship it to in Texas could ever be in the
7 public interest of Nebraskans. We derive no benefit from this project. It is not for
8 public use. Nebraska is simply in the way and when all considerations are taken in
9 there is no net benefit of any kind for Nebraska should this project be placed in our
10 state. Even if there was some arguable “benefit” it is not enough to outweigh all
11 the negative impacts and concerns.

12 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
13 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
14 **of Nebraska because it may bring temporary jobs during the construction**
15 **phase to Nebraska?**

16 A: First of all, not all jobs are created equally. Most jobs that are created, whether
17 temporary or on a permanent basis, don’t come with a project that has all the
18 potential and foreseeable negative impacts, many of which we have discussed here
19 and other witnesses throughout the course of this hearing have and will discuss. If
20 I decide to hire and employ someone to help me out in my farming or ranching
21 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
22 to my land or my town or my county or my state. And I’ve hired someone who is
23 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
24 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
25 jobs are not created equal. Additionally, I understand from what I’m familiar with
26 from TransCanada’s own statements that the jobs numbers they originally touted
27 were determined to be a minute fraction of the permanent jobs that had been
28 projected. According to their answer to our Interrogatory No. 191, TransCanada
29 has created only thirty-four (34) jobs within Nebraska working specifically on

1 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
2 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
3 Further, according to their answer to Interrogatory No. 199, TransCanada would
4 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
5 constructed on its Preferred Route or its Mainline Alternative Route.

6 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
7 **because it would cross your land?**

8 A: No, absolutely not. I am opposed to this project because it is not in the public
9 interest, neither within my community nor within our state.

10 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
11 **was to cross someone else's land?**

12 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
13 the fear and anxiety and potential foreseeable risks and negative impacts that this
14 type of a project carrying this type of product brings foisted upon anyone in this
15 state or any other state.

16 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
17 **Pipeline to cross the state of Nebraska?**

18 A: I don't believe there is an intelligent route because as I have stated I don't believe
19 this project anywhere within Nebraska is within the public interest. However, if
20 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
21 had to go somewhere in the state of Nebraska, the only intelligent route I believe
22 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
23 preferred route and the mainline alternative routes are economic liabilities our
24 state cannot risk.

25 **Q: What do you rely upon to make that statement?**

26 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
27 already exists in that area is reason enough as it is not in our best interest or the
28 public interests to have more major oil pipelines crisscrossing our state. Second,
29 they have all the infrastructure already there in terms of relationships with the

1 counties and local officials and first responders along that route. Third, they have
2 already obtained easements from all the landowners along that route and have
3 relationships with them. Fourth, that route avoids our most sensitive soils, the
4 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
5 Aquifer. Sixth, they have already studied that route and previously offered it as an
6 alternative. Seventh, it just makes the most sense that as a state we would have
7 some intelligent policy of energy corridors and co-locating this type of
8 infrastructure near each other.

9 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
10 **like the Public Service Commissioners to consider in their review of**
11 **TransCanada's Application?**

12 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
13 document below but other things may come to me or my memory may be
14 refreshed and I will add and address those things at the time of the Hearing in
15 August and address any additional items at that time as is necessary. Additionally,
16 I have not had an adequate amount of time to receive and review all of
17 TransCanada's answers to our discovery and the discovery of others so it was
18 impossible to competently and completely react to that in my testimony here and I
19 reserve the right to also address anything related to discovery that has not yet
20 concluded as of the date I signed this document below. Lastly, certain documents
21 requested have not yet been produced by TransCanada and therefore I may have
22 additional thoughts on those I will also share at the hearing as needed.

23 **Q: What is it that you are requesting the Public Service Commissioners do in**
24 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
25 **across Nebraska?**

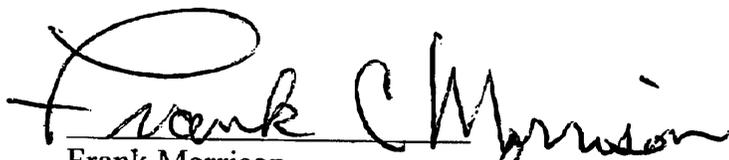
26 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
27 a temporary job spike that this project may bring to a few counties and beyond the
28 relatively small amount of taxes this proposed foreign pipeline would possibly
29 generate. And, instead think about the perpetual and forever impacts of this

1 pipeline as it would have on the landowners specifically, first and foremost, but
2 also thereby upon the entire state of Nebraska, and to determine that neither the
3 preferred route nor the Keystone mainline alternative route are in the public
4 interest of the citizens of the state of Nebraska. And if the Commissioners were
5 inclined to modify TransCanada's proposed routes and were to be inclined to grant
6 an application for a route in Nebraska, that the only potential route that would
7 make any intelligent sense whatsoever would be twinning or near paralleling of
8 the proposed KXL with the existing Keystone I pipeline. It simply does not make
9 sense to add yet another major oil pipeline crisscrossing our state creating new
10 pumping stations, creating new impacts on additional counties and communities
11 and going through all of the court processes with myself and other landowners like
12 me when this applicant already has relationships with the landowners, the towns
13 and the communities along Keystone I, and that Keystone I is firmly outside of the
14 sand hills and a significantly further portion away from the heart of the Ogallala
15 Aquifer than the preferred route or the Keystone mainline alternative route.

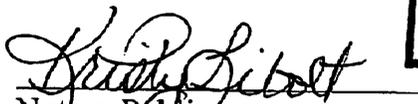
16 **Q: Are all of your statements in your testimony provided above true and**
17 **accurate as of the date you signed this document to the best of your**
18 **knowledge?**

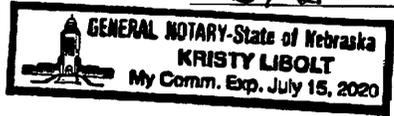
19 A: Yes, they are.

20 **Q: Thank you, I have no further questions at this time and reserve the right to**
21 **ask you additional questions at the August 2017 Hearing.**

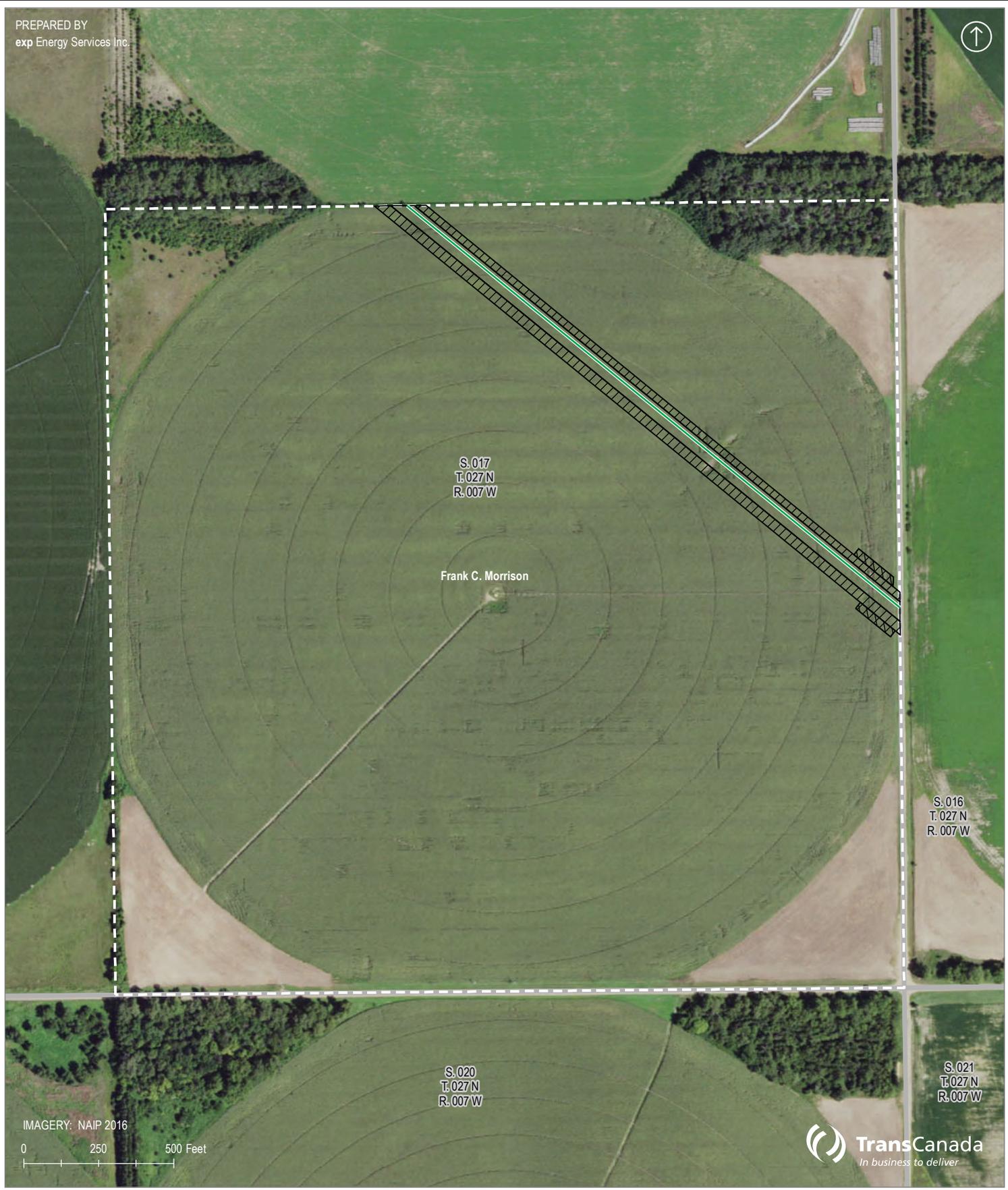

Frank Morrison

Subscribed and Sworn to me before this 31st day of May, 2017.


Notary Public



Attachment No. 1



S. 017
T. 027 N
R. 007 W

Frank C. Morrison

S. 016
T. 027 N
R. 007 W

S. 020
T. 027 N
R. 007 W

S. 021
T. 027 N
R. 007 W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Frank C. Morrison

TRACT NO. ML-NE-AT-30170.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 017
TOWNSHIP: 027N
RANGE: 007W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

PREPARED BY
exp Energy Services Inc.



S.031
T.027N
R.006W

S.036
T.027N
R.007W

S.001
T.026N
R.007W

Frank C. Morrison
Lynn H. Morrison

S.006
T.026N
R.006W

IMAGERY: NAIP 2016



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Frank C. Morrison
Lynn H. Morrison

TRACT NO. ML-NE-AT-30240.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 006
TOWNSHIP: 026N
RANGE: 006W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\53528\NE\STONE_XL\5000_9995326

Attachment No. 2

**Prepared by and after recording
please return to:**
TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-AT-30170.000
ML-NE-AT-30240.000

**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**") **Frank C. Morrison and Lynn H. Morrison, husband and wife**, whose mailing address is 85824 519 Avenue, Clearwater, NE 68726 (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 159.82 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the SE1/4 of Section 17, Township 27 North, Range 7 West of the 6th P.M., as recorded in Book 119, Page 361 and Book 119, Page 358 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 155.82 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NW1/4 of Section 6, Township 26 North, Range 6 West of the 6th P.M., as recorded in Book 105, Page 52 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):

Frank C. Morrison

Lynn H. Morrison

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Frank C. Morrison**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Lynn H. Morrison**

Notary Public Signature

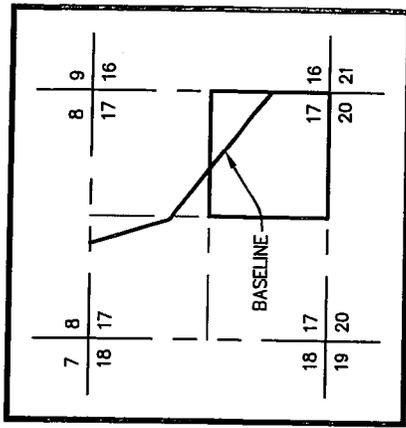
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LEGEND

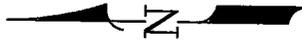
- R — PROPERTY LINE
- S — SECTION LINE
- PROP. — PROPOSED
- A.T.W.S. — ADDITIONAL TEMPORARY WORKSPACE
- P.E.R.W. — PERMANENT EASEMENT & RIGHT OF WAY
- D.R.A.C.N. — DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA

ANTELOPE COUNTY, NEBRASKA
T-27-N, R-7-W, SECTION 17
ML-NE-AT-30170.000

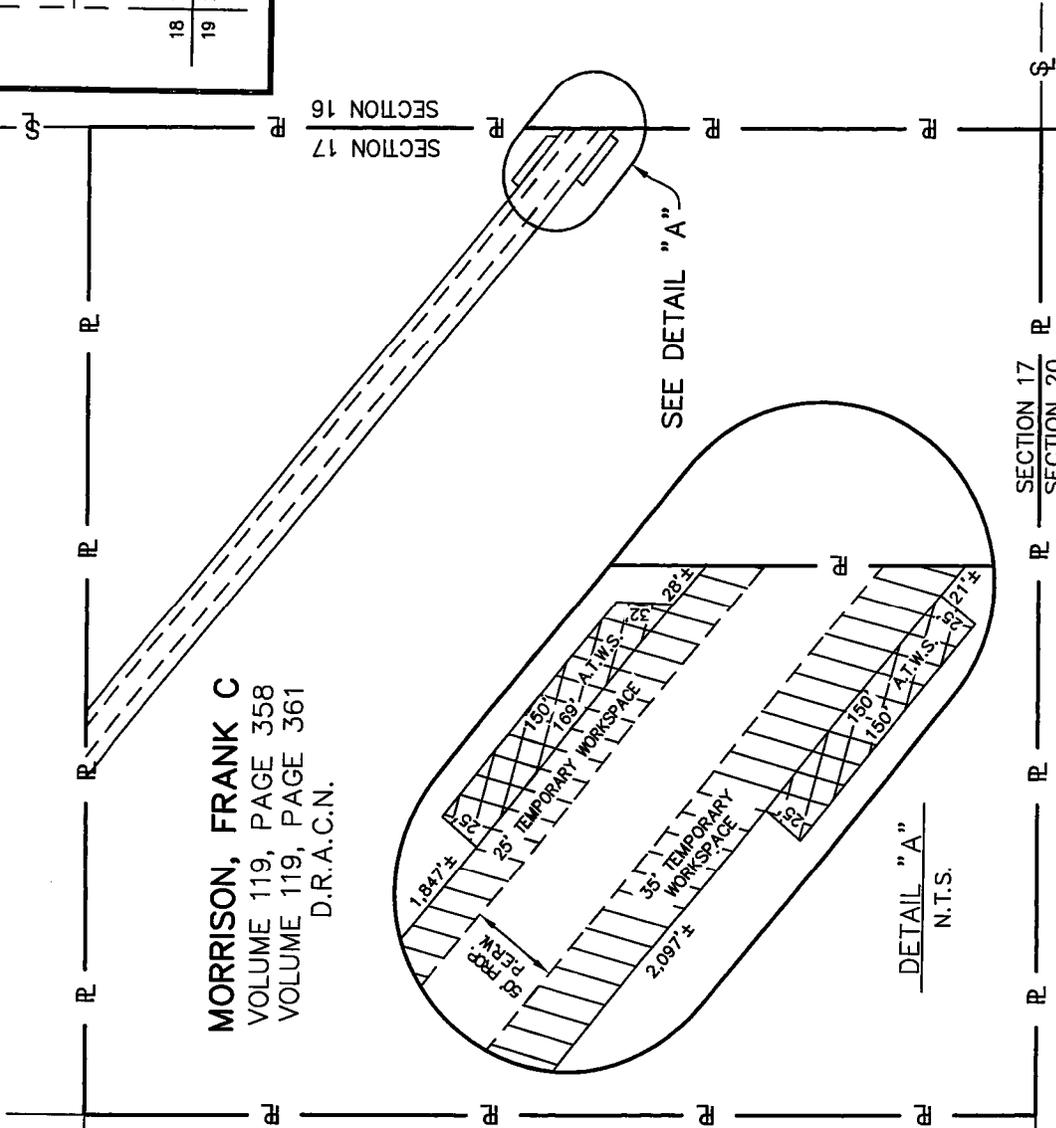
MORRISON, FRANK C
 VOLUME 119, PAGE 358
 VOLUME 119, PAGE 361
 D.R.A.C.N.



VICINITY MAP
N.T.S.



TRACT LEGAL DESCRIPTION:
SE/4 OF SECTION 17,
T-27-N, R-7-W



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.

TOTAL DISTANCE ACROSS PROPERTY: 2,126'±
 AREA OF PERMANENT EASEMENT: 2.5 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.0 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.2 ACRE



KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
MORRISON, FRANK C
ML-NE-AT-30170.000

PROJECT:	XL	EXHIBIT A
APPROVED BY:		DRAWING NUMBER
SLR	XL-08-ML-SK-3408	DATE
NO.	REVISION	DATE
SCALE	DATE	DRAWN BY
1" = 500'	11/03/14	PB
		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-AT-30240.000

We, Frank C. Morrison and Lynn H. Morrison, husband and wife, as joint tenants, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Six Hundred Twenty Four Dollar and No Cents (\$624.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Antelope, State of Nebraska:

NW/4

Section 6, 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

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-AT-30170.000

We, Frank Morrison and Lynn H. Morrison, husband and wife, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Four Thousand Five Hundred Sixty Dollars and No Cents (\$4,560.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Antelope, State of Nebraska:

SE/4

Section 17, Township 27N, Range 7W

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____.

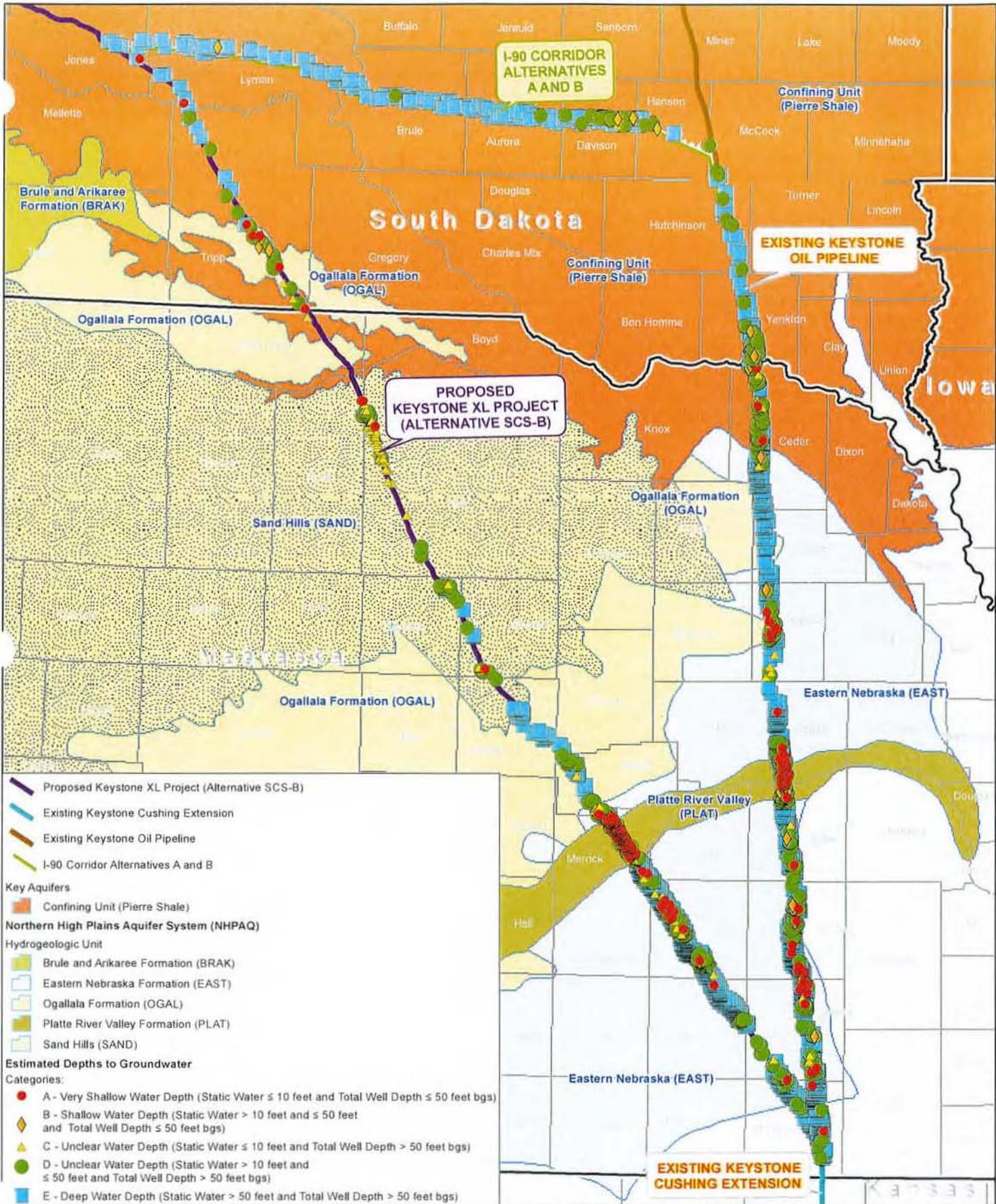
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 5



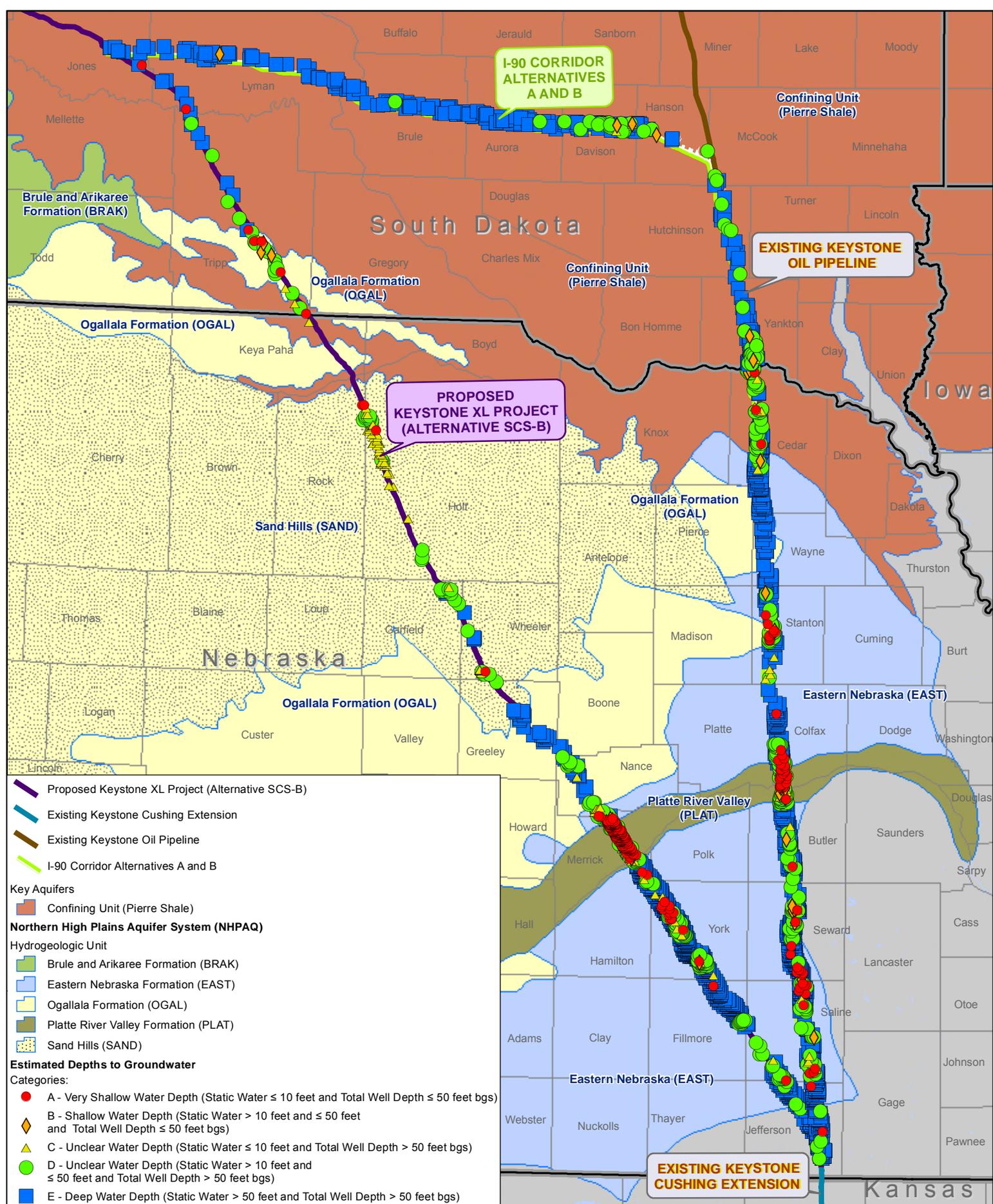
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

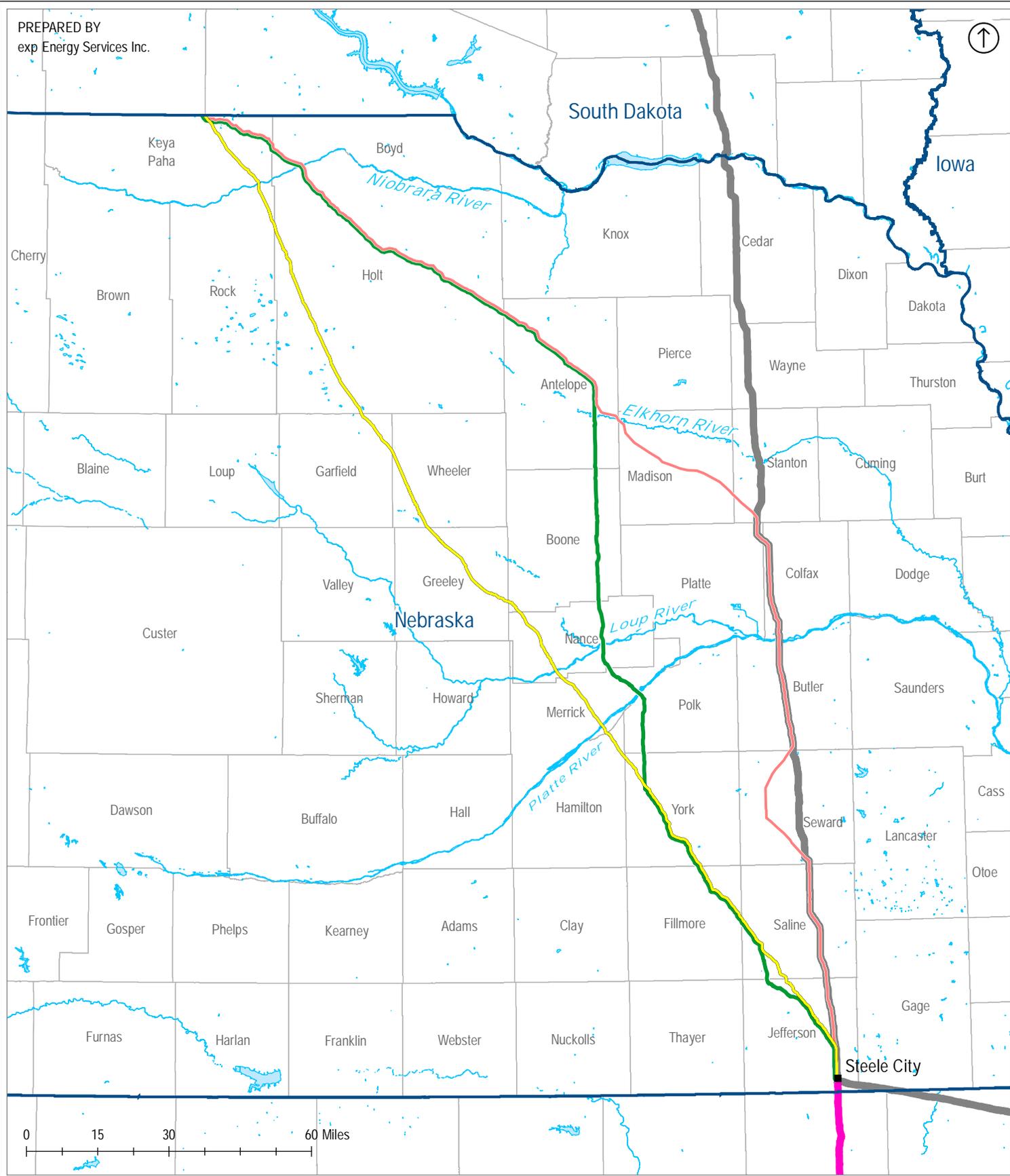
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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
Jamus “JD” Mudloff in Support of
Landowner Intervenors**

State of Nebraska)
) ss.
Lancaster County)

1 **Q: Please state your name.**

2 A: My name is Jamus “JD” Mudloff.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Farmer.

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 grandfather, Gene Mudloff bought the land in 1945 and it has been in our
8 family for 3 generations now.

9 **Q: Do you earn any income from this land?**

10 A: Yes.

11 **Q: Have you depended on the income from your land to support your livelihood**
12 **or the livelihood of your family?**

13 A: Yes.

14 **Q: Have you ever in the past or have you thought about in the future leasing all**
15 **or a portion of your land in question here?**

16 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
17 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
18 all the restrictions and risks and potential negative impacts to farming or ranching
19 operations as opposed to land that did not have those same risks. If I was looking
20 to lease or rent ground I would pay more for comparable non-pipeline land than I
21 would for comparable pipeline land and I think most folks would think the same
22 way. This is another negative economic impact that affects the landowner and the
23 county and the state and will forever and ever should TransCanada's preferred or
24 mainline alternative routes be approved. If they were to twin or closely parallel to
25 Keystone I the vast majority of landowners would be those that already have a
26 pipeline so there would be considerable less new incremental negative impacts.

27 **Q: Do you have similar concerns about selling the land?**

28 A: Well I hope not to have to sell the land in my lifetime but times change and you
29 never know what is around the corner and yes I am concerned that if another piece

1 of ground similar to mine were for sale and it did not have the pipeline and mine
2 did that I would have a lower selling price. I think this would be true for pipeline
3 ground on both the preferred and mainline alternative routes.

4 **Q: What is your intent with your land after you die?**

5 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
6 to come but I have thought about getting out if this pipeline were to come through.

7 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
8 Pipeline would cross the land described above and owned by you?**

9 A: Yes.

10 **Q: Were you or an entity for which you are a member, shareholder, or director
11 previously sued by TransCanada Keystone Pipeline, LP?**

12 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
13 petition for condemnation against our land so it could place its proposed pipeline
14 within an easement that it wanted to take from us on our land.

15 **Q: Did you defend yourself and your land in that condemnation action?**

16 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
17 and expenses in our resistance of TransCanada's lawsuit against us.

18 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
19 incurred?**

20 A: No, they have not.

21 **Q: In its lawsuit against you, did TransCanada identify the amount of your
22 property that it wanted to take for its proposed pipeline?**

23 A: The lawsuit against us stated they would take the amount of property that is
24 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
25 and equipment reasonably necessary to operate the pipeline.

26 **Q: Did TransCanada define what they meant by "property that is reasonably
27 necessary"?**

28 A: No, they did not.

1 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
2 **property portion of your land?**

3 A: Yes, they did.

4 **Q: Did TransCanada describe what rights it proposed to take related to the**
5 **eminent domain property on your land?**

6 A: Yes, they did.

7 **Q: What rights that they proposed to take did they describe?**

8 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
9 operate, and maintain the pipeline and the plant and equipment reasonably
10 necessary to operate the pipeline, specifically including surveying, laying,
11 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
12 reconstructing, removing and abandoning one pipeline, together with all fittings,
13 cathodic protection equipment, pipeline markers, and all their equipment and
14 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
15 petroleum products, and all by-products thereof.”

16 **Q: Prior to filing an eminent domain lawsuit to take your land that**
17 **TransCanada identified, do you believe they attempted to negotiate in good**
18 **faith with you?**

19 A: No, I do not.

20 **Q: Did TransCanada at any time approach you with or deliver to you their**
21 **proposed easement and right-of-way agreement?**

22 A: Yes, they did.

23 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
24 **agreement, did you understand that they would be purchasing a fee title**
25 **interest in your property or that they were taking something else?**

26 A: I understood that they proposed to have the power to take both a temporary
27 construction easement that could last for a certain period of time and then also a
28 permanent easement which they described to be 50 feet across or in width, and

1 that would run the entire portion of my property from where a proposed pipeline
2 would enter my property until where it would exit the property.

3 **Q: Is the document included with your testimony here as Attachment No. 3, a**
4 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
5 **Way agreement that they included with their condemnation lawsuit against**
6 **you?**

7 A: Yes, it is.

8 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
9 **and Right-of-Way agreement?**

10 A: Yes, I have.

11 **Q: What is your understanding of the significance of the Easement and Right-of-**
12 **Way agreement as proposed by TransCanada?**

13 A: My understanding is that this is the document that will govern all of the rights and
14 obligations and duties as well as the limitations of what I can and cannot do and
15 how I and any future landowner and any person I invite to come onto my property
16 must behave as well as what TransCanada is and is not responsible for and how
17 they can use my land.

18 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
19 **agreement do you have any concerns about any portions of it or any of the**
20 **language either included in the document or missing from the proposed**
21 **document?**

22 A: Yes, I have a number of significant concerns and worries about the document and
23 how the language included and the language not included potentially negatively
24 impacts my land and thereby potentially negatively impacts my community and
25 my state.

26 **Q: I would like you to walk the Commissioners through each and every one of**
27 **your concerns about TransCanada's proposed Easement and Right-of-Way**
28 **agreement so they can develop an understanding of how that language and**
29 **the terms of that contract, in your opinion, potentially negatively impacts you**

1 **and your land. So, if you can start at the beginning of that document and**
2 **let's work our way through it, okay?**

3 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
4 Easement and Right-of-Way agreement and how it negatively could affect my
5 property rights and my economic interests.

6 **Q: Okay, let's start with your first concern please.**

7 A: The very first sentence talks about consideration or how much money they will
8 pay to compensate me for all of the known and unknown affects and all of the
9 rights I am giving up and for all the things they get to do to my land and for what
10 they will prevent me from doing on my land and they only will pay me one time at
11 the signing of the easement agreement. That is a huge problem.

12 **Q: Explain to the Commissioners why that is a problem.**

13 A: It is not fair to the landowner, the county, or the State. It is not fair to the
14 landowner because they want to have my land forever for use as they see fit so
15 they can make a daily profit from their customers. If I was to lease ground from
16 my neighbor I would typically pay twice a year every year as long as they granted
17 me the rights to use their land. That only makes sense – that is fair. If I was going
18 to rent a house in town I would typically pay monthly, every month until I gave up
19 my right to use that house. By TransCanada getting out on the cheap and paying
20 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
21 revenue collection on the money I would be paid and then pay taxes on and
22 contribute to this state and this country. It is money I would be putting back into
23 my local community both spending and stimulating the local economy and
24 generating more economic activity right here. Instead TransCanada's shareholders
25 keep all that money and it never finds its way to Nebraska.

26 **Q: What is your next concern?**

27 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
28 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
29 limited partnership..." and I have no idea who that really is. I have no idea who is

1 forcing this pipeline on us or who the owners of the entities are, or what are the
2 assets backing this limited partnership, or who the general partner is, or who all
3 the limited partners are, and who makes up the ownership of the these partners or
4 the structure or any of the basic things you would want to know and understand if
5 you would want to do business with such an outfit. According to TransCanada's
6 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
7 liability company called TransCanada Keystone Pipeline GP, LLC is the general
8 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
9 basically nothing. That is really scary since the general partner has the liability but
10 virtually none of the ownership and who knows if it has any other assets.

11 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
12 **percent clear on exactly who could become the owner of over 275 miles of**
13 **Nebraska land?**

14 A: No.

15 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
16 **percent clear on exactly who will be operating and responsible for**
17 **approximately 275 miles of tar sands pipeline underneath and through**
18 **Nebraska land?**

19 A: No.

20 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
21 **and the State of Nebraska of TransCanada's easement terms.**

22 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
23 called "Grantee")..." and this concerns me because it would allow their easement
24 to be transferred or sold to someone or some company or country or who knows
25 what that I don't know and who we may not want to do business with. This
26 pipeline would be a huge asset for TransCanada and if they can sell to the highest
27 bidder that could have terrible impacts upon all of Nebraska depending upon who
28 may buy it and I don't know of any safeguards in place for us or the State to veto

1 or have any say so in who may own, operate, or be responsible for this pipeline in
2 the future.

3 **Q: Do you think that type of uncertainty and lack of control over a major piece**
4 **of infrastructure crossing our State is in the public interest?**

5 A: No, certainly not, in fact, just the opposite.

6 **Q: What's next?**

7 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
8 really concerns me. Why does the easement and right-of-way have to be perpetual
9 and permanent? That is the question myself and my family want an answer to.
10 Perpetual to me is like forever and that doesn't make sense.

11 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

12 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
13 data proving there is a perpetual supply of tar sands. I am not aware in
14 TransCanada's application where it proves there is a perpetual necessity for this
15 pipeline. My understanding of energy infrastructure like wind towers is they have
16 a decommission plan and actually take the towers down when they become
17 obsolete or no longer needed. Nothing manmade lasts forever. My land however
18 will, and I want my family or future Nebraska families to have that land as
19 undisturbed as possible and it is not in my interest or the public interest of
20 Nebraska to be forced to give up perpetual and permanent rights in the land for
21 this specific kind of pipeline project.

22 **Q: Okay, what is your next concern?**

23 A: The easement language includes all these things TransCanada can do and it says
24 "...abandoning in place..." so they can just leave this pipeline under my ground
25 until the end of time just sitting there while they are not using it, but I am still
26 prevented from doing on my land and using my land what I would like. If I owned
27 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
28 there. It doesn't make sense and it scares me and it is not in my interest or the
29 public interest of Nebraska to allow this.

1 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
2 **right?**

3 A: Yes.

4 **Q: So now on the second page of the Easement what are your concerns?**

5 A: Here the Easement identifies a 24-month deadline to complete construction of the
6 pipeline but has caveats that are undefined and ambiguous. The 24-month period
7 starts to run from the moment “actual pipeline installation activities” begin on
8 Landowners property. It appears that TransCanada would define this phrase as
9 needed. It would be wise to explain what types of TransCanada action constitutes
10 “installation activity” For instance, would the placement and storage of an
11 excavator or other equipment on or near the Easement property be an activity or
12 would earth have to be moved before the activity requirement is triggered. This
13 vague phrase is likely to lead to future disputes and litigation that is not in the best
14 interest of the welfare of Nebraska and would not protect property interests. The
15 24-months can also be extended in the case of “force majeure.” My understanding
16 is that force majeure is often used to insulate a party to a contract when events
17 occur that are completely out of their control. In TransCanada’s easement this is
18 expanded to include “without limitation...availability of labor and materials.”
19 Extending this language to labor and materials is problematic because these are
20 two variables that TransCanada does have some or significant control over and to
21 allow extension of the 24-month period over events not truly out of the control of
22 TransCanada and without further provision for compensation for the Landowner is
23 not conducive to protection of property rights.

24 **Q: Okay, what is your next concern?**

25 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
26 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
27 reasonable costs and expenses” will pay for damages caused but then limits
28 TransCanada’s liability to certain circumstances. There is no definition of
29 “commercially reasonable” and no stated right that the Landowner would get to

1 determine the amounts of cost or expense that is “commercially reasonable.”
2 TransCanada excepts out from their liability any damages that are caused by
3 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
4 Landowner. It is understandable that if the Landowner were to willfully and
5 intentionally cause damages to the pipeline that Landowner should be liable.
6 However, anything short of willful misconduct should be the liability of
7 TransCanada who is subjecting the pipeline on the Landowner and who is making
8 a daily profit from that pipeline. When evaluating the impact on property rights of
9 this provision, you must consider the potentially extremely expensive fight a
10 Landowner would have over this question of whether or not damage was an act of
11 negligence. Putting this kind of potential liability upon the Landowner is
12 incredibly problematic and is detrimental to the protection of property rights. I
13 don’t think this unilateral power which I can’t do anything about as the landowner
14 is in the best economic interest of the land in question or the State of Nebraska for
15 landowners to be treated that way.

16 **Q: Is there any specific event or example you are aware of that makes this**
17 **concern more real for you?**

18 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
19 Nemaha County, Nebraska landowner farmers who accidently struck two
20 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
21 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
22 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
23 copy of the Federal Court Complaint is here as **Attachment No. 4.**

24 **Q: What is your next concern with the Easement language?**

25 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
26 they choose unless 1) any Landowner use interferes in any way with
27 TransCanada’s exercise of any of its rights within the Easement, or 2)
28 TransCanada decides to take any action on the property it deems necessary to
29 prevent injury, endangerment or interference with anything TransCanada deems

1 necessary to do on the property. Landowner is also forbidden from excavating
2 without prior authorization by TransCanada. So my understanding is that
3 TransCanada will unilaterally determine what Landowner can and can't do based
4 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
5 could also completely deny my request to excavate. Further, TransCanada retains
6 all "privileges necessary or convenient for the full use of the rights" granted to
7 them in the Easement. Again, TransCanada unilaterally can decide to the
8 detriment of the property rights of Landowner what TransCanada believes is
9 necessary or convenient for it. And there is no option for any additional
10 compensation to landowner for any right exercised by TransCanada that leads to
11 the removal of trees or plants or vegetation or buildings or structures or facilities
12 owned by Landowner of any kind. Such undefined and unilateral restrictions and
13 rights without having to compensate Landowner for such further destruction or
14 losses are not conducive to the protection of property rights or economic interest.

15 **Q: What is the next concern you have?**

16 A: The Easement also allows some rights for Landowner but restricts them at the
17 same time and again at the sole and unilateral decision making of TransCanada.
18 TransCanada will determine if the actions of Landowner might in anyway
19 endanger or obstruct or interfere with TransCanada's full use of the Easement or
20 any appurtenances thereon to the pipeline itself or to their access to the Easement
21 or within the Easement and TransCanada retains the right at any time, whether
22 during growing season or not, to travel "within and along Easement Area on foot
23 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
24 retain the rights to prevent any landowner activity that it thinks may "unreasonably
25 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
26 undefined and unilateral restrictions are not conducive to the protection of
27 property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
2 Landowner's land any debris of any kind without any input or power of
3 Landowner to demand an alternative method or location of debris disposal. Such
4 unilateral powers would negatively affect Landowners property are not conducive
5 to the protection of property rights or economic interest.

6 **Q: What is the next concern you have with the Easement language?**

7 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
8 "where rock is encountered" mean and why does TransCanada solely get to
9 determine whether or not this phrase is triggered. This phrase could be used to
10 justify installing the pipeline 24 inches beneath the surface. The ability to use this
11 provision to minimal locate the pipeline at a depth of 24 inches could negatively
12 affect Landowners property are not conducive to the protection of property rights.
13 A shallow pipeline is much more likely to become a danger and liability in the
14 future given farming operations and buried irrigation lines and other factors
15 common to the current typical agricultural uses of the land in question impacted
16 by TransCanada's preferred pipeline route.

17 **Q: What is the next concern you have with the Easement language?**

18 A: There are more vague concepts solely at the determination of TransCanada such as
19 "as nearly as practicable" and "pre-construction position" and "extent reasonably
20 possible." There is nothing here that defines this or provides a mechanism for
21 documenting or memorializing "pre-construction position" so as to minimize
22 costly legal battles or wasted Landowner time attempting to recreate the soil
23 condition on their fields or pasture. Such unilateral powers would negatively affect
24 Landowners property are not conducive to the protection of property rights or
25 economic interest.

26 **Q: What is the next concern you have with the Easement language?**

27 A: TransCanada maintains the unilateral right to abandon the pipeline and all
28 appurtenances thereto in place on, under, across, or through Nebraska land at any
29 time it chooses. There is no provision for Landowner compensation for such

1 abandonment nor any right for the Landowner to demand removal. Such unilateral
2 powers would negatively affect Landowners property are not conducive to the
3 protection of property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: TransCanada has the power to unilaterally move or modify the location of any
6 Easement area whether permanent or temporary at their sole discretion.
7 Regardless, if Landowner has taken prior steps relative to their property in
8 preparation or planning of TransCanada's taking of the initial easement area(s),
9 the language here does not require TransCanada to compensate the Landowner if
10 they decide to move the easement anywhere on Landowners property. Such
11 unilateral powers would negatively affect Landowners property are not conducive
12 to the protection of property rights or economic interests.

13 **Q: What is the next concern you have with the Easement language?**

14 A: The Easement requires that all of the burdens and restrictions upon Landowner to
15 transfer and be applicable to any future owner of the Land in question without the
16 ability of the future Landowner to modify or negotiate any of the language in
17 question to which it will be held to comply.

18 **Q: What is the next concern you have with the Easement language?**

19 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
20 Easement to any person, company, country, etc. at their sole discretion at anytime
21 to anyone. This also means that any buyer of the easement could do the same to a
22 third buyer and so on forever. There is no change of control or sale provision in
23 place to protect the Landowner or Nebraska or to provide compensation for such
24 change of control or ownership. It is not conducive to the protection of property
25 rights or economic interests to allow unilateral unrestricted sale of the Easement
26 thereby forcing upon the Landowner and our State a new unknown Easement
27 owner.

28 **Q: What is the next concern you have with the Easement language?**

1 A: There are many terms in the Easement that are either confusing or undefined terms
2 that are without context as to whether or not the Landowner would have any say
3 so in determining what these terms mean or if the evaluation is solely in
4 TransCanada's control. Some of these vague undefined terms are as follows:

- 5 i. "pipeline installation activities"
- 6 ii. "availability of labor and materials"
- 7 iii. "commercially reasonable costs and expenses"
- 8 iv. "reasonably anticipated and foreseeable costs and expenses"
- 9 v. "yield loss damages"
- 10 vi. "diminution in the value of the property"
- 11 vii. "substantially same condition"
- 12 viii. "an actual or potential hazard"
- 13 ix. "efficient"
- 14 x. "convenient"
- 15 xi. "endangered"
- 16 xii. "obstructed"
- 17 xiii. "injured"
- 18 xiv. "interfered with"
- 19 xv. "impaired"
- 20 xvi. "suitable crossings"
- 21 xvii. "where rock is encountered"
- 22 xviii. "as nearly as practicable"
- 23 xix. "pre-construction position"
- 24 xx. "pre-construction grade"
- 25 xxi. "various engineering factors"

26 Each one of these above terms and phrases as read in the context of the Easement
27 could be problematic in many ways. Notably, undefined terms tend to only get
28 definition in further legal proceedings after a dispute arises and the way the
29 Easement is drafted, TransCanada has sole power to determine when and if a

1 particular situation conforms with or triggers rights affected by these terms. For
2 instance, “yield loss damages” should be specifically defined and spelled out
3 exactly how the landowner is to be compensated and in what events on the front
4 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
5 the Landowner is without contractual rights to define these terms or determine
6 when rights related to them trigger and what the affects may be.

7 **Q: Do you have any other concerns about the Easement language that you can**
8 **think of at this time?**

9 A: I reserve the right to discuss any additional concerns that I think of at the time of
10 my live testimony in August.

11 **Q: Based upon what you have shared with the Commission above regarding**
12 **TransCanada’s proposed Easement terms and agreement, do you believe**
13 **those to be reasonable or just, under the circumstances of the pipeline’s**
14 **impact upon you and your land?**

15 A: No, I do not believe those terms to be reasonable or just for the reasons that we
16 discussed previously.

17 **Q: Did TransCanada ever offer you financial compensation for the rights that**
18 **they sought to obtain in your land, and for what they sought to prevent you**
19 **and any future land owner of your property from doing in the future?**

20 A: Yes, we received an offer from them.

21 **Q: As the owner of the land in question and as the person who knows it better**
22 **than anyone else, do you believe that TransCanada offered you just, or fair,**
23 **compensation for all of what they proposed to take from you so that their tar**
24 **sands pipeline could be located across your property?**

25 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
26 offer for all the potential impacts and effects and the rights that I’m giving up, and
27 what we will be prevented from doing in the future and how their pipeline would
28 impact my property for ever and ever.

1 **Q: Has TransCanada at any time offered to compensate you annually, such as**
2 **wind farm projects do, for the existence of their potential tar sands pipeline**
3 **across your property.**

4 A: No, never.

5 **Q: At any time did TransCanada present you with or request that you, as the**
6 **owner of the land in question, sign and execute a document called, “Advanced**
7 **Release of Damage Claims and Indemnity Agreement?”**

8 A: Yes, they did and it was included in the County Court lawsuit against us.

9 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
10 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

11 A: Yes, it is.

12 **Q: What was your understanding of that document?**

13 A: When I read that document in the plain language of that document, it was my
14 understanding that TransCanada was attempting to pay me a very small amount at
15 that time in order for me to agree to give up my rights to be compensated from
16 them in the future related to any damage or impact they may have upon my
17 property “arising out of, in connection with, or alleged to resulted from
18 construction or surveying over, under or on” my land.

19 **Q: Did you ever sign that document?**

20 A: No, I did not.

21 **Q: Why not?**

22 A; Because I do not believe that it is fair or just to try to get me to agree to a small
23 sum of money when I have no idea how bad the impacts or damages that they, or
24 their contractors, or subcontractors, or other agents or employees, may cause on
25 my land at any time in the future that resulted from the construction or surveying
26 or their activities upon my land.

27 **Q: When you reviewed this document, what did it make you feel?**

28 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
29 shield themselves against known and foreseeable impacts that their pipeline, and

1 the construction of it, would have upon my land. It made me feel that they knew it
2 was in their financial interest to pay me as little as possible to prevent me from
3 ever having the opportunity to seek fair compensation again, and that this must be
4 based upon their experience of unhappy landowners and situations in other places
5 where they have built pipelines.

6 **Q: Has TransCanada ever contacted you and specifically asked you if you**
7 **thought their proposed location of their proposed pipeline across your land**
8 **was in your best interest?**

9 A: No, they have not.

10 **Q: Has TransCanada ever contacted you and specifically asked you if you**
11 **thought their proposed location of their proposed pipeline across your land**
12 **was in the public interest of the State of Nebraska?**

13 A: No, they have not.

14 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
15 **Takings Clause?**

16 A: Yes, I am.

17 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
18 **an American citizens property?**

19 A: My understanding is that, according to the United States Constitution, that if the
20 government is going to take land for public use, then in that case, or by taking for
21 public use, it can only occur if the private land owner is compensated justly, or
22 fairly.

23 **Q: Has TransCanada ever contacted you specially to explain the way in which**
24 **the public could use its proposed Keystone XL Pipeline?**

25 A: No, they have not.

26 **Q: Can you think of any way in which the public, that is the citizens of the State**
27 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
28 **Pipeline, as it dissects the State of Nebraska?**

1 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
2 public benefits from this pipeline in any way, how they can use it any way, or how
3 it's in the public interest in any way. By looking at the map, it is quite clear to me
4 that the only reason it's proposed to come through Nebraska, is that because we
5 are geographically in the way from between where the privately-owned Tar Sands
6 are located to where TransCanada wants to ship the Tar Sands to refineries in
7 Houston, Texas.

8 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
9 crude petroleum, or oil and petroleum by-products that you would like to
10 ship in its pipeline?**

11 A: No, it has not.

12 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
13 products that you, at this time or any time in the future, would desire to place
14 for transport within the proposed TransCanada Keystone XL Pipeline?**

15 A: No, I do not.

16 **Q: Do you know anyone in the state of Nebraska who would be able to ship any
17 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
18 products within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not. I've never heard of such a person or company like that.

20 **Q: Do you pay property taxes for the land that would be affected and impacted
21 at the proposed TransCanada Keystone XL Pipeline?**

22 A: Yes, I do.

23 **Q: Why do you pay property taxes on that land?**

24 A: Because that is the law. The law requires us to pay the property taxes as the owner
25 of that property.

26 **Q: Because you follow the law and pay property taxes, do you believe you
27 deserve any special consideration or treatment apart from any other person
28 or company that pays property taxes?**

1 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
2 just what you do.

3 **Q: Do you believe the fact that you pay property taxes entitles you to special**
4 **treatment of any kind, or special rights of any kind?**

5 A: No, of course not.

6 **Q: Do you believe the fact that you pay property taxes on your land would be**
7 **enough to qualify you to have the power of eminent domain to take land of**
8 **your neighbors or other people in your county, or other people across the**
9 **state of Nebraska?**

10 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
11 I expect an award for or any type of special consideration.

12 **Q: Have you at any time ever employed any person other than yourself?**

13 A: Well, yes I have.

14 **Q: Do you believe that the fact that you have, at some point in your life,**
15 **employed one or more other persons entitle you to any special treatment or**
16 **consideration above and beyond any other Nebraskan that has also employed**
17 **one or more persons?**

18 A: No, of course not.

19 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
20 **have at one point employed another person within this state, entitles you to**
21 **preferential treatment or consideration of any kind?**

22 A: No, of course not. If I choose to employ someone that decision is up to me. I
23 don't deserve any special treatment or consideration for that fact.

24 **Q: At the beginning of your statement, you briefly described your property that**
25 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
26 **give the Commissioners a sense of specifically how you believe the proposed**
27 **Keystone XL Pipeline and its preferred route, which proposes to go across**
28 **your land, how it would in your opinion based on your knowledge,**
29 **experience, and background of your land, affect it. So please share with the**

1 **Commissioners the characteristics of your land that you believe is important**
2 **for them to understand, while they evaluate TransCanada's application for a**
3 **route for its proposed pipeline to cross Nebraska and across your land,**
4 **specifically.**

5 A: The pipe they want to use has been sitting out in the elements for years. Tar sands
6 is a very corrosive material. What will happen when we practice our normal
7 tillage and run our irrigation systems over an already weakened pipeline? My
8 family does not have the funds to clean up an oil spill, that I'm sure TransCanada
9 will somehow deem our fault. TransCanada needs to be responsible for all
10 leaks. It's their pipeline. The Keystone XL pipeline will decrease the value of our
11 land. A pipe that is already weak from sitting in the elements, and that has
12 corrosive tar sands being pumped through it, is going to leak. Who is going to
13 want to pay market price for land with such high risk? Also, why should we
14 accept a 1 time payment, when TransCanada will use our land to pump their dirty
15 tar sands through everyday. Land owners should be compensated
16 yearly. TransCanada also needs to renew their operating permit yearly.
17 There are thousands of private and irrigation wells that risk contamination along
18 the proposed route. Why should our Country risk the largest fresh water aquifer in
19 the nation, for a FOREIGN company to pump their dirty tar sands to a foreign
20 market. The easement gives TransCanada the right to abandon the pipeline in
21 place. Not only that, but keep the easement to our property. All easements need
22 to be terminated when they are done using our property, and the pipeline removed.
23 Lastly, I can't believe there isn't a better route for this pipeline. The proposed
24 route still crosses the fragile Sandhills and the Ogallala Aquifer.

25 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
26 **crude oil pipeline in its preferred location, or ultimate location across the**
27 **state of Nebraska?**

28 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
29 or even bullied around and being made to feel scared that they did not have any

1 options but to sign whatever papers TransCanada told them they had to. I am
2 aware of folks being threatened that their land would be taken if they didn't follow
3 what TransCanada was saying. I am aware of tactics to get people to sign
4 easements that I don't believe have any place in Nebraska or anywhere such as
5 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
6 landowners and convince them they should sign TransCanada's easement
7 agreements. I am aware of older folks and widows or widowers feeling they had
8 no choice but to sign TransCanada's Easement and they didn't know they could
9 fight or stand up for themselves. From a more practical standpoint, I am worried
10 that according to their answer to our Interrogatory No. 211, TransCanada only
11 owns and operates one (1) major oil pipeline. They simply do not have the
12 experience with this type of pipeline and that scares me. There are others but that
13 is what I can recollect at this time and if I remember more or my recollection is
14 refreshed I will share those with the Commissioners at the Hearing in August.

15 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
16 **landowner is reasonable or just?**

17 A: No, I do not.

18 **Q: Do you have any concern about limitations that the construction of this**
19 **proposed pipeline across your affected land would prevent construction of**
20 **future structures upon the portion of your land affected by the proposed**
21 **easement and immediately surrounding areas?**

22 A: Well yes, of course I do. We would not be able to build many, if any, types of
23 structures directly across or touching the easement, and it would be unwise and I
24 would be uncomfortable to build anything near the easement for fear of being
25 blamed in the future should any damage or difficulty result on my property in
26 regards to the pipeline.

27 **Q: Do you think such a restriction would impact you economically?**

28 A: Well yes, of course.

29 **Q: How do you think such a restriction would impact you economically?**

1 A: The future of this land may not be exactly how it's being used as of this moment,
2 and having the restrictions and limiting my ability to develop my land in certain
3 ways presents a huge negative economic impact on myself, my family, and any
4 potential future owner of the property. You have no idea how I or the future owner
5 may want to use this land in the future or the other land across Nebraska
6 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
7 ago it would have been hard to imagine all the advances that we have now or how
8 things change. Because the Easement is forever and TransCanada gets the rights in
9 my land forever we have to think with a very long term view. By placing their
10 pipeline on under across and through my land that prevents future development
11 which greatly negatively impacts future taxes and tax revenue that could have
12 been generated by the County and State but now will not. When you look at the
13 short blip of economic activity that the two years of temporary construction efforts
14 may bring, that is far outweighed by the perpetual and forever loss of opportunity
15 and restrictions TransCanada is forcing upon us and Nebraska.

16 **Q: Do you have any concerns about the environmental impact of the proposed**
17 **pipeline?**

18 A: Yes, I do.

19 **Q: What are some of those concerns?**

20 A: As an affected land owner and Nebraskan, I am concerned that any construction,
21 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
22 a detrimental impact upon the environment of my land specifically, as well as the
23 lands near my land and surrounding the proposed pipeline route.

24 **Q: Do you have any other environmental concerns?**

25 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
26 construction and/or maintenance and operation. I am concerned about spills and
27 leaks that TransCanada has had in the past and will have in the future. This could
28 be catastrophic to my operations or others and to my county and the State.

1 **Q: Do you have any thoughts regarding if there would be an impact upon the**
2 **natural resources on or near your property due to the proposed pipeline?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
5 resources of my land, and the lands near and surrounding the proposed pipeline
6 route.

7 **Q: Do you have any worries about potential impacts from the proposed pipeline**
8 **to the soil of your land, or land near you?**

9 A: Yes, I believe that any construction, operation, and/or maintenance of the
10 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
11 land, as well as land along and surrounding the proposed pipeline route. This
12 includes, but is not limited to, the reasons that we discussed above of disturbing
13 the soil composition and makeup as it has naturally existed for thousands and
14 millions of years during the construction process, and any future maintenance or
15 removal process. I'm gravely concerned about the fertility and the loss of
16 economic ability of my property to grow the crops, or grow the grasses, or grow
17 whatever it is at that time they exist on my property or that I may want to grow in
18 the future, or that a future owner may want to grow. The land will never be the
19 same from as it exists now undisturbed to after it is trenched up for the proposed
20 pipeline.

21 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
22 **upon the groundwater over your land, or surrounding lands?**

23 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
24 the proposed Keystone XL Pipeline would have a detrimental impact upon the
25 groundwater of not only under my land, but also near and surrounding the pipeline
26 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
27 simple and it is simply too valuable to our State and the country to put at
28 unreasonable risk.

1 **Q: Do you have any concern about the potential impact of the proposed pipeline**
2 **upon the surface water on, or near or around your land?**

3 A: Yes, I have significant concerns that any construction, operation, and/or
4 maintenance of the proposed Keystone XL Pipeline would have detrimental
5 impact upon the surface water of not only within my property boundary, but along
6 and near and surrounding the pipeline route, and in fact, across the state of
7 Nebraska.

8 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
9 **upon the wildlife and plants, other than your growing crops on or near your**
10 **land?**

11 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
12 the proposed Keystone XL Pipeline would have a detrimental impact upon the
13 wildlife and the plants, not only that are located on or can be found upon my land,
14 but also near and along the proposed pipeline route.

15 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
16 **fair market value of your land?**

17 A: Yes, I do. I am significantly concerned about how the existence of the proposed
18 pipeline underneath and across and through my property will negatively affect the
19 fair market value at any point in the future, especially at that point in which I
20 would need to sell the property, or someone in my family would need to sell the
21 property. I do not believe, and certainly would not be willing to pay, the same
22 price for land that had the pipeline located on it, versus land that did not. I hope
23 there is never a point where I'm in a position where I have to sell and have to
24 realize as much value as I can out of my land. But because it is my single largest
25 asset, I'm gravely concerned that the existence of the proposed Keystone XL
26 Pipeline upon my land will affect a buyer's willingness to pay as much as they
27 would've paid and as much as I could've received, if the pipeline were not upon
28 my property. There are just too many risks, unknowns, impacts and uncertainties,
29 not to mention all of the rights you give up by the nature of having the pipeline

1 due to having the easement that we have previously discussed, for any reasonable
2 person to think that the existence of the pipeline would not negatively affect my
3 property's value.

4 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your
5 testimony?**

6 A: Yes, I have.

7 **Q: Where have you seen that before?**

8 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
9 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
10 believe the portion of the alternative route in Nebraska essentially twins or
11 parallels Keystone I.

12 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion
13 of the proposed pipeline within Nebraska as found in Attachment No. 6 to
14 your testimony, is in the public interest of Nebraska?**

15 A: No, I do not.

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 there is any potential route for the proposed Keystone XL
25 Pipeline across, within, under, or through the State of Nebraska that is in the
26 public interest of the citizens of Nebraska?**

27 A: No, I do not.

28 **Q: Why do you hold that belief?**

1 A: Because there simply is no public interest based on all of the factors that I am
2 aware and that I have read and that I have studied that this Commission is to
3 consider that would establish that a for-profit foreign-owned pipeline that simply
4 crosses Nebraska because we are geographically in the way between where tar
5 sands are in Canada to where it wants to ship it to in Texas could ever be in the
6 public interest of Nebraskans. We derive no benefit from this project. It is not for
7 public use. Nebraska is simply in the way and when all considerations are taken in
8 there is no net benefit of any kind for Nebraska should this project be placed in our
9 state. Even if there was some arguable “benefit” it is not enough to outweigh all
10 the negative impacts and concerns.

11 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
12 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
13 **of Nebraska because it may bring temporary jobs during the construction**
14 **phase to Nebraska?**

15 A: First of all, not all jobs are created equally. Most jobs that are created, whether
16 temporary or on a permanent basis, don’t come with a project that has all the
17 potential and foreseeable negative impacts, many of which we have discussed here
18 and other witnesses throughout the course of this hearing have and will discuss. If
19 I decide to hire and employ someone to help me out in my farming or ranching
20 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
21 to my land or my town or my county or my state. And I’ve hired someone who is
22 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
23 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
24 jobs are not created equal. Additionally, I understand from what I’m familiar with
25 from TransCanada’s own statements that the jobs numbers they originally touted
26 were determined to be a minute fraction of the permanent jobs that had been
27 projected. According to their answer to our Interrogatory No. 191, TransCanada
28 has created only thirty-four (34) jobs within Nebraska working specifically on
29 behalf of TransCanada and according to their answer to Interrogatory No. 196, as

1 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
2 Further, according to their answer to Interrogatory No. 199, TransCanada would
3 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
4 constructed on its Preferred Route or its Mainline Alternative Route.

5 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
6 **because it would cross your land?**

7 A: No, absolutely not. I am opposed to this project because it is not in the public
8 interest, neither within my community nor within our state.

9 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
10 **was to cross someone else's land?**

11 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
12 the fear and anxiety and potential foreseeable risks and negative impacts that this
13 type of a project carrying this type of product brings foisted upon anyone in this
14 state or any other state.

15 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
16 **Pipeline to cross the state of Nebraska?**

17 A: I don't believe there is an intelligent route because as I have stated I don't believe
18 this project anywhere within Nebraska is within the public interest. However, if
19 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
20 had to go somewhere in the state of Nebraska, the only intelligent route I believe
21 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
22 preferred route and the mainline alternative routes are economic liabilities our
23 state cannot risk.

24 **Q: What do you rely upon to make that statement?**

25 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
26 already exists in that area is reason enough as it is not in our best interest or the
27 public interests to have more major oil pipelines crisscrossing our state. Second,
28 they have all the infrastructure already there in terms of relationships with the
29 counties and local officials and first responders along that route. Third, they have

1 already obtained easements from all the landowners along that route and have
2 relationships with them. Fourth, that route avoids our most sensitive soils, the
3 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
4 Aquifer. Sixth, they have already studied that route and previously offered it as an
5 alternative. Seventh, it just makes the most sense that as a state we would have
6 some intelligent policy of energy corridors and co-locating this type of
7 infrastructure near each other.

8 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
9 **like the Public Service Commissioners to consider in their review of**
10 **TransCanada's Application?**

11 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
12 document below but other things may come to me or my memory may be
13 refreshed and I will add and address those things at the time of the Hearing in
14 August and address any additional items at that time as is necessary. Additionally,
15 I have not had an adequate amount of time to receive and review all of
16 TransCanada's answers to our discovery and the discovery of others so it was
17 impossible to competently and completely react to that in my testimony here and I
18 reserve the right to also address anything related to discovery that has not yet
19 concluded as of the date I signed this document below. Lastly, certain documents
20 requested have not yet been produced by TransCanada and therefore I may have
21 additional thoughts on those I will also share at the hearing as needed.

22 **Q: What is it that you are requesting the Public Service Commissioners do in**
23 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
24 **across Nebraska?**

25 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
26 a temporary job spike that this project may bring to a few counties and beyond the
27 relatively small amount of taxes this proposed foreign pipeline would possibly
28 generate. And, instead think about the perpetual and forever impacts of this
29 pipeline as it would have on the landowners specifically, first and foremost, but

1 also thereby upon the entire state of Nebraska, and to determine that neither the
2 preferred route nor the Keystone mainline alternative route are in the public
3 interest of the citizens of the state of Nebraska. And if the Commissioners were
4 inclined to modify TransCanada's proposed routes and were to be inclined to grant
5 an application for a route in Nebraska, that the only potential route that would
6 make any intelligent sense whatsoever would be twinning or near paralleling of
7 the proposed KXL with the existing Keystone I pipeline. It simply does not make
8 sense to add yet another major oil pipeline crisscrossing our state creating new
9 pumping stations, creating new impacts on additional counties and communities
10 and going through all of the court processes with myself and other landowners like
11 me when this applicant already has relationships with the landowners, the towns
12 and the communities along Keystone I, and that Keystone I is firmly outside of the
13 sand hills and a significantly further portion away from the heart of the Ogallala
14 Aquifer than the preferred route or the Keystone mainline alternative route.

15 **Q: Are all of your statements in your testimony provided above true and**
16 **accurate as of the date you signed this document to the best of your**
17 **knowledge?**

18 A: Yes, they are.

19 **Q: Thank you, I have no further questions at this time and reserve the right to**
20 **ask you additional questions at the August 2017 Hearing.**


Jamus Mudloff

Subscribed and Sworn to me before this 27 day of May, 2017.


Notary Public

State of Nebraska - General Notary
SARAH FORGET
My Commission Expires
February 1, 2021

Attachment No. 1



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
 J. D. Mudloff
 Larry D. Mudloff
 LJM Farms, LLC
 Lori Mudloff

TRACT NO. ML-NE-HT-30530.000
STATE: Nebraska
COUNTY: Holt
SECTION: 030
TOWNSHIP: 029N
RANGE: 009W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line



S.032
T.029N
R.009W

Larry D. Mudloff
LJM Farms, LLC

S.033
T.029N
R.009W

S.005
T.028N
R.009W

IMAGERY: NAIP 2016
0 250 500 Feet



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Larry D. Mudloff
LJM Farms, LLC

TRACT NO. ML-NE-HT-30560.000
STATE: Nebraska
COUNTY: Holt
SECTION: 032
TOWNSHIP: 029N
RANGE: 009W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Wksp.
- Property Line
- Section Line

S.032
T.029N
R.009W

S.033
T.029N
R.009W

S.004
T.028N
R.009W

S.005
T.028N
R.009W

Larry D. Mudloff
LJM Farms, LLC

IMAGERY: NAIP 2016



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Larry D. Mudloff
LJM Farms, LLC

TRACT NO. ML-NE-HT-30565.000
STATE: Nebraska
COUNTY: Holt
SECTION: 005
TOWNSHIP: 028N
RANGE: 009W

- 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-30530.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Larry D. Mudloff, J. D. Mudloff, Lori Mudloff, and LJM Farms, LLC, a Nebraska limited liability company**, whose mailing address is 50381 870th Road, Page, NE 68766 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection 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 156.07 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SW1/4 of Section 30, T29N, R9W of the 6th P.M., as recorded in Book 199, Page 731, Book 189, Page 507, and Book 189, Page 34 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):

Larry D. Mudloff

J. D. Mudloff

Lori Mudloff

LJM Farms, 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 **Lori Mudloff**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By _____ of

LJM Farms, LLC, a Nebraska limited liability company, on behalf of the corporation.

Notary Public Signature

Affix Seal Here

HOLT COUNTY, NEBRASKA

T-29-N, R-9-W, SECTION 30
ML-NE-HT-30530.000

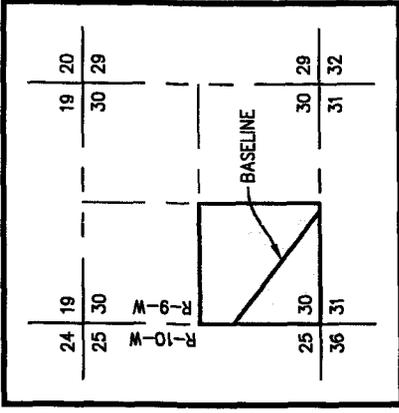
PROPERTY LINE
SECTION LINE
PROPOSED
AND OTHERS
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF HOLT COUNTY, NEBRASKA

LEGEND
P
S
PROF.
et al
A.T.W.S.
P.E.R.W.
D.R.H.C.N.

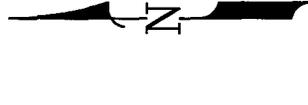
LJM FARMS, LLC, et al
VOLUME 189, PAGE 34
VOLUME 189, PAGE 507
VOLUME 199, PAGE 731-732
D.R.H.C.N.

SEE DETAIL "A"

SEE DETAIL "B"



VICINITY MAP
N.T.S.



0 250 500
SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:
SW/4 OF SECTION 30,
T-29-N, R-9-W

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 3,092'±
AREA OF PERMANENT EASEMENT: 3.5 ACRES
AREA OF TEMPORARY WORKSPACE: 4.2 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.4 ACRE

 TransCanada <i>In business to deliver.</i>			
KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF LJM FARMS, LLC, et al ML-NE-HT-30530.000			
PROJECT:	EXHIBIT A		
APPROVED BY:	DRAWING NUMBER		
SLR	XL-08-ML-SK-3362		
NO.	REVISION		
	DATE		
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/31/14	JN	ALS



**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-30560.000
ML-NE-HT-30565.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Larry D. Mudloff and LJM Farms, LLC, a Nebraska limited liability company**, whose mailing address is 50381 870th Road, Page, NE 68766 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection 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 Holt, 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 Holt, in the State of Nebraska, being further described as the SE1/4 of Section 32, Township 29 North, Range 9 West of the 6th P.M., as recorded in Book 199, Page 733 and Book 176, Page 230 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 154.87 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NE1/4 of Section 5, T28N, R9W of the 6th P.M., as recorded in Book 199, Page 731 and Book 176, Page 230 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):

Larry D. Mudloff

**LJM Farms, 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 **Larry D. Mudloff**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By _____ of

LJM Farms, LLC, a Nebraska limited liability company, on behalf of the corporation.

Notary Public Signature

Affix Seal Here

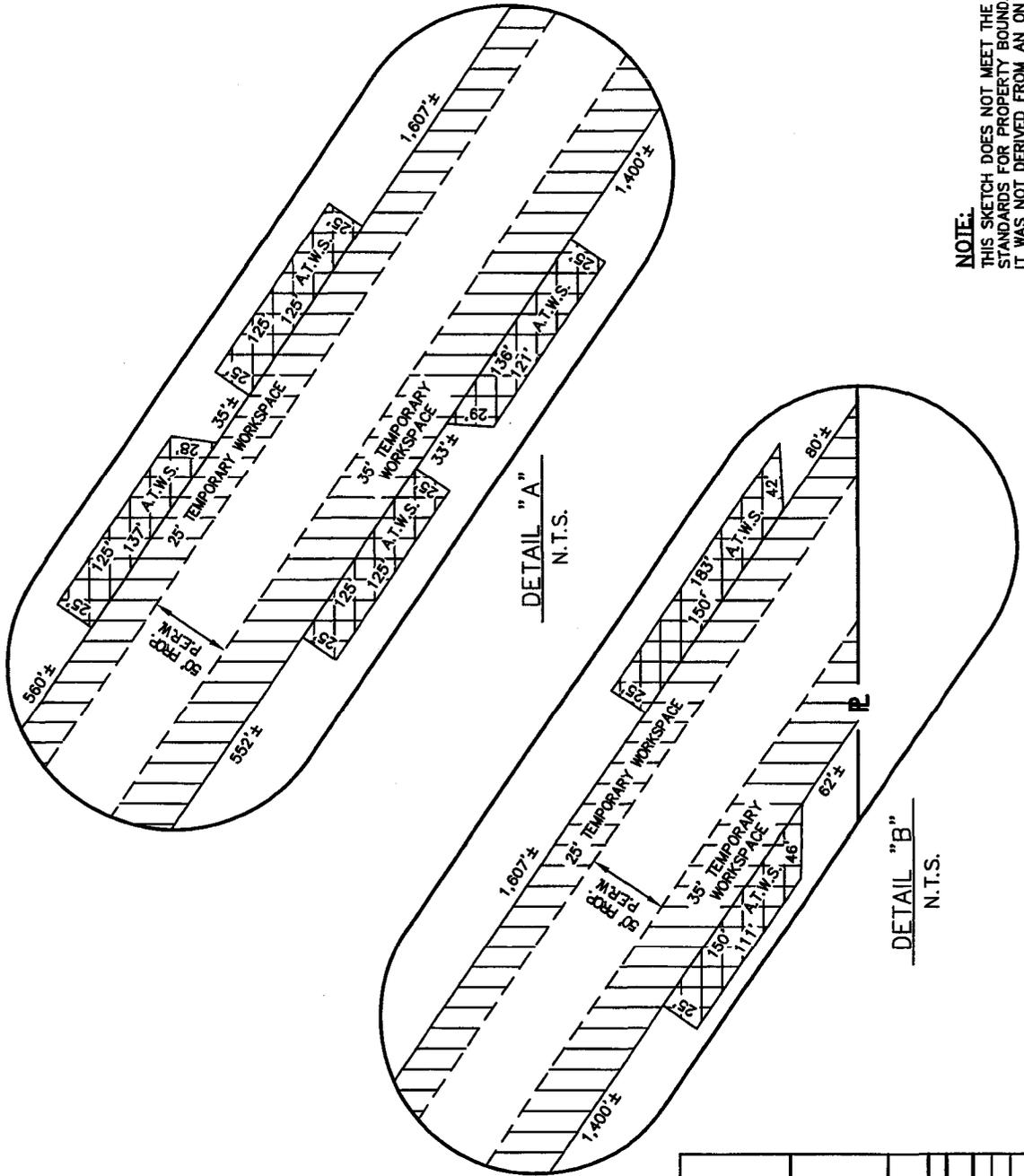
HOLT COUNTY, NEBRASKA

T-29-N, R-9-W, SECTION 32

ML-NE-HT-30560.000

PROPERTY LINE
AND OTHERS
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY

LEGEND
P
et al
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.

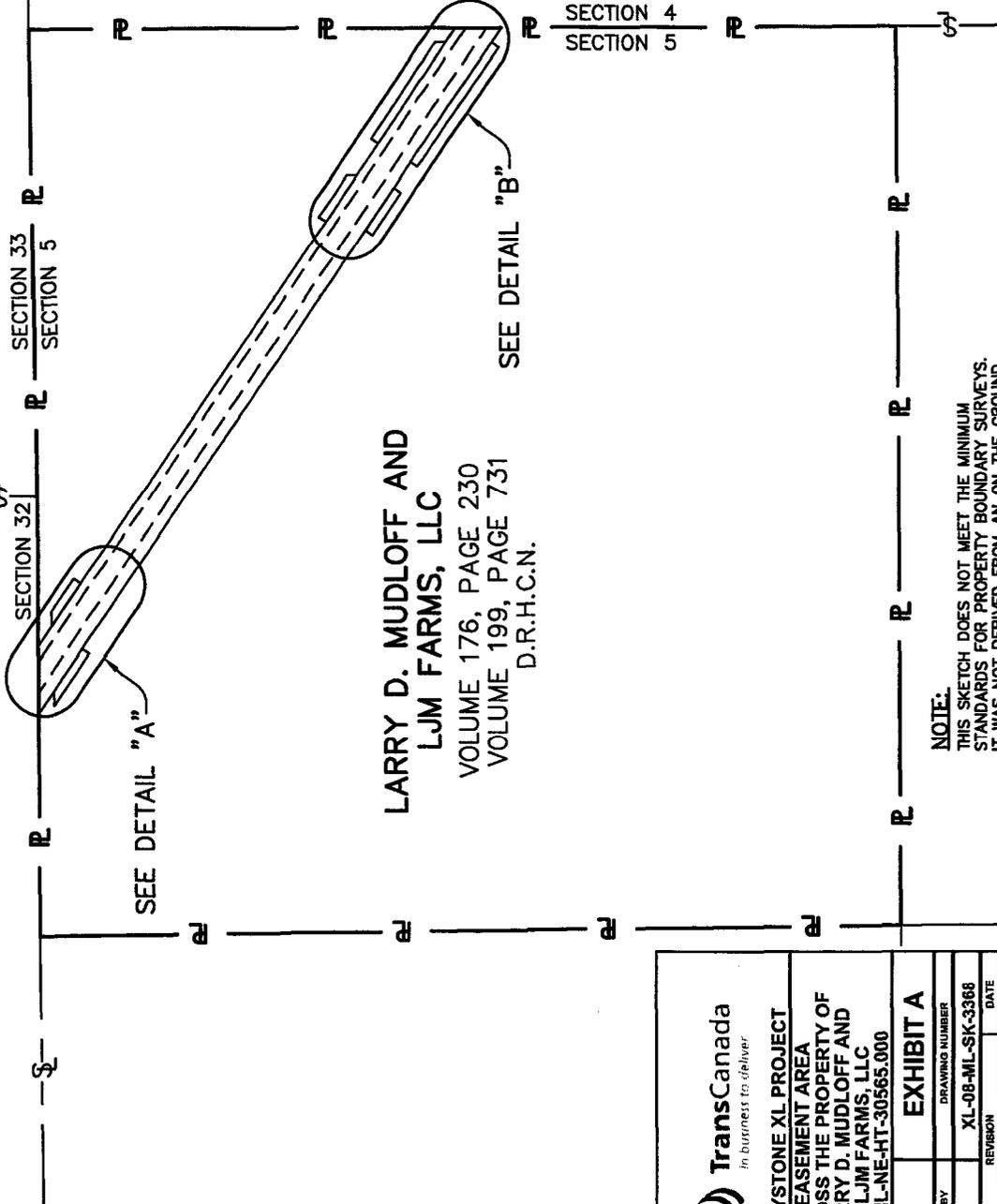
		In business to deliver	
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF			
LARRY D. MUDLOFF AND			
LJM FARMS, LLC			
ML-NE-HT-30560.000			
PROJECT:	XL	EXHIBIT A	
APPROVED BY:	SLR	DRAWING NUMBER	XL-08-ML-SK-3387
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/31/14	JN	ALS



HOLT COUNTY, NEBRASKA

T-28-N, R-9-W, SECTION 5
ML-NE-HT-30565.000

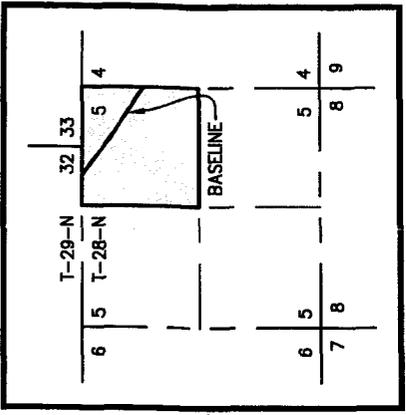
LEGEND
 P PROPERTY LINE
 S SECTION LINE
 P PROP. AND OTHERS
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA



LARRY D. MUDLOFF AND
LJM FARMS, LLC
VOLUME 176, PAGE 230
VOLUME 199, PAGE 731
D.R.H.C.N.

SEE DETAIL "A"

SEE DETAIL "B"



VICINITY MAP
N.T.S.



