

South Dakota Public Utilities Commission

HP14-001 In the Matter of the Petition of TransCanada Keystone Pipeline, LP for Order Accepting Certification of Permit Issued in Docket HP09-001 - Evidentiary Hearing August 4, 2015, 8:00 a.m.

Room 414, State Capitol, 500 E. Capitol Ave., Pierre, SD

Please Print Legibly

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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PETITION HP14-001
OF TRANSCANADA KEYSTONE PIPELINE,
LP FOR ORDER ACCEPTING CERTIFICATION
OF PERMIT ISSUED IN DOCKET HP09-001
TO CONSTRUCT THE KEYSTONE XL
PIPELINE

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Transcript of Hearing
July 27, 2015 through August 5, 2015

Volume VIII
August 4, 2015
Pages 1935-2252

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BEFORE THE PUBLIC UTILITIES COMMISSION

CHRIS NELSON, CHAIRMAN
KRISTIE FIEGEN, VICE CHAIRMAN (not present)
GARY HANSON, COMMISSIONER

COMMISSION STAFF

John Smith
Kristen Edwards
Karen Cremer
Greg Rislov
Brian Rounds
Darren Kearney
Tina Douglas
Katlyn Gustafson

Reported By Cheri McComsey Wittler, RPR, CRR

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above-entitled matter, at the South Dakota State Capitol
Building, Room 414, 500 East Capitol Avenue, Pierre,
South Dakota, on the 4th day of August, 2015.

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1 MR. SMITH: We'll call the hearing back to order
2 in Docket HP14-001, In the Matter of the Petition of
3 TransCanada Keystone Pipeline, LP For Order Accepting
4 Certification of Permit in Docket HP09-001 to Construct
5 the Keystone XL Pipeline.

6 Our recollection of where we were was with
7 Dakota Rural Action.

8 MS. EDWARDS: Mr. Smith, this is Kristen Edwards
9 of Staff. I believe we have one Intervenor who would
10 like to request leave to do her opening statement at this
11 time.

12 MR. SMITH: Okay. Yes, please. You can either
13 do it from there or --

14 We've limited openings to 10 minutes. I think
15 you knew that. We'll give you a warning.

16 Fire away.

17 MS. JEWETT: Good morning, everyone. My name is
18 Chasity Jewett. I'm sorry that I'm just now joining you.
19 I'm an Intervenor, but I've had other obligations so I
20 couldn't come. Thank you for letting me give my opening
21 statement.

22 My name is Chas Jewett, and I'm a member of the
23 Cheyenne River Sioux Tribe. My parents are Keith and
24 Candy Jewett, and my grandparents are George and Keva
25 Jewett and we live on Jewett Creek up -- a tributary of

1 the Moreau River. And I'm here today because in the
2 third grade some young white guy with blond hair and blue
3 eyes came to our school and talked to us about water and
4 something that he said there sort of pushed me into my
5 life's direction and it stayed with me for a long time.

6 And that was that water doesn't recreate itself.
7 Once we pollute it, it's polluted, and we can't use it
8 anymore. And there's only so much fresh water in the
9 world and it's a lot less than we think and it's very
10 important for us to be thoughtful about the water that we
11 use.

12 And I think that -- he told us when we brushed
13 our teeth we lost like seven gallons of water down every
14 time you brushed your teeth. So I sort of lived with
15 that and I took that my whole life and I became sort of a
16 crazy half Sierra Club, half Dakota crazy person riding
17 around, telling everyone what are all the things that are
18 happening to our water and our country. And I've done
19 that in this country and this world, and I've done that
20 since that time.

21 And so I also started working with the -- in the
22 environmental community. In 2002 I started working with
23 the Sierra Club in Rapid City. And I think I was the
24 only person in Sierra Club that's ever poisoned prairie
25 dogs. They used to call me a prairie dog hunter. I'm a

1 sixth generation rancher. We've done some funny stuff to
2 prairie dogs. I don't know why I'm talking about prairie
3 dogs.

4 But the point is that I didn't know what the
5 Sierra Club was and I didn't know why everyone hated them
6 so much. And I got up there and there was a fire in the
7 forest everyone called us up and said all of these
8 horrible names to us. And I didn't know that this was
9 such a -- you know, a volatile conversation that I wanted
10 to go to save the earth, I guess. I've been --

11 Since I remember, I think I've been working on,
12 you know, thinking about all the way up here how do we
13 solve these problems? And lately I've been working on
14 racism stuff in Rapid City. I'm right in the middle of
15 all the stuff that happened in the last six months out
16 there. And it's difficult stuff, and it's really -- you
17 know, it's sort of -- it's unknowable things. How do we,
18 you know, look at each other like human beings? You
19 know, how do you guys, you know, see us as, you know,
20 something other? How do we each see each other as
21 something other, you know?

22 And we grew up as Lakota people learning about
23 treaties. We're all very knowledgeable about this stuff,
24 and we can't even talk about treaties in here. You know,
25 I learned about climate change in 1990, and we can't even

1 talk about that here. There's this -- you know, this
2 disconnect or this cognitive distance that we have to
3 live with in order to live in this world, you know.

4 And, you know, it's like -- I mean, it's like
5 the cigarette industry; right? They said for so long
6 that cigarettes don't kill. And, you know, that's what
7 they're doing. They're telling us cigarettes are not
8 killing and what they're doing is not killing everything.
9 And it is. We know that. The world has changed.

10 The thunderstorms are more fierce. All these
11 obvious -- Atlas Blizzard. Come on. We lost 200,000
12 head of cattle out there. And, you know, things are
13 getting worse, and we can't acknowledge those things
14 because we're stuck in this place where we can't look at
15 treaties. We can't look at each other as human beings,
16 you know.

17 So how do we solve these problems? I don't
18 know. But we can't be dumb about them anymore. You
19 know, we don't have the time.

20 You know, the cold climate forests are on fire
21 over there in Seattle and Portland. Those things aren't
22 supposed to burn, but they're burning now. And it's
23 scary. You know, 400 people came over here and crossed
24 that Missouri River a week and a half ago. 400 people.
25 When I started doing this, you know, people were, you

1 know, calling us names. Now we have 400 people standing
2 with us. And that's just, you know, a little bit of all
3 the other people that support us.

4 And, you know, as Lakota people, Oceti Sakowin,
5 we stand united on this. My Aunt Julie Marshall is a
6 school teacher. She taught did say this to me. She
7 said, my girl, when are you guys going to stop that
8 pipeline? All that water they're wasting up there. You
9 know, it takes like seven gallons of water for every one
10 gallon of tar sands they pull out and they just let that
11 water sit there and the birds jump in it and all kinds of
12 crazy stuff. It's just ridiculous.

13 You know, we live out there in the prairie
14 where, you know, there's no water. You carry your water.
15 Your grandparents had to carry their water to their
16 places, and we cherish water. Now we just pollute it.

17 Like I said before when I was here, the Moreau
18 River, the Grand River, you can't eat fish out of there.
19 People are still swimming in it, and yet we can't eat the
20 fish. I mean, come on. We've got to be sensible about
21 these conversations. It doesn't seem like we are, you
22 know.

23 And, you know, I apologize for saying some
24 bombastic things that have to be backed up, you know,
25 with numbers and stuff. But you know what? 99 percent

1 of the scientists agree with the Lakota people that we
2 are messing stuff up. 99 percent of them. The other one
3 are being paid by these guys (indicating).

4 So that's where we sit. So, you know, I hope
5 that you guys, you know, take it into your heart and look
6 at us. You know, we're human beings. You are human
7 beings. Sometimes we fall asleep. We're human beings.
8 These things happen, you know. None of us are beyond it.

9 But we have to recognize these things. You
10 know, we have to look at each other, you know. And where
11 are we going to start? Respect treaties? I don't know.
12 Respect us as human beings. Respect us, and respect the
13 science. That's all we ask really.

14 Thank you.

15 MR. SMITH: Thank you, Ms. Jewett.

16 MR. MARTINEZ: Mr. Smith, I'll be going. We are
17 ready with Sue Sibson so I would ask Sue Sibson to go
18 ahead and take the stand.

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

20 DIRECT EXAMINATION

21 BY MR. MARTINEZ:

22 Q. Morning, Ms. Sibson.

23 A. Good morning.

24 Q. Could you be go ahead and identify yourself for the
25 record.

1 A. Sure. I'm Susan Sibson. I'm from Howard,
2 South Dakota.

3 Q. For those -- my understanding is there are probably
4 a lot of people listening on the internet. Where is
5 Howard in South Dakota? What part of the state is it in?

6 A. We like to say that we're like 35 miles northeast of
7 Mitchell, the world's only Corn Palace. Usually let's
8 people know where we live.

9 Q. Okay. Do you have a farm there or a ranch?

10 A. Yes, we do. My husband Mike and I farm. We live in
11 Roswell Township in Miner County.

12 Q. Tell me a little bit -- tell the Commissioners a
13 little bit about your farm and what kind of operations
14 you have.

15 A. Sure. We raise grain, and we have corn and beans.
16 We also run a number of feeder cattle. Mike goes to the
17 sale barn in the fall and purchases calves for fall
18 through the spring.

19 We keep them in lots through winter and then in the
20 spring when the native grass starts growing we put them
21 out to pasture. And that's how we make our living is off
22 the grass, putting pounds on the cattle.

23 Q. Is that pretty much what I guess the cattle industry
24 would call backgrounding cattle?

25 A. Yes. That's what we have, backgrounding feeder

1 cattle, yes.

2 Q. You indicated that the grasslands are really, really
3 important to you and your husband.

4 A. Yes, they are.

5 Q. And your farm and ranch. Tell us why.

6 A. Like I said, we have feeder cattle. And one of the
7 things that happens when we take them to the sale barn in
8 the fall they're highly sought after cattle because
9 they're grass fed all summer. The last time we sold
10 cattle in October of last year we had 15 buyers after our
11 yearlings.

12 So it says a lot about how the native grass can help
13 put the pounds on. And we like to say that we're
14 inefficient feeders because we're not buying all the
15 commercial feed. We're using God and nature to make our
16 living.

17 Q. And so based on that you'd say is the native
18 grassland then very, very important?

19 A. Yes, it is. That's -- yeah. It is very important.

20 Q. Okay. Now my understanding is that the base
21 Keystone Pipeline crosses your property; is that correct?

22 A. Yes, it does. It crosses a mile and a quarter of
23 our land. It goes at a diagonal through our home
24 section.

25 Q. Let me ask you a little bit about just how that came

1 about. When did you first learn that TransCanada was
2 going to come and build a pipeline through your property?

3 A. Through their informational meetings that they had.
4 And then later on it was dealing with land agents that
5 would come into our farm requesting us to sign an
6 easement. Or at least they wanted to purchase 5 acres of
7 our land to put a pump station on.

8 Q. When did they first come out? When did the land
9 agent first come out to your property?

10 A. It was around June 24 of 2006.

11 Q. That's pretty precise.

12 A. Yeah.

13 Q. Is that date burned in your mind?

14 A. Yes, it does.

15 Q. Tell us what happened.

16 MR. MOORE: Excuse me. I'll just object. This
17 is beyond the scope of the prefiled direct, this
18 particular incident.

19 MR. MARTINEZ: I believe that Ms. Sibson is
20 certainly entitled to lay a foundation as to how she
21 believes that she and her family were treated by
22 TransCanada. And then also just the foundation of how
23 and why their easement came about.

24 I really think that that's important for not
25 just the Commissioners to hear, but also I think it's

1 important for the public to hear.

2 MR. SMITH: Yeah. That's what I thought.

3 Overruled.

4 Q. Okay. Tell us what happened, Ms. Sibson.

5 A. The land agent had a map, and they showed us from
6 the map where they wanted to put a pump station on our
7 land. And they offered us \$25,000 to pay -- to do that.

8 And Mike I thought answered him very well because he
9 said I'll give you \$25,000 to get it off our land. And
10 the guy closed the book and left. So that's how we dealt
11 with him.

12 Q. That was your first contact with them?

13 A. Pretty much, yes. Uh-huh.

14 Q. What happened next?

15 A. We had another land agent come in, and she had an
16 easement for us to sign. And she was actually there --
17 and we talked to her quite a while about how the proposed
18 pipeline at that time was going to track through our
19 land.

20 Because we have native grass. We have wetlands. We
21 have waterway. We have crop down. The pipeline cut
22 through about any type of land that we have.

23 Q. Do you recall when you had -- just a rough
24 guesstimate of when you had those conversations with that
25 land agent?

1 A. That would have probably been end of June, first
2 part of July of 2006.

3 Q. Okay.

4 Now you said that they presented you with an
5 easement. Did you have any concerns about that?

6 A. Yeah. Yes, we did. We felt it was very lopsided.
7 It was all for TransCanada. It waived TransCanada's
8 liability. They wanted -- the easement said one or more
9 pipelines. That was the biggest concerns to us, that --
10 excuse me. That -- waiving their liability.

11 Q. Were you afraid that -- you know, of a spill, an oil
12 spill or something like that on your property?

13 A. Yep. Especially we live a mile and three-quarters
14 south of the Roswell Pump Station. And the way that we
15 understand it is that there's more higher pressure within
16 the first couple of miles south of a pump station. So a
17 chance of an oil spill on our land I think is probably
18 greater than elsewhere.

19 Q. That was at least your fear, wasn't it?

20 A. Yeah. That was a fear. Yes.

21 Q. Okay. Did you sign an easement back in June 2006
22 when the land agent came out to your place?

23 A. No, we did not.

24 Q. Okay. What happened after that?

25 A. We joined a group of other landowners and were

1 represented by one attorney.

2 Q. Now. I want to be real careful here because I don't
3 want to get into conversations that you may have had with
4 an attorney.

5 A. Sure.

6 Q. Because that's privileged, and I don't want you
7 waiving whatever that is on the stand.

8 But if you can tell us maybe what happened without
9 getting into those confidential communications with your
10 lawyer?

11 A. We joined about 30 other landowners, and through our
12 attorney and TransCanada's attorney they worked out an
13 easement for us all to sign.

14 Q. Okay. Did you ultimately wind up signing that?

15 A. Yeah. We did sign the one that went through our
16 attorney, yes.

17 Q. How did it make you feel to sign that easement?

18 A. It was probably the hardest thing that Mike and I
19 have had to do in our life. It really bothers us that we
20 had to let a foreign corporation put an easement on our
21 land. Really bothered us.

22 Q. Did you feel like you had a choice?

23 A. No. We had no choice. Huh-uh. Even with a -- even
24 with an attorney we felt we had no choice.

25 Q. Did they threaten to take your property with eminent

1 domain?

2 A. With us being with the group of 30 other landowners,
3 they -- some of them had been served papers because they
4 lived in northern South Dakota. And with us living in
5 the middle of South Dakota we were just under the threat,
6 which to me is, you know -- serve papers or being under
7 the threat is -- I would say is the same. To me.

8 Q. So ultimately you signed the easement?

9 A. Yep.

10 Q. And I'm presuming at some point they sent
11 contractors out to your land to building the pipeline?

12 A. Yeah.

13 Q. Is that correct?

14 A. Uh-huh. Yeah.

15 Q. When did that happen?

16 A. The first surveyors came -- it would have been
17 probably June of 2009. Somewhere in there. May, June,
18 somewhere in there. The surveyors went through.

19 Q. And what happened after that?

20 A. Just basic construction of the pipeline. One of the
21 land -- excuse me.

22 Q. Did they ask you to sign any kind of a construction
23 agreement or anything?

24 A. One of the land supervisors for TransCanada came,
25 and Mike and I signed a construction agreement with them.

1 It went through how we wanted things done on our land
2 according to rocks, how we wanted the grass restored,
3 things like that. Just a pretty basic.

4 Q. Okay. Did you, for instance, tell them that you
5 wanted your topsoil replaced and things like that?

6 A. Yep. Uh-huh. Yep. And as part of the PUC
7 Conditions they -- they're supposed to.

8 Q. Okay. Did you read the Conditions at the time to
9 get an understanding of what --

10 A. Yep.

11 Q. -- TransCanada's required to do?

12 A. Uh-huh. Uh-huh. Yes, I did.

13 Q. What about the -- what about reclamation of the
14 native grasses? I mean, you've indicated that that's
15 pretty important to you?

16 A. Uh-huh.

17 Q. Did you ask them to replace that as well?

18 A. Yes, we did. And I did make a copy of our
19 construction agreement so that I had it. And what we
20 wrote on there was to have the mixture put on our land.
21 I had talked to the conservation office, and that's what
22 they had suggested to do.

23 Because TransCanada, when they read that, was
24 supposed to evidently according to the conservation
25 office contact them and find out what mixture was on our

1 ground.

2 Q. Now what happened during the construction process of
3 the pipeline? I mean, did anything happen that gave you
4 some concerns?

5 A. Yes. The construction company, oh, were really
6 disrespectful to us because when they first started
7 putting pipe down they left garbage. And I guess to me
8 that's a -- if you look around our place, you've ever
9 been there, there's no garbage.

10 I mean, if there's a piece of paper, it's picked up.
11 And that's what we expected of them too. We told them
12 that too in the construction agreement. We wanted all
13 garbage picked up, even their cigarette butts.

14 Q. What other issues did you have, if any, with how
15 they handled construction?

16 A. Well, September 3 we got like an inch 30 rain, and
17 they continued construction. That was the day they
18 slugged mud is what we said. It was a mess. The workers
19 were walking in knee deep mud through the easement area.
20 And the cranes kept slugging mud digging the trench for
21 the pipe.

22 I did take video. I have video of cats getting
23 stuck in the easement area in a wetland area and -- it
24 went on for like 15 minutes. And a lot of the guys
25 driving the Caterpillars quit, just pulled them over, and

1 stopped for the day. Because they were digging really
2 deep ruts.

3 Q. What did that do to the integrity of your land?

4 A. Oh, it's pretty tore up yet, even though they've
5 been back to do some reclamation. It's still -- it still
6 shows the areas where it was really tore up bad.

7 Q. So I presume at some point they -- the pipeline was
8 put in?

9 A. Yeah.

10 Q. It was buried, they covered it with dirt again?

11 A. Yep.

12 Q. What happened then in terms of the efforts that were
13 being made to reclaim your land?

14 A. They were in a hurry to do the reclamation. The
15 video that I took of the tractors doing the work were
16 like road gear. So and then with us wanting native grass
17 planted you have to be careful with that because if you
18 plant it in high winds, it just kind of blows it
19 wherever.

20 And I have video too that shows that the wind was
21 probably 20 to 30 miles an hour that day when they were
22 planting the easement area.

23 Q. Do you believe that those conditions that they
24 planted it in and the way they tried to replant it caused
25 it to not -- you know, not be reseeded properly?

1 A. Properly. Yeah. And especially too with the -- the
2 amount of rain that we got and how they tore up the land
3 so bad that I just don't think they got the soil back
4 right like they should have.

5 Q. Okay. So they obviously planted something. What
6 happened after they tried to replant?

7 A. Would have been probably June of 2010. When you'd
8 look out at our easement area all it was was weeds. We
9 went and looked and tried to find the grass that they
10 planted and couldn't find any.

11 And we ended up going through Sarah Metcalf, the PUC
12 liaison at that time, and through her and getting ahold
13 of Dusty Johnson who was the Chairman of the PUC at that
14 time -- he came out and looked at our easement area
15 because according to the PUC Conditions TransCanada's
16 supposed to take care of the noxious weeds and get the
17 native grass going. And it didn't look pretty at that
18 time, and we just wanted him, Dusty Johnson, to see what
19 it looked like.

20 Q. So he came out and took a look?

21 A. Yeah. He did. Uh-huh. Yeah.

22 Q. What conversations did you have with him when he
23 came out to your property?

24 A. He had big concerns about why there was noxious
25 weeds, why they weren't taking care of the easement area.

1 Q. Okay. After that visit by the Chairman of the PUC
2 at that time did TransCanada do anything in response?

3 A. The interesting thing was that we had been after
4 them to spray the weeds. So about a week before Dusty
5 showed up they were out there spraying. So anyway we
6 got -- the easement area got sprayed, which it should
7 have been.

8 Q. Do you think that was a coincidence?

9 A. I don't know. Maybe.

10 Q. Let me backtrack a little bit. How much acreage do
11 you have that's actually been affected by this --

12 A. Like I said, it cuts through a mile and a quarter of
13 our home section. But it's around 17 acres that the
14 pipeline -- the pipeline area is.

15 Q. Roughly -- you know, you were using that as grazing
16 land; is that right?

17 A. Yes. There's some crop ground too.

18 Q. Can you maybe let the Commissioners know how many --
19 you know, how many animal units or how many -- how many
20 cattle that kind of acreage would support?

21 A. We figured like three to five, I think it was.
22 Something like that. Three to five, depending on the
23 year and the grass and the rain.

24 Q. All right. Now you said TransCanada came out and
25 sprayed some weeds. Did that help solve the problem?

1 A. There was still little native grass growing. And
2 through Sarah Metcalf again in August of 2011 they --
3 TransCanada did a total reclamation of our land again.
4 They came out with graders and dump trucks to haul the
5 rocks away that they were supposed to the first time.

6 The rocks that were dug out of the easement area in
7 2011 amounted to 75 ton of rock, which was supposed to
8 have been done in 2009.

9 Q. Did they replant the area again?

10 A. Yes, they did. Uh-huh.

11 Q. Did that replanting take with the native grasses?

12 A. Not really. Not really.

13 Q. Tell us a little bit about what it looked like after
14 they replanted.

15 A. One grass that they planted is what we call
16 thickspike wheatgrass. And that's about all that was
17 coming in the easement area.

18 Q. Can you tell us a little bit about that particular
19 type of grass?

20 A. Well, at first it looked really good. And then --
21 because it was tall and green. And then it started
22 killing out the other grass around it.

23 And we were told by TransCanada that that grass was
24 sterile, and it would die out in one to two years. And
25 as of today, 2015, it still hasn't died out.

1 Q. Is it a type of grass that your cattle can eat?

2 A. No, it's not. It's unedible grass.

3 Q. Now I understand that you brought a sample of that
4 grass and what it looks like today?

5 A. Yes, we did. The pictures don't do it justice, and
6 telling you about it doesn't do justice either. You
7 really need to see it.

8 MR. MARTINEZ: For illustrative purposes -- and
9 I don't want to handle this as an exhibit because I'm not
10 sure how you handle a bundle of grass. I want you all to
11 see what it looks like. Could I get Mr. Mike Sibson to
12 come up with a bundle of this thickspike wheatgrass.

13 Could you just hold that up for them to see.

14 Q. Is this your husband, Mike Sibson?

15 A. Uh-huh.

16 Q. And is what he's holding the type of grass you just
17 described?

18 A. Yes, it is. It's a thickspike wheatgrass. It's
19 native to Arizona and New Mexico.

20 Q. Are your cattle able to eat this grass?

21 A. Actually we haven't grazed the easement area. But
22 when we look at other people's land that have that
23 planted the cattle leave it alone. They don't touch it.

24 Q. Does it have any nutritional value for your cattle?

25 A. Not that I'm aware of.

1 Q. How much has this particular type of grass taken
2 over the easement area?

3 MR. MARTINEZ: Thanks, Mike.

4 A. Probably 30 to 40 percent.

5 Q. Have you had conversations since that with the folks
6 with TransCanada about trying to get this problem solved?

7 A. Yes. Uh-huh. One of the meetings that we had in
8 2013 I told them we didn't care what they had to do, if
9 they had to pull it out by hand, we wanted it all off our
10 land.

11 It's not native. It should have never been planted
12 in the first place.

13 Q. Did they do anything about it?

14 A. Kind of. They came in and sprayed it. And the
15 first spray didn't work so then they came back again and
16 sprayed it again.

17 Q. When did they do that, Ms. Sibson?

18 A. That would have been -- 2013 they sprayed, and then
19 they came back in 2014 and sprayed twice.

20 Q. Okay. Did you -- what conversations did you have
21 with them, with TransCanada, either land agents or
22 reclamation staff about it? And did they give you any
23 kind of a plan for dealing with it?

24 A. No. I asked them for a plan of what they were going
25 to do with our land a couple of times. And I e-mailed

1 the reclamation guy, and his answer back to me was that
2 that was confidential.

3 It's our land, and then they told me it's
4 confidential. And I tried through a land agent too to
5 get a report of somewhat of what they were doing on our
6 land, and to this day I still haven't got it.

7 Q. Did they tell you why it was confidential? Did they
8 tell you why it was confidential?

9 A. It was TransCanada. He was an employee of
10 TransCanada, and it was confidential.

11 Q. Okay. And you said this was back in -- the last
12 time they came out and sprayed and dealt with it was in
13 2014; correct?

14 A. Uh-huh. It would have been in May. May of 2014.

15 Q. Have they done anything within the last year?

16 A. That's interesting too because after I sent prefilled
17 testimony to the PUC that probably I would maybe testify
18 today, they were out a few days later to reseed the
19 easement area again.

20 Q. Are you a believer in coincidence?

21 A. It's getting to be quite a coincidence with these
22 people.

23 Q. What did they tell you when they came out just
24 fairly recently?

25 A. I didn't talk to them that day in May. Mike did.

1 And they said that they were there to reseed, and they
2 would be back to spray. And we haven't seen them yet.

3 Q. Haven't seen them since?

4 A. No.

5 Q. Okay. What kind of condition is your property
6 currently in?

7 A. Excuse me?

8 Q. What kind of condition is your property currently
9 in, along the easement area?

10 A. Sure. We feel it's a big mess. If you look, if you
11 compare the easement area to the adjacent land, there's
12 no comparison at all. It's --

13 Q. Besides the spiked wheatgrass that your husband just
14 showed us, you know, are there other weeds or plants?

15 A. Sure.

16 Q. What's growing there?

17 A. Yep. I brought a couple of samples. Would you want
18 to see those?

19 Q. Sure. Can you please show them to us?

20 A. Sure.

21 This is some of the weeds that are doing quite well
22 on the easement area. Just so you can see. I'm sorry I
23 made a mess but anyway.

24 Q. Is that a fairly typical type of weed that's growing
25 on the easement area?

1 A. Yes, it is. And it's real interesting. This is the
2 first year that -- we call this like a tobacco plant.
3 This is the first year that this has been growing on the
4 easement area.

5 Q. Is it edible for your cattle?

6 A. No. No, it's not.

7 Q. What other types of -- are there any other types of
8 weeds or plants that are growing there that just don't --

9 A. There's some thistles too, noxious weeds that are
10 growing there too.

11 Q. Now what I'd like to do next is show you a series of
12 photographs. And these were previously entered into
13 evidence through Ms. Steskal's testimony. I believe they
14 were actually admitted.

15 Do you recall when these -- you took these
16 photographs?

17 A. Sure. Sure do. Diana and Stix were there.

18 Q. Okay. Tell us a little bit about this first picture
19 here.

20 A. This is the easement area looking -- what we call
21 the 80 acres, looking to the north. You can see the
22 really green bunches there. That's the thickspike
23 wheatgrass.

24 Q. Oh, so that small --

25 A. That's the small version.

1 Q. And it grew into that tall plant your husband showed
2 us?

3 A. Uh-huh.

4 Q. Okay.

5 A. That's more pictures of it too.

6 Q. That reddish plant that's growing on there, was that
7 sort of the weeds that you just showed us?

8 A. Yes, it is. Uh-huh. And you have to remember this
9 is in the fall too. This is November when these pictures
10 were taken.

11 Q. Okay. So this next picture up, it's very, very
12 similar, the easement area; is that right?

13 A. Yes, it is.

14 That's a picture of the thickspike wheatgrass that
15 was left in the fence line. So that's what it looks like
16 when it's totally brown.

17 Q. Okay. What about this?

18 A. That's a picture of the thickspike wheatgrass again.

19 Q. Okay. And the same for the next photograph?

20 A. Yes, it is. Uh-huh.

21 Q. Now tell us a little bit about this picture. This
22 one looks kind of interesting. What's the condition of
23 the grass and the land there? Just describe it for us.

24 A. Actually I don't see any grass.

25 Q. Oh.

1 A. I see the -- I see thickspike wheatgrass and weeds.
2 That's all I see.

3 Q. Okay. And is this a -- kind of a compare and
4 contrast showing an area that's outside of the easement
5 area compared to the actual easement area?

6 A. Yes, it is.

7 Q. So what's the difference there?

8 A. Well, you can see to the right the established
9 native grass and how it looks. We don't overgraze. We
10 believe in leaving grass for the next year. And that's
11 why it looks as good as it does on the adjacent.

12 Q. Do you and your husband use rotational grazing then?

13 A. Somewhat.

14 Q. My dad uses that too on his ranch so I'm familiar
15 with that.

16 Is this a similar picture but just showing a
17 different perspective?

18 A. Yes, it is.

19 Q. Of the native grasses? Okay.

20 Is that a pretty stark contrast for you?

21 A. I think so. Yes.

22 Q. And, once again, a very similar photo. The next
23 photo is a very similar photo, would you say?

24 A. Yes, it is.

25 Q. Now this whole series of photos, they were taken in

1 2014; is that right?

2 A. Correct.

3 Q. Okay. Has there been -- since these photos were
4 taken -- any kind of marginal improvement to the easement
5 area?

6 A. No.

7 Q. Has it gotten worse?

8 A. In our -- yeah. In our opinion, yes.

9 Q. More weeds?

10 A. Yes.

11 Q. More of the grasses that your cattle can't eat?

12 A. There's no grass growing there.

13 Q. Okay.

14 A. Well, I should say very little.

15 Q. Let me go ahead and just conclude here. But what
16 I'd like to hear from you, Ms. Sibson is, you know, as a
17 landowner, as a farmer, as a rancher, what do you expect
18 from the Commissioners and the PUC in terms of protecting
19 your rights and your property?

20 A. I think there was 41 Conditions put down for the
21 Keystone I Pipeline. Those Conditions were put on by the
22 PUC, and I feel that it's been a burden on the landowner
23 to make sure that TransCanada's followed those
24 Conditions.

25 There was a couple of times that I called out to the

1 PUC to talk to them about what to do in regards to them
2 not following the PUC Conditions, and what we were told
3 most of the time was that TransCanada was trying and if
4 we didn't like what was going on, we needed to file a
5 formal complaint with the PUC.

6 Q. Based on your experience with TransCanada, do you
7 believe that they've fulfilled their obligations and met
8 the Conditions that were imposed upon them?

9 A. Not on our land, no. I don't think so.

10 Q. Do you have any confidence that they're going to be
11 able to meet any Conditions relating to land reclamation
12 that have been imposed on them?

13 A. No, I don't. Especially with the grasslands.
14 Because most of eastern South Dakota consists of
15 cropland, and ours is probably very few of the native
16 grass that they had to go through. And there's a lot
17 more West River as far as grasslands.

18 So yeah. I just don't see where they could do it.
19 I really don't, from what they've done on our land.

20 MR. MARTINEZ: Thank you.

21 I have no further questions.

22 MR. SMITH: Cross-examination?

23 MR. MOORE: Were you going to offer the
24 prefiled, Mr. Martinez, or not?

25 MR. MARTINEZ: Thank you so much for the

1 reminder.

2 I'd go ahead and offer Ms. Sibson's prefiled
3 testimony. I believe we've entered that as Exhibit
4 No. 3. And we've already had 3-A and B so we're going to
5 offer that as 3-C.

6 MR. MOORE: I have no objection. Thank you.

7 MR. SMITH: Any Intervenor objections?

8 MR. GOUGH: No objections.

9 MS. EDWARDS: Staff has no objection.

10 MR. SMITH: Mr. Seamans.

11 MR. SEAMANS: Excuse me. I thought you said
12 questions.

13 MR. SMITH: No. Just the exhibit entry.
14 Exhibit 3-C is admitted.

15 TransCanada.

16 MR. MOORE: Thank you, Mr. Smith.

17 CROSS-EXAMINATION

18 BY MR. MOORE:

19 Q. Good morning, Mrs. Sibson.

20 A. Good morning.

21 Q. I don't know if you remember me. My name is
22 James Moore. I'm one of the lawyers from TransCanada.
23 We met about seven years ago, I think, and I probably
24 haven't seen you since.

25 A. Probably not. Yes. I do remember you.

1 Q. You said that there were about 17 acres of your land
2 that were part of the right of way, both the permanent
3 easement and the construction right of way and that some
4 is pasture and some is cropland.

5 Do you know approximately how much is pasture?

6 A. Maybe 8 to 9. I don't know for sure. I should have
7 looked that up before I came here.

8 Q. So maybe about half the right of way?

9 A. Sure.

10 Q. And is it fair to say that your primary concern is
11 the reclamation of the native grassland, the pasture
12 areas of the right of way?

13 A. Yes.

14 Q. There is a drawing of the right of way in evidence,
15 and one of the things that's shown on the drawing is an
16 unnamed ditch that the right of way crosses where there
17 was some extra temporary workspace, I think.

18 Are you familiar with what I'm talking about?

19 A. Would that be close to the county road? I'd have to
20 look at the map to say.

21 Q. As I look at the property sketch, I'd say that it's
22 a little bit more than halfway to the south as the right
23 of way travels across your property.

24 A. I'd have to look at the map to know what you're
25 talking about.

1 Q. Okay. Do you know then whether there were any
2 particular issues caused by drainage or any wetlands in
3 the area of that unnamed ditch that have been a factor at
4 all in the reclamation?

5 A. I'd have to see the map before I could answer that
6 question.

7 Q. Diana Steskal prepared a time line of the
8 reclamation efforts that have taken place on your
9 property, and that's been admitted into evidence.
10 Have you seen that?

11 A. Yes, I have.

12 Q. And is it accurate as far as you're aware?

13 A. Yes.

14 Q. And based on that time line and your testimony, my
15 understanding is that your property was first reseeded
16 after construction in the fall of 2009. Is that correct?

17 A. That's true.

18 Q. And where did the initial seed mix come from? Was
19 it the county approved mix?

20 A. When I saw -- no. It wasn't the county approved
21 mix.

22 Q. And what do you know about the seed mix and where it
23 came from?

24 A. Actually that day I went out when the reclamation
25 crew was going to start planting and asked them for a

1 seed tag. And they gave me one, but they told me they
2 needed it back so I took it home and made a copy of it
3 and then returned their tag to them. And the whole -- go
4 ahead.

5 Q. What was the seed mix that was used?

6 A. What was the seed mix used?

7 Q. Yes.

8 A. It wasn't -- you want to know the exact mixture
9 that's in it?

10 Q. To the extent that you recall.

11 A. One of the grasses was called tall wheatgrass.

12 Q. And do you remember any of the others?

13 A. Not off the top of my head.

14 Q. After 2010 when you met with TransCanada and after
15 Commissioner Johnson had been to your property my
16 understanding is you developed a reclamation plan that
17 was to be implemented in 2011; correct?

18 A. Yep. That probably is true.

19 Q. And I think you said that that was basically a
20 wholesale reclamation effort that included debris
21 removal, and it also included reseeding of the entire
22 right of way that was reseeded to grass; is that correct?

23 A. That's true.

24 Q. Was there some decompaction that occurred at that
25 time too?

1 A. Probably.

2 Q. And were you paid for crop and pasture loss in 2011?

3 A. Yes, we were.

4 Q. At the time you signed the easement, Mrs. Sibson,
5 you were paid for the easement itself; correct?

6 A. Yes.

7 Q. Were you also paid for crop loss and pasture loss
8 over a period of time?

9 A. For three years.

10 Q. Okay. And do you recall how much you were paid for
11 the easement and for the crop and pasture loss?

12 A. Mr. Moore, that's all confidential. We had to sign
13 confidentiality agreements with TransCanada.

14 Q. Okay. After the reseeding in 2011 was TransCanada
15 back in 2012 to spray weeds?

16 A. Yes, they were.

17 Q. And was that done at your request?

18 A. Everything that they did on our land was at our
19 request.

20 Q. And did they actually spray weeds twice in 2012
21 because the first spraying was ineffective?

22 A. Yes, they did.

23 Q. And I think, according to the time line, in early
24 August of 2012 the right of way was mowed, and it was
25 seeded again with a new mix; is that correct?

1 A. Yes.

2 Q. And was the mix one that you had approved at that
3 time?

4 A. Sure.

5 Q. And there's a seed label that's in evidence, and I'm
6 not quite certain about the timing of that seed label.

7 Do you know if that seed label was from the 2012
8 planting, or was it from a different planting?

9 A. I'd have to look at the picture of the tag to see.

10 Q. So you don't know right now?

11 A. No. But I'm assuming it was probably from 2014, if
12 I'm -- or no. 2015.

13 Q. Okay. Thank you. Were you paid for crop loss again
14 in 2012?

15 MR. MARTINEZ: I think that's been asked and
16 answered.

17 A. I'm glad that you brought that up about getting
18 paid. Because the last time a land agent was at our
19 place to pay for crop loss, which we are entitled to, we
20 were told by the land agent that this was going to be the
21 last payment from TransCanada.

22 They wanted us to sign off on our land, excuse me,
23 and if we didn't sign off our land, then we would not
24 receive the crop loss check. So we told the land agent
25 that they could keep their check. So before he left

1 we -- he gave us the check, and we did not sign off on
2 our land.

3 Q. And I'm sorry. That was in 2012?

4 A. I think so. I don't have that date in front of me.

5 Q. Was there a contractor out to spray weeds in 2013?

6 A. Yes, there was.

7 Q. And were portions of the right of way sprayed with
8 Roundup at your request in early 2014 in anticipation of
9 reseeding the property again?

10 A. I don't know if we requested Roundup. We requested
11 that we wanted all of the thickspike wheatgrass gone.
12 And I think that was the plan, that the reclamation crew
13 came up with was Roundup.

14 Q. And I think the time line shows that the right of
15 way was reseeded on August 19 of 2014. Does that sound
16 correct?

17 A. Yes. That's true.

18 Q. Okay. So the photographs that we were looking at
19 today that were taken in November of 2014 would have been
20 after the reseeding in August of 2014?

21 A. Yes.

22 Q. Do you know how long it takes native grasses to
23 establish themselves after they've been planted?

24 A. Quite a while.

25 Q. And, Mrs. Sibson, in 2015 was the contractor again

1 at your property in April to spray for weeds and to
2 reseed portions of the right of way?

3 A. I wasn't home that day. But according to Mike they
4 did reseed that day, but they did not spray that day.

5 Q. I'm sorry. Is it your testimony there was no
6 spraying that day or no spraying in 2015?

7 A. It would be no spraying in 2015.

8 Q. By my count, your property has been seeded or
9 reseeded five times. Is that fair?

10 A. Yes. Uh-huh.

11 Q. And someone from TransCanada has been to your
12 property every year since construction in 2009?

13 A. At our request.

14 Q. And they've taken measures during that time to try
15 to control the weeds on your property?

16 A. Halfheartedly.

17 Q. Mrs. Sibson, has anyone from TransCanada told you
18 that they're done working on your property and they're
19 never coming back?

20 A. It's been mentioned a couple of times that they were
21 done with us, that they -- they wanted us to sign off our
22 land, and they wanted us to take over the reclamation.

23 Q. Have they been back since then?

24 A. Only after I gave testimony to the PUC. Then they
25 came back again.

1 Q. Have you worked with Sarah Metcalf?

2 A. Yes, we have.

3 Q. Has she been attentive to you?

4 A. Excuse me?

5 Q. Has she been attentive to you?

6 A. Oh, yes. Uh-huh. Yes.

7 Q. Has she been helpful?

8 A. Yes, she has.

9 MR. MOORE: That's all I have. Thank you.

10 THE WITNESS: Thank you.

11 MR. SMITH: Okay. We'll go to Intervenor
12 cross-examination.

13 Mr. Clark.

14 MR. CLARK: No questions.

15 MR. SMITH: Okay. Next is Mr. Rappold.

16 CROSS-EXAMINATION

17 BY MR. RAPPOLD:

18 Q. Good morning, Ms. Sibson. Matt Rappold on behalf of
19 the Rosebud Sioux Tribe. Just one question for you.

20 In your experience with this situation that you've
21 just described, do you think that past performance is a
22 good indicator of future ability to comply with similar
23 requirements?

24 A. Yes -- yes, I do.

25 MR. RAPPOLD: Thank you so much. Have a good

1 day.

2 MR. SMITH: Mr. Capossela.

3 MR. CAPOSSELA: Thank you.

4 CROSS-EXAMINATION

5 BY MR. CAPOSSELA:

6 Q. Good morning, Ms. Sibson. My name is Peter
7 Capossela. I'm a lawyer for Standing Rock Sioux Tribe,
8 South Dakota and North Dakota.

