

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 Rech in Support of Landowner
Intervenors

State of Nebraska)
) ss.
Boyd County)

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

2 A: My name is Donald Rech.

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 Boyd County.

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

14 A: Yes.

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

1 A: Yes.

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

3 A: Yes.

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

6 A: Yes.

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

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

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

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

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

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

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

3 A: Yes.

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

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

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

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

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

14 A: No, they have not.

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

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

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

22 A: No, they did not.

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

25 A: Yes, they did.

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

28 A: Yes, they did.

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

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

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

12 A: No, I do not.

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

15 A: Yes, they did.

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

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

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

28 A: Yes, it is.

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

3 A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
6 **percent clear on exactly who could become the owner of 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 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. 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: My biggest fear from the start was the ability to grass growing without having a
2 permanent blowout in the undisturbed prairie. If this was easy to do we would not
3 have to manage the grazing as intensely as we do. If we don't we will have
4 blowouts. Once a blowout starts it is difficult to control and often grows in size
5 rapidly. I would like to know how they feel this can be so easily done. As time
6 moves on I feel Museveni more concerned with the ever increasing pipeline
7 failures as well. A pipeline was recently place in some of my family ground by
8 two different companies. One was TransCanada and the other for natural gas.
9 Neither of those lines we put back to original grade. We have mud holes and have
10 seen severe erosion as a result. TransCanada lied about letting our pivots make full
11 circles and also about providing us with a cover crop to control the erosion. Also
12 when repairing drainage tile they cut corners and did a poor job, causing further
13 erosion and crop loss. In the end we had to hire someone locally to get the repairs
14 made and to be reimbursed for all of the extra hassle. If TransCanada is as
15 reputable as they claim I feel this all should have never happened. Finally the first
16 contact I had with some punk kid that grew up in a big city pushing the easement
17 was very rude. He had no clue or idea of what it takes to make everything work in
18 the agriculture community. He made me uncomfortable from day one and I still
19 feel that way.

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

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

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

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

12 A: No, I do not.

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

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

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

23 A: Well yes, of course.

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

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

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

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

13 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 A: Yes, I have.

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

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

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

8 A: No, I do not.

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

12 A: No, I do not.

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

15 A: No, I do not.

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

19 A: No, I do not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

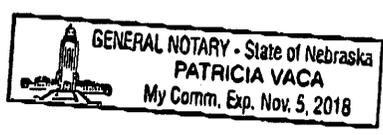
11 A: Yes, they are.

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

Donald Rech
Donald Rech

Subscribed and Sworn to me before this 1 day of June, 2017.

Patricia Vaca
Notary Public



Attachment No. 1



S.002
T.033N
R.016W

Donald J. Rech

S.001
T.033N
R.016W

S.011
T.033N
R.016W

S.012
T.033N
R.016W

IMAGERY: NAIP 2016



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Donald J. Rech

TRACT NO. ML-NE-BD-40280.000
STATE: Nebraska
COUNTY: Boyd
SECTION: 002
TOWNSHIP: 033N
RANGE: 016W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- 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-BD-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**") **Donald J. Rech**, whose mailing address is 1320 24th Road, Dwight, NE 68635 (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 Boyd, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 319.14 acres, more or less, situated in the County of Boyd, in the State of Nebraska, being further described as Lots 3 and 4 (a/k/a N1/2 of the NW1/4), S1/2 of the NW1/4, and the SE1/4 of Section 2, T33N, R16W of the 6th P.M., as recorded in Book 53, Page 142 in the Deed Records of Boyd 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 J. Rech

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **Donald J. Rech**

Notary Public Signature

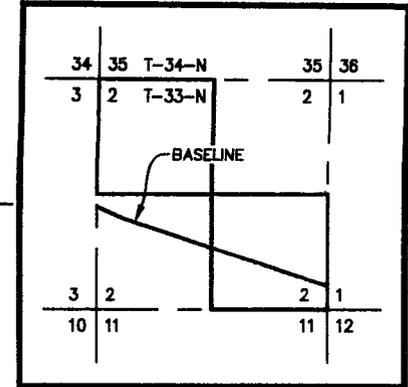
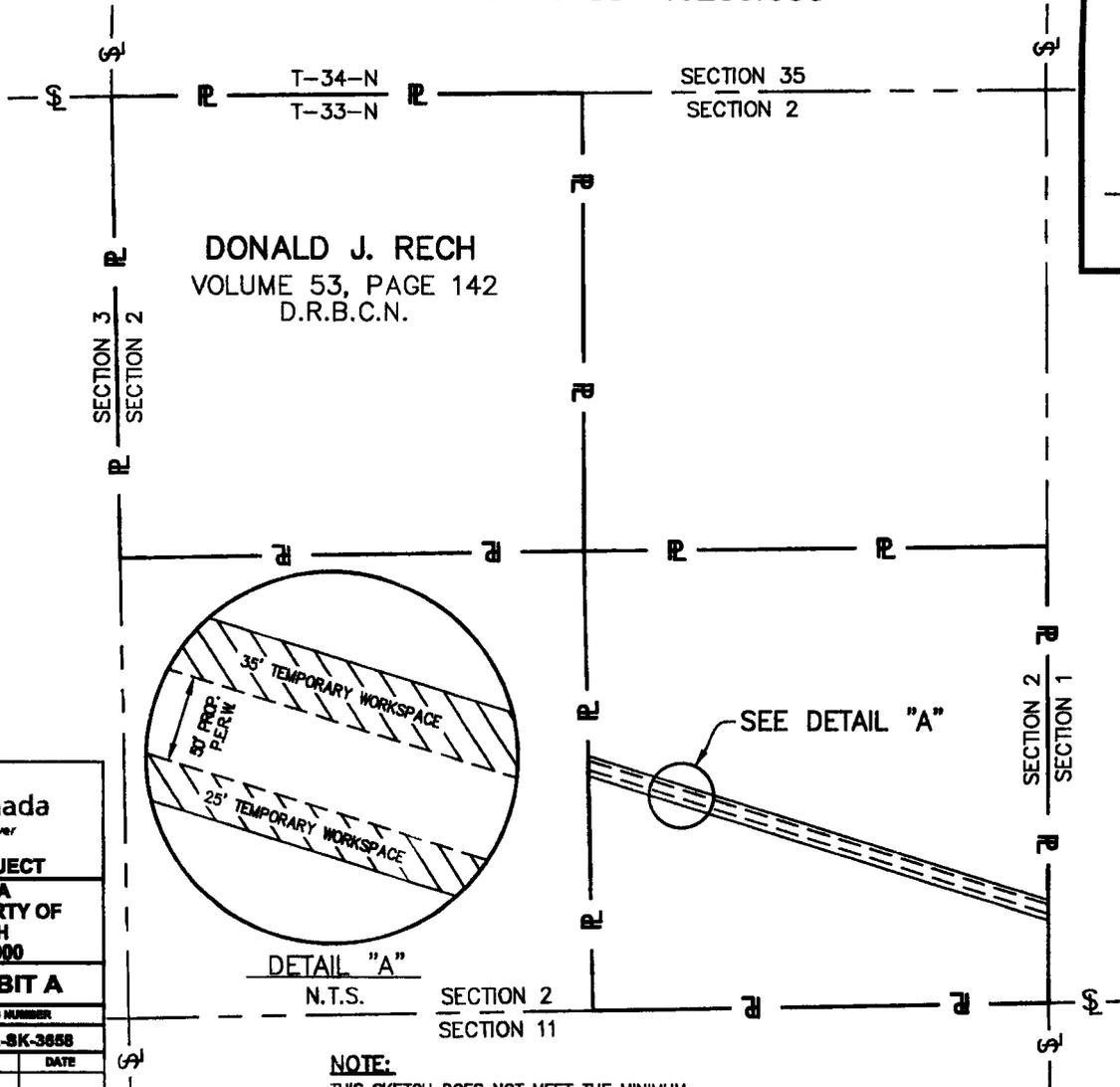
Affix Seal Here

LEGEND
 P PROPERTY LINE
 S SECTION LINE
 PROP. PROPOSED
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.B.C.N. DEED RECORDS OF BOYD COUNTY, NEBRASKA

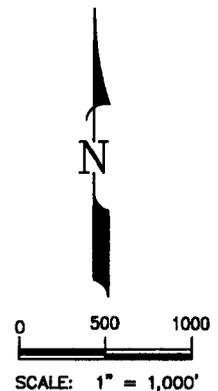
BOYD COUNTY, NEBRASKA

T-33-N, R-16-W, SECTION 2

ML-NE-BD-40280.000



VICINITY MAP
N.T.S.



TRACT LEGAL DESCRIPTION:
 LOTS 3 AND 4, S/2 NW/4,
 SE/4 OF SECTION 2, T-33-N,
 R-16-W

TransCanada
In business to deliver

KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
DONALD J. RECH
ML-NE-BD-40280.000

| | | |
|-------------|------------------|------------|
| PROJECT: | XL | EXHIBIT A |
| APPROVED BY | DRAWING NUMBER | |
| SLR | XL-08-ML-SK-3658 | |
| NO. | REVISION | DATE |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| SCALE | DATE | DRAWN BY |
| 1" = 1000' | 10/27/14 | JN |
| | | CHECKED BY |
| | | ALS |

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: 2,771'±
 AREA OF PERMANENT EASEMENT: 3.2 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.8 ACRES



Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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

CASE NO. _____

COMPLAINT

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

PARTIES

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM: NEGLIGENCE

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

SECOND CLAIM: TRESPASS

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

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

Attachment No. 5

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-BD-40280.000

I/we Donald J. Rech, of Butler 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 Boyd, State of Nebraska:

LOTS 3 AND 4, S/2 NW/4, SE/4

Section 2, Township 33N, Range 16W

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____.

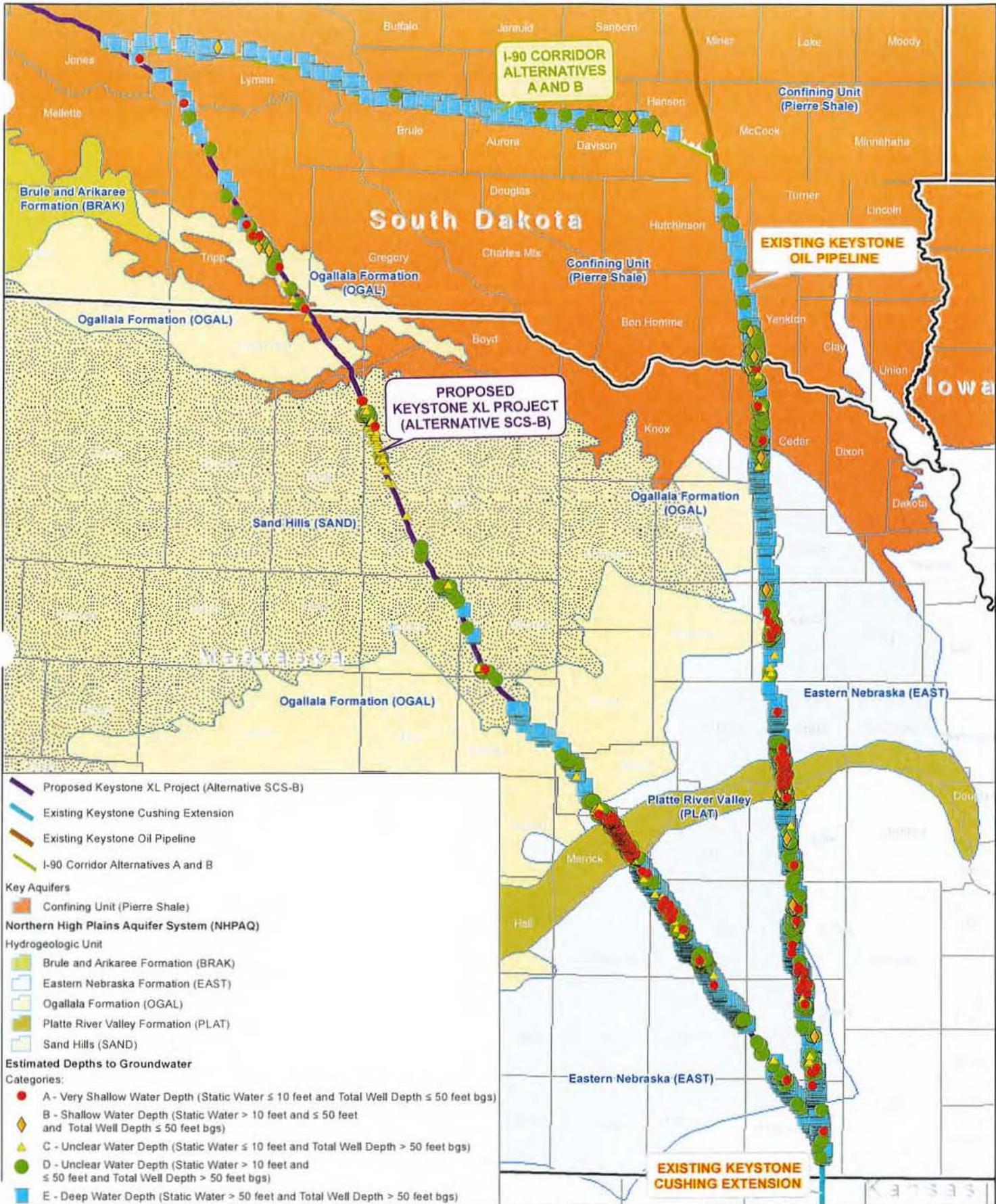
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



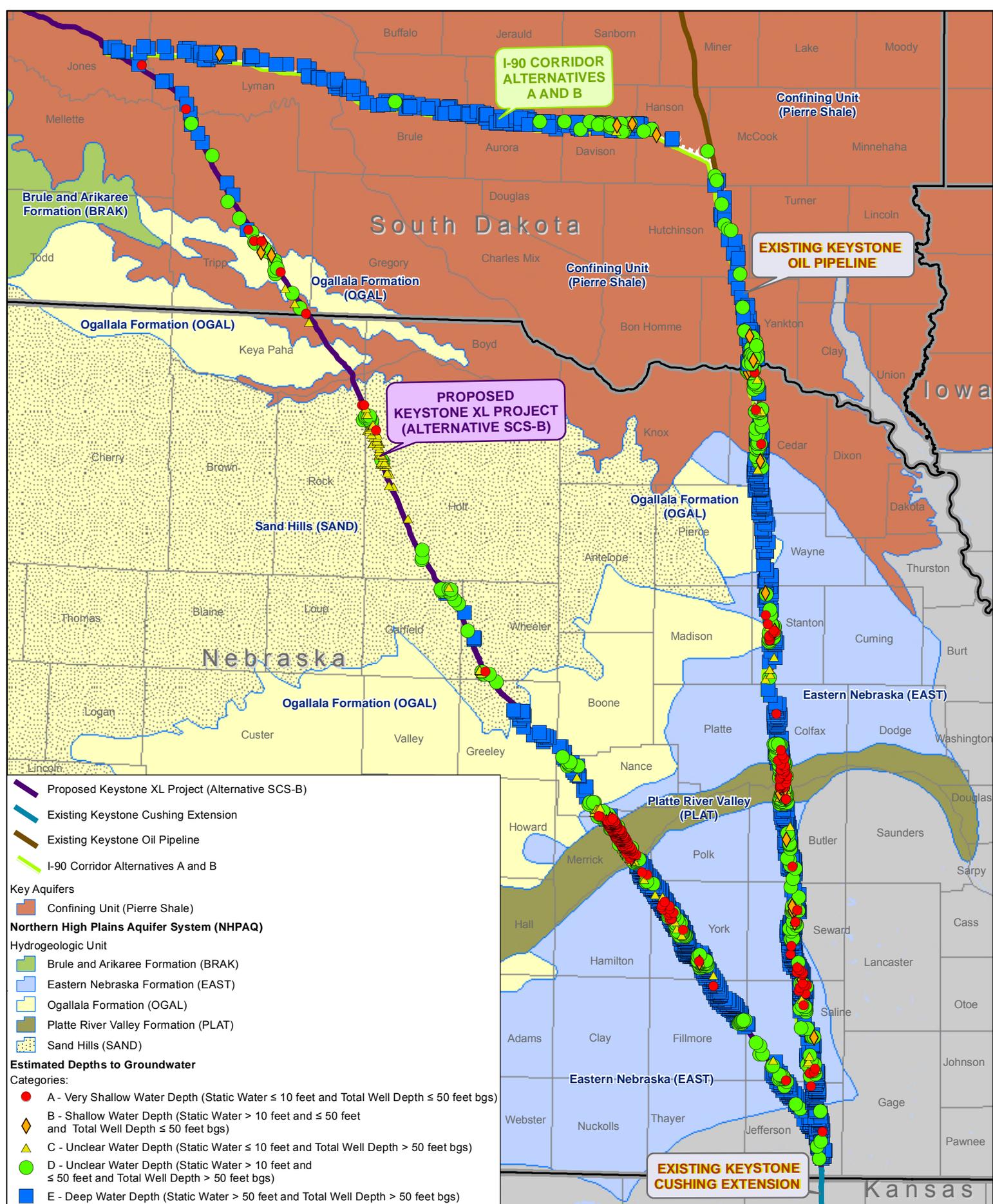
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

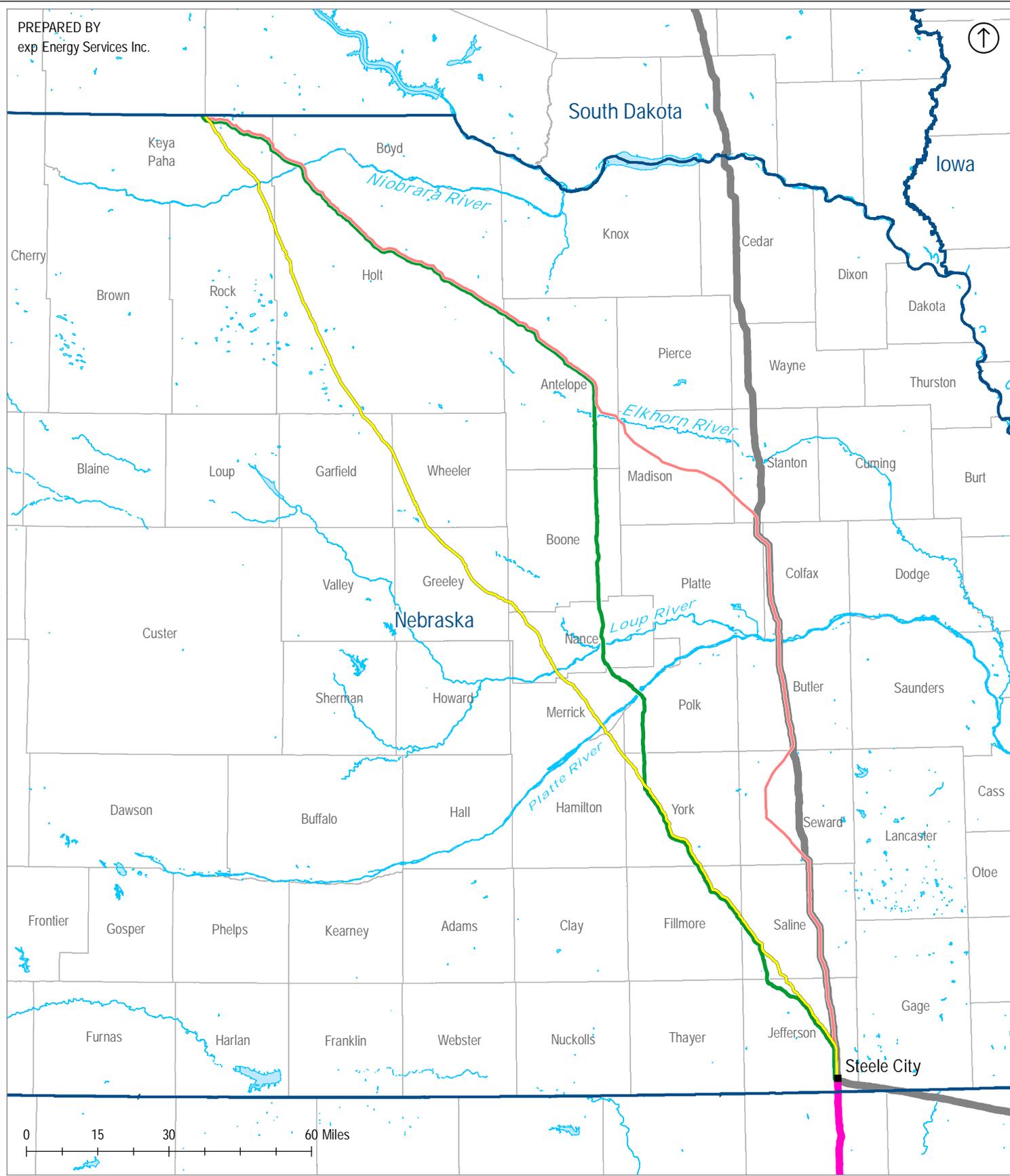
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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
Edyth Sayer in
Support of Landowner Intervenors

State of Idaho)
) ss.
Custer County)

1 Q: Please state your name.

2 A: My name is Edyth Sayer.

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: How long the land has been in your family?

1 A: The land has been in my family since 1880. My grandfather raised a large family
2 on the farm. I appreciate the land so I never wanted to sell it.

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

4 A: Yes.

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

7 A: Yes.

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

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

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

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

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

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

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

3 A: Yes.

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

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

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

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

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

14 A: No, they have not.

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

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

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

22 A: No, they did not.

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

25 A: Yes, they did.

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

28 A: Yes, they did.

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

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

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

12 A: No, I do not.

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

15 A: Yes, they did.

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

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

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

28 A: Yes, it is.

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

3 A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 A: No.

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

13 A: No.

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

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

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

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

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

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

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

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

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

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

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

26 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at 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: TransCanada will go from end to another end. This is close to the neighbor's field.
2 There is a chance of damage to his field. TransCanada has the good neighbor
3 policy that he could sue me in one of their offers. TransCanada will dig across my
4 water line and electric line that connects to the neighbor's pivot that waters my 80
5 acres. Anytime you dig there can be damage. Construction wants to get done so it
6 means nothing to the workers if they damage it. What restrictions will
7 TransCanada have on this land they lease forever? I feel with all these problems I
8 possibly cannot find anyone that will farm the ground. I cannot justify why
9 TransCanada SHOULD even consider going through the farm land and not look
10 for another route I know this will cause serious problems for me and the
11 neighbors also for the counties as it should devalue the land.

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

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

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

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

5 A: No, I do not.

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

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

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

16 A: Well yes, of course.

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

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

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

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

6 A: Yes, I do.

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

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

12 **Q: Do you have 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. 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 portion of the proposed pipeline within Nebraska as found**
7 **in Attachment No. 5 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.**

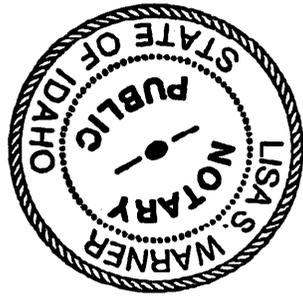
5 **Q: Thank you, I have no further questions at this time and reserve the right to**
6 **ask you additional questions at the August 2017 Hearing.**

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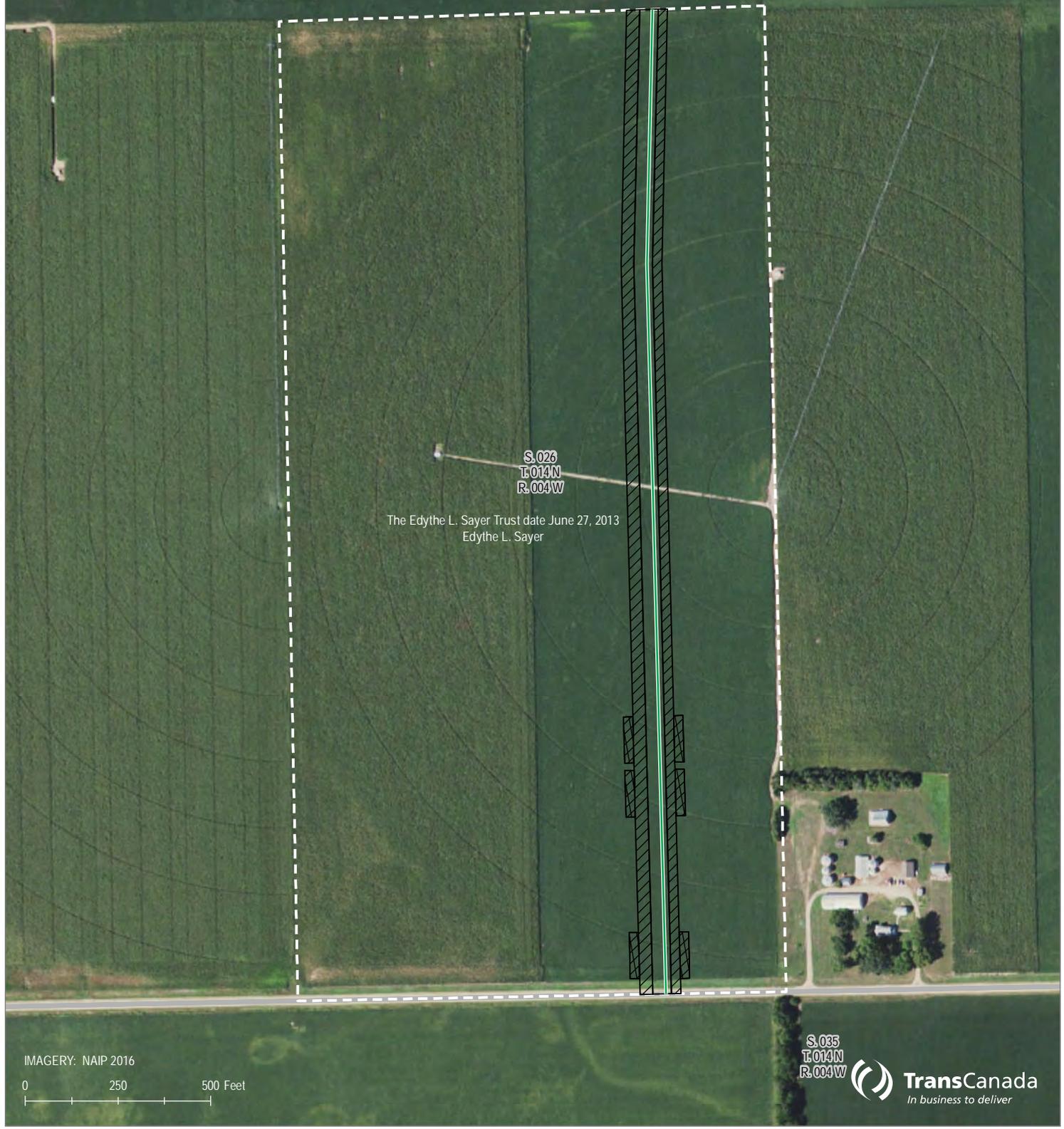
Edytha Sayer
Edyth Sayer

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

15
16 Lisa S. Warner
17 Notary Public for Id.
18 Res: Mackay, Id
Com Exp: 3/09/2021



Attachment No. 1



S.026
T.014N
R.004W
The Edythe L. Sayer Trust date June 27, 2013
Edythe L. Sayer

S.035
T.014N
R.004W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
The Edythe L. Sayer Trust date June 27, 2013
Edythe L. Sayer

TRACT NO. ML-NE-PO-40320.000
STATE: Nebraska
COUNTY: Polk
SECTION: 026
TOWNSHIP: 014N
RANGE: 004R

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

Attachment No. 2

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

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-PO-40320.000

**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**"), **Edythe L. Sayer, Trustee of The Edythe L. Sayer Trust dated June 27, 2013**, whose mailing address is PO Box 101, Mackay, Idaho 83251 (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 80 acres, more or less, situated in the County of Polk, in the State of Nebraska, being further described as the E1/2 of the SW1/4 of Section 26, T14N, R4W of the 6th P.M., as recorded in Book 97, Page 680 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):

The Edythe L. Sayer Trust dated June 27, 2013

Edythe L. Sayer, Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By Edythe L. Sayer, Trustee of The Edythe L. Sayer Trust dated June 27, 2013 on behalf of said Trust.

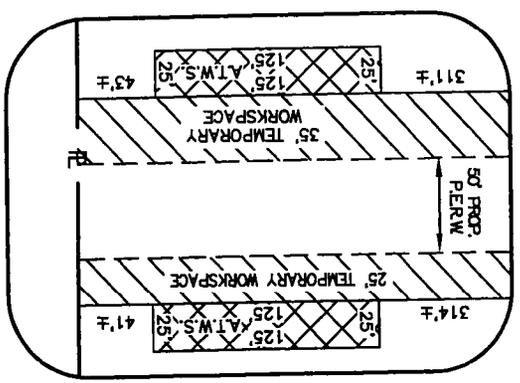
Notary Public Signature

Affix Seal Here

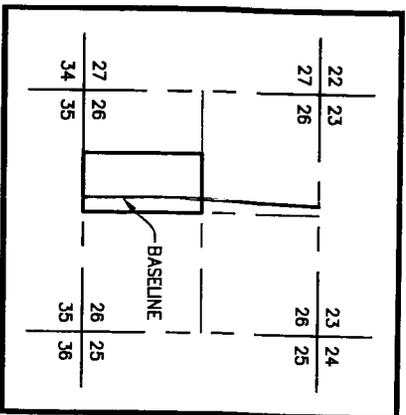
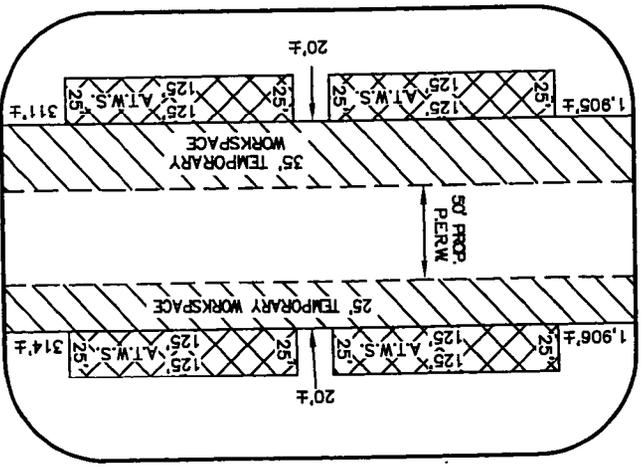
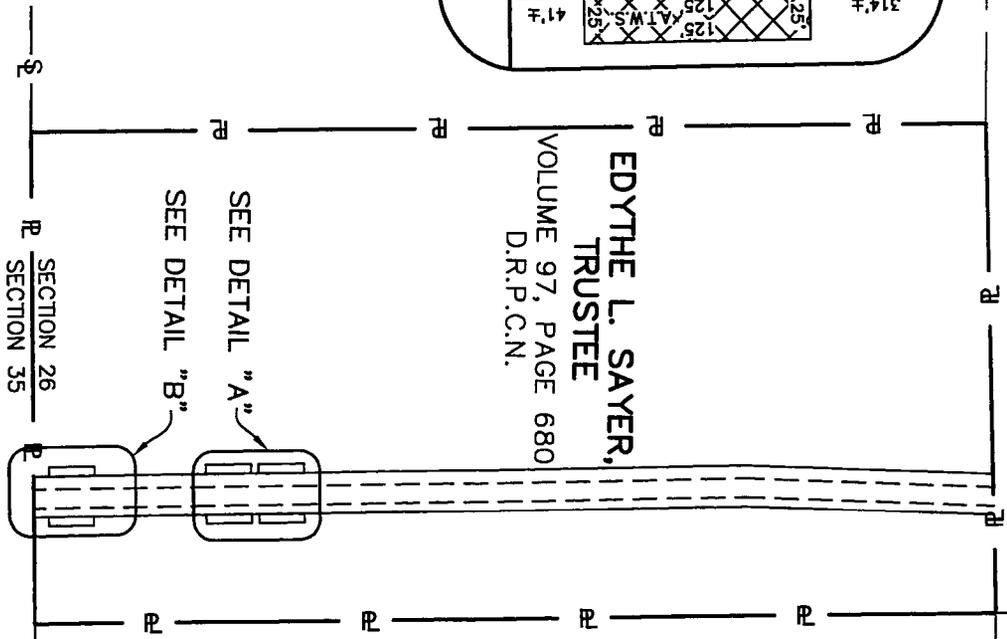
Grantor's Initials _____

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

POLK COUNTY, NEBRASKA
 T-14-N, R-4-W, SECTION 26
 ML-NE-PO-40320.000



EDYTHE L. SAYER, TRUSTEE
 VOLUME 97, PAGE 680
 D.R.P.C.N.



TRACT LEGAL DESCRIPTION:
 E/2 SW/4 OF SECTION 26,
 T-14-N, R-4-W

TransCanada
In business to deliver

KEYSTONE XL PROJECT
 EASEMENT AREA
 ACROSS THE PROPERTY OF
 EDYTHE L. SAYER, TRUSTEE
 ML-NE-PO-40320.000

PROJECT: XL EXHIBIT A

APPROVED BY: _____ DRAWING NUMBER: XL-08-MI-SK-3883

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: 2,655'±
 AREA OF PERMANENT EASEMENT: 3.0 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.7 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.4 ACRE

Attachment No. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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

CASE NO. _____

COMPLAINT

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

PARTIES

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM: NEGLIGENCE

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

SECOND CLAIM: TRESPASS

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

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

Attachment No. 4

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-PO-40320.000

I, Edythe L. Sayer, Trustee, of Polk County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Thousand Seven Hundred Ninety Dollars and No Cents (\$3,790.00), 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:

E/2 SW/4

Section 26, Township 14N, Range 4W

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

IN WITNESS WHEREOF, I have hereunto set our hands on this__ day of

_____, 20____.

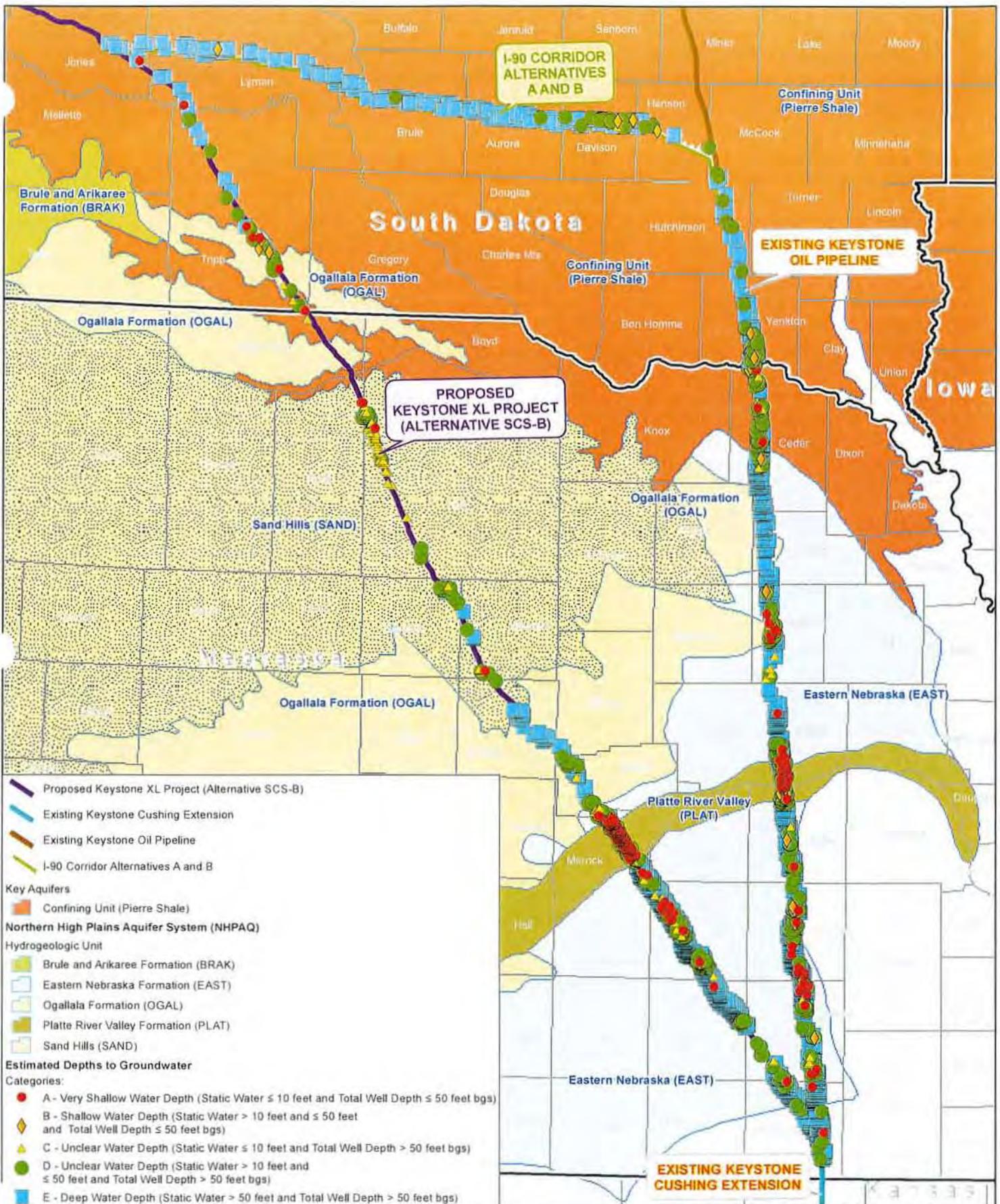
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 5



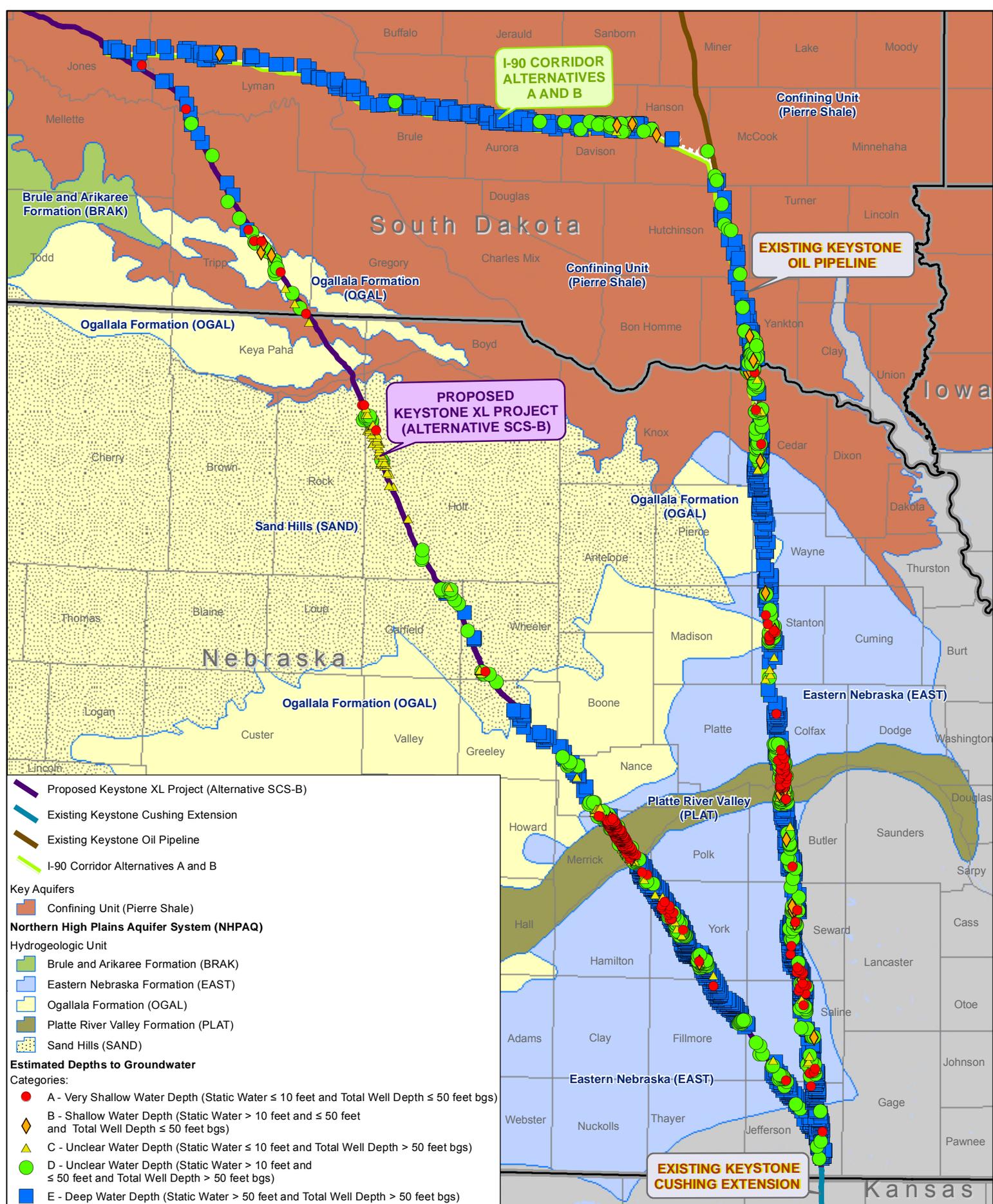
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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



KEYSTONE XL PROJECT

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



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

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

0 5 10 20 Miles

KEYSTONE XL PROJECT

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

Attachment No. 6



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

KEYSTONE XL PROJECT
FIGURE 2.2-2
PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

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

**Direct Testimony of
Tim Sayer in
Support of Landowner Intervenors**

State of Idaho)
) ss.
Custer County)

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

2 A: My name is Tim Sayer. Edith Sayer, landowner, is my mother.

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

6 A: No, but I have a Power of Attorney for my mother to speak on her behalf
7 regarding the land owned by her.

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

11 A: Yes, and it is located in Polk County.

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

15 A: Yes.

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

1 A: The land has been in my family since 1880. My great-grandfather raised a large
2 family on the farm. We appreciate the land so we never wanted to sell it.

3 **Q: Does your family earn any income from this land?**

4 A: Yes.

5 **Q: Has your family depended on the income from the land to support its
6 livelihood?**

7 A: Yes.

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

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

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

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

28 .

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

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

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

7 A: Yes.. She hired lawyers to defend and protect her and incurred legal fees and
8 expenses in her resistance of TransCanada's lawsuit against her.

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

11 A: No, they have not.

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

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

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

19 A: No, they did not.

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

22 A: Yes, they did.

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

25 A: Yes, they did.

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

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

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

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

8 A: No, I do not.

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

11 A: Yes, they did.

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

15 A: Yes, it is.

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

18 A: Yes, I have.

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

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

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

1 A: Yes, I have a number of significant concerns and worries about the document and
2 how the language included and the language not included potentially negatively
3 impacts the land and thereby potentially negatively impacts the community and
4 the 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 the**
9 **land. So, if you can start at the beginning of that document and let's work**
10 **our way through it, okay?**

11 A: Okay.

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 for all of the known and unknown affects and all of the rights
15 being given up and for all the things they get to do to the land and for what they
16 will prevent the landowner from doing on the land and they only will pay one time
17 at 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 that would be put back into the

1 local community both spending and stimulating the local economy and generating
2 more economic activity right here.

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

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

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

20 A: No.

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

25 A: No.

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

28 A: Yes, so the next sentence talks about “...its successors and assigns (hereinafter
29 called “Grantee”)...” and this concerns me because it would allow 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. The 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 mother's interest or the public interest
25 of 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 the ground

1 until the end of time just sitting there while they are not using it, but the landowner
2 is still prevented from doing on the land and using the land what they would like.
3 If I owned a gas station I couldn't just leave my underground oil or fuel storage
4 tanks sitting there. It doesn't make sense and it scares me and it is not in my
5 interest or the 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 the landowner can’t do anything about is in
19 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. 3**.

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 the Landowner can and can't do
9 based upon how TransCanada chooses to define the terms in paragraph 3.
10 TransCanada could also completely deny my request to excavate. Further,
11 TransCanada retains all "privileges necessary or convenient for the full use of the
12 rights" granted to them in the Easement. Again, TransCanada unilaterally can
13 decide to the detriment of the property rights of Landowner what TransCanada
14 believes is 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 the their property in
12 preparation or planning of TransCanada's taking of the initial easement area(s),
13 the language here does not require TransCanada to compensate the Landowner if
14 they decide to move the easement anywhere on Landowners property. Such
15 unilateral powers would negatively affect Landowners property are not conducive
16 to the protection of property rights or economic interests.

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

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

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

23 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
24 Easement to any person, company, country, etc. at their sole discretion at any time
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 mother’s land, and for what they sought to**
23 **prevent you and any future land owner of her property from doing in the**
24 **future?**

25 A: Yes, she received an offer from them.

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

29 A: No, never.

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

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

11 **Q: Do you believe TransCanada's proposed method of compensation to your**
12 **mother as a 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 mother's affected land would prevent**
16 **construction of future structures upon the portion of the land affected by the**
17 **proposed 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 we
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 the property in
22 regards to the pipeline.

23 **Q: Do you think such a restriction would impact your mother economically?**

24 A: Well yes, of course.

25 **Q: How do you think such a restriction would impact your mother**
26 **economically?**

27 A: The future of this land may not be exactly how it's being used as of this moment,
28 and having the restrictions and limiting my ability to develop my land in certain
29 ways presents a huge negative economic impact on myself, my family, and any

1 potential future owner of the property. You have no idea how we or the future
2 owner may want to use this land in the future or the other land across Nebraska
3 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
4 ago it would have been hard to imagine all the advances that we have now or how
5 things change. Because the Easement is forever and TransCanada gets the rights in
6 the land forever we have to think with a very long term view. By placing their
7 pipeline on under across and through the land that prevents future development
8 which greatly negatively impacts future taxes and tax revenue that could have
9 been generated by the County and State but now will not. When you look at the
10 short blip of economic activity that the two years of temporary construction efforts
11 may bring, that is far outweighed by the perpetual and forever loss of opportunity
12 and restrictions TransCanada is forcing upon us and Nebraska.

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

15 A: Yes, I do.

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

17 A: I am concerned that any construction, operation, and/or maintenance of the
18 proposed Keystone XL Pipeline would have a detrimental impact upon the
19 environment of the land specifically, as well as the lands near it and surrounding
20 the proposed pipeline route.

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

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

26 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
27 **fair market value of your mother's land?**

28 A: Yes, I do. I am significantly concerned about how the existence of the proposed
29 pipeline underneath and across and through the property will negatively affect the

1 fair market value at any point in the future, especially at that point in which
2 someone in my family would need to sell the property. I do not believe, and
3 certainly would not be willing to pay, the same price for land that had the pipeline
4 located on it, versus land that did not. There are just too many risks, unknowns,
5 impacts and uncertainties, not to mention all of the rights you give up by the
6 nature of having the pipeline due to having the easement that we have previously
7 discussed, for any reasonable person to think that the existence of the pipeline
8 would not negatively affect the property's value.

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. 4, 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. 4 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. Nebraska derives no net benefit from this project. It
28 is not for public use. Nebraska is simply in the way and when all considerations
29 are taken in there is no net benefit of any kind for Nebraska should this project be

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

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

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

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

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

1 **Q: Would you be happier if instead of crossing your mother's land, this**
2 **proposed pipeline 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. No route is in the public interest.

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. Lastly,
8 certain documents requested have not yet been produced by TransCanada and
9 therefore I may have additional thoughts on those I will also share at the hearing
10 as needed.

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

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

1 and the communities along Keystone I, and that Keystone I is firmly outside of the
2 sand hills and a significantly further portion away from the heart of the Ogallala
3 Aquifer than the preferred route or the Keystone mainline alternative route.

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

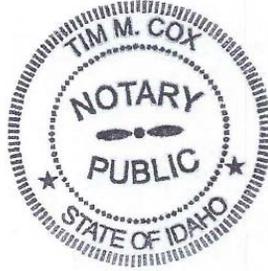
7 A: Yes, they are.

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

Timothy P Sayer
Tim Sayer

Subscribed and Sworn to me before this 3 day of JUNE,
2017.

Tim M Cox
Notary Public
IDAHO FALLS, ID
Comm expires 9-13-2020



Attachment No. 1



IMAGERY: NAIP 2016
0 250 500 Feet

S.035
T.014N
R.004W
TransCanada
In business to deliver



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
The Edythe L. Sayer Trust date June 27, 2013
Edythe L. Sayer

TRACT NO. ML-NE-PO-40320.000
STATE: Nebraska
COUNTY: Polk
SECTION: 026
TOWNSHIP: 014N
RANGE: 004R

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

May 2017 - X:\Drawings\50320\KEYSTONE_XL\5000_9999\5036

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-PO-40320.000

**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**"), **Edythe L. Sayer, Trustee of The Edythe L. Sayer Trust dated June 27, 2013**, whose mailing address is PO Box 101, Mackay, Idaho 83251 (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 80 acres, more or less, situated in the County of Polk, in the State of Nebraska, being further described as the E1/2 of the SW1/4 of Section 26, T14N, R4W of the 6th P.M., as recorded in Book 97, Page 680 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):

The Edythe L. Sayer Trust dated June 27, 2013

Edythe L. Sayer, Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

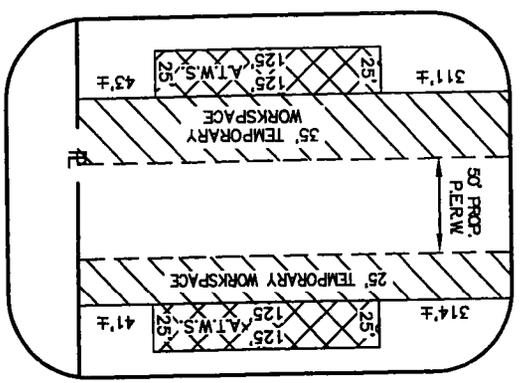
By Edythe L. Sayer, Trustee of The Edythe L. Sayer Trust dated June 27, 2013 on behalf of said Trust.

Notary Public Signature

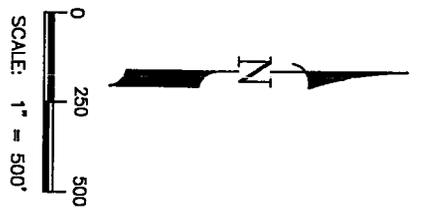
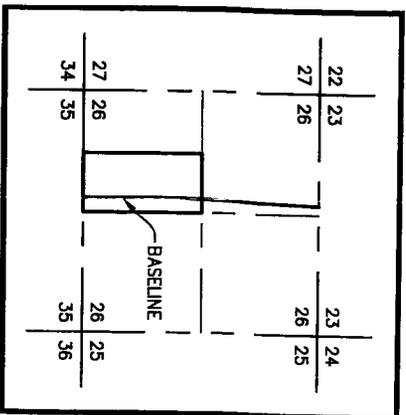
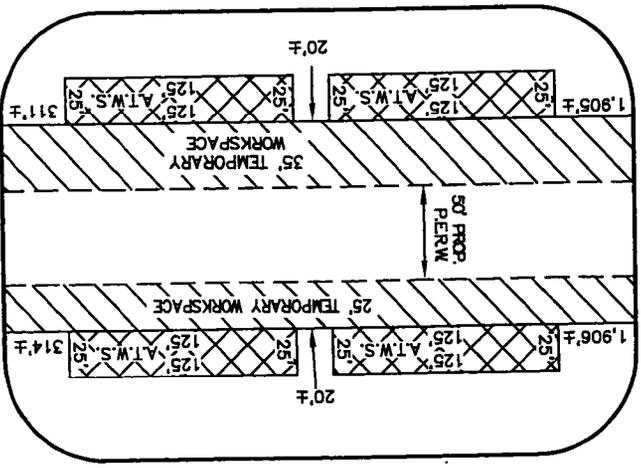
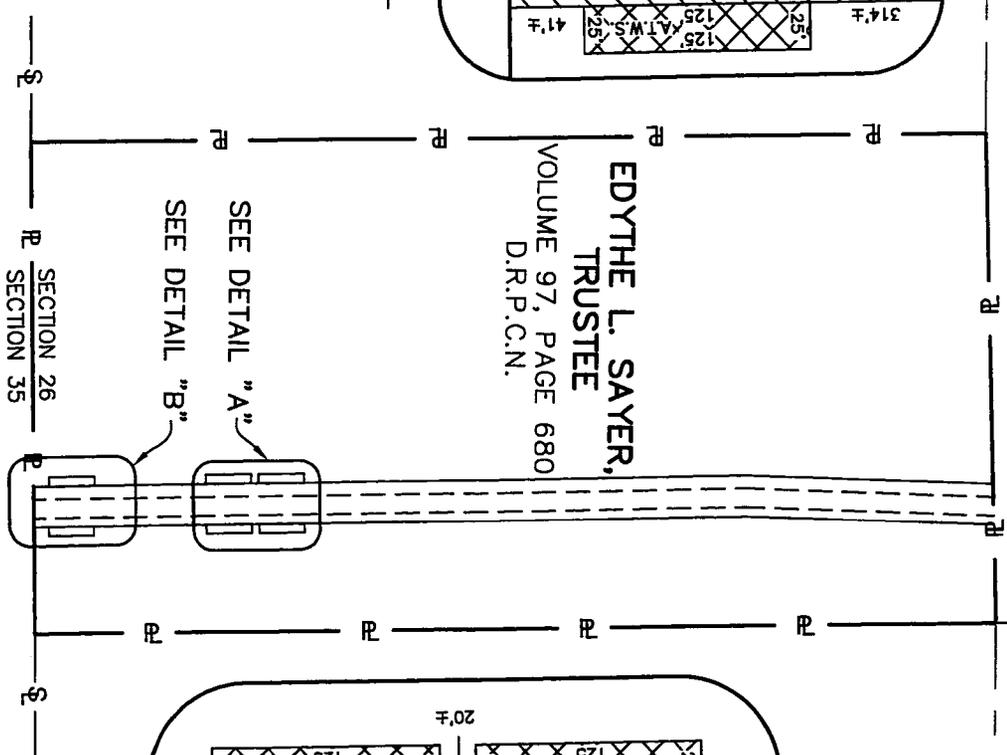
Affix Seal Here

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

POLK COUNTY, NEBRASKA
T-14-N, R-4-W, SECTION 26
ML-NE-PO-40320.000



EDYTHE L. SAYER, TRUSTEE
 VOLUME 97, PAGE 680
 D.R.P.C.N.



TRACT LEGAL DESCRIPTION:
 E/2 SW/4 OF SECTION 26,
 T-14-N, R-4-W

TransCanada
In business to deliver

KEYSTONE XL PROJECT
 EASEMENT AREA
 ACROSS THE PROPERTY OF
 EDYTHE L. SAYER, TRUSTEE
 ML-NE-PO-40320.000

PROJECT: XL EXHIBIT A

APPROVED BY: _____ DRAWING NUMBER: XL-08-MI-SK-3883

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: 2,655'±
 AREA OF PERMANENT EASEMENT: 3.0 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.7 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.4 ACRE

Attachment No. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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

CASE NO. _____

COMPLAINT

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

PARTIES

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM: NEGLIGENCE

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

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

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

23. Defendants were negligent in the following particulars:

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

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

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

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

SECOND CLAIM: TRESPASS

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

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

Attachment No. 4



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
Dan Shotkoski in Support of Landowner
Intervenors

State of Nebraska)
) ss.
Nance County)

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

2 A: My name is Dan Shotkoski.

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

1 A: Yes.

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

3 A: The land has been in the family for about 55 years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 A: No, never.

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

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

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

4 A: Yes, it is.

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

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

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

13 A: No, I did not.

14 **Q: Why not?**

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

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

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

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

4 A: No, they have not.

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

8 A: No, they have not.

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

11 A: Yes, I am.

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

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

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

20 A: No, they have not.

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

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

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

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

6 A: No, it has not.

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

10 A: No, I do not.

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

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

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

17 A: Yes, I do.

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

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

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

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

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

28 A: No, of course not.

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

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

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

8 A: Well, yes I have.

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

13 A: No, of course not.

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

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

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

25 A: The water table is very high. There have been years that the whole pasture has
26 been under water. On the south quarter there is a center pivot with underground
27 pipes running to it. The prairie Creek also runs through this ground. The creek
28 runs into the Platte River, this will affect people along & downstream on the Platte
29 River. We would like to pass this land down to kids & grandkids one day.

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

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

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

22 A: No, I do not.

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

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

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

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

4 A: Well yes, of course.

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

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

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

23 A: Yes, I do.

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

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

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

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

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

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

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

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

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

27 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
28 the proposed Keystone XL Pipeline would have a detrimental impact upon the
29 groundwater of not only under my land, but also near and surrounding the pipeline

1 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
2 simple and it is simply too valuable to our State and the country to put at
3 unreasonable risk.

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

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

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

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

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

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

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

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

9 A: Yes, I have.

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

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

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

18 A: No, I do not.

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

22 A: No, I do not.

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

25 A: No, I do not.

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

29 A: No, I do not.

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

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

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

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

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

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

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

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

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

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

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

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

26 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
27 already exists in that area is reason enough as it is not in our best interest or the
28 public interests to have more major oil pipelines crisscrossing our state. Second,
29 they have all the infrastructure already there in terms of relationships with the

1 counties and local officials and first responders along that route. Third, they have
2 already obtained easements from all the landowners along that route and have
3 relationships with them. Fourth, that route avoids our most sensitive soils, the
4 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
5 Aquifer. Sixth, they have already studied that route and previously offered it as an
6 alternative. Seventh, it just makes the most sense that as a state we would have
7 some intelligent policy of energy corridors and co-locating this type of
8 infrastructure near each other.

