

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

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

Direct Testimony of
Robert Krutz in Support of Landowner
Intervenors

State of Nebraska)
) ss.
Antelope County)

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

2 A: My name is Robert Krutz.

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

6 A: Yes, I am.

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

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

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

14 A: Yes.

15 **Q: If you are you married tell us your spouse’s name please?**

16 A: Beverly Krutz.



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

3 **Q: How long the land has been in your family?**
4 A: I have owned the land for 17 years.

5 **Q: Do you earn any income from this land?**
6 A: Yes.

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

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

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

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

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

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

5 A: Yes.

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

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

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

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

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

16 A: No, they have not.

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

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

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

24 A: No, they did not.

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

27 A: Yes, they did.

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

1 A: Yes, they did.

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

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

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

14 A: No, I do not.

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

17 A: Yes, they did.

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

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

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

1 A: Yes, it is.

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

4 A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **A:** No.

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

13 **A:** No.

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

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

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

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

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

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

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

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

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

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

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

26 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **A: No, never.**

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

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

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

4 A: Yes, it is.

5 Q: What was your understanding of that document?

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

12 Q: Did you ever sign that document?

13 A: No, I did not.

14 Q: Why not?

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

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

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

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

4 A: No, they have not.

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

8 A: No, they have not.

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

11 A: Yes, I am.

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

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

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

20 A: No, they have not.

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

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

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

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

6 **A:** No, it has not.

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

10 **A:** No, I do not.

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

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

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

17 **A:** Yes, I do.

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

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

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

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

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

28 **A:** No, of course not.

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

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

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

8 **A: Well, yes I have.**

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

13 **A: No, of course not.**

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

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

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

1 A: The ground is primarily sandy soil and the pipeline company, who are not
2 stewards of the land, would destroy the native grasses and it would not return it to
3 the natural state of native grasses. It is also a high water table area; if the pipeline
4 would leak water would be contaminated. The windmill is the only source of water
5 for the ground. It would cost too much to buy water to water livestock. By
6 scraping off the top soil it is easier for noxious weeds to get a foothold on the
7 ground and it will be very costly to control them. This would be a yearly cost for
8 me to try to keep the noxious weeds under control. I am a farmer and a steward of
9 the land.

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

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

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

3 **A: No, I do not.**

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

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

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

14 A: Well yes, of course.

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

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

1 may bring, that is far outweighed by the perpetual and forever loss of opportunity
2 and restrictions TransCanada is forcing upon us and Nebraska.

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

5 A: Yes, I do.

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

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

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

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

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

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

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

24 A: Yes, I believe that any construction, operation, and/or maintenance of the
25 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
26 land, as well as land along and surrounding the proposed pipeline route. This
27 includes, but is not limited to, the reasons that we discussed above of disturbing
28 the soil composition and makeup as it has naturally existed for thousands and
29 millions of years during the construction process, and any future maintenance or

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

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

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

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

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

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

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

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

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

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

21 A: Yes, I have.

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

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

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

1 A: No, I do not.

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

5 A: No, I do not.

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

9 A: No, I do not.

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

13 A: No, I do not.

14 Q: Why do you hold that belief?

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

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

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

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

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

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

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

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

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

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

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

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

25 A: Yes. After my passing, the land will be left to my children and spouse and any
26 future grandchildren. **TransCanada cannot guarantee that the sandy soils will be**
27 **back to their original condition due to the fact of disrupting the ground and the**
28 **land will erode because of the lost cover that the company takes from the land. I**
29 **will lose income due to the erosion that will be caused by the destruction of the**

1 land. The pasture is a source of income for my farming operation. If this pipeline
2 is constructed I would lose rental income for that season and possibly for future
3 years. I have concerns that this is a foreign company crossing our borders and they
4 are not showing how they are going to use this product here in the United States
5 and have not disclosed what is exactly being transported within the pipeline. Cattle
6 drink 35 gallons of water a day and if I have to purchase and haul water for the
7 cattle I will be out of business and it will be unrealistic for me to have cattle.

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

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

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

25 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
26 a temporary job spike that this project may bring to a few counties and beyond the
27 relatively small amount of taxes this proposed foreign pipeline would possibly
28 generate. And, instead think about the perpetual and forever impacts of this
29 pipeline as it would have on the landowners specifically, first and foremost, but

1 also thereby upon the entire state of Nebraska, and to determine that neither the
2 preferred route nor the Keystone mainline alternative route are in the public
3 interest of the citizens of the state of Nebraska. And if the Commissioners were
4 inclined to modify TransCanada's proposed routes and were to be inclined to grant
5 an application for a route in Nebraska, that the only potential route that would
6 make any intelligent sense whatsoever would be twinning or near paralleling of
7 the proposed KXL with the existing Keystone I pipeline. It simply does not make
8 sense to add yet another major oil pipeline crisscrossing our state creating new
9 pumping stations, creating new impacts on additional counties and communities
10 and going through all of the court processes with myself and other landowners like
11 me when this applicant already has relationships with the landowners, the towns
12 and the communities along Keystone I, and that Keystone I is firmly outside of the
13 sand hills and a significantly further portion away from the heart of the Ogallala
14 Aquifer than the preferred route or the Keystone mainline alternative route.

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

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

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

Robert Kintz,
Robert Kintz

Subscribed and sworn to the before this 26th day of May, 2011.

Stan Clayton
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

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

Direct Testimony of
Larry Mudloff Support of Landowner
Intervenors

State of Nebraska)
) ss.
Holt County)

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

2 A: My name is Larry Mudloff.

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

6 A: Yes, I am.

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

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

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

14 A: Yes.

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

16 A: Farmer.



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

3 A: Yes.

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

7 A: Gene Mudloff bought the land in 1945 and it has been in our family for 3
8 generations now.

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

10 A: Yes.

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

13 A: Yes.

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

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

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

28 A: **Well I hope not to have to sell the land in my lifetime but times change and you**
29 **never know what is around the corner and yes I am concerned that if another piece**

1 of ground similar to mine were for sale and it did not have the pipeline and mine
2 did that I would have a lower selling price. I think this would be true for pipeline
3 ground on both the preferred and mainline alternative routes.

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

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

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

9 A: Yes.

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

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

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

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

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

20 A: No, they have not.

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

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

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

28 A: No, they did not.

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

3 **A:** Yes, they did.

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

6 **A:** Yes, they did.

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

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

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

19 **A:** No, I do not.

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

22 **A:** Yes, they did.

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

26 **A:** I understood that they proposed to have the power to take both a temporary
27 construction easement that could last for a certain period of time and then also a
28 permanent easement which they described to be 50 feet across or in width, and

1 that would run the entire portion of my property from where a proposed pipeline
2 would enter my property until where it would exit the property.

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

7 **A:** Yes, it is.

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

10 **A:** Yes, I have.

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

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

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

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

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

1 **and your land. So, if you can start at the beginning of that document and**
2 **let's work our way through it, okay?**

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

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

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

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

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

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

27 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
28 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
29 limited partnership..." and I have no idea who that really is. I have no idea who is

1 forcing this pipeline on us or who the owners of the entities are, or what are the
2 assets backing this limited partnership, or who the general partner is, or who all
3 the limited partners are, and who makes up the ownership of the these partners or
4 the structure or any of the basic things you would want to know and understand if
5 you would want to do business with such an outfit. According to TransCanada's
6 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
7 liability company called TransCanada Keystone Pipeline GP, LLC is the general
8 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
9 basically nothing. That is really scary since the general partner has the liability but
10 virtually none of the ownership and who knows if it has any other assets.

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

14 **A: No.**

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

19 **A: No.**

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

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

1 or have any say so in who may own, operate, or be responsible for this pipeline in
2 the future.

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

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

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

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

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

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

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

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

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

3 **A: Yes.**

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

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

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

25 **A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of**
26 **TransCanada and Landowner. In 1.A., the first sentence discusses “commercially**
27 **reasonable costs and expenses” will pay for damages caused but then limits**
28 **TransCanada’s liability to certain circumstances. There is no definition of**
29 **“commercially reasonable” and no stated right that the Landowner would get to**

1 determine the amounts of cost or expense that is “commercially reasonable.”
2 TransCanada excepts out from their liability any damages that are caused by
3 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
4 Landowner. It is understandable that if the Landowner were to willfully and
5 intentionally cause damages to the pipeline that Landowner should be liable.
6 However, anything short of willful misconduct should be the liability of
7 TransCanada who is subjecting the pipeline on the Landowner and who is making
8 a daily profit from that pipeline. When evaluating the impact on property rights of
9 this provision, you must consider the potentially extremely expensive fight a
10 Landowner would have over this question of whether or not damage was an act of
11 negligence. Putting this kind of potential liability upon the Landowner is
12 incredibly problematic and is detrimental to the protection of property rights. I
13 don’t think this unilateral power which I can’t do anything about as the landowner
14 is in the best economic interest of the land in question or the State of Nebraska for
15 landowners to be treated that way.

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

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

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

25 **A:** Paragraph 3 states that Landowner can farm on and otherwise use their property as
26 they choose unless 1) any Landowner use interferes in any way with
27 TransCanada’s exercise of any of its rights within the Easement, or 2)
28 TransCanada decides to take any action on the property it deems necessary to
29 prevent injury, endangerment or interference with anything TransCanada deems

1 necessary to do on the property. Landowner is also forbidden from excavating
2 without prior authorization by TransCanada. So my understanding is that
3 TransCanada will unilaterally determine what Landowner can and can't do based
4 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
5 could also completely deny my request to excavate. Further, TransCanada retains
6 all "privileges necessary or convenient for the full use of the rights" granted to
7 them in the Easement. Again, TransCanada unilaterally can decide to the
8 detriment of the property rights of Landowner what TransCanada believes is
9 necessary or convenient for it. And there is no option for any additional
10 compensation to landowner for any right exercised by TransCanada that leads to
11 the removal of trees or plants or vegetation or buildings or structures or facilities
12 owned by Landowner of any kind. Such undefined and unilateral restrictions and
13 rights without having to compensate Landowner for such further destruction or
14 losses are not conducive to the protection of property rights or economic interest.

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

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

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

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

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

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

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

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

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

27 A: TransCanada maintains the unilateral right to abandon the pipeline and all
28 appurtenances thereto in place on, under, across, or through Nebraska land at any
29 time it chooses. There is no provision for Landowner compensation for such

1 abandonment nor any right for the Landowner to demand removal. Such unilateral
2 powers would negatively affect Landowners property are not conducive to the
3 protection of property rights or economic interest.

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

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

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

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

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

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

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

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

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

26 Each one of these above terms and phrases as read in the context of the Easement
27 could be problematic in many ways. Notably, undefined terms tend to only get
28 definition in further legal proceedings after a dispute arises and the way the
29 Easement is drafted, TransCanada has sole power to determine when and if a

1 particular situation conforms with or triggers rights affected by these terms. For
2 instance, “yield loss damages” should be specifically defined and spelled out
3 exactly how the landowner is to be compensated and in what events on the front
4 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
5 the Landowner is without contractual rights to define these terms or determine
6 when rights related to them trigger and what the affects may be.

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

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

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

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

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

20 **A:** Yes, we received an offer from them.

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

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

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

4 **A:** No, never.

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

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

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

11 **A:** Yes, it is.

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

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

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

20 **A:** No, I did not.

21 **Q:** **Why not?**

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

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

28 **A:** I felt like it was simply another attempt for TransCanada to try to pay very little to
29 shield themselves against known and foreseeable impacts that their pipeline, and

1 the construction of it, would have upon my land. It made me feel that they knew it
2 was in their financial interest to pay me as little as possible to prevent me from
3 ever having the opportunity to seek fair compensation again, and that this must be
4 based upon their experience of unhappy landowners and situations in other places
5 where they have built pipelines.

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

9 A: No, they have not.

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

13 A: No, they have not.

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

16 A: Yes, I am.

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

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

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

25 A: No, they have not.

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

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

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

11 **A:** No, it has not.

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

15 **A:** No, I do not.

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

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

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

22 **A:** Yes, I do.

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

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

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

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

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

5 A: No, of course not.

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

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

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

13 A: Well, yes I have.

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

18 A: No, of course not.

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

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

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

1 **Commissioners the characteristics of your land that you believe is important**
2 **for them to understand, while they evaluate TransCanada's application for a**
3 **route for its proposed pipeline to cross Nebraska and across your land,**
4 **specifically.**

5 **A:** **The pipe they want to use has been sitting out in the elements for years. Tar sands**
6 **is a very corrosive material. What will happen when we practice our normal**
7 **tillage and run our irrigation systems over an already weakened pipeline? My**
8 **family does not have the funds to clean up an oil spill, that I'm sure TransCanada**
9 **will somehow deem our fault. TransCanada needs to be responsible for all**
10 **leaks. It's their pipeline. The Keystone XL pipeline will decrease the value of our**
11 **land. A pipe that is already weak from sitting in the elements, and that has**
12 **corrosive tar sands being pumped through it, is going to leak. Who is going to**
13 **want to pay market price for land with such high risk? Also, why should we**
14 **accept a 1 time payment, when TransCanada will use our land to pump their dirty**
15 **tar sands through every day. Land owners should be compensated**
16 **yearly. TransCanada also needs to renew their operating permit yearly.**
17 **There are thousands of private and irrigation wells that risk contamination along**
18 **the proposed route. Why should our Country risk the largest fresh water aquifer in**
19 **the nation, for a FOREIGN company to pump their dirty tar sands to a foreign**
20 **market. The easement gives TransCanada the right to abandon the pipeline in**
21 **place. Not only that, but keep the easement to our property. All easements need**
22 **to be terminated when they are done using our property, and the pipeline removed.**
23 **Lastly, I can't believe there isn't a better route for this pipeline. The proposed**
24 **route still crosses the fragile Sandhills and the Ogallala Aquifer.**

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

28 **A:** **Yes, I have significant concerns. I am aware of landowners being treated unfairly**
29 **or even bullied around and being made to feel scared that they did not have any**

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

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

17 **A:** No, I do not.

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

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

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

28 **A:** Well yes, of course.

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

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

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

18 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 due to having the easement that we have previously discussed, for any reasonable
2 person to think that the existence of the pipeline would not negatively affect my
3 property's value.

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

6 A: Yes, I have.

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

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

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

14 A: No, I do not.

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

18 A: No, I do not.

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

22 A: No, I do not.

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

26 A: No, I do not.

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

28 A: Because there simply is no public interest based on all of the factors that I am
29 aware and that I have read and that I have studied that this Commission is to

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

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

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

1 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
2 constructed on its Preferred Route or its Mainline Alternative Route.

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

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

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

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

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

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

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

23 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
24 already exists in that area is reason enough as it is not in our best interest or the
25 public interests to have more major oil pipelines crisscrossing our state. Second,
26 they have all the infrastructure already there in terms of relationships with the
27 counties and local officials and first responders along that route. Third, they have
28 already obtained easements from all the landowners along that route and have
29 relationships with them. Fourth, that route avoids our most sensitive soils, the

1 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
2 Aquifer. Sixth, they have already studied that route and previously offered it as an
3 alternative. Seventh, it just makes the most sense that as a state we would have
4 some intelligent policy of energy corridors and co-locating this type of
5 infrastructure near each other.

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

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

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

23 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
24 a temporary job spike that this project may bring to a few counties and beyond the
25 relatively small amount of taxes this proposed foreign pipeline would possibly
26 generate. And, instead think about the perpetual and forever impacts of this
27 pipeline as it would have on the landowners specifically, first and foremost, but
28 also thereby upon the entire state of Nebraska, and to determine that neither the
29 preferred route nor the Keystone mainline alternative route are in the public

1 interest of the citizens of the state of Nebraska. And if the Commissioners were
2 inclined to modify TransCanada's proposed routes and were to be inclined to grant
3 an application for a route in Nebraska, that the only potential route that would
4 make any intelligent sense whatsoever would be twinning or near paralleling of
5 the proposed KXL with the existing Keystone I pipeline. It simply does not make
6 sense to add yet another major oil pipeline crisscrossing our state creating new
7 pumping stations, creating new impacts on additional counties and communities
8 and going through all of the court processes with myself and other landowners like
9 me when this applicant already has relationships with the landowners, the towns
10 and the communities along Keystone I, and that Keystone I is firmly outside of the
11 sand hills and a significantly further portion away from the heart of the Ogallala
12 Aquifer than the preferred route or the Keystone mainline alternative route.

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

16 A: Yes.

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

20 A: Yes, they are.

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

Larry Mudloff

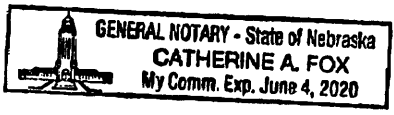
Larry Mudloff

Subscribed and Sworn to me before this 30th day of May, 2017.

Catherine A Fox

Notary Public

28



Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

Direct Testimony of
Lori Mudloff in
Support of Landowner Intervenors

State of Nebraska)
) ss.
Holt County)

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

2 A: My name is Lori Mudloff

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

6 A: Yes, I am.

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

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

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

14 A: Yes.

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

16 A: Farmer.



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

3 A: Yes.

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

5 A: Yes.

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

8 A: Yes.

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

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

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

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

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

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

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

5 A: Yes.

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

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

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

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

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

16 A: No, they have not.

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

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

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

24 A: No, they did not.

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

27 A: Yes, they did.

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

1 A: Yes, they did.

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

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

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

14 A: No, I do not.

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

17 A: Yes, they did.

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

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

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

1 A: Yes, it is.

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

4 A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **A: No.**

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

13 **A: No.**

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

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

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

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

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

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

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

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

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

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

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

26 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **A: No, never.**

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

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

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

4 A: Yes, it is.

5 Q: What was your understanding of that document?

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

12 Q: Did you ever sign that document?

13 A: No, I did not.

14 Q: Why not?

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

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

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

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

4 A: No, they have not.

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

8 A: No, they have not.

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

11 A: Yes, I am.

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

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

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

20 A: No, they have not.

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

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

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

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

6 **A:** No, it has not.

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

10 **A:** No, I do not.

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

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

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

17 **A:** Yes, I do.

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

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

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

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

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

28 **A:** No, of course not.

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

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

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

8 **A: Well, yes I have.**

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

13 **A: No, of course not.**

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

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

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

1 A: The pipe they want to use has been sitting out in the elements for years. Tar sands
2 is a very corrosive material. What will happen when we practice our normal
3 tillage and run our irrigation systems over an already weakened pipeline? My
4 family does not have the funds to clean up an oil spill, that I'm sure TransCanada
5 will somehow deem our fault. TransCanada needs to be responsible for all
6 leaks. It's their pipeline. The Keystone XL pipeline will decrease the value of our
7 land. A pipe that is already weak from sitting in the elements, and that has
8 corrosive tar sands being pumped through it, is going to leak. Who is going to
9 want to pay market price for land with such high risk? Also, why should we
10 accept a 1 time payment, when TransCanada will use our land to pump their dirty
11 tar sands through every day. Land owners should be compensated
12 yearly. TransCanada also needs to renew their operating permit yearly.
13 There are thousands of private and irrigation wells that risk contamination along
14 the proposed route. Why should our Country risk the largest fresh water aquifer in
15 the nation, for a FOREIGN company to pump their dirty tar sands to a foreign
16 market. The easement gives TransCanada the right to abandon the pipeline in
17 place. Not only that, but keep the easement to our property. All easements need
18 to be terminated when they are done using our property, and the pipeline removed.
19 Lastly, I can't believe there isn't a better route for this pipeline. The proposed
20 route still crosses the fragile Sandhills and the Ogallala Aquifer.

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

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

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

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

13 **A: No, I do not.**

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

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

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

24 A: Well yes, of course.

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

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

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

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

14 A: Yes, I do.

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

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

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

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

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

27 A: Yes, I believe that any construction, operation, and/or maintenance of the
28 proposed Keystone XL Pipeline would have detrimental impacts upon the natural

1 resources of my land, and the lands near and surrounding the proposed pipeline
2 route.

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

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

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

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

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

27 A: Yes, I have significant concerns that any construction, operation, and/or
28 maintenance of the proposed Keystone XL Pipeline would have detrimental
29 impact upon the surface water of not only within my property boundary, but along

1 and near and surrounding the pipeline route, and in fact, across the state of
2 Nebraska.

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

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

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

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

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

1 A: Yes, I have.

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

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

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

9 A: No, I do not.

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

13 A: No, I do not.

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

17 A: No, I do not.

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

21 A: No, I do not.

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

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

1 there is no net benefit of any kind for Nebraska should this project be placed in our
2 state. Even if there was some arguable “benefit” it is not enough to outweigh all
3 the negative impacts and concerns.

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

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

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

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

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

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

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

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

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

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

1 some intelligent policy of energy corridors and co-locating this type of
2 infrastructure near each other.

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

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

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

20 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
21 a temporary job spike that this project may bring to a few counties and beyond the
22 relatively small amount of taxes this proposed foreign pipeline would possibly
23 generate. And, instead think about the perpetual and forever impacts of this
24 pipeline as it would have on the landowners specifically, first and foremost, but
25 also thereby upon the entire state of Nebraska, and to determine that neither the
26 preferred route nor the Keystone mainline alternative route are in the public
27 interest of the citizens of the state of Nebraska. **And if the Commissioners were**
28 **inclined to modify TransCanada's proposed routes and were to be inclined to grant**
29 **an application for a route in Nebraska, that the only potential route that would**

1 make any intelligent sense whatsoever would be twinning or near paralleling of
2 the proposed KXL with the existing Keystone I pipeline. It simply does not make
3 sense to add yet another major oil pipeline crisscrossing our state creating new
4 pumping stations, creating new impacts on additional counties and communities
5 and going through all of the court processes with myself and other landowners like
6 me when this applicant already has relationships with the landowners, the towns
7 and the communities along Keystone I, and that Keystone I is firmly outside of the
8 sand hills and a significantly further portion away from the heart of the Ogallala
9 Aquifer than the preferred route or the Keystone mainline alternative route.

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

13 A: Yes.

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

17 A: Yes, they are.

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

Lori Mudloff

Lori Mudloff

Subscribed and Sworn to me before this 30th day of May, 2017.

Catherine A Fox

Notary Public

28



Before the Nebraska Public Service Commission

In the Matter of the Application

of

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

Application No: OP-003

**Direct Testimony of
Jamus “JD” Mudloff in Support of
Landowner Intervenors**

State of Nebraska)
) ss.
Lancaster County)

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

2 A: My name is Jamus “JD” Mudloff.

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

6 A: Yes, I am.

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

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

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

14 A: Yes.

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

16 A: Farmer.



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

3 A: Yes.

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

7 A: My grandfather, Gene Mudloff bought the land in 1945 and it has been in our
8 family for 3 generations now.

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

10 A: Yes.

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

13 A: Yes.

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

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

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

28 A: Well I hope not to have to sell the land in my lifetime but times change and you
29 never know what is around the corner and yes I am concerned that if another piece

1 of ground similar to mine were for sale and it did not have the pipeline and mine
2 did that I would have a lower selling price. I think this would be true for pipeline
3 ground on both the preferred and mainline alternative routes.

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

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

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

9 A: Yes.

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

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

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

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

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

20 A: No, they have not.

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

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

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

28 A: No, they did not.

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

3 **A:** Yes, they did.

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

6 **A:** Yes, they did.

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

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

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

19 **A:** No, I do not.

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

22 **A:** Yes, they did.

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

26 **A:** I understood that they proposed to have the power to take both a temporary
27 construction easement that could last for a certain period of time and then also a
28 permanent easement which they described to be 50 feet across or in width, and

1 that would run the entire portion of my property from where a proposed pipeline
2 would enter my property until where it would exit the property.

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

7 **A: Yes, it is.**

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

10 **A: Yes, I have.**

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

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

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

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

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

1 **and your land. So, if you can start at the beginning of that document and**
2 **let's work our way through it, okay?**

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

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

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

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

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

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

27 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
28 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
29 limited partnership..." and I have no idea who that really is. I have no idea who is

1 forcing this pipeline on us or who the owners of the entities are, or what are the
2 assets backing this limited partnership, or who the general partner is, or who all
3 the limited partners are, and who makes up the ownership of the these partners or
4 the structure or any of the basic things you would want to know and understand if
5 you would want to do business with such an outfit. According to TransCanada's
6 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
7 liability company called TransCanada Keystone Pipeline GP, LLC is the general
8 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
9 basically nothing. That is really scary since the general partner has the liability but
10 virtually none of the ownership and who knows if it has any other assets.

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

14 **A: No.**

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

19 **A: No.**

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

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

1 or have any say so in who may own, operate, or be responsible for this pipeline in
2 the future.

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

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

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

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

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

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

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

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

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

3 **A: Yes.**

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

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

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

25 **A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of**
26 **TransCanada and Landowner. In 1.A., the first sentence discusses “commercially**
27 **reasonable costs and expenses” will pay for damages caused but then limits**
28 **TransCanada’s liability to certain circumstances. There is no definition of**
29 **“commercially reasonable” and no stated right that the Landowner would get to**

1 determine the amounts of cost or expense that is “commercially reasonable.”
2 TransCanada excepts out from their liability any damages that are caused by
3 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
4 Landowner. It is understandable that if the Landowner were to willfully and
5 intentionally cause damages to the pipeline that Landowner should be liable.
6 However, anything short of willful misconduct should be the liability of
7 TransCanada who is subjecting the pipeline on the Landowner and who is making
8 a daily profit from that pipeline. When evaluating the impact on property rights of
9 this provision, you must consider the potentially extremely expensive fight a
10 Landowner would have over this question of whether or not damage was an act of
11 negligence. Putting this kind of potential liability upon the Landowner is
12 incredibly problematic and is detrimental to the protection of property rights. I
13 don’t think this unilateral power which I can’t do anything about as the landowner
14 is in the best economic interest of the land in question or the State of Nebraska for
15 landowners to be treated that way.

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

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

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

25 **A:** Paragraph 3 states that Landowner can farm on and otherwise use their property as
26 they choose unless 1) any Landowner use interferes in any way with
27 TransCanada’s exercise of any of its rights within the Easement, or 2)
28 TransCanada decides to take any action on the property it deems necessary to
29 prevent injury, endangerment or interference with anything TransCanada deems

1 necessary to do on the property. Landowner is also forbidden from excavating
2 without prior authorization by TransCanada. So my understanding is that
3 TransCanada will unilaterally determine what Landowner can and can't do based
4 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
5 could also completely deny my request to excavate. Further, TransCanada retains
6 all "privileges necessary or convenient for the full use of the rights" granted to
7 them in the Easement. Again, TransCanada unilaterally can decide to the
8 detriment of the property rights of Landowner what TransCanada believes is
9 necessary or convenient for it. And there is no option for any additional
10 compensation to landowner for any right exercised by TransCanada that leads to
11 the removal of trees or plants or vegetation or buildings or structures or facilities
12 owned by Landowner of any kind. Such undefined and unilateral restrictions and
13 rights without having to compensate Landowner for such further destruction or
14 losses are not conducive to the protection of property rights or economic interest.

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

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

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

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

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

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

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

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

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

27 A: TransCanada maintains the unilateral right to abandon the pipeline and all
28 appurtenances thereto in place on, under, across, or through Nebraska land at any
29 time it chooses. There is no provision for Landowner compensation for such

1 abandonment nor any right for the Landowner to demand removal. Such unilateral
2 powers would negatively affect Landowners property are not conducive to the
3 protection of property rights or economic interest.

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

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

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

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

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

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

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

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

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

26 Each one of these above terms and phrases as read in the context of the Easement
27 could be problematic in many ways. Notably, undefined terms tend to only get
28 definition in further legal proceedings after a dispute arises and the way the
29 Easement is drafted, TransCanada has sole power to determine when and if a

1 particular situation conforms with or triggers rights affected by these terms. For
2 instance, “yield loss damages” should be specifically defined and spelled out
3 exactly how the landowner is to be compensated and in what events on the front
4 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
5 the Landowner is without contractual rights to define these terms or determine
6 when rights related to them trigger and what the affects may be.

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

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

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

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

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

20 **A:** Yes, we received an offer from them.

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

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

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

4 **A:** No, never.

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

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

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

11 **A:** Yes, it is.

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

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

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

20 **A:** No, I did not.

21 **Q:** **Why not?**

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

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

28 **A:** I felt like it was simply another attempt for TransCanada to try to pay very little to
29 shield themselves against known and foreseeable impacts that their pipeline, and

1 the construction of it, would have upon my land. It made me feel that they knew it
2 was in their financial interest to pay me as little as possible to prevent me from
3 ever having the opportunity to seek fair compensation again, and that this must be
4 based upon their experience of unhappy landowners and situations in other places
5 where they have built pipelines.

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

9 A: No, they have not.

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

13 A: No, they have not.

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

16 A: Yes, I am.

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

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

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

25 A: No, they have not.

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

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

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

11 **A:** No, it has not.

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

15 **A:** No, I do not.

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

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

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

22 **A:** Yes, I do.

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

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

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

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

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

5 A: No, of course not.

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

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

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

13 A: Well, yes I have.

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

18 A: No, of course not.

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

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

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

1 **Commissioners the characteristics of your land that you believe is important**
2 **for them to understand, while they evaluate TransCanada's application for a**
3 **route for its proposed pipeline to cross Nebraska and across your land,**
4 **specifically.**

5 **A:** **The pipe they want to use has been sitting out in the elements for years. Tar sands**
6 **is a very corrosive material. What will happen when we practice our normal**
7 **tillage and run our irrigation systems over an already weakened pipeline? My**
8 **family does not have the funds to clean up an oil spill, that I'm sure TransCanada**
9 **will somehow deem our fault. TransCanada needs to be responsible for all**
10 **leaks. It's their pipeline. The Keystone XL pipeline will decrease the value of our**
11 **land. A pipe that is already weak from sitting in the elements, and that has**
12 **corrosive tar sands being pumped through it, is going to leak. Who is going to**
13 **want to pay market price for land with such high risk? Also, why should we**
14 **accept a 1 time payment, when TransCanada will use our land to pump their dirty**
15 **tar sands through everyday. Land owners should be compensated**
16 **yearly. TransCanada also needs to renew their operating permit yearly.**
17 **There are thousands of private and irrigation wells that risk contamination along**
18 **the proposed route. Why should our Country risk the largest fresh water aquifer in**
19 **the nation, for a FOREIGN company to pump their dirty tar sands to a foreign**
20 **market. The easement gives TransCanada the right to abandon the pipeline in**
21 **place. Not only that, but keep the easement to our property. All easements need**
22 **to be terminated when they are done using our property, and the pipeline removed.**
23 **Lastly, I can't believe there isn't a better route for this pipeline. The proposed**
24 **route still crosses the fragile Sandhills and the Ogallala Aquifer.**

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

28 **A:** **Yes, I have significant concerns. I am aware of landowners being treated unfairly**
29 **or even bullied around and being made to feel scared that they did not have any**

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

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

17 **A:** No, I do not.

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

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

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

28 **A:** Well yes, of course.

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

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

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

18 A: Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 due to having the easement that we have previously discussed, for any reasonable
2 person to think that the existence of the pipeline would not negatively affect my
3 property's value.

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

6 A: Yes, I have.

7 Q: Where have you seen that before?

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

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

15 A: No, I do not.

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

19 A: No, I do not.

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

23 A: No, I do not.

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

27 A: No, I do not.

28 Q: Why do you hold that belief?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


25 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
26 a temporary job spike that this project may bring to a few counties and beyond the
27 relatively small amount of taxes this proposed foreign pipeline would possibly
28 generate. And, instead think about the perpetual and forever impacts of this
29 pipeline as it would have on the landowners specifically, first and foremost, but

1 also thereby upon the entire state of Nebraska, and to determine that neither the
2 preferred route nor the Keystone mainline alternative route are in the public
3 interest of the citizens of the state of Nebraska. And if the Commissioners were
4 inclined to modify TransCanada's proposed routes and were to be inclined to grant
5 an application for a route in Nebraska, that the only potential route that would
6 make any intelligent sense whatsoever would be twinning or near paralleling of
7 the proposed KXL with the existing Keystone I pipeline. It simply does not make
8 sense to add yet another major oil pipeline crisscrossing our state creating new
9 pumping stations, creating new impacts on additional counties and communities
10 and going through all of the court processes with myself and other landowners like
11 me when this applicant already has relationships with the landowners, the towns
12 and the communities along Keystone I, and that Keystone I is firmly outside of the
13 sand hills and a significantly further portion away from the heart of the Ogallala
14 Aquifer than the preferred route or the Keystone mainline alternative route.

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

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

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


Jamus Mudloff

Subscribed and Sworn to me before this 27 day of May, 2017.


Notary Public

State of Nebraska - General Notary
SARAH FORGET
My Commission Expires
February 1, 2021

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

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

Direct Testimony of
Donald Loseke in Support of Landowner
Intervenors

State of Arizona)
) ss.
Maricopa County)

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

2 A: My name is Donald Loseke.

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

6 A: Yes, I am.

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

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

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

14 A: Yes.

15 **Q: If you are you married tell us your spouse’s name please?**

16 A: Wanda Loseke.



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

3 A: Yes.

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

5 A: The land was purchased by father Hugo Loseke in the 1950's and the rest in 1960.

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

7 A: Yes.

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

10 A: Yes.

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

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

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

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

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

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

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

6 A: Yes.

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

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

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

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

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

17 A: No, they have not.

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

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

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

25 A: No, they did not.

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

28 A: Yes, they did.

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

3 **A:** Yes, they did.

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

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

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

16 **A:** No, I do not.

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

19 **A:** Yes, they did.

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

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

28 **Q:** Is the document included with your testimony here as Attachment No. 3, a
29 true and accurate copy of TransCanada’s proposed Easement and Right-of-

1 Way agreement that they included with their condemnation lawsuit against
2 you?

3 A: Yes, it is.

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

6 A: Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

25 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
26 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
27 limited partnership..." and I have no idea who that really is. I have no idea who is
28 forcing this pipeline on us or who the owners of the entities are, or what are the
29 assets backing this limited partnership, or who the general partner is, or who all

1 the limited partners are, and who makes up the ownership of the these partners or
2 the structure or any of the basic things you would want to know and understand if
3 you would want to do business with such an outfit. According to TransCanada's
4 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
5 liability company called TransCanada Keystone Pipeline GP, LLC is the general
6 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
7 basically nothing. That is really scary since the general partner has the liability but
8 virtually none of the ownership and who knows if it has any other assets.

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

12 **A: No.**

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

17 **A: No.**

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

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

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

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

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

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

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

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

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

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

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

1 A: Yes.

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

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

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

23 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
24 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
25 reasonable costs and expenses” will pay for damages caused but then limits
26 TransCanada’s liability to certain circumstances. There is no definition of
27 “commercially reasonable” and no stated right that the Landowner would get to
28 determine the amounts of cost or expense that is “commercially reasonable.”
29 TransCanada excepts out from their liability any damages that are caused by

1 Landowner's negligence or the negligence of anyone ever acting on the behalf of
2 Landowner. It is understandable that if the Landowner were to willfully and
3 intentionally cause damages to the pipeline that Landowner should be liable.
4 However, anything short of willful misconduct should be the liability of
5 TransCanada who is subjecting the pipeline on the Landowner and who is making
6 a daily profit from that pipeline. When evaluating the impact on property rights of
7 this provision, you must consider the potentially extremely expensive fight a
8 Landowner would have over this question of whether or not damage was an act of
9 negligence. Putting this kind of potential liability upon the Landowner is
10 incredibly problematic and is detrimental to the protection of property rights. I
11 don't think this unilateral power which I can't do anything about as the landowner
12 is in the best economic interest of the land in question or the State of Nebraska for
13 landowners to be treated that way.

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

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

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

23 **A:** Paragraph 3 states that Landowner can farm on and otherwise use their property as
24 they choose unless 1) any Landowner use interferes in any way with
25 TransCanada's exercise of any of its rights within the Easement, or 2)
26 TransCanada decides to take any action on the property it deems necessary to
27 prevent injury, endangerment or interference with anything TransCanada deems
28 necessary to do on the property. Landowner is also forbidden from excavating
29 without prior authorization by TransCanada. So my understanding is that

1 TransCanada will unilaterally determine what Landowner can and can't do based
2 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
3 could also completely deny my request to excavate. Further, TransCanada retains
4 all "privileges necessary or convenient for the full use of the rights" granted to
5 them in the Easement. Again, TransCanada unilaterally can decide to the
6 detriment of the property rights of Landowner what TransCanada believes is
7 necessary or convenient for it. And there is no option for any additional
8 compensation to landowner for any right exercised by TransCanada that leads to
9 the removal of trees or plants or vegetation or buildings or structures or facilities
10 owned by Landowner of any kind. Such undefined and unilateral restrictions and
11 rights without having to compensate Landowner for such further destruction or
12 losses are not conducive to the protection of property rights or economic interest.

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

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

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

27 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
28 Landowner's land any debris of any kind without any input or power of
29 Landowner to demand an alternative method or location of debris disposal. Such

1 unilateral powers would negatively affect Landowners property are not conducive
2 to the protection of property rights or economic interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **A:** There are many terms in the Easement that are either confusing or undefined terms
27 that are without context as to whether or not the Landowner would have any say
28 so in determining what these terms mean or if the evaluation is solely in

1 TransCanada's control. Some of these vague undefined and ambiguous terms are
2 as follows:

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

24 Each one of these above terms and phrases as read in the context of the Easement
25 could be problematic in many ways. Notably, undefined terms tend to only get
26 definition in further legal proceedings after a dispute arises and the way the
27 Easement is drafted, TransCanada has sole power to determine when and if a
28 particular situation conforms with or triggers rights affected by these terms. For
29 instance, "yield loss damages" should be specifically defined and spelled out

1 exactly how the landowner is to be compensated and in what events on the front
2 end. I can't afford to fight over this after the damage has occurred. Unfortunately,
3 the Landowner is without contractual rights to define these terms or determine
4 when rights related to them trigger and what the affects may be.

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

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

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

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

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

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

19 **Q: As the owner of the land in question and as the person who knows it better**
20 **than anyone else, do you believe that TransCanada offered you just, or fair,**
21 **compensation for all of what they proposed to take from you so that their tar**
22 **sands pipeline could be located across your property?**

23 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
24 offer for all the potential impacts and effects and the rights that I'm giving up, and
25 what we will be prevented from doing in the future and how their pipeline would
26 impact my property for ever and ever.

27 **Q: Has TransCanada at any time offered to compensate you annually, such as**
28 **wind farm projects do, for the existence of their potential tar sands pipeline**
29 **across your property.**

1 A: No, never.

2 Q: At any time did TransCanada present you with or request that you, as the
3 owner of the land in question, sign and execute a document called, “Advanced
4 Release of Damage Claims and Indemnity Agreement?”

5 A: Yes, they did and it was included in the County Court lawsuit against us.

6 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the
7 “Advanced Release of Damage Claims and Indemnity Agreement

8 A: Yes, it is.

9 Q: What was your understanding of that document?

10 A: When I read that document in the plain language of that document, it was my
11 understanding that TransCanada was attempting to pay me a very small amount at
12 that time in order for me to agree to give up my rights to be compensated from
13 them in the future related to any damage or impact they may have upon my
14 property “arising out of, in connection with, or alleged to resulted from
15 construction or surveying over, under or on” my land.

16 Q: Did you ever sign that document?

17 A: No, I did not.

18 Q: Why not?

19 A: Because I do not believe that it is fair or just to try to get me to agree to a small
20 sum of money when I have no idea how bad the impacts or damages that they, or
21 their contractors, or subcontractors, or other agents or employees, may cause on
22 my land at any time in the future that resulted from the construction or surveying
23 or their activities upon my land.

24 Q: When you reviewed this document, what did it make you feel?

25 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
26 shield themselves against known and foreseeable impacts that their pipeline, and
27 the construction of it, would have upon my land. It made me feel that they knew it
28 was in their financial interest to pay me as little as possible to prevent me from
29 ever having the opportunity to seek fair compensation again, and that this must be

1 based upon their experience of unhappy landowners and situations in other places
2 where they have built pipelines.

3 **Q: Has TransCanada ever contacted you and specifically asked you if you**
4 **thought their proposed location of their proposed pipeline across your land**
5 **was in your best interest?**

6 A: No, they have not.

7 **Q: Has TransCanada ever contacted you and specifically asked you if you**
8 **thought their proposed location of their proposed pipeline across your land**
9 **was in the public interest of the State of Nebraska?**

10 A: No, they have not.

11 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
12 **Takings Clause?**

13 A: Yes, I am.

14 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
15 **an American citizens property?**

16 A: My understanding is that, according to the United States Constitution, that if the
17 government is going to take land for public use, then in that case, or by taking for
18 public use, it can only occur if the private land owner is compensated justly, or
19 fairly.

20 **Q: Has TransCanada ever contacted you specially to explain the way in which**
21 **the public could use its proposed Keystone XL Pipeline?**

22 A: No, they have not.

23 **Q: Can you think of any way in which the public, that is the citizens of the State**
24 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
25 **Pipeline, as it dissects the State of Nebraska?**

26 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
27 public benefits from this pipeline in any way, how they can use it any way, or how
28 it's in the public interest in any way. By looking at the map, it is quite clear to me
29 that the only reason it's proposed to come through Nebraska, is that because we

1 are geographically in the way from between where the privately-owned Tar Sands
2 are located to where TransCanada wants to ship the Tar Sands to refineries in
3 Houston, Texas.

4 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
5 crude petroleum, or oil and petroleum by-products that you would like to
6 ship in its pipeline?**

7 **A:** No, it has not.

8 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
9 products that you, at this time or any time in the future, would desire to place
10 for transport within the proposed TransCanada Keystone XL Pipeline?**

11 **A:** No, I do not.

12 **Q: Do you know anyone in the state of Nebraska who would be able to ship any
13 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
14 products within the proposed TransCanada Keystone XL Pipeline?**

15 **A:** No, I do not. I've never heard of such a person or company like that.

16 **Q: Do you pay property taxes for the land that would be affected and impacted
17 at the proposed TransCanada Keystone XL Pipeline?**

18 **A:** Yes, I do.

19 **Q: Why do you pay property taxes on that land?**

20 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
21 of that property.

22 **Q: Because you follow the law and pay property taxes, do you believe you
23 deserve any special consideration or treatment apart from any other person
24 or company that pays property taxes?**

25 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
26 just what you do.

27 **Q: Do you believe the fact that you pay property taxes entitles you to special
28 treatment of any kind, or special rights of any kind?**

29 **A:** No, of course not.

1 **Q:** Do you believe the fact that you pay property taxes on your land would be
2 enough to qualify you to have the power of eminent domain to take land of
3 your neighbors or other people in your county, or other people across the
4 state of Nebraska?

5 **A:** Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q:** Have you at any time ever employed any person other than yourself?

8 **A:** Well, yes I have.

9 **Q:** Do you believe that the fact that you have, at some point in your life,
10 employed one or more other persons entitle you to any special treatment or
11 consideration above and beyond any other Nebraskan that has also employed
12 one or more persons?

13 **A:** No, of course not.

14 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
15 have at one point employed another person within this state, entitles you to
16 preferential treatment or consideration of any kind?

17 **A:** No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q:** At the beginning of your statement, you briefly described your property that
20 would be impacted by the potential Keystone XL Pipeline. I would like you to
21 give the Commissioners a sense of specifically how you believe the proposed
22 Keystone XL Pipeline and its preferred route, which proposes to go across
23 your land, how it would in your opinion based on your knowledge,
24 experience, and background of your land, affect it. So please share with the
25 Commissioners the characteristics of your land that you believe is important
26 for them to understand, while they evaluate TransCanada's application for a
27 route for its proposed pipeline to cross Nebraska and across your land,
28 specifically.

1 A: We need to remember that this is not oil that they are wanting to put through this
2 pipeline, it is almost 50% tar sands and diluted with benzene and other toxic
3 chemicals to make this mixture flow. Benzene is a very toxic substance that can be
4 very harmful if you get in contact with it. It will also be heated and this will cause
5 this area of our land to be warm all the time. We need freezing and thawing of this
6 land to keep it in the best shape for our use to raise corn and soybeans. KXL
7 wants to get an easement right through the middle of our farm for one mile. This
8 land is listed as highly erodible by the USDA and is subject to erosion. We farm
9 this land according to the lay of the land and take measures to keep this land from
10 eroding the best that we can. This pipeline will go up and down the hills with no
11 thought as to what a very hard rain will do and what erosion will occur. Canada
12 has not even given KXL a permit to go to a west coast port in Canada to transport
13 this mixture so why should we even consider giving them a permit to cross our
14 Ogallala aquifer and the entire state with the chance of polluting the one and only
15 big resource that we have. If this is allowed to pass we should get an annual
16 payment for the right to use our land. In a few years the State of Nebraska will get
17 very little taxes from this pipeline. Boone County will get very little in tax revenue
18 as they will have no pumping stations or permanent structures to tax. According
19 to language in the easement the land owner can be held responsible for damage to
20 this pipe if they think leak could have been caused by the landowner. KXL will
21 sue you into eternity trying to prove that it is your fault rather than theirs. It is our
22 understanding that this pipe will only be buried 4 feet deep. We have had hard
23 rains that have eroded our pivot tracks deeper than that. This pipeline is of no
24 benefit to the State of Nebraska and only will benefit a foreign corporation to
25 profit from its use. The jobs that this will create are temporary in nature and no
26 more than 6 to 10 permanent jobs will be created in Nebraska.

27 Q: Do you have any concerns TransCanada's fitness as an applicant for a major
28 crude oil pipeline in its preferred location, or ultimate location across the
29 state of Nebraska?

1 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
2 or even bullied around and being made to feel scared that they did not have any
3 options but to sign whatever papers TransCanada told them they had to. I am
4 aware of folks being threatened that their land would be taken if they didn't follow
5 what TransCanada was saying. I am aware of tactics to get people to sign
6 easements that I don't believe have any place in Nebraska or anywhere such as
7 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
8 landowners and convince them they should sign TransCanada's easement
9 agreements. I am aware of older folks and widows or widowers feeling they had
10 no choice but to sign TransCanada's Easement and they didn't know they could
11 fight or stand up for themselves. From a more practical standpoint, I am worried
12 that according to their answer to our Interrogatory No. 211, TransCanada only
13 owns and operates one (1) major oil pipeline. They simply do not have the
14 experience with this type of pipeline and that scares me. There are others but that
15 is what I can recollect at this time and if I remember more or my recollection is
16 refreshed I will share those with the Commissioners at the Hearing in August.

17 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
18 **landowner is reasonable or just?**

19 A: No, I do not.

20 **Q: Do you have any concern about limitations that the construction of this**
21 **proposed pipeline across your affected land would prevent construction of**
22 **future structures upon the portion of your land affected by the proposed**
23 **easement and immediately surrounding areas?**

24 A: Well yes, of course I do. We would not be able to build many, if any, types of
25 structures directly across or touching the easement, and it would be unwise and I
26 would be uncomfortable to build anything near the easement for fear of being
27 blamed in the future should any damage or difficulty result on my property in
28 regards to the pipeline.

29 **Q: Do you think such a restriction would impact you economically?**

1 A: Well yes, of course.

2 **Q: How do you think such a restriction would impact you economically?**

3 A: The future of this land may not be exactly how it's being used as of this moment,
4 and having the restrictions and limiting my ability to develop my land in certain
5 ways presents a huge negative economic impact on myself, my family, and any
6 potential future owner of the property. You have no idea how I or the future owner
7 may want to use this land in the future or the other land across Nebraska
8 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
9 ago it would have been hard to imagine all the advances that we have now or how
10 things change. Because the Easement is forever and TransCanada gets the rights in
11 my land forever we have to think with a very long term view. By placing their
12 pipeline on under across and through my land that prevents future development
13 which greatly negatively impacts future taxes and tax revenue that could have
14 been generated by the County and State but now will not. When you look at the
15 short blip of economic activity that the two years of temporary construction efforts
16 may bring, that is far outweighed by the perpetual and forever loss of opportunity
17 and restrictions TransCanada is forcing upon us and Nebraska.

18 **Q: Do you have any concerns about the environmental impact of the proposed**
19 **pipeline?**

20 A: Yes, I do.

21 **Q: What are some of those concerns?**

22 A: As an affected land owner and Nebraskan, I am concerned that any construction,
23 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
24 a detrimental impact upon the environment of my land specifically, as well as the
25 lands near my land and surrounding the proposed pipeline route.

26 **Q: Do you have any other environmental concerns?**

27 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
28 construction and/or maintenance and operation. I am concerned about spills and

1 leaks that TransCanada has had in the past and will have in the future. This could
2 be catastrophic to my operations or others and to my county and the State.

3 **Q: Do you have any thoughts regarding if there would be an impact upon the**
4 **natural resources on or near your property due to the proposed pipeline?**

5 A: Yes, I believe that any construction, operation, and/or maintenance of the
6 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
7 resources of my land, and the lands near and surrounding the proposed pipeline
8 route.

9 **Q: Do you have any worries about potential impacts from the proposed pipeline**
10 **to the soil of your land, or land near you?**

11 A: Yes, I believe that any construction, operation, and/or maintenance of the
12 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
13 land, as well as land along and surrounding the proposed pipeline route. This
14 includes, but is not limited to, the reasons that we discussed above of disturbing
15 the soil composition and makeup as it has naturally existed for thousands and
16 millions of years during the construction process, and any future maintenance or
17 removal process. I'm gravely concerned about the fertility and the loss of
18 economic ability of my property to grow the crops, or grow the grasses, or grow
19 whatever it is at that time they exist on my property or that I may want to grow in
20 the future, or that a future owner may want to grow. The land will never be the
21 same from as it exists now undisturbed to after it is trenched up for the proposed
22 pipeline.

23 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
24 **upon the groundwater over your land, or surrounding lands?**

25 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
26 the proposed Keystone XL Pipeline would have a detrimental impact upon the
27 groundwater of not only under my land, but also near and surrounding the pipeline
28 route, and in fact, potentially the entire State of Nebraska. Water is life plain and

1 simple and it is simply too valuable to our State and the country to put at
2 unreasonable risk.

3 **Q: Do you have any concern about the potential impact of the proposed pipeline**
4 **upon the surface water on, or near or around your land?**

5 A: Yes, I have significant concerns that any construction, operation, and/or
6 maintenance of the proposed Keystone XL Pipeline would have detrimental
7 impact upon the surface water of not only within my property boundary, but along
8 and near and surrounding the pipeline route, and in fact, across the state of
9 Nebraska.

10 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
11 **upon the wildlife and plants, other than your growing crops on or near your**
12 **land?**

13 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
14 the proposed Keystone XL Pipeline would have a detrimental impact upon the
15 wildlife and the plants, not only that are located on or can be found upon my land,
16 but also near and along the proposed pipeline route.

17 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
18 **fair market value of your land?**

19 A: Yes, I do. I am significantly concerned about how the existence of the proposed
20 pipeline underneath and across and through my property will negatively affect the
21 fair market value at any point in the future, especially at that point in which I
22 would need to sell the property, or someone in my family would need to sell the
23 property. I do not believe, and certainly would not be willing to pay, the same
24 price for land that had the pipeline located on it, versus land that did not. I hope
25 there is never a point where I'm in a position where I have to sell and have to
26 realize as much value as I can out of my land. But because it is my single largest
27 asset, I'm gravely concerned that the existence of the proposed Keystone XL
28 Pipeline upon my land will affect a buyer's willingness to pay as much as they
29 would've paid and as much as I could've received, if the pipeline were not upon

1 my property. There are just too many risks, unknowns, impacts and uncertainties,
2 not to mention all of the rights you give up by the nature of having the pipeline
3 due to having the easement that we have previously discussed, for any reasonable
4 person to think that the existence of the pipeline would not negatively affect my
5 property's value.

6 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
7 **testimony?**

8 A: Yes, I have.

9 **Q: Where have you seen that before?**

10 A: That is a map I think I first saw a couple years ago that shows what was called the
11 Keystone XL I-90 corridor alternate route of its proposed pipeline through
12 Nebraska and I believe the portion of the alternative route in Nebraska essentially
13 twins or parallels Keystone I.

14 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
15 **of the proposed pipeline route within Nebraska as found in Attachment No. 6**
16 **to your testimony, is in the public interest of Nebraska?**

17 A: No, I do not.

18 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
19 **Application, and as found on Attachment No. 7, here to your testimony, is in**
20 **the public interest of Nebraska?**

21 A: No, I do not.

22 **Q: Do you believe that the Keystone mainline alternative route as shown on**
23 **Attachment No. 7 included with your testimony here is a major oil pipeline**
24 **route that is in the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe there is any potential route for the proposed Keystone XL**
27 **Pipeline across, within, under, or through the State of Nebraska that is in the**
28 **public interest of the citizens of Nebraska?**

29 A: No, I do not.

1 **Q: Why do you hold that belief?**

2 **A:** Because there simply is no public interest based on all of the factors that I am
3 aware and that I have read and that I have studied that this Commission is to
4 consider that would establish that a for-profit foreign-owned pipeline that simply
5 crosses Nebraska because we are geographically in the way between where tar
6 sands are in Canada to where it wants to ship it to in Texas could ever be in the
7 public interest of Nebraskans. We derive no benefit from this project. It is not for
8 public use. Nebraska is simply in the way and when all considerations are taken in
9 there is no net benefit of any kind for Nebraska should this project be placed in our
10 state. Even if there was some arguable “benefit” it is not enough to outweigh all
11 the negative impacts and concerns.

12 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
13 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
14 **of Nebraska because it may bring temporary jobs during the construction**
15 **phase to Nebraska?**

16 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
17 temporary or on a permanent basis, don’t come with a project that has all the
18 potential and foreseeable negative impacts, many of which we have discussed here
19 and other witnesses throughout the course of this hearing have and will discuss. If
20 I decide to hire and employ someone to help me out in my farming or ranching
21 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
22 to my land or my town or my county or my state. And I’ve hired someone who is
23 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
24 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
25 jobs are not created equal. Additionally, I understand from what I’m familiar with
26 from TransCanada’s own statements that the jobs numbers they originally touted
27 were determined to be a minute fraction of the permanent jobs that had been
28 projected. According to their answer to our Interrogatory No. 191, TransCanada
29 has created only thirty-four (34) jobs within Nebraska working specifically on

1 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
2 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
3 Further, according to their answer to Interrogatory No. 199, TransCanada would
4 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
5 constructed on its Preferred Route or its Mainline Alternative Route.

6 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
7 **because it would cross your land?**

8 A: No, absolutely not. I am opposed to this project because it is not in the public
9 interest, neither within my community nor within our state.

10 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
11 **was to cross someone else's land?**

12 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
13 the fear and anxiety and potential foreseeable risks and negative impacts that this
14 type of a project carrying this type of product brings foisted upon anyone in this
15 state or any other state.

16 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
17 **Pipeline to cross the state of Nebraska?**

18 A: I don't believe there is an intelligent route because as I have stated I don't believe
19 this project anywhere within Nebraska is within the public interest. However, if
20 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
21 had to go somewhere in the state of Nebraska, the only intelligent route I believe
22 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
23 preferred route and the mainline alternative routes are economic liabilities our
24 state cannot risk.

25 **Q: What do you rely upon to make that statement?**

26 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
27 already exists in that area is reason enough as it is not in our best interest or the
28 public interests to have more major oil pipelines crisscrossing our state. Second,
29 they have all the infrastructure already there in terms of relationships with the

1 counties and local officials and first responders along that route. Third, they have
2 already obtained easements from all the landowners along that route and have
3 relationships with them. Fourth, that route avoids our most sensitive soils, the
4 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
5 Aquifer. Sixth, they have already studied that route and previously offered it as an
6 alternative. Seventh, it just makes the most sense that as a state we would have
7 some intelligent policy of energy corridors and co-locating this type of
8 infrastructure near each other.

9 **Q: Do you have any other concerns you would like to reiterate or can think of at**
10 **this time you would like the Commissioners to understand?**

11 **A:** Yes. If this is allowed to pass we should get an annual payment for the right to use
12 our land. In a few years the State of Nebraska will get very little taxes from this
13 pipeline. Boone County will get very little in tax revenue as they will have no
14 pumping stations or permanent structures to tax. According to language in the
15 easement the land owner can be held responsible for damage to this pipe if they
16 think leak could have been caused by the landowner. KXL will sue you into
17 eternity trying to prove that it is your fault rather than theirs. It is our
18 understanding that this pipe will only be buried 4 feet deep. We have had hard
19 rains that have eroded our pivot tracks deeper than that. This pipeline is of no
20 benefit to the State of Nebraska and only will benefit a foreign corporation to
21 profit from its use. The jobs that this will create are temporary in nature and no
22 more than 35 jobs will be created for this entire project.

23 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
24 **like the Public Service Commissioners to consider in their review of**
25 **TransCanada's Application?**

26 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
27 document below but other things may come to me or my memory may be
28 refreshed and I will add and address those things at the time of the Hearing in
29 August and address any additional items at that time as is necessary. Additionally,

1 I have not had an adequate amount of time to receive and review all of
2 TransCanada's answers to our discovery and the discovery of others so it was
3 impossible to competently and completely react to that in my testimony here and I
4 reserve the right to also address anything related to discovery that has not yet
5 concluded as of the date I signed this document below. Lastly, certain documents
6 requested have not yet been produced by TransCanada and therefore I may have
7 additional thoughts on those I will also share at the hearing as needed.

8 **Q: What is it that you are requesting the Public Service Commissioners do in**
9 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
10 **across Nebraska?**

11 A: I am respectfully and humbly requesting that the Commissioners think far beyond
12 a temporary job spike that this project may bring to a few counties and beyond the
13 relatively small amount of taxes this proposed foreign pipeline would possibly
14 generate. And, instead think about the perpetual and forever impacts of this
15 pipeline as it would have on the landowners specifically, first and foremost, but
16 also thereby upon the entire state of Nebraska, and to determine that neither the
17 preferred route nor the Keystone mainline alternative route are in the public
18 interest of the citizens of the state of Nebraska. And if the Commissioners were
19 inclined to modify TransCanada's proposed routes and were to be inclined to grant
20 an application for a route in Nebraska, that the only potential route that would
21 make any intelligent sense whatsoever would be twinning or near paralleling of
22 the proposed KXL with the existing Keystone I pipeline. It simply does not make
23 sense to add yet another major oil pipeline crisscrossing our state creating new
24 pumping stations, creating new impacts on additional counties and communities
25 and going through all of the court processes with myself and other landowners like
26 me when this applicant already has relationships with the landowners, the towns
27 and the communities along Keystone I, and that Keystone I is firmly outside of the
28 sand hills and a significantly further portion away from the heart of the Ogallala
29 Aquifer than the preferred route or the Keystone mainline alternative route.

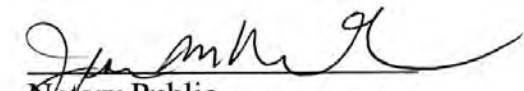
1 **Q: Are all of your statements in your testimony provided above true and**
2 **accurate as of the date you signed this document to the best of your**
3 **knowledge?**


4 **A: Yes, they are.**

5 **Q: Thank you, I have no further questions at this time and reserve the right to**
6 **ask you additional questions at the August 2017 Hearing.**


Donald Loseke

Subscribed and Sworn to me before this 25th day of May, 2017.


Notary Public

 JEANNINE M KINCADE
Notary Public-State of Arizona
Maricopa County
My Comm. Exp. Dec. 4, 2020

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act*

Direct Testimony of
Frankie Maughan in Support of
Landowner Intervenor

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Frankie Maughan.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse’s name please?**

16 A: Sandra Maughan.



1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A: Yes.

4 **Q: How long the land has been in your family?**

5 A: We bought this land in 1989.

6 **Q: Do you earn any income from this land?**

7 A: Yes.

8 **Q: Have you depended on the income from your land to support your livelihood**
9 **or the livelihood of your family?**

10 A: Yes.

11 **Q: Have you ever in the past or have you thought about in the future leasing all**
12 **or a portion of your land in question here?**

13 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
14 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
15 all the restrictions and risks and potential negative impacts to farming or ranching
16 operations as opposed to land that did not have those same risks. If I was looking
17 to lease or rent ground I would pay more for comparable non-pipeline land than I
18 would for comparable pipeline land and I think most folks would think the same
19 way. This is another negative economic impact that affects the landowner and the
20 county and the state and will forever and ever should TransCanada's preferred or
21 mainline alternative routes be approved. If they were to twin or closely parallel to
22 Keystone I the vast majority of landowners would be those that already have a
23 pipeline so there would be considerable less new incremental negative impacts.

24 **Q: Do you have similar concerns about selling the land?**

25 A: Well I hope not to have to sell the land in my lifetime but times change and you
26 never know what is around the corner and yes I am concerned that if another piece
27 of ground similar to mine were for sale and it did not have the pipeline and mine
28 did that I would have a lower selling price. I think this would be true for pipeline
29 ground on both the preferred and mainline alternative routes.

1 **Q: What is your intent with your land after you die?**
2 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
3 to come but I have thought about getting out if this pipeline were to come through.
4 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
5 **Pipeline would cross the land described above and owned by you?**
6 A: Yes.
7 **Q: Were you or an entity for which you are a member, shareholder, or director**
8 **previously sued by TransCanada Keystone Pipeline, LP?**
9 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
10 petition for condemnation against our land so it could place its proposed pipeline
11 within an easement that it wanted to take from us on our land.
12 **Q: Did you defend yourself and your land in that condemnation action?**
13 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
14 and expenses in our resistance of TransCanada's lawsuit against us.
15 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
16 **incurred?**
17 A: No, they have not.
18 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
19 **property that it wanted to take for its proposed pipeline?**
20 A: The lawsuit against us stated they would take the amount of property that is
21 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
22 and equipment reasonably necessary to operate the pipeline.
23 **Q: Did TransCanada define what they meant by "property that is reasonably**
24 **necessary"?**
25 A: No, they did not.
26 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
27 **property portion of your land?**
28 A: Yes, they did.

1 **Q: Did TransCanada describe what rights it proposed to take related to the**
2 **eminent domain property on your land?**

3 **A:** Yes, they did.

4 **Q: What rights that they proposed to take did they describe?**

5 **A:** TransCanada stated that the eminent domain property will be used to “lay, relay,
6 operate, and maintain the pipeline and the plant and equipment reasonably
7 necessary to operate the pipeline, specifically including surveying, laying,
8 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
9 reconstructing, removing and abandoning one pipeline, together with all fittings,
10 cathodic protection equipment, pipeline markers, and all their equipment and
11 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
12 petroleum products, and all by-products thereof.”

13 **Q: Prior to filing an eminent domain lawsuit to take your land that**
14 **TransCanada identified, do you believe they attempted to negotiate in good**
15 **faith with you?**

16 **A:** No, I do not.

17 **Q: Did TransCanada at any time approach you with or deliver to you their**
18 **proposed easement and right-of-way agreement?**

19 **A:** Yes, they did.

20 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
21 **agreement, did you understand that they would be purchasing a fee title**
22 **interest in your property or that they were taking something else?**

23 **A:** I understood that they proposed to have the power to take both a temporary
24 construction easement that could last for a certain period of time and then also a
25 permanent easement which they described to be 50 feet across or in width, and
26 that would run the entire portion of my property from where a proposed pipeline
27 would enter my property until where it would exit the property.

28 **Q: Is the document included with your testimony here as Attachment No. 3, a**
29 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**

1 **Way agreement that they included with their condemnation lawsuit against**
2 **you?**

3 **A:** Yes, it is.

4 **Q:** **Have you had an opportunity to review TransCanada's proposed Easement**
5 **and Right-of-Way agreement?**

6 **A:** Yes, I have.

7 **Q:** **What is your understanding of the significance of the Easement and Right-of-**
8 **Way agreement as proposed by TransCanada?**

9 **A:** My understanding is that this is the document that will govern all of the rights and
10 obligations and duties as well as the limitations of what I can and cannot do and
11 how I and any future landowner and any person I invite to come onto my property
12 must behave as well as what TransCanada is and is not responsible for and how
13 they can use my land.

14 **Q:** **After reviewing TransCanada's proposed Easement and Right-of-Way**
15 **agreement do you have any concerns about any portions of it or any of the**
16 **language either included in the document or missing from the proposed**
17 **document?**

18 **A:** Yes, I have a number of significant concerns and worries about the document and
19 how the language included and the language not included potentially negatively
20 impacts my land and thereby potentially negatively impacts my community and
21 my state.

22 **Q:** **I would like you to walk the Commissioners through each and every one of**
23 **your concerns about TransCanada's proposed Easement and Right-of-Way**
24 **agreement so they can develop an understanding of how that language and**
25 **the terms of that contract, in your opinion, potentially negatively impacts you**
26 **and your land. So, if you can start at the beginning of that document and**
27 **let's work our way through it, okay?**

1 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
2 Easement and Right-of-Way agreement and how it negatively could affect my
3 property rights and my economic interests.

4 Q: Okay, let's start with your first concern please.

5 A: The very first sentence talks about consideration or how much money they will
6 pay to compensate me for all of the known and unknown affects and all of the
7 rights I am giving up and for all the things they get to do to my land and for what
8 they will prevent me from doing on my land and they only will pay me one time at
9 the signing of the easement agreement. That is a huge problem.

10 Q: Explain to the Commissioners why that is a problem.

11 A: It is not fair to the landowner, the county, or the State. It is not fair to the
12 landowner because they want to have my land forever for use as they see fit so
13 they can make a daily profit from their customers. If I was to lease ground from
14 my neighbor I would typically pay twice a year every year as long as they granted
15 me the rights to use their land. That only makes sense – that is fair. If I was going
16 to rent a house in town I would typically pay monthly, every month until I gave up
17 my right to use that house. By TransCanada getting out on the cheap and paying
18 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
19 revenue collection on the money I would be paid and then pay taxes on and
20 contribute to this state and this country. It is money I would be putting back into
21 my local community both spending and stimulating the local economy and
22 generating more economic activity right here. Instead TransCanada's shareholders
23 keep all that money and it never finds its way to Nebraska.

24 Q: What is your next concern?

25 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
26 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
27 limited partnership..." and I have no idea who that really is. I have no idea who is
28 forcing this pipeline on us or who the owners of the entities are, or what are the
29 assets backing this limited partnership, or who the general partner is, or who all

1 the limited partners are, and who makes up the ownership of the these partners or
2 the structure or any of the basic things you would want to know and understand if
3 you would want to do business with such an outfit. According to TransCanada's
4 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
5 liability company called TransCanada Keystone Pipeline GP, LLC is the general
6 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
7 basically nothing. That is really scary since the general partner has the liability but
8 virtually none of the ownership and who knows if it has any other assets.

9 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
10 **percent clear on exactly who could become the owner of over 275 miles of**
11 **Nebraska land?**

12 **A: No.**

13 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
14 **percent clear on exactly who will be operating and responsible for**
15 **approximately 275 miles of tar sands pipeline underneath and through**
16 **Nebraska land?**

17 **A: No.**

18 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
19 **and the State of Nebraska of TransCanada's easement terms.**

20 **A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter**
21 **called "Grantee")..." and this concerns me because it would allow their easement**
22 **to be transferred or sold to someone or some company or country or who knows**
23 **what that I don't know and who we may not want to do business with. This**
24 **pipeline would be a huge asset for TransCanada and if they can sell to the highest**
25 **bidder that could have terrible impacts upon all of Nebraska depending upon who**
26 **may buy it and I don't know of any safeguards in place for us or the State to veto**
27 **or have any say so in who may own, operate, or be responsible for this pipeline in**
28 **the future.**

1 **Q: Do you think that type of uncertainty and lack of control over a major piece**
2 **of infrastructure crossing our State is in the public interest?**

3 **A: No, certainly not, in fact, just the opposite.**

4 **Q: What's next?**

5 **A: Then it says "...a perpetual permanent easement and right-of-way..." and this**
6 **really concerns me. Why does the easement and right-of-way have to be perpetual**
7 **and permanent? That is the question myself and my family want an answer to.**
8 **Perpetual to me is like forever and that doesn't make sense.**

9 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

10 **A: For many reasons but mostly because the tar sands are finite. I am unaware of any**
11 **data proving there is a perpetual supply of tar sands. I am not aware in**
12 **TransCanada's application where it proves there is a perpetual necessity for this**
13 **pipeline. My understanding of energy infrastructure like wind towers is they have**
14 **a decommission plan and actually take the towers down when they become**
15 **obsolete or no longer needed. Nothing manmade lasts forever. My land however**
16 **will, and I want my family or future Nebraska families to have that land as**
17 **undisturbed as possible and it is not in my interest or the public interest of**
18 **Nebraska to be forced to give up perpetual and permanent rights in the land for**
19 **this specific kind of pipeline project.**

20 **Q: Okay, what is your next concern?**

21 **A: The easement language includes all these things TransCanada can do and it says**
22 **"...abandoning in place..." so they can just leave this pipeline under my ground**
23 **until the end of time just sitting there while they are not using it, but I am still**
24 **prevented from doing on my land and using my land what I would like. If I owned**
25 **a gas station I couldn't just leave my underground oil or fuel storage tanks sitting**
26 **there. It doesn't make sense and it scares me and it is not in my interest or the**
27 **public interest of Nebraska to allow this.**

28 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
29 **right?**

1 A: Yes.

2 Q: So now on the second page of the Easement what are your concerns?

3 A: Here the Easement identifies a 24-month deadline to complete construction of the
4 pipeline but has caveats that are undefined and ambiguous. The 24-month period
5 starts to run from the moment “actual pipeline installation activities” begin on
6 Landowners property. It appears that TransCanada would define this phrase as
7 needed. It would be wise to explain what types of TransCanada action constitutes
8 “installation activity” For instance, would the placement and storage of an
9 excavator or other equipment on or near the Easement property be an activity or
10 would earth have to be moved before the activity requirement is triggered. This
11 vague phrase is likely to lead to future disputes and litigation that is not in the best
12 interest of the welfare of Nebraska and would not protect property interests. The
13 24-months can also be extended in the case of “force majeure.” My understanding
14 is that force majeure is often used to insulate a party to a contract when events
15 occur that are completely out of their control. In TransCanada’s easement this is
16 expanded to include “without limitation...availability of labor and materials.”
17 Extending this language to labor and materials is problematic because these are
18 two variables that TransCanada does have some or significant control over and to
19 allow extension of the 24-month period over events not truly out of the control of
20 TransCanada and without further provision for compensation for the Landowner is
21 not conducive to protection of property rights.

22 Q: Okay, what is your next concern?

23 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
24 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
25 reasonable costs and expenses” will pay for damages caused but then limits
26 TransCanada’s liability to certain circumstances. There is no definition of
27 “commercially reasonable” and no stated right that the Landowner would get to
28 determine the amounts of cost or expense that is “commercially reasonable.”
29 TransCanada excepts out from their liability any damages that are caused by

1 Landowner's negligence or the negligence of anyone ever acting on the behalf of
2 Landowner. It is understandable that if the Landowner were to willfully and
3 intentionally cause damages to the pipeline that Landowner should be liable.
4 However, anything short of willful misconduct should be the liability of
5 TransCanada who is subjecting the pipeline on the Landowner and who is making
6 a daily profit from that pipeline. When evaluating the impact on property rights of
7 this provision, you must consider the potentially extremely expensive fight a
8 Landowner would have over this question of whether or not damage was an act of
9 negligence. Putting this kind of potential liability upon the Landowner is
10 incredibly problematic and is detrimental to the protection of property rights. I
11 don't think this unilateral power which I can't do anything about as the landowner
12 is in the best economic interest of the land in question or the State of Nebraska for
13 landowners to be treated that way.

14 **Q: Is there any specific event or example you are aware of that makes this**
15 **concern more real for you?**

16 **A: Yes, one need not look further than a November 3, 2015 lawsuit filed against**
17 **Nemaha County, Nebraska landowner farmers who accidentally struck two**
18 **Magellan Midstream Partners, LP pipelines, one used to transport a mixture of**
19 **gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged**
20 **negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate**
21 **copy of the Federal Court Complaint is here as Attachment No. 4.**

22 **Q: What is your next concern with the Easement language?**

23 **A: Paragraph 3 states that Landowner can farm on and otherwise use their property as**
24 **they choose unless 1) any Landowner use interferes in any way with**
25 **TransCanada's exercise of any of its rights within the Easement, or 2)**
26 **TransCanada decides to take any action on the property it deems necessary to**
27 **prevent injury, endangerment or interference with anything TransCanada deems**
28 **necessary to do on the property. Landowner is also forbidden from excavating**
29 **without prior authorization by TransCanada. So my understanding is that**

1 TransCanada will unilaterally determine what Landowner can and can't do based
2 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
3 could also completely deny my request to excavate. Further, TransCanada retains
4 all "privileges necessary or convenient for the full use of the rights" granted to
5 them in the Easement. Again, TransCanada unilaterally can decide to the
6 detriment of the property rights of Landowner what TransCanada believes is
7 necessary or convenient for it. And there is no option for any additional
8 compensation to landowner for any right exercised by TransCanada that leads to
9 the removal of trees or plants or vegetation or buildings or structures or facilities
10 owned by Landowner of any kind. Such undefined and unilateral restrictions and
11 rights without having to compensate Landowner for such further destruction or
12 losses are not conducive to the protection of property rights or economic interest.

13 **Q: What is the next concern you have?**

14 **A:** The Easement also allows some rights for Landowner but restricts them at the
15 same time and again at the sole and unilateral decision making of TransCanada.
16 TransCanada will determine if the actions of Landowner might in anyway
17 endanger or obstruct or interfere with TransCanada's full use of the Easement or
18 any appurtenances thereon to the pipeline itself or to their access to the Easement
19 or within the Easement and TransCanada retains the right at any time, whether
20 during growing season or not, to travel "within and along Easement Area on foot
21 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
22 retain the rights to prevent any landowner activity that it thinks may "unreasonably
23 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
24 undefined and unilateral restrictions are not conducive to the protection of
25 property rights or economic interest.

26 **Q: What is the next concern you have with the Easement language?**

27 **A:** The Easement allows TransCanada sole discretion to burn or chip or bury under
28 Landowner's land any debris of any kind without any input or power of
29 Landowner to demand an alternative method or location of debris disposal. Such

1 unilateral powers would negatively affect Landowners property are not conducive
2 to the protection of property rights or economic interest.

3 **Q: What is the next concern you have with the Easement language?**

4 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
5 “where rock is encountered” mean and why does TransCanada solely get to
6 determine whether or not this phrase is triggered. This phrase could be used to
7 justify installing the pipeline 24 inches beneath the surface. The ability to use this
8 provision to minimal locate the pipeline at a depth of 24 inches could negatively
9 affect Landowners property are not conducive to the protection of property rights.
10 A shallow pipeline is much more likely to become a danger and liability in the
11 future given farming operations and buried irrigation lines and other factors
12 common to the current typical agricultural uses of the land in question impacted
13 by TransCanada’s preferred pipeline route.

14 **Q: What is the next concern you have with the Easement language?**

15 A: There are more vague concepts solely at the determination of TransCanada such as
16 “as nearly as practicable” and “pre-construction position” and “extent reasonably
17 possible.” There is nothing here that defines this or provides a mechanism for
18 documenting or memorializing “pre-construction position” so as to minimize
19 costly legal battles or wasted Landowner time attempting to recreate the soil
20 condition on their fields or pasture. Such unilateral powers would negatively affect
21 Landowners property are not conducive to the protection of property rights or
22 economic interest.

23 **Q: What is the next concern you have with the Easement language?**

24 A: TransCanada maintains the unilateral right to abandon the pipeline and all
25 appurtenances thereto in place on, under, across, or through Nebraska land at any
26 time it chooses. There is no provision for Landowner compensation for such
27 abandonment nor any right for the Landowner to demand removal. Such unilateral
28 powers would negatively affect Landowners property are not conducive to the
29 protection of property rights or economic interest.

1 **Q: What is the next concern you have with the Easement language?**

2 **A:** TransCanada has the power to unilaterally move or modify the location of any
3 Easement area whether permanent or temporary at their sole discretion.
4 Regardless, if Landowner has taken prior steps relative the their property in
5 preparation or planning of TransCanada's taking of the initial easement area(s),
6 the language here does not require TransCanada to compensate the Landowner if
7 they decide to move the easement anywhere on Landowners property. Such
8 unilateral powers would negatively affect Landowners property are not conducive
9 to the protection of property rights or economic interests.

10 **Q: What is the next concern you have with the Easement language?**

11 **A:** The Easement requires that all of the burdens and restrictions upon Landowner to
12 transfer and be applicable to any future owner of the Land in question without the
13 ability of the future Landowner to modify or negotiate any of the language in
14 question to which it will be held to comply.

15 **Q: What is the next concern you have with the Easement language?**

16 **A:** The Easement allows TransCanada to assign, transfer, or sell any part of the
17 Easement to any person, company, country, etc. at their sole discretion at anytime
18 to anyone. This also means that any buyer of the easement could do the same to a
19 third buyer and so on forever. There is no change of control or sale provision in
20 place to protect the Landowner or Nebraska or to provide compensation for such
21 change of control or ownership. It is not conducive to the protection of property
22 rights or economic interests to allow unilateral unrestricted sale of the Easement
23 thereby forcing upon the Landowner and our State a new unknown Easement
24 owner.

25 **Q: What is the next concern you have with the Easement language?**

26 **A:** There are many terms in the Easement that are either confusing or undefined terms
27 that are without context as to whether or not the Landowner would have any say
28 so in determining what these terms mean or if the evaluation is solely in
29 TransCanada's control. Some of these vague undefined terms are as follows:

- 1 i. "pipeline installation activities"
- 2 ii. "availability of labor and materials"
- 3 iii. "commercially reasonable costs and expenses"
- 4 iv. "reasonably anticipated and foreseeable costs and expenses"
- 5 v. "yield loss damages"
- 6 vi. "diminution in the value of the property"
- 7 vii. "substantially same condition"
- 8 viii. "an actual or potential hazard"
- 9 ix. "efficient"
- 10 x. "convenient"
- 11 xi. "endangered"
- 12 xii. "obstructed"
- 13 xiii. "injured"
- 14 xiv. "interfered with"
- 15 xv. "impaired"
- 16 xvi. "suitable crossings"
- 17 xvii. "where rock is encountered"
- 18 xviii. "as nearly as practicable"
- 19 xix. "pre-construction position"
- 20 xx. "pre-construction grade"
- 21 xxi. "various engineering factors"

22 Each one of these above terms and phrases as read in the context of the Easement
23 could be problematic in many ways. Notably, undefined terms tend to only get
24 definition in further legal proceedings after a dispute arises and the way the
25 Easement is drafted, TransCanada has sole power to determine when and if a
26 particular situation conforms with or triggers rights affected by these terms. For
27 instance, "yield loss damages" should be specifically defined and spelled out
28 exactly how the landowner is to be compensated and in what events on the front
29 end. I can't afford to fight over this after the damage has occurred. Unfortunately,

1 the Landowner is without contractual rights to define these terms or determine
2 when rights related to them trigger and what the affects may be.

3 **Q: Do you have any other concerns about the Easement language that you can
4 think of at this time?**

5 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
6 my live testimony in August.

7 **Q: Based upon what you have shared with the Commission above regarding
8 TransCanada's proposed Easement terms and agreement, do you believe
9 those to be reasonable or just, under the circumstances of the pipeline's
10 impact upon you and your land?**

11 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
12 discussed previously.

13 **Q: Did TransCanada ever offer you financial compensation for the rights that
14 they sought to obtain in your land, and for what they sought to prevent you
15 and any future land owner of your property from doing in the future?**

16 **A:** Yes, we received an offer from them.

17 **Q: As the owner of the land in question and as the person who knows it better
18 than anyone else, do you believe that TransCanada offered you just, or fair,
19 compensation for all of what they proposed to take from you so that their tar
20 sands pipeline could be located across your property?**

21 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
22 offer for all the potential impacts and effects and the rights that I'm giving up, and
23 what we will be prevented from doing in the future and how their pipeline would
24 impact my property for ever and ever.

25 **Q: Has TransCanada at any time offered to compensate you annually, such as
26 wind farm projects do, for the existence of their potential tar sands pipeline
27 across your property.**

28 **A:** No, never.

1 **Q:** **At any time did TransCanada present you with or request that you, as the**
2 **owner of the land in question, sign and execute a document called, “Advanced**
3 **Release of Damage Claims and Indemnity Agreement?”**

4 **A:** **Yes, they did and it was included in the County Court lawsuit against us.**

5 **Q:** **Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
6 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

7 **A:** **Yes, it is.**

8 **Q:** **What was your understanding of that document?**

9 **A:** **When I read that document in the plain language of that document, it was my**
10 **understanding that TransCanada was attempting to pay me a very small amount at**
11 **that time in order for me to agree to give up my rights to be compensated from**
12 **them in the future related to any damage or impact they may have upon my**
13 **property “arising out of, in connection with, or alleged to resulted from**
14 **construction or surveying over, under or on” my land.**

15 **Q:** **Did you ever sign that document?**

16 **A:** **No, I did not.**

17 **Q:** **Why not?**

18 **A:** **Because I do not believe that it is fair or just to try to get me to agree to a small**
19 **sum of money when I have no idea how bad the impacts or damages that they, or**
20 **their contractors, or subcontractors, or other agents or employees, may cause on**
21 **my land at any time in the future that resulted from the construction or surveying**
22 **or their activities upon my land.**

23 **Q:** **When you reviewed this document, what did it make you feel?**

24 **A:** **I felt like it was simply another attempt for TransCanada to try to pay very little to**
25 **shield themselves against known and foreseeable impacts that their pipeline, and**
26 **the construction of it, would have upon my land. It made me feel that they knew it**
27 **was in their financial interest to pay me as little as possible to prevent me from**
28 **ever having the opportunity to seek fair compensation again, and that this must be**

1 based upon their experience of unhappy landowners and situations in other places
2 where they have built pipelines.

3 Q: Has TransCanada ever contacted you and specifically asked you if you
4 thought their proposed location of their proposed pipeline across your land
5 was in your best interest?

6 A: No, they have not.

7 Q: Has TransCanada ever contacted you and specifically asked you if you
8 thought their proposed location of their proposed pipeline across your land
9 was in the public interest of the State of Nebraska?

10 A: No, they have not.

11 Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
12 Takings Clause?

13 A: Yes, I am.

14 Q: What is your understanding of the Fifth Amendment as it relates to taking of
15 an American citizens property?

16 A: My understanding is that, according to the United States Constitution, that if the
17 government is going to take land for public use, then in that case, or by taking for
18 public use, it can only occur if the private land owner is compensated justly, or
19 fairly.

20 Q: Has TransCanada ever contacted you specially to explain the way in which
21 the public could use its proposed Keystone XL Pipeline?

22 A: No, they have not.

23 Q: Can you think of any way in which the public, that is the citizens of the State
24 of Nebraska, can directly use the proposed TransCanada Keystone XL
25 Pipeline, as it dissects the State of Nebraska?

26 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
27 public benefits from this pipeline in any way, how they can use it any way, or how
28 it's in the public interest in any way. By looking at the map, it is quite clear to me
29 that the only reason it's proposed to come through Nebraska, is that because we

1 are geographically in the way from between where the privately-owned Tar Sands
2 are located to where TransCanada wants to ship the Tar Sands to refineries in
3 Houston, Texas.

4 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
5 crude petroleum, or oil and petroleum by-products that you would like to
6 ship in its pipeline?**

7 **A:** No, it has not.

8 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
9 products that you, at this time or any time in the future, would desire to place
10 for transport within the proposed TransCanada Keystone XL Pipeline?**

11 **A:** No, I do not.

12 **Q: Do you know anyone in the state of Nebraska who would be able to ship any
13 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
14 products within the proposed TransCanada Keystone XL Pipeline?**

15 **A:** No, I do not. I've never heard of such a person or company like that.