9 In places like South Dakota, rural, beautiful land,
10 there -- it seems like these are the types of places
11 where a lot of people like to retire to or move into.
12 There's a lot of transplants?

13 A. Yes.

14 Q. How long have you and your family been out at your
15 place? Are you a recent transplant to South Dakota?

16 A. No, no, no. My husband's parents bought this farm
17 in 1972, and then Mike and I moved there in '77.

18 Q. So you're a second or third generation out on your
19 land?

20 A. Sure. Yes, we are.

21 MR. CAPOSSELA: Thank you, ma'am. No further
22 questions, Mr. Smith.

23 MR. SMITH: Thank you. Ms. Real Bird or
24 Ms. Baker.

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CROSS-EXAMINATION

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BY MS. REAL BIRD:

Q. Good morning, Ms. Sibson. I'm Thomasina Real Bird for the Yankton Sioux Tribe.

It sounds like a lot of your time is spent calling, following up, inspecting your land, just dealing with TransCanada in general regarding your concerns; is that accurate?

A. That's very true.

Q. Compared to before the construction of the pipeline on your land, could you estimate how much time you now have to devote to getting TransCanada to address your concerns or just dealing with the situation in general?

A. I think since 2006 we probably -- between Mike and I probably about 3,000 hours that we've spent, you know, on the internet, reading, checking up on them, things like that.

Q. Sounds like a full-time job.

A. It has been.

Q. At least a part-time job.

A. Yeah. I've went through two computers so --

Q. Okay. Okay. So, in your opinion, is it fair to say it disrupted the quality of your life or your lifestyle just with that amount of time you now have to devote?

A. Yes. Yes, that's true. It has.

1 MS. REAL BIRD: No further questions. Thank
2 you.

3 THE WITNESS: Thank you.

4 MR. SMITH: Okay. Ms. Craven.

5 MS. CRAVEN: Kimberly Craven with the Indigenous
6 Environmental Network. No questions, but thank you very
7 much for coming today.

8 MR. SMITH: Mr. Gough.

9 MR. GOUGH: Bob Gough, InterTribal Council On
10 Utility Policy. Thank you for your testimony. No
11 further questions.

12 THE WITNESS: Thanks.

13 MR. SMITH: Okay. Mr. Dorr.

14 MR. DORR: No further questions. Thank you.

15 MR. SMITH: Mr. Harter.

16 CROSS-EXAMINATION

17 BY MR. HARTER:

18 Q. Good morning, Ms. Sibson.

19 A. Good morning.

20 Q. Do you believe that the contracts you entered were
21 done under duress?

22 A. Excuse me. I'm having a hard time hearing this
23 morning. Could you repeat the question?

24 Q. Do you believe that the contracts that you entered
25 into with TransCanada were done under duress?

1 A. Very much so.

2 MR. HARTER: Thank you.

3 MR. SMITH: Is that it, John?

4 MR. HARTER: That's all, sir.

5 MR. SMITH: Oh, okay. Ms. Jewett.

6 MS. JEWETT: I have no questions. Thank you.

7 MR. SMITH: Okay. There's no Kilmurry.

8 MS. LONE EAGLE: Good morning. Thank you for
9 being here. This is Elizabeth Lone Eagle. I'm an
10 Individual Intervenor.

11 CROSS-EXAMINATION

12 BY MS. LONE EAGLE:

13 Q. I couldn't help but notice it seems to be taking
14 quite an emotional toll on you this morning to testify.

15 Would you say that's been true of your entire
16 dealings with TransCanada?

17 A. Yes.

18 Q. And then you mentioned earlier that you feel that
19 your contracts were signed under duress. Would you be
20 able to expand on that, please.

21 A. Being under the threat of eminent domain by a
22 foreign company. And then also Mike and I are lifetime
23 citizens of South Dakota and always been on the right
24 side of the law and tried to do things the right way, and
25 we always believed that if we ran into trouble, like the

1 PUC would be there to step up and help us. And we
2 didn't -- we didn't get any help as far as we're
3 concerned in some issues from the PUC.

4 Some things they helped. Others they didn't. I
5 just felt like we had the burden of the Conditions was
6 put on the landowners. Not the PUC.

7 Q. Were you at any time told that any damage that was
8 done would be your responsibility?

9 A. No.

10 Q. Was there anything like that in your contract?

11 A. No. Huh-uh. No. Uh-huh.

12 MS. LONE EAGLE: Okay. All right. Thank you.

13 MR. SMITH: Is that all? I can't see you so I
14 can't --

15 MS. LONE EAGLE: Yeah. That was all. Thank
16 you.

17 MR. SMITH: Oh, okay. Thank you.

18 Mr. Seamans.

19 MR. SEAMANS: Yes. I have a few questions.

20 CROSS-EXAMINATION

21 BY MR. SEAMANS:

22 Q. Ms. Sibson, my name is Paul Seamans, and I am a
23 West River rancher with an abiding interest in native
24 grasses.

25 As a rancher, would you say that grass species could

1 be classified as either a native species or a non-native
2 species?

3 A. I'm not an expert, but, yes, I would think so.

4 Q. Could you say that -- as far as your understanding,
5 could you say that native grasses are described as the
6 grasses that originally have grown in that particular
7 region?

8 A. Yes. I think they're the best.

9 Q. Could you say that tame or non-native grasses are
10 grasses that have been brought in from other regions,
11 even other countries?

12 A. Yes.

13 Q. In your experience as an East River rancher you are
14 familiar with smooth brome grass; is that correct?

15 A. Yes.

16 Q. Do you know that smooth brome grass is a non-native
17 species?

18 A. I'm not really up on alternative grasses. I have no
19 idea.

20 Q. You mentioned tall wheatgrass. Would you know if
21 that is a native or non-native species?

22 A. The thickspike wheatgrass that's planted on our
23 easement area is not native to South Dakota. I did look
24 that up.

25 Q. Okay. Thank you.

1 A. Thank you.

2 Q. Would you consider smooth brome grass -- I'm sure
3 there's a lot of that in your area. Would you consider
4 smooth brome grass as a highly competitive grass that will
5 eventually crowd out native grass species?

6 A. Yes.

7 Q. Diana Steskal's testimony was mentioned, and there
8 was a photo of that seed ticket.

9 Did you specify only native grass species in your
10 seed mix?

11 A. We have from the beginning. And once they're there
12 with that grass, we didn't know what they were going to
13 do.

14 Q. Did TransCanada kind of select the seed mix?

15 A. Yes, they did. They were supposed to go by -- we
16 had the grasslands team come out and do a survey of our
17 land to do -- so that we would know what native grass was
18 on those quarters of land. And they were supposed to go
19 by what the grassland team had come up with.

20 Q. In this seed ticket that Diane Steskal introduced I
21 noticed one of the grasses in that seed mix was the
22 non-native smooth brome grass.

23 Would you like smooth brome grass growing in your
24 native pastures?

25 A. Probably not.

1 Q. Now this thickspike wheatgrass, does it grow in a
2 clump?

3 A. A clump or a bunch.

4 Q. You have not noticed it forming like a sod, like the
5 native sod?

6 A. In the fence lines where it's been planted since
7 2009 it's probably starting to do something like that.
8 It's starting to creep a little bit too. So yeah. I
9 would agree with you.

10 Q. Something like these clumps that thickspike
11 wheatgrass forms, would it -- would it make it harder to
12 drive over your pasture or a little rougher when you're
13 driving over these clumps?

14 A. Yes. There's some areas where we have to drive over
15 the easement area where that's planted, and that's very
16 true. It's pretty rough riding a four-wheeler across it.

17 Q. Now if this thickspike wheatgrass were to spread
18 onto your native range and you decided to mow it, what do
19 you think would happen when you're mowing through this
20 thick, tall clump?

21 A. Probably run into a lot of blades that go dull. And
22 up the road where TransCanada mowed an easement area last
23 year with the thickspike wheatgrass it's come back even
24 stronger this year.

25 Q. You've said you noticed the cattle do not like

1 eating this thickspike wheatgrass. Would you say that if
2 you put it up for hay, that it would be worth anything as
3 fodder?

4 A. Only probably for bedding. That's what we would use
5 it for.

6 Q. Yeah. Well, I agree with that.

7 As a rancher, have you noticed grasses, the
8 non-native species like smooth brome grass, have you
9 noticed them taking over pastures?

10 A. In some pastures, yes.

11 Q. Would you be agreeable to smooth brome grass or
12 thickspike wheatgrass taking over your pasture?

13 A. No. No. That's how we make our living. If the
14 cattle can't eat the grass, that's their -- there goes
15 our business.

16 MR. SEAMANS: I guess that's all the questions I
17 have. Thank you.

18 MR. SMITH: Ms. Smith.

19 MS. SMITH: I have no questions.

20 MR. SMITH: Mr. Tanderup.

21 MR. TANDERUP: Yes. I have a couple of
22 questions.

23 CROSS-EXAMINATION

24 BY MR. TANDERUP:

25 Q. Good morning, Ms. Sibson.

1 Do you have any other crops on the rest of your
2 right of way?

3 A. Yes, we do. We have corn and soybeans this year.

4 Q. And how do these other crops compare to the same
5 crops off the right of way?

6 A. There's always been lower yields. Even to this day
7 there's still lower yields. And the ground is warmer.
8 You can see -- you can track the pipeline through the
9 fields just because of the lower stand of beans and corn.

10 Q. Okay. So the -- the heat from the pipeline is
11 affecting the root structure and the water supply for
12 those crops then?

13 A. Yes.

14 Q. Okay. Do you feel when they came in and renewed
15 your -- or regenerated or whatever they did, that they --
16 you know, that the topsoil was replaced correctly and as
17 it was before it was torn up?

18 A. I think that they could have done a lot better job.
19 They could have took more time. And we feel that there's
20 clay and topsoil mixed on our land.

21 Q. Okay. So did they -- when they first removed the
22 topsoil did they set it aside like they were supposed to?

23 A. Yes, they did.

24 Q. But when they put it back it got mixed with the
25 other?

1 A. Yes, it did.

2 MR. TANDERUP: Okay. Thank you. That ends my
3 questions.

4 THE WITNESS: Thank you.

5 MR. SMITH: Staff.

6 CROSS-EXAMINATION

7 BY MS. EDWARDS:

8 Q. Good morning. Kristen Edwards for Staff.

9 Ms. Steskal showed us a picture of some holes in
10 your pasture. Do you know what I'm talking about?

11 A. Yes, I do.

12 Q. Can you kind of explain that to us and expand on
13 that?

14 A. It's been real interesting. The heat from the
15 pipeline, the rodents like that. They dig holes over the
16 pipeline and burrow in. Because, you know, why not be in
17 a sauna, I think, anyway. So it's from rodents digging
18 over the pipeline.

19 Q. Have you addressed that with TransCanada?

20 A. Yes, we have.

21 Q. And has anything been done about that?

22 A. Oh, one person when they were out was using their
23 boot to fill in the holes. So that's about it. And Mike
24 took care of it because a lot of it was in the crop
25 ground. So with disking stuff they were covered back up.

1 Q. Okay. And have you filed a formal complaint with
2 the PUC?

3 A. No, we haven't.

4 Q. Thank you. Always trying to drum up work for
5 myself.

6 MS. EDWARDS: Thank you, Ms. Sibson.

7 A. If we do file a complaint, we'd really appreciate
8 some help.

9 MR. SMITH: Commissioner questions.

10 CHAIRMAN NELSON: Mrs. Sibson, I do have a
11 series of questions because this is an issue that is
12 extremely important to me as we look at these projects.

13 THE WITNESS: Thank you.

14 CHAIRMAN NELSON: Of the 8 to 9 acres of pasture
15 that are in this easement, is any of that virgin prairie?

16 THE WITNESS: It had never been broke. Yeah.
17 You're right. It's virgin.

18 CHAIRMAN NELSON: And so you talked about
19 reclamation of the native grasses. So what were the
20 native grasses that were there before all of this
21 happened?

22 THE WITNESS: According to the grassland team
23 that we had out there -- I could give you the papers
24 later if you want, and I can name a few off.

25 Is that what you want me to do now?

1 CHAIRMAN NELSON: Yeah. I'm very interested.

2 THE WITNESS: Sure. One of them was green
3 needlegrass, western wheatgrass, needle-and-thread,
4 porcupine grass, little bluestem, prairie dropseed,
5 sideoats grama, and blue grama. I don't know if I
6 pronounced the last two right. But that's what came from
7 the grasslands team.

8 CHAIRMAN NELSON: Thank you. I found your
9 description of the planting methodology interesting. You
10 indicated they were planting in road gear.

11 Road gear is 15 to 20 miles an hour. Is that
12 what you observed?

13 THE WITNESS: Yes.

14 CHAIRMAN NELSON: They were going 15 to 20 miles
15 an hour?

16 THE WITNESS: In high winds, yes.

17 CHAIRMAN NELSON: What kind of seeder were they
18 using?

19 THE WITNESS: A drill.

20 CHAIRMAN NELSON: So you're telling me they were
21 going 15 to 20 miles an hour with a drill.

22 THE WITNESS: Yes. And I have video evidence.
23 If you don't believe me, I'll get you the DVD.

24 CHAIRMAN NELSON: One of the other things that
25 you testified to that I just needed to make sure I heard

1 correctly, that you've calculated that your native
2 pasture has a carrying capacity of 3 to 5 AUM.

3 THE WITNESS: Could you repeat the question
4 again.

5 CHAIRMAN NELSON: That your testimony was that
6 your native grass has a carrying capacity of 3 to 5
7 animal units per month?

8 THE WITNESS: Yearlings, yes.

9 CHAIRMAN NELSON: I want to look -- and I've
10 looked at this picture a number of times since it was
11 first introduced. And help me to understand it.

12 Where the camera person is standing, is that
13 essentially over the top of the pipeline?

14 THE WITNESS: Yes, it is. TransCanada puts the
15 signs right over the top of the pipe.

16 CHAIRMAN NELSON: And obviously a significant
17 difference between what we're seeing in forage in the
18 fence row versus out into the pasture.

19 THE WITNESS: That's correct.

20 CHAIRMAN NELSON: And I think maybe this
21 question was answered, but that's because they came in in
22 the pasture area, sprayed it down, and reseeded it.

23 Is that why we're seeing the difference?

24 THE WITNESS: You're talking about the easement
25 area?

1 CHAIRMAN NELSON: Yes.

2 THE WITNESS: Okay. Yeah. That's -- yep.

3 CHAIRMAN NELSON: And so if they hadn't come in
4 and sprayed it down, it all -- and you hadn't grazed it,
5 it all would have looked like what we're seeing in the
6 fence row; correct?

7 THE WITNESS: Yes. It would all be thickspike
8 wheatgrass. Yep. That's correct.

9 CHAIRMAN NELSON: What have you observed in the
10 reclamation of your neighbors' properties?

11 And here's where I'm going with the question. I
12 mean, obviously this issue has been bubbling for you all
13 along. But we're not hearing from your neighbors.

14 What are you observing in what their reclamation
15 was like compared to yours?

16 THE WITNESS: Our neighbors' choice not to say
17 anything. Their land.

18 CHAIRMAN NELSON: My question was what have you
19 observed in their property compared to yours that's the
20 difference? Is there a difference, and what have you
21 observed?

22 THE WITNESS: There's little difference between
23 the pastureland for us and versus the neighbors. They
24 have thickspike wheatgrass. There's noxious weeds. It
25 looks the same.

1 CHAIRMAN NELSON: I'm intrigued about it and
2 I've heard some other commentary about this but since you
3 brought it up I want to drill into this.

4 Talking about the soil temperature over the
5 pipeline as compared to on the sides. Obviously, it's a
6 common ag practice in the spring to measure the soil temp
7 of the topsoil to determine when we get to 50 degrees and
8 can start planting.

9 Have you done any soil temperature actual
10 measurements over the top of the pipeline compared to off
11 to the side to see what that differential is?

12 THE WITNESS: No, we haven't.

13 CHAIRMAN NELSON: Okay. I think the last
14 question, what's the real problem here?

15 If you had been in charge of getting the grass
16 reestablished, how would you have done it differently
17 than what we've seen going on here?

18 Obviously, this is a failure. How would you
19 have done it differently?

20 THE WITNESS: I was telling you about the
21 grassland teams that was out to our place. They gave us
22 a folder, and in there they gave us the instructions on
23 how to reseed the native grass on our land.

24 A lot of it was being timely with the spraying,
25 being timely to clip the weeds. You know, most of it's

1 just being timely to get grass established.

2 CHAIRMAN NELSON: And so you believe that the
3 Keystone failure in this is lack of timeliness.

4 THE WITNESS: A lot of it is, yes.

5 CHAIRMAN NELSON: I think that's all of my
6 questions.

7 Thank you.

8 THE WITNESS: Thank you.

9 MR. SMITH: Commissioner Hanson.

10 COMMISSIONER HANSON: Thank you.

11 Good morning, Ms. Sibson.

12 I don't remember the date that I came out to
13 your property and toured it, and you seem to be pretty
14 good with dates.

15 Do you remember?

16 THE WITNESS: It would have been September 10.

17 CHAIRMAN NELSON: Of '14.

18 THE WITNESS: Yes.

19 COMMISSIONER HANSON: Thank you. I was just
20 trying to relate that to when reclamation work was done.

21 And I'm assuming that your -- is your property
22 in similar condition now as it was when we toured it?

23 THE WITNESS: Actually I think it's worse.

24 COMMISSIONER HANSON: I didn't do that, did I?

25 THE WITNESS: No, you didn't. No, you didn't.

1 COMMISSIONER HANSON: So what efforts have been
2 made -- I was trying to figure out what efforts Keystone
3 has made since my visit. Do you recall?

4 THE WITNESS: Excuse me. I couldn't hear your
5 question.

6 COMMISSIONER HANSON: I'm trying to ascertain
7 what efforts may have been made by Keystone since my
8 visit.

9 THE WITNESS: Since your visit they came out in
10 the spring and replanted. That's all that they've done.

11 COMMISSIONER HANSON: Okay. And that's the
12 planting that Mr. Moore was talking about.

13 THE WITNESS: Yes.

14 COMMISSIONER HANSON: That we're waiting to see
15 how that turns out.

16 THE WITNESS: Yeah.

17 CHAIRMAN NELSON: Did they spray prior to that
18 such as in the fall to try to --

19 THE WITNESS: No, they did not.

20 CHAIRMAN NELSON: So when they replanted did
21 they just turn all the soil, or how did they replant?

22 THE WITNESS: They just drilled over the top of
23 the easement area.

24 COMMISSIONER HANSON: Drilled over the top?
25 That's a term I'm not familiar with.

1 THE WITNESS: Using a drill. A drill that's
2 pulled behind a tractor.

3 COMMISSIONER HANSON: Just a seeder.

4 THE WITNESS: Yeah. A seeder, yeah.

5 COMMISSIONER HANSON: Okay. So they didn't turn
6 the soil.

7 THE WITNESS: No, they did not.

8 COMMISSIONER HANSON: Is that a similar effort
9 that they had made previously?

10 THE WITNESS: Yep. Most of the time that they
11 over-reseed maybe could be the term. I don't know for
12 sure.

13 COMMISSIONER HANSON: So they never just went
14 through and plowed everything up?

15 Well, they sprayed to kill everything a couple
16 of times, it sounds like.

17 THE WITNESS: They have done that. That would
18 have been in 2011 that they went through and redid
19 everything again, the easement area.

20 COMMISSIONER HANSON: Okay. Ms. Steskal has
21 some filed testimony regarding reclamation time line. It
22 sounds as if that time line may be -- may not be the same
23 as the time line that was expressed by Keystone. And
24 Mr. Moore was reminding you of some additional work that
25 they did on reclamation.

1 THE WITNESS: Uh-huh.

2 COMMISSIONER HANSON: Is that accurate from what
3 they had explained?

4 THE WITNESS: Yep. I might not have got
5 everything written down in that time line to Diana like I
6 should have.

7 COMMISSIONER HANSON: Okay.

8 THE WITNESS: Like I could have.

9 COMMISSIONER HANSON: And I want to make certain
10 on the actual construction date of completion, do you
11 know when the actual completion date was?

12 THE WITNESS: For our land?

13 COMMISSIONER HANSON: Yes.

14 THE WITNESS: September 29 of 2009.

15 COMMISSIONER HANSON: September 29, 2009.

16 THE WITNESS: Yep.

17 COMMISSIONER HANSON: And did reclamation begin
18 soon after, or does that --

19 THE WITNESS: That includes reclamation. That
20 was the day that they seeded the first time.

21 COMMISSIONER HANSON: Mr. Moore asked you have
22 they ever told you that reclamation is completed and they
23 won't be back ever.

24 Have they ever told you that reclamation is
25 completed?

1 THE WITNESS: No, they have not. But they've
2 really been after us to sign off on our land.

3 COMMISSIONER HANSON: That was my next question.
4 How many times have they -- do you know how many times
5 they've asked you?

6 THE WITNESS: Two times.

7 COMMISSIONER HANSON: Just twice. Okay. I
8 shouldn't say just twice. But twice.

9 THE WITNESS: Twice is enough.

10 COMMISSIONER HANSON: You say you haven't grazed
11 the land. I'm a generation removed from the land except
12 I have a brother that farms, but I'm not familiar with --
13 should you have tried that?

14 What are your neighbors' experience in
15 attempting to graze the land?

16 THE WITNESS: Well, according to the
17 South Dakota PUC Conditions, they've reseeded so many
18 times on our land that you can't graze the land for a
19 year after it's been reseeded. So that's what's caused
20 problems for us not to go back out there.

21 Because we as landowners want to follow the PUC
22 Conditions.

23 COMMISSIONER HANSON: Thank you for that
24 clarification.

25 THE WITNESS: Uh-huh.

1 COMMISSIONER HANSON: You say you were told that
2 reclamation was confidential, that the plans were
3 confidential.

4 THE WITNESS: Yes. Uh-huh.

5 COMMISSIONER HANSON: Do you recall who told you
6 that?

7 THE WITNESS: It would have been Frank Maddox
8 who is the reclamation crew. I don't know what his
9 exact -- boss. I don't know the exact term correctly for
10 his job.

11 COMMISSIONER HANSON: And when was that? Do you
12 remember approximately?

13 THE WITNESS: I'll have to repeat the question.
14 I've got so many things going through my mind right now
15 that -- could you repeat the question, please?

16 COMMISSIONER HANSON: Sure. I was just curious
17 when Frank Maddox told you that the reclamation plan was
18 confidential.

19 THE WITNESS: That would have been probably
20 2013.

21 COMMISSIONER HANSON: Thank you. You had a
22 number of contacts with Sarah Metcalf, the public liaison
23 officer.

24 THE WITNESS: Yes, we have.

25 COMMISSIONER HANSON: Did she follow up in all

1 of the cases?

2 THE WITNESS: Most of the time, yes. It's just
3 that when I would ask for reports, like this one from
4 Frank Maddox about our land, I never received that.

5 And she was aware of that, that we wanted copies
6 of that, of what they had did on our land and what they
7 wanted to do.

8 And recently we asked -- not that she's on the
9 Keystone I anymore, but we've asked her again to get the
10 plan from TransCanada of how they're going to fix our
11 land, restore it back to the way it should be.

12 COMMISSIONER HANSON: All right. Thank you very
13 much. Good to see you again.

14 THE WITNESS: Thank you.

15 MR. SMITH: Okay. Any follow-on questions?
16 Keystone?

17 MR. MOORE: No questions. Thank you.

18 MR. SMITH: Okay. Intervenors, any? I'll go in
19 order.

20 Mr. Clark? No?

21 MR. CLARK: No questions.

22 MR. RAPPOLD: Just one.

23 MR. SMITH: Okay, Mr. Rappold.

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RE CROSS-EXAMINATION

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BY MR. RAPPOLD:

Q. Ms. Sibson, Commissioner Nelson asked you a question and I'll paraphrase and it went something like this: What would you have done differently?

And I wanted to ask you is one of the things you would have done differently, using all of the same native grass that was there when you started?

A. Sure. Yeah.

MR. RAPPOLD: Okay. Thanks.

MR. SMITH: Mr. Capossela.

MR. CAPOSSELA: No questions. Thank you.

MR. SMITH: Ms. Real Bird?

MS. REAL BIRD: No.

MR. SMITH: Ms. Craven?

MS. CRAVEN: No. No questions.

MR. SMITH: Mr. Gough.

MR. GOUGH: Yes.

RE CROSS-EXAMINATION

BY MR. GOUGH:

Q. Bob Gough, InterTribal Council on Utility Policy. I really appreciated your testimony on the reclamation phase here.

A. Thank you.

Q. I'm wondering, have you had any discussions with

1 TransCanada about how they would handle dealing with
2 leaks or spills from the pipeline on your land?

3 A. No, we haven't. We have to get reclamation fixed
4 first. I think anyway.

5 Q. Do you know how deep that pipe sits in your land?

6 A. Probably between 6 feet and then closer to maybe
7 9 feet to the -- closer to the county road. And the only
8 reason we know that, we were there the day that they were
9 out checking the pipe, and the guys doing the work were
10 telling us how deep the pipe was.

11 Q. Uh-huh. Have you been to any sites where they've
12 had to dig up pipe after it's been placed in the ground?

13 A. No, we haven't.

14 Q. So you have no sense of how much additional
15 disturbance there might be in the event they'd have to do
16 something like that?

17 A. No. Huh-uh.

18 MR. GOUGH: No further questions. Thank you.

19 MR. SMITH: Mr. Dorr.

20 RE-CROSS-EXAMINATION

21 BY MR. DORR:

22 Q. Gary Dorr, Individual Intervenor. Thank you, ma'am,
23 for being here this morning.

24 I'm looking at that picture up there on the screen.
25 Who took that picture?

1 A. It would have been Diana Steskal.

2 Q. What does that sign say? I can't read it. I don't
3 have my glasses on.

4 A. Sure. It's the sign that marks the TransCanada
5 Pipeline. Are you making it larger?

6 Q. Yeah. So the sign actually says that's where the
7 pipeline lays; is that correct?

8 A. That's true.

9 Q. Is that sign directly over the pipeline route?

10 A. Yes, it is. It's right over the pipe.

11 Q. Did you put it there?

12 A. No. No.

13 Q. Who put it there?

14 A. TransCanada.

15 Q. Can the public see that sign?

16 A. Yes, they can.

17 Q. Have you seen other signs marking the route of the
18 pipeline?

19 A. Yes, I have.

20 Q. Have you ever been told that the pipeline route is
21 classified and that you weren't allowed access to where
22 the actual route would be?

23 A. Like with -- no.

24 Q. So they never told you -- the reclamation team never
25 told you it was a national interest and that you weren't

1 allowed to have the actual data from where the pipeline
2 would lay?

3 A. No.

4 MR. DORR: All right. Thank you.

5 No further questions.

6 MR. SMITH: Mr. Harter.

7 RE CROSS-EXAMINATION

8 BY MR. HARTER:

9 Q. Ms. Sibson, on the reseeded part of the -- of your
10 right of way something that I noticed is that two -- at
11 least two of the seedings were done in the fall and one
12 of them was done in the spring and that's the two that I
13 caught and wrote down.

14 A. Yeah.

15 Q. Do you think that these fall seedings, knowing
16 South Dakota, that we have usually a lack of moisture
17 later in the season, was part of TransCanada's problem
18 with getting your easement redone?

19 A. I think so. Like I said, we don't feel like they
20 did anything in a timely manner. And I think that they
21 would be better off looking and talking to the local
22 conservation office to know where -- when and where to
23 plant.

24 Q. Thank you.

25 You stated that you got a -- the local FSA office

1 was it or NRCS office to come out and do a survey on your
2 property?

3 A. Yep. We called them, the grasslands team.

4 Q. So was it up to you as the property owner being
5 inundated by this project to get that done?

6 A. That was something that we chose to do. We wanted
7 to know before our land was tore up by TransCanada what
8 was out there.

9 Q. Do you feel that it should have been the obligation
10 of the person impacting you with this to do a baseline
11 survey on your property first?

12 A. Yes, I do. Uh-huh.

13 MR. HARTER: That would be all. Thank you.

14 MR. SMITH: Ms. Jewett.

15 MS. JEWETT: I have no questions.

16 MR. SMITH: Thank you.

17 Ms. Lone Eagle.

18 RECROSS-EXAMINATION

19 BY MS. LONE EAGLE:

20 Q. Following up on what Mr. Dorr asked you, given that
21 there's warning signs all over with the pipeline, were
22 you ever informed that you were in a high consequence
23 area for the pipeline?

24 A. We could have been. We get information from the
25 pipeline about every year telling us, you know, to watch

1 where you dig and things like that. But I don't recall
2 them ever saying anything like that.

3 MS. LONE EAGLE: Thank you. No more questions.

4 MR. SMITH: Mr. Seamans?

5 MR. SEAMANS: Yes. I have a few questions.

6 RE CROSS-EXAMINATION

7 BY MR. SEAMANS:

8 Q. Do any of your neighbors have thickspike wheatgrass
9 growing on their pastures?

10 A. Yes, they do.

11 Q. Do you know if any of your neighbors asked for this
12 thickspike wheatgrass?

13 A. I'm not aware that they asked.

14 Q. Were your neighbors -- yours has been redone quite a
15 few times, and your neighbors' hasn't.

16 Have you noticed this thickspike wheatgrass
17 spreading?

18 A. Yes. Especially to the pasture to the south of us.
19 It's getting more and more each year.

20 Q. Rodents were mentioned in your easement. And when
21 you have rodents you have predators. Have you noticed
22 anymore digging to go in after these rodents like foxes
23 maybe, coyotes, badgers, bigger holes?

24 A. No. Not really. Just every once in awhile.

25 Especially in the fall. I think they're looking for a

1 winter spot that they're digging holes.

2 MR. SEAMANS: Okay. Thank you. No more
3 questions. Thank you.

4 MR. SMITH: Ms. Smith.

5 MS. SMITH: I have no questions.

6 MR. SMITH: Mr. Tanderup.

7 MR. TANDERUP: Yes. I have a couple follow-up
8 questions.

9 RE CROSS-EXAMINATION

10 BY MR. TANDERUP:

11 Q. Ms. Sibson, a little bit ago you were discussing
12 about how deep they laid the pipe and so forth, and you
13 mentioned it was 7 foot and 9 foot.

14 Do you recall, was that the depth of the trench, or
15 was that where the top of the pipe is?

16 A. That would have been from the pipe up to the top of
17 the ground. It wouldn't have been the whole trench.

18 Q. Okay. So from the top of the pipe to the surface of
19 the ground?

20 A. Uh-huh. Yes.

21 Q. Okay. So even in that much distance you are seeing
22 examples of heat damage on?

23 A. Yes. Yeah.

24 Q. Okay. So it's not only -- you know, so there's --
25 if there's heat damage, you know, one of the things as a

1 farmer that I know is when you sow something into the
2 soil like grass or small grains, whatever, traditional
3 crops, whatever it might be, if you have hot, dry soil
4 underneath when those little roots try and find a place
5 to go, there's no place for them to go.

6 So part of the issue, you know, appears to be that
7 there is -- you know, there is an environment where the
8 seed cannot establish itself well.

9 I guess, would you agree with that statement?

10 A. Yes, I would.

11 MR. TANDERUP: Okay. Thank you.

12 MR. SMITH: Staff.

13 MS. EDWARDS: No recross. Thank you.

14 MR. SMITH: Any redirect?

15 MR. MARTINEZ: Just a very -- it will be a very
16 short redirect.

17 REDIRECT EXAMINATION

18 BY MR. MARTINEZ:

19 Q. Ms. Sibson, would it be accurate to say it's been
20 roughly about six years since TransCanada said they would
21 reclaim your land?

22 A. Yes. In September it will be six years.

23 Q. So after all that time would it be fair to say you
24 still have no native grasses growing on that easement?

25 A. The pictures show it, yes.

1 Q. And would it also be fair to say that at this point
2 what you've been left with are weeds and unusable
3 grasses?

4 A. That's very true.

5 MR. MARTINEZ: Thank you. That's all I have.

6 THE WITNESS: Thank you.

7 MR. SMITH: You may step down.

8 THE WITNESS: Thank you, PUC Commissioners, for
9 letting me testify. I appreciate it.

10 MR. SMITH: Did you want to call Mr. Crow Ghost
11 at this point?

12 MR. CAPOSSELA: Mr. Smith, my understanding is
13 Mr. Crow Ghost is on his way. He left McLaughlin at 7:00
14 this morning. Should be here at any time. I appreciate
15 everyone's indulgence while he's en route.

16 MR. SMITH: I didn't know if he was or not.

17 Mr. Dorr, can you call your witness? Is he
18 present?

19 MR. DORR: My witness is on his way here still.

20 MR. SMITH: Oh, he is. Okay. I wonder if we
21 should then take a break now and -- do you think?

22 (Pause)

23 MR. SMITH: Well, should we take a recess and, I
24 don't know, until when? 15 minutes? Okay. So about 7
25 or 6 minutes to.

1 (A short recess is taken)

2 MR. SMITH: Mr. Capossela, are you ready?

3 MR. CAPOSSELA: Yes, Mr. Smith.

4 MR. SMITH: If you want to. If you'd like to
5 go. Because, otherwise, it's going to be a --

6 MR. CAPOSSELA: I understand. I wouldn't go so
7 far as to say Mr. Crow Ghost has caught his breath but,
8 in any event, the Standing Rock Sioux Tribe is prepared
9 and if we're back on the record, call Doug Crow Ghost as
10 a direct witness.

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

12 DIRECT EXAMINATION

13 BY MR. CAPOSSELA:

14 Q. Good morning again, Mr. Crow Ghost.

15 A. Good morning.

16 Q. Would you state your name and your business address
17 for the record.

18 A. Okay. My name is Errol Douglas Crow Ghost, Junior.

19 Q. And what is your occupation?

20 A. I am the Standing Rock Sioux Tribe's Department of
21 Water Resources Administrator/Director.

22 Q. And would you state your business address for the
23 record as a water resources director for the Standing
24 Rock Sioux Tribe?

25 A. P.O. Box D, Ft. Yates, North Dakota at the

1 administrative building.

2 Q. Would you summarize your educational background.

3 A. Yeah. I hold a bachelor's degree in environmental
4 science, restoration ecology from Salish-Kootenai
5 College. Also a natural resources degree from Black Feet
6 Community College. I'm a military veteran, four years
7 active during the war, '92 to '96. I -- what else?

8 I served with the Chief Mountain Hotshots for the
9 Bureau of Indian Affairs. I've been on Tribal Council
10 from 2009 to 2013 as a district representative for one of
11 our districts, which also I served as a Health and
12 Education, Welfare for the Tribe as a Tribal Council for
13 those years.

14 I don't know what else to say. I'm single. Just
15 kidding. For the record. Sorry.

16 Q. With those qualifications, you're single?

17 A. Don't let my girlfriend hear that one. Sorry.

18 Q. Mr. Crow Ghost, did you prepare prefiled testimony
19 and file prefiled testimony to the Public Utilities
20 Commission in this docket?

21 A. Yes, I did.

22 MR. MARTINEZ: The Standing Rock Sioux Tribe
23 moves for the introduction of the exhibit marked 8010,
24 the Prefiled Testimony of Doug Crow Ghost.

25 MR. SMITH: Is there objection?

1 MR. MOORE: No objection, Mr. Smith.

2 MR. SMITH: Objection from any of the
3 Intervenors?

4 Staff?

5 MS. EDWARDS: No objection.

6 MR. GOUGH: No objection from the Intervenor.

7 MR. SMITH: Okay. It's admitted.

8 MR. CAPOSSELA: Thank you, Mr. Smith.

9 Q. Mr. Crow Ghost, would you summarize your duties as
10 the director of the Department of Water Resources at
11 Standing Rock?

12 A. Other than what's in my prefiled testimony,
13 basically I'd just state what I do is I make sure that
14 the 106 Clean Water Act is upheld. You know, our
15 drinking water, our water, fish and wildlife are
16 protected for the water of the Standing Rock Sioux Tribe,
17 which has encompassed 2.3 million acres. And also what's
18 outside of our reservation, surrounding a lot of activity
19 with water quality.

20 So water quality is my main objective and also the
21 water quantity that flows through reservation boundaries.
22 I make sure that that's adequate for our future use of
23 our people.

24 Q. Does the Tribe have a water use code?

25 A. Yes, we do.

1 Q. Does the Tribe have a water quality code?

2 A. Yes, we do.

3 Q. Do you oversee -- what's your role with respect to
4 those codes?

5 Do you oversee the implementation of those codes?

6 A. Yes, I do. As a water administrator/director I make
7 sure that the codes are upheld to the standards by which
8 they were approved by the Tribal Council through
9 resolutions and also through the Federal Government.

10 Q. What is the Winters Doctrine?

11 A. Well, the Winters Doctrine basically is just what --
12 back in I think it was 1908 gave the American Indians
13 rights to their water and to use it as they see fit and
14 how they want to use it and that federally that is
15 what -- you know, basically what they have is theirs to
16 own, to protect, and to use.

17 Q. You mentioned the reservation is 2.3 million acres.

18 A. Correct.

19 Q. So the Tribe has water rights under the 1908 Winters
20 Doctrine. How much -- you know, we can -- 2.3 million
21 acres of land.

22 How much water does the Tribe possess under the
23 Winters Doctrine? Has that been determined?

24 A. No.

25 Q. Is there a process underway to determine that?

1 Would you describe that process?

2 A. The process in which the Tribe is looking at -- I
3 use the word "quantifying" loosely is the use of what we
4 are going to need for the next 100 to 200 years. The
5 next seven generations.

6 We will need the water for every use available for
7 our tribal members, wildlife, cultural resources. So we
8 are determining for the next seven generations what is
9 going to happen with our water as far as industrial use,
10 use for our homes, use for culture, use for our 20 plus
11 thousand members that we're estimating, you know, we're
12 going to have in the next seven generations.

13 Q. Is it a court proceeding in which you're doing that?
14 How is that unfolding, the determination? How do you
15 determine that?

16 A. We determine that by -- by just knowing the
17 quality -- or the quantity of the water and the uses of
18 the water, what we use them for on a daily basis.

19 I mean, we're meeting with the State engineers. We
20 have our own engineers. We meet every three months,
21 quarterly. We've been doing that before I got on every
22 few years, which is really turning out great for North
23 and South Dakota.

24 I think when we get together every three months
25 something positive always comes out of that meeting with

1 the State of North Dakota engineer and the State of
2 South Dakota engineer.

3 Also the governors of both states, their assistants
4 are there taking notes, going back to the Governor. And
5 so we're working very diligently in a positive effort to
6 incorporate the -- not only the quality of the water not
7 just on our reservation but the surrounding reservations
8 and also the counties to -- you know, to get on the same
9 page.

10 And that's what we've been doing, and it's really
11 turning out great. And that's kind of in a nutshell, I
12 guess.

13 Q. And is that process designed to determine how much
14 water ultimately the Tribe will be entitled to under the
15 Winters Doctrine?

16 A. Correct. Correct.

17 Q. Per your information, are the other Indian Tribes in
18 the state, are they engaged in a similar effort? Do you
19 know?

20 A. Not offhand. I don't know if any other states are
21 doing it.

22 I know I'm part of a Great Plains Tribal Water
23 Alliance with other Tribes of the -- I mean, other Tribes
24 of the State of South Dakota. And when I talk about --
25 loosely with them about what the State and our Tribe is

1 doing, you know, they're very shocked. They're at awe.

2 They're actually wanting to get on board and figure
3 out how they can get on with the states in order to, you
4 know, talk with the states the way we've been doing for a
5 couple of years now.

6 So I see other Tribes that are trying to follow suit
7 with what Standing Rock is doing with the states, North
8 and South Dakota, with the water engineers and the
9 quality of the water and the quantity, of course, you
10 know, protecting that for the Tribes.

11 Q. But, as you understand, Standing Rock is the only
12 Tribe --

13 A. Correct.

14 Q. -- in this process?

15 A. Correct.

16 Q. But for the stream systems crossing or bordering the
17 Standing Rock Reservation, at the present time we don't
18 know how much water the Tribe is entitled to out of these
19 stream systems. Is that your testimony?

20 A. Correct.

21 Q. So if the -- if any water user were to apply for a
22 construction -- for a temporary water permit and say the
23 Grand River, which runs through the Standing Rock
24 Reservation, the state engineer does not know when
25 issuing that permit how much water the Tribe needs. Is

1 that accurate?