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

12 A: Yes, they are.

13 **Q: Are there any other concerns you can want to share at this time?**

14 A:

MY CONCERN IS THAT THEY ARE PUTTING
THEIR PIPE INTO THE WATER. AS SEEN
IN THE PICTURES OF THE PASTURE THE WATER
TABLE IS QUITE HIGH, THERE ARE TIMES
THE WHOLE PASTURE HAS BEEN UNDER WATER.
NOW IF THERE IS A LEAK IT WILL BE DIRECTLY
INTO THE WATER, THIS IS WATER THAT IS
FOR HOUSE WELL AS WELL AS LIVESTOCK.
I'VE ASKED TRANS CANADA SEVERAL TIMES
HOW THEY PLAN ON CLEANING THAT OUT OF

THE WATER, AND THERE REALLY IS THAT THEY
WILL GET BACK TO ME. I AM STILL WAITING
FOR A ANSWER, THAT WAS THREE YEARS
AGO. IF IS THIS HOW THEY TAKE CARE
ISSUE'S THIS WILL BE BAD FOR THE WHOLE
STATE. THIS CONTAMINATED WATER WILL EVENTUALLY
END UP IN THE STREAMS & RIVERS THAT WILL
EFFECT THE EASTERN PART OF THE STATE.
ALL DRINKING WATER COMES FROM THE GROUND,
UNLESS THEY HAVE ANTIPOD SOAPY FROM
SOMEWHERE ELSE.

1

2 Q: Are there any other issues?

THE OTHER ISSUE IS THAT IT WILL DEVALUE
THE LAND FOR THE OWNERS & RENTERS OF THE
LAND. IF THEY WANT A TRUE EFFECT OF WHAT
IS HAS DONE TO THE LAND, TAKE A LOOK AT
WHERE ~~THEY~~ THEY ARE PROCESSING THIS PRODUCT
UP IN CANADA. SO TEST THERE WATER & SOIL!
AND LET THAT BE KNOWN TO EVERYBODY.

BIRDSTICK TEST. ALSO HOW MUCH WILL THIS
COST THE TAX PAYER'S, WHEN THERE IS A CLEAN
UP. AND WHO WILL MAKE FOR CROP LOSE &
LIVESTOCK LOSE.

3 A:

4

Sam Shouli



Marian M. Abegglen
6-1-17

Attachment No. 1



Living Trust Agreement of Marilyn T. Shotkoski dated January 30, 1992
Clifford F. Shotkoski
Dan Shotkoski

S. 028
T. 016 N
R. 005 W

S. 027
T. 016 N
R. 005 W

S. 033
T. 016 N
R. 005 W

S. 034
T. 016 N
R. 005 W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Living Trust Agreement of Marilyn T. Shotkoski dated January 30, 1992
Clifford F. Shotkoski
Dan Shotkoski

TRACT NO. ML-NE-NA-40020.000
STATE: Nebraska
COUNTY: Nance
SECTION: 028
TOWNSHIP: 016N
RANGE: 005W

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

PREPARED BY
exp Energy Services Inc.



S.028
T.016N
R.005W

S.027
T.016N
R.005W

S.033
T.016N
R.005W

S.034
T.016N
R.005W

Living Trust Agreement of Marilyn T. Shotkoski dated January 30, 1992
Clifford F. Shotkoski
Dan Shotkoski

IMAGERY: NAIP 2016

0 250 500 1,000 Feet



VICINITY MAP



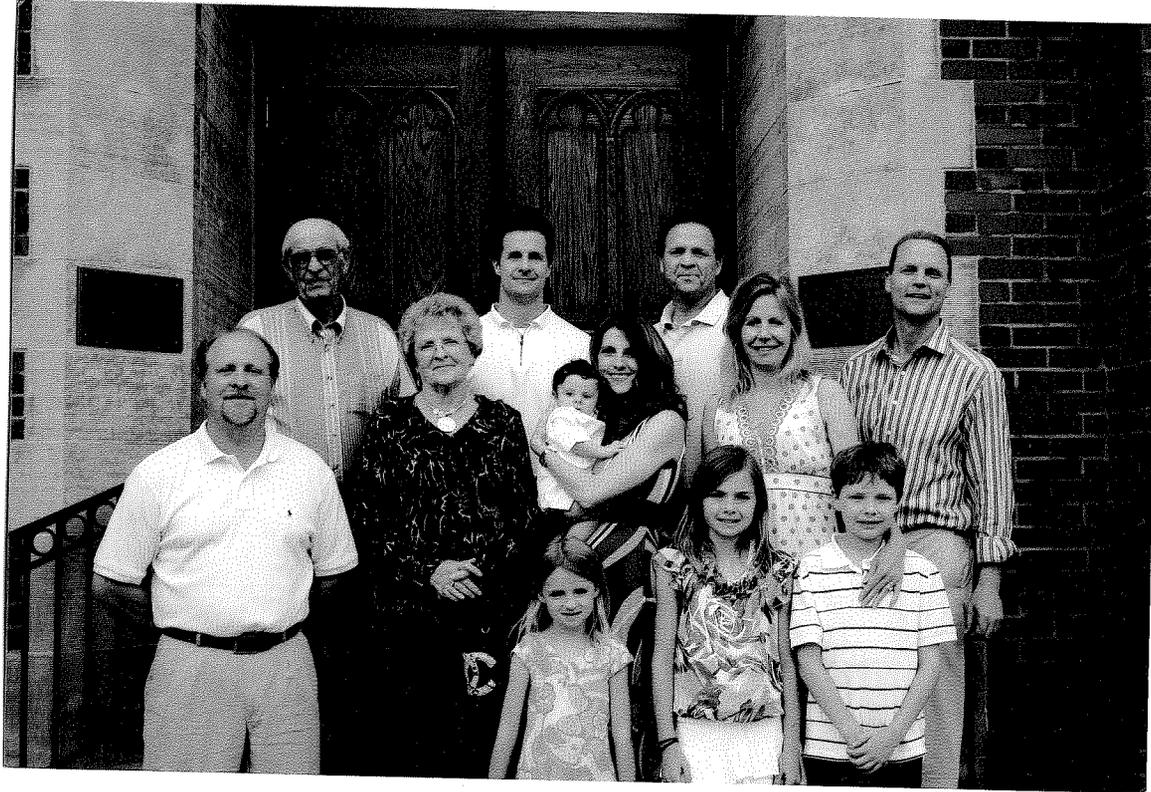
KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Living Trust Agreement of Marilyn T. Shotkoski dated January 30, 1992
Clifford F. Shotkoski
Dan Shotkoski

TRACT NO. ML-NE-NA-40060.000
STATE: Nebraska
COUNTY: Nance
SECTION: 034
TOWNSHIP: 016N
RANGE: 005W

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

May 2017 - X:\Drawings\53528\NE\STONE_XL\5000_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-NA-40020.000
ML-NE-NA-40060.000

**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**"), **Clifford F. Shotkoski and Dan Shotkoski, as Co-Trustees under the Living Trust Agreement of Marilyn T. Shotkoski dated January 30, 1992**, whose mailing address is 3054 37th Avenue, Columbus, Nebraska 68601 (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

Grantor's Initials _____

electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Easement Area") located on real property situated in the County of Nance, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 160 acres, more or less, situated in the County of Nance, in the State of Nebraska, being further described as the SE1/4 of Section 28, Township 16 North, Range 5 West of the 6th P.M., as recorded in Book 67, Page 367 in the Deed Records of Nance County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 160 acres, more or less, situated in the County of Nance, in the State of Nebraska, being further described as the NW1/4 of Section 34, Township 16 North, Range 5 West of the 6th P.M., as recorded in Book 67, Page 370 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):

**Living Trust Agreement of Marilyn T. Shotkoski
dated January 30, 1992**

Clifford F. Shotkoski, Co-Trustee

Dan Shotkoski, Co-Trustee

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By Clifford F. Shotkoski, Co-Trustee under the Living Trust Agreement of Marilyn T. Shotkoski dated January 30, 1992 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 Dan Shotkoski, Co-Trustee under the Living Trust Agreement of Marilyn T. Shotkoski dated January 30, 1992 on behalf of said Trust.

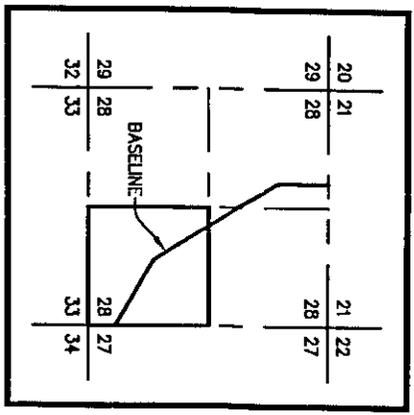
Notary Public Signature

Affix Seal Here

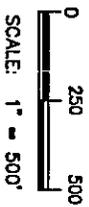
LEGEND
 R PROPERTY LINE
 S SECTION LINE
 \$ PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.N.C.N. DEED RECORDS OF NANCE COUNTY, NEBRASKA

NANCE COUNTY, NEBRASKA
 T-16-N, R-5-W, SECTION 28
 ML-NE-NA-40020.000

**CLIFFORD F. SHOTKOSKI AND
 DAN SHOTKOSKI, CO-TRUSTEES**
 VOLUME 67, PAGE 367
 D.R.N.C.N.



VICINITY MAP
 N.T.S.



TRACT LEGAL DESCRIPTION:
 SE 1/4 OF SECTION 28,
 T-16-N, R-5-W



TransCanada
In business to deliver

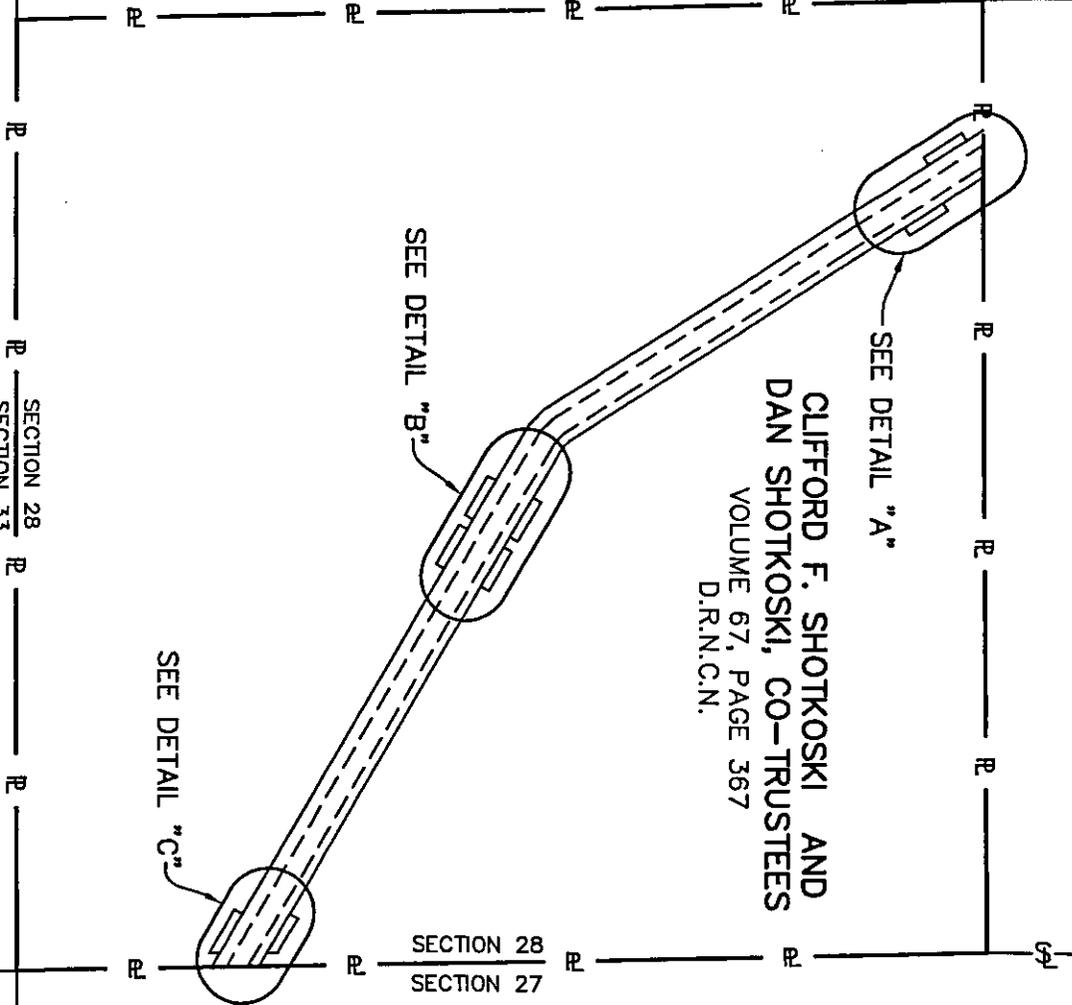
KEYSTONE XL PROJECT

**EASEMENT AREA
 ACROSS THE PROPERTY OF
 CLIFFORD F. SHOTKOSKI AND
 DAN SHOTKOSKI, CO-TRUSTEES
 ML-NE-NA-40020.000**

PROJECT: XL
EXHIBIT A

APPROVED BY: [] DRAWING NUMBER: XL-08-ML-SK-3662
 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.

SECTION 28
 SECTION 33

TOTAL DISTANCE ACROSS PROPERTY: 3,106.1
 AREA OF PERMANENT EASEMENT: 3.6 ACRES
 AREA OF TEMPORARY WORKSPACE: 4.3 ACRES
 ADDITIONAL AREA OF TEMPORARY WORKSPACE: 0.6 ACRE

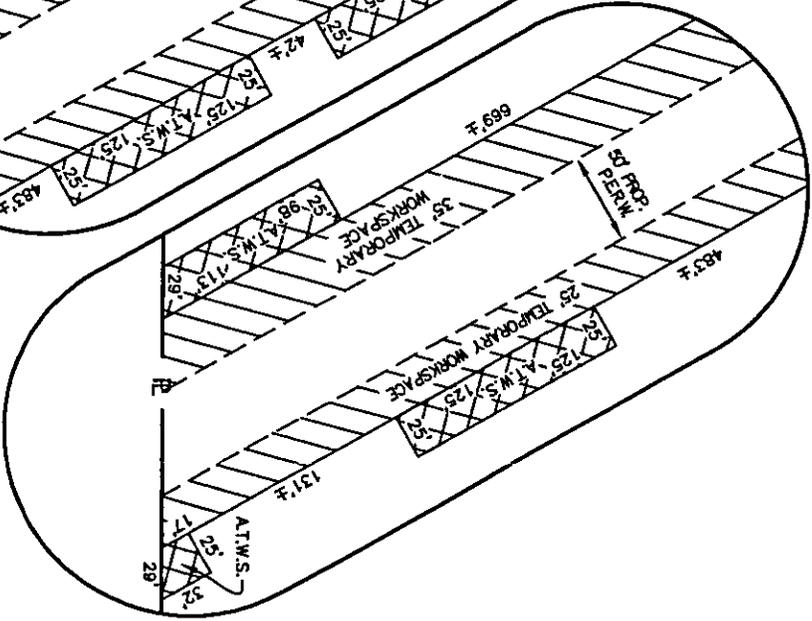
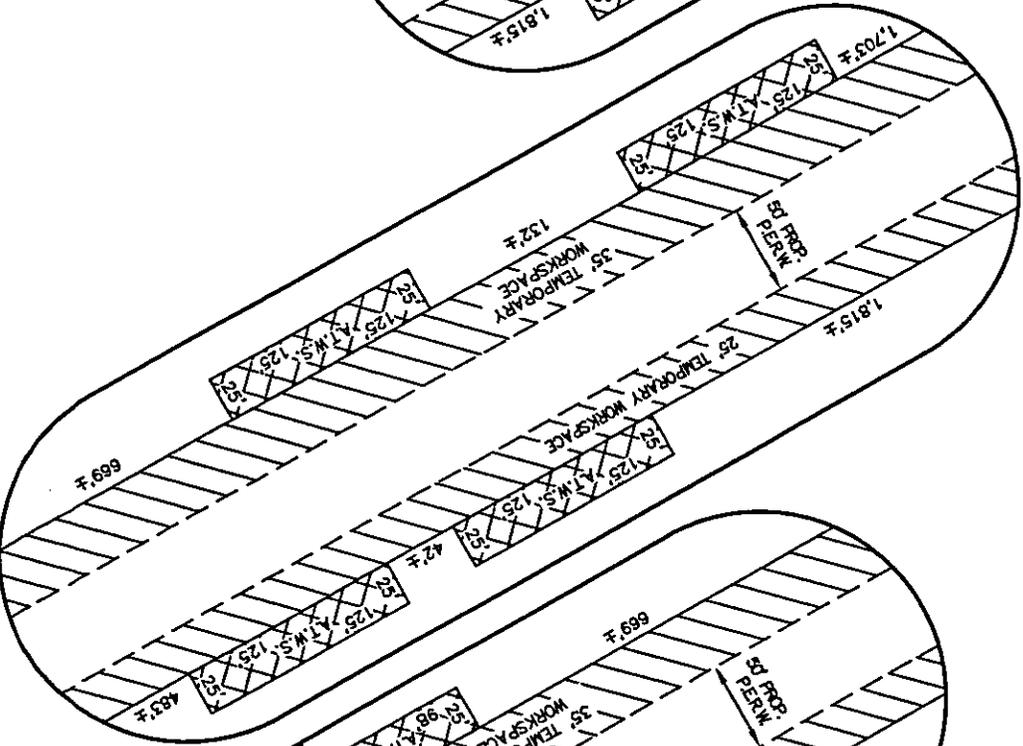
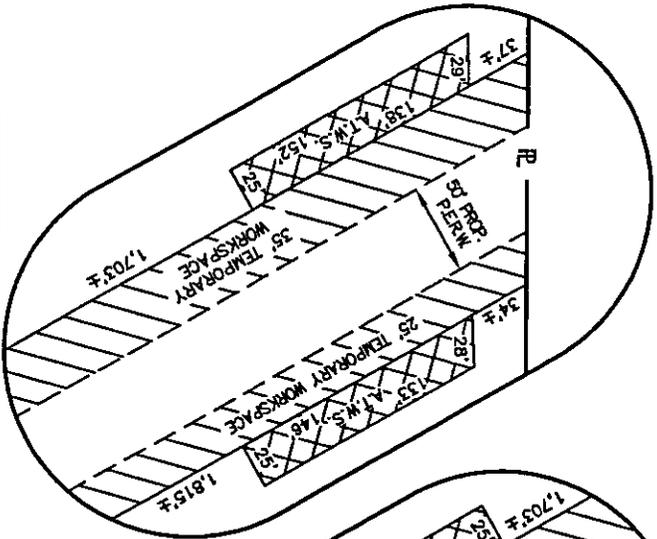


LEGEND
 P.P. PROPERTY LINE
 P.P. PROP. ADDITIONAL TEMPORARY WORKSPACE
 P.P. P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY

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

NANCE COUNTY, NEBRASKA

T-16-N, R-5-W, SECTION 34
 ML-NE-NA-40060.000



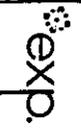
In Business to deliver

KEYSTONE XL PROJECT
 EASEMENT AREA
 ACROSS THE PROPERTY OF
 CLIFFORD F. SHOTKOSKI
 AND DAN SHOTKOSKI,
 CO-TRUSTEES
 ML-NE-NA-40060.000

Project: **EXHIBIT A**

| | |
|-------------|------------------|
| APPROVED BY | DRAWING NUMBER |
| SLR | XL-08-ML-SK-3664 |
| NO. | REVISION |
| | DATE |

| | | | |
|--------|----------|----------|------------|
| SCALE | DATE | DRAWN BY | CHECKED BY |
| N.T.S. | 10/28/14 | PB | ALS |



The new reality of Energy

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.

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-40060.000

We, Clifford F. Shotkoski and Dan Shotkoski, Co-Trustees, of Nance County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Six Thousand Six Hundred Forty Dollars and No Cents (\$6,640.00), 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:

NW/4

Section 34, 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-40020.000

We, Clifford F. Shotkoski and Dan Shotkoski, Co-Trustees, of Nance County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Five Thousand Four Hundred Ten Dollars and No Cents (\$5,410.00), 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:

SE/4

Section 28, 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____.

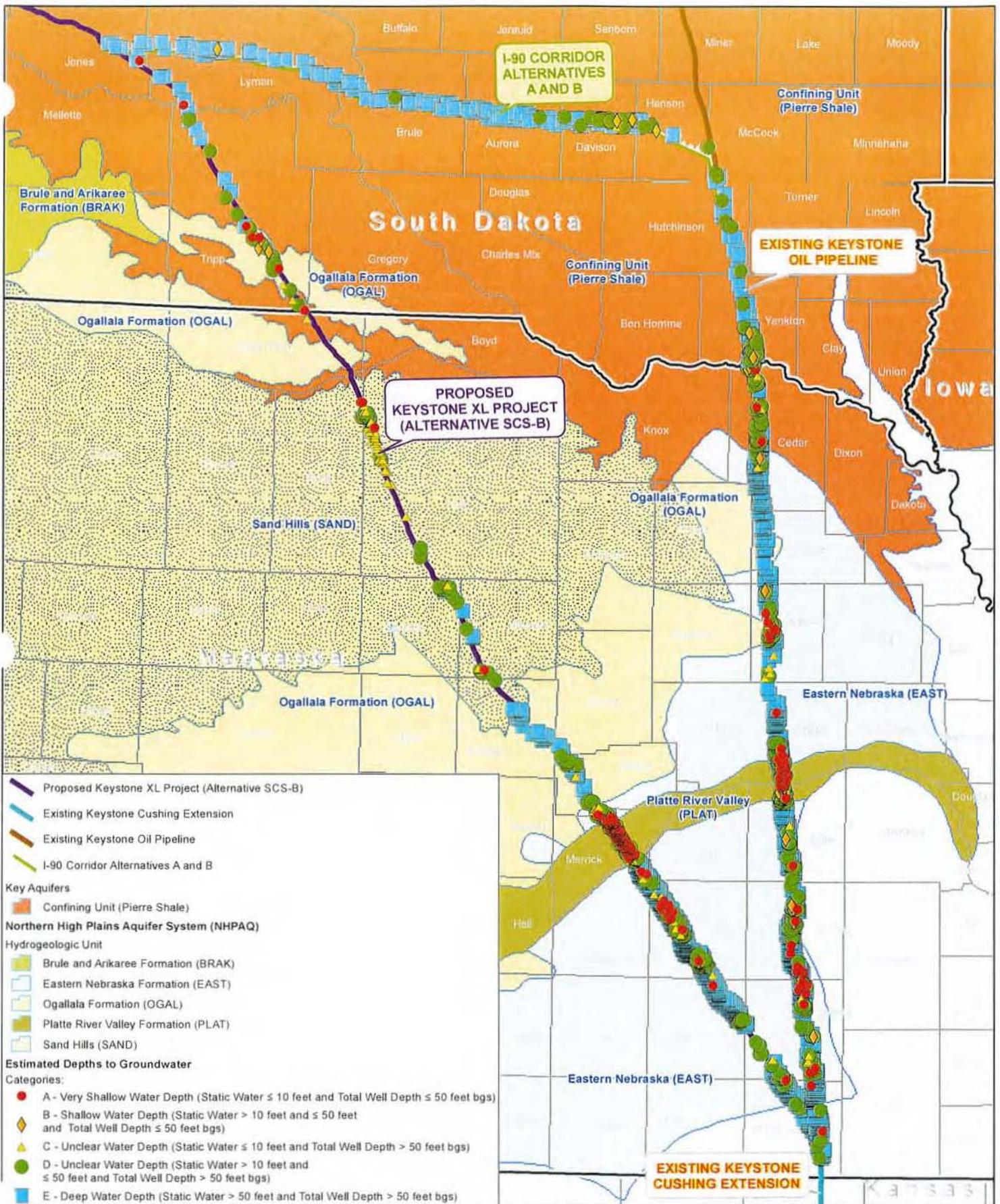
Owner Signature

Owner Signature

Owner/Owner Representative Name

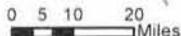
Owner/Owner Representative Name

Attachment No. 6



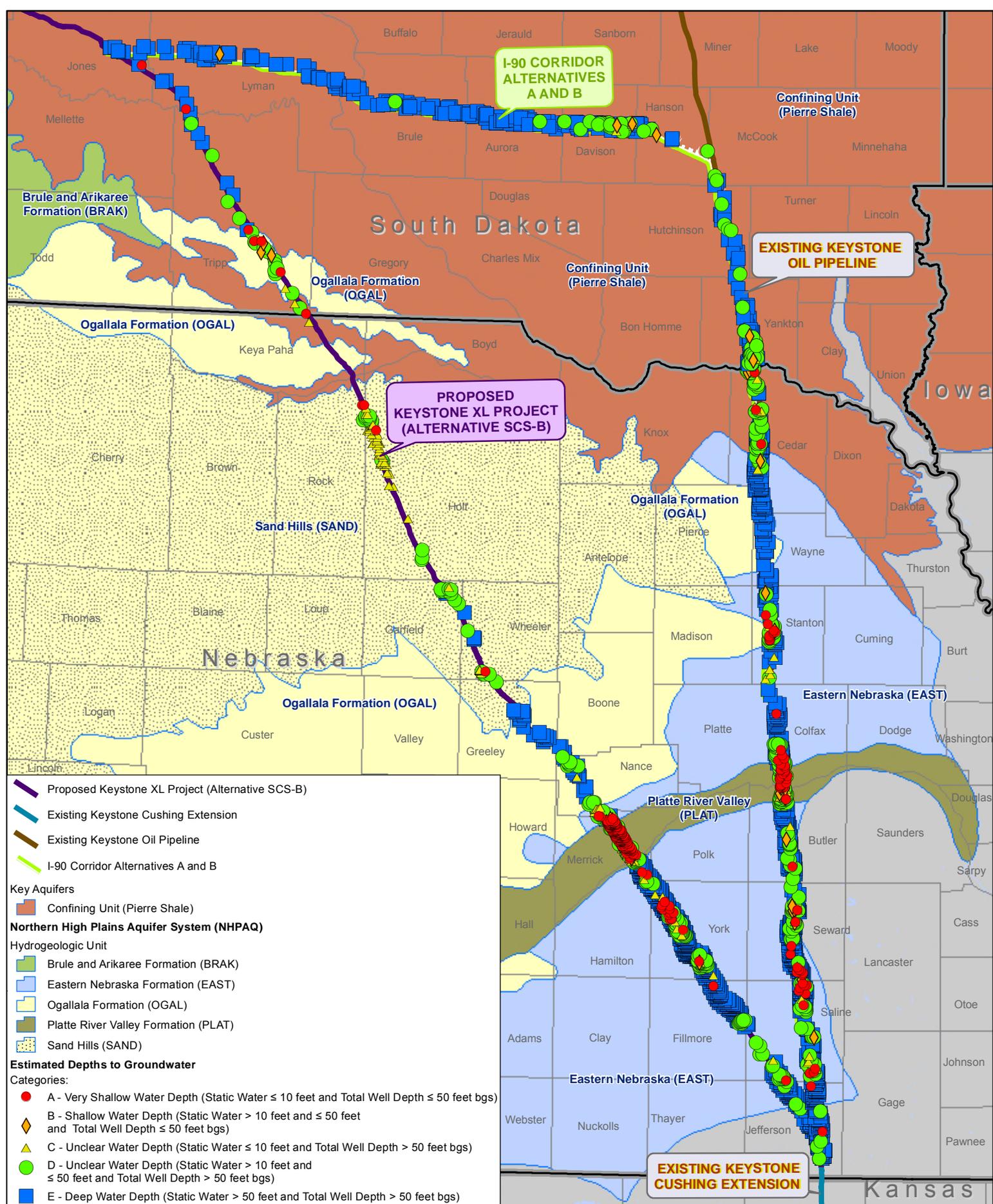
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

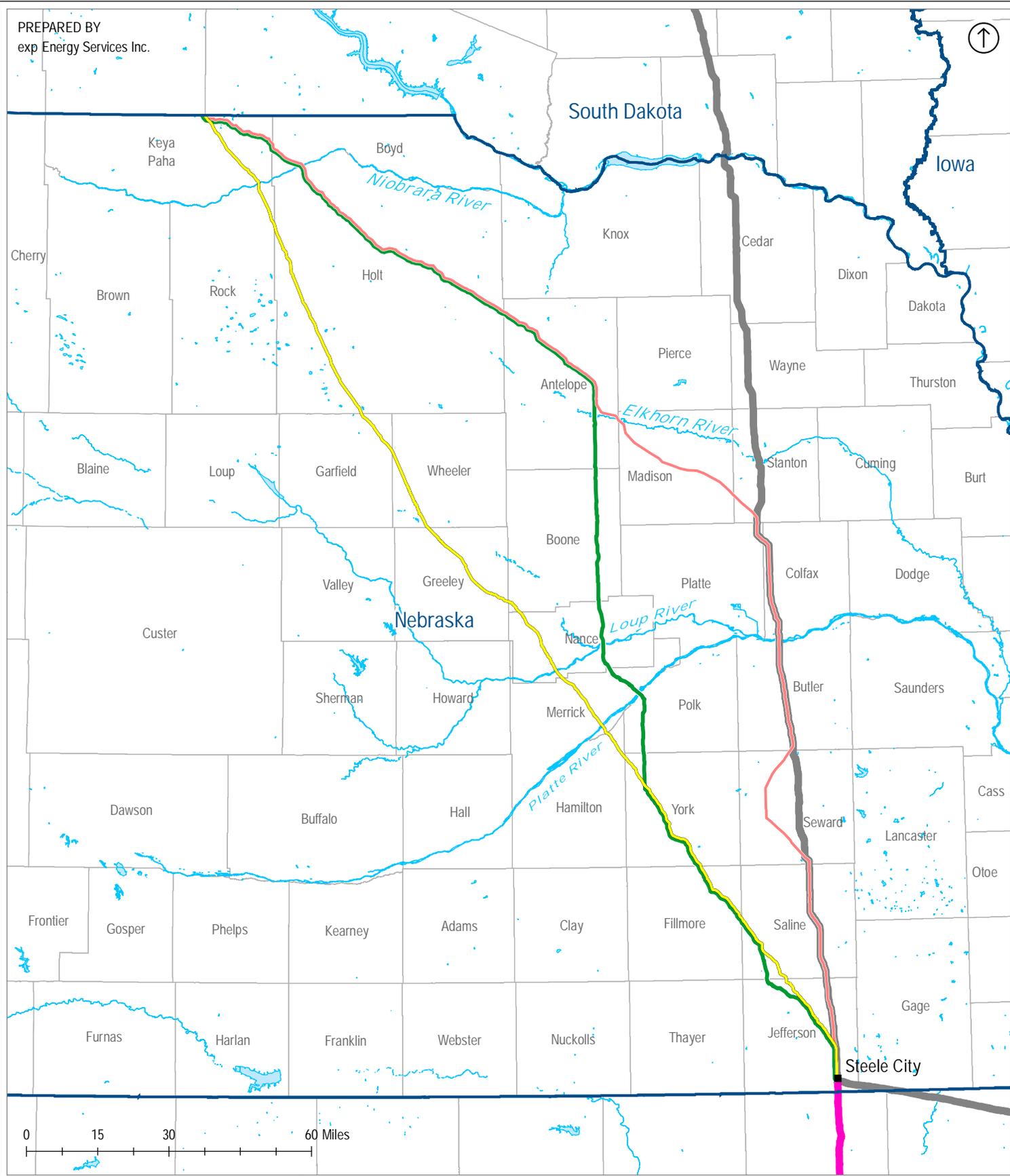
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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

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
Connie Smith in Support of Landowner
Intervenors

State of Nebraska)
) ss.
Holt County)

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

2 A: My name is Connie Smith.

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: Verdon Smith.

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

2 A: 2.

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

4 A: 6.

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

6 A: Verdon's grandparents purchased the land in 1926. It was handed down to his dad
7 and then to us in 2006 with the passing of his dad at age 98.

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

9 A: Yes.

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

12 A: Yes.

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

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

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

27 A: Well I hope not to have to sell the land in my lifetime but times change and you
28 never know what is around the corner and yes I am concerned that if another piece
29 of ground similar to mine were for sale and it did not have the pipeline and mine

1 did that I would have a lower selling price. I think this would be true for pipeline
2 ground on both the preferred and mainline alternative routes.

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

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

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

8 A: Yes.

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

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

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

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

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

19 A: No, they have not.

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

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

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

27 A: No, they did not.

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

1 A: Yes, they did.

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

4 A: Yes, they did.

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

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

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

17 A: No, I do not.

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

20 A: Yes, they did.

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

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

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

5 A: Yes, it is.

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

8 A: Yes, I have.

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

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

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

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

24 **Q: I would like you to walk the Commissioners through each and every one of**
25 **your concerns about TransCanada's proposed Easement and Right-of-Way**
26 **agreement so they can develop an understanding of how that language and**
27 **the terms of that contract, in your opinion, potentially negatively impacts you**
28 **and your land. So, if you can start at the beginning of that document and**
29 **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 about 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. 3**.

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 to 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

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. 4, 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.**

25 A: If the pipeline goes thru, it will go under our creek and up thru our hillside natural
26 springs that sub-irrigate our hay meadow. Our hay meadow will dry up because
27 the water will take the path of least resistance and go down the trench back into
28 the creek and we will lose the water.

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

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

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

22 A: No, I do not.

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

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

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

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

4 A: Well yes, of course.

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

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

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

26 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 A: Yes, I have.

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

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

18 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
19 **Application, and as found on Attachment No. 6, 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. 6 included with your testimony here is a major oil pipeline**
24 **route that is in the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
27 **in Attachment No. 5 to your testimony, is in the public interest of Nebraska?**

28 A: No, I do not.

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

4 A: No, I do not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 A: I am respectfully and humbly requesting that the Commissioners think far beyond
2 a temporary job spike that this project may bring to a few counties and beyond the
3 relatively small amount of taxes this proposed foreign pipeline would possibly
4 generate. And, instead think about the perpetual and forever impacts of this
5 pipeline as it would have on the landowners specifically, first and foremost, but
6 also thereby upon the entire state of Nebraska, and to determine that neither the
7 preferred route nor the Keystone mainline alternative route are in the public
8 interest of the citizens of the state of Nebraska. And if the Commissioners were
9 inclined to modify TransCanada's proposed routes and were to be inclined to grant
10 an application for a route in Nebraska, that the only potential route that would
11 make any intelligent sense whatsoever would be twinning or near paralleling of
12 the proposed KXL with the existing Keystone I pipeline. The point of including
13 Attachment No. 5 is to show that twinning Keystone I within Nebraska has been
14 considered by TransCanada before. It simply does not make sense to add yet
15 another major oil pipeline crisscrossing our state creating new pumping stations,
16 creating new impacts on additional counties and communities and going through
17 all of the court processes with myself and other landowners like me when this
18 applicant already has relationships with the landowners, the towns and the
19 communities along Keystone I, and that Keystone I is firmly outside of the sand
20 hills and a significantly further portion away from the heart of the Ogallala
21 Aquifer than the preferred route or the Keystone mainline alternative route.

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

25 A: Yes, they are.

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

Connie Smith
Connie Smith

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.033
T.032N
R.014W

S.034
T.032N
R.014W



S.004
T.031N
R.014W

Connie M. Smith
Verdon L. Smith

S.003
T.031N
R.014W

S.009
T.031N
R.014W

S.010
T.031N
R.014W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Connie M. Smith
Verdon L. Smith

TRACT NO. ML-NE-HT-30150.000
STATE: Nebraska
COUNTY: Holt
SECTION: 004
TOWNSHIP: 031N
RANGE: 014W

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

May 2017 - X:\Drawings\53528\NE\STONE_XL\B00C_99965288

Attachment No. 2

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

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-HT-30150.000

**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**") **Verdon L. Smith and Connie M. Smith, husband and wife, as joint tenants**, whose mailing address is 87961 State Hwy 11, 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 319.61 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the E1/2 of Section 4, Township 31 North, Range 14 West of the 6th P.M., as recorded in Book 201, Page 746 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):

Verdon L. Smith

Connie M. Smith

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **Verdon L. Smith**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

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

By **Connie M. Smith**

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-HT-30150.000

We, Verdon and Connie M. Smith, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Two Hundred Sixty Eight dollars and no cents (\$2,268.00), 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 4, 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____.

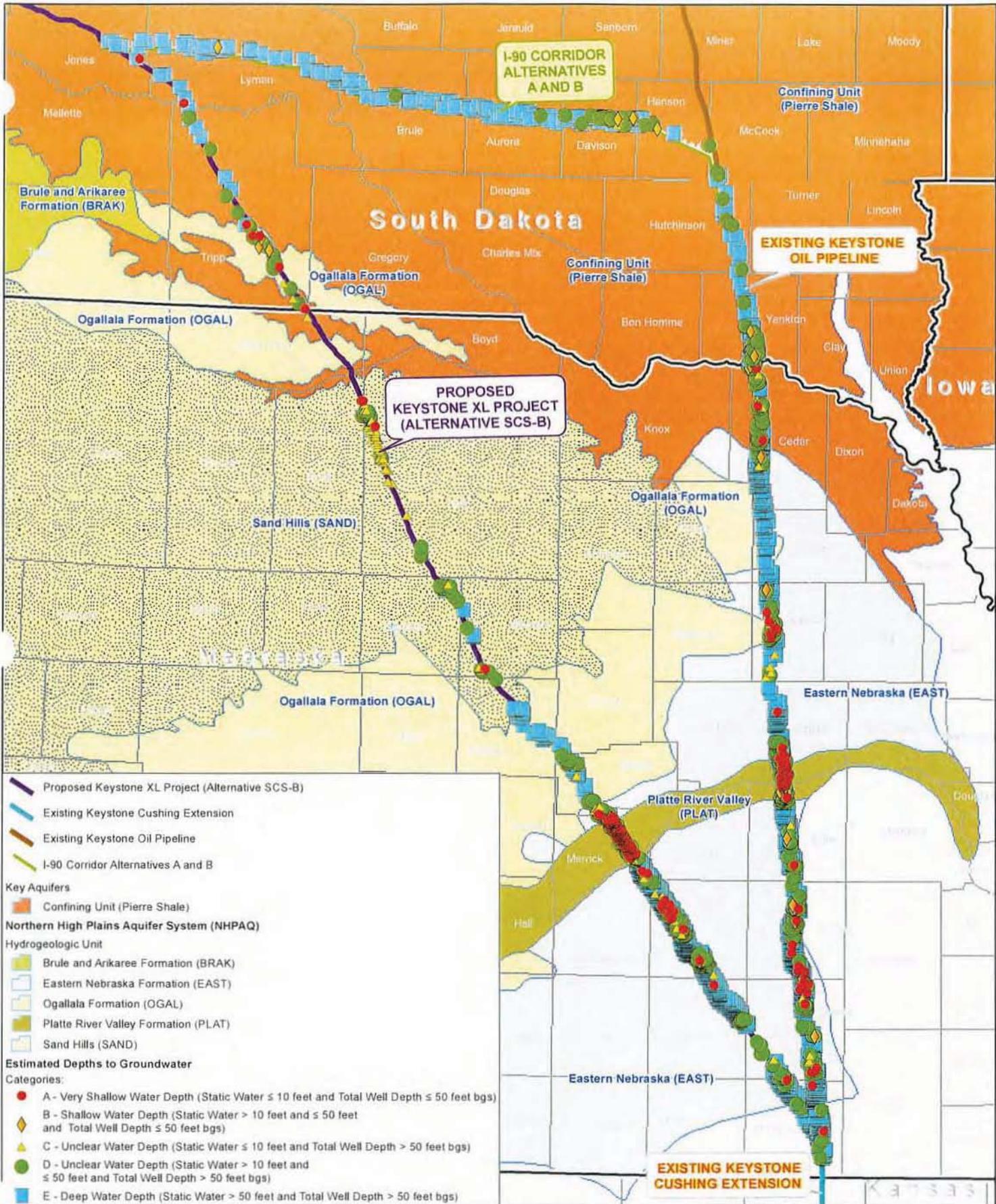
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 5



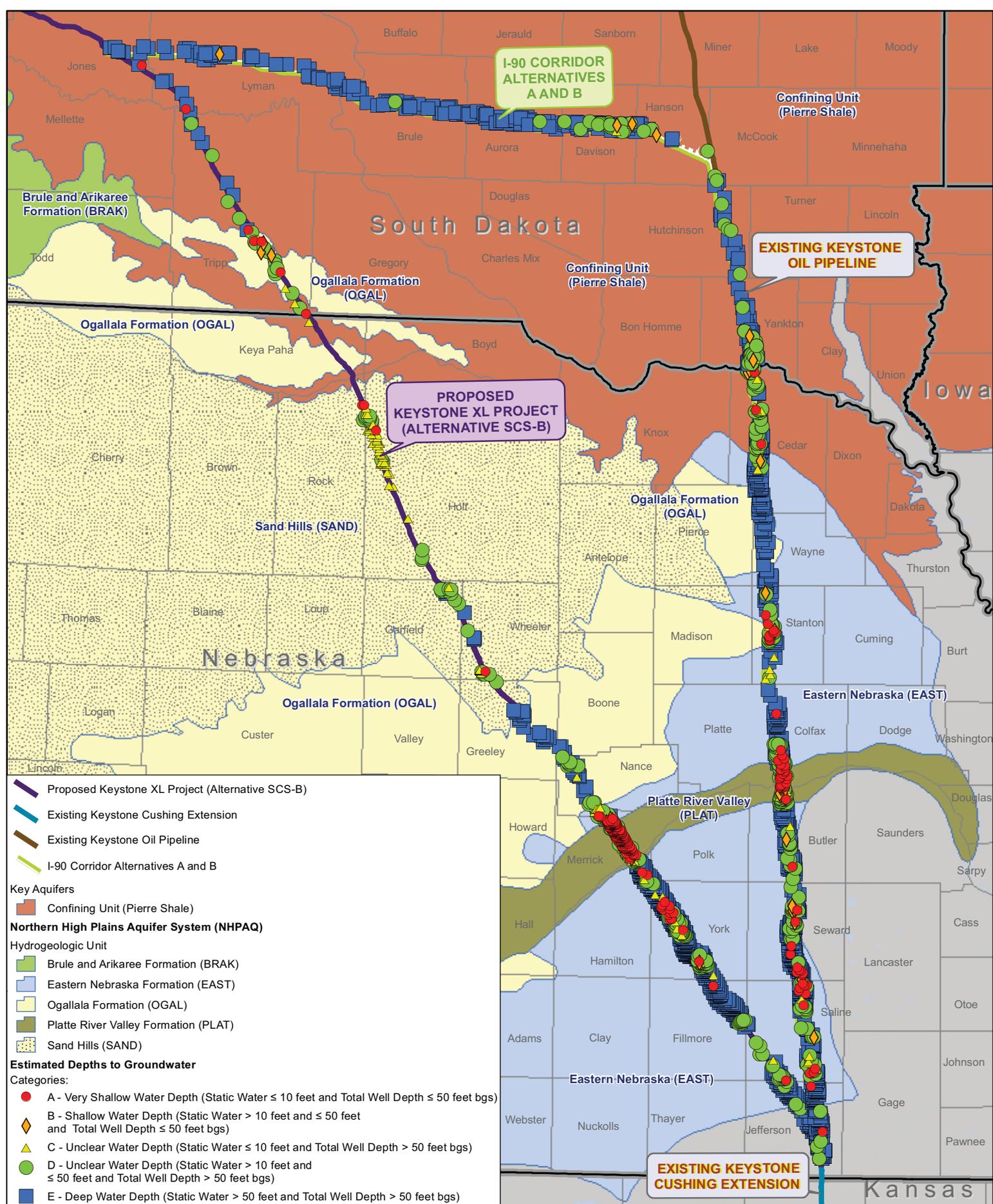
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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



KEYSTONE XL PROJECT

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



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

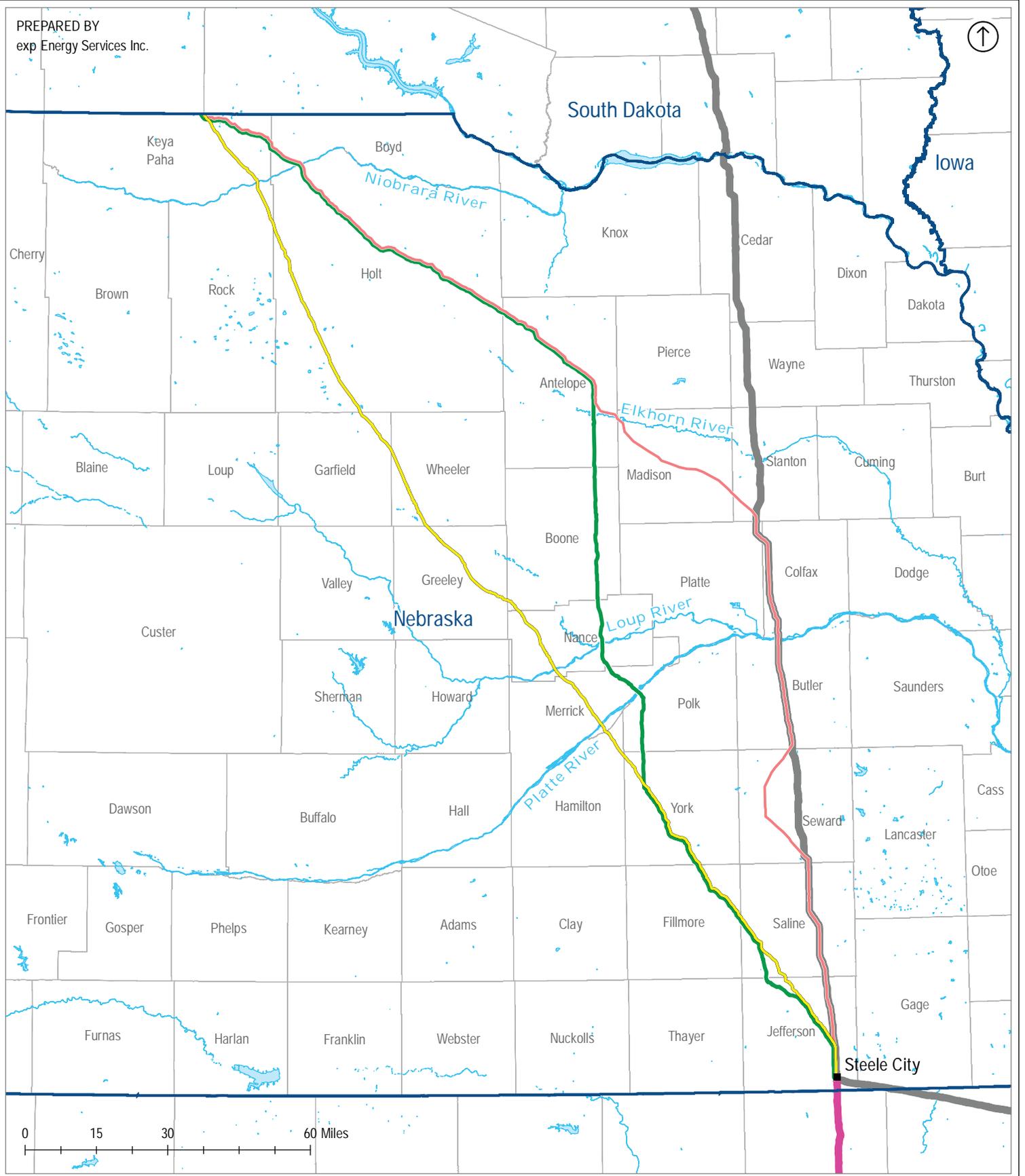
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

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

Attachment No. 6



VICINITY MAP



LEGEND

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

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES



Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

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

Direct Testimony of
Verdon Smith in Support of Landowner
Intervenors

State of Nebraska)
) ss.
Holt County)

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

2 A: My name is Verdon Smith.

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: Connie Smith.

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

2 A: 2.

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

4 A: 6.

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

6 A: My grandparents purchased the land in 1926. It was handed down to my dad and
7 then to us in 2006 with the passing of his dad at age 98.

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

9 A: Yes.

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

12 A: Yes.

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

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

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

27 A: Well I hope not to have to sell the land in my lifetime but times change and you
28 never know what is around the corner and yes I am concerned that if another piece
29 of ground similar to mine were for sale and it did not have the pipeline and mine

1 did that I would have a lower selling price. I think this would be true for pipeline
2 ground on both the preferred and mainline alternative routes.

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

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

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

8 A: Yes.

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

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

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

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

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

19 A: No, they have not.

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

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

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

27 A: No, they did not.

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

1 A: Yes, they did.

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

4 A: Yes, they did.

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

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

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

17 A: No, I do not.

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

20 A: Yes, they did.

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

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

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

5 A: Yes, it is.

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

8 A: Yes, I have.

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

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

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

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

24 **Q: I would like you to walk the Commissioners through each and every one of**
25 **your concerns about TransCanada’s proposed Easement and Right-of-Way**
26 **agreement so they can develop an understanding of how that language and**
27 **the terms of that contract, in your opinion, potentially negatively impacts you**
28 **and your land. So, if you can start at the beginning of that document and**
29 **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 about 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. 3**.

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 to 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

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. 4, 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.**

25 A: If the pipeline goes thru, it will go under our creek and up thru our hillside natural
26 springs that sub-irrigate our hay meadow. Our hay meadow will dry up because
27 the water will take the path of least resistance and go down the trench back into
28 the creek and we will lose the water.

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

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

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

22 A: No, I do not.

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

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

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

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

4 A: Well yes, of course.

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

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

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

26 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 A: Yes, I have.

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

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

18 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
19 **Application, and as found on Attachment No. 6, 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. 6 included with your testimony here is a major oil pipeline**
24 **route that is in the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
27 **in Attachment No. 5 to your testimony, is in the public interest of Nebraska?**

28 A: No, I do not.

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

4 A: No, I do not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 A: I am respectfully and humbly requesting that the Commissioners think far beyond
2 a temporary job spike that this project may bring to a few counties and beyond the
3 relatively small amount of taxes this proposed foreign pipeline would possibly
4 generate. And, instead think about the perpetual and forever impacts of this
5 pipeline as it would have on the landowners specifically, first and foremost, but
6 also thereby upon the entire state of Nebraska, and to determine that neither the
7 preferred route nor the Keystone mainline alternative route are in the public
8 interest of the citizens of the state of Nebraska. And if the Commissioners were
9 inclined to modify TransCanada's proposed routes and were to be inclined to grant
10 an application for a route in Nebraska, that the only potential route that would
11 make any intelligent sense whatsoever would be twinning or near paralleling of
12 the proposed KXL with the existing Keystone I pipeline. The point of including
13 Attachment No. 5 is to show that twinning Keystone I within Nebraska has been
14 considered by TransCanada before. It simply does not make sense to add yet
15 another major oil pipeline crisscrossing our state creating new pumping stations,
16 creating new impacts on additional counties and communities and going through
17 all of the court processes with myself and other landowners like me when this
18 applicant already has relationships with the landowners, the towns and the
19 communities along Keystone I, and that Keystone I is firmly outside of the sand
20 hills and a significantly further portion away from the heart of the Ogallala
21 Aquifer than the preferred route or the Keystone mainline alternative route.

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

25 A: Yes, they are.

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

Verdon Smith
Verdon Smith

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.033
T.032N
R.014W

S.034
T.032N
R.014W



S.004
T.031N
R.014W

Connie M. Smith
Verdon L. Smith

S.003
T.031N
R.014W

S.009
T.031N
R.014W

S.010
T.031N
R.014W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Connie M. Smith
Verdon L. Smith

TRACT NO. ML-NE-HT-30150.000
STATE: Nebraska
COUNTY: Holt
SECTION: 004
TOWNSHIP: 031N
RANGE: 014W

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

May 2017 - X:\Drawings\65828\NE\STONE_XL\8000_89965288

Attachment No. 2

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

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-HT-30150.000

**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**") **Verdon L. Smith and Connie M. Smith, husband and wife, as joint tenants**, whose mailing address is 87961 State Hwy 11, 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 319.61 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the E1/2 of Section 4, Township 31 North, Range 14 West of the 6th P.M., as recorded in Book 201, Page 746 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):

Verdon L. Smith

Connie M. Smith

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

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

By **Verdon L. Smith**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

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

By **Connie M. Smith**

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-HT-30150.000

We, Verdon and Connie M. Smith, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Two Hundred Sixty Eight dollars and no cents (\$2,268.00), 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 4, 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

Attachment No. 5



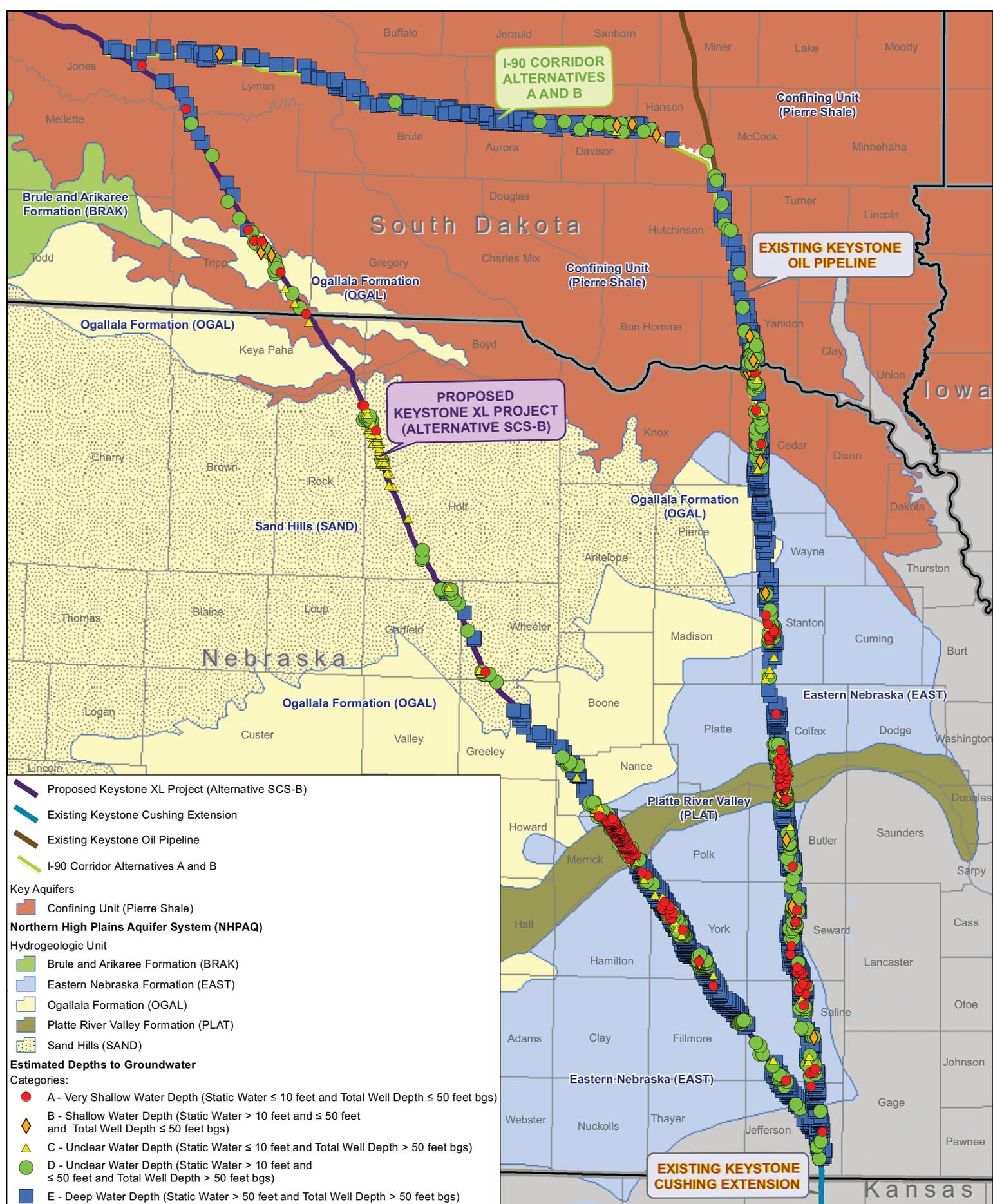
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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



KEYSTONE XL PROJECT

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



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

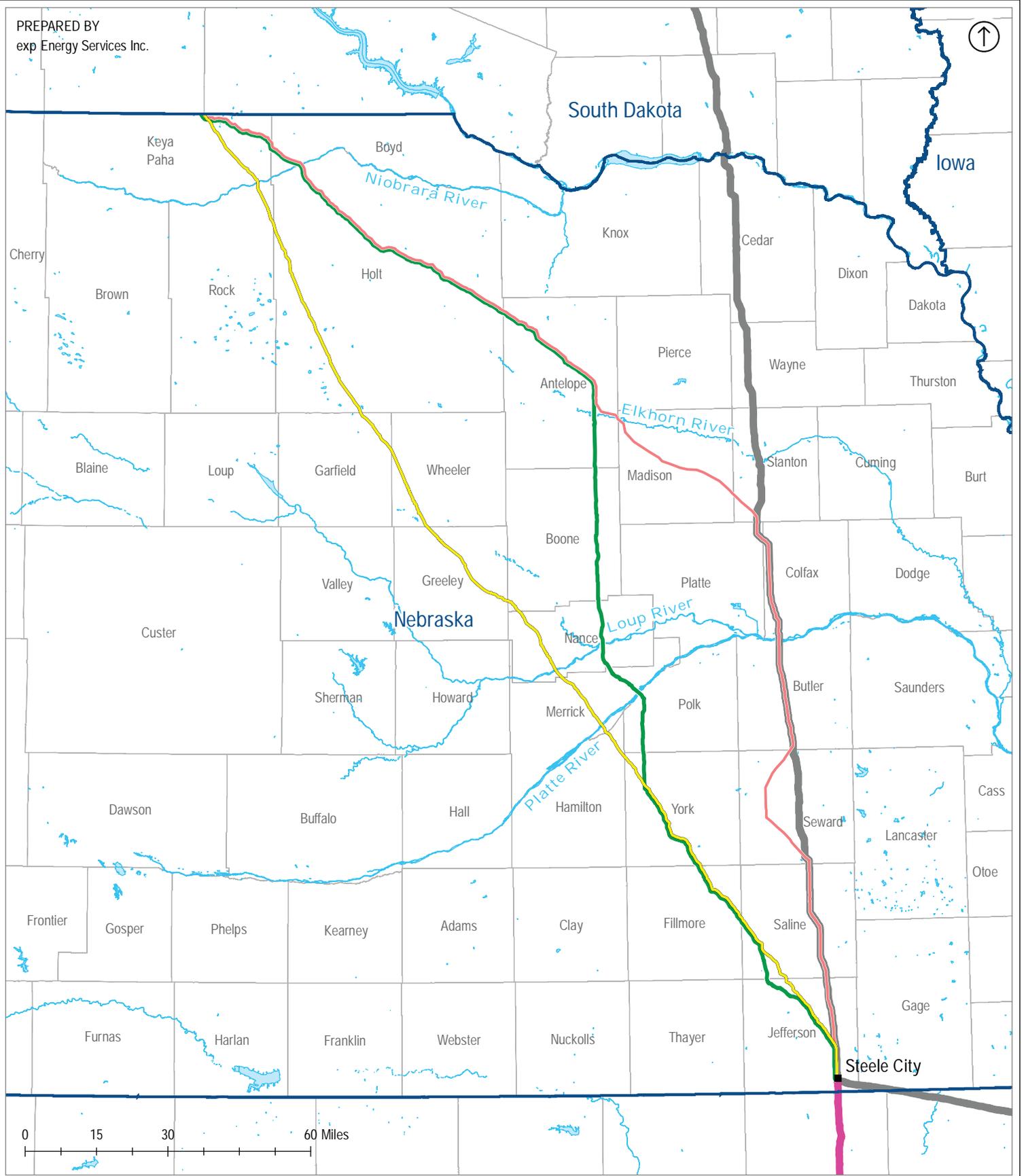
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

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

Attachment No. 6



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

KEYSTONE XL PROJECT
FIGURE 2.2-2
PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

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

**Direct Testimony of
Joshua Stelling in
Support of Landowner Intervenors**

State of Nebraska)
) ss.
Antelope County)

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

2 A: My name is Joshua Stelling.

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 have children how many do you have?**

2 A: 2.

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

5 A: Yes.

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

9 A: Stelling Farms has been farming in Antelope county Nebraska for at least 60
10 years. My grandfather, Richard Stelling began his farming and ranching career
11 with a few hogs, cattle and a small plot of ground to farm. His passion for farming
12 was passed along to my father, Steve Stelling and then on to me. After graduating
13 from high school I attended college at Nebraska College of Technical Agriculture
14 in Curtis, Nebraska where I majored in Ag Production Crop Management. I
15 anxiously awaited graduating from college from my very first day of college
16 because I couldn't wait to get back "home" and play a more active role in the
17 family farm. I've been back "home" farming for the past thirteen years. Most
18 consider me a young farmer but I've been a steward of the land for as long as I can
19 remember.