TRACT LEGAL DESCRIPTION:
NE/4 OF SECTION 5,
T-28-N, R-9-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: 2,277'±
AREA OF PERMANENT EASEMENT: 2.6 ACRES
AREA OF TEMPORARY WORKSPACE: 3.2 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.8 ACRE



KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
LARRY D. MUDLOFF AND
LJM FARMS, LLC
ML-NE-HT-30565.000

PROJECT: XL EXHIBIT A

APPROVED BY	DRAWING NUMBER		
SLR	XL-08-ML-SK-3368		
NO.	REVISION		
	DATE		
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/31/14	JN	ALS

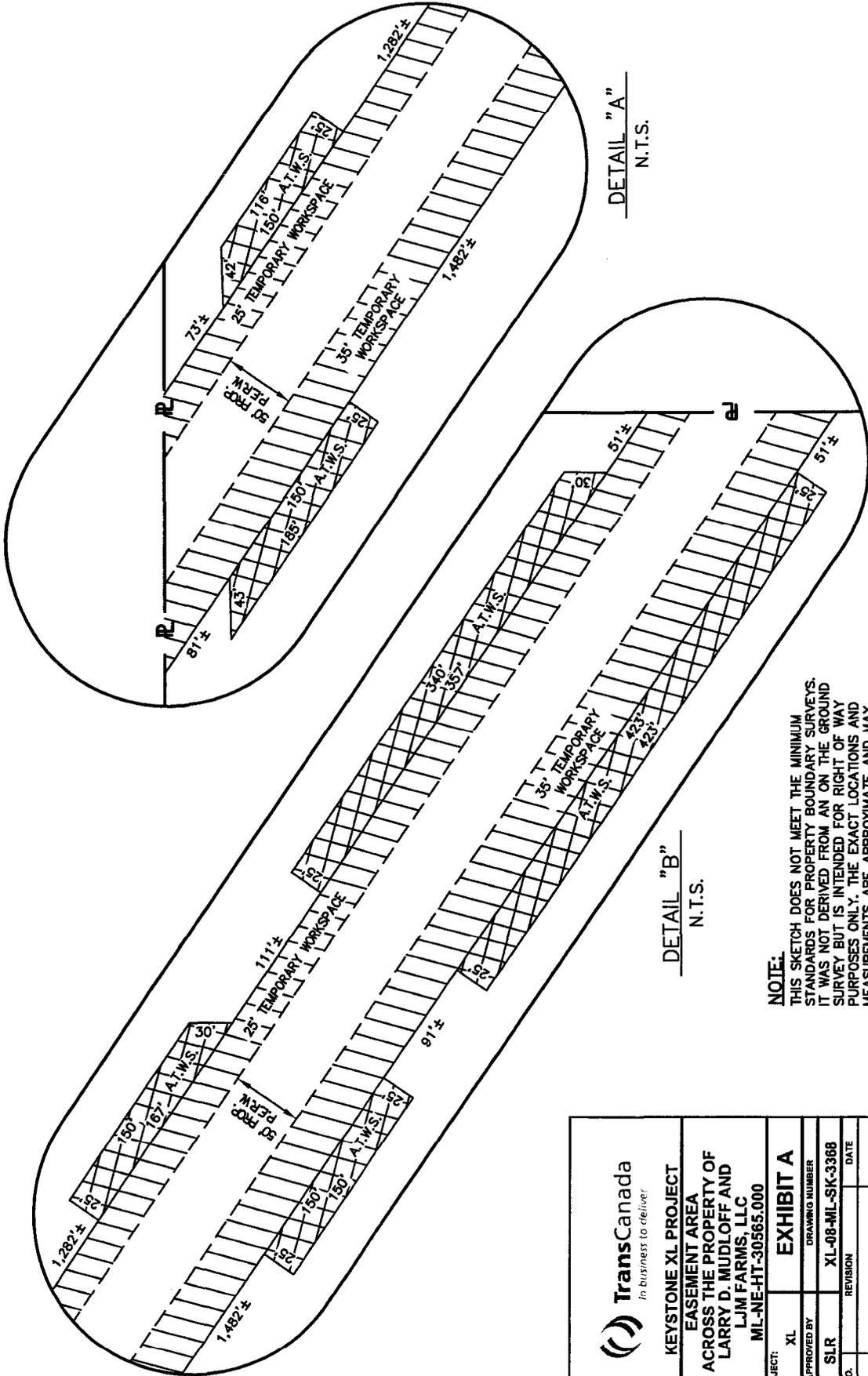


HOLT COUNTY, NEBRASKA

T-28-N, R-9-W, SECTION 5

ML-NE-HT-30565.000

LEGEND
 P. PROPERTY LINE
 PR. PROPOSED
 AND OTHERS
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
LARRY D. MUDLOFF AND	
LJM FARMS, LLC	
ML-NE-HT-30565.000	
PROJECT:	XL EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3368
NO.	REVISION
	DATE
SCALE	DATE
N.T.S.	10/31/14
	DRAWN BY
	JN
	CHECKED BY
	ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30530.000

I/we Larry D. Mudloff, J. D. Mudloff, Lori Mudloff, and LJM Farms, LLC, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Six Thousand Four Hundred Eighty Dollars and No Cents (\$6,480.00), 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 Holt, State of Nebraska:

SW/4

Section 30, Township 29-N, Range 9-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 (sign and print)

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30560.000

I/we Larry D. Mudloff and LJM Farms, LLC, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Six Hundred Dollars and No Cents (\$5,600.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

SE/4

Section 32, Township 29-N, Range 9-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-30565.000

I/we Larry D. Mudloff and LJM Farms, LLC, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Two Hundred Eighty Dollars and No Cents (\$5,280.00), 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:

NE/4

Section 5, Township 28-N, Range 9-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_____.

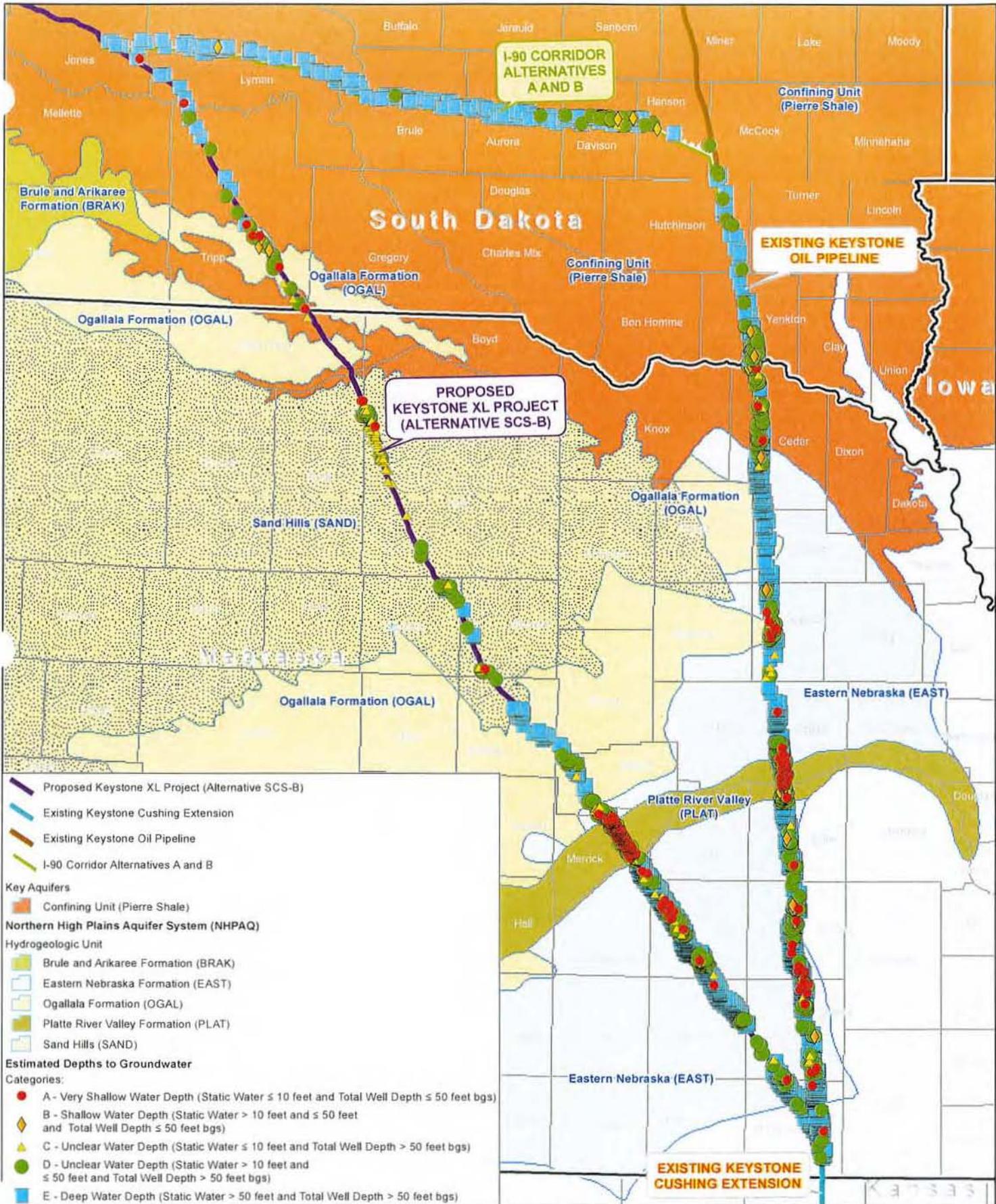
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



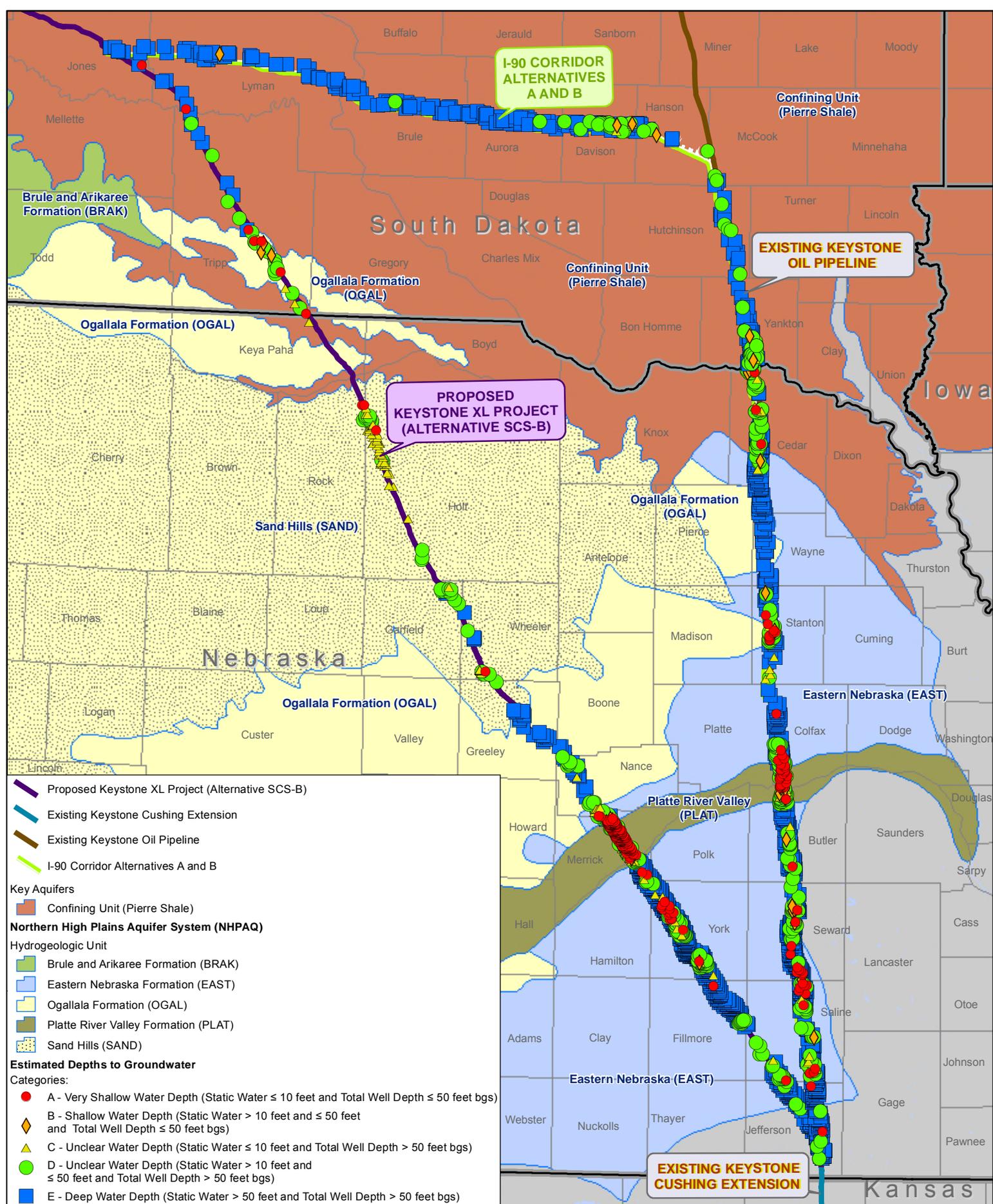
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

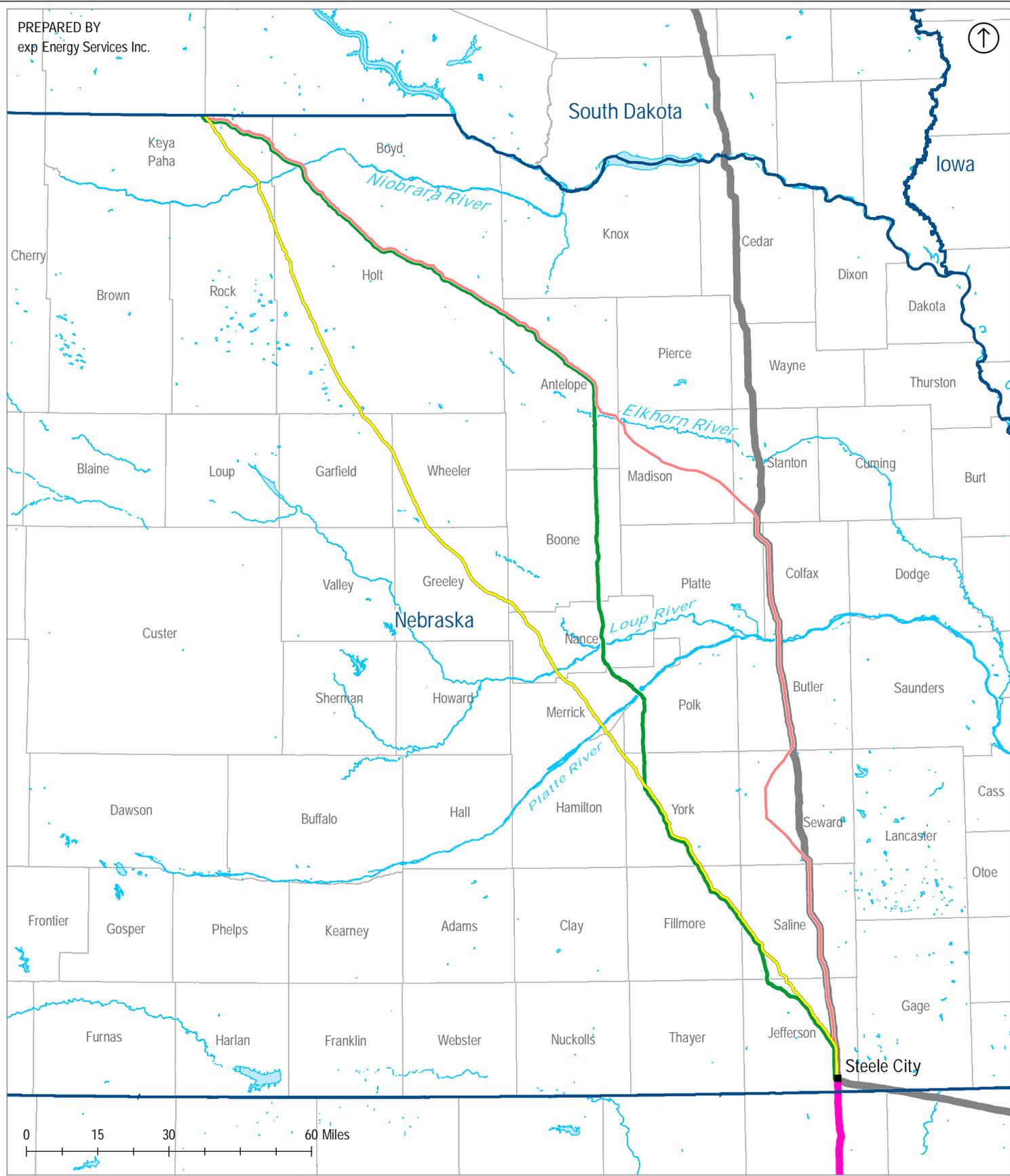
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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
Larry Mudloff Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Larry Mudloff.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Farmer.

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: Gene Mudloff bought the land in 1945 and it has been in our family for 3
8 generations now.

9 **Q: Do you earn any income from this land?**

10 A: Yes.

11 **Q: Have you depended on the income from your land to support your livelihood**
12 **or the livelihood of your family?**

13 A: Yes.

14 **Q: Have you ever in the past or have you thought about in the future leasing all**
15 **or a portion of your land in question here?**

16 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
17 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
18 all the restrictions and risks and potential negative impacts to farming or ranching
19 operations as opposed to land that did not have those same risks. If I was looking
20 to lease or rent ground I would pay more for comparable non-pipeline land than I
21 would for comparable pipeline land and I think most folks would think the same
22 way. This is another negative economic impact that affects the landowner and the
23 county and the state and will forever and ever should TransCanada's preferred or
24 mainline alternative routes be approved. If they were to twin or closely parallel to
25 Keystone I the vast majority of landowners would be those that already have a
26 pipeline so there would be considerable less new incremental negative impacts.

27 **Q: Do you have similar concerns about selling the land?**

28 A: Well I hope not to have to sell the land in my lifetime but times change and you
29 never know what is around the corner and yes I am concerned that if another piece

1 of ground similar to mine were for sale and it did not have the pipeline and mine
2 did that I would have a lower selling price. I think this would be true for pipeline
3 ground on both the preferred and mainline alternative routes.

4 **Q: What is your intent with your land after you die?**

5 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
6 to come but I have thought about getting out if this pipeline were to come through.

7 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
8 Pipeline would cross the land described above and owned by you?**

9 A: Yes.

10 **Q: Were you or an entity for which you are a member, shareholder, or director
11 previously sued by TransCanada Keystone Pipeline, LP?**

12 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
13 petition for condemnation against our land so it could place its proposed pipeline
14 within an easement that it wanted to take from us on our land.

15 **Q: Did you defend yourself and your land in that condemnation action?**

16 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
17 and expenses in our resistance of TransCanada's lawsuit against us.

18 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
19 incurred?**

20 A: No, they have not.

21 **Q: In its lawsuit against you, did TransCanada identify the amount of your
22 property that it wanted to take for its proposed pipeline?**

23 A: The lawsuit against us stated they would take the amount of property that is
24 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
25 and equipment reasonably necessary to operate the pipeline.

26 **Q: Did TransCanada define what they meant by "property that is reasonably
27 necessary"?**

28 A: No, they did not.

1 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
2 **property portion of your land?**

3 A: Yes, they did.

4 **Q: Did TransCanada describe what rights it proposed to take related to the**
5 **eminent domain property on your land?**

6 A: Yes, they did.

7 **Q: What rights that they proposed to take did they describe?**

8 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
9 operate, and maintain the pipeline and the plant and equipment reasonably
10 necessary to operate the pipeline, specifically including surveying, laying,
11 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
12 reconstructing, removing and abandoning one pipeline, together with all fittings,
13 cathodic protection equipment, pipeline markers, and all their equipment and
14 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
15 petroleum products, and all by-products thereof.”

16 **Q: Prior to filing an eminent domain lawsuit to take your land that**
17 **TransCanada identified, do you believe they attempted to negotiate in good**
18 **faith with you?**

19 A: No, I do not.

20 **Q: Did TransCanada at any time approach you with or deliver to you their**
21 **proposed easement and right-of-way agreement?**

22 A: Yes, they did.

23 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
24 **agreement, did you understand that they would be purchasing a fee title**
25 **interest in your property or that they were taking something else?**

26 A: I understood that they proposed to have the power to take both a temporary
27 construction easement that could last for a certain period of time and then also a
28 permanent easement which they described to be 50 feet across or in width, and

1 that would run the entire portion of my property from where a proposed pipeline
2 would enter my property until where it would exit the property.

3 **Q: Is the document included with your testimony here as Attachment No. 3, a**
4 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
5 **Way agreement that they included with their condemnation lawsuit against**
6 **you?**

7 A: Yes, it is.

8 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
9 **and Right-of-Way agreement?**

10 A: Yes, I have.

11 **Q: What is your understanding of the significance of the Easement and Right-of-**
12 **Way agreement as proposed by TransCanada?**

13 A: My understanding is that this is the document that will govern all of the rights and
14 obligations and duties as well as the limitations of what I can and cannot do and
15 how I and any future landowner and any person I invite to come onto my property
16 must behave as well as what TransCanada is and is not responsible for and how
17 they can use my land.

18 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
19 **agreement do you have any concerns about any portions of it or any of the**
20 **language either included in the document or missing from the proposed**
21 **document?**

22 A: Yes, I have a number of significant concerns and worries about the document and
23 how the language included and the language not included potentially negatively
24 impacts my land and thereby potentially negatively impacts my community and
25 my state.

26 **Q: I would like you to walk the Commissioners through each and every one of**
27 **your concerns about TransCanada's proposed Easement and Right-of-Way**
28 **agreement so they can develop an understanding of how that language and**
29 **the terms of that contract, in your opinion, potentially negatively impacts you**

1 **and your land. So, if you can start at the beginning of that document and**
2 **let's work our way through it, okay?**

3 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
4 Easement and Right-of-Way agreement and how it negatively could affect my
5 property rights and my economic interests.

6 **Q: Okay, let's start with your first concern please.**

7 A: The very first sentence talks about consideration or how much money they will
8 pay to compensate me for all of the known and unknown affects and all of the
9 rights I am giving up and for all the things they get to do to my land and for what
10 they will prevent me from doing on my land and they only will pay me one time at
11 the signing of the easement agreement. That is a huge problem.

12 **Q: Explain to the Commissioners why that is a problem.**

13 A: It is not fair to the landowner, the county, or the State. It is not fair to the
14 landowner because they want to have my land forever for use as they see fit so
15 they can make a daily profit from their customers. If I was to lease ground from
16 my neighbor I would typically pay twice a year every year as long as they granted
17 me the rights to use their land. That only makes sense – that is fair. If I was going
18 to rent a house in town I would typically pay monthly, every month until I gave up
19 my right to use that house. By TransCanada getting out on the cheap and paying
20 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
21 revenue collection on the money I would be paid and then pay taxes on and
22 contribute to this state and this country. It is money I would be putting back into
23 my local community both spending and stimulating the local economy and
24 generating more economic activity right here. Instead TransCanada's shareholders
25 keep all that money and it never finds its way to Nebraska.

26 **Q: What is your next concern?**

27 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
28 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
29 limited partnership..." and I have no idea who that really is. I have no idea who is

1 forcing this pipeline on us or who the owners of the entities are, or what are the
2 assets backing this limited partnership, or who the general partner is, or who all
3 the limited partners are, and who makes up the ownership of the these partners or
4 the structure or any of the basic things you would want to know and understand if
5 you would want to do business with such an outfit. According to TransCanada's
6 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
7 liability company called TransCanada Keystone Pipeline GP, LLC is the general
8 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
9 basically nothing. That is really scary since the general partner has the liability but
10 virtually none of the ownership and who knows if it has any other assets.

11 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
12 **percent clear on exactly who could become the owner of about 275 miles of**
13 **Nebraska land?**

14 A: No.

15 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
16 **percent clear on exactly who will be operating and responsible for**
17 **approximately 275 miles of tar sands pipeline underneath and through**
18 **Nebraska land?**

19 A: No.

20 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
21 **and the State of Nebraska of TransCanada's easement terms.**

22 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
23 called "Grantee")..." and this concerns me because it would allow their easement
24 to be transferred or sold to someone or some company or country or who knows
25 what that I don't know and who we may not want to do business with. This
26 pipeline would be a huge asset for TransCanada and if they can sell to the highest
27 bidder that could have terrible impacts upon all of Nebraska depending upon who
28 may buy it and I don't know of any safeguards in place for us or the State to veto

1 or have any say so in who may own, operate, or be responsible for this pipeline in
2 the future.

3 **Q: Do you think that type of uncertainty and lack of control over a major piece**
4 **of infrastructure crossing our State is in the public interest?**

5 A: No, certainly not, in fact, just the opposite.

6 **Q: What's next?**

7 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
8 really concerns me. Why does the easement and right-of-way have to be perpetual
9 and permanent? That is the question myself and my family want an answer to.
10 Perpetual to me is like forever and that doesn't make sense.

11 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

12 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
13 data proving there is a perpetual supply of tar sands. I am not aware in
14 TransCanada's application where it proves there is a perpetual necessity for this
15 pipeline. My understanding of energy infrastructure like wind towers is they have
16 a decommission plan and actually take the towers down when they become
17 obsolete or no longer needed. Nothing manmade lasts forever. My land however
18 will, and I want my family or future Nebraska families to have that land as
19 undisturbed as possible and it is not in my interest or the public interest of
20 Nebraska to be forced to give up perpetual and permanent rights in the land for
21 this specific kind of pipeline project.

22 **Q: Okay, what is your next concern?**

23 A: The easement language includes all these things TransCanada can do and it says
24 "...abandoning in place..." so they can just leave this pipeline under my ground
25 until the end of time just sitting there while they are not using it, but I am still
26 prevented from doing on my land and using my land what I would like. If I owned
27 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
28 there. It doesn't make sense and it scares me and it is not in my interest or the
29 public interest of Nebraska to allow this.

1 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
2 **right?**

3 A: Yes.

4 **Q: So now on the second page of the Easement what are your concerns?**

5 A: Here the Easement identifies a 24-month deadline to complete construction of the
6 pipeline but has caveats that are undefined and ambiguous. The 24-month period
7 starts to run from the moment “actual pipeline installation activities” begin on
8 Landowners property. It appears that TransCanada would define this phrase as
9 needed. It would be wise to explain what types of TransCanada action constitutes
10 “installation activity” For instance, would the placement and storage of an
11 excavator or other equipment on or near the Easement property be an activity or
12 would earth have to be moved before the activity requirement is triggered. This
13 vague phrase is likely to lead to future disputes and litigation that is not in the best
14 interest of the welfare of Nebraska and would not protect property interests. The
15 24-months can also be extended in the case of “force majeure.” My understanding
16 is that force majeure is often used to insulate a party to a contract when events
17 occur that are completely out of their control. In TransCanada’s easement this is
18 expanded to include “without limitation...availability of labor and materials.”
19 Extending this language to labor and materials is problematic because these are
20 two variables that TransCanada does have some or significant control over and to
21 allow extension of the 24-month period over events not truly out of the control of
22 TransCanada and without further provision for compensation for the Landowner is
23 not conducive to protection of property rights.

24 **Q: Okay, what is your next concern?**

25 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
26 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
27 reasonable costs and expenses” will pay for damages caused but then limits
28 TransCanada’s liability to certain circumstances. There is no definition of
29 “commercially reasonable” and no stated right that the Landowner would get to

1 determine the amounts of cost or expense that is “commercially reasonable.”
2 TransCanada excepts out from their liability any damages that are caused by
3 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
4 Landowner. It is understandable that if the Landowner were to willfully and
5 intentionally cause damages to the pipeline that Landowner should be liable.
6 However, anything short of willful misconduct should be the liability of
7 TransCanada who is subjecting the pipeline on the Landowner and who is making
8 a daily profit from that pipeline. When evaluating the impact on property rights of
9 this provision, you must consider the potentially extremely expensive fight a
10 Landowner would have over this question of whether or not damage was an act of
11 negligence. Putting this kind of potential liability upon the Landowner is
12 incredibly problematic and is detrimental to the protection of property rights. I
13 don’t think this unilateral power which I can’t do anything about as the landowner
14 is in the best economic interest of the land in question or the State of Nebraska for
15 landowners to be treated that way.

16 **Q: Is there any specific event or example you are aware of that makes this**
17 **concern more real for you?**

18 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
19 Nemaha County, Nebraska landowner farmers who accidently struck two
20 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
21 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
22 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
23 copy of the Federal Court Complaint is here as **Attachment No. 4.**

24 **Q: What is your next concern with the Easement language?**

25 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
26 they choose unless 1) any Landowner use interferes in any way with
27 TransCanada’s exercise of any of its rights within the Easement, or 2)
28 TransCanada decides to take any action on the property it deems necessary to
29 prevent injury, endangerment or interference with anything TransCanada deems

1 necessary to do on the property. Landowner is also forbidden from excavating
2 without prior authorization by TransCanada. So my understanding is that
3 TransCanada will unilaterally determine what Landowner can and can't do based
4 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
5 could also completely deny my request to excavate. Further, TransCanada retains
6 all "privileges necessary or convenient for the full use of the rights" granted to
7 them in the Easement. Again, TransCanada unilaterally can decide to the
8 detriment of the property rights of Landowner what TransCanada believes is
9 necessary or convenient for it. And there is no option for any additional
10 compensation to landowner for any right exercised by TransCanada that leads to
11 the removal of trees or plants or vegetation or buildings or structures or facilities
12 owned by Landowner of any kind. Such undefined and unilateral restrictions and
13 rights without having to compensate Landowner for such further destruction or
14 losses are not conducive to the protection of property rights or economic interest.

15 **Q: What is the next concern you have?**

16 A: The Easement also allows some rights for Landowner but restricts them at the
17 same time and again at the sole and unilateral decision making of TransCanada.
18 TransCanada will determine if the actions of Landowner might in anyway
19 endanger or obstruct or interfere with TransCanada's full use of the Easement or
20 any appurtenances thereon to the pipeline itself or to their access to the Easement
21 or within the Easement and TransCanada retains the right at any time, whether
22 during growing season or not, to travel "within and along Easement Area on foot
23 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
24 retain the rights to prevent any landowner activity that it thinks may "unreasonably
25 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
26 undefined and unilateral restrictions are not conducive to the protection of
27 property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
2 Landowner's land any debris of any kind without any input or power of
3 Landowner to demand an alternative method or location of debris disposal. Such
4 unilateral powers would negatively affect Landowners property are not conducive
5 to the protection of property rights or economic interest.

6 **Q: What is the next concern you have with the Easement language?**

7 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
8 "where rock is encountered" mean and why does TransCanada solely get to
9 determine whether or not this phrase is triggered. This phrase could be used to
10 justify installing the pipeline 24 inches beneath the surface. The ability to use this
11 provision to minimal locate the pipeline at a depth of 24 inches could negatively
12 affect Landowners property are not conducive to the protection of property rights.
13 A shallow pipeline is much more likely to become a danger and liability in the
14 future given farming operations and buried irrigation lines and other factors
15 common to the current typical agricultural uses of the land in question impacted
16 by TransCanada's preferred pipeline route.

17 **Q: What is the next concern you have with the Easement language?**

18 A: There are more vague concepts solely at the determination of TransCanada such as
19 "as nearly as practicable" and "pre-construction position" and "extent reasonably
20 possible." There is nothing here that defines this or provides a mechanism for
21 documenting or memorializing "pre-construction position" so as to minimize
22 costly legal battles or wasted Landowner time attempting to recreate the soil
23 condition on their fields or pasture. Such unilateral powers would negatively affect
24 Landowners property are not conducive to the protection of property rights or
25 economic interest.

26 **Q: What is the next concern you have with the Easement language?**

27 A: TransCanada maintains the unilateral right to abandon the pipeline and all
28 appurtenances thereto in place on, under, across, or through Nebraska land at any
29 time it chooses. There is no provision for Landowner compensation for such

1 abandonment nor any right for the Landowner to demand removal. Such unilateral
2 powers would negatively affect Landowners property are not conducive to the
3 protection of property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: TransCanada has the power to unilaterally move or modify the location of any
6 Easement area whether permanent or temporary at their sole discretion.
7 Regardless, if Landowner has taken prior steps relative to their property in
8 preparation or planning of TransCanada's taking of the initial easement area(s),
9 the language here does not require TransCanada to compensate the Landowner if
10 they decide to move the easement anywhere on Landowners property. Such
11 unilateral powers would negatively affect Landowners property are not conducive
12 to the protection of property rights or economic interests.

13 **Q: What is the next concern you have with the Easement language?**

14 A: The Easement requires that all of the burdens and restrictions upon Landowner to
15 transfer and be applicable to any future owner of the Land in question without the
16 ability of the future Landowner to modify or negotiate any of the language in
17 question to which it will be held to comply.

18 **Q: What is the next concern you have with the Easement language?**

19 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
20 Easement to any person, company, country, etc. at their sole discretion at anytime
21 to anyone. This also means that any buyer of the easement could do the same to a
22 third buyer and so on forever. There is no change of control or sale provision in
23 place to protect the Landowner or Nebraska or to provide compensation for such
24 change of control or ownership. It is not conducive to the protection of property
25 rights or economic interests to allow unilateral unrestricted sale of the Easement
26 thereby forcing upon the Landowner and our State a new unknown Easement
27 owner.

28 **Q: What is the next concern you have with the Easement language?**

1 A: There are many terms in the Easement that are either confusing or undefined terms
2 that are without context as to whether or not the Landowner would have any say
3 so in determining what these terms mean or if the evaluation is solely in
4 TransCanada's control. Some of these vague undefined terms are as follows:

- 5 i. "pipeline installation activities"
- 6 ii. "availability of labor and materials"
- 7 iii. "commercially reasonable costs and expenses"
- 8 iv. "reasonably anticipated and foreseeable costs and expenses"
- 9 v. "yield loss damages"
- 10 vi. "diminution in the value of the property"
- 11 vii. "substantially same condition"
- 12 viii. "an actual or potential hazard"
- 13 ix. "efficient"
- 14 x. "convenient"
- 15 xi. "endangered"
- 16 xii. "obstructed"
- 17 xiii. "injured"
- 18 xiv. "interfered with"
- 19 xv. "impaired"
- 20 xvi. "suitable crossings"
- 21 xvii. "where rock is encountered"
- 22 xviii. "as nearly as practicable"
- 23 xix. "pre-construction position"
- 24 xx. "pre-construction grade"
- 25 xxi. "various engineering factors"

26 Each one of these above terms and phrases as read in the context of the Easement
27 could be problematic in many ways. Notably, undefined terms tend to only get
28 definition in further legal proceedings after a dispute arises and the way the
29 Easement is drafted, TransCanada has sole power to determine when and if a

1 particular situation conforms with or triggers rights affected by these terms. For
2 instance, “yield loss damages” should be specifically defined and spelled out
3 exactly how the landowner is to be compensated and in what events on the front
4 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
5 the Landowner is without contractual rights to define these terms or determine
6 when rights related to them trigger and what the affects may be.

7 **Q: Do you have any other concerns about the Easement language that you can**
8 **think of at this time?**

9 A: I reserve the right to discuss any additional concerns that I think of at the time of
10 my live testimony in August.

11 **Q: Based upon what you have shared with the Commission above regarding**
12 **TransCanada’s proposed Easement terms and agreement, do you believe**
13 **those to be reasonable or just, under the circumstances of the pipeline’s**
14 **impact upon you and your land?**

15 A: No, I do not believe those terms to be reasonable or just for the reasons that we
16 discussed previously.

17 **Q: Did TransCanada ever offer you financial compensation for the rights that**
18 **they sought to obtain in your land, and for what they sought to prevent you**
19 **and any future land owner of your property from doing in the future?**

20 A: Yes, we received an offer from them.

21 **Q: As the owner of the land in question and as the person who knows it better**
22 **than anyone else, do you believe that TransCanada offered you just, or fair,**
23 **compensation for all of what they proposed to take from you so that their tar**
24 **sands pipeline could be located across your property?**

25 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
26 offer for all the potential impacts and effects and the rights that I’m giving up, and
27 what we will be prevented from doing in the future and how their pipeline would
28 impact my property for ever and ever.

1 **Q: Has TransCanada at any time offered to compensate you annually, such as**
2 **wind farm projects do, for the existence of their potential tar sands pipeline**
3 **across your property.**

4 A: No, never.

5 **Q: At any time did TransCanada present you with or request that you, as the**
6 **owner of the land in question, sign and execute a document called, “Advanced**
7 **Release of Damage Claims and Indemnity Agreement?”**

8 A: Yes, they did and it was included in the County Court lawsuit against us.

9 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
10 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

11 A: Yes, it is.

12 **Q: What was your understanding of that document?**

13 A: When I read that document in the plain language of that document, it was my
14 understanding that TransCanada was attempting to pay me a very small amount at
15 that time in order for me to agree to give up my rights to be compensated from
16 them in the future related to any damage or impact they may have upon my
17 property “arising out of, in connection with, or alleged to resulted from
18 construction or surveying over, under or on” my land.

19 **Q: Did you ever sign that document?**

20 A: No, I did not.

21 **Q: Why not?**

22 A; Because I do not believe that it is fair or just to try to get me to agree to a small
23 sum of money when I have no idea how bad the impacts or damages that they, or
24 their contractors, or subcontractors, or other agents or employees, may cause on
25 my land at any time in the future that resulted from the construction or surveying
26 or their activities upon my land.

27 **Q: When you reviewed this document, what did it make you feel?**

28 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
29 shield themselves against known and foreseeable impacts that their pipeline, and

1 the construction of it, would have upon my land. It made me feel that they knew it
2 was in their financial interest to pay me as little as possible to prevent me from
3 ever having the opportunity to seek fair compensation again, and that this must be
4 based upon their experience of unhappy landowners and situations in other places
5 where they have built pipelines.

6 **Q: Has TransCanada ever contacted you and specifically asked you if you**
7 **thought their proposed location of their proposed pipeline across your land**
8 **was in your best interest?**

9 A: No, they have not.

10 **Q: Has TransCanada ever contacted you and specifically asked you if you**
11 **thought their proposed location of their proposed pipeline across your land**
12 **was in the public interest of the State of Nebraska?**

13 A: No, they have not.

14 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
15 **Takings Clause?**

16 A: Yes, I am.

17 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
18 **an American citizens property?**

19 A: My understanding is that, according to the United States Constitution, that if the
20 government is going to take land for public use, then in that case, or by taking for
21 public use, it can only occur if the private land owner is compensated justly, or
22 fairly.

23 **Q: Has TransCanada ever contacted you specially to explain the way in which**
24 **the public could use its proposed Keystone XL Pipeline?**

25 A: No, they have not.

26 **Q: Can you think of any way in which the public, that is the citizens of the State**
27 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
28 **Pipeline, as it dissects the State of Nebraska?**

1 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
2 public benefits from this pipeline in any way, how they can use it any way, or how
3 it's in the public interest in any way. By looking at the map, it is quite clear to me
4 that the only reason it's proposed to come through Nebraska, is that because we
5 are geographically in the way from between where the privately-owned Tar Sands
6 are located to where TransCanada wants to ship the Tar Sands to refineries in
7 Houston, Texas.

8 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
9 crude petroleum, or oil and petroleum by-products that you would like to
10 ship in its pipeline?**

11 A: No, it has not.

12 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
13 products that you, at this time or any time in the future, would desire to place
14 for transport within the proposed TransCanada Keystone XL Pipeline?**

15 A: No, I do not.

16 **Q: Do you know anyone in the state of Nebraska who would be able to ship any
17 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
18 products within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not. I've never heard of such a person or company like that.

20 **Q: Do you pay property taxes for the land that would be affected and impacted
21 at the proposed TransCanada Keystone XL Pipeline?**

22 A: Yes, I do.

23 **Q: Why do you pay property taxes on that land?**

24 A: Because that is the law. The law requires us to pay the property taxes as the owner
25 of that property.

26 **Q: Because you follow the law and pay property taxes, do you believe you
27 deserve any special consideration or treatment apart from any other person
28 or company that pays property taxes?**

1 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
2 just what you do.

3 **Q: Do you believe the fact that you pay property taxes entitles you to special**
4 **treatment of any kind, or special rights of any kind?**

5 A: No, of course not.

6 **Q: Do you believe the fact that you pay property taxes on your land would be**
7 **enough to qualify you to have the power of eminent domain to take land of**
8 **your neighbors or other people in your county, or other people across the**
9 **state of Nebraska?**

10 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
11 I expect an award for or any type of special consideration.

12 **Q: Have you at any time ever employed any person other than yourself?**

13 A: Well, yes I have.

14 **Q: Do you believe that the fact that you have, at some point in your life,**
15 **employed one or more other persons entitle you to any special treatment or**
16 **consideration above and beyond any other Nebraskan that has also employed**
17 **one or more persons?**

18 A: No, of course not.

19 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
20 **have at one point employed another person within this state, entitles you to**
21 **preferential treatment or consideration of any kind?**

22 A: No, of course not. If I choose to employ someone that decision is up to me. I
23 don't deserve any special treatment or consideration for that fact.

24 **Q: At the beginning of your statement, you briefly described your property that**
25 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
26 **give the Commissioners a sense of specifically how you believe the proposed**
27 **Keystone XL Pipeline and its preferred route, which proposes to go across**
28 **your land, how it would in your opinion based on your knowledge,**
29 **experience, and background of your land, affect it. So please share with the**

1 **Commissioners the characteristics of your land that you believe is important**
2 **for them to understand, while they evaluate TransCanada's application for a**
3 **route for its proposed pipeline to cross Nebraska and across your land,**
4 **specifically.**

5 A: The pipe they want to use has been sitting out in the elements for years. Tar sands
6 is a very corrosive material. What will happen when we practice our normal
7 tillage and run our irrigation systems over an already weakened pipeline? My
8 family does not have the funds to clean up an oil spill, that I'm sure TransCanada
9 will somehow deem our fault. TransCanada needs to be responsible for all
10 leaks. It's their pipeline. The Keystone XL pipeline will decrease the value of our
11 land. A pipe that is already weak from sitting in the elements, and that has
12 corrosive tar sands being pumped through it, is going to leak. Who is going to
13 want to pay market price for land with such high risk? Also, why should we
14 accept a 1 time payment, when TransCanada will use our land to pump their dirty
15 tar sands through every day. Land owners should be compensated
16 yearly. TransCanada also needs to renew their operating permit yearly.
17 There are thousands of private and irrigation wells that risk contamination along
18 the proposed route. Why should our Country risk the largest fresh water aquifer in
19 the nation, for a FOREIGN company to pump their dirty tar sands to a foreign
20 market. The easement gives TransCanada the right to abandon the pipeline in
21 place. Not only that, but keep the easement to our property. All easements need
22 to be terminated when they are done using our property, and the pipeline removed.
23 Lastly, I can't believe there isn't a better route for this pipeline. The proposed
24 route still crosses the fragile Sandhills and the Ogallala Aquifer.

25 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
26 **crude oil pipeline in its preferred location, or ultimate location across the**
27 **state of Nebraska?**

28 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
29 or even bullied around and being made to feel scared that they did not have any

1 options but to sign whatever papers TransCanada told them they had to. I am
2 aware of folks being threatened that their land would be taken if they didn't follow
3 what TransCanada was saying. I am aware of tactics to get people to sign
4 easements that I don't believe have any place in Nebraska or anywhere such as
5 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
6 landowners and convince them they should sign TransCanada's easement
7 agreements. I am aware of older folks and widows or widowers feeling they had
8 no choice but to sign TransCanada's Easement and they didn't know they could
9 fight or stand up for themselves. From a more practical standpoint, I am worried
10 that according to their answer to our Interrogatory No. 211, TransCanada only
11 owns and operates one (1) major oil pipeline. They simply do not have the
12 experience with this type of pipeline and that scares me. There are others but that
13 is what I can recollect at this time and if I remember more or my recollection is
14 refreshed I will share those with the Commissioners at the Hearing in August.

15 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
16 **landowner is reasonable or just?**

17 A: No, I do not.

18 **Q: Do you have any concern about limitations that the construction of this**
19 **proposed pipeline across your affected land would prevent construction of**
20 **future structures upon the portion of your land affected by the proposed**
21 **easement and immediately surrounding areas?**

22 A: Well yes, of course I do. We would not be able to build many, if any, types of
23 structures directly across or touching the easement, and it would be unwise and I
24 would be uncomfortable to build anything near the easement for fear of being
25 blamed in the future should any damage or difficulty result on my property in
26 regards to the pipeline.

27 **Q: Do you think such a restriction would impact you economically?**

28 A: Well yes, of course.

29 **Q: How do you think such a restriction would impact you economically?**

1 A: The future of this land may not be exactly how it's being used as of this moment,
2 and having the restrictions and limiting my ability to develop my land in certain
3 ways presents a huge negative economic impact on myself, my family, and any
4 potential future owner of the property. You have no idea how I or the future owner
5 may want to use this land in the future or the other land across Nebraska
6 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
7 ago it would have been hard to imagine all the advances that we have now or how
8 things change. Because the Easement is forever and TransCanada gets the rights in
9 my land forever we have to think with a very long term view. By placing their
10 pipeline on under across and through my land that prevents future development
11 which greatly negatively impacts future taxes and tax revenue that could have
12 been generated by the County and State but now will not. When you look at the
13 short blip of economic activity that the two years of temporary construction efforts
14 may bring, that is far outweighed by the perpetual and forever loss of opportunity
15 and restrictions TransCanada is forcing upon us and Nebraska.

16 **Q: Do you have any concerns about the environmental impact of the proposed**
17 **pipeline?**

18 A: Yes, I do.

19 **Q: What are some of those concerns?**

20 A: As an affected land owner and Nebraskan, I am concerned that any construction,
21 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
22 a detrimental impact upon the environment of my land specifically, as well as the
23 lands near my land and surrounding the proposed pipeline route.

24 **Q: Do you have any other environmental concerns?**

25 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
26 construction and/or maintenance and operation. I am concerned about spills and
27 leaks that TransCanada has had in the past and will have in the future. This could
28 be catastrophic to my operations or others and to my county and the State.

1 **Q: Do you have any thoughts regarding if there would be an impact upon the**
2 **natural resources on or near your property due to the proposed pipeline?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
5 resources of my land, and the lands near and surrounding the proposed pipeline
6 route.

7 **Q: Do you have any worries about potential impacts from the proposed pipeline**
8 **to the soil of your land, or land near you?**

9 A: Yes, I believe that any construction, operation, and/or maintenance of the
10 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
11 land, as well as land along and surrounding the proposed pipeline route. This
12 includes, but is not limited to, the reasons that we discussed above of disturbing
13 the soil composition and makeup as it has naturally existed for thousands and
14 millions of years during the construction process, and any future maintenance or
15 removal process. I'm gravely concerned about the fertility and the loss of
16 economic ability of my property to grow the crops, or grow the grasses, or grow
17 whatever it is at that time they exist on my property or that I may want to grow in
18 the future, or that a future owner may want to grow. The land will never be the
19 same from as it exists now undisturbed to after it is trenched up for the proposed
20 pipeline.

21 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
22 **upon the groundwater over your land, or surrounding lands?**

23 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
24 the proposed Keystone XL Pipeline would have a detrimental impact upon the
25 groundwater of not only under my land, but also near and surrounding the pipeline
26 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
27 simple and it is simply too valuable to our State and the country to put at
28 unreasonable risk.

1 **Q: Do you have any concern about the potential impact of the proposed pipeline**
2 **upon the surface water on, or near or around your land?**

3 A: Yes, I have significant concerns that any construction, operation, and/or
4 maintenance of the proposed Keystone XL Pipeline would have detrimental
5 impact upon the surface water of not only within my property boundary, but along
6 and near and surrounding the pipeline route, and in fact, across the state of
7 Nebraska.

8 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
9 **upon the wildlife and plants, other than your growing crops on or near your**
10 **land?**

11 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
12 the proposed Keystone XL Pipeline would have a detrimental impact upon the
13 wildlife and the plants, not only that are located on or can be found upon my land,
14 but also near and along the proposed pipeline route.

15 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
16 **fair market value of your land?**

17 A: Yes, I do. I am significantly concerned about how the existence of the proposed
18 pipeline underneath and across and through my property will negatively affect the
19 fair market value at any point in the future, especially at that point in which I
20 would need to sell the property, or someone in my family would need to sell the
21 property. I do not believe, and certainly would not be willing to pay, the same
22 price for land that had the pipeline located on it, versus land that did not. I hope
23 there is never a point where I'm in a position where I have to sell and have to
24 realize as much value as I can out of my land. But because it is my single largest
25 asset, I'm gravely concerned that the existence of the proposed Keystone XL
26 Pipeline upon my land will affect a buyer's willingness to pay as much as they
27 would've paid and as much as I could've received, if the pipeline were not upon
28 my property. There are just too many risks, unknowns, impacts and uncertainties,
29 not to mention all of the rights you give up by the nature of having the pipeline

1 due to having the easement that we have previously discussed, for any reasonable
2 person to think that the existence of the pipeline would not negatively affect my
3 property's value.

4 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
5 **testimony?**

6 A: Yes, I have.

7 **Q: Where have you seen that before?**

8 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
9 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
10 believe the portion of the alternative route in Nebraska essentially twins or
11 parallels Keystone I.

12 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
13 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

14 A: No, I do not.

15 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
16 **Application, and as found on Attachment No. 7, here to your testimony, is in**
17 **the public interest of Nebraska?**

18 A: No, I do not.

19 **Q: Do you believe that the Keystone mainline alternative route as shown on**
20 **Attachment No. 7 included with your testimony here is a major oil pipeline**
21 **route that is in the public interest of Nebraska?**

22 A: No, I do not.

23 **Q: Do you believe there is any potential route for the proposed Keystone XL**
24 **Pipeline across, within, under, or through the State of Nebraska that is in the**
25 **public interest of the citizens of Nebraska?**

26 A: No, I do not.

27 **Q: Why do you hold that belief?**

28 A: Because there simply is no public interest based on all of the factors that I am
29 aware and that I have read and that I have studied that this Commission is to

1 consider that would establish that a for-profit foreign-owned pipeline that simply
2 crosses Nebraska because we are geographically in the way between where tar
3 sands are in Canada to where it wants to ship it to in Texas could ever be in the
4 public interest of Nebraskans. We derive no benefit from this project. It is not for
5 public use. Nebraska is simply in the way and when all considerations are taken in
6 there is no net benefit of any kind for Nebraska should this project be placed in our
7 state. Even if there was some arguable “benefit” it is not enough to outweigh all
8 the negative impacts and concerns.

9 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
10 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
11 **of Nebraska because it may bring temporary jobs during the construction**
12 **phase to Nebraska?**

13 A: First of all, not all jobs are created equally. Most jobs that are created, whether
14 temporary or on a permanent basis, don’t come with a project that has all the
15 potential and foreseeable negative impacts, many of which we have discussed here
16 and other witnesses throughout the course of this hearing have and will discuss. If
17 I decide to hire and employ someone to help me out in my farming or ranching
18 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
19 to my land or my town or my county or my state. And I’ve hired someone who is
20 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
21 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
22 jobs are not created equal. Additionally, I understand from what I’m familiar with
23 from TransCanada’s own statements that the jobs numbers they originally touted
24 were determined to be a minute fraction of the permanent jobs that had been
25 projected. According to their answer to our Interrogatory No. 191, TransCanada
26 has created only thirty-four (34) jobs within Nebraska working specifically on
27 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
28 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
29 Further, according to their answer to Interrogatory No. 199, TransCanada would

1 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
2 constructed on its Preferred Route or its Mainline Alternative Route.

3 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
4 **because it would cross your land?**

5 A: No, absolutely not. I am opposed to this project because it is not in the public
6 interest, neither within my community nor within our state.

7 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
8 **was to cross someone else's land?**

9 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
10 the fear and anxiety and potential foreseeable risks and negative impacts that this
11 type of a project carrying this type of product brings foisted upon anyone in this
12 state or any other state.

13 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
14 **Pipeline to cross the state of Nebraska?**

15 A: I don't believe there is an intelligent route because as I have stated I don't believe
16 this project anywhere within Nebraska is within the public interest. However, if
17 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
18 had to go somewhere in the state of Nebraska, the only intelligent route I believe
19 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
20 preferred route and the mainline alternative routes are economic liabilities our
21 state cannot risk.

22 **Q: What do you rely upon to make that statement?**

23 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
24 already exists in that area is reason enough as it is not in our best interest or the
25 public interests to have more major oil pipelines crisscrossing our state. Second,
26 they have all the infrastructure already there in terms of relationships with the
27 counties and local officials and first responders along that route. Third, they have
28 already obtained easements from all the landowners along that route and have
29 relationships with them. Fourth, that route avoids our most sensitive soils, the

1 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
2 Aquifer. Sixth, they have already studied that route and previously offered it as an
3 alternative. Seventh, it just makes the most sense that as a state we would have
4 some intelligent policy of energy corridors and co-locating this type of
5 infrastructure near each other.

6 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
7 **like the Public Service Commissioners to consider in their review of**
8 **TransCanada's Application?**

9 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
10 document below but other things may come to me or my memory may be
11 refreshed and I will add and address those things at the time of the Hearing in
12 August and address any additional items at that time as is necessary. Additionally,
13 I have not had an adequate amount of time to receive and review all of
14 TransCanada's answers to our discovery and the discovery of others so it was
15 impossible to competently and completely react to that in my testimony here and I
16 reserve the right to also address anything related to discovery that has not yet
17 concluded as of the date I signed this document below. Lastly, certain documents
18 requested have not yet been produced by TransCanada and therefore I may have
19 additional thoughts on those I will also share at the hearing as needed.

20 **Q: What is it that you are requesting the Public Service Commissioners do in**
21 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
22 **across Nebraska?**

23 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
24 a temporary job spike that this project may bring to a few counties and beyond the
25 relatively small amount of taxes this proposed foreign pipeline would possibly
26 generate. And, instead think about the perpetual and forever impacts of this
27 pipeline as it would have on the landowners specifically, first and foremost, but
28 also thereby upon the entire state of Nebraska, and to determine that neither the
29 preferred route nor the Keystone mainline alternative route are in the public

1 interest of the citizens of the state of Nebraska. And if the Commissioners were
2 inclined to modify TransCanada's proposed routes and were to be inclined to grant
3 an application for a route in Nebraska, that the only potential route that would
4 make any intelligent sense whatsoever would be twinning or near paralleling of
5 the proposed KXL with the existing Keystone I pipeline. It simply does not make
6 sense to add yet another major oil pipeline crisscrossing our state creating new
7 pumping stations, creating new impacts on additional counties and communities
8 and going through all of the court processes with myself and other landowners like
9 me when this applicant already has relationships with the landowners, the towns
10 and the communities along Keystone I, and that Keystone I is firmly outside of the
11 sand hills and a significantly further portion away from the heart of the Ogallala
12 Aquifer than the preferred route or the Keystone mainline alternative route.

13 **Q: Does Attachment No. 8 here contain other documents you are competent to**
14 **speak about that you wish to be part of your testimony and to discuss in more**
15 **detail as needed at the August 2017 Hearing?**

16 A: Yes.

17 **Q: Are all of your statements in your testimony provided above true and**
18 **accurate as of the date you signed this document to the best of your**
19 **knowledge?**

20 A: Yes, they are.

21 **Q: Thank you, I have no further questions at this time and reserve the right to**
22 **ask you additional questions at the August 2017 Hearing.**

Larry Mudloff

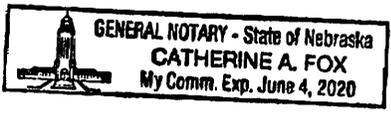
Larry Mudloff

Subscribed and Sworn to me before this 30th day of May, 2017.

Catherine A Fox

Notary Public

28



Attachment No. 1



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
 J. D. Mudloff
 Larry D. Mudloff
 LJM Farms, LLC
 Lori Mudloff

TRACT NO. ML-NE-HT-30530.000
STATE: Nebraska
COUNTY: Holt
SECTION: 030
TOWNSHIP: 029N
RANGE: 009W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

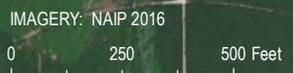


S.032
T.029N
R.009W

Larry D. Mudloff
LJM Farms, LLC

S.033
T.029N
R.009W

S.005
T.028N
R.009W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Larry D. Mudloff
LJM Farms, LLC

TRACT NO. ML-NE-HT-30560.000
STATE: Nebraska
COUNTY: Holt
SECTION: 032
TOWNSHIP: 029N
RANGE: 009W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Wksp.
- Property Line
- Section Line

S.032
T.029N
R.009W

S.033
T.029N
R.009W

S.004
T.028N
R.009W

S.005
T.028N
R.009W

Larry D. Mudloff
LJM Farms, LLC

IMAGERY: NAIP 2016



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Larry D. Mudloff
LJM Farms, LLC

TRACT NO. ML-NE-HT-30565.000
STATE: Nebraska
COUNTY: Holt
SECTION: 005
TOWNSHIP: 028N
RANGE: 009W

- 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-30530.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Larry D. Mudloff, J. D. Mudloff, Lori Mudloff, and LJM Farms, LLC, a Nebraska limited liability company**, whose mailing address is 50381 870th Road, Page, NE 68766 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection 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 156.07 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SW1/4 of Section 30, T29N, R9W of the 6th P.M., as recorded in Book 199, Page 731, Book 189, Page 507, and Book 189, Page 34 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):

Larry D. Mudloff

J. D. Mudloff

Lori Mudloff

LJM Farms, 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 **Lori Mudloff**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By _____ of

LJM Farms, LLC, a Nebraska limited liability company, on behalf of the corporation.

Notary Public Signature

Affix Seal Here

HOLT COUNTY, NEBRASKA

T-29-N, R-9-W, SECTION 30
ML-NE-HT-30530.000

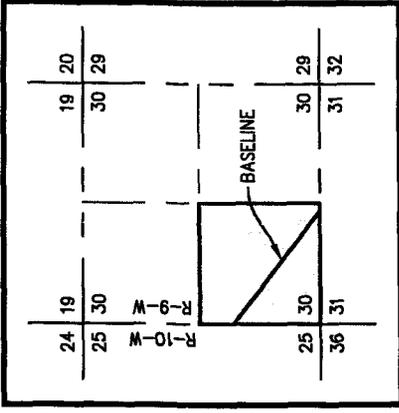
PROPERTY LINE
SECTION LINE
PROPOSED
AND OTHERS
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF HOLT COUNTY, NEBRASKA

LEGEND
P
S
PROF.
et al
A.T.W.S.
P.E.R.W.
D.R.H.C.N.

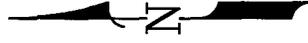
LJM FARMS, LLC, et al
VOLUME 189, PAGE 34
VOLUME 189, PAGE 507
VOLUME 199, PAGE 731-732
D.R.H.C.N.

SEE DETAIL "A"

SEE DETAIL "B"



VICINITY MAP
N.T.S.



0 250 500
SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:
SW/4 OF SECTION 30,
T-29-N, R-9-W

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 3,092'±
AREA OF PERMANENT EASEMENT: 3.5 ACRES
AREA OF TEMPORARY WORKSPACE: 4.2 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.4 ACRE

 TransCanada <i>In business to deliver.</i>			
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF			
LJM FARMS, LLC, et al			
ML-NE-HT-30530.000			
PROJECT:	EXHIBIT A		
APPROVED BY:	DRAWING NUMBER		
SLR	XL-08-ML-SK-3362		
NO.	REVISION		
	DATE		
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/31/14	JN	ALS



**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-30560.000
ML-NE-HT-30565.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Larry D. Mudloff and LJM Farms, LLC, a Nebraska limited liability company**, whose mailing address is 50381 870th Road, Page, NE 68766 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection 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 Holt, 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 Holt, in the State of Nebraska, being further described as the SE1/4 of Section 32, Township 29 North, Range 9 West of the 6th P.M., as recorded in Book 199, Page 733 and Book 176, Page 230 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 154.87 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NE1/4 of Section 5, T28N, R9W of the 6th P.M., as recorded in Book 199, Page 731 and Book 176, Page 230 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):

Larry D. Mudloff

**LJM Farms, 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 **Larry D. Mudloff**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By _____ of

LJM Farms, LLC, a Nebraska limited liability company, on behalf of the corporation.

Notary Public Signature

Affix Seal Here

HOLT COUNTY, NEBRASKA

T-29-N, R-9-W, SECTION 32

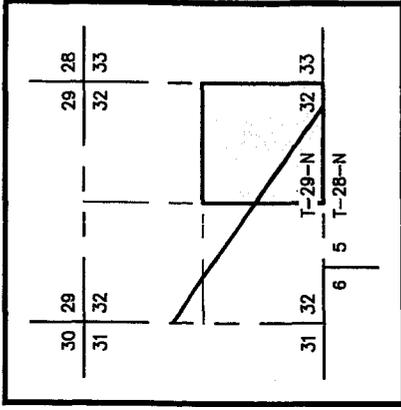
ML-NE-HT-30560.000

LEGEND

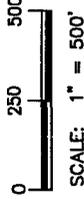
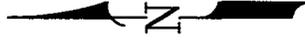
- PROPERTY LINE
- SECTION LINE
- AND OTHERS
- PROPOSED
- ADDITIONAL TEMPORARY WORKSPACE
- PERMANENT EASEMENT & RIGHT OF WAY
- DEED RECORDS OF HOLT COUNTY, NEBRASKA

- A.T.W.S.
- P.E.R.W.
- D.R.H.C.N.

**LARRY D. MUDLOFF AND
LJM FARMS, LLC**
VOLUME 176, PAGE 230
VOLUME 199, PAGE 733
D.R.H.C.N.



VICINITY MAP
N.T.S.

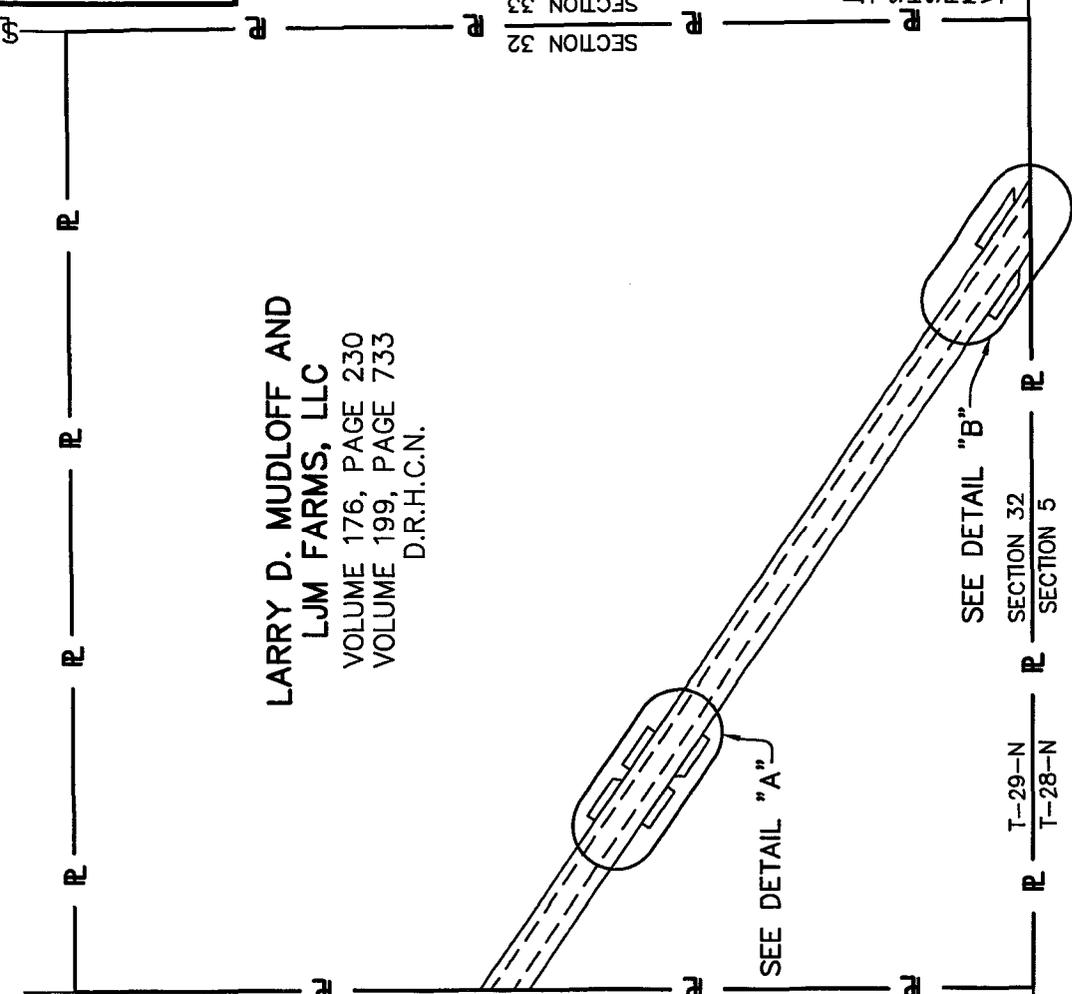


SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:
SE 1/4 OF SECTION 32,
T-29-N, R-9-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"

SEE DETAIL "B"

TransCanada
in business to deliver

KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
LARRY D. MUDLOFF AND
LJM FARMS, LLC
ML-NE-HT-30560.000

PROJECT: XL EXHIBIT A

APPROVED BY: SLR
DRAWING NUMBER: XL-08-MIL-SK-3367

NO.	REVISION	DATE

SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/31/14	JN	ALS



TOTAL DISTANCE ACROSS PROPERTY: 2,608'±
AREA OF PERMANENT EASEMENT: 3.0 ACRES
AREA OF TEMPORARY WORKSPACE: 3.5 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.5 ACRES

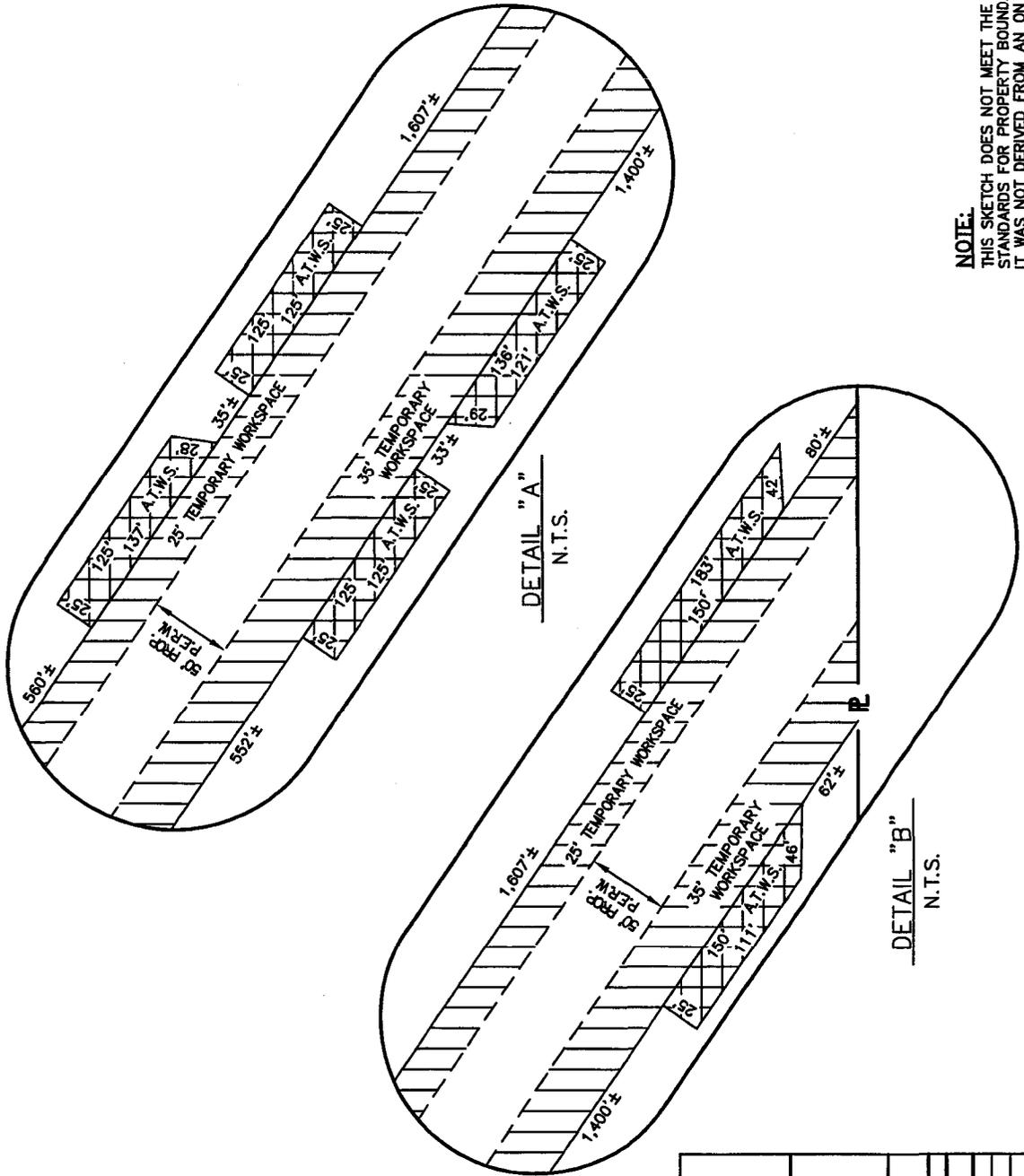
HOLT COUNTY, NEBRASKA

T-29-N, R-9-W, SECTION 32

ML-NE-HT-30560.000

PROPERTY LINE
AND OTHERS
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY

LEGEND
P
et al
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.

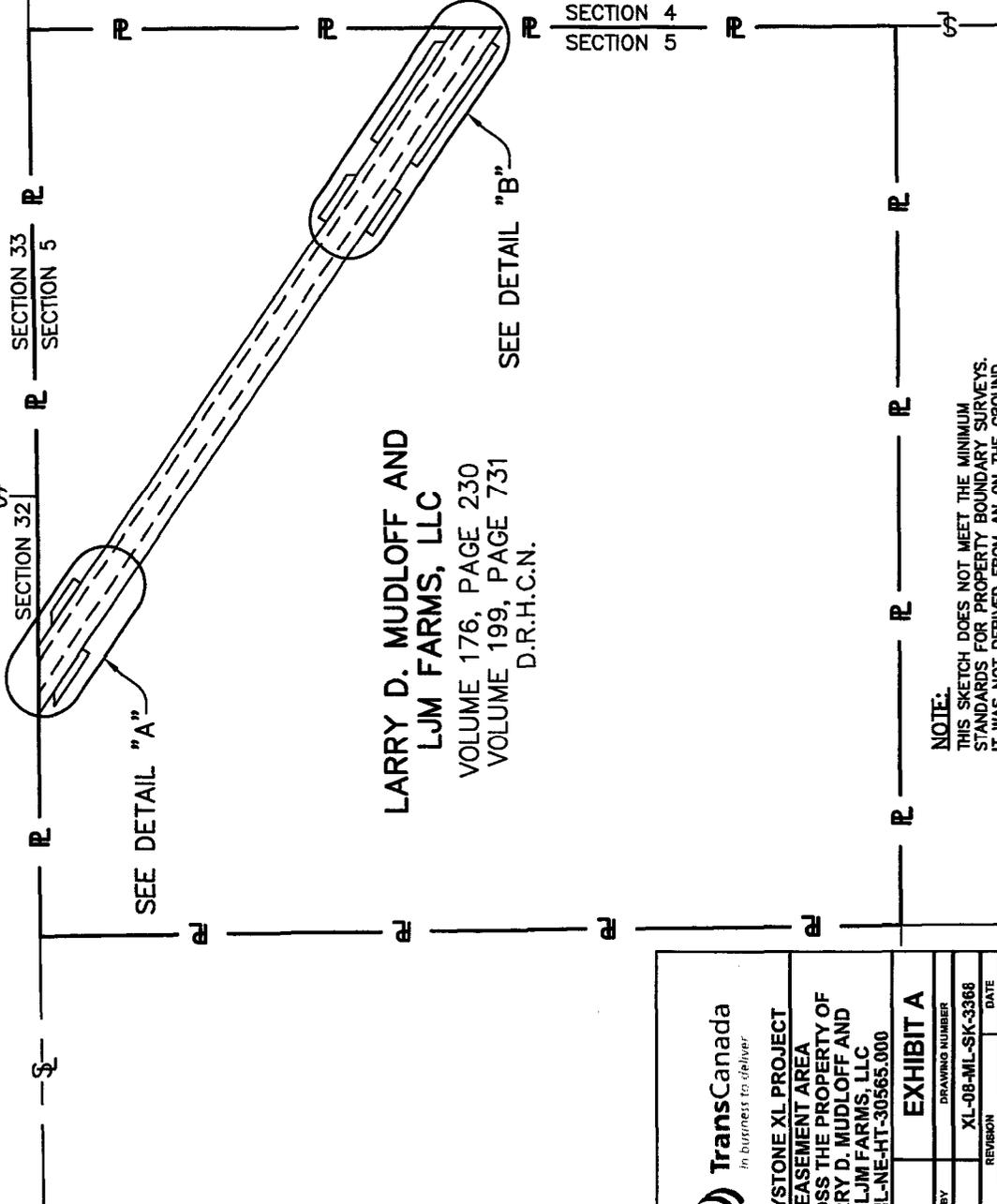
		In business to deliver	
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF LARRY D. MUDLOFF AND LJM FARMS, LLC ML-NE-HT-30560.000			
PROJECT:	XL	EXHIBIT A	
APPROVED BY:	SLR	DRAWING NUMBER	XL-08-ML-SK-3387
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/31/14	JN	ALS



HOLT COUNTY, NEBRASKA

T-28-N, R-9-W, SECTION 5
ML-NE-HT-30565.000

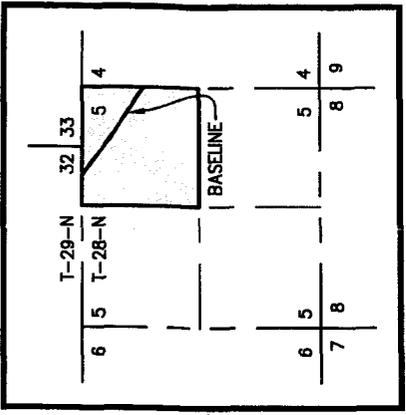
LEGEND
 P PROPERTY LINE
 S SECTION LINE
 — PROPOSED
 — AND OTHERS
 et al.
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA



LARRY D. MUDLOFF AND
LJM FARMS, LLC
VOLUME 176, PAGE 230
VOLUME 199, PAGE 731
D.R.H.C.N.

SEE DETAIL "A"

SEE DETAIL "B"



VICINITY MAP
N.T.S.



TRACT LEGAL DESCRIPTION:
NE/4 OF SECTION 5,
T-28-N, R-9-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: 2,277'±
 AREA OF PERMANENT EASEMENT: 2.6 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.2 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.8 ACRE



KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
LARRY D. MUDLOFF AND
LJM FARMS, LLC
ML-NE-HT-30565.000

PROJECT: XL EXHIBIT A

APPROVED BY	DRAWING NUMBER		
SLR	XL-08-ML-SK-3368		
NO.	REVISION		
	DATE		
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/31/14	JN	ALS

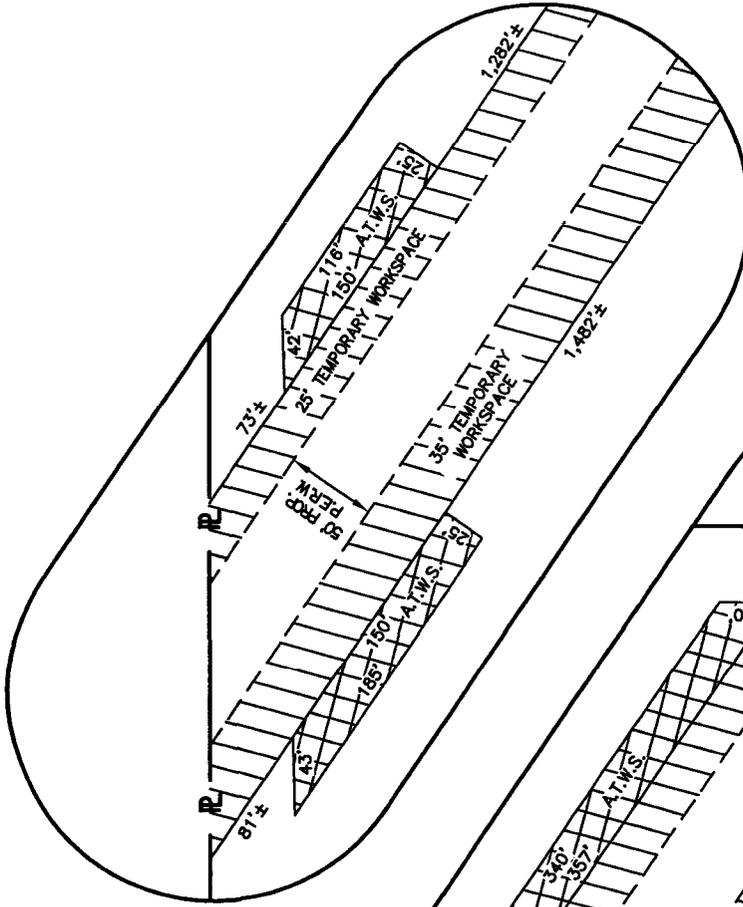


HOLT COUNTY, NEBRASKA

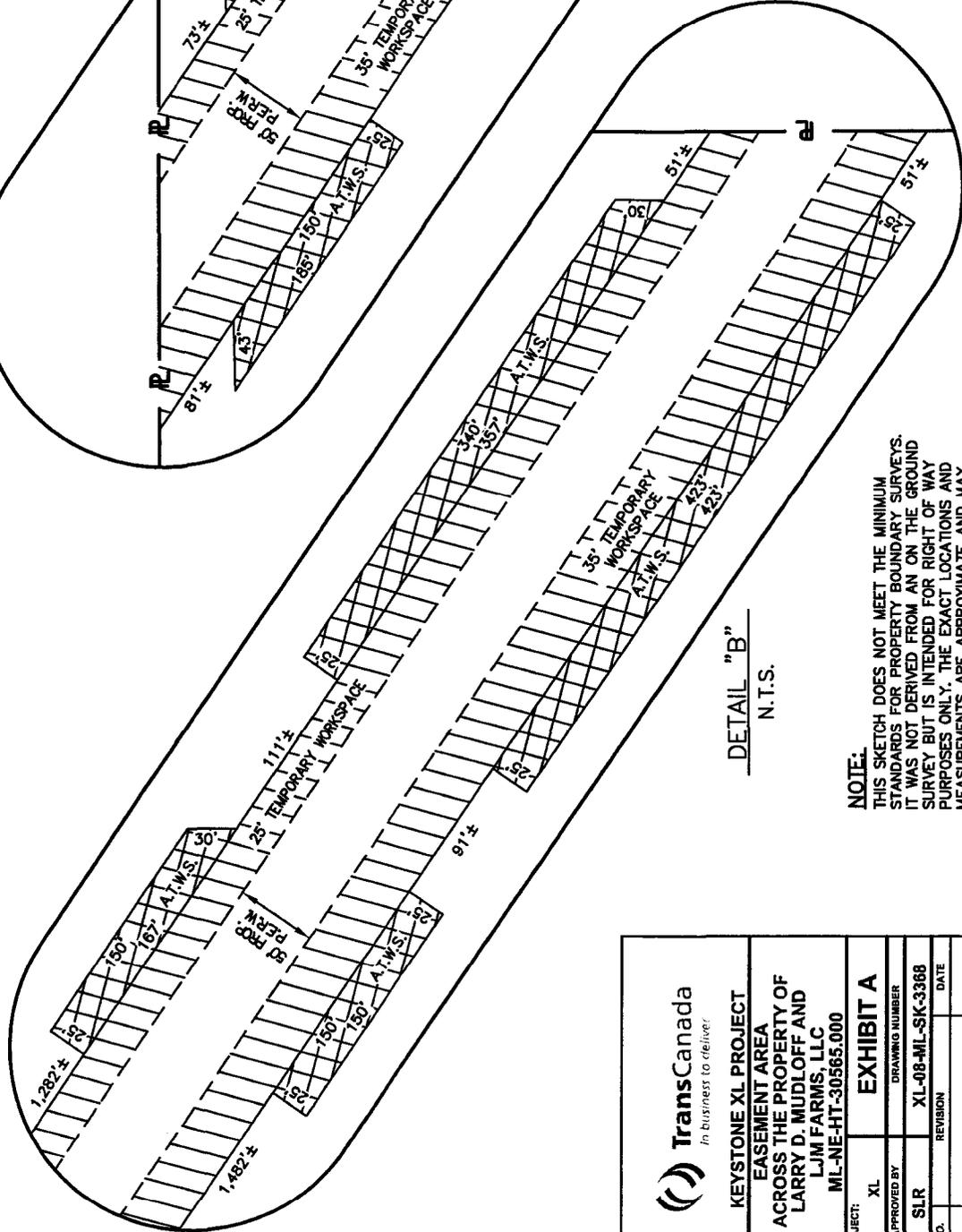
T-28-N, R-9-W, SECTION 5

ML-NE-HT-30565.000

LEGEND
 P. PROPERTY LINE
 PR. PROPOSED
 AND OTHERS
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



DETAIL "A"
N.T.S.



