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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION
OF DAKOTA ACCESS, LLC FOR AN
ENERGY FACILITY PERMIT TO CONSTRUCT
THE DAKOTA ACCESS PIPELINE

HP14-002

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Transcript of Hearing
September 29, 2015 through October 9, 2015
October 6, 2015
Volume V
Pages 1007-1351

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BEFORE THE PUBLIC UTILITIES COMMISSION

CHRIS NELSON, CHAIRMAN
GARY HANSON, COMMISSIONER
RICHARD SATTGAST, ACTING COMMISSIONER

COMMISSION STAFF

Rolayne Ailts Wiest
Kristen Edwards
Karen Cremer
Brian Rounds
Greg Rislov
Darren Kearney
Tina Douglas
Katlyn Gustafson

Reported By Cheri McComsey Wittler, RPR, CRR

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APPEARANCES

Brett Koenecke and Kara Semmler, Dakota Access
Glenn Boomsma, Intervenors
Kimberly Craven, Indigenous Environmental Network and
Dakota Rural Action
Thomasina Real Bird and Jennifer Baker, Yankton Sioux
Tribe
Matt Rappold, Rosebud Sioux Tribe
Diane Best, City of Sioux Falls
Margo Northrup, SD Association of Rural Water Systems
Kristen Edwards and Karen Cremer, PUC Staff

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TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the South Dakota State Capitol
Building, Room 414, 500 East Capitol Avenue, Pierre,
South Dakota, on the 6th day of October, 2015.

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1 MS. WIEST: I believe according to motions that
2 were filed and granted by the Commission this morning, we
3 were starting with witnesses from the Yankton Sioux
4 Tribe.

5 MS. REAL BIRD: Yes. That's correct. Good
6 morning.

7 And we have an update regarding Mr. Saunsoci.
8 He's ill and will not be present today to give his
9 testimony, and we don't know whether he will be able to
10 attend by the rest of the hearing. We are playing that
11 by ear.

12 We do have Ms. Spotted Eagle and Mr. Cooke
13 ready. We didn't file a motion for Mr. Cooke, but if the
14 Commission wishes, we can present Mr. Cooke.

15 MS. WIEST: Is there any objection to Mr. Cooke
16 going today if possible?

17 MS. NORTHRUP: Ms. Wiest, before we proceed, I
18 do have one issue that I would like to bring up if that's
19 possible at this time.

20 MS. WIEST: Yes.

21 MS. NORTHRUP: I'm requesting that Troy Larson
22 from Lewis & Clark be able to testify tomorrow in lieu of
23 Dan Zulkosky.

24 The reason is when we filed our testimony
25 probably based on miscommunication the parties hadn't

1 really engaged in the process. We hadn't even exchanged
2 basic engineering information.

3 Since that time we've spent the last three weeks
4 trying to gear up and get to a point where we can get an
5 agreement, which we're not quite there. But Troy
6 Larson's really the one that's been involved in the bulk
7 of those negotiations and has requested that he be the
8 one that be allowed to testify tomorrow on behalf of the
9 Rural Water Association and Lewis & Clark.

10 I have notified Staff and also Dakota Access
11 Pipeline of this request, and I'm not sure what their
12 position is going to be.

13 MS. WIEST: Do any of the parties have -- who is
14 Troy?

15 MS. NORTHRUP: I'm sorry. Troy Larson is the
16 general manager of Lewis & Clark.

17 MS. WIEST: And would he be using the same
18 testimony as Mr. Zulkosky and exhibits?

19 MS. NORTHRUP: Yes. He would be in a position
20 to adopt the testimony that's already been prefiled. But
21 a good portion of, you know, the conditions, the
22 engineering issues, all of those have transpired and kind
23 of came to light in the last three weeks so we'd be in a
24 position to supplement or update that testimony in either
25 Condition.

1 MS. WIEST: Do any of the parties at this
2 time -- or if you would like time to think about it, we
3 don't have to decide it this morning -- have any
4 objection to that substitution of witness?

5 MR. KOENECKE: We have no objection.

6 MS. WIEST: Any objection?

7 With that, we will allow the substitution of
8 witness.

9 MS. NORTHRUP: Thank you.

10 MS. WIEST: Is there anything else that we
11 should go over prior to Yankton Sioux Tribe calling their
12 first witness?

13 If not --

14 MS. CRAVEN: I would just like to get
15 clarification on what additional witnesses and what order
16 the State will be calling their witnesses.

17 MS. WIEST: I think we're -- well, I'll just
18 ask -- do you mean PUC Staff, what order their
19 witnesses --

20 MS. CRAVEN: Yes.

21 MS. WIEST: Did you have any updates on order of
22 witnesses at this time?

23 MS. EDWARDS: I don't really have an update
24 beyond what we gave last time we discussed it. Most of
25 our witnesses who were from out of state are now present

1 in the room.

2 The only one who is not present I believe is
3 David Nickel who was called away on an incident
4 investigation, which, unfortunately, takes priority over
5 being personally present. So hopefully he'll be able to
6 call in because that was somewhat of an emergency for
7 him.

8 MS. WIEST: And at the end of each day we can
9 ask for updates about order of witnesses for the next
10 day.

11 MS. CRAVEN: Thank you.

12 MS. WIEST: Go ahead, Yankton Sioux Tribe.

13 MS. BAKER: Thank you, Commissioners.

14 Jennifer Baker for the Yankton Sioux Tribe. The
15 Yankton Sioux Tribe would like to call Faith Spotted
16 Eagle.

17 (The oath is administered by the court reporter.)

18 DIRECT EXAMINATION

19 BY MS. BAKER:

20 Q. Good morning, Ms. Spotted Eagle.

21 A. Good morning.

22 Q. For the record I have just handed you a binder of
23 the Yankton Sioux Tribe's exhibits.

24 A. Yes.

25 Q. Now could you please state your name and address for

1 the record.

2 A. My name is Faith Spotted Eagle, my English name. My
3 Dakota name is Tunkan Inajin Win, which is Standing
4 Stone. And my address is Box 667, Lake Andes,
5 South Dakota on the Ihanktonwan.

6 Q. Are you an enrolled member of any Tribe?

7 A. Of the Ihanktonwan. Yankton.

8 Q. Thank you.

9 Can you describe the kinds of work that you do?

10 A. For the last 25 years I've done a private business,
11 individual contractor as a therapist. I'm a
12 posttraumatic stress disorder therapist, and I work with
13 the VA. I used to work with three VA centers, and
14 because I've slowed down a little-bit I just do Tucson
15 now. Tucson VA.

16 And then I work with various schools' programs
17 throughout the country and currently have a contract with
18 the group in Nebraska that is doing workforce trauma
19 reduction. And I have a master's in counseling.

20 Q. Can you describe your educational background and
21 professional experience. And you've done that a bit, but
22 is there anything that you'd like to add to your
23 educational background and your professional experience?

24 A. Probably when I answer that question the way I see
25 the world on one track is the Western information and

1 then on the other track is my traditional cultural
2 knowledge, which I think is just as important.

3 So from the traditional cultural perspective I'm a
4 speaker of my language. I'm fluent -- I didn't speak
5 English until I was five fluently anyway because I was
6 raised by my grandma. And she died when she was 104.
7 And I learned a lot about the things that I'm concerned
8 about with the pipelines about the land.

9 So that's my traditional cultural up bringing.
10 Because my grandmother was a spiritual person that -- my
11 great grandmother that people depended on in Three Bands.

12 And then on the left side, the Western science, my
13 grandma really wanted me to be a biologist but I didn't
14 take good math at my high school and so I bombed out in
15 organic chemistry. So I ended up with a minor in biology
16 and I have a master's in counseling.

17 And I've worked with a number of settings. I've
18 been a school principal, counselor, teacher. I've been
19 manager of human services programs for the Coeur d'Alene
20 Tribe in the northwest Colville. I worked in the
21 psychiatric unit for community mental health in Spokane,
22 Washington, principal of a school in Fort Hall, Idaho.
23 And then there came a time when I needed to return home.

24 So I came home I believe in -- I lost track of time.
25 It's been a while since I came home and purchased a home

1 at Yankton, on the Yankton Reservation.

2 Q. Okay. Thank you.

3 Now in that binder I handed you of exhibits there's
4 a label YST 8, and I believe it's under the eighth tab.

5 A. Okay.

6 Q. Can you tell us what that document is?

7 A. It says Bio for Faith Spotted Eagle.

8 Q. Thank you.

9 MS. BAKER: Yankton Sioux Tribe would move for
10 admission of Exhibit YST 8.

11 MS. WIEST: Any objection?

12 THE WITNESS: I'm 67, not 65. I'm not lying.

13 Q. If not, it's been admitted.

14 MS. BAKER: Thank you.

15 Q. And you previously stated that you're a member of
16 the Sioux Tribe. Do you hold any positions with the
17 Tribe?

18 A. We have inherent authority of our Tribe, which is a
19 general council, because we are different than other
20 Tribes that have tribal councils. So in our Tribe we
21 didn't accept the Indian Reorganization Act, which was
22 designed to replace our traditional forms of government
23 in 1934.

24 And so our Tribe voted that down so that we have
25 like in a sense a pure democracy. So under that general

1 council the elected officials are the Business and Claims
2 Committee. And then in a parallel fashion to the side we
3 are selected by council, and I'm a member of the
4 Ithanktonwan Treaty Committee.

5 And there are five members on that. And I'm the
6 chair. And when you're selected by the people in general
7 council you serve for life, unless you do something like
8 steal a car or do something.

9 But I've been on there for -- I think I'm going into
10 my seventh year.

11 Q. In that binder you'll also find two documents
12 labeled YST 9 and YST 10.

13 Can you identify YST 9 for the Commission?

14 A. Yeah. That's -- identifies our aboriginal
15 territories in eastern South Dakota.

16 Q. That's 9?

17 A. Yes.

18 Q. Okay. Thank you. And can you tell us what YST 10
19 is?

20 A. Yeah. It shows the pipeline at discussion here,
21 Dakota Access, going through several counties. I think
22 is it 13 counties.

23 Q. Okay. Thank you. And did you submit prefiled
24 testimony in this matter?

25 A. Yes, I did.

1 Q. In that binder under 7 you'll find the document
2 marked YST 7.

3 Can you tell us what that document is?

4 A. It's my testimony.

5 Q. Okay. Have you read and reviewed this document?

6 A. Yes. I was just reviewing it a little bit ago.

7 Q. Okay. And is there anything that you would like to
8 add that is not in that document?

9 A. Yeah. It talks about the purpose of my testimony in
10 the beginning, and it names several reasons why I felt
11 like it was important for me to testify.

12 And one of those is it talks about treaties,
13 sociocultural, the infusion of large numbers of people
14 into an area where they didn't exist before, and then
15 concerns about the water.

16 And so when you look at sociocultural, something
17 that I would like to expand on is the fact -- I think a
18 lot of people don't realize that there's parts of our
19 infrastructure in the Dakota world that would still exist
20 in the visible manner, and that's the gathering of
21 plants, the knowledge of traditional ways of healing.

22 Because, as you know, our infrastructure has been
23 destroyed for the last 500 years. And then every time
24 different government administration comes in they have a
25 different answer for the Indian problem. So we're

1 constantly reeling from somebody else's solution.

2 And so the way we survive is we depend on our
3 culture. So I think that those areas -- and I'll give
4 you an example. In the sisitwan [phonetic] area, which
5 is up in the middle of those counties, one of the best
6 places for gathering is what we call sepetwata
7 [phonetic], which is actually food of the muskrats.
8 That's a prime area to gather sepetwata because they have
9 some areas that are preserved from the runoff from the
10 pesticides from the farmlands.

11 So even that we have to guard against because
12 there's so much farmland and runoff into the streams that
13 a lot of those areas are polluted to begin with.

14 And so because of that, we're even more concerned
15 about any further pollution to the Missouri River that
16 would impact our gathering capabilities that we do for
17 our medicines.

18 So I think that is really of prime concern for me as
19 a grandmother. Because at the age that I am at, 67, we
20 use a lot of these medicines with our younger people, and
21 so that's not -- in the Western world that I talked about
22 before, they try to term it evidence-based practice. We
23 call it practice-based evidence, that we've done it for
24 hundreds and thousands of years. So these are proven
25 methods of indigenous ways of being.

1 So when you have a disruption of that, then you have
2 another layer of oppression that you have to deal with
3 because you really don't have anywhere to turn to because
4 the laws are not ours. And so then we're, once again,
5 reeling from another decision made by somebody else who
6 doesn't understand these ways of being. So that's a
7 primary concern.

8 The other concern, I think, again in sociocultural
9 is that we have -- in Western society you have like all
10 these computer screens. You have keyboards. You have my
11 phone sitting over there. You have all of that stuff.

12 But in our traditional cultural world we have
13 something called traditional technology. And that
14 traditional technology is a relationship between what
15 exists on the land and has been there for hundreds of
16 years and how we interact with that environment.

17 And I think my name is an example of that. My name
18 is Spotted Eagle. And my grandfather -- my
19 great-great-grandfather was the eagle catcher for the
20 Ithanktonwan, the Yankton Sioux. And so he was given the
21 name Spotted Eagle.

22 And so when the latest administration came in they
23 said you can't hang onto that name anymore. You can't be
24 called Spotted Eagle. And he said why not. And they
25 said because you have to have an English name. And he

1 said no, I don't. That's my honored name.

2 And so I had a grandmother whose name was Deloria,
3 and they were from the French. And they tried to force
4 him to take that Deloria name, which was his mother's
5 name, and he said no. And so at the threat of being
6 arrested and at the threat of coercion, he stuck to his
7 name. Otherwise, I wouldn't be named Faith Spotted
8 Eagle.

9 So he had a deep relationship with the existence of
10 eagles, nesting areas. Because when we did gather eagles
11 we didn't kill them. We would dig the pits, and we have
12 oral history of that in my family. And they dig the pits
13 in the ground and have the rabbit run on the raw hide or
14 the other prey.

15 And the eagle would come down and grab the animal,
16 and then my grandfather would reach up and grab that
17 eagle and they would pluck the feathers that they needed
18 for ceremony. But they wouldn't kill the eagle. They
19 would let the eagle go.

20 So that's a relationship of respect. Then they
21 would make an offering. They would say thank you for the
22 feathers.

23 So nowadays in Western technology it's all
24 fragmented. So you have the -- a nonexistent EIS over
25 here. You have a government report over here. You have

1 a PUC process. You have all of these fragments that
2 don't necessarily look at the complete picture. And I
3 think in our traditional technology we looked at the
4 existence and the relationship between the cranes, the
5 sand cherries, the different species that grow in the
6 land, the harvest times.

7 Like right now in our language we call it pna yetu
8 [phonetic], entering the fall. There's certain things
9 that we are harvesting right now. And so now -- and the
10 good thing is that we're remaking relationships with
11 farmers now that they are allowing us back on the land.
12 And that's, I guess, the side benefit of fighting the
13 pipelines is now that we have overcome some historical
14 trauma and they say, yeah, I know that plant or I know
15 the existence of those stone features, we protect them.
16 So we've been able to ally on the common protection of
17 the land. So that's a concern.

18 And I think the other concern is with the
19 sociocultural is that it's not mentioned in the testimony
20 but it is sociocultural is that the James River in our
21 oral history -- and actually we have a winter count that
22 is called a John K. Bear winter count, and it recounts
23 that our Ithanktonwan people and portions of the band of
24 the Nakota and Dakota lived along the James River.

25 And the James River cuts completely through that

1 area. So in our oral history and by the writings of
2 James Howard from the University of South Dakota -- and
3 he actually interviewed my father, and so as a first
4 informant of that, we know that we have many, many
5 cultural sites along the James River.

6 And that was a prime camping area because the
7 pattern, the relationship that we had with the James
8 River, we knew the flood times, and it wasn't as
9 dangerous as the Missouri River. So they would go back
10 between those two water bodies.

11 So we have a lot of direct oral history, and we
12 actually did -- in my family we did ethnographics
13 interviews regarding the James River. So we have lots of
14 information on the James River.

15 And on the other side of my family system you asked
16 what Tribe I belonged to -- or band. My grandmother that
17 raised me was Hunkpati or Ithanktonwan from the Crow
18 Creek. And her mother that I'm named after, my
19 great-grandmother, gathered plants along the James River
20 that were specific to that area.

21 So we are in the process of making relationship.
22 And we did an ethnographic study of the Wessington
23 Springs area and Jerauld County and to the counties left
24 interviewing and see how much of those plants are still
25 in existence.

1 So we have a great concern for that because there
2 just isn't a lot of prairie left. And so when you see
3 natural grasslands that it's such a pristine environment
4 that is pretty difficult to create, recreate, especially
5 when you bring in foreign species, and we have no idea
6 what kind of interaction 100 years from now that is going
7 to happen between the interaction of those species.

8 So in a sense we're toddlers. When we start messing
9 with these things we have no clue about what's going to
10 happen 100 years from now.

11 So I guess in my mind and my teachings and the
12 sociocultural concerns is we do have a traditional
13 technology that exists about what lives on the land and
14 what interacts and our role in that, which is to be
15 friendly, not to destroy it without any kind of insight
16 to what will happen even 10 years from now.

17 And the other part that is also a sociocultural
18 concern is -- and it was just a few sentences in the
19 prefiled testimony is the impact on sexual violence.

20 And sexual violence has nothing to do with sex.
21 It's an act of violence. So when a person gets raped by
22 someone -- and the figures are three out of five native
23 women in Indian Country so that's like one, two, three,
24 four, five. One, two, three. In this room there would
25 be numerous people if you use that statistic, that suffer

1 rape.

2 So there's a high incidence of that in our culture,
3 and the highest number comes from people that are outside
4 of our cultural. And I have personal experience and I
5 don't care to expound on that but just knowing that I am
6 not unusual in the fact I am a sexual abuse survivor and
7 was indeed assaulted by somebody outside of my culture.
8 And so I have knowledge of the dynamics that take place
9 in a situation.

10 And one of the side things to consider, which is a
11 sociocultural effect, is that when you have a large
12 number of people who have suffered that kind of trauma,
13 the biggest single thing that will combat the existence
14 of trauma in any society is a sense of safety.

15 And it's not safe to think of large numbers of men
16 coming into a territory that is isolated and didn't have
17 them there before. So you're creating a whole new mix.
18 And there's so much unpredictability to -- and not even
19 considering and wondering whether these people are on
20 sexual offender registers. We don't even know if they're
21 registered sexual offenders.

22 So there's so many like shots in the dark. And it's
23 not just -- and something that I know personally on our
24 larger cultural effect in our families, working with the
25 VA, I used to think that native people had had the

1 monopoly on trauma because we've suffered so much
2 oppression and we had a holocaust in this country. And I
3 used to think, oh, Indian people or native people are the
4 only ones that have trauma.

5 And I was taught a really big lesson in working with
6 the VA that we are not alone, that there's major
7 historical trauma suffered by all the inhabitants of this
8 country because they were forced to give up their
9 language, they were forced to live by laws that were
10 foreign to where they came from, and there's -- what
11 would be the word?

12 There's, I guess, nostalgia and longing for their
13 own culture. And I know that because I work with these
14 individuals. And they'll say we wish we would have been
15 allowed, but our language was outlawed too. So the
16 melting pot failed. It created more division and
17 historical trauma for populations in addition to our own.
18 And we resisted that because we didn't want to give that
19 up.

20 And that's what we're saying now is we don't want to
21 give up those medicines. We don't want to give up that
22 traditional technology we have about that land. And we
23 do travel those areas.

24 We've talked to a women's society. Myself, one of
25 the infrastructures that had to be restored when the

1 oppression from the government came is that the
2 regulatory authority that existed in many of our cultures
3 was the existence of societies.

4 And so you had men societies. You had women
5 societies. You had spiritual societies. You had warrior
6 societies. Those are the ones that regulated the
7 infrastructure. And nowadays it's the Department of
8 justice. It's totally foreign. And it's punishment.

9 And so when we saw that in my home area, which is
10 actually -- aboriginal territory is huge, we decided that
11 we needed to bring back our traditional culture. So I'm
12 a member, my older sister who's a matriarch in our
13 family, we brought back the revived Brave Heart Society,
14 which is the Cante Ohitika Okodakiciye.

15 And our role is to preserve sacred sites, to gather
16 traditional medicines, to teach this to our younger
17 people. Because the best medicine against violence,
18 domestic assault, poverty is the good medicine of
19 culture. And we see the effects because we have been
20 revived for 21 years.

21 We've gone for a whole generation. We started and
22 revived in November of 1994, and now we have -- when we
23 first began, some of the men came to us and they said you
24 should start a men's society. And we said we're women.
25 And so we said, well, we'll pray about that.

1 And 20 years later we have a men's society within
2 our midst. And we raised them. Those young men 20 years
3 later have been raised in a respectful way to respect
4 plants, to know how to gather, to know the seasons, to do
5 rights of passage, to stand against -- and we see the
6 kind of partners that they are choosing. They are taking
7 care of their children.

8 So what it is is restoration of an infrastructure
9 that combined that traditional technology that had a
10 relationship with the land. And if we destroy the land,
11 there's going to even be greater problems, not only for
12 us but for other people who are raising the food for all
13 of the people on Turtle Island.

14 But I really wanted to point that out because I
15 think that you don't have to be a biologist to know that.
16 All you need to do is go stand and observe the four
17 seasons, and you see the migration patterns that are
18 being disrupted.

19 And the other thing that I wanted to point out is
20 that we have an actual symbol in our language that
21 encapsulates that in a drawing.

22 You know the form of a tepee? If you look at an
23 upsidedown tepee and you look at an upright tepee, the
24 symbol for that is sacred above and sacred below, meaning
25 that how you live and how you take care of the earth is

1 how it's reflected not only in the sky but in the
2 afterworld.

3 So if we destroy that tepee down here, we're going
4 to destroy what's sacred above and what's sacred below.
5 So that very concept. And you'll see that in a lot of
6 beadwork designs. You'll see that geometric form.

7 So just like the anthropologists that study the
8 Egyptians, we're just as fascinating. We have a lot of
9 those archetypes and those symbols that are so deep and
10 codified that you look at that symbol and you find it on
11 a stone formation, if you find triangles in those areas.

12 And from my understanding, a traditional cultural
13 property survey was not even done in those areas. And a
14 traditional cultural property is an opportunity for us as
15 the grandmothers and those who have knowledge of the ways
16 and the symbols to get out on the land and reconnect and
17 feel it and know and smell it and know it's there.

18 And I stress the need for presence. Because I
19 remember when we were doing the survey along the Missouri
20 River, and I was with a crew of young men, and they
21 reluctantly agreed to take me along. And I was on this
22 four-wheeler and I was bumping along and all the sudden
23 the young men were ahead of me and they were stopped and
24 they were looking around kind of puzzled.

25 And I said what's going on? And they said there's

1 something here, but we can't figure it out. And I said
2 what do you mean? They said we can feel it, but we don't
3 know. They said, grandma, go stand up on the hill, see
4 if you can see or feel anything.

5 So when I was walking up that hill I could smell
6 chiaka [phonetic], which is tea. And you gather those in
7 those areas where there's creeks and wetlands.

8 And then one of the boys said, I smell soup. And so
9 what we were able to do is we were able to detect an old
10 campsite. And once we were able to zero in on the smells
11 of the area we were able to identify the physical
12 markings of a prior camp.

13 So the spirits of that time were still there. And
14 so when you -- and you can't do that through an
15 archaeological study that consists of people from another
16 culture. They didn't even drink the same kind of soup.
17 They didn't even have the same kind of stone formations.
18 So how would they know?

19 It would be like me going to make a Hutterite study
20 and I'm not a Hutterite. So the parallel is very
21 different. But I wanted to stress that because I want
22 my -- as a 67 year old I want my grandchildren to have
23 the benefit of that medicine.

24 And that other sociocultural thing is the water in
25 our culture is seen as the first medicine. We call it

1 pejuta because when you're born your first environment is
2 the womb. Every single one of you in the room, your
3 first medicine was the water inside your mother's womb.

4 And so that touches on the issue of reproductive
5 justice because we know that some of our relatives in the
6 Bridger area because of the contamination from the
7 Homestake Mine, the tailings, that when they did a study
8 of the roots of their hair the majority of the people in
9 Bridger have uranium in the roots of their hair. And
10 it's not just native people. I imagine all the ranchers
11 in that area also have that in their hair.

12 So that's a threat. And the generational threat is
13 reproductive justice is I have the right to have a
14 healthy child. If my body is threatened by the
15 environment, I am impinging on the reproductive justice
16 of unborn children who are going to be impacted by
17 threats to the environment. And that's not fair, and I
18 don't have that right to do that.

19 So reproductive justice is a major one that we're
20 concerned about. We already have enough threats in our
21 community.

22 Q. Thank you, Ms. Spotted Eagle.

23 You mentioned that you did review your prefilled
24 testimony prior to testifying here this morning. If you
25 were to be asked those same questions today, would your

1 answers be the same?

2 A. I think so. But I'm sure that when I leave here I'm
3 going to think of other things. I brought a picture of
4 my grandmother and I don't know if I'm allowed to say
5 that but I brought them along so they could remind me but
6 I have a picture of my great-grandmother who died when
7 she was 94. And she was a member of the Mdewakantonwan
8 from Minnesota. And this was her.

9 She was a medicine helper. In our language we don't
10 call them medicine woman, but she was a spiritual helper.
11 This is a picture of her, and this is a picture of her
12 with one of the babies. And this is my grandmother right
13 here, her daughter. And she died when she was 104.

14 So a lot of the information that I have about the
15 James River and those gathering areas in Jerauld County,
16 sisitwan, we have family members who live there, the
17 Red Day family, so we know those are actually first
18 informant education, I guess, that those were prime
19 gathering areas because of the presence of the water, the
20 lakes.

21 And so I brought them along to remind me of the
22 responsibilities that we're talking. And this picture
23 probably represents probably about 400 years of
24 knowledge. So it's not just me writing a testimony.
25 It's an education process in traditional technology.

1 Q. Thank you for sharing that with us.

2 Would you like to adopt your prefiled testimony in
3 addition to what you've already shared as your testimony
4 in this matter?

5 A. I would. And can I make one more comment?

6 Q. Yes. Go ahead.

7 A. I have deep concerns about the incidence of sexual
8 violence all across the country because, again, when I
9 worked in the VA I was so shocked about the existence of
10 military sexual trauma.

11 So sexual violence is not something that is unique
12 to native populations. It's a violence that exists all
13 across the country. And when you have that type of --
14 you're creating an additional threat to something that
15 you deem safe. So you're layering it with danger.

16 And so in sexual violence work there's something
17 that comes about that affects an invisible layer. In
18 many of the clients that I've worked with, one of the
19 things that surfaces is when your spirit has been hurt by
20 somebody who has no right to do that, you have a fear of
21 the ordinary.

22 So if a child grows up in an environment like
23 that -- and I learned this because I was the first
24 president of the first native women's shelter in the
25 United States, which was in 1977, White Buffalo Calif

1 Women's Society. And we would wonder why women would
2 stay in that situation and because they didn't feel like
3 they were safe if they did anything. So there had to be
4 systematic changes.

5 And now 40 years later I think I was 26 when the
6 White Buffalo Calf Women's Society was founded, and now
7 I'm 67. We've barely made some systematic changes.

8 So when you temper with the environment and the
9 systems that are at play, you do destruction that you
10 don't even foresee 40 years down the road. So just now
11 we've made some gains where they have that Violence
12 Against Women Act. That took 50 years to come around.
13 And where there's still a larger number of women being
14 assaulted.

15 So I think that the thing that we have learned is
16 the impact of systematic danger when you mess with these
17 systems like this that are on the ground, like nature,
18 water, reproductive justice, and the safety of families.

19 Because it's highly irresponsible because there's no
20 way that I know and can't claim to know that I know
21 what's going to happen in 50 years. I could make a
22 strategic plan like Brave Heart has done. We have a
23 50-year strategic plan. We hope that our language will
24 be thriving in 50 years, but I'm going to have to be
25 recycled if I'm going to see that and I'll hopefully be

1 recycled in a safe environment.

2 MS. BAKER: Thank you.

3 The Yankton Sioux Tribe moves for admission of
4 YST 7, YST 9, and YST 10.

5 MS. WIEST: Are there any objections?

6 If not, they have been admitted.

7 Q. Thank you, Ms. Spotted Eagle. We appreciate your
8 testimony.

9 A. Thank you.

10 MS. WIEST: Mr. Rappold, did you have any
11 questions?

12 MR. RAPPOLD: Just a few. Thank you. Excuse
13 me. I was in midchew.

14 CROSS-EXAMINATION

15 BY MR. RAPPOLD:

16 Q. Good morning, Ms. Spotted Eagle. Matt Rappold,
17 Rosebud Sioux Tribe. I appreciate you being here today
18 and testifying in this matter.

19 Last week we heard some testimony regarding recently
20 discovered cultural sites along the pipeline route, and
21 some of those were stone circles and also some mounds and
22 a few other types of sites.

23 This morning you testified a little bit about the
24 uniqueness of some of the cultural sites along the
25 pipeline route. And I was wondering if you could expand

1 just a little bit on why is it -- why is it important for
2 Indian people to be involved in surveying and I'll call
3 it analyzing, for lack of a better word, of these sites
4 and determining what they are and how to proceed.

5 So can you share a little bit more about that?

6 A. Sure.

7 I think the thing that I have learned not only from
8 my grandmother and my grandparents is that by actual
9 being out in the field with other spiritual leaders and
10 learning from the land is that there are certain codified
11 stone formations that will -- just like the -- what do
12 they call them? The hieroglyphics in Egypt, you have
13 people who can translate that language, we're
14 translators. In our language we're ieska [phonetic].

15 When I see that I say, oh, this is a triangle. That
16 means this is possibly Northern Cheyenne. Because the
17 Northern Cheyenne buried their people in triangular stone
18 formations.

19 Or I might see a stone formation, and an
20 archeologist will say it's a tepee ring. No Native in
21 their right mind would put a tepee on top of a hill. It
22 would blow away. So archeologists call these tepee rings
23 on top of a hill. We would never put a tepee on top of a
24 hill. I can't even imagine the poles holding it up with
25 South Dakota winds.

1 So there's an example of total unawareness of what
2 stone formations are. And if I go up to a stone
3 formation, what I'm going to look for is I'm going to
4 look for a door. There's an entrance into that. And
5 maybe I'm not qualified to go into that. And I have an
6 actual story if I could tell that about a stone
7 formation.

8 My son was involved in a survey with DM&E when they
9 were wanting to put the railroad through South Dakota,
10 Minnesota, and Wyoming and they ended up failing. But he
11 called, and they had a survey crew out there. And he
12 said, ina, which means mother, he said I have some
13 concerns about this archeologist. He said remember what
14 you told us, to always watch the energy when we go out so
15 you can be safe at these sites?

16 Because the people just like in the Presbyterian or
17 whatever religion you belong to, when you inter you say a
18 prayer. So those prayers are still in existence at those
19 sites and those prayers are there for protection and they
20 last forever.

21 And so he said there's an archeologist that's out on
22 the crew and he drinks every night in the bar and we can
23 smell his breath in the morning. And you told us that no
24 one's supposed to use any kind of substance around these
25 sacred sites for safety and respect.

1 And he said, I don't know, he's drinking every night
2 and he's hung over and he's the head arc. And I said,
3 well, say a prayer, make sure you're safe, and I said
4 we'll talk to the contractor.

5 And then he called later on that afternoon, and he
6 said, ina, you're never going to believe this. Something
7 happened. And I said what? And he said, we went out on
8 the crew -- with the crew, and he said the -- there was a
9 lady archeologist and she insisted on doing a shovel test
10 and we objected. We said we don't dig. We're not
11 authorized to dig, And we object to a shovel test. And
12 she said, well, we've -- that's part of our contract.

13 And she tried to do a shovel test but I don't know
14 if she was not strong enough because the ground was
15 starting to freeze and so she couldn't do the shovel
16 test. So she handed it to the other arc, the one who was
17 drinking, and he jumped on that shovel and they heard
18 something snap and his leg broke.

19 And he called back, and he said is that what you
20 were talking about? And I said yeah. There is that
21 energy. And we have a word for it. It's called capiminy
22 [phonetic]. It's that when you touch something that's
23 sacred and there's a negativity it goes in an
24 unpredictable manner. It's called capiminy. He said
25 capiminy happened, and I says, yeah, they'll never

1 believe us. But I said, I'm going to call the company.

2 So I called the company, and I said you have no
3 business having an archeologist that is drinking every
4 night out on our sacred sites. So I was very pleased
5 with the company. They removed him, and they respected
6 our belief system.

7 So we have certain intense belief systems about
8 those sacred sites, that you don't go mess with them, and
9 you have to be careful. So it's for safety's sake not
10 only for us but for the people out on the pipeline.

11 I have another situation, and I have no knowledge
12 about this but when the Keystone Pipeline was coming in
13 we were approached by a native liaison from the Omaha
14 Tribe. And I remember he came up and met with us, and he
15 said, you know, Faith, he said, there's money in this.
16 And it's kind of like there's money in them thar hills.
17 And he said you should talk to the pipeline. And we said
18 we've got to think about the land.

19 Anyway he contracted with them, and he went into
20 some of those areas. And he's no longer with us. He
21 died out on the pipeline.

22 And then another situation in Wessington Springs.
23 We found some burial sites, and we said do not touch
24 them. And one of the contractors, I don't know if they
25 had the inaccurate maps, but this guy was killed onsite.

1 In Wessington Springs.

2 So we're very adamant about protection of those
3 areas. We've seen the practice.

4 Q. Thank you. And also can you expound a little bit
5 more -- there have been some sites that have been
6 identified as mounds.

7 Are you familiar with that concept?

8 A. Yes.

9 Q. And can you share a little bit more with the
10 Commission and the folks here? What could a mound be,
11 and what could its significance be?

12 A. There's lots of layers of knowledge dependent on the
13 groups that have the mounds. But what I'm familiar with
14 is at Fort Randall there was a white burial mound right
15 below Fort Randall dam. Before they built it they
16 destroyed it. They said, you know, it's in the way of
17 the dam. But we still consider that energy there.

18 And, obviously, if you think of your loved ones that
19 are interred, you don't want them to be dug up. You
20 don't want them to be disrespected.

21 And so there are also items that -- the funerary
22 associated items that are related to your love for that
23 individual. So a lot of the mounds contain things like
24 that.

25 And so just think of the great historical knowledge

1 that our country can benefit from. It's a philosophical
2 tolerance for somebody else's dead. So it's not like my
3 dead is more important than yours. Because I would never
4 go dig up a cemetery. I would not do that.

5 Q. And then one more. As it relates to the discovery
6 of human remains, are there any issues that are uniquely
7 associated or protocol from your perspective that is
8 associated with what you do when human remains are
9 discovered like you described?

10 A. Yeah.

11 Q. What would you do?

12 A. There are certain individuals like the -- I'm a
13 member of Brave Heart Society. And so the purpose -- and
14 some tribal leaders have not realized the significance of
15 that group until we had an individual named Ben Gonzales
16 on our leadership at home. But the Corps of Engineers in
17 1999 kept saying, you know, we took care of all of those
18 graves. We took care of all of those burial areas down
19 there on White Swan. And we said no. We watch them
20 ourselves because they always surface.

21 So there came a time in December of 1999 that Ben
22 called me. And he said, grandma, you ladies that have
23 that Brave Heart Society, he said what was its purpose?

24 And I said it was to take care of the dead. We
25 would revive those, pick up those from the battlefield.

1 And in order to work with decomposed bodies you have to
2 have a Brave heart. So that's how they received their
3 name. They we would take them down from the scaffolds.

4 So he called up, and he said, can you help? We have
5 a real -- he said pardon the language, but we have a real
6 live situation. There's numerous burials that have been
7 uncovered. So we went down to the Missouri River, and
8 really some very strange things began to happen.

9 When we drove down there there were like 35 or 40
10 burials all scattered across the Missouri flatland. And
11 there were -- there was a whole row of babies. I
12 remember it. It must have been during that influenza
13 time, but there was a big long row of little tiny bones.
14 And so we began to -- and the Corps said you have to
15 follow NAGPRA. There's a -- what do they call it? SOP?
16 Standard operating procedure.

17 And we said we have our SOP too and ours dictates
18 that we have to do prayers and we have to take care of
19 these things in our manner. And they didn't want to
20 listen to us. And they said they had already consulted
21 with us.

22 So we filed a TRO in Sioux Falls with Judge Piersol
23 and he granted it and he shut down the Missouri River for
24 six weeks while we were able to do those essential things
25 in ceremony that we don't like to disclose in public and

1 we were able to do that.

2 And the ACHP made a determination that it was a
3 Section 106 violation, and they foreclosed on the
4 Missouri River in 1999. So we have gone through the
5 whole process.

6 The other thing that we did was we challenged NAGPRA
7 because we said NAGPRA says that when you have an
8 inadvertent discovery -- that is such a misnomer because
9 we knew they were there. And they call it inadvertent.
10 It was an advertent discovery. We said don't dig.

11 And so when those came up -- and we did those
12 processes when we were out there taking care of the
13 funerary items and the relatives. There were skulls
14 laying all over. I remember the Corps came up, and one
15 of the young men said, Grandma Faith, there's a boxcar at
16 the side of the shore over there.

17 And I looked back at the camp and I saw a big old
18 railroad boxcar and we were so busy doing what we were
19 doing I didn't see it pulled in. And I said, what is
20 going on? And the colonel from the Corps said, oh, we
21 brought that to keep the remains safe. And I said, safe
22 from who?

23 And he said, well, NAGPRA says we have to hold them
24 for 30 days. And I said there's no way that you're going
25 to hold them. We are going to put them up on the

1 scaffold, and we are going to pray with them.

2 So we had to have a talk in the tepee. And he came
3 in, and he said, you know, I may not be here tomorrow but
4 he said I will agree with you. And he said I'll allow
5 this to happen. So we put them up on a scaffold and we
6 kept them for 30 days and we prayed with them and we
7 claimed them as members of the Yankton Sioux Tribe. And
8 we never saw the kernel again. But at least he gave us
9 consent and he was pulled off the job. In answer to your
10 question, there's certain protocols that we have too.

11 And we feel really weird about doing reburials
12 because they've already been buried. So it is horribly
13 presumptuous to think this wasn't done right so I'm going
14 to dig them up and you're going to rebury them. That's a
15 horrible presumption to do that. It's not right.

16 Q. And I know there's probably some certain details
17 that you're not permitted to share publicly.

18 A. Yes.

19 Q. So I appreciate that, and I'll leave it there.
20 Thank you.

21 A. And those take time and prayer.

22 MS. WIEST: Ms. Craven, did you have any
23 questions?

24 MS. CRAVEN: No, I don't. Thank you.

25 MS. WIEST: Ms. Northrup, did you have any

1 questions?

2 MS. NORTHRUP: No.

3 MS. WIEST: Mr. Boomsma, did you have any
4 questions?

5 MR. BOOMSMA: No questions. Thank you.

6 MS. WIEST: Commission Staff, did you have any
7 questions?

8 MS. EDWARDS: Staff has no cross. Thank you.

9 MS. WIEST: Dakota Access, any questions?

10 MS. SEMMLER: No, thank you.

11 MS. WIEST: Commissioners, any questions?

12 Go ahead.

13 CHAIRMAN NELSON: I have just two questions for
14 you.

15 The first is you spent quite a bit of time
16 talking about the current gathering of plants that are
17 done and the importance of that.

18 THE WITNESS: Right.

19 CHAIRMAN NELSON: Can you tell me specifically
20 along the proposed pipeline route where you are gathering
21 those plants?

22 THE WITNESS: In the cici tawa area and then any
23 place along the James River. There are certain plants
24 that are what would you call it? What's the biological
25 term? Prolific with water. And so any water bodies,

1 even small lakes, will contain certain plants.

2 But the added layer to that is that it has to be
3 lakes or water bodies that don't have runoff from the
4 fields. Because if I gather from next to a cornfield,
5 I'm going to be gathering all the pesticides that were in
6 that field. So there's certain areas that we know of
7 that are natural grasslands where that runoff doesn't
8 occur.

9 CHAIRMAN NELSON: Can you tell me -- you've put
10 in Exhibit 10 that has the pipeline route map.

11 Can you tell me on that map specifically where
12 you are gathering these plants on the pipeline?

13 THE WITNESS: If you could bring up the map of
14 the James River, it's anywhere adjacent to the James
15 River. And the James River goes all the way through
16 there.

17 CHAIRMAN NELSON: Okay. I think that takes care
18 of that question.

19 The last question that I've got, Mr. Rappold
20 asked you about mounds.

21 THE WITNESS: Right.

22 CHAIRMAN NELSON: Do mounds always contain human
23 remains?

24 THE WITNESS: Some are for funerary items. And
25 we don't know the incidents that happened around the

1 sociocultural events that were happening. Because I have
2 an actual situation in my family where when the
3 government came in the late 1800s and early 1900s when
4 they outlawed our religion I have a grandfather and his
5 name was Red Owl. And the agent told him, he said that
6 you Indians need to destroy all of your regalia because
7 you have to wear suits and you have to come to the
8 church.

9 And so my grandfather had a dance house where he
10 would do those ceremonies. And he said that he was not
11 going to give up his regalia because in some instances
12 they took their regalia and they burned it. They
13 actually forced them to bring it to the agent, and they
14 burned them. And he said no, and they buried it.

15 So we have a mound in my property which is my
16 grandfather's regalia, and I will never tell anybody
17 what's there.

18 CHAIRMAN NELSON: Thank you. I appreciate that.

19 MS. WIEST: Any other Commissioner questions?

20 If not, any further cross based on Commissioner
21 questions?

22 If not, any redirect?

23 MS. BAKER: Nothing. Thank you.

24 MS. WIEST: Thank you.

25 You may call your next witness.

1 MS. REAL BIRD: The Yankton Sioux Tribe calls
2 Jason Cooke.

3 (The oath is administered by the court reporter.)