16 **Q: Do you pay property taxes for the land that would be affected and impacted
17 at the proposed TransCanada Keystone XL Pipeline?**

18 **A:** Yes, I do.

19 **Q: Why do you pay property taxes on that land?**

20 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
21 of that property.

22 **Q: Because you follow the law and pay property taxes, do you believe you
23 deserve any special consideration or treatment apart from any other person
24 or company that pays property taxes?**

25 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
26 just what you do.

27 **Q: Do you believe the fact that you pay property taxes entitles you to special
28 treatment of any kind, or special rights of any kind?**

29 **A:** No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**
2 **enough to qualify you to have the power of eminent domain to take land of**
3 **your neighbors or other people in your county, or other people across the**
4 **state of Nebraska?**

5 **A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that**
6 **I expect an award for or any type of special consideration.**

7 **Q: Have you at any time ever employed any person other than yourself?**

8 **A: Well, yes I have.**

9 **Q: Do you believe that the fact that you have, at some point in your life,**
10 **employed one or more other persons entitle you to any special treatment or**
11 **consideration above and beyond any other Nebraskan that has also employed**
12 **one or more persons?**

13 **A: No, of course not.**

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
15 **have at one point employed another person within this state, entitles you to**
16 **preferential treatment or consideration of any kind?**

17 **A: No, of course not. If I choose to employ someone that decision is up to me. I**
18 **don't deserve any special treatment or consideration for that fact.**

19 **Q: At the beginning of your statement, you briefly described your property that**
20 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
21 **give the Commissioners a sense of specifically how you believe the proposed**
22 **Keystone XL Pipeline and its preferred route, which proposes to go across**
23 **your land, how it would in your opinion based on your knowledge,**
24 **experience, and background of your land, affect it.**

25 **A: We attended an information meeting with TransCanada one time. During the**
26 **questioning I asked if there was a spill if they would put in the contract that they**
27 **would clean it. They told me they wouldn't do that but that the State and Federal**
28 **Government would make them do that. We got to hearing about the leaks in**
29 **Keystone I and were not impressed with their "safe pipeline". Not only from the**

1 spill aspect but just the worry about a potential spill can drive the land value down.
2 We could have our property value plummet. We have a sandy loam soil here the
3 back section and where this proposed pipe would go is loose sand over the
4 Ogallala Aquifer. I've concerns about our water here also we have a natural spring
5 just a short distance from where they have mapped. Our land has a shelterbelt on it
6 which is very well established the pipeline would tear out a large chunk of that and
7 we also have a natural gully right by the proposed pipeline route. We have
8 contracts with Invenergy to place wind towers also in that area and they pay
9 annually and per tower on your land not just one time and then take your land
10 forever. We believe in progression of the right kind.

11 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
12 **crude oil pipeline in its preferred location, or ultimate location across the**
13 **state of Nebraska?**

14 **A:** Yes, I have significant concerns. I am aware of landowners being treated unfairly
15 or even bullied around and being made to feel scared that they did not have any
16 options but to sign whatever papers TransCanada told them they had to. I am
17 aware of folks being threatened that their land would be taken if they didn't follow
18 what TransCanada was saying. I am aware of tactics to get people to sign
19 easements that I don't believe have any place in Nebraska or anywhere such as
20 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
21 landowners and convince them they should sign TransCanada's easement
22 agreements. I am aware of older folks and widows or widowers feeling they had
23 no choice but to sign TransCanada's Easement and they didn't know they could
24 fight or stand up for themselves. From a more practical standpoint, I am worried
25 that according to their answer to our Interrogatory No. 211, TransCanada only
26 owns and operates one (1) major oil pipeline. They simply do not have the
27 experience with this type of pipeline and that scares me. There are others but that
28 is what I can recollect at this time and if I remember more or my recollection is
29 refreshed I will share those with the Commissioners at the Hearing in August.

1 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
2 **landowner is reasonable or just?**

3 **A: No, I do not.**

4 **Q: Do you have any concern about limitations that the construction of this**
5 **proposed pipeline across your affected land would prevent construction of**
6 **future structures upon the portion of your land affected by the proposed**
7 **easement and immediately surrounding areas?**

8 A: Well yes, of course I do. We would not be able to build many, if any, types of
9 structures directly across or touching the easement, and it would be unwise and I
10 would be uncomfortable to build anything near the easement for fear of being
11 blamed in the future should any damage or difficulty result on my property in
12 regards to the pipeline.

13 **Q: Do you think such a restriction would impact you economically?**

14 A: Well yes, of course.

15 **Q: How do you think such a restriction would impact you economically?**

16 A: The future of this land may not be exactly how it's being used as of this moment,
17 and having the restrictions and limiting my ability to develop my land in certain
18 ways presents a huge negative economic impact on myself, my family, and any
19 potential future owner of the property. You have no idea how I or the future owner
20 may want to use this land in the future or the other land across Nebraska
21 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
22 ago it would have been hard to imagine all the advances that we have now or how
23 things change. **Because the Easement is forever and TransCanada gets the rights in**
24 **my land forever we have to think with a very long term view. By placing their**
25 **pipeline on under across and through my land that prevents future development**
26 **which greatly negatively impacts future taxes and tax revenue that could have**
27 **been generated by the County and State but now will not. When you look at the**
28 **short blip of economic activity that the two years of temporary construction efforts**

1 may bring, that is far outweighed by the perpetual and forever loss of opportunity
2 and restrictions TransCanada is forcing upon us and Nebraska.

3 **Q: Do you have any concerns about the environmental impact of the proposed**
4 **pipeline?**

5 A: Yes, I do.

6 **Q: What are some of those concerns?**

7 A: As an affected land owner and Nebraskan, I am concerned that any construction,
8 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
9 a detrimental impact upon the environment of my land specifically, as well as the
10 lands near my land and surrounding the proposed pipeline route.

11 **Q: Do you have any other environmental concerns?**

12 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
13 construction and/or maintenance and operation. I am concerned about spills and
14 leaks that TransCanada has had in the past and will have in the future. This could
15 be catastrophic to my operations or others and to my county and the State.

16 **Q: Do you have any thoughts regarding if there would be an impact upon the**
17 **natural resources on or near your property due to the proposed pipeline?**

18 A: Yes, I believe that any construction, operation, and/or maintenance of the
19 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
20 resources of my land, and the lands near and surrounding the proposed pipeline
21 route.

22 **Q: Do you have any worries about potential impacts from the proposed pipeline**
23 **to the soil of your land, or land near you?**

24 A: Yes, I believe that any construction, operation, and/or maintenance of the
25 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
26 land, as well as land along and surrounding the proposed pipeline route. This
27 includes, but is not limited to, the reasons that we discussed above of disturbing
28 the soil composition and makeup as it has naturally existed for thousands and
29 millions of years during the construction process, and any future maintenance or

1 removal process. I'm gravely concerned about the fertility and the loss of
2 economic ability of my property to grow the crops, or grow the grasses, or grow
3 whatever it is at that time they exist on my property or that I may want to grow in
4 the future, or that a future owner may want to grow. The land will never be the
5 same from as it exists now undisturbed to after it is trenched up for the proposed
6 pipeline.

7 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
8 **upon the groundwater over your land, or surrounding lands?**

9 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
10 the proposed Keystone XL Pipeline would have a detrimental impact upon the
11 groundwater of not only under my land, but also near and surrounding the pipeline
12 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
13 simple and it is simply too valuable to our State and the country to put at
14 unreasonable risk.

15 **Q: Do you have any concern about the potential impact of the proposed pipeline**
16 **upon the surface water on, or near or around your land?**

17 A: Yes, I have significant concerns that any construction, operation, and/or
18 maintenance of the proposed Keystone XL Pipeline would have detrimental
19 impact upon the surface water of not only within my property boundary, but along
20 and near and surrounding the pipeline route, and in fact, across the state of
21 Nebraska.

22 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
23 **upon the wildlife and plants, other than your growing crops on or near your**
24 **land?**

25 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
26 the proposed Keystone XL Pipeline would have a detrimental impact upon the
27 wildlife and the plants, not only that are located on or can be found upon my land,
28 but also near and along the proposed pipeline route.

1 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
2 **fair market value of your land?**

3 A: Yes, I do. I am significantly concerned about how the existence of the proposed
4 pipeline underneath and across and through my property will negatively affect the
5 fair market value at any point in the future, especially at that point in which I
6 would need to sell the property, or someone in my family would need to sell the
7 property. I do not believe, and certainly would not be willing to pay, the same
8 price for land that had the pipeline located on it, versus land that did not. I hope
9 there is never a point where I'm in a position where I have to sell and have to
10 realize as much value as I can out of my land. But because it is my single largest
11 asset, I'm gravely concerned that the existence of the proposed Keystone XL
12 Pipeline upon my land will affect a buyer's willingness to pay as much as they
13 would've paid and as much as I could've received, if the pipeline were not upon
14 my property. There are just too many risks, unknowns, impacts and uncertainties,
15 not to mention all of the rights you give up by the nature of having the pipeline
16 due to having the easement that we have previously discussed, for any reasonable
17 person to think that the existence of the pipeline would not negatively affect my
18 property's value.

19 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
20 **testimony?**

21 A: Yes, I have.

22 **Q: Where have you seen that before?**

23 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
24 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
25 believe the portion of the alternative route in Nebraska essentially twins or
26 parallels Keystone I.

27 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
28 **Application, and as found on Attachment No. 7, here to your testimony, is in**
29 **the public interest of Nebraska?**

1 A: No, I do not.

2 Q: Do you believe that the Keystone mainline alternative route as shown on
3 Attachment No. 7 included with your testimony here is a major oil pipeline
4 route that is in the public interest of Nebraska?

5 A: No, I do not.

6 Q: Do you believe the portion of the proposed pipeline within Nebraska as found
7 in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

8 A: No, I do not.

9 Q: Do you believe there is any potential route for the proposed Keystone XL
10 Pipeline across, within, under, or through the State of Nebraska that is in the
11 public interest of the citizens of Nebraska?

12 A: No, I do not.

13 Q: Why do you hold that belief?

14 A: Because there simply is no public interest based on all of the factors that I am
15 aware and that I have read and that I have studied that this Commission is to
16 consider that would establish that a for-profit foreign-owned pipeline that simply
17 crosses Nebraska because we are geographically in the way between where tar
18 sands are in Canada to where it wants to ship it to in Texas could ever be in the
19 public interest of Nebraskans. We derive no benefit from this project. It is not for
20 public use. Nebraska is simply in the way and when all considerations are taken in
21 there is no net benefit of any kind for Nebraska should this project be placed in our
22 state. Even if there was some arguable “benefit” it is not enough to outweigh all
23 the negative impacts and concerns.

24 Q: What do you think about the applicant, TransCanada’s argument that it’s
25 preferred route for its proposed Keystone XL Pipeline is in the public interest
26 of Nebraska because it may bring temporary jobs during the construction
27 phase to Nebraska?

28 A: First of all, not all jobs are created equally. Most jobs that are created, whether
29 temporary or on a permanent basis, don’t come with a project that has all the

1 potential and foreseeable negative impacts, many of which we have discussed here
2 and other witnesses throughout the course of this hearing have and will discuss. If
3 I decide to hire and employ someone to help me out in my farming or ranching
4 business, I've created a job but I haven't done so at the risk or detrimental impact
5 to my land or my town or my county or my state. And I've hired someone who is
6 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
7 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
8 jobs are not created equal. Additionally, I understand from what I'm familiar with
9 from TransCanada's own statements that the jobs numbers they originally touted
10 were determined to be a minute fraction of the permanent jobs that had been
11 projected. According to their answer to our Interrogatory No. 191, TransCanada
12 has created only thirty-four (34) jobs within Nebraska working specifically on
13 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
14 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
15 Further, according to their answer to Interrogatory No. 199, TransCanada would
16 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
17 constructed on its Preferred Route or its Mainline Alternative Route.

18 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
19 **because it would cross your land?**

20 A: No, absolutely not. I am opposed to this project because it is not in the public
21 interest, neither within my community nor within our state.

22 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
23 **was to cross someone else's land?**

24 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
25 the fear and anxiety and potential foreseeable risks and negative impacts that this
26 type of a project carrying this type of product brings foisted upon anyone in this
27 state or any other state.

28 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
29 **Pipeline to cross the state of Nebraska?**

1 A: I don't believe there is an intelligent route because as I have stated I don't believe
2 this project anywhere within Nebraska is within the public interest. However, if
3 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
4 had to go somewhere in the state of Nebraska, the only intelligent route I believe
5 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
6 preferred route and the mainline alternative routes are economic liabilities our
7 state cannot risk.

8 **Q: What do you rely upon to make that statement?**

9 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
10 already exists in that area is reason enough as it is not in our best interest or the
11 public interests to have more major oil pipelines crisscrossing our state. Second,
12 they have all the infrastructure already there in terms of relationships with the
13 counties and local officials and first responders along that route. Third, they have
14 already obtained easements from all the landowners along that route and have
15 relationships with them. Fourth, that route avoids our most sensitive soils, the
16 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
17 Aquifer. Sixth, they have already studied that route and previously offered it as an
18 alternative. Seventh, it just makes the most sense that as a state we would have
19 some intelligent policy of energy corridors and co-locating this type of
20 infrastructure near each other.

21 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
22 **like the Public Service Commissioners to consider in their review of**
23 **TransCanada's Application?**

24 A: No, I have not. I have shared that which I can think of as of the date I signed this
25 document below but other things may come to me or my memory may be
26 refreshed and I will add and address those things at the time of the Hearing in
27 August and address any additional items at that time as is necessary. Additionally,
28 I have not had an adequate amount of time to receive and review all of
29 TransCanada's answers to our discovery and the discovery of others so it was

1 impossible to competently and completely react to that in my testimony here and I
2 reserve the right to also address anything related to discovery that has not yet
3 concluded as of the date I signed this document below. Lastly, certain documents
4 requested have not yet been produced by TransCanada and therefore I may have
5 additional thoughts on those I will also share at the hearing as needed.

6 **Q: What is it that you are requesting the Public Service Commissioners do in**
7 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
8 **across Nebraska?**

9 A: I am respectfully and humbly requesting that the Commissioners think far beyond
10 a temporary job spike that this project may bring to a few counties and beyond the
11 relatively small amount of taxes this proposed foreign pipeline would possibly
12 generate. And, instead think about the perpetual and forever impacts of this
13 pipeline as it would have on the landowners specifically, first and foremost, but
14 also thereby upon the entire state of Nebraska, and to determine that neither the
15 preferred route nor the Keystone mainline alternative route are in the public
16 interest of the citizens of the state of Nebraska. **And if the Commissioners were**
17 **inclined to modify TransCanada's proposed routes and were to be inclined to grant**
18 **an application for a route in Nebraska, that the only potential route that would**
19 **make any intelligent sense whatsoever would be twinning or near paralleling of**
20 **the proposed KXL with the existing Keystone I pipeline. It simply does not make**
21 **sense to add yet another major oil pipeline crisscrossing our state creating new**
22 **pumping stations, creating new impacts on additional counties and communities**
23 **and going through all of the court processes with myself and other landowners like**
24 **me when this applicant already has relationships with the landowners, the towns**
25 **and the communities along Keystone I, and that Keystone I is firmly outside of the**
26 **sand hills and a significantly further portion away from the heart of the Ogallala**
27 **Aquifer than the preferred route or the Keystone mainline alternative route.**

1 **Q: Are all of your statements in your testimony provided above true and**
2 **accurate as of the date you signed this document to the best of your**
3 **knowledge?**

4 **A: Yes, they are.**

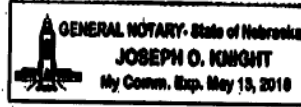
5 **Q: Thank you, I have no further questions at this time and reserve the right to**
6 **ask you additional questions at the August 2017 Hearing.**

Signed Frankie Maughan
Frankie Maughan

Sandra L. Maughan
Sandra L. Maughan

On 5-31-17, Frankie Maughan + Sandra L. Maughan appeared before me and signed this form in front of me.

Notary: Joseph O. Knight



Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act*

Direct Testimony of
Earl Miller in
Support of Landowner Intervenors

State of Nebraska)
) ss.
Knox County)

1 Q: Please state your name.

2 A: My name is Earl Miller.

3 Q: Are you an intervener in the Public Service Commission’s proceedings
4 regarding TransCanada’s application for approval of its proposed Keystone
5 XL tar sands pipeline across Nebraska?

6 A: Yes, I am.

7 Q: Do you own land in Nebraska, either directly or through an entity of which
8 you are an owner that could be affected by the proposed TransCanada
9 Keystone XL pipeline?

10 A: Yes, I do and it is located in Holt County.

11 Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial
12 photo(s) of your land in question here with the area of the proposed KXL
13 pipeline depicted?

14 A: Yes.

15 Q: If you are you married tell us your spouse’s name please?

16 A: Beverly Miller.



1 **Q: If you have children how many do you have?**
2 A: We have 3 daughters.
3 **Q: If you have grandchildren how many do you have?**
4 A: We have 5 grandchildren and 4 great-grandchildren.
5 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
6 **and or your family?**
7 A. Yes.
8 **Q: How long the land has been in your family?**
9 A: We have owned this land for over 40 years.
10 **Q: Do you earn any income from this land?**
11 A: Yes.
12 **Q: Have you depended on the income from your land to support your livelihood**
13 **or the livelihood of your family?**
14 A: Yes.
15 **Q: Have you ever in the past or have you thought about in the future leasing all**
16 **or a portion of your land in question here?**
17 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
18 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
19 all the restrictions and risks and potential negative impacts to farming or ranching
20 operations as opposed to land that did not have those same risks. If I was looking
21 to lease or rent ground I would pay more for comparable non-pipeline land than I
22 would for comparable pipeline land and I think most folks would think the same
23 way. This is another negative economic impact that affects the landowner and the
24 county and the state and will forever and ever should TransCanada's preferred or
25 mainline alternative routes be approved. If they were to twin or closely parallel to
26 Keystone I the vast majority of landowners would be those that already have a
27 pipeline so there would be considerable less new incremental negative impacts.
28 **Q: Do you have similar concerns about selling the land?**

1 A: Well I hope not to have to sell the land in my lifetime but times change and you
2 never know what is around the corner and yes I am concerned that if another piece
3 of ground similar to mine were for sale and it did not have the pipeline and mine
4 did that I would have a lower selling price. I think this would be true for pipeline
5 ground on both the preferred and mainline alternative routes.

6 Q: What is your intent with your land after you die?

7 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
8 to come but I have thought about getting out if this pipeline were to come through.

9 Q: Are you aware that the preferred route of TransCanada's Keystone XL
10 Pipeline would cross the land described above and owned by you?

11 A: Yes.

12 Q: Were you or an entity for which you are a member, shareholder, or director
13 previously sued by TransCanada Keystone Pipeline, LP?

14 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
15 petition for condemnation against our land so it could place its proposed pipeline
16 within an easement that it wanted to take from us on our land.

17 Q: Did you defend yourself and your land in that condemnation action?

18 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
19 and expenses in our resistance of TransCanada's lawsuit against us.

20 Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
21 incurred?

22 A: No, they have not.

23 Q: In its lawsuit against you, did TransCanada identify the amount of your
24 property that it wanted to take for its proposed pipeline?

25 A: The lawsuit against us stated they would take the amount of property that is
26 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
27 and equipment reasonably necessary to operate the pipeline.

28 Q: Did TransCanada define what they meant by "property that is reasonably
29 necessary"?

1 A: No, they did not.

2 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
3 property portion of your land?

4 A: Yes, they did.

5 Q: Did TransCanada describe what rights it proposed to take related to the
6 eminent domain property on your land?

7 A: Yes, they did.

8 Q: What rights that they proposed to take did they describe?

9 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
10 operate, and maintain the pipeline and the plant and equipment reasonably
11 necessary to operate the pipeline, specifically including surveying, laying,
12 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
13 reconstructing, removing and abandoning one pipeline, together with all fittings,
14 cathodic protection equipment, pipeline markers, and all their equipment and
15 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
16 petroleum products, and all by-products thereof.”

17 Q: Prior to filing an eminent domain lawsuit to take your land that
18 TransCanada identified, do you believe they attempted to negotiate in good
19 faith with you?

20 A: No, I do not.

21 Q: Did TransCanada at any time approach you with or deliver to you their
22 proposed easement and right-of-way agreement?

23 A: Yes, they did.

24 Q: At the time you reviewed TransCanada’s easement and right-of-way
25 agreement, did you understand that they would be purchasing a fee title
26 interest in your property or that they were taking something else?

27 A: I understood that they proposed to have the power to take both a temporary
28 construction easement that could last for a certain period of time and then also a
29 permanent easement which they described to be 50 feet across or in width, and

1 that would run the entire portion of my property from where a proposed pipeline
2 would enter my property until where it would exit the property.

3 **Q: Is the document included with your testimony here as Attachment No. 3, a**
4 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
5 **Way agreement that they included with their condemnation lawsuit against**
6 **you?**

7 **A: Yes, it is.**

8 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
9 **and Right-of-Way agreement?**

10 **A: Yes, I have.**

11 **Q: What is your understanding of the significance of the Easement and Right-of-**
12 **Way agreement as proposed by TransCanada?**

13 **A: My understanding is that this is the document that will govern all of the rights and**
14 **obligations and duties as well as the limitations of what I can and cannot do and**
15 **how I and any future landowner and any person I invite to come onto my property**
16 **must behave as well as what TransCanada is and is not responsible for and how**
17 **they can use my land.**

18 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
19 **agreement do you have any concerns about any portions of it or any of the**
20 **language either included in the document or missing from the proposed**
21 **document?**

22 **A: Yes, I have a number of significant concerns and worries about the document and**
23 **how the language included and the language not included potentially negatively**
24 **impacts my land and thereby potentially negatively impacts my community and**
25 **my state.**

26 **Q: I would like you to walk the Commissioners through each and every one of**
27 **your concerns about TransCanada's proposed Easement and Right-of-Way**
28 **agreement so they can develop an understanding of how that language and**
29 **the terms of that contract, in your opinion, potentially negatively impacts you**

1 **and your land. So, if you can start at the beginning of that document and**
2 **let's work our way through it, okay?**

3 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
4 Easement and Right-of-Way agreement and how it negatively could affect my
5 property rights and my economic interests.

6 **Q: Okay, let's start with your first concern please.**

7 A: The very first sentence talks about consideration or how much money they will
8 pay to compensate me for all of the known and unknown affects and all of the
9 rights I am giving up and for all the things they get to do to my land and for what
10 they will prevent me from doing on my land and they only will pay me one time at
11 the signing of the easement agreement. That is a huge problem.

12 **Q: Explain to the Commissioners why that is a problem.**

13 A: It is not fair to the landowner, the county, or the State. It is not fair to the
14 landowner because they want to have my land forever for use as they see fit so
15 they can make a daily profit from their customers. If I was to lease ground from
16 my neighbor I would typically pay twice a year every year as long as they granted
17 me the rights to use their land. That only makes sense – that is fair. If I was going
18 to rent a house in town I would typically pay monthly, every month until I gave up
19 my right to use that house. By TransCanada getting out on the cheap and paying
20 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
21 revenue collection on the money I would be paid and then pay taxes on and
22 contribute to this state and this country. It is money I would be putting back into
23 my local community both spending and stimulating the local economy and
24 generating more economic activity right here. Instead TransCanada's shareholders
25 keep all that money and it never finds its way to Nebraska.

26 **Q: What is your next concern?**

27 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
28 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
29 limited partnership..." and I have no idea who that really is. I have no idea who is

1 forcing this pipeline on us or who the owners of the entities are, or what are the
2 assets backing this limited partnership, or who the general partner is, or who all
3 the limited partners are, and who makes up the ownership of the these partners or
4 the structure or any of the basic things you would want to know and understand if
5 you would want to do business with such an outfit. According to TransCanada's
6 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
7 liability company called TransCanada Keystone Pipeline GP, LLC is the general
8 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
9 basically nothing. That is really scary since the general partner has the liability but
10 virtually none of the ownership and who knows if it has any other assets.

11 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
12 **percent clear on exactly who could become the owner of over 275 miles of**
13 **Nebraska land?**

14 **A: No.**

15 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
16 **percent clear on exactly who will be operating and responsible for**
17 **approximately 275 miles of tar sands pipeline underneath and through**
18 **Nebraska land?**

19 **A: No.**

20 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
21 **and the State of Nebraska of TransCanada's easement terms.**

22 **A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter**
23 **called "Grantee")..." and this concerns me because it would allow their easement**
24 **to be transferred or sold to someone or some company or country or who knows**
25 **what that I don't know and who we may not want to do business with. This**
26 **pipeline would be a huge asset for TransCanada and if they can sell to the highest**
27 **bidder that could have terrible impacts upon all of Nebraska depending upon who**
28 **may buy it and I don't know of any safeguards in place for us or the State to veto**

1 or have any say so in who may own, operate, or be responsible for this pipeline in
2 the future.

3 **Q: Do you think that type of uncertainty and lack of control over a major piece**
4 **of infrastructure crossing our State is in the public interest?**

5 **A:** No, certainly not, in fact, just the opposite.

6 **Q: What's next?**

7 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
8 really concerns me. Why does the easement and right-of-way have to be perpetual
9 and permanent? That is the question myself and my family want an answer to.
10 Perpetual to me is like forever and that doesn't make sense.

11 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

12 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
13 data proving there is a perpetual supply of tar sands. I am not aware in
14 TransCanada's application where it proves there is a perpetual necessity for this
15 pipeline. My understanding of energy infrastructure like wind towers is they have
16 a decommission plan and actually take the towers down when they become
17 obsolete or no longer needed. Nothing manmade lasts forever. My land however
18 will, and I want my family or future Nebraska families to have that land as
19 undisturbed as possible and it is not in my interest or the public interest of
20 Nebraska to be forced to give up perpetual and permanent rights in the land for
21 this specific kind of pipeline project.

22 **Q: Okay, what is your next concern?**

23 **A:** The easement language includes all these things TransCanada can do and it says
24 "...abandoning in place..." so they can just leave this pipeline under my ground
25 until the end of time just sitting there while they are not using it, but I am still
26 prevented from doing on my land and using my land what I would like. If I owned
27 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
28 there. It doesn't make sense and it scares me and it is not in my interest or the
29 public interest of Nebraska to allow this.

1 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
2 **right?**

3 **A: Yes.**

4 **Q: So now on the second page of the Easement what are your concerns?**

5 **A: Here the Easement identifies a 24-month deadline to complete construction of the**
6 **pipeline but has caveats that are undefined and ambiguous. The 24-month period**
7 **starts to run from the moment “actual pipeline installation activities” begin on**
8 **Landowners property. It appears that TransCanada would define this phrase as**
9 **needed. It would be wise to explain what types of TransCanada action constitutes**
10 **“installation activity” For instance, would the placement and storage of an**
11 **excavator or other equipment on or near the Easement property be an activity or**
12 **would earth have to be moved before the activity requirement is triggered. This**
13 **vague phrase is likely to lead to future disputes and litigation that is not in the best**
14 **interest of the welfare of Nebraska and would not protect property interests. The**
15 **24-months can also be extended in the case of “force majeure.” My understanding**
16 **is that force majeure is often used to insulate a party to a contract when events**
17 **occur that are completely out of their control. In TransCanada’s easement this is**
18 **expanded to include “without limitation...availability of labor and materials.”**
19 **Extending this language to labor and materials is problematic because these are**
20 **two variables that TransCanada does have some or significant control over and to**
21 **allow extension of the 24-month period over events not truly out of the control of**
22 **TransCanada and without further provision for compensation for the Landowner is**
23 **not conducive to protection of property rights.**

24 **Q: Okay, what is your next concern?**

25 **A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of**
26 **TransCanada and Landowner. In 1.A., the first sentence discusses “commercially**
27 **reasonable costs and expenses” will pay for damages caused but then limits**
28 **TransCanada’s liability to certain circumstances. There is no definition of**
29 **“commercially reasonable” and no stated right that the Landowner would get to**

1 determine the amounts of cost or expense that is “commercially reasonable.”
2 TransCanada excepts out from their liability any damages that are caused by
3 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
4 Landowner. It is understandable that if the Landowner were to willfully and
5 intentionally cause damages to the pipeline that Landowner should be liable.
6 However, anything short of willful misconduct should be the liability of
7 TransCanada who is subjecting the pipeline on the Landowner and who is making
8 a daily profit from that pipeline. When evaluating the impact on property rights of
9 this provision, you must consider the potentially extremely expensive fight a
10 Landowner would have over this question of whether or not damage was an act of
11 negligence. Putting this kind of potential liability upon the Landowner is
12 incredibly problematic and is detrimental to the protection of property rights. I
13 don’t think this unilateral power which I can’t do anything about as the landowner
14 is in the best economic interest of the land in question or the State of Nebraska for
15 landowners to be treated that way.

16 **Q: Is there any specific event or example you are aware of that makes this**
17 **concern more real for you?**

18 **A:** Yes, one need not look further than a November 3, 2015 lawsuit filed against
19 Nemaha County, Nebraska landowner farmers who accidentally struck two
20 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
21 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
22 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
23 copy of the Federal Court Complaint is here as **Attachment No. 4.**

24 **Q: What is your next concern with the Easement language?**

25 **A:** Paragraph 3 states that Landowner can farm on and otherwise use their property as
26 they choose unless 1) any Landowner use interferes in any way with
27 TransCanada’s exercise of any of its rights within the Easement, or 2)
28 TransCanada decides to take any action on the property it deems necessary to
29 prevent injury, endangerment or interference with anything TransCanada deems

1 necessary to do on the property. Landowner is also forbidden from excavating
2 without prior authorization by TransCanada. So my understanding is that
3 TransCanada will unilaterally determine what Landowner can and can't do based
4 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
5 could also completely deny my request to excavate. Further, TransCanada retains
6 all "privileges necessary or convenient for the full use of the rights" granted to
7 them in the Easement. Again, TransCanada unilaterally can decide to the
8 detriment of the property rights of Landowner what TransCanada believes is
9 necessary or convenient for it. And there is no option for any additional
10 compensation to landowner for any right exercised by TransCanada that leads to
11 the removal of trees or plants or vegetation or buildings or structures or facilities
12 owned by Landowner of any kind. Such undefined and unilateral restrictions and
13 rights without having to compensate Landowner for such further destruction or
14 losses are not conducive to the protection of property rights or economic interest.

15 **Q: What is the next concern you have?**

16 **A:** The Easement also allows some rights for Landowner but restricts them at the
17 same time and again at the sole and unilateral decision making of TransCanada.
18 TransCanada will determine if the actions of Landowner might in anyway
19 endanger or obstruct or interfere with TransCanada's full use of the Easement or
20 any appurtenances thereon to the pipeline itself or to their access to the Easement
21 or within the Easement and TransCanada retains the right at any time, whether
22 during growing season or not, to travel "within and along Easement Area on foot
23 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
24 retain the rights to prevent any landowner activity that it thinks may "unreasonably
25 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
26 undefined and unilateral restrictions are not conducive to the protection of
27 property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
2 Landowner's land any debris of any kind without any input or power of
3 Landowner to demand an alternative method or location of debris disposal. Such
4 unilateral powers would negatively affect Landowners property are not conducive
5 to the protection of property rights or economic interest.

6 **Q: What is the next concern you have with the Easement language?**

7 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
8 "where rock is encountered" mean and why does TransCanada solely get to
9 determine whether or not this phrase is triggered. This phrase could be used to
10 justify installing the pipeline 24 inches beneath the surface. The ability to use this
11 provision to minimal locate the pipeline at a depth of 24 inches could negatively
12 affect Landowners property are not conducive to the protection of property rights.
13 A shallow pipeline is much more likely to become a danger and liability in the
14 future given farming operations and buried irrigation lines and other factors
15 common to the current typical agricultural uses of the land in question impacted
16 by TransCanada's preferred pipeline route.

17 **Q: What is the next concern you have with the Easement language?**

18 A: There are more vague concepts solely at the determination of TransCanada such as
19 "as nearly as practicable" and "pre-construction position" and "extent reasonably
20 possible." There is nothing here that defines this or provides a mechanism for
21 documenting or memorializing "pre-construction position" so as to minimize
22 costly legal battles or wasted Landowner time attempting to recreate the soil
23 condition on their fields or pasture. Such unilateral powers would negatively affect
24 Landowners property are not conducive to the protection of property rights or
25 economic interest.

26 **Q: What is the next concern you have with the Easement language?**

27 A: TransCanada maintains the unilateral right to abandon the pipeline and all
28 appurtenances thereto in place on, under, across, or through Nebraska land at any
29 time it chooses. There is no provision for Landowner compensation for such

1 abandonment nor any right for the Landowner to demand removal. Such unilateral
2 powers would negatively affect Landowners property are not conducive to the
3 protection of property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: TransCanada has the power to unilaterally move or modify the location of any
6 Easement area whether permanent or temporary at their sole discretion.
7 Regardless, if Landowner has taken prior steps relative to their property in
8 preparation or planning of TransCanada's taking of the initial easement area(s),
9 the language here does not require TransCanada to compensate the Landowner if
10 they decide to move the easement anywhere on Landowners property. Such
11 unilateral powers would negatively affect Landowners property are not conducive
12 to the protection of property rights or economic interests.

13 **Q: What is the next concern you have with the Easement language?**

14 A: The Easement requires that all of the burdens and restrictions upon Landowner to
15 transfer and be applicable to any future owner of the Land in question without the
16 ability of the future Landowner to modify or negotiate any of the language in
17 question to which it will be held to comply.

18 **Q: What is the next concern you have with the Easement language?**

19 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
20 Easement to any person, company, country, etc. at their sole discretion at any time
21 to anyone. This also means that any buyer of the easement could do the same to a
22 third buyer and so on forever. There is no change of control or sale provision in
23 place to protect the Landowner or Nebraska or to provide compensation for such
24 change of control or ownership. It is not conducive to the protection of property
25 rights or economic interests to allow unilateral unrestricted sale of the Easement
26 thereby forcing upon the Landowner and our State a new unknown Easement
27 owner.

28 **Q: What is the next concern you have with the Easement language?**

1 A: There are many terms in the Easement that are either confusing or undefined terms
2 that are without context as to whether or not the Landowner would have any say
3 so in determining what these terms mean or if the evaluation is solely in
4 TransCanada's control. Some of these vague undefined terms are as follows:

- 5 i. "pipeline installation activities"
- 6 ii. "availability of labor and materials"
- 7 iii. "commercially reasonable costs and expenses"
- 8 iv. "reasonably anticipated and foreseeable costs and expenses"
- 9 v. "yield loss damages"
- 10 vi. "diminution in the value of the property"
- 11 vii. "substantially same condition"
- 12 viii. "an actual or potential hazard"
- 13 ix. "efficient"
- 14 x. "convenient"
- 15 xi. "endangered"
- 16 xii. "obstructed"
- 17 xiii. "injured"
- 18 xiv. "interfered with"
- 19 xv. "impaired"
- 20 xvi. "suitable crossings"
- 21 xvii. "where rock is encountered"
- 22 xviii. "as nearly as practicable"
- 23 xix. "pre-construction position"
- 24 xx. "pre-construction grade"
- 25 xxi. "various engineering factors"

26 Each one of these above terms and phrases as read in the context of the Easement
27 could be problematic in many ways. Notably, undefined terms tend to only get
28 definition in further legal proceedings after a dispute arises and the way the
29 Easement is drafted, TransCanada has sole power to determine when and if a

1 particular situation conforms with or triggers rights affected by these terms. For
2 instance, “yield loss damages” should be specifically defined and spelled out
3 exactly how the landowner is to be compensated and in what events on the front
4 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
5 the Landowner is without contractual rights to define these terms or determine
6 when rights related to them trigger and what the affects may be.

7 **Q: Do you have any other concerns about the Easement language that you can**
8 **think of at this time?**

9 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
10 my live testimony in August.

11 **Q: Based upon what you have shared with the Commission above regarding**
12 **TransCanada’s proposed Easement terms and agreement, do you believe**
13 **those to be reasonable or just, under the circumstances of the pipeline’s**
14 **impact upon you and your land?**

15 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
16 discussed previously.

17 **Q: Did TransCanada ever offer you financial compensation for the rights that**
18 **they sought to obtain in your land, and for what they sought to prevent you**
19 **and any future land owner of your property from doing in the future?**

20 **A:** Yes, we received an offer from them.

21 **Q: As the owner of the land in question and as the person who knows it better**
22 **than anyone else, do you believe that TransCanada offered you just, or fair,**
23 **compensation for all of what they proposed to take from you so that their tar**
24 **sands pipeline could be located across your property?**

25 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
26 offer for all the potential impacts and effects and the rights that I’m giving up, and
27 what we will be prevented from doing in the future and how their pipeline would
28 impact my property for ever and ever.

1 **Q:** **Has TransCanada at any time offered to compensate you annually, such as**
2 **wind farm projects do, for the existence of their potential tar sands pipeline**
3 **across your property.**

4 **A:** No, never.

5 **Q:** **At any time did TransCanada present you with or request that you, as the**
6 **owner of the land in question, sign and execute a document called, “Advanced**
7 **Release of Damage Claims and Indemnity Agreement?”**

8 **A:** Yes, they did and it was included in the County Court lawsuit against us.

9 **Q:** **Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
10 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

11 **A:** Yes, it is.

12 **Q:** **What was your understanding of that document?**

13 **A:** When I read that document in the plain language of that document, it was my
14 understanding that TransCanada was attempting to pay me a very small amount at
15 that time in order for me to agree to give up my rights to be compensated from
16 them in the future related to any damage or impact they may have upon my
17 property “arising out of, in connection with, or alleged to resulted from
18 construction or surveying over, under or on” my land.

19 **Q:** **Did you ever sign that document?**

20 **A:** No, I did not.

21 **Q:** **Why not?**

22 **A;** Because I do not believe that it is fair or just to try to get me to agree to a small
23 sum of money when I have no idea how bad the impacts or damages that they, or
24 their contractors, or subcontractors, or other agents or employees, may cause on
25 my land at any time in the future that resulted from the construction or surveying
26 or their activities upon my land.

27 **Q:** **When you reviewed this document, what did it make you feel?**

28 **A:** I felt like it was simply another attempt for TransCanada to try to pay very little to
29 shield themselves against known and foreseeable impacts that their pipeline, and

1 the construction of it, would have upon my land. It made me feel that they knew it
2 was in their financial interest to pay me as little as possible to prevent me from
3 ever having the opportunity to seek fair compensation again, and that this must be
4 based upon their experience of unhappy landowners and situations in other places
5 where they have built pipelines.

6 **Q: Has TransCanada ever contacted you and specifically asked you if you**
7 **thought their proposed location of their proposed pipeline across your land**
8 **was in your best interest?**

9 A: No, they have not.

10 **Q: Has TransCanada ever contacted you and specifically asked you if you**
11 **thought their proposed location of their proposed pipeline across your land**
12 **was in the public interest of the State of Nebraska?**

13 A: No, they have not.

14 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
15 **Takings Clause?**

16 A: Yes, I am.

17 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
18 **an American citizens property?**

19 A: My understanding is that, according to the United States Constitution, that if the
20 government is going to take land for public use, then in that case, or by taking for
21 public use, it can only occur if the private land owner is compensated justly, or
22 fairly.

23 **Q: Has TransCanada ever contacted you specially to explain the way in which**
24 **the public could use its proposed Keystone XL Pipeline?**

25 A: No, they have not.

26 **Q: Can you think of any way in which the public, that is the citizens of the State**
27 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
28 **Pipeline, as it dissects the State of Nebraska?**

1 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
2 public benefits from this pipeline in any way, how they can use it any way, or how
3 it's in the public interest in any way. By looking at the map, it is quite clear to me
4 that the only reason it's proposed to come through Nebraska, is that because we
5 are geographically in the way from between where the privately-owned Tar Sands
6 are located to where TransCanada wants to ship the Tar Sands to refineries in
7 Houston, Texas.

8 **Q:** Has TransCanada ever contacted you and asked you if you had any tar sands,
9 crude petroleum, or oil and petroleum by-products that you would like to
10 ship in its pipeline?

11 **A:** No, it has not.

12 **Q:** Do you have any tar sands, crude petroleum, or oil and petroleum by-
13 products that you, at this time or any time in the future, would desire to place
14 for transport within the proposed TransCanada Keystone XL Pipeline?

15 **A:** No, I do not.

16 **Q:** Do you know anyone in the state of Nebraska who would be able to ship any
17 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
18 products within the proposed TransCanada Keystone XL Pipeline?

19 **A:** No, I do not. I've never heard of such a person or company like that.

20 **Q:** Do you pay property taxes for the land that would be affected and impacted
21 at the proposed TransCanada Keystone XL Pipeline?

22 **A:** Yes, I do.

23 **Q:** Why do you pay property taxes on that land?

24 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
25 of that property.

26 **Q:** Because you follow the law and pay property taxes, do you believe you
27 deserve any special consideration or treatment apart from any other person
28 or company that pays property taxes?

1 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
2 just what you do.

3 **Q: Do you believe the fact that you pay property taxes entitles you to special**
4 **treatment of any kind, or special rights of any kind?**

5 A: No, of course not.

6 **Q: Do you believe the fact that you pay property taxes on your land would be**
7 **enough to qualify you to have the power of eminent domain to take land of**
8 **your neighbors or other people in your county, or other people across the**
9 **state of Nebraska?**

10 **A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that**
11 **I expect an award for or any type of special consideration.**

12 **Q: Have you at any time ever employed any person other than yourself?**

13 A: Well, yes I have.

14 **Q: Do you believe that the fact that you have, at some point in your life,**
15 **employed one or more other persons entitle you to any special treatment or**
16 **consideration above and beyond any other Nebraskan that has also employed**
17 **one or more persons?**

18 A: No, of course not.

19 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
20 **have at one point employed another person within this state, entitles you to**
21 **preferential treatment or consideration of any kind?**

22 A: No, of course not. If I choose to employ someone that decision is up to me. I
23 don't deserve any special treatment or consideration for that fact.

24 **Q: At the beginning of your statement, you briefly described your property that**
25 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
26 **give the Commissioners a sense of specifically how you believe the proposed**
27 **Keystone XL Pipeline and its preferred route, which proposes to go across**
28 **your land, how it would in your opinion based on your knowledge,**
29 **experience, and background of your land, affect it.**

1 A: I own 840 acres of native grassland in Holt County. This land has been the same
2 for Nebraska cattlemen for over 100 years. It has even been reported to host
3 whooping cranes on their annual migration. My own cow-calf operation has been
4 peacefully grazing these slews and gravel knobs, and drinking the fresh spring
5 water for 40 years. They graze the land half of the year. We also use the land for
6 winter feed. We planned to develop a gravel pit right where the easement would
7 be. The pipeline will cut the value of our land in half and stop our pit plan.
8 TransCanada proposes dissecting the tract of land, crossing 3 of my 8 quarters of
9 ground.

10 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
11 **crude oil pipeline in its preferred location, or ultimate location across the**
12 **state of Nebraska?**

13 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
14 or even bullied around and being made to feel scared that they did not have any
15 options but to sign whatever papers TransCanada told them they had to. I am
16 aware of folks being threatened that their land would be taken if they didn't follow
17 what TransCanada was saying. I am aware of tactics to get people to sign
18 easements that I don't believe have any place in Nebraska or anywhere such as
19 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
20 landowners and convince them they should sign TransCanada's easement
21 agreements. I am aware of older folks and widows or widowers feeling they had
22 no choice but to sign TransCanada's Easement and they didn't know they could
23 fight or stand up for themselves. From a more practical standpoint, I am worried
24 that according to their answer to our Interrogatory No. 211, TransCanada only
25 owns and operates one (1) major oil pipeline. They simply do not have the
26 experience with this type of pipeline and that scares me. There are others but that
27 is what I can recollect at this time and if I remember more or my recollection is
28 refreshed I will share those with the Commissioners at the Hearing in August.

1 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
2 **landowner is reasonable or just?**

3 **A: No, I do not.**

4 **Q: Do you have any concern about limitations that the construction of this**
5 **proposed pipeline across your affected land would prevent construction of**
6 **future structures upon the portion of your land affected by the proposed**
7 **easement and immediately surrounding areas?**

8 A: Well yes, of course I do. We would not be able to build many, if any, types of
9 structures directly across or touching the easement, and it would be unwise and I
10 would be uncomfortable to build anything near the easement for fear of being
11 blamed in the future should any damage or difficulty result on my property in
12 regards to the pipeline.

13 **Q: Do you think such a restriction would impact you economically?**

14 A: Well yes, of course.

15 **Q: How do you think such a restriction would impact you economically?**

16 A: The future of this land may not be exactly how it's being used as of this moment,
17 and having the restrictions and limiting my ability to develop my land in certain
18 ways presents a huge negative economic impact on myself, my family, and any
19 potential future owner of the property. You have no idea how I or the future owner
20 may want to use this land in the future or the other land across Nebraska
21 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
22 ago it would have been hard to imagine all the advances that we have now or how
23 things change. **Because the Easement is forever and TransCanada gets the rights in**
24 **my land forever we have to think with a very long term view. By placing their**
25 **pipeline on under across and through my land that prevents future development**
26 **which greatly negatively impacts future taxes and tax revenue that could have**
27 **been generated by the County and State but now will not. When you look at the**
28 **short blip of economic activity that the two years of temporary construction efforts**

1 may bring, that is far outweighed by the perpetual and forever loss of opportunity
2 and restrictions TransCanada is forcing upon us and Nebraska.

3 **Q: Do you have any concerns about the environmental impact of the proposed**
4 **pipeline?**

5 A: Yes, I do.

6 **Q: What are some of those concerns?**

7 A: As an affected land owner and Nebraskan, I am concerned that any construction,
8 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
9 a detrimental impact upon the environment of my land specifically, as well as the
10 lands near my land and surrounding the proposed pipeline route.

11 **Q: Do you have any other environmental concerns?**

12 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
13 construction and/or maintenance and operation. I am concerned about spills and
14 leaks that TransCanada has had in the past and will have in the future. This could
15 be catastrophic to my operations or others and to my county and the State.

16 **Q: Do you have any thoughts regarding if there would be an impact upon the**
17 **natural resources on or near your property due to the proposed pipeline?**

18 A: Yes, I believe that any construction, operation, and/or maintenance of the
19 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
20 resources of my land, and the lands near and surrounding the proposed pipeline
21 route.

22 **Q: Do you have any worries about potential impacts from the proposed pipeline**
23 **to the soil of your land, or land near you?**

24 A: Yes, I believe that any construction, operation, and/or maintenance of the
25 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
26 land, as well as land along and surrounding the proposed pipeline route. This
27 includes, but is not limited to, the reasons that we discussed above of disturbing
28 the soil composition and makeup as it has naturally existed for thousands and
29 millions of years during the construction process, and any future maintenance or

1 removal process. I'm gravely concerned about the fertility and the loss of
2 economic ability of my property to grow the crops, or grow the grasses, or grow
3 whatever it is at that time they exist on my property or that I may want to grow in
4 the future, or that a future owner may want to grow. The land will never be the
5 same from as it exists now undisturbed to after it is trenched up for the proposed
6 pipeline.

7 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
8 **upon the groundwater over your land, or surrounding lands?**

9 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
10 the proposed Keystone XL Pipeline would have a detrimental impact upon the
11 groundwater of not only under my land, but also near and surrounding the pipeline
12 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
13 simple and it is simply too valuable to our State and the country to put at
14 unreasonable risk.

15 **Q: Do you have any concern about the potential impact of the proposed pipeline**
16 **upon the surface water on, or near or around your land?**

17 A: Yes, I have significant concerns that any construction, operation, and/or
18 maintenance of the proposed Keystone XL Pipeline would have detrimental
19 impact upon the surface water of not only within my property boundary, but along
20 and near and surrounding the pipeline route, and in fact, across the state of
21 Nebraska.

22 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
23 **upon the wildlife and plants, other than your growing crops on or near your**
24 **land?**

25 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
26 the proposed Keystone XL Pipeline would have a detrimental impact upon the
27 wildlife and the plants, not only that are located on or can be found upon my land,
28 but also near and along the proposed pipeline route.

1 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
2 **fair market value of your land?**

3 A: Yes, I do. I am significantly concerned about how the existence of the proposed
4 pipeline underneath and across and through my property will negatively affect the
5 fair market value at any point in the future, especially at that point in which I
6 would need to sell the property, or someone in my family would need to sell the
7 property. I do not believe, and certainly would not be willing to pay, the same
8 price for land that had the pipeline located on it, versus land that did not. I hope
9 there is never a point where I'm in a position where I have to sell and have to
10 realize as much value as I can out of my land. But because it is my single largest
11 asset, I'm gravely concerned that the existence of the proposed Keystone XL
12 Pipeline upon my land will affect a buyer's willingness to pay as much as they
13 would've paid and as much as I could've received, if the pipeline were not upon
14 my property. There are just too many risks, unknowns, impacts and uncertainties,
15 not to mention all of the rights you give up by the nature of having the pipeline
16 due to having the easement that we have previously discussed, for any reasonable
17 person to think that the existence of the pipeline would not negatively affect my
18 property's value.

19 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
20 **testimony?**

21 A: Yes, I have.

22 **Q: Where have you seen that before?**

23 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
24 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
25 believe the portion of the alternative route in Nebraska essentially twins or
26 parallels Keystone I.

27 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
28 **Application, and as found on Attachment No. 7, here to your testimony, is in**
29 **the public interest of Nebraska?**

1 A: No, I do not.

2 Q: Do you believe that the Keystone mainline alternative route as shown on
3 Attachment No. 7 included with your testimony here is a major oil pipeline
4 route that is in the public interest of Nebraska?

5 A: No, I do not.

6 Q: Do you believe the portion of the proposed pipeline within Nebraska as found
7 in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

8 A: No, I do not.

9 Q: Do you believe there is any potential route for the proposed Keystone XL
10 Pipeline across, within, under, or through the State of Nebraska that is in the
11 public interest of the citizens of Nebraska?

12 A: No, I do not.

13 Q: Why do you hold that belief?

14 A: Because there simply is no public interest based on all of the factors that I am
15 aware and that I have read and that I have studied that this Commission is to
16 consider that would establish that a for-profit foreign-owned pipeline that simply
17 crosses Nebraska because we are geographically in the way between where tar
18 sands are in Canada to where it wants to ship it to in Texas could ever be in the
19 public interest of Nebraskans. We derive no benefit from this project. It is not for
20 public use. Nebraska is simply in the way and when all considerations are taken in
21 there is no net benefit of any kind for Nebraska should this project be placed in our
22 state. Even if there was some arguable “benefit” it is not enough to outweigh all
23 the negative impacts and concerns.

24 Q: What do you think about the applicant, TransCanada’s argument that it’s
25 preferred route for its proposed Keystone XL Pipeline is in the public interest
26 of Nebraska because it may bring temporary jobs during the construction
27 phase to Nebraska?

28 A: First of all, not all jobs are created equally. Most jobs that are created, whether
29 temporary or on a permanent basis, don’t come with a project that has all the

1 potential and foreseeable negative impacts, many of which we have discussed here
2 and other witnesses throughout the course of this hearing have and will discuss. If
3 I decide to hire and employ someone to help me out in my farming or ranching
4 business, I've created a job but I haven't done so at the risk or detrimental impact
5 to my land or my town or my county or my state. And I've hired someone who is
6 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
7 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
8 jobs are not created equal. Additionally, I understand from what I'm familiar with
9 from TransCanada's own statements that the jobs numbers they originally touted
10 were determined to be a minute fraction of the permanent jobs that had been
11 projected. According to their answer to our Interrogatory No. 191, TransCanada
12 has created only thirty-four (34) jobs within Nebraska working specifically on
13 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
14 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
15 Further, according to their answer to Interrogatory No. 199, TransCanada would
16 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
17 constructed on its Preferred Route or its Mainline Alternative Route.

18 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
19 **because it would cross your land?**

20 A: No, absolutely not. I am opposed to this project because it is not in the public
21 interest, neither within my community nor within our state.

22 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
23 **was to cross someone else's land?**

24 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
25 the fear and anxiety and potential foreseeable risks and negative impacts that this
26 type of a project carrying this type of product brings foisted upon anyone in this
27 state or any other state.

28 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
29 **Pipeline to cross the state of Nebraska?**

1 A: I don't believe there is an intelligent route because as I have stated I don't believe
2 this project anywhere within Nebraska is within the public interest. However, if
3 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
4 had to go somewhere in the state of Nebraska, the only intelligent route I believe
5 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
6 preferred route and the mainline alternative routes are economic liabilities our
7 state cannot risk.

8 **Q: What do you rely upon to make that statement?**

9 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
10 already exists in that area is reason enough as it is not in our best interest or the
11 public interests to have more major oil pipelines crisscrossing our state. Second,
12 they have all the infrastructure already there in terms of relationships with the
13 counties and local officials and first responders along that route. Third, they have
14 already obtained easements from all the landowners along that route and have
15 relationships with them. Fourth, that route avoids our most sensitive soils, the
16 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
17 Aquifer. Sixth, they have already studied that route and previously offered it as an
18 alternative. Seventh, it just makes the most sense that as a state we would have
19 some intelligent policy of energy corridors and co-locating this type of
20 infrastructure near each other.

21 **Q: Do you have any other concerns you would like to reiterate or can think of at
22 this time you would like the Commissioners to understand?**

23 A: Yes. My biggest concern with this project is that my ground is composed of native
24 grasses above about 4 feet of gravel. At that 4 foot mark I hit water because this
25 spring-fed ground is the head of the Red Bird Creek. Disruption of this virgin
26 prairie cannot be restored. Furthermore, any pipe of this size would be sitting in
27 water. This project is bad for me, bad for my county and bad for our environment.

1 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
2 **like the Public Service Commissioners to consider in their review of**
3 **TransCanada's Application?**

4 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
5 document below but other things may come to me or my memory may be
6 refreshed and I will add and address those things at the time of the Hearing in
7 August and address any additional items at that time as is necessary. Additionally,
8 I have not had an adequate amount of time to receive and review all of
9 TransCanada's answers to our discovery and the discovery of others so it was
10 impossible to competently and completely react to that in my testimony here and I
11 reserve the right to also address anything related to discovery that has not yet
12 concluded as of the date I signed this document below. Lastly, certain documents
13 requested have not yet been produced by TransCanada and therefore I may have
14 additional thoughts on those I will also share at the hearing as needed.

15 **Q: What is it that you are requesting the Public Service Commissioners do in**
16 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
17 **across Nebraska?**

18 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
19 a temporary job spike that this project may bring to a few counties and beyond the
20 relatively small amount of taxes this proposed foreign pipeline would possibly
21 generate. And, instead think about the perpetual and forever impacts of this
22 pipeline as it would have on the landowners specifically, first and foremost, but
23 also thereby upon the entire state of Nebraska, and to determine that neither the
24 preferred route nor the Keystone mainline alternative route are in the public
25 interest of the citizens of the state of Nebraska. **And if the Commissioners were**
26 **inclined to modify TransCanada's proposed routes and were to be inclined to grant**
27 **an application for a route in Nebraska, that the only potential route that would**
28 **make any intelligent sense whatsoever would be twinning or near paralleling of**
29 **the proposed KXL with the existing Keystone I pipeline. It simply does not make**

1 sense to add yet another major oil pipeline crisscrossing our state creating new
2 pumping stations, creating new impacts on additional counties and communities
3 and going through all of the court processes with myself and other landowners like
4 me when this applicant already has relationships with the landowners, the towns
5 and the communities along Keystone I, and that Keystone I is firmly outside of the
6 sand hills and a significantly further portion away from the heart of the Ogallala
7 Aquifer than the preferred route or the Keystone mainline alternative route.

8 **Q: Are all of your statements in your testimony provided above true and**
9 **accurate as of the date you signed this document to the best of your**
10 **knowledge?**

11 A: Yes, they are.

12 **Q: Thank you, I have no further questions at this time and reserve the right to**
13 **ask you additional questions at the August 2017 Hearing.**

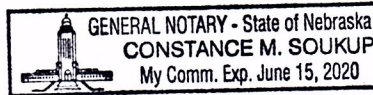
State of Nebraska
County Of Holt

Earl A Miller
Earl Miller

Subscribed and Sworn to me before this 26 day of May, 2017.

Constance M Soukup
Notary Public Constance M Soukup

Residing At O'Neill, NE



Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act*

Direct Testimony of
Glen A. Miller in
Support of Landowner Intervenors

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Glen A. Miller.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Rancher.



1 **Q: If you are you married tell us your spouse's name please?**

2 **A: Edna Miller**

3 **Q: If you have children how many do you have?**

4 **A: 4 living – one who farms with us.**

5 **Q: If you have grandchildren how many do you have?**

6 **A: 5.**

7 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
8 **and or your family?**

9 **A: Yes.**

10 **Q: How long the land has been in your family.**

11 **A: Approximately 20 years. The land was owned by our bachelor neighbor. Our sons**
12 **spent a lot of time at his farm growing up. He was like family to us and after his**
13 **death we acquired the land. It is used in conjunction with our cow-calf operation.**
14 **We intend to leave the land to our children after we die.**

15 **Q: Do you earn any income from this land?**

16 **A: Yes.**

17 **Q: Have you depended on the income from your land to support your livelihood**
18 **or the livelihood of your family?**

19 **A: Yes.**

20 **Q: Have you ever in the past or have you thought about in the future leasing all**
21 **or a portion of your land in question here?**

22 **A: Yes, I have thought of it and that concerns me. I am concerned that a prospective**
23 **tenant may try to negotiate a lower price for my land if it had the pipeline on it and**
24 **all the restrictions and risks and potential negative impacts to farming or ranching**
25 **operations as opposed to land that did not have those same risks. If I was looking**
26 **to lease or rent ground I would pay more for comparable non-pipeline land than I**
27 **would for comparable pipeline land and I think most folks would think the same**
28 **way. This is another negative economic impact that affects the landowner and the**
29 **county and the state and will forever and ever should TransCanada's preferred or**

1 mainline alternative routes be approved. If they were to twin or closely parallel to
2 Keystone I the vast majority of landowners would be those that already have a
3 pipeline so there would be considerable less new incremental negative impacts.

4 **Q: Do you have similar concerns about selling the land?**

5 A: Well I hope not to have to sell the land in my lifetime but times change and you
6 never know what is around the corner and yes I am concerned that if another piece
7 of ground similar to mine were for sale and it did not have the pipeline and mine
8 did that I would have a lower selling price. I think this would be true for pipeline
9 ground on both the preferred and mainline alternative routes.

10 **Q: What is your intent with your land after you die?**

11 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
12 to come but I have thought about getting out if this pipeline were to come through.

13 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
14 Pipeline would cross the land described above and owned by you?**

15 A: Yes.

16 **Q: Were you or an entity for which you are a member, shareholder, or director
17 previously sued by TransCanada Keystone Pipeline, LP?**

18 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
19 petition for condemnation against our land so it could place its proposed pipeline
20 within an easement that it wanted to take from us on our land.

21 **Q: Did you defend yourself and your land in that condemnation action?**

22 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
23 and expenses in our resistance of TransCanada's lawsuit against us.

24 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
25 incurred?**

26 A: No, they have not.

27 **Q: In its lawsuit against you, did TransCanada identify the amount of your
28 property that it wanted to take for its proposed pipeline?**

1 A: The lawsuit against us stated they would take the amount of property that is
2 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
3 and equipment reasonably necessary to operate the pipeline.

4 Q: Did TransCanada define what they meant by “property that is reasonably
5 necessary”?

6 A: No, they did not.

7 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
8 property portion of your land?

9 A: Yes, they did.

10 Q: Did TransCanada describe what rights it proposed to take related to the
11 eminent domain property on your land?

12 A: Yes, they did.

13 Q: What rights that they proposed to take did they describe?

14 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
15 operate, and maintain the pipeline and the plant and equipment reasonably
16 necessary to operate the pipeline, specifically including surveying, laying,
17 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
18 reconstructing, removing and abandoning one pipeline, together with all fittings,
19 cathodic protection equipment, pipeline markers, and all their equipment and
20 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
21 petroleum products, and all by-products thereof.”

22 Q: Prior to filing an eminent domain lawsuit to take your land that
23 TransCanada identified, do you believe they attempted to negotiate in good
24 faith with you?

25 A: No, I do not.

26 Q: Did TransCanada at any time approach you with or deliver to you their
27 proposed easement and right-of-way agreement?

28 A: Yes, they did.

1 **Q: At the time you reviewed TransCanada's easement and right-of-way**
2 **agreement, did you understand that they would be purchasing a fee title**
3 **interest in your property or that they were taking something else?**

4 **A: I understood that they proposed to have the power to take both a temporary**
5 **construction easement that could last for a certain period of time and then also a**
6 **permanent easement which they described to be 50 feet across or in width, and**
7 **that would run the entire portion of my property from where a proposed pipeline**
8 **would enter my property until where it would exit the property.**

9 **Q: Is the document included with your testimony here as Attachment No. 3, a**
10 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
11 **Way agreement that they included with their condemnation lawsuit against**
12 **you?**

13 **A: Yes, it is.**

14 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
15 **and Right-of-Way agreement?**

16 **A: Yes, I have.**

17 **Q: What is your understanding of the significance of the Easement and Right-of-**
18 **Way agreement as proposed by TransCanada?**

19 **A: My understanding is that this is the document that will govern all of the rights and**
20 **obligations and duties as well as the limitations of what I can and cannot do and**
21 **how I and any future landowner and any person I invite to come onto my property**
22 **must behave as well as what TransCanada is and is not responsible for and how**
23 **they can use my land.**

24 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
25 **agreement do you have any concerns about any portions of it or any of the**
26 **language either included in the document or missing from the proposed**
27 **document?**

28 **A: Yes, I have a number of significant concerns and worries about the document and**
29 **how the language included and the language not included potentially negatively**

1 impacts my land and thereby potentially negatively impacts my community and
2 my state.

3 **Q: I would like you to walk the Commissioners through each and every one of**
4 **your concerns about TransCanada's proposed Easement and Right-of-Way**
5 **agreement so they can develop an understanding of how that language and**
6 **the terms of that contract, in your opinion, potentially negatively impacts you**
7 **and your land. So, if you can start at the beginning of that document and**
8 **let's work our way through it, okay?**

9 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
10 Easement and Right-of-Way agreement and how it negatively could affect my
11 property rights and my economic interests.

12 **Q. Okay, let's start with your first concern please.**

13 **A:** The very first sentence talks about consideration or how much money they will
14 pay to compensate me for all of the known and unknown affects and all of the
15 rights I am giving up and for all the things they get to do to my land and for what
16 they will prevent me from doing on my land and they only will pay me one time at
17 the signing of the easement agreement. That is a huge problem.

18 **Q: Explain to the Commissioners why that is a problem.**

19 **A:** It is not fair to the landowner, the county, or the State. It is not fair to the
20 landowner because they want to have my land forever for use as they see fit so
21 they can make a daily profit from their customers. If I was to lease ground from
22 my neighbor I would typically pay twice a year every year as long as they granted
23 me the rights to use their land. That only makes sense – that is fair. If I was going
24 to rent a house in town I would typically pay monthly, every month until I gave up
25 my right to use that house. By TransCanada getting out on the cheap and paying
26 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
27 revenue collection on the money I would be paid and then pay taxes on and
28 contribute to this state and this country. It is money I would be putting back into
29 my local community both spending and stimulating the local economy and

1 generating more economic activity right here. Instead TransCanada's shareholders
2 keep all that money and it never finds its way to Nebraska.

3 **Q: What is your next concern?**

4 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
5 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
6 limited partnership..." and I have no idea who that really is. I have no idea who is
7 forcing this pipeline on us or who the owners of the entities are, or what are the
8 assets backing this limited partnership, or who the general partner is, or who all
9 the limited partners are, and who makes up the ownership of the these partners or
10 the structure or any of the basic things you would want to know and understand if
11 you would want to do business with such an outfit. According to TransCanada's
12 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
13 liability company called TransCanada Keystone Pipeline GP, LLC is the general
14 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
15 basically nothing. That is really scary since the general partner has the liability but
16 virtually none of the ownership and who knows if it has any other assets.

17 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
18 **percent clear on exactly who could become the owner of over 275 miles of**
19 **Nebraska land?**

20 A: No.

21 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
22 **percent clear on exactly who will be operating and responsible for**
23 **approximately 275 miles of tar sands pipeline underneath and through**
24 **Nebraska land?**

25 A: No.

26 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
27 **and the State of Nebraska of TransCanada's easement terms.**

28 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
29 called "Grantee")..." and this concerns me because it would allow their easement

1 to be transferred or sold to someone or some company or country or who knows
2 what that I don't know and who we may not want to do business with. This
3 pipeline would be a huge asset for TransCanada and if they can sell to the highest
4 bidder that could have terrible impacts upon all of Nebraska depending upon who
5 may buy it and I don't know of any safeguards in place for us or the State to veto
6 or have any say so in who may own, operate, or be responsible for this pipeline in
7 the future.

8 **Q: Do you think that type of uncertainty and lack of control over a major piece**
9 **of infrastructure crossing our State is in the public interest?**

10 **A:** No, certainly not, in fact, just the opposite.

11 **Q: What's next?**

12 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
13 really concerns me. Why does the easement and right-of-way have to be perpetual
14 and permanent? That is the question myself and my family want an answer to.
15 Perpetual to me is like forever and that doesn't make sense.

16 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

17 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
18 data proving there is a perpetual supply of tar sands. I am not aware in
19 TransCanada's application where it proves there is a perpetual necessity for this
20 pipeline. My understanding of energy infrastructure like wind towers is they have
21 a decommission plan and actually take the towers down when they become
22 obsolete or no longer needed. Nothing manmade lasts forever. My land however
23 will, and I want my family or future Nebraska families to have that land as
24 undisturbed as possible and it is not in my interest or the public interest of
25 Nebraska to be forced to give up perpetual and permanent rights in the land for
26 this specific kind of pipeline project.

27 **Q: Okay, what is your next concern?**

28 **A:** The easement language includes all these things TransCanada can do and it says
29 "...abandoning in place..." so they can just leave this pipeline under my ground

1 until the end of time just sitting there while they are not using it, but I am still
2 prevented from doing on my land and using my land what I would like. If I owned
3 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
4 there. It doesn't make sense and it scares me and it is not in my interest or the
5 public interest of Nebraska to allow this.

6 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
7 **right?**

8 **A: Yes.**

9 **Q: So now on the second page of the Easement what are your concerns?**

10 **A:** Here the Easement identifies a 24-month deadline to complete construction of the
11 pipeline but has caveats that are undefined and ambiguous. The 24-month period
12 starts to run from the moment "actual pipeline installation activities" begin on
13 Landowners property. It appears that TransCanada would define this phrase as
14 needed. It would be wise to explain what types of TransCanada action constitutes
15 "installation activity" For instance, would the placement and storage of an
16 excavator or other equipment on or near the Easement property be an activity or
17 would earth have to be moved before the activity requirement is triggered. This
18 vague phrase is likely to lead to future disputes and litigation that is not in the best
19 interest of the welfare of Nebraska and would not protect property interests. The
20 24-months can also be extended in the case of "force majeure." My understanding
21 is that force majeure is often used to insulate a party to a contract when events
22 occur that are completely out of their control. In TransCanada's easement this is
23 expanded to include "without limitation...availability of labor and materials."
24 Extending this language to labor and materials is problematic because these are
25 two variables that TransCanada does have some or significant control over and to
26 allow extension of the 24-month period over events not truly out of the control of
27 TransCanada and without further provision for compensation for the Landowner is
28 not conducive to protection of property rights.

29 **Q: Okay, what is your next concern?**

1 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
2 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
3 reasonable costs and expenses” will pay for damages caused but then limits
4 TransCanada’s liability to certain circumstances. There is no definition of
5 “commercially reasonable” and no stated right that the Landowner would get to
6 determine the amounts of cost or expense that is “commercially reasonable.”
7 TransCanada excepts out from their liability any damages that are caused by
8 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
9 Landowner. It is understandable that if the Landowner were to willfully and
10 intentionally cause damages to the pipeline that Landowner should be liable.
11 However, anything short of willful misconduct should be the liability of
12 TransCanada who is subjecting the pipeline on the Landowner and who is making
13 a daily profit from that pipeline. When evaluating the impact on property rights of
14 this provision, you must consider the potentially extremely expensive fight a
15 Landowner would have over this question of whether or not damage was an act of
16 negligence. Putting this kind of potential liability upon the Landowner is
17 incredibly problematic and is detrimental to the protection of property rights. I
18 don’t think this unilateral power which I can’t do anything about as the landowner
19 is in the best economic interest of the land in question or the State of Nebraska for
20 landowners to be treated that way.

21 Q: **Is there any specific event or example you are aware of that makes this**
22 **concern more real for you?**

23 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
24 Nemaha County, Nebraska landowner farmers who accidentally struck two
25 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
26 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
27 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
28 copy of the Federal Court Complaint is here as **Attachment No. 4.**

29 Q: **What is your next concern with the Easement language?**

1 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
2 they choose unless 1) any Landowner use interferes in any way with
3 TransCanada's exercise of any of its rights within the Easement, or 2)
4 TransCanada decides to take any action on the property it deems necessary to
5 prevent injury, endangerment or interference with anything TransCanada deems
6 necessary to do on the property. Landowner is also forbidden from excavating
7 without prior authorization by TransCanada. So my understanding is that
8 TransCanada will unilaterally determine what Landowner can and can't do based
9 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
10 could also completely deny my request to excavate. Further, TransCanada retains
11 all "privileges necessary or convenient for the full use of the rights" granted to
12 them in the Easement. Again, TransCanada unilaterally can decide to the
13 detriment of the property rights of Landowner what TransCanada believes is
14 necessary or convenient for it. And there is no option for any additional
15 compensation to landowner for any right exercised by TransCanada that leads to
16 the removal of trees or plants or vegetation or buildings or structures or facilities
17 owned by Landowner of any kind. Such undefined and unilateral restrictions and
18 rights without having to compensate Landowner for such further destruction or
19 losses are not conducive to the protection of property rights or economic interest.

20 **Q: What is the next concern you have?**

21 A: The Easement also allows some rights for Landowner but restricts them at the
22 same time and again at the sole and unilateral decision making of TransCanada.
23 TransCanada will determine if the actions of Landowner might in anyway
24 endanger or obstruct or interfere with TransCanada's full use of the Easement or
25 any appurtenances thereon to the pipeline itself or to their access to the Easement
26 or within the Easement and TransCanada retains the right at any time, whether
27 during growing season or not, to travel "within and along Easement Area on foot
28 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
29 retain the rights to prevent any landowner activity that it thinks may "unreasonably

1 impair[ed] or interfe[ed] with” TransCanada’s use of the Easement Area. Such
2 undefined and unilateral restrictions are not conducive to the protection of
3 property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
6 Landowner’s land any debris of any kind without any input or power of
7 Landowner to demand an alternative method or location of debris disposal. Such
8 unilateral powers would negatively affect Landowners property are not conducive
9 to the protection of property rights or economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
12 “where rock is encountered” mean and why does TransCanada solely get to
13 determine whether or not this phrase is triggered. This phrase could be used to
14 justify installing the pipeline 24 inches beneath the surface. The ability to use this
15 provision to minimal locate the pipeline at a depth of 24 inches could negatively
16 affect Landowners property are not conducive to the protection of property rights.
17 A shallow pipeline is much more likely to become a danger and liability in the
18 future given farming operations and buried irrigation lines and other factors
19 common to the current typical agricultural uses of the land in question impacted
20 by TransCanada’s preferred pipeline route.

21 **Q: What is the next concern you have with the Easement language?**

22 A: There are more vague concepts solely at the determination of TransCanada such as
23 “as nearly as practicable” and “pre-construction position” and “extent reasonably
24 possible.” There is nothing here that defines this or provides a mechanism for
25 documenting or memorializing “pre-construction position” so as to minimize
26 costly legal battles or wasted Landowner time attempting to recreate the soil
27 condition on their fields or pasture. Such unilateral powers would negatively affect
28 Landowners property are not conducive to the protection of property rights or
29 economic interest.

1 **Q: What is the next concern you have with the Easement language?**

2 **A:** TransCanada maintains the unilateral right to abandon the pipeline and all
3 appurtenances thereto in place on, under, across, or through Nebraska land at any
4 time it chooses. There is no provision for Landowner compensation for such
5 abandonment nor any right for the Landowner to demand removal. Such unilateral
6 powers would negatively affect Landowners property are not conducive to the
7 protection of property rights or economic interest.

8 **Q: What is the next concern you have with the Easement language?**

9 **A:** TransCanada has the power to unilaterally move or modify the location of any
10 Easement area whether permanent or temporary at their sole discretion.
11 Regardless, if Landowner has taken prior steps relative to their property in
12 preparation or planning of TransCanada's taking of the initial easement area(s),
13 the language here does not require TransCanada to compensate the Landowner if
14 they decide to move the easement anywhere on Landowners property. Such
15 unilateral powers would negatively affect Landowners property are not conducive
16 to the protection of property rights or economic interests.

17 **Q: What is the next concern you have with the Easement language?**

18 **A:** The Easement requires that all of the burdens and restrictions upon Landowner to
19 transfer and be applicable to any future owner of the Land in question without the
20 ability of the future Landowner to modify or negotiate any of the language in
21 question to which it will be held to comply.

22 **Q: What is the next concern you have with the Easement language?**

23 **A:** The Easement allows TransCanada to assign, transfer, or sell any part of the
24 Easement to any person, company, country, etc. at their sole discretion at anytime
25 to anyone. This also means that any buyer of the easement could do the same to a
26 third buyer and so on forever. There is no change of control or sale provision in
27 place to protect the Landowner or Nebraska or to provide compensation for such
28 change of control or ownership. It is not conducive to the protection of property
29 rights or economic interests to allow unilateral unrestricted sale of the Easement

1 thereby forcing upon the Landowner and our State a new unknown Easement
2 owner.

3 **Q: What is the next concern you have with the Easement language?**

4 **A:** There are many terms in the Easement that are either confusing or undefined terms
5 that are without context as to whether or not the Landowner would have any say
6 so in determining what these terms mean or if the evaluation is solely in
7 TransCanada's control. Some of these vague undefined and ambiguous terms are
8 as follows:

- 9 i. "pipeline installation activities"
- 10 ii. "availability of labor and materials"
- 11 iii. "commercially reasonable costs and expenses"
- 12 iv. "reasonably anticipated and foreseeable costs and expenses"
- 13 v. "yield loss damages"
- 14 vi. "diminution in the value of the property"
- 15 vii. "substantially same condition"
- 16 viii. "an actual or potential hazard"
- 17 ix. "efficient"
- 18 x. "convenient"
- 19 xi. "endangered"
- 20 xii. "obstructed"
- 21 xiii. "injured"
- 22 xiv. "interfered with"
- 23 xv. "impaired"
- 24 xvi. "suitable crossings"
- 25 xvii. "where rock is encountered"
- 26 xviii. "as nearly as practicable"
- 27 xix. "pre-construction position"
- 28 xx. "pre-construction grade"
- 29 xxi. "various engineering factors"

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, “yield loss damages” should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada’s proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline’s**
18 **impact upon you and your land?**

19 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 **A:** Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 Q: Has TransCanada at any time offered to compensate you annually, such as
6 wind farm projects do, for the existence of their potential tar sands pipeline
7 across your property.

8 A: No, never.

9 Q: At any time did TransCanada present you with or request that you, as the
10 owner of the land in question, sign and execute a document called, "Advanced
11 Release of Damage Claims and Indemnity Agreement?"

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the
14 "Advanced Release of Damage Claims and Indemnity Agreement?"

15 A: Yes, it is.

16 Q: What was your understanding of that document?

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 Q: Did you ever sign that document?

24 A: No, I did not.

25 Q: Why not?

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 **A:** I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you**
12 **thought their proposed location of their proposed pipeline across your land**
13 **was in your best interest?**

14 **A:** No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you**
16 **thought their proposed location of their proposed pipeline across your land**
17 **was in the public interest of the State of Nebraska?**

18 **A:** No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
20 **Takings Clause?**

21 **A:** Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
23 **an American citizens property?**

24 **A:** My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which**
29 **the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 Q: Can you think of any way in which the public, that is the citizens of the State
3 of Nebraska, can directly use the proposed TransCanada Keystone XL
4 Pipeline, as it dissects the State of Nebraska?

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
13 crude petroleum, or oil and petroleum by-products that you would like to
14 ship in its pipeline?

15 A: No, it has not.

16 Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
17 products that you, at this time or any time in the future, would desire to place
18 for transport within the proposed TransCanada Keystone XL Pipeline?

19 A: No, I do not.

20 Q: Do you know anyone in the state of Nebraska who would be able to ship any
21 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
22 products within the proposed TransCanada Keystone XL Pipeline?

23 A: No, I do not. I've never heard of such a person or company like that.

24 Q: Do you pay property taxes for the land that would be affected and impacted
25 at the proposed TransCanada Keystone XL Pipeline?

26 A: Yes, I do.

27 Q: Why do you pay property taxes on that land?

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q:** Because you follow the law and pay property taxes, do you believe you
2 deserve any special consideration or treatment apart from any other person
3 or company that pays property taxes?

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q:** Do you believe the fact that you pay property taxes entitles you to special
7 treatment of any kind, or special rights of any kind?

8 A: No, of course not.

9 **Q:** Do you believe the fact that you pay property taxes on your land would be
10 enough to qualify you to have the power of eminent domain to take land of
11 your neighbors or other people in your county, or other people across the
12 state of Nebraska?

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q:** Have you at any time ever employed any person other than yourself?

16 A: Well, yes I have.

17 **Q:** Do you believe that the fact that you have, at some point in your life,
18 employed one or more other persons entitle you to any special treatment or
19 consideration above and beyond any other Nebraskan that has also employed
20 one or more persons?

21 A: No, of course not.

22 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
23 have at one point employed another person within this state, entitles you to
24 preferential treatment or consideration of any kind?

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q:** At the beginning of your statement, you briefly described your property that
28 would be impacted by the potential Keystone XL Pipeline. I would like you to
29 give the Commissioners a sense of specifically how you believe the proposed

1 **Keystone XL Pipeline and its preferred route, which proposes to go across**
2 **your land, how it would in your opinion based on your knowledge,**
3 **experience, and background of your land, affect it. So please share with the**
4 **Commissioners the characteristics of your land that you believe is important**
5 **for them to understand, while they evaluate TransCanada's application for a**
6 **route for its proposed pipeline to cross Nebraska and across your land,**
7 **specifically.**

8 **A:** **On the E ½ E ½ the pipeline would cross below a dam on a neighbor's adjoining**
9 **land and thru a swamp and running springs. A leak would impact the drinking**
10 **water on this pasture. On the NE ¼ of 13-28-9 the pipeline would cross a running**
11 **creek before entering our land. This is the source of water for our pasture. It is**
12 **vital to our farming operation. The terrain is hilly and sandy soil.**

13 **Q:** **Do you have any concerns TransCanada's fitness as an applicant for a major**
14 **crude oil pipeline in its preferred location, or ultimate location across the**
15 **state of Nebraska?**

16 **A:** **Yes, I have significant concerns. I am aware of landowners being treated unfairly**
17 **or even bullied around and being made to feel scared that they did not have any**
18 **options but to sign whatever papers TransCanada told them they had to. I am**
19 **aware of folks being threatened that their land would be taken if they didn't follow**
20 **what TransCanada was saying. I am aware of tactics to get people to sign**
21 **easements that I don't believe have any place in Nebraska or anywhere such as**
22 **TransCanada or some outfit associated with it hiring a pastor or priest to pray with**
23 **landowners and convince them they should sign TransCanada's easement**
24 **agreements. I am aware of older folks and widows or widowers feeling they had**
25 **no choice but to sign TransCanada's Easement and they didn't know they could**
26 **fight or stand up for themselves. From a more practical standpoint, I am worried**
27 **that according to their answer to our Interrogatory No. 211, TransCanada only**
28 **owns and operates one (1) major oil pipeline. They simply do not have the**
29 **experience with this type of pipeline and that scares me. There are others but that**

1 is what I can recollect at this time and if I remember more or my recollection is
2 refreshed I will share those with the Commissioners at the Hearing in August.

3 **Q: Do you believe TransCanada's proposed method of compensation to you as a
4 landowner is reasonable or just?**

5 **A: No, I do not.**

6 **Q: Do you have any concern about limitations that the construction of this
7 proposed pipeline across your affected land would prevent construction of
8 future structures upon the portion of your land affected by the proposed
9 easement and immediately surrounding areas?**

10 A: Well yes, of course I do. We would not be able to build many, if any, types of
11 structures directly across or touching the easement, and it would be unwise and I
12 would be uncomfortable to build anything near the easement for fear of being
13 blamed in the future should any damage or difficulty result on my property in
14 regards to the pipeline.

15 **Q: Do you think such a restriction would impact you economically?**

16 A: Well yes, of course.

17 **Q: How do you think such a restriction would impact you economically?**

18 A: The future of this land may not be exactly how it's being used as of this moment,
19 and having the restrictions and limiting my ability to develop my land in certain
20 ways presents a huge negative economic impact on myself, my family, and any
21 potential future owner of the property. You have no idea how I or the future owner
22 may want to use this land in the future or the other land across Nebraska
23 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
24 ago it would have been hard to imagine all the advances that we have now or how
25 things change. Because the Easement is forever and TransCanada gets the rights in
26 my land forever we have to think with a very long term view. By placing their
27 pipeline on under across and through my land that prevents future development
28 which greatly negatively impacts future taxes and tax revenue that could have
29 been generated by the County and State but now will not. When you look at the

1 short blip of economic activity that the two years of temporary construction efforts
2 may bring, that is far outweighed by the perpetual and forever loss of opportunity
3 and restrictions TransCanada is forcing upon us and Nebraska. The terms of the
4 easement must be addressed in order for the Commission to truly consider
5 property rights, economic interests, the welfare of Nebraska, and the balancing of
6 the proposed routes against all they will affect and impact.

7 **Q: Do you have any concerns about the environmental impact of the proposed**
8 **pipeline?**

9 A: Yes, I do.

10 **Q: What are some of those concerns?**

11 A: As an affected land owner and Nebraskan, I am concerned that any construction,
12 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
13 a detrimental impact upon the environment of my land specifically, as well as the
14 lands near my land and surrounding the proposed pipeline route.

15 **Q: Do you have any other environmental concerns?**

16 **A: Yes, of course I am concerned about potential breaches of the pipeline, failures in**
17 **construction and/or maintenance and operation. I am concerned about spills and**
18 **leaks that TransCanada has had in the past and will have in the future. This could**
19 **be catastrophic to my operations or others and to my county and the State.**

20 **Q: Do you have any thoughts regarding if there would be an impact upon the**
21 **natural resources on or near your property due to the proposed pipeline?**

22 A: Yes, I believe that any construction, operation, and/or maintenance of the
23 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
24 resources of my land, and the lands near and surrounding the proposed pipeline
25 route.

26 **Q: Do you have any worries about potential impacts from the proposed pipeline**
27 **to the soil of your land, or land near you?**

28 A: Yes, I believe that any construction, operation, and/or maintenance of the
29 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of

1 land, as well as land along and surrounding the proposed pipeline route. This
2 includes, but is not limited to, the reasons that we discussed above of disturbing
3 the soil composition and makeup as it has naturally existed for thousands and
4 millions of years during the construction process, and any future maintenance or
5 removal process. I'm gravely concerned about the fertility and the loss of
6 economic ability of my property to grow the crops, or grow the grasses, or grow
7 whatever it is at that time they exist on my property or that I may want to grow in
8 the future, or that a future owner may want to grow. The land will never be the
9 same from as it exists now undisturbed to after it is trenched up for the proposed
10 pipeline.