DETAIL "B"
N.T.S.

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.



KEYSTONE XL PROJECT

EASEMENT AREA
 ACROSS THE PROPERTY OF
 LARRY D. MUDLOFF AND
 LJM FARMS, LLC
 ML-NE-HT-30565.000

PROJECT: XL EXHIBIT A

APPROVED BY: DRAWING NUMBER

SLR: XL-08-ML-SK-3368

NO. REVISION DATE

SCALE DATE DRAWN BY CHECKED BY

N.T.S. 10/31/14 JN ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

ENGLES, KETCHAM, OLSON, & KEITH, P.C.

1350 Woodmen Tower

1700 Farnam Street

Omaha, Nebraska 68102

(402) 348-0900

(402) 348-0904 (Facsimile)

Albert M. Engles, #11194

Dan H. Ketcham, #18930

Michael L. Moran, #24042

James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30530.000

I/we Larry D. Mudloff, J. D. Mudloff, Lori Mudloff, and LJM Farms, LLC, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Six Thousand Four Hundred Eighty Dollars and No Cents (\$6,480.00), 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 Holt, State of Nebraska:

SW/4

Section 30, Township 29-N, Range 9-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 (sign and print)

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30560.000

I/we Larry D. Mudloff and LJM Farms, LLC, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Six Hundred Dollars and No Cents (\$5,600.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

SE/4

Section 32, Township 29-N, Range 9-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-30565.000

I/we Larry D. Mudloff and LJM Farms, LLC, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Two Hundred Eighty Dollars and No Cents (\$5,280.00), 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:

NE/4

Section 5, Township 28-N, Range 9-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_____.

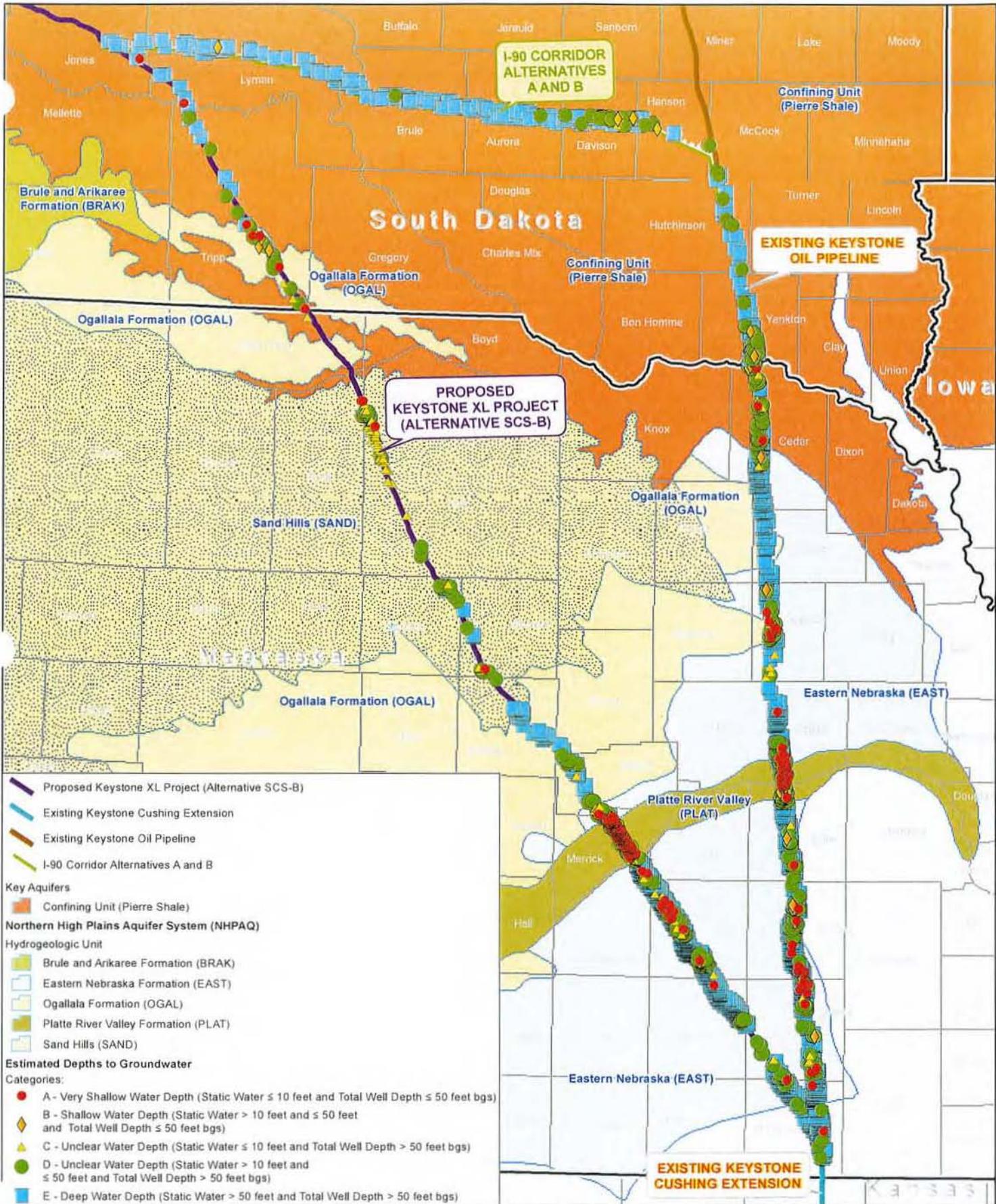
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



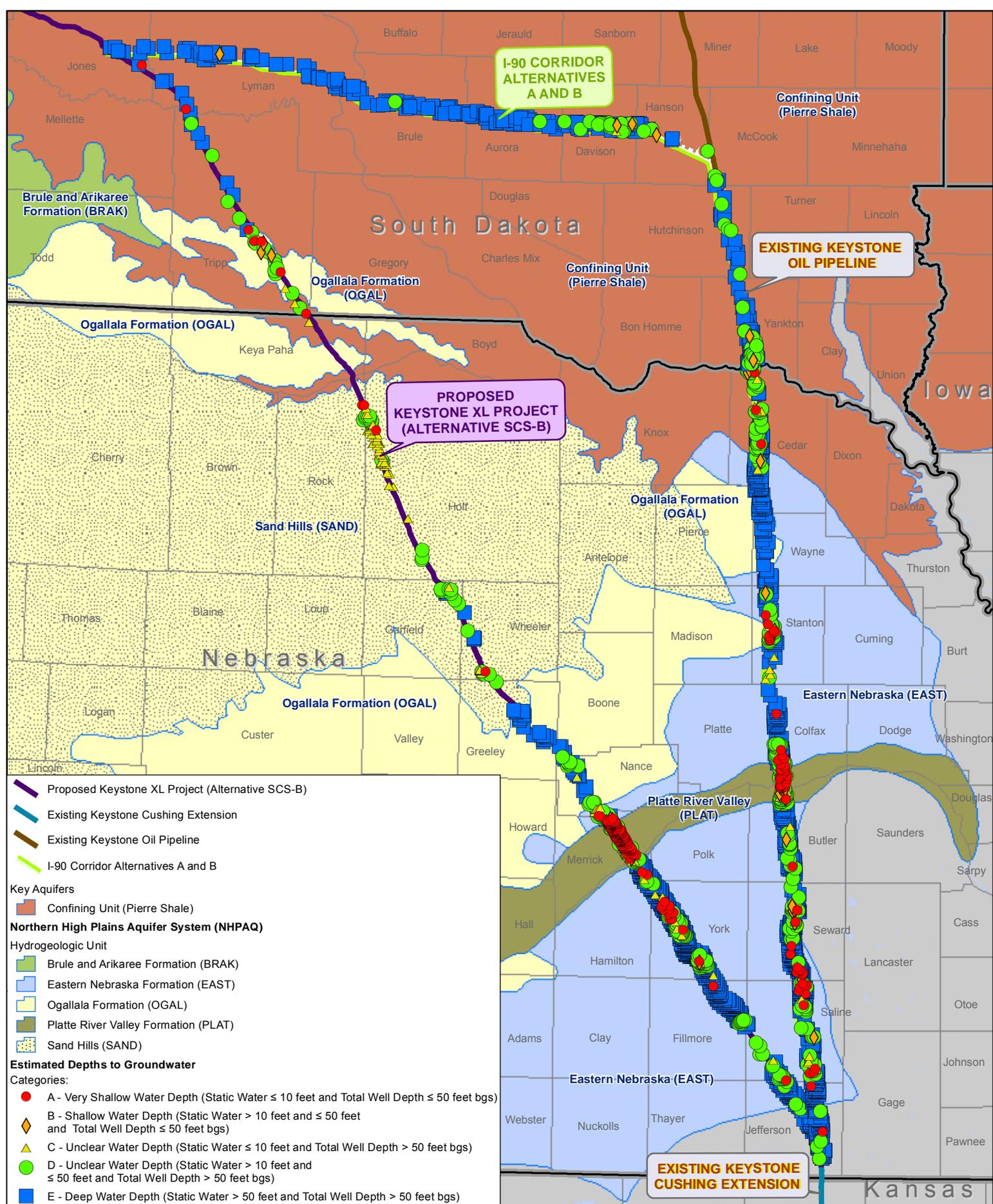
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

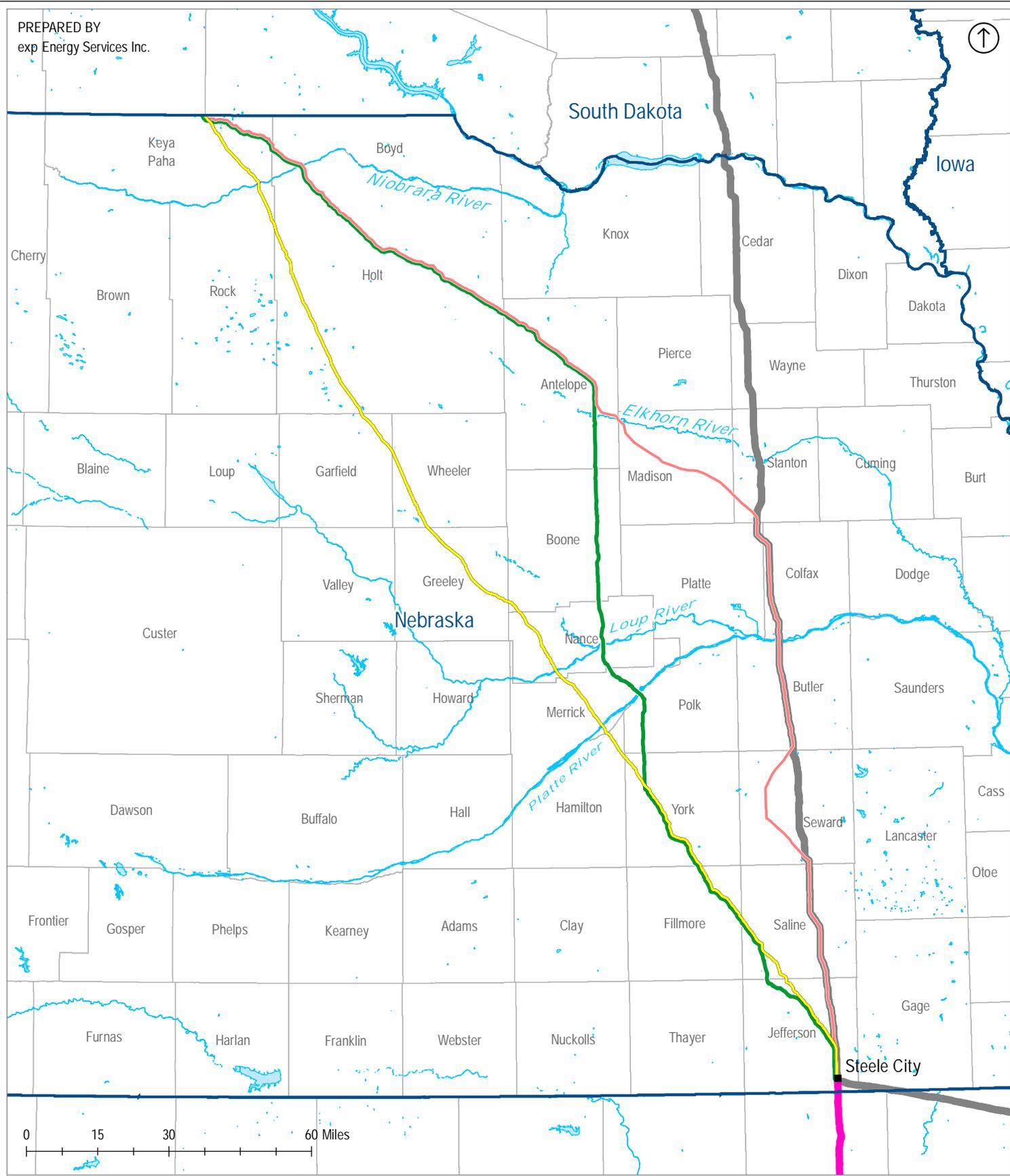
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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
Lori Mudloff in
Support of Landowner Intervenors**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Lori Mudloff

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Farmer.

1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A: Yes.

4 **Q: Do you earn any income from this land?**

5 A: Yes.

6 **Q: Have you depended on the income from your land to support your livelihood**
7 **or the livelihood of your family?**

8 A: Yes.

9 **Q: Have you ever in the past or have you thought about in the future leasing all**
10 **or a portion of your land in question here?**

11 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
12 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
13 all the restrictions and risks and potential negative impacts to farming or ranching
14 operations as opposed to land that did not have those same risks. If I was looking
15 to lease or rent ground I would pay more for comparable non-pipeline land than I
16 would for comparable pipeline land and I think most folks would think the same
17 way. This is another negative economic impact that affects the landowner and the
18 county and the state and will forever and ever should TransCanada's preferred or
19 mainline alternative routes be approved. If they were to twin or closely parallel to
20 Keystone I the vast majority of landowners would be those that already have a
21 pipeline so there would be considerable less new incremental negative impacts.

22 **Q: Do you have similar concerns about selling the land?**

23 A: Well I hope not to have to sell the land in my lifetime but times change and you
24 never know what is around the corner and yes I am concerned that if another piece
25 of ground similar to mine were for sale and it did not have the pipeline and mine
26 did that I would have a lower selling price. I think this would be true for pipeline
27 ground on both the preferred and mainline alternative routes.

28 **Q: What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
4 Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Were you or an entity for which you are a member, shareholder, or director
7 previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
9 petition for condemnation against our land so it could place its proposed pipeline
10 within an easement that it wanted to take from us on our land.

11 **Q: Did you defend yourself and your land in that condemnation action?**

12 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
13 and expenses in our resistance of TransCanada's lawsuit against us.

14 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
15 incurred?**

16 A: No, they have not.

17 **Q: In its lawsuit against you, did TransCanada identify the amount of your
18 property that it wanted to take for its proposed pipeline?**

19 A: The lawsuit against us stated they would take the amount of property that is
20 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
21 and equipment reasonably necessary to operate the pipeline.

22 **Q: Did TransCanada define what they meant by "property that is reasonably
23 necessary"?**

24 A: No, they did not.

25 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain
26 property portion of your land?**

27 A: Yes, they did.

28 **Q: Did TransCanada describe what rights it proposed to take related to the
29 eminent domain property on your land?**

1 A: Yes, they did.

2 **Q: What rights that they proposed to take did they describe?**

3 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
4 operate, and maintain the pipeline and the plant and equipment reasonably
5 necessary to operate the pipeline, specifically including surveying, laying,
6 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
7 reconstructing, removing and abandoning one pipeline, together with all fittings,
8 cathodic protection equipment, pipeline markers, and all their equipment and
9 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
10 petroleum products, and all by-products thereof.”

11 **Q: Prior to filing an eminent domain lawsuit to take your land that**
12 **TransCanada identified, do you believe they attempted to negotiate in good**
13 **faith with you?**

14 A: No, I do not.

15 **Q: Did TransCanada at any time approach you with or deliver to you their**
16 **proposed easement and right-of-way agreement?**

17 A: Yes, they did.

18 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
19 **agreement, did you understand that they would be purchasing a fee title**
20 **interest in your property or that they were taking something else?**

21 A: I understood that they proposed to have the power to take both a temporary
22 construction easement that could last for a certain period of time and then also a
23 permanent easement which they described to be 50 feet across or in width, and
24 that would run the entire portion of my property from where a proposed pipeline
25 would enter my property until where it would exit the property.

26 **Q: Is the document included with your testimony here as Attachment No. 3, a**
27 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
28 **Way agreement that they included with their condemnation lawsuit against**
29 **you?**

1 A: Yes, it is.

2 **Q: Have you had an opportunity to review TransCanada’s proposed Easement**
3 **and Right-of-Way agreement?**

4 A: Yes, I have.

5 **Q: What is your understanding of the significance of the Easement and Right-of-**
6 **Way agreement as proposed by TransCanada?**

7 A: My understanding is that this is the document that will govern all of the rights and
8 obligations and duties as well as the limitations of what I can and cannot do and
9 how I and any future landowner and any person I invite to come onto my property
10 must behave as well as what TransCanada is and is not responsible for and how
11 they can use my land.

12 **Q: After reviewing TransCanada’s proposed Easement and Right-of-Way**
13 **agreement do you have any concerns about any portions of it or any of the**
14 **language either included in the document or missing from the proposed**
15 **document?**

16 A: Yes, I have a number of significant concerns and worries about the document and
17 how the language included and the language not included potentially negatively
18 impacts my land and thereby potentially negatively impacts my community and
19 my state.

20 **Q: I would like you to walk the Commissioners through each and every one of**
21 **your concerns about TransCanada’s proposed Easement and Right-of-Way**
22 **agreement so they can develop an understanding of how that language and**
23 **the terms of that contract, in your opinion, potentially negatively impacts you**
24 **and your land. So, if you can start at the beginning of that document and**
25 **let’s work our way through it, okay?**

26 A: Yes, I’ll be happy to express my concerns about TransCanada’s proposed
27 Easement and Right-of-Way agreement and how it negatively could affect my
28 property rights and my economic interests.

29 **Q. Okay, let’s start with your first concern please.**

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada’s shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership...” and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada’s
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
6 **percent clear on exactly who could become the owner of over 275 miles of**
7 **Nebraska land?**

8 A: No.

9 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
10 **percent clear on exactly who will be operating and responsible for**
11 **approximately 275 miles of tar sands pipeline underneath and through**
12 **Nebraska land?**

13 A: No.

14 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
15 **and the State of Nebraska of TransCanada's easement terms.**

16 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow their easement
18 to be transferred or sold to someone or some company or country or who knows
19 what that I don't know and who we may not want to do business with. This
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest
21 bidder that could have terrible impacts upon all of Nebraska depending upon who
22 may buy it and I don't know of any safeguards in place for us or the State to veto
23 or have any say so in who may own, operate, or be responsible for this pipeline in
24 the future.

25 **Q: Do you think that type of uncertainty and lack of control over a major piece**
26 **of infrastructure crossing our State is in the public interest?**

27 A: No, certainly not, in fact, just the opposite.

28 **Q: What's next?**

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that
25 right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

1 TransCanada who is subjecting the pipeline on the Landowner and who is making
2 a daily profit from that pipeline. When evaluating the impact on property rights of
3 this provision, you must consider the potentially extremely expensive fight a
4 Landowner would have over this question of whether or not damage was an act of
5 negligence. Putting this kind of potential liability upon the Landowner is
6 incredibly problematic and is detrimental to the protection of property rights. I
7 don't think this unilateral power which I can't do anything about as the landowner
8 is in the best economic interest of the land in question or the State of Nebraska for
9 landowners to be treated that way.

10 **Q: Is there any specific event or example you are aware of that makes this**
11 **concern more real for you?**

12 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
13 Nemaha County, Nebraska landowner farmers who accidentally struck two
14 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
15 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
16 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
17 copy of the Federal Court Complaint is here as **Attachment No. 4.**

18 **Q: What is your next concern with the Easement language?**

19 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
20 they choose unless 1) any Landowner use interferes in any way with
21 TransCanada's exercise of any of its rights within the Easement, or 2)
22 TransCanada decides to take any action on the property it deems necessary to
23 prevent injury, endangerment or interference with anything TransCanada deems
24 necessary to do on the property. Landowner is also forbidden from excavating
25 without prior authorization by TransCanada. So my understanding is that
26 TransCanada will unilaterally determine what Landowner can and can't do based
27 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
28 could also completely deny my request to excavate. Further, TransCanada retains
29 all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada’s full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel “within and along Easement Area on foot
17 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may “unreasonably
19 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner’s land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative 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 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: The pipe they want to use has been sitting out in the elements for years. Tar sands
2 is a very corrosive material. What will happen when we practice our normal
3 tillage and run our irrigation systems over an already weakened pipeline? My
4 family does not have the funds to clean up an oil spill, that I'm sure TransCanada
5 will somehow deem our fault. TransCanada needs to be responsible for all
6 leaks. It's their pipeline. The Keystone XL pipeline will decrease the value of our
7 land. A pipe that is already weak from sitting in the elements, and that has
8 corrosive tar sands being pumped through it, is going to leak. Who is going to
9 want to pay market price for land with such high risk? Also, why should we
10 accept a 1 time payment, when TransCanada will use our land to pump their dirty
11 tar sands through every day. Land owners should be compensated
12 yearly. TransCanada also needs to renew their operating permit yearly.
13 There are thousands of private and irrigation wells that risk contamination along
14 the proposed route. Why should our Country risk the largest fresh water aquifer in
15 the nation, for a FOREIGN company to pump their dirty tar sands to a foreign
16 market. The easement gives TransCanada the right to abandon the pipeline in
17 place. Not only that, but keep the easement to our property. All easements need
18 to be terminated when they are done using our property, and the pipeline removed.
19 Lastly, I can't believe there isn't a better route for this pipeline. The proposed
20 route still crosses the fragile Sandhills and the Ogallala Aquifer.

21 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
22 **crude oil pipeline in its preferred location, or ultimate location across the**
23 **state of Nebraska?**

24 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
25 or even bullied around and being made to feel scared that they did not have any
26 options but to sign whatever papers TransCanada told them they had to. I am
27 aware of folks being threatened that their land would be taken if they didn't follow
28 what TransCanada was saying. I am aware of tactics to get people to sign
29 easements that I don't believe have any place in Nebraska or anywhere such as

1 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
2 landowners and convince them they should sign TransCanada's easement
3 agreements. I am aware of older folks and widows or widowers feeling they had
4 no choice but to sign TransCanada's Easement and they didn't know they could
5 fight or stand up for themselves. From a more practical standpoint, I am worried
6 that according to their answer to our Interrogatory No. 211, TransCanada only
7 owns and operates one (1) major oil pipeline. They simply do not have the
8 experience with this type of pipeline and that scares me. There are others but that
9 is what I can recollect at this time and if I remember more or my recollection is
10 refreshed I will share those with the Commissioners at the Hearing in August.

11 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
12 **landowner is reasonable or just?**

13 A: No, I do not.

14 **Q: Do you have any concern about limitations that the construction of this**
15 **proposed pipeline across your affected land would prevent construction of**
16 **future structures upon the portion of your land affected by the proposed**
17 **easement and immediately surrounding areas?**

18 A: Well yes, of course I do. We would not be able to build many, if any, types of
19 structures directly across or touching the easement, and it would be unwise and I
20 would be uncomfortable to build anything near the easement for fear of being
21 blamed in the future should any damage or difficulty result on my property in
22 regards to the pipeline.

23 **Q: Do you think such a restriction would impact you economically?**

24 A: Well yes, of course.

25 **Q: How do you think such a restriction would impact you economically?**

26 A: The future of this land may not be exactly how it's being used as of this moment,
27 and having the restrictions and limiting my ability to develop my land in certain
28 ways presents a huge negative economic impact on myself, my family, and any
29 potential future owner of the property. You have no idea how I or the future owner

1 may want to use this land in the future or the other land across Nebraska
2 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
3 ago it would have been hard to imagine all the advances that we have now or how
4 things change. Because the Easement is forever and TransCanada gets the rights in
5 my land forever we have to think with a very long term view. By placing their
6 pipeline on under across and through my land that prevents future development
7 which greatly negatively impacts future taxes and tax revenue that could have
8 been generated by the County and State but now will not. When you look at the
9 short blip of economic activity that the two years of temporary construction efforts
10 may bring, that is far outweighed by the perpetual and forever loss of opportunity
11 and restrictions TransCanada is forcing upon us and Nebraska.

12 **Q: Do you have any concerns about the environmental impact of the proposed**
13 **pipeline?**

14 A: Yes, I do.

15 **Q: What are some of those concerns?**

16 A: As an affected land owner and Nebraskan, I am concerned that any construction,
17 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
18 a detrimental impact upon the environment of my land specifically, as well as the
19 lands near my land and surrounding the proposed pipeline route.

20 **Q: Do you have any other environmental concerns?**

21 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
22 construction and/or maintenance and operation. I am concerned about spills and
23 leaks that TransCanada has had in the past and will have in the future. This could
24 be catastrophic to my operations or others and to my county and the State.

25 **Q: Do you have any thoughts regarding if there would be an impact upon the**
26 **natural resources on or near your property due to the proposed pipeline?**

27 A: Yes, I believe that any construction, operation, and/or maintenance of the
28 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: 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. It simply does not make
3 sense to add yet another major oil pipeline crisscrossing our state creating new
4 pumping stations, creating new impacts on additional counties and communities
5 and going through all of the court processes with myself and other landowners like
6 me when this applicant already has relationships with the landowners, the towns
7 and the communities along Keystone I, and that Keystone I is firmly outside of the
8 sand 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: Does Attachment No. 8 here contain other documents you are competent to**
11 **speak about that you wish to be part of your testimony and to discuss in more**
12 **detail as needed at the August 2017 Hearing?**

13 A: Yes.

14 **Q: Are all of your statements in your testimony provided above true and**
15 **accurate as of the date you signed this document to the best of your**
16 **knowledge?**

17 A: Yes, they are.

18 **Q: Thank you, I have no further questions at this time and reserve the right to**
19 **ask you additional questions at the August 2017 Hearing.**

Lori Mudloff

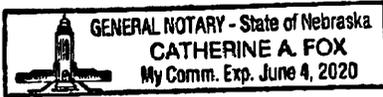
Lori Mudloff

Subscribed and Sworn to me before this 30th day of May, 2017.

Catherine A Fox

Notary Public

28



Attachment No. 1



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY

J. D. Mudloff
Larry D. Mudloff
LJM Farms, LLC
Lori Mudloff

TRACT NO. ML-NE-HT-30530.000
STATE: Nebraska
COUNTY: Holt
SECTION: 030
TOWNSHIP: 029N
RANGE: 009W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

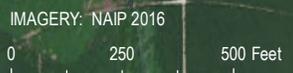


S.032
T.029N
R.009W

Larry D. Mudloff
LJM Farms, LLC

S.033
T.029N
R.009W

S.005
T.028N
R.009W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Larry D. Mudloff
LJM Farms, LLC

TRACT NO. ML-NE-HT-30560.000
STATE: Nebraska
COUNTY: Holt
SECTION: 032
TOWNSHIP: 029N
RANGE: 009W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Wksp.
- Property Line
- Section Line

S.032
T.029N
R.009W

S.033
T.029N
R.009W

S.004
T.028N
R.009W

S.005
T.028N
R.009W

Larry D. Mudloff
LJM Farms, LLC

IMAGERY: NAIP 2016



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Larry D. Mudloff
LJM Farms, LLC

TRACT NO. ML-NE-HT-30565.000
STATE: Nebraska
COUNTY: Holt
SECTION: 005
TOWNSHIP: 028N
RANGE: 009W

- 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-30530.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Larry D. Mudloff, J. D. Mudloff, Lori Mudloff, and LJM Farms, LLC, a Nebraska limited liability company**, whose mailing address is 50381 870th Road, Page, NE 68766 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection 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 156.07 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SW1/4 of Section 30, T29N, R9W of the 6th P.M., as recorded in Book 199, Page 731, Book 189, Page 507, and Book 189, Page 34 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):

Larry D. Mudloff

J. D. Mudloff

Lori Mudloff

LJM Farms, 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 **Lori Mudloff**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By _____ of

LJM Farms, LLC, a Nebraska limited liability company, on behalf of the corporation.

Notary Public Signature

Affix Seal Here

HOLT COUNTY, NEBRASKA

T-29-N, R-9-W, SECTION 30
ML-NE-HT-30530.000

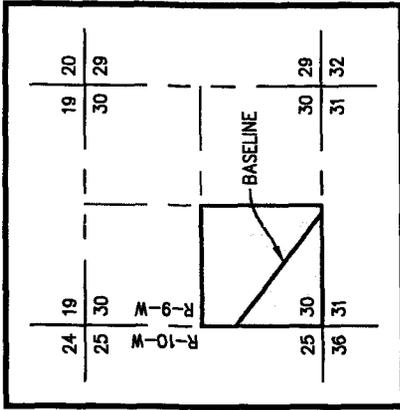
PROPERTY LINE
SECTION LINE
PROPOSED
AND OTHERS
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF HOLT COUNTY, NEBRASKA

LEGEND
P
S
PROF.
et al
A.T.W.S.
P.E.R.W.
D.R.H.C.N.

LJM FARMS, LLC, et al
VOLUME 189, PAGE 34
VOLUME 189, PAGE 507
VOLUME 199, PAGE 731-732
D.R.H.C.N.

SEE DETAIL "A"

SEE DETAIL "B"



VICINITY MAP
N.T.S.



0 250 500
SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:
SW/4 OF SECTION 30,
T-29-N, R-9-W

NOTE:
THIS SKETCH DOES NOT MEET THE MINIMUM
STANDARDS FOR PROPERTY BOUNDARY SURVEYS.
IT WAS NOT DERIVED FROM AN ON THE GROUND
SURVEY BUT IS INTENDED FOR RIGHT OF WAY
PURPOSES ONLY. THE EXACT LOCATIONS AND
MEASUREMENTS ARE APPROXIMATE AND MAY
VARY, BUT THE WIDTH OF THE EASEMENT AREA
TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 3,092'±
AREA OF PERMANENT EASEMENT: 3.5 ACRES
AREA OF TEMPORARY WORKSPACE: 4.2 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.4 ACRE

 TransCanada <i>In business to deliver.</i>			
KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF LJM FARMS, LLC, et al ML-NE-HT-30530.000			
PROJECT:	EXHIBIT A		
APPROVED BY:	DRAWING NUMBER		
SLR	XL-08-ML-SK-3362		
NO.	REVISION		
	DATE		
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/31/14	JN	ALS



**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-30560.000
ML-NE-HT-30565.000

**EASEMENT AND RIGHT-OF-WAY
AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "**Agreement**"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "**Consideration**") **Larry D. Mudloff and LJM Farms, LLC, a Nebraska limited liability company**, whose mailing address is 50381 870th Road, Page, NE 68766 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection 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 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SE1/4 of Section 32, Township 29 North, Range 9 West of the 6th P.M., as recorded in Book 199, Page 733 and Book 176, Page 230 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 154.87 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NE1/4 of Section 5, T28N, R9W of the 6th P.M., as recorded in Book 199, Page 731 and Book 176, Page 230 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):

Larry D. Mudloff

**LJM Farms, 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 **Larry D. Mudloff**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By _____ of

LJM Farms, LLC, a Nebraska limited liability company, on behalf of the corporation.

Notary Public Signature

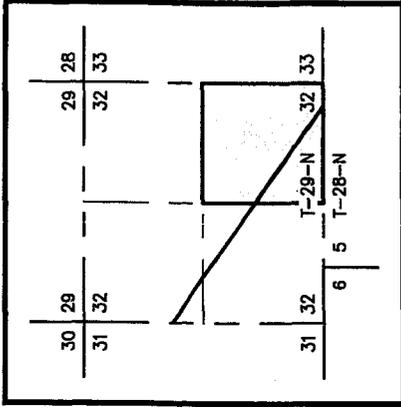
Affix Seal Here

HOLT COUNTY, NEBRASKA

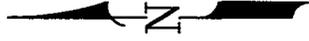
T-29-N, R-9-W, SECTION 32
ML-NE-HT-30560.000

LEGEND
 P PROPERTY LINE
 S SECTION LINE
 A AND OTHERS
 P PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA

**LARRY D. MUDLOFF AND
LJM FARMS, LLC**
 VOLUME 176, PAGE 230
 VOLUME 199, PAGE 733
 D.R.H.C.N.



VICINITY MAP
N.T.S.

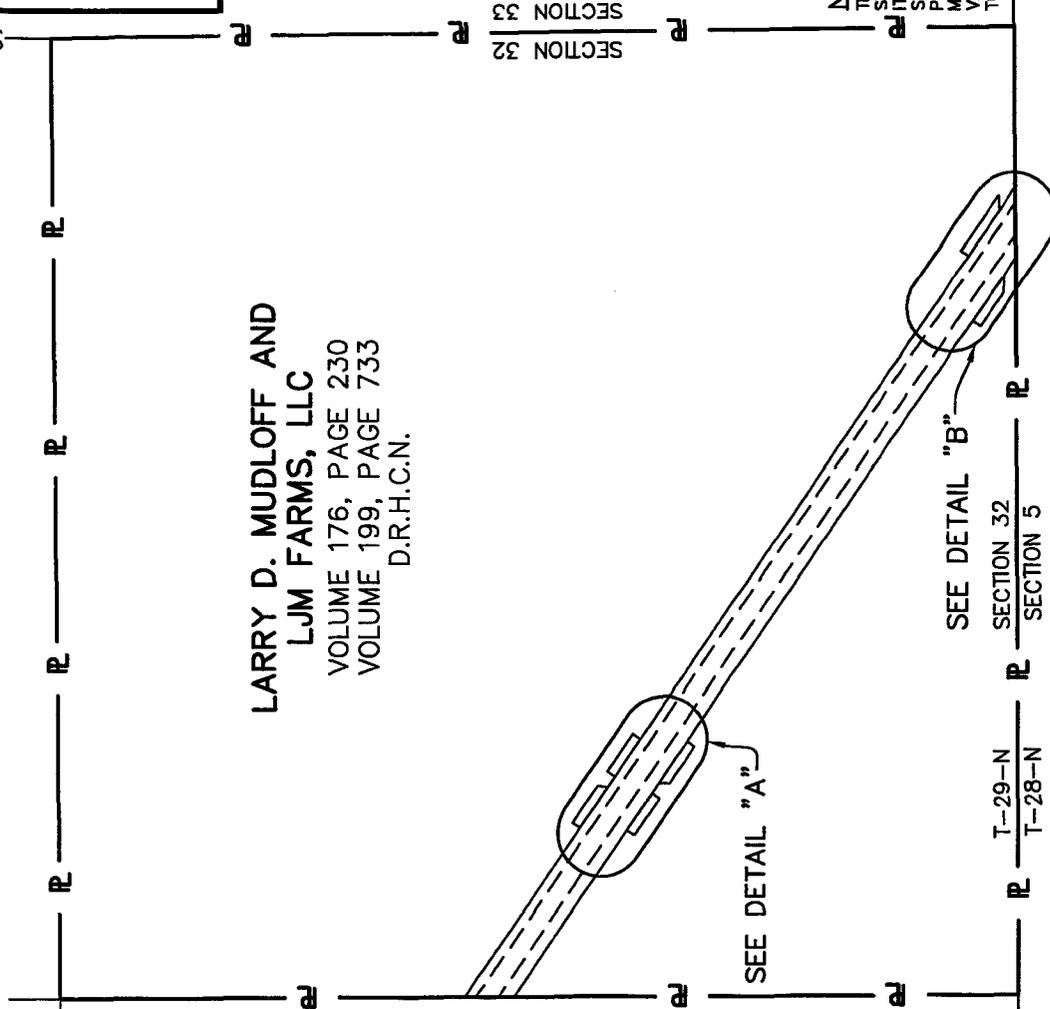


SCALE: 1" = 500'

TRACT LEGAL DESCRIPTION:
SE 1/4 OF SECTION 32,
T-29-N, R-9-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"

SEE DETAIL "B"

SECTION 32
SECTION 5

T-29-N
R-9-W

TOTAL DISTANCE ACROSS PROPERTY: 2,608'±
 AREA OF PERMANENT EASEMENT: 3.0 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.5 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.5 ACRES



KEYSTONE XL PROJECT

EASEMENT AREA
ACROSS THE PROPERTY OF
LARRY D. MUDLOFF AND
LJM FARMS, LLC
ML-NE-HT-30560.000

PROJECT: XL EXHIBIT A

APPROVED BY: SLR

DRAWING NUMBER: XL-08-MIL-SK-3367

NO. REVISION DATE

DATE

CHECKED BY: JN

DATE: 10/31/14

SCALE: 1" = 500'

ALS

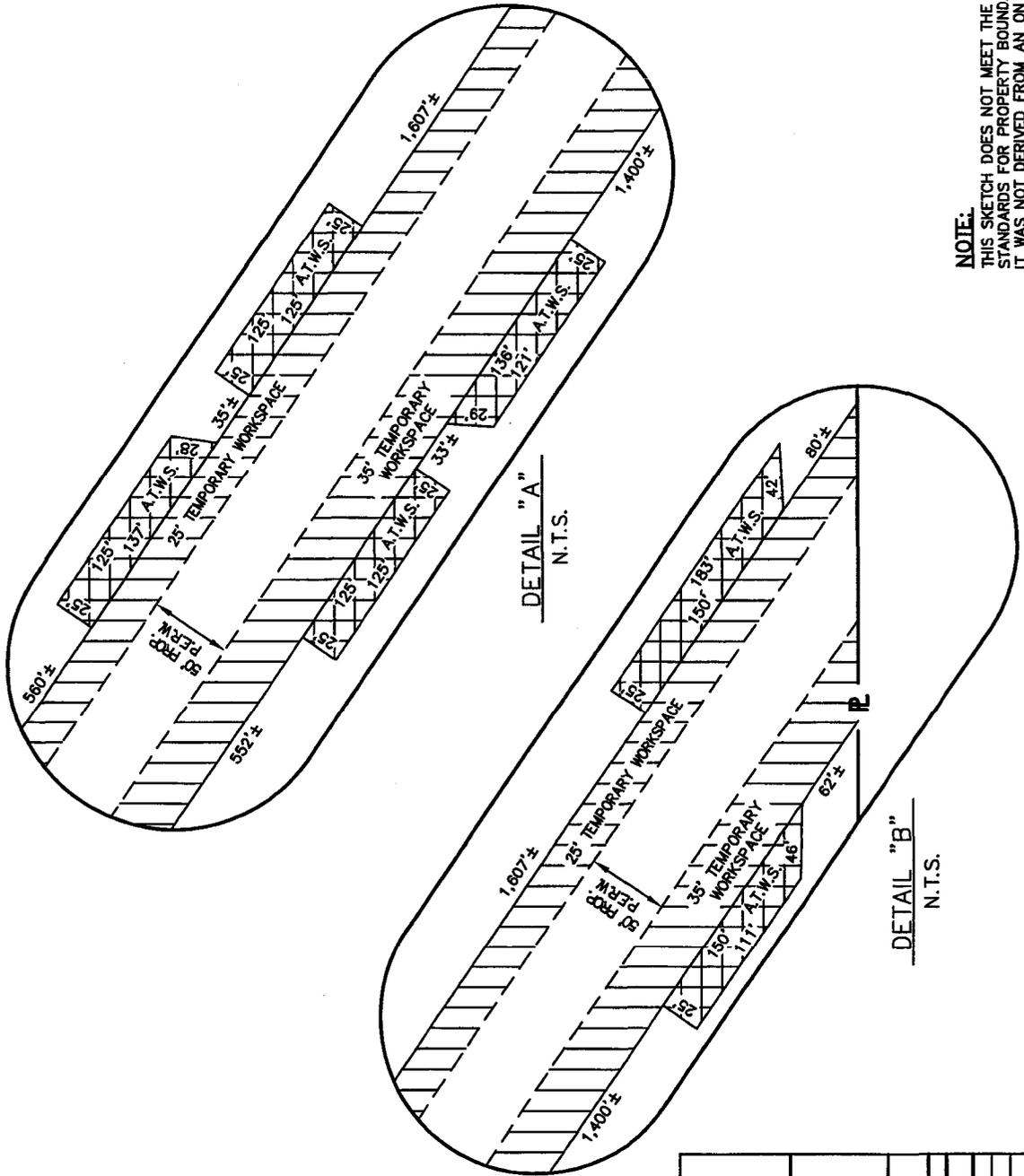


HOLT COUNTY, NEBRASKA

T-29-N, R-9-W, SECTION 32

ML-NE-HT-30560.000

LEGEND
 P PROPERTY LINE
 et al
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

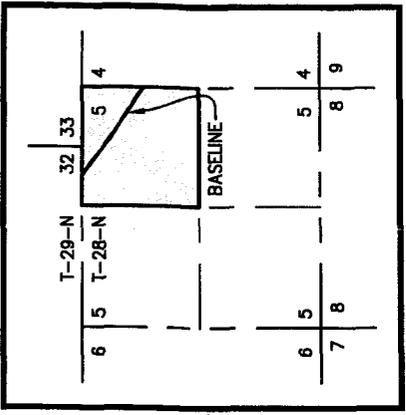
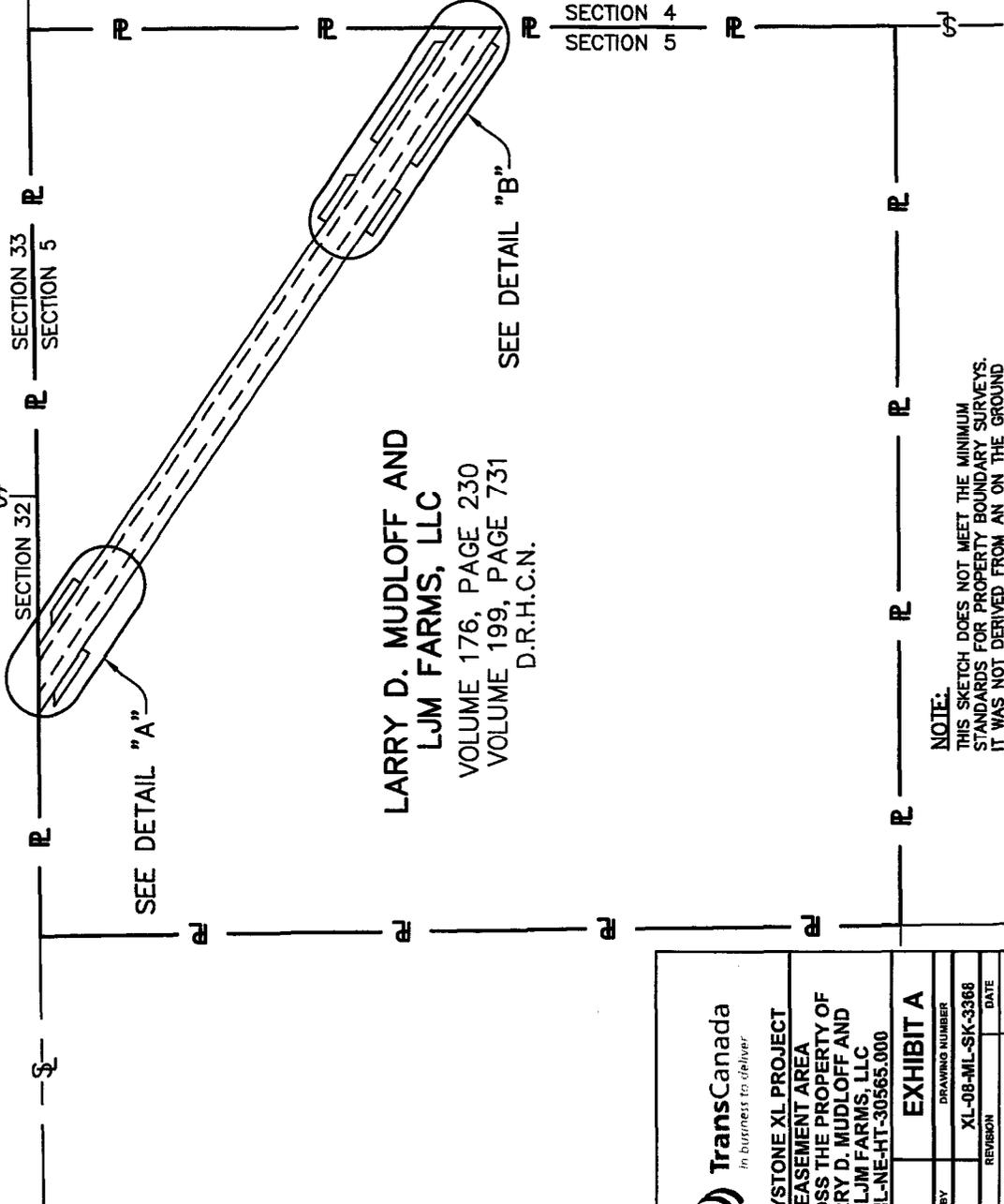
		In business to deliver	
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF			
LARRY D. MUDLOFF AND			
LJM FARMS, LLC			
ML-NE-HT-30560.000			
PROJECT:	XL	EXHIBIT A	
APPROVED BY:	SLR	DRAWING NUMBER	XL-08-ML-SK-3387
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/31/14	JN	ALS



HOLT COUNTY, NEBRASKA

T-28-N, R-9-W, SECTION 5
ML-NE-HT-30565.000

LEGEND
 P PROPERTY LINE
 S SECTION LINE
 P PROP. AND OTHERS
 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



VICINITY MAP
N.T.S.



TRACT LEGAL DESCRIPTION:
NE/4 OF SECTION 5,
T-28-N, R-9-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: 2,277'±
 AREA OF PERMANENT EASEMENT: 2.6 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.2 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.8 ACRE

In business to deliver	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
LARRY D. MUDLOFF AND	
LJM FARMS, LLC	
ML-NE-HT-30565.000	
PROJECT:	EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3368
NO.	REVISION
	DATE
SCALE	DATE
1" = 500'	10/31/14
DRAWN BY	CHECKED BY
JN	ALS

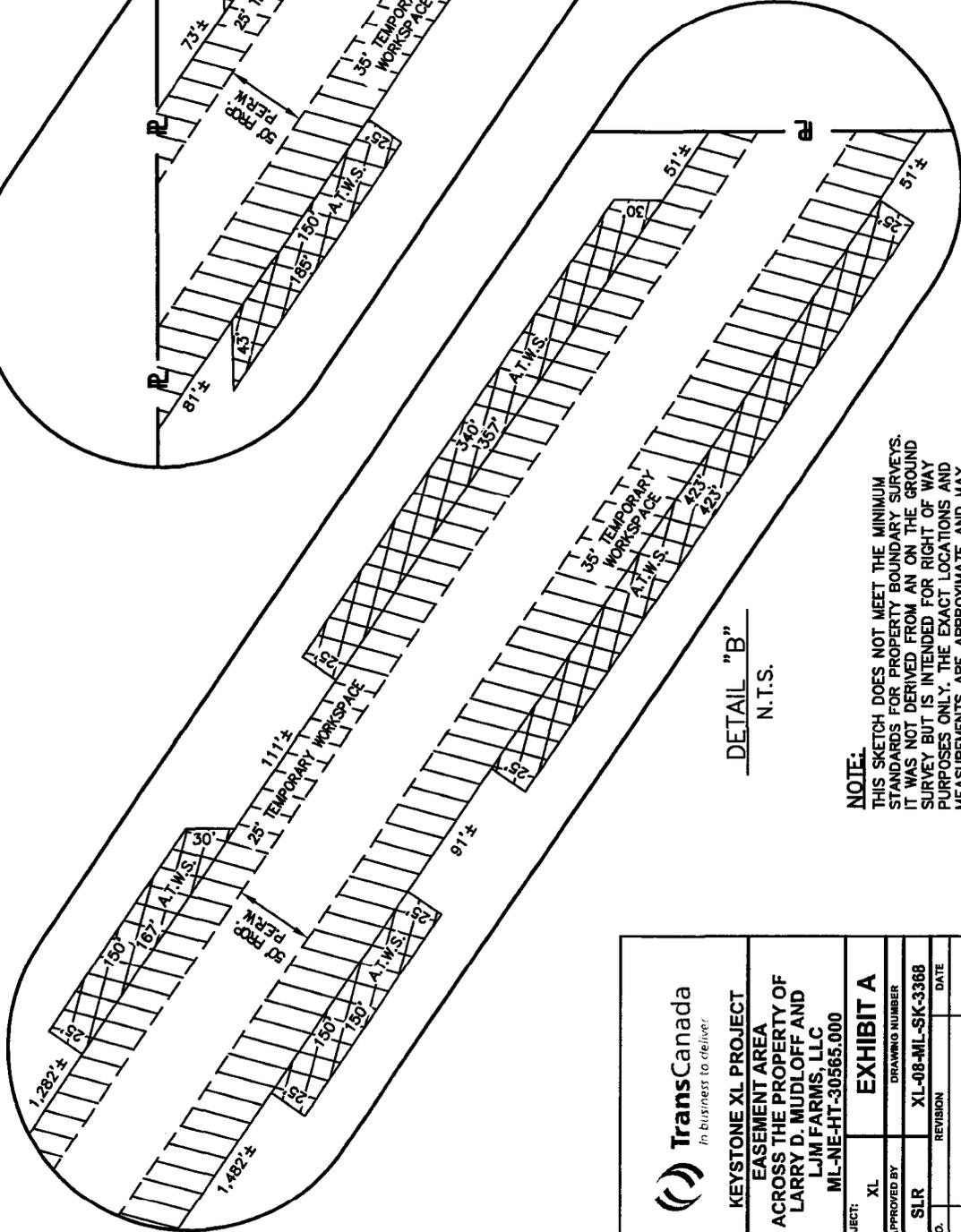
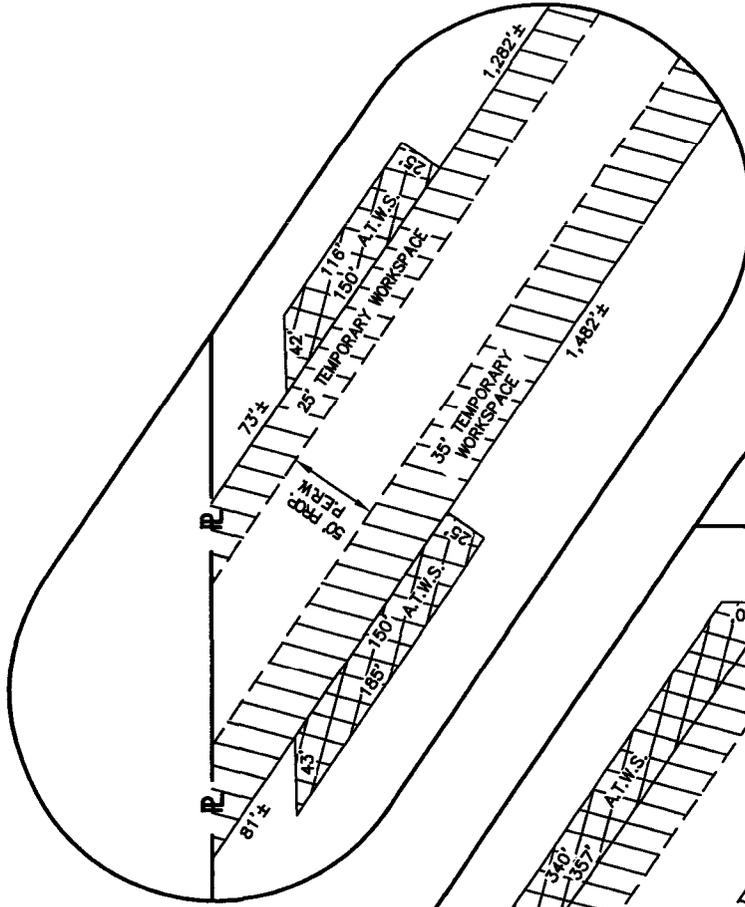


HOLT COUNTY, NEBRASKA

T-28-N, R-9-W, SECTION 5

ML-NE-HT-30565.000

LEGEND
 P. PROPERTY LINE
 PR. PROPOSED
 AND OTHERS
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



NOTE:
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KEYSTONE XL PROJECT

EASEMENT AREA
 ACROSS THE PROPERTY OF
 LARRY D. MUDLOFF AND
 LJM FARMS, LLC
 ML-NE-HT-30565.000

PROJECT: XL EXHIBIT A

APPROVED BY: DRAWING NUMBER

SLR: XL-08-ML-SK-3368

NO. REVISION DATE

SCALE DATE DRAWN BY CHECKED BY

N.T.S. 10/31/14 JN ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30530.000

I/we Larry D. Mudloff, J. D. Mudloff, Lori Mudloff, and LJM Farms, LLC, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Six Thousand Four Hundred Eighty Dollars and No Cents (\$6,480.00), 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 Holt, State of Nebraska:

SW/4

Section 30, Township 29-N, Range 9-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 (sign and print)

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30560.000

I/we Larry D. Mudloff and LJM Farms, LLC, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Six Hundred Dollars and No Cents (\$5,600.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

SE/4

Section 32, Township 29-N, Range 9-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-30565.000

I/we Larry D. Mudloff and LJM Farms, LLC, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Two Hundred Eighty Dollars and No Cents (\$5,280.00), 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:

NE/4

Section 5, Township 28-N, Range 9-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



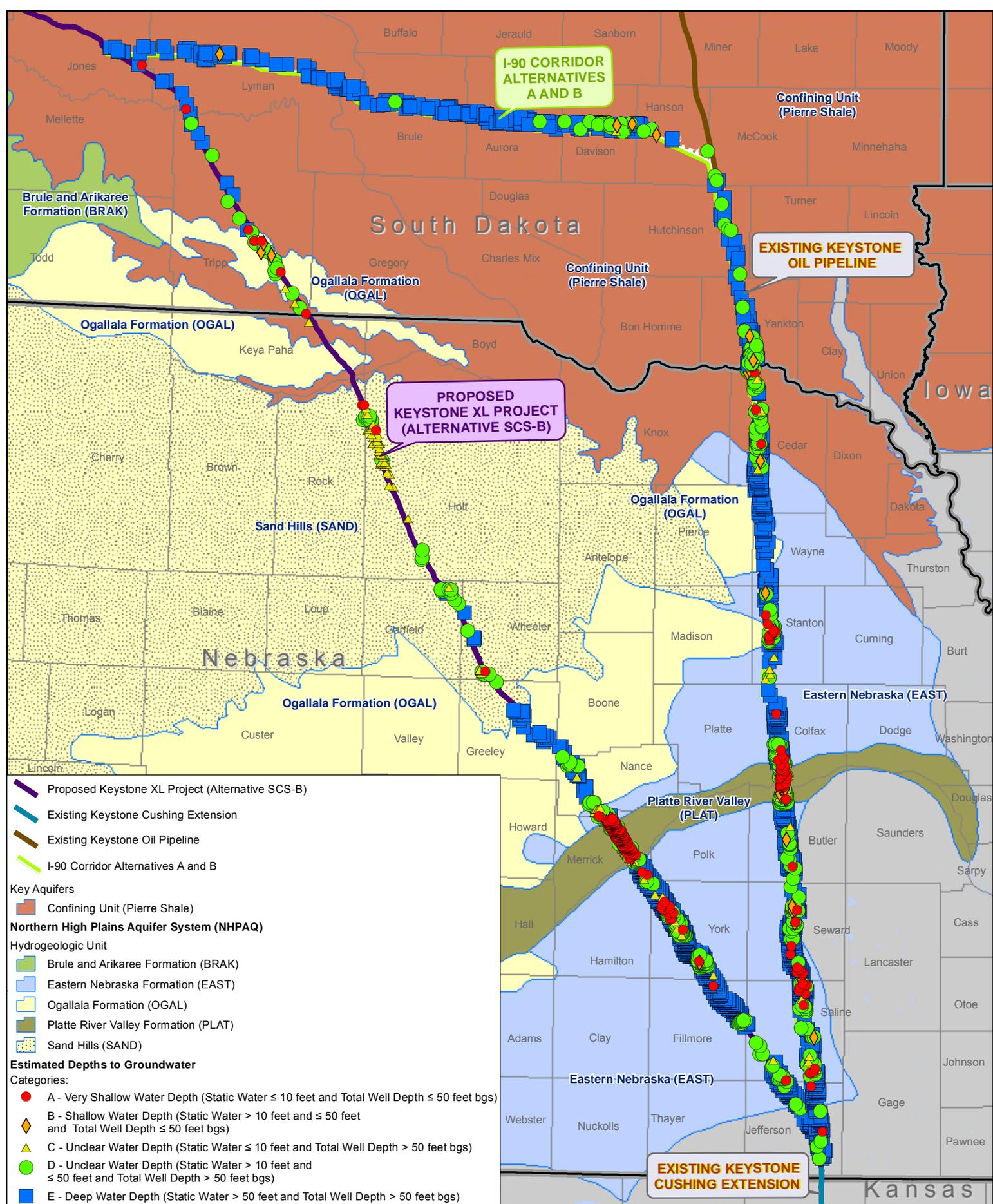
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

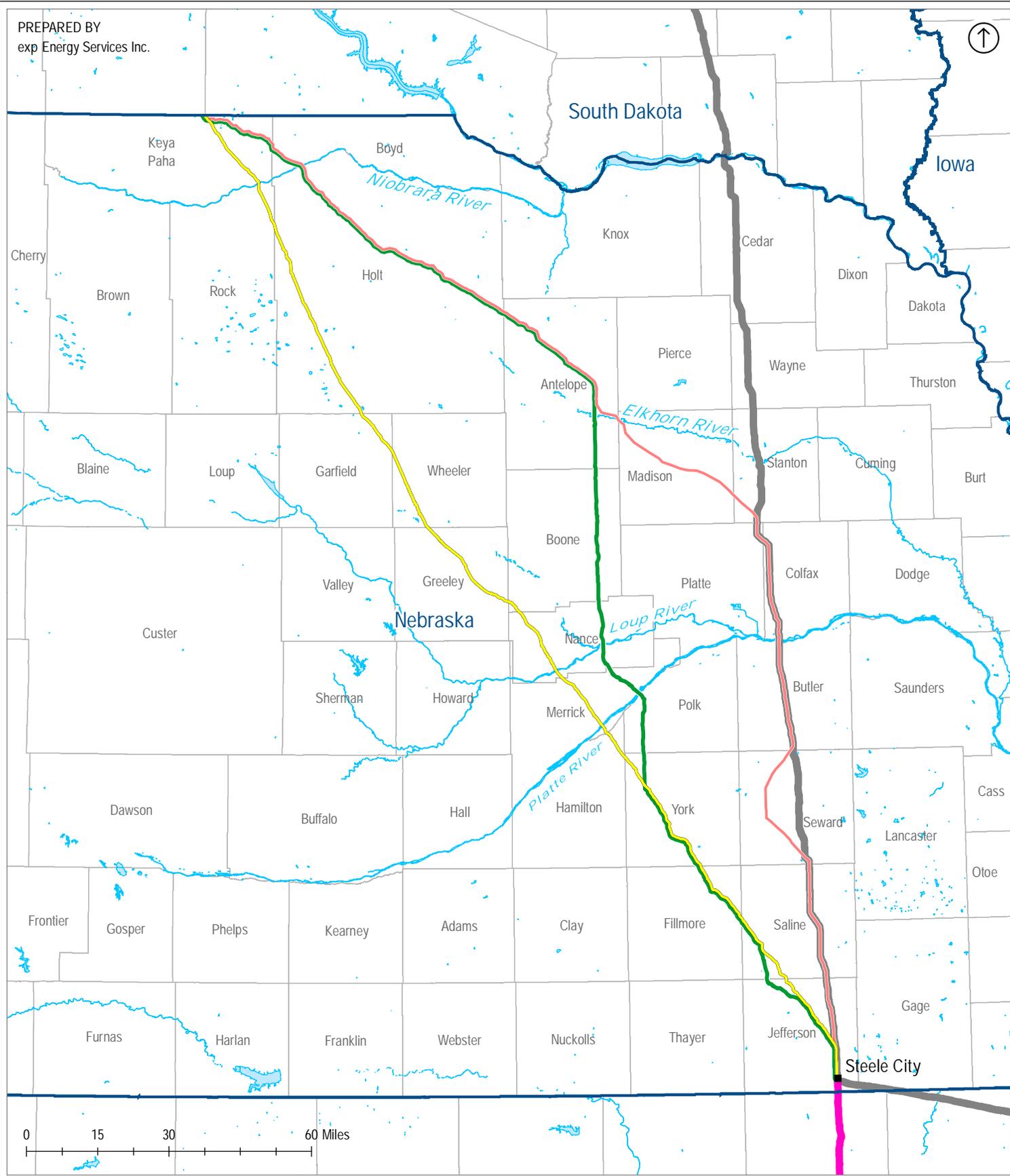
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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
Constance Ramold Myers in Support of
Landowner Intervenors**

State of Nebraska)
) ss.
Dixon County)

1 **Q: Please state your name.**

2 A: My name is Constance Ramold Myers

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you have children how many do you have?**

16 A: 2. I also have 6 step children.

1 **Q: If you have grandchildren how many do you have?**

2 A: 2. I also have 19 step grandchildren.

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
4 **and or your family?**

5 A: Yes.

6 **Q: For the land that would be affected and impacted by the proposed KXL tar**
7 **sands pipeline give the Commissioners a sense how long the land has been in**
8 **your family and a little history of the land.**

9 A: My great grandparents homesteaded in Holt County, Nebraska in 1881. There are
10 now 6 generations of our family. The land that TransCanada is wanting is the Holt
11 County, W ½ 12-30-13. My husband and I purchased this land in August, 1977.
12 We had rented it for several years prior to that. My husband supported our family
13 by working the land.

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: Have you ever in the past or have you thought about in the future leasing all**
20 **or a portion of your land in question here?**

21 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
22 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
23 all the restrictions and risks and potential negative impacts to farming or ranching
24 operations as opposed to land that did not have those same risks. If I was looking
25 to lease or rent ground I would pay more for comparable non-pipeline land than I
26 would for comparable pipeline land and I think most folks would think the same
27 way. This is another negative economic impact that affects the landowner and the
28 county and the state and will forever and ever should TransCanada's preferred or
29 mainline alternative routes be approved. If they were to twin or closely parallel to

1 Keystone I the vast majority of landowners would be those that already have a
2 pipeline so there would be considerable less new incremental negative impacts.

3 **Q: Do you have similar concerns about selling the land?**

4 A: Well I hope not to have to sell the land in my lifetime but times change and you
5 never know what is around the corner and yes I am concerned that if another piece
6 of ground similar to mine were for sale and it did not have the pipeline and mine
7 did that I would have a lower selling price. I think this would be true for pipeline
8 ground on both the preferred and mainline alternative routes.

9 **Q: What is your intent with your land after you die?**

10 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
11 to come but I have thought about getting out if this pipeline were to come through.

12 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
13 Pipeline would cross the land described above and owned by you?**

14 A: Yes.

15 **Q: Were you or an entity for which you are a member, shareholder, or director
16 previously sued by TransCanada Keystone Pipeline, LP?**

17 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
18 petition for condemnation against our land so it could place its proposed pipeline
19 within an easement that it wanted to take from us on our land.

20 **Q: Did you defend yourself and your land in that condemnation action?**

21 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
22 and expenses in our resistance of TransCanada's lawsuit against us.

23 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
24 incurred?**

25 A: No, they have not.

26 **Q: In its lawsuit against you, did TransCanada identify the amount of your
27 property that it wanted to take for its proposed pipeline?**

1 A: The lawsuit against us stated they would take the amount of property that is
2 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
3 and equipment reasonably necessary to operate the pipeline.

4 **Q: Did TransCanada define what they meant by “property that is reasonably
5 necessary”?**

6 A: No, they did not.

7 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain
8 property portion of your land?**

9 A: Yes, they did.

10 **Q: Did TransCanada describe what rights it proposed to take related to the
11 eminent domain property on your land?**

12 A: Yes, they did.

13 **Q: What rights that they proposed to take did they describe?**

14 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
15 operate, and maintain the pipeline and the plant and equipment reasonably
16 necessary to operate the pipeline, specifically including surveying, laying,
17 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
18 reconstructing, removing and abandoning one pipeline, together with all fittings,
19 cathodic protection equipment, pipeline markers, and all their equipment and
20 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
21 petroleum products, and all by-products thereof.”

22 **Q: Prior to filing an eminent domain lawsuit to take your land that
23 TransCanada identified, do you believe they attempted to negotiate in good
24 faith with you?**

25 A: No, I do not.

26 **Q: Did TransCanada at any time approach you with or deliver to you their
27 proposed easement and right-of-way agreement?**

28 A: Yes, they did.

1 **Q: At the time you reviewed TransCanada's easement and right-of-way**
2 **agreement, did you understand that they would be purchasing a fee title**
3 **interest in your property or that they were taking something else?**

4 A: I understood that they proposed to have the power to take both a temporary
5 construction easement that could last for a certain period of time and then also a
6 permanent easement which they described to be 50 feet across or in width, and
7 that would run the entire portion of my property from where a proposed pipeline
8 would enter my property until where it would exit the property.

9 **Q: Is the document included with your testimony here as Attachment No. 3, a**
10 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
11 **Way agreement that they included with their condemnation lawsuit against**
12 **you?**

13 A: Yes, it is.

14 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
15 **and Right-of-Way agreement?**

16 A: Yes, I have.

17 **Q: What is your understanding of the significance of the Easement and Right-of-**
18 **Way agreement as proposed by TransCanada?**

19 A: My understanding is that this is the document that will govern all of the rights and
20 obligations and duties as well as the limitations of what I can and cannot do and
21 how I and any future landowner and any person I invite to come onto my property
22 must behave as well as what TransCanada is and is not responsible for and how
23 they can use my land.

24 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
25 **agreement do you have any concerns about any portions of it or any of the**
26 **language either included in the document or missing from the proposed**
27 **document?**

28 A: Yes, I have a number of significant concerns and worries about the document and
29 how the language included and the language not included potentially negatively

1 impacts my land and thereby potentially negatively impacts my community and
2 my state.

3 **Q: I would like you to walk the Commissioners through each and every one of**
4 **your concerns about TransCanada’s proposed Easement and Right-of-Way**
5 **agreement so they can develop an understanding of how that language and**
6 **the terms of that contract, in your opinion, potentially negatively impacts you**
7 **and your land. So, if you can start at the beginning of that document and**
8 **let’s work our way through it, okay?**

9 A: Yes, I’ll be happy to express my concerns about TransCanada’s proposed
10 Easement and Right-of-Way agreement and how it negatively could affect my
11 property rights and my economic interests.

12 **Q. Okay, let’s start with your first concern please.**

13 A: The very first sentence talks about consideration or how much money they will
14 pay to compensate me for all of the known and unknown affects and all of the
15 rights I am giving up and for all the things they get to do to my land and for what
16 they will prevent me from doing on my land and they only will pay me one time at
17 the signing of the easement agreement. That is a huge problem.

18 **Q: Explain to the Commissioners why that is a problem.**

19 A: It is not fair to the landowner, the county, or the State. It is not fair to the
20 landowner because they want to have my land forever for use as they see fit so
21 they can make a daily profit from their customers. If I was to lease ground from
22 my neighbor I would typically pay twice a year every year as long as they granted
23 me the rights to use their land. That only makes sense – that is fair. If I was going
24 to rent a house in town I would typically pay monthly, every month until I gave up
25 my right to use that house. By TransCanada getting out on the cheap and paying
26 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax
27 revenue collection on the money I would be paid and then pay taxes on and
28 contribute to this state and this country. It is money I would be putting back into
29 my local community both spending and stimulating the local economy and

1 generating more economic activity right here. Instead TransCanada's shareholders
2 keep all that money and it never finds its way to Nebraska.

3 **Q: What is your next concern?**

4 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
5 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
6 limited partnership..." and I have no idea who that really is. I have no idea who is
7 forcing this pipeline on us or who the owners of the entities are, or what are the
8 assets backing this limited partnership, or who the general partner is, or who all
9 the limited partners are, and who makes up the ownership of the these partners or
10 the structure or any of the basic things you would want to know and understand if
11 you would want to do business with such an outfit. According to TransCanada's
12 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
13 liability company called TransCanada Keystone Pipeline GP, LLC is the general
14 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
15 basically nothing. That is really scary since the general partner has the liability but
16 virtually none of the ownership and who knows if it has any other assets.

17 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
18 **percent clear on exactly who could become the owner of over 275 miles of**
19 **Nebraska land?**

20 A: No.

21 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
22 **percent clear on exactly who will be operating and responsible for**
23 **approximately 275 miles of tar sands pipeline underneath and through**
24 **Nebraska land?**

25 A: No.

26 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
27 **and the State of Nebraska of TransCanada's easement terms.**

28 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
29 called "Grantee")..." and this concerns me because it would allow their easement

1 to be transferred or sold to someone or some company or country or who knows
2 what that I don't know and who we may not want to do business with. This
3 pipeline would be a huge asset for TransCanada and if they can sell to the highest
4 bidder that could have terrible impacts upon all of Nebraska depending upon who
5 may buy it and I don't know of any safeguards in place for us or the State to veto
6 or have any say so in who may own, operate, or be responsible for this pipeline in
7 the future.

8 **Q: Do you think that type of uncertainty and lack of control over a major piece**
9 **of infrastructure crossing our State is in the public interest?**

10 A: No, certainly not, in fact, just the opposite.

11 **Q: What's next?**

12 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
13 really concerns me. Why does the easement and right-of-way have to be perpetual
14 and permanent? That is the question myself and my family want an answer to.
15 Perpetual to me is like forever and that doesn't make sense.

16 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

17 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
18 data proving there is a perpetual supply of tar sands. I am not aware in
19 TransCanada's application where it proves there is a perpetual necessity for this
20 pipeline. My understanding of energy infrastructure like wind towers is they have
21 a decommission plan and actually take the towers down when they become
22 obsolete or no longer needed. Nothing manmade lasts forever. My land however
23 will, and I want my family or future Nebraska families to have that land as
24 undisturbed as possible and it is not in my interest or the public interest of
25 Nebraska to be forced to give up perpetual and permanent rights in the land for
26 this specific kind of pipeline project.

27 **Q: Okay, what is your next concern?**

28 A: The easement language includes all these things TransCanada can do and it says
29 "...abandoning in place..." so they can just leave this pipeline under my ground

1 until the end of time just sitting there while they are not using it, but I am still
2 prevented from doing on my land and using my land what I would like. If I owned
3 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
4 there. It doesn't make sense and it scares me and it is not in my interest or the
5 public interest of Nebraska to allow this.

6 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
7 **right?**

8 A: Yes.

9 **Q: So now on the second page of the Easement what are your concerns?**

10 A: Here the Easement identifies a 24-month deadline to complete construction of the
11 pipeline but has caveats that are undefined and ambiguous. The 24-month period
12 starts to run from the moment "actual pipeline installation activities" begin on
13 Landowners property. It appears that TransCanada would define this phrase as
14 needed. It would be wise to explain what types of TransCanada action constitutes
15 "installation activity" For instance, would the placement and storage of an
16 excavator or other equipment on or near the Easement property be an activity or
17 would earth have to be moved before the activity requirement is triggered. This
18 vague phrase is likely to lead to future disputes and litigation that is not in the best
19 interest of the welfare of Nebraska and would not protect property interests. The
20 24-months can also be extended in the case of "force majeure." My understanding
21 is that force majeure is often used to insulate a party to a contract when events
22 occur that are completely out of their control. In TransCanada's easement this is
23 expanded to include "without limitation...availability of labor and materials."
24 Extending this language to labor and materials is problematic because these are
25 two variables that TransCanada does have some or significant control over and to
26 allow extension of the 24-month period over events not truly out of the control of
27 TransCanada and without further provision for compensation for the Landowner is
28 not conducive to protection of property rights.

29 **Q: Okay, what is your next concern?**

1 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
2 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
3 reasonable costs and expenses” will pay for damages caused but then limits
4 TransCanada’s liability to certain circumstances. There is no definition of
5 “commercially reasonable” and no stated right that the Landowner would get to
6 determine the amounts of cost or expense that is “commercially reasonable.”
7 TransCanada excepts out from their liability any damages that are caused by
8 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
9 Landowner. It is understandable that if the Landowner were to willfully and
10 intentionally cause damages to the pipeline that Landowner should be liable.
11 However, anything short of willful misconduct should be the liability of
12 TransCanada who is subjecting the pipeline on the Landowner and who is making
13 a daily profit from that pipeline. When evaluating the impact on property rights of
14 this provision, you must consider the potentially extremely expensive fight a
15 Landowner would have over this question of whether or not damage was an act of
16 negligence. Putting this kind of potential liability upon the Landowner is
17 incredibly problematic and is detrimental to the protection of property rights. I
18 don’t think this unilateral power which I can’t do anything about as the landowner
19 is in the best economic interest of the land in question or the State of Nebraska for
20 landowners to be treated that way.

21 **Q: Is there any specific event or example you are aware of that makes this**
22 **concern more real for you?**

23 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
24 Nemaha County, Nebraska landowner farmers who accidentally struck two
25 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
26 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
27 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
28 copy of the Federal Court Complaint is here as **Attachment No. 4.**

29 **Q: What is your next concern with the Easement language?**

1 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
2 they choose unless 1) any Landowner use interferes in any way with
3 TransCanada's exercise of any of its rights within the Easement, or 2)
4 TransCanada decides to take any action on the property it deems necessary to
5 prevent injury, endangerment or interference with anything TransCanada deems
6 necessary to do on the property. Landowner is also forbidden from excavating
7 without prior authorization by TransCanada. So my understanding is that
8 TransCanada will unilaterally determine what Landowner can and can't do based
9 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
10 could also completely deny my request to excavate. Further, TransCanada retains
11 all "privileges necessary or convenient for the full use of the rights" granted to
12 them in the Easement. Again, TransCanada unilaterally can decide to the
13 detriment of the property rights of Landowner what TransCanada believes is
14 necessary or convenient for it. And there is no option for any additional
15 compensation to landowner for any right exercised by TransCanada that leads to
16 the removal of trees or plants or vegetation or buildings or structures or facilities
17 owned by Landowner of any kind. Such undefined and unilateral restrictions and
18 rights without having to compensate Landowner for such further destruction or
19 losses are not conducive to the protection of property rights or economic interest.

20 **Q: What is the next concern you have?**

21 A: The Easement also allows some rights for Landowner but restricts them at the
22 same time and again at the sole and unilateral decision making of TransCanada.
23 TransCanada will determine if the actions of Landowner might in anyway
24 endanger or obstruct or interfere with TransCanada's full use of the Easement or
25 any appurtenances thereon to the pipeline itself or to their access to the Easement
26 or within the Easement and TransCanada retains the right at any time, whether
27 during growing season or not, to travel "within and along Easement Area on foot
28 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
29 retain the rights to prevent any landowner activity that it thinks may "unreasonably

1 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
2 undefined and unilateral restrictions are not conducive to the protection of
3 property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
6 Landowner’s land any debris of any kind without any input or power of
7 Landowner to demand an alternative method or location of debris disposal. Such
8 unilateral powers would negatively affect Landowners property are not conducive
9 to the protection of property rights or economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
12 “where rock is encountered” mean and why does TransCanada solely get to
13 determine whether or not this phrase is triggered. This phrase could be used to
14 justify installing the pipeline 24 inches beneath the surface. The ability to use this
15 provision to minimal locate the pipeline at a depth of 24 inches could negatively
16 affect Landowners property are not conducive to the protection of property rights.
17 A shallow pipeline is much more likely to become a danger and liability in the
18 future given farming operations and buried irrigation lines and other factors
19 common to the current typical agricultural uses of the land in question impacted
20 by TransCanada’s preferred pipeline route.

21 **Q: What is the next concern you have with the Easement language?**

22 A: There are more vague concepts solely at the determination of TransCanada such as
23 “as nearly as practicable” and “pre-construction position” and “extent reasonably
24 possible.” There is nothing here that defines this or provides a mechanism for
25 documenting or memorializing “pre-construction position” so as to minimize
26 costly legal battles or wasted Landowner time attempting to recreate the soil
27 condition on their fields or pasture. Such unilateral powers would negatively affect
28 Landowners property are not conducive to the protection of property rights or
29 economic interest.

1 **Q: What is the next concern you have with the Easement language?**

2 A: TransCanada maintains the unilateral right to abandon the pipeline and all
3 appurtenances thereto in place on, under, across, or through Nebraska land at any
4 time it chooses. There is no provision for Landowner compensation for such
5 abandonment nor any right for the Landowner to demand removal. Such unilateral
6 powers would negatively affect Landowners property are not conducive to the
7 protection of property rights or economic interest.

8 **Q: What is the next concern you have with the Easement language?**

9 A: TransCanada has the power to unilaterally move or modify the location of any
10 Easement area whether permanent or temporary at their sole discretion.
11 Regardless, if Landowner has taken prior steps relative to their property in
12 preparation or planning of TransCanada's taking of the initial easement area(s),
13 the language here does not require TransCanada to compensate the Landowner if
14 they decide to move the easement anywhere on Landowners property. Such
15 unilateral powers would negatively affect Landowners property are not conducive
16 to the protection of property rights or economic interests.

17 **Q: What is the next concern you have with the Easement language?**

18 A: The Easement requires that all of the burdens and restrictions upon Landowner to
19 transfer and be applicable to any future owner of the Land in question without the
20 ability of the future Landowner to modify or negotiate any of the language in
21 question to which it will be held to comply.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
24 Easement to any person, company, country, etc. at their sole discretion at anytime
25 to anyone. This also means that any buyer of the easement could do the same to a
26 third buyer and so on forever. There is no change of control or sale provision in
27 place to protect the Landowner or Nebraska or to provide compensation for such
28 change of control or ownership. It is not conducive to the protection of property
29 rights or economic interests to allow unilateral unrestricted sale of the Easement

1 thereby forcing upon the Landowner and our State a new unknown Easement
2 owner.

3 **Q: What is the next concern you have with the Easement language?**

4 A: There are many terms in the Easement that are either confusing or undefined terms
5 that are without context as to whether or not the Landowner would have any say
6 so in determining what these terms mean or if the evaluation is solely in
7 TransCanada’s control. Some of these vague undefined terms are as follows:

- 8 i. “pipeline installation activities”
- 9 ii. “availability of labor and materials”
- 10 iii. “commercially reasonable costs and expenses”
- 11 iv. “reasonably anticipated and foreseeable costs and expenses”
- 12 v. “yield loss damages”
- 13 vi. “diminution in the value of the property”
- 14 vii. “substantially same condition”
- 15 viii. “an actual or potential hazard”
- 16 ix. “efficient”
- 17 x. “convenient”
- 18 xi. “endangered”
- 19 xii. “obstructed”
- 20 xiii. “injured”
- 21 xiv. “interfered with”
- 22 xv. “impaired”
- 23 xvi. “suitable crossings”
- 24 xvii. “where rock is encountered”
- 25 xviii. “as nearly as practicable”
- 26 xix. “pre-construction position”
- 27 xx. “pre-construction grade”
- 28 xxi. “various engineering factors”

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, “yield loss damages” should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 A: I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada’s proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline’s**
18 **impact upon you and your land?**

19 A: No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 A: Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 **Q: Has TransCanada at any time offered to compensate you annually, such as**
6 **wind farm projects do, for the existence of their potential tar sands pipeline**
7 **across your property.**

8 A: No, never.

9 **Q: At any time did TransCanada present you with or request that you, as the**
10 **owner of the land in question, sign and execute a document called, "Advanced**
11 **Release of Damage Claims and Indemnity Agreement?"**

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
14 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

15 A: Yes, it is.

16 **Q: What was your understanding of that document?**

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 **Q: Did you ever sign that document?**

24 A: No, I did not.

25 **Q: Why not?**

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you
12 thought their proposed location of their proposed pipeline across your land
13 was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you
16 thought their proposed location of their proposed pipeline across your land
17 was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
20 Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of
23 an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which
29 the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 **Q: Can you think of any way in which the public, that is the citizens of the State**
3 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
4 **Pipeline, as it dissects the State of Nebraska?**

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
13 **crude petroleum, or oil and petroleum by-products that you would like to**
14 **ship in its pipeline?**

15 A: No, it has not.

16 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
17 **products that you, at this time or any time in the future, would desire to place**
18 **for transport within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not.

