

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

IN THE MATTER OF THE APPLICATION BY )  
TRANSCANADA KEYSTONE PIPELINE, LP )  
FOR A PERMIT UNDER THE SOUTH DAKOTA ) HP 14-001  
ENERGY CONVERSION AND TRANSMISSION )  
FACILITIES ACT TO CONSTRUCT THE )  
KEYSTONE XL PROJECT )

**STANDING ROCK SIOUX TRIBE, BOLD NEBRASKA  
AND INDIGENOUS ENVIRONMENTAL NETWORK  
JOINT POST HEARING BRIEF**

**I. Introduction**

The burden of proof in this certification proceeding under SDCL §41-49B-27 is on TransCanada. ARSD §20:10:01:15.01. TransCanada’s burden is to certify that it continues to meet all conditions incorporated into the permit issued in HP 09-001, with substantial evidence. *M.G. Oil Co. v. City of Rapid City*, 793 N.W.2d 816, 822 (SD. 2011); *Therkildsen v. Fisher Bev.*, 545 N.W.2d 834 (1996). TransCanada failed to do so and accordingly the Commission should deny certification. Moreover, denial is required by the evidence of violations of numerous important laws that apply to Keystone XL Pipeline. *E.g.* 42 U.S.C. §4231 *et seq.* Alternatively, the Commission should schedule supplemental evidentiary proceedings for the purpose of hearing additional testimony and evidence that was improperly excluded from the evidentiary hearing.

**II. TransCanada Failed to Meet its Burden of Proof  
and Certification Should be Denied**

**A. The Burden of Proof is on TransCanada**

The PUC regulations impose the burden of proof on TransCanada in this docket. ARSD §20:10:01:15.01. The applicable rule provides that “In **any** contested case proceeding...petitioner has the burden of proof as to factual allegations which form the basis of the... application or permit.” *Id.* (emphasis added). For this reason, the Commission Counsel, John Smith, opened the hearing by stating:

It is the Petitioner, TransCanada, that has the burden of proof. And under SDCL 49-41B-27, that burden of proof is to establish that the proposed facility continues to meet the 50 conditions set forth in the Commission's Amended Final Decision.

TRANSCRIPT, *In re the Application of TransCanada Keystone Pipeline LLP for a Permit Under the South Dakota Energy Conversion and Transmission Facilities Act to Construct the Keystone XL Pipeline*, Vol. I, p. 10 (hereinafter cited as "Tr.").

The underlying statute itself imposes the burden of proof on TransCanada. SDCL §41-49B-27 provides in relevant part:

... if such construction, expansion or improvement commences more than four years after a permit has been issued, then **the utility must certify** to the Public Utilities Commission that such facility continues to meet the conditions upon which the permit was issued. (emphasis added).

The plain words of the statute impose the evidentiary burden on the permittee. A statute must be interpreted according to its plain words. *See Matter of SDDS, Inc.*, 472 N.W.2d 502, 509 (S.D. 1991). And the plain words of §41-49B-27 require the utility to certify that it continues to meet the conditions.

The statute does not state that intervenors who object to the permit must demonstrate non-compliance – in that case the burden of proof would fall upon the objecting parties. Nevertheless, TransCanada advanced this unmeritorious argument at the evidentiary hearing:

Under the statute, we could have said we certify and at that moment the burden of proof shifts to **anyone who wants to contest that certification** to come forward with affirmative proof that there are conditions in our permit issued in 2010 that we cannot meet. And **they have to provide permanent proof** of that.

Tr. at 2467 (emphasis added).

The South Dakota Supreme Court has rejected the concept advanced by TransCanada. The Court explained, "The question is not whether there is substantial evidence contrary to the findings, but whether there is substantial evidence to support them." *Abild v. Gateway 2000, Inc.*, 547 N.W.2d 556, 558 (1996). TransCanada's argument is also contrary to the plain words of section 27 of the Energy Conversion and Transmission Facilities Act, SDCL §41-49B-27, the PUC regulations, ARSD

§20:10:01:15.01, and the sound advice of Commission Counsel John Smith at the evidentiary hearing. Tr. at 10.

Indeed, the entire procedure invoked by Mr. Smith and the Commissioners in conducting the evidentiary hearing reflected that TransCanada has the burden of proof. South Dakota law prescribes the “Order of proceedings at trial,” and the party with the burden of proof puts forward its case first, SDCL §15-14-1(2), followed by the party which does not have the burden of proof, *id.* at (3), and then rebuttal by the party with the burden, *id.* at (4). That is how the evidentiary hearing was conducted from the start. Notwithstanding the misleading and erroneous arguments by TransCanada to the contrary, this entire docket has been conducted in a manner reflecting that the burden of proof falls upon the party that filed the petition, TransCanada.

**B. TransCanada’s Burden of Proof Requires Substantial Evidence that it Continues to Comply with the Permit Conditions**

In any administrative agency contested case in South Dakota, “the issue we must determine is whether the record contains substantial evidence to support the agency’s determination.” *Helms v. Lynn*, 542 N.W.2d 764, 766 (S.D. 1996). In order to certify the permit per TransCanada’s petition in this docket, the Commission must find that TransCanada continues to comply with the conditions in its 2010 permit. SDCL §41-49B-27. “The inquiry is whether the record contains substantial evidence to support the agency’s determination.” *Matter of Establishing Certain Territorial Electric Boundaries Within South Dakota*, 318 N.W.2d 118, 121 (1982). As the burden of proof is substantial evidence, and the issue in this docket is whether TransCanada still complies with the permit conditions, in order to certify the permit the PUC must find compliance with each permit condition by substantial evidence. *Id.*

The substantial evidence standard is not overly burdensome on TransCanada. *Id.* Under South Dakota law, substantial evidence is “such relevant and competent evidence as a reasonable mind might accept as being sufficiently adequate to support a conclusion.” SDCL §1-26-1(9).

Nevertheless, inexplicably, TransCanada failed to pro-offer **any evidence whatsoever** to demonstrate continuing compliance with an overwhelming majority of the permit conditions. Exhibit A filed herewith lists the conditions and subconditions in the Keystone XL permit, and identifies the evidence introduced by TransCanada for each condition. The evidence column is generally empty – TransCanada introduced no evidence to certify that it continues to meet 101 of 107 conditions and subconditions. *See* Exhibit A. Its evidence covered merely 6 of 107 condition and subconditions. Consequently, it failed to meet its burden of proof and certification must be denied. *Id.*

Notwithstanding the requirement in SDCL §41-49B-27 that it certify its continuing compliance with the conditions, TransCanada argued that it need not introduce evidence for “prospective” conditions: “... some of the conditions that are considered – that are imposed by the permit you issued in 2010 are inherently prospective in nature and can’t be complied with or conformed to until the project is underway or completed.” Tr. at 2467-2468.

However, TransCanada failed to provide any evidence on many conditions and subconditions which must be complied with prior to construction. *See* Exhibit A. For example, condition 15c requires special plans for reclamation of areas with bentonite and sandy soils, but offered no evidence that such plans have been prepared. *Id.* More than four years after issuance of the permit, there is no Emergency Response Plan (condition 36), integrity management plan, or paleontology mitigation plan (condition 44c).

An example of a non-prospective condition violated by TransCanada is condition 6b, requiring landowner consultation in route changes. As stated by John Harter, the pipeline route was altered immediately near his property, with no communication having been made. Tr. at 718-719.

An area in which TransCanada failed to provide sufficient evidence with respect to a non-prospective condition is reflected in the TransCanada testimony of Heidi Tillquist. Tr. Vol. II-III. The PHMSA regulations require the preparation of worst case discharge spills and related information. 49 CFR Part 194 Appendix B. Under cross examination, Tillquist described that her efforts in these studies as “It’s a start.” Tr. at 686. Five years after obtaining the permit for Keystone XL, TransCanada has just “started” to address important non-prospective conditions.

Conditions such as compliance with Appendix B are not prospective – compliance or good faith efforts at compliance must be demonstrated. Yet TransCanada offered no evidence that it complied with these conditions, or intends to. The failure to comply, five years later, casts doubt on their ability and willingness to do so. To be sure, they presented no evidence of this, much less substantial evidence as required under South Dakota law. *Therkildsen v. Fisher Bev.*, 545 N.W.2d 834; *Helms v. Lynn’s, Inc.*, 643 N.W.2d 764. Accordingly, certification should be denied for failure to meet the petitioner’s burden of proof in this contested case proceeding. *See In re SDDS, Inc.*, 472 N.W.2d 502, 507 (S.D. 191). TransCanada simply failed to make its case.

### **III. The Evidence Reveals Significant Developments Since Issuance of the 2010 Permit Relating to TransCanada’s Ability to Comply with Many Permit Conditions**

Moreover, the Commission received competent, substantial evidence that the Keystone XL Pipeline project fails to comply with numerous federal laws, and is unable to comply with condition 1 (compliance with applicable laws) and other conditions. In considering whether to certify the permit, the PUC must consider all relevant evidence, including the significant developments since issuance of the 2010 permit. This includes the sufficiency of the *Final Supplemental Environmental Impact Statement* by the Department of State, TransCanada’s Programmatic Agreement for future discoveries, and the impacts on Indian water.

#### **A. The Final Supplemental Environmental Impact Statement and the Keystone XL Pipeline Do Not Comply with the Requirements of the National Environmental Policy Act**

The Commission took judicial notice of the U.S. Department of State, *Final Supplemental Environmental Impact Statement, Keystone XL Pipeline Project* (2014) (“FSEIS”). This document did not exist and could not be used as evidence in the HP 09-001. In order to serve as a sufficient environmental review of Keystone XL under the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.*, the FSEIS must include take a “hard look (and) consider every significant aspect of the environmental impact of a

proposed action,” through a rigorous alternatives analysis and reasonable findings based on the record. *Baltimore Gas & Electric Co. v. NRDC*, 462 U.S. 87 (1982); *Muckleshoot Indian Tribe v. U.S. Forest Service*, 652 F.3d 1092 (9<sup>th</sup> Cir. 2010).

“NEPA ensures that important effects will not be overlooked.” *Robertson v. Methow Valley Citizens*, 490 U.S. 332, 349 (1989). The Keystone XL Pipeline would be in compliance with applicable law, NEPA, and condition 1 of the permit, only if the Final SEIS “adequately disclosed the adverse impacts” *Id.* at 346.

The record before the Commission establishes that the environmental impacts of Keystone XL have not been evaluated in compliance with NEPA. SRST Exhibit 8014, the Congressional Research Service report on Keystone XL Pipeline, describes the EPA’s evaluation of the NEPA documents:

On July 26, 2010, EPA rated the draft EIS “Inadequate.” EPA found that potentially significant impacts were not evaluated and that the additional information and analysis needed was of such importance that the draft EIS would need to be formally revised... On June 6, 2011, EPA sent a letter to the State Department that rated the supplemental draft EIS as having “Insufficient Information” and having “Environmental Objections” to the proposed action... additional analysis was needed on several points, including potential oil spill risks and lifecycle greenhouse gas emissions of the proposed project.

