

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION)	APPLICATION NO. OP-0003
OF TRANSCANADA KEYSTONE)	
PIPELINE, LP FOR ROUTE APPROVAL OF)	OBJECTION TO, AND MOTION IN
THE KEYSTONE XL PIPELINE PROJECT)	LIMINE TO EXCLUDE, EVIDENCE
PURSUANT TO THE MAJOR OIL)	OFFERED BY THE PONCA TRIBE OF
PIPELINE SITING ACT)	NEBRASKA AND THE YANKTON
)	SIOUX TRIBE
)	
_____)	

TransCanada Keystone Pipeline, LP (“Keystone”), objects to and moves in limine to exclude portions of the pre-filed testimony of Shannon Wright submitted by the Ponca Tribe of Nebraska (“Ponca Testimony”) and of Jason Cooke submitted by the Yankton Sioux Tribe (“Yankton Testimony”). The bases of this motion are to exclude testimony on subjects which the Hearing Officer has either stated are beyond the scope of intervention for the Cultural Intervenors or are not relevant to the Commission’s siting decision. Keystone also seeks to exclude speculative and inflammatory testimony, which lacks foundation.

Keystone specifically objects to and moves to exclude:

1. Questions and Answers to questions 107, 108, 119, 120, 129 of the Ponca Testimony (attached as exhibit 1) because the testimony addresses the risks or impacts of spills or leaks from the pipeline. This exact type of testimony has been excluded by orders of the Hearing Officer pursuant to MOPSA. (See, Order on Intervention, page 1; Order Granting in Part, Denying in Part, Motions to Compel, page 4-5; and Neb. Rev. Stat. § 57-1407(4)). As with the Landowners’ testimony, this testimony is marked **blue** in the attached Ponca Testimony
2. Questions and Answers to questions 45, 46, 148, 149 of the Ponca Testimony because the testimony addresses legal conclusions, which are decisions/conclusions exclusively within the purview of the Commission. Additionally, this witness lacks the foundation to

provide this type of testimony. (See, Order Granting in Part, Denying in Part, Motions to Compel, pages 3-4) This testimony is marked pink.

3. Paragraphs 9(a), 9(b), 20(a), 25(c), and 25(d) of the Yankton Testimony (attached as exhibit 2) because it addresses the risks or impacts of spills or leaks from the pipeline. This exact type of testimony has been excluded by orders of the Hearing Officer pursuant to MOPSA. (See, Order on Intervention, page 1; Order Granting in Part, Denying in Part, Motions to Compel, page 4-5; and Neb. Rev. Stat. § 57-1407(4)). This testimony is marked blue.
4. Paragraphs 26(a) and 29(a-d) of the Yankton testimony because Mr. Cooke, without any foundation, speculates as to the possibility of individual criminal misconduct including inflammatory allegations of illicit drug use, alcohol abuse, and illicit sex trafficking all of which allegedly impacts the Tribe's youth. Mr. Cooke has set forth zero basis for the serious accusations, and they should be excluded due to his complete lack of foundation to give that testimony. This testimony is not marked, and Keystone requests that it be totally and completely stricken from the record.

WHEREFORE, Keystone moves the Commission to exclude the above-referenced testimony.

Dated this 24th day of July, 2017.

TRANSCANADA KEYSTONE PIPELINE,
LP

By:  _____

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2017, that a copy of the foregoing was served by email to the individuals and entities listed below:

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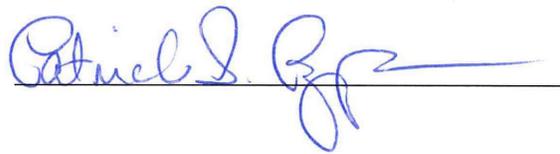
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A handwritten signature in blue ink, appearing to read "Daniel S. Papp", is written over a horizontal line.

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION)
OF TRANSCANADA KEYSTONE)
PIPELINE, L.P. FOR ROUTE APPROVAL)
OF THE KEYSTONE XL PIPELINE)
PROJECT PURSUANT TO THE MAJOR)
OIL PIPELINE SITING ACT.)
)

Application No. OP-0003

**DIRECT TESTIMONY OF
SHANNON WRIGHT**

1. What is your name?

A: Shannon Wright.

2. Are you a member of the Ponca Tribe of Nebraska?

A: Yes.

3. What is your occupation?

A: I am the Tribal Historic Preservation Officer for the Ponca Tribe of Nebraska.

4. How long have you been employed there?

A: 1½ years.

5. What are your job responsibilities?

A: NAGPRA consultations, Section 106 consultations, TCNS research, and Cultural Presentations.

6. Have you or others at the Tribe monitored construction sites for cultural resources?

A: Yes.

7. In monitoring construction sites for cultural resources, have you or the Tribe encountered unanticipated discoveries during construction? If so, describe those unanticipated discoveries.



A: I have monitored various construction sites. I have also had to go out to construction sites where unanticipated discoveries have happened (the uncovering of human remains) and have helped in the mitigation of those issues.

8. Have you or the Tribe had to handle mitigation or relocating construction due to unanticipated discoveries while monitoring construction? If so, describe the handling of mitigation or relocation.

A: Yes. When this happens we work with the parties to mitigate any further damage of the sites and work to stop any further discoveries and help the project continue.

9. Are you familiar with the TransCanada Keystone XL Pipeline project?

A: Yes.

10. Are you familiar with the proposed Preferred Route and proposed Mainline Alternative Route of the Keystone XL Pipeline project?

A: Yes.