4 DIRECT EXAMINATION

5 BY MS. REAL BIRD:

6 Q. Good morning.

7 A. Morning.

8 Q. Please state your name and address for the record.

9 A. My name is Jason Cooke. My address -- business
10 address is Box 1153, Wagner, South Dakota.

11 Q. And are you an enrolled member of any Tribe?

12 A. Yes. The Ihanktonwan, the Yankton Sioux.

13 Q. And do you hold a position with the Yankton Sioux
14 Tribe?

15 A. Yes. I'm an elected member of the Business and
16 Claims Committee.

17 Q. Did you submit prefiled testimony in this matter?

18 A. Yes, I did.

19 Q. And I've given you a document marked YST 6. Can you
20 tell us what that document is?

21 A. That's my prefiled.

22 Q. And have you read and reviewed this document?

23 A. Yes, I did.

24 Q. If you were asked these questions again today, would
25 your answers be any different?

1 A. No.

2 Q. Would you like to adopt this prefiled testimony as
3 your testimony in this matter?

4 A. Yes, I would.

5 MS. REAL BIRD: I move for the admission of
6 YST 6.

7 MS. WIEST: Any objection?

8 If not, it's admitted.

9 MS. REAL BIRD: And I make the witness available
10 for cross.

11 MS. WIEST: Mr. Rappold.

12 MR. RAPPOLD: No questions.

13 MS. WIEST: Ms. Craven.

14 MS. CRAVEN: I have no questions. Thank you.

15 MS. WIEST: Ms. Northrup.

16 MS. NORTHRUP: I have no questions. Thank you.

17 MS. WIEST: Mr. Boomsma.

18 MR. BOOMSMA: No questions.

19 MS. WIEST: Commission Staff.

20 MS. EDWARDS: No questions. Thank you.

21 MS. WIEST: Dakota Access?

22 MR. KOENECKE: I have just a couple.

23 CROSS-EXAMINATION

24 BY MR. KOENECKE:

25 Q. Mr. Cooke, where would you expect that workers from

1 the pipeline construction spreads would visit on the
2 Yankton Reservation?

3 A. Probably the casino.

4 Q. Do you know how far it is from Sioux Falls to the
5 casino?

6 A. About 110 miles.

7 Q. Do you currently have public safety problems at the
8 casino involving non-Indians?

9 A. We have jurisdictional problems.

10 Q. Can you describe those for the Commission?

11 A. We have a -- I don't know how to say it, but we
12 have -- our reservation's checkerboard. So we have
13 differences working with the county.

14 Q. So if there's trouble at the casino involving a
15 non-Indian, do you call the sheriff?

16 A. We do. If they come.

17 Q. Okay. Is there anything in particular that gives
18 you reason to think the pipeline workers are any
19 different from anybody else who visits the casino?

20 A. Well, from what I -- I have guys that work in the
21 oil fields, and it's a lot of drinking and partying and
22 drugging, I know. So I don't see it firsthand because
23 I've never been to one of the pipelines.

24 MR. KOENECKE: Nothing further. Thank you.

25 MS. WIEST: Any Commissioner questions?

1 COMMISSIONER HANSON: Mr. Cooke, could you give
2 us your experience with -- with the casino, working with
3 the casino.

4 THE WITNESS: Well, I worked in the surveillance
5 department, and I was a sergeant on the supervisors of
6 security before I become elected as a Tribal B & C.

7 COMMISSIONER HANSON: So would you say that you
8 have a -- well, how long a period of time? What was the
9 duration that you did that?

10 THE WITNESS: I probably worked surveillance for
11 like maybe three years, and then I transferred over into
12 security.

13 COMMISSIONER HANSON: And security, how long?

14 THE WITNESS: Probably like three years, maybe
15 four before I got elected.

16 COMMISSIONER HANSON: Okay. So you have pretty
17 good experience then.

18 THE WITNESS: Yes.

19 COMMISSIONER HANSON: Pretty concrete knowledge
20 of -- I just want to piggyback a little bit on the
21 violence that's been brought up and concern for violence.

22 Does the casino advertise to have nontribal
23 members go to the casino?

24 THE WITNESS: Yeah.

25 CHAIRMAN NELSON: Come to the casino?

1 And do you serve alcoholic beverages there?

2 THE WITNESS: Yes, we do.

3 CHAIRMAN NELSON: Do you have control over that
4 as to -- from a security standpoint, do you make certain
5 people do not become overly intoxicated?

6 THE WITNESS: Yeah. The security guards are
7 trained, as are the bartenders.

8 COMMISSIONER HANSON: And if someone becomes
9 unruly, do you have the ability as security to take care
10 of that, so to speak?

11 THE WITNESS: Like I was telling you, we could
12 detain them, call the local sheriff's department, and if
13 they don't come, what do we do? I mean, we only can hold
14 them there a certain time.

15 COMMISSIONER HANSON: Well, as opposed to
16 detaining them, you have other options, I assume.

17 Do you escort them to leave the casino?

18 THE WITNESS: Yes. If they're in the hotel room
19 and they're unjustly or whatever, we'll just call the
20 security guards, escort them to their room. If they
21 don't stay there and they come out again, we escort them
22 out. And then again if we -- we can't let them drive
23 away like that, you know, if they're drinking. So, you
24 know, once we -- we don't have jurisdiction over a
25 non-Native so they're just going to go. They're going to

1 leave. They're going to go.

2 COMMISSIONER HANSON: Are you testifying that
3 you have problems with the sheriff doing their job as far
4 as DUIs?

5 THE WITNESS: Well, we always had the problem of
6 working with the County and the Tribe.

7 COMMISSIONER HANSON: All right.

8 Thank you. That's all the questions I have.

9 CHAIRMAN NELSON: Continuing that line of
10 questioning, when the original Keystone Pipeline was
11 built, came through the Yankton area, tell me what
12 specific problems those workers caused on your
13 reservation.

14 THE WITNESS: I don't really understand your
15 question to --

16 CHAIRMAN NELSON: I'll break it down.

17 THE WITNESS: All right.

18 CHAIRMAN NELSON: You know that the first
19 Keystone Pipeline was built through eastern South Dakota
20 and passed very close to Yankton; correct?

21 THE WITNESS: Yes.

22 CHAIRMAN NELSON: In your testimony you've
23 expressed concern about construction personnel and the
24 difficulties they may cause for law enforcement on your
25 reservation.

1 THE WITNESS: Yes.

2 CHAIRMAN NELSON: So my question is what
3 specific incidents did those construction workers from
4 the first Keystone Pipeline cause on your reservation?

5 THE WITNESS: I can't recall because I probably
6 wasn't working at the casino at the time. And I wasn't
7 elected on the leadership back then so I -- I have no,
8 you know, idea if they came there or not.

9 So, I mean, I probably wasn't in the -- working
10 there at the time when that one was built.

11 CHAIRMAN NELSON: Thank you. I guess the only
12 other question I've got, in regard to the proposed
13 Keystone XL Pipeline, we know that at least one of the
14 Tribes in South Dakota has banned any of those workers
15 from entering tribal areas, the reservation.

16 Would you propose that the Yankton Sioux Tribe
17 ban any of the workers from the Dakota Access Pipeline
18 from entering the reservation?

19 THE WITNESS: Well, I couldn't do that on my
20 own.

21 CHAIRMAN NELSON: But my question was would you
22 propose that?

23 THE WITNESS: I could propose it. I mean, I
24 would propose it. I can't tell if it would be voted --
25 like Faith was saying, we have a government that --

1 general council that I can't speak on behalf of the
2 Tribe. The general council votes. That's legislation
3 and the laws.

4 CHAIRMAN NELSON: Okay. Thank you.

5 MS. WIEST: Any further cross based on
6 Commissioner questions?

7 Any redirect?

8 MS. REAL BIRD: No redirect. Thank you.

9 MS. WIEST: Thank you.

10 And, Yankton Sioux Tribe, you have no further
11 witnesses at this time; is that correct?

12 MS. REAL BIRD: That's correct.

13 MS. WIEST: I believe according to our schedule
14 we were then going to go to Mr. Boomsma's witnesses.

15 MR. BOOMSMA: Yes. Thank you.

16 MS. WIEST: Are you ready to proceed,
17 Mr. Boomsma?

18 MR. BOOMSMA: I am. Thank you.

19 MS. WIEST: Just before you start, I know some
20 of your witnesses were appearing by phone. Are you doing
21 those first or not?

22 MR. BOOMSMA: My plan was to actually do them
23 later in the day, and I was going to give preference to
24 those that came here today.

25 MS. WIEST: Go ahead.

1 MR. BOOMSMA: I call Kevin Schoffelman to the
2 stand.

3 (The oath is administered by the court reporter.)

4 DIRECT EXAMINATION

5 BY MR. BOOMSMA:

6 Q. Could you state your name for the record, please.

7 A. Kevin John Schoffelman.

8 Q. Your address, Kevin?

9 A. 712 West Fourth Avenue, Lennox, South Dakota.

10 Q. Tell me a little bit about your yourself, your level
11 of education, please.

12 A. I have a degree from South Dakota State University
13 in business economics.

14 Q. When did you get that, Kevin?

15 A. 1995.

16 Q. Your occupation?

17 A. I'm self-employed, and I'm an independent
18 contractor. I sell promotional products.

19 Q. How long have you been doing that?

20 A. Just about 18 years.

21 Q. Before I get to your prefilled testimony document, is
22 it my understanding that you are a part owner or a joint
23 owner of land affected by the Dakota Access Pipeline?

24 A. I own one-seventh of a quarter of land that was left
25 to us by my parents, me and my six sisters.

1 Q. Let me lay some groundwork. Tell me about that
2 land. Tell me where it's at.

3 A. The quarter is in the northwest corner of Lincoln
4 County. It is -- Highway 17 runs right along the west
5 edge of it, and it is just one mile south of the county
6 road running into Tea.

7 Q. How long has your family owned it?

8 A. Close to 90 years.

9 Q. Tell me how that came about briefly, Kevin.

10 A. My grandfather purchased it in 1927. And then he
11 died. He was injured in a farm accident. He passed away
12 when my father was just 15 years old. My father was the
13 oldest of the children, and he raised his brothers and
14 sisters on the farm.

15 Q. And now the quarter got passed down to the children?

16 A. Correct.

17 Q. What do you use the land for?

18 A. Currently we rent out the crop acres, the tillable
19 acres, and then we also rent out the pastureland. There
20 is a creek that cuts through it so there is acres there,
21 not many, maybe 12, 13 acres that are pasture, pasture
22 and creek. But the majority of it is tillable, and it's
23 good soil.

24 Q. Are you familiar with the crop yield data for that
25 land?

1 A. I do not have those numbers with me, but I can tell
2 you roughly. I did speak with a gentleman who had been
3 farming that, and they said as far as a corn yield,
4 somewhere in the 175 to 190 range is very doable.

5 Q. How is the crop looking this year?

6 A. Very good. As a matter of fact, they combined the
7 beans last weekend. They're all out.

8 Q. Is this land improved by tile?

9 A. Yes.

10 Q. Tell me about that, Kevin.

11 A. There was a section of tile that was put in before I
12 was born. And there is an area close to the creek where
13 there's about six acres that otherwise would not drain.

14 So the tile goes down -- from the inlet it goes down
15 about 4 or 5 feet. The majority of the tile is clay. It
16 runs through a hillside. And then past the hillside
17 where it shallows out towards the creek we have had to
18 replace that several times ourselves because it got too
19 close to the surface, and the tile would crack.

20 Q. Is the tile functioning?

21 A. The tile is functioning very well. The last time I
22 worked on it was about eight years ago. I replaced the
23 whole lower section with 8-inch plastic sewer line that
24 so far has held up very well.

25 Q. When you put that quarter in perspective how much of

1 the tiling is clay, and how much is new?

2 A. Of the length of the tile, I would say 40 percent of
3 it has been redone. The other 60 percent because it runs
4 through the hillside it runs rather deep. I would guess
5 it could be at its deepest point as much as 10 foot down.

6 Q. Will the pipeline cross the tile?

7 A. If you stand on the gravel road and you line up the
8 flags, it will miss the tile. Not by much, but it will
9 miss it. Any change, of course, whatsoever from those
10 flags and we could have an issue.

11 Q. As far as that clay tile, tell me a little bit more
12 about that. Do you know if it's durable? Is it fragile?

13 Do you have any characteristics you can tell the
14 Commission about?

15 A. If it's not disturbed, it functions very well. But
16 if you get to areas, like I said, on the lower end where
17 we've had to replace it, where it was only in some
18 spaces, you know, maybe 30 inches down, 36 inches down,
19 as farm equipment has gotten larger and heavier and the
20 loads that the wagons carry get heavier, that compaction,
21 that pressure, that clay tile, you know, once its damaged
22 you could crumble it in your hands.

23 Q. Very fragile?

24 A. It can be if it's disturbed.

25 Q. Would putting an oil pipeline such as what we've

1 been talking about in this Dakota Access case disturb
2 this clay tile?

3 A. It certainly could. Like I said, I'm basing
4 everything off of the stakes on the road. Until they
5 start digging I don't know exactly how close they're
6 going to get.

7 Q. Do you have an opinion, Kevin, as far as whether
8 somebody would be able to splice into this clay tile?

9 A. I think that's very difficult, and here's why: When
10 I've replaced it myself in years past we would dig down
11 to it using a tractor and loader. Once you replaced the
12 section that was bad, from there you had to hand shovel
13 and dig up the hill until you didn't find anything else
14 that was cracked.

15 So is it possible? It's possible. But I'm guessing
16 that they would not take the same precautions, the same
17 concern for it that I would.

18 Q. Is the land more valuable because of the fact that
19 there's tiling on the land?

20 A. Oh, absolutely. Yeah. Without that we'd have five
21 or six acres that would be -- you know, it would be a
22 slough.

23 Q. Pretend I'm an idiot about farm ground. Tell me why
24 farmers -- other than what you just said, why farmers
25 would pay more for this land that is already benefited by

1 tile.

2 A. The farmer starts off, and it's always a gamble.
3 It's always a risk. You're planting a crop. You don't
4 know what sort of moisture you're going to get, what sort
5 of hail or other incidents might occur. So the more of
6 those hazards, the more of those potential bad things
7 that you can have that you can eliminate, the better.

8 If you have well drained ag land, you know that if
9 you get into a wet season, you're not going to end up
10 with large areas where the corn does not or the beans do
11 not come out of the ground because it was just too wet,
12 too saturated for too long of a time.

13 If you can get that excess moisture out of there,
14 you can in some cases end up a difference between having
15 a crop or having no crop at all.

16 Q. Would your crop yield be the same as what you told
17 the Commissioner had it not been for the tiling?

18 A. No.

19 Q. Would it be less?

20 A. Yes.

21 Q. Well, how much less?

22 A. In years like this year where it's wet there would
23 be 6 acres that would produce zero.

24 Q. Let me ask this too: In terms of location of this
25 land, is it close to a housing development?

1 A. We have an existing rural development. It was a
2 quarter of ground, and that is about, I would say, 70 to
3 80 percent full now, as far as, you know, homes in that
4 quarter section.

5 We have another quarter that is right next to it --
6 both of these are a half a mile from our farm -- and that
7 is currently ag land, but the owner has applied to have
8 it redesignated as rural development, and he is planning
9 on turning that into housing.

10 Q. Is the housing development on the east side of your
11 quarter?

12 A. The existing one is to the northeast by a half-mile,
13 and the one that is being working on or proposed is
14 directly north by a half-mile.

15 Q. Are there any housing developments to the west of
16 this affected quarter?

17 A. Not currently, no.

18 Q. And the housing development is an outgrowth of Tea.
19 Am I right?

20 A. It's an outgrowth of Tea, but more importantly it's
21 an outgrowth of Sioux Falls.

22 Q. So it's both?

23 A. Yeah. It's both. When you travel within Sioux
24 Falls there are lots of these type of developments that
25 are 5, 10 miles outside of Sioux Falls.

1 Q. What are your future plans for this quarter?

2 A. Well, it was left to us by our parents, and you
3 know, I know my father has said before that it was
4 supposed to be our retirement.

5 Currently we would like to see it kept in
6 production. But at the same time, you know, the growth
7 that Sioux Falls and Tea and Harrisburg have experienced
8 over the last several decades, at some point there are
9 going to be houses put there. How many and what type are
10 going to depend largely upon what happens here.

11 Q. So would this proposed pipeline affect development
12 potential for this quarter?

13 A. Definitely.

14 Q. How?

15 A. You can't take a quarter section of land and run a
16 pipeline directly through the middle of it and say that
17 you can't build any permanent structures on top of that
18 pipeline and not have a negative impact on the value of
19 the whole quarter.

20 I mean, imagine any square, and you draw a line from
21 one corner to the other corner and say, okay, you can't
22 build here, go ahead and put houses on. That causes
23 nightmares as far as laying out streets, water lines,
24 sewer, you know, all sorts of things.

25 Q. Are there any structures on the land now?

1 A. There is a farmstead, yes, on the northeast corner.

2 Q. Who lives there?

3 A. It is currently occupied -- the house and the
4 buildings are kept up. We take turns, my sisters and I.
5 We mow, and the buildings are kept up.

6 When I was born my father was 50 and my mom was 45
7 so for the end of their lives, from the time they were 65
8 until they passed away it was me. I was the one out
9 there taking care of stuff.

10 Q. Does this proposed pipeline run close to that farm
11 site?

12 A. Within 300 yards.

13 Q. Does that concern you?

14 A. Very much.

15 Q. Tell me a little bit more about the watershed on
16 this land, aside from what you already mentioned about
17 the tiling.

18 A. The creek runs -- it enters the property along the
19 north side and it runs diagonally for the most part and
20 it ends up running straight south right along the edge of
21 Highway 17.

22 The concern about the watershed is, as Tea has been
23 developed, the amount of water that comes through that
24 creek has increased over the years.

25 A few years back the township put in new culverts

1 along the north road where the creek enters. And in the
2 pasture part itself where it is grazed that creek is
3 getting cut deeper and deeper all the time. I have
4 hauled in, you know, loads of rock as far as a tractor
5 loader. We've -- if there's a building project in the
6 area, I've taken the concrete left over from there and
7 trying to shore up the bottom of this creek.

8 When it gets along Highway 17 that section is not
9 grazed, and there the grass and the cover is about 4 feet
10 high. There is very little erosion. But through the
11 pasture, through where the pipeline would go through,
12 there is no safe place to cross that creek anymore with a
13 tractor. It's been cut that deep already.

14 Q. Are you puzzled by the fact that this proposed
15 pipeline would come so close to these growth areas of
16 Sioux Falls and Tea and Harrisburg?

17 A. Very much. And I had a hard time believing this
18 from the beginning but someone pointed out if you look
19 where the wells are in North Dakota and you look where
20 they want to go, it looked like they basically connected
21 the two dots with a straight line.

22 Now they did make a slight adjustment to get around
23 Sioux Falls. The original location would have put it
24 where it would cross Interstate 29 right in the area of
25 about 85th Street, and that would have been a stone's

1 throw away from the Heart Hospital, from the golden
2 triangle.

3 I mean, if you've lived in this area for any amount
4 of time, you've been told where 229 breaks off of 29 on
5 the south side of Sioux Falls that was the most valuable
6 land in the state for economic development. And the
7 original path of this pipeline would have gone very close
8 to that.

9 Now they did adjust that path. They moved it away a
10 few miles. But it would be like saying, Glenn, that
11 rather than running the pipeline through your living
12 room, we're going to run it through your garage. You
13 feel better about that; right? That is how this whole
14 reroute looks to us.

15 Q. You mentioned a farm site on the property. So by
16 way of reasoning are there three housing eligibilities
17 left on the quarter?

18 A. Yes. We have three housing eligibilities. Because
19 of the creek that runs along Highway 17 on the west side,
20 you would have to put in a bridge or large culverts to
21 develop there. So the prime development area is along
22 the north road, and that's where the pipeline enters is
23 along the north road.

24 Q. Is that going to make your housing eligibilities
25 worthless?

1 A. It's going to make it very difficult to get all
2 three in there and situated in a way where they would be
3 as valuable as they are today.

4 Q. Do you have in front of you a document marked I 17?

5 A. Yes, I do.

6 Q. Is that document called your prefiled testimony
7 document?

8 A. Yes, it is.

9 Q. Did you sign that?

10 A. Yes, I did.

11 Q. What's the date on that?

12 A. It was signed June 24 of this year.

13 Q. Is that your testimony in this matter?

14 A. Yes, it is.

15 Q. Do you adopt that testimony here today?

16 A. I would make one change.

17 Q. Go ahead.

18 A. There's a question on line 113 that says "Has Dakota
19 Access Pipeline made any statements to you that it is a
20 common carrier under South Dakota Law? If so, please
21 describe."

22 At the time and to this day no one from Dakota
23 Access has spoken to me verbally about this whole
24 pipeline project. But I would amend that because we've
25 been sued twice now by Dakota Access.

1 The first time was for access to the property to be
2 surveyed. And in Lincoln County where the land is
3 Judge Zell told them they did not have the right to come
4 on private property for the purpose of the survey.

5 On September 10 we received a letter, me and my
6 siblings, and now they are suing us -- they're beginning
7 condemnation proceedings to take access to the land for
8 the purpose of the survey.

9 In my mind if they're beginning condemnation
10 proceedings, they are saying that they are a common
11 carrier and they do have eminent domain and they have the
12 right to come on my property, which without a Permit I
13 don't believe is accurate.

14 Q. Kevin, I put in front of you four documents, I 26,
15 I 27, I 30, and I 31. Can you look at I 27 and I 26
16 first.

17 Have you seen those papers before?

18 A. Yes, I have.

19 Q. Do those papers relate to the first lawsuit against
20 you?

21 A. Yes, they do.

22 Q. And that's the lawsuit that was thrown out?

23 A. Yes.

24 MR. KOENECKE: I object. This line of
25 questioning is not relevant to this proceeding. Land

1 acquisition matters are not properly before the
2 Commission.

3 MS. WIEST: Did you have a response,
4 Mr. Boomsma?

5 MR. BOOMSMA: Yes. My response is Joey Mahmoud
6 testified, at least if I heard him correctly, that there
7 was a fundamental element of fairness in this whole
8 process, and then he proceeded to testify that suing
9 these landowners met his definition of fairness.

10 It's relevant because he brought it up, and it's
11 part of the whole scheme of this.

12 MS. WIEST: Objection overruled.

13 Q. So 26 and 27, that's the first lawsuit; correct?

14 A. Correct.

15 Q. That's the one that was thrown out?

16 A. Correct.

17 Q. And then you look at 30 and 31. Have you seen those
18 papers before?

19 A. Yes, I have.

20 Q. Is that the lawsuit that was started against you and
21 your siblings about two weeks before this hearing even
22 started?

23 A. Correct.

24 Q. And tell me your understanding of why now you're
25 getting sued a second time.

1 A. Well, they are trying to say that as a common
2 carrier they have the right to condemn, you know, the
3 access to the property, to come in and do the survey.
4 And as far as that goes, if they are a common carrier, at
5 that point to perhaps start digging.

6 Q. They want acquisition to this easement area before
7 they even have a Permit. Is that how you take it?

8 A. How could you take it anywhere else? They're saying
9 they already have a right before the Permit -- that's
10 what they're claiming here.

11 Q. As a landowner, Kevin, tell me, how hard has it been
12 for you and your family to stand up and oppose something
13 like this pipeline?

14 A. On one hand, it's not difficult because this is the
15 family farm. This is something that meant everything to
16 my parents.

17 On the other hand, it's been unbelievable difficult
18 because we all have our own lives. We have our own
19 children, our grandchildren, our own work, our own
20 responsibilities, and through this whole process all of
21 those aspects of our life we've had to sacrifice.

22 We've had to sacrifice time and money and days away
23 from work to fight something that was ill placed to begin
24 with, especially when you consider the proximity to
25 Sioux Falls.

1 Minnehaha and Lincoln County, there are places they
2 could have ran this without cutting right through the
3 prime, you know, development area in eastern
4 South Dakota.

5 MR. BOOMSMA: I move for admission of I 17,
6 I 26, I 27, I 30 and I 31 at this time.

7 MS. WIEST: Just to double-check, I have I 17,
8 I 26, I 27, I 30, and I 31.

9 Are there any objections?

10 MR. KOENECKE: I object to the last four
11 documents, again, on the grounds that it's not relevant
12 to this proceeding.

13 MS. WIEST: Any other objections?

14 I will overrule that objection and admit those
15 documents.

16 Q. From the standpoint of legal expenses, what has
17 opposing this pipeline done to you in the pocketbook?

18 MR. KOENECKE: I again object. It's not
19 relevant to this proceeding. This is a permitting
20 proceeding, and it's not about the personal finances of
21 anybody.

22 MR. BOOMSMA: My response to that is I think
23 it's important for the Commission to know how a landowner
24 that opposes this pipeline is burdened by this. This is
25 a great, great burden upon any landowner in this state

1 that had the gall to come forward.

2 MS. WIEST: Objection overruled.

3 A. Financially for me and my siblings it's easier. We
4 get to divide the bill seven ways. For some of the other
5 landowners, you know, I am very well-aware that in some
6 cases some of them decided they couldn't afford to fight
7 it.

8 Again, you know, if this was a piece of ground that
9 we had bought 10 years ago as an investment, we may have
10 very well done the same thing.

11 Q. Put it in a nutshell, Kevin, and wrap it up for us.
12 What are your concerns as it relates to this pipeline
13 going through your quarter section of land without
14 repeating your testimony so far?

15 A. Personally, it hurts. It hurts the heritage of our
16 family. It hurts the value of the land going forward.
17 It has the potential to hurt crop production
18 possibilities. You know, and aside from the fact that
19 I'm a landowner, again, caring about the State of South
20 Dakota, to come that close to northern Lincoln County,
21 southern Minnehaha County, Sioux Falls, Tea, Harrisburg
22 does not make common sense.

23 Q. Anything else you want to add, Kevin, or does that
24 conclude it?

25 A. That concludes it.

1 MR. BOOMSMA: That's all I have for questions at
2 this time.

3 MS. WIEST: Yankton Sioux Tribe, do you have any
4 questions?

5 MS. REAL BIRD: We have no questions.

6 MS. WIEST: Rosebud.

7 MR. RAPPOLD: No.

8 MS. WIEST: Ms. Craven.

9 MS. CRAVEN: We have no questions. Thank you.

10 MS. WIEST: Ms. Northrup.

11 MS. NORTHRUP: I have no questions. Thank you.

12 MS. WIEST: Commission Staff.

13 MS. EDWARDS: No questions. Thank you.

14 MS. WIEST: Dakota Access.

15 MR. KOENECKE: We do have some questions. Thank
16 you.

17 CROSS-EXAMINATION

18 BY MR. KOENECKE:

19 Q. I understood it was your testimony that you think
20 the project will miss the tile in your farm?

21 A. Like I said, standing on the road comparing flags,
22 it should miss the tile.

23 Q. About by how far, do you think?

24 A. 100 yards maybe.

25 Q. You also testified that you are experiencing

1 compaction on your property due to the weight of farm
2 equipment; is that correct?

3 A. Compaction is a problem for all farmers.

4 Q. How do you manage compaction on your farm by farm
5 equipment?

6 A. The current renters, they do a -- a no till where
7 they go in and they plant. They plant Roundup Ready
8 crops so that there is no additional pass over the field
9 for cultivation.

10 They spray. They hire the local elevator to come
11 out and spray so they're spraying at a wide swath.

12 And now this time of year once the crop is off, you
13 know, they request no other traffic out there. No
14 hunters, no cattle grazing, no nothing, keeping as much
15 equipment and et cetera off that land as possible.

16 Q. Do you use tillage to manage compaction?

17 A. They will disk that. That's about all they do.
18 They haven't used a subsoiler or anything like that for
19 as long as I can remember. They'll disk up the previous
20 year crop, and that will be it.

21 Q. You own the property with six of your siblings; is
22 that correct?

23 A. Six sisters. Correct.

24 Q. Which of you is the managing sibling, if there is
25 one?

1 A. As far as managing the finances, that would be my
2 sister Marilyn Murray. My sister Linda Goulet and I were
3 the executors, and we were dad's right hands as far as
4 taking care of things while he was alive.

5 Q. Do you know if the pipeline project -- anybody from
6 the pipeline project contacted your sister Linda?

7 A. My understanding is my sister Linda was -- someone
8 from the pipeline trying to get ahold of her a couple of
9 times. She was out of the state at that point. It was
10 early this spring, and her and her husband were down
11 south for the winter.

12 Q. So if we said we tried to contact your sister seven
13 times, would you know whether that was accurate or not?

14 A. I wouldn't have the first clue.

15 Q. Should we have contacted you in instead?

16 A. I don't think it would have been that hard to find
17 anyone else. All but one of us live within 20 miles.
18 Any neighbor could have told you how to get ahold of me.

19 Q. Have you reviewed the Ag Mitigation Plan offered by
20 the Applicant?

21 A. I'm not sure what that is, sir.

22 Q. That's responsive. Thank you.

23 MR. KOENECKE: Nothing further.

24 MS. WIEST: Are there any Commissioner
25 questions?

1 CHAIRMAN NELSON: Just one. Thank you, first of
2 all, for being here.

3 I'm a maps guy. I like to visualize things. I
4 have Google Satellite up here, and I just want to be
5 clear. Does 273rd run across the north side of your
6 quarter?

7 THE WITNESS: Correct.

8 CHAIRMAN NELSON: Then I'm looking at the right
9 quarter. Thank you.

10 MS. WIEST: Any further Commissioner questions?

11 COMMISSIONER HANSON: Morning, Mr. Schoffelman.

12 THE WITNESS: Good morning.

13 COMMISSIONER HANSON: I'm not quite clear, but
14 it sounds like from your testimony that you're a lifelong
15 resident of the Tea area.

16 THE WITNESS: Lived in Sioux Falls for a short
17 period of time before my wife and I decided to have kids,
18 and then we moved out to Lennox.

19 COMMISSIONER HANSON: Okay. So you've been
20 around the area for --

21 THE WITNESS: My whole life.

22 COMMISSIONER HANSON: -- a long time. All
23 right.

24 You recall what Tea and Sioux Falls and
25 Harrisburg, Hartford looked like back when you were a

1 kid.

2 THE WITNESS: Yes. As a matter of fact,
3 30 years ago when I was just out of high school I
4 delivered lumber for Schoenemann's Brothers. So I
5 delivered lumber to the south side of 49th Street right
6 across from the Empire Mall when they first started
7 building those first apartments. That was cornfield
8 30 years ago.

9 COMMISSIONER HANSON: You remember when the
10 Empire Mall was built then?

11 THE WITNESS: Yes, I do.

12 COMMISSIONER HANSON: And the highway and the
13 farms that existed right around there.

14 THE WITNESS: Correct.

15 COMMISSIONER HANSON: Do you remember what Tea
16 looked like back in that time?

17 THE WITNESS: Very much.

18 COMMISSIONER HANSON: Would you say it has grown
19 substantially over that period of time?

20 THE WITNESS: It's grown substantially in the
21 last 10 years. It was growing fast before that. And
22 since they've got their own school district, it's really
23 boomed.

24 COMMISSIONER HANSON: Would you say that as much
25 as you have expressed a love for your -- the history of

1 your grandparents' -- or parents' farm that some day you
2 plan to sell that for development?

3 THE WITNESS: I'd like to put my own house on it
4 first.

5 COMMISSIONER HANSON: All right. First means
6 that some day you and your sisters will probably
7 anticipate you're going to sell it to a developer and --

8 THE WITNESS: Or develop it ourselves, yes.

9 COMMISSIONER HANSON: Okay. Do you anticipate
10 then that there's going to be an economic impact upon
11 your property in the future?

12 THE WITNESS: Yes.

13 COMMISSIONER HANSON: When you look at
14 Harrisburg and -- have you looked at the pipeline route
15 along the south side of Harrisburg?

16 THE WITNESS: Yes, I have.

17 COMMISSIONER HANSON: Are you familiar with the
18 growth apparently of Harrisburg as well?

19 THE WITNESS: Yes.

20 COMMISSIONER HANSON: And would you say that
21 within the likelihood of your lifetime that Harrisburg
22 will -- that development will cross the pipeline area
23 from Harrisburg?

24 THE WITNESS: I would be surprised if it
25 doesn't.

1 COMMISSIONER HANSON: Within your children's
2 lifetime would you positively expect it to?

3 THE WITNESS: Completely, yes.

4 COMMISSIONER HANSON: Okay. Thank you. No
5 further questions.

6 MS. WIEST: Any further cross based on
7 Commissioner questions before we go to redirect?

8 If not, redirect?

9 MR. BOOMSMA: Redirect.

10 REDIRECT EXAMINATION

11 BY MR. BOOMSMA:

12 Q. Kevin, Mr. Koenecke asked you questions about
13 compaction. What is your opinion as it relates to
14 compaction of this easement area where they're going to
15 put the pipe?

16 A. All compaction for crop is bad. And a very good
17 example is just one half mile east of the farm runs the
18 Lewis & Clark water pipeline. I know what that land
19 looked like.

20 After the line was put in six, seven, eight years
21 later you can still see a 10- to 12-inch difference of
22 the height of the corn through that pipeline. So over
23 time is it possible to alleviate that? It's possible,
24 but it's not something that you just fix in a year or
25 two.

1 Q. Do you have any concerns as it relates to the
2 topsoil stripping in that easement area as well?

3 A. Yes. You know, the way the plan was described back
4 in -- January 22 back in Sioux Falls where they were
5 going to layer back the topsoil dig, if that's the way
6 it's done, you know, that's the best way it could be
7 done.

8 The issue comes in is the subcontractors who are
9 doing the work. I mean, they're being paid per the
10 project so they're in a big hurry. The quicker they can
11 get this done the more profit they have.

12 MR. KOENECKE: I object to that and move to
13 strike. That testimony is not in evidence any place and
14 is just sheer speculation by the witness.

15 MR. BOOMSMA: He's a landowner. He's entitled
16 to an opinion about his land.

17 MS. WIEST: Overruled.

18 A. I've seen it. I mean, I've personally seen what
19 happens. So yeah. I'm very concerned.

20 And as far as that goes, you know, we've already
21 taken photographs looking crossways through this field.
22 I wish there had been corn planted there this year.
23 There was soybeans so it's going to be a lot tougher
24 going forward. But I wouldn't be a bit surprised if two
25 years after this pipeline is done if it goes through

1 there, you'll be able to see a line through the field.

2 MR. BOOMSMA: No other questions.

3 MS. WIEST: Any recross based on redirect?

4 MR. KOENECKE: I have a couple of questions.

5 RECCROSS-EXAMINATION

6 BY MR. KOENECKE:

7 Q. Do you know whether the Lewis & Clark pipeline had a
8 Permit from the PUC to route its pipe?

9 A. I believe they did.

10 Q. Are you sure about -- did you check into that?

11 A. No. It didn't run through our land.

12 Q. Do you know whether the Lewis & Clark pipeline had
13 an Ag Mitigation Plan and followed it in their
14 construction procedures?

15 A. It didn't run through our land. I didn't pay
16 attention to it.

17 MR. KOENECKE: Very well. Thanks.

18 MS. WIEST: Any redirect?

19 MR. BOOMSMA: Nothing.

20 MS. WIEST: Thank you.

21 CHAIRMAN NELSON: Just a second.

22 MS. WIEST: Do you have a question?

23 CHAIRMAN NELSON: You've talked about the Lewis
24 & Clark pipeline and what you've observed in relation to
25 that, and there's been other hints that we've gotten

1 through public testimony about problems with the yields
2 in that particular area.

3 So I want to ask you when Lewis & Clark was
4 built in that area a half mile east of you what did they
5 do in regard to segregating the topsoil from the subsoil,
6 and what did they do in regard to replacing that?

7 THE WITNESS: I didn't see them strip back the
8 topsoil. I did see while they were digging the topsoil
9 was off to the side. And, again, when they went back in
10 and covered it, you know, all I can tell you is what I
11 saw in different spots through the project.

12 I saw the trench. I saw the line. I didn't see
13 them either strip it or replace it so I can't testify,
14 you know, knowledgeably about that.

15 CHAIRMAN NELSON: Thank you.

16 MS. WIEST: Any other cross?

17 Any further --

18 MR. KOENECKE: I have one more.

19 RE-CROSS-EXAMINATION

20 BY MR. KOENECKE:

21 Q. How many piles of soil did you see alongside the
22 Lewis & Clark pipeline?

23 A. It was like a windrow. It wasn't a pile. It was
24 drug off to one side.

25 Q. Just one?

1 A. One that I remember.

2 MR. KOENECKE: Thank you.

3 MS. WIEST: Any redirect?

4 MR. BOOMSMA: Nothing.

5 MS. WIEST: Anything further from this witness?

6 If not, thank you.

7 I would ask our court reporter, did you need to
8 take a break at this point before our next witness?

9 (Discussion off the record)

10 MS. WIEST: We will come back at 10 o'clock.

11 Thank you.

12 (A short recess is taken)

13 MS. WIEST: You may call your next witness.

14 MR. BOOMSMA: I'll call Brian Top.

15 (The oath is administered by the court reporter.)

16 DIRECT EXAMINATION

17 BY MR. BOOMSMA:

18 Q. Who are you?

19 A. My name is Brian Top from Sioux Falls, South Dakota.

20 Q. All right. A few introductory questions.

21 You're from Sioux Falls. How long have you been
22 around the Sioux Falls area?

23 A. Since 1986.

24 Q. Where were you before that, Brian?

25 A. Before that I was in Vermillion and Brookings, and I

1 grew up in southwest Minnesota. So I've always been in
2 that general area.

3 Q. Your date of birth?

4 A. 2-13-59.

5 Q. I saw some information about your education in your
6 prefiled testimony. Give us a generalization of what
7 that is, Brian.

8 A. A B.S. in agronomy from South Dakota State
9 University with an emphasis on soils and chemistry. I
10 had had some master's courses in unrelated fields.

11 Q. My memory tells me you obtained that B.S. in 1982?

12 A. Correct.

13 Q. And so since obtaining that bachelor's degree have
14 you worked in the agronomy field?

15 A. Yes. My entire career. I started with a crop
16 consulting business Centrol. And then I worked for the
17 U.S. Department of Agriculture in an agency called the
18 Natural Resources Conservation Service.

19 Q. When did you start that soil consulting business
20 that you mentioned first?

21 A. In 2012.

22 Q. Okay. So that's most recent.

23 A. Correct.

24 Q. Is the USDA job the oldest one in terms of your
25 agronomy field?

1 A. For the most part, yes.

2 Q. All right. So let's start with that one. So USDA.
3 What years did you work there, Brian?

4 A. From 1982 through 2011.

5 Q. Your title was?

6 MR. KOENECKE: I'm going to object. I
7 appreciate Mr. Top's presence and his work history but it
8 was all contained in the prefiled testimony and if we
9 could move this along, I think we'd all appreciate it.

10 So I offer that for the consideration of the
11 Commission.

12 MS. WIEST: I would just state that, you know,
13 not everything in the prefiled testimony needs to be gone
14 through again.

15 MR. BOOMSMA: I agree with you.

16 MS. WIEST: If you can shorten it to whatever
17 extent that you can, since it's already in the prefiled
18 testimony.

19 MR. BOOMSMA: I would agree with that. I was
20 just laying some introductory questions, but I will move
21 it along.

22 MS. WIEST: Thank you.

23 Q. I heard USDA. Very quickly move us through this,
24 and let's get to the heart of this. What was after USDA?

25 A. I worked for USDA for 30 years, 30 plus years, and

1 then I worked for Hefty Seed Company as a soil
2 improvement specialist for a year, and then I started my
3 own consulting business called Topsoil Consulting.

4 Q. Put it in a nutshell, Brian. What does a soil
5 conservationist do in terms of work?

6 A. Primarily I worked with ag producers on conservation
7 practices and conservation programs when I was with USDA.

8 Q. Have you done that type of work consistently since
9 1982 until now?

10 A. Yes.

11 Q. All right. I 23 is in front of you. Do you see
12 that?

13 A. Yes.

14 Q. That is your prefiled testimony document. Am I
15 right?

16 A. Correct.

17 Q. What's the date on that?

18 A. I've got to get my glasses out. July 2, 2015.

19 Q. You signed that?

20 A. Yes.

21 Q. Do you adopt the testimony in that document?

22 A. Yes.

23 MR. BOOMSMA: At this time I'd move for
24 admission of I 23.

25 MS. WIEST: Is there any objection?

1 If not, it's admitted.

2 Q. I'm going to ask you some questions in terms of
3 whether you have any information to update or explain or
4 clarify what was in that prefiled testimony document.

5 First of all, Brian, did you review any rebuttal
6 testimony documents from Dakota Access witnesses?

7 A. Yes. I reviewed at least four of the rebuttal
8 documents, yes.

9 Q. You laid out in your I 23 document other items that
10 you reviewed in this case; is that correct?

11 A. Yes. That's correct.

12 Q. And so that we don't go through all that section
13 again, are you able to look at I 23 and tell us the
14 portion or lines that refers to what you looked at?

15 A. Probably the most critical items were the
16 Agricultural Impact Mitigation Plan. I feel that was
17 directly pertaining to my expertise.

18 Q. Tiling. One of the issues that's going to be talked
19 about a lot today is agricultural tiling.

20 Are you knowledgeable about that as a soil
21 conservationist and agronomist?

22 A. Yes.

23 Q. What do you know, if anything, in terms of the clay
24 and concrete tiling systems that span out westerly as you
25 leave Sioux Falls?

1 A. Well, I think both southwest and to the west of
2 Sioux Falls there's extensive old clay tile systems that
3 feed into larger concrete main lines. And I think the
4 pipeline is going to impact a great number of those.

5 Q. As you move further away from Sioux Falls to the
6 west, does the presence of these older clay and concrete
7 tiling systems become I'll use the word "less frequent"?

8 A. Yes. You would have to go approximately, I would
9 say, 30 miles west of Sioux Falls, and then they would
10 decrease in that area. For the first 15 miles or so
11 they're quite extensive, and then it would slowly meter
12 out.

13 Q. When were these older systems put in, Brian?

14 A. Most of them in the late teens and '20s. 1915 to
15 1925.

16 Q. Is there an exact record of exactly where these tile
17 systems are at?

18 MR. KOENECKE: Again, I really do appreciate
19 Mr. Top being here. I'd like to spend his time on
20 matters that weren't covered in his written testimony.

21 MR. BOOMSMA: This feeds into how he's going to
22 update his testimony, and I'm just laying the groundwork.

23 MS. WIEST: Okay. Go ahead.

24 Q. Is there any recorded record of exactly where these
25 older tile systems are located?

1 A. I would say few are of public record, yeah. Very
2 few of them. Some are but --

3 Q. What's the typical depth of these tiling systems?

4 A. Typically it's probably 3 to 4 feet deep. Some a
5 lot deeper than that, some shallower. But that's common,
6 3 to 4 feet.

7 Q. Does tiling increase the value of agricultural land?

8 A. Yes.

9 Q. Does tiling increase the productivity of land?

10 A. Yes.

11 Q. Let's talk more about splicing or connecting to
12 tiles. You testified you looked at the Ag Mitigation
13 Plan; correct?

14 A. Correct.

15 Q. Do you have any concerns, Brian, as far as how
16 somebody would ever splice into a tiling system,
17 especially an old one?

