

Appendix

Certification Under SDCL § 49-41B-27	(APP-0001-0002)
Petition for Order Accepting Certification under SDCL § 49-41B-27 ...	(APP-0003-0008)
Appendix B to Certification Petition	(APP-0009-0038)
Appendix C to Certification Petition	(APP-0039-0043)
Final Decision and Order finding Certification valid and Accepting Certification	(APP-0044-0071)
Order, December 17, 2014.....	(APP-0072-0073)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE :
APPLICATION BY TRANSCANADA : DOCKET NUMBER HP _____
KEYSTONE PIPELINE, LP FOR A :
PERMIT UNDER THE SOUTH :
DAKOTA ENERGY CONVERSION : CERTIFICATION
AND TRANSMISSION FACILITIES :
ACT TO CONSTRUCT THE :
KEYSTONE XL PROJECT :

0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0

City of Calgary)
) ss
Alberta, Canada)

TransCanada Keystone Pipeline, LP (“Keystone”) hereby certifies that the conditions upon which the South Dakota Public Utilities Commission granted the facility permit in Docket HP09-001 for the Keystone XL hydrocarbon pipeline (the “Project”) under the Energy Conversion and Transmission Facilities Act continue to be satisfied. The basis for this certification is set forth in the accompanying Petition for Order Accepting Certification under SDCL 49-41B-27. Keystone is in compliance with the conditions attached to the June 29, 2010 Amended Final Decision and Order in this docket, to the extent that those conditions have applicability in the current pre-construction phase of the Project. Keystone certifies that it will meet and comply with all of the applicable permit conditions during construction, operation, and maintenance of the Project.


STATUTORY DECLARATION

I, *COREY GOULET*, of *CALGARY*, in the Province of Alberta, Canada, do solemnly declare as follows:

THAT THE CERTIFICATION CONTAINED HEREIN IS TRUE.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as is made under oath.


DECLARED before me at the *CITY*)
of *CALGARY* in the)
Province of Alberta, this *12th* day)
of *SEPTEMBER*, A.D. 20 *14* .)


COREY GOULET

A Commissioner for Oaths/Notary Public

(PRINT OF STAMP NAME HERE)

MY APPOINTMENT EXPIRES


(Must be legibly printed or stamped in legible printing if appointed under section 1 of the act)

SHANNON R. ONOOK
A Notary Public in and for the
Province of Alberta. My Commission
expires at the pleasure of the
Lieutenant Governor-in-Council

**I.
BACKGROUND**

On March 12, 2009, Keystone filed an application in Docket HP 09-001 seeking a permit to construct and operate the Project in South Dakota. A hearing was held before the Commission from November 2-4, 2009. Keystone, Commission staff, and Dakota Rural Action were parties to the proceeding and participated in the hearing. The Commission issued a Final Decision and Order dated March 12, 2010. The Commission issued an Amended Final Decision and Order dated June 29, 2010, to which 50 conditions are attached.

As stated in the Amended Final Decision and Order, the Project originally was proposed to be developed in three segments: the Steele City Segment from Hardisty, Alberta, to Steele City, Nebraska; the Gulf Coast Segment from Cushing, Oklahoma, to Liberty County, Texas; and the Houston Lateral Segment from Liberty County, Texas to refinery markets near Houston, Texas. The Project was conceived to transport incremental crude oil production from the Western Canadian Sedimentary Basin to refineries and markets in the United States. Construction of the Project was proposed to begin in May 2011 and to be completed in 2012.

The Project, as proposed, has been delayed. A Presidential Permit required by Executive Order 11423 of August 16, 1968, and Executive Order 13337 of April 30, 2004, allowing the pipeline to cross the border between Canada and the United States, is still under review before the United States Department of State (DOS). Keystone submitted a Presidential Permit application to the DOS on September 19, 2008. After that application was denied without prejudice due to the Administration's inability to complete its review by a Congressionally imposed deadline, Keystone submitted a revised application on May 4, 2012. Drawing upon an

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extensive public record and multiple draft and final Environmental Impact Statements, DOS issued a Final Supplemental Environmental Impact Statement (Final SEIS) on January 31, 2014.¹

In the Final SEIS, the DOS concluded, among other things, that:

- Keystone has long-term commitments to ship both Canadian and Bakken oil to Gulf Coast refineries, production of Canadian and Bakken oil is projected to increase, and there is existing demand by Gulf Coast area refiners for stable sources of crude oil. (Final SEIS §§ 1.3.1, 1.4.)
- The analyses of potential impacts associated with construction and normal operation of the pipeline “suggest that significant impacts to most resources are not expected along the proposed Project route” assuming that the Project complies with applicable laws, regulations, and permit conditions. (Final SEIS § 4.16.)
- Due to market developments, the transportation of Canadian crude by rail is already occurring in substantial volumes (an estimated 180,000 bpd), with a greater risk of leaks and spills, as well as injuries and fatalities, than if the oil were transported by pipeline. (Final EIS, §§ E.S. 3.1, E.S.5.4.3.)

On April 18, 2014, the Administration announced an indefinite delay in the current Presidential Permit review process, referencing on-going litigation related to the approval of a revised pipeline route in Nebraska.²

During the pendency of the current Presidential Permit application, Keystone proceeded with the Gulf Coast Segment as a stand-alone project based on its independent utility. Construction is complete and that pipeline from Cushing, OK to Liberty County, Texas was placed in service on January 22, 2014. Construction of the Houston Lateral segment is currently

¹ <http://keystonepipeline-xl.state.gov/finalseis/index.htm>.

² In 2012, the Nebraska Legislature approved legislation giving the Governor authority to approve a revised route for the pipeline in that State. After an extensive public review process led by the Department of Environmental Quality, the Governor approved Keystone’s proposed re-route in Nebraska. In February 2014, a Nebraska lower court declared the legislation unconstitutional. That case is currently on appeal to the Nebraska Supreme Court and the effect of the lower court’s decision is stayed pending the outcome of that appeal. (01717811.1)

under way. The currently pending Presidential Permit application involves consideration of the former Steele City segment only (see Appendix A; map of the current proposed Project).

Since the Amended Final Decision and Order, the Bakken Marketlink Project has been made part of the Project. Bakken Marketlink includes a five-mile pipeline, pumps, meters, and storage tanks near Baker, Montana, to deliver light sweet crude oil from the Bakken formation in Montana and North Dakota for transportation through the Project. Bakken Marketlink became commercial after the Amended Final Decision and Order in this case, as the result of a successful open season that closed on November 19, 2010. Bakken Marketlink will deliver up to 100,000 bpd of domestically-produced crude oil into the Keystone XL Pipeline. Approximately 700,000 bpd of Bakken formation production is currently being shipped by rail. Bakken Marketlink may relieve the need for some of that rail transportation while providing improved ratability and lower transportation costs for American producers.

The material aspects of the proposed construction and operation of the Project in South Dakota remain essentially unchanged since the Commission granted its approval in 2010. The Project will extend 315 miles, use 36-inch nominal diameter pipe made of high-strength steel, and be protected by an external fusion bonded epoxy coating and cathodic protection by impressed current. The route corridor through South Dakota is largely unchanged from the route analyzed by the Commission as part of the permitting process.³ The pipeline will have batching capabilities and will be able to transport products ranging from light crude oil to heavy crude oil.

³ Keystone has implemented minor route variations designed to accommodate landowner concerns and improve constructability. As required by Condition No. 6 of the Amended Final Decision and Order, any material route changes will be provided to the Commission for review prior to construction.
{01717811.1}

Since the Amended Final Decision and Order, Keystone has filed seventeen quarterly reports with the Commission as required by Condition No. 8 of the Amended Final Decision and Order. Each report is submitted by Keystone's public liaison officer and addresses the status of land acquisition, construction, permitting, and other items. The most recent quarterly report was submitted on July 29, 2014, and a copy of this report is attached hereto as Appendix B.

II.
THE PROJECT CONTINUES TO MEET THE CONDITIONS UPON WHICH THE PERMIT WAS ISSUED

Accompanying this petition is a Certification, signed by the President of the Keystone Pipeline business unit, attesting that: (i) the conditions upon which the Commission issued the facility permit in this docket continue to be satisfied; (ii) Keystone is in compliance with the conditions attached to the June 29, 2010 order, to the extent that those conditions have applicability in the current pre-construction phase of the Project; and (iii) Keystone will meet and comply with all of the applicable permit conditions during construction, operation, and maintenance of the Project. Compliance with those conditions is further reflected in Keystone's July 29, 2014 Quarterly Report (Appendix B). Thus, Keystone has satisfied the statutory requirement to certify that the Project continues to meet the conditions upon which the Commission's approval was issued.

In addition, Keystone submits that the circumstances and factual underpinnings of the Project that led the Commission to issue the facility permit remain valid. The factual findings underlying the Commission's decision are set forth in the June 29, 2010 Amended Final Decision and Order. In support of this petition, Appendix C hereto presents those findings of fact from the

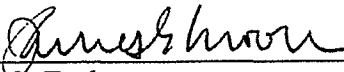
Commission's Amended Final Decision and Order that have changed since 2010 and describes the nature of those changes. As Appendix C makes clear, to the extent that there have been changes in the underlying facts, those changes are either neutral or positive to the Commission's concerns. In sum, the need, impacts, efficacy, and safety of the Project have not changed since the Amended Final Decision and Order.

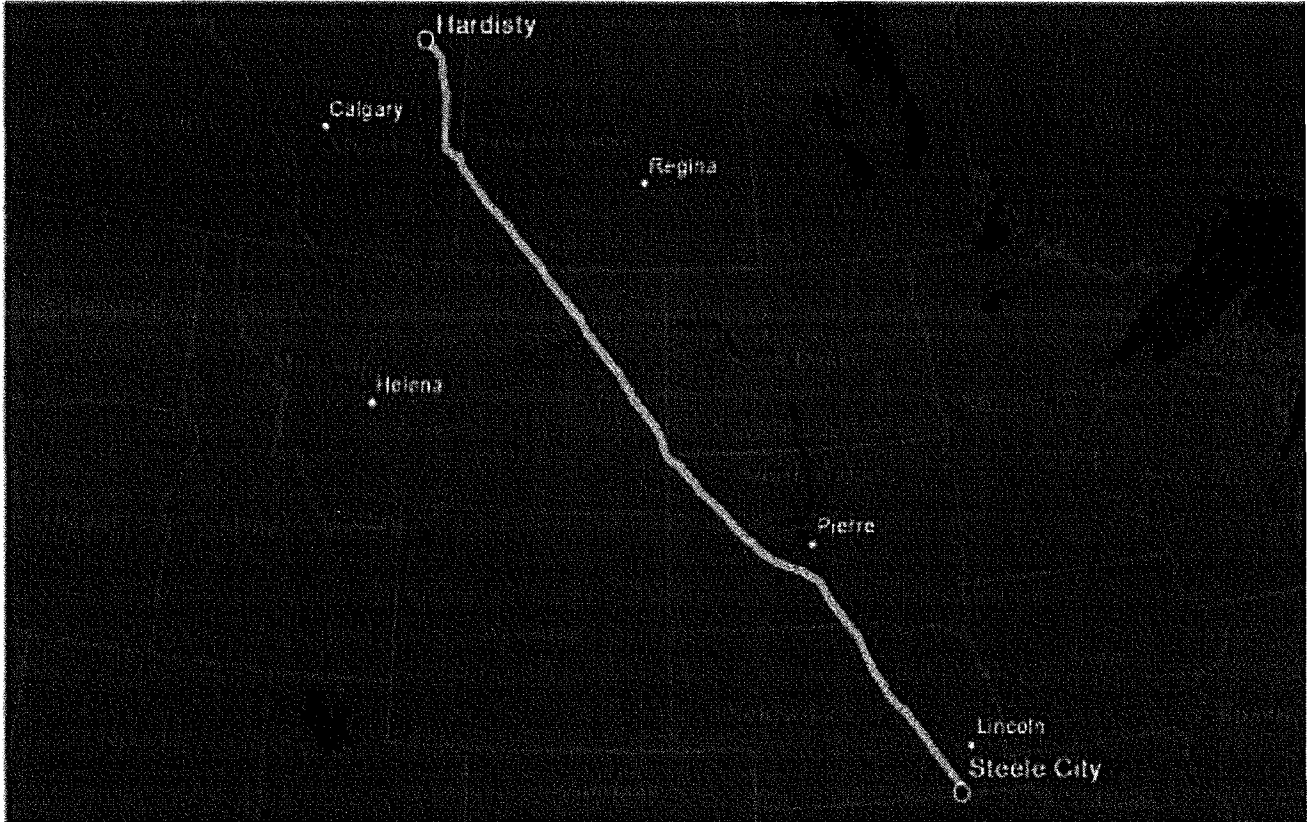
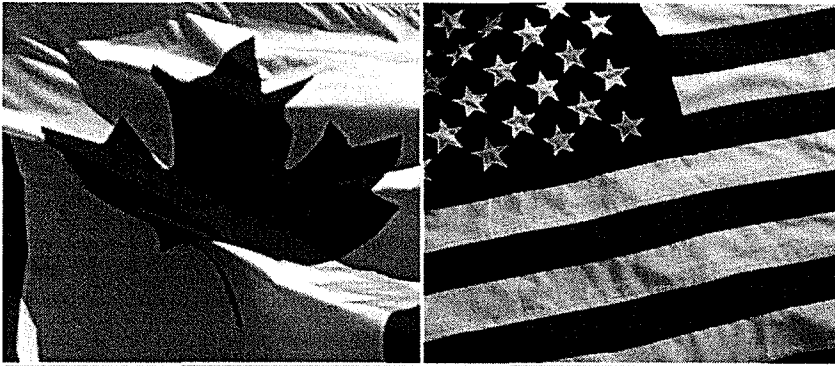
III. CONCLUSION

The attached Certification, together with this petition and the supporting appendices, provides the necessary basis for the Commission to find that the Project continues to meet the conditions upon which the June 2010 permit was issued. Accordingly, Keystone respectfully requests that the Commission accept its certification under SDCL § 49-41B-27.

Dated this 15th day of September, 2014.

WOODS, FULLER, SHULTZ & SMITH P.C.

By 
William G. Taylor
James E. Moore
PO Box 5027
300 South Phillips Avenue, Suite 300
Sioux Falls, SD 57117-5027
Phone (605) 336-3890
Fax (605) 339-3357
Email james.moore@woodsfuller.com
bill.taylor@woodsfuller.com
Attorneys for Applicant
TransCanada Keystone Pipeline, LP.



KEYSTONE XL PIPELINE PROJECT

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION QUARTERLY REPORT

For the Quarter Ending: **June 30, 2014**

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1.0 EXECUTIVE SUMMARY

TransCanada filed a new a Presidential Permit application with the Department of State on May 4, 2012 and on January 31, 2014 the Department of State issued a Final Supplemental Environmental Impact Statement (FSEIS). The project is currently in the National Interest Determination period of the Presidential Permit process. Construction activities have not taken place, or will take place, in South Dakota until the required permits and regulatory approvals are obtained for any proposed construction site. Project personnel are continuing to review the proposed pipeline route to identify any potential construction issues before construction. The construction plan for the portion of the Keystone XL Pipeline Project through South Dakota is dependent on the timing of final regulatory approvals and may include three or four spreads.

Keystone will implement the conditions of federal and state permits at the times specified by those permits. (See Appendix A for a table of the Summary of Consultations with the South Dakota Department of Environmental and Natural Resources.)

2.0 PROJECT DESCRIPTION

The project will include approximately 1,204 miles of 36 inch diameter pipeline from Hardisty, Alberta to Steel City, Nebraska, including approximately 313 miles in South Dakota.

3.0 LAND ACQUISITION STATUS (South Dakota)

3.1 Pipeline Right-of-Way Acquisition

The pipeline centerline crosses property owned by 301 landowners. Keystone has acquired easements from over 99% of the landowners. Easements have been acquired from the vast majority of all private landowners. Acquisition of tracts owned by the State of South Dakota is in process.

3.2 Pump Stations

The pump stations will be located in Harding, Meade, Haakon, Jones, and Tripp County, South Dakota. Keystone has purchased all seven pump station sites. The size of each pump station site is approximately 10 acres.

3.3 Pipe and Contractor Yards

Keystone has leased 11 pipe yards and six contractor yards in South Dakota. The leases were originally for 36 months, commencing on October 10, 2010. The leases have been extended an additional 24 months, expiring on October 1, 2015. The yards are in Harding, Butte, Meade, Haakon, Jones, Lyman and Tripp Counties. Each yard is approximately 30 acres in size.

3.4 Contractor Housing Camps

As outlined in the Keystone XL FSEIS, in Section 2.1.5.4 - Construction Camps, some remote areas in South Dakota do not have sufficient temporary housing near the proposed route to house all construction personnel working on spreads in those areas. In those remote areas, temporary work camps would be constructed to meet the housing needs of the construction workforce. Details of the construction camp configuration will depend on the final construction spread configuration and construction schedule, which is dependent on receipt of the final federal approval.

4.0 Non-Environmental Permitting Status (South Dakota)

4.1 County Roads

102 crossing permit applications have been filed for the pipeline to cross under all county road rights-of-way. Of the 102 applications filed, 101 have been acquired as of September 30, 2013.

4.2 State Roads

Thirteen (13) crossing permits and twenty-four (24) temporary approach permit applications have been filed with the state of South Dakota Department of Transportation (SD DOT) for the pipeline to cross under the state road rights-of-way. All crossing and temporary approach permits have been received from the SD DOT.

4.3 Railroads

Two crossing easement permits are being negotiated for the pipeline to cross under existing railroad rights-of-way. The South Dakota State Railroad application was received November 23, 2012. Canadian Pacific Railway was sold to the Genesee & Wyoming Railway; All permitting was transferred and is pending a signed license agreement.

4.4 Pump Stations

The special use permits required for the two Harding County pump stations were approved on September 28, 2010. Of the remaining five pump stations, four do not require a special use permit, leaving only one special use permit needed for the pump station in Jones County.

4.5 Contractor Camps

All construction camps will be permitted, constructed and operated consistent with applicable county, state, and federal regulations. (See Table 2.1-11 of the FSEIS for relevant regulations and permits required for the construction.)

5.0 ENVIRONMENTAL PERMITTING STATUS (South Dakota)

Keystone is awaiting or will be preparing and submitting all remaining applications for required federal and state environmental permits for work in South Dakota and will obtain the required permits in advance of pipeline construction activities.

6.0 FEDERAL PERMITS

TransCanada filed a Presidential Permit application with the U.S. Department of State on May 4, 2012 to authorize the international border crossing for the Keystone XL Project. On January 31, 2014 the US Department of State issued a Final Supplemental Environmental Impact Statement addressing Keystone's May 2012 Presidential Permit application. The project is currently in the National Interest Determination phase. The route through South Dakota is largely unchanged from the route analyzed for the SDPUC permit.

The former "Gulf Coast Segment" of the Keystone XL Project (a pipeline from Cushing Oklahoma to the Gulf Coast in Texas) was determined to have independent utility and was constructed as the stand-alone Gulf Coast pipeline separate from the Keystone XL Project.

Keystone XL pipeline will also file permit applications with the US Army Corps of Engineers for the necessary authorizations under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

6.1 Permit Compliance

Keystone will implement the conditions of federal and state permits at the times specified by those permits. (See Appendix A for a table of the Summary of Consultations with the South Dakota Department of Environmental and Natural Resources.)

7.0 CONSTRUCTION STATUS

No construction activities have taken place, or will take place, in South Dakota until the required permits and regulatory approvals are obtained for any proposed construction site. Project personnel are continuing to review the proposed pipeline route to identify any potential construction issues before construction.

8.0 ENVIRONMENTAL CONTROL ACTIVITIES

Environmental control activities, as required by applicable permit conditions, will be implemented when construction activities start in South Dakota.

9.0 STATUS OF EMERGENCY RESPONSE AND INTEGRITY MANAGEMENT PLANS

9.1 Emergency Response Plan

Development of the Keystone Pipeline Project operational Emergency Response Plan for the U.S. is ongoing and will be submitted to Pipeline and Hazardous Materials Safety Administration (PHMSA) six months before pipeline in-service. New TransCanada-owned emergency response equipment trailers are planned for storage in South Dakota.

Through its public awareness program, TransCanada continues to provide various types of information related to Keystone emergency response and pipeline safety awareness.

9.2 Integrity Management Plan for High Consequence Areas

Development of the Integrity Management Plan for the high consequence areas is ongoing. Progress in identifying high consequence areas and creating their subsequent tactical plans is about 70% complete. These tactical plans will be included in the Emergency Response Plan. After further discussions and coordination with PHMSA, the Integrity Management Plan will be formally submitted to PHMSA.

10.0 OTHER COMPLIANCE MEASURES

See Appendix B for the status of implementation of South Dakota Public Utilities Commission (PUC) conditions.

APPENDIX A

**Table 1: Recent Consultations with South Dakota
 Department of Environment and Natural Resources**

Date of Contact	Agency / Individual	Purpose of Consultation	Results of Consultation	Follow-up Required
8-3-10	SD DENR Kelli Buscher, John Miller, Albert Spangler, Brian Walsh, Mike DeFea SDGFP Leslie Murphy, John Lott SD DAG Raymond Sowers, Bill Smith	Discuss both state and federal permitting for the Keystone XL Pipeline project in South Dakota as well as to review the current project status and schedule in South Dakota.	Laid out a blue print for State permitting.	Determine if a construction stormwater discharge permit is required for the camps as it is not required for pipeline related construction
10-23-12	SDGFP Silka Kempana, Travis Runia	Coordination with FWS, DOS, SD GFP regarding Keystone Sage Grouse Protection Plan and mitigation plans	Keystone will modify Sage Grouse Protection Plan to account for SD GFP additional input, conduct ambient noise studies and additional modeling, and revise mitigation plans for SD GFP review.	Updating Sage Grouse Protection Plan, mitigation plans and noise modeling
10-25-12	SD DENR Al Spangler	Verification of permit application process	Discussed water withdrawal and discharge permit application and format required	Keystone will prepare permit applications
12-3-12	SD DENR Ashley Brakke	Followed up with SD DENR with the submitted air permit applications for the contractor camps [for emergency generators].	DENR needs a notarized statement from the applicant saying these were the generators that would be used for emergency electric power. Ms. Brakke was about ½ way through with the applications and none yet required the permit.	Prepare statement for SD Camp Contractor(s) to sign, notarize and send to the DENR Air Quality representative when they are on board.
12-5-12	SD DENR Ashley Brakke	Followed up with SD DENR with the submitted air permit applications for the contractor camps [for emergency generators].	DENR stated that they were OK with the notarized letter not being submitted until the camp contractor had been identified and on board.	Prepare statement for SD Camp Contractor(s) to sign, notarize and send to the DENR Air Quality representative when they are on board.