11 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
12 **upon the groundwater over your land, or surrounding lands?**

13 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
14 the proposed Keystone XL Pipeline would have a detrimental impact upon the
15 groundwater of not only under my land, but also near and surrounding the pipeline
16 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
17 simple and it is simply too valuable to our State and the country to put at
18 unreasonable risk.

19 **Q: Do you have any concern about the potential impact of the proposed pipeline**
20 **upon the surface water on, or near or around your land?**

21 A: Yes, I have significant concerns that any construction, operation, and/or
22 maintenance of the proposed Keystone XL Pipeline would have detrimental
23 impact upon the surface water of not only within my property boundary, but along
24 and near and surrounding the pipeline route, and in fact, across the state of
25 Nebraska.

26 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
27 **upon the wildlife and plants, other than your growing crops on or near your**
28 **land?**

1 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
2 the proposed Keystone XL Pipeline would have a detrimental impact upon the
3 wildlife and the plants, not only that are located on or can be found upon my land,
4 but also near and along the proposed pipeline route.

5 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
6 **fair market value of your land?**

7 A: Yes, I do. I am significantly concerned about how the existence of the proposed
8 pipeline underneath and across and through my property will negatively affect the
9 fair market value at any point in the future, especially at that point in which I
10 would need to sell the property, or someone in my family would need to sell the
11 property. I do not believe, and certainly would not be willing to pay, the same
12 price for land that had the pipeline located on it, versus land that did not. I hope
13 there is never a point where I'm in a position where I have to sell and have to
14 realize as much value as I can out of my land. But because it is my single largest
15 asset, I'm gravely concerned that the existence of the proposed Keystone XL
16 Pipeline upon my land will affect a buyer's willingness to pay as much as they
17 would've paid and as much as I could've received, if the pipeline were not upon
18 my property. There are just too many risks, unknowns, impacts and uncertainties,
19 not to mention all of the rights you give up by the nature of having the pipeline
20 due to having the easement that we have previously discussed, for any reasonable
21 person to think that the existence of the pipeline would not negatively affect my
22 property's value.

23 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
24 **testimony?**

25 A: Yes, I have.

26 **Q: Where have you seen that before?**

27 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
28 I-90 corridor alternate route of its proposed pipeline through Nebraska and I

1 believe the portion of the alternative route in Nebraska essentially twins or
2 parallels Keystone I.

3 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
4 **Application, and as found on Attachment No. 7, here to your testimony, is in**
5 **the public interest of Nebraska?**

6 **A: No, I do not.**

7 **Q: Do you believe that the Keystone mainline alternative route as shown on**
8 **Attachment No. 7 included with your testimony here is a major oil pipeline**
9 **route that is in the public interest of Nebraska?**

10 **A: No, I do not.**

11 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
12 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

13 **A: No, I do not.**

14 **Q: Do you believe there is any potential route for the proposed Keystone XL**
15 **Pipeline across, within, under, or through the State of Nebraska that is in the**
16 **public interest of the citizens of Nebraska?**

17 **A: No, I do not.**

18 **Q: Why do you hold that belief?**

19 **A: Because there simply is no public interest based on all of the factors that I am**
20 **aware and that I have read and that I have studied that this Commission is to**
21 **consider that would establish that a for-profit foreign-owned pipeline that simply**
22 **crosses Nebraska because we are geographically in the way between where tar**
23 **sands are in Canada to where it wants to ship it to in Texas could ever be in the**
24 **public interest of Nebraskans. We derive no benefit from this project. It is not for**
25 **public use. Nebraska is simply in the way and when all considerations are taken in**
26 **there is no net benefit of any kind for Nebraska should this project be placed in our**
27 **state. Even if there was some arguable "benefit" it is not enough to outweigh all**
28 **the negative impacts and concerns.**

1 **Q: What do you think about the applicant, TransCanada's argument that it's**
2 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
3 **of Nebraska because it may bring temporary jobs during the construction**
4 **phase to Nebraska?**

5 **A: First of all, not all jobs are created equally. Most jobs that are created, whether**
6 **temporary or on a permanent basis, don't come with a project that has all the**
7 **potential and foreseeable negative impacts, many of which we have discussed here**
8 **and other witnesses throughout the course of this hearing have and will discuss. If**
9 **I decide to hire and employ someone to help me out in my farming or ranching**
10 **business, I've created a job but I haven't done so at the risk or detrimental impact**
11 **to my land or my town or my county or my state. And I've hired someone who is**
12 **working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce**
13 **and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all**
14 **jobs are not created equal. Additionally, I understand from what I'm familiar with**
15 **from TransCanada's own statements that the jobs numbers they originally touted**
16 **were determined to be a minute fraction of the permanent jobs that had been**
17 **projected. According to their answer to our Interrogatory No. 191, TransCanada**
18 **has created only thirty-four (34) jobs within Nebraska working specifically on**
19 **behalf of TransCanada and according to their answer to Interrogatory No. 196, as**
20 **of May 5, 2017 they only employ one (1) temporary working within Nebraska.**
21 **Further, according to their answer to Interrogatory No. 199, TransCanada would**
22 **only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was**
23 **constructed on its Preferred Route or its Mainline Alternative Route.**

24 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
25 **because it would cross your land?**

26 **A: No, absolutely not. I am opposed to this project because it is not in the public**
27 **interest, neither within my community nor within our state.**

28 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
29 **was to cross someone else's land?**

1 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
2 the fear and anxiety and potential foreseeable risks and negative impacts that this
3 type of a project carrying this type of product brings foisted upon anyone in this
4 state or any other state.

5 **Q: Do you think there is any intelligent route for the proposed Keystone XL
6 Pipeline to cross the state of Nebraska?**

7 A: I don't believe there is an intelligent route because as I have stated **I don't believe
8 this project anywhere within Nebraska is within the public interest.** However, if
9 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
10 had to go somewhere in the state of Nebraska, the only intelligent route I believe
11 would be to twin or closely parallel the existing Keystone I Pipeline. **Both the
12 preferred route and the mainline alternative routes are economic liabilities our
13 state cannot risk.**

14 **Q: What do you rely upon to make that statement?**

15 A: **Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
16 already exists in that area is reason enough as it is not in our best interest or the
17 public interests to have more major oil pipelines crisscrossing our state. Second,
18 they have all the infrastructure already there in terms of relationships with the
19 counties and local officials and first responders along that route. Third, they have
20 already obtained easements from all the landowners along that route and have
21 relationships with them. Fourth, that route avoids our most sensitive soils, the
22 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
23 Aquifer. Sixth, they have already studied that route and previously offered it as an
24 alternative. Seventh, it just makes the most sense that as a state we would have
25 some intelligent policy of energy corridors and co-locating this type of
26 infrastructure near each other.**

27 **Q: Do you have any other concerns you would like to reiterate or can think of at
28 this time you would like the Commissioners to understand?**

1 **A:** Yes. We are deeply concerned about our underground water being contaminated
2 by a leak. Our damage to the land would be minimum compared to most of the
3 other landowners. We are also concerned about the conditions of the easement.

4 **Q:** Have you fully expressed each and every opinion, concern, or fact you would
5 like the Public Service Commissioners to consider in their review of
6 TransCanada's Application?

7 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
8 document below but other things may come to me or my memory may be
9 refreshed and I will add and address those things at the time of the Hearing in
10 August and address any additional items at that time as is necessary. Additionally,
11 I have not had an adequate amount of time to receive and review all of
12 TransCanada's answers to our discovery and the discovery of others so it was
13 impossible to competently and completely react to that in my testimony here and I
14 reserve the right to also address anything related to discovery that has not yet
15 concluded as of the date I signed this document below. Lastly, certain documents
16 requested have not yet been produced by TransCanada and therefore I may have
17 additional thoughts on those I will also share at the hearing as needed.

18 **Q:** Does Attachment No. 8 here contain other documents you are competent to
19 speak about that you wish to be part of your testimony and to discuss in more
20 detail as needed at the August 2017 Hearing?

21 **A:** Yes.

22 **Q:** What is it that you are requesting the Public Service Commissioners do in
23 regards to TransCanada's application for the proposed Keystone XL Pipeline
24 across Nebraska?

25 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
26 a temporary job spike that this project may bring to a few counties and beyond the
27 relatively small amount of taxes this proposed foreign pipeline would possibly
28 generate. And, instead think about the perpetual and forever impacts of this
29 pipeline as it would have on the landowners specifically, first and foremost, but

1 also thereby upon the entire state of Nebraska, and to determine that neither the
2 preferred route nor the Keystone mainline alternative route are in the public
3 interest of the citizens of the state of Nebraska. And if the Commissioners were
4 inclined to modify TransCanada's proposed routes and were to be inclined to grant
5 an application for a route in Nebraska, that the only potential route that would
6 make any intelligent sense whatsoever would be twinning or near paralleling of
7 the proposed KXL with the existing Keystone I pipeline. The point of including
8 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been
9 considered by TransCanada before. It simply does not make sense to add yet
10 another major oil pipeline crisscrossing our state creating new pumping stations,
11 creating new impacts on additional counties and communities and going through
12 all of the court processes with myself and other landowners like me when this
13 applicant already has relationships with the landowners, the towns and the
14 communities along Keystone I, and that Keystone I is firmly outside of the sand
15 hills and a significantly further portion away from the heart of the Ogallala
16 Aquifer than the preferred route or the Keystone mainline alternative route.

17 **Q: Are all of your statements in your testimony provided above true and**
18 **accurate as of the date you signed this document to the best of your**
19 **knowledge?**

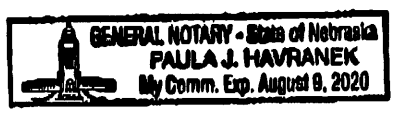
20 **A:** Yes, they are.

21 **Q: Thank you, I have no further questions at this time and reserve the right to**
22 **ask you additional questions at the August 2017 Hearing.**

Glen A. Miller
Glen A. Miller

Subscribed and Sworn to me before this 27 day of May, 2017.

Paula J. Havranek
Notary Public



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
LaVonne Beck in
Support of Landowner Intervenors

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is LaVonne Beck. I am President of Milliron Ranch Corp.

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 NE ¼ 32-32-14 in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**



1 A: I am retired from ranching but pay the bills and look after the ranch to the best of
2 my ability.

3 **Q: If you are you married tell us your spouse's name please?**

4 A: I am a widow. I was married to Duane R. Beck, but he passed away Jan.23, 2004.

5 **Q: If you have children how many do you have?**

6 A: Yes, Duane had 3 children and I have two children.

7 **Q: If you have grandchildren how many do you have?**

8 A: Yes, I have 12 grandchildren and two great-grandchildren.

9 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you
10 and or your family?**

11 A. Yes.

12 **Q: For the land that would be affected and impacted by the proposed KXL tar
13 sands pipeline give the Commissioners a sense how long the land has been in
14 your family and a little history of the land.**

15 **A:** This land has been in my family for over 70 years. This property is of very sandy
16 soil. In the fall of 1974 an insurance agent got tuck on the road, his muffler started
17 a fire which went across section 32-32-14. Several years we could not use the land
18 to its fullest capacity. We had lots of weeds for several years. On the Milliron
19 Ranch Corp. there was much work to do but when you love your work, it is fun. In
20 the spring there was calving, seems the cow needing help was always in the early
21 morning hours like 1, 2, or 3 o'clock. Most times we were able to pull the calf but
22 sometimes had to call the Vet and they would have to drive 30 miles. Then came
23 branding day and taking them to pasture. Of course there was fixing fence before
24 cattle went out to pasture. A job I hated but it had to be done. We cut cedar trees,
25 musk thistle and sprayed for leafy spurge. Of course we must pay taxes which are
26 not cheap. This property is very sandy and with the loss of the top soil, it will blow
27 ~ we have lots of wind. A blowout is not easy to heal, also we do not know what is
28 under our land. At one time many cattle had anthrax and had to be shot and buried.

1 What if an anthrax burial site is dug up and this disease surfaces again. This is a
2 beautiful, productive pasture, if tore up cannot be restored to its original condition.

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. This land is pasture land, I have a very good renter that takes good care of the
8 land. Taxes on this quarter are currently \$6,417.32 per year. I need the full use of
9 this land, it also helps pay my bills.

10 **Q: Have you ever in the past or have you thought about in the future leasing all
11 or a portion of your land in question here?**

12 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
13 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
14 all the restrictions and risks and potential negative impacts to farming or ranching
15 operations as opposed to land that did not have those same risks. If I was looking
16 to lease or rent ground I would pay more for comparable non-pipeline land than I
17 would for comparable pipeline land and I think most folks would think the same
18 way. This is another negative economic impact that affects the landowner and the
19 county and the state and will forever and ever should TransCanada's preferred or
20 mainline alternative routes be approved. If they were to twin or closely parallel to
21 Keystone I the vast majority of landowners would be those that already have a
22 pipeline so there would be considerable less new incremental negative impacts.

23 **Q: Do you have similar concerns about selling the land?**

24 A: Well I hope not to have to sell the land in my lifetime but times change and you
25 never know what is around the corner and yes I am concerned that if another piece
26 of ground similar to mine were for sale and it did not have the pipeline and mine
27 did that I would have a lower selling price. I think this would be true for pipeline
28 ground on both the preferred and mainline alternative routes.

29 **Q: What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
4 Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Were you or an entity for which you are a member, shareholder, or director
7 previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
9 petition for condemnation against our land so it could place its proposed pipeline
10 within an easement that it wanted to take from us on our land.

11 **Q: Did you defend yourself and your land in that condemnation action?**

12 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
13 and expenses in our resistance of TransCanada's lawsuit against us.

14 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
15 incurred?**

16 A: No, they have not.

17 **Q: In its lawsuit against you, did TransCanada identify the amount of your
18 property that it wanted to take for its proposed pipeline?**

19 A: The lawsuit against us stated they would take the amount of property that is
20 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
21 and equipment reasonably necessary to operate the pipeline.

22 **Q: Did TransCanada define what they meant by "property that is reasonably
23 necessary"?**

24 A: No, they did not.

25 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain
26 property portion of your land?**

27 A: Yes, they did.

28 **Q: Did TransCanada describe what rights it proposed to take related to the
29 eminent domain property on your land?**

1 A: Yes, they did.

2 Q: **What rights that they proposed to take did they describe?**

3 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
4 operate, and maintain the pipeline and the plant and equipment reasonably
5 necessary to operate the pipeline, specifically including surveying, laying,
6 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
7 reconstructing, removing and abandoning one pipeline, together with all fittings,
8 cathodic protection equipment, pipeline markers, and all their equipment and
9 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
10 petroleum products, and all by-products thereof.”

11 Q: **Prior to filing an eminent domain lawsuit to take your land that
12 TransCanada identified, do you believe they attempted to negotiate in good
13 faith with you?**

14 A: No, I do not.

15 Q: **Did TransCanada at any time approach you with or deliver to you their
16 proposed easement and right-of-way agreement?**

17 A: Yes, they did.

18 Q: **At the time you reviewed TransCanada’s easement and right-of-way
19 agreement, did you understand that they would be purchasing a fee title
20 interest in your property or that they were taking something else?**

21 A: I understood that they proposed to have the power to take both a temporary
22 construction easement that could last for a certain period of time and then also a
23 permanent easement which they described to be 50 feet across or in width, and
24 that would run the entire portion of my property from where a proposed pipeline
25 would enter my property until where it would exit the property.

26 Q: **Is the document included with your testimony here as Attachment No. 3, a
27 true and accurate copy of TransCanada’s proposed Easement and Right-of-
28 Way agreement that they included with their condemnation lawsuit against
29 you?**

1 A: Yes, it is.

2 Q: **Have you had an opportunity to review TransCanada's proposed Easement**
3 **and Right-of-Way agreement?**

4 A: Yes, I have.

5 Q: **What is your understanding of the significance of the Easement and Right-of-**
6 **Way agreement as proposed by TransCanada?**

7 A: My understanding is that this is the document that will govern all of the rights and
8 obligations and duties as well as the limitations of what I can and cannot do and
9 how I and any future landowner and any person I invite to come onto my property
10 must behave as well as what TransCanada is and is not responsible for and how
11 they can use my land.

12 Q: **After reviewing TransCanada's proposed Easement and Right-of-Way**
13 **agreement do you have any concerns about any portions of it or any of the**
14 **language either included in the document or missing from the proposed**
15 **document?**

16 A: Yes, I have a number of significant concerns and worries about the document and
17 how the language included and the language not included potentially negatively
18 impacts my land and thereby potentially negatively impacts my community and
19 my state.

20 Q: **I would like you to walk the Commissioners through each and every one of**
21 **your concerns about TransCanada's proposed Easement and Right-of-Way**
22 **agreement so they can develop an understanding of how that language and**
23 **the terms of that contract, in your opinion, potentially negatively impacts you**
24 **and your land. So, if you can start at the beginning of that document and**
25 **let's work our way through it, okay?**

26 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
27 Easement and Right-of-Way agreement and how it negatively could affect my
28 property rights and my economic interests.

29 Q: **Okay, let's start with your first concern please.**

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership..." and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
6 percent clear on exactly who could become the owner of over 275 miles of
7 Nebraska land?

8 **A:** No.

9 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
10 percent clear on exactly who will be operating and responsible for
11 approximately 275 miles of tar sands pipeline underneath and through
12 Nebraska land?

13 **A:** No.

14 **Q:** Okay, let's continue please with your concerns of the impacts upon your land
15 and the State of Nebraska of TransCanada's easement terms.

16 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow my easement to
18 be transferred or sold to someone or some company or country or who knows what
19 that I don't know and who we may not want to do business with. This pipeline
20 would be a huge asset for TransCanada and if they can sell to the highest bidder
21 that could have terrible impacts upon all of Nebraska depending upon who may
22 buy it and I don't know of any safeguards in place for us or the State to veto or
23 have any say so in who may own, operate, or be responsible for this pipeline in the
24 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 negotiation any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 **A:** The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at anytime
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 **A:** There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada’s control. Some of these vague undefined terms are as follows:

- 27 i. “pipeline installation activities”
- 28 ii. “availability of labor and materials”
- 29 iii. “commercially reasonable costs and expenses”

- 1 iv. “reasonably anticipated and foreseeable costs and expenses”
- 2 v. “yield loss damages”
- 3 vi. “diminution in the value of the property”
- 4 vii. “substantially same condition”
- 5 viii. “an actual or potential hazard”
- 6 ix. “efficient”
- 7 x. “convenient”
- 8 xi. “endangered”
- 9 xii. “obstructed”
- 10 xiii. “injured”
- 11 xiv. “interfered with”
- 12 xv. “impaired”
- 13 xvi. “suitable crossings”
- 14 xvii. “where rock is encountered”
- 15 xviii. “as nearly as practicable”
- 16 xix. “pre-construction position”
- 17 xx. “pre-construction grade”
- 18 xxi. “various engineering factors”

19 Each one of these above terms and phrases as read in the context of the Easement
20 could be problematic in many ways. Notably, undefined terms tend to only get
21 definition in further legal proceedings after a dispute arises and the way the
22 Easement is drafted, TransCanada has sole power to determine when and if a
23 particular situation conforms with or triggers rights affected by these terms. For
24 instance, “yield loss damages” should be specifically defined and spelled out
25 exactly how the landowner is to be compensated and in what events on the front
26 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
27 the Landowner is without contractual rights to define these terms or determine
28 when rights related to them trigger and what the affects may be.

1 **Q: Do you have any other concerns about the Easement language that you can**
2 **think of at this time?**

3 **A: I reserve the right to discuss any additional concerns that I think of at the time of**
4 **my live testimony in August.**

5 **Q: Based upon what you have shared with the Commission above regarding**
6 **TransCanada's proposed Easement terms and agreement, do you believe**
7 **those to be reasonable or just, under the circumstances of the pipeline's**
8 **impact upon you and your land?**

9 **A: No, I do not believe those terms to be reasonable or just for the reasons that we**
10 **discussed previously.**

11 **Q: Did TransCanada ever offer you financial compensation for the rights that**
12 **they sought to obtain in your land, and for what they sought to prevent you**
13 **and any future land owner of your property from doing in the future?**

14 **A: Yes, we received an offer from them.**

15 **Q: As the owner of the land in question and as the person who knows it better**
16 **than anyone else, do you believe that TransCanada offered you just, or fair,**
17 **compensation for all of what they proposed to take from you so that their tar**
18 **sands pipeline could be located across your property?**

19 **A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just**
20 **offer for all the potential impacts and effects and the rights that I'm giving up, and**
21 **what we will be prevented from doing in the future and how their pipeline would**
22 **impact my property for ever and ever.**

23 **Q: Has TransCanada at any time offered to compensate you annually, such as**
24 **wind farm projects do, for the existence of their potential tar sands pipeline**
25 **across your property.**

26 **A: No, never.**

27 **Q: At any time did TransCanada present you with or request that you, as the**
28 **owner of the land in question, sign and execute a document called, "Advanced**
29 **Release of Damage Claims and Indemnity Agreement?"**

1 A: Yes, they did.

2 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the
3 “Advanced Release of Damage Claims and Indemnity Agreement?”

4 A: Yes, it is.

5 Q: What was your understanding of that document?

6 A: When I read that document in the plain language of that document, it was my
7 understanding that TransCanada was attempting to pay me a very small amount at
8 that time in order for me to agree to give up my rights to be compensated from
9 them in the future related to any damage or impact they may have upon my
10 property “arising out of, in connection with, or alleged to resulted from
11 construction or surveying over, under or on” my land.

12 Q: Did you ever sign that document?

13 A: No, I did not.

14 Q: Why not?

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small
16 sum of money when I have no idea how bad the impacts or damages that they, or
17 their contractors, or subcontractors, or other agents or employees, may cause on
18 my land at any time in the future that resulted from the construction or surveying
19 or their activities upon my land.

20 Q: When you reviewed this document, what did it make you feel?

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
22 shield themselves against known and foreseeable impacts that their pipeline, and
23 the construction of it, would have upon my land. It made me feel that they knew it
24 was in their financial interest to pay me as little as possible to prevent me from
25 ever having the opportunity to seek fair compensation again, and that this must be
26 based upon their experience of unhappy landowners and situations in other places
27 where they have built pipelines.

1 **Q: Has TransCanada ever contacted you and specifically asked you if you**
2 **thought their proposed location of their proposed pipeline across your land**
3 **was in your best interest?**

4 A: No, they have not.

5 **Q: Has TransCanada ever contacted you and specifically asked you if you**
6 **thought their proposed location of their proposed pipeline across your land**
7 **was in the public interest of the State of Nebraska?**

8 A: No, they have not.

9 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
10 **Takings Clause?**

11 A: Yes, I am.

12 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
13 **an American citizens property?**

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 **Q: Has TransCanada ever contacted you specially to explain the way in which**
19 **the public could use its proposed Keystone XL Pipeline?**

20 A: No, they have not.

21 **Q: Can you think of any way in which the public, that is the citizens of the State**
22 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
23 **Pipeline, as it dissects the State of Nebraska?**

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
4 crude petroleum, or oil and petroleum by-products that you would like to
5 ship in its pipeline?**

6 **A:** No, it has not.

7 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
8 products that you, at this time or any time in the future, would desire to place
9 for transport within the proposed TransCanada Keystone XL Pipeline?**

10 **A:** No, I do not.

11 **Q: Do you know anyone in the state of Nebraska who would be able to ship any
12 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
13 products within the proposed TransCanada Keystone XL Pipeline?**

14 **A:** No, I do not. I've never heard of such a person or company like that.

15 **Q: Do you pay property taxes for the land that would be affected and impacted
16 at the proposed TransCanada Keystone XL Pipeline?**

17 **A:** Yes, I do.

18 **Q: Why do you pay property taxes on that land?**

19 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q: Because you follow the law and pay property taxes, do you believe you
22 deserve any special consideration or treatment apart from any other person
23 or company that pays property taxes?**

24 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q: Do you believe the fact that you pay property taxes entitles you to special
27 treatment of any kind, or special rights of any kind?**

28 **A:** No, of course not.

1 **Q: Do you believe the fact that you pay property taxes on your land would be**
2 **enough to qualify you to have the power of eminent domain to take land of**
3 **your neighbors or other people in your county, or other people across the**
4 **state of Nebraska?**

5 **A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that**
6 **I expect an award for or any type of special consideration.**

7 **Q: Have you at any time ever employed any person other than yourself?**

8 **A: Well, yes I have.**

9 **Q: Do you believe that the fact that you have, at some point in your life,**
10 **employed one or more other persons entitle you to any special treatment or**
11 **consideration above and beyond any other Nebraskan that has also employed**
12 **one or more persons?**

13 **A: No, of course not.**

14 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
15 **have at one point employed another person within this state, entitles you to**
16 **preferential treatment or consideration of any kind?**

17 **A: No, of course not. If I choose to employ someone that decision is up to me. I**
18 **don't deserve any special treatment or consideration for that fact.**

19 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
20 **crude oil pipeline in its preferred location, or ultimate location across the**
21 **state of Nebraska?**

22 **A: Yes, I have significant concerns. Yes, I have significant concerns: TransCanada**
23 **employees threaten landowners with eminent domain, telling them that if they**
24 **don't sign the easement and take the offered money they will use eminent domain**
25 **and just use their land with no money involved. It is supposed to be the safest way**
26 **to go but look at all the spills. Freeman SD for one. How did they clean it up? I am**
27 **also aware of landowners being treated unfairly or even bullied around and being**
28 **made to feel scared that they did not have any options but to sign whatever papers**
29 **TransCanada told them they had to. I am aware of folks being threatened that their**

1 land would be taken if they didn't follow what TransCanada was saying. I am
2 aware of tactics to get people to sign easements that I don't believe have any place
3 in Nebraska or anywhere such as TransCanada or some outfit associated with it
4 hiring a pastor or priest to pray with landowners and convince them they should
5 sign TransCanada's easement agreements. I am aware of older folks and widows
6 or widowers feeling they had no choice but to sign TransCanada's Easement and
7 they didn't know they could fight or stand up for themselves. From a more
8 practical standpoint, I am worried that according to their answer to our
9 Interrogatory No. 211, TransCanada only owns and operates one (1) major oil
10 pipeline. They simply do not have the experience with this type of pipeline and
11 that scares me. There are others but that is what I can recollect at this time and if I
12 remember more or my recollection is refreshed I will share those with the
13 Commissioners at the Hearing in August.

14 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
15 **landowner is reasonable or just?**

16 **A: No, I do not.**

17 **Q: Do you have any concern about limitations that the construction of this**
18 **proposed pipeline across your affected land would prevent construction of**
19 **future structures upon the portion of your land affected by the proposed**
20 **easement and immediately surrounding areas?**

21 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
22 structures directly across or touching the easement, and it would be unwise and I
23 would be uncomfortable to build anything near the easement for fear of being
24 blamed in the future should any damage or difficulty result on my property in
25 regards to the pipeline.

26 **Q: Do you think such a restriction would impact you economically?**

27 **A:** Well yes, of course.

28 **Q: How do you think such a restriction would impact you economically?**

1 A: The future of this land may not be exactly how it's being used as of this moment,
2 and having the restrictions and limiting my ability to develop my land in certain
3 ways presents a huge negative economic impact on myself, my family, and any
4 potential future owner of the property. You have no idea how I or the future owner
5 may want to use this land in the future or the other land across Nebraska
6 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
7 ago it would have been hard to imagine all the advances that we have now or how
8 things change. Because the Easement is forever and TransCanada gets the rights in
9 my land forever we have to think with a very long term view. By placing their
10 pipeline on under across and through my land that prevents future development
11 which greatly negatively impacts future taxes and tax revenue that could have
12 been generated by the County and State but now will not. When you look at the
13 short blip of economic activity that the two years of temporary construction efforts
14 may bring, that is far outweighed by the perpetual and forever loss of opportunity
15 and restrictions TransCanada is forcing upon us and Nebraska.

16 **Q: Do you have any concerns about the environmental impact of the proposed**
17 **pipeline?**

18 A: Yes, I do.

19 **Q: What are some of those concerns?**

20 A: As an affected land owner and Nebraskan, I am concerned that any construction,
21 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
22 a detrimental impact upon the environment of my land specifically, as well as the
23 lands near my land and surrounding the proposed pipeline route.

24 **Q: Do you have any other environmental concerns?**

25 **A: Yes, of course I am concerned about potential breaches of the pipeline, failures in**
26 **construction and/or maintenance and operation. I am concerned about spills and**
27 **leaks that TransCanada has had in the past and will have in the future. This could**
28 **be catastrophic to my operations or others and to my county and the State.**

1 **Q: Do you have any thoughts regarding if there would be an impact upon the**
2 **natural resources on or near your property due to the proposed pipeline?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
5 resources of my land, and the lands near and surrounding the proposed pipeline
6 route.

7 **Q: Do you have any worries about potential impacts from the proposed pipeline**
8 **to the soil of your land, or land near you?**

9 A: Yes, I believe that any construction, operation, and/or maintenance of the
10 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
11 land, as well as land along and surrounding the proposed pipeline route. This
12 includes, but is not limited to, the reasons that we discussed above of disturbing
13 the soil composition and makeup as it has naturally existed for thousands and
14 millions of years during the construction process, and any future maintenance or
15 removal process. I'm gravely concerned about the fertility and the loss of
16 economic ability of my property to grow the crops, or grow the grasses, or grow
17 whatever it is at that time they exist on my property or that I may want to grow in
18 the future, or that a future owner may want to grow. The land will never be the
19 same from as it exists now undisturbed to after it is trenched up for the proposed
20 pipeline.

21 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
22 **upon the groundwater over your land, or surrounding lands?**

23 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
24 the proposed Keystone XL Pipeline would have a detrimental impact upon the
25 groundwater of not only under my land, but also near and surrounding the pipeline
26 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
27 simple and it is simply too valuable to our State and the country to put at
28 unreasonable risk.

1 **Q: Do you have any concern about the potential impact of the proposed pipeline**
2 **upon the surface water on, or near or around your land?**

3 A: Yes, I have significant concerns that any construction, operation, and/or
4 maintenance of the proposed Keystone XL Pipeline would have detrimental
5 impact upon the surface water of not only within my property boundary, but along
6 and near and surrounding the pipeline route, and in fact, across the state of
7 Nebraska.

8 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
9 **upon the wildlife and plants, other than your growing crops on or near your**
10 **land?**

11 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
12 the proposed Keystone XL Pipeline would have a detrimental impact upon the
13 wildlife and the plants, not only that are located on or can be found upon my land,
14 but also near and along the proposed pipeline route.

15 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
16 **fair market value of your land?**

17 A: Yes, I do. I am significantly concerned about how the existence of the proposed
18 pipeline underneath and across and through my property will negatively affect the
19 fair market value at any point in the future, especially at that point in which I
20 would need to sell the property, or someone in my family would need to sell the
21 property. I do not believe, and certainly would not be willing to pay, the same
22 price for land that had the pipeline located on it, versus land that did not. I hope
23 there is never a point where I'm in a position where I have to sell and have to
24 realize as much value as I can out of my land. But because it is my single largest
25 asset, I'm gravely concerned that the existence of the proposed Keystone XL
26 Pipeline upon my land will affect a buyer's willingness to pay as much as they
27 would've paid and as much as I could've received, if the pipeline were not upon
28 my property. There are just too many risks, unknowns, impacts and uncertainties,
29 not to mention all of the rights you give up by the nature of having the pipeline

1 due to having the easement that we have previously discussed, for any reasonable
2 person to think that the existence of the pipeline would not negatively affect my
3 property's value.

4 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
5 **testimony?**

6 A: Yes, I have.

7 **Q: Where have you seen that before?**

8 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
9 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
10 believe the portion of the alternative route in Nebraska essentially twins or
11 parallels Keystone I.

12 **Q: Do you believe 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 it’s**
12 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
13 **of Nebraska because it may bring temporary jobs during the construction**
14 **phase to Nebraska?**

15 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
16 temporary or on a permanent basis, don’t come with a project that has all the
17 potential and foreseeable negative impacts, many of which we have discussed here
18 and other witnesses throughout the course of this hearing have and will discuss. If
19 I decide to hire and employ someone to help me out in my farming or ranching
20 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
21 to my land or my town or my county or my state. And I’ve hired someone who is
22 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
23 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
24 jobs are not created equal. Additionally, I understand from what I’m familiar with
25 from TransCanada’s own statements that the jobs numbers they originally touted
26 were determined to be a minute fraction of the permanent jobs that had been
27 projected. According to their answer to our Interrogatory No. 191, TransCanada
28 has created only thirty-four (34) jobs within Nebraska working specifically on
29 behalf of TransCanada and according to their answer to Interrogatory No. 196, as

1 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
2 Further, according to their answer to Interrogatory No. 199, TransCanada would
3 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
4 constructed on its Preferred Route or its Mainline Alternative Route.

5 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
6 **because it would cross your land?**

7 A: No, absolutely not. I am opposed to this project because it is not in the public
8 interest, neither within my community nor within our state.

9 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
10 **was to cross someone else's land?**

11 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
12 the fear and anxiety and potential foreseeable risks and negative impacts that this
13 type of a project carrying this type of product brings foisted upon anyone in this
14 state or any other state.

15 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
16 **Pipeline to cross the state of Nebraska?**

17 A: I don't believe there is an intelligent route because as I have stated I don't believe
18 this project anywhere within Nebraska is within the public interest. However, if
19 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
20 had to go somewhere in the state of Nebraska, the only intelligent route I believe
21 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
22 preferred route and the mainline alternative routes are economic liabilities our
23 state cannot risk.

24 **Q: What do you rely upon to make that statement?**

25 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
26 already exists in that area is reason enough as it is not in our best interest or the
27 public interests to have more major oil pipelines crisscrossing our state. Second,
28 they have all the infrastructure already there in terms of relationships with the
29 counties and local officials and first responders along that route. Third, they have

1 already obtained easements from all the landowners along that route and have
2 relationships with them. Fourth, that route avoids our most sensitive soils, the
3 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
4 Aquifer. Sixth, they have already studied that route and previously offered it as an
5 alternative. Seventh, it just makes the most sense that as a state we would have
6 some intelligent policy of energy corridors and co-locating this type of
7 infrastructure near each other.

8 **Q: Do you have any other concerns you would like to reiterate or can think of at**
9 **this time you would like the Commissioners to understand?**

10 A: Yes, here comes TransCanada, a rich foreign company threatening to take our land
11 by eminent domain if we don't sign their easement. A cheap one-time payment to
12 use our land for whatever they please. They have no feeling for the land, I do.
13 Many people have been threatened by Eminent Domain and signed the easement.
14 TransCanada will be stealing our Ogallala Aquifer water and selling it elsewhere.
15 Ruination of our Nebraska land. And the people they will bring in to build the
16 pipeline. If this pipeline goes through our land, we cannot borrow money and if we
17 have a money borrowed we must pay it back immediately. I am debt free now but
18 if I need to replace an irrigation system I will have to borrow money.

19 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
20 **like the Public Service Commissioners to consider in their review of**
21 **TransCanada's Application?**

22 A: No, I have not. I have shared that which I can think of as of the date I signed this
23 document below but other things may come to me or my memory may be
24 refreshed and I will add and address those things at the time of the Hearing in
25 August and address any additional items at that time as is necessary. Additionally,
26 I have not had an adequate amount of time to receive and review all of
27 TransCanada's answers to our discovery and the discovery of others so it was
28 impossible to competently and completely react to that in my testimony here and I
29 reserve the right to also address anything related to discovery that has not yet

1 concluded as of the date I signed this document below. Lastly, certain documents
2 requested have not yet been produced by TransCanada and therefore I may have
3 additional thoughts on those I will also share at the hearing as needed.

4 **Q: What is it that you are requesting the Public Service Commissioners do in**
5 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
6 **across Nebraska?**

7 A: I am respectfully and humbly requesting that the Commissioners think far beyond
8 a temporary job spike that this project may bring to a few counties and beyond the
9 relatively small amount of taxes this proposed foreign pipeline would possibly
10 generate. And, instead think about the perpetual and forever impacts of this
11 pipeline as it would have on the landowners specifically, first and foremost, but
12 also thereby upon the entire state of Nebraska, and to determine that neither the
13 preferred route nor the Keystone mainline alternative route are in the public
14 interest of the citizens of the state of Nebraska. And if the Commissioners were
15 inclined to modify TransCanada's proposed routes and were to be inclined to grant
16 an application for a route in Nebraska, that the only potential route that would
17 make any intelligent sense whatsoever would be twinning or near paralleling of
18 the proposed KXL with the existing Keystone I pipeline. It simply does not make
19 sense to add yet another major oil pipeline crisscrossing our state creating new
20 pumping stations, creating new impacts on additional counties and communities
21 and going through all of the court processes with myself and other landowners like
22 me when this applicant already has relationships with the landowners, the towns
23 and the communities along Keystone I, and that Keystone I is firmly outside of the
24 sand hills and a significantly further portion away from the heart of the Ogallala
25 Aquifer than the preferred route or the Keystone mainline alternative route.

26 **Q: Does Attachment No. 8 here contain other documents you are competent to**
27 **speak about that you wish to be part of your testimony and to discuss in more**
28 **detail as needed at the August 2017 Hearing?**

29 A: Yes.

1 **Q: Are all of your statements in your testimony provided above true and**
2 **accurate as of the date you signed this document to the best of your**
3 **knowledge?**

4 **A: Yes, they are.**

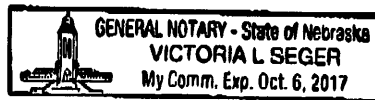
5 **Q: Thank you, I have no further questions at this time and reserve the right to**
6 **ask you additional questions at the August 2017 Hearing.**

LaVonne Beck Milliron Ranch Corp.
LaVonne Beck, Milliron Ranch

Subscribed and Sworn to me before this 25 day of May, 2017.

Victoria L Seger

Notary Public



05.25.2017

Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act*

Direct Testimony of
Frank Morrison in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Frank Morrison.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Farmer.



1 **Q: If you are you married tell us your spouse's name please?**

2 A: Lynn Morrison.

3 **Q: For the land that would be affected and impacted by the proposed KXL tar**
4 **sands pipeline give the Commissioners a sense how long the land has been in**
5 **your family and a little history of the land.**

6 A: My family has been farming land in Antelope County since it was homesteaded in
7 1883 by his great grandfather. One quarter of their ground in that the line will go
8 through has been owned by Frank's family since the mid 1960's. The other
9 quarter of ground has been owned since 1999. There are irrigation pivots on both
10 of these properties.

11 **Q: Do you earn any income from this land?**

12 A: Yes.

13 **Q: Have you depended on the income from your land to support your livelihood**
14 **or the livelihood of your family?**

15 A: Yes.

16 **Q: Have you ever in the past or have you thought about in the future leasing all**
17 **or a portion of your land in question here?**

18 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
19 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
20 all the restrictions and risks and potential negative impacts to farming or ranching
21 operations as opposed to land that did not have those same risks. If I was looking
22 to lease or rent ground I would pay more for comparable non-pipeline land than I
23 would for comparable pipeline land and I think most folks would think the same
24 way. This is another negative economic impact that affects the landowner and the
25 county and the state and will forever and ever should TransCanada's preferred or
26 mainline alternative routes be approved. If they were to twin or closely parallel to
27 Keystone I the vast majority of landowners would be those that already have a
28 pipeline so there would be considerable less new incremental negative impacts.

29 **Q: Do you have similar concerns about selling the land?**

1 A: Well I hope not to have to sell the land in my lifetime but times change and you
2 never know what is around the corner and yes I am concerned that if another piece
3 of ground similar to mine were for sale and it did not have the pipeline and mine
4 did that I would have a lower selling price. I think this would be true for pipeline
5 ground on both the preferred and mainline alternative routes.

6 Q: **What is your intent with your land after you die?**

7 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
8 to come but I have thought about getting out if this pipeline were to come through.

9 Q: **Are you aware that the preferred route of TransCanada's Keystone XL
10 Pipeline would cross the land described above and owned by you?**

11 A: Yes.

12 Q: **Were you or an entity for which you are a member, shareholder, or director
13 previously sued by TransCanada Keystone Pipeline, LP?**

14 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
15 petition for condemnation against our land so it could place its proposed pipeline
16 within an easement that it wanted to take from us on our land.

17 Q: **Did you defend yourself and your land in that condemnation action?**

18 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
19 and expenses in our resistance of TransCanada's lawsuit against us.

20 Q: **Has TransCanada reimbursed you for any of your expenses or costs for fees
21 incurred?**

22 A: No, they have not.

23 Q: **In its lawsuit against you, did TransCanada identify the amount of your
24 property that it wanted to take for its proposed pipeline?**

25 A: The lawsuit against us stated they would take the amount of property that is
26 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
27 and equipment reasonably necessary to operate the pipeline.

28 Q: **Did TransCanada define what they meant by "property that is reasonably
29 necessary"?**

1 A: No, they did not.

2 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
3 property portion of your land?

4 A: Yes, they did.

5 Q: Did TransCanada describe what rights it proposed to take related to the
6 eminent domain property on your land?

7 A: Yes, they did.

8 Q: What rights that they proposed to take did they describe?

9 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
10 operate, and maintain the pipeline and the plant and equipment reasonably
11 necessary to operate the pipeline, specifically including surveying, laying,
12 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
13 reconstructing, removing and abandoning one pipeline, together with all fittings,
14 cathodic protection equipment, pipeline markers, and all their equipment and
15 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
16 petroleum products, and all by-products thereof.”

17 Q: Prior to filing an eminent domain lawsuit to take your land that
18 TransCanada identified, do you believe they attempted to negotiate in good
19 faith with you?

20 A: No, I do not.

21 Q: Did TransCanada at any time approach you with or deliver to you their
22 proposed easement and right-of-way agreement?

23 A: Yes, they did.

24 Q: At the time you reviewed TransCanada’s easement and right-of-way
25 agreement, did you understand that they would be purchasing a fee title
26 interest in your property or that they were taking something else?

27 A: I understood that they proposed to have the power to take both a temporary
28 construction easement that could last for a certain period of time and then also a
29 permanent easement which they described to be 50 feet across or in width, and

1 that would run the entire portion of my property from where a proposed pipeline
2 would enter my property until where it would exit the property.

3 **Q: Is the document included with your testimony here as Attachment No. 2, a**
4 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
5 **Way agreement that they included with their condemnation lawsuit against**
6 **you?**

7 **A:** Yes, it is.

8 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
9 **and Right-of-Way agreement?**

10 **A:** Yes, I have.

11 **Q: What is your understanding of the significance of the Easement and Right-of-**
12 **Way agreement as proposed by TransCanada?**

13 **A:** My understanding is that this is the document that will govern all of the rights and
14 obligations and duties as well as the limitations of what I can and cannot do and
15 how I and any future landowner and any person I invite to come onto my property
16 must behave as well as what TransCanada is and is not responsible for and how
17 they can use my land.

18 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
19 **agreement do you have any concerns about any portions of it or any of the**
20 **language either included in the document or missing from the proposed**
21 **document?**

22 **A:** Yes, I have a number of significant concerns and worries about the document and
23 how the language included and the language not included potentially negatively
24 impacts my land and thereby potentially negatively impacts my community and
25 my state.

26 **Q: I would like you to walk the Commissioners through each and every one of**
27 **your concerns about TransCanada's proposed Easement and Right-of-Way**
28 **agreement so they can develop an understanding of how that language and**
29 **the terms of that contract, in your opinion, potentially negatively impacts you**

1 and your land. So, if you can start at the beginning of that document and
2 let's work our way through it, okay?

3 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
4 Easement and Right-of-Way agreement and how it negatively could affect my
5 property rights and my economic interests.

6 Q: Okay, let's start with your first concern please.

7 A: The very first sentence talks about consideration or how much money they will
8 pay to compensate me for all of the known and unknown affects and all of the
9 rights I am giving up and for all the things they get to do to my land and for what
10 they will prevent me from doing on my land and they only will pay me one time at
11 the signing of the easement agreement. That is a huge problem.

12 Q: Explain to the Commissioners why that is a problem.

13 A: It is not fair to the landowner, the county, or the State. It is not fair to the
14 landowner because they want to have my land forever for use as they see fit so
15 they can make a daily profit from their customers. If I was to lease ground from
16 my neighbor I would typically pay twice a year every year as long as they granted
17 me the rights to use their land. That only makes sense – that is fair. If I was going
18 to rent a house in town I would typically pay monthly, every month until I gave up
19 my right to use that house. By TransCanada getting out on the cheap and paying
20 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
21 revenue collection on the money I would be paid and then pay taxes on and
22 contribute to this state and this country. It is money I would be putting back into
23 my local community both spending and stimulating the local economy and
24 generating more economic activity right here. Instead TransCanada's shareholders
25 keep all that money and it never finds its way to Nebraska.

26 Q: What is your next concern?

27 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
28 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
29 limited partnership..." and I have no idea who that really is. I have no idea who is

1 forcing this pipeline on us or who the owners of the entities are, or what are the
2 assets backing this limited partnership, or who the general partner is, or who all
3 the limited partners are, and who makes up the ownership of the these partners or
4 the structure or any of the basic things you would want to know and understand if
5 you would want to do business with such an outfit. According to TransCanada's
6 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
7 liability company called TransCanada Keystone Pipeline GP, LLC is the general
8 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
9 basically nothing. That is really scary since the general partner has the liability but
10 virtually none of the ownership and who knows if it has any other assets.

11 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
12 **percent clear on exactly who could become the owner of over 275 miles of**
13 **Nebraska land?**

14 **A: No.**

15 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
16 **percent clear on exactly who will be operating and responsible for**
17 **approximately 275 miles of tar sands pipeline underneath and through**
18 **Nebraska land?**

19 **A: No.**

20 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
21 **and the State of Nebraska of TransCanada's easement terms.**

22 **A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter**
23 **called "Grantee")..." and this concerns me because it would allow their easement**
24 **to be transferred or sold to someone or some company or country or who knows**
25 **what that I don't know and who we may not want to do business with. This**
26 **pipeline would be a huge asset for TransCanada and if they can sell to the highest**
27 **bidder that could have terrible impacts upon all of Nebraska depending upon who**
28 **may buy it and I don't know of any safeguards in place for us or the State to veto**

1 or have any say so in who may own, operate, or be responsible for this pipeline in
2 the future.

3 **Q: Do you think that type of uncertainty and lack of control over a major piece**
4 **of infrastructure crossing our State is in the public interest?**

5 **A:** No, certainly not, in fact, just the opposite.

6 **Q: What's next?**

7 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
8 really concerns me. Why does the easement and right-of-way have to be perpetual
9 and permanent? That is the question myself and my family want an answer to.
10 Perpetual to me is like forever and that doesn't make sense.

11 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

12 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
13 data proving there is a perpetual supply of tar sands. I am not aware in
14 TransCanada's application where it proves there is a perpetual necessity for this
15 pipeline. My understanding of energy infrastructure like wind towers is they have
16 a decommission plan and actually take the towers down when they become
17 obsolete or no longer needed. Nothing manmade lasts forever. My land however
18 will, and I want my family or future Nebraska families to have that land as
19 undisturbed as possible and it is not in my interest or the public interest of
20 Nebraska to be forced to give up perpetual and permanent rights in the land for
21 this specific kind of pipeline project.

22 **Q: Okay, what is your next concern?**

23 **A:** The easement language includes all these things TransCanada can do and it says
24 "...abandoning in place..." so they can just leave this pipeline under my ground
25 until the end of time just sitting there while they are not using it, but I am still
26 prevented from doing on my land and using my land what I would like. If I owned
27 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
28 there. It doesn't make sense and it scares me and it is not in my interest or the
29 public interest of Nebraska to allow this.

1 **Q:** Now it looks like we are ready to go to the second page of the Easement is that
2 **right?**

3 **A:** Yes.

4 **Q:** So now on the second page of the Easement what are your concerns?

5 **A:** Here the Easement identifies a 24-month deadline to complete construction of the
6 pipeline but has caveats that are undefined and ambiguous. The 24-month period
7 starts to run from the moment “actual pipeline installation activities” begin on
8 Landowners property. It appears that TransCanada would define this phrase as
9 needed. It would be wise to explain what types of TransCanada action constitutes
10 “installation activity” For instance, would the placement and storage of an
11 excavator or other equipment on or near the Easement property be an activity or
12 would earth have to be moved before the activity requirement is triggered. This
13 vague phrase is likely to lead to future disputes and litigation that is not in the best
14 interest of the welfare of Nebraska and would not protect property interests. The
15 24-months can also be extended in the case of “force majeure.” My understanding
16 is that force majeure is often used to insulate a party to a contract when events
17 occur that are completely out of their control. In TransCanada’s easement this is
18 expanded to include “without limitation...availability of labor and materials.”
19 Extending this language to labor and materials is problematic because these are
20 two variables that TransCanada does have some or significant control over and to
21 allow extension of the 24-month period over events not truly out of the control of
22 TransCanada and without further provision for compensation for the Landowner is
23 not conducive to protection of property rights.

24 **Q:** Okay, what is your next concern?

25 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
26 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
27 reasonable costs and expenses” will pay for damages caused but then limits
28 TransCanada’s liability to certain circumstances. There is no definition of
29 “commercially reasonable” and no stated right that the Landowner would get to

1 determine the amounts of cost or expense that is “commercially reasonable.”
2 TransCanada excepts out from their liability any damages that are caused by
3 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
4 Landowner. It is understandable that if the Landowner were to willfully and
5 intentionally cause damages to the pipeline that Landowner should be liable.
6 However, anything short of willful misconduct should be the liability of
7 TransCanada who is subjecting the pipeline on the Landowner and who is making
8 a daily profit from that pipeline. When evaluating the impact on property rights of
9 this provision, you must consider the potentially extremely expensive fight a
10 Landowner would have over this question of whether or not damage was an act of
11 negligence. Putting this kind of potential liability upon the Landowner is
12 incredibly problematic and is detrimental to the protection of property rights. I
13 don’t think this unilateral power which I can’t do anything about as the landowner
14 is in the best economic interest of the land in question or the State of Nebraska for
15 landowners to be treated that way.

16 **Q: Is there any specific event or example you are aware of that makes this**
17 **concern more real for you?**

18 **A:** Yes, one need not look further than a November 3, 2015 lawsuit filed against
19 Nemaha County, Nebraska landowner farmers who accidently struck two
20 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
21 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
22 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
23 copy of the Federal Court Complaint is here as **Attachment No. 3.**

24 **Q: What is your next concern with the Easement language?**

25 **A:** Paragraph 3 states that Landowner can farm on and otherwise use their property as
26 they choose unless 1) any Landowner use interferes in any way with
27 TransCanada’s exercise of any of its rights within the Easement, or 2)
28 TransCanada decides to take any action on the property it deems necessary to
29 prevent injury, endangerment or interference with anything TransCanada deems

1 necessary to do on the property. Landowner is also forbidden from excavating
2 without prior authorization by TransCanada. So my understanding is that
3 TransCanada will unilaterally determine what Landowner can and can't do based
4 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
5 could also completely deny my request to excavate. Further, TransCanada retains
6 all "privileges necessary or convenient for the full use of the rights" granted to
7 them in the Easement. Again, TransCanada unilaterally can decide to the
8 detriment of the property rights of Landowner what TransCanada believes is
9 necessary or convenient for it. And there is no option for any additional
10 compensation to landowner for any right exercised by TransCanada that leads to
11 the removal of trees or plants or vegetation or buildings or structures or facilities
12 owned by Landowner of any kind. Such undefined and unilateral restrictions and
13 rights without having to compensate Landowner for such further destruction or
14 losses are not conducive to the protection of property rights or economic interest.

15 **Q: What is the next concern you have?**

16 **A:** The Easement also allows some rights for Landowner but restricts them at the
17 same time and again at the sole and unilateral decision making of TransCanada.
18 TransCanada will determine if the actions of Landowner might in anyway
19 endanger or obstruct or interfere with TransCanada's full use of the Easement or
20 any appurtenances thereon to the pipeline itself or to their access to the Easement
21 or within the Easement and TransCanada retains the right at any time, whether
22 during growing season or not, to travel "within and along Easement Area on foot
23 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
24 retain the rights to prevent any landowner activity that it thinks may "unreasonably
25 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
26 undefined and unilateral restrictions are not conducive to the protection of
27 property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
2 Landowner's land any debris of any kind without any input or power of
3 Landowner to demand an alternative method or location of debris disposal. Such
4 unilateral powers would negatively affect Landowners property are not conducive
5 to the protection of property rights or economic interest.

6 **Q: What is the next concern you have with the Easement language?**

7 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
8 "where rock is encountered" mean and why does TransCanada solely get to
9 determine whether or not this phrase is triggered. This phrase could be used to
10 justify installing the pipeline 24 inches beneath the surface. The ability to use this
11 provision to minimal locate the pipeline at a depth of 24 inches could negatively
12 affect Landowners property are not conducive to the protection of property rights.
13 A shallow pipeline is much more likely to become a danger and liability in the
14 future given farming operations and buried irrigation lines and other factors
15 common to the current typical agricultural uses of the land in question impacted
16 by TransCanada's preferred pipeline route.

17 **Q: What is the next concern you have with the Easement language?**

18 A: There are more vague concepts solely at the determination of TransCanada such as
19 "as nearly as practicable" and "pre-construction position" and "extent reasonably
20 possible." There is nothing here that defines this or provides a mechanism for
21 documenting or memorializing "pre-construction position" so as to minimize
22 costly legal battles or wasted Landowner time attempting to recreate the soil
23 condition on their fields or pasture. Such unilateral powers would negatively affect
24 Landowners property are not conducive to the protection of property rights or
25 economic interest.

26 **Q: What is the next concern you have with the Easement language?**

27 A: TransCanada maintains the unilateral right to abandon the pipeline and all
28 appurtenances thereto in place on, under, across, or through Nebraska land at any
29 time it chooses. There is no provision for Landowner compensation for such

1 abandonment or any right for the Landowner to demand removal. Such unilateral
2 powers would negatively affect Landowners property are not conducive to the
3 protection of property rights or economic interest. The potential environmental
4 impact on the farm ground as my family plans on continuing to farm through
5 future generations of Morrison's is a concern. I am also concerned in case the
6 lines are abandoned and not removed since the low grade oil, solvents, and
7 corrosive actions would diminish the value of the property and risk contamination
8 for future generations.

9 **Q: What is the next concern you have with the Easement language?**

10 A: TransCanada has the power to unilaterally move or modify the location of any
11 Easement area whether permanent or temporary at their sole discretion.
12 Regardless, if Landowner has taken prior steps relative the their property in
13 preparation or planning of TransCanada's taking of the initial easement area(s),
14 the language here does not require TransCanada to compensate the Landowner if
15 they decide to move the easement anywhere on Landowners property. Such
16 unilateral powers would negatively affect Landowners property are not conducive
17 to the protection of property rights or economic interests.

18 **Q: What is the next concern you have with the Easement language?**

19 A: The Easement requires that all of the burdens and restrictions upon Landowner to
20 transfer and be applicable to any future owner of the Land in question without the
21 ability of the future Landowner to modify or negotiate any of the language in
22 question to which it will be held to comply.

23 **Q: What is the next concern you have with the Easement language?**

24 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
25 Easement to any person, company, country, etc. at their sole discretion at anytime
26 to anyone. This also means that any buyer of the easement could do the same to a
27 third buyer and so on forever. There is no change of control or sale provision in
28 place to protect the Landowner or Nebraska or to provide compensation for such
29 change of control or ownership. It is not conducive to the protection of property

1 rights or economic interests to allow unilateral unrestricted sale of the Easement
2 thereby forcing upon the Landowner and our State a new unknown Easement
3 owner.

4 **Q: What is the next concern you have with the Easement language?**

5 **A:** There are many terms in the Easement that are either confusing or undefined terms
6 that are without context as to whether or not the Landowner would have any say
7 so in determining what these terms mean or if the evaluation is solely in
8 TransCanada's control. Some of these vague undefined terms are as follows:

- 9 i. "pipeline installation activities"
- 10 ii. "availability of labor and materials"
- 11 iii. "commercially reasonable costs and expenses"
- 12 iv. "reasonably anticipated and foreseeable costs and expenses"
- 13 v. "yield loss damages"
- 14 vi. "diminution in the value of the property"
- 15 vii. "substantially same condition"
- 16 viii. "an actual or potential hazard"
- 17 ix. "efficient"
- 18 x. "convenient"
- 19 xi. "endangered"
- 20 xii. "obstructed"
- 21 xiii. "injured"
- 22 xiv. "interfered with"
- 23 xv. "impaired"
- 24 xvi. "suitable crossings"
- 25 xvii. "where rock is encountered"
- 26 xviii. "as nearly as practicable"
- 27 xix. "pre-construction position"
- 28 xx. "pre-construction grade"
- 29 xxi. "various engineering factors"

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, “yield loss damages” should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada’s proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline’s**
18 **impact upon you and your land?**

19 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 **A:** Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 **Q: Has TransCanada at any time offered to compensate you annually, such as**
6 **wind farm projects do, for the existence of their potential tar sands pipeline**
7 **across your property.**

8 A: No, never.

9 **Q: At any time did TransCanada present you with or request that you, as the**
10 **owner of the land in question, sign and execute a document called, "Advanced**
11 **Release of Damage Claims and Indemnity Agreement?"**

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 **Q: Is Attachment No. 4, to your testimony here, a true and accurate copy of the**
14 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

15 A: Yes, it is.

16 **Q: What was your understanding of that document?**

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 **Q: Did you ever sign that document?**

24 A: No, I did not.

25 **Q: Why not?**

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you**
12 **thought their proposed location of their proposed pipeline across your land**
13 **was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you**
16 **thought their proposed location of their proposed pipeline across your land**
17 **was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
20 **Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
23 **an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which**
29 **the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 Q: Can you think of any way in which the public, that is the citizens of the State
3 of Nebraska, can directly use the proposed TransCanada Keystone XL
4 Pipeline, as it dissects the State of Nebraska?

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
13 crude petroleum, or oil and petroleum by-products that you would like to
14 ship in its pipeline?

15 A: No, it has not.

16 Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
17 products that you, at this time or any time in the future, would desire to place
18 for transport within the proposed TransCanada Keystone XL Pipeline?

19 A: No, I do not.

20 Q: Do you know anyone in the state of Nebraska who would be able to ship any
21 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
22 products within the proposed TransCanada Keystone XL Pipeline?

23 A: No, I do not. I've never heard of such a person or company like that.

24 Q: Do you pay property taxes for the land that would be affected and impacted
25 at the proposed TransCanada Keystone XL Pipeline?

26 A: Yes, I do.

27 Q: Why do you pay property taxes on that land?

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q:** Because you follow the law and pay property taxes, do you believe you
2 deserve any special consideration or treatment apart from any other person
3 or company that pays property taxes?

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q:** Do you believe the fact that you pay property taxes entitles you to special
7 treatment of any kind, or special rights of any kind?

8 A: No, of course not.

9 **Q:** Do you believe the fact that you pay property taxes on your land would be
10 enough to qualify you to have the power of eminent domain to take land of
11 your neighbors or other people in your county, or other people across the
12 state of Nebraska?

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q:** Have you at any time ever employed any person other than yourself?

16 A: Well, yes I have.

17 **Q:** Do you believe that the fact that you have, at some point in your life,
18 employed one or more other persons entitle you to any special treatment or
19 consideration above and beyond any other Nebraskan that has also employed
20 one or more persons?

21 A: No, of course not.

22 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
23 have at one point employed another person within this state, entitles you to
24 preferential treatment or consideration of any kind?

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q:** Do you have any concerns TransCanada's fitness as an applicant for a major
28 crude oil pipeline in its preferred location, or ultimate location across the
29 state of Nebraska?

1 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
2 or even bullied around and being made to feel scared that they did not have any
3 options but to sign whatever papers TransCanada told them they had to. I am
4 aware of folks being threatened that their land would be taken if they didn't follow
5 what TransCanada was saying. I am aware of tactics to get people to sign
6 easements that I don't believe have any place in Nebraska or anywhere such as
7 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
8 landowners and convince them they should sign TransCanada's easement
9 agreements. I am aware of older folks and widows or widowers feeling they had
10 no choice but to sign TransCanada's Easement and they didn't know they could
11 fight or stand up for themselves. From a more practical standpoint, I am worried
12 that according to their answer to our Interrogatory No. 211, TransCanada only
13 owns and operates one (1) major oil pipeline. They simply do not have the
14 experience with this type of pipeline and that scares me. There are others but that
15 is what I can recollect at this time and if I remember more or my recollection is
16 refreshed I will share those with the Commissioners at the Hearing in August.

17 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
18 **landowner is reasonable or just?**

19 A: No, I do not.

20 **Q: Do you have any concern about limitations that the construction of this**
21 **proposed pipeline across your affected land would prevent construction of**
22 **future structures upon the portion of your land affected by the proposed**
23 **easement and immediately surrounding areas?**

24 A: Well yes, of course I do. We would not be able to build many, if any, types of
25 structures directly across or touching the easement, and it would be unwise and I
26 would be uncomfortable to build anything near the easement for fear of being
27 blamed in the future should any damage or difficulty result on my property in
28 regards to the pipeline.

29 **Q: Do you think such a restriction would impact you economically?**

1 A: Well yes, of course.

2 **Q: How do you think such a restriction would impact you economically?**

3 A: The future of this land may not be exactly how it's being used as of this moment,
4 and having the restrictions and limiting my ability to develop my land in certain
5 ways presents a huge negative economic impact on myself, my family, and any
6 potential future owner of the property. You have no idea how I or the future owner
7 may want to use this land in the future or the other land across Nebraska
8 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
9 ago it would have been hard to imagine all the advances that we have now or how
10 things change. Because the Easement is forever and TransCanada gets the rights in
11 my land forever we have to think with a very long term view. By placing their
12 pipeline on under across and through my land that prevents future development
13 which greatly negatively impacts future taxes and tax revenue that could have
14 been generated by the County and State but now will not. When you look at the
15 short blip of economic activity that the two years of temporary construction efforts
16 may bring, that is far outweighed by the perpetual and forever loss of opportunity
17 and restrictions TransCanada is forcing upon us and Nebraska.

18 **Q: Do you have any concerns about the environmental impact of the proposed**
19 **pipeline?**

20 A: Yes, I do.

21 **Q: What are some of those concerns?**

22 A: As an affected land owner and Nebraskan, I am concerned that any construction,
23 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
24 a detrimental impact upon the environment of my land specifically, as well as the
25 lands near my land and surrounding the proposed pipeline route.

26 **Q: Do you have any other environmental concerns?**

27 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
28 construction and/or maintenance and operation. I am concerned about spills and

1 leaks that TransCanada has had in the past and will have in the future. This could
2 be catastrophic to my operations or others and to my county and the State.

3 **Q: Do you have any thoughts regarding if there would be an impact upon the**
4 **natural resources on or near your property due to the proposed pipeline?**

5 A: Yes, I believe that any construction, operation, and/or maintenance of the
6 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
7 resources of my land, and the lands near and surrounding the proposed pipeline
8 route.

9 **Q: Do you have any worries about potential impacts from the proposed pipeline**
10 **to the soil of your land, or land near you?**

11 A: Yes, I believe that any construction, operation, and/or maintenance of the
12 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
13 land, as well as land along and surrounding the proposed pipeline route. This
14 includes, but is not limited to, the reasons that we discussed above of disturbing
15 the soil composition and makeup as it has naturally existed for thousands and
16 millions of years during the construction process, and any future maintenance or
17 removal process. I'm gravely concerned about the fertility and the loss of
18 economic ability of my property to grow the crops, or grow the grasses, or grow
19 whatever it is at that time they exist on my property or that I may want to grow in
20 the future, or that a future owner may want to grow. The land will never be the
21 same from as it exists now undisturbed to after it is trenched up for the proposed
22 pipeline.

23 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
24 **upon the groundwater over your land, or surrounding lands?**

25 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
26 the proposed Keystone XL Pipeline would have a detrimental impact upon the
27 groundwater of not only under my land, but also near and surrounding the pipeline
28 route, and in fact, potentially the entire State of Nebraska. Water is life plain and

1 simple and it is simply too valuable to our State and the country to put at
2 unreasonable risk.

3 **Q: Do you have any concern about the potential impact of the proposed pipeline**
4 **upon the surface water on, or near or around your land?**

5 A: Yes, I have significant concerns that any construction, operation, and/or
6 maintenance of the proposed Keystone XL Pipeline would have detrimental
7 impact upon the surface water of not only within my property boundary, but along
8 and near and surrounding the pipeline route, and in fact, across the state of
9 Nebraska.

10 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
11 **upon the wildlife and plants, other than your growing crops on or near your**
12 **land?**

13 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
14 the proposed Keystone XL Pipeline would have a detrimental impact upon the
15 wildlife and the plants, not only that are located on or can be found upon my land,
16 but also near and along the proposed pipeline route.

17 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
18 **fair market value of your land?**

19 A: Yes, I do. I am significantly concerned about how the existence of the proposed
20 pipeline underneath and across and through my property will negatively affect the
21 fair market value at any point in the future, especially at that point in which I
22 would need to sell the property, or someone in my family would need to sell the
23 property. I do not believe, and certainly would not be willing to pay, the same
24 price for land that had the pipeline located on it, versus land that did not. I hope
25 there is never a point where I'm in a position where I have to sell and have to
26 realize as much value as I can out of my land. But because it is my single largest
27 asset, I'm gravely concerned that the existence of the proposed Keystone XL
28 Pipeline upon my land will affect a buyer's willingness to pay as much as they
29 would've paid and as much as I could've received, if the pipeline were not upon

1 my property. There are just too many risks, unknowns, impacts and uncertainties,
2 not to mention all of the rights you give up by the nature of having the pipeline
3 due to having the easement that we have previously discussed, for any reasonable
4 person to think that the existence of the pipeline would not negatively affect my
5 property's value.

6 **Q: Have you ever seen the document that's marked as Attachment No. 5, to your**
7 **testimony?**

8 A: Yes, I have.

9 **Q: Where have you seen that before?**

10 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
11 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
12 believe the portion of the alternative route in Nebraska essentially twins or
13 parallels Keystone I.

14 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
15 **Application, and as found on Attachment No. 6, here to your testimony, is in**
16 **the public interest of Nebraska?**

17 A: No, I do not.

18 **Q: Do you believe that the Keystone mainline alternative route as shown on**
19 **Attachment No. 6 included with your testimony here is a major oil pipeline**
20 **route that is in the public interest of Nebraska?**

21 A: No, I do not.

22 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
23 **of the proposed pipeline within Nebraska as found in Attachment No. 5 to**
24 **your testimony, is in the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe there is any potential route for the proposed Keystone XL**
27 **Pipeline across, within, under, or through the State of Nebraska that is in the**
28 **public interest of the citizens of Nebraska?**

29 A: No, I do not.

1 **Q: Why do you hold that belief?**

2 **A:** Because there simply is no public interest based on all of the factors that I am
3 aware and that I have read and that I have studied that this Commission is to
4 consider that would establish that a for-profit foreign-owned pipeline that simply
5 crosses Nebraska because we are geographically in the way between where tar
6 sands are in Canada to where it wants to ship it to in Texas could ever be in the
7 public interest of Nebraskans. We derive no benefit from this project. It is not for
8 public use. Nebraska is simply in the way and when all considerations are taken in
9 there is no net benefit of any kind for Nebraska should this project be placed in our
10 state. Even if there was some arguable “benefit” it is not enough to outweigh all
11 the negative impacts and concerns.

12 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
13 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
14 **of Nebraska because it may bring temporary jobs during the construction**
15 **phase to Nebraska?**

16 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
17 temporary or on a permanent basis, don’t come with a project that has all the
18 potential and foreseeable negative impacts, many of which we have discussed here
19 and other witnesses throughout the course of this hearing have and will discuss. If
20 I decide to hire and employ someone to help me out in my farming or ranching
21 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
22 to my land or my town or my county or my state. And I’ve hired someone who is
23 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
24 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
25 jobs are not created equal. Additionally, I understand from what I’m familiar with
26 from TransCanada’s own statements that the jobs numbers they originally touted
27 were determined to be a minute fraction of the permanent jobs that had been
28 projected. According to their answer to our Interrogatory No. 191, TransCanada
29 has created only thirty-four (34) jobs within Nebraska working specifically on

1 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
2 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
3 Further, according to their answer to Interrogatory No. 199, TransCanada would
4 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
5 constructed on its Preferred Route or its Mainline Alternative Route.

6 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
7 **because it would cross your land?**

8 A: No, absolutely not. I am opposed to this project because it is not in the public
9 interest, neither within my community nor within our state.

10 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
11 **was to cross someone else's land?**

12 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
13 the fear and anxiety and potential foreseeable risks and negative impacts that this
14 type of a project carrying this type of product brings foisted upon anyone in this
15 state or any other state.

16 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
17 **Pipeline to cross the state of Nebraska?**

18 A: I don't believe there is an intelligent route because as I have stated I don't believe
19 this project anywhere within Nebraska is within the public interest. However, if
20 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
21 had to go somewhere in the state of Nebraska, the only intelligent route I believe
22 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
23 preferred route and the mainline alternative routes are economic liabilities our
24 state cannot risk.

25 **Q: What do you rely upon to make that statement?**

26 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
27 already exists in that area is reason enough as it is not in our best interest or the
28 public interests to have more major oil pipelines crisscrossing our state. Second,
29 they have all the infrastructure already there in terms of relationships with the

1 counties and local officials and first responders along that route. Third, they have
2 already obtained easements from all the landowners along that route and have
3 relationships with them. Fourth, that route avoids our most sensitive soils, the
4 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
5 Aquifer. Sixth, they have already studied that route and previously offered it as an
6 alternative. Seventh, it just makes the most sense that as a state we would have
7 some intelligent policy of energy corridors and co-locating this type of
8 infrastructure near each other.

9 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
10 **like the Public Service Commissioners to consider in their review of**
11 **TransCanada's Application?**

12 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
13 document below but other things may come to me or my memory may be
14 refreshed and I will add and address those things at the time of the Hearing in
15 August and address any additional items at that time as is necessary. Additionally,
16 I have not had an adequate amount of time to receive and review all of
17 TransCanada's answers to our discovery and the discovery of others so it was
18 impossible to competently and completely react to that in my testimony here and I
19 reserve the right to also address anything related to discovery that has not yet
20 concluded as of the date I signed this document below. Lastly, certain documents
21 requested have not yet been produced by TransCanada and therefore I may have
22 additional thoughts on those I will also share at the hearing as needed.

23 **Q: What is it that you are requesting the Public Service Commissioners do in**
24 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
25 **across Nebraska?**

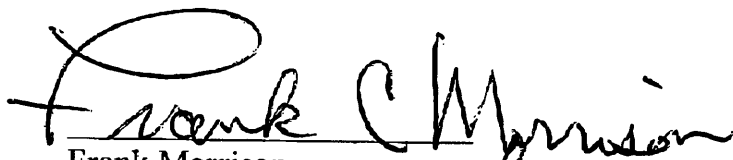
26 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
27 a temporary job spike that this project may bring to a few counties and beyond the
28 relatively small amount of taxes this proposed foreign pipeline would possibly
29 generate. And, instead think about the perpetual and forever impacts of this

1 pipeline as it would have on the landowners specifically, first and foremost, but
2 also thereby upon the entire state of Nebraska, and to determine that neither the
3 preferred route nor the Keystone mainline alternative route are in the public
4 interest of the citizens of the state of Nebraska. And if the Commissioners were
5 inclined to modify TransCanada's proposed routes and were to be inclined to grant
6 an application for a route in Nebraska, that the only potential route that would
7 make any intelligent sense whatsoever would be twinning or near paralleling of
8 the proposed KXL with the existing Keystone I pipeline. It simply does not make
9 sense to add yet another major oil pipeline crisscrossing our state creating new
10 pumping stations, creating new impacts on additional counties and communities
11 and going through all of the court processes with myself and other landowners like
12 me when this applicant already has relationships with the landowners, the towns
13 and the communities along Keystone I, and that Keystone I is firmly outside of the
14 sand hills and a significantly further portion away from the heart of the Ogallala
15 Aquifer than the preferred route or the Keystone mainline alternative route.

16 **Q: Are all of your statements in your testimony provided above true and**
17 **accurate as of the date you signed this document to the best of your**
18 **knowledge?**

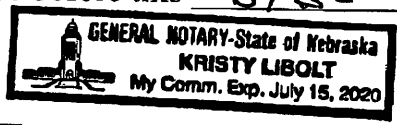
19 A: Yes, they are.

20 **Q: Thank you, I have no further questions at this time and reserve the right to**
21 **ask you additional questions at the August 2017 Hearing.**


Frank Morrison

Subscribed and Sworn to me before this 31st day of May, 2017.


Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act*

Direct Testimony of
Constance Ramold Myers in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Dixon County)

1 **Q: Please state your name.**

2 A: My name is Constance Ramold Myers

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you have children how many do you have?**

16 A: 2. I also have 6 step children.



1 **Q: If you have grandchildren how many do you have?**

2 A: 2. I also have 19 step grandchildren.

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
4 **and or your family?**

5 A: Yes.

6 **Q: For the land that would be affected and impacted by the proposed KXL tar**
7 **sands pipeline give the Commissioners a sense how long the land has been in**
8 **your family and a little history of the land.**

9 A: My great grandparents homesteaded in Holt County, Nebraska in 1881. There are
10 now 6 generations of our family. The land that TransCanada is wanting is the Holt
11 County, W ½ 12-30-13. My husband and I purchased this land in August, 1977.
12 We had rented it for several years prior to that. My husband supported our family
13 by working the land.

14 **Q: Do you earn any income from this land?**

15 A: Yes.

16 **Q: Have you depended on the income from your land to support your livelihood**
17 **or the livelihood of your family?**

18 A: Yes.

19 **Q: Have you ever in the past or have you thought about in the future leasing all**
20 **or a portion of your land in question here?**

21 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
22 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
23 all the restrictions and risks and potential negative impacts to farming or ranching
24 operations as opposed to land that did not have those same risks. If I was looking
25 to lease or rent ground I would pay more for comparable non-pipeline land than I
26 would for comparable pipeline land and I think most folks would think the same
27 way. This is another negative economic impact that affects the landowner and the
28 county and the state and will forever and ever should TransCanada's preferred or
29 mainline alternative routes be approved. If they were to twin or closely parallel to

1 Keystone I the vast majority of landowners would be those that already have a
2 pipeline so there would be considerable less new incremental negative impacts.

3 **Q: Do you have similar concerns about selling the land?**

4 A: Well I hope not to have to sell the land in my lifetime but times change and you
5 never know what is around the corner and yes I am concerned that if another piece
6 of ground similar to mine were for sale and it did not have the pipeline and mine
7 did that I would have a lower selling price. I think this would be true for pipeline
8 ground on both the preferred and mainline alternative routes.

9 **Q: What is your intent with your land after you die?**

10 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
11 to come but I have thought about getting out if this pipeline were to come through.

12 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
13 Pipeline would cross the land described above and owned by you?**

14 A: Yes.

15 **Q: Were you or an entity for which you are a member, shareholder, or director
16 previously sued by TransCanada Keystone Pipeline, LP?**

17 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
18 petition for condemnation against our land so it could place its proposed pipeline
19 within an easement that it wanted to take from us on our land.

20 **Q: Did you defend yourself and your land in that condemnation action?**

21 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
22 and expenses in our resistance of TransCanada's lawsuit against us.

23 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
24 incurred?**

25 A: No, they have not.

26 **Q: In its lawsuit against you, did TransCanada identify the amount of your
27 property that it wanted to take for its proposed pipeline?**

1 A: The lawsuit against us stated they would take the amount of property that is
2 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
3 and equipment reasonably necessary to operate the pipeline.

4 Q: Did TransCanada define what they meant by “property that is reasonably
5 necessary”?

6 A: No, they did not.

7 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
8 property portion of your land?

9 A: Yes, they did.

10 Q: Did TransCanada describe what rights it proposed to take related to the
11 eminent domain property on your land?

12 A: Yes, they did.

13 Q: What rights that they proposed to take did they describe?

14 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
15 operate, and maintain the pipeline and the plant and equipment reasonably
16 necessary to operate the pipeline, specifically including surveying, laying,
17 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
18 reconstructing, removing and abandoning one pipeline, together with all fittings,
19 cathodic protection equipment, pipeline markers, and all their equipment and
20 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
21 petroleum products, and all by-products thereof.”

22 Q: Prior to filing an eminent domain lawsuit to take your land that
23 TransCanada identified, do you believe they attempted to negotiate in good
24 faith with you?

25 A: No, I do not.

26 Q: Did TransCanada at any time approach you with or deliver to you their
27 proposed easement and right-of-way agreement?

28 A: Yes, they did.

1 **Q: At the time you reviewed TransCanada's easement and right-of-way**
2 **agreement, did you understand that they would be purchasing a fee title**
3 **interest in your property or that they were taking something else?**

4 **A: I understood that they proposed to have the power to take both a temporary**
5 **construction easement that could last for a certain period of time and then also a**
6 **permanent easement which they described to be 50 feet across or in width, and**
7 **that would run the entire portion of my property from where a proposed pipeline**
8 **would enter my property until where it would exit the property.**

9 **Q: Is the document included with your testimony here as Attachment No. 3, a**
10 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
11 **Way agreement that they included with their condemnation lawsuit against**
12 **you?**

13 **A: Yes, it is.**

14 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
15 **and Right-of-Way agreement?**

16 **A: Yes, I have.**

17 **Q: What is your understanding of the significance of the Easement and Right-of-**
18 **Way agreement as proposed by TransCanada?**

19 **A: My understanding is that this is the document that will govern all of the rights and**
20 **obligations and duties as well as the limitations of what I can and cannot do and**
21 **how I and any future landowner and any person I invite to come onto my property**
22 **must behave as well as what TransCanada is and is not responsible for and how**
23 **they can use my land.**

24 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
25 **agreement do you have any concerns about any portions of it or any of the**
26 **language either included in the document or missing from the proposed**
27 **document?**

28 **A: Yes, I have a number of significant concerns and worries about the document and**
29 **how the language included and the language not included potentially negatively**

1 impacts my land and thereby potentially negatively impacts my community and
2 my state.

3 **Q: I would like you to walk the Commissioners through each and every one of**
4 **your concerns about TransCanada's proposed Easement and Right-of-Way**
5 **agreement so they can develop an understanding of how that language and**
6 **the terms of that contract, in your opinion, potentially negatively impacts you**
7 **and your land. So, if you can start at the beginning of that document and**
8 **let's work our way through it, okay?**

9 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
10 Easement and Right-of-Way agreement and how it negatively could affect my
11 property rights and my economic interests.

12 **Q. Okay, let's start with your first concern please.**

13 **A:** The very first sentence talks about consideration or how much money they will
14 pay to compensate me for all of the known and unknown affects and all of the
15 rights I am giving up and for all the things they get to do to my land and for what
16 they will prevent me from doing on my land and they only will pay me one time at
17 the signing of the easement agreement. That is a huge problem.

18 **Q: Explain to the Commissioners why that is a problem.**

19 **A:** It is not fair to the landowner, the county, or the State. It is not fair to the
20 landowner because they want to have my land forever for use as they see fit so
21 they can make a daily profit from their customers. If I was to lease ground from
22 my neighbor I would typically pay twice a year every year as long as they granted
23 me the rights to use their land. That only makes sense – that is fair. If I was going
24 to rent a house in town I would typically pay monthly, every month until I gave up
25 my right to use that house. By TransCanada getting out on the cheap and paying
26 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
27 revenue collection on the money I would be paid and then pay taxes on and
28 contribute to this state and this country. It is money I would be putting back into
29 my local community both spending and stimulating the local economy and

1 generating more economic activity right here. Instead TransCanada's shareholders
2 keep all that money and it never finds its way to Nebraska.

3 **Q: What is your next concern?**

4 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
5 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
6 limited partnership..." and I have no idea who that really is. I have no idea who is
7 forcing this pipeline on us or who the owners of the entities are, or what are the
8 assets backing this limited partnership, or who the general partner is, or who all
9 the limited partners are, and who makes up the ownership of the these partners or
10 the structure or any of the basic things you would want to know and understand if
11 you would want to do business with such an outfit. According to TransCanada's
12 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
13 liability company called TransCanada Keystone Pipeline GP, LLC is the general
14 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
15 basically nothing. That is really scary since the general partner has the liability but
16 virtually none of the ownership and who knows if it has any other assets.

17 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
18 **percent clear on exactly who could become the owner of over 275 miles of**
19 **Nebraska land?**

20 A: No.

21 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
22 **percent clear on exactly who will be operating and responsible for**
23 **approximately 275 miles of tar sands pipeline underneath and through**
24 **Nebraska land?**

25 A: No.

26 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
27 **and the State of Nebraska of TransCanada's easement terms.**

28 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
29 called "Grantee")..." and this concerns me because it would allow their easement

1 to be transferred or sold to someone or some company or country or who knows
2 what that I don't know and who we may not want to do business with. This
3 pipeline would be a huge asset for TransCanada and if they can sell to the highest
4 bidder that could have terrible impacts upon all of Nebraska depending upon who
5 may buy it and I don't know of any safeguards in place for us or the State to veto
6 or have any say so in who may own, operate, or be responsible for this pipeline in
7 the future.

8 **Q: Do you think that type of uncertainty and lack of control over a major piece**
9 **of infrastructure crossing our State is in the public interest?**

10 **A:** No, certainly not, in fact, just the opposite.

11 **Q: What's next?**

12 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
13 really concerns me. Why does the easement and right-of-way have to be perpetual
14 and permanent? That is the question myself and my family want an answer to.
15 Perpetual to me is like forever and that doesn't make sense.

16 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

17 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
18 data proving there is a perpetual supply of tar sands. I am not aware in
19 TransCanada's application where it proves there is a perpetual necessity for this
20 pipeline. My understanding of energy infrastructure like wind towers is they have
21 a decommission plan and actually take the towers down when they become
22 obsolete or no longer needed. Nothing manmade lasts forever. My land however
23 will, and I want my family or future Nebraska families to have that land as
24 undisturbed as possible and it is not in my interest or the public interest of
25 Nebraska to be forced to give up perpetual and permanent rights in the land for
26 this specific kind of pipeline project.

27 **Q: Okay, what is your next concern?**

28 **A:** The easement language includes all these things TransCanada can do and it says
29 "...abandoning in place..." so they can just leave this pipeline under my ground

1 until the end of time just sitting there while they are not using it, but I am still
2 prevented from doing on my land and using my land what I would like. If I owned
3 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
4 there. It doesn't make sense and it scares me and it is not in my interest or the
5 public interest of Nebraska to allow this.

6 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
7 **right?**

8 **A: Yes.**

9 **Q: So now on the second page of the Easement what are your concerns?**

10 **A:** Here the Easement identifies a 24-month deadline to complete construction of the
11 pipeline but has caveats that are undefined and ambiguous. The 24-month period
12 starts to run from the moment "actual pipeline installation activities" begin on
13 Landowners property. It appears that TransCanada would define this phrase as
14 needed. It would be wise to explain what types of TransCanada action constitutes
15 "installation activity" For instance, would the placement and storage of an
16 excavator or other equipment on or near the Easement property be an activity or
17 would earth have to be moved before the activity requirement is triggered. This
18 vague phrase is likely to lead to future disputes and litigation that is not in the best
19 interest of the welfare of Nebraska and would not protect property interests. The
20 24-months can also be extended in the case of "force majeure." My understanding
21 is that force majeure is often used to insulate a party to a contract when events
22 occur that are completely out of their control. In TransCanada's easement this is
23 expanded to include "without limitation...availability of labor and materials."
24 Extending this language to labor and materials is problematic because these are
25 two variables that TransCanada does have some or significant control over and to
26 allow extension of the 24-month period over events not truly out of the control of
27 TransCanada and without further provision for compensation for the Landowner is
28 not conducive to protection of property rights.