18 A. Especially an old one. A more modern plastic tile
19 system you probably can splice into and do it correctly.
20 If done correctly, it will continue to work.

21 A lot of the old clay systems are very fragile. And
22 I think they're going to be very difficult to splice into
23 and put a collar on and expect it to function well.

24 Q. In some instances would it be necessary to actually
25 replace the entire old system on a parcel that's affected

1 by this pipeline?

2 A. Yes. I could see that happening, yes.

3 Q. Is settling of soil in this easement area going to
4 be a concern of yours?

5 A. When I talked about doing the splicing correctly,
6 that's a huge concern of mine is the settlement of the
7 material around the splice.

8 Q. Is it a concern of yours, Brian, that these tile
9 systems are roughly the same depth below the surface as
10 what the oil pipeline's going to be?

11 A. Yes. That's going to make it difficult to reroute.
12 You can't go over. You can't go under. If the pipeline
13 is put in at the depth that's suggested, it's going to
14 directly impact most of the tile lines.

15 Q. Are you aware that the drain tile must be 2 feet
16 from the oil pipeline?

17 A. Yes. I've read that, yeah.

18 Q. Future tiling. Do you have an opinion, Brian, as
19 far as how this pipeline might affect future tiling on
20 property?

21 A. Yes. That's a very good point. Because it's hard
22 to establish what the needs are at this point in time,
23 what the future needs of tiling are going to be. And
24 tile that's been put in will probably be added to
25 extensively. There will be new areas tiled.

1 So I know the pipeline company has asked that you
2 submit plans for future tiling. And that -- it's very
3 hard to do that because, for one, we don't know what the
4 needs are going to be and, two, we don't know how this is
5 going to impact them.

6 Q. You offered testimony in your prefiled document
7 about topsoil stripping. Do you remember that?

8 A. Yes.

9 Q. I'm asking you if you have any updates to that,
10 especially in terms of what you saw in the Ag Mitigation
11 Plan?

12 A. In the Mitigation Plan they talk about a maximum of
13 12 inches of topsoil will be stripped. In a majority of
14 the area that's impacted it will be less than 12 inches
15 of topsoil available. And those are the areas that I'm
16 actually more concerned about. Because if you have more
17 than 12 inches of topsoil, it's a very deep soil, a very
18 productive soil, lots of microbial activity. So my
19 concern is more with the shallower soils where you don't
20 have a lot of topsoil to work with.

21 Q. Well, what if Dakota Access says we'll have somebody
22 determine where those shallower topsoil areas are, and
23 we'll just segregate those? Isn't that an easy answer?

24 A. The soil's been formed over 10,000 years, and those
25 areas have struggled to, in many cases, you know, have

1 4 or 5 inches of topsoil. So to disturb that and think
2 that we're going to restore that within a year or two is
3 naive in my opinion.

4 Q. How about this area that you think that the topsoil
5 is actually thicker than 12 inches? Is it concerning to
6 you that Dakota Access is going to not restore any
7 topsoil after the first 12 inches?

8 A. It would be ideal to restore all the topsoil. Those
9 areas are probably going to be lower in the landscape in
10 areas of deposition where the soil has washed down into
11 these areas. And so yeah. The ideal would be to store
12 all the topsoil.

13 Q. Because after all in those areas where you've got
14 very, very thick topsoil, in other words, the topsoil
15 extending well beyond 12 inches, how long did it take for
16 that to build up?

17 A. Thousands of years.

18 Q. As far as the stripping of the topsoil and then the
19 efforts made to restore it, do you have an opinion
20 whether this pipeline project is going to have an effect
21 or impact on productivity of soil?

22 A. Yes. It will. It will affect productivity, yeah.

23 Q. Have you observed easement areas above pipelines
24 where productivity is impacted?

25 A. Yes.

1 Q. What did you see, and tell us a little bit about
2 that.

3 A. Well, the prior testimony regarding Lewis & Clark, I
4 witnessed that also. Probably a longer term project has
5 been the Williams Pipeline, which runs northeast of
6 Sioux Falls. And I think -- I can't tell you when that
7 was put in, but you can still see evidence that the
8 pipeline is there.

9 Q. As far as this topsoil business, Brian, are you able
10 to quantify it as far as, well, how long is the
11 productivity of this easement area going to be impacted
12 and how much of an impact are we talking about?

13 A. I knew you would ask that question. Those are very
14 hard questions to answer because it is quite variable.
15 You will have areas that I feel will be back into almost
16 full production within a few years, and you will have
17 areas that it will take 20 years or maybe they will never
18 come back into full production. And that's based on the
19 depth of topsoil, the parent material underneath it, the
20 methods used to install the pipe.

21 I'm not even sure I can give you a good number as
22 far as how many years it would take on average. It would
23 probably be 10. I'll pick a number.

24 Q. 10 is what you used in your prefiled testimony
25 document.

1 A. Okay.

2 Q. Brian, I put in front of you Exhibits I 26A through
3 I 26L.

4 Do you see that that's a compilation of photographs?

5 A. Yes. Mine say I 16A through L.

6 Q. Okay.

7 A. But yes.

8 Q. Have you seen those photos before?

9 A. Yes.

10 Q. What's your understanding of what's depicted in
11 those photos, Brian?

12 A. I'm not sure which pipeline it is a photograph of,
13 but it's a pipeline in the area I think -- I think I was
14 told it was six years prior to this photo that the
15 pipeline was installed.

16 Q. Are you able to discern from looking at those
17 pictures a distinct parallel easement area?

18 A. Yes.

19 Q. Are you able to discern whether that strip that's
20 depicted in the pictures would be the typical width of
21 what an easement above a pipeline would be?

22 MR. KOENECKE: I object. There's a lack of
23 foundation, personal knowledge here as to these
24 photographs.

25 They're highly prejudicial. We don't really

1 know anything about them, and the witness didn't seem to
2 know when he was asked. So I would ask that any further
3 questions about these pictures be stricken.

4 MR. BOOMSMA: My response: He's identified
5 them. He's looked at them before. He's testified that
6 it relates to an easement area above a pipeline. And
7 it's directly relevant to what he's saying in terms of
8 crop productivity in that easement area.

9 MR. KOENECKE: And he has no idea if the crop
10 right of way in that picture was sprayed or actually was
11 a pipeline. Didn't take the pictures himself, has no
12 idea what happened on that ground the day, the week, the
13 month, the year, the decade before the picture was taken.

14 They're highly prejudicial and misleading and
15 shouldn't be allowed.

16 MS. WIEST: And were these on your prefiled
17 exhibit list?

18 MR. BOOMSMA: What they are --

19 MS. WIEST: Were they on your prefiled exhibit
20 list?

21 MR. BOOMSMA: Yes. And how I identified them
22 it's a video -- these are screen shots of a video that
23 was attached to Sue Sibson's prefiled testimony document.
24 So these are pictures of things that everybody has been
25 able to see if they looked at her prefiled document.

1 MR. KOENECKE: My objections stand.

2 MS. WIEST: Can I see the exhibits?

3 MR. BOOMSMA: And Sue Sibson is coming here
4 today to testify about them as well.

5 MS. WIEST: I just don't see where they were
6 prefiled.

7 MR. BOOMSMA: On my exhibit list how I
8 identified them was the prefiled testimony documents and
9 any attachments thereto. And her video was attached to
10 that. And these are just screen shots from the video.

11 MS. WIEST: Her video was attached to?

12 MR. BOOMSMA: Her prefiled testimony document.

13 MS. WIEST: Ms. Sibson's.

14 MR. BOOMSMA: Ms. Sue Sibson. So anybody would
15 have been able to click on her prefiled link and watch
16 her video. So this isn't anything new.

17 MS. WIEST: I'm going to take a short break
18 because I need to look this up. We'll take a short
19 five-minute break here.

20 (A short recess is taken)

21 MS. WIEST: I'm going to sustain the objection.
22 It doesn't seem that the witness has knowledge of where
23 these were taken, nor when they were taken, or what
24 exactly they depict.

25 And I believe the reference in the prefiled

1 testimony is just a reference -- it was not actually
2 filed as a separate document. It was just filed as a
3 website URL.

4 You may proceed.

5 Q. Brian, that means we move on. No more questions
6 about the pictures.

7 A. Okay.

8 Q. That put aside, Brian, sum it up as far as your
9 testimony goes in terms of topsoil stripping.

10 A. I think it is very important to strip all of the
11 topsoil that's feasible. I think that's one good step to
12 the re-vegetation and restoration plan. But it's not
13 going to return that land to total productivity.

14 And, like I said, the soil takes thousands of years
15 to build. It's full of microbes, fungi, bacteria,
16 earthworms, gophers that have formed the root systems,
17 and that's all going to be disturbed.

18 Q. Information was in your prefiled document about soil
19 compaction, and I'm going to ask you to expound on that.

20 What are your concerns as far as soil compaction in
21 this easement area?

22 A. My concerns would be -- especially if we have high
23 moisture conditions and this very heavy equipment is
24 going to be running over the land and causing compaction.
25 Basically it just squeezes the air out of the soil.

1 Ideally the soil will have 25 percent air mass in it, and
2 it just squeezes that out, and it takes many years of
3 freezing and thawing to solve compaction problems.

4 Q. Dakota Access says they have an answer to that.
5 Your response?

6 A. Deep tillage alone will not solve all compaction
7 issues. For one thing it's deeper than that. You know,
8 you'll have compaction 3 feet deep. Another is you're
9 just destroying the structure of the soil. And a part of
10 healing compaction is that you need that vertical
11 movement of water and freezing and thawing. That's the
12 only way that's going to be solved.

13 Q. Is soil compaction going to result in lower crop
14 productivity?

15 A. Yes.

16 Q. How long on average?

17 A. Another hard question. I know that there are
18 university studies that say it would last up to 20 years.

19 Q. Dakota Access is proposing to make crop loss
20 payments to landowners that extend out three years on a
21 tiered phase.

22 Will there be crop loss damage beyond three years?

23 A. I would say yes. On average, yes.

24 Q. This ties in to some other questions I asked earlier
25 about the presence of these older tile systems.

1 Would this pipeline have a lower impact on tiling
2 systems if it was further west of Sioux Falls in the
3 growth areas?

4 A. Yes.

5 Q. Without stating the obvious, explain.

6 A. Just because there is very little tile, especially
7 the older tile systems, put in. And, like I said, the
8 line is probably around 20 miles west of Sioux Falls
9 where it really starts to drop off, that west of there
10 there were very few of these old clay tile systems.

11 Q. Are these older clay and concrete tile systems
12 pervasive or very prevalent in this 20-mile span going
13 westward out of Sioux Falls?

14 A. Yes.

15 Q. From an agronomy standpoint, Brian, are you aware of
16 any reason why that pipeline could not have been routed
17 further to the west to avoid some of these growth areas?

18 A. Not that I'm aware of, no.

19 Q. Why are these tiling systems more prevalent -- or
20 more frequent as you get closer to the growth areas?

21 MR. KOENECKE: I object. I think the witness
22 stated his expertise was in agronomy, and now he's being
23 asked to combine that with growth areas, which I think
24 has nothing to do with his particular area of expertise.

25 If he's an expert in agronomy, we'll accept

1 that, and we'll cross-examine him. But as to growth
2 patterns and the growth of Minnehaha County and Sioux
3 Falls, I don't think he's qualified to answer that.

4 MR. BOOMSMA: He's not a growth expert but he is
5 a tiling expert and that's what we're talking about.

6 MS. WIEST: Yes. Objection overruled.

7 Q. My question was why are these older and I guess
8 newer tiling systems more prevalent or more frequent as
9 you get closer to the growth area like Sioux Falls, Tea,
10 Harrisburg?

11 A. I think it's mainly due to increased land values.
12 Productivity's higher, and so people are willing to spend
13 money on tiling systems.

14 Actually I think the late teens and early '20s there
15 was a very productive time within agriculture, and that's
16 why a lot of the drain tile went in back in that period.

17 Q. Does tiling have an impact on development?

18 Strike that. Poor question. Let me go at it a
19 different way.

20 Will the pipeline have an impact on development,
21 especially from the standpoint of rural developments or
22 more specialized farming areas?

23 A. Yes.

24 MR. KOENECKE: I object. I don't think the
25 witness is qualified to answer that. This trying --

1 mixing of his expertise in agronomy with routing and
2 growth patterns is not part of his expertise.

3 MR. BOOMSMA: Response is that he's able to
4 answer in terms of especially rural developments and more
5 specialized farming areas. That's what he's an expert
6 in.

7 MR. KOENECKE: I don't recall seeing this in his
8 prefiled testimony either. We've covered almost every
9 bit of his prefiled testimony here live this morning. I
10 don't recall seeing that.

11 MR. BOOMSMA: He's allowed to update.

12 MS. WIEST: I'm going to overrule the objection.
13 A. I think specifically what will be limited is housing
14 eligibilities and feedlot areas, tree plantings. I guess
15 those are the types of things that will be limited by the
16 easement area.

17 Q. Have you had past experience dealing with
18 conservation and agronomy type easements?

19 A. Yes.

20 Q. Without belaboring it, tell me what that past
21 experience has been from the standpoint of these
22 easements.

23 A. I've worked with a lot of farmers that have
24 easements on land they own, and it's something maybe
25 their grandpa did, you know, in the '60s and they sold a

1 conservation easement for \$200 an acre, something like
2 that. Relatively low amount of money by today's
3 standards.

4 But that has severely restricted their use of that
5 area now. And so that's one of the concerns I have with
6 easements in general.

7 Q. From your past experience, are you able to tell me
8 whether the presence of these types of easements on
9 agricultural land affects the value of that land?

10 A. Yes. They would -- in general they would diminish
11 that, yeah.

12 Q. Have you reviewed some information as it relates to
13 environmental impacts of this pipeline on agricultural
14 land?

15 A. Yeah. I've reviewed the Ag Impact Mitigation Plan,
16 I guess it's referred to. I think that's where a lot of
17 that is talked about.

18 Q. Did you review an Environmental Impact Statement in
19 this case?

20 A. There wasn't one that I'm aware of.

21 Q. Let me ask you, Brian, from an agronomy soil
22 conservation and agricultural standpoint, would an
23 Environmental Impact Statement have been helpful to you
24 in determining how this is going to impact our
25 landowners, our farmers, et cetera?

1 A. I think that document would have given me more
2 details than what the Ag Impact Mitigation Plan could
3 give me on specific sites and how certain tile lines are
4 going to be rerouted or -- so to answer your question,
5 yes, I feel it would have given me more information.

6 Q. More information in terms of plants?

7 A. Plants, yes.

8 Q. Do you have any specific concerns as far as how this
9 pipeline will affect plants?

10 A. I don't consider myself an endangered species
11 expert, but I have dealt with western prairie fringed
12 orchid areas. And so I know one of the rebuttals talked
13 about how a survey was done and they found no effect.
14 And I guess I would be concerned about whether that was a
15 complete survey of the area or just of certain areas.

16 As far as other plants, I guess I think the pipeline
17 will impact native range areas. You're not going to get
18 the full complement of plants seeded back in the native
19 range areas.

20 I'm not sure I'm answering your question.

21 Q. You are. And a little follow up.

22 Would an Environmental Impact Statement have given
23 you more information in terms of water flow patterns or
24 drainage type issues?

25 A. Yes. I think a good Environmental Impact Statement

1 would have addressed certain drainage areas and the Ag
2 Impact Mitigation Plan has just some general job plans in
3 it but no specifics on that issue.

4 Q. Would it have given you more information in terms of
5 agriculture, i.e., cropland? Crops that are being grown?

6 A. Environmental impact statements generally, you know,
7 address prime farmland, impacts to prime farmland and
8 then just probably farmland in general. But probably the
9 big thing missing would be how it impacts prime farmland.

10 Q. You've looked at environmental impact statements
11 before; correct?

12 A. That's correct. Yeah.

13 Q. How many have you looked at in the past?

14 A. Over my entire career? I'm not sure. I'll say 20
15 to 30.

16 Q. So you're familiar with what sort of information or
17 help is provided by these EIS documents?

18 A. Yes.

19 MR. BOOMSMA: At this time I move for admission
20 of I 23, which is his prefiled testimony document.

21 MS. WIEST: That hasn't already been admitted?

22 MR. BOOMSMA: I don't think so.

23 MS. WIEST: Any objection?

24 If not, it's admitted.

25 Q. Is there anything else that you want to add or

1 update in terms of that I 23 prefiled testimony document?

2 A. I think most of the general things were addressed in
3 there, yes.

4 Q. Okay. Do you adopt the testimony in that document?

5 A. Yes.

6 MR. BOOMSMA: That's all I have for questions.

7 MS. WIEST: We'll go to cross.

8 Yankton Sioux Tribe?

9 CROSS-EXAMINATION

10 BY MS. REAL BIRD:

11 Q. Good morning, Mr. Top.

12 A. Morning.

13 Q. My name is Thomasina Real Bird. I'm an attorney for
14 the Yankton Sioux Tribe. I do have just one question.

15 On page 10, line 218 to 221 you talk about concern
16 about disease and insects in the area due to the heat
17 generated by the pipeline.

18 A. Yes. Correct.

19 Q. Would those concerns extend to rodents and varmints?

20 A. Yes. I would say that would be accurate, yes.

21 Q. In general -- and are you comfortable answering more
22 questions in detail about rodents and varmints or --

23 A. I think that may be out of my area of expertise, but
24 I just feel that that increase in temperature is going to
25 favor overwintering of certain insects and probably

1 varmints too.

2 MS. REAL BIRD: Okay. No further questions.

3 Thank you.

4 MS. WIEST: Mr. Rappold.

5 CROSS-EXAMINATION

6 BY MR. RAPPOLD:

7 Q. Thank you, Mr. Top.

8 Do you have any concerns as it relates to invasive
9 species that could move their way in along the pipeline
10 route?

11 A. Yeah. I think invasive species are always a
12 concern. Especially in native prairie areas that, you
13 know, have a very stable vegetation base at this point in
14 time. And when we open them up like that, there will be
15 invasive species, yes.

16 Q. What harms are associated with invasive species?

17 A. The reason they're critical is because they spread
18 to other adjacent land. And so that's one large concern
19 I would have is the spreading to adjacent property.

20 They're difficult to control. And they could turn
21 into a long-term weed control issue.

22 Q. And are you able to tell us exactly what native
23 prairie is. Could you describe that?

24 A. To me it's areas that have never been broken and are
25 still dominated by native species.

1 Q. And do you know approximately how much native
2 prairie is left in eastern South Dakota?

3 A. I should know that, but I can't give you a number
4 off the top of my head, no.

5 MR. RAPPOLD: Thank you. I have no further
6 questions.

7 MS. WIEST: Ms. Craven.

8 MS. CRAVEN: I have no questions.

9 MS. WIEST: Ms. Northrup.

10 MS. NORTHRUP: I have no questions. Thank you.

11 MS. WIEST: PUC Staff.

12 MS. EDWARDS: No questions.

13 MS. WIEST: Dakota Access.

14 MR. KOENECKE: I do. Thank you.

15 CROSS-EXAMINATION

16 BY MR. KOENECKE:

17 Q. Good morning, Mr. Top.

18 A. Good morning.

19 Q. Let's talk about drain tile first. I'm curious.
20 How is drain tile installed?

21 A. Presently most of it is plowed in with a large track
22 hoe and just plowed into the ground. Traditionally it
23 was trenched in. They dug a trench.

24 Q. Dug a trench with what?

25 A. Well, back in the late teens and '20s it was Ole and

1 Sven with a tile spade.

2 Q. And later than that was there power equipment used?

3 A. Probably starting in the '40s I'm estimating they
4 started to have different machines that would install the
5 drain tile, yeah.

6 Q. What kind of different machines?

7 A. Oh, bucket -- what I call bucket excavator, which is
8 just a big wheel with buckets that excavate a chunk of
9 ground and then put it on a pipeline that leads to the
10 side. So that would be probably the '40s, '50s version
11 of how tile was installed.

12 Q. And how about a backhoe?

13 A. Yeah. Probably starting in the '60s and '70s they
14 started using backhoes.

15 Q. And did those methods of installation cause land to
16 never come back in production?

17 A. No. They probably disturbed the area for a period
18 of time, yeah.

19 Q. People have to fix tile from time to time, don't
20 they?

21 A. Yes.

22 Q. And it's not your testimony that tile can't be fixed
23 if it's disturbed, is it?

24 A. Are you referring to the old clay tile or the
25 plastic tile?

1 Q. Well, let's go over it.

2 Fixing clay tile. People fix clay tile systems
3 routinely, don't they?

4 A. They do try to repair clay tile. It's very
5 difficult, yes.

6 Q. But it can be done?

7 A. Possibly, yeah.

8 Q. Well, are you aware of circumstances where it
9 couldn't be done?

10 A. Yes.

11 Q. And then what was the response?

12 A. A lot of times there's a big hole in the ground
13 right there.

14 Q. And so was the tile system abandoned? Is that your
15 testimony?

16 A. No. It continues to function, but the broken tile
17 is exposed.

18 Q. I guess my point, Mr. Top, is tile systems can be
19 fixed and/or replaced, can't they?

20 A. Yes.

21 Q. Thank you. Is it your testimony that a tile bridge
22 is the only way to repair a tile system?

23 A. I just -- in my testimony I talked about how it's a
24 preferable way to do it.

25 Q. There are other people working in the Minnehaha and

1 Lincoln County areas that repair tile with different
2 methods, aren't there?

3 A. Yes.

4 Q. And are they necessarily wrong because they just
5 don't agree with you?

6 MR. BOOMSMA: Objection. Argumentative.

7 MS. WIEST: Sustained.

8 A. I guess I --

9 MS. WIEST: I'm sorry. That was sustained. He
10 can just rephrase that if he needs to.

11 Q. Are you aware that -- well, strike that.

12 Do you think other tiling experts are wrong because
13 they disagree with you?

14 A. I think everybody's entitled to an opinion. My
15 opinion is that the ideal would be to have a tile bridge.
16 If the repair is done in a very careful manner, you
17 probably could get by without a tile bridge. I just
18 think it's the ideal situation.

19 Q. You'd agree with me that the point is to get the
20 tile system to continue to work, isn't it?

21 A. Correct. Yes.

22 Q. You testified previously that you've observed other
23 easement areas from pipelines. Did I hear that right?

24 A. Correct.

25 Q. And did you say it was the Lewis & Clark pipeline?

1 A. Yes.

2 Q. And the Williams Pipeline?

3 A. Yes.

4 Q. Where is the Williams Pipeline located that you've
5 observed it?

6 A. Running from the Sioux Falls -- like the airport, if
7 you're familiar with the airport area. It runs northeast
8 towards Garretson.

9 Q. Do you know whether either the Lewis & Clark
10 pipeline or the Williams Pipeline were permitted by the
11 PUC?

12 A. I'm not aware of that. I don't know.

13 Q. Do you know whether they used, in their
14 construction, procedures found in the Agricultural Impact
15 Mitigation Plan in this proceeding?

16 A. I'm not aware of that, no.

17 Q. It's your testimony that the project should strip
18 all the topsoil feasible?

19 A. Yes.

20 Q. Did you hear us agree last week in testimony that
21 we'd strip whatever topsoil the landowner wanted
22 stripped?

23 A. I was just getting my information from the written
24 material, and that said up to 12 inches.

25 Q. And so it's a surprise to you that we said we'd

1 strip whatever topsoil the landowner wanted?

2 A. I was not aware of that. That's correct.

3 Q. Does that mean you're advocating for stripping the
4 topsoil from the entire right of way?

5 A. No.

6 Q. You mean just over the trench where the pipe is to
7 be buried?

8 A. The excavated areas, yes.

9 Q. You'd agree with me it should be up to the landowner
10 as to how much is stripped; correct?

11 A. Yeah. That sounds reasonable to me.

12 Q. I'm interested in how much familiarity you have with
13 environmental impact statements. Did I hear you say 20
14 to 30?

15 A. Yeah. That's my estimate.

16 Q. Are you an author of any environmental impact
17 statements?

18 A. I have helped write. I am not the sole author, no.

19 Q. And how many people -- name one for us that you
20 worked on.

21 A. Turkey Clay Watershed Environmental Impact
22 Statement.

23 Q. And how many people have worked on that project, if
24 you know? On that Environmental Impact Statement. I'm
25 sorry.

1 A. I don't know. I would guess probably three or four.

2 Q. Did you compile data from others in that process?

3 A. We looked at other impact statements as far as how
4 they are structured and stuff like that, yes.

5 Q. Did you interview witnesses?

6 A. No.

7 Q. Just did you -- if I understand correctly, did you
8 do a literature review for your Environmental Impact
9 Statement?

10 A. Yes.

11 Q. What other tasks did you undertake in preparing that
12 statement?

13 A. I guess this is while I was employed by U.S.
14 Department of Ag. And they have a pretty structured
15 process to writing an Environmental Impact Statement.
16 And so that's basically what was followed.

17 Q. I'm trying to understand what tasks were involved in
18 your participation. And so I'll ask again, did you do
19 anything other than a literature review as part of the
20 tasks you were involved in in preparing the Environmental
21 Impact Statement?

22 A. I guess I've also done surveys. Those were
23 primarily geared towards looking for endangered species.
24 Western prairie fringed orchid, Topeka shiner, those
25 issues.

1 Q. How did people who were affected by that project
2 give their input as to the Environmental Impact
3 Statement?

4 A. While I was involved they did not give input.

5 Q. Thank you. Are you familiar with the Northern
6 Natural Gas pipeline?

7 A. In general, I guess.

8 Q. Do you know where it lays in South Dakota?

9 A. I know where certain parts of it are because it
10 would affect our construction projects. So we had a map,
11 you know, of the pipeline and where the lines were.

12 Q. You spoke about the Williams Pipeline and the Lewis
13 & Clark pipeline in respect to problems.

14 How come you didn't mention the Northern Natural Gas
15 pipeline?

16 A. I guess I -- I'm not familiar with any problem sites
17 on the Northern Natural Gas pipeline. The Lewis &
18 Clark --

19 Q. Thank you.

20 A. -- is the most recent. And the Williams Pipeline I
21 was actually on the Task Force when there was a large
22 spill in the early '90s. I was on the Task Force for the
23 clean up.

24 MR. KOENECKE: Thank you. I have no further
25 questions.

1 MS. WIEST: Are there any Commissioner
2 questions?

3 CHAIRMAN NELSON: You made the statement in
4 regard to tiling, you said, "We don't know what the needs
5 will be" for future tiling.

6 What conditions on a given piece of property
7 would change to drive the need for tiling in the future
8 that doesn't exist today?

9 THE WITNESS: Two major issues that come to my
10 mind. The first is economics. Economics drives tiling.
11 So if corn goes to 7 bucks, there's going to be a lot
12 more demand for tile. So it's economics.

13 And the second one would be environmental
14 regulation. If areas are designated wetland, they're not
15 allowed to be tiled. If those regulations change or
16 requirements change, then there would probably be more
17 tiling.

18 CHAIRMAN NELSON: Do you think there's a
19 likelihood of a backing away from wetland preservation
20 that would allow additional tiling in those areas?

21 THE WITNESS: Not that I'm aware of, no.

22 CHAIRMAN NELSON: The second set of questions.
23 Have you personally -- I'm not talking about pictures.
24 I'm talking about you personally.

25 Have you dealt with any of the areas, observed

1 any of the areas crossed by the first Keystone Pipeline
2 in eastern South Dakota?

3 THE WITNESS: No.

4 CHAIRMAN NELSON: One more set of questions.
5 Dealing with soil structure, obviously where the pipeline
6 trench will be the structure will be completely
7 destroyed. The soil is replaced. They may do some
8 subsoiling to deal with some compaction issues.

9 Explain to us how that soil structure is
10 regenerated.

11 THE WITNESS: Have you got an hour?

12 CHAIRMAN NELSON: And, in all honesty, I would
13 love to spend an hour. I'm an aggie. Okay. So this is
14 my stuff. I would love to spend an hour. We don't have
15 that. So if you could give us the 60-second version,
16 that would be great.

17 THE WITNESS: The soil, you know, needs organic
18 matter. It needs microbes. It needs bacteria. So that
19 comes from root growth, from nutrients being applied back
20 on. Hopefully the landowner has access to maybe some
21 livestock manure or other things that can kind of
22 rejuvenate the organic matter and microbes.

23 CHAIRMAN NELSON: Thank you.

24 COMMISSIONER SATTGAST: Yes. Thank you for
25 being here this morning. I'm not an aggie so could you

1 explain a tile bridge and the benefits of going that
2 route then.

3 THE WITNESS: The tile bridge is just a
4 structure that is going to not allow the soil above the
5 repair to collapse. And that's frequently a concern is
6 these areas do settle. And along with it that tile
7 repair settles and, therefore, you get this little dip in
8 the tile and pretty soon that starts to fill with
9 sediment and reduces the capability of the tile system.

10 COMMISSIONER SATTGAST: Is this significantly
11 more costly than going other routes?

12 THE WITNESS: The tile bridge? Probably around
13 1,000 bucks a site.

14 COMMISSIONER SATTGAST: Okay. Thank you very
15 much.

16 MS. WIEST: Any other Commissioner questions?
17 Any cross based on Commissioner questions?
18 Any redirect?

19 MR. BOOMSMA: Yes. A few questions. I'll keep
20 it brief.

21 REDIRECT EXAMINATION

22 BY MR. BOOMSMA:

23 Q. Based upon your knowledge of the existing older clay
24 and concrete tile systems west of Sioux Falls, do you
25 know if they're functioning?

1 A. There's a lot of them that are, yeah.

2 Q. You're able to tell if they're not; correct?

3 A. Correct. Yeah.

4 Q. Following up as far as the tile bridge.

5 In some instances with the older systems, clay,
6 concrete, a tile bridge won't be possible. Am I right or
7 wrong?

8 A. It would probably still assist the repair. The
9 concern I have with splicing into an old clay tile system
10 is it's so fragile.

11 I've dug up a lot of old clay tile where the top
12 half of the clay is gone. The bottom half is still
13 there. And, you know, to try and put a collar on that
14 or act like we can repair it is -- it's just not
15 possible.

16 Q. In some instances would it even be necessary to
17 replace the entire old system on this parcel?

18 A. If you're going to make it function properly, yes.

19 MR. BOOMSMA: That's all I have.

20 MS. WIEST: And is there any recross based on
21 redirect?

22 Commissioners?

23 Okay. Thank you.

24 You may call your next witness?

25 MR. BOOMSMA: I'll do that. I'll call Thomas

1 Stofferahn to the stand.

2 (The oath is administered by the court reporter.)

3 DIRECT EXAMINATION

4 BY MR. BOOMSMA:

5 Q. Your name?

6 A. Thomas E. Stofferahn.

7 Q. Where do you live, Tom?

8 A. Humboldt, South Dakota.

9 Q. How long have you been in that area?

10 A. All my life.

11 Q. Your level of education?

12 A. High school, two years of college, SDSU, and back to
13 the farm.

14 Q. Your occupation?

15 A. Farmer, and we also own a seed business of which my
16 brother and I own the seed business. I am president of
17 Nortec Seeds.

18 Q. How long have you been involved with Nortec Seeds?

19 A. Nortec Seeds goes way back. My father started in
20 the business. We were in high school. Of course, we got
21 to throw the bags, but we've been at the business since
22 then in '65, '66.

23 My father worked for a company. They were bought
24 out. Three other gentlemen with my father formed a new
25 company called Four Star Seed, of which I worked in, and

1 my father did and my brother.

2 We decided to split up in '98 between the
3 territories, and at that time we were Four Star Seed
4 North, and then we about eight years ago changed our name
5 to Nortec Seeds to not have the confusion between
6 Four Star Seed North and Four Star Seed.

7 Q. Do you grow seeds?

8 A. All our soybeans are grown by Stofferahn Farms for
9 our company.

10 Q. Do you grow that by your farm site?

11 A. Yes. All our seed corn is grown in various areas:
12 Wisconsin, Iowa, South Dakota, Minnesota.

13 Q. Do you see a document with a sticker on it and that
14 sticker says I 22 in front of you?

15 A. Yes, I do.

16 Q. What's the date on that, Tom?

17 A. 29th of June, 2015.

18 Q. Did you sign that?

19 A. Yes, I did.

20 Q. Is that your prefiled testimony document?

21 A. Yes, it is.

22 Q. Do you adopt the testimony in that document?

23 A. Yes.

24 MR. BOOMSMA: Move for admission of I 22.

25 MS. WIEST: Is there any objection to I 22? If

1 not, it has been admitted.

2 Q. Can you give us the two-minute summary of your land
3 that is going to be affected by this pipeline.

4 A. Purchased in 1975 by my brother and I. It was
5 rather rough, hadn't been taken care of, not a lot of
6 fertilizer done to it.

7 We've made a lot of improvements, increased the
8 fertilization, hauled a lot of rock. I can guarantee you
9 I walked up every row and back picking up rock on that
10 parcel.

11 Q. What's the size of your parcel that will be affected
12 by this proposed pipeline?

13 A. 118.36 acres.

14 Q. Location of the parcel. I think you said it was by
15 Humboldt. How far from town?

16 A. Two and a half miles east of Humboldt on Highway 38.

17 Q. Is all of your land used for agricultural purposes?

18 A. Yes.

19 Q. Is your Nortec Seed business on your land?

20 A. Yes.

21 Q. How many acres does your seed business take up of
22 your land?

23 A. It's part of Stofferahn Farms. It's 3.98 acres.

24 Q. Do you have seed research plots on your land?

25 A. Yes. They vary place to place. We usually -- in

1 the back of our seed business, which is located where I
2 live and where the business is at, in Section 13 we
3 always have one there. This year we did not. We didn't
4 know what was going to go on so we did not.

5 But basically in back of our business we put in
6 research plots, our own test plots of competitive
7 hybrids, soybean plots, and that's going to be very
8 important in the coming two years.

9 We have three new soybean products being introduced
10 by Monsanto, Dow, Agrigenetics, and Bayer that will be
11 used -- different chemical combinations, and farmers are
12 going to want to see what those chemical combinations are
13 going to do, if there's drift, how they're actually going
14 to act in the environment.

15 We cannot do these until China gives okay to these
16 companies. But after that we expect there will be
17 five-acre plots for each one of those different
18 chemistries plus the original RR2, plus our test plot for
19 corn, plus our research plot. So we're talking
20 approximately 50 acres in back of our seed building.

21 Q. How many plots do you have now?

22 A. Soybean plots I have six, and corn seed plots five.

23 Q. And you want to expand that to did I hear 50?

24 A. Well, it's going to take up more in back of our
25 place. Especially when we're talking about the new

1 chemistries, new chemicals that are going to be used on
2 the soybeans.

3 Q. Will this proposed pipeline impact or affect those
4 research plots?

5 A. I've received one document that shows the line of
6 the pipeline, and it comes right to the back of our seed
7 business right now. I have plans for a 60-by-152
8 additional warehouse and that will go north and it's
9 going to be awfully close to that pipeline.

10 The lots that will be straight north of there on
11 that land, the pipeline shows going diagonally across
12 that, and there's no way I can put those kind of research
13 plots and test plots with that pipeline going diagonally
14 across that ground.

15 Q. Have these research plots and expansion plans been
16 in the works for a while?

17 A. Yes.

18 Q. How long?

19 A. The expansion plan two years ago. We're adding
20 offices that we expect to do this year. Research plots,
21 that's just an ongoing project for us every year. We get
22 to look at new hybrids, new genetics coming out, new GMO,
23 whatever.

24 Q. In terms of volume of your business, can you try and
25 put it in perspective of what size of business we're

1 dealing with, Tom?

2 A. Our business, our gross sales are 3.2 to 3.5 million
3 per year. My brother, I, I have two sons, and my brother
4 has a son. They all work in the business. They're all
5 paid wages out of that -- out of our company.

6 We have dealers, and they are paid commissions when
7 they sell seed. So there's additional monies that go out
8 to them for a little bit more working capital for them.

9 Q. Are the research plots finicky?

10 A. Yeah. They're planted in two-row plots, and they're
11 20 feet long, and then there's a break and there's
12 various -- there will be -- I can have 200, 250 different
13 hybrids. And it's replicated in that plot twice, if not
14 three times, each hybrid.

15 Q. Do you have any concerns as far as topsoil stripping
16 or soil compaction on your land and inclusive of the
17 research plots?

18 A. Yes.

19 Q. Sum it up. What are your concerns?

20 A. They come across and as Brian mentioned that people
21 that have probably more than a foot of black topsoil
22 probably have very productive soils. Where we live and
23 where we have it, we maybe have 10 inches, and after that
24 is clay.

25 And our clay, and as Brian stated, if it's very wet,

1 it is going to compact very tightly. And breaking that
2 up or getting something to grow in that is definitely
3 going to have an effect on our research plots, all of our
4 plots back there.

5 Q. Tiling, that's a subject we've been talking about a
6 lot today. Do you have tiling on your land, Tom?

7 A. Yes.

8 Q. Give us an idea of what you have for tiling,
9 especially as it relates to the land that's affected by
10 the pipeline.

11 A. Right now there is two -- there is two tiles in
12 there, and the pipeline will not affect those.

13 And what we did was in my prefiled testimony I said
14 it would not affect it. But as of that date we are going
15 to be doing some more tiling that the pipeline will
16 cross.

17 Q. Do you have any concerns as it relates to splicing
18 of tiles?

19 A. If it's plastic, I do not have a problem splicing.

20 Q. Do you have a concern as it relates to the pipe --
21 excuse me. Of the tile being required to go 2 feet above
22 or 2 feet below the oil pipeline?

23 A. Most of our tile, if it's put in, it is in that 30,
24 32 inches to 36 inches. So it will be right in that
25 zone.

1 Q. Is it a concern of yours if the tile is at the same
2 elevation or depth of the proposed pipeline?

3 A. Yes.

4 Q. What's your concern?

5 A. If it's at the same depth, what are my options? I
6 can't go under it. That's not going to work. And I
7 cannot go over it. It will not work.

8 Q. Are you knowledgeable as far as the tiling systems
9 in your area and also the area generally west of
10 Sioux Falls?

11 A. Yes.

12 Q. Are you knowledgeable as far as the older clay and
13 concrete systems?

14 A. Yes.

15 Q. Did you have some of those systems on your land?

16 A. Yes. We have two different systems that were put
17 in, as Brian said, in the late teens to early '20s. At
18 the time they were filed and recorded in Minnehaha
19 County, but they were called ditches. For what reason I
20 don't know. But we deal with Ditch 9 and Ditch 11 in the
21 farm ground that we farm.

22 Q. Are your landowner -- excuse me. Are your
23 neighboring landowners utilizing these older clay and
24 concrete tiles?

25 A. State that again.

1 Q. Yep. I'll ask it a different way.

2 Are your neighboring landowners, in other words,
3 your farming neighbors, are they utilizing these older
4 clay and concrete tile systems?

5 A. Yes.

6 Q. Is that older system prevalent through your area?

7 A. Yes. Very.

8 Q. Do you have any experience, Tom, as far as replacing
9 tile?

10 A. Yes. We -- on some rented ground we have, we've --
11 it's a 12-inch clay tile. We have had the excavator in,
12 tried to repair it, could not find a good strip. We had
13 to dig an additional 100 feet to find the piece of tile
14 that we could connect with.

15 Q. Is it going to be easy to splice into these old
16 systems?

17 A. No.

18 Q. Is it going to be even possible?

19 A. I don't believe so, no. They crumble as soon as
20 they touch them.

21 Q. Are these old systems functioning, though?

22 A. Yes. Amazingly, they do.

23 Q. How do you know if they're functioning or not? You
24 can't see them.

25 A. No. But there's inlets and there's water that sits

1 in bottoms and there is a tile opening. And it may take
2 a little while. I'm sure it takes a lot longer now, but
3 the water does drain out. So I know that that whole
4 system -- the systems are working.

5 Q. Lots of signs to look for.

6 Do you know if this -- if these older tile systems
7 extend further out west of you near by Humboldt?

8 A. Right. I do not know of any county systems that
9 were installed like this. These were installed by the
10 county. Townships put money into these tiles, the older
11 systems, because they could not keep roads from being
12 under water. It just -- it was ruining roads. So that's
13 why they were put in, these tile systems.

14 And farmers, they were assessed owner taxes to pay
15 for all the systems. Townships put in money. And I
16 believe the county did when they have county roads.

17 Q. Did you sit on a township board that dealt with tile
18 issues?

19 A. I sat for 18 years on Humboldt Township Board. If
20 they involved our roads, yes, we had to be involved.
21 Sometimes we had to dig and repair.

22 Q. Are you knowledgeable as far as where these older
23 tile systems are when you go directly west of
24 Sioux Falls, Harrisburg, et cetera?

25 A. I am aware of the two systems around -- in Humboldt

1 and the two systems are within a mile apart and one is
2 Ditch 9 and the other one's Ditch 11.

3 I'm familiar with Ditch 10, which is closer to
4 Colton.

5 MR. KOENECKE: Commissioners, I appreciate the
6 witness's apparently extensive knowledge of the tiling
7 system, but the order for this hearing explicitly stated
8 that direct testimony was to be offered in writing, that
9 it was to be -- live testimony was to be limited to a
10 brief summary, and it was to be limited to things that
11 weren't known to the witness at the time the direct
12 testimony was filed.

13 I haven't heard much in Mr. Stofferahn's
14 testimony that wasn't known to him before the written
15 document was filed. And I do appreciate his being here.
16 His concerns are of tremendous interest to my client, but
17 I -- we're far afield from what the written testimony
18 was, and we're way off of what the Order was.

19 MS. WIEST: And we would just like to put you on
20 notice as to what was in that Order, Mr. Boomsma.

21 MR. BOOMSMA: Okay.

22 MS. WIEST: If you could shorten it up.

23 MR. BOOMSMA: I will.

24 MS. WIEST: Thank you.

25 MR. BOOMSMA: And thank you.

1 Q. Tom, let's wrap up some of your testimony. I want
2 to hear from you as far as what your concerns are in
3 terms of the pipeline going through your land. Not only
4 your land but also where it's going to travel westerly of
5 Sioux Falls in the growth areas.

6 A. Going back to my ground, my biggest concern --

7 MR. KOENECKE: Again, I object. This is not in
8 the prefiled testimony. It's not part of the Commission
9 Order. It was known to the witness previously, and I
10 object. We need to stick to that Order.

11 MR. BOOMSMA: My response is that he's a
12 landowner. He has firsthand knowledge. He has the right
13 to expand on his prefiled testimony document. I'm not
14 far astray from that.