Congressional Research Service, *CRS Report for Congress: Oil Sands and the Keystone XL Pipeline, Background and Selected Environmental Issues* (2012), p. 17, SRST Exhibit 8014.

With respect to the FSEIS, the EPA expressed alarm that environmental concerns have not been adequately addressed:

... risks of oil spills and adverse impacts remain, and spills of diluted bitumen can have different impacts than spills of conventional oil... Nonetheless, the Final EIS acknowledged that the proposed pipeline does present a risk of spills, which remains a concern for citizens and businesses relying on ground water resources crossed by the route.

Letter of Cynthia Giles, EPA, to Department of State, dated February 15, 2015.

The EPA also pointed out the specific misapplication of NEPA and invalid findings by the state Department on the FSEIS:

[T]he Final SEIS concluded that although development of oil would lead to significant additional releases of greenhouse gases, a decision not to grant the permit would likely not change the outcome, i.e., those significant greenhouse gas emissions would likely happen regardless of the decision on the proposed Project. The conclusion was based in large part on projections of the global price of oil... Given the recent variability in oil prices, **it is important to revisit these conclusions**... Given recent declines in oil prices and the uncertainty of oil price projections, the additional low price scenario in the Final SEIS should be given additional weight during decision making... we note that eliminating alternatives from a detailed analysis based on an abbreviated estimate of environmental impacts is not the preferred approach under NEPA's requirement to take a 'hard look' at alternatives.

*Id.*

The EPA is the agency with statutory authority to review all environmental impact statements, and in its review it found that the Final SEIS violates the act. This information was not available in Docket HP 09-001. The point is not whether Keystone XL will increase greenhouse gases – the point is that the Keystone XL Pipeline as currently evaluated does not comply with NEPA, as required in condition 1.

Standing Rock Sioux Tribal rebuttal witness Kevin Cahill corroborated the EPA's finding that Keystone XL Pipeline violates federal law. SRST Exhibit 8029. Cahill's report states in relevant part:

If the State Department and TransCanada are serious about conducting an analysis of the socioeconomic impact of the Keystone oil pipeline, such an analysis, at a minimum, would include: (1) an IMPLAN model that takes into account the impact of potential oil spills; (2) an IMPLAN model that estimates net effects (3) a survey of individuals currently living in areas at risk of an oil spill; and (4) a survey of individuals currently living in areas at risk of an oil spill; and (5) a comparative analysis of socioeconomic impact based on areas where an oil pipeline is introduced.

*Id.* at 26.

The Keystone XL Pipeline does not comply with the National Environmental Policy Act as required in condition 1, as demonstrated by evidence that was not available to the Commission in HP 09-001. Certification of the permit under must be denied under SDCL §41-49B-27.

**B. The Programmatic Agreement and Unanticipated Discoveries Plan were not Prepared in Accordance with the NHPA**

Any cultural surveys conducted by TransCanada are invalid unless there was proper consultation with the Standing Rock THPO by the State Department, under section 106 of the National Historic Preservation Act. 36 CFR §800.2(c)(2)(A). Moreover, the legality of the Programmatic Agreement and Unanticipated Discoveries Plan are determined in part by the sufficiency of Tribal consultation in their preparation. 36 CFR §800.13(b).

The gravamen of NHPA section 106 is proper identification of historic properties that may be affected by a project, a determination of whether there may be adverse effects, and the resolution of effects. *See e.g. Nat'l Trust for Historic Preservation v. Blanck*, 938 F.Supp. 908, 920 (D.D.C. 1996). The propriety of the surveys to determine the location of such properties and efforts to resolve adverse effects is determined by 36 CFR §800.2(c)(2)(A). This section provides that:

[C]onsultation in the section 106 process provides the Indian Tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, **advise on the identification** and evaluation of historic properties, including those of traditional religious and cultural importance, **articulate its views on the undertaking's effects** on such properties, and **participate in the resolution of adverse effects.**"

*Id.* (emphasis added).

Thus, the affected Tribal Historic Preservation Officers must be consulted in at last two regards: (1) identification and evaluation – i.e. the Class III survey; and (3) resolution of effects – the Programmatic Agreement. In the uncontroverted testimony of Steve Vance, Tribal Historic Preservation Officer, Cheyenne River Sioux Tribe, he explained, "Consultation (must) be conducted in a good faith efforts. And we responded that **that wasn't sufficient.**" Tr. at 1533-1534 (emphasis added).

Neither TransCanada's Class III survey nor the Programmatic Agreement on the resolution of effects were properly prepared. The Keystone XL Pipeline project would violate section 106 of the National Historic Preservation Act, 16 U.S.C. §§470f and the



implementing regulations. 36 CFR §800.2. Consequently, TransCanada is not in compliance with conditions 1 and 43. The permit should not be certified.

### **C. Impacts on Indian Water Rights Should be Considered**

The South Dakota and North Dakota Tribes possess significant unquantified reserved water rights. See Peter Capossela, *Indian Reserved Water Rights in the Missouri River Basin*, 6 GREAT PLAINS NATURAL RESOURCES J. 131 (2002). In *Winters v. United States*, the Supreme Court established that when Montana's Fort Belknap Tribe reserved rights to land, they also reserved water rights as needed to survive on the Reservation. *Winters v. United States*, 207 U.S. 564, 600 (1908). Indian water rights have been characterized as "prior and superior" to state-granted water rights: "prior" because the reservations were established before most western states and are thus senior during periods of shortage, *Arizona v. California*, 373 U.S. at 575-576. (Indian water rights are "entitled to priority..."), and "superior" because Indian reserved water rights exist pursuant to federal law, rather state law. As explained in COHEN'S HANDBOOK OF FEDERAL INDIAN LAW:

The *Winters* decision established that the creation of an Indian reservation impliedly reserves water rights to the tribe or tribes occupying the territory; that those rights are reserved in order to carry out the purposes for which the lands were set aside, and that the rights are paramount to water rights later perfected under state law.

COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, (2009 ed.) §19.03(1).

In *Arizona v. California*, the Court held that "when the United States created these reservations, or added to them, it reserved not only land but also the use of enough water from the Colorado to irrigate the irrigable portions of the reserved lands." 373 U.S. at 596. The Court recognized a reservation of a quantity of water "to satisfy the future as well as the present needs of the Indian Reservations and... that enough water was reserved to irrigate all the practicably irrigable acreage on the reservations." *Id.* at 600. Ultimately, the over-arching purpose of most Indian Reservations is to provide a permanent homeland for that Tribe, which encompasses water for all beneficial uses, including livestock, fish and wildlife and ceremonial uses. *United States v. Adair*, 723

F.2d 1394, 1413-1415 (9<sup>th</sup> Cir. 1983) (reserved water right for fishery with priority date of time immemorial),

The precise quantity of a Tribe's reserved water right may be determined in an adjudication or by compact. See Robert T. Anderson, *Indian Water Rights: Litigation and Settlements*, 42 TULSA L. REV. 23 (2006). Under *Winters*, the priority date of the water right is the date which the Reservation was established, or earlier. *Winters*, 207 U.S. at 575-576; *Adair*, 723 F.2d at 1413-1415. Consequently, according to foremost Indian law expert Felix Cohen, "the exercise of tribal water rights has the potential to disrupt non-Indian water uses." Cohen's Handbook of Federal Indian Law §19.03(1).

Certification of the Keystone XL Pipeline turns these concepts on their head. It would permit a foreign oil and gas company to withdrawal water from stream systems subject to Tribal claims. It would enable the construction of a dangerous pipeline crossing waters subject to Tribal claims, jeopardizing the water quality with enhanced total dissolved solvents, and posing long-term jeopardy with the threat of a release. See SRST Exhibit 8013, S.D. DENR, Integrated Report, Surface Water Quality (identifying impaired waters crossed by Keystone XL). For these reasons also, certification should be denied.

#### **IV. The Testimony of Waste'Win Young, Standing Rock Sioux Tribe Historical Preservation Officer, was Improperly Excluded**

Waste'Win Young, the Standing Rock Sioux Tribal Historic Preservation Officer, timely pre-filed testimony, regarding her scant interactions with the Department of State on cultural resources surveys along the pipeline route, and requests of information she made regarding impacts on specific identified sites. The Commission issued an order excluding her testimony as not relevant. The exclusion of Ms. Young's testimony is contrary to the South Dakota Rules of Evidence and results in significant prejudice to the Tribe.

Rule 401 of the Rules of Evidence governs the admission of relevant evidence. As explained by the South Dakota Supreme Court, the threshold is low:

Relevance is defined by SDCL 19-12-1 (Rule 401). " 'Relevant evidence' means evidence having *any* tendency to make the existence of *any* fact that is of consequence... more or less

probable...” SDCL 19-12-1 (Rule 401). As we have previously noted, “Rule 401 uses a lenient standard for relevance.” *citing Supreme Pork v. Master Blaster*, 2009 SD 20, ¶46.

*St. John v. Peterson*, 804 N.W.2d 71, 75 (S.D. 2011) *emphasis added*.

The South Dakota Court deems evidence relevant “even if it only slightly affects the trier’s assessment.” *Supreme Pork v. Master Blaster*, 764 N.W.2d 474, 488 (S.D. 2009) (affirming the admission of expert testimony at trial). All there must be is “a probative connection, however slight.” *VC v. Cassady*, 634 N.W.2d 798, 810 (Neb. 2001) (ordering new trial due to improper exclusion of relevant evidence). “The standard is extremely liberal.” *V & M Star Steel v. Centimark Corp.*, 678 F.3d 459, 468 (6<sup>th</sup> Cir. 2012). “The relevancy threshold established by the Federal Rules of Evidence is fairly low.” *Harrington v. City of Council Bluffs, Iowa*, 902 F.Supp.2d 1195, 1202 (S.D. Iowa 2012) (challenged evidence deemed relevant and admitted). In order to be relevant under Rule 401, evidence must merely “shed light upon or touch the issues” in dispute. *Dean v. Nunez*, 534 So.2d 1282, 1289 (La. App. 1988).

The South Dakota Court has rejected the contention that the Rule 401 prescribes a “narrow interpretation of ‘relevance.’” *Supreme Pork v. Master Blaster*, 764 N.W.2d at 481. Chief Justice Gilbertson explained:

The dissent suggests that the only evidence that is “relevant” in this case is that which relates to the ultimate fact issue. Quite simply, this narrow view of relevancy misinterprets Rule 401... Evidence, to be relevant to an inquiry, *need not conclusively prove the fact in issue.* *citing Weinstein’s Federal Evidence*, §401.

*Id.* at 488.

The testimony may not be determinative in this case – it does not have to be. That is the lesson of the South Dakota Supreme Court decision in *Supreme Pork v. Master Blaster*, *Id.* at 481, 488.