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

21 A: Yes.

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

24 A: Yes.

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

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

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

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

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

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

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

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

20 A: Yes.

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

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

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

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

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

3 A: No, they have not.

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

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

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

11 A: No, they did not.

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

14 A: Yes, they did.

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

17 A: Yes, they did.

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

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

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

1 A: No, I do not.

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

4 A: Yes, they did.

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

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

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

17 A: Yes, it is.

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

20 A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 A: No.

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

29 A: No.

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

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

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

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

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

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

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

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

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

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

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

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

13 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 xviii. “as nearly as practicable”
- 2 xix. “pre-construction position”
- 3 xx. “pre-construction grade”
- 4 xxi. “various engineering factors”

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

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

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

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

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

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

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

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

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

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

12 A: No, never.

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

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

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

19 A: Yes, it is.

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

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

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

28 A: No, I did not.

29 **Q: Why not?**

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

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

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

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

17 A: No, they have not.

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

21 A: No, they have not.

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

24 A: Yes, I am.

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

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

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

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

5 A: No, they have not.

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

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

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

19 A: No, it has not.

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

23 A: No, I do not.

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

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

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

1 A: Yes, I do.

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

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

5 **Q: Because you follow the law and pay property taxes, do you believe you
6 deserve any special consideration or treatment apart from any other person
7 or company that pays property taxes?**

8 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
9 just what you do.

10 **Q: Do you believe the fact that you pay property taxes entitles you to special
11 treatment of any kind, or special rights of any kind?**

12 A: No, of course not.

13 **Q: Do you believe the fact that you pay property taxes on your land would be
14 enough to qualify you to have the power of eminent domain to take land of
15 your neighbors or other people in your county, or other people across the
16 state of Nebraska?**

17 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
18 I expect an award for or any type of special consideration.

19 **Q: Have you at any time ever employed any person other than yourself?**

20 A: Well, yes I have.

21 **Q: Do you believe that the fact that you have, at some point in your life,
22 employed one or more other persons entitle you to any special treatment or
23 consideration above and beyond any other Nebraskan that has also employed
24 one or more persons?**

25 A: No, of course not.

26 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer
27 have at one point employed another person within this state, entitles you to
28 preferential treatment or consideration of any kind?**

1 A: No, of course not. If I choose to employ someone that decision is up to me. I
2 don't deserve any special treatment or consideration for that fact.

3 **Q: At the beginning of your statement, you briefly described your property that**
4 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
5 **give the Commissioners a sense of specifically how you believe the proposed**
6 **Keystone XL Pipeline and its preferred route, which proposes to go across**
7 **your land, how it would in your opinion based on your knowledge,**
8 **experience, and background of your land, affect it.**

9 A: Taking care of the Ogallala Aquifer is a concern on more of a national level, but
10 my opposition to the Keystone XL Pipeline is also rooted in personal reasons. As
11 previously stated farming has been in my family since before I was born, and it's
12 second nature to me to take care of the land that I own. I have underground water
13 lines that run across my ground from well to pivot. I am concerned that the oil
14 pipelines that could potentially be run over or under my water lines could hinder
15 my ability to repair my water lines without causing damage to the pipeline
16 carrying oil. This negatively affects my property rights and economic interests.

17 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
18 **crude oil pipeline in its preferred location, or ultimate location across the**
19 **state of Nebraska?**

20 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
21 or even bullied around and being made to feel scared that they did not have any
22 options but to sign whatever papers TransCanada told them they had to. I am
23 aware of folks being threatened that their land would be taken if they didn't follow
24 what TransCanada was saying. I am aware of tactics to get people to sign
25 easements that I don't believe have any place in Nebraska or anywhere such as
26 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
27 landowners and convince them they should sign TransCanada's easement
28 agreements. I am aware of older folks and widows or widowers feeling they had
29 no choice but to sign TransCanada's Easement and they didn't know they could

1 fight or stand up for themselves. From a more practical standpoint, I am worried
2 that according to their answer to our Interrogatory No. 211, TransCanada only
3 owns and operates one (1) major oil pipeline. They simply do not have the
4 experience with this type of pipeline and that scares me. There are others but that
5 is what I can recollect at this time and if I remember more or my recollection is
6 refreshed I will share those with the Commissioners at the Hearing in August.

7 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
8 **landowner is reasonable or just?**

9 A: No, I do not.

10 **Q: Do you have any concern about limitations that the construction of this**
11 **proposed pipeline across your affected land would prevent construction of**
12 **future structures upon the portion of your land affected by the proposed**
13 **easement and immediately surrounding areas?**

14 A: Well yes, of course I do. We would not be able to build many, if any, types of
15 structures directly across or touching the easement, and it would be unwise and I
16 would be uncomfortable to build anything near the easement for fear of being
17 blamed in the future should any damage or difficulty result on my property in
18 regards to the pipeline.

19 **Q: Do you think such a restriction would impact you economically?**

20 A: Well yes, of course.

21 **Q: How do you think such a restriction would impact you economically?**

22 A: The future of this land may not be exactly how it's being used as of this moment,
23 and having the restrictions and limiting my ability to develop my land in certain
24 ways presents a huge negative economic impact on myself, my family, and any
25 potential future owner of the property. You have no idea how I or the future owner
26 may want to use this land in the future or the other land across Nebraska
27 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
28 ago it would have been hard to imagine all the advances that we have now or how
29 things change. Because the Easement is forever and TransCanada gets the rights in

1 my land forever we have to think with a very long term view. By placing their
2 pipeline on under across and through my land that prevents future development
3 which greatly negatively impacts future taxes and tax revenue that could have
4 been generated by the County and State but now will not. When you look at the
5 short blip of economic activity that the two years of temporary construction efforts
6 may bring, that is far outweighed by the perpetual and forever loss of opportunity
7 and restrictions TransCanada is forcing upon us and Nebraska.

8 **Q: Do you have any concerns about the environmental impact of the proposed**
9 **pipeline?**

10 A: Yes, I do.

11 **Q: What are some of those concerns?**

12 A: As an affected land owner and Nebraskan, I am concerned that any construction,
13 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
14 a detrimental impact upon the environment of my land specifically, as well as the
15 lands near my land and surrounding the proposed pipeline route.

16 **Q: Do you have any other environmental concerns?**

17 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
18 construction and/or maintenance and operation. I am concerned about spills and
19 leaks that TransCanada has had in the past and will have in the future. This could
20 be catastrophic to my operations or others and to my county and the State.

21 **Q: Do you have any thoughts regarding if there would be an impact upon the**
22 **natural resources on or near your property due to the proposed pipeline?**

23 A: Yes, I believe that any construction, operation, and/or maintenance of the
24 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
25 resources of my land, and the lands near and surrounding the proposed pipeline
26 route.

27 **Q: Do you have any worries about potential impacts from the proposed pipeline**
28 **to the soil of your land, or land near you?**

1 A: Yes, I believe that any construction, operation, and/or maintenance of the
2 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
3 land, as well as land along and surrounding the proposed pipeline route. This
4 includes, but is not limited to, the reasons that we discussed above of disturbing
5 the soil composition and makeup as it has naturally existed for thousands and
6 millions of years during the construction process, and any future maintenance or
7 removal process. I'm gravely concerned about the fertility and the loss of
8 economic ability of my property to grow the crops, or grow the grasses, or grow
9 whatever it is at that time they exist on my property or that I may want to grow in
10 the future, or that a future owner may want to grow. The land will never be the
11 same from as it exists now undisturbed to after it is trenched up for the proposed
12 pipeline.

13 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
14 **upon the groundwater over your land, or surrounding lands?**

15 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
16 the proposed Keystone XL Pipeline would have a detrimental impact upon the
17 groundwater of not only under my land, but also near and surrounding the pipeline
18 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
19 simple and it is simply too valuable to our State and the country to put at
20 unreasonable risk.

21 **Q: Do you have any concern about the potential impact of the proposed pipeline**
22 **upon the surface water on, or near or around your land?**

23 A: Yes, I have significant concerns that any construction, operation, and/or
24 maintenance of the proposed Keystone XL Pipeline would have detrimental
25 impact upon the surface water of not only within my property boundary, but along
26 and near and surrounding the pipeline route, and in fact, across the state of
27 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
2 **upon the wildlife and plants, other than your growing crops on or near your**
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the
6 wildlife and the plants, not only that are located on or can be found upon my land,
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed
11 pipeline underneath and across and through my property will negatively affect the
12 fair market value at any point in the future, especially at that point in which I
13 would need to sell the property, or someone in my family would need to sell the
14 property. I do not believe, and certainly would not be willing to pay, the same
15 price for land that had the pipeline located on it, versus land that did not. I hope
16 there is never a point where I'm in a position where I have to sell and have to
17 realize as much value as I can out of my land. But because it is my single largest
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they
20 would've paid and as much as I could've received, if the pipeline were not upon
21 my property. There are just too many risks, unknowns, impacts and uncertainties,
22 not to mention all of the rights you give up by the nature of having the pipeline
23 due to having the easement that we have previously discussed, for any reasonable
24 person to think that the existence of the pipeline would not negatively affect my
25 property's value.

26 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
27 **testimony?**

28 A: Yes, I have.

29 **Q: Where have you seen that before?**

1 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
2 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
3 believe the portion of the alternative route in Nebraska essentially twins or
4 parallels Keystone I.

5 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
6 **Application, and as found on Attachment No. 7, here to your testimony, is in**
7 **the public interest of Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe that the Keystone mainline alternative route as shown on**
10 **Attachment No. 7 included with your testimony here is a major oil pipeline**
11 **route that is in the public interest of Nebraska?**

12 A: No, I do not.

13 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
14 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

15 A: No, I do not.

16 **Q: Do you believe there is any potential route for the proposed Keystone XL**
17 **Pipeline across, within, under, or through the State of Nebraska that is in the**
18 **public interest of the citizens of Nebraska?**

19 A: No, I do not.

20 **Q: Why do you hold that belief?**

21 A: Because there simply is no public interest based on all of the factors that I am
22 aware and that I have read and that I have studied that this Commission is to
23 consider that would establish that a for-profit foreign-owned pipeline that simply
24 crosses Nebraska because we are geographically in the way between where tar
25 sands are in Canada to where it wants to ship it to in Texas could ever be in the
26 public interest of Nebraskans. We derive no benefit from this project. It is not for
27 public use. Nebraska is simply in the way and when all considerations are taken in
28 there is no net benefit of any kind for Nebraska should this project be placed in our

1 state. Even if there was some arguable “benefit” it is not enough to outweigh all
2 the negative impacts and concerns.

3 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
4 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
5 **of Nebraska because it may bring temporary jobs during the construction**
6 **phase to Nebraska?**

7 A: First of all, not all jobs are created equally. Most jobs that are created, whether
8 temporary or on a permanent basis, don’t come with a project that has all the
9 potential and foreseeable negative impacts, many of which we have discussed here
10 and other witnesses throughout the course of this hearing have and will discuss. If
11 I decide to hire and employ someone to help me out in my farming or ranching
12 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
13 to my land or my town or my county or my state. And I’ve hired someone who is
14 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
15 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
16 jobs are not created equal. Additionally, I understand from what I’m familiar with
17 from TransCanada’s own statements that the jobs numbers they originally touted
18 were determined to be a minute fraction of the permanent jobs that had been
19 projected. According to their answer to our Interrogatory No. 191, TransCanada
20 has created only thirty-four (34) jobs within Nebraska working specifically on
21 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
22 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
23 Further, according to their answer to Interrogatory No. 199, TransCanada would
24 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
25 constructed on its Preferred Route or its Mainline Alternative Route.

26 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
27 **because it would cross your land?**

28 A: No, absolutely not. I am opposed to this project because it is not in the public
29 interest, neither within my community nor within our state.

1 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
2 **was to cross someone else's land?**

3 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
4 the fear and anxiety and potential foreseeable risks and negative impacts that this
5 type of a project carrying this type of product brings foisted upon anyone in this
6 state or any other state.

7 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
8 **Pipeline to cross the state of Nebraska?**

9 A: I don't believe there is an intelligent route because as I have stated I don't believe
10 this project anywhere within Nebraska is within the public interest. However, if
11 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
12 had to go somewhere in the state of Nebraska, the only intelligent route I believe
13 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
14 preferred route and the mainline alternative routes are economic liabilities our
15 state cannot risk.

16 **Q: What do you rely upon to make that statement?**

17 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
18 already exists in that area is reason enough as it is not in our best interest or the
19 public interests to have more major oil pipelines crisscrossing our state. Second,
20 they have all the infrastructure already there in terms of relationships with the
21 counties and local officials and first responders along that route. Third, they have
22 already obtained easements from all the landowners 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: Do you have any other concerns you would like to reiterate or can think of at**
2 **this time you would like the Commissioners to understand?**

3 **A:** Yes. There are many reasons that I am opposed to the Keystone XL Pipeline. As
4 proposed the pipeline would run on top of the Ogallala Aquifer. The total store of
5 the Ogallala Aquifer is nearly equal to that of Lake Huron and is the most
6 important water source in the High Plains region. This water source is the primary
7 water source for residential, industrial and agricultural use. By placing the
8 pipeline over the aquifer there is potential for there to be a leak thus contaminating
9 this source of life. Lastly, I'm opposed to Keystone XL because of the easement
10 that will come along with it. My family has personally struggled with getting out
11 of an easement that was put on Stelling Farms ground in 1965 for a radio repeater
12 tower. This land is virtually useless to us because of this easement. I plan on
13 handing down the land that I own to my own children. A one-time payment isn't
14 worth the burden that an easement or the responsibility that would be inherited by
15 my children from this easement in years to come. Farming isn't just planting seeds
16 in the spring, irrigating them during the summer and harvesting them in the fall.
17 Farming is my way of life. The revenue from these crops is what allows me to
18 farm the next year and to provide for my family. Being a steward of the land is
19 more than a way of life it defines who I am.

20 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
21 **like the Public Service Commissioners to consider in their review of**
22 **TransCanada's Application?**

23 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
24 document below but other things may come to me or my memory may be
25 refreshed and I will add and address those things at the time of the Hearing in
26 August and address any additional items at that time as is necessary. Additionally,
27 I have not had an adequate amount of time to receive and review all of
28 TransCanada's answers to our discovery and the discovery of others so it was
29 impossible to competently and completely react to that in my testimony here and I

1 reserve the right to also address anything related to discovery that has not yet
2 concluded as of the date I signed this document below. Lastly, certain documents
3 requested have not yet been produced by TransCanada and therefore I may have
4 additional thoughts on those I will also share at the hearing as needed.

5 **Q: What is it that you are requesting the Public Service Commissioners do in**
6 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
7 **across Nebraska?**

8 A: I am respectfully and humbly requesting that the Commissioners think far beyond
9 a temporary job spike that this project may bring to a few counties and beyond the
10 relatively small amount of taxes this proposed foreign pipeline would possibly
11 generate. And, instead think about the perpetual and forever impacts of this
12 pipeline as it would have on the landowners specifically, first and foremost, but
13 also thereby upon the entire state of Nebraska, and to determine that neither the
14 preferred route nor the Keystone mainline alternative route are in the public
15 interest of the citizens of the state of Nebraska. And if the Commissioners were
16 inclined to modify TransCanada's proposed routes and were to be inclined to grant
17 an application for a route in Nebraska, that the only potential route that would
18 make any intelligent sense whatsoever would be twinning or near paralleling of
19 the proposed KXL with the existing Keystone I pipeline. It simply does not make
20 sense to add yet another major oil pipeline crisscrossing our state creating new
21 pumping stations, creating new impacts on additional counties and communities
22 and going through all of the court processes with myself and other landowners like
23 me when this applicant already has relationships with the landowners, the towns
24 and the communities along Keystone I, and that Keystone I is firmly outside of the
25 sand hills and a significantly further portion away from the heart of the Ogallala
26 Aquifer than the preferred route or the Keystone mainline alternative route.

27 **Q: Are all of your statements in your testimony provided above true and**
28 **accurate as of the date you signed this document to the best of your**
29 **knowledge?**

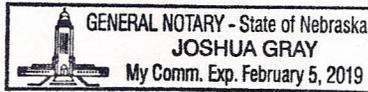
1 A: Yes, they are.

2 **Q: Thank you, I have no further questions at this time and reserve the right to**
3 **ask you additional questions at the August 2017 Hearing.**

Joshua R. Stelling
Joshua Stelling

Subscribed and Sworn to me before this 30th day of May, 2017.

Joshua
Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.



S.036
T.028 N
R.008 W

S.031
T.028 N
R.007 W

S.001
T.027 N
R.008 W

Joshua R. Stelling

S.006
T.027 N
R.007 W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Joshua R. Stelling

TRACT NO. ML-NE-AT-30127.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 006
TOWNSHIP: 027N
RANGE: 007W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\53528\KEYSTONE_XL\5300_999526



S.026
T.028 N
R.008 W

S.025
T.028 N
R.008 W

Joshua R. Stelling

S.036
T.028 N
R.008 W

S.035
T.028 N
R.008 W

IMAGERY: NAIP 2016

0 250 500 1,000 1,500 Feet



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Joshua R. Stelling

TRACT NO. ML-NE-AT-30095.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 035
TOWNSHIP: 028N
RANGE: 008W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

Attachment No. 2



Attachment No. 3

**Prepared by and after recording
please return to:**
TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-AT-30095.000
ML-NE-AT-30127.000

**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**") **Joshua R. Stelling, a single person**, whose mailing address is PO Box 84, 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 173.85 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the N1/2 of Section 35, Township 28 North, Range 8 West of the 6th P.M., as recorded in Book 125, Page 640, Book 125, Page 530, and Book 125, Page 529 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

Less and Except: An irregular tract of land located in the Northwest Quarter of Section 35, Township 28 North, Range 8 West of the 6th P.M., Antelope County, Nebraska, described as follows: Beginning at the NW corner of said NW1/4; thence N89°08'26"E on the north line of said NW1/4, a distance of 1289.33 feet; thence S01°01'09"E, a distance of 264.12 feet to a non-tangential curve concave Northeasterly with a radius of 2060.01 feet, a chord bearing of S30°10'51"E and a chord distance of 1560.24 feet; thence on said curve, an arc distance of 1600.17 feet; thence S05°09'39"W, a distance of 447.35 feet to the south line of the North 92 feet of the S1/2 S1/2 of said NW1/4; thence S89°06'50"W on said South line of the North 92 feet of the S1/2 S1/2 of said NW1/4; thence S89°06'50"W on said south line of the North 92 feet of the S1/2 S1/2 NW1/4, a distance of 1990.30 feet to the west line of said NW1/4; thence N01°19'39"W on said west line of the NW1/4, a distance of 2070.34 feet to the point of beginning, containing 76.705 acres of land, more or less, of which the north 33 feet and the west 33 feet are occupied by a public road, as recorded in Book 125, Page 754.

A tract of land containing 151.87 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 27 North, Range 7 West of the 6th P.M., as recorded in Book 126, Page 185 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 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):

Joshua R. Stelling

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By Joshua R. Stelling, a single person

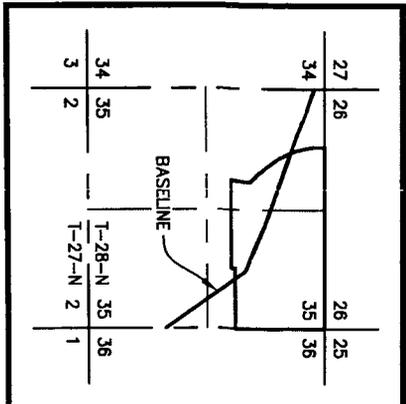
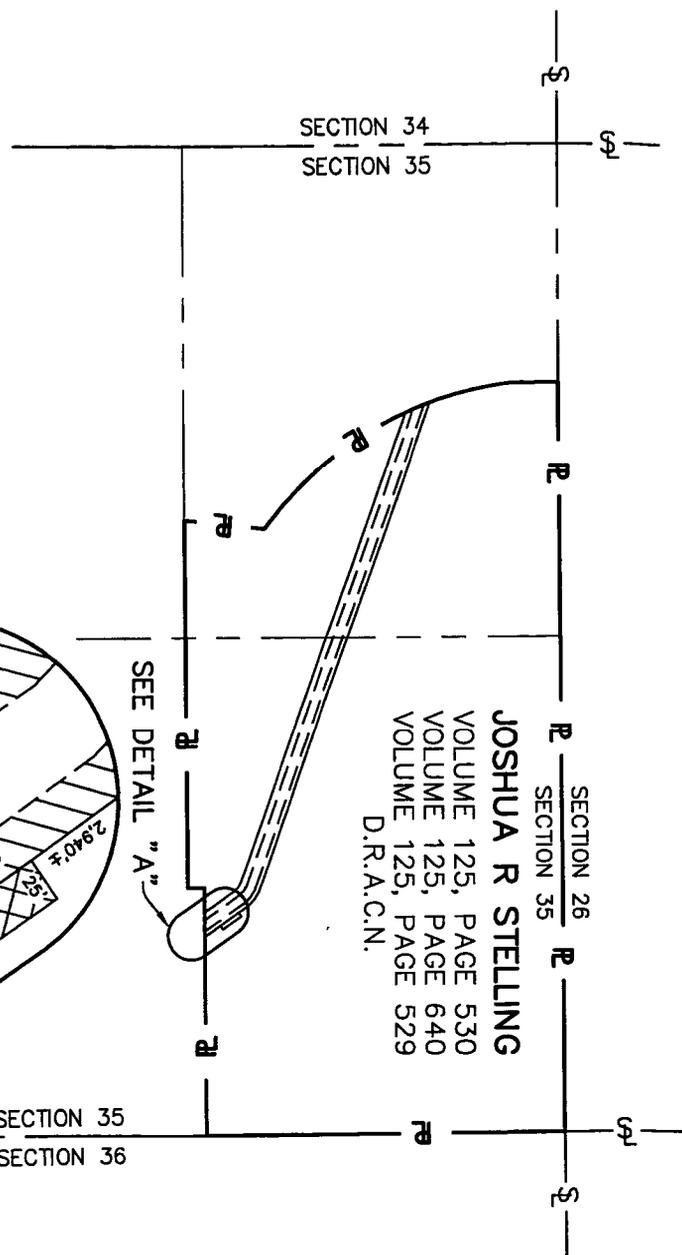
Notary Public Signature

Affix Seal Here

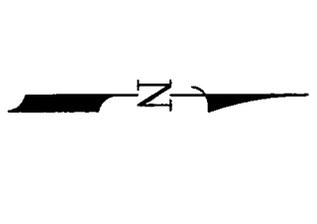
LEGEND
 R PROPERTY LINE
 P PROPOSED
 A.T.W.S. PERMANENT EASEMENT & RIGHT OF WAY DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA

ANTELOPE COUNTY, NEBRASKA
 T-28-N, R-8-W, SECTION 35
 ML-NE-AT-30095.000

JOSHUA R STELLING
 VOLUME 125, PAGE 530
 VOLUME 125, PAGE 640
 VOLUME 125, PAGE 529
 D.R.A.C.N.



VICINITY MAP
 N.T.S.



TRACT LEGAL DESCRIPTION:
 AN IRREGULAR TRACT IN THE N/2 OF SECTION 35, T-28-N, R-8-W

SCALE: 1" = 1000'

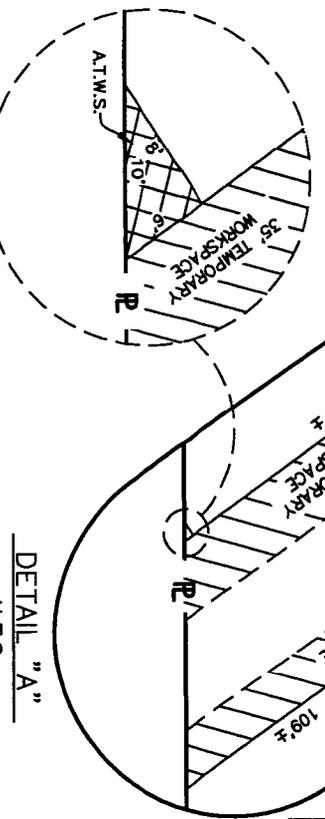
TransCanada
In business to deliver

KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
JOSHUA R STELLING
ML-NE-AT-30095.000

PROJECT: XL
 EXHIBIT A

APPROVED BY: [Signature]
 DRAWING NUMBER: XL-08-ML-SK-3397

NO. [] REVISION [] DATE []



DETAIL "A"
 N.T.S.

| | | | |
|------------|----------|----------|------------|
| SCALE | DATE | DRAWN BY | CHECKED BY |
| 1" = 1000' | 11/05/14 | JIN | 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.

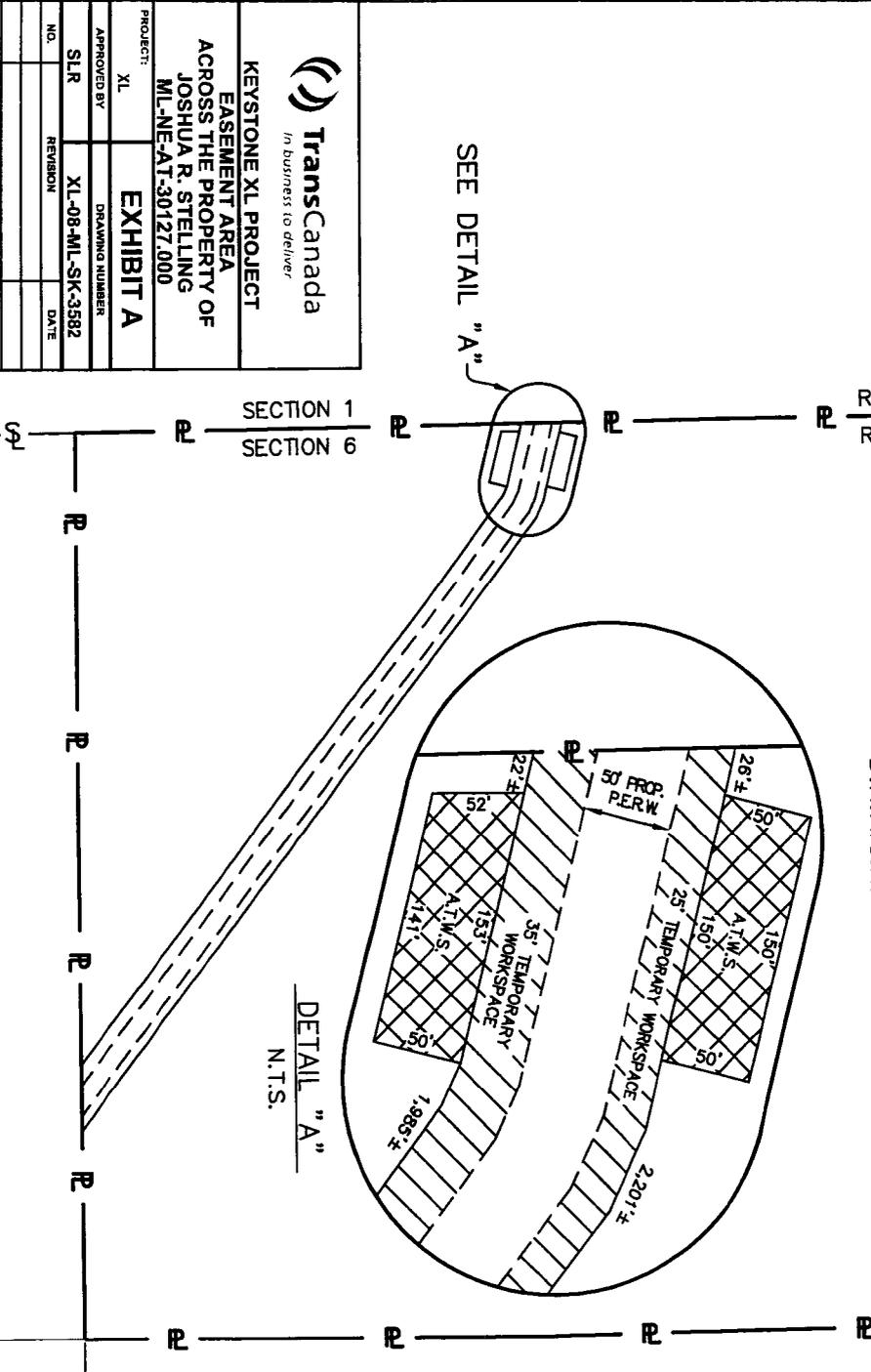
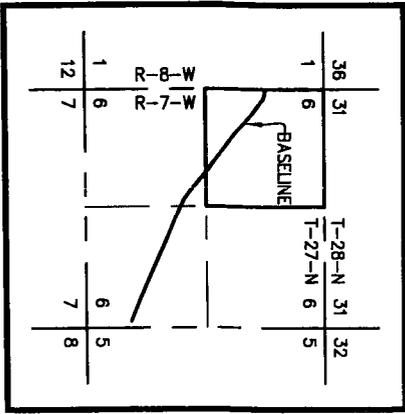
TOTAL DISTANCE ACROSS PROPERTY: 3,087'±
 AREA OF PERMANENT EASEMENT: 3.5 ACRES
 AREA OF TEMPORARY WORKSPACE: 4.2 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.1 ACRE

LEGEND
 R PROPERTY LINE
 \$ SECTION LINE
 P 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 6
 ML-NE-AT-30127.000

JOSHUA R. STELLING
 VOLUME 126, PAGE 185
 D.R.A.C.N.



TransCanada
In business to deliver

KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
JOSHUA R. STELLING
ML-NE-AT-30127.000

PROJECT: XL
 EXHIBIT A

APPROVED BY: [Signature]
 DRAWING NUMBER: XL-08-ML-SK-382

SLR: [Signature]
 REVISION: [Signature]

NO. [] DATE []

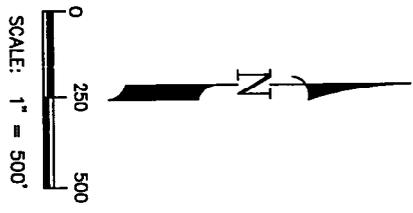
SCALE: 1" = 500'
 DATE: 11/03/14
 DRAWN BY: PB
 CHECKED BY: ALS



TOTAL DISTANCE ACROSS PROPERTY: 2,298'±
 AREA OF PERMANENT EASEMENT: 2.6 ACRES
 AREA OF TEMPORARY WORKSPACE: 3.1 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.3 ACRE

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

TRACT LEGAL DESCRIPTION:
 NW/4 OF SECTION 6,
 T-27-N, R-7-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-AT-30095.000

I, Joshua R. Stelling, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Six Thousand Two Hundred Forty Dollars and No Cents (\$6,240.00), 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:

An Irregular Tract in the N/2

Section 35, Township 28N, Range 8W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I have hereunto set our hands on this _____ day of

_____, 20____.

Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

TRANSCANADA KEYSTONE PIPELINE, LP

ADVANCE RELEASE OF DAMAGE CLAIMS AND INDEMNITY AGREEMENT

Tract No. : ML-NE-AT-30127.000

I, Joshua R. Stelling, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Four Thousand Eight Hundred Dollars and No Cents (\$4,800.00), 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 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, I have hereunto set our hands on this _____ day of _____, 20____.

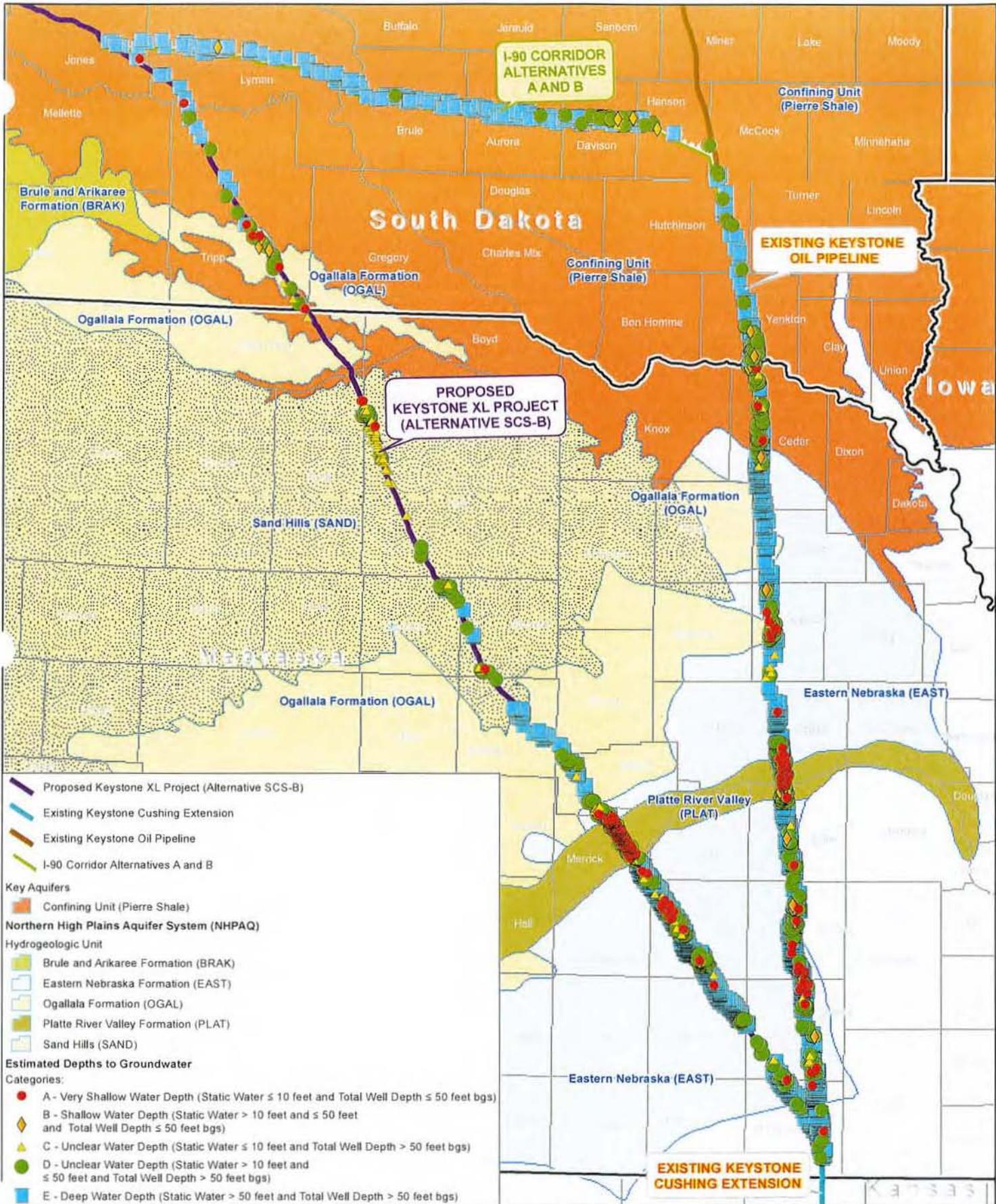
Owner Signature

Owner Signature

Owner/Owner Representative Name

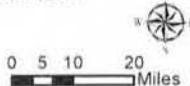
Owner/Owner Representative Name

Attachment No. 6



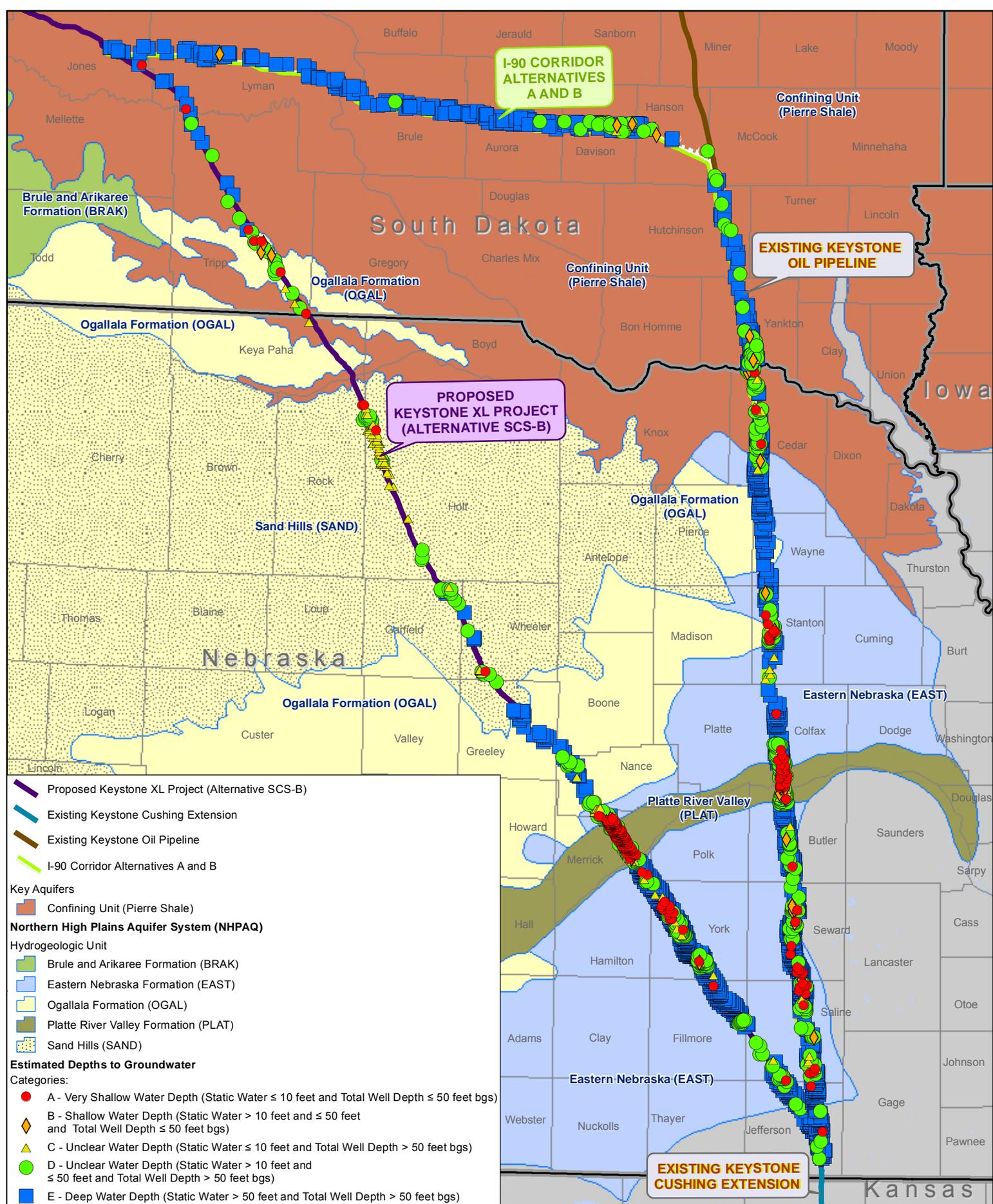
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

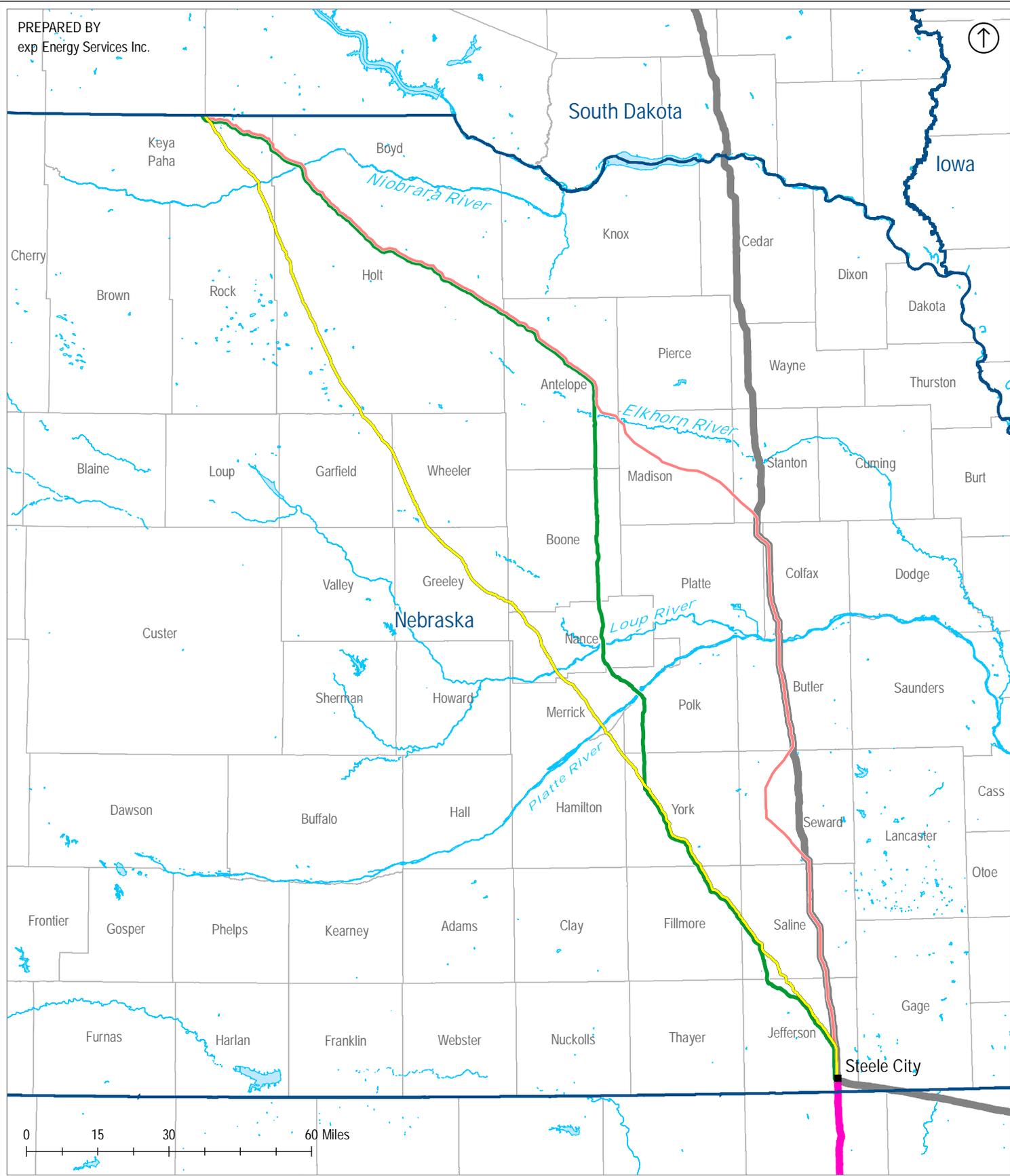
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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
Richard Stelling in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Richard Stelling.

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: Darlene Stelling

3 **Q: If you have children how many do you have?**

4 A: 1.

5 **Q: If you have grandchildren how many do you have?**

6 A: 2.

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: Over 60 years.

12 **Q: Do you earn any income from this land?**

13 A: Yes.

14 **Q: Have you depended on the income from your land to support your livelihood**
15 **or the livelihood of your family?**

16 A: Yes.

17 **Q: Have you ever in the past or have you thought about in the future leasing all**
18 **or a portion of your land in question here?**

19 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
20 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
21 all the restrictions and risks and potential negative impacts to farming or ranching
22 operations as opposed to land that did not have those same risks. If I was looking
23 to lease or rent ground I would pay more for comparable non-pipeline land than I
24 would for comparable pipeline land and I think most folks would think the same
25 way. This is another negative economic impact that affects the landowner and the
26 county and the state and will forever and ever should TransCanada's preferred or
27 mainline alternative routes be approved. If they were to twin or closely parallel to
28 Keystone I the vast majority of landowners would be those that already have a
29 pipeline so there would be considerable less new incremental negative impacts.

1 **Q: Do you have similar concerns about selling the land?**

2 A: Well I hope not to have to sell the land in my lifetime but times change and you
3 never know what is around the corner and yes I am concerned that if another piece
4 of ground similar to mine were for sale and it did not have the pipeline and mine
5 did that I would have a lower selling price. I think this would be true for pipeline
6 ground on both the preferred and mainline alternative routes.

7 **Q: What is your intent with your land after you die?**

8 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
9 to come but I have thought about getting out if this pipeline were to come through.

10 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
11 Pipeline would cross the land described above and owned by you?**

12 A: Yes.

13 **Q: Were you or an entity for which you are a member, shareholder, or director
14 previously sued by TransCanada Keystone Pipeline, LP?**

15 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
16 petition for condemnation against our land so it could place its proposed pipeline
17 within an easement that it wanted to take from us on our land.

18 **Q: Did you defend yourself and your land in that condemnation action?**

19 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
20 and expenses in our resistance of TransCanada's lawsuit against us.

21 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
22 incurred?**

23 A: No, they have not.

24 **Q: In its lawsuit against you, did TransCanada identify the amount of your
25 property that it wanted to take for its proposed pipeline?**

26 A: The lawsuit against us stated they would take the amount of property that is
27 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
28 and equipment reasonably necessary to operate the pipeline.

1 **Q: Did TransCanada define what they meant by “property that is reasonably**
2 **necessary”?**

3 A: No, they did not.

4 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
5 **property portion of your land?**

6 A: Yes, they did.

7 **Q: Did TransCanada describe what rights it proposed to take related to the**
8 **eminent domain property on your land?**

9 A: Yes, they did.

10 **Q: What rights that they proposed to take did they describe?**

11 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
12 operate, and maintain the pipeline and the plant and equipment reasonably
13 necessary to operate the pipeline, specifically including surveying, laying,
14 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
15 reconstructing, removing and abandoning one pipeline, together with all fittings,
16 cathodic protection equipment, pipeline markers, and all their equipment and
17 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
18 petroleum products, and all by-products thereof.”

19 **Q: Prior to filing an eminent domain lawsuit to take your land that**
20 **TransCanada identified, do you believe they attempted to negotiate in good**
21 **faith with you?**

22 A: No, I do not.

23 **Q: Did TransCanada at any time approach you with or deliver to you their**
24 **proposed easement and right-of-way agreement?**

25 A: Yes, they did.

26 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
27 **agreement, did you understand that they would be purchasing a fee title**
28 **interest in your property or that they were taking something else?**

1 A: I understood that they proposed to have the power to take both a temporary
2 construction easement that could last for a certain period of time and then also a
3 permanent easement which they described to be 50 feet across or in width, and
4 that would run the entire portion of my property from where a proposed pipeline
5 would enter my property until where it would exit the property.

6 **Q: Is the document included with your testimony here as Attachment No. 3, a**
7 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
8 **Way agreement that they included with their condemnation lawsuit against**
9 **you?**

10 A: Yes, it is.

11 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
12 **and Right-of-Way agreement?**

13 A: Yes, I have.

14 **Q: What is your understanding of the significance of the Easement and Right-of-**
15 **Way agreement as proposed by TransCanada?**

16 A: My understanding is that this is the document that will govern all of the rights and
17 obligations and duties as well as the limitations of what I can and cannot do and
18 how I and any future landowner and any person I invite to come onto my property
19 must behave as well as what TransCanada is and is not responsible for and how
20 they can use my land.

21 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
22 **agreement do you have any concerns about any portions of it or any of the**
23 **language either included in the document or missing from the proposed**
24 **document?**

25 A: Yes, I have a number of significant concerns and worries about the document and
26 how the language included and the language not included potentially negatively
27 impacts my land and thereby potentially negatively impacts my community and
28 my state.

1 **Q: I would like you to walk the Commissioners through each and every one of**
2 **your concerns about TransCanada’s proposed Easement and Right-of-Way**
3 **agreement so they can develop an understanding of how that language and**
4 **the terms of that contract, in your opinion, potentially negatively impacts you**
5 **and your land. So, if you can start at the beginning of that document and**
6 **let’s work our way through it, okay?**

7 A: Yes, I’ll be happy to express my concerns about TransCanada’s proposed
8 Easement and Right-of-Way agreement and how it negatively could affect my
9 property rights and my economic interests.

10 **Q. Okay, let’s start with your first concern please.**

11 A: The very first sentence talks about consideration or how much money they will
12 pay to compensate me for all of the known and unknown affects and all of the
13 rights I am giving up and for all the things they get to do to my land and for what
14 they will prevent me from doing on my land and they only will pay me one time at
15 the signing of the easement agreement. That is a huge problem.

16 **Q: Explain to the Commissioners why that is a problem.**

17 A: It is not fair to the landowner, the county, or the State. It is not fair to the
18 landowner because they want to have my land forever for use as they see fit so
19 they can make a daily profit from their customers. If I was to lease ground from
20 my neighbor I would typically pay twice a year every year as long as they granted
21 me the rights to use their land. That only makes sense – that is fair. If I was going
22 to rent a house in town I would typically pay monthly, every month until I gave up
23 my right to use that house. By TransCanada getting out on the cheap and paying
24 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax
25 revenue collection on the money I would be paid and then pay taxes on and
26 contribute to this state and this country. It is money I would be putting back into
27 my local community both spending and stimulating the local economy and
28 generating more economic activity right here. Instead TransCanada’s shareholders
29 keep all that money and it never finds its way to Nebraska.

1 **Q: What is your next concern?**

2 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
3 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
4 limited partnership...” and I have no idea who that really is. I have no idea who is
5 forcing this pipeline on us or who the owners of the entities are, or what are the
6 assets backing this limited partnership, or who the general partner is, or who all
7 the limited partners are, and who makes up the ownership of the these partners or
8 the structure or any of the basic things you would want to know and understand if
9 you would want to do business with such an outfit. According to TransCanada’s
10 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
11 liability company called TransCanada Keystone Pipeline GP, LLC is the general
12 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
13 basically nothing. That is really scary since the general partner has the liability but
14 virtually none of the ownership and who knows if it has any other assets.

15 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred
16 percent clear on exactly who could become the owner of about 275 miles of
17 Nebraska land?**

18 A: No.

19 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred
20 percent clear on exactly who will be operating and responsible for
21 approximately 275 miles of tar sands pipeline underneath and through
22 Nebraska land?**

23 A: No.

24 **Q: Okay, let’s continue please with your concerns of the impacts upon your land
25 and the State of Nebraska of TransCanada’s easement terms.**

26 A: Yes, so the next sentence talks about “...its successors and assigns (hereinafter
27 called “Grantee”)...” and this concerns me because it would allow their easement
28 to be transferred or sold to someone or some company or country or who knows
29 what that I don’t know and who we may not want to do business with. This

1 pipeline would be a huge asset for TransCanada and if they can sell to the highest
2 bidder that could have terrible impacts upon all of Nebraska depending upon who
3 may buy it and I don't know of any safeguards in place for us or the State to veto
4 or have any say so in who may own, operate, or be responsible for this pipeline in
5 the future.

6 **Q: Do you think that type of uncertainty and lack of control over a major piece**
7 **of infrastructure crossing our State is in the public interest?**

8 A: No, certainly not, in fact, just the opposite.

9 **Q: What's next?**

10 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
11 really concerns me. Why does the easement and right-of-way have to be perpetual
12 and permanent? That is the question myself and my family want an answer to.
13 Perpetual to me is like forever and that doesn't make sense.

14 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

15 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
16 data proving there is a perpetual supply of tar sands. I am not aware in
17 TransCanada's application where it proves there is a perpetual necessity for this
18 pipeline. My understanding of energy infrastructure like wind towers is they have
19 a decommission plan and actually take the towers down when they become
20 obsolete or no longer needed. Nothing manmade lasts forever. My land however
21 will, and I want my family or future Nebraska families to have that land as
22 undisturbed as possible and it is not in my interest or the public interest of
23 Nebraska to be forced to give up perpetual and permanent rights in the land for
24 this specific kind of pipeline project.

25 **Q: Okay, what is your next concern?**

26 A: The easement language includes all these things TransCanada can do and it says
27 "...abandoning in place..." so they can just leave this pipeline under my ground
28 until the end of time just sitting there while they are not using it, but I am still
29 prevented from doing on my land and using my land what I would like. If I owned

1 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
2 there. It doesn't make sense and it scares me and it is not in my interest or the
3 public interest of Nebraska to allow this.

4 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
5 **right?**

6 A: Yes.

7 **Q: So now on the second page of the Easement what are your concerns?**

8 A: Here the Easement identifies a 24-month deadline to complete construction of the
9 pipeline but has caveats that are undefined and ambiguous. The 24-month period
10 starts to run from the moment "actual pipeline installation activities" begin on
11 Landowners property. It appears that TransCanada would define this phrase as
12 needed. It would be wise to explain what types of TransCanada action constitutes
13 "installation activity" For instance, would the placement and storage of an
14 excavator or other equipment on or near the Easement property be an activity or
15 would earth have to be moved before the activity requirement is triggered. This
16 vague phrase is likely to lead to future disputes and litigation that is not in the best
17 interest of the welfare of Nebraska and would not protect property interests. The
18 24-months can also be extended in the case of "force majeure." My understanding
19 is that force majeure is often used to insulate a party to a contract when events
20 occur that are completely out of their control. In TransCanada's easement this is
21 expanded to include "without limitation...availability of labor and materials."
22 Extending this language to labor and materials is problematic because these are
23 two variables that TransCanada does have some or significant control over and to
24 allow extension of the 24-month period over events not truly out of the control of
25 TransCanada and without further provision for compensation for the Landowner is
26 not conducive to protection of property rights.

27 **Q: Okay, what is your next concern?**

28 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
29 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially

1 reasonable costs and expenses” will pay for damages caused but then limits
2 TransCanada’s liability to certain circumstances. There is no definition of
3 “commercially reasonable” and no stated right that the Landowner would get to
4 determine the amounts of cost or expense that is “commercially reasonable.”
5 TransCanada excepts out from their liability any damages that are caused by
6 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
7 Landowner. It is understandable that if the Landowner were to willfully and
8 intentionally cause damages to the pipeline that Landowner should be liable.
9 However, anything short of willful misconduct should be the liability of
10 TransCanada who is subjecting the pipeline on the Landowner and who is making
11 a daily profit from that pipeline. When evaluating the impact on property rights of
12 this provision, you must consider the potentially extremely expensive fight a
13 Landowner would have over this question of whether or not damage was an act of
14 negligence. Putting this kind of potential liability upon the Landowner is
15 incredibly problematic and is detrimental to the protection of property rights. I
16 don’t think this unilateral power which I can’t do anything about as the landowner
17 is in the best economic interest of the land in question or the State of Nebraska for
18 landowners to be treated that way.