29 **Q: Okay, what is your next concern?**

1 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
2 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
3 reasonable costs and expenses” will pay for damages caused but then limits
4 TransCanada’s liability to certain circumstances. There is no definition of
5 “commercially reasonable” and no stated right that the Landowner would get to
6 determine the amounts of cost or expense that is “commercially reasonable.”
7 TransCanada excepts out from their liability any damages that are caused by
8 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
9 Landowner. It is understandable that if the Landowner were to willfully and
10 intentionally cause damages to the pipeline that Landowner should be liable.
11 However, anything short of willful misconduct should be the liability of
12 TransCanada who is subjecting the pipeline on the Landowner and who is making
13 a daily profit from that pipeline. When evaluating the impact on property rights of
14 this provision, you must consider the potentially extremely expensive fight a
15 Landowner would have over this question of whether or not damage was an act of
16 negligence. Putting this kind of potential liability upon the Landowner is
17 incredibly problematic and is detrimental to the protection of property rights. I
18 don’t think this unilateral power which I can’t do anything about as the landowner
19 is in the best economic interest of the land in question or the State of Nebraska for
20 landowners to be treated that way.

21 **Q:** **Is there any specific event or example you are aware of that makes this**
22 **concern more real for you?**

23 **A:** Yes, one need not look further than a November 3, 2015 lawsuit filed against
24 Nemaha County, Nebraska landowner farmers who accidentally struck two
25 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
26 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
27 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
28 copy of the Federal Court Complaint is here as **Attachment No. 4.**

29 **Q:** **What is your next concern with the Easement language?**

1 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
2 they choose unless 1) any Landowner use interferes in any way with
3 TransCanada's exercise of any of its rights within the Easement, or 2)
4 TransCanada decides to take any action on the property it deems necessary to
5 prevent injury, endangerment or interference with anything TransCanada deems
6 necessary to do on the property. Landowner is also forbidden from excavating
7 without prior authorization by TransCanada. So my understanding is that
8 TransCanada will unilaterally determine what Landowner can and can't do based
9 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
10 could also completely deny my request to excavate. Further, TransCanada retains
11 all "privileges necessary or convenient for the full use of the rights" granted to
12 them in the Easement. Again, TransCanada unilaterally can decide to the
13 detriment of the property rights of Landowner what TransCanada believes is
14 necessary or convenient for it. And there is no option for any additional
15 compensation to landowner for any right exercised by TransCanada that leads to
16 the removal of trees or plants or vegetation or buildings or structures or facilities
17 owned by Landowner of any kind. Such undefined and unilateral restrictions and
18 rights without having to compensate Landowner for such further destruction or
19 losses are not conducive to the protection of property rights or economic interest.

20 **Q: What is the next concern you have?**

21 A: The Easement also allows some rights for Landowner but restricts them at the
22 same time and again at the sole and unilateral decision making of TransCanada.
23 TransCanada will determine if the actions of Landowner might in anyway
24 endanger or obstruct or interfere with TransCanada's full use of the Easement or
25 any appurtenances thereon to the pipeline itself or to their access to the Easement
26 or within the Easement and TransCanada retains the right at any time, whether
27 during growing season or not, to travel "within and along Easement Area on foot
28 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
29 retain the rights to prevent any landowner activity that it thinks may "unreasonably

1 impair[ed] or interfe[ed] with” TransCanada’s use of the Easement Area. Such
2 undefined and unilateral restrictions are not conducive to the protection of
3 property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
6 Landowner’s land any debris of any kind without any input or power of
7 Landowner to demand an alternative method or location of debris disposal. Such
8 unilateral powers would negatively affect Landowners property are not conducive
9 to the protection of property rights or economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
12 “where rock is encountered” mean and why does TransCanada solely get to
13 determine whether or not this phrase is triggered. This phrase could be used to
14 justify installing the pipeline 24 inches beneath the surface. The ability to use this
15 provision to minimal locate the pipeline at a depth of 24 inches could negatively
16 affect Landowners property are not conducive to the protection of property rights.
17 A shallow pipeline is much more likely to become a danger and liability in the
18 future given farming operations and buried irrigation lines and other factors
19 common to the current typical agricultural uses of the land in question impacted
20 by TransCanada’s preferred pipeline route.

21 **Q: What is the next concern you have with the Easement language?**

22 A: There are more vague concepts solely at the determination of TransCanada such as
23 “as nearly as practicable” and “pre-construction position” and “extent reasonably
24 possible.” There is nothing here that defines this or provides a mechanism for
25 documenting or memorializing “pre-construction position” so as to minimize
26 costly legal battles or wasted Landowner time attempting to recreate the soil
27 condition on their fields or pasture. Such unilateral powers would negatively affect
28 Landowners property are not conducive to the protection of property rights or
29 economic interest.

- 1 **Q: What is the next concern you have with the Easement language?**
- 2 **A:** TransCanada maintains the unilateral right to abandon the pipeline and all
3 appurtenances thereto in place on, under, across, or through Nebraska land at any
4 time it chooses. There is no provision for Landowner compensation for such
5 abandonment nor any right for the Landowner to demand removal. Such unilateral
6 powers would negatively affect Landowners property are not conducive to the
7 protection of property rights or economic interest.
- 8 **Q: What is the next concern you have with the Easement language?**
- 9 **A:** TransCanada has the power to unilaterally move or modify the location of any
10 Easement area whether permanent or temporary at their sole discretion.
11 Regardless, if Landowner has taken prior steps relative to their property in
12 preparation or planning of TransCanada's taking of the initial easement area(s),
13 the language here does not require TransCanada to compensate the Landowner if
14 they decide to move the easement anywhere on Landowners property. Such
15 unilateral powers would negatively affect Landowners property are not conducive
16 to the protection of property rights or economic interests.
- 17 **Q: What is the next concern you have with the Easement language?**
- 18 **A:** The Easement requires that all of the burdens and restrictions upon Landowner to
19 transfer and be applicable to any future owner of the Land in question without the
20 ability of the future Landowner to modify or negotiate any of the language in
21 question to which it will be held to comply.
- 22 **Q: What is the next concern you have with the Easement language?**
- 23 **A:** The Easement allows TransCanada to assign, transfer, or sell any part of the
24 Easement to any person, company, country, etc. at their sole discretion at anytime
25 to anyone. This also means that any buyer of the easement could do the same to a
26 third buyer and so on forever. There is no change of control or sale provision in
27 place to protect the Landowner or Nebraska or to provide compensation for such
28 change of control or ownership. It is not conducive to the protection of property
29 rights or economic interests to allow unilateral unrestricted sale of the Easement

1 thereby forcing upon the Landowner and our State a new unknown Easement
2 owner.

3 **Q: What is the next concern you have with the Easement language?**

4 **A:** There are many terms in the Easement that are either confusing or undefined terms
5 that are without context as to whether or not the Landowner would have any say
6 so in determining what these terms mean or if the evaluation is solely in
7 TransCanada's control. Some of these vague undefined terms are as follows:

- 8 i. "pipeline installation activities"
- 9 ii. "availability of labor and materials"
- 10 iii. "commercially reasonable costs and expenses"
- 11 iv. "reasonably anticipated and foreseeable costs and expenses"
- 12 v. "yield loss damages"
- 13 vi. "diminution in the value of the property"
- 14 vii. "substantially same condition"
- 15 viii. "an actual or potential hazard"
- 16 ix. "efficient"
- 17 x. "convenient"
- 18 xi. "endangered"
- 19 xii. "obstructed"
- 20 xiii. "injured"
- 21 xiv. "interfered with"
- 22 xv. "impaired"
- 23 xvi. "suitable crossings"
- 24 xvii. "where rock is encountered"
- 25 xviii. "as nearly as practicable"
- 26 xix. "pre-construction position"
- 27 xx. "pre-construction grade"
- 28 xxi. "various engineering factors"

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, “yield loss damages” should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada’s proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline’s**
18 **impact upon you and your land?**

19 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 **A:** Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 Q: Has TransCanada at any time offered to compensate you annually, such as
6 wind farm projects do, for the existence of their potential tar sands pipeline
7 across your property.

8 A: No, never.

9 Q: At any time did TransCanada present you with or request that you, as the
10 owner of the land in question, sign and execute a document called, "Advanced
11 Release of Damage Claims and Indemnity Agreement?"

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the
14 "Advanced Release of Damage Claims and Indemnity Agreement?"

15 A: Yes, it is.

16 Q: What was your understanding of that document?

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 Q: Did you ever sign that document?

24 A: No, I did not.

25 Q: Why not?

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you**
12 **thought their proposed location of their proposed pipeline across your land**
13 **was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you**
16 **thought their proposed location of their proposed pipeline across your land**
17 **was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
20 **Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
23 **an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which**
29 **the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 Q: Can you think of any way in which the public, that is the citizens of the State
3 of Nebraska, can directly use the proposed TransCanada Keystone XL
4 Pipeline, as it dissects the State of Nebraska?

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
13 crude petroleum, or oil and petroleum by-products that you would like to
14 ship in its pipeline?

15 A: No, it has not.

16 Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
17 products that you, at this time or any time in the future, would desire to place
18 for transport within the proposed TransCanada Keystone XL Pipeline?

19 A: No, I do not.

20 Q: Do you know anyone in the state of Nebraska who would be able to ship any
21 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
22 products within the proposed TransCanada Keystone XL Pipeline?

23 A: No, I do not. I've never heard of such a person or company like that.

24 Q: Do you pay property taxes for the land that would be affected and impacted
25 at the proposed TransCanada Keystone XL Pipeline?

26 A: Yes, I do.

27 Q: Why do you pay property taxes on that land?

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q:** Because you follow the law and pay property taxes, do you believe you
2 deserve any special consideration or treatment apart from any other person
3 or company that pays property taxes?

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q:** Do you believe the fact that you pay property taxes entitles you to special
7 treatment of any kind, or special rights of any kind?

8 A: No, of course not.

9 **Q:** Do you believe the fact that you pay property taxes on your land would be
10 enough to qualify you to have the power of eminent domain to take land of
11 your neighbors or other people in your county, or other people across the
12 state of Nebraska?

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q:** Have you at any time ever employed any person other than yourself?

16 A: Well, yes I have.

17 **Q:** Do you believe that the fact that you have, at some point in your life,
18 employed one or more other persons entitle you to any special treatment or
19 consideration above and beyond any other Nebraskan that has also employed
20 one or more persons?

21 A: No, of course not.

22 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
23 have at one point employed another person within this state, entitles you to
24 preferential treatment or consideration of any kind?

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q:** At the beginning of your statement, you briefly described your property that
28 would be impacted by the potential Keystone XL Pipeline. I would like you to
29 give the Commissioners a sense of specifically how you believe the proposed

1 **Keystone XL Pipeline and its preferred route, which proposes to go across**
2 **your land, how it would in your opinion based on your knowledge,**
3 **experience, and background of your land, affect it. So please share with the**
4 **Commissioners the characteristics of your land that you believe is important**
5 **for them to understand, while they evaluate TransCanada’s application for a**
6 **route for its proposed pipeline to cross Nebraska and across your land,**
7 **specifically.**

8 A: This pasture land has never been plowed up, it is the native grass that has always
9 been there. To plow up this soil and try to plant new grass seed in this dry ground,
10 it would never grow. I have seen a movie photo that was photographed from an
11 airplane and it looked like a river continuing to run quarter after quarter of land.
12 Tearing up the ground for the pipeline will never be able to return to what it has
13 been for the last 100 years or more.

14 **Q: Do you have any concerns TransCanada’s fitness as an applicant for a major**
15 **crude oil pipeline in its preferred location, or ultimate location across the**
16 **state of Nebraska?**

17 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
18 or even bullied around and being made to feel scared that they did not have any
19 options but to sign whatever papers TransCanada told them they had to. I am
20 aware of folks being threatened that their land would be taken if they didn’t follow
21 what TransCanada was saying. I am aware of tactics to get people to sign
22 easements that I don’t believe have any place in Nebraska or anywhere such as
23 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
24 landowners and convince them they should sign TransCanada’s easement
25 agreements. I am aware of older folks and widows or widowers feeling they had
26 no choice but to sign TransCanada’s Easement and they didn’t know they could
27 fight or stand up for themselves. From a more practical standpoint, I am worried
28 that according to their answer to our Interrogatory No. 211, TransCanada only
29 owns and operates one (1) major oil pipeline. They simply do not have the

1 experience with this type of pipeline and that scares me. There are others but that
2 is what I can recollect at this time and if I remember more or my recollection is
3 refreshed I will share those with the Commissioners at the Hearing in August.

4 **Q: Do you believe TransCanada's proposed method of compensation to you as a
5 landowner is reasonable or just?**

6 **A: No, I do not.**

7 **Q: Do you have any concern about limitations that the construction of this
8 proposed pipeline across your affected land would prevent construction of
9 future structures upon the portion of your land affected by the proposed
10 easement and immediately surrounding areas?**

11 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
12 structures directly across or touching the easement, and it would be unwise and I
13 would be uncomfortable to build anything near the easement for fear of being
14 blamed in the future should any damage or difficulty result on my property in
15 regards to the pipeline.

16 **Q: Do you think such a restriction would impact you economically?**

17 **A:** Well yes, of course.

18 **Q: How do you think such a restriction would impact you economically?**

19 **A:** The future of this land may not be exactly how it's being used as of this moment,
20 and having the restrictions and limiting my ability to develop my land in certain
21 ways presents a huge negative economic impact on myself, my family, and any
22 potential future owner of the property. You have no idea how I or the future owner
23 may want to use this land in the future or the other land across Nebraska
24 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
25 ago it would have been hard to imagine all the advances that we have now or how
26 things change. **Because the Easement is forever and TransCanada gets the rights in
27 my land forever we have to think with a very long term view. By placing their
28 pipeline on under across and through my land that prevents future development
29 which greatly negatively impacts future taxes and tax revenue that could have**

1 been generated by the County and State but now will not. When you look at the
2 short blip of economic activity that the two years of temporary construction efforts
3 may bring, that is far outweighed by the perpetual and forever loss of opportunity
4 and restrictions TransCanada is forcing upon us and Nebraska.

5 **Q: Do you have any concerns about the environmental impact of the proposed**
6 **pipeline?**

7 A: Yes, I do.

8 **Q: What are some of those concerns?**

9 A: As an affected land owner and Nebraskan, I am concerned that any construction,
10 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
11 a detrimental impact upon the environment of my land specifically, as well as the
12 lands near my land and surrounding the proposed pipeline route.

13 **Q: Do you have any other environmental concerns?**

14 **A: Yes, of course I am concerned about potential breaches of the pipeline, failures in**
15 **construction and/or maintenance and operation. I am concerned about spills and**
16 **leaks that TransCanada has had in the past and will have in the future. This could**
17 **be catastrophic to my operations or others and to my county and the State.**

18 **Q: Do you have any thoughts regarding if there would be an impact upon the**
19 **natural resources on or near your property due to the proposed pipeline?**

20 A: Yes, I believe that any construction, operation, and/or maintenance of the
21 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
22 resources of my land, and the lands near and surrounding the proposed pipeline
23 route.

24 **Q: Do you have any worries about potential impacts from the proposed pipeline**
25 **to the soil of your land, or land near you?**

26 A: Yes, I believe that any construction, operation, and/or maintenance of the
27 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
28 land, as well as land along and surrounding the proposed pipeline route. This
29 includes, but is not limited to, the reasons that we discussed above of disturbing

1 the soil composition and makeup as it has naturally existed for thousands and
2 millions of years during the construction process, and any future maintenance or
3 removal process. I'm gravely concerned about the fertility and the loss of
4 economic ability of my property to grow the crops, or grow the grasses, or grow
5 whatever it is at that time they exist on my property or that I may want to grow in
6 the future, or that a future owner may want to grow. The land will never be the
7 same from as it exists now undisturbed to after it is trenched up for the proposed
8 pipeline.

9 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
10 **upon the groundwater over your land, or surrounding lands?**

11 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
12 the proposed Keystone XL Pipeline would have a detrimental impact upon the
13 groundwater of not only under my land, but also near and surrounding the pipeline
14 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
15 simple and it is simply too valuable to our State and the country to put at
16 unreasonable risk.

17 **Q: Do you have any concern about the potential impact of the proposed pipeline**
18 **upon the surface water on, or near or around your land?**

19 A: Yes, I have significant concerns that any construction, operation, and/or
20 maintenance of the proposed Keystone XL Pipeline would have detrimental
21 impact upon the surface water of not only within my property boundary, but along
22 and near and surrounding the pipeline route, and in fact, across the state of
23 Nebraska.

24 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
25 **upon the wildlife and plants, other than your growing crops on or near your**
26 **land?**

27 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
28 the proposed Keystone XL Pipeline would have a detrimental impact upon the

1 wildlife and the plants, not only that are located on or can be found upon my land,
2 but also near and along the proposed pipeline route.

3 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
4 **fair market value of your land?**

5 **A:** Yes, I do. I am significantly concerned about how the existence of the proposed
6 pipeline underneath and across and through my property will negatively affect the
7 fair market value at any point in the future, especially at that point in which I
8 would need to sell the property, or someone in my family would need to sell the
9 property. I do not believe, and certainly would not be willing to pay, the same
10 price for land that had the pipeline located on it, versus land that did not. I hope
11 there is never a point where I'm in a position where I have to sell and have to
12 realize as much value as I can out of my land. But because it is my single largest
13 asset, I'm gravely concerned that the existence of the proposed Keystone XL
14 Pipeline upon my land will affect a buyer's willingness to pay as much as they
15 would've paid and as much as I could've received, if the pipeline were not upon
16 my property. There are just too many risks, unknowns, impacts and uncertainties,
17 not to mention all of the rights you give up by the nature of having the pipeline
18 due to having the easement that we have previously discussed, for any reasonable
19 person to think that the existence of the pipeline would not negatively affect my
20 property's value.

21 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
22 **testimony?**

23 **A:** Yes, I have.

24 **Q: Where have you seen that before?**

25 **A:** That is a map I think I first saw a couple years ago that shows the Keystone XL
26 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
27 believe the portion of the alternative route in Nebraska essentially twins or
28 parallels Keystone I.

1 **Q:** Do you believe that TransCanada’s preferred route as found on page 5 of its
2 Application, and as found on Attachment No. 7, here to your testimony, is in
3 the public interest of Nebraska?

4 **A:** No, I do not.

5 **Q:** Do you believe that the Keystone mainline alternative route as shown on
6 Attachment No. 7 included with your testimony here is a major oil pipeline
7 route that is in the public interest of Nebraska?

8 **A:** No, I do not.

9 **Q:** Do you believe the I-90 corridor alternative route, specifically for the portion
10 of the proposed pipeline within Nebraska as found in Attachment No. 6 to
11 your testimony, is in the public interest of Nebraska?

12 **A:** No, I do not.

13 **Q:** Do you believe there is any potential route for the proposed Keystone XL
14 Pipeline across, within, under, or through the State of Nebraska that is in the
15 public interest of the citizens of Nebraska?

16 **A:** No, I do not.

17 **Q:** Why do you hold that belief?

18 **A:** Because there simply is no public interest based on all of the factors that I am
19 aware and that I have read and that I have studied that this Commission is to
20 consider that would establish that a for-profit foreign-owned pipeline that simply
21 crosses Nebraska because we are geographically in the way between where tar
22 sands are in Canada to where it wants to ship it to in Texas could ever be in the
23 public interest of Nebraskans. We derive no benefit from this project. It is not for
24 public use. Nebraska is simply in the way and when all considerations are taken in
25 there is no net benefit of any kind for Nebraska should this project be placed in our
26 state. Even if there was some arguable “benefit” it is not enough to outweigh all
27 the negative impacts and concerns.

28 **Q:** What do you think about the applicant, TransCanada’s argument that it’s
29 preferred route for its proposed Keystone XL Pipeline is in the public interest

1 **of Nebraska because it may bring temporary jobs during the construction**
2 **phase to Nebraska?**

3 A: First of all, not all jobs are created equally. Most jobs that are created, whether
4 temporary or on a permanent basis, don't come with a project that has all the
5 potential and foreseeable negative impacts, many of which we have discussed here
6 and other witnesses throughout the course of this hearing have and will discuss. If
7 I decide to hire and employ someone to help me out in my farming or ranching
8 business, I've created a job but I haven't done so at the risk or detrimental impact
9 to my land or my town or my county or my state. And I've hired someone who is
10 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
11 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
12 jobs are not created equal. Additionally, I understand from what I'm familiar with
13 from TransCanada's own statements that the jobs numbers they originally touted
14 were determined to be a minute fraction of the permanent jobs that had been
15 projected. According to their answer to our Interrogatory No. 191, TransCanada
16 has created only thirty-four (34) jobs within Nebraska working specifically on
17 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
18 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
19 Further, according to their answer to Interrogatory No. 199, TransCanada would
20 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
21 constructed on its Preferred Route or its Mainline Alternative Route.

22 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
23 **because it would cross your land?**

24 A: No, absolutely not. I am opposed to this project because it is not in the public
25 interest, neither within my community nor within our state.

26 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
27 **was to cross someone else's land?**

28 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
29 the fear and anxiety and potential foreseeable risks and negative impacts that this

1 type of a project carrying this type of product brings foisted upon anyone in this
2 state or any other state.

3 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
4 **Pipeline to cross the state of Nebraska?**

5 A: I don't believe there is an intelligent route because as I have stated I don't believe
6 this project anywhere within Nebraska is within the public interest. However, if
7 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
8 had to go somewhere in the state of Nebraska, the only intelligent route I believe
9 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
10 preferred route and the mainline alternative routes are economic liabilities our
11 state cannot risk.

12 **Q: What do you rely upon to make that statement?**

13 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
14 already exists in that area is reason enough as it is not in our best interest or the
15 public interests to have more major oil pipelines crisscrossing our state. Second,
16 they have all the infrastructure already there in terms of relationships with the
17 counties and local officials and first responders along that route. Third, they have
18 already obtained easements from all the landowners along that route and have
19 relationships with them. Fourth, that route avoids our most sensitive soils, the
20 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
21 Aquifer. Sixth, they have already studied that route and previously offered it as an
22 alternative. Seventh, it just makes the most sense that as a state we would have
23 some intelligent policy of energy corridors and co-locating this type of
24 infrastructure near each other.

25 **Q: Do you have any other concerns you would like to reiterate or can think of at**
26 **this time you would like the Commissioners to understand?**

27 A: Yes. Easement by eminent domain forever alters the land and everything around it.
28 I thought eminent domain was not be allowed by businesses outside of the United
29 States. Why do we want them to give us one payment and yet they can come on

1 the land any time that they desire or feel that they have a need, with us having
2 nothing to say about that? What about our loss of income anytime they decide to
3 come and dig on our land, be it a spill or whatever reason they have? Why do we
4 get one lump payment and yet they can continue to generate revenue from this
5 land? I understood that eminent domain was for not-for-profit entities, and that it
6 should benefit general public. It seems our government should be protecting US
7 citizens instead out of county business. I believe that there should be some
8 liability protection for the landowners. I believe that TransCanada should be
9 required to remove the pipe at the end of the 50 year lifespan. I thought that they
10 were to use United States pipe, not some inferior pipe. I understand that they have
11 foreign made pipe that has been sitting out in the elements deteriorating for maybe
12 7 years and that is not good on a pipeline that you do not want it to leak. I believe
13 that there should be liability protection for the land owners. I understand there is a
14 problem to buy insurance to cover the pipeline land. Why are they trying to run a
15 new line with this pipeline when they already have a pipeline right away that they
16 could just add this to that route instead of tearing up new soil? That does not seem
17 to add up, there must be some reason??? There must be some reason that they are
18 buying up more land when they already have some that they could use.

19 **Q: What else?**

20 A: I understand that a Mr. Chad Gilbert with Pipeline Union #798 says it will create
21 about 35 full time jobs according to the US State Department's Environmental
22 Review of the projects but TransCanada admitted there would only be 6 to 10 new
23 permanent jobs in Nebraska. And so when we look at balancing 6 to 10 jobs
24 against all the possible negative impacts and results will there be to all of us with
25 our life investments and our families' income depending on the land when there is
26 a big strip of the land torn up from the Pipeline route for the benefit of another
27 country. What will we do when our homes are here and our total income depends
28 on this land we have spent our lives acquiring.

29 **Q: What else?**

1 A: And then...there is the big issue of our water supply being contaminated, not just
2 ours but others. Even a small leak would harm our drinking water, all Farmer's
3 water, and so much more for so many people. I understand that water dealing with
4 the Ogallala Aquifer involves 200 bodies of water including the Niobrara River.
5 Other people have no idea that this will affect them. TransCanada is not
6 concerned about this because they are far enough away it will never affect them.
7 Our country had better be thinking about where all the water will come from when
8 it happens. In listening to people who have had oil leaks on their land it can never
9 be brought back to what it is now. This will be irreversible damage. This KXL
10 pipeline will have a negative, disastrous effect on so many of us for no gain. We
11 will have to deal with liabilities on our property, abandonment, and restoration. I
12 do not believe a Foreign Corporation should be able to take our land by eminent
13 domain on American land for Foreign corporate gain. I do not think that we need
14 to have any foreign pipeline running through any America soil. Please consider
15 the people and the land you are supposed to be looking out for and not
16 TransCanada KXL Pipeline.

17 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
18 **like the Public Service Commissioners to consider in their review of**
19 **TransCanada's Application?**

20 A: No, I have not. I have shared that which I can think of as of the date I signed this
21 document below but other things may come to me or my memory may be
22 refreshed and I will add and address those things at the time of the Hearing in
23 August and address any additional items at that time as is necessary. Additionally,
24 I have not had an adequate amount of time to receive and review all of
25 TransCanada's answers to our discovery and the discovery of others so it was
26 impossible to competently and completely react to that in my testimony here and I
27 reserve the right to also address anything related to discovery that has not yet
28 concluded as of the date I signed this document below. Lastly, certain documents

1 requested have not yet been produced by TransCanada and therefore I may have
2 additional thoughts on those I will also share at the hearing as needed.

3 **Q: What is it that you are requesting the Public Service Commissioners do in**
4 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
5 **across Nebraska?**

6 A: I am respectfully and humbly requesting that the Commissioners think far beyond
7 a temporary job spike that this project may bring to a few counties and beyond the
8 relatively small amount of taxes this proposed foreign pipeline would possibly
9 generate. And, instead think about the perpetual and forever impacts of this
10 pipeline as it would have on the landowners specifically, first and foremost, but
11 also thereby upon the entire state of Nebraska, and to determine that neither the
12 preferred route nor the Keystone mainline alternative route are in the public
13 interest of the citizens of the state of Nebraska. **And if the Commissioners were**
14 **inclined to modify TransCanada's proposed routes and were to be inclined to grant**
15 **an application for a route in Nebraska, that the only potential route that would**
16 **make any intelligent sense whatsoever would be twinning or near paralleling of**
17 **the proposed KXL with the existing Keystone I pipeline. It simply does not make**
18 **sense to add yet another major oil pipeline crisscrossing our state creating new**
19 **pumping stations, creating new impacts on additional counties and communities**
20 **and going through all of the court processes with myself and other landowners like**
21 **me when this applicant already has relationships with the landowners, the towns**
22 **and the communities along Keystone I, and that Keystone I is firmly outside of the**
23 **sand hills and a significantly further portion away from the heart of the Ogallala**
24 **Aquifer than the preferred route or the Keystone mainline alternative route.**

25 **Q: Are all of your statements in your testimony provided above true and**
26 **accurate as of the date you signed this document to the best of your**
27 **knowledge?**

28 A: Yes, they are.

1 **Q: Thank you, I have no further questions at this time and reserve the right to**
2 **ask you additional questions at the August 2017 Hearing.**

Constance Ramold Myers
Constance Ramold Myers

Subscribed and Sworn to me before this 26th day of May, 2017.

[Signature]
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

**Direct Testimony of
Bryce Naber in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Boone County)

1 **Q: Please state your name.**

2 A: My name is Bryce Naber.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own or lease land in Nebraska, either directly or through an entity of**
8 **which you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Boone County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of the land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Farmer.



1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A: Yes.

4 **Q: Do you earn any income from the land in question?**

5 A: Yes. I am the tenant.

6 **Q: Have you depended on the income from the land to support your livelihood or**
7 **the livelihood of your family?**

8 A: Yes.

9 **Q: Have you thought about whether or not you would be willing to pay the same**
10 **rental payments for the land if the proposed route is approve and the KXL**
11 **pipeline goes through the land as you are today without it?**

12 **A: Yes, I have thought of it and that concerns me. As a business owner and farmer I**
13 **have to also control my costs and risks the best I can. For instance, if there are**
14 **damages to crops and loss in yields, I need to take that real possibility into**
15 **account. I need to factor in the likelihood of deferred payment or no payment or**
16 **even budgeting in legal expenses to fight about damages caused by the pipeline.**
17 **These are all real world things that have and do occur. I just don't know if I could**
18 **agree to carry on with the same payment arrangements if the land were to change**
19 **so dramatically as it would if a major oil pipeline is present.**

20 **Q: Do you have concerns about your family being able to selling the land?**

21 **A: Well I hope we never have to sell the land but as a farmer who has attended**
22 **auctions and who is familiar with what factors you consider when bidding on farm**
23 **land, I am concerned that if another piece of ground similar to hers was for sale at**
24 **the same time and it did not have the pipeline and hers did that she would have a**
25 **lower selling price. I think this would be true for pipeline ground on both the**
26 **preferred and mainline alternative routes.**

27 **Q: Were you or an entity for which you are a member, shareholder, or director**
28 **previously sued by TransCanada Keystone Pipeline, LP?**

1 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
2 petition for condemnation against our land so it could place its proposed pipeline
3 within an easement that it wanted to take from us on our land.

4 **Q: Did you defend yourself and the land in that condemnation action?**

5 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
6 and expenses in our resistance of TransCanada's lawsuit against us.

7 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
8 incurred?**

9 A: No, they have not.

10 **Q: In its lawsuit against you, did TransCanada identify the amount of your
11 property that it wanted to take for its proposed pipeline?**

12 A: The lawsuit against us stated they would take the amount of property that is
13 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
14 and equipment reasonably necessary to operate the pipeline.

15 **Q: Did TransCanada define what they meant by "property that is reasonably
16 necessary"?**

17 A: No, they did not.

18 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain
19 property portion of the land?**

20 A: Yes, they did.

21 **Q: Did TransCanada describe what rights it proposed to take related to the
22 eminent domain property on the land?**

23 A: Yes, they did.

24 **Q: What rights that they proposed to take did they describe?**

25 A: TransCanada stated that the eminent domain property will be used to "lay, relay,
26 operate, and maintain the pipeline and the plant and equipment reasonably
27 necessary to operate the pipeline, specifically including surveying, laying,
28 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
29 reconstructing, removing and abandoning one pipeline, together with all fittings,

1 cathodic protection equipment, pipeline markers, and all their equipment and
2 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
3 petroleum products, and all by-products thereof.”

4 **Q: Prior to filing an eminent domain lawsuit to take the land that TransCanada
5 identified, do you believe they attempted to negotiate in good faith with you?**

6 **A:** No, I do not.

7 **Q: Did TransCanada at any time approach you with or deliver to you their
8 proposed easement and right-of-way agreement?**

9 **A:** Yes, they did.

10 **Q: At the time you reviewed TransCanada’s easement and right-of-way
11 agreement, did you understand that they would be purchasing a fee title
12 interest in your property or that they were taking something else?**

13 **A:** I understood that they proposed to have the power to take both a temporary
14 construction easement that could last for a certain period of time and then also a
15 permanent easement which they described to be 50 feet across or in width, and
16 that would run the entire portion of my property from where a proposed pipeline
17 would enter my property until where it would exit the property.

18 **Q: Is the document included with your testimony here as Attachment No. 3, a
19 true and accurate copy of TransCanada’s proposed Easement and Right-of-
20 Way agreement that they included with their condemnation lawsuit against
21 you?**

22 **A:** Yes, it is.

23 **Q: Have you had an opportunity to review TransCanada’s proposed Easement
24 and Right-of-Way agreement?**

25 **A:** Yes, I have.

26 **Q: What is your understanding of the significance of the Easement and Right-of-
27 Way agreement as proposed by TransCanada?**

28 **A:** My understanding is that this is the document that will govern all of the rights and
29 obligations and duties as well as the limitations of what I can and cannot do and

1 how I and any future landowner and any person I invite to come onto my property
2 must behave as well as what TransCanada is and is not responsible for and how
3 they can use the land.

4 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
5 **agreement do you have any concerns about any portions of it or any of the**
6 **language either included in the document or missing from the proposed**
7 **document?**

8 **A:** Yes, I have a number of significant concerns and worries about the document and
9 how the language included and the language not included potentially negatively
10 impacts the land and thereby potentially negatively impacts my community and
11 my state.

12 **Q: I would like you to walk the Commissioners through each and every one of**
13 **your concerns about TransCanada's proposed Easement and Right-of-Way**
14 **agreement so they can develop an understanding of how that language and**
15 **the terms of that contract, in your opinion, potentially negatively impacts you**
16 **and the land. So, if you can start at the beginning of that document and let's**
17 **work our way through it, okay?**

18 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
19 Easement and Right-of-Way agreement and how it negatively could affect my
20 property rights and my economic interests.

21 **Q. Okay, let's start with your first concern please.**

22 **A:** The very first sentence talks about consideration or how much money they will
23 pay to compensate me for all of the known and unknown affects and all of the
24 rights I am giving up and for all the things they get to do to the land and for what
25 they will prevent me from doing on the land and they only will pay me one time at
26 the signing of the easement agreement. That is a huge problem.

27 **Q: Explain to the Commissioners why that is a problem.**

28 **A:** It is not fair to the landowner, the county, or the State. It is not fair to the
29 landowner because they want to have the land forever for use as they see fit so

1 they can make a daily profit from their customers. If I was to lease ground from
2 my neighbor I would typically pay twice a year every year as long as they granted
3 me the rights to use their land. That only makes sense – that is fair. If I was going
4 to rent a house in town I would typically pay monthly, every month until I gave up
5 my right to use that house. By TransCanada getting out on the cheap and paying
6 once in today’s dollars that is monthly, bi-annual, or at least an annual loss in tax
7 revenue collection on the money I would be paid and then pay taxes on and
8 contribute to this state and this country. It is money I would be putting back into
9 my local community both spending and stimulating the local economy and
10 generating more economic activity right here. Instead TransCanada’s shareholders
11 keep all that money and it never finds its way to Nebraska.

12 **Q: What is your next concern?**

13 **A:** The first paragraph goes on to say Grantor, which is me the landowner, “does
14 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
15 limited partnership...” and I have no idea who that really is. I have no idea who is
16 forcing this pipeline on us or who the owners of the entities are, or what are the
17 assets backing this limited partnership, or who the general partner is, or who all
18 the limited partners are, and who makes up the ownership of the these partners or
19 the structure or any of the basic things you would want to know and understand if
20 you would want to do business with such an outfit. According to TransCanada’s
21 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
22 liability company called TransCanada Keystone Pipeline GP, LLC is the general
23 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
24 basically nothing. That is really scary since the general partner has the liability but
25 virtually none of the ownership and who knows if it has any other assets.

26 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
27 **percent clear on exactly who could become the owner of about 275 miles of**
28 **Nebraska land?**

29 **A:** No.

1 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
2 percent clear on exactly who will be operating and responsible for
3 approximately 275 miles of tar sands pipeline underneath and through
4 Nebraska land?

5 **A:** No.

6 **Q:** Okay, let's continue please with your concerns of the impacts upon the land
7 and the State of Nebraska of TransCanada's easement terms.

8 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
9 called "Grantee")..." and this concerns me because it would allow their easement
10 to be transferred or sold to someone or some company or country or who knows
11 what that I don't know and who we may not want to do business with. This
12 pipeline would be a huge asset for TransCanada and if they can sell to the highest
13 bidder that could have terrible impacts upon all of Nebraska depending upon who
14 may buy it and I don't know of any safeguards in place for us or the State to veto
15 or have any say so in who may own, operate, or be responsible for this pipeline in
16 the future.

17 **Q:** Do you think that type of uncertainty and lack of control over a major piece
18 of infrastructure crossing our State is in the public interest?

19 **A:** No, certainly not, in fact, just the opposite.

20 **Q:** What's next?

21 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
22 really concerns me. Why does the easement and right-of-way have to be perpetual
23 and permanent? That is the question myself and my family want an answer to.
24 Perpetual to me is like forever and that doesn't make sense.

25 **Q:** Why doesn't a perpetual Easement and Right-of-Way make sense to you?

26 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
27 data proving there is a perpetual supply of tar sands. I am not aware in
28 TransCanada's application where it proves there is a perpetual necessity for this
29 pipeline. My understanding of energy infrastructure like wind towers is they have

1 a decommission plan and actually take the towers down when they become
2 obsolete or no longer needed. Nothing manmade lasts forever. The land however
3 will, and I want my family or future Nebraska families to have that land as
4 undisturbed as possible and it is not in my interest or the public interest of
5 Nebraska to be forced to give up perpetual and permanent rights in the land for
6 this specific kind of pipeline project.

7 **Q: Okay, what is your next concern?**

8 **A:** The easement language includes all these things TransCanada can do and it says
9 "...abandoning in place..." so they can just leave this pipeline under my ground
10 until the end of time just sitting there while they are not using it, but I am still
11 prevented from doing on the land and using the land what I would like. If I owned
12 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
13 there. It doesn't make sense and it scares me and it is not in my interest or the
14 public interest of Nebraska to allow this.

15 **Q: Now it looks like we are ready to go to the second page of the Easement is that
16 right?**

17 **A:** Yes.

18 **Q: So now on the second page of the Easement what are your concerns?**

19 **A:** Here the Easement identifies a 24-month deadline to complete construction of the
20 pipeline but has caveats that are undefined and ambiguous. The 24-month period
21 starts to run from the moment "actual pipeline installation activities" begin on
22 Landowners property. It appears that TransCanada would define this phrase as
23 needed. It would be wise to explain what types of TransCanada action constitutes
24 "installation activity" For instance, would the placement and storage of an
25 excavator or other equipment on or near the Easement property be an activity or
26 would earth have to be moved before the activity requirement is triggered. This
27 vague phrase is likely to lead to future disputes and litigation that is not in the best
28 interest of the welfare of Nebraska and would not protect property interests. The
29 24-months can also be extended in the case of "force majeure." My understanding

1 is that force majeure is often used to insulate a party to a contract when events
2 occur that are completely out of their control. In TransCanada's easement this is
3 expanded to include "without limitation...availability of labor and materials."
4 Extending this language to labor and materials is problematic because these are
5 two variables that TransCanada does have some or significant control over and to
6 allow extension of the 24-month period over events not truly out of the control of
7 TransCanada and without further provision for compensation for the Landowner is
8 not conducive to protection of property rights.

9 **Q: Okay, what is your next concern?**

10 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
11 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially
12 reasonable costs and expenses" will pay for damages caused but then limits
13 TransCanada's liability to certain circumstances. There is no definition of
14 "commercially reasonable" and no stated right that the Landowner would get to
15 determine the amounts of cost or expense that is "commercially reasonable."
16 TransCanada excepts out from their liability any damages that are caused by
17 Landowner's negligence or the negligence of anyone ever acting on the behalf of
18 Landowner. It is understandable that if the Landowner were to willfully and
19 intentionally cause damages to the pipeline that Landowner should be liable.
20 However, anything short of willful misconduct should be the liability of
21 TransCanada who is subjecting the pipeline on the Landowner and who is making
22 a daily profit from that pipeline. When evaluating the impact on property rights of
23 this provision, you must consider the potentially extremely expensive fight a
24 Landowner would have over this question of whether or not damage was an act of
25 negligence. Putting this kind of potential liability upon the Landowner is
26 incredibly problematic and is detrimental to the protection of property rights. I
27 don't think this unilateral power which I can't do anything about as the landowner
28 is in the best economic interest of the land in question or the State of Nebraska for
29 landowners to be treated that way.

1 **Q: Is there any specific event or example you are aware of that makes this**
2 **concern more real for you?**

3 **A: Yes, one need not look further than a November 3, 2015 lawsuit filed against**
4 **Nemaha County, Nebraska landowner farmers who accidentally struck two**
5 **Magellan Midstream Partners, LP pipelines, one used to transport a mixture of**
6 **gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged**
7 **negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate**
8 **copy of the Federal Court Complaint is here as Attachment No. 4.**

9 **Q: What is your next concern with the Easement language?**

10 **A: Paragraph 3 states that Landowner can farm on and otherwise use their property as**
11 **they choose unless 1) any Landowner use interferes in any way with**
12 **TransCanada's exercise of any of its rights within the Easement, or 2)**
13 **TransCanada decides to take any action on the property it deems necessary to**
14 **prevent injury, endangerment or interference with anything TransCanada deems**
15 **necessary to do on the property. Landowner is also forbidden from excavating**
16 **without prior authorization by TransCanada. So my understanding is that**
17 **TransCanada will unilaterally determine what Landowner can and can't do based**
18 **upon how TransCanada chooses to define the terms in paragraph 3. TransCanada**
19 **could also completely deny my request to excavate. Further, TransCanada retains**
20 **all "privileges necessary or convenient for the full use of the rights" granted to**
21 **them in the Easement. Again, TransCanada unilaterally can decide to the**
22 **detriment of the property rights of Landowner what TransCanada believes is**
23 **necessary or convenient for it. And there is no option for any additional**
24 **compensation to landowner for any right exercised by TransCanada that leads to**
25 **the removal of trees or plants or vegetation or buildings or structures or facilities**
26 **owned by Landowner of any kind. Such undefined and unilateral restrictions and**
27 **rights without having to compensate Landowner for such further destruction or**
28 **losses are not conducive to the protection of property rights or economic interest.**

29 **Q: What is the next concern you have?**

1 A: The Easement also allows some rights for Landowner but restricts them at the
2 same time and again at the sole and unilateral decision making of TransCanada.
3 TransCanada will determine if the actions of Landowner might in anyway
4 endanger or obstruct or interfere with TransCanada’s full use of the Easement or
5 any appurtenances thereon to the pipeline itself or to their access to the Easement
6 or within the Easement and TransCanada retains the right at any time, whether
7 during growing season or not, to travel “within and along Easement Area on foot
8 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
9 retain the rights to prevent any landowner activity that it thinks may “unreasonably
10 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
11 undefined and unilateral restrictions are not conducive to the protection of
12 property rights or economic interest.

13 **Q: What is the next concern you have with the Easement language?**

14 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
15 Landowner’s land any debris of any kind without any input or power of
16 Landowner to demand an alternative method or location of debris disposal. Such
17 unilateral powers would negatively affect Landowners property are not conducive
18 to the protection of property rights or economic interest.

19 **Q: What is the next concern you have with the Easement language?**

20 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
21 “where rock is encountered” mean and why does TransCanada solely get to
22 determine whether or not this phrase is triggered. This phrase could be used to
23 justify installing the pipeline 24 inches beneath the surface. The ability to use this
24 provision to minimal locate the pipeline at a depth of 24 inches could negatively
25 affect Landowners property are not conducive to the protection of property rights.
26 A shallow pipeline is much more likely to become a danger and liability in the
27 future given farming operations and buried irrigation lines and other factors
28 common to the current typical agricultural uses of the land in question impacted
29 by TransCanada’s preferred pipeline route.

1 **Q: What is the next concern you have with the Easement language?**

2 **A:** There are more vague concepts solely at the determination of TransCanada such as
3 “as nearly as practicable” and “pre-construction position” and “extent reasonably
4 possible.” There is nothing here that defines this or provides a mechanism for
5 documenting or memorializing “pre-construction position” so as to minimize
6 costly legal battles or wasted Landowner time attempting to recreate the soil
7 condition on their fields or pasture. Such unilateral powers would negatively affect
8 Landowners property are not conducive to the protection of property rights or
9 economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 **A:** TransCanada maintains the unilateral right to abandon the pipeline and all
12 appurtenances thereto in place on, under, across, or through Nebraska land at any
13 time it chooses. There is no provision for Landowner compensation for such
14 abandonment nor any right for the Landowner to demand removal. Such unilateral
15 powers would negatively affect Landowners property are not conducive to the
16 protection of property rights or economic interest.

17 **Q: What is the next concern you have with the Easement language?**

18 **A:** TransCanada has the power to unilaterally move or modify the location of any
19 Easement area whether permanent or temporary at their sole discretion.
20 Regardless, if Landowner has taken prior steps relative to their property in
21 preparation or planning of TransCanada’s taking of the initial easement area(s),
22 the language here does not require TransCanada to compensate the Landowner if
23 they decide to move the easement anywhere on Landowners property. Such
24 unilateral powers would negatively affect Landowners property are not conducive
25 to the protection of property rights or economic interests.

26 **Q: What is the next concern you have with the Easement language?**

27 **A:** The Easement requires that all of the burdens and restrictions upon Landowner to
28 transfer and be applicable to any future owner of the Land in question without the

1 ability of the future Landowner to modify or negotiate any of the language in
2 question to which it will be held to comply.

3 **Q: What is the next concern you have with the Easement language?**

4 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
5 Easement to any person, company, country, etc. at their sole discretion at anytime
6 to anyone. This also means that any buyer of the easement could do the same to a
7 third buyer and so on forever. There is no change of control or sale provision in
8 place to protect the Landowner or Nebraska or to provide compensation for such
9 change of control or ownership. It is not conducive to the protection of property
10 rights or economic interests to allow unilateral unrestricted sale of the Easement
11 thereby forcing upon the Landowner and our State a new unknown Easement
12 owner.

13 **Q: What is the next concern you have with the Easement language?**

14 A: There are many terms in the Easement that are either confusing or undefined terms
15 that are without context as to whether or not the Landowner would have any say
16 so in determining what these terms mean or if the evaluation is solely in
17 TransCanada's control. Some of these vague undefined and ambiguous terms are
18 as follows:

- 19 i. "pipeline installation activities"
- 20 ii. "availability of labor and materials"
- 21 iii. "commercially reasonable costs and expenses"
- 22 iv. "reasonably anticipated and foreseeable costs and expenses"
- 23 v. "yield loss damages"
- 24 vi. "diminution in the value of the property"
- 25 vii. "substantially same condition"
- 26 viii. "an actual or potential hazard"
- 27 ix. "efficient"
- 28 x. "convenient"
- 29 xi. "endangered"

- 1 xii. “obstructed”
- 2 xiii. “injured”
- 3 xiv. “interfered with”
- 4 xv. “impaired”
- 5 xvi. “suitable crossings”
- 6 xvii. “where rock is encountered”
- 7 xviii. “as nearly as practicable”
- 8 xix. “pre-construction position”
- 9 xx. “pre-construction grade”
- 10 xxi. “various engineering factors”

11 Each one of these above terms and phrases as read in the context of the Easement
12 could be problematic in many ways. Notably, undefined terms tend to only get
13 definition in further legal proceedings after a dispute arises and the way the
14 Easement is drafted, TransCanada has sole power to determine when and if a
15 particular situation conforms with or triggers rights affected by these terms. For
16 instance, “yield loss damages” should be specifically defined and spelled out
17 exactly how the landowner is to be compensated and in what events on the front
18 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
19 the Landowner is without contractual rights to define these terms or determine
20 when rights related to them trigger and what the affects may be.

21 **Q: Do you have any other concerns about the Easement language that you can**
22 **think of at this time?**

23 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
24 my live testimony in August.

25 **Q: Based upon what you have shared with the Commission above regarding**
26 **TransCanada’s proposed Easement terms and agreement, do you believe**
27 **those to be reasonable or just, under the circumstances of the pipeline’s**
28 **impact upon you and the land?**

1 A: No, I do not believe those terms to be reasonable or just for the reasons that we
2 discussed previously.

3 Q: **Did TransCanada ever offer you financial compensation for the rights that**
4 **they sought to obtain in the land, and for what they sought to prevent you and**
5 **any future land owner of your property from doing in the future?**

6 A: Yes, we received an offer from them.

7 Q: **As the owner of the land in question and as the person who knows it better**
8 **than anyone else, do you believe that TransCanada offered you just, or fair,**
9 **compensation for all of what they proposed to take from you so that their tar**
10 **sands pipeline could be located across your property?**

11 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
12 offer for all the potential impacts and effects and the rights that I'm giving up, and
13 what we will be prevented from doing in the future and how their pipeline would
14 impact my property for ever and ever.

15 Q: **Has TransCanada at any time offered to compensate you annually, such as**
16 **wind farm projects do, for the existence of their potential tar sands pipeline**
17 **across your property.**

18 A: No, never.

19 Q: **At any time did TransCanada present you with or request that you, as the**
20 **owner of the land in question, sign and execute a document called, "Advanced**
21 **Release of Damage Claims and Indemnity Agreement?"**

22 A: Yes, they did and it was included in the County Court lawsuit against us.

23 Q: **Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
24 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

25 A: Yes, it is.

26 Q: **What was your understanding of that document?**

27 A: When I read that document in the plain language of that document, it was my
28 understanding that TransCanada was attempting to pay me a very small amount at
29 that time in order for me to agree to give up my rights to be compensated from

1 them in the future related to any damage or impact they may have upon my
2 property “arising out of, in connection with, or alleged to resulted from
3 construction or surveying over, under or on” the land.

4 **Q: Did you ever sign that document?**

5 A: No, we did not.

6 **Q: Why not?**

7 A; Because we did not believe that it is fair or just to try to get me to agree to a small
8 sum of money when we have no idea how bad the impacts or damages that they,
9 or their contractors, or subcontractors, or other agents or employees, may cause on
10 the land at any time in the future that resulted from the construction or surveying
11 or their activities upon the land.

12 **Q: When you reviewed this document, what did it make you feel?**

13 A: We felt like it was simply another attempt for TransCanada to try to pay very little
14 to shield themselves against known and foreseeable impacts that their pipeline,
15 and the construction of it, would have upon the land. It made us feel that they
16 knew it was in their financial interest to pay me as little as possible to prevent me
17 from ever having the opportunity to seek fair compensation again, and that this
18 must be based upon their experience of unhappy landowners and situations in
19 other places where they have built pipelines.

20 **Q: Has TransCanada ever contacted you and specifically asked you if you
21 thought their proposed location of their proposed pipeline across the land was
22 in your best interest?**

23 A: No, they have not.

24 **Q: Has TransCanada ever contacted you and specifically asked you if you
25 thought their proposed location of their proposed pipeline across the land was
26 in the public interest of the State of Nebraska?**

27 A: No, they have not.

28 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
29 Takings Clause?**

- 1 A: Yes, I am.
- 2 Q: What is your understanding of the Fifth Amendment as it relates to taking of
3 an American citizens property?
- 4 A: My understanding is that, according to the United States Constitution, that if the
5 government is going to take land for public use, then in that case, or by taking for
6 public use, it can only occur if the private land owner is compensated justly, or
7 fairly.
- 8 Q: Has TransCanada ever contacted you specially to explain the way in which
9 the public could use its proposed Keystone XL Pipeline?
- 10 A: No, they have not.
- 11 Q: Can you think of any way in which the public, that is the citizens of the State
12 of Nebraska, can directly use the proposed TransCanada Keystone XL
13 Pipeline, as it dissects the State of Nebraska?
- 14 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
15 public benefits from this pipeline in any way, how they can use it any way, or how
16 it's in the public interest in any way. By looking at the map, it is quite clear to me
17 that the only reason it's proposed to come through Nebraska, is that because we
18 are geographically in the way from between where the privately-owned Tar Sands
19 are located to where TransCanada wants to ship the Tar Sands to refineries in
20 Houston, Texas.
- 21 Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
22 crude petroleum, or oil and petroleum by-products that you would like to
23 ship in its pipeline?
- 24 A: No, it has not.
- 25 Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
26 products that you, at this time or any time in the future, would desire to place
27 for transport within the proposed TransCanada Keystone XL Pipeline?
- 28 A: No, I do not.

1 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
2 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
3 **products within the proposed TransCanada Keystone XL Pipeline?**

4 **A: No, I do not. I've never heard of such a person or company like that.**

5 **Q: Have you at any time ever employed any person other than yourself?**

6 A: Well, yes I have.

7 **Q: Do you believe that the fact that you have, at some point in your life,**
8 **employed one or more other persons entitle you to any special treatment or**
9 **consideration above and beyond any other Nebraskan that has also employed**
10 **one or more persons?**

11 A: No, of course not.

12 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
13 **have at one point employed another person within this state, entitles you to**
14 **preferential treatment or consideration of any kind?**

15 A: No, of course not. If I choose to employ someone that decision is up to me. I
16 don't deserve any special treatment or consideration for that fact.

17 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
18 **crude oil pipeline in its preferred location, or ultimate location across the**
19 **state of Nebraska?**

20 **A: Yes, I have significant concerns. I am aware of landowners being treated unfairly**
21 **or even bullied around and being made to feel scared that they did not have any**
22 **options but to sign whatever papers TransCanada told them they had to. I am**
23 **aware of folks being threatened that their land would be taken if they didn't follow**
24 **what TransCanada was saying. I am aware of tactics to get people to sign**
25 **easements that I don't believe have any place in Nebraska or anywhere such as**
26 **TransCanada or some outfit associated with it hiring a pastor or priest to pray with**
27 **landowners and convince them they should sign TransCanada's easement**
28 **agreements. I am aware of older folks and widows or widowers feeling they had**
29 **no choice but to sign TransCanada's Easement and they didn't know they could**

1 fight or stand up for themselves. From a more practical standpoint, I am worried
2 that according to their answer to our Interrogatory No. 211, TransCanada only
3 owns and operates one (1) major oil pipeline. They simply do not have the
4 experience with this type of pipeline and that scares me. There are others but that
5 is what I can recollect at this time and if I remember more or my recollection is
6 refreshed I will share those with the Commissioners at the Hearing in August.

7 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
8 **landowner is reasonable or just?**

9 **A:** No, I do not.

10 **Q: Do you have any concern about limitations that the construction of this**
11 **proposed pipeline across your affected land would prevent construction of**
12 **future structures upon the portion of the land affected by the proposed**
13 **easement and immediately surrounding areas?**

14 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
15 structures directly across or touching the easement, and it would be unwise and I
16 would be uncomfortable to build anything near the easement for fear of being
17 blamed in the future should any damage or difficulty result on my property in
18 regards to the pipeline.

19 **Q: Do you think such a restriction would impact you economically?**

20 **A:** Well yes, of course.

21 **Q: How do you think such a restriction would impact you economically?**

22 **A:** The future of this land may not be exactly how it's being used as of this moment,
23 and having the restrictions and limiting my ability to develop the land in certain
24 ways presents a huge negative economic impact on myself, my family, and any
25 potential future owner of the property. You have no idea how I or the future owner
26 may want to use this land in the future or the other land across Nebraska
27 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
28 ago it would have been hard to imagine all the advances that we have now or how
29 things change. Because the Easement is forever and TransCanada gets the rights in

1 the land forever we have to think with a very long term view. By placing their
2 pipeline on under across and through the land that prevents future development
3 which greatly negatively impacts future taxes and tax revenue that could have
4 been generated by the County and State but now will not. When you look at the
5 short blip of economic activity that the two years of temporary construction efforts
6 may bring, that is far outweighed by the perpetual and forever loss of opportunity
7 and restrictions TransCanada is forcing upon us and Nebraska. The terms of the
8 easement must be addressed in order for the Commission to truly consider
9 property rights, economic interests, the welfare of Nebraska, and the balancing of
10 the proposed routes against all they will affect and impact.

11 **Q: Do you have any concerns about the environmental impact of the proposed**
12 **pipeline?**

13 A: Yes, I do.

14 **Q: What are some of those concerns?**

15 A: As an affected land owner and Nebraskan, I am concerned that any construction,
16 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
17 a detrimental impact upon the environment of the land specifically, as well as the
18 lands near the land and surrounding the proposed pipeline route.

19 **Q: Do you have any other environmental concerns?**

20 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
21 construction and/or maintenance and operation. I am concerned about spills and
22 leaks that TransCanada has had in the past and will have in the future. This could
23 be catastrophic to my operations or others and to my county and the State.

24 **Q: Do you have any thoughts regarding if there would be an impact upon the**
25 **natural resources on or near your property due to the proposed pipeline?**

26 A: Yes, I believe that any construction, operation, and/or maintenance of the
27 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
28 resources of the land, and the lands near and surrounding the proposed pipeline
29 route.

1 **Q: Do you have any worries about potential impacts from the proposed pipeline**
2 **to the soil of the land, or land near you?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
5 land, as well as land along and surrounding the proposed pipeline route. This
6 includes, but is not limited to, the reasons that we discussed above of disturbing
7 the soil composition and makeup as it has naturally existed for thousands and
8 millions of years during the construction process, and any future maintenance or
9 removal process. I'm gravely concerned about the fertility and the loss of
10 economic ability of my property to grow the crops, or grow the grasses, or grow
11 whatever it is at that time they exist on my property or that I may want to grow in
12 the future, or that a future owner may want to grow. The land will never be the
13 same from as it exists now undisturbed to after it is trenched up for the proposed
14 pipeline.

15 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
16 **upon the groundwater over the land, or surrounding lands?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 groundwater of not only under the land, but also near and surrounding the pipeline
20 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
21 simple and it is simply too valuable to our State and the country to put at
22 unreasonable risk.

23 **Q: Do you have any concern about the potential impact of the proposed pipeline**
24 **upon the surface water on, or near or around the land?**

25 A: Yes, I have significant concerns that any construction, operation, and/or
26 maintenance of the proposed Keystone XL Pipeline would have detrimental
27 impact upon the surface water of not only within my property boundary, but along
28 and near and surrounding the pipeline route, and in fact, across the state of
29 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
2 **upon the wildlife and plants, other than your growing crops on or near the**
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the
6 wildlife and the plants, not only that are located on or can be found upon the land,
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
9 **fair market value of the land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed
11 pipeline underneath and across and through my property will negatively affect the
12 fair market value at any point in the future, especially at that point in which I
13 would need to sell the property, or someone in my family would need to sell the
14 property. I do not believe, and certainly would not be willing to pay, the same
15 price for land that had the pipeline located on it, versus land that did not. I hope
16 there is never a point where I'm in a position where I have to sell and have to
17 realize as much value as I can out of the land. But because it is my single largest
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL
19 Pipeline upon the land will affect a buyer's willingness to pay as much as they
20 would've paid and as much as I could've received, if the pipeline were not upon
21 my property. There are just too many risks, unknowns, impacts and uncertainties,
22 not to mention all of the rights you give up by the nature of having the pipeline
23 due to having the easement that we have previously discussed, for any reasonable
24 person to think that the existence of the pipeline would not negatively affect my
25 property's value.

26 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
27 **testimony?**

28 A: Yes, I have.

29 **Q: Where have you seen that before?**

1 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
2 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
3 believe the portion of the alternative route in Nebraska essentially twins or
4 parallels Keystone I.

5 **Q: Do you believe the portion of the proposed pipeline route within Nebraska as**
6 **found in Attachment No. 6 to your testimony, is in the public interest of**
7 **Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
10 **Application, and as found on Attachment No. 7, here to your testimony, is in**
11 **the public interest of Nebraska?**

12 A: No, I do not.

13 **Q: Do you believe that the Keystone mainline alternative route as shown on**
14 **Attachment No. 7 included with your testimony here is a major oil pipeline**
15 **route that is in the public interest of Nebraska?**

16 A: No, I do not.

17 **Q: Do you believe there is any potential route for the proposed Keystone XL**
18 **Pipeline across, within, under, or through the State of Nebraska that is in the**
19 **public interest of the citizens of Nebraska?**

20 A: No, I do not.

21 **Q: Why do you hold that belief?**

22 A: Because there simply is no public interest based on all of the factors that I am
23 aware and that I have read and that I have studied that this Commission is to
24 consider that would establish that a for-profit foreign-owned pipeline that simply
25 crosses Nebraska because we are geographically in the way between where tar
26 sands are in Canada to where it wants to ship it to in Texas could ever be in the
27 public interest of Nebraskans. We derive no benefit from this project. It is not for
28 public use. Nebraska is simply in the way and when all considerations are taken in
29 there is no net benefit of any kind for Nebraska should this project be placed in our

1 state. Even if there was some arguable “benefit” it is not enough to outweigh all
2 the negative impacts and concerns.

3 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
4 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
5 **of Nebraska because it may bring temporary jobs during the construction**
6 **phase to Nebraska?**

7 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
8 temporary or on a permanent basis, don’t come with a project that has all the
9 potential and foreseeable negative impacts, many of which we have discussed here
10 and other witnesses throughout the course of this hearing have and will discuss. If
11 I decide to hire and employ someone to help me out in my farming or ranching
12 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
13 to the land or my town or my county or my state. And I’ve hired someone who is
14 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
15 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
16 jobs are not created equal. Additionally, I understand from what I’m familiar with
17 from TransCanada’s own statements that the jobs numbers they originally touted
18 were determined to be a minute fraction of the permanent jobs that had been
19 projected. According to their answer to our Interrogatory No. 191, TransCanada
20 has created only thirty-four (34) jobs within Nebraska working specifically on
21 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
22 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
23 Further, according to their answer to Interrogatory No. 199, TransCanada would
24 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
25 constructed on its Preferred Route or its Mainline Alternative Route.

26 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
27 **because it would cross the land?**

28 **A:** No, absolutely not. I am opposed to this project because it is not in the public
29 interest, neither within my community nor within our state.

1 **Q: Would you be happier if instead of crossing the land, this proposed pipeline**
2 **was to cross someone else's land?**

3 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
4 the fear and anxiety and potential foreseeable risks and negative impacts that this
5 type of a project carrying this type of product brings foisted upon anyone in this
6 state or any other state.

7 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
8 **Pipeline to cross the state of Nebraska?**

9 A: I don't believe there is an intelligent route because as I have stated **I don't believe**
10 **this project anywhere within Nebraska is within the public interest.** However, if
11 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
12 had to go somewhere in the state of Nebraska, the only intelligent route I believe
13 would be to twin or closely parallel the existing Keystone I Pipeline. **Both the**
14 **preferred route and the mainline alternative routes are economic liabilities our**
15 **state cannot risk.**

16 **Q: What do you rely upon to make that statement?**

17 A: **Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,**
18 **already exists in that area is reason enough as it is not in our best interest or the**
19 **public interests to have more major oil pipelines crisscrossing our state. Second,**
20 **they have all the infrastructure already there in terms of relationships with the**
21 **counties and local officials and first responders along that route. Third, they have**
22 **already obtained easements from all the landowners along that route and have**
23 **relationships with them. Fourth, that route avoids our most sensitive soils, the**
24 **sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala**
25 **Aquifer. Sixth, they have already studied that route and previously offered it as an**
26 **alternative. Seventh, it just makes the most sense that as a state we would have**
27 **some intelligent policy of energy corridors and co-locating this type of**
28 **infrastructure near each other.**

1 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
2 **like the Public Service Commissioners to consider in their review of**
3 **TransCanada's Application?**

4 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
5 document below but other things may come to me or my memory may be
6 refreshed and I will add and address those things at the time of the Hearing in
7 August and address any additional items at that time as is necessary. Additionally,
8 I have not had an adequate amount of time to receive and review all of
9 TransCanada's answers to our discovery and the discovery of others so it was
10 impossible to competently and completely react to that in my testimony here and I
11 reserve the right to also address anything related to discovery that has not yet
12 concluded as of the date I signed this document below. Lastly, certain documents
13 requested have not yet been produced by TransCanada and therefore I may have
14 additional thoughts on those I will also share at the hearing as needed.

15 **Q: What is it that you are requesting the Public Service Commissioners do in**
16 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
17 **across Nebraska?**

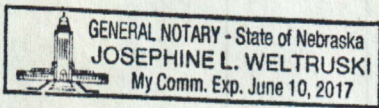
18 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
19 a temporary job spike that this project may bring to a few counties and beyond the
20 relatively small amount of taxes this proposed foreign pipeline would possibly
21 generate. And, instead think about the perpetual and forever impacts of this
22 pipeline as it would have on the landowners specifically, first and foremost, but
23 also thereby upon the entire state of Nebraska, and to determine that neither the
24 preferred route nor the Keystone mainline alternative route are in the public
25 interest of the citizens of the state of Nebraska. **And if the Commissioners were**
26 **inclined to modify TransCanada's proposed routes and were to be inclined to grant**
27 **an application for a route in Nebraska, that the only potential route that would**
28 **make any intelligent sense whatsoever would be twinning or near paralleling of**
29 **the proposed KXL with the existing Keystone I pipeline. The point of including**

1 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been
2 considered by TransCanada before. It simply does not make sense to add yet
3 another major oil pipeline crisscrossing our state creating new pumping stations,
4 creating new impacts on additional counties and communities and going through
5 all of the court processes with myself and other landowners like me when this
6 applicant already has relationships with the landowners, the towns and the
7 communities along Keystone I, and that Keystone I is firmly outside of the sand
8 hills and a significantly further portion away from the heart of the Ogallala
9 Aquifer than the preferred route or the Keystone mainline alternative route.

10 **Q: Are all of your statements in your testimony provided above true and**
11 **accurate as of the date you signed this document to the best of your**
12 **knowledge?**

13 **A: Yes, they are.**

14 **Q: Thank you, I have no further questions at this time and reserve the right to**
15 **ask you additional questions at the August 2017 Hearing.**



Bryce Naber

Bryce Naber

5-30-17

Subscribed and sworn before me
in my presence this 30th day of
May, a Notary Public in and
for the County of Boone,
State of Nebraska

Josephine L. Weltruski
(signature)

Notary Public

My Commission Exp. 6-10-17

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
Dave Troester in Support of Landowner
Intervenors

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Dave Troester.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Farmer.



1 **Q: If you are you married tell us your spouse's name please?**

2 A: Sharyn Troester

3 **Q: If you have children how many do you have?**

4 A: 2.

5 **Q: If you have grandchildren how many do you have?**

6 A: 5.

7 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
8 **and or your family?**

9 A: Yes.

10 **Q: How long the land has been in your family?**

11 A: Our family farm has been in our stewardship for many decades. There are corner
12 machines on the land involved, underground tiling, underground cable for the
13 corner machines, and three phase underground wiring for power lines. There is a
14 quonset building used for storage of seed, farm machinery and work areas.
15 Currently, two families reside on land that is on the proposed route that have
16 drinking wells being used.

17 **Q: Do you earn any income from this land?**

18 A: Yes.

19 **Q: Have you depended on the income from your land to support your livelihood**
20 **or the livelihood of your family?**

21 A: Yes.

22 **Q: Have you ever in the past or have you thought about in the future leasing all**
23 **or a portion of your land in question here?**

24 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
25 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
26 all the restrictions and risks and potential negative impacts to farming or ranching
27 operations as opposed to land that did not have those same risks. If I was looking
28 to lease or rent ground I would pay more for comparable non-pipeline land than I
29 would for comparable pipeline land and I think most folks would think the same

1 way. This is another negative economic impact that affects the landowner and the
2 county and the state and will forever and ever should TransCanada's preferred or
3 mainline alternative routes be approved. If they were to twin or closely parallel to
4 Keystone I the vast majority of landowners would be those that already have a
5 pipeline so there would be considerable less new incremental negative impacts.

6 **Q: Do you have similar concerns about selling the land?**

7 A: Well I hope not to have to sell the land in my lifetime but times change and you
8 never know what is around the corner and yes I am concerned that if another piece
9 of ground similar to mine were for sale and it did not have the pipeline and mine
10 did that I would have a lower selling price. I think this would be true for pipeline
11 ground on both the preferred and mainline alternative routes.

12 **Q: What is your intent with your land after you die?**

13 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
14 to come but I have thought about getting out if this pipeline were to come through.

15 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
16 Pipeline would cross the land described above and owned by you?**

17 A: Yes.

18 **Q: Were you or an entity for which you are a member, shareholder, or director
19 previously sued by TransCanada Keystone Pipeline, LP?**

20 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
21 petition for condemnation against our land so it could place its proposed pipeline
22 within an easement that it wanted to take from us on our land.

23 **Q: Did you defend yourself and your land in that condemnation action?**

24 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
25 and expenses in our resistance of TransCanada's lawsuit against us.

26 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
27 incurred?**

28 A: No, they have not.

1 **Q:** In its lawsuit against you, did TransCanada identify the amount of your
2 property that it wanted to take for its proposed pipeline?

3 **A:** The lawsuit against us stated they would take the amount of property that is
4 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
5 and equipment reasonably necessary to operate the pipeline.

6 **Q:** Did TransCanada define what they meant by “property that is reasonably
7 necessary”?

8 **A:** No, they did not.

9 **Q:** Did TransCanada in its lawsuit against you, identify the eminent domain
10 property portion of your land?

11 **A:** Yes, they did.

12 **Q:** Did TransCanada describe what rights it proposed to take related to the
13 eminent domain property on your land?

14 **A:** Yes, they did.

15 **Q:** What rights that they proposed to take did they describe?

16 **A:** TransCanada stated that the eminent domain property will be used to “lay, relay,
17 operate, and maintain the pipeline and the plant and equipment reasonably
18 necessary to operate the pipeline, specifically including surveying, laying,
19 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
20 reconstructing, removing and abandoning one pipeline, together with all fittings,
21 cathodic protection equipment, pipeline markers, and all their equipment and
22 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
23 petroleum products, and all by-products thereof.”

24 **Q:** Prior to filing an eminent domain lawsuit to take your land that
25 TransCanada identified, do you believe they attempted to negotiate in good
26 faith with you?

27 **A:** No, I do not.

28 **Q:** Did TransCanada at any time approach you with or deliver to you their
29 proposed easement and right-of-way agreement?

1 A: Yes, they did.

2 Q: **At the time you reviewed TransCanada's easement and right-of-way**
3 **agreement, did you understand that they would be purchasing a fee title**
4 **interest in your property or that they were taking something else?**

5 A: I understood that they proposed to have the power to take both a temporary
6 construction easement that could last for a certain period of time and then also a
7 permanent easement which they described to be 50 feet across or in width, and
8 that would run the entire portion of my property from where a proposed pipeline
9 would enter my property until where it would exit the property.

10 Q: **Is the document included with your testimony here as Attachment No. 3, a**
11 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
12 **Way agreement that they included with their condemnation lawsuit against**
13 **you?**

14 A: Yes, it is.

15 Q: **Have you had an opportunity to review TransCanada's proposed Easement**
16 **and Right-of-Way agreement?**

17 A: Yes, I have.

18 Q: **What is your understanding of the significance of the Easement and Right-of-**
19 **Way agreement as proposed by TransCanada?**

20 A: My understanding is that this is the document that will govern all of the rights and
21 obligations and duties as well as the limitations of what I can and cannot do and
22 how I and any future landowner and any person I invite to come onto my property
23 must behave as well as what TransCanada is and is not responsible for and how
24 they can use my land.

25 Q: **After reviewing TransCanada's proposed Easement and Right-of-Way**
26 **agreement do you have any concerns about any portions of it or any of the**
27 **language either included in the document or missing from the proposed**
28 **document?**

1 A: Yes, I have a number of significant concerns and worries about the document and
2 how the language included and the language not included potentially negatively
3 impacts my land and thereby potentially negatively impacts my community and
4 my state.

5 **Q: I would like you to walk the Commissioners through each and every one of**
6 **your concerns about TransCanada's proposed Easement and Right-of-Way**
7 **agreement so they can develop an understanding of how that language and**
8 **the terms of that contract, in your opinion, potentially negatively impacts you**
9 **and your land. So, if you can start at the beginning of that document and**
10 **let's work our way through it, okay?**

11 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
12 Easement and Right-of-Way agreement and how it negatively could affect my
13 property rights and my economic interests.

14 **Q. Okay, let's start with your first concern please.**

15 A: The very first sentence talks about consideration or how much money they will
16 pay to compensate me for all of the known and unknown affects and all of the
17 rights I am giving up and for all the things they get to do to my land and for what
18 they will prevent me from doing on my land and they only will pay me one time at
19 the signing of the easement agreement. That is a huge problem.

20 **Q: Explain to the Commissioners why that is a problem.**

21 A: It is not fair to the landowner, the county, or the State. It is not fair to the
22 landowner because they want to have my land forever for use as they see fit so
23 they can make a daily profit from their customers. If I was to lease ground from
24 my neighbor I would typically pay twice a year every year as long as they granted
25 me the rights to use their land. That only makes sense – that is fair. If I was going
26 to rent a house in town I would typically pay monthly, every month until I gave up
27 my right to use that house. By TransCanada getting out on the cheap and paying
28 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
29 revenue collection on the money I would be paid and then pay taxes on and

1 contribute to this state and this country. It is money I would be putting back into
2 my local community both spending and stimulating the local economy and
3 generating more economic activity right here. Instead TransCanada's shareholders
4 keep all that money and it never finds its way to Nebraska.

5 **Q: What is your next concern?**

6 **A:** The first paragraph goes on to say Grantor, which is me the landowner, "does
7 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
8 limited partnership..." and I have no idea who that really is. I have no idea who is
9 forcing this pipeline on us or who the owners of the entities are, or what are the
10 assets backing this limited partnership, or who the general partner is, or who all
11 the limited partners are, and who makes up the ownership of the these partners or
12 the structure or any of the basic things you would want to know and understand if
13 you would want to do business with such an outfit. According to TransCanada's
14 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
15 liability company called TransCanada Keystone Pipeline GP, LLC is the general
16 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
17 basically nothing. That is really scary since the general partner has the liability but
18 virtually none of the ownership and who knows if it has any other assets.

19 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
20 **percent clear on exactly who could become the owner of over 275 miles of**
21 **Nebraska land?**

22 **A:** No.

23 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
24 **percent clear on exactly who will be operating and responsible for**
25 **approximately 275 miles of tar sands pipeline underneath and through**
26 **Nebraska land?**

27 **A:** No.

28 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
29 **and the State of Nebraska of TransCanada's easement terms.**

1 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
2 called "Grantee")..." and this concerns me because it would allow their easement
3 to be transferred or sold to someone or some company or country or who knows
4 what that I don't know and who we may not want to do business with. This
5 pipeline would be a huge asset for TransCanada and if they can sell to the highest
6 bidder that could have terrible impacts upon all of Nebraska depending upon who
7 may buy it and I don't know of any safeguards in place for us or the State to veto
8 or have any say so in who may own, operate, or be responsible for this pipeline in
9 the future.

10 **Q: Do you think that type of uncertainty and lack of control over a major piece
11 of infrastructure crossing our State is in the public interest?**

12 A: No, certainly not, in fact, just the opposite.

13 **Q: What's next?**

14 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
15 really concerns me. Why does the easement and right-of-way have to be perpetual
16 and permanent? That is the question myself and my family want an answer to.
17 Perpetual to me is like forever and that doesn't make sense.

18 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

19 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
20 data proving there is a perpetual supply of tar sands. I am not aware in
21 TransCanada's application where it proves there is a perpetual necessity for this
22 pipeline. My understanding of energy infrastructure like wind towers is they have
23 a decommission plan and actually take the towers down when they become
24 obsolete or no longer needed. Nothing manmade lasts forever. My land however
25 will, and I want my family or future Nebraska families to have that land as
26 undisturbed as possible and it is not in my interest or the public interest of
27 Nebraska to be forced to give up perpetual and permanent rights in the land for
28 this specific kind of pipeline project.

29 **Q: Okay, what is your next concern?**

1 A: The easement language includes all these things TransCanada can do and it says
2 "...abandoning in place..." so they can just leave this pipeline under my ground
3 until the end of time just sitting there while they are not using it, but I am still
4 prevented from doing on my land and using my land what I would like. If I owned
5 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
6 there. It doesn't make sense and it scares me and it is not in my interest or the
7 public interest of Nebraska to allow this.

8 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
9 **right?**

10 A: Yes.

11 **Q: So now on the second page of the Easement what are your concerns?**

12 A: Here the Easement identifies a 24-month deadline to complete construction of the
13 pipeline but has caveats that are undefined and ambiguous. The 24-month period
14 starts to run from the moment "actual pipeline installation activities" begin on
15 Landowners property. It appears that TransCanada would define this phrase as
16 needed. It would be wise to explain what types of TransCanada action constitutes
17 "installation activity" For instance, would the placement and storage of an
18 excavator or other equipment on or near the Easement property be an activity or
19 would earth have to be moved before the activity requirement is triggered. This
20 vague phrase is likely to lead to future disputes and litigation that is not in the best
21 interest of the welfare of Nebraska and would not protect property interests. The
22 24-months can also be extended in the case of "force majeure." My understanding
23 is that force majeure is often used to insulate a party to a contract when events
24 occur that are completely out of their control. In TransCanada's easement this is
25 expanded to include "without limitation...availability of labor and materials."
26 Extending this language to labor and materials is problematic because these are
27 two variables that TransCanada does have some or significant control over and to
28 allow extension of the 24-month period over events not truly out of the control of

1 TransCanada and without further provision for compensation for the Landowner is
2 not conducive to protection of property rights.

3 **Q: Okay, what is your next concern?**

4 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
5 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
6 reasonable costs and expenses” will pay for damages caused but then limits
7 TransCanada’s liability to certain circumstances. There is no definition of
8 “commercially reasonable” and no stated right that the Landowner would get to
9 determine the amounts of cost or expense that is “commercially reasonable.”
10 TransCanada excepts out from their liability any damages that are caused by
11 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
12 Landowner. It is understandable that if the Landowner were to willfully and
13 intentionally cause damages to the pipeline that Landowner should be liable.
14 However, anything short of willful misconduct should be the liability of
15 TransCanada who is subjecting the pipeline on the Landowner and who is making
16 a daily profit from that pipeline. When evaluating the impact on property rights of
17 this provision, you must consider the potentially extremely expensive fight a
18 Landowner would have over this question of whether or not damage was an act of
19 negligence. Putting this kind of potential liability upon the Landowner is
20 incredibly problematic and is detrimental to the protection of property rights. I
21 don’t think this unilateral power which I can’t do anything about as the landowner
22 is in the best economic interest of the land in question or the State of Nebraska for
23 landowners to be treated that way.

24 **Q: Is there any specific event or example you are aware of that makes this**
25 **concern more real for you?**

26 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
27 Nemaha County, Nebraska landowner farmers who accidently struck two
28 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
29 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged

1 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
2 copy of the Federal Court Complaint is here as **Attachment No. 4** .

3 **Q: What is your next concern with the Easement language?**

4 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
5 they choose unless 1) any Landowner use interferes in any way with
6 TransCanada's exercise of any of its rights within the Easement, or 2)
7 TransCanada decides to take any action on the property it deems necessary to
8 prevent injury, endangerment or interference with anything TransCanada deems
9 necessary to do on the property. Landowner is also forbidden from excavating
10 without prior authorization by TransCanada. So my understanding is that
11 TransCanada will unilaterally determine what Landowner can and can't do based
12 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
13 could also completely deny my request to excavate. Further, TransCanada retains
14 all "privileges necessary or convenient for the full use of the rights" granted to
15 them in the Easement. Again, TransCanada unilaterally can decide to the
16 detriment of the property rights of Landowner what TransCanada believes is
17 necessary or convenient for it. And there is no option for any additional
18 compensation to landowner for any right exercised by TransCanada that leads to
19 the removal of trees or plants or vegetation or buildings or structures or facilities
20 owned by Landowner of any kind. Such undefined and unilateral restrictions and
21 rights without having to compensate Landowner for such further destruction or
22 losses are not conducive to the protection of property rights or economic interest.

23 **Q: What is the next concern you have?**

24 A: The Easement also allows some rights for Landowner but restricts them at the
25 same time and again at the sole and unilateral decision making of TransCanada.
26 TransCanada will determine if the actions of Landowner might in anyway
27 endanger or obstruct or interfere with TransCanada's full use of the Easement or
28 any appurtenances thereon to the pipeline itself or to their access to the Easement
29 or within the Easement and TransCanada retains the right at any time, whether

1 during growing season or not, to travel “within and along Easement Area on foot
2 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
3 retain the rights to prevent any landowner activity that it thinks may “unreasonably
4 impair[ed] or interfe[ed] with” TransCanada’s use of the Easement Area. Such
5 undefined and unilateral restrictions are not conducive to the protection of
6 property rights or economic interest.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
9 Landowner’s land any debris of any kind without any input or power of
10 Landowner to demand an alternative method or location of debris disposal. Such
11 unilateral powers would negatively affect Landowners property are not conducive
12 to the protection of property rights or economic interest.

13 **Q: What is the next concern you have with the Easement language?**

14 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
15 “where rock is encountered” mean and why does TransCanada solely get to
16 determine whether or not this phrase is triggered. This phrase could be used to
17 justify installing the pipeline 24 inches beneath the surface. The ability to use this
18 provision to minimal locate the pipeline at a depth of 24 inches could negatively
19 affect Landowners property are not conducive to the protection of property rights.
20 A shallow pipeline is much more likely to become a danger and liability in the
21 future given farming operations and buried irrigation lines and other factors
22 common to the current typical agricultural uses of the land in question impacted
23 by TransCanada’s preferred pipeline route.

24 **Q: What is the next concern you have with the Easement language?**

25 A: There are more vague concepts solely at the determination of TransCanada such as
26 “as nearly as practicable” and “pre-construction position” and “extent reasonably
27 possible.” There is nothing here that defines this or provides a mechanism for
28 documenting or memorializing “pre-construction position” so as to minimize
29 costly legal battles or wasted Landowner time attempting to recreate the soil

1 condition on their fields or pasture. Such unilateral powers would negatively affect
2 Landowners property are not conducive to the protection of property rights or
3 economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: TransCanada maintains the unilateral right to abandon the pipeline and all
6 appurtenances thereto in place on, under, across, or through Nebraska land at any
7 time it chooses. There is no provision for Landowner compensation for such
8 abandonment nor any right for the Landowner to demand removal. Such unilateral
9 powers would negatively affect Landowners property are not conducive to the
10 protection of property rights or economic interest.

11 **Q: What is the next concern you have with the Easement language?**

12 A: TransCanada has the power to unilaterally move or modify the location of any
13 Easement area whether permanent or temporary at their sole discretion.
14 Regardless, if Landowner has taken prior steps relative to their property in
15 preparation or planning of TransCanada's taking of the initial easement area(s),
16 the language here does not require TransCanada to compensate the Landowner if
17 they decide to move the easement anywhere on Landowners property. Such
18 unilateral powers would negatively affect Landowners property are not conducive
19 to the protection of property rights or economic interests.

20 **Q: What is the next concern you have with the Easement language?**

21 A: The Easement requires that all of the burdens and restrictions upon Landowner to
22 transfer and be applicable to any future owner of the Land in question without the
23 ability of the future Landowner to modify or negotiate any of the language in
24 question to which it will be held to comply.

25 **Q: What is the next concern you have with the Easement language?**

26 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
27 Easement to any person, company, country, etc. at their sole discretion at anytime
28 to anyone. This also means that any buyer of the easement could do the same to a
29 third buyer and so on forever. There is no change of control or sale provision in

1 place to protect the Landowner or Nebraska or to provide compensation for such
2 change of control or ownership. It is not conducive to the protection of property
3 rights or economic interests to allow unilateral unrestricted sale of the Easement
4 thereby forcing upon the Landowner and our State a new unknown Easement
5 owner.