Keystone XL Pipeline Project
Response to Condition 8 for the
South Dakota Public Utilities Commission



Date of Contact	Agency / Individual	Purpose of Consultation	Results of Consultation	Follow-up Required
4-10-13	SD DENR Al Spangler	Confirm/discuss whether there would be any issues associated with hydrotest water obtained in SD being used to test pipe in Nebraska as long as the water was pushed back and released in SD near the location where the water was withdrawn.	Al Spangler confirmed that he did not see any issue with this approach. He would double-check with the water people and confirm.	Keystone will follow up with SD DENR on the feasibility of using SD test water in NE.
4-15-13	SD GFP Paul Coughlin	Discuss the potential for water withdrawal from Lake Gardner, which is a SD Game Protection Area.	SD GFP was receptive to the potential water withdrawal from Lake Gardner. SD GFP requested a formal written request.	Keystone will prepare a formal written request for the withdrawal of water from Lake Gardner
5-7-13	SD DENR Genny McMat, Marc Rush SDGFP Leslie Murphy, Gene Galinat, John Lott	Discuss the feasibility of the Keystone utilizing Lake Gardner as a source for hydrostatic test water and dust control water	SDGFP conditionally approved of the water withdrawal from Lake Gardner as long as there was adequate water present. SD GFP also stated that they would have to determine if there would be any other conditions that would need to be met to allow for the water withdrawal.	Follow-up with SDGFP on their progress developing a list of conditions that would permit the use of water from Lake Gardner for the proposed use [no further conditions were proposed] Work with SD GFP to fund restoration or conservation project in exchange for water use.
5-9-13	SDGFP Leslie Murphy	Emailed a pdf map of the proposed water withdrawal location for Lake Gardner	Provided the map following May 7, 2013 meeting	None
11-14-13	SD DENR William Marcouiller	Discuss the renewal process for the temporary discharge permit that had been issued to Keystone in April 2013.	SD DENR confirmed that the permit was good through December 31, 2015.	Keystone would need to renew the permit if discharge activities would occur after December 2015.
04-03-14	SD Natural Heritage Program Casey Heimerl	Request for most recent observation records for northern long-eared bat	Being processed	No
04-16-14	SD Natural Heritage Program Casey Heimerl	Request for most recent observation records for northern long-eared bat	Received via email: tabular and GIS (shapefiles) of the observation records of the northern long-eared bat for the counties that the Project crosses.	No

Date of Contact	Agency / Individual	Purpose of Consultation	Results of Consultation	Follow-up Required
05-28-14	SD Natural Heritage Program Casey Heimerl SD Game, Fish and Parks Tom Kirschenmann	Voluntary Informal Conference with US Fish and Wildlife Service to discuss the potential impacts to northern long-eared bat and red knot resulting from the Project. Both species are proposed for listing under the Endangered Species Act.	Keystone to revise habitat assessment report for the northern long-eared bat and red knot based on the comments and guidance provided during the meeting.	Keystone will submit a revised report to USFWS

APPENDIX B

Table 2: Status of Implementation of South Dakota PUC Conditions

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
1	<p>Keystone shall comply with all applicable laws and regulations in its construction and operation of the Project. These laws and regulations include, but are not necessarily limited to: the federal Hazardous Liquid Pipeline Safety Act of 1979 and Pipeline Safety Improvement Act of 2002, as amended by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, and the various other pipeline safety statutes currently codified at 49 U.S.C. § 601 01 et seq. (collectively, the "PSA"); the regulations of the United States Department of Transportation implementing the PSA, particularly 49 C.F.R Parts 194 and 195; temporary permits for use of public water for construction, testing or drilling purposes, SDCL 46-5-40.1 and ARSD 74:02:01 :32 through 74:02:01 :34.02 and temporary discharges to waters of the state, SDCL 34A-2-36 and ARSD Chapters 74:52:01 through 74:52:11, specifically, ARSD § 74:52:02:46 and the General Permit issued thereunder covering temporary discharges of water from construction dewatering and hydrostatic testing.</p>	<p>Construction of the project has not been initiated. Keystone will comply with all applicable laws and regulations during construction and operation of the Project.</p>
2	<p>Keystone shall obtain and shall thereafter comply with all applicable federal, state and local permits, including but not limited to: Presidential Permit from the United States Department of State, Executive Order 11423 of August 16, 1968 (33 Fed. Reg. 11741) and Executive Order 13337 of April 30, 2004 (69 Fed. Reg. 25229), for the construction, connection, operation, or maintenance, at the border of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country; Clean Water Act § 404 and Rivers and Harbors Act Section 10 Permits; Special Permit if issued by the Pipeline and Hazardous Materials Safety Administration; Temporary Water Use Permit, General Permit for Temporary Discharges and federal, state and local highway and road encroachment permits. Any of such permits not previously filed with the Commission shall be filed with the Commission upon their issuance. To the extent that any condition, requirement or standard of the Presidential Permit, including the Final EIS Recommendations, or any other law, regulation or permit applicable to the portion of the pipeline in this state differs from the requirements of these Conditions, the more stringent shall apply.</p>	<p>Construction of the project has not been initiated. Keystone is in the process of obtaining all applicable permits from Federal, State and Local entities. Upon commencement of construction Keystone will follow all applicable laws and conditions related to these permits.</p>

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
3	<p>Keystone shall comply with and implement the Recommendations set forth in the Final Environmental Impact Statement when issued by the United States Department of State pursuant to its Amended Department of State Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings and Notice of Floodplain and Wetland Involvement and To Initiate Consultation Under Section 106 of the National Historic Preservation Act for the Proposed TransCanada Keystone XL Pipeline; Notice of Intent--Rescheduled Public Scoping Meetings in South Dakota and extension of comment period (FR vol. 74, no. 54, Mar. 23, 2009). The Amended Notice and other Department of State and Project Documents are available on-line at: http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open.</p>	<p>The Department of State re-initiated its NEPA review upon receipt of Keystone's May 4, 2012 application for a Presidential Permit. The Department is in the process of preparing a Supplement to the August 2011 Final Environmental Impact Statement for the project. Construction of the project has not been initiated. Keystone will comply with and implement the Recommendations set forth in the Final Environmental Impact Statement, and the Supplemental Environmental Impact Statement, as reflected in the Record of Decision, when issued by the Department of State.</p>
4	<p>The permit granted by this Order shall not be transferable without the approval of the Commission pursuant to SDCL 49-418-29.</p>	<p>N/A at this time.</p>
5	<p>Keystone shall undertake and complete all of the actions that it and its affiliated entities committed to undertake and complete in its Application as amended, in its testimony and exhibits received in evidence at the hearing, and in its responses to data requests received in evidence at the hearing.</p>	<p>Construction of the project has not been initiated. When construction is initiated, Keystone will undertake the actions committed to during the SDPUC hearings.</p>
6.a	<p>The most recent and accurate depiction of the Project route and facility locations is found on the maps in Exhibit TC-14. The Application indicates in Section 4.2.3 that Keystone will continue to develop route adjustments throughout the pre-construction design phase. These route adjustments will accommodate environmental features identified during surveys, property-specific issues, and civil survey information. The Application states that Keystone will file new aerial route maps that incorporate any such route adjustments prior to construction. Ex TC-1.4.2.3, p. 27.</p>	<p>Keystone will file new aerial route maps reflecting route adjustments prior to construction.</p>
6.b	<p>Keystone shall notify the Commission and all affected landowners, utilities and local governmental units as soon as practicable if material deviations are proposed to the route.</p>	<p>Keystone will continue to work with all landowners, utilities, local government and other affected parties as the final route is being developed and will notify the Commission and all affected parties of any material deviations to the proposed route.</p>
6.c	<p>Keystone shall notify affected landowners of any change in the route on their land.</p>	<p>This is a continuing occurrence during engineering review. Keystone will continue to notify landowners of route changes on their land as well as inform them of associated activities, such as civil and environmental surveys.</p>
6.d	<p>At such time as Keystone has finalized the pre-construction route, Keystone shall file maps with the Commission depicting the final preconstruction route</p>	<p>Construction of the project has not been initiated. Keystone will finalize the route and submit to the Commission new maps depicting the final preconstruction route prior to construction.</p>

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
6.e	If material deviations are proposed from the route depicted on Exhibit TC-14 and accordingly approved by this Order, Keystone shall advise the Commission and all affected landowners, utilities and local governmental units prior to implementing such changes and afford the Commission the opportunity to review and approve such modifications.	Keystone has advised the Commission of all material route changes to date and has afforded the commission the opportunity to review and approve such modifications.
6.f	At the conclusion of construction, Keystone shall file detail maps with the Commission depicting the final as-built location of the Project facilities.	Keystone will submit final route maps to the Commission at the conclusion of construction.
7	Keystone shall provide a public liaison officer, approved by the Commission, to facilitate the exchange of information between Keystone, including its contractors, and landowners, local communities and residents and to promptly resolve complaints and problems that may develop for landowners, local communities and residents as a result of the Project. Keystone shall file with the Commission its proposed public liaison officer's credentials for approval by the Commission prior to the commencement of construction. After the public liaison officer has been approved by the Commission, the public liaison officer may not be removed by Keystone without the approval of the Commission. The public liaison officer shall be afforded immediate access to Keystone's on-site project manager, its executive project manager and to contractors' on-site managers and shall be available at all times to the Staff via mobile phone to respond to complaints and concerns communicated to the Staff by concerned landowners and others. Keystone shall also implement and keep an up-dated web site covering the planning and implementation of construction and commencement of operations in this state as an informational medium for the public. As soon as the Keystone's public liaison officer has been appointed and approved, Keystone shall provide contact information for him/her to all landowners crossed by the Project and to law enforcement agencies and local governments in the vicinity of the Project. The public liaison officer's contact information shall be provided to landowners in each subsequent written communication with them. If the Commission determines that the public liaison officer has not been adequately performing the duties set forth for the position in this Order, the Commission may, upon notice to Keystone and the public liaison officer, take action to remove the public liaison officer.	<p>The Commission has approved Sarah Metcalf as the public liaison officer for the Keystone XL project. The liaison can be reached at:</p> <p>Mailing Address:</p> <p>South Dakota Pipeline Liaison Officer PO Box 491 Aberdeen, South Dakota 57402 Phone: (888) 375-1370 Email: smetcalf12@gmail.com</p> <p>Contact information for the South Dakota liaison was sent out in December 2010 to landowners. Notification to law enforcement agencies and local governments in the vicinity of the Project was completed in 1st quarter 2011 in conjunction with notice required by other conditions for these groups. The liaison continues to contact affected counties, townships and other groups as the permit process takes place.</p> <p>The TransCanada Keystone Pipeline website at: http://www.transcanada.com/keystone.html provides general information about planning for construction of the project. When construction commences, more detailed construction information will be posted.</p>

Keystone XL Pipeline Project
Response to Condition 8 for the
South Dakota Public Utilities Commission



NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
8	<p>Until construction of the Project, including reclamation, is completed, Keystone shall submit quarterly progress reports to the Commission that summarize the status of land acquisition and route finalization, the status of construction, the status of environmental control activities, including permitting status and Emergency Response Plan and Integrity Management Plan development, the implementation of the other measures required by these conditions, and the overall percent of physical completion of the project and design changes of a substantive nature. Each report shall include a summary of consultations with the South Dakota Department of Environment and Natural Resources and other agencies concerning the issuance of permits. The reports shall list dates, names, and the results of each contact and the company's progress in implementing prescribed construction, land restoration, environmental protection, emergency response and integrity management regulations, plans and standards. The first report shall be due for the period ending June 30, 2010. The reports shall be filed within 31 days after the end of each quarterly period and shall continue until the project is fully operational.</p>	<p>Keystone will continue to submit quarterly reports until the construction and reclamation of the Keystone XL pipeline is complete and the pipeline is operational.</p>
9	<p>Until one year following completion of construction of the Project, including reclamation, Keystone's public liaison officer shall report quarterly to the Commission on the status of the Project from his/her independent vantage point. The report shall detail problems encountered and complaints received. For the period of three years following completion of construction, Keystone's public liaison officer shall report to the Commission annually regarding post-construction landowner and other complaints, the status of road repair and reconstruction and land and crop restoration and any problems or issues occurring during the course of the year</p>	<p>The public liaison officer will comply with this condition and is currently available to affected landowners and parties in the State. Quarterly reporting will begin with active construction activities.</p>
10	<p>Not later than six months prior to commencement of construction, Keystone shall commence a program of contacts with state, county and municipal emergency response, law enforcement and highway, road and other infrastructure management agencies serving the Project area in order to educate such agencies concerning the planned construction schedule and the measures that such agencies should begin taking to prepare for construction impacts and the commencement of project operations.</p>	<p>Keystone has commenced and will continue a program of contacts to inform and coordinate with county and municipal emergency response, law enforcement and highway, road and other infrastructure management agencies regarding planned construction and eventual operation of the Keystone XL Pipeline.</p>
11	<p>Keystone shall conduct a preconstruction conference prior to the commencement of construction to ensure that Keystone fully understands the conditions set forth in this order. At a minimum, the conference shall include a Keystone representative, Keystone's construction supervisor and Staff.</p>	<p>Prior to the start of construction a Keystone representative, the Keystone construction supervisor, and staff will arrange a preconstruction conference with the Commission to ensure a full understanding of the conditions set forth in this order.</p>
12	<p>Once known, Keystone shall inform the Commission of the date construction will commence, report to the Commission on the date construction is started and keep the Commission updated on construction activities as provided in Condition 8.</p>	<p>Keystone will inform the Commission accordingly during the preconstruction conference.</p>
13	<p>Except as otherwise provided in the conditions of this Order and Permit, Keystone shall comply with all mitigation measures set forth in the Construction Mitigation and Reclamation Plan (CMR Plan)</p>	<p>Construction of the project has not been initiated. Keystone will comply with the requirements set forth in the CMR Plan during construction.</p>

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
13.a	If modifications to the CMR Plan are made by Keystone as it refines its construction plans or are required by the Department of State in its Final EIS Record of Decision or the Presidential Permit, the CMR Plan as so modified shall be filed with the Commission and shall be complied with by Keystone.	Keystone will submit any modifications to the CMR Plan to the Commission and comply with any modifications to the CMR Plan.
14	Keystone shall incorporate environmental inspectors into its CMR Plan and obtain follow-up information reports from such inspections upon the completion of each construction spread to help ensure compliance with this Order and Permit and all other applicable permits, laws, and rules	Construction of the project has not been initiated. Keystone will utilize environmental inspectors and comply with this condition during the construction of the project.
15	Prior to construction, Keystone shall, in consultation with area NRCS staff, develop specific construction/reclamation units (Con/Rec Units) that are applicable to particular soil and subsoil classifications, land uses and environmental settings. The Con/Rec Units shall contain information of the sort described in response to Staff Data Request 3-25 found in Exhibit TC-16.	Keystone has completed the consultation with NRCS and has received the concurrence of the NRCS for Con/Rec Units to be utilized in South Dakota. Keystone will consult further with the NRCS should alterations to the Con/Rec Units be required.
15.a	In the development of the Con/Rec Units in areas where NRCS recommends, Keystone shall conduct analytical soil probing and/or soil boring and analysis in areas of particularly sensitive soils where reclamation potential is low. Records regarding this process shall be available to the Commission and to the specific land owner affected by such soils upon request	Keystone has completed analytical soil probing and/or soil boring and analysis in areas of particularly sensitive soils where reclamation potential is low. Records regarding the process are available to the Commission and to the specific land owner affected by such soil upon request.
15.b	Through development of the Con/Rec Units and consultation with NRCS, Keystone shall identify soils for which alternative handling methods are recommended.	Keystone has completed the analytical soil probing and/or boring in areas of sensitive soils following the NRCS recommendations.
15.b.1	Keystone shall thoroughly inform the landowner regarding the options applicable to their property, including their respective benefits and negatives, and implement whatever reasonable option for soil handling is selected by the landowner. Records regarding this process shall be available to the Commission upon request.	This is discussed with the landowners and itemized in the "Binding Agreement". These agreements are available to the Commission upon request.
15.c	Keystone shall, in consultation with NCRS, ensure that its construction planning and execution process, including Con/Rec Units, CMR Plan and its other construction documents and planning shall adequately identify and plan for areas susceptible to erosion, areas where sand dunes are present, areas with high concentrations of sodium bentonite, areas with sodic, saline and sodic-saline soils and any other areas with low reclamation potential	Keystone's construction planning and execution process consisted of consultation with the NRCS for identified areas susceptible to erosion, areas where sand dunes are present, areas with high concentration of sodium bentonite, areas with sodic, saline and sodic-saline soils and any other areas with low reclamation potential. The identified areas were addressed in the CON/REC Units, CMR Plan, and will be listed on construction alignment sheets.
15.d	The Con/Rec Units shall be available upon request to the Commission and affected landowners. Con/Rec Units may be evaluated by the Commission upon complaint or otherwise, regarding whether proper soil handling, damage mitigation or reclamation procedures are being followed.	Con/Rec Units will be available upon request to the Commission and affected landowners.

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
15.e	Areas of specific concern or of low reclamation potential shall be recorded in a separate database. Action taken at such locations and the results thereof shall also be recorded and made available to the Commission and the affected property owner upon request.	Areas of specific concern or of low reclamation potential will be recorded in a separate database. Action taken at such locations and the results thereof will be recorded and made available to the Commission and the affected property owner upon request.
16	Keystone shall provide each landowner with an explanation regarding trenching and topsoil and subsoil/rock removal, segregation and restoration method options for his/her property consistent with the applicable Con/Rec Unit and shall follow the landowner's selected preference as documented on its written construction agreement with the landowner, as modified by any subsequent amendments, or by other written agreement(s).	This is discussed with the landowners and itemized in the "Binding Agreement".
16.a	Keystone shall separate and segregate topsoil from subsoil in agricultural areas, including grasslands and shelter belts, as provided in the CMR Plan and the applicable Con/Rec Unit.	Keystone will separate and segregate topsoil from subsoil in agricultural areas, including grasslands and shelter belts, as provided in the CMR Plan and the applicable Con/Rec Unit.
16.b	Keystone shall repair any damage to property that results from construction activities	Keystone will address this during or following construction activities.
16.c	Keystone shall restore all areas disturbed by construction to their preconstruction condition, including their original preconstruction topsoil, vegetation, elevation, and contour, or as close thereto as is feasible, except as is otherwise agreed to by the landowner.	Keystone will address this during or following construction activities and will restore disturbed areas as close as feasible to their preconstruction conditions or as otherwise agreed to by the landowner.
16.d	Except where practicably infeasible, final grading and topsoil replacement and installation of permanent erosion control structures shall be completed in non-residential areas within 20 days after backfilling the trench.	Keystone will address this during construction.
16.d.1	In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Keystone's control prevent compliance with this time frame, temporary erosion controls shall be maintained until conditions allow completion of cleanup and reclamation.	Keystone will address this during construction.
16.d.2	In the event Keystone cannot comply with the 20-day time frame as provided in this Condition, it shall give notice of such fact to all affected landowners, and such notice shall include an estimate of when such restoration is expected to be completed.	Keystone will address this during construction.
16.e	Keystone shall draft specific crop monitoring protocols for agricultural lands.	Keystone is in the process of developing specific crop monitoring protocols for agricultural lands. These protocols will be finalized prior to the start of construction and implemented following construction.

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
16.e.1	If requested by the landowner, Keystone shall provide an independent crop monitor to conduct yield testing and/or such other measurements of productivity as he shall deem appropriate. The independent monitor shall be a qualified agronomist, rangeland specialist or otherwise qualified with respect to the species to be restored. The protocols shall be available to the Commission upon request and may be evaluated for adequacy in response to a complaint or otherwise.	If requested by the landowner, Keystone will provide an independent crop monitor and develop appropriate protocols, which will be available to the Commission upon request
16.f	Keystone shall work closely with landowners or land management agencies to determine a plan to control noxious weeds. Landowner permission shall be obtained before the application of herbicides.	Keystone has prepared a noxious weed control plan and provided a draft to the County Weed Boards for review and approval.
16.g	Keystone's adverse weather plan shall apply to improved hay land and pasture lands in addition to crop lands.	Keystone is in the process of developing an adverse weather plan and will include both improved hay lands and pasture lands in addition to crop lands.
16.h	The size, density and distribution of rock within the construction right-of-way following reclamation shall be similar to adjacent undisturbed areas.	Keystone will require the Contractor to remove excess rocks so that the size density and distribution of rock within the construction right-of-way is similar to the adjacent undisturbed areas.
16.h.1	Keystone shall treat rock that cannot be backfilled within or below the level of the natural rock profile as construction debris and remove it for disposal offsite except when the landowner agrees to the placement of the rock on his property. In such case, the rock shall be placed in accordance with the landowner's directions.	Keystone will require the Contractor to treat rock that cannot be backfilled within or below the level of the natural rock profile as construction debris and remove it for disposal offsite except when the landowner agrees to the placement of the rock on his property. In such case, the rock shall be placed in accordance with the landowner's directions and all Federal and State permits.
16.i	Keystone shall utilize the proposed trench line for its pipe stringing trucks where conditions allow and shall employ adequate measures to de-compact subsoil as provided in its CMR Plan. Topsoil shall be de-compacted if requested by the landowner.	Keystone will utilize the trench line for its pipe stringing trucks when site conditions allow and will employ adequate measures to de-compact subsoil as provided in its CMR Plan and in the specified CON/REC unit.
16.i.1	Topsoil shall be de-compacted if requested by the landowner.	Keystone will employ adequate measures to de-compact subsoil as provided in its CMR Plan and in the specified CON/REC unit, and will de-compact topsoil if requested by the landowner.
16.j	Keystone shall monitor and take appropriate mitigative actions as necessary to address salinity issues when dewatering the trench, and field conductivity and/or other appropriate constituent analyses shall be performed prior to disposal of trench water in areas where salinity may be expected.	Keystone will monitor and take appropriate actions as necessary to address salinity issues when dewatering the trench. Field conductivity and/or other appropriate constituent analyses will be performed prior to disposal of trench water in areas where salinity is expected.

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
16.j.1	Keystone shall notify landowners prior to any discharge of saline water on their lands or of any spills of hazardous materials on their lands of one pint or more or of any lesser volume which is required by any federal, state, or local law or regulation or product license or label to be reported to a state or federal agency, manufacturer, or manufacturer's representative.	Keystone will notify landowners prior to any discharge of saline water on private lands or of any spills of hazardous materials on private lands of one pint or more or of any lesser volume which is required by any federal, state, or local law or regulation or product license or label to be reported.
16.k	Keystone shall install trench and slope breakers where necessary in accordance with the CMR Plan as augmented by Staff's recommendations in Post Hearing Commission Staff Brief, pp. 26-27	Keystone will install trench and slope breakers where necessary in accordance with the CMR Plan and SDPUC recommendations.
16.l	Keystone shall apply mulch when reasonably requested by landowners and also wherever necessary following seeding to stabilize the soil surface and to reduce wind and water erosion. Keystone shall follow the other recommendations regarding mulch application in Post Hearing Commission Staff Brief, p. 27.	Keystone will apply mulch in accordance with the CMR Plan and the specific CON/REC units to stabilize the soil surface and to reduce wind and water erosion. Keystone will apply mulch at the landowners request when the request is reasonable and in accordance with site reclamation requirements. Keystone will follow the other recommendations regarding mulch application in Post Hearing Commission Staff Brief, p. 27.
16.m	Keystone shall reseed all lands with comparable crops to be approved by landowner in landowner's reasonable discretion, or in pasture, hay or native species areas with comparable grass or forage crop seed or native species mix to be approved by landowner in landowner's reasonable discretion.	Keystone has developed seed mixtures in consultation with the NRCS.
16.m.1	Keystone shall actively monitor revegetation of all disturbed areas for at least two years.	Keystone will monitor revegetation on all disturbed areas for at least two years.
16.n	Keystone shall coordinate with landowners regarding his/her desires to properly protect cattle, shall implement such protective measures as are reasonably requested by the landowner and shall adequately compensate the landowner for any loss.	Keystone will coordinate with landowners and implement reasonably requested protective measures during construction and adequately compensate landowners for any loss.
16.o	Prior to commencing construction, Keystone shall file with the Commission a confidential list of property owners crossed by the pipeline and update this list if route changes during construction result in property owner changes	Prior to commencing construction, Keystone will submit to the Commission a confidential list of property owners crossed by the pipeline and will update this list if route changes result in property owner changes during construction.
16.p	Except in areas where fire suppression resources as provided in CMR Plan 2.16 are in close proximity, to minimize fire risk, Keystone shall, and shall cause its contractor to, equip each of its vehicles used in pre-construction or construction activities, including off-road vehicles, with a hand held fire extinguisher, portable compact shovel and communication device such as a cell phone, in areas with coverage, or a radio capable of achieving prompt communication with Keystone's fire suppression resources and emergency services.	Keystone will address compliance with this condition with Contractor prior to the commencement of construction on the right-of-way. Each vehicle that is subject to this condition will be equipped with fire extinguisher, portable compact shovel, and proper communications devices.

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
17	Keystone shall cover open-bodied dump trucks carrying sand or soil while on paved roads and cover open-bodied dump trucks carrying gravel or other materials having the potential to be expelled onto other vehicles or persons while on all public roads.	Keystone will address this with the Contractor. Contractor vehicles carrying sand, soil, or gravel while traveling on paved public roads shall be covered to avoid the potential of expelling the material onto other vehicles or persons.
18	Keystone shall use its best efforts to not locate fuel storage facilities within 200 feet of private wells and 400 feet of municipal wells and shall minimize and exercise vigilance in refueling activities in areas within 200 feet of private wells and 400 feet of municipal wells.	Keystone will address this in the pre-construction planning. Fuel storage tanks and refueling activities shall follow the requirements set forth in the CMRP and Spill Prevention and Containment Plan.
19	If trees are to be removed that have commercial or other value to affected landowners, Keystone shall compensate the landowner for the fair market value of the trees to be cleared and/or allow the landowner the right to retain ownership of the felled trees.	Keystone will comply with this condition during the easement acquisition process.
19.a	Except as the landowner shall otherwise agree in writing, the width of the clear cuts through any windbreaks and shelterbelts shall be limited to 50 feet or less, and the width of clear cuts through extended lengths of wooded areas shall be limited to 85 feet or less. The environmental inspection in Condition 14 shall include forested lands.	Keystone will comply with this condition prior to or during construction.
20.	Keystone shall implement the following sediment control practices: a) Keystone shall use floating sediment curtains to maintain sediments within the construction right of way in open water bodies with no or low flow when the depth of non-flowing water exceeds the height of straw bales or silt fence installation. In such situations the floating sediment curtains shall be installed as a substitute for straw bales or silt fence along the edge or edges of each side of the construction right-of-way that is underwater at a depth greater than the top of a straw bale or silt fence as portrayed in Keystone's construction Detail #11 included in the CMR Plan. b) Keystone shall install sediment barriers in the vicinity of delineated wetlands and water bodies as outlined in the CMR Plan regardless of the presence of flowing or standing water at the time of construction. c) The Applicant should consult with South Dakota Game, Fish and Parks (SDGFP) to avoid construction near water bodies during fish spawning periods in which in-stream construction activities should be avoided to limit impacts on specific fisheries, if any, with commercial or recreational importance.	Keystone will comply with parts (a) and (b) of this condition during construction. Keystone will consult with SDGFP regarding spawning periods. The current construction schedule will avoid impacts to streams during the spawning season.
21	Keystone shall develop frac-out plans specific to areas in South Dakota where horizontal directional drilling will occur. The plan shall be followed in the event of a frac-out.	Keystone has developed a draft frac-out plan and HDD plan in South Dakota. The plan will be finalized with the input from the Contractor. The plan will be followed in the event of a frac-out.