19 **Q: Is there any specific event or example you are aware of that makes this**
20 **concern more real for you?**

21 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
22 Nemaha County, Nebraska landowner farmers who accidentally struck two
23 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
24 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
25 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
26 copy of the Federal Court Complaint is here as **Attachment No. 4.**

27 **Q: What is your next concern with the Easement language?**

28 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
29 they choose unless 1) any Landowner use interferes in any way with

1 TransCanada’s exercise of any of its rights within the Easement, or 2)
2 TransCanada decides to take any action on the property it deems necessary to
3 prevent injury, endangerment or interference with anything TransCanada deems
4 necessary to do on the property. Landowner is also forbidden from excavating
5 without prior authorization by TransCanada. So my understanding is that
6 TransCanada will unilaterally determine what Landowner can and can’t do based
7 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
8 could also completely deny my request to excavate. Further, TransCanada retains
9 all “privileges necessary or convenient for the full use of the rights” granted to
10 them in the Easement. Again, TransCanada unilaterally can decide to the
11 detriment of the property rights of Landowner what TransCanada believes is
12 necessary or convenient for it. And there is no option for any additional
13 compensation to landowner for any right exercised by TransCanada that leads to
14 the removal of trees or plants or vegetation or buildings or structures or facilities
15 owned by Landowner of any kind. Such undefined and unilateral restrictions and
16 rights without having to compensate Landowner for such further destruction or
17 losses are not conducive to the protection of property rights or economic interest.

18 **Q: What is the next concern you have?**

19 A: The Easement also allows some rights for Landowner but restricts them at the
20 same time and again at the sole and unilateral decision making of TransCanada.
21 TransCanada will determine if the actions of Landowner might in anyway
22 endanger or obstruct or interfere with TransCanada’s full use of the Easement or
23 any appurtenances thereon to the pipeline itself or to their access to the Easement
24 or within the Easement and TransCanada retains the right at any time, whether
25 during growing season or not, to travel “within and along Easement Area on foot
26 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
27 retain the rights to prevent any landowner activity that it thinks may “unreasonably
28 impair[ed] or interfe[ed] with” TransCanada’s use of the Easement Area. Such

1 undefined and unilateral restrictions are not conducive to the protection of
2 property rights or economic interest.

3 **Q: What is the next concern you have with the Easement language?**

4 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
5 Landowner's land any debris of any kind without any input or power of
6 Landowner to demand an alternative method or location of debris disposal. Such
7 unilateral powers would negatively affect Landowners property are not conducive
8 to the protection of property rights or economic interest.

9 **Q: What is the next concern you have with the Easement language?**

10 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
11 "where rock is encountered" mean and why does TransCanada solely get to
12 determine whether or not this phrase is triggered. This phrase could be used to
13 justify installing the pipeline 24 inches beneath the surface. The ability to use this
14 provision to minimal locate the pipeline at a depth of 24 inches could negatively
15 affect Landowners property are not conducive to the protection of property rights.
16 A shallow pipeline is much more likely to become a danger and liability in the
17 future given farming operations and buried irrigation lines and other factors
18 common to the current typical agricultural uses of the land in question impacted
19 by TransCanada's preferred pipeline route.

20 **Q: What is the next concern you have with the Easement language?**

21 A: There are more vague concepts solely at the determination of TransCanada such as
22 "as nearly as practicable" and "pre-construction position" and "extent reasonably
23 possible." There is nothing here that defines this or provides a mechanism for
24 documenting or memorializing "pre-construction position" so as to minimize
25 costly legal battles or wasted Landowner time attempting to recreate the soil
26 condition on their fields or pasture. Such unilateral powers would negatively affect
27 Landowners property are not conducive to the protection of property rights or
28 economic interest.

29 **Q: What is the next concern you have with the Easement language?**

1 A: TransCanada maintains the unilateral right to abandon the pipeline and all
2 appurtenances thereto in place on, under, across, or through Nebraska land at any
3 time it chooses. There is no provision for Landowner compensation for such
4 abandonment nor any right for the Landowner to demand removal. Such unilateral
5 powers would negatively affect Landowners property are not conducive to the
6 protection of property rights or economic interest.

7 **Q: What is the next concern you have with the Easement language?**

8 A: TransCanada has the power to unilaterally move or modify the location of any
9 Easement area whether permanent or temporary at their sole discretion.
10 Regardless, if Landowner has taken prior steps relative to their property in
11 preparation or planning of TransCanada's taking of the initial easement area(s),
12 the language here does not require TransCanada to compensate the Landowner if
13 they decide to move the easement anywhere on Landowners property. Such
14 unilateral powers would negatively affect Landowners property are not conducive
15 to the protection of property rights or economic interests.

16 **Q: What is the next concern you have with the Easement language?**

17 A: The Easement requires that all of the burdens and restrictions upon Landowner to
18 transfer and be applicable to any future owner of the Land in question without the
19 ability of the future Landowner to modify or negotiate any of the language in
20 question to which it will be held to comply.

21 **Q: What is the next concern you have with the Easement language?**

22 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
23 Easement to any person, company, country, etc. at their sole discretion at anytime
24 to anyone. This also means that any buyer of the easement could do the same to a
25 third buyer and so on forever. There is no change of control or sale provision in
26 place to protect the Landowner or Nebraska or to provide compensation for such
27 change of control or ownership. It is not conducive to the protection of property
28 rights or economic interests to allow unilateral unrestricted sale of the Easement

1 thereby forcing upon the Landowner and our State a new unknown Easement
2 owner.

3 **Q: What is the next concern you have with the Easement language?**

4 A: There are many terms in the Easement that are either confusing or undefined terms
5 that are without context as to whether or not the Landowner would have any say
6 so in determining what these terms mean or if the evaluation is solely in
7 TransCanada’s control. Some of these vague undefined terms are as follows:

- 8 i. “pipeline installation activities”
- 9 ii. “availability of labor and materials”
- 10 iii. “commercially reasonable costs and expenses”
- 11 iv. “reasonably anticipated and foreseeable costs and expenses”
- 12 v. “yield loss damages”
- 13 vi. “diminution in the value of the property”
- 14 vii. “substantially same condition”
- 15 viii. “an actual or potential hazard”
- 16 ix. “efficient”
- 17 x. “convenient”
- 18 xi. “endangered”
- 19 xii. “obstructed”
- 20 xiii. “injured”
- 21 xiv. “interfered with”
- 22 xv. “impaired”
- 23 xvi. “suitable crossings”
- 24 xvii. “where rock is encountered”
- 25 xviii. “as nearly as practicable”
- 26 xix. “pre-construction position”
- 27 xx. “pre-construction grade”
- 28 xxi. “various engineering factors”

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, “yield loss damages” should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 A: I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada’s proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline’s**
18 **impact upon you and your land?**

19 A: No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 A: Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 **Q: Has TransCanada at any time offered to compensate you annually, such as**
6 **wind farm projects do, for the existence of their potential tar sands pipeline**
7 **across your property.**

8 A: No, never.

9 **Q: At any time did TransCanada present you with or request that you, as the**
10 **owner of the land in question, sign and execute a document called, "Advanced**
11 **Release of Damage Claims and Indemnity Agreement?"**

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
14 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

15 A: Yes, it is.

16 **Q: What was your understanding of that document?**

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 **Q: Did you ever sign that document?**

24 A: No, I did not.

25 **Q: Why not?**

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you
12 thought their proposed location of their proposed pipeline across your land
13 was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you
16 thought their proposed location of their proposed pipeline across your land
17 was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
20 Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of
23 an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which
29 the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 **Q: Can you think of any way in which the public, that is the citizens of the State**
3 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
4 **Pipeline, as it dissects the State of Nebraska?**

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
13 **crude petroleum, or oil and petroleum by-products that you would like to**
14 **ship in its pipeline?**

15 A: No, it has not.

16 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
17 **products that you, at this time or any time in the future, would desire to place**
18 **for transport within the proposed TransCanada Keystone XL Pipeline?**

19 A: No, I do not.

20 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
21 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
22 **products within the proposed TransCanada Keystone XL Pipeline?**

23 A: No, I do not. I've never heard of such a person or company like that.

24 **Q: Do you pay property taxes for the land that would be affected and impacted**
25 **at the proposed TransCanada Keystone XL Pipeline?**

26 A: Yes, I do.

27 **Q: Why do you pay property taxes on that land?**

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q: Because you follow the law and pay property taxes, do you believe you**
2 **deserve any special consideration or treatment apart from any other person**
3 **or company that pays property taxes?**

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q: Do you believe the fact that you pay property taxes entitles you to special**
7 **treatment of any kind, or special rights of any kind?**

8 A: No, of course not.

9 **Q: Do you believe the fact that you pay property taxes on your land would be**
10 **enough to qualify you to have the power of eminent domain to take land of**
11 **your neighbors or other people in your county, or other people across the**
12 **state of Nebraska?**

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q: Have you at any time ever employed any person other than yourself?**

16 A: Well, yes I have.

17 **Q: Do you believe that the fact that you have, at some point in your life,**
18 **employed one or more other persons entitle you to any special treatment or**
19 **consideration above and beyond any other Nebraskan that has also employed**
20 **one or more persons?**

21 A: No, of course not.

22 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
23 **have at one point employed another person within this state, entitles you to**
24 **preferential treatment or consideration of any kind?**

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q: At the beginning of your statement, you briefly described your property that**
28 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
29 **give the Commissioners a sense of specifically how you believe the proposed**

1 **Keystone XL Pipeline and its preferred route, which proposes to go across**
2 **your land, how it would in your opinion based on your knowledge,**
3 **experience, and background of your land, affect it.**

4 A: I'm opposing this pipeline because it crosses over my underground irrigation
5 pipeline. Our water source is the Ogallala Aquifer. The water is worth more to us
6 than any oil will be. If there is ever a leak I don't want our water contaminated
7 with oil. And beyond the leak or spill itself, the perception and known risks
8 themselves create issues and devalues the land.

9 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
10 **crude oil pipeline in its preferred location, or ultimate location across the**
11 **state of Nebraska?**

12 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
13 or even bullied around and being made to feel scared that they did not have any
14 options but to sign whatever papers TransCanada told them they had to. I am
15 aware of folks being threatened that their land would be taken if they didn't follow
16 what TransCanada was saying. I am aware of tactics to get people to sign
17 easements that I don't believe have any place in Nebraska or anywhere such as
18 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
19 landowners and convince them they should sign TransCanada's easement
20 agreements. I am aware of older folks and widows or widowers feeling they had
21 no choice but to sign TransCanada's Easement and they didn't know they could
22 fight or stand up for themselves. From a more practical standpoint, I am worried
23 that according to their answer to our Interrogatory No. 211, TransCanada only
24 owns and operates one (1) major oil pipeline. They simply do not have the
25 experience with this type of pipeline and that scares me. There are others but that
26 is what I can recollect at this time and if I remember more or my recollection is
27 refreshed I will share those with the Commissioners at the Hearing in August.

28 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
29 **landowner is reasonable or just?**

1 A: No, I do not.

2 **Q: Do you have any concern about limitations that the construction of this**
3 **proposed pipeline across your affected land would prevent construction of**
4 **future structures upon the portion of your land affected by the proposed**
5 **easement and immediately surrounding areas?**

6 A: Well yes, of course I do. We would not be able to build many, if any, types of
7 structures directly across or touching the easement, and it would be unwise and I
8 would be uncomfortable to build anything near the easement for fear of being
9 blamed in the future should any damage or difficulty result on my property in
10 regards to the pipeline.

11 **Q: Do you think such a restriction would impact you economically?**

12 A: Well yes, of course.

13 **Q: How do you think such a restriction would impact you economically?**

14 A: The future of this land may not be exactly how it's being used as of this moment,
15 and having the restrictions and limiting my ability to develop my land in certain
16 ways presents a huge negative economic impact on myself, my family, and any
17 potential future owner of the property. You have no idea how I or the future owner
18 may want to use this land in the future or the other land across Nebraska
19 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
20 ago it would have been hard to imagine all the advances that we have now or how
21 things change. Because the Easement is forever and TransCanada gets the rights in
22 my land forever we have to think with a very long term view. By placing their
23 pipeline on under across and through my land that prevents future development
24 which greatly negatively impacts future taxes and tax revenue that could have
25 been generated by the County and State but now will not. When you look at the
26 short blip of economic activity that the two years of temporary construction efforts
27 may bring, that is far outweighed by the perpetual and forever loss of opportunity
28 and restrictions TransCanada is forcing upon us and Nebraska.

1 **Q: Do you have any concerns about the environmental impact of the proposed**
2 **pipeline?**

3 A: Yes, I do.

4 **Q: What are some of those concerns?**

5 A: As an affected land owner and Nebraskan, I am concerned that any construction,
6 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
7 a detrimental impact upon the environment of my land specifically, as well as the
8 lands near my land and surrounding the proposed pipeline route.

9 **Q: Do you have any other environmental concerns?**

10 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
11 construction and/or maintenance and operation. I am concerned about spills and
12 leaks that TransCanada has had in the past and will have in the future. This could
13 be catastrophic to my operations or others and to my county and the State.

14 **Q: Do you have any thoughts regarding if there would be an impact upon the**
15 **natural resources on or near your property due to the proposed pipeline?**

16 A: Yes, I believe that any construction, operation, and/or maintenance of the
17 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
18 resources of my land, and the lands near and surrounding the proposed pipeline
19 route.

20 **Q: Do you have any worries about potential impacts from the proposed pipeline**
21 **to the soil of your land, or land near you?**

22 A: Yes, I believe that any construction, operation, and/or maintenance of the
23 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
24 land, as well as land along and surrounding the proposed pipeline route. This
25 includes, but is not limited to, the reasons that we discussed above of disturbing
26 the soil composition and makeup as it has naturally existed for thousands and
27 millions of years during the construction process, and any future maintenance or
28 removal process. I'm gravely concerned about the fertility and the loss of
29 economic ability of my property to grow the crops, or grow the grasses, or grow

1 whatever it is at that time they exist on my property or that I may want to grow in
2 the future, or that a future owner may want to grow. The land will never be the
3 same from as it exists now undisturbed to after it is trenched up for the proposed
4 pipeline.

5 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
6 **upon the groundwater over your land, or surrounding lands?**

7 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
8 the proposed Keystone XL Pipeline would have a detrimental impact upon the
9 groundwater of not only under my land, but also near and surrounding the pipeline
10 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
11 simple and it is simply too valuable to our State and the country to put at
12 unreasonable risk.

13 **Q: Do you have any concern about the potential impact of the proposed pipeline**
14 **upon the surface water on, or near or around your land?**

15 A: Yes, I have significant concerns that any construction, operation, and/or
16 maintenance of the proposed Keystone XL Pipeline would have detrimental
17 impact upon the surface water of not only within my property boundary, but along
18 and near and surrounding the pipeline route, and in fact, across the state of
19 Nebraska.

20 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
21 **upon the wildlife and plants, other than your growing crops on or near your**
22 **land?**

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 wildlife and the plants, not only that are located on or can be found upon my land,
26 but also near and along the proposed pipeline route.

27 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
28 **fair market value of your land?**

1 A: Yes, I do. I am significantly concerned about how the existence of the proposed
2 pipeline underneath and across and through my property will negatively affect the
3 fair market value at any point in the future, especially at that point in which I
4 would need to sell the property, or someone in my family would need to sell the
5 property. I do not believe, and certainly would not be willing to pay, the same
6 price for land that had the pipeline located on it, versus land that did not. I hope
7 there is never a point where I'm in a position where I have to sell and have to
8 realize as much value as I can out of my land. But because it is my single largest
9 asset, I'm gravely concerned that the existence of the proposed Keystone XL
10 Pipeline upon my land will affect a buyer's willingness to pay as much as they
11 would've paid and as much as I could've received, if the pipeline were not upon
12 my property. There are just too many risks, unknowns, impacts and uncertainties,
13 not to mention all of the rights you give up by the nature of having the pipeline
14 due to having the easement that we have previously discussed, for any reasonable
15 person to think that the existence of the pipeline would not negatively affect my
16 property's value.

17 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
18 **testimony?**

19 A: Yes, I have.

20 **Q: Where have you seen that before?**

21 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
22 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
23 believe the portion of the alternative route in Nebraska essentially twins or
24 parallels Keystone I.

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. 7, 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 the portion of the proposed pipeline within Nebraska as found**
6 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

7 A: No, I do not.

8 **Q: Do you believe there is any potential route for the proposed Keystone XL**
9 **Pipeline across, within, under, or through the State of Nebraska that is in the**
10 **public interest of the citizens of Nebraska?**

11 A: No, I do not.

12 **Q: Why do you hold that belief?**

13 A: Because there simply is no public interest based on all of the factors that I am
14 aware and that I have read and that I have studied that this Commission is to
15 consider that would establish that a for-profit foreign-owned pipeline that simply
16 crosses Nebraska because we are geographically in the way between where tar
17 sands are in Canada to where it wants to ship it to in Texas could ever be in the
18 public interest of Nebraskans. We derive no benefit from this project. It is not for
19 public use. Nebraska is simply in the way and when all considerations are taken in
20 there is no net benefit of any kind for Nebraska should this project be placed in our
21 state. Even if there was some arguable “benefit” it is not enough to outweigh all
22 the negative impacts and concerns.

23 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
24 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
25 **of Nebraska because it may bring temporary jobs during the construction**
26 **phase to Nebraska?**

27 A: First of all, not all jobs are created equally. Most jobs that are created, whether
28 temporary or on a permanent basis, don’t come with a project that has all the
29 potential and foreseeable negative impacts, many of which we have discussed here

1 and other witnesses throughout the course of this hearing have and will discuss. If
2 I decide to hire and employ someone to help me out in my farming or ranching
3 business, I've created a job but I haven't done so at the risk or detrimental impact
4 to my land or my town or my county or my state. And I've hired someone who is
5 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
6 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
7 jobs are not created equal. Additionally, I understand from what I'm familiar with
8 from TransCanada's own statements that the jobs numbers they originally touted
9 were determined to be a minute fraction of the permanent jobs that had been
10 projected. According to their answer to our Interrogatory No. 191, TransCanada
11 has created only thirty-four (34) jobs within Nebraska working specifically on
12 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
13 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
14 Further, according to their answer to Interrogatory No. 199, TransCanada would
15 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
16 constructed on its Preferred Route or its Mainline Alternative Route.

17 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
18 **because it would cross your land?**

19 A: No, absolutely not. I am opposed to this project because it is not in the public
20 interest, neither within my community nor within our state.

21 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
22 **was to cross someone else's land?**

23 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
24 the fear and anxiety and potential foreseeable risks and negative impacts that this
25 type of a project carrying this type of product brings foisted upon anyone in this
26 state or any other state.

27 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
28 **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. I have concern as to who is liable for damages if there is a leak on to another
24 landowner. Having checked with Insurance Companies I have discovered they
25 wouldn't cover such damages nor can I even get such coverage. I do not have faith
26 that TransCanada or whoever they may sell out to will be there to protect us and
27 Nebraska! Who really owns the pipeline? If a foreign country does or becomes the
28 owner which they can, what rights do I have? If I had to sue one I would come out
29 on the short end. The bad easement language allows TransCanada or the next

1 owner to go across an irrigated field with a crop growing and if we disagree on
2 how much damages they caused I have to hire a lawyer to fight it – to try to
3 recover damages for something that should never have happened. As such the heat
4 from under the crop and the heat from above the ground will show stress in the
5 summer on the crop. I've given easements before and once you do so, you pretty
6 much lose rights to any changes that I want to do later on, on this property. Elbows
7 and bends on the pipeline come across on our land and the extra wear will tend to
8 wear on those areas. Once owning this land I don't want to be arguing with anyone
9 what I can or can't do with it. There's a pipeline already in place East of us 50
10 miles and they can lay it next to it.

11 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
12 **like the Public Service Commissioners to consider in their review of**
13 **TransCanada's Application?**

14 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
15 document below but other things may come to me or my memory may be
16 refreshed and I will add and address those things at the time of the Hearing in
17 August and address any additional items at that time as is necessary. Additionally,
18 I have not had an adequate amount of time to receive and review all of
19 TransCanada's answers to our discovery and the discovery of others so it was
20 impossible to competently and completely react to that in my testimony here and I
21 reserve the right to also address anything related to discovery that has not yet
22 concluded as of the date I signed this document below. Lastly, certain documents
23 requested have not yet been produced by TransCanada and therefore I may have
24 additional thoughts on those I will also share at the hearing as needed.

25 **Q: What is it that you are requesting the Public Service Commissioners do in**
26 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
27 **across Nebraska?**

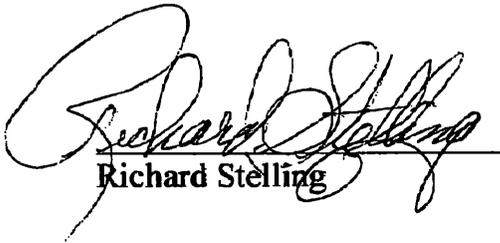
28 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
29 a temporary job spike that this project may bring to a few counties and beyond the

1 relatively small amount of taxes this proposed foreign pipeline would possibly
2 generate. And, instead think about the perpetual and forever impacts of this
3 pipeline as it would have on the landowners specifically, first and foremost, but
4 also thereby upon the entire state of Nebraska, and to determine that neither the
5 preferred route nor the Keystone mainline alternative route are in the public
6 interest of the citizens of the state of Nebraska. And if the Commissioners were
7 inclined to modify TransCanada's proposed routes and were to be inclined to grant
8 an application for a route in Nebraska, that the only potential route that would
9 make any intelligent sense whatsoever would be twinning or near paralleling of
10 the proposed KXL with the existing Keystone I pipeline. It simply does not make
11 sense to add yet another major oil pipeline crisscrossing our state creating new
12 pumping stations, creating new impacts on additional counties and communities
13 and going through all of the court processes with myself and other landowners like
14 me when this applicant already has relationships with the landowners, the towns
15 and the communities along Keystone I, and that Keystone I is firmly outside of the
16 sand hills and a significantly further portion away from the heart of the Ogallala
17 Aquifer than the preferred route or the Keystone mainline alternative route.

18 **Q: Are all of your statements in your testimony provided above true and**
19 **accurate as of the date you signed this document to the best of your**
20 **knowledge?**

21 **A:** Yes, they are.

22 **Q: Thank you, I have no further questions at this time and reserve the right to**
23 **ask you additional questions at the August 2017 Hearing.**


Richard Stelling

Subscribed and Sworn to me before this 31st day of May, 2017.


Notary Public



Attachment No. 1



Darlene R. Stelling
Richard E. Stelling

S.036
T.028N
R.008W

IMAGERY: NAIP 2016



VICINITY MAP



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY

Darlene R. Stelling
Richard E. Stelling

TRACT NO. ML-NE-AT-30100.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 035
TOWNSHIP: 028N
RANGE: 008W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

Attachment No. 2



Attachment No. 3

**Prepared by and after recording
please return to:**
TransCanada Keystone Pipeline, LP
1106 Benjamin Avenue, Suite 600
Norfolk, NE 68701

(Above Space for Recorder's Use Only)

Tract No.: ML-NE-AT-30100.000

**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 E. Stelling and Darlene R. Stelling, as joint tenants**, whose mailing address is 51303 861 Road, 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 59.17 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NE1/4 of the SE1/4 and the S1/2 of the SE1/4 of the NE1/4 of Section 35, Township 28 North, Range 8 West of the 6th P.M., as recorded in Book 123, Page 751 and Book 123, Page 750 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):

Richard E. Stelling

Darlene R. Stelling

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Richard E. Stelling**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Darlene R. Stelling**

Notary Public Signature

Affix Seal Here

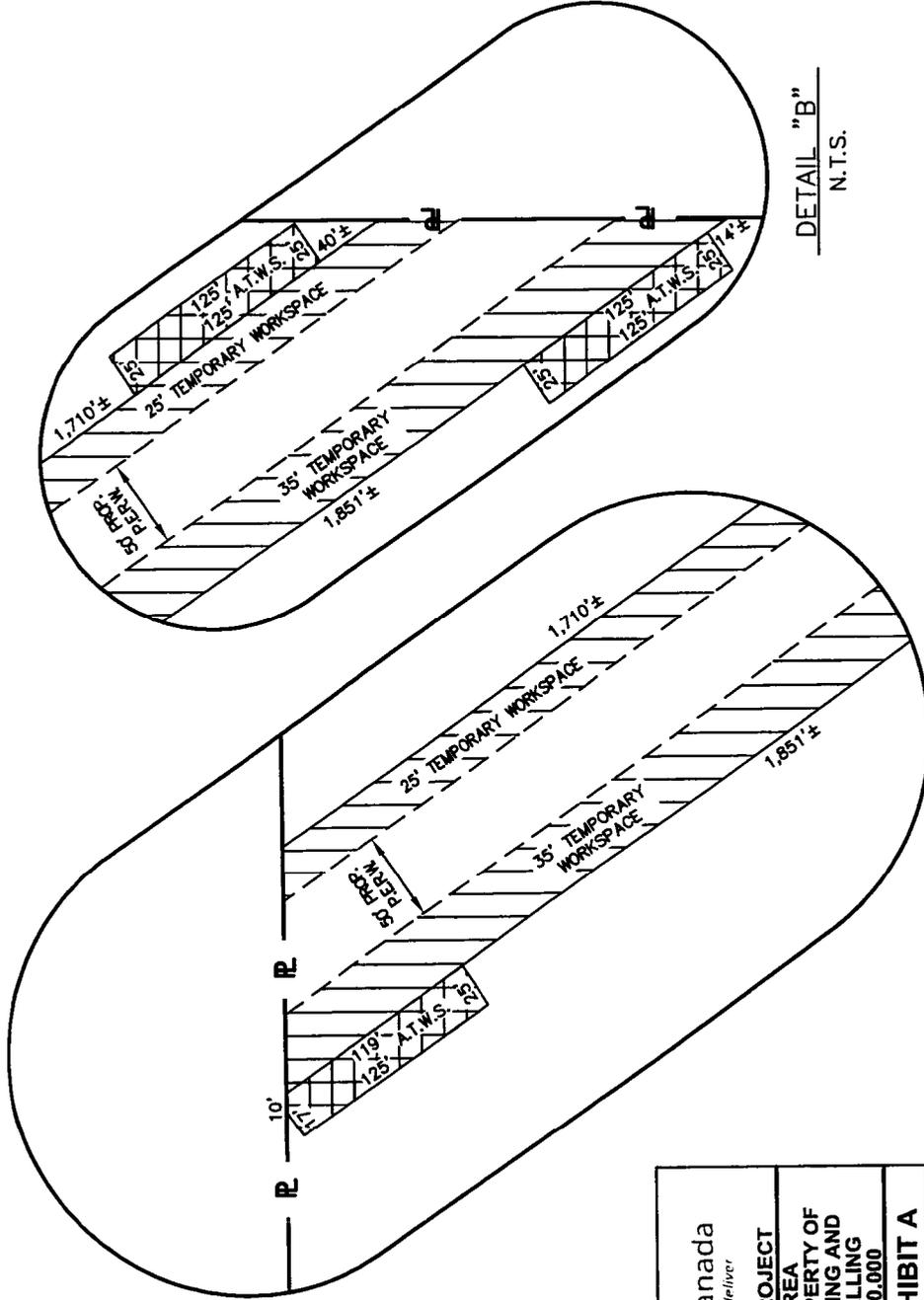
ANTELOPE COUNTY, NEBRASKA

T-28-N, R-8-W, SECTION 35

ML-NE-AT-30100.000

PROPERTY LINE
 PROPOSED
 ADDITIONAL TEMPORARY WORKSPACE
 PERMANENT EASEMENT & RIGHT OF WAY

LEGEND
 P. PROP.
 A.T.W.S.
 P.E.R.W.



DETAIL "B"
 N.T.S.

DETAIL "A"
 N.T.S.

NOTE:
 THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY. THE EXACT LOCATIONS AND MEASUREMENTS ARE APPROXIMATE AND MAY VARY, BUT THE WIDTH OF THE EASEMENT AREA TO BE ACQUIRED WILL NOT VARY.

| | | | |
|---|----|---|-----|
|  | | KEYSTONE XL PROJECT | |
| EASEMENT AREA | | ACROSS THE PROPERTY OF RICHARD E STELLING AND DARLENE R STELLING ML-NE-AT-30100.000 | |
| PROJECT: | XL | EXHIBIT A | |
| APPROVED BY | | DRAWING NUMBER | |
| SLR | | XL-08-ML-SK-3398 | |
| NO. | | REVISION | |
| SCALE | | DATE | |
| N.T.S. | | 11/05/14 | |
| | | 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-AT-30100.000

We, Richard E. Stelling and Darlene R. Stelling, as joint tenants, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Two Thousand Eight Hundred Sixty Two Dollars and No Cents (\$2,862.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Antelope, State of Nebraska:

S/2 SE/4 NE/4, NE/4 SE/4

Section 35, Township 28N, Range 8W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this _____ day of

_____, 20_____.

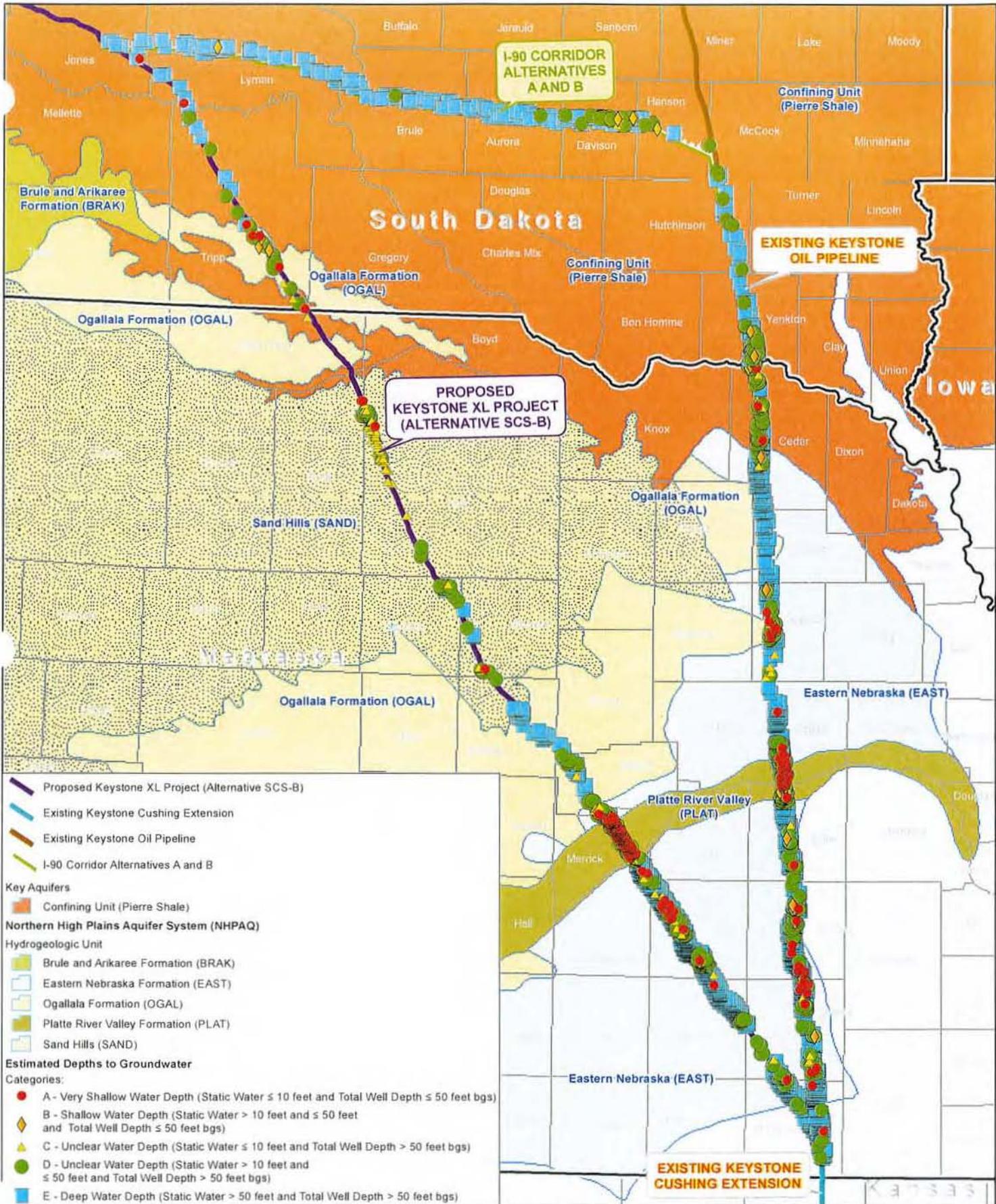
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



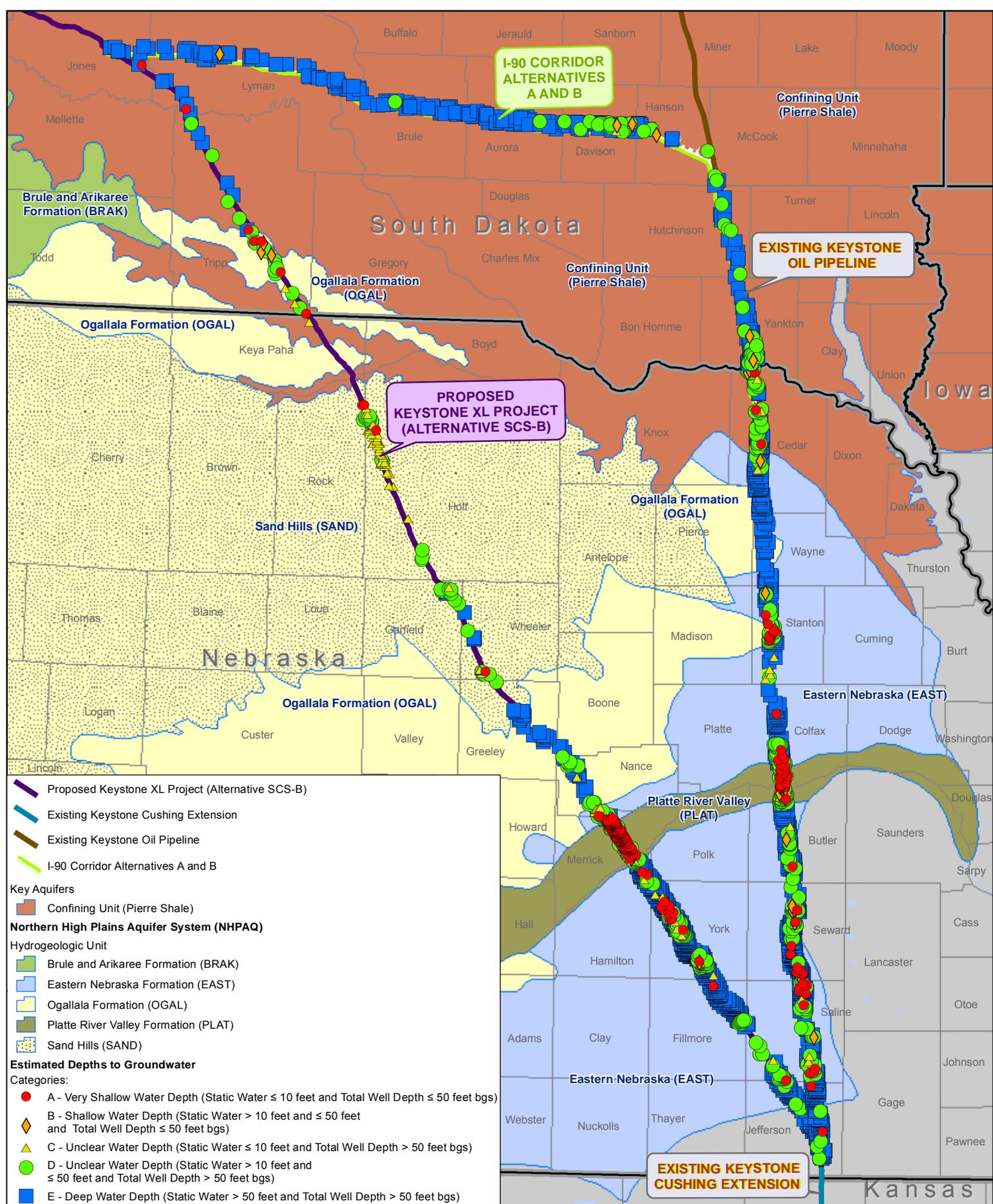
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

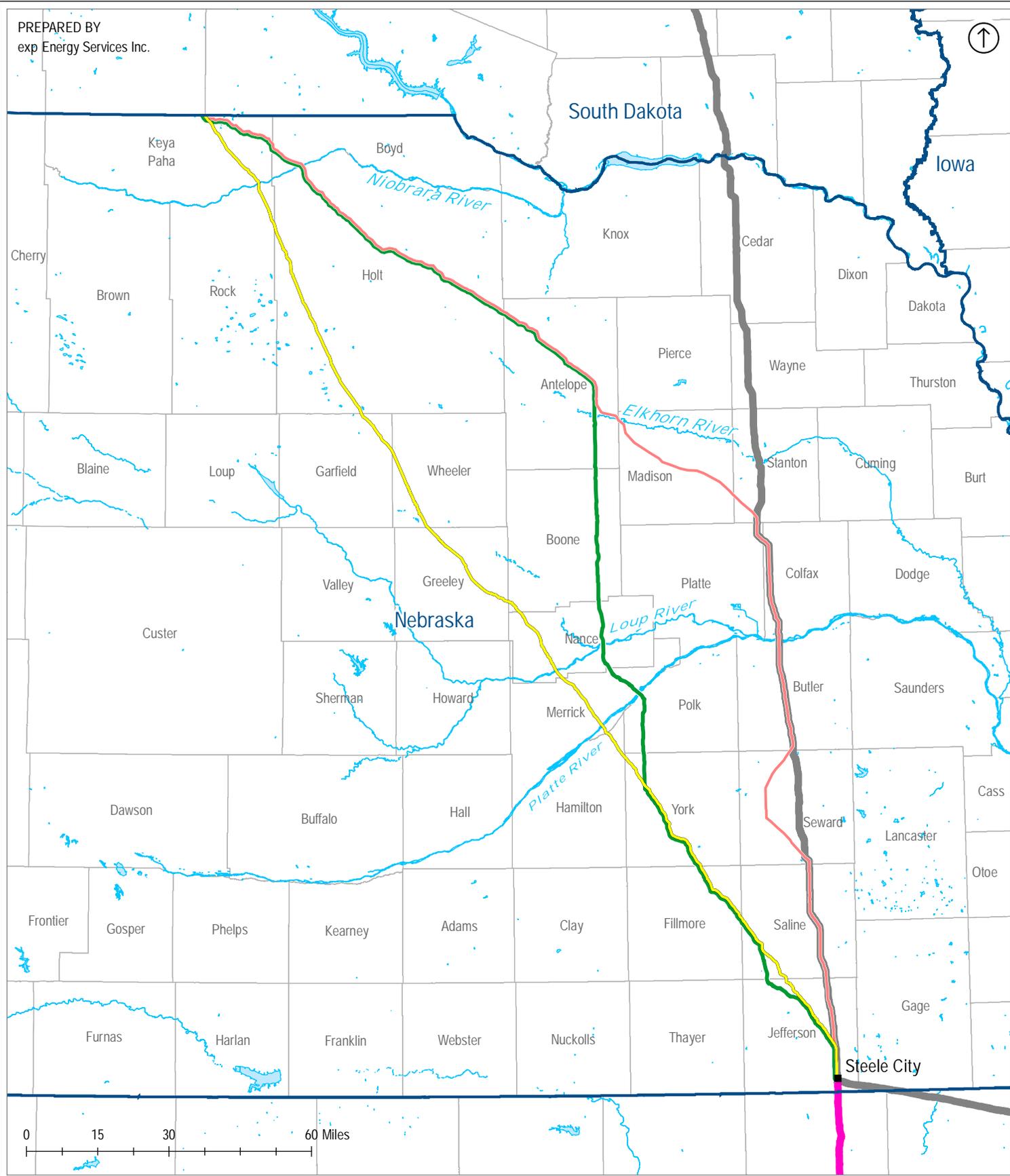
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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
Todd Stelling in
Support of Landowner Intervenors**

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Todd Stelling.

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: Lisa Stelling.

1 **Q: If you have children how many do you have?**

2 A: 3.

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: 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 about 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 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 to 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: Do you have any concerns TransCanada's fitness as an applicant for a major**
20 **crude oil pipeline in its preferred location, or ultimate location across the**
21 **state of Nebraska?**

22 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
23 or even bullied around and being made to feel scared that they did not have any
24 options but to sign whatever papers TransCanada told them they had to. I am
25 aware of folks being threatened that their land would be taken if they didn't follow
26 what TransCanada was saying. I am aware of tactics to get people to sign
27 easements that I don't believe have any place in Nebraska or anywhere such as
28 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
29 landowners and convince them they should sign TransCanada's easement

1 agreements. I am aware of older folks and widows or widowers feeling they had
2 no choice but to sign TransCanada's Easement and they didn't know they could
3 fight or stand up for themselves. From a more practical standpoint, I am worried
4 that according to their answer to our Interrogatory No. 211, TransCanada only
5 owns and operates one (1) major oil pipeline. They simply do not have the
6 experience with this type of pipeline and that scares me. There are others but that
7 is what I can recollect at this time and if I remember more or my recollection is
8 refreshed I will share those with the Commissioners at the Hearing in August.

9 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
10 **landowner is reasonable or just?**

11 A: No, I do not.

12 **Q: Do you have any concern about limitations that the construction of this**
13 **proposed pipeline across your affected land would prevent construction of**
14 **future structures upon the portion of your land affected by the proposed**
15 **easement and immediately surrounding areas?**

16 A: Well yes, of course I do. We would not be able to build many, if any, types of
17 structures directly across or touching the easement, and it would be unwise and I
18 would be uncomfortable to build anything near the easement for fear of being
19 blamed in the future should any damage or difficulty result on my property in
20 regards to the pipeline.

21 **Q: Do you think such a restriction would impact you economically?**

22 A: Well yes, of course.

23 **Q: How do you think such a restriction would impact you economically?**

24 A: The future of this land may not be exactly how it's being used as of this moment,
25 and having the restrictions and limiting my ability to develop my land in certain
26 ways presents a huge negative economic impact on myself, my family, and any
27 potential future owner of the property. You have no idea how I or the future owner
28 may want to use this land in the future or the other land across Nebraska
29 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years

1 ago it would have been hard to imagine all the advances that we have now or how
2 things change. Because the Easement is forever and TransCanada gets the rights in
3 my land forever we have to think with a very long term view. By placing their
4 pipeline on under across and through my land that prevents future development
5 which greatly negatively impacts future taxes and tax revenue that could have
6 been generated by the County and State but now will not. When you look at the
7 short blip of economic activity that the two years of temporary construction efforts
8 may bring, that is far outweighed by the perpetual and forever loss of opportunity
9 and restrictions TransCanada is forcing upon us and Nebraska.

10 **Q: Do you have any concerns about the environmental impact of the proposed**
11 **pipeline?**

12 A: Yes, I do.

13 **Q: What are some of those concerns?**

14 A: As an affected land owner and Nebraskan, I am concerned that any construction,
15 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
16 a detrimental impact upon the environment of my land specifically, as well as the
17 lands near my land and surrounding the proposed pipeline route.

18 **Q: Do you have any other environmental concerns?**

19 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
20 construction and/or maintenance and operation. I am concerned about spills and
21 leaks that TransCanada has had in the past and will have in the future. This could
22 be catastrophic to my operations or others and to my county and the State.

23 **Q: Do you have any thoughts regarding if there would be an impact upon the**
24 **natural resources on or near your property due to the proposed pipeline?**

25 A: Yes, I believe that any construction, operation, and/or maintenance of the
26 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
27 resources of my land, and the lands near and surrounding the proposed pipeline
28 route.

1 **Q: Do you have any worries about potential impacts from the proposed pipeline**
2 **to the soil of your land, or land near you?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
5 land, as well as land along and surrounding the proposed pipeline route. This
6 includes, but is not limited to, the reasons that we discussed above of disturbing
7 the soil composition and makeup as it has naturally existed for thousands and
8 millions of years during the construction process, and any future maintenance or
9 removal process. I'm gravely concerned about the fertility and the loss of
10 economic ability of my property to grow the crops, or grow the grasses, or grow
11 whatever it is at that time they exist on my property or that I may want to grow in
12 the future, or that a future owner may want to grow. The land will never be the
13 same from as it exists now undisturbed to after it is trenched up for the proposed
14 pipeline.

15 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
16 **upon the groundwater over your land, or surrounding lands?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 groundwater of not only under my land, but also near and surrounding the pipeline
20 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
21 simple and it is simply too valuable to our State and the country to put at
22 unreasonable risk.

23 **Q: Do you have any concern about the potential impact of the proposed pipeline**
24 **upon the surface water on, or near or around your land?**

25 A: Yes, I have significant concerns that any construction, operation, and/or
26 maintenance of the proposed Keystone XL Pipeline would have detrimental
27 impact upon the surface water of not only within my property boundary, but along
28 and near and surrounding the pipeline route, and in fact, across the state of
29 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
2 **upon the wildlife and plants, other than your growing crops on or near your**
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the
6 wildlife and the plants, not only that are located on or can be found upon my land,
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed
11 pipeline underneath and across and through my property will negatively affect the
12 fair market value at any point in the future, especially at that point in which I
13 would need to sell the property, or someone in my family would need to sell the
14 property. I do not believe, and certainly would not be willing to pay, the same
15 price for land that had the pipeline located on it, versus land that did not. I hope
16 there is never a point where I'm in a position where I have to sell and have to
17 realize as much value as I can out of my land. But because it is my single largest
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they
20 would've paid and as much as I could've received, if the pipeline were not upon
21 my property. There are just too many risks, unknowns, impacts and uncertainties,
22 not to mention all of the rights you give up by the nature of having the pipeline
23 due to having the easement that we have previously discussed, for any reasonable
24 person to think that the existence of the pipeline would not negatively affect my
25 property's value.

26 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
27 **testimony?**

28 A: Yes, I have.

29 **Q: Where have you seen that before?**

1 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
2 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
3 believe the portion of the alternative route in Nebraska essentially twins or
4 parallels Keystone I.

5 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
6 **Application, and as found on Attachment No. 7, here to your testimony, is in**
7 **the public interest of Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe that the Keystone mainline alternative route as shown on**
10 **Attachment No. 7 included with your testimony here is a major oil pipeline**
11 **route that is in the public interest of Nebraska?**

12 A: No, I do not.

13 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
14 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

15 A: No, I do not.

16 **Q: Do you believe there is any potential route for the proposed Keystone XL**
17 **Pipeline across, within, under, or through the State of Nebraska that is in the**
18 **public interest of the citizens of Nebraska?**

19 A: No, I do not.

20 **Q: Why do you hold that belief?**

21 A: Because there simply is no public interest based on all of the factors that I am
22 aware and that I have read and that I have studied that this Commission is to
23 consider that would establish that a for-profit foreign-owned pipeline that simply
24 crosses Nebraska because we are geographically in the way between where tar
25 sands are in Canada to where it wants to ship it to in Texas could ever be in the
26 public interest of Nebraskans. We derive no benefit from this project. It is not for
27 public use. Nebraska is simply in the way and when all considerations are taken in
28 there is no net benefit of any kind for Nebraska should this project be placed in our

1 state. Even if there was some arguable “benefit” it is not enough to outweigh all
2 the negative impacts and concerns.

3 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
4 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
5 **of Nebraska because it may bring temporary jobs during the construction**
6 **phase to Nebraska?**

7 A: First of all, not all jobs are created equally. Most jobs that are created, whether
8 temporary or on a permanent basis, don’t come with a project that has all the
9 potential and foreseeable negative impacts, many of which we have discussed here
10 and other witnesses throughout the course of this hearing have and will discuss. If
11 I decide to hire and employ someone to help me out in my farming or ranching
12 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
13 to my land or my town or my county or my state. And I’ve hired someone who is
14 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
15 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
16 jobs are not created equal. Additionally, I understand from what I’m familiar with
17 from TransCanada’s own statements that the jobs numbers they originally touted
18 were determined to be a minute fraction of the permanent jobs that had been
19 projected. According to their answer to our Interrogatory No. 191, TransCanada
20 has created only thirty-four (34) jobs within Nebraska working specifically on
21 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
22 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
23 Further, according to their answer to Interrogatory No. 199, TransCanada would
24 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
25 constructed on its Preferred Route or its Mainline Alternative Route.

26 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
27 **because it would cross your land?**

28 A: No, absolutely not. I am opposed to this project because it is not in the public
29 interest, neither within my community nor within our state.

1 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
2 **was to cross someone else's land?**

3 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
4 the fear and anxiety and potential foreseeable risks and negative impacts that this
5 type of a project carrying this type of product brings foisted upon anyone in this
6 state or any other state.

7 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
8 **Pipeline to cross the state of Nebraska?**

9 A: I don't believe there is an intelligent route because as I have stated I don't believe
10 this project anywhere within Nebraska is within the public interest. However, if
11 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
12 had to go somewhere in the state of Nebraska, the only intelligent route I believe
13 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
14 preferred route and the mainline alternative routes are economic liabilities our
15 state cannot risk.

16 **Q: What do you rely upon to make that statement?**

17 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
18 already exists in that area is reason enough as it is not in our best interest or the
19 public interests to have more major oil pipelines crisscrossing our state. Second,
20 they have all the infrastructure already there in terms of relationships with the
21 counties and local officials and first responders along that route. Third, they have
22 already obtained easements from all the landowners 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: Do you have any other concerns you would like to reiterate or can think of at**
2 **this time you would like the Commissioners to understand?**

3 **A:** Yes. The property, which I own, will be affected by the Keystone XL Pipeline that
4 is proposed to cross. I don't want to grant an easement no do I wish to be
5 threatened by a foreign company trying to push eminent domain on me. Our area
6 has the largest fresh water aquifer in the world, mixing oil and water would be
7 damaging to our natural resources for years to come. It's sad that it's come down
8 to me having to rely upon legal counsel to defend what is rightfully mine, land that
9 I have purchased and have paid taxes on for years. The bad easement language
10 allows TransCanada or the next owner to go across an irrigated field with a crop
11 growing and if we disagree on how much damages they caused I have to hire a
12 lawyer to fight it – to try to recover damages for something that should never have
13 happened.

14 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
15 **like the Public Service Commissioners to consider in their review of**
16 **TransCanada's Application?**

17 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
18 document below but other things may come to me or my memory may be
19 refreshed and I will add and address those things at the time of the Hearing in
20 August and address any additional items at that time as is necessary. Additionally,
21 I have not had an adequate amount of time to receive and review all of
22 TransCanada's answers to our discovery and the discovery of others so it was
23 impossible to competently and completely react to that in my testimony here and I
24 reserve the right to also address anything related to discovery that has not yet
25 concluded as of the date I signed this document below. Lastly, certain documents
26 requested have not yet been produced by TransCanada and therefore I may have
27 additional thoughts on those I will also share at the hearing as needed.

1 **Q: What is it that you are requesting the Public Service Commissioners do in**
2 **regards to TransCanada’s application for the proposed Keystone XL Pipeline**
3 **across Nebraska?**

4 A: I am respectfully and humbly requesting that the Commissioners think far beyond
5 a temporary job spike that this project may bring to a few counties and beyond the
6 relatively small amount of taxes this proposed foreign pipeline would possibly
7 generate. And, instead think about the perpetual and forever impacts of this
8 pipeline as it would have on the landowners specifically, first and foremost, but
9 also thereby upon the entire state of Nebraska, and to determine that neither the
10 preferred route nor the Keystone mainline alternative route are in the public
11 interest of the citizens of the state of Nebraska. And if the Commissioners were
12 inclined to modify TransCanada’s proposed routes and were to be inclined to grant
13 an application for a route in Nebraska, that the only potential route that would
14 make any intelligent sense whatsoever would be twinning or near paralleling of
15 the proposed KXL with the existing Keystone I pipeline. It simply does not make
16 sense to add yet another major oil pipeline crisscrossing our state creating new
17 pumping stations, creating new impacts on additional counties and communities
18 and going through all of the court processes with myself and other landowners like
19 me when this applicant already has relationships with the landowners, the towns
20 and the communities along Keystone I, and that Keystone I is firmly outside of the
21 sand hills and a significantly further portion away from the heart of the Ogallala
22 Aquifer than the preferred route or the Keystone mainline alternative route.

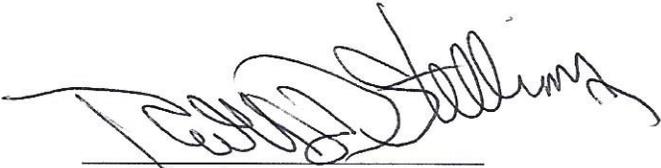
23 **Q: Does Attachment No. 8 here contain other documents you are competent to**
24 **speak about that you wish to be part of your testimony and to discuss in more**
25 **detail as needed at the August 2017 Hearing**

26 A: Yes.

27 **Q: Are all of your statements in your testimony provided above true and**
28 **accurate as of the date you signed this document to the best of your**
29 **knowledge?**

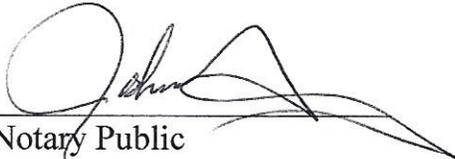
1 A: Yes, they are.

2 **Q: Thank you, I have no further questions at this time and reserve the right to**
3 **ask you additional questions at the August 2017 Hearing.**

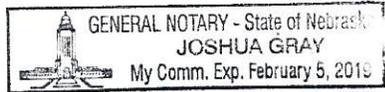


Todd Stelling

Subscribed and Sworn to me before this 30th day of May, 2017.



Notary Public



Attachment No. 1



S.035
T.028 N
R.008 W

S.036
T.028 N
R.008 W

S.002
T.027 N
R.008 W

Lisa J. Stelling
Todd J. Stelling

S.001
T.027 N
R.008 W



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Lisa J. Stelling
Todd J. Stelling

TRACT NO. ML-NE-AT-30120.000
STATE: Nebraska
COUNTY: Antelope
SECTION: 001
TOWNSHIP: 027N
RANGE: 008W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

Attachment No. 2



Family of Todd + Lisa Stelling

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-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**") **Todd J. Stelling and Lisa J. Stelling, husband and wife, as joint tenants**, whose mailing address is 86299 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 159.97 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NW1/4 of Section 1, Township 27 North, Range 8 West of the 6th P.M., as recorded in Book 118, Page 515 and Book 118, Page 453 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):

Todd J. Stelling

Lisa J. Stelling

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Todd J. Stelling**

Notary Public Signature

Affix Seal Here

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Lisa J. Stelling**

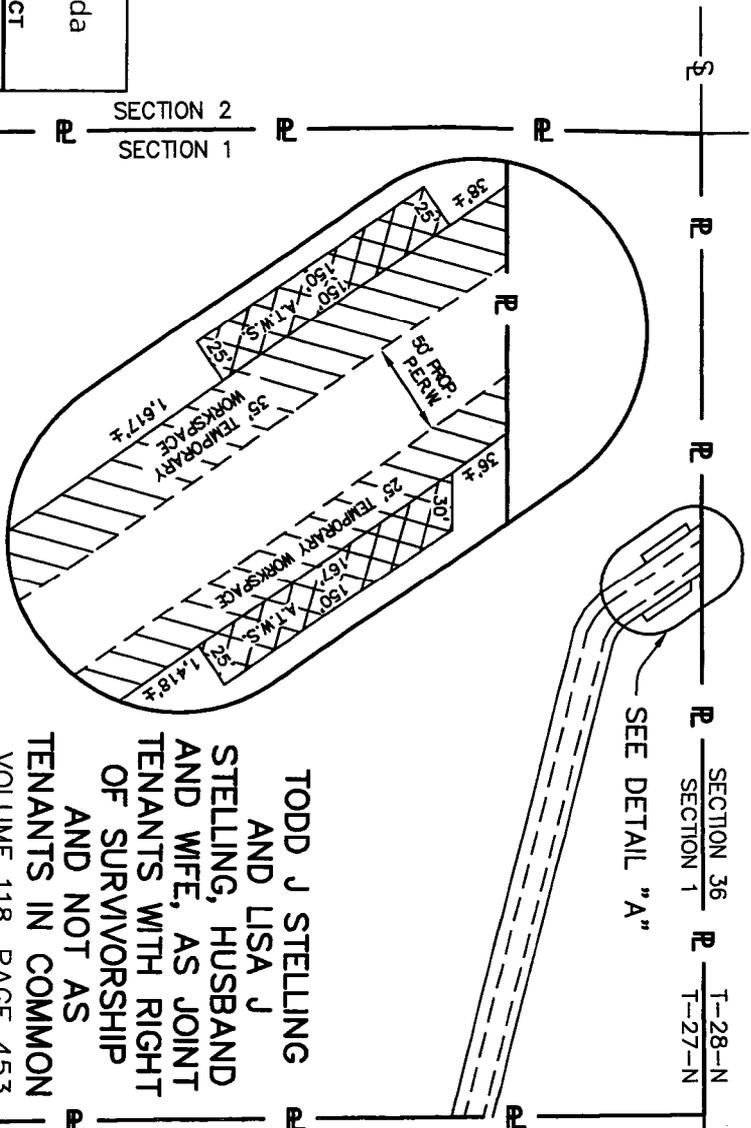
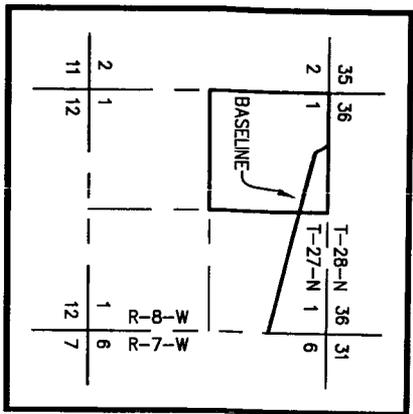
Notary Public Signature

Affix Seal Here

LEGEND
 R - PROPERTY LINE
 S - PROPOSED SECTION LINE
 P - ADDITIONAL TEMPORARY WORKSPACE
 A - PERMANENT EASEMENT & RIGHT OF WAY
 W - DEED RECORDS OF ANTELOPE COUNTY, NEBRASKA

ANTELOPE COUNTY, NEBRASKA

T-27-N, R-8-W, SECTION 1
 ML-NE-AT-30120.000



TODD J STELLING
 AND LISA J
 STELLING, HUSBAND
 AND WIFE, AS JOINT
 TENANTS WITH RIGHT
 OF SURVIVORSHIP
 AND NOT AS
 TENANTS IN COMMON
 VOLUME 118, PAGE 453
 VOLUME 118, PAGE 515
 D.R.A.C.N.