20 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
21 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
22 **products within the proposed TransCanada Keystone XL Pipeline?**

23 A: No, I do not. I've never heard of such a person or company like that.

24 **Q: Do you pay property taxes for the land that would be affected and impacted**
25 **at the proposed TransCanada Keystone XL Pipeline?**

26 A: Yes, I do.

27 **Q: Why do you pay property taxes on that land?**

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q: Because you follow the law and pay property taxes, do you believe you**
2 **deserve any special consideration or treatment apart from any other person**
3 **or company that pays property taxes?**

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q: Do you believe the fact that you pay property taxes entitles you to special**
7 **treatment of any kind, or special rights of any kind?**

8 A: No, of course not.

9 **Q: Do you believe the fact that you pay property taxes on your land would be**
10 **enough to qualify you to have the power of eminent domain to take land of**
11 **your neighbors or other people in your county, or other people across the**
12 **state of Nebraska?**

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q: Have you at any time ever employed any person other than yourself?**

16 A: Well, yes I have.

17 **Q: Do you believe that the fact that you have, at some point in your life,**
18 **employed one or more other persons entitle you to any special treatment or**
19 **consideration above and beyond any other Nebraskan that has also employed**
20 **one or more persons?**

21 A: No, of course not.

22 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
23 **have at one point employed another person within this state, entitles you to**
24 **preferential treatment or consideration of any kind?**

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q: At the beginning of your statement, you briefly described your property that**
28 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
29 **give the Commissioners a sense of specifically how you believe the proposed**

1 **Keystone XL Pipeline and its preferred route, which proposes to go across**
2 **your land, how it would in your opinion based on your knowledge,**
3 **experience, and background of your land, affect it. So please share with the**
4 **Commissioners the characteristics of your land that you believe is important**
5 **for them to understand, while they evaluate TransCanada's application for a**
6 **route for its proposed pipeline to cross Nebraska and across your land,**
7 **specifically.**

8 A: This pasture land has never been plowed up, it is the native grass that has always
9 been there. To plow up this soil and try to plant new grass seed in this dry ground,
10 it would never grow. I have seen a movie photo that was photographed from an
11 airplane and it looked like a river continuing to run quarter after quarter of land.
12 Tearing up the ground for the pipeline will never be able to return to what it has
13 been for the last 100 years or more.

14 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
15 **crude oil pipeline in its preferred location, or ultimate location across the**
16 **state of Nebraska?**

17 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
18 or even bullied around and being made to feel scared that they did not have any
19 options but to sign whatever papers TransCanada told them they had to. I am
20 aware of folks being threatened that their land would be taken if they didn't follow
21 what TransCanada was saying. I am aware of tactics to get people to sign
22 easements that I don't believe have any place in Nebraska or anywhere such as
23 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
24 landowners and convince them they should sign TransCanada's easement
25 agreements. I am aware of older folks and widows or widowers feeling they had
26 no choice but to sign TransCanada's Easement and they didn't know they could
27 fight or stand up for themselves. From a more practical standpoint, I am worried
28 that according to their answer to our Interrogatory No. 211, TransCanada only
29 owns and operates one (1) major oil pipeline. They simply do not have the

1 experience with this type of pipeline and that scares me. There are others but that
2 is what I can recollect at this time and if I remember more or my recollection is
3 refreshed I will share those with the Commissioners at the Hearing in August.

4 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
5 **landowner is reasonable or just?**

6 A: No, I do not.

7 **Q: Do you have any concern about limitations that the construction of this**
8 **proposed pipeline across your affected land would prevent construction of**
9 **future structures upon the portion of your land affected by the proposed**
10 **easement and immediately surrounding areas?**

11 A: Well yes, of course I do. We would not be able to build many, if any, types of
12 structures directly across or touching the easement, and it would be unwise and I
13 would be uncomfortable to build anything near the easement for fear of being
14 blamed in the future should any damage or difficulty result on my property in
15 regards to the pipeline.

16 **Q: Do you think such a restriction would impact you economically?**

17 A: Well yes, of course.

18 **Q: How do you think such a restriction would impact you economically?**

19 A: The future of this land may not be exactly how it's being used as of this moment,
20 and having the restrictions and limiting my ability to develop my land in certain
21 ways presents a huge negative economic impact on myself, my family, and any
22 potential future owner of the property. You have no idea how I or the future owner
23 may want to use this land in the future or the other land across Nebraska
24 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
25 ago it would have been hard to imagine all the advances that we have now or how
26 things change. Because the Easement is forever and TransCanada gets the rights in
27 my land forever we have to think with a very long term view. By placing their
28 pipeline on under across and through my land that prevents future development
29 which greatly negatively impacts future taxes and tax revenue that could have

1 been generated by the County and State but now will not. When you look at the
2 short blip of economic activity that the two years of temporary construction efforts
3 may bring, that is far outweighed by the perpetual and forever loss of opportunity
4 and restrictions TransCanada is forcing upon us and Nebraska.

5 **Q: Do you have any concerns about the environmental impact of the proposed**
6 **pipeline?**

7 A: Yes, I do.

8 **Q: What are some of those concerns?**

9 A: As an affected land owner and Nebraskan, I am concerned that any construction,
10 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
11 a detrimental impact upon the environment of my land specifically, as well as the
12 lands near my land and surrounding the proposed pipeline route.

13 **Q: Do you have any other environmental concerns?**

14 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
15 construction and/or maintenance and operation. I am concerned about spills and
16 leaks that TransCanada has had in the past and will have in the future. This could
17 be catastrophic to my operations or others and to my county and the State.

18 **Q: Do you have any thoughts regarding if there would be an impact upon the**
19 **natural resources on or near your property due to the proposed pipeline?**

20 A: Yes, I believe that any construction, operation, and/or maintenance of the
21 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
22 resources of my land, and the lands near and surrounding the proposed pipeline
23 route.

24 **Q: Do you have any worries about potential impacts from the proposed pipeline**
25 **to the soil of your land, or land near you?**

26 A: Yes, I believe that any construction, operation, and/or maintenance of the
27 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
28 land, as well as land along and surrounding the proposed pipeline route. This
29 includes, but is not limited to, the reasons that we discussed above of disturbing

1 the soil composition and makeup as it has naturally existed for thousands and
2 millions of years during the construction process, and any future maintenance or
3 removal process. I'm gravely concerned about the fertility and the loss of
4 economic ability of my property to grow the crops, or grow the grasses, or grow
5 whatever it is at that time they exist on my property or that I may want to grow in
6 the future, or that a future owner may want to grow. The land will never be the
7 same from as it exists now undisturbed to after it is trenched up for the proposed
8 pipeline.

9 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
10 **upon the groundwater over your land, or surrounding lands?**

11 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
12 the proposed Keystone XL Pipeline would have a detrimental impact upon the
13 groundwater of not only under my land, but also near and surrounding the pipeline
14 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
15 simple and it is simply too valuable to our State and the country to put at
16 unreasonable risk.

17 **Q: Do you have any concern about the potential impact of the proposed pipeline**
18 **upon the surface water on, or near or around your land?**

19 A: Yes, I have significant concerns that any construction, operation, and/or
20 maintenance of the proposed Keystone XL Pipeline would have detrimental
21 impact upon the surface water of not only within my property boundary, but along
22 and near and surrounding the pipeline route, and in fact, across the state of
23 Nebraska.

24 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
25 **upon the wildlife and plants, other than your growing crops on or near your**
26 **land?**

27 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
28 the proposed Keystone XL Pipeline would have a detrimental impact upon the

1 wildlife and the plants, not only that are located on or can be found upon my land,
2 but also near and along the proposed pipeline route.

3 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
4 **fair market value of your land?**

5 A: Yes, I do. I am significantly concerned about how the existence of the proposed
6 pipeline underneath and across and through my property will negatively affect the
7 fair market value at any point in the future, especially at that point in which I
8 would need to sell the property, or someone in my family would need to sell the
9 property. I do not believe, and certainly would not be willing to pay, the same
10 price for land that had the pipeline located on it, versus land that did not. I hope
11 there is never a point where I'm in a position where I have to sell and have to
12 realize as much value as I can out of my land. But because it is my single largest
13 asset, I'm gravely concerned that the existence of the proposed Keystone XL
14 Pipeline upon my land will affect a buyer's willingness to pay as much as they
15 would've paid and as much as I could've received, if the pipeline were not upon
16 my property. There are just too many risks, unknowns, impacts and uncertainties,
17 not to mention all of the rights you give up by the nature of having the pipeline
18 due to having the easement that we have previously discussed, for any reasonable
19 person to think that the existence of the pipeline would not negatively affect my
20 property's value.

21 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
22 **testimony?**

23 A: Yes, I have.

24 **Q: Where have you seen that before?**

25 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
26 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
27 believe the portion of the alternative route in Nebraska essentially twins or
28 parallels Keystone I.

1 **Q: Do you believe that TransCanada’s preferred route as found on page 5 of its**
2 **Application, and as found on Attachment No. 7, here to your testimony, is in**
3 **the public interest of Nebraska?**

4 A: No, I do not.

5 **Q: Do you believe that the Keystone mainline alternative route as shown on**
6 **Attachment No. 7 included with your testimony here is a major oil pipeline**
7 **route that is in the public interest of Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
10 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
11 **your testimony, is in the public interest of Nebraska?**

12 A: No, I do not.

13 **Q: Do you believe there is any potential route for the proposed Keystone XL**
14 **Pipeline across, within, under, or through the State of Nebraska that is in the**
15 **public interest of the citizens of Nebraska?**

16 A: No, I do not.

17 **Q: Why do you hold that belief?**

18 A: Because there simply is no public interest based on all of the factors that I am
19 aware and that I have read and that I have studied that this Commission is to
20 consider that would establish that a for-profit foreign-owned pipeline that simply
21 crosses Nebraska because we are geographically in the way between where tar
22 sands are in Canada to where it wants to ship it to in Texas could ever be in the
23 public interest of Nebraskans. We derive no benefit from this project. It is not for
24 public use. Nebraska is simply in the way and when all considerations are taken in
25 there is no net benefit of any kind for Nebraska should this project be placed in our
26 state. Even if there was some arguable “benefit” it is not enough to outweigh all
27 the negative impacts and concerns.

28 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
29 **preferred route for its proposed Keystone XL Pipeline is in the public interest**

1 **of Nebraska because it may bring temporary jobs during the construction**
2 **phase to Nebraska?**

3 A: First of all, not all jobs are created equally. Most jobs that are created, whether
4 temporary or on a permanent basis, don't come with a project that has all the
5 potential and foreseeable negative impacts, many of which we have discussed here
6 and other witnesses throughout the course of this hearing have and will discuss. If
7 I decide to hire and employ someone to help me out in my farming or ranching
8 business, I've created a job but I haven't done so at the risk or detrimental impact
9 to my land or my town or my county or my state. And I've hired someone who is
10 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
11 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
12 jobs are not created equal. Additionally, I understand from what I'm familiar with
13 from TransCanada's own statements that the jobs numbers they originally touted
14 were determined to be a minute fraction of the permanent jobs that had been
15 projected. According to their answer to our Interrogatory No. 191, TransCanada
16 has created only thirty-four (34) jobs within Nebraska working specifically on
17 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
18 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
19 Further, according to their answer to Interrogatory No. 199, TransCanada would
20 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
21 constructed on its Preferred Route or its Mainline Alternative Route.

22 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
23 **because it would cross your land?**

24 A: No, absolutely not. I am opposed to this project because it is not in the public
25 interest, neither within my community nor within our state.

26 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
27 **was to cross someone else's land?**

28 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
29 the fear and anxiety and potential foreseeable risks and negative impacts that this

1 type of a project carrying this type of product brings foisted upon anyone in this
2 state or any other state.

3 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
4 **Pipeline to cross the state of Nebraska?**

5 A: I don't believe there is an intelligent route because as I have stated I don't believe
6 this project anywhere within Nebraska is within the public interest. However, if
7 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
8 had to go somewhere in the state of Nebraska, the only intelligent route I believe
9 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
10 preferred route and the mainline alternative routes are economic liabilities our
11 state cannot risk.

12 **Q: What do you rely upon to make that statement?**

13 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
14 already exists in that area is reason enough as it is not in our best interest or the
15 public interests to have more major oil pipelines crisscrossing our state. Second,
16 they have all the infrastructure already there in terms of relationships with the
17 counties and local officials and first responders along that route. Third, they have
18 already obtained easements from all the landowners along that route and have
19 relationships with them. Fourth, that route avoids our most sensitive soils, the
20 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
21 Aquifer. Sixth, they have already studied that route and previously offered it as an
22 alternative. Seventh, it just makes the most sense that as a state we would have
23 some intelligent policy of energy corridors and co-locating this type of
24 infrastructure near each other.

25 **Q: Do you have any other concerns you would like to reiterate or can think of at**
26 **this time you would like the Commissioners to understand?**

27 A: Yes. Easement by eminent domain forever alters the land and everything around it.
28 I thought eminent domain was not be allowed by businesses outside of the United
29 States. Why do we want them to give us one payment and yet they can come on

1 the land any time that they desire or feel that they have a need, with us having
2 nothing to say about that? What about our loss of income anytime they decide to
3 come and dig on our land, be it a spill or whatever reason they have? Why do we
4 get one lump payment and yet they can continue to generate revenue from this
5 land? I understood that eminent domain was for not-for-profit entities, and that it
6 should benefit general public. It seems our government should be protecting US
7 citizens instead out of county business. I believe that there should be some
8 liability protection for the landowners. I believe that TransCanada should be
9 required to remove the pipe at the end of the 50 year lifespan. I thought that they
10 were to use United States pipe, not some inferior pipe. I understand that they have
11 foreign made pipe that has been sitting out in the elements deteriorating for maybe
12 7 years and that is not good on a pipeline that you do not want it to leak. I believe
13 that there should be liability protection for the land owners. I understand there is a
14 problem to buy insurance to cover the pipeline land. Why are they trying to run a
15 new line with this pipeline when they already have a pipeline right away that they
16 could just add this to that route instead of tearing up new soil? That does not seem
17 to add up, there must be some reason??? There must be some reason that they are
18 buying up more land when they already have some that they could use.

19 **Q: What else?**

20 A: I understand that a Mr. Chad Gilbert with Pipeline Union #798 says it will create
21 about 35 full time jobs according to the US State Department's Environmental
22 Review of the projects but TransCanada admitted there would only be 6 to 10 new
23 permanent jobs in Nebraska. And so when we look at balancing 6 to 10 jobs
24 against all the possible negative impacts and results will there be to all of us with
25 our life investments and our families' income depending on the land when there is
26 a big strip of the land torn up from the Pipeline route for the benefit of another
27 country. What will we do when our homes are here and our total income depends
28 on this land we have spent our lives acquiring.

29 **Q: What else?**

1 A: And then...there is the big issue of our water supply being contaminated, not just
2 ours but others. Even a small leak would harm our drinking water, all Farmer's
3 water, and so much more for so many people. I understand that water dealing with
4 the Ogallala Aquifer involves 200 bodies of water including the Niobrara River.
5 Other people have no idea that this will affect them. TransCanada is not
6 concerned about this because they are far enough away it will never affect them.
7 Our country had better be thinking about where all the water will come from when
8 it happens. In listening to people who have had oil leaks on their land it can never
9 be brought back to what it is now. This will be irreversible damage. This KXL
10 pipeline will have a negative, disastrous effect on so many of us for no gain. We
11 will have to deal with liabilities on our property, abandonment, and restoration. I
12 do not believe a Foreign Corporation should be able to take our land by eminent
13 domain on American land for Foreign corporate gain. I do not think that we need
14 to have any foreign pipeline running through any America soil. Please consider
15 the people and the land you are supposed to be looking out for and not
16 TransCanada KXL Pipeline.

17 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
18 **like the Public Service Commissioners to consider in their review of**
19 **TransCanada's Application?**

20 A: No, I have not. I have shared that which I can think of as of the date I signed this
21 document below but other things may come to me or my memory may be
22 refreshed and I will add and address those things at the time of the Hearing in
23 August and address any additional items at that time as is necessary. Additionally,
24 I have not had an adequate amount of time to receive and review all of
25 TransCanada's answers to our discovery and the discovery of others so it was
26 impossible to competently and completely react to that in my testimony here and I
27 reserve the right to also address anything related to discovery that has not yet
28 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.**

Constance Ramold Myers
Constance Ramold Myers

Subscribed and Sworn to me before this 26th day of May, 2017.

[Signature]
Notary Public



Attachment No. 1

PREPARED BY

exp Energy Services Inc.

S.002
T.030N
R.013W

S.001
T.030N
R.013W



S.011
T.030N
R.013W

S.012
T.030N
R.013W

Constance C. Myers Trustee of the Constance C. Myers Revocable Trust
Constance Ramold

S.014
T.030N
R.013W

S.013
T.030N
R.013W

0 250 500 1,000 1,500 Feet



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Constance C. Myers Trustee of the Constance C. Myers Revocable Trust
Constance Ramold

TRACT NO. ML-NE-HT-30265.000
STATE: Nebraska
COUNTY: Holt
SECTION: 012
TOWNSHIP: 030N
RANGE: 013W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\6358\KEYSTONE XL\6002_9995326

Attachment No. 2









Attachment No. 3

**Prepared by and after recording
please return to:**
TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-HT-30265.000

**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**") **Constance C. Myers, Trustee of the Constance C. Myers Revocable Trust**, whose mailing address is Box 206, Newcastle, NE 68757 (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 320 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the W1/2 of Section 12, T30N, R13W of the 6th P.M., as recorded in Book 205, Page 623 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the

negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____
_____, 20_____.

GRANTOR(S):

**Constance C. Myers, Trustee of the Constance C.
Myers Revocable Trust**

Constance C. Myers, Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Constance C. Myers, Trustee of the Constance C. Myers Revocable Trust** on behalf of the said Trust.

Notary Public Signature

Affix Seal Here

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30265.000

I, Constance Ramold c/o Constance C. Myers, Trustee, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Eight Hundred Twenty dollars and no cents (\$1,820.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

W/2

Section 12, Township 30-N, Range 13-W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I have hereunto set our hands on this__ day of

_____, 20_____.

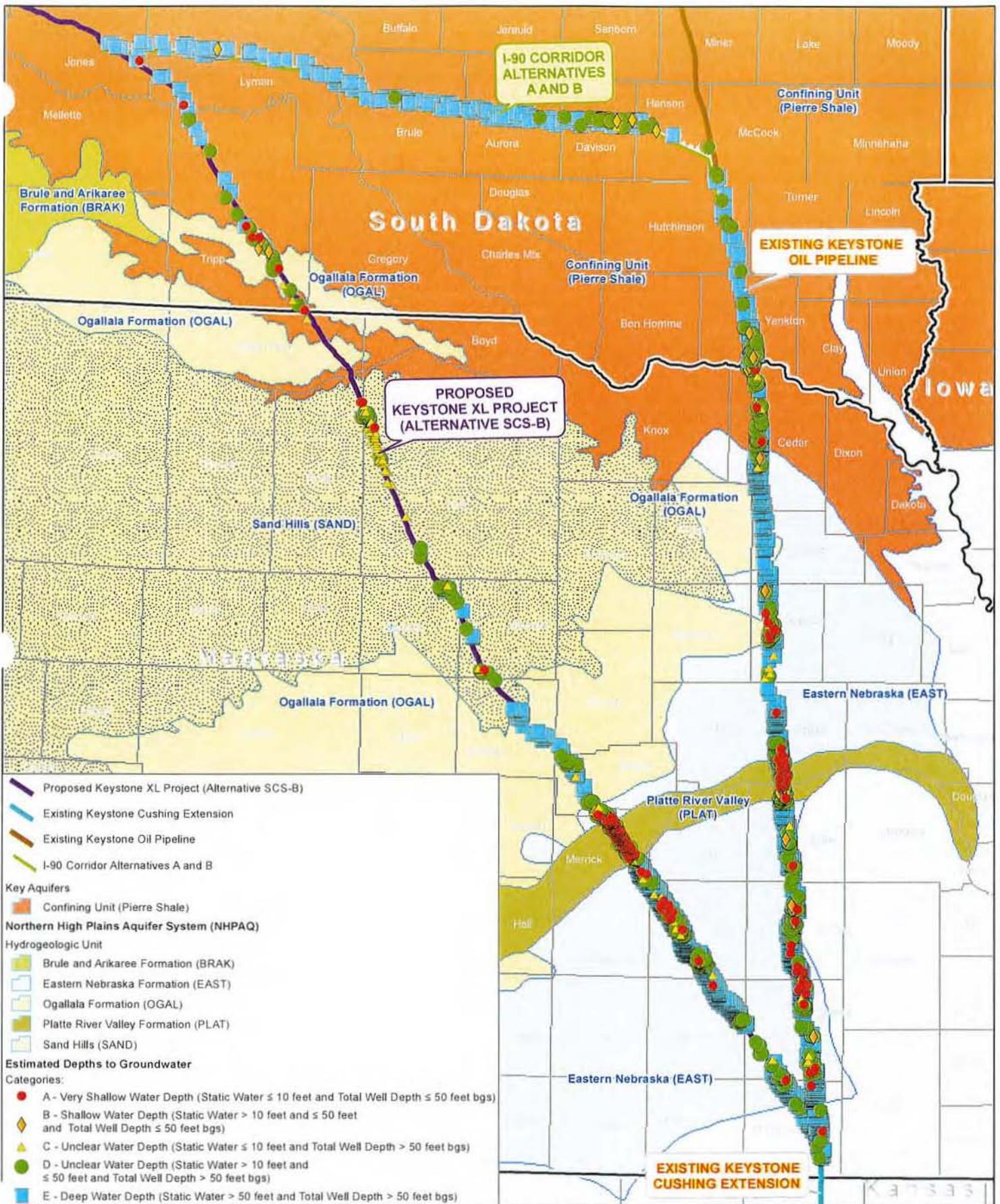
Owner Signature

Owner Signature

Owner/Owner Representative Name

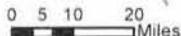
Owner/Owner Representative Name

Attachment No. 6



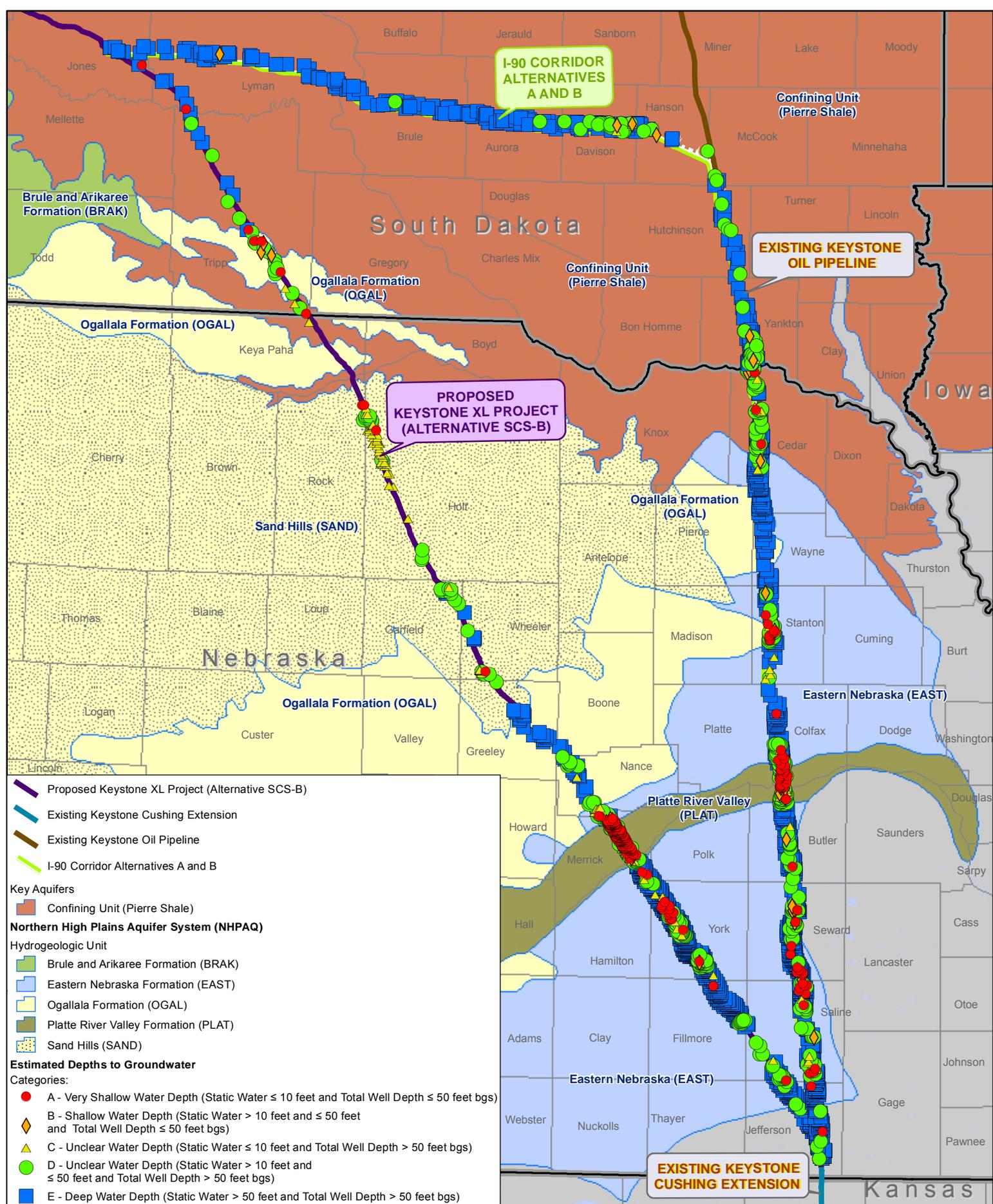
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

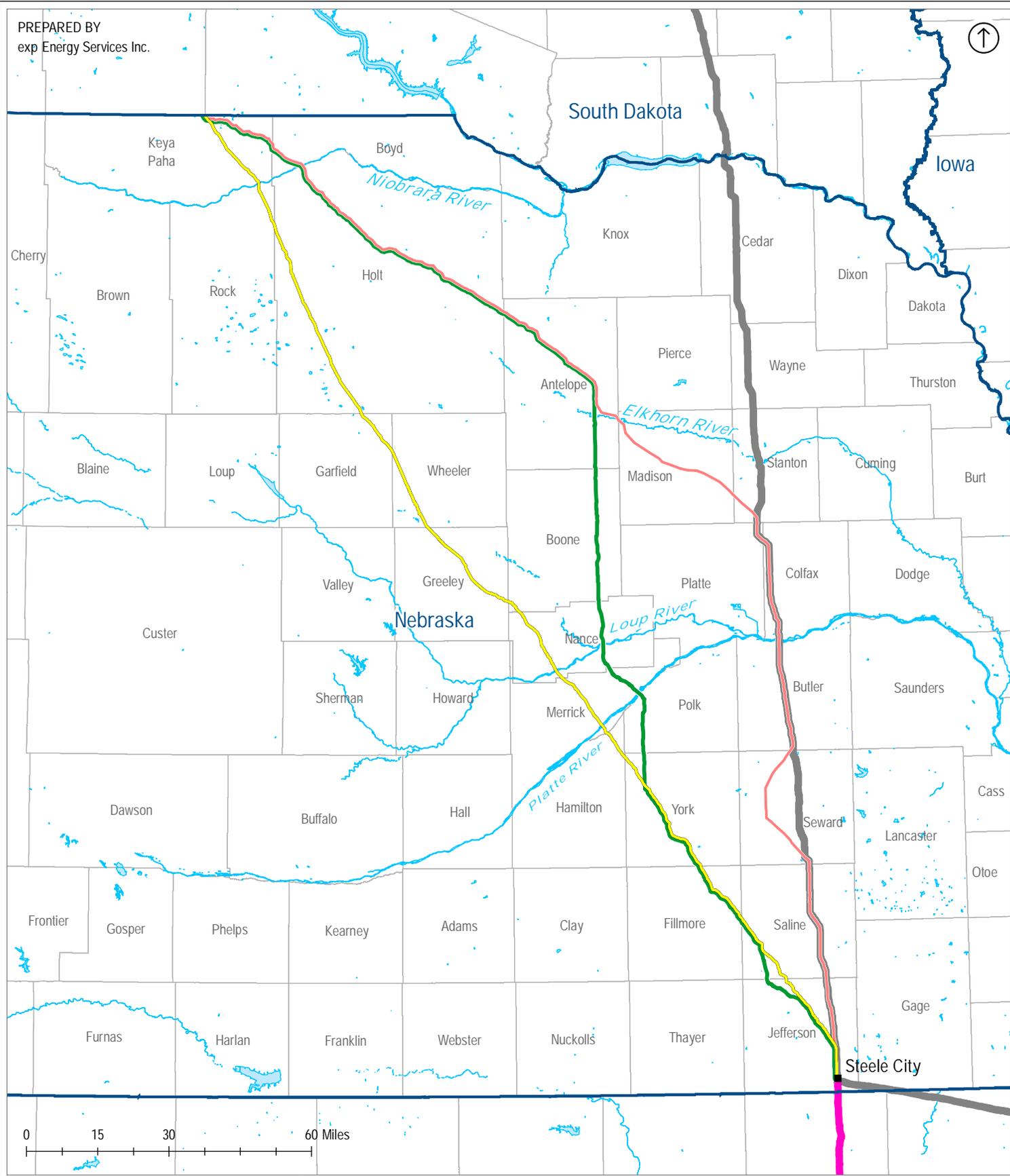
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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
Bryce Naber in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Boone County)

1 **Q: Please state your name.**

2 A: My name is Bryce Naber.

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 or lease land in Nebraska, either directly or through an entity of**
8 **which 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 the land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Farmer.

1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A: Yes.

4 **Q: Do you earn any income from the land in question?**

5 A: Yes. I am the tenant.

6 **Q: Have you depended on the income from the land to support your livelihood or**
7 **the livelihood of your family?**

8 A: Yes.

9 **Q: Have you thought about whether or not you would be willing to pay the same**
10 **rental payments for the land if the proposed route is approve and the KXL**
11 **pipeline goes through the land as you are today without it?**

12 A: Yes, I have thought of it and that concerns me. As a business owner and farmer I
13 have to also control my costs and risks the best I can. For instance, if there are
14 damages to crops and loss in yields, I need to take that real possibility into
15 account. I need to factor in the likelihood of deferred payment or no payment or
16 even budgeting in legal expenses to fight about damages caused by the pipeline.
17 These are all real world things that have and do occur. I just don't know if I could
18 agree to carry on with the same payment arrangements if the land were to change
19 so dramatically as it would if a major oil pipeline is present.

20 **Q: Do you have concerns about your family being able to selling the land?**

21 A: Well I hope we never have to sell the land but as a farmer who has attended
22 auctions and who is familiar with what factors you consider when bidding on farm
23 land, I am concerned that if another piece of ground similar to hers was for sale at
24 the same time and it did not have the pipeline and hers did that she would have a
25 lower selling price. I think this would be true for pipeline ground on both the
26 preferred and mainline alternative routes.

27 **Q: Were you or an entity for which you are a member, shareholder, or director**
28 **previously sued by TransCanada Keystone Pipeline, LP?**

1 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
2 petition for condemnation against our land so it could place its proposed pipeline
3 within an easement that it wanted to take from us on our land.

4 **Q: Did you defend yourself and the land in that condemnation action?**

5 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
6 and expenses in our resistance of TransCanada's lawsuit against us.

7 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
8 incurred?**

9 A: No, they have not.

10 **Q: In its lawsuit against you, did TransCanada identify the amount of your
11 property that it wanted to take for its proposed pipeline?**

12 A: The lawsuit against us stated they would take the amount of property that is
13 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
14 and equipment reasonably necessary to operate the pipeline.

15 **Q: Did TransCanada define what they meant by "property that is reasonably
16 necessary"?**

17 A: No, they did not.

18 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain
19 property portion of the land?**

20 A: Yes, they did.

21 **Q: Did TransCanada describe what rights it proposed to take related to the
22 eminent domain property on the land?**

23 A: Yes, they did.

24 **Q: What rights that they proposed to take did they describe?**

25 A: TransCanada stated that the eminent domain property will be used to "lay, relay,
26 operate, and maintain the pipeline and the plant and equipment reasonably
27 necessary to operate the pipeline, specifically including surveying, laying,
28 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
29 reconstructing, removing and abandoning one pipeline, together with all fittings,

1 cathodic protection equipment, pipeline markers, and all their equipment and
2 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
3 petroleum products, and all by-products thereof.”

4 **Q: Prior to filing an eminent domain lawsuit to take the land that TransCanada**
5 **identified, do you believe they attempted to negotiate in good faith with you?**

6 A: No, I do not.

7 **Q: Did TransCanada at any time approach you with or deliver to you their**
8 **proposed easement and right-of-way agreement?**

9 A: Yes, they did.

10 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
11 **agreement, did you understand that they would be purchasing a fee title**
12 **interest in your property or that they were taking something else?**

13 A: I understood that they proposed to have the power to take both a temporary
14 construction easement that could last for a certain period of time and then also a
15 permanent easement which they described to be 50 feet across or in width, and
16 that would run the entire portion of my property from where a proposed pipeline
17 would enter my property until where it would exit the property.

18 **Q: Is the document included with your testimony here as Attachment No. 3, a**
19 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
20 **Way agreement that they included with their condemnation lawsuit against**
21 **you?**

22 A: Yes, it is.

23 **Q: Have you had an opportunity to review TransCanada’s proposed Easement**
24 **and Right-of-Way agreement?**

25 A: Yes, I have.

26 **Q: What is your understanding of the significance of the Easement and Right-of-**
27 **Way agreement as proposed by TransCanada?**

28 A: My understanding is that this is the document that will govern all of the rights and
29 obligations and duties as well as the limitations of what I can and cannot do and

1 how I and any future landowner and any person I invite to come onto my property
2 must behave as well as what TransCanada is and is not responsible for and how
3 they can use the land.

4 **Q: After reviewing TransCanada’s proposed Easement and Right-of-Way**
5 **agreement do you have any concerns about any portions of it or any of the**
6 **language either included in the document or missing from the proposed**
7 **document?**

8 A: Yes, I have a number of significant concerns and worries about the document and
9 how the language included and the language not included potentially negatively
10 impacts the land and thereby potentially negatively impacts my community and
11 my state.

12 **Q: I would like you to walk the Commissioners through each and every one of**
13 **your concerns about TransCanada’s proposed Easement and Right-of-Way**
14 **agreement so they can develop an understanding of how that language and**
15 **the terms of that contract, in your opinion, potentially negatively impacts you**
16 **and the land. So, if you can start at the beginning of that document and let’s**
17 **work our way through it, okay?**

18 A: Yes, I’ll be happy to express my concerns about TransCanada’s proposed
19 Easement and Right-of-Way agreement and how it negatively could affect my
20 property rights and my economic interests.

21 **Q. Okay, let’s start with your first concern please.**

22 A: The very first sentence talks about consideration or how much money they will
23 pay to compensate me for all of the known and unknown affects and all of the
24 rights I am giving up and for all the things they get to do to the land and for what
25 they will prevent me from doing on the land and they only will pay me one time at
26 the signing of the easement agreement. That is a huge problem.

27 **Q: Explain to the Commissioners why that is a problem.**

28 A: It is not fair to the landowner, the county, or the State. It is not fair to the
29 landowner because they want to have the land forever for use as they see fit so

1 they can make a daily profit from their customers. If I was to lease ground from
2 my neighbor I would typically pay twice a year every year as long as they granted
3 me the rights to use their land. That only makes sense – that is fair. If I was going
4 to rent a house in town I would typically pay monthly, every month until I gave up
5 my right to use that house. By TransCanada getting out on the cheap and paying
6 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax
7 revenue collection on the money I would be paid and then pay taxes on and
8 contribute to this state and this country. It is money I would be putting back into
9 my local community both spending and stimulating the local economy and
10 generating more economic activity right here. Instead TransCanada’s shareholders
11 keep all that money and it never finds its way to Nebraska.

12 **Q: What is your next concern?**

13 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
14 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
15 limited partnership...” and I have no idea who that really is. I have no idea who is
16 forcing this pipeline on us or who the owners of the entities are, or what are the
17 assets backing this limited partnership, or who the general partner is, or who all
18 the limited partners are, and who makes up the ownership of the these partners or
19 the structure or any of the basic things you would want to know and understand if
20 you would want to do business with such an outfit. According to TransCanada’s
21 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
22 liability company called TransCanada Keystone Pipeline GP, LLC is the general
23 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
24 basically nothing. That is really scary since the general partner has the liability but
25 virtually none of the ownership and who knows if it has any other assets.

26 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
27 **percent clear on exactly who could become the owner of about 275 miles of**
28 **Nebraska land?**

29 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 the 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. The 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 the land and using the 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 to their property in
21 preparation or planning of TransCanada’s taking of the initial easement area(s),
22 the language here does not require TransCanada to compensate the Landowner if
23 they decide to move the easement anywhere on Landowners property. Such
24 unilateral powers would negatively affect Landowners property are not conducive
25 to the protection of property rights or economic interests.

26 **Q: What is the next concern you have with the Easement language?**

27 A: The Easement requires that all of the burdens and restrictions upon Landowner to
28 transfer and be applicable to 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 anytime
6 to anyone. This also means that any buyer of the easement could do the same to a
7 third buyer and so on forever. There is no change of control or sale provision in
8 place to protect the Landowner or Nebraska or to provide compensation for such
9 change of control or ownership. It is not conducive to the protection of property
10 rights or economic interests to allow unilateral unrestricted sale of the Easement
11 thereby forcing upon the Landowner and our State a new unknown Easement
12 owner.

13 **Q: What is the next concern you have with the Easement language?**

14 A: There are many terms in the Easement that are either confusing or undefined terms
15 that are without context as to whether or not the Landowner would have any say
16 so in determining what these terms mean or if the evaluation is solely in
17 TransCanada's control. Some of these vague undefined and ambiguous terms are
18 as follows:

- 19 i. "pipeline installation activities"
- 20 ii. "availability of labor and materials"
- 21 iii. "commercially reasonable costs and expenses"
- 22 iv. "reasonably anticipated and foreseeable costs and expenses"
- 23 v. "yield loss damages"
- 24 vi. "diminution in the value of the property"
- 25 vii. "substantially same condition"
- 26 viii. "an actual or potential hazard"
- 27 ix. "efficient"
- 28 x. "convenient"
- 29 xi. "endangered"

- 1 xii. “obstructed”
- 2 xiii. “injured”
- 3 xiv. “interfered with”
- 4 xv. “impaired”
- 5 xvi. “suitable crossings”
- 6 xvii. “where rock is encountered”
- 7 xviii. “as nearly as practicable”
- 8 xix. “pre-construction position”
- 9 xx. “pre-construction grade”
- 10 xxi. “various engineering factors”

11 Each one of these above terms and phrases as read in the context of the Easement
12 could be problematic in many ways. Notably, undefined terms tend to only get
13 definition in further legal proceedings after a dispute arises and the way the
14 Easement is drafted, TransCanada has sole power to determine when and if a
15 particular situation conforms with or triggers rights affected by these terms. For
16 instance, “yield loss damages” should be specifically defined and spelled out
17 exactly how the landowner is to be compensated and in what events on the front
18 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
19 the Landowner is without contractual rights to define these terms or determine
20 when rights related to them trigger and what the affects may be.

21 **Q: Do you have any other concerns about the Easement language that you can**
22 **think of at this time?**

23 A: I reserve the right to discuss any additional concerns that I think of at the time of
24 my live testimony in August.

25 **Q: Based upon what you have shared with the Commission above regarding**
26 **TransCanada’s proposed Easement terms and agreement, do you believe**
27 **those to be reasonable or just, under the circumstances of the pipeline’s**
28 **impact upon you and the land?**

1 A: No, I do not believe those terms to be reasonable or just for the reasons that we
2 discussed previously.

3 **Q: Did TransCanada ever offer you financial compensation for the rights that**
4 **they sought to obtain in the land, and for what they sought to prevent you and**
5 **any future land owner of your property from doing in the future?**

6 A: Yes, we received an offer from them.

7 **Q: As the owner of the land in question and as the person who knows it better**
8 **than anyone else, do you believe that TransCanada offered you just, or fair,**
9 **compensation for all of what they proposed to take from you so that their tar**
10 **sands pipeline could be located across your property?**

11 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
12 offer for all the potential impacts and effects and the rights that I'm giving up, and
13 what we will be prevented from doing in the future and how their pipeline would
14 impact my property for ever and ever.

15 **Q: Has TransCanada at any time offered to compensate you annually, such as**
16 **wind farm projects do, for the existence of their potential tar sands pipeline**
17 **across your property.**

18 A: No, never.

19 **Q: At any time did TransCanada present you with or request that you, as the**
20 **owner of the land in question, sign and execute a document called, "Advanced**
21 **Release of Damage Claims and Indemnity Agreement?"**

22 A: Yes, they did and it was included in the County Court lawsuit against us.

23 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
24 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

25 A: Yes, it is.

26 **Q: What was your understanding of that document?**

27 A: When I read that document in the plain language of that document, it was my
28 understanding that TransCanada was attempting to pay me a very small amount at
29 that time in order for me to agree to give up my rights to be compensated from

1 them in the future related to any damage or impact they may have upon my
2 property “arising out of, in connection with, or alleged to resulted from
3 construction or surveying over, under or on” the land.

4 **Q: Did you ever sign that document?**

5 A: No, we did not.

6 **Q: Why not?**

7 A; Because we did not believe that it is fair or just to try to get me to agree to a small
8 sum of money when we have no idea how bad the impacts or damages that they,
9 or their contractors, or subcontractors, or other agents or employees, may cause on
10 the land at any time in the future that resulted from the construction or surveying
11 or their activities upon the land.

12 **Q: When you reviewed this document, what did it make you feel?**

13 A: We felt like it was simply another attempt for TransCanada to try to pay very little
14 to shield themselves against known and foreseeable impacts that their pipeline,
15 and the construction of it, would have upon the land. It made us feel that they
16 knew it was in their financial interest to pay me as little as possible to prevent me
17 from ever having the opportunity to seek fair compensation again, and that this
18 must be based upon their experience of unhappy landowners and situations in
19 other places where they have built pipelines.

20 **Q: Has TransCanada ever contacted you and specifically asked you if you**
21 **thought their proposed location of their proposed pipeline across the land was**
22 **in your best interest?**

23 A: No, they have not.

24 **Q: Has TransCanada ever contacted you and specifically asked you if you**
25 **thought their proposed location of their proposed pipeline across the land was**
26 **in the public interest of the State of Nebraska?**

27 A: No, they have not.

28 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
29 **Takings Clause?**

1 A: Yes, I am.

2 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
3 **an American citizens property?**

4 A: My understanding is that, according to the United States Constitution, that if the
5 government is going to take land for public use, then in that case, or by taking for
6 public use, it can only occur if the private land owner is compensated justly, or
7 fairly.

8 **Q: Has TransCanada ever contacted you specially to explain the way in which**
9 **the public could use its proposed Keystone XL Pipeline?**

10 A: No, they have not.

11 **Q: Can you think of any way in which the public, that is the citizens of the State**
12 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
13 **Pipeline, as it dissects the State of Nebraska?**

14 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
15 public benefits from this pipeline in any way, how they can use it any way, or how
16 it's in the public interest in any way. By looking at the map, it is quite clear to me
17 that the only reason it's proposed to come through Nebraska, is that because we
18 are geographically in the way from between where the privately-owned Tar Sands
19 are located to where TransCanada wants to ship the Tar Sands to refineries in
20 Houston, Texas.

21 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
22 **crude petroleum, or oil and petroleum by-products that you would like to**
23 **ship in its pipeline?**

24 A: No, it has not.

25 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
26 **products that you, at this time or any time in the future, would desire to place**
27 **for transport within the proposed TransCanada Keystone XL Pipeline?**

28 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: 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 the 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 the 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 the land forever we have to think with a very long term view. By placing their
2 pipeline on under across and through the 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 the land specifically, as well as the
18 lands near the 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 the 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 the 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 the 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 the 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 the 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 the**
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 the 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 the 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 the 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 the 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 the portion of the proposed pipeline route within Nebraska as**
6 **found in Attachment No. 6 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. 7, 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. 7 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 the 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 the 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 the 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?**

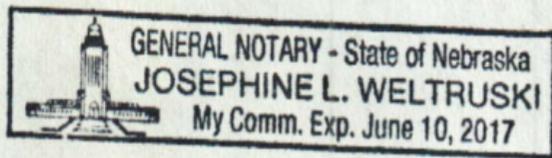
18 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
19 a temporary job spike that this project may bring to a few counties and beyond the
20 relatively small amount of taxes this proposed foreign pipeline would possibly
21 generate. And, instead think about the perpetual 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. 6 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.**



Bryce Naber

Bryce Naber

5-30-17

Subscribed and sworn before me
in my presence this 30th day of
May, a Notary Public in and
for the County of Boone,
State of Nebraska

Josephine L. Weltruski
(signature)

Notary Public

My Commission Exp. 6-10-17

Attachment No. 1



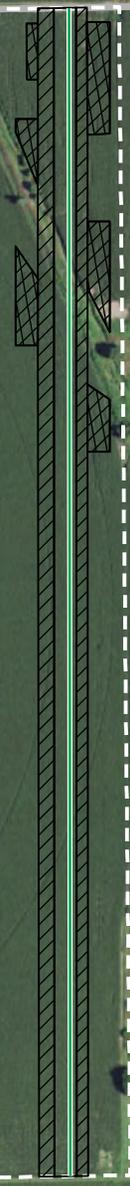
S.006
T.020N
R.005W

S.005
T.020N
R.005W

S.007
T.020N
R.005W

Walter G. Naber and Aria M. Naber Revocable Trust Agreement Dated May 22, 2002
Aria M. Naber
Walter G. Naber Deceased

S.008
T.020N
R.005W



IMAGERY: NAIP 2016



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Walter G. Naber and Aria M. Naber Revocable Trust Agreement Dated May 22, 2002
Aria M. Naber
Walter G. Naber Deceased

TRACT NO. ML-NE-BO-30200.000
STATE: Nebraska
COUNTY: Boone
SECTION: 008
TOWNSHIP: 020N
RANGE: 005W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

Attachment No. 2



Attachment No. 3

**Prepared by and after recording
please return to:**
TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-BO-30200.000

**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**"), **Arla M. Naber, Trustee of the Walter G. Naber and Arla M. Naber Revocable Trust Agreement Dated May 22, 2002**, whose mailing address is 427 S. 5th Street, Albion, Nebraska 68620 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through

a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Boone, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 160 acres, more or less, situated in the County of Boone, in the State of Nebraska, being further described as the NW1/4 of Section 8, T20N, R5W of the 6th P.M., as recorded in Book 107, Page 497 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):

**Walter G. Naber and Arla M. Naber Revocable Trust
Agreement Dated May 22, 2002**

Arla M. Naber, Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

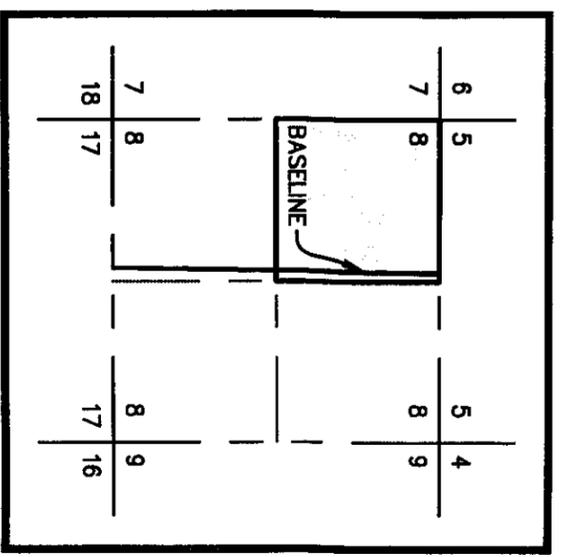
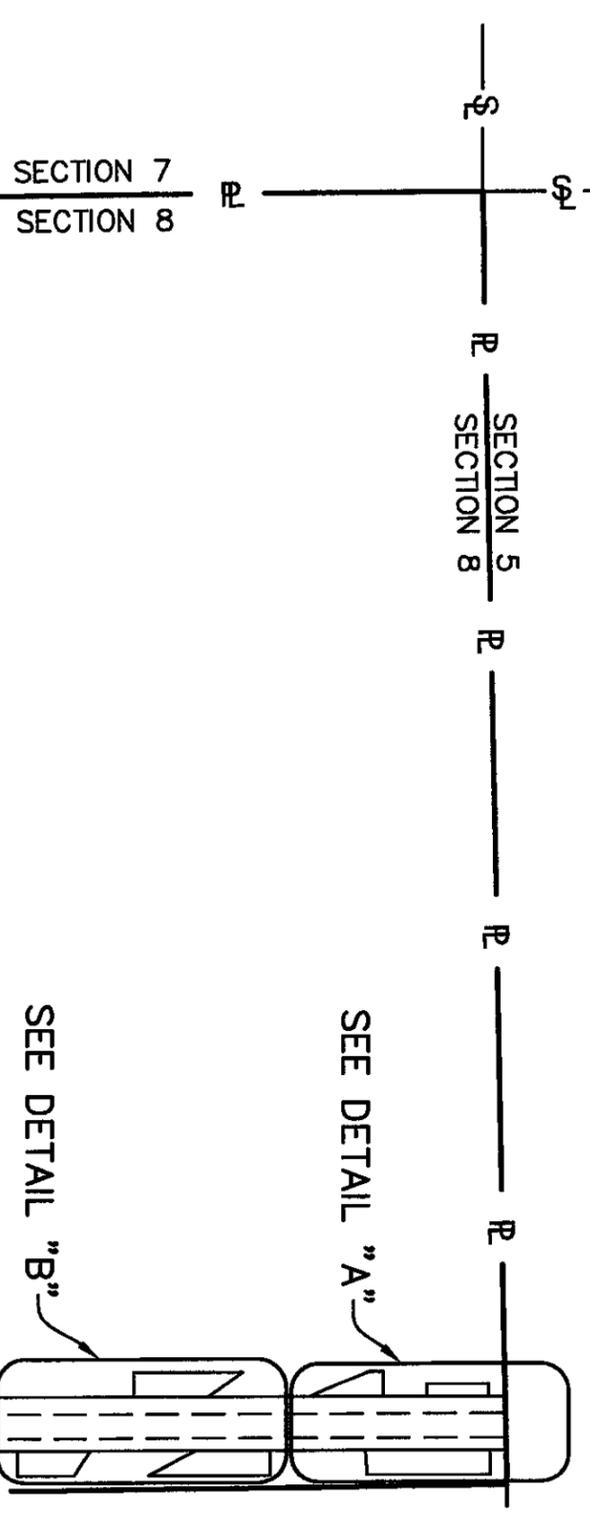
LEGEND
 P PROPERTY LINE
 S SECTION LINE
 \$ PROPOSED TEMPORARY WORKSPACE
 A.T.W.S. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.B.C.N. DEED RECORDS OF BOONE COUNTY, NEBRASKA

PROPERTY LINE
 SECTION LINE
 PROPOSED TEMPORARY WORKSPACE
 ADDITIONAL PERMANENT EASEMENT & RIGHT OF WAY
 DEED RECORDS OF BOONE COUNTY, NEBRASKA

BOONE COUNTY, NEBRASKA

T-20-N, R-5-W, SECTION 8

ML-NE-BO-30200.000



VICINITY MAP
 N.T.S.

WALTER G. NABER AND ARLA M. NABER,
 CO-TRUSTEES OF THE WALTER G.
 NABER AND ARLA M. NABER REVOCABLE
 TRUST AGREEMENT

VOLUME 107, PAGE 497



KEYSTONE XL PROJECT
 EASEMENT AREA

ACROSS THE PROPERTY OF
 WALTER G. NABER AND ARLA
 M. NABER, CO-TRUSTEES OF
 THE WALTER G. NABER AND
 ARLA M. NABER REVOCABLE
 TRUST AGREEMENT
 ML-NE-BO-30200.000

PROJECT: XL EXHIBIT A

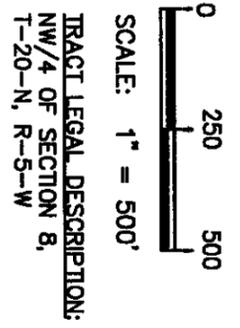
APPROVED BY	DRAWING NUMBER	DATE
SLR	XL-08-ML-SK-3499	
NO.	REVISION	DATE

SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/28/14	PB	ALS



TOTAL DISTANCE ACROSS PROPERTY: 2,611'±
 AREA OF PERMANENT EASEMENT: 3.0 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.6 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 1.1 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.



SCALE: 1" = 500'
 TRACT LEGAL DESCRIPTION:
 NW/4 OF SECTION 8,
 T-20-N, R-5-W

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-30200.000

I, Arla M. Naber, Trustee of the Walter G. Naber and Arla M. Naber Revocable Trust Agreement Dated May 22, 2002, of Boone County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Six Thousand One Hundred Sixty Dollars and No Cents (\$6,160.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all crop 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:

NW/4

Section 8, Township 20N, Range 5W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I have hereunto set our hands on this _____ day of _____, 20____.

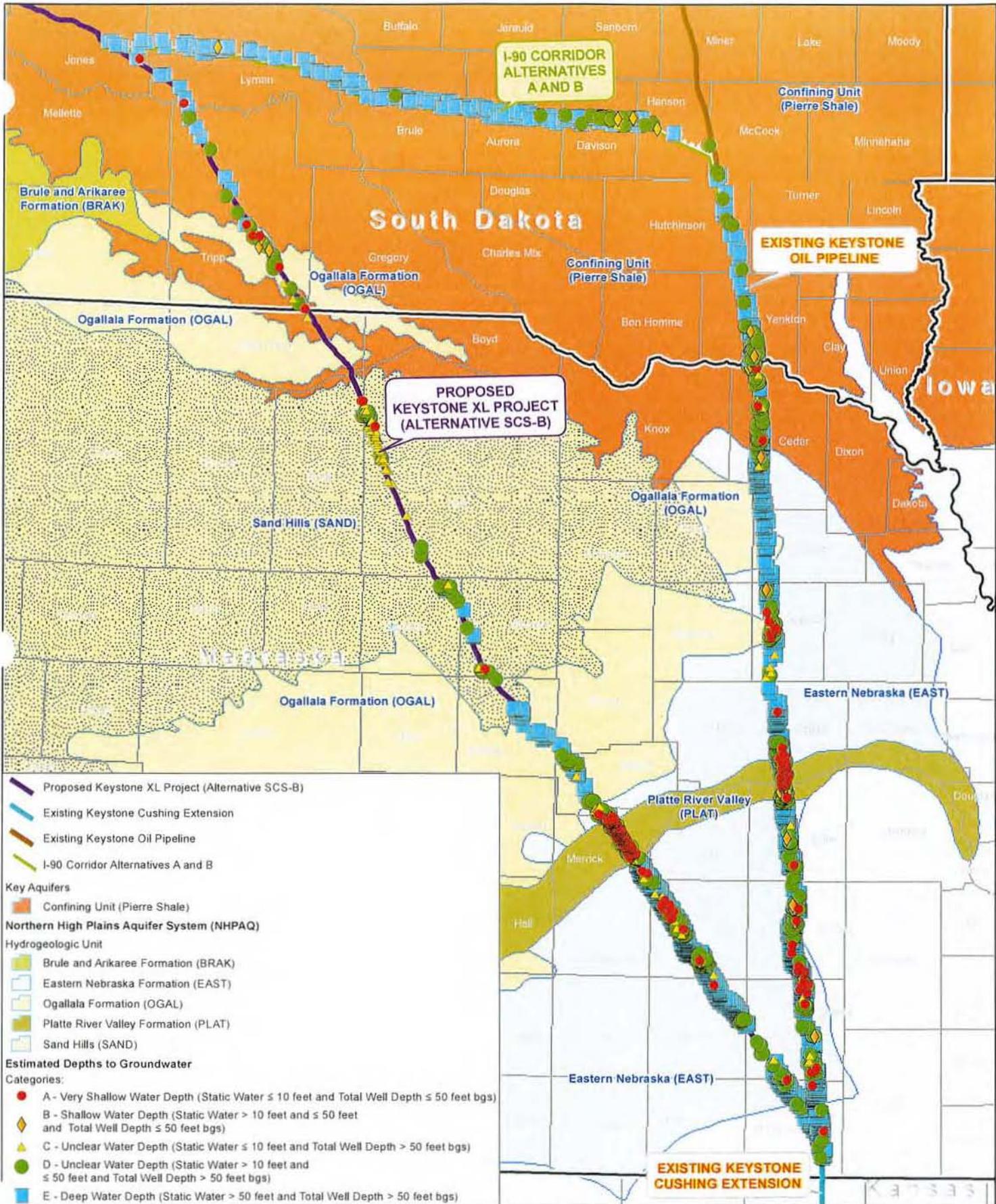
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



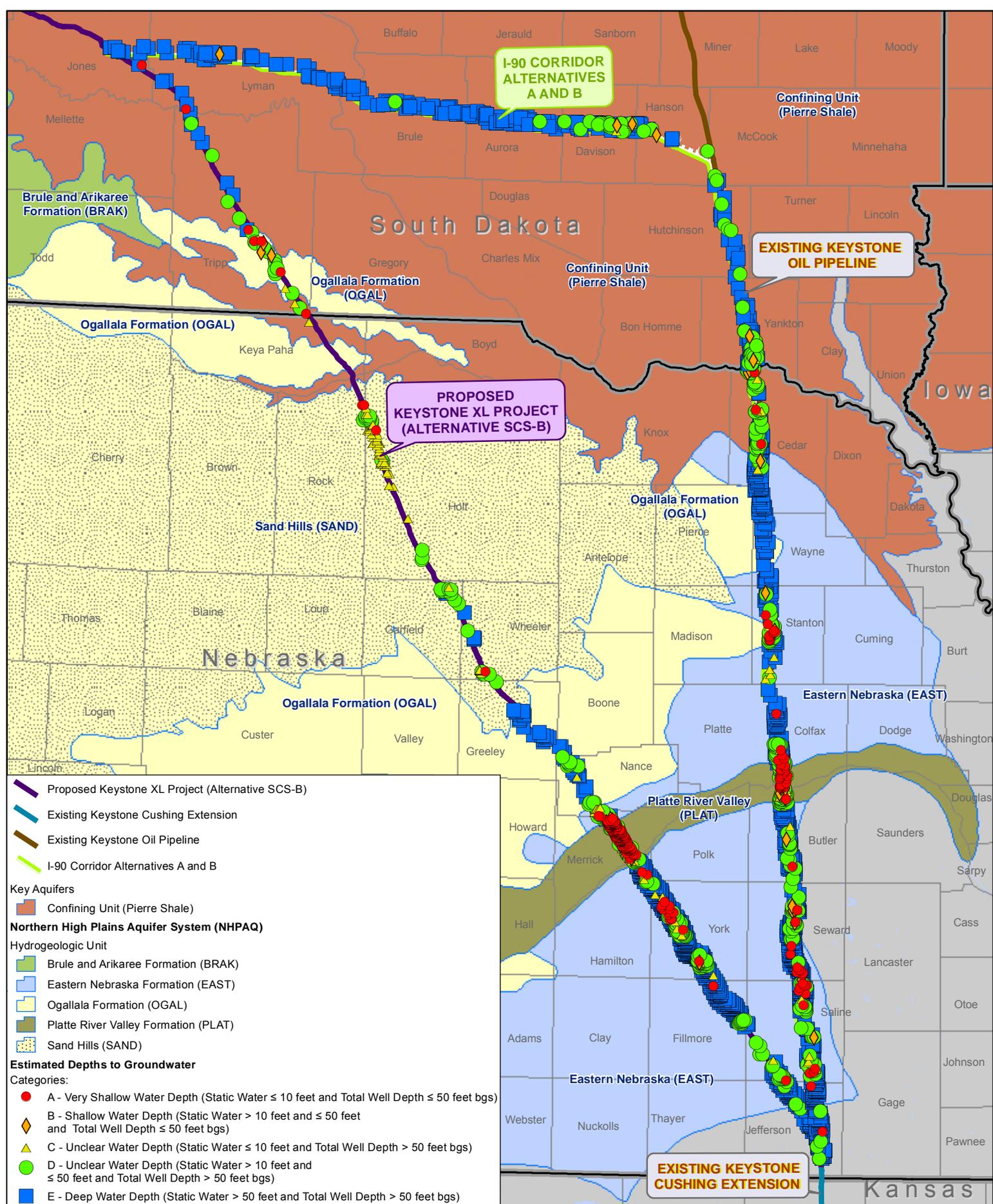
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

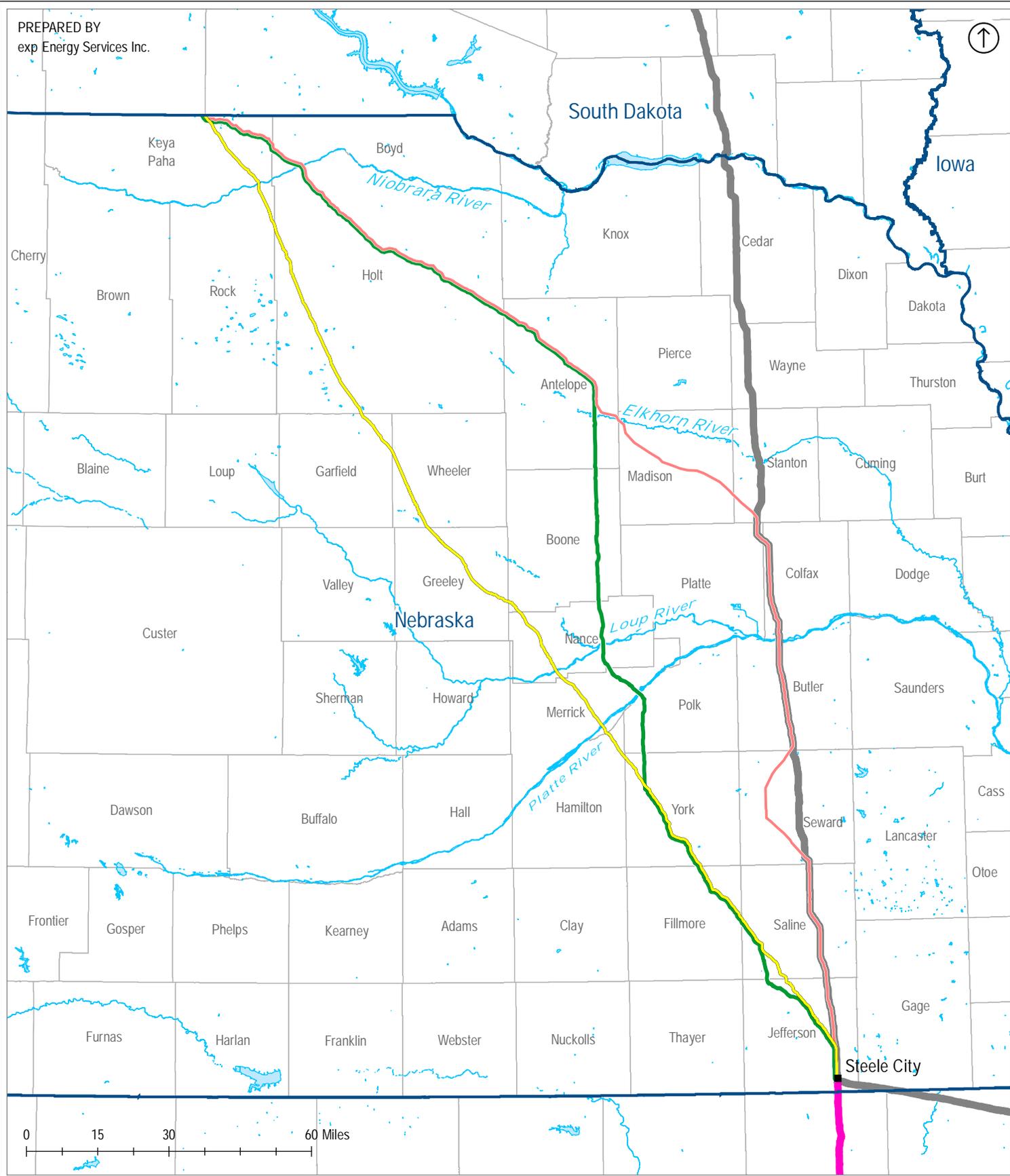
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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
Mary Jane Nyberg in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Polk County)

1 **Q: Please state your name.**

2 A: My name is Mary Jane Nyberg.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Polk County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: 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 how**
3 **long the land has been in your family?**

4 A: 88 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. 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 interfe[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative the their property in
2 preparation or planning of TransCanada’s taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at any time
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada’s control. Some of these vague undefined terms are as follows:

- 27 i. “pipeline installation activities”
- 28 ii. “availability of labor and materials”
- 29 iii. “commercially reasonable costs and expenses”

- 1 iv. “reasonably anticipated and foreseeable costs and expenses”
- 2 v. “yield loss damages”
- 3 vi. “diminution in the value of the property”
- 4 vii. “substantially same condition”
- 5 viii. “an actual or potential hazard”
- 6 ix. “efficient”
- 7 x. “convenient”
- 8 xi. “endangered”
- 9 xii. “obstructed”
- 10 xiii. “injured”
- 11 xiv. “interfered with”
- 12 xv. “impaired”
- 13 xvi. “suitable crossings”
- 14 xvii. “where rock is encountered”
- 15 xviii. “as nearly as practicable”
- 16 xix. “pre-construction position”
- 17 xx. “pre-construction grade”
- 18 xxi. “various engineering factors”

19 Each one of these above terms and phrases as read in the context of the Easement
20 could be problematic in many ways. Notably, undefined terms tend to only get
21 definition in further legal proceedings after a dispute arises and the way the
22 Easement is drafted, TransCanada has sole power to determine when and if a
23 particular situation conforms with or triggers rights affected by these terms. For
24 instance, “yield loss damages” should be specifically defined and spelled out
25 exactly how the landowner is to be compensated and in what events on the front
26 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
27 the Landowner is without contractual rights to define these terms or determine
28 when rights related to them trigger and what the affects may be.

1 **Q: Do you have any other concerns about the Easement language that you can**
2 **think of at this time?**

3 A: I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q: Based upon what you have shared with the Commission above regarding**
6 **TransCanada's proposed Easement terms and agreement, do you believe**
7 **those to be reasonable or just, under the circumstances of the pipeline's**
8 **impact upon you and your land?**

9 A: No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q: Did TransCanada ever offer you financial compensation for the rights that**
12 **they sought to obtain in your land, and for what they sought to prevent you**
13 **and any future land owner of your property from doing in the future?**

14 A: Yes, we received an offer from them.

15 **Q: As the owner of the land in question and as the person who knows it better**
16 **than anyone else, do you believe that TransCanada offered you just, or fair,**
17 **compensation for all of what they proposed to take from you so that their tar**
18 **sands pipeline could be located across your property?**

19 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q: Has TransCanada at any time offered to compensate you annually, such as**
24 **wind farm projects do, for the existence of their potential tar sands pipeline**
25 **across your property.**

26 A: No, never.

27 **Q: At any time did TransCanada present you with or request that you, as the**
28 **owner of the land in question, sign and execute a document called, "Advanced**
29 **Release of Damage Claims and Indemnity Agreement?"**

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
3 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, it is.

5 **Q: What was your understanding of that document?**

6 A: When I read that document in the plain language of that document, it was my
7 understanding that TransCanada was attempting to pay me a very small amount at
8 that time in order for me to agree to give up my rights to be compensated from
9 them in the future related to any damage or impact they may have upon my
10 property “arising out of, in connection with, or alleged to resulted from
11 construction or surveying over, under or on” my land.

12 **Q: Did you ever sign that document?**

13 A: No, I did not.

14 **Q: Why not?**

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small
16 sum of money when I have no idea how bad the impacts or damages that they, or
17 their contractors, or subcontractors, or other agents or employees, may cause on
18 my land at any time in the future that resulted from the construction or surveying
19 or their activities upon my land.

20 **Q: When you reviewed this document, what did it make you feel?**

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
22 shield themselves against known and foreseeable impacts that their pipeline, and
23 the construction of it, would have upon my land. It made me feel that they knew it
24 was in their financial interest to pay me as little as possible to prevent me from
25 ever having the opportunity to seek fair compensation again, and that this must be
26 based upon their experience of unhappy landowners and situations in other places
27 where they have built pipelines.

1 **Q: Has TransCanada ever contacted you and specifically asked you if you**
2 **thought their proposed location of their proposed pipeline across your land**
3 **was in your best interest?**

4 A: No, they have not.

5 **Q: Has TransCanada ever contacted you and specifically asked you if you**
6 **thought their proposed location of their proposed pipeline across your land**
7 **was in the public interest of the State of Nebraska?**

8 A: No, they have not.

9 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
10 **Takings Clause?**

11 A: Yes, I am.

12 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
13 **an American citizens property?**

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 **Q: Has TransCanada ever contacted you specially to explain the way in which**
19 **the public could use its proposed Keystone XL Pipeline?**

20 A: No, they have not.

21 **Q: Can you think of any way in which the public, that is the citizens of the State**
22 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
23 **Pipeline, as it dissects the State of Nebraska?**

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
4 crude petroleum, or oil and petroleum by-products that you would like to
5 ship in its pipeline?**

6 A: No, it has not.

7 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
8 products that you, at this time or any time in the future, would desire to place
9 for transport within the proposed TransCanada Keystone XL Pipeline?**

10 A: No, I do not.

11 **Q: Do you know anyone in the state of Nebraska who would be able to ship any
12 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
13 products within the proposed TransCanada Keystone XL Pipeline?**

14 A: No, I do not. I've never heard of such a person or company like that.

15 **Q: Do you pay property taxes for the land that would be affected and impacted
16 at the proposed TransCanada Keystone XL Pipeline?**

17 A: Yes, I do.

18 **Q: Why do you pay property taxes on that land?**

19 A: Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q: Because you follow the law and pay property taxes, do you believe you
22 deserve any special consideration or treatment apart from any other person
23 or company that pays property taxes?**

24 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q: Do you believe the fact that you pay property taxes entitles you to special
27 treatment of any kind, or special rights of any kind?**

28 A: No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**
2 **enough to qualify you to have the power of eminent domain to take land of**
3 **your neighbors or other people in your county, or other people across the**
4 **state of Nebraska?**

5 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q: Have you at any time ever employed any person other than yourself?**

8 A: Well, yes I have.

9 **Q: Do you believe that the fact that you have, at some point in your life,**
10 **employed one or more other persons entitle you to any special treatment or**
11 **consideration above and beyond any other Nebraskan that has also employed**
12 **one or more persons?**

13 A: No, of course not.

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
15 **have at one point employed another person within this state, entitles you to**
16 **preferential treatment or consideration of any kind?**

17 A: No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q: At the beginning of your statement, you briefly described your property that**
20 **would be impacted by the potential Keystone XL Pipeline, what is your main**
21 **concern on direct impact to your land?**

22 A: We will not be able to run pivot irrigation during construction.

23 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
24 **crude oil pipeline in its preferred location, or ultimate location across the**
25 **state of Nebraska?**

26 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
27 or even bullied around and being made to feel scared that they did not have any
28 options but to sign whatever papers TransCanada told them they had to. I am
29 aware of folks being threatened that their land would be taken if they didn't follow

1 what TransCanada was saying. I am aware of tactics to get people to sign
2 easements that I don't believe have any place in Nebraska or anywhere such as
3 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
4 landowners and convince them they should sign TransCanada's easement
5 agreements. I am aware of older folks and widows or widowers feeling they had
6 no choice but to sign TransCanada's Easement and they didn't know they could
7 fight or stand up for themselves. From a more practical standpoint, I am worried
8 that according to their answer to our Interrogatory No. 211, TransCanada only
9 owns and operates one (1) major oil pipeline. They simply do not have the
10 experience with this type of pipeline and that scares me. There are others but that
11 is what I can recollect at this time and if I remember more or my recollection is
12 refreshed I will share those with the Commissioners at the Hearing in August.

13 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
14 **landowner is reasonable or just?**

15 A: No, I do not.

16 **Q: Do you have any concern about limitations that the construction of this**
17 **proposed pipeline across your affected land would prevent construction of**
18 **future structures upon the portion of your land affected by the proposed**
19 **easement and immediately surrounding areas?**

20 A: Well yes, of course I do. We would not be able to build many, if any, types of
21 structures directly across or touching the easement, and it would be unwise and I
22 would be uncomfortable to build anything near the easement for fear of being
23 blamed in the future should any damage or difficulty result on my property in
24 regards to the pipeline.

25 **Q: Do you think such a restriction would impact you economically?**

26 A: Well yes, of course.

27 **Q: How do you think such a restriction would impact you economically?**

28 A: The future of this land may not be exactly how it's being used as of this moment,
29 and having the restrictions and limiting my ability to develop my land in certain

1 ways presents a huge negative economic impact on myself, my family, and any
2 potential future owner of the property. You have no idea how I or the future owner
3 may want to use this land in the future or the other land across Nebraska
4 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
5 ago it would have been hard to imagine all the advances that we have now or how
6 things change. Because the Easement is forever and TransCanada gets the rights in
7 my land forever we have to think with a very long term view. By placing their
8 pipeline on under across and through my land that prevents future development
9 which greatly negatively impacts future taxes and tax revenue that could have
10 been generated by the County and State but now will not. When you look at the
11 short blip of economic activity that the two years of temporary construction efforts
12 may bring, that is far outweighed by the perpetual and forever loss of opportunity
13 and restrictions TransCanada is forcing upon us and Nebraska.

14 **Q: Do you have any concerns about the environmental impact of the proposed**
15 **pipeline?**

16 A: Yes, I do.

17 **Q: What are some of those concerns?**

18 A: As an affected land owner and Nebraskan, I am concerned that any construction,
19 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
20 a detrimental impact upon the environment of my land specifically, as well as the
21 lands near my land and surrounding the proposed pipeline route.

22 **Q: Do you have any other environmental concerns?**

23 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
24 construction and/or maintenance and operation. I am concerned about spills and
25 leaks that TransCanada has had in the past and will have in the future. This could
26 be catastrophic to my operations or others and to my county and the State.

27 **Q: Do you have any thoughts regarding if there would be an impact upon the**
28 **natural resources on or near your property due to the proposed pipeline?**

1 A: Yes, I believe that any construction, operation, and/or maintenance of the
2 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
3 resources of my land, and the lands near and surrounding the proposed pipeline
4 route.

5 **Q: Do you have any worries about potential impacts from the proposed pipeline
6 to the soil of your land, or land near you?**

7 A: Yes, I believe that any construction, operation, and/or maintenance of the
8 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
9 land, as well as land along and surrounding the proposed pipeline route. This
10 includes, but is not limited to, the reasons that we discussed above of disturbing
11 the soil composition and makeup as it has naturally existed for thousands and
12 millions of years during the construction process, and any future maintenance or
13 removal process. I'm gravely concerned about the fertility and the loss of
14 economic ability of my property to grow the crops, or grow the grasses, or grow
15 whatever it is at that time they exist on my property or that I may want to grow in
16 the future, or that a future owner may want to grow. The land will never be the
17 same from as it exists now undisturbed to after it is trenched up for the proposed
18 pipeline.

19 **Q: Do you have any concerns about the potential impact of the proposed pipeline
20 upon the groundwater over your land, or surrounding lands?**

21 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
22 the proposed Keystone XL Pipeline would have a detrimental impact upon the
23 groundwater of not only under my land, but also near and surrounding the pipeline
24 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
25 simple and it is simply too valuable to our State and the country to put at
26 unreasonable risk.

27 **Q: Do you have any concern about the potential impact of the proposed pipeline
28 upon the surface water on, or near or around your land?**

1 A: Yes, I have significant concerns that any construction, operation, and/or
2 maintenance of the proposed Keystone XL Pipeline would have detrimental
3 impact upon the surface water of not only within my property boundary, but along
4 and near and surrounding the pipeline route, and in fact, across the state of
5 Nebraska.

6 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
7 **upon the wildlife and plants, other than your growing crops on or near your**
8 **land?**

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 wildlife and the plants, not only that are located on or can be found upon my land,
12 but also near and along the proposed pipeline route.

13 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
14 **fair market value of your land?**

15 A: Yes, I do. I am significantly concerned about how the existence of the proposed
16 pipeline underneath and across and through my property will negatively affect the
17 fair market value at any point in the future, especially at that point in which I
18 would need to sell the property, or someone in my family would need to sell the
19 property. I do not believe, and certainly would not be willing to pay, the same
20 price for land that had the pipeline located on it, versus land that did not. I hope
21 there is never a point where I'm in a position where I have to sell and have to
22 realize as much value as I can out of my land. But because it is my single largest
23 asset, I'm gravely concerned that the existence of the proposed Keystone XL
24 Pipeline upon my land will affect a buyer's willingness to pay as much as they
25 would've paid and as much as I could've received, if the pipeline were not upon
26 my property. There are just too many risks, unknowns, impacts and uncertainties,
27 not to mention all of the rights you give up by the nature of having the pipeline
28 due to having the easement that we have previously discussed, for any reasonable

1 person to think that the existence of the pipeline would not negatively affect my
2 property's value.

3 **Q: Have you ever seen the document that's marked as Attachment No. 6, 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 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 the I-90 corridor alternative route, specifically for the portion**
20 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
21 **your testimony, is in the public interest of Nebraska?**

22 A: No, I do not.

23 **Q: Do you believe there is any potential route for the proposed Keystone XL**
24 **Pipeline across, within, under, or through the State of Nebraska that is in the**
25 **public interest of the citizens of Nebraska?**

26 A: No, I do not.

27 **Q: Why do you hold that belief?**

28 A: Because there simply is no public interest based on all of the factors that I am
29 aware and that I have read and that I have studied that this Commission is to

1 consider that would establish that a for-profit foreign-owned pipeline that simply
2 crosses Nebraska because we are geographically in the way between where tar
3 sands are in Canada to where it wants to ship it to in Texas could ever be in the
4 public interest of Nebraskans. We derive no benefit from this project. It is not for
5 public use. Nebraska is simply in the way and when all considerations are taken in
6 there is no net benefit of any kind for Nebraska should this project be placed in our
7 state. Even if there was some arguable “benefit” it is not enough to outweigh all
8 the negative impacts and concerns.

9 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
10 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
11 **of Nebraska because it may bring temporary jobs during the construction**
12 **phase to Nebraska?**

13 A: First of all, not all jobs are created equally. Most jobs that are created, whether
14 temporary or on a permanent basis, don’t come with a project that has all the
15 potential and foreseeable negative impacts, many of which we have discussed here
16 and other witnesses throughout the course of this hearing have and will discuss. If
17 I decide to hire and employ someone to help me out in my farming or ranching
18 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
19 to my land or my town or my county or my state. And I’ve hired someone who is
20 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
21 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
22 jobs are not created equal. Additionally, I understand from what I’m familiar with
23 from TransCanada’s own statements that the jobs numbers they originally touted
24 were determined to be a minute fraction of the permanent jobs that had been
25 projected. According to their answer to our Interrogatory No. 191, TransCanada
26 has created only thirty-four (34) jobs within Nebraska working specifically on
27 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
28 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
29 Further, according to their answer to Interrogatory No. 199, TransCanada would

1 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
2 constructed on its Preferred Route or its Mainline Alternative Route.

3 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
4 **because it would cross your land?**

5 A: No, absolutely not. I am opposed to this project because it is not in the public
6 interest, neither within my community nor within our state.

7 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
8 **was to cross someone else's land?**

9 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
10 the fear and anxiety and potential foreseeable risks and negative impacts that this
11 type of a project carrying this type of product brings foisted upon anyone in this
12 state or any other state.

13 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
14 **Pipeline to cross the state of Nebraska?**

15 A: I don't believe there is an intelligent route because as I have stated I don't believe
16 this project anywhere within Nebraska is within the public interest. However, if
17 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
18 had to go somewhere in the state of Nebraska, the only intelligent route I believe
19 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
20 preferred route and the mainline alternative routes are economic liabilities our
21 state cannot risk.

22 **Q: What do you rely upon to make that statement?**

23 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
24 already exists in that area is reason enough as it is not in our best interest or the
25 public interests to have more major oil pipelines crisscrossing our state. Second,
26 they have all the infrastructure already there in terms of relationships with the
27 counties and local officials and first responders along that route. Third, they have
28 already obtained easements from all the landowners along that route and have
29 relationships with them. Fourth, that route avoids our most sensitive soils, the

1 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
2 Aquifer. Sixth, they have already studied that route and previously offered it as an
3 alternative. Seventh, it just makes the most sense that as a state we would have
4 some intelligent policy of energy corridors and co-locating this type of
5 infrastructure near each other.

