

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

HP14-001

IN THE MATTER OF THE APPLICATION BY		
TRANSCANADA KEYSTONE PIPELINE, LP		GARY DORR'S MOTION TO COMPEL
FOR A PERMIT UNDER THE SOUTH		DISCOVERY AND PRECLUDE KEYSTONE
DAKOTA ENERGY CONVERSION AND		FROM OFFERING EVIDENCE OR
TRANSMISSION FACILITIES ACT TO		WITNESSES AT HEARING
CONSTRUCT THE KEYSTONE XL		
PROJECT		

Intervener, Gary F. Dorr moves that the Commission enter an order to Compel Discovery and require TransCanada Keystone XL Pipeline, LP, (KS) to answer the questions listed below and on the attachments A,B,C and D and preclude KS from offering evidence or witnesses at Hearing.

I take offense to the notion expressed by the PUC Chairman that the interveners had until March 10 to file motions to compel. It was never stated in any order by the PUC that interveners had to file motions to compel by March 10. It is also offensive that the PUC commissioners would imply that the interveners had not been prejudiced. As can be noted by my record of interrogatory and response from Keystone, I have been severely prejudiced. Keystone has failed to provide me with correct documents. I personally had to drive over 80 miles from my residence to Haakon and Jones County Deeds of Records offices where one of the staff members indicated that the easement agreement provided to me by TransCanada did not contain any water line easements. I also appeared at Haakon County in person and found out that the Clerk in the Deeds of Record office was not bonded to conduct searches. I personally paid for the Haakon County Abstract Company to search documents for me as the time was drawing near to closing for the work offices. I also found that in agreement with my line of questioning, Attachment OS-3 clearly shows that the West River/Lyman-Jones RWS Inc. easement agreements have specific language above and beyond the United States Easement Agreements with landowners that states that the grantors will not build anything "other than an ordinary fence" on the waterline right of way. I was also given a blank standard easement agreement from West River/Lyman-Jones RWS Inc. (attached as **Attachment E**) The

information I requested from TransCanada will lead to discovery of either subsequent easement agreements that provide proof of permission to build anything other than ordinary fences in the waterline right of way, or they will lead to discovery that TransCanada does not have permission to build anything other than an ordinary fence. TransCanada did not provide proof of any such documents. Further I requested a map of the entire system to include the core lines and the branch lines of the waterline system. This map will show the hundreds of crossings that the proposed Keystone pipeline will cross, and the fact that Keystone does not have proof of permission would mean discovery in each of these questions would lead to admissible evidence and TransCanada has not provided that. Further if TransCanada does not have a map showing the location of the Waterlines, how can they provide evidence that they are necessarily planning appropriately for any waterline crossings? My questions of TransCanada or Keystone would lead to admissible evidence. I am providing evidence of my request for TransCanada to answer my questions below. I attempted to reconcile the questions by further explaining the questions in a manner that better defines and narrows the questions.

Also, as can be evidenced by Keystone's responses to my questions, it becomes evident that when I asked for proof of permission from the Bureau of Reclamation and the Oglala Sioux Rural Water Supply System, TransCanada said "discussions" were held. This does not answer my request for proof of permission from TransCanada. Again, this discovery would lead to admissible evidence based on the amended permit condition or finding of fact, contained with that question. I have attached my questions and TransCanada's Response to my discovery requests as **Attachments A, B, C, and D**.

Based on the below exchange with TransCanada or Keystone, sent in an email dated April 6, 2015, regarding their failure to provide me with correct easements and additional questions I am requesting a motion to Compel Discovery on Keystone:

This is to serve as notice that TransCanada has provided insufficient or deficient responses to my First Interrogatories and Request for Production in the above mentioned matter, and that I requested that they cure said deficiencies.