2 A. Correct.

3 Q. But that process is ongoing to make those
4 determinations?

5 A. Yes.

6 Q. Okay. Thank you. Now you've testified that one of
7 the water uses or one of the areas of concern to you is
8 wildlife.

9 A. Yes.

10 Q. Would you elaborate on your role and your concerns
11 as a water manager at Standing Rock on wildlife resources
12 of the reservation, fish and wildlife?

13 A. Yeah. Well, fish and wildlife on the Standing Rock
14 Sioux Tribe Reservation, Corson County as well as
15 Sioux County, there's a drought, a national drought.

16 We go to the NOAA -- I'm also with NOAA, and we talk
17 about the droughts coming up, the trends. The droughts
18 are affecting the wildlife and our cultural resources in
19 respects to the significance of what we need with the
20 water.

21 The big thing is the drought right now. And I think
22 that when the water is being -- when water is being taken
23 out for any use other than the intentions for any permit
24 and there's a drought condition, that NOAA is talking
25 about -- you know, we always look at and we want to know

1 why.

2 We want to know what the permit is for, why is the
3 water being used. So, you know, we're pretty strict, but
4 we're also loose. But we just -- that's why we have an
5 application process. So we're protecting it the best
6 that we can.

7 We know that there's a lot of fish kill on the
8 Grand River right now because of the drought so we're
9 trying to protect our fish and wildlife as well.

10 Q. Sure. In its filings in this proceeding,
11 TransCanada has identified the Little Missouri River, the
12 Cheyenne River, the North Fork of the Moreau River, the
13 Bad River, and the White River as water sources for
14 significant depletions of water for hydrostatic testing
15 and for construction.

16 Is it your understanding that these tributaries to
17 the Missouri River are simply suffering the impacts of
18 long-term drought?

19 A. Yes. Most definitely.

20 Q. If TransCanada withdraws water from these river
21 systems, because of a long-term drought is it possible
22 that water users downstream from the points of diversion,
23 that their water uses may be affected if construction
24 happens during this period of long-term drought that
25 South Dakota is experiencing?

1 A. Yes.

2 Q. I'm going to approach you, Mr. Crow Ghost, and show
3 you a document and ask you what this document is, if you
4 recognize it.

5 MR. MARTINEZ: I have a document marked
6 Exhibit 8011.

7 Do you want to see it before I show this to the
8 witness?

9 MR. MOORE: No. That's fine. Thank you.

10 Q. As part of your water management at Standing Rock,
11 do you engage in research? Do you stay up to date on
12 academic and government documents and publications with
13 respect to the water resources of the reservation?

14 A. Yes. The best that I can.

15 Q. Do you keep files of these documents?

16 A. Yes, we do.

17 Q. Do you recognize the document that I just handed to
18 you?

19 A. Yes, I do.

20 Q. Would you briefly describe it?

21 A. Well, it's the droughts, the 21 Century Drought Risk
22 in the Southern and the Central Plains of the
23 United States.

24 And, you know, basically like I explained a little
25 bit earlier, it's just the next -- the trends for the

1 Southwest and the Central Plains of the droughts and how
2 NOAA and also how, you know, we're getting ready for it
3 and how the water's going to be affected, in these
4 areas.

5 MR. CAPOSSELA: Standing Rock Tribe moves to
6 enter as evidence the exhibit. It's marked 8011, an
7 article from the Journal of Scientific Advancement from
8 Columbia University as described by Mr. Crow Ghost.

9 MR. MOORE: And I would object to relevance,
10 hearsay, and foundation.

11 MR. CAPOSSELA: It's a learned treatise which is
12 Exception 18 to hearsay. The foundation's been
13 established. This witness as part of -- he's a water
14 manager, and this is what he does. It's properly --

15 There's proper foundation for it. It fits under
16 the hearsay objection, and we reiterate our request that
17 it be entered into the record to confirm the Tribe's
18 concerns.

19 CHAIRMAN NELSON: I'm sorry. What was the
20 exhibit number?

21 MR. CAPOSSELA: 8011. Learned treatise from
22 Columbia University, Journal of Scientific Advancement on
23 long-term drought in the Southwest and Central Plains.

24 MR. SMITH: Overruled.

25 Q. You also stated, Mr. Crow Ghost, that part of your

1 responsibility for the Tribe involves the protection of
2 water quality.

3 Per your understanding, what waters which you manage
4 would be impacted directly by construction of Keystone
5 Pipeline?

6 A. Which waters?

7 Q. What river systems will Keystone cross?

8 A. The Grand River, the South Fork leads into the main
9 tributary of the -- or the Grand River, which is a
10 tributary of the Missouri River. The Grand River runs
11 directly through our reservation, which we use
12 continuously all year round.

13 Q. Is it a intermittent water, or is the Grand River a
14 perennial stream?

15 A. It's all year round.

16 Q. The crossing of the Grand River will be an open cut
17 method. Do you have any concerns that the -- forgetting
18 for a second about the possibility of a future release of
19 oil, do you have any concerns about the impacts of
20 construction and open cut trenching method of
21 construction crossing the South Fork of the Grand River?

22 A. Well, I'm really not too familiar with open cut, but
23 I know that, you know, dredging might be a part of that.

24 Q. I'm going to approach the witness with a document.
25 I'm going to show him the document that's been marked

1 Exhibit 8013, the 2012 South Dakota Integrated Report,
2 Surface Water Quality Assessment prepared by the
3 South Dakota DENR.

4 This is a report from the State. Is this -- are you
5 familiar with this document?

6 A. Yes. I looked over it.

7 Q. Is this document something that would be in your
8 files and utilized by your office for water quality work
9 on the reservation?

10 A. Yes, it would.

11 MR. CAPOSSELA: Standing Rock Sioux Tribe moves
12 for the introduction of the South Dakota DENR Surface
13 Water Quality Assessment dated 2012, and that's been
14 marked as Exhibit 8013.

15 MR. MOORE: No objection.

16 MR. SMITH: Any Intervenor objection?
17 Staff?

18 MS. EDWARDS: No objection.

19 MR. SMITH: It's admitted.

20 Q. Are you familiar, Mr. Crow Ghost, with the
21 preparation by the State Department of the Final
22 Supplemental Environmental Impact Statement, the FSEIS?

23 A. Yes.

24 Q. Per your understanding, has any agency at the
25 federal or state level taken into account the potential

1 impacts of the construction or operation of the Keystone
2 XL Pipeline on the water rights of the Standing Rock
3 Sioux Tribe?

4 A. No.

5 MR. CAPOSSELA: I'm going to approach the
6 witness again with a document that's been marked as
7 Exhibit 8023. It's a letter to the State Department from
8 the -- I'm sorry. 8025, Exhibit 8025, a letter from the
9 Environmental Protection Agency to the State Department.
10 It's dated July 16, 2010.

11 Q. Mr. Crow Ghost, are you familiar with this document?

12 A. Yes.

13 Q. Is this a document that the EPA courtesy copied to
14 the Tribe?

15 A. Yes, they did.

16 Q. Does it relate to the Draft Environmental Impact
17 Statement that was open for comment back in 2010?

18 A. Yes, it did.

19 MR. CAPOSSELA: The Tribe moves for the
20 introduction of the exhibit that's marked 8025, premarked
21 8025, the letter of the EPA to Department of State
22 regarding, in part, tribal waters.

23 MR. MOORE: Object to relevance.

24 MR. CAPOSSELA: The witness has already
25 testified at some length on his concerns with the impact

1 of the construction on tribal waters. And this letter
2 contains information at the federal level corroborating
3 the concerns that have been expressed by Mr. Crow Ghost.

4 CHAIRMAN NELSON: It's a long letter. Can you
5 point me to the page you're looking at?

6 MR. CAPOSSELA: The attachment to the letter on
7 page 6. There's a caption, Additional issues related to
8 impacts on Tribes.

9 The paragraph that's second to the bottom of
10 that letter states "We recommend that the Revised Draft
11 EIS clarify the extent of Indian Country lands
12 potentially impacted by the proposed project, including
13 tribal trust and allotted tribal member land. We also
14 recommend that the Revised Draft EIS address the
15 potential impacts to areas where Tribes may have
16 unadjudicated claims to water bodies that could be
17 affected by spills from the proposed pipeline."

18 Mr. Crow Ghost has already testified that the
19 Tribe is in a process of negotiations with the State of
20 South Dakota to resolve the unadjudicated water claims of
21 the Tribe, including unadjudicated claims to the Grand
22 River.

23 CHAIRMAN NELSON: I'm sorry. Are we on 8025?

24 MR. CAPOSSELA: Yes, we are, sir.

25 CHAIRMAN NELSON: Page 6? The last paragraph

1 I've got talks about migratory birds.

2 MR. CAPOSSELA: There's an attachment. There's
3 an enclose to the letter.

4 And the paragraph that I just read is on page 6
5 to the enclosure, which the enclosure is entitled
6 detailed comments or something to that effect.

7 And page 6 to the enclosure has a caption
8 Additional issues related to impacts on Tribes. It's set
9 out separately because the impacts on tribal lands and
10 tribal waters must be evaluated separately because of the
11 unique responsibilities to the Tribes by the federal and
12 state governments.

13 CHAIRMAN NELSON: Thank you.

14 MR. CAPOSSELA: You're welcome, sir.

15 MR. SMITH: The exhibit is admitted.

16 MR. CAPOSSELA: Thank you, Mr. Smith.

17 MR. SMITH: Chairman Nelson wants to revisit the
18 admission of our previous exhibit.

19 CHAIRMAN NELSON: Not the previous exhibit.

20 8011.

21 I would -- I guess I'd like to hear a little bit
22 more argument on this one before I'm comfortable. You
23 know, we have a clear Order talking about the fact that
24 climate change was not going to be part of this
25 proceeding, and the very first sentence of this indicates

1 that's what this is premised on.

2 MR. CAPOSSELA: The theme of the article is
3 long-term drought, Mr. Chairman, and the foundation
4 propounded by Mr. Crow Ghost -- he didn't say anything
5 about climate change.

6 CHAIRMAN NELSON: Actually the first sentence
7 does.

8 MR. CAPOSSELA: No. Mr. Crow Ghost's testimony
9 did not involve greenhouse gas emissions. He's a water
10 manager.

11 The purpose of the article is drought and his
12 concerns with drought. He testified about wildlife and
13 his concerns with the impact of diminished water flows on
14 wildlife. And so we would hope that it would remain in
15 the record.

16 MR. SMITH: Mr. Moore.

17 MR. MOORE: Keystone has not challenged Mr. Crow
18 Ghost's prefiled testimony related to drought. And I can
19 assure you that Mr. Gough will seize on the article as an
20 opportunity to argue that climate change is now an issue
21 in the hearing. And I think it's not and should not be,
22 and I objected to relevance for that reason.

23 COMMISSIONER HANSON: Excuse me. I'm
24 reacquainting myself with the exhibit.

25 MR. RAPPOLD: Mr. Smith.

1 MR. SMITH: Yes, sir.

2 MR. RAPPOLD: I'm a little confused. The
3 original Environmental Impact Statement contemplated in
4 this Permit started in 2009, which was ultimately denied
5 in 2011, didn't address climate change. In 2012
6 TransCanada applied for a new Presidential Permit and
7 eventually a new Final Supplemental Environmental Impact
8 Statement issued.

9 And clearly that Final Supplemental Environment
10 Impact Statement addresses climate change. Many federal
11 agencies have submitted comments on that topic, and it's
12 actually a -- I believe it's in the notice for that
13 Supplemental Environmental Impact Statement.

14 So I'm a little bit curious as to which applies,
15 and if the second one is the one that applies, the 2012
16 Application, why the topic of climate change is not
17 relevant to these proceedings.

18 MR. SMITH: Because as the Commission ruled
19 earlier -- I mean, I didn't, they did. But the reason is
20 because it's beyond the scope of what this is.

21 This is a -- within the boundaries of a
22 South Dakota pipeline Permit. Not the extraction of tar
23 sands oil in Canada.

24 MR. RAPPOLD: I'm not talking about the
25 extraction -- thank you for the clarification.

1 COMMISSIONER HANSON: I will allow for
2 reconsideration, and I do note that it speaks to global
3 warming and induced changes and such, hydro climate,
4 et cetera.

5 MR. SMITH: The objection -- we're going to
6 reconsider and --

7 MR. CAPOSSELA: May I make a comment before
8 there's a ruling?

9 MR. SMITH: Sure.

10 MR. CAPOSSELA: We're not trying to side door
11 climate change here. We're talking about water.
12 Mr. Crow Ghost is the water resources director.

13 Rule 105 of the Rules of Evidence, South Dakota
14 Codified Law 19-19-105, it's Rule of Evidence 105 does
15 permit for evidence to have limited admissibility.

16 And under that rule we're not proposing this for
17 the purpose of contending that Keystone XL Pipeline will
18 cause climate change, although we may have views on that.
19 That's not the purpose for the request that this document
20 be admitted.

21 The purpose is for the limited purpose that the
22 Central Plains of the United States, including
23 South Dakota, is currently suffering from long-term
24 drought that is expected to continue on into the distant
25 future.

1 And Mr. Crow Ghost is the water manager for the
2 reservation. That's why we sought the admission of this
3 exhibit. Not to try to backdoor the climate change
4 issue.

5 Even though we may have -- perhaps we wished
6 that that ruling earlier in this proceeding were
7 different, we're not challenging that ruling. It hasn't
8 been offered for that purpose. We're talking about
9 water.

10 MS. LONE EAGLE: If I could make a comment,
11 please, too.

12 MR. SMITH: Okay. We're going to sustain. The
13 Commissioners feel that way.

14 MR. CAPOSSELA: We'll move on. Thank you,
15 Mr. Smith. We'll move on.

16 Q. Mr. Crow Ghost, you testified that you're familiar
17 with the Environmental Impact Statement of the Department
18 of State in some respects, at least as it relates to your
19 position with the Tribe.

20 I'm going to approach you with a document, which is
21 another letter from the Environmental Protection Agency.
22 It's marked as Exhibit 8024. It's a letter from the EPA
23 to the State Department dated June 6, 2011.

24 Is that a letter, Mr. Crow Ghost that the Standing
25 Rock Sioux Tribe was copied on by the EPA?

1 A. Yes.

2 Q. Is that a document that your office maintains --

3 A. Yes.

4 Q. -- in its records as part of your position?

5 A. Yes.

6 MR. CAPOSSELA: Standing Rock Sioux Tribe moves
7 for the introduction of the exhibit that's marked 8024, a
8 letter of June 6, 2011, of the Environmental Protection
9 Agency of the Department of State.

10 MR. MOORE: Object to relevance.

11 MR. CAPOSSELA: There has been discussion of the
12 applicability and information in the Environmental Impact
13 Statement and the unique impacts on the reservation. And
14 it's being introduced for that purpose.

15 MR. SMITH: Staff, do you have a --

16 MS. EDWARDS: We have no objection to the
17 admission for the limited purpose. I don't believe that
18 would open any doors.

19 MR. CAPOSSELA: Thank you.

20 MR. SMITH: Thank you. I'm going to overrule.
21 And, again, with the explanation that it's admitted for
22 that purpose.

23 MR. CAPOSSELA: Thank you, Mr. Smith.

24 Q. Mr. Crow Ghost, we have discussed the potential
25 impacts of construction and open trenching on the waters

1 of the reservation, just the construction piece of it.

2 There's also been a lot of concern expressed about
3 the potential for oil release, a potential release of oil
4 from Keystone XL.

5 Is that something -- is that a concern of yours?

6 A. Yes, it is.

7 Q. Would you care to elaborate on that at all?

8 A. Well, yeah. Basically an oil spill in a water
9 source no matter where it's located is always potentially
10 bad for the residents and also the fish and animals,
11 every wildlife there is.

12 So, I mean, I'm sure that -- I will just say without
13 elaborating any farther that it's potentially one of the
14 most dangerous, hazardous spills next to a nuclear blast
15 that you can have anywhere close to human and wildlife
16 populations.

17 MR. CAPOSSELA: I'm going to approach the
18 witness with the exhibit that's been marked 8014. It's a
19 United States Congressional Research Service Report
20 titled Oil Sands and Keystone XL Pipeline. Background
21 and Selected Environmental Issues.

22 8014.

23 Q. Mr. Crow Ghost, as part of your office's work,
24 working with the Environmental Protection Agency, the
25 Department of the Interior on these issues, is this a

1 document of the Standing Rock Sioux Tribe?

2 A. Yes.

3 Q. Is this a document in your -- you've testified that
4 your office maintains these types of records as part of
5 your environmental management work.

6 Is this one of those records?

7 A. Yes, it is.

8 MR. CAPOSSELA: The Tribe moves for the
9 introduction of the exhibit that's been marked 8014, the
10 Congressional Research Service Report on the Keystone XL
11 Pipeline.

12 MR. MOORE: I'll object to relevance, hearsay,
13 and foundation.

14 MR. CAPOSSELA: It's not hearsay. It's a public
15 record.

16 MR. SMITH: Overruled.

17 Q. Mr. Crow Ghost, do you have any concerns relating to
18 the project sponsor, TransCanada, itself as part of your
19 tracking this process of the reviews of the Keystone XL
20 Pipeline?

21 Would you elaborate on any concerns that you may
22 have as you've studied this issue?

23 A. Well, I mean, yeah. There's been a lot of safety
24 issues. There's a lot of issues that I've read as far as
25 the EIS, the FEIS, and that the potential impacts on

1 water sources is very great.

2 You know, I -- it's just something that our office,
3 our 106 coordinator and myself have been looking into for
4 the past, you know, two years now, three years. And
5 we're just familiarizing ourselves with the potentials of
6 what can happen, if it happens and when it does happen.

7 Q. You know, you've got -- you testified that you've
8 been on the Tribal Council, that you've worn different
9 hats as a tribal -- as a tribal person at Standing Rock.

10 Do any of those hats involve emergency management?

11 A. Yeah. I was also part of an emergency management
12 team of the reservation for any type of spills, be it
13 railroad derailments, chemical trucks -- I mean, trucks
14 with chemicals or oil, or what have you, contaminants
15 coming onto our reservation. You know, fires, tornadoes,
16 any kind of emergency. So, yes, I've been a part of the
17 Emergency Task Force team for quite a while.

18 Q. So you've been involved in emergency response for
19 weather, the environmental issues; is that right?

20 A. Correct.

21 MR. CAPOSSELA: I'm going to approach Mr. Crow
22 Ghost with an exhibit that's marked 8021. It's an
23 Emergency Response ERP Puget Sound. It was prepared by
24 Kinder Morgan Canada, Inc.

25 Q. Mr. Crow Ghost, as you testified, one of the many

1 hats you wear involves emergency response. Is that a
2 document -- are you familiar with that document?

3 A. Yeah. It's several pages long. But I just
4 familiarized myself with a few pages that I wanted to let
5 my tribal representation know about.

6 Q. Do you have any comparable study for Keystone XL,
7 any comparable plan for Keystone XL?

8 A. No.

9 MR. CAPOSSELA: The Tribe moves for introduction
10 of the exhibit that's been marked 8021, the Emergency
11 Response Plan for the Puget Sound Pipeline System that
12 was prepared by Kinder Morgan Company for the pipeline
13 system from British Columbia to Washington State for the
14 limited purpose of demonstrating what a thorough
15 Emergency Response Plan may look like.

16 MR. MOORE: Object to relevance, hearsay, and
17 foundation.

18 MR. SMITH: Sustained.

19 Q. Do you have anything else you'd like to testify to
20 this morning, Mr. Crow Ghost, to the Utilities Commission
21 as it relates to the issues we've discussed this morning?

22 A. I mean, no. I think I just want to say as a tribal
23 employee, also a tribal enrolled member, that the
24 Standing Rock Sioux Tribe Department of Water Resources
25 opposes the TransCanada Pipeline coming through not only

1 our aboriginal territories but our waterways that can
2 possibly potentially affect the ways of life of not only
3 South Dakotans but also my relatives and your relatives
4 as well.

5 And we do oppose the TransCanada Pipeline as
6 respects to the Water Commission and these dealings
7 today. So that's really all I have.

8 MR. CAPOSSELA: Thank you, Mr. Crow Ghost. I
9 have no further questions for this witness, Mr. Smith.

10 MR. SMITH: Thank you. TransCanada.

11 MR. MOORE: No questions. Thank you.

12 MR. SMITH: We'll go to Intervenors.

13 Mr. Clark.

14 MR. CLARK: Yes, sir. I have a few questions.

15 CROSS-EXAMINATION

16 BY MR. CLARK:

17 Q. Good morning, Mr. Crow Ghost. Right here.

18 You stated in your testimony that you believe the
19 release of oil along the proposed pipeline would possibly
20 affect the Standing Rock Sioux Tribe; is that correct?

21 A. Yes.

22 Q. Okay. Would it be fair to say that the construction
23 and just general operation of the Keystone XL Pipeline as
24 proposed would also affect the Standing Rock Sioux Tribe?

25 A. Yes.

1 Q. Okay. You also just talked about that part of your
2 professional duties are assisting in the emergency
3 management and response to emergencies on the Standing
4 Rock Sioux Reservation; is that right?

5 A. Correct.

6 Q. To the best of your knowledge, has Keystone or any
7 of its agents submitted any sort of contact information,
8 emergency contact information, to the Standing Rock Sioux
9 Tribe or its emergency entities?

10 A. No.

11 Q. To the best of your knowledge, has Keystone provided
12 any sort of emergency training to the Standing Rock Sioux
13 Tribe or any of its emergency entities?

14 A. No.

15 Q. Okay. Have you personally been contacted or has
16 Keystone made any attempt to seek out and consider your
17 professional opinion, professional knowledge of the local
18 area around the Standing Rock Sioux Reservation?

19 A. No.

20 Q. To the best of your knowledge, has Keystone or any
21 of its agents sought out and considered the local
22 knowledge of anyone else in your office?

23 A. No.

24 Q. To the best of your knowledge, has Keystone or any
25 of its agents sought out and considered the local

1 knowledge of any other entity of the Standing Rock Sioux
2 Tribe?

3 A. No.

4 MR. CLARK: No further questions.

5 MR. SMITH: Mr. Rappold.

6 MR. RAPPOLD: Thank you, Mr. Smith.

7 CROSS-EXAMINATION

8 BY MR. RAPPOLD:

9 Q. Good morning, Mr. Crow Ghost.

10 A. Good morning.

11 Q. My name is Matt Rappold. I represent the Rosebud
12 Sioux Tribe.

13 Just a follow-up question on the Winters Doctrine.
14 Would it be your understanding that the rule from the
15 Winters Doctrine applies to all the Tribes in
16 South Dakota?

17 A. Yes.

18 Q. And that would include the Rosebud Sioux Tribe?

19 A. Yes.

20 Q. And is it also your understanding of the Winters
21 Doctrine that Tribes have protected water rights even
22 though they may not actually be quantified?

23 A. Yes.

24 MR. RAPPOLD: Thank you. No further questions.

25 MR. SMITH: Ms. Real Bird or Baker?

1 MS. BAKER: The Yankton Sioux Tribe has no
2 questions for this witness but thanks him for his
3 presence.

4 Thanks.

5 THE WITNESS: Thank you.

6 MR. SMITH: Dakota Rural Action.

7 MR. ELLISON: Dakota Rural Action has no
8 questions for Mr. Crow Ghost but thanks him for his
9 testimony.

10 MR. SMITH: Ms. Craven.

11 MS. CRAVEN: The Indigenous Environmental
12 Network has no questions for Mr. Crow Ghost and also
13 thanks you for appearing here today.

14 MR. SMITH: Mr. Gough.

15 MR. GOUGH: The InterTribal Council On Utility
16 Policy has a question or two.

17 But first I would like to thank TransCanada for
18 responding so quickly to the issue of climate. I'm glad
19 to see that that is front and foremost on their minds.

20 I'd like to ask Mr. Smith if I can have -- what
21 exactly was the ruling on 8011?

22 MR. SMITH: We sustained the objection.

23 MR. GOUGH: The objection to the admission?

24 MR. SMITH: Yes.

25 MR. GOUGH: Thank you. That cuts down my

1 questions considerably, as you may be aware.

2 CROSS-EXAMINATION

3 BY MR. GOUGH:

4 Q. I'm concerned, and I'd like to hear more with regard
5 to your concern about drought affecting the Standing Rock
6 Sioux Tribe.

7 Your testimony was that you had been working with
8 NOAA. And are you familiar with the term NIDIS?

9 A. Yes.

10 Q. National Integrated Drought Information System, I
11 believe is what it stands for.

12 A. I've looked at it, yes.

13 Q. Yes. Okay. And you've seen the drought monitoring
14 maps that have been produced by NOAA?

15 A. Yes.

16 Q. Although the article, I guess, and your previous
17 testimony had to do with the Central Plains. Do you see
18 this extending into the Northern Plains, your concern for
19 drought?

20 A. Yes, I do.

21 Q. Are you concerned both in terms of water quality and
22 water quantity?

23 A. Yes, I am.

24 Q. Do you see threats to water quantity coming from the
25 proposed project?

1 A. Yes. Yes, I do. I do. The use of the water for
2 construction and -- yes. From the states.

3 Q. And I apologize. I'm presuming that since your
4 earlier testimony seemed to go to water quality, I was
5 just zeroing in on the other aspect.

6 A. Sure. Thanks.

7 Q. Are these concerns for water quality and quantity in
8 your opinion shared by the other Tribes that you may be
9 aware of through your meetings with them?

10 A. Yes, they are very much so. As earlier talked about
11 in my testimony, I had mentioned the Great Plains Tribal
12 Water Alliance.

13 I also had mentioned other Tribes along the corridor
14 of the pipeline, part of the aboriginal territories of
15 our treaty lands that are tremendously concerned that the
16 pipeline runs through their aboriginal not only
17 territories but waterways that will be affected with the
18 quantity and also very much the quality of potential, you
19 know, breaks. Not only breaks but also the construction
20 impacts of the pipeline around the waterways that we
21 talked about, the open trenching.

22 So, yes, other Tribes that I'm well-aware of with
23 the Great Plains Tribal Water Alliance are very much so
24 wanting to, you know, know what's going to happen here
25 with the state. So they are aware of it and concerned.

1 Q. Thank you. Are you aware of concerns extending to
2 Tribes beyond the borders of South Dakota?

3 A. Yes, I am.

4 Q. Montana, Nebraska, Canada, elsewhere?

5 A. Montana, Canada, Nebraska, Iowa. Yes. I'm also
6 part of the Missouri River Implementation Committee, the
7 MRIC, and we have in our outbreaks talked about potential
8 pipeline activities in the great -- I don't want to say
9 the Great Plains but up and down the central corridor of
10 the United States.

11 Q. Is it your opinion that these tribal concerns would
12 be alleviated if there was no pipeline built?

13 A. Yes.

14 Q. Have you had a chance to look at the initial Permit
15 from 2009, 2010?

16 A. Yes, I have looked at it.

17 Q. Are you comfortable with the protections afforded,
18 if any, in that Permit?

19 A. No, I'm not.

20 Q. Do you think these kinds of concerns were adequately
21 addressed in that Permit?

22 A. No. Not what I looked at. I couldn't see they
23 addressed that we would -- of the concerns that would
24 protect our future.

25 Q. Is it your opinion as an official of the Standing

1 Rock Sioux Tribe that if this Commission were to
2 recommend or to rule that recertification was not in
3 order and that a new permit proceeding would be
4 instigated, initiated, that you'd have a chance to raise
5 these issues in a more comprehensive way?

6 MR. MOORE: I'll just object. Irrelevance and
7 argument at this point.

8 MR. SMITH: Sustained.

9 MR. GOUGH: Thank you. I have no further
10 questions.

11 I appreciate your testimony.

12 THE WITNESS: Thank you.

13 MR. SMITH: Mr. Dorr. Oh, did he leave?

14 MS. BAKER: He stepped out.

15 MR. SMITH: Mr. Harter.

16 CROSS-EXAMINATION

17 BY MR. HARTER:

18 Q. Mr. Crow Ghost, is the Keystone XL crossing upstream
19 from where your water intakes are for your reservation?

20 A. Yes.

21 Q. You're aware of the first Keystone Pipeline that's
22 come through North Dakota, South Dakota?

23 A. Yes.

24 Q. Do you think that in creating a second corridor
25 farther west this is increasing our chances of

1 contaminating more water in South Dakota and North
2 Dakota -- or South Dakota because this one isn't crossing
3 North Dakota.

4 A. More west?

5 Q. Yes. The previous pipeline is on the east side of
6 the Missouri River, and now this one's on the west side
7 of the Missouri River.

8 So do you believe that this is increasing our
9 chances for our water contamination?

10 A. Yes.

11 MR. HARTER: Thank you. That's all.

12 MR. SMITH: Ms. Jewett.

13 CROSS-EXAMINATION

14 BY MS. JEWETT:

15 Q. Hello, Mr. Crow Ghost. Thank you for your
16 testimony.

17 As you know, I'm from Cheyenne River down below, and
18 I live on the Moreau River. A few years ago the folks
19 from Game & Fish put up signs telling us not to eat the
20 fish from the Moreau River.

21 Is that kind of because of, I don't know, mercury or
22 whatever it was? Is that the situation with the Grand
23 River as well?

24 A. Yes, it is. It was. Yeah.

25 Q. Do you have any idea why that is, or do you know the

1 source of that contamination?

2 MR. MOORE: I'll object to relevance.

3 MR. SMITH: Sustained.

4 MS. JEWETT: What does that mean? I don't know.

5 Sustained, what does that mean? I can't ask the

6 question? All right.

7 Anyway, thank you.

8 MR. SMITH: Ms. is it pronounced -- do you go by

9 both last names?

10 MR. BARDAGLIO: I go by Bardaglio.

11 MR. SMITH: Okay. Ms. Bardaglio.

12 MR. BARDAGLIO: I have no questions. Thank you.

13 MR. SMITH: Ms. Lone Eagle.

14 MS. LONE EAGLE: Before I begin my questions, I

15 want to at this point have a standing objection to any

16 future objections that TransCanada may make.

17 Earlier the Commission sustained an objection on

18 Exhibit 8011 based on TransCanada's objection that

19 Mr. Gough may in the future decide to bring an argument.

20 So they're basing their objection on something that may

21 happen in the future.

22 So I want a standing objection to their

23 objections that they may have in the future.

24 Now I'll begin my questions.

25

CROSS-EXAMINATION

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BY MS. LONE EAGLE:

Q. Thank you, Mr. Crow Ghost, for being here. My name is Elizabeth Lone Eagle. I'm an Intervenor. I'm also a enrolled member of the Rosebud Sioux Tribe and married into the Sioux Tribe, and my family and I, we live in Bridger.

A. Hello.

Q. Hello.

Are you familiar with the term "high consequence area"?

A. Yes.

Q. Okay. Has anyone contacted you or anyone you know of within the Standing Rock Sioux Tribe regarding a risk assessment for the KXL Pipeline?

A. No.

Q. If you were considered to be living in a high consequence area, is that information that you would like to have?

A. Definitely.

Q. Do you believe you would be entitled to know that information?

A. Definitely.

Q. And the same for the Standing Rock Sioux Tribe?

A. Definitely.

1 Q. Do you think that that is information that could be
2 useful to the Tribe?

3 A. Yes.

4 MS. LONE EAGLE: Thank you very much. I'm done
5 with my questions.

6 MR. SMITH: Mr. Seamans.

7 MR. SEAMANS: No questions.

8 MR. SMITH: Ms. Smith.

9 MS. SMITH: No questions.

10 MR. SMITH: Mr. Tanderup.

11 MR. TANDERUP: No questions. Thank you.

12 MR. SMITH: Staff.

13 MS. EDWARDS: Thank you, Mr. Smith. Briefly.

14 CROSS-EXAMINATION

15 BY MS. EDWARDS:

16 Q. Concerning the two letters that were introduced into
17 evidence, I believe they were Exhibits 8024 and 8025, are
18 you aware of whether or not the Final Supplemental
19 Environmental Impact Statement addressed any of the
20 issues raised in those letters that you discussed?

21 A. Am I aware of it?

22 Q. Just are you aware?

23 A. Yes.

24 Q. Did the FSEIS address those issues?

25 A. They address -- yes, they did.

1 Q. Would you say that they addressed them to your
2 satisfaction?

3 A. No.

4 MS. EDWARDS: Okay. Thank you.

5 MR. SMITH: Commissioners.

6 CHAIRMAN NELSON: I want to thank you for your
7 written testimony. I found it interesting to read
8 through. And most of the questions that I have written
9 down as I read through that have already been answered
10 but just a couple.

11 In your written testimony you indicated that the
12 pipeline will cross the North Fork of the Grand River.
13 Can you tell me where it's crossing the North Fork of the
14 Grand River?

15 THE WITNESS: I couldn't give you the exact
16 location, but it is off the reservation and it is -- I
17 couldn't give you the township and range if that's what
18 you're asking.

19 CHAIRMAN NELSON: Well, I'm asking what town is
20 it close to. Because, as I'm understanding the map, I'm
21 not seeing where it's crossing the North Fork and the
22 Grand River.

23 MR. CAPOSSELA: Mr. Chairman, thank you for
24 pointing that out. That was an error in Mr. Crow Ghost's
25 testimony. And he responded earlier in oral testimony

1 that it does cross the South Fork and that was an error
2 and that's been corrected.

3 Thank you for pointing that out.

4 CHAIRMAN NELSON: Is it within -- do you believe
5 it is within this Commission's jurisdiction to resolve
6 your tribal claims under the Winters Doctrine?

7 THE WITNESS: Not directly.

8 CHAIRMAN NELSON: You were asked a question
9 earlier about fishing. Do tribal members fish, catch,
10 and eat fish from the Grand River?

11 THE WITNESS: Currently?

12 CHAIRMAN NELSON: Yes.

13 THE WITNESS: Yes.

14 CHAIRMAN NELSON: Last question I've got, I
15 believe.

16 In your capacity -- and we've talked a lot about
17 observing drought, dealing with drought.

18 Do you monitor the U.S. Drought Monitor Map on a
19 periodic basis?

20 THE WITNESS: Yes, I do.

21 CHAIRMAN NELSON: How much of the Standing Rock
22 Reservation is currently indicated as being under any
23 kind of drought condition based on that map?

24 THE WITNESS: The whole reservation is.

25 CHAIRMAN NELSON: No further questions.

1 MR. SMITH: Commissioner Hanson.

2 COMMISSIONER HANSON: Good morning, Crow Ghost.
3 Thank you for your testimony.

4 THE WITNESS: Good morning.

5 COMMISSIONER HANSON: And traveling here.
6 Appreciate it.

7 THE WITNESS: Thank you.

8 COMMISSIONER HANSON: I just have a couple of
9 questions that were prompted by Mr. Gough's questions.
10 You answered that the Conditions that were
11 placed on the XL Pipeline were lacking -- I'm
12 paraphrasing now, but with the questions and answers
13 there are several that some of the Conditions were
14 lacking and some of them were -- appeared that you
15 would -- from your answer that you would prefer
16 additional Conditions.

17 What additional Conditions would you have
18 preferred?

19 THE WITNESS: A better study of the water
20 quality for potential hazards, spills. Also cultural
21 impacts, cultural resource impacts. Just overall better
22 water quality study.

23 COMMISSIONER HANSON: A better water quality
24 study.

25 THE WITNESS: Water quality study.

1 COMMISSIONER HANSON: Is there anything in
2 particular that you can think of as far as better water
3 quality study than what was -- that's all right. I
4 won't --

5 And there are cultural resource impacts as part
6 of the Conditions. Is there -- are there some other ones
7 that are missing there or --

8 MR. CAPOSSELA: Excuse me. Commissioner Hanson,
9 might it helpful for Mr. Crow Ghost to briefly review the
10 Amended Conditions?

11 COMMISSIONER HANSON: Well, I'm just trying to
12 pick his mind a little bit, whatever's on it. If he
13 doesn't have any right now to mention, that's fine.

14 THE WITNESS: I mean, no. Not really, as the
15 position that I hold right now. You know, the quality of
16 the water and the potential impacts of the downstream
17 areas of my reservation and of the residents and also the
18 intake system is -- it wasn't addressed as well as I was
19 hoping for.

20 COMMISSIONER HANSON: Thank you very much.

21 THE WITNESS: Thank you.

22 COMMISSIONER HANSON: Safe travels.

23 MR. SMITH: Does Keystone have any follow up?

24 MR. MOORE: No, thank you.

25 MR. SMITH: Intervenors, any follow up to

1 Commissioner questions?

2 Mr. Gough.

3 MR. GOUGH: I'm happy to go in turn.

4 MR. SMITH: Yeah. I was just looking to see if
5 there were no hands. Usually on this follow up I take it
6 real informally.

7 MR. GOUGH: I have a couple of follow-up
8 questions.

9 REXCROSS-EXAMINATION

10 BY MR. GOUGH:

11 Q. Sir, do you believe that it's within the
12 Commission's jurisdiction to respect the Winters
13 Doctrine?

14 A. Yes, I --

15 MR. MOORE: I'll object to this, I guess, as
16 argumentative and calling for legal issues related to the
17 Commission's jurisdiction.

18 MR. SMITH: Sustained.

19 MR. GOUGH: He had a direct question with regard
20 to this Commission resolving it. And that was not
21 objected to.

22 MR. SMITH: That's true. Well, that's a
23 Commissioner so I can't --

24 MR. GOUGH: Perhaps the Commissioners could
25 overrule the objection.

1 MR. SMITH: Maybe I'll change my mind due to
2 that and allow him to answer.

3 MR. GOUGH: Thank you.

4 Q. You're allowed to answer that question.

5 A. I would hope that part of the Commissioners' voters
6 that are on the reservation that -- you know, that they
7 respectfully protect would be the law in which they
8 protect their water rights of South Dakota, which is the
9 Winters Doctrine.

10 So, yes, I would hope that the Commission would look
11 at the Winters Doctrine to help protect that, yes.

12 Q. Observing it and respecting it is a little different
13 than resolving it for you, I take it?

14 A. Respecting it. Sorry.

15 Q. Thank you.

16 Lastly, you indicated a familiarity with the Drought
17 Monitor, South Dakota Drought Monitor. Does that -- do
18 those mappings change regularly?

19 A. Yes.

20 Q. Weekly? Do you know? Monthly?

21 A. Well, yeah. They would change weekly and monthly.
22 I don't look at them weekly and monthly, though.
23 Probably biannually because they're a long-term type of
24 system setup so.

25 Q. And sometimes their appreciation of drought, it

1 moves around. It's in drought, certain degrees of
2 drought, and out of that?

3 A. Yes.

4 Q. It changes?

5 A. Yes, it does.

6 MR. GOUGH: Thank you. No further questions.

7 MR. CAPOSSELA: Briefly on redirect, Mr. Smith.

8 MR. SMITH: I just wanted to see if there were
9 any other Intervenors.

10 Okay. Go ahead.

11 MS. LONE EAGLE: Okay. Thank you.

12 REXCROSS-EXAMINATION

13 BY MS. LONE EAGLE:

14 Q. My question is also in reference to Commissioner
15 Nelson's question about the Winters Doctrine.

16 Based on your understanding of that Doctrine, you
17 stated that not directly would the Commission have
18 jurisdiction, but would that Doctrine then preclude them
19 from having any authority to issue a permit in which
20 tribal water resources would be affected?

21 A. Rephrase that question. I'm not understanding it.

22 Q. According to the Winters Doctrine you stated that
23 the Commission does not directly have jurisdiction.

24 A. Okay.

25 Q. Okay. But there's a difference between having

1 jurisdiction and having authority.

2 A. Yeah.

3 Q. Do you understand it?

4 A. Yes.

5 Q. Okay.

6 A. So yeah. I believe that the -- that the Commission
7 does have a right to acknowledge and protect the Winters
8 Doctrine for its members of the state that are Native
9 American that follow underneath that Winters Doctrine
10 right. So, yes, they do.