6 **Q: What is the next concern you have with the Easement language?**

7 **A:** There are many terms in the Easement that are either confusing or undefined terms
8 that are without context as to whether or not the Landowner would have any say
9 so in determining what these terms mean or if the evaluation is solely in
10 TransCanada's control. Some of these vague undefined terms are as follows:

- 11 i. "pipeline installation activities"
- 12 ii. "availability of labor and materials"
- 13 iii. "commercially reasonable costs and expenses"
- 14 iv. "reasonably anticipated and foreseeable costs and expenses"
- 15 v. "yield loss damages"
- 16 vi. "diminution in the value of the property"
- 17 vii. "substantially same condition"
- 18 viii. "an actual or potential hazard"
- 19 ix. "efficient"
- 20 x. "convenient"
- 21 xi. "endangered"
- 22 xii. "obstructed"
- 23 xiii. "injured"
- 24 xiv. "interfered with"
- 25 xv. "impaired"
- 26 xvi. "suitable crossings"
- 27 xvii. "where rock is encountered"
- 28 xviii. "as nearly as practicable"
- 29 xix. "pre-construction position"

1 xx. “pre-construction grade”

2 xxi. “various engineering factors”

3 Each one of these above terms and phrases as read in the context of the Easement
4 could be problematic in many ways. Notably, undefined terms tend to only get
5 definition in further legal proceedings after a dispute arises and the way the
6 Easement is drafted, TransCanada has sole power to determine when and if a
7 particular situation conforms with or triggers rights affected by these terms. For
8 instance, “yield loss damages” should be specifically defined and spelled out
9 exactly how the landowner is to be compensated and in what events on the front
10 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
11 the Landowner is without contractual rights to define these terms or determine
12 when rights related to them trigger and what the affects may be.

13 **Q: Do you have any other concerns about the Easement language that you can**
14 **think of at this time?**

15 A: I reserve the right to discuss any additional concerns that I think of at the time of
16 my live testimony in August.

17 **Q: Based upon what you have shared with the Commission above regarding**
18 **TransCanada’s proposed Easement terms and agreement, do you believe**
19 **those to be reasonable or just, under the circumstances of the pipeline’s**
20 **impact upon you and your land?**

21 A: No, I do not believe those terms to be reasonable or just for the reasons that we
22 discussed previously.

23 **Q: Did TransCanada ever offer you financial compensation for the rights that**
24 **they sought to obtain in your land, and for what they sought to prevent you**
25 **and any future land owner of your property from doing in the future?**

26 A: Yes, we received an offer from them.

27 **Q: As the owner of the land in question and as the person who knows it better**
28 **than anyone else, do you believe that TransCanada offered you just, or fair,**

1 **compensation for all of what they proposed to take from you so that their tar**
2 **sands pipeline could be located across your property?**

3 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
4 offer for all the potential impacts and effects and the rights that I'm giving up, and
5 what we will be prevented from doing in the future and how their pipeline would
6 impact my property for ever and ever.

7 **Q: Has TransCanada at any time offered to compensate you annually, such as**
8 **wind farm projects do, for the existence of their potential tar sands pipeline**
9 **across your property.**

10 A: No, never.

11 **Q: At any time did TransCanada present you with or request that you, as the**
12 **owner of the land in question, sign and execute a document called, "Advanced**
13 **Release of Damage Claims and Indemnity Agreement?"**

14 A: Yes, they did and it was included in the County Court lawsuit against us.

15 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
16 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

17 A: Yes, it is.

18 **Q: What was your understanding of that document?**

19 A: When I read that document in the plain language of that document, it was my
20 understanding that TransCanada was attempting to pay me a very small amount at
21 that time in order for me to agree to give up my rights to be compensated from
22 them in the future related to any damage or impact they may have upon my
23 property "arising out of, in connection with, or alleged to resulted from
24 construction or surveying over, under or on" my land.

25 **Q: Did you ever sign that document?**

26 A: No, I did not.

27 **Q: Why not?**

28 A: Because I do not believe that it is fair or just to try to get me to agree to a small
29 sum of money when I have no idea how bad the impacts or damages that they, or

1 their contractors, or subcontractors, or other agents or employees, may cause on
2 my land at any time in the future that resulted from the construction or surveying
3 or their activities upon my land.

4 **Q: When you reviewed this document, what did it make you feel?**

5 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
6 shield themselves against known and foreseeable impacts that their pipeline, and
7 the construction of it, would have upon my land. It made me feel that they knew it
8 was in their financial interest to pay me as little as possible to prevent me from
9 ever having the opportunity to seek fair compensation again, and that this must be
10 based upon their experience of unhappy landowners and situations in other places
11 where they have built pipelines.

12 **Q: Has TransCanada ever contacted you and specifically asked you if you**
13 **thought their proposed location of their proposed pipeline across your land**
14 **was in your best interest?**

15 A: No, they have not.

16 **Q: Has TransCanada ever contacted you and specifically asked you if you**
17 **thought their proposed location of their proposed pipeline across your land**
18 **was in the public interest of the State of Nebraska?**

19 A: No, they have not.

20 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
21 **Takings Clause?**

22 A: Yes, I am.

23 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
24 **an American citizens property?**

25 A: My understanding is that, according to the United States Constitution, that if the
26 government is going to take land for public use, then in that case, or by taking for
27 public use, it can only occur if the private land owner is compensated justly, or
28 fairly.

1 **Q:** Has TransCanada ever contacted you specially to explain the way in which
2 the public could use its proposed Keystone XL Pipeline?

3 **A:** No, they have not.

4 **Q:** Can you think of any way in which the public, that is the citizens of the State
5 of Nebraska, can directly use the proposed TransCanada Keystone XL
6 Pipeline, as it dissects the State of Nebraska?

7 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
8 public benefits from this pipeline in any way, how they can use it any way, or how
9 it's in the public interest in any way. By looking at the map, it is quite clear to me
10 that the only reason it's proposed to come through Nebraska, is that because we
11 are geographically in the way from between where the privately-owned Tar Sands
12 are located to where TransCanada wants to ship the Tar Sands to refineries in
13 Houston, Texas.

14 **Q:** Has TransCanada ever contacted you and asked you if you had any tar sands,
15 crude petroleum, or oil and petroleum by-products that you would like to
16 ship in its pipeline?

17 **A:** No, it has not.

18 **Q:** Do you have any tar sands, crude petroleum, or oil and petroleum by-
19 products that you, at this time or any time in the future, would desire to place
20 for transport within the proposed TransCanada Keystone XL Pipeline?

21 **A:** No, I do not.

22 **Q:** Do you know anyone in the state of Nebraska who would be able to ship any
23 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
24 products within the proposed TransCanada Keystone XL Pipeline?

25 **A:** No, I do not. I've never heard of such a person or company like that.

26 **Q:** Do you pay property taxes for the land that would be affected and impacted
27 at the proposed TransCanada Keystone XL Pipeline?

28 **A:** Yes, I do.

29 **Q:** Why do you pay property taxes on that land?

1 A: Because that is the law. The law requires us to pay the property taxes as the owner
2 of that property.

3 **Q: Because you follow the law and pay property taxes, do you believe you**
4 **deserve any special consideration or treatment apart from any other person**
5 **or company that pays property taxes?**

6 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
7 just what you do.

8 **Q: Do you believe the fact that you pay property taxes entitles you to special**
9 **treatment of any kind, or special rights of any kind?**

10 A: No, of course not.

11 **Q: Do you believe the fact that you pay property taxes on your land would be**
12 **enough to qualify you to have the power of eminent domain to take land of**
13 **your neighbors or other people in your county, or other people across the**
14 **state of Nebraska?**

15 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
16 I expect an award for or any type of special consideration.

17 **Q: Have you at any time ever employed any person other than yourself?**

18 A: Well, yes I have.

19 **Q: Do you believe that the fact that you have, at some point in your life,**
20 **employed one or more other persons entitle you to any special treatment or**
21 **consideration above and beyond any other Nebraskan that has also employed**
22 **one or more persons?**

23 A: No, of course not.

24 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
25 **have at one point employed another person within this state, entitles you to**
26 **preferential treatment or consideration of any kind?**

27 A: No, of course not. If I choose to employ someone that decision is up to me. I
28 don't deserve any special treatment or consideration for that fact.

1 **Q:** At the beginning of your statement, you briefly described your property that
2 would be impacted by the potential Keystone XL Pipeline. I would like you to
3 give the Commissioners a sense of specifically how you believe the proposed
4 Keystone XL Pipeline and its preferred route, which proposes to go across
5 your land, how it would in your opinion based on your knowledge,
6 experience, and background of your land, affect it.

7 **A:** Our land is very sandy and porous. So the installation of the pipeline from
8 TransCanada could threaten our productive land and our valuable water resources.
9 We should not take for granted our valuable asset, and that is water, water for
10 people, animals, crops and recreational use. We cannot magically make water.
11 Water is vital to life.

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. 6, to your**
20 **testimony?**

21 A: Yes, I have.

22 **Q: Where have you seen that before?**

23 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
24 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
25 believe the portion of the alternative route in Nebraska essentially twins or
26 parallels Keystone I.

27 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
28 **Application, and as found on Attachment No. 7, here to your testimony, is in**
29 **the public interest of Nebraska?**

1 A: No, I do not.

2 Q: Do you believe that the Keystone mainline alternative route as shown on
3 Attachment No. 7 included with your testimony here is a major oil pipeline
4 route that is in the public interest of Nebraska?

5 A: No, I do not.

6 Q: Do you believe the portion of the proposed pipeline within Nebraska as found
7 in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

8 A: No, I do not.

9 Q: Do you believe there is any potential route for the proposed Keystone XL
10 Pipeline across, within, under, or through the State of Nebraska that is in the
11 public interest of the citizens of Nebraska?

12 A: No, I do not.

13 Q: Why do you hold that belief?

14 A: Because there simply is no public interest based on all of the factors that I am
15 aware and that I have read and that I have studied that this Commission is to
16 consider that would establish that a for-profit foreign-owned pipeline that simply
17 crosses Nebraska because we are geographically in the way between where tar
18 sands are in Canada to where it wants to ship it to in Texas could ever be in the
19 public interest of Nebraskans. We derive no benefit from this project. It is not for
20 public use. Nebraska is simply in the way and when all considerations are taken in
21 there is no net benefit of any kind for Nebraska should this project be placed in our
22 state. Even if there was some arguable “benefit” it is not enough to outweigh all
23 the negative impacts and concerns.

24 Q: What do you think about the applicant, TransCanada’s argument that it’s
25 preferred route for its proposed Keystone XL Pipeline is in the public interest
26 of Nebraska because it may bring temporary jobs during the construction
27 phase to Nebraska?

28 A: First of all, not all jobs are created equally. Most jobs that are created, whether
29 temporary or on a permanent basis, don’t come with a project that has all the

1 potential and foreseeable negative impacts, many of which we have discussed here
2 and other witnesses throughout the course of this hearing have and will discuss. If
3 I decide to hire and employ someone to help me out in my farming or ranching
4 business, I've created a job but I haven't done so at the risk or detrimental impact
5 to my land or my town or my county or my state. And I've hired someone who is
6 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
7 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
8 jobs are not created equal. Additionally, I understand from what I'm familiar with
9 from TransCanada's own statements that the jobs numbers they originally touted
10 were determined to be a minute fraction of the permanent jobs that had been
11 projected. According to their answer to our Interrogatory No. 191, TransCanada
12 has created only thirty-four (34) jobs within Nebraska working specifically on
13 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
14 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
15 Further, according to their answer to Interrogatory No. 199, TransCanada would
16 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
17 constructed on its Preferred Route or its Mainline Alternative Route.

18 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
19 **because it would cross your land?**

20 A: No, absolutely not. I am opposed to this project because it is not in the public
21 interest, neither within my community nor within our state.

22 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
23 **was to cross someone else's land?**

24 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
25 the fear and anxiety and potential foreseeable risks and negative impacts that this
26 type of a project carrying this type of product brings foisted upon anyone in this
27 state or any other state.

28 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
29 **Pipeline to cross the state of Nebraska?**

1 A: I don't believe there is an intelligent route because as I have stated I don't believe
2 this project anywhere within Nebraska is within the public interest. However, if
3 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
4 had to go somewhere in the state of Nebraska, the only intelligent route I believe
5 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
6 preferred route and the mainline alternative routes are economic liabilities our
7 state cannot risk.

8 **Q: What do you rely upon to make that statement?**

9 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
10 already exists in that area is reason enough as it is not in our best interest or the
11 public interests to have more major oil pipelines crisscrossing our state. Second,
12 they have all the infrastructure already there in terms of relationships with the
13 counties and local officials and first responders along that route. Third, they have
14 already obtained easements from all the landowners along that route and have
15 relationships with them. Fourth, that route avoids our most sensitive soils, the
16 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
17 Aquifer. Sixth, they have already studied that route and previously offered it as an
18 alternative. Seventh, it just makes the most sense that as a state we would have
19 some intelligent policy of energy corridors and co-locating this type of
20 infrastructure near each other.

21 **Q: Do you have any other concerns you would like to reiterate or can think of at
22 this time you would like the Commissioners to understand?**

23 A: Yes. We worry about the tar sands that need strong and damaging chemicals
24 (solvents) that are used to push this dirty liquid through the underground pipeline
25 which will be close to home and drinking wells. Solvents, which are unlike oil,
26 will permeate immediately into water and the only way to remove solvents is to
27 distill it which means the water would be permanently destroyed. We are
28 instructed to be concerned about nitrates in water, shouldn't we worry about the
29 tar sands mixture leaking into the drinking wells people and animals use? When

1 the sandy, porous and permeable land is dug up and disturbed as the pipeline
2 construction would be certainly do, there is little, if any healing process to return
3 the land to its natural productive state. It will be forever changed. Our constitution
4 grants us landowners property rights. Rights that were reserved for the
5 government for the taking of property for specified purpose of “public use” do not
6 apply to this Application or project. The proposed routes should not be approved.
7 The constitution does not say a private company can use eminent domain for its
8 own use and then profit from it. There are strict laws for the government to use
9 eminent domain.

10 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
11 **like the Public Service Commissioners to consider in their review of**
12 **TransCanada’s Application?**

13 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
14 document below but other things may come to me or my memory may be
15 refreshed and I will add and address those things at the time of the Hearing in
16 August and address any additional items at that time as is necessary. Additionally,
17 I have not had an adequate amount of time to receive and review all of
18 TransCanada’s answers to our discovery and the discovery of others so it was
19 impossible to competently and completely react to that in my testimony here and I
20 reserve the right to also address anything related to discovery that has not yet
21 concluded as of the date I signed this document below. Lastly, certain documents
22 requested have not yet been produced by TransCanada and therefore I may have
23 additional thoughts on those I will also share at the hearing as needed.

24 **Q: Does Attachment No. 8 here contain other documents you are competent to**
25 **speak about that you wish to be part of your testimony and to discuss in more**
26 **detail as needed at the August 2017 Hearing?**

27 **A:** Yes.

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: Are all of your statements in your testimony provided above true and**
24 **accurate as of the date you signed this document to the best of your**
25 **knowledge?**

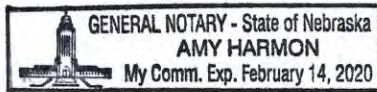
26 A: Yes, they are.

27 **Q: Thank you, I have no further questions at this time and reserve the right to**
28 **ask you additional questions at the August 2017 Hearing.**

Dave Troester
Dave Troester

Subscribed and Sworn to me before this 30th day of May, 2017.

Amy Harmon
Notary Public



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
Sharyn L. Troester in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Sharyn L. Troester. I am the sole partner of Nichols Family Limited
3 Partnership and Trustee of Nichols Family 1992 Irrevocable Trust.

4 **Q: Are you an intervener in the Public Service Commission’s proceedings**
5 **regarding TransCanada’s application for approval of its proposed Keystone**
6 **XL tar sands pipeline across Nebraska?**

7 A: Yes, I am.

8 **Q: Do you own land in Nebraska, either directly or through an entity of which**
9 **you are an owner that could be affected by the proposed TransCanada**
10 **Keystone XL pipeline?**

11 A: Yes, I do and it is located in Holt County.

12 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
13 **photo(s) of your land in question here with the area of the proposed KXL**
14 **pipeline depicted?**

15 A: Yes.

16 **Q: What do you do for a living?**



1 A: Farmer.

2 **Q: If you are you married tell us your spouse's name please?**

3 A: Dave Troester

4 **Q: If you have children how many do you have?**

5 A: 2.

6 **Q: If you have grandchildren how many do you have?**

7 A: 5.

8 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
9 **and or your family?**

10 A: Yes.

11 **Q: How long the land has been in your family?**

12 A: Our family farm has been in our stewardship for many decades. There are corner
13 machines on the land involved, underground tiling, underground cable for the
14 corner machines, and three phase underground wiring for power lines. There is a
15 quonset building used for storage of seed, farm machinery and work areas.
16 Currently, two families reside on land that is on the proposed route that have
17 drinking wells being used.

18 **Q: Do you earn any income from this land?**

19 A: Yes.

20 **Q: Have you depended on the income from your land to support your livelihood**
21 **or the livelihood of your family?**

22 A: Yes.

23 **Q: Have you ever in the past or have you thought about in the future leasing all**
24 **or a portion of your land in question here?**

25 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
26 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
27 all the restrictions and risks and potential negative impacts to farming or ranching
28 operations as opposed to land that did not have those same risks. If I was looking
29 to lease or rent ground I would pay more for comparable non-pipeline land than I

1 would for comparable pipeline land and I think most folks would think the same
2 way. This is another negative economic impact that affects the landowner and the
3 county and the state and will forever and ever should TransCanada's preferred or
4 mainline alternative routes be approved. If they were to twin or closely parallel to
5 Keystone I the vast majority of landowners would be those that already have a
6 pipeline so there would be considerable less new incremental negative impacts.

7 **Q: Do you have similar concerns about selling the land?**

8 A: Well I hope not to have to sell the land in my lifetime but times change and you
9 never know what is around the corner and yes I am concerned that if another piece
10 of ground similar to mine were for sale and it did not have the pipeline and mine
11 did that I would have a lower selling price. I think this would be true for pipeline
12 ground on both the preferred and mainline alternative routes.

13 **Q: What is your intent with your land after you die?**

14 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
15 to come but I have thought about getting out if this pipeline were to come through.

16 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
17 Pipeline would cross the land described above and owned by you?**

18 A: Yes.

19 **Q: Were you or an entity for which you are a member, shareholder, or director
20 previously sued by TransCanada Keystone Pipeline, LP?**

21 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
22 petition for condemnation against our land so it could place its proposed pipeline
23 within an easement that it wanted to take from us on our land.

24 **Q: Did you defend yourself and your land in that condemnation action?**

25 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
26 and expenses in our resistance of TransCanada's lawsuit against us.

27 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
28 incurred?**

29 A: No, they have not.

1 Q: In its lawsuit against you, did TransCanada identify the amount of your
2 property that it wanted to take for its proposed pipeline?

3 A: The lawsuit against us stated they would take the amount of property that is
4 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
5 and equipment reasonably necessary to operate the pipeline.

6 Q: Did TransCanada define what they meant by “property that is reasonably
7 necessary”?

8 A: No, they did not.

9 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
10 property portion of your land?

11 A: Yes, they did.

12 Q: Did TransCanada describe what rights it proposed to take related to the
13 eminent domain property on your land?

14 A: Yes, they did.

15 Q: What rights that they proposed to take did they describe?

16 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
17 operate, and maintain the pipeline and the plant and equipment reasonably
18 necessary to operate the pipeline, specifically including surveying, laying,
19 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
20 reconstructing, removing and abandoning one pipeline, together with all fittings,
21 cathodic protection equipment, pipeline markers, and all their equipment and
22 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
23 petroleum products, and all by-products thereof.”

24 Q: Prior to filing an eminent domain lawsuit to take your land that
25 TransCanada identified, do you believe they attempted to negotiate in good
26 faith with you?

27 A: No, I do not.

28 Q: Did TransCanada at any time approach you with or deliver to you their
29 proposed easement and right-of-way agreement?

1 A: Yes, they did.

2 Q: At the time you reviewed TransCanada's easement and right-of-way
3 agreement, did you understand that they would be purchasing a fee title
4 interest in your property or that they were taking something else?

5 A: I understood that they proposed to have the power to take both a temporary
6 construction easement that could last for a certain period of time and then also a
7 permanent easement which they described to be 50 feet across or in width, and
8 that would run the entire portion of my property from where a proposed pipeline
9 would enter my property until where it would exit the property.

10 Q: Is the document included with your testimony here as Attachment No. 3, a
11 true and accurate copy of TransCanada's proposed Easement and Right-of-
12 Way agreement that they included with their condemnation lawsuit against
13 you?

14 A: Yes, it is.

15 Q: Have you had an opportunity to review TransCanada's proposed Easement
16 and Right-of-Way agreement?

17 A: Yes, I have.

18 Q: What is your understanding of the significance of the Easement and Right-of-
19 Way agreement as proposed by TransCanada?

20 A: My understanding is that this is the document that will govern all of the rights and
21 obligations and duties as well as the limitations of what I can and cannot do and
22 how I and any future landowner and any person I invite to come onto my property
23 must behave as well as what TransCanada is and is not responsible for and how
24 they can use my land.

25 Q: After reviewing TransCanada's proposed Easement and Right-of-Way
26 agreement do you have any concerns about any portions of it or any of the
27 language either included in the document or missing from the proposed
28 document?

1 A: Yes, I have a number of significant concerns and worries about the document and
2 how the language included and the language not included potentially negatively
3 impacts my land and thereby potentially negatively impacts my community and
4 my state.

5 **Q: I would like you to walk the Commissioners through each and every one of**
6 **your concerns about TransCanada's proposed Easement and Right-of-Way**
7 **agreement so they can develop an understanding of how that language and**
8 **the terms of that contract, in your opinion, potentially negatively impacts you**
9 **and your land. So, if you can start at the beginning of that document and**
10 **let's work our way through it, okay?**

11 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
12 Easement and Right-of-Way agreement and how it negatively could affect my
13 property rights and my economic interests.

14 **Q. Okay, let's start with your first concern please.**

15 A: The very first sentence talks about consideration or how much money they will
16 pay to compensate me for all of the known and unknown affects and all of the
17 rights I am giving up and for all the things they get to do to my land and for what
18 they will prevent me from doing on my land and they only will pay me one time at
19 the signing of the easement agreement. That is a huge problem.

20 **Q: Explain to the Commissioners why that is a problem.**

21 A: It is not fair to the landowner, the county, or the State. It is not fair to the
22 landowner because they want to have my land forever for use as they see fit so
23 they can make a daily profit from their customers. If I was to lease ground from
24 my neighbor I would typically pay twice a year every year as long as they granted
25 me the rights to use their land. That only makes sense – that is fair. If I was going
26 to rent a house in town I would typically pay monthly, every month until I gave up
27 my right to use that house. By TransCanada getting out on the cheap and paying
28 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
29 revenue collection on the money I would be paid and then pay taxes on and

1 contribute to this state and this country. It is money I would be putting back into
2 my local community both spending and stimulating the local economy and
3 generating more economic activity right here. Instead TransCanada's shareholders
4 keep all that money and it never finds its way to Nebraska.

5 **Q: What is your next concern?**

6 **A:** The first paragraph goes on to say Grantor, which is me the landowner, "does
7 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
8 limited partnership..." and I have no idea who that really is. I have no idea who is
9 forcing this pipeline on us or who the owners of the entities are, or what are the
10 assets backing this limited partnership, or who the general partner is, or who all
11 the limited partners are, and who makes up the ownership of the these partners or
12 the structure or any of the basic things you would want to know and understand if
13 you would want to do business with such an outfit. According to TransCanada's
14 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
15 liability company called TransCanada Keystone Pipeline GP, LLC is the general
16 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
17 basically nothing. That is really scary since the general partner has the liability but
18 virtually none of the ownership and who knows if it has any other assets.

19 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
20 **percent clear on exactly who could become the owner of over 275 miles of**
21 **Nebraska land?**

22 **A:** No.

23 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
24 **percent clear on exactly who will be operating and responsible for**
25 **approximately 275 miles of tar sands pipeline underneath and through**
26 **Nebraska land?**

27 **A:** No.

28 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
29 **and the State of Nebraska of TransCanada's easement terms.**

1 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
2 called "Grantee")..." and this concerns me because it would allow their easement
3 to be transferred or sold to someone or some company or country or who knows
4 what that I don't know and who we may not want to do business with. This
5 pipeline would be a huge asset for TransCanada and if they can sell to the highest
6 bidder that could have terrible impacts upon all of Nebraska depending upon who
7 may buy it and I don't know of any safeguards in place for us or the State to veto
8 or have any say so in who may own, operate, or be responsible for this pipeline in
9 the future.

10 **Q: Do you think that type of uncertainty and lack of control over a major piece
11 of infrastructure crossing our State is in the public interest?**

12 A: No, certainly not, in fact, just the opposite.

13 **Q: What's next?**

14 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
15 really concerns me. Why does the easement and right-of-way have to be perpetual
16 and permanent? That is the question myself and my family want an answer to.
17 Perpetual to me is like forever and that doesn't make sense.

18 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

19 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
20 data proving there is a perpetual supply of tar sands. I am not aware in
21 TransCanada's application where it proves there is a perpetual necessity for this
22 pipeline. My understanding of energy infrastructure like wind towers is they have
23 a decommission plan and actually take the towers down when they become
24 obsolete or no longer needed. Nothing manmade lasts forever. My land however
25 will, and I want my family or future Nebraska families to have that land as
26 undisturbed as possible and it is not in my interest or the public interest of
27 Nebraska to be forced to give up perpetual and permanent rights in the land for
28 this specific kind of pipeline project.

29 **Q: Okay, what is your next concern?**

1 A: The easement language includes all these things TransCanada can do and it says
2 "...abandoning in place..." so they can just leave this pipeline under my ground
3 until the end of time just sitting there while they are not using it, but I am still
4 prevented from doing on my land and using my land what I would like. If I owned
5 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
6 there. It doesn't make sense and it scares me and it is not in my interest or the
7 public interest of Nebraska to allow this.

8 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
9 **right?**

10 A: Yes.

11 **Q: So now on the second page of the Easement what are your concerns?**

12 A: Here the Easement identifies a 24-month deadline to complete construction of the
13 pipeline but has caveats that are undefined and ambiguous. The 24-month period
14 starts to run from the moment "actual pipeline installation activities" begin on
15 Landowners property. It appears that TransCanada would define this phrase as
16 needed. It would be wise to explain what types of TransCanada action constitutes
17 "installation activity" For instance, would the placement and storage of an
18 excavator or other equipment on or near the Easement property be an activity or
19 would earth have to be moved before the activity requirement is triggered. This
20 vague phrase is likely to lead to future disputes and litigation that is not in the best
21 interest of the welfare of Nebraska and would not protect property interests. The
22 24-months can also be extended in the case of "force majeure." My understanding
23 is that force majeure is often used to insulate a party to a contract when events
24 occur that are completely out of their control. In TransCanada's easement this is
25 expanded to include "without limitation...availability of labor and materials."
26 Extending this language to labor and materials is problematic because these are
27 two variables that TransCanada does have some or significant control over and to
28 allow extension of the 24-month period over events not truly out of the control of

1 TransCanada and without further provision for compensation for the Landowner is
2 not conducive to protection of property rights.

3 **Q: Okay, what is your next concern?**

4 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
5 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
6 reasonable costs and expenses” will pay for damages caused but then limits
7 TransCanada’s liability to certain circumstances. There is no definition of
8 “commercially reasonable” and no stated right that the Landowner would get to
9 determine the amounts of cost or expense that is “commercially reasonable.”
10 TransCanada excepts out from their liability any damages that are caused by
11 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
12 Landowner. It is understandable that if Landowner were to willfully and
13 intentionally cause damages to the pipeline that Landowner should be liable.
14 However, anything short of willful misconduct should be the liability of
15 TransCanada who is subjecting the pipeline on the Landowner and who is making
16 a daily profit from that pipeline. When evaluating the impact on property rights of
17 this provision, you must consider the potentially extremely expensive fight a
18 Landowner would have over this question of whether or not damage was an act of
19 negligence. Putting this kind of potential liability upon the Landowner is
20 incredibly problematic and is detrimental to the protection of property rights. I
21 don’t think this unilateral power which I can’t do anything about as the landowner
22 is in the best economic interest of the land in question or the State of Nebraska for
23 landowners to be treated that way.

24 **Q: Is there any specific event or example you are aware of that makes this**
25 **concern more real for you?**

26 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
27 Nemaha County, Nebraska landowner farmers who accidently struck two
28 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
29 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged

1 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
2 copy of the Federal Court Complaint is here as **Attachment No. 4**.

3 **Q: What is your next concern with the Easement language?**

4 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
5 they choose unless 1) any Landowner use interferes in any way with
6 TransCanada's exercise of any of its rights within the Easement, or 2)
7 TransCanada decides to take any action on the property it deems necessary to
8 prevent injury, endangerment or interference with anything TransCanada deems
9 necessary to do on the property. Landowner is also forbidden from excavating
10 without prior authorization by TransCanada. So my understanding is that
11 TransCanada will unilaterally determine what Landowner can and can't do based
12 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
13 could also completely deny my request to excavate. Further, TransCanada retains
14 all "privileges necessary or convenient for the full use of the rights" granted to
15 them in the Easement. Again, TransCanada unilaterally can decide to the
16 detriment of the property rights of Landowner what TransCanada believes is
17 necessary or convenient for it. And there is no option for any additional
18 compensation to landowner for any right exercised by TransCanada that leads to
19 the removal of trees or plants or vegetation or buildings or structures or facilities
20 owned by Landowner of any kind. Such undefined and unilateral restrictions and
21 rights without having to compensate Landowner for such further destruction or
22 losses are not conducive to the protection of property rights or economic interest.

23 **Q: What is the next concern you have?**

24 A: The Easement also allows some rights for Landowner but restricts them at the
25 same time and again at the sole and unilateral decision making of TransCanada.
26 TransCanada will determine if the actions of Landowner might in anyway
27 endanger or obstruct or interfere with TransCanada's full use of the Easement or
28 any appurtenances thereon to the pipeline itself or to their access to the Easement
29 or within the Easement and TransCanada retains the right at any time, whether

1 during growing season or not, to travel “within and along Easement Area on foot
2 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
3 retain the rights to prevent any landowner activity that it thinks may “unreasonably
4 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
5 undefined and unilateral restrictions are not conducive to the protection of
6 property rights or economic interest.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
9 Landowner’s land any debris of any kind without any input or power of
10 Landowner to demand an alternative method or location of debris disposal. Such
11 unilateral powers would negatively affect Landowners property are not conducive
12 to the protection of property rights or economic interest.

13 **Q: What is the next concern you have with the Easement language?**

14 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
15 “where rock is encountered” mean and why does TransCanada solely get to
16 determine whether or not this phrase is triggered. This phrase could be used to
17 justify installing the pipeline 24 inches beneath the surface. The ability to use this
18 provision to minimal locate the pipeline at a depth of 24 inches could negatively
19 affect Landowners property are not conducive to the protection of property rights.
20 A shallow pipeline is much more likely to become a danger and liability in the
21 future given farming operations and buried irrigation lines and other factors
22 common to the current typical agricultural uses of the land in question impacted
23 by TransCanada’s preferred pipeline route.

24 **Q: What is the next concern you have with the Easement language?**

25 A: There are more vague concepts solely at the determination of TransCanada such as
26 “as nearly as practicable” and “pre-construction position” and “extent reasonably
27 possible.” There is nothing here that defines this or provides a mechanism for
28 documenting or memorializing “pre-construction position” so as to minimize
29 costly legal battles or wasted Landowner time attempting to recreate the soil

1 condition on their fields or pasture. Such unilateral powers would negatively affect
2 Landowners property are not conducive to the protection of property rights or
3 economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: TransCanada maintains the unilateral right to abandon the pipeline and all
6 appurtenances thereto in place on, under, across, or through Nebraska land at any
7 time it chooses. There is no provision for Landowner compensation for such
8 abandonment nor any right for the Landowner to demand removal. Such unilateral
9 powers would negatively affect Landowners property are not conducive to the
10 protection of property rights or economic interest.

11 **Q: What is the next concern you have with the Easement language?**

12 A: TransCanada has the power to unilaterally move or modify the location of any
13 Easement area whether permanent or temporary at their sole discretion.
14 Regardless, if Landowner has taken prior steps relative to their property in
15 preparation or planning of TransCanada's taking of the initial easement area(s),
16 the language here does not require TransCanada to compensate the Landowner if
17 they decide to move the easement anywhere on Landowners property. Such
18 unilateral powers would negatively affect Landowners property are not conducive
19 to the protection of property rights or economic interests.

20 **Q: What is the next concern you have with the Easement language?**

21 A: The Easement requires that all of the burdens and restrictions upon Landowner to
22 transfer and be applicable to any future owner of the Land in question without the
23 ability of the future Landowner to modify or negotiate any of the language in
24 question to which it will be held to comply.

25 **Q: What is the next concern you have with the Easement language?**

26 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
27 Easement to any person, company, country, etc. at their sole discretion at anytime
28 to anyone. This also means that any buyer of the easement could do the same to a
29 third buyer and so on forever. There is no change of control or sale provision in

1 place to protect the Landowner or Nebraska or to provide compensation for such
2 change of control or ownership. It is not conducive to the protection of property
3 rights or economic interests to allow unilateral unrestricted sale of the Easement
4 thereby forcing upon the Landowner and our State a new unknown Easement
5 owner.

6 **Q: What is the next concern you have with the Easement language?**

7 **A:** There are many terms in the Easement that are either confusing or undefined terms
8 that are without context as to whether or not the Landowner would have any say
9 so in determining what these terms mean or if the evaluation is solely in
10 TransCanada's control. Some of these vague undefined terms are as follows:

- 11 i. "pipeline installation activities"
- 12 ii. "availability of labor and materials"
- 13 iii. "commercially reasonable costs and expenses"
- 14 iv. "reasonably anticipated and foreseeable costs and expenses"
- 15 v. "yield loss damages"
- 16 vi. "diminution in the value of the property"
- 17 vii. "substantially same condition"
- 18 viii. "an actual or potential hazard"
- 19 ix. "efficient"
- 20 x. "convenient"
- 21 xi. "endangered"
- 22 xii. "obstructed"
- 23 xiii. "injured"
- 24 xiv. "interfered with"
- 25 xv. "impaired"
- 26 xvi. "suitable crossings"
- 27 xvii. "where rock is encountered"
- 28 xviii. "as nearly as practicable"
- 29 xix. "pre-construction position"

1 xx. “pre-construction grade”

2 xxi. “various engineering factors”

3 Each one of these above terms and phrases as read in the context of the Easement
4 could be problematic in many ways. Notably, undefined terms tend to only get
5 definition in further legal proceedings after a dispute arises and the way the
6 Easement is drafted, TransCanada has sole power to determine when and if a
7 particular situation conforms with or triggers rights affected by these terms. For
8 instance, “yield loss damages” should be specifically defined and spelled out
9 exactly how the landowner is to be compensated and in what events on the front
10 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
11 the Landowner is without contractual rights to define these terms or determine
12 when rights related to them trigger and what the affects may be.

13 **Q: Do you have any other concerns about the Easement language that you can**
14 **think of at this time?**

15 A: I reserve the right to discuss any additional concerns that I think of at the time of
16 my live testimony in August.

17 **Q: Based upon what you have shared with the Commission above regarding**
18 **TransCanada’s proposed Easement terms and agreement, do you believe**
19 **those to be reasonable or just, under the circumstances of the pipeline’s**
20 **impact upon you and your land?**

21 A: No, I do not believe those terms to be reasonable or just for the reasons that we
22 discussed previously.

23 **Q: Did TransCanada ever offer you financial compensation for the rights that**
24 **they sought to obtain in your land, and for what they sought to prevent you**
25 **and any future land owner of your property from doing in the future?**

26 A: Yes, we received an offer from them.

27 **Q: As the owner of the land in question and as the person who knows it better**
28 **than anyone else, do you believe that TransCanada offered you just, or fair,**

1 **compensation for all of what they proposed to take from you so that their tar**
2 **sands pipeline could be located across your property?**

3 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
4 offer for all the potential impacts and effects and the rights that I'm giving up, and
5 what we will be prevented from doing in the future and how their pipeline would
6 impact my property for ever and ever.

7 **Q: Has TransCanada at any time offered to compensate you annually, such as**
8 **wind farm projects do, for the existence of their potential tar sands pipeline**
9 **across your property.**

10 A: No, never.

11 **Q: At any time did TransCanada present you with or request that you, as the**
12 **owner of the land in question, sign and execute a document called, "Advanced**
13 **Release of Damage Claims and Indemnity Agreement?"**

14 A: Yes, they did and it was included in the County Court lawsuit against us.

15 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
16 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

17 A: Yes, it is.

18 **Q: What was your understanding of that document?**

19 A: When I read that document in the plain language of that document, it was my
20 understanding that TransCanada was attempting to pay me a very small amount at
21 that time in order for me to agree to give up my rights to be compensated from
22 them in the future related to any damage or impact they may have upon my
23 property "arising out of, in connection with, or alleged to resulted from
24 construction or surveying over, under or on" my land.

25 **Q: Did you ever sign that document?**

26 A: No, I did not.

27 **Q: Why not?**

28 A: Because I do not believe that it is fair or just to try to get me to agree to a small
29 sum of money when I have no idea how bad the impacts or damages that they, or

1 their contractors, or subcontractors, or other agents or employees, may cause on
2 my land at any time in the future that resulted from the construction or surveying
3 or their activities upon my land.

4 **Q: When you reviewed this document, what did it make you feel?**

5 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
6 shield themselves against known and foreseeable impacts that their pipeline, and
7 the construction of it, would have upon my land. It made me feel that they knew it
8 was in their financial interest to pay me as little as possible to prevent me from
9 ever having the opportunity to seek fair compensation again, and that this must be
10 based upon their experience of unhappy landowners and situations in other places
11 where they have built pipelines.

12 **Q: Has TransCanada ever contacted you and specifically asked you if you**
13 **thought their proposed location of their proposed pipeline across your land**
14 **was in your best interest?**

15 A: No, they have not.

16 **Q: Has TransCanada ever contacted you and specifically asked you if you**
17 **thought their proposed location of their proposed pipeline across your land**
18 **was in the public interest of the State of Nebraska?**

19 A: No, they have not.

20 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
21 **Takings Clause?**

22 A: Yes, I am.

23 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
24 **an American citizens property?**

25 A: My understanding is that, according to the United States Constitution, that if the
26 government is going to take land for public use, then in that case, or by taking for
27 public use, it can only occur if the private land owner is compensated justly, or
28 fairly.

1 **Q:** Has TransCanada ever contacted you specially to explain the way in which
2 the public could use its proposed Keystone XL Pipeline?

3 **A:** No, they have not.

4 **Q:** Can you think of any way in which the public, that is the citizens of the State
5 of Nebraska, can directly use the proposed TransCanada Keystone XL
6 Pipeline, as it dissects the State of Nebraska?

7 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
8 public benefits from this pipeline in any way, how they can use it any way, or how
9 it's in the public interest in any way. By looking at the map, it is quite clear to me
10 that the only reason it's proposed to come through Nebraska, is that because we
11 are geographically in the way from between where the privately-owned Tar Sands
12 are located to where TransCanada wants to ship the Tar Sands to refineries in
13 Houston, Texas.

14 **Q:** Has TransCanada ever contacted you and asked you if you had any tar sands,
15 crude petroleum, or oil and petroleum by-products that you would like to
16 ship in its pipeline?

17 **A:** No, it has not.

18 **Q:** Do you have any tar sands, crude petroleum, or oil and petroleum by-
19 products that you, at this time or any time in the future, would desire to place
20 for transport within the proposed TransCanada Keystone XL Pipeline?

21 **A:** No, I do not.

22 **Q:** Do you know anyone in the state of Nebraska who would be able to ship any
23 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
24 products within the proposed TransCanada Keystone XL Pipeline?

25 **A:** No, I do not. I've never heard of such a person or company like that.

26 **Q:** Do you pay property taxes for the land that would be affected and impacted
27 at the proposed TransCanada Keystone XL Pipeline?

28 **A:** Yes, I do.

29 **Q:** Why do you pay property taxes on that land?

1 A: Because that is the law. The law requires us to pay the property taxes as the owner
2 of that property.

3 **Q: Because you follow the law and pay property taxes, do you believe you**
4 **deserve any special consideration or treatment apart from any other person**
5 **or company that pays property taxes?**

6 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
7 just what you do.

8 **Q: Do you believe the fact that you pay property taxes entitles you to special**
9 **treatment of any kind, or special rights of any kind?**

10 A: No, of course not.

11 **Q: Do you believe the fact that you pay property taxes on your land would be**
12 **enough to qualify you to have the power of eminent domain to take land of**
13 **your neighbors or other people in your county, or other people across the**
14 **state of Nebraska?**

15 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
16 I expect an award for or any type of special consideration.

17 **Q: Have you at any time ever employed any person other than yourself?**

18 A: Well, yes I have.

19 **Q: Do you believe that the fact that you have, at some point in your life,**
20 **employed one or more other persons entitle you to any special treatment or**
21 **consideration above and beyond any other Nebraskan that has also employed**
22 **one or more persons?**

23 A: No, of course not.

24 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
25 **have at one point employed another person within this state, entitles you to**
26 **preferential treatment or consideration of any kind?**

27 A: No, of course not. If I choose to employ someone that decision is up to me. I
28 don't deserve any special treatment or consideration for that fact.

1 **Q:** At the beginning of your statement, you briefly described your property that
2 would be impacted by the potential Keystone XL Pipeline. I would like you to
3 give the Commissioners a sense of specifically how you believe the proposed
4 Keystone XL Pipeline and its preferred route, which proposes to go across
5 your land, how it would in your opinion based on your knowledge,
6 experience, and background of your land, affect it.

7 **A:** Our land is very sandy and porous. So the installation of the pipeline from
8 TransCanada could threaten our productive land and our valuable water resources.
9 We should not take for granted our valuable asset, and that is water, water for
10 people, animals, crops and recreational use. We cannot magically make water.
11 Water is vital to life.

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. 6, to your**
20 **testimony?**

21 A: Yes, I have.

22 **Q: Where have you seen that before?**

23 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
24 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
25 believe the portion of the alternative route in Nebraska essentially twins or
26 parallels Keystone I.

27 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
28 **Application, and as found on Attachment No. 7, here to your testimony, is in**
29 **the public interest of Nebraska?**

1 A: No, I do not.

2 Q: Do you believe that the Keystone mainline alternative route as shown on
3 Attachment No. 7 included with your testimony here is a major oil pipeline
4 route that is in the public interest of Nebraska?

5 A: No, I do not.

6 Q: Do you believe the portion of the proposed pipeline within Nebraska as found
7 in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

8 A: No, I do not.

9 Q: Do you believe there is any potential route for the proposed Keystone XL
10 Pipeline across, within, under, or through the State of Nebraska that is in the
11 public interest of the citizens of Nebraska?

12 A: No, I do not.

13 Q: Why do you hold that belief?

14 A: Because there simply is no public interest based on all of the factors that I am
15 aware and that I have read and that I have studied that this Commission is to
16 consider that would establish that a for-profit foreign-owned pipeline that simply
17 crosses Nebraska because we are geographically in the way between where tar
18 sands are in Canada to where it wants to ship it to in Texas could ever be in the
19 public interest of Nebraskans. We derive no benefit from this project. It is not for
20 public use. Nebraska is simply in the way and when all considerations are taken in
21 there is no net benefit of any kind for Nebraska should this project be placed in our
22 state. Even if there was some arguable “benefit” it is not enough to outweigh all
23 the negative impacts and concerns.

24 Q: What do you think about the applicant, TransCanada’s argument that it’s
25 preferred route for its proposed Keystone XL Pipeline is in the public interest
26 of Nebraska because it may bring temporary jobs during the construction
27 phase to Nebraska?

28 A: First of all, not all jobs are created equally. Most jobs that are created, whether
29 temporary or on a permanent basis, don’t come with a project that has all the

1 potential and foreseeable negative impacts, many of which we have discussed here
2 and other witnesses throughout the course of this hearing have and will discuss. If
3 I decide to hire and employ someone to help me out in my farming or ranching
4 business, I've created a job but I haven't done so at the risk or detrimental impact
5 to my land or my town or my county or my state. And I've hired someone who is
6 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
7 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
8 jobs are not created equal. Additionally, I understand from what I'm familiar with
9 from TransCanada's own statements that the jobs numbers they originally touted
10 were determined to be a minute fraction of the permanent jobs that had been
11 projected. According to their answer to our Interrogatory No. 191, TransCanada
12 has created only thirty-four (34) jobs within Nebraska working specifically on
13 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
14 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
15 Further, according to their answer to Interrogatory No. 199, TransCanada would
16 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
17 constructed on its Preferred Route or its Mainline Alternative Route.

18 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
19 **because it would cross your land?**

20 A: No, absolutely not. I am opposed to this project because it is not in the public
21 interest, neither within my community nor within our state.

22 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
23 **was to cross someone else's land?**

24 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
25 the fear and anxiety and potential foreseeable risks and negative impacts that this
26 type of a project carrying this type of product brings foisted upon anyone in this
27 state or any other state.

28 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
29 **Pipeline to cross the state of Nebraska?**

1 A: I don't believe there is an intelligent route because as I have stated I don't believe
2 this project anywhere within Nebraska is within the public interest. However, if
3 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
4 had to go somewhere in the state of Nebraska, the only intelligent route I believe
5 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
6 preferred route and the mainline alternative routes are economic liabilities our
7 state cannot risk.

8 **Q: What do you rely upon to make that statement?**

9 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
10 already exists in that area is reason enough as it is not in our best interest or the
11 public interests to have more major oil pipelines crisscrossing our state. Second,
12 they have all the infrastructure already there in terms of relationships with the
13 counties and local officials and first responders along that route. Third, they have
14 already obtained easements from all the landowners along that route and have
15 relationships with them. Fourth, that route avoids our most sensitive soils, the
16 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
17 Aquifer. Sixth, they have already studied that route and previously offered it as an
18 alternative. Seventh, it just makes the most sense that as a state we would have
19 some intelligent policy of energy corridors and co-locating this type of
20 infrastructure near each other.

21 **Q: Do you have any other concerns you would like to reiterate or can think of at
22 this time you would like the Commissioners to understand?**

23 A: Yes. We worry about the tar sands that need strong and damaging chemicals
24 (solvents) that are used to push this dirty liquid through the underground pipeline
25 which will be close to home and drinking wells. Solvents, which are unlike oil,
26 will permeate immediately into water and the only way to remove solvents is to
27 distill it which means the water would be permanently destroyed. We are
28 instructed to be concerned about nitrates in water, shouldn't we worry about the
29 tar sands mixture leaking into the drinking wells people and animals use? When

1 the sandy, porous and permeable land is dug up and disturbed as the pipeline
2 construction would be certainly do, there is little, if any healing process to return
3 the land to its natural productive state. It will be forever changed. Our constitution
4 grants us landowners property rights. Rights that were reserved for the
5 government for the taking of property for specified purpose of “public use” do not
6 apply to this Application or project. The proposed routes should not be approved.
7 The constitution does not say a private company can use eminent domain for its
8 own use and then profit from it. There are strict laws for the government to use
9 eminent domain.

10 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
11 **like the Public Service Commissioners to consider in their review of**
12 **TransCanada’s Application?**

13 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
14 document below but other things may come to me or my memory may be
15 refreshed and I will add and address those things at the time of the Hearing in
16 August and address any additional items at that time as is necessary. Additionally,
17 I have not had an adequate amount of time to receive and review all of
18 TransCanada’s answers to our discovery and the discovery of others so it was
19 impossible to competently and completely react to that in my testimony here and I
20 reserve the right to also address anything related to discovery that has not yet
21 concluded as of the date I signed this document below. Lastly, certain documents
22 requested have not yet been produced by TransCanada and therefore I may have
23 additional thoughts on those I will also share at the hearing as needed.

24 **Q: Does Attachment No. 8 here contain other documents you are competent to**
25 **speak about that you wish to be part of your testimony and to discuss in more**
26 **detail as needed at the August 2017 Hearing?**

27 **A:** Yes.

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: Are all of your statements in your testimony provided above true and**
24 **accurate as of the date you signed this document to the best of your**
25 **knowledge?**

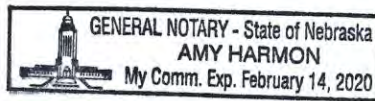
26 A: Yes, they are.

27 **Q: Thank you, I have no further questions at this time and reserve the right to**
28 **ask you additional questions at the August 2017 Hearing.**

Sharyn L. Troester
Sharyn L. Troester

Subscribed and Sworn to me before this 30th day of May, 2017.

Amy Harmon
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act*

Direct Testimony of
Mary Jane Nyberg in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Polk County)

1 **Q: Please state your name.**

2 A: My name is Mary Jane Nyberg.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Polk County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
16 **and or your family?**



1 A: Yes.

2 **Q: For the land that would be affected and impacted by the proposed KXL how**
3 **long the land has been in your family?**

4 A: 88 years.

5 **Q: Do you earn any income from this land?**

6 A: Yes.

7 **Q: Have you depended on the income from your land to support your livelihood**
8 **or the livelihood of your family?**

9 A: Yes.

10 **Q: Have you ever in the past or have you thought about in the future leasing all**
11 **or a portion of your land in question here?**

12 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
13 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
14 all the restrictions and risks and potential negative impacts to farming or ranching
15 operations as opposed to land that did not have those same risks. If I was looking
16 to lease or rent ground I would pay more for comparable non-pipeline land than I
17 would for comparable pipeline land and I think most folks would think the same
18 way. This is another negative economic impact that affects the landowner and the
19 county and the state and will forever and ever should TransCanada's preferred or
20 mainline alternative routes be approved. If they were to twin or closely parallel to
21 Keystone I the vast majority of landowners would be those that already have a
22 pipeline so there would be considerable less new incremental negative impacts.

23 **Q: Do you have similar concerns about selling the land?**

24 A: Well I hope not to have to sell the land in my lifetime but times change and you
25 never know what is around the corner and yes I am concerned that if another piece
26 of ground similar to mine were for sale and it did not have the pipeline and mine
27 did that I would have a lower selling price. I think this would be true for pipeline
28 ground on both the preferred and mainline alternative routes.

29 **Q: What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
4 Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Were you or an entity for which you are a member, shareholder, or director
7 previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
9 petition for condemnation against our land so it could place its proposed pipeline
10 within an easement that it wanted to take from us on our land.

11 **Q: Did you defend yourself and your land in that condemnation action?**

12 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
13 and expenses in our resistance of TransCanada's lawsuit against us.

14 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
15 incurred?**

16 A: No, they have not.

17 **Q: In its lawsuit against you, did TransCanada identify the amount of your
18 property that it wanted to take for its proposed pipeline?**

19 A: The lawsuit against us stated they would take the amount of property that is
20 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
21 and equipment reasonably necessary to operate the pipeline.

22 **Q: Did TransCanada define what they meant by "property that is reasonably
23 necessary"?**

24 A: No, they did not.

25 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain
26 property portion of your land?**

27 A: Yes, they did.

28 **Q: Did TransCanada describe what rights it proposed to take related to the
29 eminent domain property on your land?**

1 A: Yes, they did.

2 Q: **What rights that they proposed to take did they describe?**

3 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
4 operate, and maintain the pipeline and the plant and equipment reasonably
5 necessary to operate the pipeline, specifically including surveying, laying,
6 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
7 reconstructing, removing and abandoning one pipeline, together with all fittings,
8 cathodic protection equipment, pipeline markers, and all their equipment and
9 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
10 petroleum products, and all by-products thereof.”

11 Q: **Prior to filing an eminent domain lawsuit to take your land that
12 TransCanada identified, do you believe they attempted to negotiate in good
13 faith with you?**

14 A: No, I do not.

15 Q: **Did TransCanada at any time approach you with or deliver to you their
16 proposed easement and right-of-way agreement?**

17 A: Yes, they did.

18 Q: **At the time you reviewed TransCanada’s easement and right-of-way
19 agreement, did you understand that they would be purchasing a fee title
20 interest in your property or that they were taking something else?**

21 A: I understood that they proposed to have the power to take both a temporary
22 construction easement that could last for a certain period of time and then also a
23 permanent easement which they described to be 50 feet across or in width, and
24 that would run the entire portion of my property from where a proposed pipeline
25 would enter my property until where it would exit the property.

26 Q: **Is the document included with your testimony here as Attachment No. 3, a
27 true and accurate copy of TransCanada’s proposed Easement and Right-of-
28 Way agreement that they included with their condemnation lawsuit against
29 you?**

1 A: Yes, it is.

2 Q: Have you had an opportunity to review TransCanada's proposed Easement
3 and Right-of-Way agreement?

4 A: Yes, I have.

5 Q: What is your understanding of the significance of the Easement and Right-of-
6 Way agreement as proposed by TransCanada?

7 A: My understanding is that this is the document that will govern all of the rights and
8 obligations and duties as well as the limitations of what I can and cannot do and
9 how I and any future landowner and any person I invite to come onto my property
10 must behave as well as what TransCanada is and is not responsible for and how
11 they can use my land.

12 Q: After reviewing TransCanada's proposed Easement and Right-of-Way
13 agreement do you have any concerns about any portions of it or any of the
14 language either included in the document or missing from the proposed
15 document?

16 A: Yes, I have a number of significant concerns and worries about the document and
17 how the language included and the language not included potentially negatively
18 impacts my land and thereby potentially negatively impacts my community and
19 my state.

20 Q: I would like you to walk the Commissioners through each and every one of
21 your concerns about TransCanada's proposed Easement and Right-of-Way
22 agreement so they can develop an understanding of how that language and
23 the terms of that contract, in your opinion, potentially negatively impacts you
24 and your land. So, if you can start at the beginning of that document and
25 let's work our way through it, okay?

26 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
27 Easement and Right-of-Way agreement and how it negatively could affect my
28 property rights and my economic interests.

29 Q: Okay, let's start with your first concern please.

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership...” and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q:** **Do you think it is in the public interest of Nebraska to not be one-hundred**
6 **percent clear on exactly who could become the owner of over 275 miles of**
7 **Nebraska land?**

8 **A:** No.

9 **Q:** **Do you think it is in the public interest of Nebraska to not be one-hundred**
10 **percent clear on exactly who will be operating and responsible for**
11 **approximately 275 miles of tar sands pipeline underneath and through**
12 **Nebraska land?**

13 **A:** No.

14 **Q:** **Okay, let's continue please with your concerns of the impacts upon your land**
15 **and the State of Nebraska of TransCanada's easement terms.**

16 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow their easement
18 to be transferred or sold to someone or some company or country or who knows
19 what that I don't know and who we may not want to do business with. This
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest
21 bidder that could have terrible impacts upon all of Nebraska depending upon who
22 may buy it and I don't know of any safeguards in place for us or the State to veto
23 or have any say so in who may own, operate, or be responsible for this pipeline in
24 the future.

25 **Q:** **Do you think that type of uncertainty and lack of control over a major piece**
26 **of infrastructure crossing our State is in the public interest?**

27 **A:** No, certainly not, in fact, just the opposite.

28 **Q:** **What's next?**

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that
25 right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

1 TransCanada who is subjecting the pipeline on the Landowner and who is making
2 a daily profit from that pipeline. When evaluating the impact on property rights of
3 this provision, you must consider the potentially extremely expensive fight a
4 Landowner would have over this question of whether or not damage was an act of
5 negligence. Putting this kind of potential liability upon the Landowner is
6 incredibly problematic and is detrimental to the protection of property rights. I
7 don't think this unilateral power which I can't do anything about as the landowner
8 is in the best economic interest of the land in question or the State of Nebraska for
9 landowners to be treated that way.

10 **Q: Is there any specific event or example you are aware of that makes this**
11 **concern more real for you?**

12 **A: Yes, one need not look further than a November 3, 2015 lawsuit filed against**
13 **Nemaha County, Nebraska landowner farmers who accidentally struck two**
14 **Magellan Midstream Partners, LP pipelines, one used to transport a mixture of**
15 **gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged**
16 **negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate**
17 **copy of the Federal Court Complaint is here as Attachment No. 4.**

18 **Q: What is your next concern with the Easement language?**

19 **A: Paragraph 3 states that Landowner can farm on and otherwise use their property as**
20 **they choose unless 1) any Landowner use interferes in any way with**
21 **TransCanada's exercise of any of its rights within the Easement, or 2)**
22 **TransCanada decides to take any action on the property it deems necessary to**
23 **prevent injury, endangerment or interference with anything TransCanada deems**
24 **necessary to do on the property. Landowner is also forbidden from excavating**
25 **without prior authorization by TransCanada. So my understanding is that**
26 **TransCanada will unilaterally determine what Landowner can and can't do based**
27 **upon how TransCanada chooses to define the terms in paragraph 3. TransCanada**
28 **could also completely deny my request to excavate. Further, TransCanada retains**
29 **all "privileges necessary or convenient for the full use of the rights" granted to**

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 **A:** The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada’s full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel “within and along Easement Area on foot
17 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may “unreasonably
19 impair[ed] or 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, what is your main**
21 **concern on direct impact to your land?**

22 **A: We will not be able to run pivot irrigation during construction.**

23 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
24 **crude oil pipeline in its preferred location, or ultimate location across the**
25 **state of Nebraska?**

26 **A: Yes, I have significant concerns. I am aware of landowners being treated unfairly**
27 **or even bullied around and being made to feel scared that they did not have any**
28 **options but to sign whatever papers TransCanada told them they had to. I am**
29 **aware of folks being threatened that their land would be taken if they didn't follow**

1 what TransCanada was saying. I am aware of tactics to get people to sign
2 easements that I don't believe have any place in Nebraska or anywhere such as
3 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
4 landowners and convince them they should sign TransCanada's easement
5 agreements. I am aware of older folks and widows or widowers feeling they had
6 no choice but to sign TransCanada's Easement and they didn't know they could
7 fight or stand up for themselves. From a more practical standpoint, I am worried
8 that according to their answer to our Interrogatory No. 211, TransCanada only
9 owns and operates one (1) major oil pipeline. They simply do not have the
10 experience with this type of pipeline and that scares me. There are others but that
11 is what I can recollect at this time and if I remember more or my recollection is
12 refreshed I will share those with the Commissioners at the Hearing in August.

13 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
14 **landowner is reasonable or just?**

15 **A:** No, I do not.

16 **Q: Do you have any concern about limitations that the construction of this**
17 **proposed pipeline across your affected land would prevent construction of**
18 **future structures upon the portion of your land affected by the proposed**
19 **easement and immediately surrounding areas?**

20 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
21 structures directly across or touching the easement, and it would be unwise and I
22 would be uncomfortable to build anything near the easement for fear of being
23 blamed in the future should any damage or difficulty result on my property in
24 regards to the pipeline.

25 **Q: Do you think such a restriction would impact you economically?**

26 **A:** Well yes, of course.

27 **Q: How do you think such a restriction would impact you economically?**

28 **A:** The future of this land may not be exactly how it's being used as of this moment,
29 and having the restrictions and limiting my ability to develop my land in certain

1 ways presents a huge negative economic impact on myself, my family, and any
2 potential future owner of the property. You have no idea how I or the future owner
3 may want to use this land in the future or the other land across Nebraska
4 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
5 ago it would have been hard to imagine all the advances that we have now or how
6 things change. Because the Easement is forever and TransCanada gets the rights in
7 my land forever we have to think with a very long term view. By placing their
8 pipeline on under across and through my land that prevents future development
9 which greatly negatively impacts future taxes and tax revenue that could have
10 been generated by the County and State but now will not. When you look at the
11 short blip of economic activity that the two years of temporary construction efforts
12 may bring, that is far outweighed by the perpetual and forever loss of opportunity
13 and restrictions TransCanada is forcing upon us and Nebraska.

14 **Q: Do you have any concerns about the environmental impact of the proposed**
15 **pipeline?**

16 A: Yes, I do.

17 **Q: What are some of those concerns?**

18 A: As an affected land owner and Nebraskan, I am concerned that any construction,
19 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
20 a detrimental impact upon the environment of my land specifically, as well as the
21 lands near my land and surrounding the proposed pipeline route.

22 **Q: Do you have any other environmental concerns?**

23 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
24 construction and/or maintenance and operation. I am concerned about spills and
25 leaks that TransCanada has had in the past and will have in the future. This could
26 be catastrophic to my operations or others and to my county and the State.

27 **Q: Do you have any thoughts regarding if there would be an impact upon the**
28 **natural resources on or near your property due to the proposed pipeline?**

1 A: Yes, I believe that any construction, operation, and/or maintenance of the
2 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
3 resources of my land, and the lands near and surrounding the proposed pipeline
4 route.

5 **Q: Do you have any worries about potential impacts from the proposed pipeline
6 to the soil of your land, or land near you?**

7 A: Yes, I believe that any construction, operation, and/or maintenance of the
8 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
9 land, as well as land along and surrounding the proposed pipeline route. This
10 includes, but is not limited to, the reasons that we discussed above of disturbing
11 the soil composition and makeup as it has naturally existed for thousands and
12 millions of years during the construction process, and any future maintenance or
13 removal process. I'm gravely concerned about the fertility and the loss of
14 economic ability of my property to grow the crops, or grow the grasses, or grow
15 whatever it is at that time they exist on my property or that I may want to grow in
16 the future, or that a future owner may want to grow. The land will never be the
17 same from as it exists now undisturbed to after it is trenched up for the proposed
18 pipeline.

19 **Q: Do you have any concerns about the potential impact of the proposed pipeline
20 upon the groundwater over your land, or surrounding lands?**

21 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
22 the proposed Keystone XL Pipeline would have a detrimental impact upon the
23 groundwater of not only under my land, but also near and surrounding the pipeline
24 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
25 simple and it is simply too valuable to our State and the country to put at
26 unreasonable risk.

27 **Q: Do you have any concern about the potential impact of the proposed pipeline
28 upon the surface water on, or near or around your land?**

1 A: Yes, I have significant concerns that any construction, operation, and/or
2 maintenance of the proposed Keystone XL Pipeline would have detrimental
3 impact upon the surface water of not only within my property boundary, but along
4 and near and surrounding the pipeline route, and in fact, across the state of
5 Nebraska.

6 **Q: Do you have any concern about the potential impacts of the proposed pipeline
7 upon the wildlife and plants, other than your growing crops on or near your
8 land?**

9 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
10 the proposed Keystone XL Pipeline would have a detrimental impact upon the
11 wildlife and the plants, not only that are located on or can be found upon my land,
12 but also near and along the proposed pipeline route.

13 **Q: Do you have any concerns about the effects of the proposed pipeline upon the
14 fair market value of your land?**

15 A: Yes, I do. I am significantly concerned about how the existence of the proposed
16 pipeline underneath and across and through my property will negatively affect the
17 fair market value at any point in the future, especially at that point in which I
18 would need to sell the property, or someone in my family would need to sell the
19 property. I do not believe, and certainly would not be willing to pay, the same
20 price for land that had the pipeline located on it, versus land that did not. I hope
21 there is never a point where I'm in a position where I have to sell and have to
22 realize as much value as I can out of my land. But because it is my single largest
23 asset, I'm gravely concerned that the existence of the proposed Keystone XL
24 Pipeline upon my land will affect a buyer's willingness to pay as much as they
25 would've paid and as much as I could've received, if the pipeline were not upon
26 my property. There are just too many risks, unknowns, impacts and uncertainties,
27 not to mention all of the rights you give up by the nature of having the pipeline
28 due to having the easement that we have previously discussed, for any reasonable

1 person to think that the existence of the pipeline would not negatively affect my
2 property's value.

3 Q: Have you ever seen the document that's marked as Attachment No. 6, to your
4 testimony?

5 A: Yes, I have.

6 Q: Where have you seen that before?

7 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
8 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
9 believe the portion of the alternative route in Nebraska essentially twins or
10 parallels Keystone I.

11 Q: Do you believe that TransCanada's preferred route as found on page 5 of its
12 Application, and as found on Attachment No. 7, here to your testimony, is in
13 the public interest of Nebraska?

14 A: No, I do not.

15 Q: Do you believe that the Keystone mainline alternative route as shown on
16 Attachment No. 7 included with your testimony here is a major oil pipeline
17 route that is in the public interest of Nebraska?

18 A: No, I do not.

19 Q: Do you believe the I-90 corridor alternative route, specifically for the portion
20 of the proposed pipeline within Nebraska as found in Attachment No. 6 to
21 your testimony, is in the public interest of Nebraska?

22 A: No, I do not.

23 Q: Do you believe there is any potential route for the proposed Keystone XL
24 Pipeline across, within, under, or through the State of Nebraska that is in the
25 public interest of the citizens of Nebraska?

26 A: No, I do not.

27 Q: Why do you hold that belief?

28 A: Because there simply is no public interest based on all of the factors that I am
29 aware and that I have read and that I have studied that this Commission is to

1 consider that would establish that a for-profit foreign-owned pipeline that simply
2 crosses Nebraska because we are geographically in the way between where tar
3 sands are in Canada to where it wants to ship it to in Texas could ever be in the
4 public interest of Nebraskans. We derive no benefit from this project. It is not for
5 public use. Nebraska is simply in the way and when all considerations are taken in
6 there is no net benefit of any kind for Nebraska should this project be placed in our
7 state. Even if there was some arguable “benefit” it is not enough to outweigh all
8 the negative impacts and concerns.

9 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
10 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
11 **of Nebraska because it may bring temporary jobs during the construction**
12 **phase to Nebraska?**

13 **A: First of all, not all jobs are created equally. Most jobs that are created, whether**
14 **temporary or on a permanent basis, don’t come with a project that has all the**
15 **potential and foreseeable negative impacts, many of which we have discussed here**
16 **and other witnesses throughout the course of this hearing have and will discuss. If**
17 **I decide to hire and employ someone to help me out in my farming or ranching**
18 **business, I’ve created a job but I haven’t done so at the risk or detrimental impact**
19 **to my land or my town or my county or my state. And I’ve hired someone who is**
20 **working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce**
21 **and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all**
22 **jobs are not created equal. Additionally, I understand from what I’m familiar with**
23 **from TransCanada’s own statements that the jobs numbers they originally touted**
24 **were determined to be a minute fraction of the permanent jobs that had been**
25 **projected. According to their answer to our Interrogatory No. 191, TransCanada**
26 **has created only thirty-four (34) jobs within Nebraska working specifically on**
27 **behalf of TransCanada and according to their answer to Interrogatory No. 196, as**
28 **of May 5, 2017 they only employ one (1) temporary working within Nebraska.**
29 **Further, according to their answer to Interrogatory No. 199, TransCanada would**

1 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
2 constructed on its Preferred Route or its Mainline Alternative Route.

3 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
4 **because it would cross your land?**

5 A: No, absolutely not. I am opposed to this project because it is not in the public
6 interest, neither within my community nor within our state.

7 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
8 **was to cross someone else's land?**

9 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
10 the fear and anxiety and potential foreseeable risks and negative impacts that this
11 type of a project carrying this type of product brings foisted upon anyone in this
12 state or any other state.

13 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
14 **Pipeline to cross the state of Nebraska?**

15 A: I don't believe there is an intelligent route because as I have stated I don't believe
16 this project anywhere within Nebraska is within the public interest. However, if
17 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
18 had to go somewhere in the state of Nebraska, the only intelligent route I believe
19 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
20 preferred route and the mainline alternative routes are economic liabilities our
21 state cannot risk.

22 **Q: What do you rely upon to make that statement?**

23 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
24 already exists in that area is reason enough as it is not in our best interest or the
25 public interests to have more major oil pipelines crisscrossing our state. Second,
26 they have all the infrastructure already there in terms of relationships with the
27 counties and local officials and first responders along that route. Third, they have
28 already obtained easements from all the landowners along that route and have
29 relationships with them. Fourth, that route avoids our most sensitive soils, the

1 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
2 Aquifer. Sixth, they have already studied that route and previously offered it as an
3 alternative. Seventh, it just makes the most sense that as a state we would have
4 some intelligent policy of energy corridors and co-locating this type of
5 infrastructure near each other.

6 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
7 **like the Public Service Commissioners to consider in their review of**
8 **TransCanada's Application?**

9 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
10 document below but other things may come to me or my memory may be
11 refreshed and I will add and address those things at the time of the Hearing in
12 August and address any additional items at that time as is necessary. Additionally,
13 I have not had an adequate amount of time to receive and review all of
14 TransCanada's answers to our discovery and the discovery of others so it was
15 impossible to competently and completely react to that in my testimony here and I
16 reserve the right to also address anything related to discovery that has not yet
17 concluded as of the date I signed this document below. Lastly, certain documents
18 requested have not yet been produced by TransCanada and therefore I may have
19 additional thoughts on those I will also share at the hearing as needed.

20 **Q: What is it that you are requesting the Public Service Commissioners do in**
21 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
22 **across Nebraska?**

23 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
24 a temporary job spike that this project may bring to a few counties and beyond the
25 relatively small amount of taxes this proposed foreign pipeline would possibly
26 generate. And, instead think about the perpetual and forever impacts of this
27 pipeline as it would have on the landowners specifically, first and foremost, but
28 also thereby upon the entire state of Nebraska, and to determine that neither the
29 preferred route nor the Keystone mainline alternative route are in the public

1 interest of the citizens of the state of Nebraska. And if the Commissioners were
2 inclined to modify TransCanada's proposed routes and were to be inclined to grant
3 an application for a route in Nebraska, that the only potential route that would
4 make any intelligent sense whatsoever would be twinning or near paralleling of
5 the proposed KXL with the existing Keystone I pipeline. It simply does not make
6 sense to add yet another major oil pipeline crisscrossing our state creating new
7 pumping stations, creating new impacts on additional counties and communities
8 and going through all of the court processes with myself and other landowners like
9 me when this applicant already has relationships with the landowners, the towns
10 and the communities along Keystone I, and that Keystone I is firmly outside of the
11 sand hills and a significantly further portion away from the heart of the Ogallala
12 Aquifer than the preferred route or the Keystone mainline alternative route.

13 **Q: Are all of your statements in your testimony provided above true and**
14 **accurate as of the date you signed this document to the best of your**
15 **knowledge?**

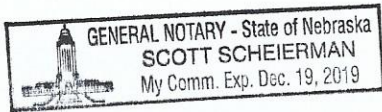
16 **A:** Yes, they are.

17 **Q: Thank you, I have no further questions at this time and reserve the right to**
18 **ask you additional questions at the August 2017 Hearing.**

Mary Jane Nyberg
Mary Jane Nyberg

Subscribed and Sworn to me before this 26th day of May, 2017.

Scott Scheierman
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act*

Direct Testimony of
Richard Pongratz in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Richard Pongratz.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Rancher.



1 **Q: If you are you married tell us your spouse's name please?**

2 A: Ann Pongratz.

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
4 **and or your family?**

5 A. Yes.

6 **Q: How long the land has been in your family?**

7 A: This land has been in our family for generations. Our first ancestor to own this
8 land was George Pongratz. He came over from Germany when he was 11 years
9 old. He learned to speak English and became a citizen of the United States. He
10 worked hard and had good times and rough times but he did this for his children
11 and his children's children to make things better for them. **No foreign country or**
12 **company should be allowed eminent domain over United States land or citizen. If**
13 **Canada needs this pipeline let them put it through their country not ours. We own**
14 320 acres of pasture land that Trans Canada wants to put the pipeline through. It
15 has been in our family for 60 plus years. We are the third generation of owners.
16 We will pass this land on to our children and grandchildren.

17 **Q: Do you earn any income from this land?**

18 A: Yes.

19 **Q: Have you depended on the income from your land to support your livelihood**
20 **or the livelihood of your family?**

21 A: Yes.

22 **Q: Have you ever in the past or have you thought about in the future leasing all**
23 **or a portion of your land in question here?**

24 A: Yes, I have thought of it and that concerns me. **I am concerned that a prospective**
25 **tenant may try to negotiate a lower price for my land if it had the pipeline on it and**
26 **all the restrictions and risks and potential negative impacts to farming or ranching**
27 **operations as opposed to land that did not have those same risks. If I was looking**
28 **to lease or rent ground I would pay more for comparable non-pipeline land than I**
29 **would for comparable pipeline land and I think most folks would think the same**

1 way. This is another negative economic impact that affects the landowner and the
2 county and the state and will forever and ever should TransCanada's preferred or
3 mainline alternative routes be approved. If they were to twin or closely parallel to
4 Keystone I the vast majority of landowners would be those that already have a
5 pipeline so there would be considerable less new incremental negative impacts.

6 **Q: Do you have similar concerns about selling the land?**

7 **A:** Well I hope not to have to sell the land in my lifetime but times change and you
8 never know what is around the corner and yes I am concerned that if another piece
9 of ground similar to mine were for sale and it did not have the pipeline and mine
10 did that I would have a lower selling price. I think this would be true for pipeline
11 ground on both the preferred and mainline alternative routes.

12 **Q: What is your intent with your land after you die?**

13 **A:** Like I said I hope not to have to sell and I hope that it stays in the family for years
14 to come but I have thought about getting out if this pipeline were to come through.

15 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
16 Pipeline would cross the land described above and owned by you?**

17 **A:** Yes.

18 **Q: Were you or an entity for which you are a member, shareholder, or director
19 previously sued by TransCanada Keystone Pipeline, LP?**

20 **A:** Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
21 petition for condemnation against our land so it could place its proposed pipeline
22 within an easement that it wanted to take from us on our land.

23 **Q: Did you defend yourself and your land in that condemnation action?**

24 **A:** Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
25 and expenses in our resistance of TransCanada's lawsuit against us.

26 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
27 incurred?**

28 **A:** No, they have not.

1 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
2 **property that it wanted to take for its proposed pipeline?**

3 **A: The lawsuit against us stated they would take the amount of property that is**
4 **reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant**
5 **and equipment reasonably necessary to operate the pipeline.**

6 **Q: Did TransCanada define what they meant by “property that is reasonably**
7 **necessary”?**

8 **A: No, they did not.**

9 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
10 **property portion of your land?**

11 **A: Yes, they did.**

12 **Q: Did TransCanada describe what rights it proposed to take related to the**
13 **eminent domain property on your land?**

14 **A: Yes, they did.**

15 **Q: What rights that they proposed to take did they describe?**

16 **A: TransCanada stated that the eminent domain property will be used to “lay, relay,**
17 **operate, and maintain the pipeline and the plant and equipment reasonably**
18 **necessary to operate the pipeline, specifically including surveying, laying,**
19 **constructing, inspecting, maintaining, operating, repairing, replacing, altering,**
20 **reconstructing, removing and abandoning one pipeline, together with all fittings,**
21 **cathodic protection equipment, pipeline markers, and all their equipment and**
22 **appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,**
23 **petroleum products, and all by-products thereof.”**

24 **Q: Prior to filing an eminent domain lawsuit to take your land that**
25 **TransCanada identified, do you believe they attempted to negotiate in good**
26 **faith with you?**

27 **A: No, I do not.**

28 **Q: Did TransCanada at any time approach you with or deliver to you their**
29 **proposed easement and right-of-way agreement?**

1 A: Yes, they did.

2 Q: At the time you reviewed TransCanada's easement and right-of-way
3 agreement, did you understand that they would be purchasing a fee title
4 interest in your property or that they were taking something else?

5 A: I understood that they proposed to have the power to take both a temporary
6 construction easement that could last for a certain period of time and then also a
7 permanent easement which they described to be 50 feet across or in width, and
8 that would run the entire portion of my property from where a proposed pipeline
9 would enter my property until where it would exit the property.

10 Q: Is the document included with your testimony here as Attachment No. 3, a
11 true and accurate copy of TransCanada's proposed Easement and Right-of-
12 Way agreement that they included with their condemnation lawsuit against
13 you?

14 A: Yes, it is.

15 Q: Have you had an opportunity to review TransCanada's proposed Easement
16 and Right-of-Way agreement?

17 A: Yes, I have.

18 Q: What is your understanding of the significance of the Easement and Right-of-
19 Way agreement as proposed by TransCanada?

20 A: My understanding is that this is the document that will govern all of the rights and
21 obligations and duties as well as the limitations of what I can and cannot do and
22 how I and any future landowner and any person I invite to come onto my property
23 must behave as well as what TransCanada is and is not responsible for and how
24 they can use my land.

25 Q: After reviewing TransCanada's proposed Easement and Right-of-Way
26 agreement do you have any concerns about any portions of it or any of the
27 language either included in the document or missing from the proposed
28 document?

1 A: Yes, I have a number of significant concerns and worries about the document and
2 how the language included and the language not included potentially negatively
3 impacts my land and thereby potentially negatively impacts my community and
4 my state.

5 Q: I would like you to walk the Commissioners through each and every one of
6 your concerns about TransCanada's proposed Easement and Right-of-Way
7 agreement so they can develop an understanding of how that language and
8 the terms of that contract, in your opinion, potentially negatively impacts you
9 and your land. So, if you can start at the beginning of that document and
10 let's work our way through it, okay?

11 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
12 Easement and Right-of-Way agreement and how it negatively could affect my
13 property rights and my economic interests.

14 Q. Okay, let's start with your first concern please.

15 A: The very first sentence talks about consideration or how much money they will
16 pay to compensate me for all of the known and unknown affects and all of the
17 rights I am giving up and for all the things they get to do to my land and for what
18 they will prevent me from doing on my land and they only will pay me one time at
19 the signing of the easement agreement. That is a huge problem.

20 Q: Explain to the Commissioners why that is a problem.

21 A: It is not fair to the landowner, the county, or the State. It is not fair to the
22 landowner because they want to have my land forever for use as they see fit so
23 they can make a daily profit from their customers. If I was to lease ground from
24 my neighbor I would typically pay twice a year every year as long as they granted
25 me the rights to use their land. That only makes sense – that is fair. If I was going
26 to rent a house in town I would typically pay monthly, every month until I gave up
27 my right to use that house. By TransCanada getting out on the cheap and paying
28 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
29 revenue collection on the money I would be paid and then pay taxes on and

1 contribute to this state and this country. It is money I would be putting back into
2 my local community both spending and stimulating the local economy and
3 generating more economic activity right here. Instead TransCanada's shareholders
4 keep all that money and it never finds its way to Nebraska.

5 **Q: What is your next concern?**

6 **A:** The first paragraph goes on to say Grantor, which is me the landowner, "does
7 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
8 limited partnership..." and I have no idea who that really is. I have no idea who is
9 forcing this pipeline on us or who the owners of the entities are, or what are the
10 assets backing this limited partnership, or who the general partner is, or who all
11 the limited partners are, and who makes up the ownership of the these partners or
12 the structure or any of the basic things you would want to know and understand if
13 you would want to do business with such an outfit. According to TransCanada's
14 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
15 liability company called TransCanada Keystone Pipeline GP, LLC is the general
16 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
17 basically nothing. That is really scary since the general partner has the liability but
18 virtually none of the ownership and who knows if it has any other assets.

19 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
20 **percent clear on exactly who could become the owner of over 275 miles of**
21 **Nebraska land?**

22 **A:** No.

23 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
24 **percent clear on exactly who will be operating and responsible for**
25 **approximately 275 miles of tar sands pipeline underneath and through**
26 **Nebraska land?**

27 **A:** No.

28 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
29 **and the State of Nebraska of TransCanada's easement terms.**

1 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
2 called "Grantee")..." and this concerns me because it would allow their easement
3 to be transferred or sold to someone or some company or country or who knows
4 what that I don't know and who we may not want to do business with. This
5 pipeline would be a huge asset for TransCanada and if they can sell to the highest
6 bidder that could have terrible impacts upon all of Nebraska depending upon who
7 may buy it and I don't know of any safeguards in place for us or the State to veto
8 or have any say so in who may own, operate, or be responsible for this pipeline in
9 the future.

10 Q: **Do you think that type of uncertainty and lack of control over a major piece
11 of infrastructure crossing our State is in the public interest?**

12 A: No, certainly not, in fact, just the opposite.

13 Q: **What's next?**

14 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
15 really concerns me. Why does the easement and right-of-way have to be perpetual
16 and permanent? That is the question myself and my family want an answer to.
17 Perpetual to me is like forever and that doesn't make sense.

18 Q: **Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

19 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
20 data proving there is a perpetual supply of tar sands. I am not aware in
21 TransCanada's application where it proves there is a perpetual necessity for this
22 pipeline. My understanding of energy infrastructure like wind towers is they have
23 a decommission plan and actually take the towers down when they become
24 obsolete or no longer needed. Nothing manmade lasts forever. My land however
25 will, and I want my family or future Nebraska families to have that land as
26 undisturbed as possible and it is not in my interest or the public interest of
27 Nebraska to be forced to give up perpetual and permanent rights in the land for
28 this specific kind of pipeline project.

29 Q: **Okay, what is your next concern?**

1 A: The easement language includes all these things TransCanada can do and it says
2 "...abandoning in place..." so they can just leave this pipeline under my ground
3 until the end of time just sitting there while they are not using it, but I am still
4 prevented from doing on my land and using my land what I would like. If I owned
5 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
6 there. It doesn't make sense and it scares me and it is not in my interest or the
7 public interest of Nebraska to allow this.

8 Q: Now it looks like we are ready to go to the second page of the Easement is that
9 right?

10 A: Yes.

11 Q: So now on the second page of the Easement what are your concerns?

12 A: Here the Easement identifies a 24-month deadline to complete construction of the
13 pipeline but has caveats that are undefined and ambiguous. The 24-month period
14 starts to run from the moment "actual pipeline installation activities" begin on
15 Landowners property. It appears that TransCanada would define this phrase as
16 needed. It would be wise to explain what types of TransCanada action constitutes
17 "installation activity" For instance, would the placement and storage of an
18 excavator or other equipment on or near the Easement property be an activity or
19 would earth have to be moved before the activity requirement is triggered. This
20 vague phrase is likely to lead to future disputes and litigation that is not in the best
21 interest of the welfare of Nebraska and would not protect property interests. The
22 24-months can also be extended in the case of "force majeure." My understanding
23 is that force majeure is often used to insulate a party to a contract when events
24 occur that are completely out of their control. In TransCanada's easement this is
25 expanded to include "without limitation...availability of labor and materials."
26 Extending this language to labor and materials is problematic because these are
27 two variables that TransCanada does have some or significant control over and to
28 allow extension of the 24-month period over events not truly out of the control of

1 TransCanada and without further provision for compensation for the Landowner is
2 not conducive to protection of property rights.

3 **Q: Okay, what is your next concern?**

4 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
5 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
6 reasonable costs and expenses” will pay for damages caused but then limits
7 TransCanada’s liability to certain circumstances. There is no definition of
8 “commercially reasonable” and no stated right that the Landowner would get to
9 determine the amounts of cost or expense that is “commercially reasonable.”
10 TransCanada excepts out from their liability any damages that are caused by
11 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
12 Landowner. It is understandable that if the Landowner were to willfully and
13 intentionally cause damages to the pipeline that Landowner should be liable.
14 However, anything short of willful misconduct should be the liability of
15 TransCanada who is subjecting the pipeline on the Landowner and who is making
16 a daily profit from that pipeline. When evaluating the impact on property rights of
17 this provision, you must consider the potentially extremely expensive fight a
18 Landowner would have over this question of whether or not damage was an act of
19 negligence. Putting this kind of potential liability upon the Landowner is
20 incredibly problematic and is detrimental to the protection of property rights. I
21 don’t think this unilateral power which I can’t do anything about as the landowner
22 is in the best economic interest of the land in question or the State of Nebraska for
23 landowners to be treated that way.