11. Have you reviewed any documents in preparation for this hearing?

A: Yes.

12. Specifically what documents have you reviewed?

A: The Department of State's EIS and TransCanada's Application.

13. Does TransCanada's Application discuss the Keystone XL Pipeline's impact on historic and cultural resources?

A: No, I did not find anything in the application that discussed that.

14. Have you reviewed the written witness testimony TransCanada filed with its Application?

A: Yes.

15. Does any of the witness testimony discuss the Keystone XL Pipeline's impact on historic and cultural resources?

A: No, it does not.

16. Is the Ponca Tribe of Nebraska a federally recognized Indian Tribe?

A: Yes.

17. Does the proposed Preferred Route of the Keystone XL Pipeline run through the Ponca Tribe of Nebraska's aboriginal territory?

A: Yes, it does.

18. Does the Tribe have cultural and historical interests in land located in the area of the Preferred Route?

A: Yes, we do.

19. Does the proposed Mainline Alternative Route of the Keystone XL Pipeline run through the Ponca Tribe of Nebraska's aboriginal territory?

A: Yes, it does.

20. Does the Tribe have cultural and historical interests in land located in the area of the Mainline Alternative Route?

A: Yes, we do.

21. In your review of the environmental impact statements conducted by the Department of State and the Nebraska Department of Environmental Quality, did either of them provide for who was responsible for conducting cultural surveys? If so, who did they say was responsible for conducting cultural surveys?

A: Yes. It states that Keystone is required to complete cultural resource surveys on all areas that would be potentially impacted by the proposed project.

22. According to the DOS EIS, has TransCanada completed cultural surveys of all lands impacted by the Keystone XL Pipeline?

A: No, they have not.

23. I'd like to show you a set of maps that was provided by TransCanada (Exhibit A). Have you reviewed these maps?

A: Yes.

24. What do these maps depict?

A: These maps show the areas of cultural surveys done by TransCanada along the Preferred Route.

25. Do the maps show that TransCanada has completed cultural surveys along the entire Preferred Route?

A: No. They show many places where TransCanada has not completed cultural surveys along the Preferred Route.

26. In your opinion, has TransCanada failed to complete cultural surveys along a significant portion of the Preferred Route?

A: Yes, they have failed.

27. I'd like to show you a set of maps that was provided by TransCanada (Exhibit B). Have you reviewed these maps?

A: Yes.

28. What do these maps depict?

A: These maps show the cultural survey progress on the Mainline Alternative Route.

29. Do the maps show that TransCanada has completed cultural surveys along the entire Mainline Alternative Route?

A: No. They show many places where TransCanada has not completed cultural surveys along the Mainline Alternative Route.

30. In your opinion, has TransCanada failed to complete cultural surveys along a significant portion of the Mainline Alternative Route?

A: Yes.

31. Are you familiar with the National Historic Preservation Act of 1966 (“NHPA”), in particular Section 106 (now 54 U.S.C. § 306108)?

A: Yes.

32. Describe the requirements of Section 106.

A: Section 106 states, “The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.”

The Section essentially states that prior to the approval of the expenditure of any federal funds or issuance any license, a federal agency must take into account the effect of the project on anything that is included in or eligible for inclusion in the National Register of Historic Places. The first step in the Section 106 process is to identify any historic properties that may be affected by the undertaking. This includes reviewing existing information on historic properties within the area of potential effects, consultation with the SHPO/THPO, seeking information from knowledgeable parties, gathering information from any Indian tribe that might attach religious and cultural

significance to historic properties in the area of potential effects, and conducting field surveys. Once sites are identified and evaluated for significance, the affect the project will have on the sites is determined.

33. Are you familiar with the requirements of 54 U.S.C. § 302706 of the NHPA?

A: Yes.

34. Describe the requirements.

A: Section 302706 states, “In carrying out its responsibilities under section 306108 of this title, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to property” of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization.

Section 302706 requires agency officials to consult with any Indian tribe that attaches religious and cultural significance to properties that may be affected by project. This requirement applies regardless of the location of the property. The Section also states that property of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

35. Does the NHPA require Traditional Cultural Property Surveys?

A: Yes, in 36 C.F.R. § 800.4 (a) and (b). 36 CFR § 800.4(c)(1) also requires federal agencies to acknowledge the special expertise of Indian tribes in assessing the eligibility of historic properties that may be of religious and cultural significance to them. The Advisory Council on Historic Preservation states that “unless an archaeologist has been specifically authorized or permitted by an Indian tribe or Native Hawaiian organization to speak on its behalf, or has been determined by that entity to be qualified to conduct such surveys, it should not be assumed that the archaeologist possesses the appropriate expertise to determine what properties are or are not of religious and

cultural significance to an Indian tribe or Native Hawaiian organization. The appropriate individual to make such a determination is the representative designated by the tribe or Native Hawaiian organization for this purpose.” This is typically referred to as a Traditional Cultural Property Survey.

36. Are you familiar with Nebraska Revised Statutes § 82-507?

A: Yes.

37. Describe that section.

A: It makes it a crime for a person to knowingly and willfully appropriate, excavate, injure, or destroy any archaeological resource on public land without written permission from the State Archaeology Office.

38. I'd like to show you a set of maps that was provided by TransCanada (Exhibit C).

Have you reviewed these maps?

A: Yes.

39. What do these maps depict?

A: These maps show where the Preferred Route will cross State and Federal lands.

40. Do these maps indicate that the Preferred Route would cross federal and state lands?

A: Yes.