Nevertheless, Ms. Young’s pre-filed testimony is relevant because it addressed the permit conditions covering historic properties. (condition 1 – comply with all applicable laws; condition 45 – compliance with proper unanticipated discoveries plan, programmatic agreement on cultural resources). She stated in her pre-filed testimony:

Yet the proper procedures to make the requisite determinations have not been followed. The Keystone XL Pipeline is unable to comply with Amended Condition number 43 in the Amended Conditions in the Final Order in HP 09-001.

The Standing Rock Sioux Tribe has the right in this docket to present testimony and evidence that developments since the issuance of the Keystone XL 2010 illustrate that cultural resources compliance efforts are insufficient, and consequently TransCanada cannot comply with conditions 1 and 43. SDCL §1-26-18 (right to present evidence in administrative hearing). As the Nebraska Supreme Court explained, “[T]he parties are to be given a chance to rebut or comment on any evidence considered by the agency in making its decision.” *Langvardt v. Horton*, 581 N.W.2d 60, 69 (Neb. 1998).

Testimony that has any probative value with respect to the Keystone XL’s potential impact on cultural resources is relevant, admissible testimony in this proceeding, with the finder of fact (the Commission) possessing reasonable discretion to give it whatever weight it sees fit in making the decision whether to certify the permit. The exclusion of Young’s testimony confuses “relevancy” with “weight” of evidence. That is precisely the mistake that the South Dakota Supreme Court inveighed against in *Supreme Pork v. Master Blaster*, 764 N.W.2d at 481.

General and amorphous findings about relevance are not countenanced by reviewing courts – there must be specific reasons to exclude evidence on grounds of relevance. *Doe v. Young*, 664 F.3d 727, 733 (8<sup>th</sup> Cir. 2011) (trial court improperly excluded testimony, new trial ordered). In order to exclude testimony, the moving party “should state exactly the objection.” *Davidson Oil Country Supply, Inc. v. Klockner, Inc.*, 908 F.2d 1238, 1247 (5<sup>th</sup> Cir. 1990) (reversing trial court grant of motion in limine). There are no specific findings in the record to justify the exclusion of Waste’Win Young. The exclusion of Waste’Win Young’s testimony was improper, and additional proceedings are necessary in this docket to take such testimony in order to avoid substantial prejudice to the Standing Rock Sioux Tribe.

RESPECTFULLY SUBMITTED this 1st day of October, 2015

By: *Peter Capossela*  
Peter Capossela, P.C.  
Attorney at Law  
Post Office Box 10643  
Eugene, Oregon 97440  
(541) 505-4883  
pcapossela@nu-world.com

*/s/ Chase Iron Eyes*  
Chase Iron Eyes  
Iron Eyes Law Office, PLLC  
Post Office Box 888  
Fort Yates, North Dakota 58538  
(701) 455-3702  
chaseironeyes@gmail.com  
S.D. Bar No. 3981

Attorneys for Standing Rock Sioux Tribe

*/s/ Paul C. Blackburn*  
Paul C. Blackburn  
South Dakota Bar No. 4071  
4145 20<sup>th</sup> Avenue South  
Minneapolis, Minnesota 55407  
(612) 599-5568  
paul@paulblackburn.net

Attorney for Bold Nebraska

*/s/ Kimberly Craven*  
Kimberly Craven, AZ BAR #23163  
3560 Catalpa Way  
Boulder, CO 80304  
Telephone: 303.494.1974  
Email: kimecraven@gmail.com

Attorney for Indigenous Environmental Network

NO.	CONDITION
1	Keystone shall comply with all applicable laws and regulations in its construction and operation of the Project. These laws and regulations include, but are not necessarily limited to: the federal Hazardous Liquid Pipeline Safety Act of 1979 and Pipeline Safety Improvement Act of 2002, as amended by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, and the various other pipeline safety statutes currently codified at 49 U.S.C. § 601 01 et seq. (collectively, the "PSA"); the regulations of the United States Department of Transportation implementing the PSA, particularly 49 C.F.R Parts 194 and 195; temporary permits for use of public water for construction, testing or drilling purposes, SDCL 46-5-40.1 and ARSD 74:02:01 :32 through 74:02:01 :34.02 and temporary discharges to waters of the state, SDCL 34A-2-36 and ARSD Chapters 74:52:01 through 74:52:11, specifically, ARSD §74:52:02:46 and the General Permit issued thereunder covering temporary discharges of water from construction dewatering and hydrostatic testing.
2	Keystone shall obtain and shall thereafter comply with all applicable federal, state and local permits, including but not limited to: Presidential Permit from the United States Department of State, Executive Order 11423 of August 16, 1968 (33 Fed. Reg. 11741) and Executive Order 13337 of April 30, 2004 (69 Fed. Reg. 25229), for the construction, connection, operation, or maintenance, at the border of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country; Clean Water Act § 404 and Rivers and Harbors Act Section 10 Permits; Special Permit if issued by the Pipeline and Hazardous Materials Safety Administration; Temporary Water Use Permit, General Permit for Temporary Discharges and federal, state and local highway and road encroachment permits. Any of such permits not previously filed with the Commission shall be filed with the Commission upon their issuance. To the extent that any condition, requirement or standard of the Presidential Permit, including the Final EIS Recommendations, or any other law, regulation or permit applicable to the portion of the pipeline in this state differs from the requirements of these Conditions, the more stringent shall apply.
3	Keystone shall comply with and implement the Recommendations set forth in the Final Environmental Impact Statement when issued by the United States Department of State pursuant to its Amended Department of State Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings and Notice of Floodplain and Wetland Involvement and To Initiate Consultation Under Section 106 of the National Historic Preservation Act for the Proposed TransCanada Keystone XL Pipeline; Notice of Intent-- Rescheduled Public Scoping Meetings in South Dakota and extension of comment period (FR vol. 74, no. 54, Mar. 23, 2009). The Amended Notice and other Department of State and Project Documents are available on-line at: <a href="http://www.keystonepipeline-xl.state.gov/">http://www.keystonepipeline-xl.state.gov/</a>
4	The permit granted by this Order shall not be transferable without the approval of the Commission pursuant to SDCL 49-418-29.
5	Keystone shall undertake and complete all of the actions that it and its affiliated entities committed to undertake and complete in its Application as amended, in its testimony and exhibits received in evidence at the hearing, and in its responses to data requests received in evidence at the hearing.
6.a	The most recent and accurate depiction of the Project route and facility locations is found on the maps in Exhibit TC-14. The Application indicates in Section 4.2.3 that Keystone will continue to develop route adjustments throughout the pre-construction design phase. These route adjustments will accommodate environmental features identified during surveys, property-specific issues, and civil survey information. The Application states that Keystone will file new aerial route maps that incorporate any such route adjustments prior to construction. Ex TC-1.4.2.3, p. 27.
6.b	Keystone shall notify the Commission and all affected landowners, utilities and local governmental units as soon as practicable if material deviations are proposed to the route.
6.c	Keystone shall notify affected landowners of any change in the route on their land.
6.d	At such time as Keystone has finalized the pre-construction route, Keystone shall file maps with the Commission depicting the final preconstruction route
6.e	If material deviations are proposed from the route depicted on Exhibit TC-14 and accordingly approved by this Order, Keystone shall advise the Commission and all affected landowners, utilities and local governmental units prior to implementing such changes and afford the Commission the opportunity to review and approve such modifications.
6.f	At the conclusion of construction, Keystone shall file detail maps with the Commission depicting the final as-built location of the Project facilities.

7	Keystone shall provide a public liaison officer, approved by the Commission, to facilitate the exchange of information between Keystone, including its contractors, and landowners, local communities and residents and to promptly resolve complaints and problems that may develop for landowners, local communities and residents as a result of the Project. Keystone shall file with the Commission its proposed public liaison officer's credentials for approval by the Commission prior to the commencement of construction. After the public liaison officer has been approved by the Commission, the public liaison officer may not be removed by Keystone without the approval of the Commission. The public liaison officer shall be afforded immediate access to Keystone's on-site project manager, its executive project manager and to contractors' on-site managers and shall be available at all times to the Staff via mobile phone to respond to complaints and concerns communicated to the Staff by concerned landowners and others. Keystone shall also implement and keep an up-dated web site covering the planning and implementation of construction and commencement of operations in this state as an informational medium for the public. As soon as the Keystone's public liaison officer has been appointed and approved, Keystone shall provide contact information for him/her to all landowners crossed by the Project and to law enforcement agencies and local governments in the vicinity of the Project. The public liaison officer's contact information shall be provided to landowners in each subsequent written communication with them. If the Commission determines that the public liaison officer has not been adequately performing the duties set forth for the position in this Order, the Commission may, upon notice to Keystone and the public liaison officer, take action to remove the public liaison officer.
8	Until construction of the Project, including reclamation, is completed, Keystone shall submit quarterly progress reports to the Commission that summarize the status of land acquisition and route finalization, the status of construction, the status of environmental control activities, including permitting status and Emergency Response Plan and Integrity Management Plan development, the implementation of the other measures required by these conditions, and the overall percent of physical completion of the project and design changes of a substantive nature. Each report shall include a summary of consultations with the South Dakota Department of Environment and Natural Resources and other agencies concerning the issuance of permits. The reports shall list dates, names, and the results of each contact and the company's progress in implementing prescribed construction, land restoration, environmental protection, emergency response and integrity management regulations, plans and standards. The first report shall be due for the period ending June 30, 2010. The reports shall be filed within 31 days after the end of each quarterly period and shall continue until the project is fully operational.
9	Until one year following completion of construction of the Project, including reclamation, Keystone's public liaison officer shall report quarterly to the Commission on the status of the Project from his/her independent vantage point. The report shall detail problems encountered and complaints received. For the period of three years following completion of construction, Keystone's public liaison officer shall report to the Commission annually regarding post-construction landowner and other complaints, the status of road repair and reconstruction and land and crop restoration and any problems or issues occurring during the course of the year
10	Not later than six months prior to commencement of construction, Keystone shall commence a program of contacts with state, county and municipal emergency response, law enforcement and highway, road and other infrastructure management agencies serving the Project area in order to educate such agencies concerning the planned construction schedule and the measures that such agencies should begin taking to prepare for construction impacts and the commencement of project operations.
11	Keystone shall conduct a preconstruction conference prior to the commencement of construction to ensure that Keystone fully understands the conditions set forth in this order. At a minimum, the conference shall include a Keystone representative, Keystone's construction supervisor and Staff.
12	Once known, Keystone shall inform the Commission of the date construction will commence, report to the Commission on the date construction is started and keep the Commission updated on construction activities as provided in Condition 8.
13	Except as otherwise provided in the conditions of this Order and Permit, Keystone shall comply with all mitigation measures set forth in the Construction Mitigation and Reclamation Plan (CMR Plan)
13.a	If modifications to the CMR Plan are made by Keystone as it refines its construction plans or are required by the Department of State in its Final EIS Record of Decision or the Presidential Permit, the CMR Plan as so modified shall be filed with the Commission and shall be complied with by Keystone.
14	Keystone shall incorporate environmental inspectors into its CMR Plan and obtain follow-up information reports from such inspections upon the completion of each construction spread to help ensure compliance with this Order and Permit and all other applicable permits, laws, and rules

