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Applicant TransCanada Keystone Pipeline, LP (“Keystone”) submits the following Post-Hearing Brief in connection with Keystone’s Application for Approval of the Preferred Route for the Keystone XL Pipeline (the “Application”).

ARGUMENT SUMMARY

Keystone is seeking approval of its proposed route in Nebraska for the Keystone XL Pipeline pursuant to the Major Oil Pipeline Siting Act (“MOPSA”). The Keystone XL Project is a proposed major oil pipeline from Alberta, Canada to Steele City, Nebraska. Keystone has sought to build this project since 2008 and recently the Department of State (“DOS”) granted Keystone a Presidential Permit because it found the Keystone XL pipeline was in the Nation’s interest. During the time this project has been proposed, the route of the pipeline in Nebraska has been heavily scrutinized. At the hearing on this Application, Keystone presented the Public Service Commission (“Commission”) with the product of all of those years of effort. This brief explains why Keystone’s Application should be granted.

First, Keystone showed the Commission that, of all the proposed alternatives, the Preferred Route is the best and certainly in the public interest as required by MOPSA. Keystone’s evidence proved that the Preferred Route was the product of literally years of study, analysis, and refinement by Keystone, federal agencies and Nebraska agencies. No alternative route, including the Keystone Mainline Alternative, the Sandhills Alternative, or anything argued for by the intervenors, comes close to the quality of the Preferred Route. *Second*, Keystone has shown the Commission that the I-90 Corridor alternative (or “twinning” or “closely paralleling” the Mainline) is not a viable alternative. The I-90 Corridor was considered and rejected by the DOS during its National Environmental Policy Act (“NEPA”) analysis. Instead, the DOS chose the Preferred Route and that route is part of the Final Supplement Environmental Impact Statement (“FSEIS”) on which Keystone’s Presidential Permit is based. The I-90 Corridor

alternative also directly conflicts with Keystone's permit in South Dakota. *Third*, the evidence relating to each of the factors in Neb. Rev. Stat. § 57-1407(4) supports a finding that the Preferred Route is in the public interest. This includes questions relating to Nebraska's natural resources, Nebraska's cultural resources, and the socioeconomic impact of the Preferred Route. *Fourth*, there is a lack of reliable, relevant evidence to rebut the overwhelming proof of public interest provided to the Commission. The lack of evidence in support of any alternative route is a reflection that the Preferred Route is the best alternative and in the public interest of Nebraska.

ARGUMENT

I. THE PREFERRED ROUTE IS THE BEST ROUTE FOR THE KEYSTONE XL PIPELINE THROUGH NEBRASKA AND IT IS IN THE PUBLIC INTEREST.

The question for the Commission to answer is whether the evidence presented to the Commission proves that the Preferred Route is in the public interest in accordance with Neb. Rev. Stat. § 57-1407(4). Not only does Keystone's evidence - the only affirmative and competent routing evidence in this case - satisfy Neb. Rev. Stat. § 57-1407(4), it shows the Preferred Route is the best route available.

Potential route alternatives for Keystone XL have been examined in detail, and Keystone's proposed path through Nebraska has been studied and refined for many years. (KXL-1, §§ 2.1, 3.0) (KXL-8, 2:20-3:45) (KXL-9, 2:22-3:40) (KXL-13, 10:205-11:225) The Preferred Route is the product of those extensive efforts. It was selected because, among other things, it minimizes disruption to Nebraska land and sensitive environmental resources, does not cross the Nebraska Sandhills, and avoids the need for additional above-ground infrastructure and associated disturbance. (KXL-1, §§ 2.1, 3.0) (KXL-8, 3:60-4:64) (KXL-9, 2:22-3:40) (KXL-3, 2:23-3:42) The Preferred Route also has been the subject of substantial public input and governmental review, which has produced a route that is superior to any others. (Id.) (KXL-20)

(KXL-19) (KXL-1, Appx. A) No other route has all of these positive attributes or is as clearly in the public interest as the Preferred Route. Keystone's evidence is un rebutted on these points.

A. The Evidence Before The Commission Demonstrates The Preferred Route Is Superior To The Mainline Alternative And The Sandhills Alternative Routes.

The overwhelming weight of the evidence before the Commission, including the Application, its appendices, and the witness' testimony, confirms the Preferred Route is a better choice for Keystone XL than the Mainline Alternative or the Sandhills Alternative Routes, which were examined in Keystone's Application. Despite the Commission's open invitation to do so, no party put forth reliable evidence supporting those or any other alternative.

In pipeline siting decisions, all other factors being equal, the general rule is that the shorter the distance, the better the route. (PSC-6, p. 5) Dr. Jon Schmidt and Meera Kothari explained that the Preferred Route is shorter and, therefore, disturbs less Nebraska land than the Mainline Alternative Route. (KXL-8, 2:23-4:64) (KXL-9, 2:29-3:40) (KXL-1, §§ 2.1, 3.0) Because of the shorter distance, Keystone's witnesses also explained that the Preferred Route eliminates the need for an additional pump station and associated electric transmission lines. (Id.) (KXL-3, 2:23-3:42) While the Sandhills Alternative would be shorter, the Preferred Route avoids the sensitive Sandhills region as defined by the Nebraska Department of Environmental Quality ("NDEQ"). (Id.) Avoiding the NDEQ Sandhills region accommodates concerns from Nebraskans, the NDEQ, and elected officials. There is no competing evidence on these points.

The additional characteristics of the Preferred Route that make it superior to the Mainline Alternative Route are outlined in detail in Sections 2.1, 3.0 and 20 of Keystone's Application and the testimonies of Dr. Schmidt, Ms. Kothari and Paul Fuhrer. (KXL-1) (KXL-8) (KXL-9) (KXL-13) (KXL-3) Supporting data is further compiled in Keystone's Route Comparison Table 2-1.

(KXL-1, Table 2-1) (KXL-16) In particular, the evidence shows that, along with decreasing the total number of acres disturbed by Keystone XL, the Preferred Route crosses fewer ecological unusually sensitive areas, crosses fewer perennial streams, railroads and roads, and traverses the ranges of four fewer federally-listed and state-listed threatened and endangered species, compared to the Mainline Alternative. (KXL-1, §§ 2.1, 20.3) (KXL-13, 1:1-2:35) (KXL-3, 2:23-3:42) (KXL-8, 2:20-4:64) (KXL-16) The Preferred Route also crosses fewer miles of cultivated cropland and fewer areas of highly erodible soils, and it has the fewest number of identified water wells within 150 feet of the centerline. (Id.) (KXL-13, 6:126-128) Keystone also has voluntarily acquired easements from approximately 90 percent of landowners along the Preferred Route. (KXL-1, § 3.0) This fact indicates overwhelming landowner support for the Preferred Route and demonstrates the proposed major oil pipeline is compatible with current land uses and the development of land along the Preferred Route. These attributes are undoubtedly favorable and serve the public interest.