15 And if he has an opinion as far as what his
16 concern is, he's trying to wrap it up.

17 MS. WIEST: I'll allow it.

18 Go ahead.

19 A. My biggest concern, as I started to say, is for our
20 business and a pipeline coming in back of it. If we
21 cannot do all these test plots, research plots in back of
22 us and we want to bring our customers in to show them the
23 new hybrids, the new chemical systems for soybeans, we --
24 if they go someplace else and look, then I may lose a
25 customer.

1 I need that parcel in back of our business to have
2 all of my plots so that I can show my customers and
3 anyone else that wants to look.

4 MR. BOOMSMA: That's all I have for questions.
5 Thank you.

6 MS. WIEST: Before we go to cross, did you need
7 a break, Cheri?

8 Let's go to cross. Yankton Sioux Tribe, did you
9 have any questions?

10 MS. REAL BIRD: We have no questions.

11 MS. WIEST: Rosebud.

12 MR. RAPPOLD: Just a few.

13 CROSS-EXAMINATION

14 BY MR. RAPPOLD:

15 Q. Thank you, Mr. Stofferahn. I'm a coyote so I
16 probably know even less about tile systems than most
17 other folks in the room.

18 What it seems to me is it's like a drainage system
19 for water that accumulates in fields?

20 A. Yes.

21 Q. And you said that you know they're working because
22 the water drains out.

23 A. Yes.

24 Q. Where does the water drain out?

25 A. It goes to one point. The two systems that I talked

1 about, No. 9 and No. 11, drain into Section 35 of
2 Clear Lake Township. From there it enters a small creek,
3 and that water goes to Skunk Creek and into the
4 Sioux River.

5 Q. Okay. And other -- is it safe to say that other
6 systems that aren't where you just described work the
7 same way?

8 A. Yes.

9 Q. And in addition to being able to transport water, if
10 oil were to get into that same system, would that move
11 just like the water?

12 A. Yes.

13 MR. RAPPOLD: Thank you. No further questions.

14 MS. WIEST: Ms. Craven, any questions?

15 CROSS-EXAMINATION

16 BY MS. CRAVEN:

17 Q. I just have one or two questions. Thank you.
18 Kimberly Craven, attorney for Dakota Rural Action and
19 Indigenous Environmental Network.

20 How are you today, sir?

21 A. Good.

22 Q. Have you had an opportunity to see a document
23 regarding an economic impact of the pipeline prepared by
24 DAPL?

25 A. No, I have not.

1 MS. CRAVEN: Okay. Thank you. No further
2 questions.

3 MS. WIEST: Ms. Northrup, any questions?

4 MS. NORTHRUP: I have no questions. Thank you.

5 MS. WIEST: Commission Staff.

6 MS. EDWARDS: No questions. Thank you.

7 MS. WIEST: Dakota Access.

8 MR. KOENECKE: I do have just a few. Thank you.

9 CROSS-EXAMINATION

10 BY MR. KOENECKE:

11 Q. And thank you for being here today. You made a
12 statement previously. I wrote it down as "right to the
13 back of the seed business."

14 Do you remember that?

15 A. Yes.

16 Q. I want to understand exactly what you meant by that.

17 A. Well, Stofferahn Farms -- and it's platted off as
18 Stofferahn Farms 1 and Stofferahn Farms 2. Our house is
19 on 2. The business is on Stofferahn Farms 1 that's been
20 surveyed out. And that goes back of the existing
21 building probably another 150 feet, and then it ends,
22 that plot.

23 Without -- if I add on the extra warehouse that we
24 need, we're going to be getting close within the distance
25 of the pipeline where it's coming through. And I'm not

1 sure, according to easements -- the ones I've seen -- if
2 the structure is too close, you have the right to tear it
3 down.

4 Q. So there's no current structure there. You're
5 planning to build one.

6 A. I have the bid sitting in my office for it.

7 Q. If I understood correctly then, at that same
8 location you plant two-row plots 20 feet long?

9 A. That consists -- it's about a 7 and a half acre
10 total plot. This is just a research plot. And this is
11 how they're put in.

12 I said they're put in -- it could be 200, 250
13 hybrids. They're put in two rows, 20 feet long, and then
14 that same hybrid is replicated in a different part of
15 that research plot. And every hybrid that's in there
16 gets replicated twice, at least, sometimes three. It
17 takes a lot of acres to put in one of these.

18 Q. And your testimony then was if you couldn't have
19 those plots, you'd be damaged; right?

20 A. Yes.

21 Q. But what I wanted to know is what was your thinking
22 as to why you couldn't have those plots?

23 A. I can't -- on that piece of ground I cannot go to
24 the west further because the ground -- I have too many
25 areas that will drowned out, get wet. It's going to

1 affect the yields of those plots.

2 So the best area is straight in the back of our
3 business where it does drain well, and I can keep those
4 plots where I'll get the best yield results from them.

5 Q. And so I'm trying to understand how are the plots
6 not compatible with normal operation of the pipeline?

7 A. I would go back to Mr. Top's testimony. That land
8 is going to be damaged for some years, and we have the
9 type of soil that's probably not going to come back very
10 fast.

11 So if the pipeline is put in back of our business
12 and where my plots are, I probably will not be able to
13 utilize that area for my plots. I will have to move them
14 someplace else. And that takes away from us getting our
15 customers there at our business to look at these plots.

16 Q. Why is your soil of the type that won't come back
17 very fast?

18 A. Not a lot of black soil. As I said, probably in
19 areas we may have 10, 12, 15 inches, but other areas
20 we're probably limited to maybe 10 inches. Under that is
21 a clay base.

22 Q. So is your topsoil fragile or of poor or average
23 quality, or can you describe your topsoil?

24 A. Our topsoil is average, average plus. It's the soil
25 underneath that's going to cause the problems. If it's a

1 heavy clay base, they come in with the pipeline, is going
2 to pack very solid, and it's going to take years to get
3 that back.

4 As Mr. Top said, roots form veins that go down, and
5 the water goes down. The earth worms, microbial action,
6 all of that. It's going to take years to get that back.
7 I can't have those years to wait for these plots that I
8 need to have for our business.

9 Q. So here's my struggle then is to understand why your
10 test rows are in a place where the soil is only average.

11 A. I have drainage. We have good fertility. As I
12 stated, I can't go very far west, and then I'm into low
13 grounds, places I cannot tile, wetlands.

14 It produces well. We've started -- when we bought
15 that average yield was maybe 100 bushel corn. Last year
16 we had 185 bushel corn on it.

17 Q. I was unclear about your testimony on tiling, and I
18 want to go over that.

19 I understood you to say that there's no tile on the
20 tract where the pipeline's proposed to go right now.

21 A. Not right now, but there will be.

22 Q. And so you have plans to do some tiling in that
23 location?

24 A. Yes. Along with our neighbor.

25 Q. Is the neighbor your brother or somebody else not

1 involved?

2 A. It's the landowner right next to us. Kramers.

3 Q. And are they hosting the pipeline on their property?

4 Do you know?

5 A. Yes.

6 Q. Okay. Have they signed an easement?

7 A. We have all the necessary signatures to put the tile
8 in.

9 Q. Have they signed an easement for the pipeline?

10 A. I do not know.

11 Q. Okay. Then you testified about fixing tile
12 someplace else; right?

13 A. Yes.

14 Q. That's on a different parcel; not this one?

15 A. Different parcel. It's in the old clay, cement
16 systems.

17 Q. Did you testify that you had to go 100 feet to find
18 tile that was intact that you could hook onto?

19 A. Yes.

20 Q. And were you able to successfully fix the tile?

21 A. Yes. There we did.

22 MR. KOENECKE: Nothing further. Thank you.

23 MS. WIEST: Any Commissioner questions?

24 CHAIRMAN NELSON: I do. Mr. Stofferahn, thanks
25 for being here today.

1 Is it correct, is Nancy your wife?

2 THE WITNESS: Yes.

3 CHAIRMAN NELSON: I had a series of questions
4 for her, but since you're here you're going to get them
5 and she owes you one.

6 I'm a maps guy, and so I've got Google Satellite
7 of your location up here. I've also got the section of
8 the Dakota Access filing that shows their route. But
9 what I can't do is bring the two of those together in my
10 mind and understand exactly where the proposed route is
11 in relation to your seed business and your field.

12 So could you explain to me based on your
13 understanding where the pipeline comes into your field
14 and how it exits?

15 MR. KOENECKE: Commissioner, could we have the
16 benefit of all of us being able to see that? Can we make
17 that work somehow?

18 CHAIRMAN NELSON: I think so.

19 We're going to have Katlyn pull Google Satellite
20 up on the overhead, and then we'll all look at it.

21 As she's doing that, let me ask a different line
22 of questioning, in relation to the plots.

23 My understanding of test plots is that one of
24 the things you want to absolutely minimize in those plots
25 are variables that don't relate to what you're testing

1 for.

2 THE WITNESS: Right.

3 CHAIRMAN NELSON: Is that correct?

4 THE WITNESS: Yes.

5 CHAIRMAN NELSON: Would you view planting a test
6 plot over the top of a pipeline route as introducing a
7 variable that you don't want?

8 THE WITNESS: Yes.

9 CHAIRMAN NELSON: And can you tell me what kind
10 of damage that might do to the reliability of your test
11 plot results?

12 THE WITNESS: It's going to change the results
13 dramatically. For going over a pipeline and/or work area
14 versus soil not being touched.

15 Like we said, it's probably going to take years
16 to bring that soil back. And I -- I wouldn't put a plot
17 in there because it would not be the same. The variance
18 would be great between hybrids. You could have the same
19 hybrid that's on a great soil and you could have one
20 that's over the pipeline and I could definitely see 50 to
21 60 bushel difference.

22 CHAIRMAN NELSON: If you look at -- you can
23 either look up there or on the monitor in front of you.

24 Does this look familiar?

25 THE WITNESS: Yes.

1 CHAIRMAN NELSON: This is your place; correct?

2 THE WITNESS: Yes.

3 CHAIRMAN NELSON: Katlyn, could you zoom it out
4 one click, please. Over in the lower right, that minus,
5 the minus sign. Yep. There you go. And then pull it
6 down just a little bit. Down.

7 Okay. Your property I'm assuming goes to the
8 north and the west of where the seed business is located;
9 correct?

10 THE WITNESS: Yes.

11 CHAIRMAN NELSON: Where is your understanding
12 that the pipeline comes into that piece of property?

13 THE WITNESS: My understanding is that would
14 come into the northeast -- close to the northeast corner
15 of our warehouse.

16 CHAIRMAN NELSON: Okay. Does it not come in
17 from the north or the west?

18 THE WITNESS: The north.

19 CHAIRMAN NELSON: Okay. So where does it enter
20 that field on the north? It comes across 258?

21 THE WITNESS: 256, I believe. No. 258th.

22 CHAIRMAN NELSON: So where along 258th does it
23 come into your field?

24 THE WITNESS: Approximately halfway through the
25 field.

1 CHAIRMAN NELSON: Katlyn, could you pull that
2 down just a hair so that we're -- so we see a little bit
3 of a low spot there to the east of those trees.

4 Is that the general area where you believe it
5 comes in?

6 THE WITNESS: Yes.

7 CHAIRMAN NELSON: And then it's angling towards
8 the seed business as it comes across the field; is that
9 correct?

10 THE WITNESS: Yes.

11 CHAIRMAN NELSON: And, Katlyn, if you would just
12 move it back up so we're looking at the seed business
13 again. And you could maybe hit the plus sign once and
14 move it up again.

15 Does the pipeline then exit your property going
16 to the east?

17 THE WITNESS: To the east, yes.

18 CHAIRMAN NELSON: And how far north of the seed
19 building does it exit?

20 THE WITNESS: The only map I've seen is if you
21 would draw a line from the shelter belt around the other
22 building and my house, go straight across it to the fence
23 line, that looks like where it's going to cross.

24 By the time I add in a new warehouse that we
25 have there and we also want to have a conditioning plant

1 plus treating plants in that area -- currently we share
2 that with a farm, but we want to get it all in one area.
3 So we're going to be within, I would say, 200 feet or
4 less of where the pipeline would cross from the only map
5 that I've seen.

6 MR. KOENECKE: Commissioner, I hate to interrupt
7 but we were able to superimpose the pipeline route over
8 this map, and I think it would be of aid to everyone to
9 take a look at this. If I could --

10 CHAIRMAN NELSON: I'd love to see that.
11 Obviously, you've got technology I don't have so I
12 appreciate that.

13 For folks listening in, it's going to take us
14 just a minute or two to get our technology up.

15 And, Katlyn, if you could bring me my sheet
16 back.

17 Okay. Mr. Stofferahn, now we've got a little
18 better map comparing where the pipeline is actually going
19 to run. So it appears to me there may be more than 200
20 feet here between where your projected expansion would be
21 and the actual pipeline route.

22 Would that be correct?

23 THE WITNESS: It looks like it from here. This
24 is a different map than what I have.

25 CHAIRMAN NELSON: So can you tell me in relation

1 to where the pipeline is routed or your existing
2 farmstead, the 50 acres of proposed test plots, can you
3 show me where that would fit into this?

4 THE WITNESS: It would go -- if you go to the
5 northwest corner of where the house and other outbuilding
6 is, go straight up to 258th. That would be about the
7 area we'd need.

8 CHAIRMAN NELSON: Thank you. That makes it very
9 clear in my mind.

10 I think that's all the questions I've got. I
11 appreciate everybody putting together that map so that
12 was clear to me.

13 Appreciate your answers. Thank you.

14 MS. WIEST: Any other Commissioner questions?

15 Is there any further cross based on the
16 Commissioner questions?

17 MR. KOENECKE: No. Thank you.

18 MS. WIEST: Was there any redirect?

19 MR. BOOMSMA: Really quickly.

20 REDIRECT EXAMINATION

21 BY MR. BOOMSMA:

22 Q. Tom, compaction. Is that good for your soil
23 especially as relates to the research plots?

24 A. No.

25 Q. Will compaction occur when they install this

1 pipeline?

2 A. Yes.

3 Q. Can the compaction be remedied?

4 A. Over the years I'm sure it will be, but not right
5 away.

6 Q. Years in terms of what?

7 A. Our soil I would say at least 15. Maybe more.

8 Q. Do you do special things now to reduce any effect of
9 compaction on your soil?

10 A. The only tillage we do is where we pull in and out
11 of the field with our trucks, and we will subsoil them
12 areas only. Otherwise, we've went to either no till or
13 vertical tillage, which is just very light tillage or
14 stalks and so.

15 Q. You testified that your subsoil appears to be clay?

16 A. Yes.

17 Q. That's more susceptible to compaction?

18 A. Compaction.

19 Q. Not only on your land but in general?

20 A. In general, yes.

21 Q. Touching on tiling, and I'll close on that. You
22 talked about an instance where you had to go 100 feet
23 along that clay tile to be able to fix it.

24 A. Yes.

25 Q. Have there been instances or will there be instances

1 where you will not be able to splice into a clay or older
2 concrete tile?

3 MR. KOENECKE: Objection. He's asking his
4 witness to speculate.

5 MR. BOOMSMA: I'm not because he's testified he
6 knows about these older systems.

7 MS. WIEST: Overruled.

8 A. Just this spring there was the old 16-inch cement
9 tiles, and it ran through a bottom. We farm it. It's
10 owned by Gerald Foster out of Sioux Falls. We have been
11 farming it since 1969. We had to abandon the old tile
12 because there was eight holes in that field. And there
13 was a great loss of topsoil in the meantime.

14 There was no way to fix that so we abandoned it and
15 just put in a new line up to a certain point where we
16 could make a connection with the older tile again.

17 MR. BOOMSMA: That's all I have for questions.

18 MS. WIEST: Any recross?

19 Ms. Craven.

20 MS. CRAVEN: Thank you. I just have one
21 question following up on the map that Chairman Nelson
22 showed.

23 RECROSS-EXAMINATION

24 BY MS. CRAVEN:

25 Q. It seems like it really is in your backyard. We've

1 had testimony that this pipeline will not pose any threat
2 of serious injury to the social and economic conditions
3 of inhabitants or expected inhabitants in the siting
4 area.

5 Do you agree with that statement?

6 MR. KOENECKE: I object. This is beyond the
7 scope of redirect.

8 MS. WIEST: It is beyond the scope of redirect,
9 Ms. Craven. Objection sustained.

10 MS. CRAVEN: Okay. Thank you. No further
11 questions.

12 MS. WIEST: Any other recross based on redirect?
13 If not, thank you.

14 Oh, Commissioner, do you have a question?

15 CHAIRMAN NELSON: I have just one additional
16 question, Mr. Stofferahn.

17 Is there anywhere in your prefiled testimony
18 that you talked about the proposed test plots?

19 THE WITNESS: Yes. I said research plots.

20 CHAIRMAN NELSON: Okay. Thank you.

21 MS. WIEST: If nothing further, you're excused.

22 Let's talk schedule right now. It's about 20 to
23 12:00. Do people want to take a break now or do another
24 witness?

25 MR. BOOMSMA: I've been watching the clock too.

1 Here's my plan. I have two shorter witnesses that I
2 think would be ideal before the lunchtime break. I
3 propose I put those on and try and hammer through them
4 quickly.

5 MS. WIEST: Is that okay with you, Cheri, or do
6 you need a break?

7 MR. KOENECKE: I would like to know who they
8 are. We might have questions for them that are longer.

9 MR. BOOMSMA: One is going to be Janice
10 Petterson. And why I think she's going to be shorter is
11 she's a sibling of Kevin Schoffelman so I can avoid all
12 the repetitive questions about the land and et cetera.

13 And the other one will be Janice's sister, again
14 Kevin's sibling, so I think those would be shorter. I
15 think we can go through them quickly.

16 Your call.

17 MR. KOENECKE: We don't have extensive cross for
18 either of them. I found their testimony to be
19 duplicative. But perhaps they have something to add
20 that's different.

21 MR. BOOMSMA: And I don't expect they will have
22 much to add. I think we'll go through them quickly.

23 (A short recess is taken)

24 MS. WIEST: Mr. Boomsma, you may call your next
25 witness.

1 MR. BOOMSMA: I'll call Janice Petterson.
2 (The oath is administered by the court reporter.)

3 DIRECT EXAMINATION

4 BY MR. BOOMSMA:

5 Q. Your name, please.

6 A. Janice Elaine Petterson.

7 Q. Kevin's sister; right?

8 A. Correct.

9 Q. All right. Where do you live, Janice?

10 A. 6401 South Lyncrest Avenue, Apartment 307,
11 Sioux Falls, South Dakota.

12 Q. How long have you been a South Dakota resident?

13 A. All my life.

14 Q. Level of education?

15 A. High school and some banking and -- banking related
16 courses.

17 Q. Occupation?

18 A. Right now I'm retired.

19 Q. Prior to that?

20 A. In bookkeeping for the family business for 35 years.
21 The farm family. Then also as a payroll clerk for about
22 10 years. In banking a total of 14 years. And medical
23 receptionist for a total of five years.

24 Q. Were you here when Kevin testified?

25 A. Yes.

1 Q. Kevin offered a lot of specifics and details about
2 the land. There's a quarter of land affected?

3 A. Correct.

4 Q. And you're one of the owners?

5 A. That's right.

6 Q. Are there seven siblings total?

7 A. Right.

8 Q. That own that quarter?

9 A. Right.

10 Q. The pipeline goes through that land?

11 A. That's right.

12 Q. I don't want to repeat anything that Kevin talked
13 about. Do you have anything to add in terms of that land
14 and its characteristics, Janice?

15 A. I don't. Kevin was very inclusive. He did a good
16 job.

17 Q. Anything to add in terms of the housing development
18 that is to the, I believe, northeast of that quarter?

19 A. As Kevin said, there is one -- well, exactly as he
20 said. I did take some pictures this last spring from the
21 house, which is more towards the northeast corner of the
22 quarter, and one from the stakes that are there.

23 They were very -- anyway I did take some pictures.

24 Q. You looked at where the pipeline goes in relation to
25 an adjoining house. Is that what you're saying, Janice?

1 A. Yes. To the north. There is a farmstead possibly a
2 quarter of a mile to the north. That was one picture.

3 But the others were from our driveway to the
4 northeast corner of the -- the section to the north that
5 has a housing development. And I did -- I gave those to
6 you, and so --

7 Q. Why did you take those pictures anyway?

8 A. Because we wanted to show that this farm that
9 they're -- intend to go through is close to a housing
10 development, and I don't think it should be with this
11 material in the pipeline -- I don't think it should be
12 given anywhere close to a housing development.

13 Q. Based on what you were able to tell from looking at
14 the proposed route and this house, on your estimation how
15 close is that pipeline going to be to that house?

16 A. I think Kevin said 300 rods maybe.

17 Q. What does that mean for us nonfarmers?

18 A. You know, and I really shouldn't say because Kevin
19 is more knowledgeable on that. He did the measuring.

20 Q. Got it.

21 What's the address of that property, just so that
22 other people can know what you're talking about?

23 A. I believe Kevin gave the address because I have it,
24 but I don't have it up here with me.

25 MR. KOENECKE: The address of which property?

1 I'm sorry. I'm not following.

2 MR. BOOMSMA: Okay. I'll get to it in a second.

3 But where I'm going with this is I'll show her the
4 picture, and I'll quickly move on.

5 Q. Janice, do you see I 43 in front of you?

6 A. Yes.

7 Q. Is that the picture you took?

8 A. No. This is not our farmstead.

9 Q. Well, I know that. Did you take that picture?

10 A. No, I did not.

11 Q. No. All right.

12 Do you see I 47P?

13 A. Yes.

14 Q. P standing for Petterson now. I figured that out.

15 A. Okay.

16 Q. Did you take those pictures?

17 A. Yes, I did.

18 Q. Are those pictures describing or relating to the
19 proximity of this route as it relates to houses?

20 A. Yes.

21 Q. Did you take those pictures in response to what you
22 heard last week as far as information from Dakota Access
23 on proximity of the pipe to structures?

24 A. Yes.

25 MR. BOOMSMA: Move for admission of I 47P.

1 And I did provide a copy to counsel. I did that
2 recently, but only recently because I found out about
3 Dakota Access's new Exhibit 42 late last week.

4 MR. KOENECKE: I object to this. It wasn't --
5 these were matters that could have been filed much
6 previously. They lack depth and context.

7 It appears the witness is attempting to testify
8 about how somebody else should feel about the pipeline.
9 And I don't think they're -- they lack foundation, and
10 they lack clarity, I guess.

11 MR. BOOMSMA: They're produced in response to
12 that new Exhibit 42 from Dakota Access. My questioning
13 related to this -- additional questioning is very short.
14 They're relevant.

15 MS. WIEST: I'll allow I 47P.

16 Q. Janice, from looking at those pictures, are you able
17 to discern whether that pipeline is going to go close to
18 those structures or businesses?

19 A. Where this picture -- where this was taken is toward
20 the northeast corner of our quarter. Where the pipeline
21 will enter is more towards the northwest part and then
22 goes diagonally all the way across the quarter to the
23 southeast area.

24 The distance probably would be three-fourths of a
25 mile from the pipeline to the housing development.

1 Q. Got it. What do you want the Commission to glean
2 from these photos?

3 A. Okay.

4 Q. Tell the significance of the photos, in other words,
5 and then we'll move on quickly.

6 A. Okay. This housing development, when you look at
7 the first one, 47P, shows on the right-hand side some red
8 buildings, which are owned by Larry Burma [phonetic] who
9 built the development then on the northeast corner.

10 On the back of the image of the buildings is the Tea
11 water tower, which would then be about a mile and a half
12 away from our building -- from our acreage. Okay.

13 Did you want me to comment on any of the rest of the
14 pictures?

15 Q. If you have a comment.

16 A. On the second is a slightly zoomed picture of the
17 development also to the northeast from the driveway.

18 Third is another one of the Burmas' homestead with
19 Tea in the background. And then there's one that's dated
20 10-5. Actually I printed that from an e-mail my sister
21 Corlis sent me.

22 That too is zoomed last February shortly after we
23 found that we were indeed on the pipeline route, and that
24 is of the development. Then the very last one would be
25 the same thing. It's from the end of the driveway, and

1 it's showing a zoomed picture of the development half a
2 mile away.

3 Q. I 15 is in front of you. Do you see that, Janice?

4 A. No. I don't see an I 15.

5 Q. I 15 being your prefiled testimony document.

6 A. Oh, I'm sorry. It's I 16.

7 Q. Is it? My number is wrong. I apologize. Let's go
8 with I 16. Sorry.

9 I 16. Janice, the date on that quickly is what?

10 A. June 25, 2015.

11 Q. Is that your signature on that document?

12 A. Yes, it is.

13 Q. Does that document contain your testimony?

14 A. Yes.

15 Q. Do you adopt that testimony today?

16 A. I do.

17 MR. BOOMSMA: Move for admission of I 16.

18 MS. WIEST: Is there any objection to I 16?

19 If not, it's been admitted.

20 Q. What are your concerns as it relates to this
21 pipeline going through your land, Janice?

22 A. Number one, upon doing homework, I found that there
23 was an article that the State of New Jersey had refused
24 to let this pipeline come through, has a resolution that
25 refuses it on the basis of the Wall Street Journal's

1 three articles.

2 MR. KOENECKE: Objection. Move to strike.
3 That's hearsay. The witness -- there's no foundation for
4 it.

5 Newspaper articles aren't admissible evidence.
6 The person who wrote it isn't here to testify as to what
7 he or she actually knows about it. There's all sorts of
8 problems with that testimony.

9 MR. BOOMSMA: She's tying this testimony into
10 her concern. Those articles were attached to her
11 prefiled document, and I think she's entitled to her
12 opinion as a landowner and she'll wrap it up.

13 MS. WIEST: The objection is sustained to the
14 extent that she's talking about those documents,
15 especially the newspaper articles which are generally
16 considered to be hearsay.

17 Q. Janice, I don't want you to talk about newspaper
18 articles, but I want your opinion as a landowner as far
19 as your concern and fear related to this pipeline and how
20 it's going to affect your land.

21 A. Nothing lasts forever. And pipelines don't either,
22 just like railroad tracks. When they need repair and
23 there are, you know, accidents, the pipeline won't last
24 forever. And here we are to accept that this is a
25 forever thing. I guess it almost leaves me speechless.

1 Because this is land that we grew up on, took care
2 of, and I don't feel that this type of material going
3 through it is taking care of the land.

4 Q. Are you concerned about --

5 A. Very.

6 Q. -- development potential of your land?

7 A. Yes.

8 Q. Why so?

9 A. Well, we have been -- one neighbor has offered --
10 and he has done a development, offered three times to
11 purchase it. But he said he doesn't even want to be half
12 a mile from this oil pipeline. Two others have mentioned
13 it to a family member. And, yes, I am concerned that it
14 devalues our property. And, therefore, it affects my
15 retirement.

16 MR. BOOMSMA: That's all I have for questions.

17 MS. WIEST: We'll go to cross.

18 Yankton Sioux Tribe, did you have any questions?

19 MS. REAL BIRD: Good afternoon. I have no
20 questions, but I do want to thank you for your testimony
21 on page 4 that as stewards of the land your obligation is
22 for future generations.

23 Thank you.

24 MS. WIEST: Ms. Craven, did you have any
25 questions?

1 MS. CRAVEN: No. I don't have any questions.
2 Thank you.

3 MS. WIEST: Ms. Northrup.

4 MS. NORTHROP: I have no questions. Thank you.

5 MS. WIEST: Commission Staff, any questions.

6 MS. EDWARDS: No questions. Thank you.

7 MS. WIEST: Dakota Access.

8 MR. KOENECKE: No questions. Thank you.

9 MS. WIEST: Commissioners. No.

10 MR. BOOMSMA: I'm done with this witness.

11 MS. WIEST: Thank you. You may call your next
12 witness.

13 MR. BOOMSMA: Okay. I truly think this will be
14 in the range of 5 minutes, maybe a few more, and I think
15 I can get that in really quickly before the lunchtime
16 break.

17 MS. WIEST: Go ahead.

18 MR. BOOMSMA: I'll call Linda Goulet.

19 MR. KOENECKE: I think Linda might take a while
20 from our perspective. I would suggest she can't be done
21 in five minutes or probably even a half an hour.

22 MS. WIEST: With that, I think we will take our
23 break now. It is noon, and we usually give one hour and
24 15 minutes so we will reconvene at 1:15. Thank you.

25 (A lunch recess is taken)

1 MS. WIEST: Mr. Boomsma, you may call your next
2 witness.

3 MR. BOOMSMA: Thank you.

4 I'll call Linda Goulet to the stand.

5 (The oath is administered by the court reporter.)

6 DIRECT EXAMINATION

7 BY MR. BOOMSMA:

8 Q. Could you state your name for the record.

9 A. Linda Goulet.

10 Q. Spelling on your last name? Can you do that?

11 A. I can do that. G-O-U-L-E-T.

12 Q. You are Kevin's sister?

13 A. Yes.

14 Q. All right. Where do you live, Linda?

15 A. I live at 27332 Atkins Place, Tea, South Dakota.

16 Q. How long have you been a resident of that area?

17 A. 16 years.

18 Q. And prior to that, Linda?

19 A. I was in Sioux Falls.

20 Q. How long have you been in South Dakota?

21 A. All my life.

22 Q. Your level of education, Linda.

23 A. High school and some continuing education in banking
24 and finance and real estate.

25 Q. Your occupation?

1 A. I am retired now. I previously was for over 30
2 years a real estate banker.

3 Q. In front of you is a document -- I think it has an
4 I 5 sticker on it. Am I right?

5 A. Yes. That's correct.

6 Q. Is that your prefiled testimony document?

7 A. Yes, it is.

8 Q. Did you sign it?

9 A. Yes, I did.

10 Q. What's the date on that, Linda?

11 A. June 19, 2015.

12 Q. Do you adopt that testimony here today?

13 A. Yes, I do.

14 Q. You heard Kevin testify. You were here for that?

15 A. Yes.

16 Q. Do you have anything additional to offer in terms of
17 the quarter of land that you own with your siblings?

18 A. Yes.

19 Q. What is that?

20 A. For development purposes he explained where it's
21 more than likely -- or most likely it would be developed
22 on the road on 273rd Street.

23 If that was sold to developers, they would probably
24 take most of it or the whole portion. If it was sold on
25 the three separate tracts that we have approval for, it

1 would need to be over 40 acres for each tract.
2 Otherwise, we could sell it as a housing development like
3 our neighbors have done and proceed from there.

4 Q. So the conclusion from what you just said is what,
5 Linda?

6 A. It would greatly --

7 MR. KOENECKE: I'm going to object. The
8 previous testimony was speculative and not responsive to
9 a question about anything that's actually at issue here.
10 What we could do or might do in the future is
11 not properly before the Commission.

12 MS. WIEST: Did you have --

13 MR. BOOMSMA: My response: Same response as
14 before in that she's a landowner. I think she as a
15 strong voice, and I think she has a right to give her
16 opinion about what future uses her land might have.

17 MS. WIEST: Objection overruled.

18 MS. CREMER: I'm just going to interrupt here.
19 Was this witness sworn in earlier?

20 MS. WIEST: Yes.

21 A. Your question.

22 Q. My question was -- and I'll try and rephrase it and
23 hopefully I'll get it right, but the conclusion that you
24 draw from what you just stated about development is
25 what?

1 A. That the pipeline would be very damaging to us
2 economically.

3 Q. Is it going to impede your intentions or your hope
4 to get that land developed some day?

5 A. It probably would destroy it totally, in my opinion.

6 Q. Anything else that you want to add that your brother
7 didn't bring up already?

8 A. Not really. I just feel that some of the tactics
9 that have been used against us, the total disregard upon
10 being sued once and the disregard of the Lincoln County
11 court system to then follow up with another lawsuit.
12 That is of great concern to me for their lack of
13 disregard for South Dakota Law.

14 Q. I want to ask you some questions too about notice.

15 A. Sure.

16 Q. I saw a little bit of this in your prefilled
17 testimony document, but did Dakota Access give you any
18 sort of notice, advanced notice, of this Application
19 process?

20 A. We originally received a letter. It was dated
21 December 16 of 2014. We received it on December 24. And
22 it was addressed to myself as where all my father's mail
23 went to. So that was back in December.

24 Q. Any phone calls?

25 A. Actually I had a phone call later from my neighbor

1 who said someone was literally -- the word he used was
2 "prowling" around your house and trying to find you. So
3 he got the man's name and phone number and asked me if I
4 would call him in the morning, which I did.

5 Q. Any other contact besides that?

6 A. None.

7 MR. BOOMSMA: I offer I 5 at this time.

8 MS. WIEST: Is there any objection to I 5? If
9 not it's admitted.

10 Q. Linda, anything you want to add or expound upon in
11 terms of your prefiled testimony document?

12 A. Not that I can think of, no.

13 MR. BOOMSMA: That's all I have for questions.

14 MS. WIEST: Yankton Sioux Tribe, did you have
15 any questions?

16 MS. BAKER: No. Thank you.

17 MS. WIEST: Rosebud?

18 Ms. Craven.

19 MS. CRAVEN: I have one question.

20 CROSS-EXAMINATION

21 BY MS. CRAVEN:

22 Q. Ms. Goulet, I'm Kimberly Craven with Dakota Rural
23 Action and Indigenous Environmental Network, and I have
24 just one question for you.

25 Are you concerned about possible spills into your

1 water source?

2 A. Absolutely.

3 Q. And what is the source of your water?

4 A. Our drinking water?

5 Q. Uh-huh. Your drinking water.

6 A. We do have a well on the farm. It is quite deep.
7 And that has always sustained the farm. The rest of the
8 water would be from East Beaver Creek that is part of the
9 watershed from the northwest part of Tea, and then that
10 goes all the way through the pastureland and out onto
11 Highway 17.

12 MS. CRAVEN: All right. Thank you.

13 MS. WIEST: Ms. Northrup?

14 MS. NORTHRUP: I have no questions. Thank you.

15 MS. WIEST: Commission Staff.

16 MS. EDWARDS: No questions. Thank you.

17 MS. WIEST: Dakota Access.

18 MR. KOENECKE: I have some questions. Thank
19 you.

20 CROSS-EXAMINATION

21 BY MR. KOENECKE:

22 Q. Mrs. Goulet, it appears from my understanding of the
23 record that we tried to reach you at a phone number
24 ending in 5328.

25 If we tried to reach you at that number, should we

1 have been able to get ahold of you?

2 A. Yes.

3 Q. So if we testified that we tried to call that number
4 on several occasions and got no answer --

5 MS. CRAVEN: Objection. Who's testifying here?
6 Speculation.

7 MR. BOOMSMA: Same objection here.

8 MS. WIEST: Can you rephrase?

9 Q. Is it your testimony that your neighbor
10 Mr. Dunkelberger told you that somebody was looking for
11 you?

12 A. Yes, he did.

13 Q. Do you know whether any of your other siblings have
14 been approached by the pipeline?

15 A. Not to my knowledge.

16 Q. Did you indicate to anyone working for the pipeline
17 that your siblings should be contacted?

18 A. Actually I told them I would contact my siblings.
19 My siblings were aware of it from the December 24
20 letter.

21 Q. Do you know how many times the pipeline tried to
22 contact you?

23 A. I have no idea.

24 Q. It's your testimony that only one time was
25 successful?

1 A. That's my testimony, sir.

2 Q. What kind of things should the pipeline have done in
3 order to get in touch with you?

4 MS. CRAVEN: Objection. Calls for speculation.

5 MS. WIEST: Overruled.

6 A. Asking any of my neighbors. As my brother stated
7 earlier, everyone in the community knows us extremely
8 well. Any of our neighbors would have been able to get
9 ahold of myself or certainly my brother.

10 Q. Have you recently taken a telephone number out of
11 service?

12 A. No, sir.

13 Q. Is the number ending in 5328 still valid?

14 A. I'm sorry. I have to think about what my phone
15 number is right now. I don't call myself very often.

16 I don't believe it is. I'm not sure. I can't
17 testify to that.

18 Q. I want to make sure I understand. The number ending
19 in 5328 is no longer in service?

20 A. That's correct.

21 Q. Do you know when you ceased taking phone service at
22 that number?

23 A. No, I do not.

24 Q. I just want to make sure, the one time that you did
25 have contact with the pipeline you informed that you were

1 not in favor of the pipeline and did not want to allow
2 survey access; correct?

3 A. That is correct. When I called Mr. Hobbs back.

4 Q. Did you make any requests of the pipeline?

5 A. No, I did not.

6 Q. There was nothing left to contact you about?

7 You'll have to answer out loud. I'm sorry?

8 A. I'm not sure what I would have asked them at that
9 point. I knew there would be additional mailings and
10 obviously this hearing in front of the PUC.

11 Q. So you're not expecting additional contacts from the
12 pipeline then?

13 A. I would assume that -- and is wrong on my part to
14 assume anything -- is that after this decision is made
15 one way or the other if it is granted, then I would guess
16 I would hear from the pipeline.

17 Q. Does the pipeline owe you a call back right now as
18 we sit here?

19 A. My only thought would be at this point that they
20 could turn around and apologize for some of their
21 tactics. But as far as owing me a phone call, I don't
22 see that forthcoming.

23 MR. KOENECKE: Thank you.

24 MS. WIEST: Commissioner questions?

25 COMMISSIONER HANSON: I just have a few.

1 Good afternoon, Ms. Petterson.

2 MR. BOOMSMA: It's Ms. Goulet.

3 THE WITNESS: Mrs. Goulet.

4 COMMISSIONER HANSON: Forgive me. Linda Goulet.
5 I have too many notes here.

6 Is that a cell number or a landline?

7 THE WITNESS: That would have been a landline,
8 and I'm not sure when we disconnected that.

9 COMMISSIONER HANSON: Was it a long time ago?
10 Long time is rather relative. Was it a half a year --

11 THE WITNESS: No. Like several years ago.

12 COMMISSIONER HANSON: Excuse me?

13 THE WITNESS: Several years ago.

14 COMMISSIONER HANSON: Several years ago.

15 All right. Thank you very much. That's all I
16 have.

17 MS. WIEST: Any other Commissioner questions?

18 Any additional cross based on Commissioner
19 questions?

20 Any redirect?

21 MR. BOOMSMA: A really quick.

22 REDIRECT EXAMINATION

23 BY MR. BOOMSMA:

24 Q. What's your reaction, Linda, to the communication of
25 getting served with lawsuit papers? How did that sit

1 with you?

2 A. Extremely frustrating. It's very disgusting. It's
3 very disturbing. It's just very frustrating to try to
4 abide by the laws of -- that I've always been taught by
5 my parents and certainly within the laws of the State of
6 South Dakota and then to be so unheard at any point in
7 time.

8 MR. BOOMSMA: That's all I have.

9 MS. WIEST: Any recross based on redirect?

10 If not, thank you.

11 You may call your next witness.

12 MR. BOOMSMA: I will call Sue Sibson to the
13 stand.

14 (The oath is administered by the court reporter.)

15 DIRECT EXAMINATION

16 BY MR. BOOMSMA:

17 Q. Could you tell us your name, please.

18 A. Sure. Susan Sibson, S-I-B-S-O-N.

19 Q. Where do you live, Sue?

20 A. We live in Roswell Township of Miner County, Howard
21 South Dakota.

22 Q. Do you go by Sue or Susan?

23 A. Both.

24 Q. Okay.

25 A. It doesn't matter. I answer to both. And other

1 words probably too.

2 Q. Okay. We'll stick with Sue.

3 A. Sure.

4 Q. Sue, level of education real quick?

5 A. High school and vo-tech, and I think I have a
6 farming degree too.

7 Q. Is your occupation a farmer?

8 A. Yes, it is. I'm a farm wife.

9 Q. How long have you held that occupation?

10 A. Almost 39 years.

11 Q. Do you own land in that township, Roswell Township
12 that is affected by a pipeline?

13 A. Yes, we do.

14 Q. What pipeline goes through that land, Sue?

15 A. We have the TransCanada Keystone Pipeline buried on
16 our land.

17 MR. KOENECKE: I'm going to object to further
18 testimony from this witness. This proceeding is about
19 the proposed Dakota Access Pipeline and not a rehash of
20 the TransCanada Keystone Pipeline.

21 MR. BOOMSMA: Response is this: She'll be able
22 to talk about similarities in terms of the topsoil
23 stripping methods and also as far as the construction
24 company that installed the pipe on her property.

25 And so it does relate then to this pipeline, and

1 it's relevant.

2 MS. WIEST: Objection overruled.

3 Q. Sue, there's a document in front of you. It's I 18.

4 Do you see that?

5 A. Yes, I do.

6 Q. Is that your prefiled direct testimony document?

7 A. Yes, it is.

8 Q. What's the date on that?

9 A. The date is August 13, 2015.

10 Q. Do you adopt the testimony in that document?

11 A. Yes, I do.

12 Q. Now back to your land. What's the size of the
13 parcel that's affected by this Keystone I Pipeline?

14 A. The pipeline goes through a mile and a quarter of
15 our land, and it goes through the home section and plus
16 80 acres.

17 Q. What can you tell me in terms of what you know on
18 the soil -- topsoil stripping methods used as it relates
19 to your land?

20 A. Michels Construction was the ones that did the work
21 on our land. And I'd like to say that we had to sign a
22 construction agreement with them where we described how
23 we wanted things done and how the topsoil went in one
24 area and the clay in another and the rocks in another
25 area. And it wasn't really followed.

1 Q. Were you told that they were going to follow certain
2 methods as far as segregating topsoil and then trying to
3 restore topsoil?

4 A. Yes. And I think they did probably a pretty good
5 job in the beginning when they stripped the land, put the
6 topsoil on one side and the clay on the other. But when
7 it came to during the reclamation they were in a big
8 hurry and just -- you can see by pictures that have been
9 taken of our land that the clay has been mixed with the
10 topsoil.

11 Q. How long ago was that pipe put in your ground?

12 A. In 2009. It was the end of September when they
13 finished.

14 Q. So, Sue, are you able to discern whether there's a
15 difference in terms of crop productivity in the easement
16 area sitting above the pipeline?

17 A. Oh, most definitely. We've done an alternating
18 beans and corn over the easement area, and the bean
19 plants have less pods on them. And the same with the
20 corn. When we've had corn on the easement area too
21 there's always less ears.

22 Over the pipe the ground is dryer so all the plants
23 are shorter too. There's been always a loss of crop.

24 Q. Do you have an opinion, Sue, as to whether this
25 pipeline and the easement that goes with it has affected

1 the value of your land?

2 A. Oh, yeah. Most definitely. If you would drive by
3 and look at the easement area, it's a total disaster as
4 far as we're concerned. There's also a lot of native
5 grass in that easement area, and there's very little
6 grass growing.

7 So we feel that it has really devalued our land.
8 Especially this is our home section. This is where all
9 the activity takes care -- you know, takes -- is all
10 done. All the cattle come through that area, and it's
11 very important to us that we have this land that we can
12 hold onto for our kids and our grandkids.