In TransCanada or Keystone's (KS) responses dated 05 February 2015 KS stated "Keystone does not believe that any part of its route as currently permitted passes through Indian Country or across tribally owned lands." KS also stated "Keystone does not agree that the Treaties of Fort Laramie of 1851 and 1868 create usufructuary rights in lands that are within the KXL pipeline's currently permitted route." I did not ask whether the usufructuary rights were created by the treaty. The rights of the Tribes, like any other nation are "inherent." A right is never created, only taken or ceded. The Rosebud Sioux

tribe did not give up their usufructuary rights in the Treaty of 1868. The usufructuary rights are reserved unto the tribe unless it was recognized that Congress took that right from them. The usufructuary rights are still valid, still reserved by the tribe and still a concern to the Tribe today because Keystone has not provided explanation for how TransCanada is consulting separate of other applicable Federal laws, with the Rosebud Sioux Tribe about protecting usufructuary and reserved resource rights as contained in the un-abrogated treaty stipulation in Article 11 of the TREATY WITH THE SIOUX-BULE, OGLALA, MINICONJOU, YANKTONAI, HUKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SAND ARCS, AND SANTEE-AND ARAPAHO, 1868, contained in 15 Stats. 635. If TransCanada has not consulted with the Rosebud Sioux Tribe about protecting usufructuary and reserved resource rights in accordance with this treaty reserved right which is the supreme law of the land under Article 6 Section 2 of the United States Constitution whereby it states "states "[A]ll Treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding," then please indicate that TransCanada has not done so.

KS also said, "The currently permitted route for the KXL pipeline in South Dakota does not pass across any lands owned by the federal government or any South Dakota resident tribe nor does it pass across Indian Country as that term is defined by the laws of the United States. Keystone does not believe that it is required to obtain consent from the Rosebud Sioux Tribe to construct the pipeline project on lands that are within the currently permitted route." Perhaps you did not understand my question of "Provide proof that TransCanada has obtained consent from the Rosebud Sioux or Great Sioux Nation to pass through the 1868 boundaries of the Great Sioux Nation in accordance with the un-abrogated treaty stipulation in Article 16 of the TREATY WITH THE SIOUX-BULE, OGLALA, MINICONJOU, YANKTONAI, HUKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SAND ARCS, AND SANTEE-AND ARAPAHO, 1868, contained in 15 Stats. 635. I made no mention of currently owned lands. I made no mention of "Indian Country" in my question. I asked for proof that TransCanada complied with standing Treaty Reserved Right and obtained permission to cross the 1868 treaty territory boundaries. I would add that my question is asking if TransCanada complied with a Supreme law of the land that has never been abrogated from the 1868 Treaty provisions. Article 6 Section 2 of the Constitution states "[A]ll Treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." If TransCanada did not obtain consent, then please indicate you did not get consent from the Rosebud Sioux Tribe

or the Great Sioux Nation to cross the 1868 treaty boundaries.

In that same letter KS stated that my request for KS to identify “all emergency medical response planning being provided to the Rosebud Sioux Tribal Government as contained within the emergency response plan” was seeking “information that is beyond the scope of the PUC’s jurisdiction and Keystone’s burden under SDCL 49-41B-27. This is an amended permit condition #36(a) so I feel it is under the purview of the PUC and therefore should be a vital piece of information as the Rosebud Sioux Tribe is a “LOCAL GOVERNMENT” and should be consulted as they have housing areas that are not under the jurisdiction of the county and state governments that are in areas that could be impacted in emergencies. The citizens of the Rosebud Sioux Tribe housing areas are also State and Federal citizens and thus are entitled to have a voice in the emergency planning response under their local Federally-recognized government, the Rosebud Sioux Tribe. If KS has not provided any emergency response planning to the Rosebud Sioux Tribe, then please indicate so.

KS also in the same letter indicated that my question 36(b) about providing explanation for why the Rosebud Sioux Tribal Government was being excluded from having emergency management plan(s) filed with them, was beyond the PUC’s jurisdiction; however, it is not beyond TransCanada or Keystone’s duty and that is why I asked that question. I am not asking for compliance, I am asking for an explanation for why one of the local governments in the pipeline corridor area is being excluded from emergency management planning. This is directly in relation to the amended permit condition which TransCanada agreed to in 36(b).