DETAIL "A"
 N.T.S.

TransCanada
In business to deliver.

KEYSTONE XL PROJECT

EASEMENT AREA
 ACROSS THE PROPERTY OF
 TODD J STELLING AND LISA J
 STELLING, HUSBAND AND
 WIFE, AS JOINT TENANTS WITH
 RIGHT OF SURVIVORSHIP AND
 NOT AS TENANTS IN COMMON
 ML-NE-AT-30120.000

PROJECT: XL
 EXHIBIT A

APPROVED BY: [Signature]
 DRAWING NUMBER: XL-08-ML-SK-3400

NO. [] REGION [] 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: 1,688'±
 AREA OF PERMANENT EASEMENT: 2.0 ACRES
 AREA OF TEMPORARY WORKSPACE: 2.4 ACRES
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.2 ACRE

TRACT LEGAL DESCRIPTION:
 NW/4 OF SECTION 1,
 T-27-N, R-8-W



The new identity of Trans

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-30120.000

We, Todd J. Stelling and Lisa J. Stelling, husband and wife, as joint tenants, of Antelope County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Three Thousand Six Hundred Eighty Dollars and No Cents (\$3,680.00), now paid to Grantor by TransCanada Keystone Pipeline, LP (hereinafter "Company"), in full payment and settlement, in advance, for all damages listed on the Advance Damages Computation Form attached hereto as Appendix A. In consideration of said advance payment, Grantor and Grantor's heirs, executors, administrators and assigns, do hereby release and forever discharge Company from any and all causes of action, suits, debts, claims, expenses, general damages, interest, costs and demands whatsoever, at law and in equity, against Company, which Grantor ever had, has now, or which Grantor's insurers, heirs, executors, administrators, successors or assigns hereafter can, shall or may have in the future, relating to all damage items listed on Appendix A, arising out of, in connection with, or resulting or alleged to have resulted from construction or surveying over, under or on the following lands (hereinafter collectively referred to as the "Lands"):

Situated in the County of Antelope, State of Nebraska:

NW/4

Section 1, Township 27N, Range 8W

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, we have hereunto set our hands on this _____ day of _____, 20_____.

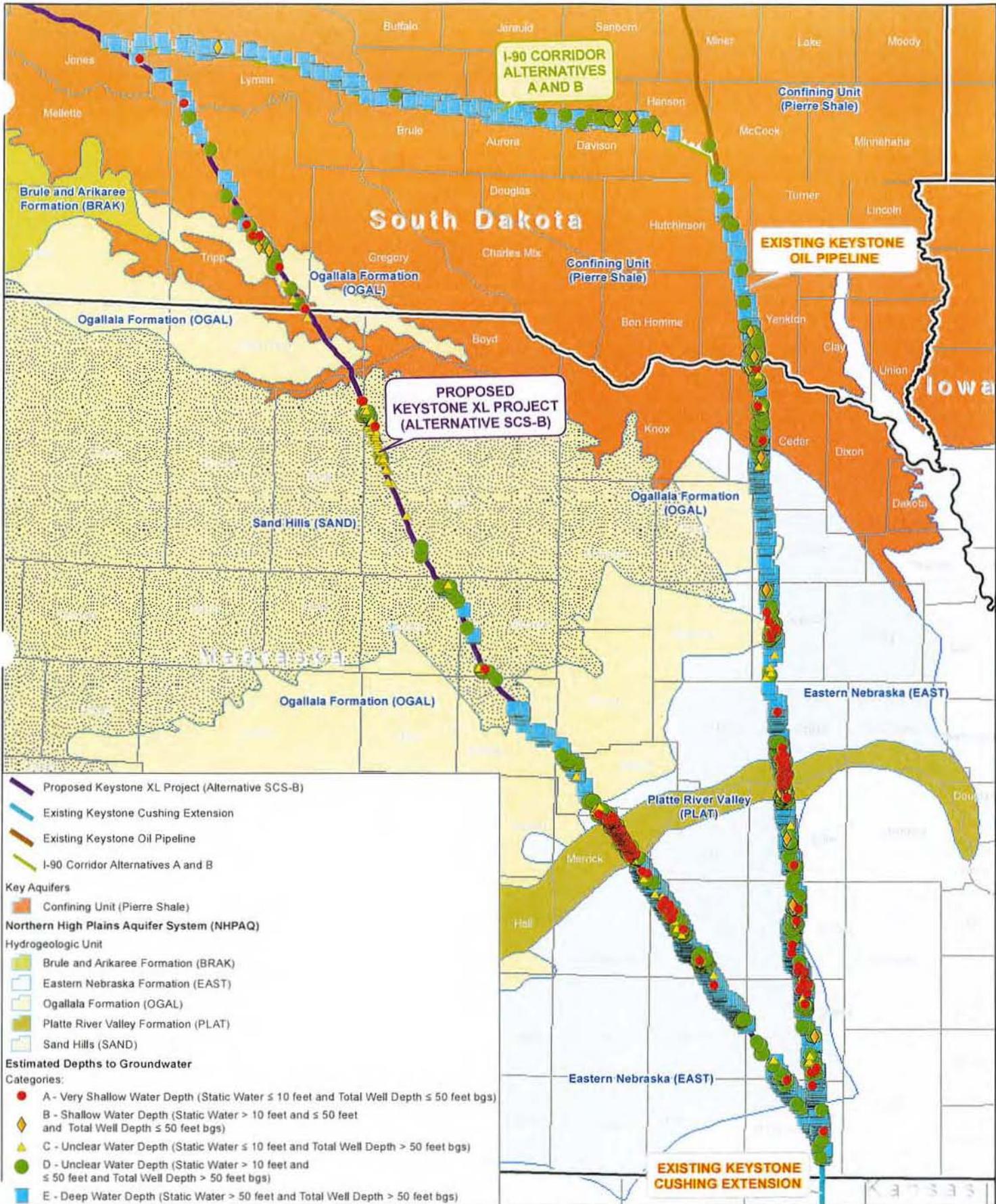
Owner Signature

Owner Signature

Owner/Owner Representative Name

Owner/Owner Representative Name

Attachment No. 6



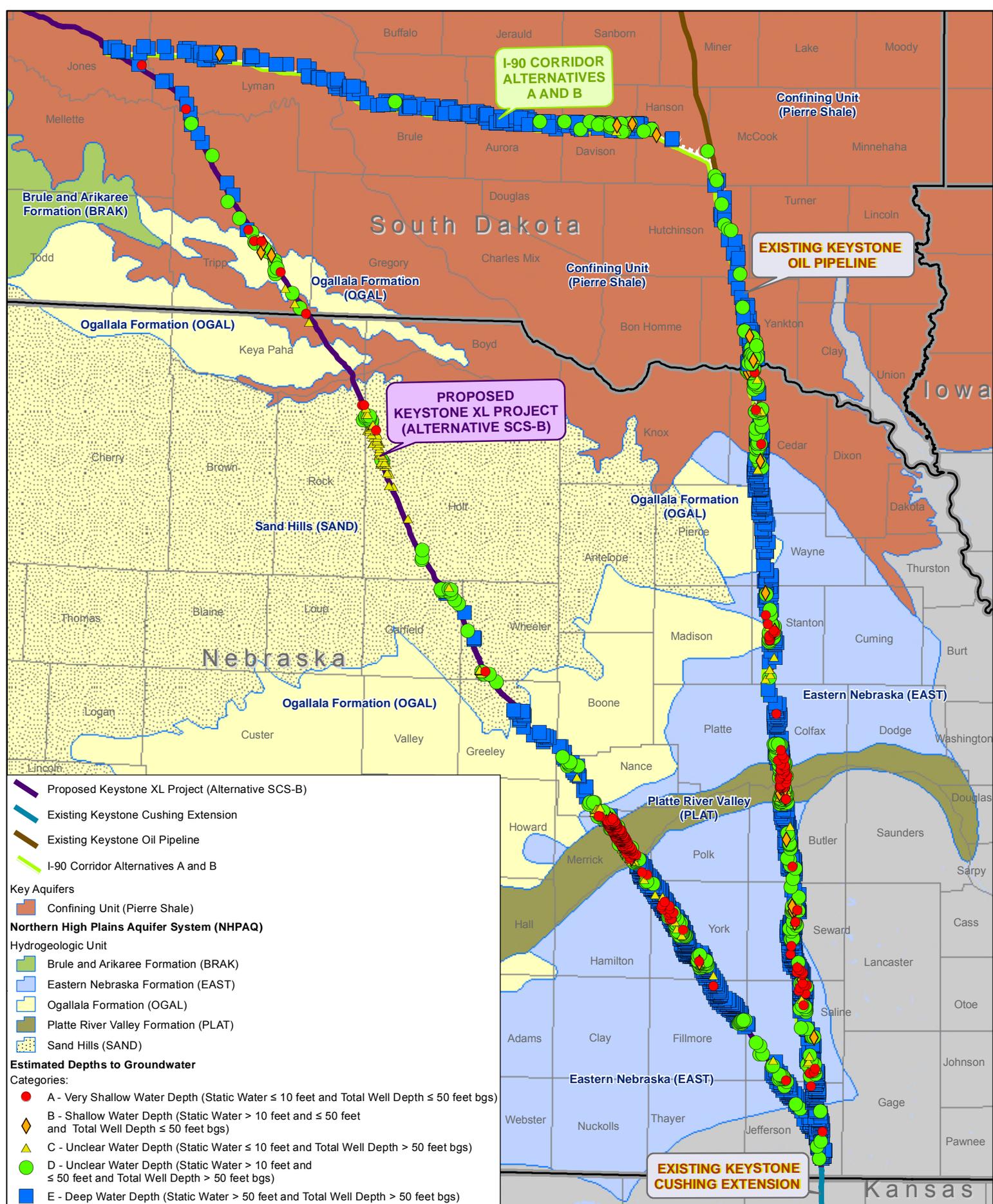
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

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.

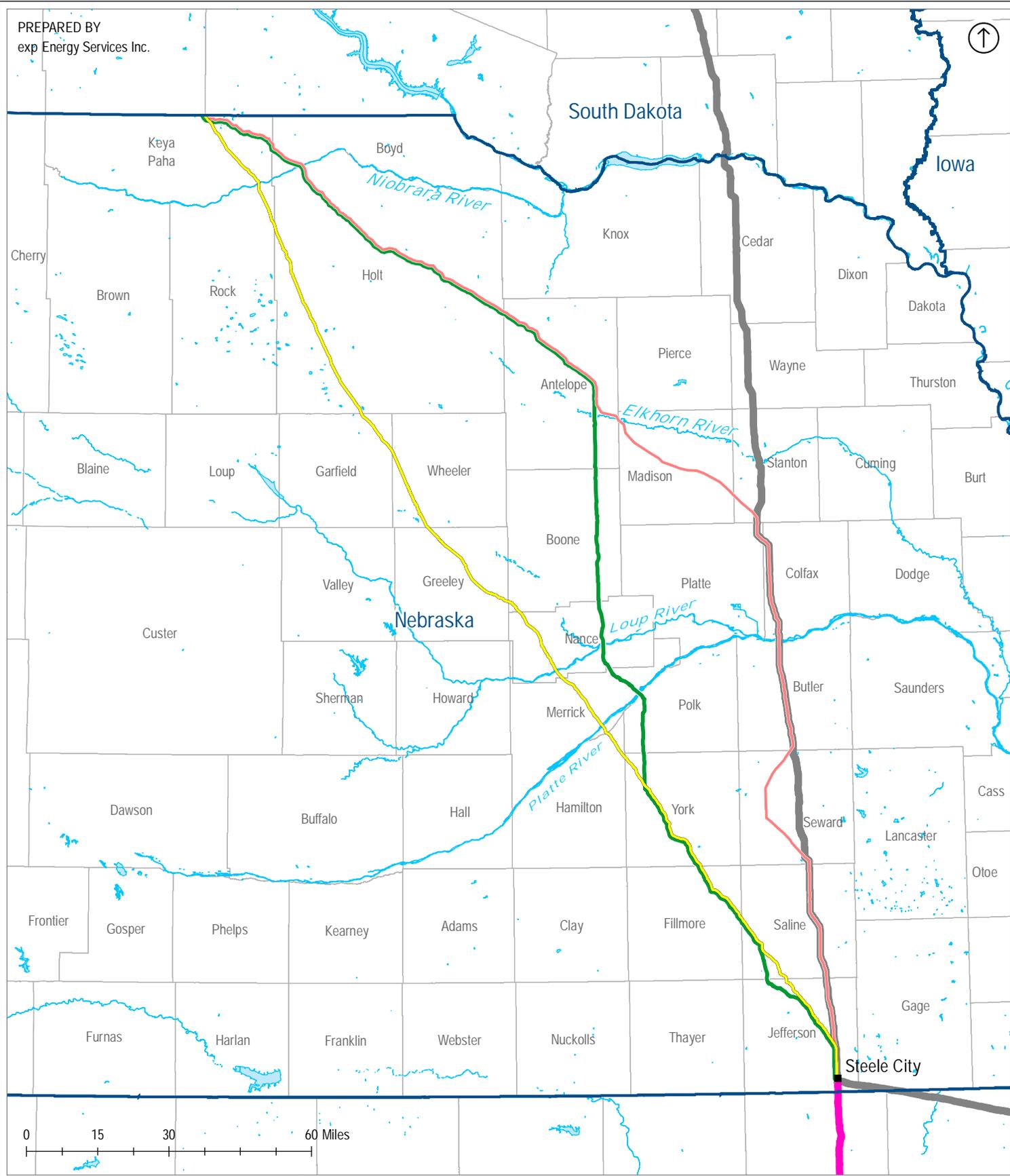
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

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
Byron Terry Steskal in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Byron Terry Steskal.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located at Section 29 – Township 31 – Range 13 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: Please describe your property that would be impacted by the potential**
16 **TransCanada’s Keystone XL Pipeline?**

1 A: Our 480 acres farm land is located on the northeast edge of the Nebraska
2 Sandhills. The farm soil is of highly erodible sandy soil and the Ogallala Aquifer
3 runs beneath our land. The route proposed by TransCanada will cut through our
4 land diagonally 1.2 miles ~ crossing 3 irrigated quarters; affecting 6 wells ~ 2
5 domestic wells; and also crossing the beginning of the north branch of the Eagle
6 Creek.

7 **Q: What do you do for a living?**

8 A: Semi-retired AG based worker also 25 years of irrigation industry.

9 **Q: If you are you married tell us your spouse's name please?**

10 A: Yes, Diana Lynn Steskal.

11 **Q: If you have children how many do you have?**

12 A: Yes ~ two step-children (Sarah/Jake).

13 **Q: If you have grandchildren how many do you have?**

14 A: No.

15 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you
16 and or your family?**

17 A: Yes.

18 **Q: For the land that would be affected and impacted by the proposed KXL tar
19 sands pipeline give the Commissioners a sense how long the land has been in
20 your family and a little history of the land.**

21 **A:** The property that is affected by the preferred pipeline route was purchased by my
22 parents ~ Bill and Alda Steskal in 1942 on the steps of the Holt County Court
23 House in O'Neill NE. They had discussed buying the property when Bill came
24 home one day, told Alda that he had bought the property and it took all of their
25 money, so they had no money for groceries that week. Alda said "Don't worry Bill
26 I have alittle money stashed in the cookie jar." Usually the money in the cookie jar
27 went for coffee, flour, and sugar. At that time Bill and Alda had 4 young girls they
28 raised a large garden, a few hogs, and small herd of cattle. They endured the
29 Blizzard of '49 and World War II purchasing saving bonds in support of the war

1 efforts for their country. On these 480 acres of land, Bill and Alda raised four
2 daughters and one son. They knew how to take care of their livestock and land to
3 be able to provide for their family. Bill knew the importance of the Eagle Creek on
4 his land, a natural watering hole for his cattle. Although Bill (a steward of the
5 land) and Alda (retired teacher) are gone, their ashes are spread upon the
6 homestead property by the two story house which is still standing.

7 **Q: Tell the Commissioners more how important this land is to you.**

8 A: 1st ~ This land is where I was born and raised. 2nd ~ I was taught a strong work
9 ethic as learning to drive a tractor at the young age of 9. 3rd ~ I had chores of
10 milking and feeding the livestock. 4th ~ My step-children learned how to drive a
11 vehicle on this property, also learning the proper handling of firearms and gun
12 safety. 5th ~ At present time I enjoy gardening for stress relief on this property.

13 **Q: Do you earn any income from this land?**

14 A: Yes. We lease it and we make a living on it.

15 **Q: Have you depended on the income from your land to support your livelihood
16 or the livelihood of your family?**

17 A: Yes. We do. We raised our family on this land. The land and our family are
18 connected.

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 do lease and that concerns me. I am concerned that a prospective tenant
22 may try to negotiate a lower price for my land if it had the pipeline on it and all the
23 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: I hope that it will stay in the family for years by passing my interest on to my wife
11 and or my step-daughter Sarah and her family.

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 my easement to

1 be transferred or sold to someone or some company or country or who knows what
2 that I don't know and who we may not want to do business with. This pipeline
3 would be a huge asset for TransCanada and if they can sell to the highest bidder
4 that could have terrible impacts upon all of Nebraska depending upon who may
5 buy it and I don't know of any safeguards in place for us or the State to veto or
6 have any say so in who may own, operate, or be responsible for this pipeline in the
7 future.

8 **Q: Do you think that type of uncertainty and lack of control over a major piece**
9 **of infrastructure crossing our State is in the public interest?**

10 A: No, certainly not, in fact, just the opposite.

11 **Q: What's next?**

12 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
13 really concerns me. Why does the easement and right-of-way have to be perpetual
14 and permanent? That is the question myself and my family want an answer to.
15 Perpetual to me is like forever and that doesn't make sense.

16 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

17 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
18 data proving there is a perpetual supply of tar sands. I am not aware in
19 TransCanada's application where it proves there is a perpetual necessity for this
20 pipeline. My understanding of energy infrastructure like wind towers is they have
21 a decommission plan and actually take the towers down when they become
22 obsolete or no longer needed. Nothing manmade lasts forever. My land however
23 will, and I want my family or future Nebraska families to have that land as
24 undisturbed as possible and it is not in my interest or the public interest of
25 Nebraska to be forced to give up perpetual and permanent rights in the land for
26 this specific kind of pipeline project.

27 **Q: Okay, what is your next concern?**

28 A: The easement language includes all these things TransCanada can do and it says
29 "...abandoning in place..." so they can just leave this pipeline under my ground

1 until the end of time just sitting there while they are not using it, but I am still
2 prevented from doing on my land and using my land what I would like. If I owned
3 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
4 there. It doesn't make sense and it scares me and it is not in my interest or the
5 public interest of Nebraska to allow this.

6 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
7 **right?**

8 A: Yes.

9 **Q: So now on the second page of the Easement what are your concerns?**

10 A: Here the Easement identifies a 24-month deadline to complete construction of the
11 pipeline but has caveats that are undefined and ambiguous. The 24-month period
12 starts to run from the moment "actual pipeline installation activities" begin on
13 Landowners property. It appears that TransCanada would define this phrase as
14 needed. It would be wise to explain what types of TransCanada action constitutes
15 "installation activity" For instance, would the placement and storage of an
16 excavator or other equipment on or near the Easement property be an activity or
17 would earth have to be moved before the activity requirement is triggered. This
18 vague phrase is likely to lead to future disputes and litigation that is not in the best
19 interest of the welfare of Nebraska and would not protect property interests. The
20 24-months can also be extended in the case of "force majeure." My understanding
21 is that force majeure is often used to insulate a party to a contract when events
22 occur that are completely out of their control. In TransCanada's easement this is
23 expanded to include "without limitation...availability of labor and materials."
24 Extending this language to labor and materials is problematic because these are
25 two variables that TransCanada does have some or significant control over and to
26 allow extension of the 24-month period over events not truly out of the control of
27 TransCanada and without further provision for compensation for the Landowner is
28 not conducive to protection of property rights.

29 **Q: Okay, what is your next concern?**

1 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
2 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
3 reasonable costs and expenses” will pay for damages caused but then limits
4 TransCanada’s liability to certain circumstances. There is no definition of
5 “commercially reasonable” and no stated right that the Landowner would get to
6 determine the amounts of cost or expense that is “commercially reasonable.”
7 TransCanada excepts out from their liability any damages that are caused by
8 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
9 Landowner. It is understandable that if the Landowner were to willfully and
10 intentionally cause damages to the pipeline that Landowner should be liable.
11 However, anything short of willful misconduct should be the liability of
12 TransCanada who is subjecting the pipeline on the Landowner and who is making
13 a daily profit from that pipeline. When evaluating the impact on property rights of
14 this provision, you must consider the potentially extremely expensive fight a
15 Landowner would have over this question of whether or not damage was an act of
16 negligence. Putting this kind of potential liability upon the Landowner is
17 incredibly problematic and is detrimental to the protection of property rights. I
18 don’t think this unilateral power which I can’t do anything about as the landowner
19 is in the best economic interest of the land in question or the State of Nebraska for
20 landowners to be treated that way.

21 **Q: Is there any specific event or example you are aware of that makes this**
22 **concern more real for you?**

23 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
24 Nemaha County, Nebraska landowner farmers who accidentally struck two
25 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
26 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
27 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
28 copy of the Federal Court Complaint is here as **Attachment No. 4**
29

1 **Q: What is your next concern with the Easement language?**

2 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
3 they choose unless 1) any Landowner use interferes in any way with
4 TransCanada's exercise of any of its rights within the Easement, or 2)
5 TransCanada decides to take any action on the property it deems necessary to
6 prevent injury, endangerment or interference with anything TransCanada deems
7 necessary to do on the property. Landowner is also forbidden from excavating
8 without prior authorization by TransCanada. So my understanding is that
9 TransCanada will unilaterally determine what Landowner can and can't do based
10 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
11 could also completely deny my request to excavate. Further, TransCanada retains
12 all "privileges necessary or convenient for the full use of the rights" granted to
13 them in the Easement. Again, TransCanada unilaterally can decide to the
14 detriment of the property rights of Landowner what TransCanada believes is
15 necessary or convenient for it. And there is no option for any additional
16 compensation to landowner for any right exercised by TransCanada that leads to
17 the removal of trees or plants or vegetation or buildings or structures or facilities
18 owned by Landowner of any kind. Such undefined and unilateral restrictions and
19 rights without having to compensate Landowner for such further destruction or
20 losses are not conducive to the protection of property rights or economic interest.

21 **Q: What is the next concern you have?**

22 A: The Easement also allows some rights for Landowner but restricts them at the
23 same time and again at the sole and unilateral decision making of TransCanada.
24 TransCanada will determine if the actions of Landowner might in anyway
25 endanger or obstruct or interfere with TransCanada's full use of the Easement or
26 any appurtenances thereon to the pipeline itself or to their access to the Easement
27 or within the Easement and TransCanada retains the right at any time, whether
28 during growing season or not, to travel "within and along Easement Area on foot
29 or in vehicle or machinery..." Further at TransCanada's sole discretion it will

1 retain the rights to prevent any landowner activity that it thinks may “unreasonably
2 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
3 undefined and unilateral restrictions are not conducive to the protection of
4 property rights or economic interest.

5 **Q: What is the next concern you have with the Easement language?**

6 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
7 Landowner’s land any debris of any kind without any input or power of
8 Landowner to demand an alternative method or location of debris disposal. Such
9 unilateral powers would negatively affect Landowners property are not conducive
10 to the protection of property rights or economic interest.

11 **Q: What is the next concern you have with the Easement language?**

12 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
13 “where rock is encountered” mean and why does TransCanada solely get to
14 determine whether or not this phrase is triggered. This phrase could be used to
15 justify installing the pipeline 24 inches beneath the surface. The ability to use this
16 provision to minimal locate the pipeline at a depth of 24 inches could negatively
17 affect Landowners property are not conducive to the protection of property rights.
18 A shallow pipeline is much more likely to become a danger and liability in the
19 future given farming operations and buried irrigation lines and other factors
20 common to the current typical agricultural uses of the land in question impacted
21 by TransCanada’s preferred pipeline route.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are more vague concepts solely at the determination of TransCanada such as
24 “as nearly as practicable” and “pre-construction position” and “extent reasonably
25 possible.” There is nothing here that defines this or provides a mechanism for
26 documenting or memorializing “pre-construction position” so as to minimize
27 costly legal battles or wasted Landowner time attempting to recreate the soil
28 condition on their fields or pasture. Such unilateral powers would negatively affect

1 Landowners property are not conducive to the protection of property rights or
2 economic interest.

3 **Q: What is the next concern you have with the Easement language?**

4 A: TransCanada maintains the unilateral right to abandon the pipeline and all
5 appurtenances thereto in place on, under, across, or through Nebraska land at any
6 time it chooses. There is no provision for Landowner compensation for such
7 abandonment nor any right for the Landowner to demand removal. Such unilateral
8 powers would negatively affect Landowners property are not conducive to the
9 protection of property rights or economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: TransCanada has the power to unilaterally move or modify the location of any
12 Easement area whether permanent or temporary at their sole discretion.
13 Regardless, if Landowner has taken prior steps relative the their property in
14 preparation or planning of TransCanada's taking of the initial easement area(s),
15 the language here does not require TransCanada to compensate the Landowner if
16 they decide to move the easement anywhere on Landowners property. Such
17 unilateral powers would negatively affect Landowners property are not conducive
18 to the protection of property rights or economic interests.

19 **Q: What is the next concern you have with the Easement language?**

20 A: The Easement requires that all of the burdens and restrictions upon Landowner to
21 transfer and be applicable to any future owner of the Land in question without the
22 ability of the future Landowner to modify or negotiation any of the language in
23 question to which it will be held to comply.

24 **Q: What is the next concern you have with the Easement language?**

25 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
26 Easement to any person, company, country, etc. at their sole discretion at anytime
27 to anyone. This also means that any buyer of the easement could do the same to a
28 third buyer and so on forever. There is no change of control or sale provision in
29 place to protect the Landowner or Nebraska or to provide compensation for such

1 change of control or ownership. It is not conducive to the protection of property
2 rights or economic interests to allow unilateral unrestricted sale of the Easement
3 thereby forcing upon the Landowner and our State a new unknown Easement
4 owner.

5 **Q: What is the next concern you have with the Easement language?**

6 A: There are many terms in the Easement that are either confusing or undefined terms
7 that are without context as to whether or not the Landowner would have any say
8 so in determining what these terms mean or if the evaluation is solely in
9 TransCanada's control. Some of these vague undefined terms are as follows:

- 10 i. "pipeline installation activities"
- 11 ii. "availability of labor and materials"
- 12 iii. "commercially reasonable costs and expenses"
- 13 iv. "reasonably anticipated and foreseeable costs and expenses"
- 14 v. "yield loss damages"
- 15 vi. "diminution in the value of the property"
- 16 vii. "substantially same condition"
- 17 viii. "an actual or potential hazard"
- 18 ix. "efficient"
- 19 x. "convenient"
- 20 xi. "endangered"
- 21 xii. "obstructed"
- 22 xiii. "injured"
- 23 xiv. "interfered with"
- 24 xv. "impaired"
- 25 xvi. "suitable crossings"
- 26 xvii. "where rock is encountered"
- 27 xviii. "as nearly as practicable"
- 28 xix. "pre-construction position"
- 29 xx. "pre-construction grade"

1 xxi. “various engineering factors”

2 Each one of these above terms and phrases as read in the context of the Easement
3 could be problematic in many ways. Notably, undefined terms tend to only get
4 definition in further legal proceedings after a dispute arises and the way the
5 Easement is drafted, TransCanada has sole power to determine when and if a
6 particular situation conforms with or triggers rights affected by these terms. For
7 instance, “yield loss damages” should be specifically defined and spelled out
8 exactly how the landowner is to be compensated and in what events on the front
9 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
10 the Landowner is without contractual rights to define these terms or determine
11 when rights related to them trigger and what the affects may be.

12 **Q: Do you have any other concerns about the Easement language that you can**
13 **think of at this time?**

14 A: I reserve the right to discuss any additional concerns that I think of at the time of
15 my live testimony in August.

16 **Q: Based upon what you have shared with the Commission above regarding**
17 **TransCanada’s proposed Easement terms and agreement, do you believe**
18 **those to be reasonable or just, under the circumstances of the pipeline’s**
19 **impact upon you and your land?**

20 A: No, I do not believe those terms to be reasonable or just for the reasons that we
21 discussed previously.

22 **Q: Did TransCanada ever offer you financial compensation for the rights that**
23 **they sought to obtain in your land, and for what they sought to prevent you**
24 **and any future land owner of your property from doing in the future?**

25 A: Yes, we received an offer from them.

26 **Q: As the owner of the land in question and as the person who knows it better**
27 **than anyone else, do you believe that TransCanada offered you just, or fair,**
28 **compensation for all of what they proposed to take from you so that their tar**
29 **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.

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 think this document is fair to sign?**

24 A: No.

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: Our 3 highly erodible irrigated sandy soils and the north branch of the Eagle Creek
9 are of concern. Our renters practice good stewardship of my property by using
10 minimum tillage..

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. TransCanada has not been a good neighbor to us.
25 They have lied to us; used Eminent Domain against us; the surveying crews
26 trespassed onto our posted no trespass land, in which a claim was file with the
27 sheriff's office. TransCanada doesn't have a good reputation as Keystone I had 14
28 leaks in the first year. I believe today that Keystone I is not running to its fullest
29 capacity and if so certainly a new route for a new pipeline for the same products

1 and chemicals is not needed and not in the “public interest”. Even though a new
2 map of the Sandhills boundaries was presented TransCanada and in the FEIS, it
3 doesn’t matter because our highly erodible sandy soil and the two gravel pits
4 across the road from our farm are still located in the Sandhills. Keystone XL tar
5 sands pipeline contain toxic chemicals is not in the best interest of Nebraska as the
6 preferred proposed pipeline route still crosses the Ogallala Aquifer. I am also
7 worried that according to their answer to our Interrogatory No. 211, TransCanada
8 only owns and operates one (1) major oil pipeline. They simply do not have the
9 experience with this type of pipeline and that scares me. There are others but that
10 is what I can recollect at this time and if I remember more or my recollection is
11 refreshed I will share those with the Commissioners at the Hearing in August.

12 **Q: Do you believe TransCanada’s proposed method of compensation to you as a**
13 **landowner is reasonable or just?**

14 A: No, I do not.

15 **Q: Do you have any concern about limitations that the construction of this**
16 **proposed pipeline across your affected land would prevent construction of**
17 **future structures upon the portion of your land affected by the proposed**
18 **easement and immediately surrounding areas?**

19 A: Well yes, of course I do. We would not be able to build many, if any, types of
20 structures directly across or touching the easement, and it would be unwise and I
21 would be uncomfortable to build anything near the easement for fear of being
22 blamed in the future should any damage or difficulty result on my property in
23 regards to the pipeline.

24 **Q: Do you think such a restriction would impact you economically?**

25 A: Well yes, of course.

26 **Q: How do you think such a restriction would impact you economically?**

27 A: The future of this land may not be exactly how it’s being used as of this moment,
28 and having the restrictions and limiting my ability to develop my land in certain
29 ways presents a huge negative economic impact on myself, my family, and any

1 potential future owner of the property. You have no idea how I or the future owner
2 may want to use this land in the future or the other land across Nebraska
3 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
4 ago it would have been hard to imagine all the advances that we have now or how
5 things change. Because the Easement is forever and TransCanada gets the rights in
6 my land forever we have to think with a very long term view. By placing their
7 pipeline on under across and through my land that prevents future development
8 which greatly negatively impacts future taxes and tax revenue that could have
9 been generated by the County and State but now will not. When you look at the
10 short blip of economic activity that the two years of temporary construction efforts
11 may bring, that is far outweighed by the perpetual and forever loss of opportunity
12 and restrictions TransCanada is forcing upon us and Nebraska.

13 **Q: Do you have any concerns about the environmental impact of the proposed**
14 **pipeline?**

15 A: Yes, I do.

16 **Q: What are some of those concerns?**

17 A: As an affected land owner and Nebraskan, I am concerned that any construction,
18 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
19 a detrimental impact upon the environment of my land specifically, as well as the
20 lands near my land and surrounding the proposed pipeline route.

21 **Q: Do you have any other environmental concerns?**

22 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
23 construction and/or maintenance and operation. I am concerned about spills and
24 leaks that TransCanada has had in the past and will have in the future. This could
25 be catastrophic to my operations or others and to my county and the State. With all
26 the spills on Keystone I across the United States, I question TransCanada's
27 integrity. Also their high tech spill detection that doesn't work, as most of the
28 spills have been detected or found by the land owners and/or local citizens.

1 **Q: Do you have any thoughts regarding if there would be an impact upon the**
2 **natural resources on or near your property due to the proposed pipeline?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
5 resources of my land, and the lands near and surrounding the proposed pipeline
6 route.

7 **Q: Do you have any worries about potential impacts from the proposed pipeline**
8 **to the soil of your land, or land near you?**

9 A: Yes, I believe that any construction, operation, and/or maintenance of the
10 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
11 land, as well as land along and surrounding the proposed pipeline route. This
12 includes, but is not limited to, the reasons that we discussed above of disturbing
13 the soil composition and makeup as it has naturally existed for thousands and
14 millions of years during the construction process, and any future maintenance or
15 removal process. I'm gravely concerned about the fertility and the loss of
16 economic ability of my property to grow the crops, or grow the grasses, or grow
17 whatever it is at that time they exist on my property or that I may want to grow in
18 the future, or that a future owner may want to grow. The land will never be the
19 same from as it exists now undisturbed to after it is trenched up for the proposed
20 pipeline.

21 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
22 **upon the groundwater over your land, or surrounding lands?**

23 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
24 the proposed Keystone XL Pipeline would have a detrimental impact upon the
25 groundwater of not only under my land, but also near and surrounding the pipeline
26 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
27 simple and it is simply too valuable to our State and the country to put at
28 unreasonable risk.

1 **Q: Do you have any concern about the potential impact of the proposed pipeline**
2 **upon the surface water on, or near or around your land?**

3 A: Yes, I have significant concerns that any construction, operation, and/or
4 maintenance of the proposed Keystone XL Pipeline would have detrimental
5 impact upon the surface water of not only within my property boundary, but along
6 and near and surrounding the pipeline route, and in fact, across the state of
7 Nebraska.

8 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
9 **upon the wildlife and plants, other than your growing crops on or near your**
10 **land?**

11 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
12 the proposed Keystone XL Pipeline would have a detrimental impact upon the
13 wildlife and the plants, not only that are located on or can be found upon my land,
14 but also near and along the proposed pipeline route.

15 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
16 **fair market value of your land?**

17 A: Yes, I do. I am significantly concerned about how the existence of the proposed
18 pipeline underneath and across and through my property will negatively affect the
19 fair market value at any point in the future, especially at that point in which I
20 would need to sell the property, or someone in my family would need to sell the
21 property. I do not believe, and certainly would not be willing to pay, the same
22 price for land that had the pipeline located on it, versus land that did not. I hope
23 there is never a point where I'm in a position where I have to sell and have to
24 realize as much value as I can out of my land. But because it is my single largest
25 asset, I'm gravely concerned that the existence of the proposed Keystone XL
26 Pipeline upon my land will affect a buyer's willingness to pay as much as they
27 would've paid and as much as I could've received, if the pipeline were not upon
28 my property. There are just too many risks, unknowns, impacts and uncertainties,
29 not to mention all of the rights you give up by the nature of having the pipeline

1 due to having the easement that we have previously discussed, for any reasonable
2 person to think that the existence of the pipeline would not negatively affect my
3 property's value.

4 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
5 **testimony?**

6 A: Yes, I have.

7 **Q: Where have you seen that before?**

8 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
9 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
10 believe the portion of the alternative route in Nebraska essentially twins or
11 parallels Keystone I.

12 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
13 **Application, and as found on Attachment No. 7, here to your testimony, is in**
14 **the public interest of Nebraska?**

15 A: No, I do not.

16 **Q: Do you believe that the Keystone mainline alternative route as shown on**
17 **Attachment No. 7 included with your testimony here is a major oil pipeline**
18 **route that is in the public interest of Nebraska?**

19 A: No, I do not.

20 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
21 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
22 **your testimony, is in the public interest of Nebraska?**

23 A: No, I do not.

24 **Q: Do you believe there is any potential route for the proposed Keystone XL**
25 **Pipeline across, within, under, or through the State of Nebraska that is in the**
26 **public interest of the citizens of Nebraska?**

27 A: No, I do not.

28 **Q: Why do you hold that belief?**

1 A: Because there simply is no public interest based on all of the factors that I am
2 aware and that I have read and that I have studied that this Commission is to
3 consider that would establish that a for-profit foreign-owned pipeline that simply
4 crosses Nebraska because we are geographically in the way between where tar
5 sands are in Canada to where it wants to ship it to in Texas could ever be in the
6 public interest of Nebraskans. We derive no benefit from this project. It is not for
7 public use. Nebraska is simply in the way and when all considerations are taken in
8 there is no net benefit of any kind for Nebraska should this project be placed in our
9 state. Even if there was some arguable “benefit” it is not enough to outweigh all
10 the negative impacts and concerns.

11 **Q: What do you think about the applicant, TransCanada’s argument that its**
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. Both the
19 preferred route and the mainline alternative routes are economic liabilities our
20 state cannot risk.

21 **Q: What do you rely upon to make that statement?**

22 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
23 already exists in that area is reason enough as it is not in our best interest or the
24 public interests to have more major oil pipelines crisscrossing our state.

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: My main concerns with easement terms are as follows: 1. TransCanada using
28 bullying tactics (Eminent Domain) to gain part of our family farm for private gain.
29 2. No Protection for NE landowners from Liability 3. Abandonment of Pipe (pipe

1 removal) 4. Perpetual ownership ~ easement should end when project ends. 5.
2 Land Reclamation ~ TransCanada's famous last words: "How they will leave the
3 land in better shape than they found it." Our 3 highly erodible irrigated sandy soils
4 are also of concern. Our renters practice good stewardship of my property by using
5 minimum tillage. Location of this proposed pipeline on my land will cut my
6 underground water line and electrical wire. I worry about my center pivots getting
7 stuck following any construction which could lead to crop loss and yield loss for
8 years to come. I am very concerned about potential lawsuits from my downstream
9 neighbors should there be any adverse issue with the pipeline that occurs upstream
10 from them near where my land is. I use heavy equipment and I remember reading
11 that I am not supposed to use unusually heavy equipment over the easement – this
12 is a big problem as I farm with large equipment and it keeps getting bigger and
13 heavier year after year.

14 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
15 **like the Public Service Commissioners to consider in their review of**
16 **TransCanada's Application?**

17 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
18 document below but other things may come to me or my memory may be
19 refreshed and I will add and address those things at the time of the Hearing in
20 August and address any additional items at that time as is necessary. Additionally,
21 I have not had an adequate amount of time to receive and review all of
22 TransCanada's answers to our discovery and the discovery of others so it was
23 impossible to competently and completely react to that in my testimony here and I
24 reserve the right to also address anything related to discovery that has not yet
25 concluded as of the date I signed this document below. Lastly, certain documents
26 requested have not yet been produced by TransCanada and therefore I may have
27 additional thoughts on those I will also share at the hearing as needed.

1 **Q: What is it that you are requesting the Public Service Commissioners do in**
2 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
3 **across Nebraska?**

4 A: I am respectfully and humbly requesting that the Commissioners think far beyond
5 a temporary job spike that this project may bring to a few counties and beyond the
6 relatively small amount of taxes this proposed foreign pipeline would possibly
7 generate. And, instead think about the perpetual and forever impacts of this
8 pipeline as it would have on the landowners specifically, first and foremost, but
9 also thereby upon the entire state of Nebraska, and to determine that neither the
10 preferred route nor the Keystone mainline alternative route are in the public
11 interest of the citizens of the state of Nebraska. It simply does not make sense to
12 add yet another major oil pipeline crisscrossing our state.

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.**

Byron Terry Steskal
 Byron Terry Steskal

Subscribed and Sworn to me before this 25th day of May, 2017.

Victoria L Seger
 Notary Public



Attachment No. 1

PREPARED BY
exp Energy Services Inc.



KEYSTONE XL PROPOSED FOOTPRINT ON PROPERTY OWNED BY
Byron Terry Steskal

TRACT NO. ML-NE-HT-30215.000
STATE: Nebraska
COUNTY: Holt
SECTION: 029
TOWNSHIP: 031N
RANGE: 013W

- Proposed Centerline
- Perm. Easement
- Temp. Easement
- Add. Temp. Worksp.
- Property Line
- Section Line

May 2017 - X:\Drawings\55858\KEYSTONE_XL\9000_9999251

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-30215.000

**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**") **Byron Terry Steskal, a single person**, whose mailing address is 707 E. 2nd Street, Stuart, NE 68780 (hereinafter called "**Grantor**") does hereby grant, sell, convey and warrant unto **TransCanada Keystone Pipeline, LP**, a limited partnership having its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, Nebraska 68154, its successors and assigns (hereinafter called "**Grantee**"), a perpetual permanent easement and right-of-way (the "**Easement**") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or

through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "**Easement Area**") located on real property situated in the County of Holt, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 480 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the N1/2 and the SE1/4 of Section 29, Township 31 North, Range 13 West of the 6th P.M., as recorded in Book 178, Page 241 and Book 174, Page 462 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):

Byron Terry Steskal

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By **Byron Terry Steskal, a single person**

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-30215.000

I, Byron Terry Steskal, a single person, of Holt County, in the State of Nebraska, (hereinafter "Grantor") acknowledge receipt of:

Ten Thousand One Hundred Sixty Seven Dollars and Forty Cents (\$10,167.40), 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 & SE/4

Section 29, Township 31, Range 13

Grantor understands and agrees that payment of such consideration is not deemed to be an admission of liability on the part of Company. Grantor agrees to accept said advance payment on behalf of Grantor and Grantor's tenants, if any, and to take full responsibility for compensating any and all of Grantor's tenants for any damage or loss that is owed to said tenants as a result of Company's use of any pipeline easement acquired by Company from Grantor on the Lands. Grantor will indemnify, defend, and hold Company and the Company's officers, agents, and employees harmless from any claim asserted by Grantor's tenants, tenants' successors-in-interest, or tenants' heirs for compensation, restitution, crop loss, consideration, or damage of any kind that Grantor's tenants may be lawfully entitled to as a result of Company's construction or surveying activity within any easement acquired by Company from Grantor on the Lands.

IN WITNESS WHEREOF, I have hereunto set our hands on this _____ day of

_____, 20____.

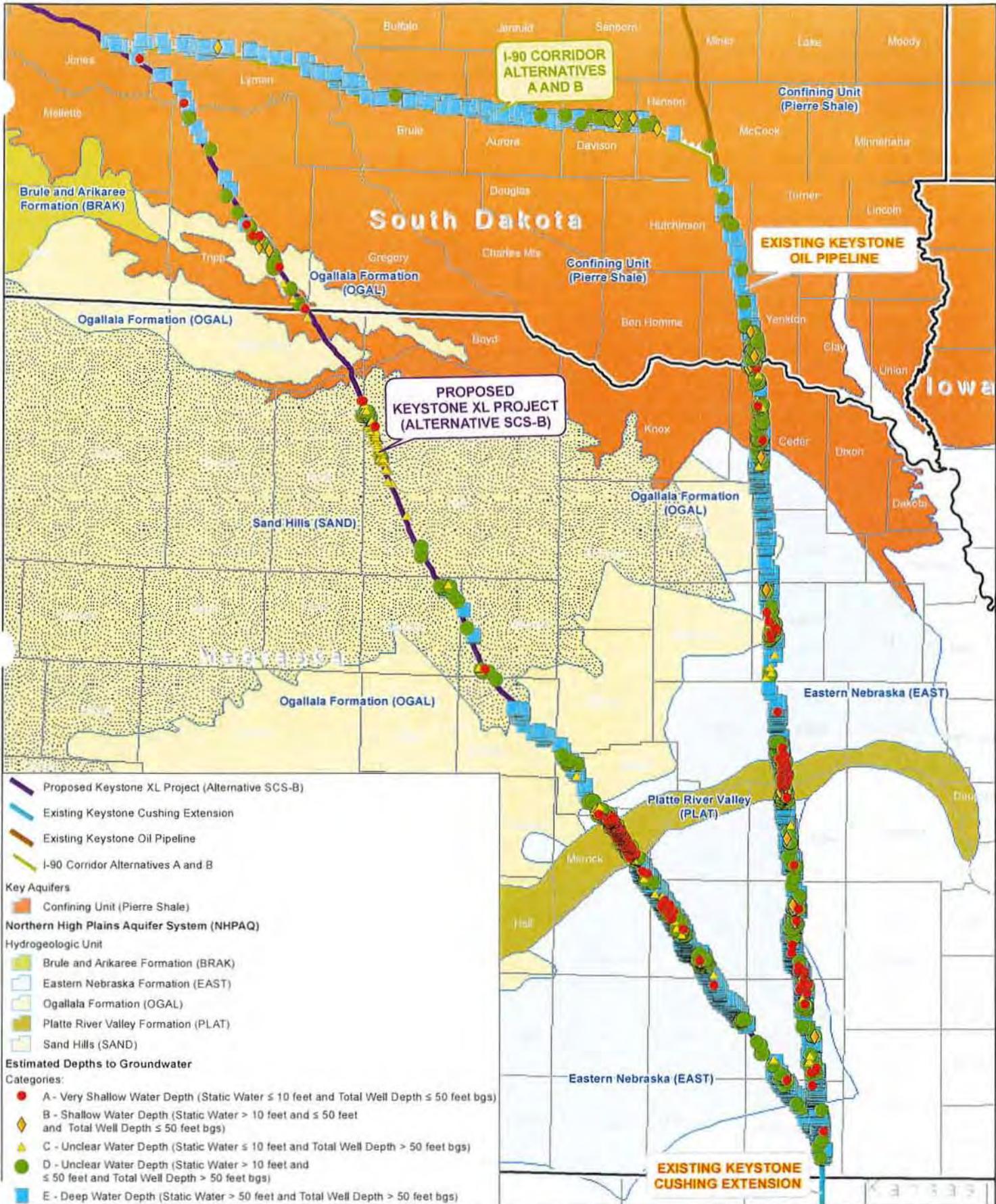
Owner Signature

Owner Signature

Owner/Owner Representative Name

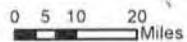
Owner/Owner Representative Name

Attachment No. 6



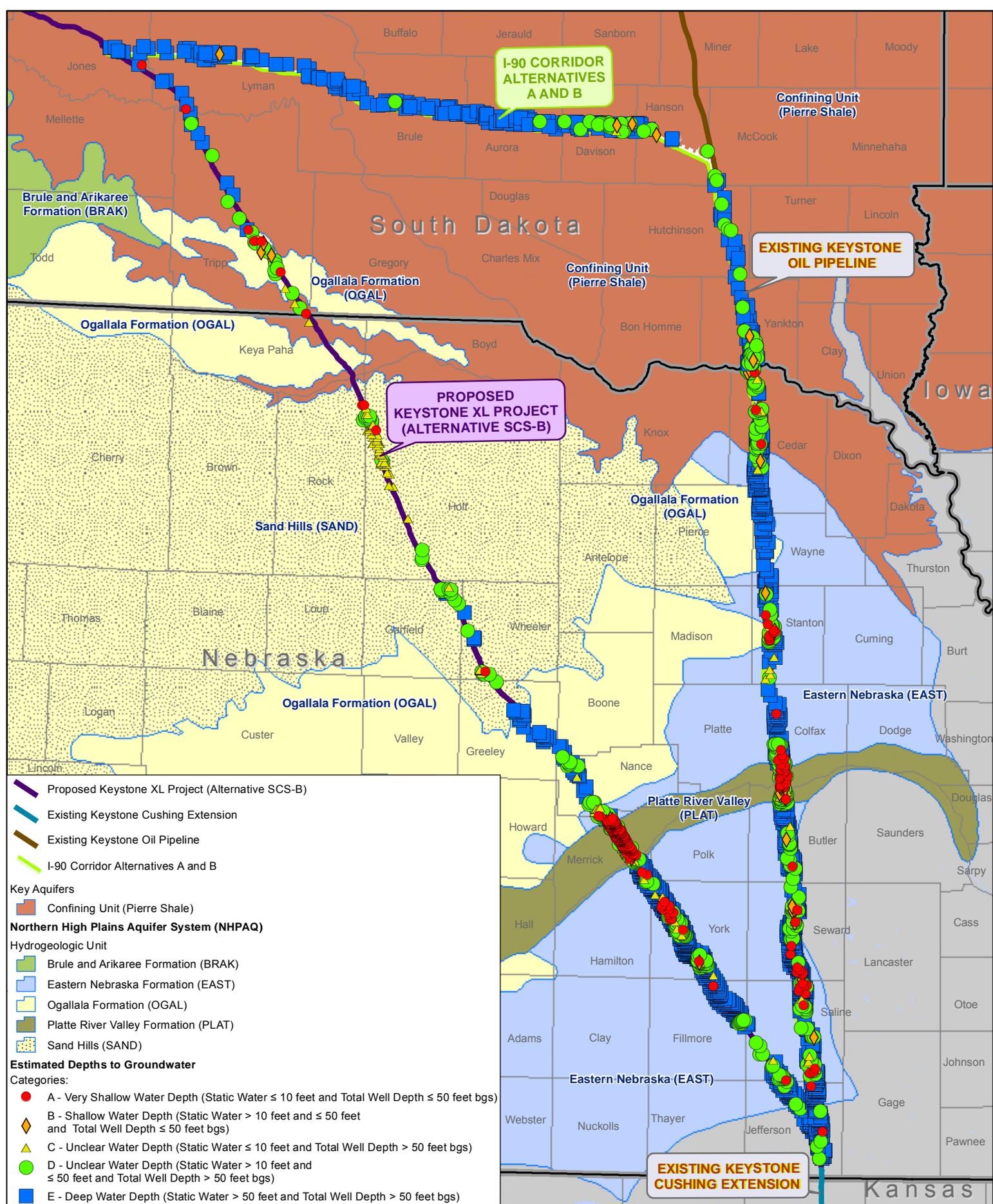
Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.



KEYSTONE XL PROJECT

Figure 4.3.3-8
I-90 Corridor Alternatives A and B
Key Aquifers and Potable Water Wells
within 2-mile Corridor



Data Sources: Basemap - ESRI; Aquifers - National Atlas; NHPAQ - USGS; Water Wells - SD DENR, NEDNR, 2010.

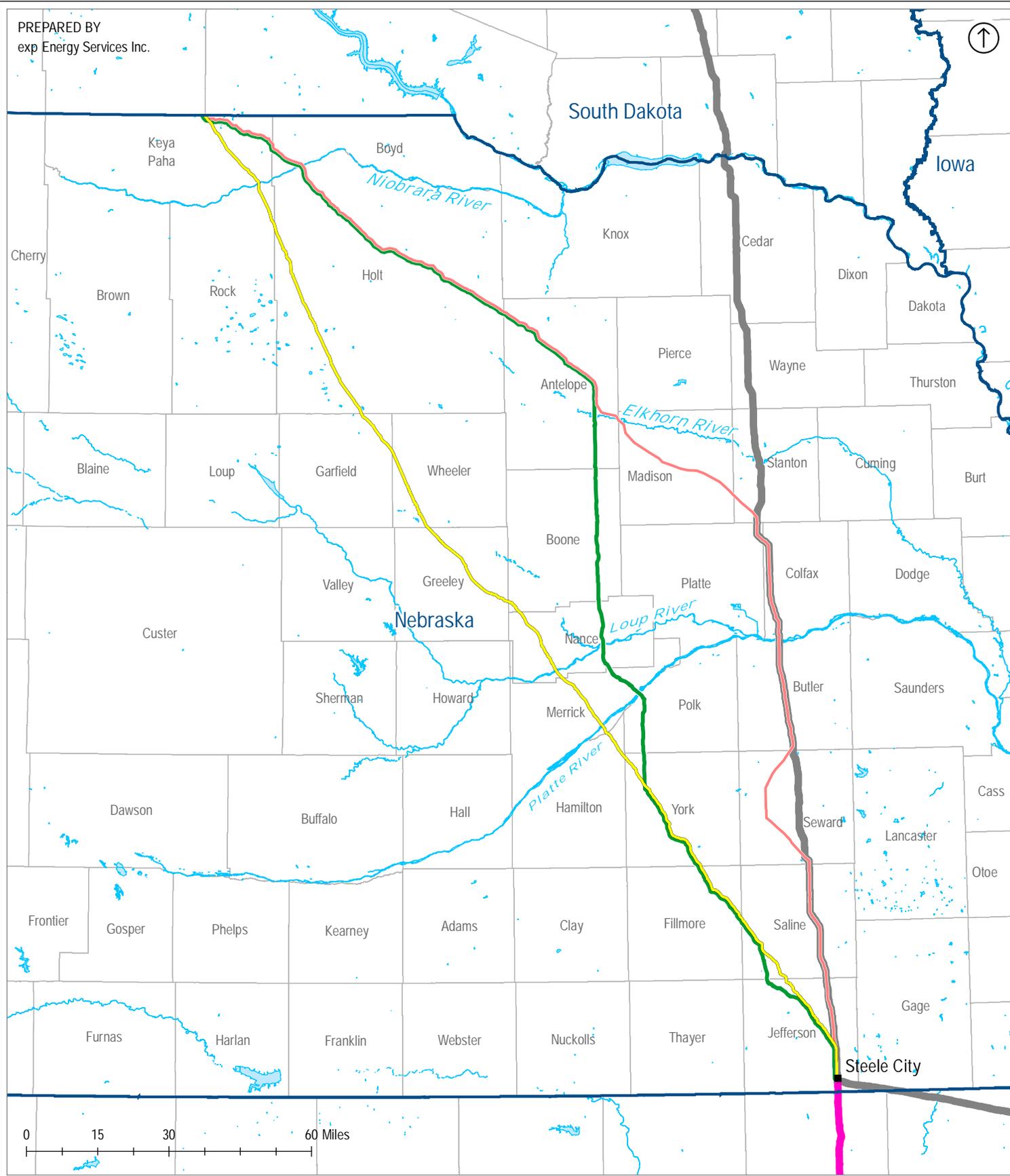
Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate. Deep water depth also includes deep-screened artesian wells.

0 5 10 20 Miles

KEYSTONE XL PROJECT

Figure 4.3.3-8
 I-90 Corridor Alternatives A and B
 Key Aquifers and Potable Water Wells
 within 2-mile Corridor

Attachment No. 7



| LEGEND | |
|--------|---------------------------------------|
| | PREFERRED ROUTE |
| | SANDHILLS ALTERNATIVE ROUTE |
| | KEYSTONE MAINLINE ALTERNATIVE ROUTE |
| | KEYSTONE MAINLINE (PHASE I) |
| | KEYSTONE CUSHING EXTENSION (PHASE II) |
| | WATERBODY |
| | STATE BOUNDARY |
| | COUNTY BOUNDARY |

KEYSTONE XL PROJECT

FIGURE 2.2-2

PREFERRED ROUTE AND TWO ALTERNATIVE ROUTES

Attachment No. 8

Attachment 8.1

NEBRASKA AGRICULTURE FACT CARD

NEBRASKA'S TOP NATIONAL RANKINGS

- 1st Beef and veal exports, 2016 ~ \$1,126,575,000
Commercial Red Meat Production, 2016 ~ 8,009,800,000 lbs.
Great Northern Bean Production, 2016 ~ 746,000 cwt.
All Cattle on feed, Jan. 1, 2017 ~ 2,470,000 head
Popcorn production, 2012 ~ 353,711,118 lbs.
- 2nd All Cattle and Calves, Jan.1, 2017 ~ 6,450,000 head
Pinto Beans Production, 2016 ~ 1,687,000 cwt.
- 3rd Corn for Grain Production, 2016 ~ 1,699,900,000 bushels
Corn Exports, 2015 ~ \$987,200,000
Cash Receipts from all Livestock & Products, 2015 ~\$13,951,023,000
Light Red Kidney Beans Production, 2016 ~ 50,000 cwt.
- 4th All Dry Edible Beans Production, 2016 ~ 2,766,000 cwt.
- 5th Soybean Exports, 2015 ~ 1,395,900,000

NEBRASKA'S AG FACTS:

Cash Receipts from farm marketing contributed over \$23 billion to Nebraska's economy in 2015.