<b>15</b>	Prior to construction, Keystone shall, in consultation with area NRCS staff, develop specific construction/reclamation units (Con/Rec Units) that are applicable to particular soil and subsoil classifications, land uses and environmental settings. The Con/Rec Units shall contain information of the sort described in response to Staff Data Request 3-25 found in Exhibit TC-16.
<b>15.a</b>	In the development of the Con/Rec Units in areas where NRCS recommends, Keystone shall conduct analytical soil probing and/or soil boring and analysis in areas of particularly sensitive soils where reclamation potential is low. Records regarding this process shall be available to the Commission and to the specific land owner affected by such soils upon request
<b>15.b</b>	Through development of the Con/Rec Units and consultation with NRCS, Keystone shall identify soils for which alternative handling methods are recommended.
<b>15.b.1</b>	Keystone shall thoroughly inform the landowner regarding the options applicable to their property, including their respective benefits and negatives, and implement whatever reasonable option for soil handling is selected by the landowner. Records regarding this process shall be available to the Commission upon request.
<b>15.c</b>	Keystone shall, in consultation with NCRS, ensure that its construction planning and execution process, including Con/Rec Units, CMR Plan and its other construction documents and planning shall adequately identify and plan for areas susceptible to erosion, areas where sand dunes are present, areas with high concentrations of sodium bentonite, areas with sodic, saline and sodic-saline soils and any other areas with low reclamation potential
<b>15.d</b>	The Con/Rec Units shall be available upon request to the Commission and affected landowners. Con/Rec Units may be evaluated by the Commission upon complaint or otherwise, regarding whether proper soil handling, damage mitigation or reclamation procedures are being followed.
<b>15.e</b>	Areas of specific concern or of low reclamation potential shall be recorded in a separate database. Action taken at such locations and the results thereof shall also be recorded and made available to the Commission and the affected property owner upon request.
<b>16</b>	Keystone shall provide each landowner with an explanation regarding trenching and topsoil and subsoil/rock removal, segregation and restoration method options for his/her property consistent with the applicable Con/Rec Unit and shall follow the landowner's selected preference as documented on its written construction agreement with the landowner, as modified by any subsequent amendments, or by other written agreement(s).
<b>16.a</b>	Keystone shall separate and segregate topsoil from subsoil in agricultural areas, including grasslands and shelter belts, as provided in the CMR Plan and the applicable Con/Rec Unit.
<b>16.b</b>	Keystone shall repair any damage to property that results from construction activities
<b>16.c</b>	Keystone shall restore all areas disturbed by construction to their preconstruction condition, including their original preconstruction topsoil, vegetation, elevation, and contour, or as close thereto as is feasible, except as is otherwise agreed to by the landowner.
<b>16.d</b>	Except where practicably infeasible, final grading and topsoil replacement and installation of permanent erosion control structures shall be completed in non-residential areas within 20 days after backfilling the trench.
<b>16.d.1</b>	In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Keystone's control prevent compliance with this time frame, temporary erosion controls shall be maintained until conditions allow completion of cleanup and reclamation.
<b>16.d.2</b>	In the event Keystone cannot comply with the 20-day time frame as provided in this Condition, it shall give notice of such fact to all affected landowners, and such notice shall include an estimate of when such restoration is expected to be completed.
<b>16.e</b>	Keystone shall draft specific crop monitoring protocols for agricultural lands.
<b>16.e.1</b>	If requested by the landowner, Keystone shall provide an independent crop monitor to conduct yield testing and/or such other measurements of productivity as he shall deem appropriate. The independent monitor shall be a qualified agronomist, rangeland specialist or otherwise qualified with respect to the species to be restored. The protocols shall be available to the Commission upon request and may be evaluated for adequacy in response to a complaint or otherwise.
<b>16.f</b>	Keystone shall work closely with landowners or land management agencies to determine a plan to control noxious weeds. Landowner permission shall be obtained before the application of herbicides.
<b>16.g</b>	Keystone's adverse weather plan shall apply to improved hay land and pasture lands in addition to crop lands.
<b>16.h</b>	The size, density and distribution of rock within the construction right-of-way following reclamation shall be similar to adjacent undisturbed areas.
<b>16.h.1</b>	Keystone shall treat rock that cannot be backfilled within or below the level of the natural rock profile as construction debris and remove it for disposal offsite except when the landowner agrees to the placement of the rock on his property. In such case, the rock shall be placed in accordance with the landowner's directions.



<b>16.i</b>	Keystone shall utilize the proposed trench line for its pipe stringing trucks where conditions allow and shall employ adequate measures to de-compact subsoil as provided in its CMR Plan. Topsoil shall be de-compactified if requested by the landowner.
<b>16.i.1</b>	Topsoil shall be de-compactified if requested by the landowner.
<b>16.j</b>	Keystone shall monitor and take appropriate mitigative actions as necessary to address salinity issues when dewatering the trench, and field conductivity and/or other appropriate constituent analyses shall be performed prior to disposal of trench water in areas where salinity may be expected.
<b>16.j.1</b>	Keystone shall notify landowners prior to any discharge of saline water on their lands or of any spills of hazardous materials on their lands of one pint or more or of any lesser volume which is required by any federal, state, or local law or regulation or product license or label to be reported to a state or federal agency, manufacturer, or manufacturer's representative.
<b>16.k</b>	Keystone shall install trench and slope breakers where necessary in accordance with the CMR Plan as augmented by Staff's recommendations in Post Hearing Commission Staff Brief, pp. 26-27
<b>16.l</b>	Keystone shall apply mulch when reasonably requested by landowners and also wherever necessary following seeding to stabilize the soil surface and to reduce wind and water erosion. Keystone shall follow the other recommendations regarding mulch application in Post Hearing Commission Staff Brief, p. 27.
<b>16.m</b>	Keystone shall reseed all lands with comparable crops to be approved by landowner in landowner's reasonable discretion, or in pasture, hay or native species areas with comparable grass or forage crop seed or native species mix to be approved by landowner in landowner's reasonable discretion.
<b>16.m.1</b>	Keystone shall actively monitor revegetation of all disturbed areas for at least two years.
<b>16.n</b>	Keystone shall coordinate with landowners regarding his/her desires to properly protect cattle, shall implement such protective measures as are reasonably requested by the landowner and shall adequately compensate the landowner for any loss.
<b>16.o</b>	Prior to commencing construction, Keystone shall file with the Commission a confidential list of property owners crossed by the pipeline and update this list if route changes during construction result in property owner changes
<b>16.p</b>	Except in areas where fire suppression resources as provided in CMR Plan 2.16 are in close proximity, to minimize fire risk, Keystone shall, and shall cause its contractor to, equip each of its vehicles used in pre-construction or construction activities, including off-road vehicles, with a hand held fire extinguisher, portable compact shovel and communication device such as a cell phone, in areas with coverage, or a radio capable of achieving prompt communication with Keystone's fire suppression resources and emergency services.
<b>17</b>	Keystone shall cover open-bodied dump trucks carrying sand or soil while on paved roads and cover open-bodied dump trucks carrying gravel or other materials having the potential to be expelled onto other vehicles or persons while on all public roads.
<b>18</b>	Keystone shall use its best efforts to not locate fuel storage facilities within 200 feet of private wells and 400 feet of municipal wells and shall minimize and exercise vigilance in refueling activities in areas within 200 feet of private wells and 400 feet of municipal wells.
<b>19</b>	If trees are to be removed that have commercial or other value to affected landowners, Keystone shall compensate the landowner for the fair market value of the trees to be cleared and/or allow the landowner the right to retain ownership of the felled trees.
<b>19.a</b>	Except as the landowner shall otherwise agree in writing, the width of the clear cuts through any windbreaks and shelterbelts shall be limited to 50 feet or less, and the width of clear cuts through extended lengths of wooded areas shall be limited to 85 feet or less. The environmental inspection in Condition 14 shall include forested lands.
<b>20</b>	Keystone shall implement the following sediment control practices: a) Keystone shall use floating sediment curtains to maintain sediments within the construction right of way in open water bodies with no or low flow when the depth of non-flowing water exceeds the height of straw bales or silt fence installation. In such situations the floating sediment curtains shall be installed as a substitute for straw bales or silt fence along the edge or edges of each side of the construction right-of-way that is underwater at a depth greater than the top of a straw bale or silt fence as portrayed in Keystone's construction Detail #11 included in the CMR Plan. b) Keystone shall install sediment barriers in the vicinity of delineated wetlands and water bodies as outlined in the CMR Plan regardless of the presence of flowing or standing water at the time of construction. c) The Applicant should consult with South Dakota Game, Fish and Parks (SDGFP) to avoid construction near water bodies during fish spawning periods in which in-stream construction activities should be avoided to limit impacts on specific fisheries, if any, with commercial or recreational importance.
<b>21</b>	Keystone shall develop frac-out plans specific to areas in South Dakota where horizontal directional drilling will occur. The plan shall be followed in the event of a frac-out.