41. I'd like to show you another set of maps that was provided by TransCanada (Exhibit

D). Have you reviewed these maps?

A: Yes.

42. What do these maps depict?

A: They show where the Mainline Alternative Route would cross State and Federal lands.

43. Do these maps indicate that the Mainline Alternative Route would cross federal and state lands?

A: Yes.

44. To your knowledge, has the Ponca Tribe of Nebraska been allowed to conduct a Traditional Cultural Property Survey of the federal or state lands the Preferred Route and Mainline Alternative Route would cross?

A: No.

45. Do you feel that not including Traditional Cultural Property Surveys for those federal and state lands would satisfy the requirements of the NHPA?

A: No, I do not.

46. If the Section 106 requirements are not satisfied, has TransCanada complied with all applicable laws?

A: No, they have not.

47. Are there different considerations for conducting tribal Traditional Cultural Property surveys versus surveys conducted by archaeologists?

A: Yes.

48. What are the different considerations?

A: These surveys are best done by a tribal member with traditional knowledge of the area and the tribe's involvement in that area. You are not just looking at the land. You are looking at how the tribe would have used the land. A tribal member generally has the cultural context of the tribe to view the land and its importance or significance. An archaeologist lacks that context. This is expressed in the Advisory Council on Historic Preservation stating that an archaeologist is not considered to have the appropriate expertise to determine what properties are or are not of religious and cultural significance to a tribe.

49. Has the Tribe conducted surveys of cultural resources along the Preferred Route of the Keystone XL Pipeline?

A: The Tribe has looked at and gathered information at a farm owned by the Alpress family and the property just southeast of that farm. Although the Tribe has finished gathering information, the surveys are not yet complete.

50. Has the Tribe been able to conduct surveys along the entire Preferred Route?

A: No.

51. If the Tribe was able to complete surveys of the entire Preferred Route, do you believe you would find additional cultural resources?

A: Yes.

52. Has the Tribe been able to conduct surveys along the entire Mainline Alternative Route?

A: No.

53. If the Tribe was able to complete surveys of the entire Mainline Alternative Route, do you believe you would find additional cultural resources?

A: Yes.

54. Are you familiar with the trail followed by the members of the Ponca Tribe led by Chief Standing Bear to and from Oklahoma in 1877 during their forced removal from their home and subsequent return, sometimes referred to as the “Ponca Trail of Tears” or “Chief Standing Bear Trail”?

A: Yes.

55. Can you provide a brief history of the events surrounding the Tribe’s original walk along the Ponca Removal Trail?

A: The Tribe was forced south from Niobrara on May 17th of 1877 and traveled south to the Quapaw reservation. There were nine Tribal members who died along the way, including Standing Bear's daughter. These Tribal members are buried along the Trail. And they were met with bad weather and terrible conditions throughout the journey.

56. What is the significance of the Ponca Removal Trail to the Tribe?

A: That the Tribe was removed from almost perfect farmlands and their homelands and placed on lands that were far from good for growing crops and an environment that was even worse for the health of the Tribal members.

57. Does the Tribe conduct events or have legal holidays related to the Ponca Removal Trail? If so, describe them.

A: Yes. There are celebrations for White Buffalo Girl who is buried in Neiligh as well as the Chief Standing Bear Breakfast held in the State capitol every year. And the Ponca Tribe just held its first Ponca Remembrance Walk to commemorate the 140th year anniversary of the Tribe's removal.

58. You mentioned the Ponca Remembrance Walk; does the Tribe and its members conduct a remembrance walk every year?

A: This year was the first year and there are plans to do it again.

59. Is the Ponca Removal Trail significant to the State of Nebraska other than the Tribe and how?

A: Yes. There are many non-tribal members who supported the Tribe along the walk and the Nebraska Trails Foundation gifted the tribe a 19 mile stretch of the trailhead.

60. Does the State of Nebraska conduct or participate in events or any kind of celebration or recognition surrounding the Trail and Chief Standing Bear? If so, describe them.

A: Yes, the Chief Standing Bear Breakfast is an exciting event that the Nebraska Commission of Indian Affairs hosts.

61. Has there been any action to designate the entire Ponca Removal Trail as a National Historic Trail?

A: Yes.

62. What are those actions?

A: There are currently actions being taken to designate a virtual trail on the National Historical Register. Also, in 2015, Congressman Jeff Fortenberry from Nebraska introduced legislation to study the designation of the Trail as Chief Standing Bear National Historic Trail. The legislation passed the House that year and a similar bill passed the House the year before. It seems to keep getting stuck in the Senate.

63. In your opinion, is the Ponca Removal Trail eligible for inclusion in the National Register of Historic Places?

A: Yes.

64. Is the location of the Ponca Removal Trail known with precision or is it more of an approximation?

A: There are very good records of the Trail's location.

65. In your opinion, is the Ponca Removal Trail's location known enough to conduct cultural surveys of the Trail and have a sufficient idea of its location to protect it and prevent damage to or destruction of it?

A: Yes.

66. Are there existing designated cultural or historic sites along the Ponca Removal Trail? If so, describe them.

A: Yes. The gravesites of White Buffalo Girl and Praireflower as well as the Ponca Tribe of Nebraska Historical Marker at the Milford rest area on I-80. There is a historical marker outside of Niobrara State Park on Highway 12.

67. So, there are two sets of human remains already identified along the Ponca Removal Trail?

A: Yes.

68. And you testified that nine people died while traveling along the Ponca Removal Trail, correct?

A: Yes.

69. Have you reviewed the proposed Preferred Route of the Keystone XL Pipeline project with specific regard to the portions of the project which will cross or run near the Ponca Removal Trail?