11 Q. They have the authority to make a decision about
12 resources affected --

13 A. No. They do not have the authority to make the
14 decision.

15 Q. Thank you.

16 A. They do not have the authority.

17 Q. Thank you very much.

18 A. In my opinion.

19 MR. SMITH: Mr. Capossela, redirect.

20 MR. CAPOSSELA: Thank you. Just briefly.

21 REDIRECT EXAMINATION

22 BY MR. CAPOSSELA:

23 Q. We're not in a bad year right now. Is your concern
24 short-term or long-term?

25 A. Long.

1 MR. CAPOSSELA: Thank you. No further
2 questions.

3 MR. SMITH: Oh, okay. You may step down.

4 THE WITNESS: Thank you.

5 MR. SMITH: Are you ready to proceed, Staff?

6 MS. EDWARDS: I am, Mr. Smith. Staff calls
7 Daniel Flo.

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

9 DIRECT EXAMINATION

10 BY MS. EDWARDS:

11 Q. Good morning, Mr. Flo. Could you please state your
12 name and business address for the record.

13 A. Yes. Daniel Flo, and I live and work in Portland,
14 Oregon.

15 Q. By whom are you employed?

16 A. Natural Resource Group.

17 Q. And what is your job title?

18 A. I am a senior consultant and project manager.

19 Q. And in that role what are your job responsibilities?

20 A. Primarily I manage projects on behalf of our
21 clients. Typically energy projects, pipelines, electric
22 transmission, wind projects. And we do the environmental
23 investigations and environmental surveys, environmental
24 permitting, and environmental review for those types of
25 projects such as environmental impact statements.

1 Q. Can you briefly summarize your educational
2 background?

3 A. Yes. I have a Bachelor of Science in geography and
4 a law degree from Lewis & Clark Law School in Portland,
5 Oregon, bachelor's from Minnesota State University in
6 Mankato, Minnesota.

7 Q. Can you briefly describe your work experience since
8 college?

9 A. Yes. After -- during and after college I worked for
10 about 10 years at a printing company, but then after law
11 school I worked for three years at the Minnesota
12 Department of Commerce. And since then I've been in the
13 consulting industry working for different firms,
14 including Natural Resource Group.

15 Q. Drawing your attention to what has been previously
16 marked for identification purposes as Exhibit 3009, is
17 this your prefilled testimony?

18 A. Yes, it is.

19 Q. Do you have any additions, deletions, or edits to
20 make?

21 A. Not to this testimony as filed, no.

22 Q. If I asked you the same questions today, would your
23 answers be the same?

24 A. Yes, they would.

25 Q. And have you also submitted a revised exhibit?

1 A. Yes.

2 Q. And can you please take a moment to explain the
3 situation there?

4 A. Yes. So the exhibit that was originally filed as
5 DF-2 was a working summary of my testimony. What I
6 intended to file as Exhibit 2 or to have filed is what
7 has now been submitted, I understand, as a supplemental
8 filing.

9 And so the new exhibit -- I'm sorry. What are we
10 calling that? Supplemental 2?

11 Q. I believe we called it Revised Exhibit 2.

12 A. Revised 2. Thank you.

13 Revised 2 is a table in which we summarized, I
14 summarized, my findings specifically with regard to the
15 changes to the CMR plan.

16 Q. Thank you.

17 MS. EDWARDS: At this time I would move for the
18 admission of Exhibit 3009.

19 MR. MOORE: No objection.

20 MR. SMITH: Objection anybody?

21 MR. ELLISON: Does that include the revised
22 summary that we just heard about, sir?

23 THE WITNESS: Correct.

24 MR. ELLISON: I guess I do have a question. Is
25 that what you were working on yesterday?

1 THE WITNESS: No.

2 MR. ELLISON: Okay. Is there a reason why this
3 was not filed prior to today?

4 THE WITNESS: It was submitted to Staff back in
5 March, I believe. And I think that it was just an error
6 of filing at the time.

7 MR. ELLISON: You're not responsible for filing;
8 that's Staff's responsibility, is it not?

9 THE WITNESS: Correct.

10 MR. ELLISON: I would object to this filing
11 being contrary to the procedural rules that have been set
12 up, especially because it's now many months past when it
13 was completed and submitted to Staff for submission.

14 MR. SMITH: Staff, do you have a response?

15 MS. EDWARDS: We granted leeway several times
16 before. I'm just asking for the same courtesy.

17 MR. SMITH: We have. Maybe do you have an
18 explanation of why it wasn't --

19 MS. EDWARDS: That was a failure on my part. I
20 submitted the wrong exhibit and didn't notice until last
21 night.

22 MR. SMITH: Okay.

23 MS. LONE EAGLE: I wasn't given that same
24 courtesy.

25 MR. GOUGH: We've had preclusion of testimony

1 not filed on time. I would object.

2 MS. LONE EAGLE: I'd join that objection for the
3 reason I stated earlier.

4 MR. CAPOSSELA: Mr. Smith, I do not join in the
5 objection, but I will point out that a thorough expert
6 report of the Standing Rock Sioux Tribe on ethnobotany
7 was precluded because it did not include a -- a written
8 statement by its author that she wrote it, which I
9 thought was form over substance and overly strict. I --

10 MR. SMITH: Was that in one of the orders?

11 MR. CAPOSSELA: That was, yes.

12 But we don't play that way. And so we do not
13 object to the introduction of the untimely filing. But I
14 thought that that was unnecessarily strict on the part
15 of -- I thought it was wrong for TransCanada to move to
16 exclude it, and I thought it was an unnecessarily strict
17 interpretation of the rules when it was precluded for
18 that reason. And I just want to state that for the
19 record.

20 MR. SMITH: Okay. Ms. Craven.

21 MS. CRAVEN: I have a question about the
22 document. Where were you when you wrote that? The
23 revised exhibit? Where were you?

24 THE WITNESS: Where was I physically?

25 MS. CRAVEN: Yes.

1 THE WITNESS: I was in my office in Portland,
2 Oregon.

3 MS. CRAVEN: Okay. This exhibit has the -- you
4 know, you can check who has written documents by going to
5 the properties, and then you scroll down and you can see
6 who wrote it. And this exhibit has the same author as
7 the exhibit that was submitted yesterday, rebuttal
8 testimony.

9 So I'm just curious how these two recently
10 submitted documents by PUC Staff has the same author,
11 which is -- I don't know. It's probably not you. I
12 don't know. I haven't seen what you have actually
13 submitted via documentation.

14 So I'm just curious if you used a computer here
15 to update it.

16 THE WITNESS: No, ma'am.

17 MS. CRAVEN: Okay. All right. Thank you.

18 MS. EDWARDS: I would ask for some follow up to
19 that, some proof of that, where that's coming from.

20 MS. CRAVEN: Well, I check to see who writes the
21 documents. And it has the properties -- if you look at
22 the properties on this document, the revised exhibit, and
23 you look at the properties on the exhibit that was
24 submitted yesterday, they have the same author, which is
25 different than the other exhibits that the State has

1 submitted. I'm just curious why this is.

2 MR. MARTINEZ: If I may interject, Robin
3 Martinez on behalf of Dakota Rural Action.

4 What Ms. Craven is referencing is if you can
5 recall the line of questions I had yesterday about one
6 particular document where I was asking about the meta
7 data in it and asking I believe one of the other
8 witnesses about the authorship of that document and the
9 origins of it, what Ms. Craven is referencing here is
10 she's finding the exact same sort of user I.D. within the
11 meta data of that -- of this new document.

12 And we're just wondering consequently where it
13 had originated from. And I think that was the question.

14 MR. SMITH: Right. We've -- I think we've dealt
15 with that, didn't we?

16 MR. MARTINEZ: Yeah. I asked a number of
17 questions yesterday of the witness, and it was just sort
18 of a dead-end. And honestly I'm not too terribly
19 concerned about it after the questions I received.

20 MS. EDWARDS: We have checked with our IT
21 department and figured that out so --

22 It's because we convert it here in-house to
23 pdf, and the signature comes somehow from Tina's
24 computer.

25 MR. MARTINEZ: Oh, that's the explanation.

1 MR. SMITH: And we do it so it's available --

2 MS. DOUGLAS: And if you would show me that, I
3 would appreciate it so I can get rid of it. I don't know
4 how. I will definitely try. It's not anything
5 intentional. It's something that my computer is doing
6 obviously.

7 MS. CRAVEN: And I searched the name, and it is
8 identified with a guy named Chad Olson.

9 MR. MARTINEZ: I will be happy to show you later
10 maybe off the record how to get the meta data off of a
11 pdf.

12 MR. SMITH: And get back to it. I'm going to
13 admit the testimony with the revised exhibit. And I just
14 think it's better to have a document that is a correct --
15 because I think it's going to be helpful for everybody in
16 then reviewing things later when we get to that point.

17 MR. HARTER: Mr. Smith, John Harter. I would
18 just -- I'm not going to object to your motion, but I'd
19 just like it known for the record that because of the
20 reason that I was excluded that I think that it's a
21 little bit prejudiced.

22 So I just wanted to note that for the record.

23 MR. SMITH: Okay. Thanks.

24 MS. LONE EAGLE: This is Elizabeth Lone Eagle.
25 And ditto to what he said. And I would make a motion for

1 myself to be readmitted to be allowed to at least present
2 testimony for myself based on this special consideration
3 that's being given to PUC Staff, especially since you all
4 are aware of what my special circumstances were regarding
5 the U.S. Postal Service.

6 Thank you.

7 MR. SMITH: Well, right now I'm just ruling on
8 the request for admission, and it's admitted.

9 MS. LONE EAGLE: What's good for the goose is
10 good for the gander.

11 MS. EDWARDS: I have no further questions on
12 direct.

13 Thank you.

14 MR. SMITH: Okay. We'll go to Keystone.

15 MR. MOORE: No questions. Thank you.

16 MR. SMITH: Okay. We'll go to Intervenors, and
17 I'll go the normal order.

18 Mr. Clark.

19 MR. CLARK: No questions.

20 MR. SMITH: Mr. Rappold.

21 MR. RAPPOLD: Just a few questions, Mr. Smith.

22 Thank you.

23 CROSS-EXAMINATION

24 BY MR. RAPPOLD:

25 Q. Good morning, Mr. Flo. Is it correct that your

1 testimony only addresses soil classifications and CRM
2 plans?

3 A. It's not entirely true, but the purpose of my
4 testimony is that in 2009 Natural Resource Group was in a
5 similar position, assisting PUC Staff to review the
6 Keystone Application at the time, primarily with regard
7 to potential for environmental impacts and construction
8 measures and mitigation measures, restoration, that sort
9 of thing.

10 And so this testimony was purely a review of the
11 changes cited by Keystone in their Appendix C to their
12 certification filing. And then whether -- an analysis of
13 whether our original testimony would change in any way as
14 a result of the Appendix C findings and changes
15 highlighted by Keystone.

16 MR. RAPPOLD: Okay. Thank you.

17 No further questions.

18 MR. SMITH: Okay. Mr. Capossela.

19 MR. CAPOSSELA: Thank you, Mr. Smith.

20 CROSS-EXAMINATION

21 BY MR. CAPOSSELA:

22 Q. You testified that you got your law degree at Lewis
23 & Clark in Portland?

24 A. Yes.

25 Q. Where does a guy find a parking space for the law

1 school for research at Lewis & Clark?

2 A. You live near campus, and you walk.

3 Q. There's been testimony this morning that during the
4 conduct of reclamation at the Sibson property heavy
5 equipment got stuck in a wetland.

6 Is that -- would that comply with the Clean Water
7 Act?

8 A. It sounds like -- well, I would have to have an
9 observation of the conditions at the time and the exact
10 damage, whether there was damage to make a finding or
11 a -- give an opinion on that exact situation.

12 But in general, no, that's -- that would not be
13 consistent with the Corps of Engineers Permit.

14 MR. CAPOSSELA: I have no further questions.
15 Thank you.

16 MR. SMITH: Okay. Ms. Real Bird or Baker.

17 MS. BAKER: Thank you.

18 CROSS-EXAMINATION

19 BY MS. BAKER:

20 Q. Jennifer Baker for the Yankton Sioux Tribe.

21 Mr. Flo, I see that your prefiled testimony focused
22 significantly on findings. Were you focused on the
23 Tracking Table of Changes proposed by TransCanada?

24 A. Yes. That's correct. Appendix C? Are we talking
25 about the same thing there?

1 Q. Yes. Thank you.

2 Did you look to any Conditions or any circumstances
3 of their Permit Application outside of that Tracking
4 Table of Changes?

5 A. No.

6 Q. Thank you. Is there any reason that you were
7 focused only on their proposed changes to the Findings of
8 Fact?

9 A. Well, let me -- let me clarify.

10 So it was the Findings and changes in Appendix C,
11 plus specifically the red line changes in the CMR plan,
12 the Construction Mitigation Reclamation Plan. So those
13 two sources were what we reviewed.

14 And so the reason for that is that it was our
15 understanding that that encompassed the entirety of the
16 changes from the original basis of our 2009 testimony,
17 and the purpose for our assistance to Staff was to review
18 our testimony in 2009 relative to those changes.

19 Q. Okay. And who gave you that understanding, that the
20 only changes were the changes identified by TransCanada
21 in Appendix C and then the red line to the CMR?

22 A. That was my understanding in discussions with Staff
23 regarding the purpose of our scope of work and testimony.

24 MS. BAKER: Thank you. No further questions.

25 MR. SMITH: Okay. Mr. Ellison or Martinez.

CROSS-EXAMINATION

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BY MR. ELLISON:

Q. Good morning, Mr. Flo. I think we met for the first time yesterday.

A. Yes. Hi.

Q. Hi. A couple of questions. A few questions.

You do have a law degree, but you are not admitted to practice --

A. I am not, in any state.

Q. You really haven't practiced as a lawyer, but you have benefited from the scholarship of attending law school and learning about the laws?

A. I'd say that's correct.

Q. And you're also not a licensed engineer?

A. I am not.

Q. One of the things that you have looked at is -- has to do with the issue of potential paleontological finds that might occur along the route of the proposed pipeline; is that correct?

A. That is something that we, NRG, looked at in 2009 as part of our original testimony.

Q. I mean, as I understand your original testimony and as you're here today, that there are a number of areas -- I mean, we're in a very rich what I think is referred to as the paleontological community as a rich bone bed area.

1 Would you agree with that, sir?

2 A. I understand that could be the case, yes.

3 Q. And in order -- when the machines come in to do the
4 excavation to build the trench, that's not a careful
5 scraping of the various layers inch by inch in an effort
6 to not only locate but prevent damage to any
7 paleontological resources that might be in the digging of
8 the trench; isn't that right?

9 A. Not typically, that's correct. Unless someone has
10 awareness for the high propensity for some sort of
11 resource like that.

12 Q. Or possibly a bone or something sticking into the
13 surface that would give the surface operator --

14 A. Visual.

15 Q. If I remember right, I think you said in your
16 previous testimony that, well, a lot of fossils are just
17 pieces that are put back together.

18 Am I remembering that right?

19 A. I don't recall that specifically.

20 Q. Okay. But you would agree, would you not, as
21 someone who's concerned about paleontological specimens
22 and the preservation of them, that using, say, an
23 excavator or a large trenching tool could actually be
24 very destructive to any paleontological finds that might
25 be 2, 3, 4, 5 feet under the ground and not visible --

1 MR. MOORE: Excuse me. I'll just object. I
2 think we're beyond the scope of direct and beyond the
3 scope of this proceeding.

4 MR. SMITH: I mean, I think we're getting out
5 there but if --

6 MR. ELLISON: I'll move on. I just wanted to
7 make that point.

8 MR. SMITH: Okay. Sustained then.

9 Q. Would it be fair to say that that would be similar
10 for any cultural resources that might not be visible on
11 the surface?

12 A. That is the case, and that's why things like
13 unanticipated finds plans are typically part of a
14 construction project.

15 Q. I have a couple of questions, sir, that are -- I
16 think even TransCanada would agree -- maybe more directly
17 related to your current testimony.

18 I noticed on page 3, sir, that you discussed the
19 con. rec. mapping and say that mapping was completed in
20 consultation with the area NRCS staff?

21 A. Yes.

22 Q. Do you know where I'm referring to on page 3?

23 A. Yes.

24 Q. One of the things I -- and I think you mentioned and
25 pointed out that although it was not part of the updated

1 CMRP, there the results are included in the latest FSEIS
2 and Appendix R?

3 A. That's correct.

4 Q. My question has to do with the fact that you note at
5 the bottom of page 3 that the con. rec. units do not
6 specifically include Badland soils.

7 Am I correct that that's part of your testimony?

8 A. Yes.

9 Q. Would you agree with me, sir, that the overriding
10 length of the proposed pipeline through the State of
11 South Dakota goes, in fact, through what might be called
12 Badlands soils or bentonite rich soils?

13 A. I believe that that was part of our original
14 testimony of Dr. Jim Arndt that soil type is likely to
15 occur in the project area, and it's his recommendation
16 that that soil type be mapped as a part of con. rec.
17 units, all of which goes to preparations for how to
18 manage that soil type during construction.

19 Q. Another question I would have, sir, is that you've
20 reviewed the FSEIS as it might relate to the subject
21 matters of your testimony?

22 A. The only review that I did of the FSEIS is to
23 determine whether, in fact, the con. rec. units had been
24 mapped and included as part of that document. I did not
25 review any of the rest of the FSEIS as part of this

1 testimony.

2 Q. Did part of your review include the -- and I
3 apologize. At the moment I can't give you the exact
4 cite, but there was a reference to the fact that along
5 the route approximately 43 percent of the area was
6 considered nonreclaimable.

7 Would that be in the area of these bentonite areas?

8 A. I'm sorry. It was not something that I -- that I
9 reviewed. I just looked to see that this tool was
10 included with the FSEIS.

11 Q. So your work did not really include any of the
12 landslide hazard areas that --

13 A. That's correct. Right. That's correct.

14 Q. Okay.

15 A. So I just wanted to look and compare our original
16 testimony to the potential changes -- or the discussed
17 changes in Keystone's state-specific certification
18 filings and determine whether there were any material
19 changes to our testimony as a result.

20 And over all and including on this specific topic I
21 found that there were no material changes to our original
22 testimony.

23 Q. But if -- since you've agreed with me that -- and
24 certainly maps in the FSEIS show that a majority of the
25 route goes through these bentonite clay areas, isn't that

1 an important omission from the con. rec. units to not
2 specifically include the Badlands soils in their analysis
3 or in what is being proposed to be dealt with by the con.
4 rec. units?

5 A. Sure. I believe our findings originally were that
6 some of the construction measures discussed in the
7 Application, including measures that would be used while
8 constructing through such soils, were typical and
9 appropriate.

10 And so while the recommendation to specifically call
11 out Badlands soils may not have been followed, the
12 construction measures are still available to Keystone to
13 deal with those conditions.

14 Q. But you've not reviewed any TransCanada documents
15 which show exactly how they're going to deal with those
16 documents -- those soils, have you?

17 A. No. No. Other than to know that the con. rec.
18 units are part of their overall project construction
19 plans.

20 MR. ELLISON: Thank you, sir. No further
21 questions.

22 MR. SMITH: Okay. Ms. Craven.

23 CROSS-EXAMINATION

24 BY MS. CRAVEN:

25 Q. Kimberly Craven for the Indigenous Environmental

1 Network. I just have a couple of questions for you.

2 So, Mr. Flo, are you a licensed engineer?

3 A. I am not.

4 Q. And are you being paid to be here today?

5 A. Yes, I am.

6 Q. And the other question I have is has your firm that
7 you're affiliated with, has it done any work for
8 TransCanada?

9 A. Yes. Natural Resource Group has done some work for
10 TransCanada, I think primarily our public affairs group.

11 Q. Okay. And was that --

12 A. Not on this project.

13 Q. Okay. Did you reveal that information to the PUC
14 Staff when they hired your firm to --

15 A. Yes. We had a discussion to assure that there were
16 no conflicts of interest with my participation on this
17 project.

18 Q. Okay. And how did you assure there were no
19 conflicts since your firm has worked for TransCanada?

20 What did that discussion sound like?

21 A. That we have not -- Natural Resource Group has not
22 worked for TransCanada on the Keystone Pipeline project.

23 Q. Uh-huh. So then what projects have you worked for
24 TransCanada on?

25 A. Well, I have never worked for TransCanada on any

1 project.

2 Q. But NRG --

3 A. NRG has. I don't know a list of them, and I don't
4 think that there are very many. But, like I said, it's
5 primarily public affairs projects, which is just a
6 different service that we offer.

7 So in our business model it is not uncommon to work
8 for -- as a third-party consultant to a government agency
9 on one project and perhaps work for that proponent on
10 another different project. And as long as it's different
11 teams of people, different projects, then we are able to
12 avoid conflicts of interest.

13 MS. CRAVEN: Okay. Thank you.

14 MR. SMITH: Mr. Gough.

15 CROSS-EXAMINATION

16 BY MR. GOUGH:

17 Q. Thank you. Bob Gough, InterTribal Council On
18 Utility Policy. Good morning. Not quite afternoon.

19 In the course of your work have you had -- either
20 required or opportunity to review reports, plats, plans,
21 and land surveys with regard to this project?

22 A. Not this project sir, no.

23 MR. GOUGH: Then I have no further questions.
24 Thank you.

25 MR. SMITH: Thank you.

1 Mr. Dorr.

2 CROSS-EXAMINATION

3 BY MR. DORR:

4 Q. Thank you. Gary Dorr, Individual Intervenor.

5 Sir, in your prefiled testimony you said that you
6 assist with routing and citing of projects; is that
7 correct?

8 A. That's correct.

9 Q. You said you assist clients with provisions of the
10 Clean Water Act; is that correct?

11 A. That's right.

12 Q. For this Keystone project you said you reviewed
13 horizontal directional drilling sites?

14 A. Yes. There were, I believe, two water body crossing
15 locations that were changes from the proposed crossing
16 method from our original testimony in 2009 until now, and
17 the change was that those two sites -- I don't remember
18 the names off the top of my head -- were now being
19 proposed as horizontal directional drills.

20 Q. Would crossing any water lines be part of any
21 environmental assessments or environmental impact
22 statements?

23 A. The existence of water supply lines crossed by
24 pipeline route, if known, would be part of an
25 Environmental Impact Statement, to note it as a condition

1 of the environment.

2 Q. Would the crossing of any water lines trigger Clean
3 Water Act provisions?

4 A. Not necessarily.

5 Q. But it might. Is that accurate to say it might?

6 A. I can't think of -- off the top of my head I can't
7 think of any reason -- you're talking about a water
8 delivery pipe essentially?

9 Q. Yes.

10 A. Is that correct?

11 Q. Yes.

12 A. Then I can't think of any way that that would
13 trigger the Clean Water Act, at least not what I'm
14 familiar with, which is primarily Section 404.

15 Q. What about private lines? Do you assess the impact
16 of crossing private water lines in your work?

17 A. No. I do not.

18 Q. Okay. Can you give an example of a private water
19 line that Keystone XL would cross?

20 A. A private -- I'm afraid that's outside of my
21 expertise.

22 Q. So if I'm a landowner and I have a private water
23 line on my land, wouldn't that be part of an
24 Environmental Impact Statement or an environmental
25 assessment?

1 A. Not necessarily. So as part of an Environmental
2 Impact Statement there often is a count of the number of
3 public and private water sources such as wells, but I
4 can't think of an example where having identified a
5 private water well the EIS would then go farther and say
6 that the pipeline also crosses the line that delivers
7 water from the well to the house or whatever the use
8 might be.

9 Q. So if I'm understanding you correctly, if Keystone
10 were to cross in this instance a private water line, the
11 environmental assessment would not take the private water
12 line into account?

13 A. It may not. I'm not saying that -- I'm just saying
14 it's not typically identified in my experience.

15 MR. DORR: Okay. No further questions.

16 MR. SMITH: Mr. Harter.

17 CROSS-EXAMINATION

18 BY MR. HARTER:

19 Q. Good morning. Within the materials that you
20 reviewed were you asked by Staff to find deficiencies
21 that would discredit TransCanada from getting their
22 Permit?

23 A. No.

24 Q. So were you asked by Staff to find deficiencies so
25 that TransCanada could receive their Permit?

1 A. No.

2 MR. HARTER: Thank you. That's all.

3 MR. SMITH: Mr. -- Ms. Bardaglio. Or no. Wait
4 a minute. Ms. Jewett.

5 MS. JEWETT: I don't have any questions.

6 Thanks.

7 COMMISSIONER HANSON: Ms. Bardaglio.

8 MR. BARDAGLIO: Thank you. I have no questions.

9 MR. SMITH: Ms. Lone Eagle. Oh, she left.
10 Okay. Mr. Seamans.

11 MR. SEAMANS: No questions.

12 MR. SMITH: Ms. Smith.

13 MS. SMITH: No questions.

14 MR. SMITH: Mr. Tanderup?

15 MR. TANDERUP: Yes. I have one question to help
16 me understand a bit.

17 CROSS-EXAMINATION

18 BY MR. TANDERUP:

19 Q. In Section 6.2 of the revised document it talks
20 about wetlands crossings. And I see that the original --
21 your original recommendation was only using a 75 foot
22 construction corridor. And I'm wondering why that was
23 changed to 85 foot?

24 A. Excuse me. So what I show and remember is that our
25 original testimony in 2009 was commenting on Keystone's

1 plan that they would reduce their construction right of
2 way width from whatever the standard width would be to
3 85 feet wide in wetlands.

4 And our recommendation was to reduce that even
5 further to 75 feet. That was just a recommendation based
6 on our professional experience.

7 MR. TANDERUP: Okay. Thank you very much. I
8 just -- I was having trouble. It seemed narrower is much
9 better in a wetland, in a fragile environment.

10 Thank you.

11 MR. SMITH: Ms. Lone Eagle back there yet?

12 CHAIRMAN NELSON: No.

13 MR. SMITH: Okay. We'll move on to Staff.

14 MS. EDWARDS: I have no redirect. Thank you.

15 CHAIRMAN NELSON: No questions here.

16 MR. SMITH: Oh, any Commissioner questions?

17 No Commissioner questions. Okay. I guess now I
18 go to you, but you have nothing.

19 MS. EDWARDS: Still no redirect.

20 MR. SMITH: You may step down, sir.

21 THE WITNESS: Thank you.

22 MR. SMITH: Mr. Dorr, are you prepared to go
23 now?

24 MR. DORR: Yes, I am. Mr. Frederick is here.

25 MR. SMITH: Why don't you call him then.

1 MR. DORR: Gary Dorr calls the Honorable Wayne
2 Frederick.

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

4 DIRECT EXAMINATION

5 BY MR. DORR:

6 Q. (Speaks Lakota.)

7 State your name and your address for the record.

8 A. First I'll say -- (speaks Lakota.) Not quite there
9 yet so.

10 (Speaks Lakota.)

11 I greet you all with an open heart and a warm
12 handshake. My name is Wayne Frederick. Lakota name is
13 Pehan Han Ska.

14 I reside from Winner, South Dakota. It's south of
15 here about 100 miles in the path of this pipeline. I
16 come to you as a rancher, also as Tribal Councilman and
17 many other labels that I've been hung with.

18 Q. How many cattle do you have on your ranch?

19 A. Just short of 500 now.

20 Q. Please state your position of employment.

21 A. Tribal Councilman.

22 Q. What is your area of responsibility on the Tribal
23 Council with respect to the Keystone XL project?

24 A. As a Tribal Councilman it would be equal to like a
25 State Senator. So on that aspect I guess I'd have to say

1 that some of the committees that I reside on would be
2 Land and Natural, which is a governing and policy making
3 committee for the Rosebud Sioux Tribe.

4 I also sit on Economic Development, Police
5 Commission, Tribal Ranch, and Regional Director of
6 14 Midwest Tribes through the ITBC. And rancher.

7 Q. And does ITBC stand for?

8 A. InterTribal Buffalo Cooperative.

9 MR. ELLISON: Excuse me, Mr. Dorr.

10 Sir, you have an incredibly powerful voice,
11 which I respect and appreciate. I'm wondering if
12 whoever's controlling the volume could turn it down just
13 a little bit.

14 MR. SMITH: Bend it up a little bit so --

15 THE WITNESS: Is that better?

16 MR. ELLISON: I'm sorry, Mr. Dorr.

17 Yes, sir. Thank you.

18 Q. Please state your professional qualifications and
19 experience with tribal government.

20 A. My college education, you mean?

21 Q. Yes.

22 A. I have an A.A. degree in diesel technology. I have
23 a bachelor's degree in human services, specializing in
24 alcohol and drug rehabilitation and a bachelor's degree
25 in criminal justice.

1 Q. Can you describe your work history with the Rosebud
2 Sioux Tribe?

3 A. Currently five years working for the Rosebud Sioux
4 Tribe, four as their buffalo herd coordinator, and then
5 technically one more month and a year as a Tribal Council
6 representative.

7 Q. Your ranch is significant in Todd County?

8 A. Todd County.

9 Q. Why is there your ranch significant?

10 A. It's the oldest in Todd County, and it's basically
11 the oldest tribal family owned and operated ranch on the
12 reservation.

13 Q. Please state the position of the Rosebud Sioux Tribe
14 with respect to an infringement of treaty rights upon the
15 treaty territory of the Rosebud Sioux Tribe.

16 A. In our opposition for this?

17 Q. Yes.

18 A. We've passed a number of -- I think it is 13
19 different resolutions in opposition covering many
20 different aspects of the pipeline itself.

21 Q. What would be the authority for passing the
22 resolutions to oppose the Keystone XL Pipeline?

23 A. Pardon?

24 Q. What would be the authority for the Tribal Council
25 to pass a resolution opposing the pipeline?

1 A. We're sworn to uphold and protect the treaties of
2 '68, '51, and all that governs within. That would fall
3 under law enforcement, land, land issues, water issues,
4 human rights.

5 Q. Can you tell us if there are any treaty provisions
6 about -- specifically about corporations or people
7 crossing your treaty territory?

8 MR. TAYLOR: Excuse me, Mr. Smith. I'll
9 interpose the same general objection I interposed on this
10 subject in the past.

11 MR. DORR: I can't hear him. Could you please
12 speak up?

13 MR. TAYLOR: I'll interpose the same objection
14 that I posed on this subject in the past and ask for a
15 standing objection.

16 Thank you.

17 MR. SMITH: And would you just in a nutshell --

18 MR. DORR: I can't hear anybody. Can you please
19 speak up?

20 MR. SMITH: Sorry. I was turning my head. Can
21 you just in a nutshell explain your basis for your
22 objection?

23 MR. TAYLOR: Treaty rights, treaty territory,
24 aboriginal land issues have been determined by this
25 Commission to not be relevant to these proceedings.

1 Preliminary order on that has been entered, and it
2 appears we're about to launch on that same ground
3 again.

4 MR. SMITH: Well, I think we have ruled -- I
5 think some of it. I don't know about relevance and --
6 but I think we just felt that it's just not something we
7 have any authority to adjudicate.

8 MR. DORR: I can have him explain -- I'll
9 rephrase the question.

10 MR. SMITH: Okay. And I'll sustain the
11 objection, but go ahead and try to -- and rephrase it.

12 Q. Mr. Frederick, what is aboriginal title?

13 A. Aboriginal title?

14 Q. Yes.

15 A. It would basically be the reserved rights? Is that
16 what you mean?

17 Q. No.

18 A. Aboriginal title? Rephrase the question.

19 Q. What are reserved rights?

20 A. The right that we have to govern ourselves?

21 Q. Okay.

22 A. And then within the '68 and Statute 635 boundaries?

23 Q. Okay. And what are treaty rights? Who gets treaty
24 rights?

25 A. We do -- oh, okay. I was going to say we don't --

1 treaty rights are for nonmembers within the boundaries of
2 the treaty itself.

3 Q. Okay. So let me ask you again. Who receives
4 reserved rights in a treaty?

5 A. Tribal members.

6 Q. Okay. So aboriginal --

7 A. For reserved.

8 Q. Okay. And what is aboriginal title? Is that the
9 same thing as treaty rights?

10 A. Is aboriginal title the same as treaty rights?

11 Q. Yes.

12 A. No.

13 Q. Could you give an image of -- probably to describe
14 to people what the difference between them are?

15 A. Aboriginal title and what?

16 Q. That's okay.

17 A. Treaty rights?

18 Q. That's okay. We'll move on.

19 Are you aware of any reason that Keystone cannot
20 continue to meet the Condition on which the Permit was
21 granted by this Commission?

22 A. Say again.

23 Q. Are you aware of any reason that Keystone cannot
24 continue to meet the Condition on which the Permit was
25 granted by this Commission?

1 A. The whole pipeline's almost changed since that time.

2 Q. Okay. Has the Rosebud Sioux Tribal Council been
3 made aware of the results of the cultural survey
4 conducted by TransCanada?

5 A. No.

6 Q. Has the Rosebud Sioux Tribal Government through its
7 Tribal Historic Preservation Office been consulted about
8 an unanticipated discoveries plan by TransCanada?

9 A. Say that one more time.

10 Q. Has the Rosebud Sioux Tribal Government through its
11 Tribal Historic Preservation Office been consulted about
12 the unanticipated discoveries plan by TransCanada?

13 A. No.

14 Q. Earlier a Keystone witness asked if the Keystone XL
15 Pipeline was going to cross treaty territory even if the
16 Tribes objected to it or words to that effect. The
17 answer given was that it would not cross any reservations
18 or trust land.

19 Is that accurate?

20 A. True.

21 Q. Why is that accurate?

22 A. They're dancing in between trust lands. But that
23 does cross trust property.

24 Q. So will it cross treaty territory?

25 A. Yes.

1 Q. Does the Rosebud Sioux Tribe object to the Keystone
2 XL Pipeline?

3 A. Yes.

4 Q. In your duties as a rancher do you have any private
5 water lines that cross your property as an example of
6 what a typical rancher might have on their ranch?

7 A. Say again.

8 Q. As a rancher, as a typical rancher, do you have any
9 private water lines that extend across your property that
10 might be an example of other ranchers with private water
11 lines?

12 MR. TAYLOR: Relevance.

13 A. Oh, yeah.

14 THE WITNESS: Can I go on with my description?

15 MR. SMITH: Yeah. I'm going to overrule that
16 and let him answer.

17 Q. Go ahead.

18 A. A private water line basically going across my
19 property, yes, there is. The only thing that's a public
20 water line would be the water line that's bringing it to
21 the meter pit basically.

22 From the meter pit anything past to a house or a
23 hydrant is your private property so you're responsible
24 for it.

25 Q. And do you have any of those private type of water

1 lines?

2 A. At least a dozen.

3 Q. At least a dozen? I can't hear you.

4 A. A dozen. Yeah. 12.

5 Q. And how far would the farthest one extend?

6 A. 2 miles.

7 Q. Thank you. So --

8 MR. DORR: All right. No further questions.

9 MR. SMITH: Keystone?

10 MR. TAYLOR: No cross exam.

11 MR. RAPPOLD: Just a moment, please.

12 MR. SMITH: Mr. Clark.

13 CROSS-EXAMINATION

14 BY MR. CLARK:

15 Q. Thank you for being here, Mr. Frederick. I only
16 have a few questions for you.

17 In front of you. Sorry.

18 In your direct testimony you've basically generally
19 alleged that the construction and operation of the
20 Keystone Pipeline is going to affect the Rosebud Sioux
21 Tribe.

22 Is that a fair characterization?

23 A. Yes.

24 Q. Would it also be a fair characterization that a
25 spill in the vicinity of the Mni Wiconi water line would

1 also affect the Rosebud Sioux Tribe?

2 MR. TAYLOR: I'm going to object to that. We've
3 already had a discussion about the Application of real
4 property rights, easements, and so forth on the
5 Mni Wiconi line, and an Order was entered to that end.

6 A. But that's not the same --

7 MR. CLARK: That wasn't my question, Mr. Smith.
8 My question was whether as an elected tribal official
9 it's his position that the Rosebud Sioux Tribal
10 Government itself would be affected by a spill in the
11 vicinity of the Mni Wiconi water line.

12 The objection wasn't really directed towards the
13 question.

14 A. The water line really isn't the --

15 MR. SMITH: I'm overruling and letting him
16 answer. If he can.

17 A. It's the water line, yes, to an extent. But where
18 the water line is crossing the Missouri, that would
19 definitely cross our intake, and that would itself pose
20 the biggest threat.

21 Q. Okay. And you also said that you were on the Police
22 Commission of the Rosebud Sioux Tribe; is that correct?

23 A. Yes.

24 Q. So would it be your position as a elected tribal
25 leader on that Commission that would it be your opinion

1 that any kind of leak in that area would necessarily
2 result in Tribal Emergency Services responding?

3 A. Yes, it would.

4 Q. Okay. To the best of your knowledge, has Keystone
5 or any of its agents submitted any contact information to
6 the Rosebud Tribal Emergency Services?

7 A. No.

8 Q. To the best of your knowledge, has Keystone or any
9 of its agents sought out and considered the local
10 knowledge of the Rosebud Sioux Tribe?

11 A. No.

12 Q. To the best of your knowledge, has Keystone or any
13 of its agents provided or offered to provide the
14 emergency services of the Rosebud Sioux Tribe with
15 emergency training?

16 A. No.

17 MR. CLARK: No further questions.

18 MR. SMITH: Mr. Rappold.

19 MR. RAPPOLD: Yes. Thank you, Mr. Smith.

20 CROSS-EXAMINATION

21 BY MR. RAPPOLD:

22 Q. Good morning, Mr. Frederick.

23 A. Morning.

24 Q. Appreciate you being here today. I understand that
25 the council's meeting --

1 A. Yes.

2 Q. -- so I appreciate you being able to get away for a
3 little while and come up here and testify. I just have a
4 couple of questions for you.

5 Where exactly is your ranch located?

6 A. Southeastern corner of Todd County.

7 Q. What's the closest town?

8 A. Winner.

9 Q. Okay. And how many acres is it?

10 A. Just shy of 6,000. 5,800 some acres.

11 Q. Okay. And are you aware, does the project route
12 proposed cross over your ranch?

13 A. No, it doesn't.

14 Q. Okay.

15 A. Just close.

16 Q. About how close? Do you know?

17 A. Near John Harter's property. I have a family member
18 that is part of the family co-op, and it's within a mile
19 and a half.

20 Q. And the family co-op, what sort of things do they
21 do?

22 A. I am basically the manager of the ranch, but it's a
23 family-owned business, and it consists of grandmother,
24 one first cousin, myself, and father.

25 Q. Does the co-op provide like a buy-in, products?

1 A. No. Just the basic, that family run business.

2 Q. Okay. Are you close, or do you know any of the
3 other ranchers in the area?

4 A. Oh, yeah.

5 Q. Okay. Are they tribal members or nontribal members?

6 A. Both.

7 Q. Both? Okay. Were you here earlier this morning
8 when Sue Sibson testified?

9 A. No.

10 Q. So you didn't hear any of her testimony?

11 A. No.

12 Q. Okay.

13 A. Cut in and out.

14 Q. Were you listening to it somewhere?

15 A. Trying to.

16 Q. So you heard some of it?

17 A. Not this morning.

18 Q. Okay. Ms. Sibson testified about the first
19 Keystone. She's a rancher also up near Mitchell
20 somewhere. And she testified about the reclamation
21 efforts that Keystone has engaged in since they crossed
22 her property.

23 Would it -- as a rancher in the area, would it
24 concern you to know -- would you like to know what sort
25 of reclamation efforts Keystone is engaged in related to

1 other property similar to yours that have had the
2 pipeline cross their land?

3 MR. TAYLOR: Objection.

4 A. Definitely.

5 MR. TAYLOR: Well beyond the scope of direct
6 examination.

7 MR. SMITH: I'm going to sustain that.

8 MR. RAPPOLD: The witness has testified that he
9 has a ranch in close proximity to the current pipeline
10 route, if approved. And part of Ms. Sibson's testimony
11 got into the issue of non-native plants and noxious weeds
12 migrating from the easement that Keystone has on her
13 property going into other areas that are close by that
14 are not part of the easement.

15 And so the testimony is sought to elicit his
16 concern -- his knowledge about whether or not he would be
17 concerned about that sort of thing happening to him in
18 that area. Because he owns a ranch in the proposed area,
19 and presumably if the same sort of reclamation efforts
20 are done by Keystone on the new route, grass is going to
21 grow and it's going to move and it could be a situation
22 that -- where it moves into his property where the
23 easement wasn't actually on his property.

24 So that's how it's relevant.

25 A. Keystone doesn't have a reclamation?

1 MR. SMITH: I'm sustaining the objection.

2 CHAIRMAN NELSON: He's in a different county.

3 THE WITNESS: What's in a different county?

4 MR. SMITH: What Commissioner -- he said the
5 ranch is in a different county.

6 THE WITNESS: No. There's scattered tracts near
7 Tripp County where John Harter's at.

8 MR. SMITH: Right. He said there was something
9 a mile and a half away.

10 Q. Are you aware of any communications that Keystone
11 has put forward to the Rosebud Sioux Tribe as it relates
12 to law enforcement services in the community near the
13 pipeline route?