<b>21.a</b>	If a frac-out event occurs, Keystone shall promptly file a report of the incident with the Commission. Keystone shall also, after execution of the plan, provide a follow-up report to the Commission regarding the results of the occurrence and any lingering concerns.
<b>22</b>	Keystone shall comply with the following conditions regarding construction across or near wetlands, water bodies and riparian areas: a) Unless a wetland is actively cultivated or rotated cropland or unless site specific conditions require utilization of Keystone's proposed 85 foot width and the landowner has agreed to such greater width, the width of the construction right-of-way shall be limited to 75 feet in non-cultivated wetlands unless a different width is approved or required by the United States Army Corps of Engineers. b) Unless a wetland is actively cultivated or rotated cropland, extra work areas shall be located at least 50 feet away from wetland boundaries except where site-specific conditions render a 50-foot setback infeasible. Extra work areas near water bodies shall be located at least 50 feet from the water's edge, except where the adjacent upland consists of actively cultivated or rotated cropland or other disturbed land or where site-specific conditions render a 50- foot setback infeasible. Clearing of vegetation between extra work space areas and the water's edge shall be limited to the construction right-of-way. c) Water body crossing spoil, including upland spoil from crossings of streams up to 30 feet in width, shall be stored in the construction right of way at least 10 feet from the water's edge or in additional extra work areas and only on a temporary basis. d) Temporary in-stream spoil storage in streams greater than 30 feet in width shall only be conducted in conformity with any required federal permit(s) and any applicable federal or state statutes, rules and standards. e) Wetland and water body boundaries and buffers shall be marked and maintained until ground disturbing activities are complete. Keystone shall maintain 15-foot buffers where practicable, which for stream crossings shall be maintained except during the period of trenching, pipe laying and backfilling the crossing point. Buffers shall not be required in the case of non-flowing streams. f) Best management practices shall be implemented to prevent heavily silt-laden trench water from reaching any wetland or water body directly or indirectly. g) Erosion control fabric shall be used on water body banks immediately following final stream bank restoration unless riprap or other bank stabilization methods are utilized in accordance with federal or state permits. h) The use of timber and slash to support equipment crossings of wetlands shall be avoided. i) Subject to Conditions 37 and 38, vegetation restoration and maintenance adjacent to water bodies shall be conducted in such manner to allow a riparian strip at least 25 feet wide as measured from the water body's mean high water mark to permanently re- vegetate with native plant species across the entire construction right-of way.
<b>23</b>	Keystone shall comply with the following conditions regarding road protection and bonding: a. Keystone shall coordinate road closures with state and local governments and emergency responders and shall acquire all necessary permits authorizing crossing and construction use of county and township roads. b) Keystone shall implement a regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the general public. c) Prior to their use for construction, Keystone shall videotape those portions of all roads which will be utilized by construction equipment or transport vehicles in order to document the pre-construction condition of such roads. d) After construction, Keystone shall repair and restore, or compensate governmental entities for the repair and restoration of, any deterioration caused by construction traffic, such that the roads are returned to at least their preconstruction condition. e) Keystone shall use appropriate preventative measures as needed to prevent damage to paved roads and to remove excess soil or mud from such roadways. f) Pursuant to SDCL 49-418-38, Keystone shall obtain and file for approval by the Commission prior to construction in such year a bond in the amount of \$15.6 million for the year in which construction is to commence and a second bond in the amount of \$15.6 million for the ensuing year, including any additional period until construction and repair has been completed, to ensure that any damage beyond normal wear to public roads, highways, bridges or other related facilities will be adequately restored or compensated. Such bonds shall be issued in favor of, and for the benefit of, all such townships, counties, and other governmental entities whose property is crossed by the Project. Each bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Either at the contact meetings required by Condition 10 or by mail, Keystone shall give notice of the existence and amount of these bonds to all counties, townships and other governmental entities whose property is crossed by the Project.

24	Although no residential property is expected to be encountered in connection with the Project, in the event that such properties are affected and due to the nature of residential property, Keystone shall implement the following protections in addition to those set forth in its CMR Plan in areas where the Project passes within 500 feet of a residence: a) To the extent feasible, Keystone shall coordinate construction work schedules with affected residential landowners prior to the start of construction in the area of the residences. b) Keystone shall maintain access to all residences at all times, except for periods when it is infeasible to do so or except as otherwise agreed between Keystone and the occupant. Such periods shall be restricted to the minimum duration possible and shall be coordinated with affected residential landowners and occupants, to the extent possible. c) Keystone shall install temporary safety fencing, when reasonably requested by the landowner or occupant, to control access and minimize hazards associated with an open trench and heavy equipment in a residential area. d) Keystone shall notify affected residents in advance of any scheduled disruption of utilities and limit the duration of such disruption. e) Keystone shall repair any damage to property that results from construction activities. f) Keystone shall separate topsoil from subsoil and restore all areas disturbed by construction to at least their preconstruction condition. g) Except where practically infeasible, final grading and topsoil replacement, installation of permanent erosion control structures and repair of fencing and other structures shall be completed in residential areas within 10 days after backfilling the trench. In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Keystone's control prevent compliance with this time frame, temporary erosion controls and appropriate mitigative measures shall be maintained until conditions allow completion of cleanup and reclamation.
25	Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken. At least two months prior to the start of construction in South Dakota, Keystone shall file with the Commission an adverse weather land protection plan containing appropriate adverse weather land protection measures, the conditions in which such measures may be appropriately used, and conditions in which no construction is appropriate, for approval of or modification by the Commission prior to the start of construction. The Commission shall make such plan available to impacted landowners who may provide comment on such plan to the Commission
26	Reclamation and clean-up along the right-of-way must be continuous and coordinated with ongoing construction.
27	All pre-existing roads and lanes used during construction must be restored to at least their pre-construction condition that will accommodate their previous use, and areas used as temporary roads during construction must be restored to their original condition, except as otherwise requested or agreed to by the landowner or any governmental authority having jurisdiction over such roadway
28	Keystone shall, prior to any construction, file with the Commission a list identifying private and new access roads that will be used or required during construction and file a description of methods used by Keystone to reclaim those access roads.
29	Prior to construction, Keystone shall have in place a winterization plan and shall implement the plan if winter conditions prevent reclamation completion until spring. The plan shall be provided to affected landowners and, upon request, to the Commission.
30	Numerous Conditions of this Order, including but not limited to 16, 19, 24, 25, 26, 27 and 51 relate to construction and its effects upon affected landowners and their property. The Applicant may encounter physical conditions along the route during construction which makes compliance with certain of these Conditions infeasible. If, after providing a copy of this order, including the Conditions, to the landowner, the Applicant and landowner agree in writing to modifications of one or more requirements specified in these conditions, such as maximum clearances or right-of-way widths, Keystone may follow the alternative procedures and specifications agreed to between it and the landowner.
31	Keystone shall construct and operate the pipeline in the manner described in the application and at the hearing, including in Keystone's exhibits, and in accordance with the conditions of this permit, the PHMSA Special Permit, if issued, and the conditions of this Order and the construction permit granted herein
32	Keystone shall require compliance by its shippers with its crude oil specifications in order to minimize the potential for internal corrosion.
33	Keystone's obligation for reclamation and maintenance of the right- of-way shall continue throughout the life of the pipeline.
33.a	In its surveillance and maintenance activities, Keystone shall, and shall cause its contractor to, equip each of its vehicles, including off- road vehicles, with a hand held fire extinguisher, portable compact shovel and communication device such as a cell phone, in areas with coverage, or a radio capable of achieving prompt communication with emergency services.

<b>34</b>	In accordance with 49 C.F.R. 195, Keystone shall continue to evaluate and perform assessment activities regarding high consequence areas.
<b>34.a</b>	Prior to Keystone commencing operation, all unusually sensitive areas as defined by 49 CFR 195.6 that may exist, whether currently marked on DOT's HCA maps or not, should be identified and added to the Emergency Response Plan and Integrity Management Plan
<b>34.b</b>	In its continuing assessment and evaluation of environmentally sensitive and high consequence areas, Keystone shall seek out and consider local knowledge, including the knowledge of the South Dakota Geological Survey, the Department of Game Fish and Parks and local landowners and governmental officials.
<b>35</b>	The evidence in the record demonstrates that in some reaches of the Project in southern Tripp County, the High Plains Aquifer is present at or very near ground surface and is overlain by highly permeable sands permitting the uninhibited infiltration of contaminants. This aquifer serves as the water source for several domestic farm wells near the pipeline as well as public water supply system wells located at some distance and upgradient from the pipeline route. Keystone shall identify the High Plains Aquifer area in southern Tripp County as a hydrologically sensitive area in its Integrity Management and Emergency Response Plans. Keystone shall similarly treat any other similarly vulnerable and beneficially useful surficial aquifers of which it becomes aware during construction and continuing route evaluation
<b>36</b>	Prior to putting the Keystone Pipeline into operation, Keystone shall prepare, file with PHMSA and implement an emergency response plan as required under 49 CFR 194 and a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies as required under 49 CFR 195.402. Keystone shall also prepare and implement a written integrity management program in the manner and at such time as required under 49 CFR 195.452. At such time as Keystone files its Emergency Response Plan and Integrity Management Plan with PHMSA or any other state or federal agency, it shall also file such documents with the Commission. The Commission's confidential filing rules found at ARSD 20:10:01:41 may be invoked by Keystone with respect to such filings to the same extent as with all other filings at the Commission. If information is filed as "confidential," any person desiring access to such materials or the Staff or the Commission may invoke the procedures of ARSD 20:10:01 :41 through 20: 10:01 :43 to determine whether such information is entitled to confidential treatment and what protective provisions are appropriate for limited release of information found to be entitled to confidential treatment.
<b>37</b>	To facilitate periodic pipeline leak surveys during operation of the facilities in wetland areas, a corridor centered on the pipeline and up to 15 feet wide shall be maintained in an herbaceous state. Trees within 15 feet of the pipeline greater than 15 feet in height may be selectively cut and removed from the permanent right-of- way.
<b>38</b>	To facilitate periodic pipeline leak surveys in riparian areas, a corridor centered on the pipeline and up to 10 feet wide shall be maintained in an herbaceous state.
<b>39</b>	Except to the extent waived by the owner or lessee in writing or to the extent the noise levels already exceed such standard, the noise levels associated with Keystone's pump stations and other noise-producing facilities will not exceed the L 1 0=55dbA standard at the nearest occupied, existing residence, office, hotel/motel or non- industrial business not owned by Keystone. The point of measurement will be within 100 feet of the residence or business in the direction of the pump station or facility. Post-construction operational noise assessments will be completed by an independent third-party noise consultant, approved by the Commission, to show compliance with the noise level at each pump station or other noise-producing facility. The noise assessments will be performed in accordance with applicable American National Standards Institute standards. The results of the assessments will be filed with the Commission. In the event that the noise level exceeds the limit set forth in this condition at any pump station or other noise producing facility, Keystone shall promptly implement noise mitigation measures to bring the facility into compliance with the limits set forth in this condition and shall report to the Commission concerning the measures taken and the results of post-mitigation assessments demonstrating that the noise limits have been met.
<b>40</b>	At the request of any landowner or public water supply system that offers to provide the necessary access to Keystone over his/her property or easement(s) to perform the necessary work, Keystone shall replace at no cost to such landowner or public water supply system, any polyethylene water piping located within 500 feet of the Project with piping that is resistant to permeation by BTEX.
<b>40.a</b>	Keystone shall publish a notice in each newspaper of general circulation in each county through which the Project will be constructed advising landowners and public water supply systems of this condition.
<b>41</b>	Keystone shall follow all protection and mitigation efforts as identified by the U.S. Fish and Wildlife Service ("USFWS") and SDGFP