13 It's not that we want to sell it today but we did
14 have a realtor come out and look at our land, and we
15 asked his opinion. And when he would not give his
16 opinion on how our land looked we assumed that it wasn't
17 up to the value of what other lands would be that did not
18 have a pipe on it.

19 Q. Did you have a video taken of this land that has the
20 easement area in it?

21 A. Yes, we have. Yes, we did.

22 Q. When did you have that video taken?

23 A. It was I think July 12 of 2015.

24 Q. Did you attach that video to one of your prefilled
25 testimony documents?

1 A. Yes, I did.

2 Q. And could you look at a document that I put in front
3 of you, and it's got exhibit stickers on it, Exhibits
4 16A through 16L.

5 Do you see that?

6 A. Yes. They're all here. Yeah.

7 Q. Are those screen shot pictures of the video that you
8 attached to your document?

9 A. Yes, they are.

10 Q. Do those pictures depict the easement area sitting
11 above the oil pipeline?

12 A. Yes, they do.

13 MR. BOOMSMA: Move for admission of Exhibits
14 I 16A through I 16L.

15 MS. WIEST: Any objection?

16 MR. KOENECKE: You know, we do object. I don't
17 know that there's been a proper foundation laid. Again
18 it's a different pipeline, a different place, a different
19 time. It's not relevant to this proceeding.

20 There's a whole host of foundation questions
21 that, in my opinion, should have been asked. But the
22 biggest thing is, you know, if we attached a video, I
23 don't know if the Commission has had video evidence
24 before, and then we take some slides from it, who knows
25 what the rest of the slides show.

1 I don't think you can pick and choose from
2 something like that and then offer only parts. So we do
3 object.

4 MR. BOOMSMA: My response is that she's
5 identified that these screen shots come directly out of
6 the video. The video is made available. There's no
7 surprise in that regard.

8 On top of that, it's extremely relevant. It's
9 relevant because one of the big issues here today is the
10 topsoil and whether it's causing loss of productivity.

11 What this witness has to say is germane.

12 MS. WIEST: I think there has been adequate
13 foundation so I will allow it in.

14 Q. So, Sue, when you look at those pictures -- and I'll
15 wait for the Commission to be provided copies.

16 Sue, when you look at those pictures and you start
17 with the second picture, what is the brown strip?

18 A. In the background? Right here?

19 Q. Correct.

20 A. That is supposedly the native glass that was
21 planted.

22 Q. Is that the easement area?

23 A. Yes, it is. That's the easement area. The easement
24 area through this area is fenced in. So you could go by
25 the fence from side to side. That's all easement area.

1 Q. How wide is the easement area?

2 A. About 150 feet.

3 Q. Third photograph, which has I 16C on it, do you see
4 that?

5 A. Yes, I do.

6 Q. That's an aerial photograph?

7 A. Yes.

8 Q. And that brown strip again is what?

9 A. That's the easement area.

10 Q. Fourth picture, is that a close-up?

11 A. Yes, it is.

12 Q. Sue, the question that comes to mind -- and I know I
13 got -- I'm curious about this -- was any sort of
14 herbicide or plant killer applied to that easement area
15 by you?

16 A. Oh, absolutely not. We don't -- we don't touch that
17 area at all. That's -- to follow the PUC conditions the
18 pipeline company is supposed to take care of the easement
19 area, and they've done all the work on there. We haven't
20 did a thing.

21 Q. Did you try and till it, though?

22 A. No. We haven't done -- on the crop ground it's
23 tilled, yes. But not on the native grass.

24 Q. Do you have an opinion as to why that grass or why
25 the vegetation is not growing in that easement area?

1 A. Their incompetence in reclamation. I really don't
2 think they know what they're doing as far as to get the
3 native grass to grow back. The pictures show it.

4 Q. Did the vegetation ever come back in that easement
5 area?

6 A. There's a lot of weeds that have come in. And they
7 also planted some non-native grass. Thickspike
8 wheatgrass is one grass that they planted that's done
9 really well in that area, but it's not native to
10 South Dakota and should have never ever been planted on
11 our land.

12 Q. Do you have an opinion as to whether topsoil was
13 restored in that area?

14 A. Not very well. This one area particularly is poor
15 soil anyway. And native grass did grow there until it
16 was all tore up. And then since it's been tore up it's
17 just not been able to come back.

18 Q. You helped answer my next question.

19 So before the easement area, Sue, I'm wondering what
20 was the vegetation like then?

21 A. Oh, pristine. It had never been broke. It was
22 native grass. And if you look to the side of the
23 pictures, you can see the grass on each side of the
24 fence, and that's what that area looked like before.

25 MR. BOOMSMA: No other questions.

1 MS. WIEST: Yankton, do you have any cross?

2 MS. BAKER: I believe just one. Thank you.

3 CROSS-EXAMINATION

4 BY MS. BAKER:

5 Q. Hi, Ms. Sibson.

6 A. Hi.

7 Q. You mentioned very little native grass now grows on
8 the easement. And I was just wondering if you have
9 noticed a change in any other native plants that used to
10 grow on the easement, if there are any other native
11 plants that would grow there?

12 A. There's no prairie flowers that would grow there,
13 which surprised me too. That's about it.

14 MS. BAKER: Okay. Thank you. Nothing further.

15 MS. WIEST: Rosebud Sioux Tribe?

16 Ms. Craven.

17 CROSS-EXAMINATION

18 BY MS. CRAVEN:

19 Q. Thank you. Kimberly Craven for Dakota Rural Action
20 and Indigenous Environmental Network.

21 How are you today?

22 A. Pretty good.

23 Q. So I have a few questions for you. Could you
24 elaborate and explain to us how you use your land?

25 A. Sure. We have corn and beans, and we also buy

1 calves and put them in a lot through the winter, and then
2 in the spring they're put out on native grass. The
3 native grass plays a very big part in our farming
4 operation.

5 Q. And being an experienced farmer -- how long have you
6 been a farmer or rancher?

7 A. Can I count when I was a kid? I did chores.

8 Q. Sure.

9 A. A long time. Over 50. Probably closer to 60.

10 Q. And are you aware that one of the cardinal precepts
11 of range management is that you do not mix non-native
12 grass seed and native grass seed together in the seed
13 mixture?

14 A. Yes, I am.

15 Q. And are you aware that non-native grasses will out
16 compete and eventually crowd out native grasses?

17 A. Yes.

18 Q. And are you aware that smooth brome grass is a
19 non-native grass species?

20 A. Yeah. After we did some checking into that, yep we
21 found that out too.

22 Q. And is brome grass one of the grasses that is in the
23 seed mixture for reclaiming your land?

24 A. That was one of them that was on the tag, listed on
25 the tag.

1 Q. And was one of the other grasses that was listed on
2 the tag was Kentucky bluegrass?

3 A. Yes.

4 Q. And is that unusual for South Dakota to have
5 Kentucky bluegrass?

6 A. I'm not an expert in native grass, but probably not.

7 Q. Doesn't sound like it's very native, Kentucky
8 bluegrass.

9 A. No. Right.

10 Q. Did you request that TransCanada -- or are you also
11 aware that thickspike wheatgrass is not native to
12 South Dakota?

13 A. Yes.

14 Q. And did you request that TransCanada use a native
15 seed mix on your land?

16 A. Yes, we did. That was part of the construction
17 agreement with Michels Construction.

18 Q. Did you request that the smooth brome grass be
19 included in the seed mix?

20 A. No, we did not.

21 Q. What about the thickspike wheatgrass? Did you ask
22 to have that included?

23 A. No, we didn't.

24 Q. Are you okay with these grasses being introduced
25 into your easement area?

1 A. No. We are not.

2 Q. What's been the impact of having these grasses in
3 your easement area?

4 A. Well, we haven't been able to graze that area
5 because there's nothing there to eat. And it looks awful
6 when you drive by and all you see is weeds. Big impact.

7 Q. Have you noticed if the thickspike wheatgrass is
8 growing into your neighbor's easement?

9 A. Yes. That thickspike wheatgrass is in a lot of
10 easement areas all through eastern South Dakota on the
11 Keystone I.

12 Q. And have you noticed if it's -- the brome grass is
13 spreading outside the easement area into your neighbors'?

14 A. Yes. Yes, it is.

15 Q. And is the Kentucky bluegrass also spreading?

16 A. There's not too much of that so I'd probably have to
17 say no.

18 Q. And did you say that the cattle don't like to eat
19 the thickspike wheatgrass?

20 A. No. We haven't pastured our easement area but other
21 neighbors have and there will be no other grass left in
22 that pasture except the thickspike. They will not eat
23 it. It's a desert grass.

24 Q. Do you know if there's any way of getting rid of it,
25 the thickspike wheatgrass or the smooth brome grass once

1 it's been established in a pasture?

2 A. I guess it would have to be something that we'd have
3 to ask like the conservation office in our area how to
4 help us get rid of it. But since we didn't plant it, I
5 don't think we need to get -- I mean, it's not up to us
6 to get rid of it.

7 Q. And so if the thickspike wheatgrass were to spread
8 and take over the native pastures, how would it impact
9 your ranching operation?

10 A. Well, I just told you that our cattle operation runs
11 on native grass. And if there's the thickspike there,
12 they're not going to eat it. We're out of business.

13 Q. You mentioned Michels Construction a little while
14 back.

15 A. Yes.

16 Q. Could you tell us about your experience with Michels
17 Construction?

18 A. They're a construction company. That's for sure.
19 One of the land agents for Michels Construction, the
20 first thing that he said to us one day when we stopped
21 was we were on the hateful landowner list. He had a list
22 on his desk of about 30 landowners that they were
23 supposed to watch during construction.

24 And we asked for a list of that, but he never ever
25 gave us one. So anyway we feel like Michels Construction

1 didn't follow the construction agreement that we had
2 signed with them. There's quite a few cattle in our area
3 and fences in between different pastures.

4 When they would leave for the day they would leave
5 the gates halfway up. Most of the time they were like
6 knee high. And our cattle didn't get mixed up with other
7 neighbors because of the way our land is, but we had a
8 neighbor that called us a couple of times that asked to
9 have us come and help him sort his cattle because they
10 failed to shut the gates correctly and his cattle got
11 mixed up with his neighbor's cattle.

12 And one thing too that Michels construction did that
13 was two months after the pipe was buried, one of their
14 land agents came by and wanted us to sign an agreement
15 with Michels Construction saying that we accepted and
16 agreed that Michels Construction had got our land back to
17 as it was or an approved condition. And they wanted to
18 us sign that agreement that we were satisfied with our
19 land.

20 And thank goodness we never did. Because if you
21 look at the pictures today, you can see what our land
22 looks like.

23 Q. And are you aware that Michels Construction will be
24 the contractor on the DAPL's pipeline?

25 A. Yes. Just a couple of weeks ago I read that in the

1 Argus Leader.

2 Q. And are you also aware that DAPL is requesting some
3 of the same conditions that were issued in the
4 Keystone -- in the first Keystone?

5 A. No. I'm not aware of that, but it doesn't surprise
6 me.

7 Q. And if they were to include the same kind of
8 conditions regarding reclamation of land, how would you
9 feel about that?

10 A. Our land shows that they did not follow the
11 conditions.

12 Q. So South Dakota is really a beautiful place, and
13 there's a lot of people moving in here because of quality
14 of life, the hunting and the fishing and all of that kind
15 of stuff.

16 Did you actually ever tell us how long you had been
17 out there on that land or how long your family has been
18 out there on that land?

19 A. That always makes me cry. Sorry. Since 1972.

20 Q. And was it your hope that your children will be able
21 to be on that land as well?

22 A. Yes.

23 Q. And have those dreams changed since --

24 A. Absolutely not. We've got a bunch of little
25 pipeline fighters that are coming up.

1 MS. CRAVEN: Thank you. No more questions.

2 MS. WIEST: Before we go on to further cross, I
3 didn't have where Ms. Sibson's testimony was offered.

4 Am I correct? I don't have it checked off. You
5 offered those exhibits?

6 MR. BOOMSMA: All right. Give me one second,
7 please.

8 Move for admission of I 18.

9 MS. WIEST: Any objection to I 18?

10 If not, it's been admitted.

11 And she had two. 32? Exhibit 32?

12 MR. BOOMSMA: She does have that, and that was
13 more of a rebuttal testimony document. I could offer
14 that now, or we could wait until she testifies on
15 rebuttal.

16 MS. WIEST: Actually I'm sorry. If you're going
17 to wait, I 18, I believe, according to the list I have,
18 is her prefiled rebuttal testimony.

19 MR. BOOMSMA: Give me a --

20 MS. WIEST: So maybe you meant to offer I 32?

21 MR. BOOMSMA: Yes, I did. I offer I 32, not
22 I 18, at this time.

23 MS. WIEST: So we will not be admitting I 18,
24 but we will be offering -- you are offering I 32.

25 Is there any objection to I 32?

1 If not --

2 MR. BOOMSMA: I'll offer I 32 at this time as
3 well.

4 MS. WIEST: So you're just offering I 32 but not
5 I 18?

6 MR. BOOMSMA: Both of them. Thank you.

7 MS. WIEST: Okay. So we're offering I 18 and I
8 32. Is there any objection?

9 If not, they're both admitted.

10 Now let's go on to further cross.

11 Ms. Northrup.

12 MS. NORTHROP: Thank you. I have no questions.

13 MS. WIEST: Commission Staff.

14 MS. EDWARDS: Thank you.

15 CROSS-EXAMINATION

16 BY MS. EDWARDS:

17 Q. Ms. Sibson, are you aware of whether or not the
18 current reclamation contractor for the Keystone I
19 Pipeline is still Michels?

20 A. Could you rephrase that question?

21 Q. Sure. I'll withdraw it and go at it a different
22 way.

23 Is there still a company working with you to reclaim
24 your property?

25 A. Yes, there is.

1 Q. Is it still Michels, or has the pipeline company
2 switched to a different contractor?

3 A. I guess you'd have to ask them. I don't know who
4 the -- what the current name is of the current
5 reclamation people.

6 Q. Drawing your attention to the photographs taken from
7 the video, to your knowledge would those have been done
8 by -- under -- while the property was still being
9 reclaimed by Michels or a different contractor?

10 A. This was just taken in July of 2015 so -- they've
11 changed the contractors on us a couple of times so I
12 couldn't tell you who the current contractor is.

13 MS. EDWARDS: Okay. Thank you. No further
14 questions.

15 MS. WIEST: Dakota Access.

16 MR. KOENECKE: I do have a couple. Thank you.

17 CROSS-EXAMINATION

18 BY MR. KOENECKE:

19 Q. I noticed in your video that there's some areas of
20 dark green vegetation that appear to overlie the pipeline
21 route. Am I correct?

22 A. Yes. There's green on the easement area. They're
23 mostly weeds.

24 Q. Looks to me like row crops. If I look at K, for
25 example.

1 A. Excuse me.

2 Q. Or -- yeah. K, that looks like row crops over the
3 easement in the background, isn't it?

4 A. Yes. There's beans and corn that are also planted
5 over the pipeline.

6 Q. Was it your testimony that you've had difficulty in
7 the cultivated areas with reclamation also?

8 A. Yes. Not as much as the native grass. Because with
9 the disking and tilling of the land Mike's been able to
10 work a lot of the problem areas better. There's not the
11 dips and holes in it like there is on the grass areas.

12 Q. I guess if I look at -- it looks like there's two Ks
13 in my packet.

14 I don't see any difference in the row crops from the
15 pipeline easement to the remainder of the field except
16 where it looks like water. Am I seeing that right?

17 A. Which one are you referring to so I can make sure
18 I'm on the right photo?

19 Q. Well, I have two Ks in my packet.

20 A. So do I.

21 Q. Okay. Really either one of them, they don't seem to
22 show much difference in the row crops. Am I right?

23 A. This photo here, is this the one that you're looking
24 at?

25 Q. Yes.

1 A. Okay. And this photo here, there's the field in the
2 background. Is that what you're referring to?

3 Q. Yeah. Both of those.

4 A. That's not our land. The cornfield to the back is
5 not ours.

6 Q. Whose is it, if you know?

7 A. That's confidential.

8 Q. What was the grass mixture in your pasture before
9 the pipeline came through?

10 A. We had the South Dakota grassland team come out and
11 do a survey on our land, and if you give me a moment
12 here, I can tell you some of the grasses that they came
13 up with.

14 Do you want to know?

15 Q. I do. I asked, yes.

16 A. Sure. Okay. All right.

17 Green needlegrass, western wheatgrass,
18 needle-and-thread, porcupine grass, prairie dropseed,
19 sideoats grama, and blue grama were some of them.

20 Q. And when did you have this survey taken?

21 A. It was done June 24 of 2009.

22 Q. Is that postconstruction?

23 A. Yes.

24 Q. How did you work with the contractor to develop a
25 seed mix for the right of way?

1 A. In the construction agreement that we had it says to
2 follow the county mixture. And silly us thinking that
3 Michels Construction would contact the conservation
4 office and find out what the county mixture was and plant
5 it, but they did not.

6 Q. Did you specify a seed mix to be used?

7 A. No, we did not because the grassland team told us
8 that the construction company was supposed to check with
9 the local conservation office and get all of that
10 information.

11 Q. So you expected Michels to use the county mix, not
12 necessarily the mix that was already present in the
13 pasture?

14 A. Our county mix is used by the conservation office as
15 the county mix.

16 Q. And would that have been acceptable to you?

17 A. Yes.

18 Q. Okay. Do you know whether the Agriculture Impact
19 Mitigation Plan offered by the Applicant in this
20 proceeding is the same or different from the construction
21 plan that was offered by TransCanada in I'll say your
22 proceeding or the one you were involved in?

23 A. No. I don't know.

24 Q. Have you --

25 A. I haven't read it.

1 Q. Okay. Thanks.

2 How has TransCanada compensated you for the loss of
3 productivity on the right of way?

4 A. They did like three years of crop loss.

5 Q. After that have you been compensated since three
6 years?

7 A. For other damages, yes, we've been compensated.

8 Q. What control measures do you know of that have been
9 attempted on the right of way in these pictures?

10 A. What do you mean by control?

11 Q. That's a fair question back.

12 I presume TransCanada has been out or sent someone
13 out on more than one occasion to look at and attempt to
14 remediate your right of way. Am I correct?

15 A. Yes. That's true.

16 Q. About how many times?

17 A. Three or four.

18 Q. Do you know what measures TransCanada or somebody
19 working for them has taken on your right of way in this
20 picture?

21 Have they sprayed it, planted it, tilled it?

22 Anything like that?

23 A. They've done a different -- they've done many
24 things, and none of them have worked so far.

25 Q. Have you suggested things to be done that they have

1 been unwilling to do?

2 A. Yes.

3 Q. What would those be?

4 A. We suggested to them that they could pull the
5 thickspike wheatgrass out by hand, and they chose not to
6 do that.

7 Q. You spoke previously and also in your prefiled
8 testimony about the conditions. Am I right?

9 A. Yes.

10 Q. Which conditions do you feel like TransCanada didn't
11 follow?

12 A. Can I look at my testimony?

13 Q. You sure can.

14 A. Thank you.

15 In my testimony I mention a couple of them. Like
16 Condition 34, Condition 41.

17 Q. Are there any others?

18 A. Those were the ones that were most important to us.

19 Q. Do you know what method of topsoil stripping was
20 done on your farm?

21 A. They just took the bulldozer and pushed it over to
22 the side. That's how they did it.

23 Q. Do you know whether TransCanada asked you if you
24 wanted only the trench stripped or the trench and the
25 workspace?

1 A. Yes. They gave us a choice.

2 Q. Which did you choose? Do you know?

3 A. To have the total area stripped. We thought it
4 would be better for reclamation.

5 Q. Have you filed a formal complaint with the Public
6 Utilities Commission about your reclamation?

7 A. Not as of yet. No, we haven't.

8 Q. Is there a reason why?

9 MR. BOOMSMA: Objection. Relevancy.

10 MS. WIEST: Overruled.

11 A. Well, to be totally honest with you, when I call out
12 to the PUC they always took the side of TransCanada.
13 That's why.

14 We were told that -- when we said what was going on
15 on our land we were told by the PUC that at least they're
16 trying. I just don't think we'll have any help
17 whatsoever if we file a formal complaint at this time.
18 Maybe things will change.

19 Q. I apologize if I've asked this before. Have you or
20 your husband or anyone working for you done control
21 measures on the pipeline right of way?

22 A. What do you mean by "control measures"?

23 Q. Have you or anyone working for you gone out and
24 sprayed the right of way in this picture?

25 A. No, we have not.

1 MR. KOENECKE: Nothing further. Thank you.

2 MS. WIEST: Commissioners.

3 CHAIRMAN NELSON: If you would look with me at
4 picture 16K, the first picture 16K which is taken at
5 1 minute and 57 seconds into the video.

6 THE WITNESS: Sure. Okay. Got it.

7 CHAIRMAN NELSON: At about the middle of the
8 page you see where the brown area ends abruptly and then
9 it appears like there's some pretty good grass before we
10 get into the corn.

11 Help me understand how the -- what appears to be
12 an absolute failure of reclamation abruptly turns into an
13 area of what looks like decent grass.

14 THE WITNESS: There's only a little short strip
15 there. The fence goes further off of the easement area
16 there towards the bottom. And there probably is some of
17 the grass that was never ever tore up during construction
18 through that little area there.

19 CHAIRMAN NELSON: So what you're telling me is
20 that in that area of the easement you would not have
21 removed all of the topsoil?

22 THE WITNESS: Yeah. Because the closer they got
23 to the fence, the construction company, they kind of --
24 they stayed away from it, if that makes sense. Maybe 2
25 to 3 feet away.

1 CHAIRMAN NELSON: Okay. No further questions.

2 THE WITNESS: Okay. Come out and look at it.
3 We'll show you.

4 COMMISSIONER HANSON: Good afternoon,
5 Ms. Sibson.

6 You said that incompetence was the reason that
7 the native grass was not properly restored. I'm assuming
8 that if they had been competent, you believe that there
9 is some way to properly have completed restoration?

10 THE WITNESS: Yes. The grassland team that we
11 had come out, they had a plan put in place how to restore
12 the native grass.

13 COMMISSIONER HANSON: And I don't want to put
14 words in your mouth. Do you believe that that grassland
15 process would have resulted in proper restoration?

16 THE WITNESS: I think it would have been a
17 little bit -- it would have looked better. Excuse me.

18 To establish native grass, from what I've read,
19 it takes many, many years. So anything that you can do
20 to get it going like to clip it and just maybe do some
21 fertilizing or something too would help. But --

22 COMMISSIONER HANSON: So you do believe that
23 there is a method by which restoration would have --

24 THE WITNESS: It won't be like it was exactly,
25 but I think it could -- it could look a lot better.

1 COMMISSIONER HANSON: Do you think Michels
2 Construction may have learned how to do it yet?

3 THE WITNESS: No, I do not.

4 COMMISSIONER HANSON: Okay. When were the
5 pictures taken? Oh, July 2015 I believe you said.

6 THE WITNESS: Yeah. I think it was like
7 July 12. I don't have the exact date.

8 COMMISSIONER HANSON: That's fine. I just
9 needed the year and month. And when was construction
10 completed?

11 THE WITNESS: The end of September 2009.

12 COMMISSIONER HANSON: And did they begin
13 restoration at that point, or did they wait until the
14 spring?

15 THE WITNESS: No --

16 COMMISSIONER HANSON: And don't ask me to define
17 spring.

18 THE WITNESS: The date is with the reclamation
19 done too. That's when they left our land was the end of
20 September 2009.

21 COMMISSIONER HANSON: Okay. I noticed the --
22 like everyone else that the brown areas in some areas
23 turn into green areas.

24 Do you do any irrigation?

25 THE WITNESS: No, we do not.

1 COMMISSIONER HANSON: I couldn't help but react
2 to when you stated -- when you had contacted the PUC you
3 were always told by the PUC that at least they're --
4 meaning Keystone, are doing something.

5 THE WITNESS: Yeah. At least they're trying.
6 Uh-huh. Yes.

7 COMMISSIONER HANSON: Do you remember talking to
8 me about it --

9 THE WITNESS: They would never let us talk to
10 you.

11 COMMISSIONER HANSON: You don't remember
12 speaking to me about it?

13 THE WITNESS: Excuse me?

14 COMMISSIONER HANSON: You don't remember
15 speaking to me about it?

16 THE WITNESS: At our farm too but not at -- not
17 calling out here to Pierre to the office.

18 COMMISSIONER HANSON: Right. We're trying not
19 to talk over each other.

20 THE WITNESS: Okay.

21 COMMISSIONER HANSON: You met me at the Huron
22 fair, I believe, with your husband.

23 THE WITNESS: That's true.

24 COMMISSIONER HANSON: And you told me of your
25 challenge.

1 THE WITNESS: Uh-huh.

2 COMMISSIONER HANSON: And I came out to your
3 property.

4 THE WITNESS: Yes, you did.

5 COMMISSIONER HANSON: And we drove all over your
6 property and looked at everything. And I believe that
7 you spoke with Commissioner Johnson when he was a
8 Commissioner.

9 THE WITNESS: Yes, we did.

10 COMMISSIONER HANSON: And he came out to your
11 property.

12 THE WITNESS: Yes, he did.

13 COMMISSIONER HANSON: Okay. So it's not fair to
14 the PUC to say that we ignored you.

15 THE WITNESS: I said when I called out to the
16 office that's what I was told. I didn't say when anyone
17 visited our land.

18 COMMISSIONER HANSON: Okay.

19 THE WITNESS: Okay.

20 COMMISSIONER HANSON: I just feel a little pain
21 when you --

22 THE WITNESS: Well, now you know how we feel.
23 It's our land. Look at what we're going through. I feel
24 pain too.

25 COMMISSIONER HANSON: I fully understand. I

1 appreciate and I have a great deal of empathy with you
2 and that's why I came out and toured your property.

3 THE WITNESS: And we appreciated that a lot.

4 COMMISSIONER HANSON: Well, it gave me a much
5 better perspective of the challenges that you have.

6 Subsequent to our visits I understand that the
7 contacts from us to Keystone, that there have been some
8 attempts -- did they not come out with Roundup and try to
9 kill pretty much everything?

10 THE WITNESS: Yes. When we've asked for their
11 reports of what they've done on our land like in 2014, I
12 still haven't got those reports. And I asked for them
13 again just like three weeks ago.

14 COMMISSIONER HANSON: Did they do that more than
15 one time?

16 THE WITNESS: In 2014 I think they sprayed
17 twice. That we were told. We're just going by what --
18 I'm going by what the head guy told us.

19 COMMISSIONER HANSON: Okay. So they've made
20 some other efforts besides ignoring you, it sounds like.

21 THE WITNESS: Yeah.

22 COMMISSIONER HANSON: I'm just trying to get a
23 fair idea of what took place. I have total empathy with
24 your challenge here. I understand there's a huge
25 problem, but there has been a great deal of work done.

1 Has there, or has there not? And, granted, it's failed.

2 THE WITNESS: They've done work, but it's still
3 failing. Look at it now. Look. It still looks the same
4 today.

5 COMMISSIONER HANSON: Would it be fair to say
6 that you wouldn't have had to go through any of these
7 problems if they would have planted the right grass to
8 begin with?

9 THE WITNESS: That would have been a big first
10 step, uh-huh.

11 COMMISSIONER HANSON: Because it was the two
12 types -- at least those two types of grasses that have
13 really -- they have found a home, so to speak.

14 THE WITNESS: Yes, they have.

15 COMMISSIONER HANSON: And they're very difficult
16 to get rid of.

17 THE WITNESS: Yes.

18 COMMISSIONER HANSON: And if it weren't for
19 those grasses, then things would be a lot better. Am I
20 saying it correctly or --

21 THE WITNESS: Pretty close. Yep.

22 COMMISSIONER HANSON: Do you think -- after our
23 discussion do you think that there's something we can
24 tell whoever does the restoration, if this pipeline is
25 approved, that the other folks aren't going to experience

1 similar problems?

2 THE WITNESS: I think you can tell the
3 construction company anything you want, but they've still
4 got to follow it, you know. And it goes back onto them.

5 Because I think that's the case with us too. We
6 had all those conditions that you put down, and very few
7 seemed like they really tried to do, you know.

8 COMMISSIONER HANSON: Fair enough. I really
9 appreciate seeing you again, chatting with you. Thank
10 you.

11 THE WITNESS: Thank you.

12 MS. WIEST: Any other Commission questions?

13 CHAIRMAN NELSON: I've got just a couple of
14 follow-ups after Commissioner Hanson's questions.

15 So it's your understanding from talking with the
16 reclamation company in 2014 they sprayed Roundup twice?

17 THE WITNESS: That's what he said.

18 CHAIRMAN NELSON: Then did they follow that up
19 with a replanting?

20 THE WITNESS: They were there April 2015 and
21 reseeded over the grass areas again.

22 CHAIRMAN NELSON: So if they sprayed with
23 Roundup twice in 2014, it wouldn't surprise any of us why
24 this looks brown in this picture; correct?

25 THE WITNESS: Yeah. Probably.

1 CHAIRMAN NELSON: Thank you.

2 MS. WIEST: Any other cross based on those
3 Commissioner questions?

4 Any redirect?

5 MR. BOOMSMA: Yes.

6 REDIRECT EXAMINATION

7 BY MR. BOOMSMA:

8 Q. Sue, you identified and talked about Exhibit I 18,
9 but I don't think you identified I 32. It was received
10 into evidence, but I think it's important that you tell
11 us what that is.

12 What is that document?

13 A. This is some of my prefiled testimony that was dated
14 July 6 of 2015.

15 Q. Do you adopt that testimony?

16 A. Yes, I do.

17 Q. Just the same as the testimony in I 18?

18 A. Yes.

19 Q. And then a follow-up question or two. Besides the
20 failure of the grass seed mixture on the easement area on
21 your land, are you critical of other things that Michels
22 Construction did in terms of restoring crop productivity?

23 A. On or land in 2010, that would have been the spring,
24 there was large cracks in the soil. Mike, when he ran
25 the sprayer over the ground, sunk in. And even in the

1 fall of 2010 our combine went down over the easement area
2 when Mike was combining beans.

3 Q. What do you mean "went down"?

4 A. Well, it sunk over the pipe about 2 feet.

5 Q. So there's settling in that area?

6 A. Yes. Uh-huh. Yeah. So there was -- I'd say
7 that -- I guess I've said it before. They were in a
8 really big hurry to do the reclamation on our land. Big
9 hurry.

10 Q. You had brought up topsoil restoration as well.

11 A. Uh-huh.

12 Q. Sum that up, please.

13 A. If you look at the total video that was taken, you
14 can see where -- on the crop ground where the topsoil has
15 been mixed with the clay. It's very evident when you
16 look at the video.

17 Q. Have you been able to discern whether any of your
18 neighboring landowners are similarly situated in terms of
19 their easement areas?

20 A. Yes. We all had the same construction company that
21 went through our area. And all the easement areas look
22 about the same, as far as the thickspike wheatgrass and
23 crop loss, things like that.

24 Q. As far as crop loss, how much crop loss are we
25 talking about, if you could quantify it percentagewise?

1 If you can't, tell me that.

2 A. No, I can't. Like I told you earlier, there's less
3 pods on the bean plant. There's less ears on the corn
4 stalk.

5 Q. So it's not just a matter of mixing the right grass?

6 A. No. No, it's not. Huh-uh. No.

7 MR. BOOMSMA: That's all I have for questions.

8 MS. WIEST: Is there any recross based on that
9 redirect?

10 If not, thank you.

11 THE WITNESS: Thank you.

12 (A short recess is taken)

13 MS. WIEST: Mr. Boomsma, you may call your next
14 witness.

15 MR. BOOMSMA: I'll call Orrin Geide to the
16 stand.

17 (The oath is administered by the court reporter.)

18 DIRECT EXAMINATION

19 BY MR. BOOMSMA:

20 Q. Your name, please.

21 A. Orrin Earl Geide.

22 Q. Orrin, where do you live?

23 A. Wall Lake Township, Minnehaha County, Hartford,
24 South Dakota.

25 Q. Are you a farmer?

1 A. Yes, I am.

2 Q. How long have you been a farmer?

3 A. Well, I'm 56 years old. I'd say my whole life. But
4 actively probably about 40.

5 Q. What type of crops do you grow?

6 A. We have corn, soybeans, alfalfa, and then I also
7 have livestock.

8 Q. What sort of livestock do you grow?

9 A. I've got Angus cattle, and I've got a herd of
10 buffalo, bison.

11 Q. Do you have land that's going to be impacted by this
12 proposed pipeline?

13 A. Yes, I do.

14 Q. What's the size of that parcel?

15 A. Well, they're coming through two parcels. One's a
16 quarter, 160 acres, and then they're going to affect the
17 corner of another 160 acres I have, according to the map
18 I've received.

19 Q. For the first quarter that you mentioned what's your
20 understanding of how that pipe's going to traverse that
21 map?

22 A. Well, as I understand it according to the map, it's
23 going to run north and south along the fence line. I
24 don't know how far from the fence line, but it will be in
25 good productive crop ground.

1 Q. Will it run a half-mile through that quarter or --

2 A. Yeah. That's a half-mile, yes.

3 Q. Right. How far through the other quarter?

4 A. Well, if you'll give me a minute, I'll look it up.

5 I can tell you exactly. But it would be less than an

6 eighth of a mile.

7 Q. How long have you owned that land?

8 A. Well, my folks bought it in the 1950s, and I suppose
9 we did a land swap on that when I got out of college back
10 in '82, 1982. So I suppose I've owned it that long. You
11 can do the math. I'm not as good.

12 Q. 1982 out of college. What is your degree in, Orrin?

13 A. It would be ag business. South Dakota State.

14 Q. There's a document in front of you, and it has an
15 I 4 sticker on it.

16 Do you see that?

17 A. Yes, I do.

18 Q. Is that your prefiled testimony document?

19 A. Yes, it is.

20 Q. What's the date on that? And did you sign that?

21 A. I signed it July 2, 2015.

22 Q. Do you adopt the testimony in that document?

23 A. Yes, I do.

24 MR. BOOMSMA: Move for admission of I 4.

25 MS. WIEST: Any objection to I 4?

1 If not, it's been admitted.

2 Q. I don't want to rehash information from that I 4
3 document, but I do want to ask you some questions in
4 terms of the wells on the property. You made mention of
5 that in your document.

6 Is there anything you want to expound on about that?

7 A. Well, I have three wells on that section and another
8 one a quarter of a mile away across the road. And that's
9 my only source of water. And I bring about three to 400
10 head of livestock in during the fall and the winter to
11 over winter them.

12 And as my main source of water I'm just real
13 concerned about a leak in the pipeline affecting my water
14 table, and then I'd have to get a different source of
15 water, which I suppose it would have to be rural water.
16 But I'd rather not. I've drank that water my whole life,
17 and I'm kind of partial to it.

18 Q. Are those artesian deep wells, or are they shallow
19 wells?

20 A. Well they're 250 feet approximately in that area.
21 So I don't know if it's that deep or not. I don't know.
22 But that's about standard for the area.

23 Q. What's the proximity or closeness of this proposed
24 pipeline to your wells?

25 A. Oh, I'd say less than a quarter of a mile. More

1 than an eighth, but somewhere in between there. Among
2 the three.

3 Q. Now those two quarters that are affected, what do
4 you use those quarters for now? Is it growing crops,
5 pasture? You tell me.

6 A. The north quarter is strictly crop production, corn
7 and soybeans. Occasionally I mix wheat or alfalfa,
8 though, in there. And the south quarter where they want
9 to cut through is native pasture that I have for my
10 buffalo.

11 Q. Has that native pasture ever been broken?

12 A. No, it has not.

13 Q. Is your ground located above or near an aquifer
14 system?

15 A. Yes, it is.

16 Q. Tell me about that.

17 A. Well, we got the Wall Lake Aquifer or proximity
18 about 2 and a half miles -- I'm about 2 and a half miles
19 north of that. So I think if we had a problem with that,
20 it would definitely get into some kind of a water source
21 that would either affect -- it would affect me plus
22 probably the local towns and also Sioux Falls.

23 Q. In your prefiled document I think you answered a
24 question or two relating to tile. Do you remember that?

25 A. Yes, I do.

1 Q. My memory is that you indicated there's no tiling on
2 your land now; is that right?

3 A. Not on that parcel, as of yet.

4 Q. What are your plans, if any, as far as future
5 tiling, especially as it relates to these two quarters?

6 A. Well, the north quarter where I had my crop
7 production, we're going to be laying tile in that in two
8 weeks.

9 Q. How long have you had that planned?

10 A. Long before the pipeline was proposed. It's just an
11 economic thing to get the funds in order to get
12 permission from NRCS and local landowners because they're
13 going to be running water down on their property. So
14 you've got to have all your Ts crossed and Is dotted.

15 Q. What sort of crop yield data can you tell me about
16 as far as the northern quarter?

17 A. Well, last year -- yeah. Last year I had corn on it
18 and I had 198 bushels per acre and that's certified by my
19 crop insurance agent.

20 Q. And that's before tiling went in; right?

21 A. That's before tiling.

22 Q. Without stating the obvious, tell me, why would you
23 want to put tiling in?

24 A. Well, there's a few wet spots in there. They've
25 always kind of been a problem in wetter years. And I've

1 got some extra funds because we had some good commodity
2 prices here the last couple of years. And also I want it
3 to be put in before this pipeline if it comes through.

4 I want that in there before that because I want to
5 have my tile in there at the right depth so they've got
6 to go either over it or under it.

7 Q. Will tiling improve the productivity of your land?

8 A. It sure will.

9 Q. Will it improve the value of your land?

10 A. It always does.

11 Q. Do you have any concerns as they relate to the
12 effect of the pipeline on any tiling?

13 A. Well, I think it's all been hashed over before with
14 Brian Top and Tom Stofferahn. I think they've covered it
15 pretty well, and I don't know if I have anymore to add to
16 it.

17 But a pipeline coming through there and changing my
18 elevation and my tile, I have a concern with that because
19 it isn't cheap putting tile in. The last one I did cost
20 me over 100,000 on the quarter.

21 Q. Is that what you're going to spend?

22 A. This one is not going to be that bad.

23 Q. What will you spend on the north quarter that you're
24 talking about?

25 A. The estimate that I got this morning was 30,000.

1 Q. As far as the southerly quarter, the one that you
2 have buffalo on, what's your concern as far as the native
3 prairie grass?

4 A. Well, when Sue Sibson was up here she talked about
5 if they maybe would have put native grasses back in
6 there. I don't think that would have made any difference
7 whether it grew or didn't grow. That ground is disturbed
8 and I don't think whatever you're going to plant in there
9 it's going to rebound -- what we're being offered for
10 reimbursement.

11 It's going to take us many, many years. I've done
12 some research on my own and North Dakota has oil
13 pipelines running through there and now they've -- North
14 Dakota has given a grant to the Williston research
15 department to study the effects of reclamation on ground
16 that has been used for pipelines.

17 So in some cases they see a difference of 20 years
18 where they can't get productivity back.

19 Q. Have you made a very conscious effort to keep that
20 native grassland intact on the quarter where you say the
21 buffalo are at?

22 A. Yes, I do. Because I'm trying to raise organic
23 buffalo so I don't want to introduce anything else into
24 it.

25 Q. How many buffalo are on that 160 acre quarter?

1 A. I got about 50 cows and probably about 35 calves as
2 of now.

3 Q. How long have you been raising buffalo?

4 A. Since '95.

5 Q. With the two quarters do you have all the housing
6 eligibilities on them yet?

7 A. Other than the one I live in, I have seven left.

8 Q. Any concern as to what the pipeline's going to do
9 with that?

10 A. I'll be speculating, but I suppose in the future the
11 way Sioux Falls is growing it's a possibility that I
12 could sell housing eligibilities off of there if that's
13 what I would want to do. But we'd like to keep it in our
14 family.

15 Q. Do you have anything else that you want to tell us
16 or update in terms of your prefiled testimony document,
17 Orrin?

18 A. No. I guess that's covered pretty well.

19 MR. BOOMSMA: That's all I have.

20 MS. WIEST: We'll go to cross.

21 Yankton Sioux Tribe.

22 MS. BAKER: Thank you. Yankton Sioux Tribe has
23 no questions for this witness.

24 MS. WIEST: Rosebud.

25 MR. RAPPOLD: Rosebud has no questions for the

1 witness.

2 MS. WIEST: Ms. Craven.

3 MS. CRAVEN: I have just a couple of questions.

4 CROSS-EXAMINATION

5 BY MS. CRAVEN:

6 Q. Thank you. Kimberly Craven with the Dakota Rural
7 Action and Indigenous Environmental Network.

8 How are you today?

9 A. I'm fine. Thank you.

10 Q. Good. Good. In your testimony you make mention of
11 a meeting that you attended January 2015 in Sioux Falls.
12 And there you met Joey Mahmoud from Dakota Access.

13 Would you tell us about that meeting.

14 A. Well, I guess I had concerns about especially with
15 these buffalo how they were going to handle them when
16 they were going to be coming through. I had concerns
17 that they can't corral them up in tight places so I was
18 just a little concerned that they -- they have broken out
19 before, and that's not a good deal, especially not so
20 close to Sioux Falls.

21 And I guess they tried to reassure me that they
22 could build adequate fence to contain them. And then I
23 was a little worried about where the pipeline was running
24 it was going to be going kind of through -- this native
25 grass has a low spot in it, and water ponds there after

1 we get heavy rains.

2 So I was a little concerned about, you know, if
3 there's water ponding there and we have an oil leak
4 somewhere in that area, it's all going to be saturated in
5 the ground or it's going to move on down through culverts
6 or whatever else onto other people's grounds.

7 So as of my recollection, that's all I can remember
8 what I talked to him about.

9 Q. And did he seem responsive to your concerns?

10 A. Yes. All -- it seemed like they always had an
11 answer.

12 Q. Okay. Great. That's good.

13 Were you satisfied with those answers?

14 A. I guess time will tell, but not to my satisfaction,
15 no.

16 Q. Let's see. My mind just went blank. Give me a
17 moment, please.

18 So you talk about how close the pipeline is going to
19 come to your source of drinking water. Could you talk a
20 little bit more about that?

21 A. Well, I grew up on that water. I don't know what
22 else I can tell you about it. It's a stone's throw away,
23 I guess. You know, the wells going down into my water
24 table which is under that native ground, that pasture.
25 Yes, I'm concerned.

1 I mean, if they have a leak, it doesn't have to be
2 exactly right on my property but it's going to get into
3 that water table somewhere and then I'm going to have to
4 find a different source of water. And I don't think I
5 need another expense.