A: Yes.

70. Will the Preferred Route cross the Ponca Removal Trail?

A: Yes.

71. Will the Preferred Route run along or near the Ponca Removal Trail?

A: Yes.

72. Have you reviewed the proposed Mainline Alternative Route of the Keystone XL Pipeline project with specific regard to the portions of the project which will cross or run near the Ponca Removal Trail?

A: Yes.

73. Will the Mainline Alternative Route cross the Ponca Removal Trail?

A: Yes.

74. Will the Mainline Alternative Route run along or near the Ponca Removal Trail?

A: Yes.

75. I'd like to show you a map that was provided by TransCanada (Exhibit E). Have you reviewed this map?

A: Yes.

76. What does the map depict?

A: It shows where the Preferred Route and the Mainline Alternative Route would cross the Ponca Removal Trail in Antelope County.

77. Would you say this map accurately depicts the location of the Ponca Removal Trail?

A: Yes.

78. Does the map indicate where TransCanada has conducted cultural surveys?

A: Yes.

79. Based on this map, has TransCanada conducted a survey of where the Preferred Route would cross the Ponca Removal Trail at this location in Antelope County?

A: No.

80. I'd like to show you a map that was provided by TransCanada (Exhibit F). Have you reviewed this map?

A: Yes.

81. What does the map depict?

A: It shows where the Preferred Route would cross the Ponca Removal Trail at a second location in Antelope County.

82. Would you say this map accurately depicts the location of the Ponca Removal Trail?

A: Yes.

83. Does the map show where TransCanada has conducted cultural surveys?

A: Yes.

84. Based on this map, has TransCanada conducted a survey of where the Preferred Route would cross the Ponca Removal Trail at this location in Antelope County?

A: Yes.

85. Does the map show any other historic or cultural sites?

A: Yes.

86. What is that site depicted on the map?

A: A Ponca encampment.

87. Is this particular site specifically referenced or documented in historical documents?

A: Yes.

88. Would the pipeline be close to that historic trail campsite?

A: Yes.

89. In your opinion, would construction of the Keystone XL Pipeline along the Preferred Route threaten that historic trail campsite? If so, describe how it could threaten the site.

A: Yes. It could be destroyed.

90. In your opinion, could construction of the Keystone XL Pipeline along the Preferred Route damage or destroy that historic trail campsite? If so, describe how.

A: Yes. Peeling off the topsoil could remove any cultural remains that might still be there.

91. Do you believe that if the pipeline leaked near that historic trail site, it could damage or destroy that historic site? If so, describe how.

A: Yes, the clean up process would remove either all or some of the site.

92. In your opinion, would construction of the Keystone XL Pipeline along the Preferred Route damage or destroy parts of the Ponca Removal Trail where it is crossed by the Pipeline?

A: Yes, it would. By peeling back the topsoil there can be significant loss of sacred sites.

93. Please describe how parts of the Ponca Removal Trail would be damaged or destroyed by construction of the Keystone XL Pipeline along the Preferred Route.

A: There may be sacred sites along the Trail that if damaged will be lost forever.

94. In your opinion, would the Ponca Tribe of Nebraska's cultural and historic resources be irreparably harmed by the construction and presence of the Keystone XL Pipeline along the Preferred Route?

A: Yes.

95. Please describe how those cultural and historic resources would be irreparably harmed.

A: There is a chance they would be destroyed and lost forever.

96. I'd like to show you a map that was provided by TransCanada (Exhibit G). Have you reviewed this map?

A: Yes.

97. What does the map depict?

A: It shows where the Mainline Alternative route would cross the Ponca Removal Trail a second time in Seward County.

98. Would you say this map accurately depicts the location of the Ponca Removal Trail?

A: Yes.

99. Does the map indicate that TransCanada has conducted cultural surveys where the Mainline Alternative Route would cross the Ponca Removal Trail?

A: No. Based on the map, they have not done any cultural surveys along the route in the area covered by this map.

100. So, based on this map, TransCanada has not conducted a survey of where the Mainline Alternative Route would cross the Ponca Removal Trail at this location in Seward County?

A: No.

101. In your opinion, would construction of the Keystone XL Pipeline along the Mainline Alternative Route damage or destroy parts of the Ponca Removal Trail where it is crossed by the Pipeline?

A: Yes.

102. Please describe how parts of the Ponca Removal Trail would be damaged or destroyed by construction of the Keystone XL Pipeline along the Mainline Alternative Route.

A: Removal of the topsoil and the trenching can and will destroy sites along the path.

103. In your opinion, would the Ponca Tribe of Nebraska's cultural and historic resources be irreparably harmed by the construction and presence of the Keystone XL Pipeline along the Mainline Alternative Route?

A: Yes.

104. Please describe how those cultural and historic resources would be irreparably harmed.

A: They would be destroyed and no longer exist.

105. In your opinion, would construction of the Keystone XL Pipeline along either the Preferred Route or the Mainline Alternative Route affect the Ponca Tribe of Nebraska's access to cultural and historic resources along the route?

A: Yes.

106. Please describe how access to such resources would be hindered by construction of the Keystone XL Pipeline along either the Preferred Route or the Mainline Alternative Route.

A: They would be erased from the landscape. Access would not just be hindered, it would not exist anymore. Once the site is gone from constructing the pipeline, there is no site remaining to access.

107. In your opinion, would the presence of the Keystone XL Pipeline along either the Preferred Route or the Mainline Alternative Route, once completed, pose any ongoing problems with regard to cultural or historic resources?