When I asked about amended permit condition 36(d) about how Tribal rural housing areas, allotments and political precincts of the Rosebud Sioux Tribe in and near to the project area be notified of spills or other emergencies KS responded “If it is appropriate under the circumstances to notify political subdivision of the Rosebud Sioux Tribe, it will be done in the manner provided in the emergency response plan, through contacts with law enforcement agencies and other official representatives of the body politic of the Rosebud Sioux Tribe.” I didn’t ask if it what responses would be “appropriate,” rather this question seeks to identify how, since the Rosebud Sioux Tribe is not part of the emergency response plan, and the plan is not being filed with them, how any coordination is supposed to take place to provide emergency response planning when some allotments are near to towns with no local law enforcement or very little, as in having one officer. If TransCanada or Keystone has no idea how they will notify Tribal housing areas and tribally-controlled landowners about spills or other emergencies, please indicate so.

When I asked about amended permit condition 43(c), and providing proof that the Rosebud Sioux Tribe was consulted about the results of the cultural survey, I sought discovery of proof from TransCanada that TransCanada consulted with the Rosebud Sioux Tribe about the results of the Cultural survey. If TransCanada does not have proof of consultation with the Rosebud Sioux Tribe about the results of the Cultural survey, please indicate so.

In that same letter I asked in relation to amended permit condition 43(d) that TransCanada provide proof that any maps used for the survey and compiled from the survey contain recognition that the Rosebud Sioux Tribe is the appropriate tribe of consultation, I was referring to Section 106 of the National Historic Preservation Act's definition of the appropriate tribe of consultation for an area. While many tribes may have interest in an area there is "an appropriate" tribe for purposes of consultation. Since the Rosebud Sioux Tribe contains political precincts and housing areas, and allotments under their jurisdiction all the way across Gregory, Tripp, Melette, Todd, and Lyman County, to name a few, my question was to provide proof that the maps TransCanada used as part of this process contain recognition that the Rosebud Sioux Tribe is the appropriate tribe of consultation. I am not asking if the SD SHPO and DOS reviewed and approved the survey methodologies used in the course of the surveys noted in Sections 3.11 and 4.11 of the Department of State SFEIS (2014). I am asking for proof that the appropriate tribe of consultation according to the rules of Section 106 of the National Historic Preservation Act is being referenced in the process. If TransCanada has a Tribe other than the Rosebud Sioux tribe recognized on their maps as having jurisdiction over the counties of Gregory and Tripp, please indicate so.

In the KS response dated 10 March 2015 when I asked,

"1. TransCanada has publicly stated through its Tribal Liaison with the United States, Calvin Harlan, that it has a process of reaching out to a tribe "as a priority." Calvin Harlan further said "First, TransCanada researches the tribal historical jurisdictions of each tribe along a proposed project. Next, meetings are set up with the tribe, providing TransCanada the opportunity to introduce themselves and explain their reason for meeting. Tribes are then advised of all project details, ensuring they understand that the project's goal is to have little effect on their traditional lands." This was reported in the online edition of The Vindicator at

http://www.thevindicator.com/news/article_5c63b1ee-e643-11e2-ad3a-001a4bcf887a.htm.

Provide any and all documentation that TransCanada or Keystone complied with its publicly stated policy of consultation with Tribes and met with the Rosebud Sioux Tribal Council. The Tribe has a distinct National Government represented by an elected Tribal Council,”

KS answered “See Keystone Documents numbered 1122, 1129-30, 1135-1140, 1145-1146, 1148-1150, 1170-1181.” I did not receive these Keystone Documents with any of these numbers. If TransCanada does not have proof of complying with their own publicly stated policy as stated by Calvin Harlan, a TransCanada tribal liaison employee, then please indicate so. I also asked for documentation in questions number 2 and 3 of the same document, and KS provided the same page numbers of documents I have not received.

In the March 10 letter, when I asked

“4. Provide proof of TransCanada’s or Keystone’s compliance with the United States Easement Agreements held in South Dakota County Records’ Offices between the United States and South Dakota Landowners whose land the Oglala Sioux Rural Water Supply System crosses, whereby permission must be granted by the United States to cross the Oglala Sioux Rural Water Supply System, otherwise known as the “Mni Wiconi” water line.