6 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
7 **like the Public Service Commissioners to consider in their review of**
8 **TransCanada's Application?**

9 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
10 document below but other things may come to me or my memory may be
11 refreshed and I will add and address those things at the time of the Hearing in
12 August and address any additional items at that time as is necessary. Additionally,
13 I have not had an adequate amount of time to receive and review all of
14 TransCanada's answers to our discovery and the discovery of others so it was
15 impossible to competently and completely react to that in my testimony here and I
16 reserve the right to also address anything related to discovery that has not yet
17 concluded as of the date I signed this document below. Lastly, certain documents
18 requested have not yet been produced by TransCanada and therefore I may have
19 additional thoughts on those I will also share at the hearing as needed.

20 **Q: What is it that you are requesting the Public Service Commissioners do in**
21 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
22 **across Nebraska?**

23 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
24 a temporary job spike that this project may bring to a few counties and beyond the
25 relatively small amount of taxes this proposed foreign pipeline would possibly
26 generate. And, instead think about the perpetual and forever impacts of this
27 pipeline as it would have on the landowners specifically, first and foremost, but
28 also thereby upon the entire state of Nebraska, and to determine that neither the
29 preferred route nor the Keystone mainline alternative route are in the public

1 interest of the citizens of the state of Nebraska. And if the Commissioners were
2 inclined to modify TransCanada's proposed routes and were to be inclined to grant
3 an application for a route in Nebraska, that the only potential route that would
4 make any intelligent sense whatsoever would be twinning or near paralleling of
5 the proposed KXL with the existing Keystone I pipeline. It simply does not make
6 sense to add yet another major oil pipeline crisscrossing our state creating new
7 pumping stations, creating new impacts on additional counties and communities
8 and going through all of the court processes with myself and other landowners like
9 me when this applicant already has relationships with the landowners, the towns
10 and the communities along Keystone I, and that Keystone I is firmly outside of the
11 sand hills and a significantly further portion away from the heart of the Ogallala
12 Aquifer than the preferred route or the Keystone mainline alternative route.

13 **Q: Are all of your statements in your testimony provided above true and**
14 **accurate as of the date you signed this document to the best of your**
15 **knowledge?**

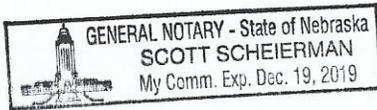
16 A: Yes, they are.

17 **Q: Thank you, I have no further questions at this time and reserve the right to**
18 **ask you additional questions at the August 2017 Hearing.**

Mary Jane Nyberg
Mary Jane Nyberg

Subscribed and Sworn to me before this 26th day of May, 2017.

Scott Scheierman
Notary Public



Attachment No. 1



S.002
T.013N
R.004W

S.011
T.013N
R.004W

Mary Jane Nyberg

IMAGERY: NAIP 2016

0 250 500 Feet



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Mary Jane Nyberg

TRACT NO. ML-NE-PO-40460.000
STATE: Nebraska
COUNTY: Polk
SECTION: 011
TOWNSHIP: 013N
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-PO-40460.000

**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**"), **Mary Jane Nyberg**, whose mailing address is 12569 E. Road, Polk, Nebraska 68654 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and

made a part hereof (the "**Easement Area**") located on real property situated in the County of Polk, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 160 acres, more or less, situated in the County of Polk, in the State of Nebraska, being further described as the NW1/4 of Section 11, T13N, R4W of the 6th P.M., as recorded in Book 70, Page 25 in the Deed Records of Polk County, Nebraska; less and except any conveyances heretofore made.

(the "**Property**"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "**Initial Construction Period**"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "**Temporary Work Space**"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the

negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____, 20____.

GRANTOR(S):

Mary Jane Nyberg

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Mary Jane Nyberg**

Notary Public Signature

Affix Seal Here

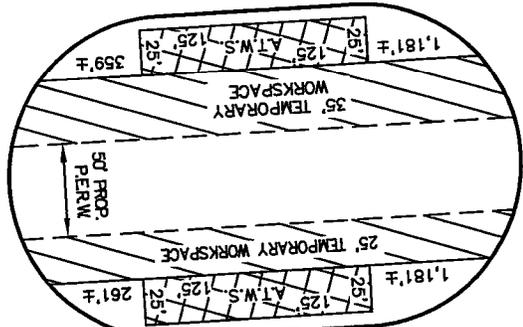
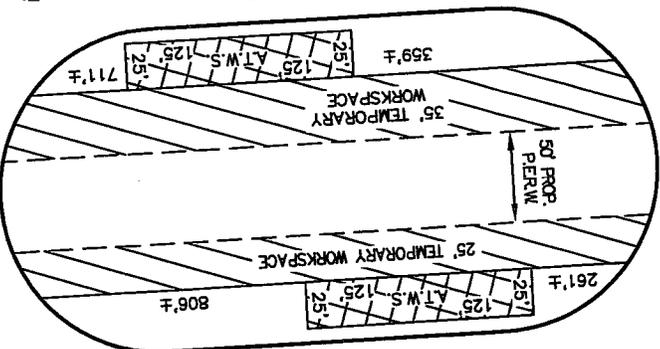
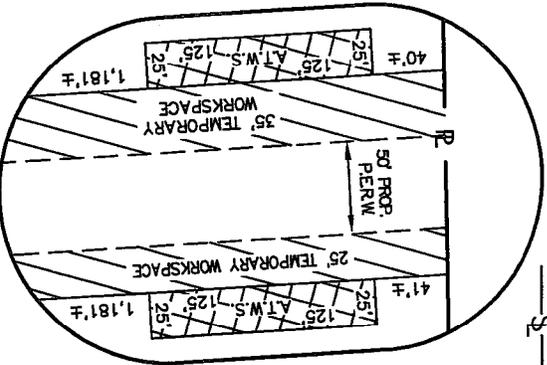
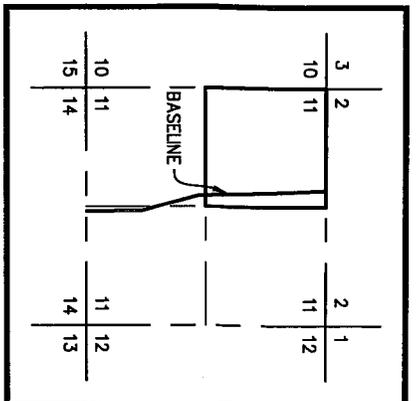
LEGEND
 R PROPERTY LINE
 \$ SECTION LINE
 P PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.P.C.N. DEED RECORDS OF POLK COUNTY, NEBRASKA

POLK COUNTY, NEBRASKA

T-13-N, R-4-W, SECTION 11
 ML-NE-PO-40460.000

MARY JANE NYBERG
 VOLUME 70, PAGE 25-26
 D.R.P.C.N.

SEE DETAIL "A"



TransCanada
In business together

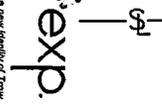
KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
MARY JANE NYBERG
ML-NE-PO-40460.000

PROJECT: **XL**
 EXHIBIT **A**

APPROVED BY: [Signature]
 DRAWING NUMBER: **XL-08-ML-SK-3705**

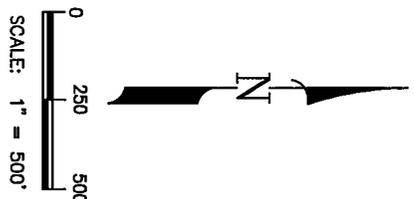
NO. [] REVISION [] DATE []

SCALE: 1" = 500'
 DATE: 10/28/14
 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: 2,664'±
 AREA OF PERMANENT EASEMENT: 3.1 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.7 ACRES
 ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.4 ACRE



TRACT LEGAL DESCRIPTION:
 NW/4 OF SECTION 11,
 T-13-N, R-4-W

Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-PO-40460.000

I, Mary Jane Nyberg, of Polk County, in the State of Nebraska, (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 Polk, State of Nebraska:

NW/4

Section 11, Township 13N, Range 4W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I have hereunto set our hands on this ___ day of

_____, 20____.

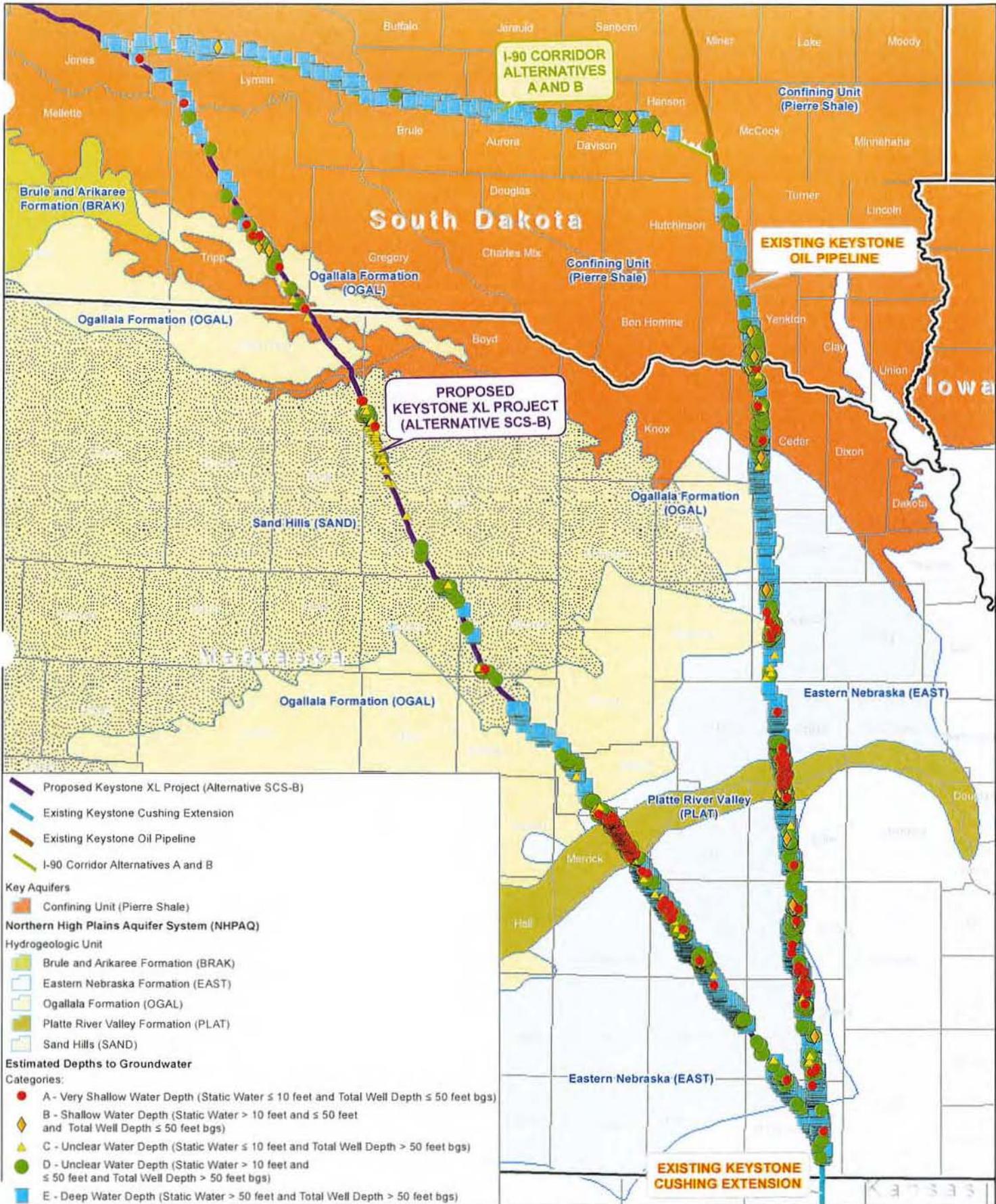
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



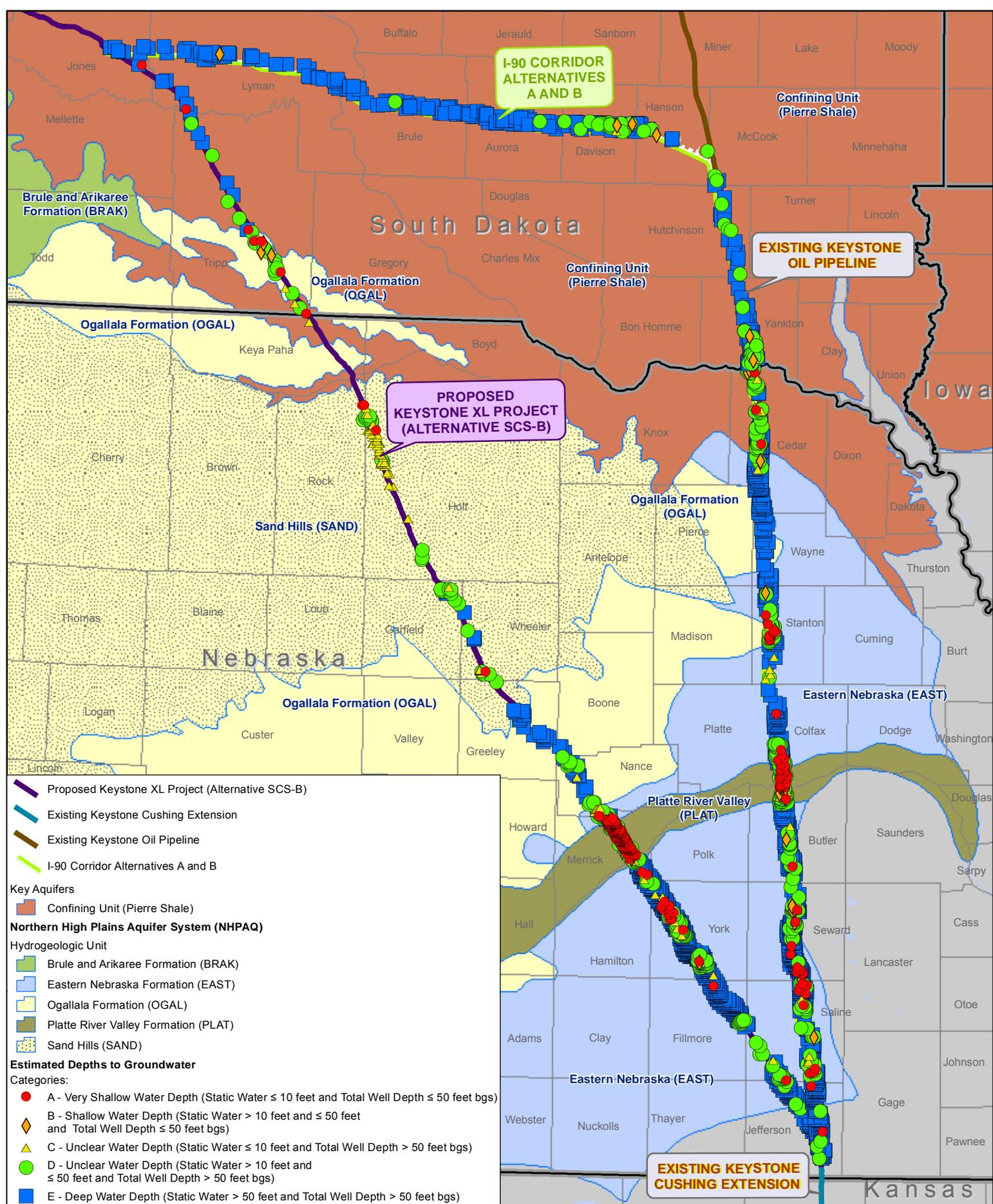
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

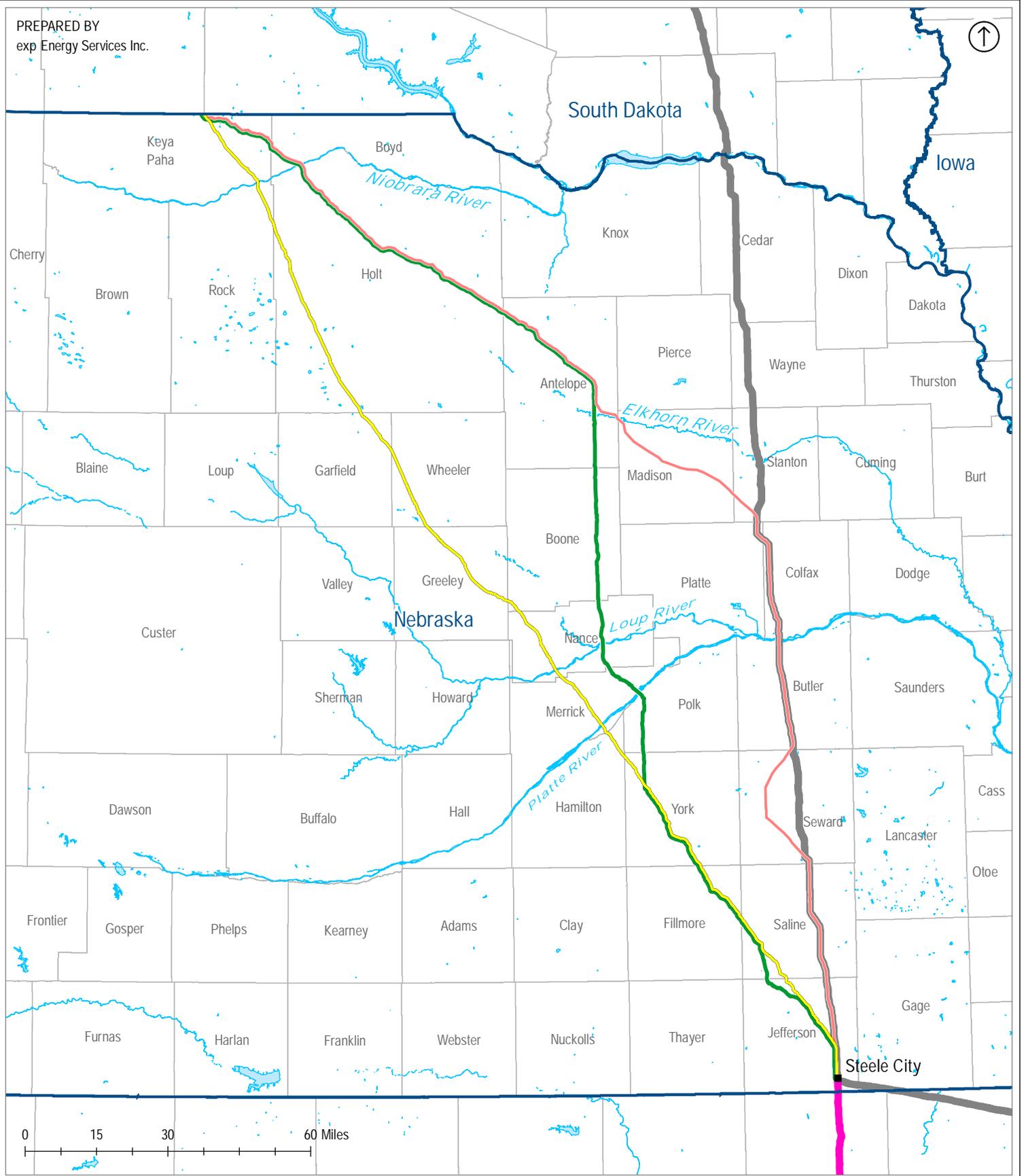
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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



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
Expert Michael O'Hara
in Support of Landowner Intervenors**

State of Nebraska)
) ss.
Douglas County)

- 1 **Q: Please state your name.**
- 2 A: My name is Michael O'Hara.
- 3 **Q: Mr. O'Hara is Attachment No. 1 to this sworn statement a true and accurate**
4 **copy of your most recent CV or Resume?**
- 5 A: Yes it is.
- 6 **Q: Does your CV describe your educational background and relevant**
7 **professional experiences?**
- 8 A: Yes.
- 9 **Q: Is Attachment No. 2 to this sworn statement a copy of your Expert Report in**
10 **this matter?**
- 11 A: Yes it is.
- 12 **Q: What were you asked to do?**
- 13 A. I was asked to analyze several items: first, I analyzed the impact of the proposed
14 KXL pipeline within Nebraska upon property taxes, income taxes, and sale/use
15 taxes; second, I analyzed what economic opportunities are likely to be disrupted or
16 precluded by the existence of the pipeline in the location of the proposed route

1 over the next 50 years; third, I analyzed economic advantages and consequences,
2 and whether the proposed use of the pipeline route by the Applicant more
3 appropriately resemble and approximate a route requiring a real estate interest in
4 the form of a lease, or in the form of an easement; fourth, I analyzed what are the
5 economic consequences of TransCanada's use of an easement, as contrasted with a
6 lease, to acquire and occupy the proposed route over the course of 50 years and
7 upon removal of the depleted pipeline; fifth, I analyzed what are the likely
8 economic consequences upon Nebraska and its counties for any enhancements in
9 budgetary expenses attributable to a) pipeline construction and b) pipeline
10 maintenance; sixth I analyzed the economic study and report of TransCanada
11 economist, Professor Ernie Goss.

12 **Q: In Attachment No. 2 to your sworn testimony, your Expert Report, did you**
13 **come to any professional opinions about TransCanada's proposed KXL**
14 **pipeline's potential impact on taxes within Nebraska?**

15 A: Yes, I did.

16 **Q: Are those opinions and the others held by you as found in your report given**
17 **with a reasonable degree of professional certainty based upon your education,**
18 **background, training, and relevant work experiences?**

19 A: Yes they are, and I incorporate my Report and the opinions therein into my
20 testimony as though set forth fully herein.

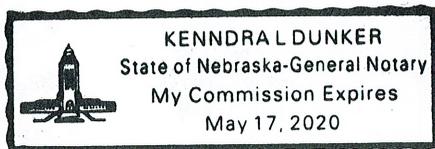


Michael O'Hara

Subscribed and Sworn to before me this 6th day of June, 2017.



Notary Public



Attachment No. 1

Resume Focused on Last Ten Years

Name: Michael J. O'Hara, J.D., Ph.D.
Employer: University of Nebraska at Omaha
College of Business Administration
Finance, Banking, and Real Estate Department
Academic Rank: Professor
Graduate Faculty Status: Yes
Continuous Appointment: Yes

Higher Education

<u>Degree</u>	<u>Institution</u>	<u>Date</u>	<u>Primary Subject Fields</u>
Ph.D. Economics	Univ. of Nebraska- Lincoln	1983	Public Utilities Regulation of Business
Juris Doctor (Law)	Univ. of Nebraska- Lincoln	1978	Regulation of Business

The J.D. is my terminal degree for my UNO academic appointment.

Professional Experience (since joining academe)

1981 - Present College of Business Administration, University of Nebraska at Omaha. Instruction and research in the areas of law and economics, with a current research emphasis on forensic economics. Instructor, 1981. Assistant Professor, 1982 - 1988. Elected to Member, Graduate Faculty, 1986. Associate Professor, 1988 - 2001. Elected to Fellow, Graduate Faculty, Spring 2000. Professor, 2001 - present. Economics Department, 1981. Law and Society Department, 1982 - 1996; Fall 1996, Chair. Finance, Banking, and Law Department, 1997 - 2012. Finance, Banking, and Real Estate Department, 2012 - present.

2016 - present founding officer of Felicity Fund, Inc., now only a shareholder. FFI's business model is materially different than either PGSi or TOI, but is in the money transfer field.

2014 - 2016 Member, Board of Directors, Prosperitas Global Services, Inc. (d.b.a., PGSi). Treasurer, 2014 - 2016. PGSi has closed. PGSi was a Nebraska corporation, a start-up pursuing a novel business model for international money transfers.

2012 - 2016 Co-Editor, *The Earnings Analyst* (TEA). TEA is the scholarly journal of the American Rehabilitation Economics Association (AREA). AREA desired to expand the coverage of TEA and welcomed CPDE's invitation to cooperate in the production of TEA. As Co-Editor O'Hara focuses upon commercial damages.

2012 - 2016 Member, Board of Directors, Association of Regulatory Boards of

- Optometry. Also, various committees of ARBO. Secretary, 2015 - 2016.
- 2011 - present Member, Judicial Council and Resolutions Committee of ARBO. ARBO is the Association of Regulatory Boards of Optometry.
- 2011 - present Collegium of Pecuniary Damages Experts (CPDE). CPDE is a 501(c)(3) professional association incorporated in Nevada. As Secretary I serve as voting ex officio on the Board of Directors. As noted above, I also serve as the CPDE appointed Co-Editor of AREA's journal TEA. Secretary, 2011-2014; Vice President, 2014; President 2015; Past President 2016. Re-elected Secretary in 2017.
- 2010 - present Member, Board of Directors, Nebraska Economics and Business Association. President-Elect, Oct 2012 & Oct. 2016; President, Oct. 2013; Past President, Oct. 2014.
- 2010 - 2012 Member, OE Tracker Committee of ARBO. This committee supervises ARBO's web registry of continuing education accomplishment in satisfaction of licensing requirements specified by individual State regulatory Boards.
- 2009 - present Member, Board of Optometry. Appointed by the Nebraska Board of Health. The Board of Optometry oversees licensure and scope of practice enforcement. Secretary, February 2010 - present. Reappointed November 2014.
- 2002 - 2009 Member, Board of Directors, Ole Holding Corporation. A Nevada for-profit corporation that was in its start up phase to provide financial services to the Spanish speaking communities of the USA and their ancestral homelands. Since second round financing in 2009 serving on spin off corporation's (i.e., Transactions Ole, Inc.'s) Advisory Board rather than its Board of Directors. Doors closed in 2012, sold to the Delaware corporation TOI Pay in December 2016.
- 2005 - 2007 Editor, *Journal of Legal Economics*. *JLE* is the journal of AAEFE. *JLE* focuses upon the proof of monetary damages in the context of litigation.
- 2002 - 2007 Member, Board of Directors, American Academy of Economic and Financial Experts (AAEFE). A national professional association that is a 501(c)(3).
- 2000 - 2003 Member, Board of Directors, Concord Center (f.k.a. The Community Mediation Center). A 501(c)(3) not-for-profit corporation with five employees that contracts with the Nebraska Supreme Court to develop and foster mediation services in the most populated counties of eastern Nebraska. Chair of the Fund Raising Committee, 2000. Co-Secretary, 2000-01 (authored complete revision of Bylaws), Vice President, 2001-03. www.concord-center.com
- 1996 - 1999 Member, LR 455 (1996) Advisory Group. LR 455 is an in-depth study of electric utility deregulation in the USA and its implications for Nebraska's 100% publicly owned electric utility industry. This three year study was completed December 1999. March 1998, presentation on price discrimination. June 1998, detailed questions on impact of deregulation on consumers.

- 1989 - 1994 Member, Board of Directors, Omaha Public Power District (www.OPPD.com). A vertically integrated electric utility serving 13 counties in southeast Nebraska with (then) \$400 million in annual revenues. Secretary, 1990-1992; Vice Chair, 1993. I was a very active member, including (1) being the Board's representative on the task force studying the economic viability of the District's nuclear program; (2) shepherding the restructuring of the District's cost-based rate redesign; and (3) initiating the District's tree planting program.
- 1991-1992 Interim Director, UNO CBA International Center for Telecommunications Management (ICTM). Complete managerial responsibility for a research center with two research associates and 5 FTE of support staff. Responsible for encouraging UNO faculty to adopt telecommunications research topics and for encouraging grant writing. Drafted \$2.6 million, three-year EPSCoR proposal; associates drafted two proposals: \$100,000 and \$50,000; all proposals dealt with the economic development benefits of telecommunications infrastructure. ICTM has been disbanded and reformed into UNO's newest College of Information Science and Technology and its Center for Management of Information Technology (CMIT). I was instrumental in redirecting the emphasis of ICTM away from telephony and towards CMIT's emphasis on information technology.
- 1985-1988 Member, Nebraska Power Review Board (www.nprb.state.ne.us). Vice Chair, 1987. PRB regulates Nebraska's 100% publicly owned electric utility industry by controlling the service territories and capacity additions, but not rates. I led a major revision of the PRB's rules and regulations.
- 1979-1981 Legislative Aide III, Public Works Committee (now split into Natural Resources and Transportation Committees), Nebraska Legislature. Analysis and drafting of legislation related to utilities, highways, and common carriers. I coordinated a comprehensive examination of the structure of Nebraska's publicly-owned electric industry.
- 1979 Research Assistant, Southeast Nebraska Health Systems Agency. Assembled, analyzed, and managed data concerning supply and demand for health delivery systems. (Four months, full-time).
- 1978-1979 Teaching Assistant, Department of Economics, University of Nebraska-Lincoln. Instructional responsibilities for introductory macroeconomics.

Primary Teaching Fields

Law

Business Law Fundamentals, LAWS 3930
 Legal and Ethical Applications, LAWS 3940
 Legal, Ethical, and Social Environment, BSAD 8010
 Valuation of Intellectual Property, BSAD 8620

Economics

Principles of Economics: Microeconomics; ECON 2200
Managerial Economics; BSAD 8100/ECON 8210

Research and Creative Activity

Articles and Book Chapters (all listed)

- "Valuation of Naming Rights", chapter 12 in *The Principles of Sports Marketing* textbook edited by Gary Bernstein; chapter co-author is Greg Ashley of Bellevue University.
- "Learned Hand's False Efficiency", *The Earning Analyst*, volume 14, 2014.
- "Financial Management Fees in Damage Claims", Graham Mitenko and Michael J. O'Hara, *The Earnings Analyst* (TEA), volume XII, 2012.
- "Pecuniary Damage", Michael J. O'Hara, *The Earnings Analyst* (TEA), volume XI, 2010.
- "*Post Hoc Ergo?: A Reply to Craig Marxsen's 'Fabricating the Doomsday Crisis'*", Christopher Decker and Michael J. O'Hara, *B>Quest*, 2010. Invited Commentary.
- "Contracting with a Co-Author", Michael J. O'Hara and Graham Mitenko, *Economics & Business Journal: Inquiries & Perspectives*, volume 2, Number 1, October 2009.
- "Digest of Selected Articles: Usufructs". Michael J. O'Hara. *Real Estate Law Journal*, volume 37, number 2, Fall 2008.
- "Assessing the Mobility of Value of Tenure to a Faculty Member". Graham Mitenko and Michael J. O'Hara, *Economics & Business Journal: Inquiries & Perspectives*, volume 1, issue 1, October 2008.
- "The Expert Opinion: An Interview on Intellectual Property Law with Michael J. O'Hara, J.D., Ph.D." Interview by Dan Peak. *Journal of information Technology Cases and Applications*, volume 7, issue 1, 2005.
- "Governing for Genuine Profit" *Vanderbilt Journal of Transnational Law*, 2003, vol. 36, p. 1366. (Proceedings version published as Working Paper #533 of the University of Michigan's William Davidson Institute.) Invited. Solo authored.
- "Scope of Discovery of an Expert's Work Product", *Journal of Legal Economics*, 2002, vol. 10, no. 2, pp. 37-54. Double blind refereed. Jointly authored with Dr. Graham Mitenko of UNO CBA.
- "Precedence and Forensic Economics" §1640, pages 16-15 through 16-18, in *Determining Economic Damages*, Drs. Gerald D. Martin and Ted Vavoulis, James Publishing, Costa Mesa: CA, 2002.
- "Intellectual property and information technology" *International Encyclopedia of Business & Management*. October 2001. Invited and double blind refereed. Jointly authored with Dr. Dan Peak of the University of North Texas.
- "Quandary of Who Owns the Content of Distance Education" *Journal of Information Systems Education*, volume 11 & 12, 2000. Refereed. Jointly authored with Dr. D. Peak of UNO IS&T's ISQA.
- "Intellectual Property" in International Encyclopedia of Business Management's

- Handbook of Information Technology in Business*. Malin Zeleny, Editor. October 1999. Refereed. Jointly authored with Dr. D. Peak of UNO IS&T's ISQA. (Now under revision for second edition. Dr. Peak now of University of North Texas.)
- "UNO versus ZAP," chapter in *Negotiation Simulation Exercises: Simulations with Teaching Notes* Fall 1998. Center for Dispute Resolution, Willamette University College of Law, Salem, Oregon.
- "Internship and Consulting Engagements: Management of the University's Liability," *Journal of Management Issues*, Vol. 12, #1, Spring 1999. Refereed. Jointly authored with Dr. D. Peak of UNO CMIT.
- "Practical Liability Issues of Information Technology Education: Internship and Consulting Engagements," *Informing Science: The International Journal of an Emerging Discipline*. Volume 1, Number 2, Winter 1998, pp. 43-51. Refereed. Jointly authored with Dr. D. Peak of UNO CMIT.
- "Rural Intrastate Air Service Systems," *Regional Science Perspectives*, 24 (1), 3-22, (January, 1994). Refereed. Jointly authored with C. Bayer and Dr. G. Mitenko, both of UNO CBA.
- "The Effects of Ownership and Investment upon the Performance of Franchise Systems," *American Economist*, Vol. XXXIV, Spring 1990. Refereed. Jointly authored with Dr. F. W. Musgrave of Ithaca College and Dr. W. L. Thomas of the State University of New York at Oneonta.
- "Retroactive Application of State Laws Regulating Franchise Relationships," *Franchise Law Journal*, Vol. 7, No. 3, Winter 1987. Refereed.
- "The Importance of the *Guidelines for Vertical Restraints*: with an Emphasis on Franchising," *Capitol University Law Review*. Vol. 15, No. 4, 1986. Refereed.
- "The Economic Expert in the Antitrust Arena," *Antitrust Law and Economics Review*. Vol. 12, No. 2, 1980. Refereed.

Proceedings (none is last ten years)

Papers Presented and Other Publications (only last ten years)

- "An Expert's Report", Michael J. O'Hara, Collegium of Pecuniary Damages Experts (CPDE), Las Vegas, NV, March 2017 (updated version of AEF 2017 paper).
- "Expert's Report", Michael J. O'Hara, Academy of Economics and Finance (AEF), Charleston, SC, February 2017.
- "Carpets Match the Drapes: Idioms in the Classroom", Michael J. O'Hara, Academy of Economics and Finance (AEF) Teacher Training Program (TTP), Charleston, SC, February 2017.
- "Quandaries", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), San Juan, Puerto Rico, August 2016.
- "Carpets Match the Drapes", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), San Juan, Puerto Rico, August 2016.
- "Retainer Agreements / Fee Schedules, Document Production, E&O Insurance & Expert Liability", Michael J. O'Hara and Graham Mitenko, Collegium of Pecuniary

- Damages Experts (CPDE), Las Vegas, Nevada, March 2016.
- "Tasks of an Expert Witness", Michael J. O'Hara, Academy of Economics and Finance (AEF), Pensacola, Florida, February 2016.
- "Environmentally Preferential Purchasing Survey Results", Michael J. O'Hara, Canadian Academy of Legal Studies in Business (CanALSB), Toronto, May 2015.
- "Ethics for Pecuniary Damage Experts", Michael J. O'Hara, Collegium of Pecuniary Damages Experts (CPDE), Las Vegas, Nevada, March 2015.
- "Greenwashing", Michael J. O'Hara, Academy of Economics and Finance (AEF), Jacksonville, Florida, February 2015.
- "EPP Survey Results", Michael J. O'Hara, Academy of Economics and Finance (AEF), Jacksonville, Florida, February 2015. "Stigma Effects on Valuation", Michael J. O'Hara, Academy of Economics and Finance (AEF), Chattanooga, Tennessee, February 2014.
- "Ethical Issues and Assessment", Michael J. O'Hara, Association of Government Accountants, Omaha, Nebraska, October 2013.
- "RRR via Brownfields", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), Boston, Massachusetts, August 2013.
- "'Random' Regulation in Nebraska", Academy of Economics and Finance (AEF), February 2012, Mobile, Alabama.
- "Learned Hand's False Efficiency", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), Kansas City, Missouri, August 2012. An **updated version** presented to the Nebraska Economics and Business Association (NEBA), October 2012, Lincoln, NE.
- "Entrepreneurship: the T of STEM", Michael J. O'Hara, Nebraska Economics and Business Association (NEBA), October 2012, Lincoln, NE.
- "A Clearinghouse for Forensic Economics", Michael J. O'Hara Collegium of Pecuniary Damage Experts (CPDE), Las Vegas, Nevada, March 2012.
- "A Baker's Big Top Ten List of Recent Cases of Interest to FEs", Michael J. O'Hara, Collegium of Pecuniary Damage Experts (CPDE), Las Vegas, Nevada, March 2012.
- "A Steep Learning Curve", Nebraska Economics and Business Association (NEBA), October 2011, Norfolk, Nebraska. Co-authored with Graham Mitenko. *A revised version presented* at the Academy of Economics and Finance (AEF) in February 2012 in Charleston, South Carolina.
- "Mitigation of Wrongful Termination Damages", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2011, New Orleans, Louisiana.
- "A Modest Proposal for Inclusion of Financial Management Fees", Graham Mitenko and Michael J. O'Hara, *presented both to* the Academy of Economics and Finance (AEF) in February 2011 in Jacksonville, Florida as well as to the Collegium of Pecuniary Damages Experts (CPDE) in March 2011 in Las Vegas, Nevada.
- "Scope of Practice: As Seen Through Medicated Contact Lenses", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2010, Richmond, Virginia.
- "Subrogation", Michael J. O'Hara, Academy of Economics and Finance (AEF), February 2010, Houston, Texas.
- "Pay Day Loans", Michael J. O'Hara, Smart Money Week, Omaha, Nebraska.

- "Wrongful Death and Personal Injury Damages in Nebraska", Michael J. O'Hara, Nebraska Economics and Business Association (NEBA), October 30, 2009, Omaha, Nebraska
- "Wrongful Death and Personal Injury Damages in Nebraska", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2009, Denver, Colorado.
- "Honey, They Shrank the Honey", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2009, Denver, Colorado.
- "Pecuniary Value", Michael J. O'Hara, Collegium of Pecuniary Damages Experts (CPDE), April 2009, Las Vegas, Nevada.
- "Fiduciary Trust and Personal Banking", Graham Mitenko, Michael J. O'Hara, and Susan Eldridge. Academy of Economics and Finance (AEF), February 2009, Pensacola, Florida.
- "Contracting with a Co-Author", Michael J. O'Hara, Graham Mitenko, and Janet West. Academy of Economics and Finance (AEF), February 2009, Pensacola, Florida.
- "Contract for a Co-Author", Michael J. O'Hara and Graham Mitenko. Nebraska Economics and Business Association (NEBA), October 2008, Crete, Nebraska. (Revised and submitted to the *Economics and Business Journal* using the AEF revision noted above.)
- "Rack the Value", Michael J. O'Hara. First version presented at the Academy of Legal Studies in Business (ALSB), August 2008, Long Beach, California. Second version presented at the Nebraska Economics and Business Association (NEBA), October 2008, Crete, Nebraska
- "The Retirement Conundrum", Graham Mitenko and Michael J. O'Hara, Academy of Economics and Finance (AEF), February 2008, Nashville, Tennessee.
- "Faculty Retirement Variables", Graham Mitenko and Michael J. O'Hara, Nebraska Economics and Business Association (NEBA), October 2007, Hastings, Nebraska.
- "Trespasser or Implied Invitee: *Apis Mellifera*". Michael J. O'Hara. Academy of Legal Studies in Business (ALSB), August 2007, Indianapolis, Indiana.
- "Creeping Up the Ladder to the "Best and Safest" Risk-Free Return". Graham Mitenko and Michael J. O'Hara, American Academy of Economic and Financial Experts (AAEFE), March 2007, Las Vegas, Nevada.
- "Applying Geometric Returns During Interest Rate Changes". Graham Mitenko and Michael J. O'Hara, Academy of Economics and Finance (AEF), February 2007, Jacksonville, Florida.

Other Creative Activity (all)

Economics Ph.D. Dissertation: *The Nebraska Power Review Board: Regulating a Publicly-Owned Electric Utility Industry*. December 1983. Advisor: Dr. J. R. Felton.

Introduction to Legal and Economic Analysis, self published textbook for BSAD 8010. Initial draft during Spring 2004, first hardbound copy Summer 2004; second hardbound copy Fall 2004, third hardbound copy Spring 2005.

SERVICE TO PROFESSION AND DISCIPLINE

Supervision of Major Student Research Projects

IN PROGRESS:

Member, Ph.D. Dissertation Supervisory Committee, Alicia Buttner, Psychology.

LIKELY TOPIC: canine interaction with humans and measurement of canine stress. January 2012 - present.

Member, Ph.D. Dissertation Supervisory Committee, Penny Westphal, Criminal Justice, course work in progress.

COMPLETED (last ten years):

Rachel Ouranda, pursuing an MBA, BSAD 8900, TOPIC: "Valuing a Website".

Member, UNO Department of Psychology Masters Thesis Supervisory Committee, Kathryn "Kitty" Dybdall, TOPIC: "Measuring Stress and Social Behaviors in Domestic Cats at a Local Humane Society", May 2011.

Member, Supervisory Committee for Education Ph.D. Dissertation by Gary Ogden Harper, *An Interpretive Biography of Saint Nicholas: Applying Contextual Analysis to the Historical and Mythological Evolution of Santa Claus to Create New Teaching and Learning Paradigms*, August 2009.

Chair, MBA Thesis Supervisory Committee, Deepak Gupta, *A Lost Profits Estimate for Information Technology Start-ups*, May 2009.

Editorial Board Membership and/or Service as a Reviewer:

EDITORIAL DUTIES

The Earnings Analyst, 2011 - 2016,

Co-Editor O'Hara appointed by CPDE;

Editor Bob Male appointed by AREA.

Economics & Business Journal, 2009 - present. Book Review Editor.

CPDE Compendium, 2009 - present. Co-editor of newsletter with Bob Male.

Business Quest, 2012 - present. Member of Editorial Board.

Journal of Legal Economics, Editor, 2005 - 2007.

REVIEWER DUTIES

Academy of Legal Studies in Business

American Business Law Journal, Staff Reviewer, 2006 - present.

Annual Meeting Proceedings, 1995 - present.

Discussant, Distinguished Papers, 1996, 1997, 1999 - 2002, 2004.

Journal of Legal Studies in Business, reviewer, 2001 - present.

Journal of Business Ethics, reviewer, 2009 - present.

Midwest Law Journal, reviewer, 2008 - present.

Journal of Legal Economics, reviewer, 2000 - 2005; then Editor 2005 through 2007.

Journal of Management Issues, reviewer, 1988 - 2002.

The Earnings Analyst, reviewer 2016 - present; was Co-Editor 2011 - 2016.

Membership in Professional Organizations (some no longer are active):

Primarily Law Related

Academy of Legal Studies in Business (ALSB)
American Bar Association (ABA)
American Intellectual Property Law Association (AIPLA)
American Association for Justice (AAJ, f.k.a., ATLA)
Nebraska Bar Association
Nebraska Trial Lawyers Association (NTLA)

Primarily Economics Related

Collegium of Pecuniary Damage Experts (CPDE), Founding member 2009.
Secretary and Member, Board of Directors, March 2011 - present.
Co-Editor, *The Earnings Analyst*.
Nebraska Economics and Business Association (NEBA)
President-Elect, 2012; President, 2013, Past President, 2014.
Board of Directors, 2010 - present.
Book Review Editor, *Economics & Business Journal*, 2009 - present.
National Association of Forensic Economists (NAFE)
Ad Hoc Membership Committee, 2003-2004.
American Economics Association (AEA)
Academy of Economics and Finance (AEF)
American Academy of Economic and Financial Experts (AAEFE)
Board of Directors, 2002 - 2007.
Editor, *Journal of Legal Economics*, 2005 - 2007.
National Association of Business Economics (NABE)
Missouri Valley Economics Association (MVEA)
Omaha Green Coalition.

Primarily Service Related

Omicron Delta Epsilon (Economics Honorary) Life Member
Beta Gamma Sigma (Business Honorary) Life Member
President of Local Chapter, 1988-1991

University Service (last ten years)

College

Faculty Advisor, 2012 - 2017. G-BASIS student group (Green Businesses Advancing Strategic Integration of Sustainability).
Green Team, 2011 - 2017. The UNO CBA Green Team is pursuing sustainability in college operations.
Ad Hoc Coordinator of CBA's AACSB Reaffirmation of Accreditation, 2003 - 2011. UNO CBA successfully reaccredited in 2011.
CBA External Relations Council, Aug. 2009 - 2011.

CBA Personnel Advisory Council, 2004 - Aug. 2010.
CBA Strategic Planning Council, 2005 - Aug. 2009.
Graduate Program Committee; Chair, 1991-1993; Member, 1989-1993; as well as sabbatical replacement member during Spring 1999 and Spring 2010.

University

UNO Budget Advisory Committee; Member 2012 - present.
Faculty Advisor, UNO student group, G-BASIS, whose membership is focused on CBA, Fall 2011 - 2017. As part of UNO's and as part of CBA's sustainability efforts I lead reactivation of a defunct student group (i.e., Ecology NOW), which the new members renamed G-BASIS (i.e., green businesses advancing strategic integration of sustainability).
UoN Executive Graduate Council, Aug. 2010 - July 2013; also 2000.
UNO Graduate Council, March 1998 - August 2000; and August 2004 - August 2007; August 2010 - 2014.
Committee "A" (Policy), August 2004 - August 2007; August 2010 - present.
CO-Chair of Committee "A", 2011; 2012.
Student Appeal Committee, 1999-2000; August 2010 - August 2011.
Program Review Committee, 2010, Geography/Geology.
Committee "C" (Personnel), March 1998-August 2000.
UNO Student Publications Board (i.e., publisher of the *Gateway*), August 2010 - July 2014.
UNO Priorities Committee: STEM. In Fall 2011 UNO has chosen five priority areas and formed committees to assemble resources and develop an implementation plan for those priorities. STEM (science, technology, engineering, and mathematics) is one of those five.
UNO Facilities Planning Committee; Member 2003 - 2012.
Academic Freedom and Tenure Committee; Member, 1996 - 2002; 2003 - 2010; Chair, 1998 - 2002. Presided over May 1998 trial resulting in dismissal, after 34 years with UNO, of Professor Gordon Becker (Psychology). Re-elected 1999. Presided over May 2000 trial affirming the denial of tenure for Dr. Jeffrey Johnson (Aviation). Presided over August 2006 trial affirming the denial of tenure for Dr. Pamela Owens (Philosophy and Religion). Re-election in October 2006.
Technology Transfer Committee; Member, 1996 - 2007. Committee formed upon my suggestion to Chancellor. Functions transferred to UNMC's and UNL's intellectual property offices.

AWARDS AND HONORS (last ten years)

CBA Summer Teaching Fellowship (2017): "B-law for Start-ups".
CBA Summer Research Fellowship (2015): Business Case re Brownfields.
CBA Summer Research Fellowship (2013): Greenwashing.
UNO Professional Development Leave (2013): "Law & Econ of Pollution Prevention".
CBA Summer Teaching Fellowship (2012): "Creating LAWS 4630 / BSAD 8636 'Brownfields in Sustainable Systems'".

(all) DEPOSITIONS and TESTIMONIES: Rule 26

January 2016

McGowan v. Platte Valley Medical Group
CI 1 00589; District Court of Buffalo County, Nebraska
Retained by Defendant. Wrongful discharge; mitigation of damages.
Deposition: January 8, 2016.
Trial: none; settled in March 2016.
Attorney: Kate Jones, Kutak, Rock, LLP, Omaha Nebraska.

April 2006:

Koenig v. CBIZ Benefits & Insurance Services, Inc.
8:04 CV 486 (D. Neb. 2005)
Retained by Defendant. Covenant not to compete; lost profits.
Deposition: none
Trial: none, case settled week prior to trial date of October 10, 2006
Attorney: Alan Rupe, Kutak Rock, LLP, Wichita, Kansas;
Kutak Rock's Omaha office contact was attorney Janis Winterhof.

July 2004:

Eunice M. Foster-Holland v. Roberts Dairy Company, LLC
8:03 CV469 (D. Neb. 2004)
Retained by Defendant. Title VII.
Deposition: none
Trial: none
Attorney: Angela Lisec, Blackwell Sanders Peper Martin LLP, Omaha, Nebraska

MAY 2001:

Nash Finch v. Rubloff Hastings
4:00 CV206 (D. Neb. 2000).
Retained by Plaintiff. Lost Profits.
Deposition: none.
Trial: testimony on February 5, 2002.
Attorney: Pamela Dahlquist, Kutak Rock, LLP, Omaha, Nebraska

MARCH 2001:

Nebraska On-Ramp, Inc. v. US West Communications, Inc.
8:99 CV284 (D. Neb. 1999)
Retained by Defendant. Lost Profits.
Deposition: March 23, 2001.
Trial: none, case settled, prior to trial, week of 1-1-2002.
Attorney: Richard Jeffries, Kutak Rock LLP, Omaha, Nebraska.

Attachment No. 2

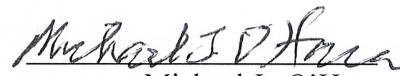
Michael J. O'Hara, J.D., Ph.D.

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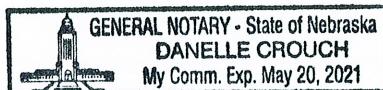
Professor
College of Business Administration
University of Nebraska at Omaha
Omaha NE 68182
402 - 554 - 2823

Nebraska
Douglas County ss.

I, Michael J. O'Hara, do swear under oath that the report that follows is based on my personal and professional education, training, knowledge, investigation and experience. I have applied regularly recognized research and analytical methodologies, and used to generally recognized and accepted economic and finance analytical processes to reason through, and reach, the conclusions expressed below. The contents of this report are known to me personally and my conclusions represent my professional work product. I am prepared to testify about these matters.


Michael J. O'Hara

Subscribed and sworn to before me on June 6th, 2017 by Michael J O'Hara.




Notary Public

Report: TransCanada Keystone XL Pipeline -- Nebraska Route

My name is Michael J O'Hara. My professional resume or curriculum vitae is attached to this Report as **Attachment 1**. It sets forth my credentials. The subject matter of this report is within the scope of my professional expertise.

I used methods of analysis, testing and deduction commonly used in generally accepted by economists engaged in the study of similar subjects in the United States and around the world. For example, these methods can be seen as used in applied in many publications of the Organisation for Economic Cooperation & Development (OECD). OECD is an international organization headquartered in Paris, France with a staff of 2500 persons and annual publications of approximately 250 titles per year, substantially all of which are about economics, and other matters designed to improve the economic and social well-being of the people around the world The OECD is one of the world's foremost economic organizations. It was organized by the United States, Canada and 18 European nations in 1960.

The methods I use or also recognized by many publications in my view, including, but not limited to publications of the *Congressional Budget Office* of the United States Congress, the

Office of Management & Budget of the United States, and publications by numerous economists employed by the Federal Reserve System and the regional Federal Reserve Banks.

Documents Reviewed

I had access to, and I reviewed or consulted the following publications during the course of my work:

1. 2017 TransCanada KXL pipeline Co., LTD Application filed with the Nebraska PSC.
2. NE PSC Testimony of TransCanada Witness Barnett
3. NE PSC Testimony of TransCanada Witness Beaver
4. NE PSC Testimony of TransCanada Witness Fuhrer
5. NE PSC Testimony of TransCanada Witness Goss
6. NE PSC Testimony of TransCanada Witness Kothari
7. NE PSC Testimony of TransCanada Witness Palmer
8. NE PSC Testimony of TransCanada Witness Portnoy
9. NE PSC Testimony of TransCanada Witness Schmidt
10. TransCanada Proposed Easement Form
11. Route Map
12. Summary, Names, Number of Property Owners
13. List of Counties and Governing Bodies
14. Environmental Impact Statement
15. IRS Pub 946, How to Depreciate Property
16. Statement of Ethical Principles & principles of Professional Practice, Nat'l Ass'n of Forensic Economists
17. L. Malm, Taxplainer: State & Local Impact of Keystone Pipeline (January 2017).
18. Neb Rev Stat § 57-1401 et seq. & PSC Reg. Tile 291, Ch. 9 of Neb Admin Code.
19. Article, 10-Year Treasury Constant Maturity Rate, Federal Reserve Bank of St. Louis, June 1, 2010.
20. 350 Neb Admin Code Real Property Valuation, Assessment Regulations
21. L Stockman, Keystone XL Benefits from Taxpayer Subsidies, Oil Change Int'l (Oct 2012).
22. ASTM E 1527-00: Environmental Site Assessments: Phase I ESA Process.
23. Z Hejzlar, Technical Aspects of Phase I/II Environmental Site Assessments (ASTM MNL43).
24. Charles Brownman, Hazardous Liquids Pipelines – Reg. & Due Diligence (apps.americanbar.org/buslaw/committees/CL400000pub/newsletter/.../brownman.pdf)
25. C E Smith, Crude Oil Pipeline Growth Revenue Surge, Oil & Gas Journal, <http://www.ogj.com/articles/print/volume-112/issue-9/special-report-pipeline-economics/crude-oil-pipeline-growth-revenues-surge-construction-costs-mount.html>
26. Prototype TransCanada Easement Instrument

27. IMPLAN's "General Information About Multipliers" at http://support.implan.com/index.php?option=com_content&view=article&id=212:212&catid=222:222
28. Business Dictionary, <http://www.businessdictionary.com/definition/lease>.
29. Land use planning for pipelines: A guidelines for local authorities, developers, and pipeline operators, ISBN 1-55436-826-X. (Canadian Standards Association 2004). www.cepa.com/wp-content/.../11/CSA-Plus-663-Land-Use-Planning-For-Pipelines.pdf
30. Guidelines for Property Development, , American Petroleum Institute Pub. Prod # DOGP04 (2011). www.chevronpipeline.com/pdf/Guidelines_for_Property_Development.pdf
31. The American Railway Engineering Association Specifications, pertinent parts at <https://www.cn.ca/-/media/Files/Delivering.../pipeline-specs-form-US-0510-en.pdf?...>
32. Gen Admin Order of Indiana Utility Reg. Comm'n 2007-1.
33. Indiana Agricultural Impact Mitigation Agreement April 2008 Agreement governing the Rockies Express Pipeline-East Project.
34. Pipeline Information for Landowners, Pipeline Safety Trust, <http://pstrust.org/about-pipelines1/pipelines-for-landowners/> .

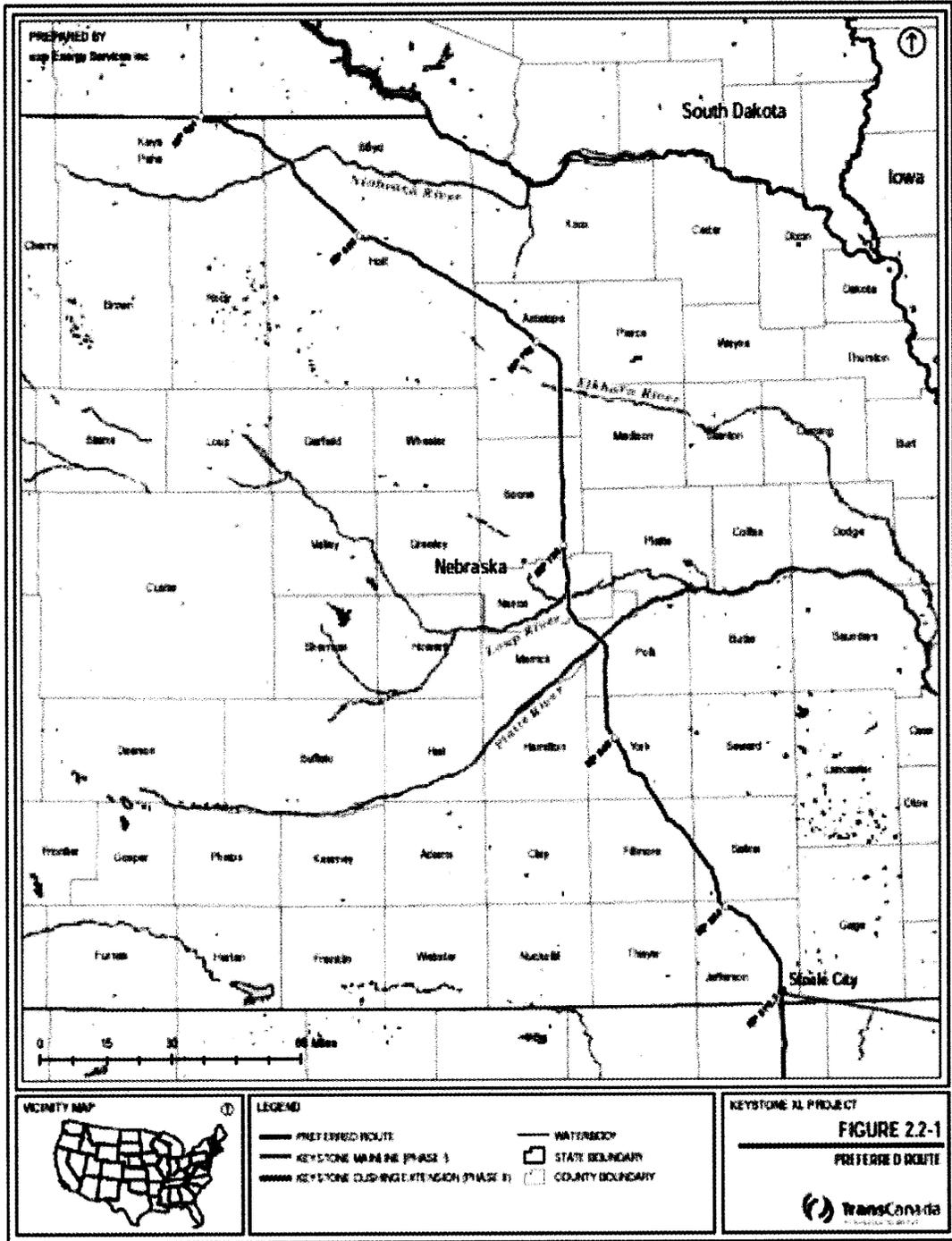
The Proposed Pipeline Route

As the Applicant for Nebraska Public Service Commission's approval of a proposed route for its proposed KXL major crude oil pipeline, TransCanada Pipeline Co. LP proposes the three routes, one being preferred. By its description, TransCanada says this "preferred route, would start at the Nebraska border in Keya Paha County near pipeline milepost 601. It would run across the southwest corner of Boyd County, cross Holt County, enter Antelope County and turn southward. From there, it would continue through Boone, Nance, Merrick, Polk, York, Fillmore and Saline Counties."

The preferred route, hereinafter the route, across Nebraska is 275.2 miles long; it would require 5 pump stations.

This means the route crosses approximately 1,102 quarter-sections of land. Virtually all this land is used for production agricultural purposes. The predominant ag use is row crop farming. The second most common use is forage production. In many instances the land will dissect farms, and in some instances it will divide center pivot irrigation pivot points from irrigation wells, and residences from domestic wells.

The route is mapped by TransCanada as:



Scope of Engagement

I am engaged by Domina Law Group PC to provide professional services for a fee amount that will not exceed \$15,000. My hourly rate is \$300. Travel time is billed. Expenses are charged without markup in addition. They do not include data bases available to me through public sources without charge.

I am engaged to respond to these specific eight (8) questions:

1. What is the impact of the proposed KXL pipeline, along the proposed route, on property tax revenues in Nebraska, assuming current rates, over 20 years? 50 years,?
2. What is the impact of the proposed KXL pipeline, along the proposed route, on Nebraska income tax revenues, assuming current rates, over 20 years? 50 years?
3. What is the impact of the proposed KXL pipeline, along the proposed route, on sales/use tax revenues, assuming current rates, over 20 years? 50 years?
4. What economic opportunities are likely to be disrupted or precluded by the existence of the pipeline in the location of the proposed route over the next 20 years? 50 years?
5. In terms of its economic advantages and consequences, does the proposed use of the pipeline route by the Applicant more appropriately resemble and approximate a route requiring a real estate interest in the form of a lease, or in the form of an easement?
6. What is the economic consequence of TransCanada's use of an easement, as contrasted with a lease to acquire and occupy the proposed route over the course of 20 years? 50 years? In the case of removal of the depleted pipeline?
7. What are the likely economic consequences upon Nebraska and its counties for any enhancements in expenses attributable to a) pipeline construction? b) pipeline maintenance?
8. What is my analysis of the economic study and report of TransCanada economist, Dr. Ernie Goss?

Analysis

- I. What is the impact of the proposed KXL pipeline, along the proposed route, on property tax revenues in Nebraska, assuming current rates, over 20 years? 50 years?**
1. Research publications concerning the impact of crude oil pipelines on property values differ in results depending on one critical variable: whether the study was undertaken before, or after, a significant leak, spill, or release in the general vicinity of the real estate under consideration. Published studies examining real estate values after major oil spills disclose significant adverse impacts on real estate values. And, values tend to decline where cleanup costs have been incurred and the landowner participation in those costs has been required, either through direct payments, or loss of use of the real estate. There are many such studies. They were compiled in 2014 in *Pipelines and Property Values: A Review of the Academic Literature* Nadlan Consulting 2014) (<https://apps.neb-one.gc.ca/REGDOCS/File/Download/2480459>). This compendium notes that post-spill or leak consequences range from an adverse impact upon real estate ranging from minus 6.5% to minus 25%. *Id.*
 2. TransCanada has experienced major spills along its Keystone I pipeline. An April 2016 Release in South Dakota caused major cleanup expenses. News of spills of this kind certainly reached Nebraska on a regular basis. They generate awareness of risks associated with land ownership on an oil pipeline route. Values of real estate are derived economically from a combination of benefits and risks from ownership. At its simplest level, Nebraska dryland sells for less money than Nebraska irrigated row crop land for two (2) reasons: 1) there is a greater risk of crop failure due to drought on dry land; and (2) the production potential is lower on dryland.
 3. Farms and ranches dissected by a crude oil pipeline bear a greater risk of disruption to operations and crop disturbance, and, therefore, partial crop failure due to potential oil releases or leaks from a pipeline. They also bear the risk that production potential is lower because the pipeline Company will use its easement for ingress, egress, repairs, replacement, disruption, disturbance of operations, and other levels of interference and complexity.
 4. Property values along the proposed route are likely to decline in comparison with nearby properties not along the route, on a progressively increasing basis as the pipeline ages. The compendium of publications on this subject, noted above, illustrates this is so. A declining values occurs because it is widely recognized that “pipelines are likely to corrode and leak”. Economists generally recognize, and accommodate in economic analysis, risks that are generally accepted. The risks of corrosion, leaks, aging and debilitation of a pipeline are so well recognized that they were articulated in a publication of the American Bar Association distributed for general readership by American lawyers and also public readership. See, Charles Brownman, *Hazardous Liquids Pipelines – Reg. & Due Diligence*

(apps.americanbar.org/buslaw/committees/CL400000pub/newsletter/.../brownman.pdf)

5. In Nebraska, it is probable that a body of information sufficient to support demonstrable differences in value sufficient for the purposes of real estate appraisal and appraisers will not exist for at least a decade, and the complete impact will not be fully known until after the state has experienced one or more major spills. A spill is virtually certain to occur as noted above. A professional judgment must be assigned the probable adverse impact on property values from the presence of the pipeline. This judgment can only be based on the literature and past experience.
6. Assuming the adjustment is at a midpoint between the demonstrated values declines in the studies noted above (which focused principally on housing or residential properties and must be extrapolated farmland) it is reasonable to forecast a **15% negative difference** between the market value of land on the pipeline route and the market value of comparable land that is remote from the route. This decline in values will produce a decline in property taxes of commensurate amounts since the Nebraska property taxes of function of the “actual value” of real estate.
7. The effect of this adverse consequence will be, assuming the 15% negative difference, the equivalent of removing from taxation altogether approximately 165 for sections of Nebraska farmland. (1,102 quarters x 15% = 165.3). Using an eastern Boyd County quarter section randomly selected only for illustration with a land and improvement value of \$687,000, the 2017 property taxes on this parcel are \$7,155.

If, hypothetically, this is the approximate average value of land across Nebraska by the proposed KXL pipeline, this represents a loss of (165 x \$7,155 =) **\$1,180,575 in real estate taxes per year.**

This loss would be reasonably forecast as perpetual and potentially escalating after the 10th year and as spills and information of consequences of spills become better known. Indeed, as is discussed below, if landowners must bear the cost of removal of the abandoned line, and environmental remediation and cleanup, in the decade nearest the end of the pipeline’s life, the values of land on the pipeline route could collapse.

8. **Enhanced Environmental Assessment Costs.** The TransCanada Application fails to recognize, or admit, that environmental hazards are present as a result of the implantation of crude oil pipe lines anywhere in the United States, even before oil leaks or releases are detected. The presence of the pipeline is a *recognized environmental condition (REC)* for purposes of the technical aspects of Phase I & II Environmental Site Assessments undertaken to ascertain the presence or absence of conditions requiring remediation under State and Federal environmental laws, including, but not limited to, 42 U.S.C. §9601, the *Comprehensive Environmental Response Cleanup Liability Act (CERCLA)*. This is a well-documented and recognized concern, and increased expense, and a cause for diminution in value of real estate. Technical aspects

are explained in readable publications such as Z Hejzlar, *Technical Aspects of Phase I/II Environmental Site Assessments* (ASTM MNL43).

9. The financial impact of this enhanced cost will require experience to be fully appreciated, and value. No data for similar pipelines has been identified as a reliable foundation for projecting this cost. But reasonably prudent economic forecasting must inherently, and responsibly note its nearly certain probability of occurrence. Determination of an appropriate reserve, as a condition for issuance of route approval would be a reasonable and prudent course.
10. The Applicant's application Appendix H on page 22 contains Table 3.6a authored by Professor Goss. Dr. Goss notes nearly 100% of KXL's pipeline assets are fully depreciated at the end of 15 years; and Dr. Goss provides forecasts for the first 15 years of operation. Dr. Goss does not provide any information on the pattern of KXL investments into the pipeline other than to display the vast majority of property tax obligations initiating in the forecasted 2 years of construction immediately prior to the forecasted 15 years of operation. Accordingly, implicitly, all KXL pipeline assets are fully depreciated by the end of that 15th year (i.e., 2034). Accordingly, it is easy to **forecast KXL's property tax obligations owed to each and every county in each and every one of the years 2035 through 2069 (i.e., 50th year of operation): it is a grand total of \$0.** That is, the total property taxes obligations Dr. Goss forecasts for the first 15 years of operations is identical to the totals for first 20 years and for the first 50 years.
11. In summary, I am reasonably certain that, in economic terms, construction of the proposed pipeline along the proposed route will produce a significant net decrease in property taxes over the life of the pipeline.

II. What is the impact of the proposed KXL pipeline, along the proposed route, on Nebraska income tax revenues, assuming current rates, over 20 years? 50 years?

12. Nebraska imposes state taxes personal and corporate income. The State's revenues increase as the incomes of its residents increase. More corn production, for example, means more income. And rental of land for use by another to make money generates both rental income and income from the tenant's operations.
13. Table 1 of this report by O'Hara extrapolates Goss' jobs forecast and income forecast to cover 50 years of operation. This Table 1 adds income taxes. The labor related income taxes paid over the first 20 years would be (in discounted to 2015 dollars) \$518,576,343; and over the first 50 years \$1,202,142,284; with the 20 year average being \$25,928,817 and the 50 year average being \$24,042,846. That reduction in the average is not a typo, it is the result of declining jobs.
14. Table 2 of this report addresses income from leases instead of easements and includes income taxes. KXL uses easements which do not involve rental income to landowners. Landowners lose rental income in the amount of \$4,950,000 in first year of operations (i.e., 2020), which escalates at 2% per year. Nebraska in turn then loses income tax revenues in the first year of \$346,500. Over the first 20 years the discounted dollars income tax loss for Nebraska is \$4,843,144 and over the first 50 years that loss of income tax revenues is \$14,320,027.

III. What is the impact of the proposed KXL pipeline, along the proposed route, on sales/use tax revenues, assuming current rates, over 20 years? 50 years?

15. Table 3 of this report extrapolates beyond Goss' sales/use tax obligations out to cover the periods of first 20 years of operations and first 50 years of operation.
16. The total sales/use taxes owed by KXL (given Goss' assumptions) are \$82,709,188 and \$138,477,315, over the first 20 years of operations and 50 years, respectively.
17. Note that the average sales/use taxes owed decline over the 50 year period compared with the 20 year period. Over the 20 year period KXL's average sales/use tax obligation will be \$4,135,459 while the 50 year average drops to become \$2,769,546.
18. TransCanada will be obligated to pay significant sales/use taxes. However TransCanada might obtain major reductions in these tax obligations through various business incentive programs. Dr. Goss did not address this issue.

IV. What economic opportunities are likely to be disrupted or precluded by the existence of the pipeline in the location of the proposed route over the next 50 years?

19. The proposed pipeline route will dissect Nebraska along an irregular route. This dissection will diminish or preclude certain economic opportunities. Increased construction costs, instruction complexities, risks associated with proximity to the pipeline, etc., will have a disruptive impact.
20. The proposed pipeline route ignores all county zoning and land use restrictions. It does not observe setbacks from structures or property lines. The proposed route does not respect either the existing need, or potential need for future pipelines. Nothing in the plan for this route would accommodate existing or future pipelines by constructing them in close proximity together to create a court or and minimize crisscrossing and chopping up the State. Canadians have given these matters national consideration in order to protect future options with current planning. This was done more than a decade ago. *Land use planning for pipelines: A guidelines for local authorities, developers, and pipeline operators*, ISBN 1-55436-826-X. (Canadian Standards Association 2004).
21. As noted previously, county land use controls are ignored by the proposed route. It appears as though they only consistently applied at land-use control over the are the decisions of TransCanada itself. There are no apparent respect by KXL for setbacks.
22. Landowners who have pipelines on or near their property require information. The proposed route passes, principally through agricultural property. Some state agencies require an *Agricultural Impact Mitigation Agreement* with the pipeline company. Illinois is one such State. In Indiana, a General Administrative Order was issued by its Utility Regulatory Commission. The 13 page Order establishes specific conditions to be masked to assure compatibility with agricultural uses, and uses of wet soils or soils commonly displaying wet conditions. *Gen Admin Order of Indiana Utility Reg. Comm'n 2007-1*. An example of an Indiana *Agricultural Impact Mitigation Agreement* can be seen by examining the April 2008 Agreement governing the Rockies Express Pipeline-East Project. This Project involves a 42-inch natural gas pipeline crossing, nine (9) Indiana Counties.
23. The *Pipeline Safety Trust* has published a general guideline outlining many concerns and documenting considerations. Each consideration involved potential economic costs. These costs have not been accounted for, assessed or considered in the TransCanada application. *Pipeline Information for Landowners*, Pipeline Safety Trust, <http://pstrust.org/about-pipelines1/pipelines-for-landowners/> .
24. As the route map above demonstrates, in many instances the pipeline will not follow section lines and will not run north-south, or east-west, but will cross much of Nebraska

at an angle that is not consistent with the State's current basic road system. These angles also are not generally consistent with the State's system of requiring that utility easements be built on property lines.

25. This crisscrossing presents construction cost concerns for future structures that may intersect the route and require crossings above or below the proposed pipeline. The frequency or intensity of these potential uses has not been forecasted by TransCanada or its economist. Insufficient data is found in the documents to disclose that number might be.
26. Industry data establishes guidelines for crossing crude oil pipe lines. Generally, crossings are asked to be at 90° angles, where they must occur. The KXL easement requires crossing to be at no less than a 45° angle. *Guidelines for Property Development*, American Petroleum Institute Pub. Prod # DOGP04 (2011). Meeting the requirements of these guidelines will involve costs. Commonly, really well made crossings will require culverts, concrete boxes, or bridges. *Id.* Railroad crossings over pipelines must conform with criteria of the *American Railway Engineering Association Specifications*; these Specifications include highly specific criteria. These include heightened minimum criteria for the pipe itself. *Id.*
27. Nothing in the TransCanada submissions evaluates the economic, economic forecasting, or engineering concerns associated with these compliance requirements. In addition, nothing submitted evaluates how often the enhanced cost of such compliance will preclude, or complicate, or heighten the risk due to more cost, associated with future projects in the State. Projects thwarted, or built only with the increased costs of planning, planning approval, and construction, are likely to range from construction of new improvements for center pivot irrigation of a farm to building of highway by the State, and many more.
28. It is my opinion that, without accounting for this subject matter, Nebraska would undertake great risks, without commensurate rewards, upon approving the proposed route. Accordingly, from the perspective of economics, it is not reasonably prudent to approve this route under the circumstances.

V. In terms of its economic advantages and consequences, does the proposed use of the pipeline route by the Applicant more appropriately resemble and approximate a route requiring a real estate interest in the form of a lease, or in the form of an easement?

29. This analysis is constrained to economics. It considers legal definitions supplied by Domina Law Group pc llo from the sources in Nebraska law indicated below. These definitions are:

1. Lease.

“lease is a species of contract for the possession and profits of land and tenements, either for life, or for a certain period of time, or during the pleasure of the parties; and the essential elements of a contract must be present,”

Krance v. Faeh, 215 Neb. 242, 245, 338 N.W.2d 55, 57 (1983).

2: Real Property.

"(5) Real property shall mean any estate or interest in land, including all buildings, fixtures and improvements thereon and all rights-of-way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, used or enjoyed with said land, or any part thereof;"

Neb. Rev. Stat. § 76-1001.

3: Easement.

"The possessor of land subject to an easement created by a conveyance is privileged to make such uses of the servient tenement as are not inconsistent with the provisions of the creating conveyance. An easement is usually defined as a right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with the general property right of the owner. The owner of the easement may make use of it only for the special purpose that gave rise to the easement itself."

R & S Investments v. Auto Auctions, Ltd., 15 Neb. App. 267, 278, 725 N.W.2d 871, 880 (2006), citing *Kovanda v Vavra*, 10 Neb. App. 486, 633 N.W.2d 576 (2001), citing 28A C.J.S. *Easements* § 165(a) at 380 (1996).

4: Wind Agreement.

"(2) Wind agreement means a right, whether or not stated in the form of a

restriction, easement, covenant, or condition, in any deed, wind easement, wind option, or lease or lease option securing land for the study or production of wind-generated energy or any other instrument executed by or on behalf of any owner of land or air space for the purpose of allowing another party to study the potential for, or to develop, a wind energy conversion system as defined in section 66-909.02 on the land or in the air space."

Neb. Rev. Stat. § 76-3001.

5: Construction of Instruments

"In the construction of every instrument creating or conveying, or authorizing or requiring the creation or conveyance of any real estate, or interest therein, it shall be the duty of the courts of justice to carry into effect the true intent of the parties, so far as such intent can be collected from the whole instrument, and so far as such intent is consistent with the rules of law."

Neb. Rev. Stat. § 76-205.

6. Leases with Easements

Leases can actually contain grants of easements with in them.

Eng v Olsen, 99 Neb 183, 155 N.W. 796 (1915).

30. The proposed KXL pipeline route is intended to be used for a finite purpose and a finite time. The projects duration is to match the KXL pipeline. The pipeline is being built to transport bitumen, which is essentially viscous tar, from open pit mining locations in northern Alberta through Nebraska, southward.
31. Nothing about the pipeline project or purpose is "perpetual". Economists generally perceived leases as functioning for a finite term of years. Though this is not a component of the statutory definition, it appears in general economic sources as commonplace as *Business Dictionary*, a source identifying terms commonly used in business and economics. <http://www.businessdictionary.com/definition/lease.html>
32. Wind agreements are of interest. They routinely permit the lessee to use the leased property for a defined term of years, and purpose while regulating access and use by the owner. Wind agreements are seldom called "easements". They routinely provide for annual rents and are used by the owner to generate annual income. They interfere with the right of the owner to use the leased real estate to generate an income. The TransCanada instrument more closely approximates a Wind Agreements based upon what is asked of the landowner.

33. Ratios of rent to value, or income to rent, or cash flow to rent, are all different economic measures of the amount to be paid to the owner by the party using less than all the ownership interests as a tenant or other user. Under any of these scenarios, the owner of Nebraska real estate permitting another party to use a portion of the real estate, resulting in its dissection and interference with his overall use, we expect a rate of return for that use, annually. The amount of the return could vary with the market and economy from year to year and with the amount of intrusion or intensity of use in any given year. Restrictions on the owner's use must also be considered. These are all economic considerations, and they form the true bases for determining whether an instrument, by whatever name it may be known, is truly in the character of a lease, or an easement.
34. TransCanada proposes to use the document it calls an "easement" and it proposes to acquire these easements by condemnation or through negotiations involving only a single, upfront payment for acquisition of a "perpetual" right to use the strip of land that dissects the farms of landowners, interferes with the rights of the landowners to use the premises to generate income, but permits TransCanada to use the land for this purpose.
35. Fundamentally, TransCanada proposes to use property owned by another, but to make that property subservient to TransCanada's needs and interests, while making only a single advance payment to do so. TransCanada proposes that the KXL easements are perpetual and run with the land, i.e., they are permanent servitudes upon title. Generally, leases are the products of agreements between parties. Sometimes easements are obtained by agreement and sometimes they are not. Generally, either of these or an agreement is transferable or economic purposes and, for the purposes of economists, either may be revocable or not.
36. Sometimes, easements are used where possession is to be shared; but leases also are used for these purposes. The economic pricing of a lease depends on the extent and value of the interests transferred and the duration of the transfer. The economic pricing of an easement depends on the extent to which the easement invades the interests of the titleholder and renders his title subservient person obtaining the easement.
37. TransCanada, in its easement, restricts use of the surface above its pipeline, acquires an exclusive right to enter upon the land and access its easement and pipeline, and the right to preclude the landowner from crossing the pipeline, either under generalized, or select circumstances.
38. A lease commonly requires the tenant to return the leased premises to the landlord in the same condition in which they were found at the commencement of the lease. An easement does not do so. This important difference permits TransCanada to escape or attempt to escape the costs of exhausted pipeline removal and soils remediation. Across the entire length of the proposed KXL pipeline, this cost could be tens of billions of dollars. In Nebraska, where 275 miles of the line will be placed under

TransCanada's proposal, the removal process could involve several billion dollars. These costs must be borne by either Nebraska landowners, or Nebraska and its political subdivisions, under the terms of the proposed TransCanada easement. Economically, TransCanada's insistence upon a perpetual easement hints at TransCanada's current intent to abandon in place.

39. Under all these circumstances, it must be concluded that the route TransCanada proposes to use across Nebraska will be governed by the legal documents, proposed by TransCanada that more closely resemble leases than easements; but are called easements.

40. It is my opinion that the Nebraska Public Service Commission route approval should, at a minimum:
 - (a) conditioned on real estate instruments used to secure land from landowners be in the nature of leases requiring reasonable annual rents;
 - (b) conditioned on removal of the pipeline when it is exhausted at the expense of TransCanada or its successor;and
 - (c) conditioned on any PSC permit renewal requirements include proof of financial responsibility to pay the costs of pipeline removal.

41. It is my opinion that, without accounting for this subject matter, Nebraska would undertake great risks, without commensurate rewards, upon approving the proposed route. Accordingly, from the perspective of economics, it is not reasonably prudent to approve this route under the circumstances.

VI. What is the economic consequence of TransCanada's use of an easement, as contrasted with a lease, to acquire and occupy the proposed route over the course of 50 years and upon removal of the depleted pipeline?