6 That's why I didn't hook onto rural water to begin
7 with. My livestock does great on my water. I've had it
8 tested, and it's good water.

9 Q. Have you had an opportunity to look through the
10 Dakota Access Application?

11 A. No, I haven't.

12 Q. Okay. I was just wondering if you read through
13 their Economic Impact Analysis of the pipeline.

14 A. No, I have not.

15 MS. CRAVEN: Okay. Thank you, sir. No more
16 questions.

17 MS. WIEST: Ms. Northrup.

18 MS. NORTHRUP: I have no questions of this
19 witness.

20 MS. WIEST: Commission Staff.

21 MS. EDWARDS: No questions. Thank you.

22 MS. WIEST: Dakota Access.

23 MR. KOENECKE: I just have a couple.
24
25

CROSS-EXAMINATION

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BY MR. KOENECKE:

Q. Thank you, Mr. Geide. I'm wondering, do you know what your current grass mix is in your buffalo pasture?

A. No. I haven't done a study on that. I figured I wouldn't need to do that until -- we'll see if this pipeline is approved.

Q. Okay. My second question is how deep are your wells? Do you know?

A. Well, the one on my home place is 240 feet, and the adjoining quarter on that same section I think is about 180. And what the third one is I could not tell you. I don't -- that would be my sister and brother-in-law's property. She would know, but I don't know.

Q. Is it fair to assume it's probably about the same?

A. I would assume so, yes.

MR. KOENECKE: Okay. Thank you.

MS. WIEST: Commissioner questions.

CHAIRMAN NELSON: Thanks for being here. Just one question, I think.

You said you are "trying to" raise organic buffalo. What do you mean by trying? Where are you at in the certification process?

THE WITNESS: Well, it takes a number of years to get there. And they've got to take tests on the

1 grasses and make sure there isn't any -- what do they
2 say? If it's not native -- other grasses mixed in that
3 isn't native. We have to have that certified.

4 And then we raise a lot of GMO crops. We've got
5 to make sure that I keep all of that stuff separate in
6 different storage bins. So it's a process. I haven't
7 tried to do this since '95. I'm just starting this
8 process now. So I've probably only been about two years
9 into it. And it's my understanding it could take up to
10 five years.

11 CHAIRMAN NELSON: So within the typical
12 reclamation of the disturbed area where the pipeline
13 would go through the buffalo pasture, if their typical
14 weed control mechanism was herbicides, that would be a
15 definite problem for you.

16 THE WITNESS: Yes, it would.

17 CHAIRMAN NELSON: Thank you. No other
18 questions.

19 MS. WIEST: Any other Commissioner questions?

20 COMMISSIONER HANSON: Good afternoon, Mr. Geide.

21 THE WITNESS: Hello, Mr. Hanson.

22 COMMISSIONER HANSON: I thought Commissioner
23 Nelson was going to ask my question, but obviously he's
24 more knowledgeable than I am in ag by a long shot.

25 I've heard of range chickens and organic

1 vegetables. I've never heard of an organic buffalo. I'm
2 curious. Does that mean you don't vaccinate?

3 THE WITNESS: That's correct. We do not
4 vaccinate them. We don't fly control and so forth.
5 That's all done on their own with the roll in the ground
6 and the dirt is what they do to control lice and flies
7 and so forth.

8 COMMISSIONER HANSON: Okay. Thanks for that.
9 Just curious.

10 THE WITNESS: Just elaborate on that.

11 COMMISSIONER HANSON: Sure.

12 THE WITNESS: I don't know where that pipeline's
13 coming through with my pasture and that grass doesn't
14 grow back there, yeah, that will be the number one spot
15 they're going to want to roll in and I don't think you're
16 ever going to get anything to grow back into that.

17 Because that's bare ground when you reintroduce
18 them to it, and they're going to make dust bowls out of
19 it is what they're going to do.

20 COMMISSIONER HANSON: You said you had your
21 water tested, and it's good water. My familiarization
22 with the Wall Lake Aquifer area is it's high in sulfates.

23 Is that what you found with yours?

24 THE WITNESS: Yes.

25 COMMISSIONER HANSON: Is it considerably higher

1 than the water that you'd purchase from a municipality,
2 for instance?

3 THE WITNESS: I don't -- I'm not hooked onto
4 rural water. That's what you're asking?

5 COMMISSIONER HANSON: Correct.

6 THE WITNESS: I don't know. I don't use rural
7 water, not even to the house.

8 COMMISSIONER HANSON: All right.

9 THE WITNESS: The wells feed all the
10 outbuildings and all my waters. And then we haul water
11 to the livestock in the winter if they're off this
12 section.

13 COMMISSIONER HANSON: You ever have guests to
14 your home who stay for a few days or a weekend and drink
15 the water and have any challenges from it?

16 THE WITNESS: No.

17 COMMISSIONER HANSON: Okay. Just curious.
18 Sulfates have a laxative effect if you're not accustomed
19 to it. So just curious if that's a challenge for any of
20 your guests or not. Apparently not.

21 Thank you very much. Appreciate it.

22 MS. WIEST: Any other Commissioner questions?
23 Any cross based on Commissioner questions?

24 Any redirect?

25 MR. BOOMSMA: Nothing.

1 MS. WIEST: Thank you. You may call your next
2 witness.

3 MR. BOOMSMA: I call Joy Hohn to the stand.
4 (The oath is administered by the court reporter.)

5 DIRECT EXAMINATION

6 BY MR. BOOMSMA:

7 Q. Your name for the record is?

8 A. Joy Adele Hohn.

9 Q. You're the brother of Orrin?

10 A. I'm the sister --

11 Q. Or the sister.

12 A. -- of Orrin. That would be a little hard.

13 Q. Backwards. All right. Sister of Orrin.

14 And you live close by in the same proximity to
15 Orrin?

16 A. Right. We're within the same mile. We're a half a
17 mile apart.

18 Q. He had made mention of how you share a well or maybe
19 have a well in close proximity of his place?

20 A. That's correct. We have a well on our farm place.

21 Q. Okay. How far apart distance-wise are your two farm
22 sites?

23 A. I'd say a half a mile.

24 Q. How long have you lived in that area?

25 A. All my life.

1 Q. And do you have a parcel of land, Joy, that's going
2 to be affected by this pipeline?

3 A. Correct.

4 Q. Tell me about that.

5 A. It's an 80-acre parcel that's adjacent to where my
6 brother's pasture is on that parcel.

7 Q. Does your 80 acre piece sit right beside that
8 quarter of Orrin's that he has the buffalo on?

9 A. Correct.

10 Q. Which direction is it? Is it to the east?

11 A. Right. To the east.

12 Q. How long have you owned that?

13 A. Five years.

14 Q. What do you use your 80-acre piece for?

15 A. We grow corn and beans.

16 Q. What's your understanding as far as how this
17 pipeline is going to affect the 80-acre parcel?

18 A. It's going to come through, according to the map
19 that we received, I guess, along the fence line. It will
20 cut through Orrin's fence line on the north edge of that
21 80 acres, and then it will come into our land.

22 Q. Does it come in the northern portion of your 80-acre
23 piece --

24 A. Right.

25 Q. -- and then traverse down the middle? Or you tell

1 me.

2 A. It comes, traverses the north portion, and then it
3 looks like it just comes -- well, it looks like it runs
4 along the fence line. But it will be on our side so, you
5 know, it will go into crop ground.

6 Q. How long have you farmed that ground?

7 A. Oh, that parcel of land I bought in 1999.

8 Q. And you farm that with your husband, Rod?

9 A. Right. Right.

10 Q. I 7 is in front of you. Do you see that up on the
11 counter?

12 A. Yes, I do.

13 Q. Is that your prefiled testimony document?

14 A. Yes, it is.

15 Q. And the date on that?

16 A. Is June 29 of 2015.

17 Q. You signed it?

18 A. Yes, I did.

19 Q. Do you adopt the testimony from that document?

20 A. Yes, I do.

21 MR. BOOMSMA: Move for admission of I 7.

22 MS. WIEST: Any objection to I 7 being admitted?

23 If not, it's admitted.

24 Q. I'm going to ask a few additional questions relating
25 to the well. One well is on your property?

1 A. Correct.

2 Q. Tell me a little bit about that.

3 A. It's right kind of in the center of our farm place
4 there. It's about 200 feet.

5 Q. Is that your sole source of water?

6 A. No. We are hooked up to rural water.

7 Q. What do you use the well for?

8 A. Right now just for, you know, the few animals that
9 we have on our place.

10 Q. Are you knowledgeable about the watershed system on
11 your property?

12 A. Not --

13 Q. Let me go at it a different way.

14 A. Okay.

15 Q. You have a puzzled look. Any tiling on your
16 property?

17 A. No.

18 Q. Any creeks on your property?

19 A. No. Well, not on that 80.

20 Q. Would you share the same concern as Orrin,
21 especially as it relates to that Wall Lake Aquifer
22 system?

23 A. Yes. If it goes into the aquifer, Sioux Falls
24 will -- I mean, that is a backup reservoir for
25 Sioux Falls, is my understanding. And so that will

1 definitely be a detriment to the city.

2 Q. Other testimony has pertained to lawsuits or tactics
3 by Dakota Access. Are you part of these lawsuits?

4 A. Yes, I am.

5 Q. Your reaction to that?

6 A. Well, it hasn't been a fair process to the
7 landowners. Here's what happens to people that go
8 against the pipeline. We have to hire an attorney to
9 protect us. We get sued. We're threatened with a final
10 offer even before the hearing has started.

11 We have -- you know, constantly through this whole
12 process we have felt intimidation either through -- I
13 shouldn't say either through but through -- if you go
14 down to Worthing and you see the stockpiles of pipe, you
15 feel like this is a done deal.

16 We just had this last week. Rural water was getting
17 lines ready to put -- to accommodate Dakota Access on the
18 pipeline. And so like Commissioner Schmidt had
19 referenced to Commissioner Nelson in the letter, he said,
20 Is this a done deal? And you said, no, it's not a done
21 deal. And I hope it's not.

22 And we are having faith as landowners that you will
23 help protect us. Because, you know, South Dakota used to
24 be -- let me get my wording correctly here. South Dakota
25 used to promote family farms, and I feel like it's given

1 out to corporate greed.

2 Q. One thing you had brought up was this final offer
3 business. So you got the final offer, and what were you
4 told would happen if you don't take this final offer?

5 A. That it will go into eminent domain and
6 condemnation.

7 Q. You'll be sued?

8 A. Right. Correct.

9 Q. And is that the first offer you were ever made?

10 A. Yes.

11 Q. How does that make you feel?

12 A. It just really feels like your rights are violated.
13 You just feel like you don't have a say. And you kind of
14 feel like the government, you know, is going for the
15 money and for what looks good for them at the time and,
16 you know, where are the landowner rights and the rights
17 of the citizens of South Dakota.

18 Q. You heard Brian Top testify?

19 A. Yes.

20 Q. No need to rehash all of that. Do you agree with
21 him, though?

22 A. Yes. I have a major concern with the topsoil
23 restoration. And I do feel that it's going to take a lot
24 longer than 10 years to get our land back to the way it
25 was.

1 Q. Last week did you receive some information from
2 Dakota Access as far as an Exhibit 42 document?

3 A. Yes.

4 Q. Do you see that document in front of you?

5 A. I do.

6 Q. What is your understanding of what that document was
7 intended to portray?

8 A. To the best of my knowledge, this is to portray the
9 pipeline to the -- the center of the pipeline to the
10 home -- to a home.

11 Q. Does that 42 give you any information as far as how
12 close proximity-wise that the proposed pipeline is going
13 to be to structures like farm sites, houses, et cetera?

14 A. I feel that they're not the best descriptions. The
15 maps that we have received on the website and, you know,
16 throughout the whole process, they're hard to read. I
17 mean, I don't know why they don't have addresses and, you
18 know -- they just need to be more descriptive. They were
19 just very hard to follow.

20 Q. After you received that 42 document did you do some
21 checking on your own as far as this business of how close
22 the pipeline's going to be to farm sites?

23 A. I did.

24 Q. When did you do that?

25 A. Just this last weekend.

1 Q. Do you see number -- or Exhibit I 46J in front of
2 you?

3 A. Yes, I do.

4 Q. Did you take those pictures?

5 A. I certainly did.

6 Q. When did you take those?

7 A. I spent a few hours this last weekend taking them.

8 Q. Did you do it for the purpose of trying to help
9 people understand how close the pipeline will be to
10 places like farm sites, buildings, et cetera?

11 A. That's exactly the reason why I did that.

12 MR. BOOMSMA: Move for admission of I 46J.

13 MS. WIEST: Any objection?

14 MR. KOENECKE: I object. I think he needs to
15 lay foundation for each and every picture here. I don't
16 think you can just say did you take those pictures and
17 then have a blanket description of what was shown. I
18 think you've got to go through every one of them.

19 MS. WIEST: Why don't you lay your foundation
20 for the pictures, Mr. Boomsma.

21 MR. BOOMSMA: Sure.

22 Q. So laying the foundation, if you could look at
23 I 46J.

24 First, you took those pictures; correct?

25 A. Correct.

1 Q. In each one of those pictures, Joy, do you see
2 structures such as houses or farm sites in the
3 background?

4 A. Yes, I do.

5 Q. And in each one of those pictures do you see a --
6 excuse me. A stick with an orange flag on the top?

7 A. Yes.

8 Q. And as far as those stakes, what is your
9 understanding as to why those stakes are there?

10 A. Well, those stakes are there to mark the Dakota
11 Access Pipeline. And when I was taking the pictures it's
12 harder to read on the majority of the stakes because I'm
13 trying to focus on what's going on behind so the stakes
14 are a little bit more blurry. But the majority of them
15 have DAPL on them.

16 Q. And so you're able to identify that as the pipeline
17 route?

18 A. Right. Exactly.

19 Q. And so from your perspective, Joy, were you
20 concerned as far as how close this pipeline's actually
21 going to come to structures?

22 A. I was shocked actually. I knew kind of in our
23 neighboring area, but when I started -- you know, when I
24 went around and started -- went down by Harrisburg and
25 Tea, I really had my eyes opened.

1 Q. Do these pictures then depict your concerns as
2 you're telling the Commission here today?

3 A. Yes.

4 MR. BOOMSMA: Move for admission of I 46J.

5 MS. WIEST: Are there any objections?

6 If not, they're admitted.

7 Q. Going back to I 46J, let's walk through that. The
8 first page, where is that at, and what does that depict?

9 A. Okay. This was taken on 475th Avenue, and as you
10 can see, it's a half a mile from housing and it's one
11 mile south of the Harrisburg South Middle School.

12 Q. Second page, what is that?

13 A. Okay. This was -- this was on 476th Avenue. And
14 you can see beyond the railroad crossing in the center of
15 the picture that is the water tower of Harrisburg and
16 it's three-quarters of a mile southeast of Harrisburg.

17 Q. Third picture, what is that, and where is it?

18 A. The next three pictures are three houses that are in
19 a row. They're on Louise Avenue or 476th -- or 472nd
20 Avenue. And as you can see, that house on that first
21 picture there is approximately about 250 feet from the
22 pipeline -- the proposed pipeline.

23 Q. Continue.

24 A. Okay.

25 Q. We're on the fourth picture, I think.

1 A. Yeah. The fourth picture, if you look on the
2 previous picture, you can see a road going into a
3 cornfield. Well, so I pulled up next to the Trademark
4 Home sign, and there is a new house building built right
5 in that cornfield. And I would say that's approximately
6 100 feet from the stake.

7 Q. Fifth picture?

8 A. Okay. The fifth picture is -- let's see. Is on
9 that same road, on Louise Avenue, and that is -- the
10 first two pictures from the stake you're looking south.

11 And this picture from the stake here you're looking
12 to the north. So the stake is coming right in between
13 those three homes.

14 Q. Next picture?

15 A. The next picture is a house on 471st Avenue. The
16 actual address is 27446 471st Avenue. And it's kind of a
17 little hard to tell so, you know, if you drive up by the
18 driveway, you can see closer, but on the right side of
19 the picture behind those trees is a house.

20 And so it's approximately 100 feet from the yard and
21 200 feet from the house.

22 Q. Next picture.

23 A. This picture was taken on 477th Avenue. And at
24 the end of the driveway they had McAllister so I'm
25 assuming that's who lives there. But the address is

1 27464 477th Avenue. And it's southeast of Harrisburg.
2 And the stake is approximately 300 feet from the house.

3 Q. The next picture?

4 A. This is -- I hope I pronounce this right, but
5 this is taken over by Tea. This is Deloris Assid and
6 her sister's land. And the address on that is
7 27275 South Dakota Highway 17.

8 And the way that this stake runs, it kind of -- if
9 you look at the maps, the way the line is going to go is
10 going to be 50 feet from the property line and it will be
11 about 250 feet from the hog house that you see there. Or
12 I don't know whatever -- that barn.

13 Q. The next picture?

14 A. The next picture is on the Tea oil. And this is
15 John Strattmeyer's [phonetic] home. And you can see
16 the -- I mean, behind the trees there is their house.
17 And the actual address is 46534 272nd Street in Tea, and
18 this is approximately 150 feet away.

19 Q. Next picture.

20 A. This picture here is between my brother's and my
21 land -- or my husband and my land. And basically where
22 we have the sign up is where the proposed pipeline will
23 be.

24 Q. Second to last picture.

25 A. Okay. This picture was taken on Highway 42, and

1 this is the Lowell and Joyce Gray farm. And it's -- the
2 address is 46182 265th Street in Hartford.

3 And you can see a -- on the left-hand side of the
4 picture there's a red and white machine shed kind of
5 behind the trees, and to the right of that -- or it would
6 be to the south of that is a farmhouse, and that's
7 approximately 500 feet way from the stake.

8 Q. We're on the last picture.

9 A. The last picture is Kyle Grace's place on
10 46162 266th Street in Hartford. And this picture is a
11 half a mile to the west of Wall Lake. And that's about
12 approximately 200 feet.

13 And if you look at this picture, there are two
14 stakes on this picture. There's one on the left-hand
15 side and one on the right-hand side. The left-hand side
16 is kind of below the farm machinery there.

17 And as you can see, originally the pipeline was
18 supposed to go through the Minnehaha conservation area
19 there, which is just to the west of Wall Lake. Well,
20 they had just recently rerouted that I think here in
21 September, and now this was supposed to go on the east
22 side of the farm place.

23 Now it's coming around the backside of the farm
24 place coming around the grain bin there, and it will hit
25 that first -- or it will cross the driveway, hit the

1 first stake, and then come over across on that second
2 stake.

3 Q. All right. Back to that 42 exhibit. Were you able
4 to make sense of that and figure out if these properties
5 are on that No. 42 exhibit?

6 A. To the best of my knowledge, they are not, but I'm
7 not sure. Because the descriptions are just hard to
8 read.

9 Q. There's no addresses on No. 42.

10 A. No. None whatsoever.

11 Q. And it's hard to decipher where those parcels are
12 at?

13 A. Right.

14 Q. In the process of taking these pictures and doing
15 the investigation that you did, are you concerned about
16 the pipeline going through a growth area?

17 A. I'm very concerned about that. And I would really
18 like to urge the PUC to just please take a little time
19 and drive around where this pipeline is going down by
20 Harrisburg and Tea and around Wall Lake, and you will see
21 how many lives and people's homes and livelihoods are
22 going to be disrupted by this pipeline.

23 Q. Did you have to search very hard to find these
24 examples?

25 A. No. I probably was at this maybe three hours.

1 Q. If you don't know the answer to this, fine. Tell me
2 that.

3 But my question is this: Do you know if you would
4 have the same density of these houses and farm sites if
5 you went further west?

6 A. Well, in the essence of time, like I ended up -- I
7 was kind of pushing daylight, and so I skipped many, many
8 miles of -- you know, like going up and down. But I
9 would assume the way that Sioux Falls is growing and
10 especially as it shows on these Louise Avenue pictures
11 where three houses are right in the line, you know, it --
12 you know, that pipeline will be an issue.

13 Q. Joy, any additional issues or factors or information
14 that you want to tell the Commission that's not already
15 in your prefiled testimony document? And we'll stop
16 there.

17 A. Well, I know some of the issues were mentioned in
18 our prefiled testimony document, but I am very concerned
19 with the liability concerns if there is a spill. I'm
20 also concerned with our crop yields.

21 I'm concerned what's going to happen to our two
22 building eligibilities on this 80 acres. I mean,
23 basically I feel that they're going to be worthless or
24 incredibly devalued.

25 You know, not to mention that, you know, this is a

1 hazardous toxic pipeline that's just, you know, crossing
2 so close to us. And I feel with the construction
3 techniques -- from my perspective, this is what I fear.
4 I fear that they're going to mix the topsoil with the
5 subsoil.

6 And, you know, who's going to monitor the miles and
7 miles of pipeline that's installed? You know, when this
8 is being installed at the same time you're not going to
9 have enough inspectors out there. There's just not
10 enough staffing for that.

11 So I just feel there's not enough assurance in place
12 and that our state is not ready for this. We need to
13 have more -- you know, we just need to have more Is
14 dotted and Ts crossed basically.

15 And I would also like to say that this last weekend
16 I had talked to a neighbor that was a couple of miles to
17 the north of us and just knew that the pipeline is going
18 about 300 feet from their place or her place and --

19 MR. KOENECKE: I object. This is hearsay.

20 MR. BOOMSMA: If it's based on knowledge, I
21 think she can testify to it, and she says she has
22 knowledge of where this place is at.

23 MR. KOENECKE: That's not a hearsay exception.

24 MS. WIEST: Objection sustained.

25 Q. Without talking about who told you what, are you

1 able to finish your thought? Base it on your own
2 knowledge, please.

3 A. Yes. I know that there are some people that have
4 not been contacted by Dakota Access that this pipeline is
5 coming through their land. And I also know that -- well,
6 I guess I can't reference the lady, but I know she made a
7 call to the PUC and it was never returned.

8 So I just -- once again, I just want to reiterate
9 that, you know, our state was known for long-term family
10 farms and agriculture, and it just -- it seems to have
11 changed.

12 And I just feel like landowners are afraid to take a
13 stand. And they're just afraid that their voice isn't
14 going to be heard. They are afraid of eminent domain.
15 They feel that they have no say and that they're going to
16 be treated badly if Dakota Access comes through their
17 land with this pipeline.

18 And so instead of standing up and saying anything,
19 they're just, you know, accepting it. They just feel
20 eminent domain is just a big cloud over their heads.

21 Q. Joy, you mentioned intimidation and how you felt as
22 far as being treated by Dakota Access. Could you look at
23 I 44 on the counter.

24 Did you take those pictures?

25 A. I did.

1 Q. Where was that picture taken at?

2 A. These pictures were taken at Worthing this last
3 weekend too.

4 Q. You took them?

5 A. I did.

6 Q. You referenced in your testimony the pipeline -- the
7 stacks of pipes?

8 A. Right.

9 Q. Is that what the picture depicts?

10 A. Yes.

11 Q. And to you does that represent or depict
12 intimidation?

13 A. Yeah. These pipes have been -- you know, been there
14 for months. And so, you know -- and it's a small, small
15 community. And landowners know that these pipes are
16 there.

17 And the same thing in Aberdeen. I'm up in Aberdeen
18 quite a bit, and there's a stockpile of pipes up there as
19 well.

20 Q. Does it give you the sense or feel that this is, at
21 least in Dakota Access's mind, a rubber stamp process?

22 A. Yes.

23 MR. BOOMSMA: Move for admission of I 44.

24 MS. WIEST: Is there any objection?

25 If not, it's admitted.

1 MR. BOOMSMA: That's all I have.

2 MS. WIEST: Yankton Sioux Tribe, did you have
3 any cross?

4 MS. BAKER: Thank you. Just a few questions,
5 please.

6 CROSS-EXAMINATION

7 BY MS. BAKER:

8 Q. Good afternoon, Ms. Hohn.

9 A. Hi.

10 Q. You mentioned those pipes just a second ago. Can
11 you give us a more specific idea of when those pipes were
12 placed there, if you can recall?

13 A. You know, Worthing is on the other side of
14 Sioux Falls so I don't get down that way very much so I
15 can't say specifically. But I know we drove down there
16 past that area probably in May, and they were there.

17 Q. Okay. And they're still there, to your knowledge?

18 A. This was just taken this weekend.

19 Q. Okay. And have you driven past it multiple times?

20 A. Yes.

21 Q. Okay. And were they ever covered by anything, or
22 were they left exposed --

23 A. No.

24 Q. -- the entire time?

25 A. They're exposed like this.

1 Q. Okay. Thank you.

2 Now I understand that you and your husband prepared
3 this testimony, and I don't know if you have more
4 knowledge about the stray voltage that you mentioned. Is
5 that something that you feel comfortable answering
6 questions about or --

7 A. Well, we tried to do more research on the stray
8 voltage, and I think there's just not enough research out
9 there. And I know that the gentleman that it happened to
10 on his residence, he was not willing to give a testimony
11 or --

12 MR. KOENECKE: Again, I object. It's hearsay.

13 MS. WIEST: Objection sustained.

14 Q. Okay. But you do have enough knowledge to be
15 concerned about this as an issue?

16 A. I do.

17 Q. Is it an issue that you raised with any
18 representatives from Dakota Access?

19 A. No. My communication with them has been through our
20 attorney.

21 Q. Okay. And I know you did mention one meeting with
22 Mr. Mahmoud; is that right?

23 A. Yes.

24 Q. At that meeting did he happen to discuss stray
25 voltage, any of your concerns?

1 A. No, he did not. He -- I had -- I don't know if the
2 Commissioners remember, but I prepared a long testimony
3 at that January 22 meeting with a lot of questions, and I
4 know Mr. Mahmoud had said that we had already "talked
5 about" most of these issues. But I have never had a
6 conversation with him.

7 Q. Okay. Do you recall any of those specific questions
8 that you had that he was referencing that he wouldn't
9 answer?

10 A. Well, questions as far as oil spills and the cleanup
11 and -- I probably have my notes here from that meeting.

12 I know another thing was the monitoring that will be
13 done. And I know -- gosh. I'm just trying to recall. I
14 think a lot of what my concerns were were in my prefiled
15 testimony.

16 Q. Okay. And he didn't address any of those at that
17 time?

18 A. No.

19 Q. Did you feel like Dakota Access treated you and your
20 concerns with respect?

21 A. Yeah. The whole process has been disrespectful.

22 MS. BAKER: Thank you. Nothing further.

23 MS. WIEST: Rosebud?

24 Ms. Craven?

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CROSS-EXAMINATION

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BY MS. CRAVEN:

Q. I just have a couple of questions. Let's see.

A lot of your concerns seem to be with the --
Kimberly Craven with the Indigenous Environmental Network
and Dakota Rural Action.

How are you today?

A. Good.

Q. Thanks for coming today.

A. Thank you.

Q. So you have a lot of concerns about the economic
impact of this pipeline on your property; is that
correct?

A. Uh-huh. I do.

Q. Have you had an opportunity to read the report that
Dakota Access filed regarding the economic impacts?

A. Refresh my memory.

Q. It's part of their Application. It's called
economic impacts --

A. Oh. It's been so long ago, I'd have to reread that.

Q. Okay. Just curious about that.

And you did say that you met with Mr. Mahmoud in
January, and how was he responsive to your concerns?

A. Well, it was at the public meeting. So there was
over 400 people there, I believe. And we did -- my

1 brother and I attended the city council meeting on
2 January 13 and also listened to what the proposed
3 pipeline and, you know, how it was going to be routed
4 and -- state the question to me again.

5 Q. Oh, I was talking about Mr. Mahmoud's responsiveness
6 to your questions and your concerns and stuff.

7 A. Well, they seemed responsive, but there was no
8 follow up.

9 Q. Okay. Great.

10 Now the South Dakota Corn Growers Association has a
11 billboard outside of Rapid City. I don't know if you've
12 seen it, but it asks the question what you've asked about
13 South Dakota's future. It says Cornfields or oil fields?
14 And what will be the future of South Dakota.

15 What's your response to that? Is that an
16 appropriate question that we should be asking as
17 South Dakotans?

18 A. Absolutely. I definitely believe that. Once again,
19 I just feel that, you know, the big money come in and
20 they talk and, you know, us landowners and farmers that
21 are just trying to make a living, you know, for past
22 generations and future generations is being threatened.

23 Q. And at that meeting in January in Sioux Falls there
24 were over 400 people there, is that what you --

25 A. Yes.

1 Q. Were most of them in support of it, or were they
2 there to voice their concerns?

3 MR. KOENECKE: I object. That calls for
4 speculation, and it's hearsay.

5 MS. WIEST: Sustained.

6 Q. Okay.

7 MS. CRAVEN: Thank you. No more questions.

8 MS. WIEST: Ms. Northrup?

9 MS. NORTHRUP: I have no questions. Thank you.

10 MS. WIEST: Commission Staff.

11 CROSS-EXAMINATION

12 BY MS. EDWARDS:

13 Q. Thank you, Ms. Hohn, and thank you for your comments
14 over the last several months.

15 Looking at these pictures that you took, these
16 stakes on there, if you know, do they depict the
17 centerline of the pipeline or the edge of the easement?
18 If you know.

19 A. That would be a question for Dakota Access. I have
20 no clue. That's just where the stakes are.

21 MS. EDWARDS: Okay. Thank you. No further
22 questions.

23 MS. WIEST: Dakota Access.
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CROSS-EXAMINATION

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BY MR. KOENECKE:

Q. Mrs. Hohn, do you recall the project calling you on October 29, 2014?

A. Say again.

Q. Do you recall the project calling you on October 29, 2014?

A. Calling me?

Q. Yeah. A phone call from a project representative on October 29, 2014.

A. The first recollection that I had, there was a gentleman that knocked at our door during harvest.

Q. And approximately how many contacts has the pipeline attempted to make with you since?

A. Well, they've -- they've -- me personally?

Q. Sure. You. Let's start with you.

A. Yeah. They haven't really made any phone calls to me.

Q. How about to your husband, if you know?

A. I believe he has been called.

Q. Do you know how many times approximately?

A. No. I cannot say.

Q. How about your brother? Do you know how many times?

A. No.

Q. Would it surprise you if the number was over two

1 dozen?

2 A. Would that --

3 MR. BOOMSMA: Objection. Assuming facts into
4 evidence. Plus he's testifying again.

5 MS. WIEST: Overruled.

6 THE WITNESS: Does that mean I answer?

7 MS. WIEST: Yes.

8 THE WITNESS: Say the question again.

9 MR. KOENECKE: I'll ask Cheri to read it back.

10 (Reporter reads back the last question.)

11 A. That could be. I'm not sure.

12 Q. At any time did you indicate to anyone working on
13 behalf of the pipeline that you were interested in
14 receiving more information or having a conversation about
15 it?

16 A. We have done a lot of research on this pipeline --
17 or the pipeline effects, and we just don't want the
18 pipeline. So we're not wanting the calls.

19 Q. Did you testify that you went and took pictures on
20 Sunday? This past Sunday?

21 A. Yes.

22 Q. Did you drive through Harrisburg?

23 A. Did I drive through?

24 Q. Yes.

25 A. Like what do you mean drive through?

1 Q. On the highway that runs east and west through
2 Harrisburg. Were you on that oil road?

3 A. Not -- I was kind of more south of that.

4 Q. So you didn't drive past the football field and the
5 school in Harrisburg?

6 A. Well, yeah. I did drive by that. But where these
7 pictures were taken is about a mile and a half south of
8 that.

9 Q. So you didn't take pictures of the pipeline right of
10 way next to the high school and the football field?

11 A. Well, if you look at the first picture on this first
12 exhibit on I 46J, the house is what is depicted at a half
13 a mile. And if you look beyond the house, you can see
14 the middle school.

15 Q. But you didn't take pictures of the pipeline right
16 of way that goes right next to it; correct?

17 A. I guess I don't really understand what you're
18 saying. I just went to where the stake was, and I took
19 pictures towards Harrisburg.

20 Q. Did you take pictures of any existing pipeline right
21 of ways?

22 A. No.

23 Q. Did you notice any existing pipeline rights of way?

24 A. No. I basically was concentrating on this pipeline
25 and the proposed route.

1 Q. Have you read the Spill Response Plan offered by the
2 Applicant?

3 MS. CRAVEN: Objection. That's beyond the scope
4 of direct.

5 MR. KOENECKE: She testified as to her concern
6 about leaks.

7 MS. WIEST: Overruled.

8 A. You know, I have read -- there has just been so much
9 to read and really need an attorney for half of the stuff
10 that you read. So, I mean, I have read it, but I just
11 feel that knowing the past and what pipelines have done,
12 I just have legitimate concerns.

13 Q. What past? What pipelines have done are you
14 referencing?

15 A. Well, just like Sue Sibson testified with what
16 happened to hers.

17 Q. How about oil spills? Are you referencing what
18 spills in the past?

19 A. Yeah.

20 Q. Any one specifically?

21 A. Well, it's in my prefiled testimony.

22 Q. Point me out.

23 A. Do you want me to read it to you?

24 Q. Please.

25 A. Okay. Let's see. On page 3 I -- in response to

1 Please describe which of your farming operations or other
2 land uses will be impaired by the Dakota Access Pipeline
3 and how they will be impaired. And I responded The
4 highly productive land used for raising our crops will be
5 greatly impaired by this pipeline. If the pipeline is
6 built, our crops will never be the same. Disturbed soil
7 from the pipeline installation and the heat produced from
8 the pipeline after installation will both have
9 detrimental effects on the cropland. It will never
10 return to its highly productive state. In addition, when
11 an oil spill occurs it will leave our farmland and crops
12 saturated, and that land can no longer be farmed and is
13 considered worthless. This was proven by the oil spills
14 in both Benton, Michigan, September 16 of 2014 and in
15 Bismarck, North Dakota on September 29 of 2013.

16 Do you want me to continue?

17 Q. I'm satisfied. Thank you. I appreciate that.

18 Have you been listening to the testimony this past
19 week that's been offered here?

20 A. When I can I do, yes.

21 Q. So if anybody testified contrary to what you said in
22 that paragraph, are they wrong?

23 A. To this paragraph here about the oil spills?

24 Q. Yes.

25 A. Well, this is my opinion.

1 Q. Have you been to Benton, Michigan or Bismarck to
2 look yourself?

3 A. I actually fly to Bismarck quite a bit.

4 Q. And you looked at the oil spill there? Is that a
5 no?

6 A. You can see when you fly -- when you fly over that
7 because I have been up in that area on -- after that oil
8 spill happened.

9 Q. How far is it from your house to the pipe yard at
10 Worthing?

11 MS. CRAVEN: Objection. Relevance.

12 MR. KOENECKE: She brought up the pipe yard at
13 Worthing and took pictures of it.

14 MS. WIEST: Overruled.

15 A. It's probably 30 minutes.

16 Q. So you had to make a special trip to look at the
17 pipe?

18 A. Yes.

19 Q. Why do you think Sioux Falls gets water from Wall
20 Lake?

21 MR. BOOMSMA: Misstatement of her testimony.
22 Plus relevancy.

23 MR. KOENECKE: I don't see how it's irrelevant.
24 She brought it up.

25 MS. WIEST: Overruled.

1 MS. BAKER: Objection. Calls for speculation.
2 He asked how she thinks that they get their water.

3 MR. KOENECKE: I asked why she thinks that. She
4 brought it up.

5 MS. WIEST: Overruled.

6 MR. KOENECKE: Sioux Falls told me they don't
7 get water there. I'm wondering why she thinks so.

8 MS. WIEST: Overruled, if you can answer.

9 A. We had seen an -- a report on that that was
10 submitted that my husband had sent in with -- I'm trying
11 to think if it was his testimony. It was on the aquifer
12 systems around Sioux Falls.

13 I don't have that report on me.

14 MR. KOENECKE: I've got nothing more. Thank
15 you.

16 MS. WIEST: Commissioner questions.

17 COMMISSIONER HANSON: Afternoon.

18 THE WITNESS: Hi.

19 COMMISSIONER HANSON: Are you aware of what's
20 described as the Wall Lake Aquifer's parameters?

21 THE WITNESS: Wall Lake Aquifer's what?

22 COMMISSIONER HANSON: Parameters. Where it
23 exists.

24 THE WITNESS: When we submitted that report,
25 yes. But I'd have to look at that again.

1 COMMISSIONER HANSON: You may be confusing the
2 Wall Lake Aquifer with Wall Lake. I have to ask things
3 in a question rather than testifying myself.

4 Would it surprise you to know that what is
5 called the Wall Lake Aquifer which does not receive its
6 water from Wall Lake but it's described as the Wall Lake
7 Aquifer exists on its eastern parameter at approximately
8 26th Street and Interstate 29?

9 THE WITNESS: I know it extends -- I mean, it
10 extends quite a ways.

11 COMMISSIONER HANSON: Yes. But that aquifer
12 does not receive -- would you be surprised to know it
13 does not receive its water from Wall Lake itself?

14 THE WITNESS: Yeah. Isn't it more -- it's from
15 the -- from the rivers.

16 COMMISSIONER HANSON: That's correct. From
17 Skunk Creek.

18 THE WITNESS: Uh-huh.

19 COMMISSIONER HANSON: Okay. Thank you.

20 MS. WIEST: Any cross based on Commissioner
21 questions?

22 Any redirect?

23 MR. BOOMSMA: A little bit of redirect.

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REDIRECT EXAMINATION

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BY MR. BOOMSMA:

Q. Joy, you offered testimony about January 22, 2015, a PUC public info meeting in Sioux Falls. Do you remember that questioning?

A. Yes.

Q. Do you remember at that time whether Mr. Mahmoud was made aware of concerns not only from people in the audience but also from the Commission about the proposed pipeline going through a growth area?

A. Yes. Commissioner Hanson addressed why in the world would you be going so close to Sioux Falls.

Q. And his response, in other words, Mr. Mahmoud's response to that? Did you --

A. I would have to look at it, but I believe he said that they had consulted, you know, with the necessary people and the necessary city officials and that's, you know, the -- they approved of that. Or that was the routing that they agreed to.

Q. What do you think of that response?

A. I think it was -- you know, the routing when you look at the routing it looks -- it's just from point A to point B. They took no respect -- or no consideration as far as for landowners and the citizens of South Dakota. They didn't care if they come through people's

1 properties, close to homes, 100 feet from homes. I mean,
2 it's just a disregard to the people of South Dakota.

3 Q. You had mentioned something in your questioning in
4 response to Mr. Koenecke, and that was about flying.

5 You're a pilot; correct?

6 A. Correct.

7 Q. And that's how you flew over Bismarck?

8 A. Yes.

9 Q. In relation to that same topic, Dakota Access, as
10 you may know, intends to inspect or use one of their
11 inspection methods of flying over the pipeline.

12 A. Correct.

13 Q. Are you aware of that?

14 A. Yes.

15 Q. What is your understanding of their details in terms
16 of how they want to fly over the pipeline?

17 A. My understanding is is I believe it was 500 feet
18 above the pipeline. Or was it 200? I'd have to look.

19 Q. Okay. In looking at your experience as a pilot, do
20 you have a response to that, or do you have input to
21 that?

22 A. Well, I think it's very dangerous, especially going
23 around the Sioux Falls area. I mean, they're crossing
24 not too far -- that pipeline will be going not too far
25 from the Tea Airport. And there is a lot of uncontrolled

1 traffic flying around at Tea, lots of private planes.
2 And they're not probably going to be looking for this
3 pipeline pilot doing monitoring of the line.

4 MR. BOOMSMA: That's all I have.

5 MS. WIEST: Is there any recross based on
6 redirect?

7 MR. KOENECKE: I just have a couple.

8 RECCROSS-EXAMINATION

9 BY MR. KOENECKE:

10 Q. Are you familiar with the federal regulations
11 requiring aerial surveys of and aerial patrols, I should
12 say, of pipelines?

13 A. Well, is there a certain reg on it -- regulation on
14 that? Do you have a regulation number for me?

15 Q. There are regulations. Are you familiar with them?

16 A. Yeah. I'm familiar with the Federal Aviation
17 Regulations that's for sure.

18 Q. And how about the ones from the Pipeline Hazardous
19 Materials Safety Administration?

20 A. No.

21 Q. Are you familiar with any other technology used in
22 aerial patrols of pipeline routes?

23 A. Any other technology with aerial pipeline?

24 Q. Yes. Are you familiar with how aerial surveys are
25 done of pipelines?

1 A. As far as it's just kind of a -- they're looking to
2 see if a pipeline's leaking; is that correct?

3 Q. No. Are you familiar with it? It sounds like the
4 answer is no. That's a fair answer.

5 A. I have not done any pipeline monitoring from an
6 airplane, if that's what you're asking.

7 MR. KOENECKE: Thank you.

8 MS. WIEST: Any redirect?

9 MR. BOOMSMA: Nothing.

10 MS. WIEST: Thank you.

11 We're trying to figure out our next break. How
12 long do you think your next witness will be?

13 MR. BOOMSMA: 15 to 20 minutes. Including
14 cross.

15 MS. WIEST: Who is your next witness?

16 (Discussion off the record)

17 MS. WIEST: Okay. You may call your next
18 witness.

19 MR. BOOMSMA: I would call Laurie Kunzelman to
20 the stand.

21 (The oath is administered by the court reporter.)

22 DIRECT EXAMINATION

23 BY MR. BOOMSMA:

24 Q. Tell us your name, please.

25 A. Laurie Ann Kunzelman.

1 Q. Where do you live, Laurie?

2 A. 3604 East Woods Edge Street, Sioux Falls,
3 South Dakota.

4 Q. How long have you been in South Dakota?

5 A. I was born and raised here. I moved to Colorado to
6 teach for three years, moved to Pennsylvania to teach for
7 one year, and got drawn back here so I've lived here the
8 rest of my life.

9 Q. You went to college?

10 A. Yes. Augustana.

11 Q. When did you complete that?

12 A. 1971.

13 Q. Laurie, my understanding is that you own land that's
14 affected by this proposed pipeline. Fair statement?

15 A. I don't own the land. I'm an heir to the land. My
16 mother and my two aunts own the land. It's been in my
17 family for 133 years. It was homesteaded by my
18 great-grandfather in 1882. He homesteaded the quarter
19 that the pipeline is supposed to go through in 1882, and
20 then in 1883 he bought the adjacent quarter to the west.

21 Q. Your mom is Deloris Assid?

22 A. Deloris Assid, yes.

23 Q. Assid. Thank you. And you help your mom manage
24 this particular piece of land?

25 A. I do. My mom is 89 years old and does have some

1 difficulty with trying to figure out, you know, things
2 about the crops and things about writing up papers and
3 stuff like that. So I help her with that.