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
21.a	If a frac-out event occurs, Keystone shall promptly file a report of the incident with the Commission. Keystone shall also, after execution of the plan, provide a follow-up report to the Commission regarding the results of the occurrence and any lingering concerns.	Keystone will comply with this section in the event of a frac-out.
22.	<p>Keystone shall comply with the following conditions regarding construction across or near wetlands, water bodies and riparian areas:</p> <p>a) Unless a wetland is actively cultivated or rotated cropland or unless site specific conditions require utilization of Keystone's proposed 85 foot width and the landowner has agreed to such greater width, the width of the construction right-of-way shall be limited to 75 feet in non-cultivated wetlands unless a different width is approved or required by the United States Army Corps of Engineers.</p> <p>b) Unless a wetland is actively cultivated or rotated cropland, extra work areas shall be located at least 50 feet away from wetland boundaries except where site-specific conditions render a 50-foot setback infeasible. Extra work areas near water bodies shall be located at least 50 feet from the water's edge, except where the adjacent upland consists of actively cultivated or rotated cropland or other disturbed land or where site-specific conditions render a 50-foot setback infeasible. Clearing of vegetation between extra work space areas and the water's edge shall be limited to the construction right-of-way.</p> <p>c) Water body crossing spoil, including upland spoil from crossings of streams up to 30 feet in width, shall be stored in the construction right of way at least 10 feet from the water's edge or in additional extra work areas and only on a temporary basis.</p> <p>d) Temporary in-stream spoil storage in streams greater than 30 feet in width shall only be conducted in conformity with any required federal permit(s) and any applicable federal or state statutes, rules and standards.</p> <p>e) Wetland and water body boundaries and buffers shall be marked and maintained until ground disturbing activities are complete. Keystone shall maintain 15-foot buffers where practicable, which for stream crossings shall be maintained except during the period of trenching, pipe laying and backfilling the crossing point. Buffers shall not be required in the case of non-flowing streams.</p> <p>f) Best management practices shall be implemented to prevent heavily silt-laden trench water from reaching any wetland or water body directly or indirectly.</p> <p>g) Erosion control fabric shall be used on water body banks immediately following final stream bank restoration unless riprap or other bank stabilization methods are utilized in accordance with federal or state permits.</p> <p>h) The use of timber and slash to support equipment crossings of wetlands shall be avoided.</p>	Keystone will comply with all ROW widths, setbacks, and BMPS as detailed by the Commission. Keystone is identifying the appropriate locations for these conditions at or near wetlands, water bodies and riparian areas during the pre-construction process and will identify the ROW widths and setbacks on the construction drawings. BMPs will be installed as detailed in the CMRP.

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
	<p>i) Subject to Conditions 37 and 38, vegetation restoration and maintenance adjacent to water bodies shall be conducted in such manner to allow a riparian strip at least 25 feet wide as measured from the water body's mean high water mark to permanently re-vegetate with native plant species across the entire construction right-of-way.</p>	
<p>23.</p>	<p>Keystone shall comply with the following conditions regarding road protection and bonding:</p> <p>a. Keystone shall coordinate road closures with state and local governments and emergency responders and shall acquire all necessary permits authorizing crossing and construction use of county and township roads.</p> <p>b) Keystone shall implement a regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the general public.</p> <p>c) Prior to their use for construction, Keystone shall videotape those portions of all roads which will be utilized by construction equipment or transport vehicles in order to document the pre-construction condition of such roads.</p> <p>d) After construction, Keystone shall repair and restore, or compensate governmental entities for the repair and restoration of, any deterioration caused by construction traffic, such that the roads are returned to at least their preconstruction condition.</p> <p>e) Keystone shall use appropriate preventative measures as needed to prevent damage to paved roads and to remove excess soil or mud from such roadways.</p> <p>f) Pursuant to SDCL 49-418-38, Keystone shall obtain and file for approval by the Commission prior to construction in such year a bond in the amount of \$15.6 million for the year in which construction is to commence and a second bond in the amount of \$15.6 million for the ensuing year, including any additional period until construction and repair has been completed, to ensure that any damage beyond normal wear to public roads, highways, bridges or other related facilities will be adequately restored or compensated. Such bonds shall be issued in favor of, and for the benefit of, all such townships, counties, and other governmental entities whose property is crossed by the Project. Each bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Either at the contact meetings required by Condition 10 or by mail, Keystone shall give notice of the existence and amount of these bonds to all counties, townships and other governmental entities whose property is crossed by the Project.</p>	<p>During the pre-construction planning period Keystone will develop and implement videotaping of road conditions prior to construction activities. Keystone, Contractor, and County Representatives will be present for evaluation and determination of road conditions.</p> <p>Keystone will notify state and local governments and emergency responders to coordinate and implement road closures. All necessary permits authorizing crossing and construction use of county and township roads will be obtained.</p> <p>Keystone will file the necessary bond prior to construction.</p>

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
24	<p>Although no residential property is expected to be encountered in connection with the Project, in the event that such properties are affected and due to the nature of residential property, Keystone shall implement the following protections in addition to those set forth in its CMR Plan in areas where the Project passes within 500 feet of a residence:</p> <p>a) To the extent feasible, Keystone shall coordinate construction work schedules with affected residential landowners prior to the start of construction in the area of the residences.</p> <p>b) Keystone shall maintain access to all residences at all times, except for periods when it is infeasible to do so or except as otherwise agreed between Keystone and the occupant. Such periods shall be restricted to the minimum duration possible and shall be coordinated with affected residential landowners and occupants, to the extent possible.</p> <p>c) Keystone shall install temporary safety fencing, when reasonably requested by the landowner or occupant, to control access and minimize hazards associated with an open trench and heavy equipment in a residential area.</p> <p>d) Keystone shall notify affected residents in advance of any scheduled disruption of utilities and limit the duration of such disruption.</p> <p>e) Keystone shall repair any damage to property that results from construction activities.</p> <p>f) Keystone shall separate topsoil from subsoil and restore all areas disturbed by construction to at least their preconstruction condition.</p> <p>g) Except where practicably infeasible, final grading and topsoil replacement, installation of permanent erosion control structures and repair of fencing and other structures shall be completed in residential areas within 10 days after backfilling the trench. In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Keystone's control prevent compliance with this time frame, temporary erosion controls and appropriate mitigative measures shall be maintained until conditions allow completion of cleanup and reclamation.</p>	<p>In the event that Keystone constructs within 500 feet of a residence, it will implement these protective measures and those set forth in the CMR Plan.</p>
25	<p>Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken. At least two months prior to the start of construction in South Dakota, Keystone shall file with the Commission an adverse weather land protection plan containing appropriate adverse weather land protection measures, the conditions in which such measures may be appropriately used, and conditions in which no construction is appropriate, for approval of or modification by the Commission prior to the start of construction. The Commission shall make such plan available to impacted landowners who may provide comment on such plan to the Commission</p>	<p>Keystone is preparing this adverse weather land protection plan and will submit it to the Commission after the plan has been completed but at least 2 months prior to start of construction in South Dakota.</p>

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
26	Reclamation and clean-up along the right-of-way must be continuous and coordinated with ongoing construction.	Keystone will implement this requirement during construction of the project.
27	All pre-existing roads and lanes used during construction must be restored to at least their pre-construction condition that will accommodate their previous use, and areas used as temporary roads during construction must be restored to their original condition, except as otherwise requested or agreed to by the landowner or any governmental authority having jurisdiction over such roadway	Keystone is coordinating with county and state road authorities during the pre-construction planning phase. Pre-construction conditions will be documented and pre-existing roads will be restored to pre-construction condition following construction. Keystone will comply with the condition with respect to temporary roads after construction.
28	Keystone shall, prior to any construction, file with the Commission a list identifying private and new access roads that will be used or required during construction and file a description of methods used by Keystone to reclaim those access roads.	The list of private and new access roads that are being planned for use on the Project is being developed. This list of roads, including the reclamation methods that will be implemented will be provided to the Commission prior to construction.
29	Prior to construction, Keystone shall have in place a winterization plan and shall implement the plan if winter conditions prevent reclamation completion until spring. The plan shall be provided to affected landowners and, upon request, to the Commission.	Keystone will develop and submit to the Commission a winterization plan which addresses these factors.
30	Numerous Conditions of this Order, including but not limited to 16, 19, 24, 25, 26, 27 and 51 relate to construction and its effects upon affected landowners and their property. The Applicant may encounter physical conditions along the route during construction which makes compliance with certain of these Conditions infeasible. If, after providing a copy of this order, including the Conditions, to the landowner, the Applicant and landowner agree in writing to modifications of one or more requirements specified in these conditions, such as maximum clearances or right-of-way widths, Keystone may follow the alternative procedures and specifications agreed to between it and the landowner.	Keystone will comply with this condition and through negotiations with the landowner and any such modifications shall be agreed upon in writing. Note: Through the SDPUC liaison, Keystone has validated a typo in this condition with John Smith, the SDPUC General Counsel. The typo occurs in the first sentence and is a reference Condition 51, which does not exist. This should actually reference Condition 45.
31	Keystone shall construct and operate the pipeline in the manner described in the application and at the hearing, including in Keystone's exhibits, and in accordance with the conditions of this permit, the PHMSA Special Permit, if issued, and the conditions of this Order and the construction permit granted herein	Keystone will comply with this condition during construction and operation of the pipeline. Keystone XL has withdrawn its application to PHMSA for a Special Permit, subject to its right to apply for a Special Permit at a later time.
32	Keystone shall require compliance by its shippers with its crude oil specifications in order to minimize the potential for internal corrosion.	Keystone will require compliance by its shippers with its crude oil tariff specifications.

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
33	Keystone's obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the pipeline.	Keystone will monitor the right-of-way conditions throughout the life of the pipeline.
33.a	In its surveillance and maintenance activities, Keystone shall, and shall cause its contractor to, equip each of its vehicles, including off-road vehicles, with a hand held fire extinguisher, portable compact shovel and communication device such as a cell phone, in areas with coverage, or a radio capable of achieving prompt communication with emergency services.	Keystone will require all Operators to maintain the required equipment in all vehicles on the right-of-way during surveillance and maintenance activities.
34	In accordance with 49 C.F.R. 195, Keystone shall continue to evaluate and perform assessment activities regarding high consequence areas.	Keystone will identify and assess high consequence areas in accordance with 49 C.F.R. 195.
34.a	Prior to Keystone commencing operation, all unusually sensitive areas as defined by 49 CFR 195.6 that may exist, whether currently marked on DOT's HCA maps or not, should be identified and added to the Emergency Response Plan and Integrity Management Plan	Keystone will identify HCA's as defined at 49 CFR 195.6 and add them to the Emergency Response Plan and Integrity Management Plan.
34.b	In its continuing assessment and evaluation of environmentally sensitive and high consequence areas, Keystone shall seek out and consider local knowledge, including the knowledge of the South Dakota Geological Survey, the Department of Game Fish and Parks and local landowners and governmental officials.	Keystone has conducted numerous consultations with South Dakota state agencies, local agencies and landowners and essentially concluded the assessment and evaluation of environmentally sensitive and high consequence areas and has concurrence from stakeholders related to construction and restoration plans within these areas. If new or different information on environmentally sensitive and high consequence areas becomes available, Keystone will assess that information.
35	The evidence in the record demonstrates that in some reaches of the Project in southern Tripp County, the High Plains Aquifer is present at or very near ground surface and is overlain by highly permeable sands permitting the uninhibited infiltration of contaminants. This aquifer serves as the water source for several domestic farm wells near the pipeline as well as public water supply system wells located at some distance and upgradient from the pipeline route. Keystone shall identify the High Plains Aquifer area in southern Tripp County as a hydrologically sensitive area in its Integrity Management and Emergency Response Plans. Keystone shall similarly treat any other similarly vulnerable and beneficially useful surficial aquifers of which it becomes aware during construction and continuing route evaluation	Keystone will identify the High Plains Aquifer area in southern Tripp County and any other similarly vulnerable and beneficially useful surficial aquifers as a hydrologically sensitive area in its Integrity Management and Emergency Response Plans.

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
36	<p>Prior to putting the Keystone Pipeline into operation, Keystone shall prepare, file with PHMSA and implement an emergency response plan as required under 49 CFR 194 and a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies as required under 49 CFR 195.402. Keystone shall also prepare and implement a written integrity management program in the manner and at such time as required under 49 CFR 195.452. At such time as Keystone files its Emergency Response Plan and Integrity Management Plan with PHMSA or any other state or federal agency, it shall also file such documents with the Commission. The Commission's confidential filing rules found at ARSD 20:10:01:41 may be invoked by Keystone with respect to such filings to the same extent as with all other filings at the Commission. If information is filed as "confidential," any person desiring access to such materials or the Staff or the Commission may invoke the procedures of ARSD 20:10:01 :41 through 20: 10:01 :43 to determine whether such information is entitled to confidential treatment and what protective provisions are appropriate for limited release of information found to be entitled to confidential treatment.</p>	<p>Keystone will file its Emergency Response Plan and Integrity Management Plan with the Commission upon filing with PHMSA and will invoke the Commission's confidential filing rules.</p>
37	<p>To facilitate periodic pipeline leak surveys during operation of the facilities in wetland areas, a corridor centered on the pipeline and up to 15 feet wide shall be maintained in an herbaceous state. Trees within 15 feet of the pipeline greater than 15 feet in height may be selectively cut and removed from the permanent right-of-way.</p>	<p>Keystone will maintain a corridor centered on the pipeline and up to 15 feet wide in an herbaceous state to facilitate periodic pipeline leak surveys during operation of the facilities in wetland areas.</p>
38	<p>To facilitate periodic pipeline leak surveys in riparian areas, a corridor centered on the pipeline and up to 10 feet wide shall be maintained in an herbaceous state.</p>	<p>Keystone will maintain a corridor centered on the pipeline and up to 10 feet wide in an herbaceous state to facilitate periodic pipeline leak surveys during operation of the facilities in riparian areas.</p>
39	<p>Except to the extent waived by the owner or lessee in writing or to the extent the noise levels already exceed such standard, the noise levels associated with Keystone's pump stations and other noise-producing facilities will not exceed the L 1 0=55dbA standard at the nearest occupied, existing residence, office, hotel/motel or non-industrial business not owned by Keystone. The point of measurement will be within 100 feet of the residence or business in the direction of the pump station or facility. Post-construction operational noise assessments will be completed by an independent third-party noise consultant, approved by the Commission, to show compliance with the noise level at each pump station or other noise-producing facility. The noise assessments will be performed in accordance with applicable American National Standards Institute standards. The results of the assessments will be filed with the Commission. In the event that the noise level exceeds the limit set forth in this condition at any pump station or other noise producing facility, Keystone shall promptly implement noise mitigation measures to bring the facility into compliance with the limits set forth in this condition and shall report to the Commission concerning the measures taken and the results of post-mitigation assessments demonstrating that the noise limits have been met.</p>	<p>Keystone will design pump stations and other noise-producing facilities so that noise will not exceed the L 1 0 = 55dbA standard at the nearest occupied receptor (existing residence, office, hotel/motel or non-industrial business not owned by Keystone). Keystone will utilize a third-party noise consultant, approved by the Commission, to show post-construction compliance with the noise level at each pump station or other noise-producing facility and will file the assessments with the Commission.</p>

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
40	At the request of any landowner or public water supply system that offers to provide the necessary access to Keystone over his/her property or easement(s) to perform the necessary work, Keystone shall replace at no cost to such landowner or public water supply system, any polyethylene water piping located within 500 feet of the Project with piping that is resistant to permeation by BTEX.	Keystone will replace polyethylene water piping located within 500 feet of the Project with piping that is resistant to permeation by BTEX when requested and provided access by the landowner or a public water supply system.
40.a	Keystone shall publish a notice in each newspaper of general circulation in each county through which the Project will be constructed advising landowners and public water supply systems of this condition.	Keystone will publish a notice in each newspaper of general circulation in each county through which the Project will be constructed advising landowners and public water supply systems of condition 40.
41	Keystone shall follow all protection and mitigation efforts as identified by the U.S. Fish and Wildlife Service ("USFWS") and SDGFP	Keystone is currently involved in consultation with the USFWS and SDGFP and will follow protection and mitigation efforts agreed to during consultation with the agencies.
41.a	Keystone shall identify all greater prairie chicken and greater sage and sharp-tailed grouse leks within the buffer distances from the construction right of way set forth for the species in the FE IS and Biological Assessment (BA) prepared by DOS and USFWS	Keystone is involved in consultations with SDGFP to identify greater prairie chicken and greater sage and sharp-tailed grouse leks and to develop construction mitigation plans for each species.
41.b	In accordance with commitments in the FEIS and BA, Keystone shall avoid or restrict construction activities as specified by USFWS within such buffer zones between March 1 and June 15 and for other species as specified by USFW and SDGFP.	Keystone will address this requirement during pre-construction planning efforts.
42	Keystone shall keep a record of drain tile system information throughout planning and construction, including pre-construction location of drain tiles. Location information shall be collected using a sub-meter accuracy global positioning system where available or, where not available by accurately documenting the pipeline station numbers of each exposed drain tile.	Records will be kept of drain tile system information.
42.a	Keystone shall maintain the drain tile location information and tile specifications and incorporate it into its Emergency Response and Integrity Management Plans where drains might be expected to serve as contaminant conduits in the event of a release.	Keystone will maintain the drain tile location information and tile specifications and incorporate it into its Emergency Response and Integrity Management Plans where drains might be expected to serve as contaminant conduits in the event of a release.
42.b	If drain tile relocation is necessary, the applicant shall work directly with landowner to determine proper location.	Keystone will work directly with landowner to determine proper location should drain tile relocation be necessary.

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
42.c	The location of permanent drain tiles shall be noted on as-built maps. Qualified drain tile contractors shall be employed to repair drain tiles.	Keystone will identify the location of permanent drain tiles on as-built maps. Keystone will employ qualified drain tile contractors to repair drain tiles impacted by the project.
43	Keystone shall follow the "Unanticipated Discoveries Plan," as reviewed by the State Historical Preservation Office ("SHPO") and approved by the DOS and provide it to the Commission upon request. Ex TC-1.6.4, pp. 94-96; Ex S-3.	Keystone will comply with the "Unanticipated Discoveries Plan," as reviewed by the State Historical Preservation Office ("SHPO") and approved by the DOS and will provide the plan to the Commission upon request.
43.a	If during construction, Keystone or its agents discover what may be an archaeological resource, cultural resource, historical resource or gravesite, Keystone or its contractors or agents shall immediately cease work at that portion of the site and notify the DOS, the affected landowner(s) and the SHPO.	Keystone will comply with this condition during construction.
43.b	If the DOS and SHPO determine that a significant resource is present, Keystone shall develop a plan that is approved by the DOS and commenting/signatory parties to the Programmatic Agreement to salvage avoid or protect the archaeological resource.	Keystone will develop a treatment plan that is approved by the DOS and commenting/signatory parties to the Programmatic Agreement to salvage, avoid, or protect an archaeological resource that DOS and SHPO determine as significant.
43.c	If such a plan will require a materially different route than that approved by the Commission, Keystone shall obtain Commission and landowner approval for the new route before proceeding with any further construction.	Keystone will obtain approval from the Commission and affected landowner(s) for any materially different route that may be required as a result of unanticipated discoveries prior to further construction.
43.d	Keystone shall be responsible for any costs that the landowner is legally obligated to incur as a consequence of the disturbance of a protected cultural resource as a result of Keystone's construction or maintenance activities.	Keystone will be responsible for costs that the landowner is legally obligated to incur as a consequence of the disturbance of a protected cultural resource as a result of Keystone's construction or maintenance activities.
44.a	Prior to commencing construction, Keystone shall conduct a literature review and records search, and consult with the BLM and Museum of Geology at the S.D. School of Mines and Technology ("SDSMT") to identify known fossil sites along the pipeline route and identify locations of surface exposures of paleontologically sensitive rock formations using the BLM's Potential Fossil Yield Classification system.	Keystone is currently completing consultations with the BLM and Museum of Geology at the S.D. School of Mines and Technology ("SDSMT") to identify known fossil sites along the pipeline route and identify locations of surface exposures of paleontologically sensitive rock formations using the BLM's Potential Fossil Yield Classification system.
44.a.1	Any area where trenching will occur into the Hell Creek Formation shall be considered a high probability area.	Keystone has identified locations along the pipeline route where trenching will occur into the Hell Creek Formation and has identified these locations as areas of high probability to yield fossils.