Every Dollar in agricultural exports generates \$1.22 in economic activities such as transportation, financing, warehousing and production. Nebraska's \$6.4 billion in agricultural exports in 2015 translate into \$7.8 billion in additional economic activity.

In 2015, Nebraska ranked second in ethanol production capacity, with 25 operating plants having production capacity of more than 2 billion gallons. Approximately 31% of the state's 2015 corn crop was utilized in ethanol production. Our local ethanol plant (Atkinson NE) employs 43 full time employees; this amount times 25 = over 1000 full time employees.

1 in 4 jobs in Nebraska is related to agriculture.

NEBRASKA'S NATURAL RESOURCES

Nebraska's farms and ranches utilize 45.2 million acres ~ 91% of the state's total land area.

Nebraska is fortunate to have aquifers below it. If poured over the surface of the state, the water in those aquifers would have a depth of 37.9 feet. The state has 96,131 registered, active irrigation wells supplying water to over 8.3 million acres of harvested cropland and pasture. Of the total cropland harvested during 2012, 44% was irrigated.

Attachment 8.2

TODAY

WE STAND TOGETHER
IN SOLIDARITY TO
PROTECT OUR LAND & WATER

Missing

Affidavit

*Amy Schaffer
Malen Heckenlaible*

ONLY THE LAND LIVES FOREVER



The pipeline is NOT an asset on the landowner's balance sheet, it is a liability. The landowner should carry absolutely NO risk concerning pipelines or their abandonment. It is unreasonable to expect a landowner to cover these costs. ~ Unknown~

“We do not inherit Mother Earth from our ancestors. We borrow her from our children.”

~Crazy Horse~

Diana L. Steskal
707 East 2nd Street
Stuart Ne 68780
402-924-3186
prairierose@nntc.net

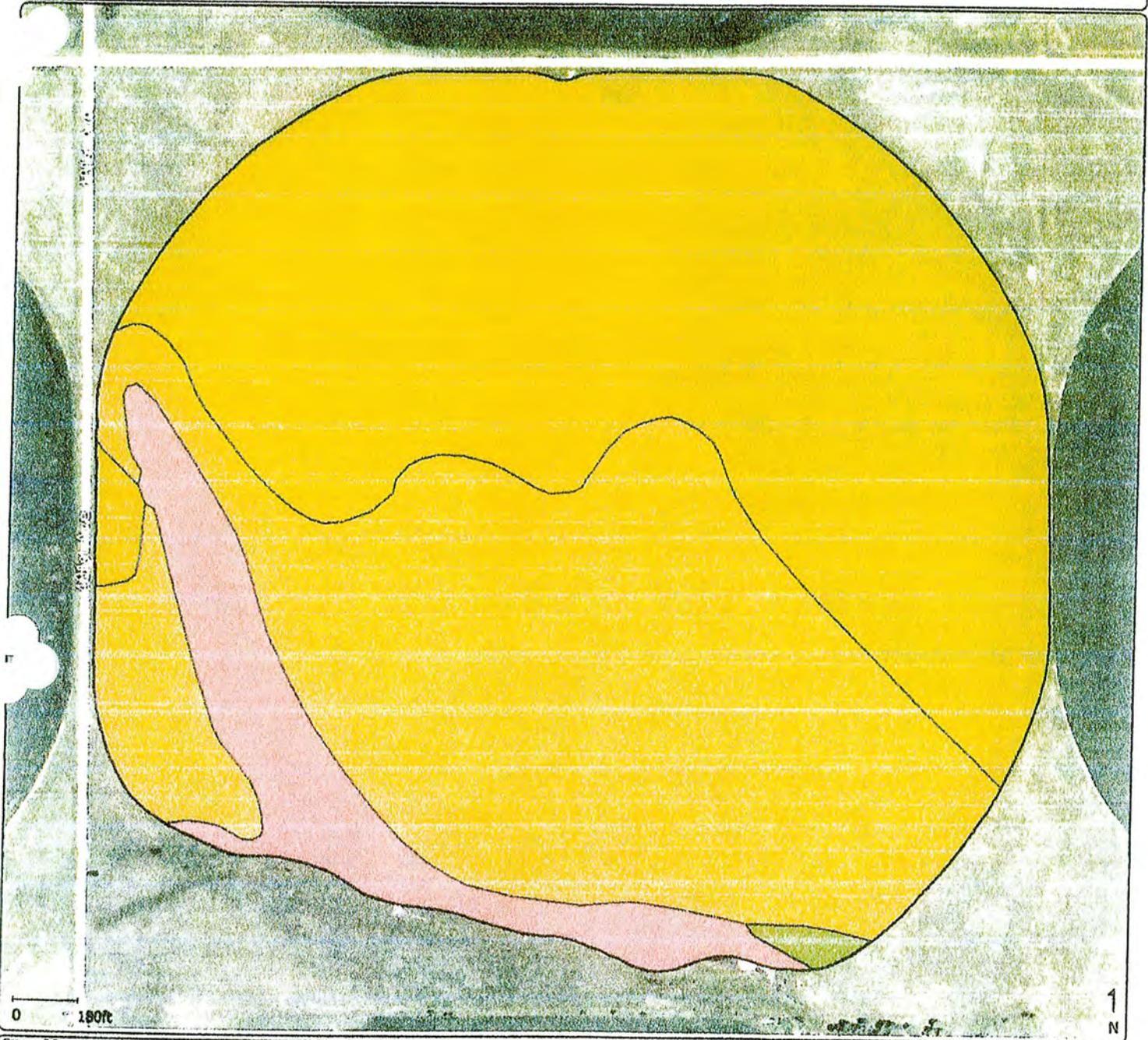
Keystone XL Pipeline
Docket # OP-0003
August 2017

Hello, I am Diana Steskal. I am testifying to you to express my concerns about the proposed preferred Keystone XL pipeline route. I would like to state that I am not an expert farmer or photographer, but I have taken the following pictures in this testimony. The following is my testimony pertaining to the impact of this proposed preferred pipeline route to the natural resources of Nebraska. The impact of this pipeline route to the soils of our property and other affected property soils in Holt County. I will comment and show pictures of TransCanada's poor quality of workmanship in land reclamation and speak of the existing corridor.

We (myself, my husband -Byron Steskal along with our children Sarah (Nebraska High School Teacher) and our late son Jake have been life-long residents of Holt County in Nebraska. As owners of 480 acres (350 farmland & 130 grass/hay) in the north central part of Holt County, our property lies in the line of the proposed preferred pipeline route. Our farm which has been in the family for over 70 years lies within the Sandhills. Our land still shows the evidence from the Dust Bowl years ~ fence lines which had packed sand 2-3 ft. high, but is now grassed over. Even though you cannot visually see the rolling Sandhills on our property, the soil is still sandy and high erodible. The proposed preferred route still currently crosses the Sandhills and the Ogallala Aquifer, which lies underneath our farm. It will cross diagonally over our farm affecting 3 irrigated quarters, wet lands, and some grass lands. The pipeline will come within ½ mile of 6 water wells on our farmland and the North Branch of the Eagle Creek begins on our property. The Ogallala Aquifer is our life line to the state of Nebraska, its citizens and Nebraska's future generations.

Attachment 8.3

Soil Survey Prairie Rose W



Grower : B-Farms Partnership

Farm : Terry Steskal

Field : Prairie Rose W

Operation : Soil Survey

Area : 124.84 ac

Soil Type : O'Neill (124.29 ac) | Dunday (0.552 ac)

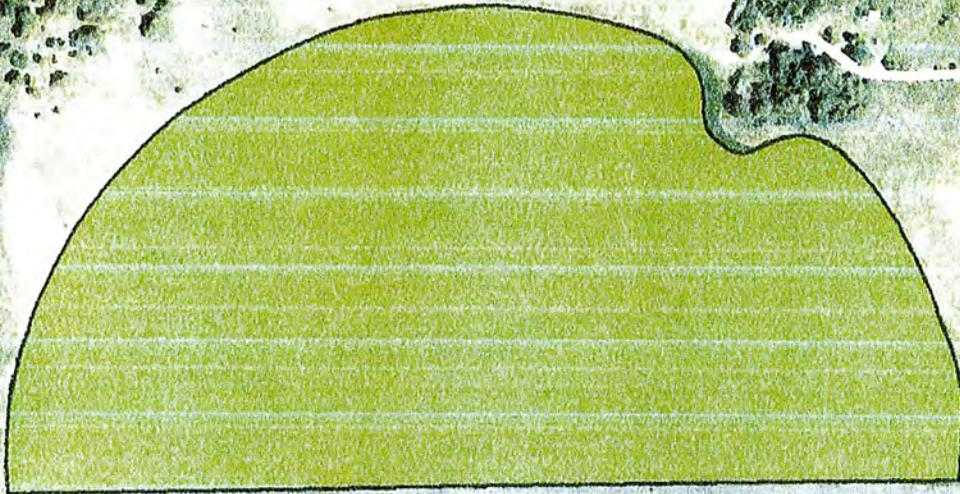
Slope/Grade Range 00% to 05% (63.72 ac) | 02% to 08% (50.22 ac) | 06% to 11% (10.35 ac)

Soil Description

| | | |
|---|---|--------------------|
|  | Dunday loamy sand, 3 to 6 percent slopes | (0.55 ac - 0.4%) |
|  | O'Neill loamy sand, 0 to 2 percent slopes | (63.89 ac - 51.0%) |
|  | O'Neill-Meadin fine sandy loams, 2 to 6 percent slopes | (50.35 ac - 40.2%) |
|  | O'Neill-Meadin fine sandy loams, 6 to 11 percent slopes | (10.38 ac - 8.3%) |

Exhibit " "

Soil Survey Prairie Rose S



1
N

Grower : B-Farms Partnership
 Farm : Terry Steskal
 Field : Prairie Rose S
 Operation : Soil Survey
 Area : 58.94 ac
 Type : O'Neill (58.94 ac)
 Slope Range : 02% to 06% (58.94 ac)

Soil Description
 ■ O'Neill-Meadin fine sandy loams, 2 to 6 percent slopes (59.10 ac - 100.0%)

Attachment 8.4

FARM IRRIGATION SYSTEMS ~ WELLS

#1). Keystone XL Project Affected Pivot Irrigation Map ~ This maps show that during the construction of this proposed preferred route, it would affect all THREE of our irrigation systems. We have 6 irrigation wells and 2 domestic wells that will be affected when this pipeline leaks because of the sandy porous soil.

This project will affected 64 irrigated quarters just in Holt County.

CROPS PRODUCED IN HOLT COUNTY

#1). FSA Office O'Neill NE ~ Crops Planted in Holt Co. 2011 2013 2015

#2). FSA Office O'Neill NE ~ Crops Planted / Harvested in Holt Co. 2016

Nebraska Department of Natural Resources

Data Bank

Database Through: Aug 28 2008

Processed: 8/28/2008 2:48:14 PM

REGISTERED GROUNDWATER WELLS DATA RETRIEVAL

Note:

Information on Public Water Supply Wells is not available through this interface. Contact the Department of Natural Resources (Data Bank) at 402-471-2363 for more information. For explanation on use, status and other well information, please see Legend and Notes below.

Legend and Notes

Criteria : FirstName - byron LastName - steskal

7 Stations met this criteria.

| Registration# Well ID Permit Number Well Log | Use Status | County Name NRD Name Well Location Footage Latitude Longitude | Completion Date Filing Date Decommissioned Date Times Replaced | Acres Irrig Gallons/Min Static Level Pumping Level | Pump Col Dia Pump Depth Well Depth | Owner's Name and Address Owner ID |
|--|---------------|--|---|---|--|---|
| G-129728 161883 Other Info Logs View as PDF | S A | Holt Lower Niobrara 31N 13W 29 SWNE 2380S 2610W Map It | 7/ 22/ 2004 9/13/2004 --- 0 | --- 12 gpm 26 ft 28 ft | 1.25 in 30 ft 43 ft | Byron Terry Steskal Owner ID: 56657 707 East 2nd Street Stuart, NE 68780 |
| G-135347 167223 LN-05037 Other Info Logs View as PDF | I A | Holt Lower Niobrara 31N 13W 29 SENE 1900S 20W Map It | 4/ 19/ 2005 8/24/2005 --- 0 | 130 acres 650 gpm 35 ft 46 ft | 8 in 160 ft 176 ft | Byron Terry Steskal Owner ID: 56657 707 East 2nd Street Stuart, NE 68780 |
| G-136704 170698 LN-0554 Other Info Logs View as PDF | I A | Holt Lower Niobrara 31N 13W 29 SENE Map It 42° 38' 02.80" 098° 51' 24.00" | 9/ 27/ 2005 10/5/2005 --- 0 | 130 acres 250 gpm 36 ft 100 ft | 4 in 100 ft 125 ft | Byron Terry Steskal Owner ID: 56657 707 East 2nd Street Stuart, NE 68780 |
| G-106973 126966 LN-00009 Other Info Logs View as PDF | I A | Holt Lower Niobrara 31N 13W 29 NENW 650S 1340E Map It | 8/ 9/ 2000 9/6/2000 --- 0 | 5 acres 200 gpm 26 ft 40 ft | 3 in 47 ft 60 ft | Byron Terry Steskal Owner ID: 56657 707 East 2nd Street Stuart, NE 68780 |
| G-136155 164577 LN-04072 Other Info Logs View as PDF | I I | Holt Lower Niobrara 31N 13W 29 NWNW 1300S 1300E Map It | 2/ 23/ 2005 9/22/2005 --- 0 | 130 acres --- 37 ft 37 ft | --- --- 182 ft | Byron Terry Steskal Owner ID: 56657 707 East 2nd Street Stuart, NE 68780 |
| G-136154 166278 LN-05024 Other Info Logs View as PDF | I A | Holt Lower Niobrara 31N 13W 29 NWNW 30S 1300E Map It | 3/ 9/ 2005 9/22/2005 --- 0 | 128 acres 900 gpm 41 ft 80 ft | 8 in 140 ft 150 ft | Byron Terry Steskal Owner ID: 56657 707 East 2nd Street Stuart, NE 68780 |

Handwritten notes:
- K
- low flow
- 1/24

| | | | | | | |
|---------------------------------|----------|----------------------------------|--------------------|-----------------|-------------|----------------------------|
| G-136156 | I | Holt | 2/ 26/ 2005 | 51 acres | 8 in | Byron Terry Steskal |
| 164576 | A | Lower Niobrara | 9/22/2005 | 800 gpm | 100 ft | Owner ID: 56657 |
| LN-04071 | | 31N 13W 29 SESE | --- | 38 ft | 121 ft | 707 East 2nd Street |
| Other Info Logs | | 20N 1300W Map It | 0 | 117 ft | | Stuart, NE 68780 |
| View as PDF | | | | | | |

- [Data copy of requested wells as Bar\(\) delimited file.](#)
- [Data copy of Geo Logs for requested wells as Bar\(\) delimited file.](#)
- [Data copy of Casing Screen for requested wells as Bar\(\) delimited file.](#)
- [Data copy of Grout Gravel for requested wells as Bar\(\) delimited file.](#)
- [Legend and Notes](#)

Attachment 8.5

Soils Inventory Report

BYRON T STESKAL

| Tract | Land Unit | Map Unit Symbol | Map Unit Name | Acres | Percent |
|-------|-----------|-----------------|--|-------|---------|
| 722 | | 3270 | O'Neill-Meadin fine sandy loams, 11 to 30 percent slopes | 2.3 | 9% |
| 722 | | 3271 | O'Neill-Meadin fine sandy loams, 2 to 6 percent slopes | 6.6 | 26% |
| 722 | | 3266 | O'Neill loamy sand, 0 to 2 percent slopes | 16.7 | 65% |
| | | | Total: | 25.6 | 100% |
| 722 | 1 | 4499 | Dunday loamy sand, 3 to 6 percent slopes | 0.7 | 0% |
| 722 | 1 | 3270 | O'Neill-Meadin fine sandy loams, 11 to 30 percent slopes | 10 | 4% |
| 722 | 1 | 3273 | O'Neill-Meadin fine sandy loams, 6 to 11 percent slopes | 17.8 | 7% |
| 722 | 1 | 3266 | O'Neill loamy sand, 0 to 2 percent slopes | 92.4 | 35% |
| 722 | 1 | 3271 | O'Neill-Meadin fine sandy loams, 2 to 6 percent slopes | 139.5 | 54% |
| | | | Total: | 260.4 | 100% |
| 722 | 2 | 3271 | O'Neill-Meadin fine sandy loams, 2 to 6 percent slopes | 61 | 100% |
| | | | Total: | 61 | 100% |
| 722 | 4 | 3270 | O'Neill-Meadin fine sandy loams, 11 to 30 percent slopes | 1 | 1% |
| 722 | 4 | 3266 | O'Neill loamy sand, 0 to 2 percent slopes | 1.2 | 1% |
| 722 | 4 | 6314 | Barney silt loam, channeled, frequently flooded | 3.8 | 3% |
| 722 | 4 | 8425 | Boel-Inavale complex, channeled, frequently flooded | 4 | 3% |
| 722 | 4 | 3273 | O'Neill-Meadin fine sandy loams, 6 to 11 percent slopes | 25.8 | 21% |
| 722 | 4 | 4499 | Dunday loamy sand, 3 to 6 percent slopes | 26.7 | 21% |
| 722 | 4 | 3271 | O'Neill-Meadin fine sandy loams, 2 to 6 percent slopes | 62 | 50% |
| | | | Total: | 124.5 | 100% |
| | | | Total: | 471.5 | 100% |

NATURAL RESOURCES CONSERVATION SERVICE ~ Neligh Nebraska

#1). This report on 07/30/2013 states the amount of high erodible land and wetlands on our property 29-31-13.

#2). Soil Inventory Report and Map ~ Agency: USDA – NRCS 07/30/2013

Key Legends: 3266 ~ 3271 ~ 4499 ~ 3273 ~ 3271

a). 3266 – O’Neill ~ Loamy sand

b). 3271 – O’Neill-Meadin ~ Fine sandy loam

c). 3273 – O’Neill-Meadin ~ Fine sandy loam

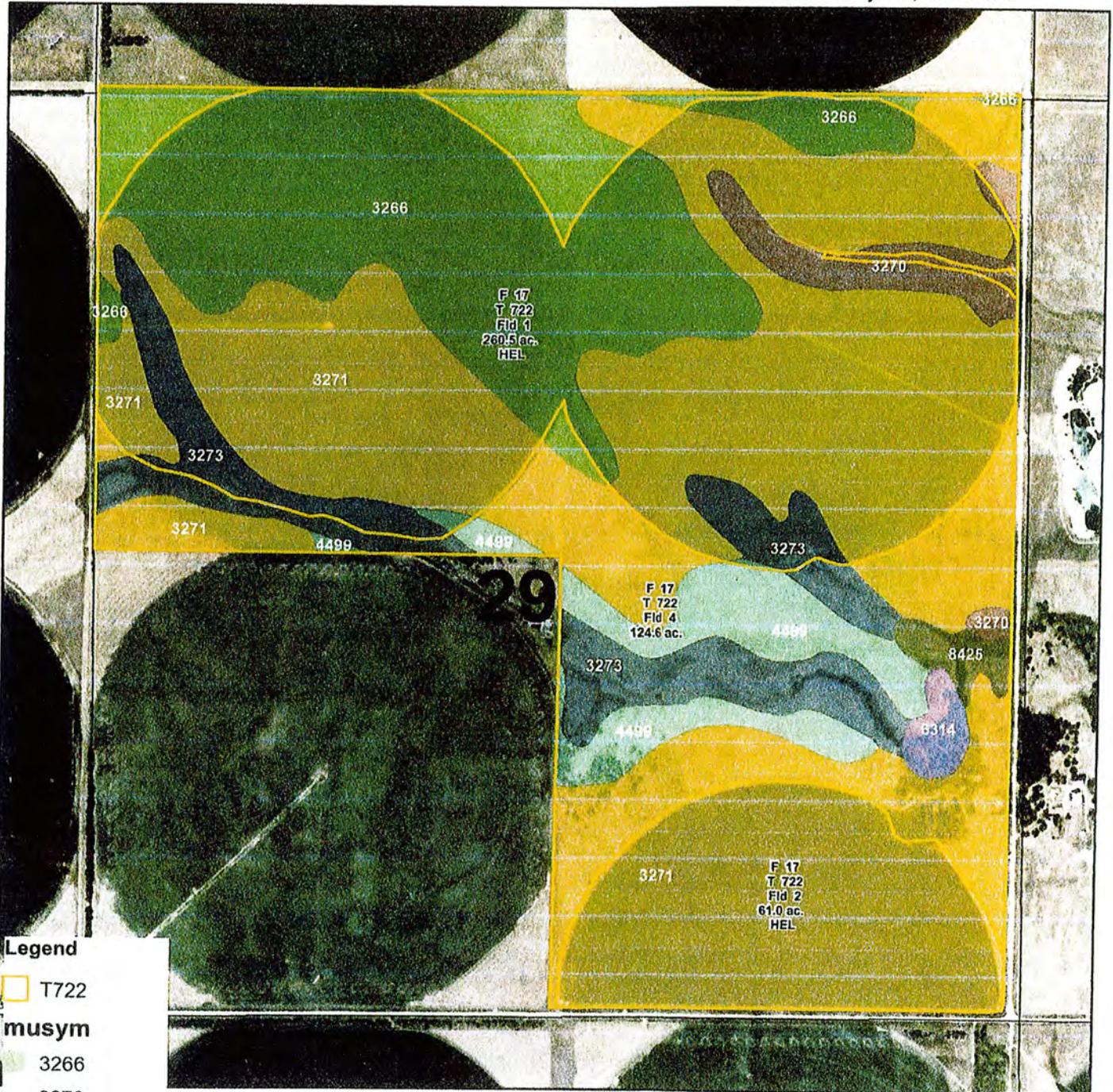
d). 4499 – Dunday ~ Loamy sand

Soils Map

Date: 7/30/2013

Customer(s): BYRON T STESKAL
District: UPPER ELKHORN NRD
Legal Description: E1/2 & NW1/4 Sec. 29-31-13

Field Office: NELIGH FIELD OFFICE
Agency: USDA - NRCS
Assisted By: JESSE HAEN
State and County: NE, ANTELOPE



Legend

T722

musym

3266

3270

3271

3273

4499

6314

8425

plss_a_ne089

FARM 17
TRACT 722
E1/2 & NW1/4 SECTION 29-31-13
BYRON T STESKAL (OO)

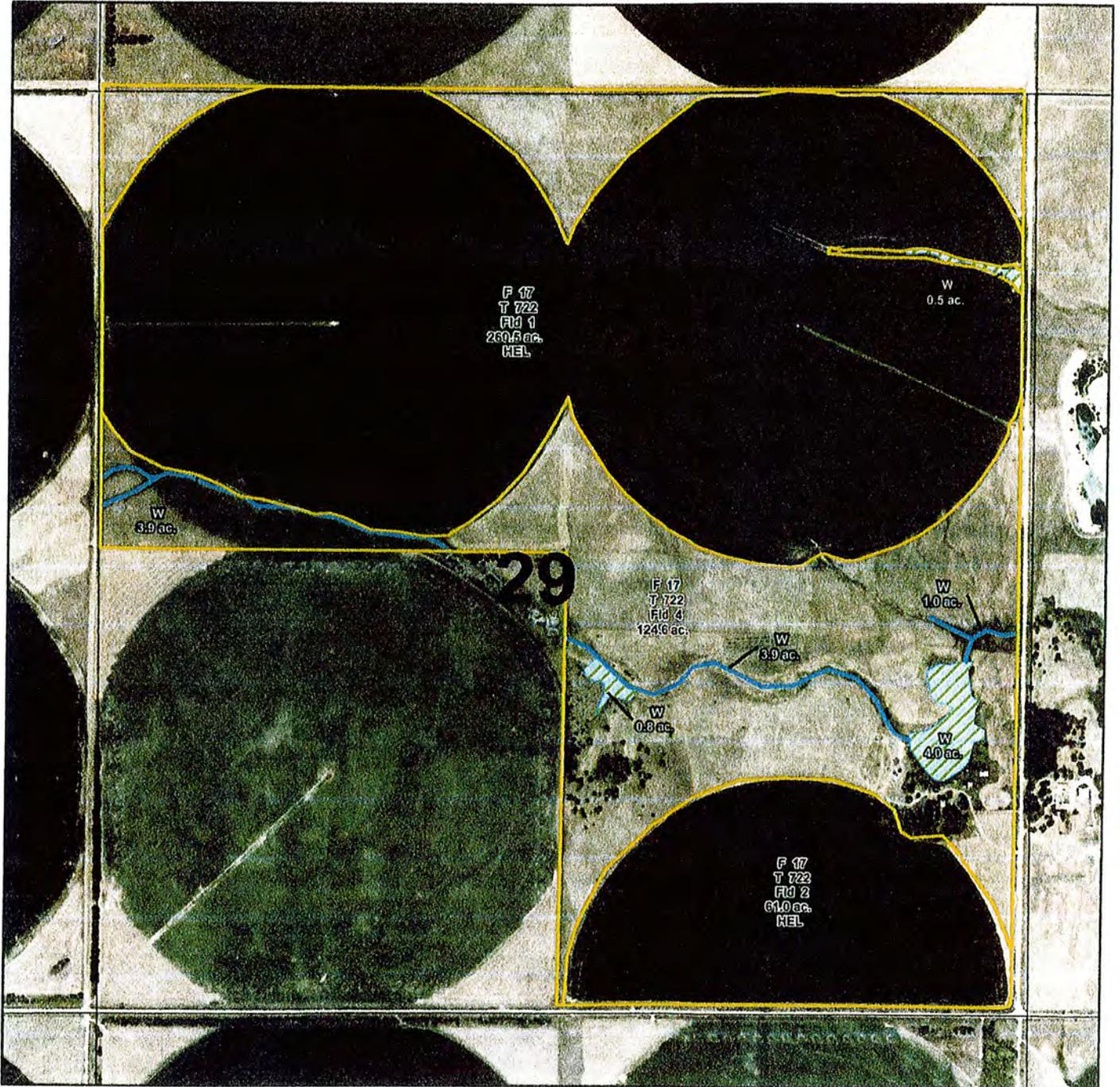


Determination Map

Date: 7/30/2013

Customer(s): BYRON T STESKAL
District: UPPER ELKHORN NRD
Legal Description: E1/2 & NW1/4 Sec. 29-31-13

Field Office: NELIGH FIELD OFFICE
Agency: USDA - NRCS
Assisted By: JESSE HAEN
State and County: NE, ANTELOPE



Legend

-  T722
-  Wetland_Lines
-  Wetlands
-  plss_a_ne089



FARM 17
TRACT 722
E1/2 & NW1/4 SECTION 29-31-13
BYRON T STESKAL (OO)



SOIL MAPS ~ SOIL SURVEY OF HOLT COUNTY

#1). TransCanada's map of the proposed preferred route through our 3 irrigated quarters.

#2). Soil Map showing where our property is located and the types of soil on the land. We own 3 of the 4 quarters in the section ~ (NW, NE, and SE). The proposed preferred pipeline route goes diagonally all three of the quarter.

Soil Legend ~ Key #6 O'Neill-Meadin-Jansen association ~ Gently sloping to steep, excessively drained and well drained; loamy soils that are moderately deep and shallow over SAND and GRAVEL on uplands.

Located to the east of our property across the road, lies 2 decommissioned gravel pits. (Shown on TC's map exhibit #1)

#3). TransCanada's map Soil Association ~ Mile Post Markers

a). Key #3 ~ Elsmere lpage Loup Association ~ Deep-nearly level and very gently sloping, moderately well drained to very poorly drained, sandy and loamy soils, on bottom lands, on stream terraces and in sandhill valleys.

b). Key #6 ~ O'Neill-Meadin-Jansen Association ~ Gently sloping to steep excessively drained and well drained loamy soils that are moderately deep and shallow over sand and gravel on uplands.

c). Key #8 ~ Labu-Sanarc-Valentine Association ~ Deep to shallow, moderately steep to very steep excessively drained and well drained, clayey and sandy soils on uplands.

d). Key #9 ~ Dunday Pivot Dunn Association ~ Deep nearly level to gently sloping, somewhat excessively drained and moderately well drained sandy soils on tablelands and stream terraces.

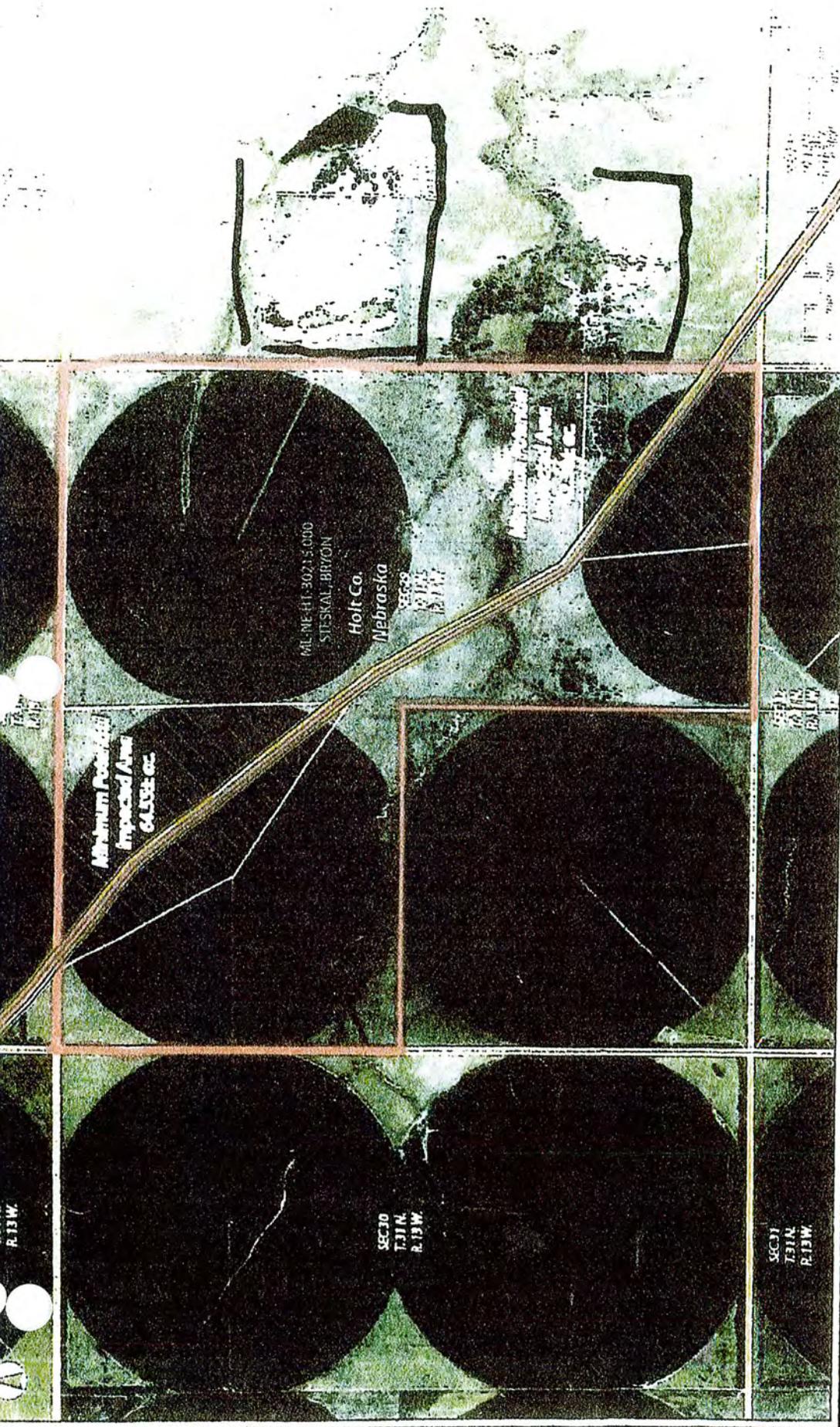
e). Key #10 ~ Jansen-O'Neill Association ~ Nearly level well drained, loamy soils that are moderately deep over sand and gravel on tablelands.

f). Key #11 ~ Valentine-Simeon-Dunday Association ~ Deep nearly level to steep excessively drained and somewhat excessively drained; sandy soils on uplands and stream terraces.

g). Key #14 ~ O'Neill-Anselmo-Pivot Association ~ Nearly level to gently sloping somewhat excessively drained and well drained; loamy and sandy soils that are deep and moderately deep over sand and gravel on upland, foot slopes and stream terraces.

TransCanada's Soil Association ~ Mile Posts Marker Map shows that the proposed preferred route is still in the Sandhills. The soil legend map Keys: 3 ~ 6 ~ 8 ~ 9 ~ 10 ~ 11 ~ 14 – states that the associations all have sand, sandy soils and/or gravel from mile post marker 625 to 675.

The Soils north of the Elkhorn River are the same sandy soil as south of the Elkhorn River.



MEASUREMENTS ONLY INCLUDE ACREAGE INSIDE THE PROPERTY BOUNDARIES OF:
STENSKAL, BRYON

MINIMUM POTENTIAL TOTAL IMPACTED AREA: 100.03 ± (±%)
NOTE: IMPACTED AREA AND PROPERTY BOUNDARIES MAY NOT BE BASED ON SURVEY.

PROPERTY DETAILS

| | |
|------------|---------------------|
| CENTERLINE | MIL-NE-HT-20218.000 |
| PRIVATE | |
| CLASS: | 029 |
| TOWNSHIP: | 01N |

LEGEND

- FOOT BOUNDARY
- IMPACTED LANDOWNER (PROJECT)
- PROPERTY PARCEL
- SECTION LINE
- COUNTY BOUNDARY

NEIGHBORHOOD MAP

KEYSTONE XL PROJECT
Potentially Affected Pivotal Irrigation

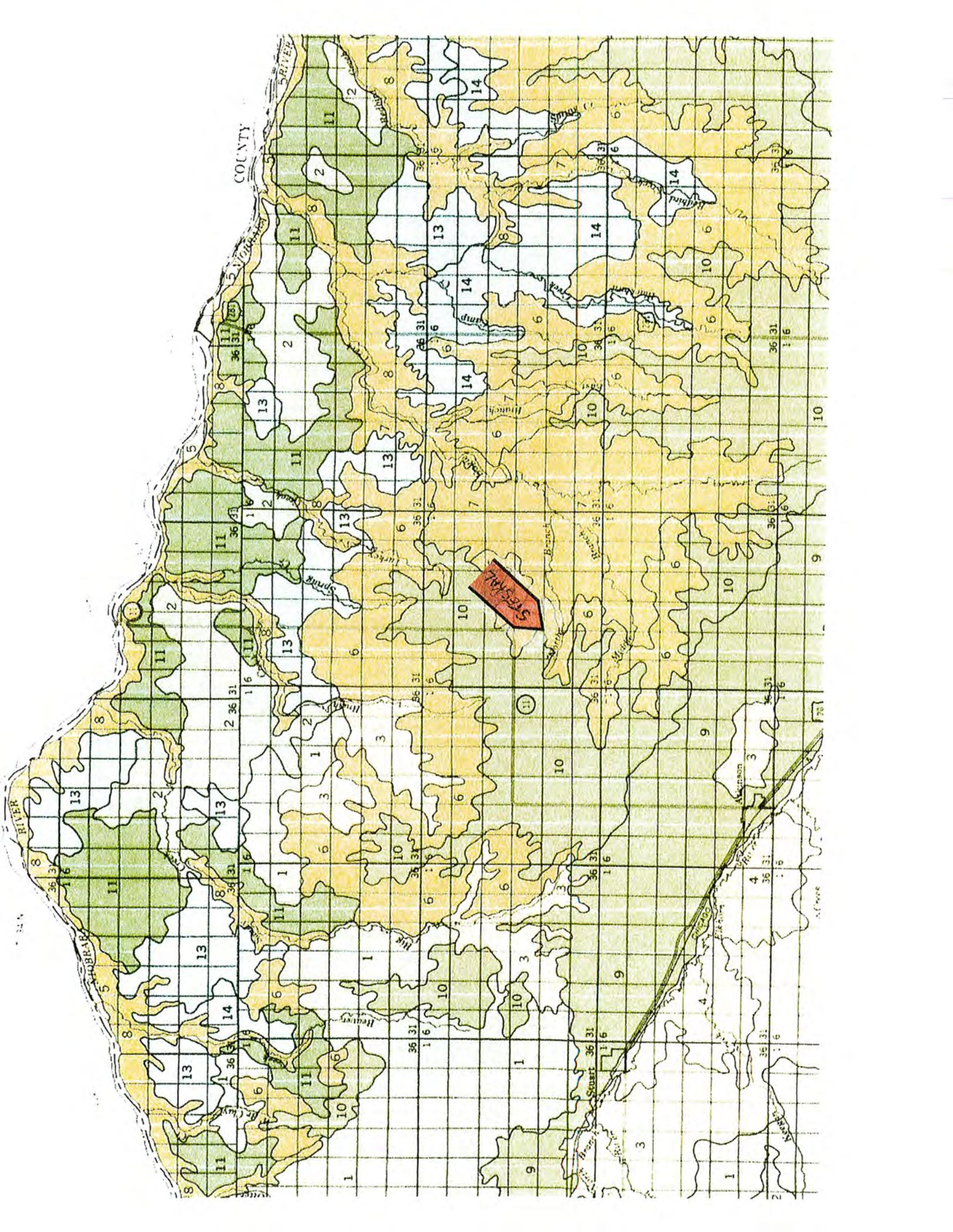
| | | | |
|---------------|-------------------------------------|-------------|------------|
| COUNTY: | IT | DRAWN BY: | PO |
| STATE: | NEBRASKA | CHECKED BY: | JP |
| REV NO.: | 0 | DATE | 2018.02.02 |
| DESIGNED FOR: | BY DATE FOR INFORMATION: 2018.02.02 | | |

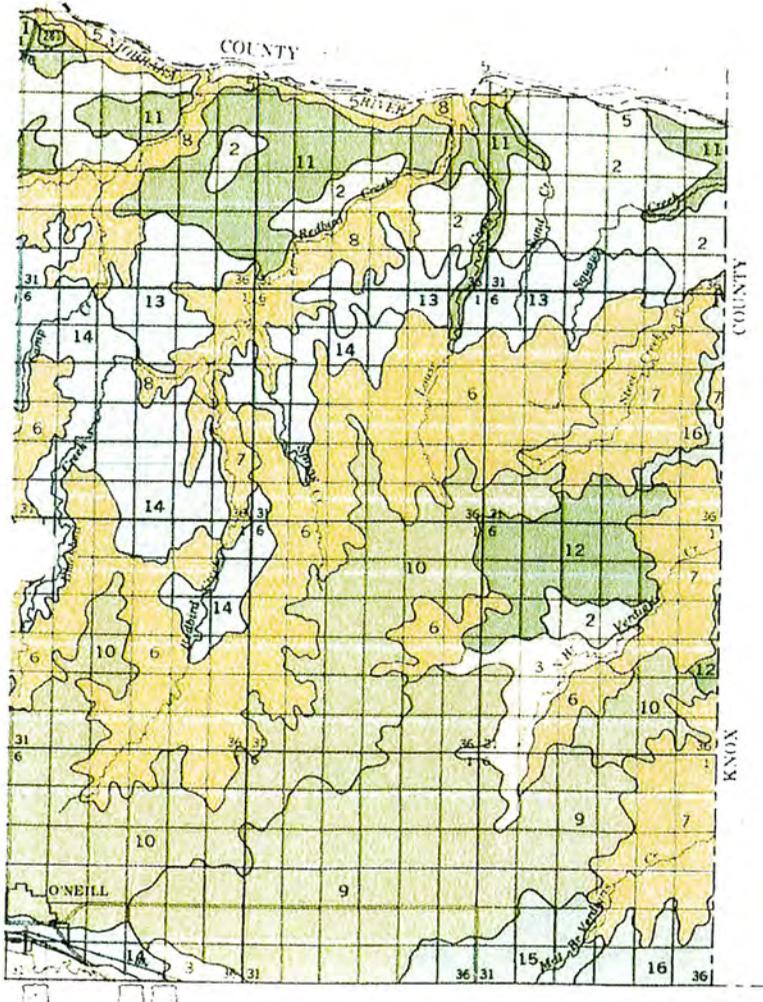
exp
By the authority of the Engineering Council

exp Energy Services Inc.
1500 International Blvd
Suite 100
Lincoln, NE 68502
USA
www.exp.com

REGULATIONS - CARBON ENVIRONMENT - ENERGY
INFRASTRUCTURE - MANUFACTURING - SUSTAINABILITY

DATE: 2018.02.02 PROJ: MOBI1001618
SHEET: 12





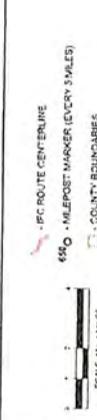
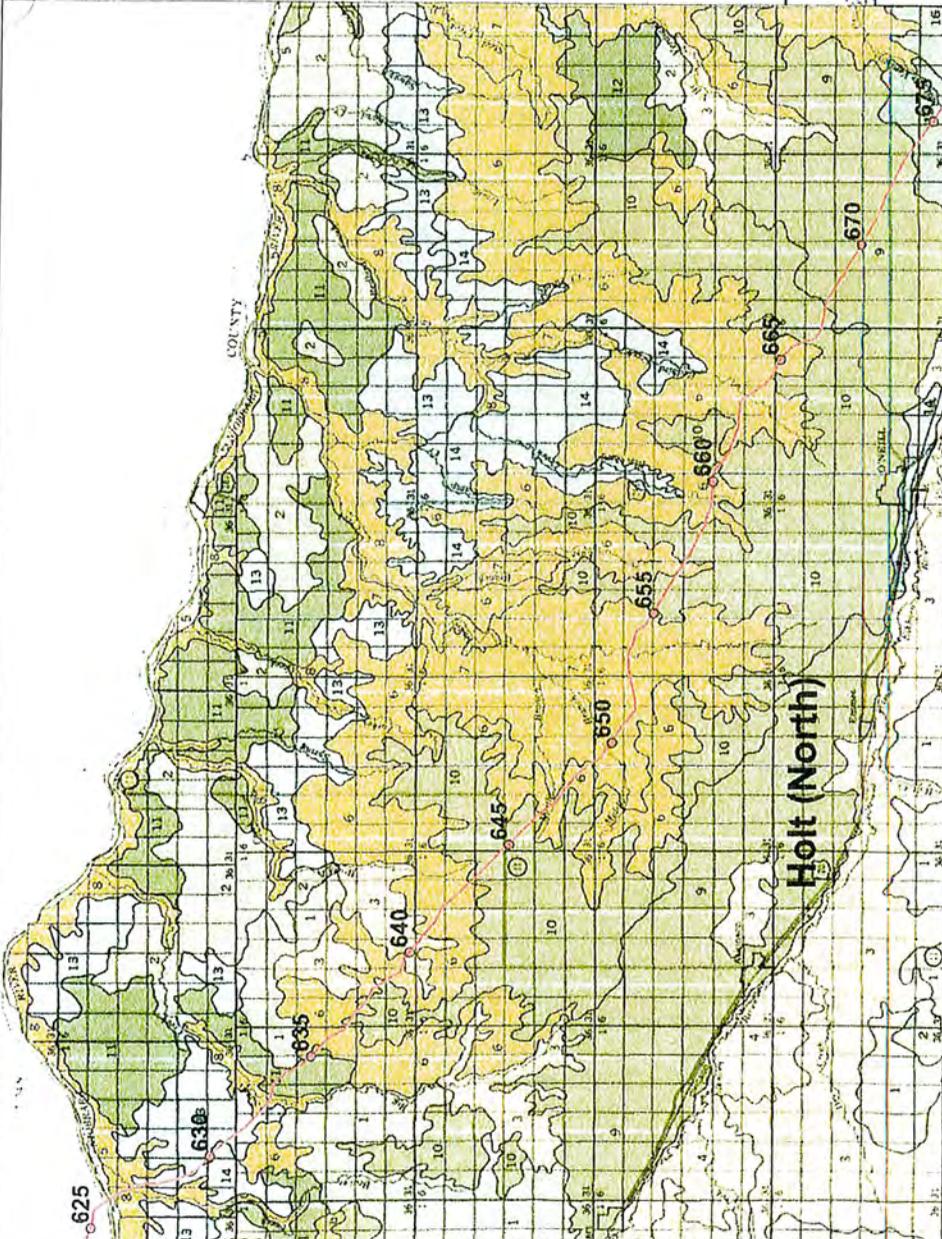
SOIL LEGEND[®]

- 1** NEARLY LEVEL TO VERY SLIGHT SLOPE. IN THE SANDS.
 Deep, heavy, well-drained, and somewhat poorly drained, silty, clayey, and loamy soils.
- 2** SLOPES OF 1% TO 3%. DEEP, HEAVY, WELL-DRAINED, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.
- NEARLY LEVEL AND VERY SLIGHT SLOPES ON BOTTOM LANDS ON STREAM TERRACES AND IN SAND-HILL VALLEYS.**
- 3** FINE-MEDED TO MEDIUM-FINED. DEEP, HEAVY, WELL-DRAINING, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.
- 4** VERY SLIGHT SLOPE. DEEP, HEAVY, WELL-DRAINING, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.
- 5** NEARLY LEVEL TO SLIGHT SLOPE. DEEP, HEAVY, WELL-DRAINING, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.
- NEARLY LEVEL TO VERY SLIGHT SLOPE. IN THE SANDS.**
- 6** VERY SLIGHT SLOPE. DEEP, HEAVY, WELL-DRAINING, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.
- 7** VERY SLIGHT SLOPE. DEEP, HEAVY, WELL-DRAINING, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.
- 8** SLOPES OF 1% TO 3%. DEEP, HEAVY, WELL-DRAINING, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.
- NEARLY LEVEL TO SLIGHT SLOPE. IN THE SANDS, AND IN STREAM TERRACES.**
- 9** SLOPES OF 1% TO 3%. DEEP, HEAVY, WELL-DRAINING, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.
- 10** SLOPES OF 1% TO 3%. DEEP, HEAVY, WELL-DRAINING, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.
- NEARLY LEVEL TO SLIGHT SLOPE. IN THE SANDS, AND IN STREAM TERRACES.**
- 11** SLOPES OF 1% TO 3%. DEEP, HEAVY, WELL-DRAINING, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.
- 12** SLOPES OF 1% TO 3%. DEEP, HEAVY, WELL-DRAINING, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.
- NEARLY LEVEL TO SLIGHT SLOPE. IN THE SANDS, AND IN STREAM TERRACES.**
- 13** SLOPES OF 1% TO 3%. DEEP, HEAVY, WELL-DRAINING, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.
- 14** SLOPES OF 1% TO 3%. DEEP, HEAVY, WELL-DRAINING, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.
- NEARLY LEVEL TO SLIGHT SLOPE. IN THE SANDS, AND IN STREAM TERRACES.**
- 15** SLOPES OF 1% TO 3%. DEEP, HEAVY, WELL-DRAINING, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.
- 16** SLOPES OF 1% TO 3%. DEEP, HEAVY, WELL-DRAINING, AND SOMEWHAT POORLY DRAINING, CLAYEY, AND LOAMY SANDS AND SANDS.

SECTIONAL T10
 TOWNSHIP
 6 5 4 3 2 1

SOIL LEGEND

1. ...
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PG ROUTE CENTERLINE
 650' MILEPOST MARKER (EVERY 5 MILES)
 COUNTY BOUNDARIES

| | | |
|-------------|-------------|-----------|
| PROJECT | MAPSHEET | DATE |
| PREPARED BY | DATE | |
| LOCATION | DATE | |
| DRAWN BY | REVIEWED BY | DATE |
| 1911 | DRP | 3-30-2014 |

PEI

FIGURE SA-03A
 SOIL ASSOCIATIONS - MILE POST 625-676
 HOLT COUNTY (NORTH)
 NEBRASKA PREFERRED ROUTE
 KEYSTONE XL PIPELINE PROJECT

John Ripon L. Stevens, Vinton O. Eppelshier, R. Lebaugh, S. Carlson, J. and Schultz, H. ...
 National State Department of Agriculture Soil Conservation Service in cooperation with University of Nebraska Geographers and Surveyors
 Division, March 1932

Holt (South)

Attachment 8.6

THE NEBRASKA SANDHILLS & OGALLALA AQUIFER

BY STEWARDS OF THE LAND FEB.2, 2012

#1. On February 2, 2012 a group of Nebraska landowners from Holt County met with Governor Heineman to show him lab results from soil samples taken throughout the Keystone XL reroute (now the preferred route) that the DEQ and TransCanada claimed had been “moved out of the Sandhills”. The landowners paid \$600 to have 11 soil samples tested by Midwest Labs of Omaha NE. A Power Point presentation by Amy Boettcher-Schaffer illustrated that soil on the north shore of the Elkhorn River deemed outside the Sandhills by an ecoregion map, was as sandy and porous as soil on the south shore of the river inside the area labeled Sandhills.

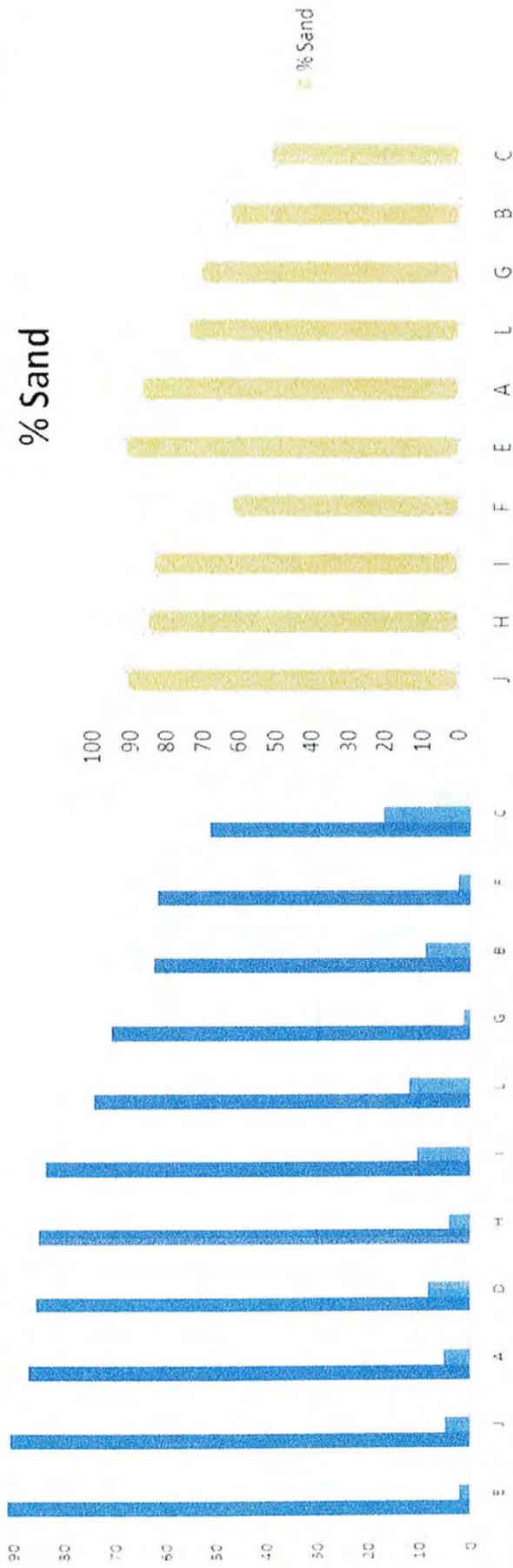
#2. Midwest Laboratories Table ~ Comparing soil samples of Byron Steskal’s property 29-31-13 ~ north of the Elkhorn River ~ 62.7% of sand and Terry Frisch’s property T29N-5-14 ~ south of the Elkhorn River ~ 62% sand. Sand is a porous soil, thus putting the Ogallala Aquifer at more risk in these areas.

#3. Soil Map of Nebraska ~ “snrs.unl.edu” ~ This map states that Region 17 (north of the Elkhorn River) shows soil in all three associations of Jansen; O’Neill; and Meadin are sand and gravel. In Region 12 (north of the Elkhorn River) shows soil in all three associations of Valentine; Elsmere; and Tryon are sandy soils.

#4. Affidavit from Amy Boettcher-Schaffer

#5. Power Point ~ The Nebraska Sandhills & Ogallala Aquifer

100



Midwest Laboratories

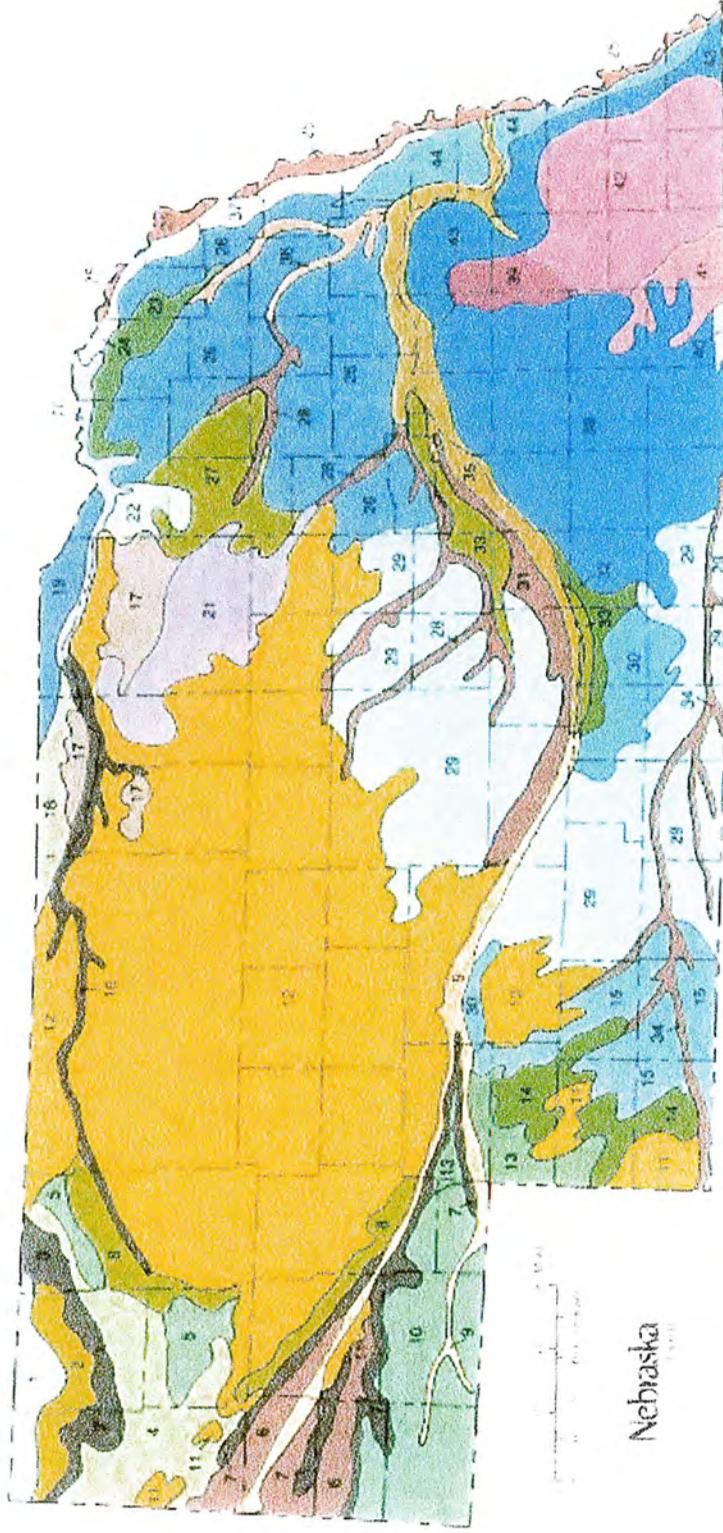
13611 B Street Omaha, NE 68144

February 1, 2012

| Sample ID | % Fine Sand | % Silt | % Clay | Soil Sample Location |
|-----------|-------------|--------|--------|--|
| E | 91.3 | 2.2 | 1 | Karl C - Keya Paha County |
| J | 90.6 | 5.1 | 0.8 | East Side of Hwy 14 2mi S of Neligh - Sandhills |
| A | 87.2 | 5.2 | 1.2 | Entry Point of Keystone XL Pipeline |
| D | 85.5 | 8.5 | 1 | Keya Paha County - 1 Mile South of Keystone XL Entry Point |
| H | 85.2 | 4.3 | 1 | Bruce B - Sandhills |
| I | 83.8 | 10.4 | 2.1 | Bruce B - Sandhills |
| L | 74.2 | 12 | 0.8 | N. of Hwy 20, East of Weigh Station |
| G | 71 | 1.4 | 1 | Calvin D - Niobraria |
| B | 62.7 | 9 | 1.5 | Terry S - North of Atkinson |
| F | 62 | 2.4 | 0.8 | Terry F - Sandhills |
| C | 51.6 | 17.2 | 7.7 | Paul C - North of Atkinson |

Here are the results of eleven samples that we have gathered, some being in the area declared as being in the "Sandhills" by the NDEQ and others that are not. The blue bar graph ranks the samples from the highest to lowest percent sand. As you can see, the third highest percentile of sand is that at the proposed entry point of the Keystone XL pipeline. You can also see that sample F which has been declared as being in the Sandhills by the NDEQ has a much lower percentile of sand. Looking at the green bar graph samples J, H, F, and I are from the areas which have been declared as the "Sandhills." Samples E, A, L, G, B, and C are from areas that the NDEQ declared as not being in the Sandhills. As you can see, the soil samples from area that have not been declared as being in the Sandhills, have just as high and in some cases a higher percentile of sand than the soil from the region that the NDEQ declared as the Sandhills. Again, sand is a porous soil, thus putting the Ogallala Aquifer at more risk in these areas. This is specifically the case at the entry point of the proposed Keystone XL pipeline and 1 mile south of the entry point where the percentile of sand is just as high as areas that the NDEQ declared as the "Sandhills."