While the Mainline Alternative would allow for some co-location with the existing Keystone Mainline pipeline, actual co-location opportunities are limited and do not outweigh the other factors weighing in favor of the Preferred Route. Dr. Schmidt's analysis demonstrated that there would only be 38.3 non-contiguous miles where the Keystone XL pipeline could actually be co-located with the Keystone Mainline if the Mainline Alternative Route were followed. (KXL-13, 7:137-10:204) Numerous deviations from the Mainline would be required to avoid the same constraints avoided by the Preferred Route (such as avoiding impact to three Wellhead Protection Areas in Seward County and maintaining at least a 500-foot buffer from residences where practicable), and in some locations (e.g., roads, water bodies, and railroads) the Mainline Alternative Route would require placing Keystone XL in a sub-optimal location because the

Mainline is already located in the best site. (Id.) Given these issues, the limited benefits of co-location associated with the Mainline Alternative Route are not enough to outweigh the indisputably more beneficial attributes of the Preferred Route. (Id.)

The record evidence also makes clear that the Sandhills Alternative Route is not a better route than the Preferred Route because a significant portion of the Sandhills Alternative Route would cross the Sandhills region. (KXL-1, §§ 2.1.2, 3.0) While the Sandhills route was approved by the DOS in its 2011 Final Environmental Impact Statement, Nebraska citizens and elected officials previously urged that this region be avoided due to its ecological sensitivity. The Preferred Route takes these concerns into account by avoiding the Sandhill eco-region altogether and crossing fewer areas of highly erodible soils. (KXL-1, §§ 2.1, 3.0) (KXL-20, pp. 8-13) Additionally, the Preferred Route reduces impacts to the habitat of the American burying beetle (a federally and state-listed endangered species), grasslands, and wellhead protection areas. (KXL-1, §§ 2.1, 3.0, Table 2-1) (KXL-16) These favorable characteristics also make the Preferred Route superior to the Sandhills Alternative Route.

Keystone's Application and its supporting evidence prove that the Preferred Route is in the public interest under the factors set forth in Neb. Rev. Stat. § 57-1407 and is the best routing choice in this State. Evidence of Keystone XL's minimal impacts on natural resources, consistency with existing land use, and positive economic and social impacts in the State is abundant in the record. (*See e.g.*, KXL-1 through KXL-9; KXL-11 through KXL-27) Keystone has set forth in detail the actions it will take to minimize/mitigate the impacts to natural resources and land, reclaim the land to its prior condition, and address any potential impacts to cultural resources. Keystone's plans are set forth in its Application, Construction Mitigation and Reclamation Plan ("CMRP"), Noxious Weed Management Plan, Construction/Reclamation

(“ConRec”) Units and other supporting documents. (KXL-1) (KXL-24) (KXL-25) (KXL-26) Cultural resource and tribal concerns are specifically addressed by the Programmatic Agreement and Keystone’s commitment to protect sacred cultural resources. (KXL-1, Appx. D § 2.19) (KXL-23) (TR 1181:11-24) The views of the Commission’s independent consultants as well as Nebraska government agencies and the governing bodies of most counties and municipalities around the Preferred Route, are similarly favorable. (KXL-28 through KXL-37) (PSC-4 through PSC-6) The evidence is clear that the Preferred Route is the optimal route for Keystone XL.

B. The Preferred Route Is The Product Of A Lengthy Refinement Process And Has Been Scrutinized And Approved By Independent State And Federal Agencies And Officials.

The benefits of the Preferred Route are confirmed by the thorough and independent state and federal reviews and approvals of that route. Both the NDEQ and the federal government conducted independent, comprehensive, public reviews of the Preferred Route during the course of its development, resulting in state and federal approvals of that route. (KXL-17 through KXL-20) (KXL-1, Appx. A) No other route has undergone such reviews or received such approvals. In a similar vein, the PSC’s Consultant reports are favorable to the Preferred Route, and those are the product of independent and objective analysis.

In 2012, the NDEQ conducted a ten-month public review process pursuant to Neb. Rev. Stat. § 57-1501 et seq. which included public comment/testimony and independent evaluation of the Preferred Route and its potential environmental, economic and social impacts in Nebraska. (KXL-20) That evaluation led to a 1500+ page Final Evaluation Report and approval of the route by Nebraska’s Governor. (Id.) (KXL-1, Appx. A) The report noted the project did not cross the Sandhills, would have a positive economic impact on the State, and would have

minimal environmental impacts with the mitigation and commitments Keystone identified. (KXL-20, pp. 71-72) (see also KXL-1, Appx. A) The NDEQ's findings are in lock step with Keystone's evidence.

Similar conclusions were reached by the DOS when it evaluated the Keystone XL project, including the Preferred Route, in considering Keystone's Application for a Presidential Permit. Pursuant to NEPA, the DOS authored a 7,000+ page FSEIS which thoroughly studied the effects of the project and included millions of public comments and consultation with other federal and state agencies. (KXL-19) In March 2017, the DOS issued a Record of Decision and National Interest Determination and Presidential Permit for Keystone XL, finding the project, *including the Preferred Route*, would "serve the national interest." (KXL-18) (KXL-17)

Finally, the Commission's Consultant Memos/Reports addressing routing support the conclusion that the Preferred Route is the best route for Keystone XL. The independent Flatwater Group acknowledges that the Keystone Mainline Alternative Route would have 70 more acres of disturbance than the Preferred Route. (PSC-6, p. 4) The same report also acknowledges that a shorter pipeline route (i.e. the Preferred Route) is generally preferable than a longer route (i.e. the Mainline Alternative Route) because it results in less environmental impact. (PSC-6, pp. 5-6) The report further concludes that effectively evaluating Nebraska alternatives requires consideration of the overall project route - not merely the portion of the route located in Nebraska. (Id.)

As Dr. Schmidt explained, the first step in the development of a route across Nebraska was to identify a study corridor based upon the project's fixed start and end points as well as major project constraints. (KXL-1, § 2.1) (KXL-8, 2:20-45) (KXL-13, 10:213-11:225) Once that corridor was defined, Keystone applied specific routing criteria to identify route alternatives.

(Id.) After the route alternatives were identified, field investigation and analysis of additional agency-supplied data was completed, field surveys were undertaken, and route alternatives were refined. (Id.) This route selection and refinement process was informed by and responsive to the NDEQ and DOS review proceedings. Keystone selected the Preferred Route as a result of this multidisciplinary and comprehensive analysis. Keystone then continued to refine the route over a lengthy period. Dr. Schmidt, who has been involved in thousands of miles of pipeline siting, testified that in his experience no other pipeline has received as much development and refinement to optimize the route as the Preferred Route. (KXL-13, 11:226-230) Keystone chose the Preferred Route because it is the least impactful to the environment and natural resources, it has a positive social and economic impact, and it has been extensively scrutinized and optimized through the NDEQ review process and through the DOS consideration of the overall route. The totality of the evidence before the Commission supports those findings. Simply put, the Preferred Route serves the public interest of this State and does so better than any conceivable alternative.