42. TransCanada proposes to use a real interest acquisition instrument it calls an "easement". See section V, above. The instrument will a) provide only a single payment for the landowner despite use of the real estate by TransCanada to make money on a daily and annual basis; b) permit abandonment of the pipeline "in situ" or in the ground, at the end of the pipeline's utility; c) cause additional costs when land is sold due to needs for Environmental Site Assessments (ESAs).
43. The TransCanada route is far more similar to a tenant's interest in a property for income production purposes, than an easement taken for a public utility. In the latter case, a utility acquires property rights for a purpose that is likely to serve the property owner or neighbors with the necessary product (water, electricity, transportation, telephone) or service (fire protection, police protection, parks, recreation, etc.).
44. Easements are appropriate for such purposes because a) there is no profit motive, b) the acquiring party is a government entity responsible to the public, including the landowner affected, c) an array of laws protect the relationship between the landowner and the government differently from the manner in which the legal process can be used in proceedings between the landowner and a private company, d) the government cannot be sold to a 3rd party buyer, though the private condemning authority certainly can be sold to an unknown party with whom the landowner would prefer not to have a relationship, e) the landowner has no redress in the form of a voice concerning a change in management as is the case in the electoral process and its ability to impact the leadership and direction of a government agency or entity, and/or f) it is highly unlikely, the government would impose the burden of cleanup of government activity on the private landowner, but the TransCanada lease does so.
45. Leased on a reasonable basis, the possession and use interests sought by TransCanada along the route would be likely to command of value equal to at least 2 times the rental value of a typical Nebraska site for a wind turbine used to generate electricity. Over 275 miles, it is reasonable to expect that at least 550 wind turbines, theoretically, could be placed. Rental rates in eastern Nebraska, and Western I suggest an approximate average price of \$9,000 per turbine at the outset, and to 2% annual escalation in rents. Using the base price only, this amounts to annual rents of \$4,950,000 per year, escalating at 2% or \$99,000 of additional rental income denied landowners after the 1st year.
46. At the current 7% Nebraska state income tax rate, the income tax generated on \$4,950,000, in the 1st year, would be **\$346,500**. If it is assumed that the annual rents would turn over in the Nebraska economy just twice after rents are paid, this annual tax revenue would be, in the first year, ($\$346,500 \times 3 =$) **\$1,039,500**. **This magnitude of annual income tax revenues are lost permanently if TransCanada is permitted**

to acquire its ownership interests with an easement. (Note: Dr. Goss mentions multipliers many times in his report; but, never gives a numerical value for any of the multiple multipliers he asserts he has used. The IMPLAN website states the expected multipliers at the county level are between 1 and 2; at the state level between 2 and 3; and at the national level between 2 and 7. http://support.implan.com/index.php?option=com_content&view=article&id=212:212&catid=222:222)

47. This calculation is simplistic but designed to illustrate that imposition of a condition that TransCanada utilize a reasonable acquisition instrument, i.e., a lease and not an easement, is most likely to produce positive financial circumstances for Nebraska landowners and tax advantages for the State.
48. There is an additional factor concerning the easement v. lease, circumstance that affects Nebraska tax revenues. Based on Canadian studies recently undertaken, it is reasonable to estimate that the cost to remove the pipeline when it is no longer in use is likely to exceed, in current dollars, the cost of implanting or installing the line by at least 200%. If individual property owners are required to route pipeline from 1,102 distinct quarter sections of Nebraska land, for example, there will be little opportunity to achieve economies of scale that could be achieved in an removal process that would be conducted on a broad scale basis. TransCanada's removal estimate is likely less than 25% of the probable cost to Nebraska landowners.
49. Based on Canadian studies if conducted on a broad scale, the removal cost is estimated at about \$1.9 million per mile. The proposed easement permits abandoning the pipeline *in situ*, thus leaving it to Nebraska to clean up later. When this expense is incurred tax revenues will be greatly demanded, and contributions to taxes from adversely affected real estate, including all 1,102 quarter sections of affected land will be largely depleted of value and unable to contribute taxes or generate income.
50. The PSC approving the KXL application without imposing appropriate conditions will cause tax losses on all fronts: property taxes, income taxes, sales taxes, and it is likely to generate massive public private environmental response and cleanup liabilities. These can be avoided with the lease in which the tenant is required to remediate the land following removal of the pipeline, and maintenance of the sinking fund from the outset of the construction, to assure the funding is available for removal and remediation at the predictable future date. See, <http://www.ogj.com/articles/print/volume-112/issue-9/special-report-pipeline-economics/crude-oil-pipeline-growth-revenues-surge-construction-costs-mount.html>
51. TransCanada proposes to install a pipeline to carry caustic materials across the state, with the right to abandon the pipeline in place when it is exhausted. This approach will leave it to a future generation of Nebraskans to cleanup TransCanada's remains.

52. In economic terms, unless a verifiable reserve is required to be posted by TransCanada, and it is required to prove financial responsibility intermittently to establish that it has the financial ability in a reserve set aside for the purpose of doing so, to pay for the removal of the pipeline and remediation of all sites within Nebraska, where construction occurs to support the proposed pipeline along the proposed route and to return Nebraska's land and resources to their pre-construction status.

VII. What are the likely economic consequences upon Nebraska and its counties for any enhancements in budgetary expenses attributable to a) pipeline construction? b) pipeline maintenance?

53. **During Construction.** Other parts of this paper demonstrate that local governments will incur additional expenses as a result of the process of constructing the pipeline. Demands on schools, law enforcement services, judicial services, either other elements of public service will be exacerbated during the construction. Not been accounted for by TransCanada.
54. **After Construction.** Ongoing maintenance expenses will be associated with the pipeline. Local governments and the State will have to shoulder these expenses. For example, at every road crossing, increased shoulder and ditch, and road surface maintenance will be mandatory; some of the service may require specialized equipment and personnel with special training. Loadbearing capacities of pipeline crossing points, erosion around pipelines as they penetrate through and under ditches and roads and other public services, will all be exacerbated.
55. Utility services will require additional budgetary accommodations and costs. Many of these, including power, water and sewer are publicly owned. Others, such as telephone, and fiber-optic cable are owned by regulated industries. Electronic and telephone transmission lines, and particularly underground lines will require accommodation and additional maintenance on an ongoing basis. Other industries and companies regulated by the Nebraska Public Service Commission will have increased costs where their facilities pass over, under, or around the proposed pipeline; and, in some contexts then requiring the PSC to approve rate increases.
56. Ultimately, these costs will affect revenues and local governments and utilities. They are likely to produce rate increases in amounts proportionate to the complexities created by the pipeline.
57. These cannot be budgeted without more information than TransCanada has furnished as the number of such crossings, or needs to accommodate existing facilities, has not been told definitively. It is reasonably economically certain, however, that these costs will be incurred and will be substantial. It is also reasonably certain that these costs will substantially increase any tax benefits generated by construction or operation of the KXL pipeline along the route proposed in Nebraska.
58. **Enhanced Environmental Assessment Costs.** As noted previously, the TransCanada Application fails to recognize, or admit, that environmental hazards are present as a result of the implantation of crude oil pipe lines anywhere in the United States, even before oil leaks or releases are detected. The mere presence of the pipeline is a *recognized environmental condition (REC)* for purposes of the technical aspects of Phase I & II Environmental Site Assessments. This is a widely recognized concern, and increased expense, and a cause for diminution in value of real estate.

59. The financial impact of this enhanced cost will require experience to be fully appreciated, and value. No data set for similar pipelines has been identified as a reliable foundation for projecting this cost. But reasonably prudent economic forecasting must inherently, and responsibly note its near certain probability of occurrence.
60. It is my opinion that, without taking steps to investigate, and to ameliorate the risks of this subject matter, Nebraska would undertake great risks, without commensurate rewards, upon approving the proposed route. Accordingly, from the perspective of economics, it is not reasonably prudent to approve this route under the circumstances.

VIII. What is my analysis of the economic study and report of TransCanada economist, Professor Ernie Goss?

61. I carefully reviewed the economic analysis of Dr. Ernie Goss, Prof., Creighton University. His report is entitled "The Socioeconomic Impact of the Keystone XL Pipeline on the State of Nebraska and its Counties" and appears as application Appendix H. The report contains a number of analytical, economic and econometric deficiencies. They included these:

59.1 Dr. Goss makes several suggestions about taxes that are flawed. These are among the most prominent:

- The Goss report does not account for the federal, state and local tax benefits and “incentives” that drive down project cost and could diminish Goss' estimated tax “benefits” in other areas. This include a) investment credits; b) depreciation to offset gross income; c) refineries tax credits estimated at \$1 Billion to \$1.8 Billion.
- The Goss report mere acknowledges depreciation, but does not account for the fact that any initial property tax liability due for the pipeline will depreciated out over a term much shorter than life of the project.
- Citing a newspaper story, Goss reports the depreciation period is 15 years. This is incorrect. It should be 20 years v. 15 years.
- The Goss report does not consider, or calculate, the decline in real estate values to the approximate 1,102 quarter sections of Nebraska land that will be impaired by the pipeline. It fails to consider the impact on tax obligations of property owners whose land is reduced in fair market value because it is does not account for the direct decline in values and corresponding decline in tax revenues.
- The Goss report fails to consider the escalated demand on public services and exacerbated costs.
- The Goss report presumes that it has been determined that the KXL pipeline is “in the public interest”. I am informed that in eminent domain terms what is “in the public interest” is a judicial question that every landowner is entitled to raise; both for the PSC to decide and for the county appointed appraisers to decide. If this is the case, the report makes a major presumptive error.
- The Goss report fails to appreciate, or account for, the removal costs for the line.

- The Goss report includes no provision for enhanced costs, and probable deductions to reduce taxes payable by Nebraska landowners if forced to bear pipeline removal and remediation costs.
- The Goss report fails to consider the need for, or to provide for, the public cost for Nebraska government and taxpayers if forced to bear pipeline removal and remediation costs, or the amount of reserves required for this cost.
- The Goss report fails to provide for the ability to replicate its calculations.
- Parts of the Goss report allocations of costs of the pipeline by county and hint at a county by county benefit but fails to note that the expenditures accounted for will occur principally, or perhaps even exclusively, outside the county. See, e.g., p 10, Chart, Table 1:1.
- The Goss report suggests the pipeline will encourage visitors to purchase in Nebraska, but suggests no rationale why the pipeline will become a tourist attraction or attraction to visitors.
- The Goss report fails consider tax losses due to increased deductions incurred or claimed by Nebraska taxpayers for Phase I & II Environmental Site Assessments (ESAs) in connection with the rental or sale of real estate, and it fails to account for remediation expenses necessarily accomplished in order to render real estate leasable or salable. These extra costs and complications are often guided by the American Society of Testing & Materials, *ASTM E 1527-00: Environmental Site Assessments: Phase I ESA Process*. (One automatic complexity in this process is passage of an oil pipeline over an aquifer; this is a necessary investigative issue in a Phase I ESA. *Id.*)
- The Goss report uses a discount rate that is highly vulnerable to serious economic doubt and is more probably than not erroneous. This discount rate impacts all of Goss' projections.

59.2 The Goss Report focuses on tax revenues and jobs, and it determines gross revenue volume but does not deduct predictable costs that will be incurred by Nebraska to accommodate any temporary increase in jobs. See my comments concerning the lack of a social, economic analysis below. In addition to the absence of the socioeconomic analysis as explained below, the Goss Report fails to net from gross projected revenues any sums necessary to calculate the net economic impact. Accordingly, the report is really only one half of an economic analysis – it considers the revenue side, but not the expenses side.

59.3 The Goss Report equates econometrics with socioeconomics, but it contains no socioeconomic analysis. Both the Major Oil Pipeline Siting Act (MOPSA) at 57-1407(d) and the PSC's own MOPSA regulations at Title 291, Chapter 9, section 023.7D require analysis of both social issues and economic issues. A "socioeconomic" analysis necessarily considers the secondary consequences and impacts of predictable human behaviors in the course of an activity involving economic consequences and secondary economic consequences due to the social interaction engendered by the primary component of the economic activity. Goss' sole evaluation of secondary effects is his use of economic multipliers.

As but one example of a secondary social consequence, an itinerant population may involve a larger criminal element than a fixed population. The increased crime is a socioeconomic consequence.

An itinerant population consisting predominantly of young males may consume more alcohol than a fixed population of the same number. This is likely to produce more arrests for alcohol related offenses, more costs, and it constitutes a socioeconomic consequence. The same can be true of a number of public health considerations, temporary impacts on schools and school districts, and temporary demands on other social services.

The Goss report does not consider these matters. Simply stated, by definition, is not a socioeconomic analysis.

Conclusion

62. I am reasonably professionally certain about each and all the opinions formed and expressed above. They represent my opinions, and I am prepared to testify about them.

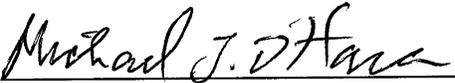

Michael J. O'Hara J.D., PhD.

TABLE 1. O'Hara extrapolation of Goss' labor and labor income to 50 years
 BASED UPON Dr. Goss' "THE SOCIOECONOMIC IMPACT OF THE KEYSTONE XL PIPELINE ON THE STATE OF NEBRASKA AND ITS COUNTIES"
 Note particularly, page 16, "Table 3.2: Impact of Keystone XL on state of Nebraska output, 2018 - 2035 (discounted to 2015 dollars)"

Goss forecasted		Goss forecasted		O'Hara extrapolated	O'Hara extrapolated	Goss forecasted	Goss forecasted	Goss forecasted	O'Hara extrapolation	O'Hara extrapolation	O'Hara extrapolated	O'Hara extrapolated
jobs	calendar year	operation year	growth rate	jobs	annual jobs	discounted labor income	per job labor income	op. job income growth	op. job income growth	per job labor income	labor income	estimated income taxes at 4.03%
3,784.1	2018					\$ 177,587,209	\$ 46,930					\$ 7,156,765
3,010.2	2019					\$ 148,971,147	\$ 49,489					\$ 6,003,537
347.2	2020	1				\$ 22,012,944	\$ 63,401					\$ 887,122
448.6	2021	2	29.205%			\$ 31,104,696	\$ 69,337	9%				\$ 1,253,519
433.4	2022	3	-3.388%			\$ 30,415,167	\$ 70,178	1.21%				\$ 1,225,731
419.0	2023	4	-3.323%			\$ 29,766,068	\$ 71,041	1.23%				\$ 1,199,573
405.2	2024	5	-3.294%			\$ 29,156,461	\$ 71,956	1.29%				\$ 1,175,005
392.1	2025	6	-3.233%			\$ 28,578,946	\$ 72,887	1.29%				\$ 1,151,732
379.8	2026	7	-3.137%			\$ 28,052,102	\$ 73,860	1.34%				\$ 1,130,500
368.1	2027	8	-3.081%			\$ 27,555,605	\$ 74,859	1.35%				\$ 1,110,491
357.0	2028	9	-3.015%			\$ 27,095,110	\$ 75,897	1.39%				\$ 1,091,933
346.6	2029	10	-2.913%			\$ 26,669,810	\$ 76,947	1.38%				\$ 1,074,793
336.8	2030	11	-2.827%			\$ 26,278,923	\$ 78,025	1.40%				\$ 1,059,041
321.7	2031	12	-4.483%			\$ 25,460,548	\$ 79,144	1.43%				\$ 1,026,060
307.6	2032	13	-4.383%			\$ 24,694,730	\$ 80,282	1.44%				\$ 995,198
294.5	2033	14	-4.259%			\$ 23,978,620	\$ 81,421	1.42%				\$ 966,338
282.3	2034	15	-4.143%			\$ 23,309,503	\$ 82,570	1.41%				\$ 939,373
135.4	2035	16	-52.037%	-3.50%	273.4	\$ 11,342,401	\$ 83,770	1.45%		\$ 83,770	\$ 22,901,420	\$ 922,927
727.6	2036	17		-3.50%	263.8				1.36%	\$ 86,785	\$ 22,895,350	\$ 922,683
	2037	18		-3.50%	254.6				1.36%	\$ 89,910	\$ 22,889,397	\$ 922,443
	2038	19		-3.50%	245.7				1.36%	\$ 93,146	\$ 22,883,446	\$ 922,203
	2039	20		-3.50%	237.1				1.36%	\$ 96,500	\$ 22,877,496	\$ 921,963
	2040	21		-3.50%	228.8				1.36%	\$ 99,974	\$ 22,871,548	\$ 921,723
	2041	22		-3.50%	220.8				1.36%	\$ 103,573	\$ 22,865,602	\$ 921,484
	2042	23		-3.50%	213.0				1.36%	\$ 107,301	\$ 22,859,657	\$ 921,244
	2043	24		-3.50%	205.6				1.36%	\$ 111,164	\$ 22,853,713	\$ 921,005
	2044	25		-3.50%	198.4				1.36%	\$ 115,166	\$ 22,847,771	\$ 920,765
	2045	26		-3.50%	191.4				1.36%	\$ 119,312	\$ 22,841,831	\$ 920,526
	2046	27		-3.50%	184.7				1.36%	\$ 123,607	\$ 22,835,892	\$ 920,286
	2047	28		-3.50%	178.3				1.36%	\$ 128,057	\$ 22,829,954	\$ 920,047
	2048	29		-3.50%	172.0				1.36%	\$ 132,667	\$ 22,824,019	\$ 919,808
	2049	30		-3.50%	166.0				1.36%	\$ 137,443	\$ 22,818,084	\$ 919,569
	2050	31		-3.50%	160.2				1.36%	\$ 142,391	\$ 22,812,152	\$ 919,330
	2051	32		-3.50%	154.6				1.36%	\$ 147,517	\$ 22,806,221	\$ 919,091
	2052	33		-3.50%	149.2				1.36%	\$ 152,828	\$ 22,800,291	\$ 918,852
	2053	34		-3.50%	144.0				1.36%	\$ 158,330	\$ 22,794,363	\$ 918,613
	2054	35		-3.50%	138.9				1.36%	\$ 164,029	\$ 22,788,436	\$ 918,374
	2055	36		-3.50%	134.1				1.36%	\$ 169,934	\$ 22,782,511	\$ 918,135
	2056	37		-3.50%	129.4				1.36%	\$ 176,052	\$ 22,776,588	\$ 917,896
	2057	38		-3.50%	124.8				1.36%	\$ 182,390	\$ 22,770,666	\$ 917,658
	2058	39		-3.50%	120.5				1.36%	\$ 188,956	\$ 22,764,746	\$ 917,419
	2059	40		-3.50%	116.3				1.36%	\$ 195,758	\$ 22,758,827	\$ 917,181
	2060	41		-3.50%	112.2				1.36%	\$ 202,806	\$ 22,752,910	\$ 916,942
	2061	42		-3.50%	108.3				1.36%	\$ 210,107	\$ 22,746,994	\$ 916,704
	2062	43		-3.50%	104.5				1.36%	\$ 217,671	\$ 22,741,080	\$ 916,466
	2063	44		-3.50%	100.8				1.36%	\$ 225,507	\$ 22,735,167	\$ 916,227
	2064	45		-3.50%	97.3				1.36%	\$ 233,625	\$ 22,729,256	\$ 915,989
	2065	46		-3.50%	93.9				1.36%	\$ 242,035	\$ 22,723,346	\$ 915,751
	2066	47		-3.50%	90.6				1.36%	\$ 250,749	\$ 22,717,438	\$ 915,513
	2067	48		-3.50%	87.4				1.36%	\$ 259,776	\$ 22,711,532	\$ 915,275
	2068	49		-3.50%	84.4				1.36%	\$ 269,128	\$ 22,705,627	\$ 915,037
	2069	50		-3.50%	81.4				1.36%	\$ 278,816	\$ 22,699,723	\$ 914,799
CONSTRUCTION plus OPERATION: Total Jobs first 20 years					13,508.7	CONSTRUCTION plus OPERATION: Total first 20 years					\$ 1,528,700,640	\$ 33,136,965
CONSTRUCTION plus OPERATION: Ave. Jobs first 20 years					675.4	CONSTRUCTION plus OPERATION: Average first 20 years					\$ 76,435,032	\$ 61,606,636
OPERATION: Total Job Years First 20 Years					6,714.4	OPERATION: Total Years First 20 Years					\$ 518,576,343	\$ 21,820,350
OPERATION: Total Job Years First 50 Years					11,006.2	OPERATION: Total Years First 50 Years					\$ 1,202,142,284	\$ 48,446,334
OPERATION: Average Job Years First 20 Years					335.7	OPERATION: Average First 20 Years					\$ 25,928,817	\$ 1,091,017.50
OPERATION: Average Job Years First 50 Years					220.1	OPERATION: Average First 50 Years					\$ 24,042,846	\$ 968,926.68

NOTES:
 1. Goss year 2018 and year 2035 each is a half year; the former ending Dec. 31 and latter ending June 30. Jobs in 2035 doubled in adjacent O'Hara column.
 2. Goss forecasted a decay process in KXL spawned jobs. The low annual job growth rate was minus 2.83% and the high was minus 4.48%.
 Over the 12 years 2022 through 2034 the average job loss rate Goss forecasts is minus 3.79%.
 O'Hara extrapolated from year 2035 to 2069 using a job loss rate of minus 3.50%.
 3. The total of the jobs column in Goss' Table 3.1 does not make sense as a total.
 If a total of data in the column it ought read 12,369.6; if a total only of the operation years, then it ought read 5,575.3.
 The 727.6 is an annual average; when the individual years range from a high of nearly 3,800 at the beginning and a low of about 270 jobs at the end.
 The 727.6 is the sum of construction plus operation jobs divided by 16 years (recall, the first and last years are half years).
 That spread over that time line make use of the average incorrect.
 4. Goss discount factor uses an estimated 2015 interest rate of 3.88% that then is raised by the power of the number of years.
 A discount factor is divided into a value in a future year to reduce that future value to present value. The "present" used by Goss was 2015.
 5. Goss' forecasted annual growth in labor income during the operation phase over the 12 years 2022 through 2035 is a positive 1.36%.
 But, Goss has it start low at 1.21% and grow (roughly continuously in +0.002 increments) to positive 1.45%.
 O'Hara extrapolates using the average of positive 1.36%.
 6. Goss labor income in Table 3.1 is discounted to 2015 dollars.
 O'Hara calculation of Goss' per job income as well as per job income growth rate also are discounted to 2015 dollars.
 7. Goss' operation jobs forecast in 2021 has the peak at 448.6 jobs and with an per job income of \$69,377. For discounting, Goss uses 3.88%.
 Discounting those 2021 dollars to 2017 dollars yields \$61,944. Which requires \$2,496 (or, 4.03%) in Nebraska income taxes for a married filer in Omaha.
 See, <https://smartasset.com/taxes/nebraska-tax-calculator>

TABLE 2: O'Hara estimate of lease income and taxes

The KXL pipeline crosses 1,102 quarter sections; most of it production agriculture.
 The KXL pipeline has route of 275.2 miles in length and a minimum of 50 feet in width; or 1,668 acres of right-of-way.
 That is, $[(5,280 * 275.2 * 50) / 43,560] = 1,667.879$.

The cash rental of an acre depends on its type of ag production. From a UNL Ag Econ report for 2017,

	North	Central	South	AVERAGE		
Dryland	\$ 56	\$ 89	\$ 74	\$ 73		
Gravity Irrig.	\$ 165	\$ 220	\$ 205	\$ 197		KXL acres 1,668
Pivot Irrig.	\$ 21	\$ 230	\$ 225	\$ 159		Ave. ag rent \$ 103
Pasture	\$ 25	\$ 34	\$ 35	\$ 31		Neb. ag. rent due from KXL \$ 171,804 annually
Cow-Calf pair	\$ 61	\$ 55	\$ 47	\$ 55		
AVERAGE	\$ 66	\$ 126	\$ 117	\$ 103		

See, <http://agecon.unl.edu/cornhusker-economics/2017/2017-trends-nebraska-farmland-markets>

The above table shows the minimum a landowner would accept to pull that land out of agricultural production.

The above minimum is not the rental that a landowner would accept from KXL in an arm's length transaction.

The landowner will insist upon a rent that recognizes the tenant's production opportunities.

For a comparable to an oil pipeline we can use an average wind contract, which also is on a lease basis.

Routinely, wind agreements require annual \$9,000 lease payment that escalate at 2% per year.

With 275 miles of right-of-way, and assuming pipeline displacement of 2 wind turbines per mile,

KXL would expect to be expected to lease 550 wind turbine locations.

Thus, $550 * \$9,000 = \$4,950,000$ of annual wind rental income is lost to Nebraskans.

The lost rental income translates into lost Nebraska income tax revenues.

Since the lost rental income when captured would be added to existing income from ag operations,
 the relevant tax rate is the top rate of 7%.

Using the lost wind rental income of \$4,950,000 and the tax rate of 7%,

Nebraska loses \$346,500 in tax revenue in the first year: escalating at 2% per year thereafter.

Accordingly, discounting to 2015 dollars (so as to be comparable to all Goss tables),

over the first 20 years of operations Nebraska loses \$ 4,843,144 of income tax revenues;
and

over the first 50 years of operations Nebraska loses \$ 14,320,027 of income tax revenues.

TABLE 3: O'Hara extrapolate sale taxes over 20 years and 50 years

calendar year	operations year	Goss estimated sales	Goss estimated sales growth	O'Hara extrapolation using -3.46%	O'Hara extrapolation of sales	O'Hara estimates sales tax at 5.5%
2018		\$ 494,516,390				
2019		\$ 396,479,550				
2020	1	\$ 70,521,484				\$ 3,878,682
2021	2	\$ 95,592,734	35.6%			\$ 5,257,600
2022	3	\$ 92,969,203	-2.7%			\$ 5,113,306
2023	4	\$ 90,483,962	-2.7%			\$ 4,976,618
2024	5	\$ 88,133,671	-2.6%			\$ 4,847,352
2025	6	\$ 85,893,578	-2.5%			\$ 4,724,147
2026	7	\$ 83,825,045	-2.4%			\$ 4,610,377
2027	8	\$ 81,860,499	-2.3%			\$ 4,502,327
2028	9	\$ 80,018,468	-2.3%			\$ 4,401,016
2029	10	\$ 78,296,072	-2.2%			\$ 4,306,284
2030	11	\$ 76,690,512	-2.1%			\$ 4,217,978
2031	12	\$ 73,861,298	-3.7%			\$ 4,062,371
2032	13	\$ 71,216,031	-3.6%			\$ 3,916,882
2033	14	\$ 68,744,730	-3.5%			\$ 3,780,960
2034	15	\$ 66,437,895	-3.4%			\$ 3,654,084
2035	16	\$ 32,143,252	-51.6%	-3.46%	\$ 64,139,144	\$ 3,527,653
2036	17			-3.46%	\$ 61,919,929	\$ 3,405,596
2037	18			-3.46%	\$ 59,777,500	\$ 3,287,762
2038	19			-3.46%	\$ 57,709,198	\$ 3,174,006
2039	20			-3.46%	\$ 55,712,460	\$ 3,064,185
2040	21			-3.46%	\$ 53,784,809	\$ 2,958,164
2041	22			-3.46%	\$ 51,923,855	\$ 2,855,812
2042	23			-3.46%	\$ 50,127,289	\$ 2,757,001
2043	24			-3.46%	\$ 48,392,885	\$ 2,661,609
2044	25			-3.46%	\$ 46,718,491	\$ 2,569,517
2045	26			-3.46%	\$ 45,102,031	\$ 2,480,612
2046	27			-3.46%	\$ 43,541,501	\$ 2,394,783
2047	28			-3.46%	\$ 42,034,965	\$ 2,311,923
2048	29			-3.46%	\$ 40,580,555	\$ 2,231,931
2049	30			-3.46%	\$ 39,176,468	\$ 2,154,706
2050	31			-3.46%	\$ 37,820,962	\$ 2,080,153
2051	32			-3.46%	\$ 36,512,357	\$ 2,008,180
2052	33			-3.46%	\$ 35,249,030	\$ 1,938,697
2053	34			-3.46%	\$ 34,029,413	\$ 1,871,618
2054	35			-3.46%	\$ 32,851,995	\$ 1,806,860
2055	36			-3.46%	\$ 31,715,316	\$ 1,744,342
2056	37			-3.46%	\$ 30,617,966	\$ 1,683,988
2057	38			-3.46%	\$ 29,558,585	\$ 1,625,722
2058	39			-3.46%	\$ 28,535,858	\$ 1,569,472
2059	40			-3.46%	\$ 27,548,517	\$ 1,515,168
2060	41			-3.46%	\$ 26,595,338	\$ 1,462,744
2061	42			-3.46%	\$ 25,675,140	\$ 1,412,133
2062	43			-3.46%	\$ 24,786,780	\$ 1,363,273
2063	44			-3.46%	\$ 23,929,157	\$ 1,316,104
2064	45			-3.46%	\$ 23,101,208	\$ 1,270,566
2065	46			-3.46%	\$ 22,301,907	\$ 1,226,605
2066	47			-3.46%	\$ 21,530,261	\$ 1,184,164
2067	48			-3.46%	\$ 20,785,314	\$ 1,143,192
2068	49			-3.46%	\$ 20,066,142	\$ 1,103,638
2069	50			-3.46%	\$ 19,371,853	\$ 1,065,452
					20 year TOTAL sales tax	\$ 82,709,188
					50 year TOTAL sales tax	\$ 138,477,315
					AVERAGE sales tax over 20 years	\$ 4,135,459
					AVERAGE sales tax over 50 years	\$ 2,769,546

NOTES:

1. Goss assumes sales in Nebraska, not just the 12 counties with the pipeline; and assumes zero construction sales in 2020 and later.
2. Recall, Goss' year 2018 and year 2034 are half years; the former ending Dec. 31 and the latter ending June 30.
3. Goss' estimated sales grow at an average of an annual decline of 2.76% over the 13 year period of 2022 through 2034; but, the last five years averaged 3.46% declines. In this table O'Hara uses the 3.46% decline.
4. Goss' table used discounted to 2015 dollars. This table preserves that.

Attachment 1

VITA FOCUSED ON LAST TEN YEARS

Name: Michael J. O'Hara, J.D., Ph.D.
Employer: University of Nebraska at Omaha
College of Business Administration
Finance, Banking, and Real Estate Department
Academic Rank: Professor
Graduate Faculty Status: Yes
Continuous Appointment: Yes

Higher Education

Degree	Institution	Date	Primary Subject Fields
Ph.D.	Univ. of Nebraska-Lincoln	1983	Public Utilities Regulation of Business
Juris Doctor (Law)	Univ. of Neb.-Lincoln	1978	Regulations of Business

The J.D. is my terminal degree for my UNO academic appointment.

Professional Experience (since joining academe)

1981 - Present College of Business Administration, University of Nebraska at Omaha. Instruction and research in the areas of law and economics, with a current research emphasis on forensic economics. Instructor, 1981. Assistant Professor, 1982 - 1988. Elected to Member, Graduate Faculty, 1986. Associate Professor, 1988 - 2001. Elected to Fellow, Graduate Faculty, Spring 2000. Professor, 2001 - present. Economics Department, 1981. Law and Society Department, 1982 - 1996; Fall 1996, Chair. Finance, Banking, and Law Department, 1997 - 2012. Finance, Banking, and Real Estate Department, 2012 - present.

2016 - present founding officer of Felicity Fund, Inc., now only a shareholder. FFI's business model is materially different than either PGSi or TOI, but is in the money transfer field.

2014 - 2016 Member, Board of Directors, Prosperitas Global Services, Inc. (d.b.a., PGSi). Treasurer, 2014 - 2016. PGSi has closed. PGSi was a Nebraska corporation, a start-up pursuing a novel business model for international money transfers.

2012 - 2016 Co-Editor, *The Earnings Analyst* (TEA). TEA is the scholarly journal of the American Rehabilitation Economics Association (AREA). AREA desired to expand the coverage of TEA and

- welcomed CPDE's invitation to cooperate in the production of TEA. As Co-Editor O'Hara focuses upon commercial damages.
- 2012 - 2016 Member, Board of Directors, Association of Regulatory Boards of Optometry. Also, various committees of ARBO. Secretary, 2015 - 2016.
- 2011 - present Member, Judicial Council and Resolutions Committee of ARBO. ARBO is the Association of Regulatory Boards of Optometry.
- 2011 - present Collegium of Pecuniary Damages Experts (CPDE). CPDE is a 501(c)(3) professional association incorporate in Nevada. As Secretary I serve as voting ex officio on the Board of Directors. As noted above, I also served as the CPDE appointed Co-Editor of AREA's journal TEA 2013-2016. Secretary, 2011-2014; Vice Pres., 2014, Pres., 2015; Past Pres., 2016. Re-elected Secretary in 2017.
- 2010 - present Member, Board of Directors, Nebraska Economics and Business Association. President-Elect, Oct 2012 & Oct. 2016; President, Oct. 2013; Past President, Oct.2014; Pres. Elect, Oct. 2016.
- 2010 - 2012 Member, OE Tracker Committee of ARBO. This committee supervises ARBO's web registry of continuing education accomplishment in satisfaction of licensing requirements specified by individual State regulatory Boards.
- 2009 - present Member, Board of Optometry. Appointed by the Nebraska Board of Health. The Board of Optometry oversees licensure and scope of practice enforcement. Secretary, February 2010 - present. Reappointed November 2014.
- 2002 - 2009 Member, Board of Directors, Ole Holding Corporation. A Nevada for-profit corporation that was in its start-up phase to provide financial services to the Spanish speaking communities of the USA and their ancestral homelands. Since second round financing in 2009 serving on spin off corporation's (i.e., Transactions Ole, Inc.'s) Advisory Board rather than its Board of Directors. Doors closed in 2012, sold to the Delaware corporation TOI Pay in December 2016. 2005 - 2007
 Editor, *Journal of Legal Economics*. *JLE* is the journal of AAEFE. *JLE* focuses upon the proof of monetary damages in the context of litigation.
- 2002 - 2007 Member, Board of Directors, American Academy of Economic and Financial Experts (AAEFE). A national professional association that is a 501(c)(3).
- 2000 - 2003 Member, Board of Directors, Concord Center (f.k.a. The Community Mediation Center). A 501(c)(3) not-for-profit corporation with five employees that contracts with the Nebraska Supreme Court to develop and foster mediation services in the most populated counties of eastern Nebraska. Chair of the Fund Raising Committee, 2000. Co-Secretary, 2000-01 (authored complete revision of Bylaws), Vice President, 2001-03. www.concord-center.com

- 1996 - 1999 Member, LR 455 (1996) Advisory Group. LR 455 is an in-depth study of electric utility deregulation in the USA and its implications for Nebraska's 100% publicly owned electric utility industry. This three year study was completed December 1999. March 1998, presentation on price discrimination. June 1998, detailed questions on impact of deregulation on consumers.
- 1989 - 1994 Member, Board of Directors, Omaha Public Power District (www.OPPD.com). A vertically integrated electric utility serving 13 counties in southeast Nebraska with (then) \$400 million in annual revenues. Secretary, 1990-1992; Vice Chair, 1993. I was a very active member, including (1) being the Board's representative on the task force studying the economic viability of the District's nuclear program; (2) shepherding the restructuring of the District's cost-based rate redesign; and (3) initiating the District's tree planting program.
- 1991-1992 Interim Director, UNO CBA International Center for Telecommunications Management (ICTM). Complete managerial responsibility for a research center with two research associates and 5 FTE of support staff. Responsible for encouraging UNO faculty to adopt telecommunications research topics and for encouraging grant writing. Drafted \$2.6 million, three-year EPSCoR proposal; associates drafted two proposals: \$100,000 and \$50,000; all proposals dealt with the economic development benefits of telecommunications infrastructure. ICTM has been disbanded and reformed into UNO's newest College of Information Science and Technology and its Center for Management of Information Technology (CMIT). I was instrumental in redirecting the emphasis of ICTM away from telephony and towards CMIT's emphasis on information technology.
- 1985-1988 Member, Nebraska Power Review Board (www.nprb.state.ne.us). Vice Chair, 1987. PRB regulates Nebraska's 100% publicly owned electric utility industry by controlling the service territories and capacity additions, but not rates. I led a major revision of the PRB's rules and regulations.
- 1979-1981 Legislative Aide III, Public Works Committee (now split into Natural Resources and Transportation Committees), Nebraska Legislature. Analysis and drafting of legislation related to utilities, highways, and common carriers. I coordinated a comprehensive examination of the structure of Nebraska's publicly-owned electric industry.
- 1979 Research Assistant, Southeast Nebraska Health Systems Agency. Assembled, analyzed, and managed data concerning supply and demand for health delivery systems. (Four months, full-time).
- 1978-1979 Teaching Assistant, Department of Economics,

University of Nebraska-Lincoln. Instructional responsibilities for introductory macroeconomics.

Primary Teaching Fields

Law

Business Law Fundamentals, LAWS 3930
Legal and Ethical Applications, LAWS 3940
Legal, Ethical, and Social Environment, BSAD 8010
Valuation of Intellectual Property, BSAD 8620

Economics

Principles of Economics: Microeconomics; ECON 2200
Managerial Economics; BSAD 8100/ECON 8210

Research and Creative Activity

Articles and Book Chapters (all listed)

- "Valuation of Naming Rights", chapter 12 in *The Principles of Sports Marketing* textbook edited by Gary Bernstein; chapter co-author is Greg Ashley of Bellevue University.
- "Learned Hand's False Efficiency", *The Earning Analyst*, volume 14, 2014.
- "Financial Management Fees in Damage Claims", Graham Mitenko and Michael J. O'Hara, *The Earnings Analyst* (TEA), volume XII, 2012.
- "Pecuniary Damage", Michael J. O'Hara, *The Earnings Analyst* (TEA), volume XI, 2010.
- "*Post Hoc Ergo?*: A Reply to Craig Marxsen's 'Fabricating the Domsday Crisis'", Christopher Decker and Michael J. O'Hara, *B>Quest*, 2010. Invited Commentary.
- "Contracting with a Co-Author", Michael J. O'Hara and Graham Mitenko, *Economics & Business Journal: Inquiries & Perspectives*, volume 2, Number 1, October 2009.
- "Digest of Selected Articles: Usufructs". Michael J. O'Hara. *Real Estate Law Journal*, volume 37, number 2, Fall 2008.
- "Assessing the Mobility of Value of Tenure to a Faculty Member". Graham Mitenko and Michael J. O'Hara, *Economics & Business Journal: Inquiries & Perspectives*, volume 1, issue 1, October 2008.
- "The Expert Opinion: An Interview on Intellectual Property Law with Michael J. O'Hara, J.D., Ph.D." Interview by Dan Peak. *Journal of information Technology Cases and Applications*, volume 7, issue 1, 2005.
- "Governing for Genuine Profit" *Vanderbilt Journal of Transnational Law*, 2003, vol. 36, p. 1366. (Proceedings version published as Working Paper #533 of the University of Michigan's William Davidson Institute.) Invited. Solo authored.

- "Scope of Discovery of an Expert's Work Product", *Journal of Legal Economics*, 2002, vol. 10, no. 2, pp. 37-54. Double blind refereed. Jointly authored with Dr. Graham Mitenko of UNO CBA.
- "Precedence and Forensic Economics" §1640, pages 16-15 through 16-18, in *Determining Economic Damages*, Drs. Gerald D. Martin and Ted Vavoulis, James Publishing, Costa Mesa: CA, 2002.
- "Intellectual property and information technology" *International Encyclopedia of Business & Management*. October 2001. Invited and double blind refereed. Jointly authored with Dr. Dan Peak of the University of North Texas.
- "Quandary of Who Owns the Content of Distance Education" *Journal of Information Systems Education*, volume 11 & 12, 2000. Refereed. Jointly authored with Dr. D. Peak of UNO IS&T's ISQA.
- "Intellectual Property" in *International Encyclopedia of Business Management's Handbook of Information Technology in Business*. Malin Zeleny, Editor. October 1999. Refereed. Jointly authored with Dr. D. Peak of UNO IS&T's ISQA. (Now under revision for second edition. Dr. Peak now of University of North Texas.)
- "UNO versus ZAP," chapter in *Negotiation Simulation Exercises: Simulations with Teaching Notes* Fall 1998. Center for Dispute Resolution, Willamette University College of Law, Salem, Oregon.
- "Internship and Consulting Engagements: Management of the University's Liability," *Journal of Management Issues*, Vol. 12, #1, Spring 1999. Refereed. Jointly authored with Dr. D. Peak of UNO CMIT.
- "Practical Liability Issues of Information Technology Education: Internship and Consulting Engagements," *Informing Science: The International Journal of an Emerging Discipline*. Volume 1, Number 2, Winter 1998, pp. 43-51. Refereed. Jointly authored with Dr. D. Peak of UNO CMIT.
- "Rural Intrastate Air Service Systems," *Regional Science Perspectives*, 24 (1), 3-22, (January, 1994). Refereed. Jointly authored with C. Bayer and Dr. G. Mitenko, both of UNO CBA.
- "The Effects of Ownership and Investment upon the Performance of Franchise Systems," *American Economist*, Vol. XXXIV, Spring 1990. Refereed. Jointly authored with Dr. F. W. Musgrave of Ithaca College and Dr. W. L. Thomas of the State University of New York at Oneonta.
- "Retroactive Application of State Laws Regulating Franchise Relationships," *Franchise Law Journal*, Vol. 7, No. 3, Winter 1987. Refereed.
- "The Importance of the Guidelines for Vertical Restraints: with an Emphasis on Franchising," *Capitol University Law Review*. Vol. 15, No. 4, 1986. Refereed.
- "The Economic Expert in the Antitrust Arena," *Antitrust Law and Economics Review*. Vol. 12, No. 2, 1980. Refereed.

Proceedings (none is last ten years)

Papers Presented and Other Publications (only last ten years)

- "An Expert's Report", Michael J. O'Hara, Collegium of Pecuniary Damages Experts (CPDE), Las Vegas, NV, March 2017 (updated version of AEF 2017 paper).
- "Expert's Report", Michael J. O'Hara, Academy of Economics and Finance (AEF), Charleston, SC, February 2017.
- "Carpets Match the Drapes: Idioms in the Classroom", Michael J. O'Hara, Academy of Economics and Finance (AEF) Teacher Training Program (TTP), Charleston, SC, February 2017.
- "Quandaries", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), San Juan, Puerto Rico, August 2016.
- "Carpets Match the Drapes", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), San Juan, Puerto Rico, August 2016.
- "Retainer Agreements / Fee Schedules, Document Production, E&O Insurance & Expert Liability", Michael J. O'Hara and Graham Mitenko, Collegium of Pecuniary Damages Experts (CPDE), Las Vegas, Nevada, March 2016.
- "Tasks of an Expert Witness", Michael J. O'Hara, Academy of Economics and Finance (AEF), Pensacola, Florida, February 2016.
- "Environmentally Preferential Purchasing Survey Results", Michael J. O'Hara, Canadian Academy of Legal Studies in Business (CanALSB), Toronto, May 2015.
- "Ethics for Pecuniary Damage Experts", Michael J. O'Hara, Collegium of Pecuniary Damages Experts (CPDE), Las Vegas, Nevada, March 2015.
- "Greenwashing", Michael J. O'Hara, Academy of Economics and Finance (AEF), Jacksonville, Florida, February 2015.
- "EPP Survey Results", Michael J. O'Hara, Academy of Economics and Finance (AEF), Jacksonville, Florida, February 2015. "Stigma Effects on Valuation", Michael J. O'Hara, Academy of Economics and Finance (AEF), Chattanooga, Tennessee, February 2014.
- "Ethical Issues and Assessment", Michael J. O'Hara, Association of Government Accountants, Omaha, Nebraska, October 2013.
- "RRR via Brownfields", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), Boston, Massachusetts, August 2013.
- "'Random' Regulation in Nebraska", Academy of Economics and Finance (AEF), February 2012, Mobile, Alabama.
- "Learned Hand's False Efficiency", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), Kansas City, Missouri, August 2012. **An updated version** presented to the Nebraska Economics and Business Association (NEBA), October 2012, Lincoln, NE.
- "Entrepreneurship: the T of STEM", Michael J. O'Hara, Nebraska Economics and Business Association (NEBA), October 2012, Lincoln, NE.
- "A Clearinghouse for Forensic Economics", Michael J. O'Hara Collegium of Pecuniary Damage Experts (CPDE), Las Vegas, Nevada, March 2012.

- "A Baker's Big Top Ten List of Recent Cases of Interest to FEs", Michael J. O'Hara, Collegium of Pecuniary Damage Experts (CPDE), Las Vegas, Nevada, March 2012.
- "A Steep Learning Curve", Nebraska Economics and Business Association (NEBA), October 2011, Norfolk, Nebraska. Co-authored with Graham Mitenko. A revised version presented at the Academy of Economics and Finance (AEF) in February 2012 in Charleston, South Carolina.
- "Mitigation of Wrongful Termination Damages", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2011, New Orleans, Louisiana.
- "A Modest Proposal for Inclusion of Financial Management Fees", Graham Mitenko and Michael J. O'Hara, presented both to the Academy of Economics and Finance (AEF) in February 2011 in Jacksonville, Florida as well as to the Collegium of Pecuniary Damages Experts (CPDE) in March 2011 in Las Vegas, Nevada.
- "Scope of Practice: As Seen Through Medicated Contact Lenses", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2010, Richmond, Virginia.
- "Subrogation", Michael J. O'Hara, Academy of Economics and Finance (AEF), February 2010, Houston, Texas.
- "Pay Day Loans", Michael J. O'Hara, Smart Money Week, Omaha, Nebraska.
- "Wrongful Death and Personal Injury Damages in Nebraska", Michael J. O'Hara, Nebraska Economics and Business Association (NEBA), October 30, 2009, Omaha, Nebraska
- "Wrongful Death and Personal Injury Damages in Nebraska", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2009, Denver, Colorado.
- "Honey, They Shrank the Honey", Michael J. O'Hara, Academy of Legal Studies in Business (ALSB), August 2009, Denver, Colorado.
- "Pecuniary Value", Michael J. O'Hara, Collegium of Pecuniary Damages Experts (CPDE), April 2009, Las Vegas, Nevada.
- "Fiduciary Trust and Personal Banking", Graham Mitenko, Michael J. O'Hara, and Susan Eldridge. Academy of Economics and Finance (AEF), February 2009, Pensacola, Florida.
- "Contracting with a Co-Author", Michael J. O'Hara, Graham Mitenko, and Janet West. Academy of Economics and Finance (AEF), February 2009, Pensacola, Florida.
- "Contract for a Co-Author", Michael J. O'Hara and Graham Mitenko. Nebraska Economics and Business Association (NEBA), October 2008, Crete, Nebraska. (Revised and submitted to the *Economics and Business Journal* using the AEF revision noted above.)
- "Rack the Value", Michael J. O'Hara. First version presented at the Academy of Legal Studies in Business (ALSB), August 2008, Long Beach, California. Second version presented at the Nebraska Economics and Business Association (NEBA), October 2008, Crete, Nebraska
- "The Retirement Conundrum", Graham Mitenko and Michael J. O'Hara, Academy of Economics and Finance (AEF), February 2008, Nashville, Tennessee.
- "Faculty Retirement Variables", Graham Mitenko and Michael J. O'Hara, Nebraska Economics and Business Association (NEBA), October 2007, Hastings, Nebraska.
- "Trespasser or Implied Invitee: *Apis Mellifera*". Michael J. O'Hara. Academy of Legal Studies in Business (ALSB), August 2007, Indianapolis, Indiana.

"Creeping Up the Ladder to the "Best and Safest" Risk-Free Return". Graham Mitenko and Michael J. O'Hara, American Academy of Economic and Financial Experts (AAEFE), March 2007, Las Vegas, Nevada.

"Applying Geometric Returns During Interest Rate Changes". Graham Mitenko and Michael J. O'Hara, Academy of Economics and Finance (AEF), February 2007, Jacksonville, Florida.

Other Creative Activity (all)

Economics Ph.D. Dissertation: *The Nebraska Power Review Board: Regulating a Publicly-Owned Electric Utility Industry*. December 1983. Advisor: Dr. J. R. Felton.

Introduction to Legal and Economic Analysis, self published textbook for BSAD 8010. Initial draft during Spring 2004, first hardbound copy Summer 2004; second hardbound copy Fall 2004, third hardbound copy Spring 2005.

SERVICE TO PROFESSION AND DISCIPLINE

Supervision of Major Student Research Projects

IN PROGRESS:

Member, Ph.D. Dissertation Supervisory Committee, Alicia Buttner, Psychology.
LIKELY TOPIC: canine interaction with humans and measurement of canine stress. January 2012 - present.

Member, Ph.D. Dissertation Supervisory Committee, Penny Westphal, Criminal Justice, course work in progress.

COMPLETED (last ten years):

Rachel Ouranda, pursuing an MBA, BSAD 8900, TOPIC: "Valuing a Website".

Member, UNO Department of Psychology Masters Thesis Supervisory Committee, Kathryn "Kitty" Dybdall, TOPIC: "Measuring Stress and Social Behaviors in Domestic Cats at a Local Humane Society", May 2011.

Member, Supervisory Committee for Education Ph.D. Dissertation by Gary Ogden Harper, *An Interpretive Biography of Saint Nicholas: Applying Contextual Analysis to the Historical and Mythological Evolution of Santa Claus to Create New Teaching and Learning Paradigms*, August 2009.

Chair, MBA Thesis Supervisory Committee, Deepak Gupta, *A Lost Profits Estimate for Information Technology Start-ups*, May 2009.

Editorial Board Membership and/or Service as a Reviewer:

EDITORIAL DUTIES

The Earnings Analyst, 2011 - 2016,

Co-Editor O'Hara appointed by CPDE;

Co-Editor Bob Male appointed by AREA.

Economics & Business Journal, 2009 - present. Book Review Editor.

CPDE Compendium, 2009 - present. Co-editor of newsletter with Bob Male.

Business Quest, 2012 - present. Member of Editorial Board.

Journal of Legal Economics, Editor, 2005 - 2007.

REVIEWER DUTIES

Academy of Legal Studies in Business

American Business Law Journal, Staff Reviewer, 2006 - present.

Annual Meeting Proceedings, 1995 - present.

Discussant, Distinguished Papers, 1996, 1997, 1999 - 2002, 2004.

Journal of Legal Studies in Business, reviewer, 2001 - present.

Journal of Business Ethics, reviewer, 2009 - present.

Midwest Law Journal, reviewer, 2008 - present.

Journal of Legal Economics, reviewer, 2000 - 2005; then Editor 2005 through 2007.

Journal of Management Issues, reviewer, 1988 - 2002.

The Earnings Analyst, reviewer 2016 - present; was Co-Editor 2011 - 2016.

Membership in Professional Organizations (some no longer are active):

Primarily Law Related

Academy of Legal Studies in Business (ALSB)

American Bar Association (ABA)

American Intellectual Property Law Association (AIPLA)

American Association for Justice (AAJ, f.k.a., ATLA)

Nebraska Bar Association

Nebraska Trial Lawyers Association (NTLA)

Primarily Economics Related

Collegium of Pecuniary Damage Experts (CPDE), Founding member 2009.

Secretary and Member, Board of Directors, March 2011 - present.

Co-Editor, *The Earnings Analyst*.

Nebraska Economics and Business Association (NEBA)

President-Elect, 2012; President, 2013, Past President, 2014; Pres. Elect, 2016.

Board of Directors, 2010 - present.

Book Review Editor, *Economics & Business Journal*, 2009 - present.

National Association of Forensic Economists (NAFE)

Ad Hoc Membership Committee, 2003-2004.

American Economics Association (AEA)

Academy of Economics and Finance (AEF)

American Academy of Economic and Financial Experts (AAEFE)
Board of Directors, 2002 - 2007.
Editor, *Journal of Legal Economics*, 2005 - 2007.
National Association of Business Economics (NABE)
Missouri Valley Economics Association (MVEA)
Omaha Green Coalition.

Primarily Service Related

Omicron Delta Epsilon (Economics Honorary) Life Member
Beta Gamma Sigma (Business Honorary) Life Member
President of Local Chapter, 1988-1991

University Service (last ten years)

College

Faculty Advisor, 2012 - 2017. G-BASIS student group (Green Businesses Advancing Strategic Integration of Sustainability).
Green Team, 2011 - 2017. The UNO CBA Green Team is pursuing sustainability in college operations.
Ad Hoc Coordinator of CBA's AACSB Reaffirmation of Accreditation, 2003 - 2011.
UNO CBA successfully reaccredited in 2011.
CBA External Relations Council, Aug. 2009 - 2011.
CBA Personnel Advisory Council, 2004 - Aug. 2010.
CBA Strategic Planning Council, 2005 - Aug. 2009.
Graduate Program Committee; Chair, 1991-1993; Member, 1989-1993; as well as sabbatical replacement member during Spring 1999 and Spring 2010.

University

UNO Budget Advisory Committee; Member 2012 - present.
Faculty Advisor, UNO student group, G-BASIS, whose membership is focused on CBA, Fall 2011 - 2017. As part of UNO's and as part of CBA's sustainability efforts I lead reactivation of a defunct student group (i.e., Ecology NOW), which the new members renamed G-BASIS (i.e., green businesses advancing strategic integration of sustainability).
UoN Executive Graduate Council, Aug. 2010 - July 2013; also 2000.
UNO Graduate Council, March 1998 - August 2000; and August 2004 - August 2007; August 2010 - 2014.
Committee "A" (Policy), August 2004 - August 2007; August 2010 - present.
Co-Chair of Committee "A", 2011; 2012.
Student Appeal Committee, 1999-2000; August 2010 - August 2011.
Program Review Committee, 2010, Geography/Geology.
Committee "C" (Personnel), March 1998-August 2000.

UNO Student Publications Board (i.e., publisher of the *Gateway*), August 2010 - July 2014.

UNO Priorities Committee: STEM. In Fall 2011 UNO has chosen five priority areas and formed committees to assemble resources and develop an implementation plan for those priorities. STEM (science, technology, engineering, and mathematics) is one of those five.

UNO Facilities Planning Committee; Member 2003 - 2012.

Academic Freedom and Tenure Committee; Member, 1996 - 2002; 2003 - 2010; Chair, 1998 - 2002.

Presided over May 1998 trial resulting in dismissal, after 34 years with UNO, of Professor Gordon Becker (Psychology). Re-elected 1999.

Presided over May 2000 trial affirming the denial of tenure for Dr. Jeffrey Johnson (Aviation). Presided over August 2006 trial affirming the denial of tenure for Dr. Pamela Owens (Philosophy and Religion). Re-election in October 2006.

Technology Transfer Committee; Member, 1996 - 2007. Committee formed upon my suggestion to Chancellor. Functions transferred to UNMC's and UNL's intellectual property offices.

AWARDS AND HONORS (last ten years)

CBA Summer Teaching Fellowship (2017): "B-law for Start-ups".

CBA Summer Research Fellowship (2015): Business Case re Brownfields.

CBA Summer Research Fellowship (2013): Greenwashing.

UNO Professional Development Leave (2013): "Law & Econ of Pollution Prevention".

CBA Summer Teaching Fellowship (2012): "Creating LAWS 4630 / BSAD 8636 'Brownfields in Sustainable Systems'".

Rule 26 (all) Depositions

January 2016

McGowan v. Platte Valley Medical Group

CI 1 00589; District Court of Buffalo County, Nebraska

Retained by Defendant. Wrongful discharge; mitigation of damages.

Deposition: January 8, 2016.

Trial: none; settled in March 2016.

Attorney: Kate Jones, Kutak, Rock, LLP, Omaha Nebraska.

April 2006:

Koenig v. CBIZ Benefits & Insurance Services, Inc.

8:04 CV 486 (D. Neb. 2005)

Retained by Defendant. Covenant not to compete; lost profits.

Deposition: none

Trial: none, case settled week prior to trial date of October 10, 2006

Attorney: Alan Rupe, Kutak Rock, LLP, Wichita, Kansas;

Kutak Rock's Omaha office contact was attorney Janis Winterhof.

July 2004:

Eunice M. Foster-Holland v. Roberts Dairy Company, LLC

8:03 CV469 (D. Neb. 2004)

Retained by Defendant. Title VII.

Deposition: none

Trial: none

Attorney: Angela Lisee, Blackwell Sanders Peper Martin LLP, Omaha, Nebraska

MAY 2001:

Nash Finch v. Rubloff Hastings

4:00 CV206 (D. Neb. 2000).

Retained by Plaintiff. Lost Profits.

Deposition: none.

Trial: testimony on February 5, 2002.

Attorney: Pamela Dahlquist, Kutak Rock, LLP, Omaha, Nebraska

MARCH 2001:

Nebraska On-Ramp, Inc. v. US West Communications, Inc.

8:99 CV284 (D. Neb. 1999)

Retained by Defendant. Lost Profits.

Deposition: March 23, 2001.

Trial: none, case settled, prior to trial, week of 1-1-2002.

Attorney: Richard Jeffries, Kutak Rock LLP, Omaha, Nebraska.

Before the Nebraska Public Service Commission

In the Matter of the Application

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
Ann Pongratz in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Ann Pongratz.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Rancher.

1 **Q: If you are you married tell us your spouse's name please?**

2 A: Richard Pongratz.

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
4 **and or your family?**

5 A. Yes.

6 **Q: How long the land has been in your family?**

7 **A:** This land has been in our family for generations. Our first ancestor to own this
8 land was George Pongratz. He came over from Germany when he was 11 years
9 old. He learned to speak English and became a citizen of the United States. He
10 worked hard and had good times and rough times but he did this for his children
11 and his children's children to make things better for them. No foreign country or
12 company should be allowed eminent domain over United States land or citizen. If
13 Canada needs this pipeline let them put it through their country not ours. We own
14 320 acres of pasture land that Trans Canada wants to put the pipeline through. It
15 has been in our family for 60 plus years. We are the third generation of owners.
16 We will pass this land on to our children and grandchildren.

17 **Q: Do you earn any income from this land?**

18 A: Yes.

19 **Q: Have you depended on the income from your land to support your livelihood**
20 **or the livelihood of your family?**

21 A: Yes.

22 **Q: Have you ever in the past or have you thought about in the future leasing all**
23 **or a portion of your land in question here?**

24 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
25 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
26 all the restrictions and risks and potential negative impacts to farming or ranching
27 operations as opposed to land that did not have those same risks. If I was looking
28 to lease or rent ground I would pay more for comparable non-pipeline land than I
29 would for comparable pipeline land and I think most folks would think the same

1 way. This is another negative economic impact that affects the landowner and the
2 county and the state and will forever and ever should TransCanada's preferred or
3 mainline alternative routes be approved. If they were to twin or closely parallel to
4 Keystone I the vast majority of landowners would be those that already have a
5 pipeline so there would be considerable less new incremental negative impacts.

6 **Q: Do you have similar concerns about selling the land?**

7 A: Well I hope not to have to sell the land in my lifetime but times change and you
8 never know what is around the corner and yes I am concerned that if another piece
9 of ground similar to mine were for sale and it did not have the pipeline and mine
10 did that I would have a lower selling price. I think this would be true for pipeline
11 ground on both the preferred and mainline alternative routes.

12 **Q: What is your intent with your land after you die?**

13 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
14 to come but I have thought about getting out if this pipeline were to come through.

15 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
16 Pipeline would cross the land described above and owned by you?**

17 A: Yes.

18 **Q: Were you or an entity for which you are a member, shareholder, or director
19 previously sued by TransCanada Keystone Pipeline, LP?**

20 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
21 petition for condemnation against our land so it could place its proposed pipeline
22 within an easement that it wanted to take from us on our land.

23 **Q: Did you defend yourself and your land in that condemnation action?**

24 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
25 and expenses in our resistance of TransCanada's lawsuit against us.

26 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
27 incurred?**

28 A: No, they have not.

1 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
2 **property that it wanted to take for its proposed pipeline?**

3 A: The lawsuit against us stated they would take the amount of property that is
4 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
5 and equipment reasonably necessary to operate the pipeline.

6 **Q: Did TransCanada define what they meant by “property that is reasonably**
7 **necessary”?**

8 A: No, they did not.

9 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
10 **property portion of your land?**

11 A: Yes, they did.

12 **Q: Did TransCanada describe what rights it proposed to take related to the**
13 **eminent domain property on your land?**

14 A: Yes, they did.

15 **Q: What rights that they proposed to take did they describe?**

16 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
17 operate, and maintain the pipeline and the plant and equipment reasonably
18 necessary to operate the pipeline, specifically including surveying, laying,
19 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
20 reconstructing, removing and abandoning one pipeline, together with all fittings,
21 cathodic protection equipment, pipeline markers, and all their equipment and
22 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
23 petroleum products, and all by-products thereof.”

24 **Q: Prior to filing an eminent domain lawsuit to take your land that**
25 **TransCanada identified, do you believe they attempted to negotiate in good**
26 **faith with you?**

27 A: No, I do not.

28 **Q: Did TransCanada at any time approach you with or deliver to you their**
29 **proposed easement and right-of-way agreement?**

1 A: Yes, they did.

2 **Q: At the time you reviewed TransCanada's easement and right-of-way**
3 **agreement, did you understand that they would be purchasing a fee title**
4 **interest in your property or that they were taking something else?**

5 A: I understood that they proposed to have the power to take both a temporary
6 construction easement that could last for a certain period of time and then also a
7 permanent easement which they described to be 50 feet across or in width, and
8 that would run the entire portion of my property from where a proposed pipeline
9 would enter my property until where it would exit the property.

10 **Q: Is the document included with your testimony here as Attachment No. 3, a**
11 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
12 **Way agreement that they included with their condemnation lawsuit against**
13 **you?**

14 A: Yes, it is.

15 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
16 **and Right-of-Way agreement?**

17 A: Yes, I have.

18 **Q: What is your understanding of the significance of the Easement and Right-of-**
19 **Way agreement as proposed by TransCanada?**

20 A: My understanding is that this is the document that will govern all of the rights and
21 obligations and duties as well as the limitations of what I can and cannot do and
22 how I and any future landowner and any person I invite to come onto my property
23 must behave as well as what TransCanada is and is not responsible for and how
24 they can use my land.

25 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
26 **agreement do you have any concerns about any portions of it or any of the**
27 **language either included in the document or missing from the proposed**
28 **document?**

1 A: Yes, I have a number of significant concerns and worries about the document and
2 how the language included and the language not included potentially negatively
3 impacts my land and thereby potentially negatively impacts my community and
4 my state.

5 **Q: I would like you to walk the Commissioners through each and every one of**
6 **your concerns about TransCanada’s proposed Easement and Right-of-Way**
7 **agreement so they can develop an understanding of how that language and**
8 **the terms of that contract, in your opinion, potentially negatively impacts you**
9 **and your land. So, if you can start at the beginning of that document and**
10 **let’s work our way through it, okay?**

11 A: Yes, I’ll be happy to express my concerns about TransCanada’s proposed
12 Easement and Right-of-Way agreement and how it negatively could affect my
13 property rights and my economic interests.

14 **Q. Okay, let’s start with your first concern please.**

15 A: The very first sentence talks about consideration or how much money they will
16 pay to compensate me for all of the known and unknown affects and all of the
17 rights I am giving up and for all the things they get to do to my land and for what
18 they will prevent me from doing on my land and they only will pay me one time at
19 the signing of the easement agreement. That is a huge problem.

20 **Q: Explain to the Commissioners why that is a problem.**

21 A: It is not fair to the landowner, the county, or the State. It is not fair to the
22 landowner because they want to have my land forever for use as they see fit so
23 they can make a daily profit from their customers. If I was to lease ground from
24 my neighbor I would typically pay twice a year every year as long as they granted
25 me the rights to use their land. That only makes sense – that is fair. If I was going
26 to rent a house in town I would typically pay monthly, every month until I gave up
27 my right to use that house. By TransCanada getting out on the cheap and paying
28 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax
29 revenue collection on the money I would be paid and then pay taxes on and

1 contribute to this state and this country. It is money I would be putting back into
2 my local community both spending and stimulating the local economy and
3 generating more economic activity right here. Instead TransCanada's shareholders
4 keep all that money and it never finds its way to Nebraska.

5 **Q: What is your next concern?**

6 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
7 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
8 limited partnership..." and I have no idea who that really is. I have no idea who is
9 forcing this pipeline on us or who the owners of the entities are, or what are the
10 assets backing this limited partnership, or who the general partner is, or who all
11 the limited partners are, and who makes up the ownership of the these partners or
12 the structure or any of the basic things you would want to know and understand if
13 you would want to do business with such an outfit. According to TransCanada's
14 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
15 liability company called TransCanada Keystone Pipeline GP, LLC is the general
16 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
17 basically nothing. That is really scary since the general partner has the liability but
18 virtually none of the ownership and who knows if it has any other assets.

19 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred
20 percent clear on exactly who could become the owner of over 275 miles of
21 Nebraska land?**

22 A: No.

23 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred
24 percent clear on exactly who will be operating and responsible for
25 approximately 275 miles of tar sands pipeline underneath and through
26 Nebraska land?**

27 A: No.

28 **Q: Okay, let's continue please with your concerns of the impacts upon your land
29 and the State of Nebraska of TransCanada's easement terms.**

1 A: Yes, so the next sentence talks about “...its successors and assigns (hereinafter
2 called “Grantee”)...” and this concerns me because it would allow their easement
3 to be transferred or sold to someone or some company or country or who knows
4 what that I don’t know and who we may not want to do business with. This
5 pipeline would be a huge asset for TransCanada and if they can sell to the highest
6 bidder that could have terrible impacts upon all of Nebraska depending upon who
7 may buy it and I don’t know of any safeguards in place for us or the State to veto
8 or have any say so in who may own, operate, or be responsible for this pipeline in
9 the future.

10 **Q: Do you think that type of uncertainty and lack of control over a major piece**
11 **of infrastructure crossing our State is in the public interest?**

12 A: No, certainly not, in fact, just the opposite.

13 **Q: What’s next?**

14 A: Then it says “...a perpetual permanent easement and right-of-way...” and this
15 really concerns me. Why does the easement and right-of-way have to be perpetual
16 and permanent? That is the question myself and my family want an answer to.
17 Perpetual to me is like forever and that doesn’t make sense.

18 **Q: Why doesn’t a perpetual Easement and Right-of-Way make sense to you?**

19 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
20 data proving there is a perpetual supply of tar sands. I am not aware in
21 TransCanada’s application where it proves there is a perpetual necessity for this
22 pipeline. My understanding of energy infrastructure like wind towers is they have
23 a decommission plan and actually take the towers down when they become
24 obsolete or no longer needed. Nothing manmade lasts forever. My land however
25 will, and I want my family or future Nebraska families to have that land as
26 undisturbed as possible and it is not in my interest or the public interest of
27 Nebraska to be forced to give up perpetual and permanent rights in the land for
28 this specific kind of pipeline project.

29 **Q: Okay, what is your next concern?**

1 A: The easement language includes all these things TransCanada can do and it says
2 "...abandoning in place..." so they can just leave this pipeline under my ground
3 until the end of time just sitting there while they are not using it, but I am still
4 prevented from doing on my land and using my land what I would like. If I owned
5 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
6 there. It doesn't make sense and it scares me and it is not in my interest or the
7 public interest of Nebraska to allow this.

8 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
9 **right?**

10 A: Yes.

11 **Q: So now on the second page of the Easement what are your concerns?**

12 A: Here the Easement identifies a 24-month deadline to complete construction of the
13 pipeline but has caveats that are undefined and ambiguous. The 24-month period
14 starts to run from the moment "actual pipeline installation activities" begin on
15 Landowners property. It appears that TransCanada would define this phrase as
16 needed. It would be wise to explain what types of TransCanada action constitutes
17 "installation activity" For instance, would the placement and storage of an
18 excavator or other equipment on or near the Easement property be an activity or
19 would earth have to be moved before the activity requirement is triggered. This
20 vague phrase is likely to lead to future disputes and litigation that is not in the best
21 interest of the welfare of Nebraska and would not protect property interests. The
22 24-months can also be extended in the case of "force majeure." My understanding
23 is that force majeure is often used to insulate a party to a contract when events
24 occur that are completely out of their control. In TransCanada's easement this is
25 expanded to include "without limitation...availability of labor and materials."
26 Extending this language to labor and materials is problematic because these are
27 two variables that TransCanada does have some or significant control over and to
28 allow extension of the 24-month period over events not truly out of the control of

1 TransCanada and without further provision for compensation for the Landowner is
2 not conducive to protection of property rights.

3 **Q: Okay, what is your next concern?**

4 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
5 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
6 reasonable costs and expenses” will pay for damages caused but then limits
7 TransCanada’s liability to certain circumstances. There is no definition of
8 “commercially reasonable” and no stated right that the Landowner would get to
9 determine the amounts of cost or expense that is “commercially reasonable.”
10 TransCanada excepts out from their liability any damages that are caused by
11 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
12 Landowner. It is understandable that if the Landowner were to willfully and
13 intentionally cause damages to the pipeline that Landowner should be liable.
14 However, anything short of willful misconduct should be the liability of
15 TransCanada who is subjecting the pipeline on the Landowner and who is making
16 a daily profit from that pipeline. When evaluating the impact on property rights of
17 this provision, you must consider the potentially extremely expensive fight a
18 Landowner would have over this question of whether or not damage was an act of
19 negligence. Putting this kind of potential liability upon the Landowner is
20 incredibly problematic and is detrimental to the protection of property rights. I
21 don’t think this unilateral power which I can’t do anything about as the landowner
22 is in the best economic interest of the land in question or the State of Nebraska for
23 landowners to be treated that way.

24 **Q: Is there any specific event or example you are aware of that makes this
25 concern more real for you?**

26 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
27 Nemaha County, Nebraska landowner farmers who accidentally struck two
28 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
29 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged

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.

11 **Q: What is the next concern you have with the Easement language?**

12 A: TransCanada has the power to unilaterally move or modify the location of any
13 Easement area whether permanent or temporary at their sole discretion.
14 Regardless, if Landowner has taken prior steps relative to their property in
15 preparation or planning of TransCanada's taking of the initial easement area(s),
16 the language here does not require TransCanada to compensate the Landowner if
17 they decide to move the easement anywhere on Landowners property. Such
18 unilateral powers would negatively affect Landowners property are not conducive
19 to the protection of property rights or economic interests.

20 **Q: What is the next concern you have with the Easement language?**

21 A: The Easement requires that all of the burdens and restrictions upon Landowner to
22 transfer and be applicable to any future owner of the Land in question without the
23 ability of the future Landowner to modify or negotiate any of the language in
24 question to which it will be held to comply.

25 **Q: What is the next concern you have with the Easement language?**

26 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
27 Easement to any person, company, country, etc. at their sole discretion at anytime
28 to anyone. This also means that any buyer of the easement could do the same to a
29 third buyer and so on forever. There is no change of control or sale provision in

1 place to protect the Landowner or Nebraska or to provide compensation for such
2 change of control or ownership. It is not conducive to the protection of property
3 rights or economic interests to allow unilateral unrestricted sale of the Easement
4 thereby forcing upon the Landowner and our State a new unknown Easement
5 owner.

6 **Q: What is the next concern you have with the Easement language?**

7 A: There are many terms in the Easement that are either confusing or undefined terms
8 that are without context as to whether or not the Landowner would have any say
9 so in determining what these terms mean or if the evaluation is solely in
10 TransCanada's control. Some of these vague undefined terms are as follows:

- 11 i. "pipeline installation activities"
- 12 ii. "availability of labor and materials"
- 13 iii. "commercially reasonable costs and expenses"
- 14 iv. "reasonably anticipated and foreseeable costs and expenses"
- 15 v. "yield loss damages"
- 16 vi. "diminution in the value of the property"
- 17 vii. "substantially same condition"
- 18 viii. "an actual or potential hazard"
- 19 ix. "efficient"
- 20 x. "convenient"
- 21 xi. "endangered"
- 22 xii. "obstructed"
- 23 xiii. "injured"
- 24 xiv. "interfered with"
- 25 xv. "impaired"
- 26 xvi. "suitable crossings"
- 27 xvii. "where rock is encountered"
- 28 xviii. "as nearly as practicable"
- 29 xix. "pre-construction position"

1 xx. “pre-construction grade”

2 xxi. “various engineering factors”

3 Each one of these above terms and phrases as read in the context of the Easement
4 could be problematic in many ways. Notably, undefined terms tend to only get
5 definition in further legal proceedings after a dispute arises and the way the
6 Easement is drafted, TransCanada has sole power to determine when and if a
7 particular situation conforms with or triggers rights affected by these terms. For
8 instance, “yield loss damages” should be specifically defined and spelled out
9 exactly how the landowner is to be compensated and in what events on the front
10 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
11 the Landowner is without contractual rights to define these terms or determine
12 when rights related to them trigger and what the affects may be.

13 **Q: Do you have any other concerns about the Easement language that you can**
14 **think of at this time?**

15 A: I reserve the right to discuss any additional concerns that I think of at the time of
16 my live testimony in August.

17 **Q: Based upon what you have shared with the Commission above regarding**
18 **TransCanada’s proposed Easement terms and agreement, do you believe**
19 **those to be reasonable or just, under the circumstances of the pipeline’s**
20 **impact upon you and your land?**

21 A: No, I do not believe those terms to be reasonable or just for the reasons that we
22 discussed previously.

23 **Q: Did TransCanada ever offer you financial compensation for the rights that**
24 **they sought to obtain in your land, and for what they sought to prevent you**
25 **and any future land owner of your property from doing in the future?**

26 A: Yes, we received an offer from them.

27 **Q: As the owner of the land in question and as the person who knows it better**
28 **than anyone else, do you believe that TransCanada offered you just, or fair,**

1 **compensation for all of what they proposed to take from you so that their tar**
2 **sands pipeline could be located across your property?**

3 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
4 offer for all the potential impacts and effects and the rights that I'm giving up, and
5 what we will be prevented from doing in the future and how their pipeline would
6 impact my property for ever and ever.

7 **Q: Has TransCanada at any time offered to compensate you annually, such as**
8 **wind farm projects do, for the existence of their potential tar sands pipeline**
9 **across your property.**

10 A: No, never.

11 **Q: At any time did TransCanada present you with or request that you, as the**
12 **owner of the land in question, sign and execute a document called, "Advanced**
13 **Release of Damage Claims and Indemnity Agreement?"**

14 A: Yes, they did and it was included in the County Court lawsuit against us.

15 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
16 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

17 A: Yes, it is.

18 **Q: What was your understanding of that document?**

19 A: When I read that document in the plain language of that document, it was my
20 understanding that TransCanada was attempting to pay me a very small amount at
21 that time in order for me to agree to give up my rights to be compensated from
22 them in the future related to any damage or impact they may have upon my
23 property "arising out of, in connection with, or alleged to resulted from
24 construction or surveying over, under or on" my land.

25 **Q: Did you ever sign that document?**

26 A: No, I did not.

27 **Q: Why not?**

28 A; Because I do not believe that it is fair or just to try to get me to agree to a small
29 sum of money when I have no idea how bad the impacts or damages that they, or

1 their contractors, or subcontractors, or other agents or employees, may cause on
2 my land at any time in the future that resulted from the construction or surveying
3 or their activities upon my land.

4 **Q: When you reviewed this document, what did it make you feel?**

5 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
6 shield themselves against known and foreseeable impacts that their pipeline, and
7 the construction of it, would have upon my land. It made me feel that they knew it
8 was in their financial interest to pay me as little as possible to prevent me from
9 ever having the opportunity to seek fair compensation again, and that this must be
10 based upon their experience of unhappy landowners and situations in other places
11 where they have built pipelines.

12 **Q: Has TransCanada ever contacted you and specifically asked you if you
13 thought their proposed location of their proposed pipeline across your land
14 was in your best interest?**

15 A: No, they have not.

16 **Q: Has TransCanada ever contacted you and specifically asked you if you
17 thought their proposed location of their proposed pipeline across your land
18 was in the public interest of the State of Nebraska?**

19 A: No, they have not.

20 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
21 Takings Clause?**

22 A: Yes, I am.

23 **Q: What is your understanding of the Fifth Amendment as it relates to taking of
24 an American citizens property?**

25 A: My understanding is that, according to the United States Constitution, that if the
26 government is going to take land for public use, then in that case, or by taking for
27 public use, it can only occur if the private land owner is compensated justly, or
28 fairly.

1 **Q: Has TransCanada ever contacted you specially to explain the way in which**
2 **the public could use its proposed Keystone XL Pipeline?**

3 A: No, they have not.

4 **Q: Can you think of any way in which the public, that is the citizens of the State**
5 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
6 **Pipeline, as it dissects the State of Nebraska?**

7 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
8 public benefits from this pipeline in any way, how they can use it any way, or how
9 it's in the public interest in any way. By looking at the map, it is quite clear to me
10 that the only reason it's proposed to come through Nebraska, is that because we
11 are geographically in the way from between where the privately-owned Tar Sands
12 are located to where TransCanada wants to ship the Tar Sands to refineries in
13 Houston, Texas.

14 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
15 **crude petroleum, or oil and petroleum by-products that you would like to**
16 **ship in its pipeline?**

17 A: No, it has not.

18 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
19 **products that you, at this time or any time in the future, would desire to place**
20 **for transport within the proposed TransCanada Keystone XL Pipeline?**

21 A: No, I do not.

22 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
23 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
24 **products within the proposed TransCanada Keystone XL Pipeline?**

25 A: No, I do not. I've never heard of such a person or company like that.

26 **Q: Do you pay property taxes for the land that would be affected and impacted**
27 **at the proposed TransCanada Keystone XL Pipeline?**

28 A: Yes, I do.

29 **Q: Why do you pay property taxes on that land?**

1 A: Because that is the law. The law requires us to pay the property taxes as the owner
2 of that property.

3 **Q: Because you follow the law and pay property taxes, do you believe you**
4 **deserve any special consideration or treatment apart from any other person**
5 **or company that pays property taxes?**

6 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
7 just what you do.

8 **Q: Do you believe the fact that you pay property taxes entitles you to special**
9 **treatment of any kind, or special rights of any kind?**

10 A: No, of course not.

11 **Q: Do you believe the fact that you pay property taxes on your land would be**
12 **enough to qualify you to have the power of eminent domain to take land of**
13 **your neighbors or other people in your county, or other people across the**
14 **state of Nebraska?**

15 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
16 I expect an award for or any type of special consideration.

17 **Q: Have you at any time ever employed any person other than yourself?**

18 A: Well, yes I have.

19 **Q: Do you believe that the fact that you have, at some point in your life,**
20 **employed one or more other persons entitle you to any special treatment or**
21 **consideration above and beyond any other Nebraskan that has also employed**
22 **one or more persons?**

23 A: No, of course not.

24 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
25 **have at one point employed another person within this state, entitles you to**
26 **preferential treatment or consideration of any kind?**

27 A: No, of course not. If I choose to employ someone that decision is up to me. I
28 don't deserve any special treatment or consideration for that fact.

1 **Q: At the beginning of your statement, you briefly described your property that**
2 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
3 **give the Commissioners a sense of specifically how you believe the proposed**
4 **Keystone XL Pipeline and its preferred route, which proposes to go across**
5 **your land, how it would in your opinion based on your knowledge,**
6 **experience, and background of your land, affect it.**

7 A: There are 2 stock wells on this land, a creek runs through it. There is a watering
8 dug out for the cattle to drink from and shelter belts. The land is surrounded by
9 barbwire fence with gate. The subsoil is gravel. According to the map that
10 TransCanada sent us this pipeline will go under or through the creek. It comes
11 into our property from the east and will go cross to almost the north end of the
12 property.

13 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
14 **crude oil pipeline in its preferred location, or ultimate location across the**
15 **state of Nebraska?**

16 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
17 or even bullied around and being made to feel scared that they did not have any
18 options but to sign whatever papers TransCanada told them they had to. I am
19 aware of folks being threatened that their land would be taken if they didn't follow
20 what TransCanada was saying. I am aware of tactics to get people to sign
21 easements that I don't believe have any place in Nebraska or anywhere such as
22 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
23 landowners and convince them they should sign TransCanada's easement
24 agreements. I am aware of older folks and widows or widowers feeling they had
25 no choice but to sign TransCanada's Easement and they didn't know they could
26 fight or stand up for themselves. From a more practical standpoint, I am worried
27 that according to their answer to our Interrogatory No. 211, TransCanada only
28 owns and operates one (1) major oil pipeline. They simply do not have the
29 experience with this type of pipeline and that scares me. There are others but that

1 is what I can recollect at this time and if I remember more or my recollection is
2 refreshed I will share those with the Commissioners at the Hearing in August.

3 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
4 **landowner is reasonable or just?**

5 A: No, I do not.

6 **Q: Do you have any concern about limitations that the construction of this**
7 **proposed pipeline across your affected land would prevent construction of**
8 **future structures upon the portion of your land affected by the proposed**
9 **easement and immediately surrounding areas?**

10 A: Well yes, of course I do. We would not be able to build many, if any, types of
11 structures directly across or touching the easement, and it would be unwise and I
12 would be uncomfortable to build anything near the easement for fear of being
13 blamed in the future should any damage or difficulty result on my property in
14 regards to the pipeline.

15 **Q: Do you think such a restriction would impact you economically?**

16 A: Well yes, of course.

17 **Q: How do you think such a restriction would impact you economically?**

18 A: The future of this land may not be exactly how it's being used as of this moment,
19 and having the restrictions and limiting my ability to develop my land in certain
20 ways presents a huge negative economic impact on myself, my family, and any
21 potential future owner of the property. You have no idea how I or the future owner
22 may want to use this land in the future or the other land across Nebraska
23 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
24 ago it would have been hard to imagine all the advances that we have now or how
25 things change. Because the Easement is forever and TransCanada gets the rights in
26 my land forever we have to think with a very long term view. By placing their
27 pipeline on under across and through my land that prevents future development
28 which greatly negatively impacts future taxes and tax revenue that could have
29 been generated by the County and State but now will not. When you look at the

1 short blip of economic activity that the two years of temporary construction efforts
2 may bring, that is far outweighed by the perpetual and forever loss of opportunity
3 and restrictions TransCanada is forcing upon us and Nebraska.

4 **Q: Do you have any concerns about the environmental impact of the proposed**
5 **pipeline?**

6 A: Yes, I do.

7 **Q: What are some of those concerns?**

8 A: As an affected land owner and Nebraskan, I am concerned that any construction,
9 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
10 a detrimental impact upon the environment of my land specifically, as well as the
11 lands near my land and surrounding the proposed pipeline route.

