

THE PUBLIC UTILITIES COMMISSION
 OF THE STATE OF SOUTH DAKOTA

=====
 IN THE MATTER OF THE APPLICATION HP14-002
 OF DAKOTA ACCESS, LLC FOR AN
 ENERGY FACILITY PERMIT TO CONSTRUCT
 THE DAKOTA ACCESS PIPELINE
 =====

Transcript of Hearing
 September 29, 2015 through October 9, 2015
 October 7, 2015
 Volume VI
 Pages 1351-1702

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 BEFORE THE PUBLIC UTILITIES COMMISSION

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

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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 7th day of October, 2015.

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1 MS. WIEST: Good morning, everyone. I believe
2 we were going to begin with Mr. Boomsma's final
3 witnesses.

4 And they will all be participating by telephone;
5 is that correct, Mr. Boomsma?

6 MR. BOOMSMA: That is correct.

7 MS. WIEST: Okay. You may call your first
8 witness.

9 MR. BOOMSMA: Before I do that, one thing from
10 yesterday. It's Exhibit I 10. This is the prefiled
11 testimony of Laurie Kunzelman. I can't remember, but I
12 don't think I introduced that. If I didn't, I do so now.

13 MS. WIEST: I do have it marked as introduced
14 and admitted, but if we want to make sure, does anybody
15 have objection to I 10?

16 I believe it was admitted, but it is admitted
17 now for sure.

18 MR. BOOMSMA: Thank you. I wasn't sure.

19 With that out of the way, I call Delores Assid.

20 MS. WIEST: One other point. If any of the
21 attorneys who have questions, they can come up to these
22 microphones and ask questions. You just cannot ask
23 questions from back there. And, of course, you can ask
24 questions from where Mr. Boomsma is sitting also.

25 Thank you.

1 CHAIRMAN NELSON: Ms. Assid, are you on the
2 line?

3 Ms. Assid, we are not hearing you, if you're
4 speaking.

5 (Discussion off the record)

6 CHAIRMAN NELSON: Is there anyone on the line?

7 THE WITNESS: Yes, this is Shirley Oltmanns.

8 CHAIRMAN NELSON: Shirley, we are happy to hear
9 from you. This is Chairman Nelson. We are ready to
10 begin your testimony.

11 (The oath is administered by Chairman Nelson.)

12 DIRECT EXAMINATION

13 BY MR. BOOMSMA:

14 Q. Shirley, this is Glenn Boomsma. Can you hear me
15 okay?

16 A. Yes, I can.

17 Q. Shirley, you're broadcasting live in this PUC room.
18 If you can't hear us, let us know, and we'll try to do
19 something different.

20 Let's start this way. Could you tell me your full
21 name, please.

22 A. Shirley May Oltmanns.

23 Q. And really quickly, Shirley, where do you live?

24 A. 26576 466th Avenue, Sioux Falls, South Dakota 57106.

25 Q. How long have you been a resident of South Dakota?

1 A. My whole life, which is 64 years.

2 Q. And if I have it right, your siblings, Kevin, Linda,
3 and Janice testified yesterday. Does that sound on the
4 mark?

5 A. Yes, it does.

6 Q. Okay. So the same information that they gave us
7 about the land that's affected pertains to you as well?

8 A. Yes, it does.

9 Q. Shirley, I have in front of me a document that has
10 an I 13 sticker on it. It's a prefiled testimony
11 document for you.

12 A. Right.

13 Q. It has a date on it of June 22, 2015, and it appears
14 to have your signature on it and it appears to be
15 notarized. Is that correct?

16 A. Yes, it is.

17 Q. Shirley, do you adopt the testimony from this I 13
18 document?

19 A. Yes, I do.

20 MR. BOOMSMA: Move for admission of I 13 at this
21 time.

22 MS. WIEST: Is there any objection to the
23 admission of I 13?

24 If not, it has been admitted.

25 Q. Shirley, I wanted to ask you, is there any

1 additional information that you want to offer in relation
2 to I 13 or perhaps any corrections or updates that you
3 want to tell us about?

4 A. The only thing that I would like to say, my family
5 has been sued twice by Dakota Access, and we have had to
6 hire an attorney to represent us to try to protect us and
7 our ground, which has led to emotional and financial
8 stress. And I think that the PUC should know that.

9 Q. Does that sum up your testimony, Shirley?

10 A. Yes, it does.

11 MR. BOOMSMA: That's all the questions I have.

12 THE WITNESS: Thank you.

13 MS. WIEST: Now we'll go to cross-examination.

14 Yankton Sioux Tribe, did you have any questions
15 of Ms. Oltmanns?

16 MS. REAL BIRD: No questions for the witness.
17 Thank you.

18 MS. WIEST: Rosebud Sioux Tribe.

19 MR. RAPPOLD: No.

20 MS. CRAVEN: No, ma'am.

21 MS. NORTHRUP: No questions. Thank you.

22 MS. WIEST: Ms. Best?

23 MS. BEST: None. Thank you.

24 MS. WIEST: PUC Staff.

25 MS. EDWARDS: No questions. Thank you.

1 MS. WIEST: Dakota Access.

2 MS. SEMMLER: None. Thank you.

3 MS. WIEST: Commissioners.

4 Okay. With that, I believe we're done with
5 Ms. Oltmanns.

6 (Discussion off the record)

7 CHAIRMAN NELSON: Corliss, this is Chairman
8 Nelson. We are going to proceed with your testimony. I
9 need to administer the oath to you.

10 (The oath is administered by Chairman Nelson.)

11 DIRECT EXAMINATION

12 BY MR. BOOMSMA:

13 Q. Corliss, Glenn Boomsma speaking. If at any time you
14 can't hear me or anybody else, please let us know.

15 Tell me your name one more time for the record.

16 A. Corliss Faye Wiebers.

17 Q. What is your address, Corliss?

18 A. 607 South Elm Street, Lennox, South Dakota.

19 Q. How long have you been a resident of South Dakota?

20 A. All but one year of my life.

21 Q. And you are a member of the Schoffelman family. Am
22 I right?

23 A. That's correct.

24 Q. We heard testimony from Kevin and some of your other
25 siblings yesterday, and that testimony related to the

1 land that's affected. I think they've covered the basis,
2 but is there anything else that you want to add in terms
3 of that?

4 A. Not really. I think they've done a very good job.
5 And I did hear Shirley's comments a little while ago too,
6 and that would fall right in with mine. So I don't think
7 there's anything I need to add.

8 Q. Did you listen to the live audio broadcast
9 yesterday?

10 A. Yes, I did.

11 Q. Okay. So you're tuned in to what the testimony has
12 been?

13 A. Yes.

14 Q. Corliss, I have a question as far as a document that
15 has an I 24 exhibit sticker on it.

16 A. Yes.

17 Q. That document looks to be your prefiled testimony.
18 Also, Corliss, it looks like it's dated June 19 of 2015.

19 A. That's correct.

20 Q. It looks to have your signature on it, and it looks
21 to be notarized; is that correct?

22 A. It is.

23 Q. As far as this I 24 document, do you adopt the
24 testimony from that document?

25 A. I do.

1 Q. Any changes, updates, or corrections that you want
2 to tell us about now?

3 A. Not that I can think of.

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

5 MS. WIEST: Is there any objection to the
6 admission of I 24?

7 If not, it has been admitted.

8 Do you have any further questions?

9 MR. BOOMSMA: Sorry. No other questions.

10 MS. WIEST: We'll go to cross-examination.
11 Yankton Sioux Tribe, any questions?

12 MS. REAL BIRD: No questions for the witness.
13 Thank you.

14 MS. WIEST: Rosebud.

15 MR. RAPPOLD: Nothing from Rosebud.

16 MS. WIEST: Ms. Craven.

17 MS. CRAVEN: No questions.

18 MS. WIEST: Ms. Northrup.

19 MS. NORTHRUP: No questions. Thank you.

20 MS. WIEST: Ms. Best.

21 MS. BEST: None. Thank you.

22 MS. WIEST: PUC Staff.

23 MS. EDWARDS: No questions. Thank you.

24 MS. WIEST: Dakota Access.

25 MS. SEMMLER: No questions. Thank you.

1 MS. WIEST: Commissioners.

2 Thank you.

3 MR. BOOMSMA: I will call my next telephonic
4 witness, and I'm just going to wait a second and see who
5 actually calls in. I've got somebody working on that.

6 CHAIRMAN NELSON: This is Chairman Nelson. Who
7 do we have on the line?

8 MR. MOECKLY: Kent Moeckly, Britton,
9 South Dakota is here, Mr. Chairman.

10 CHAIRMAN NELSON: Glenn, does that work for you?

11 MR. BOOMSMA: I wasn't planning on calling him
12 until later, but let's get it done now. That will work.

13 (The oath is administered by Chairman Nelson.)

14 DIRECT EXAMINATION

15 BY MR. BOOMSMA:

16 Q. Kent, my name is Glenn Boomsma. Can you hear me
17 okay?

18 A. Yes, I can.

19 Q. Where do you live, Kent?

20 A. Britton, South Dakota, Marshall County.

21 Q. How long have you lived in that area?

22 A. My whole life on and off.

23 Q. Do you own land in that county that's affected by an
24 oil pipeline?

25 A. Yes, I do.

1 Q. What's the size of that parcel? And tell me
2 approximately geographically where it is.

3 A. The pipeline runs about 2 miles across our property
4 in Marshall -- western Marshall County.

5 Q. And the size of that parcel that it runs across,
6 Mr. Moeckly, is what?

7 A. Well, it runs across four quarters of land.

8 Q. Four quarters.

9 Your occupation, Kent, am I right in saying that
10 you're a farmer?

11 A. Farmer, but I'm retired now.

12 Q. Got it. How long have you been a farmer, Kent?

13 A. Well, on and off with the family really my whole
14 life, but that's living away here and there.

15 Q. Kent, there's a document in front of me. It's
16 marked I 11. And what it's called, it's called the
17 prefiled testimony of Kent Moeckly. It looks to have
18 your signature on it, and it looks to be dated July 6 of
19 2015. Is that correct?

20 A. Page 3. That's correct.

21 Q. Do you have that document in front of you, Kent?

22 A. I do.

23 Q. Do you adopt the testimony from that document?

24 A. I do.

25 Q. I want to ask you a few questions in terms of any

1 updated information that you have, Mr. Moeckly. You
2 already mentioned that you have a piece of land that's
3 crossed by an oil pipeline; correct?

4 A. Yes.

5 Q. That's the Keystone I Pipeline?

6 A. TransCanada Phillips Petroleum pipeline.

7 MS. SEMMLER: Commissioners, I do object to any
8 further testimony from this witness, as his testimony
9 pertains to a different pipeline, a different company in
10 a different part of the state.

11 I argue, Commissioners, it's irrelevant.

12 MS. WIEST: Any response Mr. Boomsma?

13 MR. BOOMSMA: Any response is this: Mr. Moeckly
14 is going to establish that the similarities between his
15 parcel and the proposed pipeline in this case are there.
16 In other words, it's relevant. He's going to also
17 establish that the same construction company was used
18 there as what's proposed here.

19 MS. WIEST: Objection overruled.

20 Q. Mr. Moeckly, you were telling us about this
21 pipeline. It's the Keystone I Pipeline; correct?

22 A. They refer to it as the Keystone I, but, in fact, it
23 is the TransCanada Phillips Petroleum pipeline.

24 Q. Understood. How long ago was that pipeline put in
25 your ground?

1 A. I'm not even sure of that right now. I didn't get
2 that checked. I think it was about '08 or '09. The
3 Commissioners would probably know better than I.

4 Q. Do you remember who the construction company was for
5 that project?

6 A. It was a Wisconsin company, and I just cannot
7 remember the name of it.

8 Q. Does Michels Construction --

9 MS. SEMMLER: Objection. Leading the witness.

10 MS. WIEST: Sustained.

11 A. He refreshed my memory, and it was Michels.

12 Q. Do you have a memory, an independent memory,
13 Mr. Moeckly, as to whether it was Michels Construction?

14 A. Yes. I can see it on the side of their red and
15 white trucks now. They were everywhere. And it was
16 Michels everywhere.

17 Q. So they put the pipeline in your ground, and then
18 tell me what you observed in terms of the aftereffects on
19 the easement area?

20 MS. SEMMLER: You know, I'm going to object.
21 This is beyond the scope of what was contained in the
22 prefiled written testimony. It's something this witness
23 was well-aware of and could have included in his
24 testimony.

25 MR. BOOMSMA: My response is that I think it is

1 in the prefiled testimony, and he's elaborating on how
2 his land's been affected.

3 MS. WIEST: I will overrule the objection on
4 that basis.

5 Q. You may answer, Mr. Moeckly.

6 A. Well, if you're talking about the -- what the
7 productivity of the land is now, which I mentioned in my
8 prefiled, it is remarkably less. And that's what, seven
9 years later.

10 You go look at the ground, and the crop is very
11 uneven down the corridor of the construction easement.
12 And it's just obvious. When you get to each side of that
13 the crop is botched, just goes right down -- the
14 construction easement, which on our pipeline was about
15 110 feet wide.

16 Q. You were testifying in terms of your perspective on
17 crop productivity.

18 A. Yes.

19 Q. Can you continue along that line of thought? I
20 didn't know if you were done testifying on that.

21 A. No. I'm not done. One of our renters flew over. I
22 was visiting with him the other day. Flew over the land
23 where the pipeline is, and said that it's very obvious --

24 MS. SEMMLER: Objection hearsay. Objection. I
25 ask that be stricken. It's hearsay.

1 MS. WIEST: Do you have a response, Mr. Boomsma?

2 MR. BOOMSMA: My response is I'm going to tell
3 this witness not to testify about what others told him.

4 MS. WIEST: Okay. That objection is sustained.

5 Q. Mr. Moeckly, I want to make it clear that you can't
6 testify about what other people told you. I want your
7 testimony to be based on your observations.

8 A. Yes.

9 Q. Let's follow that ground rule.

10 Mr. Moeckly, what have you seen? What have you
11 observed in terms of this reduced crop productivity in
12 the easement area?

13 A. There are plants that are half the height of the
14 plants outside of that construction area for the
15 pipeline. And it's up and down and irregular, and you
16 can tell that the ground has been pretty much upset and
17 become unproductive in spots all along the corridor.

18 Q. What types of crops are you trying to grow in the
19 easement area?

20 A. Corn and soybeans.

21 Q. Has that been the case for the last roughly seven,
22 seven and a half years?

23 A. Yes.

24 Q. Is there a dip or a depression in the easement area?

25 A. Yes.

1 Q. Tell me about that, please.

2 A. Well, that too is obvious. You can see that it has
3 been pounded down by all the machinery. Not only has the
4 ground been disturbed, ripped up and then thrown back in,
5 in our case in mud, total water, but they've also worn
6 the ground down so there is a bit of a concave in the
7 easement.

8 A construction company did come back. Not Michels.
9 But another construction company came back and tried to
10 remedy the situation, but it's not all remedied and
11 probably won't be forever.

12 Q. Can you quantify it in terms of how much of a
13 reduced crop production you feel you have in this
14 easement area for the last -- whatever year since the
15 pipeline went in?

16 A. My estimate is a good third less productive.

17 Q. Do you have any sort of opinion, Mr. Moeckly, as far
18 as whether the land that the easement area sits on is now
19 worth less as a result of what you're seeing in this
20 pipeline/easement area/lower crop productivity?

21 A. Yes, I do.

22 Q. What is your opinion on that?

23 A. My opinion is that with less productive ground, with
24 an obvious scarring through the field, that visually it's
25 less valuable. If I wanted to sell that ground now, it

1 wouldn't be a secret that there's a thin-walled, high
2 pressure hazardous liquid pipeline under that ground.
3 And any buyer would be put on notice that he's buying a
4 wounded piece of ground.

5 And that equates to less value. Whether he's afraid
6 of the fact that it's going to break some day or whether
7 he's simply afraid of less productivity, he's not going
8 to pay as much for that ground because it won't be as
9 productive.

10 Q. Do you have any firsthand knowledge, Mr. Moeckly, as
11 far as what you saw in the way of the topsoil stripping
12 process?

13 A. I do.

14 Q. What do you know about that?

15 A. We requested that the black dirt be set aside on its
16 own windrow and then the rest of the soil underneath the
17 black dirt in a separate windrow so when they went back
18 together it would be some semblance of the stratas that
19 exist in the soil.

20 Of course, that was denied, and they did it just the
21 way they wanted to. Which simply mixed up the black
22 dirt, which in some areas up here we don't have a lot of
23 black dirt. Mixed it up with clay and other less
24 desirable soils. So when it went back together you've
25 got a mess. You've got something that just is not

1 original soil, and it will take how many years?

2 Years and years and years, way beyond my life and
3 maybe even the next generation before it ever starts to
4 come back to good, productive, black soil.

5 Q. Mr. Moeckly, did you observe anything in the way of
6 compaction of soil over the easement area when that
7 pipeline was being put in?

8 A. Yes.

9 Q. What do you know about that?

10 A. The machinery used to build the pipeline is big and
11 heavy. And it went up and down that easement, back and
12 forth, back and forth, excavators, Cats, and absolutely
13 pressed the ground down.

14 Where the pipeline crosses the section line we still
15 have a mud hole there where it's just down. You can see
16 when you're driving around you've got a hole bottomed
17 out, which, of course, fills up with water during the wet
18 cycles. And that type of scarring is left here and there
19 all the way up and down the corridor.

20 Q. Have you complained? In other words, have you asked
21 for the pipeline or its construction company to come back
22 and fix the problem at all?

23 A. I have. And they have come back. Their
24 subcontractors have come back. But it's terribly hard to
25 work with these people. They just want to do something

1 and get on down the line.

2 And so it's never done right. It's never completed.
3 And so you're sitting there with your hat in your hand
4 and unable to do anything.

5 When the pipeline was being built they had what they
6 called a liaison officer out who supposedly was a little
7 bit on the landowner's side. But they were paid by --
8 they're buddies to the pipeline people so we have no
9 help.

10 The PUC is the Commission that should be there to
11 help us. We should have an administrator out to watch
12 this construction. The landowner, the taxpayer of
13 South Dakota, has nobody on their side. We have nobody.

14 Q. Did any of these lower crop productivity problems or
15 compaction issues or settling issues occur ever before
16 the pipeline was put in?

17 A. No. Absolutely not.

18 Q. This land, if I got it right, had been in your
19 family's name since the 1900s, early 1900s?

20 A. Yes. Yes. That's right.

21 MR. BOOMSMA: If I haven't moved for admission
22 of I 11, I do so at this time.

23 MS. WIEST: Is there an objection to the
24 admission of I 11?

25 MS. SEMMLER: I object. I understand it will

1 probably be overruled, but for the record I object. It's
2 irrelevant. Different company, different pipeline,
3 different part of the state.

4 MS. WIEST: I will overrule the objection, and I
5 11 is admitted.

6 MR. BOOMSMA: I have no other questions.

7 MS. WIEST: We will go to cross.

8 Yankton Sioux Tribe, did you have any questions?

9 MS. REAL BIRD: I joined over here because of
10 the telephonic.

11 CROSS-EXAMINATION

12 BY MS. REAL BIRD:

13 Q. Good morning, Mr. Moeckly. My name is Thomasina
14 Real Bird. I'm an attorney for the Yankton Sioux Tribe.
15 We are an intervening party in this case. I do have just
16 one or maybe two follow-up questions.

17 You testified that your crops were half the height
18 in the area where the pipeline was installed. And you
19 also testified that the soil is depressed. And my
20 question is whether the crops are half the height because
21 of the depressed soil or whether they are half the height
22 regardless of whether the soil was depressed or not.

23 A. I believe it's a combination of depressed and bad
24 soil now.

25 Q. So, in other words, even if the soil were not

1 depressed, the crops -- so even assuming if they had the
2 same starting point in the soil, they would still be half
3 the height?

4 A. Yes.

5 MS. REAL BIRD: Okay. Thank you. No further
6 questions.

7 MS. WIEST: Rosebud.

8 Ms. Craven.

9 MS. CRAVEN: No questions.

10 MS. WIEST: Ms. Northrup.

11 MS. NORTHRUP: No questions.

12 MS. WIEST: Ms. Best.

13 MS. BEST: No questions.

14 MS. WIEST: PUC Staff.

15 MS. EDWARDS: Thank you.

16 CROSS-EXAMINATION

17 BY MS. EDWARDS:

18 Q. Mr. Moeckly, have you communicated your concerns to
19 the liaison officer?

20 A. Several times, yes.

21 Q. Okay. Have you signed off on the reclamation?

22 A. I'm sorry?

23 Q. Have you signed --

24 A. Have I signed off?

25 Q. Uh-huh. Yes.

1 A. Good question. I don't know. We had so much
2 trouble with the reclamation that a PHMSA representative
3 from Kansas City had to come out and stop the machines
4 because they were throwing the only black dirt we had
5 into standing water which was against all regulations.
6 And the next day the machines were gone.

7 But I'm not sure if that has ever been signed off.
8 I'd have to -- maybe I have a copy of it. I'm not sure.

9 Q. So you don't know if you signed the document from
10 TransCanada agreeing that your property was reclaimed?

11 A. I do not know that.

12 Q. Okay. Have you filed a complaint with the Public
13 Utilities Commission?

14 A. Regarding?

15 Q. Regarding damage to your property.

16 A. I don't believe I have, no. No. No. I've been --
17 what could the PUC do? I could file all the complaints
18 in the world. The carnival's down the road.

19 Michels is gone. You know, the pipe's in the
20 ground. Everybody's giggling and laughing. They're
21 making millions of dollars a minute. What can I do? I'm
22 nobody.

23 MS. EDWARDS: No further questions. Thank you.

24 MS. WIEST: Dakota Access, do you have any
25 questions?

1 MS. SEMMLER: I do.

2 CROSS-EXAMINATION

3 BY MS. SEMMLER:

4 Q. Mr. Moeckly, this is Kara Semmler. I'm an attorney
5 for Dakota Access. So I'm going to pick up right where
6 Ms. Edwards left off.

7 So you didn't ever explore the process with the
8 Commission then, did you?

9 A. I had reclamation crews come out --

10 Q. That wasn't my question, though.

11 A. -- if that's what you mean.

12 Q. Sir, that wasn't my question.

13 You didn't explore the complaint process with the
14 Commission, did you?

15 MR. BOOMSMA: My objection is that he's
16 attempting to answer, but he was interrupted. And I
17 think he needs to be able to finish his answers.

18 MS. WIEST: Objection overruled. I think she
19 has stated her question again, and he can give the
20 response.

21 A. It's been so long now, I'm not sure what took place,
22 and I'd have to look back in my volumes of files on this
23 thing to see if I did.

24 I certainly did with the liaison officer, and I may
25 have filed something with the Commission but I am not

1 certain.

2 Q. I didn't see any sort of exhibit with your testimony
3 which would at all illustrate that your land is less
4 productive.

5 Did I miss something?

6 A. That the land is not productive?

7 Q. You claim your land is less productive; correct?

8 A. Yes.

9 Q. But you did not provide this Commission with any
10 sort of documentation to verify that, did you?

11 A. As in the prefiled testimony?

12 Q. Just in general. You didn't provide anything for
13 this Commission to verify that, did you?

14 MR. RAPPOLD: Objection.

15 A. Not outside of the prefiled testimony. This is the
16 only paperwork I've filed. I assume that I would be able
17 to --

18 MR. RAPPOLD: Objection.

19 A. -- testify about it when we're all here together.

20 MS. WIEST: Okay. Just one moment. There's an
21 objection.

22 MR. RAPPOLD: I'm going to object. Assumes
23 facts not in evidence and move to strike.

24 MS. SEMMLER: He mentioned -- he testified that
25 his land was less productive, and I simply want to assure

1 I didn't miss anything. This Commission has nothing to
2 verify that.

3 MS. WIEST: Objection overruled.

4 MR. RAPPOLD: I was actually trying to object to
5 the question regarding filing a complaint with the PUC
6 and that line. It's also argumentative.

7 MS. WIEST: Objection overruled.

8 Q. And you testified that you believe your land is
9 worth less; correct?

10 A. Correct.

11 Q. But, again, you've provided nothing for us to look
12 at today to verify that in any way, have you?

13 A. Only me. You have me.

14 Q. Correct.

15 A. I own the land. I know what land sells for. I know
16 what buyers look for. And I can testify to that. And
17 they're going to pay less for this land.

18 Q. Sure. And you're very angry about that pipeline
19 having gone through your land, aren't you?

20 A. I am not pleased with it.

21 Q. Have you read the Agriculture Mitigation Plan that
22 Dakota Access filed in this proceeding?

23 A. I have not.

24 Q. So then you didn't compare it in any way to
25 TransCanada's plan, did you?

1 A. Whose plan is this? The Dakota Access people?

2 Q. I'll ask the question again.

3 Because you didn't read the Dakota Access Ag
4 Mitigation Plan, is it fair to assume that you didn't do
5 any comparison between the two? Between Dakota Access
6 and TransCanada's plan?

7 A. Well, I don't think it's fair to assume that, but I
8 have not read it.

9 Q. Okay. So then you don't know the differences in how
10 these companies are dealing with compaction, do you?

11 A. There's only two ways to do it, and it only happens
12 from one way. You don't need a fancy chart of
13 comparisons to know that when big machinery rips up land
14 you're hurting the soil, in some cases destroying the
15 soil.

16 Q. Sir, if you could just answer my questions, we could
17 move this along.

18 You don't know the differences in the way these
19 companies are handling compaction, do you? Yes or no.

20 MR. BOOMSMA: Objection. Asked and answered and
21 argumentative.

22 MS. WIEST: Objection overruled.

23 Q. You don't know the differences between their plans,
24 do you?

25 A. In the plan that I have not read I do not know, but

1 I know that there is no difference.

2 Q. If you haven't read it, how is it that you know
3 there's no difference?

4 A. Because we're talking about machinery digging up
5 farmland in South Dakota, and there is not that big of a
6 difference from one end of the state to the other. It's
7 dirt being ripped up by heavy machinery and thrown back
8 in the trench. There's no other way that you're going to
9 get a different result.

10 Q. So it's your testimony that -- strike that.

11 You have personally experienced one pipeline;
12 correct?

13 A. On my land, yes.

14 Q. Have you studied construction techniques or ag
15 mitigation techniques of pipeline companies generally?

16 A. In fact, I have studied Michels' technique on my
17 land. They ripped it up, and that's exactly what I
18 studied.

19 MS. WIEST: I just need to hear an objection.
20 Go ahead.

21 MS. CRAVEN: Objection. Her question is way
22 beyond the scope of his testimony. He's not testifying
23 as an expert on construction.

24 MS. WIEST: Objection overruled.

25 Q. So that's been the only process that you've

1 personally taken a look at; right? That Michels process
2 on your land?

3 A. Absolutely.

4 Q. So all of your opinions are based only on that
5 Michels Construction on your land; right?

6 A. All my opinions are based upon the mess I was left
7 with after that pipeline went in my ground, yes.

8 Q. Okay.

9 MS. SEMMLER: Nothing further. Thanks.

10 MS. WIEST: Commissioners, do you have any
11 questions?

12 CHAIRMAN NELSON: Mr. Moeckly, this is
13 Commissioner Nelson. Thank you for spending some time
14 with us this morning. I've got just a few questions.

15 In your opinion, if you had been overseeing the
16 replacement of -- well, the whole process, what steps
17 would you have ordered or taken to make sure that the
18 reclamation was done properly and the land was restored?

19 THE WITNESS: Well, first off, the black dirt
20 should have been protected in its own windrow so that
21 whatever -- that's the value. The black dirt is what
22 grows our plants. And that should have been in its own
23 windrow so that when the final pass went through that
24 that was our good black dirt going back in.

25 Now there's the compaction issue. There's the

1 disturbance issue nearby and the construction easement.
2 But, nevertheless, at least that part would be considered
3 done with as good of attention as you can possibly do.

4 Secondly, we were in a wet cycle up here when
5 that pipe went in. And I went out on the site and
6 watched them drop that pipe into a trench filled with
7 water. They just slopped it in and then slopped the
8 backfill over it and when it came time for the final
9 portion of reclamation, the last bit of cover that was
10 put over the pipe was thrown into standing water.

11 And I watched that for several days, complained
12 to the liaison officer. And she's a nice person but
13 she's not going to go stop anybody and she didn't.

14 And a PHMSA officer just happened to be up here
15 on a hearing I think in Redfield and came up to see some
16 other land next to mine and came over to see what was
17 going on on our land. And there they were slopping it in
18 the mud and she was shocked and she said What is this?

19 And the next day the project shut down at that
20 point and the machines walked out of there and they were
21 gone until it dried up.

22 There aren't the people watching these people on
23 behalf of the land and the landowner, the taxpayer, the
24 residents of this state. You can't just turn the gates
25 open to these construction companies because every time

1 they're going to do it the cheapest and the fastest way,
2 and that doesn't help South Dakota.

3 That's what I would have done.

4 CHAIRMAN NELSON: I greatly appreciate your
5 insight into that.

6 And so what I'm taking from that is you feel
7 perhaps a need for there to be a third-party observer of
8 the reclamation process with the authority to stop the
9 activity if it's not happening properly; is that correct?

10 THE WITNESS: I think you've hit it right on the
11 head. An independent third party. Because, you see, if
12 it's not an independent third party with that power, then
13 they're going to do like the liaison officer and walk
14 pretty softly. They're really not going to --

15 Like the PHMSA rep who came out and said this is
16 stopping here and now. It's improper what you're doing
17 to this soil. So I think you're right.

18 CHAIRMAN NELSON: Thank you.

19 The next question: Do you have any pastureland
20 that was crossed by the pipeline?

21 THE WITNESS: No. It's all cropland.

22 CHAIRMAN NELSON: Okay. The last question I've
23 got for you, and this goes back to your prefiled
24 testimony. You have a sentence in there that says "We
25 now live in constant fear of the pipeline breaking and

1 ruining our land." And you have constant fear in bold
2 letters.

3 Can you describe that fear to us?

4 THE WITNESS: Yes. When this whole pipeline
5 issue came up my family and I were not in favor of it
6 just right from the start. To say nothing of what kind
7 of sludge they're going to put through it on the land
8 they're killing up in Canada.

9 But to have that sludge come down under us,
10 under our soil, which was testified back at those
11 hearings, a thin-walled, high pressure hazardous liquid
12 pipeline, and this crude oil is the worst of the worst.
13 It's killer stuff.

14 And so the fear comes from the fact that
15 TransCanada's said, well, we've got a SCADA system or
16 SCADA -- I'm not sure how you pronounce that -- that our
17 computers will pick up any drop in pressure. Therefore,
18 we know there's a break somewhere.

19 There was a break just up in North Dakota at a
20 pumping station right after the whole thing was up and
21 running. A valve blew. Oil up in the air everywhere,
22 and they didn't know about it. And the people up there
23 called, and the pipeline people in Canada said, no, there
24 isn't. Everything is fine.

25 And the point is here if that break is in the

1 line and then it's pointing down or sideways -- so we
2 don't see that oil right away. Tens of thousands of
3 gallons of barrels of oil can seep into the groundwater.
4 That's what we live in fear is this thing --

5 This isn't a toy. This is a very dangerous
6 instrumentality, and it kills. And it will kill our
7 environment. It will kill people with the benzenes and
8 all the other zenes that are in petroleum products.

9 That's the fear that we have, that our very
10 livelihood could be cut short if that pipe fails. And it
11 has every reason to fail because of the nature of its
12 construction, thin walled and using the high pressure.

13 CHAIRMAN NELSON: Thank you.

14 THE WITNESS: That's that point.

15 CHAIRMAN NELSON: Thank you. I have no further
16 questions.

17 MS. WIEST: Any other Commissioner questions?
18 If not, was there any cross based on those Commissioner
19 questions?

20 Go ahead.

21 RE CROSS-EXAMINATION

22 BY MS. SEMMLER:

23 Q. Mr. Moeckly, this is Kara Semmler again.

24 Are you aware of the design differences between this
25 line and the TransCanada line?

1 A. I am not. I'd be interested to know because it's
2 dangerous.

3 Q. So you don't know -- you mentioned thin wall. You
4 mentioned that several times.

5 You don't know if that statement, you know, would be
6 applicable here?

7 A. I only hope not. But knowing how companies like to
8 cut costs, it probably isn't any different.

9 MS. SEMMLER: Nothing further.

10 MS. WIEST: Any redirect?

11 MR. BOOMSMA: Yes.

12 REDIRECT EXAMINATION

13 BY MR. BOOMSMA:

14 Q. Kent, this is Glenn Boomsma. I have a follow-up
15 question or two.

16 My question is this: Even with an overseer at the
17 site, from a landowner perspective, your perspective,
18 would it be preferable that the pipeline not go there in
19 the first place?

20 A. Yes. It would definitely be preferable. I see
21 these power lines. There's one south of Fargo that juts
22 around. It looks like it's on the section line, goes
23 here and there.

24 I just came up from Rochester to St. Paul. There's
25 a big power line up there running along the freeway. And

1 it comes along to a farmstead and juts over and comes
2 over and pretty sure it's back to the easement.
3 Obviously, those people had something to say about
4 whether they wanted the power line over them. The owner
5 should have something to say about whether the pipeline
6 goes across their land.

7 MS. SEMMLER: I object, and I ask that that
8 hearsay statement be stricken.

9 MS. WIEST: What was the hearsay part?

10 MS. SEMMLER: That other people had some input
11 regarding whether or not that power line went through
12 their land. It's irrelevant, and it's -- it must be --
13 it's hearsay or speculation. He doesn't know that.

14 MR. BOOMSMA: Response: I heard him give his
15 opinion about things. I didn't hear him say what others
16 told him. And I think he's got a right to give his say
17 so, and it's responsive to my question.

18 MS. REAL BIRD: And, Ms. Wiest, the definition
19 of hearsay is offering something for the truth of the
20 matter asserted that someone else said. He didn't offer
21 that.

22 MS. WIEST: Objection overruled.

23 Q. Kent, that means that you can continue your thought,
24 if you weren't done.

25 A. Well, I just believe that the landowner for those

1 that don't -- like us and many of us that didn't want
2 that pipeline to come across us, we should have the right
3 to have that pipeline move over. They can move that
4 pipeline anywhere they want.

5 And there were other people that loved the pipeline
6 that thought it was just sweet. They loved the money is
7 what it boils down to. And let them have the pipeline
8 and do a favor to the people that don't want it.

9 MR. BOOMSMA: No other questions.

10 MS. WIEST: Is there any further -- is there any
11 recross based on redirect from anyone?

12 MS. CRAVEN: I have a question.

13 REXCROSS-EXAMINATION

14 BY MS. CRAVEN:

15 Q. This is Kimberly Craven, and I am an attorney for
16 Indigenous Environmental Network and Dakota Rural Action.

17 How are you today?

18 A. Fine. Thank you.

19 Q. You testified in North Dakota a landowner discovered
20 a leak from an oil pipeline and reported it but that the
21 oil company denied it.

22 Are you aware that the same thing happened when an
23 Enbridge Pipeline spilled a million barrels into the
24 Kalamazoo River costing the state about \$500 million?

25 Would that surprise you?

1 A. That wouldn't surprise me at all. The system isn't
2 good.

3 MS. CRAVEN: Okay. Thank you. No more
4 questions.

5 MS. WIEST: Ms. Semmler, did you have any?

6 MS. SEMMLER: I do.

7 RE CROSS-EXAMINATION

8 BY MS. SEMMLER:

9 Q. Mr. Moeckly, are you the Kent Moeckly that was a
10 Defendant in a federal case where you were convicted of
11 conspiracy to import cocaine?

12 MR. BOOMSMA: Objection. Number one, relevancy.
13 Number two, beyond the scope of redirect. Number three,
14 prejudicial.

15 MS. SEMMLER: If I may. It goes to credibility
16 and to determine whether or not this witness will perjure
17 himself.

18 MR. BOOMSMA: Entirely beyond the scope of
19 redirect.

20 MS. WIEST: Beyond the scope of redirect.
21 Objection sustained.

22 MR. CAPOSSELA: Wow.

23 MS. WIEST: Any other redirect?

24 MR. BOOMSMA: Nothing else from me.

25 MS. WIEST: Thank you, Mr. Moeckly.

1 THE WITNESS: Thank you.

2 MS. CRAVEN: I would request that that last
3 question be stricken from the record.

4 MR. BOOMSMA: I join in that request. It was
5 entirely improper.

6 MS. WIEST: I don't think I -- I think the
7 record will just reflect what happened here, and we'll
8 leave it as it is.

9 Objection overruled.

10 MS. SEMMLER: If I may put one more piece of
11 information on the record regarding that case, that case
12 involves perjury and I'm entitled to go to credibility of
13 the witness and that is a crime of dishonesty.

14 MR. BOOMSMA: Response is that we closed with
15 that witness, and that line of questioning was overruled.
16 I think we're done with that witness.

17 MS. WIEST: So what is the --

18 MS. SEMMLER: Crimes of dishonesty go towards
19 credibility of a witness. That was a crime that involved
20 perjury. It's a crime of dishonesty, and I'm entitled to
21 ask questions about that witness's credibility.

22 MS. WIEST: Yes. I think maybe the difficulty
23 would be that what happened is you waited until we were
24 on recross based on redirect. So that is part of why I
25 overruled your objection.

1 And my objection stands. My ruling stands.

2 MR. BOOMSMA: I renew my request that the last
3 comments made by Ms. Semmler be stricken from the record.
4 I think those are sandbag comments and they were improper
5 and they should not have been made.

6 MS. WIEST: Your request to strike is denied.
7 You may call your next witness.

8 MR. BOOMSMA: I will call whoever calls in on
9 the phone line.

10 MS. GUSTAFSON: We're working on that.

11 (Discussion off the record)

12 CHAIRMAN NELSON: This is Chairman Nelson.
13 Ms. Assid, are you on the line? Is anybody on the line?

14 (Discussion off the record)

15 CHAIRMAN NELSON: This is Chairman Nelson. I am
16 going to administer the oath of office -- oath of office.

17 THE WITNESS: Would you speak a little bit
18 louder.

19 CHAIRMAN NELSON: I will. I am going to
20 administer the oath to you.

21 (The oath is administered by Chairman Nelson.)

22 DIRECT EXAMINATION

23 BY MR. BOOMSMA:

24 Q. Delores, this is Glenn Boomsma talking. Can you
25 hear me okay?

1 A. Yes. You're far away, but I guess I can manage.

2 Q. Okay. If at any time I'm not coming across, you
3 tell me, and we'll work on that.

4 A. All right.

5 Q. Your name for the record is what again?

6 A. Delores Andreessen Assid.

7 Q. Delores, where do you live?

8 A. 3009 South Holly Avenue, Sioux Falls, South Dakota.

9 Q. How long have you lived in South Dakota?

10 A. Since '45. Since 1945. Well, no. I've been born
11 in South Dakota, but I've been in Sioux Falls since 1945.

12 Q. Got it.

13 Laurie Kunzelman is your daughter; is that right?

14 A. Yes, she is.

15 Q. She testified yesterday, and we heard some details
16 about land that you own. Do you own land that's affected
17 by the pipeline?

18 A. Yes. It is.

19 Q. What's the size of that parcel, and how long have
20 you owned that?

21 A. Well, that parcel is 160 acres, and it crosses the
22 land from the northwest corner to almost the southeast
23 corner. Goes across Highway 17.

24 Q. How long have you owned that land, Delores?

25 A. Well, my mother, when she died in 1988, my two

1 sisters and I inherited the land. But my grandfather
2 homesteaded it in 1882. And he farmed until 1940 -- 1927
3 when my father inherited it.

4 Q. I heard Laurie testify about how there's concrete or
5 cement tile on your land; is that right?

6 A. Yes. There's a big pond just north of the house
7 along the highway so there's the tiles from there just in
8 the ditch past the house, and then it goes southwest into
9 the field and drains out further toward the south.

10 Q. Where is this land at in relation to a town? In
11 other words, is it close to a town? And if so, could you
12 tell me about that?

13 A. It's about two and a half miles west and a half --
14 and a half-mile -- or a mile south of Tea.

15 Q. Delores, I have in front of me a document. It has a
16 sticker on it, and it says Exhibit I 3, and it says
17 prefiled testimony of Delores Assid.

18 A. Yes.

19 Q. Looks like you signed it, and it looks like it's
20 dated June 19 of 2015. Is this ringing a bell with you?

21 A. Pardon? I couldn't hear this.

22 Q. Was I correct in what I said about the date of the
23 document and how you signed it?

24 A. I didn't hear what you said about -- what document?

25 Q. Okay. Let me go at that again.

1 The document is called prefiled testimony of
2 Delores Assid. It looks like you signed it. It looks
3 like it has a date of June 19, 2015, on it; is that
4 correct?

5 A. I'm not sure about that. I know I got a document
6 before but this was a telephone note that they wanted to
7 go survey and I gave them no permission. I said no. So
8 I don't know about the document anymore.

9 Q. Okay. I think we're on a different page here, and
10 I'm going to try --

11 A. Uh-huh.

12 Q. I'm going to back up a little bit.

13 Delores, do you remember signing a prefiled
14 testimony document in this case?

15 A. Yeah. Probably. I'm not sure what -- just what you
16 were talking about.

17 Q. Okay. Your daughter Laurie signed one too. Does
18 that ring a bell?

19 A. Yeah. I think so.

20 Q. All right. My question is as far as this prefiled
21 testimony document, do you adopt the testimony from that
22 document?

23 A. Do I adopt that?

24 Q. In other words, Delores, do you agree with the
25 testimony that you offered in that document?

1 A. Yes.

2 MR. BOOMSMA: Move for admission of I 3 at this
3 time.

4 MS. WIEST: Is there any objection to I 3?
5 If not, it has been admitted.

6 THE WITNESS: I can't hear you.

7 MS. WIEST: The document has been admitted.

8 THE WITNESS: All right.

9 Q. Delores?

10 A. Yeah.

11 Q. Before I end here, I want to ask you if there are
12 any updates or concerns or corrections that you want to
13 tell the people about here as it relates to your prefiled
14 testimony document?

15 A. Well, they called me twice to ask if they could go
16 and survey the land, and I told them no. And now they
17 said they were going to take me to court, and Judge
18 Zelmer [sic] said no to the survey.

19 And then they sent me a final letter. They said
20 this is your second letter to offer easement on the land,
21 and I never got the first letter. And now they say
22 there's a condemnation letter and to answer
23 Interrogatories or go to court. And the PUC hasn't even
24 given permission yet.

25 Q. What is your age, Delores?

1 A. 89.

2 Q. How has all of this business with the lawsuits and
3 the condemnation and et cetera affected you?

4 A. I couldn't hear that again.

5 Q. Okay. Let me try one more time.

6 I was asking you, Delores, how have the lawsuits,
7 this pipeline business, and this talk of condemnation
8 affected you?