A: Yes.

108. Please describe how it would pose ongoing problems.

A: There is always a chance for a leak in a pipeline and the damage caused by repairs and clean up can and may destroy Ponca sites. There also could be a question about whether the Tribe and its members will allowed to access the sites.

109. In your opinion, is there a significant chance that there will be unanticipated discoveries along the Ponca Removal Trail during construction of the Keystone XL Pipeline either along the Preferred Route or the Mainline Alternative Route?

A: Yes, there is that chance.

110. You testified that the Tribe has started some cultural surveys along the Preferred Route and Mainline Alternative Route; did the Tribe find any cultural resources in the places surveyed along the Preferred Route?

A: Yes.

111. Describe the cultural resources found along the Preferred Route.

A: We have found two earth lodge villages along the route. These were found when the Tribe visited the farm owned by the Alpress family and the property just southeast of that farm. They are entire former villages. The site on the Alpress farm is about a half an acre in size and the site on the land southeast of the Alpress farm is about 2 to 3 acres in size. I believe that they are former Ponca villages.

112. In your opinion, are either of the earth lodge village sites eligible for inclusion in the National Register of Historic Places?

A: At this time, I cannot say with 100% certainty, but I believe the larger village likely is an eligible historic property.

113. Has the Tribe found any cultural resources along the Mainline Alternative Route?

A: Yes.

114. Describe the cultural resources found along the Mainline Alternative Route.

A: They are the same village sites found along the Preferred Route.

115. In your opinion, would construction of the Keystone XL Pipeline along either the Preferred Route or the Mainline Alternative Route threaten these earth lodge villages?

A: Yes.

116. Describe how it could threaten the earth lodge villages.

A: They could be destroyed by construction.

117. In your opinion, could construction of the Keystone XL Pipeline along the Preferred Route or the Mainline Alternative Route damage or destroy these earth lodge villages?

A: Yes.

118. Describe how it could damage or destroy these earth lodge villages.

A: They would be destroyed by removal of the topsoil and the trenching.

119. In the event the pipeline leaked near cultural resources along either the Preferred Route or the Mainline Alternative Route, could it damage or destroy these cultural resources?

A: Yes, it could. They might have to remove all of the soil and if that happens, the cultural resources would be entirely gone forever. I don't think there is really a way to do mitigation in those circumstances.

120. Would you say, in your opinion, that the construction and presence of the Keystone XL Pipeline would deplete beneficial uses of historic and cultural resources along the pipeline, including the Ponca Removal Trail? If so, how.

A: Yes. If it leaks and has to be repaired, then there is the possibility of damage to the Trail or sites that would damage the Trail and hinder its use. If the soil becomes contaminated and they have to remove it, the sites would be entirely gone. I don't think there is really a way to do mitigation if there is a leak.

121. Besides the Ponca Removal Trail, in your opinion, is there a significant chance that there will be unanticipated discoveries during construction of the Keystone XL Pipeline either along the Preferred Route or the Mainline Alternative Route?

A: Yes. Just by visiting two farms, the Tribe found two earth lodge villages. The chances of finding more sites along either route is definitely there.

122. In your professional capacity, has TransCanada Keystone XL Pipeline, LP contacted you or the Culture Department with regard to construction of the Keystone XL Pipeline?

A: Not me, but they had contacted the former Culture Director.

123. To the extent of your knowledge, was the Keystone XL Pipeline's impact on cultural and historic resources of the Tribe discussed during these meetings?

A: No.

124. To the extent of your knowledge, did TransCanada propose or otherwise agree to any mitigating measures in order to reduce the pipeline's impact on the Tribe's cultural and historic resources?

A: No.

125. I am showing you an excerpt from TransCanada's Application which is Section 2.19 of the Construction Mitigation and Reclamation Plan (Exhibit H). What does that section state about TransCanada avoiding cultural and historic resources?

A: It says they intend to avoid cultural resources by rerouting the pipeline corridor, avoiding construction activities on historic properties, or by boring or using HDD through culturally sterile soils.

126. In your opinion, is it possible for the Keystone XL Pipeline to be constructed along the Preferred Route or the Mainline Alternative Route while avoiding construction activities on the Ponca Removal Trail?

A: No, not with these proposed routes.

127. In your opinion, could TransCanada use boring techniques to construct the Keystone XL Pipeline under the Ponca Removal Trail without disturbing the Trail?

A: Yes, there is that possibility.

128. In your opinion, if TransCanada used boring techniques to construct the Keystone XL Pipeline under the Ponca Removal Trail, would it avoid disturbing other cultural resources along the Trail?

A: No.

129. In the event the pipeline leaked under the Ponca Removal Trail, would it damage or destroy that historic site?

A: Yes, that can happen. If the soil were to become contaminated with tar sands, oil, cleaning agents, or other contaminants and they remove the soil, the sites would be entirely gone. I don't believe there is really any way to do mitigation to protect cultural or historic sites if there is a leak.

130. In your opinion, is the only way the Keystone XL Pipeline can avoid the Ponca Removal Trail to reroute the pipeline as TransCanada mentioned in Section 2.19 of the Construction Mitigation and Reclamation Plan?

A: Yes.

131. What is a programmatic agreement?

A: A programmatic agreement, or PA, is a document that spells out the terms of a formal, legally binding agreement between state and/or federal agencies, Indian tribes and others that establishes a process for consultation, review, and compliance with one or more federal laws, usually federal laws concerning historic preservation.