<b>41.a</b>	Keystone shall identify all greater prairie chicken and greater sage and sharp-tailed grouse leks within the buffer distances from the construction right of way set forth for the species in the FE IS and Biological Assessment (BA) prepared by DOS and USFWS
<b>41.b</b>	In accordance with commitments in the FEIS and BA, Keystone shall avoid or restrict construction activities as specified by USFWS within such buffer zones between March 1 and June 15 and for other species as specified by USFW Sand SDGFP.
<b>42</b>	Keystone shall keep a record of drain tile system information throughout planning and construction, including pre-construction location of drain tiles. Location information shall be collected using a sub-meter accuracy global positioning system where available or, where not available by accurately documenting the pipeline station numbers of each exposed drain tile.
<b>42.a</b>	Keystone shall maintain the drain tile location information and tile specifications and incorporate it into its Emergency Response and Integrity Management Plans where drains might be expected to serve as contaminant conduits in the event of a release.
<b>42.b</b>	If drain tile relocation is necessary, the applicant shall work directly with landowner to determine proper location.
<b>42.c</b>	The location of permanent drain tiles shall be noted on as-built maps. Qualified drain tile contractors shall be employed to repair drain tiles.
<b>43</b>	Keystone shall follow the "Unanticipated Discoveries Plan," as reviewed by the State Historical Preservation Office ("SHPO") and approved by the DOS and provide it to the Commission upon request. Ex TC-1.6.4, pp. 94-96; Ex S-3.
<b>43.a</b>	If during construction, Keystone or its agents discover what may be an archaeological resource, cultural resource, historical resource or gravesite, Keystone or its contractors or agents shall immediately cease work at that portion of the site and notify the DOS, the affected landowner(s) and the SHPO.
<b>43.b</b>	If the DOS and SHPO determine that a significant resource is present, Keystone shall develop a plan that is approved by the DOS and commenting/signatory parties to the Programmatic Agreement to salvage avoid or protect the archaeological resource.
<b>43.c</b>	If such a plan will require a materially different route than that approved by the Commission, Keystone shall obtain Commission and landowner approval for the new route before proceeding with any further construction.
<b>43.d</b>	Keystone shall be responsible for any costs that the landowner is legally obligated to incur as a consequence of the disturbance of a protected cultural resource as a result of Keystone's construction or maintenance activities.
<b>44</b>	Keystone shall implement and comply with the following procedures regarding paleontological resources:
<b>44.a</b>	Prior to commencing construction, Keystone shall conduct a literature review and records search, and consult with the BLM and Museum of Geology at the S.D. School of Mines and Technology ("SDSMT") to identify known fossil sites along the pipeline route and identify locations of surface exposures of paleontologically sensitive rock formations using the BLM's Potential Fossil Yield Classification system.
<b>44.a.1</b>	Any area where trenching will occur into the Hell Creek Formation shall be considered a high probability area.
<b>44.b</b>	Keystone shall at its expense conduct a pre-construction field survey of each area identified by such review and consultation as a known site or high probability area within the construction ROW. Following BLM guidelines as modified by the provisions of Condition 44, including the use of BLM permitted paleontologists, areas with exposures of high sensitivity (PFYC Class 4) and very high sensitivity (PFYC Class 5) rock formations shall be subject to a 100% pedestrian field survey, while areas with exposures of moderately sensitive rock formations (PFYC Class 3) shall be spot-checked for occurrences of scientifically or economically significant surface fossils and evidence of subsurface fossils. Scientifically or economically significant surface fossils shall be avoided by the Project or mitigated by collecting them if avoidance is not feasible. Following BLM guidelines for the assessment and mitigation of paleontological resources, scientifically significant paleontological resources are defined as rare vertebrate fossils that are identifiable to taxon and element, and common vertebrate fossils that are identifiable to taxon and element and that have scientific research value; and scientifically noteworthy occurrences of invertebrate, plant and trace fossils. Fossil localities are defined as the geographic and stratigraphic locations at which fossils are found

<b>44.c</b>	Following the completion of field surveys, Keystone shall prepare and file with the Commission a paleontological resource mitigation plan. The mitigation plan shall specify monitoring locations, and include BLM permitted monitors and proper employee and contractor training to identify any paleontological resources discovered during construction and the procedures to be followed following such discovery. Paleontological monitoring will take place in areas within the construction ROW that are underlain by rock formations with high sensitivity (PFYC Class 4) and very high sensitivity (PFYC Class 5), and in areas underlain by rock formations with moderate sensitivity (PFYC Class 3) where significant fossils were identified during field surveys.
<b>44.d</b>	If during construction, Keystone or its agents discover what may be a paleontological resource of economic significance, or of scientific significance, as defined in subparagraph (b) above, Keystone or its contractors or agents shall immediately cease work at that portion of the site and, if on private land, notify the affected landowner(s). Upon such a discovery, Keystone's paleontological monitor will evaluate whether the discovery is of economic significance, or of scientific significance as defined in subparagraph (b) above. If an economically or scientifically significant paleontological resource is discovered on state land, Keystone will notify SDSMT and if on federal land, Keystone will notify the BLM or other federal agency. In no case shall Keystone return any excavated fossils to the trench. If a qualified and BLM-permitted paleontologist, in consultation with the landowner, BLM, or SDSMT determines that an economically or scientifically significant paleontological resource is present, Keystone shall develop a plan that is reasonably acceptable to the landowner(s), BLM, or SDSMT, as applicable, to accommodate the salvage or avoidance of the paleontological resource to protect or mitigate damage to the resource. The responsibility for conducting such measures and paying the costs associated with such measures, whether on private, state or federal land, shall be borne by Keystone to the same extent that such responsibility and costs would be required to borne by Keystone on BLM managed lands pursuant to BLM regulations and guidelines, including the BLM Guidelines for Assessment and Mitigation of Potential Impacts to Paleontological Resources, except to the extent factually inappropriate to the situation in the case of private land (e.g. museum curation costs would not be paid by Keystone in situations where possession of the recovered fossil(s) was turned over to the landowner as opposed to curation for the public). If such a plan will require a materially different route than that approved by the Commission, Keystone shall obtain Commission approval for the new route before proceeding with any further construction. Keystone shall, upon discovery and salvage of paleontological resources either during pre-construction surveys or construction and monitoring on private land, return any fossils in its possession to the landowner of record of the land on which the fossil is found. If on state land, the fossils and all associated data and documentation will be transferred to the SDSM; if on federal land, to the BLM.
<b>44.e</b>	To the extent that Keystone or its contractors or agents have control over access to such information, Keystone shall, and shall require its contractors and agents to, treat the locations of sensitive and valuable resources as confidential and limit public access to this information.
<b>45</b>	Keystone shall repair or replace all property removed or damaged during all phases of construction and operation of the proposed transmission facility, including but not limited to, all fences, gates and utility, water supply, irrigation or drainage systems.
<b>45.a</b>	Keystone shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses or loss of value to a paleontological resource damaged by construction or other activities.
<b>46</b>	In the event that a person's well is contaminated as a result of construction or pipeline operation, Keystone shall pay all costs associated with finding and providing a permanent water supply that is at least of similar quality and quantity; and any other related damages, including but not limited to any consequences, medical or otherwise, related to water contamination.
<b>47</b>	Any damage that occurs as a result of soil disturbance on a persons' property shall be paid for by Keystone
<b>48</b>	No person will be held responsible for a pipeline leak that occurs as a result of his/her normal farming practices over the top of or near the pipeline
<b>49</b>	Keystone shall pay commercially reasonable costs and indemnify and hold the landowner harmless for any loss, damage, claim or action resulting from Keystone's use of the easement, including any resulting from any release of regulated substances or from abandonment of the facility, except to the extent such loss, damage claim or action results from the gross negligence or willful misconduct of the landowner or its agents.
<b>50</b>	The Commission's complaint process as set forth in ARSD 20:10:01 shall be available to landowners, other persons sustaining or threatened with damage or the consequences of Keystone's failure to abide by the conditions of this permit or otherwise having standing to obtain enforcement of the conditions of this Order and Permit.

SUMMARY	TRANSCANADA TESTIMONY
Compliance with applicable laws	Goulet [PHMSA] Schmidt [App R, ESA, NHPA]; Tilliquist [App P]; Goulet & Kothari [App. Z, PHMSA];
Obtain all required permits	Schmidt (404 only)
Comply with FSEIS recommendations	
PUC permit is not transferable	
Keystone is responsible for all actions of affiliated entities	
Keystone must advise the PUC of any route changes	Goule, Tilliquist, Schmidt
Notify landowners & local gov't of route deviations	
Communicate directly w/ landowners	
Finalize & file maps	
Landowner and local gov't opp to comment on route changes	
Final maps as-built locations	

Public liaison officer	
Keystone must file quarterly report	
The public liaison must report to the Public Utilities Commission	
Within six months of start of construction, Keystone must contact local emergency response plans	
Pre-construction conference required	
Keystone must inform the PUC once construction start date is known	
Keystone must comply with the CMR plan	Schmidt
Keystone must have environmental inspectors	



In consult with the NRCS, Keystone must deveop Con/Rec sections	Schmidt
Detailed soil analysis in sensitive areas	
Id soils requiring alternative handling methods	
Keystone shall implement options for soil handling based on what is selected by the landowner.	
Sp plans for bentonite areas, sandy soils	
Procedures for open process re soil handling,mit., reclamation	
Sep database for areas of low reclamation potential	
Keystone shall give landowners information and follow their preference as documented	
Plan to segregate top soil in ag areas	
Repair damage	
Permanent restoration to pre-construction cond	
Final maps as-built locations	
Temp erosion control	
Notice to landowners of timeliness	
Crop monitoring protocols	
Indep crop monitor	
Noxious weed control plan	
Adverse weather plan	
Maintain geo integrity	
Landowner direction rock replacement	

Decompact soil	
Decompact topsoil	
Dewatering	
Notify landowners saline water discharge	
Trench and slope breakers	
Mulch	
Reseed	
Actively monitor revegetation	
Coordinate w/ landowners re cattle protection	
Confidential list of landowners	
Fire protection procedures	
Dump trucks must be covered	
Fuel storage facilities should if possible not be located within 200' of private wells and 400' of municipal wells	
Keystone must compensate landowners for trees or allow them to maintain ownership	
Limit clear cuts	
Seed control	
Frac-out plans for horizontal directional drilling areas	

Frac out plan	
Construction affecting water: limit row to 75 ft in noncultivated wetland; extra work areas 50' away; keep spoil 10' away; comply with 404; 15' construction buffer; bmp's to prevent silt-laden trench water discharge; use erosion control fabric unless riprap, native riparian vegetation 25' fr high water	
Coordinate road closures with local government, do regular maintenance, repairs, and document road conditions; must repair to original condition	

<p>If a residence is within 50', Keystone must coordinate construction with the landowner, maintaining access to their property. Must put up safety fencing when requested, separate topsoil from subsoil, repair damage. Complete erosion control within ten days.</p>	
<p>Stop construction when weather would cause damage, must have adverse weather plan</p>	
<p>Reclamation and cleanup must be on-going</p>	
<p>Keystone must restore roads to their original condition</p>	
<p>Keystone must file a list of private and new access roads</p>	
<p>Keystone must have a winterization plan</p>	
<p>Keystone can make modifications to certain conditions if agreed to by the landowner</p>	
<p>Keystone shall comply with PHMSA conditions</p>	<p>Kothari</p>
<p>Shippers must do anti-corrosion</p>	
<p>All vehicles must have extinguisher, radio</p>	
<p>Emergency services communication</p>	