9 A. Well, I'm 89 years old, and it's kind of hard on my
10 memory. And I just -- I get nervous about it. And my
11 daughter Laurie has been taking care of -- helping me
12 take care of it.

13 MR. BOOMSMA: Delores, thank you for calling in.
14 I don't have any other questions, but other people might
15 so hang on a second. Okay.

16 THE WITNESS: Okay.

17 MS. WIEST: Any questions from Yankton?

18 MS. BAKER: No questions from Yankton. Thank
19 you.

20 MS. WIEST: Rosebud.

21 MR. RAPPOLD: No, ma'am.

22 THE WITNESS: Hello.

23 MS. WIEST: Just one second. We're just asking
24 the attorneys in the building whether they have any
25 questions of you, and if they do, they will come on line

1 and say so.

2 So, Ms. Craven, did you have any questions of
3 this witness?

4 MS. CRAVEN: I have no questions, but thank you
5 for your testimony.

6 MS. WIEST: Ms. Northrup, did you have any
7 questions?

8 MS. NORTHROP: No questions.

9 MS. WIEST: Ms. Best.

10 MS. BEST: No questions.

11 MS. WIEST: PUC Staff.

12 MS. EDWARDS: No questions. Thank you.

13 MS. WIEST: Dakota Access?

14 Commissioners, do you have any questions?

15 Okay. Thank you.

16 MR. BOOMSMA: Delores, we're done talking. And
17 thank you.

18 THE WITNESS: Okay. Thank you.

19 CHAIRMAN NELSON: Do you have another witness?

20 MR. BOOMSMA: I'm waiting for a call in, and,
21 yes, I do.

22 (Discussion off the record)

23 CHAIRMAN NELSON: Ms. Murray, I have to
24 administer the oath.

25 (The oath is administered by Chairman Nelson.)

1 CHAIRMAN NELSON: Thank you.

2 DIRECT EXAMINATION

3 BY MR. BOOMSMA:

4 Q. Could you tell me your name, please.

5 A. Marilyn Jean Murray, M-U-R-R-A-Y.

6 Q. Marilyn, again, this is Glenn talking.

7 A. Okay.

8 (Discussion off the record)

9 Q. All right. Marilyn, you're there yet?

10 A. Yes, I'm here.

11 Q. Okay. Let's continue. I asked you where you lived
12 and how long have you lived there?

13 A. My address is 1416 South Larkspur Trail, Sioux Falls
14 South Dakota, and I have lived there for 16 years.

15 Q. You are a member of the Schoffelman family. Am I
16 right?

17 A. That's correct.

18 Q. We heard about details of your land. I think you
19 were listening to the live audio broadcast yesterday;
20 correct?

21 A. Yes. That's correct.

22 Q. Anything to add at all in terms of the land as it
23 was described by your siblings yesterday?

24 A. No. Not in terms of the land.

25 Q. All right. Marilyn, my next question is is that

1 there's a document in front of me. It has an exhibit
2 sticker on it. It's called I 12. The document says
3 prefiled testimony of Marilyn Gene Murray. It's dated
4 June 18, 2015, looks to be signed by you. Is that
5 correct?

6 A. That's correct. I have a copy of it in front of me.

7 Q. Good. Then I want to ask you, do you adopt and
8 agree with the testimony from that document?

9 A. Yes, I do.

10 MR. BOOMSMA: Offer I 12 at this time.

11 MS. WIEST: Is there any objection to I 12?

12 If not, it has been admitted.

13 Q. Marilyn, I want to ask you if you have any updates,
14 corrections, or clarifications as it relates to your
15 prefiled testimony document. And I don't want you to
16 repeat or -- repeat what your siblings talked about
17 yesterday or repeat the exact terms of your prefiled
18 testimony document.

19 A. I understand.

20 Just a couple of items. On page 4 of that document
21 I mention that the housing development which has been
22 discussed in detail but I wanted -- I don't believe it
23 has been mentioned that that housing development that is
24 just a half a mile from our farm has 70 individual
25 acreages already built upon it.

1 Q. Marilyn, this is Glenn.

2 A. Yes.

3 Q. Stop one second. I'm going to ask you to talk a
4 little bit slower because the connection is not the best
5 in the world.

6 A. Okay.

7 Q. And I want to make sure that you get your message
8 across. Okay?

9 A. Okay. Should I repeat what I just said?

10 Q. No. I think we're fine there. Just going forward
11 do that. Okay?

12 A. All right. Will do.

13 And that that development is literally across -- on
14 the other side of the gravel road from where the Tea
15 projected plan development shows.

16 Q. So is -- is this development you're telling us about
17 even within the projected growth plan of that city?

18 A. No, it isn't. And that's what I found interesting
19 because it's literally on the other side of the gravel
20 road. It's already existing, and there are 70 acreages
21 on it.

22 Q. So your point being and my question is from your
23 perspective is the development of that town even
24 extending further west than what the growth area shows on
25 the city maps?

1 A. Absolutely.

2 Q. Your profession is a realtor. Am I right?

3 A. Yes. I have been a realtor for the last two years.
4 Previous to that I was in banking for how many years for
5 38 years.

6 Q. You said you're at Sanford Hospital; is that
7 correct?

8 A. That's correct.

9 Q. Just remember to talk slowly. Your husband's having
10 surgery today; is that right?

11 A. Yes.

12 Q. Sorry about that. My line of questioning was about
13 your realtor profession; is that correct?

14 A. Yes.

15 Q. Do you know, in your experience as a -- as a realtor
16 are there certain things that affect the value and
17 marketability of land?

18 A. Yes. Of course, there are.

19 Q. From your perspective, Marilyn, how would this
20 particular oil pipeline affect the marketability and
21 value of your land?

22 A. I think it would have a negative impact on the value
23 of the land that it runs through. And particularly in
24 the counties that we have been discussing as far as
25 Turner, Minnehaha, Lincoln County. Those are all rapidly

1 developing areas, and when you look at selling, marketing
2 property you look at the whole of the people that would
3 be interested in it, and there is certainly going to be
4 potential buyers that have absolutely no interest in
5 buying land that a pipeline is running through or closely
6 near.

7 Q. My last question: From a development standpoint,
8 will this pipeline affect the development aspects for
9 your land?

10 A. Yes. I believe it will.

11 Q. And your quick foundation or reason why you say that
12 is what?

13 A. Because if you take a look at just the fact that
14 that pipeline was moved from its original route, which
15 was even closer to Sioux Falls, it was moved for a
16 variety of reasons, but part of it was the development
17 concerns.

18 If it affects the development around 85th Street,
19 then it certainly would also affect the development just
20 southwest of Tea.

21 Q. That was my last question. Others may have some
22 questions, though, so hang on, please.

23 THE WITNESS: Uh-huh.

24 MS. WIEST: Any cross, Yankton Sioux Tribe?

25 MS. REAL BIRD: No questions for the witness.

1 MS. WIEST: Rosebud.

2 Ms. Craven.

3 MS. CRAVEN: No questions.

4 MS. WIEST: Ms. Northrup.

5 MS. NORTHRUP: No, thank you.

6 MS. WIEST: Ms. Best.

7 MS. BEST: None. Thank you.

8 MS. WIEST: PUC Staff?

9 MS. EDWARDS: No questions. Thank you.

10 MS. WIEST: Dakota Access.

11 MR. KOENECKE: I do have a couple. Thank you.

12 CROSS-EXAMINATION

13 BY MR. KOENECKE:

14 Q. Mrs. Murray, I was having a hard time hearing you on
15 the phone.

16 A. I apologize.

17 Q. How long have you been a real estate agent?

18 A. For two years.

19 Q. Two?

20 A. Correct.

21 Q. Thank you. What experience do you have in marketing
22 properties with pipelines on or near them?

23 A. None.

24 Q. Have you looked at any studies regarding the value
25 of property with pipelines on or near them?

1 A. No, I have not.

2 Q. Are you familiar with the existing pipelines in
3 Minnehaha and Lincoln Counties?

4 A. Existing oil pipelines?

5 Q. The existing pipelines in Minnehaha and Lincoln
6 Counties. Are you familiar with them?

7 A. May I ask which ones you're referring to?

8 Q. I'm referring to the Magellan Pipeline, the New Star
9 Pipeline, and the Northern Natural Gas Pipeline.

10 A. The first two I am not. The natural gas pipeline
11 runs through a number of our areas, I guess.

12 Q. Thank you.

13 You spoke about the reasons why the pipeline was
14 moved, the route?

15 A. Yes.

16 Q. How do you know the facts that you testified to? I
17 guess what I'm asking is how do you know why the route
18 was moved?

19 A. That's a very good question, and I understand why
20 you're asking it. Have I seen written documents as to
21 why? No, I have not but --

22 MR. KOENECKE: Very good. Thank you.

23 THE WITNESS: You're welcome.

24 MS. WIEST: Any questions from Commissioners?

25 Any redirect?

1 MR. BOOMSMA: Nothing.

2 MS. WIEST: Okay. Thank you. You may call your
3 next witness.

4 MR. BOOMSMA: Did I move for admission of I 12?

5 MS. WIEST: I have I 12 marked as admitted.

6 MR. BOOMSMA: Thank you. I have another caller
7 coming in soon.

8 (Discussion off the record)

9 (The oath is it administered by Chairman Nelson.)

10 DIRECT EXAMINATION

11 BY MR. BOOMSMA:

12 Q. Rod, are you still there?

13 A. Yeah. Yes, I am.

14 Q. Rod, Glenn Boomsma talking.

15 A. Yeah. Good morning.

16 Q. Good morning. You're on a speaker or audio system
17 at this PUC conference room. So if at any time you can't
18 hear us, you've got to let us know.

19 A. All right.

20 Q. Where do you live, Rod?

21 A. 46178 263rd Street, Hartford.

22 Q. How long have you been at that address?

23 A. Approximately eight years.

24 Q. How long have you been in South Dakota, Rod?

25 A. I grew up in South Dakota.

1 Q. I'm going to take a guess, but I believe your
2 occupation is a farmer?

3 A. Yeah. Then I also work in town for the Minnehaha
4 County.

5 Q. How long have you been a farmer?

6 A. Most of my life, I guess. Off and on, yeah.

7 Q. Rod, we heard testimony yesterday from Joy Hohn, and
8 that is your spouse; correct?

9 A. Yeah. Correct.

10 Q. And the two of you signed a prefiled testimony
11 document together. It was marked as I 7, and it was
12 admitted into evidence.

13 Does that ring a bell with you?

14 A. Yeah. Correct.

15 Q. I'm going to ask you, Rod, as far as what you put in
16 that prefiled testimony document, do you agree with all
17 the facts and testimony from that?

18 A. Yes, I do.

19 Q. Do you adopt that testimony here today?

20 A. Yes, I do.

21 Q. We obtained a lot of information yesterday from Joy
22 and also her brother Orrin as far as the land that's
23 affected by the pipeline. We also obtained information
24 from your prefiled testimony document.

25 What I was going to ask you is if you have anything

1 additional to add, update, or correct as it relates to
2 the land or your prefiled testimony document.

3 A. Well, I guess I feel that this pipeline has been
4 poorly thought out from the start. I mean, when we
5 received our letters the addresses weren't correct or
6 anything on the letters. And I guess I have concerns
7 about whether they can install a pipeline if they can't
8 even get our address correct.

9 I mean, there's aquifers -- we have the Wall Lake
10 Aquifer and Skunk Creek Aquifer. There's aquifers all
11 over and the old tile systems. Why would you want to
12 bring a pipeline through this area? Why wouldn't you
13 want to stay away from it and avoid all of these
14 headaches instead of just making more.

15 I think it's been poorly planned out.

16 Q. Rod, would you consider yourself to be in a growth
17 area on the west side of the towns like Sioux Falls,
18 Hartford, Tea?

19 A. Well, Sioux Falls is growing every direction. I
20 mean, I can't believe there wasn't a study done to, you
21 know, evaluate the situation and what they got going. I
22 mean, Sioux Falls is growing just unbelievable.

23 Harrisburg and Tea are the same way. That whole area is
24 just expanding in every direction.

25 Q. Are you close to that growth area, Rod?

1 A. Well, it doesn't affect us right now, but the way
2 it's growing I don't believe it will be too many years
3 down the road, and it will be affecting us. Yes.

4 Q. Joy told us about a well on your property. Anything
5 to add about that?

6 A. Well, yeah. We're definitely concerned. We're
7 concerned about the chemicals that are still going to be
8 in the oil once it's extracted out of the ground and that
9 are going to be pumped through the pipeline. We're
10 definitely concerned about our drinking water. I think
11 everybody should be.

12 Q. Does that sum it up, or is there anything else you
13 want to add, Rod?

14 A. Well, yeah. I'm also concerned about the topsoil,
15 you know, that they said -- about extracting 12 inches
16 off the topsoil.

17 I know that we have some pretty heavy farmland soil
18 out there, and there's more than 12 inches of good
19 topsoil on top, you know. And we're concerned about how
20 it's going to be replaced back in the pipe -- over the
21 pipe.

22 Q. Are you done?

23 A. Yeah. I guess. So I just think it's been poorly
24 planned out from the start. I believe that there should
25 have been an environmental study done. I don't think

1 the -- I don't think you realize the amount of water in
2 the aquifers that this pipeline is going over and the
3 potential hazard that there could be down the road.

4 MR. BOOMSMA: No other questions.

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

6 Did Yankton Sioux Tribe have any cross?

7 MS. REAL BIRD: No questions for the witness.

8 Thank you.

9 MS. WIEST: Rosebud.

10 MR. RAPPOLD: No.

11 MS. WIEST: Ms. Northrup.

12 MS. NORTHRUP: No questions.

13 MS. WIEST: Ms. Best.

14 MS. BEST: No questions.

15 MS. WIEST: PUC Staff.

16 MS. EDWARDS: Thank you. No questions.

17 MS. WIEST: Dakota Access.

18 CROSS-EXAMINATION

19 BY MR. KOENECKE:

20 Q. Hi there, Mr. Hohn. Brett Koenecke for Dakota
21 Access. I've got a couple of questions for you.

22 A. Okay.

23 Q. Is it your testimony that Sioux Falls gets its water
24 from Wall Lake?

25 A. No. I'm not saying that. I'm saying there's a

1 potential in the years to come. The Wall Lake Aquifer
2 and the Skunk Creek Aquifer, they all tie -- the Wall
3 Lake Aquifer covers approximately 110 miles and it does
4 connect with the Skunk Creek Aquifer in a certain area,
5 and I am just saying that the way Sioux Falls is growing,
6 I think it should be looked at to where this pipeline
7 should be ran.

8 Q. How deep is your well, Mr. Hohn?

9 A. It's approximately 200 feet.

10 Q. And I think your wife testified that you're hooked
11 up to rural water for drinking water; is that correct?

12 A. That's correct.

13 Q. How many inches of topsoil do you have?

14 A. Well, it depends on -- it's different in certain
15 areas. On the hills I imagine it's less; some of the low
16 land areas it's more. It's a couple of feet in certain
17 areas.

18 Q. And how deep is it at its thinnest point?

19 A. Probably a foot and a half.

20 Q. And so you would want the pipeline to strip off all
21 of that topsoil and then replace it?

22 A. I would like the topsoil to be replaced exactly the
23 way it is now.

24 Q. The same depth.

25 A. Yes.

1 MR. KOENECKE: Very good. Nothing further.
2 Thank you.

3 MS. WIEST: Any Commissioner questions?

4 COMMISSIONER HANSON: Mr. Hohn.

5 THE WITNESS: Yes.

6 COMMISSIONER HANSON: This is Gary Hanson. I'm
7 a Commissioner with the PUC. Appreciate your testimony
8 today.

9 You were talking about the -- excuse me. You
10 were talking about the Wall Lake Aquifer.

11 THE WITNESS: Uh-huh.

12 COMMISSIONER HANSON: And I'm not sure of the
13 testimony or not, but it sounded as if it was implied
14 that the City of Sioux Falls does not receive -- does not
15 harvest water from the Wall Lake Aquifer.

16 Is that your impression that you gave?

17 THE WITNESS: I am not sure what the latest
18 updates or how the city now receives its water, but I've
19 done some background checking and the Wall Lake Aquifer
20 is a very huge aquifer, you know, and it stretches way
21 west of Sioux Falls approximately 30 miles. And the
22 Skunk Creek Aquifer, they're basically -- most of them
23 are tied together.

24 And the study that was done years ago said that
25 in time to come if Sioux Falls needed, though, they could

1 use Wall Lake Aquifer for a water system, yes.

2 COMMISSIONER HANSON: Would it surprise you then
3 to know that at approximately 26th Street and I-29
4 there's a large blue -- I believe it's blue water
5 reservoir tank, and there's a greensand treatment center
6 at that location for the City of Sioux Falls and that
7 uses Wall Lake Aquifer water?

8 Would that surprise you?

9 THE WITNESS: Yeah. That doesn't surprise me.

10 COMMISSIONER HANSON: And would it surprise you
11 to know that the City of Sioux Falls has wells in the
12 Skunk Creek Aquifer as well?

13 THE WITNESS: Well, yeah. I knew that the City
14 of Sioux Falls got water from Skunk Creek. Yes, I knew
15 that.

16 COMMISSIONER HANSON: All right. Thank you. No
17 further questions.

18 MS. WIEST: Any further cross?

19 Any redirect?

20 REDIRECT EXAMINATION

21 BY MR. BOOMSMA:

22 Q. Rod, this is Glenn Boomsma again.

23 A. Yeah.

24 Q. My follow-up question is that would it be your
25 preference as a landowner that your topsoil not be

1 disturbed in any way to begin with?

2 A. Well, yeah. I think that's what most landowners --
3 they'd be happy if it was just left the way it is. We've
4 got a good thing going right now, and we'd like to keep
5 it that way.

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

7 MS. WIEST: Any recross?

8 If not, thank you.

9 You may call your next witness.

10 CHAIRMAN NELSON: Do we have anybody else on the
11 line right now?

12 (The oath is administered by Chairman Nelson.)

13 DIRECT EXAMINATION

14 BY MR. BOOMSMA:

15 Q. Allan, this is Glenn Boomsma. Can you hear me okay?

16 A. Yes, I can.

17 Q. All right, Allan. I have a few questions for you.
18 Let's start with some basics. Where do you live at?

19 A. Got a phone ringing there.

20 Q. Yeah. Please shut it off.

21 All right. Are we ready?

22 A. Yes. I'm ready.

23 Q. Okay. Here we go. Allan, where do you live?

24 A. 192 West Lake Drive, Arlington, South Dakota.

25 Q. How long have you lived in South Dakota?

1 A. Basically all my life except I spent a couple of
2 years in the service.

3 Q. Do you have land that will be affected by this
4 proposed Dakota Access Pipeline?

5 A. Yes. We have 80 acres and that would be located
6 2 miles south and a quarter east of Wall Lake corner.

7 Q. My next question, Allan, is what is that land used
8 for right now?

9 A. We have 58 acres of cropland, 24 acres of pasture,
10 and there's 6 acres of building site.

11 Q. Allan, my question is, as far as the pasture, do you
12 know if that's native grass?

13 A. Yes. It's original pasture.

14 Q. As far as the crop acres, do you have any info as
15 far as the yield data historically on that land?

16 A. Actually we rent that out as cash rent so I do not
17 have them figures.

18 Q. Very good.

19 I have in front of me, Allan, a document that has a
20 sticker. It says I 2 exhibit. It's called the prefiled
21 testimony of Ruth Arends, Allan Arends, Lorrie Bacon, and
22 Sherrie Fines-Tracy. That document looks to be signed by
23 you, and it looks like it was signed on July 2, 2015.

24 Do you remember signing that?

25 A. I do.

1 Q. These other people who signed it with you, i.e.,
2 Ruth Arends, Lorrie Bacon, and Sherrie Fines-Tracy, are
3 those your siblings?

4 A. Yes, they are.

5 Q. So you own this land 80 acres, in other words,
6 jointly?

7 A. My mother owns it, and we own it also, you know.
8 It's in the will that way, I guess.

9 Q. So you are the heir apparent -- you and your
10 siblings are the heir apparent to this land?

11 A. Yes.

12 Q. Do you also manage and control this particular
13 property, Allan?

14 A. Yes.

15 Q. Now back to this prefiled testimony document. Do
16 you adopt and agree with all of the testimony that you
17 offered in that document?

18 A. Yes.

19 MR. BOOMSMA: Move for admission of I 2.

20 MS. WIEST: Is there any objection to I 2?

21 If not, I 2 has been admitted.

22 Q. Allan, as it relates to your prefiled testimony
23 document, do you have anything additional to add, update,
24 or clarify? We don't want you to repeat information
25 that's already in that.

1 A. Yes. I have a few things to add to that.

2 I'm 66 years old. My parents bought this land when
3 I was 4. From the best that I can remember when I was a
4 young child, 41st Street was a gravel road.

5 When I was in high school I worked at a cut rate gas
6 station named Finia, and that would be located east of
7 Interstate 29 on 41st Street on the north side of the
8 road.

9 In the back of that gas station was basically
10 farmland for as far as you could see. On the south side
11 of the road was a Texaco station and a newly constructed
12 Ben Hur Ford. And basically them were the only two
13 businesses out there. Well, there was three businesses,
14 one on the north side and two on the south side. And the
15 back of Ben Hur Ford was agricultural land also.

16 Don't think short-term. 10, 20, 50, 100 years.
17 This isn't your ordinary water pipeline. It's an
18 explosive, toxic pipeline. Once the pipeline's in the
19 ground it's there forever.

20 The pipeline is being planned too close to Wall Lake
21 and Sioux Falls. We never asked for any of this, and it
22 cost us a lot of time and money. This oil pipeline goes
23 through our land -- if it does, it will drastically
24 diminish its value.

25 Directly across the road to the north of our land

1 5 acres has been bought for an electric substation. I
2 commend the management to see that in the future there
3 will be a large demand for electricity in the area.

4 Our land is getting ready for development,
5 residential, commercial, or industrial. How are we to
6 develop this land when we cannot build or even have a
7 parking lot on top of this gas line? Everybody knows
8 this gas line is not going in a populated area.

9 Dakota Access may say it's safe. Then why can't we
10 build on top of it? Some day Wall Lake and Sioux Falls
11 will be together. Let's not leave a problem for future
12 generations. Let's get this pipeline away from Wall Lake
13 and future Sioux Falls.

14 I'd like to say a few words about communication with
15 Dakota Access. Basically it was none. They didn't
16 contact us. We had to contact them. If they wanted to
17 find us, we pay taxes like everybody else.

18 Minnehaha County Courthouse has all the information
19 on who pays taxes, and a few phone calls will provide
20 names, addresses, and phone numbers. The only contact I
21 received from Dakota Access was when I received a summons
22 to survey. And that's when we hired Glenn to represent
23 us.

24 I want to thank the Commission for hearing my
25 thoughts. Thank you.

1 Q. What you said prompted a follow-up question on my
2 part, Allan.

3 A. Pardon me?

4 Q. I said I have a follow-up question.

5 My question is this: How close will that proposed
6 pipeline be to any building sites on or near your
7 property?

8 A. That is going to be 250 feet.

9 Q. What type of building is it going to be within 250
10 feet of?

11 A. I do not have that information. I just -- I just
12 think it's the building site.

13 Q. Is it a farm site?

14 A. Yes, it is.

15 Q. Is that farm site on your land?

16 A. Yes, it is.

17 Q. Okay. Is there only one farm site on your land, or
18 is there another house in addition to that farm site?

19 A. There's just one farmstead on there.

20 I also would like to add that there is a stock dam
21 on the property in the pasture and the second proposal of
22 that pipeline which covers about twice as much land as
23 the first, goes approximately 150 to 200 feet away from
24 that stock dam.

25 Q. Anything else to add before I close, Allan?

1 A. No.

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

3 MS. WIEST: We will go to cross.

4 Yankton Sioux Tribe.

5 MS. REAL BIRD: No questions for the witness.

6 MS. WIEST: Rosebud.

7 MR. RAPPOLD: Rosebud has no questions.

8 MS. WIEST: Ms. Craven.

9 MS. CRAVEN: I have a question.

10 CROSS-EXAMINATION

11 BY MS. CRAVEN:

12 Q. Good afternoon -- or good morning. This is Kimberly
13 Craven. I'm an attorney for the Indigenous Environmental
14 Network and Dakota Rural Action.

15 How are you today?

16 A. I'm just fine. Thank you.

17 Q. Good. So I have a question about your testimony.
18 Starting on page 3, the very bottom and going over to
19 page 4, you say that Wall Lake is part of the aquifer
20 system to the City of Sioux Falls.

21 What aquifer is that? Do you know the name of it?

22 A. No, I do not.

23 Q. Okay. But you're pretty sure it's part of the
24 aquifer system that feeds into the City of Sioux Falls?

25 A. No. I'm not -- no, I do not.

1 Q. Okay. Well, that is your testimony. Wall Lake is
2 part of the aquifer system to the City of Sioux Falls,
3 and the overflow is a natural creek through our property.

4 I have another question, though. You say the
5 pipeline should be rerouted away from this high growth
6 area. And where would you propose to reroute it to?

7 A. Would you repeat the question, please.

8 Q. Where do you think the pipeline should be rerouted
9 to away from the high growth area?

10 A. Well, that's not my -- that's not for me to figure
11 out, to tell you the truth. I just think it should be
12 away from Wall Lake and away from potentially Sioux Falls
13 in the future.

14 Q. Wouldn't your concern that you would just be
15 creating additional new problems for some of your
16 neighbors wherever the pipeline might go to?

17 A. Basically I think the pipeline should be moved some
18 distance away from Wall Lake and the future of Sioux
19 Falls.

20 Q. But I guess what I'm asking is won't that just
21 create problems wherever it's moved to?

22 A. Well, any time -- any time that -- it should be
23 located in a lower population area or in a lower
24 population area that -- that basically you cannot see a
25 higher population in the future.

1 We've got to look at this for 10, 20, 50, 100 years.
2 And I don't think anybody wants that pipeline close to a
3 populated area.

4 MS. CRAVEN: Okay. No further questions. Thank
5 you.

6 MS. WIEST: Ms. Northrup.

7 MS. NORTHRUP: No questions.

8 MS. WIEST: Ms. Best.

9 MS. BEST: I have one question.

10 MS. WIEST: Just one second. There will be
11 another question for you.

12 CROSS-EXAMINATION

13 BY MS. BEST:

14 Q. Thank you. This is Diane Best. I'm an attorney for
15 the City of Sioux Falls.

16 Did you just testify that it's your belief that the
17 City of Sioux Falls obtains water from the Wall Lake
18 itself?

19 A. No. I didn't say that at all.

20 Q. Okay. And you know that that's not true; is that
21 correct?

22 A. I didn't say that at all.

23 Q. Okay. And you know that the City of Sioux Falls
24 does not, in fact, obtain its water supply from the Wall
25 Lake? Do you know that?

1 A. Basically I don't know where Sioux Falls gets its
2 water.

3 MS. BEST: Okay. Thank you. No further
4 questions.

5 MS. WIEST: PUC Staff.

6 MS. EDWARDS: No questions. Thank you.

7 MS. WIEST: Dakota Access.

8 CROSS-EXAMINATION

9 BY MR. KOENECKE:

10 Q. I do have a couple. Thank you. Brett Koenecke on
11 behalf of the Dakota Access Pipeline.

12 I noticed in your testimony on page 3 you said
13 that -- lines 47 and 48 your land can no longer be farmed
14 and is considered worthless.

15 Is that your testimony?

16 A. Well, with an oil spill, that could be very, very
17 true.

18 Q. Do you have any particular expertise in oil spill
19 remediation?

20 A. No. I have common sense.

21 Q. You testified about a gas line in your testimony,
22 your oral testimony that you spoke recently; is that
23 correct?

24 A. Would you repeat the question?

25 Q. You spoke about a gas line. You mentioned gas line

1 three times if my count is correct.

2 A. Okay.

3 Q. Is that right?

4 A. That's correct.

5 Q. What gas line are you referring to?

6 A. I'm talking about the oil line.

7 Q. So you know this pipeline's going to have crude oil
8 in it and not gas; correct?

9 A. Is it flammable?

10 Q. I ask the questions here.

11 Do you know the pipeline is not --

12 A. Gas is flammable. This is flammable too. We've
13 seen that in train derailments. We've seen that -- you
14 can go up there in North Dakota and you can go to some of
15 the water ponds and you can light a fire on top of the
16 water.

17 Is it flammable? Yes, it is flammable.

18 Q. Have you been to North Dakota to view any --

19 A. No, I have not.

20 Q. I'm sorry? Have you been to North Dakota to view
21 any oil related projects?

22 A. No, I haven't.

23 Q. So on line 49 in your testimony where you talk about
24 something being proven by the oil spill in Bismarck, you
25 don't know anything about that personally?

1 A. No, I don't.

2 Q. It's your testimony that the project had failed to
3 contact you with respect to this property?

4 A. It is.

5 Q. So the 22 contacts to your brother and sister and
6 brother-in-law, you're not including those in your
7 testimony?

8 A. Well, it's when I was contacted personally.

9 Q. Is your name on the deed to the property, sir?

10 A. Yes, it is.

11 Q. And you're a remainder interest holder?

12 A. Yes.

13 Q. But your mother holds the life estate?

14 A. You're asking me questions here that would have to
15 be defined as what is life estate, and I'll answer the
16 question.

17 Q. And so if I understand correctly, you'd feel better
18 if we had figured out the life estate and who all has
19 ownership interest in this property before we started
20 contacting any of you?

21 A. Well, if you wanted to communicate with me, you
22 should have found out who owned the property and where --
23 and then you could have found out exactly where we lived,
24 our phone numbers, and so forth and so on.

25 Q. And how would we do that without communicating with

1 you?

2 A. Well, if you went to the courthouse, you could see
3 who pays the taxes on it and then you could call that
4 person up and they could relay the messages on to -- or
5 give you our phone numbers, addresses, and so forth and
6 so on.

7 Q. Do you have a landline phone number?

8 A. I do not have a landline phone number.

9 Q. So in what phone directory would we find your phone
10 number?

11 A. Minnehaha --

12 Q. There isn't one; correct?

13 A. Minnehaha County has the address of my mother. They
14 might not have the phone number, but they have the
15 address. If you would have went up to that -- in Pierre,
16 South Dakota and did a little investigative work, you
17 could have found out exactly where Laurie lived and where
18 I lived.

19 Q. Well, were you at the house on February 28 when
20 nobody answered the door?

21 A. I don't live in Pierre. I live in Arlington,
22 South Dakota.

23 MR. KOENECKE: No further questions. Thank you.

24 MS. WIEST: Commissioners, do you have any
25 questions?

1 Any redirect?

2 MR. BOOMSMA: Nothing.

3 MS. WIEST: Thank you.

4 You can call your next witness.

5 MR. BOOMSMA: I have one more telephonic
6 witness, and let's see if he buzzes in.

7 (Discussion off the record)

8 CHAIRMAN NELSON: I'm going to administer the
9 oath.

10 (The oath is administered by Chairman Nelson.)

11 CHAIRMAN NELSON: Thank you.

12 DIRECT EXAMINATION

13 BY MR. BOOMSMA:

14 Q. My name is Glenn Boomsma. Ron, can you hear me
15 okay?

16 A. Yes, I can.

17 Q. Your full name for the record is what?

18 A. Ronald Howard Stofferahn.

19 Q. Where do you live at?

20 A. I live at 315 North Fourth Street in Humboldt,
21 South Dakota.

22 Q. How long have you been at that address?

23 A. A little over a year.

24 Q. What is your occupation, Ron?

25 A. I'm a farmer and also a half owner in a seed

1 business.

2 Q. Your brother is Tom Stofferahn, if I have it right;
3 right?

4 A. Correct.

5 Q. Sister-in-law is going to be Nancy Stofferahn?

6 A. Correct.

7 Q. Were you aware that they testified yesterday?

8 A. Yes. I am aware that they testified yesterday.

9 Q. Did you listen in on the live audio broadcast?

10 A. No. I was combining beans so I didn't have a
11 chance.

12 Q. And is that part of the reason why you're calling
13 in, in other words, testifying telephonically is because
14 of the harvest?

15 A. Yes, it is.

16 Q. Ron, I have a document in front of me. It's marked
17 I 21, and it says prefiled testimony of Ronald
18 Stofferahn. It looks like it's dated June 29, 2015, and
19 it looks like it's signed by you.

20 Does that sound right?

21 A. That's correct.

22 Q. You offered testimony in that document. Do you
23 adopt and agree with that testimony today?

24 A. Yes, I do.

25 MR. BOOMSMA: Offer I-29 at this point.

1 MS. WIEST: Any objection to I-29?

2 Which one is it?

3 MR. BOOMSMA: I 21.

4 MS. WIEST: I 21. If not, I 21 has been
5 admitted.

6 Q. Ron, we received testimony yesterday plus there's
7 testimony today in your prefiled testimony document about
8 your land and the seed business.

9 I don't want you to repeat everything that you have
10 in that document, but I do want to ask you if you have
11 anything to add in terms of your land and how it relates
12 to the seed business?

13 A. That particular piece of ground Tom and I purchased
14 in 1975, which is in the documents. But we've had that
15 ground for 40 years now, and part of that ground we
16 decided to build a warehouse seed shed and we did that on
17 that particular piece of ground because of the highway
18 access, the ability of people to readily find it, and
19 also, you know, it's -- if you get right down to it, it's
20 a little bit of free advertising for us with our name on
21 it.

22 Q. Is that Highway 38 heavily traveled?

23 A. Yes, it is. Yes. It's very well traveled.

24 Q. Do you have any idea or estimate as far as how many
25 people drive by your place every day on that Highway 38?

1 A. I have no idea.

2 Q. Got it.

3 So your business is located on Highway 38. It's a
4 seed business, and is it a family business?

5 A. Yes, it is.

6 Q. I heard testimony yesterday about how it involves
7 children, other family members. Could you expound on
8 that quickly?

9 A. My son has -- after college came back into the
10 farming and also the seed. And Tom has two sons that are
11 also back in farming and the seed business also.

12 Q. How does your seed business work in terms of
13 research seed test plots and also just -- I think what I
14 heard yesterday was more ordinary test plots?

15 Can you explain that?

16 A. Well, there are several different kinds of plots.
17 An ordinary plot would be just a competitive plot where
18 you have your hybrids, competition. You would have plots
19 where you are looking at new inbreds and a stripped plot
20 situation for maybe future use in our seed lineup.

21 And also you would have a research plot, which
22 involves maybe 80 to approximately 100 hybrids that are
23 stripped within this certain area to give you results of
24 yields, standability.

25 So this research plot is very intense. It's very

1 quantified in the amount of hybrids and the amount of
2 information that you garner from that.

3 Q. Are the research test plots located at or near the
4 farm site?

5 A. We have had them there in previous years, but this
6 year with it being beans we did not have one there, and
7 it was mainly because we didn't know what was going to
8 happen with the pipeline. So we chose not to put any
9 test plots over there this year.

10 Q. What sort of test plots are located at or near the
11 farm site now, if any?

12 A. There are none there right now.

13 Q. I heard testimony yesterday in the way of hopes for
14 expansion for your business. Could you tell me about
15 that?

16 A. Yes. We have been planning on building a larger
17 facility, and this facility would be additional warehouse
18 space. It would be a cleaning facility, a seed treatment
19 facility, some bins for cleaned product, things like
20 that.

21 Q. Which direction do you intend to expand toward?

22 A. We only have one way to go, and that is north.

23 Q. How far north would you want to expand to?

24 A. Well, and by the time you figure availability for
25 getting semis turned around, this, that, and the other

1 thing, I would assume that you're going to be talking a
2 minimum of 250 feet, probably 300 feet north.

3 Q. Has there been discussion or talk about expanding
4 the seed test plots all the way north to the gravel road
5 that runs north of your farm site?

6 A. Yeah. That would be if we could -- we want to get
7 that facility built. And when that is done we want to
8 use all that area north as a test plot, research, show
9 plots for customers, all that, that is necessary for the
10 seed industry.

11 Q. How many acres to the north would encompass these
12 expansion plans of yours?

13 A. With the test plots?

14 Q. Yes.

15 A. Basically you can figure a minimum of 30. And it
16 depends on, you know, how much material you're looking at
17 in a given year.

18 Q. 30 on the low side. What would the number of acres
19 be on the high side for the expansion, including the test
20 plots?

21 A. I would assume you could get maybe up to 40. I
22 don't anticipate it going any higher than that.

23 Q. Are you able to offer any opinion or input as far as
24 what will be the impact on your business if you cannot
25 expand?

1 A. Well, with the proposed pipeline coming through in
2 proximity to where we're at, we would not be able to
3 expand. Consequently, I don't know how detrimental at
4 this point it would be to the business. I can only
5 assume that it would be.

6 We would have to probably move the facilities that
7 we do have or abandon basically and start over somewhere
8 else. And where somewhere else would be, I don't know.

9 Like I said earlier, we chose that spot for
10 proximity to Highway 38 and the access from the highway.
11 So I do not know. I can't put a dollar figure on it,
12 per se. It's basically an unknown at this point, but I
13 feel that it would be or could be very detrimental to us.

14 Q. Ron, I'm kind of reading into what you said and
15 please clarify for me, but it would seem as though
16 starting over somewhere else is a big deal.

17 Could you elaborate on that? I'm not the witness?

18 A. Yeah. It is a big deal. Number one, the facility
19 that we have there is relatively new, and that would not
20 be pliable for the seed storage and things like that
21 without our ability to expand beyond that.

22 And as you know, facilities are very expensive to
23 build. That would be number one.

24 Number two, we would probably not have the highway
25 accessibility that we have right now. So that would be a

1 detriment to our customers and also our access for future
2 customers.

3 So, consequently, I don't know how we'd put a dollar
4 figure on some of those consequences, but it would
5 definitely hurt us.

6 Q. People testified yesterday about the drain tile on
7 your property. Is there drain tile on your property?

8 A. Yes.

9 Q. Are you knowledgeable about where the drain tile is
10 and how it works?

11 A. Yes, I am.

12 Q. Do you have any input or opinion as far as what sort
13 of impact an oil pipeline would have on your drain tile?

14 A. Well, every time that -- and it's not going to be
15 only me. It's every landowner that has drain tile. When
16 they would go through an older, existing tile or even the
17 newer modern plastic tile, as the ground would settle
18 and -- it would pull these tile and disrupt the line of
19 flow is what I'm getting at.

20 They would settle, and they would not work properly.
21 There's no way to cure that. And once that is done we
22 have not the ability to go in and repair those to the
23 proper depth and alignment that they should be in.

24 Q. On some of your land you either have now or have had
25 in the past some of that older clay or concrete tile. Am

1 I right?

2 A. Yes.

3 Q. Do you have any opinion or input as far as how
4 difficult it would be to ever splice into an old system
5 like that?

6 A. We have tried to do it before, and it's nearly
7 impossible because the cement tile and also the clay tile
8 have been in the ground for probably decades is getting
9 very fragile. And every time you expose that tile,
10 unearth it, if you touch it and you can -- some of it you
11 can touch by hand and it crumbles.

12 It is very, how should I say it, fragile to the
13 touch. And once you've exposed that, it is almost
14 impossible to replace that with existing material. You
15 have to go to something new.

16 Q. Is that older clay and/or concrete tile prevalent in
17 your area?

18 A. Yes, it is, quite prevalent.

19 Q. A few last questions about the seed plots. Are
20 those very sensitive areas?

21 A. Are the seed plots sensitive areas? Yes. Where you
22 put a seed plot is you try to pick very what I would call
23 uniform soil. And it does not mean that it has to be
24 flat by any means, but it's very uniform in its
25 productivity rating so that as you're putting these plots

1 in you can come out with some very equal results for
2 everybody's -- not only our hybrids but also competitors
3 if they're in there.

4 And once you disturb that soil, those results are --
5 they're no good anymore.

6 Q. Are you wondering why this proposed pipeline is
7 going to be --

8 MR. KOENECKE: I object to the leading question.

9 MR. BOOMSMA: I'm asking for his opinion on a
10 subject. I didn't even finish my question.

11 MS. WIEST: Can you rephrase that?

12 Q. Are you aware, Ron, as to whether this proposed
13 pipeline will travel through a growth area?

14 A. Well, I'm aware that it's going between Sioux Falls,
15 Harrisburg, Tea, and that area, Wall Lake, and it's not
16 actually too far from Hartford. And, you know, those
17 areas are exploding in growth right now.

18 And, quite honestly, within I would say 30 years
19 Hartford Humboldt could very possibly almost be part of
20 Sioux Falls just like they have with Brandon, Harrisburg,
21 and areas like that.

22 Q. From a landowner perspective, Ron, does that concern
23 you?

24 A. It does. Because if this pipeline should happen to
25 go through ground that potentially could be used for

1 development, it is probably not going to get developed
2 because of the proximity of the pipeline, you know,
3 within -- I don't know how -- let's say a quarter to a
4 half-mile. That could very easily be a detriment, which
5 would not make people readily available -- or want to
6 build in those areas.

7 MR. BOOMSMA: No other questions at this time.

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

9 Yankton Sioux Tribe.

10 MS. BAKER: Yankton Sioux Tribe has no
11 questions. Thank you.

12 MS. WIEST: Rosebud.

13 MR. RAPPOLD: No, ma'am.

14 MS. WIEST: Ms. Craven.

15 MS. CRAVEN: No questions. Thank you.

16 MS. WIEST: Ms. Northrup.

17 MS. NORTHRUP: No questions.

18 MS. WIEST: Ms. Best.

19 MS. BEST: No questions.

20 MS. WIEST: Commission Staff.

21 MS. EDWARDS: No, thank you.

22 MS. WIEST: Dakota Access.

23 MR. KOENECKE: I do have a few thank you.
24
25

CROSS-EXAMINATION

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BY MR. KOENECKE:

Q. Brett Koenecke from Dakota Access. I'm trying to understand the difference between test plots, show plots, and research plots. Could you describe the difference for me?

A. Okay. Show plot would be a plot that you put in and basically at a certain time of the year after, oh, let's say when the corn is getting mature and the beans are starting to mature you would invite customers in to see your hybrids and your offerings for sale. That would be a show plot.

Competitive plot would be where you would have a plot where you would test yourself against you and/or your competitors so you would know how you're doing against other companies as far as your hybrids.

And a research plot is the beginning stages of development for hybrids that would be accessible for sale in the future.