II. THE FALLACY OF THE I-90 CORRIDOR ROUTE.

A subset of the intervenors have suggested - without supporting evidence - that the only acceptable route is for the Keystone XL pipeline to follow or “twin” the Keystone Mainline from the point where it enters Nebraska in Cedar County. They refer to this as the I-90 Corridor route because the route would follow Interstate 90 from west to east in South Dakota, then turn south to loosely follow the Keystone Mainline. However, for a litany of reasons, the I-90 Corridor route, or any similar concept of “twinning” or “paralleling” the Keystone Mainline pipeline from its exit point in South Dakota to Steele City, is not a preferable, viable, or beneficial option.

First, the I-90 Corridor route was considered by the DOS in its NEPA review and was discarded in favor of the Preferred Route. (*See*, KXL-19, pp. 1965-1991) This routing decision underlies Keystone’s Presidential Permit. Adopting the I-90 Corridor route would be inconsistent with that permit.

Second, Keystone’s South Dakota construction permit fixes the point of entry into Nebraska over 100 miles to the west of where the I-90 Corridor route would enter Cedar County. (KXL-13, 11:231-12:250) (LO-235, p. 24, ¶ 16; p. 26, ¶ 6) The South Dakota permit - which Keystone applied for in 2009 and received in 2010, well before Nebraska had a pipeline routing statute - is limited to a specific route and fixes a single exit point from South Dakota (along with a corresponding entry point into Nebraska) for Keystone XL. (LO-235, p. 24, ¶ 16; p. 26, ¶ 6) (*See also*, KXL-1, § 2.1) If there are any material changes to the route in South Dakota, then “approval” is required from the South Dakota Public Utilities Commission. (LO-235, p. 26, ¶ 6) The permit is clear on this point. Keystone cannot change its route through South Dakota or the point at which Keystone XL exits that State and enters Nebraska.

Third, Dr. Schmidt’s testimony regarding the Mainline Alternative shows that the I-90 Corridor route could not actually “twin” the Keystone Mainline. (KXL-13, 8:155-9:189) Rather, there would be many deviations and instances where Keystone would have to use less optimal locations for the placement of Keystone XL. (KXL-13, 10:200-204) In addition to the numerous deviations along the Mainline Alternative, there would likely be considerable deviations from the Mainline starting at the Nebraska/South Dakota border (the Mainline Alternative connection is in Stanton County, Nebraska, not Cedar County). For example, at the South Dakota – Nebraska border the presence of a sewage treatment plant (in South Dakota) and

wetlands (in Nebraska) would require a deviation at the outset of the landowners' concept. (KXL-13, 11:231-12:250)

Fourth, as the DOS found, the I-90 Corridor route offers no environmental advantage in terms of risk impacts to natural resources and construction on that route would impact more private and developed land. (See, KXL-19, pp. 1965-1991) Moreover, the I-90 Corridor route would cross the Lewis and Clark National Historic Trail in Nebraska and South Dakota, which the Preferred Route avoids. (Id., pp. 811, 1983) Overall, the I-90 Corridor route is significantly longer, also increasing its environmental impact. (See Id., pp. 1932-1933)

Fifth, the report prepared for the Commission by the Flatwater Group concurs that the I-90 Corridor route is infeasible. (See PSC-6) The Flatwater Group acknowledged the rejection of the I-90 Corridor alternative during the course of the FSEIS process and the fact that the South Dakota permitting process resulted in one exit point from South Dakota for Keystone XL. (Id., pp. 5-6) The Flatwater Group also concluded that in light of South Dakota's permit constraint "any route in Nebraska not using that fixed entry point is not likely viable...." (Id.)

The Landowner Intervenors' concept of selecting a route that supposedly "twins" the Keystone Mainline by arguing that Nebraska's route selection should proceed in isolation from state to state is illogical. Interstate projects necessarily require acknowledgment of the routing considerations from other states and, as in this instance, from another country. Ignoring those considerations would lead to a system where either (a) linear projects simply could not be constructed due to conflicting route approvals or (b) the overall route of a pipeline is lengthened through higgledy-piggledy route approvals to the point that the larger footprint of the pipeline eliminates any environmental benefits of MOPSA or similar siting regulations. This would fail to serve any public interest.

III. ACCORDING TO THE SPECIFIC FACTORS IN MOPSA, KEYSTONE PROVED THE PREFERRED ROUTE IS IN THE PUBLIC INTEREST.

As part of MOPSA, the Nebraska Legislature found and declared: “[T]he construction of major oil pipelines in Nebraska is in the public interest of Nebraska and the nation to meet the increasing need for energy.” Neb. Rev. Stat. § 57-1403(3). The Legislature then gave specific instructions on what information to include in a siting application and what any applicant must prove to have its application granted.

Keystone’s obligation is to prove the Preferred Route is “in the public interest.” Neb. Rev. Stat. § 57-1407(4); 291 NAC 023.07. MOPSA and the Commission’s regulations identify the items that must be included in an application for route approval and direct the Commission to approve an application if the evidence before the Commission shows the proposed route is “in the public interest.” *See* Neb. Rev. Stat. §§ 57-1405, 1407; 291 NAC 023.02A, 023.07. Because Keystone’s Application and other evidence meet these standards, Keystone’s Application should be approved.

A. Keystone’s Application Contains All Required Content.

As an initial matter, Keystone’s Application on its face satisfies Neb. Rev. Stat. § 57-1405(2) and 291 NAC 023.02A, which identify the required content of an application for approval of a major oil pipeline route in Nebraska. (*See* KXL-1) In particular, and although the entirety of the Application supports selection of the Preferred Route, the following sections specifically explain the matters required by Sections 57-1405(2) and 023.02A:

Statute / Regulation	Requirement	Application Section(s)
57-1405(2)(a) / 023.02A1	The name and address of the pipeline carrier	§ 1
57-1405(2)(b) / 203.02A2	A description of the nature and proposed route of the major oil pipeline including a map and evidence of consideration of alternative routes	§§ 2, 20
57-1405(2)(c) / 023.02A3	A statement of the reasons for the selection of the proposed route	§§ 3, 20
57-1405(2)(d) / 023.02A4	A list of the governing bodies of the counties and municipalities through which the proposed route would be located	§ 4
57-1405(2)(e) / 023.02A5	A description of the product or material to be transported, which may be satisfied through filing a representative Safety Data Sheet	§ 5 Appx. C
57-1405(2)(f) / 023.02A6	The person who will own the major oil pipeline	§ 6
57-1405(2)(g) / 023.02A7	The person who will manage the major oil pipeline	§ 7
57-1405(2)(h) / 023.02A8	A plan to comply with the Oil Pipeline Reclamation Act	§ 8 Appx. D, E, F
57-1405(2)(i) / 023.02A9	A list of planned methods to minimize or mitigate potential impacts to land areas and connected resources other than with respect to oil spills	§§ 2, 9 Appx. D, E, F
023.02A10	A description of the method to obtain current Safety Data Sheets for the products or materials transported	§ 10

B. Keystone's Application And Other Evidence Prove The Preferred Route Is In The Public Interest.

Keystone's Application and the other evidence before the Commission also overwhelmingly meet the showing required under Neb. Rev. Stat. § 57-1407(4) and 291 NAC 023.07, which set forth the factors to be considered by the Commission in determining whether the Preferred Route is in the public interest. *See* Neb. Rev. Stat. § 57-1407(4); *see also* 291 NAC 023.07. The following discussion addresses each factor separately and shows there is an abundance of evidence on each to support approval.