24 **Q: Is there any specific event or example you are aware of that makes this**
25 **concern more real for you?**

26 **A:** Yes, one need not look further than a November 3, 2015 lawsuit filed against
27 Nemaha County, Nebraska landowner farmers who accidentally struck two
28 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
29 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged

1 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
2 copy of the Federal Court Complaint is here as **Attachment No. 4.**

3 **Q: What is your next concern with the Easement language?**

4 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
5 they choose unless 1) any Landowner use interferes in any way with
6 TransCanada's exercise of any of its rights within the Easement, or 2)
7 TransCanada decides to take any action on the property it deems necessary to
8 prevent injury, endangerment or interference with anything TransCanada deems
9 necessary to do on the property. Landowner is also forbidden from excavating
10 without prior authorization by TransCanada. So my understanding is that
11 TransCanada will unilaterally determine what Landowner can and can't do based
12 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
13 could also completely deny my request to excavate. Further, TransCanada retains
14 all "privileges necessary or convenient for the full use of the rights" granted to
15 them in the Easement. Again, TransCanada unilaterally can decide to the
16 detriment of the property rights of Landowner what TransCanada believes is
17 necessary or convenient for it. And there is no option for any additional
18 compensation to landowner for any right exercised by TransCanada that leads to
19 the removal of trees or plants or vegetation or buildings or structures or facilities
20 owned by Landowner of any kind. Such undefined and unilateral restrictions and
21 rights without having to compensate Landowner for such further destruction or
22 losses are not conducive to the protection of property rights or economic interest.

23 **Q: What is the next concern you have?**

24 A: The Easement also allows some rights for Landowner but restricts them at the
25 same time and again at the sole and unilateral decision making of TransCanada.
26 TransCanada will determine if the actions of Landowner might in anyway
27 endanger or obstruct or interfere with TransCanada's full use of the Easement or
28 any appurtenances thereon to the pipeline itself or to their access to the Easement
29 or within the Easement and TransCanada retains the right at any time, whether

1 during growing season or not, to travel “within and along Easement Area on foot
2 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
3 retain the rights to prevent any landowner activity that it thinks may “unreasonably
4 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
5 undefined and unilateral restrictions are not conducive to the protection of
6 property rights or economic interest.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
9 Landowner’s land any debris of any kind without any input or power of
10 Landowner to demand an alternative method or location of debris disposal. Such
11 unilateral powers would negatively affect Landowners property are not conducive
12 to the protection of property rights or economic interest.

13 **Q: What is the next concern you have with the Easement language?**

14 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
15 “where rock is encountered” mean and why does TransCanada solely get to
16 determine whether or not this phrase is triggered. This phrase could be used to
17 justify installing the pipeline 24 inches beneath the surface. The ability to use this
18 provision to minimal locate the pipeline at a depth of 24 inches could negatively
19 affect Landowners property are not conducive to the protection of property rights.
20 A shallow pipeline is much more likely to become a danger and liability in the
21 future given farming operations and buried irrigation lines and other factors
22 common to the current typical agricultural uses of the land in question impacted
23 by TransCanada’s preferred pipeline route.

24 **Q: What is the next concern you have with the Easement language?**

25 A: There are more vague concepts solely at the determination of TransCanada such as
26 “as nearly as practicable” and “pre-construction position” and “extent reasonably
27 possible.” There is nothing here that defines this or provides a mechanism for
28 documenting or memorializing “pre-construction position” so as to minimize
29 costly legal battles or wasted Landowner time attempting to recreate the soil

1 condition on their fields or pasture. Such unilateral powers would negatively affect
2 Landowners property are not conducive to the protection of property rights or
3 economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: TransCanada maintains the unilateral right to abandon the pipeline and all
6 appurtenances thereto in place on, under, across, or through Nebraska land at any
7 time it chooses. There is no provision for Landowner compensation for such
8 abandonment nor any right for the Landowner to demand removal. Such unilateral
9 powers would negatively affect Landowners property are not conducive to the
10 protection of property rights or economic interest.

11 **Q: What is the next concern you have with the Easement language?**

12 A: TransCanada has the power to unilaterally move or modify the location of any
13 Easement area whether permanent or temporary at their sole discretion.
14 Regardless, if Landowner has taken prior steps relative to their property in
15 preparation or planning of TransCanada's taking of the initial easement area(s),
16 the language here does not require TransCanada to compensate the Landowner if
17 they decide to move the easement anywhere on Landowners property. Such
18 unilateral powers would negatively affect Landowners property are not conducive
19 to the protection of property rights or economic interests.

20 **Q: What is the next concern you have with the Easement language?**

21 A: The Easement requires that all of the burdens and restrictions upon Landowner to
22 transfer and be applicable to any future owner of the Land in question without the
23 ability of the future Landowner to modify or negotiate any of the language in
24 question to which it will be held to comply.

25 **Q: What is the next concern you have with the Easement language?**

26 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
27 Easement to any person, company, country, etc. at their sole discretion at anytime
28 to anyone. This also means that any buyer of the easement could do the same to a
29 third buyer and so on forever. There is no change of control or sale provision in

1 place to protect the Landowner or Nebraska or to provide compensation for such
2 change of control or ownership. It is not conducive to the protection of property
3 rights or economic interests to allow unilateral unrestricted sale of the Easement
4 thereby forcing upon the Landowner and our State a new unknown Easement
5 owner.

6 **Q: What is the next concern you have with the Easement language?**

7 **A:** There are many terms in the Easement that are either confusing or undefined terms
8 that are without context as to whether or not the Landowner would have any say
9 so in determining what these terms mean or if the evaluation is solely in
10 TransCanada's control. Some of these vague undefined terms are as follows:

- 11 i. "pipeline installation activities"
- 12 ii. "availability of labor and materials"
- 13 iii. "commercially reasonable costs and expenses"
- 14 iv. "reasonably anticipated and foreseeable costs and expenses"
- 15 v. "yield loss damages"
- 16 vi. "diminution in the value of the property"
- 17 vii. "substantially same condition"
- 18 viii. "an actual or potential hazard"
- 19 ix. "efficient"
- 20 x. "convenient"
- 21 xi. "endangered"
- 22 xii. "obstructed"
- 23 xiii. "injured"
- 24 xiv. "interfered with"
- 25 xv. "impaired"
- 26 xvi. "suitable crossings"
- 27 xvii. "where rock is encountered"
- 28 xviii. "as nearly as practicable"
- 29 xix. "pre-construction position"

1 xx. “pre-construction grade”

2 xxi. “various engineering factors”

3 Each one of these above terms and phrases as read in the context of the Easement
4 could be problematic in many ways. Notably, undefined terms tend to only get
5 definition in further legal proceedings after a dispute arises and the way the
6 Easement is drafted, TransCanada has sole power to determine when and if a
7 particular situation conforms with or triggers rights affected by these terms. For
8 instance, “yield loss damages” should be specifically defined and spelled out
9 exactly how the landowner is to be compensated and in what events on the front
10 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
11 the Landowner is without contractual rights to define these terms or determine
12 when rights related to them trigger and what the affects may be.

13 **Q: Do you have any other concerns about the Easement language that you can**
14 **think of at this time?**

15 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
16 my live testimony in August.

17 **Q: Based upon what you have shared with the Commission above regarding**
18 **TransCanada’s proposed Easement terms and agreement, do you believe**
19 **those to be reasonable or just, under the circumstances of the pipeline’s**
20 **impact upon you and your land?**

21 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
22 discussed previously.

23 **Q: Did TransCanada ever offer you financial compensation for the rights that**
24 **they sought to obtain in your land, and for what they sought to prevent you**
25 **and any future land owner of your property from doing in the future?**

26 **A:** Yes, we received an offer from them.

27 **Q: As the owner of the land in question and as the person who knows it better**
28 **than anyone else, do you believe that TransCanada offered you just, or fair,**

1 **compensation for all of what they proposed to take from you so that their tar**
2 **sands pipeline could be located across your property?**

3 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
4 offer for all the potential impacts and effects and the rights that I'm giving up, and
5 what we will be prevented from doing in the future and how their pipeline would
6 impact my property for ever and ever.

7 Q: **Has TransCanada at any time offered to compensate you annually, such as**
8 **wind farm projects do, for the existence of their potential tar sands pipeline**
9 **across your property.**

10 A: No, never.

11 Q: **At any time did TransCanada present you with or request that you, as the**
12 **owner of the land in question, sign and execute a document called, "Advanced**
13 **Release of Damage Claims and Indemnity Agreement?"**

14 A: Yes, they did and it was included in the County Court lawsuit against us.

15 Q: **Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
16 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

17 A: Yes, it is.

18 Q: **What was your understanding of that document?**

19 A: When I read that document in the plain language of that document, it was my
20 understanding that TransCanada was attempting to pay me a very small amount at
21 that time in order for me to agree to give up my rights to be compensated from
22 them in the future related to any damage or impact they may have upon my
23 property "arising out of, in connection with, or alleged to resulted from
24 construction or surveying over, under or on" my land.

25 Q: **Did you ever sign that document?**

26 A: No, I did not.

27 Q: **Why not?**

28 A: Because I do not believe that it is fair or just to try to get me to agree to a small
29 sum of money when I have no idea how bad the impacts or damages that they, or

1 their contractors, or subcontractors, or other agents or employees, may cause on
2 my land at any time in the future that resulted from the construction or surveying
3 or their activities upon my land.

4 **Q: When you reviewed this document, what did it make you feel?**

5 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
6 shield themselves against known and foreseeable impacts that their pipeline, and
7 the construction of it, would have upon my land. It made me feel that they knew it
8 was in their financial interest to pay me as little as possible to prevent me from
9 ever having the opportunity to seek fair compensation again, and that this must be
10 based upon their experience of unhappy landowners and situations in other places
11 where they have built pipelines.

12 **Q: Has TransCanada ever contacted you and specifically asked you if you**
13 **thought their proposed location of their proposed pipeline across your land**
14 **was in your best interest?**

15 A: No, they have not.

16 **Q: Has TransCanada ever contacted you and specifically asked you if you**
17 **thought their proposed location of their proposed pipeline across your land**
18 **was in the public interest of the State of Nebraska?**

19 A: No, they have not.

20 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
21 **Takings Clause?**

22 A: Yes, I am.

23 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
24 **an American citizens property?**

25 A: My understanding is that, according to the United States Constitution, that if the
26 government is going to take land for public use, then in that case, or by taking for
27 public use, it can only occur if the private land owner is compensated justly, or
28 fairly.

1 **Q:** **Has TransCanada ever contacted you specially to explain the way in which**
2 **the public could use its proposed Keystone XL Pipeline?**

3 **A:** **No, they have not.**

4 **Q:** **Can you think of any way in which the public, that is the citizens of the State**
5 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
6 **Pipeline, as it dissects the State of Nebraska?**

7 **A:** **No, I cannot. I cannot think of any way to use this pipeline. I do not see how the**
8 **public benefits from this pipeline in any way, how they can use it any way, or how**
9 **it's in the public interest in any way. By looking at the map, it is quite clear to me**
10 **that the only reason it's proposed to come through Nebraska, is that because we**
11 **are geographically in the way from between where the privately-owned Tar Sands**
12 **are located to where TransCanada wants to ship the Tar Sands to refineries in**
13 **Houston, Texas.**

14 **Q:** **Has TransCanada ever contacted you and asked you if you had any tar sands,**
15 **crude petroleum, or oil and petroleum by-products that you would like to**
16 **ship in its pipeline?**

17 **A:** **No, it has not.**

18 **Q:** **Do you have any tar sands, crude petroleum, or oil and petroleum by-**
19 **products that you, at this time or any time in the future, would desire to place**
20 **for transport within the proposed TransCanada Keystone XL Pipeline?**

21 **A:** **No, I do not.**

22 **Q:** **Do you know anyone in the state of Nebraska who would be able to ship any**
23 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
24 **products within the proposed TransCanada Keystone XL Pipeline?**

25 **A:** **No, I do not. I've never heard of such a person or company like that.**

26 **Q:** **Do you pay property taxes for the land that would be affected and impacted**
27 **at the proposed TransCanada Keystone XL Pipeline?**

28 **A:** **Yes, I do.**

29 **Q:** **Why do you pay property taxes on that land?**

1 A: Because that is the law. The law requires us to pay the property taxes as the owner
2 of that property.

3 **Q: Because you follow the law and pay property taxes, do you believe you**
4 **deserve any special consideration or treatment apart from any other person**
5 **or company that pays property taxes?**

6 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
7 just what you do.

8 **Q: Do you believe the fact that you pay property taxes entitles you to special**
9 **treatment of any kind, or special rights of any kind?**

10 A: No, of course not.

11 **Q: Do you believe the fact that you pay property taxes on your land would be**
12 **enough to qualify you to have the power of eminent domain to take land of**
13 **your neighbors or other people in your county, or other people across the**
14 **state of Nebraska?**

15 **A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that**
16 **I expect an award for or any type of special consideration.**

17 **Q: Have you at any time ever employed any person other than yourself?**

18 A: Well, yes I have.

19 **Q: Do you believe that the fact that you have, at some point in your life,**
20 **employed one or more other persons entitle you to any special treatment or**
21 **consideration above and beyond any other Nebraskan that has also employed**
22 **one or more persons?**

23 A: No, of course not.

24 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
25 **have at one point employed another person within this state, entitles you to**
26 **preferential treatment or consideration of any kind?**

27 A: No, of course not. If I choose to employ someone that decision is up to me. I
28 don't deserve any special treatment or consideration for that fact.

1 **Q:** At the beginning of your statement, you briefly described your property that
2 would be impacted by the potential Keystone XL Pipeline. I would like you to
3 give the Commissioners a sense of specifically how you believe the proposed
4 Keystone XL Pipeline and its preferred route, which proposes to go across
5 your land, how it would in your opinion based on your knowledge,
6 experience, and background of your land, affect it.

7 **A:** There are 2 stock wells on this land, a creek runs through it. There is a watering
8 dug out for the cattle to drink from and shelter belts. The land is surrounded by
9 barbwire fence with gate. The subsoil is gravel. According to the map that
10 TransCanada sent us this pipeline will go under or through the creek. It comes
11 into our property from the east and will go cross to almost the north end of the
12 property.

13 **Q:** Do you have any concerns TransCanada's fitness as an applicant for a major
14 crude oil pipeline in its preferred location, or ultimate location across the
15 state of Nebraska?

16 **A:** Yes, I have significant concerns. I am aware of landowners being treated unfairly
17 or even bullied around and being made to feel scared that they did not have any
18 options but to sign whatever papers TransCanada told them they had to. I am
19 aware of folks being threatened that their land would be taken if they didn't follow
20 what TransCanada was saying. I am aware of tactics to get people to sign
21 easements that I don't believe have any place in Nebraska or anywhere such as
22 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
23 landowners and convince them they should sign TransCanada's easement
24 agreements. I am aware of older folks and widows or widowers feeling they had
25 no choice but to sign TransCanada's Easement and they didn't know they could
26 fight or stand up for themselves. From a more practical standpoint, I am worried
27 that according to their answer to our Interrogatory No. 211, TransCanada only
28 owns and operates one (1) major oil pipeline. They simply do not have the
29 experience with this type of pipeline and that scares me. There are others but that

1 is what I can recollect at this time and if I remember more or my recollection is
2 refreshed I will share those with the Commissioners at the Hearing in August.

3 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
4 **landowner is reasonable or just?**

5 **A: No, I do not.**

6 **Q: Do you have any concern about limitations that the construction of this**
7 **proposed pipeline across your affected land would prevent construction of**
8 **future structures upon the portion of your land affected by the proposed**
9 **easement and immediately surrounding areas?**

10 A: Well yes, of course I do. We would not be able to build many, if any, types of
11 structures directly across or touching the easement, and it would be unwise and I
12 would be uncomfortable to build anything near the easement for fear of being
13 blamed in the future should any damage or difficulty result on my property in
14 regards to the pipeline.

15 **Q: Do you think such a restriction would impact you economically?**

16 A: Well yes, of course.

17 **Q: How do you think such a restriction would impact you economically?**

18 A: The future of this land may not be exactly how it's being used as of this moment,
19 and having the restrictions and limiting my ability to develop my land in certain
20 ways presents a huge negative economic impact on myself, my family, and any
21 potential future owner of the property. You have no idea how I or the future owner
22 may want to use this land in the future or the other land across Nebraska
23 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
24 ago it would have been hard to imagine all the advances that we have now or how
25 things change. **Because the Easement is forever and TransCanada gets the rights in**
26 **my land forever we have to think with a very long term view. By placing their**
27 **pipeline on under across and through my land that prevents future development**
28 **which greatly negatively impacts future taxes and tax revenue that could have**
29 **been generated by the County and State but now will not. When you look at the**

1 short blip of economic activity that the two years of temporary construction efforts
2 may bring, that is far outweighed by the perpetual and forever loss of opportunity
3 and restrictions TransCanada is forcing upon us and Nebraska.

4 **Q: Do you have any concerns about the environmental impact of the proposed**
5 **pipeline?**

6 A: Yes, I do.

7 **Q: What are some of those concerns?**

8 A: As an affected land owner and Nebraskan, I am concerned that any construction,
9 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
10 a detrimental impact upon the environment of my land specifically, as well as the
11 lands near my land and surrounding the proposed pipeline route.

12 **Q: Do you have any other environmental concerns?**

13 **A: Yes, of course I am concerned about potential breaches of the pipeline, failures in**
14 **construction and/or maintenance and operation. I am concerned about spills and**
15 **leaks that TransCanada has had in the past and will have in the future. This could**
16 **be catastrophic to my operations or others and to my county and the State.**

17 **Q: Do you have any thoughts regarding if there would be an impact upon the**
18 **natural resources on or near your property due to the proposed pipeline?**

19 A: Yes, I believe that any construction, operation, and/or maintenance of the
20 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
21 resources of my land, and the lands near and surrounding the proposed pipeline
22 route.

23 **Q: Do you have any worries about potential impacts from the proposed pipeline**
24 **to the soil of your land, or land near you?**

25 A: Yes, I believe that any construction, operation, and/or maintenance of the
26 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
27 land, as well as land along and surrounding the proposed pipeline route. This
28 includes, but is not limited to, the reasons that we discussed above of disturbing
29 the soil composition and makeup as it has naturally existed for thousands and

1 millions of years during the construction process, and any future maintenance or
2 removal process. I'm gravely concerned about the fertility and the loss of
3 economic ability of my property to grow the crops, or grow the grasses, or grow
4 whatever it is at that time they exist on my property or that I may want to grow in
5 the future, or that a future owner may want to grow. The land will never be the
6 same from as it exists now undisturbed to after it is trenched up for the proposed
7 pipeline.

8 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
9 **upon the groundwater over your land, or surrounding lands?**

10 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
11 the proposed Keystone XL Pipeline would have a detrimental impact upon the
12 groundwater of not only under my land, but also near and surrounding the pipeline
13 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
14 simple and it is simply too valuable to our State and the country to put at
15 unreasonable risk.

16 **Q: Do you have any concern about the potential impact of the proposed pipeline**
17 **upon the surface water on, or near or around your land?**

18 A: Yes, I have significant concerns that any construction, operation, and/or
19 maintenance of the proposed Keystone XL Pipeline would have detrimental
20 impact upon the surface water of not only within my property boundary, but along
21 and near and surrounding the pipeline route, and in fact, across the state of
22 Nebraska.

23 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
24 **upon the wildlife and plants, other than your growing crops on or near your**
25 **land?**

26 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
27 the proposed Keystone XL Pipeline would have a detrimental impact upon the
28 wildlife and the plants, not only that are located on or can be found upon my land,
29 but also near and along the proposed pipeline route.

1 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
2 **fair market value of your land?**

3 A: Yes, I do. I am significantly concerned about how the existence of the proposed
4 pipeline underneath and across and through my property will negatively affect the
5 fair market value at any point in the future, especially at that point in which I
6 would need to sell the property, or someone in my family would need to sell the
7 property. I do not believe, and certainly would not be willing to pay, the same
8 price for land that had the pipeline located on it, versus land that did not. I hope
9 there is never a point where I'm in a position where I have to sell and have to
10 realize as much value as I can out of my land. But because it is my single largest
11 asset, I'm gravely concerned that the existence of the proposed Keystone XL
12 Pipeline upon my land will affect a buyer's willingness to pay as much as they
13 would've paid and as much as I could've received, if the pipeline were not upon
14 my property. There are just too many risks, unknowns, impacts and uncertainties,
15 not to mention all of the rights you give up by the nature of having the pipeline
16 due to having the easement that we have previously discussed, for any reasonable
17 person to think that the existence of the pipeline would not negatively affect my
18 property's value.

19 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
20 **testimony?**

21 A: Yes, I have.

22 **Q: Where have you seen that before?**

23 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
24 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
25 believe the portion of the alternative route in Nebraska essentially twins or
26 parallels Keystone I.

27 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
28 **Application, and as found on Attachment No. 7, here to your testimony, is in**
29 **the public interest of Nebraska?**

1 A: No, I do not.

2 Q: Do you believe that the Keystone mainline alternative route as shown on
3 Attachment No. 7 included with your testimony here is a major oil pipeline
4 route that is in the public interest of Nebraska?

5 A: No, I do not.

6 Q: Do you believe the portion of the proposed pipeline within Nebraska as found
7 in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

8 A: No, I do not.

9 Q: Do you believe there is any potential route for the proposed Keystone XL
10 Pipeline across, within, under, or through the State of Nebraska that is in the
11 public interest of the citizens of Nebraska?

12 A: No, I do not.

13 Q: Why do you hold that belief?

14 A: Because there simply is no public interest based on all of the factors that I am
15 aware and that I have read and that I have studied that this Commission is to
16 consider that would establish that a for-profit foreign-owned pipeline that simply
17 crosses Nebraska because we are geographically in the way between where tar
18 sands are in Canada to where it wants to ship it to in Texas could ever be in the
19 public interest of Nebraskans. We derive no benefit from this project. It is not for
20 public use. Nebraska is simply in the way and when all considerations are taken in
21 there is no net benefit of any kind for Nebraska should this project be placed in our
22 state. Even if there was some arguable “benefit” it is not enough to outweigh all
23 the negative impacts and concerns.

24 Q: What do you think about the applicant, TransCanada’s argument that it’s
25 preferred route for its proposed Keystone XL Pipeline is in the public interest
26 of Nebraska because it may bring temporary jobs during the construction
27 phase to Nebraska?

28 A: First of all, not all jobs are created equally. Most jobs that are created, whether
29 temporary or on a permanent basis, don’t come with a project that has all the

1 potential and foreseeable negative impacts, many of which we have discussed here
2 and other witnesses throughout the course of this hearing have and will discuss. If
3 I decide to hire and employ someone to help me out in my farming or ranching
4 business, I've created a job but I haven't done so at the risk or detrimental impact
5 to my land or my town or my county or my state. And I've hired someone who is
6 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
7 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
8 jobs are not created equal. Additionally, I understand from what I'm familiar with
9 from TransCanada's own statements that the jobs numbers they originally touted
10 were determined to be a minute fraction of the permanent jobs that had been
11 projected. According to their answer to our Interrogatory No. 191, TransCanada
12 has created only thirty-four (34) jobs within Nebraska working specifically on
13 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
14 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
15 Further, according to their answer to Interrogatory No. 199, TransCanada would
16 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
17 constructed on its Preferred Route or its Mainline Alternative Route.

18 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
19 **because it would cross your land?**

20 A: No, absolutely not. I am opposed to this project because it is not in the public
21 interest, neither within my community nor within our state.

22 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
23 **was to cross someone else's land?**

24 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
25 the fear and anxiety and potential foreseeable risks and negative impacts that this
26 type of a project carrying this type of product brings foisted upon anyone in this
27 state or any other state.

28 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
29 **Pipeline to cross the state of Nebraska?**

1 A: I don't believe there is an intelligent route because as I have stated I don't believe
2 this project anywhere within Nebraska is within the public interest. However, if
3 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
4 had to go somewhere in the state of Nebraska, the only intelligent route I believe
5 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
6 preferred route and the mainline alternative routes are economic liabilities our
7 state cannot risk.

8 **Q: What do you rely upon to make that statement?**

9 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
10 already exists in that area is reason enough as it is not in our best interest or the
11 public interests to have more major oil pipelines crisscrossing our state. Second,
12 they have all the infrastructure already there in terms of relationships with the
13 counties and local officials and first responders along that route. Third, they have
14 already obtained easements from all the landowners along that route and have
15 relationships with them. Fourth, that route avoids our most sensitive soils, the
16 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
17 Aquifer. Sixth, they have already studied that route and previously offered it as an
18 alternative. Seventh, it just makes the most sense that as a state we would have
19 some intelligent policy of energy corridors and co-locating this type of
20 infrastructure near each other.

21 **Q: Do you have any other concerns you would like to reiterate or can think of at
22 this time you would like the Commissioners to understand?**

23 A: Yes. The product of this pipeline is for export markets and would not benefit
24 Nebraska or the United States of America. The proposed jobs would be few for
25 our "Nebraska workers" and only temporary.

26 **Q: Have you fully expressed each and every opinion, concern, or fact you would
27 like the Public Service Commissioners to consider in their review of
28 TransCanada's Application?**

1 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
2 document below but other things may come to me or my memory may be
3 refreshed and I will add and address those things at the time of the Hearing in
4 August and address any additional items at that time as is necessary. Additionally,
5 I have not had an adequate amount of time to receive and review all of
6 TransCanada's answers to our discovery and the discovery of others so it was
7 impossible to competently and completely react to that in my testimony here and I
8 reserve the right to also address anything related to discovery that has not yet
9 concluded as of the date I signed this document below. Lastly, certain documents
10 requested have not yet been produced by TransCanada and therefore I may have
11 additional thoughts on those I will also share at the hearing as needed.

12 **Q: What is it that you are requesting the Public Service Commissioners do in**
13 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
14 **across Nebraska?**

15 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
16 a temporary job spike that this project may bring to a few counties and beyond the
17 relatively small amount of taxes this proposed foreign pipeline would possibly
18 generate. And, instead think about the perpetual and forever impacts of this
19 pipeline as it would have on the landowners specifically, first and foremost, but
20 also thereby upon the entire state of Nebraska, and to determine that neither the
21 preferred route nor the Keystone mainline alternative route are in the public
22 interest of the citizens of the state of Nebraska. **And if the Commissioners were**
23 **inclined to modify TransCanada's proposed routes and were to be inclined to grant**
24 **an application for a route in Nebraska, that the only potential route that would**
25 **make any intelligent sense whatsoever would be twinning or near paralleling of**
26 **the proposed KXL with the existing Keystone I pipeline. It simply does not make**
27 **sense to add yet another major oil pipeline crisscrossing our state creating new**
28 **pumping stations, creating new impacts on additional counties and communities**
29 **and going through all of the court processes with myself and other landowners like**

1 me when this applicant already has relationships with the landowners, the towns
2 and the communities along Keystone I, and that Keystone I is firmly outside of the
3 sand hills and a significantly further portion away from the heart of the Ogallala
4 Aquifer than the preferred route or the Keystone mainline alternative route.

5 **Q: Are all of your statements in your testimony provided above true and**
6 **accurate as of the date you signed this document to the best of your**
7 **knowledge?**

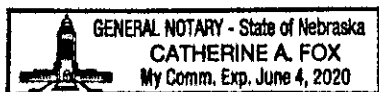
8 **A: Yes, they are.**

9 **Q: Thank you, I have no further questions at this time and reserve the right to**
10 **ask you additional questions at the August 2017 Hearing.**

Richard Pongratz
Richard Pongratz

Subscribed and Sworn to me before this 26th day of May, 2017.

Catherine A Fox
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act*

Direct Testimony of
Ann Pongratz in Support of Landowner
Intervenors

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Ann Pongratz.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Rancher.



1 **Q: If you are you married tell us your spouse's name please?**

2 A: Richard Pongratz.

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
4 **and or your family?**

5 A: Yes.

6 **Q: How long the land has been in your family?**

7 A: This land has been in our family for generations. Our first ancestor to own this
8 land was George Pongratz. He came over from Germany when he was 11 years
9 old. He learned to speak English and became a citizen of the United States. He
10 worked hard and had good times and rough times but he did this for his children
11 and his children's children to make things better for them. **No foreign country or**
12 **company should be allowed eminent domain over United States land or citizen. If**
13 **Canada needs this pipeline let them put it through their country not ours. We own**
14 320 acres of pasture land that Trans Canada wants to put the pipeline through. It
15 has been in our family for 60 plus years. We are the third generation of owners.
16 We will pass this land on to our children and grandchildren.

17 **Q: Do you earn any income from this land?**

18 A: Yes.

19 **Q: Have you depended on the income from your land to support your livelihood**
20 **or the livelihood of your family?**

21 A: Yes.

22 **Q: Have you ever in the past or have you thought about in the future leasing all**
23 **or a portion of your land in question here?**

24 A: Yes, I have thought of it and that concerns me. **I am concerned that a prospective**
25 **tenant may try to negotiate a lower price for my land if it had the pipeline on it and**
26 **all the restrictions and risks and potential negative impacts to farming or ranching**
27 **operations as opposed to land that did not have those same risks. If I was looking**
28 **to lease or rent ground I would pay more for comparable non-pipeline land than I**
29 **would for comparable pipeline land and I think most folks would think the same**

1 way. This is another negative economic impact that affects the landowner and the
2 county and the state and will forever and ever should TransCanada's preferred or
3 mainline alternative routes be approved. If they were to twin or closely parallel to
4 Keystone I the vast majority of landowners would be those that already have a
5 pipeline so there would be considerable less new incremental negative impacts.

6 **Q: Do you have similar concerns about selling the land?**

7 **A:** Well I hope not to have to sell the land in my lifetime but times change and you
8 never know what is around the corner and yes I am concerned that if another piece
9 of ground similar to mine were for sale and it did not have the pipeline and mine
10 did that I would have a lower selling price. I think this would be true for pipeline
11 ground on both the preferred and mainline alternative routes.

12 **Q: What is your intent with your land after you die?**

13 **A:** Like I said I hope not to have to sell and I hope that it stays in the family for years
14 to come but I have thought about getting out if this pipeline were to come through.

15 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
16 Pipeline would cross the land described above and owned by you?**

17 **A:** Yes.

18 **Q: Were you or an entity for which you are a member, shareholder, or director
19 previously sued by TransCanada Keystone Pipeline, LP?**

20 **A:** Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
21 petition for condemnation against our land so it could place its proposed pipeline
22 within an easement that it wanted to take from us on our land.

23 **Q: Did you defend yourself and your land in that condemnation action?**

24 **A:** Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
25 and expenses in our resistance of TransCanada's lawsuit against us.

26 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
27 incurred?**

28 **A:** No, they have not.

1 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
2 **property that it wanted to take for its proposed pipeline?**

3 **A: The lawsuit against us stated they would take the amount of property that is**
4 **reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant**
5 **and equipment reasonably necessary to operate the pipeline.**

6 **Q: Did TransCanada define what they meant by “property that is reasonably**
7 **necessary”?**

8 **A: No, they did not.**

9 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
10 **property portion of your land?**

11 **A: Yes, they did.**

12 **Q: Did TransCanada describe what rights it proposed to take related to the**
13 **eminent domain property on your land?**

14 **A: Yes, they did.**

15 **Q: What rights that they proposed to take did they describe?**

16 **A: TransCanada stated that the eminent domain property will be used to “lay, relay,**
17 **operate, and maintain the pipeline and the plant and equipment reasonably**
18 **necessary to operate the pipeline, specifically including surveying, laying,**
19 **constructing, inspecting, maintaining, operating, repairing, replacing, altering,**
20 **reconstructing, removing and abandoning one pipeline, together with all fittings,**
21 **cathodic protection equipment, pipeline markers, and all their equipment and**
22 **appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,**
23 **petroleum products, and all by-products thereof.”**

24 **Q: Prior to filing an eminent domain lawsuit to take your land that**
25 **TransCanada identified, do you believe they attempted to negotiate in good**
26 **faith with you?**

27 **A: No, I do not.**

28 **Q: Did TransCanada at any time approach you with or deliver to you their**
29 **proposed easement and right-of-way agreement?**

1 A: Yes, they did.

2 Q: At the time you reviewed TransCanada's easement and right-of-way
3 agreement, did you understand that they would be purchasing a fee title
4 interest in your property or that they were taking something else?

5 A: I understood that they proposed to have the power to take both a temporary
6 construction easement that could last for a certain period of time and then also a
7 permanent easement which they described to be 50 feet across or in width, and
8 that would run the entire portion of my property from where a proposed pipeline
9 would enter my property until where it would exit the property.

10 Q: Is the document included with your testimony here as Attachment No. 3, a
11 true and accurate copy of TransCanada's proposed Easement and Right-of-
12 Way agreement that they included with their condemnation lawsuit against
13 you?

14 A: Yes, it is.

15 Q: Have you had an opportunity to review TransCanada's proposed Easement
16 and Right-of-Way agreement?

17 A: Yes, I have.

18 Q: What is your understanding of the significance of the Easement and Right-of-
19 Way agreement as proposed by TransCanada?

20 A: My understanding is that this is the document that will govern all of the rights and
21 obligations and duties as well as the limitations of what I can and cannot do and
22 how I and any future landowner and any person I invite to come onto my property
23 must behave as well as what TransCanada is and is not responsible for and how
24 they can use my land.

25 Q: After reviewing TransCanada's proposed Easement and Right-of-Way
26 agreement do you have any concerns about any portions of it or any of the
27 language either included in the document or missing from the proposed
28 document?

1 A: Yes, I have a number of significant concerns and worries about the document and
2 how the language included and the language not included potentially negatively
3 impacts my land and thereby potentially negatively impacts my community and
4 my state.

5 Q: I would like you to walk the Commissioners through each and every one of
6 your concerns about TransCanada's proposed Easement and Right-of-Way
7 agreement so they can develop an understanding of how that language and
8 the terms of that contract, in your opinion, potentially negatively impacts you
9 and your land. So, if you can start at the beginning of that document and
10 let's work our way through it, okay?

11 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
12 Easement and Right-of-Way agreement and how it negatively could affect my
13 property rights and my economic interests.

14 Q. Okay, let's start with your first concern please.

15 A: The very first sentence talks about consideration or how much money they will
16 pay to compensate me for all of the known and unknown affects and all of the
17 rights I am giving up and for all the things they get to do to my land and for what
18 they will prevent me from doing on my land and they only will pay me one time at
19 the signing of the easement agreement. That is a huge problem.

20 Q: Explain to the Commissioners why that is a problem.

21 A: It is not fair to the landowner, the county, or the State. It is not fair to the
22 landowner because they want to have my land forever for use as they see fit so
23 they can make a daily profit from their customers. If I was to lease ground from
24 my neighbor I would typically pay twice a year every year as long as they granted
25 me the rights to use their land. That only makes sense – that is fair. If I was going
26 to rent a house in town I would typically pay monthly, every month until I gave up
27 my right to use that house. By TransCanada getting out on the cheap and paying
28 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
29 revenue collection on the money I would be paid and then pay taxes on and

1 contribute to this state and this country. It is money I would be putting back into
2 my local community both spending and stimulating the local economy and
3 generating more economic activity right here. Instead TransCanada's shareholders
4 keep all that money and it never finds its way to Nebraska.

5 **Q: What is your next concern?**

6 **A:** The first paragraph goes on to say Grantor, which is me the landowner, "does
7 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
8 limited partnership..." and I have no idea who that really is. I have no idea who is
9 forcing this pipeline on us or who the owners of the entities are, or what are the
10 assets backing this limited partnership, or who the general partner is, or who all
11 the limited partners are, and who makes up the ownership of the these partners or
12 the structure or any of the basic things you would want to know and understand if
13 you would want to do business with such an outfit. According to TransCanada's
14 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
15 liability company called TransCanada Keystone Pipeline GP, LLC is the general
16 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
17 basically nothing. That is really scary since the general partner has the liability but
18 virtually none of the ownership and who knows if it has any other assets.

19 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
20 **percent clear on exactly who could become the owner of over 275 miles of**
21 **Nebraska land?**

22 **A:** No.

23 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
24 **percent clear on exactly who will be operating and responsible for**
25 **approximately 275 miles of tar sands pipeline underneath and through**
26 **Nebraska land?**

27 **A:** No.

28 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
29 **and the State of Nebraska of TransCanada's easement terms.**

1 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
2 called "Grantee")..." and this concerns me because it would allow their easement
3 to be transferred or sold to someone or some company or country or who knows
4 what that I don't know and who we may not want to do business with. This
5 pipeline would be a huge asset for TransCanada and if they can sell to the highest
6 bidder that could have terrible impacts upon all of Nebraska depending upon who
7 may buy it and I don't know of any safeguards in place for us or the State to veto
8 or have any say so in who may own, operate, or be responsible for this pipeline in
9 the future.

10 Q: **Do you think that type of uncertainty and lack of control over a major piece
11 of infrastructure crossing our State is in the public interest?**

12 A: No, certainly not, in fact, just the opposite.

13 Q: **What's next?**

14 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
15 really concerns me. Why does the easement and right-of-way have to be perpetual
16 and permanent? That is the question myself and my family want an answer to.
17 Perpetual to me is like forever and that doesn't make sense.

18 Q: **Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

19 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
20 data proving there is a perpetual supply of tar sands. I am not aware in
21 TransCanada's application where it proves there is a perpetual necessity for this
22 pipeline. My understanding of energy infrastructure like wind towers is they have
23 a decommission plan and actually take the towers down when they become
24 obsolete or no longer needed. Nothing manmade lasts forever. My land however
25 will, and I want my family or future Nebraska families to have that land as
26 undisturbed as possible and it is not in my interest or the public interest of
27 Nebraska to be forced to give up perpetual and permanent rights in the land for
28 this specific kind of pipeline project.

29 Q: **Okay, what is your next concern?**

1 A: The easement language includes all these things TransCanada can do and it says
2 "...abandoning in place..." so they can just leave this pipeline under my ground
3 until the end of time just sitting there while they are not using it, but I am still
4 prevented from doing on my land and using my land what I would like. If I owned
5 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
6 there. It doesn't make sense and it scares me and it is not in my interest or the
7 public interest of Nebraska to allow this.

8 Q: **Now it looks like we are ready to go to the second page of the Easement is that**
9 **right?**

10 A: Yes.

11 Q: **So now on the second page of the Easement what are your concerns?**

12 A: Here the Easement identifies a 24-month deadline to complete construction of the
13 pipeline but has caveats that are undefined and ambiguous. The 24-month period
14 starts to run from the moment "actual pipeline installation activities" begin on
15 Landowners property. It appears that TransCanada would define this phrase as
16 needed. It would be wise to explain what types of TransCanada action constitutes
17 "installation activity" For instance, would the placement and storage of an
18 excavator or other equipment on or near the Easement property be an activity or
19 would earth have to be moved before the activity requirement is triggered. This
20 vague phrase is likely to lead to future disputes and litigation that is not in the best
21 interest of the welfare of Nebraska and would not protect property interests. The
22 24-months can also be extended in the case of "force majeure." My understanding
23 is that force majeure is often used to insulate a party to a contract when events
24 occur that are completely out of their control. In TransCanada's easement this is
25 expanded to include "without limitation...availability of labor and materials."
26 Extending this language to labor and materials is problematic because these are
27 two variables that TransCanada does have some or significant control over and to
28 allow extension of the 24-month period over events not truly out of the control of

1 TransCanada and without further provision for compensation for the Landowner is
2 not conducive to protection of property rights.

3 **Q: Okay, what is your next concern?**

4 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
5 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
6 reasonable costs and expenses” will pay for damages caused but then limits
7 TransCanada’s liability to certain circumstances. There is no definition of
8 “commercially reasonable” and no stated right that the Landowner would get to
9 determine the amounts of cost or expense that is “commercially reasonable.”
10 TransCanada excepts out from their liability any damages that are caused by
11 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
12 Landowner. It is understandable that if the Landowner were to willfully and
13 intentionally cause damages to the pipeline that Landowner should be liable.
14 However, anything short of willful misconduct should be the liability of
15 TransCanada who is subjecting the pipeline on the Landowner and who is making
16 a daily profit from that pipeline. When evaluating the impact on property rights of
17 this provision, you must consider the potentially extremely expensive fight a
18 Landowner would have over this question of whether or not damage was an act of
19 negligence. Putting this kind of potential liability upon the Landowner is
20 incredibly problematic and is detrimental to the protection of property rights. I
21 don’t think this unilateral power which I can’t do anything about as the landowner
22 is in the best economic interest of the land in question or the State of Nebraska for
23 landowners to be treated that way.

24 **Q: Is there any specific event or example you are aware of that makes this**
25 **concern more real for you?**

26 **A:** Yes, one need not look further than a November 3, 2015 lawsuit filed against
27 Nemaha County, Nebraska landowner farmers who accidentally struck two
28 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
29 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged

1 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
2 copy of the Federal Court Complaint is here as **Attachment No. 4.**

3 **Q: What is your next concern with the Easement language?**

4 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
5 they choose unless 1) any Landowner use interferes in any way with
6 TransCanada's exercise of any of its rights within the Easement, or 2)
7 TransCanada decides to take any action on the property it deems necessary to
8 prevent injury, endangerment or interference with anything TransCanada deems
9 necessary to do on the property. Landowner is also forbidden from excavating
10 without prior authorization by TransCanada. So my understanding is that
11 TransCanada will unilaterally determine what Landowner can and can't do based
12 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
13 could also completely deny my request to excavate. Further, TransCanada retains
14 all "privileges necessary or convenient for the full use of the rights" granted to
15 them in the Easement. Again, TransCanada unilaterally can decide to the
16 detriment of the property rights of Landowner what TransCanada believes is
17 necessary or convenient for it. And there is no option for any additional
18 compensation to landowner for any right exercised by TransCanada that leads to
19 the removal of trees or plants or vegetation or buildings or structures or facilities
20 owned by Landowner of any kind. Such undefined and unilateral restrictions and
21 rights without having to compensate Landowner for such further destruction or
22 losses are not conducive to the protection of property rights or economic interest.

23 **Q: What is the next concern you have?**

24 A: The Easement also allows some rights for Landowner but restricts them at the
25 same time and again at the sole and unilateral decision making of TransCanada.
26 TransCanada will determine if the actions of Landowner might in anyway
27 endanger or obstruct or interfere with TransCanada's full use of the Easement or
28 any appurtenances thereon to the pipeline itself or to their access to the Easement
29 or within the Easement and TransCanada retains the right at any time, whether

1 during growing season or not, to travel “within and along Easement Area on foot
2 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
3 retain the rights to prevent any landowner activity that it thinks may “unreasonably
4 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
5 undefined and unilateral restrictions are not conducive to the protection of
6 property rights or economic interest.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
9 Landowner’s land any debris of any kind without any input or power of
10 Landowner to demand an alternative method or location of debris disposal. Such
11 unilateral powers would negatively affect Landowners property are not conducive
12 to the protection of property rights or economic interest.

13 **Q: What is the next concern you have with the Easement language?**

14 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
15 “where rock is encountered” mean and why does TransCanada solely get to
16 determine whether or not this phrase is triggered. This phrase could be used to
17 justify installing the pipeline 24 inches beneath the surface. The ability to use this
18 provision to minimal locate the pipeline at a depth of 24 inches could negatively
19 affect Landowners property are not conducive to the protection of property rights.
20 A shallow pipeline is much more likely to become a danger and liability in the
21 future given farming operations and buried irrigation lines and other factors
22 common to the current typical agricultural uses of the land in question impacted
23 by TransCanada’s preferred pipeline route.

24 **Q: What is the next concern you have with the Easement language?**

25 A: There are more vague concepts solely at the determination of TransCanada such as
26 “as nearly as practicable” and “pre-construction position” and “extent reasonably
27 possible.” There is nothing here that defines this or provides a mechanism for
28 documenting or memorializing “pre-construction position” so as to minimize
29 costly legal battles or wasted Landowner time attempting to recreate the soil

1 condition on their fields or pasture. Such unilateral powers would negatively affect
2 Landowners property are not conducive to the protection of property rights or
3 economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: TransCanada maintains the unilateral right to abandon the pipeline and all
6 appurtenances thereto in place on, under, across, or through Nebraska land at any
7 time it chooses. There is no provision for Landowner compensation for such
8 abandonment nor any right for the Landowner to demand removal. Such unilateral
9 powers would negatively affect Landowners property are not conducive to the
10 protection of property rights or economic interest.

11 **Q: What is the next concern you have with the Easement language?**

12 A: TransCanada has the power to unilaterally move or modify the location of any
13 Easement area whether permanent or temporary at their sole discretion.
14 Regardless, if Landowner has taken prior steps relative to their property in
15 preparation or planning of TransCanada's taking of the initial easement area(s),
16 the language here does not require TransCanada to compensate the Landowner if
17 they decide to move the easement anywhere on Landowners property. Such
18 unilateral powers would negatively affect Landowners property are not conducive
19 to the protection of property rights or economic interests.

20 **Q: What is the next concern you have with the Easement language?**

21 A: The Easement requires that all of the burdens and restrictions upon Landowner to
22 transfer and be applicable to any future owner of the Land in question without the
23 ability of the future Landowner to modify or negotiate any of the language in
24 question to which it will be held to comply.

25 **Q: What is the next concern you have with the Easement language?**

26 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
27 Easement to any person, company, country, etc. at their sole discretion at anytime
28 to anyone. This also means that any buyer of the easement could do the same to a
29 third buyer and so on forever. There is no change of control or sale provision in

1 place to protect the Landowner or Nebraska or to provide compensation for such
2 change of control or ownership. It is not conducive to the protection of property
3 rights or economic interests to allow unilateral unrestricted sale of the Easement
4 thereby forcing upon the Landowner and our State a new unknown Easement
5 owner.

6 **Q: What is the next concern you have with the Easement language?**

7 **A:** There are many terms in the Easement that are either confusing or undefined terms
8 that are without context as to whether or not the Landowner would have any say
9 so in determining what these terms mean or if the evaluation is solely in
10 TransCanada's control. Some of these vague undefined terms are as follows:

- 11 i. "pipeline installation activities"
- 12 ii. "availability of labor and materials"
- 13 iii. "commercially reasonable costs and expenses"
- 14 iv. "reasonably anticipated and foreseeable costs and expenses"
- 15 v. "yield loss damages"
- 16 vi. "diminution in the value of the property"
- 17 vii. "substantially same condition"
- 18 viii. "an actual or potential hazard"
- 19 ix. "efficient"
- 20 x. "convenient"
- 21 xi. "endangered"
- 22 xii. "obstructed"
- 23 xiii. "injured"
- 24 xiv. "interfered with"
- 25 xv. "impaired"
- 26 xvi. "suitable crossings"
- 27 xvii. "where rock is encountered"
- 28 xviii. "as nearly as practicable"
- 29 xix. "pre-construction position"

1 xx. “pre-construction grade”

2 xxi. “various engineering factors”

3 Each one of these above terms and phrases as read in the context of the Easement
4 could be problematic in many ways. Notably, undefined terms tend to only get
5 definition in further legal proceedings after a dispute arises and the way the
6 Easement is drafted, TransCanada has sole power to determine when and if a
7 particular situation conforms with or triggers rights affected by these terms. For
8 instance, “yield loss damages” should be specifically defined and spelled out
9 exactly how the landowner is to be compensated and in what events on the front
10 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
11 the Landowner is without contractual rights to define these terms or determine
12 when rights related to them trigger and what the affects may be.

13 **Q: Do you have any other concerns about the Easement language that you can**
14 **think of at this time?**

15 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
16 my live testimony in August.

17 **Q: Based upon what you have shared with the Commission above regarding**
18 **TransCanada’s proposed Easement terms and agreement, do you believe**
19 **those to be reasonable or just, under the circumstances of the pipeline’s**
20 **impact upon you and your land?**

21 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
22 discussed previously.

23 **Q: Did TransCanada ever offer you financial compensation for the rights that**
24 **they sought to obtain in your land, and for what they sought to prevent you**
25 **and any future land owner of your property from doing in the future?**

26 **A:** Yes, we received an offer from them.

27 **Q: As the owner of the land in question and as the person who knows it better**
28 **than anyone else, do you believe that TransCanada offered you just, or fair,**

1 **compensation for all of what they proposed to take from you so that their tar**
2 **sands pipeline could be located across your property?**

3 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
4 offer for all the potential impacts and effects and the rights that I'm giving up, and
5 what we will be prevented from doing in the future and how their pipeline would
6 impact my property for ever and ever.

7 Q: **Has TransCanada at any time offered to compensate you annually, such as**
8 **wind farm projects do, for the existence of their potential tar sands pipeline**
9 **across your property.**

10 A: No, never.

11 Q: **At any time did TransCanada present you with or request that you, as the**
12 **owner of the land in question, sign and execute a document called, "Advanced**
13 **Release of Damage Claims and Indemnity Agreement?"**

14 A: Yes, they did and it was included in the County Court lawsuit against us.

15 Q: **Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
16 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

17 A: Yes, it is.

18 Q: **What was your understanding of that document?**

19 A: When I read that document in the plain language of that document, it was my
20 understanding that TransCanada was attempting to pay me a very small amount at
21 that time in order for me to agree to give up my rights to be compensated from
22 them in the future related to any damage or impact they may have upon my
23 property "arising out of, in connection with, or alleged to resulted from
24 construction or surveying over, under or on" my land.

25 Q: **Did you ever sign that document?**

26 A: No, I did not.

27 Q: **Why not?**

28 A: Because I do not believe that it is fair or just to try to get me to agree to a small
29 sum of money when I have no idea how bad the impacts or damages that they, or

1 their contractors, or subcontractors, or other agents or employees, may cause on
2 my land at any time in the future that resulted from the construction or surveying
3 or their activities upon my land.

4 **Q: When you reviewed this document, what did it make you feel?**

5 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
6 shield themselves against known and foreseeable impacts that their pipeline, and
7 the construction of it, would have upon my land. It made me feel that they knew it
8 was in their financial interest to pay me as little as possible to prevent me from
9 ever having the opportunity to seek fair compensation again, and that this must be
10 based upon their experience of unhappy landowners and situations in other places
11 where they have built pipelines.

12 **Q: Has TransCanada ever contacted you and specifically asked you if you**
13 **thought their proposed location of their proposed pipeline across your land**
14 **was in your best interest?**

15 A: No, they have not.

16 **Q: Has TransCanada ever contacted you and specifically asked you if you**
17 **thought their proposed location of their proposed pipeline across your land**
18 **was in the public interest of the State of Nebraska?**

19 A: No, they have not.

20 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
21 **Takings Clause?**

22 A: Yes, I am.

23 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
24 **an American citizens property?**

25 A: My understanding is that, according to the United States Constitution, that if the
26 government is going to take land for public use, then in that case, or by taking for
27 public use, it can only occur if the private land owner is compensated justly, or
28 fairly.

1 **Q:** **Has TransCanada ever contacted you specially to explain the way in which**
2 **the public could use its proposed Keystone XL Pipeline?**

3 **A:** **No, they have not.**

4 **Q:** **Can you think of any way in which the public, that is the citizens of the State**
5 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
6 **Pipeline, as it dissects the State of Nebraska?**

7 **A:** **No, I cannot. I cannot think of any way to use this pipeline. I do not see how the**
8 **public benefits from this pipeline in any way, how they can use it any way, or how**
9 **it's in the public interest in any way. By looking at the map, it is quite clear to me**
10 **that the only reason it's proposed to come through Nebraska, is that because we**
11 **are geographically in the way from between where the privately-owned Tar Sands**
12 **are located to where TransCanada wants to ship the Tar Sands to refineries in**
13 **Houston, Texas.**

14 **Q:** **Has TransCanada ever contacted you and asked you if you had any tar sands,**
15 **crude petroleum, or oil and petroleum by-products that you would like to**
16 **ship in its pipeline?**

17 **A:** **No, it has not.**

18 **Q:** **Do you have any tar sands, crude petroleum, or oil and petroleum by-**
19 **products that you, at this time or any time in the future, would desire to place**
20 **for transport within the proposed TransCanada Keystone XL Pipeline?**

21 **A:** **No, I do not.**

22 **Q:** **Do you know anyone in the state of Nebraska who would be able to ship any**
23 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
24 **products within the proposed TransCanada Keystone XL Pipeline?**

25 **A:** **No, I do not. I've never heard of such a person or company like that.**

26 **Q:** **Do you pay property taxes for the land that would be affected and impacted**
27 **at the proposed TransCanada Keystone XL Pipeline?**

28 **A:** **Yes, I do.**

29 **Q:** **Why do you pay property taxes on that land?**

1 A: Because that is the law. The law requires us to pay the property taxes as the owner
2 of that property.

3 **Q: Because you follow the law and pay property taxes, do you believe you**
4 **deserve any special consideration or treatment apart from any other person**
5 **or company that pays property taxes?**

6 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
7 just what you do.

8 **Q: Do you believe the fact that you pay property taxes entitles you to special**
9 **treatment of any kind, or special rights of any kind?**

10 A: No, of course not.

11 **Q: Do you believe the fact that you pay property taxes on your land would be**
12 **enough to qualify you to have the power of eminent domain to take land of**
13 **your neighbors or other people in your county, or other people across the**
14 **state of Nebraska?**

15 **A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that**
16 **I expect an award for or any type of special consideration.**

17 **Q: Have you at any time ever employed any person other than yourself?**

18 A: Well, yes I have.

19 **Q: Do you believe that the fact that you have, at some point in your life,**
20 **employed one or more other persons entitle you to any special treatment or**
21 **consideration above and beyond any other Nebraskan that has also employed**
22 **one or more persons?**

23 A: No, of course not.

24 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
25 **have at one point employed another person within this state, entitles you to**
26 **preferential treatment or consideration of any kind?**

27 A: No, of course not. If I choose to employ someone that decision is up to me. I
28 don't deserve any special treatment or consideration for that fact.

1 **Q:** At the beginning of your statement, you briefly described your property that
2 would be impacted by the potential Keystone XL Pipeline. I would like you to
3 give the Commissioners a sense of specifically how you believe the proposed
4 Keystone XL Pipeline and its preferred route, which proposes to go across
5 your land, how it would in your opinion based on your knowledge,
6 experience, and background of your land, affect it.

7 **A:** There are 2 stock wells on this land, a creek runs through it. There is a watering
8 dug out for the cattle to drink from and shelter belts. The land is surrounded by
9 barbwire fence with gate. The subsoil is gravel. According to the map that
10 TransCanada sent us this pipeline will go under or through the creek. It comes
11 into our property from the east and will go cross to almost the north end of the
12 property.

13 **Q:** Do you have any concerns TransCanada's fitness as an applicant for a major
14 crude oil pipeline in its preferred location, or ultimate location across the
15 state of Nebraska?

16 **A:** Yes, I have significant concerns. I am aware of landowners being treated unfairly
17 or even bullied around and being made to feel scared that they did not have any
18 options but to sign whatever papers TransCanada told them they had to. I am
19 aware of folks being threatened that their land would be taken if they didn't follow
20 what TransCanada was saying. I am aware of tactics to get people to sign
21 easements that I don't believe have any place in Nebraska or anywhere such as
22 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
23 landowners and convince them they should sign TransCanada's easement
24 agreements. I am aware of older folks and widows or widowers feeling they had
25 no choice but to sign TransCanada's Easement and they didn't know they could
26 fight or stand up for themselves. From a more practical standpoint, I am worried
27 that according to their answer to our Interrogatory No. 211, TransCanada only
28 owns and operates one (1) major oil pipeline. They simply do not have the
29 experience with this type of pipeline and that scares me. There are others but that

1 is what I can recollect at this time and if I remember more or my recollection is
2 refreshed I will share those with the Commissioners at the Hearing in August.

3 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
4 **landowner is reasonable or just?**

5 **A: No, I do not.**

6 **Q: Do you have any concern about limitations that the construction of this**
7 **proposed pipeline across your affected land would prevent construction of**
8 **future structures upon the portion of your land affected by the proposed**
9 **easement and immediately surrounding areas?**

10 A: Well yes, of course I do. We would not be able to build many, if any, types of
11 structures directly across or touching the easement, and it would be unwise and I
12 would be uncomfortable to build anything near the easement for fear of being
13 blamed in the future should any damage or difficulty result on my property in
14 regards to the pipeline.

15 **Q: Do you think such a restriction would impact you economically?**

16 A: Well yes, of course.

17 **Q: How do you think such a restriction would impact you economically?**

18 A: The future of this land may not be exactly how it's being used as of this moment,
19 and having the restrictions and limiting my ability to develop my land in certain
20 ways presents a huge negative economic impact on myself, my family, and any
21 potential future owner of the property. You have no idea how I or the future owner
22 may want to use this land in the future or the other land across Nebraska
23 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
24 ago it would have been hard to imagine all the advances that we have now or how
25 things change. Because the Easement is forever and TransCanada gets the rights in
26 my land forever we have to think with a very long term view. By placing their
27 pipeline on under across and through my land that prevents future development
28 which greatly negatively impacts future taxes and tax revenue that could have
29 been generated by the County and State but now will not. When you look at the

1 short blip of economic activity that the two years of temporary construction efforts
2 may bring, that is far outweighed by the perpetual and forever loss of opportunity
3 and restrictions TransCanada is forcing upon us and Nebraska.

4 **Q: Do you have any concerns about the environmental impact of the proposed**
5 **pipeline?**

6 A: Yes, I do.

7 **Q: What are some of those concerns?**

8 A: As an affected land owner and Nebraskan, I am concerned that any construction,
9 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
10 a detrimental impact upon the environment of my land specifically, as well as the
11 lands near my land and surrounding the proposed pipeline route.

12 **Q: Do you have any other environmental concerns?**

13 **A: Yes, of course I am concerned about potential breaches of the pipeline, failures in**
14 **construction and/or maintenance and operation. I am concerned about spills and**
15 **leaks that TransCanada has had in the past and will have in the future. This could**
16 **be catastrophic to my operations or others and to my county and the State.**

17 **Q: Do you have any thoughts regarding if there would be an impact upon the**
18 **natural resources on or near your property due to the proposed pipeline?**

19 A: Yes, I believe that any construction, operation, and/or maintenance of the
20 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
21 resources of my land, and the lands near and surrounding the proposed pipeline
22 route.

23 **Q: Do you have any worries about potential impacts from the proposed pipeline**
24 **to the soil of your land, or land near you?**

25 A: Yes, I believe that any construction, operation, and/or maintenance of the
26 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
27 land, as well as land along and surrounding the proposed pipeline route. This
28 includes, but is not limited to, the reasons that we discussed above of disturbing
29 the soil composition and makeup as it has naturally existed for thousands and

1 millions of years during the construction process, and any future maintenance or
2 removal process. I'm gravely concerned about the fertility and the loss of
3 economic ability of my property to grow the crops, or grow the grasses, or grow
4 whatever it is at that time they exist on my property or that I may want to grow in
5 the future, or that a future owner may want to grow. The land will never be the
6 same from as it exists now undisturbed to after it is trenched up for the proposed
7 pipeline.

8 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
9 **upon the groundwater over your land, or surrounding lands?**

10 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
11 the proposed Keystone XL Pipeline would have a detrimental impact upon the
12 groundwater of not only under my land, but also near and surrounding the pipeline
13 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
14 simple and it is simply too valuable to our State and the country to put at
15 unreasonable risk.

16 **Q: Do you have any concern about the potential impact of the proposed pipeline**
17 **upon the surface water on, or near or around your land?**

18 A: Yes, I have significant concerns that any construction, operation, and/or
19 maintenance of the proposed Keystone XL Pipeline would have detrimental
20 impact upon the surface water of not only within my property boundary, but along
21 and near and surrounding the pipeline route, and in fact, across the state of
22 Nebraska.

23 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
24 **upon the wildlife and plants, other than your growing crops on or near your**
25 **land?**

26 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
27 the proposed Keystone XL Pipeline would have a detrimental impact upon the
28 wildlife and the plants, not only that are located on or can be found upon my land,
29 but also near and along the proposed pipeline route.

1 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
2 **fair market value of your land?**

3 A: Yes, I do. I am significantly concerned about how the existence of the proposed
4 pipeline underneath and across and through my property will negatively affect the
5 fair market value at any point in the future, especially at that point in which I
6 would need to sell the property, or someone in my family would need to sell the
7 property. I do not believe, and certainly would not be willing to pay, the same
8 price for land that had the pipeline located on it, versus land that did not. I hope
9 there is never a point where I'm in a position where I have to sell and have to
10 realize as much value as I can out of my land. But because it is my single largest
11 asset, I'm gravely concerned that the existence of the proposed Keystone XL
12 Pipeline upon my land will affect a buyer's willingness to pay as much as they
13 would've paid and as much as I could've received, if the pipeline were not upon
14 my property. There are just too many risks, unknowns, impacts and uncertainties,
15 not to mention all of the rights you give up by the nature of having the pipeline
16 due to having the easement that we have previously discussed, for any reasonable
17 person to think that the existence of the pipeline would not negatively affect my
18 property's value.

19 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
20 **testimony?**

21 A: Yes, I have.

22 **Q: Where have you seen that before?**

23 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
24 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
25 believe the portion of the alternative route in Nebraska essentially twins or
26 parallels Keystone I.

27 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
28 **Application, and as found on Attachment No. 7, here to your testimony, is in**
29 **the public interest of Nebraska?**

1 A: No, I do not.

2 Q: Do you believe that the Keystone mainline alternative route as shown on
3 Attachment No. 7 included with your testimony here is a major oil pipeline
4 route that is in the public interest of Nebraska?

5 A: No, I do not.

6 Q: Do you believe the portion of the proposed pipeline within Nebraska as found
7 in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

8 A: No, I do not.

9 Q: Do you believe there is any potential route for the proposed Keystone XL
10 Pipeline across, within, under, or through the State of Nebraska that is in the
11 public interest of the citizens of Nebraska?

12 A: No, I do not.

13 Q: Why do you hold that belief?

14 A: Because there simply is no public interest based on all of the factors that I am
15 aware and that I have read and that I have studied that this Commission is to
16 consider that would establish that a for-profit foreign-owned pipeline that simply
17 crosses Nebraska because we are geographically in the way between where tar
18 sands are in Canada to where it wants to ship it to in Texas could ever be in the
19 public interest of Nebraskans. We derive no benefit from this project. It is not for
20 public use. Nebraska is simply in the way and when all considerations are taken in
21 there is no net benefit of any kind for Nebraska should this project be placed in our
22 state. Even if there was some arguable “benefit” it is not enough to outweigh all
23 the negative impacts and concerns.

24 Q: What do you think about the applicant, TransCanada’s argument that it’s
25 preferred route for its proposed Keystone XL Pipeline is in the public interest
26 of Nebraska because it may bring temporary jobs during the construction
27 phase to Nebraska?

28 A: First of all, not all jobs are created equally. Most jobs that are created, whether
29 temporary or on a permanent basis, don’t come with a project that has all the

1 potential and foreseeable negative impacts, many of which we have discussed here
2 and other witnesses throughout the course of this hearing have and will discuss. If
3 I decide to hire and employ someone to help me out in my farming or ranching
4 business, I've created a job but I haven't done so at the risk or detrimental impact
5 to my land or my town or my county or my state. And I've hired someone who is
6 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
7 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
8 jobs are not created equal. Additionally, I understand from what I'm familiar with
9 from TransCanada's own statements that the jobs numbers they originally touted
10 were determined to be a minute fraction of the permanent jobs that had been
11 projected. According to their answer to our Interrogatory No. 191, TransCanada
12 has created only thirty-four (34) jobs within Nebraska working specifically on
13 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
14 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
15 Further, according to their answer to Interrogatory No. 199, TransCanada would
16 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
17 constructed on its Preferred Route or its Mainline Alternative Route.

18 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
19 **because it would cross your land?**

20 A: No, absolutely not. I am opposed to this project because it is not in the public
21 interest, neither within my community nor within our state.

22 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
23 **was to cross someone else's land?**

24 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
25 the fear and anxiety and potential foreseeable risks and negative impacts that this
26 type of a project carrying this type of product brings foisted upon anyone in this
27 state or any other state.

28 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
29 **Pipeline to cross the state of Nebraska?**

1 A: I don't believe there is an intelligent route because as I have stated I don't believe
2 this project anywhere within Nebraska is within the public interest. However, if
3 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
4 had to go somewhere in the state of Nebraska, the only intelligent route I believe
5 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
6 preferred route and the mainline alternative routes are economic liabilities our
7 state cannot risk.

8 **Q: What do you rely upon to make that statement?**

9 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
10 already exists in that area is reason enough as it is not in our best interest or the
11 public interests to have more major oil pipelines crisscrossing our state. Second,
12 they have all the infrastructure already there in terms of relationships with the
13 counties and local officials and first responders along that route. Third, they have
14 already obtained easements from all the landowners along that route and have
15 relationships with them. Fourth, that route avoids our most sensitive soils, the
16 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
17 Aquifer. Sixth, they have already studied that route and previously offered it as an
18 alternative. Seventh, it just makes the most sense that as a state we would have
19 some intelligent policy of energy corridors and co-locating this type of
20 infrastructure near each other.

21 **Q: Do you have any other concerns you would like to reiterate or can think of at
22 this time you would like the Commissioners to understand?**

23 A: Yes. The product of this pipeline is for export markets and would not benefit
24 Nebraska or the United States of America. The proposed jobs would be few for
25 our "Nebraska workers" and only temporary.

26 **Q: Have you fully expressed each and every opinion, concern, or fact you would
27 like the Public Service Commissioners to consider in their review of
28 TransCanada's Application?**

1 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
2 document below but other things may come to me or my memory may be
3 refreshed and I will add and address those things at the time of the Hearing in
4 August and address any additional items at that time as is necessary. Additionally,
5 I have not had an adequate amount of time to receive and review all of
6 TransCanada's answers to our discovery and the discovery of others so it was
7 impossible to competently and completely react to that in my testimony here and I
8 reserve the right to also address anything related to discovery that has not yet
9 concluded as of the date I signed this document below. Lastly, certain documents
10 requested have not yet been produced by TransCanada and therefore I may have
11 additional thoughts on those I will also share at the hearing as needed.

12 **Q: What is it that you are requesting the Public Service Commissioners do in**
13 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
14 **across Nebraska?**

15 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
16 a temporary job spike that this project may bring to a few counties and beyond the
17 relatively small amount of taxes this proposed foreign pipeline would possibly
18 generate. And, instead think about the perpetual and forever impacts of this
19 pipeline as it would have on the landowners specifically, first and foremost, but
20 also thereby upon the entire state of Nebraska, and to determine that neither the
21 preferred route nor the Keystone mainline alternative route are in the public
22 interest of the citizens of the state of Nebraska. **And if the Commissioners were**
23 **inclined to modify TransCanada's proposed routes and were to be inclined to grant**
24 **an application for a route in Nebraska, that the only potential route that would**
25 **make any intelligent sense whatsoever would be twinning or near paralleling of**
26 **the proposed KXL with the existing Keystone I pipeline. It simply does not make**
27 **sense to add yet another major oil pipeline crisscrossing our state creating new**
28 **pumping stations, creating new impacts on additional counties and communities**
29 **and going through all of the court processes with myself and other landowners like**

1 me when this applicant already has relationships with the landowners, the towns
2 and the communities along Keystone I, and that Keystone I is firmly outside of the
3 sand hills and a significantly further portion away from the heart of the Ogallala
4 Aquifer than the preferred route or the Keystone mainline alternative route.

5 **Q: Are all of your statements in your testimony provided above true and**
6 **accurate as of the date you signed this document to the best of your**
7 **knowledge?**

8 **A: Yes, they are.**

9 **Q: Thank you, I have no further questions at this time and reserve the right to**
10 **ask you additional questions at the August 2017 Hearing.**

Ann Pongratz
Ann Pongratz

Subscribed and Sworn to me before this 26th day of May, 2017.

Catherine A Fox
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act*

Direct Testimony of
Kenneth Prosocki in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Nance County)

1 **Q: Please state your name.**

2 A: My name is Kenneth Prosocki.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Nance County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse’s name please?**

16 A: Karen Prosocki



1 **Q: Is Attachment No. 2 to your testimony a true and accurate copy of a photo of**
2 **your family?**

3 A: Yes.

4 **Q: Do you earn any income from this land?**

5 A: Yes.

6 **Q: Have you depended on the income from your land to support your livelihood**
7 **or the livelihood of your family?**

8 A: Yes.

9 **Q: Have you ever in the past or have you thought about in the future leasing all**
10 **or a portion of your land in question here?**

11 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
12 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
13 all the restrictions and risks and potential negative impacts to farming or ranching
14 operations as opposed to land that did not have those same risks. If I was looking
15 to lease or rent ground I would pay more for comparable non-pipeline land than I
16 would for comparable pipeline land and I think most folks would think the same
17 way. This is another negative economic impact that affects the landowner and the
18 county and the state and will forever and ever should TransCanada's preferred or
19 mainline alternative routes be approved. If they were to twin or closely parallel to
20 Keystone I the vast majority of landowners would be those that already have a
21 pipeline so there would be considerable less new incremental negative impacts.

22 **Q: Do you have similar concerns about selling the land?**

23 A: Well I hope not to have to sell the land in my lifetime but times change and you
24 never know what is around the corner and yes I am concerned that if another piece
25 of ground similar to mine were for sale and it did not have the pipeline and mine
26 did that I would have a lower selling price. I think this would be true for pipeline
27 ground on both the preferred and mainline alternative routes.

28 **Q: What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
4 Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Were you or an entity for which you are a member, shareholder, or director
7 previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
9 petition for condemnation against our land so it could place its proposed pipeline
10 within an easement that it wanted to take from us on our land.

11 **Q: Did you defend yourself and your land in that condemnation action?**

12 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
13 and expenses in our resistance of TransCanada's lawsuit against us.

14 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
15 incurred?**

16 A: No, they have not.

17 **Q: In its lawsuit against you, did TransCanada identify the amount of your
18 property that it wanted to take for its proposed pipeline?**

19 A: The lawsuit against us stated they would take the amount of property that is
20 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
21 and equipment reasonably necessary to operate the pipeline.

22 **Q: Did TransCanada define what they meant by "property that is reasonably
23 necessary"?**

24 A: No, they did not.

25 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain
26 property portion of your land?**

27 A: Yes, they did.

28 **Q: Did TransCanada describe what rights it proposed to take related to the
29 eminent domain property on your land?**

1 A: Yes, they did.

2 **Q: What rights that they proposed to take did they describe?**

3 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
4 operate, and maintain the pipeline and the plant and equipment reasonably
5 necessary to operate the pipeline, specifically including surveying, laying,
6 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
7 reconstructing, removing and abandoning one pipeline, together with all fittings,
8 cathodic protection equipment, pipeline markers, and all their equipment and
9 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
10 petroleum products, and all by-products thereof.”

11 **Q: Prior to filing an eminent domain lawsuit to take your land that
12 TransCanada identified, do you believe they attempted to negotiate in good
13 faith with you?**

14 A: No, I do not.

15 **Q: Did TransCanada at any time approach you with or deliver to you their
16 proposed easement and right-of-way agreement?**

17 A: Yes, they did.

18 **Q: At the time you reviewed TransCanada’s easement and right-of-way
19 agreement, did you understand that they would be purchasing a fee title
20 interest in your property or that they were taking something else?**

21 A: I understood that they proposed to have the power to take both a temporary
22 construction easement that could last for a certain period of time and then also a
23 permanent easement which they described to be 50 feet across or in width, and
24 that would run the entire portion of my property from where a proposed pipeline
25 would enter my property until where it would exit the property.

26 **Q: Is the document included with your testimony here as Attachment No. 3, a
27 true and accurate copy of TransCanada’s proposed Easement and Right-of-
28 Way agreement that they included with their condemnation lawsuit against
29 you?**

1 A: Yes, it is.

2 Q: **Have you had an opportunity to review TransCanada's proposed Easement**
3 **and Right-of-Way agreement?**

4 A: Yes, I have.

5 Q: **What is your understanding of the significance of the Easement and Right-of-**
6 **Way agreement as proposed by TransCanada?**

7 A: My understanding is that this is the document that will govern all of the rights and
8 obligations and duties as well as the limitations of what I can and cannot do and
9 how I and any future landowner and any person I invite to come onto my property
10 must behave as well as what TransCanada is and is not responsible for and how
11 they can use my land.

12 Q: **After reviewing TransCanada's proposed Easement and Right-of-Way**
13 **agreement do you have any concerns about any portions of it or any of the**
14 **language either included in the document or missing from the proposed**
15 **document?**

16 A: Yes, I have a number of significant concerns and worries about the document and
17 how the language included and the language not included potentially negatively
18 impacts my land and thereby potentially negatively impacts my community and
19 my state.

20 Q: **I would like you to walk the Commissioners through each and every one of**
21 **your concerns about TransCanada's proposed Easement and Right-of-Way**
22 **agreement so they can develop an understanding of how that language and**
23 **the terms of that contract, in your opinion, potentially negatively impacts you**
24 **and your land. So, if you can start at the beginning of that document and**
25 **let's work our way through it, okay?**

26 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
27 Easement and Right-of-Way agreement and how it negatively could affect my
28 property rights and my economic interests.

29 Q: **Okay, let's start with your first concern please.**

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership...” and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
6 percent clear on exactly who could become the owner of about 275 miles of
7 Nebraska land?

8 **A:** No.

9 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
10 percent clear on exactly who will be operating and responsible for
11 approximately 275 miles of tar sands pipeline underneath and through
12 Nebraska land?

13 **A:** No.

14 **Q:** Okay, let's continue please with your concerns of the impacts upon your land
15 and the State of Nebraska of TransCanada's easement terms.

16 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow their easement
18 to be transferred or sold to someone or some company or country or who knows
19 what that I don't know and who we may not want to do business with. This
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest
21 bidder that could have terrible impacts upon all of Nebraska depending upon who
22 may buy it and I don't know of any safeguards in place for us or the State to veto
23 or have any say so in who may own, operate, or be responsible for this pipeline in
24 the future.

25 **Q:** Do you think that type of uncertainty and lack of control over a major piece
26 of infrastructure crossing our State is in the public interest?

27 **A:** No, certainly not, in fact, just the opposite.

28 **Q:** What's next?

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
25 **right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

1 TransCanada who is subjecting the pipeline on the Landowner and who is making
2 a daily profit from that pipeline. When evaluating the impact on property rights of
3 this provision, you must consider the potentially extremely expensive fight a
4 Landowner would have over this question of whether or not damage was an act of
5 negligence. Putting this kind of potential liability upon the Landowner is
6 incredibly problematic and is detrimental to the protection of property rights. I
7 don't think this unilateral power which I can't do anything about as the landowner
8 is in the best economic interest of the land in question or the State of Nebraska for
9 landowners to be treated that way.

10 **Q: Is there any specific event or example you are aware of that makes this**
11 **concern more real for you?**

12 **A:** Yes, one need not look further than a November 3, 2015 lawsuit filed against
13 Nemaha County, Nebraska landowner farmers who accidentally struck two
14 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
15 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
16 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
17 copy of the Federal Court Complaint is here as **Attachment No. 4.**

18 **Q: What is your next concern with the Easement language?**

19 **A:** Paragraph 3 states that Landowner can farm on and otherwise use their property as
20 they choose unless 1) any Landowner use interferes in any way with
21 TransCanada's exercise of any of its rights within the Easement, or 2)
22 TransCanada decides to take any action on the property it deems necessary to
23 prevent injury, endangerment or interference with anything TransCanada deems
24 necessary to do on the property. Landowner is also forbidden from excavating
25 without prior authorization by TransCanada. So my understanding is that
26 TransCanada will unilaterally determine what Landowner can and can't do based
27 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
28 could also completely deny my request to excavate. Further, TransCanada retains
29 all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative to their property in
2 preparation or planning of TransCanada's taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at anytime
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada's control. Some of these vague undefined terms are as follows:

- 27 i. "pipeline installation activities"
- 28 ii. "availability of labor and materials"
- 29 iii. "commercially reasonable costs and expenses"

- 1 iv. “reasonably anticipated and foreseeable costs and expenses”
- 2 v. “yield loss damages”
- 3 vi. “diminution in the value of the property”
- 4 vii. “substantially same condition”
- 5 viii. “an actual or potential hazard”
- 6 ix. “efficient”
- 7 x. “convenient”
- 8 xi. “endangered”
- 9 xii. “obstructed”
- 10 xiii. “injured”
- 11 xiv. “interfered with”
- 12 xv. “impaired”
- 13 xvi. “suitable crossings”
- 14 xvii. “where rock is encountered”
- 15 xviii. “as nearly as practicable”
- 16 xix. “pre-construction position”
- 17 xx. “pre-construction grade”
- 18 xxi. “various engineering factors”

19 Each one of these above terms and phrases as read in the context of the Easement
20 could be problematic in many ways. Notably, undefined terms tend to only get
21 definition in further legal proceedings after a dispute arises and the way the
22 Easement is drafted, TransCanada has sole power to determine when and if a
23 particular situation conforms with or triggers rights affected by these terms. For
24 instance, “yield loss damages” should be specifically defined and spelled out
25 exactly how the landowner is to be compensated and in what events on the front
26 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
27 the Landowner is without contractual rights to define these terms or determine
28 when rights related to them trigger and what the affects may be.

1 **Q:** Do you have any other concerns about the Easement language that you can
2 think of at this time?

3 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q:** Based upon what you have shared with the Commission above regarding
6 TransCanada's proposed Easement terms and agreement, do you believe
7 those to be reasonable or just, under the circumstances of the pipeline's
8 impact upon you and your land?

9 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q:** Did TransCanada ever offer you financial compensation for the rights that
12 they sought to obtain in your land, and for what they sought to prevent you
13 and any future land owner of your property from doing in the future?

14 **A:** Yes, we received an offer from them.

15 **Q:** As the owner of the land in question and as the person who knows it better
16 than anyone else, do you believe that TransCanada offered you just, or fair,
17 compensation for all of what they proposed to take from you so that their tar
18 sands pipeline could be located across your property?

19 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q:** Has TransCanada at any time offered to compensate you annually, such as
24 wind farm projects do, for the existence of their potential tar sands pipeline
25 across your property.

26 **A:** No, never.

27 **Q:** At any time did TransCanada present you with or request that you, as the
28 owner of the land in question, sign and execute a document called, "Advanced
29 Release of Damage Claims and Indemnity Agreement?"

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 Q: **Is Attachment No. 5, to your testimony here, a true and accurate copy of the**

3 **“Advanced Release of Damage Claims and Indemnity Agreement?”**

4 A: Yes, it is.

5 Q: **What was your understanding of that document?**

6 A: When I read that document in the plain language of that document, it was my

7 understanding that TransCanada was attempting to pay me a very small amount at

8 that time in order for me to agree to give up my rights to be compensated from

9 them in the future related to any damage or impact they may have upon my

10 property “arising out of, in connection with, or alleged to resulted from

11 construction or surveying over, under or on” my land.

12 Q: **Did you ever sign that document?**

13 A: No, I did not.

14 Q: **Why not?**

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small

16 sum of money when I have no idea how bad the impacts or damages that they, or

17 their contractors, or subcontractors, or other agents or employees, may cause on

18 my land at any time in the future that resulted from the construction or surveying

19 or their activities upon my land.

20 Q: **When you reviewed this document, what did it make you feel?**

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to

22 shield themselves against known and foreseeable impacts that their pipeline, and

23 the construction of it, would have upon my land. It made me feel that they knew it

24 was in their financial interest to pay me as little as possible to prevent me from

25 ever having the opportunity to seek fair compensation again, and that this must be

26 based upon their experience of unhappy landowners and situations in other places

27 where they have built pipelines.

1 **Q:** Has TransCanada ever contacted you and specifically asked you if you
2 thought their proposed location of their proposed pipeline across your land
3 was in your best interest?

4 **A:** No, they have not.

5 **Q:** Has TransCanada ever contacted you and specifically asked you if you
6 thought their proposed location of their proposed pipeline across your land
7 was in the public interest of the State of Nebraska?

8 **A:** No, they have not.

9 **Q:** Are you familiar with the Fifth Amendment to the U.S. Constitution and the
10 Takings Clause?

11 **A:** Yes, I am.

12 **Q:** What is your understanding of the Fifth Amendment as it relates to taking of
13 an American citizens property?

14 **A:** My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 **Q:** Has TransCanada ever contacted you specially to explain the way in which
19 the public could use its proposed Keystone XL Pipeline?

20 **A:** No, they have not.

21 **Q:** Can you think of any way in which the public, that is the citizens of the State
22 of Nebraska, can directly use the proposed TransCanada Keystone XL
23 Pipeline, as it dissects the State of Nebraska?

24 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
4 crude petroleum, or oil and petroleum by-products that you would like to
5 ship in its pipeline?**

6 **A:** No, it has not.

7 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
8 products that you, at this time or any time in the future, would desire to place
9 for transport within the proposed TransCanada Keystone XL Pipeline?**

10 **A:** No, I do not.

11 **Q: Do you know anyone in the state of Nebraska who would be able to ship any
12 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
13 products within the proposed TransCanada Keystone XL Pipeline?**

14 **A:** No, I do not. I've never heard of such a person or company like that.

15 **Q: Do you pay property taxes for the land that would be affected and impacted
16 at the proposed TransCanada Keystone XL Pipeline?**

17 **A:** Yes, I do.

18 **Q: Why do you pay property taxes on that land?**

19 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q: Because you follow the law and pay property taxes, do you believe you
22 deserve any special consideration or treatment apart from any other person
23 or company that pays property taxes?**

24 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q: Do you believe the fact that you pay property taxes entitles you to special
27 treatment of any kind, or special rights of any kind?**

28 **A:** No, of course not.

1 **Q:** Do you believe the fact that you pay property taxes on your land would be
2 enough to qualify you to have the power of eminent domain to take land of
3 your neighbors or other people in your county, or other people across the
4 state of Nebraska?

5 **A:** Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q:** Have you at any time ever employed any person other than yourself?

8 **A:** Well, yes I have.

9 **Q:** Do you believe that the fact that you have, at some point in your life,
10 employed one or more other persons entitle you to any special treatment or
11 consideration above and beyond any other Nebraskan that has also employed
12 one or more persons?

13 **A:** No, of course not.

14 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
15 have at one point employed another person within this state, entitles you to
16 preferential treatment or consideration of any kind?

17 **A:** No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q:** At the beginning of your statement, you briefly described your property that
20 would be impacted by the potential Keystone XL Pipeline. I would like you to
21 give the Commissioners a sense of specifically how you believe the proposed
22 Keystone XL Pipeline and its preferred route, which proposes to go across
23 your land, how it would in your opinion based on your knowledge,
24 experience, and background of your land, affect it. So please share with the
25 Commissioners the characteristics of your land that you believe is important
26 for them to understand, while they evaluate TransCanada's application for a
27 route for its proposed pipeline to cross Nebraska and across your land,
28 specifically.

1 A: The pipeline crosses through one mile of our property. It will be only 1100 feet
2 from our home and wells for us and our livestock. Our land is sub-irrigated and
3 our water table is usually 3-4 feet in the spring of the year, and in some years
4 higher than that. With that being said, that means this tar sands benzene carrying
5 pipe, one third will be dangerous chemicals, placed at a depth of seven feet will be
6 in our water table.

7 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
8 **crude oil pipeline in its preferred location, or ultimate location across the**
9 **state of Nebraska?**

10 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
11 or even bullied around and being made to feel scared that they did not have any
12 options but to sign whatever papers TransCanada told them they had to. I am
13 aware of folks being threatened that their land would be taken if they didn't follow
14 what TransCanada was saying. I am aware of tactics to get people to sign
15 easements that I don't believe have any place in Nebraska or anywhere such as
16 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
17 landowners and convince them they should sign TransCanada's easement
18 agreements. I am aware of older folks and widows or widowers feeling they had
19 no choice but to sign TransCanada's Easement and they didn't know they could
20 fight or stand up for themselves. From a more practical standpoint, I am worried
21 that according to their answer to our Interrogatory No. 211, TransCanada only
22 owns and operates one (1) major oil pipeline. They simply do not have the
23 experience with this type of pipeline and that scares me. There are others but that
24 is what I can recollect at this time and if I remember more or my recollection is
25 refreshed I will share those with the Commissioners at the Hearing in August.