KS answered that Keystone objects to interrogatory number 4 on the grounds that it is argumentative, is an incorrect expression of law and assumes facts not in evidence. Notwithstanding the objection and without waiving, the United States Department of the Interior, acting through the Bureau of Reclamation, secured easements for the construction of the Oglala Sioux Rural Water Supply System core pipeline. Keystone’s proposed route crosses the Oglala Sioux Rural Water Supply System core line in Haakon County and in Jones County. Discussions have been held between Keystone and the Bureau of Reclamation with respect to construction of the crossings and criteria governing the same.” I am actually seeking factual evidence that TransCanada is complying with specific language contained in every Oglala Sioux Rural Water Supply System easement agreed to by South Dakota landowners between them and the United States, signed by the Bureau of Reclamation (under colors of National Government) which states on Exhibit OS-1 and OS-2:

“3. The GRANTOR, his successors or assigns shall have the right to cultivate, use, and occupy said premises for any purposes which will not, by the determination of the GRANTEE, interfere with the easement rights herein granted or endanger any of its property, but said right of cultivation, use and occupancy shall not extend to or include the erection of any structure(s), planting of trees on, or the drilling of any wells in or the removal of material from or placement of material on said Premises without advance

written permission from the GRANTEE.” The Easement agreements go on to indicate in paragraph 7 that “This easement and provisions hereof shall constitute covenants running with the land for the benefits of the parties, their successors, and assigns forever. Title to the Oglala Sioux Rural Water Supply System shall be held by the United States in trust for the Oglala Sioux Tribe and shall not be transferred or encumbered without a subsequent act of Congress. By acceptance of this grant of easement, the GRANTEE does not intend to diminish any claim that the easement area is “Indian Country.” Buy this grant of easement the GRANTOR does not intend to make or recognize that the easement as “Indian Country.”

As the common man would understand the legal language, this easement agreement is for a pipeline HELD IN TRUST by the United States for the Oglala Sioux Tribe and later by amendment of Public Law 100-516 for the Rosebud, Lower Brule, and Cheyenne River Sioux Tribes. The opening paragraph states that the easement agreement is with the landowners and the GRANTEE, the United States of America, not merely the Bureau of Reclamation. The signature block also contains a signature under “UNITED STATES OF AMERICA” with a Bureau of Reclamation Area Manager in the Dakota Area Office “for” THE UNITED STATES OF AMERICA.” These two documents are held in the Records of Deeds Office for Jones County. So again to make the question more clear, please provide proof that Keystone or TransCanada has **written permission** to cross the Oglala Sioux Rural Water Supply System, a subsequent act of Congress, or permission from the Oglala Sioux Rural Water Supply system tribes for whom the waterline is held in trust by the United States. If TransCanada does not have proof to cross a current South Dakota Easement held in South Dakota County Records of Deeds offices then please indicate so. If TransCanada does not have permission from the Tribes for whom the Oglala Sioux Rural Water System is held in trusty by Public Law 100-516, then please indicate so. Further, the “conclusion” by the Bureau of Reclamation dated Nov 4, 2011, DOES indeed indicate in part that permission must be gained for TransCanada to “enter the subsurface or surface space,” of the OSRWSS. An English sentence containing the word “but” as in “but said right of cultivation, use and occupancy...” as contained in the easement agreements will indicate that the clause is separate of the previous clause and therefore must be construed as a supplementary and additional comment not tied to the first clause. That BOR concluded that the U.S. does not have any right has not been argued as a point of law, it is merely an opinion and is up for challenge. If TransCanada does not have substantive evidence beyond a mere conclusion that the signer for the United States does not believe that permission is needed, please indicate so. Additionally, **in attachment OS-3, a right of Way Agreement between Hostutlers and West River Lyman Jones Rural Water System, the Hostutlers agree that they “will not construct any structure (other than ordinary fencing) within the right of way except upon the prior agreement thereto by the Grantee in writing.”** This is in addition to the attachment OS-4 a right of Way Agreement between

Hostutlers and United States of America. So again I respectfully ask that if TransCanada does not have every single easement agreement signed by the landowners for every place where the Keystone crosses the OSRWSS's "SYSTEM" please indicate so.

5. Provide all easement agreements made by TransCanada or Keystone between TransCanada or Keystone and landowners on land where the Keystone XL pipeline will cross the Oglala Sioux Rural Water Supply System, otherwise known as the Mni Wiconi Waterline.