1. Keystone Has Demonstrated Compliance With All Applicable State Statutes, Rules, And Regulations And Local Ordinances.

Keystone explained in its Application that it has complied with all presently-applicable state statutes, rules, regulations, and local ordinances, and it committed to complying with all other laws (including permits) which may be applied to the Keystone XL project in the future. (KXL-1, §§ 8, 9.8, 12.0) That explanation and commitment was reaffirmed to the Commission by Tony Palmer - the President of the two entities who own 100% of Keystone - in both his pre-filed and live testimony. (KXL-2, 4:66-5:107) (TR 162:20-163:3, 186:15-187:21) Mr. Palmer also specifically stated, consistent with Nebraska's Oil Pipeline Reclamation Act, Neb. Rev. Stat. § 76-3301, et seq. (the "Reclamation Act"), that Keystone will be responsible for all reclamation costs relating to the construction and operation of Keystone XL and will comply with all reclamation and maintenance commitments and regulatory requirements. (KXL-2, 4:73-5:93) (TR 136:12-137:23; 186:15-187:10) The evidence definitively shows that Keystone has sufficient financial ability, i.e., approximately \$7 billion in assets, to live up to its obligations. (TR 187:22-188:2)

Although Mr. Palmer's testimony is enough to satisfy Keystone's burden, there is also other evidence in the record that demonstrates Keystone has complied, and will continue to comply, with applicable law. For example, as shown by the January 2013 letter from Governor Heineman attached to Keystone's Application as Appendix A, Keystone followed the provisions of Neb. Rev. Stat. § 57-1501, et seq. when it originally submitted its Nebraska route to the NDEQ for evaluation and that route was approved by the Governor. (KXL-1, § 1.1, Appx. A) Keystone is now complying with the provisions of MOPSA by seeking approval of the Preferred Route from the Commission. In addition, the Application, the testimonies of Sandra Barnett and

John Beaver, and the Project's CMRP set forth Keystone's detailed plan to comply with the Reclamation Act for the life of the Project, although those obligations are still prospective in nature. (KXL-1, §§ 8, 9) (KXL-24) (KXL-5, 2:21-3:50) (KXL-6, 1:14-3:64) (*See also* Neb. Rev. Stat. § 76-3304) The Presidential Permit for Keystone XL also mandates that Keystone follow all applicable state law and local requirements. (KXL-17, p. 2) In light of the current stage of the Keystone XL project and the fact that the Commission's approval is required before construction can proceed, this evidence is more than sufficient to satisfy this statutory requirement.

2. The Preferred Route Minimizes Intrusion On Natural Resources.

The multidisciplinary approach used to develop the Preferred Route was conducted, in part, to minimize Keystone XL's intrusion on natural resources. The evidence reflects that the development of the Preferred Route was successful in satisfying this statutory criterion.

First, the Preferred Route does not cross the NDEQ-defined Nebraska Sandhills. (KXL-1, § 3.0, Figure 3.0-1) (KXL-20, pp. 8, 71) Although Landowner Intervenors attempted to use exhibits reflecting the "sandhills" area, as John Beaver explained that those maps are reflective of an aquifer system map, not an ecological region map such as the NDEQ uses. (TR 395:17-397:11) *Second*, the Preferred Route has been designed to avoid a number of major water bodies and fragile areas of soil within the State; known recreation areas; and special interest areas such as Wetland Reserve Program land and Nebraska Land Trust tracts. (KXL-1, § 9.13, Figure 3.0-1) (KXL-20, pp. 8-9, 71-72) These areas were avoided through extensive surveys and continual refinement with input from the NDEQ, DOS, and other government agencies. *Third*, the Preferred Route does not cross most areas of native prairies. (KXL-11, 5:92-105) It also avoids Nebraska state-managed wildlife management areas which provide protected habitats, as the DOS recognized in the FSEIS. (KXL-19, p. 723)

Keystone's analysis of the Preferred Route's potential environmental impacts in Nebraska is discussed in Sections 13 through 18 of the Application (including Table 13-1) and the pre-filed testimonies of Sandra Barnett, Jon Schmidt, Michael Portnoy and John Beaver. (KXL-1, §§ 13-18) (KXL-5, 1:12-3:50) (KXL-6, 1:14-4:83) (KXL-7, 2:19-3:44) (KXL-8, 1:11-4:75) (*See also*, KXL-11 through KXL-13) That analysis shows any impacts of Keystone XL will be largely temporary and certainly not major. (*Id.*) For example, because the bulk of the route crosses agricultural land, vegetation impacts will be primarily short term. (KXL-1, Table 13-1, § 17.1) Land crossed by the pipeline will also be able to be used after construction since the pipeline will be buried 48 inches or more below the soil surface, and the FSEIS imposes a requirement that Keystone maintain that depth of cover. (KXL-1, § 21.0) (KXL-19, pp. 362-363) Further, as explained by Mr. Beaver, construction will not significantly increase the impermeability of Nebraska soils. (KXL-11, 1:14-2:21) Keystone undertook significant evaluation of the Preferred Route to reach these conclusions, including an environmental impact study, distance to groundwater survey, and a soil permeability study as identified in Section 023.07B of the Commission's regulations. (*See* KXL-1, §§ 13, 14, 15, Appx. G) The NDEQ did similar analyses, and obtained significant public comment and input from other agencies including the Nebraska Department of Natural Resources and the Nebraska Game and Parks Commission. (KXL-20, pp. 34-35, 426-442)

The Biological Assessment authored by the DOS (KXL-21) and the Biological Opinion authored by the United States Fish and Wildlife Service (KXL-22) in connection with Keystone XL's federal review process also show the Preferred Route will minimize any impacts to wildlife. Input from the Nebraska Game and Parks Commission, along with other agencies, was evaluated and incorporated into this process. (KXL-21, pp. 17-22) (KXL-22, pp. 3-9) (KXL-34)