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
44.b	<p>Keystone shall at its expense conduct a pre-construction field survey of each area identified by such review and consultation as a known site or high probability area within the construction ROW. Following BLM guidelines as modified by the provisions of Condition 44, including the use of BLM permitted paleontologists, areas with exposures of high sensitivity (PFYC Class 4) and very high sensitivity (PFYC Class 5) rock formations shall be subject to a 100% pedestrian field survey, while areas with exposures of moderately sensitive rock formations (PFYC Class 3) shall be spot-checked for occurrences of scientifically or economically significant surface fossils and evidence of subsurface fossils. Scientifically or economically significant surface fossils shall be avoided by the Project or mitigated by collecting them if avoidance is not feasible. Following BLM guidelines for the assessment and mitigation of paleontological resources, scientifically significant paleontological resources are defined as rare vertebrate fossils that are identifiable to taxon and element, and common vertebrate fossils that are identifiable to taxon and element and that have scientific research value; and scientifically noteworthy occurrences of invertebrate, plant and trace fossils. Fossil localities are defined as the geographic and stratigraphic locations at which fossils are found</p>	<p>Keystone has conducting pre-construction field surveys of each area identified as high probability to yield fossils within the construction ROW. Keystone is conducting pedestrian field surveys of 100% of areas with exposures of high sensitivity (PFYC Class 4) and very high sensitivity (PFYC Class 5) rock formations utilizing the BLM guidelines as modified by the provisions of Condition 44, including the use of BLM permitted paleontologists. Additionally, Keystone is spot-checking areas of moderately sensitive rock formations (PFYC Class 3). Keystone will avoid scientifically or economically significant surface fossils or will mitigate by collecting them if avoidance is not feasible.</p>
44.c	<p>Following the completion of field surveys, Keystone shall prepare and file with the Commission a paleontological resource mitigation plan. The mitigation plan shall specify monitoring locations, and include BLM permitted monitors and proper employee and contractor training to identify any paleontological resources discovered during construction and the procedures to be followed following such discovery. Paleontological monitoring will take place in areas within the construction ROW that are underlain by rock formations with high sensitivity (PFYC Class 4) and very high sensitivity (PFYC Class 5), and in areas underlain by rock formations with moderate sensitivity (PFYC Class 3) where significant fossils were identified during field surveys.</p>	<p>Keystone will prepare and file with the Commission a paleontological resource mitigation plan upon completion of survey.</p>

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
44.d	<p>If during construction, Keystone or its agents discover what may be a paleontological resource of economic significance, or of scientific significance, as defined in subparagraph (b) above, Keystone or its contractors or agents shall immediately cease work at that portion of the site and, if on private land, notify the affected landowner(s). Upon such a discovery, Keystone's paleontological monitor will evaluate whether the discovery is of economic significance, or of scientific significance as defined in subparagraph (b) above. If an economically or scientifically significant paleontological resource is discovered on state land, Keystone will notify SDSMT and if on federal land, Keystone will notify the BLM or other federal agency. In no case shall Keystone return any excavated fossils to the trench. If a qualified and BLM-permitted paleontologist, in consultation with the landowner, BLM, or SDSMT determines that an economically or scientifically significant paleontological resource is present, Keystone shall develop a plan that is reasonably acceptable to the landowner(s), BLM, or SDSMT, as applicable, to accommodate the salvage or avoidance of the paleontological resource to protect or mitigate damage to the resource. The responsibility for conducting such measures and paying the costs associated with such measures, whether on private, state or federal land, shall be borne by Keystone to the same extent that such responsibility and costs would be required to borne by Keystone on BLM managed lands pursuant to BLM regulations and guidelines, including the BLM Guidelines for Assessment and Mitigation of Potential Impacts to Paleontological Resources, except to the extent factually inappropriate to the situation in the case of private land (e.g. museum curation costs would not be paid by Keystone in situations where possession of the recovered fossil(s) was turned over to the landowner as opposed to curation for the public). If such a plan will require a materially different route than that approved by the Commission, Keystone shall obtain Commission approval for the new route before proceeding with any further construction. Keystone shall, upon discovery and salvage of paleontological resources either during pre-construction surveys or construction and monitoring on private land, return any fossils in its possession to the landowner of record of the land on which the fossil is found. If on state land, the fossils and all associated data and documentation will be transferred to the SDSM; if on federal land, to the BLM.</p>	<p>Keystone will comply with this condition during construction.</p>
44.e	<p>To the extent that Keystone or its contractors or agents have control over access to such information, Keystone shall, and shall require its contractors and agents to, treat the locations of sensitive and valuable resources as confidential and limit public access to this information.</p>	<p>To the extent that Keystone or its contractors or agents have control over access to such information, Keystone will, and will require its contractors and agents to treat the locations of sensitive and valuable resources as confidential and limit public access to this information.</p>

NO.	CONDITION	STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS
45	Keystone shall repair or replace all property removed or damaged during all phases of construction and operation of the proposed transmission facility, including but not limited to, all fences, gates and utility, water supply, irrigation or drainage systems.	Keystone will repair or replace all property removed or damaged during all phases of construction and operation of the proposed transmission facility.
45.a	Keystone shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses or loss of value to a paleontological resource damaged by construction or other activities.	Keystone will compensate the owners for damages or losses that result from construction and operation of the proposed transmission facility and cannot be fully remedied by repair or replacement.
46	In the event that a person's well is contaminated as a result of construction or pipeline operation, Keystone shall pay all costs associated with finding and providing a permanent water supply that is at least of similar quality and quantity; and any other related damages, including but not limited to any consequences, medical or otherwise, related to water contamination.	Keystone will pay all costs associated with finding and providing a permanent water supply that is at least of similar quality and quantity and any other related damages related to water contamination in the event that a well is contaminated as a result of construction or pipeline operation.
47	Any damage that occurs as a result of soil disturbance on a persons' property shall be paid for by Keystone	Keystone will compensate for damage that occurs as a result of soil disturbance on a persons' property caused by construction and operation of the Project.
48	No person will be held responsible for a pipeline leak that occurs as a result of his/her normal farming practices over the top of or near the pipeline	Keystone will not hold any person responsible for a pipeline leak that occurs as a result of normal farming practices.
49	Keystone shall pay commercially reasonable costs and indemnify and hold the landowner harmless for any loss, damage, claim or action resulting from Keystone's use of the easement, including any resulting from any release of regulated substances or from abandonment of the facility, except to the extent such loss, damage claim or action results from the gross negligence or willful misconduct of the landowner or its agents.	Keystone will pay commercially reasonable costs and indemnify and hold the landowner harmless for any loss, damage, claim or action resulting from Keystone's use of the easement, including any resulting from any release of regulated substances or from abandonment of the facility, except to the extent such loss, damage claim or action results from the gross negligence or willful misconduct of the landowner or its agents.
50	The Commission's complaint process as set forth in ARSD 20:10:01 shall be available to landowners, other persons sustaining or threatened with damage or the consequences of Keystone's failure to abide by the conditions of this permit or otherwise having standing to obtain enforcement of the conditions of this Order and Permit.	The Commission's complaint process as set forth in ARSD 20:10:01 shall be available to landowners, other persons sustaining or threatened with damage or the consequences of Keystone's failure to abide by the conditions of this permit or otherwise having standing to obtain enforcement of the conditions of this Order and Permit.

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14	The purpose of the Project is to transport incremental crude oil production from the Western Canadian Sedimentary Basin ("WCSB") to meet growing demand by refineries and markets in the United States ("U.S."). This supply will serve to replace U.S. reliance on less stable and less reliable sources of offshore crude oil. Ex TC-1, 1.1, p. 1; Ex TC-1, 3.0 p. 23; Ex TC-1, 3.4 p. 24.	The purpose of the Project is to transport incremental crude oil production from the Western Canadian Sedimentary Basin ("WCSB") and domestic production from the Williston Basin area to meet demand by refineries and markets in the United States ("U.S."). This supply will serve to replace U.S. reliance on less stable and less reliable sources of offshore crude oil and support the growth of crude oil production in the U.S. (See updated Findings 24-29)
15	The Project will consist of three segments: the Steele City Segment, the Gulf Coast Segment, and the Houston Lateral. From north to south, the Steele City Segment extends from Hardisty, Alberta, Canada, southeast to Steele City, Nebraska. The Gulf Coast Segment extends from Cushing, Oklahoma south to Nederland, in Jefferson County, Texas. The Houston Lateral extends from the Gulf Coast Segment in Liberty County, Texas southwest to Moore Junction, Harris County, Texas. It will interconnect with the northern and southern termini of the previously approved 298-mile-long, 36-inch-diameter Keystone Cushing Extension segment of the Keystone Pipeline Project. Ex TC-1, 1.2, p. 1. Initially, the pipeline would have a nominal capacity to transport 700,000 barrels per day ("bpd"). Keystone could add additional pumping capacity to expand the nominal capacity to 900,000 bpd. Ex TC-1, 2.1.2, p. 8.	The Project will consist of the Steele City Segment. From north to south, the Steele City Segment extends from Hardisty, Alberta, Canada, southeast to Steele City, Nebraska. It will interconnect with the previously approved and constructed 298-mile-long, 36-inch-diameter Keystone Cushing Extension segment of the Keystone Pipeline System allowing crude oil to be delivered to Gulf Coast Refineries. The pipeline would have a maximum capacity to transport 830,000 barrels per day.
16	The Project is an approximately 1,707 mile pipeline with about 1,380, miles in the United States. The South Dakota portion of the pipeline will be approximately 314 miles in length and will extend from the Montana border in Harding County to the Nebraska border in Tripp County. The Project is proposed to cross the South Dakota counties of Harding, Butte, Perkins, Meade, Pennington, Haakon, Jones, Lyman and Tripp. Ex TC-1, 1.2 and 2.1.1, pp. 1 and 8. Detailed route maps are presented in Ex TC-1, Exhibits A and C, as updated in Ex TC-14.	The Project is an approximately 1202 mile pipeline with about 876 miles in the United States. The South Dakota portion of the pipeline will be approximately 315 miles in length and will extend from the Montana border in Harding County to the Nebraska border in Tripp County. The Project is proposed to cross the South Dakota counties of Harding, Butte, Perkins, Meade, Pennington, Haakon, Jones, Lyman and Tripp.
17	Construction of the Project is proposed to commence in May of 2011 and be completed in 2012. Construction in South Dakota will be conducted in five spreads, generally proceeding in a north to south direction. The Applicant expects to place the Project in service in 2012. This in-service date is consistent with the requirements of the Applicant's shippers who have made the contractual commitments that underpin the viability and need for the project. Ex TC-1, 1.4, pp. 1 and 4; TR 26.	Construction of the Project is proposed to commence when all necessary permits are obtained. Construction in South Dakota will be conducted in three or four spreads, generally proceeding in a north to south direction. The Applicant expects to place the Project in service when construction is completed.
18	The pipeline in South Dakota will extend from milepost 282.5 to milepost 597, approximately 314 miles. The pipeline will have a 36-inch nominal diameter and be constructed using API 5L X70 or X80 high-strength steel. An external fusion bonded epoxy ("FBE") coating will be applied to the pipeline and all buried facilities to protect against corrosion. Cathodic protection will be provided by impressed current. The pipeline will have batching capabilities and will be able to transport products ranging from light crude oil to heavy crude oil. Ex TC-1, 2.2, 2.2.1, 6.5.2, pp. 8-9, 97-98; Ex TC-8, ¶ 26.	The pipeline in South Dakota will extend from milepost 285.6 to milepost 600.9, approximately 315 miles. The pipeline will have a 36-inch nominal diameter and be constructed using API 5L X70M high-strength steel. An external fusion bonded epoxy ("FBE") coating will be applied to the pipeline and all buried facilities to protect against corrosion. Cathodic protection will be provided by impressed current. The pipeline will have batching capabilities and will be able to transport products ranging from light crude oil to heavy crude oil.
19	The pipeline will operate at a maximum operating pressure of 1,440 psig. For location specific low elevation segments close to the discharge of pump stations, the maximum operating pressure will be 1,600 psig. Pipe associated with these segments of 1,600 psig MOP are excluded from the Special Permit application and will have a design factor of 0.72 and pipe wall thickness of 0.572 inch (X-70) or 0.500 inch (X-80). All other segments in South Dakota will have a MOP of 1,440 psig. Ex TC-1, 2.2.1, p. 9.	At most locations, the pipeline will operate at a maximum operating pressure of 1,307 psig. For location specific low elevation segments close to the discharge of pump stations, the maximum operating pressure will be 1,600 psig. Pipe associated with these segments of 1,600 psig MOP will have a design factor of 0.72 and a nominal pipe wall thickness of 0.572 inch (X-70M). All other segments in South Dakota will have a MOP of 1,307 psig.

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20	The Project will have seven pump stations in South Dakota, located in Harding (2), Meade, Haakon, Jones and Tripp (2) Counties. TC-1, 2.2.2, p. 10. The pump stations will be electrically driven. Power lines required for providing power to pump stations will be permitted and constructed by local power providers, not by Keystone. Initially, three pumps will be installed at each station to meet the nominal design flow rate of 700,000 bpd. If future demand warrants, pumps may be added to the proposed pump stations for a total of up to five pumps per station, increasing nominal throughput to 900,000 bpd. No additional pump stations will be required to be constructed for this additional throughput. No tank facilities will be constructed in South Dakota. Ex TC-1, 2.1.2, p.8. Sixteen mainline valves will be located in South Dakota. Seven of these valves will be remotely controlled, in order to have the capability to isolate sections of line rapidly in the event of an emergency to minimize impacts or for operational or maintenance reasons. Ex TC-1, 2.2.3, pp. 10- 11.	The Project will have seven pump stations in South Dakota, located in Harding (2), Meade, Haakon, Jones and Tripp (2) Counties. TC-1, 2.2.2, p. 10. The pump stations will be electrically driven. Power lines required for providing power to pump stations will be permitted and constructed by local power providers, not by Keystone. Three to five pumps will be installed at each station to meet the maximum design flow rate of 830,000 bpd. No tank facilities will be constructed in South Dakota. Twenty mainline valves will be located in South Dakota. All of these valves will be remotely controlled, in order to have the capability to isolate sections of line rapidly in the event of an emergency to minimize impacts or for operational or maintenance reasons.
22	The Project will be designed, constructed, tested, and operated in accordance with all applicable requirements, including the U.S. Department of Transportation, Pipeline Hazardous Materials and Safety Administration (PHMSA) regulations set forth at 49 CFR Part 195, as modified by the Special Permit requested for the Project from PHMSA (see Finding 71). These federal regulations are intended to ensure adequate protection for the public and the environment and to prevent crude oil pipeline accidents and failures. Ex TC-1, 2.2, p. 8.	The Project will be designed, constructed, tested, and operated in accordance with all applicable requirements, including the U.S. Department of Transportation, Pipeline Hazardous Materials and Safety Administration (PHMSA) regulations set forth at 49 CFR Part 195, and the special conditions developed by PHMSA and set forth in Appendix Z to the Department of State ("DOS") January 2014 Final Supplemental Environmental Impact Statement ("Final SEIS"). These federal regulations and additional conditions are intended to ensure adequate protection for the public and the environment and to prevent crude oil pipeline accidents and failures.
23	The current estimated cost of the Keystone Project in South Dakota is \$921.4 million. Ex TC-1, 1.3, p. 1.	The current estimated cost of the Keystone XL Project in South Dakota is \$1.974 billion. The estimated cost of the South Dakota portion of the project has primarily increased due to the new technical requirements (for example, the 59 additional conditions set forth in the DOS Final SEIS), and inflation and additional costs (for example, increased project management; regulatory; and material storage and preservation costs) due to the projected six-year delay in starting construction.
Demand for the Facility		
24	The transport of additional crude oil production from the WCSB is necessary to meet growing demand by refineries and markets in the U.S. The need for the project is dictated by a number of factors, including increasing WCSB crude oil supply combined with insufficient export pipeline capacity; increasing crude oil demand in the U.S. and decreasing domestic crude supply; the opportunity to reduce U.S. dependence on foreign off-shore oil through increased access to stable, secure Canadian crude oil supplies; and binding shipper commitments to utilize the Keystone Pipeline Project. Ex TC-1, 3.0, p. 23.	The June 29, 2010 order recites Findings of Fact demonstrating the strong demand for the Project. Given the dynamic nature of the crude oil market, there have been changes in the nature of this demand since 2010. As demonstrated below, however market demand for the Project remains strong today. The transport of additional crude oil production from the WCSB continues to be necessary to meet demand by refineries and markets in the U.S. The need for the project is driven by a number of factors, including increasing domestic U.S. and Canadian, crude oil production combined with insufficient pipeline capacity; an energy efficient and safe method to transport this growing production; the opportunity to reduce U.S. dependence on foreign offshore crude oil through increased access to North American supplies; and binding shipper commitments to utilize the Keystone Pipeline System.
25	According to the U.S. Energy Information Administration ("EIA"), U.S. demand for petroleum products has increased by over 11 percent or 2,000,000 bpd over the past 10 years and is expected to increase further. The EIA estimates that total U.S. petroleum consumption will increase by approximately 10 million bpd over the next 10 years, representing average demand growth of about 100,000 bpd per year (EIA Annual Energy Outlook 2008). Ex TC-1, 3.2, pp. 23-24.	United States production of crude oil has increased significantly, from approximately 6.5 million barrels per day (bpd) in 2012, and is expected to peak at 9.6 million bpd by 2019. However, even with the domestic production growth, the U.S. is expected to remain a net importer of crude oil. According to the U.S. Energy Information Administration ("EIA"), U.S. demand for crude oil has held steady at approximately 15 million bpd and is expected to remain relatively stable into the future.
26	At the same time, domestic U.S. crude oil supplies continue to decline. For example, over the past 10 years, domestic crude production in the United States has declined at an average rate of about 135,000 bpd per year, or 2% per year. Ex TC-1, 3.3, p. 24. Crude and refined petroleum product imports into the U.S. have increased by over 3.3 million bpd over the past 10 years. In 2007, the U.S. imported over 13.4 million bpd of crude oil and petroleum products or over 60 percent of total U.S. petroleum product	The rise in U.S. crude oil production, predominantly light crude, has replaced most foreign imports of light crude. However the demand persists for imported heavy crude oil by U.S. refineries that are optimally configured to process heavy crude slates. ² The U.S. Gulf Coast continues to import approximately 3.5 million bpd of heavy and medium sour crude oil. ³

¹ Energy Information Administration (EIA) Annual Energy Outlook 2014

² Id.

³ Energy Information Administration – Company Level Imports

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	consumption. Canada is currently the largest supplier of imported crude oil and refined products to the U.S., supplying over 2.4 million bpd in 2007, representing over 11 percent of total U.S. petroleum product consumption (EIA 2007). Ex TC-1, 3.4, p.24.	
27	The Project will provide an opportunity for U.S. refiners in Petroleum Administration for Defense District III, the Gulf Coast region, to further diversify supply away from traditional offshore foreign crude supply and to obtain direct access to secure and growing Canadian crude supplies. Access to additional Canadian crude supply will also provide an opportunity for the U.S. to offset annual declines in domestic crude production and, specifically, to decrease its dependence on other foreign crude oil suppliers, such as Mexico and Venezuela, the top two heavy crude oil exporters into the U.S. Gulf Coast. Ex TC-1, 3.4, p. 24.	Canadian production of heavy crude oil continues to grow, the vast majority of which is currently exported to the United States to be processed by U.S. refineries. North American crude oil production growth and logistics constraints have contributed to significant discounts on the price of landlocked crude and led to growing volumes of crude shipped by rail in the United States and, more recently Canada. As the DOS Final SEIS makes clear, in the absence of new pipelines, crude oil will continue to be transported via rail at an increasing rate. ⁴ The North Dakota Pipeline Authority estimates that rail export volumes from the U.S. Williston Basin have increased from approximately 40,000 bpd in 2010 to over 700,000 bpd in early 2014. Over 60% of crude oil transported from the Williston Basin is delivered by rail. ⁵ The industry has also been making significant investments in increasing rail transport capacity for crude oil out of the Western Canadian Sedimentary Basin (WCSB). ⁶ In recent years, rail transport of crude oil in Canada has grown from approximately 10,000 bpd in 2010 to approximately 270,000 bpd by the end of 2013. ⁷ The DOS Final SEIS indicates that transportation of crude oil by pipeline is safer and less greenhouse gas intensive than crude oil transportation by rail. ⁸ The Project will provide an opportunity for U.S. refiners in Petroleum Administration for Defense District III, the Gulf Coast region, to further diversify supply away from traditional offshore foreign crude supply and to obtain direct access to secure and growing domestic crude supplies.
28	Reliable and safe transportation of crude oil will help ensure that U.S. energy needs are not subject to unstable political events. Established crude oil reserves in the WCSB are estimated at 179 billion barrels (CAPP 2008). Over 97 percent of WCSB crude oil supply is sourced from Canada's vast oil sands reserves located in northern Alberta. The Alberta Energy and Utilities Board estimates there are 175 billion barrels of established reserves recoverable from Canada's oil sands. Alberta has the second largest crude oil reserves in the world, second only to Saudi Arabia. Ex TC-1, 3.1, p. 23.	Reliable and safe transportation of crude oil will help ensure that U.S. energy needs are not subject to unstable political events. Of Canada's 173 billion barrels of oil reserves, 97% or 167 billion, barrels are located in the oil sands. In terms of overall oil reserves, Canada's 173 billion barrels is third only to Venezuela and Saudi Arabia. ⁹ Canada is the largest foreign supplier of crude oil to the U.S. and is likely to remain as such for the foreseeable future. ¹⁰
29	Shippers have already committed to long-term binding contracts, enabling Keystone to proceed with regulatory applications and construction of the pipeline once all regulatory, environmental, and other approvals are received. These long-term binding shipper commitments demonstrate a material endorsement of support for the Project, its economics, proposed route, and target market, as well as the need for additional pipeline capacity and access to Canadian crude supplies. Ex TC-1, 3.5, p. 24.	Shippers have committed to long-term binding contracts, enabling Keystone to proceed with regulatory applications and construction of the pipeline once all regulatory, environmental, and other approvals are received. These long-term binding shipper commitments demonstrate a material endorsement of support for the Project, its economics, proposed route, and target market, as well as the need for additional pipeline capacity to access domestic and Canadian crude supplies. The DOS Final SEIS independently confirms the continuing strong market demand. ¹¹
	Environmental	
32	Table 6 to the Application summarizes the environmental impacts that Keystone's analysis indicates could be expected to remain after its Construction Mitigation and Reclamation Plan (CMR Plan) are implemented. Ex TC-1, pp. 31-37.	Table 6 is still applicable. The latest version of the CMR Plan is Rev4, April 2012. Attachment A to this Tracking Table is a redline version showing changes to the CMR Plan from Rev1 to the current Rev4. Overall changes to the CMR Plan were made to clarify language, provide additional detail related to construction procedures and incorporate lessons learned from previous pipeline construction, current right-of-way conditions and project requirements.

⁴ Final Supplemental Environmental Impact Statement, Keystone XL Pipeline Project, January 2014 at 1.4.3.2 and 1.4.3.3.

⁵ North Dakota Pipeline Authority 2014 <https://ndpipeline.files.wordpress.com/2014/08/nd-rails-estimate-april-2014.pdf>

⁶ Final Supplemental Environmental Impact Statement Keystone XL Pipeline Project, January 2014 at 1.4.1.3

⁷ Transportation Safety Board of Canada <http://www.tsb.gc.ca/eng/recommendations-recommendations/rail/2014/rrec-1401-r1403.asp>

⁸ Final Supplemental Environmental Impact Statement, Keystone XL Pipeline Project, January 2014, Chapter 5 and Errata Sheet at <http://keystonepipeline-xl.state.gov/documents/organization/227464.pdf>.

⁹ Canadian Association of Petroleum Producers (CAPP) Crude Oil Forecast, Markets & Transportation June 2014

¹⁰ EIA Annual Energy Outlook 2014

¹¹ Final Supplemental Environmental Impact Statement, Keystone XL Pipeline Project, January 2014 at 1.3.1 and 1.4.2.6

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33	The pipeline will cross the Unglaciated Missouri Plateau. This physiographic province is characterized by a dissected plateau where river channels have incised into the landscape. Elevations range from just over 3,000 feet above mean sea level in the northwestern part of the state to around 1,800 feet above mean sea level in the White River valley. The major river valleys traversed include the Little Missouri River, Cheyenne River, and White River. Ex TC-1, 5.3.1, p. 30; Ex TC-4, ¶ 15. Exhibit A to the Application includes soil type maps and aerial photograph maps of the Keystone pipeline route in South Dakota that indicate topography, land uses, project mileposts and Section, Township, Range location descriptors. Ex TC-1, Exhibit A. Updated versions of these maps were received in evidence as Exhibit TC-14.	The soil type maps and aerial photograph maps of the Keystone pipeline route in South Dakota that indicate topography, land uses, project mileposts and Section, Township, Range location descriptors that were submitted in evidence as Exhibit TC-14 are still generally consistent in the description of the current Project route through South Dakota. Keystone will submit updated maps prior to the initiation of construction as required by Condition No. 6 of the Amended Final Decision and Order.
41	Fifteen perennial streams and rivers, 129 intermittent streams, 206 ephemeral streams and seven man-made ponds will be crossed during construction of the Project in South Dakota. Keystone will utilize horizontal directional drilling ("HDD") to cross the Little Missouri, Cheyenne and White River crossings. Keystone intends to use open-cut trenching at the other perennial streams and intermittent water bodies. The open cut wet method can cause the following impacts: loss of in-stream habitat through direct disturbance, loss of bank cover, disruption of fish movement, direct disturbance to spawning, water quality effects and sedimentation effects. Alternative techniques include open cut dry flume, open cut dam-and-pump and horizontal directional drilling. Exhibit C to the Application contains a listing of all water body crossings and preliminary site-specific crossing plans for the HDD sites. Ex TC-14. Permitting of water body crossings, which is currently underway, will ultimately determine the construction method to be utilized. Keystone committed to mitigate water crossing impacts through implementation of procedures outlined in the CMR Plan. Ex TC-1, 5.4.1, pp. 45-46.	Fifteen perennial streams and rivers, 129 intermittent streams, and 206 ephemeral streams will be crossed during construction of the Project in South Dakota. No man-made ponds are crossed. Keystone will utilize horizontal directional drilling ("HDD") to cross the Little Missouri, Cheyenne, Bad, and White rivers, as well as Bridger Creek. Keystone intends to use open-cut trenching at other perennial streams and intermittent water bodies. The open cut wet method can cause the following impacts: loss of in-stream habitat through direct disturbance, loss of bank cover, disruption of fish movement, direct disturbance to spawning, water quality effects and sedimentation effects. Alternative techniques include open cut dry flume, open cut dam-and-pump and horizontal directional drilling. To supplement Exhibit C to the Application, Attachment B to this Tracking Table contains the preliminary site-specific crossing plans for the two newly identified HDD crossings; Bad River and Bridger Creek.
50	The total length of Project pipe with the potential to affect a High Consequence Area ("HCA") is 34.3 miles. A spill that could affect an HCA would occur no more than once in 250 years. TC-12, ¶ 24.	The total length of Project pipe with the potential to affect a High Consequence Area ("HCA") is 19.9 miles. A spill that could affect an HCA would occur no more than once in 250 years.
54	Of the approximately 314-mile route in South Dakota, all but 21.5 miles is privately owned. 21.5 miles is state-owned and managed. The list is found in Table 14. No tribal or federal lands are crossed by the proposed route. Ex TC-1, 5.7.1, p. 75.	Of the approximately 315-mile route in South Dakota, all but 27.9 miles are privately owned. 1.7 miles are local government owned, and 26.3 miles are state-owned and managed. No tribal or federal lands are crossed by the route.
Design and Construction		
60	Keystone has applied for a special permit ("Special Permit") from PHMSA authorizing Keystone to design, construct, and operate the Project at up to 80% of the steel pipe specified minimum yield strength at most locations, TC-1, 2.2, p. 8; TR 62. In Condition 2, the Commission requires Keystone to comply with all of the conditions of the Special Permit, if issued.	Keystone withdrew its request to PHMSA for a special permit ("Special Permit") on August 5, 2010. Keystone will implement 59 additional safety measures as set forth in the DOS Final SEIS, Appendix Z. These measures provide an enhanced level of safety equivalent to or greater than those that would have applied under the previously requested Special Permit.
61	TransCanada operates approximately 11,000 miles of pipelines in Canada with a 0.8 design factor and requested the Special Permit to ensure consistency across its system and to reduce costs. PHMSA has previously granted similar waivers adopting this modified design factor for natural gas pipelines and for the Keystone Pipeline. Ex TC-8, ¶¶ 13, 17.	[Finding 61 is no longer relevant as Keystone has withdrawn its request for a Special Permit.]
62	The Special Permit is expected to exclude pipeline segments operating in (i) PHMSA defined HCAs described as high population areas and commercially navigable waterways in 49 CFR Section 195.450; (ii) pipeline segments operating at highway, railroad, and road crossings; (iii) piping located within pump stations, mainline valve assemblies, pigging facilities, and measurement facilities; and (iv) areas where the MOP is greater than 1,440 psig. Ex TC-8, ¶ 16.	[Finding 62 is no longer relevant as Keystone has withdrawn its request for a Special Permit.]
63	Application of the 0.8 design factor and API 5L PSL2 X70 high-strength steel pipe results in use of pipe with a 0.463 inch wall thickness, as compared with the 0.512 inch wall thickness under the otherwise applicable 0.72 design factor, a reduction in thickness of .050 inches. TR 61. PHMSA previously found that the issuance of a waiver is not inconsistent with pipeline safety and that the waiver will provide a level of safety equal to or greater than that which would be provided if the pipeline were operated under the otherwise applicable regulations. Ex TC-8, ¶ 15.	The pipeline will operate at a maximum operating pressure of 1,307 psig. Use of API 5L X70 high-strength steel results in a 0.465 inch nominal pipe wall thickness. For location specific low elevation segments close to the discharge of pump stations, the maximum operating pressure will be 1,600 psig. Pipe associated with these segments of 1,600 psig MOP will have a design factor of 0.72 and a nominal pipe wall thickness of 0.572 inch (X-70M).