132. Is there a Programmatic Agreement for the Keystone XL Pipeline?

A: Yes. The Department of State, TransCanada, several other federal agencies, and some Indian tribes have entered into a PA for the pipeline.

133. Are you familiar with the Programmatic Agreement covering the construction of the Keystone XL Pipeline?

A: Yes.

134. Is the Ponca Tribe of Nebraska a party to that Programmatic Agreement?

A: To the best of my knowledge, the Tribe attended meetings about the PA and was involved with it, but did not become a party to it at this point.

135. To your knowledge, was the Ponca Tribe of Nebraska ever asked to be a party to that Programmatic Agreement?

A: Yes.

136. To the best of your knowledge, does the Ponca Tribe of Nebraska and the Culture Department have concerns with the adequacy of the Programmatic Agreement?

A: Yes.

137. What are the Tribe's and the Culture Department's concerns with the Programmatic Agreement?

A: Surveys were apparently not done along the entire route so the PA is immediately deficient since it does not consider handling the specific existing sites that have not been surveyed, like the Ponca Removal Trail.

138. I'd like to show you a map that was provided by TransCanada (Exhibit I). Have you reviewed this map?

A: Yes.

139. What does the map depict?

A: It shows each of the proposed routes in relation to the Ponca Tribe's Service Areas.

140. What are the "Service Areas" of the Tribe?

A: When Congress restored the United States' relationship with the Tribe, it prohibited the Tribe from re-establishing a formal reservation. Instead, it designated fifteen counties where the Tribe and its members are deemed to be residing on or near a reservation.

141. Does the map show that the Preferred Route would cross through the Ponca Tribe of Nebraska's Service Areas?

A: Yes.

142. Which Service Areas would the Preferred Route cross?

A: Boyd and Holt Counties.

143. Does the map show that the Mainline Alternative Route would cross through the Ponca Tribe of Nebraska's Service Areas?

A: Yes.

144. Which Service Areas would the Mainline Alternative Route cross?

A: Boyd, Holt, Madison, Stanton and Platte Counties.

145. Does the map show that the Sandhills Alternative Route would cross through the Ponca Tribe of Nebraska's Service Areas?

A: Yes.

146. Which Service Areas would the Sandhills Alternative Route cross?

A: Holt County.

147. To your knowledge, has the governing body of the Ponca Tribe of Nebraska ever consented to construction of the proposed Keystone XL Pipeline through the Tribe's Service Areas?

A: No.

148. In your opinion, with respect to cultural and historic resources, would construction and operation of the Keystone XL Pipeline along the Preferred Route serve the public interest of Nebraska and Nebraskans?

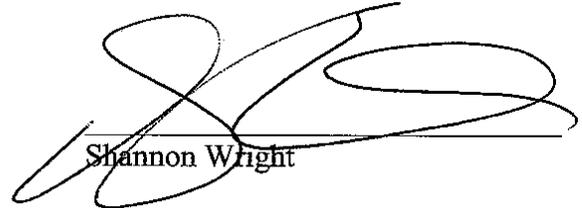
A: No, it would not.

149. In your opinion, with respect to cultural and historic resources, would construction and operation of the Keystone XL Pipeline along the Mainline Alternative Route serve the public interest of Nebraska and Nebraskans?

A: No, it would not.

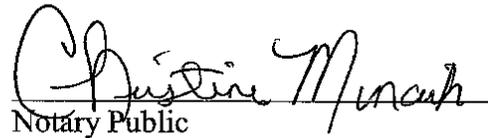
150. Is there anything else you would like to say to the Nebraska Public Service Commission?

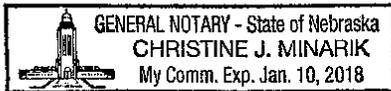
A: I would hope that they would look long and hard at these routes and realize that none of them will be able to avoid historic sites and that many of these sites would be destroyed and lost forever.


Shannon Wright

COUNTY OF KNOX)
)
STATE OF NEBRASKA)

Subscribed and sworn to before me this 7 day of June, 2017.


Notary Public



BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of the Application of)
TransCanada Keystone Pipeline, L.P.)
For route approval of the Keystone XL)
Pipeline Project pursuant to the Major)
Oil Pipeline Siting Act.)
)
)

Application No. OP-0003

**PREFILED TESTIMONY OF
JASON COOKE**

PREFILED TESTIMONY OF JASON COOKE

COMES NOW Yankton Sioux Tribe, by and through its counsel Jennifer S. Baker and Conly J. Schulte, and hereby submits the prefiled testimony of its witness Jason Cooke.

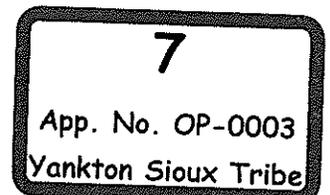
1. Please state your name and title for the record
 - a. Jason Cooke, Member of the Yankton Sioux Tribe Business and Claims Committee.

2. Please explain what the Yankton Sioux Tribe Business and Claims Committee is.
 - a. It is the executive body of the Yankton Sioux Tribe that handles day-to-day business of the Tribe. The governing body of the Yankton Sioux Tribe is its General Council, which consists of all tribal members age 18 and up. The Business and Claims Committee takes care of the Tribe's routine business.

3. How long have you been a member of the Business and Claims Committee?
 - a. I am just completing my third two-year term.