Those analyses concluded that only one federally-listed species, the American burying beetle, was likely to be adversely affected by the proposed project, and those effects were “not likely to jeopardize the continued existence” of the species. (KXL-22, p. 70) (KXL-21, p. 170-171) (KXL-1, § 18.1) Other federally-listed species, including the whooping crane, will either not be impacted or not adversely affected. (KXL-21) (KXL-22) (KXL-1, § 18.1) (KXL-13, 4:79-5:102) In particular, as the Biological Assessment noted, “no direct impacts to the whooping crane are anticipated” from the construction of the Keystone XL project and the project will not result in the destruction or adverse modification of federally-designated critical habitat for whooping cranes. (KXL-21, pp. 127-133)

Dr. Paul Johnsgard - the whooping crane expert retained by Intervenors The Bold Alliance and the Sierra Club, Nebraska Chapter - also acknowledged that any potential impact to whooping cranes associated with the construction of Keystone XL along the Preferred Route would be “small.” (TR 1027:5-1028:8) The vast majority of the Preferred Route avoids the whooping crane’s central migration corridor. (TR 1019:15-1020:25; 1024:20-1025:3) (KXL-58) The remainder of the Preferred Route falls along only the eastern edge of the full migration area. (Id.) These factors all support the Preferred Route’s approval. In sum, the evidence relating to Keystone XL’s potential impacts to natural resources supports approval of the Preferred Route because it shows years of effort to minimize intrusion on natural resources.

3. The Mitigation Methods Proposed By Keystone Will Limit Any Potential Impacts To Natural Resources Along The Preferred Route.

To limit any potential impacts to natural resources along the Preferred Route, Keystone also has developed and committed to implement significant mitigation measures and best management practices. Those measures are reflected in a number of detailed documents before

the Commission including, among others, Keystone's CMRP, ConRec Units, and Noxious Weed Management Plan. (KXL-24 through KXL-26) Keystone has also committed to developing and implementing a Construction Spill Prevention, Control and Countermeasure Plan, which will be finalized when construction contractors are engaged. (KXL-1, § 9.11) (KXL-5, 2:21-3:50)

The mitigation and reclamation measures set forth in Keystone's CMRP (KXL-1, App. D.; KXL-24) are based upon and consistent with best management practices that have been developed and used in the pipeline construction industry. (KXL-11, 3:44-48) (KXL-61, 41:15-23) As discussed by numerous Keystone witnesses, that plan outlines multiple procedures such as soil protection, water-crossing methods, vegetation reclamation, and aquatic resources protection that Keystone will use to minimize environmental disturbance and return the land impacted by Keystone XL as close as reasonably practicable to the condition, contour, and vegetation that existed prior to construction. (*See*, KXL-1, § 8, Appx. D) Dr. Thomas Hayes (the environmental expert retained by Intervenors Bold/Sierra Club) also testified that the CMRP is consistent with industry standards and it addresses and adopts mitigation/reclamation measures identified in the studies he cited, such as using deep ripping to relieve any soil compaction and imposing measures and mandates to avoid work during wet soil conditions. (KXL-61, 36:23-37:13; 50:14-52:5; 54:4-20) (KXL-24, §§ 2.18, 4.11.1) Significantly, Section 2.2 of the CMRP provides for daily monitoring by an Environmental Inspector to ensure construction complies with federal, state and local regulatory requirements, and gives the Environmental Inspector and Chief Inspector the authority to stop work when appropriate. (KXL-24, § 2.2)

The ConRec Units and Keystone's Noxious Weed Management Plan are also important mitigation measures. These plans work together with the CMRP to ensure all land types - including native prairie - along the Preferred Route are restored as nearly as practicable to

original condition and are not impacted by the spread of noxious weeds. (TR 445:20-447:10) (KXL-25) (KXL-26) The ConRec Units address different construction and reclamation techniques applicable to different soil conditions, slopes, vegetation and land use, and were developed after surveys along the Preferred Route were complete so that Keystone could plan appropriate construction and reclamation procedures for each of those areas. (KXL-25) (KXL-1, § 9.7) (TR 465:22-467:6) Keystone also spent considerable time meeting with the Natural Resources Conservation Service and University of Nebraska-Lincoln experts during development of these procedures to make sure they are appropriate to reclaim the land. (TR 465:22-467:6) Keystone's Noxious Weed Management Plan describes the best management practices (such as cleaning equipment, pretreatment of weeds and post-construction monitoring) that will be used during construction to manage noxious weeds and invasive plants on the Preferred Route. (KXL-26) (KXL-1, § 8.6) (KXL-11, 4:81-5:85) Keystone has further committed to implement a specific Spill Prevention, Control, and Countermeasure Plan to address discharges during construction, reduce the likelihood of a spill during construction activities, provide for prompt and proper clean up and removal if a spill occurs. (KXL-1, § 9.11) (KXL-5, 2:21-3:50) Each of these plans minimizes potential impacts to the Nebraska environment.

Testimony from John Beaver and Michael Portnoy further confirm the measures Keystone will use to minimize and mitigate potential environmental impacts along the Preferred Route. For example, Mr. Portnoy explained that the flow of groundwater will not change due to the existence of the pipeline because Keystone will place the pipeline so it crosses surface water in the direction of the flow of groundwater. In other words, the pipeline and groundwater will be moving parallel to each other. (KXL-12, 2:29-3:42) Mr. Beaver further specifically detailed a

number of the mitigation and reclamation measures that Keystone will implement, including the use of deep ripping to relieve compaction from subsoils that have received substantial construction traffic. (KXL-11, 1:10-3:43) Mr. Beaver also testified that the implementation of Keystone's ConRec units will ensure that impacts to native prairies are neither irretrievable nor irreversible and native prairie soil and productivity will be restored within a few years. (Id., 5:92-6:142) Mr. Beaver has had significant experience with crude oil pipeline reclamation and worked on the existing Keystone Mainline in Nebraska. In his opinion, the totality of Keystone's plans are likely to lead to successful revegetation and reclamation. (TR 461:9-16; 465:22-467:6)

The conclusions of multiple government agencies are in accord with Keystone's analysis. For one, the FSEIS issued by the DOS concluded that construction and normal operation of Keystone XL is not expected to have significant impacts to most resources along the Preferred Route. (KXL-19) (KXL-1, § 13.0) The NDEQ's Final Evaluation Report also determined that construction and operation of Keystone XL, with the mitigation and commitments from Keystone, would have minimal environmental impacts in Nebraska. (KXL-20) (KXL-1, §13.0, Appx. A) Importantly, that conclusion was reaffirmed to the Commission by the NDEQ in its correspondence in response to the Application. (PSC-4, pp. 2, 22) The overwhelming evidence shows that Keystone's mitigation measures will eliminate or substantially mitigate potential impacts to natural resources along the Preferred Route.

4. Construction Along The Preferred Route Will Have Positive Economic And Social Impacts And Any Cultural Impacts Will Be Minimized.

Section 023.07D of the Commission's regulations and Neb. Rev. Stat. § 57-1407(4)(d) direct that evidence regarding the economic and social impacts of Keystone XL, including

estimated taxes paid by Keystone as well as impact on employment in Nebraska, should be considered in assessing whether the Preferred Route is in the public interest. Although two retained experts offered competing analysis to the Commission on these issues, the evidence overwhelmingly shows Keystone XL would have positive economic and social impacts in this State.