Q. Which types of plots do you plant there at the property we're talking about?

A. We've done research plots, and we've done -- we've done all three actually, show plots and also competitive plots.

Q. How big is this show plot?

1 A. Oh, a show plot can be as big as 10 acres by itself
2 for just one -- for corn.

3 Q. And I think the testimony was that you plant about a
4 20-foot row for a show plot?

5 A. No. That is for a research.

6 Q. Okay. So a show plot can be up to 10 acres?

7 A. Yep.

8 Q. How about research?

9 A. Research is -- there's two rows that are put in
10 17.5 feet long. And this is the one where you would have
11 possibly 80 to 100 hybrids in that research plot. And
12 though -- each one of those are repeated four times
13 throughout the research plot.

14 Q. And how many acres do you think you need for that?

15 A. That is approximately 3 to 4, 5 acres roughly,
16 depending on the number of hybrids that you would have in
17 there.

18 Q. Okay. And then I think we're down to test plots.

19 A. Okay. Test plot would be where we run a competition
20 against ourselves.

21 Q. And how many acres do you need for that?

22 A. It depends on corn, beans. If beans, I would say
23 probably in that 5. Corn, I would say 5 to 7 or 8.
24 Somewhere in there.

25 Q. Approximately how many of these plots considering

1 all three together do you plant every year?

2 A. We plant all of them every year.

3 Q. How many total number of plots?

4 A. We have a research, we have a show plot, and we also
5 have a competitive plot in both corn and soybeans.

6 Q. How many acres are planted to these plots?

7 A. This year?

8 Q. Yes.

9 A. I'm going to say 25.

10 Q. 25 total acres planted in plots.

11 A. Yes.

12 Q. Is your testimony that you farm about 2,800 acres?

13 A. Yes, it is.

14 Q. And how many of the -- are your plots scattered over
15 the 2,800 acres?

16 A. This year they are, yes.

17 Q. Is that not usual?

18 A. Generally we would try to group them. If we're
19 going to have show days, we want the plots relatively
20 close to one another so that we're not running all over
21 the country, per se, looking at plots with customers.
22 But this year we did not do that because of what is going
23 on, quite honestly.

24 Q. What do you mean by what was going on?

25 A. Well, the proposed pipeline. We did not know if

1 there was going to be like people trampling through our
2 fields surveying. We didn't know exactly how all of this
3 was going to take place so we chose not to do any plots
4 over there.

5 Q. What time of year do you plant your plots?

6 A. They are planted -- normal time of planting season,
7 which would be in May.

8 Q. And yet you're telling the Commission you decided
9 not to plant there in May because of what was going on?

10 A. Yes. Because in March we got a summons for --
11 saying that they were going to survey. So we didn't know
12 if they were going to be surveying -- when, what time of
13 year, anything.

14 Q. And so is foot traffic for a survey not compatible
15 with your plots?

16 A. No. It's not. Because if they would go straight
17 north and south or east and west, whichever way the rows
18 would go and walk down the middle of the rows, that would
19 be fine. But the proposed pipeline is going at an angle
20 so they would be walking across of the test plots.

21 Q. How do you take people out to view your plots?

22 A. We take them out there, and we're dealing with
23 farmers. And farmers are very respectful -- respectful
24 of the seed fields so they will walk in, straight in,
25 look at beans, and walk back out the same way.

1 Q. But you didn't think you could trust surveyors from
2 the project to do the same thing?

3 A. Well, quite honestly, I'm glad we made the decision
4 we did because they did survey our neighbor's property,
5 and they were walking kitty-corner across his bean field
6 trampling it down. So I'm glad we made the decision we
7 did make.

8 Q. I think you testified that the project wouldn't
9 cross any tile on this parcel; is that correct?

10 A. Not right now, but there's a tiling project that is
11 going to be done this fall.

12 Q. Is there any tile on this tract at all currently?

13 A. Yes.

14 Q. Okay. But the project right of way, as you know it
15 to be, won't cross that?

16 A. Not right now.

17 Q. Okay. And did I hear your testimony correct you
18 said there was no way to fix it?

19 A. The problem with trying to fix it and especially
20 when you're dealing with plastic flexible tile is they
21 will come through. They will till the trench back in.
22 And hopefully they're putting the tile back in the way it
23 should be, but with ground settling and recompacting
24 itself, those tiles will settle.

25 And when you do, you end up with a U shape in your

1 tile. And all this tile is put in at a certain grade,
2 one- to two-tenths to three or four-tenths slope,
3 depending on the ground. And it's put in so that it
4 maintains a certain drop all the way. And once you
5 create a U within that tile, it will not work properly.

6 Q. So what you're saying is it has to be fixed
7 correctly?

8 A. It has to be fixed correctly. And that that's
9 impossible to do with the ground settling.

10 Q. And so but you've been able to go out and fix tile.

11 A. We can because we don't -- we're not digging up the
12 tile. We're going and fixing a problem area, but we're
13 not digging through the tile.

14 Q. What I'm trying to understand is why you can fix
15 tile but apparently nobody else can. Can you help me out
16 with that?

17 A. Well, we're not digging beneath the tile. We're
18 going down to the tile and fixing it.

19 Q. Are you familiar with the tile repair drawings that
20 have been filed in this docket?

21 A. I am not.

22 Q. Have you read the Agricultural Impact Mitigation
23 Plan?

24 A. I have not.

25 Q. Have you reviewed the maps showing the route over

1 your property?

2 A. Yeah. Yes, I have.

3 Q. When was the last time you did that?

4 A. It was probably about three, four months ago.

5 MR. KOENECKE: Okay. Thank you. Nothing
6 further.

7 MS. WIEST: Any Commissioner questions?

8 COMMISSIONER HANSON: Mr. Stofferahn, this is
9 Gary Hanson.

10 THE WITNESS: Yes.

11 COMMISSIONER HANSON: Thank you for your
12 testimony. Appreciate the information you provided to
13 us.

14 You say that 25 acres are used for the various
15 plots that you use, and you have 2,800 acres. And in
16 your written testimony you state that -- do I understand
17 your written testimony correctly that the remainder is
18 used, I assume, for buildings and for raising seed?

19 THE WITNESS: Of the -- are you talking about
20 the remaining 2,800 acres or the --

21 COMMISSIONER HANSON: Your written testimony
22 states that you have 2,800 acres in Minnehaha, McCook,
23 and Turner Counties.

24 THE WITNESS: Yes.

25 COMMISSIONER HANSON: And I understand your

1 written testimony to state that you use those 2,800 acres
2 for growing soybeans for seeds.

3 THE WITNESS: Yes.

4 COMMISSIONER HANSON: How do you anticipate the
5 pipeline to affect the growth of those seeds?

6 THE WITNESS: On the remaining acres, other than
7 where the pipeline is going, there will be no affect on
8 the seed growing.

9 What could affect it is if the business actually
10 starts to suffer. Then consequently we won't need the
11 seed anymore. So if it -- it would be detrimental
12 economically to the seed business but also to our farm.

13 COMMISSIONER HANSON: All right. Thank you. No
14 further questions.

15 MS. WIEST: Any cross based on Commissioner
16 questions?

17 Any redirect?

18 REDIRECT EXAMINATION

19 BY MR. BOOMSMA:

20 Q. Follow-up question, Ron.

21 From your perspective in your past dealings with
22 tiling, would it be possible that even the most careful
23 person would not be able to repair or splice onto the
24 older clay or concrete tile systems?

25 A. I've seen many people try to do it, and quite

1 honestly there's never been what I would call a reliable
2 job done. Because you're dealing with something that is
3 so fragile that, like I said earlier, when you touch it
4 it breaks.

5 And although you may not notice any fractures in
6 like concrete tile where you would hook up, it would
7 eventually break. There's just no way to do it.

8 We have hooked up to a concrete tile previously
9 years back, and quite honestly -- with the plastic.
10 Quite honestly, within two to three years you go back and
11 you put in more plastic and you keep trying to hook up
12 and hook up and hook up because that old product is just
13 very fragile. It just does not stand up anymore once you
14 expose it and try to start fixing it -- or splicing onto
15 it.

16 Q. I also gather from your testimony that from your
17 perspective it's most advantageous for your seed business
18 to have the plots as close to the farm site as you can;
19 is that correct?

20 A. As close -- what's that?

21 Q. I said is that correct?

22 A. As close to the seed warehouse, yes, on the farm,
23 yes.

24 MR. BOOMSMA: Okay. That's all I have for
25 questions.

1 MS. WIEST: Any recross based on redirect?

2 If not, thank you.

3 Mr. Boomsma, do you have any further witnesses?

4 MR. BOOMSMA: Would this be a good time to ask
5 for a five-minute break. I believe I'm done with
6 witnesses, but I need to check for sure.

7 MS. WIEST: We will actually take our break now,
8 and we will reconvene at 10:45.

9 Just one thing before we go. Assuming
10 Mr. Boomsma does not have any witnesses, I'm assuming the
11 City of Sioux Falls is calling their witness. Is that
12 right, Ms. Best?

13 MS. BEST: What we'd like to do is let the
14 South Dakota Association of Rural Water Systems go with
15 their witness first and then the City of Sioux Falls.

16 MS. WIEST: Okay. That will be the order of
17 testimony then. Thank you.

18 10:45.

19 (A short recess is taken)

20 MS. WIEST: First I would ask Mr. Boomsma if he
21 had anything further. He was going to check over the
22 break.

23 MR. BOOMSMA: No other witnesses.

24 MS. WIEST: Thank you.

25 Then I believe we're going to Ms. Northrup

1 representing the South Dakota Association of Rural Water
2 Systems.

3 MS. NORTHRUP: Thank you. I call Troy Larson.
4 (The oath is administered by the court reporter.)

5 DIRECT EXAMINATION

6 BY MS. NORTHRUP:

7 Q. Good morning, Mr. Larson. Would you please
8 introduce yourself to the Commission.

9 A. My name is Troy Larson. I'm the executive director
10 of the Lewis & Clark Regional Water System.

11 Q. What is your business address?

12 A. 46986 Monte Street, Tea, South Dakota.

13 Q. What is the purpose of your testimony today?

14 A. I want to begin by stressing that Lewis & Clark is
15 in no way, shape, or form opposed to Dakota Access
16 project. The sole purpose of me being here today is to
17 ensure that when they cross our 54-inch main trunk line
18 that it's done in a way that our engineers feel
19 comfortable that it will not adversely impact the
20 pipeline.

21 And so it's not a question of whether they can cross
22 our pipeline but how.

23 Q. Thank you. In front of you is an exhibit marked
24 SDARW Exhibit 3. Can you identify that document?

25 A. Yes. This is prefiled testimony from our

1 construction administrator Dan Zulkosky.

2 Q. And have you had an opportunity to review that
3 testimony?

4 A. I have.

5 Q. Do you have any updates or corrections of that
6 testimony?

7 A. Well, the purpose is to share the updates since then
8 so, yes, we do have some updates since this is signed.

9 Q. Are you prepared to adopt this prefiled testimony as
10 if it was your own?

11 A. Yes.

12 MS. NORTHRUP: I would move SDARW 3.

13 MS. WIEST: Is there any objection to SDARW 3
14 being admitted?

15 If not, it has been admitted.

16 Q. To your knowledge, how many crossings are proposed
17 by Dakota Access Pipeline of the Lewis & Clark water
18 line?

19 A. To my knowledge, two.

20 Q. And how many of those are in South Dakota?

21 A. One.

22 Q. I'm going to direct your attention to Exhibit 2,
23 SDARW 2. Can you identify that document?

24 A. It's a drawing from the engineers in terms of where
25 they understand the crossing of Dakota Access will cross

1 our pipeline, our 54-inch pipeline.

2 Q. And does that map identify the legal description
3 where the crossing is proposed to be located?

4 A. I believe it does. I don't have my reading glasses.

5 MS. NORTHRUP: I would move admission of
6 Exhibit 2.

7 MS. WIEST: Any objection to admission of
8 Exhibit 2?

9 If not, it has been admitted.

10 Q. You testified that the crossing will be of your
11 50-inch line. Can you tell me how important this water
12 line is to Lewis & Clark?

13 A. This 54-inch pipeline is both the aorta artery and
14 the backbone of our system. Think of it as the spinal
15 cord and the aorta artery. It is critically important to
16 our entire distribution system.

17 This 54-inch pipeline contains 33 million gallons of
18 water when filled. This is the pipeline that takes the
19 water up to the Tea reservoir. And any disruption in
20 that 54-inch pipeline would really be catastrophic for
21 the project.

22 Q. I'm going to direct your attention to Exhibit 3 --
23 I'm sorry. Exhibit 1 in front of you that would be SDARW
24 Exhibit 1.

25 Can you identify that document?

1 A. This is the easement we have with the landowner on
2 this particular parcel where Dakota Access proposes to
3 cross our pipeline.

4 Q. And does Lewis & Clark keep, in the normal course of
5 their business records, the original easements?

6 A. Yes.

7 Q. And have you been able to compare this document with
8 the original easement?

9 A. Yes.

10 MS. NORTHRUP: I would move admission of
11 SDARW 1.

12 MS. WIEST: Any objection?

13 If not, SDARW 1 has been admitted.

14 Q. And does Lewis & Clark have an easement with the
15 landowner for the placement of its water line?

16 A. Yes. We have an exclusive easement.

17 Q. Why have negotiations only recently commenced
18 between Dakota Access Pipeline and Lewis & Clark, in your
19 opinion?

20 A. In my opinion, there was a misunderstanding. I
21 first was contacted -- or I first had a chance to visit
22 with Dakota Access officials on February 4 this year at a
23 rural water manager's meeting at Cedar Shores Resort.

24 I had a chance to express to Mr. Jack Edwards and
25 Kim McClory that Lewis & Clark has no objections to them

1 crossing our pipeline but stressed the importance of them
2 coordinating with our engineers to ensure that the
3 crossing is done in a way that does not adversely impact
4 our pipeline.

5 We have been in a waiting pattern for them to
6 contact us. During the course of this summer there were
7 a couple of e-mails from Kim McClory to our engineer in
8 July and August where they asked about the elevation of
9 our pipeline. And that was the only information they had
10 requested for us so we understood -- or we believed that
11 was the start of the coordination process.

12 That was the only contact we had had with them. So
13 we were waiting for them to contact us and they -- it's
14 our understanding -- had the impression that they didn't
15 need any further coordination with us.

16 So I believe it was an honest misunderstanding where
17 we were waiting for them to contact us, and they didn't
18 think they needed to contact us.

19 When it became clear that there was no further
20 contact forthcoming then we reached out to them, and
21 there was a telephone conference on September 25 and that
22 was really the first discussions that we've had with
23 Dakota Access other than those very cursory discussions
24 that took place on February 4 as well as those e-mails.

25 We did also have then a two-hour meeting, little

1 over two-hour meeting this past Monday where our
2 engineers were present. And that was the first meeting
3 where our engineers really had a chance to delve into
4 what the proposed crossing involved.

5 Q. And at this point is there enough engineering detail
6 on both sides that Lewis & Clark feels comfortable with
7 the crossing?

8 A. There is not. We have every confidence we will get
9 to that point, but we simply ran out of time. We worked
10 very hard to try to come to an agreement before today so
11 that I wouldn't have to be here, but we ran out of time.

12 Right now there are unanswered engineering questions
13 that needed to be worked out. That two-hour meeting was
14 shorter than this morning's hearing thus far so you can
15 imagine there was a lot that we need to cover yet.

16 Q. Has Lewis & Clark negotiated in good faith to
17 finalize an agreement?

18 A. Yes, we have.

19 Q. Do you think this lack of communication was just a
20 misunderstanding between the parties?

21 A. I really do. I just simply think there was some
22 kind of breakdown in communication that evidently we
23 needed to be more clear about what we needed, but on the
24 other hand I think they shouldn't have assumed that two
25 e-mails was sufficient to cross our pipeline.

1 Q. And you've identified some but what are some of your
2 remaining concerns as it regards safety?

3 A. It really comes down to the engineering. And I'm
4 not an engineer. But simply memorializing how they're
5 going to cross our pipeline, the machinery that's going
6 on top of our pipeline.

7 You would think a 54-inch pipeline would be very
8 sturdy, but it's not. It's a quarter-inch steel with a
9 half-inch concrete mortar lining. It's very flexible.

10 And essentially what holds its shape is the bedding
11 material around it. So heavy machinery on top of it can
12 change the roundness of it and break the concrete mortar
13 lining.

14 And also we want to make sure if they bore under
15 us -- and we've given them the option to either go under
16 us or over us. We've given them that option. The
17 bedding material, it's important that that not be
18 disturbed because that's essentially what holds the form.

19 Q. And what is it that Lewis & Clark is requesting from
20 the South Dakota PUC today?

21 A. What we are specifically requesting is that if the
22 PUC sees fit to approve this project, that a condition be
23 added that it be conditioned on a signed crossing
24 agreement with the Lewis & Clark Regional Water System.

25 MS. NORTHRUP: Thank you. I have no further

1 questions.

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

4 MS. REAL BIRD: I do.

5 CROSS-EXAMINATION

6 BY MS. REAL BIRD:

7 Q. Good morning, Mr. Larson. Right here. Thomasina
8 Real Bird, attorney for the Yankton Sioux Tribe.

9 So I have prefiled testimony for Dan Zulkosky and
10 his position as construction administrator. What did you
11 say your position is?

12 A. Executive director.

13 Q. Okay. Do you have knowledge of the material used
14 for your pipeline system?

15 A. The type of material in this particular spot, it's
16 quarter-inch steel approximately. The diameter of the
17 steel varies depending on the pressures at a particular
18 point. So generally speaking it's quarter-inch steel and
19 then a half inch concrete mortar lining on the inside.

20 Q. And that's the material at the crossing you
21 referenced in your testimony?

22 A. Correct.

23 Q. And I believe you mentioned the purpose of the
24 concrete mortar lining. Is it for stabilization, or are
25 there other purposes?

1 A. Again, I'm not an engineer, but it allows for the
2 conduit of the water -- the concrete is more to provide
3 the flow of the water as opposed to stability to the
4 pipeline.

5 The steel is the main stabilizing force. The
6 concrete can crack very easily.

7 Q. Are you aware whether there are any exterior
8 coatings on your pipeline and, in particular, at this
9 crossing site?

10 A. Yes. That's a good question.

11 Our pipe is coated. And I don't have the
12 engineering term for it, but it's coated to ensure that
13 it does not corrode. Or I should say to slow the
14 corrosion process.

15 And so this is a coating that we have to make sure
16 cannot be nicked, in any way damaged. So that's another
17 part of the engineering is to make sure that that coating
18 is in no way damaged.

19 Q. And I'm not sure if you know this because you're not
20 an engineer, but was the coating selected for this pipe
21 in consideration of the nonpresence of any pipeline?

22 So to rephrase -- I think that sounded confusing --
23 do you know if the coating selection would have changed
24 had your association known there would be another
25 pipeline present?

1 A. The coating would not have changed.

2 Q. So it's a pretty standard coating?

3 A. Correct.

4 Q. Is it fusion bonded epoxy?

5 A. That sounds familiar, but, again, I'm not -- I don't
6 know the exact answer to that. I believe that's the
7 case.

8 And then also it's cathodically protected, which
9 means there's a small electrical current that goes
10 through the pipeline that also serves as a mechanism to
11 prevent -- or to delay, slow corrosion.

12 Q. And, to your knowledge, those are the only two
13 protections on the exterior of the pipeline?

14 A. Yes.

15 Q. Your pipeline.

16 And I don't know if this was in the testimony. Are
17 the discussions you're having with the representatives
18 from Dakota Access regarding the integrity concerns?

19 A. The discussions have to do with getting a signed
20 crossing agreement in place. And the crossing agreement
21 would include a number of different things about the how
22 to cross our pipeline and what happens if -- you know, if
23 A happens, then B happens.

24 So it's an attempt to cover as many possible
25 contingencies as possible. And that's so that ultimately

1 what we are trying to get is a crossing agreement with
2 Dakota Access.

3 Q. And do you have any concerns about the integrity of
4 the Dakota Access proposed pipeline if it's located in
5 close proximity to your pipeline?

6 A. If it is engineered properly, we believe they can
7 safely cross us. So, again, we have no objection to them
8 crossing our pipe.

9 Q. I understand that. And would the agreement that
10 you're negotiating with Dakota Access contain assurances
11 as to engineering, or you believe that will be covered
12 elsewhere in the Application?

13 A. That would be in the crossing agreement. As many
14 engineering details as possible.

15 That being said, we know that there's always the
16 unknown. And so we will attempt -- we will continue to
17 work with Dakota Access to identify as many of the
18 engineering issues as possible.

19 At the end of the day, though, we want to make sure
20 that our finger is still on the checker, that anything
21 that comes up that is unexpected, that Lewis & Clark,
22 because we have an exclusive easement, still reserves the
23 right to approve anything that comes up in the future
24 that's not already covered in the crossing agreement.

25 So we could spend months and months working with

1 Dakota Access, and at the end of the day it's simply
2 impossible to identify every little thing that could
3 possibly come up. And so because we have an exclusive
4 easement, at the end of the day there will be language in
5 that crossing agreement that says Lewis & Clark
6 ultimately has to approve any changes that may take place
7 in the field.

8 But we also want to stress that that approval cannot
9 be unreasonably withheld. Lewis & Clark is not trying to
10 be obstructionists here. We're not trying to hinder the
11 project.

12 So we believe we're very reasonable people. But
13 ultimately we have such a tremendous responsibility with
14 this trunk line that we have to make sure that Lewis &
15 Clark has the final say with regard to how they are
16 crossing our pipeline.

17 Q. And it looks like it serves over 300,000 people
18 across three states. Is that correct?

19 A. When complete it will serve that many. It doesn't
20 currently because we're 65 percent complete right now.
21 But, ultimately, yes, this will serve approximately
22 300,000 people in the tri-state region.

23 Q. Who are you planning to serve in the future to make
24 up that 300,000?

25 A. The members that aren't connected include Madison in

1 South Dakota. In Minnesota we have Luverne and Lincoln
2 Pipestone Rural Water. Worthington. We have Hull,
3 Sioux Center, Sheldon, and Sibley to connect.

4 Q. What is the source of water that feeds into your
5 system?

6 A. We tap into a series of aquifers adjacent to the
7 Missouri River south of Vermillion.

8 Q. Do you know the names of the aquifers?

9 A. It's the Missouri -- excuse me. It's the Missouri
10 Elk Point Aquifer, I believe. I know the word Elk Point
11 is in it. I'm pretty sure Missouri Elk Point Aquifer.

12 Q. So that is the one aquifer?

13 A. Correct. That's the one and only.

14 MS. REAL BIRD: I'll conclude my questions.
15 Thank you.

16 MS. WIEST: Any cross from Rosebud?

17 MR. RAPPOLD: Yes, ma'am.

18 CROSS-EXAMINATION

19 BY MR. RAPPOLD:

20 Q. Good morning, Mr. Larson. My name is Matt Rappold.
21 I represent the Rosebud Sioux Tribe. I just have a few
22 questions for you.

23 You're just here today testifying on behalf of Lewis
24 & Clark; correct?

25 A. Correct. Via the South Dakota Association of Rural

1 Water Systems.

2 Q. Right. But you don't represent any of the other
3 water systems that will be crossed by the pipeline?

4 A. I do not.

5 Q. Okay. Lewis & Clark, can you describe the structure
6 of that organization? I notice it has members.

7 A. Uh-huh.

8 Q. Do the members have any sort of say so in what the
9 association does?

10 MS. NORTHRUP: Objection. Relevance.

11 MR. RAPPOLD: Well, I believe it's relevant
12 because the witness is testifying that the Lewis & Clark
13 Association has no problem with Dakota Access crossing.
14 It's just a question of how they're going to cross. And
15 I'm wondering if there's a membership that's approved
16 that.

17 MS. WIEST: Overruled.

18 A. There was multiple parts to that question. We are a
19 501(c)(4). Did you want me to start with how we're
20 organized?

21 Q. Briefly, yeah.

22 A. Okay. We're a 501(c)(4). There are 20 members. A
23 member is either a city or rural water system. Lewis &
24 Clark is owned and governed by those members. Each
25 member has a seat on the board of directors, and I'm

1 ultimately responsible to that board of directors.

2 And so each member -- a member let's say it's the
3 City of Sioux Falls -- nominates one person to serve on
4 that board, and then the Lewis & Clark board approves
5 that nomination. So ultimately it's the Lewis & Clark
6 board that approves the directors that serve on the
7 board.

8 Our board is very familiar with the discussions that
9 are taking place. It came up at our last board of
10 directors meeting. And, again, we do not object to them
11 crossing.

12 Ultimately if we objected, they have condemnation
13 authority. And we have no expectation this will go to
14 condemnation because to date -- and I want to stress to
15 date there are no engineering disagreements, but as
16 pointed out, there's a lot of engineering that has yet to
17 go.

18 So does that answer your question?

19 Q. Yeah. As far as the structure goes.

20 And then I think I asked you the question is there
21 any sort of formal resolution that the approval is
22 authorized by the board?

23 A. There has been no formal resolution adopted, no.

24 Q. And normally wouldn't it be common practice for a
25 board of this type to have some sort of formal

1 authorization to take any sort of action?

2 A. No, it would not.

3 Q. What's the depth of the 54-inch aorta line, as you
4 described it?

5 A. The goal -- or I should say the engineering plans
6 and specs call for, regardless of the diameter, to have
7 six feet of fill on top of the pipe.

8 Now the depth of the trench sometimes will vary. It
9 depends on how much bedding material needs to be
10 underneath a particular segment of pipe. So is that what
11 you were looking for is how much fill is on top or how
12 deep the trench?

13 Q. I think what I'm looking for is how deep is the pipe
14 today as it currently exists?

15 A. You have 6 feet of fill, and then you add 4 and a
16 half feet of pipe so that's 10 and a half feet. And then
17 depending on how much bedding material, roughly the -- so
18 the bottom of the pipe would be 10 and a half feet from
19 the surface.

20 Is that what you're asking for? That's not how deep
21 the trench is. That would be the bottom of the pipe to
22 the surface.

23 Q. Yeah. That satisfies the question.

24 You testified earlier that a breach, I believe you
25 called it, or a breach near the 54-inch main line would

1 be catastrophic. Are you able to tell with any certainty
2 how many people would be out of water if a catastrophic
3 event occurred?

4 A. Sure.

5 Q. In that area?

6 MR. KOENECKE: I object. That calls for
7 speculation.

8 MS. WIEST: Overruled if he can answer.

9 A. I don't have the exact number, but there are members
10 of Lewis & Clark who are sole source -- which means their
11 sole source of water is Lewis & Clark.

12 Q. Uh-huh.

13 A. Centerville, Beresford, Parker, Tea, Harrisburg,
14 Lincoln County Rural Water. So there are members that
15 would have no water whatsoever.

16 Other members blend Lewis & Clark water with their
17 existing sources so they would have other sources they
18 could turn to. When I said catastrophic I'm mainly
19 referring to the members who do not have other water
20 sources. Although those that blend would certainly be
21 adversely impacted in a very large way.

22 Q. So are you able to answer the question then with any
23 degree of certainty as to how many people would be out of
24 water?

25 A. No.

1 Q. And you also testified if engineered properly. Does
2 that statement leave in space for a proposition where if
3 a pipeline is not engineered properly?

4 MS. NORTHRUP: Objection. Vague and
5 speculative.

6 MS. WIEST: Can you rephrase that? Be more
7 specific.

8 MR. RAPPOLD: Yeah. Thank you.

9 Q. You testified if the pipeline is engineered
10 properly, there will be no problems with the crossing.
11 Is the opposite of that statement true?

12 If it's not engineered properly, could there be
13 problems at the crossing?

14 A. Yes.

15 MR. RAPPOLD: Thank you. I have no further
16 questions.

17 MS. WIEST: Ms. Craven, do you have any
18 questions?

19 MS. CRAVEN: Yes. I have just a couple
20 questions.

21 CROSS-EXAMINATION

22 BY MS. CRAVEN:

23 Q. Kimberly Craven with the Indigenous Environmental
24 Network and Dakota Rural Action.

25 How are you today?

1 A. Fine. Thank you.

2 Q. Good. So we've been given a map, but I'm not quite
3 sure on this map where the pipeline would be crossing.

4 A. Excuse me. That's a good question. You see the
5 line that heads to the west towards Parker?

6 MS. NORTHRUP: Ms. Wiest, probably for
7 clarification of the record, she's asking him to look at
8 an exhibit that's not yet admitted. I understand it's a
9 City of Sioux Falls exhibit.

10 MS. WIEST: Oh, I see. Can we use that exhibit,
11 or do we need to wait?

12 MS. NORTHRUP: It's fine with me. I just wanted
13 to make sure the record was clear on what exhibit he was
14 referring to.

15 MS. WIEST: And the exhibit you are referring to
16 is which City of Sioux Falls exhibit?

17 MS. CRAVEN: I was assuming it was your exhibit
18 because it says Lewis & Clark Regional Water System.

19 MS. BEST: The exhibit was provided by the City
20 of Sioux Falls and given to all the Intervenors already,
21 and apparently Ms. Craven wasn't at her desk when I came
22 by to hand it to her.

23 But it is City of Sioux Falls D. And for the
24 value of the proceedings as a whole, I know I'm out of
25 order, but I would move for admission of Sioux Falls

1 Exhibit D.

2 MS. WIEST: Is everyone aware of the Sioux Falls
3 Exhibit D? Do I need to have people aware of this before
4 I ask for objections, or does anybody have any objection
5 to us admitting this at this time?

6 If not, we will admit the City of Sioux Falls
7 Exhibit D. And did you have a copy of that, Ms. Craven?

8 Okay. Go ahead.

9 MS. CRAVEN: Sorry.

10 Q. So would you explain to us where the --

11 A. Yes --

12 MS. WIEST: I'm just going to ask one more
13 question. We don't have a copy of that exhibit. Can we
14 get a copy, Ms. Best?

15 THE WITNESS: I don't need it so someone can
16 have my copy.

17 MS. WIEST: So to be clear, Ms. Craven, are you
18 going to ask questions about the City of Sioux Falls
19 Exhibit D?

20 MS. CRAVEN: Yes, I am. Thank you.

21 MS. WIEST: Okay. Go ahead.

22 A. There's a line that heads to the west. And I know
23 it's hard to see, but it has the word Parker. It's on
24 the very left-hand edge in the upper third left-hand
25 corner. There's a square. That's the City of Parker. I

1 can point to it if that would help.

2 Q. Oh, okay. Okay.

3 A. The main trunk line runs from our treatment plant up
4 to Tea. That's the long line you see going north and
5 south. So then heading to the west is a service line to
6 Parker. So that's the line I referenced that heads to
7 the west.

8 According to our construction administrator,
9 Dan Zulkosky, the crossing would be 500 feet to the north
10 of that service line intersection. 500 feet to the
11 north. So just a small ways to the north you could put a
12 dot, and that's where they would cross.

13 I know that's not a legal description. So yep.
14 Just find that crossing. Just 500 feet to the north.

15 Q. And so it's currently planned to cross the
16 pipeline -- your water pipeline one time?

17 A. Once in South Dakota.

18 Q. Once in South Dakota. That would leave the door
19 open for is it going to cross at another time in other
20 state?

21 A. Yes. I testified earlier there's two crossings.
22 The other crossing, as I understand, is near Hull in
23 Iowa.

24 Q. It's your pipeline, though?

25 A. Correct.

1 Q. Let's see. Mr. Rappold, asked a lot of my questions
2 about the process of approving the pipeline. So then did
3 your board instruct you to come down here and say that
4 there was no opposition to the pipeline?

5 A. I advised them what was taking place at that board
6 meeting and by e-mail. I sent out a report to our
7 members -- excuse me. Not only the directors but the
8 members advising, and I indicated that we were working
9 hard to try to secure a crossing agreement with Dakota
10 Access so that I would not need to be here today but that
11 if we could not get that crossing agreement in place,
12 that I would be here.

13 So my board is fully aware of my being here today.
14 They support my being here today. We are not a board
15 that spends a lot of time taking formal resolutions to
16 take a certain action.

17 Q. Okay. What is the purpose of entering into the
18 record the Easement Agreement?

19 A. Before we can put a pipeline on a piece of land we
20 need an easement from the landowner that gives us
21 permission to do that.

22 So the purpose of the easement is to allow us to
23 construct the pipe on that landowner's property.

24 Q. And so would you say this is a model that you're
25 looking at having some kind of a parallel agreement with

1 Dakota Access?

2 A. No. The only purpose of -- I think the relevance of
3 the testimony is the fact that we have an exclusive
4 easement. The word "exclusive" is in there twice. That
5 essentially means that Dakota Access needs to work with
6 us to ensure any crossing is done in a way that we feel
7 comfortable with.

8 Again, back to the aorta artery example, this is
9 such a critical piece of infrastructure, we want to make
10 sure that any crossing of it is coordinated properly.

11 But no. The agreement that we are working with with
12 Dakota Access is a crossing agreement. It's not an
13 easement. It's a crossing agreement. It's the
14 essentially how it's going to be done, what
15 responsibility Dakota Access has in the whole procedures.

16 For example, our crossing agreement -- well, it has
17 things like they would be responsible for covering our
18 engineering fees, for covering our legal fees. So
19 there's things beyond just the how. So the crossing
20 agreement would attempt to encapsulate as much of that as
21 possible.

22 Q. I see. And when you have these kinds of easement
23 agreements with individuals or landowners is there
24 also -- is there an exchange of considerations? I mean,
25 you're getting an easement, and is that because typically

1 you're going to deliver water to them?

2 A. I believe your question goes to compensation. And
3 if I understand your question, yes, we do pay for our
4 easements so the landowner is compensated.

5 Q. And would that include getting the delivery of
6 water?

7 A. No. That's a good question. Lewis & Clark is a
8 wholesale provider of water. So we are unique in that
9 regard. We don't hook up homes and businesses. We only
10 deliver water to our 20 cities and rural water systems.

11 They in turn provide it to the customer. And so no home
12 or business would be directly connected to Lewis & Clark.

13 Q. Okay. And do you know if the homeowner -- who owns
14 the land where the crossing is supposed to take place?

15 A. I really should have brought my reading glasses.

16 The name is Linda and Dennis -- it's
17 K-R-O-N-A-I-Z-L. Linda and Dennis.

18 Q. And have you been in communication with them?

19 A. We have not. To my knowledge we have not.

20 Q. Okay.

21 MS. CRAVEN: No further questions. Thank you.

22 MS. WIEST: Ms. Best, do you have any questions?

23 MS. BEST: I do. Thank you.

24

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CROSS-EXAMINATION

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BY MS. BEST:

Q. Mr. Larson, could you state, please, again, how many members there are on the Lewis & Clark?

A. 20.

Q. 20 members currently receive water?

A. 20 members total. Of those 20, 12 are currently connected. Eight are not.

Q. Please turn to exhibit Sioux Falls Exhibit D.

A. Yes.

Q. Just to -- for orientation purposes is north at the top of that map?

A. Yes.

Q. Okay. And at the bottom of Sioux Falls Exhibit D, is that the well field you were talking about with the series of wells?

A. Yes.

Q. Okay. And you -- I just want to clear something up. You said a series of aquifers. Did you mean a series of wells?

A. Yes. Thank you. A series of wells.

Q. Okay. And it's one aquifer?

A. Correct.

Q. And then does the 54-inch water transmission line then go from those wells to a water treatment plant?

1 A. Yes.

2 Q. Okay. And where is the water treatment plant?

3 A. It's shown on the bottom left-hand corner of that
4 map. It says water treatment plant, and there's an arrow
5 pointing to it. Another way to describe it, it's two
6 miles north of the Highway 50 and Highway 19 intersection
7 in Vermillion. So it's two miles north of Vermillion.

8 Q. Okay. So by the time the water goes up to where the
9 crossing will be with the Dakota Access Pipeline that
10 water is all treated water?

11 A. Correct. Anything leaving the water treatment plant
12 is treated water.

13 Q. Are there any other Lewis & Clark transmission
14 lines?

15 A. You mean, not shown on this map or --

16 Q. Let me rephrase that.

17 Are there any other Lewis & Clark transmission lines
18 that would serve the City of Sioux Falls?

19 A. No.

20 Q. Are there any other Lewis & Clark transmission lines
21 planned to serve Sioux Falls?

22 A. No.

23 Q. Mr. Larson, I've placed in front of the witness desk
24 there Sioux Falls Exhibit E, and I've provided that to
25 the other parties as well.

1 A. Yes. I have it.

2 Q. Can you tell the PUC Commission what Exhibit E is?

3 A. This is a monthly invoice we send to the connected
4 members, billing them for the water that they have used
5 for that given month. And in this particular case it's
6 an invoice we sent to the City of Sioux Falls.

7 Q. At the top of this invoice there is a reference
8 using the word GPD. Do you see that?

9 A. Yes.

10 Q. What does GPD mean?

11 A. Gallons per day.

12 Q. And there are actually several references to gallons
13 per day on that exhibit, aren't there?

14 A. Correct.

15 Q. So what is -- what is the total -- does that invoice
16 show the total gallons that were sold from Lewis & Clark
17 to the City of Sioux Falls for the month involved there?

18 A. Yes. This is for the month of June of this past
19 year and there's a line that says total actual gallons
20 used and that's the total amount, 375 million. And then
21 broken down that's a gallons per day average of
22 12.5 million gallons.

23 Q. Is this bill that you're looking at a typical bill
24 that Lewis & Clark would send to the City of Sioux Falls?

25 A. Yes.

1 Q. Who was Lewis & Clark's biggest water customer?

2 A. Sioux Falls.

3 Q. Do you know whether Lewis & Clark provides a
4 significant part of the Sioux Falls drinking water
5 supply?

6 A. Yes. Depending on the month, of course, it varies.
7 But, generally speaking, a little under half of -- a
8 little under half of Sioux Falls's annual water supply
9 comes from Lewis & Clark.

10 Q. And in recent months has that been the case, a
11 little under half?

12 A. More recently I think it's been a little higher.
13 It's been maybe right at half. But you take the whole
14 year, it's a little under half.

15 Q. Okay. In addition to the volume water charges that
16 we see in these bills, has the City of Sioux Falls paid
17 other money toward Lewis & Clark's system?

18 A. Yes. Sioux Falls and the other members needed to
19 pay their share of the project in terms of the
20 construction. And, generally speaking, the funding for
21 Lewis & Clark is 80 percent from the Federal Government,
22 10 percent from the three states, and 10 percent from the
23 members.

24 Sioux Falls had a slightly different arrangement,
25 but generally speaking that's the case. And those

1 members, including Sioux Falls, prepaid their share of
2 the money -- they call it the construction dollars -- to
3 help build the project.

4 And combined the three states -- the three states
5 and the 20 members have paid \$154 million towards this
6 project.

7 Q. And how much of that comes from Sioux Falls?

8 A. I don't remember the exact number, but I believe it
9 was like 71 million. As I recall, it was over 70 million
10 of that amount.

11 MS. BEST: Okay. Thank you. I have no further
12 questions.

13 MS. WIEST: Commission Staff, do you have any
14 questions?

15 MS. BEST: I'm sorry. I didn't move to admit
16 Exhibit E.

17 MS. WIEST: Is there any objection to the
18 admission of Sioux Falls Exhibit E?

19 If not, it is admitted.

20 Commission Staff, did you have any questions?

21 MS. EDWARDS: Thank you.

22 CROSS-EXAMINATION

23 BY MS. EDWARDS:

24 Q. Mr. Larson, if the Lewis & Clark Regional Water
25 System were to come to an agreement before the conclusion

1 of this case as in before a Permit is either granted or
2 denied, would you be willing to file that with the
3 Commission?

4 A. Yes.

5 Q. And if that were the case, would you still want that
6 as a condition?

7 A. If the crossing agreement has been signed -- and I
8 don't know your time frame, but if it's signed before
9 this Commission makes a decision, then, yes, we could
10 withdraw our request to have this condition added.

11 Was that your question?

12 Q. Yes.

13 MS. EDWARDS: Thank you. No further questions.

14 MS. WIEST: Dakota Access, did you have any
15 questions?

16 MR. KOENECKE: I do. Thank you.

17 CROSS-EXAMINATION

18 BY MR. KOENECKE:

19 Q. Good morning, Mr. Larson. Thank you for being here.
20 We're glad you're here today.

21 Has Dakota Access negotiated with Lewis & Clark in
22 good faith?

23 A. To date we believe, yes.

24 Q. I want to understand, is your pipe somehow unique?
25 Let me just -- you described your pipe as being metal

1 inside of, I believe, cement?

2 A. It's steel on the outside and concrete on the
3 inside.

4 Q. On the inside. Was that a unique manufactured
5 product for your pipeline?

6 A. No. That's pretty typical.

7 Q. And did I understand correctly you've got cathodic
8 protection on your pipeline?

9 A. Correct.

10 Q. And you also understand that Dakota Access is going
11 to have cathodic protection on its pipeline?

12 A. That's my understanding.

13 Q. And that one of the details we're working on is how
14 to make sure the two systems don't cross each other up?

15 A. Correct.

16 Q. There are other details as well, similar engineering
17 details. Am I right?

18 A. Correct.

19 Q. Do you allow other facilities to cross over your
20 pipeline?

21 A. We do. We've had other utilities cross either under
22 or over. I don't recall specifically if it's been over
23 or under our 54-inch pipeline. Certainly over and under
24 our service lines.

25 But, again, we understand that will occur, and again

1 we're not -- whether it's this utility or another
2 utility, we have no objection to those crossings being
3 made, just to make sure that they're done in a way that
4 our engineers feel comfortable with.

5 Q. How much pressure is inside that main trunk line?

6 A. As I recall it's roughly 300 psi. Again, it depends
7 on the location. Near the treatment plant it's higher.
8 If you're near a booster station, it's higher. But it
9 varies. But again that's a general answer.

10 Q. Do you allow third parties to construct buildings
11 over top of your pipeline?

12 A. No, we do not.

13 Q. And why is that?

14 A. If we need to go in and do any repair, maintenance
15 of our pipeline, we need clear access to the pipeline.

16 Q. And how do you patrol your -- or I should say do you
17 patrol your pipeline route?

18 A. We do.

19 Q. And how do you do that?

20 A. We have staff, distribution -- we have one
21 distribution operator, and we're soon adding another one
22 that make rounds to the various parts of the project, the
23 meter buildings and different stretches of pipe.

24 And we've had instances where we've had construction
25 taking place too close to our easement and we've made

1 sure that was brought to the attention of whoever was
2 doing it and it was remedied.

3 Q. How wide is your permanent easement?

4 A. It varies depending on the diameter of pipe. In
5 this particular instance my recollection is it's an
6 80-foot permanent easement. The smaller diameter pipe,
7 it's a smaller permanent easement.

8 Q. How much smaller, if you know?

9 A. Right now in Minnesota I believe we're getting
10 50-foot permanent easement. So obviously the wider the
11 pipe the wider the permanent easement.