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68	TransCanada has thousands of miles of this particular grade of pipeline steel installed and in operation. TransCanada pioneered the use of FBE, which has been in use on its system for over 29 years. There have been no leaks on this type of pipe installed by TransCanada with the FBE coating and cathodic protection system during that time. When TransCanada has excavated pipe to validate FBE coating performance, there has been no evidence of external corrosion. Ex TC-8, ¶ 27.	TransCanada has thousands of miles of this particular grade of pipeline steel installed and in operation. TransCanada pioneered the use of FBE, which has been in use on its system for over 33 years. There have been no leaks on this type of pipe installed by TransCanada with the FBE coating and cathodic protection system during that time. When TransCanada has excavated pipe to validate FBE coating performance, there has been no evidence of external corrosion except for one instance where an adjacent foreign utility interfered with the cathodic protection system. No similar situations exist on the Project in South Dakota.
73	The Applicant has prepared a detailed CMR Plan that describes procedures for crossing cultivated lands, grasslands, including native grasslands, wetlands, streams and the procedures for restoring or reclaiming and monitoring those features crossed by the Project. The CMR Plan is a summary of the commitments that Keystone has made for environmental mitigation, restoration and post-construction monitoring and compliance related to the construction phase of the Project. Among these, Keystone will utilize construction techniques that will retain the original characteristics of the lands crossed as detailed in the CMR Plan. Keystone's thorough implementation of these procedures will minimize the impacts associated with the Project. A copy of the CMR Plan was filed as Exhibit B to Keystone's permit application and introduced into evidence as TC-1, Exhibit B.	Keystone has updated its CMR Plan since the Amended Final Decision and Order. Overall changes to the CMR Plan were made to clarify language, provide additional detail related to construction procedures and incorporate lessons learned from previous pipeline construction, current right-of-way conditions and project requirements. A redlined version of the CMR Plan showing changes since the version considered in 2010 is attached as Attachment A to this Tracking Table.
80	Keystone is in the process of preparing, in consultation with the area National Resource Conservation Service, construction/reclamation unit ("Con/Rec Unit") mapping to address differing construction and reclamation techniques for different soils conditions, slopes, vegetation, and land use along the pipeline route. This analysis and mapping results in the identification of segments called Con/Rec Units. Ex. TC-5; TC-16, DR 3-25.	In consultation with the area National Resource Conservation Service, Keystone has completed construction/reclamation unit ("Con/Rec Unit") mapping to address differing construction and reclamation techniques for different soils conditions, slopes, vegetation, and land use along the pipeline route.
83	Keystone will utilize HDD for the Little Missouri, Cheyenne and White River crossings, which will aid in minimizing impacts to important game and commercial fish species and special status species. Open-cut trenching, which can affect fisheries, will be used at other perennial streams. Keystone will use best practices to reduce or eliminate the impact of crossings at the perennial streams other than the Cheyenne and White Rivers, Ex TC-1, 5.4.1, p. 46; 5.6.2, p. 72; TC-16, DR 3-39.	Keystone will utilize HDD for the Little Missouri, Cheyenne, Bad and White River crossings, as well as Bridger Creek, which will aid in minimizing impacts to important game and commercial fish species and special status species. Open-cut trenching, which can affect fisheries, will be used at other perennial streams. Keystone will use best practices to reduce or eliminate the impact of crossings at the perennial streams that are open cut.
Operation and Maintenance		
90	The Keystone pipeline will be designed constructed, tested and operated in accordance with all applicable requirements, including the PHMSA regulations set forth at 49 CFR Parts 194 and 195, as modified by the Special Permit. These federal regulations are intended to ensure adequate protection for the public and the environment and to prevent crude oil pipeline accidents and failures. Ex TC-8, ¶ 2.	The Keystone pipeline will be designed constructed, tested and operated in accordance with all applicable requirements, including the PHMSA regulations set forth at 49 CFR Parts 194 and 195, and the 59 PHMSA Special Conditions as set forth in DOS Final SEIS, Appendix Z. These federal regulations and additional conditions are intended to ensure adequate protection for the public and the environment and to prevent crude oil pipeline accidents and failures.
Socio-Economic Factors		
107	Socio-economic evidence offered by both Keystone and Staff demonstrates that the welfare of the citizens of South Dakota will not be impaired by the Project. Staff expert Dr. Michael Madden conducted a socio-economic analysis of the Keystone Pipeline, and concluded that the positive economic benefits of the project were unambiguous, while most if not all of the social impacts were positive or neutral. S-2, Madden Assessment at 21. The Project, subject to compliance with the Special Permit and the Conditions herein, would not, from a socioeconomic standpoint: (i) pose a threat of serious injury to the socioeconomic conditions in the project area; (ii) substantially impair the health, safety, or welfare of the inhabitants in the project area; or (iii) unduly interfere with the orderly development of the region.	[Keystone has withdrawn its Special Permit application but will comply with the 59 additional conditions set forth in the DOS Final SEIS, Appendix Z, which provide an enhanced level of safety equivalent to or greater than those that would have applied under the requested Special Permit.] The increased cost of the Project reflected in updated Finding 23 is likely to result in increased tax revenue to the affected counties.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF) TRANSCANADA KEYSTONE PIPELINE, LP) FOR ORDER ACCEPTING CERTIFICATION) OF PERMIT ISSUED IN DOCKET HP09-001) TO CONSTRUCT THE KEYSTONE XL) PIPELINE))	FINAL DECISION AND ORDER FINDING CERTIFICATION VALID AND ACCEPTING CERTIFICATION; NOTICE OF ENTRY
		HP14-001

PROCEDURAL HISTORY

On September 15, 2014, TransCanada Keystone Pipeline, LP (Keystone, TransCanada, or Applicant) filed with the Commission a Certification signed by Corey Goulet on September 12, 2014, in Calgary, Alberta, Canada, and a Petition for Order Accepting Certification under SDCL § 49-41B-27 (Petition). Attached to the Petition were Appendix A, Project Overview Map, Appendix B, Quarterly Report for the Quarter Ending 6/30/14, and Appendix C, Tracking Table of Changes, including Attachment A, Redlined Construction, Mitigation, and Reclamation Plan, and Attachment B, Preliminary Site-Specific Crossing Plans. The Commission opened Docket HP14-001 for consideration of the Certification and Petition.¹ The purpose of these filings was to provide the Commission with Keystone's certified statement that such facility continues to meet the conditions upon which the permit was issued and to otherwise verify that Keystone continues to meet the 50 conditions imposed in the Amended Final Decision and Order; Notice of Entry issued by the Commission on June 29, 2010, in Docket HP09-001 (Amended Final Decision) granting a permit to Keystone to construct the Keystone XL Pipeline (Project).² Since more than four years have elapsed since the Commission's issuance of the Amended Decision granting the permit to construct, Keystone now seeks an order from the Commission accepting Keystone's certification pursuant to SDCL 49-41B-27.

On September 18, 2014, the Commission electronically transmitted notice of the certification filing and the intervention deadline of October 15, 2014, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv, and on October 1, 2014, the Commission issued an Order Assessing Filing Fee. Forty-three individuals and entities sought to intervene as parties by submitting applications between September 30 and October 17, 2014. On November 4, 2014, the Commission entered an Order Granting Intervention and Party Status to the following forty-two persons: John Harter, Rosebud Sioux Tribe-Tribal Utility Commission, Elizabeth Lone Eagle, Paul F. Seamans, Viola Waln, Cindy Myers, RN, Bold, Nebraska, Diana L. Steskal, Cheryl Frisch, Terry Frisch, Standing Rock Sioux Indian Tribe, Byron T. Steskal, Arthur R. Tanderup, Lewis GrassRope, Carolyn P. Smith, Robert G. Allpress, Jeff Jensen, Amy Schaffer, Louis T. Genung, Nancy Hilding, Gary F. Dorr, Bruce Boettcher, Rosebud Sioux Tribe, Wrexie Lainson Bardaglio, South Dakota Wildlife Federation, Cheyenne River Sioux Tribe, Jerry D. Jones, Cody Jones, Debbie J. Trapp, Gena M. Parkhurst,

¹ The Commission's Orders in the case and all other filings and documents in the record are available on the Commission's web page for Docket HP14-001 at: <http://puc.sd.gov/Dockets/HydrocarbonPipeline/2014/hp14-001.aspx>

² The Commission's Orders in the case and all other filings and documents in the record are available on the Commission's web page for Docket HP09-001 at: <http://puc.sd.gov/Dockets/HydrocarbonPipeline/2009/hp09-001.aspx>

Sierra Club, Joyce Braun, 350.org, Yankton Sioux Tribe, Dakota Rural Action (DRA), Chastity Jewett, Indigenous Environmental Network, Dallas Goldtooth, RoxAnn Boettcher, Bonny Kilmurry, Ronald Fees, and Intertribal Council on Utility Policy (collectively, Intervenor). On March 4, 2015, the Commission issued an Order Granting Request to Withdraw Party Status allowing the South Dakota Wildlife Federation and the Sierra Club to withdraw as parties, and on April 21, 2015, the Commission issued an Order Granting Request to Withdraw Party Status allowing Jeff Jensen to withdraw as a party.

On October 30, 2014, Keystone filed Keystone's Motion to Define the Scope of Discovery under SDCL §49-41B-27 (Motion to Define Scope). On November 4, 2014, the Commission issued a Prehearing Scheduling Conference Order setting a telephonic scheduling conference to be conducted by General Counsel John Smith on November 13, 2014. On November 5, 2014, the Commission issued an Order for and Notice of Motion Hearing setting the Motion to Define Scope for hearing on November 25, 2014. The prehearing scheduling conference was held as scheduled on November 13, 2014. On November 14, 2014, a number of motions for extension of time to respond to the Motion to Define Scope were filed by Intervenor. Keystone did not object to the extension. On November 14, 2014, the Commission issued an Order Changing Motion Hearing Date and Order for and Notice of Scheduling Hearing setting the Motion to Define Scope and to establish a procedural schedule for hearing on December 9, 2014. Responses to the Motion to Define Scope and setting forth procedural schedule recommendations were filed by the Commission's staff (Staff) and many of the Intervenor. After hearing from the parties regarding the Motion to Define Scope and the procedural schedule, on December 17, 2014, the Commission issued an Order Granting Motion to Define Issues and Setting Procedural Schedule. In this order, the Commission decided that the scope of discovery would be limited to any matter relevant to: (1) whether the Project continues to meet the 50 conditions in Exhibit A to the Amended Final Decision; and (2) the changes in the Findings of Fact identified in the Tracking Table of Changes attached to Keystone's Certification Petition as Appendix C. The Commission also established the following deadlines: January 6, 2015, for serving initial discovery; February 6, 2015, for responding to initial discovery; February 20, 2015, for a second round of discovery; March 10, 2015, for responding to the second round of discovery; April 2, 2015, for submitting pre-filed direct testimony; April 23, 2015, for submitting pre-filed rebuttal testimony; and May 5-8, 2015, for an evidentiary hearing.

On December 2, 2014, Yankton Sioux Tribe (Yankton) filed Yankton Sioux Tribe's Motion to Dismiss, and on December 29, 2014, Rosebud Sioux Tribe (Rosebud) filed Rosebud Sioux Tribe's Motion to Dismiss and Request for Oral Argument. The motions contended that the Certification Petition on its face established that the Project was a different project than the one permitted in the Amended Final Decision in Docket HP09-001 and that Keystone could therefore not prove that it could continue to meet the conditions on which the permit was issued. A number of Intervenor filed motions to join in Yankton Sioux Tribe's Motion to Dismiss. On December 29, 2014, Keystone filed Applicant's Opposition to Yankton Sioux Tribe's Motion to Dismiss, and Staff filed Commission Staff's Response to Yankton Sioux Tribe's Motion to Dismiss. On January 2, 2015, Yankton Sioux Tribe filed Yankton Sioux Tribe's Reply in Support of Its Motion to Dismiss. After hearing from the parties at the hearing on the motions to join and dismiss on January 6, 2015, on January 8, 2015, the Commission issued an Order Granting Motions to Join and Denying Motions to Dismiss which granted the Intervenor's motions to join and to consider Rosebud's motion to dismiss together with Yankton's but denied the motions to dismiss.

On March 17, 2015, Staff filed a Motion to Amend Procedural Schedule to add to the procedural schedule a deadline by which parties must file a witness list and an exhibit list. On April 2, 2015, the Commission issued an Order Amending Procedural Schedule (Witness and Exhibit Lists) requiring that witness lists and exhibit lists must be filed and served by all parties no later than 5:00 p.m. CDT, on April 21, 2015. On March 25, 2015, Rosebud Sioux Tribe filed a Motion to Amend Order Setting Procedural Schedule requesting that the Commission amend the procedural schedule in the Order Setting Procedural Schedule to delay the date set for pre-filed testimony. The Commission heard Rosebud's motion to amend on March 31, 2015, and on April 3 issued an Order Granting in Part Motion to Amend Procedural Schedule extending the date for the filing of pre-filed rebuttal testimony to April 27, 2015, and allowing testimony regarding new information acquired as a result of any motion to compel granted by the Commission to be included in rebuttal testimony. On April 8, 2014, Rosebud Sioux Tribe filed Rosebud Sioux Tribe's Motion for Reconsideration. After hearing the Motion to Reconsider on April 9, 2015, on April 10 the Commission issued an Order Granting Motion to Reconsider and Amending In Part Procedural Schedule which granted reconsideration with respect to expert testimony, extended the deadline for Rosebud's pre-filed testimony for its expert witnesses to April 24, 2015, except to the extent it qualifies for later filing on April 27, 2015, pursuant to the Amended Scheduling Order, and extended the deadline for Keystone to file its rebuttal testimony with respect to the pre-filed testimony of Rosebud's expert witnesses to May 5, 2015. On March 27, 2015, Standing Rock Sioux Tribe (Standing Rock) filed a Motion to Amend Order Setting Procedural requesting that the Commission amend the procedural schedule to delay the dates set for close of discovery, pre-filed testimony, rebuttal testimony, filing of exhibits, and the evidentiary hearing. The Commission heard Standing Rock's motion to amend on March 31, 2015, and on April 2 issued an Order Denying Motion to Amend Order Setting Procedural Schedule as requested by Standing Rock.

The Commission decided a number of discovery-related motions. Dakota Rural Action, Standing Rock Sioux Tribe, Yankton Sioux Tribe, Gary Dorr, and Rosebud Sioux Tribe filed motions to compel discovery against Keystone and Staff. The Commission entered orders dated April 17, 2015, granting in part and denying in part the motions filed by Dakota Rural Action, Standing Rock Sioux Tribe, and Yankton Sioux Tribe, and compelling Keystone to answer certain discovery requests by April 17, 2015. The Commission denied the motions filed by Gary Dorr and Rosebud Sioux Tribe by orders dated April 22, 2015, and April 23, 2015.

On March 23, 2015, Keystone filed a Motion to Preclude Certain Intervenors (John Harter, BOLD Nebraska, Carolyn Smith, Gary Dorr, and Yankton Sioux Tribe) from Offering Evidence or Witnesses at Hearing (Motion to Preclude). On March 25, 2015, Keystone filed an Amended Motion to Preclude Certain Intervenors from Offering Evidence or Witnesses at Hearing and to Compel Discovery requesting: (1) that certain Intervenors be precluded from offering any evidence or witnesses at the hearing based on their complete failure to respond to Keystone's discovery requests (Rosebud Sioux Tribe-Tribal Utility Commission, Viola Wain, Cheryl & Terry Frisch, Louis Grass Rope, Robert Allpress, Jeff Jensen, Louis Genung, Jerry Jones, Debbie Tripp, Gina Parkhurst, Joye Braun, 350.org, Chastity Jewett, Dallas Goldtooth, and Ronald Fees); and (2) that certain Intervenors (John Harter, BOLD Nebraska, Carolyn Smith, Gary Dorr, and Yankton Sioux Tribe) be prohibited from offering evidence or witnesses at the hearing because of their failure to respond fully to Keystone's discovery requests. On April 17, 2015, the Commission issued an Order Granting In Part Keystone's Motion for Discovery Sanctions precluding the seventeen intervenors who did not respond at all to Keystone's requests for discovery from presenting evidence or witnesses at the evidentiary hearing, precluding John Harter, BOLD Nebraska, and Carolyn Smith from presenting evidence or witnesses at the evidentiary hearing for not sufficiently responding to Keystone's discovery

requests, but not precluding Yankton Sioux Tribe and Gary Dorr from presenting evidence or witnesses at the evidentiary hearing.

On April 2, 2015, Dakota Rural Action filed a Statement and Objections on behalf of Dakota Rural Action with respect to Submission of Written Testimony arguing that the Commission's pre-filed testimony rule, ARSD 20:10:01:06, violates SDCL 15-6-43(a) and 49-1-11. Several Intervenors filed statements in support of DRA's Statement and Objections. In Staff's Brief in Response to Motion to Preclude Witnesses from Offering Testimony Who Did Not File Pre-Filed Testimony filed on April 10, 2015, Staff pointed out that pre-filed testimony does not become evidence in the case unless and until it is received in evidence as an exhibit upon proper foundation by a live witness or stipulation and that ARSD 20:10:01:06 is not therefore violative of SDCL 15-6-43(a). In complex contested case proceedings, it is normal practice for the Commission to require pre-filed testimony as part of the discovery and hearing preparation process, and no court has ever ruled that such requirement is unlawful.

On April 6, 2015, Keystone filed Keystone's Motion to Preclude Witnesses from Testifying at Hearing Who Did Not File Prefile Testimony asking that the Commission preclude testimony from any witness who did not pre-file testimony as required by the Commission's procedural order. Responses to this motion were filed by Staff and numerous Intervenors. On April 23, 2015, the Commission issued an Order Granting Motion to Preclude Witnesses from Testifying at Hearing Who Did Not File Prefiled Testimony, precluding persons for whom pre-filed testimony was not filed from testifying at the hearing, subject to the condition that pre-filed rebuttal testimony would be allowed to be filed by all parties until the April 27, 2015, deadline, including testimony and exhibits addressing information obtained as a result of any order to compel discovery granted by the Commission.

On April 7, 2015, the Commission received Dakota Rural Action's, Rosebud Sioux Tribe's, Cheyenne River Sioux Tribe's and Indigenous Environmental Network's Joint Motion for Appointment of Special Master to oversee the discovery process in this docket (Special Master Motion). Responses in opposition to the Special Master Motion were filed by Staff and Keystone on April 8 and April 9, 2015, respectively. On April 22, 2015, the Commission issued an Order Denying Motion for Special Master, finding that the Commission has sufficient resources and is competent to hear and act on the discovery issues presented in this proceeding.

On April 7, 2015, the Commission received Dakota Rural Action's, Rosebud Sioux Tribe's, Standing Rock Sioux Tribe's, Cheyenne River Sioux Tribe's and Indigenous Environmental Network's Joint Motion for Stay of Proceedings (Motion for Stay) requesting a stay pending the Presidential Permit decision and the conclusion of the investigation initiated by the Canadian National Energy Board regarding allegations of pipeline safety violations. Keystone and Staff filed responses in opposition to the Motion for Stay on April 9 and 10, 2015, respectively. On April 22, 2015, the Commission issued an Order Denying Motion for Stay.

At a motion hearing on April 14, 2015, the Commission considered a number of discovery related motions filed by Keystone and a number of Intervenors. In response to objections raised by Keystone based on the confidential nature of many documents requested by intervenor parties, on April 17, 2015, the Commission issued a Protective Order imposing protective provisions on parties' discovery of materials deemed confidential, subject to the provisions of ARSD 20:10:01:40 through 20:10:01:44. On April 24, 2015, Dakota Rural Action, Rosebud Sioux Tribe, Standing Rock Sioux Tribe, Cheyenne River Sioux Tribe (Cheyenne River), Yankton Sioux Tribe, Indigenous Environmental Network, and BOLD Nebraska filed a Joint Motion to Vacate or, in the Alternative, to Clarify or Amend Protective Order. On April 27,

2015, Keystone filed Applicant's Opposition to Joint Motion to Vacate or Amend the Protective Order arguing that Keystone had in fact allowed intervenors to provide access to confidential materials to co-counsel and experts. On April 28, 2015, Staff filed Staff's Brief in Response to Joint Motion to Vacate or, in the Alternative, to Clarify or Amend Protective Order. In response to intervenors' motion, on May 13, 2015, the Commission issued an Amended Protective Order authorizing disclosure of confidential information to co-counsel, professional staff, and experts, in addition to attorneys of record, provided that notice of such disclosure is provided by the disclosing party and the persons receiving the information sign the non-disclosure agreement.

On April 24, 2015, Dakota Rural Action, Rosebud Sioux Tribe, Yankton Sioux Tribe, BOLD Nebraska, Cheyenne River Sioux Tribe, and Standing Rock Sioux Tribe filed a Joint Motion for Continuance and Relief from Scheduling Order requesting a later date for the evidentiary hearing to allow additional time for consideration of discovery documents and preparation for hearing. Indigenous Environmental Network joined the motion on April 27, 2015. On April 24, 2015, the Commission received Keystone's Opposition to Joint Motion for Continuance. On April 27, 2015, the Commission issued an Order Granting Joint Motion for Continuance and Relief from Scheduling Order in which the Commission granted the Joint Motion for Continuance and instructed Staff to propose a revised schedule at the next regularly scheduled Commission meeting. On May 5, 2015, the Commission issued an Order Amending Procedural Schedule establishing the following deadlines and dates: (1) substantive motions filed by May 26, 2015; (2) responses to substantive motions filed by June 2, 2015; (3) hearing on substantive motions on June 11, 2015; (4) rebuttal testimony filed by June 26, 2015; (5) witness and exhibit lists filed by July 7, 2015; (6) motions *in limine* filed by July 10, 2015; (7) responses to motions *in limine* filed by July 17, 2015; (8) motion hearing on motions *in limine* on July 21, 2015; and (5) an evidentiary hearing from July 27-31, and continuing August 3-4, 2015.