Dr. Goss's report on the socio-economic impacts of Keystone XL is attached as Appendix H to Keystone's Application. (KXL-1, Appx. H) Within that Report, Dr. Goss concluded that construction of Keystone XL along the Preferred Route would result in positive tax revenue in an amount estimated to exceed \$200 million during the period of construction and the first 15 years of operation. (Id., Appx. H, Table 3.8) (KXL-4, 1:14-2:24) Dr. O'Hara claimed otherwise, based solely upon his belief that the value of real estate crossed by Keystone XL would be negatively impacted and those purported valuation losses would outweigh the positive tax revenue. Dr. Goss and three independent evaluators disagree with Dr. O'Hara's view. In the FSEIS and the NDEQ's Final Evaluation Report, both the DOS and the NDEQ concluded that Keystone XL would have a significant, positive, tax effect. (KXL-19, pp. 25-26) (KXL-20, pp. 8-9, 26-27) The FSEIS further explicitly noted that the operation of the project was not expected to have an impact on residential or agricultural property values. (KXL-19, p. 26) In his report, Dr. O'Hara did not criticize these conclusions. (TR 836:2-10) Moreover, the Commission's independent consultants, Ron Konecny and L. Allan Jenkins, also determined that normal operation of the pipeline would have no impact on property values. (PSC-6, pp. 30, 66)

In reaching his opinions, Dr. O'Hara also speculated that Keystone would receive tax incentives from the Nebraska Advantage Act. Keystone President Tony Palmer unambiguously affirmed that Keystone will not make any claim for deductions, exemptions, credits refunds or

rebates under the Nebraska Advantage Act in connection with Keystone XL if its Application is approved. (TR 157:22-158:5) This testimony completely undercuts Dr. O’Hara’s claim. Further, Dr. O’Hara failed to research whether Keystone had received any incentives on the Mainline. (TR 838:9-839:10)

The other positive benefits of Keystone XL outlined by Dr. Goss include increased employment and the flow of outside money into counties which typically suffer from “brain drain.” (KXL-1, Appx. H) (TR 278:24-279:11) Dr. Goss calculated the Preferred Route would support an average of 727.6 jobs per year for the period of 2018-2034, which would result in \$0.7 billion in labor income during the period. (KXL-1, Appx. H) Keystone XL would also, as explained by Dr. Goss, have other favorable spillover socio-economic effects to Nebraska, including increasing spending by non-Nebraska residents in the State and encouraging the startup and/or relocation of retail businesses and manufacturing firms to areas that typically do not attract or retain individuals (i.e. those areas that suffer from “brain drain”). (Id.) The DOS has separately found that the entire project will support approximately 42,100 jobs and would contribute approximately \$34 billion to the US Gross Domestic Product. (KXL-19, p. 25) The NDEQ’s findings were also overwhelmingly positive. These include hundreds of millions of dollars of new economic activity, millions of dollars in annual property tax revenue, and hundreds of jobs for Nebraskans. (KXL-20, pp. 8-9, 26-27)

In addition to the favorable socio-economic analysis, Keystone’s evidence also shows that the protections for cultural resources that are in place, including its CMRP and the Programmatic Agreement, promote the social interests of the State and minimize any potential impacts. In particular, those documents reflect specific obligations to Keystone relating to the study of cultural resources that may be located along the Preferred Route and address how

cultural resources along the Route will be handled if discovered. (KXL-23) (KXL-24) To date, Keystone has completed cultural resources surveys for the majority of the Preferred Route and has not identified any historic property that is subject to protection or eligible for inclusion in the National Register of Historic Places. (KXL-14, 2:24-5:83) Additional surveys for areas to which Keystone has been denied entry will be performed once access is obtained and, in the event a historic property eligible for inclusion is identified, it will be appropriately handled under the National Historic Preservation Act. (Id.) However, the likelihood of impacting a potential cultural site along the Preferred Route is minimized because in most areas the ground is agricultural and has already been tilled.

The robustness of the CMRP and the Programmatic Agreement are best illustrated by the example of the Allpress farm. Mr. Allpress believes he may have a sacred Ponca site on his property. If survey access is allowed and the DOS confirms the existence of a protectable cultural resource, then the provisions of the CMRP and the Programmatic Agreement mandate that the DOS and Keystone take steps to protect those resources. (KXL-14, 6:104-106) (KXL-1, Appx. D § 2.19) This situation is not unforeseen and these procedures ensure that unanticipated discoveries are properly addressed.

The sufficiency of Keystone's work with regard to the protection of cultural resources is affirmed by the Nebraska State Historical Society's letter to the Commission. (KXL-37)

5. No Utility Corridors Could Be Feasibly And Beneficially Used For The Keystone XL Pipeline.

Keystone evaluated a number of co-location possibilities including other utility corridors, as part of its development of the Preferred Route. Section 20 of the Application explains Keystone's co-location analysis, and demonstrates that the Preferred Route co-locates with other

linear features for a total of 9.7 miles across the State. (KXL-1, § 20, Table 20-1) Of those 9.7 miles, 7.3 miles represent co-location with the existing Keystone Mainline; the other 2.4 miles represent co-location with roads. (Id.) Further co-location opportunities (i.e., co-locating with a Nebraska Public Power district transmission line or the Cowboy Trail in Rock, Holt and Antelope Counties) were examined and determined not to be feasible because the environmental attributes of those sites (such as high slopes) gave rise to constructability concerns, and for other reasons. (Id.) In addition, as explained in Section 2 of this Brief, the ability to truly “twin” the Keystone Mainline is not viable, feasible, or preferable for a number of reasons. The fact that there is no actual evidence of a better corridor for Keystone XL than the Preferred Route shows the Preferred Route is the best route available.

Keystone had valid reasons not to follow the Mainline for Keystone XL. The Keystone Mainline was uniquely able to convert and use an unused natural gas pipeline moving west to east from Alberta to Winnipeg, Manitoba. (TR 182:5-23) There is not another unused pipeline to be converted, which is why Keystone developed the Preferred Route as a hypotenuse when compared to the Mainline. (TR 182:24-183:6) If the Keystone XL pipeline were to follow the Mainline in its entirety, it would require considerably greater length in the overall pipeline route than the Preferred Route currently uses. This additional length would cause greater environmental impact and render the route inferior to the Preferred Route.

6. Keystone XL Will Not Unduly Interfere With The Orderly Development Of Land, And Construction Of The Preferred Route Is Compatible With Existing Land Use.

The Keystone XL Preferred Route passes through land which is primarily agricultural in nature and located in rural Nebraska. (KXL-1, § 21.0) (KXL-3, 2:33-3:42) That land will be able

to remain agricultural land after construction. (Id.) The pipeline will have four feet of cover and, as Paul Fuhrer and Keystone's other witnesses explained, will not interfere with normal agricultural operations except for during periods of construction or pipeline maintenance. (Id.) The Preferred Route also has been located away from existing rural residences and farmsteads to the extent possible, which reduces the likelihood of any impact of future construction or development. (Id.)