12 Q. When your crews are on patrol, can you tell me what
13 they're looking for?

14 A. They're mainly doing routine maintenance, exercising
15 valves, checking vaults, things like that.

16 Q. Do they look for third-party damage, things like
17 that?

18 A. Yeah. I mean, that comes with just being observant.
19 Like the one time in particular there was a structure
20 going up that was far too close to our pipeline, and so
21 they weren't specifically -- they weren't on patrol --
22 they don't go on patrol just looking for violations of
23 our easement. It's just part of their routine duties to
24 keep their eyes open.

25 Q. Thank you. Is it fair to say that you expect to

1 have an agreement, a crossing agreement, with Dakota
2 Access shortly?

3 A. We certainly hope so, but we have no way of knowing.
4 We thought we would have it by now. I would certainly
5 hope within the month, but that's pure speculation
6 because --

7 MR. RAPPOLD: Objection. Move to strike.
8 Speculation, as the witness indicated.

9 MS. WIEST: I think he can speak to what he
10 thinks is going to be done.

11 Objection overruled.

12 A. From our perspective we believe it can be done in
13 fairly short order. It really depends on Dakota Access's
14 position.

15 Q. In your opinion, has the restriction on building
16 over the pipeline impeded growth in the Sioux Falls
17 area?

18 MR. RAPPOLD: Objection. Calls for facts not in
19 evidence.

20 Q. Are you familiar with building --

21 MS. WIEST: Just a second. Okay. Are you going
22 to rephrase the question?

23 MR. KOENECKE: Sure. Glad to.

24 MS. WIEST: Go ahead.

25 Q. Are you familiar with the growth and progress in

1 Sioux Falls or Minnehaha or Lincoln County?

2 A. Just in general it's obviously growing.

3 Q. And are you aware of instances where your pipeline
4 has impeded that growth for any reason?

5 A. I'm not aware of any specific instances.

6 MR. KOENECKE: Thank you. Nothing further.

7 MS. WIEST: Commissioners, do you have any
8 questions?

9 CHAIRMAN NELSON: I do.

10 Troy, thank you for being here. I know you're
11 kind of the third-string witness for this Intervenor, but
12 I have confidence you'll be able to do well with the
13 questions.

14 Referencing Sioux Falls Exhibit D.

15 THE WITNESS: Yes.

16 CHAIRMAN NELSON: And understanding where you've
17 described that Dakota Access is proposing to cross that,
18 is there a valve on the 50-inch line at the Parker
19 off-ramp?

20 In other words, would that pipe be able to be
21 shut down at that point if there was a breach north of
22 there?

23 THE WITNESS: I believe that to be the case, but
24 I would want to confirm that with our engineers and
25 operations staff. But I would believe that's the case.

1 CHAIRMAN NELSON: And so if for some
2 catastrophic reason, to use your terms, the Dakota Access
3 Pipeline or anything else would cause a breach north of
4 there, all of the systems south of there, including
5 Parker, would be able to continue to operate; is that
6 correct.

7 THE WITNESS: I would hope that would be the
8 case. I, again, would want to confirm that with our
9 operations team and engineers.

10 CHAIRMAN NELSON: When you mentioned the fact
11 that a breach of the system going down would be
12 catastrophic, immediately my thought was, well, certainly
13 these systems have backup plans.

14 But I take it that's not the case?

15 THE WITNESS: Our backup plan is we have a
16 contractor on stand by, if you will, that we have
17 contracted with that will get out there as quickly as
18 possible to repair the pipe. Our contingency plan is to
19 repair the pipe.

20 We have, generally speaking, one day of reserved
21 capacity of storage. So, for example, we have two very
22 large reservoirs up by Tea, 7.5 million gallons. That
23 would take about one day to deplete that.

24 Part of our contingency plan as well would be to
25 make sure to get word out to members as quickly as

1 possible so that those members who do have other water
2 sources could reduce their dependency on Lewis & Clark as
3 quickly as possible because the sole source members have
4 no other options.

5 But yeah. Our contingency plan, we can't -- we
6 don't have another pipeline we can quickly switch to and
7 flip on that line. The contingency plan is to get the
8 pipe repaired as quickly as possible.

9 CHAIRMAN NELSON: My understanding from some
10 earlier questions is that the depth of the top of the
11 pipe in the crossing location is about 6 feet.

12 You testified that you would be fine with Dakota
13 Access either going over or underneath your pipe. I
14 can't visualize how on earth they could go over your
15 pipe.

16 Have they indicated that that's an option for
17 them?

18 THE WITNESS: My understanding is normally that
19 would be their preference as well. And actually that
20 would be our preference. But the reason -- they can
21 speak to this -- that it doesn't work that well is
22 there's another pipeline involved that they have to go
23 under.

24 So if they go under that pipeline and over ours,
25 there's going to be this really big swing. And so it's

1 my understanding -- they haven't ruled it out, it's my
2 understanding, but I believe they are going to go under
3 us primarily because of this other pipeline. But, again,
4 they could speak to that more clearly.

5 CHAIRMAN NELSON: Thank you.

6 In the public testimony meetings that we had
7 back in January and already in this proceeding there have
8 been a number of mentions about people's perception that
9 reclamation over your pipeline was inadequate.

10 Were you at the meeting in Sioux Falls in
11 January?

12 THE WITNESS: I was not.

13 CHAIRMAN NELSON: You were not. And so based on
14 those questions, I would like to ask you a few questions
15 about the actual construction methodology and the
16 reclamation for your pipeline.

17 In the construction portion was your contractor
18 required to segregate topsoil versus subsoil?

19 THE WITNESS: Yes.

20 CHAIRMAN NELSON: And were they required in
21 replacing the soil to take great care that the topsoil
22 was not mixed with the subsoil and properly replaced?

23 THE WITNESS: That is in the contract and
24 something we stressed to our contractors repeatedly. The
25 restoration of the topsoil is of utmost importance to the

1 landowner and to us.

2 We want to make sure we're maintaining a good
3 reputation with the landowners. So we not only include
4 all the details on how the segregation is done and the
5 restoration in the contract but it's something in our
6 monthly progress meetings that we stress to the
7 contractor.

8 That being said, there are certainly differences
9 in contractors. Some contractors maybe do a little
10 better job than others. But it's something that we
11 strive to make sure that our contractors are doing a very
12 good job.

13 And we believe throughout the project the vast
14 majority of landowners would be -- I believe would be
15 very pleased with the job that has been done.

16 Now we understand there might be exceptions to
17 that rule. We don't know if there was a particular day
18 where the contractor was trying to get something done
19 quickly. Maybe weather conditions weren't conducive.
20 But we strive mightily to make sure the topsoil is
21 restored and is able to produce crops like it was
22 previously.

23 CHAIRMAN NELSON: Have you had complaints from
24 landowners who felt the reclamation was inadequate?

25 THE WITNESS: One in particular that comes to

1 mind. Others, no.

2 CHAIRMAN NELSON: And I appreciate you sharing
3 that.

4 The last question I've got is in regard to the
5 80-foot permanent easement. As you were seeking easement
6 agreements in the Sioux Falls, Harrisburg, Tea, Lennox,
7 Hartford areas, did you have any opposition to your
8 request for those easements based on potential future
9 development of those areas?

10 THE WITNESS: Yes. There were landowners who
11 used that as a example of why they felt they should have
12 received additional compensation. Or more compensation
13 than we were offering.

14 CHAIRMAN NELSON: Last question.

15 And in some cases did you have to exercise
16 eminent domain?

17 THE WITNESS: We did.

18 CHAIRMAN NELSON: No further questions. Thank
19 you.

20 COMMISSIONER SATTGAST: Thank you very much for
21 being here. I just had a couple of questions.

22 You had mentioned about -- that the type of pipe
23 you're using has a concrete core. I take it it has a
24 lining on the inside.

25 THE WITNESS: Uh-huh.

1 COMMISSIONER SATTGAST: And that lining can get
2 broken due to movement on the surface.

3 THE WITNESS: Correct.

4 COMMISSIONER SATTGAST: How do you detect that
5 if there's a break within the line like that?

6 THE WITNESS: That's a good question. It's very
7 difficult to do, obviously, because it's full of water.
8 We have various locations there's isolation valves.

9 So we'd have to turn off the water on two ends,
10 drain the water, and then go in and make any repairs if
11 we knew, indeed, it had been damaged.

12 Now there's certainly instances where what if
13 it's damaged and we have no way of knowing it. That
14 would eventually show itself through corrosion where it
15 starts corroding through. Because if there's a gap in
16 the concrete, then the water is directly hitting the
17 steel. And there's no coating on the inside of the steel
18 so that's something that would show itself maybe 20 years
19 from now where we suddenly spring a leak in the middle of
20 our pipe, and probably then the engineers would figure
21 out that it was because the concrete was damaged.

22 Now before it goes into operation there's a very
23 thorough inspection to make sure there are no cracks --
24 that any cracks are covered with mortar fixes. So before
25 it goes into operation we make sure there are no cracks.

1 But to your point, once it's in operation that's
2 why we have to take so much care to make sure that any
3 activity that could cause damage is absolutely minimized
4 to the best of our engineering abilities.

5 COMMISSIONER SATTGAST: And then as far as water
6 quality, that's been brought up a couple different times
7 during testimony during this hearing.

8 Is water quality tested at the distribution
9 points, at your members' points, as well as somewhere
10 else along the line?

11 THE WITNESS: Yes, they are.

12 COMMISSIONER SATTGAST: And how periodic is that
13 done then?

14 THE WITNESS: It depends on the member. It
15 could be daily that they go out to their meter building
16 and check the pH levels and other things. So it could be
17 daily.

18 COMMISSIONER SATTGAST: Thank you very much.

19 COMMISSIONER HANSON: Good morning, Mr. Larson.

20 THE WITNESS: Good morning.

21 COMMISSIONER HANSON: Appreciate you being here.
22 You stated that the well field is located in the
23 Missouri Elk Point Aquifer.

24 THE WITNESS: Correct.

25 COMMISSIONER HANSON: Is that so close in

1 proximity to the Missouri River that the water is treated
2 as surface waters?

3 THE WITNESS: That's a good question. Our
4 aquifer is -- depending on how good your arm is, it's a
5 stone's throw from the Missouri River.

6 And we designed our system so that it could
7 treat water under the influence of surface water.
8 However, thus far we are considered a groundwater
9 system. There has not been that influence showing up
10 yet.

11 And so the State of South Dakota currently
12 designates Lewis & Clark as a groundwater system.

13 COMMISSIONER HANSON: Your crossing then is a
14 significant distance away from the well field. I'm not
15 certain how large the aquifer is then to the north. Do
16 you know approximately how many miles?

17 It appears to be a long distance. Do you know?

18 THE WITNESS: Oh, the distance from the aquifer
19 to that crossing?

20 COMMISSIONER HANSON: Correct.

21 THE WITNESS: I would say -- I don't know
22 exactly. I would say approximately 50 miles, maybe 45.

23 COMMISSIONER HANSON: Okay. So you're more
24 concerned -- obviously you're concerned about damage to
25 not just the pipe, but your primary concern at that

1 crossing is damage to the pipe and your ability to serve
2 water.

3 THE WITNESS: Correct.

4 COMMISSIONER HANSON: Okay. I'm sure you're
5 concerned of potential other damages but --

6 You were asked some questions about the pipe,
7 the construction of the pipe, location of the pipe
8 inhibiting the growth of Sioux Falls.

9 Doesn't the Lewis & Clark actually encourage and
10 strengthen the growth of Sioux Falls because it was a
11 necessary resource?

12 THE WITNESS: Oh, absolutely. Lewis & Clark was
13 built for two reasons, quality of life and economic
14 development opportunities. Without this water,
15 communities like Sioux Falls and others simply wouldn't
16 be able to attract the business and industry on a
17 long-term basis like they're doing now.

18 So absolutely economic development is a key
19 component of why Lewis & Clark exists.

20 COMMISSIONER HANSON: So would you say there's a
21 direct and significant benefit to having that pipe?

22 THE WITNESS: Absolutely.

23 COMMISSIONER HANSON: Does the line run south of
24 Sioux Falls?

25 THE WITNESS: Yep.

1 COMMISSIONER HANSON: In a horizontal fashion?

2 THE WITNESS: It does.

3 COMMISSIONER HANSON: And does it run along
4 roadways such as 85th Street?

5 THE WITNESS: Yes. 85th Street is one of them,
6 yes.

7 COMMISSIONER HANSON: In the process of
8 obtaining easements did you have any citizens inform you
9 that they were worried about or fearful that water was
10 going to be in a pipeline close to them?

11 THE WITNESS: No. Not in that stretch, no.

12 COMMISSIONER HANSON: Were they worried about
13 the potential of leak of water and the damage that it
14 might create to their properties?

15 THE WITNESS: No.

16 COMMISSIONER HANSON: They certainly weren't
17 worried about it being flammable or harmful to their
18 health?

19 THE WITNESS: No.

20 COMMISSIONER HANSON: Okay. Thank you very
21 much. Appreciate your testimony.

22 One last question. The Lewis & Clark Rural
23 Water System, the board of directors, as you testified,
24 is comprised of elected members of municipalities, Rural
25 Water System board of directors members, and those folks

1 are representing municipalities and rural water systems;
2 correct?

3 THE WITNESS: Correct.

4 COMMISSIONER HANSON: And they are citizens of
5 Iowa, Minnesota, South Dakota.

6 THE WITNESS: Correct.

7 COMMISSIONER HANSON: So this pipeline is run by
8 and has responsibility to and benefit to the citizens of
9 those three states.

10 THE WITNESS: That's absolutely correct.

11 COMMISSIONER HANSON: Thank you. No further
12 questions.

13 MS. WIEST: Any further cross?

14 MS. REAL BIRD: I do.

15 MS. WIEST: Go ahead.

16 RECROSS-EXAMINATION

17 BY MS. REAL BIRD:

18 Q. Mr. Larson, you mentioned another pipeline that
19 Dakota Access would have to cross.

20 A. Yes.

21 Q. Do you know which pipeline?

22 A. I believe it's a Lincoln County Rural Water System
23 pipeline. I'm not positive, but that's my understanding.

24 Q. And what is your understanding as to what material
25 that pipeline transports?

1 A. I'm almost certain it's PVC simply because of the
2 diameter, but I don't have direct knowledge of that.

3 Q. Oh, I'm sorry.

4 My question might have been confusing. Does it
5 transport water?

6 A. Oh, sorry. Yes. Water.

7 Q. And you indicated that the material might be PVC
8 that the pipeline's made of, but you're not certain?

9 A. That's correct.

10 Q. And you wouldn't know whether or not the cathodic --
11 there is a cathodic protection system on that third
12 pipeline?

13 A. That I don't know.

14 Q. You don't know. Okay.

15 And what is the temperature of your pipeline?

16 A. The temperature I do not know.

17 Q. Do you know a range?

18 A. I do not know.

19 Q. And you mentioned water quality testing. And I
20 believe you said pH is tested. Is that the only thing
21 tested?

22 A. No. There's a variety of things that our operation
23 team monitors. And that's why we hire good people to
24 make sure they cover that. I couldn't give you all of
25 the science behind their testing.

1 Q. And so the daily testing, is that only pH, and then
2 the other items are tested on a different schedule?

3 A. No. It would all be on the same schedule that it is
4 monitored. And I just mentioned pH. There's a variety
5 of things our distribution team has to monitor to make
6 sure the water being delivered meets all required
7 standards.

8 Q. Okay. I just wanted to make sure because it sounded
9 like that was the list and not an example.

10 A. Thank you for clarifying that. That is just one of
11 many things that we have to monitor.

12 Q. The other pipeline that would be crossed, do you
13 know if it's in the size of your pipeline, the 54 inches?
14 Is it smaller or larger?

15 A. It's significantly smaller. I don't know the exact
16 diameter, though, but it's significantly smaller.

17 MS. REAL BIRD: No further recross. Thank you.

18 MS. WIEST: Any others.

19 MR. RAPPOLD: Just a few. Thank you.

20 RE-CROSS-EXAMINATION

21 BY MR. RAPPOLD:

22 Q. You testified that some contractors do a better job
23 than others; is that correct?

24 A. Yes.

25 Q. And are you aware that Michels Construction is

1 slated to construct this pipeline for Dakota Access?

2 A. I was not aware of that.

3 Q. Do you know that Michels Construction are the same
4 folks that constructed the base Keystone Pipeline?

5 A. I was not aware of that.

6 Q. Are you aware that the base Keystone Pipeline had
7 14 leaks within the first year of its operation?

8 A. I was not aware --

9 MR. KOENECKE: I object. This is way beyond the
10 scope of any examination.

11 MR. RAPPOLD: No. This is directly relevant and
12 connected to Chairman Nelson's questions.

13 MS. WIEST: His questions on what?

14 Oh, okay. On the catastrophe issue?

15 MR. RAPPOLD: Yeah.

16 MS. WIEST: Okay. Go ahead.

17 Q. And is it further your testimony that you have no
18 backup plan other than fix the problem?

19 A. If we have -- if we have an issue with our pipe
20 where it has been breached or it starts to leak, we need
21 to fix it as quickly as possible.

22 Other contingency plans would be to ensure that the
23 member has reduced their water use as quickly as possible
24 to minimize the impact. But in terms -- if your question
25 is repairing the pipe, that is the only option is to

1 repair the pipe. There's no contingency plan beyond
2 repairing the pipe.

3 Q. And there's no contingency plan to provide water for
4 people that you're contracted to provide that to, aside
5 from the day supply you have?

6 A. For the members that are sole source, that is
7 correct. So we need to make that day stretch as long as
8 possible, which in part would be involving the members
9 that have other sources reducing their usage of Lewis &
10 Clark water.

11 Q. And if a situation like that were to occur, would
12 you agree that the interruption of water, of being
13 provided to people's homes and businesses, would be an
14 activity that interferes with quality of life?

15 MR. KOENECKE: Objection. Asked and answered.

16 MR. RAPPOLD: I didn't ask this question.

17 MS. WIEST: Overruled.

18 A. Yes.

19 Q. And would you also agree that interruption of the
20 water that you're contracted to provide to users could
21 interfere with economic benefits that they currently
22 enjoy from having the water?

23 A. Yes.

24 Q. Would you agree that there are different concerns
25 associated with the construction and operation of water

1 pipeline as compared to the operation and construction of
2 oil pipelines?

3 A. Yes.

4 Q. Would you agree that you can present no testimony
5 regarding how Lincoln County feels about the crossing
6 that you described?

7 A. That's correct.

8 Q. Would you agree also then that the sole source users
9 will have no other water to drink if something were to
10 happen?

11 A. It would not come from Lewis & Clark in that
12 instance. What contingency plans they have beyond that,
13 I do not know.

14 Q. They'd be pretty much on their own?

15 A. Correct.

16 MR. RAPPOLD: Thank you. I have no further
17 questions.

18 MS. WIEST: Any other cross?

19 MS. CRAVEN: I just have two questions.

20 RE-CROSS-EXAMINATION

21 BY MS. CRAVEN:

22 Q. So it was your testimony this pipeline was built for
23 two reasons, quality of life and economic development?

24 A. Correct.

25 Q. And that 80 percent of the money came from the

1 Federal Government to build it?

2 A. Generally speaking 80 percent, correct.

3 Q. How much is that?

4 A. To date the Federal Government has provided over
5 200 million. I believe it's 221 million that they have
6 provided to date. And they still owe as of today roughly
7 204 million.

8 Q. So all total it would be over 400 million once it's
9 all said and done?

10 A. Correct. The remaining federal cost share is
11 indexed for inflation each year so that's why it's hard
12 to put an exact number on it. But, yes, it would be over
13 400 million.

14 Q. So would you say there's a federal nexus to this
15 pipeline?

16 A. A federal what?

17 Q. Nexus. That there's a federal connection to this
18 pipeline because it's federally financed?

19 A. Yes. There's certainly a federal component to this
20 project.

21 Q. And do you have any kind of agreement with the
22 Federal Government regarding the pipeline because you're
23 taking their money? Do you have any kind of --

24 MS. NORTHRUP: Objection. Relevance. Beyond
25 the scope.

1 MS. WIEST: I think that goes beyond the scope
2 of any question.

3 MS. CRAVEN: I'm just trying to figure out
4 whether there's an agreement in place with the Bureau of
5 Reclamation for the safeguard of the pipeline based on
6 the funding of it.

7 MS. WIEST: You can ask that question.

8 Q. Okay. Is there a agreement in place with the Bureau
9 of Reclamation based on the federal funding of the
10 pipeline?

11 A. An agreement that addresses what?

12 Q. Safety, crossings, what you can do with the pipeline
13 or anything like that?

14 A. The Bureau of Reclamation or the Federal Government
15 has no oversight whatsoever in terms of the operation.
16 Their oversight is the construction of the project.

17 So in this case the project -- and this crossing has
18 been completed so the Bureau of Reclamation would have no
19 oversight in regard to this crossing.

20 MS. CRAVEN: Okay. Thank you.

21 CHAIRMAN NELSON: I have just one additional
22 question.

23 Are there any sole source members north of where
24 the pipeline is proposed to cross?

25 THE WITNESS: Yes. Tea, Harrisburg, Lincoln

1 County Rural Water.

2 CHAIRMAN NELSON: Thank you.

3 MS. WIEST: Redirect? Any redirect?

4 MS. NORTHRUP: No. Thank you.

5 MR. KOENECKE: I have a question, if I might.

6 RE CROSS-EXAMINATION

7 BY MR. KOENECKE:

8 Q. I'm wondering how those communities got water before
9 the Lewis & Clark pipeline was installed?

10 A. Are you referring to Tea, Harrisburg, and Lincoln
11 County Rural Water?

12 Q. Sure. Any of the sole source communities?

13 A. Well, each answer would be different. Tea,
14 Harrisburg, and Lincoln County Rural Water received the
15 vast majority of their water from the City of Sioux Falls
16 at that time before we started providing water.

17 Centerville is another example where they had a very
18 old treatment facility so they were treating their own
19 water. And they have abandoned, mothballed maybe is a
20 better term, their treatment facility so they're
21 receiving all their water from Lewis & Clark.

22 Beresford is another example where they have a very
23 old treatment facility that they have mothballed. So
24 each system again there's a different story involved as
25 to why they're sole source Lewis & Clark.

1 MR. KOENECKE: Thank you.

2 MS. WIEST: I think this concludes the testimony
3 of this witness.

4 Going forward, I would say it is noon. Did the
5 Commissioners want to take a break at this point then?

6 Okay. We will -- does that work for you,
7 Ms. Best?

8 MS. BEST: If I may, we have reached an -- the
9 City of Sioux Falls has reached an agreement with Dakota
10 Access Pipeline and would like to present the
11 stipulation. So it would be very short.

12 MS. WIEST: Go ahead.

13 MS. BEST: Thank you.

14 (Discussion off the record)

15 MS. BEST: I've just distributed a Stipulation
16 to you that involves an agreement between Dakota Access
17 Pipeline and the City of Sioux Falls, and I have provided
18 it to all parties.

19 The parties entered into negotiations regarding
20 the protections that could be provided to the Sioux Falls
21 Landfill, and as you recall from my opening statement we
22 were very concerned with the features and fixtures at the
23 Sioux Falls Landfill and whether the Dakota Access
24 Pipeline lying along the west side of the Sioux Falls
25 Landfill would be adequately protected.

1 Following that opening statement and throughout
2 the course of these proceedings the parties have had an
3 opportunity to engage in extensive negotiations and have
4 reached agreement.

5 I will point out to you that the Stipulation
6 contains a typographical error. It says that it is dated
7 the 29th day of September. That actually was the
8 original date -- or the first date that this hearing
9 started. It actually is dated October 7, and that
10 correction has been made both in the copies you have
11 received and in the original.

12 To put it very briefly, what the Stipulation
13 does is that it asks -- jointly asks the Commission to
14 approve certain conditions that will apply to the Dakota
15 Access proposed route line parallel along the west
16 boundary of the landfill.

17 The landfill is designed so that the landfill
18 cells, the areas where the excavation will occur for the
19 deposited municipal public waste, those cells are some
20 300 feet away from where this pipeline will go. So there
21 is not a concern about excavation or undercutting of the
22 pipeline.

23 Our biggest concern was about a leachate
24 collection system, basically garbage juice. The
25 collection system collects leachate. It is produced in a

1 gas form, leaves the Sioux Falls Landfill in a pipeline,
2 and is exported to an ethanol facility some 11 miles
3 away. And that is the pipeline that has previously been
4 permitted by this Commission, and the City of Sioux Falls
5 is committed to maintain the integrity of that pipeline.

6 We believe that the proposal that we have
7 currently offered to the Commission with these conditions
8 will maintain the integrity of that pipeline.

9 In addition, the City of Sioux Falls has a
10 groundwater monitoring well that will be near the place
11 where the Dakota Access Pipeline will lie. And how it
12 works is that it's what I would call a background
13 environmental groundwater monitoring well. It is up
14 gradient from the landfill, and it's in place so we have
15 a baseline to determine what the water -- groundwater
16 source is near the landfill.

17 And so that will tell us later on if the
18 landfill or, as I said, leachate, garbage juice, is
19 actually leaking through the bottom of the landfill into
20 the groundwater in the area.

21 I would say this: That it is a highly regulated
22 landfill. Leakage is not occurring, but it is a
23 groundwater monitoring well situation that's designed to
24 address those circumstances if it were ever to occur.

25 We want to make sure that that groundwater

1 monitoring well serves its function of determining
2 whether contamination is occurring in the area. It will
3 have the coincidental function, in this case, because
4 there would be the -- the Dakota Access Pipeline is
5 coming through that area, it would have the incidental
6 function, if you will, of identifying petroleum if there
7 was a leak in the area up gradient from the groundwater
8 monitoring well.

9 We've also included protections, however, that
10 our groundwater monitoring well needs to be barricaded
11 off from my construction vehicles, and, of course, the
12 groundwater monitoring well needs to be protected.

13 If it were to see the influx of petroleum in
14 that well from Dakota Access Pipeline such that it no
15 longer has the reliability to serve as a groundwater
16 monitoring source for the landfill itself, then Dakota
17 Access would have to go in -- in worst-case scenario they
18 would have to go in actually and drill us a new
19 groundwater monitoring well. And they have agreed to do
20 that.

21 In addition, as Dakota Access constructs the
22 pipeline it will be driving its heavy vehicles in the
23 area. We've included conditions so that the heavy
24 vehicles cannot be -- dozers or excavators cannot be
25 driven on the surface where our gas pipeline is below.

1 We're several feet below the surface. Even so, the
2 concern may be distortion of that pipeline based on
3 compression.

4 We were concerned about that. We've asked for a
5 condition. Dakota Access has agreed to that condition.
6 And so they would be using light vehicles, pickups or
7 Bobcats or that sort of thing only over that gas pipeline
8 area.

9 We do have a chain link fence around the
10 perimeter of the landfill, and that's consistent with I
11 think most landfills in the state. That chain link fence
12 to the extent that it needs to be removed for just the
13 excavation equipment to be moved around during the
14 construction of the Dakota Access Pipeline, Dakota Access
15 Pipeline would undertake the removal, and they would
16 replace the chain link fence for the City at no cost to
17 the City.

18 We believe that the conditions, as proposed,
19 adequately protect the needs of the landfill. I do note
20 that there is a crossing. As I indicated, the gas
21 pipeline is parallel on the west side of the landfill,
22 and then the Dakota Access Pipeline would also be
23 parallel to it along the west side of the landfill. So
24 they would -- they would not interfere with each other in
25 operation.

1 However, there is a crossing where Dakota Access
2 Pipeline would cross under the City's 12-inch gas --
3 landfill gas pipeline. And there's a condition in here
4 as well that would protect that.

5 And then in addition I would state that the
6 landfill personnel have informed Dakota Access and intend
7 to be on site at all times during the construction
8 process.

9 And at this time I would ask that the Commission
10 favorably consider this joint motion to include these
11 conditions.

12 And, in addition, I attached a couple of
13 exhibits that I wanted the Commission to consider as part
14 of this process. It includes Sioux Falls Exhibit A,
15 which has already been admitted into evidence and used in
16 this proceeding, and it includes Exhibit B that
17 details -- provides further detail regarding the landfill
18 route -- or, I mean, excuse me. The landfill and the
19 Dakota Access route. And I think it may be useful for
20 consideration in this proceeding and would I ask you to
21 admit that as part of this -- admit that and approve the
22 joint conditions.

23 Thank you.

24 MS. WIEST: At this time I believe since it's a
25 joint motion regarding stipulated Findings of Fact,

1 conditions, and exhibits and, of course, the Commission
2 will not be making any decision on this pipeline for a
3 while, I would assume that the Commission just would be
4 taking this under advisement and if anybody wants to file
5 anything in response, they are free to do so.

6 COMMISSIONER HANSON: Yeah. I have some
7 questions too.

8 MS. WIEST: Go ahead.

9 CHAIRMAN NELSON: Ms. Best, earlier in this
10 proceeding there was testimony that one of the reasons
11 the City of Sioux Falls intervened was your concern about
12 the quality of Missouri River water.

13 I don't see that addressed anywhere here. And
14 so my question to you is was that one of the reasons you
15 intervened?

16 MS. BEST: No.

17 CHAIRMAN NELSON: Thank you.

18 MS. BEST: If you would like me to, I can
19 elaborate. We do receive water from Lewis & Clark but
20 not --

21 CHAIRMAN NELSON: That's fine.

22 MS. BEST: Weren't concerned about it.

23 MS. WIEST: Go ahead. There's another question
24 for you.

25 COMMISSIONER HANSON: I have a couple of

1 questions.

2 MS. BEST: Sure.

3 COMMISSIONER HANSON: On page 2, item 6, it
4 states that if the PUC grants this joint motion, the City
5 would not object to the siting of the Dakota Access
6 Pipeline as presently proposed.

7 So, in other words, this agreement with what I
8 refer to as the regional landfill, Sioux Falls Regional
9 Landfill, with this agreement you're giving up all rights
10 to protest anything regarding the pipeline regardless
11 of --

12 MS. BEST: Correct. We also had concerns
13 regarding the Lewis & Clark crossing. And so we were
14 concerned about that, and I think Lewis & Clark is
15 working forward. And we will obviously watch that with
16 interest.

17 But at this time we would withdraw other
18 objections.

19 We do, of course -- they will have to obtain an
20 easement from us, both a permanent easement for a very
21 few feet along the west side of our boundary -- I think
22 it's something like 25 feet -- and then also a temporary
23 construction easement in order to run the heavy
24 equipment.

25 And those easements have not been -- we don't

1 have easements in place yet. We are negotiating so
2 obviously we're not giving up the right to further
3 negotiate easements. But we've talked, and we're fairly
4 sure we'll get something in place.

5 COMMISSIONER HANSON: So but just for the sake
6 of an easement at the landfill of Sioux Falls giving up
7 all of its rights on consideration for anything else
8 pertaining to the pipeline?

9 MS. BEST: For this PUC proceeding, yes.

10 COMMISSIONER HANSON: On page 6, item 12, you
11 state that the pipeline as proposed will be at least two
12 feet beneath the landfill gas pipeline.

13 How shallow is --

14 MS. BEST: Correct.

15 COMMISSIONER HANSON: -- that? I know it
16 varies, but do you know the depth of the gas pipeline at
17 that location? If you don't, that's fine.

18 MS. BEST: I don't.

19 COMMISSIONER HANSON: Do you know the average
20 depth of the methane pipeline that runs to the ethanol
21 plant?

22 MS. BEST: I don't. I'm sure I've been told,
23 but I do not. It's the depth that would be required by
24 the regulatory standards and the Permit issued by this
25 Commission.

1 COMMISSIONER HANSON: I'm just assuming that
2 it's not real deep. But, then again, the landfill's real
3 deep. I'm just trying to figure out how you arrived at
4 being underneath the gas pipeline -- having the oil
5 pipeline beneath the gas pipeline. I assume it's because
6 of the depth, but just wondering if there's --

7 MS. BEST: I believe that's the case. I don't
8 have the particulars on that.

9 COMMISSIONER HANSON: Okay. Thank you, Diane.
10 Or Ms. Best.

11 MS. WIEST: Okay. Anything else regarding the
12 motion?

13 MS. CRAVEN: I have something to say. I don't
14 object to the merits of the motion, but we find this
15 untimely. I mean, we're right in the middle of an
16 evidentiary hearing, and this motion just kind of comes
17 out of the blue. We haven't seen it previously, and it
18 seems like it's something that should be heard at a later
19 time.

20 And also I wanted to clarify one thing. It's my
21 understanding that Ms. Best did state that it was one of
22 the concerns of Sioux Falls -- the quality of the
23 Missouri River water not necessarily a reason why they
24 intervened but a concern. So I just wanted to clarify
25 that.

1 MS. WIEST: Anything else?

2 MR. RAPPOLD: Quickly. Yeah. It seems like a
3 more appropriate way to deal with Sioux Falls's position
4 on the issues is to do that through calling a witness and
5 allowing all the parties to cross-examine that witness.

6 If at a later point in time we're permitted to
7 submit Proposed Findings of Fact and Conclusions of Law,
8 then I think that this -- that that's the better time for
9 these conditions to be filed, and I would assume they
10 would do that jointly.

11 So those are my comments as far as the motion.
12 I'd kind of ask that you just take it under advisement
13 and see how the remaining portion of the hearing plays
14 out and then determining how this fits into your overall
15 decision-making process and reaching an ultimate
16 conclusion one way or the other.

17 And I'll just leave my comments there. Thank
18 you.

19 MS. WIEST: Yes. I don't believe that the
20 Commission would be ruling on this motion at this time at
21 all. So --

22 MR. KOENECKE: As long as we're having open
23 microphone time, can I make a few comments?

24 MS. WIEST: Go ahead.

25 MR. KOENECKE: I would appreciate that.

1 And I want to say how much I appreciate working
2 with Ms. Best and the City of Sioux Falls. We've
3 resolved their issues. She wouldn't have put that term
4 in the agreement had we not resolved their issues.

5 Ms. Best is experienced counsel, far more
6 experienced than I am. I'm very much her junior at this
7 game. And we've worked out and worked on issues with the
8 City of Sioux Falls, and we put a stipulation forward
9 that has nothing to do with the other parties in this
10 room.

11 It ought to be considered because it's the
12 product of negotiations, discussions back and forth.
13 It's a positive thing that ought to be looked on
14 positively by everybody. When people can come together,
15 talk about their differences, and offer up to
16 decision-makers, hey, we worked this out, that's a
17 positive thing and should be looked at that way, in my
18 view.

19 Thanks for listening to me.

20 MS. WIEST: And we will consider this motion at
21 a later time.

22 Go ahead.

23 MS. EDWARDS: Could I add one thing just for
24 clarification purposes? This is Kristen Edwards for
25 Staff.

1 In the conditions on page 4, No. 1, it does
2 reference standard conditions posed by the PUC. To my
3 knowledge, there's not a set of standard conditions out
4 there. So if other parties or anyone else is looking for
5 those, I don't believe they'll find those. We don't have
6 standard conditions that we impose.

7 MS. WIEST: Okay. Thank you.

8 Let's move on to what we're doing this
9 afternoon. I believe the next witness that we were going
10 to take would be Ms. Young; is that correct?

11 MS. CRAVEN: Yes.

12 MS. WIEST: It would be Ms. Young.

13 Did you have any special order, Ms. Edwards, for
14 your witnesses this afternoon?

15 MS. REAL BIRD: Ms. Wiest, I do have a question
16 for the Yankton Sioux Tribe regarding the pending motion.

17 On page 2, paragraph 5, it states if the PUC
18 denies this joint motion and then it continues on that
19 the City reserves its right to call its witnesses.

20 I'm curious to know how that will be dealt with.
21 Because it sounds like the Commission is taking up the
22 motion to be decided at a later date.

23 Is it the city's decision to not call its
24 witness today?

25 MS. WIEST: Can you address that, Ms. Best?

1 MS. BEST: Obviously this was drafted with the
2 hope that the PUC would be able to give our motion an up
3 or down at this time so that we would know whether to
4 continue and go ahead and call a witness.

5 But we are not going to call the witness. What
6 the witness would do is just simply go through these
7 conditions and explain the agreement that's been reached.
8 I think that is very redundant. It's unnecessary, and it
9 would certainly save the Commission time to just take
10 this -- to do as you've indicated, to take the matter
11 under advisement without need for further witness.

12 MS. WIEST: Okay.

13 MS. REAL BIRD: So just to be clear, the other
14 parties can file responses to the motion?

15 I mean, my concern is the South Dakota Statutes
16 that require a public hearing process. We're here for an
17 evidentiary hearing. The witness will not be sworn in,
18 et cetera, all of the due process requirements that the
19 South Dakota Legislature provided for.

20 So I'm -- is it clear that we can file a
21 response? And I'm not attacking the process the parties
22 engaged in. Trying to figure out how this fits in with
23 what's required of the Commission.

24 MS. WIEST: Well, Ms. Best, to the extent that
25 the Commission were to take up this joint motion after

1 the evidentiary hearing, I'm assuming it wouldn't be your
2 position that you had a right to call a witness and go
3 back to a hearing.

4 MS. BEST: The City of Sioux Falls understands
5 that the time for the hearing is now, and we would
6 withdraw our witness at this time.

7 MS. WIEST: Okay. Thank you.

8 Ms. Edwards, did you have an update on your
9 witnesses?

10 MS. EDWARDS: Not really since yesterday. We
11 will still start out with Robert McFadden and see where
12 that takes us.

13 MS. WIEST: Okay. Is there anything else before
14 we break?

15 If not, we will come back in an hour and 15
16 minutes.

17 (A lunch recess is taken)

18 MS. WIEST: I believe at this point, Ms. Craven,
19 you were going to call a witness?

20 MS. CRAVEN: Thank you. This is Kimberly Craven
21 for the Indigenous Environmental Network and Dakota Rural
22 Action, and I'm calling Ms. Waste Win Young, please.

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

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DIRECT EXAMINATION

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BY MS. CRAVEN:

Q. Would you please state your name and occupation for the record.

A. Yes. My name is Waste Win Young, and I'm the Tribal Historic Preservation Officer for the Standing Rock Sioux Tribe.

MS. CRAVEN: May I approach the witness?

Q. Ms. Young, I've just handed you some documents. Could you please identify a document that is marked DRA IEN Exhibit No. 2, please.

A. Yes. That's my prefiled testimony.

MS. CRAVEN: And I move to enter this into the record.

MS. WIEST: Is there any objection to Exhibit No. 2? Is that correct? It was Exhibit No. 2.

MS. CRAVEN: Yes. Exhibit No. 2. Sorry.

MS. WIEST: Any objection?

If not, it's admitted.

Q. And I've also handed you another document marked DRA IEN Exhibit No. 3. Do you know what that is?

A. Yes. That is a letter to Martha Chieply, regulatory chief of the Army Corps from myself.

MS. CRAVEN: I move to introduce this as DRA IEN Exhibit No. 3.

1 MS. WIEST: And what is the date of that letter?

2 MS. CRAVEN: April 8, 2015.

3 MS. WIEST: Okay. Thank you. Any objection?

4 If not, it's admitted.

5 Q. And I've also handed you another document marked DRA
6 IEN Exhibit No. 4. Do you know what that is?

7 A. Yes.

8 Q. What is it?

9 A. Yes. It's a letter to Richard Harnois of the Army
10 Corps of Engineers dated February 18, 2015, from myself.

11 MS. CRAVEN: And I move to introduce DRA Exhibit
12 No. 4 into the record.

13 MS. WIEST: Any objection?

14 If not, it's admitted.

15 Q. I've also handed you DRA IEN Exhibit No. 5. Do you
16 recognize that, and what is it?

17 A. Yes. Those are e-mails between Joel Ames of the
18 Army Corps and myself and Monica Howard of Energy
19 Transfer and myself and Richard Harnois of the Corps and
20 myself.

21 MS. WIEST: And what is the top date on that
22 document for my records?

23 THE WITNESS: March 30, 2015.

24 MS. WIEST: Okay. Is there any objection?

25 If not, it's admitted.

1 MS. CRAVEN: I also move to --

2 Q. So I've also handed you DRA IEN Exhibit No. 6. Do
3 you see that?

4 A. Yes.

5 Q. And what is this document?

6 A. That is a letter to me as the THPO addressed
7 February 17, 2015, from Martha Chieply of the Army Corps.

8 MS. CRAVEN: And I move to introduce DRA IEN
9 Exhibit No. 6.

10 MS. WIEST: Any objection?

11 If not, it's admitted.

12 Q. Are your answers the same today as when you signed
13 your prefiled testimony?

14 A. No. There is a correction.

15 Q. And what would that correction be?

16 A. It is on page 3 of the prefiled Affidavit. The last
17 sentence where it says The NHPA process was followed, it
18 is supposed to say was not followed.

19 Q. So the last sentence is supposed to say the NHPA
20 process was not followed?

21 A. Correct.

22 Q. Okay. Thank you.

23 Would you please summarize your duties as the
24 Standing Rock Tribal Historic Preservation Officer.

25 A. As the Tribal Historic Preservation Officer I manage

1 the cultural, archaeological, sacred sites, significant
2 cultural sites on the Standing Rock Sioux Indian
3 Reservation.

4 I also consult with agencies off the reservation on
5 projects that may impact places that are spiritually and
6 culturally significant to our Tribe.

7 Q. Would you please describe the National Historic
8 Preservation Act Section 106 process as it was intended
9 to be implemented?

10 A. The 1992 Amendment to the National Historic
11 Preservation Act established Tribal Historic Preservation
12 Offices. And what that did was that gave authority to
13 Tribes to have a seat at the table, if you will, and gave
14 them authority to say yes or no to a project that may be
15 impacting a significant site on their lands or lands that
16 they deemed cultural or sacred or significant.

17 Q. Would you please describe your experience with
18 respect to the Section 106 process for the Dakota Access
19 Pipeline Project?

20 A. The Section 106 process for Dakota Access is
21 currently incomplete, and we are still waiting to meet
22 with the Army Corps.

23 Q. Does a cultural resource survey that lacks
24 identification of traditional cultural properties by
25 tribal experts comply with the Section 106 regulations

1 for identification of historic properties?

2 A. No, it does not.

3 Q. If a federal agency responsible for implementing
4 Section 106 that may affect historical properties of
5 Standing Rock Sioux Tribe fails to properly consult with
6 your office and if the project is approved, does it
7 violate Section 106?

8 A. Yes.

9 MS. SEMMLER: I'm going to object to the extent
10 that that calls for a legal conclusion. She's not a
11 lawyer.

12 MS. WIEST: Sustained.

13 MS. CRAVEN: She's experienced working with the
14 Act, though. She's worked with it several times. She
15 knows what the Act does.