26 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
27 **landowner is reasonable or just?**

28 A: No, I do not.

1 **Q: Do you have any concern about limitations that the construction of this**
2 **proposed pipeline across your affected land would prevent construction of**
3 **future structures upon the portion of your land affected by the proposed**
4 **easement and immediately surrounding areas?**

5 A: Well yes, of course I do. We would not be able to build many, if any, types of
6 structures directly across or touching the easement, and it would be unwise and I
7 would be uncomfortable to build anything near the easement for fear of being
8 blamed in the future should any damage or difficulty result on my property in
9 regards to the pipeline.

10 **Q: Do you think such a restriction would impact you economically?**

11 A: Well yes, of course.

12 **Q: How do you think such a restriction would impact you economically?**

13 A: The future of this land may not be exactly how it's being used as of this moment,
14 and having the restrictions and limiting my ability to develop my land in certain
15 ways presents a huge negative economic impact on myself, my family, and any
16 potential future owner of the property. You have no idea how I or the future owner
17 may want to use this land in the future or the other land across Nebraska
18 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
19 ago it would have been hard to imagine all the advances that we have now or how
20 things change. Because the Easement is forever and TransCanada gets the rights in
21 my land forever we have to think with a very long term view. By placing their
22 pipeline on under across and through my land that prevents future development
23 which greatly negatively impacts future taxes and tax revenue that could have
24 been generated by the County and State but now will not. When you look at the
25 short blip of economic activity that the two years of temporary construction efforts
26 may bring, that is far outweighed by the perpetual and forever loss of opportunity
27 and restrictions TransCanada is forcing upon us and Nebraska.

28 **Q: Do you have any concerns about the environmental impact of the proposed**
29 **pipeline?**

1 A: Yes, I do.

2 **Q: What are some of those concerns?**

3 A: As an affected land owner and Nebraskan, I am concerned that any construction,
4 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
5 a detrimental impact upon the environment of my land specifically, as well as the
6 lands near my land and surrounding the proposed pipeline route.

7 **Q: Do you have any other environmental concerns?**

8 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
9 construction and/or maintenance and operation. I am concerned about spills and
10 leaks that TransCanada has had in the past and will have in the future. This could
11 be catastrophic to my operations or others and to my county and the State.

12 **Q: Do you have any thoughts regarding if there would be an impact upon the
13 natural resources on or near your property due to the proposed pipeline?**

14 A: Yes, I believe that any construction, operation, and/or maintenance of the
15 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
16 resources of my land, and the lands near and surrounding the proposed pipeline
17 route.

18 **Q: Do you have any worries about potential impacts from the proposed pipeline
19 to the soil of your land, or land near you?**

20 A: Yes, I believe that any construction, operation, and/or maintenance of the
21 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
22 land, as well as land along and surrounding the proposed pipeline route. This
23 includes, but is not limited to, the reasons that we discussed above of disturbing
24 the soil composition and makeup as it has naturally existed for thousands and
25 millions of years during the construction process, and any future maintenance or
26 removal process. I'm gravely concerned about the fertility and the loss of
27 economic ability of my property to grow the crops, or grow the grasses, or grow
28 whatever it is at that time they exist on my property or that I may want to grow in
29 the future, or that a future owner may want to grow. The land will never be the

1 same from as it exists now undisturbed to after it is trenched up for the proposed
2 pipeline.

3 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
4 **upon the groundwater over your land, or surrounding lands?**

5 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
6 the proposed Keystone XL Pipeline would have a detrimental impact upon the
7 groundwater of not only under my land, but also near and surrounding the pipeline
8 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
9 simple and it is simply too valuable to our State and the country to put at
10 unreasonable risk.

11 **Q: Do you have any concern about the potential impact of the proposed pipeline**
12 **upon the surface water on, or near or around your land?**

13 A: Yes, I have significant concerns that any construction, operation, and/or
14 maintenance of the proposed Keystone XL Pipeline would have detrimental
15 impact upon the surface water of not only within my property boundary, but along
16 and near and surrounding the pipeline route, and in fact, across the state of
17 Nebraska.

18 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
19 **upon the wildlife and plants, other than your growing crops on or near your**
20 **land?**

21 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
22 the proposed Keystone XL Pipeline would have a detrimental impact upon the
23 wildlife and the plants, not only that are located on or can be found upon my land,
24 but also near and along the proposed pipeline route.

25 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
26 **fair market value of your land?**

27 A: Yes, I do. I am significantly concerned about how the existence of the proposed
28 pipeline underneath and across and through my property will negatively affect the
29 fair market value at any point in the future, especially at that point in which I

1 would need to sell the property, or someone in my family would need to sell the
2 property. I do not believe, and certainly would not be willing to pay, the same
3 price for land that had the pipeline located on it, versus land that did not. I hope
4 there is never a point where I'm in a position where I have to sell and have to
5 realize as much value as I can out of my land. But because it is my single largest
6 asset, I'm gravely concerned that the existence of the proposed Keystone XL
7 Pipeline upon my land will affect a buyer's willingness to pay as much as they
8 would've paid and as much as I could've received, if the pipeline were not upon
9 my property. There are just too many risks, unknowns, impacts and uncertainties,
10 not to mention all of the rights you give up by the nature of having the pipeline
11 due to having the easement that we have previously discussed, for any reasonable
12 person to think that the existence of the pipeline would not negatively affect my
13 property's value.

14 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
15 **testimony?**

16 A: Yes, I have.

17 **Q: Where have you seen that before?**

18 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
19 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
20 believe the portion of the alternative route in Nebraska essentially twins or
21 parallels Keystone I.

22 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
23 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

24 A: No, I do not.

25 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
26 **Application, and as found on Attachment No. 6, here to your testimony, is in**
27 **the public interest of Nebraska?**

28 A: No, I do not.

1 **Q:** Do you believe that the Keystone mainline alternative route as shown on
2 Attachment No. 7 included with your testimony here is a major oil pipeline
3 route that is in the public interest of Nebraska?

4 **A:** No, I do not.

5 **Q:** Do you believe there is any potential route for the proposed Keystone XL
6 Pipeline across, within, under, or through the State of Nebraska that is in the
7 public interest of the citizens of Nebraska?

8 **A:** No, I do not.

9 **Q:** Why do you hold that belief?

10 **A:** Because there simply is no public interest based on all of the factors that I am
11 aware and that I have read and that I have studied that this Commission is to
12 consider that would establish that a for-profit foreign-owned pipeline that simply
13 crosses Nebraska because we are geographically in the way between where tar
14 sands are in Canada to where it wants to ship it to in Texas could ever be in the
15 public interest of Nebraskans. We derive no benefit from this project. It is not for
16 public use. Nebraska is simply in the way and when all considerations are taken in
17 there is no net benefit of any kind for Nebraska should this project be placed in our
18 state. Even if there was some arguable “benefit” it is not enough to outweigh all
19 the negative impacts and concerns.

20 **Q:** What do you think about the applicant, TransCanada’s argument that its
21 preferred route for its proposed Keystone XL Pipeline is in the public interest
22 of Nebraska because it may bring temporary jobs during the construction
23 phase to Nebraska?

24 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
25 temporary or on a permanent basis, don’t come with a project that has all the
26 potential and foreseeable negative impacts, many of which we have discussed here
27 and other witnesses throughout the course of this hearing have and will discuss. If
28 I decide to hire and employ someone to help me out in my farming or ranching
29 business, I’ve created a job but I haven’t done so at the risk or detrimental impact

1 to my land or my town or my county or my state. And I've hired someone who is
2 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
3 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
4 jobs are not created equal. Additionally, I understand from what I'm familiar with
5 from TransCanada's own statements that the jobs numbers they originally touted
6 were determined to be a minute fraction of the permanent jobs that had been
7 projected. According to their answer to our Interrogatory No. 191, TransCanada
8 has created only thirty-four (34) jobs within Nebraska working specifically on
9 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
10 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
11 Further, according to their answer to Interrogatory No. 199, TransCanada would
12 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
13 constructed on its Preferred Route or its Mainline Alternative Route.

14 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
15 **because it would cross your land?**

16 A: No, absolutely not. I am opposed to this project because it is not in the public
17 interest, neither within my community nor within our state.

18 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
19 **was to cross someone else's land?**

20 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
21 the fear and anxiety and potential foreseeable risks and negative impacts that this
22 type of a project carrying this type of product brings foisted upon anyone in this
23 state or any other state.

24 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
25 **Pipeline to cross the state of Nebraska?**

26 A: I don't believe there is an intelligent route because as I have stated I don't believe
27 this project anywhere within Nebraska is within the public interest. However, if
28 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
29 had to go somewhere in the state of Nebraska, the only intelligent route I believe

1 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
2 preferred route and the mainline alternative routes are economic liabilities our
3 state cannot risk.

4 **Q: What do you rely upon to make that statement?**

5 **A:** Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
6 already exists in that area is reason enough as it is not in our best interest or the
7 public interests to have more major oil pipelines crisscrossing our state. Second,
8 they have all the infrastructure already there in terms of relationships with the
9 counties and local officials and first responders along that route. Third, they have
10 already obtained easements from all the landowners along that route and have
11 relationships with them. Fourth, that route avoids our most sensitive soils, the
12 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
13 Aquifer. Sixth, they have already studied that route and previously offered it as an
14 alternative. Seventh, it just makes the most sense that as a state we would have
15 some intelligent policy of energy corridors and co-locating this type of
16 infrastructure near each other.

17 **Q: Do you have any other concerns you would like to reiterate or can think of at
18 this time you would like the Commissioners to understand?**

19 **A:** Yes. The pipeline would expose our very super sandy soil, and would not grow
20 back to grass due to the pipeline heat. TransCanada also wants to destroy 300 feet
21 of a well-established shelter belt, 5 rows at least. This belt is used for wind erosion
22 and to protect our cattle. We are concerned and against the Pipeline being placed
23 in our water supply because of the corrosive nature of our soil and water on the
24 steel being used. We are afraid in time the steel pipe will corrode and contaminate
25 our fresh water supply. We no longer have steel casings for irrigation, stock or any
26 other wells that are all PVC pipe. Our steel columns in our irrigation wells or stock
27 wells need to be serviced, and/or replaced every ten to fifteen years. I have
28 enclosed a picture of a 15 year old steel pipe from a 5hp submersible pump that we
29 use for water. It deteriorated to a point where we had to replace it with PVC pipe.

1 I have also enclosed pictures of steel posts, galvanized pipe, and other posts to
2 show the corrosive process. Even products with a special sealant corrode. The 20
3 miles between the Loup River and the Platte River have the same issues of the
4 corroding. This can be verified by Grosch Irrigation at Silver Creek, Nebraska.
5 TransCanada claims their sensors can detect a small leak, but all leaks have been
6 landowners and farmers, NOT SENSORS! We are very concerned for us and our
7 family's future of being able to continue our family farm operations with the threat
8 of benzene leaking into our ground water. There is no way to detect a small leak
9 in this pipe which will be placed directly into our water table. At 160 degrees, and
10 1600 pounds of pressure, any poor weld or flaw in pipe will contaminate our clean
11 water and of Nebraska to the KXL Pipeline out of the aquifer and twin it with the
12 Keystone One, where they have from 50 to 300 feet of soil before they are in
13 ground water. One more of our concerns is the proposed pumping station is only 2
14 miles from the Loup River, and by a water drain which flows directly into the
15 Loup River. Any leak or spill will cause major contamination to our water supply.
16 Once in the water supply of the Loup River, it will contaminate the city of
17 Columbus, Nebraska by way of the river and Cornhusker Public Power canal. The
18 canal is only three miles east of this benzene carrying pipeline.

19 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
20 **like the Public Service Commissioners to consider in their review of**
21 **TransCanada's Application?**

22 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
23 document below but other things may come to me or my memory may be
24 refreshed and I will add and address those things at the time of the Hearing in
25 August and address any additional items at that time as is necessary. Additionally,
26 I have not had an adequate amount of time to receive and review all of
27 TransCanada's answers to our discovery and the discovery of others so it was
28 impossible to competently and completely react to that in my testimony here and I
29 reserve the right to also address anything related to discovery that has not yet

1 concluded as of the date I signed this document below. Lastly, certain documents
2 requested have not yet been produced by TransCanada and therefore I may have
3 additional thoughts on those I will also share at the hearing as needed.

4 **Q: What is it that you are requesting the Public Service Commissioners do in**
5 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
6 **across Nebraska?**

7 A: I am respectfully and humbly requesting that the Commissioners think far beyond
8 a temporary job spike that this project may bring to a few counties and beyond the
9 relatively small amount of taxes this proposed foreign pipeline would possibly
10 generate. And, instead think about the perpetual and forever impacts of this
11 pipeline as it would have on the landowners specifically, first and foremost, but
12 also thereby upon the entire state of Nebraska, and to determine that neither the
13 preferred route nor the Keystone mainline alternative route are in the public
14 interest of the citizens of the state of Nebraska. And if the Commissioners were
15 inclined to modify TransCanada's proposed routes and were to be inclined to grant
16 an application for a route in Nebraska, that the only potential route that would
17 make any intelligent sense whatsoever would be twinning or near paralleling of
18 the proposed KXL with the existing Keystone I pipeline. It simply does not make
19 sense to add yet another major oil pipeline crisscrossing our state creating new
20 pumping stations, creating new impacts on additional counties and communities
21 and going through all of the court processes with myself and other landowners like
22 me when this applicant already has relationships with the landowners, the towns
23 and the communities along Keystone I, and that Keystone I is firmly outside of the
24 sand hills and a significantly further portion away from the heart of the Ogallala
25 Aquifer than the preferred route or the Keystone mainline alternative route.

26 **Q: Are all of your statements in your testimony provided above true and**
27 **accurate as of the date you signed this document to the best of your**
28 **knowledge?**

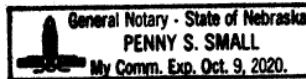
29 A: Yes, they are.

1 **Q: Thank you, I have no further questions at this time and reserve the right to**
2 **ask you additional questions at the August 2017 Hearing.**

John P. ...
(Landowner Name Here)

Subscribed and Sworn to me before this 30th day of May, 2017.

Penny S. Small
Notary Public



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 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. 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?**

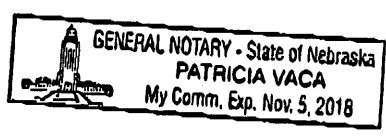
11 A: Yes, they are.

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



Before the Nebraska Public Service Commission

In the Matter of the Application

of

TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act*

Application No: OP-003

Direct Testimony of
Tim 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?**

EXHIBIT

50

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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 accidently 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?**

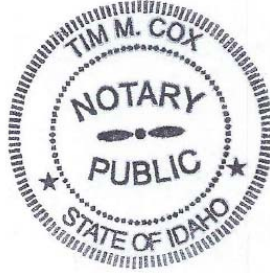
7 **A: Yes, they are.**

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



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.**

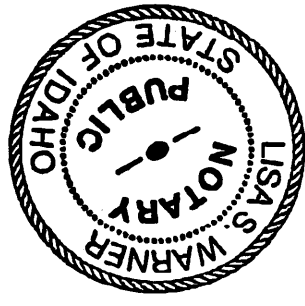
5 **Q: Thank you, I have no further questions at this time and reserve the right to**
6 **ask you additional questions at the August 2017 Hearing.**

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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



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

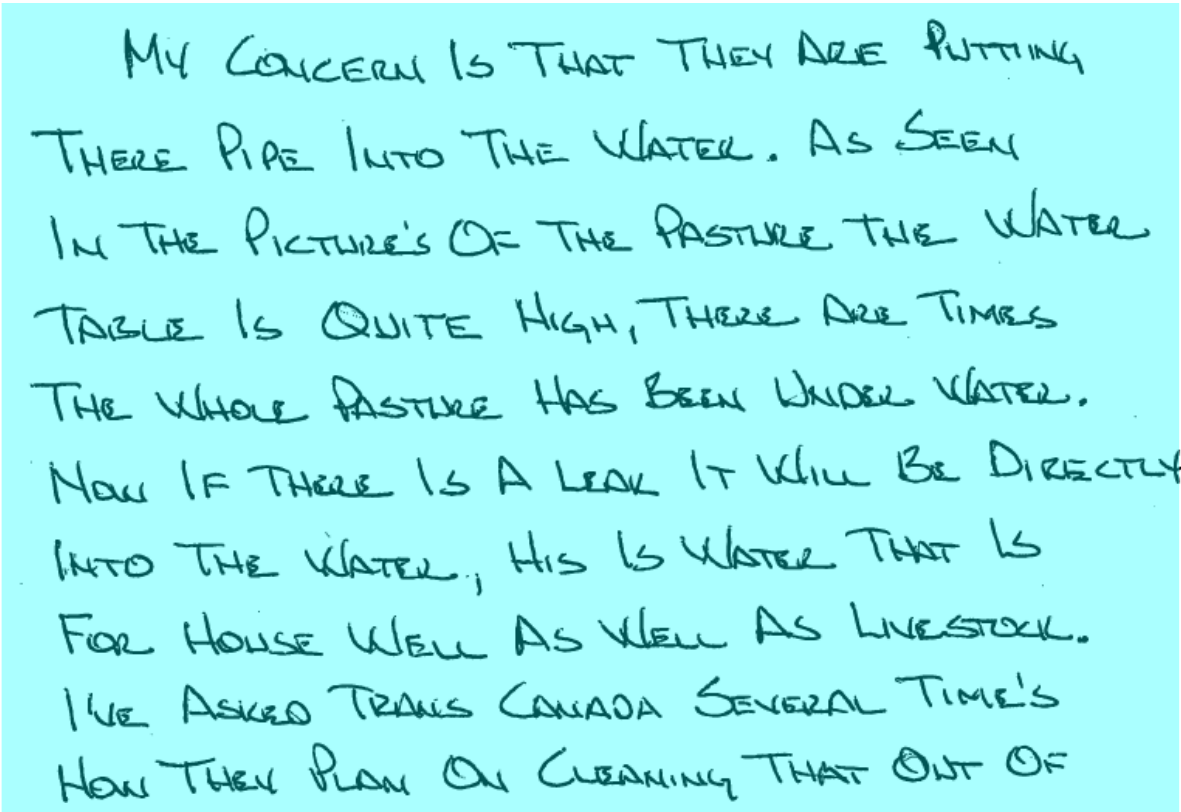
1 counties and local officials and first responders along that route. Third, they have
2 already obtained easements from all the landowners along that route and have
3 relationships with them. Fourth, that route avoids our most sensitive soils, the
4 sandier lighter soils. Fifth, that route for all practical 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 REPLY 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 EVENTLY END UP IN THE STREAMS & RIVERS THAT WILL EFFECT THE EASTERN PART OF THE STATE. ALL DRINKING WATER COME'S FROM THE GROUND, UNLESS THEY HAVE ANTIOX 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 KNOW TO EVERYBODY.

BIRDITISAN 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

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 accidently 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



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 accidently 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



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 accidently 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?**

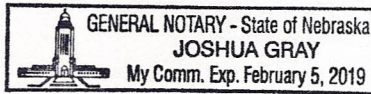
1 A: Yes, they are.

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



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 accidently 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 interfere[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?**

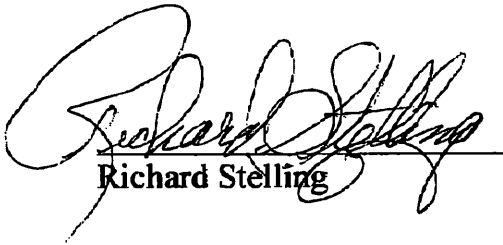
28 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
29 a temporary job spike that this project may bring to a few counties and beyond the

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



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 accidently 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.

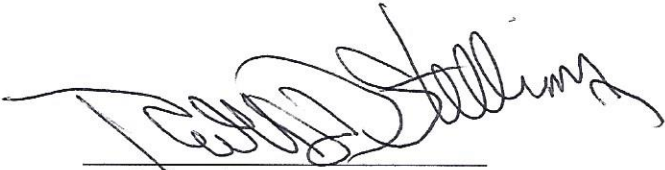
23 **Q: Does Attachment No. 8 here contain other documents you are competent to**
24 **speak about that you wish to be part of your testimony and to discuss in more**
25 **detail as needed at the August 2017 Hearing**

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.**

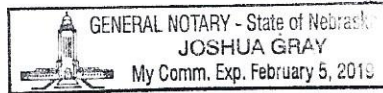


Todd Stelling

Subscribed and Sworn to me before this 30th day of May, 2017.



Notary Public



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 accidently 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**

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 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

90
80
70
60
50
40
30
20
10
0

% Sand

100
90
80
70
60
50
40
30
20
10
0

% Sand

E J A D H I L G B F C J H I F E A L G B C

Midwest Laboratories

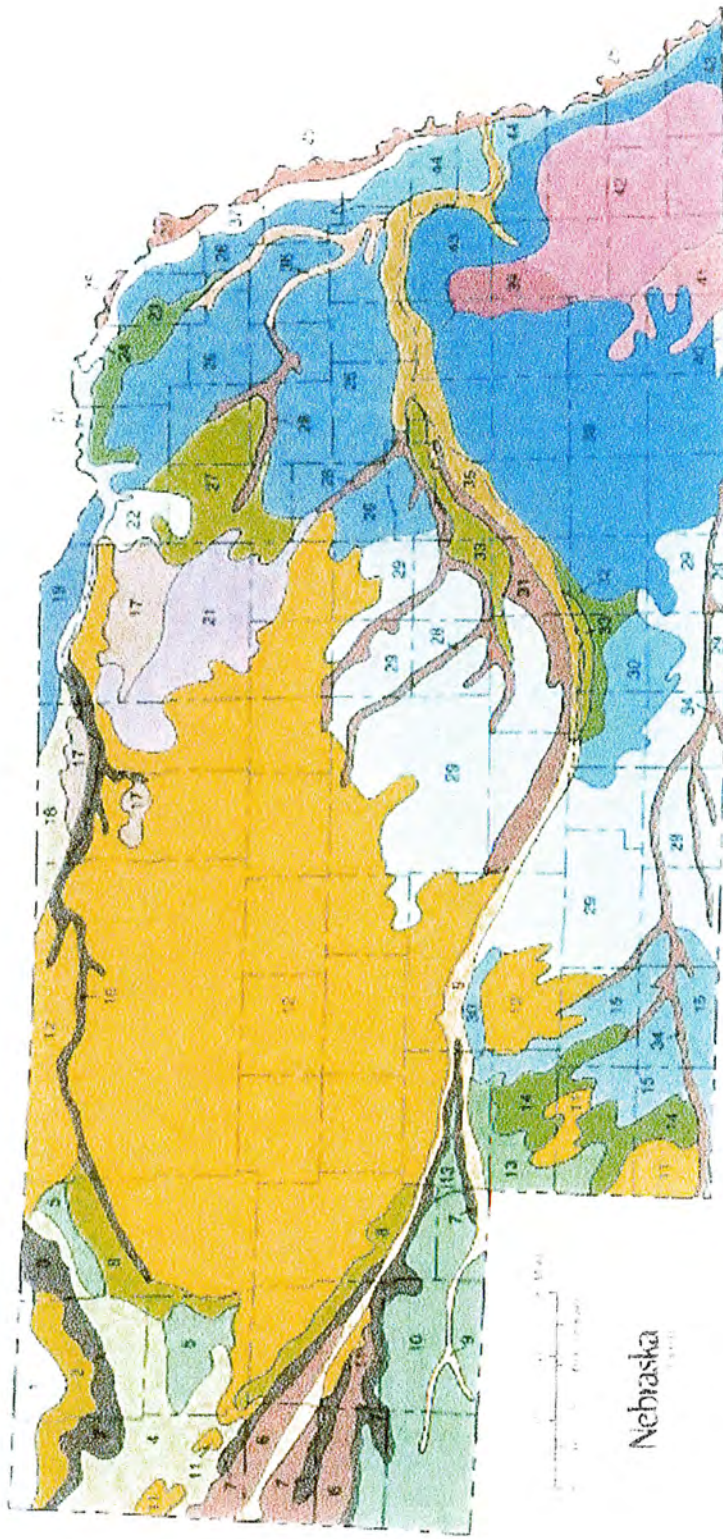
13611 B Street Omaha, NE 68144

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

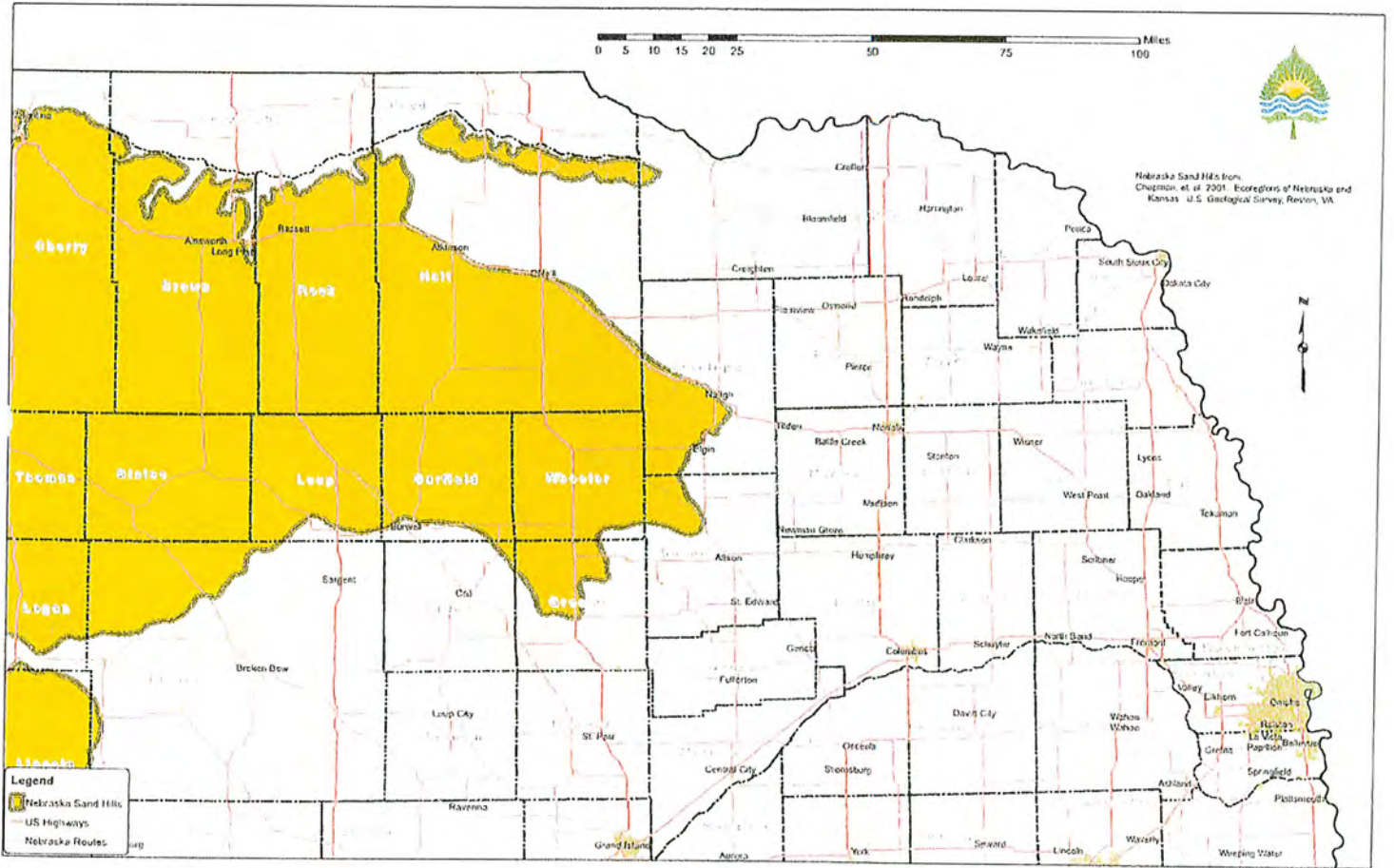
Prairie Fire ~ "The Progressive Voice of the Great Plains"

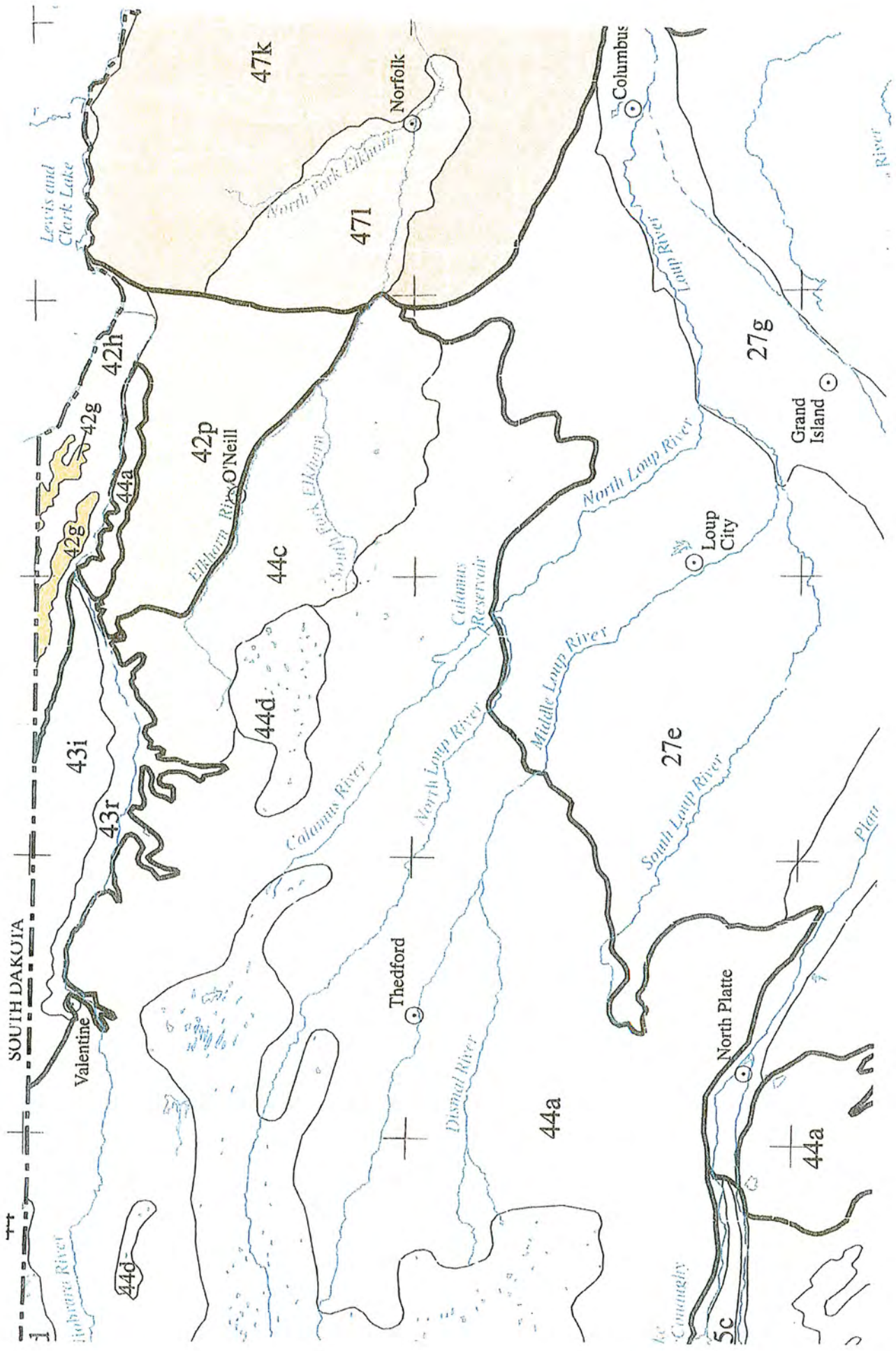
07/30/13 and quote from Bruce Boettcher

Nebrask DEQ ~ Your Environment Region 2011 and 2012

NDEQ Dec. 29, 2011

TC PSC APPLICATION





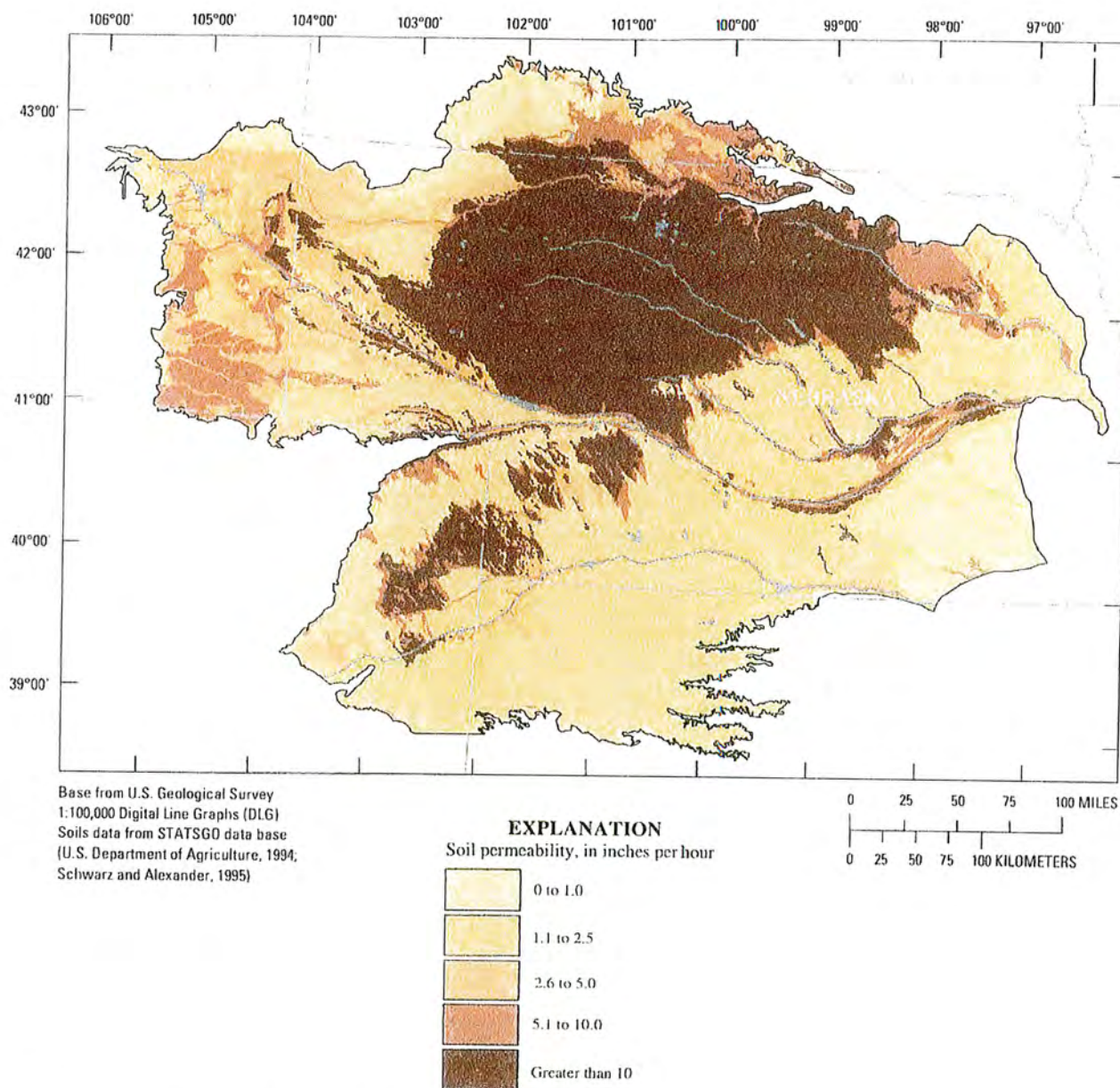


Figure 5. Permeability of soils overlying the northern High Plains aquifer.

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

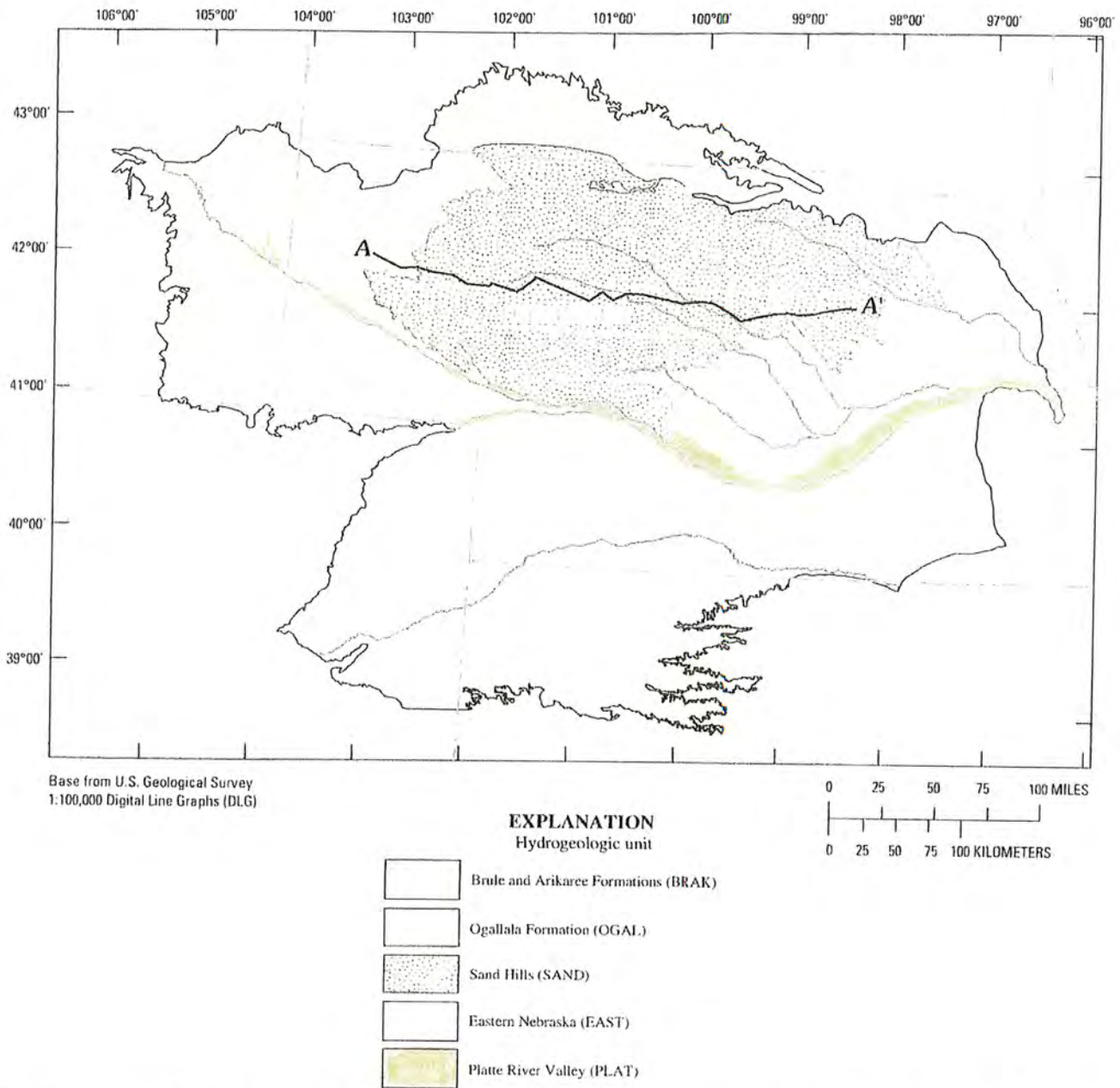
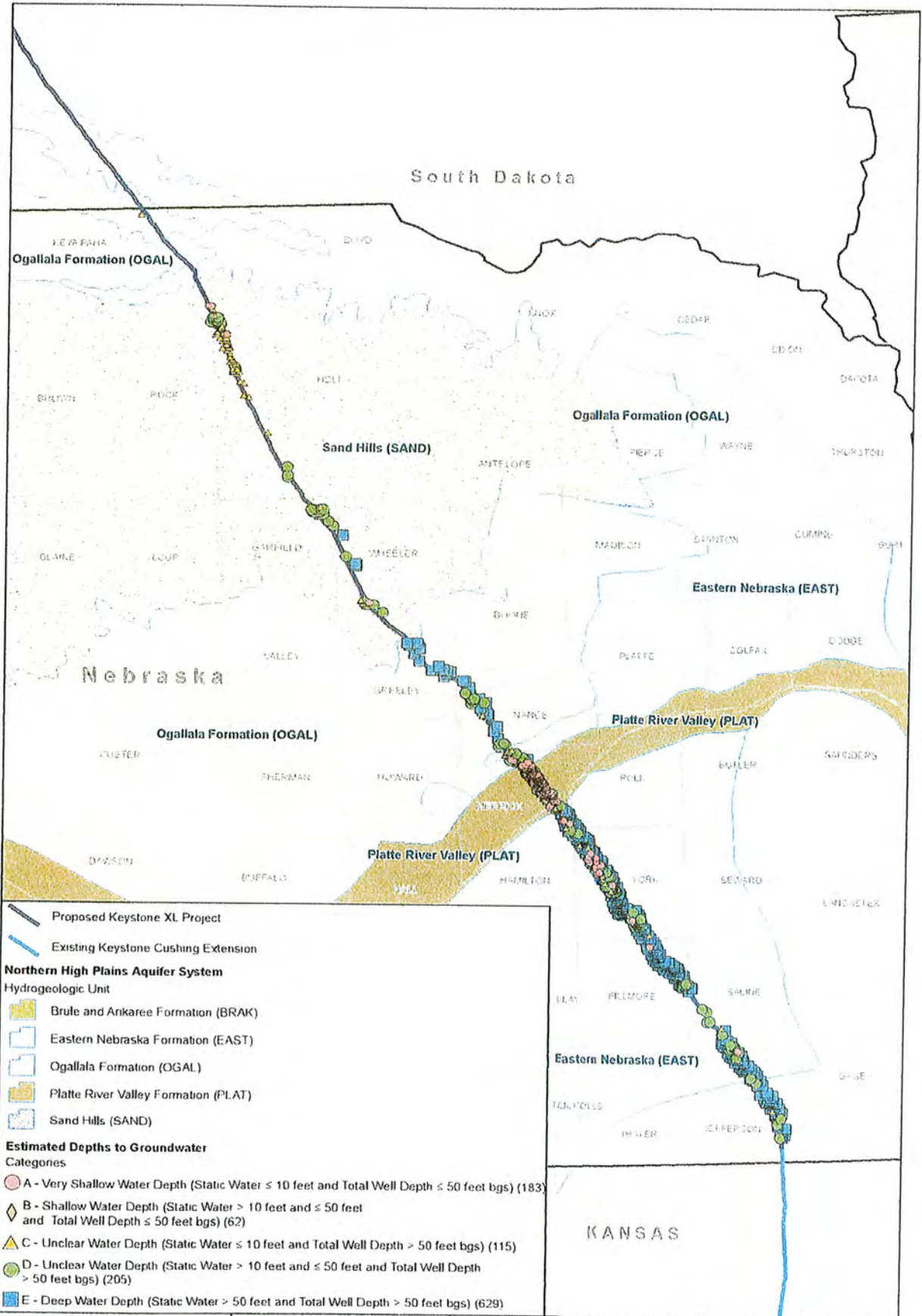


Figure 3. Location of major hydrogeologic units and trace of generalized geologic section A–A' (modified from Gutentag and others, 1984).

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).



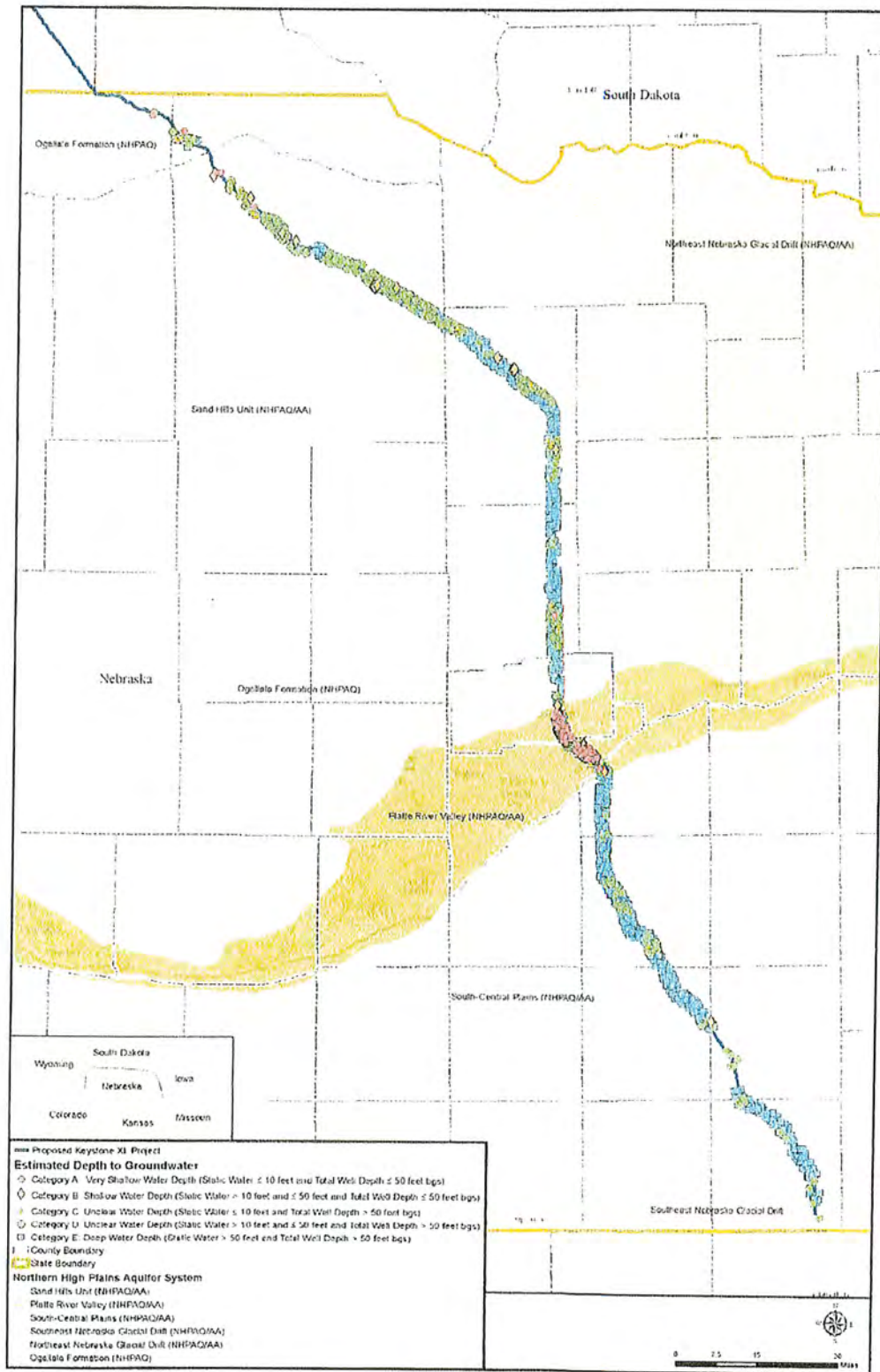
Date Sources: NHPAQ - USGS, Water Wells - NEDNR, 2011. Basemap - ESRI.

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)



Sources: Nebraska Department of Natural Resources 2012a, Esri 2013

Figure 3.3.2-4 Nebraska Water Wells Within 1 Mile of Proposed Pipeline Route

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

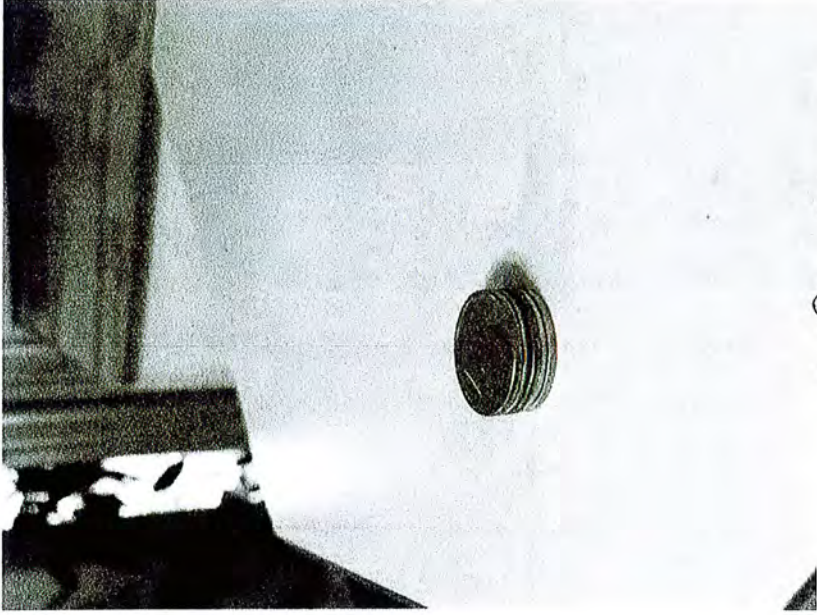


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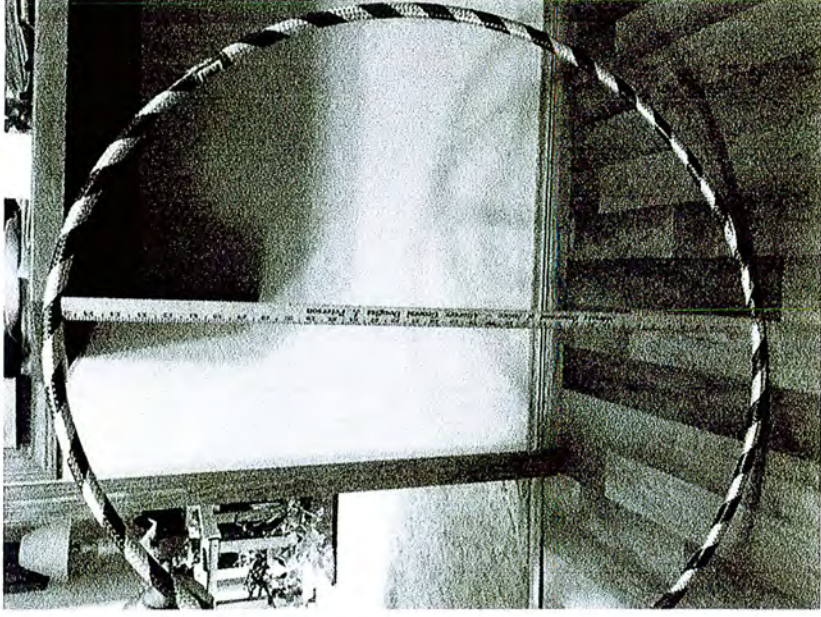


Attachment 8.13

SIZE AND THICKNESS OF THE PIPE



5-Dimeter



36" Hula Hoop

Attachment 8.14

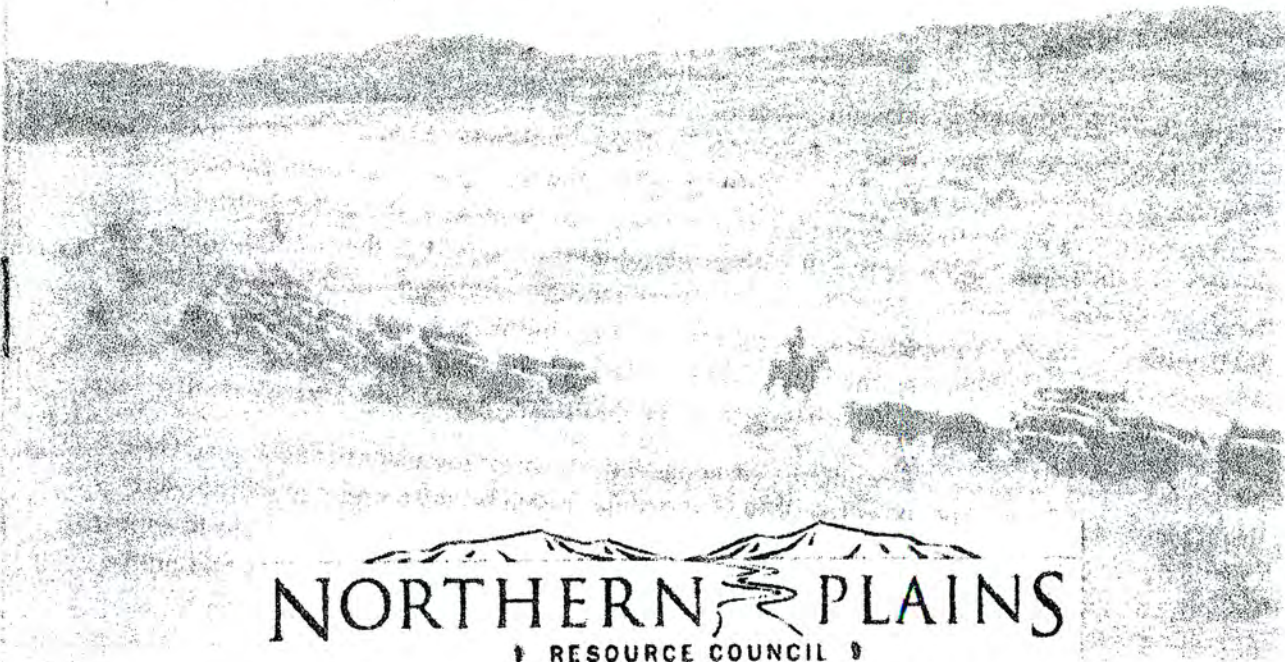
Northern Plains

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

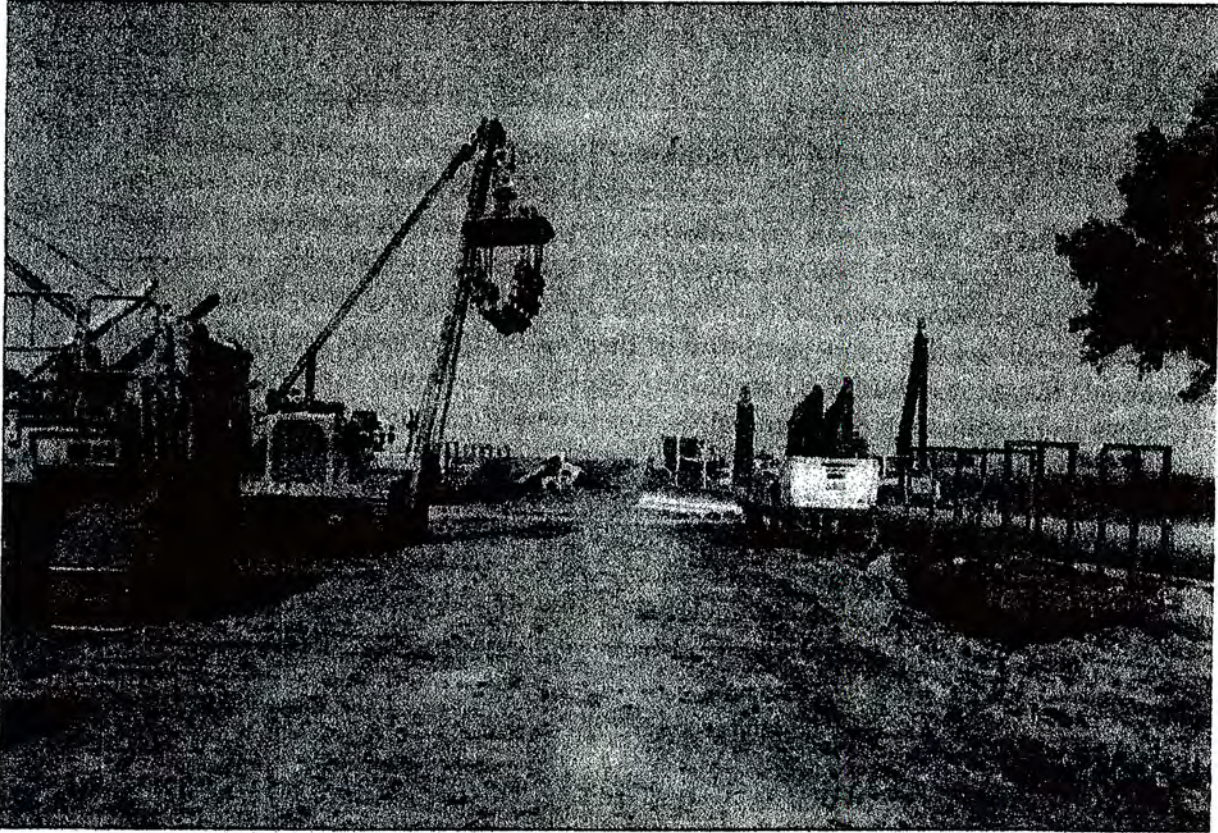
Working together to protect landowners and their property

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.

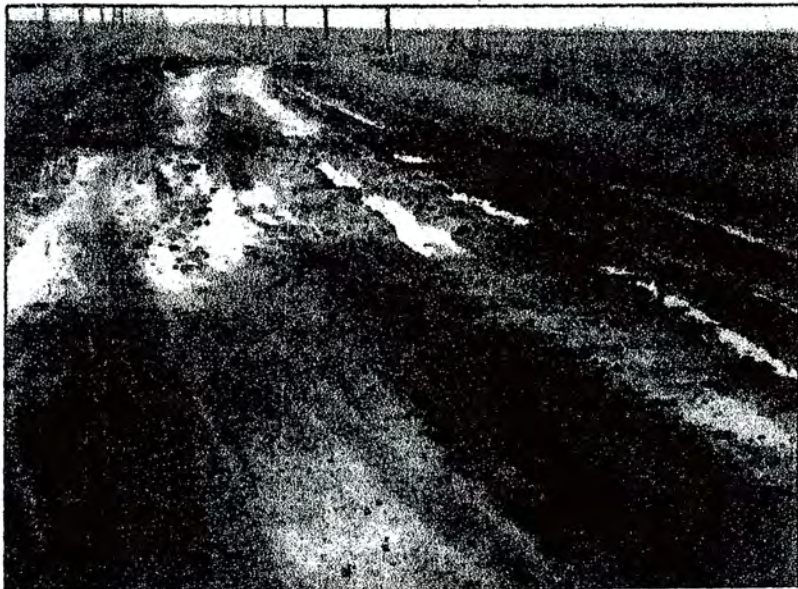
Good roads are an important safety issue in rural areas. Roads are necessary for emergency and fire vehicles to reach those in peril. Damaged roads can cause needless increased risk of accidents.

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.



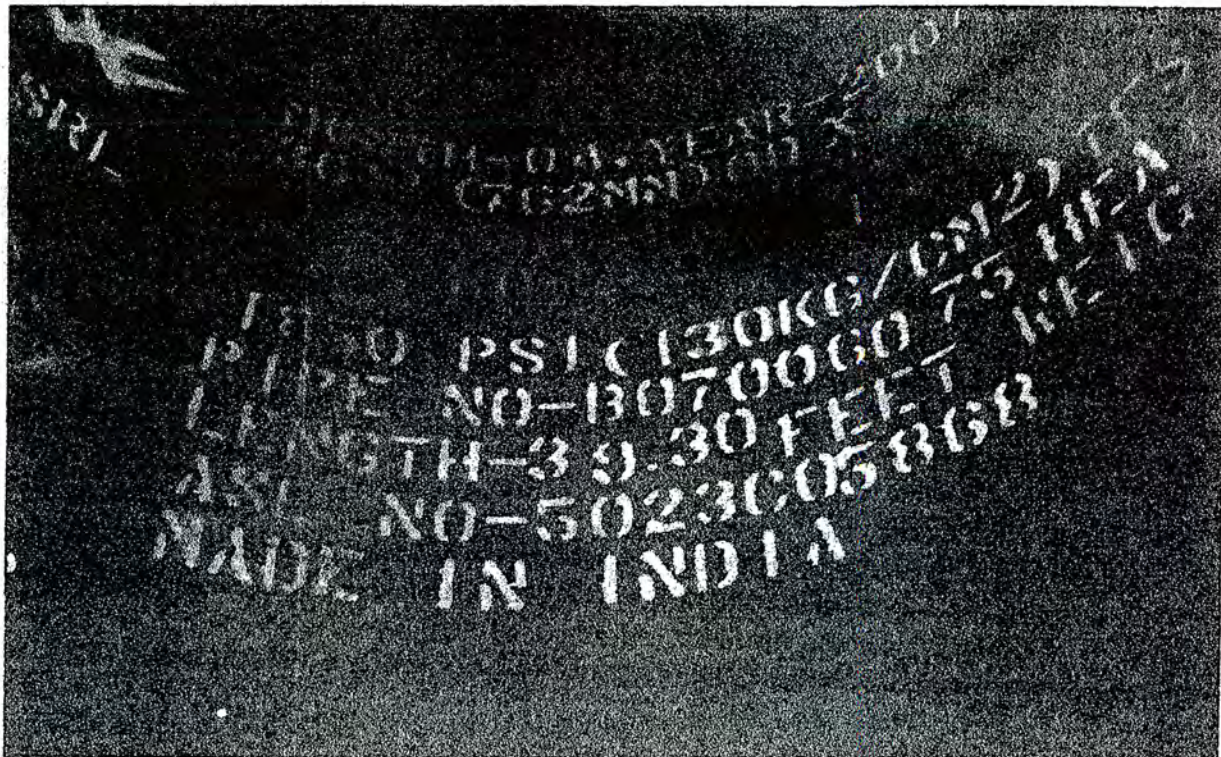
PIPE THICKNESS

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.

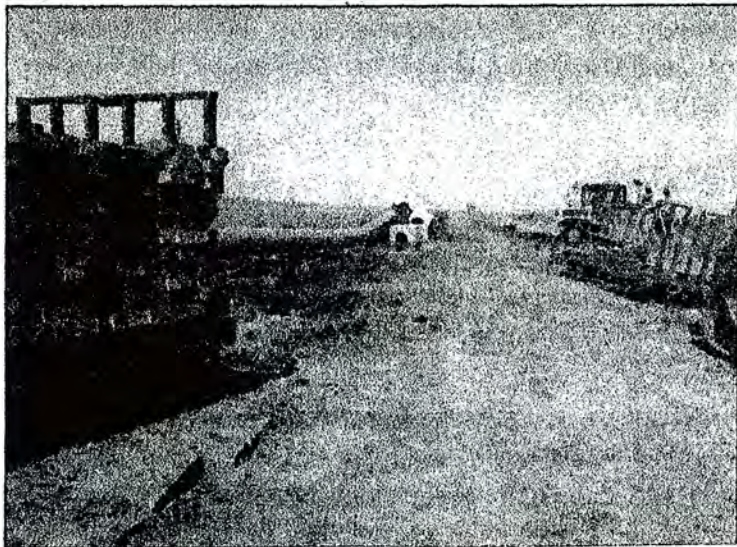
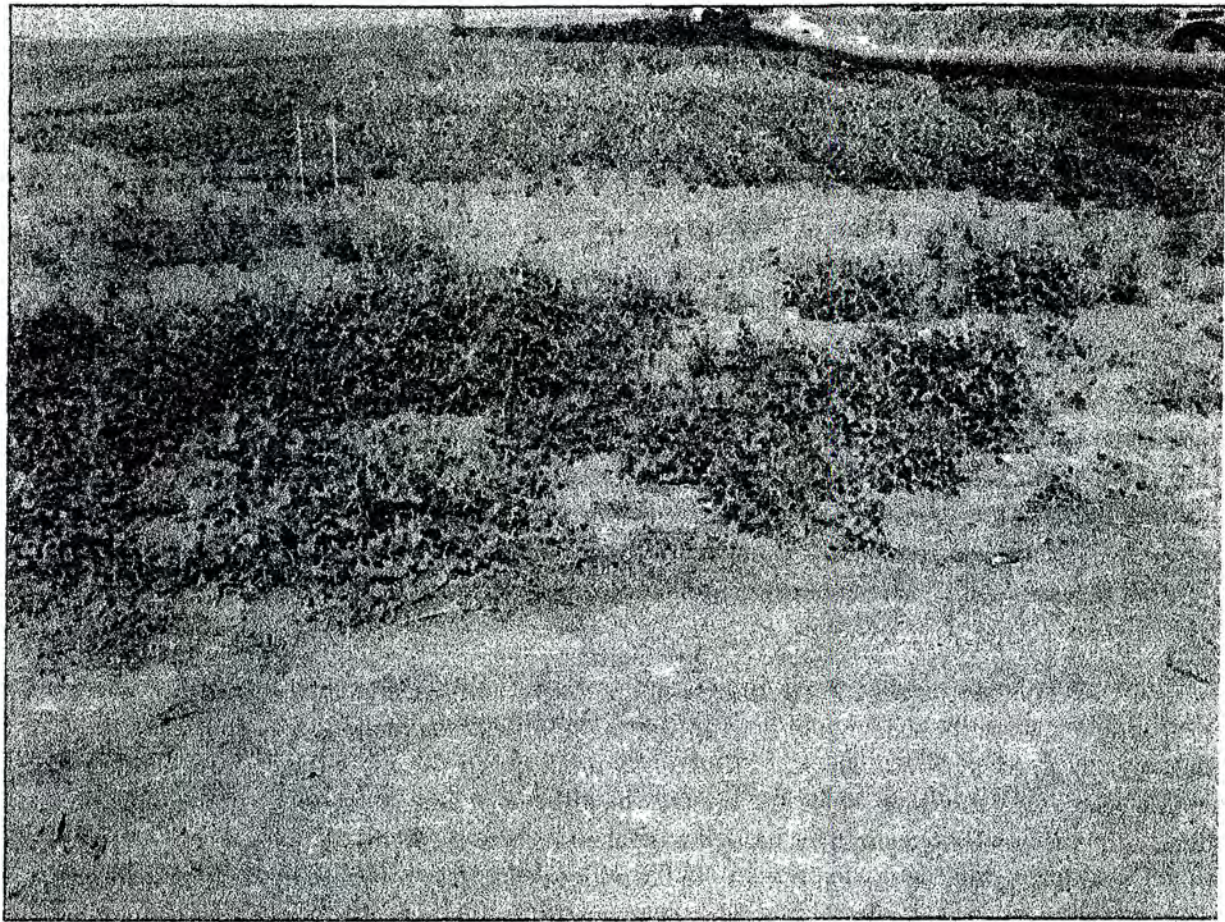
Another trend was trash, portable outhouses, and metal debris being left behind and fences not being rebuilt on the easement after construction. One landowner said a steel post was left behind that damaged his machinery. He billed TransCanada for it and the company did pay. However it shouldn't have 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
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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
Diana Lynn Steskal in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Holt County)

1 Q: Please state your name.

2 A: My name is Diana Lynn 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: I am a Registered Cosmetologist working part time and also a sub-contract rural
9 mail-route carrier.

10 **Q: If you are you married tell us your spouse's name please?**

11 A: Yes, Byron Terry Steskal.

12 **Q: If you have children how many do you have?**

13 A: Two children, Sarah (31) a High School Teacher) and my late son, Jake (18)
14 whom passed in 2008.

15 **Q: If you have grandchildren how many do you have?**

16 A: Not yet!

17 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you
18 and or your family?**

19 A: Yes.

20 **Q: For the land that would be affected and impacted by the proposed KXL tar
21 sands pipeline give the Commissioners a sense how long the land has been in
22 your family and a little history of the land.**

23 A: We have had this land for over 75 years. Terry's parents Bill and Alda bought this
24 property after the "Dust Bowl" years. Both working outside the home throughout
25 their years, as well as working the land they purchased to raise a garden, livestock
26 and a family. Bill and Alda lived on their property until the time of their passing
27 except of a couple of years in the Rest Home. Terry was their primary care giver,
28 both living well into their 90's.

29 **Q: Tell the Commissioners more how important this land is to you.**

1 A: This property is important to me because it is our livelihood and also my husband,
2 Terry Steskal's family home. This property holds fond memories of our blended
3 family riding the four-wheeler; snow sledding on an ole' car hood pulled by the
4 four-wheeler; both Sarah and Jake learned to drive an ole' can in our farm
5 pastures, coming back with smiles a mile wide; as well as working maintain the
6 irrigation systems, raising Chinese Ring-necked pheasants and chuckars.

7 **Q: Do you earn any income from this land?**

8 A: Yes. We have a contract with a renter to lease the property.

9 **Q: Have you depended on the income from your land to support your livelihood
10 or the livelihood of your family?**

11 A: Yes. We do. We raised our family on this land. The land and our family are
12 connected.

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, we do lease our property which concerns me. I am concerned that our tenant
16 may try to negotiate a lower price for our land if it had the pipeline on it and all
17 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.

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: I hope that it will stay in the family for years by passing it on to my daughter
3 Sarah and her family.

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. TransCanada’s surveying crew trespassed onto our land when it was
17 posted and we did not sign any easement agreement.

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. 3, 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 over 275 miles of**
11 **Nebraska land?**

12 **A: No.**

13 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
14 **percent clear on exactly who will be operating and responsible for**
15 **approximately 275 miles of tar sands pipeline underneath and through**
16 **Nebraska land?**

17 **A: No.**

18 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
19 **and the State of Nebraska of TransCanada's easement terms.**

20 **A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter**
21 **called "Grantee")..." and this concerns me because it would allow my easement to**
22 **be transferred or sold to someone or some company or country or who knows what**
23 **that I don't know and who we may not want to do business with. This pipeline**
24 **would be a huge asset for TransCanada and if they can sell to the highest bidder**
25 **that could have terrible impacts upon all of Nebraska depending upon who may**
26 **buy it and I don't know of any safeguards in place for us or the State to veto or**
27 **have any say so in who may own, operate, or be responsible for this pipeline in the**
28 **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 accidently 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**

1 without prior authorization by TransCanada. So my understanding is that
2 TransCanada will unilaterally determine what Landowner can and can't do based
3 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
4 could also completely deny my request to excavate. Further, TransCanada retains
5 all "privileges necessary or convenient for the full use of the rights" granted to
6 them in the Easement. Again, TransCanada unilaterally can decide to the
7 detriment of the property rights of Landowner what TransCanada believes is
8 necessary or convenient for it. And there is no option for any additional
9 compensation to landowner for any right exercised by TransCanada that leads to
10 the removal of trees or plants or vegetation or buildings or structures or facilities
11 owned by Landowner of any kind. Such undefined and unilateral restrictions and
12 rights without having to compensate Landowner for such further destruction or
13 losses are not conducive to the protection of property rights or economic interest.

14 **Q: What is the next concern you have?**

15 A: The Easement also allows some rights for Landowner but restricts them at the
16 same time and again at the sole and unilateral decision making of TransCanada.
17 TransCanada will determine if the actions of Landowner might in anyway
18 endanger or obstruct or interfere with TransCanada's full use of the Easement or
19 any appurtenances thereon to the pipeline itself or to their access to the Easement
20 or within the Easement and TransCanada retains the right at any time, whether
21 during growing season or not, to travel "within and along Easement Area on foot
22 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
23 retain the rights to prevent any landowner activity that it thinks may "unreasonably
24 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
25 undefined and unilateral restrictions are not conducive to the protection of
26 property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
29 Landowner's land any debris of any kind without any input or power of

1 Landowner to demand an alternative method or location of debris disposal. Such
2 unilateral powers would negatively affect Landowners property are not conducive
3 to the protection of property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
6 “where rock is encountered” mean and why does TransCanada solely get to
7 determine whether or not this phrase is triggered. This phrase could be used to
8 justify installing the pipeline 24 inches beneath the surface. The ability to use this
9 provision to minimal locate the pipeline at a depth of 24 inches could negatively
10 affect Landowners property are not conducive to the protection of property rights.
11 A shallow pipeline is much more likely to become a danger and liability in the
12 future given farming operations and buried irrigation lines and other factors
13 common to the current typical agricultural uses of the land in question impacted
14 by TransCanada’s preferred pipeline route.

15 **Q: What is the next concern you have with the Easement language?**

16 A: There are more vague concepts solely at the determination of TransCanada such as
17 “as nearly as practicable” and “pre-construction position” and “extent reasonably
18 possible.” There is nothing here that defines this or provides a mechanism for
19 documenting or memorializing “pre-construction position” so as to minimize
20 costly legal battles or wasted Landowner time attempting to recreate the soil
21 condition on their fields or pasture. Such unilateral powers would negatively affect
22 Landowners property are not conducive to the protection of property rights or
23 economic interest.

24 **Q: What is the next concern you have with the Easement language?**

25 A: TransCanada maintains the unilateral right to abandon the pipeline and all
26 appurtenances thereto in place on, under, across, or through Nebraska land at any
27 time it chooses. There is no provision for Landowner compensation for such
28 abandonment nor any right for the Landowner to demand removal. Such unilateral

1 powers would negatively affect Landowners property are not conducive to the
2 protection of property rights or economic interest.

3 **Q: What is the next concern you have with the Easement language?**

4 A: TransCanada has the power to unilaterally move or modify the location of any
5 Easement area whether permanent or temporary at their sole discretion.
6 Regardless, if Landowner has taken prior steps relative the their property in
7 preparation or planning of TransCanada's taking of the initial easement area(s),
8 the language here does not require TransCanada to compensate the Landowner if
9 they decide to move the easement anywhere on Landowners property. Such
10 unilateral powers would negatively affect Landowners property are not conducive
11 to the protection of property rights or economic interests.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement requires that all of the burdens and restrictions upon Landowner to
14 transfer and be applicable to any future owner of the Land in question without the
15 ability of the future Landowner to modify or negotiation any of the language in
16 question to which it will be held to comply.

17 **Q: What is the next concern you have with the Easement language?**

18 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
19 Easement to any person, company, country, etc. at their sole discretion at anytime
20 to anyone. This also means that any buyer of the easement could do the same to a
21 third buyer and so on forever. There is no change of control or sale provision in
22 place to protect the Landowner or Nebraska or to provide compensation for such
23 change of control or ownership. It is not conducive to the protection of property
24 rights or economic interests to allow unilateral unrestricted sale of the Easement
25 thereby forcing upon the Landowner and our State a new unknown Easement
26 owner.

27 **Q: What is the next concern you have with the Easement language?**

28 A: There are many terms in the Easement that are either confusing or undefined terms
29 that are without context as to whether or not the Landowner would have any say

1 so in determining what these terms mean or if the evaluation is solely in
2 TransCanada's control. Some of these vague undefined terms are 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.

6 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the
7 “Advanced Release of Damage Claims and Indemnity Agreement?”

8 A: Yes, it is.

9 Q: What was your understanding of that document?

10 A: When I read that document in the plain language of that document, it was my
11 understanding that TransCanada was attempting to pay me a very small amount at
12 that time in order for me to agree to give up my rights to be compensated from
13 them in the future related to any damage or impact they may have upon my
14 property “arising out of, in connection with, or alleged to resulted from
15 construction or surveying over, under or on” my land.

16 Q: Did you think this document is fair to sign?

17 A: No.

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. Also a possibility that TransCanada would like to take the
4 Ogallala Aquifer water from Nebraska out of Nebraska.

5 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
6 crude petroleum, oil and petroleum by-products that you would like to ship in
7 its pipeline?**

8 **A:** No, it has not.

9 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
10 products that you, at this time or any time in the future, would desire to place
11 for transport within the proposed TransCanada Keystone XL Pipeline?**

12 **A:** No, I do not.

13 **Q: Do you know anyone in the state of Nebraska who would be able to ship any
14 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
15 products within the proposed TransCanada Keystone XL Pipeline?**

16 **A:** No, I do not. I've never heard of such a person or company like that.

17 **Q: Do you pay property taxes for the land that would be affected and impacted
18 at the proposed TransCanada Keystone XL Pipeline?**

19 **A:** Yes, I do.

20 **Q: Why do you pay property taxes on that land?**

21 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
22 of that property.

23 **Q: Because you follow the law and pay property taxes, do you believe you
24 deserve any special consideration or treatment apart from any other person
25 or company that pays property taxes?**

26 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
27 just what you do.

28 **Q: Do you believe the fact that you pay property taxes entitles you to special
29 treatment of any kind, or special rights of any kind?**

1 A: No, of course not.

2 **Q: Do you believe the fact that you pay property taxes on your land would be**
3 **enough to qualify you to have the power of eminent domain to take land of**
4 **your neighbors or other people in your county, or other people across the**
5 **state of Nebraska?**

6 **A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that**
7 **I expect an award for or any type of special consideration.**

8 **Q: Have you at any time ever employed any person other than yourself?**

9 A: Well, yes I have.

10 **Q: Do you believe that the fact that you have, at some point in your life,**
11 **employed one or more other persons entitle you to any special treatment or**
12 **consideration above and beyond any other Nebraskan that has also employed**
13 **one or more persons?**

14 A: No, of course not.

15 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
16 **have at one point employed another person within this state, entitles you to**
17 **preferential treatment or consideration of any kind?**

18 A: No, of course not. If I choose to employ someone that decision is up to me. I
19 don't deserve any special treatment or consideration for that fact.

20 **Q: At the beginning of your statement, you briefly described your property that**
21 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
22 **give the Commissioners a sense of specifically how you believe the proposed**
23 **Keystone XL Pipeline and its preferred route, which proposes to go across**
24 **your land, how it would in your opinion based on your knowledge,**
25 **experience, and background of your land, affect it. So please share with the**
26 **Commissioners the characteristics of your land that you believe is important**
27 **for them to understand, while they evaluate TransCanada's application for a**
28 **route for its proposed pipeline to cross Nebraska and across your land,**
29 **specifically.**

1 A: I am very concerned about TransCanada's land reclamation practices. I have
2 visited two different properties of reclamation in South Dakota. As of today
3 neither one of the landowners are happy with the results of the land reclamation of
4 their properties. Both properties are not of sandy soil. I am not an expert farmers
5 but I have lived in the Nebraska Sandhills all of my life. The knowledge that is
6 gained by everyone growing up in the sandhills is that when you disturb the sandy
7 soils of the Sandhills it takes a lifetime of healing and a big possibility of never
8 healing. This route of the pipeline will affect our natural native grasses on our
9 farm. Also it will affect the crops grown on our 3 irrigated quarters.

10 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
11 **crude oil pipeline in its preferred location, or ultimate location across the**
12 **state of Nebraska?**

13 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
14 or even bullied around and being made to feel scared that they did not have any
15 options but to sign whatever papers TransCanada told them they had to. I am
16 aware of folks being threatened that their land would be taken if they didn't follow
17 what TransCanada was saying. I am aware of tactics to get people to sign
18 easements that I don't believe have any place in Nebraska or anywhere such as
19 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
20 landowners and convince them they should sign TransCanada's easement
21 agreements. I am aware of older folks and widows or widowers feeling they had
22 no choice but to sign TransCanada's Easement and they didn't know they could
23 fight or stand up for themselves. TransCanada has not been a good neighbor to us.
24 They have lied to us; used Eminent Domain against us; the surveying crews
25 trespassed onto our posted no trespass land, in which a claim was file with the
26 sheriff's office. TransCanada doesn't have a good reputation as Keystone I had 14
27 leaks in the first year. I believe today that Keystone I is not running to its fullest
28 capacity and if so certainly a new route for a new pipeline for the same products
29 and chemicals is not needed and not in the "public interest". Even though a new

1 map of the Sandhills boundaries was presented TransCanada and in the FEIS, it
2 doesn't matter because our highly erodible sandy soil and the two gravel pits
3 across the road from our farm are still located in the Sandhills. Keystone XL tar
4 sands pipeline contain toxic chemicals is not in the best interest of Nebraska as the
5 preferred proposed pipeline route still crosses the Ogallala Aquifer. I am also
6 worried that according to their answer to our Interrogatory No. 211, TransCanada
7 only owns and operates one (1) major oil pipeline. They simply do not have the
8 experience with this type of pipeline and that scares me. There are others but that
9 is what I can recollect at this time and if I remember more or my recollection is
10 refreshed I will share those with the Commissioners at the Hearing in August.

11 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
12 **landowner is reasonable or just?**

13 **A: No, I do not.**

14 **Q: Do you have any concern about limitations that the construction of this**
15 **proposed pipeline across your affected land would prevent construction of**
16 **future structures upon the portion of your land affected by the proposed**
17 **easement and immediately surrounding areas?**

18 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
19 structures directly across or touching the easement, and it would be unwise and I
20 would be uncomfortable to build anything near the easement for fear of being
21 blamed in the future should any damage or difficulty result on my property in
22 regards to the pipeline.

23 **Q: Do you think such a restriction would impact you economically?**

24 **A:** Well yes, of course.

25 **Q: How do you think such a restriction would impact you economically?**

26 **A:** The future of this land may not be exactly how it's being used as of this moment,
27 and having the restrictions and limiting my ability to develop my land in certain
28 ways presents a huge negative economic impact on myself, my family, and any
29 potential future owner of the property. You have no idea how I or the future owner

1 may want to use this land in the future or the other land across Nebraska
2 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
3 ago it would have been hard to imagine all the advances that we have now or how
4 things change. Because the Easement is forever and TransCanada gets the rights in
5 my land forever we have to think with a very long term view. By placing their
6 pipeline on under across and through my land that prevents future development
7 which greatly negatively impacts future taxes and tax revenue that could have
8 been generated by the County and State but now will not. When you look at the
9 short blip of economic activity that the two years of temporary construction efforts
10 may bring, that is far outweighed by the perpetual and forever loss of opportunity
11 and restrictions TransCanada is forcing upon us and Nebraska.

12 **Q: Do you have any concerns about the environmental impact of the proposed**
13 **pipeline?**

14 A: Yes, I do.

15 **Q: What are some of those concerns?**

16 A: As an affected land owner and Nebraskan, I am concerned that any construction,
17 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
18 a detrimental impact upon the environment of my land specifically, as well as the
19 lands near my land and surrounding the proposed pipeline route.

20 **Q: Do you have any other environmental concerns?**

21 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
22 construction and/or maintenance and operation. I am concerned about spills and
23 leaks that TransCanada has had in the past and will have in the future. This could
24 be catastrophic to my operations or others and to my county and the State.

25 **Q: Do you have any thoughts regarding if there would be an impact upon the**
26 **natural resources on or near your property due to the proposed pipeline?**

27 A: Yes, I believe that any construction, operation, and/or maintenance of the
28 proposed Keystone XL Pipeline would have detrimental impacts upon the natural

1 resources of my land, and the lands near and surrounding the proposed pipeline
2 route.

3 **Q: Do you have any worries about potential impacts from the proposed pipeline**
4 **to the soil of your land, or land near you?**

5 A: Yes, I believe that any construction, operation, and/or maintenance of the
6 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
7 land, as well as land along and surrounding the proposed pipeline route. This
8 includes, but is not limited to, the reasons that we discussed above of disturbing
9 the soil composition and makeup as it has naturally existed for thousands and
10 millions of years during the construction process, and any future maintenance or
11 removal process. I'm gravely concerned about the fertility and the loss of
12 economic ability of my property to grow the crops, or grow the grasses, or grow
13 whatever it is at that time they exist on my property or that I may want to grow in
14 the future, or that a future owner may want to grow. The land will never be the
15 same from as it exists now undisturbed to after it is trenched up for the proposed
16 pipeline.