4 And both of my aunts live out in Colorado so they're
5 too far away to do any of the management here.

6 Q. When Joy was testifying if I heard her right, she
7 had mentioned the address for the Delores property;
8 right?

9 A. Correct.

10 Q. Got it. Does your mother reside at that farm site
11 yet?

12 A. No. She lives in Sioux Falls.

13 Q. Put it in perspective. Where exactly is this land,
14 and what's the size of it?

15 A. Well, they own a half of a section. So 360 acres.
16 The pipeline is going through the eastern quarter there.
17 And that would be 160 acres, 180 acres, whatever. Well,
18 actually take out 10 acres that they sold to the lady who
19 lives there, her and her husband. Ronda and Chris
20 Nielson bought the house and the buildings there so it's
21 about 10 acres that they bought.

22 Q. Does the pipe or is the pipe supposed to travel
23 completely from one end, in other words, the northern end
24 all the way through the southern end?

25 Tell me a little bit about that.

1 A. On the east quarter it's going from the northwest
2 quarter all the way to the southeast corner. I mean,
3 northwest corner to the southeast corner, basically
4 bisecting that part of the farm in half.

5 Q. So it's a diagonal crossing across one quarter of
6 land?

7 A. Right.

8 Q. And it doesn't affect the other quarter. Or does
9 it?

10 A. Not really, other than there's tile that drains --
11 there's a couple of tile there, and it could affect
12 those.

13 Q. How many building eligibilities do you have on that
14 land yet?

15 A. There are seven building eligibilities total.

16 Q. Do you hope to build on that land yourself?

17 A. My husband and I were thinking about buying some
18 land on the southeast corner. But that pipeline is
19 supposed to go through there, and if that would happen,
20 we absolutely would not buy land there.

21 Q. Little Beaver Creek, does that go through your land?

22 A. Yes, it does. It's in the other quarter section,
23 but close enough that it could be affected. And little
24 Beaver Creek, you know, runs into the river -- into the
25 Sioux River and into the aquifers so that oil could go

1 much farther than just our property.

2 Q. Your land is about 2 miles to the west of Tea?

3 A. 2 miles west of Tea on Highway 17.

4 Q. Are there any developments cropping up on the east
5 side of your land?

6 A. Yes. There's a housing development just a half a
7 mile to the east, and then there's another one that's
8 proposed across Highway 17 and a half a mile north.

9 Q. Would you look at I 10. That's your prefiled
10 testimony document.

11 A. Yes.

12 Q. Did you sign and date that?

13 A. Yes, I signed it on July 6.

14 Q. Do you adopt that testimony as you sit here today?

15 A. I do.

16 MR. BOOMSMA: Move for admission of I 10.

17 MS. WIEST: Any objection to I 10?

18 If not, it has been admitted.

19 Q. Ask you a really quick question or two about the
20 tiling on your land.

21 A. Okay.

22 Q. First of all, is there tiling?

23 A. Yes. There's tile that goes from the northeast
24 area -- there's a little pond, water area there, and the
25 tile goes from there down to the southeast area and

1 drains down into the ditch.

2 Q. How old is the tile, and what kind of tile is it?

3 A. It's old cement tile. My mother said it was there
4 when she was a little girl, and she's 89 years old. She
5 thinks it was probably there before she was born, and
6 she -- her parents got the farm when she was 1 year old.
7 So they moved on the farm when she was 1 year old, and
8 she's assuming the tile was there before that.

9 Q. Does it work?

10 A. It works great.

11 Q. How many different tile tributaries are there across
12 the two quarters of ground?

13 A. There are two. This is the main one that the
14 pipeline that's proposed will cross. And if that -- if
15 something would happen to that tile, the farmhouse area
16 would be flooded. The tile does a good job of keeping
17 the water out of that area.

18 And then the other tile is farther west. I don't
19 think the pipeline crosses that. And it goes into the
20 other quarter section.

21 Q. Could you look at I 45 in front of you?

22 A. Yes.

23 Q. Did you last week learn of Dakota Access's
24 Exhibit 42 document?

25 A. Yes.

1 Q. And that's the document that talks about
2 distance-wise how close the pipe is going to be to
3 structures.

4 A. Right.

5 Q. When did you take these pictures that comprise I 45?

6 A. Last week.

7 Q. And what are you trying to depict with these
8 pictures?

9 A. On the first picture if you look, it's a little hard
10 to see. It was just my phone camera, and it's not that
11 great. But there's a housing development right there.

12 This is the view from the farm across the road,
13 across Highway 17 to the housing development. You can
14 see all the roofs back there.

15 Q. Is it your understanding that the pipeline will
16 travel or traverse close to where you're standing when
17 you took the picture?

18 A. Yes. It was very close to this area.

19 Q. What's the second picture about?

20 A. The second picture is on this quarter you can see
21 the farmhouse and buildings in the background. The tile
22 comes past there, and where the green area is at the end
23 of that there's like a little ridge and that's where the
24 cement tile comes in here and the water runs into this
25 ditch out of the northeast corner of the farm.

1 Q. The last two pages of this I 45, what are those?

2 A. The second to the last page shows all the wetlands
3 on the farm. And about half of that is that quarter --
4 the half on the right is that quarter, and that shows the
5 wetlands there. And then the other half is the other
6 quarter, and there are several wetlands there also.

7 The last page shows the tile. And the tile on the
8 right is the one that's coming out into that ditch that I
9 took a picture of.

10 Q. So the last two pages relate specifically to your
11 land; correct?

12 A. Correct.

13 Q. And the first two pages relate to structures that
14 are close to the proposed pipeline?

15 A. Right.

16 MR. BOOMSMA: Move for admission of I 45.

17 MS. WIEST: Any objection?

18 If not, it's received.

19 Q. There's a farm site on your property -- actually
20 your mom's property; right?

21 A. Correct.

22 Q. And were you able to determine how close this
23 proposed pipeline is going to come to that farm site?

24 A. I purposely called Rhonda Nielson who lives on that
25 farm, and she said that from their property line it's

1 only --

2 MR. KOENECKE: I object. This is hearsay.

3 Q. I don't want you to tell me about what others told
4 you. Can't do that.

5 MS. WIEST: Yeah. Just I need to sustain that
6 objection.

7 MR. BOOMSMA: Thank you.

8 Q. So without telling me what others told you, what is
9 your understanding or estimation as far as distance-wise
10 from the pipe to the farm site?

11 A. Okay. From the --

12 MR. KOENECKE: The only way she knows this is
13 through what someone told her. There's no way to get
14 away from hearsay on this.

15 MS. WIEST: Did you have personal knowledge on
16 this?

17 THE WITNESS: If you look from the road where
18 the flag is and where it goes it curves around the farm
19 site to the other -- the north end. You can see that it
20 runs very close to their property.

21 And the hog house is the closest building there.
22 And it's quite close.

23 MS. WIEST: So you're speaking from your
24 personal knowledge?

25 THE WITNESS: Yes. You can see that.

1 MS. WIEST: So for this I will overrule that
2 objection.

3 Q. So when you look at where the flags are and also
4 based on your observations, what's your estimation as far
5 as how close then it's going to come to what you call the
6 hog building?

7 A. I would -- I would say 250 to 300 feet maximum to
8 the hog building.

9 Q. Does it come any closer to other buildings on that
10 farm site?

11 A. The silo might be about the same but the barn is a
12 little farther and the house is a little farther.

13 Q. You heard Brian Top testify, and you heard what he
14 had to offer in terms of tiling systems and how they're
15 going to be affected.

16 Do you share the same concern?

17 A. I do. Without that tiling there would definitely be
18 flooding of the building area but also of crops. It's
19 pulling all that water away into that ditch, and that
20 ditch goes into the county ditch. So without that, that
21 water would be there, and it would -- it would flood.

22 And that is very old tile. Like I said, my mother
23 was one year old when they moved on to the farm, and as
24 far as she remembers, it was there before she can
25 remember so --

1 Q. Any additional concerns that you want to bring up
2 that are not already addressed in your I 10 document?

3 A. Yes. Like I said, that housing development's only a
4 half a mile away. And one person had asked my mother if
5 they could buy an acreage on the farm, and my mother said
6 no. And then the appraiser, Marshall Miller, who
7 appraised the farm asked if he could buy the farm, and
8 she said no.

9 She doesn't want to sell it. My aunts and my mother
10 want to leave it to my sister and I and my two cousins.
11 And, you know, we would like to leave that land to our
12 children and our grandchildren, but I feel like if this
13 pipeline goes through, we're losing control and it's just
14 going to ruin that property.

15 MR. BOOMSMA: That's all I have.

16 MS. WIEST: Any cross? Yankton Sioux Tribe?

17 MS. REAL BIRD: No questions for the witness.

18 MS. WIEST: Rosebud.

19 Ms. Craven.

20 CROSS-EXAMINATION

21 BY MS. CRAVEN:

22 Q. Kimberly Craven from Indigenous Environmental
23 Network and Dakota Rural Action.

24 How are you today?

25 A. Good.

1 Q. Good. On page 2, line 34 of your testimony you talk
2 about a windmill that brings water to the house. Will
3 you elaborate on that windmill and how you get water to
4 the house -- I mean, where the water comes from?

5 A. Right now -- well, the water comes from underground.
6 Right now the pump is not working on the windmill, and
7 the people on the farm have hooked up to rural water now.

8 But when the pump is working then they can use that
9 water for gardens and things like that.

10 Q. And is that from a well or an --

11 A. Yes.

12 Q. -- underground aquifer?

13 A. It's from a well.

14 Q. A well. Okay.

15 And I've asked everyone else this. Have you read
16 the Economic Impact Statement that Dakota Access has
17 submitted?

18 A. I did, but I just glanced through it so I don't
19 really remember what it said.

20 MS. CRAVEN: Okay. Thank you.

21 MS. WIEST: Ms. Northrup.

22 MS. NORTHRUP: I have no questions.

23 MS. WIEST: Commission Staff.

24 MS. EDWARDS: I have no questions. Thank you.

25 MS. WIEST: Dakota Access.

CROSS-EXAMINATION

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BY MR. KOENECKE:

Q. Just a couple, please.

I wasn't clear. Did you say your mother and her sisters want to leave the farm as it is?

A. Yes.

Q. But that you want to build a house there?

A. Well, yes. I mean, they were willing to let us buy or purchase one small acreage area. But they want -- they have a tenant farmer who farms, and they want to have him continue farming.

Q. And is that where the appraiser came into the story?

A. We had an appraiser appraise the value of the land. And he appraised it and said I would like to buy the farm.

Q. Did you have it appraised for sale?

A. We had it appraised out of curiosity basically and, you know, if we would buy that corner of the land. We had it appraised just out of curiosity to see how much it was -- how -- you know, what the value of it was.

Q. You said we had it appraised. Who is "we"?

A. My mother, my aunts, and I.

Q. Okay. Last question. If you know, how deep is the well?

A. I don't know that.

1 Q. Okay.

2 MR. KOENECKE: Thank you.

3 MS. WIEST: Commissioners.

4 COMMISSIONER HANSON: Good afternoon. What was
5 the name of the appraiser?

6 THE WITNESS: Marshall Miller.

7 COMMISSIONER HANSON: Did he make a written
8 offer or just verbally say --

9 THE WITNESS: Verbally he said he would be
10 interested in buying it, would she be interested in
11 selling it, and she said no.

12 COMMISSIONER HANSON: All right. Thank you.

13 MS. WIEST: Any further cross based on
14 Commissioner questions?

15 Any redirect?

16 MR. BOOMSMA: Nothing from me.

17 MS. WIEST: Okay. Thank you.

18 We will take a break. It is about 4:06. We'll
19 take 15 minutes.

20 (A short recess is taken)

21 MR. RAPPOLD: Ms. Wiest, if I may, since we're
22 back on the record, take a moment to address something
23 I'll call a housekeeping issue.

24 This morning we were served from Dakota Access a
25 brief in support of their opposition to our motion for an

1 Environmental Impact Statement.

2 It's our understanding that the Commission
3 denied that motion and unless the Commission is
4 entertaining a motion to reconsider our motion, we would
5 ask the Commission to strike that filing as being
6 improper.

7 It's our understanding that the motion was
8 denied. At this point there's no filing on the table to
9 respond to and the filing is inappropriate and we'd ask
10 you to strike it at this time.

11 MS. REAL BIRD: The Yankton Sioux Tribe joins in
12 that motion for the reasons stated.

13 MS. CRAVEN: So does DRA and IEN.

14 MR. BOOMSMA: And so do I.

15 MS. WIEST: Okay. Did you have a response,
16 Dakota Access?

17 MR. KOENECKE: I do. The topic keeps coming up.
18 It's come up every day of the hearing. I don't believe
19 as I sit here that the topic is dead.

20 I have a number of things I'm trying to manage
21 this week as far as testimony, and I got one that I
22 foresaw coming out of the way yesterday. If it's
23 stricken and the motion comes back up, I'm just going to
24 file it again.

25 But I object to striking that brief. It's

1 information that ought to be shared, disseminated, and
2 talked about, in my opinion.

3 MS. WIEST: You know, at this time I am going to
4 take this under advisement because I haven't even read
5 that entire brief yet. I've only skimmed through it. So
6 we'll rule on it at a different time.

7 Anything further?

8 MR. RAPPOLD: No, thank you.

9 MR. BOOMSMA: I'll call Nancy Stofferahn to the
10 stand.

11 (The oath is administered by the court reporter.)

12 DIRECT EXAMINATION

13 BY MR. BOOMSMA:

14 Q. Your name, for the record.

15 A. Nancy Stofferahn.

16 Q. You're married to Tom?

17 A. Uh-huh.

18 Q. And your brother is Rod?

19 A. Ron.

20 Q. At least I didn't get the brother/sister part mixed
21 up.

22 All right, Nancy. Tell me, where do you live?

23 A. I live at 45938 South Dakota Highway 38, Humboldt,
24 South Dakota. And it's located right between about
25 Hartford and Humboldt on 38.

1 Q. How long have you lived there?

2 A. Since 1980. We built our house then.

3 Q. Tom testified already as far as some of the
4 characteristics or attributes of your land. Do you agree
5 with that?

6 A. Yes. It was the first land he ever purchased. It
7 does have a housing eligibility. I don't know if Tom
8 testified to that. Our son did want to use that, but
9 that's right smack -- where he wants to build is right
10 where they're coming through to the north also.

11 So anything else with our land that Tom didn't
12 mention? I can't think of anything right now.

13 Q. Good.

14 I 20 is in front of you. Do you see that? It's on
15 the counter. It's an exhibit number. It's a document
16 with a sticker on it.

17 A. Oh.

18 Q. There you go.

19 A. Up above. Okay.

20 Q. Do you see how that relates to you?

21 A. Yes.

22 Q. And it's your prefiled testimony document. Am I
23 right?

24 A. Yes.

25 Q. You signed it?

1 A. Yes.

2 Q. Dated it?

3 A. June 29, 2015.

4 Q. Do you adopt the testimony from that I 20 document?

5 A. There is one addition. I believe it's on page 4.
6 Next to the last paragraph I answered that I had not been
7 sued, no. But my husband has so I have incurred legal
8 fees in defending his lawsuit.

9 Q. Was this the Minnehaha County lawsuit?

10 A. Yes.

11 Q. That's -- that was about the survey rights?

12 A. Yes. That was in March -- or it began in March.

13 Q. And back to my question, do you adopt then --

14 A. Yes.

15 Q. -- the rest of your testimony that's in the I 20
16 document?

17 A. Yes.

18 MR. BOOMSMA: Move for admission of I 20.

19 MS. WIEST: Any objection to the admission of
20 I 20? If not, it has been admitted.

21 Q. We received a lot of information from Tom in terms
22 of your business, the research seed plots, et cetera.

23 You were here for that; correct?

24 A. Yes.

25 Q. So we don't need to rehash that. But you're part of

1 the business; correct?

2 A. Yes.

3 Q. What part of the business are you?

4 A. I do all the accounting, inventory management, all
5 the reporting, the compliance issues. There's quite a
6 bit in Nortec Seeds at a seed business. So I'm well --
7 very familiar with what is going on there.

8 Q. Is Nortec an independent seed company?

9 A. Yes, it is. And that means it can sell different
10 traits such as Monsanto, Syngenta, Dow, AgriSciences,
11 Bayer. There's like eight different genetic companies
12 also.

13 So we are independent. Say like DeKalb is a
14 Monsanto. We can sell different types of traits, and
15 that's what that means. There are, I believe, three
16 remaining independent seed companies in South Dakota, and
17 we are one of them.

18 Tom had talked about the research, why it's so
19 important. And because Mustang Seeds, Legend Seeds are
20 the other two independent seed companies, they have these
21 research plots. If we don't have them, we're not
22 competing with our competitors so --

23 Q. So you're part of the business. Tom's part of the
24 business. Ron is part of it.

25 A. Ron and Tom are owners.

1 Q. Right. Who else from your family would be involved
2 in this business?

3 A. Okay. We have my son Justin, and he's an employee.
4 He does a lot of the trucking, sales. My nephew
5 Thad Stofferahn. That is Ron's son. He is an employee.

6 And just this May my youngest son left his teaching
7 profession here in South Dakota and he came on board and
8 he is an employee and he has a master's in technology so
9 we're looking for him to really help us out too. We've
10 made a lot of changes in the last few months with him
11 there.

12 Q. Sounds like your hope is that this is a long-term
13 type --

14 A. Oh, yeah. Of course. We've already talked to
15 Monsanto about that. We talked to them, in fact, a few
16 months ago because we have a license with them. And so
17 to -- for our sons to inherit it by death or by purchase,
18 however we may go, they have to have a license with it.
19 And so we have to see how that goes.

20 We've already started this. They're in it. We want
21 it to grow. And we hope in 20 years they can do a lot
22 more than we're doing so.

23 Q. I don't want to belabor this point, but I do want to
24 ask you some questions about expansion plans for the
25 business.

1 A. Okay.

2 Q. What do you know about that?

3 A. Okay. I know we really need an office, I mean,
4 extended office. We have plans for that. We have an
5 estimate in my office for a Morton shed and that will go
6 running north to south behind the -- our headquarters
7 right now.

8 And then we have a plan for a seed treatment
9 facility. There's quite a few treatments. And so that
10 would be soybeans, not corn, by the way. There's
11 Acceleron. There's Trilex. I can go on.

12 And then we also have plans for trucks, semis. We
13 need something, you know, like that.

14 Then just straight on back to the gravel road is
15 where the test plots, research plots will be. We
16 probably have a pathway right alongside for the
17 customers, also seed reps from these different genetic
18 companies that I didn't mention but -- so I hope I didn't
19 leave anything out. It would be about in line the west
20 side of the house over and then straight down to the
21 gravel road.

22 I mean, these were started back in 2013. I wished
23 we could have started doing it, but why would you -- the
24 pipeline came -- we found out, you know, last fall. So
25 our capital -- our everything just stopped. I mean, we

1 don't want to invest capital into something that's not
2 going to work, our sons can't make it grow, we can't use
3 it. So why put \$700,000 in capital for expansion.

4 So let's just say we're on hold, you know.

5 Q. How critical is it that you expand to the north in
6 that 50-acre parcel that then runs up against that gravel
7 road?

8 A. That's our only place. I mean, we have -- I mean,
9 east -- I mean, excuse me, west of Nortec is a slough and
10 my home, you know. There's the slough and then the home.
11 And then about, I don't know, 30 or 40 feet the property
12 line ends. It's another landowner to the east.

13 To the south is a parking lot, Highway 38. Our only
14 way is north. We're boxed. You know, we're just boxed
15 in. So --

16 Q. How critical is it to have these research plots
17 close to the farm site where the business is at?

18 A. Well, like I was just stating, customers -- I mean,
19 you're not going to drag a customer like let's go
20 2 miles, 5 miles over here and then let's come back here
21 or try to find another spot. Continuity, in my opinion.

22 Our research -- or the reps, excuse me, come to
23 our -- that's our headquarters, you know. That's where
24 our sign is. That's where our sales are, our wearables,
25 everything. It's there. So you're not going to want to

1 start diverting people all over the place. I mean,
2 that's our unit, just as I said Mustang and Legend, you
3 know.

4 Q. How often do these reps or customers or whomever
5 connected with your seed business come to your site to
6 then look at the research plots?

7 A. Well, of course, that's seasonal. You know, we have
8 reps stopping all the time. They're stopping now to look
9 at plots, you know. Well, now -- really earlier you
10 would have customers there to look at plots.

11 You would have like a seed day. Okay. You would
12 invite -- you send out a card or a letter. All your
13 customers would come there, and then they could view it.
14 But you could always view it by individual, you know, and
15 then sometimes these genetic companies MDS, Thurston
16 Genetics, different genetic companies, they want to look
17 at what you're growing too because they're getting
18 information.

19 I mean, this is information for the farmer. This is
20 for the farmer. You know, I mean, again all these traits
21 and technologies are coming out so fast. I would argue
22 that the seed industry is one of the fastest growing
23 industries in the United States right now. And it's hard
24 to keep up with because there are so many traits,
25 technologies, treatments. I'll try to talk fast. And

1 anyway so -- now I've lost my train of thought.

2 But in the next five years there's going to be so
3 much more. And my husband knows a little bit more about
4 that than I do. But this year we have two new soybean
5 traits coming out. We're waiting for the EPA approval
6 and China's approval. But, you know, it's moving fast.
7 And it's for the farmer.

8 And we have to get the data, the information. We
9 have to get that to the farmer, and then he has to study
10 it. And all soil types as we're learning today are
11 different. So different hybrids grow differently, you
12 know, on different land.

13 Q. So, Nancy, if the end product is a seed that didn't
14 work well, i.e., doesn't grow well, what's that going to
15 do to you?

16 A. I'm not sure I understood that. What do you mean?

17 Q. Let me go at it a different way.

18 So you have these research seed test plots. And so
19 if those don't produce the types of seeds that you're
20 hoping for, in other words for the seed business, how is
21 that going to impact or affect your business?

22 A. Do you mean like if the pipeline went through there,
23 these research plots? They wouldn't even be valuable. I
24 mean, you couldn't even use them.

25 Q. That's what I'm getting at.

1 A. Nobody would -- any rep wouldn't really use them.
2 You know, I don't know why they would. Because you
3 would -- okay.

4 It would be like a test that wasn't a fair test, I
5 guess is how I would look at it. Because, well, this
6 number beat this one. Well, this one was on the pipeline
7 ground. I mean, it's not a fair test.

8 And what you're looking for is information, data,
9 testing. That's why it's called that research and
10 testing, you know.

11 Q. Anything else to add about that topic? Or have you
12 covered it?

13 A. Well, just one more thing.

14 The pipeline, I believe it's close to about 300
15 feet, maybe 400 feet from my home. It's hard to tell on
16 the map, my house. So that's where I live. So then I go
17 to the office. It's about 300 feet north of there.

18 But then on the east it's coming back around on my
19 east side about 500 feet. I mean, I'm -- it's coming so
20 it's all around me. I mean, it's on the north side of
21 the shed and the east side of the shed. Not all on our
22 land but --

23 Q. Emotionally speaking, what have these lawsuits done
24 to you?

25 A. This is personal. It's personal. I'm sorry. You

1 know, it's our land. It's where we built our first
2 house. That land is my husband's baby. He knows every
3 inch of that land.

4 You know, and so you have your house, your
5 children's future, your grandchildren's future. Your
6 business is getting disrupted. I feel like I've just
7 been hit on all sides. I really do.

8 And then to fight to get here. Just to fight to
9 tell my story. And it's -- it's -- you know, and then I
10 got the call last week on the water. You know, it's
11 almost funny. They call me because they want to store
12 the pipe right next to the Nortec building, you know,
13 Minnehaha Community Water, and he had to have a place to
14 store it.

15 And then he said, well, he didn't know how it's
16 going in. They had a expert from California and that the
17 expert was sick and they had 18 crosses in Minnehaha
18 County and they had to get it all done by December 1.
19 And this guy was just all going upset. I'm like this is
20 our water we drink. We're in a hurry by December 1 and
21 nobody -- so, you know.

22 So it's home, land, business, water.

23 Q. Nancy, put this in context. I'm not sure I follow
24 you completely about the water pipes, but tell me a
25 little bit more about what's going on there.

1 A. Okay. I got a call I believe a week ago Monday from
2 the gentleman that puts pipes in -- I can't remember his
3 name -- from Minnehaha Community Water.

4 He said they were going to be crossing just east of
5 our house and that he had these pipes and he wanted to
6 put them -- he was wondering if he could store them next
7 to Nortec.

8 Q. What is your understanding as to the reason behind
9 why these water pipes have to be removed or new one's
10 installed?

11 A. He said something about it had to be really deep and
12 it was a special pipe and he had to have an expert and
13 that expert was from California and that he was in the
14 hotel sick but they had 18 crossings in Minnehaha County
15 and they had to have it done by December 1.

16 So I asked him, well, what if it doesn't get done by
17 December 1? What happens? Well, he says, I don't know.
18 You'll have to ask the board about that. Because I don't
19 know.

20 So why are we in such a hurry? This is the water I
21 drink. I mean, I was dealing with all of these other
22 things, and then last week I'm like, okay, just add
23 another one.

24 Q. But the water pipe issue ties into the Dakota Access
25 issue. Am I right?

1 A. Oh, yeah. They're doing this -- Dakota Access he
2 said paid them, paid Minnehaha Water, to get this done by
3 December 1. And I don't know who paid for the pipe. I
4 mean, I'm not a -- I'm just going by what he was telling
5 me, and I don't know who he was. He was just the one who
6 did it. But I'm like why do we have to be done by
7 December 1.

8 Q. Got it. I was just trying to establish the nexus,
9 and I think you answered it.

10 A. Okay.

11 Q. That's all I have for questions unless you feel you
12 have anything else to add above and beyond your prefiled
13 testimony document.

14 A. Maybe one more thing. You know, on Highway 38 there
15 we were the third home that built -- we built the third
16 home between Humboldt and Hartford in 1980.

17 You drive that stretch now and, I don't know, 60, 70
18 homes between there, you know. I mean, our neighbors
19 right across the road are within a half a mile. There's
20 little developments. It has -- I guess I'm old. I know
21 the changes.

22 And I think what will it be like when my sons, you
23 know, are going to be there. I think we have to look at
24 the future. I think we have to look long term. I don't
25 think we can be shortsighted and look short term, and

1 that is my belief.

2 Because you can make a short-term dollar in this
3 hand, but if it gives you a \$5 long-term loss, you know,
4 you loose that -- you know, it's like your land. That's
5 a long-term investment. And if you lose 20 years of
6 that, I mean, you're writing off part of your biggest
7 asset on the books.

8 And I think we just have to look a little bit longer
9 term. We have to look at the future, the future
10 generations, and be really careful with what we're doing.
11 Consider it thoroughly. Consider Bakken oil thoroughly.
12 And -- okay. That's it.

13 Q. Are you too wondering why this pipeline is going to
14 go through a growth area?

15 A. Oh, yeah. I don't even -- I can't understand it.
16 Why would you go next to the largest city in the State of
17 South Dakota? Why would you go right in the most growing
18 area of South Dakota? I don't understand.

19 And this is Bakken oil. I'm sure I can't discuss
20 that, but I think it should be considered. It is not a
21 natural gas pipeline. It's a Bakken oil pipeline. And
22 that's different.

23 And I think we need to look at that because it's
24 just -- I don't think we can treat it as conventional
25 oil. I think we should take the time to look at it at

1 what it is. And I don't understand the water. I don't
2 understand being a half a mile from a middle school. I
3 mean, I think we can take the time and do this right. I
4 think we have the time to do this right.

5 What I really don't understand is the hurry. You
6 know, I was sued -- or my husband was sued before Dakota
7 Access had a Permit from the State of South Dakota. I
8 received a letter three weeks ago, a condemnation letter
9 of our land. Dakota Access did not have a Permit from
10 the PUC.

11 Now I had a right to be here. I shouldn't -- I just
12 think everything went fast and too premature.

13 Q. You were made a final offer, I take it?

14 A. Yeah. In that -- an easement was in there, and that
15 easement had a lot more questions because I don't
16 understand the easement. The easement gives me a legal
17 description for the total property, the 118 acres, and in
18 there it says we can change the route or routes any time.
19 So what does that mean?

20 If I'm forced -- that letter is forcing me to sign
21 that easement. Now in there it says they can change the
22 route. So is it going to be there, or isn't it? How
23 long do they have to change it? I guess I still have
24 questions.

25 Q. You're told another lawsuit is coming?

1 A. Yes.

2 Q. At least that's what the letter said; right?

3 A. Unless I sign that. I'm forced to sign it. And I
4 don't agree with that easement. I don't think that's in
5 my best interest.

6 In fact, I don't see any interest in there. They
7 can abandon that pipeline any time. Now is that for my
8 kids to pay for 30 years down the road? You know, I
9 don't know.

10 They don't sign that easement. It says Easement
11 Agreement. Agreement is used throughout the whole
12 document, but they don't sign it. I'm the only one who
13 signs -- or my husband is the only one who signs it. I
14 need some -- I still need some questions answered, I
15 guess, on that easement.

16 MR. BOOMSMA: That's all I have.

17 MS. WIEST: Yankton Sioux Tribe, do you have any
18 questions?

19 MS. REAL BIRD: No questions.

20 MS. WIEST: Rosebud?

21 CROSS-EXAMINATION

22 BY MR. RAPPOLD:

23 Q. Hi. I'm Matt Rappold. I represent the Rosebud
24 Sioux Tribe. Thanks, Nancy.

25 A. Yes.

1 Q. Can you think of any reason why Dakota Access would
2 pay Minnehaha water system to do anything to their water
3 lines before December 1?

4 A. I think it was for the pipe. I mean, they have to
5 purchase new special pipe, the way I understand it.

6 Q. Uh-huh.

7 A. And maybe Dakota Access could answer that better
8 than me. It sounded like from this gentleman -- and I'll
9 admit I totally didn't understand it. I was more upset
10 with the December 1, 18 crossings.

11 But it sounded like -- maybe it was a double case
12 pipe. I don't know. It has to be a special pipe for
13 water, and it has to be so deep under the pipeline is
14 what I think I understood.

15 Q. And that's your understanding of the conversation --

16 A. Well, I'm not -- you know, I cannot say exactly on
17 that portion. What rang in my mind was 18 crossings,
18 December 1. Why the hurry? I don't know that much about
19 the why they were doing it.

20 MR. RAPPOLD: Thank you.

21 THE WITNESS: Uh-huh.

22 MS. WIEST: Ms. Craven, did you have any
23 questions?

24 MS. CRAVEN: Kimberly Craven with Dakota Rural
25 Action, Indigenous Environmental Network. I don't have

1 any questions.

2 I just want to say I really appreciate how you
3 articulated decision making and how we should consider
4 the seven generations and --

5 MR. KOENECKE: I object. Counsel's testifying.
6 There's a time for arguing, and it's not right now.

7 MS. WIEST: Objection sustained.

8 Ms. Northrup.

9 CROSS-EXAMINATION

10 BY MS. NORTHRUP:

11 Q. Thank you. Good afternoon. My name is Margo
12 Northrup. I'm an attorney with the South Dakota
13 Association of Rural Water Systems.

14 A. Okay.

15 Q. And I just wanted to follow up.

16 I believe you testified that you're concerned about
17 the safety of your drinking water; is that correct?

18 A. Well, I don't know.

19 Q. But that's an issue?

20 A. Yeah. I mean, of course you are. If they have to
21 put it so deep under a pipeline -- now what does Bakken
22 oil have? It has benzene. You know, it has a lot of
23 gases that I -- you know, that I don't know about. It --
24 from what I've read, which -- it's different. What is --

25 Okay. Rural Water, are you testing for those

1 chemicals that are in Bakken oil? I mean, I don't know.
2 Are you testing to see? I don't know how safe it is, you
3 know. That's what I'm asking.

4 Q. But would you agree with me that it's imperative
5 that we protect the integrity of those water lines that
6 serve water to the citizens of South Dakota?

7 A. Protect them? You mean so by putting new pipe in,
8 is that what you mean, that that's protecting them?

9 Q. Just generally. Don't you think this is an
10 important issue for the PUC, that we protect those water
11 lines the best of our ability?

12 A. Right. I guess so. But there is another reason why
13 you're being so -- in my opinion, you're in the east.
14 You're in these Minnehaha rural water -- you're in these
15 water districts right here, you know. You're not out
16 west, and you're right into them. 18 crossings seems
17 like a lot to me but --

18 Q. And is it -- was it your understanding that the
19 modifications that were being contemplated were for
20 safety issues?

21 A. Yes. I'm sure they were.

22 MS. NORTHRUP: I have no further questions.

23 MS. WIEST: Commission Staff?

24 MS. EDWARDS: No questions. Thank you.

25 MS. WIEST: Dakota Access.

1 MR. KOENECKE: I have just a couple. Thank you.

2 CROSS-EXAMINATION

3 BY MR. KOENECKE:

4 Q. I noticed in your testimony you said that the
5 Stofferahn Farms partnership farms approximately 2,800
6 acres; is that correct?

7 A. Yes.

8 Q. And I didn't then understand why the only place --
9 let me strike that.

10 Do you grow the seed that you sell on those 2,800
11 acres?

12 A. Yes.

13 Q. And --

14 A. Well, just soybeans now. We only grow soybeans. We
15 have growers that supply us with the corn seed. We do
16 not grow our own corn.

17 Q. Okay. Thanks. How about alfalfa?

18 A. No.

19 Q. I'm trying to understand the uses of the 118 acres
20 that we're talking about and how they differ from the
21 2,800 acres that you reference in your testimony.

22 A. Our headquarters is there. That's our business.

23 Q. And --

24 A. Our business isn't someplace else, and we don't want
25 to move it someplace else. 38 is a pretty good location.

1 Highway 38. Excuse me.

2 Q. Sure. Do you also grow test plots on the 2,800
3 acres?

4 A. Well, yes, we do.

5 Q. Okay.

6 A. Now see --

7 Q. Thank you.

8 A. No. Let me -- well -- you have a crop rotation.
9 You have soybeans. You can't put soybeans on top of
10 soybeans or corn on top of corn. So, yes, you do have to
11 do a variety.

12 But this is different. This is a research plot. So
13 I don't know if you're thinking of a little test plot
14 somewhere. But this is a research plot, and it's a lot
15 different than just a plain test plot.

16 Q. And how is it different?

17 A. Well, my husband explained that. And I think he
18 could explain it better than I, the different hybrids and
19 how many different -- I wished he could do it because I
20 can't do it. But if you go back to his testimony, he
21 told you how they had to be planted in these sections and
22 stuff.

23 And, you know, because a research plot -- there's
24 research plots, and there are test plots both. And they
25 can be together. But they have to be spaced so much

1 and -- I would ask you to refer back to my husband's
2 testimony, and he talked to you about that.

3 MR. KOENECKE: Okay. Thank you.

4 MS. WIEST: Any Commissioner questions?

5 COMMISSIONER HANSON: Good afternoon.

6 THE WITNESS: Hi.

7 COMMISSIONER HANSON: You stated and in your
8 written testimony that you built your house in 1980 and
9 for 40 years you've been part of the business. So you've
10 been around the area for quite a period of time.

11 THE WITNESS: I wasn't originally from here. I
12 met my husband at SDSU. So since that time I have been.

13 COMMISSIONER HANSON: I will not make any
14 comments about SDSU.

15 The Applicant, the company, Dakota Access, one
16 of their witnesses testified that the shortest route
17 impacts the fewest landowners and that they designed the
18 pipeline route based upon the shortest route because of
19 that.

20 Would you agree that in this particular instance
21 in this area that that's true?

22 THE WITNESS: I want to make sure I understand
23 your question. Are you saying there are less landowners
24 here in the east side? Or what did he say again?

25 COMMISSIONER HANSON: No. The witness for the

1 Applicant --

2 THE WITNESS: Okay.

3 COMMISSIONER HANSON: -- stated -- there are two
4 of them. One of them stated that the shortest route was
5 the way in which this pipeline route was designed. The
6 other one stated that the shortest route impacts the
7 fewest landowners.

8 Would you agree or disagree?

9 THE WITNESS: Disagree, I guess. There would be
10 more landowners where it is right now. Maybe, if I
11 understand your question and maybe I can explain a little
12 bit.

13 May 31 I was at a Hartford Chamber of Commerce
14 meeting, and I listened to Chuck Frey. It's in my
15 testimony, I believe. But he was asked that very
16 question. I have a memo here that I prepared right
17 afterwards. I'm going to refer to that a little bit.

18 Well, in a -- well, he stated that the reason
19 why -- he was asked why they were east and not farther
20 west, such as Salem or McCook County or Turner County.
21 This was asked by Lenae Redini [phonetic] as a chamber
22 member, and he said that there would be more landowners
23 and easements to sign further west.

24 I disagree with that. And the reason I disagree
25 with that because of our customers. I just think there's

1 more acres out there. I can't prove it. But I think
2 there's more landowners east. I think there's smaller
3 parcels east. I think there's larger parcels west. So I
4 just don't think it's true that there's fewer landowners
5 east.

6 COMMISSIONER HANSON: And you're making this
7 statement based upon your experience as living in this
8 area for an extended period of time and your experience
9 with your customers.

10 THE WITNESS: Correct.

11 COMMISSIONER HANSON: All right. Thank you.

12 THE WITNESS: You're welcome.

13 MS. WIEST: Any further cross based on
14 Commissioner questions?

15 If not, any redirect?

16 MR. BOOMSMA: Nothing.

17 MS. WIEST: Thank you.

18 You may call your next witness.

19 MR. BOOMSMA: I'll call Peggy Hoogestraat to the
20 stand.

21 (The oath is administered by the court reporter.)

22 DIRECT EXAMINATION

23 BY MR. BOOMSMA:

24 Q. What is your name, please.

25 A. Peggy Ann Hoogestraat.

1 Q. Where do you live, Peggy?

2 A. At 27575 462nd Avenue of Chancellor, South Dakota.

3 Q. Much of the same questions I've posed of other
4 witnesses.

5 How long have you been in South Dakota?

6 A. All my life.

7 Q. Tell me a little bit about your land.

8 A. That is where I grew up as a child, and there were
9 generations -- there have been and still are generations
10 of my family in that area.

11 And that I did not mention in my testimony, but I
12 acquired this property after the premature death of my
13 parents.

14 Q. Okay. There is information in your prefiled about
15 your land; correct?

16 A. Yes.

17 Q. Peggy, could you look at two documents. One's
18 marked I 8, and the other one is I 9.

19 Do you see those?

20 A. Yes, I do.

21 Q. One's direct prefiled testimony. One is rebuttal.
22 Am I right?

23 A. Correct.

24 Q. Are they both signed by you?

25 A. Yes.

1 Q. Do you adopt the testimony from those two documents?

2 A. I do, but there's one thing that I would like to
3 correct. But as it was written at that time I do, yes.

4 Q. Tell me about that.

5 A. On page 13, line 294, when I was discussing how
6 Dakota Access had purposely kept landowners uninformed,
7 on line 294 I had put the word "complete," more complete
8 information about the process was not available until
9 after the Application for a Permit. The word complete
10 should not have been put in there.

11 Q. All right.

12 A. We have never received complete information.

13 Q. So that I followed you correctly, are you talking
14 about the June 24, 2015, document?

15 A. Correct.

16 Q. That's the one that's I 9; right?

17 A. Correct.

18 MR. BOOMSMA: Move for admission of I 9 and I 8.

19 MS. WIEST: Is there any objection to I 8 and
20 I 9, both of which have exhibits attached?

21 If not, they're admitted.

22 Q. A little bit of background info, Peggy.

23 First, as far as your parcel, the size of it is
24 what?

25 A. A total of 280 acres.

1 Q. And location in terms of, well, geographical towns.
2 Where is it at?

3 A. It's between Humboldt and Hartford, and if it's
4 possible, I'd like to bring the map up. Or is it too
5 soon to do that?

6 Q. I'll get to that in like two minutes. Okay?

7 A. Yes. It is along Highway 38. It is actually right
8 across the road from the Stofferahns and Kramers also in
9 that area.

10 Q. This 200 some acres, what do you use it for?

11 A. It is used for pastureland, and it is used for
12 cropland.

13 Q. Do you live on the land?

14 A. I do not live on the land there. There is no home
15 structure on that property.

16 Q. Does it have all the building eligibilities yet?

17 A. It does have seven eligibilities on the property.

18 Q. Is the property right along Highway 38?

19 A. Yes, it is.

20 MR. BOOMSMA: Could I have help with the
21 monitor, please.

22 Q. While she's getting that set up I'll ask a few more
23 questions.

24 A. Yes.

25 Q. Tiling. What information do you have in terms of

1 tiling?

2 A. I did provide pictures as exhibits for the tiling.
3 When we did additional tiling to what had already been
4 there -- my parents had added tiling as they were alive,
5 and there had already been some of the clay tile there
6 before they even purchased the land.

7 But I did additional tiling. And one thing that was
8 accomplished in 2013 was we began the tiling process. We
9 could not complete it because of wet and rainy
10 conditions. So we had to complete it in 2014. And that
11 particular tiling area will be crossed by the pipeline.

12 And, there again, that's a concern of mine as they
13 install the pipeline that they will not wait until the
14 proper soil conditions before they cross any property.

15 Q. How much of the old tile do you have, Peggy?

16 A. It is located all the way from Highway 38 on down to
17 the part of the farm that my sister received when my
18 parents passed away. So it goes more than a mile south.

19 Q. Will the pipeline cross old clay tile on your
20 property?

21 A. Yes.

22 Q. Will it --

23 A. It will.

24 Q. Will it cross the newer tile too?

25 A. Yes.

1 Q. Okay. Let's put it in perspective. I had the help
2 of Staff in bringing up this Exhibit 4. Exhibit 4 is
3 attached to your prefiled document.

4 Do you see that?

5 A. Yes, I do.

6 Q. Okay. So tell us what this diagram on the overhead
7 is all about.

8 A. If you see the yellow line going through, that is
9 Highway 38. That is actually the north edge of the
10 property. And that is the area also where I had been
11 approached many times to sell that property because it
12 was desirable along Highway 38.

13 As you look where the pipeline will cross, because
14 of the way it's sitting in the photo for you, if you look
15 just above it, it's green with two stripes going through
16 there. That has since changed because of tiling and also
17 the removal of a railroad bed. That is no longer the
18 accurate picture.

19 Q. How old is that picture, Peggy?

20 A. I do not know the date on that, but just in the year
21 2014 we completed the railroad bed and the tiling so that
22 that would be changing.

23 Q. Back to your prefiled document, Peggy. I think I 9
24 is the one we're looking at. There are many exhibits
25 attached to that. It looks like Exhibits 1 through 19,

1 if I got it right.