On April 27, 2015, the Commission received Standing Rock, Cheyenne River, Rosebud Sioux, and Yankton Sioux Tribes, Dakota Rural Action, Indigenous Environmental Network, Intertribal COUP and BOLD Nebraska Motion to Exclude Evidence and Testimony by TransCanada seeking to preclude Keystone from offering testimony or witnesses at the hearing based on its alleged failure to comply with discovery. On May 1, 2015, Intervenor Gary Dorr filed Gary Dorr's Motion to Join Joint Motion by Standing Rock, Cheyenne River, Rosebud, and Yankton Sioux Tribes, Dakota Rural Action, Indigenous Environmental Network, Intertribal COUP, and BOLD Nebraska to Exclude Evidence and Testimony by TransCanada. On April 27, 2015, Keystone filed Keystone's Opposition to Joint Motion to Exclude Evidence and Testimony. On May 18, 2015, Staff filed Staff's Brief in Response to Joint Motion to Exclude Evidence and Testimony. On May 19, 2015, Keystone filed Keystone's Supplemental Opposition to Joint Motion to Exclude Testimony and Evidence. Finding that TransCanada had produced a very large volume of documents in response to intervenor discovery requests and the Commission's Orders to Compel and that movants had not demonstrated that TransCanada had acted in bad faith or with willfulness or fault, on May 28, 2015, the Commission issued an Order Granting Motion to Join and Denying Joint Motion to Exclude Evidence and Testimony by TransCanada, granting Gary Dorr's motion to join and denying the joint motion to exclude.

On April 27, 2015, Intertribal Council on Utility Policy (COUP) filed a Notice of Request for a Time Certain for an Expert Rebuttal Witness for the Intertribal Council on Utility Policy asking for a time certain for testimony of three of its experts, namely Dr. James Hansen, Dr. George Seielstad, and Dr. Robert Oglesby. On April 27, 2015, Keystone filed Keystone's Objection to Coup's Request for a Time Certain and Motion to Preclude Witnesses. Keystone opposed Intertribal COUP's motion on the grounds that Intertribal COUP had not submitted pre-filed testimony for these experts and their proposed testimony was not rebuttal testimony. On

May 18, 2015, Intertribal COUP filed Intertribal COUP's Response to Keystone's Objection to COUP's Request for a Time Certain and Motion to Preclude Witnesses. On May 18, 2015, Staff filed Staff's Brief in Response to Keystone's Objection to COUP's Request for a Time Certain and Motion to Preclude Witness. In its brief, Staff argued that denial of a time certain and preclusion were appropriate, but for the reasons that the hearing dates have changed so the time certain is no longer at issue and that the testimony of Intertribal COUP's three witnesses is not relevant to the issues before the Commission in this proceeding. On May 19, 2015, Intertribal COUP filed Intertribal COUP's Amended Response to Keystone's Objection to COUP's Request for a Time Certain and Motion to Preclude Witnesses. On May 28, 2015, the Commission issued an Order Granting TransCanada's Motion to Preclude Witnesses on the grounds that the testimony of COUP's proposed witnesses was beyond the scope of the certification proceeding and took no action on COUP's Request for a Time Certain for an Expert Witness, finding that such issue was moot given the Commission's April 27, 2015 Order Granting Joint Motion for Continuance and Relief from Scheduling Order.

On May 26, 2015, the Commission received Yankton Sioux Tribe's and Indigenous Environmental Network's Motion to Preclude Improper Relief or, in the Alternative, to Amend Findings of Fact seeking to have certain findings of fact contained in the Amended Final Decision amended. Alternatively, the motion asked that the Commission amend Findings of Fact numbers 113 and 114. On May 26, 2015, Staff filed Staff's Brief in Response to Motion to Preclude Improper Relief or, in the Alternative, to Amend Findings of Fact. On June 2, 2015, DRA filed Dakota Rural Action's Joinder of Yankton Sioux Tribe's Motion to Preclude Improper Relief. On June 2, 2015, Keystone filed Keystone's Opposition to Joint Motion to Preclude Improper Relief. On June 6, 2015, the Commission received Yankton Sioux Tribe's And Indigenous Environmental Network's Reply in Support of Motion to Preclude Improper Relief or, in the Alternative, to Amend Findings of Fact. Finding that TransCanada did not seek to amend the Findings of Fact in the Amended Final Decision and that there exists no legal authority for the Commission to amend the Amended Final Decision at this time, on June 15, 2015, the Commission issued an Order Denying Yankton Sioux Tribe's and Indigenous Environmental Network's Motion to Preclude Improper Relief or, in the Alternative, to Amend Findings Of Fact.

On May 26, 2015, Keystone filed Keystone's Motion to Exclude Testimony of Richard Kuprewicz requesting that the Commission exclude all of Kuprewicz's testimony except for his opinion on pages 2-3 of Exhibit 9 that the Project will not pose a substantial risk to the Rosebud Sioux Tribe's water supply. On June 2, 2015, Staff filed a Corrected Staff's Brief in Response to Applicant's Motion to Exclude Testimony of Richard Kuprewicz. On June 2, 2015, the Commission received Rosebud Sioux Tribe's Response to Keystone's Motion to Exclude Testimony of Richard Kuprewicz. On June 2, 2015, DRA filed Dakota Rural Action's Joinder of Rosebud Sioux Tribe's Response to TransCanada's Motion to Exclude Testimony of Richard Kuprewicz, and Cheyenne River Sioux Tribe filed Cheyenne River Sioux Tribe's Response to Keystone's Motion to Exclude the Testimony of Richard Kuprewicz. On June 10, 2015, the Commission received Rosebud Sioux Tribe's Supplemental Response to Motion to Exclude Testimony of Richard Kuprewicz. On June 8, 2015, Keystone filed Applicant's Reply in Support of Motion to Limit Testimony of Richard Kuprewicz. On June 15, 2015 the Commission issued an Order Granting in Part and Denying in Part Keystone's Motion to Exclude Testimony of Richard Kuprewicz, in which the Commission ordered the exclusion of that portion of the testimony dealing with re-routing the Project as beyond the Commission's jurisdiction pursuant to SDCL 49-41B-36 and denying the motion with respect to the rest of Mr. Kuprewicz's testimony.

On May 26, 2015, Keystone filed a Motion to Preclude Testimony Regarding Mni Wiconi Pipeline Easements, on the grounds that Keystone has already entered into easement agreements for such crossings from the U.S. Bureau of Reclamation and the affected landowners. On June 2, 2015, Intervenor Gary Dorr filed Gary Dorr's Response to Motion by TransCanada to Preclude Testimony Regarding Mni Wiconi Pipeline Easements. On June 9, 2015, Keystone filed a Reply Brief in Support of TransCanada's Motion to Preclude Testimony Regarding Mni Wiconi Pipeline Easements and up-dated supporting documentation. On June 15, 2015, the Commission issued an Order Granting Motion to Preclude Testimony Regarding Mni Wiconi Pipeline Easements, finding that tribal consent to the proposed Keystone XL Pipeline's crossing of the Mni Wiconi pipeline(s) is not relevant to this proceeding, because the Commission does not have jurisdiction over property rights.

On May 26, 2015, Keystone filed Applicant's Motion to Preclude Consideration of Aboriginal Title or Usufructuary Rights as beyond the Commission's jurisdiction and the scope of this proceeding. On June 2, 2015, the Commission received Standing Rock Sioux Tribe Opposition to Motion to Preclude Consideration of Aboriginal Title or Usufructuary Rights, Yankton Sioux Tribe's Response to Applicant's Motion to Preclude Consideration of Aboriginal Title or Usufructuary Rights, and Cheyenne River Sioux Tribe's Response to Keystone's Motion to Preclude Consideration of Aboriginal Title or Usufructuary Rights. On June 8, 2015, Keystone filed Applicant's Reply Brief - Motion to Preclude Consideration of Aboriginal Title or Usufructuary Rights. Finding that the Commission does not have jurisdiction over aboriginal title or usufructuary rights, on June 15, 2015, the Commission issued an Order Granting Motion to Preclude Consideration of Aboriginal Title or Usufructuary Rights.

On or before July 7, 2015, exhibit and/or witness lists were filed by Keystone, Staff, and Intervenor Cindy Myers, Cheyenne River Sioux Tribe, Dakota Rural Action, Standing Rock Sioux Tribe, Yankton Sioux Tribe, Chastity Jewett, and Rosebud Sioux Tribe.

On July 9, 2015, Staff filed a Motion for Judicial Notice requesting that the Commission take judicial notice of: the evidentiary record in Docket No. HP09-001; the Department of State's Final Environmental Impact Statement involving the Project; the Final Supplemental Environmental Impact Statement; and SDCL Chapter 49-41B in its entirety. On July 22, 2015, the Commission issued an Order Granting Judicial Notice of these documents.

On July 10, 2015, the Rosebud Sioux Tribe filed Rosebud Sioux Tribe's Motion *in Limine* asking that certain rebuttal testimony filed by Keystone in response to Rosebud's expert witnesses Richard Kuprewicz, Ian Goodman, and Brigid Rowan be excluded because it had elected not to call these persons as witnesses. At the hearing on the motion on July 21, 2015, Keystone and Rosebud agreed that the issue was moot because Kuprewicz, Goodman, and Rowan would not be called as witnesses at the hearing. On July 22, 2015, the Commission accordingly issued an Order Denying Rosebud Sioux Tribe's Motion to Exclude Testimony.

On July 10, 2015, Staff filed a Motion for Time Certain for Witness Testimony requesting that August 3, 2015, or such time as necessary on such date be set aside for the testimony of at least one of Staff's witnesses, Dan Flo, and witnesses for Standing Rock Sioux Tribe who will be traveling some distance from out of town. On July 22, 2015, the Commission issued an Order Granting Motion for Time Certain for Witness Testimony. On July 16, Diana Steskal filed a request for time certain for her testimony on either July 29 or 30, 2015. On July 22, 2015, the Commission issued an Order Granting Motion for Time Certain for Witness Testimony as requested by Ms. Steskal.

On July 10, 2015, Keystone filed the following motions *in limine*: (1) to strike the proposed testimony of Linda Black Elk, consisting of an article on Native American plants; (2) to strike Paula Antoine's rebuttal testimony; (3) to exclude the testimony of Kevin E. Cahill, Ph.D.; (4) to restrict the testimony of Leonard Crow Dog; (5) to preclude the testimony of Dr. Hansen and Dr. Oglesby; (6) to restrict the testimony of Faith Spotted Eagle and an unnamed member of the Yankton Sioux Tribe Business and Claims Committee; (7) to preclude the testimony of Chris Saucosi; (8) to preclude the rebuttal testimony of Jennifer Galindo and Waste Win Young; and (9) to preclude the rebuttal testimony of Ian Goodman and Brigid Rowan. Staff and Intervenor filed responses. With respect to these motions, the Commission by separate orders dated July 22, 2015, granted the motions concerning Linda Black Elk, Kevin Cahill, Leonard Crow Dog, Dr. Hansen and Dr. Oglesby, Faith Spotted Eagle and an unnamed member of the Business and Claims Committee, Chris Saucosi, and Jennifer Galindo and Waste Win Young. The Commission granted in part the motion to strike Paula Antoine's testimony as it related to the Spirit Camp located in Tripp County, but otherwise denied the motion in its July 22, 2015 Order Granting in Part and Denying in Part Motion *in Limine* to Strike Paula Antoine's Rebuttal Testimony. Also on July 22, 2015, the Commission issued an Order Denying Motion *in Limine* to Preclude Rebuttal Testimony of Ian Goodman and Brigid Rowan finding the issue to be moot.

On July 24, 2015, Standing Rock Sioux Tribe filed motions for reconsideration of the orders excluding the testimony of Kevin E. Cahill and Jennifer Galindo and Waste Win Young. On August 31, 2015, the Commission issued an Order Denying Motion for Reconsideration of Order Granting Motion *in Limine* to Preclude Rebuttal Testimony of Jennifer Galindo and Waste Win Young. On September 1, 2015, the Commission issued an Order Granting in Part Motion for Reconsideration of Order Granting Motion to Exclude Testimony of Kevin E. Cahill, Ph.D. allowing that part of Cahill's testimony responsive to the testimony of Staff witness Brian Walsh.

On July 10, 2015, Keystone filed Keystone's Protective Motion *in Limine* Regarding Dakota Rural Action's Exhibit List Dated July 7, 2015, seeking to preclude those documents or portions of documents on DRA's Exhibit List that were not timely disclosed to Keystone in DRA's responses to Keystone's discovery requests. After considering Keystone's motion at an ad hoc meeting, on July 17, 2015, the Commission issued an Order Granting in Part and Denying in Part Motion *in Limine* (DRA Exhibits) precluding exhibits 29-37, 39-65, 67-128, 397-409, 1058-1062, and 1063-1073. On July 21, 2015, DRA filed Dakota Rural Action's Motion and Memorandum for Reconsideration of Partial Granting of Motion *in Limine* to Exclude Exhibits. On July 23, 2015, the Commission issued an Order Granting in Part Motion for Reconsideration of Partial Granting of Motion *in Limine* to Exclude Exhibits, allowing exhibits 29-37, 39-65, and 1058-1062 to be offered in evidence.

On July 10, 2015, Yankton Sioux Tribe, Cheyenne River Sioux Tribe, BOLD Nebraska, Rosebud Sioux Tribe, Indigenous Environmental Network, and Dakota Rural Action filed a Joint Motion *in Limine* to Exclude Evidence Pertaining to Keystone's Proposed Changes to Findings of Fact requesting that Keystone be prohibited from submitting any evidence related to changes in facts as reflected in the Tracking Table of Changes attached as Appendix C to its Certification Petition. On July 17, 2015, Keystone filed Applicant's Response to Joint Motion *in Limine* arguing that the Tracking Table of Changes is merely a reference to minor changes in facts that have occurred since the issuance of the Amended Final Decision in 2010. Finding that the testimony at issue is relevant to the proceeding and that amending the findings of fact in Docket HP09-001 is not requested, on July 23, 2015, the Commission issued an Order Denying Joint Motion *in Limine* to Exclude Evidence Pertaining to Keystone's Proposed Changes to Findings of Fact.

On July 10, 2015, Keystone filed Applicant's Motion Concerning Procedural Issues at the Evidentiary Hearing (Procedural Motion) requesting that the Commission issue several directives to expedite the evidentiary hearing and ensure that it operates efficiently given the number of parties and witnesses involved, namely: (1) limiting Intervenors with a common interest to one lawyer conducting cross-examination; (2) requiring written rather than oral opening statements; (3) precluding friendly cross examination; (4) limiting cross-examination to counsel if a party was represented by counsel; (5) limiting cross examination to the scope of direct examination; and (6) precluding argument on evidentiary objections unless requested by the Hearing Examiner. Responses to the Procedural Motion were filed by Staff and several Intervenors. On July 22, 2015, the Commission issued Order Denying in Part and Granting in Part Applicant's Motion Concerning Procedural Issues at the Evidentiary Hearing denying all of Keystone's requests except for limiting cross examination to the scope of direct examination and matters affecting the credibility of a witness and limiting cross-examination to counsel if a party was represented by counsel.

On July 6, 2015, a public input hearing was held before the Commission beginning at 5:30 p.m. in Room 414 of the State Capitol Building. The Commission heard public comment from 52 persons. The Commission also received written comments from a number of persons, which are included in the docket.

An evidentiary hearing was held beginning on Monday, July 27, 2015, in Room 414 of the State Capitol Building. On July 30, 2015, the Commission issued a Notice of Additional Hearing dates extending the hearing to include Saturday, August 1, 2015, and then continuing from August 3-5 and 6-7, 2015, if necessary. The hearing concluded near the end of the business day on August 5, 2015. The evidentiary hearing was conducted by Commission General Counsel John J. Smith, who acted as Hearing Examiner. Commissioners Chris Nelson and Gary Hanson attended the hearing in person. Due to medical treatment, Commissioner Kristie Fiegen elected to participate by reviewing the hearing transcript as allowed under SDCL § 1-26-24. TR 46-50.³ On October 5, 2015, Commissioner Fiegen filed a Certification attesting to the fact that she had read the entirety of the hearing transcripts.

At the conclusion of the hearing, the Commission established a briefing schedule. TR 2502-2503. On August 12, 2015, the Commission issued an Order Establishing Post-Hearing Briefing Schedule in conformity with the action taken at the hearing with simultaneous initial post-hearing briefs due October 1, 2015, and simultaneous reply briefs due October 31, 2015, with reply briefs limited to parties who submitted initial briefs.

At the evidentiary hearing, non-attorney Intervenor Cindy Myers testified on her own behalf. Keystone objected to much of Ms. Myers's testimony and exhibits; however, in the interest of time, it was agreed at the hearing that Keystone would submit its objections in writing to be ruled on at a later date. On September 21, 2015, Keystone filed Applicant's Motion to Strike Testimony and Exhibits of Cindy Myers requesting that the Commission issue an order striking certain portions of Intervenor Cindy Myers's hearing testimony and exhibits. The motion was heard on October 29, 2015. During the discussion on the motion, the following clarifications were made involving Keystone's references to specific items identified in the motion: 1) TransCanada's request to strike transcript testimony 1659:6-1660:13 should be 1659:6-

³ References to the June 10-11, 2014, Hearing Transcript are in the format "TR" followed by the Hearing Transcript page number(s) referenced, and references to Hearing Exhibits are in the format Ex followed by the exhibit number and, where applicable, the page number(s) referenced or other identifying reference and, where applicable, the appendix, attachment or sub-exhibit identifier and page number(s) referenced.

1660:15; 2) TransCanada's request to strike the first paragraph under "Aquifers" applies to the entire paragraph; the request to strike the second paragraph under "Aquifers" excludes the first sentence of the second paragraph; 3) the request to strike the third paragraph under "Aquifers" refers to the entire paragraph; and 4) the request to strike the third paragraph under "Waterways" should be the second paragraph. Chairman Chris Nelson moved to grant TransCanada's Motion to Strike, subject to the clarifications made during the hearing. Commissioner Gary Hanson moved to amend the motion to exclude Exhibit 6001 from the Motion to Strike, which motion failed. The Commission then voted unanimously to grant Keystone's motion subject to the clarifications made at the hearing. On November 4, 2015, Commissioner Hanson filed a request for reconsideration of the Commission action taken on October 29, 2015, in order to separately address Exhibit 6001. On November 6, 2015, the Commission issued an Order Granting Keystone's Motion to Strike Testimony and Exhibits of Cindy Myers. In response to Commissioner Hanson's request for reconsideration, on November 19, 2015, the Commission issued an Order Granting Reconsideration of Order Granting Keystone's Motion to Strike Testimony and Exhibits of Cindy Myers in which the Commission bifurcated the Motion to Strike in order to consider Exhibit 6001 separately. With Commissioner Hanson dissenting, a majority of the Commission voted to exclude Exhibit 6001. The Commission then voted unanimously to exclude the remaining testimony and exhibits addressed in the October 29 Commission action.

On November 4, 2015, Yankton Sioux Tribe, Rosebud Sioux Tribe, Cheyenne River Sioux Tribe, Standing Rock Sioux Tribe, Indigenous Environmental Network, Dakota Rural Action, Intertribal Council on Utility Policy, and BOLD Nebraska submitted a Joint Motion to Strike Proposed Findings of Fact and Conclusions of Law requesting that the Commission strike Keystone's Proposed Findings of Fact and Conclusions of law submitted as an attachment to Applicant's Post-Hearing Brief on the grounds that ARSD 20:10:01:25 states that "[i]f requested by the commission, the parties shall file proposed findings of fact." Finding that nothing in the statutes or rules precludes a party from filing proposed findings of fact and conclusions of law, on November 18, 2015, the Commission issued an Order Denying Joint Motion to Strike Proposed Findings of Fact and Conclusions of Law.

On November 9, 2015, John H. Harter, Elizabeth Lone Eagle, Paul F. Seamans, Cindy Myers, Diana L. Steskal, Byron T. Steskal, Arthur R. Tanderup, Lewis GrassRope, Carolyn P. Smith, Nancy Hilding, Gary F. Dorr, Wrexie L. Bardaglio, Joye Braun, Chastity Jewett, Dallas Goldtooth, Bonny J. Kilmurry, Viola Waln, Louis T. Genung, Terry Frisch, Cheryl Frisch, Dakota Rural Action, Indigenous Environmental Network, Intertribal Council on Utility Policy, BOLD Nebraska, Rosebud Sioux Tribe, Yankton Sioux Tribe, Cheyenne River Sioux Tribe, and Standing Rock Sioux Tribe filed Intervenor's Joint Motion to Dismiss requesting that the Commission enter an order (a) dismissing the petition for certification filed by TransCanada Keystone Pipeline, LP, and (b) revoking the permit for construction of the proposed Keystone XL Pipeline through South Dakota which was granted by the Commission on June 29, 2010, in the Amended Final Decision. On December 29, 2015, the Commission issued an Order Denying Motion to Dismiss denying both of these requests.

On December 9, 2015, Yankton Sioux Tribe filed Yankton Sioux Tribe's Proposed Findings of Fact and Conclusions of Law and Objections to Applicant's Proposed Findings of Fact and Conclusions of Law. On December 21, 2015, Keystone filed Applicant's Objections to Yankton Sioux Tribe's Proposed Findings of Fact and Conclusions of Law.

On December 18, 2015, the Commission received Dakota Rural Action's Motion to Supplement Administrative Record. In its motion, DRA asks the Commission to take

administrative notice of a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order filed by the United States Pipeline and Hazardous Materials Safety Administration (PHMSA) on November 20, 2015, and supplement the administrative record with the same. On December 21, 2015, Keystone filed Applicant's Response to DRA's Motion to Supplement the Record in which Keystone requests that the Commission also supplement the record with Keystone's response to the Notice of Probable Violation. On December 29, 2015, the Commission issued an Order Granting Motion for Administrative Notice and Supplementing the Administrative Record taking administrative notice of the Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order as official documents of PHMSA, an agency of the government of the United States, and supplementing the record with these documents, but denying Keystone's request to supplement the record with its response on the grounds that such response is not an official record of a governmental agency and would therefore be hearsay without an opportunity for adjudicatory challenge by other parties.

At its regular meeting on January 5, 2016, the Commission took this matter up for decision. Commissioner Fiegen moved to accept Keystone's Certification in accordance with SDCL 49-41B-27 and find that the Certification is valid. After discussion by the Commissioners, the Commission voted unanimously in favor of the motion.

Having considered the evidence of record, applicable law, and the briefs and arguments of the parties, the Commission makes the following Findings of Fact, Conclusions of Law, and Decision.

FINDINGS OF FACT

Parties

1. The permit holder and Applicant in this docket is TransCanada Keystone Pipeline, LP, a limited partnership organized under the laws of the State of Delaware and owned by affiliates of TransCanada Corporation, a Canadian public company organized under the laws of Canada. Amended Final Decision, Finding of Fact 1.

2. On November 4, 2014, the Commission issued an Order Granting Intervention and Party Status granting intervention and party status to all persons who had requested party status, namely: John H. Harter, Rosebud Sioux Tribe-Tribal Utility Commission, Elizabeth Lone Eagle, Paul F. Seamans, Viola Waln, Cindy Myers, RN, BOLD Nebraska, Diana L. Steskal, Cheryl Frisch, Terry Frisch, Standing Rock Sioux Indian Tribe, Byron T. Steskal, Arthur R. Tanderup, Lewis GrassRope, Carolyn P. Smith, Robert G. Allpress, Jeff Jensen, Amy Schaffer, Louis T. Genung, Nancy Hilding, Gary F. Dorr, Bruce Boettcher, Rosebud Sioux Tribe, Wrexie Lainson Bardaglio, South Dakota Wildlife Federation, Cheyenne River Sioux Tribe, Jerry D. Jones, Cody Jones, Debbie J. Trapp, Gena M. Parkhurst, Sierra Club, Joye Braun, 350.org, Yankton Sioux Tribe, Dakota Rural Action, Chastity Jewett, Indigenous Environmental Network, Dallas Goldtooth, RoxAnn Boettcher, Bonny Kilmurry, Ronald Fees, and Intertribal Council on Utility Policy. On March 4, 2015, the Commission issued an Order Granting Request to Withdraw Party Status allowing the South Dakota Wildlife Federation and the Sierra Club to withdraw as parties, and on April 21, 2015, the Commission entered an Order Granting Request to Withdraw Party Status allowing Jeff Jensen to withdraw as a party.

3. Staff participated fully as a party, represented by Kristen Edwards and Karen Cremer.

Procedural Findings

4. The Procedural History set forth above is hereby incorporated by reference in its entirety in these Procedural Findings. The procedural findings set forth in the Procedural History are a substantially complete and accurate description of the material documents filed in this docket and the proceedings conducted and orders issued by the Commission in this matter. In addition to the procedural findings set forth in the Procedural History, the following Procedural Findings deal with the hearing process itself.