17 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
18 **upon the groundwater over your land, or surrounding lands?**

19 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
20 the proposed Keystone XL Pipeline would have a detrimental impact upon the
21 groundwater of not only under my land, but also near and surrounding the pipeline
22 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
23 simple and it is simply too valuable to our State and the country to put at
24 unreasonable risk.

25 **Q: Do you have any concern about the potential impact of the proposed pipeline**
26 **upon the surface water on, or near or around your land?**

27 A: Yes, I have significant concerns that any construction, operation, and/or
28 maintenance of the proposed Keystone XL Pipeline would have detrimental
29 impact upon the surface water of not only within my property boundary, but along

1 and near and surrounding the pipeline route, and in fact, across the state of
2 Nebraska. The north branch of the Eagle Creek begins on our property.

3 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
4 **upon the wildlife and plants, other than your growing crops on or near your**
5 **land?**

6 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
7 the proposed Keystone XL Pipeline would have a detrimental impact upon the
8 wildlife and the plants, not only that are located on or can be found upon my land,
9 but also near and along the proposed pipeline route.

10 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
11 **fair market value of your land?**

12 A: Yes, I do. I am significantly concerned about how the existence of the proposed
13 pipeline underneath and across and through my property will negatively affect the
14 fair market value at any point in the future, especially at that point in which I
15 would need to sell the property, or someone in my family would need to sell the
16 property. I do not believe, and certainly would not be willing to pay, the same
17 price for land that had the pipeline located on it, versus land that did not. I hope
18 there is never a point where I'm in a position where I have to sell and have to
19 realize as much value as I can out of my land. But because it is my single largest
20 asset, I'm gravely concerned that the existence of the proposed Keystone XL
21 Pipeline upon my land will affect a buyer's willingness to pay as much as they
22 would've paid and as much as I could've received, if the pipeline were not upon
23 my property. There are just too many risks, unknowns, impacts and uncertainties,
24 not to mention all of the rights you give up by the nature of having the pipeline
25 due to having the easement that we have previously discussed, for any reasonable
26 person to think that the existence of the pipeline would not negatively affect my
27 property's value.

28 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
29 **testimony?**

1 A: Yes, I have.

2 **Q: Where have you seen that before?**

3 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
4 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
5 believe the portion of the alternative route in Nebraska essentially twins or
6 parallels Keystone I.

7 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
8 **Application, and as found on Attachment No. 7, here to your testimony, is in**
9 **the public interest of Nebraska?**

10 A: No, I do not.

11 **Q: Do you believe that the Keystone mainline alternative route as shown on**
12 **Attachment No. 7 included with your testimony here is a major oil pipeline**
13 **route that is in the public interest of Nebraska?**

14 A: No, I do not.

15 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
16 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
17 **your testimony, is in the public interest of Nebraska?**

18 A: No, I do not.

19 **Q: Do you believe there is any potential route for the proposed Keystone XL**
20 **Pipeline across, within, under, or through the State of Nebraska that is in the**
21 **public interest of the citizens of Nebraska?**

22 A: No, I do not.

23 **Q: Why do you hold that belief?**

24 A: Because there simply is no public interest based on all of the factors that I am
25 aware and that I have read and that I have studied that this Commission is to
26 consider that would establish that a for-profit foreign-owned pipeline that simply
27 crosses Nebraska because we are geographically in the way between where tar
28 sands are in Canada to where it wants to ship it to in Texas could ever be in the
29 public interest of Nebraskans. We derive no benefit from this project. It is not for

1 public use. Nebraska is simply in the way and when all considerations are taken in
2 there is no net benefit of any kind for Nebraska should this project be placed in our
3 state. Even if there was some arguable “benefit” it is not enough to outweigh all
4 the negative impacts and concerns.

5 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
6 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
7 **of Nebraska because it may bring temporary jobs during the construction**
8 **phase to Nebraska?**

9 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
10 temporary or on a permanent basis, don’t come with a project that has all the
11 potential and foreseeable negative impacts, many of which we have discussed here
12 and other witnesses throughout the course of this hearing have and will discuss. If
13 I decide to hire and employ someone to help me out in my farming or ranching
14 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
15 to my land or my town or my county or my state. And I’ve hired someone who is
16 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
17 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
18 jobs are not created equal. Additionally, I understand from what I’m familiar with
19 from TransCanada’s own statements that the jobs numbers they originally touted
20 were determined to be a minute fraction of the permanent jobs that had been
21 projected. According to their answer to our Interrogatory No. 191, TransCanada
22 has created only thirty-four (34) jobs within Nebraska working specifically on
23 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
24 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
25 Further, according to their answer to Interrogatory No. 199, TransCanada would
26 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
27 constructed on its Preferred Route or its Mainline Alternative Route.

28 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
29 **because it would cross your land?**

1 A: No, absolutely not. I am opposed to this project because it is not in the public
2 interest, neither within my community nor within our state.

3 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
4 **was to cross someone else's land?**

5 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
6 the fear and anxiety and potential foreseeable risks and negative impacts that this
7 type of a project carrying this type of product brings foisted upon anyone in this
8 state or any other state.

9 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
10 **Pipeline to cross the state of Nebraska?**

11 A: I don't believe there is an intelligent route because as I have stated I don't believe
12 this project anywhere within Nebraska is within the public interest. Both the
13 preferred route and the mainline alternative routes are economic liabilities our
14 state cannot risk.

15 **Q: What do you rely upon to make that statement?**

16 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
17 already exists in that area is reason enough as it is not in our best interest or the
18 public interests to have more major tar sands oil pipelines crisscrossing our state.

19 **Q: Do you have any other concerns you would like to reiterate or can think of at**
20 **this time you would like the Commissioners to understand?**

21 A: My main concerns with easement terms are as follows: 1. TransCanada using
22 bullying tactics (Eminent Domain) to gain part of our family farm for private gain.
23 2. No Protection for NE landowners from Liability 3. Abandonment of Pipe (pipe
24 removal) 4. Perpetual ownership ~ easement should end when project ends. 5.
25 Land Reclamation ~ TransCanada's famous last words: "How they will leave the
26 land in better shape than they found it."

27 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
28 **like the Public Service Commissioners to consider in their review of**
29 **TransCanada's Application?**

1 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
2 document below but other things may come to me or my memory may be
3 refreshed and I will add and address those things at the time of the Hearing in
4 August and address any additional items at that time as is necessary. Additionally,
5 I have not had an adequate amount of time to receive and review all of
6 TransCanada's answers to our discovery and the discovery of others so it was
7 impossible to competently and completely react to that in my testimony here and I
8 reserve the right to also address anything related to discovery that has not yet
9 concluded as of the date I signed this document below. Lastly, certain documents
10 requested have not yet been produced by TransCanada and therefore I may have
11 additional thoughts on those I will also share at the hearing as needed.

12 **Q:** **What is it that you are requesting the Public Service Commissioners do in**
13 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
14 **across Nebraska?**

15 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
16 a temporary job spike that this project may bring to a few counties and beyond the
17 relatively small amount of taxes this proposed foreign pipeline would possibly
18 generate. And, instead think about the perpetual and forever impacts of this
19 pipeline as it would have on the landowners specifically, first and foremost, but
20 also thereby upon the entire state of Nebraska, and to determine that neither the
21 preferred route nor the Keystone mainline alternative route are in the public
22 interest of the citizens of the state of Nebraska. It simply does not make sense to
23 add yet another major oil pipeline crisscrossing our state. This project is not in the
24 best interest for the state of Nebraska.

25 **Q:** **Does Attachment No. 8 here contain other documents you are competent to**
26 **speak about that you wish to be part of your testimony and to discuss in more**
27 **detail as needed at the August 2017 Hearing?**

28 **A:** Yes.

1 **Q: Are all of your statements in your testimony provided above true and**
2 **accurate as of the date you signed this document to the best of your**
3 **knowledge?**

4 **A: Yes, they are.**

5 **Q: Thank you, I have no further questions at this time and reserve the right to**
6 **ask you additional questions at the August 2017 Hearing.**

Diana Lynn Steskal
 Diana Lynn Steskal

Subscribed and Sworn to me before this 25th day of May, 2017.

Peggy S. Drorak
 Notary Public



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

90
80
70
60
50
40
30
20
10
0

% Sand

100
90
80
70
60
50
40
30
20
10
0

% Sand

E J A D H I L G B F C J H I F E A L G B C

Midwest Laboratories

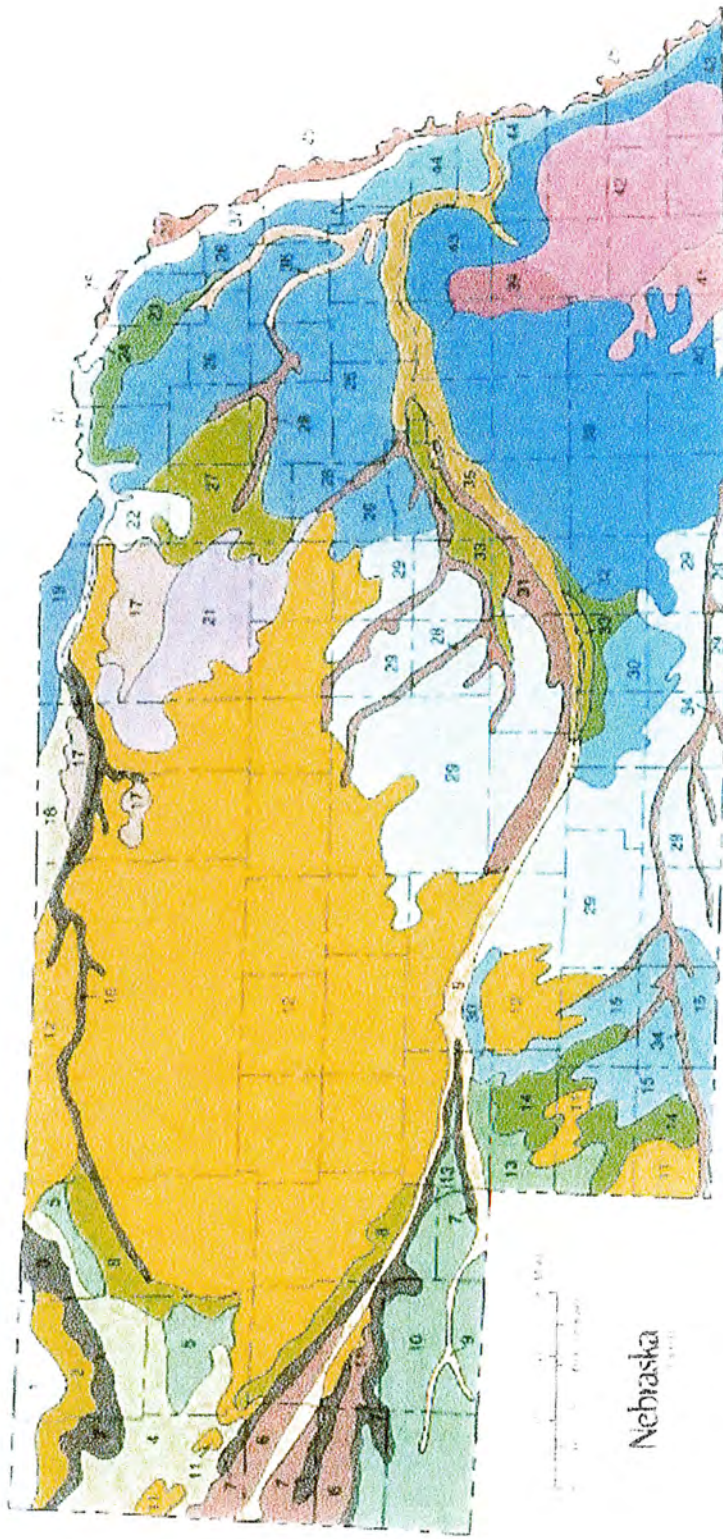
13611 B Street Omaha, NE 68144

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.

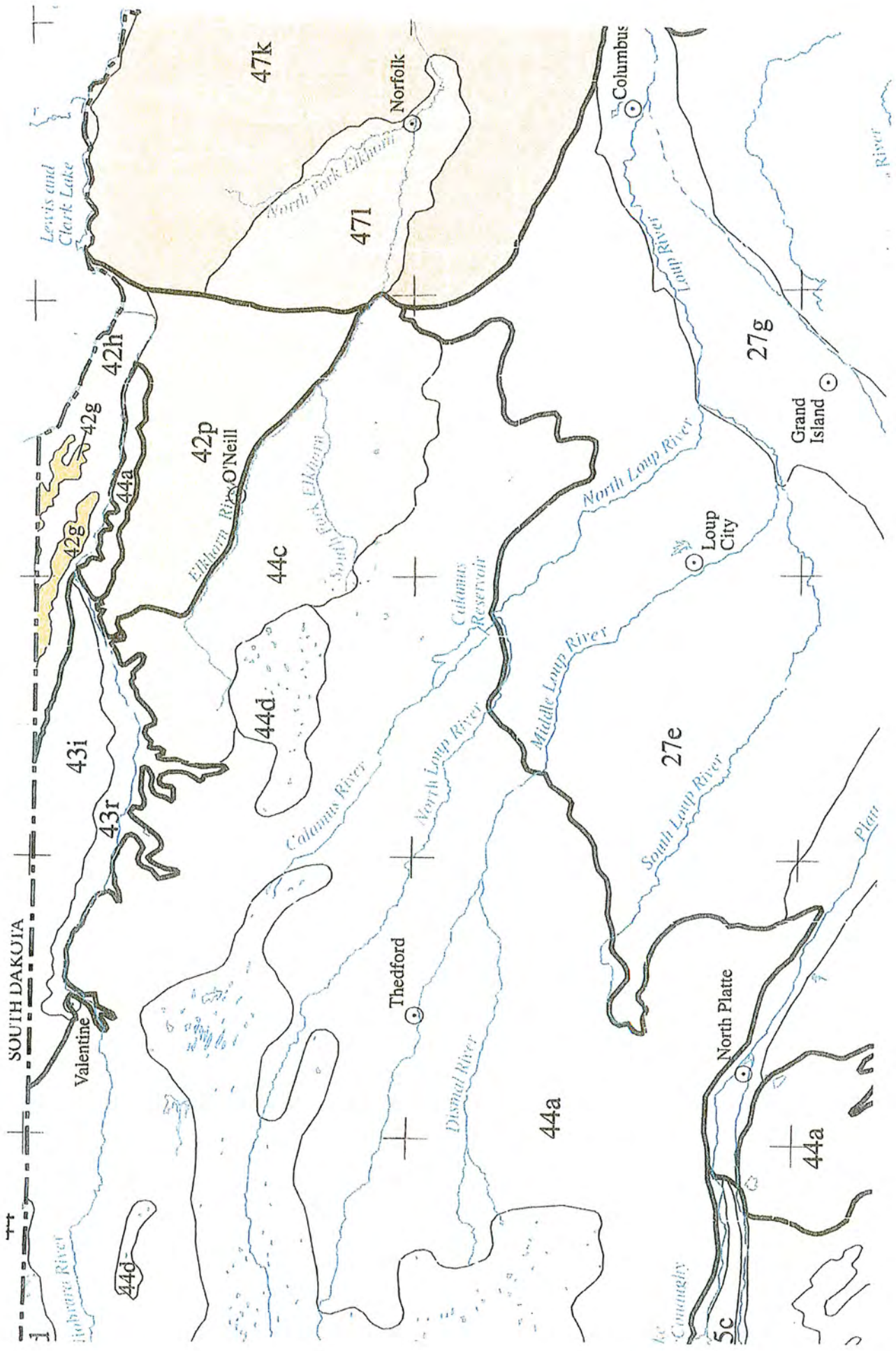
No matter which map is used ~ Keystone XL propose preferred route
is still over the Ogallala Aquifer and in the Sandhills.

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



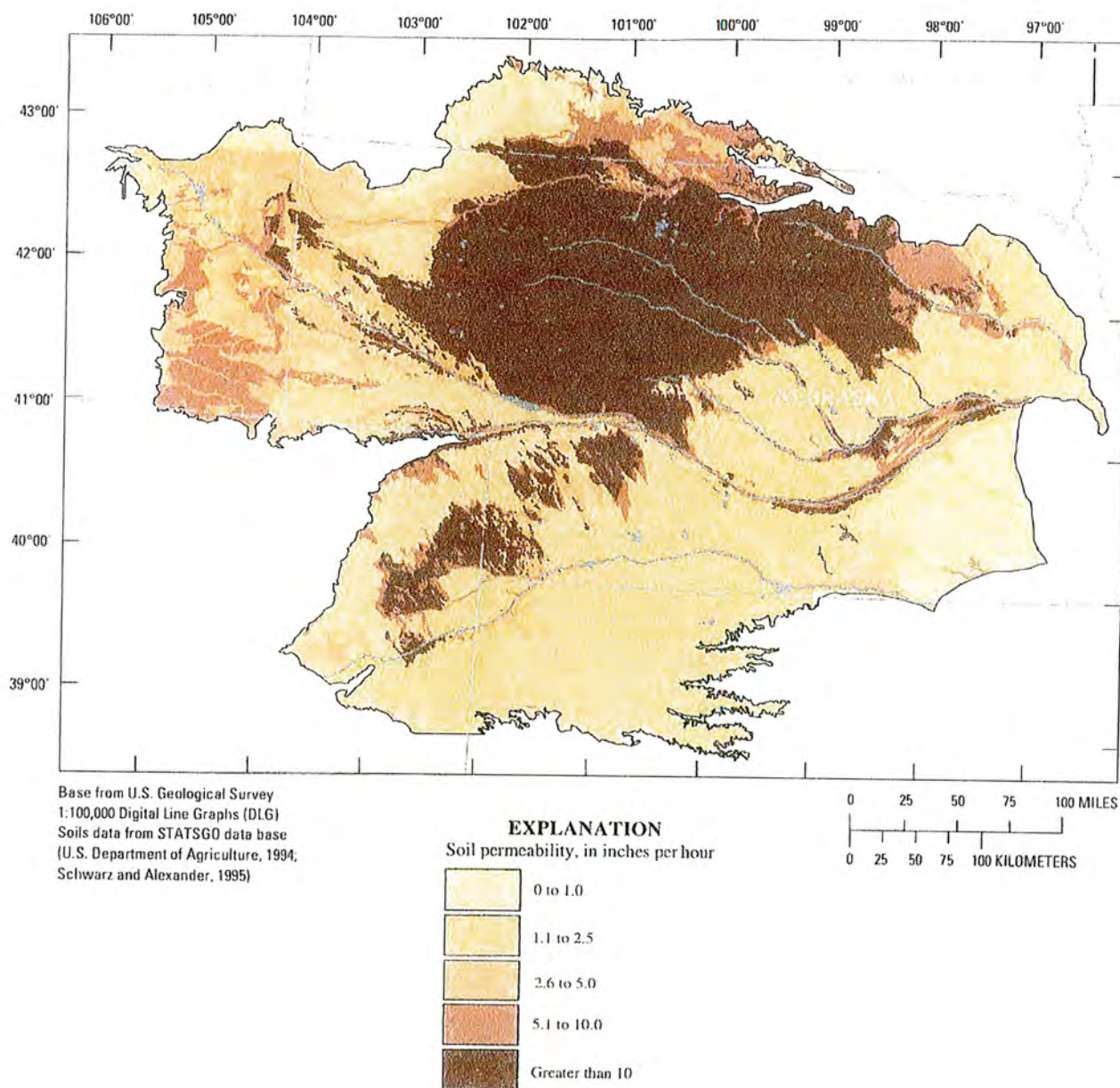


Figure 5. Permeability of soils overlying the northern High Plains aquifer.

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

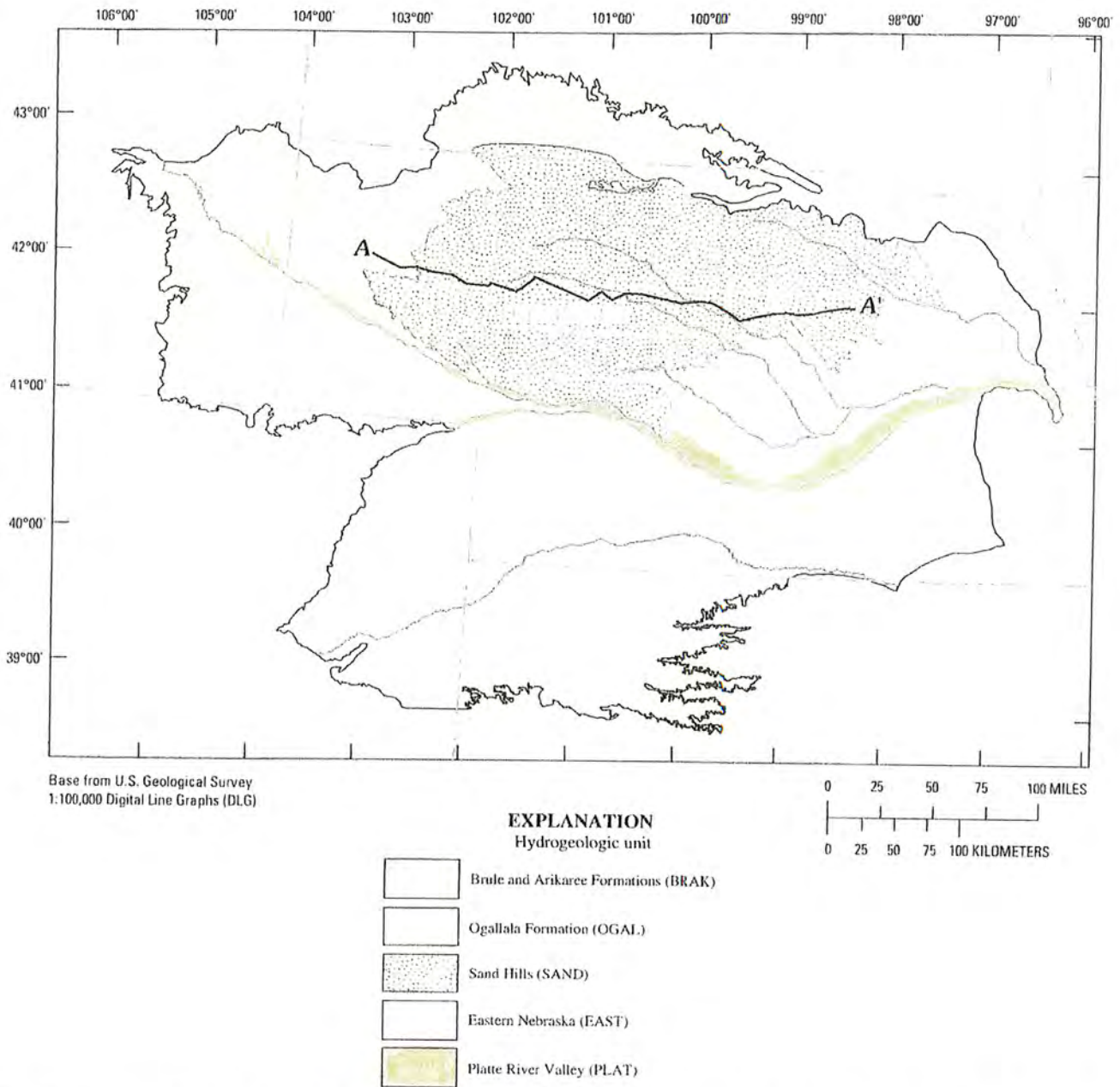
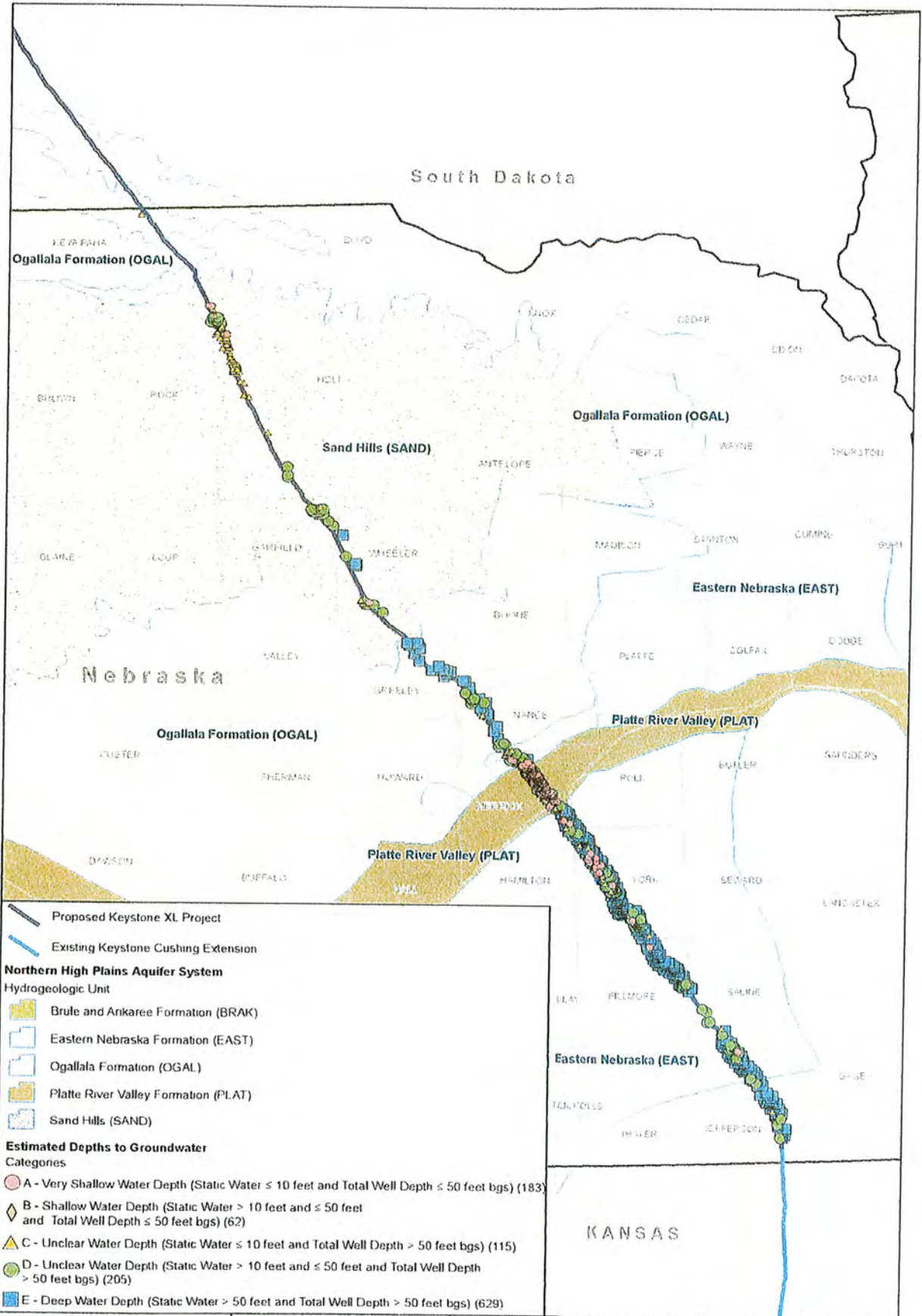


Figure 3. Location of major hydrogeologic units and trace of generalized geologic section A–A' (modified from Gutentag and others, 1984).

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).



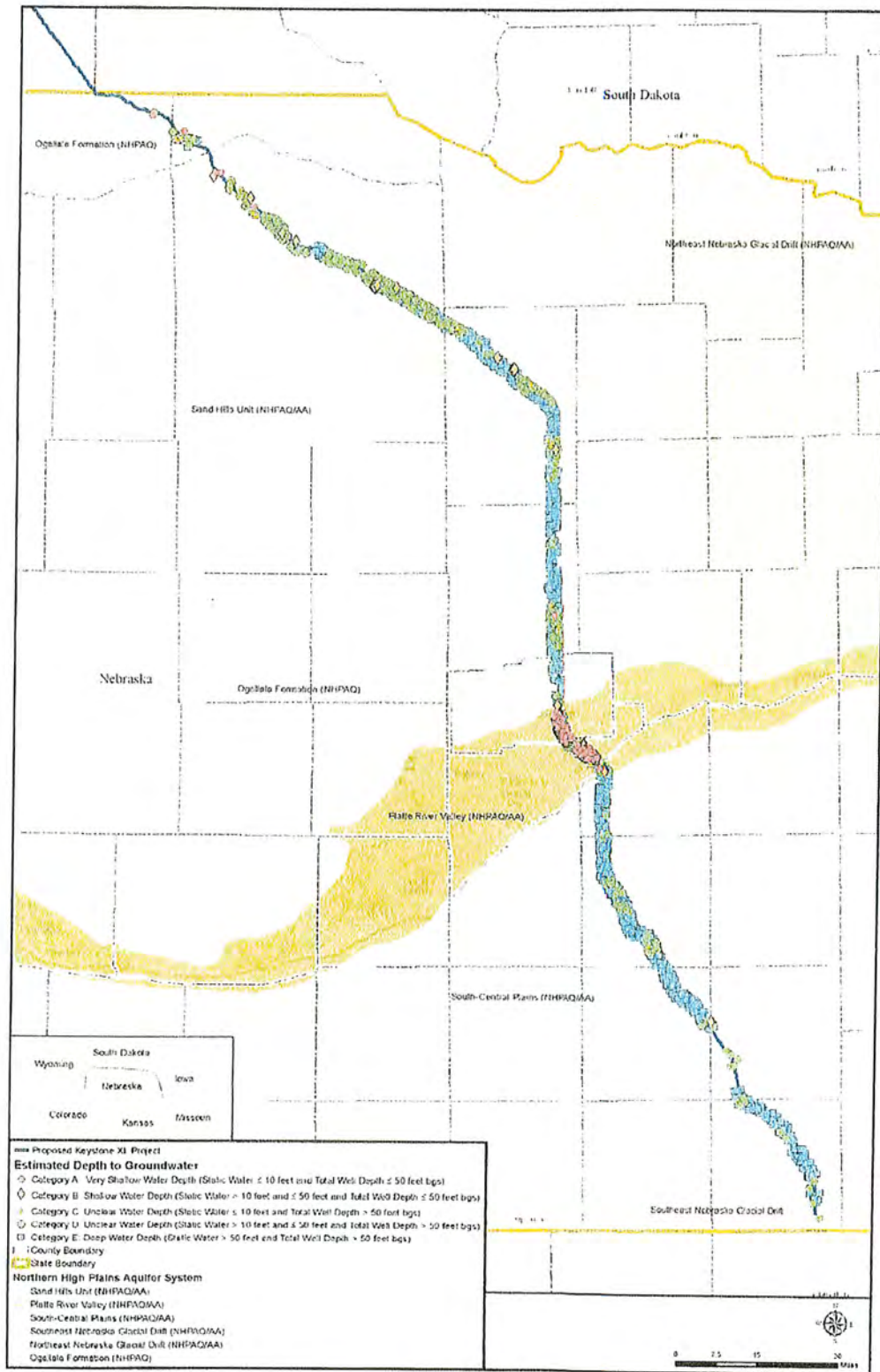
Date Sources: NHPAQ - USGS, Water Wells - NEDNR, 2011, Basemap - ESRI.

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)



Sources: Nebraska Department of Natural Resources 2012a, Esri 2013

Figure 3.3.2-4 Nebraska Water Wells Within 1 Mile of Proposed Pipeline Route

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

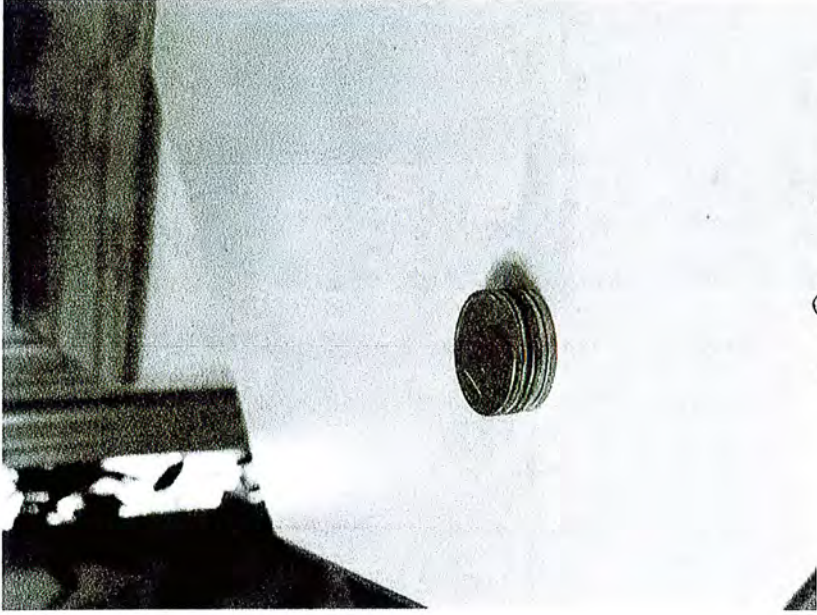


4/18

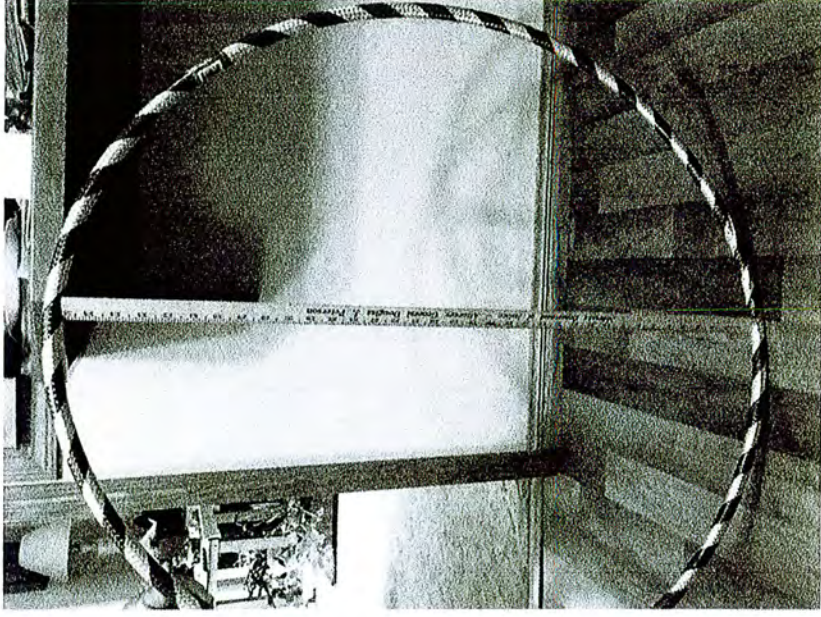


Attachment 8.13

SIZE AND THICKNESS OF THE PIPE



5-Diameter



36" Hula Hoop

Attachment 8.14

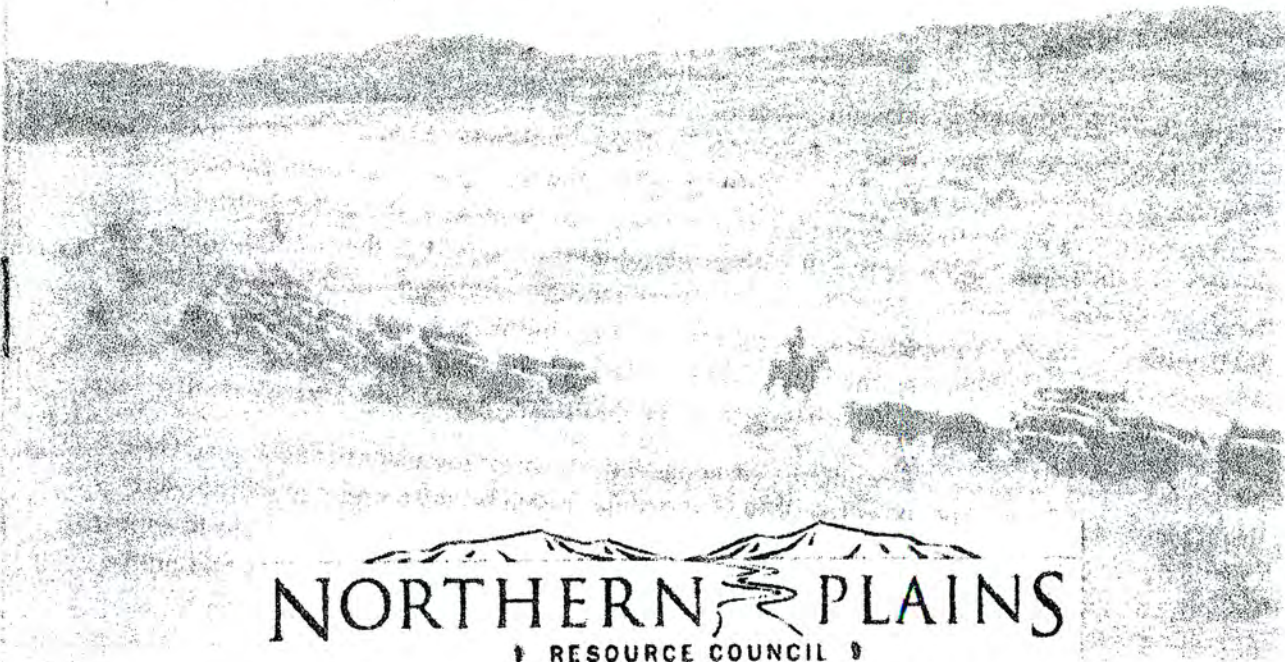
Northern Plains

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

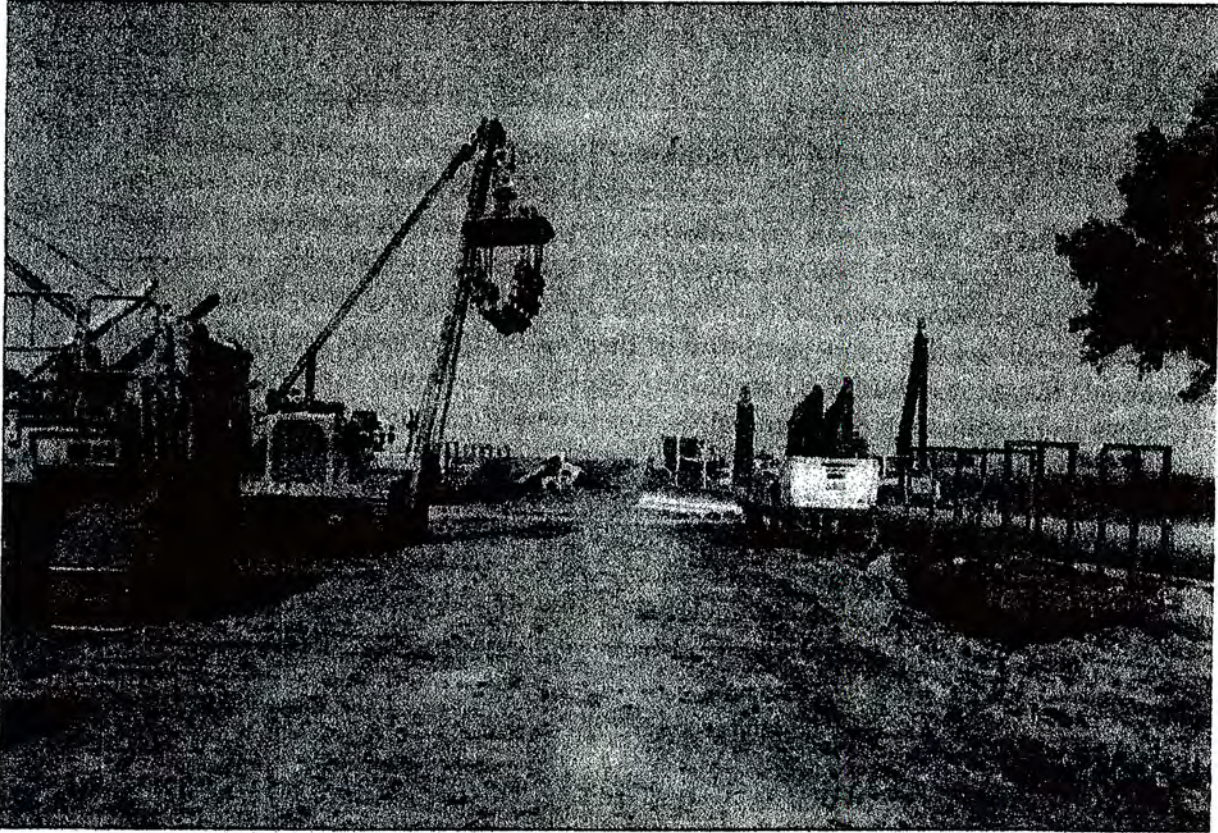
Working together to protect landowners and their property

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.

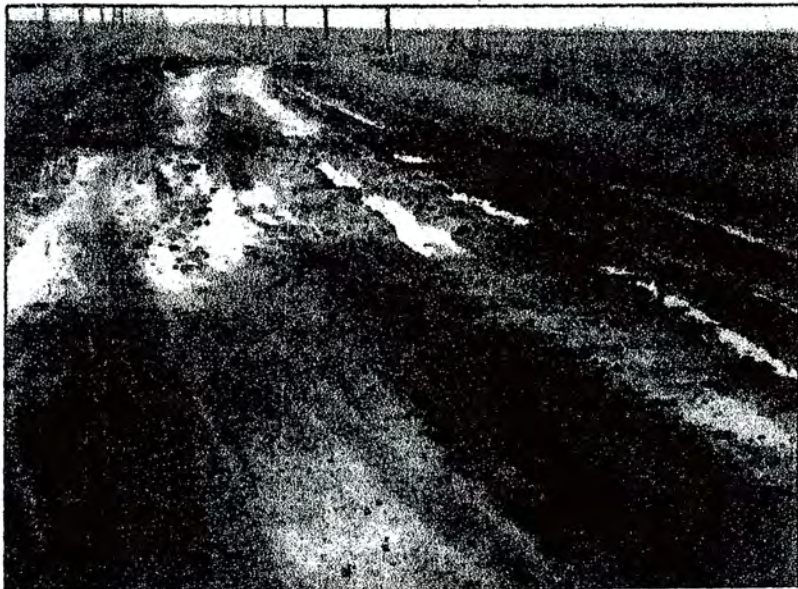
Good roads are an important safety issue in rural areas. Roads are necessary for emergency and fire vehicles to reach those in peril. Damaged roads can cause needless increased risk of accidents.

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.



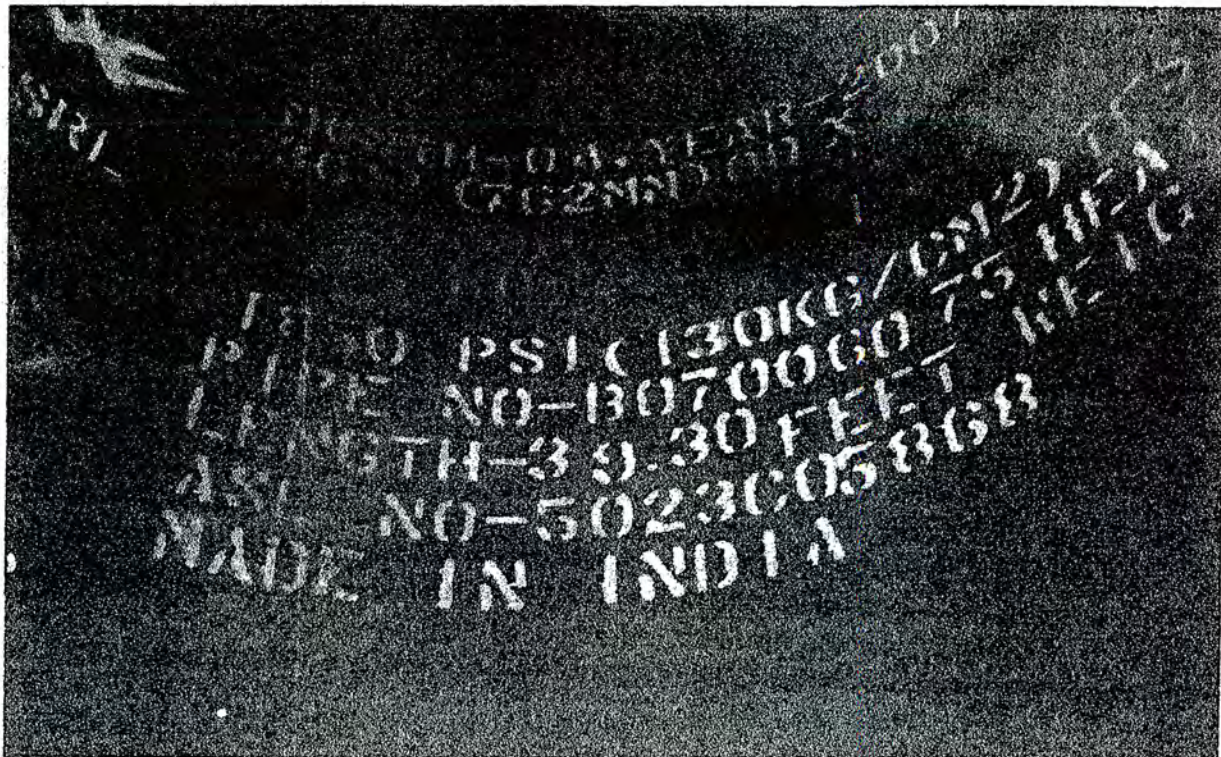
PIPE THICKNESS

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.

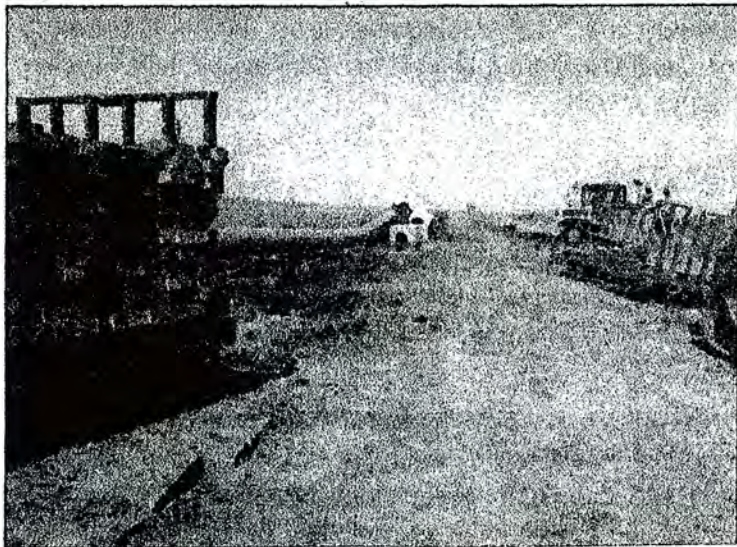
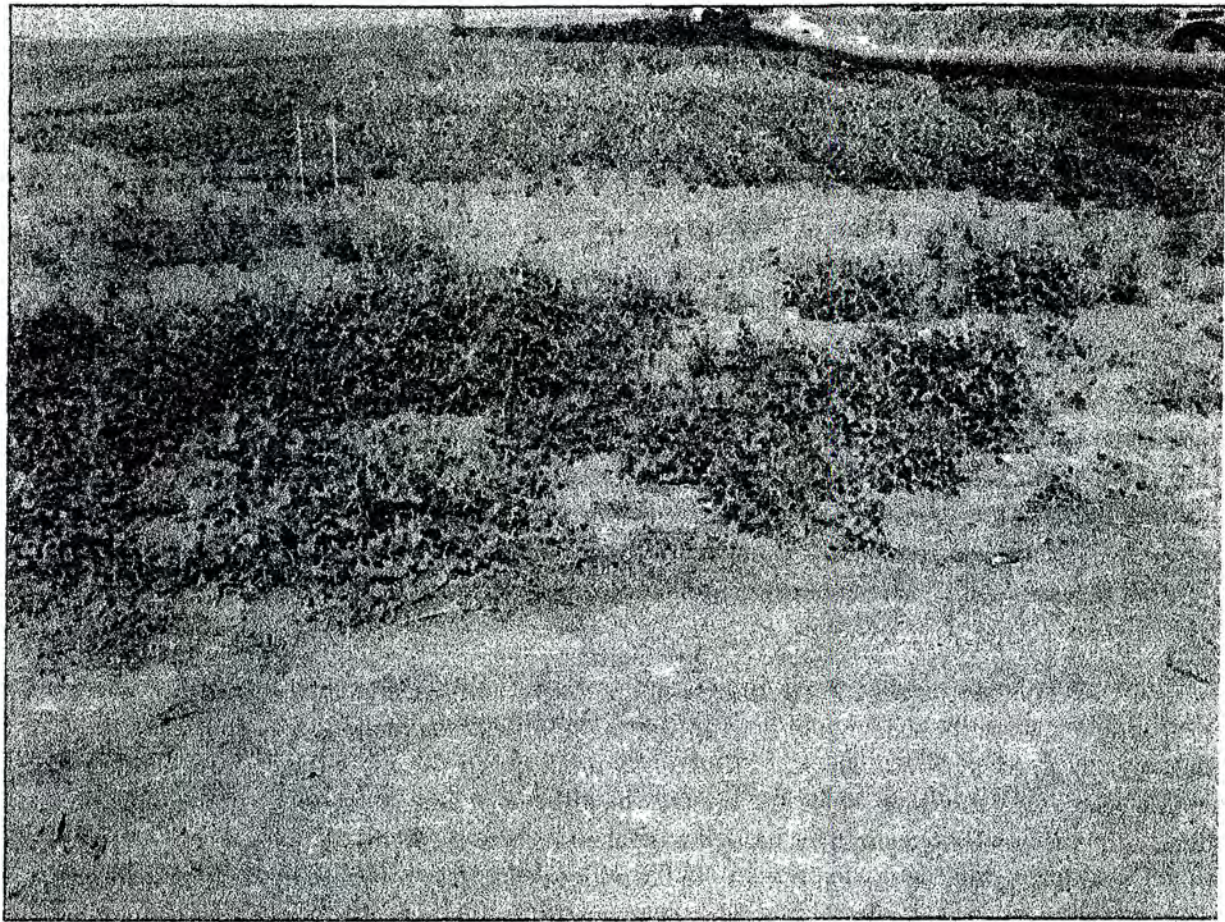
Another trend was trash, portable outhouses, and metal debris being left behind and fences not being rebuilt on the easement after construction. One landowner said a steel post was left behind that damaged his machinery. He billed TransCanada for it and the company did pay. However it shouldn't have 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.



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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
Arthur Tanderup in Support of
Landowner Intervenors

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Arthur Tanderup.

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: Helen Tanderup.



1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A: Yes.

4 **Q: How long the land has been in your family?**

5 A: The farm has been in my wife's family for over 100 years.

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 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 accidently 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 are some of the reasons why this is concerning to you?**

24 A: Our farm is in the eastern Sandhills and directly over the Ogallala Aquifer. The
25 soil where the pipeline would run is all in the Thurman fine sand family. These
26 are fine sands that are very porous. According to the Soil Survey of Antelope
27 County Nebraska, the sand turns into a sand/gravel mixture and then all gravel
28 before hitting a shale layer. Our house well is 70 feet deep and our irrigation well
29 is 120 feet deep. The irrigation well is at the shale layer. When dug in the 90’s, it

1 test pumped over 1500 gallons per minute. There is a massive amount of water in
2 that sandy gravel sponge. High permeability with a high water table would be
3 rapidly contaminated by a chemical and tar sands spill. This is the water we drink,
4 the livestock drinks and irrigate our crops and garden with.

5 **Q: What is the next concern you have with the Easement language?**

6 A: TransCanada maintains the unilateral right to abandon the pipeline and all
7 appurtenances thereto in place on, under, across, or through Nebraska land at any
8 time it chooses. There is no provision for Landowner compensation for such
9 abandonment nor any right for the Landowner to demand removal. Such unilateral
10 powers would negatively affect Landowners property are not conducive to the
11 protection of property rights or economic interest.

12 **Q: What is the next concern you have with the Easement language?**

13 A: TransCanada has the power to unilaterally move or modify the location of any
14 Easement area whether permanent or temporary at their sole discretion.
15 Regardless, if Landowner has taken prior steps relative the their property in
16 preparation or planning of TransCanada's taking of the initial easement area(s),
17 the language here does not require TransCanada to compensate the Landowner if
18 they decide to move the easement anywhere on Landowners property. Such
19 unilateral powers would negatively affect Landowners property are not conducive
20 to the protection of property rights or economic interests.

21 **Q: What is the next concern you have with the Easement language?**

22 A: The Easement requires that all of the burdens and restrictions upon Landowner to
23 transfer and be applicable to any future owner of the Land in question without the
24 ability of the future Landowner to modify or negotiate any of the language in
25 question to which it will be held to comply.

26 **Q: What is the next concern you have with the Easement language?**

27 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
28 Easement to any person, company, country, etc. at their sole discretion at any time
29 to anyone. This also means that any buyer of the easement could do the same to a

1 third buyer and so on forever. There is no change of control or sale provision in
2 place to protect the Landowner or Nebraska or to provide compensation for such
3 change of control or ownership. It is not conducive to the protection of property
4 rights or economic interests to allow unilateral unrestricted sale of the Easement
5 thereby forcing upon the Landowner and our State a new unknown Easement
6 owner.

7 **Q: What is the next concern you have with the Easement language?**

8 **A:** There are many terms in the Easement that are either confusing or undefined terms
9 that are without context as to whether or not the Landowner would have any say
10 so in determining what these terms mean or if the evaluation is solely in
11 TransCanada's control. Some of these vague undefined terms are as follows:

- 12 i. "pipeline installation activities"
- 13 ii. "availability of labor and materials"
- 14 iii. "commercially reasonable costs and expenses"
- 15 iv. "reasonably anticipated and foreseeable costs and expenses"
- 16 v. "yield loss damages"
- 17 vi. "diminution in the value of the property"
- 18 vii. "substantially same condition"
- 19 viii. "an actual or potential hazard"
- 20 ix. "efficient"
- 21 x. "convenient"
- 22 xi. "endangered"
- 23 xii. "obstructed"
- 24 xiii. "injured"
- 25 xiv. "interfered with"
- 26 xv. "impaired"
- 27 xvi. "suitable crossings"
- 28 xvii. "where rock is encountered"
- 29 xviii. "as nearly as practicable"

1 xix. “pre-construction position”

2 xx. “pre-construction grade”

3 xxi. “various engineering factors”

4 Each one of these above terms and phrases as read in the context of the Easement
5 could be problematic in many ways. Notably, undefined terms tend to only get
6 definition in further legal proceedings after a dispute arises and the way the
7 Easement is drafted, TransCanada has sole power to determine when and if a
8 particular situation conforms with or triggers rights affected by these terms. For
9 instance, “yield loss damages” should be specifically defined and spelled out
10 exactly how the landowner is to be compensated and in what events on the front
11 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
12 the Landowner is without contractual rights to define these terms or determine
13 when rights related to them trigger and what the affects may be.

14 **Q: Do you have any other concerns about the Easement language that you can**
15 **think of at this time?**

16 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
17 my live testimony in August.

18 **Q: Based upon what you have shared with the Commission above regarding**
19 **TransCanada’s proposed Easement terms and agreement, do you believe**
20 **those to be reasonable or just, under the circumstances of the pipeline’s**
21 **impact upon you and your land?**

22 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
23 discussed previously.

24 **Q: Did TransCanada ever offer you financial compensation for the rights that**
25 **they sought to obtain in your land, and for what they sought to prevent you**
26 **and any future land owner of your property from doing in the future?**

27 **A:** Yes, we received an offer from them.

28 **Q: As the owner of the land in question and as the person who knows it better**
29 **than anyone else, do you believe that TransCanada offered you just, or fair,**

1 **compensation for all of what they proposed to take from you so that their tar**
2 **sands pipeline could be located across your property?**

3 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
4 offer for all the potential impacts and effects and the rights that I'm giving up, and
5 what we will be prevented from doing in the future and how their pipeline would
6 impact my property for ever and ever.

7 **Q: Has TransCanada at any time offered to compensate you annually, such as**
8 **wind farm projects do, for the existence of their potential tar sands pipeline**
9 **across your property.**

10 A: No, never.

11 **Q: At any time did TransCanada present you with or request that you, as the**
12 **owner of the land in question, sign and execute a document called, "Advanced**
13 **Release of Damage Claims and Indemnity Agreement?"**

14 A: Yes, they did and it was included in the County Court lawsuit against us.

15 **Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
16 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

17 A: Yes, it is.

18 **Q: What was your understanding of that document?**

19 A: When I read that document in the plain language of that document, it was my
20 understanding that TransCanada was attempting to pay me a very small amount at
21 that time in order for me to agree to give up my rights to be compensated from
22 them in the future related to any damage or impact they may have upon my
23 property "arising out of, in connection with, or alleged to resulted from
24 construction or surveying over, under or on" my land.

25 **Q: Did you ever sign that document?**

26 A: No, I did not.

27 **Q: Why not?**

28 A: Because I do not believe that it is fair or just to try to get me to agree to a small
29 sum of money when I have no idea how bad the impacts or damages that they, or

1 their contractors, or subcontractors, or other agents or employees, may cause on
2 my land at any time in the future that resulted from the construction or surveying
3 or their activities upon my land.

4 **Q: When you reviewed this document, what did it make you feel?**

5 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
6 shield themselves against known and foreseeable impacts that their pipeline, and
7 the construction of it, would have upon my land. It made me feel that they knew it
8 was in their financial interest to pay me as little as possible to prevent me from
9 ever having the opportunity to seek fair compensation again, and that this must be
10 based upon their experience of unhappy landowners and situations in other places
11 where they have built pipelines.

12 **Q: Has TransCanada ever contacted you and specifically asked you if you**
13 **thought their proposed location of their proposed pipeline across your land**
14 **was in your best interest?**

15 A: No, they have not.

16 **Q: Has TransCanada ever contacted you and specifically asked you if you**
17 **thought their proposed location of their proposed pipeline across your land**
18 **was in the public interest of the State of Nebraska?**

19 A: No, they have not.

20 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
21 **Takings Clause?**

22 A: Yes, I am.

23 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
24 **an American citizens property?**

25 A: My understanding is that, according to the United States Constitution, that if the
26 government is going to take land for public use, then in that case, or by taking for
27 public use, it can only occur if the private land owner is compensated justly, or
28 fairly.

1 **Q:** Has TransCanada ever contacted you specially to explain the way in which
2 the public could use its proposed Keystone XL Pipeline?

3 **A:** No, they have not.

4 **Q:** Can you think of any way in which the public, that is the citizens of the State
5 of Nebraska, can directly use the proposed TransCanada Keystone XL
6 Pipeline, as it dissects the State of Nebraska?

7 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
8 public benefits from this pipeline in any way, how they can use it any way, or how
9 it's in the public interest in any way. By looking at the map, it is quite clear to me
10 that the only reason it's proposed to come through Nebraska, is that because we
11 are geographically in the way from between where the privately-owned Tar Sands
12 are located to where TransCanada wants to ship the Tar Sands to refineries in
13 Houston, Texas.

14 **Q:** Has TransCanada ever contacted you and asked you if you had any tar sands,
15 crude petroleum, or oil and petroleum by-products that you would like to
16 ship in its pipeline?

17 **A:** No, it has not.

18 **Q:** Do you have any tar sands, crude petroleum, or oil and petroleum by-
19 products that you, at this time or any time in the future, would desire to place
20 for transport within the proposed TransCanada Keystone XL Pipeline?

21 **A:** No, I do not.

22 **Q:** Do you know anyone in the state of Nebraska who would be able to ship any
23 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
24 products within the proposed TransCanada Keystone XL Pipeline?

25 **A:** No, I do not. I've never heard of such a person or company like that.

26 **Q:** Do you pay property taxes for the land that would be affected and impacted
27 at the proposed TransCanada Keystone XL Pipeline?

28 **A:** Yes, I do.

29 **Q:** Why do you pay property taxes on that land?

1 A: Because that is the law. The law requires us to pay the property taxes as the owner
2 of that property.

3 **Q: Because you follow the law and pay property taxes, do you believe you**
4 **deserve any special consideration or treatment apart from any other person**
5 **or company that pays property taxes?**

6 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
7 just what you do.

8 **Q: Do you believe the fact that you pay property taxes entitles you to special**
9 **treatment of any kind, or special rights of any kind?**

10 A: No, of course not.

11 **Q: Do you believe the fact that you pay property taxes on your land would be**
12 **enough to qualify you to have the power of eminent domain to take land of**
13 **your neighbors or other people in your county, or other people across the**
14 **state of Nebraska?**

15 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
16 I expect an award for or any type of special consideration.

17 **Q: Have you at any time ever employed any person other than yourself?**

18 A: Well, yes I have.

19 **Q: Do you believe that the fact that you have, at some point in your life,**
20 **employed one or more other persons entitle you to any special treatment or**
21 **consideration above and beyond any other Nebraskan that has also employed**
22 **one or more persons?**

23 A: No, of course not.

24 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
25 **have at one point employed another person within this state, entitles you to**
26 **preferential treatment or consideration of any kind?**

27 A: No, of course not. If I choose to employ someone that decision is up to me. I
28 don't deserve any special treatment or consideration for that fact.

1 **Q:** At the beginning of your statement, you briefly described your property that
2 would be impacted by the potential Keystone XL Pipeline. I would like you to
3 give the Commissioners a sense of specifically how you believe the proposed
4 Keystone XL Pipeline and its preferred route, which proposes to go across
5 your land, how it would in your opinion based on your knowledge,
6 experience, and background of your land, affect it.

7 **A:** The KXL pipeline poses a significant threat to our farming practices. We have
8 been utilizing no-till conservation practices for the past 13 years. We also plant
9 cover crops to enhance these practices. This improves soil structure, builds
10 microorganisms and organic matter to create healthy soil. Plant root structure goes
11 down to over five feet deep. These conservation practices also prevent soil erosion
12 from wind and weather. When not protected, our sand will drift like snow, creating
13 “blowouts” while destroying productivity. Destroying the earth for pipeline
14 construction would require years of reclamation to bring back to current levels.
15 The heat from the pipe will destroy root structure, causing poor growth and yields.
16 The warm soil will harbor insects and diseases over winter. A buried pipeline will
17 continue to settle the dirt around it, creating potential cave-ins. Irrigation water
18 will wash into the trench area. Pivot tires can become stuck in such a trench line.
19 These trenches also create potential for equipment to fall into. Significant damage
20 can occur to that equipment. If the pipe happens to get damaged from such an
21 accident, it becomes our responsibility. Future farming technologies may be
22 forbidden or severely restricted. Our farm has a large number of trees that protect
23 the land from wind erosion. Many old and newer trees will have to be removed
24 and cannot be replaced. The property value of our farm will be significantly
25 decreased with this pipeline and permanent easement. Land with KXL easements
26 has already sold for less than comparable market value.

27 **Q:** Do you have any concerns TransCanada’s fitness as an applicant for a major
28 crude oil pipeline in its preferred location, or ultimate location across the
29 state of Nebraska?

1 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
2 or even bullied around and being made to feel scared that they did not have any
3 options but to sign whatever papers TransCanada told them they had to. I am
4 aware of folks being threatened that their land would be taken if they didn't follow
5 what TransCanada was saying. I am aware of tactics to get people to sign
6 easements that I don't believe have any place in Nebraska or anywhere such as
7 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
8 landowners and convince them they should sign TransCanada's easement
9 agreements. I am aware of older folks and widows or widowers feeling they had
10 no choice but to sign TransCanada's Easement and they didn't know they could
11 fight or stand up for themselves. From a more practical standpoint, I am worried
12 that according to their answer to our Interrogatory No. 211, TransCanada only
13 owns and operates one (1) major oil pipeline. They simply do not have the
14 experience with this type of pipeline and that scares me. There are others but that
15 is what I can recollect at this time and if I remember more or my recollection is
16 refreshed I will share those with the Commissioners at the Hearing in August.

17 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
18 **landowner is reasonable or just?**

19 A: No, I do not.

20 **Q: Do you have any concern about limitations that the construction of this**
21 **proposed pipeline across your affected land would prevent construction of**
22 **future structures upon the portion of your land affected by the proposed**
23 **easement and immediately surrounding areas?**

24 A: Well yes, of course I do. We would not be able to build many, if any, types of
25 structures directly across or touching the easement, and it would be unwise and I
26 would be uncomfortable to build anything near the easement for fear of being
27 blamed in the future should any damage or difficulty result on my property in
28 regards to the pipeline.

29 **Q: Do you think such a restriction would impact you economically?**

1 A: Well yes, of course.

2 **Q: How do you think such a restriction would impact you economically?**

3 A: The future of this land may not be exactly how it's being used as of this moment,
4 and having the restrictions and limiting my ability to develop my land in certain
5 ways presents a huge negative economic impact on myself, my family, and any
6 potential future owner of the property. You have no idea how I or the future owner
7 may want to use this land in the future or the other land across Nebraska
8 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
9 ago it would have been hard to imagine all the advances that we have now or how
10 things change. Because the Easement is forever and TransCanada gets the rights in
11 my land forever we have to think with a very long term view. By placing their
12 pipeline on under across and through my land that prevents future development
13 which greatly negatively impacts future taxes and tax revenue that could have
14 been generated by the County and State but now will not. When you look at the
15 short blip of economic activity that the two years of temporary construction efforts
16 may bring, that is far outweighed by the perpetual and forever loss of opportunity
17 and restrictions TransCanada is forcing upon us and Nebraska.

18 **Q: Do you have any concerns about the environmental impact of the proposed**
19 **pipeline?**

20 A: Yes, I do.

21 **Q: What are some of those concerns?**

22 A: As an affected land owner and Nebraskan, I am concerned that any construction,
23 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
24 a detrimental impact upon the environment of my land specifically, as well as the
25 lands near my land and surrounding the proposed pipeline route.

26 **Q: Do you have any other environmental concerns?**

27 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
28 construction and/or maintenance and operation. I am concerned about spills and

1 leaks that TransCanada has had in the past and will have in the future. This could
2 be catastrophic to my operations or others and to my county and the State.

3 **Q: Do you have any thoughts regarding if there would be an impact upon the**
4 **natural resources on or near your property due to the proposed pipeline?**

5 A: Yes, I believe that any construction, operation, and/or maintenance of the
6 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
7 resources of my land, and the lands near and surrounding the proposed pipeline
8 route.

9 **Q: Do you have any worries about potential impacts from the proposed pipeline**
10 **to the soil of your land, or land near you?**

11 A: Yes, I believe that any construction, operation, and/or maintenance of the
12 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
13 land, as well as land along and surrounding the proposed pipeline route. This
14 includes, but is not limited to, the reasons that we discussed above of disturbing
15 the soil composition and makeup as it has naturally existed for thousands and
16 millions of years during the construction process, and any future maintenance or
17 removal process. I'm gravely concerned about the fertility and the loss of
18 economic ability of my property to grow the crops, or grow the grasses, or grow
19 whatever it is at that time they exist on my property or that I may want to grow in
20 the future, or that a future owner may want to grow. The land will never be the
21 same from as it exists now undisturbed to after it is trenched up for the proposed
22 pipeline.

23 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
24 **upon the groundwater over your land, or surrounding lands?**

25 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
26 the proposed Keystone XL Pipeline would have a detrimental impact upon the
27 groundwater of not only under my land, but also near and surrounding the pipeline
28 route, and in fact, potentially the entire State of Nebraska. Water is life plain and

1 simple and it is simply too valuable to our State and the country to put at
2 unreasonable risk.

3 **Q: Do you have any concern about the potential impact of the proposed pipeline**
4 **upon the surface water on, or near or around your land?**

5 A: Yes, I have significant concerns that any construction, operation, and/or
6 maintenance of the proposed Keystone XL Pipeline would have detrimental
7 impact upon the surface water of not only within my property boundary, but along
8 and near and surrounding the pipeline route, and in fact, across the state of
9 Nebraska.

10 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
11 **upon the wildlife and plants, other than your growing crops on or near your**
12 **land?**

13 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
14 the proposed Keystone XL Pipeline would have a detrimental impact upon the
15 wildlife and the plants, not only that are located on or can be found upon my land,
16 but also near and along the proposed pipeline route.

17 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
18 **fair market value of your land?**

19 A: Yes, I do. I am significantly concerned about how the existence of the proposed
20 pipeline underneath and across and through my property will negatively affect the
21 fair market value at any point in the future, especially at that point in which I
22 would need to sell the property, or someone in my family would need to sell the
23 property. I do not believe, and certainly would not be willing to pay, the same
24 price for land that had the pipeline located on it, versus land that did not. I hope
25 there is never a point where I'm in a position where I have to sell and have to
26 realize as much value as I can out of my land. But because it is my single largest
27 asset, I'm gravely concerned that the existence of the proposed Keystone XL
28 Pipeline upon my land will affect a buyer's willingness to pay as much as they
29 would've paid and as much as I could've received, if the pipeline were not upon

1 my property. There are just too many risks, unknowns, impacts and uncertainties,
2 not to mention all of the rights you give up by the nature of having the pipeline
3 due to having the easement that we have previously discussed, for any reasonable
4 person to think that the existence of the pipeline would not negatively affect my
5 property's value.

6 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
7 **testimony?**

8 A: Yes, I have.

9 **Q: Where have you seen that before?**

10 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
11 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
12 believe the portion of the alternative route in Nebraska essentially twins or
13 parallels Keystone I.

14 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
15 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

16 A: No, I do not.

17 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
18 **Application, and as found on Attachment No. 7, here to your testimony, is in**
19 **the public interest of Nebraska?**

20 A: No, I do not.

21 **Q: Do you believe that the Keystone mainline alternative route as shown on**
22 **Attachment No. 7 included with your testimony here is a major oil pipeline**
23 **route that is in the public interest of Nebraska?**

24 A: No, I do not.

25 **Q: Do you believe there is any potential route for the proposed Keystone XL**
26 **Pipeline across, within, under, or through the State of Nebraska that is in the**
27 **public interest of the citizens of Nebraska?**

28 A: No, I do not.

29 **Q: Why do you hold that belief?**

1 A: Because there simply is no public interest based on all of the factors that I am
2 aware and that I have read and that I have studied that this Commission is to
3 consider that would establish that a for-profit foreign-owned pipeline that simply
4 crosses Nebraska because we are geographically in the way between where tar
5 sands are in Canada to where it wants to ship it to in Texas could ever be in the
6 public interest of Nebraskans. We derive no benefit from this project. It is not for
7 public use. Nebraska is simply in the way and when all considerations are taken in
8 there is no net benefit of any kind for Nebraska should this project be placed in our
9 state. Even if there was some arguable “benefit” it is not enough to outweigh all
10 the negative impacts and concerns.

11 Q: **What do you think about the applicant, TransCanada’s argument that it’s**
12 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
13 **of Nebraska because it may bring temporary jobs during the construction**
14 **phase to Nebraska?**

15 A: First of all, not all jobs are created equally. Most jobs that are created, whether
16 temporary or on a permanent basis, don’t come with a project that has all the
17 potential and foreseeable negative impacts, many of which we have discussed here
18 and other witnesses throughout the course of this hearing have and will discuss. If
19 I decide to hire and employ someone to help me out in my farming or ranching
20 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
21 to my land or my town or my county or my state. And I’ve hired someone who is
22 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
23 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
24 jobs are not created equal. Additionally, I understand from what I’m familiar with
25 from TransCanada’s own statements that the jobs numbers they originally touted
26 were determined to be a minute fraction of the permanent jobs that had been
27 projected. According to their answer to our Interrogatory No. 191, TransCanada
28 has created only thirty-four (34) jobs within Nebraska working specifically on
29 behalf of TransCanada and according to their answer to Interrogatory No. 196, as

1 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
2 Further, according to their answer to Interrogatory No. 199, TransCanada would
3 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
4 constructed on its Preferred Route or its Mainline Alternative Route.

5 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
6 **because it would cross your land?**

7 A: No, absolutely not. I am opposed to this project because it is not in the public
8 interest, neither within my community nor within our state.

9 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
10 **was to cross someone else's land?**

11 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
12 the fear and anxiety and potential foreseeable risks and negative impacts that this
13 type of a project carrying this type of product brings foisted upon anyone in this
14 state or any other state.

15 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
16 **Pipeline to cross the state of Nebraska?**

17 A: I don't believe there is an intelligent route because as I have stated I don't believe
18 this project anywhere within Nebraska is within the public interest. However, if
19 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
20 had to go somewhere in the state of Nebraska, the only intelligent route I believe
21 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
22 preferred route and the mainline alternative routes are economic liabilities our
23 state cannot risk.

24 **Q: What do you rely upon to make that statement?**

25 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
26 already exists in that area is reason enough as it is not in our best interest or the
27 public interests to have more major oil pipelines crisscrossing our state. Second,
28 they have all the infrastructure already there in terms of relationships with the
29 counties and local officials and first responders along that route. Third, they have

1 already obtained easements from all the landowners along that route and have
2 relationships with them. Fourth, that route avoids our most sensitive soils, the
3 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
4 Aquifer. Sixth, they have already studied that route and previously offered it as an
5 alternative. Seventh, it just makes the most sense that as a state we would have
6 some intelligent policy of energy corridors and co-locating this type of
7 infrastructure near each other.

8 **Q: Do you have any other concerns you would like to reiterate or can think of at**
9 **this time you would like the Commissioners to understand?**

10 A: Yes. TransCanada refuses to agree to remove this pipeline after its usefulness has
11 expired. They will be leaving a continuous toxic waste dump across Nebraska.
12 The pipe will be significantly deteriorated by then. In other words, this is a disaster
13 waiting to happen. Property rights ensure that private corporations cannot take
14 land via eminent domain unless it is in the public interest. There is no public
15 benefit from this pipeline to the citizens of Nebraska. This is a situation of
16 granting a foreign corporation the right to take land from American citizens. The
17 whole purpose is for corporate gain and greed. TransCanada wants to use eminent
18 domain as a means of “hostile business acquisition.” That is not in the public
19 interest. The non-negotiable terms of TransCanada’s easement violate good
20 business practices. They provide a one-time payment for a lifetime of risks. The
21 easement takes control of a portion of land down the middle of the farm. It is not
22 like a road or highway where the land is generally at the edge of the property. By
23 putting it through the middle of a property, the landowner provides more security
24 from vandalism or terrorism. The farmer also deals with all the reclamation and
25 productivity issues. In the cases of most spills, it has been a landowner or tenant
26 who has discovered leaks. The company knows that the farmers will be over the
27 easement on a regular basis to observe potential problems. For all the risks and
28 extra work, annual payments should be made to the landowner. Wind energy
29 easements make annual payments to the landowner. No wise businessman would

1 sign TransCanada's easement that offers a lot of risk and no reward. If anything
2 TransCanada should offer a lease not a one-time payment.

3 **Q: Does Attachment No. 8 here contain other documents you are competent to**
4 **speak about that you wish to be part of your testimony and to discuss in more**
5 **detail as needed at the August 2017 Hearing?**

6 A: Yes.

7 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
8 **like the Public Service Commissioners to consider in their review of**
9 **TransCanada's Application?**

10 A: No, I have not. I have shared that which I can think of as of the date I signed this
11 document below but other things may come to me or my memory may be
12 refreshed and I will add and address those things at the time of the Hearing in
13 August and address any additional items at that time as is necessary. Additionally,
14 I have not had an adequate amount of time to receive and review all of
15 TransCanada's answers to our discovery and the discovery of others so it was
16 impossible to competently and completely react to that in my testimony here and I
17 reserve the right to also address anything related to discovery that has not yet
18 concluded as of the date I signed this document below. Lastly, certain documents
19 requested have not yet been produced by TransCanada and therefore I may have
20 additional thoughts on those I will also share at the hearing as needed.

21 **Q: What is it that you are requesting the Public Service Commissioners do in**
22 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
23 **across Nebraska?**

24 A: I am respectfully and humbly requesting that the Commissioners think far beyond
25 a temporary job spike that this project may bring to a few counties and beyond the
26 relatively small amount of taxes this proposed foreign pipeline would possibly
27 generate. And, instead think about the perpetual and forever impacts of this
28 pipeline as it would have on the landowners specifically, first and foremost, but
29 also thereby upon the entire state of Nebraska, and to determine that neither the

1 preferred route nor the Keystone mainline alternative route are in the public
2 interest of the citizens of the state of Nebraska. And if the Commissioners were
3 inclined to modify TransCanada's proposed routes and were to be inclined to grant
4 an application for a route in Nebraska, that the only potential route that would
5 make any intelligent sense whatsoever would be twinning or near paralleling of
6 the proposed KXL with the existing Keystone I pipeline. It simply does not make
7 sense to add yet another major oil pipeline crisscrossing our state creating new
8 pumping stations, creating new impacts on additional counties and communities
9 and going through all of the court processes with myself and other landowners like
10 me when this applicant already has relationships with the landowners, the towns
11 and the communities along Keystone I, and that Keystone I is firmly outside of the
12 sand hills and a significantly further portion away from the heart of the Ogallala
13 Aquifer than the preferred route or the Keystone mainline alternative route.

14 **Q: Are all of your statements in your testimony provided above true and**
15 **accurate as of the date you signed this document to the best of your**
16 **knowledge?**

17 **A:** Yes, they are.

18 **Q: Thank you, I have no further questions at this time and reserve the right to**
19 **ask you additional questions at the August 2017 Hearing.**

Arthur Tanderup
Arthur Tanderup

Subscribed and Sworn to me before this 30th day of May, 2017.

Patricia M. Smith
Notary Public

State of Nebraska - General Notary
PATRICIA M. SMITH
My Commission Expires
January 21, 2019

Attachment 8.5

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Who Killed the Finest Soybean Soil?

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A breached sediment barrier at the mouth of a terrace is a violation of Georgia's Soil and Water Commission's Green Book.

© Randy Dowdy



By **Chris Bennett**
Farm Journal
Technology and Issues Editor

Randy Dowdy says he'll face major yield loss from natural gas pipeline project

As he walked along muddy turnrows under pounding January rains, Randy Dowdy knew part of the topsoil from the farm that birthed the highest soybean yields in world history was gone. His 171.7 bu. soybeans and 521 bu. corn from fall harvest faded far into the past.

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Today the topsoil on more than 40 acres has been stripped or flipped and replaced or mixed with fresh dirt. In agriculture, dirt is death and soil is life. Compounding the topsoil loss, 100 acres of wetlands caught much of the fertilizer-heavy slurry as it spilled off Dowdy's Brooks County land in southern Georgia. The reconstruction bill is expected to top \$1 million.

Dowdy signed an easement in 2015 giving Spectra Energy right of way across a mile of his land for the Sabal Trail natural gas pipeline, a 515-mile project running through Alabama, Georgia and Florida. The section of the project on Dowdy's land began after fall harvest and was slated for completion the first week of 2017.

On Dec. 6, Dowdy contacted Sabal Trail management, expressing concern about erosion and emphasizing the sensitivity of his ground. According to Dowdy, he continued to contact management and was assured construction would be done on schedule.

"I texted again Jan. 9 and nothing was done," Dowdy says. "No rebuilt terraces, cover crops or restoration."

The third week of January, the skies opened. Construction was ongoing and Dowdy's unprotected topsoil was exposed to heavy rains. Across a 180-acre farm, two-thirds of the runoff was headed directly for the terraces. Sabal Trail's sediment barriers at the mouth of each terrace acted like corks, backing up water into the fields until the watershed surrendered to gravity, escaping across barriers, over terraces and into a creek. Dowdy's meticulously crafted elixir of protozoa, microbials and organic matter was whisked away. Bon voyage to soil health.

Who is to blame? Dowdy points to Sabal Trail and alleges regulatory violations. Sabal Trail declined interview requests citing privacy concerns. Parent company Spectra Energy didn't respond to phone or email questions.

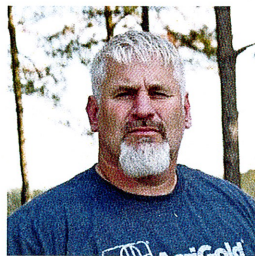
When Dowdy signed the easement, the agreement included a stipulation: Sabal Trail would return all land to its pre-construction condition, both in fertility

and soil deposition.

Dowdy's ground runs at a steep 10% to 12% grade. Cover crops and terraces control water runoff and slow the flow to a 1% grade equivalency. The gas line runs mainly north to south, and Dowdy's terraces run east to west. The gas line breaks through every terrace.

Dowdy says the topsoil disaster was a direct result of Sabal Trail negligence in following the Georgia Soil and Water Commission's Green Book (Manual for Erosion and Sediment Control in Georgia) regulations. "Sediment barriers in concentrated flows of water; no straw covers; no safety sediment fences; and many more violations," Dowdy contends.

At Sabal Trail's request, he provided three restoration estimates. One: costs of topsoil purchase, extraction, hauling, grading, soil health applications and terrace reconstruction. Two: estimation of damage to wetlands. Three: long-term yield loss projections. According to Dowdy, Sabal Trail agreed to pay for topsoil restoration and allowed him to begin the process.



"It's one thing to rebuild terraces, haul in topsoil and straw, plant cover crops and spread chicken litter. It's another thing to gain soil life from dead dirt." - **Randy Dowdy**, Brooks County, Georgia

He hauled in eight to 18 trucks of lower grade topsoil per day and used one excavator, one motor grader, two bulldozers, two tractors and hay blowing equipment for a \$25,000 price tag per day. Before Sabal Trail would write a check, Dowdy was required to sign a release waiving compensation for future yield loss and wetlands damage. "They knew I would spend \$700,000-plus and were squeezing me, but there was no way I would sign," he explains.

In March, Dowdy filed a complaint with the Environmental Protection Division (EPD) of

Georgia. EPD enforces Green Book regulations but only monitors potential construction project violations on a complaint basis: One representative in south Georgia covers nine counties. "We rely on people letting us know about issues. However, we investigate every single complaint we get," says Burt Langley, EPD's director of compliance.

Joe Freeman, environmental compliance officer with EPD, visited the site on March 10 and didn't see any best management practices violations. "Mr. Dowdy has already undertaken the re-terracing of his fields, and the evidence is effectively covered. It may have been different if I'd seen things in December," Freeman says.



While repairing an irrigation line, Randy Dowdy found jumbled soil deposition. "Even the soil that was saved and put back on my land wasn't segregated."

"The only people involved in reviewing compliance with permitting standards are on Sabal Trail's payroll," Dowdy responds. "Isn't that the fox guarding the henhouse? What's the point of having an agency that issues permits if they don't personally police for compliance?"

On March 11, while fixing an irrigation line leak, Dowdy found jumbled soil deposition—a violation of Sabal Trail's agreement. Rance Harrod, irrigation manager at Nashville Tractor, ran an excavator: "I pushed off a couple inches of topsoil and hit at least a 6" layer of a hard clay and blackish dirt mix. The excavator was struggling, and the ground was coming up in chunks."

In succession, Harrod scraped off 2" of topsoil, 6" of hard clay and 10" to 15" of various mixtures before digging into the

expected bright orange Georgia clay. "How do other landowners know this hasn't been done on their land?" Dowdy asks. "Farmers and landowners are just supposed to sign a release and the story is over?"

Dewey Lee, University of Georgia agronomist, says the ramifications of soil disturbance and erosion on Dowdy's ground are incalculable. "It's impossible to replace the positive effects of Randy's management on his soils in a short period of time. Just in the disturbance, you lose aggregation, organic matter, fertility and nutrients," Lee says. "The negative effects are immediate, but of far more concern, the long-term effects could last decades."

Dowdy believes he's facing a lifetime of yield loss on the affected ground due to the negligence of Sabal Trail. He's hauled in more than 1,000 loads of new dirt and expects he needs at least 800 more. In part, the breadbasket topsoil of the world's record soybean yield and some of the highest corn yields is being replaced by a forced substitute.

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