2 What's the significance of those exhibits without
3 repeating what's already in your testimony?

4 A. With keeping that map up, I can put those in there.
5 As you see, the lighter colored green is pasture that
6 will be crossed. This is a native grass pasture. It has
7 never been tilled.

8 We have not been able to drive equipment across it
9 to spray. We actually -- my brother-in-law hires a
10 helicopter to fly over to take care of the weed control.

11 Also in this picture you can see Beaver Lake at the
12 bottom. And you can see that that continues towards my
13 property. When Beaver Lake overflows it actually flows
14 towards my property. And not only does that water go
15 through the pasture, but tile from Stofferahns to the
16 north and Kramers to the north comes through this
17 pasture, as well as to the south of my property there are
18 tiles that are connected and they are also going through
19 those waterways that you see there.

20 And then as well as the property on the west has
21 water flow that comes through, and it all continues to
22 the east on the other side of the property, and that is a
23 tributary of Skunk Creek.

24 Q. The tiling on your property, especially the old
25 tiling, does it work?

1 A. There were places that we've had to put new tiling
2 in, but we did not connect into the old tiling. And I do
3 not have an accurate map, but what I have in my
4 possession at home is a handwritten paper where my mom
5 tried to explain where all the tile was.

6 Q. Aside from that note, do you have any other record
7 of where exactly the old clay tile is at?

8 A. I do not.

9 Q. Does that old clay tile work?

10 A. Yes, it does.

11 Q. Were you involved at all, Peggy, as far as doing
12 some of the repairs or replacement of the clay tile, or
13 was that before your time?

14 A. That was before my time.

15 Q. Okay.

16 A. And to clarify it, there have been some places where
17 we have found clay tile in just these last two years. We
18 did not attempt to do any changes with that but we did
19 find some of it and we left that alone and we continued
20 to install the new tile.

21 Q. Minimum maintenance road. Is there --

22 A. Yes.

23 Q. -- something like that near your property? And, if
24 so, what are your concerns?

25 A. On the map as you're looking at it on the upper

1 right-hand side, the 120 acres that is on the northern
2 and eastern part is a minimum maintenance road.

3 The townships of Humboldt and Hartford meet at that
4 point. And neither township wants to be responsible for
5 the maintenance, but they have come to an agreement they
6 will very minimally maintain that because there is
7 traffic.

8 But once you get -- it's really hard for me to
9 describe it, but once you get past the mile marker -- if
10 you would look up in the upper right-hand corner, there
11 are houses there in the gray area. And as you come down
12 at an angle and you come to the point of the black line,
13 okay, at that point going south in the picture that is a
14 dirt road that the townships refuse to do any work on and
15 they have given the landowners the permission to make it
16 possible so we can get our equipment into the fields.

17 And so as landowners we had to do the ditch work,
18 the building up, the putting of the gravel road, and so
19 it is passable for our farm machinery to get to the
20 fields.

21 Now as that line goes across there not only will I
22 not be able to farm right through the right of way, of
23 course, but I won't be able to farm those green sections
24 you see in the lower part of my property because there is
25 no way to get there.

1 I can't come from Highway 38 because of the pasture,
2 the hills, and so on. And the road -- the dirt road
3 going to the south is not passable because of wet
4 conditions.

5 Q. You answered my next question.

6 In your mind how is the renter or farmer going to be
7 able to access that area of your land that sits to the
8 northwest of that proposed pipeline? Actually south --
9 is it southwest?

10 A. It would be southwest.

11 Q. Southwest. Sorry.

12 A. There would be no access available. Because of the
13 hills.

14 Q. Quick question about grasses on your land, Peggy.

15 A. Yes.

16 Q. Are there any native grasses there?

17 A. There are. I had John Parker from the Minnehaha
18 Conservation District out at the location. And I had
19 previously met with someone in their office to get an
20 idea of what grasses were out there, and he explained to
21 me that not only are there native grasses out there but
22 there are native flowers out there.

23 And the best way to see that is by grazing it, a
24 flash graze in the spring, and then not to allow any
25 cattle in there after that, and you would be able to see

1 those native grasses and native flowers come and blossom.

2 Q. When you look at this diagram are you able to tell
3 or testify as to whether that proposed pipeline's going
4 to disrupt those native grass areas?

5 A. Definitely. As you would see in the pictures that
6 I've provided in my exhibits, there are pictures of the
7 pasture and the grass.

8 Q. How many acres of native grass are there on your
9 parcel of 200 some acres?

10 A. 111. It actually comes all the way from Highway 38,
11 and there's a strip there, and then it -- it goes to the
12 east and some of it continues down south.

13 Q. If you ever wished to exercise these housing
14 eligibilities, where would be the logical point that you
15 would want to put them?

16 A. Well, I talked with the Planning and Zoning in
17 Sioux Falls, and, of course, the housing eligibilities go
18 with 40 acres. So I would have to work with them to get
19 them -- to get permission to put the houses -- the
20 original plans were eventually along Highway 38 because I
21 had grandchildren in mind.

22 I had always kept it in the back of my head if on --
23 pardon me to my husband, but if he had prematurely died,
24 I would probably build a house up there because I am part
25 of a blended family and I felt his family should have the

1 home place by Chancellor and I would be willing to have a
2 home up at Hartford on that property. So it would have
3 been on Highway 38, of course, because of convenience.

4 But there are also opportunities, well, all the way
5 across 38, and then there are some where we have built up
6 the road on the dirt road. We could put some there.

7 Q. Will the pipeline disrupt your plan?

8 A. Definitely. I would never consider it.

9 Q. Okay. Back to this I 9 and the 1 through 19
10 documents that are attached to this Exhibit I 9.

11 A. Yes.

12 Q. Is there anything additional that you want to add as
13 far as those attachments, Peggy?

14 A. Well, one thing I want to stress is this isn't all
15 about me. When I've explained this and that's when I
16 wrote my testimony it wasn't all about me. It was about
17 the other landowners across southeastern South Dakota,
18 and they all have their stories. And I felt as I told my
19 story they would be able to also see themselves in this
20 same testimony.

21 And something that I have done since the day this
22 property became mine, I have invested money back into it.
23 And just prior to getting a knock on the door by a land
24 agent, I had spent over \$50,000 on tiling, cleaning out
25 the dugouts, leveling the railroad bed, and putting in

1 new fence, and the new fence will be crossed in two
2 places. And we all know what happens when you cut fence.
3 The stability of it is quite damaged.

4 Q. Looks like you have some of the tiling bills
5 attached to your prefiled; is that correct?

6 A. I do.

7 Q. Looks like you have some of the crop production
8 records attached to your prefiling; is that right?

9 A. Yes.

10 Q. One sentence or two, what is the crop yield data for
11 your land?

12 A. I just have it right here. When soybeans have been
13 planted on what is called mom's Highway 38 because that's
14 the field right by 38, the soybeans had started out at 38
15 and improved to 58 bushels. And that is because of the
16 tile involved, the minimum tillage practices, and the
17 fertilizing management.

18 And the corn went from 183 bushels to 238 as we made
19 those improvements, including the tile.

20 Q. That's a good yield.

21 A few other questions, Peggy. A lot of testimony
22 has been offered in terms of the growth areas and why the
23 pipeline is proposed where they have it.

24 What is your perspective and opinion on that,
25 Peggy?

1 A. I'd like you to look at the map one more time. As
2 you look in the upper right corner in the gray area I
3 don't know if all the houses are there on this map, but
4 in counting them just this week just on the south side of
5 the gravel road there are eight houses today. And on the
6 north side of the gravel road between the gravel road and
7 Highway 38 there are four more houses.

8 That is just in the mile from my place. And I see
9 other development happening. This is Hartford, and I --
10 Hartford's no different than Tea, Harrisburg. There is
11 growth coming. And I know that there are a lot of plans
12 of people and a lot of dreams of people that city leaders
13 are not aware of. We didn't know we had to tell them.

14 And I feel they have provided a lack of information
15 on that part.

16 Q. Nancy testified as far as her opinion on how a
17 greater number of landowners are impacted because of the
18 pipeline going into the growth areas.

19 Do you have anything to add on that?

20 A. I do agree. Because there are more homes that have
21 been built up not only next to the towns but along the
22 roads that are there. And they do have more people to
23 approach because of the number of landowners.

24 And I actually have included a picture of the
25 populated or residential areas in Minnehaha County with

1 my rebuttal. So this might not be the time to bring that
2 up but --

3 Q. Your rebuttal is I 8?

4 A. Correct.

5 Q. Do you want to refer to that really quick?

6 A. I sure can.

7 Q. Go ahead.

8 A. There's a Minnehaha County map that is dated 6-15 of
9 2015. It shows the residential distribution in the
10 county. And that just shows you what kind of an area
11 that they are crossing. And I realize as I get into
12 Lincoln County it's going to be even more congested.

13 The black and white pictures don't show up as well
14 as the colored pictures, but all those dots on there are
15 residences.

16 Q. And so the record's clear, it looks to me you were
17 talking about the attachment that's marked Exhibit 2 to
18 your I 8 document.

19 Do I have it right?

20 A. I'll check.

21 Correct.

22 Q. It's the last page of your rebuttal testimony
23 document.

24 A. It's the second page.

25 Q. Okay. Is it fair to say that you also have gathered

1 information last week from Dakota Access in the way of
2 this Exhibit 42 document?

3 A. Correct.

4 Q. And did you go out and do your own checking in terms
5 of proximity of the pipeline to a particular residence?

6 A. I had done it previously when there were some new
7 markers that were made on the mile south of my property
8 right where my son lives. And I was actually physically
9 there.

10 And I do know that from point -- to the centerline
11 of where the pipeline will be placed to a residence right
12 on the southern edge of my son's property it is within
13 200 -- it is 200 yards.

14 Q. I 43. Could you look at that, Peggy. What's the
15 address of that residence?

16 A. The address of that is 46073 260th Street.

17 Q. Is that the residence that you were talking about?

18 A. Yes.

19 Q. Did you take -- does that picture accurately depict
20 that residence?

21 A. Yes, it does.

22 Q. When was the picture taken?

23 A. Just this weekend.

24 MR. BOOMSMA: I offer I 43.

25 MS. WIEST: Any objection to I 43?

1 If not, it's admitted.

2 Q. Based upon your knowledge, Peggy, of the pipeline
3 route, are you going to see more and more instances like
4 what's depicted in I 43?

5 MR. KOENECKE: I object to that. That calls for
6 speculation.

7 MR. BOOMSMA: It's based on her knowledge.
8 That's how I phrased it. And if she knows, she can
9 answer.

10 MS. WIEST: I'll allow it. Go ahead.

11 A. Could you repeat the question?

12 Q. Yes. I'll try and rephrase it.

13 What I remember asking is that based on your
14 knowledge, Peggy, are there going to be more and more
15 instances like what's depicted in I 43, i.e., proximity
16 of the pipe to other structures?

17 A. Yes. I know that for a fact.

18 Q. How do you know that? And tell us a little bit
19 about what you know.

20 A. Because as a -- because as a spokesman for land --
21 some of the landowners and because I have not been quiet
22 on my opposition, I am the person who has been receiving
23 phone calls, letters, packages, from people across the
24 state.

25 And as I receive those calls they tell me how close

1 it is to their home or how it's going to destroy their
2 cropland.

3 MR. KOENECKE: I object. This is hearsay. I'd
4 like to move to strike the answer.

5 MS. WIEST: Sustained.

6 Q. I don't want to know what other people have told
7 you. All I'm interested in hearing, plus what the
8 Commission wants to know, is your observations.

9 So based on the area where you live, are you aware
10 of other instances where the pipeline is going to come
11 close proximity-wise to structures, farms, things like
12 that?

13 A. I did not go out on the route and specifically look
14 for that. I did not have the time.

15 Q. Okay. You made mention of how you've been vocal
16 throughout this process. Fair statement?

17 A. Fair statement.

18 Q. And what have you got in return from Dakota Access?

19 A. I have been sued to -- because I denied survey
20 access on the property. And I have also received a
21 letter of threat of condemnation. Actually they said the
22 condemnation process had already begun.

23 Q. There's a document in front of you. Could you look
24 at that?

25 A. Yes.

1 Q. Have I got it right? Is it I 25?
2 A. Correct.
3 Q. The date on that is what?
4 A. September 12.
5 Q. Of this year?
6 A. Correct.
7 Q. And mention has been made today of these final
8 offers to landowners; correct?
9 A. Yes.
10 Q. Is this a final offer letter that you got from
11 Dakota Access?
12 A. It is the first and final offer that I received.
13 Q. And so when you look at that 25 -- I 25 letter,
14 what's that telling you in terms of, well, if you don't
15 take the offer, this is what's going to happen?
16 A. Yes.
17 Q. What does that say?
18 A. To me that's a threat, that I have no rights, and
19 we're going to do it no matter what.
20 Q. I'll get back to my microphone. Back to that I 25
21 document.
22 A. Yes.
23 Q. Could you look at the second to the last paragraph
24 of that document?
25 A. Yes.

1 Q. What does that say?

2 A. It says We want to emphasize that the condemnation
3 process is being started now so that Dakota Access, LLC
4 will be able to meet the time constraints necessary to
5 begin construction. As always, Dakota Access, LLC wants
6 to work with you in order to reach an acceptable
7 agreement through negotiation.

8 Q. And some of the landowner -- excuse me. Landowner
9 witnesses that have testified today have already received
10 their condemnation lawsuit paperwork?

11 A. Yes. Landowners in Lincoln County.

12 MR. BOOMSMA: Move for admission of I 25.

13 MS. WIEST: Is there an objection to I 25?

14 MR. KOENECKE: I object. Land acquisition is
15 not relevant to this proceeding. The Commission has no
16 authority over land acquisition, and it's not relevant.

17 MS. WIEST: Any response?

18 MR. BOOMSMA: My response is that this does go
19 to the fairness element, and it's relevant. It's all
20 about how landowners are getting treated here.

21 MS. WIEST: I see that there's more letters than
22 just Ms. Hoogestraat. Only the first one goes to her.

23 MR. BOOMSMA: Can I ask a few follow-up
24 questions?

25 MS. WIEST: Go ahead.

1 Q. Peggy, the compilation of I 25, several letters?

2 A. Yes.

3 Q. Are they all identical except for what the dollar
4 amount was?

5 A. Without reading it word by word, it sure looks like
6 it, according to the placement.

7 Q. And so would you be able to have any personal
8 knowledge as to whether those documents were received by
9 most, if not all, of the landowners who have testified
10 today?

11 A. Yes.

12 MR. BOOMSMA: Move for admission of I 25.

13 MS. WIEST: I'm going to allow just the
14 admission of the first page.

15 MR. BOOMSMA: Thank you.

16 Q. Brian Top testified. Do you have anything in
17 addition or anything to add to what he said?

18 A. The only thing I think that wasn't covered -- before
19 I even determined to do tiling on my own --

20 MR. KOENECKE: I object. I think Mr. Top is the
21 person for that question. What foundation has been laid
22 for this witness to -- as far as his level of expertise?
23 I think we're far afield here this afternoon.

24 MS. WIEST: Yes, Mr. Boomsma. I need to remind
25 you again it was supposed to be testimony on direct

1 limited to brief summary of the prefiled and information
2 not reasonably available at the time.

3 I'm not sure where you're going to what she
4 wants to add to Mr. Top's testimony.

5 MR. BOOMSMA: I think I need to ask it a
6 different way and move on.

7 Q. Let me try it a different way.

8 Is there anything you want to add in terms of your
9 concerns with the tiling, topsoil restoration, or
10 compaction issues as they relate to your land? Not to --
11 I don't want you to repeat stuff that's already in your
12 paper.

13 A. Correct.

14 Q. Thank you.

15 A. As tiling is done it affects the neighbors, and it
16 affects erosion. It affects the water quality and the
17 plant availability, and I don't know that Brian was able
18 to get that far.

19 But in regards to the pasture, as I met with
20 Minnehaha Conservation District employee John Parker, he
21 recommended that not only that we had looked at the
22 pasture and determined what was there, but he also
23 recommended that I consult with the State Historic
24 Preservation Office, the Advisory Council on Historic
25 Preservation, the Tribal Historic Preservation Offices,

1 the federally recognized Native American Tribes, and with
2 individuals or groups with pertinent knowledge or
3 expertise to develop what effects my proposed project or
4 the Dakota Access project would have on historic
5 properties or cultural resources.

6 And he also talked with me about mounds that could
7 be located, and I've learned a lot sitting through these
8 hearings last week and today. I've learned a lot about
9 mounds. I know because of a water source throughout my
10 property it could have been a place where there were
11 inhabitants at one point.

12 And for me personally I would want to have this
13 surveyed with the proper authorities.

14 Q. Anything else you want to add, Peggy, or have you
15 gotten your thoughts across?

16 A. Just in regards to the land. I guess I feel like my
17 rights of the use of my land, my rights are very violated
18 by this. And as I mentioned before, I feel that this is
19 the same thing that has happened to other landowners
20 across the state.

21 MR. BOOMSMA: That's all I have. Thank you.

22 MS. WIEST: Yankton Sioux Tribe, do you have any
23 cross?
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CROSS-EXAMINATION

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BY MS. REAL BIRD:

Q. Good afternoon, Peggy.

A. Yes.

Q. Hi. You are a citizen of South Dakota; is that correct?

A. That's correct.

Q. And is it your understanding that crude oil would be transported by this pipeline if built?

A. Correct.

Q. Have you received any guarantee that the oil will stay in South Dakota?

A. I have not.

Q. Have you received any guarantee that the oil will return to South Dakota?

A. I have not.

Q. And can you think of any way that if this pipeline is built would meet your energy needs?

A. I cannot imagine how it would.

MS. REAL BIRD: No further questions. Thank you.

MS. WIEST: Rosebud.

MR. RAPPOLD: Just a few.

CROSS-EXAMINATION

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BY MR. RAPPOLD:

Q. Good afternoon, Ms. Hoogestraat. My name is Matt Rappold. I represent the Rosebud Sioux Tribe.

Earlier you testified that there's 111 acres of native grassland on your property; right?

A. Yes.

Q. Have you ever been told or do you know what the significance of native grassland is to certain animals that live in the area?

A. Yes, I have. Partially from what I have heard in testimony here.

Q. Okay. And is there anything else that you know about it?

A. Not that I need to add at this point.

MR. RAPPOLD: Okay. Thank you very much.

MS. WIEST: Ms. Craven.

CROSS-EXAMINATION

BY MS. CRAVEN:

Q. Thank you. Kimberly Craven for the Indigenous Environmental Network and Dakota Rural Action.

What is the source of water for your property?

A. The source of water for the cattle? I have the two water dugouts that are on the property, and they receive the overflow from this creek that comes through there.

1 And those actually will be cut off from the cattle as the
2 installation process goes on. So I won't even have water
3 for my cattle at that time.

4 Q. And do you have to solve that problem yourself or
5 what will happen?

6 A. I'm hoping if it gets that far, that I would be able
7 to work something out in an easement agreement without it
8 being my expense.

9 Q. Okay.

10 MS. CRAVEN: Thank you very much. No more
11 questions.

12 MS. WIEST: Ms. Northrup.

13 MS. NORTHRUP: I have no questions. Thank you.

14 MS. WIEST: Commission Staff.

15 MS. EDWARDS: No questions. Thank you.

16 MS. WIEST: Dakota Access.

17 MR. KOENECKE: I just have one line of
18 questions. Thank you.

19 CROSS-EXAMINATION

20 BY MR. KOENECKE:

21 Q. Have you attempted to negotiate an easement with
22 Dakota Access?

23 A. I was never offered an easement agreement until this
24 final offer came.

25 Q. Has anyone on your behalf attempted to negotiate an

1 easement?

2 A. We have not attempted to do so because we did not --
3 or I did not choose to allow them to do a survey. So I
4 did not believe that an easement agreement could even be
5 reached without the correct information.

6 Q. And what's the correct information?

7 A. The exact number of feet crossed, the exact location
8 that could have changed after a survey.

9 Q. Are you willing to negotiate on an easement if we
10 give you that information?

11 A. After the Permit is possibly granted, but not
12 necessarily.

13 Q. Did you read the final offer letter to mean that
14 Dakota Access is refusing to negotiate?

15 A. Okay. Could you repeat that, please.

16 Q. Did you read the final offer letter to mean that
17 Dakota Access is refusing to negotiate?

18 A. I understood that was the final offer letter, and
19 that was the dollar amount offered to me and that was
20 what I had to accept as well as the easement agreement.

21 Q. And the letter didn't contain any language seeking
22 to negotiate?

23 A. I'm not an attorney. I don't understand all of the
24 language.

25 Q. Do you see the fifth paragraph of that letter?

1 A. I would need that back.

2 MR. BOOMSMA: I think I 25 is with you yet, but
3 I'll check.

4 A. I think it was given -- okay. Where is it, you
5 said?

6 Q. The fifth paragraph.

7 A. Yes.

8 Q. And could you read the last sentence of that
9 paragraph out loud?

10 A. It says "As always, Dakota Access, LLC wants to work
11 with you in order to reach an acceptable agreement
12 through negotiation."

13 Q. Thank you.

14 I understood your testimony to be that you were
15 concerned that there would be no access to the grassland
16 on this parcel. Did I hear that correct?

17 A. Actually to the field -- the cropland.

18 Q. Okay. And I want to understand, why do you think
19 that there would be no access to that? I did not follow
20 that.

21 A. Because they will be crossing the road, the dirt
22 road, and that is where the driveway is to the southern
23 portion of my property, to the 160 acres. That's where
24 the road is and the entrance. And as they are working
25 through the installation process, unless they're willing

1 to build up a road for us to get through, there's no way
2 to enter my property.

3 Q. It doesn't seem to me like a problem that can't be
4 solved. Does it to you?

5 A. If you're willing to improve a road to the south.
6 It was a -- it was a very expensive undertaking that the
7 township themselves said they would not use funds for.

8 Q. Okay.

9 MR. KOENECKE: I have nothing further. Thank
10 you.

11 MS. WIEST: Any Commissioner questions?

12 CHAIRMAN NELSON: Just a couple.

13 In the native prairie area that you've got did I
14 understand you to say that you've got some native prairie
15 flowers that grow there?

16 THE WITNESS: Correct.

17 CHAIRMAN NELSON: Then I also heard you say that
18 your renter or somebody is spraying that with a
19 helicopter.

20 Isn't that pretty harmful to the native
21 flowers?

22 THE WITNESS: No, it is not. John Parker said
23 they are there and when -- when the cattle are in the
24 pasture they actually go dormant, and they are -- you
25 don't necessarily see them, but they're still there under

1 all the other grass. But because of the animals being
2 there, the native -- some of the native grass and the
3 flowers will go dormant.

4 But if I were to flash graze it in the spring
5 and then leave it go, I would be able to see the
6 flowering plants and the grasses, the native grasses.
7 They would show more.

8 CHAIRMAN NELSON: And so the herbicides don't
9 affect the native flowers is what you're telling me.

10 THE WITNESS: That's what I understand from
11 John Parker.

12 CHAIRMAN NELSON: Thank you.

13 COMMISSIONER SATTGAST: Good afternoon. I want
14 to thank you for coming in.

15 The questions you've raised have helped bring
16 about questions in my own mind, and I'd like to ask you
17 to clarify some of those you brought forward as well.

18 In your prefiled testimony you talk about page 8
19 that you're not able to purchase liability insurance to
20 cover expenses involved with a Dakota Access Pipeline
21 spill, leak, or explosion on your property.

22 Have you been advised by somebody that you need
23 to purchase liability insurance to cover such an event?

24 THE WITNESS: Nobody has advised me to as far as
25 Dakota Access or any authorities. But it only makes

1 sense. If you have a product going through your property
2 like that, you are liable.

3 Liability insurance is an important thing for me
4 along that property. As you see where the property's
5 along Highway 38, there have been automobile accidents
6 and the loss of lives right along that property I've had
7 to deal with. So I would never consider being without
8 liability insurance and also with a renter.

9 And so I questioned my insurance agent, and he
10 said it is not available through their office.

11 MR. KOENECKE: I object again. This is hearsay.

12 MS. WIEST: Sustained.

13 THE WITNESS: And --

14 MR. BOOMSMA: You can't talk about what you were
15 told, but you can finish based upon personal knowledge,
16 if you have any, Peggy.

17 THE WITNESS: Right. I have not been able to
18 locate a company where I can obtain that insurance yet at
19 this time.

20 COMMISSIONER SATTGAST: Certainly. Thank you.

21 Also the Commission has received a letter from
22 you where you were concerned not only -- well, where you
23 brought about the concern that the people of South Dakota
24 needed to be worried about a spill, that we don't have a
25 fund set up for that.

1 Were you in attendance when Kimberly McIntosh
2 spoke with the South Dakota Department of Environment and
3 Natural Resources?

4 THE WITNESS: Yes. I was here, and I heard
5 that. And the source for the information of no state
6 funds came when there were a number of us landowners that
7 had called the PUC Staff. They were the ones that told
8 us there were no state funds in the case of a spill.

9 COMMISSIONER SATTGAST: After hearing
10 Ms. McIntosh's testimony from questions directly to her
11 about if state taxpayers needed to be concerned, did that
12 set your mind at ease with her statement dealing with the
13 South Dakota Regulated Substance Response Fund as well as
14 some national funds as well?

15 THE WITNESS: Could you have them repeat that?
16 The first part of that I kind of lost.

17 (Reporter reads back Commissioner Sattgast's question.)

18 A. The question that came up in my mind as I heard that
19 here in the room was, okay, there are funds but how
20 readily available will they be and how much of a struggle
21 will it be for those people affected by a spill and what
22 process will they go through.

23 Because as I have watched the process of this and
24 how it's been a struggle to learn this process and to get
25 to this point, I don't think it will be any easier when

1 there's a spill.

2 COMMISSIONER SATTGAST: Thank you very much.

3 MS. WIEST: Any additional cross based on the
4 Commissioner questions?

5 Any redirect?

6 MR. BOOMSMA: Nothing.

7 MS. WIEST: Thank you.

8 MR. RAPPOLD: I've already put my concerns off
9 the record about the length of some of our days.

10 (Discussion off the record)

11 MS. WIEST: How many more witnesses do you have,
12 Mr. Boomsma?

13 MR. BOOMSMA: Off the top of my head -- five or
14 six telephonic. And I've got one ready to call in right
15 now.

16 MS. WIEST: Do you have any estimate on how long
17 these will take?

18 MR. BOOMSMA: I do. My best estimate is about
19 five minutes maximum with each one. Except for Kent
20 Moeckly I think 10 minutes.

21 MR. KOENECKE: I've heard five minutes and
22 20 minutes discussed several times. I've started writing
23 down the times when witnesses are called, and I've got
24 one time where we were within Mr. Boomsma's estimate is
25 all. Maybe someone else has something different.

1 I for one don't expect that it will take five
2 minutes or 10 minutes, especially for Kent Moeckly.
3 We've all heard from him before. It's going to take a
4 long time, in my opinion.

5 MR. BOOMSMA: I want to give it a try, and I
6 think most of them will be brief. And if Mr. Koenecke
7 wants to time them, more power to him, but I think we can
8 get to him.

9 MS. WIEST: Did the Commissioners have any
10 preference?

11 CHAIRMAN NELSON: I'd say let's try the one
12 you've got teed up and see how close you are.

13 MR. BOOMSMA: Let's do it.

14 I will call Matthew Anderson. And hopefully
15 he's calling in really shortly.

16 CHAIRMAN NELSON: The other thing that I will
17 mention because the telephonic was kind of -- not kind
18 of. It was difficult last time. If any of the attorneys
19 want to come up here and grab microphones for possible
20 objections, you're welcome to do that. Just make
21 yourself at home up here.

22 (Discussion off the record)

23 CHAIRMAN NELSON: This is Chairman Nelson.

24 (The oath is administered by Chairman Nelson.)

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DIRECT EXAMINATION

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BY MR. BOOMSMA:

Q. All right. Your full name, please.

A. Matthew L. Anderson.

Q. Matt, I've got a document that's marked Exhibit 1 in front of me. It looks as though it's dated June 26, 2015. It's notarized, and it looks to have your signature on that.

Would you agree with me?

A. I would agree, yes.

Q. And is that a prefiled testimony document in this case?

A. Yes, it is.

Q. And my next question is if you were here testifying live, would you adopt and agree with all of the testimony that's in that Exhibit 1 document?

A. Yes, I would.

Q. You have land affected by the pipeline; correct?

A. Yes. Yes, I do. Yep.

Q. You're the son of Peggy Hoogestraat. Am I right?

A. Yeah. Yes, I am.

Q. Size of your parcel is what, Matt?

A. 80 acres.

Q. You've got the details addressed in your prefiling as far as that parcel; correct?

1 A. Yes. Yep.

2 Q. There anything else that you would want to add very
3 briefly to this I 1 document?

4 A. I would -- yes. I guess I would like to add that my
5 wife and I, we have been sued by Dakota Access, and the
6 judge has not signed his final ruling on that yet. And
7 last month Dakota Access sent me a letter saying that
8 they have started the condemnation process.

9 And it's very concerning to me and my wife because
10 this already -- well, because of Dakota Access, they have
11 cost us a lot of money. And we have had to borrow money
12 because of Dakota Access.

13 And I would also -- I would also like to add that
14 there aren't many concerns in my testimony, but I'm
15 really concerned why they would even consider running a
16 pipeline through an area that has so much productive
17 land.

18 It's got so much drain tile, and it's so highly
19 populated. I don't understand why they would even
20 consider that. That is a great concern of mine.

21 MR. BOOMSMA: I move for admission of I 1.

22 MS. WIEST: Any objection to I 1?

23 If not, it has been admitted.

24 MR. BOOMSMA: No other questions.

25 MS. WIEST: Yankton Sioux Tribe, any questions?

1 MS. REAL BIRD: No.

2 MS. WIEST: Rosebud.

3 Ms. Craven.

4 MS. CRAVEN: No, thank you.

5 MS. WIEST: Ms. Northrup.

6 MS. NORTHRUP: No questions.

7 MS. WIEST: Staff.

8 MS. EDWARDS: No questions.

9 MS. WIEST: Dakota Access.

10 MR. KOENECKE: I just have one.

11 CROSS-EXAMINATION

12 BY MR. KOENECKE:

13 Q. Good evening, Mr. Anderson. My name is Brett
14 Koenecke. I represent Dakota Access in this proceeding.

15 A. Uh-huh.

16 Q. As I look at your testimony on page 2, line 31, you
17 testify that the proposed route is within 1,000 feet of
18 your farm buildings and pond.

19 A. Yes, it is.

20 Q. Did you go out and measure that?

21 A. Actually I did, yes.

22 Q. And what was your exact measurement?

23 A. It was 743 yards.

24 Q. And is that on your 80 acres then?

25 A. That is correct.

1 Q. You speak then in the next two lines about a
2 neighboring home and a neighboring shelter belt.

3 Whose property is that?

4 A. Brett, I would like to make a correction that when I
5 measured that I used my range finder, and I need to
6 convert that to feet. So it was actually 743 feet. And
7 it was used with a range finder that measures in yards.

8 Q. So how many yards did you get?

9 A. Well, I didn't write the yards down, but I wrote the
10 feet down. 743 feet divided by 3 feet in a yard would be
11 247 yards to be exact.

12 Q. 247 yards times 3 gets you to 743? That's your
13 testimony?

14 A. Yes.

15 Q. Thanks. Who owns the neighboring home and
16 neighboring shelter belt?

17 A. The neighboring home?

18 Q. Yes.

19 A. And the neighboring shelter belt?

20 Q. Yep. You testified to it in lines 32 and 33.

21 A. Yeah. Darrell Spillman owns the home, and Robert
22 and Lois Spokane own the shelter belt.

23 Q. Okay. Thank you. And where are they located from
24 your house?

25 A. Directly to the southwest.

1 Q. Okay. Thank you.

2 MR. KOENECKE: I've got nothing further.

3 MS. WIEST: Commissioner questions?

4 Any redirect?

5 MR. BOOMSMA: Nothing.

6 MS. WIEST: Okay. Thank you.

7 I think maybe we'll stop for today here. We
8 found out our phone system worked. If that's okay with
9 everybody. And at this point I want to discuss what
10 witnesses we'll begin with tomorrow.

11 I know that we have the City of Sioux Falls was
12 scheduled for the morning of Wednesday. The
13 South Dakota -- the water system was scheduled for
14 Wednesday.

15 Did you have an update for us, Ms. Northrup?

16 MS. NORTHRUP: Both of those witnesses, the City
17 of Sioux Falls and Rural Water, will be here in the
18 morning, but if there's a few landowners that we need to
19 finish up before they go, I don't think that will be a
20 problem.

21 MS. WIEST: Okay. So we'll finish up with the
22 few landowners. Then we'll go to those two witnesses.

23 After that, Commission Staff, did you have --

24 Go ahead.

25 CHAIRMAN NELSON: Ms. Northrup, are you speaking

1 on behalf of the City of Sioux Falls with that offer to
2 let the landowners go first?

3 MS. NORTHRUP: Yeah. To clarify, I talked to
4 Diane Best at the last break and just provided her an
5 update. I think that that would be acceptable.

6 CHAIRMAN NELSON: That would be great. Thank
7 you.

8 MS. WIEST: Did Staff have an update on
9 witnesses?

10 MS. EDWARDS: I can try. It's kind of a moving
11 target with trying to figure out what days people are
12 going to finish and how long people are going to take.
13 But hopefully we can get through ours tomorrow.

14 I hope that's not too ambitious, but I'd like to
15 begin with Robert McFadden, Dan Flo, Mike Timpson.
16 David Nickel, if we need to call him by phone. Michael
17 Houdyshell. Todd Bailey, if needed. He's only going to
18 be called if there are questions that Mr. Houdyshell
19 can't answer. And, finally, Derric Iles.

20 Thank you.

21 MS. WIEST: Okay. Is there anything else we
22 need to talk about for tomorrow?

23 MS. CRAVEN: Ms. Wiest, we have a rebuttal
24 witness that can only be here tomorrow so I was hoping we
25 could accommodate her.

1 MS. WIEST: Okay. And who is that?

2 MS. CRAVEN: Her name is Waste Win Young.
3 She'll be short. It won't take up a lot of time.

4 MS. WIEST: Okay. Would it be -- should we put
5 her like after the City of Sioux Falls, the water, and
6 the Individual Intervenors and then before the Staff
7 starts the rest of theirs?

8 MS. CRAVEN: Whatever works for you.

9 MS. WIEST: Oh, okay. Does anybody have a
10 problem with that?

11 Okay. Anything else?

12 MR. BOOMSMA: I have one other thing. It's more
13 of an idea, if anything. My suggestion or idea is I'm
14 wondering if the Commission would allow me to bump my
15 telephonic witnesses until later in the week. And what I
16 have in mind is more like Friday morning.

17 MS. WIEST: Is there a reason they can't just do
18 it tomorrow?

19 MR. BOOMSMA: They would be able to do it
20 tomorrow. I'm thinking more of my schedule, to be real
21 honest. Tomorrow I wasn't planning on being here because
22 I have other commitments, but I know that I'd be here
23 later in the week.

24 If I have to be here tomorrow, I'll make it
25 happen. It's a suggestion or a request, if you would.

1 MS. WIEST: Does anybody have any objection to
2 hearing the rest of the individual Intervenors on
3 Friday?

4 MR. KOENECKE: I do object to that. Counsel
5 took an extraordinary amount of time today in
6 contravention of the Commission's Order, in my opinion,
7 and now wants to run us into Friday for his own schedule.

8 I do object to that. I don't think that's
9 appropriate at all.

10 MS. WIEST: Ms. Edwards.

11 MS. EDWARDS: Thank you. I don't object,
12 per se. I'm just concerned we might run out of things to
13 do on Thursday.

14 MS. WIEST: Oh, okay.

15 MR. RAPPOLD: And I thought we were already
16 scheduled for Friday.

17 MS. CRAVEN: That's my understanding.

18 MS. WIEST: Friday morning, I believe.

19 I think we'll stick with tomorrow morning then
20 for the Intervenors.

21 MR. BOOMSMA: Thanks for the input.

22 MS. WIEST: Anything else?

23 CHAIRMAN NELSON: I'm just going to say we are
24 going to finish this deal and if it takes Friday
25 afternoon, plan on it, and if it takes Tuesday, plan on

1 it. I don't want to be here Tuesday, but we will.
2 Because we want to get this thing done. So just kind of
3 bear that in mind as we play out.

4 MS. CRAVEN: Couldn't we work on Saturday?

5 CHAIRMAN NELSON: We've discussed that, and
6 there's a number of problems with Saturday. So great
7 idea, but no.

8 MR. RAPPOLD: Some of us do have other
9 scheduling issues for next week that were not
10 contemplated in setting this hearing, and I won't be here
11 Tuesday.

12 CHAIRMAN NELSON: Okay. And I hope none of us
13 are so hopefully we can push hard and get done.

14 MR. RAPPOLD: And I do as well, Commissioner.
15 Thank you.

16 MS. WIEST: If there is nothing else, we will
17 adjourn for the day.

18 (The hearing is in recess at 6 o'clock p.m.)
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STATE OF SOUTH DAKOTA)

:SS

CERTIFICATE

COUNTY OF SULLY)

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 6th day of October, 2015, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Onida, South Dakota this 23rd day of October, 2015.

Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

\$	1150:20, 1163:22, 1239:24, 1271:18, 1271:21, 1273:9, 1273:16, 1273:17, 1279:2, 1339:20, 1340:2	1136 [1] - 1011:12 1146 [1] - 1019:18 1147 [1] - 1019:19 1148 [1] - 1019:19 1152 [1] - 1019:20 1153 [1] - 1063:10 1158 [1] - 1019:20 116 [1] - 1013:5 1160 [1] - 1019:21 1163 [1] - 1019:22 1167 [1] - 1011:21 1169 [1] - 1011:9 1173 [1] - 1020:3 1177 [2] - 1011:5, 1020:4 1178 [1] - 1020:4 118 [2] - 1298:17, 1303:19 118.36 [1] - 1136:13 1182 [2] - 1020:5, 1020:5 1183 [1] - 1020:7 1192 [2] - 1020:8, 1020:8 12 [15] - 1009:8, 1010:11, 1012:3, 1072:21, 1106:13, 1106:14, 1106:17, 1107:5, 1107:7, 1107:15, 1126:24, 1150:19, 1187:23, 1210:7, 1325:4 12-inch [2] - 1094:21, 1142:11 120 [1] - 1315:1 1200 [3] - 1011:10, 1011:18, 1020:9 1201 [1] - 1020:9 1208 [1] - 1020:10 1209 [1] - 1020:10 1215 [1] - 1020:11 1216 [1] - 1020:11 1218 [1] - 1020:13 1221 [1] - 1011:5 1227 [1] - 1020:14 1230 [2] - 1020:14, 1020:15 1231 [1] - 1020:15 1234 [1] - 1020:17 1236 [1] - 1011:6 1243 [1] - 1011:20 1251 [1] - 1011:19 1252 [1] - 1020:17 1255 [1] - 1020:18 1257 [1] - 1020:18 1258 [1] - 1020:19 1264 [1] - 1020:19 1266 [1] - 1020:20 1268 [1] - 1020:20	1269 [1] - 1020:22 1273 [1] - 1011:7 1276 [1] - 1011:20 1279 [1] - 1020:22 1281 [1] - 1020:23 1284 [1] - 1021:3 1286 [1] - 1011:11 1299 [1] - 1021:4 12:00 [1] - 1161:23 13 [8] - 1010:12, 1010:19, 1032:22, 1072:21, 1137:2, 1185:9, 1256:2, 1309:5 1301 [1] - 1021:4 1303 [1] - 1021:5 1305 [1] - 1021:5 1307 [1] - 1021:7 1309 [2] - 1011:6, 1011:7 1323 [1] - 1011:19 1327 [1] - 1011:13 133 [1] - 1270:17 1330 [1] - 1021:7 1331 [2] - 1021:8, 1021:8 1332 [1] - 1021:9 1335 [1] - 1021:9 1336 [1] - 1021:10 1341 [1] - 1021:11 1342 [1] - 1011:3 1343 [1] - 1021:12 1370 [1] - 1021:13 1371 [1] - 1011:9 1373 [1] - 1021:15 1375 [1] - 1011:13 1376 [1] - 1021:16 1386 [2] - 1011:8, 1021:17 1387 [1] - 1021:17 1389 [1] - 1021:18 1394 [1] - 1021:18 1398 [1] - 1021:19 1399 [1] - 1021:19 14 [1] - 1163:22 140 [1] - 1013:5 1401 [1] - 1021:20 1402 [1] - 1021:20 1404 [1] - 1022:3 1408 [1] - 1011:4 1411 [1] - 1022:5 1412 [1] - 1011:8 1416 [1] - 1022:5 1418 [1] - 1022:7 1422 [1] - 1022:7 1424 [1] - 1022:8 1425 [1] - 1022:8 1426 [1] - 1022:10 1428 [1] - 1011:3	1432 [1] - 1022:10 1434 [1] - 1022:11 1435 [1] - 1022:11 1439 [1] - 1022:13 1441 [1] - 1011:11 1450 [1] - 1022:13 1456 [1] - 1022:14 1457 [1] - 1022:14 1460 [1] - 1022:17 1461 [1] - 1012:14 1462 [1] - 1012:13 1463 [1] - 1012:13 1467 [1] - 1022:17 1472 [1] - 1022:18 1477 [1] - 1022:18 1479 [1] - 1012:10 1484 [1] - 1022:19 1488 [2] - 1012:10, 1022:19 1489 [1] - 1022:20 1494 [1] - 1022:20 1499 [1] - 1022:21 15 [11] - 1010:20, 1072:12, 1103:10, 1150:19, 1159:7, 1169:3, 1169:4, 1169:5, 1172:24, 1269:13, 1282:19 150 [3] - 1148:21, 1190:2, 1245:18 1501 [1] - 1022:21 1505 [1] - 1022:22 1509 [1] - 1022:22 1510 [1] - 1022:23 1513 [1] - 1022:23 1529 [2] - 1010:3, 1015:6 1530 [3] - 1010:4, 1010:5, 1010:6 1531 [1] - 1010:7 1537 [1] - 1015:7 154 [1] - 1013:6 1540 [1] - 1015:7 1551 [1] - 1015:8 1552 [1] - 1015:8 1553 [1] - 1015:9 1555 [1] - 1015:9 1557 [1] - 1017:3 1561 [1] - 1010:18 1562 [1] - 1017:4 1572 [1] - 1017:4 1578 [1] - 1017:5 158 [1] - 1013:6 1580 [1] - 1017:5 1581 [1] - 1017:6 1582 [1] - 1017:6 1583 [1] - 1017:7 1585 [1] - 1017:7 1589 [1] - 1017:8	1
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