Soil Map of Nebraska



<http://snrs.unl.edu/data/geologysoils/soilmap/NebraskaSoilMap.asp>

Now, let's move on and talk about the third characteristic, soil. This map is showing soil regions, portions of Holt County have been deemed as being in the "Sandhills" by the NDEQ and others have not.

Region 12 shows:

Valentine: Deep, nearly level to moderately steep, excessively drained, sandy soils formed in eolian sand on uplands in sandhills; Typic Ustipsamments.

Elsmere: Deep, nearly level, somewhat poorly drained, sandy soils formed in alluvium and eolian sand in valleys in sandhills; Aquic Haplustolls, sandy.

Tryon: Deep, nearly level, poorly drained, sandy soils formed in alluvium and eolian sand in valleys in sandhills; Typic Psammaquents.

Region 21 shows:

Elsmere: Deep, nearly level, somewhat poorly drained, sandy soils formed in alluvium and eolian sand in valleys in sandhills; Aquic Haplustolls, sandy.

Ipaga: Deep, nearly level and very gently sloping, moderately well-drained, sandy soils formed in eolian sand and alluvium in valleys in sandhills; Aquic Ustipsamments.

Loup: Deep, nearly level, poorly drained, sandy soils formed in alluvium and eolian sand in valleys in sandhills; Typic Haplaquolls, sandy

Regions 17 shows:

Jansen: Moderately deep over sand and gravel, nearly level to moderately steep, well-drained, loamy soils formed in loamy sediments over sand and gravel on uplands; Typic Argiustolls, fine-loamy over sandy or sandy-skeletal.

O'Neill: Moderately deep over sand and gravel, nearly level to moderately steep, well-drained, loamy soils formed in loamy sediments over sand and gravel on uplands; Typic Haplustolls, coarse-loamy over sandy or sandy-skeletal.

Meadin: Shallow over sand and gravel, nearly level to moderately steep, excessively drained, sandy soils formed in sandy sediments over sand and gravel on uplands; Entic Haplustolls, sandy.

Region 27 shows:

Thurman: Deep, nearly level to moderately steep, somewhat excessively drained, sandy soils formed in eolian sand; Udorthentic Haplustolls, sandy

Boelus: Deep, nearly level to strongly sloping, well-drained, sandy over loamy soils formed in eolian sand over loess on uplands; Udic Haplustolls, sandy over loamy

DEFINING THE SANDHILLS

#1. NDEQ Dec. 29, 2011 ~ TransCanada PSC Application 2017 ~ This map depicts the Sandhills stopping abruptly on the southern shore of the Elkhorn River. The region north of the Elkhorn River is classified as Holt Tablelands.

#2. Holt Tablelands, north of the Elkhorn River was split off from the Sandhills because it looks different; it is flat as opposed to rolling and vegetation is different. Crops are grown there. By contrast ~ the Sandhills are the largest area of grass-covered sand dunes in the world and are not suitable for crops. But the Holt Tablelands have been changed by man – “farmers”. Fifty to 60 years ago you would not have seen farming there. Farmers have developed it into cropland because of irrigation. The soil is just as porous and gravelly as the Sandhills so water goes through it just as fast. USGS maps confirms beneath the surface of the land, what is not visible to the eye, is that the Ogallala Aquifer underlies both the Sandhills and Holt Tablelands. The soil permeability on both sides of the Elkhorn River is identical ~ water flows through it rapidly.

#3. USGS Map of Soil Permeability ~ High Plains Aquifer – This Table shows that most Holt County lies within the fastest “inch per hour” permeability ~ 10 inches per hour.

#4. The following three maps show different boundaries for the Sandhills region.

a). USGS Ground Water Quality of the Northern High Plains Aquifer ~ shows the Sandhill area extends half way between the Elkhorn River north to the Niobrara River.

b). SEIS 2011 ~Figure 3.3.1-3 ~Key Aquifers & Portable Water Wells
~Keystone XL Project ~ This map show the Sandhills area extends
half way between the Elkhorn River north to the Niobrara River.

c). FEIS Figure 3.3.2-4 ~Source: Nebraska Dept. of Natural Resources
2012a. Esri 2013 ~ This map show the Sandhills area extends all the
way north from the Elkhorn River to the Niobrara River.

#5). DEQ Map and Article ~ Your Environment by Region: 2011 2012
In the 2011 the article, the first sentence states that the Sandhills
region is located in the central and north-central Nebraska, is
comprised of nearly 20,000 square miles of wind-deposited sand
dunes, the largest sand dune formation in the U.S. In 2012 the same
article, the first sentence states the North-Central region is
comprised of 20,000 square miles of wind-deposited sand dunes, the
largest sand dune formation in the U.S. Within one year, magically
the Sandhills region has disappeared. The article states that below
this 18 county region (including Holt Co.) 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 of wetlands
in this region are formed where the ground's surface dips below the
top of the groundwater aquifer.

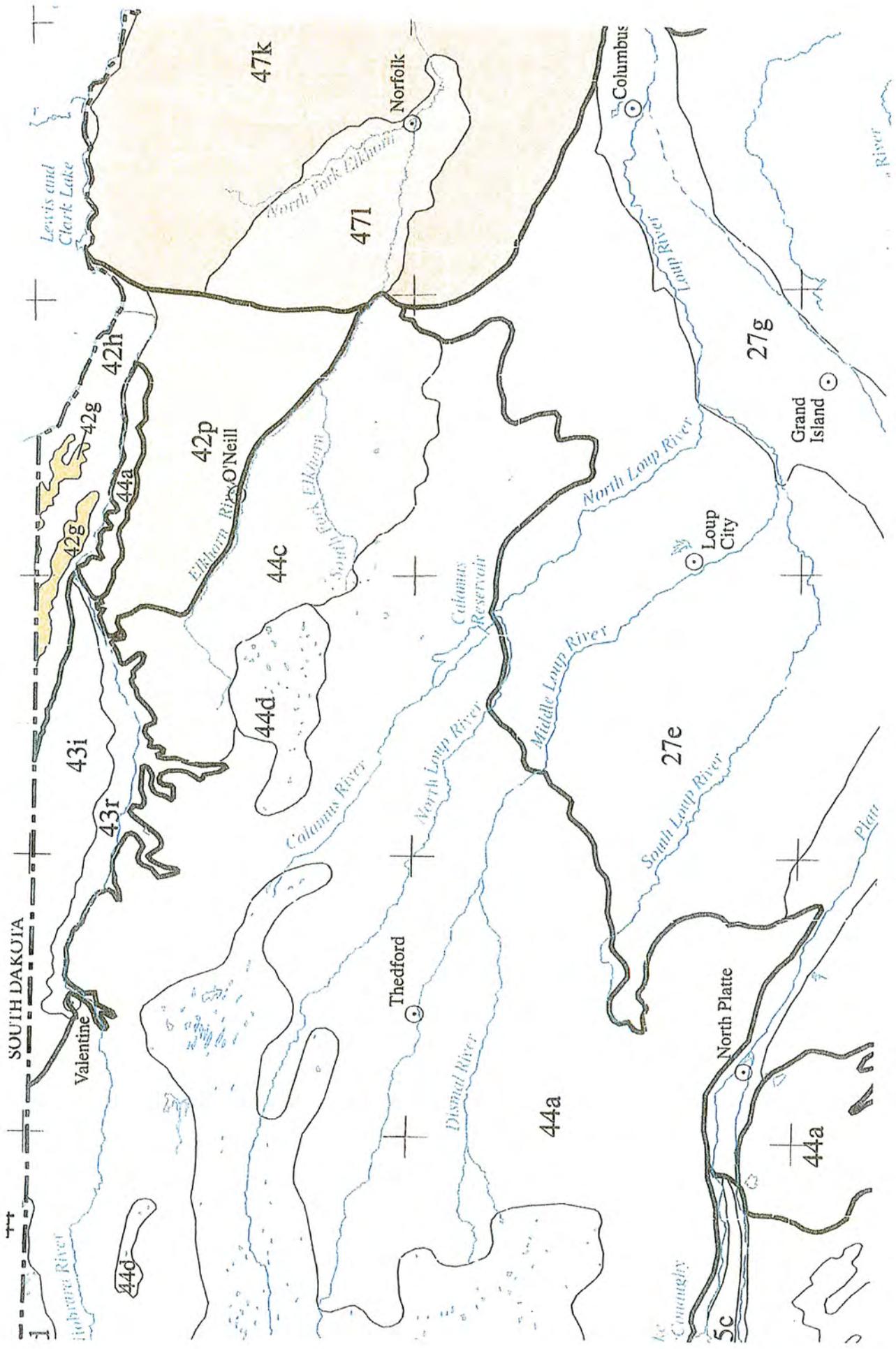
No matter which map is used ~ Keystone XL propose preferred route
is still over the Ogallala Aquifer and in the Sandhills.

Resources: Holt Tablelands

Prairie Fire ~ "The Progressive Voice of the Great Plains"

07/30/13 and quote from Bruce Boettcher

Nebrask DEQ ~ Your Environment Region 2011 and 2012



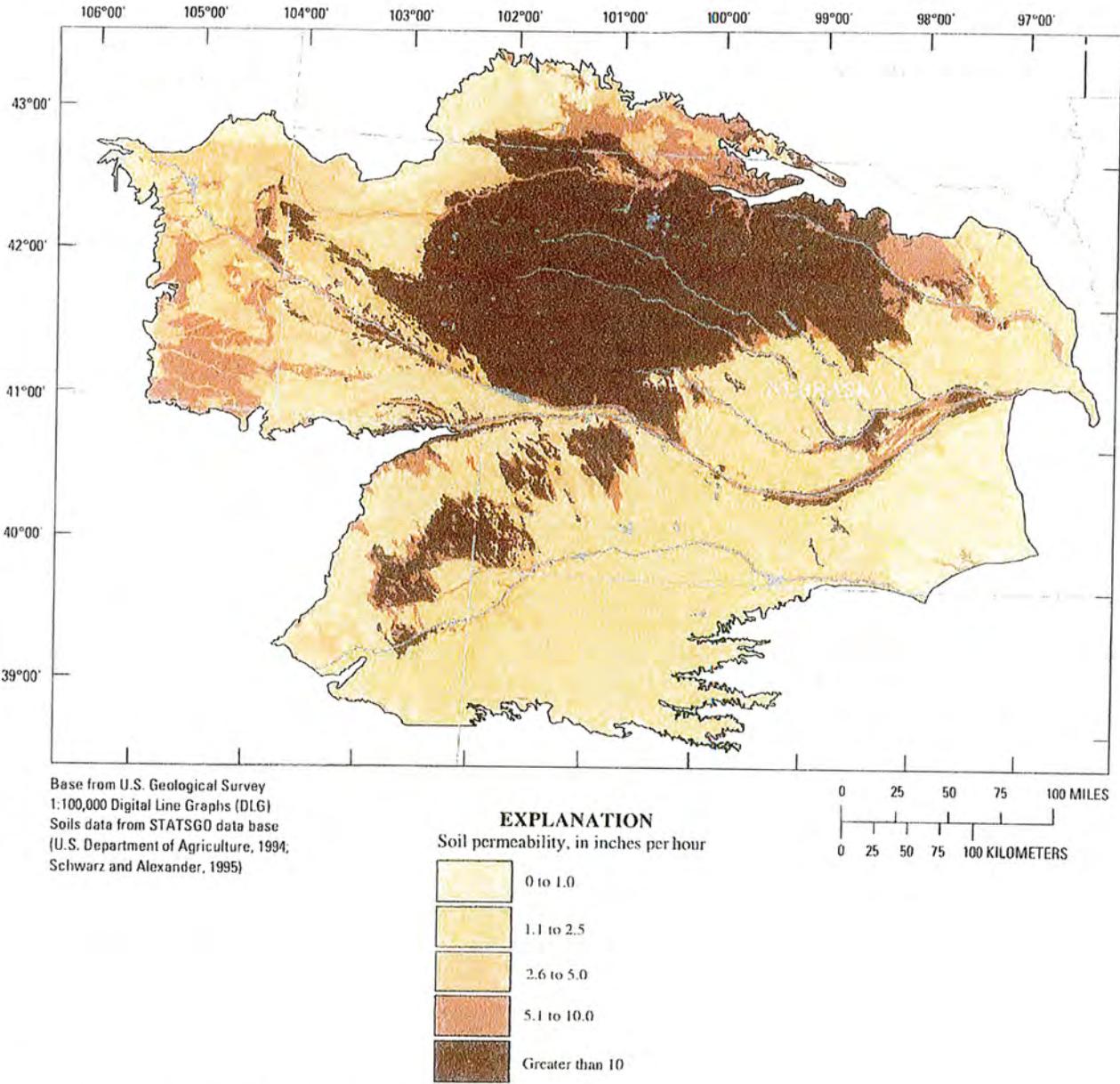


Figure 5. Permeability of soils overlying the northern High Plains aquifer.

past the soil horizon to ground water. Application of irrigation water in excess of crop needs further promotes transport of these agricultural chemicals to ground water. Nutrients, particularly nitrogen in the form of commercial fertilizers or manure, are applied to crops to increase yields. The application rates of total nitrogen, by hydrogeologic unit, are shown in table 3 (David Lorenz, U.S. Geological Survey, written commun., 1998). Percentage of cropland, percentage of irrigated cropland, and nitrogen application rates by county are shown in figure 7. Percent cropland, irrigated cropland, and nitrogen application rates are highest over the EAST and

PLAT units. Pesticides are primarily used in the study area to increase crop yields by controlling insects and competing vegetation. Pesticides also are used in smaller quantities around homes and livestock and along roads to control a wide variety of pests. The 10 most commonly applied pesticides in the northern High Plains are generally herbicides used on crops (table 3). Although the estimated application rates do not necessarily represent conditions during the time that water composing the ground-water samples was recharged, they do provide a general idea of the types and relative amounts of pesticides that are applied.

6 Ground-Water Quality of the Northern High Plains Aquifer, 1997, 2002–04

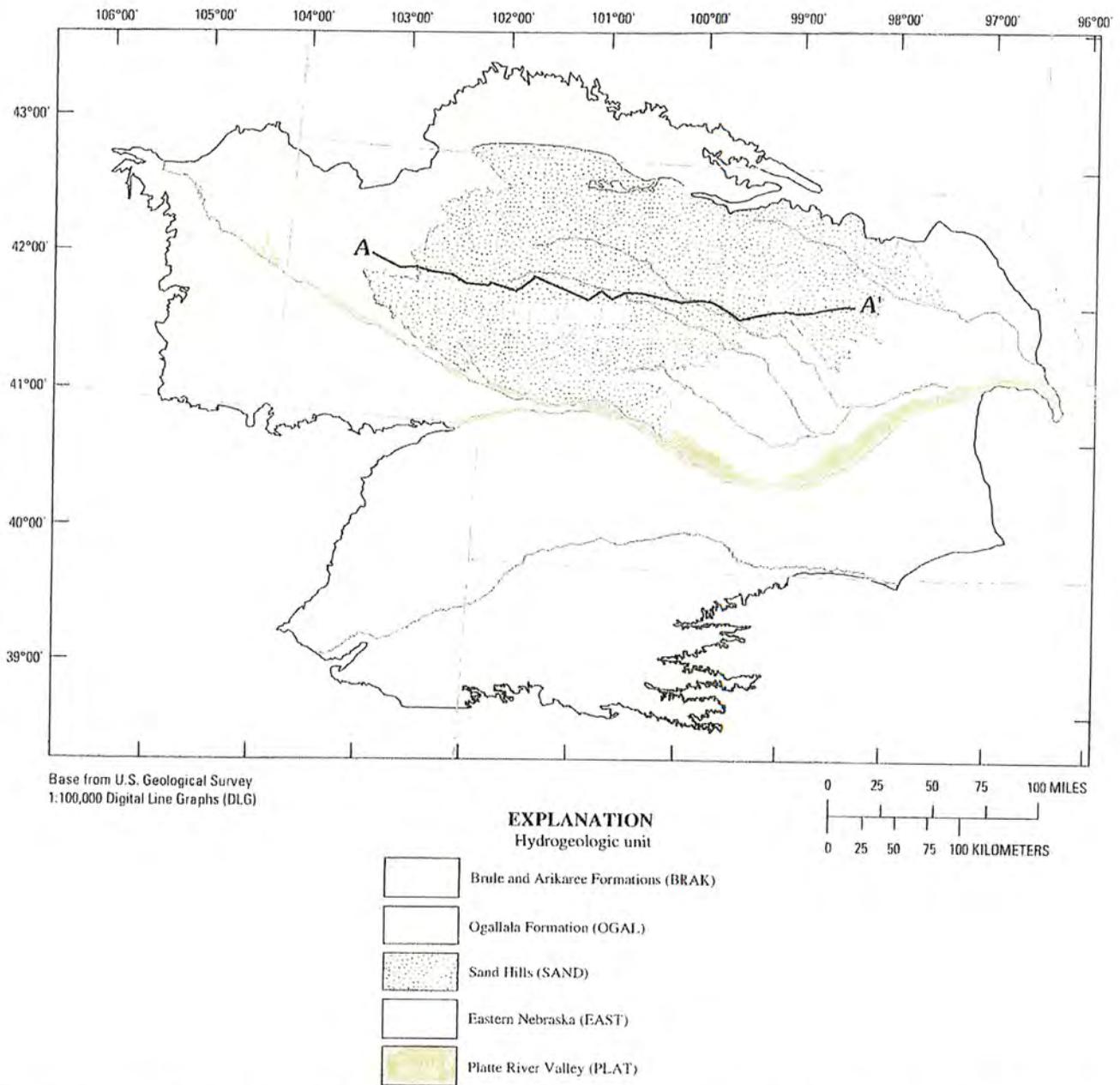
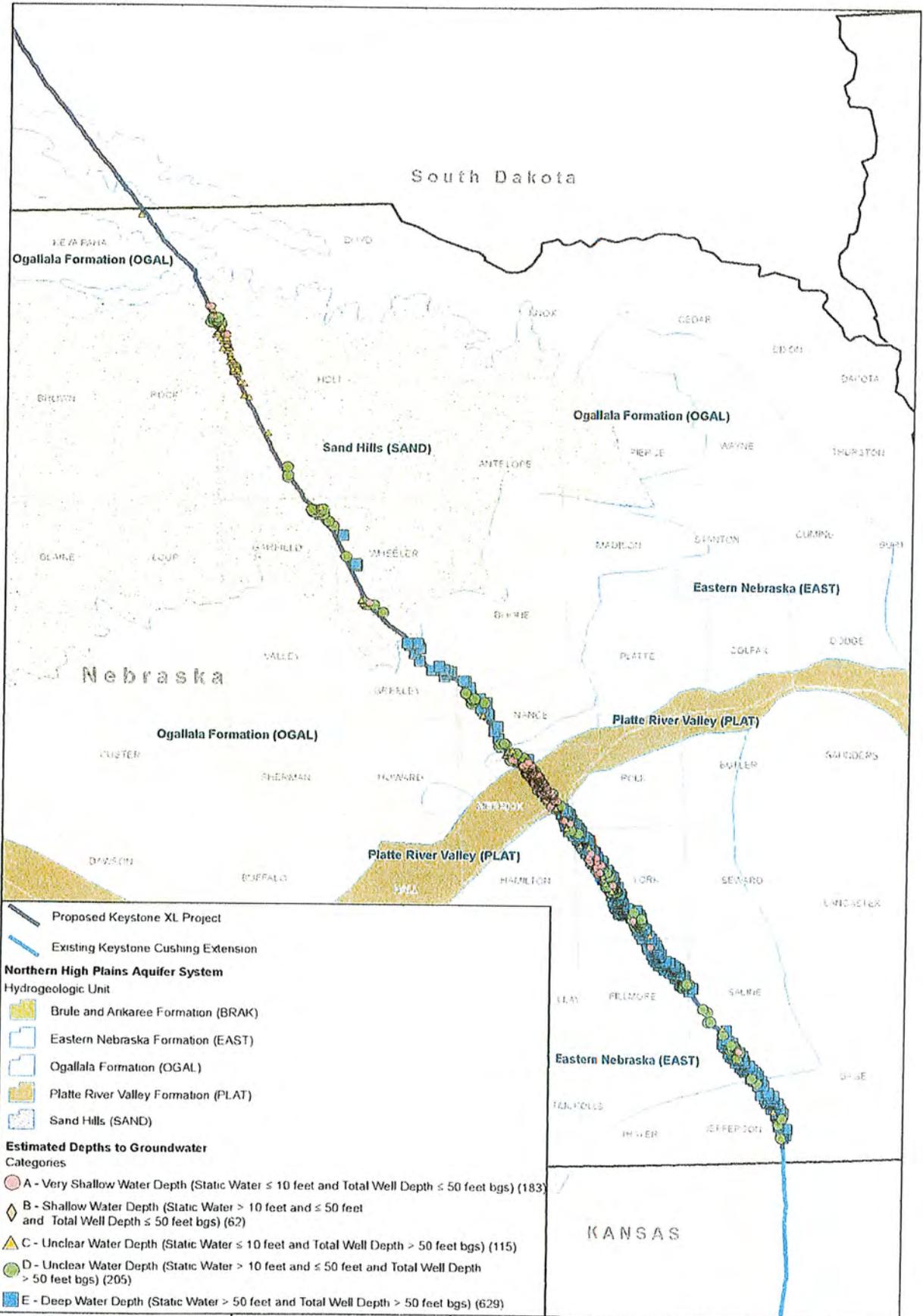


Figure 3. Location of major hydrogeologic units and trace of generalized geologic section A–A' (modified from Gutentag and others, 1984).

and others, 1996). These deposits contain weathering products derived from granite or anorthosite from the Laramie Range in Wyoming as well as some quartzite from the Medicine Bow Mountains (Richmond and others, 1994). Later, glacial processes during the Pleistocene period (0.01 to 2 million years ago) continued to fill valleys with coarse sand and gravel originating from the north (Gosselin and others, 1996). The EAST unit overlies either the OGAL where it is present or Cretaceous-age bedrock. It underlies unsaturated glacial till (a glacially deposited mixture of clay, sand, gravel, and

stones of variable sizes) and loess (wind-deposited silt or clay, typically deposited during glacial periods). The glacial till contains iron sulfide and other minerals that can be sources of iron, manganese, sulfate, and calcium (Engberg and Spalding, 1978). Glacial till and loess can be relatively impermeable. The sand and gravel deposits in paleovalleys provide the primary source of water for high-capacity wells. However, many low-capacity domestic and stock wells obtain water from lenses of perched or semiperched ground water (Gosselin and others, 1996).



Date Sources: NHPAQ - USGS, Water Wells - NEDNR, 2011, Basemap - ESRI.

Notes: bgs is below ground surface. Static water and total well depths at 0 feet might be inaccurate.

0 5 10 20 Miles

KEYSTONE XL PROJECT

Figure 3.3.1-3
Key Aquifers and Potable Water Wells within 2-mile Corridor (Nebraska)

Attachment 8.7

Your Environment By Region: Sandhills

A Brief Overview of the Sandhills Region (North-Central Nebraska)

The Sandhills region, located in central and north-central Nebraska, 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 Sandhills region is cattle grazing on large ranches. In one recent year, 535,000 beef cows grazed the grasslands of this productive environment.

(Photo by Melissa Kemling)

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). 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 Sandhills 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 Sandhills 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.

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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 Semler

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.

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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>Focus on Air Quality Air Quality Report</p> <p>Focus on Water Quality Water Quality Monitoring Report Groundwater Report</p> <p>Focus on Land Quality/Waste Contaminated Sites Waste Disposal Recycling Directory</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>Regional Topics</p> | <p>What Can I Do? Questions and Answers</p> |

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Attachment 8.8

FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT

#1. Chapter 3 Figure 3.1.2-1 ~ Surface Geology of Proposed Route

This map shows that the proposed preferred route is passes over the Ogallala Formation

#2. Chapter 3 Table 3.1-3 Physiographic Characteristics of Ecoregions in Nebraska crossed by pipeline route; 619-698 state Surface Geology is Eolian and alluvial sand and silt; Sandy residuum; and Eolian sand, alluvial sand and gravel, and lacustrine sand and silt.

#3. Chapter 3. 2-5 Nebraska ~ These statements are made:

a). Keya Paha, Boyd, and Holt counties lie within the Dakota-Nebraska Eroded Tableland Resources Area. These soils are generally sandy, very deep and excessively drained to somewhat poorly drained.

b). In northern Nebraska, the proposed Project route from approximately MP 619 to MP 707 in Boyd, Holt, and Antelope counties would enter an area where the soils tend to be highly susceptible to erosion by wind and often exhibit characteristics of the NDEQ-identified Sandhills Region. These soils consists of eolian fine sands, loamy fine sands, or sandy alluvium and are generally deep, well-to-excessively drained, and nearly level to moderately steep on uplands and streams terraces.

c). Where the vegetation cover has been disturbed or removed without restoration, severe wind erosion associated with the prevailing winds may create steep-sided, irregular, or conical depressions referred to as "BLOW OUTS". Two blowouts identified in the vicinity of the proposed preferred project route include a blowout in Keya Paha Co., located

approximately 6.5 miles south the MP 611, and a blowout in Holt Co., located approximately 1.6 miles southwest of MP 634.

d). The proposed preferred route would cross approximately 48 miles of highly wind erodible soils in Nebraska (see Table 3.2-1). In Nebraska, prime farmland soils occupy approximately 64 percent of the pipeline route.

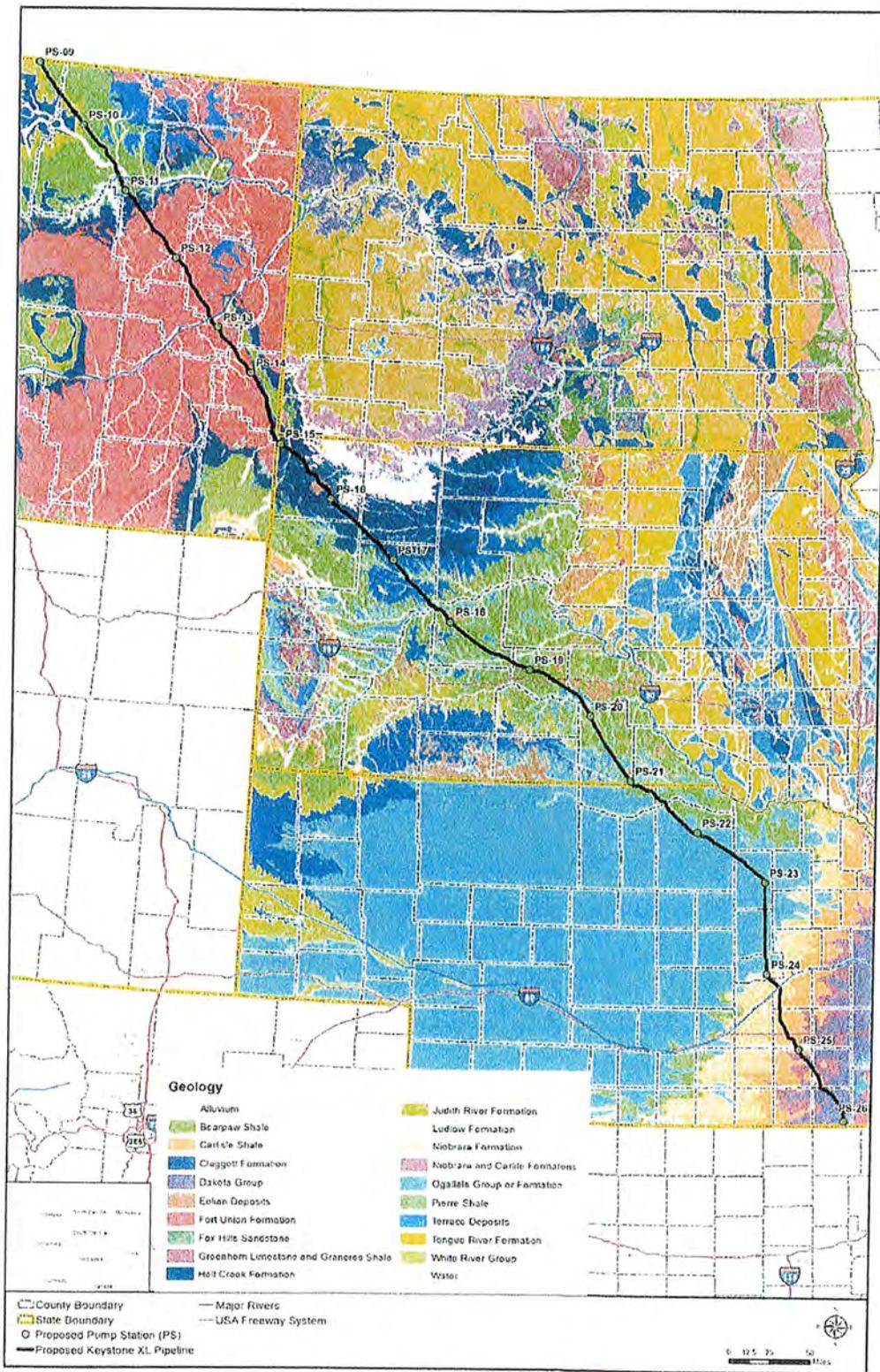
#3. Chapter 3 Figure 3.2-4 Miles of Soils Types Crossed

#4. Chapter 3 Figure 3.2.2-2 ~ Highly Wind Eroding Soils

#5. Final Evaluation Report ~ Nebraska's Keystone XL Pipeline Jan.2013
Appendix E.2

a). Figure E.2-1 ~ Soil Association along the Proposed Preferred Nebraska Reroute ~ This map also states that the soils in the route through Holt County: "Soils are Sandy Loamy soil formed from Eolian Sand.

b). Table E.2-4. Holt County Soil Characteristics ~ This table states that in all three Associations (O'Neill, Meadin, and Jansen) that the sandy and loamy soils are over sand and gravel and all being well-drained to excessively well-drained.



Source USGS 2007

Figure 3.1.2-1 Surface Geology of Proposed Project Route

between MP 820 to MP 847) contain varying amounts of limestone that potentially contain karst formations, causing surface subsidence. However, it is unlikely that karst features would be encountered. The Dakota Group (approximately 35 miles crossed between MP 823 to MP 875) consists of sandstone and shale.

Table 3.1-3 Physiographic Characteristics of Ecoregions Crossed in Nebraska by the Proposed Project Route

| MP Range | Physiographic Description | Elevation Range (ft amsl) ^a | Local Relief (ft) | Surface Geology | Bedrock Geology |
|--|---|--|-------------------|---|--|
| Northwestern Glaciated Plains—Southern River Breaks^b | | | | | |
| 601- 619 | Unglaciated dissected hills and canyons; Topography contains slopes of high relief bordering major rivers and alluvial plains | 1,250-2,000 | 250-700 | Cretaceous shale | Pierre Shale |
| Northwestern Great Plains—Keya Paha Tablelands^b | | | | | |
| 619- 625 | Unglaciated, level to rolling sandy plains; Topography is dissected near streams; contains isolated gravelly buttes | 1,900-2,400 | 20-400 | Eolian and alluvial sand and silt | Ogallala Sandstone |
| Northwestern Great Plains—Niobrara River Breaks^b | | | | | |
| 625-627 | Unglaciated, dissected canyons; Contains slopes of high relief adjacent to river | 1,700-2,700 | 200-600 | Sandy residuum | Miocene soft sandstone over Pierre Shale |
| Northwestern Glaciated Plains, Holt Tablelands^b | | | | | |
| 627-698 | Unglaciated; Tablelands with directed slopes | 1,500-2,000 | 50-475 | Eolian sand, alluvial sand and gravel, and lacustrine sand and silt. | Ogallala Sandstone. |
| Western Corn Belt Plains, Transitional Sandy Plain^b | | | | | |
| 698- 715 | Level to rolling plains | 1,400-2,000 | 5-150 | Alluvial sand, gravel and lacustrine silt and sediments | Ogallala Sandstone |
| Western Corn Belt Plains, Northeastern Nebraska Loess Hills^b | | | | | |
| 715- 734 | Glaciated; Rolling low hills. Perennial streams | 1,100-1,900 | 100-300 | Calcareous loess | Ogallala Sandstone |
| Central Great Plains—Central Nebraska Loess Plains^b | | | | | |
| 734- 762 | Rolling dissected plains with deep layer of loess; Contains perennial and intermittent streams | 1,600-3,100 | 50-275 | Calcareous loess, alluvial sand, gravel, and lacustrine sand and silt | Ogallala Sandstone |
| Central Great Plains—Platte River Valley^b | | | | | |
| 762 778 | Flat, wide alluvial valley; Contains shallow, interlacing streams on a sandy bed | 1,300-2,900 | 2-75 | Alluvial, sand, silt, clay, and gravel deposits | Quaternary and Tertiary unconsolidated sand and gravel |

3.2.2.2 *South Dakota*

The proposed Project route in South Dakota would be located within the Western Great Plains Range and Irrigated Land Resource Region (USDA 2006). In northwestern South Dakota, soils are shallow to very deep, well-drained, and loamy or clayey. To the southeast through Meade County, soils are shallow to very deep, somewhat excessively drained to moderately well-drained, and loamy or clayey. In southern South Dakota, from Hakkon County to Tripp County, areas of smectitic clays are present that have shrink-swell potential and may cause significant problems for roads and structural foundations. From central Tripp County to the state line, these clayey soils contain thick, dark, organically enriched layers of topsoil. Beginning at approximately MP 572, transitional eolian sandy soils are present that generally consist of eolian sands, sandy alluvium, and lesser amounts of loess and glacial outwash. In southern Tripp County to the state line, soils grade into deep, sandy deposits that are similar in characteristics to the NDEQ-identified Sand Hills Region soils in Nebraska. Figure 3.2.2-1 shows the NDEQ-identified Sand Hills Region in Nebraska. In South Dakota, prime farmland soils occupy approximately 35 percent of the proposed pipeline route.

3.2.2.3 *Nebraska*

The proposed Project route in northern Nebraska would be located within the Western Great Plains Range and Irrigated Land Resource Region (USDA 2006). This region is characterized by a nearly level to gently rolling fluvial plain. Keya Paha, Boyd, and Holt counties lie within the Dakota-Nebraska Eroded Tableland Resource Area. These soils are generally sandy, very deep, and excessively drained to somewhat poorly drained. Also, within Holt and Boyd counties in the Tableland Resource Area, there are soils types that are silty or sandy loam soils.

In Antelope and Boone counties, the proposed Project route would encompass the Central Feed Grains and Livestock Land Resource Region. This area is further classified as the Loess Uplands Resource Area, with soils consisting of deep loess deposits that are susceptible to erosion if unvegetated. In the northern section of Antelope County, the soils are sandy loams which are frequently layered with very fine-grained ash layers that are susceptible to erosion by rain and wind. In Nance and Merrick counties, the proposed Project route would cross the Central Nebraska Loess Hills and the Central Loess Plains Resource Areas (Central Great Plains Winter Wheat and Range Land Resource Region). These areas feature soils consisting of deep loess with some organic enrichment.

South of the Platte River, the proposed Project route would cross flat to rolling loess-covered plains of the Rainwater Basin Plains, one of the largest concentrations of natural wetlands found in Nebraska. Many of the wetlands were drained for cultivation, with much of the area pivot irrigated to help provide a fertile area for crops. The soils are largely silty loams with fine sands in both flooded and rarely flooded areas. Glacial till is scattered throughout the area south of the Platte River and is encountered along the southern section of the proposed pipeline route.

In northern Nebraska, the proposed Project route from approximately MP 619 to MP 707 in Boyd, Holt, and Antelope counties would enter an area where the soils tend to be highly susceptible to erosion by wind and often exhibit characteristics of the NDEQ-identified Sand Hills Region (i.e., fragile soils [see Figure 3.2.2-2]).

These soils consist of eolian fine sands, loamy fine sands, or sandy alluvium and are generally deep, well-to-excessively drained, and nearly level to moderately steep on uplands and streams

Table 3.2-1 Approximate Miles^a of Soils by National Inventory Grouping Crossed by the Proposed Project Route

| State | Total Miles Affected ^b | Highly Erodible (Wind) | Highly Erodible (Water) | Prime Farmland | Hydric | Compaction-Prone | Stony/Rocky | Shallow Bedrock | Drought-prone |
|--------------|-----------------------------------|------------------------|-------------------------|----------------|-------------|------------------|-------------|-----------------|---------------|
| Montana | 285.4 | 6.1 | 208.1 | 63.1 | 6.0 | 63.1 | 11.2 | 4.8 | 22.3 |
| South Dakota | 316.3 | 18.3 | 162.3 | 109.9 | 1.2 | 150.0 | 2.2 | 0.2 | 67.1 |
| Nebraska | 274.0 | 48.1 | 178.0 | 175.8 | 47.1 | 169.4 | 40.5 | 0.3 | 41.0 |
| Kansas | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| North Dakota | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Total | 875 | 72.5 | 548.4 | 348.8 | 54.3 | 382.5 | 53.9 | 5.3 | 130.4 |

^a Rounded to nearest tenth of a mile.

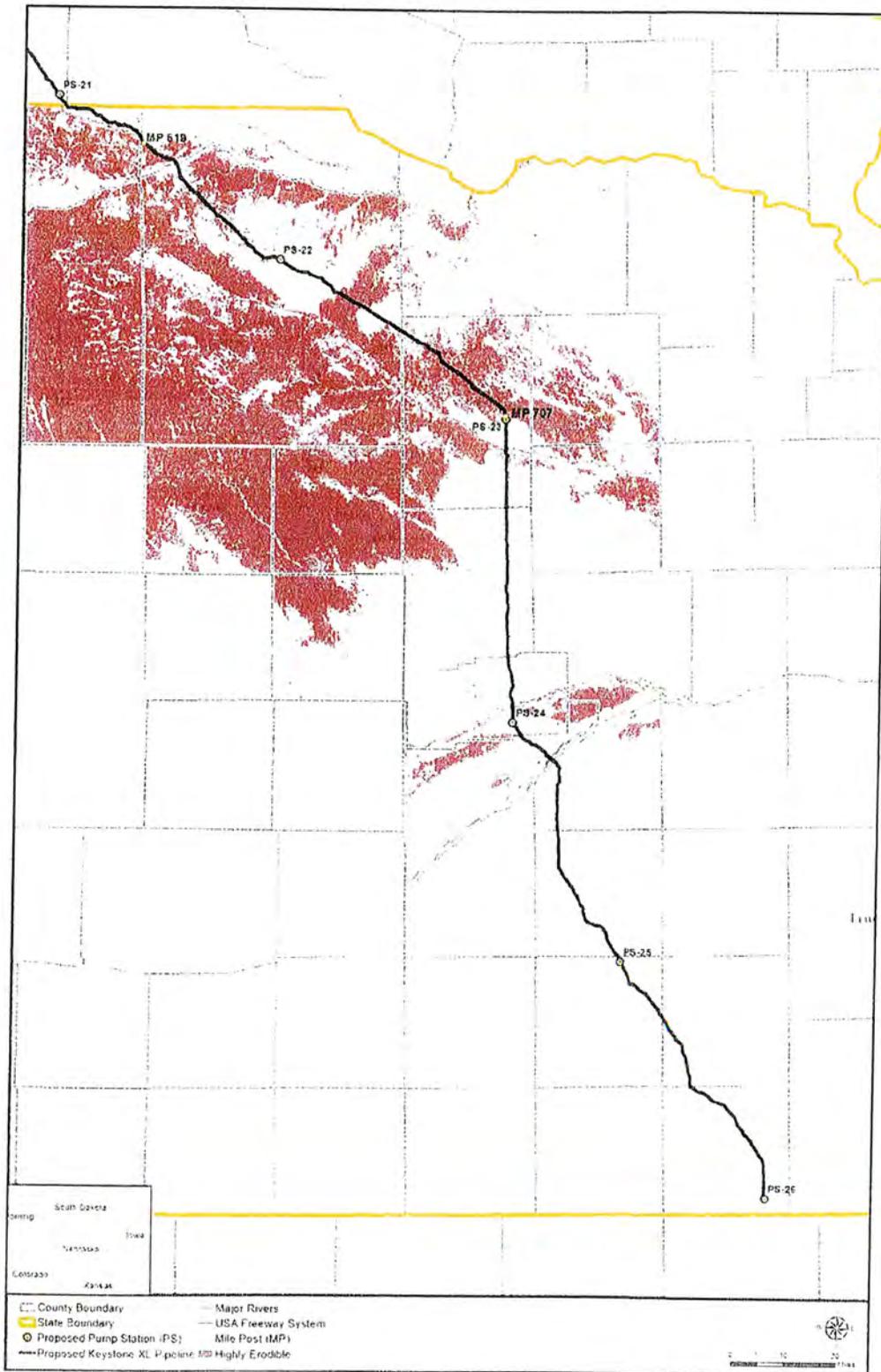
^b Total miles affected, which include non-sensitive and sensitive soils and other substrates.

Table 3.2-2 Approximate Acreage^a of Soils by National Inventory Grouping Affected by the Proposed Project During Construction and Operation^b

| State | Total Acres Affected | Highly Erodible (Wind) | Highly Erodible (Water) | Prime Farmland | Hydric | Compaction-Prone | Stony/Rocky | Shallow Bedrock | Drought-prone |
|---------------------|----------------------|------------------------|-------------------------|----------------|--------------|------------------|--------------|-----------------|----------------|
| Construction | | | | | | | | | |
| Montana | 5,462.4 | 69.1 | 4,067.5 | 1,359.9 | 14.5 | 1,245.3 | 306.2 | 71.3 | 359.0 |
| South Dakota | 5,777.8 | 312.0 | 2,962.0 | 2,179.2 | 24.1 | 2,735.7 | 27.9 | 3.2 | 1,157.3 |
| Nebraska | 3,984.7 | 673.4 | 3,523.0 | 2,572.0 | 687.9 | 2,474.6 | 578.6 | 3.3 | 600.7 |
| Kansas | 15.2 | 0.0 | 1.0 | 14.0 | 0.0 | 15.2 | 2.0 | 6.0 | 0.0 |
| North Dakota | 56.1 | 0.0 | 56.1 | 44.9 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Total | 15,296.2 | 1,054.4 | 10,609.5 | 6,169.6 | 726.5 | 6,470.7 | 914.7 | 83.7 | 2,117.0 |
| Operation | | | | | | | | | |
| Montana | 1,834.9 | 25.4 | 1,342.5 | 417.0 | 3.8 | 411.3 | 118.7 | 29.1 | 138.9 |
| South Dakota | 2,000.1 | 111.2 | 1,016.7 | 696.9 | 7.5 | 934.4 | 13.1 | 1.5 | 422.6 |
| Nebraska | 1,718.9 | 291.5 | 1,539.7 | 1,108.7 | 297.4 | 1,063.9 | 258.6 | 1.5 | 271.1 |
| Kansas | 15.2 | 0.0 | 1.0 | 14.0 | 0.0 | 15.2 | 2.0 | 6.0 | 0.0 |
| North Dakota | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Total | 5,569.1 | 428.1 | 3,899.9 | 2,236.6 | 308.7 | 2,424.8 | 392.4 | 38.1 | 832.6 |

^a Rounded to nearest tenth of an acre.

^b Based on a 110-foot-wide pipeline construction ROW for a 36-inch pipeline, including temporary and permanent work spaces and access roads, staging areas, pump stations, valve sites, construction camps, construction and pipe yards, and the two pump stations in Kansas as well as pipe yard and rail siding in North Dakota. Acreage does not account for disturbance associated with power lines and rail sidings. Individual soils may occur in more than one National Inventory Group. Discrepancies in total mileage are due to rounding.

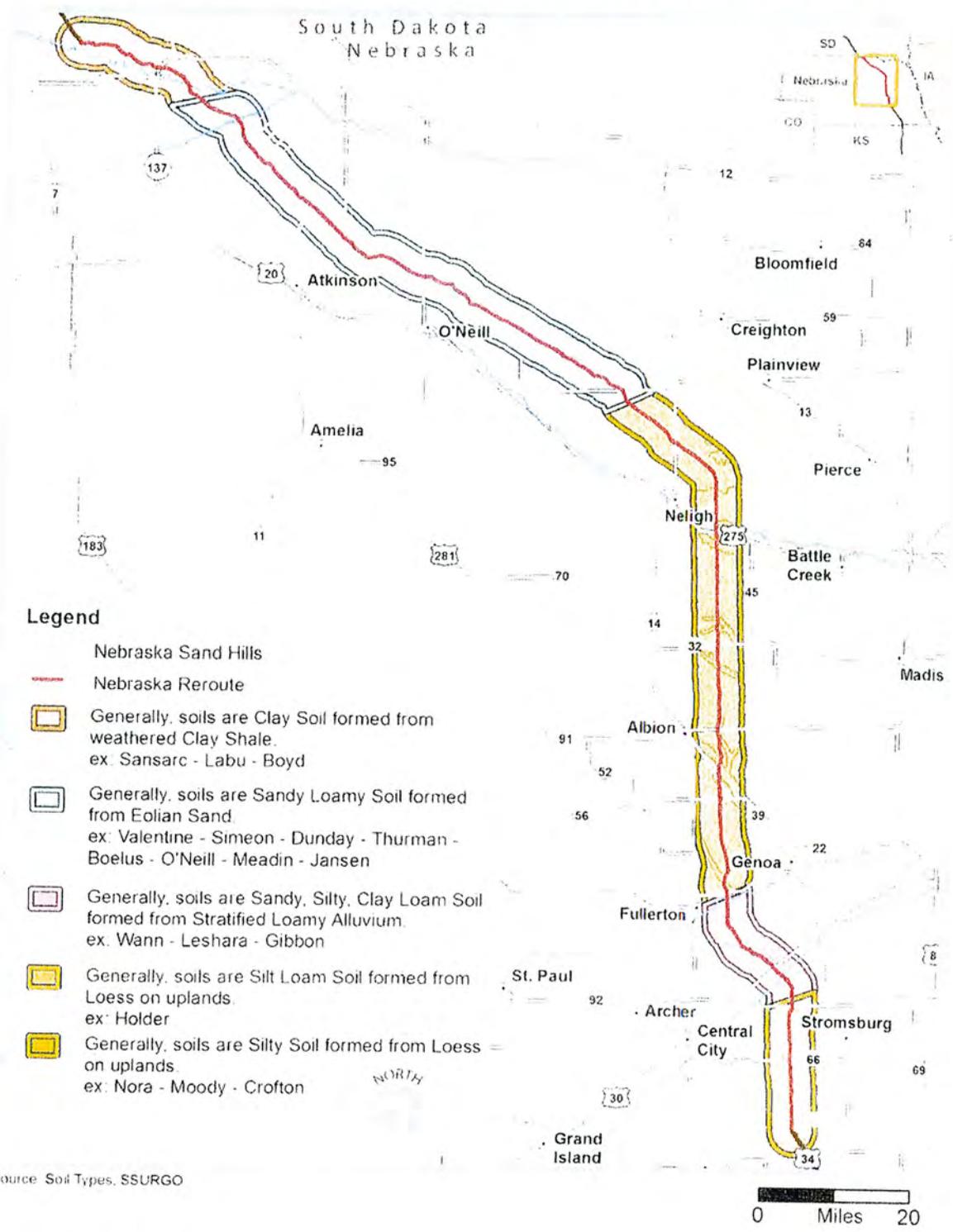


Source: Esri 2013, USDA 2007

Figure 3.2.2-2 Highly Wind Erodible Soils



Figure E.2-1. Soil Association along the Proposed Nebraska Reroute





Holt County

Soils in most of Holt County are generally very deep and excessively drained to somewhat poorly drained sandy soils. The predominant soil type in Holt County along the proposed Nebraska Reroute is the O'Neill-Meadin-Jansen Association (see Table E.2-4).

Table E.2-4. Holt County Soil Characteristics

| | | | | |
|---------|-------------|---|--------------------------|-----------------|
| O'Neill | Loamy soils | Loamy sediments over sand and gravel | Well-drained | 0 to 30 percent |
| Meadin | Sandy soils | Sandy sediments over sand and gravel on uplands | Excessively well-drained | 0 to 35 percent |
| Jansen | Loamy soils | Loamy sediments over sand and gravel on uplands | Well-drained | 0 to 30 percent |

Source: NRCS, 2012b

Antelope County

Soils in Antelope County are characterized by well-drained sandy or silty soils in the north and west grading to deep loess deposits to the south and east. The main soil types along the proposed Nebraska Reroute in Antelope County are the Nora-Moody-Crofton and the Valentine-Thurman-Nora-Boelus Associations (see Table E.2-5).

Table E.2-5. Antelope County Soil Characteristics

| | | | | |
|-----------|------------------------|-----------------------------------|------------------------------|-----------------|
| Nora | Silty soils | Loess on uplands | Well-drained | 0 to 30 percent |
| Moody | Silty soils | Loess on uplands | Well-drained | 0 to 17 percent |
| Crofton | Silty soils | Calcareous loess on uplands | Well-drained | 1 to 60 percent |
| Valentine | Sandy soils | Formed in eolian sand | Excessively drained | 0 to 80 percent |
| Thurman | Sandy soils | Formed in eolian sand | Somewhat excessively drained | 0 to 40 percent |
| Boelus | Sandy over loamy soils | Eolian sand over loess on uplands | Well-drained | 0 to 11 percent |

Source: NRCS, 2012b

Although the proposed Nebraska Reroute would be located outside the Sand Hills in Antelope County, the Reroute corridor has areas of fragile, sandy soils with surface features very similar to those of the Sand Hills (such as the Valentine Association; see Figure E.2-1). Valentine soils consist mainly of eolian, well-sorted sands, and sandy alluvium, with a smaller amount of loess.

Attachment 8.9

PROPERTY OF LONNIE & SANDRA BREINER

Section 15 ~ Township 32 ~ Range 15

#1). Soil Associations ~ TransCanada's Mile Post Markers ~ 625-676 ~ This map show that the proposed preferred pipeline route goes through theses Soil Legends Associations of 1, 8, and 11.

a). Key #1 ~ Elsmere-Valentine-lpage ~ Deep nearly level to strongly excessively drained, moderately drained, and somewhat poorly drained sandy soils on uplands and in sandhills valleys.

b). Key #8 ~ Labu-Samarc-Valentine ~ Deep to shallow, moderately steep to very steep excessively drained and well drained clayey and sandy soils in uplands.

c). Key #11 ~ Valentine-Simeon-Dunday ~ Deep nearly level to steep excessively drained and somewhat excessively drained sandy soils on uplands and stream terraces.

All three of these Associations have sandy soils

#2). Pictures of the Lonnie/Sandra Briener Property 2015. (Photos 1-5) Photos #1/#2 are pictures of a sand blow out taken by the Guard Rail Pond on 472 Ave in Holt County; Photos #3-#5 are pictures of the sand dunes and blow outs on 472 Ave in Holt County. This property is within 1 ½ mile of the proposed preferred pipeline route.

#3). Pictures taken of the Lonnie/Sandra Briener Property on 03/19/17 (Photos #1-#14) Photos #1-#6 are pictures of a sandy blow out; "Blow outs" are sandy areas where rapid wind erosion laterally "blow out" a hole in the surface of the landscape. Photos #7-#8 are pictures of the sandy soil with yucca/soapweed plants; Photos #9-#10 are pictures of

the sandy soil and blow outs in the surrounding Sandhills area; Photos #11-#13 are pictures of natural springs that are located on the same property as the blow outs. These springs do NOT freeze over during the winter; Photo #14 is a picture of a "Bull Hole" where cattle (Mostly bulls) will find an area, pawing at the ground to throw sand on their belly and back . This property is within one mile of the proposed preferred pipeline route.

#4). Pictures of the Sandy Creek on the 472 Ave in Holt County. 2015 (Photos #1-16) Photos #1-#8 are pictures of the Sandy Creek's sandy river bed taken on 472 Ave in Holt County; Photos #9-#15 are pictures of sandy soils of the river bed taken from the Sandy Creek Bridge located by the Salsness Ranch at the intersection of 472 Ave and 887 Rd in Holt County; This part of the Sandy Creek is south of the Briener property within 3 miles of the proposed preferred pipeline route.

#5). Pictures of sandy soils in Holt County in 2015 (Photos #1-#6) Photos #1-#2 are pictures are of sand dunes on 469th Ave north of Stuart NE; This property is within 3 miles of the proposed preferred pipeline route; Photos #3-#6 are pictures of the Bear Creek's river bed consisting of sandy soil, located north of Stuart NE on 890 Road. This property is within 4 miles of the proposed preferred pipeline route, located to the southwest.

#6). Affidavit of Sandra Breiner

2015

#1



Sand
Blow

Taken by Guard Rail Pond ~ 472 Ave
Proposed Pipeline crosses within 1 1/2 miles

#2





472 Ave ~

Sand Dunes & Blow Outs
Proposed Pipeline Crosses Within 1 1/2 miles



115



472 Ave ~ Sand Dunes & Blow Out
Proposed Pipeline will cross within
1 1/2 miles of this picture

2015



Sandy Creek ~ River Bed ~ 472 Ave



Proposed Pipeline runs within 3-4 miles
of this picture ~

2015

#3



Sandy Creek ~

#4



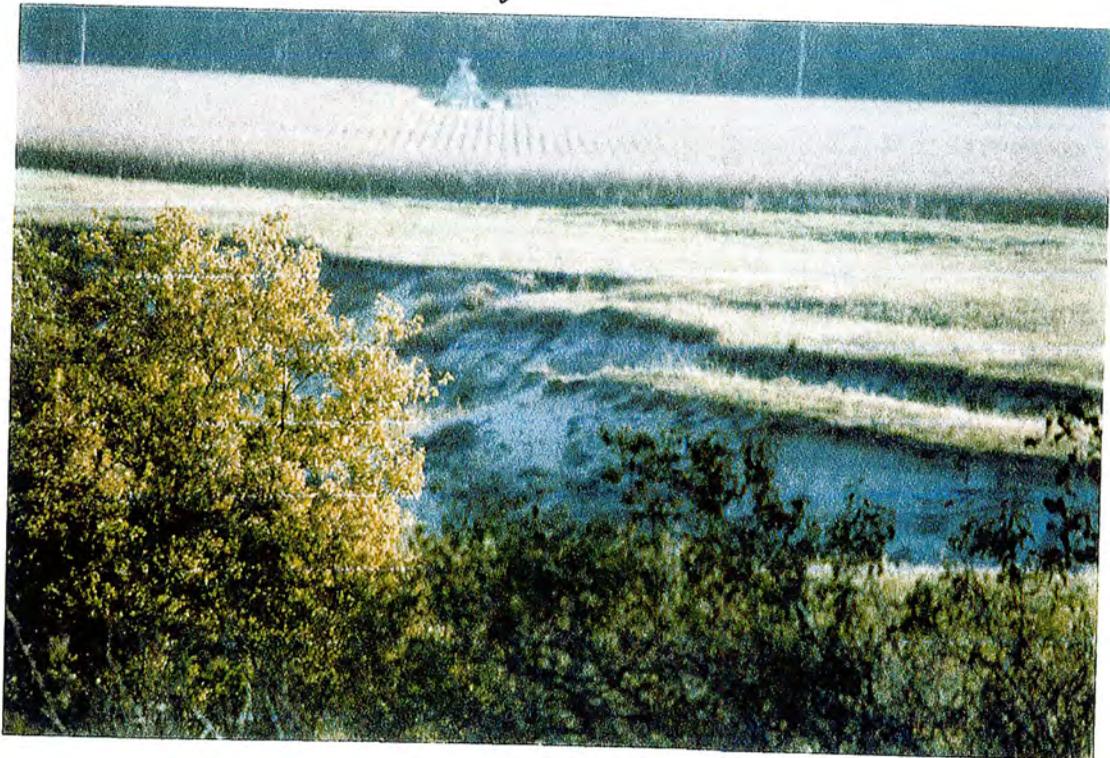
2015

#5



Sandy Creek ~ 472 Ave
north of Stuart & Atkinson NE

#6



2015

#7



Sandy Creek ~ 472 Ave

#8



2015

#19



Sandy Creek ~ Salsness Ranch ~ 887 Rd ~
Looking north ~ Bridge ~

#10



Sandy Creek - 887 Rd ~ Bridge
Looking south

#11



Taken By Salnes Ranch - Sandy Creek
887 Road ~ Bridge

#12



Looking north

2015

113



Taken By Salores Ranch Bridge ~ 887th Rd
~ Sandy Creek ~

114



2015

4/15



Sandy Creek

4/16



Sandra Breiner
47224 889th RD
Stuart NE 68780

To Whom It May Concern,

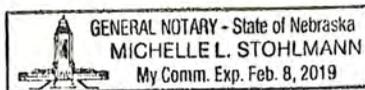
I, Sandra Breiner met with Diana Steskal on Sunday, March 19th, 2017 at our resident of 47224 899th RD, Stuart NE 68780. I took her on a tour of our property, which lies in the proposed preferred route of the Keystone XL pipeline route. Diana took photos of the blow outs and the sandy soil on the property, we visited about the concerns of land reclamation.