16 MS. SEMMLER: If I may reply, she was asked for
17 a legal interpretation as to whether the acts will be
18 complied with or not.

19 MS. WIEST: Sustained.

20 Q. If a project gets approved and you know that it
21 hasn't complied with Section 106, do you have any way
22 to -- any recourse for the Tribe to take?

23 A. Yes. We can --

24 MS. SEMMLER: Again, I'm sorry to interrupt. To
25 the extent it's going to call for any legal conclusion or

1 interpretation under 106, my objection stands.

2 MS. WIEST: Did you have a response to that?

3 MS. CRAVEN: I'm not asking for a legal
4 conclusion. I would ask what she would do. Do you want
5 me to --

6 MS. WIEST: Yes. Overruled. Go ahead.

7 Q. Okay. So if the project is approved and the Tribe
8 is not consulted, what would you do?

9 A. What we have done in the past, we request
10 foreclosure through Section 106 to the Advisory Council
11 on Historic Preservation, and that is within the National
12 Historic Preservation Act.

13 Q. And what does foreclosure mean?

14 A. It means that they would stop the project until all
15 parties meet and come to a resolution.

16 Q. Do you know who Monica Howard is?

17 A. Yes.

18 Q. Have you ever met with Monica Howard?

19 A. Yes.

20 Q. Would you please explain the circumstances.

21 A. I met with Monica and Dean Sather of Merjent last
22 year. They came to the Standing Rock Sioux Tribe at
23 the Tribal Historic Preservation Office in Ft. Yates,
24 North Dakota. They met with myself and my staff on
25 Dakota Access.

1 Q. In Exhibit No. 5 there is a copy of an e-mail from
2 Ms. Howard to you which references follow up. Would you
3 please provide for us what that follow up was supposed to
4 be?

5 A. To my knowledge there -- she has not followed up.

6 Q. Did she say she was going to follow up?

7 A. Yes.

8 Q. What did she say in the e-mail to you?

9 A. In the middle paragraph, the last sentence it says
10 "We are currently performing biological and cultural
11 surveys where landowners have granted permission,
12 although we are done for this season and will try to
13 resume this spring when the ground thaws and snow has
14 melted."

15 And the last sentence of the entire e-mail again
16 states "We understand that you would like have tribal
17 representation during the sampling events, and we will
18 communicate that schedule with you."

19 Q. Did that ever happen?

20 A. Not to my knowledge.

21 Q. Is there anything else in Ms. Howard's e-mail that
22 struck you as significant?

23 A. I think that this e-mail illustrates the
24 obliviousness of the contractor working for the project
25 because nobody -- no federal agencies would come out and

1 say that we are requesting sacred sites.

2 Because on our registry at Standing Rock they are
3 kept under lock and key in one of our map rooms. So we
4 don't generally give that information out.

5 Q. Did she ask you to provide her the location of
6 sacred sites in that e-mail?

7 A. Yes. In the middle of the e-mail it says "Please
8 review this information and let us know if Standing Rock
9 has any known sacred or documented sites along this
10 route."

11 Q. Do you have a letter from the Standing Rock Sioux
12 Tribe to the Army Corps of Engineers dated February 25,
13 2015?

14 I'll withdraw my question and ask to have that
15 stricken.

16 Is there anything else you'd like to tell the
17 Commission about Standing Rock's cultural resource
18 properties?

19 A. I would just like to add that we consider this
20 Section 106 process incomplete, and the Corps will be
21 coming to the Standing Rock Sioux Tribe on October 28 to
22 meet with us regarding this project.

23 MS. CRAVEN: No further questions.

24 MS. WIEST: We will go to cross.

25 Yankton Sioux Tribe.

1 MS. REAL BIRD: We have no questions. Thank
2 you.

3 MS. WIEST: Rosebud.

4 MR. RAPPOLD: Thank you. Just a few.

5 CROSS-EXAMINATION

6 BY MR. RAPPOLD:

7 Q. Ms. Young, are you able to share with us any
8 information that you have regarding the significance of
9 stone circles and what those mean?

10 A. Well, generally during the Section 106 process the
11 first step is consultation, the second step is
12 identification with tribal participation, and we have
13 tribal contractors and elders, spiritual people that go
14 out and assist our field personnel to identify those
15 sites.

16 And, you know, they're located throughout all of our
17 aboriginal territory. But as to the significance, it
18 depends. It varies from site to site.

19 Q. Okay. Would you agree then that for lack of a
20 better way to say this, not all stone circles are the
21 same?

22 A. Correct.

23 Q. Okay. And would it also be your understanding that
24 because of the tribal connection with those areas that
25 it's important to have tribal members be involved in

1 identifying and determining the significance of those
2 sites?

3 A. Yes. I think it's absolutely vital. And if you
4 actually read through the Corps letters, it is and always
5 was our intention to fully participate. We were just
6 never afforded the opportunity.

7 Q. Are you familiar with what we'll call mounds?

8 A. Yes.

9 Q. Okay.

10 A. But, again, it is our spiritual people and field
11 personnel that go out and help identify. And my main
12 responsibility is to review the reports and write up
13 resolution of any adverse effects that might occur.

14 Q. Okay. And, again, same question as the stone
15 circles. Is it important to have tribal people involved
16 in the process of determining the meanings of mounds?

17 A. Yes. That is, I think, the whole intent of the '92
18 Amendments to the National Historic Preservation Act, to
19 give the Tribes a seat at the table and specifically
20 recognize tribal expertise in identification of cultural
21 resources.

22 Q. Okay. Can you describe how the 106 process works,
23 generally speaking?

24 A. There are a few steps to 106 consultation. The
25 first step is consultation, and that begins with the

1 tribal government and consultation with the THPO.

2 The second step is identification of cultural
3 resources. The third step is the resolution of any
4 adverse effects that might occur and nomination of sites
5 to the National Register.

6 Q. And can you describe the process that actually took
7 place regarding Dakota Access Pipeline?

8 A. It hasn't got to consultation yet.

9 Q. So it hasn't even started really?

10 A. Correct.

11 Q. Okay. Are you familiar with -- strike that.

12 Are you familiar with the cultural resource surveys
13 that were performed in this case?

14 A. No. We didn't review them because the project is
15 incomplete at this point without tribal participation.

16 Q. Okay. Would you agree that all Tribes in
17 South Dakota have rights under the National Historic
18 Preservation Act, particularly the 106 section?

19 A. Yes. Not only South Dakota Tribes, but other Tribes
20 that were aboriginal to this territory.

21 Q. Okay. So you could perceive many Tribes throughout
22 this region could be a part of this process; correct?

23 A. Yes.

24 Q. Okay. Thank you.

25 Would it surprise you to learn that Dakota Access

1 did not include as part of its Application until Friday
2 of last week the actual results of the cultural surveys?

3 A. Would it surprise me?

4 Q. Yeah.

5 A. Yes.

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

8 MS. WIEST: Ms. Northrup, did you have any
9 questions?

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

11 MS. WIEST: Commission Staff, did you have any
12 questions?

13 MS. EDWARDS: No questions. Thank you.

14 MS. WIEST: Dakota Access, do you have any
15 questions?

16 MS. SEMMLER: I do.

17 CROSS-EXAMINATION

18 BY MS. SEMMLER:

19 Q. Hi. My name is Kara Semmler, and I'm an attorney
20 for Dakota Access.

21 A. Hi.

22 Q. Under the National Historic Preservation Act who is
23 it that has the requirement to consult with the Tribe?

24 A. There's two consultation processes. One is the
25 Tribal Council as a whole, and for identification is the

1 Tribal Historic Preservation Act.

2 Q. But what is the government entity that organizes
3 that consultation with the Tribe?

4 A. The Army Corps of Engineers.

5 Q. To be sure I understand now, the National Historic
6 Preservation Act applies to land with a federal action;
7 right?

8 A. Correct.

9 MS. BAKER: Objection. This calls for a legal
10 conclusion. If the earlier question was inappropriate,
11 then on the same grounds this would be also.

12 MS. SEMMLER: I'm not referring to the Act. I'm
13 just asking based on her experience as a Tribal Historic
14 Preservation Officer whether or not that's her
15 understanding.

16 MS. WIEST: Objection overruled.

17 Q. Your answer was yes; correct?

18 A. Can you repeat the question?

19 Q. So the National Historic Preservation Act applies to
20 lands with a federal action; right?

21 MS. BAKER: Objection. I'm sorry. She just
22 said that the National Historic Preservation Act applies
23 to land and is asking if that's accurate. That is
24 actually asking for a legal conclusion. Counsel's
25 testifying.

1 Q. I can reask the question and put in front of it
2 based on your experience is it your understanding that
3 the Act applies to lands with a federal action?

4 A. 101(d)(6)(B) of the National Historic Preservation
5 Act allows Tribes to consult on projects off of
6 reservation lands on areas that are culturally and
7 spiritually significant to the Tribe.

8 Q. But only those lands where there's a federal action;
9 right?

10 And I'll give you an example. Section 404,
11 Section 10, U.S. Fish & Wildlife easements, those are the
12 sorts of --

13 MS. CRAVEN: This is all legal -- we object.
14 She's asking her to draw a legal conclusion.

15 MS. WIEST: I'll let her finish the question
16 first.

17 Q. So in your experience as a Tribal Historic
18 Preservation Officer, are those the lands where the
19 National Historic Preservation Act applies?

20 MS. CRAVEN: What act is Section 10? She's
21 just -- has a laundry list of things, and it's totally an
22 incomplete question.

23 MS. SEMMLER: I'll clarify.

24 MS. WIEST: Can you rephrase the question?

25 Q. Is it your testimony today that the National

1 Historic Preservation Act applies to the entire route
2 this pipeline takes?

3 A. Yes.

4 Q. The entire route?

5 MS. CRAVEN: Asked and answered.

6 MS. SEMMLER: Okay.

7 Q. Is it your opinion that the National Historic
8 Preservation Act applies to private properties along this
9 route?

10 MS. REAL BIRD: Asked and answered.

11 MR. RAPPOLD: Asked and answered.

12 MS. REAL BIRD: Objection.

13 MS. SEMMLER: I don't think that was asked.

14 MS. REAL BIRD: Two or three questions ago that
15 was asked and answered.

16 MS. SEMMLER: I disagree.

17 MS. WIEST: Overruled.

18 Q. Does the Act apply to -- for example, we've heard
19 from a lot of property owners the last couple of days.

20 Does the Act apply to their land?

21 A. I don't -- I'm sorry. I don't understand the
22 question.

23 Q. Private property land where there's no federal
24 action, does the Act apply to those lands?

25 A. I think that once condemnation occurs and the Tribes

1 have a say, you know, we've consulted on many projects
2 where the Tribes were allowed to survey the entirety of
3 the route. So it has happened.

4 But I don't -- I mean, I'm sorry. I don't
5 understand what you're --

6 Q. So if it's your testimony that after condemnation
7 that Act applies, what's that based on?

8 A. Well, the National Historic Preservation Act allows
9 Tribes to participate in identification. And if there
10 hasn't been any identification efforts along certain
11 routes, they would be allowed to identify resources in --
12 within the APE.

13 Q. What is the APE?

14 A. The area of potential effect.

15 Q. And who defines that?

16 A. The federal agency.

17 Q. Under South Dakota Law is there any requirement for
18 consultation with the Tribe?

19 MS. CRAVEN: Objection.

20 Q. Based on your experience as a Tribal Historic
21 Preservation Officer, are you required to consult with
22 the State of South Dakota?

23 A. For projects or federal projects or --

24 MS. CRAVEN: Objection. This is asking for a
25 legal conclusion. It's way beyond her scope of

1 testimony. We never mentioned the South Dakota.

2 We were talking about the National Historic
3 Preservation and how DAPL has to comply with that. We
4 never mentioned the State of South Dakota.

5 It's a very vague question. It's confusing.

6 MS. WIEST: Did you have a response,
7 Ms. Semmler?

8 MS. SEMMLER: She's expressed some pretty strong
9 opinions on the fact she believes this Act applies to the
10 entire route. I'm trying to get clarity on that.

11 MS. WIEST: Objection overruled.

12 Q. So why don't you just tell me based on your
13 experience -- we'll start over.

14 Based on your experience, how is the State of South
15 Dakota involved in the process, the State of South Dakota
16 Historic Preservation Office?

17 A. The State generally only recognizes sites that are
18 on the National Register, are eligible to be nominated,
19 and if the Tribe hasn't -- or any Tribe in general hasn't
20 had the opportunity to participate in identification
21 efforts, how will we know what sites to nominate.

22 Q. So is it your understanding then that the State
23 Historic Preservation Office is required to consult with
24 organizations such as yours for nonfederal actions?

25 A. They usually do. Paige Olson usually does. We work

1 with her a lot. We have a good relationship.

2 Q. Do you know if it's required or not?

3 A. I'm not sure.

4 Q. You previously testified that the tribal
5 consultation under that 106 process has not begun. Do
6 you remember that?

7 A. Yes.

8 Q. What about this -- what about the September 3 letter
9 to your Tribal Chairman requesting consultation? Are you
10 aware of that?

11 MS. CRAVEN: Is that letter in evidence?

12 MS. SEMMLER: I'm just asking if she's aware of
13 that letter.

14 MS. CRAVEN: And could we have a copy of this
15 letter that you're referencing? It's not in evidence. I
16 don't know why it's --

17 What letter are you talking about?

18 MS. SEMMLER: I'm not attempting to introduce it
19 right now. I'm attempting to determine if I have the
20 foundation to try to do so.

21 MS. WIEST: And has it been attached to
22 anything, is my question?

23 MS. SEMMLER: No. I'm just asking this witness
24 if she's aware of a letter her Tribal Chairman received
25 regarding consultation on or about September 3.

1 A. No.

2 MS. CRAVEN: How does DAPL have a letter to the
3 Standing Rock Tribal Chairman? That seems totally
4 inappropriate.

5 MS. SEMMLER: I would ask that those comments be
6 stricken. This is my examination of this witness.

7 MR. RAPPOLD: I'm going to object and move to
8 strike. Lack of foundation. Additionally, the question
9 calls to assume facts not in evidence.

10 MS. SEMMLER: If I may respond, I was just
11 asking for this witness's general awareness of whether
12 that letter existed or not. She wasn't aware. I'm
13 moving on.

14 MS. WIEST: Then the objection and the motion to
15 strike is denied.

16 Q. You mentioned some burial sites on the west bank of
17 Lake Oahe. Are you aware of that?

18 A. What page are you referring to?

19 Q. You expressed some concern regarding that to
20 Monica Howard when she was at your office; correct?

21 I'm not referencing a page. I'm referring to a
22 conversation you had with Ms. Howard.

23 A. I don't recall that.

24 Q. The e-mail exchange -- it's an exhibit, and if you
25 could help me with that number, I apologize. It's a

1 November 13 e-mail exchange you had with Monica.

2 Do you remember talking about that?

3 A. Yes.

4 Q. Do you have that in front of you?

5 A. Yes.

6 Q. What's it say the exhibit number is?

7 A. 5.

8 Q. And that's the e-mail where the second paragraph
9 Ms. Howard asks you to "let us know" if you have any
10 sites along the route.

11 Are you looking at the same thing?

12 A. Yes.

13 Q. You never did let Monica know anything, did you?

14 A. When Monica and Dean came to our office we discussed
15 the possibility of going out into the field with them,
16 and a lot of that discussion happened, I mean, but we
17 never -- we didn't have the opportunity to go out onsite.

18 Q. Right. But let's look at this e-mail again. Please
19 review this information and let us know if there is any
20 sites along the route.

21 Again, I'll ask the question, you didn't let Monica
22 know anything, did you? You didn't get back to her, in
23 other words?

24 MS. CRAVEN: That's asked and answered.

25 Objection.

1 MS. WIEST: No. She hasn't answered it yet.
2 Objection overruled.

3 A. Well, like I referenced earlier, generally the
4 process doesn't work that way. That we don't, you know,
5 just share sensitive site files or information with, you
6 know, project proponents. And we waited for, you know,
7 follow up.

8 Q. So how is it a consultation can occur when you don't
9 want to provide information?

10 A. It's not that we didn't want to, but this e-mail
11 said that she would contact us back, and we were never
12 contacted back.

13 Q. So let's look at that, where you claim that Monica
14 said she would get back to you. Let's look at that.

15 That's in the third paragraph; right?

16 A. Uh-huh.

17 Q. And what's that third paragraph referencing? What's
18 that third paragraph about?

19 A. Tribal representation during the sampling events.

20 Q. No. Let's go ahead and read that. I'll read the
21 first sentence to you.

22 "With respect to the Lake Oahe drill and
23 geotechnical sampling." Going on to the second sentence,
24 are you with me?

25 A. Yes.

1 Q. "We understand you'd like to have representation
2 during these sampling events. We'll communicate that
3 schedule to you."

4 So, again, I'll ask the question, what does that
5 paragraph reference?

6 A. The --

7 Q. Does that paragraph reference drill and geotechnical
8 sampling?

9 A. Yes.

10 Q. Are you aware of the efforts the Applicant took to
11 avoid stone circles and mounds?

12 MS. CRAVEN: Objection. That assumes facts that
13 are not in evidence.

14 MS. SEMMLER: Again, I'm just asking if she's
15 aware.

16 MS. WIEST: Overruled.

17 A. No. I'm not.

18 Q. So if that material was -- strike that.

19 Did you read the reports the Applicant provided to
20 South Dakota State Historic Preservation Office?

21 A. No. Because they're incomplete without tribal
22 identification included in those reports.

23 Q. So you just chose not to read them then?

24 MR. RAPPOLD: Objection. That question's
25 argumentative, and it was asked and answered.

1 MS. WIEST: Sustained.

2 Q. Did you choose not to read those reports?

3 MR. RAPPOLD: Objection. Asked and answered.

4 MS. WIEST: Sustained.

5 Q. Are you aware those reports contained information
6 about the Applicant's --

7 MR. RAPPOLD: Objection. The witness testified
8 that she didn't read the reports so she can't possibly be
9 aware of anything that's contained in the reports.

10 MS. SEMMLER: Okay. I'll withdraw.

11 Nothing further. Thanks.

12 MS. WIEST: Commissioner questions.

13 CHAIRMAN NELSON: I've got just one or two. And
14 Ms. Semmler, frankly, I think, covered most of what I was
15 going to ask.

16 But going back again to this November 13 e-mail
17 that you received, so is it my understanding that you did
18 not respond to that e-mail in any way? Is that correct?

19 THE WITNESS: I believe that is correct.
20 Because at the bottom she says we'll communicate the
21 schedule with you. But at that meeting she did, you
22 know, provide some maps that we looked at at that time of
23 the proposed routes.

24 CHAIRMAN NELSON: So at any point did you ever
25 explain to her, meaning Ms. Howard, how she could access

1 your records of the known sacred and documented sites
2 along the route?

3 THE WITNESS: No. We were waiting for a
4 response from the Army Corps of Engineers. Because
5 typically it's the federal agency that meets with the
6 Tribe, but Dakota Access came to the Tribe at our request
7 because we couldn't get a response from the Corps.

8 CHAIRMAN NELSON: Okay. Thank you.

9 THE WITNESS: You're welcome.

10 MS. WIEST: Any other questions from the
11 Commissioners?

12 COMMISSIONER HANSON: Good afternoon, Ms. Young.

13 THE WITNESS: Hi.

14 COMMISSIONER HANSON: My name is Gary Hanson.
15 You are an official representative of the Standing Rock
16 Sioux Tribe; is that correct? And in relationship to
17 cultural affairs.

18 THE WITNESS: Yes.

19 COMMISSIONER HANSON: Are you capable of
20 representing other Tribes?

21 THE WITNESS: No.

22 COMMISSIONER HANSON: So are you capable of
23 representing any other culture such as the Arikara, the
24 Ree?

25 THE WITNESS: No.

1 COMMISSIONER HANSON: So is it necessary for
2 every Tribe to have someone participate in this process?

3 THE WITNESS: No. It's not necessary but, you
4 know, all Tribes are afforded the opportunity but it's up
5 to them if they want to participate.

6 COMMISSIONER HANSON: What if a Tribe is unable
7 or unwilling to participate and they claim that they have
8 to be consulted and worked with in the process?

9 THE WITNESS: If that dispute arises, it usually
10 goes to the Advisory Council on Historic Preservation.

11 COMMISSIONER HANSON: And so can another person
12 be appointed to represent that Tribe?

13 THE WITNESS: I'm not sure.

14 COMMISSIONER HANSON: Okay. Thank you very much
15 for your testimony.

16 THE WITNESS: You're welcome.

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

19 Any redirect?

20 REDIRECT EXAMINATION

21 BY MS. CRAVEN:

22 Q. Ms. Young, does your office routinely send out via
23 e-mail a list of the Standing Rock Sioux Tribe's sacred
24 sites?

25 A. No.

1 Q. What was your impression when you had that request
2 from Ms. Howard?

3 A. I think that I just was very surprised.

4 Q. And how is that information typically stored?

5 A. It's stored under lock and key within the tribal
6 administrative center.

7 Q. So did you find that request unusual to just send it
8 out via e-mail to an oil company?

9 A. Yes.

10 Q. Would the National Historic Preservation Act apply
11 to nonfederal lands if there is a federal undertaking
12 that may affect the historic properties on those
13 nonfederal lands?

14 A. Yes.

15 Q. And you testified that the National Historic
16 Preservation Act amendments provide a role for your
17 office even off reservation; is that correct?

18 A. Yes.

19 Q. Would you describe the significance of an off
20 reservation project that may be on aboriginal lands of
21 the Tribe?

22 A. Like an example?

23 Q. Say -- like the Keystone XL Pipeline.

24 A. Our Tribe was involved in it because it crosses
25 through aboriginal treaty territory.

1 Q. Is that a right?

2 A. Yes.

3 Q. Does DAPL cross Standing Rock aboriginal lands?

4 A. Yes.

5 Q. And there may be confusion between identifying sites
6 in the APE and identifying sacred sites of the Tribe.

7 Does your office routinely cooperate with project
8 sponsors in the identification of sites?

9 A. Yes.

10 Q. Okay.

11 MS. CRAVEN: I think that's all. Thank you.

12 MS. WIEST: Any recross based on redirect?

13 MS. SEMMLER: Just one question.

14 RECROSS-EXAMINATION

15 BY MS. SEMMLER:

16 Q. So as I believe you answered the question when
17 Commissioner Nelson asked it, you didn't respond to this
18 e-mail; right?

19 I'm sorry. No foundation there. Sorry.

20 The November 13 e-mail to Monica Howard. You didn't
21 answer it?

22 MR. RAPPOLD: Objection. Asked and answered.

23 MS. WIEST: Sustained.

24 Q. So you answered no, you didn't answer that -- you
25 didn't answer this e-mail. So how is the Applicant

1 supposed to cooperate if they don't get any reply from
2 you?

3 A. I think that's a question for the Army Corps.

4 MS. CRAVEN: Objection. That's an argumentative
5 question too.

6 MS. SEMMLER: And you --

7 MS. WIEST: Objection overruled.

8 Q. And you -- your answer there, the Army Corps of
9 Engineers, you answered that in that way because they're
10 the lead federal agency; right?

11 A. Correct.

12 MS. SEMMLER: Nothing further.

13 MS. WIEST: Any further recross based on
14 redirect?

15 Any further redirect?

16 Thank you.

17 THE WITNESS: Thank you.

18 MS. WIEST: I believe at this time we were going
19 to go to Commission Staff witnesses.

20 Ms. Edwards.

21 MS. EDWARDS: Thank you. Staff calls Robert
22 McFadden.

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

24

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DIRECT EXAMINATION

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BY MS. EDWARDS:

Q. Good afternoon, Mr. McFadden.

Could you please state your name and business address for the record.

A. Robert Earl McFadden. 5729 B Logan Lane, Houston, Texas.

Q. What is your professional title?

A. I'm president of REM Pipeline Consultants.

Q. And what does that entail?

A. REM Pipeline Consultants is an engineering consulting firm. We deal with midstream companies, investors, government agencies. We assist in litigation. We generally perform high-level consulting projects.

Q. Can you briefly explain your educational background?

A. Sure. I have a B.S. in civil engineering from Louisiana Tech University.

Q. And can you briefly explain your relevant work experience?

A. I have been in the pipeline industry for 41 years now. A long time. And in that I've started surveying, have pretty well worked through all aspects of many kind of projects from pipelines to compressor stations, a lot of directional drills and things of that nature over a 40-year time period.

1 Q. How did you become involved in this docket?

2 A. I was asked by the PUC to look at some issues with
3 the docket.

4 Q. And how long have you been involved in this?

5 A. It seems like it's been about three months.

6 Q. Okay. Can you tell us generally what you reviewed
7 or analyzed in order to prepare your prefiled testimony
8 and to testify today?

9 A. Sure. I reviewed the Application from DAPL, and
10 then I reviewed the Part 195 -- Code of Federal
11 Regulations, CFR Part 195, Part 199, Part 194, and
12 Part 190 in particular. And then a great deal of
13 documents that were provided by the -- on the site.

14 Q. Okay. And those regulations you mentioned, would
15 those be the PHMSA regulations generally?

16 A. Those are the regulations that govern hazardous
17 liquid pipelines is 195. The regulation that establishes
18 PHMSA is 190.

19 Q. Okay. And to the best of your knowledge, given your
20 experience, if the pipeline was constructed, would it be
21 subject to those regulations?

22 A. Yes, it would.

23 Q. Okay. Drawing your attention to what has been
24 marked for identification purposes as Exhibit 9 or
25 Staff's Exhibit 9, is this your prefiled testimony?

1 A. Yes, it is.

2 Q. Do you have any additions, deletions, or edits to
3 make?

4 A. I have two edits to make. As noted, and I believe
5 it's on page 6, I have made an exception. See if I can
6 find it here.

7 Excuse me. On page 7. And it would be line 15.
8 And the question was the Dakota Access Pipeline, does it
9 pass through HCAs in South Dakota? And I had reserved
10 the right to amend that after I did some further study.
11 And I would like to amend that at this point.

12 Q. Okay. Please do so.

13 A. Okay. The answer to that question should be the
14 Dakota Access Pipeline does not appear to be planned to
15 pass within any high density population areas as
16 described in 49 CFR 195.450 paragraphs 1, 2, and 3.

17 It does, however, cross through several unusually
18 sensitive areas, otherwise known as USAs, which by
19 paragraph 4 of that section are defined as HCAs as well.

20 Unusually sensitive areas as defined in item 4 of
21 the answer to the question above, which I define them,
22 includes an area containing endangered or imperiled
23 species. Therefore, the water crossings which are
24 habitats for the Topeka shiner must be included in the
25 HCAs.

1 Q. Given that edit, would there be any additional
2 burdens placed upon the company were this pipeline to be
3 constructed through the HCA as you have defined it?

4 A. The construction burdens are the same. The design
5 would not change. What could change is the integrity
6 management requirements of PHMSA. They may be more
7 stringent in areas with USAs and HCAs.

8 In other words, you may have to inspect them more
9 often.

10 Q. To your knowledge, given your experience with these
11 regulations, does the Commission have the authority to
12 say whether or not it is an HCA, or is that just a matter
13 of it is or isn't?

14 A. PHMSA has a website which they have maps and they
15 can look up -- unfortunately I can't do it because I
16 don't own the pipeline, but certainly DAPL can, as well
17 as the Commission Staff can.

18 Q. Thank you. Any other edits to make to your
19 testimony?

20 A. One other edit. And that's on -- let's see. It's
21 on page 7, line 36. The total block valves goes from
22 31 to 40.

23 And then I would remove the qualifier where I said
24 additional information is needed as to the width of
25 several streams to confirm, that the rest of that

1 paragraph would be removed.

2 Q. Okay. With those exceptions and edits that you
3 made, if I asked you the same questions today as those
4 posed in your prefiled testimony, would your answers be
5 the same?

6 A. Yes, they would.

7 Q. At the time your testimony was filed was it true and
8 correct to the best of your knowledge?

9 A. Yes, it is.

10 MS. EDWARDS: At this time I would move for the
11 admission of Staff's Exhibit 9.

12 MS. WIEST: Is there any objection to Staff
13 Exhibit 9 being admitted?

14 If not, it is admitted.

15 Q. Mr. McFadden, can you give a brief summary of your
16 testimony and any conditions that you're recommending?

17 A. Sure. My testimony includes reviewing the
18 permitting requirements, documents that would be required
19 to be produced by DAPL, particularly the oil spill
20 requirements, which is the only Permit that's required to
21 be actually approved by PHMSA. PHMSA's inspection role.
22 Looked at, as we just discussed, HCAs, and USAs. Block
23 valve locations and leak detection.

24 MS. EDWARDS: Thank you.

25 I have no further direct and would tender this

1 witness for cross.

2 MS. WIEST: Yankton Sioux Tribe, would you have
3 any questions?

4 MS. REAL BIRD: Yes, I do.

5 CROSS-EXAMINATION

6 BY MS. REAL BIRD:

7 Q. Good afternoon, Mr. McFadden.

8 A. Good afternoon.

9 Q. My name is Thomasina Real Bird. I'm an attorney for
10 the Yankton Sioux Tribe. I do have a series of
11 questions.

12 Do you know what an impressed current is?

13 A. Yes, I do.

14 Q. What is that?

15 A. It's used for cathodic protection on a pipeline. It
16 involves using a -- generally you use a rectifier to
17 generate that current, and it's put along the pipeline to
18 protect it from corrosion.

19 Q. And from the documents you reviewed in preparation
20 for your testimony, do you understand -- is it your
21 understanding either way whether a cathodic protection
22 system will be used for the proposed pipeline?

23 A. It's my understanding that it will.

24 Q. And that's the impressed current?

25 A. Yes.

1 Q. And what -- do you know where along the pipeline
2 the -- well, let me back up. Can you describe the system
3 in more detail as far as what is applied to the pipe?

4 A. Sure. Basically an impressed current cathodic
5 protection system is a sacrificial anode system where
6 they drill deep well anodes. And periodically they'll
7 put this current on the pipe, and this is a very small
8 current.

9 And what will happen then is any corrosion that
10 would have occurred on the pipeline ends up occurring on
11 these deep well anodes.

12 There will be several along the pipeline this long,
13 and the locations probably have not been determined yet
14 because normally what you do is you run a cathodic
15 protection survey and measure all the soil potentials and
16 then figure out from there where the best place would be
17 to locate these systems.

18 Q. Were you provided with such a survey?

19 A. I was not.

20 Q. And so if my understanding is correct, it sounds
21 like the location of these deep well anodes is important?

22 A. Yes. It is important.

23 Q. And is it important because the pipeline is possibly
24 going to be placed in relation to other existing
25 pipelines?

1 A. No.

2 Q. Okay. What is the importance?

3 A. Well, the importance is that it's spaced
4 appropriately. The physical location, whether it's one
5 place or, you know, a mile down the road, is probably not
6 critically important to the operation.

7 Q. So, for example, you wouldn't want all of the deep
8 wells on one end because the protection --

9 A. You have to space them over the pipeline.

10 Q. So isn't it just a matter of spacing it? Why would
11 a survey not be --

12 A. You actually need --

13 Q. Why would a survey not exist at this time?

14 A. Okay. Typically a cathodic protection survey is not
15 required until after the pipeline is in service so it
16 would be early to do that. Certainly without the
17 alignment totally completed it would be somewhat of a
18 waste of time to do it at this point.

19 Q. And who is it that requires the survey?

20 A. The survey is required as part of the design for the
21 cathodic protection system. The cathodic protection
22 system itself is required by PHMSA.

23 Q. So is the -- are the deep well anodes in place -- or
24 placed during construction or just before --

25 A. They are placed generally -- they can be placed

1 during construction. Normally they're done after
2 construction is complete.

3 Q. And after a pipeline is online?

4 A. Yes.

5 Q. Or just prior to?

6 A. No. No. After it's online.

7 Q. Okay. So what's the -- if this is in place for
8 protection purposes -- that's my understanding of your
9 testimony -- what is the period of time typically after a
10 line is online to when these deep well anodes are placed?

11 A. It can actually be up to one year after the pipeline
12 is put into service.

13 Q. So this particular corrosion protective measure is
14 not placed -- is not in place for up to a year?

15 A. It would be that long. Generally it's not that
16 length of time, but it could be that long in some cases,
17 yes.

18 Q. Is it your understanding that fusion bond epoxy will
19 be applied to the exterior of the pipeline?

20 A. That's my understanding.

21 Q. And what is fusion bonded epoxy?

22 A. Fusion bonded epoxy is a coating that's commonly
23 used on pipes. I've used it many times. And it's put on
24 the pipe by a -- it's first cleaned to where it's a
25 bright metal finish, and then it's heated and an epoxy

1 powder is blown on the pipe -- blown, and it forms a very
2 tough bond which has become very effective at stopping
3 corrosion.

4 Q. And that's only to the exterior?

5 A. Only to the exterior.

6 Q. And you indicated that -- well, I understand you
7 indicated that it is shiny before it's applied. Is that
8 because it's brand new, or why would it be shiny?

9 A. No. You actually clean it with a -- with a brush
10 wheel. It's like a wire brush, only much, much stronger.

11 Q. Okay.

12 A. The pipe is -- it looks rusty to begin with right
13 after it comes out of the mill.

14 Q. So is it -- so right after it comes out of the mill
15 it's rusty, and then prior to applying the fusion bonded
16 epoxy it's brushed with, in a general sense, a large wire
17 brush?

18 A. Right.

19 Q. And does application of fusion bonded epoxy mean
20 corrosion will never occur?

21 A. No.

22 Q. And what other -- what are the conditions that would
23 contribute to corrosion?

24 A. If you've got a cut in the coating where you chipped
25 the coating off, then that would be a potential corrosive

1 area.

2 Q. What about interaction with other pipelines that are
3 made from steel?

4 A. There are ways to handle that. I am not a cathodic
5 protection expert and I could not say exactly how it's
6 done but it is routinely handled.

7 Q. So to -- would the other -- let me start over.

8 Would the second pipe that's made of steel have to
9 have a cathodic protection system in place in order for
10 both to remain protected?

11 A. I cannot answer that.

12 Q. And let me know if you can't answer this one too.
13 But I'll ask it related to cathodic protection systems.

14 If they're done incorrectly, could they not provide
15 any protection to either?

16 A. I don't believe that's the case.

17 Q. Well, why would they have to be -- what would
18 happen -- let me start over.

19 What would happen if cathodic protection wasn't
20 applied correctly to protect both pipelines?

21 A. Well, if it wasn't applied to both pipelines, you
22 wouldn't have any cathodic protection.

23 Q. Correctly. That's my question. If, for example --
24 well, let me just -- let me strike that. Sorry to
25 confuse you.

1 But it's your testimony that they would both need
2 cathodic protection systems in place?

3 A. No. I did not testify that they would both need it.
4 I believe that it will work better if they both have
5 cathodic protection systems in place.

6 Q. Okay. And are there other types of corrosion
7 protection measures that are used in the industry?

8 A. Magnesium anodes are used on a regular basis but
9 primarily on smaller pipelines of shorter lengths.

10 Q. Is that the other -- that's the only other type of
11 protective measure?

12 A. I'm sure there's others, but those are the most
13 common.

14 Q. Okay. And what is your understanding of what will
15 be used for the proposed pipeline?

16 A. An impressed current rectifier system.

17 Q. And that's the only protective measure?

18 A. Well, plus the -- plus the fusion bonded epoxy
19 coating. And then there will be coating on the
20 individual pipe joints.

21 Q. And the fusion bonded epoxy is on the individual
22 pipe joints?

23 A. That's correct.

24 Q. Would the individual pipe joints be affected by the
25 cathodic protection system or vice versa?

1 A. Once they're coated they become basically the same
2 as the rest of the pipeline.

3 Q. And are you familiar with other types of coating
4 that would be applied to a pipe in your industry other
5 than fusion bonded epoxy?

6 A. There are numerous other types. There's tape wraps.
7 There's cold tar enamel. There's a number of different
8 things that can be used. They're just not used as
9 commonly.

10 Q. What was the second?

11 A. I think I said cold tar enamel.

12 Q. That was it. I didn't catch it. Thank you.

13 And those are additional types of corrosion
14 protective measures or --

15 A. Those are additional types of coating.

16 Q. What is the purpose of each of those two coatings?

17 A. Exactly the same as the fusion bonded epoxy.

18 Q. Okay. So just a substitute?

19 A. Right.

20 Q. What about UV protection coating?

21 A. The pipe is buried so it will not require UV
22 protection coating.

23 Q. What about if a pipe were stored above ground prior
24 to installation in the ground?

25 A. Fusion bonded epoxy will chalk and start to look

1 bad, but all of the information that I've read indicates
2 that the actual protective characteristics of it do not
3 change with storage above ground.

4 Q. So do you know whether fusion bonded epoxy has
5 already been applied to the pipe that the company will
6 use for this project, proposes to use for this proposed
7 project?

8 A. I do not know.

9 Q. And is it your testimony that in order for fusion
10 bonded epoxy to be effective that it needs to be applied
11 prior to above ground storage?

12 A. Not -- you don't have to store it above ground at
13 all.

14 Q. If pipe were stored above ground, would you want it
15 to be coated with fusion bonded epoxy prior to that
16 storage?

17 A. It can be either way.

18 Q. So what protective measures if there is no -- let's
19 assume there is no coating. Pipelines stored above
20 ground, what protective measures would be in place to
21 guard against damage from UV?

22 A. Well, if it's just plain steel pipe and it's not
23 coated, there's going to be no UV damage to it. And we
24 already talked about how fusion bonded epoxy would be
25 effective.

1 Q. So a naked pipe is not damaged by UV. That's your
2 testimony?

3 A. No. That's correct. It is not damaged by UV.

4 Q. Okay. And your testimony talked about corrosive
5 protection measures for the exterior of the pipe.

6 Do you know if the Applicant proposes to utilize
7 internal corrosion protective measures?

8 A. It's my understanding that they do not plan to
9 internally coat the pipe but that they will keep the
10 corrosion -- or reduce the potential for corrosion on the
11 internals by limiting the amount of water and other
12 impurities that may be within the crude oil.

13 Q. And that was contained in the Application materials?

14 A. I believe so. It was something that I read as part
15 of this.

16 Q. Do you know if you reviewed documents that were not
17 provided to the Commission?

18 A. I did not review any documents that were not
19 provided to the Commission or, for that manner, by the
20 Commission to me.

21 MS. REAL BIRD: No further questions. Thank
22 you.

23 MS. WIEST: Rosebud Sioux Tribe, did you have
24 any questions?

25 MR. RAPPOLD: Yeah. Thank you.

CROSS-EXAMINATION

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BY MR. RAPPOLD:

Q. Good afternoon, Mr. McFadden.

A. Good afternoon.

Q. My name is Matt Rappold. I represent the Rosebud Sioux Tribe.

Regarding your testimony with your edits, I think you did address a few of my questions.

Generally speaking, would you consider yourself to be pretty familiar with federal regulations as it relates to transportation of crude oil and other hazardous liquids?

A. Yes.

Q. As part of your familiarity with those rules and regulations, do you keep up to date regularly on changes that are in the works or could happen?

A. I periodically get new copies of the codes and review those, but I don't religiously check for each change.

Q. But you don't have the PHMSA website with rule changes, you know, bookmarked on your internet?

A. I do not.

Q. Do you get advanced notices of rule-makings?

A. Every now and then, but not on a regular basis.

Q. Would you agree with -- would you agree that the

1 Department of Transportation and PHMSA are currently
2 promulgating new safety rules as it relates to
3 transportation of hazardous liquid materials?

4 A. I am aware of that.

5 Q. And are you also aware that Congress is currently
6 working on additional -- new and additional federal laws
7 to respond to safety issues associated with
8 transportation of hazardous liquid materials?

9 A. I'm not specifically aware of that.

10 Q. Are you generally aware of that?

11 A. Generally aware, yes.

12 Q. Are you able to share with us what that knowledge
13 is?

14 A. As I understand -- and this is strictly from a quick
15 reading. The new regulations will require that integrity
16 be verified more often. In other words, more smart pig
17 rules.

18 Q. There could also be some other changes to those
19 rules?

20 A. There could be. I'm not --

21 Q. That you're not specifically aware of?

22 A. That's right.

23 Q. You indicated that there's no specific PHMSA
24 approval requirements to construct and operate pipelines.

25 A. Other than the spill control plan.

1 Q. Right. Other than the Spill Response Plan.

2 A. That's correct.

3 Q. That's the only document that has to actually be
4 submitted to PHMSA and get an approval?

5 A. It's the only one that has to be approved by PHMSA.
6 There are others that are required to be submitted.

7 Q. Right. But they don't -- PHMSA wouldn't issue a
8 letter that says we approve this specific aspect of your
9 plan?

10 A. That is correct.

11 Q. PHMSA seems to generally take an inspection type of
12 approach to monitoring safety. Would you agree with
13 that?

14 A. I agree with that.

15 Q. Okay. And it's also your testimony that to your
16 knowledge at this point in time Dakota Access does not
17 have a finalized Oil Spill Response Plan?

18 A. That is correct.

19 Q. Since that document is the only document that
20 actually requires PHMSA approval, would you agree that
21 PHMSA could deny approval of the Oil Spill Response Plan?

22 A. It's theoretically possible that they could deny it.

23 Q. Okay.

24 A. They generally allow you to modify it if they have
25 issues.

1 Q. And if they allowed someone to modify their Oil
2 Spill Response Plan, would the pipeline still continue to
3 be allowed to be in operation?

4 A. Yes. The pipeline can actually operate for up two
5 years without an approved spill plan, provided that they
6 have a spill plan in place that has been approved that --
7 a copy of which or similar that has been approved in
8 other locations.

9 Q. Regarding the high consequence areas that you
10 addressed in your edits to your testimony, is it your
11 testimony then that high consequence areas and --
12 including USAs are limited to just the Topeka shiner
13 streams?

14 A. I am not aware of other locations, but there may be.
15 I haven't seen them if there were.

16 Q. When you say there may be other locations, do you
17 mean additional Topeka shiner streams, or do you mean
18 other species?

19 A. There could be other species. I haven't
20 participated in a study of that.

21 Q. Okay. Then are you aware that the -- nearly the
22 entirety of the route crosses through whooping crane
23 habitat?

24 A. I am generally aware of that but not -- I was not
25 aware that the entirety of the route.

1 Q. And would you agree that the whooping crane is
2 considered a migratory bird? Or you don't know?

3 A. I do not know.

4 Q. Okay.

5 Are you aware that the pipeline route as proposed
6 crosses numerous Fish & Wildlife Service easements?

7 A. I'm not aware.

8 Q. Are you aware that the pipeline route as proposed
9 crosses through several hundred miles of wetland
10 management districts located in South Dakota?