4. Have you been authorized to speak on behalf of the Tribe at this proceeding?
 - a. Yes.

5. Why is the Yankton Sioux Tribe interested in this proceeding on the Keystone XL pipeline?



- a. Because the pipeline route would run through land and territory traditionally used by the *Ihanktonwan*, or the Yankton.
6. Do you know what this document is? [Yankton Exhibit 1 Ethnographical Map]
 - a. Yes.
7. Can you please identify this document?
 - a. This is a map showing where the Dakota people, which includes Yankton, lived in the year 1600. It essentially shows our ancestral territory.
8. Will the pipeline cross through Yankton ancestral territory?
 - a. Yes.
9. Why is it a concern that the pipeline will go through Yankton's ancestral territory?
 - a. Because since our ancestors lived on and used that land, there are vast cultural resources that are of significance to us. It is important that those resources not be disturbed by digging into the ground to lay a pipeline or by potential spills that will inevitably occur from the pipeline. In many cases, even digging underneath will disturb the cultural resource.
 - b. In addition, as Indigenous People, we are tied to the land. The land and water are sacred to us. Any destruction or contamination of the land or water would damage this relationship.
 - c. Also, this is particularly concerning for us on behalf of our youth. We as a People have been ignored and our rights and interests have been infringed upon by governments time after time, and this would be just one more example. This is damaging to our youth, mentally. It is discouraging for them to see this type

of disregard for our people and our interests, and it has negative impacts on them and on their mindsets.

10. Does Yankton have interests in any other land near the pipeline route, besides its ancestral territory?

a. Yes.

11. Do you know what this document is? [Yankton Exhibit 2 Royce map showing present-day Nebraska]

a. Yes.

12. Can you please identify this document?

a. It is a map of present-day Nebraska that shows historical tribal land ownership and sessions within the state.

13. Do you know what this document is? [Yankton Exhibit 3 Royce map showing areas 154 and 155]

a. Yes.

14. Can you please identify this document?

a. It is a larger version of the first map that shows the location of the Nemaha Reserve.

15. Where on this map is the Nemaha Reserve?

a. The Nemaha Reserve is identified as “154” and “155” on the map.

16. What is the Nemaha Reserve?

a. The Nemaha Reserve is essentially a reservation that was established pursuant to the Treaty of Prairie du Chien in 1830 for the so-called “half-breeds” of five different tribes, including Yankton. All five tribes jointly owned that land when

the Reserve was established, and the tribes continue to hold interests in that land today.

17. Do you know what this document is? [Yankton Exhibit 4 Treaty of Prairie du Chien of 1830]

a. Yes.

18. Can you please identify this document?

a. It is the Treaty of Prairie du Chien which established the Nemaha Reserve in southeast Nebraska.

19. Can you tell us the significance of the Nemaha Reserve in terms of cultural resources?

a. The Reserve is a part of our history. Because many of our ancestors resided on the Nemaha Reserve lands, those lands are bound to be particularly rich with cultural resources.

20. Do the Nemaha Reserve lands have any other significance to the Tribe?

a. Yes. In addition to untold cultural resources, we also continue to hold usufructuary rights in those lands. That means we have continuing rights, by virtue of the treaty, to hunt, fish, gather, and use the water including the Missouri River on those lands. Those rights have never been extinguished, and they must be protected for our people today. Our Nemaha Reserve lands are right on the Missouri River. They are down river from where the pipeline crosses the South Platte River, and down river from where the South Platte River runs into the Missouri River. If the pipeline were to impact the South Platte, through a spill or otherwise, then those effects would be carried down river to the Missouri River where the Missouri borders our Nemaha Reserve

lands. Our cultural resources and other interests in the Nemaha Reserve lands will be threatened by a potential spill because the South Platte River will carry toxins from a spill down river to where the Missouri River borders the Nemaha Reserve.

21. Does the Tribe still own an interest in the lands encompassed in the Nemaha Reserve?

- a. Yes. Yankton owns an undivided interest in these lands along with the Iowa Tribe of Kansas and Nebraska, the Otoe-Missouria Tribe, the Omaha Tribe of Nebraska, and the Santee Sioux Tribe of Nebraska.

22. Do you know what this document is? [Yankton Exhibit 5 BIA Report]

- a. Yes.

23. Can you please identify this document?

- a. This is a document from the Bureau of Indian Affairs that shows the Tribe's ownership interest in a parcel of land located within the Nemaha Reserve.

24. What kinds of cultural resources would you expect to find in the land the pipeline would cross in Nebraska?

- a. You would find burials, sacred sites and ceremonial use areas, altars, geoglyphs, stone features, historical trails and trade routes, and gathering areas for medicine and food. For some sites, you can't identify them from the surface. For example, there is a major historic and cultural site for the Yankton in Iowa that was recently found with a shovel test – it was not visible from the surface. You won't always have a visible indication on the surface where a site exists. Many Yankton Sioux tribal members go to the Santee Sioux area for sundance and ceremony, and medicines for these ceremonies are gathered there. There is

a huge population of Natives living in Niobrara, Santee, Scottsbluff, North Platte, Norfolk, and all throughout northeastern Nebraska, including Yankton tribal members, who gather sage and other medicines that would be harmed by the pipeline. There are also individuals who have shared lineage with tribes in Nebraska, as well as intermarriages between Yankton tribal members and members of the Nebraska tribes, including Ponca. Any harm that would affect the Ponca or other Nebraska tribes would therefore affect members of our Tribe.