14 A. Can you say that one more time.

15 Q. Are you aware of any communications that the Tribe
16 has received related to law enforcement needs within the
17 community?

18 A. No.

19 Q. Is it your testimony that the Rosebud Sioux Tribe
20 does oppose the KXL Pipeline?

21 A. Yes.

22 Q. And can you tell how did they -- how did the Tribe
23 go about doing that?

24 A. We passed a series of resolutions in opposition to
25 it that dealt with water, land issue, contamination to

1 the different areas, and human safety because of the one
2 that you're talking about for --

3 Had they contacted any of our emergency services in
4 our police departments for being able to handle such type
5 of problems? That's something that we've never been --
6 as a Tribe, been consulted with on emergency services,
7 and there's going to be a major problem with emergency
8 services on handling jurisdiction issues of people and
9 not just the pipeline itself but the workers that will
10 come with.

11 Q. And is it true that there's an Indian community
12 located in very close proximity to the city of Winner?

13 MR. TAYLOR: Objection.

14 A. Two.

15 MR. TAYLOR: I'm sorry. Go ahead.

16 A. The communities?

17 Q. Yeah.

18 A. Ideal North and Ideal South.

19 Q. And do you have knowledge of a water system that the
20 Tribe operates?

21 A. Yes.

22 Q. And what's that called?

23 A. Mni Wiconi.

24 Q. And do you know where the Tribe gets the water to
25 operate that system?

1 A. Missouri River water.

2 Q. And does it get that water from anywhere else?

3 A. Yes. The south half of the reservation also is
4 production wells from the Ogallala Aquifer.

5 Q. And do you know where the wells are approximately
6 located for the Ogallala Aquifer?

7 MR. TAYLOR: Mr. Smith, I have to object again.
8 This is well beyond the scope of his direct examination.

9 MR. SMITH: I'm going to overrule in the sense
10 that I think he's just investigating what sort of overall
11 reasons were for the concern of the Tribe. And so I'm
12 going to let him answer it.

13 MR. RAPPOLD: Thank you.

14 A. I don't have physical coordinates, but, yeah, I know
15 where they are.

16 Q. Can you say generally speaking where they'd be
17 located?

18 A. Rosebud, Mission, Lakeview.

19 Q. And are you aware of any communication's the Tribe's
20 received from the State of South Dakota regarding water
21 quality as it relates to the proposed pipeline route?

22 A. One more time.

23 Q. Are you aware of any communications that the Tribe
24 has received from the State of South Dakota DENR
25 regarding water quality in the proposed pipeline route?

1 A. No.

2 Q. Are you aware of any communications that the Tribe
3 has received from TransCanada related to high consequence
4 areas along the pipeline route?

5 A. No.

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

8 MR. SMITH: Mr. Capossela.

9 MR. CAPOSSELA: Thank you, Mr. Smith.

10 MR. DORR: Mr. Smith, I would just ask if we
11 could take a lunch break. He's been on the road all
12 morning, and he had an early start today.

13 (Discussion off the record)

14 MR. CAPOSSELA: I'll try to be brief. Thank
15 you, Mr. Smith.

16 CROSS-EXAMINATION

17 BY MR. CAPOSSELA:

18 Q. My name is Peter Capossela. I'm a lawyer from
19 Standing Rock.

20 You testified that the pipeline dances around trust
21 land. Would you elaborate on that a little bit.

22 A. It goes around every reservation and dips in between
23 very closely within a quarter mile of two intersecting
24 pieces of tribal ground.

25 Q. So in your estimation does it appear that they

1 intentionally avoided trust land in order to kind of get
2 the pipeline approved?

3 A. On a map it definitely looks that way.

4 MR. TAYLOR: Wait, wait. I'm going to interpose
5 an objection. His opinion on routing, there's nothing in
6 his testimony that relates to routing and any opinion
7 that he wants to proffer about --

8 MR. SMITH: Sustained.

9 Q. Does it come close enough to trust land that were
10 there to be a release of oil that it would affect --

11 A. Yes.

12 Q. -- the land and water?

13 MR. TAYLOR: I'm going to object. Again, it's
14 beyond the scope of his direct examination, and there's
15 no foundation.

16 A. Within 100 feet.

17 MR. CAPOSSELA: Perhaps we should take a lunch
18 break on account of it may take longer than it should
19 because of the continuing obstructive objections of
20 TransCanada.

21 MR. SMITH: I was going to sustain, yes, in
22 terms of foundation.

23 Q. Sir, are you familiar with interactions between
24 TransCanada and Ideal?

25 A. We have had a report that they had went to Ideal,

1 yeah.

2 Q. Are you aware that they offered Ideal -- to make a
3 payment to the community?

4 A. Yes.

5 Q. To cut them a check? Would you elaborate on that?
6 What happened?

7 MR. TAYLOR: Wait. Wait. I'd like to interpose
8 an objection, please. Assumes facts not in evidence.
9 Beyond the scope of direct examination. Irrelevant,
10 immaterial.

11 MS. LONE EAGLE: I renew my objection to
12 TransCanada's continuing objections.

13 MR. SMITH: Sustained.

14 MR. DORR: Excuse me. I can't hear any of these
15 objections. Can you speak up, please.

16 MS. LONE EAGLE: This is Elizabeth Lone Eagle,
17 Gary. I just renewed my objection to TransCanada's
18 continuing and obstructive objections.

19 MR. SMITH: Okay.

20 MS. CRAVEN: I think he's talking about
21 Mr. Taylor's objections if he could restate that.

22 MR. SMITH: Okay. I sustained his objection.

23 MS. REAL BIRD: Mr. Smith, which grounds are you
24 staining it on, for the record?

25 MR. SMITH: Again, repeat it, would you please,

1 Mr. Taylor. I've had so much of this that I can't --

2 (Reporter reads back the objection.)

3 MS. REAL BIRD: So you're sustaining on all of
4 the objection grounds or --

5 MR. SMITH: Yes.

6 MS. REAL BIRD: Okay. I just wanted to clarify
7 that. I didn't understand which grounds you were
8 sustaining.

9 Q. Sir, you've testified that TransCanada did not reach
10 out to the Rosebud Sioux Tribe itself. Did
11 TransCanada -- to your personal information, what you
12 know, did they reach out to any individual communities of
13 the Rosebud Sioux Tribe?

14 A. Yes.

15 Q. What community?

16 A. Ideal.

17 Q. What happened?

18 MR. TAYLOR: Just a minute. Same objection that
19 I made before.

20 MR. CAPOSSELA: TransCanada itself has --
21 Mr. Goulet testified about their efforts to interact with
22 with Tribes and how important that is to TransCanada
23 and --

24 MR. SMITH: I'll overrule that.

25 MR. CAPOSSELA: Thank you, Mr. Smith.

1 Q. What happened between TransCanada -- what did
2 TransCanada do with Ideal? What happened there?

3 A. They came to a community meeting. It would have
4 been a council term ago so two years ago sometime. And
5 they went to a community meeting to which the council
6 representative was not there but their chairperson had
7 come to the Tribal Council and stated that, you know,
8 this representative had come from TransCanada and stated
9 that it would be in their -- it would be okay for them to
10 come through, could they have their approval, they would
11 do such things as oil their dirt road that goes through
12 the community. They would supply a playground, and they
13 would make sure that there was no problem with their
14 workman's camp, man camp I guess, loose terminology,
15 would pose to their community.

16 MR. TAYLOR: Can I voir dire the witnesses for
17 the purposes of a motion?

18 MR. SMITH: Yes.

19 MR. TAYLOR: Sir, you didn't attend this meeting
20 at the community of Ideal, did you?

21 THE WITNESS: No. I've only read the minutes.

22 MR. TAYLOR: So what you're telling us today is
23 based on either what you read someplace else or what
24 somebody told you?

25 THE WITNESS: The chairperson of that community.

1 MR. TAYLOR: Okay. So it's not your firsthand
2 knowledge because you weren't there; right?

3 THE WITNESS: No.

4 MR. TAYLOR: I'd move to strike as 100 percent
5 hearsay.

6 MR. CAPOSSELA: Was he on Tribal Council?

7 THE WITNESS: They're a part of government.

8 Q. Were you on the Tribal Council at that time?

9 A. No.

10 MR. SMITH: I'm going to sustain that.

11 MR. CAPOSSELA: I have no further questions.

12 MR. SMITH: Are you going to take a long time,
13 DRA?

14 MR. ELLISON: Actually we would have no
15 questions for Mr. Crow Ghost, other than to thank him for
16 his testimony.

17 MR. SMITH: I got distracted. Ms. Real Bird,
18 please. My apology.

19 CROSS-EXAMINATION

20 BY MS. BAKER:

21 Q. Jennifer Baker for the Yankton Sioux Tribe.

22 Good morning. I think we're still -- no. We're in
23 the afternoon. Good afternoon.

24 I do have a few questions here. You stated that
25 there are a number of Tribal Council resolutions opposing

1 the Keystone XL Pipeline. I don't think you gave us an
2 explanation for why the Tribe is opposed. And if you
3 did, forgive me.

4 But if you didn't, could you go ahead and explain
5 why the Tribe is opposed to the proposed pipeline?

6 A. Well, it's a direct threat to our way of life and
7 our water and not only our rights that are in our
8 government to government, which is not just our treaty
9 but our Constitution.

10 Q. Okay. So it would be a violation of law, among
11 other things?

12 A. Law and everything, yeah.

13 Q. Okay. Has the Rosebud Sioux Tribe Tribal Council
14 been properly consulted about about the Keystone XL
15 Pipeline?

16 A. No.

17 Q. Thank you.

18 And are you familiar with a document called the
19 Programatic Agreement?

20 A. No.

21 Q. Okay. Has the Rosebud Sioux Tribal Council been
22 properly consulted on a nation-to-nation,
23 government-to-government basis pursuant to the 68 Treaty
24 and Section 106 on protection of cultural resources?

25 A. No.

1 MR. TAYLOR: Objection. Relevancy.

2 MS. BAKER: I'll just move on.

3 MR. ELLISON: Actually Amended Condition 1
4 requires compliance with all laws so that's one of the
5 things this Commission has set as a Condition to be
6 followed.

7 So I guess I would support the testimony and
8 object to the objection.

9 MR. SMITH: And the question was again.

10 MS. BAKER: The question was whether --

11 MR. SMITH: She was moving on, Mr. Ellison.

12 MR. ELLISON: Only because there was an
13 objection.

14 MR. SMITH: Right. And I hadn't ruled on it
15 yet, and she just decided to move on.

16 MS. BAKER: I will move on, but I will stick to
17 similar grounds on the pipeline. Because an earlier
18 question I asked was not quite as specific.

19 Q. But has the Council been properly consulted at the
20 full government level, meaning the entire Tribal Council
21 on a nation-to-nation, government-to-government basis
22 with respect to the proposed Keystone XL Pipeline?

23 A. No.

24 Q. And what about with respect to cultural resources?

25 A. No.

1 Q. Thank you.

2 MR. SMITH: Are you done?

3 MS. BAKER: No, I'm not.

4 Q. Will construction of the Keystone XL Pipeline -- I
5 know you said it would violate tribal law.

6 Will it violate federal law?

7 MR. TAYLOR: Objection. That's well beyond the
8 scope of this guy's --

9 MS. BAKER: He's a Tribal Council
10 representative. He speaks in the interest of the nation.
11 He's also well versed in the federal law as a Tribal
12 Council representative for a federally recognized Tribe.

13 MR. SMITH: Well, it's calling for a legal
14 opinion from somebody who's not an attorney.

15 MS. BAKER: It's calling for an opinion as to
16 the first Condition contained in the Permit. And I
17 believe we have an exception to permit such -- and I'm
18 drawing a blank on the rule right now, but I believe a
19 witness is allowed to give a final conclusory statement
20 in their opinion.

21 MS. REAL BIRD: I have the cite if you want to
22 indulge me, Mr. Smith.

23 MR. SMITH: Pardon me?

24 MS. REAL BIRD: I do have your codified law
25 cite. A witness is allowed to answer the ultimate

1 question, and that question is not objectionable per the
2 codified law.

3 MR. SMITH: So you're asking if something
4 occurred that violates Condition 1?

5 MS. BAKER: Yes.

6 MR. SMITH: Okay. Answer it.

7 Q. Thank you. Do you recall the question?

8 I was asking whether construction of the Keystone XL
9 Pipeline would violate federal law.

10 A. Yes.

11 Q. Thank you.

12 Is the Rosebud Sioux Tribal Council a government
13 body?

14 A. Yes.

15 Q. And do you consider the Rosebud Sioux Tribe to be a
16 unit of government?

17 A. Yes.

18 Q. And is the Rosebud Sioux Tribe within close
19 proximity to the proposed pipeline?

20 A. Yes.

21 Q. Thank you. Do you have -- just a couple more
22 questions.

23 Do you have any children?

24 A. Yes.

25 Q. Okay. How old are they?

1 A. 12 and 7.

2 Q. Okay. You mentioned man camps earlier. Are you
3 familiar with that concept?

4 A. Yes.

5 Q. And how do you feel about the proximity of man camps
6 to your household?

7 MR. TAYLOR: Objection. It's beyond the scope
8 of direct. It's beyond the scope of cross-examination.

9 MR. SMITH: Sustained.

10 MS. BAKER: In fact, we've had testimony from
11 TransCanada's witnesses earlier in the proceeding as far
12 as man camps.

13 MR. TAYLOR: Yeah. But his testimony did not
14 deal with -- it had nothing in there about man camps.

15 MS. BAKER: Representative Frederick did mention
16 man camps in his testimony. He initially, I believe,
17 described them as construction worker camps and then as
18 man camps and said as the term being used loosely.

19 MR. SMITH: That wasn't actually -- I think that
20 was in a cross-examination answer. But yeah. I guess --
21 you know, I'll overrule and let him answer it.

22 MS. BAKER: Thank you.

23 Q. And so what are your concerns about the proximity of
24 those man camps to your household and to your neighbors
25 and to your community?

1 A. Just the safety of my family due to transient
2 workers.

3 Q. Thank you.

4 MS. BAKER: I have nothing further. Thank you,
5 Mr. Frederick.

6 THE WITNESS: Thank you.

7 MR. SMITH: Dakota Rural Action.

8 MR. ELLISON: No questions. And, again, thank
9 you, Mr. Frederick, for your testimony.

10 MR. SMITH: Ms. Craven.

11 MS. CRAVEN: Kimberly Craven for the Indigenous
12 Environmental Network. We have no questions.

13 Thank you for appearing here today.

14 MR. SMITH: Mr. Gough.

15 MR. GOUGH: Yes. I do have a couple of
16 questions, but I would beg the indulgence --

17 I'm looking for a map, and I would just like to
18 go out of order, pass at the moment.

19 MR. SMITH: You may. We'll move along. You can
20 look at it while we're doing other questioning.

21 MR. GOUGH: Right. And I'll find it and come
22 back.

23 MR. SMITH: Thank you. With that, we'll go to
24 Mr. Harter.

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CROSS-EXAMINATION

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BY MR. HARTER:

Q. Mr. Frederick, have you ever been to my property down at Colome, South Dakota?

A. Yes.

Q. When we were on that property did you recognize that there was wetlands within that area?

A. Yes.

Q. Did you recognize as we walked -- did we walk the pipeline corridor?

A. Yes.

Q. Did you recognize the City of Colome's water wells from that property?

A. Yes.

Q. Does the Tribe reserve water rights -- have reserved water rights that would be in conjunction with my property?

A. Yes.

Q. Are you aware -- you've stated that there was Indian land approximately -- depending on which end of the section we go off of, but approximately 1.5 to 2 miles east of --

A. Yes.

Q. -- this; correct?

Are you aware of -- does this property sit on top of

1 the Ogallala Aquifer?

2 A. Yes.

3 Q. Does my property sit on top of the Ogallala Aquifer?

4 A. Yes.

5 Q. In your opinion, would you consider the tribal
6 property, with the KXL crossing my property, a danger to
7 your property?

8 A. Yes.

9 Q. How about asset value?

10 MR. TAYLOR: Objection. Beyond the scope of
11 this guy's direct examination.

12 MR. SMITH: Sustained.

13 MR. ELLISON: I object to TransCanada's attorney
14 referring to Mr. Frederick as "this guy." That's the
15 second time.

16 MR. RAPPOLD: That's what I was going to --

17 MR. TAYLOR: Forgive me. I take that back.

18 Mr. Frederick, will you forgive me for referring
19 to you by something other than your name?

20 MR. DORR: Excuse me. That's the Honorable
21 Mr. Frederick. He is a representative of the Tribal
22 Government.

23 THE WITNESS: I will forgive you.

24 MR. TAYLOR: Thank you.

25 Q. Mr. Frederick, do you receive water from the Tripp

1 County Rural Water?

2 A. Yes.

3 Q. Are you aware of approximately where Tripp County
4 Rural Water's water intakes are from my property?

5 A. Yes.

6 Q. Can you tell the Commission approximately how far
7 that is?

8 A. It's within probably -- from your property?

9 Q. Yes.

10 A. I'd say straight line probably within 7 miles.

11 Q. Correct. It is within 7 miles. I don't want to
12 answer the question for you.

13 Is Tripp County Rural Water's water intake straight
14 south of Winner basically from the west side?

15 A. Yeah.

16 Q. Yes. Under the Tripp County Rural Water water
17 intakes does the Tribe reserve water rights to this
18 area?

19 A. Yes.

20 Q. There was some conversation about the Ideal meeting.
21 Do you recall any of the people that were at this
22 meeting?

23 A. Yeah.

24 Q. Was I at that meeting? Do you recall?

25 A. No. I don't recall.

1 Q. Okay.

2 A. I only know of tribal members.

3 Q. Was Rodney Bordeaux at that meeting?

4 A. No.

5 Q. Was Rodney Bordeaux Tribal Chairman at that meeting?

6 A. Yeah.

7 Q. At that time?

8 A. At that time.

9 Q. Could you be mistaken about him being at the
10 meeting?

11 A. Could very well but I only got my information from
12 the chairperson's list and that was -- consisted of
13 different tribal members.

14 Q. Thank you. Are you aware that I'm renting property
15 from the Rosebud Sioux Tribe?

16 A. Yeah.

17 Q. Approximately on that property how far is the KXL
18 Pipeline proposed to cross from that property?

19 A. Within 150 feet.

20 Q. Thank you.

21 MR. HARTER: No further questions.

22 MR. SMITH: Ms. Jewett.

23 MS. JEWETT: Thank you. Thank you for your
24 testimony, Councilman Frederick. I just have one or two
25 questions.

CROSS-EXAMINATION

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BY MS. JEWETT:

Q. You mentioned the man camps that are going to be near your place and you were afraid for your family's safety.

Do you think the tribal police department and the local county police departments have the resources to handle all those men coming in there to work?

A. No.

MS. JEWETT: Thank you.

MR. SMITH: Ms. Bardaglio.

MR. BARDAGLIO: Thank you, Mr. Frederick, and I have no questions.

MR. SMITH: Okay. Ms. Lone Eagle.

MS. LONE EAGLE: Hello. I have a few questions.

CROSS-EXAMINATION

BY MS. LONE EAGLE:

Q. I don't know where to start. First of all, good morning. As you know, I am an enrolled member of the Rosebud Sioux Tribe, and my family has a lot of land in Tripp County. I'm married into the Cheyenne River Sioux Tribe, and we live in Bridger, which is an area that we're concerned about also.

Let's see. Well, first of all, let me get this out of the way before I ask a few more questions. Are you a

1 terrorist?

2 A. No.

3 Q. Are you aware of anyone else within the Rosebud
4 Sioux Tribe who's a terrorist?

5 A. No.

6 Q. Okay. You are familiar with the term "high
7 consequence area"?

8 A. Yeah.

9 Q. Do you believe that you as an individual who may be
10 located in a high consequence area identified by
11 Keystone, do you believe you have a right to that
12 information?

13 A. Yeah.

14 Q. Do you believe the Tribe has a right to that
15 information?

16 A. Above all.

17 Q. Has anyone contacted you regarding a risk
18 assessment?

19 A. No.

20 Q. Has anyone contacted the Tribe regarding a risk
21 assessment?

22 A. No.

23 Q. Let's see. And you said that within the Rosebud
24 Sioux Tribe it's a violation of law to impose any threat
25 to the water; is that correct?

1 A. Yes.

2 Q. And are you familiar with the Winters Doctrine?

3 A. Yes.

4 Q. Could you explain a little bit more about your
5 familiarity with the Winters Doctrine?

6 A. You want me to break down the Winters Doctrine?

7 Q. What your interpretation of what that document means
8 in terms of water rights.

9 A. We reserve water rights.

10 Q. Does the Rosebud Sioux Tribe consider itself to be
11 an owner of the water under that doctrine?

12 A. Yes.

13 Q. Okay. In your interpretation of that doctrine does
14 the Public Utilities Commission have the authority to
15 make any decision regarding a Permit of this project that
16 could affect the water that the Rosebud Sioux Tribe
17 owns?

18 A. No. We have our own.

19 Q. Thank you. My next questions are regarding some
20 of the procedures. You talked you passed several
21 resolutions.

22 In the course of conducting business does the
23 Council accept minutes into their public record of
24 community meetings?

25 A. Yeah.

1 Q. So minutes that you referred to regarding the Ideal
2 meeting that took place with TransCanada, that would be a
3 matter of so-called public record?

4 A. Yeah.

5 Q. Okay. So you would -- that would --

6 MS. LONE EAGLE: My question is not necessarily
7 at this point to you, but could someone help me out.

8 Would that be an exception to the hearsay rule
9 if it's a matter of public record?

10 MR. SMITH: Well, we can deal with that at some
11 point in the future. Let's move on.

12 MS. LONE EAGLE: Well, I have some questions
13 regarding it, and there's been an objection. But if
14 there's an exception to the hearsay rule, as opposed to
15 an earlier objection, I should be able to ask questions
16 regarding that Ideal meeting.

17 He mentioned that he read the minutes, and he is
18 a public official for our Tribe.

19 MR. ELLISON: Might come under the business
20 records exception.

21 MR. SMITH: I've allowed him to answer several
22 questions about the Ideal meeting.

23 MS. LONE EAGLE: No, you didn't.

24 MR. SMITH: Yes, I did. I did just a little
25 while ago.

1 MS. LONE EAGLE: Well, then I'm going to
2 continue some of those questions.

3 Q. Someone had asked you earlier whether or not that
4 was interested an acceptable consultation. Is that
5 correct?

6 A. It's not acceptable.

7 MR. TAYLOR: Excuse me, Mr. Frederick. Can I
8 have a standing objection, and then I won't make anymore?
9 Standing objection on all the bases that I have
10 previously mentioned with respect to the Ideal meeting.

11 MR. SMITH: Yes.

12 CHAIRMAN NELSON: Let's move along.

13 MR. DORR: Mr. Smith, he's already answered the
14 question. I would ask that we break for lunch right now.

15 MR. SMITH: I think we're just about done.

16 MR. DORR: He's objecting after the fact. The
17 question's already been answered. He waited until he was
18 done to object. I would ask that you strike the
19 objection from the record.

20 MR. SMITH: He was asking for a standing
21 objection. As far as the question that was already
22 answered, yeah, we'll let that stand.

23 Q. Have you -- Mr. Frederick, are you familiar with the
24 term "community investment program"?

25 A. No.

1 Q. What would be your definition of the term
2 "investment"?

3 MR. TAYLOR: Objection. This is so far beyond
4 the scope of any examination that's gone on before you
5 can't see it.

6 MS. LONE EAGLE: It's in reference to the Ideal
7 meeting.

8 MR. RAPPOLD: I'm going to object on relevance
9 too.

10 MR. SMITH: Sustained.

11 MS. LONE EAGLE: Okay. I guess I'm done.

12 MR. SMITH: Okay. Next is Mr. Seamans.

13 MR. SEAMANS: No questions.

14 MR. SMITH: And Mr. -- Ms. Smith. Pardon me.

15 MS. SMITH: No questions.

16 MR. SMITH: Mr. Tanderup.

17 MR. TANDERUP: Thank you, Mr. Frederick. No
18 questions.

19 THE WITNESS: Thanks.

20 MR. SMITH: Okay. Staff.

21 MS. EDWARDS: Thank you, Representative
22 Frederick. No questions.

23 MR. SMITH: Commissioner questions.

24 CHAIRMAN NELSON: Just one.

25 Is your ranch in what would be considered the

1 Sand Hills?

2 THE WITNESS: No.

3 CHAIRMAN NELSON: Thank you.

4 MR. SMITH: Mr. Dorr, redirect?

5 COMMISSIONER HANSON: I have a question.

6 MR. SMITH: Pardon me.

7 COMMISSIONER HANSON: Thank you, Mr. Smith.

8 Over here.

9 Mr. Frederick, I'm Gary Hanson. Good afternoon.

10 THE WITNESS: Afternoon.

11 COMMISSIONER HANSON: I just have one question.

12 In answer to Ms. Baker's question pertaining to federal
13 law you had stated that federal law would -- that the XL
14 Pipeline would violate federal law.

15 Could you share with us, do you happen to know
16 which federal law that is?

17 THE WITNESS: I wrote the treaty down.

18 COMMISSIONER HANSON: So the 1865 Treaty?

19 THE WITNESS: 635.

20 MR. SMITH: Okay. Is that the 1851? Oh, the
21 1868.

22 COMMISSIONER HANSON: Thank you very much.

23 MR. SMITH: Mr. Dorr, redirect?

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

1 MR. SMITH: Okay. You may step down.

2 THE WITNESS: Is 106 a federal law?

3 MR. ELLISON: Yes. That's what I was just going
4 to ask you.

5 CROSS-EXAMINATION

6 BY MR. ELLISON:

7 Q. Section 106 of the Historic Preservation Act, would
8 that be another concern?

9 A. Yes.

10 Q. And that would be due to lack of consultation?

11 A. Yes, sir.

12 MR. ELLISON: Thank you. No further questions.

13 MR. SMITH: Wait a minute. I guess, Mr. Gough,
14 did you get it together there? Maybe that was the wrong
15 way of putting it.

16 I don't mean that. I mean your questions. Did
17 you get your questions together?

18 MR. GOUGH: I was waiting for objections.

19 CROSS-EXAMINATION

20 BY MR. GOUGH:

21 Q. (Speaks Lakota.) Mr. Frederick.

22 A. (Speaks Lakota.)

23 Q. Your testimony with regard to the treaties, you're
24 familiar with the concept of the Great Sioux Nation?

25 A. Yes.

1 Q. In terms of a land area?

2 A. Yes.

3 Q. Does that concept, does that territory include all
4 of West River, South Dakota, to your knowledge?

5 A. Yes.

6 Q. So it would be your testimony that the TransCanada
7 Pipeline as proposed would be traversing through almost
8 the entirety in South Dakota of the Great Sioux Nation?

9 A. Yeah.

10 MR. GOUGH: Thank you. No further questions.

11 MR. SMITH: Okay. Mr. Dorr, did you have any
12 redirect?

13 MR. DORR: Mr. Smith, no redirect. However, I
14 would also like to self-testify but after our lunch break
15 and after a bathroom break, please.

16 MR. SMITH: I think, yeah. Let's take a break.
17 You may step down then.

18 Okay. Right now it's about 25 to 1:00. And we
19 have been doing an hour and 15 minutes so we're talking
20 10 to 2:00.

21 (A short recess is taken)

22 MR. SMITH: Okay. We'll call the hearing back
23 to order in Docket HP14-001. And I think we're now at
24 Staff.

25 Am I correct in that?

1 MR. DORR: Mr. Smith, I wanted to offer myself
2 for testimony.

3 MR. SMITH: Okay. We'll have to take that up
4 with the Commissioners because he didn't have prefiled
5 or --

6 I guess he wants to offer himself, Keystone. Do
7 you have anything to say at all?

8 MR. TAYLOR: Mr. Dorr did not file any prefiled
9 testimony. Nor did he file a witness or exhibit list so
10 it would seem to me it's out of order.

11 CHAIRMAN NELSON: Yep.

12 MR. SMITH: Okay. I think the answer is no
13 because of that.

14 MR. DORR: Intervenors are not allowed to
15 self-testify?

16 MR. SMITH: Well, you would have been able to,
17 but you filed no prefiled on behalf of yourself. Nor did
18 you give any advance indication that you were going to be
19 offering testimony here.

20 MR. DORR: I gave an opening statement, however.

21 MR. SMITH: You did. You did. You gave an
22 opening statement. And all Intervenors, whether they
23 were going to be parties or -- testimonial parties or
24 not, were allowed to give opening statements.

25 MS. BAKER: Mr. Smith, may he provide a

1 statement under the individual's right to appear section
2 of the code?

3 It provides that even if you're not an
4 Intervenor, any individual has the right to appear before
5 the Commission at any proceeding. And I believe that
6 applies to Intervenors and non-Intervenors alike. They
7 are not entitled to offer witnesses or testimony --

8 MR. SMITH: Which section are you referring to?

9 MS. BAKER: I don't have it in front of me, but
10 I can have it in a minute.

11 MR. SMITH: You're not talking about
12 49-34A-13.1, are you?

13 MS. BAKER: No. That's not it.

14 MS. REAL BIRD: It's right here.

15 MS. BAKER: Okay. It's under ARSD
16 20:10:01:15.06, Individual's right to appear. It says
17 that "not withstanding a prior section, an individual,
18 customer, ratepayer or governmental representative shall
19 be permitted to appear in person without filing a
20 petition for leave to intervene if the person makes a
21 full disclosure of identity and the person's interest in
22 the proceeding and if the contentions of the person are
23 reasonably pertinent to the issues presented and the
24 right to broaden the issues is disclaimed. Any person
25 appearing pursuant to this section may not be afforded

1 the status of a party to the proceedings.

2 So under this section it appears that any
3 individual, provided they're going to give statements
4 that are reasonably pertinent to the proceeding, has a
5 right to appear.

6 MR. SMITH: Well, the only thing about that
7 section is it deals with persons who are not Intervenors,
8 and Mr. Dorr is an Intervenor.

9 MS. BAKER: I couldn't imagine that these
10 regulations were drafted in order to somehow further
11 curtail the rights of the Intervenor.

12 CHAIRMAN NELSON: Let's move along.

13 MR. SMITH: I think the Commissioners' view is
14 no. We have an explicit Order where he's been
15 involved --

16 MR. DORR: Can you speak up? I can't hear you.

17 MR. SMITH: Mr. Dorr has been involved in this
18 from the beginning, you know, and we have issued clear
19 orders that stated and we issued an Order that expressly
20 precludes people from testifying who did not file
21 prefiled testimony.

22 MS. BAKER: I understand that. But I do believe
23 that this regulation would supersede that Order just for
24 the very limited purposes of this particular regulation.
25 I don't think that an individual should be somehow --

1 have less rights under the regulations because they did
2 go to the effort of filing a Petition to Intervene.

3 MR. SMITH: And he had an opening statement. So
4 we've allowed him to do that. He has been allowed to do
5 that. And he had an absolute right to file prefiled
6 testimony and elected not to on his own behalf.

7 MR. DORR: I'd like to register my objection to
8 that ruling then.

9 MR. SMITH: Okay. You may. We're going to move
10 along then, and we're going to go to Staff.

11 MR. CREMER: Thank you. Mr. Walsh is on his way
12 over so if you've got somebody else in the meantime.

13 MR. SMITH: I don't think there's anybody left.

14 MR. CREMER: Then I guess we'll -- he said he
15 was on his way over. I was waiting to hear from DRA.

16 MR. RAPPOLD: Rosebud has a rebuttal witness we
17 could proceed with at this time. Paula Antoine.

18 MR. SMITH: Okay. Why not.

19 CHAIRMAN NELSON: Mr. Rappold, thank you for
20 offering that and being willing to go.

21 MR. RAPPOLD: Certainly.

22 MR. DORR: Mr. Smith, Gary Dorr. I would like
23 to offer testimony of proof as to what was excluded so
24 that it can be included in the appeal.

25 MR. SMITH: An offer of proof? Sure.

1 MR. DORR: Yes. Under 19-19-103 Rulings on
2 Evidence, No. 2, offer of proof.

3 MR. SMITH: Yep.

4 MR. DORR: Okay.

5 MR. SMITH: Do you want to do that before
6 Ms. Antoine?

7 MR. RAPPOLD: Why don't we do it afterwards?
8 Were you asking me?

9 MR. DORR: After.

10 MR. SMITH: Pardon me? After?

11 MR. DORR: No objections. After.

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

13 MR. RAPPOLD: As a matter of housekeeping,
14 Mr. Smith and Commissioners, I submitted Amended Rebuttal
15 Testimony. You're nodding your heads so I'm assuming
16 that means that you've received that.

17 I was figuring we could just go ahead and give
18 it the exhibit number of 11000-A since it replaces her
19 original testimony.

20 MR. TAYLOR: Would you say the exhibit number
21 again, please.

22 MR. RAPPOLD: 11000-A. Will that work?

23 MR. SMITH: It does for me. Yes.

24 MR. RAPPOLD: Okay.

25 MR. SMITH: Is that numbering acceptable to

1 Keystone? Any objection to that numbering? To me it
2 makes sense.

3 MR. TAYLOR: No. That's fine and just to make
4 this smooth I would just say that Keystone renews all its
5 prior objections to Ms. Antoine's testimony. And I would
6 say that we received the amended rebuttal testimony last
7 night and are familiar with it.

8 So if we can have a standing objection to those
9 portions of her testimony that we objected to in our
10 Motion in Limine, appreciate that.

11 Thank you.

12 MR. RAPPOLD: Mr. Smith, could you have
13 Mr. Taylor restate those objections. I believe those
14 were all overruled with the exception of testimony
15 related to the spirit camp, which was eliminated from the
16 testimony consistent with the Order.

17 MR. SMITH: The spirit camp was all that was
18 precluded.

19 MR. TAYLOR: That's correct. But, you know, our
20 Supreme Court has never clearly stated whether or not
21 you're obligated to make a trial objection to testimony
22 that's offered over an overruled Motion in Limine,
23 whether or not failing to make that objection waives the
24 objection that was made in the Motion in Limine.

25 So I just am simply saying those objections that

1 I made and the Motions in Limine that the Commission
2 overruled I would like to renew and ask the record to
3 reflect a standing objection on that basis.

4 MR. SMITH: Yep. Okay.

5 MR. TAYLOR: And if you want to reverse your
6 prior ruling, I'm amenable to that, but I suspect you
7 won't.

8 MR. SMITH: Okay.

9 MR. RAPPOLD: Proceed?

10 All right. Thank you.

11 MR. SMITH: Yeah. Please proceed.

12 DIRECT EXAMINATION

13 BY MR. RAPPOLD:

14 Q. Good afternoon, Paula. Could you introduce yourself
15 to the Commission.

16 A. Good afternoon, Commissioners.

17 (Speaks Lakota.)

18 Good afternoon, Commissioners and PUC Staff. My
19 name is Paula Antoine. My Lakota name is Wopil Win, and
20 I'm -- would you like to --

21 Q. And are you a member of the Rosebud Sioux Tribe?

22 A. Yes, I am.

23 Q. Where are you from, Paula?

24 A. I'm originally from the Winner-Ideal community, and
25 that's on the east end of the Rosebud Reservation.

1 However, I reside in Mission, South Dakota.

2 Q. And are you currently employed?

3 A. Yes, I am.

4 Q. Where do you work?

5 A. I work for the Rosebud Sioux Tribe Sicangu Oyate
6 Land Office, and I'm the director there.

7 Q. What sort of things do you do there?

8 A. We handle land transactions. We handle land --
9 general operations of the Land Office. Land management
10 plans, land transfers, leasing, exchange assignments.

11 Q. Okay. Have you filed prefiled testimony in this
12 case?

13 A. Yes, I have.

14 Q. And are you also -- you're also aware that the
15 testimony that we originally filed was amended?

16 A. Yes, I am.

17 Q. And have you had an opportunity to review the
18 amended testimony?

19 A. Yes, I have.

20 Q. If I were to ask you the same questions contained in
21 that testimony -- in the Amended Prefiled Testimony,
22 would you answer the same way today?

23 A. Yes.

24 MR. RAPPOLD: I would move to admit Rosebud
25 Sioux Tribe 11000-A.

1 MR. SMITH: Is there objection, Keystone?

2 MR. TAYLOR: Subject to my standing objection,
3 I'll make no further objection.

4 MR. SMITH: Okay. Intervenors? Any objection?

5 MR. GOUGH: No objection.

6 MR. SMITH: I don't see anybody indicating.
7 Staff.

8 MS. EDWARDS: No objection.

9 MR. SMITH: The Amended A Exhibit is admitted.

10 Q. And could you provide for the Commission a brief
11 overview or summary of your testimony?

12 A. Yes. First of all, I'd like to offer my testimony
13 also as not only as a -- the director of the Sicangu
14 Oyate Land Office, but I'm also a mother, grandmother,
15 and enrolled member of the Rosebud Sioux Tribe and with
16 the Lakota Nation.

17 And as being a member of the Lakota Sioux Tribe,
18 Lakota Nation, we're compelled and we're raised through
19 our culture to be a good relative and to try to do things
20 for other people. And one of our things is being a good
21 relative to all living things.

22 And that's including the world, you know, unci maka,
23 we call Mother Earth and to protect the land and water on
24 her and that (speaks Lakota). That means we protect
25 Mother Earth.

1 But in my testimony it reviews the prefiled
2 testimony presented in this case as it relates to the
3 Keystone's ability to comply with the Permit Conditions
4 No. 1 and 2 and the Findings of Fact 107, 108, 109, 110,
5 which is the ability to comply.

6 And the second is sufficient evidence to show that
7 TransCanada and the PUC Staff has not put enough evidence
8 to demonstrate the ability to comply with the amended
9 Commission -- the Amended Permit Conditions 1 and 3.

10 And also Staff member Mr. Flu [sic] stated that the
11 Finding of Fact 107 was outside of his review.

12 My testimony also addresses Michael Madden's report
13 that does not address any socioeconomic factors as they
14 relate to concerns of tribal members and of the Rosebud
15 Sioux Tribal community, Winner-Ideal. And that is
16 located in Tripp County where the proposed pipeline is
17 due to pass through.

18 And this also does not relate to the citizens of
19 South Dakota. And that's based on an obligation to --
20 and the Commission has an obligation to protect the
21 resources of South Dakota, and all South Dakota citizens
22 fall within that.

23 And we also need to remember that there is an
24 inherent and nonnegotiable right of all women and
25 children, which is also considered in here, health,

1 safety, and welfare.

2 And there is also no testimony addressing law
3 enforcement issues, emergency response plans, general
4 public safety concerns, and there's no evidence to
5 demonstrate contact with the Rosebud Sioux Tribe Law
6 Enforcement Services.

7 And these -- in addressing these I would also like
8 to point out that -- in our decisions that not only the
9 Commission makes on behalf of the South Dakota citizens,
10 I would also like to offer that in Lakota teachings and
11 way of life we like to consider the next seven
12 generations in all our decision making. So to consider
13 them as well.

14 MR. RAPPOLD: Thank you. I have no further
15 questions for the witness and would tender her for
16 cross-examination.

17 MR. SMITH: Thank you.

18 Keystone?

19 MR. TAYLOR: No questions. Thank you.

20 MR. SMITH: Okay. Mr. Clark.

21 MR. CLARK: No questions at this time.

22 MR. SMITH: Mr. Capossela.

23 MR. CAPOSSELA: Thank you, Mr. Smith. Standing
24 Rock has no questions on cross.

25 MR. SMITH: Ms. Real Bird or Ms. Baker.

CROSS-EXAMINATION

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BY MS. BAKER:

Q. Jennifer Baker, Yankton Sioux Tribe. Thank you for your testimony and for being here today. I just have a couple of real quick questions.

You said that you're a mother and a grandmother, and I was wondering if you had any concerns about the location of these proposed man camps if the pipeline was built?

A. Yes.

MR. TAYLOR: Objection. Beyond the scope of direct examination.

MR. RAPPOLD: To the extent that it touches within the socioeconomic factors that the testimony references, I would say it is within the scope of the testimony.

MR. SMITH: I'll overrule.

MS. BAKER: Thank you.