11 A. I am not aware of that. That would be longer than
12 the whole pipeline.

13 MS. SEMMLER: I'm just going to step in and
14 object. I think this witness has pretty clearly
15 identified what his areas of expertise are and aren't.
16 And he did not do a biological assessment so we've got a
17 lot to get done in a limited amount of time, and I think
18 those questions are probably best for someone else.

19 MR. RAPPOLD: The witness has testified that
20 he's basically an expert in federal pipeline safety
21 regulations, including 194 and 195 and CFRs for the
22 Pipeline Safety Act, which include high consequence
23 areas, unusually sensitive areas, and in the definition
24 of those areas as the witness already testified, it
25 includes a habitat for certain species and areas that are

1 more likely to get harmed than other areas, ecological
2 areas.

3 And I paraphrased that. But the witness clearly
4 knows something about this particular topic. He may not
5 know anything about the whooping crane, and that's not
6 what's important here. What's important here is the
7 determination and his knowledge of high consequence areas
8 and unusually sensitive areas under the pipeline safety
9 regulations.

10 MS. WIEST: Okay. I'll allow it. Go ahead,
11 Mr. Rappold.

12 MR. RAPPOLD: And I'm almost done.

13 Q. In your testimony you indicated that certain width
14 of certain streams needed to be confirmed. Would you
15 still agree with that statement?

16 A. They have been confirmed. But yes.

17 Q. Okay. But did you make that update to your
18 testimony?

19 A. Yes. It was updated in the -- that was the second
20 update that I made. I withdrew my qualification since
21 those had been confirmed.

22 Q. Okay. So would you agree that it's quite possible
23 that other areas along the route could be identified as
24 USAs?

25 A. It's possible.

1 Q. Are you aware of the corrosion levels that were
2 detected along the base Keystone Project down around I
3 believe it's St. Louis near the Mississippi River?

4 A. I am not aware.

5 Q. You're not aware of the corrosion levels?

6 MS. SEMMLER: Objection. This is irrelevant.

7 MR. RAPPOLD: It's not irrelevant, as we've
8 addressed this objection several times during the
9 proceeding. The same company is going to be constructing
10 this pipeline that constructed the base Keystone
11 Pipeline.

12 Corrosion levels are obviously relevant in the
13 construction of this pipeline and safe operation, but the
14 witness has testified that he has no knowledge so I will
15 move on.

16 MS. WIEST: Yes. The objection is overruled.

17 MR. RAPPOLD: Thank you, Mr. McFadden.

18 THE WITNESS: Thank you.

19 MS. WIEST: Ms. Craven, did you have any
20 questions?

21 MS. CRAVEN: Yes, I do.

22 CROSS-EXAMINATION

23 BY MS. CRAVEN:

24 Q. Kimberly Craven. I'm an attorney for the Indigenous
25 Environmental Network and Dakota Rural Action.

1 How are you today?

2 A. Good. Thank you.

3 Q. On page 6 of your testimony you list four different
4 definitions of HCAs?

5 A. That's correct.

6 Q. The first one is a commercially navigable waterway?

7 A. Correct.

8 Q. Do you think the Missouri River is an HCA?

9 A. Yes.

10 Q. And are you aware that there's large communities,
11 including native communities, that use the Missouri River
12 as their prime source of drinking water?

13 A. I'm not specifically aware, but I'm not surprised.

14 Q. So your testimony is that the Missouri River should
15 be considered an HCA then?

16 A. It's not up to me to determine it, but it appears to
17 qualify.

18 Q. Okay. And I was going to ask about endangered
19 species. There are several other endangered species
20 habitats. Should those be considered USAs?

21 A. If they are identified habitats of an endangered
22 species, under the definition they would be USAs.

23 Q. So while DAPL has told us that there are no HCAs in
24 the State of South Dakota, would you agree with that?

25 A. No.

1 Q. Thank you.

2 MS. WIEST: Dakota Access.

3 MS. NORTHRUP: Ms. Wiest, I do have one
4 question.

5 MS. WIEST: I'm sorry, Ms. Northrup.

6 MS. NORTHRUP: That's okay.

7 CROSS-EXAMINATION

8 BY MS. NORTHRUP:

9 Q. I'm just a little bit confused by the testimony so I
10 just wanted to clarify.

11 So it's your opinion that there are HCAs impacted by
12 the project; is that correct?

13 A. It's because of the convoluted definition. A USA
14 becomes an HCA. Although HCAs were basically designed
15 for areas with high population and high impact. And then
16 the USAs were added on there.

17 Q. And what additional information would you need to
18 provide a comprehensive list of the areas that might be
19 HCAs?

20 A. I would need to do a study of the PHMSA -- the total
21 PHMSA maps that, as I said, are not available to me.

22 MS. NORTHRUP: No questions. Thank you.

23 MS. WIEST: Dakota Access.

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CROSS-EXAMINATION

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BY MS. SEMMLER:

Q. So this is Kara Semmler for Dakota Access.

So just picking up right where you left off, the maps? So you testified you didn't review those maps because you can't?

A. That's correct.

Q. Are you aware whether the Applicant did?

A. I am not aware whether the Applicant did or not.

Q. Would it surprise you if the Applicant did review those?

A. I would have assumed that they would have.

Q. Would it surprise you if there were no HCAs identified along the alignment?

A. As far as the traditional sense of HCAs, the heavily populated areas, it would not surprise me at all.

Q. So just to be sure we've got our record real clear, the only sort of HCA that you think may exist are Subsection 4 as it relates to various animal species; right?

A. That's correct.

Q. So whose responsibility is it for identifying those USAs for these species?

A. It should be DAPL's.

Q. Whose responsibility is it to identify these

1 threatened or endangered species?

2 A. I believe it should be DAPL's as well.

3 Q. Have you consulted with U.S. Fish & Wildlife Service
4 as to the USAs?

5 A. I have not.

6 Q. Are you aware of the published biological opinion
7 for the Topeka shiner? And under that opinion it allows
8 a taking of the shiner. Are you aware of that?

9 A. I am not aware of that.

10 Q. You were just testifying about the Missouri River.
11 You were asked some questions about that.

12 Do you remember that?

13 A. Yes.

14 Q. And you know that crossing is in North Dakota;
15 right?

16 A. Yes.

17 Q. So is it fair to say then until there's some clarity
18 on what U.S. Fish & Wildlife Service has designated as an
19 endangered or threatened species, it's difficult to
20 determine if there are any USAs?

21 A. It's fair to say.

22 MS. SEMMLER: Nothing further.

23 MS. WIEST: Any Commissioner questions?

24 CHAIRMAN NELSON: Thank you for being here.

25 I admit to some of the same confusion that

1 Ms. Semmler just expressed regarding your comments
2 regarding the HCAs and your determinations in that
3 regard.

4 You mentioned that the official maps of where
5 those HCAs are located would be available to Commission
6 Staff; is that correct?

7 THE WITNESS: That's correct.

8 CHAIRMAN NELSON: As a contractor for Commission
9 Staff would you have had access to those maps had you
10 requested them?

11 THE WITNESS: No.

12 CHAIRMAN NELSON: And can you explain to me why
13 not.

14 THE WITNESS: I asked.

15 CHAIRMAN NELSON: Can you explain to me why you
16 were denied.

17 THE WITNESS: I was told that only the
18 Commission Staff would have access to them.

19 CHAIRMAN NELSON: Do you know if any of
20 Commission Staff reviewed those maps?

21 THE WITNESS: I do not know specifically that
22 they did or did not.

23 CHAIRMAN NELSON: Thank you.

24 COMMISSIONER SATTGAST: Good afternoon.

25 Ms. Real Bird touched on a question that I had during

1 some of the testimony as well. And it was based upon
2 some testimony that we received from a previous
3 landowner.

4 I'm going to provide to you a picture referred
5 to as Exhibit I 44, which is a picture of pipe that is
6 being stored outside.

7 THE WITNESS: Yes, sir.

8 COMMISSIONER SATTGAST: Is there any -- let me
9 see how to put this.

10 Is that an acceptable manner for storing pipe?

11 THE WITNESS: Yes, it is.

12 COMMISSIONER SATTGAST: And in -- does it
13 require some special coating before storing it outside
14 or --

15 THE WITNESS: Now the second picture has fusion
16 bonded epoxy coating. The first picture is a different
17 type of coating, and I'm not exactly sure what it is. So
18 it could require something for ultraviolet protection.
19 The fusion bonded epoxy, as I testified earlier, it just
20 chalks over, but it stays the same.

21 This appears to be some type of a wrap coating
22 that is probably for the water crossings where they
23 wanted additional coating on it.

24 COMMISSIONER SATTGAST: Okay. Thank you very
25 much.

1 COMMISSIONER HANSON: Good morning,
2 Mr. McFadden.

3 You stated in your testimony that it appears
4 that the Missouri River is an HCA or a USA?

5 THE WITNESS: If it becomes a USA, then it is an
6 HCA.

7 COMMISSIONER HANSON: Correct.

8 THE WITNESS: But it is an HCA first by the
9 first definition, a commercially navigable waterway.

10 COMMISSIONER HANSON: Okay.

11 THE WITNESS: Now there's places on the Missouri
12 River that probably are not navigable, and so I don't
13 know the specific location.

14 COMMISSIONER HANSON: All right. What about
15 tributaries to the Missouri River, if those are
16 navigable? Would those be --

17 THE WITNESS: Unless they are commercially
18 navigable, in other words large traffic, ship traffic --
19 not the old definition of a navigable stream, which used
20 to be a primary, secondary, or tertiary tributary
21 navigable stream, having a mean cubic flow of 5 cubic
22 feet per second.

23 COMMISSIONER HANSON: 5 cubic feet isn't very
24 much.

25 THE WITNESS: Not very much, no. It was

1 basically a very small stream was still under the Corps
2 jurisdiction and called navigable. They've realigned
3 that to say commercial navigable so you're looking at
4 things where you actually have commerce on it.

5 COMMISSIONER HANSON: The Big Sioux River, I
6 believe, is required to have at least 25 cubic feet. Is
7 that enough or -- at a minimum after its passed through
8 the City of Sioux Falls it's required to have at least
9 25 cubic feet.

10 THE WITNESS: I don't understand. Cubic feet of
11 what?

12 COMMISSIONER HANSON: Water. Per minute, I
13 believe it is.

14 THE WITNESS: That would be next to nothing.
15 25 cubic feet per minute. Water hose.

16 COMMISSIONER HANSON: Didn't you just say 5
17 cubic feet?

18 THE WITNESS: 5 cubic feet per second.

19 COMMISSIONER HANSON: Okay. That's what I
20 meant. 25 cubic feet per second.

21 THE WITNESS: I'm surprised it's that small.
22 That's a relatively low flow.

23 COMMISSIONER HANSON: Is there an amount, a
24 number, that defines commercially navigable?

25 THE WITNESS: I do not know it if it is.

1 COMMISSIONER HANSON: That would seem like the
2 best way to define it.

3 What about on your HCAs on page 6? You state a
4 high population area, and then you go on to describe
5 that. What if it is a area that is growing and --

6 THE WITNESS: Until it reaches either 50,000 or
7 a density of 1,000 people per square mile or is a
8 designated city or entity of that type, it would not meet
9 the definition. These are straight out of the code book.

10 COMMISSIONER HANSON: Okay. What happens in the
11 future when it becomes an HCA? Is there anything that
12 the pipeline operator is required to do at that
13 juncture?

14 THE WITNESS: They may be required to smart pig
15 the pipeline more often. And by smart pig I mean
16 internally inspect the pipelines.

17 COMMISSIONER HANSON: What's the proximity for
18 the high population area? How close does it have to be
19 or does the pipeline have to actually pass through the --

20 THE WITNESS: I believe that this is based on
21 where the pipeline actually lays.

22 COMMISSIONER HANSON: Okay. And is there a
23 distance from the area, or --

24 THE WITNESS: You know, there's not a specific
25 requirement for distance of a pipeline from a building or

1 other physical deal.

2 COMMISSIONER HANSON: Okay.

3 THE WITNESS: Just whatever the right of way is.

4 COMMISSIONER HANSON: On page 7 -- and you have
5 subsequently marked so I wasn't able to find them so
6 forgive me if I'm asking a question you've already
7 explained to us. I believe you mentioned some of this.

8 On line 14 you state Additional study needs to
9 be done to confirm this. And this being according to
10 Dakota Access Pipeline, the pipeline route does not pass
11 through any HCAs in South Dakota.

12 THE WITNESS: Right. And after I did additional
13 study and reviewed the codes and -- and, frankly, they
14 are confusing. They're almost circular.

15 COMMISSIONER HANSON: Okay.

16 THE WITNESS: The way they go with the
17 definition. But after I made a complete review of the
18 codes, then it's my opinion that the USAs become HCAs.

19 COMMISSIONER HANSON: Excuse me?

20 THE WITNESS: That the USAs, the unusually
21 sensitive areas, are HCAs under the code. Therefore, you
22 have HCAs in the areas that were found to have endangered
23 species.

24 COMMISSIONER HANSON: I thought all USAs were
25 HCAs. I thought it was a subset basically.

1 THE WITNESS: They are.

2 COMMISSIONER HANSON: Okay. So I'm not arriving
3 at --

4 THE WITNESS: Did I confuse you?

5 COMMISSIONER HANSON: I'm not arriving at why it
6 would be such a surprise at -- discovering that all the
7 USAs were HCAs if, in fact, USAs are HCAs.

8 THE WITNESS: When you literally read the
9 definition, yes, you're correct. I should have arrived
10 at that conclusion earlier.

11 COMMISSIONER HANSON: All right. Well, I'm glad
12 I'm not doing your job.

13 Thank you for your testimony.

14 MS. WIEST: Was there any additional cross based
15 on the Commissioner questions?

16 MS. REAL BIRD: I do.

17 MS. WIEST: Yankton Sioux Tribe.

18 RE-CROSS-EXAMINATION

19 BY MS. REAL BIRD:

20 Q. Mr. McFadden, is it possible that there are other
21 USAs that are not currently represented in the PHMSA
22 maps?

23 A. Yes. It's possible.

24 Q. Turning to the coating on the pipe in the picture
25 you were provided from the Commissioner, is it your

1 testimony that you are not certain what coating is on
2 those pipes in the picture?

3 A. There were two different types of coating. The ones
4 in the foreground were a black -- black coating, and
5 they -- I'm not exactly sure what type of coating that
6 is.

7 Q. You don't recognize that as fusion bonded epoxy?

8 A. That is not fusion bonded epoxy. Fusion bonded
9 epoxy underneath it.

10 Q. Because, as you stated, fusion bonded epoxy turns
11 chalky?

12 A. Right. The pipe that was further away and there was
13 considerably more of it was the characteristic green
14 color of a lot of the fusion bond epoxy. Fusion bond
15 epoxy comes in multiple colors, but most of it is a
16 greenish color.

17 Q. Okay. Thank you for clarifying that.

18 Did the documents you reviewed indicate Dakota
19 Access would apply any other coating other than fusion
20 bonded epoxy?

21 A. I don't recall. Although it would be prudent for
22 the directional drills to apply a -- another coating to
23 the outside to keep from scratching it as you install it.

24 Q. I'm sorry. The second part was it would be --

25 A. That you apply a second coating for protection of

1 the fusion bonded epoxy. When you pull it into a
2 directionally drilled hole you're pulling it some
3 distance through there, and you could scrape the coating.
4 By putting a heavier protection coating on the outside,
5 and there's a number of different types that it could be,
6 then you protect the fusion bonded epoxy and keep from
7 getting it scratched during installation.

8 Q. And one follow up. You said you didn't believe that
9 the documents you reviewed indicated Dakota Access would
10 be applying another type of coating other than FBE?

11 A. That's the only one I recall that they said --

12 Q. Okay.

13 A. But obviously there was a second type of coating
14 there.

15 Q. Okay.

16 MS. REAL BIRD: Thank you.

17 MS. WIEST: Any other cross?

18 MR. RAPPOLD: Just a few.

19 RE CROSS-EXAMINATION

20 BY MR. RAPPOLD:

21 Q. Regarding navigable waterways, are you aware of the
22 new Clean Water Act rules that have changed the
23 definition of navigable waterways?

24 A. I'm not familiar with the Act itself.

25 Q. Do you know there are new rules?

1 A. No.

2 Q. You don't?

3 A. No, I do not.

4 Q. Then could I presume you're not aware of any
5 injunctions relating to that, Federal Court cases?

6 A. That's a good presumption.

7 Q. Thank you. And then regarding this distance
8 requirement for high population areas, if there's no
9 distance requirement, how do you determine if a pipeline
10 travels close enough to an area that contains 50,000
11 people or more triggering the requirements of 195?

12 A. The requirement is not close enough. It's whether
13 the requirement is whether it's within that area.

14 Q. Within that area?

15 A. Yes.

16 Q. I see. What then would happen if at some point down
17 the road that became -- the area became a high
18 consequence area because of population? In other words,
19 it grew over the area.

20 Does the rule address that situation?

21 A. Basically the requirements of the rule are based
22 upon how much integrity management you have to put on the
23 pipeline. You don't physically have to change the design
24 or the installation of the pipeline. So, yes, it can
25 change, and what you're required to do to maintain and

1 operate it changes.

2 Q. So that would change over time?

3 A. That would change over time. But it wouldn't
4 require a different pipeline installation.

5 Q. Right. Just the integrity management?

6 A. Correct.

7 MR. RAPPOLD: Thank you. I have no further
8 questions.

9 MS. WIEST: Any further?

10 MS. CRAVEN: I have no questions.

11 MS. WIEST: Ms. Northrup?

12 MS. NORTHRUP: I have no questions.

13 MS. WIEST: Dakota Access, did you have
14 questions?

15 MS. SEMMLER: Give me a minute, please.

16 RE-CROSS-EXAMINATION

17 BY MS. SEMMLER:

18 Q. I'm going to refer back to that picture of the piled
19 pipe. Do you know what I'm talking about?

20 A. Yes.

21 Q. You testified, if I understood, that there can be a
22 second coat placed over the fusion bonded epoxy, right,
23 for certain sorts of drills and boring?

24 A. Yes.

25 Q. Is that your testimony?

1 And could that be called abrasion resistant coating?

2 A. Sure.

3 Q. So is that what you expect these first two pictures
4 are showing?

5 A. I expect that's exactly what they are.

6 Q. And beneath that second coat is the first coat, and
7 that is the fusion bond epoxy; right?

8 A. In all likelihood, yes. I can't see it --

9 MS. CRAVEN: Objection. She's testifying.

10 MS. WIEST: She said a question at the end.

11 Objection overruled.

12 Q. You testified that there may be other USAs along the
13 route; right?

14 A. It's possible.

15 Q. And would your concern or question be resolved if
16 you knew what U.S. Fish & Wildlife Service and those
17 PHMSA maps indicated?

18 A. Yes.

19 Q. Are you aware that the Applicant did designate the
20 Missouri River as an HCA in North Dakota?

21 A. I did not see anything on what the Applicant did in
22 North Dakota.

23 Q. Because you weren't asked to review North Dakota,
24 were you?

25 A. I was not.

1 MS. SEMMLER: Nothing further. Thank you.

2 MS. WIEST: Any redirect?

3 MS. EDWARDS: Can we take a brief break before
4 redirect?

5 MS. WIEST: Well, we'll just take our regular
6 break. We'll take 15 minutes.

7 (A short recess is taken)

8 MS. WIEST: I believe we were at the point where
9 Staff was at redirect.

10 REDIRECT EXAMINATION

11 BY MS. EDWARDS:

12 Q. Mr. Timpson -- sorry. Mr. McFadden, you answered
13 several questions about the material you were provided or
14 were not provided and what you reviewed.

15 Were you provided with discovery from Staff?

16 A. Yes. Absolutely.

17 Q. Did you review that material?

18 A. Yes, I did.

19 Q. Thank you.

20 Whose responsibility is it to verify the HCAs in the
21 area?

22 A. It should be the Applicant's responsibility to
23 verify them.

24 MS. EDWARDS: Thank you. No further questions.

25 MS. WIEST: Any recross based on the redirect?

RECROSS-EXAMINATION

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BY MS. CRAVEN:

Q. I have a couple of questions. If there is a spill in the Missouri River in North Dakota, will that affect South Dakota?

MS. SEMMLER: Objection. This is outside the scope of the redirect.

MS. CRAVEN: You just asked about North Dakota.

MS. WIEST: No. We're going on redirect. Recross based on redirect. The redirect question was discovery from Staff and who's responsible, the Applicant.

MS. CRAVEN: Okay. I withdraw my question then.

MS. WIEST: Okay. Thank you.

Thank you. You may call your next witness.

MS. CREMER: Thank you. Staff would call Michael Houdyshell.

(The oath is administered by the court reporter.)

DIRECT EXAMINATION

BY MS. CREMER:

Q. Would you please state your name and address for the record.

A. My name is Michael Houdyshell, and my address is 320 North Highland Avenue, Pierre, South Dakota 507501.

Q. What is your professional title?

1 A. I am the director of the property and special taxes
2 division at the South Dakota Department of Revenue.

3 Q. And can you briefly describe for us what are your
4 job responsibilities?

5 A. I'm responsible for overseeing the division staff
6 that is responsible for the administration and oversight
7 of the property tax system in South Dakota. We provide
8 assistance to county directors of equalization, other
9 county staff in regards to the property tax
10 administration, amongst other duties.

11 Q. What is your educational background?

12 A. I have a bachelor's degree from Black Hills State
13 University and a juris doctorate from the University of
14 South Dakota School of Law.

15 Q. Would you briefly describe your work experience
16 since college?

17 A. I engaged in the private practice of law in Rapid
18 City, South Dakota from 2006 through 2008. And then in
19 2008 I was the staff attorney for the South Dakota
20 Department of Public Safety here in Pierre. And then in
21 October of 2011 I took my current position with the
22 Department of Revenue.

23 Q. And how did you become involved in this matter?

24 A. I was subpoenaed to provide written testimony on
25 this docket.

1 Q. Would you tell us what you generally reviewed or
2 analyzed in order to file prefiled testimony?

3 A. I reviewed the Application materials from Dakota
4 Access. In particular, the portions that dealt with
5 their property tax liability in South Dakota.

6 Q. And before you there is an exhibit that's been
7 marked for identification purposes as Staff Exhibit 7.
8 Do you see that?

9 A. I do.

10 Q. Is that your prefiled testimony?

11 A. Yes, it is.

12 Q. And does it have any attachments?

13 A. Yes, it does.

14 Q. And what is the attachment?

15 A. The attachment is my resume.

16 Q. Thank you. Do you have any additions, deletions, or
17 edits to make?

18 A. I do not.

19 Q. If I asked you the same questions today as those
20 posed in your prefiled testimony, would your answers be
21 the same?

22 A. They would be.

23 Q. At the time your testimony and exhibits were filed
24 were they true and correct to the best of your
25 information and knowledge?

1 A. Yes.

2 MS. CREMER: I'd move for the admission of
3 Exhibit 7 with the attachment.

4 MS. WIEST: Any objection?

5 If not, it's admitted.

6 Q. Would you please summarize the content of your
7 testimony?

8 A. Sure. In my testimony I explain how pipeline
9 properties are assessed for the purposes of taxation in
10 South Dakota. In particular I describe how the central
11 assessment process works.

12 The key distinction in the central assessment
13 process as opposed to other types of property assessment
14 in South Dakota is that the State, namely the Department
15 of Revenue, establishes the valuation of certain types of
16 property, including pipelines, and then certifies that
17 value back to the county or counties where the property
18 is located in the state for the purposes of taxation.

19 That's opposed to how other types of property are
20 assessed in South Dakota, which is done at the county
21 level.

22 Just to kind of briefly describe, you know, how the
23 central assessment process works, the State law requires
24 that the Department of Revenue consider the three
25 approaches to value, and those are the cost approach, the

1 market or sales comparison approach, and the income
2 approach to come up with the best estimation of value of
3 a particular piece of property.

4 When it comes to centrally assessed properties, the
5 income approach is preferable and is what the Department
6 of Revenue typically relies on when reaching an opinion
7 of value on centrally assessed properties.

8 And, further, the testimony explains the unit
9 valuation method or the unitary methodology for assessing
10 centrally assessed properties. And this is a standard
11 that's utilized across the country.

12 Basically, there's three steps to it. The first
13 step is to determine a total valuation for the company
14 and all of its assets. Centrally assessed companies
15 typically have property in multiple counties and in
16 multiple states. So that's the first step in the process
17 is to determine a total valuation for the company as a
18 whole.

19 And then to allocate a percentage of that to the
20 state based on the percentage of their assets that they
21 have in the state. And then to further allocate that
22 down to the local level to the various taxing
23 jurisdictions where they have property located and then
24 certify those values back to the county auditor who then
25 levies and collects taxes on that value just like any

1 other type of real property in the state.

2 Q. And did you come up with a number here?

3 A. No. We did not.

4 Q. And can you explain why you did not?

5 A. We did not come up with a number or any sort of an
6 estimate of the value of the Applicant's property in the
7 state or the amount of taxes that would be paid simply
8 because we don't have sufficient information to make that
9 type of an opinion of value at this point.

10 Q. And, to be clear, why don't you have that sufficient
11 information?

12 A. We don't have that information because the company
13 is not required to report that information to the
14 Department of Revenue until they have actually started
15 construction in the state. At that time state law
16 requires that they file reports with the Department of
17 Revenue listing their various assets in property in the
18 state.

19 And at that time we would be making an opinion of
20 value for the property in the state. But until they file
21 those reports, we don't have information available to
22 make a determination of value.

23 MS. CREMER: Thank you. That would be all of
24 Staff's questions, and he is available for cross.

25 MS. WIEST: Yankton Sioux Tribe, any questions?

1 MS. BAKER: Yes. Thank you.

2 CROSS-EXAMINATION

3 BY MS. BAKER:

4 Q. Good afternoon, Mr. Houdyshell.

5 A. Good afternoon.

6 Q. My name is Jennifer Baker. I represent the Yankton
7 Sioux Tribe.

8 Based on the testimony that you just now gave, is it
9 accurate to say that the income approach is the approach
10 that will be used to assess the proposed project?

11 A. The income approach will certainly be the primary
12 approach that's used in the unitary value method that we
13 use. It's not to say that there isn't some consideration
14 given to the other approaches, but, you know, in general
15 the income approach is going to be the primary method for
16 these types of properties.

17 Q. Okay. Line 27 on page 4, I believe -- I'm sorry.
18 On page 5 of your pipeline -- I'm sorry. Of your
19 testimony. Excuse me.

20 Line 27 states that the actual cost of the pipeline
21 does not equal the fair market value of the pipeline and
22 likely overstates the year one value of the pipeline in
23 South Dakota.

24 Could you expand on this, explain a bit about why
25 using actual cost overstates the value?

1 A. Sure. Well, as I have already stated, for centrally
2 assessed properties typically you're going to rely more
3 heavily on the income approach, and you're not going to
4 have, you know, sufficient income data available in year
5 one of the project. You know, and that's why, I guess,
6 we hazard to make any sort of estimates.

7 Now, you know, the cost, the actual cost of the
8 asset in South Dakota, in our opinion, does not represent
9 the fair market value and isn't going to be the year one
10 assessed value of the property. But by reading the
11 Application, you know, I believe that that's probably the
12 best information that was available to the Applicant and
13 so that was the basis of their estimate.

14 Q. Okay. And you mentioned specifically year one.
15 Would year two and subsequent years be equally impossible
16 to predict at this stage?

17 A. Yes.

18 Q. Is there any way for a county or other taxing
19 districts to know right now how much revenue they'll
20 receive in taxes from the pipeline if it's constructed?

21 A. In my opinion, the answer is no.

22 Q. And would it be a misrepresentation for Dakota
23 Access to publish a fact sheet asserting 13.1 million
24 dollars in estimated property taxes for 2017?

25 MS. CREMER: And I would object to that. That

1 is not something within his knowledge.

2 MS. BAKER: I'm simply asking if it would be a
3 misrepresentation. And, in fact, what I can do -- and I
4 don't have Exhibit 8 in front of me from Mr. Kearney's
5 testimony, but if I could take just a second, I could
6 grab Exhibit 8 and ask the same question basically.

7 MR. KOENECKE: While we're waiting I'll join in
8 the objection. I think Ms. Cremer's objection is well
9 founded, and we do wish to join.

10 Q. Okay. And I'm looking at DAPL 8.

11 MS. CREMER: I believe you need to give that to
12 him.

13 MS. BAKER: Okay. I was just going to identify
14 it before I hand it over.

15 MS. CREMER: And then was there a ruling on my
16 objection?

17 MS. WIEST: No. I was going to wait and see
18 what she was reading out of this first.

19 MS. REAL BIRD: Just to clarify, I don't believe
20 this was admitted as DAPL 8. It was an attachment to
21 Mr. Kearney's testimony that was admitted. It's the
22 Economic Impact Statement.

23 MS. CREMER: And I'm not understanding. What
24 witness was it?

25 MR. RAPPOLD: Darren Kearney.

1 MS. REAL BIRD: Kearney. I apologize for my
2 mispronunciation. Staff's witness Darren Kearney.

3 Q. And I've just handed the witness the document
4 pointed to I believe it's the third paragraph for the
5 last sentence for him to take a look at.

6 Would you mind first flipping to the beginning and
7 reading us the title of that document?

8 A. The title is An Assessment of the Economic and
9 Fiscal Impacts of the Dakota Access Pipeline in
10 North Dakota, South Dakota, Iowa, and Illinois.

11 Q. Okay. Thank you.

12 And then that sentence that I had just pointed out
13 to you, would you mind reading that?

14 A. It says "Also during the first full year of
15 operation the pipeline will generate an estimated
16 13.5 million in new property taxes for local
17 governments."

18 Q. Okay. Now based on your testimony and based on your
19 analysis of the ability to assess tax liability at this
20 stage, would you consider that statement to be a
21 misrepresentation?

22 MS. WIEST: Before he answers, I will overrule
23 the objection to the extent that he has an opinion on it.

24 Q. Please, go ahead.

25 A. I believe it's just as it's stated. It's an

1 estimate of what the Applicant believes they will pay.
2 You know, and in my testimony that I filed I've stated
3 that I believe it overstates what their year one value
4 will be, based on the methodology that we use to assess
5 pipeline properties.

6 MS. BAKER: Thank you. I have nothing further.

7 MS. WIEST: Rosebud, did you have any questions?

8 MR. RAPPOLD: Quickly.

9 CROSS-EXAMINATION

10 BY MR. RAPPOLD:

11 Q. Is it my understanding of your testimony that it's
12 impossible to accurately predict income taxes -- or taxes
13 generated at this point in the proceedings?

14 MS. CREMER: And was that asked and -- my
15 objection is asked and answered.

16 MS. WIEST: It may have been phrased a little
17 bit differently. I'll allow it.

18 A. What I will say in response to that is that the
19 Department of Revenue doesn't have the ability to
20 estimate what they will pay in taxes. Based on the
21 limited information that we have.

22 MR. RAPPOLD: Thank you. No further questions.

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

25 MS. CRAVEN: I have a question.

CROSS-EXAMINATION

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BY MS. CRAVEN:

Q. Kimberly Craven with Dakota Rural Action and
Indigenous Environmental Network.

How are you today?

A. I'm doing well. Thank you.

Q. So we've talked about how DAPL will be assessed, but
could you just kind of walk through the process one more
time so I understand it. It sounds like it's a little
complicated and there's different methodologies and
stuff?

A. Yes. Certainly.

The Dakota Access Pipeline would be assessed like
other pipeline properties in South Dakota. There's a
specific chapter in state law, SDCL Chapter 10-37, that
details the process and includes the information that
they must report to the Department, as I have already
described, and those reports are the basis for our
opinions of value that we make on those properties.

For centrally assessed properties we use in
South Dakota the unit value method of appraisal. And as
I already explained, it's essentially a three-step
process, just for simplicity sake, where you determine a
company wide value for the owner of the property and then
you allocate that down to the state based on the

1 percentage of operating property and assets that they
2 have in the state compared to everywhere else. And then
3 finally that value is allocated down to the counties and
4 the other taxing jurisdictions that can levy and collect
5 taxes on that property. You know, that's kind of the
6 final step.

7 And then at that point, excuse me, the county
8 auditor levies and collects taxes on that value just like
9 they do any other type of commercial property that may be
10 in the county.

11 I hope that answered your question.

12 Q. And so you don't know exactly at this point in time
13 what method you're going to use. You say most preferable
14 is the -- what was the most preferable method?

15 A. We're going to primarily utilize the income approach
16 to value.

17 Q. Okay. And is that a decision that the Department of
18 Revenue just makes at its discretion which method to use?

19 A. State law requires that we consider all three
20 approaches, and then it's essentially appraiser judgment
21 what approach is most appropriate for a given type of
22 property.

23 Q. So is it also true that when you're then allocating
24 to the counties -- does the money go to education, or is
25 that discretionary or --

1 A. Again, it's like any other type of commercial
2 property that might be in the county. Where that
3 property is located drives what taxing jurisdiction can
4 tax on it.

5 Obviously, the county can if they have property
6 within that county. Any township that has property
7 within it can levy and collect taxes. Any school
8 district that has any of the property of the pipeline in
9 it can levy and collect taxes, as well as municipalities.

10 Q. Oh, so the school districts can collect -- it can
11 tax the pipe?

12 A. That is correct.

13 Q. Wow. Okay. So is it true then that the way that
14 the South Dakota State aid to education is set up, that
15 any time you raise an extra dollar for a local effort
16 that you forego a dollar in state aid?

17 MS. CREMER: I would object as facts not in
18 evidence. I don't even -- that's my objection.

19 MS. CRAVEN: Well, we were just talking about
20 the way the school districts are able to tax money. I'm
21 trying to understand kind of the structure of what occurs
22 in South Dakota.

23 MS. WIEST: Can you restate that to make it more
24 of a foundational question.

25 Q. Any time that an extra dollar gets raised from a

1 local effort does the school district have to forego that
2 in state aid?

3 A. I'm not sure it's quite as simple as that. But
4 essentially how it works is the local effort that can be
5 generated from local property tax dollars within a school
6 district determine how much state aid to education
7 dollars come from the State of South Dakota.

8 So as the valuation increases within the school
9 district, their local effort increases and, yes, they --
10 their proportionate share of state aid dollars would
11 decrease.

12 However, all school districts get the same per
13 student allocation, which is based on their fall
14 enrollment numbers. So, you know, while it's accurate
15 that as the valuation increases in the district they get
16 less state aid, they still get the same number of dollars
17 per kid as they did prior to the increase in valuation.

18 Q. When you do the analysis of the pipeline too do you
19 look at other similarly situated pipelines?

20 A. In the central assessment process, no. We are
21 strictly looking at the valuation of the company using
22 the income approach and, you know, the other approaches
23 that we consider.

24 Q. Are you familiar with the Keystone Pipeline?

25 MS. CREMER: I would object as to relevancy.

1 MS. WIEST: Can you define the relevance of
2 that?

3 MS. CRAVEN: Well, in that situation Keystone
4 Pipeline estimated how much tax was going to go to the
5 citizens of South Dakota and the counties, and they
6 really kind of sold their pipeline.

7 And we're trying to make a correlation between
8 that pipeline and this pipeline and that this pipeline is
9 saying that they're going to generate, you know, so much
10 per year in taxes and it will go to the counties and
11 everybody will be enriched by that.

12 But in actuality when push came to shove, the
13 Keystone Pipeline -- the benefits from the Keystone
14 Pipeline did not pan out like it was supposed to so I was
15 just trying to --

16 MR. KOENECKE: The Applicant joins in the
17 objection. There's no correlation between the Keystone
18 Pipeline and this pipeline whatsoever.

19 MS. REAL BIRD: And if could I also add to the
20 response, the market approach takes into account similar
21 types of properties, and it is contained in the testimony
22 on page 4.

23 MS. WIEST: Objection overruled.

24 Q. So for Keystone I the counties along the route are
25 now receiving approximately 3.15 million in tax revenue

1 per year, and this is for 220 miles of pipeline.

2 Does Dakota Access's estimate of 13 million paid in
3 property taxes in South Dakota sound like a reasonable
4 estimate to you?

5 MS. CREMER: And I'm going to object as facts
6 not in evidence and lack of foundation.

7 MR. KOENECKE: We'll join in the objection.

8 MS. WIEST: Sustained.

9 Q. Are you familiar with the estimates Keystone made?

10 A. Yes.

11 MR. KOENECKE: Same objection. Lack of
12 relevance. This isn't that project. Has nothing to do
13 with this project.

14 MS. WIEST: Do you have a response?

15 MS. CRAVEN: I'm just trying to draw corollaries
16 and similarities between how that pipeline was sold to
17 the people of South Dakota based on how it's going to
18 enrich the people through taxes and that did not pan out
19 so I'm trying to get to similar situations to see if
20 there's a similar situation here.

21 It's almost the same length. Keystone's 227
22 miles. This one's 227 miles, going through the state of
23 South Dakota. It seems like it would, you know, pretty
24 much produce the same amount of tax revenues.

25 MS. CREMER: And my objection, again, is facts

1 not in evidence. She's testifying. I believe it lacks
2 foundation. Either ask the question to establish
3 foundation or it's -- I'm objecting.

4 MS. WIEST: Objection sustained.

5 Q. Have prior pipelines going across the state of South
6 Dakota paid as much as it was estimated they were going
7 to pay in tax revenues from what they actually paid
8 versus their projections of what they were going to pay?

9 MS. CREMER: And is there a particular pipeline
10 you would like him to refer to?

11 MS. CRAVEN: No. Just any pipeline that carries
12 crude oil through South Dakota.

13 MR. KOENECKE: We object. That's -- that's
14 nonsense, and it's such a distortion of the process to
15 continually be bringing up a completely separate project
16 that has absolutely nothing to do with this.

17 I'm tired of this now for a week and a half.
18 The Keystone Project has absolutely nothing to do with
19 the Dakota Access project whatsoever, and the continual
20 comparisons are irrelevant and oftentimes assume facts
21 not in evidence. There's no foundation laid.

22 And yet the Intervenors continually bring up the
23 Keystone Pipeline as if somehow they wish this project
24 was that one.

25 MR. RAPPOLD: If I could -- I didn't mean to

1 interrupt Mr. Koenecke but I did want to add one thing
2 when he was done and I thought he was done.

3 MS. WIEST: Go ahead.

4 MR. RAPPOLD: I just wanted to point out for the
5 record as far as the comparison to the Keystone Pipeline
6 goes, it seemed to me that earlier in these proceedings
7 the road bond calculation was made based on the same
8 formula and manner in which the road bond calculation was
9 determined for Keystone. So there is some comparisons to
10 the two projects.

11 Additionally, we also have the same construction
12 company. So I wanted to add that into the record as far
13 as relevancy goes.

14 MS. WIEST: I'll overrule the objection and
15 allow that last question.

16 MS. CRAVEN: Okay. Thank you.

17 A. And can you repeat that question, please.

18 Q. So in prior situations of pipeline permitting the
19 oil company has made projections about estimated tax
20 revenues that will benefit the people of South Dakota.

21 Have those projections proven to be true?

22 A. I have seen previous projections of estimated tax
23 liability. The Department of Revenue does not collect
24 any property taxes. We just determine valuation. Okay.

25 But I am aware of the fact that the actual taxes

1 paid have been less than the estimates in some cases.

2 MS. CRAVEN: Thank you.

3 MS. WIEST: Do you have any questions,
4 Ms. Northrup?

5 MS. NORTHROP: No. Thank you.

6 MS. WIEST: Dakota Access.

7 CROSS-EXAMINATION

8 BY MR. KOENECKE:

9 Q. Mr. Houdyshell, do you still have Exhibit 8 in front
10 of you?

11 A. Is that the --

12 Q. It's the document that you read from the first
13 page --

14 A. I do not have that.

15 (Counsel hands witness document.)

16 Q. Previously you read from the cover sheet; is that
17 correct?

18 A. That's correct.

19 Q. Would you read the remainder of the sheet starting
20 where you stopped previously?

21 A. It says "Prepared for Dakota Access, LLC. Prepared
22 by Harvey Siegelman, Mike Lipsman, and Dan Otto,
23 Strategic Economics Group, West Des Moines, Iowa,
24 November 12, 2014."

25 Q. And you were not a part of the preparation of that

1 document; correct?

2 A. That's correct.

3 Q. Mr. Houdyshell, aren't all projections of taxes on
4 construction projects estimates?

5 A. That is correct.

6 MR. KOENECKE: Thank you.

7 MS. WIEST: Any Commissioner questions?

8 CHAIRMAN NELSON: Yes. Good afternoon, and
9 thank you for being here to try and help us sort some of
10 this out.

11 I want to go back to exactly the page that has
12 just been referenced by Ms. Baker and Mr. Koenecke in
13 regard to the estimate provided by the company.

14 Based on what they have projected on their
15 estimate, would it be a fair understanding that the
16 company is using that number as a way to sell their
17 pipeline to the people of South Dakota.

18 THE WITNESS: I don't know what the purpose of
19 that number is beyond making an estimate.

20 CHAIRMAN NELSON: Fair enough. Should it be a
21 mystery to the people of South Dakota in how a pipeline
22 is assessed for property tax purposes?

23 THE WITNESS: I don't believe it should be a
24 mystery, no.

25 CHAIRMAN NELSON: Should it be a mystery to the

1 people of South Dakota how much a pipeline would be
2 projected to pay in property taxes?

3 THE WITNESS: You know, I guess the difficulty
4 that the Department of Revenue has in making any sort of
5 estimation, even if we were asked to make estimation like
6 we were in this case, is you don't assess something until
7 it's constructed. There is no value until there is
8 actually something to assess.

9 CHAIRMAN NELSON: Thank you. I want to step
10 through -- and I apologize. Probably everybody that's
11 listening here, everybody's probably got a better
12 understanding of this than I do, but I need to understand
13 your methodology.

14 And so I want to go to page 3 in your testimony
15 and really dive a little deeper than Ms. Craven did into
16 lines 34 through 38 where you're talking about the unit
17 methodology.

18 The first step in that I understand you say the
19 Department determines the fair market value of whole
20 company as a unit. And so my question is in determining
21 fair market value do you include the value of cash that
22 the company owns as an asset?

23 THE WITNESS: I do not know what's included in
24 the fair market value appraisal. I have technical
25 expertise on my staff that handles these appraisals. I

1 am not an appraiser.