12 **Q: Do you have any other environmental concerns?**

13 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
14 construction and/or maintenance and operation. I am concerned about spills and
15 leaks that TransCanada has had in the past and will have in the future. This could
16 be catastrophic to my operations or others and to my county and the State.

17 **Q: Do you have any thoughts regarding if there would be an impact upon the**
18 **natural resources on or near your property due to the proposed pipeline?**

19 A: Yes, I believe that any construction, operation, and/or maintenance of the
20 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
21 resources of my land, and the lands near and surrounding the proposed pipeline
22 route.

23 **Q: Do you have any worries about potential impacts from the proposed pipeline**
24 **to the soil of your land, or land near you?**

25 A: Yes, I believe that any construction, operation, and/or maintenance of the
26 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
27 land, as well as land along and surrounding the proposed pipeline route. This
28 includes, but is not limited to, the reasons that we discussed above of disturbing
29 the soil composition and makeup as it has naturally existed for thousands and

1 millions of years during the construction process, and any future maintenance or
2 removal process. I'm gravely concerned about the fertility and the loss of
3 economic ability of my property to grow the crops, or grow the grasses, or grow
4 whatever it is at that time they exist on my property or that I may want to grow in
5 the future, or that a future owner may want to grow. The land will never be the
6 same from as it exists now undisturbed to after it is trenched up for the proposed
7 pipeline.

8 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
9 **upon the groundwater over your land, or surrounding lands?**

10 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
11 the proposed Keystone XL Pipeline would have a detrimental impact upon the
12 groundwater of not only under my land, but also near and surrounding the pipeline
13 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
14 simple and it is simply too valuable to our State and the country to put at
15 unreasonable risk.

16 **Q: Do you have any concern about the potential impact of the proposed pipeline**
17 **upon the surface water on, or near or around your land?**

18 A: Yes, I have significant concerns that any construction, operation, and/or
19 maintenance of the proposed Keystone XL Pipeline would have detrimental
20 impact upon the surface water of not only within my property boundary, but along
21 and near and surrounding the pipeline route, and in fact, across the state of
22 Nebraska.

23 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
24 **upon the wildlife and plants, other than your growing crops on or near your**
25 **land?**

26 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
27 the proposed Keystone XL Pipeline would have a detrimental impact upon the
28 wildlife and the plants, not only that are located on or can be found upon my land,
29 but also near and along the proposed pipeline route.

1 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
2 **fair market value of your land?**

3 A: Yes, I do. I am significantly concerned about how the existence of the proposed
4 pipeline underneath and across and through my property will negatively affect the
5 fair market value at any point in the future, especially at that point in which I
6 would need to sell the property, or someone in my family would need to sell the
7 property. I do not believe, and certainly would not be willing to pay, the same
8 price for land that had the pipeline located on it, versus land that did not. I hope
9 there is never a point where I'm in a position where I have to sell and have to
10 realize as much value as I can out of my land. But because it is my single largest
11 asset, I'm gravely concerned that the existence of the proposed Keystone XL
12 Pipeline upon my land will affect a buyer's willingness to pay as much as they
13 would've paid and as much as I could've received, if the pipeline were not upon
14 my property. There are just too many risks, unknowns, impacts and uncertainties,
15 not to mention all of the rights you give up by the nature of having the pipeline
16 due to having the easement that we have previously discussed, for any reasonable
17 person to think that the existence of the pipeline would not negatively affect my
18 property's value.

19 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
20 **testimony?**

21 A: Yes, I have.

22 **Q: Where have you seen that before?**

23 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
24 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
25 believe the portion of the alternative route in Nebraska essentially twins or
26 parallels Keystone I.

27 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
28 **Application, and as found on Attachment No. 7, here to your testimony, is in**
29 **the public interest of Nebraska?**

1 A: No, I do not.

2 **Q: Do you believe that the Keystone mainline alternative route as shown on**
3 **Attachment No. 7 included with your testimony here is a major oil pipeline**
4 **route that is in the public interest of Nebraska?**

5 A: No, I do not.

6 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
7 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe there is any potential route for the proposed Keystone XL**
10 **Pipeline across, within, under, or through the State of Nebraska that is in the**
11 **public interest of the citizens of Nebraska?**

12 A: No, I do not.

13 **Q: Why do you hold that belief?**

14 A: Because there simply is no public interest based on all of the factors that I am
15 aware and that I have read and that I have studied that this Commission is to
16 consider that would establish that a for-profit foreign-owned pipeline that simply
17 crosses Nebraska because we are geographically in the way between where tar
18 sands are in Canada to where it wants to ship it to in Texas could ever be in the
19 public interest of Nebraskans. We derive no benefit from this project. It is not for
20 public use. Nebraska is simply in the way and when all considerations are taken in
21 there is no net benefit of any kind for Nebraska should this project be placed in our
22 state. Even if there was some arguable “benefit” it is not enough to outweigh all
23 the negative impacts and concerns.

24 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
25 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
26 **of Nebraska because it may bring temporary jobs during the construction**
27 **phase to Nebraska?**

28 A: First of all, not all jobs are created equally. Most jobs that are created, whether
29 temporary or on a permanent basis, don’t come with a project that has all the

1 potential and foreseeable negative impacts, many of which we have discussed here
2 and other witnesses throughout the course of this hearing have and will discuss. If
3 I decide to hire and employ someone to help me out in my farming or ranching
4 business, I've created a job but I haven't done so at the risk or detrimental impact
5 to my land or my town or my county or my state. And I've hired someone who is
6 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
7 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
8 jobs are not created equal. Additionally, I understand from what I'm familiar with
9 from TransCanada's own statements that the jobs numbers they originally touted
10 were determined to be a minute fraction of the permanent jobs that had been
11 projected. According to their answer to our Interrogatory No. 191, TransCanada
12 has created only thirty-four (34) jobs within Nebraska working specifically on
13 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
14 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
15 Further, according to their answer to Interrogatory No. 199, TransCanada would
16 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
17 constructed on its Preferred Route or its Mainline Alternative Route.

18 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
19 **because it would cross your land?**

20 A: No, absolutely not. I am opposed to this project because it is not in the public
21 interest, neither within my community nor within our state.

22 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
23 **was to cross someone else's land?**

24 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
25 the fear and anxiety and potential foreseeable risks and negative impacts that this
26 type of a project carrying this type of product brings foisted upon anyone in this
27 state or any other state.

28 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
29 **Pipeline to cross the state of Nebraska?**

1 A: I don't believe there is an intelligent route because as I have stated I don't believe
2 this project anywhere within Nebraska is within the public interest. However, if
3 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
4 had to go somewhere in the state of Nebraska, the only intelligent route I believe
5 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
6 preferred route and the mainline alternative routes are economic liabilities our
7 state cannot risk.

8 **Q: What do you rely upon to make that statement?**

9 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
10 already exists in that area is reason enough as it is not in our best interest or the
11 public interests to have more major oil pipelines crisscrossing our state. Second,
12 they have all the infrastructure already there in terms of relationships with the
13 counties and local officials and first responders along that route. Third, they have
14 already obtained easements from all the landowners along that route and have
15 relationships with them. Fourth, that route avoids our most sensitive soils, the
16 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
17 Aquifer. Sixth, they have already studied that route and previously offered it as an
18 alternative. Seventh, it just makes the most sense that as a state we would have
19 some intelligent policy of energy corridors and co-locating this type of
20 infrastructure near each other.

21 **Q: Do you have any other concerns you would like to reiterate or can think of at
22 this time you would like the Commissioners to understand?**

23 A: Yes. The product of this pipeline is for export markets and would not benefit
24 Nebraska or the United States of America. The proposed jobs would be few for
25 our "Nebraska workers" and only temporary.

26 **Q: Have you fully expressed each and every opinion, concern, or fact you would
27 like the Public Service Commissioners to consider in their review of
28 TransCanada's Application?**

1 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
2 document below but other things may come to me or my memory may be
3 refreshed and I will add and address those things at the time of the Hearing in
4 August and address any additional items at that time as is necessary. Additionally,
5 I have not had an adequate amount of time to receive and review all of
6 TransCanada's answers to our discovery and the discovery of others so it was
7 impossible to competently and completely react to that in my testimony here and I
8 reserve the right to also address anything related to discovery that has not yet
9 concluded as of the date I signed this document below. Lastly, certain documents
10 requested have not yet been produced by TransCanada and therefore I may have
11 additional thoughts on those I will also share at the hearing as needed.

12 **Q: What is it that you are requesting the Public Service Commissioners do in**
13 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
14 **across Nebraska?**

15 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
16 a temporary job spike that this project may bring to a few counties and beyond the
17 relatively small amount of taxes this proposed foreign pipeline would possibly
18 generate. And, instead think about the perpetual and forever impacts of this
19 pipeline as it would have on the landowners specifically, first and foremost, but
20 also thereby upon the entire state of Nebraska, and to determine that neither the
21 preferred route nor the Keystone mainline alternative route are in the public
22 interest of the citizens of the state of Nebraska. And if the Commissioners were
23 inclined to modify TransCanada's proposed routes and were to be inclined to grant
24 an application for a route in Nebraska, that the only potential route that would
25 make any intelligent sense whatsoever would be twinning or near paralleling of
26 the proposed KXL with the existing Keystone I pipeline. It simply does not make
27 sense to add yet another major oil pipeline crisscrossing our state creating new
28 pumping stations, creating new impacts on additional counties and communities
29 and going through all of the court processes with myself and other landowners like

1 me when this applicant already has relationships with the landowners, the towns
2 and the communities along Keystone I, and that Keystone I is firmly outside of the
3 sand hills and a significantly further portion away from the heart of the Ogallala
4 Aquifer than the preferred route or the Keystone mainline alternative route.

5 **Q: Are all of your statements in your testimony provided above true and**
6 **accurate as of the date you signed this document to the best of your**
7 **knowledge?**

8 A: Yes, they are.

9 **Q: Thank you, I have no further questions at this time and reserve the right to**
10 **ask you additional questions at the August 2017 Hearing.**

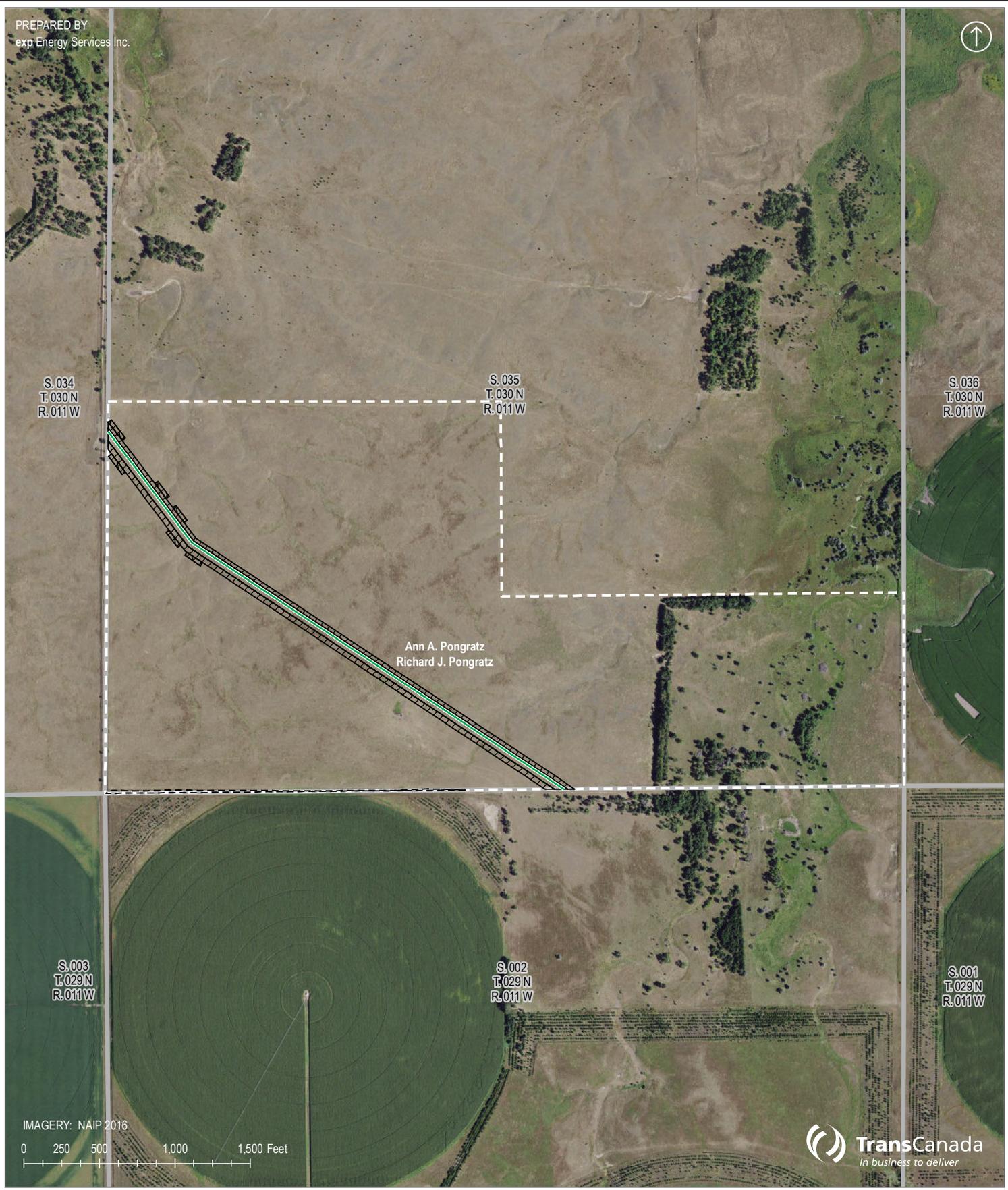
Ann Pongratz
Ann Pongratz

Subscribed and Sworn to me before this 26th day of May, 2017.

Catherine A Fox
Notary Public



Attachment No. 1



Ann A. Pongratz
Richard J. Pongratz



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Ann A. Pongratz
Richard J. Pongratz

TRACT NO. ML-NE-HT-30415.000
STATE: Nebraska
COUNTY: Holt
SECTION: 035
TOWNSHIP: 030N
RANGE: 011W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Access Road (Temp.)
- Property Line



S.035
T.030N
R.011W

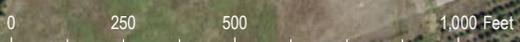
S.036
T.030N
R.011W

Ann A. Pongratz
Richard J. Pongratz

S.001
T.029N
R.011W

S.002
T.029N
R.011W

IMAGERY: NAIP 2016



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Ann A. Pongratz
Richard J. Pongratz

TRACT NO. ML-NE-HT-30425.000
STATE: Nebraska
COUNTY: Holt
SECTION: 002
TOWNSHIP: 029N
RANGE: 011W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Access Road (Temp.)
- Property 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-30415.000
ML-NE-HT-30425.000

**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**") **Richard J. Pongratz and Ann A. Pongratz, as joint tenants**, whose mailing address is 87393 488th Ave, O'Neill, NE 68763 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection

Grantor's Initials _____

equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Holt, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 240 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SW1/4 and the S1/2 of the SE1/4 of Section 35, Township 30 North, Range 11 West of the 6th P.M., as recorded in Book 200, Page 216 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 83.85 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the N1/2 of the NE1/4 of Section 2, Township 29 North, Range 11 West of the 6th P.M., as recorded in Book 200, Page 216 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):

Richard J. Pongratz

Ann A. Pongratz

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

Grantor's Initials _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Richard J. Pongratz**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Ann A. Pongratz**

Notary Public Signature

Affix Seal Here

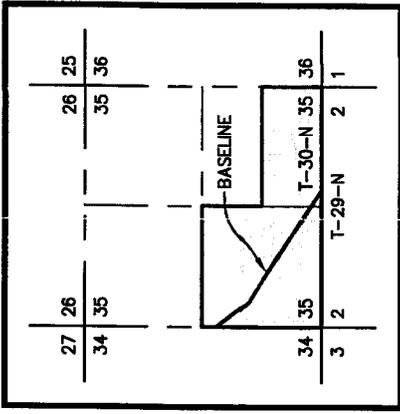
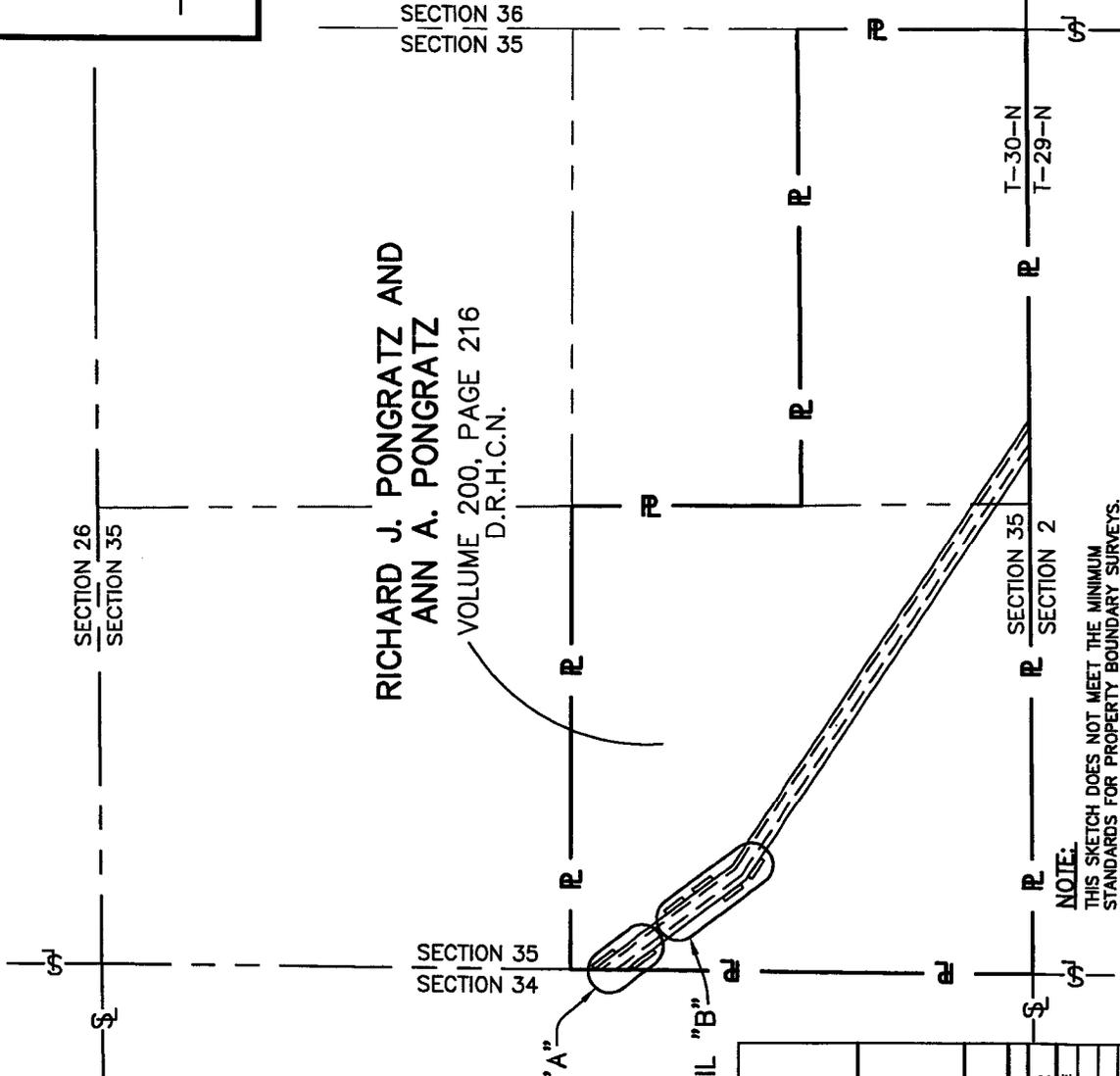
HOLT COUNTY, NEBRASKA

T-30-N, R-11-W, SECTION 35

ML-NE-HT-30415.000

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.



VICINITY MAP
N.T.S.



0 500 1000
SCALE: 1" = 1,000'

TRACT LEGAL DESCRIPTION:
SW/4, S/2 SE/4 OF SECTION 35
T-30-N, R-11-W

NOTE:
THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 3,880' ±
AREA OF PERMANENT EASEMENT: 4.4 ACRES
AREA OF TEMPORARY WORKSPACE: 5.3 ACRES
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.5 ACRE



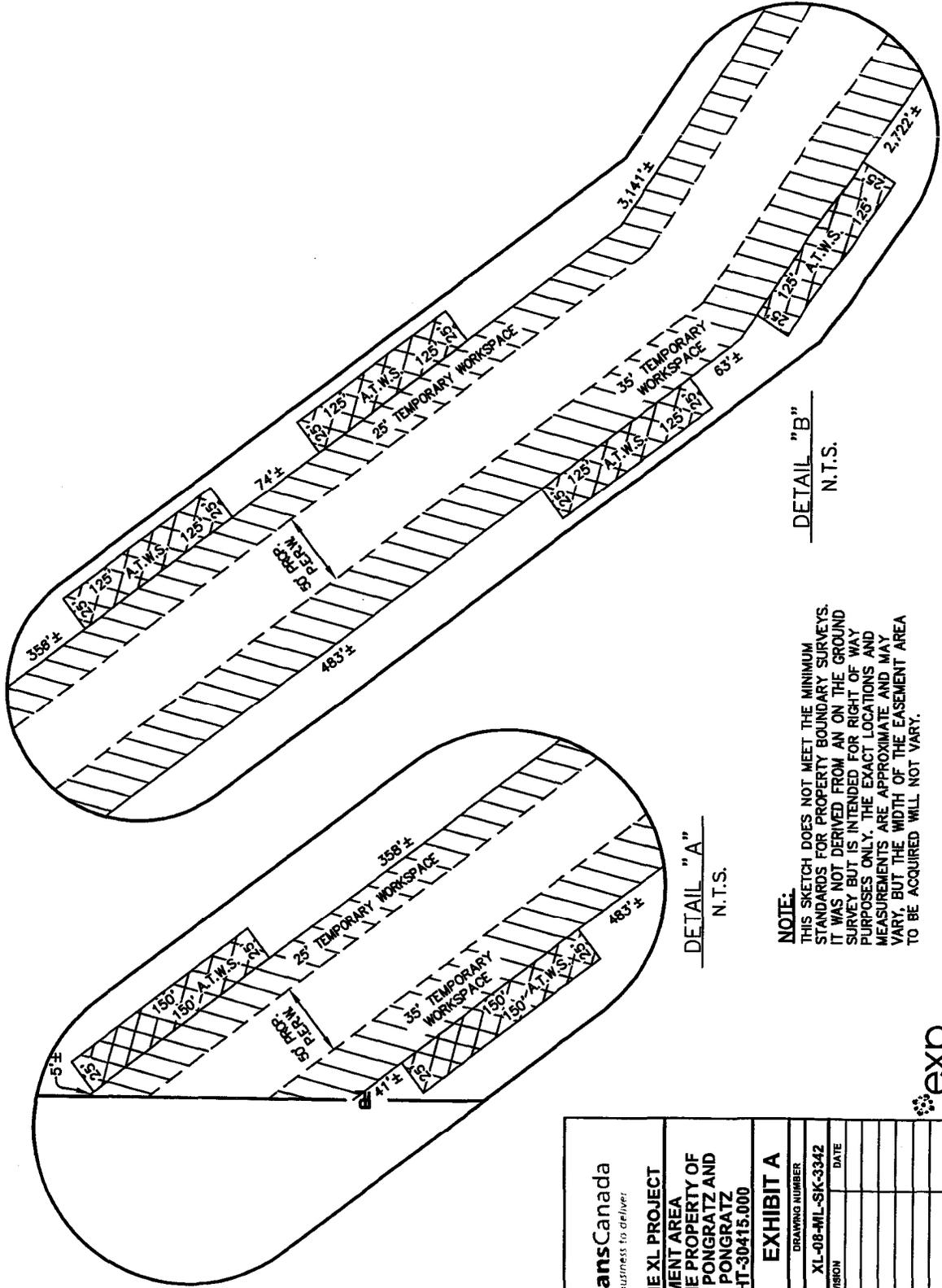
KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
RICHARD J. PONGRATZ AND
ANN A. PONGRATZ
ML-NE-HT-30415.000

PROJECT:	XL	EXHIBIT A
APPROVED BY:	SLR	DRAWING NUMBER
NO.	REVISION	DATE
SCALE	DATE	DRAWN BY
1" = 1000'	10/29/14	JN
CHECKED BY	DATE	ALS



HOLT COUNTY, NEBRASKA
T-30-N, R-11-W, SECTION 35
ML-NE-HT-30415.000

LEGEND:
 PL PROPERTY LINE
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



DETAIL "A"
 N.T.S.

DETAIL "B"
 N.T.S.

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TransCanada <i>In Business to deliver</i>	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
RICHARD J. PONGRATZ AND	
ANN A. PONGRATZ	
ML-NE-HT-30415.000	
PROJECT:	EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3342
NO.	REVISION
	DATE
SCALE	DATE
N.T.S.	10/29/14
DRAWN BY	CHECKED BY
JN	ALS



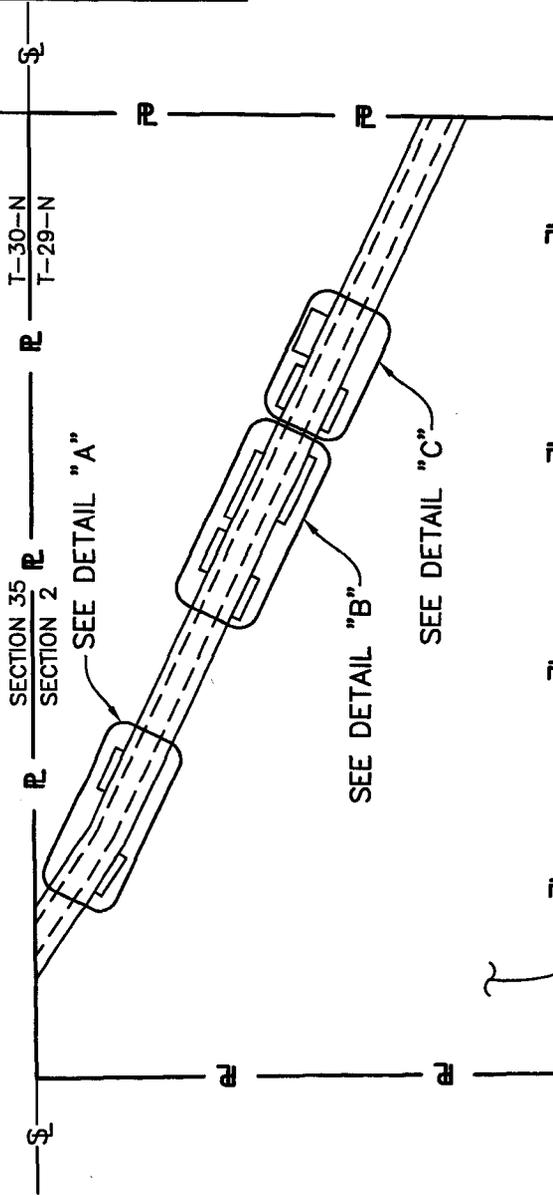
HOLT COUNTY, NEBRASKA

T-29-N, R-11-W, SECTION 2

ML-NE-HT-30425.000

PROPERTY LINE
 SECTION LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY
 DEED RECORDS OF HOLT COUNTY, NEBRASKA

LEGEND
 P
 S
 A.T.W.S.
 P.E.R.W.
 D.R.H.C.N.

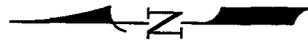


RICHARD J. PONGRATZ AND ANN A.
 PONGRATZ, AS JOINT TENANTS,
 AND NOT AS TENANTS IN COMMON
 VOLUME 200, PAGE 216
 D.R.H.C.N.

VICINITY MAP
N.T.S.

34	35	T-30-N	35	36
3	2	T-29-N	2	1
BASELINE				
3	2		2	1
10	11		11	12

VICINITY MAP
N.T.S.



TRACT LEGAL DESCRIPTION:
 N/2 NE/4 OF SECTION 2,
 T-29-N, R-11-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: 2,513'±
 AREA OF PERMANENT EASEMENT: 2.9 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.5 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.8 ACRES

		KEYSTONE XL PROJECT	
EASEMENT AREA		ACROSS THE PROPERTY OF	
RICHARD J. PONGRATZ AND ANN A.		PONGRATZ, AS JOINT TENANTS,	
AND NOT AS TENANTS IN COMMON		ML-NE-HT-30425.000	
PROJECT:	XL	EXHIBIT A	
APPROVED BY:	SLR	DRAWING NUMBER:	XL-08-ML-SK-3343
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/29/14	JN	ALS



HOLT COUNTY, NEBRASKA

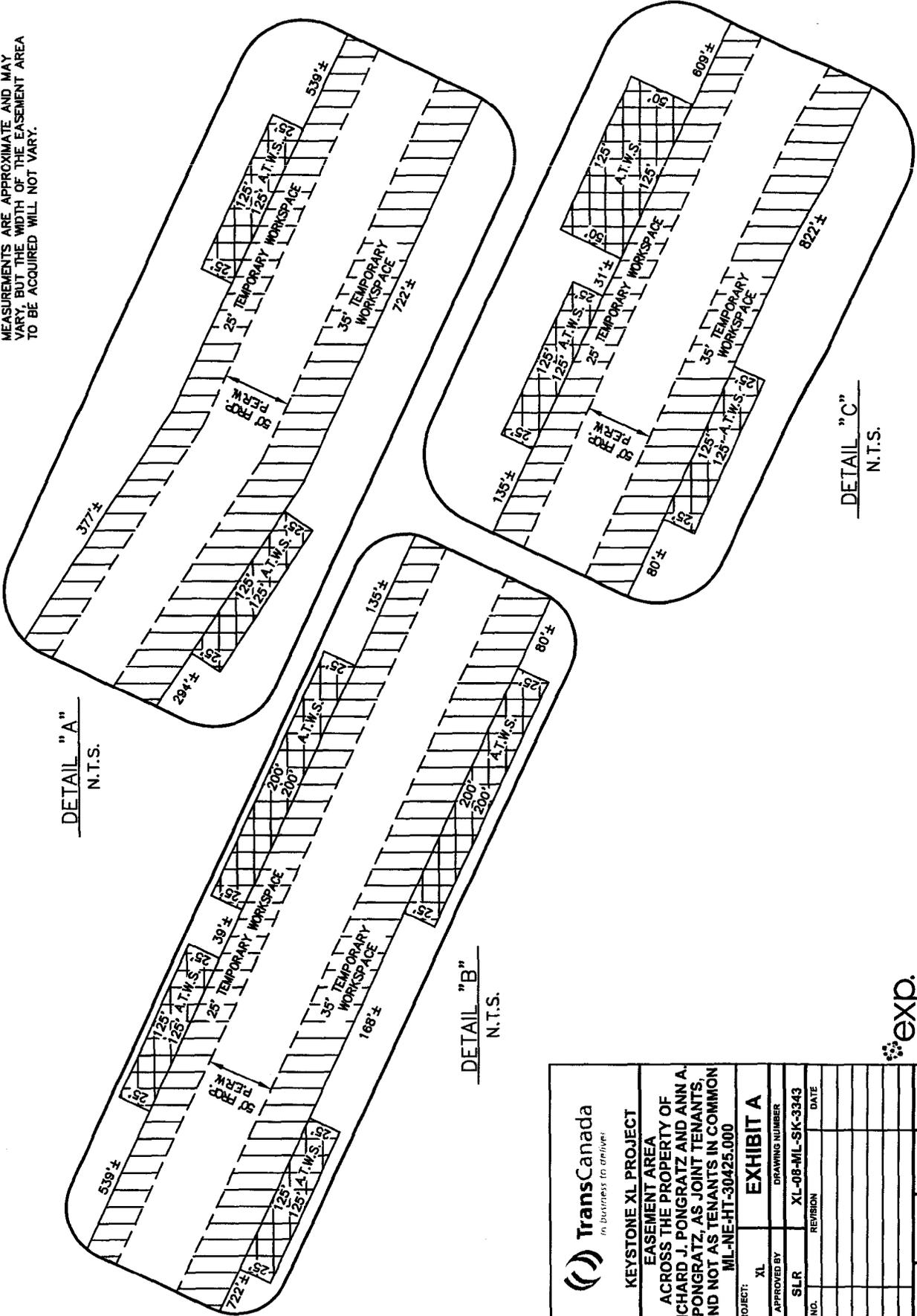
T-29-N, R-11-W, SECTION 2

ML-NE-HT-30425.000

LEGEND
 PROP
 A.T.W.S.
 P.E.R.W.

PROPOSED
 ADDITIONAL
 TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM
 STANDARDS FOR PROPERTY BOUNDARY SURVEYS.
 IT WAS NOT DERIVED FROM AN ON THE GROUND
 SURVEY BUT IS INTENDED FOR RIGHT OF WAY
 PURPOSES ONLY. THE EXACT LOCATIONS AND
 MEASUREMENTS ARE APPROXIMATE, AND MAY
 VARY, BUT THE WIDTH OF THE EASEMENT AREA
 TO BE ACQUIRED WILL NOT VARY.



DETAIL "A"
 N.T.S.

DETAIL "B"
 N.T.S.

DETAIL "C"
 N.T.S.



KEYSTONE XL PROJECT
EASEMENT AREA
 ACROSS THE PROPERTY OF
 RICHARD J. PONGRATZ AND ANN A.
 PONGRATZ, AS JOINT TENANTS,
 AND NOT AS TENANTS IN COMMON
 ML-NE-HT-30425.000

PROJECT:	XL	EXHIBIT A
APPROVED BY:	SLR	DRAWING NUMBER
NO.		XL-08-ML-SK-3343
REVISION		DATE
SCALE	DATE	DRAWN BY
N.T.S.	10/29/14	JN
		CHECKED BY
		ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30425.000

I/we Richard J. Pongratz and Ann A Pongratz, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Eight Hundred Seventy Two Dollars and No Cents (\$1,872.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

N/2 NE/4

Section 2, Township 29-N, Range 11-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-30415.000

I/we Richard J. Pongratz and Ann A Pongratz, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Six Hundred Fifty Two Dollars and No Cents (\$2,652.00), 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, S/2 SE/4

Section 35, Township 30-N, Range 11-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_____.

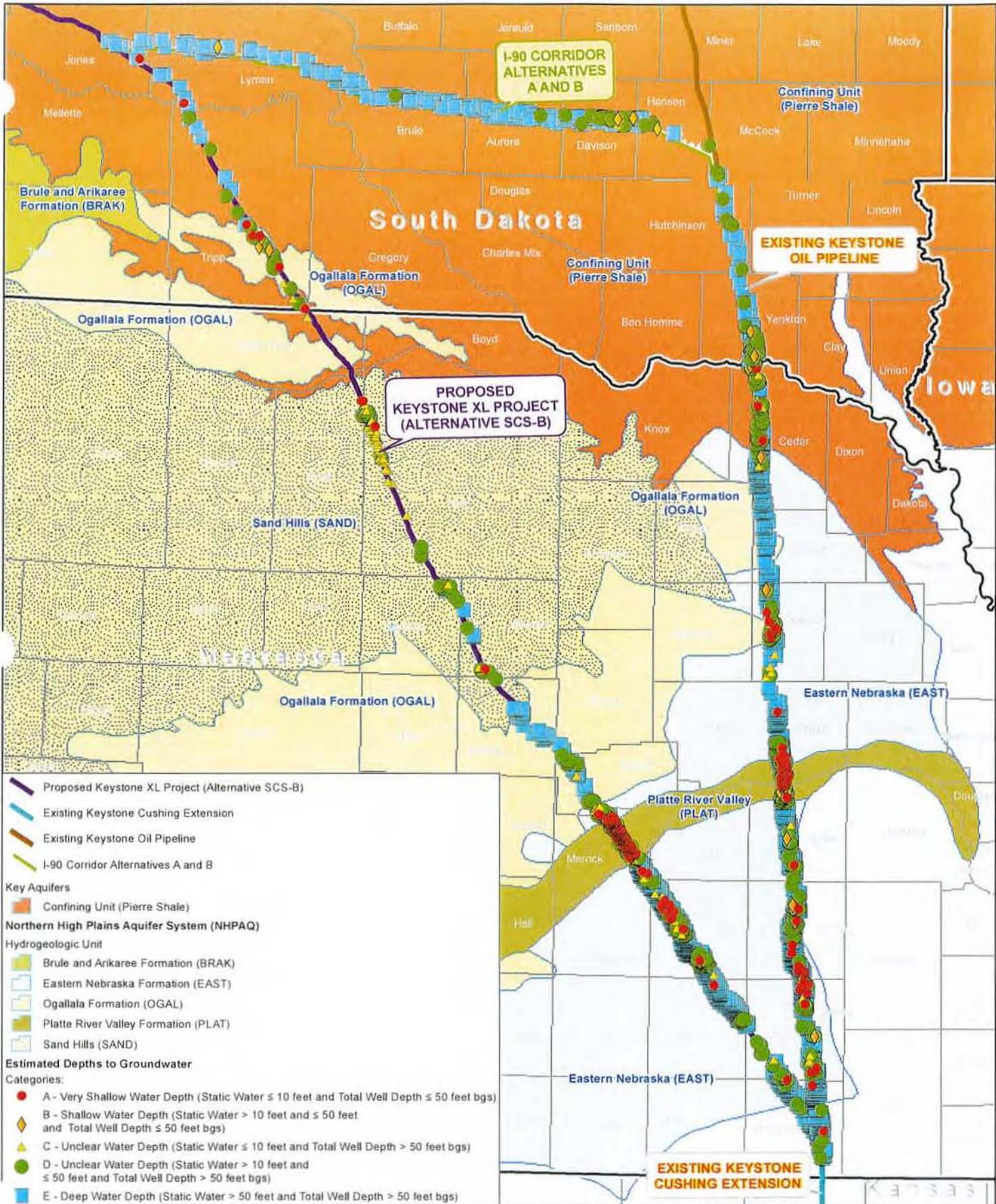
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



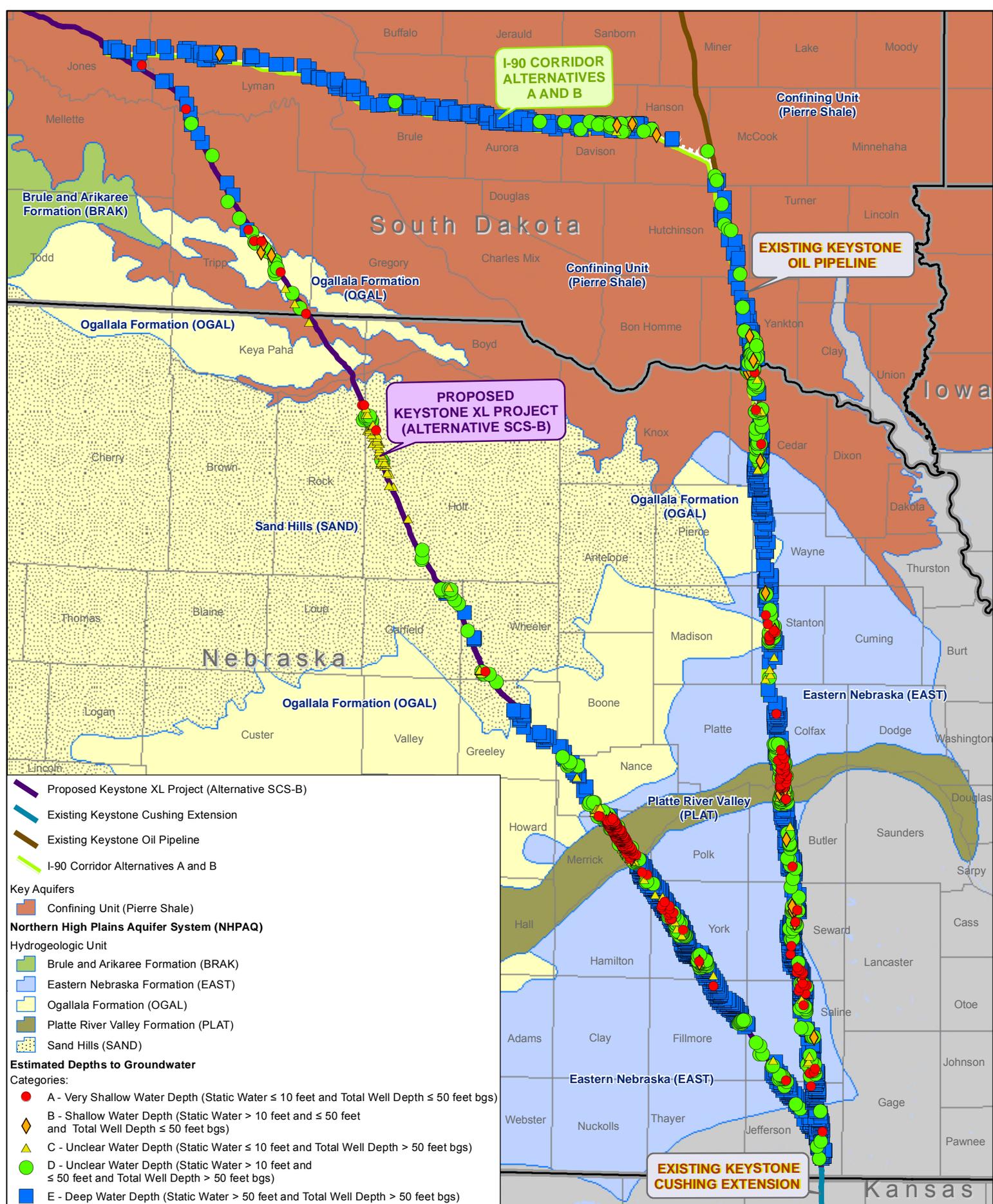
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

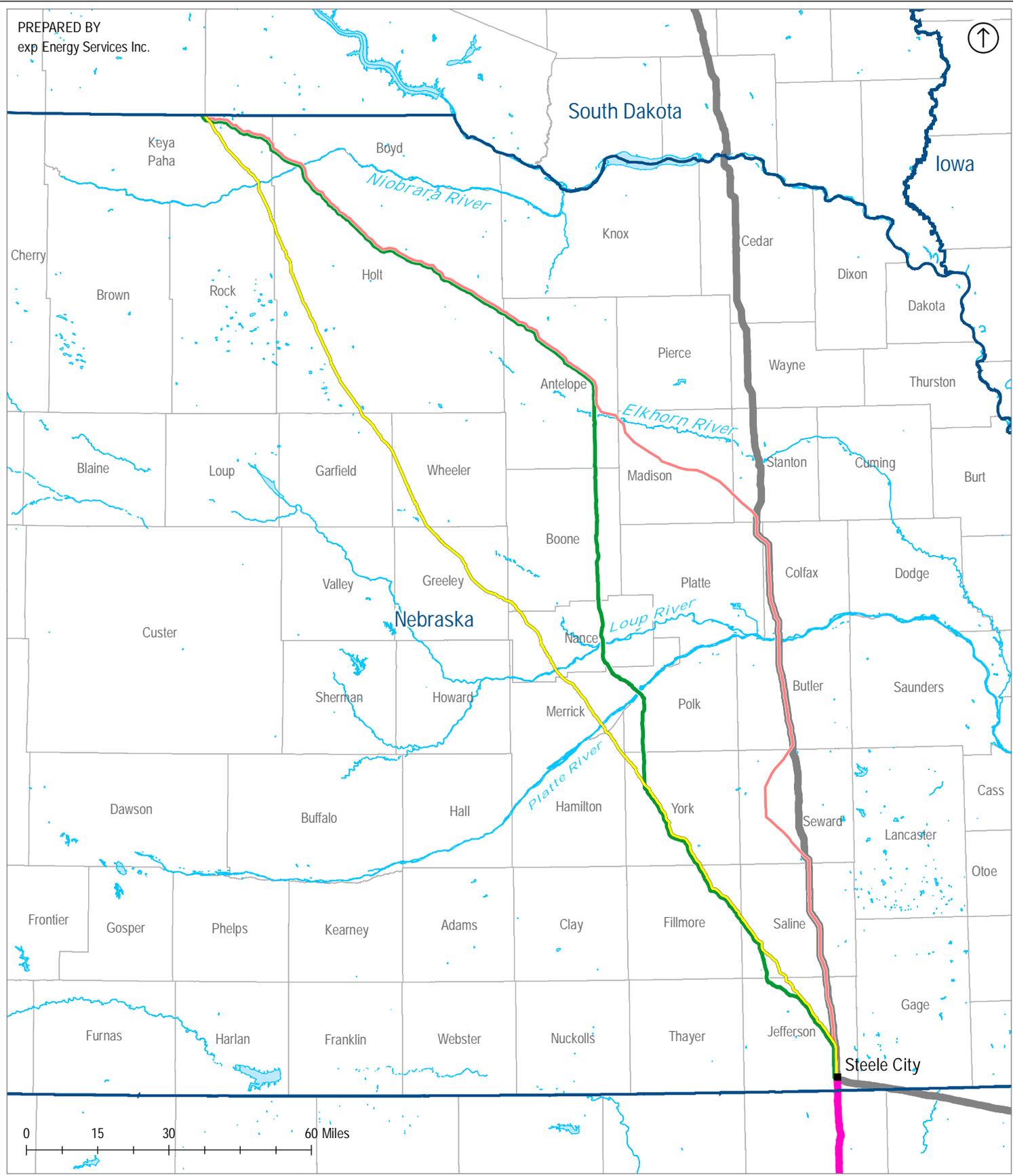
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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
Richard Pongratz in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Richard Pongratz.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Rancher.

1 **Q: If you are you married tell us your spouse's name please?**

2 A: Ann Pongratz.

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
4 **and or your family?**

5 A. Yes.

6 **Q: How long the land has been in your family?**

7 **A:** This land has been in our family for generations. Our first ancestor to own this
8 land was George Pongratz. He came over from Germany when he was 11 years
9 old. He learned to speak English and became a citizen of the United States. He
10 worked hard and had good times and rough times but he did this for his children
11 and his children's children to make things better for them. No foreign country or
12 company should be allowed eminent domain over United States land or citizen. If
13 Canada needs this pipeline let them put it through their country not ours. We own
14 320 acres of pasture land that Trans Canada wants to put the pipeline through. It
15 has been in our family for 60 plus years. We are the third generation of owners.
16 We will pass this land on to our children and grandchildren.

17 **Q: Do you earn any income from this land?**

18 A: Yes.

19 **Q: Have you depended on the income from your land to support your livelihood**
20 **or the livelihood of your family?**

21 A: Yes.

22 **Q: Have you ever in the past or have you thought about in the future leasing all**
23 **or a portion of your land in question here?**

24 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
25 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
26 all the restrictions and risks and potential negative impacts to farming or ranching
27 operations as opposed to land that did not have those same risks. If I was looking
28 to lease or rent ground I would pay more for comparable non-pipeline land than I
29 would for comparable pipeline land and I think most folks would think the same

1 way. This is another negative economic impact that affects the landowner and the
2 county and the state and will forever and ever should TransCanada's preferred or
3 mainline alternative routes be approved. If they were to twin or closely parallel to
4 Keystone I the vast majority of landowners would be those that already have a
5 pipeline so there would be considerable less new incremental negative impacts.

6 **Q: Do you have similar concerns about selling the land?**

7 A: Well I hope not to have to sell the land in my lifetime but times change and you
8 never know what is around the corner and yes I am concerned that if another piece
9 of ground similar to mine were for sale and it did not have the pipeline and mine
10 did that I would have a lower selling price. I think this would be true for pipeline
11 ground on both the preferred and mainline alternative routes.

12 **Q: What is your intent with your land after you die?**

13 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
14 to come but I have thought about getting out if this pipeline were to come through.

15 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
16 Pipeline would cross the land described above and owned by you?**

17 A: Yes.

18 **Q: Were you or an entity for which you are a member, shareholder, or director
19 previously sued by TransCanada Keystone Pipeline, LP?**

20 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
21 petition for condemnation against our land so it could place its proposed pipeline
22 within an easement that it wanted to take from us on our land.

23 **Q: Did you defend yourself and your land in that condemnation action?**

24 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
25 and expenses in our resistance of TransCanada's lawsuit against us.

26 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
27 incurred?**

28 A: No, they have not.

1 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
2 **property that it wanted to take for its proposed pipeline?**

3 A: The lawsuit against us stated they would take the amount of property that is
4 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
5 and equipment reasonably necessary to operate the pipeline.

6 **Q: Did TransCanada define what they meant by “property that is reasonably**
7 **necessary”?**

8 A: No, they did not.

9 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
10 **property portion of your land?**

11 A: Yes, they did.

12 **Q: Did TransCanada describe what rights it proposed to take related to the**
13 **eminent domain property on your land?**

14 A: Yes, they did.

15 **Q: What rights that they proposed to take did they describe?**

16 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
17 operate, and maintain the pipeline and the plant and equipment reasonably
18 necessary to operate the pipeline, specifically including surveying, laying,
19 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
20 reconstructing, removing and abandoning one pipeline, together with all fittings,
21 cathodic protection equipment, pipeline markers, and all their equipment and
22 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
23 petroleum products, and all by-products thereof.”

24 **Q: Prior to filing an eminent domain lawsuit to take your land that**
25 **TransCanada identified, do you believe they attempted to negotiate in good**
26 **faith with you?**

27 A: No, I do not.

28 **Q: Did TransCanada at any time approach you with or deliver to you their**
29 **proposed easement and right-of-way agreement?**

1 A: Yes, they did.

2 **Q: At the time you reviewed TransCanada's easement and right-of-way**
3 **agreement, did you understand that they would be purchasing a fee title**
4 **interest in your property or that they were taking something else?**

5 A: I understood that they proposed to have the power to take both a temporary
6 construction easement that could last for a certain period of time and then also a
7 permanent easement which they described to be 50 feet across or in width, and
8 that would run the entire portion of my property from where a proposed pipeline
9 would enter my property until where it would exit the property.

10 **Q: Is the document included with your testimony here as Attachment No. 3, a**
11 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
12 **Way agreement that they included with their condemnation lawsuit against**
13 **you?**

14 A: Yes, it is.

15 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
16 **and Right-of-Way agreement?**

17 A: Yes, I have.

18 **Q: What is your understanding of the significance of the Easement and Right-of-**
19 **Way agreement as proposed by TransCanada?**

20 A: My understanding is that this is the document that will govern all of the rights and
21 obligations and duties as well as the limitations of what I can and cannot do and
22 how I and any future landowner and any person I invite to come onto my property
23 must behave as well as what TransCanada is and is not responsible for and how
24 they can use my land.

25 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
26 **agreement do you have any concerns about any portions of it or any of the**
27 **language either included in the document or missing from the proposed**
28 **document?**

1 A: Yes, I have a number of significant concerns and worries about the document and
2 how the language included and the language not included potentially negatively
3 impacts my land and thereby potentially negatively impacts my community and
4 my state.

5 **Q: I would like you to walk the Commissioners through each and every one of**
6 **your concerns about TransCanada's proposed Easement and Right-of-Way**
7 **agreement so they can develop an understanding of how that language and**
8 **the terms of that contract, in your opinion, potentially negatively impacts you**
9 **and your land. So, if you can start at the beginning of that document and**
10 **let's work our way through it, okay?**

11 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
12 Easement and Right-of-Way agreement and how it negatively could affect my
13 property rights and my economic interests.

14 **Q. Okay, let's start with your first concern please.**

15 A: The very first sentence talks about consideration or how much money they will
16 pay to compensate me for all of the known and unknown affects and all of the
17 rights I am giving up and for all the things they get to do to my land and for what
18 they will prevent me from doing on my land and they only will pay me one time at
19 the signing of the easement agreement. That is a huge problem.

20 **Q: Explain to the Commissioners why that is a problem.**

21 A: It is not fair to the landowner, the county, or the State. It is not fair to the
22 landowner because they want to have my land forever for use as they see fit so
23 they can make a daily profit from their customers. If I was to lease ground from
24 my neighbor I would typically pay twice a year every year as long as they granted
25 me the rights to use their land. That only makes sense – that is fair. If I was going
26 to rent a house in town I would typically pay monthly, every month until I gave up
27 my right to use that house. By TransCanada getting out on the cheap and paying
28 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
29 revenue collection on the money I would be paid and then pay taxes on and

1 contribute to this state and this country. It is money I would be putting back into
2 my local community both spending and stimulating the local economy and
3 generating more economic activity right here. Instead TransCanada's shareholders
4 keep all that money and it never finds its way to Nebraska.

5 **Q: What is your next concern?**

6 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
7 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
8 limited partnership..." and I have no idea who that really is. I have no idea who is
9 forcing this pipeline on us or who the owners of the entities are, or what are the
10 assets backing this limited partnership, or who the general partner is, or who all
11 the limited partners are, and who makes up the ownership of the these partners or
12 the structure or any of the basic things you would want to know and understand if
13 you would want to do business with such an outfit. According to TransCanada's
14 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
15 liability company called TransCanada Keystone Pipeline GP, LLC is the general
16 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
17 basically nothing. That is really scary since the general partner has the liability but
18 virtually none of the ownership and who knows if it has any other assets.

19 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred
20 percent clear on exactly who could become the owner of over 275 miles of
21 Nebraska land?**

22 A: No.

23 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred
24 percent clear on exactly who will be operating and responsible for
25 approximately 275 miles of tar sands pipeline underneath and through
26 Nebraska land?**

27 A: No.

28 **Q: Okay, let's continue please with your concerns of the impacts upon your land
29 and the State of Nebraska of TransCanada's easement terms.**

1 A: Yes, so the next sentence talks about “...its successors and assigns (hereinafter
2 called “Grantee”)...” and this concerns me because it would allow their easement
3 to be transferred or sold to someone or some company or country or who knows
4 what that I don’t know and who we may not want to do business with. This
5 pipeline would be a huge asset for TransCanada and if they can sell to the highest
6 bidder that could have terrible impacts upon all of Nebraska depending upon who
7 may buy it and I don’t know of any safeguards in place for us or the State to veto
8 or have any say so in who may own, operate, or be responsible for this pipeline in
9 the future.

10 **Q: Do you think that type of uncertainty and lack of control over a major piece**
11 **of infrastructure crossing our State is in the public interest?**

12 A: No, certainly not, in fact, just the opposite.

13 **Q: What’s next?**

14 A: Then it says “...a perpetual permanent easement and right-of-way...” and this
15 really concerns me. Why does the easement and right-of-way have to be perpetual
16 and permanent? That is the question myself and my family want an answer to.
17 Perpetual to me is like forever and that doesn’t make sense.

18 **Q: Why doesn’t a perpetual Easement and Right-of-Way make sense to you?**

19 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
20 data proving there is a perpetual supply of tar sands. I am not aware in
21 TransCanada’s application where it proves there is a perpetual necessity for this
22 pipeline. My understanding of energy infrastructure like wind towers is they have
23 a decommission plan and actually take the towers down when they become
24 obsolete or no longer needed. Nothing manmade lasts forever. My land however
25 will, and I want my family or future Nebraska families to have that land as
26 undisturbed as possible and it is not in my interest or the public interest of
27 Nebraska to be forced to give up perpetual and permanent rights in the land for
28 this specific kind of pipeline project.

29 **Q: Okay, what is your next concern?**

1 A: The easement language includes all these things TransCanada can do and it says
2 “...abandoning in place...” so they can just leave this pipeline under my ground
3 until the end of time just sitting there while they are not using it, but I am still
4 prevented from doing on my land and using my land what I would like. If I owned
5 a gas station I couldn’t just leave my underground oil or fuel storage tanks sitting
6 there. It doesn’t make sense and it scares me and it is not in my interest or the
7 public interest of Nebraska to allow this.

8 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
9 **right?**

10 A: Yes.

11 **Q: So now on the second page of the Easement what are your concerns?**

12 A: Here the Easement identifies a 24-month deadline to complete construction of the
13 pipeline but has caveats that are undefined and ambiguous. The 24-month period
14 starts to run from the moment “actual pipeline installation activities” begin on
15 Landowners property. It appears that TransCanada would define this phrase as
16 needed. It would be wise to explain what types of TransCanada action constitutes
17 “installation activity” For instance, would the placement and storage of an
18 excavator or other equipment on or near the Easement property be an activity or
19 would earth have to be moved before the activity requirement is triggered. This
20 vague phrase is likely to lead to future disputes and litigation that is not in the best
21 interest of the welfare of Nebraska and would not protect property interests. The
22 24-months can also be extended in the case of “force majeure.” My understanding
23 is that force majeure is often used to insulate a party to a contract when events
24 occur that are completely out of their control. In TransCanada’s easement this is
25 expanded to include “without limitation...availability of labor and materials.”
26 Extending this language to labor and materials is problematic because these are
27 two variables that TransCanada does have some or significant control over and to
28 allow extension of the 24-month period over events not truly out of the control of

1 TransCanada and without further provision for compensation for the Landowner is
2 not conducive to protection of property rights.

3 **Q: Okay, what is your next concern?**

4 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
5 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
6 reasonable costs and expenses” will pay for damages caused but then limits
7 TransCanada’s liability to certain circumstances. There is no definition of
8 “commercially reasonable” and no stated right that the Landowner would get to
9 determine the amounts of cost or expense that is “commercially reasonable.”
10 TransCanada excepts out from their liability any damages that are caused by
11 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
12 Landowner. It is understandable that if the Landowner were to willfully and
13 intentionally cause damages to the pipeline that Landowner should be liable.
14 However, anything short of willful misconduct should be the liability of
15 TransCanada who is subjecting the pipeline on the Landowner and who is making
16 a daily profit from that pipeline. When evaluating the impact on property rights of
17 this provision, you must consider the potentially extremely expensive fight a
18 Landowner would have over this question of whether or not damage was an act of
19 negligence. Putting this kind of potential liability upon the Landowner is
20 incredibly problematic and is detrimental to the protection of property rights. I
21 don’t think this unilateral power which I can’t do anything about as the landowner
22 is in the best economic interest of the land in question or the State of Nebraska for
23 landowners to be treated that way.

24 **Q: Is there any specific event or example you are aware of that makes this
25 concern more real for you?**

26 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
27 Nemaha County, Nebraska landowner farmers who accidentally struck two
28 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
29 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged

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.

11 **Q: What is the next concern you have with the Easement language?**

12 A: TransCanada has the power to unilaterally move or modify the location of any
13 Easement area whether permanent or temporary at their sole discretion.
14 Regardless, if Landowner has taken prior steps relative to their property in
15 preparation or planning of TransCanada's taking of the initial easement area(s),
16 the language here does not require TransCanada to compensate the Landowner if
17 they decide to move the easement anywhere on Landowners property. Such
18 unilateral powers would negatively affect Landowners property are not conducive
19 to the protection of property rights or economic interests.

20 **Q: What is the next concern you have with the Easement language?**

21 A: The Easement requires that all of the burdens and restrictions upon Landowner to
22 transfer and be applicable to any future owner of the Land in question without the
23 ability of the future Landowner to modify or negotiate any of the language in
24 question to which it will be held to comply.

25 **Q: What is the next concern you have with the Easement language?**

26 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
27 Easement to any person, company, country, etc. at their sole discretion at anytime
28 to anyone. This also means that any buyer of the easement could do the same to a
29 third buyer and so on forever. There is no change of control or sale provision in

1 place to protect the Landowner or Nebraska or to provide compensation for such
2 change of control or ownership. It is not conducive to the protection of property
3 rights or economic interests to allow unilateral unrestricted sale of the Easement
4 thereby forcing upon the Landowner and our State a new unknown Easement
5 owner.

6 **Q: What is the next concern you have with the Easement language?**

7 A: There are many terms in the Easement that are either confusing or undefined terms
8 that are without context as to whether or not the Landowner would have any say
9 so in determining what these terms mean or if the evaluation is solely in
10 TransCanada's control. Some of these vague undefined terms are as follows:

- 11 i. "pipeline installation activities"
- 12 ii. "availability of labor and materials"
- 13 iii. "commercially reasonable costs and expenses"
- 14 iv. "reasonably anticipated and foreseeable costs and expenses"
- 15 v. "yield loss damages"
- 16 vi. "diminution in the value of the property"
- 17 vii. "substantially same condition"
- 18 viii. "an actual or potential hazard"
- 19 ix. "efficient"
- 20 x. "convenient"
- 21 xi. "endangered"
- 22 xii. "obstructed"
- 23 xiii. "injured"
- 24 xiv. "interfered with"
- 25 xv. "impaired"
- 26 xvi. "suitable crossings"
- 27 xvii. "where rock is encountered"
- 28 xviii. "as nearly as practicable"
- 29 xix. "pre-construction position"

1 xx. “pre-construction grade”

2 xxi. “various engineering factors”

3 Each one of these above terms and phrases as read in the context of the Easement
4 could be problematic in many ways. Notably, undefined terms tend to only get
5 definition in further legal proceedings after a dispute arises and the way the
6 Easement is drafted, TransCanada has sole power to determine when and if a
7 particular situation conforms with or triggers rights affected by these terms. For
8 instance, “yield loss damages” should be specifically defined and spelled out
9 exactly how the landowner is to be compensated and in what events on the front
10 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
11 the Landowner is without contractual rights to define these terms or determine
12 when rights related to them trigger and what the affects may be.

13 **Q: Do you have any other concerns about the Easement language that you can**
14 **think of at this time?**

15 A: I reserve the right to discuss any additional concerns that I think of at the time of
16 my live testimony in August.

17 **Q: Based upon what you have shared with the Commission above regarding**
18 **TransCanada’s proposed Easement terms and agreement, do you believe**
19 **those to be reasonable or just, under the circumstances of the pipeline’s**
20 **impact upon you and your land?**

21 A: No, I do not believe those terms to be reasonable or just for the reasons that we
22 discussed previously.

23 **Q: Did TransCanada ever offer you financial compensation for the rights that**
24 **they sought to obtain in your land, and for what they sought to prevent you**
25 **and any future land owner of your property from doing in the future?**

26 A: Yes, we received an offer from them.

27 **Q: As the owner of the land in question and as the person who knows it better**
28 **than anyone else, do you believe that TransCanada offered you just, or fair,**

1 **compensation for all of what they proposed to take from you so that their tar**
2 **sands pipeline could be located across your property?**

3 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
4 offer for all the potential impacts and effects and the rights that I'm giving up, and
5 what we will be prevented from doing in the future and how their pipeline would
6 impact my property for ever and ever.

7 **Q: Has TransCanada at any time offered to compensate you annually, such as**
8 **wind farm projects do, for the existence of their potential tar sands pipeline**
9 **across your property.**

10 A: No, never.

11 **Q: At any time did TransCanada present you with or request that you, as the**
12 **owner of the land in question, sign and execute a document called, "Advanced**
13 **Release of Damage Claims and Indemnity Agreement?"**

14 A: Yes, they did and it was included in the County Court lawsuit against us.

15 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
16 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

17 A: Yes, it is.

18 **Q: What was your understanding of that document?**

19 A: When I read that document in the plain language of that document, it was my
20 understanding that TransCanada was attempting to pay me a very small amount at
21 that time in order for me to agree to give up my rights to be compensated from
22 them in the future related to any damage or impact they may have upon my
23 property "arising out of, in connection with, or alleged to resulted from
24 construction or surveying over, under or on" my land.

25 **Q: Did you ever sign that document?**

26 A: No, I did not.

27 **Q: Why not?**

28 A; Because I do not believe that it is fair or just to try to get me to agree to a small
29 sum of money when I have no idea how bad the impacts or damages that they, or

1 their contractors, or subcontractors, or other agents or employees, may cause on
2 my land at any time in the future that resulted from the construction or surveying
3 or their activities upon my land.

4 **Q: When you reviewed this document, what did it make you feel?**

5 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
6 shield themselves against known and foreseeable impacts that their pipeline, and
7 the construction of it, would have upon my land. It made me feel that they knew it
8 was in their financial interest to pay me as little as possible to prevent me from
9 ever having the opportunity to seek fair compensation again, and that this must be
10 based upon their experience of unhappy landowners and situations in other places
11 where they have built pipelines.

12 **Q: Has TransCanada ever contacted you and specifically asked you if you
13 thought their proposed location of their proposed pipeline across your land
14 was in your best interest?**

15 A: No, they have not.

16 **Q: Has TransCanada ever contacted you and specifically asked you if you
17 thought their proposed location of their proposed pipeline across your land
18 was in the public interest of the State of Nebraska?**

19 A: No, they have not.

20 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
21 Takings Clause?**

22 A: Yes, I am.

23 **Q: What is your understanding of the Fifth Amendment as it relates to taking of
24 an American citizens property?**

25 A: My understanding is that, according to the United States Constitution, that if the
26 government is going to take land for public use, then in that case, or by taking for
27 public use, it can only occur if the private land owner is compensated justly, or
28 fairly.

1 **Q: Has TransCanada ever contacted you specially to explain the way in which**
2 **the public could use its proposed Keystone XL Pipeline?**

3 A: No, they have not.

4 **Q: Can you think of any way in which the public, that is the citizens of the State**
5 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
6 **Pipeline, as it dissects the State of Nebraska?**

7 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
8 public benefits from this pipeline in any way, how they can use it any way, or how
9 it's in the public interest in any way. By looking at the map, it is quite clear to me
10 that the only reason it's proposed to come through Nebraska, is that because we
11 are geographically in the way from between where the privately-owned Tar Sands
12 are located to where TransCanada wants to ship the Tar Sands to refineries in
13 Houston, Texas.

14 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
15 **crude petroleum, or oil and petroleum by-products that you would like to**
16 **ship in its pipeline?**

17 A: No, it has not.

18 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
19 **products that you, at this time or any time in the future, would desire to place**
20 **for transport within the proposed TransCanada Keystone XL Pipeline?**

21 A: No, I do not.

22 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
23 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
24 **products within the proposed TransCanada Keystone XL Pipeline?**

25 A: No, I do not. I've never heard of such a person or company like that.

26 **Q: Do you pay property taxes for the land that would be affected and impacted**
27 **at the proposed TransCanada Keystone XL Pipeline?**

28 A: Yes, I do.

29 **Q: Why do you pay property taxes on that land?**

1 A: Because that is the law. The law requires us to pay the property taxes as the owner
2 of that property.

3 **Q: Because you follow the law and pay property taxes, do you believe you**
4 **deserve any special consideration or treatment apart from any other person**
5 **or company that pays property taxes?**

6 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
7 just what you do.

8 **Q: Do you believe the fact that you pay property taxes entitles you to special**
9 **treatment of any kind, or special rights of any kind?**

10 A: No, of course not.

11 **Q: Do you believe the fact that you pay property taxes on your land would be**
12 **enough to qualify you to have the power of eminent domain to take land of**
13 **your neighbors or other people in your county, or other people across the**
14 **state of Nebraska?**

15 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
16 I expect an award for or any type of special consideration.

17 **Q: Have you at any time ever employed any person other than yourself?**

18 A: Well, yes I have.

19 **Q: Do you believe that the fact that you have, at some point in your life,**
20 **employed one or more other persons entitle you to any special treatment or**
21 **consideration above and beyond any other Nebraskan that has also employed**
22 **one or more persons?**

23 A: No, of course not.

24 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
25 **have at one point employed another person within this state, entitles you to**
26 **preferential treatment or consideration of any kind?**

27 A: No, of course not. If I choose to employ someone that decision is up to me. I
28 don't deserve any special treatment or consideration for that fact.

1 **Q: At the beginning of your statement, you briefly described your property that**
2 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
3 **give the Commissioners a sense of specifically how you believe the proposed**
4 **Keystone XL Pipeline and its preferred route, which proposes to go across**
5 **your land, how it would in your opinion based on your knowledge,**
6 **experience, and background of your land, affect it.**

7 A: There are 2 stock wells on this land, a creek runs through it. There is a watering
8 dug out for the cattle to drink from and shelter belts. The land is surrounded by
9 barbwire fence with gate. The subsoil is gravel. According to the map that
10 TransCanada sent us this pipeline will go under or through the creek. It comes
11 into our property from the east and will go cross to almost the north end of the
12 property.

13 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
14 **crude oil pipeline in its preferred location, or ultimate location across the**
15 **state of Nebraska?**

16 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
17 or even bullied around and being made to feel scared that they did not have any
18 options but to sign whatever papers TransCanada told them they had to. I am
19 aware of folks being threatened that their land would be taken if they didn't follow
20 what TransCanada was saying. I am aware of tactics to get people to sign
21 easements that I don't believe have any place in Nebraska or anywhere such as
22 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
23 landowners and convince them they should sign TransCanada's easement
24 agreements. I am aware of older folks and widows or widowers feeling they had
25 no choice but to sign TransCanada's Easement and they didn't know they could
26 fight or stand up for themselves. From a more practical standpoint, I am worried
27 that according to their answer to our Interrogatory No. 211, TransCanada only
28 owns and operates one (1) major oil pipeline. They simply do not have the
29 experience with this type of pipeline and that scares me. There are others but that

1 is what I can recollect at this time and if I remember more or my recollection is
2 refreshed I will share those with the Commissioners at the Hearing in August.

3 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
4 **landowner is reasonable or just?**

5 A: No, I do not.

6 **Q: Do you have any concern about limitations that the construction of this**
7 **proposed pipeline across your affected land would prevent construction of**
8 **future structures upon the portion of your land affected by the proposed**
9 **easement and immediately surrounding areas?**

10 A: Well yes, of course I do. We would not be able to build many, if any, types of
11 structures directly across or touching the easement, and it would be unwise and I
12 would be uncomfortable to build anything near the easement for fear of being
13 blamed in the future should any damage or difficulty result on my property in
14 regards to the pipeline.

15 **Q: Do you think such a restriction would impact you economically?**

16 A: Well yes, of course.

17 **Q: How do you think such a restriction would impact you economically?**

18 A: The future of this land may not be exactly how it's being used as of this moment,
19 and having the restrictions and limiting my ability to develop my land in certain
20 ways presents a huge negative economic impact on myself, my family, and any
21 potential future owner of the property. You have no idea how I or the future owner
22 may want to use this land in the future or the other land across Nebraska
23 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
24 ago it would have been hard to imagine all the advances that we have now or how
25 things change. Because the Easement is forever and TransCanada gets the rights in
26 my land forever we have to think with a very long term view. By placing their
27 pipeline on under across and through my land that prevents future development
28 which greatly negatively impacts future taxes and tax revenue that could have
29 been generated by the County and State but now will not. When you look at the

1 short blip of economic activity that the two years of temporary construction efforts
2 may bring, that is far outweighed by the perpetual and forever loss of opportunity
3 and restrictions TransCanada is forcing upon us and Nebraska.

4 **Q: Do you have any concerns about the environmental impact of the proposed**
5 **pipeline?**

6 A: Yes, I do.

7 **Q: What are some of those concerns?**

8 A: As an affected land owner and Nebraskan, I am concerned that any construction,
9 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
10 a detrimental impact upon the environment of my land specifically, as well as the
11 lands near my land and surrounding the proposed pipeline route.

12 **Q: Do you have any other environmental concerns?**

13 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
14 construction and/or maintenance and operation. I am concerned about spills and
15 leaks that TransCanada has had in the past and will have in the future. This could
16 be catastrophic to my operations or others and to my county and the State.

17 **Q: Do you have any thoughts regarding if there would be an impact upon the**
18 **natural resources on or near your property due to the proposed pipeline?**

19 A: Yes, I believe that any construction, operation, and/or maintenance of the
20 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
21 resources of my land, and the lands near and surrounding the proposed pipeline
22 route.

23 **Q: Do you have any worries about potential impacts from the proposed pipeline**
24 **to the soil of your land, or land near you?**

25 A: Yes, I believe that any construction, operation, and/or maintenance of the
26 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
27 land, as well as land along and surrounding the proposed pipeline route. This
28 includes, but is not limited to, the reasons that we discussed above of disturbing
29 the soil composition and makeup as it has naturally existed for thousands and

1 millions of years during the construction process, and any future maintenance or
2 removal process. I'm gravely concerned about the fertility and the loss of
3 economic ability of my property to grow the crops, or grow the grasses, or grow
4 whatever it is at that time they exist on my property or that I may want to grow in
5 the future, or that a future owner may want to grow. The land will never be the
6 same from as it exists now undisturbed to after it is trenched up for the proposed
7 pipeline.

8 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
9 **upon the groundwater over your land, or surrounding lands?**

10 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
11 the proposed Keystone XL Pipeline would have a detrimental impact upon the
12 groundwater of not only under my land, but also near and surrounding the pipeline
13 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
14 simple and it is simply too valuable to our State and the country to put at
15 unreasonable risk.

16 **Q: Do you have any concern about the potential impact of the proposed pipeline**
17 **upon the surface water on, or near or around your land?**

18 A: Yes, I have significant concerns that any construction, operation, and/or
19 maintenance of the proposed Keystone XL Pipeline would have detrimental
20 impact upon the surface water of not only within my property boundary, but along
21 and near and surrounding the pipeline route, and in fact, across the state of
22 Nebraska.

23 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
24 **upon the wildlife and plants, other than your growing crops on or near your**
25 **land?**

26 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
27 the proposed Keystone XL Pipeline would have a detrimental impact upon the
28 wildlife and the plants, not only that are located on or can be found upon my land,
29 but also near and along the proposed pipeline route.

1 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
2 **fair market value of your land?**

3 A: Yes, I do. I am significantly concerned about how the existence of the proposed
4 pipeline underneath and across and through my property will negatively affect the
5 fair market value at any point in the future, especially at that point in which I
6 would need to sell the property, or someone in my family would need to sell the
7 property. I do not believe, and certainly would not be willing to pay, the same
8 price for land that had the pipeline located on it, versus land that did not. I hope
9 there is never a point where I'm in a position where I have to sell and have to
10 realize as much value as I can out of my land. But because it is my single largest
11 asset, I'm gravely concerned that the existence of the proposed Keystone XL
12 Pipeline upon my land will affect a buyer's willingness to pay as much as they
13 would've paid and as much as I could've received, if the pipeline were not upon
14 my property. There are just too many risks, unknowns, impacts and uncertainties,
15 not to mention all of the rights you give up by the nature of having the pipeline
16 due to having the easement that we have previously discussed, for any reasonable
17 person to think that the existence of the pipeline would not negatively affect my
18 property's value.

19 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
20 **testimony?**

21 A: Yes, I have.

22 **Q: Where have you seen that before?**

23 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
24 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
25 believe the portion of the alternative route in Nebraska essentially twins or
26 parallels Keystone I.

27 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
28 **Application, and as found on Attachment No. 7, here to your testimony, is in**
29 **the public interest of Nebraska?**

1 A: No, I do not.

2 **Q: Do you believe that the Keystone mainline alternative route as shown on**
3 **Attachment No. 7 included with your testimony here is a major oil pipeline**
4 **route that is in the public interest of Nebraska?**

5 A: No, I do not.

6 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
7 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe there is any potential route for the proposed Keystone XL**
10 **Pipeline across, within, under, or through the State of Nebraska that is in the**
11 **public interest of the citizens of Nebraska?**

12 A: No, I do not.

13 **Q: Why do you hold that belief?**

14 A: Because there simply is no public interest based on all of the factors that I am
15 aware and that I have read and that I have studied that this Commission is to
16 consider that would establish that a for-profit foreign-owned pipeline that simply
17 crosses Nebraska because we are geographically in the way between where tar
18 sands are in Canada to where it wants to ship it to in Texas could ever be in the
19 public interest of Nebraskans. We derive no benefit from this project. It is not for
20 public use. Nebraska is simply in the way and when all considerations are taken in
21 there is no net benefit of any kind for Nebraska should this project be placed in our
22 state. Even if there was some arguable “benefit” it is not enough to outweigh all
23 the negative impacts and concerns.

24 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
25 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
26 **of Nebraska because it may bring temporary jobs during the construction**
27 **phase to Nebraska?**

28 A: First of all, not all jobs are created equally. Most jobs that are created, whether
29 temporary or on a permanent basis, don’t come with a project that has all the

1 potential and foreseeable negative impacts, many of which we have discussed here
2 and other witnesses throughout the course of this hearing have and will discuss. If
3 I decide to hire and employ someone to help me out in my farming or ranching
4 business, I've created a job but I haven't done so at the risk or detrimental impact
5 to my land or my town or my county or my state. And I've hired someone who is
6 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
7 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
8 jobs are not created equal. Additionally, I understand from what I'm familiar with
9 from TransCanada's own statements that the jobs numbers they originally touted
10 were determined to be a minute fraction of the permanent jobs that had been
11 projected. According to their answer to our Interrogatory No. 191, TransCanada
12 has created only thirty-four (34) jobs within Nebraska working specifically on
13 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
14 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
15 Further, according to their answer to Interrogatory No. 199, TransCanada would
16 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
17 constructed on its Preferred Route or its Mainline Alternative Route.

18 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
19 **because it would cross your land?**

20 A: No, absolutely not. I am opposed to this project because it is not in the public
21 interest, neither within my community nor within our state.

22 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
23 **was to cross someone else's land?**

24 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
25 the fear and anxiety and potential foreseeable risks and negative impacts that this
26 type of a project carrying this type of product brings foisted upon anyone in this
27 state or any other state.

28 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
29 **Pipeline to cross the state of Nebraska?**

1 A: I don't believe there is an intelligent route because as I have stated I don't believe
2 this project anywhere within Nebraska is within the public interest. However, if
3 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
4 had to go somewhere in the state of Nebraska, the only intelligent route I believe
5 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
6 preferred route and the mainline alternative routes are economic liabilities our
7 state cannot risk.

8 **Q: What do you rely upon to make that statement?**

9 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
10 already exists in that area is reason enough as it is not in our best interest or the
11 public interests to have more major oil pipelines crisscrossing our state. Second,
12 they have all the infrastructure already there in terms of relationships with the
13 counties and local officials and first responders along that route. Third, they have
14 already obtained easements from all the landowners along that route and have
15 relationships with them. Fourth, that route avoids our most sensitive soils, the
16 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
17 Aquifer. Sixth, they have already studied that route and previously offered it as an
18 alternative. Seventh, it just makes the most sense that as a state we would have
19 some intelligent policy of energy corridors and co-locating this type of
20 infrastructure near each other.

21 **Q: Do you have any other concerns you would like to reiterate or can think of at
22 this time you would like the Commissioners to understand?**

23 A: Yes. The product of this pipeline is for export markets and would not benefit
24 Nebraska or the United States of America. The proposed jobs would be few for
25 our "Nebraska workers" and only temporary.

26 **Q: Have you fully expressed each and every opinion, concern, or fact you would
27 like the Public Service Commissioners to consider in their review of
28 TransCanada's Application?**

1 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
2 document below but other things may come to me or my memory may be
3 refreshed and I will add and address those things at the time of the Hearing in
4 August and address any additional items at that time as is necessary. Additionally,
5 I have not had an adequate amount of time to receive and review all of
6 TransCanada's answers to our discovery and the discovery of others so it was
7 impossible to competently and completely react to that in my testimony here and I
8 reserve the right to also address anything related to discovery that has not yet
9 concluded as of the date I signed this document below. Lastly, certain documents
10 requested have not yet been produced by TransCanada and therefore I may have
11 additional thoughts on those I will also share at the hearing as needed.

12 **Q:** **What is it that you are requesting the Public Service Commissioners do in**
13 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
14 **across Nebraska?**

15 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
16 a temporary job spike that this project may bring to a few counties and beyond the
17 relatively small amount of taxes this proposed foreign pipeline would possibly
18 generate. And, instead think about the perpetual and forever impacts of this
19 pipeline as it would have on the landowners specifically, first and foremost, but
20 also thereby upon the entire state of Nebraska, and to determine that neither the
21 preferred route nor the Keystone mainline alternative route are in the public
22 interest of the citizens of the state of Nebraska. And if the Commissioners were
23 inclined to modify TransCanada's proposed routes and were to be inclined to grant
24 an application for a route in Nebraska, that the only potential route that would
25 make any intelligent sense whatsoever would be twinning or near paralleling of
26 the proposed KXL with the existing Keystone I pipeline. It simply does not make
27 sense to add yet another major oil pipeline crisscrossing our state creating new
28 pumping stations, creating new impacts on additional counties and communities
29 and going through all of the court processes with myself and other landowners like

1 me when this applicant already has relationships with the landowners, the towns
2 and the communities along Keystone I, and that Keystone I is firmly outside of the
3 sand hills and a significantly further portion away from the heart of the Ogallala
4 Aquifer than the preferred route or the Keystone mainline alternative route.

5 **Q: Are all of your statements in your testimony provided above true and**
6 **accurate as of the date you signed this document to the best of your**
7 **knowledge?**

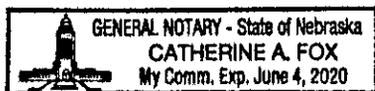
8 A: Yes, they are.