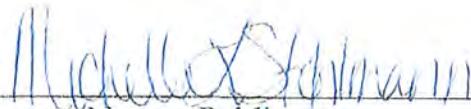
Dated this the 20 day March 2017



Signature of Affiant

Sworn to subscribed before me, this 20th day March 2017





Notary Public

Blow outs are a big problem when ranching in the sandhills. When the ground cover is disturbed, wind keeps making the blowout worse and it takes a lifetime of work to get it healed up again, if you ever do.

Sander Breiner
Breiner Ranch

Attachment 8.10

LAND RECLAMATION

OF

KEYSTONE I

GALEN HECKENLIABLE

FREEMAN SD

LAND RECLAMATION OF TRANSCANADA'S KEYSTONE I

TARSANDS OIL SPILL BY FREEMAN SD

We, Byron Steskal and myself met with Galen Heckenliable on March 28, 2017 at his home ~ 28615 437th Ave. On April 2nd 2016, a leak from the TransCanada's Keystone I was discovered and reported. This spill affected land on both sides of 437th Ave, to the west is Galen's property and to the east is his neighbors. This leak was not discovered by TransCanada but by a county resident who saw that the snow on the affected property was of a black color. We visited with Galen about his concerns of the actions taken by TransCanada's official personal, construction workers, and the reclamation of his land after cleanup completion. Galen gave me (Diana) permission to take pictures of his property as he was very unhappy with the way he was treated and the outcome of his land reclamation.

On the very first day of the spill, TransCanada's workers would not let Galen enter his property when he was returning home from work; Galen had BIG concerns when he saw the construction workers wearing hazmat suits with breathing apparatuses; Galen was not allow close to the spill site; Galen's drive-way was tore up, TC tried to fix it but Galen still had a hard time getting in and out of his drive-way; and TransCanada used more than the 50ft easement area that was stated in the original contract ~ Galen was told that TC could go anywhere during the spill/cleanup process.

As you will see in the following pictures #1-#18, TransCanada's statement about land reclamation ~ "How they will leave the land in better shape than they found it." Once again has fell short ~ FAILED!!

#1). Photos #1-#18 of Galen Heckenliable's property

a). Photos #1-#4 ~ are pictures of the Galen Heckenliable property at 28615 437th Ave.

b). Photos #5-#6 ~ are pictures of the TransCanada's Keystone Pipeline Sign

c). Photos #7-#8 ~ are pictures of the standing water that Galen referred to as his "fishing pond"

d). Photos #9-#14 ~ are pictures of the sparse land reclamation which many bare spots of soil showing on the easement area.

e). Photos #15-#16 ~ are pictures of the mesh used in land reclamation floating in the standing water pond.

f). Photo #17 ~ is a picture taken while standing on 437th Ave, looking to the east; the affected property is across the road from Galen's.

g). Photo #18 ~ this picture was taken while standing at the corner of Galen's property; close to HWY 18; looking to the west.

#2. Galen Heckenliable's Affidavit

#1



#2



13



14



#5



#6



#17



#18



#9



#10



#11



#12



#13



#14



115



116



4/17



4/18



Attachment 8.11

LAND RECLAMATION

OF

KEYSTONE I

MIKE AND SUE SIBSON

HOWARD SD

2009 -- 2016

“KEYSTONE PIPELINE ACROSS THE PRAIRIE”

By ALLISON RUSSELL

The “Keystone Pipeline Across the Prairie” video shows the beginning start of construction and the questionable completion of the land reclamation of the Keystone I on the Mike and Sue Sibson’s property.

The following pictures are taken from the video:

a). The first three pictures show the combine stuck in the easement area during the Fall Harvest 2010.

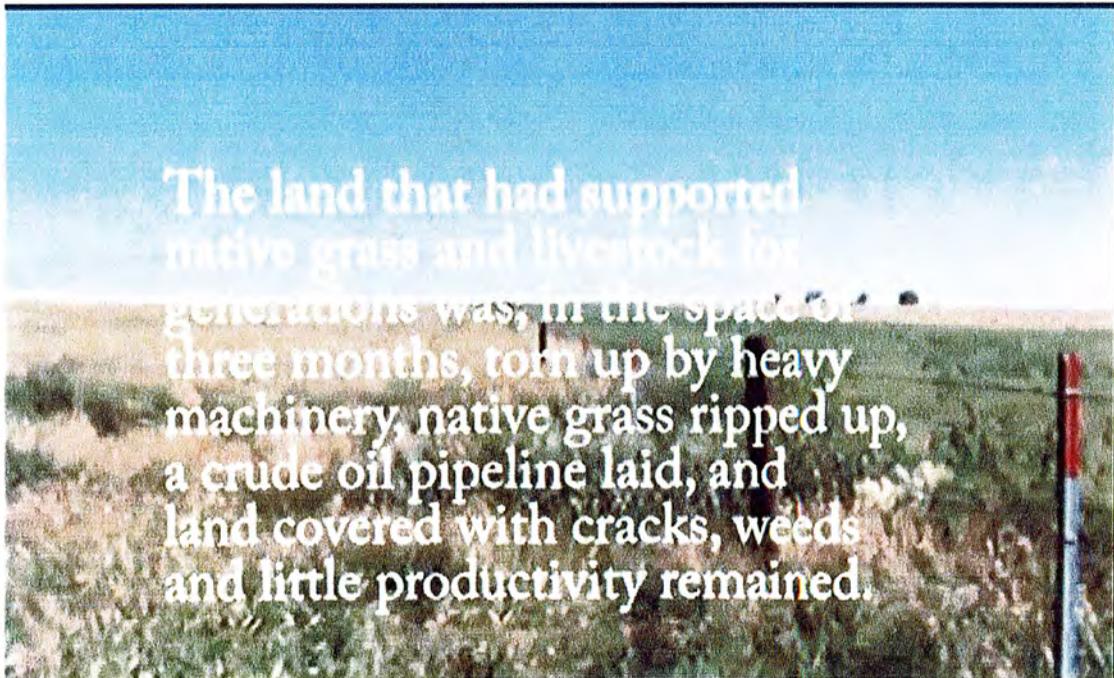
b). The next five pictures shows that construction in 2009 continued during the wet rainy weather, causing irreparable damage.











Attachment 8.12

LAND RECLAMATION of the Bison Pipeline

TRANSCANADA'S BISON PIPELINE in
Montana 04/12/2011

Pictures: Bob Zellar – Billing Gazette
Lincoln Star Journal

A cattleguard damaged during installation of the Bison high pressure gas pipeline in southeast Montana 04/12/2011



Blowing and blown soil on Robert Rusley's property on the Bison high pressure gas pipeline right of way in southeast Montana. 10/27/2010

152



10/27/2010 02:54

A pipeline sign lies fallen in a trench left after the soil over the Bison pipeline sunk in spring on Robert Rusley's property in southeast Montana 04/12/2011



One sign has fallen while another leans in the soft soil on the Bison high pressure gas pipeline right of way in southeast Montana 04/12/2011



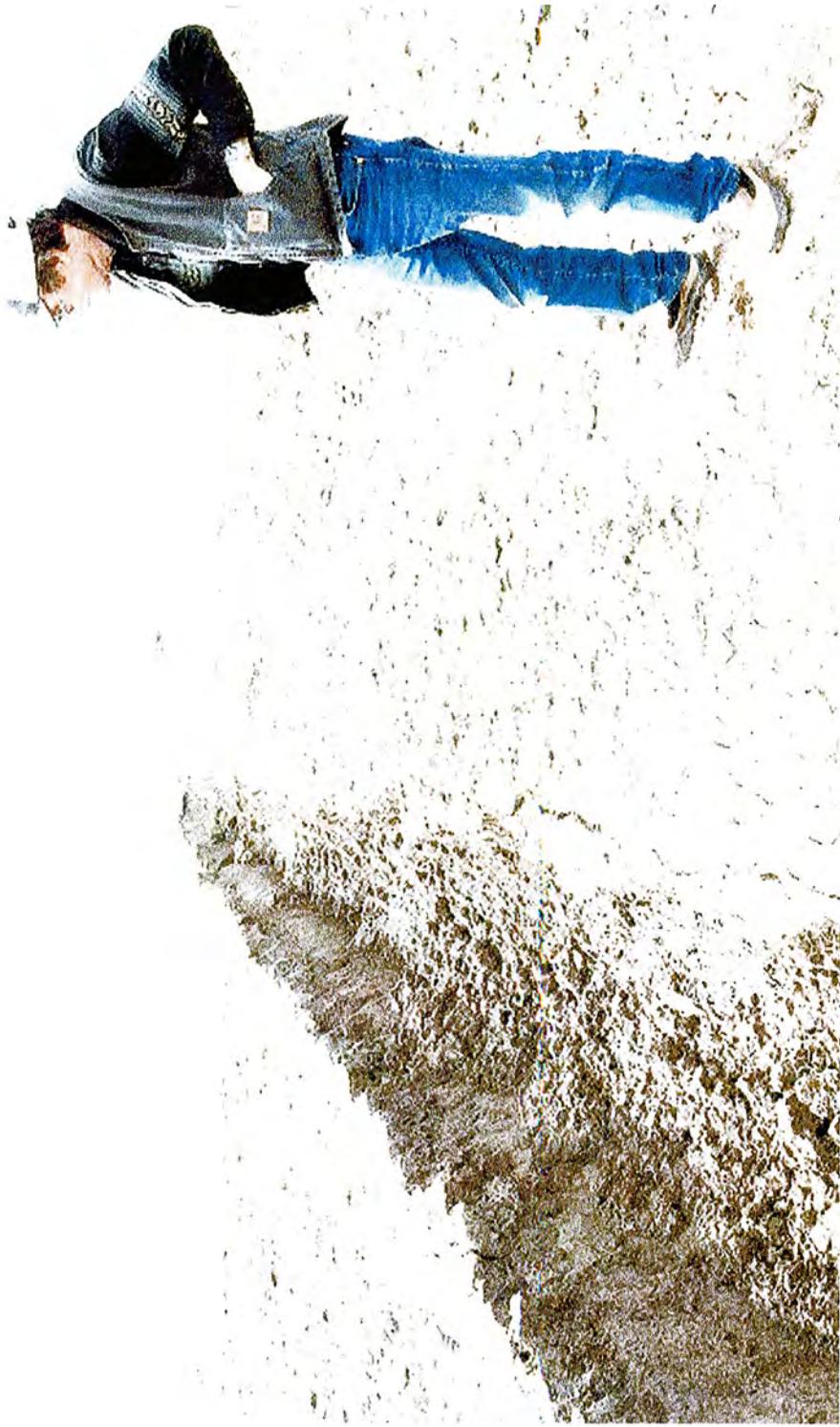
Janelle Reiger walks on a concrete creek crossing damaged during installation of the Bison high pressure gas pipeline in southeast Montana 04/12/2011



Janelle Reiger stand in a trench left after the soil over the Bison pipeline sunk this spring on Wade Klauzer's property in southeast Montana 04/12/2011



Wade Kllauzer stands by a trench left after the soil over the Bison pipeline
sunk this spring on his property in southeast Montana 04/12/2011



A pipeline sign lies fallen in a trench left after the soil over the Bison pipeline sunk this spring on Robert Rusley's property in southeast Montana
04/12/2011



Water erosion on Wade Klauzer's property on the Bison high pressure gas pipeline right of way in southeast Montana 04/12/2011

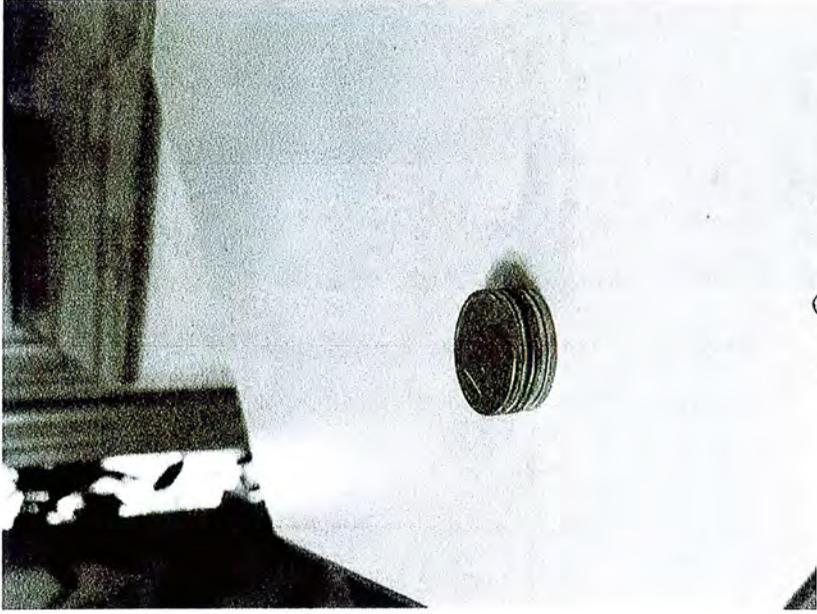


Janelle Reiger walks by a trench left after the soil over the Bison pipeline sunk
this spring in southeast Montana 04/12/2011

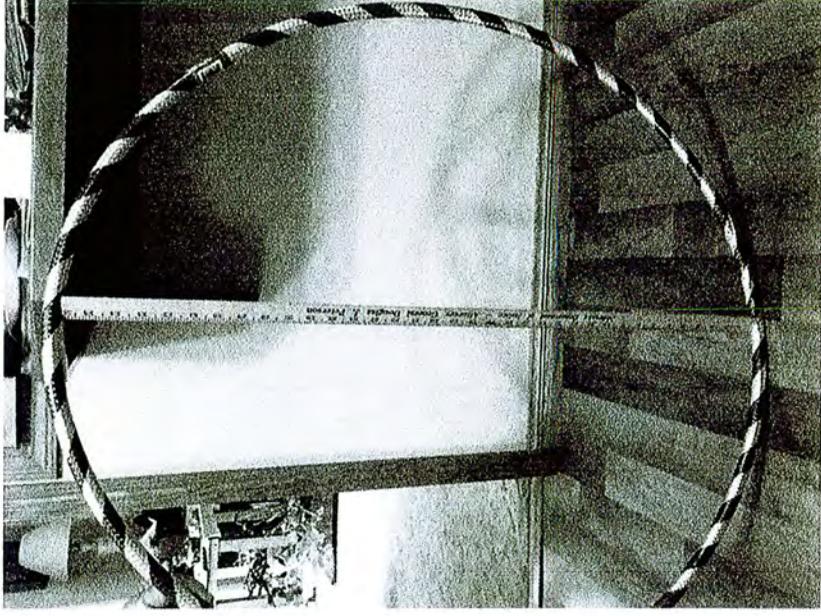


Attachment 8.13

SIZE AND THICKNESS OF THE PIPE



5-Diameter

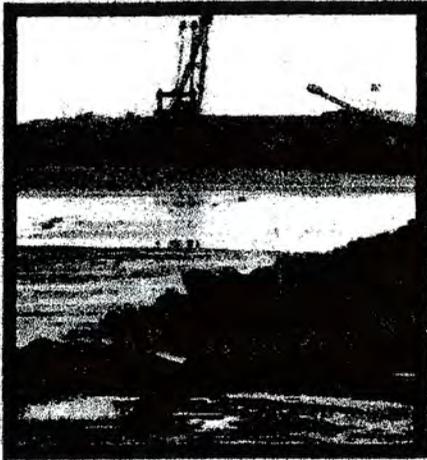


36" Hula Hoop

Attachment 8.14

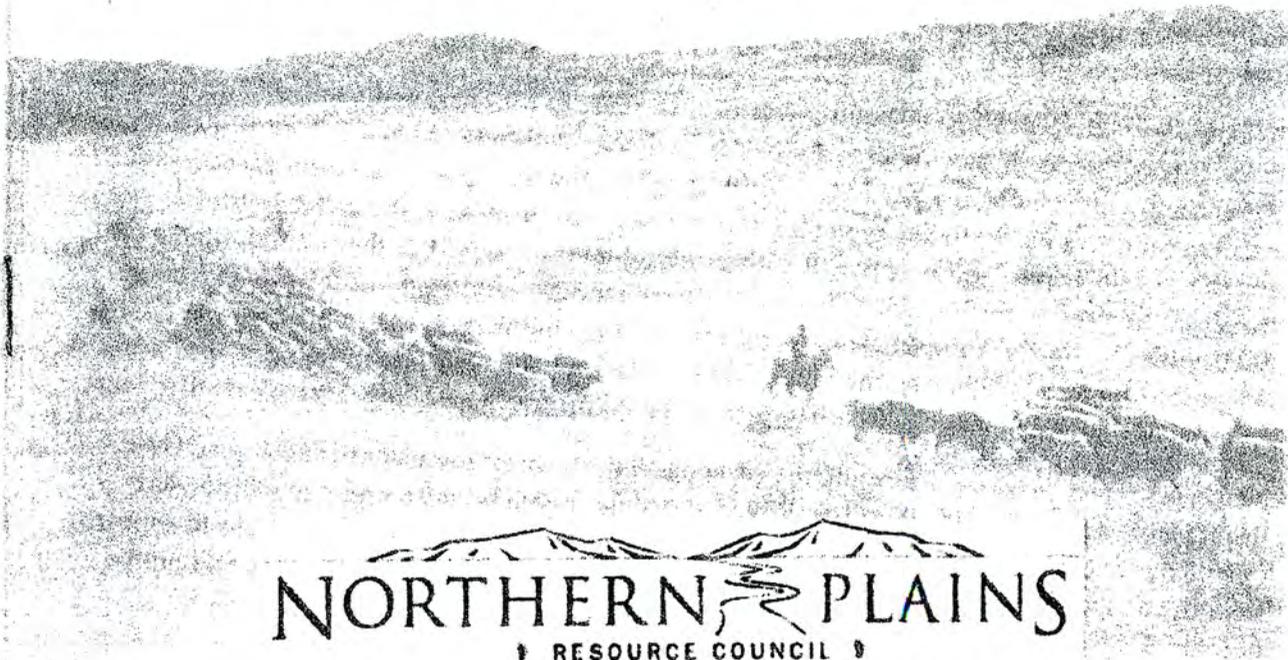
Northern Plains

What all landowners and county officials should know before construction of the



KEYSTONE XL TAR SANDS PIPELINE:

**Lessons and Recommendations
to Improve Safety**



NORTHERN  PLAINS
RESOURCE COUNCIL

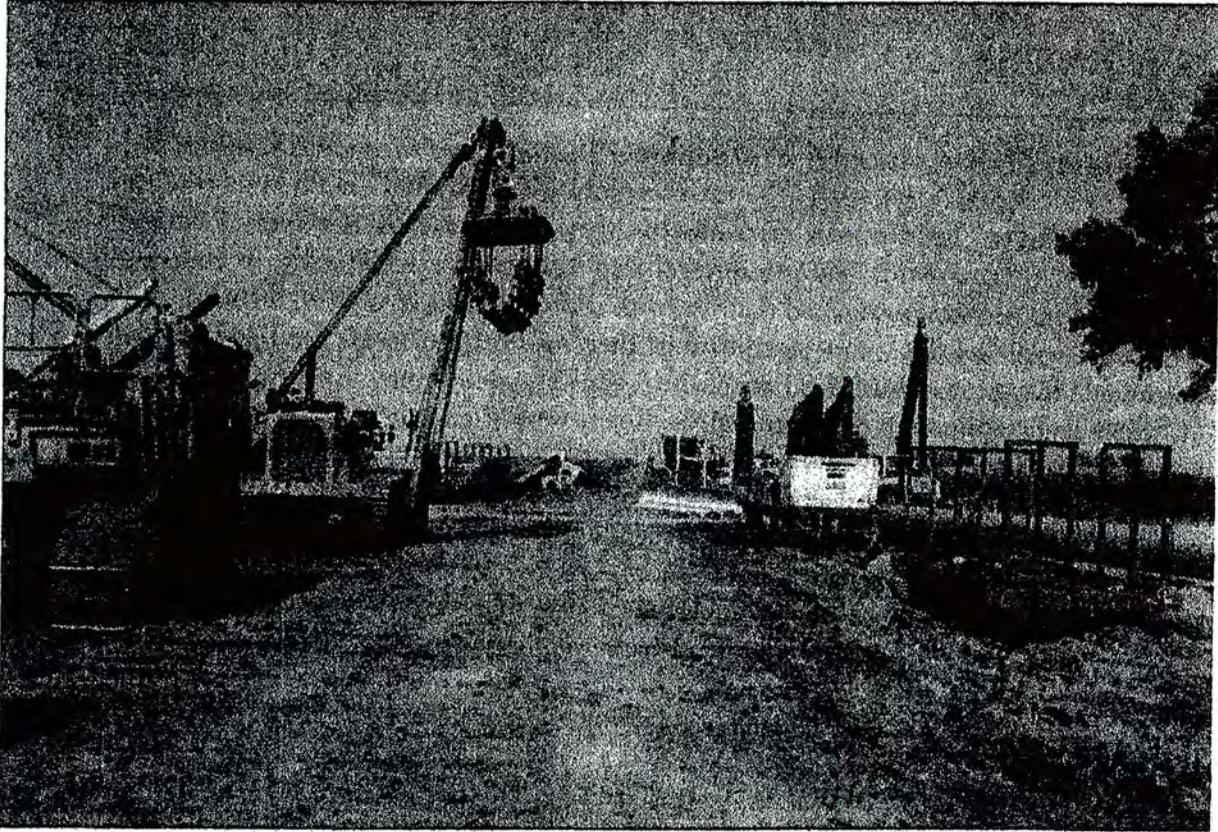
Working together to protect landowners and their property

Rural landowners from Montana to Texas are facing the construction of TransCanada's Keystone XL tar sands pipeline. This 36-inch pipeline will run from the tar sands of Alberta to the Gulf Coast and will pump up to 900,000 barrels of oil per day. TransCanada presented initial right-of-way proposals to landowners, but failed to address many of the landowners' concerns, including safety, liability, and environmental restoration. A significant proportion of people living in the areas of Montana and South Dakota to be crossed by Keystone XL rely on groundwater for domestic and agricultural uses. Preventing groundwater contamination from a pipeline failure is a particularly high priority to landowners.

To address these concerns a group of landowners living in the path of Keystone XL formed the Northern Plains Pipeline Landowners Group of Montana (NPPLG). In doing so, they determined that the best way to protect their safety, rights, land, water, and livelihoods was to come together, share information, and develop a joint agreement with TransCanada regarding the use of their land for the pipeline. NPPLG is a democratically organized group with an elected representative committee. It holds membership meetings and uses a collaborative team approach so all members have a say about their situation. Groups similar in mission and structure to NPPLG have formed in South Dakota to address landowner concerns for Keystone XL and Keystone 1, a tar sands pipeline in the Midwest which was just constructed and will be online in 2010.

In October 2009, landowners along the Keystone XL route in Montana and South Dakota attended the Montana Dakota Pipeline Safety Landowner Exchange Project in Valley City, North Dakota, one of the communities along the Keystone 1 Pipeline route. Keystone 1 crosses North Dakota from north to south eventually ending at a refinery in Illinois. The purpose of the exchange project was to educate a landowner delegation whose members would return and inform their communities about the effects of pipeline construction. This event offered landowners the opportunity to meet with public officials, pipeline company representatives, and five landowners crossed by Keystone 1. The delegation also took a flight over the route. Landowners learned about preventing safety problems, ensuring pipeline safety during construction and operation, and responding to problems that occur.

Numerous topics were covered during the exchange, but the most prevalent included road wear, maintenance and safety, pipe thickness, project oversight, easement restoration, prevention and treatment of noxious weeds, and emergency services. This publication summarizes areas of concern from the perspective of Montana landowners after hearing North Dakota landowners and public officials' testimonies, observations, and recommendations.



ROADS

Landowners and highway department personnel in North Dakota mentioned several road issues that arose from Keystone 1. The roads couldn't handle all of the additional wear and, combined with wet weather, were torn up so badly in some areas that they were no longer drivable. A school bus became stuck on a muddy, torn-up road that was used heavily by contractors. Highway department personnel estimated that Keystone 1 put 10 years of wear on the roads. It is unlikely the county will ever be compensated because there's no visible damage yet. Based on their expertise, though, they believe the useful lives of the roads were significantly shortened because of the many trucks hauling pipe and other equipment. Roads were often damaged where crossed by the pipeline. Counties did secure a cumulative \$250,000 bond for road repair, unfortunately that wasn't enough. One North Dakota county had to spend nearly a year negotiating for payment to repair road damage created when trucks repeatedly violated a no-haul order on one rural road.

Good roads are an important safety issue in rural areas. Roads are necessary for emergency and fire vehicles to reach those in peril. Damaged roads can cause needless increased risk of accidents.

Lessons and Recommendations

Based on their experiences with Keystone 1, landowners and the North Dakota highway department had several recommendations to improve and guarantee road safety:

- A \$250,000 bond wasn't enough, two to three times this amount would be needed to guarantee funds to repair and maintain roads;
- Allow counties to maintain control over the bonded money;
- Require all counties to implement a unified haul load agreement;
- Only big trucks were restricted in North Dakota. If the highway department could do it over again they said they would restrict all trucks to specific roads;
- Roads near the pipe yards and equipment yards got the most wear, therefore focus attention on those areas;
- Make sure there are provisions (funding and written agreements) requiring the company to conduct road maintenance during project construction and to fix roads upon completion.

Maintaining road quality, limiting road use, and collaborating with neighboring counties to develop road-use agreements will increase the safety and ease of travel on roads used to construct tar sands pipelines. Roads should be maintained or built – during and after construction – at a level equal to or greater than the road conditions before construction. By requiring this, landowners, emergency personnel, and school buses will be able to travel safely.



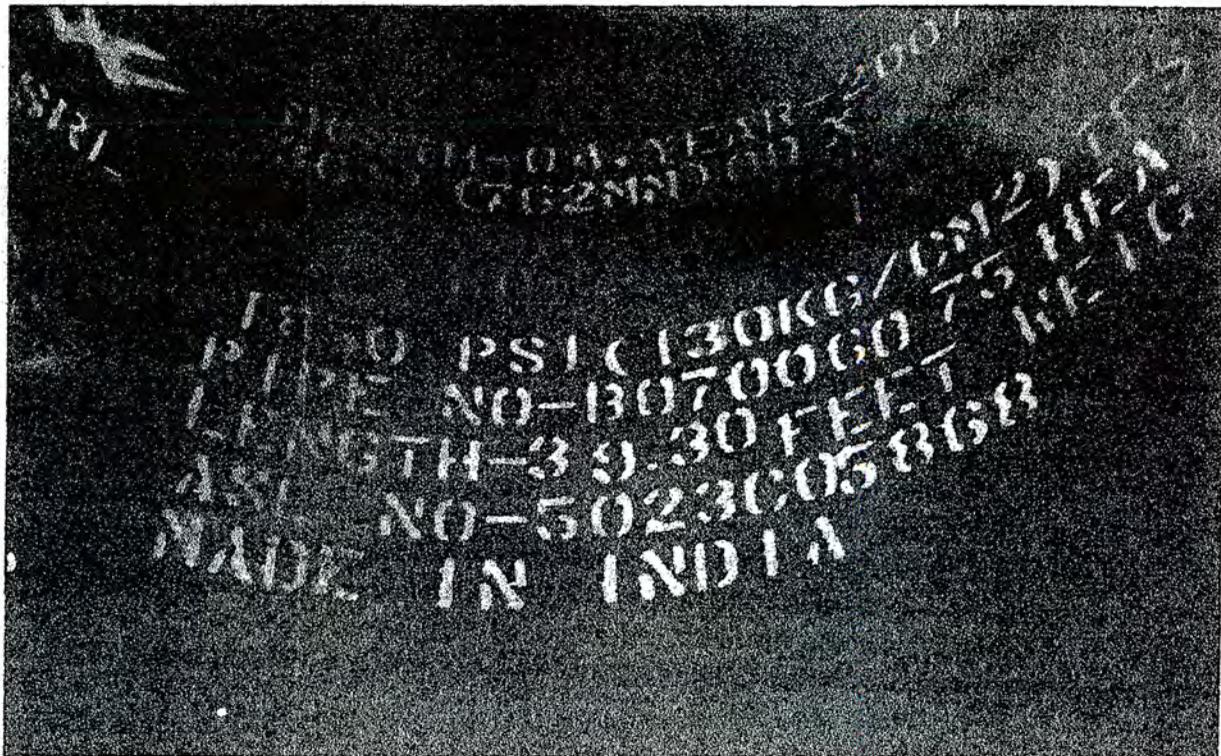
PIPE THICKNESS

On October 10, 2008, TransCanada asked the Pipeline and Hazardous Materials Safety Administration (PHMSA is part of the U.S. Department of Transportation) to waive a standard requirement which says that pipelines transporting oil and other hazardous liquids may not operate at more than 72% of their Maximum Operating Pressure. The practical effect of the special permit TransCanada seeks would be to allow it to use pipe made of thinner steel. An operating pressure of 72% of Maximum Operating Pressure in a thicker pipe will be 80% in a thinner pipe. TransCanada seeks this waiver to be able use a thinner pipe in areas not designated as "high consequence." High-consequence areas have a population of 50,000 or more people or a density of 1,000 people per square mile. About 91% of the Montana Keystone XL route is defined as a "low consequence area," therefore subject to thinner pipe, if the waiver is granted. A pipe made of thicker steel is designed to withstand higher pressures than a pipe with thinner walls made of the same kind of steel.

Wesley P. James, a retired hydraulics professor at Texas A&M University (who is also a landowner on the Keystone XL route), pointed out in a guest editorial to Montana newspapers that TransCanada has "indicated that the pipeline would be pressure tested to at least 1800 psi prior to operation. This implies that the test pressure will be greater than the yield pressure of the thin-walled pipe. If the pressure in the pipe exceeds the yield pressure, the elastic limit of the steel in the pipeline will have been exceeded and when the test is completed the pipe diameter will be greater than 36 inches and the wall of the pipe will be thinner. This would be considered a pipeline failure. It is like blowing up a balloon until it is about to pop. When the air is released, the balloon will be larger and thinner than it was initially.

"Studies of major Canadian pipeline ruptures have found that during the first 10 years of operation, stress cracking was the most common cause of pipeline ruptures while during the second 10 years of operation, external corrosion was the most common cause of pipeline rupture. Both forms of ruptures occur more frequently as the pipeline ages and will be a major concern with Keystone pipeline. Research has shown that a longitudinal stress crack 16 inches long and just 1/16 inch deep will cause the Keystone pipeline to rupture at the normal operating pressure. To reduce the external corrosion rate of the pipeline, TransCanada will use cathodic protection where a DC voltage will be applied to the pipeline. This will cause buried metal pipes and water well casings on property adjacent to the pipeline to corrode rapidly depending on the distance from the pipeline. A buried water pipe that is within 100 feet of the pipeline will be destroyed in less than a year."

At a pipeline safety conference in New Orleans, an NPPLG member discussed TransCanada's pressure waiver with PHMSA officials. Those officials said that more than 50 additional stipulations would be required if the pressure waiver were granted, in which case, in theory, the pipeline would



be just as safe. However, NPPLG members learned during the North Dakota exchange that there was very little on-ground government oversight of Keystone 1 and numerous contractors broke rules. With 50 or more stipulations, more enforcement will be needed, requiring a high level of oversight.

Lessons and Recommendations

Based on their experiences with Keystone 1, landowners and county officials had several recommendations to improve and guarantee pipeline safety:

- Deny TransCanada its waiver to operate at higher pressure in low consequence areas;
- Make sure there is a liaison who is paid by the company and is available for landowners to contact. The liaison would report to the Public Service Commission;
- Demand effective enforcement of rules and stipulations to maintain pipeline safety before and after construction.

Using thicker-walled pipe, establishing liaisons to deal with landowner concerns, and having a fully-staffed PHSMA fleet on the ground during and after pipeline construction will decrease high risk, unsafe events such as spills caused by cracks or improper procedures. As a consequence of these proactive actions, water quality will be protected and people's livelihoods will be safeguarded.

EASEMENT RESTORATION AND NOXIOUS WEEDS

Landowners and the Valley City, North Dakota, Noxious Weed Department noted many problems with weeds caused by construction of Keystone 1 and the need for proper restoration of disturbed land and necessary treatment of weeds. The county stated that certain easements do have weeds, and that TransCanada is paying to treat those weeds for a couple of years, as required by law. Certain locations, such as spoil piles and routes into work sites, were also noted as being more susceptible to weeds.

Unfortunately, problems are anticipated for many years, in which case the company will not pay any more to control weeds. At that point it's left to county taxpayers. A landowner crossed by the pipeline stated the company laid the pipe through his access road, but didn't restore the road to its original condition. In addition, the company didn't reseed his CRP land, weeds have established themselves on the easement, and his renters couldn't cross the easement (the soil was too wet and loose) to do work.

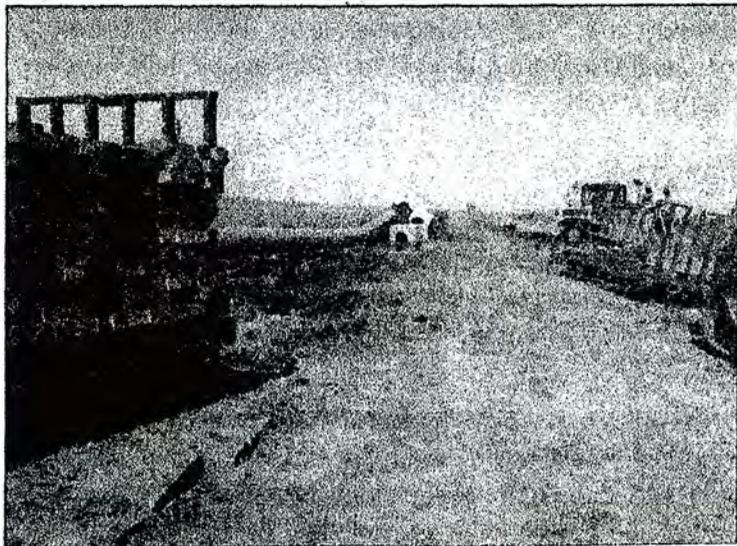
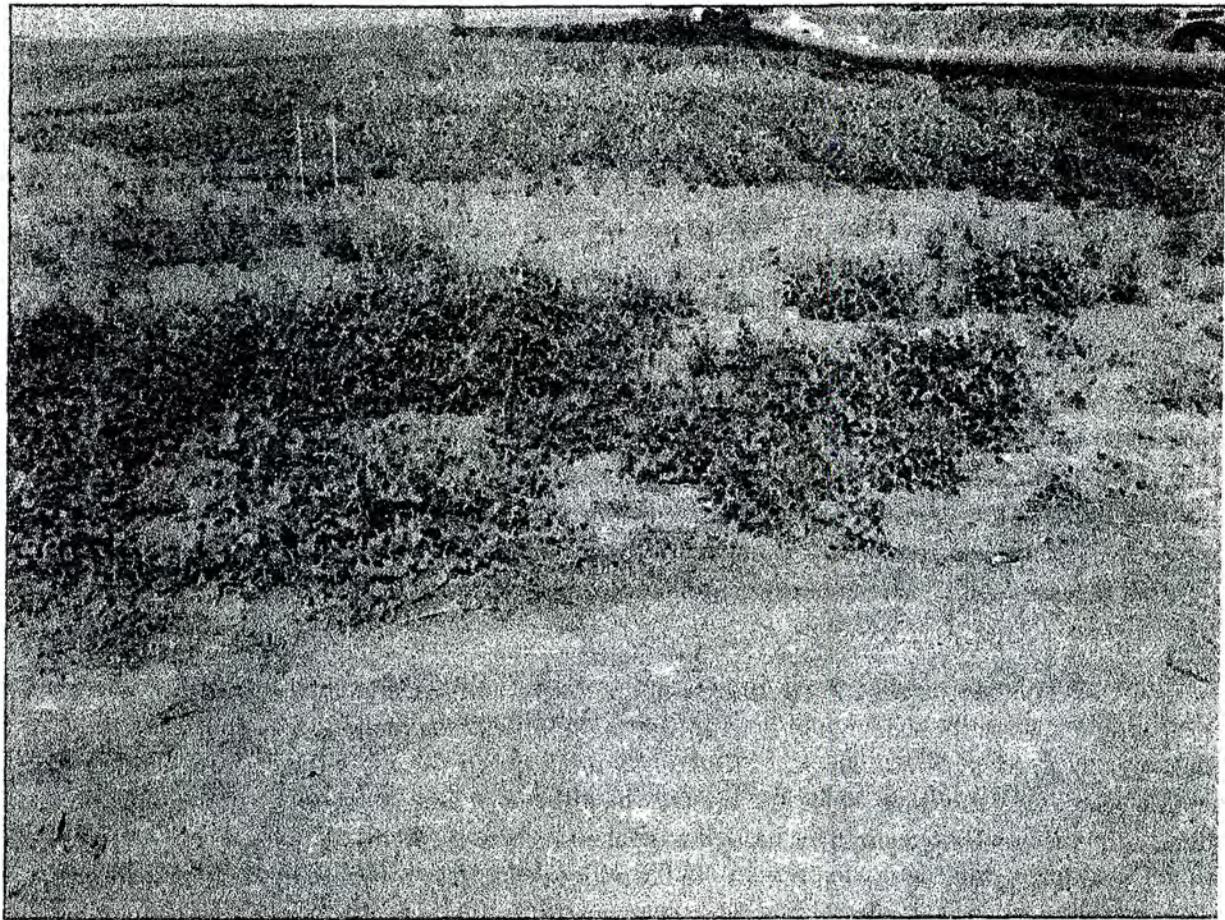
Another trend was trash, portable outhouses, and metal debris being left behind and fences not being rebuilt on the easement after construction. One landowner said a steel post was left behind that damaged his machinery. He billed TransCanada for it and the company did pay. However it shouldn't have been left behind in the first place.

Lessons and Recommendations

Based on their experiences with Keystone 1, landowners and county weed specialists had several recommendations to improve the restoration process, decrease the spread of weeds, and encourage safety:

- Document (with photos and descriptions) land, crops, fences, ditches, roads, etc. before, during, and after construction;
- Have funds reserved and available for more than two years after construction in case weed problems persist;
- Encourage reseeding with native plants.

Restoring the easement to maintain its agricultural value should be a top priority of the company. Reseeding, treating noxious weeds, and cleaning up trash will allow landowners to continue with their work quickly and safely.



EMERGENCY SERVICES

Pipeline companies are not required to submit an emergency response plan for a project until after construction has begun. TransCanada's Keystone 1 pipeline is scheduled to go into operation without the public knowing details of an emergency response plan.

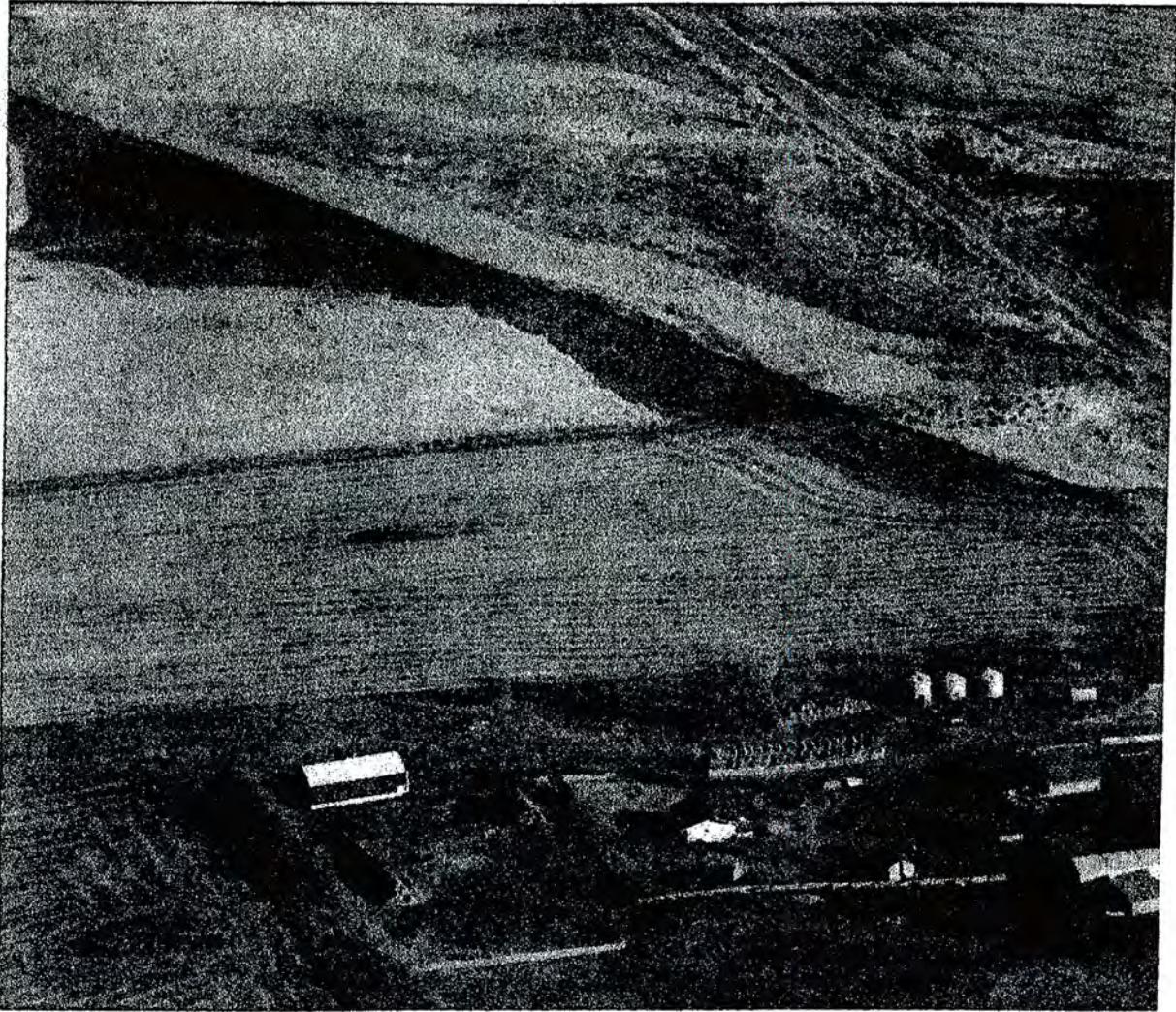
The Keystone XL pipeline is now undergoing environmental analysis and review without any proposed emergency response plan available for public review or consideration. This limits the opportunity for not only government officials but the public, including those most directly affected, to have any input before it is too late. If the U.S. Department of Transportation permits the use of thinner pipe in low consequence areas, there will be increased risk. Yet, because of a lack of an upfront emergency response plan, Montana and South Dakota emergency personnel might not be prepared to access spills, leaks, and assist rural landowners. This poses a health and safety risk to those citizens.

To ensure safety of the pipeline, environment, and citizens the Environmental Impact Statement (EIS) should analyze the adequacy of the applicant's response plans for accidents, spills, and other emergencies. Keystone XL would cross hundreds of miles of remote, often fragile areas. Finding and gaining access to sites of leaks, spills and fire may be difficult or slow along much of the pipeline route, and personnel and equipment needed to deal with these incidents will be scarce. The company should state how it will assist, equip, train, and fund local first-responders to be ready and able to act in the event of accidents threatening the environment or public health. Citizens of Montana, the Dakotas, and Nebraska have as much right to safety standards designed to prevent oil spills and contamination of the land and water as do residents of "high consequence areas" such as Houston or Oklahoma City. Citizens and county personnel also should be able to comment and help develop coherent, logical, and efficient emergency response plans.

Lessons and Recommendations

- Require the company to develop an emergency plan prior to construction;
- Secure funds to maintain and improve roads specifically for emergency access;
- Ensure local emergency personnel are educated and trained about pipeline hazards and initial response for such cases.

Developing a plan that empowers county emergency services to confidently and quickly respond to incidents near or around the pipeline will improve the health and safety of citizens. The U.S. Department of State should mandate that the EIS analyze the adequacy of the applicant's plans for response to accidents, spills, and other emergencies. Emergency response plans should be in place before construction begins.



SUMMARY

Counties and landowners will face many issues when dealing with tar sands pipelines now and into the future. Well-maintained roads, thick pipe, restored easements, and strong, organized emergency services are among the lessons learned during the Montana Dakota Pipeline Safety Landowner Exchange Project that would improve safety during any pipeline construction.

Montana landowners in the NPPLG believe that by joining together, landowners can share information and ideas to protect their rights, water, safety, and livelihoods. In the end, the goal is to work together to reach a win-win situation for landowners, the company, and the community.



NORTHERN PLAINS

• RESOURCE COUNCIL •

www.northernplains.org

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Attachment 8.15

FARM SOIL ~ Section29 Township31 Range13

#1). Farm pictures taken March 19, 2017 ~ #1-#10

Photo #1). This picture shows the beginning of the North Branch of the Eagle Creek.

Photos #3/#4). Pictures ~ there are certain times of the year when we are not able to cross the wetlands due to surface water. All wetlands are south of the shelterbelt and the proposed preferred route crosses at the west end of the shelterbelt, which will be affected by the easement area.

“Wetlands” ~ are areas where water covers the soil, or is present either at or near the surface of the soil all year or for varying periods of time during the year including the growing season.

“Shelterbelt” ~ A line of trees or shrubs planted to protect an area, especially a farm field, from strong winds and the erosion they cause.

In 1934 President Franklin D. Roosevelt initiated the Great Plains Shelterbelt in response to the severe dust storms of the Dust Bowl, which resulted in significant soil erosion and drought.

Photo #8). This picture shows the north side of the shelterbelt, showing the sandy soil. Also Byron (Stix) is standing on a small ridge which was form during the Dust Bowl, from the blowing sand into the fence line.

Photos #9/#10). This pictures shows evidence of the sandy soil on our property ~ 29-31-13.

#2). Soil Survey ~ B-Farms Partnership (Renter) of Steskal Property

March 19, 2017

Legal ~ Holt County ~ Section 29 Township 31 Range 13



#1

Beginning of North Branch of Eagle Creek



#2

March 17, 2017

#1



#2



March 17, 2017

13



14



March 19, 2017

#5



#6



March 19, 2009

17



18



March 19, 2017

#9



#10



March 19, 2017

#11



#12



#13



#14



Attachment 8.16

Pictures taken of Gravel Pit located

28 ~31 ~ 13

Atkinson Sand and Gravel

May 25, 2017

Pictures taken from Steskal Property

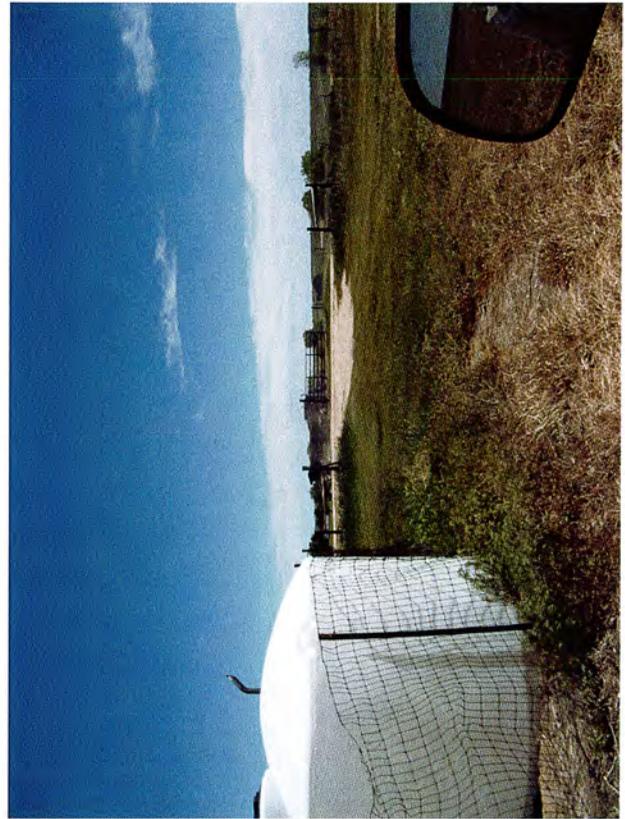
Located at 29 ~ 31 ~ 13

May 25, 2017

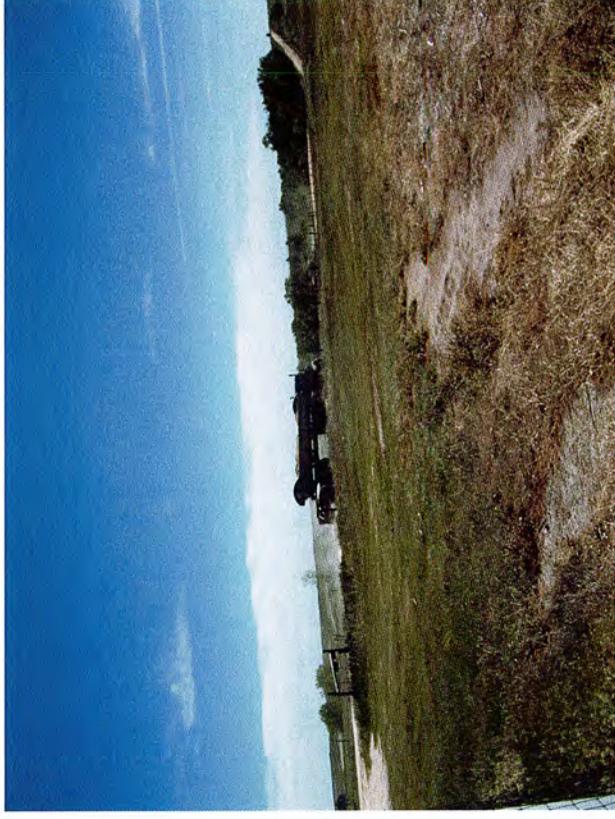
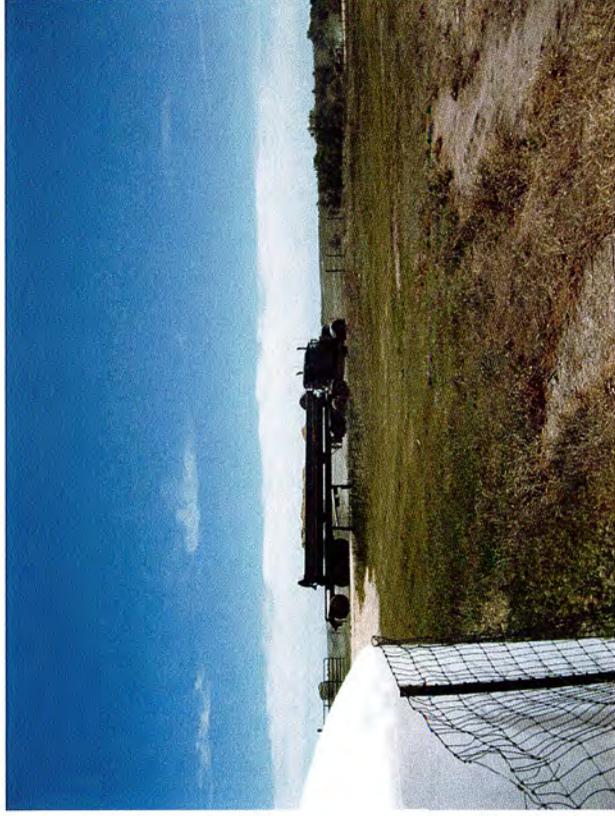
Property located at 28 ~31 ~13



The Atkinson Sand and Gravel Pit (listed on page 9 of the Boyd – Holt County Legal Map Book) is located to the east of the Steskal property.



Side-Dump trucks loaded with sand leaving the gravel pit property.



This property located across the road from the Steskal property is owned by Pat Gentele.



Side-Dump Trucks loaded with sand



Side-Dump
trucks entering
the gravel pit.



Attachment 8.17

CROPS PLANTED IN HOLT COUNTY

| | 2011 | 2013 | 2015 |
|--------------|---------------|---------------|---------------|
| Corn | 190,679 acres | 194,543 acres | 172,310 acres |
| Soybeans | 71,866 acres | 79,068 acres | 86,159 acres |
| Popcorn | 12,462 acres | 16,387 acres | |
| Potatoes | 4,318 acres | 4,893 acres | 2,487 acres |
| Edible Beans | 2,390 acres | 2,872 acres | 3,876 acres |
| Alfalfa | 13,964 acres | 16,975 acres | |
| Oats | 2,386 acres | 4,599 acres | 11,276 acres |
| Rye | 2,146 acres | 2,744 acres | 7,826 acres |
| Wheat | 4,386 acres | 3,911 acres | 2,526 acres |
| Mixed Forage | | 4,722 acres | 7,142 acres |
| Edible Peas | | | 535 acres |
| Grass | | 500,241 acres | 896,001 acres |
| Millet | | 669 acres | 2,555 acres |

(Resource: Info from FSA – Farm Service Agency ~ O’Neill NE)

Warning this document contains Personal Identifiable Information (PII)

| CRMS Load Date | Program Year | Administrative State | Administrative County | CRMS Crop/Category Name | Initial Planted Acres | Subsequent Planted Acres | Felled Acres | Prevented Acres | Total Producer Acreage |
|----------------|--------------|----------------------|-----------------------|-------------------------|-----------------------|--------------------------|--------------|-----------------|------------------------|
| 1/21/2017 | 2016 | Nebraska | Holt | Beans Except Soybeans | 2,597.07 | 0 | 0 | 0 | 2,597.07 |
| 1/21/2017 | 2016 | Nebraska | Holt | Corn | 182,153.55 | 664.92 | 65.89 | 14,356.36 | 182,818.47 |
| 1/21/2017 | 2016 | Nebraska | Holt | Forage | 20,300.11 | 0 | 0 | 0 | 20,300.11 |
| 1/21/2017 | 2016 | Nebraska | Holt | Grass | 1,039,740.48 | 312.21 | 0 | 0 | 1,040,052.69 |
| 1/21/2017 | 2016 | Nebraska | Holt | Millet | 1,228.24 | 1,120.96 | 0 | 0 | 2,349.20 |
| 1/21/2017 | 2016 | Nebraska | Holt | Oats | 8,543.58 | 0 | 0 | 0 | 8,543.58 |
| 1/21/2017 | 2016 | Nebraska | Holt | Potatoes | 2,525.45 | 120 | 0 | 0 | 2,645.45 |
| 1/21/2017 | 2016 | Nebraska | Holt | Rye | 5,082.67 | 0 | 0 | 0 | 5,082.67 |
| 1/21/2017 | 2016 | Nebraska | Holt | Sorghum | 1,824.49 | 285.31 | 0 | 0 | 2,109.80 |
| 1/21/2017 | 2016 | Nebraska | Holt | Soybeans | 85,035.43 | 3,676.07 | 0 | 463.71 | 88,711.50 |
| 1/21/2017 | 2016 | Nebraska | Holt | Triticale | 112.42 | 0 | 0 | 0 | 112.42 |

popcorn 12,396.45



United States Department
of Agriculture

Natural Resources
Conservation Service

NRCS-CPA-026e
9/2012

HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION

| | | | | | |
|--|---|---------------|-----------|---------------|------|
| Name Address: | Byron Steskal 707 E 2nd Street Stuart, NE 68780 | Request Date: | 4/15/2013 | County: | Holt |
| Agency or Person Requesting Determination: | Byron Steskal (CPA-38) | Tract No: | 722 | FSA Farm No.: | 17 |

Section I - Highly Erodible Land

| | |
|---|-----|
| Is a soil survey now available for making a highly erodible land determination? | Yes |
| Are there highly erodible soil map units on this farm? | Yes |

Fields in this section have undergone a determination of whether they are highly erodible land (HEL) or not; fields for which an HEL Determination has not been completed are not listed. In order to be eligible for USDA benefits, a person must be using an approved conservation system on all HEL.

| Field(s) | HEL(Y/N) | Sodbust (Y/N) | Acres | Determination Date |
|----------|----------|---------------|--------|--------------------|
| 1 | Yes | Yes | 260.44 | 2/4/2013 |
| 2 | Yes | Yes | 61.02 | 3/5/2008 |
| | | | | |
| | | | | |

The Highly Erodible Land determination was completed in the Office

Section II - Wetlands

Fields in this section have had wetland determinations completed. See the Definition of Wetland Label Codes for additional information regarding allowable activities under the wetland conservation provisions of the Food Security Act and/or when wetland determinations are necessary to determine USDA program eligibility.

| Field(s) | Wetland Label* | Occurrence Year (CW) | Acres | Determination Date | Certification Date |
|----------|----------------|----------------------|--------|--------------------|--------------------|
| 1 | NW | | 248.36 | 6/2/2005 | 6/2/2005 |
| 2 | NW | | 61.02 | 4/7/2005 | 4/7/2005 |
| 4 | W | | 13.6 | 7/30/2013 | 7/30/2013 |
| 4 | NW | | 111.0 | 7/30/2013 | 7/30/2013 |
| 8 | W | | 0.5 | 7/30/2013 | 7/30/2013 |

The wetland determination was completed in the Field It was Mailed to the person on 7/30/2013

Remarks:

I certify that the above determinations are correct and were conducted in accordance with policies and procedures contained in the National Food Security Act Manual.

| | |
|--------------------------------------|-----------|
| Signature Designated Conservationist | Date |
| | 7/30/2013 |

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2015



Taken By Varidek Resident ~ Blow Out ~
89075 469th Ave ~ North of Stuart NE



Sand Dune ~ 469th Ave ~

- 2015 -

890 RD / 469 AVE
NORTH OF STUART NE



Bear Creek - 890 Rd - Looking South

#4



Bear Creek - 890 Rd - Looking South



Bear Creek ~ 890th Rd ~ Looking south



Bear Creek ~ 890th Rd ~ Looking north

Attachment 8.18