25. What would happen if those cultural resources were damaged by construction or operation of the pipeline?

- a. Those resources would be permanently destroyed, and they are irreplaceable. A part of our culture and our history would be lost forever, and we cannot afford that as a People. The loss of our culture is particularly impactful on our youth, who need that culture to stay grounded as Dakota people and maintain that identity.
- b. Cultural resources are priceless. There is no amount of money or monetary value that can replace the value of that cultural resource. Our people are connected to these sites, and we feel a tremendous amount of loss when a site is damaged. These sacred sites could be burials. Destruction of sacred sites and burials is a tremendous blow not only to our tribe but to other tribes on the psychological level because it makes people feel like their remains aren't important. The reason our ancestors were buried there is so that they can rest. Disturbing them would disturb their rest. Psychological harm happens when someone digs up a non-Native's grave. We, too, would feel that trauma and

turmoil if our ancestors are disturbed. People have a right to have their sites protected and it seems like that right is negated when it comes to Native people. Although we may not know the precise locations of those sites, we are in tune with them. They have always so important to us that we wanted them protected. Those sites are inherent to our belief system. They're helping us keep an even keel as a people, and to maintain balance. Even though we don't know it in this world, on the spiritual side of things those places and sacrifices made in those sites were done for future generations. When our ancestors prayed with those sites and those burials were put there, those things were done for the generations to come. We must be mindful as *Ihanktonwan* of being good stewards of those sites because they're the reason we're here. Those sites have been set there from time immemorial for our benefit. Those are active prayers. Those sites are tied into our existence of being here today because prayers were made for us to be here today. We have a connection to those sites, which keep us in tune and stable with our environment. When that connection is broken, we are out of harmony, out of balance. The more such depredations occur, the more out of harmony we become. It is also dangerous for workers to disturb those sites because they have prayers, protections, and sacrifice.

- c. The effect on the water is another spiritual and cultural concern. Water is sacred. It is a necessity not only to live, but also for ceremony. If there is oil leakage, will we ever be able to use that water for ceremony? One of our ceremonies is called *inipi*, commonly known as a "sweat." Part of this ceremony involves pouring water on heated rocks so that the lodge fills with

hot water vapor. If the water used has been contaminated, you don't know what will happen when you inhale the vapor during this ceremony but that oil contains serious toxins that I certainly would not want to breathe in. Even though the pipeline river crossing is down-river from Yankton's present-day reservation, we have tribal members who intermarried with members of the tribes in Nebraska. Because those intermarriages include marriages with the Ponca Tribe of Nebraska, any harm to the Ponca would also constitute harm to the Yankton and I incorporate the testimony of the Ponca witness as part of my testimony. Even if water contamination down-river from the Yankton Sioux Reservation might not directly impact those of us on our Reservation, we have family down there who would definitely be affected.

- d. Another concern is what will happen when there is a spill as far as cleanup. With the Keystone I pipeline, there was a leak and they swapped the contaminated soil out with new soil. What if there were sites there and the area had not been surveyed because the oil spread beyond the area of potential effects?

26. Does the Yankton Sioux Tribe have any other concerns about the pipeline?

- a. Yes. The man camps are a huge concern to us because they bring with them violence, drug and alcohol abuse, and even sex trafficking. We don't even know yet where those camps will be located, which makes it hard to assess how big a threat one or more of those camps will pose to our tribal members, but our reservation is relatively close to the pipeline route and offers entertainment that is not widely available, if at all, along the pipeline route.

27. Do you know what this document is? [Yankton Exhibit 6 map of present-day Yankton Sioux Reservation]

a. Yes.

28. Can you please identify this document?

a. It is a map that shows the Yankton Sioux Tribe's present-day reservation and the route of the pipeline through Nebraska.

29. Can you tell us approximately how far the pipeline route is from the Tribe's reservation?

a. I would say approximately 40 miles from the pipeline's closest point which is in South Dakota, and approximately 46 miles from the pipeline's closest point in Nebraska. This is easy driving distance, considering the region and the remoteness of the pipeline route. That is why I am concerned about man camps. Our casino would be a big draw for pipeline workers making large paychecks with down time in such a remote area. Although there are a few casinos in Nebraska, those casinos are not Class III which means that those casinos can only offer forms of bingo – not true slot machines or table games. On the other hand, Yankton's casino is Class III and does offer true slot machines and table games. Yankton's casino will, no doubt, attract a large number of pipeline workers to the Reservation.

b. With those pipeline workers will come drug and alcohol abuse, particularly meth, which would jeopardize our tribal members and especially our youth.

- c. It is also a commonly known fact that sex trafficking is a big problem around these man camps, placing tribal members – again, especially our youth - at grave risk.
- d. It is frightening to think that no fore planning has been done to even recognize what happens when a large influx of non-local workers is forced into rural communities where wide gaps exist in law enforcement. The problem is magnified by cross-jurisdictional problems between reservation and state areas, which are long-standing issues. Many tribes including Yankton do not have tribal/state cross-deputization agreements in order to handle cross jurisdictional major crimes, and tribes generally do not have criminal jurisdiction over non-Indians. Because of this, many major crimes fall through the cracks. Also, what has happened in the Bakken region in North Dakota surrounding man camps there proves that even non-Natives are at risk from the threat of violence posed by man camps.

30. Does this conclude your prefiled testimony?

- a. I reserve the right to supplement my prefiled testimony as well as offer additional testimony during the hearing in this case.

DATED this 7th day of June, 2017.



Jason Cooke, Member
Yankton Sioux Tribe Business and Claims
Committee

Respectfully submitted by:

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CERTIFICATE OF SERVICE

The undersigned hereby certify that a true and correct copy of the above and foregoing Prefiled Testimony of Jason Cooke was served by email transmission and by United States mail on this 7th day of June, 2017, upon the following:

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