Q. Go ahead, please.

A. Yes, I do.

Q. Could elaborate a little bit on that what your concerns are?

A. The proposed -- one of the proposed man camps is located within the area of the Winner-Ideal community near Colome, South Dakota.

1 Q. And what is it about these man camps that has you
2 concerned?

3 A. I'm concerned with the inability of the local law
4 enforcement services to be able to provide protective
5 services for the women and children. And for all the
6 citizens within that area near the man camp.

7 MS. BAKER: Thank you. I have nothing further.
8 Thank you very much for your testimony.

9 MR. SMITH: Okay. DRA.

10 MR. MARTINEZ: We have no questions.

11 MR. SMITH: Ms. Craven.

12 MS. CRAVEN: The Indigenous Environmental
13 Network has no questions, but thank you very much for
14 coming here today. Thank you for your testimony.

15 MR. SMITH: Mr. Gough.

16 MR. GOUGH: Thank you.

17 CROSS-EXAMINATION

18 BY MR. GOUGH:

19 Q. Thank you. Bob Gough, InterTribal Council On
20 Utility Policy. Thank you for coming here for testimony
21 today.

22 Do you find your concerns widely shared with the
23 women of the Rosebud?

24 A. Yes, I do.

25 Q. In those -- among those women and yourself, is there

1 a sense that existing laws either in South Dakota or on
2 the reservation will serve to protect you from some of
3 the violence that we've heard mentioned that may surround
4 the man camps?

5 MR. TAYLOR: Objection. Foundation. Relevance.

6 MR. GOUGH: I'm trying to get at the level of
7 concern that people have indicated that -- she indicated
8 that people have.

9 MR. SMITH: Just as what she feels about it? Is
10 that the idea?

11 MR. GOUGH: No. The idea is the -- she's
12 testified that she and other people, women on the
13 Rosebud, have concerns about these man camps. And I'm
14 trying to find out if there's a sense that they may be
15 protected by law.

16 MS. BAKER: This would, likewise, go to the
17 socioeconomic concerns from her direct testimony. And to
18 the law enforcement concerns.

19 MR. SMITH: Okay. I'll overrule and allow her
20 to go.

21 MR. GOUGH: Thank you.

22 And the earlier testimony with regard to man
23 camps that we heard from Faith Spotted Eagle.

24 Q. Could you elaborate with regard to the sense -- is
25 there a sense of protection that you have from the laws

1 either on the laws of South Dakota or the reservation?

2 A. There is a sense of protection, but the sheer number
3 and disparity in number between the law enforcement
4 service, emergency services that will be provided for the
5 citizens of the area, it's such a disparity that I'm very
6 concerned about it.

7 And I had the opportunity to sit in a couple
8 community meetings, Winner-Ideal community meetings where
9 other members of that community have voiced the same
10 concern for their children and, you know, their other
11 relatives that live and reside within the Winner-Ideal
12 community.

13 Q. Uh-huh. Do you have an opinion as to whether
14 existing federal law regarding tribal jurisdiction over
15 nonmembers with regard to violence against women would
16 offer any protections?

17 MR. TAYLOR: Objection. Foundation.

18 MR. SMITH: Sustained.

19 Q. Are you familiar with the violence against women
20 domestic violence protections that the Federal Government
21 has provided?

22 A. Somewhat.

23 Q. Do you feel -- are you -- do you have any sense
24 that -- if those protections would extend to workers
25 coming onto the reservation?

1 A. Yes.

2 Q. And what is that sense?

3 A. Yeah. I feel that that would offer some form of
4 relief of being -- you know, having any violence against
5 you. Or women.

6 Q. Are there any limitations that it's a domestic
7 relationship?

8 A. Between the perpetrator and the victim?

9 Q. That there has to be an underlying domestic
10 relationship?

11 A. I'm not that familiar with the laws so I can't.

12 Q. Okay. Thank you.

13 MR. GOUGH: No further questions.

14 MR. SMITH: Mr. Dorr.

15 MR. DORR: I'm sorry. I can't hear you. Did
16 you say my name?

17 MR. SMITH: Yeah. Do you have any questions?

18 MR. DORR: I would really just ask you to
19 please -- I have a hearing problem. I can't hear you.

20 MR. SMITH: I apologize.

21 MR. DORR: I have no further questions.

22 MR. SMITH: Ms. Braun, do you have any of
23 questions? That's right in the way.

24 Do you have any questions, Ms. Braun?

25 MS. BRAUN: Yeah. I do. Good afternoon,

1 everybody.

2 CROSS-EXAMINATION

3 BY MS. BRAUN:

4 Q. Hi, Paula.

5 A. Hello.

6 Q. Paula, do you know about how many officers Rosebud
7 Sioux Tribe has, like police officers?

8 A. Actually I don't. I know that they are broke up
9 amongst shifts, but I'm not sure how many officers are
10 for each shift or if they have one per community.

11 Q. Do you know the area that the officers have to
12 serve, about like how many square miles?

13 A. No, I don't.

14 Q. Okay. Do you know how long it takes for an officer
15 to get to Ideal, Colome, Winner?

16 A. Yes, I do.

17 Q. How long does it take for them to get out there?

18 A. Sometimes it takes an hour to two hours for an
19 officer to respond to a call. And if they're -- if
20 they're responding to a -- Milk's Camp is 2 and a half --
21 probably 2 hours to 2 and a half hours to respond.

22 Q. What about now my next question is going to go to
23 like hospitals and emergency.

24 How far is it from like Winner and Ideal to get to
25 the nearest emergency room?

1 A. There's a hospital -- excuse me. There's a hospital
2 located in Winner, but most of the native people that
3 live -- that reside on tribal land go to the hospital in
4 Rosebud, which is 90 miles -- or 72 miles away.

5 Q. Okay. What about fire and rescue?

6 A. I know that -- excuse me. I know that individual
7 communities out there like Witten, Winner, Colome all
8 have individual volunteer firefighting units, and Winner
9 also has a fire -- a fire station there too.

10 Rosebud does as well, but I'm not sure -- they're
11 classified sometimes as being grassland units, and some
12 of them are for residential. So I'm --

13 Q. So would you have any idea about, you know, where
14 like the nearest hazardous -- ones that would be like
15 hazardous waste classified -- because I know, you know,
16 like sometimes volunteer firefighters don't necessarily
17 have that certification.

18 Do you know like if it would be like Rosebud or BIA
19 or anything like that?

20 A. I'm not really familiar.

21 Q. You're not?

22 A. Not with the amount of training that each fire hall
23 has.

24 Q. Okay. All right.

25 MS. BRAUN: Thank you, Paula.

1 MR. SMITH: Okay. Next is Mr. Harter.

2 CROSS-EXAMINATION

3 BY MR. HARTER:

4 Q. Good afternoon, Paula.

5 A. Good afternoon, John.

6 Q. Can you tell the Commission approximately how long
7 you and I have known each other?

8 A. I think I've known you probably over 25 years.

9 Q. All right. So we used to drink a beer together once
10 in awhile in high school?

11 A. I can't answer that. I think my mom just came into
12 the room.

13 MR. GOUGH: The statute of limitations has run
14 on that.

15 MR. RAPPOLD: What happens in high school stays
16 in high school.

17 Q. Paula, have I ever -- or let me start it this way.
18 Has the Winner-Ideal community had meetings where they
19 discussed the Keystone XL Pipeline?

20 A. Yes. We discussed the -- all the factors that are
21 surrounding the Keystone Pipeline coming through our
22 community at community meetings for a couple years, I
23 believe.

24 Q. And have I ever attended any of these meetings?

25 A. Yes, you have, John.

1 Q. And was -- did I speak at these meetings?

2 A. Yes, you did.

3 MR. HARTER: That's all. Thank you.

4 MR. SMITH: Ms. Jewett.

5 MS. JEWETT: I have no questions, but thank you
6 very much for your testimony.

7 MR. SMITH: Ms. Bardaglio.

8 MR. BARDAGLIO: Thank you very much, Paula, and
9 I have no questions.

10 MR. SMITH: Ms. Lone Eagle.

11 CROSS-EXAMINATION

12 BY MS. LONE EAGLE:

13 Q. Hi, Paula. I'm Elizabeth Lone Eagle. I'm one of
14 the Intervenors. I'm an enrolled Rosebud tribal member,
15 married into the Cheyenne River Sioux Tribe, and my
16 family and I, we live in Bridger.

17 A. Good afternoon.

18 Q. At these meetings that you talked about in Ideal,
19 was there any representatives from TransCanada?

20 MR. TAYLOR: I'm going to object to this line of
21 questioning. It's well beyond the scope of direct.

22 MS. LONE EAGLE: It's on the record that she was
23 talking about the meetings in Ideal. I don't understand
24 why I can't ask whether or not they were in attendance.

25 MR. SMITH: I'm going to overrule.

1 A. At the meetings I attended there were not any --
2 there was no representative from TransCanada in the room,
3 that I was aware of.

4 Q. Okay. And you attend these meetings regularly or --

5 A. Whenever I get the opportunity to.

6 Q. Okay. During these meetings was there any
7 discussion about any type of community investment
8 program?

9 MR. TAYLOR: Same objection.

10 MR. SMITH: Overruled.

11 A. Investment program? Can you elaborate on that? I'm
12 not sure I understand your question.

13 Q. Was there any offer to -- from anywhere? Was there
14 any discussion of an offer that had been made to the
15 community? I don't know, something that would be done
16 for the community from an outside source?

17 MR. TAYLOR: Objection. Foundation, beyond the
18 scope.

19 MS. LONE EAGLE: She asked me to clarify what I
20 meant by community investment program, and I'm clarifying
21 that for her.

22 MR. SMITH: Is that -- and your objection was?
23 Can you read the question back, Cheri.

24 (Reporter reads back the last question.)

25 MR. SMITH: I think given the -- if I'm --

1 MS. LONE EAGLE: The original question, though,
2 was about was there any discussion regarding a community
3 investment program? And the witness asked me to clarify
4 that, and that's what I was doing with my subsequent
5 question.

6 MR. SMITH: Okay. I'm going to overrule and let
7 her -- with that additional explanation, if she -- if
8 that let's her recall anything.

9 A. At the meetings that I attended there were no -- I
10 wasn't in attendance when that was discussed.

11 Q. Okay.

12 MS. LONE EAGLE: Thank you. I have no more
13 questions.

14 MR. SMITH: Mr. Seamans.

15 MR. SEAMANS: No questions.

16 MR. SMITH: Ms. Smith.

17 MS. SMITH: Hi. Carolyn Smith. Thank you,
18 ma'am, for coming and speaking up for the women and
19 children.

20 MR. SMITH: No question, Ms. Smith?

21 MS. SMITH: No. No questions.

22 MR. SMITH: And Staff.

23 MS. EDWARDS: Thank you. Commission Staff has
24 no questions.

25 MR. SMITH: Oh, did you have one? Commissioner

1 Hanson.

2 COMMISSIONER HANSON: Would you give me the
3 correct pronunciation of your last name?

4 THE WITNESS: Antoine. A lot of people
5 pronounce it in the area as Antoine, but it's Antoine.

6 COMMISSIONER HANSON: Thank you. I would have
7 mispronounced it. Thank you. Appreciate your testimony
8 here today.

9 In light of Mr. Harter's statement pertaining to
10 your relationship in high school, is there anything you'd
11 like to share with us about Mr. Harter? Because we'd
12 really like to know.

13 THE WITNESS: Well, he's become a pretty good
14 public speaker.

15 COMMISSIONER HANSON: All right. Well, we know
16 that. Thank you very much for traveling here and
17 participating. Appreciate it.

18 MR. SMITH: Are there any Intervenor questions
19 in response to Commissioner questions?

20 MR. RAPPOLD: I've just got two more redirect.

21 MR. SMITH: Please proceed.

22 REDIRECT EXAMINATION

23 BY MR. RAPPOLD:

24 Q. Paula, you mentioned a community called Milk's Camp.
25 Can you tell the Commission where Milk's Camp is

1 located?

2 A. Yes. We have 21 communities on our reservation, and
3 two are on the east end -- well, actually there are more
4 than that. The Winner-Ideal community, and then after
5 that we have a community called the Butte Creek. And
6 then we have the Milk's Camp community, which is located
7 near down by Gregory, Bonesteel, Fairfax, St. Charles,
8 down in that area.

9 Q. Thank you.

10 And is it your understanding that Rosebud Sioux
11 Tribe law enforcement operates out of a central facility
12 located in Rosebud?

13 A. Yes, they do.

14 Q. And would that explain the long amount of time that
15 it takes to get from Rosebud to Milk's Camp to respond to
16 a call?

17 A. Yes.

18 MR. RAPPOLD: Okay. Thank you. I have no
19 further questions.

20 MR. SMITH: You may step down, Ms. Antoine.

21 Is Mr. Dorr going to do his offer of proof?

22 Mr. Dorr, do you want to do your offer of
23 proof?

24 MR. DORR: Yes, sir. Just go from here?

25 MR. SMITH: If you want to. It's up to you.

1 MR. DORR: Okay. Gary Dorr, Individual
2 Intervenor.

3 During this hearing we've heard the terms
4 aboriginal title, treaty rights, and usufructuary rights.
5 The Order that was given and we've had discussion about,
6 talked about we couldn't talk about aboriginal title or
7 usufructuary rights. But they are different and unique
8 and separate from treaty rights.

9 If you think of a ball field like a baseball
10 field, treaty rights are the entire stadium. Contained
11 within the treaty rights -- maybe first base might be
12 usufructuary rights. Third base might be aboriginal
13 title. Aboriginal title are the land rights of the
14 indigenous people, and they persist after settler
15 colonialism. And it has to be declared by the Federal
16 Government. So that is a completely separate issue that
17 is being raised here in this case.

18 Now part of the rights we talk about, treaty
19 rights are contained in 15 Stat 635 of federal statute.
20 Now part of 15 Stat 635 is Article 1, the Bad Men clause
21 of the Treaty of 1868, Article 2 which says only Indian
22 agents can live in the area in performing their official
23 duties, Article 16 which says that the Tribe gets to say
24 who passes through or resides on the territory as
25 individual persons separate from the federal agents, and

1 Article 11 guarantees hunting rights which are recognized
2 by Nebraska outside of the State of South Dakota. These
3 treaty rights are still in effect, and they are still
4 part of 15 Stat 635.

5 In addition, there is another federal law,
6 Public Law 100-516, and that is known as the Mni Wiconi
7 Water Act and there are certain provisions in there
8 granted to the Tribes. There are certain provisions
9 regarding construction around the Mni Wiconi water line
10 also which we are not allowed to discuss.

11 But, regardless, that is a federal law that is
12 still on the books. That's like -- it's still going
13 through consideration. They're going to terminate the
14 project with the funding because it's reached the end of
15 it.

16 In addition, South Dakota Codified Law 1-54-5
17 states that the State of South Dakota must consult with
18 Tribes regarding native issues in the state. We have
19 been offered no proof here in this hearing that that has
20 occurred. I attempted as an Individual Intervenor to
21 subpoena the state, and I was not allowed to do that.

22 The order -- or the Amended Permit Condition
23 No. 1 states that TransCanada shall apply with all
24 applicable laws. The Order did not say TransCanada will
25 comply with all applicable state laws, all applicable

1 city laws, all applicable county laws. It said all
2 applicable laws.

3 Now we saw yesterday TransCanada witness
4 Julie [sic] Hudson testify that if a federal law were
5 going to be violated, the Permit should probably be
6 denied. And yet we're looking at these three laws,
7 100-516, 15 Stat 635, and South Dakota Codified Law
8 1-54-5. My testimony would show that this Permit would
9 violate the unabrogated portions of the Fort Laramie
10 Treaty of 1868 ratified by Congress in 15 Stat 365,
11 Public Law 100-516, South Dakota Codified Law 1-54-5.

12 The State of South Dakota -- I'm sorry. The
13 last sentence was a repeat.

14 In consideration of the exact wording and
15 terminology of the Orders and of the Amended Permit
16 Conditions, if the Keystone XL Pipeline is built with the
17 current stipulations in place, it would be in violation
18 of federal law.

19 For these reasons, this Commission must take due
20 consideration given to other federal laws violations --
21 other federal law violations. That this Commission does
22 not have jurisdiction, has no effect on NEPA, the Clean
23 Water Act, or any other federal law considerations.

24 We heard that testimony from Julie Hudson. She
25 said she would recommend -- if they violated a federal

1 law, that she would recommend that the Permit not be
2 certified.

3 I would ask then in light of this prejudice to
4 the federal laws governing the Rosebud Sioux Tribe and to
5 the prejudice to the Rosebud Sioux Tribe that able
6 consideration be given to the violations of 15 Stat. 365
7 and Public Law 100-516 in determining whether the Amended
8 Permit Condition No. 1 is met.

9 Because it cannot be met if -- if you read what
10 is put there, you cannot put anything else into that to
11 interpret that -- only a federal law? That's not what's
12 written into the Amended Permit Condition. It states all
13 applicable laws. That is the premise that we're going
14 on. And so that is what my testimony would provide proof
15 of.

16 Thank you for this time.

17 MR. SMITH: Thank you, Mr. Dorr.

18 At this time we will turn to Staff.

19 MR. CREMER: Thank you. This is Karen Cremer of
20 Staff, and Staff would call Mr. Brian Walsh to the stand,
21 please.

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

23 MR. CREMER: And just to be clear, Mr. Walsh is
24 being called for the limited purpose of addressing
25 questions that have been raised about the Colome

1 wellhead. And so we will not be offering his prefiled
2 testimony.

3 DIRECT EXAMINATION

4 BY MR. CREMER:

5 Q. Would you state your name and address for the
6 record, please.

7 A. Brian Walsh, South Dakota Department of Environment
8 and Natural Resources, 523 East Capitol Avenue, Pierre,
9 South Dakota.

10 Q. What is your professional title?

11 A. Environmental scientist 3.

12 Q. And as an environmental scientist 3 what are your
13 job responsibilities with the Department?

14 A. I'm the Department's project coordinator for
15 hazardous material pipelines. I'm responsible for the
16 underground injection control class 2 program. I work on
17 source water assessments, and I am responsible for
18 overseeing the cleanup of hazardous material releases in
19 South Dakota.

20 Q. Would you please summarize your educational
21 background for us.

22 A. I have a bachelor's degree in environmental science
23 with a co-major in biology from Creighton University in
24 Omaha, Nebraska.

25 Q. Would you briefly describe your work experience

1 since college.

2 A. I worked as a hydrologist intern for the Metro Water
3 District in Tucson, Arizona. I worked as a hydrologist
4 for the Arizona Department of Water Resources. And since
5 2003 I have worked as a hydrologist and environmental
6 scientist with the South Dakota Department of Environment
7 and Natural Resources.

8 Q. Are you familiar with the Zone A source water
9 protection area for the Colome public water supply
10 system?

11 A. Yes.

12 Q. And would you please explain to us what that is.

13 A. The Zone A source water area for Colome is an area
14 that is marked on a map that designates where potential
15 source water comes from for the cities to water wells.

16 It was developed through our Department's Source
17 Water Assessment and Protection Program using what is
18 called the calculated fixed radius method, which analyzes
19 the -- the well, the way it's pumped, the aquifer
20 characteristics, and the time of travel to calculate the
21 radius of the area that's shown on the map. And in this
22 case the time of travel used was a two-year time of
23 travel.

24 Q. And can you explain to us, and maybe you did, what
25 that is used for? Was that part of your last answer?

1 A. No, it was not.

2 Q. Okay.

3 A. The source water program is a nonregulatory program.
4 At the direction of EPA under the Safe Drinking Water Act
5 the Department developed source water areas for all of
6 the regulated public water systems. That information's
7 developed and provided to the public water supply systems
8 as a tool that they can use to better understand the
9 water supply system and to use in the development of
10 local wellhead protection restrictions or requirements,
11 if they choose to.

12 Q. Are you familiar with the proposed Keystone XL
13 route?

14 A. Yes.

15 Q. Is the Colome well down gradient or up gradient from
16 the proposed route?

17 A. It depends. As I reviewed the South Dakota
18 geological surveys, hydrogeologic assessment of the High
19 Plains Aquifer for Tripp and Gregory Counties and the
20 groundwater gradient in the area of the Zone A source
21 water system -- or area, and the proposed pipeline is
22 relatively flat with a flow gradient generally to the
23 north or northwest.

24 So, for example, if a spill occurred along the
25 pipeline north of the zone water area -- or Zone A

1 protection area, excuse me, it would be -- the protection
2 area would be up gradient of the spill.

3 If the spill occurred to the south of the Zone A
4 area, that area would be down gradient of the release.
5 So it depends where along the pipeline you are looking.

6 Q. Did TransCanada contact you in your position with
7 the Department seeking information on the source water
8 protection area for the Colome wellhead?

9 A. Yes, they did.

10 Q. And can you generally describe what occurred?

11 A. TransCanada's contractors contacted the DENR
12 requesting data on source water and wellhead information
13 along the proposed pipeline route. We provided that
14 information to them, which included the Colome --
15 information on the Colome source water area.

16 Q. Did any other interested parties contact you
17 regarding this matter?

18 A. Not specifically about the Colome source water. We
19 did receive an information request from Mr. Martinez for
20 our files on the Keystone and Keystone XL Pipeline, and I
21 had some discussions with Nancy Hilding about the project
22 also.

23 Q. And did the Department have a recommendation
24 regarding the Zone A source water protection area for the
25 Colome public water supply system?

1 A. We did. Based on an earlier proposed route that
2 actually intersected the Zone A for Colome, we
3 recommended to TransCanada that they reroute to avoid
4 crossing the Zone A source water area.

5 In addition, we recommend that they would contact
6 the local operator or government to see if they had any
7 issues with the route and/or to identify any potential
8 wellhead restrictions they might have at that local
9 level.

10 Q. And who would that operator have been?

11 A. I don't recall his name, but it would have been the
12 operator for the Colome water system.

13 Q. Okay. And do you recall approximately a date on
14 when you would have recommended that reroute?

15 A. It was prior to the 2009 hearing, if that helps.

16 Q. All right.

17 MR. CREMER: That would be all the questions I
18 would have.

19 Mr. Walsh would be available for
20 cross-examination. Thank you.

21 MR. SMITH: Keystone.

22 MR. TAYLOR: Thank you, Mr. Smith.

23 CROSS-EXAMINATION

24 BY MR. TAYLOR:

25 Q. Mr. Walsh, the Keystone Pipeline project implemented

1 your recommended route change, did it not?

2 A. Yes, it did.

3 Q. And that happened after the 2009 hearing but well
4 before this hearing; correct?

5 A. As I recall, it was even discussed during the 2009
6 hearing.

7 Q. With respect to the Colome water supply that you
8 mentioned, in -- in the 2009 hearing you testified that
9 the City of Colome currently purchases its permanent
10 water supply from the Tripp County Water User's District
11 and that the subject wells were backup wells.

12 Is that still the case?

13 A. That is not the case anymore.

14 Q. Okay. They now use those as a primary wells?

15 A. They do use those as primary wells.

16 MR. TAYLOR: Thank you. That's all the
17 questions I have.

18 MR. SMITH: Intervenors?

19 Mr. Clark?

20 MR. CLARK: No questions.

21 MR. SMITH: Mr. Rappold?

22 MR. RAPPOLD: No questions.

23 MR. SMITH: Mr. Capossela?

24 MR. CAPOSSELA: Thank you, Mr. Smith. I'll be
25 brief.

CROSS-EXAMINATION

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BY MR. CAPOSSELA:

Q. Mr. Walsh, my name is Peter Capossela. I'm a lawyer for the Standing Rock Sioux Tribe, South Dakota and North Dakota.

Amended Condition 46 in the 2010 Permit for Keystone XL Pipeline requires TransCanada to compensate a landowner for well contamination.

If the prospect of groundwater contamination for a public water supply system well, for example, is so remote, why is that Condition in there?

MR. CREMER: I would object to being outside the scope of his testimony.

MR. CAPOSSELA: Colome is a public water system, and the question involves an Amended Condition related to the requirement for compensation for contamination of a well. So it's not really outside of the scope.

MR. SMITH: I'll overrule and see if he can answer it.

A. I guess I can't speak to why the Commission put that Condition in there. I can tell you that in the event of a release that impacts any water well, DENR requires responsible parties to compensate and/or replace a water supply system if it is contaminated beyond use.

MR. CAPOSSELA: I have no further questions for

1 this witness. Thank you, Mr. Walsh.

2 MR. SMITH: Ms. Real Bird.

3 MS. REAL BIRD: No questions.

4 MR. SMITH: Mr. Martinez?

5 MR. MARTINEZ: We have no questions, but I would
6 like to thank Mr. Walsh for the very timely and full
7 response to the open records request that we submitted.

8 It is not very often that I see state agencies
9 operate with that level of transparency, and that is much
10 appreciated.

11 MR. SMITH: Ms. Craven.

12 MS. CRAVEN: The Indigenous Environmental
13 Network has no questions. Thank you.

14 MR. SMITH: Mr. Gough.

15 MR. GOUGH: I'd like to inquire, is this to be
16 the only witness we're going to hear from from the State?

17 MR. SMITH: I have no idea.

18 MR. CREMER: Well, you heard from Mr. Flo.

19 MR. GOUGH: No. I mean, will there be any
20 witnesses after this?

21 MR. CREMER: No. This -- yes. This would be
22 Staff's last witness.

23 Thank you.

24 MR. GOUGH: No questions. Thank you.

25 MR. SMITH: Ms. Braun, any questions for

1 Mr. Walsh?

2 MS. BRAUN: No, I don't. Thank you.

3 MR. SMITH: She said no?

4 Okay. Mr. Dorr.

5 CROSS-EXAMINATION

6 BY MR. DORR:

7 Q. Mr. Walsh, this is Gary Dorr, Individual Intervenor.
8 Is it statistically possible for an entire area to be
9 entirely up gradient of an apparatus?

10 MR. CREMER: I think maybe if you just qualified
11 what you meant by an apparatus maybe narrow it down what
12 exactly you're speaking to.

13 Q. Well, let's say a pipeline. Would an entire area be
14 entirely up gradient statistically of a pipeline?

15 A. I'm not sure I understand the question. I'll try to
16 answer.

17 The entire length of the pipeline in South Dakota
18 crosses multiple aquifers which have different gradients.
19 So if you're at that scale, that would be a very hard
20 question to answer.

21 Looking at a specific area like a well or a source
22 water area, I think that area could be -- depending on
23 the gradient and the flow direction of the aquifer, could
24 be either up gradient or down gradient.

25 Q. So would slope, terrain, soil, and vegetation all be

1 considerations for determination up gradient?

2 A. No. Because I'm speaking to the -- the flow
3 direction of the water table. And the surface topography
4 in many cases does not impact the flow direction of the
5 water table. Sometimes it does. Sometimes it doesn't.

6 Q. So would it be accurate to say if there's like --
7 let's say there's a really, really big hill and it's down
8 gradient -- or okay. Let's say a pipeline is down
9 gradient of point A, but it's on a really, really big
10 hill. And if that pipeline leaked, couldn't it leak down
11 to the water source independent of the gradient?

12 A. I think there's maybe two things going on and that
13 I'm hearing in your question.

14 The surface topography could be -- of the pipeline
15 could be uphill from a well or a thing, and that may
16 control the flow of a surface leak. But if we're talking
17 strictly on the groundwater contamination and flow, that
18 surface topography may or may not impact the direction of
19 flow of the groundwater.

20 Q. Okay. So in your expert opinion where the pipeline
21 crosses Mr. Harter's land, have you seen that area?

22 A. I've seen where it crosses near the Zone A source
23 water for Colome. I'm not sure where that is relative to
24 Mr. Harter's land.

25 Q. Are you familiar with the hill on Mr. Harter's land

1 which is between 60 and 100 feet higher than the Colome
2 city water well?

3 A. Not specifically.

4 Q. Okay. It's within 600 feet, as we saw on a map
5 yesterday.

6 If there was a pipeline leak on that hill which is
7 down gradient from the city well, in your expert opinion
8 as a hydrologist couldn't the contamination from an oil
9 spill, even though it's down gradient due to the terrain,
10 still contaminate the city water well?

11 A. I would expect the surface flow of an oil spill to
12 flow downhill or down gradient. If the surface flow
13 didn't reach the well but reached straight down into the
14 groundwater, it is going to follow the flow direction of
15 the water, the groundwater.

16 But certainly if it's uphill, the surface flow could
17 and would flow downhill.

18 Q. Okay. Do you have access to the map data of all the
19 Keystone XL Pipeline proposed route and subsequent
20 changes to the route?

21 MR. CREMER: And I would object as this being
22 beyond the scope of his direct testimony.

23 MR. SMITH: It is.

24 Where are you going with this, Gary?

25 MR. DORR: Well, he's testifying to the

1 gradient, and that's part of his testimony so that's why
2 I was wondering if he knows where the pipeline is. He
3 has to know where it is in order to make a judgment on
4 the gradient.

5 MR. SMITH: Well, he's talking about the
6 gradient at one point, at one short segment of the pipe
7 near the well. And he's talking about the groundwater
8 gradient. Gradient is a hydrologic term.

9 MR. DORR: I'm familiar with that. But you have
10 to have -- you have to know the route in order to know
11 whether the pipeline is up gradient as TransCanada has
12 stated that it is up gradient -- or that the water wells
13 are all up gradient of the pipeline.

14 MR. SMITH: In that immediate area? Is that
15 what you're talking about?

16 MR. DORR: Yes.

17 MR. SMITH: I think that's relevant. Or I think
18 that addresses his direct testimony.

19 A. So I'm familiar with the route's location in the
20 area of the Colome Zone A source water.

21 Q. Okay. My question was do you have access to the map
22 data for that?

23 A. Yes.

24 Q. Do you have a security clearance?

25 A. No.

1 MR. DORR: Thank you. No more questions.

2 MR. SMITH: We'll go to Mr. Harter.

3 CROSS-EXAMINATION

4 BY MR. HARTER:

5 Q. Good afternoon, Mr. Walsh.

6 A. Good afternoon.

7 Q. Is there a reason you stated earlier that you've
8 never been out to my property? Is there a reason why
9 you'd make an assessment and you never come to a
10 prescribed property?

11 MR. CREMER: I would just ask that he ask one
12 question at a time and allow the witness to answer.

13 MR. SMITH: Please, yeah. Phrase it in two
14 questions, please.

15 Q. Have you ever been to my property?

16 A. No.

17 MR. HARTER: Is that what you were getting at?

18 MR. CREMER: Yes. I'm sure he could have
19 answered them. Thank you.

20 MR. HARTER: I'm sorry.

21 Q. I guess I'd like you to explain to me how within
22 your educational background you make all of these
23 determinations and you never get boots on the ground to
24 come out and consult with the property owners that's
25 affected.

1 A. I reached my conclusions based on my knowledge of
2 the location of the Zone A area, the location of the
3 proposed pipeline, and the hydrologic data that is
4 available in the South Dakota geological surveys,
5 investigation of the High Plains Aquifer for Tripp
6 County, in which they have installed wells in the area
7 and done some analysis.

8 Q. Do you know what the figure is for the cone of
9 depression of the City of Colome's wells?

10 A. No.

11 Q. So you're telling this Commission that there is a
12 source protection area, but you don't actually know how
13 far out the draw in area for these wells are?

14 A. So what I've testified to is that the source water
15 area is calculated -- we did not calculate the cone of
16 depression in that analysis. We calculated the area
17 based on a two-year time of travel and an estimation of
18 how long it would take for contamination to travel --
19 what distance it would go traveling two years from a
20 point to the well.

21 Based on those wells operating at their licensed
22 water right rate 24 hours a day, 7 days a week for that
23 two-year period. That's the details of the analysis that
24 we did as part of our approved source water program.

25 Q. And what was your volume of spill release that you

1 used for a figure?

2 A. The calculation does not use a spill release volume.
3 It's making an estimation of how far a contaminant can
4 travel in the aquifer over a two-year period.

5 Q. Well, I guess if you don't know how much is there --
6 let's go this way.

7 Are you familiar with the spill that happened up in
8 North Dakota?

9 MR. CREMER: I think as part of my objection
10 you have to be a little more specific than a spill in
11 North Dakota. What company? What town? What year? You
12 know?

13 MR. HARTER: I'm trying to think of the town.

14 Q. Do you have knowledge of a major spill that happened
15 in North Dakota?

16 MR. CREMER: I would renew my objection.

17 MR. SMITH: Yeah. I mean, why don't you start
18 out with are we talking Keystone here or TransCanada, or
19 what are we talking?

20 MR. HARTER: No. I can't remember what the name
21 of it is. It's been mentioned in the hearings before,
22 and I understand where Ms. Cremer's coming from.

23 MR. SMITH: I mean, are you talking a
24 TransCanada facility?

25 MR. ELLISON: Is this Ludden? Is it Ludden,

1 L-U-D-D-E-N?

2 MR. HARTER: That's what I was thinking. The
3 Ludden spill.

4 MR. ELLISON: 400 barrels?

5 MR. HARTER: No. This was the one that covered
6 several acres, and they're still cleaning it up.

7 MR. SMITH: I don't know that -- okay.

8 MR. HARTER: I can move on.

9 MR. SMITH: Sustained.

10 Q. At least in two places in your testimony that I saw
11 you used the word "minimized."

12 MR. CREMER: And just as a point of reference,
13 you mean his oral testimony today?

14 MR. HARTER: Well, what I got to read was his
15 testimony that you sent out on e-mail.

16 MR. CREMER: Okay. And we're not offering that
17 testimony. He's not here to testify on that. He's here
18 for the limited purpose of talking about the Colome --

19 MR. SMITH: That's not been offered.

20 Q. Do you feel that the citizens of Colome should be
21 minimized?

22 A. No.

23 Q. Then I don't understand. How does the DENR -- I
24 talked to the DENR. I talked to Jim in DENR. I can't
25 remember his last name.

1 And I was told that the City of Colome route area
2 must have been overlooked. Now what I can't tell you is
3 is after they told me that, that somebody looked at it.

4 MR. CREMER: And before he goes on, I'm just
5 going to object. Hearsay. Facts not in evidence.

6 Mr. Harter, I'm trying not to object all the
7 time because I really just called him so you could get
8 some of your questions answered. But they have to be
9 relevant, and they have to be within the bounds of the
10 law.

11 Thank you.

12 MR. SMITH: Sustained.

13 MR. CAPOSSELA: I would just like to point out
14 that a little bit more liberal leeway is given to
15 unrepresented parties in an administrative proceeding. I
16 just wanted to --

17 MR. SMITH: I'm trying to help. With the
18 North Dakota spill I don't have any knowledge myself so
19 it's hard for me to help him.

20 MR. CAPOSSELA: I appreciate that, Mr. Smith.
21 Yes, you have. I just wanted to point that out for the
22 record for Mr. Harter.

23 Q. The draw in area of the well, it kind of works like
24 a funnel, doesn't it?

25 A. That would be a reasonable description of the cone

1 of depression.

2 Q. Okay. So TransCanada yesterday stated that their
3 line is going to be 175 feet outside the source
4 protection area.

5 Are you agreeable with this?

6 A. Yes.

7 Q. So are you telling me that there's a wall there that
8 when all of this water's funneling in it's going to say
9 you can't come in?

10 A. No.

11 Q. So there is a chance that water can be drawn in
12 from outside this source protection area and still be
13 in -- be from a contamination zone; correct?

14 A. Yes. The zone identifies the edge of where it would
15 take, conservative estimate, two years to travel from the
16 edge of that area to the well itself.

17 Q. Now when you're doing this are you talking about the
18 heavy products or the benzene toluene?

19 What are you using to determine what's going to
20 flow?

21 A. It would be in reference to the dissolved
22 contamination that's dissolved into the aquifer.

23 Q. But what chemicals?

24 A. It is not chemical specific.

25 Q. So some of the chemicals that are in this product

1 that flow easier with water could possibly flow faster
2 than a two-year period?

3 A. It would be my experience that once the contaminants
4 are dissolved into the aquifer, they will flow generally
5 at the rate of flow of the aquifer with the exception of
6 attenuation factors or biodegradation which would slow
7 them down.

8 Q. Okay. Have you seen a plan from TransCanada on how
9 they plan on cleaning up the aquifer in say the Colome
10 area?

11 A. We have a copy of TransCanada's Emergency Response
12 Plan. That plan has sections on different types of
13 cleanups for different types of media.

14 Q. Is that available to the public?

15 A. Upon request to DENR it is.

16 Q. So can you elaborate on this plan on how they're
17 going to get into water sand, let's say -- because the
18 pipe is buried 7 foot deep. The trench depth is to be
19 7 foot.

20 In this area across the wetlands area, especially in
21 my property but all the low lying area, there's a major
22 part of the time the pipe is going to be possibly sitting
23 in water.

24 I've seen when they were cleaning out the dugouts in
25 this area how the water just runs in from the soils. And

1 can you explain within their plan how they're going to
2 get into this basically almost like quick sand type water
3 sand and actually clean up a spill?

4 MR. CREMER: And I'm just going to interject at
5 this point. When you talked about the Emergency Response
6 Plan is that for Keystone or Keystone XL?

7 THE WITNESS: That would be for the existing
8 Keystone Pipeline.

9 MR. CREMER: All right. Thank you.

10 Q. So you have not seen a plan for the Keystone XL?

11 A. No.

12 Q. So there is no plan on how to clean up an aquifer in
13 our area?

14 A. I have not seen the Keystone XL Emergency Response
15 Plan.

16 Q. Thank you. Does the source water protection area --
17 you testified earlier that since the pipeline's setting
18 to the north side of it, which would be in the area of
19 straight north of the Colome city wells -- does that help
20 you?

21 A. No. I can visualize that. Yeah.

22 Q. Okay. So you testified that because of the water
23 flow you believe that a spill would flow away from the
24 City of Colome's water source; is that right?

25 A. In part. I testified that depending on where a

1 spill occurred it may flow away from the City of Colome's
2 wells, or it may flow towards them, depending on where it
3 is along the pipeline.

4 Q. Okay. Thank you.

5 So let's say straight north of the wells where the
6 flow is to, as you stated, the northwest. Would you
7 agree with me?

8 A. Yes.

9 Q. So do you know what that's flowing into when it
10 flows northwest?

11 A. The flow of the aquifer?

12 Q. Yeah. The flow of the water. Do you know what sits
13 north of that pipeline?

14 A. No.

15 Q. So in your topical maps you have no idea that the
16 water for my cattle is right north of that?

17 A. I did not know that.

18 Q. So basically what you're stating is is that we're
19 going to put a slight bit of protection on this pipeline
20 being approximately 175 feet away from the Colome's water
21 source at one point.

22 MR. CREMER: And I would just say that's a
23 mischaracterization of what he testified to and
24 argumentative.

25 MR. SMITH: Is that an objection?

1 MR. CREMER: Yes. I'm sorry. That would be an
2 objection. He can state it using the facts.

3 MR. SMITH: Sustained.

4 Q. Did you take into -- what effects this is going to
5 have on my family?

6 A. No.

7 Q. So DENR doesn't care what happens to my family?

8 MR. CREMER: Again, the question can be asked
9 without being argumentative, and I would object.

10 MR. SMITH: Sustained.

11 MR. HARTER: I'm sorry. I like to keep the B.S.
12 out of -- I'm just a direct person so excuse me for not
13 being -- having a law degree.

14 Q. Do you have any knowledge of myself being at any
15 meetings with the City of Colome and the area around the
16 Colome city wells being discussed?

17 A. Not that I recall.

18 Q. Thank you.

19 Do you know that after you recommended the route
20 change, which was deadheading straight through towards
21 the major part -- right through where Colome's city wells
22 are, do you know if I was consulted on that route change?

23 A. I do not know.

24 MR. HARTER: That's all. Thank you.

25 MR. SMITH: Thank you, Mr. Harter.

1 Ms. Jewett?

2 MS. JEWETT: I have no questions. Thanks.

3 MR. SMITH: Thank you.

4 Ms. Bardaglio.

5 MR. BARDAGLIO: Thank you. I have no questions.

6 MR. SMITH: Ms. Lone Eagle.

7 MS. LONE EAGLE: Thank you. I have no
8 questions.

9 MR. SMITH: Mr. Seamans.

10 MR. SEAMANS: No questions.

11 MR. SMITH: Ms. Smith.

12 MS. SMITH: I have a few questions, Mr. Walsh.

13 CROSS-EXAMINATION

14 BY MS. SMITH:

15 Q. I am Carolyn Smith. And you said you went to school
16 at Creighton University?

17 A. Yes.

18 Q. Do you know Dr. Andrew Smith?

19 A. No. Not that I recall.

20 Q. Okay. In your studies in hydrology can you explain
21 like in a sentence what hydrology means? Would you agree
22 that that means that you're an expert on the study of
23 water?