2 CHAIRMAN NELSON: So you don't know if equipment
3 is included?

4 THE WITNESS: Equipment is included. It's the
5 company assets that are included in that fair market
6 value.

7 CHAIRMAN NELSON: So cash would be included?

8 THE WITNESS: Yes. I apologize for misstating,
9 but yes, it is included.

10 CHAIRMAN NELSON: In talking about fair market
11 value, that would be what the company could be sold for.

12 THE WITNESS: It's essentially a business
13 appraisal of the company's worth.

14 CHAIRMAN NELSON: And so that would include the
15 value of Blue Sky for that company; correct?

16 THE WITNESS: I guess I do not know how to
17 answer that question.

18 CHAIRMAN NELSON: So you can't really tell me
19 how the fair market value of a company is assessed?

20 THE WITNESS: I do not do these assessments, no.

21 CHAIRMAN NELSON: So then my second question,
22 and I'm going to the next step in that, is you talk about
23 the Department apportioning a share of the total value of
24 the company to South Dakota.

25 How is that determined? What types of assets

1 are you looking at to actually determine what share goes
2 to South Dakota? How is that share determined?

3 THE WITNESS: That's based on the information
4 that's required to be submitted to the Department on
5 their annual reports. And, again, it's looking at their
6 operating assets that they have in South Dakota, and then
7 that is compared as a percentage to their operating
8 assets in the entire company to determine what percentage
9 is apportioned or allocated to South Dakota.

10 CHAIRMAN NELSON: Can you define for me what an
11 operating asset is?

12 THE WITNESS: That would be, you know, your
13 pipeline properties, your pumping stations, anything in
14 connection with their operating assets in the state.

15 CHAIRMAN NELSON: Okay. That helps me.

16 Okay. So and then you go through the third step
17 to come up with how it's distributed amongst the taxing
18 districts.

19 Going back to the second step where the
20 department apportions a share of the total value of the
21 company of South Dakota -- so you come up with a total
22 value of the company in South Dakota. How then does that
23 relate to the cost, the market, or the income approach?

24 Link that together for me.

25 THE WITNESS: Well, essentially what we're doing

1 is we are -- to back up to the first step is we are doing
2 a company valuation, a business valuation using real
3 property valuation techniques, the three approaches that
4 are required in statute. And we're relying primarily on
5 the income approach to do that.

6 Once it gets down to the apportionment level, we
7 are looking more at their actual operating property in
8 the state, okay, to determine what percentage of their
9 total company valuation is apportionable to South Dakota.

10 And then, finally, going, you know, one step
11 further and we're looking at on a micro level where they
12 actually have operating assets in the state to determine
13 what percentage of that statewide allocation is
14 attributable to a particular taxing jurisdiction, whether
15 it be a county, township, school district, and the like.

16 CHAIRMAN NELSON: Okay. So assuming you're
17 using the income approach, how then in that approach
18 going back to the very first step of the unit
19 assessment -- how does the fair market value of the
20 company as a whole, including its cash, equipment,
21 Blue Sky, how does that relate and how does that enter
22 into the formula for determining the income approach
23 method?

24 THE WITNESS: What we're doing in the central
25 assessment process and the unitary value method is you're

1 coming up with the unit value for that company. Okay.
2 That's good. The total picture of the company. Okay.

3 And that uses income appraisal theory to
4 determine that unit value. Okay.

5 So really the valuation of the company is using
6 income appraisal theory to come up with a unitary value
7 of the company. And then that value is further allocated
8 from there because obviously we can only assess value
9 that's in South Dakota. And to come up with that
10 percentage we rely on what operating property they
11 actually have in the state to determine what percentage
12 of their income is attributable to their operating
13 property in South Dakota.

14 Does that answer your question?

15 CHAIRMAN NELSON: No. And I apologize. And
16 it's probably because of my naivety in understanding,
17 well, this whole area. But, frankly, I need to
18 understand this. This is important to me, and that's why
19 I'm spending some time on this.

20 I understand the concept of income. And we're
21 talking about an income approach. And I understand how
22 the allocation works from one state to the next and then
23 within the taxing units within South Dakota. I get that.

24 But help me understand how, again, going back to
25 the first step of the unit assessment, how the fair

1 market value of the entire company -- how does that
2 relate to the income that's generated by the company for
3 the income approach?

4 THE WITNESS: And, you know, I might be, you
5 know, oversimplifying it, I guess, to a certain extent.
6 You know, because as I described, I am not an appraiser.
7 But the fair market value in this instance is determined
8 by the company income. We're not looking at the cost of
9 the asset to determine the fair market value. We're not
10 looking at similar properties to determine the fair
11 market value.

12 We are relying on the income generating
13 potential and not only the potential but the actual
14 income generating -- income generation from this property
15 to come up with the fair market value of the company to
16 determine the unit value.

17 CHAIRMAN NELSON: So then going back to my very
18 first question when I talked about in determining fair
19 market value do you consider cash assets, equipment
20 assets, chattel assets, Blue Sky as an asset, so you're
21 not talking about that, you're rather talking about the
22 income that's generated to determine the fair market
23 value; is that correct?

24 THE WITNESS: Commissioner, I would have to --
25 to I guess withhold an answer to that question. Again, I

1 don't -- I don't determine the valuation of these
2 companies. I have an appraiser that has a technical
3 expertise, and he is more familiar with the actual data
4 as you mentioned that goes into that assessment process.
5 So I would not feel comfortable answering that question.

6 MS. CREMER: This is Karen Cremer of Staff. And
7 we can call Mr. Bailey, who prefiled testimony, who is an
8 appraiser. We were going to see if it was needed, and I
9 believe we will call him.

10 CHAIRMAN NELSON: That would be great. Because
11 I began talking about mysteries, and, frankly, this
12 appears to a lot of people to be a mystery. And I --
13 before I'm comfortable I need to understand this, take
14 the mystery out of it.

15 I'm going to continue with a few more questions,
16 and if you want to dump them over to the next witness,
17 that's fine.

18 THE WITNESS: I'll answer what I can.

19 CHAIRMAN NELSON: You talked about on page 4
20 that the -- you said that -- which of the three
21 methodologies you used: Cost, market, income. You make
22 a determination depending on the type of property. One
23 approach may be more reliable than the other.

24 Can you explain to us what criteria you used to
25 determine "more reliable"?

1 THE WITNESS: When you're talking about
2 centrally assessed properties and the unitary valuation
3 method, the income approach is going to be the primary
4 source that you use.

5 And, you know, it's recognized as, you know, the
6 best valuation methodology when it comes to these types
7 of properties because they have operating assets in
8 multiple states.

9 When it comes to other types of properties, you
10 know, for example, the work that your local Director of
11 Equalization does in the counties it's really going to
12 be -- it's going to be case-by-case specific. On a
13 residential property, a house, you're typically going to
14 use the market approach because you're going to have, you
15 know, comparable sales that you can look at to establish
16 a fair market value for residential properties in a
17 particular community.

18 You may also look at the cost approach, which
19 is -- which is used a lot of times for new construction
20 types of properties where you don't have a lot of sales
21 and those types of things.

22 The income approach is primarily used again in
23 the centrally assessed process and for, you know, certain
24 types of commercial properties where you can get
25 sufficient income data; apartment complexes, you know,

1 commercial businesses, and those types of properties.

2 But it really varies, and it's a judgment that
3 the appraiser has to make to determine which approach is
4 the most appropriate and comes to the most fair and
5 equitable determination of the fair market value of any,
6 you know, subject property that we're looking at.

7 CHAIRMAN NELSON: So my question was what are
8 the criteria -- you did a great job of explaining how
9 that works, but, again, going back to my question, what
10 are the criteria that you would use to determine or
11 define this word "reliable"?

12 I heard you use the word "fair and equitable."
13 Is that a criteria?

14 THE WITNESS: Well, fair and equitable is a
15 requirement in the State Constitution when it comes to
16 assessing property for the purposes of taxation. You
17 have to fairly and equitably assess real property for the
18 purposes of ad valorem taxation.

19 As far as criteria for what's reliability, again
20 I would go back to it really depends on the appraiser and
21 their judgment on a very fact-specific, case-by-case
22 basis what the most reliable approach is.

23 CHAIRMAN NELSON: If the State appraiser that
24 you're talking about chooses the income approach and
25 local units of government disagree with that, they could

1 challenge that methodology in court; is that correct?

2 THE WITNESS: That's correct. There is a
3 process where both the taxing jurisdiction and the
4 company can appeal their value for centrally assessed
5 properties.

6 CHAIRMAN NELSON: I'm not sure where I picked
7 this up, but somewhere along the line I've been given the
8 impression that as -- and what you've said here today
9 doesn't wash with this understanding, and so I hope you
10 can correct me.

11 I've been given the impression that as a value
12 of the pipeline depreciates, that at some point its value
13 will be zero and the company will be paying zero property
14 tax. But from what I understand you're saying now,
15 that's not correct?

16 THE WITNESS: If the State were to use the cost
17 approach to value pipelines, you're going to depreciate
18 that value over time. And ultimately you're going to end
19 up with zero value.

20 We do not use the cost approach in most cases
21 for centrally assessed properties for that very reason.
22 You get an overinflated value at the front end, but as
23 that property depreciates, just like you said, that's
24 exactly what happens. You're going to lose value and
25 ultimately end up with no value for that property.

1 Using the income approach, as long as that
2 property is operating, it's generating income, there is
3 going to be value that's subject to taxation.

4 CHAIRMAN NELSON: Are you using the income
5 approach for the base Keystone Pipeline?

6 THE WITNESS: Yes.

7 CHAIRMAN NELSON: You very emphatically stated
8 both in your written testimony and today that as a
9 Department you don't have sufficient information to give
10 us an estimate as to the property taxes that this
11 pipeline would pay. And the reason you gave for that in
12 your testimony today is that the company is not required
13 to report that information to you and so you don't have
14 the data to run through the formulas and come up with an
15 estimate.

16 THE WITNESS: Correct.

17 CHAIRMAN NELSON: My question is did the PUC
18 Staff ever request those numbers from the company so that
19 you could run that through your formula?

20 THE WITNESS: Not that I'm aware of.

21 CHAIRMAN NELSON: I think that's all my
22 questions. And thank you for bearing with me.

23 THE WITNESS: Thank you.

24 MS. WIEST: Any other Commissioner questions?

25 COMMISSIONER HANSON: Are you having fun yet?

1 THE WITNESS: I am.

2 COMMISSIONER HANSON: I was reading some items
3 while Commissioner Nelson was asking you some questions
4 so if I ask a question that he's already asked, please
5 just let me know.

6 Commissioner Nelson finished by asking you if
7 Staff had requested information. I have a question I had
8 wrote down. Did you or did -- when I refer to you I'll
9 be referring to the Department.

10 Did the Department request information from the
11 Applicant for -- so that you would be able to provide us
12 with an estimate?

13 THE WITNESS: We did not request that
14 information from the Applicant.

15 COMMISSIONER HANSON: I have to tell you I'm
16 really disappointed because of the past controversies
17 regarding the taxation. I think the other Commissioners
18 are as well. Because this was an area that developed a
19 great deal of controversy, and as we've received a number
20 of letters on, on people -- which Commissioner Nelson has
21 alluded to in some of his questions. So it's really
22 important to us to have an estimate.

23 You stated that based on the limited information
24 that you have that the Dakota Access's estimate is
25 overstated. Do you have a ballpark of how much it's

1 overstated?

2 THE WITNESS: No. Again, we did not determine
3 an estimate, and, in fact, I am strongly of the opinion
4 it is unwise for the state to speculate as to what the
5 valuation would be at this time.

6 COMMISSIONER HANSON: But you didn't even take
7 the numbers that Dakota Access has been using for their
8 construction costs and that they have advertised and they
9 have made statements as to what the cost is in the State
10 of South Dakota and you don't have to show individual
11 counties what the taxes would be for each individual
12 county but certainly based on that amount that they have
13 stated I would think you'd be able to say based on this
14 amount, this dollar amount that Dakota Access has stated
15 it will cost to build the pipeline in South Dakota, it
16 is, therefore, going to be approximately this much in
17 taxes that they will pay the first full year of
18 existence.

19 Can you not accomplish that?

20 THE WITNESS: A couple of points to that.

21 First off, as I stated in my written testimony,
22 actual cost does not equal market value. So using that
23 approach, in my opinion, is not going to come up with any
24 sort of a reliable estimate.

25 Secondly, there's far too many variables in

1 regards to individual taxing jurisdiction and their levy
2 rates that they impose on properties to really come up
3 with a reliable estimate ahead of time. And you're
4 talking, you know, many, many, many, many different
5 taxing jurisdictions that have different levies.

6 And, you know, to make such an estimate, number
7 one, would require the Department to come up with an
8 estimated valuation and, again, based on the method that
9 we used, that data is not available.

10 And, secondly, because of the variables in the
11 different taxing jurisdictions and the levy rates that
12 they impose, I made the choice in my written testimony to
13 not give an estimate of the amount of taxes that they
14 would pay.

15 COMMISSIONER HANSON: Well, the different levies
16 that they tax, you have that information. You figure it
17 out based on centralized utilities every year. I'm
18 sorry. I just don't see how it's impossible to
19 accomplish that.

20 I understand the -- well, will they pay a
21 contractor's excise tax?

22 THE WITNESS: My understanding is, yes, they
23 would be subject to contractor's excise tax. That's not
24 my area of expertise, though.

25 COMMISSIONER HANSON: Okay. Fair enough.

1 You say you can't -- you know, we talk about the
2 different types of appraisal work from the standpoint of
3 income approach and market value, but market value's
4 basically your cost approach.

5 I'm sorry. I'm just struggling with why it's
6 impossible to accomplish this.

7 Well, perhaps someone else can help us out. I'm
8 a licensed appraiser and I've done a lot of appraisal
9 work and I've appeared as an expert witness in Circuit
10 Court on appraisals. And I'm struggling with why you
11 can't accomplish this. I just want you to know that.

12 So thank you. I have no further questions.

13 MS. WIEST: Was there any cross based on
14 Commissioner questions?

15 MR. KOENECKE: I have a few.

16 MS. WIEST: Go ahead.

17 RE-CROSS-EXAMINATION

18 BY MR. KOENECKE:

19 Q. Mr. Houdyshell, are you aware that Dakota Access had
20 four different individuals contact the Department of
21 Revenue to help determine the first year property tax
22 estimates?

23 A. I am not aware that that is the actual number. I
24 believe that, you know -- I do know that a consultant did
25 contact the Department, and I'm assuming it was whoever

1 prepared the estimate.

2 Q. Thank you. I just want to make sure I understood
3 your testimony. Did you previously say that the cost
4 approach is typically used to value new construction?

5 A. When you're talking about residential properties
6 that is one approach that the Director of Equalization is
7 going to use. But they're also going to look at the
8 market approach as well and make a determination of
9 what's the best estimate of value.

10 Q. And if I understood your testimony correctly, the
11 cost approach is the only way to value new construction.
12 There would be no market data for one-year -- since
13 the -- the pipeline would have to operate for one year to
14 have market data for a market valuing; right?

15 A. That's correct.

16 Q. And if there are no comparable sales, cost approach
17 would be all you'd have?

18 A. It is correct that you're going to have to utilize
19 the cost approach in your year one valuation.

20 Q. I'm struggling with why it would be wrong to
21 estimate property taxes based on the cost approach for
22 year one.

23 A. Well, I don't believe my testimony is that it was
24 wrong. My testimony is that I believe it overstates the
25 year one value.

1 Q. Mr. Houdyshell, do you know whether the PUC
2 Commissioners decide the taxes on the pipeline?

3 A. They do not.

4 Q. In fact, the pipeline will be taxed according to
5 mill levies up and down the pipeline in all the different
6 jurisdictions; correct?

7 A. That's correct.

8 Q. And they're set every year by those entities. Also
9 correct?

10 A. That is correct.

11 Q. It seems to me that preparing an estimate of
12 property taxes would be extremely difficult given the
13 number of entities and the fact that they change their
14 mill levies or set them at least, I should say, every
15 year. Am I right?

16 A. You are correct. I believe that was my testimony.

17 MR. KOENECKE: Thank you.

18 MS. WIEST: Were there any other questions?

19 Ms. Craven?

20 RECROSS-EXAMINATION

21 BY MS. CRAVEN:

22 Q. Mr. Houdyshell, I just wanted to make sure that --
23 we were talking about the value of the company. When you
24 talk about the value of the company are you talking about
25 the value of Dakota Access, LLC and not the value of the

1 parent companies that own the LLC? Or do you take that
2 into consideration?

3 A. I believe that it will be Dakota Access, LLC because
4 it's a separate entity.

5 Q. And not -- neither of the parent companies?

6 A. I would have to defer to my staff to answer that
7 question.

8 MS. CRAVEN: Okay. Thank you.

9 MS. WIEST: Anything further?

10 MS. CREMER: No. Thank you.

11 MS. WIEST: Thank you.

12 MS. EDWARDS: I think next we are going to go to
13 Mike Timpson. We'll keep that other Department of
14 Revenue guy on the list, but Mr. Timpson has a flight
15 out. So we're not forgetting about your questions, but
16 we've got to keep him from missing his flight. Sorry.

17 So Staff calls Mike Timpson.

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

19 DIRECT EXAMINATION

20 BY MS. EDWARDS:

21 Q. Mr. Timpson, can you please state your name and
22 address for the record.

23 A. Certainly. Michael E. Timpson. And my business
24 address is 1500 Southwest First Avenue, Suite 885 in
25 Portland, Oregon.

1 Q. What is your professional title?

2 A. I'm a principal consultant with Natural Resource
3 Group, ERM.

4 Q. And what are your responsibilities in that job?

5 A. I have a couple of sets of responsibilities. I'm
6 the office manager for our Portland office. And I am
7 also a natural resource analyst and permitting person.

8 Q. What is your educational background?

9 A. Bachelor's degree in natural resources with a
10 concentration in soil science from the University of
11 Rhode Island, a master's degree in soil science with a
12 minor in geology from North Dakota State University, and
13 a Ph.D. in plant soil science from the University of
14 Tennessee with a minor in environmental engineering. And
15 I conducted postdoctoral research at Oak Ridge National
16 Laboratory.

17 Q. Thank you. How did you become involved in this
18 docket?

19 A. NRG was approached by Staff to appear as expert
20 witnesses on your behalf.

21 Q. What specific areas were you responsible for?

22 A. I reviewed material related to the potential
23 pipeline impacts on soils and restoration.

24 Q. Did you submit prefiled testimony?

25 A. I did. Well, I should back up a second. I'm

1 dealing with prefiled testimony on behalf of one of my
2 Staff, Andrea Thornton. And then I submitted rebuttal
3 testimony in response to questions given to Staff by
4 Intervenors.

5 Q. That direct testimony that you referenced, are you
6 familiar with that?

7 A. I am.

8 Q. And would you be comfortable answering questions on
9 that?

10 A. I would.

11 Q. Drawing your attention to what's been marked as
12 Staff Exhibit 13, can you please identify that.

13 A. Yes. It's the direct testimony of Andrea Thornton
14 on behalf of the Staff of the South Dakota Public
15 Utilities Commission, and it's dated July 6, 2015.

16 Q. And is Andrea Thornton a colleague of yours?

17 A. She is.

18 Q. If I asked you all of the questions in that direct
19 testimony, would your answers be the same as they are?

20 A. They would largely be the same, but I have some
21 clarifications to make to her testimony.

22 Q. What are those clarifications?

23 A. So the first would be on page 4 in the fourth
24 paragraph on the page relating to the recommendation
25 regarding the production of a milepost in/milepost out

1 crossing table for soil units.

2 It's my understanding that that table is not a
3 requirement of the Permit Application for the Public
4 Utilities Commission. It is a fairly standard --
5 actually a minimum filing requirement for a pipeline
6 before the Federal Energy Regulatory Commission, which is
7 natural gas.

8 The materials that were filed by Dakota Access,
9 specifically their Exhibits A3 and Exhibit C, would
10 largely be used in combination to come up with the same
11 set of information that Ms. Thornton was asking for in
12 her recommendation of this milepost in/milepost out
13 table. While it might be handy, it's not a requirement.
14 I don't think the recommendation is that strong.

15 Q. Okay. Would you adopt this prefiled testimony as
16 your own?

17 A. In large measure, yes. There's three additional
18 clarifications I wanted to make to the testimony, and
19 then I would adopt it.

20 Q. What are those?

21 A. Okay. So the second is on page 5. In the second
22 paragraph in her response recommending that the PUC
23 require preconstruction design efforts including best
24 management practices or BMP specific to locations with
25 higher erosion potential, to the extent that

1 site-specific construction plans would be required for
2 the project, that is, for instance, the proposed
3 horizontal directional drill installations of the pipe at
4 certain water body crossings typically carry a
5 requirement for a detailed site-specific plan at scale
6 that shows exactly where all of the equipment and all of
7 the best management practices would be installed, if
8 those are required, then I agree that they would
9 recommend that those detailed site-specific BMPs be
10 designed for those site-specific crossings.

11 But in the absence of site-specific plans, the
12 current Agricultural Impact Mitigation Plan and the
13 Storm Water Pollution Prevention Plan that Dakota Access
14 has prepared would be adequate for locating those -- the
15 installation of those best management practices to
16 prevent erosion and sedimentation on the right of way and
17 off the right of way.

18 Q. So by making that change are you in any way making
19 your recommendation less stringent upon the company?

20 A. No. Their current plans call for adequate placement
21 of BMPs to control erosion and sedimentation off the
22 right of way into adjoining properties, based on the
23 direction of the environmental inspector and the
24 construction contractor, and that's pretty standard
25 across the industry.

1 Q. Okay. Any other additions or corrections?

2 A. Sure. Further on page 5, in the fourth paragraph,
3 there's a section regarding a recommendation for a winter
4 construction plan. It's our current understanding that
5 no winter construction is proposed.

6 However, it's possible that construction could be
7 completed and the pipe could be mechanically complete and
8 ready to be put into service but restoration efforts
9 might still need to continue beyond that pipe being
10 installed and backfilled and adequately tested to be able
11 to be put into service.

12 If restoration has to extend beyond the period where
13 winter conditions, frozen ground, freeze/thaw cycles have
14 started, it becomes more difficult to restore the
15 pipeline prior to the full onset of winter, then we would
16 recommend that a winter stabilization plan be filed
17 indicating how they're going to stabilize the right of
18 way until they can complete restoration the following
19 spring when soils are workable and seeding could be
20 adequately conducted.

21 Q. Thank you. Any other changes?

22 A. One last, on page 7 in the fifth paragraph right
23 above that last question on the page where we
24 indicated -- or Ms. Thornton indicated that Dakota Access
25 did not identify areas of saline, sodic, or saline sodic

1 soils.

2 Exhibit C actually does indicate the locations of
3 shallow sodic soils. And I would recommend going beyond
4 that to identify additional locations where saline soils
5 are located.

6 Both of these soil types are notoriously difficult
7 to re-vegetate, and consultation with the Natural
8 Resources Conservation Service regarding recommended
9 seeding for species that are particularly salt
10 tolerant -- if you plant nonsalt tolerant plants in those
11 areas, you're not going to get anything to grow. If you
12 pick a seed mix that's appropriate for those types of
13 soils, you have a much better chance of restoring them
14 after pipeline construction.

15 So I would modify her recommendation there to
16 include a recommendation that the Natural Resources
17 Conservation Service be consulted to develop adequate
18 salt tolerant seed mixes for those types of soil
19 locations.

20 Q. You just said they're notoriously difficult to
21 re-vegetate. Why is that?

22 A. For one, the salinity. Only certain plants are salt
23 tolerant enough for many of those saline soils that occur
24 in South Dakota, some portions of South Dakota. And same
25 with sodic soils. They have -- sodium in soils creates

1 difficult physical properties.

2 They get very hard. It's hard to germinate seeds in
3 the seed bed that's resulting from those sodic soils so
4 you need certain sorts of plants that are naturally
5 suited for those soil conditions or you'll end up with
6 noxious invasive weeds that take advantage of the fact
7 that they can out compete more native plants in getting
8 established, and then it's harder for the native plants
9 to get reestablished in those locations.

10 Q. Thank you. Any other changes to the testimony?

11 A. No. Those four are the only modifications I would
12 make.

13 MS. EDWARDS: Thank you. At this time I would
14 move for the admission of Staff's Exhibit 13.

15 MS. WIEST: Is there any objection to Staff
16 Exhibit 13 being admitted?

17 If not, it's admitted.

18 Q. Mr. Timpson, turning your attention to what's been
19 marked for identification purposes as Staff's Exhibit 17,
20 do you recognize this document?

21 A. I do. It's a copy of my rebuttal testimony
22 submitted on August 14 of 2015.

23 Q. Do you have any additions, deletions, or edits to
24 make to this document?

25 A. I do not.

1 Q. If I asked you these questions today, would your
2 answers be the same?

3 A. They would.

4 MS. EDWARDS: I would move for the admission of
5 Staff's Exhibit 17.

6 MS. WIEST: Any objection to Staff Exhibit 17?
7 If not, it's been admitted.

8 MS. EDWARDS: Thank you. No further questions.
9 And he's available for cross.

10 MS. WIEST: Yankton Sioux Tribe, do you have any
11 questions?

12 MS. REAL BIRD: I do.

13 CROSS-EXAMINATION

14 BY MS. REAL BIRD:

15 Q. Good afternoon, Dr. Timpson. My name is Thomasina
16 Real Bird. I'm an attorney for the Yankton Sioux Tribe.

17 I realize this might be specific to Ms. Thornton,
18 but on page 2, the second to last paragraph she states
19 that she worked on a feasibility study for a confidential
20 client project that had a similar alignment to the
21 proposed project. You've adopted this testimony as yours
22 so can you answer what alignment means? Is that the
23 route?

24 A. That's my understanding of her testimony here is,
25 yes, it would have had a similar route to this one.

1 Q. Okay. Thank you.

2 Regarding the milepost-by-milepost description
3 referenced on page 4 of the testimony, we heard your
4 explanation earlier, and my question is without this
5 description is it possible to determine the location of
6 erodible soils along the proposed pipeline route?

7 A. It is. Because based on our testimony in the
8 paragraph above, the question Does Dakota Access propose,
9 she used Exhibit A3, revised Exhibit A3 and revised
10 Exhibit C.

11 Exhibit A3 are the pipeline soils maps that show
12 where the pipeline crosses each soil map unit as mapped
13 by the Natural Resources Conservation Service. And
14 Exhibit C is the listing of map units and their
15 characteristics and how many feet of each map unit across
16 within South Dakota.

17 So you are able to actually develop the same
18 information that she would have gotten had a milepost
19 in/out table been created. It just takes a little bit
20 more. But the information's available in the record to
21 do that.

22 Q. And turning to page 6 of the testimony, we see a
23 reference to karst. Would you explain what karst is?

24 A. Karst is a specific geologic condition, typically
25 associated with limestone bedrock. It occurs worldwide

1 in areas of limestone bedrock. And that's my
2 understanding of karst.

3 Q. And it is known to occur in South Dakota?

4 A. My understanding from reading this and reviewing the
5 information that Dakota Access filed in response to Staff
6 requests is that there are geologic formations in a
7 certain part of the state -- and I don't remember if it
8 mentions it in her testimony. It was included in the
9 response that Dakota Access provided -- where limestone
10 bedrock occurs.

11 But it's buried rather deeply under overlying
12 glacial deposits. And there's no indication from the
13 geotechnical review that was conducted by Dakota Access
14 that there's any indication that there's any actual karst
15 there.

16 There's the potential for it because of the presence
17 of the limestone bedrock, but they found no indication of
18 any actual karst, is my understanding.

19 Q. And why is it important to know where karst is
20 located along the proposed route?

21 A. A couple of different reasons. There are some
22 engineering reasons for pipeline design. If you're
23 crossing areas of karst, you need to design a pipe to be
24 able to include a long lifetime of the pipeline to
25 withstand a potential for -- you know, karsting is

1 erosion of bedrock that creates channels and runnels into
2 which materials above those channels and runnels could be
3 transported resulting in land slumpage.

4 And if the pipe's not designed adequately -- and I'm
5 not a pipeline engineer. I just know generally that the
6 pipe has to be designed to accommodate potential for
7 those conditions if they're actually known.

8 And then, additionally, those subterranean
9 passageways provide conduits for groundwater movement,
10 and in the event of a leak of the pipeline, then that
11 leaked material could also travel in the same flow paths
12 that groundwater typically would. So there's a potential
13 there for easier transport of a spilled material to end
14 up in a groundwater system.

15 Q. And the subterranean passageways you said can have
16 materials pass through them? What materials?

17 A. Sure. So your -- I'm kind of a visual guy and don't
18 have a blackboard to draw on here. It goes back to being
19 an old academic.

20 If you've got a layer of bedrock that suddenly has a
21 crack in it and you've got material above that, as this
22 crack develops the material starts to move down into the
23 crack.

24 So in some cases you can have very shallow karstic
25 erosion channels in the top of a limestone bedrock area

1 and the material above it just sinks down and fills that
2 in and that's the end of it, if it never develops any
3 deeper.

4 If it goes deeper, I've personally observed karst in
5 other parts of the world that are, you know, multiple
6 feet deep that have soil material down the whole length
7 of the channel so --

8 Q. Okay. So soil material. And you also indicated
9 that groundwater could travel through the subterranean
10 passageways?

11 A. Correct.

12 Q. And that would occur in areas where it wasn't
13 necessarily placed in standing groundwater or flowing
14 groundwater? So the groundwater introduction would be
15 new?

16 A. No. That's not what I was getting at.

17 Again, I'm not a groundwater hydrologist either so
18 my response is based on my understanding. I'm not an
19 expert on groundwater movement.

20 But if you have groundwater in that upper material
21 and the limestone bedrock may or may not contain
22 groundwater on its own, those two groundwater systems may
23 be able to be joined through the development of those
24 karstic channels. And groundwater from the surface can
25 move down through the bedrock that way.

1 Q. And the groundwater could be introduced to the
2 surface of the exterior of the pipeline for the first
3 time?

4 A. No. Groundwater flows down, not up.

5 Q. So it would not. Okay.

6 How is the location of karst discovered?

7 A. My understanding from reviewing the testimony and
8 reviewing the materials filed by Dakota Access, it was --
9 the potential for karst was identified in the original
10 Application materials, the section of the Application
11 that requires a listing of geologic units crossed by the
12 proposed route and the two limestone layers that were
13 identified were identified as part of the Application
14 materials and then additional questions were asked about
15 that.

16 Q. And so that's a -- what I think of as a desktop
17 review, a paper review.

18 A. Correct.

19 Q. During the construction process how is karst
20 discovered?

21 MS. SEMMLER: You know, I'm going to object.
22 This witness has indicated he's not a geologist, not an
23 expert in this area so I object on that basis.

24 MS. REAL BIRD: My response is that he's adopted
25 the testimony of Ms. Thornton, and it is referenced

1 extensively in the prefiled testimony.

2 MS. WIEST: Overruled.

3 A. During construction, as I said, the information that
4 Dakota Access filed in response to Staff's questions
5 about karst indicates that there's not going to be any
6 karst crossed by the pipeline route. If they were
7 crossing shallow bedrock, which is not the case, my
8 understanding of this route, there is a substantial
9 amount of unconsolidated glacial sediment through which
10 the pipe will be installed.

11 If there were shallow bedrock, excavating that
12 shallow bedrock would reveal those channels that I had
13 mentioned earlier, and it would be clear there is a
14 potential for karst to be present.

15 Q. So the answer is during the excavation process?

16 A. Correct.

17 Q. Do you know who from Dakota Access would be
18 responsible for identifying karst during that process?

19 A. I do not.

20 Q. Do you know who typically is responsible on any
21 given construction -- well, strike that.

22 Would somebody with that responsibility on a
23 construction site be required to undergo training or any
24 additional certifications to identify karst?

25 A. I don't know.

1 Q. Would you recommend that that be a requirement for
2 somebody to observe the construction process to be able
3 to identify karst?

4 A. I don't -- I guess I'm not understanding what you're
5 asking.

6 Q. Okay. Okay. Fair enough.

7 I'm trying to figure out if -- it sounds like karst
8 is probably not identifiable by the everyday person. Is
9 that fair to say?

10 A. Yes. I think that's a fair characterization.

11 Q. So would the persons responsible on the site --
12 should they be required to be able to identify that
13 karst? And if so, is that -- should they undergo
14 training or hold a certification to do that?

15 A. Yeah. I think if there were significant potential
16 to encounter karst on a project, it would be sensible to
17 have somebody with appropriate training to be able to
18 identify karstic features during excavation of the
19 pipeline trench.

20 Q. So the Revised Application does identify potential
21 karst from milepost 316.5 to milepost 348.3, as well as
22 milepost 455.88 to 471.5 that's contained in
23 Ms. Thornton's testimony that you adopted on page 6?

24 A. Correct.

25 Q. So that potential -- should the presence of that

1 potential result in somebody being present on the
2 construction site that is capable and trained to identify
3 karst?

4 A. No. Because if you look down at the next paragraph,
5 it says "As indicated in Dakota Access's data request
6 responses to No. 12 and 13 as well as their June 12
7 Interrogatory Response 2-21, Although the proposed
8 project crosses regions that have the potential for karst
9 topography based on the underlying bedrock, as I
10 explained earlier, this does not mean that karst
11 topography is present.

12 Ms. Thornton agreed with that determination. I
13 agree with her agreement. And South Dakota has deep
14 glacial drift deposits, as I indicated earlier, which
15 overly the carbonate rock formations that have potential
16 for karst development. That thick coverage of glacial
17 sediment thereby limits the risk of subsurface
18 subsidence.

19 So although there are places within the pipeline
20 route that cross geological formations that have the
21 potential to develop karst, no karst was identified.

22 Q. And I understand your testimony earlier was that
23 karst was identified through the construction process?

24 A. I said you could identify it if you trench through
25 it, but this indication -- the testimony here and my

1 review of the report that they filed indicates there's
2 very little possibility for karst to be crossed by the
3 project.

4 Q. And the testimony is also that there is a potential
5 for karst present through those mileposts listed in the
6 testimony.

7 So my question is if it's identifiable through the
8 construction excavation process and that has not yet
9 occurred --

10 A. If you look a little further down Ms. Thornton's
11 testimony the last sentence says, The only lands with
12 moderate and high susceptibility for karst in the project
13 area occur in Campbell County associated with the
14 Missouri River, which would not be crossed in
15 South Dakota, as we heard earlier, and a portion in
16 Turner County, which is not crossed by the proposed
17 alignment.

18 So both places in the State of South Dakota with
19 potential for karst aren't going to be crossed.

20 Q. Okay. I'm just having a hard time reconciling, I
21 think, the two provisions of the prefiled, but I won't
22 belabor the point with you.

23 A. Okay.

24 Q. Sir, thank you for going through that with me.

25 I do have some follow up on your testimony on the

1 saline and sodic and saline sodic soils.

2 A. Sure.

3 Q. How would those soils be identified?

4 A. They'll be included in the map unit descriptions
5 that are part of the soil exhibits filed with the Permit.
6 So Exhibit C and Exhibit A3.

7 Q. And the testimony references re-vegetation issues.
8 I did hear a type of a re-vegetation issue, but I'm
9 wondering if there are other re-vegetation issues linked
10 to saline, sodic, and saline sodic soils?

11 A. No. Those particular soil types have their own set
12 of issues, and they're restricted to those soil types.
13 There are other potential re-vegetation issues for the
14 project but not related to those three soil types.

15 Q. What are those re-vegetation issues?

16 A. Well, as explained in her testimony, areas that have
17 somewhat excessively drained soils or dryer, soils on
18 relatively steep slopes, highly sandy soils with no water
19 holding capacity, may be areas that would be more
20 difficult to re-vegetate after construction.

21 Q. Thank you.

22 And the last page of the direct prefiled testimony
23 on page 8 mentions SWPPP, and my question is whether the
24 SWPPP states whether Dakota Access consulted or will
25 consult with landowners concerning seed mixtures?

1 A. I don't know whether it says -- indicates that
2 they'll consult with landowners regarding seed mixtures
3 or not. I think Ms. Thornton had recommended, and I
4 concur with, consultation with the Natural Resources Soil
5 Conservation Service for recommended seed mixtures, but
6 I'm assuming that as part of the landowner negotiations
7 if a landowner had a particular seed mix that they wanted
8 restored on their property, that Dakota Access may
9 consider that, but I don't know.

10 Q. And your recommendation was referenced earlier in
11 your corrective testimony. Because of the saline, sodic,
12 and saline sodic soils, you recommended that the mixtures
13 be determined through the process you described.

14 Are there other concerns that would lead to
15 recommending the Applicant consult on those seed
16 mixtures?

17 A. No. Picking an appropriate seed mix for a
18 particular soil type is the most important part of
19 reseeding, and Natural Resource Conservation Service
20 being the acknowledged soil expert in the State of South
21 Dakota would be the right people to consult with.

22 Q. I mean, my question was the presence of saline,
23 sodic, and saline sodic soils would not be the only type
24 of soils that you --

25 A. Correct.

1 Q. -- would think would come into those discussions?

2 A. Correct.

3 Q. I'll turn to your rebuttal.

4 The published report that you reference on page 5,
5 and it's also referenced on prior pages of your prefiled
6 testimony --

7 A. So which publication? Because I think there are two
8 I've indicated here on page 5.

9 Q. Oh, I'm sorry. The 1993 study.

10 A. Correct.

11 Q. Is that for a crude oil pipeline?

12 A. I don't know what kind of a pipeline that was --
13 that study was conducted for.

14 Q. Is it for a natural gas pipeline?

15 A. Again, I don't know in that instance which type of
16 pipeline it was.

17 Q. Does your testimony on page 4 reference what type of
18 pipeline that was?

19 A. No. It describes the fact that the other study
20 conducted by TERA Environmental Consultants was related
21 to a natural gas pipeline, the Alliance Pipeline.

22 Q. Okay. So I'm mixed up. Thank you, Doctor.

23 The Alliance Natural Gas Pipeline is the one that's
24 referenced in the TERA study?

25 A. Correct.

1 Q. Are there temperature differences between natural
2 gas pipelines and crude oil pipelines?

3 A. I assume that there are. I don't know for a fact.

4 Q. Okay. And so just to be clear, the TERA study was
5 only as to natural gas pipelines, and it did not include
6 a study of a crude oil pipeline?

7 A. That's correct.

8 MS. REAL BIRD: Thank you. No further
9 questions.

10 MS. WIEST: Rosebud, did you have any questions?

11 MR. RAPPOLD: No.

12 CROSS-EXAMINATION

13 BY MS. CRAVEN:

14 Q. Good afternoon. Kimberly Craven, attorney for the
15 Dakota Rural Action and Indigenous Environmental Network.

16 How are you today?

17 A. Just fine. Thank you.

18 Q. I have a couple of questions for you. There's been
19 considerable testimony and dispute regarding
20 re-vegetation. Your firm has recommended the PUC require
21 a more quantifiable measure to determine the success of
22 re-vegetation.

23 Would you elaborate, please, on this recommendation.

24 A. Sure. It's relatively common in FERC regulated
25 pipelines, that's Federal Energy Regulatory Commission,

1 that their upland restoration plan requires re-vegetation
2 of noncropland uplands to meet a 70 percent vegetative
3 cover with similar density of plants and similar species
4 prior to construction. And this recommendation is based
5 on that.

6 It provides a quantifiable measure to determine the
7 success of restoration. It prevents a company from
8 indicating they have successful re-vegetation because all
9 they have on the right of way is a 70 percent cover of
10 weed species.

11 This actually requires them to successfully
12 re-vegetate using appropriate seed mixes, something that
13 looks like the land looked like before the pipeline was
14 constructed, and that's the reason for the
15 recommendation.

16 The 70 percent number is somewhat arbitrary. But
17 that's sufficient density of vegetation to prevent
18 erosion. So installation of permanent erosion controls,
19 that is returning the land surface as close to
20 preconstruction vegetation as a measure of successful
21 restoration.

22 Q. And even though this is not a FERC regulated
23 pipeline, are these better measures necessary to protect
24 the farms, the ranches, and the environment in
25 South Dakota?

1 A. Again, this recommendation would only cover
2 noncropland. So hay land, pastureland, rangeland. It
3 doesn't apply to cropland because they take the crop off
4 each year. There's no reason to re-vegetate that.

5 Q. And how would -- what is your recommendation for
6 noxious weeds, dealing with noxious weeds?

7 A. Well, I think my review of the Agricultural Impact
8 Mitigation Plan indicates that Dakota Access has a plan
9 for addressing noxious weeds, and their indication so far
10 is that they have identified no noxious weed plots. I
11 don't know what they mean by a plot.

12 But my experience living in the Dakotas for a number
13 of years, that there's a very good chance there are
14 noxious weeds present. Despite county weed rules, many
15 landowners don't control noxious weeds on their property.
16 But I believe their Ag Impact Mitigation Plan does
17 address the presence of noxious weeds and controlled
18 measures for those.

19 Q. And there's a growing community of organic farmers
20 in South Dakota. Should their concerns be taken into
21 consideration --

22 MS. SEMMLER: I'm going to object. This is
23 outside the scope of his prefiled testimony. He made no
24 recommendations or testified as to organic farms.

25 MS. CRAVEN: But noxious weeds and how we deal

1 with noxious weeds.

2 MS. WIEST: Overruled.

3 A. So could you restate the question?

4 Q. So there's a growing community and demand for
5 organic farms and farmers.

6 Do you have recommendations on how to best deal with
7 noxious weeds and organic farms?

8 A. I don't know that the project crosses any organic
9 farms.

10 Q. It does.

11 A. It does.

12 MS. SEMMLER: I object. Counsel is testifying.
13 Counsel was leading.

14 MS. CRAVEN: It's in the record. Some of our
15 constituents are organic farmers.

16 MS. SEMMLER: Again, counsel is testifying.
17 This is an examination of a witness.

18 MS. WIEST: Can you restate a question without
19 any testimony?

20 Q. So for dealing with noxious weeds on organic farms
21 what's your recommendation?

22 A. Consultation with the organic farmer. Because every
23 organic farm has a different organic farm plan. And
24 everybody may have a different approach to controlling
25 weeds of any sort on their organic farm. So consultation

1 with the farmer is the only appropriate approach for
2 that. I don't have a recommendation beyond that.

3 Q. Has DAPL done that?

4 A. I have no information that they have or they have
5 not.

6 Q. Would inadequate re-vegetation affect the intent
7 that DAPL fulfill a commitment to the landowner?

8 MS. SEMMLER: I'm going to object. I don't
9 think this witness is testifying as to fulfilling any
10 sort of expectation of the landowner. It also calls for
11 speculation as to when landowners are or aren't
12 satisfied.

13 MS. CRAVEN: That's what the entire hearing is
14 about is whether this pipeline is safe and whether the
15 landowners are going to be harmed by it.