9 **Q: Thank you, I have no further questions at this time and reserve the right to**
10 **ask you additional questions at the August 2017 Hearing.**

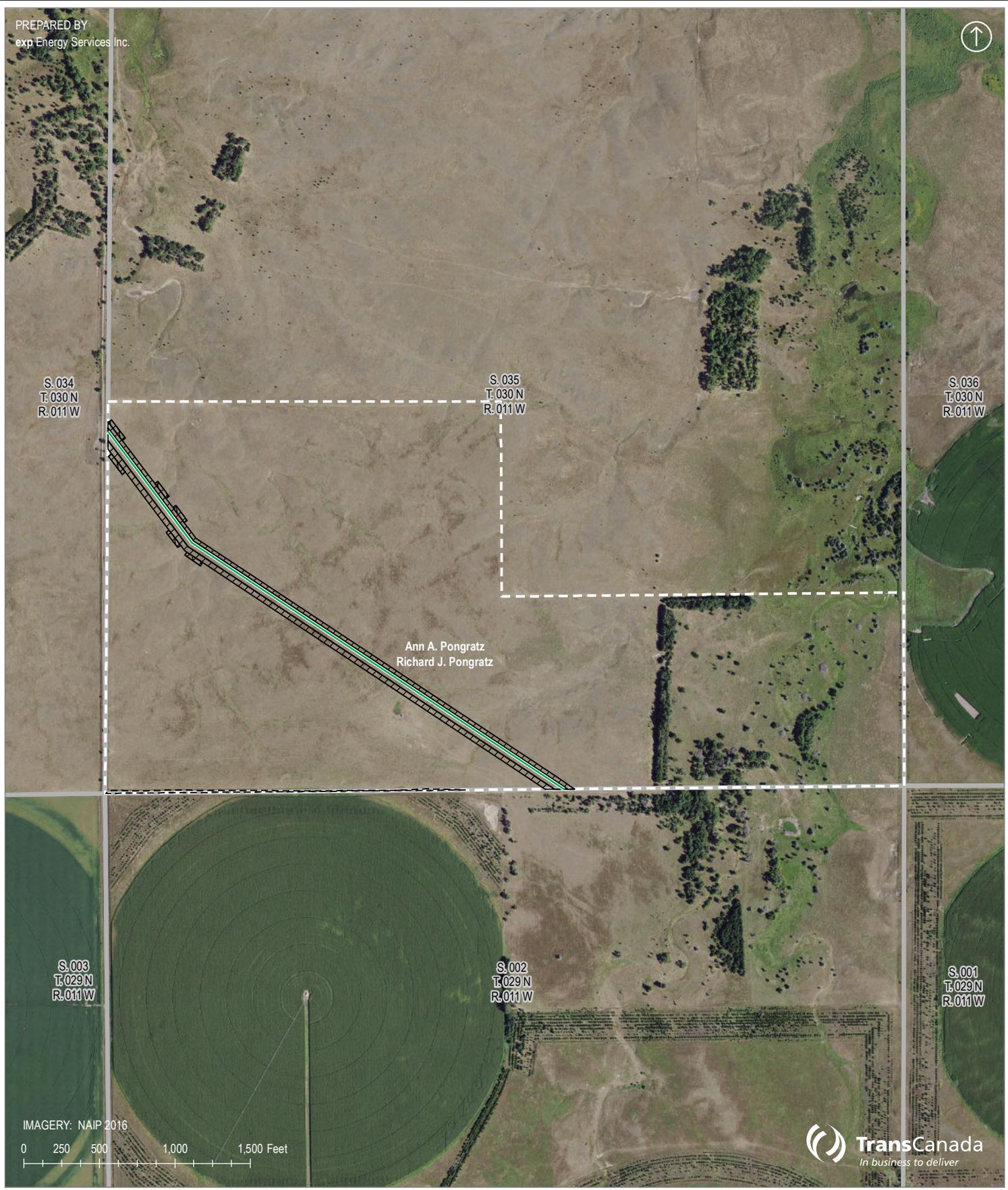
Richard Pongratz
Richard Pongratz

Subscribed and Sworn to me before this 26th day of May, 2017.

Catherine A Fox
Notary Public



Attachment No. 1



Ann A. Pongratz
Richard J. Pongratz



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Ann A. Pongratz
Richard J. Pongratz

TRACT NO. ML-NE-HT-30415.000
STATE: Nebraska
COUNTY: Holt
SECTION: 035
TOWNSHIP: 030N
RANGE: 011W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Access Road (Temp.)
- Property Line



Ann A. Pongratz
Richard J. Pongratz

S.035
T.030N
R.011W

S.036
T.030N
R.011W

S.001
T.029N
R.011W

S.002
T.029N
R.011W

IMAGERY: NAIP 2016

0 250 500 1,000 Feet



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Ann A. Pongratz
Richard J. Pongratz

TRACT NO. ML-NE-HT-30425.000
STATE: Nebraska
COUNTY: Holt
SECTION: 002
TOWNSHIP: 029N
RANGE: 011W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Access Road (Temp.)
- Property 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-30415.000
ML-NE-HT-30425.000

**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**") **Richard J. Pongratz and Ann A. Pongratz, as joint tenants**, whose mailing address is 87393 488th Ave, O'Neill, NE 68763 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection

Grantor's Initials _____

equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Holt, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 240 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SW1/4 and the S1/2 of the SE1/4 of Section 35, Township 30 North, Range 11 West of the 6th P.M., as recorded in Book 200, Page 216 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 83.85 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the N1/2 of the NE1/4 of Section 2, Township 29 North, Range 11 West of the 6th P.M., as recorded in Book 200, Page 216 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):

Richard J. Pongratz

Ann A. Pongratz

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

Grantor's Initials _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Richard J. Pongratz**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Ann A. Pongratz**

Notary Public Signature

Affix Seal Here

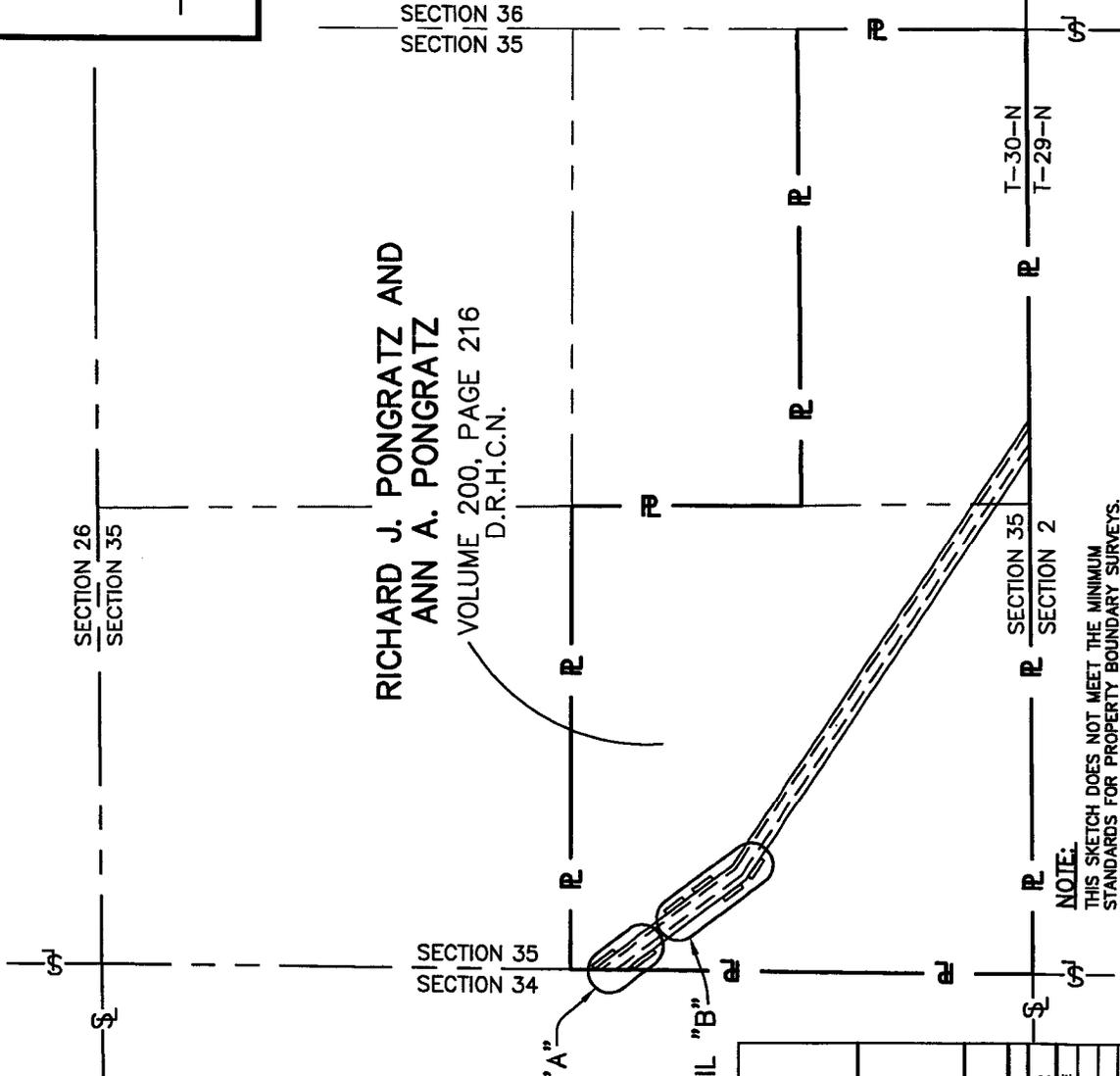
HOLT COUNTY, NEBRASKA

T-30-N, R-11-W, SECTION 35

ML-NE-HT-30415.000

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.



RICHARD J. PONGRATZ AND
ANN A. PONGRATZ
VOLUME 200, PAGE 216
D.R.H.C.N.

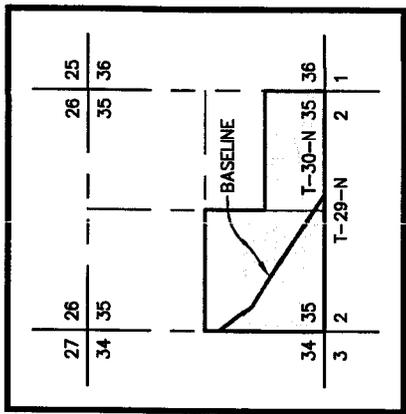
SEE DETAIL "A"
SEE DETAIL "B"

KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
RICHARD J. PONGRATZ AND	
ANN A. PONGRATZ	
ML-NE-HT-30415.000	
PROJECT:	XL EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3342
NO.	REVISION
	DATE
SCALE	DATE
1" = 1000'	10/29/14
DRAWN BY	CHECKED BY
JN	ALS

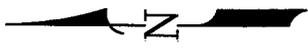
NOTE:
THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.



TOTAL DISTANCE ACROSS PROPERTY: 3,880' ±
AREA OF PERMANENT EASEMENT: 4.4 ACRES
AREA OF TEMPORARY WORKSPACE: 5.3 ACRES
ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.5 ACRE



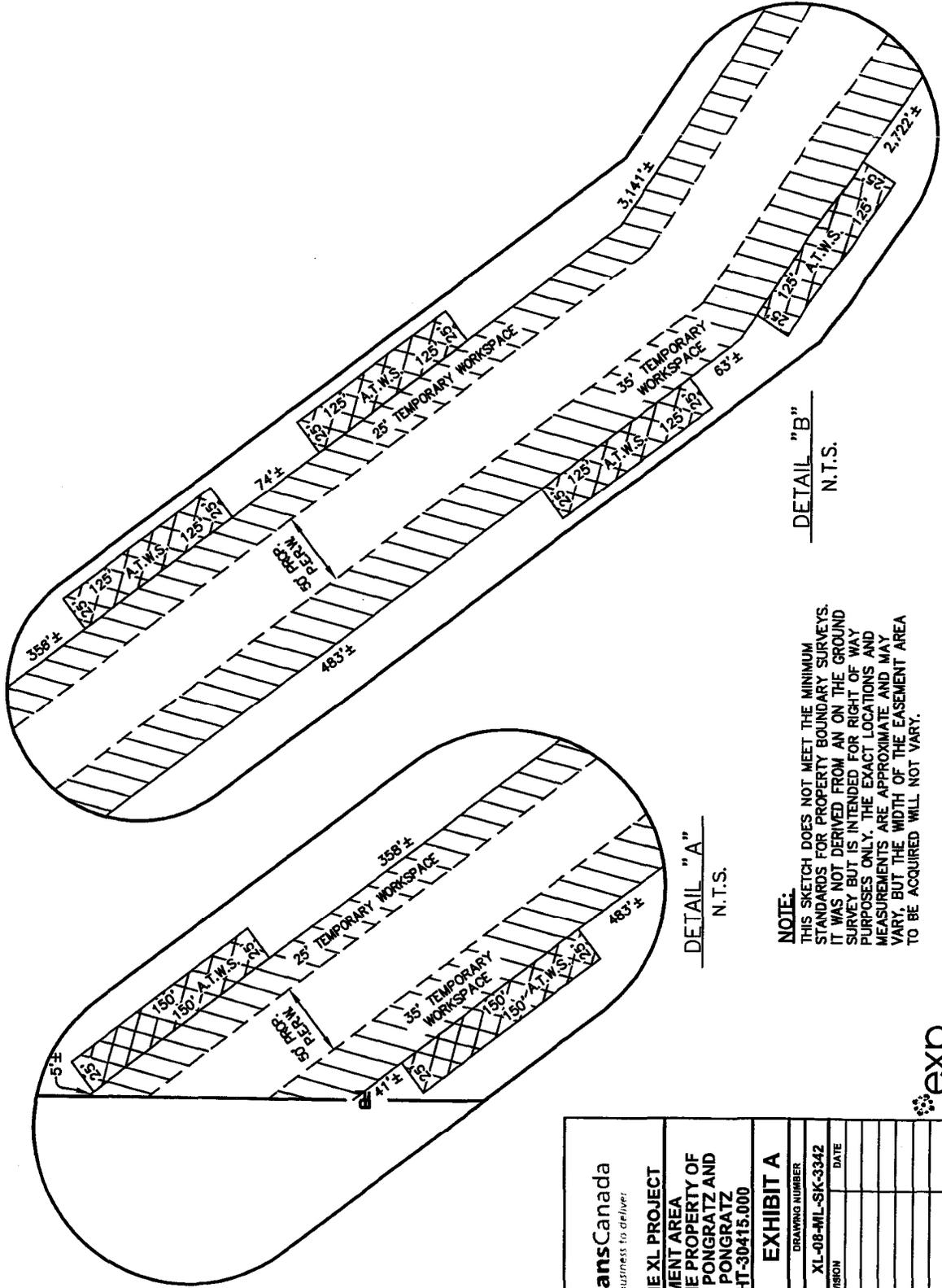
VICINITY MAP
N.T.S.



TRACT LEGAL DESCRIPTION:
SW/4, S/2 SE/4 OF SECTION 35
T-30-N, R-11-W

HOLT COUNTY, NEBRASKA
T-30-N, R-11-W, SECTION 35
ML-NE-HT-30415.000

LEGEND:
 PL PROPERTY LINE
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



DETAIL "A"
 N.T.S.

DETAIL "B"
 N.T.S.

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TransCanada <i>In Business to deliver</i>	
KEYSTONE XL PROJECT	
EASEMENT AREA	
ACROSS THE PROPERTY OF	
RICHARD J. PONGRATZ AND	
ANN A. PONGRATZ	
ML-NE-HT-30415.000	
PROJECT:	EXHIBIT A
APPROVED BY:	DRAWING NUMBER
SLR	XL-08-ML-SK-3342
NO.	REVISION
	DATE
SCALE	DATE
N.T.S.	10/29/14
DRAWN BY	CHECKED BY
JN	ALS



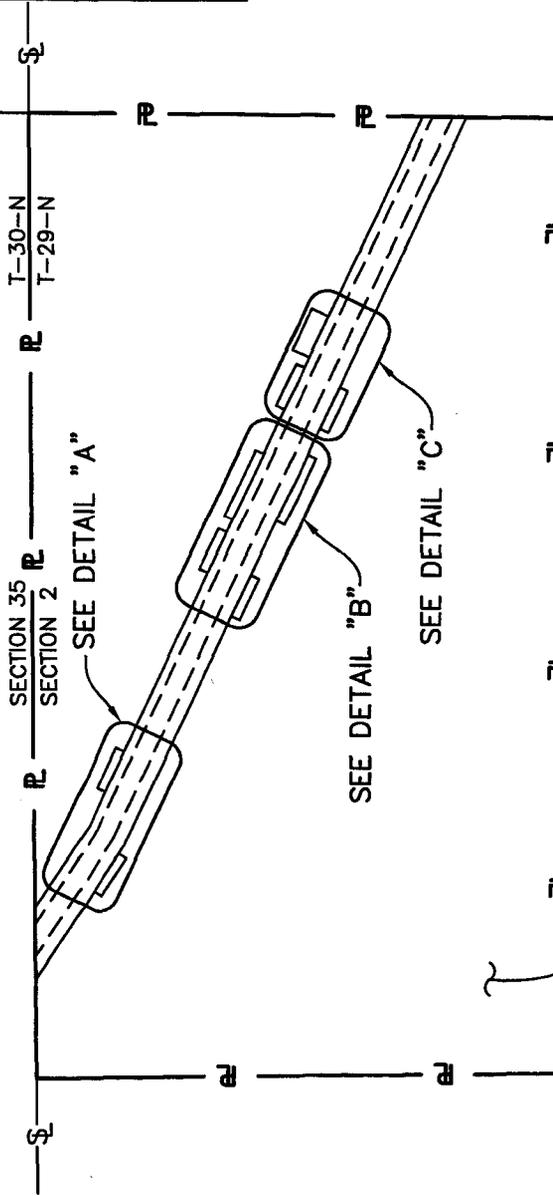
HOLT COUNTY, NEBRASKA

T-29-N, R-11-W, SECTION 2

ML-NE-HT-30425.000

PROPERTY LINE
 SECTION LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY
 DEED RECORDS OF HOLT COUNTY, NEBRASKA

LEGEND
 P
 S
 A.T.W.S.
 P.E.R.W.
 D.R.H.C.N.



VICINITY MAP
N.T.S.

34	35	T-30-N	35	36
3	2	T-29-N	2	1
BASELINE				
3	2		2	1
10	11		11	12

RICHARD J. PONGRATZ AND ANN A.
 PONGRATZ, AS JOINT TENANTS,
 AND NOT AS TENANTS IN COMMON
 VOLUME 200, PAGE 216
 D.R.H.C.N.

TransCanada <i>in business to deliver</i>			
KEYSTONE XL PROJECT			
EASEMENT AREA			
ACROSS THE PROPERTY OF			
RICHARD J. PONGRATZ AND ANN A.			
PONGRATZ, AS JOINT TENANTS,			
AND NOT AS TENANTS IN COMMON			
ML-NE-HT-30425.000			
PROJECT:	EXHIBIT A		
APPROVED BY:	DRAWING NUMBER		
SLR	XL-08-ML-SK-3343		
NO.	REVISION		
	DATE		
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	10/29/14	JN	ALS

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TOTAL DISTANCE ACROSS PROPERTY: 2,513'±
 AREA OF PERMANENT EASEMENT: 2.9 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.8 ACRES



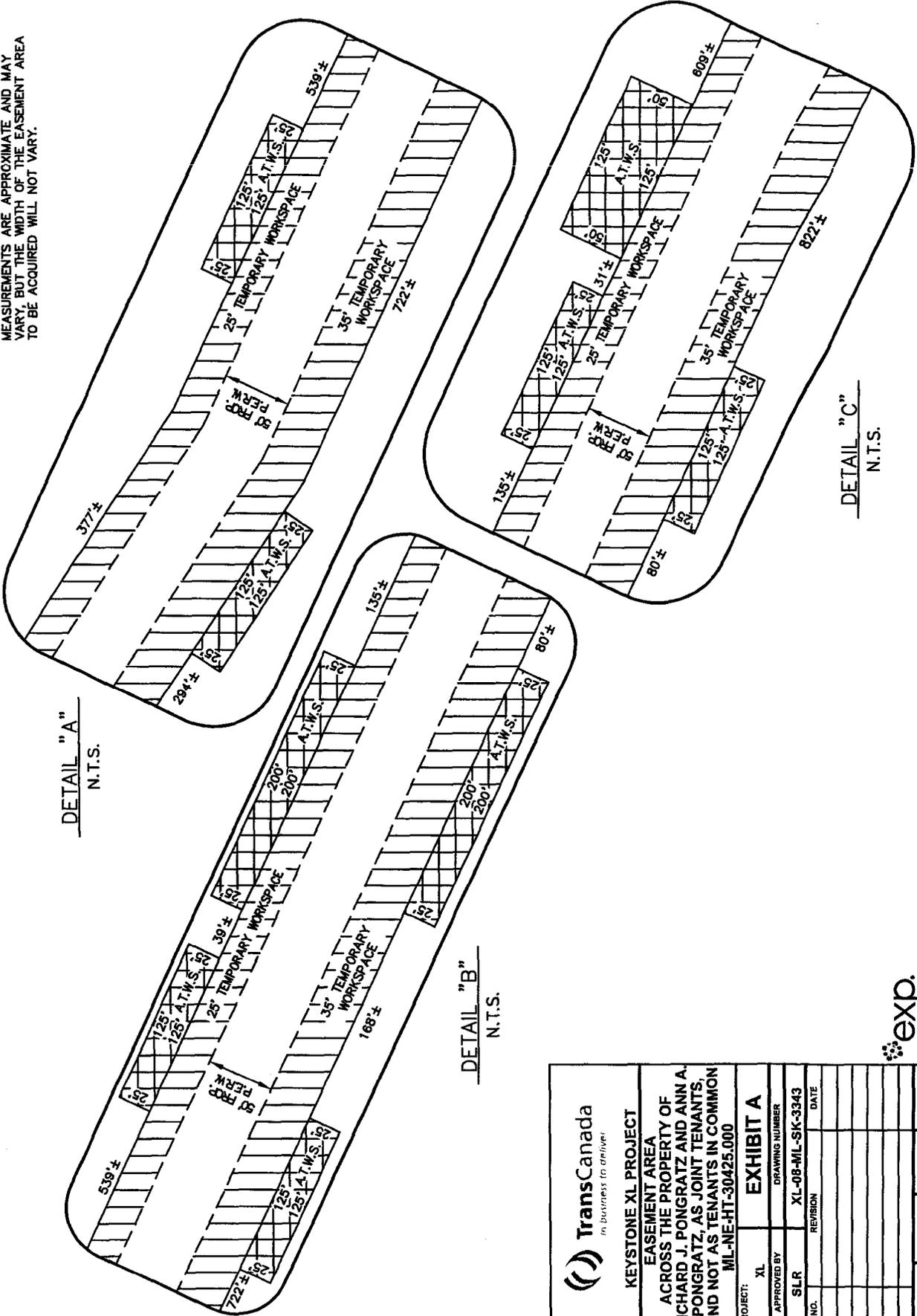
HOLT COUNTY, NEBRASKA

T-29-N, R-11-W, SECTION 2

ML-NE-HT-30425.000

LEGEND
 PROP. A.T.W.S. P.E.R.W.
 PROPOSED TEMPORARY WORKSPACE
 ADDITIONAL PERMANENT EASEMENT & RIGHT OF WAY

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE, AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.



DETAIL "A"
N.T.S.

DETAIL "B"
N.T.S.

DETAIL "C"
N.T.S.



KEYSTONE XL PROJECT
EASEMENT AREA
 ACROSS THE PROPERTY OF
 RICHARD J. PONGRATZ AND ANN A.
 PONGRATZ, AS JOINT TENANTS,
 AND NOT AS TENANTS IN COMMON
 ML-NE-HT-30425.000

PROJECT:	XL	EXHIBIT A
APPROVED BY:	SLR	DRAWING NUMBER
NO.		XL-08-ML-SK-3343
REVISION		DATE
SCALE	DATE	DRAWN BY
N.T.S.	10/29/14	JN
		CHECKED BY
		ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-HT-30425.000

I/we Richard J. Pongratz and Ann A Pongratz, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Eight Hundred Seventy Two Dollars and No Cents (\$1,872.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Holt, State of Nebraska:

N/2 NE/4

Section 2, Township 29-N, Range 11-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-30415.000

I/we Richard J. Pongratz and Ann A Pongratz, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Six Hundred Fifty Two Dollars and No Cents (\$2,652.00), 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, S/2 SE/4

Section 35, Township 30-N, Range 11-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_____.

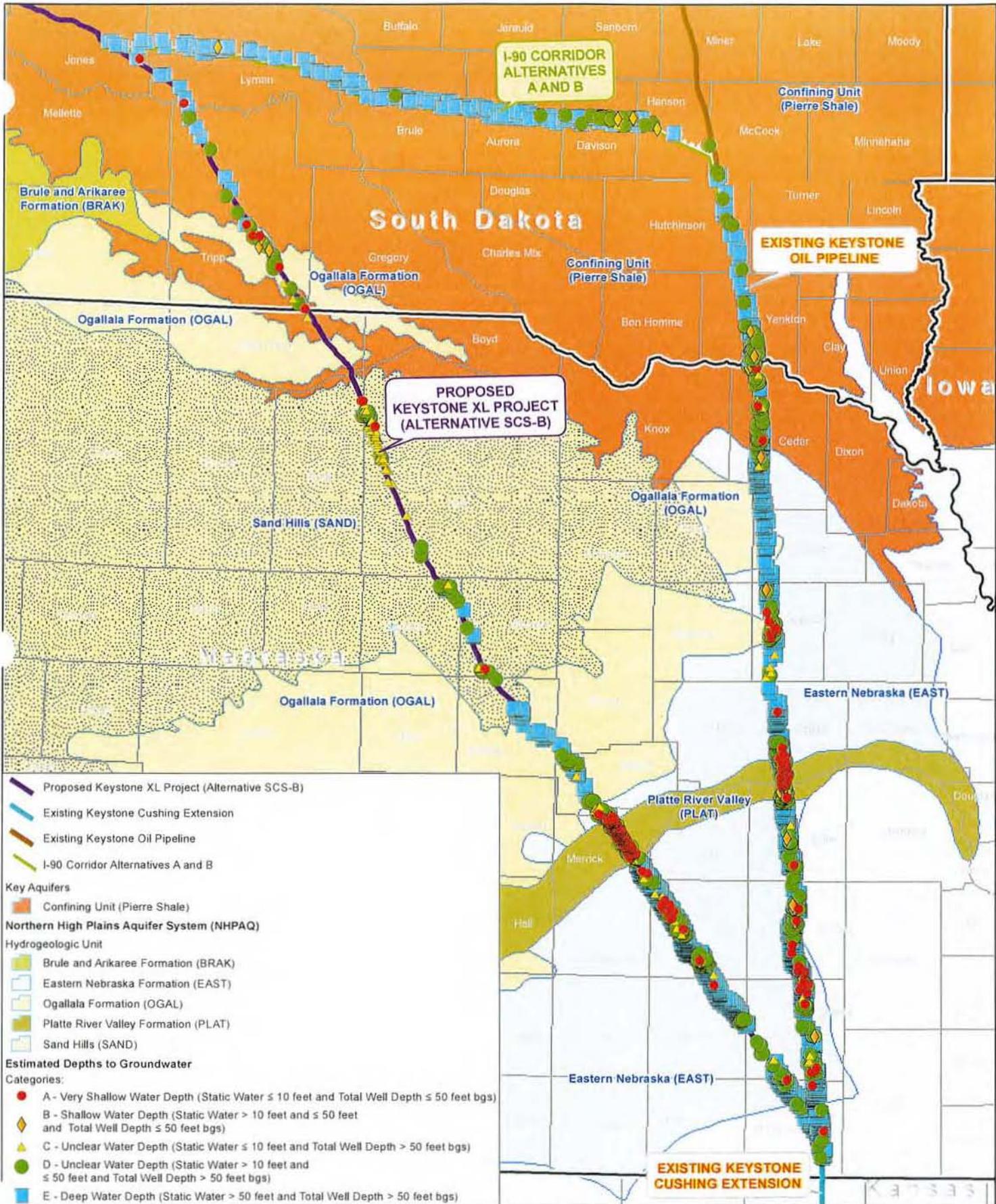
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



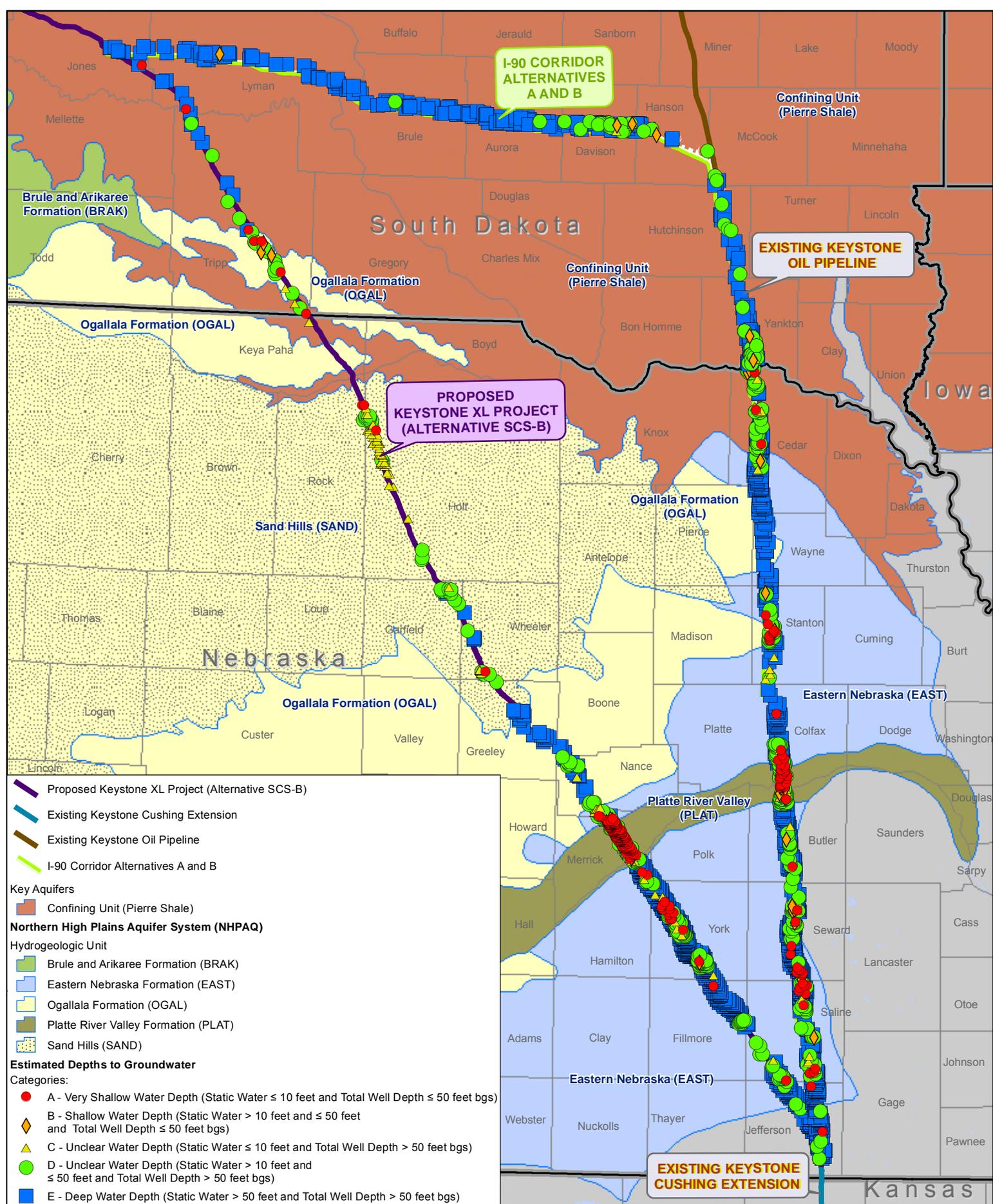
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

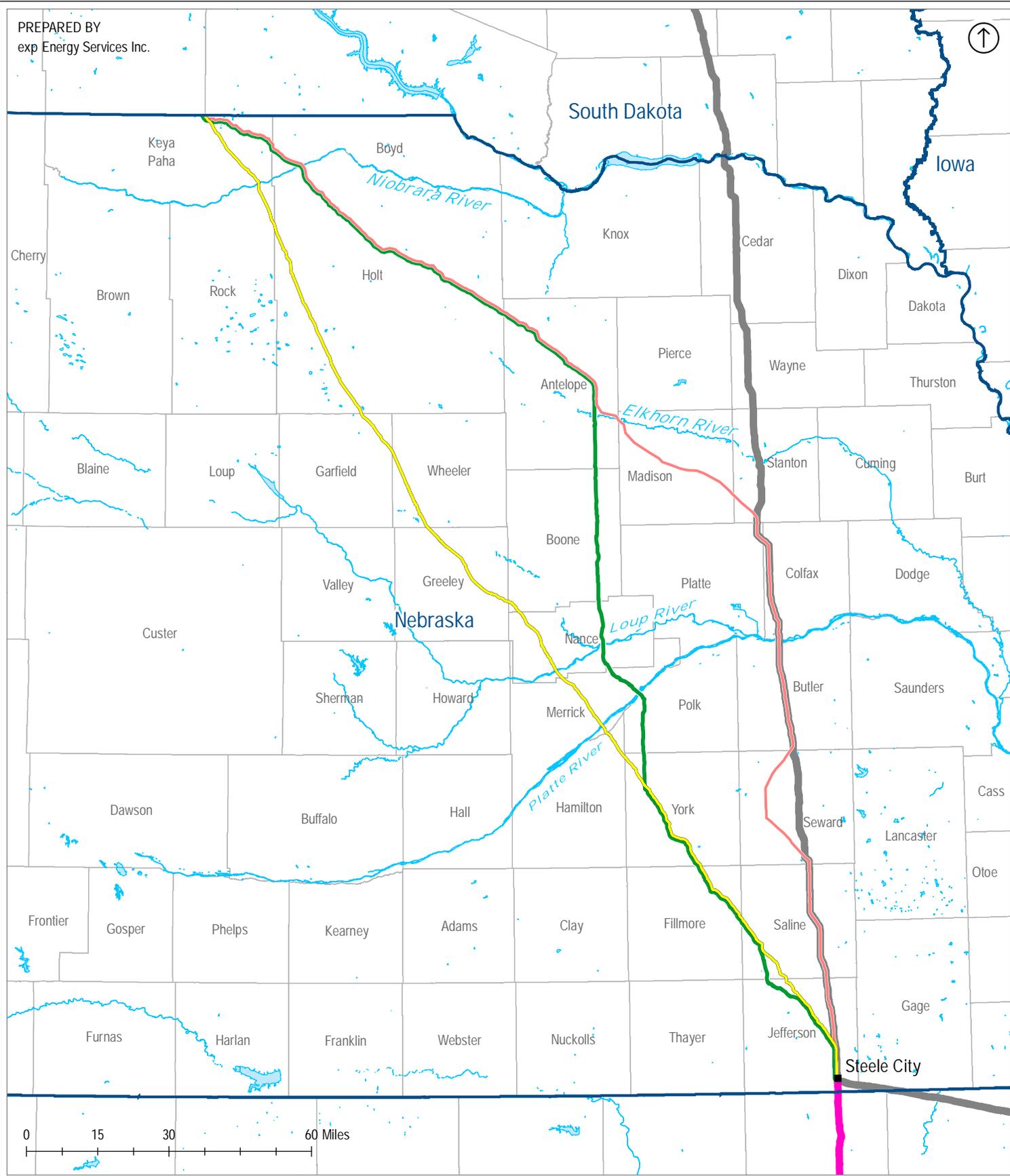
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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
Kenneth Prosocki in Support of
Landowner Intervenors**

State of Nebraska)
) ss.
Nance County)

1 **Q: Please state your name.**

2 A: My name is Kenneth Prosocki.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Nance County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse’s name please?**

16 A: Karen Prosocki

1 **Q: Is Attachment No. 2 to your testimony a true and accurate copy of a photo of**
2 **your family?**

3 A: Yes.

4 **Q: Do you earn any income from this land?**

5 A: Yes.

6 **Q: Have you depended on the income from your land to support your livelihood**
7 **or the livelihood of your family?**

8 A: Yes.

9 **Q: Have you ever in the past or have you thought about in the future leasing all**
10 **or a portion of your land in question here?**

11 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
12 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
13 all the restrictions and risks and potential negative impacts to farming or ranching
14 operations as opposed to land that did not have those same risks. If I was looking
15 to lease or rent ground I would pay more for comparable non-pipeline land than I
16 would for comparable pipeline land and I think most folks would think the same
17 way. This is another negative economic impact that affects the landowner and the
18 county and the state and will forever and ever should TransCanada's preferred or
19 mainline alternative routes be approved. If they were to twin or closely parallel to
20 Keystone I the vast majority of landowners would be those that already have a
21 pipeline so there would be considerable less new incremental negative impacts.

22 **Q: Do you have similar concerns about selling the land?**

23 A: Well I hope not to have to sell the land in my lifetime but times change and you
24 never know what is around the corner and yes I am concerned that if another piece
25 of ground similar to mine were for sale and it did not have the pipeline and mine
26 did that I would have a lower selling price. I think this would be true for pipeline
27 ground on both the preferred and mainline alternative routes.

28 **Q: What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
4 Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Were you or an entity for which you are a member, shareholder, or director
7 previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
9 petition for condemnation against our land so it could place its proposed pipeline
10 within an easement that it wanted to take from us on our land.

11 **Q: Did you defend yourself and your land in that condemnation action?**

12 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
13 and expenses in our resistance of TransCanada's lawsuit against us.

14 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
15 incurred?**

16 A: No, they have not.

17 **Q: In its lawsuit against you, did TransCanada identify the amount of your
18 property that it wanted to take for its proposed pipeline?**

19 A: The lawsuit against us stated they would take the amount of property that is
20 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
21 and equipment reasonably necessary to operate the pipeline.

22 **Q: Did TransCanada define what they meant by "property that is reasonably
23 necessary"?**

24 A: No, they did not.

25 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain
26 property portion of your land?**

27 A: Yes, they did.

28 **Q: Did TransCanada describe what rights it proposed to take related to the
29 eminent domain property on your land?**

1 A: Yes, they did.

2 **Q: What rights that they proposed to take did they describe?**

3 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
4 operate, and maintain the pipeline and the plant and equipment reasonably
5 necessary to operate the pipeline, specifically including surveying, laying,
6 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
7 reconstructing, removing and abandoning one pipeline, together with all fittings,
8 cathodic protection equipment, pipeline markers, and all their equipment and
9 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
10 petroleum products, and all by-products thereof.”

11 **Q: Prior to filing an eminent domain lawsuit to take your land that**
12 **TransCanada identified, do you believe they attempted to negotiate in good**
13 **faith with you?**

14 A: No, I do not.

15 **Q: Did TransCanada at any time approach you with or deliver to you their**
16 **proposed easement and right-of-way agreement?**

17 A: Yes, they did.

18 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
19 **agreement, did you understand that they would be purchasing a fee title**
20 **interest in your property or that they were taking something else?**

21 A: I understood that they proposed to have the power to take both a temporary
22 construction easement that could last for a certain period of time and then also a
23 permanent easement which they described to be 50 feet across or in width, and
24 that would run the entire portion of my property from where a proposed pipeline
25 would enter my property until where it would exit the property.

26 **Q: Is the document included with your testimony here as Attachment No. 3, a**
27 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
28 **Way agreement that they included with their condemnation lawsuit against**
29 **you?**

1 A: Yes, it is.

2 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
3 **and Right-of-Way agreement?**

4 A: Yes, I have.

5 **Q: What is your understanding of the significance of the Easement and Right-of-**
6 **Way agreement as proposed by TransCanada?**

7 A: My understanding is that this is the document that will govern all of the rights and
8 obligations and duties as well as the limitations of what I can and cannot do and
9 how I and any future landowner and any person I invite to come onto my property
10 must behave as well as what TransCanada is and is not responsible for and how
11 they can use my land.

12 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
13 **agreement do you have any concerns about any portions of it or any of the**
14 **language either included in the document or missing from the proposed**
15 **document?**

16 A: Yes, I have a number of significant concerns and worries about the document and
17 how the language included and the language not included potentially negatively
18 impacts my land and thereby potentially negatively impacts my community and
19 my state.

20 **Q: I would like you to walk the Commissioners through each and every one of**
21 **your concerns about TransCanada's proposed Easement and Right-of-Way**
22 **agreement so they can develop an understanding of how that language and**
23 **the terms of that contract, in your opinion, potentially negatively impacts you**
24 **and your land. So, if you can start at the beginning of that document and**
25 **let's work our way through it, okay?**

26 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
27 Easement and Right-of-Way agreement and how it negatively could affect my
28 property rights and my economic interests.

29 **Q. Okay, let's start with your first concern please.**

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada’s shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership...” and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada’s
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
6 **percent clear on exactly who could become the owner of 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 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: The pipeline crosses through one mile of our property. It will be only 1100 feet
2 from our home and wells for us and our livestock. Our land is sub-irrigated and
3 our water table is usually 3-4 feet in the spring of the year, and in some years
4 higher than that. With that being said, that means this tar sands benzene carrying
5 pipe, one third will be dangerous chemicals, placed at a depth of seven feet will be
6 in our water table.

7 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
8 **crude oil pipeline in its preferred location, or ultimate location across the**
9 **state of Nebraska?**

10 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
11 or even bullied around and being made to feel scared that they did not have any
12 options but to sign whatever papers TransCanada told them they had to. I am
13 aware of folks being threatened that their land would be taken if they didn't follow
14 what TransCanada was saying. I am aware of tactics to get people to sign
15 easements that I don't believe have any place in Nebraska or anywhere such as
16 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
17 landowners and convince them they should sign TransCanada's easement
18 agreements. I am aware of older folks and widows or widowers feeling they had
19 no choice but to sign TransCanada's Easement and they didn't know they could
20 fight or stand up for themselves. From a more practical standpoint, I am worried
21 that according to their answer to our Interrogatory No. 211, TransCanada only
22 owns and operates one (1) major oil pipeline. They simply do not have the
23 experience with this type of pipeline and that scares me. There are others but that
24 is what I can recollect at this time and if I remember more or my recollection is
25 refreshed I will share those with the Commissioners at the Hearing in August.

26 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
27 **landowner is reasonable or just?**

28 A: No, I do not.

1 **Q: Do you have any concern about limitations that the construction of this**
2 **proposed pipeline across your affected land would prevent construction of**
3 **future structures upon the portion of your land affected by the proposed**
4 **easement and immediately surrounding areas?**

5 A: Well yes, of course I do. We would not be able to build many, if any, types of
6 structures directly across or touching the easement, and it would be unwise and I
7 would be uncomfortable to build anything near the easement for fear of being
8 blamed in the future should any damage or difficulty result on my property in
9 regards to the pipeline.

10 **Q: Do you think such a restriction would impact you economically?**

11 A: Well yes, of course.

12 **Q: How do you think such a restriction would impact you economically?**

13 A: The future of this land may not be exactly how it's being used as of this moment,
14 and having the restrictions and limiting my ability to develop my land in certain
15 ways presents a huge negative economic impact on myself, my family, and any
16 potential future owner of the property. You have no idea how I or the future owner
17 may want to use this land in the future or the other land across Nebraska
18 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
19 ago it would have been hard to imagine all the advances that we have now or how
20 things change. Because the Easement is forever and TransCanada gets the rights in
21 my land forever we have to think with a very long term view. By placing their
22 pipeline on under across and through my land that prevents future development
23 which greatly negatively impacts future taxes and tax revenue that could have
24 been generated by the County and State but now will not. When you look at the
25 short blip of economic activity that the two years of temporary construction efforts
26 may bring, that is far outweighed by the perpetual and forever loss of opportunity
27 and restrictions TransCanada is forcing upon us and Nebraska.

28 **Q: Do you have any concerns about the environmental impact of the proposed**
29 **pipeline?**

1 A: Yes, I do.

2 **Q: What are some of those concerns?**

3 A: As an affected land owner and Nebraskan, I am concerned that any construction,
4 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
5 a detrimental impact upon the environment of my land specifically, as well as the
6 lands near my land and surrounding the proposed pipeline route.

7 **Q: Do you have any other environmental concerns?**

8 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
9 construction and/or maintenance and operation. I am concerned about spills and
10 leaks that TransCanada has had in the past and will have in the future. This could
11 be catastrophic to my operations or others and to my county and the State.

12 **Q: Do you have any thoughts regarding if there would be an impact upon the
13 natural resources on or near your property due to the proposed pipeline?**

14 A: Yes, I believe that any construction, operation, and/or maintenance of the
15 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
16 resources of my land, and the lands near and surrounding the proposed pipeline
17 route.

18 **Q: Do you have any worries about potential impacts from the proposed pipeline
19 to the soil of your land, or land near you?**

20 A: Yes, I believe that any construction, operation, and/or maintenance of the
21 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
22 land, as well as land along and surrounding the proposed pipeline route. This
23 includes, but is not limited to, the reasons that we discussed above of disturbing
24 the soil composition and makeup as it has naturally existed for thousands and
25 millions of years during the construction process, and any future maintenance or
26 removal process. I'm gravely concerned about the fertility and the loss of
27 economic ability of my property to grow the crops, or grow the grasses, or grow
28 whatever it is at that time they exist on my property or that I may want to grow in
29 the future, or that a future owner may want to grow. The land will never be the

1 same from as it exists now undisturbed to after it is trenched up for the proposed
2 pipeline.

3 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
4 **upon the groundwater over your land, or surrounding lands?**

5 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
6 the proposed Keystone XL Pipeline would have a detrimental impact upon the
7 groundwater of not only under my land, but also near and surrounding the pipeline
8 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
9 simple and it is simply too valuable to our State and the country to put at
10 unreasonable risk.

11 **Q: Do you have any concern about the potential impact of the proposed pipeline**
12 **upon the surface water on, or near or around your land?**

13 A: Yes, I have significant concerns that any construction, operation, and/or
14 maintenance of the proposed Keystone XL Pipeline would have detrimental
15 impact upon the surface water of not only within my property boundary, but along
16 and near and surrounding the pipeline route, and in fact, across the state of
17 Nebraska.

18 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
19 **upon the wildlife and plants, other than your growing crops on or near your**
20 **land?**

21 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
22 the proposed Keystone XL Pipeline would have a detrimental impact upon the
23 wildlife and the plants, not only that are located on or can be found upon my land,
24 but also near and along the proposed pipeline route.

25 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
26 **fair market value of your land?**

27 A: Yes, I do. I am significantly concerned about how the existence of the proposed
28 pipeline underneath and across and through my property will negatively affect the
29 fair market value at any point in the future, especially at that point in which I

1 would need to sell the property, or someone in my family would need to sell the
2 property. I do not believe, and certainly would not be willing to pay, the same
3 price for land that had the pipeline located on it, versus land that did not. I hope
4 there is never a point where I'm in a position where I have to sell and have to
5 realize as much value as I can out of my land. But because it is my single largest
6 asset, I'm gravely concerned that the existence of the proposed Keystone XL
7 Pipeline upon my land will affect a buyer's willingness to pay as much as they
8 would've paid and as much as I could've received, if the pipeline were not upon
9 my property. There are just too many risks, unknowns, impacts and uncertainties,
10 not to mention all of the rights you give up by the nature of having the pipeline
11 due to having the easement that we have previously discussed, for any reasonable
12 person to think that the existence of the pipeline would not negatively affect my
13 property's value.

14 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
15 **testimony?**

16 A: Yes, I have.

17 **Q: Where have you seen that before?**

18 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
19 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
20 believe the portion of the alternative route in Nebraska essentially twins or
21 parallels Keystone I.

22 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
23 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

24 A: No, I do not.

25 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
26 **Application, and as found on Attachment No. 6, here to your testimony, is in**
27 **the public interest of Nebraska?**

28 A: No, I do not.

1 **Q: Do you believe that the Keystone mainline alternative route as shown on**
2 **Attachment No. 7 included with your testimony here is a major oil pipeline**
3 **route that is in the public interest of Nebraska?**

4 A: No, I do not.

5 **Q: Do you believe there is any potential route for the proposed Keystone XL**
6 **Pipeline across, within, under, or through the State of Nebraska that is in the**
7 **public interest of the citizens of Nebraska?**

8 A: No, I do not.

9 **Q: Why do you hold that belief?**

10 A: Because there simply is no public interest based on all of the factors that I am
11 aware and that I have read and that I have studied that this Commission is to
12 consider that would establish that a for-profit foreign-owned pipeline that simply
13 crosses Nebraska because we are geographically in the way between where tar
14 sands are in Canada to where it wants to ship it to in Texas could ever be in the
15 public interest of Nebraskans. We derive no benefit from this project. It is not for
16 public use. Nebraska is simply in the way and when all considerations are taken in
17 there is no net benefit of any kind for Nebraska should this project be placed in our
18 state. Even if there was some arguable “benefit” it is not enough to outweigh all
19 the negative impacts and concerns.

20 **Q: What do you think about the applicant, TransCanada’s argument that its**
21 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
22 **of Nebraska because it may bring temporary jobs during the construction**
23 **phase to Nebraska?**

24 A: First of all, not all jobs are created equally. Most jobs that are created, whether
25 temporary or on a permanent basis, don’t come with a project that has all the
26 potential and foreseeable negative impacts, many of which we have discussed here
27 and other witnesses throughout the course of this hearing have and will discuss. If
28 I decide to hire and employ someone to help me out in my farming or ranching
29 business, I’ve created a job but I haven’t done so at the risk or detrimental impact

1 to my land or my town or my county or my state. And I've hired someone who is
2 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
3 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
4 jobs are not created equal. Additionally, I understand from what I'm familiar with
5 from TransCanada's own statements that the jobs numbers they originally touted
6 were determined to be a minute fraction of the permanent jobs that had been
7 projected. According to their answer to our Interrogatory No. 191, TransCanada
8 has created only thirty-four (34) jobs within Nebraska working specifically on
9 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
10 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
11 Further, according to their answer to Interrogatory No. 199, TransCanada would
12 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
13 constructed on its Preferred Route or its Mainline Alternative Route.

14 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
15 **because it would cross your land?**

16 A: No, absolutely not. I am opposed to this project because it is not in the public
17 interest, neither within my community nor within our state.

18 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
19 **was to cross someone else's land?**

20 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
21 the fear and anxiety and potential foreseeable risks and negative impacts that this
22 type of a project carrying this type of product brings foisted upon anyone in this
23 state or any other state.

24 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
25 **Pipeline to cross the state of Nebraska?**

26 A: I don't believe there is an intelligent route because as I have stated I don't believe
27 this project anywhere within Nebraska is within the public interest. However, if
28 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
29 had to go somewhere in the state of Nebraska, the only intelligent route I believe

1 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
2 preferred route and the mainline alternative routes are economic liabilities our
3 state cannot risk.

4 **Q: What do you rely upon to make that statement?**

5 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
6 already exists in that area is reason enough as it is not in our best interest or the
7 public interests to have more major oil pipelines crisscrossing our state. Second,
8 they have all the infrastructure already there in terms of relationships with the
9 counties and local officials and first responders along that route. Third, they have
10 already obtained easements from all the landowners along that route and have
11 relationships with them. Fourth, that route avoids our most sensitive soils, the
12 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
13 Aquifer. Sixth, they have already studied that route and previously offered it as an
14 alternative. Seventh, it just makes the most sense that as a state we would have
15 some intelligent policy of energy corridors and co-locating this type of
16 infrastructure near each other.

17 **Q: Do you have any other concerns you would like to reiterate or can think of at
18 this time you would like the Commissioners to understand?**

19 A: Yes. The pipeline would expose our very super sandy soil, and would not grow
20 back to grass due to the pipeline heat. TransCanada also wants to destroy 300 feet
21 of a well-established shelter belt, 5 rows at least. This belt is used for wind erosion
22 and to protect our cattle. We are concerned and against the Pipeline being placed
23 in our water supply because of the corrosive nature of our soil and water on the
24 steel being used. We are afraid in time the steel pipe will corrode and contaminate
25 our fresh water supply. We no longer have steel casings for irrigation, stock or any
26 other wells that are all PVC pipe. Our steel columns in our irrigation wells or stock
27 wells need to be serviced, and/or replaced every ten to fifteen years. I have
28 enclosed a picture of a 15 year old steel pipe from a 5hp submersible pump that we
29 use for water. It deteriorated to a point where we had to replace it with PVC pipe.

1 I have also enclosed pictures of steel posts, galvanized pipe, and other posts to
2 show the corrosive process. Even products with a special sealant corrode. The 20
3 miles between the Loup River and the Platte River have the same issues of the
4 corroding. This can be verified by Grosch Irrigation at Silver Creek, Nebraska.
5 TransCanada claims their sensors can detect a small leak, but all leaks have been
6 landowners and farmers, NOT SENSORS! We are very concerned for us and our
7 family's future of being able to continue our family farm operations with the threat
8 of benzene leaking into our ground water. There is no way to detect a small leak
9 in this pipe which will be placed directly into our water table. At 160 degrees, and
10 1600 pounds of pressure, any poor weld or flaw in pipe will contaminate our clean
11 water and of Nebraska to the KXL Pipeline out of the aquifer and twin it with the
12 Keystone One, where they have from 50 to 300 feet of soil before they are in
13 ground water. One more of our concerns is the proposed pumping station is only 2
14 miles from the Loup River, and by a water drain which flows directly into the
15 Loup River. Any leak or spill will cause major contamination to our water supply.
16 Once in the water supply of the Loup River, it will contaminate the city of
17 Columbus, Nebraska by way of the river and Cornhusker Public Power canal. The
18 canal is only three miles east of this benzene carrying pipeline.

19 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
20 **like the Public Service Commissioners to consider in their review of**
21 **TransCanada's Application?**

22 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
23 document below but other things may come to me or my memory may be
24 refreshed and I will add and address those things at the time of the Hearing in
25 August and address any additional items at that time as is necessary. Additionally,
26 I have not had an adequate amount of time to receive and review all of
27 TransCanada's answers to our discovery and the discovery of others so it was
28 impossible to competently and completely react to that in my testimony here and I
29 reserve the right to also address anything related to discovery that has not yet

1 concluded as of the date I signed this document below. Lastly, certain documents
2 requested have not yet been produced by TransCanada and therefore I may have
3 additional thoughts on those I will also share at the hearing as needed.

4 **Q: What is it that you are requesting the Public Service Commissioners do in**
5 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
6 **across Nebraska?**

7 A: I am respectfully and humbly requesting that the Commissioners think far beyond
8 a temporary job spike that this project may bring to a few counties and beyond the
9 relatively small amount of taxes this proposed foreign pipeline would possibly
10 generate. And, instead think about the perpetual and forever impacts of this
11 pipeline as it would have on the landowners specifically, first and foremost, but
12 also thereby upon the entire state of Nebraska, and to determine that neither the
13 preferred route nor the Keystone mainline alternative route are in the public
14 interest of the citizens of the state of Nebraska. And if the Commissioners were
15 inclined to modify TransCanada's proposed routes and were to be inclined to grant
16 an application for a route in Nebraska, that the only potential route that would
17 make any intelligent sense whatsoever would be twinning or near paralleling of
18 the proposed KXL with the existing Keystone I pipeline. It simply does not make
19 sense to add yet another major oil pipeline crisscrossing our state creating new
20 pumping stations, creating new impacts on additional counties and communities
21 and going through all of the court processes with myself and other landowners like
22 me when this applicant already has relationships with the landowners, the towns
23 and the communities along Keystone I, and that Keystone I is firmly outside of the
24 sand hills and a significantly further portion away from the heart of the Ogallala
25 Aquifer than the preferred route or the Keystone mainline alternative route.

26 **Q: 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?**

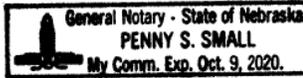
29 A: Yes, they are.

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.**

John P. ...
(Landowner Name Here)

Subscribed and Sworn to me before this 30th day of May, 2017.

Penny S. Small
Notary Public



Attachment No. 1



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Kenneth M. and Karen L. Prososki Trust under agreement dated April 18, 2008
Karen L. Prososki
Kenneth M. Prososki

TRACT NO. ML-NE-NA-30115.000
STATE: Nebraska
COUNTY: Nance
SECTION: 009
TOWNSHIP: 016N
RANGE: 005W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

PREPARED BY
exp Energy Services Inc.

S.004
T.016N
R.005W

S.003
T.016N
R.005W

S.009
T.016N
R.005W

S.010
T.016N
R.005W

Kenneth M. and Karen L. Prosocki Trust under agreement dated April 18, 2008
Karen L. Prosocki
Kenneth M. Prosocki

S.016
T.016N
R.005W

S.015
T.016N
R.005W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Kenneth M. and Karen L. Prosocki Trust under agreement dated April 18, 2008
Karen L. Prosocki
Kenneth M. Prosocki

TRACT NO. ML-NE-NA-30120.000
STATE: Nebraska
COUNTY: Nance
SECTION: 009
TOWNSHIP: 016N
RANGE: 005W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Access Road (Temp.)
- Property Line

May 2017 - X:\Drawings\65858\KEYSTONE_XL\9002_9949258

Attachment No. 2



PROTECTED

Thank You
World Wildlife Fund
WWF

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-NA-30115.000
ML-NE-NA-30120.000

**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**"), **Kenneth M. Prosocki and Karen L. Prosocki, Co-Trustees of the Kenneth M. and Karen L. Prosocki Trust under agreement dated April 18, 2008**, whose mailing address is 53595 S. 310th Avenue, Fullerton, Nebraska 68638 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-

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 Nance, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 84 acres, more or less, situated in the County of Nance, in the State of Nebraska, being further described as the E1/2 of the NW1/4 of Section 9, T16N, R5W of the 6th P.M., as recorded in Book 81, Page 169 in the Deed Records of Nance County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 400 acres, more or less, situated in the County of Nance, in the State of Nebraska, being further described as Lots 1 and 2 and the S1/2 of the NE1/4; E1/2 of the SW1/4; and the SE1/4 of Section 9, T16N, R5W of the 6th P.M. as recorded in Book 81, Page 169 in the Deed Records of Nance County, Nebraska; less and except any conveyances heretofore made.

(the "Property"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "Initial Construction Period"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "Temporary Work Space"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, government approvals, and availability of labor and materials.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the

extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth of forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable

compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the ____ day of _____, 20____.

GRANTOR(S):

Kenneth M. and Karen L. Prosocki Trust under agreement dated April 18, 2008

Kenneth M. Prosocki, Co-Trustee

Karen L. Prosocki, Co-Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By Kenneth M. Prososki, Co-Trustee of the Kenneth M. and Karen L. Prososki Trust under agreement dated April 18, 2008 on behalf of said Trust.

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By Karen L. Prososki, Co-Trustee of the Kenneth M. and Karen L. Prososki Trust under agreement dated April 18, 2008 on behalf of said Trust.

Notary Public Signature

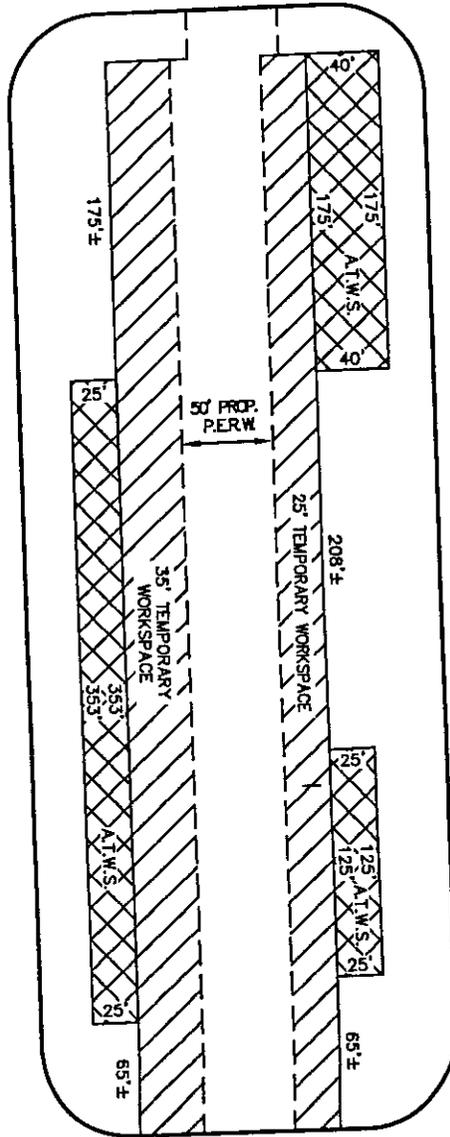
Affix Seal Here

LEGEND
 ▬ PROP.
 ▨ A.T.W.S.
 ▩ P.E.R.W.

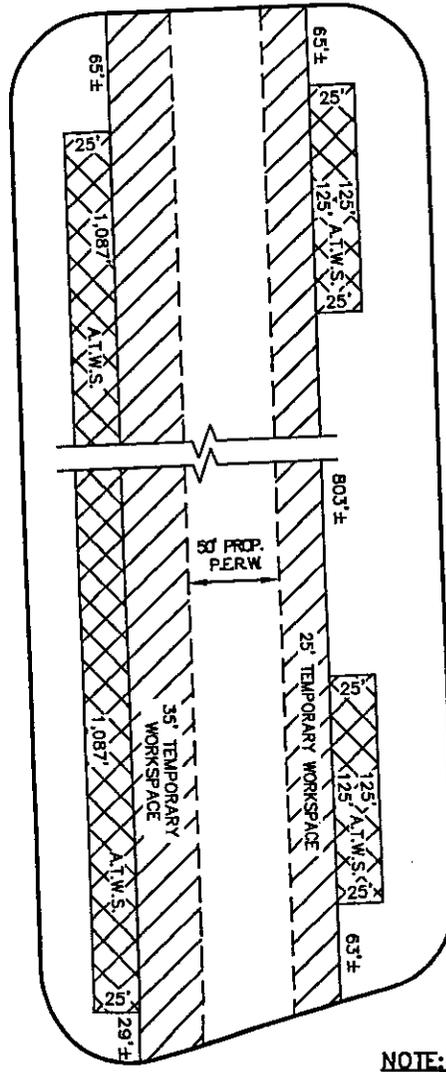
PROPERTY LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY

NANCE COUNTY, NEBRASKA

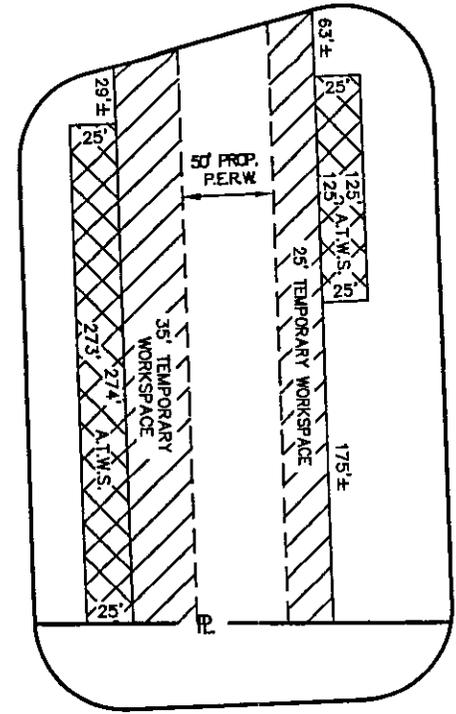
T-16-N, R-5-W, SECTION 9
 ML-NE-NA-30115.000



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.



KEYSTONE XL PROJECT
 EASEMENT AREA
 ACROSS THE PROPERTY OF
 KENNETH M. PROSOSKI AND
 KAREN L. PROSOSKI,
 CO-TRUSTEES OF THE KENNETH
 M. PROSOSKI AND KAREN L.
 PROSOSKI TRUST
 ML-NE-NA-30115.000

PROJECT:		EXHIBIT A	
XL	DRAWING NUMBER		
APPROVED BY	SLR		
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/28/14	PB	ALS



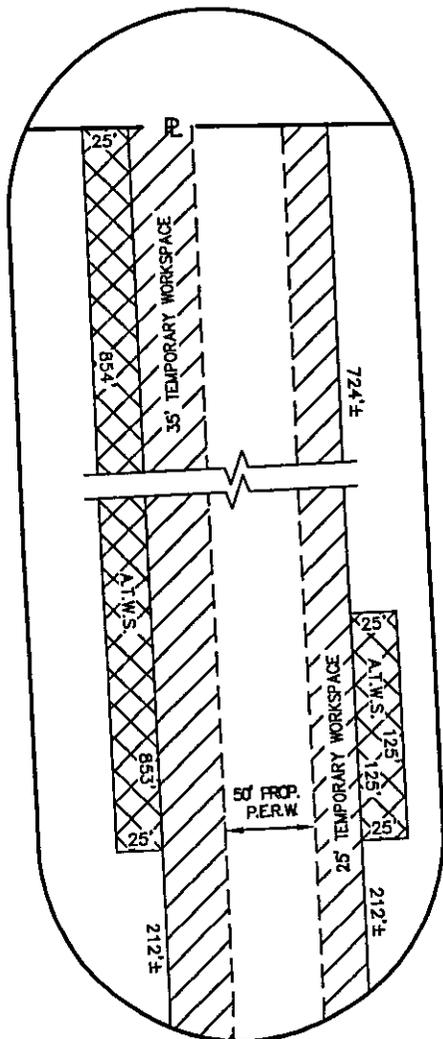
NANCE COUNTY, NEBRASKA

T-16-N, R-5-W, SECTION 9

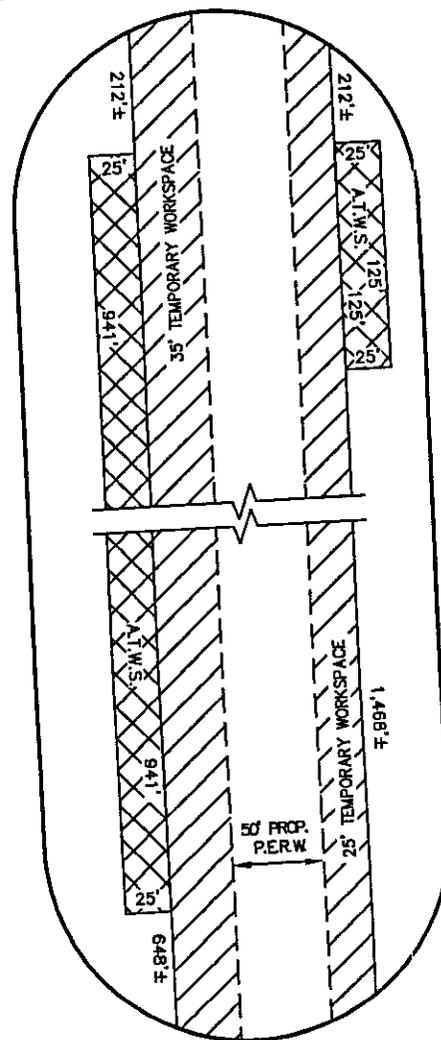
ML-NE-NA-30120.000

LEGEND
 PL PROPERTY LINE
 P. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY

PROPERTY LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY



DETAIL "A"
 N.T.S.



DETAIL "B"
 N.T.S.

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

 TransCanada <i>In business to deliver</i>			
KEYSTONE XL PROJECT EASEMENT AREA ACROSS THE PROPERTY OF KENNETH M. PROSOSKI AND KAREN L. PROSOSKI, CO-TRUSTEES OF THE KENNETH M. PROSOSKI AND KAREN L. PROSOSKI TRUSTS ML-NE-NA-30120.000			
PROJECT:	XL	EXHIBIT A	
APPROVED BY	SLR	DRAWING NUMBER XL-08-ML-SK-3550	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	10/28/14	PB	ALS



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE)
COMPANY, a New York Corporation,)
)
Plaintiff,)
)
v.)
)
RICHARD ANDREW, JANE ANDREW,)
LUKE ANDREW, and BRYCE ANDREW,)
)
Defendants.)

CASE NO. _____

COMPLAINT

COMES NOW Plaintiff, Zurich American Insurance Company (“Plaintiff”), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.
2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.
3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.
4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.
5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 (“the Policy”), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan’s rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System (“OCNS”), and to protect the Pipelines on the Property from damage during Defendants’ work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

- a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;
- b. Defendants failed to use reasonable care in their work on the Property and the Pipelines’ right-of-way and easement;
- c. Defendants failed to comply with the statutory requirements of the OCNS;
- d. Defendants failed to notify Magellan of Defendants’ intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;
- e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants’ negligence, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of \$4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid \$3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling \$1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of \$4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles
ENGLES, KETCHAM, OLSON, & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(402) 348-0900
(402) 348-0904 (Facsimile)
Albert M. Engles, #11194
Dan H. Ketcham, #18930
Michael L. Moran, #24042
James C. Boesen, #24862

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-NA-30115.000

We, Kenneth M. Prosocki and Karen L. Prosocki, Co-Trustees, of Nance County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

One Thousand Eight Hundred Twenty Dollars and No Cents (\$1,820.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Nance, State of Nebraska:

E/2 NW/4

Section 9, Township 16N, Range 5W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this day of

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-NA-30120.000

We, Kenneth M. Prosocki and Karen L. Prosocki, Co-Trustees, of Nance County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Fifty Four Dollars and No Cents (\$2054.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Nance, State of Nebraska:

Lots 1 & 2, S/2 NE/4, E/2 SW/4, SE/4

Section 9, Township 16N, Range 5W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this day of

_____, 20____.

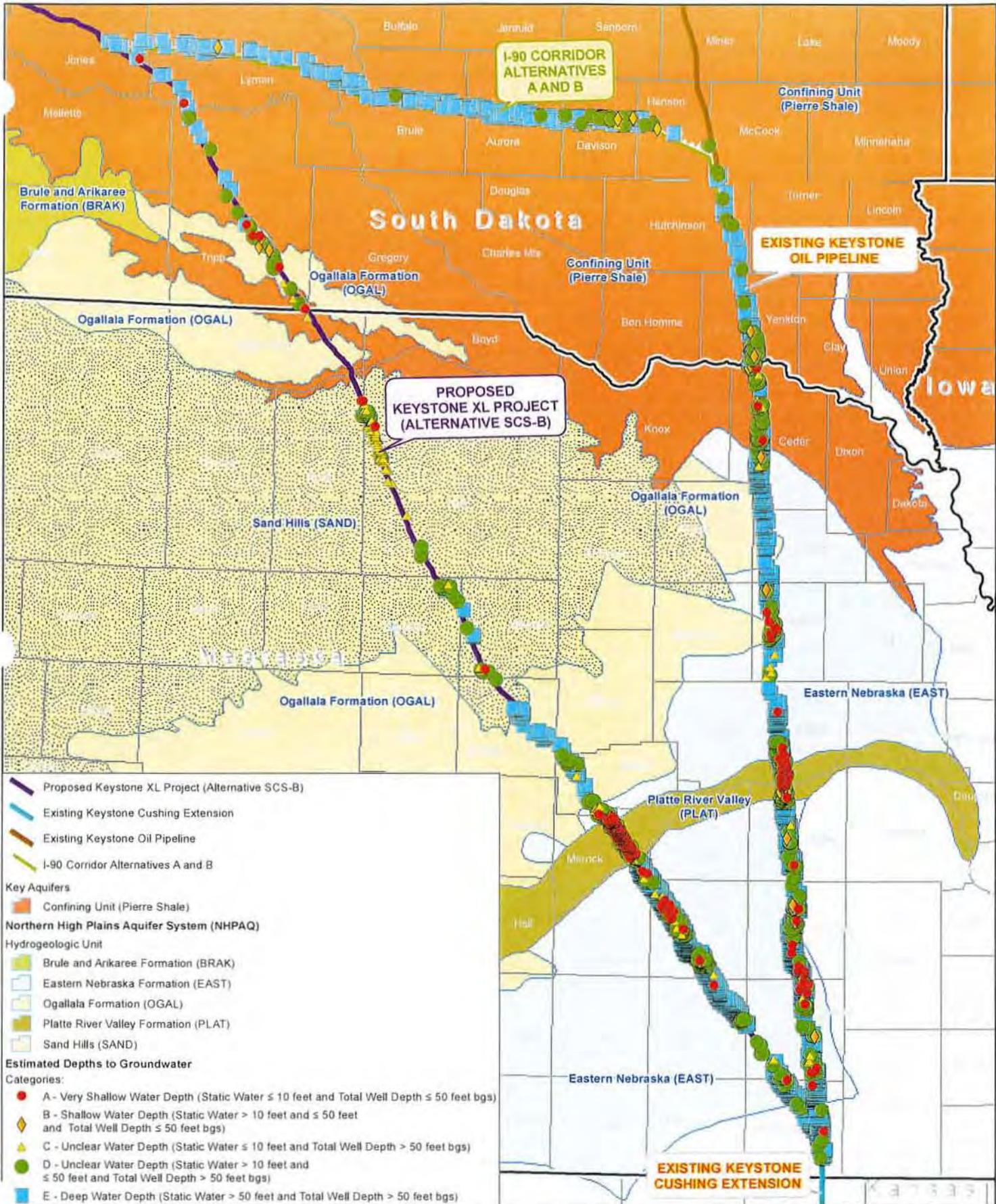
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



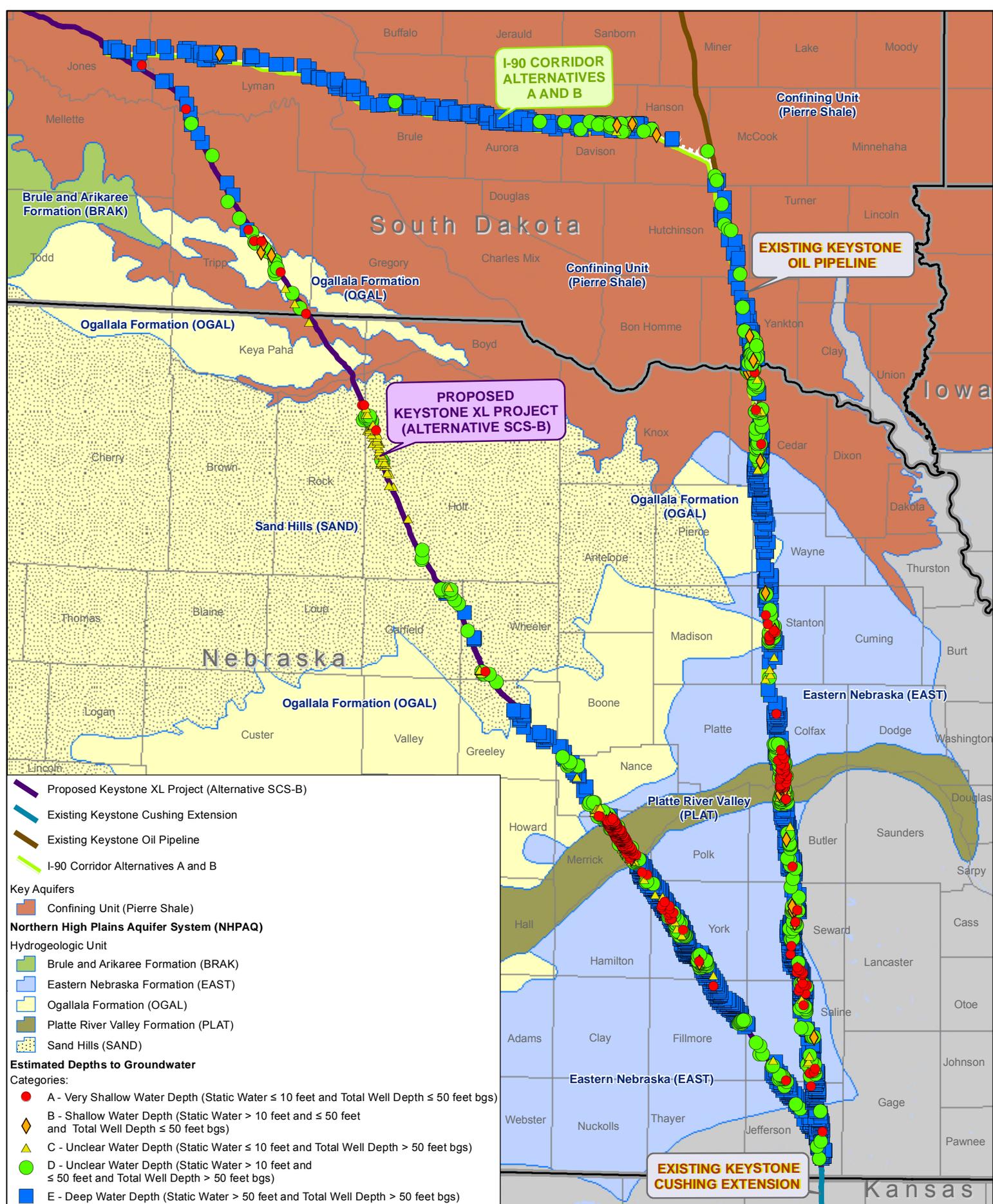
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

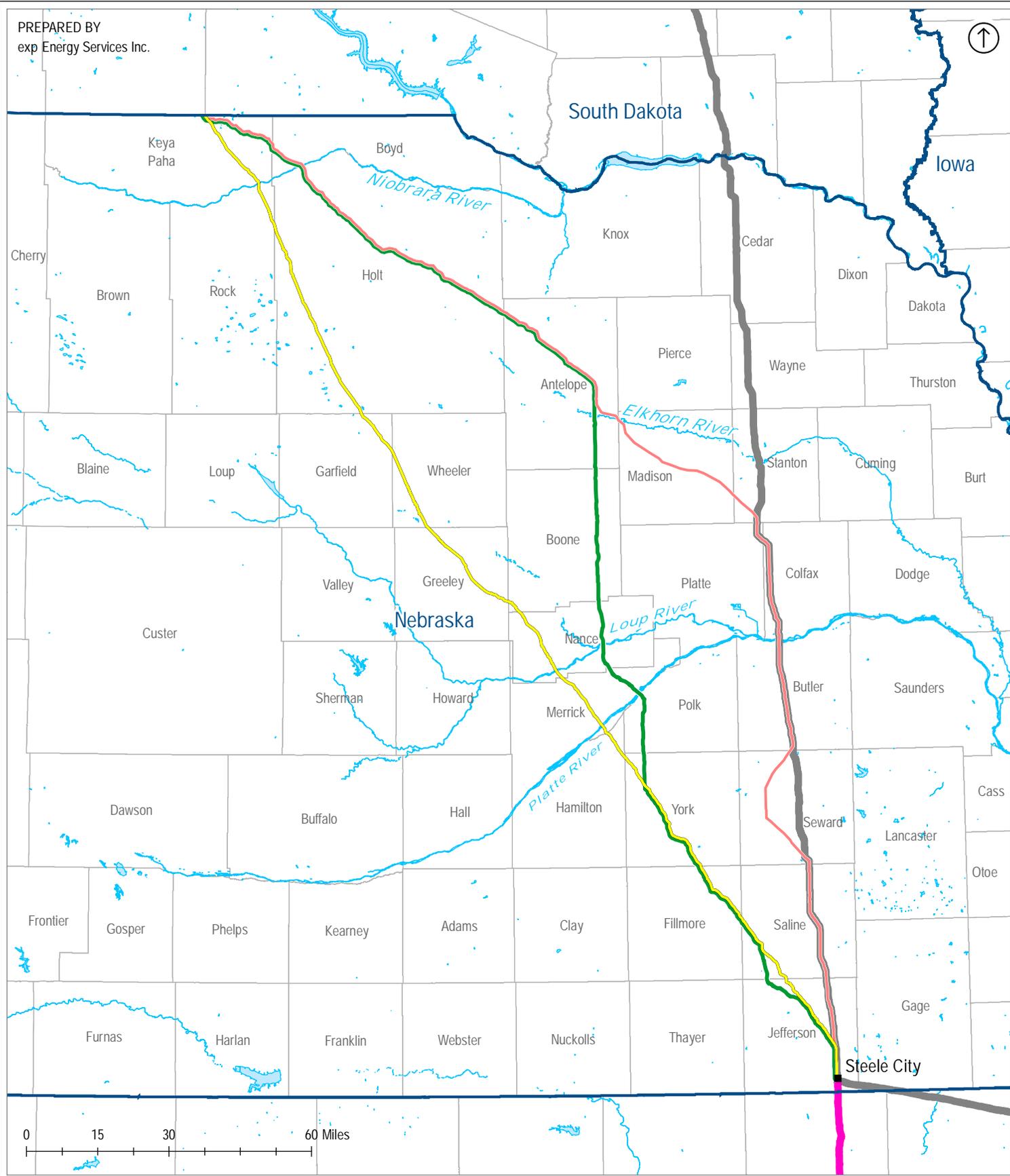
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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