Keystone must continue to evaluate HCAs	
Keystone shall seek out local knowledge of HCAs including local landowners and local government officials.	
High plains aquifer identified as HCA	
Keystone must file ERP and manual procedures operations and maintenance	
Maintain herbaceous state corridor	
Maintain herbaceous state corridor	
Keep noise to 55 decibals at nearest residence, retain noise expert	
replace water line within 500' if requested by landowner or public water supply	
Notify landowners and local gov't of construction activities	
Mitigation efforts ID'ed by FWS and GFP shall be followed	

Buffer distances T & E species	
Avoid activities T & E areas	
Maintain drain tile system and incorporate into ERP	
Maintain drain tile locations	
Coordinate drain tile locations w landowners	
Qualified drain tile contractors	
Comply with unanticipated discoveries plan	
Immediately cease work unanticipated discoveries	
Proper PA communication avoidance cultural resources	
Landowner approval route changes	
Liability for damage to cultural resources	
Paleo surveys, mitigation, discoveries plan	
Paleo lit review	
Hell creek Formation trenching	
Pre-construction surveys paleo areas	

Paleo mit plan	
Cease work and notifications paleo disturance	
Confidentiality paleo	
Keystone must reclaim transmission facilities	
Compensate landowners for lost crop productivity	
Keystone must compensate for any well contamination	
Keystone must compensate for any soil disturbance	
Landowners are not liable for normal farming practices	
Landowners not liable and will have costs paid for spills	
PUC complaint process put in place to enforce permit	

<b>PUC TESTIMONY</b>
----------------------

Schramm [PHMSA]; Hudson  
[PHMSA]; Hughes [PHMSA]




Flo






Schramm; Hudson; Hughes











UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 2 - 2015

ASSISTANT ADMINISTRATOR  
FOR ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mr. Amos Hochstein  
Special Envoy and Coordinator for International Energy Affairs  
Bureau of Energy Resources  
U.S. Department of State  
Washington, DC 20520

Ms. Judith G. Garber  
Acting Assistant Secretary  
Oceans and International Environmental and Scientific Affairs  
U.S. Department of State  
Washington, DC 20520

Dear Mr. Hochstein and Ms. Garber:

In accordance with our authorities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, EPA has reviewed the Department of State's (Department) Final Supplemental Environmental Impact Statement (SEIS) for a Presidential Permit application by TransCanada Keystone Pipeline, LP (Keystone) to construct and operate the Keystone XL Project (Project). We are providing these comments now, rather than when the Final SEIS was published, because of the possibility that a decision of the Nebraska courts would have led to changes to the Final SEIS.

EPA recognizes that the Department has made a considerable effort to evaluate the potential environmental impacts associated with the proposed Project and reasonable alternatives, and to consider measures to mitigate potential harmful effects. The Final SEIS is comprehensive and provides responses to our April 2013 comments on the Draft SEIS. We would like to especially point out the usefulness of the new compilation of all of the proposed mitigation measures (Appendix Z).

The Department has also strengthened the analysis of oil spill prevention preparedness, response and mitigation and has committed to requiring numerous mitigation measures regarding leak prevention and detection, as well as spill cleanup measures. While risks of oil spills and adverse impacts remain, and spills of diluted bitumen can have different impacts than spills of conventional oil, the Department has included provisions to reduce those risks, including working with the state of Nebraska to develop an alternative route that avoids much of the Sand Hills region, and incorporating mitigation measures recommended by both the Pipeline Safety and Hazardous Materials Administration and the independent engineering analysis. We note as particularly important the commitment by Keystone to be responsible for clean-up and

restoration of groundwater as well as surface water in the event of a release or discharge of crude oil. These efforts will decrease the risk of spills and leaks, and provide for necessary remediation should spills occur. Nonetheless, the Final SEIS acknowledged that the proposed pipeline does present a risk of spills, which remains a concern for citizens and businesses relying on groundwater resources crossed by the route.

The analysis of climate change issues has also improved from the Draft SEIS. The Final SEIS makes clear that oil sands crude has significantly higher lifecycle greenhouse gas emissions than other crudes. The Final SEIS states that lifecycle greenhouse gas emissions from development and use of oil sands crude is about 17% greater than emissions from average crude oil refined in the United States on a wells-to-wheels basis.<sup>1</sup>

The Final SEIS also finds that the incremental greenhouse gas emissions from the extraction, transport, refining and use of the 830,000 barrels per day of oils sands crude that could be transported by the proposed Project at full capacity would result in an additional 1.3 to 27.4 million metric tons of carbon dioxide equivalents (MMTCO<sub>2</sub>-e) per year compared to the reference crudes.<sup>2</sup> To put that in perspective, 27.4 MMTCO<sub>2</sub>-e per year is equivalent to the annual greenhouse gas emissions from 5.7 million passenger vehicles or 7.8 coal fired power plants.<sup>3</sup> Over the 50-year lifetime of the pipeline, this could translate into releasing as much as 1.37 billion more tons of greenhouse gases into the atmosphere.<sup>4</sup>

Until ongoing efforts to reduce greenhouse gas emissions associated with the production of oil sands are more successful and widespread, the Final SEIS makes clear that, compared to reference crudes, development of oil sands crude represents a significant increase in greenhouse gas emissions.

The Final SEIS also provided a more robust market analysis, and examined how market dynamics may influence the levels of greenhouse gas emissions associated with the proposed Project. Based on that market analysis, the Final SEIS concluded, in January of 2014, that if the Project were not approved, oil sands crude would be likely to reach the market some other way, most likely by rail. The Final SEIS acknowledged that the alternative of shipment by rail is more expensive than shipment by pipeline, and would therefore increase the costs of getting oil sands crude to market.<sup>5</sup> However, the Final SEIS concluded that given global oil prices projected at that time this difference in shipment costs would not affect development of oil sands, which would remain profitable even with the higher transportation costs of shipment by rail. Therefore, the Final SEIS concluded that although development of oil sands would lead to significant additional releases of greenhouse gasses, a decision not to grant the requested permit would likely not change that outcome, i.e., those significant greenhouse gas emissions would likely happen regardless of the decision on the proposed Project. This conclusion was based in large part on projections of the global price of oil.

---

<sup>1</sup> Final SEIS Executive Summary, p. ES-15.

<sup>2</sup> Final SEIS Executive Summary, p. ES-15.

<sup>3</sup> Final SEIS p. 4.14-46.

<sup>4</sup> Final SEIS p. 4.14-41.


<sup>5</sup> Final SEIS p. 1.4-90.

Given the recent variability in oil prices, it is important to revisit these conclusions. While the overall effect of the Project on oil sands production will be driven by long-term movements in the price of oil and not short term volatility, recent large declines in oil prices (oil was trading at below \$50 per barrel last week) highlight the variability of oil prices. The Final SEIS concluded that at sustained oil prices of \$65 to \$75 per barrel, the higher transportation costs of shipment by rail “could have a substantial impact on oil sands production levels – possibly in excess of the capacity of the proposed project.”<sup>6</sup> In other words, the Final SEIS found that at sustained oil prices within this range, construction of the pipeline is projected to change the economics of oil sands development and result in increased oil sands production, and the accompanying greenhouse gas emissions, over what would otherwise occur. Given recent large declines in oil prices and the uncertainty of oil price projections, the additional low price scenario included in the Final SEIS should be given additional weight during decision making, due to the potential implications of lower oil prices on project impacts, especially greenhouse gas emissions.

Finally, we note that the Final SEIS includes additional information on how the Department screened pipeline route alternatives, and determined what routes to analyze in detail in the SEIS. Through this process, the Department determined that the Keystone Corridor alternatives, which would parallel the entire existing Keystone pipeline route in the United States, are not reasonable alternatives for the purposes of NEPA. The additional information provided in the Final SEIS is useful, but we note that eliminating alternatives from a detailed analysis based on an abbreviated estimate of environmental impacts is not the preferred approach under NEPA’s requirement to take a “hard look” at alternatives, which would provide a more detailed and comprehensive discussion of the issues associated with these route alternatives.

Please feel free to contact me or have your staff contact Susan Bromm, Director, Office of Federal Activities, at (202) 564-5400 if you have any questions or would like to discuss our comments.

Sincerely,



Cynthia Giles

---

<sup>6</sup> Final SEIS Executive Summary, p. ES-12.

## CERTIFICATE OF SERVICE

I certify that on this 1st day of October, 2015, a true and correct copy of the Standing Rock Sioux Tribe, Bold Nebraska and the Indigenous Environmental Network's Post Hearing Brief was electronically filed on the Public Utilities Commission of the State of South Dakota e-filing website. And also on this day, a true and accurate copy was sent via email to the following (or US Mail first-class postage prepaid where no email is given):

/s/Kimberly Craven

Kimberly Craven, AZ BAR #23163

3560 Catalpa Way

Boulder, CO 80304

Telephone: 303.494.1974

Fax: 720.328.9411

Email: [kimecraven@gmail.com](mailto:kimecraven@gmail.com)

*Attorney for Dakota Rural Action &  
Indigenous Environmental Network*

Ms. Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[patty.vangerpen@state.sd.us](mailto:patty.vangerpen@state.sd.us)  
(605) 773-3201 - voice

Ms. Kristen Edwards  
Staff Attorney  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[Kristen.edwards@state.sd.us](mailto:Kristen.edwards@state.sd.us)  
(605) 773-3201 - voice

Mr. Brian Rounds  
Staff Analyst  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[brian.rounds@state.sd.us](mailto:brian.rounds@state.sd.us)  
(605) 773-3201- voice

Mr. Darren Kearney  
Staff Analyst

South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[darren.kearney@state.sd.us](mailto:darren.kearney@state.sd.us)  
(605) 773-3201 - voice

Mr. James E. Moore - Representing: TransCanada Keystone Pipeline, LP  
Attorney  
Woods, Fuller, Shultz and Smith P.C.  
PO Box 5027  
Sioux Falls, SD 57117  
[james.moore@woodsfuller.com](mailto:james.moore@woodsfuller.com)  
(605) 336-3890 - voice  
(605) 339-3357 - fax

Mr. William G. Taylor - Representing: TransCanada Keystone Pipeline, LP  
Attorney  
Taylor Law Firm  
2921 E. 57th St. #10  
Sioux Falls, SD 57108  
[bill.taylor@williamgtaylor.com](mailto:bill.taylor@williamgtaylor.com)  
(605) 212-1750 - voice

Mr. James P. White  
Attorney  
TransCanada Keystone Pipeline, LP  
Ste. 225  
1250 Eye St., NW  
Washington, DC 20005  
[jim\\_p\\_white@transcanada.com](mailto:jim_p_white@transcanada.com)  
(202) 682-4701 ext. 224 - voice

Mr. Paul F. Seamans  
27893 249th St.  
Draper, SD 57531  
[jackknife@goldenwest.net](mailto:jackknife@goldenwest.net)  
(605) 669-2777 - voice

Mr. John H. Harter  
28125 307th Ave.  
Winner, SD 57580  
[johnharter11@yahoo.com](mailto:johnharter11@yahoo.com)  
(605) 842-0934 - voice