There is, in fact, no actual evidence of any change to the existing use of land along the Preferred Route before the Commission. The issues raised by the Landowners - i.e., impacts to irrigation and drain tiles - are addressed within Keystone's CMRP. (See KXL-24) That plan requires the use of mitigating measures if irrigation systems will be impacted, including the implementation of temporary measures to allow an irrigation system to continue to operate during construction if feasible and mutually acceptable to the parties. (KXL-24, § 4.1) Keystone will also use a number of other mitigation measures outlined in the CMRP to eliminate or reduce damage to drain tiles. (KXL-24, § 5.3) If damage to underground drainage tiles does occur, the CMRP has specific plans for repair, or requires that Keystone reach a fair resolution with the landowner for repair costs. (KXL-24, § 5) Keystone's witnesses have testified that any (minor) elevated soil temperature associated with the pipeline will not have negative growth effects on the typical crop vegetation in the area. (TR 455:2-456:11; 562:24 – 563:5) (KXL-1, Table 13-1)

The conclusion that Keystone XL is compatible with land uses and will not unduly interfere with the orderly development of land is further buttressed by the NDEQ Final Evaluation Report and by the fact that Keystone has already voluntarily acquired easements from approximately 90 percent of landowners along the Preferred Route and purchased the pump station sites in fee. (KXL-1, § 21) (KXL-20) The NDEQ agreed with Keystone that land use

along the Preferred Route will “revert to its previous use. . .” and that any affected agricultural operations could resume the season after the completion of construction. (KXL-20, pp. 8, 71, 277) The NDEQ’s report also determined that any impacts from construction and operation would be small on a landscape level because the permanent corridor is narrow, disturbed habitats would be reclaimed, and the majority of the affected area is range and cropland. (KXL-20, p. 23) Moreover, if Keystone XL truly impacted the future use of land, it would be expected that a far greater number than 10% of landowners would not have agreed to the placement of Keystone XL on their property. All of these facts show that, in reality, the Keystone XL pipeline will not change the orderly development of the land along the Preferred Route. As the Consultant report prepared for the Commission regarding land impacts noted, pipelines play an “insignificant role in residential value, crop production, invasive species, and land development.” (PSC-6, p. 74)

7. The Reports Of State Agencies And The Commission’s Independent Consultants Are Favorable To Approval of Keystone’s Application.

The reports that nine separate state agencies filed with the Commission pursuant to Neb. Rev. Stat. § 57-1407(3) are all favorable to approval of the Preferred Route and support a finding that the Preferred Route is in the public interest. (PSC-4) Each agency conducted a thorough review of Keystone’s Application giving consideration to its area(s) of expertise and not one of those agencies identified a significant concern with the Preferred Route or suggested that route should not be approved. (Id.) Rather, the reports make clear that the Preferred Route is an overwhelmingly positive route for Keystone XL through this State. The NDEQ, for example, determined (again) that the Preferred Route would have minimal environmental impacts. (PSC-4, pp. 2, 22) The Nebraska Department of Revenue also noted that construction would result in incremental tax revenue. (PSC-4, pp. 116-117) The Board of Educational Lands and Funds

acknowledged that it has already negotiated easements with Keystone for lands along the Preferred Route – a fact which represents agency approval. (PSC-4, p. 1)

The reports authored for the Commission by its independent consultants are also in accord. They independently acknowledge the Preferred Route has been extensively evaluated, Keystone has adopted protective measures (such as the CMRP) to minimize and mitigate environmental effects, and Keystone XL will have no impact on property valuation and an insignificant role on crop production and future land development. (PSC-6) The totality of these third-party reviews support the conclusion that the Preferred Route is the best route for Keystone XL.

8. A Majority Of Local Governing Bodies Support Construction Along The Preferred Route.

The views of the governing bodies of counties and municipalities along the Preferred Route are also overwhelmingly favorable to approval of Keystone’s Application. Twelve Nebraska counties and two Nebraska villages are located along the Preferred Route. (KXL-1, § 4.0) In response to the Commission’s inquiry, a majority of those local governments strongly urged the Commission to approve Keystone’s Application. (PSC-5) In doing so, multiple local governments noted that construction of Keystone XL on the Preferred Route would have an important, favorable effect on their local economies. (PSC-5, pp. 8, 9, 12) They also noted the project as set forth in Keystone’s Application was in the best interest of their citizens. (Id.) The only local governments that did not voice approval of the project (Holt County and Boyd County) were those opposed to Canada’s “tar sands” oil supply as a whole. (PSC-5, pp. 5-6) That is not an issue within the purview of the Commission’s review authority under MOPSA or a reason to reject the Preferred Route. The fact that a significant majority of local governments

urge approval support the conclusion that the State's interests will be served by approving Keystone's Application.

IV. THE INTERVENORS' LACK OF EVIDENCE.

In contrast to the abundant evidence in favor of Keystone's Application discussed above, there is no evidence before the Commission which shows the Preferred Route is not in the public interest under Neb. Rev. Stat. § 57-1407(4). There is also no evidence establishing that a better route is available for the Keystone XL pipeline through this State. The August 7-10 hearing was the Intervenor's opportunity to provide the Commission with evidence showing there was a better route available and the Preferred Route was not in the public interest, but they did neither even though the Commission specifically invited such evidence. (*See* Commission Order on Intervention, pp. 8-9, March 31, 2017) Instead, Keystone's evidence went largely un rebutted and was confirmed by the Commission's consultants.

Particularly telling on this point is the fact that the Intervenor's offered no evidence of an alternate, more favorable route for Keystone XL. That is because there is none. None of the Intervenor's evidence takes issue with the DOS's FSEIS or the NDEQ's Final Evaluation Report, both of which conclude independently that construction and normal operation of the Preferred Route will not have significant environmental impacts. (KXL-19) (KXL-20) Further, the Intervenor's have not disputed that, in many instances, co-locating with the Keystone Mainline would require placing Keystone XL in a sub-optimal location because the Mainline already occupies the best site. (KXL-13, 7:129-10:204) Rather, their attorneys simply presented argument (not evidence) that the only acceptable route for Keystone XL is to "twin" the Keystone Mainline (i.e. the I-90 Corridor route). Those arguments are not, and should not be construed as, evidence. Not one of the Intervenor's combined 60+ witnesses presented technical,

science-based, admissible testimony substantiating that position. The Bold Alliance and the Sierra Club essentially acknowledged this by seeking leave to submit additional evidence on an alternate route at the close of the hearing. (TR 1197:16-199:8)