5. The following testimony was pre-filed on April 2, 2015, April 23, 2015, April 24, 2015, June 25, 2015, June 26, 2015, and August 4, 2015 in advance of the formal evidentiary hearing held July 27 through August 1, and August 3-5, 2015, in Room 414 of the State Capitol Building in Pierre, South Dakota:

Pre-filed Direct Testimony and Exhibits

Keystone

Heidi Tillquist's Testimony and Exhibit A - Resume
Corey Goulet's Testimony and Exhibit A - Resume
Jon Schmidt, Ph.D.'s Testimony and Exhibit A - Resume
Meera Kothari, P.E.'s Testimony and Exhibits A and B – Resume and Media Advisory
(August 5, 2010)
David Diakow's Testimony and Exhibit A - Resume

Staff

Brian Walsh's Testimony and Exhibit____BW-1
Derric Iles' Testimony and Exhibit____DI-1
Kimberly McIntosh's Testimony and Exhibit____KM-1
Tom Kirschenmann's Testimony and Exhibit____TK-1
Daniel Flo's Testimony and Exhibit____DF-1, Exhibit____DF-2, and Exhibit____DF-2
Revised
David Schramm's Testimony and Exhibit____DS-1
Jenny Hudson's Testimony and Exhibit____JH-1
Christopher Hughes' Testimony and Exhibit____CH-1
Supplemental Pre-filed Testimony of Christopher Hughes
Paige Olson's Testimony and Exhibit____PO-1
Darren Kearney's Testimony and Exhibit____DK-1
Darren Kearney's Testimony (Amended July 23, 2015)

Intervenors

Gary F. Dorr's Testimony and Exhibit
Wayne Frederick's Testimony and Exhibit A - Resume
Cindy Myers' Testimony
Diana Steskal's Testimony (will file exhibits later)
Paul F. Seamans' Testimony
Dakota Rural Action's Testimony
Evan Vokes' Testimony

- Dr. Arden D. Davis, Ph.D, P.E.'s Testimony and Attachment (Figures 1, 2, 3, 4, 5, 6, 7, 8, and 9)
- Sue Sibson's Testimony
- Cheyenne River Sioux Tribe's Testimony
 - Carlyle Ducheneaux's Testimony
 - Steve Vance's Testimony
- Yankton Sioux Tribe's Testimony
 - Faith Spotted Eagle's Testimony
 - Supplement to Faith Spotted Eagle Pre-filed Testimony and Attachment – International Treaty to Protect the Sacred From Tar Sands Projects
- Standing Rock Sioux Tribe's Testimony
 - Waste Win Young's Testimony
 - Phyllis Young's Testimony
 - Doug Crow Ghost's Testimony
 - Linda Black Elk's Testimony
- Rosebud Sioux Tribe's Testimony
 - Richard Kuprewicz's Testimony Confidential (removed at the request of the party)
 - RST Exhibit 8 - Richard B. Kuprewicz's Resume Confidential (removed at the request of the party)
 - RST Exhibit 9 - Accufacts Inc.'s Letter to Rosebud Sioux Tribe Confidential (removed at the request of the party)
 - RST Exhibit 10 - Figure 1 - South Dakota Elevation Profile with Valves and Additional Information Confidential (removed at the request of the party)
 - Ian Goodman's Testimony Confidential (removed at the request of the party)
 - RST Exhibit 1 – Ian Goodman's Resume Confidential (removed at the request of the party)
 - RST Exhibit 3 – Changes to the Economic Costs and Benefits of the Keystone XL Pipeline for South Dakota Confidential (removed at the request of the party)
 - Brigid Rowan's Testimony Confidential (removed at the request of the party)
 - RST Exhibit 2 – Brigid Rowan's Resume (removed at the request of the party)
 - RST Exhibit 3 – Changes to the Economic Costs and Benefits of the Keystone XL Pipeline for South Dakota (removed at the request of the party)
 - RST Exhibit 4 – Landslide Hazard Areas Confidential (removed at the request of the party)
 - RST Exhibit 5 – Spill Costs Per Barrel from Comparable Crude Pipelines Confidential (removed at the request of the party)
 - RST Exhibit 6 – Range of Worst-Case Scenario Costs for Keystone XL Using Spill Costs for Comparable Crude Oil Pipelines (with 15-minute valve shutoff) Confidential (removed at the request of the party)
 - RST Exhibit 7 - Range of Worst-Case Scenario Costs for Keystone XL Using Spill Costs for Comparable Crude Oil Pipelines (with 30-minute valve shutoff) Confidential (removed at the request of the party)

Pre-Filed Rebuttal Testimony and Exhibits

Staff

Darren Kearney's Rebuttal Testimony

Standing Rock Sioux Tribe

Kevin E. Cahill, Ph.D.'s Rebuttal Testimony and Rebuttal Expert Report of Economist
Kevin E. Cahill, PH.D. on Behalf of the Standing Rock Sioux Tribe

Rosebud Sioux Tribe

Jennifer Galindo's Rebuttal Testimony

Exhibit 11 - Curriculum Vitae Jennifer Galindo Archeologist

Exhibit 12 - Map from Programmatic Agreement

Exhibit 13 - RST Email and Letter to Paige Olson

Exhibit 14 - TransCanada's Policy regarding Native American Relations

Ian Goodman and Brigid Rowan's Rebuttal Testimony Confidential (removed at the
request of the party)

Exhibit 15 - Changes to the Economic Costs and Benefits of the Keystone XL
Pipeline for South Dakota Confidential (removed at the request of the party)

Paula Antoine's Rebuttal Testimony

Exhibit 16 - Rosebud Sioux Tribe's Resolution No. 2014-42 - Amended: Petition

Exhibit 17 - South Dakota Codified Laws 49-41B-1, 49-41B-11 and 49-41B-22

Amended Rebuttal Testimony of Paula Antoine

Chief Leonard Crow Dog's Rebuttal Testimony

Keystone

Corey Goulet's Rebuttal Testimony

Dan King's Rebuttal Testimony and Resume

F.J. (Rick) Perkins' Rebuttal Testimony and Resume

Meera Kothari's Rebuttal Testimony

Jon Schmidt's Rebuttal Testimony

Heidi Tillquist's Rebuttal Testimony

Exhibit List

Exhibit 1: Diluted Bitumen-Derived Crude Oil: Relative Pipeline Impacts (Battelle
2012)

Exhibit 2: Comparison of the Corrosivity to Dilbit and Conventional Crude (Been
2011) Confidential (not available to the public)

Exhibit 3: Effects of Diluted Bitumen on Crude Oil Pipelines (National Academy of
Sciences 2013)

Exhibit 4: Crude Oil at the Bemidji Site: 25 Years of Monitoring, Modeling, and
Understanding (Essaid et al. 2011)

Exhibit 5: Use of Long-Term Monitoring Data to Evaluate Benzene, MTBE and
TBA Plume Behavior in Groundwater at Retail Gasoline Sites (Kamath et
al. 2012)

- Exhibit 6: Review of Quantitative Surveys of the Length and Stability of MTBE, TBA, and Benzene Plumes in Groundwater at UST Sites (Connor et al. 2015)
- Exhibit 7: Characteristics of Dissolved Petroleum Hydrocarbon Plumes: Results from Four Studies (Newell and Connor 1998)
- Exhibit 8: A Comparison of Benzene and Toluene Plume Lengths for Sites Contaminated with Regular vs. Ethanol-Amended Gasoline (Ruiz-Aguilar et al. 2003)
- Exhibit 9: Evaluation of the Impact of Fuel Hydrocarbons and Oxygenates on Groundwater Resources (Shih et al. 2004)
- Exhibit 10: Leukemia Risk Associated With Low-Level Benzene Exposure (Glass et al. 2003)
- Exhibit 11: United States Department of State 12.1: Keystone XL Project, Risk Analysis (Kothari, Bajnok, Tillquist)

Jeff Mackenzie's Rebuttal Testimony

- Appendix A - Jeff Mackenzie's Resume
- Appendix B - Final EIS 3.13.5.3 and 3.13.5.4

Amended Rebuttal Testimony of Heidi Tillquist

Exhibit List

- Exhibit 1: Comparison of the Corrosivity of Dilbit and Conventional Crude
- Exhibit 2: Effects of Diluted Bitumen on Crude Oil Pipelines
- Exhibit 3: Leukemia Risk Associated With Low-Level Benzene Exposure
- Exhibit 4: Characteristics of Dissolved Petroleum Hydrocarbon Plumes
- Exhibit 5: Use of Long-Term Monitoring Data to Evaluate Benzene, MTBE, and TBA Plume Behavior in Groundwater at Retail Gasoline Sites
- Exhibit 6: Review of Quantitative Surveys of the Length and Stability of MTBE, TBA, and Benzene Plumes in Groundwater at UST Sites
- Exhibit 7: A Comparison of Benzene and Toluene Plume Lengths for Sites Contaminated with Regular vs. Ethanol-Amended Gasoline
- Exhibit 8: Evaluation of the Impact of Fuel Hydrocarbons and Oxygenates on Groundwater Resources
- Exhibit 9: United States Department of State 12.1 -Keystone XL Project Risk Analysis

Amended Rebuttal Testimony of Meera Kothari

Dakota Rural Action

Evan Vokes' Rebuttal Testimony

John Harter's Rebuttal Testimony

Yankton Sioux Tribe

Member of the Yankton Sioux Tribe Business & Claims Committee Consisting of Elected Members: Robert Flying Hawk, Quentin JB Brugier, Jr., Mona Wright, Justin Songhawk, Leo O'Conner, Jean Archambeau, Glenford Sam Sully, Jason Cooke, and Everdale Song Hawk's Rebuttal Testimony

- Exhibit A - Keystone's Responses to Yankton Sioux Tribe's First Interrogatories and Request for Production of Documents
- Exhibit B - Appendix S - Programmatic Agreement and Record of Tribal Contact

Exhibit C - Appendix E - Amended Programmatic Agreement and Record of Consultation

Faith Spotted Eagle's Rebuttal Testimony

Exhibit A - Appendix S - Programmatic Agreement and Record of Tribal Contact

Exhibit B - Appendix E - Amended Programmatic Agreement and Record of Consultation

Chris Saucosi's Rebuttal Testimony

Intertribal Council On Utility Policy

Prefiled Testimony of Dr. Robert Oglesby

- Comments of Dr. James E. Hansen

Appendix: James E. Hansen Comments Charts

Exhibit 1 - James E. Hansen's Resume

Exhibit 2 - Assessing "Dangerous Climate Change": Required Reduction of Carbon Emissions to Protect Young People, Future Generations and Nature

Surrebuttal Testimony

Cindy Myers' Surrebuttal Testimony

Keystone

Surrebuttal Testimony of Corey Goulet

Surrebuttal Testimony of Dan King and Certificate of Service

6. A nine-day evidentiary hearing was held on July 27 through August 1 and August 3 through August 5, 2015. In addition to Keystone and Staff, the following Intervenors attended and participated in the hearing: Dakota Rural Action, BOLD Nebraska, Standing Rock Sioux Tribe, Rosebud Sioux Tribe, Yankton Sioux Tribe, Intertribal COUP, Cheyenne River Sioux Tribe, Indigenous Environmental Network, Paul Seamans, Cindy Myers, Elizabeth Lone Eagle, John Harter, Gary Dorr, Joye Braun, Louis GrassRope, Diana Steskal, Carolyn Smith, Dallas Goldtooth, Chastity Jewett, Wrexie Lainson Bardaglio, and Bonny Kilmurry. Dakota Rural Action, BOLD Nebraska, Intertribal COUP, Indigenous Environmental Network, and the Tribes were all represented by counsel.

7. The following witnesses testified at the hearing and were subject to cross examination: Corey Goulet, Meera Kothari, Rick Perkins, Jon Schmidt, Heidi Tillquist, Dan King, Diana Steskal, Carlyle Ducheneaux, David Schramm, Steve Vance, Evan Vokes, Cindy Myers, Kevin Cahill, Phyllis Young, Arden Davis, Faith Spotted Eagle, Jon Schmidt, Christopher Hughes, Jenny Hudson, Sue Sibson, Doug Crow Ghost, Daniel Flo, Wayne Frederick, Paula Antoine, Brian Walsh, and John Harter.

Applicable Statute

8. The governing statute is SDCL § 49-41B-27, which requires that if construction has not started within four years of the permit being granted, then the permittee must "certify to the Public Utilities Commission that such facility continues to meet the conditions upon which the permit was issued."

9. There are no other statutes, regulations, or South Dakota cases directly addressing SDCL § 49-41B-27 and its application in this docket.

Updates to the Project since June 29, 2010

10. On March 12, 2009, Keystone filed an application for a permit pursuant to SDCL Chapter 49-41B to construct the South Dakota portion of the Project. The application was docketed as HP09-001. On June 29, 2010, after a three-day hearing, the Commission entered an Amended Final Decision and Order; Notice of Entry granting Keystone a permit to construct and operate the project subject to 50 conditions attached to the Decision as Exhibit A.

11. The Project, as proposed in Keystone's application for a permit in Docket HP09-001, was delayed. A Presidential Permit required by Executive Order 11423 of August 16, 1968, and Executive Order 13337 of April 30, 2004, allowing the pipeline to cross the border between Canada and the United States, was still under review by the United States Department of State at the time of the hearing. On November 6, 2015, the Presidential Permit was denied.

12. As originally proposed, the Project was to be developed in three segments: the Steele City Segment from Hardisty, Alberta, to Steele City, Nebraska; the Gulf Coast Segment from Cushing, Oklahoma, to Liberty County, Texas; and the Houston Lateral Segment from Liberty County, Texas, to refinery markets near Houston, Texas.

13. The Gulf Coast Segment has been constructed and was placed into operation as a stand-alone project on January 22, 2014. The Houston Lateral Segment has also been constructed as a stand-alone project. Ex 2001, ¶ 15. The Project therefore currently consists of only the Steele City segment. The Steele City Segment extends from Hardisty, Alberta, Canada, southeast to Steele City, Nebraska. It will interconnect with the previously-approved and constructed Keystone Cushing Extension segment of the Keystone Pipeline. The route in South Dakota has not changed in any material respect. Ex 2001, ¶ 7; Ex 2013.

14. The maximum capacity of the Project is 830,000 barrels per day. TR 186; Ex 2001, ¶ 6.

15. The Bakken Marketlink project was developed after Keystone's permit application in HP09-001. Ex 2001, ¶ 5. It includes a five-mile pipeline, pumps, meters, and storage tanks near Baker, Montana, to deliver light sweet crude oil from the Williston Basin in Montana and North Dakota for transportation through the Project. Bakken Marketlink will deliver up to 100,000 bpd of domestically-produced crude oil into the Keystone XL Pipeline. TR 184-187; 241-248.

16. Because the Project is only the Steele City segment, the mileage has decreased from approximately 1,707 miles to 1,202 miles with about 876 miles in the United States. Ex 2001, ¶ 7. The South Dakota portion of the Project will be approximately 315 miles in length and

crosses the South Dakota counties of Harding, Butte, Perkins, Meade, Pennington, Haakon, Jones, Lyman, and Tripp. TR 291; Ex. 2005, ¶ 9; Petition, App. C, Finding 16.

17. There is no current construction schedule for the Project, pending issuance of a Presidential Permit. Ex 2001, ¶ 8.

18. The Pipeline will be constructed using API 5L X70M high-strength steel. This was one of the design options presented in the original permit application. Petition, App. C, ¶ 18; Ex. 2003, ¶ 5. Keystone withdrew its application to PHMSA for a special permit and adopted 59 special conditions developed by PHMSA as set forth in Appendix Z to the Department of State Final Supplemental Environmental Impact Statement (FSEIS). Petition ¶¶ 60, 90; TR 215, 302. As a result of this change, Keystone will construct the Pipeline using the as-proposed stronger steel, but will operate the Pipeline at a lower maximum pressure, 1,307 psig. Ex. 2003, ¶ 8; Petition, App. C, ¶¶ 18, 19, 63.

19. As part of the 59 special conditions, valves on the Pipeline must be located based on the worst-case discharge as calculated by 49 CFR 195.260 and by taking into consideration elevation, population, and environmentally-sensitive locations, or no more than 20 miles apart, whichever is less. As a result of this change, the number of mainline valves in South Dakota will be 20 instead of 16. Petition, App. C, ¶ 20; Ex. 2001, ¶ 9, 10, 11; FSEIS, App. Z, Condition 32; TR 215.

20. Keystone has committed to meet the 59 special conditions proposed by PHMSA as set forth in Appendix Z to the FSEIS. TR 215; Ex. 2001, ¶ 12.

21. The estimated cost of the Project in South Dakota has increased from \$921.4 million to \$1.974 billion due to new technical requirements, inflation, and additional costs due to the delay in receipt of federal approval and commencing construction. Ex. 2001, ¶ 13.

22. Keystone has continued to update its Construction, Mitigation, and Reclamation Plan (CMR Plan). A current, redlined version of the CMR Plan is attached to the Petition as Appendix C, Attachment A. Ex. 2005, ¶ 5; Petition, App. C, Attachment A.

23. In Docket HP09-001, Keystone submitted soil type maps as Exhibit TC-14. The maps are still generally consistent with the Project, but Keystone has committed to submit updated maps before construction begins as required by Condition No. 6. TR 575-640; Ex 2005, ¶ 6; Petition, App. C, ¶ 33.

24. Keystone will use horizontal directional drilling (HDD) to cross two additional rivers or streams—Bridger Creek and the Bad River. TR 335-336, 531, 537-538, 545, 547, 588-589, 633-634, 870, 1205, 1286-1287, 1886; Ex 2003 ¶ 10; Ex. 2005, ¶ 7; Ex. 2009 ¶ 6; Petition, App. C., ¶¶ 41, 83. The preliminary site-specific crossing plans for these additional HDD crossings are included with the Petition as Attachment B to Appendix C.

25. The projected total length of Project pipe with the potential to affect a High Consequence Area (HCA) is 15.8 miles, which is less than the 34.3 miles stated in the Amended Final Decision's findings of fact. TR 670, 1119; Ex. 2005 ¶ 4; Petition, App. C, ¶ 50. As a result of the change in mileage, it is estimated that a spill that could affect an HCA would occur no more than once in 460 years, rather than once in 250 years. TR 670.

26. Due to minor route refinements, all but 27.9 miles of the Project route in South Dakota are privately owned, an increase from 21.5 miles in the original application. Ex. 2005, ¶ 9; Petition, App. C, ¶ 54.

27. No Indian reservation or trust lands are crossed by the Project route. TR 394; Petition, App. C, ¶ 54.

28. TransCanada has thousands of miles of the same grade of pipeline steel, which has been coated with fusion bonded epoxy (FBE) installed and in operation. There has been no evidence of external corrosion except for one instance in Missouri in which an adjacent foreign utility interfered with the active cathodic protection system. Ex. 2003, ¶ 9; Petition, App. C, ¶ 68. The corrosion incident in Missouri was detected by Keystone during an in-line inspection of the pipe. TR 293-94, 2315-16. Keystone has since then started installing passive anodes to protect the pipeline during construction, which goes beyond what is required by federal regulation. TR 265, 309-310.

29. Since the Amended Final Decision was issued in 2010, Keystone has completed the process of consulting with the National Resource Conservation Service to create construction/reclamation units for the different soils along the pipeline route. TR 617; Petition, App. C, ¶ 80.

30. Other than these updates stated in Appendix C to the Petition, the parties did not present evidence of any other factual changes to the Project.

Keystone's Ability to Meet the Permit Conditions

31. None of the updates identified in Appendix C to Keystone's Certification Petition affects Keystone's ability to meet the conditions on which the permit was issued. As identified in Petition Appendix C, Conditions 1-3, 5, 6.a-6.f, 11-14, 16.a-16.p, 17, 18, 19.a, 20-34.a, 35-40, 41.b, and 42-48 are prospective. No evidence was presented that Keystone cannot satisfy any of these conditions in the future.

32. Condition 4 provides that the permit is not transferable without the consent of the Commission. No evidence was presented that Keystone cannot continue to comply with this condition.

33. Conditions 7-9 require that Keystone appoint a public liaison officer, which has been done, and submit quarterly reports to the Commission, which has also been done and is ongoing. No evidence was introduced that Keystone cannot continue to meet these conditions.

34. Condition 10 requires that not later than six months before construction, Keystone, must commence a program of contacts with local emergency responders. Keystone presented evidence that it has already started making such contacts and will continue. TR 317-318. No evidence was introduced that Keystone cannot continue to meet this condition.

35. Condition 10 does not specifically refer to Tribal governments or officials. To the extent that Tribes may be affected by construction and operation of the Project, Keystone presented evidence that it will contact Tribal emergency responders as well. TR 317-318.

36. Condition 15 requires consultation with the NRCS to develop the con/rec units, which Keystone established has been done. TR 617; Petition, App. C, ¶ 80; FSEIS, App. R.

37. Condition 19 requires that landowners be compensated for tree removal, which Keystone indicated is done as part of the process of acquiring easements. Petition, App. B, Condition 19. No evidence was presented that Keystone cannot continue to meet this condition.

38. Condition 34 requires that Keystone continue to evaluate and perform assessment activities regarding high consequence areas. Keystone presented evidence that this process is ongoing. TR 662-663. No witness testified to the contrary.

39. Condition 41 requires that Keystone follow all protection and mitigation efforts recommended by the U.S. Fish and Wildlife Service and the South Dakota Department of Game, Fish, and Parks (SDGFP). Keystone presented evidence that this process is ongoing. TR 630, 636-637; Petition, App. B, Condition 19. No witness testified to the contrary.

40. Condition 41 requires that Keystone consult with SDGFP to identify greater prairie chicken and greater sage and sharp-tailed grouse leks. In support of its Certification, Keystone submitted its Quarterly Report stating that this process is ongoing. Petition, App. B, Condition 41.a. No witness testified to the contrary.

41. Condition 16(m) requires that Keystone must re-seed all lands with comparable crops to be approved by the landowner, or with comparable grass or native species mix to be approved by the landowner for pasture, and that Keystone must actively monitor revegetation on all disturbed areas for at least two years. Condition 49 provides that Keystone must pay commercially reasonable costs and indemnify and hold harmless landowners for any loss or damage resulting from Keystone's use of the easement. The only evidence related to these conditions came from Sue Sibson, who testified that reclamation on her property after construction of the Keystone Pipeline has not been satisfactory. TR 1965. Sibson's testimony does not, however, establish that Keystone cannot meet these conditions with Keystone XL. She testified that it takes "quite a while" for native grasses to re-establish, and that her property has been reseeded at her request four or five times since 2009. TR 1977. She also testified that she has been paid damages for loss of use of the easement area, and she did not state that Keystone has failed to pay reasonable damages. The process of reclaiming her property is ongoing, and it is undisputed that Keystone has continued to work with Sibson. TR 1975, 1978, 306-307. Corey Goulet testified that Keystone was committed to continue reclamation efforts on the Sibson property until the Sibsons were satisfied. He also testified that out of 535 tracts on the Keystone Pipeline, all but 9 had been reclaimed to the satisfaction of the landowner. TR 306.

42. Condition 50 provides that the Commission's complaint process be available to landowners threatened with damage or the consequences of Keystone's failure to comply with any of the conditions. No evidence was presented that Keystone cannot comply with this condition.

43. Multiple Intervenors testified to their concerns about the possible adverse effects of the pipeline on groundwater resources, shallow aquifers, rivers, and streams. None of this testimony related to Keystone's ability to meet any permit condition. Rather, this testimony related to Keystone's burden of proof under SDCL § 49-41B-22.

44. Dr. Arden Davis testified to concerns that the Project right of way crosses the recharge areas of several shallow aquifers, including the Ogallala aquifer, Sand Hills-type material, gravel aquifers, eolian and alluvial aquifers, and the Fox Hills aquifer. Ex. 1003, p. 1.

Dr. Davis also testified that the Project right of way would cross the Little Missouri River, the Grand River and its tributaries, the Moreau River, the Cheyenne River, the Bad River, and the White River, and that dissolved hydrocarbon contaminants could be transported downgradient in surface water, in groundwater within the aquifers, or both. Dr. Davis also testified that the Cheyenne River, which drains much of the Black Hills, flows into the Missouri River and has exposed Pierre Shale along steep sides that are prone to slope failures. Ex. 1003, p. 2. These concerns do not specifically address any permit condition.

45. Heidi Tillquist testified on behalf of Keystone that adverse impacts to all of these areas are highly unlikely. Ex. 2017, ¶¶ 4-8. Dr. Davis did not respond to Tillquist, address the likelihood of adverse impacts, or conduct an independent risk assessment related to the Project. TR 1808-1809. The Commission addressed the likelihood of such adverse impacts in the Amended Final Decision in Findings of Fact 43-45 and 52. Dr. Davis's testimony is insufficient to warrant any change to those findings.

46. With respect to Dr. Davis's testimony about the Ogallala aquifer in Tripp County and the wind-blown Sand Hills type material crossed by the Project right of way, the Commission has required Keystone to treat that area as a hydrologically sensitive area. Amended Final Decision, Finding of Fact 53 and Condition 35; Ex. 2017, ¶ 9. Dr. Davis did not testify that such treatment was inappropriate or insufficient or that Keystone could not meet the condition.