Ms. Elizabeth Lone Eagle  
PO Box 160

Howes, SD 57748  
[bethcbest@gmail.com](mailto:bethcbest@gmail.com)  
(605) 538-4224 - voice  
Serve both by email and regular mail

Mr. Tony Rogers  
Rosebud Sioux Tribe - Tribal Utility Commission  
153 S. Main St.  
Mission, SD 57555  
[tuc@rosebudsiouxtribe-nsn.gov](mailto:tuc@rosebudsiouxtribe-nsn.gov)  
(605) 856-2727 - voice

Ms. Viola Waln  
PO Box 937  
Rosebud, SD 57570  
[walnranch@goldenwest.net](mailto:waln ranch@goldenwest.net)  
(605) 747-2440 - voice

Ms. Jane Kleeb  
Bold Nebraska  
1010 N. Denver Ave.  
Hastings, NE 68901  
[jane@boldnebraska.org](mailto:jane@boldnebraska.org)  
(402) 705-3622 - voice

Mr. Benjamin D. Gotschall  
Bold Nebraska  
6505 W. Davey Rd.  
Raymond, NE 68428  
[ben@boldnebraska.org](mailto:ben@boldnebraska.org)  
(402) 783-0377 - voice

Mr. Byron T. Steskal & Ms. Diana L. Steskal  
707 E. 2nd St.  
Stuart NE 68780  
[prairierose@nntc.net](mailto:prairierose@nntc.net)  
(402) 924-3186 - voice

Ms. Cindy Myers, R.N.  
PO Box 104  
Stuart, NE 68780  
[csmyers77@hotmail.com](mailto:csmyers77@hotmail.com)  
(402) 709-2920 - voice

Mr. Arthur R. Tanderup  
52343 857th Rd.

Neligh, NE 68756  
[atanderu@gmail.com](mailto:atanderu@gmail.com)  
(402) 278-0942 - voice

Mr. Lewis GrassRope  
PO Box 61  
Lower Brule, SD 57548  
[wisestar8@msn.com](mailto:wisestar8@msn.com)  
(605) 208-0606 - voice

Ms. Carolyn P. Smith  
305 N. 3rd St.  
Plainview, NE 68769  
[peachie\\_1234@yahoo.com](mailto:peachie_1234@yahoo.com)  
(402) 582-4708 - voice

Mr. Robert G. Allpress  
46165 Badger Rd.  
Naper, NE 68755  
[bobandnan2008@hotmail.com](mailto:bobandnan2008@hotmail.com)  
(402) 832-5298 - voice

Mr. Louis T. Genung  
902 E. 7th St.  
Hastings, NE 68901  
[tg64152@windstream.net](mailto:tg64152@windstream.net)  
(402) 984-7548 - voice

Ms. Nancy Hilding  
6300 W. Elm  
Black Hawk, SD 57718  
[nhilshat@rapidnet.com](mailto:nhilshat@rapidnet.com)  
(605) 787-6779 - voice

Mr. Gary F. Dorr  
27853 292nd  
Winner, SD 57580  
[gfdorr@gmail.com](mailto:gfdorr@gmail.com)  
(605) 828-8391 - voice

Mr. Bruce & Ms. RoxAnn Boettcher  
Boettcher Organics  
86061 Edgewater Ave.  
Bassett, NE 68714  
[boettcherann@abbnebraska.com](mailto:boettcherann@abbnebraska.com)  
(402) 244-5348 - voice

Ms. Wrexie Lainson Bardaglio  
9748 Arden Rd.  
Trumansburg, NY 14886  
[wrexie.bardaglio@gmail.com](mailto:wrexie.bardaglio@gmail.com)  
(607) 229-8819 - voice

Mr. William Kindle  
President  
Rosebud Sioux Tribe  
PO Box 430  
Rosebud, SD 57570  
[William.Kindle@rst-nsn.gov](mailto:William.Kindle@rst-nsn.gov)  
[ejantoine@hotmail.com](mailto:ejantoine@hotmail.com)

Mr. Eric Antoine  
Attorney  
Rosebud Sioux Tribe  
PO Box 430  
Rosebud, SD 57570  
[ejantoine@hotmail.com](mailto:ejantoine@hotmail.com)  
(605)747-2381 - voice

Ms. Paula Antoine  
Sicangu Oyate Land Office Coordinator  
Rosebud Sioux Tribe  
PO Box 658  
Rosebud, SD 57570  
[wopila@gwtc.net](mailto:wopila@gwtc.net)  
[paula.antoine@rosebudsiouxtribe-nsn.gov](mailto:paula.antoine@rosebudsiouxtribe-nsn.gov)  
(605) 747-4225 - voice

Mr. Harold C. Frazier  
Chairman  
Cheyenne River Sioux Tribe  
PO Box 590  
Eagle Butte, SD 57625  
[haroldcfrazier@yahoo.com](mailto:haroldcfrazier@yahoo.com)  
(605) 964-4155 - voice

Mr. Cody Jones  
21648 US HWY 14/63  
Midland, SD 57552  
(605) 843-2827 - voice

Ms. Amy Schaffer  
PO Box 114



Louisville, NE 68037  
[amyannschafter@gmail.com](mailto:amyannschafter@gmail.com)  
(402) 234-2590

Mr. Jerry Jones  
22584 US HWY 14  
Midland SD 57552  
(605) 843-2264

Ms. Debbie J. Trapp  
24952 US HWY 14  
Midland, SD 57552  
[mtdt@goldenwest.net](mailto:mtdt@goldenwest.net)  
(605) 843-2155 - voice

Ms. Gena M. Parkhurst  
2825 Minnewasta Place  
Rapid City, SD 57702  
[gmp66@hotmail.com](mailto:gmp66@hotmail.com)  
(605) 716-5147 - voice

Ms. Joye Braun  
PO Box 484  
Eagle Butte, SD 57625  
[jmbraun57625@gmail.com](mailto:jmbraun57625@gmail.com)  
(605) 964-3813

Mr. Robert Flying Hawk  
Chairman  
Yankton Sioux Tribe  
PO Box 1153  
Wagner, SD 57380  
[Robertflyinghawk@gmail.com](mailto:Robertflyinghawk@gmail.com)  
(605) 384-3804 - voice

Ms. Thomasina Real Bird - Representing - Yankton Sioux Tribe  
Attorney  
Fredericks Peebles & Morgan LLP  
1900 Plaza Dr.  
Louisville, CO 80027  
[trealbird@ndnlaw.com](mailto:trealbird@ndnlaw.com)  
(303) 673-9600 - voice  
(303) 673-9155 - fax

Ms. Jennifer S. Baker – Representing Yankton Sioux Tribe  
Attorney  
Fredericks Peebles & Morgan LLP  
1900 Plaza Dr.  
Louisville, CO 80027  
[Jbaker@ndnlaw.com](mailto:Jbaker@ndnlaw.com)  
303-673-9600 - voice  
303-673-9155 – fax

Ms. Chastity Jewett  
1321 Woodridge Dr.  
Rapid City, SD 57701  
[chasjewett@gmail.com](mailto:chasjewett@gmail.com)  
(605) 431-3594 - voice

Mr. Duncan Meisel  
350.org  
20 Jay St. #1010  
Brooklyn, NY 11201  
[duncan@350.org](mailto:duncan@350.org)  
(518) 635-0350 - voice

Ms. Sabrina King  
Dakota Rural Action  
518 Sixth Street, #6  
Rapid City, SD 57701  
[sabrina@dakotarural.org](mailto:sabrina@dakotarural.org)  
(605) 716-2200 - voice

Mr. Frank James  
Dakota Rural Action  
PO Box 549  
Brookings, SD 57006  
[fejames@dakotarural.org](mailto:fejames@dakotarural.org)  
(605) 697-5204 - voice  
(605) 697-6230 - fax

Mr. Bruce Ellison  
Attorney  
Dakota Rural Action  
518 Sixth St. #6  
Rapid City, SD 57701  
[belli4law@aol.com](mailto:belli4law@aol.com)  
(605) 716-2200 - voice  
(605) 348-1117 - voice

Mr. Tom BK Goldtooth  
Indigenous Environmental Network (IEN)  
PO Box 485  
Bemidji, MN 56619  
[ien@igc.org](mailto:ien@igc.org)  
(218) 760-0442 - voice

Mr. Dallas Goldtooth  
38371 Res. HWY 1  
Morton, MN 56270  
[goldtoothdallas@gmail.com](mailto:goldtoothdallas@gmail.com)  
(507) 412-7609

Mr. Ronald Fees  
17401 Fox Ridge Rd.  
Opal, SD 57758  
(605) 748-2422 - voice

Ms. Bonny Kilmurry  
47798 888 Rd.  
Atkinson, NE 68713  
[bjkilmurry@gmail.com](mailto:bjkilmurry@gmail.com)  
(402) 925-5538 - voice

Mr. Robert P. Gough  
Secretary  
Intertribal Council on Utility Policy  
PO Box 25  
Rosebud, SD 57570  
[bobgough@intertribalCOUP.org](mailto:bobgough@intertribalCOUP.org)  
(605) 441-8316 - voice

Mr. Terry & Cheryl Frisch  
47591 875th Rd.  
Atkinson, NE 68713  
[tcfrisch@q.com](mailto:tcfrisch@q.com)  
(402) 925-2656 - voice

Ms. Tracey Zephier - Representing: Cheyenne River Sioux Tribe  
Fredericks Peebles & Morgan LLP  
Ste. 104  
910 5th St.  
Rapid City, SD 57701  
[tzephier@ndnlaw.com](mailto:tzephier@ndnlaw.com)  
(605) 791-1515 - voice

Mr. Travis Clark - Representing: Cheyenne River Sioux Tribe  
Fredericks Peebles & Morgan LLP  
Ste. 104  
910 5th St.  
Rapid City, SD 57701  
[tclark@ndnlaw.com](mailto:tclark@ndnlaw.com)  
(605) 791-1515 - voice

Mr. Robin S. Martinez - Representing: Dakota Rural Action  
The Martinez Law Firm, LLC  
616 W. 26th St.  
Kansas City, MO 64108  
[robin.martinez@martinezlaw.net](mailto:robin.martinez@martinezlaw.net)  
(816) 979-1620 – voice  
(816) 398-7021 - fax

Ms. Mary Turgeon Wynne, Esq.  
Rosebud Sioux Tribe - Tribal Utility Commission  
153 S. Main St  
Mission, SD 57555  
[tuc@rosebudsiouxtribe-nsn.gov](mailto:tuc@rosebudsiouxtribe-nsn.gov)  
(605) 856-2727 - voice

Mr. Matthew L. Rappold - Representing: Rosebud Sioux Tribe  
Rappold Law Office  
816 Sixth St.  
PO Box 873  
Rapid City, SD 57709  
[Matt.rappold01@gmail.com](mailto:Matt.rappold01@gmail.com)  
(605) 828-1680 - voice