The Intervenors also did not present any credible evidence to undermine the positive attributes of the Preferred Route that were explained in detail by Keystone's witnesses. Indeed, the evidence offered by the cultural resources intervenors does not undermine Keystone's Section 106 compliance or the cultural resource work (including working with tribes to identify potential, eligible, cultural resources) that has been done. The Yankton Sioux Tribe's witness, Jason Cooke, did not raise any concerns with Keystone's Section 106 work or cultural resource studies. (CUL-25) The Ponca Tribe of Nebraska's witness, Shannon Wright, also acknowledged during the course of the hearing that the Programmatic Agreement reflects a legally binding agreement which establishes a process for consultation, review and compliance with laws concerning historic preservation, and that if Keystone properly conducts cultural surveys in compliance with that agreement (which it still has time to do before construction) his concerns would be alleviated. (TR 1053:16-1055:7) He further admitted that both the DOS and Keystone had invited the Ponca Tribe to consult on the Keystone project. (TR 1056:3-12; 1057:2-6)

Testimony from the Intervenors' environmental witnesses also does not rebut the favorable environmental attributes of the Preferred Route. The only environmental experts the Intervenors presented to address the Preferred Route's characteristics were Bold/Sierra Club's witnesses Thomas Hayes, Joseph Trungale and Paul Johnsgard. All of their purported concerns were either completely rebutted by Keystone or acknowledged to be minimal by the witnesses themselves.

Specifically, as identified in his pre-filed testimony, Dr. Hayes' concerns with the Preferred Route focus on issues relating to alleged increased soil impermeability due to compaction, soil mixing, and impacts to native prairies and wetlands. (NR-3) He also raised concerns regarding alleged discrepancies in Keystone's Application. (Id.) However, Dr. Hayes' own cross-examination testimony and the rebuttal testimonies of John Beaver, Michael Portnoy and Dr. Jon Schmidt make clear these concerns are unfounded. (KXL-61) (KXL-11) (KXL-12) (KXL-13) Mr. Beaver and Mr. Portnoy both testified that Keystone's CMRP contains measures to segregate topsoil and relieve compaction of any soils that receive substantial construction traffic via deep ripping, etc., and those techniques are widely accepted and have been proven to be effective in past projects. (KXL-11, 1:10-3:43) (KXL-12, 1:4-2:22) Additionally, the Preferred Route avoids most areas of native prairie and Keystone has well-designed, agency-reviewed ConRec Units to ensure native prairie soil and vegetation productivity would be restored within a few years. (KXL-11, 5:92-7:142) (*See also*, KXL-25) Dr. Hayes admitted that the CMRP includes mitigation/reclamation measures recommended by the authorities he cited in his pre-filed testimony. (KXL-61, 35:1-36:6; 36:23-37:13; 37:22-39:7; 41:15-23) In fact, he did not even read the NDEQ's Final Evaluation Report - which assesses potential environmental impacts in light of Keystone's mitigation measures, including the CMRP - in any detail before rendering his conclusions. (KXL-61, 61:21-62:5) And, as Dr. Schmidt explained, the Preferred Route would not be destructive to wetlands as Mr. Hayes claimed because, among other things, the CMRP (§6.0) contains detailed mitigation requirements based upon the US Army Corps of Engineers' and the Federal Energy Regulatory Commission's permitting requirements. (KXL-13, 13:268-279) Moreover, Dr. Schmidt easily clarified the alleged inconsistencies in Keystone's Application. (KXL-13:1:4-2:35, 6:110-128) (KXL-16)

Mr. Trungale's and Mr. Johnsgard's purported concerns also were fully rebutted and/or acknowledged by the witness to be of no consequence. They are further undermined by each witness's cross examination testimony and lack of specific, detailed knowledge regarding the Preferred Route. As Mr. Portnoy explained in response to Mr. Trungale's pre-filed testimony, groundwater flow paths will not be altered by construction because the pipeline will cross the surface water in the same direction of flow of the groundwater. (KXL-12, 2:29-3:42) Mr. Trungale, on the other hand, did not review any water quality reports from the DNEQ or analyze groundwater flow along the Preferred Route. (KXL-62, 36:21-24, 43:12-16) In addition, Mr. Trungale has no basis to criticize the adequacy of Keystone's CMRP's procedures for waterbody crossings or opine regarding whether any significant fishery resources may be affected (they will not). Mr. Trungale has never before reviewed a CMRP in connection with a pipeline project like Keystone XL or any of the waterbody crossing methods described in the CMRP, and he did not do any site-specific analysis to determine whether there are significant fishery resources located at the points where Keystone XL will cross streams and waterbodies. (KXL-62, 24:25-25:14; 32:23-33:20; 35:15-20; 38:5-7) He also acknowledged that the conditions of waterbodies change during the course of the year, that it is appropriate for a contractor to have options, and that neither the NDEQ nor the Biological Opinion or Biological Assessment identified any significant fisheries resources that would be impacted. (KXL-62, 26:5-28:7, 31:20-32:6) Indeed, as Dr. Schmidt testified, Keystone's use of a suite of options in the CMRP for waterbody crossings is consistent with industry standard because there is no way to know the exact condition of each waterbody until the time of construction. (KXL-13, 13:280-14:306) These points and the others in Dr. Schmidt's rebuttal fully undermine Mr. Trungale's opinions.

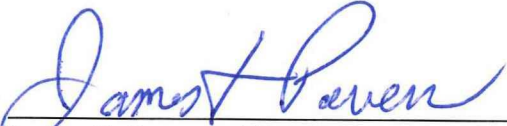
Dr. Johnsgard's criticism of the Preferred Route is undermined because (i) he had not even read Keystone's Application, the FSEIS, or any other governmental reports or analysis before rendering his opinion; (ii) he has no idea where the above-ground infrastructure (i.e. pump stations and electrical transmission lines) which he claims will pose a threat to whooping cranes will be located or how many miles of electrical transmission lines will actually be needed; and (iii) he did not review any commitments from the power suppliers to use mitigation techniques. (TR 1017:20-1018:15; 1019:10-14; 1021:7-13; 1023:11-16; 1028:9-19) As Dr. Schmidt testified, the Preferred Route adds a mere 0.4% to the existing mileage of transmission lines in Nebraska in the migratory corridor. (KXL-13, 3:43-55) Dr. Johnsgard's bias became obvious as he concluded that he would be opposed to any project that would increase the number of transmission lines in the Nebraska migration corridor because, in his opinion, the potential risk to whooping cranes is too great. (TR 1026:22-1027:4)

CONCLUSION

The Preferred Route for the Keystone XL pipeline is the best route through Nebraska and is in the public interest. It has been studied and refined by Keystone over the course of almost a decade; it minimizes or mitigates any potential impacts to Nebraska's natural and cultural resources; it is superior to any alternative; it has been analyzed by independent state and federal evaluators, including the Commission's consultants, and determined to be the best route through the State, and it presents significant economic and social opportunities for this State. For these reasons and those explained more fully above, Keystone respectfully requests that the Commission approve its Application.

Dated this 15th day of September, 2017.

TRANSCANADA KEYSTONE PIPELINE,
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