47. Dr. Davis testified to his concern about possible benzene exposures from a leak or spill, especially since benzene is soluble in water and can be transported downstream, potentially affecting water intakes. Ex. 1003, pp. 3-4. Tillquist testified, however, that benzene exposures at a level that would cause health concerns would not be expected following a crude oil spill due to the low persistence of benzene and expected emergency response measures, and that a potential release would likely not threaten groundwater sources or public water intakes. Ex. 2017, ¶¶ 11-12. This testimony was undisputed.

48. Dr. Davis relied in his testimony on the Stansbury report from 2011 that was considered by the Department of State in connection with the FSEIS. Ex. 1003, p. 5. In her rebuttal testimony, Heidi Tillquist addressed flaws in Stansbury's analysis. Ex. 2017, ¶¶ 13-14. Dr. Davis did not address the Stansbury report in his hearing testimony, and Tillquist was not cross-examined about the Stansbury report.

49. John Harter testified to his concerns about the location of the Project right of way in relation to the City of Colome's water wells. TR 2209-2210. The proximity of the Project to the City of Colome's wells was addressed in Docket HP09-001. The Commission found that the risk of a spill affecting public or private water wells is low because the components of crude oil are unlikely to travel more than 300 feet from the spill site and there are no private or public wells within 200 or 400 feet, respectively, of the right of way and that the route was refined near Colome to avoid a groundwater protection area. Amended Final Decision, Findings 49 and 105. In this proceeding, Brian Walsh from the South Dakota Department of Environment and Natural Resources (DENR) testified that the route had been moved at DENR's request before the Amended Final Decision, and that the current route had been determined in consultation with DENR. TR 2155-2156. The route was moved 175 feet from the edge of the surface water protection area and 1,000 feet from the wellhead itself. TR 1323. Keystone also met at the time the route was changed with the mayor and an engineer for the City of Colome. TR 1384. This is not an issue that affects Keystone's ability to meet any permit condition.

50. Doug Crow Ghost, the Director of the Department of Water Resources for the Standing Rock Sioux Tribe, testified about the Winters Doctrine, tribal water rights, and his concern that the Keystone XL Pipeline presented a threat to tribal water supplies given long-term drought. TR 2015-2020. He testified that the Tribe is working with the State to quantify the Tribe's water rights. TR 2016-2017. His testimony was rebutted by Dr. Jon Schmidt, who explained in his rebuttal testimony that Keystone cannot use water if the use would adversely affect prior appropriations or vested rights, and that SDCL 46-5-40.1, which governs temporary water use permits for construction purposes, protects the Tribe, even in cases of long-term drought. Ex. 2009, ¶¶ 4-5, 7. Crow Ghost's testimony did not establish that Keystone is unable to meet any permit conditions.

51. Carlyle Ducheneaux is the Section 106 Coordinator for the Cheyenne River Sioux Tribe. TR 990. He testified that construction of the pipeline would disturb contaminated sediments in the Cheyenne River and its tributaries and that pipeline failure was likely to occur because of the sloughing of river banks and the movement of highly erodible soils. Ex. 7001, ¶¶ 8-14. Jon Schmidt testified that construction would not cause any disturbance of contaminated sediments in the Cheyenne River because Keystone will use HDD for the crossing. Schmidt also testified that sloughing of river banks is not an issue for the same reason and because Keystone can take other mitigation measures during construction. Ex. 2009, ¶¶ 8-9. Ducheneaux's testimony did not establish that Keystone is unable to meet any permit condition.

52. Cindy Myers testified to her concerns: (1) that emergency responders may not have adequate information about the chemical composition of the crude oil in case of a spill, TR 1658-1660; (2) the dangers of exposure to benzene, TR 1661-1663; (3) her opinion that benzene can permeate polyethelene and polyvinyl chloride water pipe and waterlines like the Mni Wiconi water pipeline, TR 1663-1664; (4) that, according to her, 62% of South Dakotans get their drinking water from the Missouri River, which is at risk from a spill, TR 1666-1667; and (5) because of the threat to drinking water resources, the Project "could substantially impair the health, safety, and welfare of South Dakotans." TR 1673. Tillquist's testimony established that the risks posed by possible benzene exposure due to a spill are low, and the Commission previously determined that the risk of any significant pipeline release was low. Amended Final Decision, Findings 43-45 and 52; Ex. 2017, ¶¶ 4, 6, 7, 8, 11, 12. Corey Goulet testified that studies have established that the amount of benzene present in crude oil is not a threat to PVC pipe. TR 950-951. Myers' testimony does not establish that Keystone is unable to meet any permit condition and essentially addresses SDCL 49-41B-22, the permitting statute, not SDCL 49-41B-27.

53. Faith Spotted Eagle testified to concerns about safe drinking water and the availability of water from the Missouri River for spiritual ceremonies. Ex. 9011, ¶¶ 21-23; TR 1855-1857. Spotted Eagle's testimony does not contain any factual basis for the Commission to find either that the Project poses a threat to the Tribe's drinking water or that water will not be available from the Missouri River for the Tribe's spiritual ceremonies.

54. Two Intervenors testified about their concerns that Keystone had not consulted with Tribal officials about the Project. Phyllis Young testified on behalf of the Standing Rock Sioux Tribe as an at-large Tribal Council Member that Keystone did not consult with the Tribe and, similarly, that the Department of State failed to consult with the Tribe in preparing the FSEIS. Ex. 8001, last page; TR 1722, 1732-1733. The Honorable Wayne Frederick testified on behalf of the Rosebud Sioux Tribe as a member of the Council that the Rosebud Sioux Tribe was not consulted by TransCanada. TR 2088. This testimony does not establish that Keystone

cannot meet any permit conditions because, as stated in the conclusions of law, it is not Keystone's legal obligation to consult with the Tribes in connection with the FSEIS.

55. No permit condition requires that Keystone consult with the Tribes about the Project. Condition 6 refers to "local governmental units," but does not specify Tribes. Condition 34 requires that Keystone must "consider local knowledge" in assessing and evaluating environmentally sensitive and high consequence areas. In support of its Certification, Keystone submitted its Quarterly Report in which Keystone's public liaison officer stated that Keystone has sought out local knowledge. Petition, App. B, Condition 34(b).

56. None of the Tribes who intervened in this proceeding were parties to Docket HP09-001, although all could have been.

57. Appendix E to the FSEIS, which is a matter of public record of which the Commission has taken judicial notice, contains the record of consultation between the Department of State and various Tribes under Section 106 of the National Historic Preservation Act. On page 11 of the record of consultation, all of the meetings, e-mails, telephone calls, and letters between the Department of State and the Standing Rock Sioux Tribe are listed. The record of consultation establishes that the Standing Rock Sioux Tribe was consulted by the Department of State.

58. Multiple witnesses testified that the Tribes in South Dakota passed resolutions opposing the Project and that Keystone representatives were not welcome on Tribal land. TR 1745-1746, 1873, 2084, 2096-2097, 2104-2105.

59. John Harter testified that Keystone acquired an easement on his property through the use of eminent domain. TR 2199. The court file in *TransCanada v. Harter*, Civ. 11-62 (6th Jud. Cir.), of which the Commission takes judicial notice, demonstrates that Keystone acquired an easement pursuant to a judgment entered by the court that enforces a settlement agreement between Keystone and Harter. TR 2214. Even if Keystone had acquired an easement on Harter's property by eminent domain, that would not establish that Keystone is unable to meet any permit condition.

60. Kevin E. Cahill, Ph.D., is an economist with ECONorthwest from Portland, Oregon. TR 1681-1682. Cahill testified that in his opinion the socio-economic analysis that was done as part of the FSEIS was "seriously flawed" because it was supposed to be a cost-benefit analysis, but it failed to consider any costs or potential indirect costs of the Project. TR 1685-1688. He testified that any benefits of the Project had not been measured against the costs as part of the analysis done in the FSEIS. TR 1690. The socioeconomic analysis in the FSEIS was conducted by the Department of State, not Keystone. No permit condition relates to the socioeconomic analysis in the FSEIS. Dr. Cahill's testimony does not establish that Keystone does not, or is unable to, meet any permit condition.

61. Paula Antoine testified about socioeconomic issues as a rebuttal witness on behalf of the Rosebud Sioux Tribe. Ex. 11000. Ms. Antoine is the Director of the Sicangu Oyate Land Office. TR 2131. She testified that in her opinion Keystone failed to present sufficient evidence related to Amended Final Decision Findings of Fact 107, 108, 109, and 110. Ex. 11000, pp. 2-4; TR 2133. Antoine's testimony is not based on her personal knowledge and does not relate to any permit condition.

62. Faith Spotted Eagle testified on behalf of the Yankton Sioux Tribe. Ex. 9011; TR 1848. She is a counselor and a PTSD therapist. TR 1848-1849. She testified as to her concerns about the proposed work camps in South Dakota and the effect they might have on the safety of Native American communities and tribal members. Ex. 9011, ¶¶ 14, 18, 19; TR 1850-1852. Spotted Eagle testified that the Commission should "anticipate a surge in crime, especially violent crime, in the communities near the man camps" and that because the camps are inhabited by young and single men who have financial means and are away from their families, "[t]he result is easy to predict and does not require any scientific analysis." Ex. 9011, ¶¶ 14, 18. Spotted Eagle cited no studies of crime associated with work camps, no crime statistics from work camps, and no personal experience with either work camps like those proposed for the Keystone XL Pipeline or with Target Logistics, Keystone's contractor.

63. Rick Perkins testified on behalf of Keystone about the work camps, and testified that Target Logistics, the contractor that will operate the camps, does not have a documented history of behavior problems associated with the camps. Ex. 2007, ¶¶ 5-6, 12-13; TR 2400. Perkins testified that Keystone expects no increase in crime associated with the camps. TR 2409. Workers who live in the camps must sign a code of conduct and may be expelled if they violate the code. TR 2413.

64. There are three proposed work camps in South Dakota - one in Harding County near Buffalo, one in Meade County near Howes, and one in Tripp County near Colome. Ex. 2007, ¶4. Keystone has talked to local law enforcement about the camps and is willing to supplement local law enforcement officers at Keystone's expense. Ex. 2007, ¶ 14; TR 2406. Keystone has obtained a conditional use permit from Harding County for the Buffalo camp. No such permit is required in Meade County or Tripp County, although Keystone will obtain an occupancy permit for the camp in Meade County. Ex. 2007, ¶ 15.

65. There is no permit condition related to the work camps. The testimony of Faith Spotted Eagle does not establish either that the work camps pose any particular threat to any South Dakota citizens, or that Keystone cannot meet any permit condition.

66. The Keystone XL pipeline route does not cross any reservation land or land held in trust for Indians. TR 254.

67. Steve Vance testified on behalf of the Cheyenne River Sioux Tribe. He is the Tribal Historic Preservation Officer. Ex. 7002, ¶ 2; TR 1524. Vance testified to his concern that the Project falls within the view shed of several cultural sites, like the Slim Buttes; that during construction, access to cultural and historic sites could be hindered; that operation and maintenance of the pipeline could disrupt spiritual practitioners requiring solitude; and that the Project will have long term negative effects emotionally and spiritually on many Tribal members. Ex. 7002, ¶¶ 7-10.

68. Vance's testimony is insufficient to establish that Keystone cannot meet any permit condition. Permit Condition 43 addresses the protection of cultural resources and provides that Keystone must follow the Unanticipated Discoveries Plan as approved by the Department of State. If Keystone finds any cultural resources during construction, Keystone must notify the Department of State and the State Historic Preservation Office, and, if appropriate, develop a plan to address the resource. Vance offered no testimony that Keystone cannot or will not comply with this condition.

69. Dakota Rural Action called Evan Vokes, a former TransCanada employee, to testify about welding and other safety issues that he perceived from his tenure. TR 1768; Ex. 1003-A. Vokes, who is no longer a licensed professional engineer, was employed by TransCanada from 2007 until May, 2012, although he did not actively work at TransCanada after October 26, 2011. TR 1544-1554. He started in the welding group as an engineer in training, and became a professional engineer in 2009. His rank from 2009 until October, 2011, was junior engineer. TR 1549-1552. When he started at TransCanada, he had no previous experience with pipeline welding. TR 1572.

70. Vokes testified that TransCanada inspects 100% of the welds in its mainline pipe, even though applicable federal regulations require that only 15% of the welds be inspected. TR 1578.

71. Vokes testified that he thought that TransCanada had problems with automated ultrasonic testing (AUT) of welds on the Cutbank Project in Canada. Vokes testified that he found defects in welding procedures used by TransCanada and that he notified his superiors. TR 1594-1597. He testified that the National Energy Board in Canada (NEB) sent a letter related to nine welding procedures not meeting minimum qualifications. TR 1594. Vokes testified that he thought that a pipeline rupture that occurred near Otterburne, Manitoba, was an example of a problem caused by a defective weld. TR 1598-9159. Dan King, TransCanada's Chief Engineer and Vice President for Asset Reliability, testified that the concerns that the NEB raised about AUT on the Cutbank Project were administrative in nature, not technical. He testified that they did not affect the safety of any welds. TR 2264-2265. He testified that the rupture on a natural gas pipeline near Otterburne was caused by a failure on a weld that was completed in 1960 under different procedures and standards. TR 2265-2266. In addition, he testified that TransCanada worked with the NEB to look at the other welds on the same pipeline and found no issues. TR at 2266-2267.

72. Vokes testified that he was aware of pipe intended for the Keystone Pipeline that had manufacturing defects. TR 1602-1603. Dan King testified that there was pipe manufactured for the Canadian portion of the project that had problems, and it was rejected by TransCanada and never shipped or installed. TR 2267-2268.

73. Vokes testified that he was involved in testing the integrity of the welds along a segment of the Keystone Pipeline. TR at 1600-1601. There were issues with peaked pipe, which is the result of a manufacturing problem. TR 1610-1611. Vokes thought that the pipe should not have been used because it could fatigue over time. TR 1611-1614. He thought, however, that "[w]e did a very good job, actually very good pipe, other than the fact of the peaking." TR 1613. Dan King testified that there was no pipe installed on the Keystone Pipeline that was inspected in a manner that did not come within the tolerances permitted by code, and that the pipe met TransCanada's tolerances, which are stricter than code. TR 2269-2270.

74. Vokes testified that he thought there were problems with gas metal arc welding causing lack-of-fusion defects. TR 1603-1605. Dan King testified that lack-of-fusion defects can occur with gas metal arc welding, which is typically used with larger diameter pipe, but that the defects are generally found during the inspection process, and then removed or repaired. TR 2271-2272.

75. Vokes testified that he worked on the Bison Project, that there were problems with the welding, and that while TransCanada wanted to use AUT for the welds, it was technically a problem. TR 1614-1619. As a result of the problems, Vokes testified that there

were 1,200 or 1,300 welds on the project that went into the ground that never had a code inspection. TR 1621. Vokes also testified that there were dents associated with welds on the Bison project. TR 1623-1624. Dan King testified that there was an in-service failure on the Bison Pipeline, which is a natural gas line. The failure was caused by some external force, but the source of the external force, which appeared to be some sort of heavy equipment strike, could not be determined. TR 2273-2274. PHMSA was involved in the investigation and, after investigation and a corrective action order, allowed the project back into service and cleared the corrective action order. TR 2274. As a result of the failure, TransCanada increased the number of inspectors on projects and improved inspector training. TR 2274-2275. King also testified that he disagreed with Vokes's testimony that there could be 1,200 to 1,300 welds in the ground that have not been subject to an inspection that meets code on the Bison project. He testified that PHMSA's involvement and inspection of 100% of the welds was thorough and complete. TR 2275-2276.

76. Vokes testified that in connection with the Keystone XL Pipeline, he worked on one section in Canada and maybe the Gulf Coast Project in the United States. TR 1754. He testified that he was concerned that TransCanada was using Weldsonix, a nondestructive examination company to inspect welds, because there had been issues with Weldsonix in the past. TR 1754-1756. He testified that he was told to qualify Weldsonix. TR 1756. Dan King testified that TransCanada was dissatisfied with the performance of Weldsonix on a project in 2004, but that Weldsonix U.S.A., which did work on the Keystone Pipeline, passed a qualification process and performed very well on that project. TR 2276-2277. After an anonymous person raised issues about inspection on the Keystone Pipeline, TransCanada did a 100% audit and found no issues with the work that Weldsonix had done. TR 2277.

77. Vokes's testimony is insufficient to establish that Keystone cannot meet any permit condition. His testimony did not directly relate to any permit condition. Moreover, it is undisputed that Vokes has no first-hand knowledge of any welding or inspection defects on the Keystone Pipeline, the Gulf Coast Project, or the Houston Lateral Project. It is also undisputed that he has no knowledge of any welding or inspection defects in South Dakota. TR 1773, 1775, 1777-1778.

Conclusion

78. At its regularly scheduled meeting on January 5, 2016, the Commission considered this matter. The Commission unanimously voted to approve the Company's request for an order accepting its certification. The Commission finds that the Company certified that it remains eligible to construct the project under the terms of 2010 permit, subject to the provisions of 49-41B. The Commission finds that the Company certified that the Project continues to meet the conditions upon which the 2010 permit was issued.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding under SDCL Chapter 49-41B and ARSD Chapter 20:10:22. The Commission has the legal authority to decide whether to accept Keystone's Certification under SDCL § 49-41B-27.

2. The Amended Final Decision and Order dated June 30, 2010, in Docket HP09-001 was not appealed and constitutes a final order of the Commission.

3. Even though more than four years have elapsed since the permit was issued in Docket HP09-001, the permit has not lapsed or expired. Keystone therefore has no legal obligation to again prove that it meets the requirements of SDCL § 49-41B-22, which the Commission concluded in the Amended Final Decision entered in Docket HP09-001 it had met. Keystone's burden of proof under SDCL § 49-41B-27 is distinct from its burden under SDCL § 49-41B-22.

4. Under SDCL § 49-41B-27, Keystone has the burden of proof to show that its certification is valid.

5. "Conditions" as used in SDCL § 49-41B-27 means the 50 Conditions attached as Exhibit A to the Decision.

6. The Commission has no authority over condemnation or eminent domain. SDCL 21-35-1 requires that these issues be brought before the circuit court.

7. The Keystone XL pipeline route does not cross any reservation land or land held in trust for Indian Tribes. The Commission has no jurisdiction to adjudicate aboriginal or usufructory rights with respect to lands that were formerly Indian country under the Treaties of 1851 or 1868 prior to diminishment.

8. Keystone met its burden of proof through the Certification signed by Corey Goulet, the documents filed with its Certification Petition, and the direct testimony of its witnesses establishing that despite some updates related to the Project since June 30, 2010, none of these updates affects Keystone's ability to meet the conditions on which the permit was granted.

9. With respect to prospective conditions that are unaffected by the updates since June 29, 2010, Keystone is as able today to meet the conditions as it was when the permit was issued as certified to in the Certification signed by Corey Goulet. No evidence was offered demonstrating that Keystone will be unable to meet the conditions in the future. Keystone offered sufficient evidence to establish that Keystone can continue to meet the conditions.

10. The Intervenor failed to establish any reason why Keystone cannot continue to meet the conditions on which the permit was issued.

11. Under Section 106 of the National Historic Preservation Act, it is the legal obligation of the Department of State to consult with the Tribes in South Dakota. 16 U.S.C. § 470f; 36 C.F.R. Part 800.

12. The Commission granted party status to every person or entity who sought it. The Intervenor was afforded a full and fair opportunity to be heard. The proceedings in this docket were substantially longer, more in-depth, and more involved than in HP09-001, even though Keystone's burden of proof was more limited in scope. The Commission needs no additional information to determine whether to accept Keystone's Certification under SDCL § 49-41B-27.

13. The Commission concludes that the Certification and all required filings have been filed with the Commission in conformity with South Dakota law and that all procedural

requirements under South Dakota law, including public hearing requirements, notice, and an opportunity to be heard, have been met.

It is therefore

ORDERED that Keystone's Certification under SDCL § 49-41B-27 is accepted by the Commission and found to be valid and Keystone is authorized to proceed with the construction and operation of the Keystone XL Pipeline subject to the conditions attached as Exhibit A to the Amended Final Decision and Order dated June 30, 2010.

NOTICE OF ENTRY AND OF RIGHT TO APPEAL

PLEASE TAKE NOTICE that this Final Decision and Order was duly issued and entered on the 21st day of January, 2016. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition with the Commission within 30 days from the date of issuance of this Final Decision and Order; Notice of Entry. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Final Decision and Order to the appropriate Circuit Court by serving notice of appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 21st day of January, 2016.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.
By: <u>Karon E. Bremer</u>
Date: <u>1-21-16</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON, Chairman

Kristie Fiegen

KRISTIE FIEGEN, Commissioner

Gary Hanson

GARY HANSON, Commissioner

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF) TRANSCANADA KEYSTONE PIPELINE, LP) FOR ORDER ACCEPTING CERTIFICATION) OF PERMIT ISSUED IN DOCKET HP09-001) TO CONSTRUCT THE KEYSTONE XL) PIPELINE)	ORDER GRANTING MOTION TO DEFINE ISSUES AND SETTING PROCEDURAL SCHEDULE HP14-001
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On September 15, 2014, TransCanada Keystone Pipeline, LP (Keystone) filed with the South Dakota Public Utilities Commission (Commission) a Petition for Order Accepting Certification under SDCL §49-41B-27 (Petition) seeking an order accepting certification of the energy facility permit issued in Docket HP09-001 for construction of the Keystone XL Pipeline. On June 29, 2010, the Commission issued an Amended Final Decision and Order; Notice of Entry granting a permit to Keystone for construction of the Keystone XL Pipeline. Because it has been more than four years since the permit was issued and construction has not commenced, Keystone now seeks an order accepting certification pursuant to SDCL 49-41B-27. On October 1, 2014, the Commission issued an Order Assessing Filing Fee assessing a fee to cover actual expenses up to the remaining balance of the statutory maximum fee of \$660,700. On November 4, 2014, the Commission issued a Prehearing Scheduling Conference Order and an Order Granting Intervention and Party Status granting intervention to forty-two intervenors. On November 5, 2014, the Commission issued an Order for and Notice of Motion Hearing setting Keystone's Motion to Define the Scope of Discovery under SDCL § 49-41B-27 (Motion) for hearing on November 25, 2014. On November 14, 2014, the Commission issued an Order Changing Motion Hearing Date and Order for and Notice of Scheduling Hearing setting the Motion for hearing on December 9, 2014, and giving notice that on December 9, 2014, the Commission would hear from the parties regarding scheduling and take action on a procedural schedule for the docket.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-41B, specifically 49-41B-27, and ARSD Chapter 20:10:22.

At its regularly scheduled meeting on December 9, 2014, the Commission considered the Motion and the procedural schedule that should be adopted for this proceeding. After hearing from the parties, a majority of the Commission, with Commissioner Fiegen dissenting, voted: to grant the Motion to the extent that discovery be limited to only discovery regarding any matter, not privileged, which is relevant to 1) whether the proposed Keystone XL Pipeline continues to meet the fifty permit conditions set forth in Exhibit A to the Amended Final Decision and Order; Notice Of Entry issued on June 29, 2010, in Docket HP09-001 (Decision), or 2) the proposed changes to the Findings of Fact in the Decision identified in Keystone's Tracking Table of Changes attached to the Petition as Appendix C; that it shall not be grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; and that parties shall identify by number and letter the specific Condition or Finding of Fact addressed. The Commission then unanimously voted to adopt the following schedule of proceedings in this docket:

Yankton Sioux Tribe's Motion to Dismiss heard at Commission's regular meeting	January 6, 2015
Initial round of discovery served	January 6, 2015
Initial discovery responses served	February 6, 2015
Final discovery served	February 20, 2015
Responses to final discovery served	March 10, 2015
Pre-filed direct testimony filed and served	April 2, 2015
Pre-filed rebuttal testimony filed and served	April 23, 2015
Evidentiary hearing	May 5-8, 2015

It is therefore

ORDERED, that discovery shall be limited to only discovery regarding any matter, not privileged, which is relevant to 1) whether the proposed Keystone XL Pipeline continues to meet the fifty permit conditions set forth in Exhibit A to the Amended Final Decision and Order; Notice Of Entry issued on June 29, 2010, in Docket HP09-001 , or 2) the proposed changes to the Findings of Fact in the Decision identified in Keystone's Tracking Table of Changes attached to the Petition as Appendix C, that it shall not be grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence, and that parties shall identify by number and letter the specific Condition or Finding of Fact addressed. It is further

ORDERED, that the parties shall follow the procedural schedule as set forth above.

Dated at Pierre, South Dakota, this 17th day of December, 2014.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.	
By:	<u>[Signature]</u>
Date:	<u>12-17-14</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

[Signature]
GARY HANSON, Chairman

[Signature]
CHRIS NELSON, Commissioner

[Signature]
KRISTIE FIEGEN, Commissioner,
dissenting in part