16 MS. WIEST: Overruled.

17 A. So could you restate your question?

18 Q. Uh-huh. Would inadequate re-vegetation affect
19 the -- I guess to the extent that DAPL would fulfill its
20 commitments to the landowners?

21 A. I don't think I can answer that question.

22 Q. Okay. Are you aware that DAPL has retained a
23 contractor to build the pipeline which has been alleged
24 to have failed to properly re-vegetate easements in
25 South Dakota in the past?

1 A. No. I've only heard this week that they may have
2 chosen a contractor, but I'm not aware of that.

3 Q. Is that a concern to you?

4 MS. SEMMLER: Objection. He said he wasn't
5 aware of it. He just heard about it. He's done no
6 investigation. He's done no inquiry. He can't testify
7 to it.

8 MS. CRAVEN: He saw Sue Sibson's testimony, I'm
9 sure.

10 Q. Were you here when Ms. Sibson testified?

11 MS. WIEST: Can you restate the testimony.

12 Q. Earlier this week we heard testimony from Sue
13 Sibson. Were you here for that?

14 A. I was here all day yesterday.

15 Q. She was a landowner. She had photographs of her
16 farm that had been re-vegetated by the Keystone XL.

17 A. Yeah. I vaguely remember her testimony.

18 Q. Okay. Okay.

19 Would you please describe the benefits of the
20 milepost in and out table showing areas prone to erosion?

21 A. As I indicated earlier, the information that could
22 be obtained from a milepost in/milepost out table is
23 available through existing exhibits, and we -- my
24 recommendation was to remove the recommendation for that
25 in/out table.

1 So there's already information in the record to be
2 able to identify the areas that you're asking about there
3 without the production of an in/out table.

4 Q. Your group has made numerous recommendations with
5 respect -- your rebuttal, Ms. Thornton's testimony, has
6 made numerous recommendations with respect to mitigation
7 and construction of the BMPs and rebuttal testimony.
8 DAPL has resisted many of these recommendations.

9 If DAPL succeeds in obtaining the Permit and these
10 are not followed, would ag production in South Dakota be
11 diminished as a result?

12 MS. SEMMLER: I'm going to object. It assumes
13 facts not in evidence. The fact that any of our
14 witnesses rebut these recommendations, we haven't put it
15 on yet because we haven't called our rebuttal witnesses.

16 Q. You have a lot of recommendations in your testimony.
17 If those are not followed, do you think it would harm the
18 farmers in South Dakota?

19 A. I don't know that I can answer that question
20 intelligently.

21 Q. So the pipeline is supposed to be finished by next
22 October, but they say they're not going to do winter
23 construction. And I see that you have a recommendation
24 that there be a winter construction plan; is that
25 correct?

1 A. As I amended Ms. Thornton's testimony at the
2 beginning, it's now our understanding they are not going
3 to be constructing during the winter so a winter
4 construction plan is not required.

5 What we recommended was in the event that their
6 restoration activities continue into wintertime
7 conditions -- so, for instance, they get the pipe
8 installed, everything's backfilled, and they are
9 restoring the rest of the right of way and some portions
10 of that can't be restored until freeze up or freeze up
11 happens before they complete their restoration,
12 reseeding, in that instance we've recommended that they
13 file with the Commission a winter stabilization plan
14 explaining how they will stabilize the right of way,
15 prevent erosion in the spring when things fall out again
16 and then a plan for finishing the restoration after
17 suitable conditions for working soils and planting seeds
18 are obtained.

19 Q. Have you ever seen construction in wintertime?

20 A. I have.

21 Q. Is it possible to separate the topsoil when the
22 ground is frozen?

23 A. It's not very easy, which is why winter construction
24 has to have a specific plan for doing that.

25 MS. CRAVEN: Okay. Thank you. No more

1 questions.

2 MS. WIEST: Ms. Northrup, did you have any
3 questions?

4 MS. NORTHRUP: No. Thank you.

5 MS. WIEST: Dakota Access, do you have any
6 questions?

7 MS. SEMMLER: Yes.

8 CROSS-EXAMINATION

9 BY MS. SEMMLER:

10 Q. This is Kara Semmler, an attorney for Dakota Access.

11 Are you aware that Dakota Access agrees with your
12 recommendation regarding that winter stabilization plan?

13 MS. REAL BIRD: Objection. Counsel is
14 testifying.

15 MS. SEMMLER: Just asked if he was aware of
16 their agreement. I'm not testifying.

17 MS. WIEST: Sustained. I mean, overruled.

18 A. No. I was not aware of that, but that's not
19 surprising.

20 Q. Are you aware that Dakota Access agrees with your
21 70 percent successful re-vegetation measure?

22 A. Again, no, I was not aware of it. I'm glad to hear
23 that.

24 Q. And just to be sure I understand, your concern with
25 those saline and sodic soils, am I correct in my

1 understanding that if consultation with the NRCS is done
2 and an appropriate seed mix is used, that will resolve
3 your concerns?

4 A. It would.

5 Q. I know you had some specific areas of review. So
6 within those specific areas of review, do you believe
7 that Dakota Access's Ag Mitigation Plan is sufficient?

8 A. I do.

9 Q. You were asked a few questions about page 4 of your
10 testimony. There was a study that you reference.

11 Do you remember those questions?

12 A. Yes.

13 Q. Okay. I'm going to reference that same page 4 here.

14 Do you have any expertise to testify regarding the
15 differences between crude oil and gas and the hydraulic
16 conditions that may affect the temperature of the product
17 in the pipe or the soil?

18 A. No, I do not.

19 Q. And you know -- based on your line of work, you know
20 the differences between gas and crude oil pipelines;
21 right?

22 A. I do, yes.

23 Q. So do you know the -- do you know the difference
24 between a compressor station and a pump station and how
25 the thermodynamic conditions vary and how they impact the

1 temperature of the pipe and the soil temperatures?

2 MS. CRAVEN: Objection. Counsel is now
3 testifying.

4 MS. SEMMLER: I'm not. It was just a question.

5 MS. WIEST: Overruled.

6 A. So to the first part of the question I do know the
7 difference between a pump station and a compressor
8 station.

9 To the second part of your question, no, I'm not an
10 expert on the thermodynamics of compressor and pump
11 station interactions with the material that they're
12 compressing or pumping.

13 Q. So then it's not a complete, equal apples-to-apples
14 comparison, right, between gas and crude and their
15 operating conditions?

16 A. No. It's not an equal apples-to-apples comparison,
17 and I believe I indicated in my testimony that this study
18 was related to natural gas pipeline and that similar but
19 potentially different results could be found if you did
20 the same study for an oil pipeline.

21 Q. Thank you. And FERC does not regulate this pipeline
22 we're looking at in this proceeding; right?

23 A. As far as I understand, no.

24 MS. WIEST: Commissioners, do you have any
25 questions?

1 CHAIRMAN NELSON: Just one.

2 Thank you, first of all, for being here in
3 person. That's helpful to us. I appreciate that.

4 Relating to the saline soils, would the
5 incorporation of lime improve the possibility of
6 re-vegetation?

7 THE WITNESS: No.

8 CHAIRMAN NELSON: Thank you.

9 MS. WIEST: Any other questions?

10 Any further cross based on Commissioner
11 questions?

12 Any redirect?

13 MS. EDWARDS: I have no redirect.

14 Thank you.

15 MS. WIEST: Thank you.

16 Who is going to be your next witness?

17 MS. CREMER: Well, Mr. Bailey, the appraiser,
18 left me his cellphone number as well as the attorney's
19 number, and they said to call them if need be because I
20 had no idea how long Mr. Timpson was going to last. We
21 thought it would be much longer than this.

22 So I can call them. I didn't know if you want
23 to call it a day. I'll leave that up to you. But they
24 are available, and I can call them.

25 MS. WIEST: And did you have anybody else who is

1 available?

2 MS. CREMER: They're available, but they're
3 going to be a while. We can start them until they get
4 here and take a break, whatever you want to do.

5 MS. WIEST: Do you know how long that would take
6 to get --

7 MS. CREMER: They said call them, and they'd
8 come right back.

9 (Discussion off the record)

10 MS. WIEST: We'll take a break right now, and
11 we'll check in with those other witnesses.

12 (A short recess is taken)

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

14 MS. CREMER: Thank you. Staff would call
15 Todd Bailey.

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

17 DIRECT EXAMINATION

18 BY MS. CREMER:

19 Q. Would you please state your name and address for the
20 record.

21 A. Sure. Todd Bailey, 2312 Flag Mountain Drive,
22 Pierre, South Dakota 57501.

23 Q. What is your professional title?

24 A. Centrally assessed property tax specialist for the
25 South Dakota Department of Revenue.

1 Q. Could you briefly describe for us your job
2 responsibilities?

3 A. Sure. My main responsibilities are the valuation of
4 centrally assessed utility property for the State of
5 South Dakota.

6 Q. What is your educational background?

7 A. I have a bachelor's degree from the University of
8 North Dakota.

9 Q. What is your work experience since college?

10 A. I worked -- my first year out of college I worked
11 for a year in retail management and then another year in
12 consumer finance, both in the Twin Cities. And then I
13 worked for three and a half years as a loan officer at a
14 bank in Wadena, MN.

15 And for the last 15 years I've been working for the
16 South Dakota Department of Revenue. And since 2006 my
17 position has been in the valuation of centrally assessed
18 utility property.

19 Q. How did you become involved in this docket?

20 A. I was asked to submit prefiled testimony.

21 Q. Was that by Commission Staff?

22 A. Yes.

23 Q. Thank you. Can you tell us generally what you
24 reviewed or analyzed in order to file prefiled
25 testimony?

1 A. We reviewed the documents that were submitted to us
2 on the Dakota Access Pipeline with respect of how it
3 would affect the property taxation.

4 Q. And before you is what's been marked for
5 identification purposes as Staff Exhibit 7. Do you see
6 that? Or I'm sorry. Staff Exhibit 7.

7 A. Yes.

8 Q. Is that your prefiled testimony?

9 A. Yes.

10 Q. And does it have any attachments?

11 A. Yes. It has my resume.

12 Q. Do you have any additions, deletions, or edits to
13 make?

14 A. No.

15 Q. If I asked you the same questions today as those
16 posed in your prefiled testimony, would your answers be
17 the same?

18 A. Yes, they would.

19 Q. At the time your testimony and exhibits were filed
20 was it true and correct to the best of your information
21 and knowledge?

22 A. Yes.

23 MS. CREMER: I would move to admit Exhibit 8.

24 MS. WIEST: Any objection to the admission of
25 Exhibit 8?

1 If not, it has been received.

2 Q. Would you please summarize the content of your
3 testimony.

4 A. Yes. My testimony was to provide extra support to
5 Mr. Houdyshell's testimony.

6 Q. All right. Thank you.

7 MS. CREMER: That's all the direct I would have,
8 and he is available for cross.

9 MS. WIEST: Yankton Sioux Tribe, did you have
10 any questions?

11 MS. REAL BIRD: I do.

12 CROSS-EXAMINATION

13 BY MS. REAL BIRD:

14 Q. Mr. Bailey, my name is Thomasina Real Bird. I'm an
15 attorney for the Yankton Sioux Tribe.

16 Would you explain the difference between the cost,
17 market, and income approach valuations.

18 A. Sure. We'll start with the cost. The cost takes
19 the original cost to buy a property, and then you take
20 away the depreciation. And also there's some
21 interrelations with cost and income that I'll get into in
22 just a minute.

23 But that's kind of the gist is kind of replacement
24 cost new less depreciation is kind of like the general
25 formula for the cost approach.

1 As you get into income approach, it takes the
2 revenue generated divided by a market derived rate in
3 order to come up with market valuation through that.

4 As far as the sales comparison approach for
5 centrally assessed utilities, due to limited number of
6 sales, there's a proxy that's used, and it's called the
7 stock and debt approach, which takes generally a parent's
8 company stock price and a parent's company's debt and
9 then allocates their assets from the parent company down
10 to the utility being valued to come up with a market
11 value of the property that way.

12 Q. And are cost and market approach valuations used at
13 all for pipeline projects in South Dakota?

14 A. The cost approach does get some merit in there.
15 Since these pipeline companies are generally subsidiary
16 companies, the market approach or in this case in lieu of
17 the proxy, the stock and debt approach is not given any
18 merit in the valuation.

19 Q. So the market approach is not, but the cost approach
20 is?

21 A. That's correct. Yes.

22 Q. Would you -- well, would you explain how the cost
23 approach is used in the valuation of pipeline projects?

24 A. Sure. As I said, it starts out with they have to
25 report to us on an annual basis what their total original

1 cost is, and that includes additional upgrades that they
2 might have put into the line from the previous year.

3 Then we subtract out the depreciation. That gets us
4 to a net book value by the cost approach. However, that
5 isn't the end of it. Because these are -- the pipelines
6 are regulated utilities, they're generally a little bit
7 more limited what they can earn by earnings so we have to
8 do an economic obsolescence calculation, and that's
9 generally the difference between what they're earning --
10 what their rate of earning is versus what their cost of
11 capital is.

12 And then that is subtracted out from the net book
13 value. Or if they're somehow earning greater earnings
14 than what the cost of capital is, then that would be an
15 enhancement to the valuation that comes up with the value
16 by the cost approach.

17 Q. So the cost approach also includes the income
18 approach or --

19 A. That is correct. It does use a little bit of
20 factors from the income approach and the cost approach.
21 That is -- yes.

22 Q. And is the cost approach used through all years of
23 the valuation from your office?

24 A. Yes. Uh-huh. But, again, it's the secondary
25 approach. Especially as assets age. It gets a little

1 bit harder and more and more difficult to estimate
2 depreciation. So then you get more and more reliance in
3 the reconciliation process on the income approach.

4 Q. So we have the three approaches, and you said the
5 secondary -- is it an average?

6 I'm trying to figure out how the two interact with
7 each other in more detail.

8 A. Okay. Your question being is this talked about in
9 the final reconciliation? I'm not quite sure how you're
10 asking that.

11 Q. It sounds like your testimony is the cost approach
12 includes also the income approach. So it sounds like
13 they're not separate approaches, but they're used
14 together?

15 A. The income approach is a separate approach on its
16 own. The cost approach has elements from the income
17 approach in order to do the economic obsolescence
18 calculation.

19 Because there's only two ways to measure it and one
20 is through the income shortfall method and that's the one
21 I explained that relates the income approach through the
22 cost approach or through sales, which unfortunately they
23 don't exist.

24 Q. And so the income approach can be used on its own?

25 A. That's correct.

1 Q. And what variables are considered in the income
2 approach?

3 A. Generally the simplistic formula in the income
4 approach is income divided by the weighted average cost
5 of capital is equal to market value. And the formula,
6 it's an earned formula. It's income divided by rate
7 equals market value.

8 Q. The weighted average cost of capital, will you
9 explain what that means for us non persons in your line
10 of work?

11 A. Definitely. The weighted average cost of capital is
12 a market derived rate using -- it starts by using the
13 band of investment method. What you're trying to come up
14 with there is a market derived rate based on equity and
15 debt.

16 And in order to -- debt is pretty easy to calculate.
17 You can find bond debt rates generally. I use -- I use
18 merchant bond. You can generally find those debt rates
19 in the market.

20 Equity rates are derived starting with proxy
21 companies that are generally in the same industry as the
22 company that's being valued. And then you use -- then
23 you're going down to like appraiser judgment. There's
24 really three basic formulas in that.

25 And one of them is the discount cash flow model.

1 Another one is the risk premium, and the other is the
2 capital asset pricing model.

3 Q. And the capital asset appraising model, what factors
4 are considered in that model?

5 A. Okay. You're basically looking at a risk premium
6 plus -- a risk premium times the beta plus the risk free
7 rate. The risk free rates generally are easily found, as
8 the 20-year treasury gov rate is a generalized
9 consideration of the risk free rate.

10 The risk premium is a little bit more controversial.
11 The generalized one is you take the difference for the
12 previous year of large company stocks less long-term
13 government bonds, and then take it times -- times the
14 beta for that particular company.

15 Q. Are you the person that will be responsible for
16 determining whether the taxes paid by the company here
17 are sufficient?

18 A. I don't do property taxes. I don't do taxes.

19 Q. You do the assessment of the valuation?

20 A. I do do the valuation, yes.

21 Q. Will you be doing the valuation here?

22 A. Yes. I will be the person that does the valuation.

23 Q. And which process do you intend to use? Excuse me.
24 Let me rephrase.

25 Which valuation approach or hybrid, if you can

1 explain it that way, do you intend to use?

2 A. Since we try to be -- in order to be fair and
3 equitable to all of our centrally assessed companies, it
4 has been our appraiser judgment that we generally use
5 income and the cost approach.

6 Q. And so you prepare those two approaches, and then
7 you -- do you have two numbers and then you average, or
8 do you have one primary number and you check it with the
9 other number?

10 How do those two approaches interact with each
11 other?

12 A. We do not average them. We look at the number, the
13 reliability of the two numbers, and that's how we
14 determine it. It might include -- there might be some
15 merit given to both approaches.

16 Depending on the company and the year, there might
17 only be a look at one number and say I believe that that
18 is the fairest determination of the market value of the
19 assets in that year, and that might be -- and it comes
20 down to appraiser judgment at that time.

21 But they are not -- those two numbers -- the numbers
22 are -- we calculate a value by the stock and debt
23 approach either. We just don't -- if there's enough
24 information -- because our laws say we have to consider
25 all three approaches to value.

1 Because it's difficult allocating assets from a
2 parent company down to a utility, we do not use that. We
3 do not average them. We look at reliance. We look at
4 how credible the data is based on the approach for that
5 year. Usually it's a hybrid of both, with more weight
6 given to the income approach.

7 Q. Is that what you meant by the cost approach is
8 secondary?

9 A. Yes.

10 MS. REAL BIRD: Thank you for all of that
11 information.

12 MS. WIEST: Mr. Rappold, did you have any
13 questions?

14 MR. RAPPOLD: Just a few.

15 CROSS-EXAMINATION

16 BY MR. RAPPOLD:

17 Q. Good evening, Mr. Bailey. My name is Matt Rappold.
18 I represent the Rosebud Sioux Tribe.

19 I'm just looking over your testimony here, and I'm
20 at page 2. I don't know if you have it in front of you.
21 If you do, you might want to take a look.

22 The question at line 39 that says Have you reviewed
23 Michael Houdyshell's testimony in this case and your
24 answer is Yes?

25 A. Yes.

1 Q. The next question, line 43, says Do you concur with
2 his testimony, and the answer is Yes?

3 A. Yes.

4 Q. Now it's my understanding of Mr. Houdyshell's
5 testimony is that the South Dakota Department of Revenue
6 does not have the ability to assess what Dakota Access
7 Pipeline will pay in taxes based on the limited
8 information provided.

9 You agree with that; right?

10 A. We have no information at this time.

11 Q. I'm sorry. I didn't understand what you said.

12 A. We have no information at this time.

13 Q. Okay. Well, then so you would agree with his
14 testimony; correct?

15 A. Yes.

16 Q. Okay.

17 MR. RAPPOLD: Thank you. I have no further
18 questions.

19 MS. WIEST: Ms. Craven?

20 MS. CRAVEN: I have no questions.

21 MS. WIEST: Dakota Access.

22 CROSS-EXAMINATION

23 BY MR. KOENECKE:

24 Q. Mr. Bailey, thank you for being here tonight.

25 Is the cost approach the best method to value -- or

1 I should say to estimate taxes of a new construction?

2 A. I think there has been nothing determined as of how
3 is the best way to estimate assets that don't exist.

4 Q. So the only way to estimate taxes is based on cost
5 of something that doesn't exist; correct?

6 A. That would be correct, yes.

7 Q. Thank you.

8 Have you reviewed Dakota Access's estimate of taxes?

9 A. Again, the answer to that question is no.

10 Q. So you don't know what that number would be?

11 A. No.

12 Q. You've adopted Mr. Houdyshell's -- or you've
13 concurred with his testimony; correct?

14 A. Correct.

15 Q. And so didn't he have a statement in his testimony
16 as to what the estimated taxes are?

17 A. I don't have his testimony in front of me at this
18 point.

19 Q. I'll come and bring you that exhibit if you'll hold
20 on.

21 Directing you to page 5, line 15.

22 A. I have it in front of me.

23 Q. So I'll ask you again, is Dakota Access's estimate
24 reasonable based on the information in front of you where
25 no other data is available?

1 A. Again, I don't do taxes so I can't answer that
2 question.

3 Q. Do you report valuations of the pipeline to any of
4 the Tribes in South Dakota?

5 A. We report all our values to the -- to the county
6 auditors on the fourth Monday in August annually.

7 Q. And to nobody else?

8 A. No. We do not report it to anybody else.

9 MR. KOENECKE: Nothing further. Thank you.

10 MS. WIEST: Are there any Commissioner
11 questions?

12 CHAIRMAN NELSON: First of all, thank you for
13 being here late on a workday to try to help me understand
14 this. You heard a lot of my naive questions earlier, and
15 I think I'm getting a better picture, and I appreciate
16 that.

17 Going back to Mr. Houdyshell's testimony on
18 page 3 where he talks about assessing using the unit
19 value, and he talked about the first step in that of the
20 Department determining the "fair market value." And you
21 heard me ask about, well do you consider assets and Blue
22 Sky and da-da-da.

23 I'm understanding now that that is not part of
24 that at all; is that correct?

25 THE WITNESS: That is correct. But to be

1 honest, and to be really honest, if you are doing an
2 income approach on this -- I understand. If you do an
3 income approach, there is no way to guarantee that
4 there's absolutely zero income attributable to the things
5 you talked about.

6 But if it adds any value at all, it would be
7 completely inconsequential.

8 CHAIRMAN NELSON: Thank you.

9 So let me -- and I appreciate Ms. Real Bird
10 asked a lot of questions to kind of set up my questions,
11 and I appreciate that.

12 Dealing with the cost methodology -- and I
13 understood from Mr. Houdyshell that in the case of a new
14 pipeline such as Dakota Access that that would be the
15 methodology that would be used for the first year.

16 Do you concur with that?

17 THE WITNESS: I would -- I would concur.

18 CHAIRMAN NELSON: Then did I understand later in
19 your testimony that for each succeeding year you will
20 calculate both by the cost method and by the income
21 method; is that correct?

22 THE WITNESS: That is correct.

23 CHAIRMAN NELSON: And then you will choose which
24 of the two to use for that particular year; is that
25 correct?

1 THE WITNESS: That's correct.

2 CHAIRMAN NELSON: And will that choice change
3 from year to year?

4 THE WITNESS: Generally speaking, no. But it
5 is -- it is possible. We try to be as consistent as
6 possible from year to year. There could be some extreme
7 circumstances possible, but if all else being equal, we
8 will stay consistent.

9 Income approach will be the primary method and
10 then the cost approach will get some consideration but it
11 will be the secondary.

12 CHAIRMAN NELSON: Several times during this
13 series of questioning we've heard the term "appraiser's
14 judgment."

15 Is that you?

16 THE WITNESS: Yes.

17 CHAIRMAN NELSON: As you are exercising your
18 appraiser's judgment on the centrally assessed
19 properties, do you ever have representatives from
20 companies lobbying you?

21 THE WITNESS: I'm not quite understanding at the
22 time because there's a time frame -- we determine -- we
23 send out the appraised values by statute. It's July 5
24 for all industries that we deal with, except for
25 railroads which are July 7. They have a window in July

1 where they can present additional information or ask
2 questions if they disagree with my value determination.
3 And that's well before we finalize and send to the county
4 it's called the informal appeal process.

5 CHAIRMAN NELSON: And that window is provided
6 for specifically in statute; is that correct?

7 THE WITNESS: Yes. It says we have to give them
8 at least 10 days.

9 CHAIRMAN NELSON: In talking about the cost
10 approach, you talked about the economic obsolescence
11 factor that's part of the calculation. Because of that
12 part of the calculation, would the taxes for a pipeline
13 ever go to zero, even if the book value ultimately ends
14 up at zero? Would the taxes ever end up at zero? Or the
15 assessed value, I should say, ever end up at zero?

16 THE WITNESS: There will always be value left.
17 So the answer to that, the value would not go to zero.

18 CHAIRMAN NELSON: In your experience, you are
19 currently centrally assessing pipelines that have been in
20 the ground 30, 40, 50 years; is that correct?

21 THE WITNESS: That would be correct, yes.

22 CHAIRMAN NELSON: Can you help me understand
23 what -- how their valuation -- what their valuation is
24 today compared to what it might have been when they were
25 originally put in the ground?

1 I know that's a hard question.

2 THE WITNESS: Right. Again, I've been doing
3 this now for the last 10 years. I don't know how they
4 were doing it 30 years ago. I'm sorry.

5 CHAIRMAN NELSON: Fair enough. Fair enough.

6 You indicated that for this pipeline the cost
7 method would be used in the first year. In the first
8 year is there an economic obsolescence portion of the
9 formula?

10 THE WITNESS: Again, in order to really do the
11 cost approach you need to be able to calculate an
12 economic obsolescence calculation.

13 CHAIRMAN NELSON: Even in the first year?

14 THE WITNESS: Even in the first year.

15 CHAIRMAN NELSON: So when we talk about the cost
16 methodology, cost minus depreciation and then the
17 economic obsolescence and -- entered in, how come my
18 house isn't done that way?

19 Which, by the way, is just down the street from
20 apparently where you live. So, yeah, why isn't my house
21 done that way?

22 THE WITNESS: Because I think from there they
23 can use -- they can also look at -- they have sales of
24 other residential houses that they can use to compare.

25 CHAIRMAN NELSON: For a pipeline such as Dakota

1 Access, in the first year where you're using the cost
2 methodology if you were provided with all of the inputs
3 that you needed for that calculation, would you be able
4 to calculate its valuation?

5 THE WITNESS: Could I? Yes.

6 CHAIRMAN NELSON: In succeeding years of a
7 pipeline such as Dakota Access, if you were provided the
8 inputs, would you be able to estimate what the valuation
9 would be for year two?

10 THE WITNESS: No.

11 CHAIRMAN NELSON: And can you explain why not if
12 you are provided with all of the inputs to run through
13 your formula?

14 THE WITNESS: Good question. Fair enough.
15 Because we don't know what the rates are going to be for
16 that income divided by our rate formula and equal
17 valuation. We don't know what -- we can't -- we don't
18 have a crystal ball to speculate what future rates are
19 going to be.

20 Especially you asked January 1, 2009, after --
21 was it was July 1, 2008? Things happen.

22 CHAIRMAN NELSON: And that was a great answer,
23 by the way. I appreciate that. And that helps me.

24 But if assumptions were given to you, you would
25 be able to run those through your formula; is that

1 correct?

2 THE WITNESS: We could run them through the
3 formula, yes. But, of course, assumptions are --

4 CHAIRMAN NELSON: Understood.

5 I think I don't have any further questions.
6 Again, I greatly appreciate your helping me try to
7 understand.

8 MS. WIEST: Any other Commissioner questions?

9 COMMISSIONER HANSON: Good evening, Mr. Bailey.
10 Thank you for coming over. I appreciate your time as
11 well.

12 You stated that the Department of Revenue can
13 change the appraisal method from year to year, but you're
14 reluctant to do so. You try to keep it consistent? Is
15 that accurate?

16 THE WITNESS: Yes. That is correct. Because
17 it's our job to try to be fair and equitable treatment
18 both for the stable valuations for the counties and as
19 well as for the companies that we're appraising.

20 COMMISSIONER HANSON: Understood. You spoke
21 of -- Commissioner Nelson asked you about appraisers'
22 judgment and who makes the decisions. In regard to the
23 year-to-year decision of which method to use, do you make
24 that decision as well?

25 THE WITNESS: Yes.

1 COMMISSIONER HANSON: Who reviews your decisions
2 then? Are they reviewed, or are you the final arbiter?

3 THE WITNESS: They can be reviewed by
4 Mr. Houdyshell.

5 COMMISSIONER HANSON: Does the amount of the
6 taxation -- and I know you don't figure out what the
7 taxation is, but obviously you can get a good idea of
8 what it's going to be based on your appraisal.

9 Does that assist you in making your decision?

10 THE WITNESS: No.

11 COMMISSIONER HANSON: Mr. Houdyshell stated that
12 the 12.34 million estimate by Dakota Access in his
13 written testimony was too high. And you said that you
14 agree with his written testimony.

15 Do you have any -- did you provide him
16 information? Do you have an idea of what it would be
17 then?

18 THE WITNESS: I did not provide him any
19 information. And, no, I do not at this time.

20 COMMISSIONER HANSON: You stated you -- in
21 your -- when you were being asked other questions by
22 other parties, you stated that you had no information.

23 Is it possible to use the estimate that
24 Dakota Access has of 820 million dollars for the entire
25 project and look at the route of the -- the proposed

1 route and then look at all the taxing entities along that
2 route, add the levies together, and multiply that times
3 the 820 million dollars, using the most recent levies --

4 Obviously that's not going to tell you what they
5 are next year. Multiply it times that amount and obtain
6 a figure that would represent an estimate of what they
7 would pay in taxes?

8 THE WITNESS: I think you're missing a part.
9 The answer to your question is yes, you could do that.

10 COMMISSIONER HANSON: Well, please. You were
11 about to say that I'm missing something. I'd appreciate
12 knowing that. My wife always tells me.

13 THE WITNESS: I think you're missing the part
14 that somehow we need to determine -- because chances are
15 once there's revenue that there's going to be -- there
16 probably -- the rate of return that they're getting on
17 those assets is going to be less than what their weighted
18 average cost of capital is.

19 So somehow we need to try to determine that in
20 order to not be overstating what the value of those
21 assets are in year one before the revenue is there.

22 COMMISSIONER HANSON: But the actual cost of the
23 pipeline would be the best method of knowing what the
24 cost is.

25 THE WITNESS: The cost approach would be the

1 best method, yes. But the cost approach does -- for some
2 such utilities does include the calculation of economic
3 obsolescence.

4 COMMISSIONER HANSON: There wouldn't be
5 obsolescence after the very first year. I mean, there
6 wouldn't be significant obsolescence.

7 THE WITNESS: But the question -- but the point
8 is is that there will be. And in order to do a
9 full-fledged cost approach, we've got to try to estimate
10 what that obsolescence is going to be. Because we're
11 looking at that time. There may not be with the cost,
12 but there will be some economic obsolescence in order to
13 fully do the cost approach and do it right.

14 Otherwise, you're just doing -- otherwise,
15 you're just taking -- you're just taking the cost of the
16 assets times the levy rates.

17 COMMISSIONER HANSON: What do you allow them for
18 depreciation? I know they use -- there's a lot of
19 different methods, whether it's ACRS or straight line or
20 whatever it might be.

21 THE WITNESS: For a rate regulated utility for
22 depreciation for the -- other than the economic
23 obsolescence, which is a different calculation, we do
24 what they report to the -- in the Federal Energy
25 Regulatory Commission depreciation report.

1 COMMISSIONER HANSON: Okay. So you're locked
2 into what they report as to what you might prefer.

3 THE WITNESS: Uh-huh. Yes.

4 COMMISSIONER HANSON: All right. Thank you.

5 CHAIRMAN NELSON: In your observation and
6 experience for a pipeline when you move from using the
7 cost method in year one to probably using the income
8 method in year two does that typically increase or
9 decrease the valuation from year one to year two?

10 THE WITNESS: I've only had experience with one
11 such pipeline that started out the way you're asking this
12 question. The value from year one to year two remained
13 stable.

14 CHAIRMAN NELSON: Thank you.

15 MS. WIEST: Any other Commissioner questions?

16 If not, any other cross based on Commissioner
17 questions?

18 MR. KOENECKE: I have a couple.

19 RE CROSS-EXAMINATION

20 BY MR. KOENECKE:

21 Q. Mr. Bailey, for a pipeline that was placed in
22 service on January 1, 2017, would the first year then be
23 2016 during its year of construction?

24 A. The assets that would be valued would be the assets
25 that were in place on January 1, 2017. So the first

1 valuation year would be 2017 -- would be the assessment
2 year.

3 Q. So all you'd have is the cost on that date; correct?

4 A. That would be all the company would be able to
5 report to me, yes.

6 Q. Because there would be no operating data; correct?

7 A. That is correct.

8 Q. Have you ever seen a representation by Dakota Access
9 of their estimated taxes beyond year one?

10 A. No, I have not.

11 Q. Would it be reasonable for Dakota Access to use the
12 cost approach to plan for and budget for property taxes?

13 A. Again, yeah. I'm not understanding that question.

14 Q. What else would you use other than the cost approach
15 to budget for and plan for your first year of property
16 taxes?

17 A. In year one you would need to use the cost approach,
18 yes.

19 Q. Is it somehow misleading to the public for Dakota
20 Access to share that estimate with interested third
21 parties?

22 A. I can't answer that question. I don't know.

23 MR. KOENECKE: Thank you.

24 MS. WIEST: Were there other questions?

25 MR. RAPPOLD: One more.

RECROSS-EXAMINATION

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BY MR. RAPPOLD:

Q. Mr. Bailey, have you received any information in the last half hour or so that would cause you to change the answer to question No. 43 on page 2 of your testimony? I mean, line 43. Sorry.

A. You asked if I would change my answer?

Q. Have you received any information in the last 30 minutes?

A. No.

MR. RAPPOLD: Thank you.

RECROSS-EXAMINATION

BY MS. CRAVEN:

Q. I just have two short questions. One is regarding the income approach.

And I'm Kimberly Craven with the Indigenous Environmental Network and Dakota Rural Action. Hi.

I have a question on income approach. Does the price of oil have any effect on the --

(Discussion off the record)

Q. In the income approach you capitalize the income earned from the operation of the property to arrive at an estimate of value.

MR. KOENECKE: I object. The cost of oil has absolutely nothing to do with anything we're talking

1 about right now. It's completely irrelevant. It's
2 outside the scope.

3 MS. CRAVEN: We're talking about the income
4 approach, and this is a pipeline that derives income from
5 transporting oil, which is volatile based on demand.

6 MS. WIEST: Yeah. I'll overrule the objection.
7 We have been talking about income approach.

8 A. The answer to your question is no. It wouldn't.
9 The price of oil would not be affecting the revenue of a
10 pipeline company.

11 Q. What would?

12 A. I can't answer that question. I don't know what
13 would affect the revenue.

14 Q. Okay. But you know for sure the price of oil would
15 not affect it?

16 MS. CREMER: I'm going to object as to asked and
17 answered.

18 MS. WIEST: Sustained.

19 Q. Okay. Then I have a question also about the cost
20 approach. You testified earlier that the company
21 supplies the depreciation to FERC, and then you use that
22 as the basis for your depreciation.

23 Do you know how they calculate that depreciation you
24 just -- that you use?

25 A. No, I do not. But it's -- as I said, it's reported

1 to the Federal Energy Regulatory Commission.

2 Q. So it's not the depreciation that they report to the
3 IRS; it's the depreciation they report to FERC.

4 And why do they have to report that to FERC?

5 MS. CREMER: This is outside of his testimony
6 and he --

7 MS. CRAVEN: He testified about reporting income
8 to -- depreciation to FERC. I'm trying to get some
9 clarity on it.

10 MS. WIEST: Yes. That was part of his
11 testimony.

12 Objection overruled.

13 A. Will you restate the question, please.

14 Q. I'm just trying to understand why the company has to
15 report the depreciation to FERC.

16 A. Because they're a rate regulated company so they're
17 also regulated by the Federal Energy Regulatory
18 Commission.

19 Q. Because they say they're not regulated by FERC.

20 A. Oil pipeline companies file a report with FERC every
21 year.

22 MS. CRAVEN: Okay. Thank you. No more
23 questions.

24 MS. WIEST: Any other questions?

25 MS. REAL BIRD: Yes. One follow-up question to

1 Kimberly's question, which was a follow up to a
2 Commissioner question related to FERC.

3 RECROSS-EXAMINATION

4 BY MS. REAL BIRD:

5 Q. If a company does not report to FERC, what
6 information would you use?

7 A. They also have to file an annual report with us, and
8 they have to report depreciation on that report too. If
9 we have questions or concerns about it -- our laws allow
10 us that we can request any additional information that's
11 going to be used to help us in the valuation of a
12 company.

13 Q. But just so I clearly understand, it's your opinion
14 that the Applicant would have to report that depreciation
15 to FERC?

16 MR. KOENECKE: I object. The company's
17 testimony is the best testimony on this, and we testified
18 that we report to FERC for tariffing and for nothing
19 else.

20 I continue to question whether Mr. Bailey knows
21 the topics about which he's being asked right now. I
22 think it's far outside the scope of his expertise and
23 experience. There's been almost no foundation laid for
24 this as to what he does or doesn't know.

25 It's way outside the scope of the testimony that

1 he's offered, and we object.

2 MS. REAL BIRD: The witness brought up the
3 subject of FERC in response to a Commission question, and
4 I'm asking questions following up on Commission
5 questions.

6 MS. WIEST: Okay. Objection overruled.

7 MS. REAL BIRD: Cheri, could you restate the
8 question.

9 (Reporter reads back the last question.)

10 A. All I can answer related to that is we compare the
11 depreciation that they report to us and that they report
12 to -- on their FERC reports.

13 MS. REAL BIRD: No further questions. Thank
14 you.

15 MS. WIEST: Is there another Commissioner
16 question?

17 CHAIRMAN NELSON: Rolayne looks at me warily as
18 she says that.

19 Were you or Mr. Houdyshell ever asked by
20 Commission Staff to review the methodology that Dakota
21 Access used to arrive at their 13 million dollar property
22 tax figure?

23 THE WITNESS: No, we were not.

24 CHAIRMAN NELSON: And so I take it that you have
25 not reviewed that methodology; is that correct?

1 THE WITNESS: That's correct.

2 CHAIRMAN NELSON: Thank you.

3 MS. WIEST: Any other questions based on that
4 last question?

5 MR. KOENECKE: I have a question.

6 RE CROSS-EXAMINATION

7 BY MR. KOENECKE:

8 Q. Mr. Bailey, are you aware that Dakota Access asked
9 the Department of Revenue about the estimates?

10 A. Yes.

11 Q. Were you personally asked?

12 A. Yes.

13 Q. On how many occasions?

14 A. Well, that was about 17 or 18 months ago. I had one
15 or two calls that I can recall.

16 MR. KOENECKE: Thank you.

17 MS. WIEST: Any redirect?

18 MS. CREMER: No, I do not. Thank you.

19 MS. WIEST: Thank you.

20 Let's talk about tomorrow. Staff, can you give
21 us an update of what witnesses you have remaining and, if
22 possible, the order you would like to present them in.

23 MS. EDWARDS: We have two witnesses remaining.
24 They are Dan Flo and Derric Iles. Do either of you have
25 a preference who goes first?

1 Let's go Dan Flo, then Derric Iles.

2 MS. WIEST: And Dan Flo, is he adopting somebody
3 else's testimony?

4 MS. EDWARDS: Yes. Sorry. Long day.
5 Ryan Ledin and Cameron Young.

6 MR. RAPPOLD: And I thought yesterday you said
7 Nickel's testimony also.

8 MS. EDWARDS: I'm sorry.

9 MR. RAPPOLD: And Nickel's too?

10 MS. EDWARDS: Yes.

11 MS. WIEST: Will all three of those be
12 testifying in person?

13 MS. EDWARDS: No. Those three won't. Dan
14 will be adopting those and Ann Curnow's if needed, but
15 I think our witnesses may have already covered that
16 topic.

17 MS. WIEST: Are the three witnesses that you
18 mentioned that you have left, Dan Flo, Derric Iles, and
19 Nickel, will they be here in person, or will they be on
20 the phone?

21 MS. EDWARDS: Oh, I'm sorry. Dan Flo will be
22 adopting Nickel's too because Nickel had an emergency
23 come up. All of our witnesses are in person now.

24 MS. WIEST: And there will be two witnesses
25 then?

1 MS. EDWARDS: Yes. Yep.

2 MS. WIEST: Okay. Then after those two
3 witnesses, looking at my list, I have Ms. Craven.

4 MS. CRAVEN: Yes. We have Dallas Goldtooth here
5 who's ready to go tomorrow.

6 MS. WIEST: And Lisa Deville is on the -- will
7 she be presenting testimony?

8 MS. CRAVEN: She's able to appear Friday morning
9 by telephone. She had a dental thing that came up.

10 MS. WIEST: Okay. Any other questions?

11 Commissioner Hanson.

12 COMMISSIONER HANSON: I have a question in
13 regards to the liability insurance that had been asked
14 for by Diane Best who -- as the attorney for the City of
15 Sioux Falls. And now the City of Sioux Falls has agreed
16 with Dakota Access that it's dismissing all of its
17 positions and reaching the written agreement that they
18 handed to us.

19 Two questions. Number one, does the Commission
20 need to take any action on that agreement? It appears
21 that it's an agreement between them, and I don't know
22 that we need to take action on it.

23 And, secondly, does that remove the request that
24 was made by Ms. Best?

25 MS. WIEST: As to your first question, it was in

1 the form of a joint motion so the Commission will be
2 taking action on that. I don't believe that the
3 Commission needs to take action during the time of this
4 hearing. It can take action during the time that perhaps
5 it is making its decision one way or the other.

6 And on the second, I'm going to have to look to
7 Dakota Access because it was my understanding that they
8 were going to file something in writing with us on the
9 liability issue.

10 COMMISSIONER HANSON: I believe they did.

11 MR. KOENECKE: My conversations with Mrs. Best
12 were that we would file briefs after this hearing on that
13 question and that it was for determination at that time
14 and not now.

15 MS. WIEST: And so would it be your
16 understanding that you would file a brief, anybody that
17 opposed your viewpoint could file a response brief, and
18 that the Commission could, following the hearing, rule on
19 that issue, and then if the Commission ruled against you,
20 then you would provide that information; correct?

21 MR. KOENECKE: We would act in concert with
22 the -- we would react to the Commission order. We have a
23 number of arguments to make, a number of privileges to
24 argue over that, and as indicated before, we consider
25 that information to be very sensitive and we would react

1 to the Commission Order. I'm not going to say that we
2 would provide it in response.

3 MS. WIEST: Okay. Anything else before we
4 adjourn for today?

5 MR. RAPPOLD: If we get through the identified
6 witnesses tomorrow, could we expect to get into Dakota
7 Access's rebuttal witnesses? And if so, what order?

8 MS. WIEST: Do you have an order, Dakota Access?

9 MR. KOENECKE: I don't have an order at this
10 time, but we are going to be teed up to go directly into
11 that tomorrow as soon as it's ready to go.

12 MS. WIEST: Okay. Anything else from anyone?
13 If not, we will meet again at 8 o'clock tomorrow morning.

14 Thank you.

15 (The hearing is in recess at 6:20 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 7th 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

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