24 A. Hydrology means the study of water, yes.

25 Q. Okay. What would be a pearl that you could teach us

1 about the study of water? What would you say the most
2 important thing in one sentence is that you know about
3 water?

4 A. It's a vital part of life that we need.

5 Q. Right. Yeah. Good. Exactly what I was looking
6 for.

7 Do you know all of the inherent risks to water,
8 things that could affect the quality of water, whether it
9 can be used in human or animal consumption?

10 A. I'm certain I don't know all the risks. As part of
11 my job we oversee the cleanup of hazardous material
12 releases in South Dakota so I have certainly been exposed
13 to --

14 Q. Oh, your schooling was just about South Dakota?

15 A. Apologies. I didn't realize we were still on
16 schooling.

17 Q. Yeah. We're still on schooling.

18 A. Could you repeat the question, please.

19 Q. In your expert opinion as a hydrologist, can you
20 tell me the possibility of chemicals or whatever could
21 affect the quality of water for humans and animals?

22 A. Yes. It is possible for hazardous materials that
23 are released to impact and contaminate water.

24 Q. Okay. Do you know how to clean bitumen out of
25 water?

1 MR. CREMER: I'm going to object in that, again,
2 we called him for the limited purpose here of the Colome
3 wellhead, and I'm not sure that's within his expertise.

4 MS. SMITH: Okay.

5 MR. SMITH: Sustained.

6 Q. Regarding the Colome wellhead if it had bitumen in
7 it, would you advise us how to get it out?

8 A. The first step DENR would take if the Colome's water
9 supply wells were contaminated by a spill from the
10 pipeline is we would require TransCanada to provide an
11 alternate source of water.

12 And then we would require TransCanada to clean up
13 the aquifer in accordance with State groundwater quality
14 standards and soil remediation standards. And it would
15 be at their burden and expense to develop a cleanup plan
16 that we would approve to address that contamination.

17 Q. Okay. Have you seen a plan that you would approve?

18 A. Again, I have not seen the Keystone XL Emergency
19 Response Plan. In normal situations on spill cases the
20 plans are developed in the event of a spill because
21 there's lots of site specific information that is put
22 into the corrective action plan for a release.

23 MS. SMITH: I have no further questions. Thank
24 you.

25 MR. SMITH: Thank you.

1 Commissioner questions. Chairman Nelson.

2 CHAIRMAN NELSON: Have you listened to a portion
3 of these proceedings?

4 THE WITNESS: Yes. A portion of them.

5 CHAIRMAN NELSON: I apologize for this question.
6 It's really fuzzy, but I believe there's been several
7 references in relation to the Colome situation that a
8 spill would take 20 years to reach the wells.

9 Do you remember hearing that?

10 THE WITNESS: A little. I guess --

11 CHAIRMAN NELSON: So my follow-up question,
12 where did that come from? And I'm taking it from your
13 testimony that that's not an accurate figure.

14 THE WITNESS: I'm not sure where it came from.
15 My testimony is that the source water area that the
16 Department developed is based on a two-year time of
17 travel. And it's a conservative calculation that uses a
18 maximum pumping rate 24 hours, 7 days a week and no
19 contaminant attenuation factors to calculate that radius.

20 COMMISSIONER HANSON: Hi. Brian, I appreciate
21 your testimony. Just one clarification.

22 Did XL adopt every recommendation made by the
23 DENR?

24 THE WITNESS: I think the Colome reroute was
25 perhaps the only major recommendation that we made. As I

1 recall.

2 COMMISSIONER HANSON: All right. Thank you.

3 MR. SMITH: Any other Commissioner questions?
4 Okay. And again any follow up for -- I'm just going to
5 look for a show of hands in response to Commissioner
6 questions.

7 I don't see any hands up. Some people I have
8 trouble seeing.

9 Mr. Capossela.

10 RECROSS-EXAMINATION

11 BY MR. CAPOSSELA:

12 Q. This watershed, is there any interrelation between
13 the aquifer and any surface water?

14 A. I don't believe so in this area, but I'm not certain
15 where the recharge areas are for the High Plains Aquifer.

16 MR. CAPOSSELA: Thank you. No further
17 questions.

18 MR. SMITH: Is there any redirect?

19 MR. CREMER: Thank you. Staff has no redirect,
20 and we'd like to thank Mr. Walsh for making himself
21 available this afternoon.

22 MR. SMITH: Thank you. Brian, you may step
23 down.

24 MR. HARTER: Thank you, Mr. Walsh.

25 MR. SMITH: Okay. Now just a matter -- at some

1 point here we'll have to take a break.

2 I want to discuss where we're going next. And,
3 again -- okay. In just discussing the order going
4 forward -- and, again, we have the oddity of not -- you
5 know, with prefiled because we set those dates and kept
6 it -- the simple dates, we kept it simple where we had
7 all parties file direct and all parties file rebuttal,
8 due at the same time.

9 In the hearing order of testimony that we always
10 follow we follow the same pattern as is done generally --
11 you know, we're a little more liberal in that, and we
12 adjust for things like Commissioner questions.

13 But the normal order we follow is Applicant's
14 direct, Intervenors or respondents' testimony, and then
15 we go to Staff's testimony. And lastly we go to
16 rebuttal. And rebuttal being normally in a normal case
17 the rebuttal is limited to the Applicant.

18 But here we have prefiled rebuttal from
19 Intervenors, one of whom we've already heard from,
20 Ms. Antoine. And because, as I stated in my opening, I
21 mean, we normally follow that order of testimony.

22 So it's my thought here that the next people we
23 should probably hear from would be Intervenors' rebuttal.
24 And, again, I'm going to suggest -- again just maybe
25 partially for economy of time here, that we allow -- like

1 we allow Dan King's rebuttal and surrebuttal to be heard
2 simultaneously, if that's acceptable, rather than going
3 on and on and on and on and on.

4 And that would mean the people we would take
5 next would be Dakota Rural Action's rebuttal witnesses,
6 followed by TransCanada's rebuttal witnesses. But I
7 would like to discuss that with the parties and make sure
8 I'm not out of whack or listen to you and I'll take
9 whatever suggestions you deem appropriate.

10 MR. GOUGH: Sir, I was just wondering while we
11 have a few minutes -- Bob Gough, InterTribal COUP. If we
12 can get the -- has the state announced or in my response
13 to my question this is their last witness, can we get the
14 statement of that from the Staff.

15 There was a pile of other witnesses they were
16 going to call, and I would just like to get that on the
17 record fully.

18 MR. SMITH: I think she's already stated that on
19 the record, did you not, Ms. Cremer?

20 MR. CREMER: Yes. I believe I did at the
21 beginning.

22 MR. SMITH: Right. She stated that on the
23 record, that that's her -- their testimony would be
24 limited to the people who testified a few days ago and
25 Brian Walsh.

1 MR. GOUGH: So there will be no more State
2 rebuttal or surrebuttal?

3 MR. SMITH: That was the only testimony Brian
4 was giving; correct, Karen?

5 MR. CREMER: That's correct. And I can't
6 imagine we would have any sort of rebuttal unless
7 Mr. Gough just brings up something just, you know,
8 totally outrageous.

9 MR. GOUGH: I could if you'd like.
10 But my question actually goes to the prefiled
11 testimony. Will that be withdrawn as well?

12 MR. CREMER: We've never put it into the record.

13 MR. SMITH: Yeah. It's not been introduced
14 except for those witnesses who testified the other day.
15 You know, those have been dealt with. But other than
16 that, nothing else has been offered so it's not -- it's
17 not part of the evidentiary record.

18 MR. GOUGH: Thank you very much. Just wanted
19 that clarified.

20 MR. SMITH: Mr. White.

21 MR. WHITE: Two comments, Mr. Smith. One with
22 respect to Dan King's testimony. Dan King has rebuttal
23 testimony to the testimony of Evan Vokes. Dan King has
24 surrebuttal testimony to the prefiled testimony of Evan
25 Vokes.

1 The issue I guess I have is if Mr. Vokes is
2 going to present a significant amount of new additional
3 testimony that we've never heard before, then Dan King
4 would need an opportunity to be a surrebuttal witness
5 after he's heard that testimony. If we put him up for
6 rebuttal and surrebuttal and Mr. Vokes provides
7 additional testimony, we're barred --

8 MR. SMITH: Mr. King's going to go -- he will be
9 after.

10 MR. WHITE: His rebuttal and surrebuttal will
11 come after?

12 MR. SMITH: Yeah. My suggestion is we go to
13 Intervenor rebuttal now. Okay. And you guys -- you're
14 the plaintiff so you get -- in normal cases you get
15 rebuttal.

16 MR. ELLISON: I guess I'd just have a question
17 of why we're not going with TransCanada's rebuttal first.
18 I mean, I understand some of the confusion that's just --
19 or what's just been raised but --

20 MR. SMITH: Because the reason is they're the
21 plaintiff. What case have you been involved in where the
22 Defendant gets to be last? I'm unaware of it.

23 MR. ELLISON: I hear what you're saying. I'm
24 just trying to understand, everything's switching around
25 so much.

1 MR. WHITE: If I might, one other issue with
2 respect to witnesses.

3 So with respect to Mr. Harter's testimony or
4 desire to present testimony, our understanding was that
5 the April 17 Order had precluded his testimony on the
6 basis that he didn't provide any responses to discovery.

7 MR. HARTER: I guess I was told that I could be
8 a rebuttal witness.

9 MR. MARTINEZ: Mr. Smith, Robin Martinez for
10 DRA. We actually listed Mr. Harter as a rebuttal witness
11 on behalf of DRA to rebut testimony from Mr. Goulet.

12 And as just another point, we will not be
13 calling Mr. Vokes live for rebuttal testimony. So that
14 will speed things up for us.

15 MR. SMITH: Okay. You're not going to -- okay.

16 (Pause)

17 MR. SMITH: I think the ruling we're going to
18 make is because Mr. Harter didn't provide prefiled
19 testimony and didn't respond to discovery, he was
20 precluded from offering testimony on behalf of himself.

21 But I don't know that our Orders -- they
22 certainly didn't explicitly state that he couldn't be
23 called as a witness by somebody else, I guess.

24 MR. ELLISON: And after we --

25 MR. SMITH: And he has -- yeah. And that --

1 that's Commissioner Nelson's point of view, and he's the
2 person who voted on the Order so --

3 MR. WHITE: Then I'll forebear from arguing
4 that.

5 CHAIRMAN NELSON: Okay. We need to move along.
6 We're going to take a 15-minute break.

7 As soon as we're through with the break, DRA is
8 going to be on with their rebuttal witness, Harter.

9 (A short recess is taken.)

10 MR. SMITH: We will call the hearing back to
11 order. And I think we're at Dakota Rural Action.

12 MR. MARTINEZ: Dakota Rural Action's going to go
13 ahead and call John Harter as a rebuttal witness.

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

15 DIRECT EXAMINATION

16 BY MR. MARTINEZ:

17 Q. Good afternoon, Mr. Harter. For the record can you
18 go ahead and just identify yourself.

19 A. My name is John Harter, Winner, South Dakota.

20 Q. Are you here today to offer rebuttal to the
21 testimony of TransCanada's president Corey Goulet?

22 A. I am. And any other that as I, in No. 12 on my
23 prefiled, asserted that I couldn't possibly cover all the
24 topics.

25 Thank you.

1 Q. The prefiled rebuttal testimony that was submitted
2 on your behalf is -- is that an accurate statement of
3 what you wanted submitted?

4 A. It is. I have one correction.

5 Q. Could you please tell us what that correction was?

6 A. Okay. In item 6 of that I'm going to read the first
7 two lines. I informed Tim Irons, a TransCanada head land
8 agent, it should say, that I wanted to be fairly
9 compensated for every day my property was used by them.

10 Q. Other than that correction, do you have any
11 additional corrections?

12 A. No. I believe everything's fairly accurate that I
13 put in this prefiled.

14 MR. MARTINEZ: I would go ahead and move to
15 admit Mr. Harter's prefiled rebuttal testimony as DRA
16 Exhibit 3-D.

17 MR. MOORE: Other than the objection previously
18 stated by Mr. White with respect to the court's
19 April 17 -- the Commission's April 17 Order, we have no
20 additional objection to the prefiled rebuttal testimony.

21 MR. SMITH: Any other statements or objections
22 from any Intervenors?

23 MR. GOUGH: No objection.

24 MR. SMITH: I'm just going to look out and if I
25 don't see a hand up, I'm not going to --

1 Staff.

2 MS. EDWARDS: No objection.

3 MR. SMITH: I think based on the Commission's
4 ruling a bit ago, we will admit it.

5 MR. MARTINEZ: Thank you, Mr. Smith.

6 Q. You're a rancher?

7 A. Yes, I am. That's one of the few.

8 Q. Tell us a little bit about your cattle ranch. Where
9 is it, and what kind of an operation do you have?

10 A. Well, my operation is mainly cow/calf, and I do some
11 backgrounding on my own cattle. My operation, the larger
12 part of it, consists of about 15 miles southwest of
13 Winner, South Dakota, and then I have about 400 acres
14 four miles west of Colome, South Dakota, which is where
15 the route is proposed to cross me.

16 Q. Do you run a lot of cattle on that route where the
17 proposed pipeline easement is going to be?

18 A. Usually about 40 head plus or minus.

19 Q. What's the condition of your property?

20 A. Well, the condition of it is good right now, but
21 there are blowouts in the area. This is very sandy
22 ground, highly erodible type soil.

23 Q. Would it help to show some photographs of your
24 property to maybe get a better idea or give the
25 Commissioners a better idea of how it looks?

1 A. I think it would, since no one's been out to see the
2 property.

3 Q. Okay.

4 MR. MARTINEZ: We're going to show some
5 photographs just for illustrative purposes. We're not
6 going to ask that they be entered as exhibits.

7 Q. Do you recognize this first picture, Mr. Harter?

8 A. I do. And just for the record, I took these
9 photographs just this last Sunday.

10 Q. Okay. Tell us a little bit about this area, this
11 part of your ranch. Looks like a pond to me.

12 A. Well, this part of the ranch sits -- this is about
13 in the middle of the 280 acres of the area where the
14 proposed Keystone XL will go across.

15 So this dugout right here is probably -- I don't
16 remember if I zoomed -- if I shot that or not, but
17 there's about two REA poles between -- probably two or
18 three REA poles between where this is at and where the
19 line is going to be sitting at.

20 The trees that you see to the south of the dugout in
21 that picture is where the City of Colome's wells are at.

22 Q. Okay. So the City of Colome's water wells then are
23 fairly close to your property?

24 A. Yes. They set -- there's 20 acres that set --
25 there's 40 acres in the southwest corner that are not

1 mine. 20 of it -- yeah. I think it's 40. And 20 of it
2 belongs to the City of Colome and other property was just
3 recently purchased by Brad Kahler.

4 Q. Okay. I'm going to go ahead and flip to the next
5 photograph. This is just another sort of side shot of
6 the same area?

7 A. Yes, it is.

8 Q. Anything in particular you want to tell the
9 Commissioners about this particular view?

10 A. No. I was just trying to get a full scape of the
11 dugout.

12 And if you look at the dugout, earlier this spring
13 and most years you can see where the grass banks start on
14 the south end of that, and the same is on the north end,
15 that the water table will actually be up to that grass
16 level and flow out into this -- which would be the east
17 side of this. There's been times where the water can be
18 6 inches to 12 inches deep out in that area.

19 Q. So would you consider that to be a wetlands area?

20 A. Yes. I had the NRCS come out and do a study on this
21 property, and they did designate parts of that heading
22 down towards the south and to the west of that as
23 wetlands area, which I do have those documents with me.

24 TransCanada has a copy of those documents so that
25 if the PUC would want a copy of them, I could provide

1 them.

2 Q. This third image is just a shot basically to the
3 right of --

4 A. Yes, it is. And you can see the REA poles that I
5 was talking about out there that head down towards the
6 Colome -- or towards my well down there. I think it's
7 the third pole. I can't quite see.

8 Anyways, I have a -- the newest well that I drilled
9 on that around 10 years ago is 36 foot deep, and they
10 said I could get all the water I want.

11 Q. Now this next image, I presume those are some of the
12 cattle out there in the area?

13 A. Yes, it is.

14 Q. And describe for us where this particular piece of
15 property is on your ranch and whether or not this is
16 within the area that's going to be affected by the
17 proposed KXL Pipeline.

18 A. I'm going to -- should I stand up and point at the
19 picture or --

20 Q. Well, you could either stand up and point or if
21 you'd like, I've got a laser pointer I could get for you.

22 A. That would be easier.

23 (Pause)

24 A. This area right up in here is a blowout area. This
25 would be to the north side of where the pipeline will go

1 through. And then right in here is basically the south.
2 It's kind of a distant view but the south end of -- or
3 the south side of where the pipeline will be running.

4 So basically it's up in here. And this is this real
5 bad blowout area that the pipeline will be going through.
6 I took this shot just to kind of give an overall view of
7 what it looks like to the south.

8 Q. Okay. I'm going to go ahead and switch to the next
9 picture. Is this just another view of kind of the same
10 area?

11 A. It is. This here is pretty close to -- I think when
12 I took this one it's where the pipeline -- it was kind of
13 in what I thought was -- pretty sure the easement area
14 that the pipeline's going to be coming across. I was
15 trying to get in as straight of a line as possible.

16 Q. What about this photo, I mean, other than the closer
17 view of some of your cattle?

18 Does it also depict where the proposed pipeline is
19 going to cut across your property?

20 A. It does. Just right over the hill from where these
21 cows are at, just right on the bottom side of this hill
22 is the wetland area where there's different kinds of
23 grasses, more swamp grass than it is the edible grass.
24 The cows, unless you starve them to death, they won't eat
25 it.

1 Q. Now is TransCanada planning, based on what you know,
2 running their proposed pipeline through the wetlands area
3 that you referenced?

4 A. Yes. It will be going through some of the wetlands
5 area.

6 Go back to that picture once.

7 This area right here basically coming from where my
8 pointer's at straight up is where the pipeline will be
9 coming through the property (indicating).

10 Q. Okay. What about this next photo that we're
11 showing? What does it depict?

12 A. This is where the pipeline will enter my property
13 is at the south end of where my land meets up to
14 Brad Kahler's land. And there is cottonwoods all the way
15 along this route.

16 And what I did was I just turned around and took a
17 shot back at -- in the opposite direction of what the
18 last picture was.

19 Q. Okay. Now it looks like based on where you've
20 pointed that TransCanada's planning on running their
21 pipeline down right where those trees are.

22 Is that your understanding?

23 A. Yes. What I was told was is that where this enters
24 this area that they're going to do a neck down and to
25 enter my property --

1 Q. What is a neck down, Mr. Harter, as you understand
2 it?

3 A. That's where they're going to make a narrow cut so
4 that they don't have to disturb the trees that are in
5 there.

6 Q. Okay. And has that been something that they have
7 promised to you that they will do?

8 A. Yes, it is.

9 Q. What about the rest of your right of way that runs
10 through your property? Are they going to widen it back
11 up again once it gets past the trees?

12 A. Well, that's my understanding, that it will go to
13 the full width. I guess I was -- I'm not sure with
14 testimony that was given earlier about the neck downs in
15 the wetlands area, what TransCanada is prescribing for
16 that.

17 I know in the one area they actually have a spot
18 where they have an extra width in it, and that's in those
19 real wetlands areas that are right -- actually right on
20 the outside of the source protection area that they show
21 for the City of Colome's water wells.

22 Q. Have they told you why there's a plan to maybe widen
23 the right of way through a wetland?

24 A. No. I don't believe we got into that. Probably
25 part of it is they didn't offer to talk about it, and

1 probably within all the discussion I had I probably just
2 did not get it addressed.

3 Q. Okay. I've switched to the next picture which looks
4 like either some ruts in the ground or sandy area through
5 your pasture.

6 Why did you take this picture, and what's it about?

7 A. Well, this area here is not in the easement area. I
8 just took a picture of this to show that the --
9 the cattle create their own erosion areas in the pastures
10 so and that the water and rain and wind do have an
11 effect -- high effect on the erosion in this area.

12 And there's -- further up when you get past the
13 blowout area there is also a cattle trail going up
14 through there that has a small wash area.

15 Q. Now are the soil types that you are depicting in
16 this particular photo that you've said is outside of the
17 proposed right of way, are there similar soil types that
18 are within the proposed right-of-way area?

19 A. Yes, there is. The soil types here are the
20 Valentine sand. And just basically this is the
21 South Dakota side of the Sand Hills of Nebraska. It's --
22 just to easily describe it.

23 Q. Now I flipped a new picture up on the screen for you
24 to take a look at.

25 That looks like a fairly sandy area. Is that zone

1 or -- is that within the proposed right-of-way area?

2 A. This here is to the north side of what the proposed
3 route is on that property, this blowout. This looks good
4 compared to what it looks like when I was a child. It's
5 finally getting grass stand.

6 Q. What do you mean by a blowout? Can you describe
7 that for us?

8 A. It's basically an area that could have possibly been
9 started by bulls fighting out in the pasture, and the
10 wind just caught ahold of it over the years and continued
11 the erosion.

12 Q. Is that fairly indicative then of unstable soils?

13 A. It is.

14 Q. And are those unstable soils pretty much throughout
15 the proposed right of way for the pipeline?

16 A. Yes. On my property it's clear through it.

17 Q. Once again, I'm flipping to the next picture.

18 Is this an image of the similar blowout area that
19 you've described?

20 A. Flip to the next one, and then maybe come back.

21 I've got to get my bearings.

22 Okay. You can go back.

23 Okay. This area right in here would be the general
24 area where the pipeline will be run. And in the next
25 picture it just shows -- it doesn't show the clear

1 picture, but that's the blowout area basically to the
2 right of the picture.

3 Q. What concerns do you have about TransCanada running
4 a pipeline through this area of sandy, unstable soils?

5 A. Well, one of the worries is that if they're going to
6 reclaim it to 100 percent, the 100 percent of nothing's
7 still nothing. And in this area -- go back to the last
8 picture.

9 And up on these -- there are already sand burs in
10 this area, which is considered a noxious weed. And once
11 they go through that area, they're going to be spreading
12 it clear through the easement area. I mean, if you want
13 something to grow first and fast it's going to be sand
14 burs, in this country.

15 And keeping them out of a grass reclamation is going
16 to be a bad problem.

17 Q. What kind of a plant is that? You said sand bur?

18 A. Yes. It's kind of a grass type plant. It has a red
19 root so it's pretty easily identified in the soils. And
20 it gets multiple set of burs on the top side of it.

21 Q. Will your cattle eat it?

22 A. No, they won't.

23 Q. Do you sort of view it as being a noxious weed?

24 A. Yes. It is considered a noxious weed.

25 Q. And is it your fear that if TransCanada puts its

1 pipeline through your property you're going to have to
2 wind up dealing with a lot of these types of noxious
3 weeds?

4 A. Yes. And I think it's going to make the Sibsons
5 property look like a piece of cake.

6 Q. Flip to another picture that looks like a little bit
7 more stable soil there throughout your pasture. Tell us
8 about this view.

9 Is that, once again, just another view of that tree
10 line where the pipeline is going to enter your property?

11 A. Yes. This kind of catches, I believe, the hilled
12 edge of the blowout we were just looking at. And back to
13 the west where it enters, that's kind of a straight line
14 where it's going to be coming across.

15 Q. Did you want me to flip back to that again?

16 A. This is just another blowout that would basically be
17 to the south of the pipeline route.

18 Q. So how many blowouts do you have that are sort of
19 within that zone where the proposed right of way is going
20 to be?

21 A. There's four major blowouts.

22 Q. Tell us about this photo. It looks like you've got
23 sort of the edge of your four-wheeler on there?

24 A. This is just another picture of the area where -- to
25 the north side of the south blowout where the pipeline's

1 going to be crossing.

2 And then it goes just up over this hill, and that's
3 where it will cross the City of Colome's water line.

4 Q. And what about this next image? Is that a little
5 bit different angle of that same blowout, or is that a
6 different one?

7 A. Right. That will be the blowout to the south side
8 of the pipeline route. You can see that basically what's
9 growing there, that isn't good grass. That's weeds
10 already. There's a little bit of grass there, but very
11 little vegetative cover for cattle.

12 Q. And do you believe that if the pipeline goes through
13 your property there, that's going to exacerbate those
14 problems?

15 A. Yes. I've always stated that it's going to be
16 probably a minimum of a three- to five-year deal without
17 any cattle on the property to get it reclaimed.

18 Q. Do you have any confidence that TransCanada will
19 actually meet its obligations to reclaim your property?

20 A. I think it's going to be just another big battle. I
21 don't know. They -- they haven't given me the confidence
22 that -- especially looking at the Sibsons' and hearing
23 that there are other properties that are probably not in
24 as good of shape as what they should be.

25 I was unable in my negotiations to get them to put

1 in that they would reclaim my property back to
2 100 percent of what it was, which you can see in this
3 area that isn't much.

4 So, you know, if -- you're getting a bad deal going
5 into this anyways, and then I expect there's going to be
6 numerous added expenses going into this. If they get
7 their Permit.

8 Q. Now did you read Mr. Goulet's prefiled testimony and
9 did you hear him say that he believed that TransCanada's
10 going to be able to satisfy all of the Conditions that
11 are being imposed by the Commission?

12 A. Yes. I was here for that testimony.

13 Q. And do you believe that to be the case, based on
14 your own personal experience in dealing with TransCanada
15 and --

16 A. I do not. We've been arguing over the safety of
17 water and the pipeline and promises that TransCanada made
18 on pipe wall thickness for, I think, going -- it was
19 practically seven years until we went into this process.

20 And I was in negotiations with TransCanada when they
21 sent their land agent out to my house, and he met with my
22 wife Tammy and I. And I was a part of the Protect
23 South Dakota re -- I can't even say it. Protect
24 South Dakota Resources Group on an easement acquisition.

25 And because TransCanada was not holding to the

1 promises that they made at public meetings for what they
2 said would be the safest pipeline ever, I refused to sign
3 my easement.

4 And they sent their land agent out to tell me that
5 night that they met with them that if I did not sign that
6 easement that night, that they would remove the easement
7 from me to not be accessible to it.

8 And I told their land agent that I would not sign an
9 easement that was not in my best interest. And a few
10 minutes later -- this was Carl Pratt. And he got up and
11 left.

12 And it was a completely civil discussion. I have no
13 complaints about how Carl Pratt treated me. I think it
14 was a -- we had a very mutual respect for each other.
15 But to me that's coercion to attain an easement, and it
16 was not negotiating in fair and good faith.

17 Q. Was your property under the threat then of eminent
18 domain?

19 A. Yes. We were told that -- from the beginning that
20 if we did not agree with their offers, that they would
21 use eminent domain to acquire the right to our property.

22 Q. Did they wind up condemning your property via
23 eminent domain?

24 A. Yes, they did.

25 Q. Can you tell us how you feel about a foreign

1 for-profit corporation coming in and taking your
2 property?

3 A. Well, any for-profit corporation coming in to take
4 my property for private gain would not sit well with me.
5 In my mind, that's stealing.

6 And my opinion on that is is that just because you
7 have an ability to do something, that doesn't give you
8 the right to do it. And we've seen in the last day,
9 24 hours, we've seen an exercise of how that affects
10 people. And it's not a good feeling to have somebody
11 exercising an ability when they have no right to do
12 something to you.

13 Q. Now earlier in your rebuttal testimony here you
14 mentioned a number of promises that TransCanada had made.
15 And one of the things you referenced was a certain
16 thickness of pipe wall.

17 Could you explain for us what you meant by that?

18 A. At the public meetings -- and this was actually at a
19 documented PUC meeting in Winner, South Dakota that
20 TransCanada stated that under the roads and in high
21 consequence areas that the pipeline would be nearly
22 three-quarter inch thick.

23 I'm sure within my three trees that are cut down
24 laying in my house I got that wrote down exactly what it
25 was someplace, from my figure. But Ms. Kothari eluded to

1 what the decimal figure was, and it was .618 or .681.
2 But I think she used .618.

3 And even at that figure with my mechanical
4 background I kind of laughed at it being just about
5 120-thousandths, which is about an eighth-inch thinner
6 than three-quarters of an inch thick.

7 Q. Does that give you some concern given that the
8 pipeline's going to be going through wetlands on your
9 property?

10 A. Well, that's one of the concerns is the fact that
11 they downgraded the pipe wall thickness of, basically the
12 way I understand it, the entire route of the pipeline.

13 The same thing happened on Keystone I.

14 So between that and coming from a foreign source
15 that has been stated that they put out a low quality --
16 have put out low quality pipe, it was -- it turned into a
17 major concern to me.

18 My feeling was they've alluded that this is a
19 wonderful American jobs deal, and they're importing the
20 steel for it. And I've heard all of the excuses for
21 that, but to me it's just an excuse to buy a lower grade
22 steel to save their overhead.

23 Q. What do you believe would be the effect of a crude
24 oil leak from a pipeline that would be running through
25 the wetlands on your property?

1 A. It will -- in that area to run cattle down there, it
2 will put me out of business for running cattle in that
3 area.

4 The report that I brought up for distributing for
5 showing the picture of the -- the camel that looked like
6 a goat and it's -- it shows in that report the effects
7 that crude oil and chemicals that are within the crude
8 oil can have.

9 And basically what the report said was is that the
10 ground's contaminated. The water gets contaminated. The
11 soil's contaminated. The intake takes in the nutrients
12 from the soil. The plant's contaminated. The cow eats
13 the grass -- or animal. Whatever you're feeding -- and
14 then the animal's contaminated.

15 So basically you hear all the time on beef
16 commercials pasture to plate. This is going to be
17 contaminated pasture to plate if you were to have a spill
18 on your property and then end up trying to graze your
19 cattle on it.

20 Q. Where do your cattle get their water?

21 A. The water source is the dugout that we looked at in
22 the picture. The well that I put in, it will be -- I
23 don't remember what the exact distance is, the new line
24 route, because I didn't have a centerline to measure off
25 of, but it's probably going to be within 100 to 150 foot

1 from the centerline of the well. And that's basically a
2 backup if the dugout area gets too low.

3 Q. Now do you believe that based on everything that
4 you've reviewed and your own personal knowledge, do you
5 believe that TransCanada has done anything to make sure
6 that southern Tripp County where you're at is going to be
7 essentially -- they've got plans to protect the aquifer
8 and effectively treat it as a hydrologically sensitive
9 area?

10 MR. MOORE: Excuse me. I'll just object at this
11 point to foundation and speculation.

12 I think it's really beyond the scope of the
13 rebuttal testimony, and it's beyond his knowledge.

14 MR. MARTINEZ: I believe it goes directly to
15 Condition No. 35, and Mr. Goulet testified that
16 TransCanada would be meeting all Conditions.

17 MR. SMITH: Can you repeat the question, Cheri.
18 (Reporter reads back the last question.)

19 MR. MARTINEZ: That was inartfully worded on my
20 part, but answer it if you can.

21 MR. SMITH: I think I'm going to have you break
22 that down, and I'm going to sustain and have you not be
23 so conclude other, if possible.

24 MR. MARTINEZ: Okay.

25 Q. Do you believe that the area of southern Tripp

1 County where you're located is a hydrologically sensitive
2 area?

3 A. Yes, I do.

4 Q. What do you base your understanding of that on?

5 A. Well, number one, it's 52 years of living there. So
6 I guess I would consider that a little bit of an expert.

7 From my property to the northwest is wetlands area.
8 You cross the road to the next quarter, it's a wetlands
9 area. And then you go southeast from my property you
10 raise into the Sand Hills and then you go over a set of
11 Sand Hills into the next piece of property and you cross
12 the road and then you're into -- I think it goes into
13 Borland's property. This is wetlands area, and there's
14 several quarters of wetlands area going southeast from
15 there.

16 Q. Do you have an aquifer that lies underneath the area
17 where your ranch is located?

18 A. Yes. It's the Ogallala High Plains Aquifer.

19 And I would just like to point out that this picture
20 here is -- that's the City of Colome's well area. That's
21 their north well. The other one's just back over here
22 just a little bit.

23 This taken was taken from -- up on kind of the bluff
24 above that blowout area that we looked at previously. So
25 basically I'm sitting right on top of the proposed route

1 of where the pipeline is proposed to pass through the
2 property.

3 Q. Okay. You preempted my question because I was going
4 to ask you where the proposed pipeline right of way was
5 in respect to that picture.

6 A. That's the north well. That's the south well.
7 (Indicating).

8 Q. Okay.

9 A. And the route was originally going to -- the first
10 route was going to go right through those cottonwood
11 trees (indicating).

12 Q. But the revised route, based on the information you
13 have, is pretty much where you're standing when you took
14 that photograph; is that correct?

15 A. From the -- a lot of what I'm going to call argument
16 because that's basically what it was. The route
17 changes -- from the original route they changed it at
18 least three times without consulting with me at all. And
19 then the last route -- but they basically all came
20 through this area right here.

21 They may have moved a little bit kind of north-ish
22 from this. I think the one route went up to the edge of
23 the other blowout. But the entry point is basically
24 where the major changes were to my property and then the
25 angle to meet up to this area here.

1 Q. Okay. Now I asked you about the underlying aquifer.
2 To the best of your knowledge, has TransCanada developed
3 any type of adequate plans for protecting the aquifer and
4 these hydrologically sensitive areas?

5 MR. MOORE: Object to foundation, speculation on
6 the part of this witness.

7 MR. MARTINEZ: I'm asking if he knows. I asked
8 to the best of his knowledge.

9 MR. SMITH: Well, why don't you ask him first if
10 he has any knowledge.

11 Q. Do you have any knowledge, Mr. Harter, of whether or
12 not TransCanada has developed any plans to protect these
13 hydrologically sensitive areas and the aquifer that
14 underlies your ranch?

15 A. There was a -- think of how to word it.

16 We claimed to come to an agreement on my property
17 that increased the protection slightly. But there is a
18 difference between what the contract says that they
19 reached and of what Ms. Kothari said.

20 Q. Can you explain the difference?

21 A. Well, I don't know. There's a fine line -- part of
22 this, I think, come out. But basically there's a gag
23 order on the settlement and easement agreement. And I
24 think the easement's probably public record so it's not
25 probably a -- another gag order.

1 But the settlement agreement and the information
2 contained in there, I'm not sure that I can tell you what
3 the pipe wall is in compared to what they said it was
4 going to be here under testimony. But I can tell you
5 that there's a difference.

6 Q. Do you feel safer or less safe because of that
7 difference?

8 A. I was asked the same thing by I can't remember who
9 it was. It might have been James that asked me that. I
10 can't remember. And my answer was this (indicating).

11 Q. What do you mean by that?

12 A. Well, the distance in between my fingers is how
13 much -- pinched together is how much safer I feel with
14 what we come up with an agreement.

15 And basically why it ended there is because within
16 all the negotiations I had no leverage. Because the
17 State of South Dakota gave them the right to eminent
18 domain, and they continually used it as a leverage tool
19 against me. Even when I went to Sioux Falls to do the --
20 to draw up a final settlement agreement I was still --
21 they were still using the eminent domain and going to
22 court as a leverage tool.

23 Q. Okay. Now have you heard some testimony here about
24 a meeting that was held at Ideal?

25 A. Yes.

1 Q. Were you there?

2 A. I was.

3 Q. What can you tell the Commission about it, what
4 occurred there?

5 A. The meeting, I was asked to come and to speak as to
6 my knowledge and what I seen and my opinion of the
7 Keystone XL Pipeline.

8 And during the meeting there was discussion that
9 TransCanada had come and made an offer to the Ideal --

10 MR. MOORE: Excuse me. I'll object to hearsay
11 at this point. Mr. Harter can talk about what he said at
12 the meeting. Anything else is hearsay.

13 MR. MARTINEZ: It certainly would not be. He's
14 entitled to talk about and testify as to what he heard in
15 a meeting. I don't understand how that's hearsay.

16 MR. SMITH: I'm going to overrule that. I mean,
17 he can -- he can state what he heard, I think. So I'm
18 going to overrule.

19 Q. Could you please continue, Mr. Harter.

20 A. It was stated at the meeting that TransCanada had
21 made an offer to the Ideal community. And one of the
22 things that was mentioned was a new community building.
23 And that's the one item that stuck in my head.

24 And this is -- offer was made in that they wanted
25 the Ideal community to support the Keystone XL Pipeline

1 coming through this area.

2 Q. Okay. Now one of the things -- let me jump back to
3 your property.

4 Did you have any discussions with TransCanada about
5 maybe moving the pipeline to perhaps a less sensitive
6 area of your land?

7 A. I did. My opinion was that if you go up a -- it's
8 kind of on the -- probably north side of Jim Cahoy's,
9 Ron DeMers' property, the elevation is quite a bit higher
10 there.

11 On the north side of this 280 acres is
12 286th Street, which goes into Colome, South Dakota. And
13 right across the road from my property is Ron DeMers'
14 property. And if you go to the north side of that,
15 you've got quite an elevation difference.

16 And then if you follow that to the east-southeast,
17 then you're going to come across -- it could have went
18 across Cam Dougherty's property or my property, which I
19 have 80 acres, which is basically a mile east of where
20 this was proposed to go.

21 When I was a kid my dad told me that -- well, they
22 done test wells for the City of Colome clear throughout
23 that area because their old well field is 40 acres of
24 that owned -- basically it's two miles east of the west
25 end of where they entered me.

1 Q. Did you suggest that the pipeline be rerouted
2 through that area?

3 A. I did.

4 Q. Why did you make that suggestion?

5 A. Because it would -- from where these wells are it
6 would be -- probably a little over three-quarters of a
7 mile away from the wetlands saturation area of this. And
8 the property up there on that 80 when they dug test wells
9 I was told that they did not hit no water, but I don't
10 know how deep they went.

11 Q. So did you then make that suggestion because you
12 believed it would be a safer way to route the pipeline?

13 A. I did.

14 Q. And you did that out of -- did you do that out of
15 concern for the potential effect on the wetlands and
16 water resources?

17 A. Well, yeah. I -- basically for my property up there
18 I hay that land. So between that and the considerable
19 distance to the aquifer, I just thought it would be
20 safer.

21 But, you know, there's pluses and minuses to that.
22 Because I know the property a half-mile south has better
23 water on it than my 80 acres to the north side. So but
24 taking in the City of Colome's well aquifer area, I think
25 it would have made a considerably safer route.

1 Q. What was TransCanada's response to your suggestion
2 that the pipeline be routed in a safer way to protect the
3 water resources?

4 A. Basically there was -- it fell on deaf ears. There
5 was no conversation that continued from that.

6 Q. Have you had any discussions about what might occur
7 in the event of a pipeline leak on your property?
8 Discussions with TransCanada.

9 A. Yes.

10 Q. Can you please describe those for us.

11 A. Well, they know that my feeling is that if there's a
12 leak on my property with the wetlands and the aquifer --
13 I mean, the pipe's -- basically at times of the year is
14 going to be sitting in the water -- I mean, it's going to
15 have water surrounding it at the 7 foot level.
16 Especially where some of those areas when you get heavy
17 rains you're going to be out there, you're walking in
18 water.

19 So if there's a spill on my property, basically my
20 opinion is is cleanup's impossible.

21 Q. What's your understanding about how a potential leak
22 might be detected?

23 A. Well, according to the EIS --

24 Q. Are you referencing the Final Supplemental
25 Environmental Impact Statement which --

1 A. It was the first one that come out that I done most
2 of my reading in. I can't remember if it was the FEIS or
3 SEIS or which one it is, but it's one of them.

4 And they stated in there that the property owners
5 are basically they're first eyes for finding a leak. And
6 also what I read in the draft report that I talked about
7 yesterday or the day before in the article that was
8 written on it, it basically said the same thing, that
9 somebody walking across the property is more likely to
10 find a leak than the SCADA system will.

11 Q. Do you believe that unfairly shifts the burden on to
12 you as a landowner?

13 A. I do. Because the Colome property is approximately
14 16 miles away from where I reside at. So I'm going to
15 have to travel to this area to check my cattle numerous
16 times.

17 My dad's -- my dad's 81 so time is short.

18 Q. Do you need a moment, Mr. Harter?

19 MR. MARTINEZ: I have no further questions.

20 MR. SMITH: Thank you. Should we take a
21 five-minute break?

22 (A short recess is taken)

23 MR. SMITH: Dakota Rural Action had just
24 finished its direct examination of John Harter, and we
25 will go to cross.

1 TransCanada.

2 MR. MOORE: Thank you, Mr. Smith.

3 CROSS-EXAMINATION

4 BY MR. MOORE:

5 Q. Mr. Harter, I have a few questions for you.

6 You testified that TransCanada obtained an easement
7 across your property by eminent domain. In fact, you
8 signed a settlement agreement and agreed to sign the
9 easement; correct?

10 A. TransCanada did take my property by eminent domain.

11 Q. There was a lawsuit that was filed based on eminent
12 domain; correct?

13 A. There was a lawsuit filed and a decision rendered
14 that you took my property through eminent domain.

15 Q. Mr. Harter, the judgment that the court entered was
16 based on the settlement agreement that you signed;
17 correct?

18 A. That's not my understanding.

19 MR. MARTINEZ: I would object to further
20 questions. I think the issue is is that maybe Mr. Harter
21 as a lay witness may not understand the distinction once
22 he's in a lawsuit between an actual resolution via a
23 settlement agreement versus a final judgment.

24 MR. SMITH: Should I rule on it, or do you want
25 to withdraw the question?

1 MR. MOORE: I don't want to withdraw the
2 question. And, if necessary, we'll address it in
3 posthearing briefing, and I'll ask the Commission to take
4 judicial notice of the court file.

5 MR. SMITH: Right. And to me these are legal
6 questions, and I'm not sure he understands them.

7 I'm going to sustain the objection on the
8 grounds that I just don't know that the witness is
9 qualified to render an opinion on this.

10 MR. HARTER: I do have an opinion on that.

11 MR. MOORE: All right. Thank you, Mr. Smith.

12 Q. Mr. Harter, the last reroute across your property,
13 which is the current route across your property, was made
14 in 2013; is that correct?

15 A. That would probably be approximately right.

16 Q. And the location of that route was made specifically
17 at your request; is that true?

18 A. The entry point to that route was what we had
19 originally agreed upon, and then TransCanada started
20 making changes and not consulting me.

21 Q. Do you remember a day when there were probably about
22 12 people from TransCanada who came out to your property
23 and walked the right of way all the way across your
24 property, and then there was a reroute after that
25 meeting?

1 A. Yes, there was.

2 Q. And your testimony here today is that the route was
3 not at your request; is that correct?

4 A. No. I never said that.

5 MR. MOORE: That's all I have for you. Thank
6 you.

7 MR. SMITH: Okay. We'll go ahead and --
8 Intervenors.

9 Mr. Clark.

10 MR. CLARK: Cheyenne River Sioux Tribe has no
11 questions for Mr. Harter, but thank you so much for
12 coming today and being as involved in the proceedings as
13 you have been.

14 Thank you very much.

15 MR. SMITH: I don't see Mr. Rappold. He's not
16 in here.

17 Mr. Capossela?

18 MR. CAPOSSELA: No questions. Thank you,
19 Mr. Smith.

20 MR. SMITH: Okay. We'll go to -- oh, Ms. Baker.
21 There you are.

22 MS. BAKER: Thank you, Mr. Smith.

23 CROSS-EXAMINATION

24 BY MS. BAKER:

25 Q. Jennifer Baker for the Yankton Sioux Tribe.

1 Do you think that TransCanada will meet its
2 obligations to reclaim your property?

3 MR. MOORE: I'll object that that's been asked
4 and answered. It's beyond the scope of --

5 MR. SMITH: Sustained.

6 Q. I believe you said that it won't. Are they required
7 by law to do this, to reclaim your property?

8 A. That's my understanding.

9 Q. And you stated earlier in your testimony -- I'm
10 sorry.

11 So when you did state earlier in your testimony that
12 you don't think they'll reclaim it do you have any reason
13 for this thought that you have that they won't fulfill
14 that duty?

15 MR. MOORE: I guess I'll object. That's been
16 asked and answered too. He testified at great length
17 about it.

18 MR. SMITH: Sustained.

19 Q. Is there anything in their past behavior that would
20 leave you to believe they can't be trusted to fulfill
21 their legal obligations?

22 MR. MOORE: Same objection. I let Mr. Harter go
23 at great length without objection. It's asked and
24 answered.

25 MS. BAKER: This question's a little bit

1 different. It's about complying with legal obligations
2 generally.

3 MR. SMITH: Overruled.

4 A. Could you repeat it.

5 Q. Sure. Do you have any reason based on TransCanada's
6 past behavior to think that they won't fulfill legal
7 obligations that they have?

8 A. Yes. Because I've experienced several promises
9 that -- that they did not fulfill.

10 Q. Okay. So, in your opinion, based on what you just
11 said and in your dealings with the company, should
12 TransCanada be taken at their word when they ask the
13 Commission to certify that they'll comply with the Permit
14 Conditions?

15 A. In my opinion, no.

16 MS. BAKER: Thank you. Nothing further.

17 MR. SMITH: Ms. Craven.

18 MS. CRAVEN: On behalf of the Indigenous
19 Environmental Network, we have no questions. We thank
20 you very much for appearing here today and providing your
21 testimony.

22 Thanks.

23 THE WITNESS: Thank you.

24 MR. SMITH: Mr. Gough.

25 MR. GOUGH: Thank you. Bob Gough InterTribal

1 COUP.

2

CROSS-EXAMINATION

3 BY MR. GOUGH:

4 Q. Is it your opinion that the reason you were in court
5 with TransCanada was because of the eminent domain
6 leverage they were applying against you?

7 MR. MOORE: Mr. Smith --

8 A. Absolutely.

9 MR. MOORE: Mr. Smith, I guess I'll just object
10 to questions on this. You sustained an objection when I
11 asked the question.

12 If we're not going to talk about this and
13 address it through posthearing briefing, then I think
14 that rule should apply to other questions by Intervenors
15 related to the same subject matter.

16 MR. SMITH: I agree. Sustained.

17 THE WITNESS: I would answer the question.

18 MR. GOUGH: Sir, I wasn't asking him about his
19 legal opinion but his understanding of why he was in
20 court.

21 I mean, it seems to be that there was a
22 disconnect between the understandings between the
23 settlement and the landowner whose land was at risk. And
24 I'm just asking if he perceived that the legal authority
25 that they were bringing to bear under eminent domain was

1 being used as leverage to have gotten him into that court
2 situation.

3 It's not a legal question. We're not going into
4 it --

5 MR. SMITH: I'm sustaining that.

6 MR. GOUGH: Thank you. No further questions.

7 MR. SMITH: I don't see -- is Ms. Braun in the
8 room? She's not.

9 Okay. Mr. Dorr.

10 MR. DORR: Thank you.

11 CROSS-EXAMINATION

12 BY MR. DORR:

13 Q. Gary Dorr, Individual Intervenor. Mr. Harter --

14 MR. DORR: Actually could we put those pictures
15 back up? I have a question about the pictures.

16 Okay. Keep going. Keep going. Okay. Right
17 there.

18 Q. Mr. Harter, do you recognize this picture?

19 A. Yes, I do.

20 Q. Is that the blowout on the hill where TransCanada is
21 going to go through?

22 A. I believe this blowout is basically the north one.
23 It will be just to the south side of this blowout.

24 Q. Okay. And then what's the most prominent terrain
25 feature visible to the eye right now in this picture?

1 A. Well, there's one here, and then the other one is
2 back over here to the -- it would be basically the
3 northeast of that area.

4 Q. What are those topography features that you see in
5 this picture?

6 A. Those are -- it gets sandstone-ish up in that area.

7 Q. Okay. Is that -- I'm referring to the hill. Is
8 that hill prominent on your land?

9 A. Yes, it is.

10 Q. What's down there by those trees?

11 A. Down here (indicating)?

12 Q. Yes.

13 A. That is the City of Colome's well house.

14 Q. Okay. How close is that well to that hill right
15 there?

16 A. To this hill (indicating)?

17 Q. Yes. Yes. Approximately how close is that?

18 A. I would say approximately probably 200 yards.

19 Q. Okay. So about 600 feet?

20 A. Yes.

21 Q. Okay. So the Keystone XL Pipeline proposed route
22 goes over this hill; correct?

23 A. No. The original route went over that hill.

24 Q. Where does it go now?

25 A. Now it's right up through this area here. There's

1 another bluff up there, and I believe that's the one that
2 you're probably thinking of.

3 Q. So is this route closer now to the water supply
4 well?

5 A. Well, from the original first route that they drew
6 that went right through the City of Colome's well source,
7 which was probably less than 100 yards from there -- or
8 let me think. Probably that downsized it to --

9 Yeah. It was probably somewhere in there, 100,
10 150 yards from their north well in the original route.
11 But when --

12 Go ahead in the pictures. Go -- yeah. Keep going.
13 We need to find the trees where I'm looking back.

14 Okay. This route here is the last route that
15 Mr. Moore was alluding to that happened during our final
16 discussion when we were working on the settlement
17 agreement, and it comes straight across, if I can hold
18 this laser, across this way (indicating).

19 Q. Okay. Thank you.

20 Do you recall when I walked your property with the
21 TransCanada representatives?

22 A. Yes, I do.

23 Q. Do you recall if I asked TransCanada representatives
24 for map data related to the actual route?

25 A. Yes. I remember it being asked.

1 Q. Do you recall what the TransCanada reps told me?

2 A. Well, you got told the same thing. We got told
3 another time that the route is national security
4 information, and we could not have computerized data to
5 the KXL route.

6 Q. Do you recall how TransCanada reps knew on site
7 where the pipeline route was?

8 A. Yes. They had a GPS locator.

9 Q. Didn't they also have phones also?

10 A. The gentleman that come out and done the assessment
11 on my property that TransCanada hired had a -- the
12 information on a handheld GPS device.

13 Q. Do you have a security clearance, Mr. Harter?

14 A. On my own property I do.

15 Q. Thank you.

16 Was your decision to stop negotiating with
17 TransCanada influenced by TransCanada withholding the map
18 information from you?

19 A. Well, I wouldn't say that I ever stopped
20 negotiating with TransCanada. I alluded to the fact that
21 when Carl Pratt come out to the house that basically they
22 threatened me. And, of course, Carl's a pretty big guy.
23 But, you know --

24 And I like Carl. But when somebody threatens you in
25 your own home, that's an insult, and that person's

1 probably lucky that they walked out of my house,
2 threatening me in my own home.

3 So I feel that I have been very composed through
4 this whole ordeal. And I wouldn't say I was 100 percent,
5 but I've been pretty decent.

6 Q. All right. Thank you.

7 The pipeline is considered to be down gradient of
8 all city water supplies. In these pictures isn't that
9 hill the most prominent feature with topography visible
10 to the eye?

11 A. Yes. There's actually what I would consider three
12 spots in that pasture to the south and rounding to the
13 north going -- go back a couple of pictures.

14 Okay. So if you're starting here, this is the
15 southwest end basically, my property with the hills. And
16 it rounds back this way and comes back north. And that's
17 basically all what I'm going to describe as high terrain
18 Sand Hills, sandstone.

19 Q. So as a landowner in that area, does that concern
20 you that the pipeline is at a higher elevation than the
21 city water supply?

22 A. Well, I think from where the pipeline goes through
23 that in that higher area if a spill occurs on that
24 property, that the fact that the -- what they're terming
25 as a water source protection area is down gradient.

1 I think they stated it was up gradient, but it's
2 down gradient from -- the city wells are down gradient
3 from where the pipeline is. And a large spill could --
4 even a small spill could easily breach their 175 foot
5 clearance between that source water protection.

6 Q. Okay.

7 A. In some areas -- if you get into the wetland areas,
8 which are from where this blowout is, it's kind of -- I
9 won't shine that in your eyes, Mr. Nelson. It's to the
10 northwest. And that's all -- that's fairly flat.

11 And what the exact elevation is, I can't tell you.
12 The water above ground, below ground basically does flow
13 as they stated. Underground it's stated that it flows
14 from maps to the northwest.

15 When it flows out of my property if a spill occurred
16 in a high water incidence, it would actually run right up
17 towards the house.

18 MR. DORR: I would also like to note for the
19 record that Mr. Harter estimated from the hill to the
20 water supply well it was about 600 feet.

21 Q. Mr. Harter, that water well there, the cone of water
22 is greater than just that building, isn't it?

23 A. In my opinion from looking at the wetlands and the
24 dugout that it shows in the picture, they -- the years of
25 experience is that the wells -- the City of Colome water

1 wells -- Novotny's irrigation system and Tripp County
2 Rural Water all have a drawing effect on that area.

3 Q. Okay. Did part of your agreement with TransCanada
4 require a signature that there were no known cultural
5 sites on your property?

6 MR. MOORE: I'm sorry. I didn't hear the
7 question, the first part of it. I just didn't understand
8 it.

9 MR. SMITH: Just a minute. Cheri, can you
10 please reread it.

11 (Reporter reads back the last question.)

12 MR. MOORE: Well, I'll object that Mr. Harter
13 has previously testified that the terms of his settlement
14 agreement with Keystone are confidential.

15 MR. SMITH: Sustained.

16 Q. Was it a draft settlement that you signed
17 originally?

18 A. Yes.

19 Q. So did 100 percent of your landowners sign the
20 agreement?

21 MR. MOORE: I'll object to the form of the
22 question. I think it's unclear. I'll object to
23 relevance at this point.

24 MR. SMITH: Sustained.

25 MR. DORR: I have no further questions.

1 MR. SMITH: Ms. Jewett.

2 Mr. Goldtooth. There you are. Do you have any
3 questions?

4 MR. GOLDTOOTH: No, I don't. Dallas Goldtooth,
5 Individual Intervenor. And good to see you guys again.

6 MR. SMITH: Ms. Jewett has left, huh? Okay.
7 Ms. Bardaglio.

8 MR. BARDAGLIO: Thank you, Mr. Harter.
9 And I don't have any questions. Thank you.

10 MR. SMITH: Ms. Lone Eagle.

11 CROSS-EXAMINATION

12 BY MS. LONE EAGLE:

13 Q. Hi.

14 MS. LONE EAGLE: Could we move a couple of
15 pictures that way?

16 MR. MARTINEZ: Forward or back?

17 MS. LONE EAGLE: I think forward. One more.
18 Right there. That's good.

19 Q. I noticed it's more prominent in this picture than
20 some of the others, but one of the things I noticed about
21 your property and it's true of a lot of areas, especially
22 with pipelines going through there looks to be a lot of
23 sage on your land.

24 Is that true?

25 A. Yes, there is.

1 Q. And you've -- in the area that you live it's pretty
2 integrated between Lakota and non-Lakota, is it not?
3 There's Lakota people living in the area and non-Lakota
4 people living in the area?

5 A. Yes.

6 Q. And you interact quite frequently with Lakotas? You
7 have Lakotas who are your friends?

8 A. Yes.

9 Q. So are you familiar with certain Lakotas' practices
10 and beliefs?

11 A. I've learned a lot in the last seven years,
12 especially the last three.

13 Q. Okay. Are you aware of any significance to sage?

14 A. Yes. The sage is -- I don't know if I'll term this
15 100 percent right, but it's basically used as a I'm going
16 to say cleanser to the body.

17 Is that right?

18 Q. Yeah. In some instances. Are you familiar at all
19 with medicinal practices?

20 MR. MOORE: Excuse me, Mr. Smith. I'll object
21 to relevance, and this is beyond the scope of rebuttal.

22 MR. SMITH: Yep. Sustained.

23 Q. Are you aware of that -- of any culturally
24 significant sites on your land?

25 A. Yes. When -- Faith Spotted Eagle organized with

1 Rosebud to come out and do a cultural assessment of my
2 property, and they found a turtle effigy on my property.

3 Q. Is TransCanada aware of this?

4 A. Yes. I do believe they know that now. I think we
5 discussed it some time ago.

6 Q. Do you know whether or not that effigy is within the
7 area that they're planning to put the pipeline?

8 A. It is close to it, but I believe it's outside the
9 easement area.

10 Q. Is it in an area that would be considered, like the
11 water, perhaps dangerous?

12 A. You see where this blowout is here?

13 Q. I can't see where you're pointing.

14 Oh, okay. Yes.

15 A. Okay. The effigy is about right in this area here
16 approximately.

17 Q. So it's in an area that is downhill from where the
18 pipeline will come through?

19 A. Yes.

20 MS. LONE EAGLE: Okay. Thank you. No more
21 questions.

22 MR. SMITH: Thank you.

23 Mr. Seamans.

24 MR. SEAMANS: I have some questions.

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CROSS-EXAMINATION

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BY MR. SEAMANS:

Q. Mr. Harter, you mentioned the landowner group
Protect South Dakota Resources, did you not?

A. I did.

Q. Can you explain what Protect South Dakota Resources
or we'll say PSDR for short --

MR. MOORE: Excuse me. I'm sorry. I didn't
mean to interrupt.

Were you done with the question?

MR. SMITH: Were you?

MR. SEAMANS: You want me to repeat the
question?

MR. SMITH: Yeah. Or Cheri could -- do you want
her to read it?

MR. MOORE: I'm sorry. I don't need it read if
she got the question. I didn't mean to interrupt, but I
wanted to make an objection.

The objection is to relevance and beyond the
scope of rebuttal.

THE WITNESS: I didn't get the question.

MR. MARTINEZ: I'm not sure I understood what
the question was either.

MR. SEAMANS: Okay.

MR. SMITH: Do you want her to read it, or do

1 you just want to restate it? Do you have it written down
2 there?

3 MR. SEAMANS: I can repeat the question.

4 MR. SMITH: Either way. Do you want her to
5 reread it?

6 Go ahead, Cheri. Just read it.

7 (Reporter reads back the last question.)

8 MR. SMITH: So you have to finish it with the
9 end of the question because there is no question in
10 there.

11 MR. SEAMANS: Okay.

12 Q. Can you explain what PSDR is?

13 MR. MOORE: And I'll object to relevance and
14 beyond the scope of rebuttal.

15 MR. MARTINEZ: Without knowing the answer to
16 that, I'm not even sure whether I even understand whether
17 it's relevant or not. So I'm not sure what the basis is
18 for a relevancy objection.

19 MR. SMITH: I'm going to sustain it.

20 Q. Okay. Why was PSDR formed?

21 MR. MOORE: Same objection.

22 MR. SMITH: Okay. We'll overrule and let him
23 answer it.

24 A. Why was PSDR formed?

25 Q. Yes.

1 A. So that landowners could hopefully attain a better
2 easement agreement.

3 Q. And these PSDR members, approximately what
4 percentage of the Keystone XL route do the PSDR members
5 control?

6 A. It was approximately one-third.

7 Q. You personally know many of these PSDR members?

8 A. I know quite a few of them.

9 Q. Are you aware that TransCanada executives have
10 stated in the media that 100 percent of South Dakota
11 landowners have willingly -- and I want to emphasize the
12 word willingly. That 100 percent of South Dakota
13 landowners have willingly signed easements?

14 MR. MOORE: I'll object to relevance,
15 foundation, hearsay.

16 MR. MARTINEZ: I think the question was was
17 whether he was aware. So I don't see how that could
18 support a hearsay objection.

19 In terms of the relevancy issues to that,
20 Mr. Harter's already spent a lot of time testifying about
21 the nature in which TransCanada essentially obtained the
22 pipeline easements over his property.

23 Personally I don't understand the basis for the
24 objection on those grounds.

25 MR. SMITH: The other thing is that's one thing

1 as to what happened to Mr. Harter, but I think that
2 relevancy of what a newspaper -- what the newspaper
3 decides to say, I'm not sure how relevant that is.

4 Anyway we're going to sustain it on hearsay.

5 MR. SEAMANS: Okay.

6 Q. These PSDR members, do you know of many that have
7 willingly signed an easement?

8 MR. MOORE: I'll object to relevance.

9 MR. SMITH: Sustained.

10 Q. If a landowner didn't sign the easement offered by
11 TransCanada, do you think most landowners knew what
12 TransCanada's next move would be?

13 MR. MOORE: Object to relevance, foundation,
14 speculation.

15 MR. SMITH: You know, I'm going to sustain that.
16 We have nothing to do here at the PUC with the land --
17 that's totally outside of our realm is the acquisition
18 process.

19 MR. SEAMANS: Okay. Well, I guess I -- I guess
20 it looks like most of my other questions will be objected
21 to too. So I guess that's it. Thank you.

22 Thanks, Mr. Harter.

23 MR. SMITH: Ms. Smith.

24 MS. SMITH: I have no questions.

25 MS. BAKER: Mr. Smith, Jennifer Baker for the

1 Yankton Sioux Tribe. I believe that was the last of the
2 Individual Intervenors, and I would ask for the
3 Commission's indulgence to ask just a few more questions
4 on behalf of the Yankton Sioux Tribe.

5 I understand that we have had our turn, but I
6 would ask leave of the Commission to take just a few more
7 moments.

8 MR. SMITH: May I allow Ms. Jewett an
9 opportunity if she has anything first. She came back
10 into the room.

11 MS. JEWETT: I have no questions, but I would be
12 willing to ask their questions if they don't get to.

13 MR. SMITH: I'll ask the Commissioners if
14 they're willing to --

15 Yeah. Let's keep it, if we could, fairly brief,
16 though, if you would be so kind.

17 MS. BAKER: Okay. I will keep it as brief as I
18 can.

19 Thank you.

20 RE CROSS-EXAMINATION

21 BY MS. BAKER:

22 Q. Mr. Harter, I have just a couple more questions, as
23 I was stating.

24 Early in your testimony you described your lack of
25 confidence in TransCanada's ability to effectively

1 fulfill its duties. And I'd like to ask you just within
2 the scope of your direct knowledge about the
3 effectiveness of surveys since you are a landowner on the
4 route, and I believe that means surveys would have been
5 conducted on your land.

6 Did TransCanada survey your property?

7 A. For the route?

8 Q. I'm sorry. Did they conduct a cultural resources
9 survey on your property?

10 A. Several.

11 Q. Several. Thank you.

12 Did they find any archaeological or cultural
13 resources?

14 A. They did not tell me if they did.

15 Q. Okay.

16 A. I asked for a report, and they told me that there
17 was none.

18 Q. They told you that there was no report?

19 A. Yes.

20 Q. Okay. Thank you. That sounds like there must not
21 have been anything. Otherwise, they would have had to
22 generate a report.

23 You mentioned another survey as a response to
24 Ms. Lone Eagle's question. Was that survey conducted
25 before or after TransCanada's surveys?

1 A. I believe it was conducted after all of
2 TransCanada's surveys.

3 Q. Okay. Thank you. Do you recall who was there to do
4 that survey, the woman Ms. Lone Eagle was describing?

5 A. I'm not going to have all the names. There was at
6 least two people out of the Rosebud office, Ms. Lone
7 Eagle and I think Wayne Frederick and his wife was there.

8 Q. So it sounds like some tribal officials were there?

9 A. Yes.

10 Q. Do you recall if there was an archeologist or anyone
11 with expertise in archaeological and cultural resources?

12 A. Yes. There was two.

13 Q. Thank you. Did they find anything in their survey?

14 A. Yes. They found the turtle effigy.

15 Q. Okay. I won't ask you real specific details because
16 I understand that that knowledge is sensitive, but just a
17 few more questions.

18 That effigy that they found, was it something small,
19 something that's pretty easy to just miss, or was it
20 larger?

21 A. No. It's big. You always want to remember it if
22 you're chasing cows across a pasture.

23 Q. Okay. So it sounds like you've encountered it
24 before.

25 A. Yeah.

1 Q. And about how far was it from the proposed pipeline
2 route?

3 A. Well, the original route -- when I was down there
4 Sunday I kind of had an epiphany and realized that
5 looking at the original route it looked like it would
6 have been pretty much right through where that effigy
7 was.

8 Q. Wow. So based on your knowledge of TransCanada's
9 obligations to survey your property, and you said they
10 were out there several times and based on your knowledge
11 of this particular item that was found through a tribal
12 archaeological survey do you feel this is something that
13 TransCanada should have found and would have found if
14 they were effectively doing their jobs to survey?

15 MR. MOORE: I'll object to speculation,
16 foundation. It's argumentative.

17 MR. SMITH: I'm going to sustain that.

18 MS. BAKER: Let me try and reword.

19 Q. Based on your knowledge of TransCanada's obligations
20 to survey your property, do you feel like this particular
21 item is something they would have found on a more
22 thorough survey?

23 MR. MOORE: Same objection.

24 MS. BAKER: Thank you. Nothing further.

25 MR. SMITH: Sustained.

1 MR. MARTINEZ: He didn't rule.

2 MR. SMITH: I just did.

3 MR. MARTINEZ: I missed it. I'm sorry,
4 Mr. Smith.

5 MS. BAKER: Thank you, Mr. Harter.

6 MR. HARTER: Thank you.

7 MR. SMITH: Okay. We're going to Staff.

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

9 MR. SMITH: Okay. Commissioner questions.
10 Chairman Nelson.

11 CHAIRMAN NELSON: Just one question.

12 What measures have you taken to restore usable
13 forage to these blowout areas?

14 THE WITNESS: We have taken hay up into these
15 areas and put it in these areas. We have taken tires and
16 placed on the ends to slow the blowout areas down from
17 blowing.

18 CHAIRMAN NELSON: Thank you.

19 MR. SMITH: Commissioner Hanson, any questions?

20 COMMISSIONER HANSON: No.

21 MR. SMITH: Okay. Is there any redirect?

22 MR. MARTINEZ: There is no redirect.

23 MR. SMITH: Okay. You may step down,
24 Mr. Harter.

25 Commissioners, we're at 10 after 5:00. At this

1 point, as I understand it, we will be switching back to
2 Keystone's final testimony.

3 MR. ELLISON: Mr. Smith, if I may, I believe
4 there's only one witness left, and it's a little unclear
5 exactly how long -- and that, I believe, is Mr. King; is
6 that correct?

7 You have three witnesses left? Oh, I guess it's
8 growing.

9 MR. SMITH: I've got four. But I've got -- but
10 who is it going to be?

11 MR. WHITE: We have Rick Perkins. We have
12 Heidi Tillquist. We have Dan King.

13 MR. SMITH: Okay. No Schmidt.

14 MR. WHITE: No. Dr. Schmidt was yesterday.

15 MR. SMITH: I'm sorry. Okay.

16 MR. ELLISON: Well, I guess I was just wondering
17 whether we could just start in the morning or whether
18 we're going to try and plow ahead. Because obviously
19 we're going to finish tomorrow. I mean, I think that's
20 pretty clear.

21 MR. SMITH: I would think so.

22 Commissioners' thoughts?

23 CHAIRMAN NELSON: I'm okay with starting
24 tomorrow if you all --

25 I'm on you, Mr. Ellison. I take that as a

1 promise.

2 MR. ELLISON: That we're going to finish?

3 CHAIRMAN NELSON: Yes.

4 MR. ELLISON: I cannot express in words how much
5 I share that hope.

6 CHAIRMAN NELSON: Thank you.

7 MR. SMITH: Remember, we're only until -- are we
8 going until noon tomorrow?

9 CHAIRMAN NELSON: Yes.

10 MR. SMITH: Because we've got a Commission
11 meeting.

12 MR. ELLISON: And I will certainly keep that in
13 mind with regard to any witnesses that I have
14 cross-examination --

15 MR. RAPPOLD: Mr. Smith, should we be
16 anticipating preparation for closing statements tomorrow
17 then?

18 MR. SMITH: We discussed that a little bit -- I
19 did this morning -- with Chairman Nelson. And we thought
20 we would, you know, entertain the views of the parties.
21 But I think at least -- you want to --

22 CHAIRMAN NELSON: Let's get some feedback on
23 that now. I don't have a strong feeling. I guess I'd
24 like to hear what you all want to do.

25 MR. WHITE: So given the fact that there have

1 already been opening statements, there have already been
2 nine days of hearing, and that there's been a great deal
3 of testimony, our preference would clearly be and I think
4 the record would benefit from written posttrial briefs as
5 opposed to live closing arguments, after the parties have
6 had a chance to go back, review the record, formulate
7 their arguments, look at the evidence, and craft perhaps
8 initial and reply briefs.

9 MR. SMITH: Any other preferences?
10 Go ahead.

11 MS. LONE EAGLE: I think that might work for the
12 attorneys but -- and I can't speak for any of the other
13 Individual Intervenors but this is probably going to be
14 my last chance to address you personally on this and I
15 would prefer the opportunity to be able to actually speak
16 to you in closing arguments.

17 MR. RAPPOLD: It just would seem like a closing
18 argument is a natural part of a trial. And I'm
19 anticipating that the Commission will need quite a while.
20 It's my understanding the original docket was two months
21 of posttrial briefings to address the issue that
22 Mr. White just raised.

23 MR. SMITH: We quite frequently don't have
24 closing arguments because we -- but it's up to the --
25 it's up to the Commission.

1 And the people here may express themselves. But
2 a lot of times we don't. And most of the time the
3 parties are fine with that. Because I think they feel by
4 then we've been through it and everybody's burned out and
5 it's just a lot more effective to do it via briefs.

6 MR. CLARK: It would be the preference of the
7 Cheyenne River Sioux Tribe to have at least an
8 opportunity to provide a brief closing argument orally.
9 From my understanding I thought -- and correct me if I'm
10 wrong because I could be totally off.

11 At the beginning of the hearing I know you
12 talked about asking for briefs later. I guess my
13 understanding was that was if you all had questions or
14 something specific, you would ask us to clarify an issue.
15 And I guess that's kind of what I was planning on was
16 giving a brief oral closing statement that summed up our
17 theory of the case and then responding to the
18 Commissioners' whatever questions and concerns that you
19 had later if you had those questions.

20 CHAIRMAN NELSON: Thank you. And you just
21 stated almost verbatim what my original thoughts were
22 coming into this.

23 Sitting here today, my thoughts have switched to
24 very much like what TransCanada said. You know, with
25 eight or nine days of testimony I don't know how you all

1 can capture all of that and adequately do a closing
2 verbally based on the sheer volume that we've heard.

3 And so to me it would make sense to give you all
4 some time to take all of that in and give us your very
5 best arguments in writing.

6 Now I don't know that that means that we have to
7 preclude an oral argument, but I definitely want to give
8 you the opportunity to give us a written brief.

9 MR. ELLISON: Commissioner Nelson, it's me.

10 I guess I want to throw out at least for thought
11 perhaps a hybrid suggestion, and that would be that at
12 least permit the Individual Intervenors, those few that
13 are left, their chance, taking into consideration
14 Ms. Jewett's [sic] statement, because obviously they
15 would not be involved in brief.

16 MR. SMITH: Ms. Lone Eagle.

17 But, I mean, the only thing too, just something
18 to think about -- I don't really care, but, you know, if
19 we're talking like opening statements, we're talking
20 another 3 to 3 and a half, 4 hours of additional time.

21 MR. CLARK: I guess giving it the five minutes
22 of thought that I have now, like I said, my mindset was
23 that we were giving oral.

24 But I think after you explained it, I would be
25 comfortable doing it written. Like you said, maybe that

1 would give us a little bit more time to reflect and it be
2 a little bit more meaningful argument.

3 CHAIRMAN NELSON: Exactly. And I want your very
4 best arguments. And you all are a whole lot better than
5 I am if you can take what's happened in the last six,
6 seven, eight days and distill that overnight and give
7 that to us in a verbal shot tomorrow. I think you can do
8 it all better in writing.

9 MR. ELLISON: But if the Individual Intervenors
10 were to do it, it wouldn't take all that much time.

11 CHAIRMAN NELSON: I'm fine with that.
12 Certainly.

13 MR. SMITH: Go ahead. Pardon me.

14 COMMISSIONER HANSON: I agree with the
15 conclusion that you reached because that's exactly where
16 I wanted to go is to give people an opportunity to give
17 their oral argument if they want at the end, brief oral
18 argument.

19 But just for your own information, I will spend
20 a great deal of time with the final written arguments and
21 referring back to testimony from those. That will be an
22 important -- basically a matrix as I look at all the
23 different ones and compare those with what was testified
24 to during the process.

25 So the written form has always been very

1 important to me because I get to spend so much more time
2 with it.

3 Those folks who do not provide one who wish to
4 present orally, I'll look at the record, the written
5 record and use those. But I think it will benefit to
6 have a written one because that way you can go through
7 all the different arguments and outline them
8 specifically.

9 That will benefit me in making my decision.

10 MR. DORR: Mr. Smith, Gary Dorr. What's the
11 time line for everything here that we're talking about
12 for written and oral?

13 MR. SMITH: Well, we haven't gotten there yet.
14 I guess we could discuss that now. But the Commissioners
15 haven't laid out a time line yet, Mr. Dorr.

16 And I think we'd want to hear from parties on
17 what they think is a reasonable -- you know, part of it
18 is too, I mean, this has been a grueling few days. We
19 have a court reporter that's been through quite a --
20 quite a -- where are we at now, 10 days? Eight days.
21 And it's -- I don't think she's going to be able to turn
22 around a transcript with a snap of the fingers here.

23 MR. ELLISON: Mr. Smith, if I may, there is a
24 practical reality for some of the Intervenors, even those
25 represented by counsel.

1 I mean, for example, Mr. Martinez and I are
2 appearing pro bono. I don't know what the transcripts
3 are going to cost. And obviously they would be of great
4 benefit to us, and I would imagine then to the Commission
5 for us to have actual references to transcripts to aid in
6 both our putting things together and in your work.

7 And I don't know quite what to suggest on that,
8 but I just wanted to raise that, you know, we will do our
9 best to raise money to get a transcript, but there may be
10 some practical realities that go beyond just simply
11 Dakota Rural Action.

12 MR. SMITH: Yes, sir.

13 MR. RAPPOLD: This is my friend Ned Metcalf.
14 He's from Rosebud.

15 MR. SMITH: For the record, did you want to --

16 MR. METCALF: My name is Ned Metcalf. I'm a
17 Sicangu Lakota from Rosebud, and my Lakota name is
18 (speaks Lakota). It means fast horse. And I'm a singer,
19 and I'm a sun dancer. Ceremony singer.

20 And, first of all, I'd like to say hello to a
21 friend of mine, Gary Hanson, through Mr. Janowski. And I
22 hope Mr. Janowski's doing great, you know. I hate to see
23 him -- he left St. Francis Indian School, and to this day
24 I kick myself why the other board members -- but anyway.
25 Besides the point.

1 I'm here to let you know that you're crossing
2 Indian Country and all the United States is Indian
3 Country and the whole land is sacred to us. It's Mother
4 Earth how we survived to this day. If it wasn't for the
5 buffalos, northern Tribes wouldn't be here. And the land
6 is very, very sacred. And the water of life very sacred
7 to us.

8 I just finished a sundance with Chief Leonard
9 Crow Dog. He was supposed to be here, but he had this
10 little motor scooter with two wheels in the back, one in
11 the front, so he couldn't balance the scooter. And he
12 wrecked twice.

13 So I doubt if he'll be here, but he's our chief
14 on Rosebud. We have many chiefs, Spotted Tail and Chief
15 Two Strike. Many others, chiefs on the Rosebud.

16 We're the Great Sioux Nation, and we're
17 spiritual people. And I really thank my friend
18 Dr. Lionel Bordeaux, 42 years President, Sinte Gleska
19 University. But I also want to ask the elderlies that
20 are in here to talk.

21 I like to talk in my language. I feel
22 comfortable. I put my language first, and then it comes
23 out the English. So if I may speak Lakota.

24 (Speaks Lakota.)

25 What I have said was I come in the last minute.

1 I was arranging my pasture for the cattle. I usually
2 don't dress this way, but I was at the golf course for a
3 little while and I come over and I'll probably have to go
4 to Wal-Mart to get my clothes for tomorrow's hearing.

5 But, all in all, I'm really honored to be here,
6 to see some friends of mine, and long friend of mine,
7 Attorney Bob Gough who won our Crazy Horse Malt Liquor
8 Beer with Seth Big Crow.

9 All in all, the other side I want to say
10 greetings to you from the Great Sioux Nation, and I hope
11 that we can settle this once and for all.

12 The land is very sacred to us. It's Mother
13 Earth. Just like me when I came out, I nursed from my
14 mother. She nursed from the Mother Earth. So you're
15 interfering with life that is very sacred to us. And
16 you're looking at the almighty dollar, God we trust.

17 Every land in the United States belongs to us.
18 What the United States Government did to us, they took
19 all the gold out of the Black Hills and put the four
20 faces, the presidents, on our sacred land, (speaks
21 Lakota).

22 And that really hurts to this day. I don't go
23 to Mount Rushmore. I don't go to Crazy Horse because of
24 one want family, multimillionaires because of Chief Crazy
25 Horse. The greatest chief I've got who fought Little Big

1 Horn.

2 My chief where I come from is Numpkahapa, Two
3 Strike community. My chief never signed this treaty.
4 All the chiefs who signed a treaty, my Chief Two Strike
5 never signed a treaty.

6 So I hope you understand and respect us native
7 people, the owners. The homeland is ours. You're
8 crossing over a treaty territory. The treaty says as
9 long as the sun rises, it sets, as long as the wind
10 blows, the river flows. These treaties were made of our
11 ancestors.

12 It wasn't through a peace pipe. There's no such
13 thing as a peace pipe. A sacred pipe. We have a sacred
14 pipe. The non-Indians call it peace pipe, and they broke
15 every one of our treaties. Every one of them. They
16 promised to take our land, and they took our land.

17 I come from the second poorest county in the
18 United States. And because we're not greedy, we're going
19 to stay poor, as long as the government keeps squishing
20 us, as long as TransCanada is going to come and squeeze
21 us again.

22 You're multimillionaires. I survived on
23 disability, Social Security. I worked since I was 12
24 years old. I worked for the Jesuits, brother, carpenter
25 brother from Germany building Catholic church. I worked

1 for the shoe shop. One of the brothers came there, tried
2 to fix shoes.

3 The Jesuits took us, forced us, give us the
4 haircuts. It was a sin to talk our language. So we had
5 to go underground with our ceremonies because the
6 Natives, they were proud. And I credit Russell Means,
7 Leonard Crow Dog, Dennis Banks, all the great leaders. I
8 credit them.

9 I used to have long hair, but now since my age
10 every time you brush your hair you take some of the hair
11 off.

12 CHAIRMAN NELSON: Sir, sir. I'm going to
13 interrupt you.

14 I appreciate your coming here. I appreciate you
15 wanting to share with us. But we were right in the
16 middle of determining our schedule for tomorrow, and we
17 need to finish that and conclude.

18 MR. METCALF: Sorry. But I would like to sing a
19 song if it's okay. It will take two minutes.

20 CHAIRMAN NELSON: Please.

21 (Mr. Metcalf sings a song.)

22 CHAIRMAN NELSON: Thank you. Sir, I'm not sure
23 it even took that much.

24 MR. RAPPOLD: Thank you, Commissioners, for your
25 indulgence.

1 CHAIRMAN NELSON: Certainly.

2 Okay. So as I understand it, tomorrow we've got
3 our three rebuttal witnesses from Keystone. And then
4 we've agreed that any of the Individual Intervenors who
5 would like to provide an oral closing statement will be
6 able to do it at that time. And for everybody else we
7 would expect and will probably tomorrow talk about timing
8 of when those written statements will be due.

9 Mr. Gough.

10 MR. GOUGH: Sir, is there anything to preclude
11 any of the Intervenors that do give an oral statement to
12 submit a version of that in writing, given
13 Mr. Hanson's --

14 CHAIRMAN NELSON: Not at all. And I share
15 Commissioner Hanson's thoughts. I don't know that you
16 all fully appreciate how we pour over the written
17 submissions.

18 In this process there's been insinuation that we
19 don't look at stuff. And nothing could be further from
20 the truth. We examine that in great detail, pour over
21 it, and so we would look forward to that.

22 If there's nothing else, there's one other
23 housekeeping item.

24 Some of the microphones were borrowed from Game,
25 Fish & Parks, and they need them back. So you may or may

1 not have a microphone on your table tomorrow, but we'll
2 work with it. Okay.

3 I think, Mr. Smith, that may do it. See you all
4 late in the morning.

5 MR. SMITH: We're in recess until 8:00 tomorrow
6 morning.

7 (The hearing is adjourned at 5:33 p.m.)

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STATE OF SOUTH DAKOTA)

COUNTY OF SULLY)

:SS CERTIFICATE

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 4th day of August, 2015, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Onida, South Dakota this 30th day of August, 2015.

Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

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