KS answered: "Responsive documents are attached as Keystone 1539-1564." These documents are incorrect to the answer. Further I asked for easement agreements by TransCanada or Keystone to the "system" not just the core lines. The System as identified in Public Law 100-516 would include the core lines and the branch lines. If TransCanada does not have easements to cross the entire "Oglala Sioux Rural Water Supply System" which would include Core lines and Branch lines, please indicate so. Also please review your documentation as you provided the wrong easement agreements where there is no waterline.

6. In TransCanada or Keystone's required criteria for crossing Reclamation facilities, **TransCanada said "TransCanada shall receive OSRWSS and Reclamation's review and approval of crossing specifications and drawings prior to starting work, including on the cathodic protection design to assure it does not impact the OSRWSS Core System or its cathodic protection system."** Provide proof that TransCanada or Keystone gained approval of crossing specifications from the Oglala Sioux Rural Water Supply System and the Bureau of Reclamation in accordance with TransCanada's or Keystone's own reclamation plan.

KS answered "Keystone and The Bureau of Reclamation have agreed on crossing criteria. The Bureau of Reclamation has discussed the crossing criteria with both the executive and engineering staff of the Oglala Sioux Rural Water Supply System. " I appreciate the response; however, it should be noted that TransCanada agreed (and provide proof of) with another Area Office of the Bureau of Reclamation who does not have jurisdiction over South Dakota. TransCanada got agreement from a Montana Bureau of Reclamation Office. The North Dakota Office of Bureau of Reclamation has jurisdiction over South Dakota. Further, when TransCanada answered they have "discussed the crossing criteria" with the Oglala Sioux Rural Water Supply System, that is outside the question I posed. If TransCanada does not have Oglala Sioux Rural Water Supply System's approval of crossing specifications, please indicate so.

7. In the same Criteria for Crossing Reclamation facilities TransCanada said "OSRWSS has a buried fiber optic cable installed with its pipeline that was placed by plow; its precise

location is unknown. The burial depth information provided on the drawings is for information purposes only. TransCanada shall undertake exploratory excavations (potholing) to determine the exact burial depth for both the OSRWSS core pipeline and fiber optic line prior to starting crossing designs and construction of their pipeline.” Provide proof that TransCanada or Keystone has received permission from the United States to “undertake exploratory excavations (potholing)” inside the Oglala Sioux Rural Water Supply System Right of Way, whereby permission must be gained from both the United States and the Oglala Sioux Rural Water Supply System to disturb the ground, as stipulated in the Oglala Sioux Rural Water Supply System Easement Agreement which was signed by the United States, and is held in a South Dakota County Recorder’s Office.

KS answered in part: “The construction of the pipeline has not yet begun. Accordingly, Keystone has not yet asked to undertake exploratory investigations within the easements held by the Bureau of Reclamation.” A note from me on this response, I object to the wording of this answer. The Easement for the OSRWSS is not merely “held by the Bureau of Reclamation.” It is held by the UNITED STATES OF AMERICA as indicated by the attachments contained herein.

8. Provide maps showing for every single place where the Keystone XL pipeline will cross a Core Line of the Oglala Sioux Rural Water Supply System, providing Latitude and longitude or Public Land Survey System information to identify those locations.

TransCanada provided a map. The map is too difficult to read.

9. Provide a map showing every single place where the Keystone XL Pipeline will cross a Branch of the Core Lines of the Oglala Sioux Rural Water Supply System, providing Latitude and longitude or Public Land Survey System information to identify those locations.

The map KS provided is too difficult to read and does not include every single branch of the core line. If KS does not have a map showing every single place where the Keystone will cross a branch line of the OSRWSS, please indicate so.

10. Provide a map showing every single place where the Keystone XL Pipeline will cross the Core Lines of the Lyman-Jones Rural Water Supply System, providing Latitude and longitude or Public Land Survey System information to identify those locations

KS replied “The request for latitude and longitude seeks information that is confidential for security reason. Without waiving the objection, see the maps marked as Keystone 1633.” See my reply to TransCanada’s response in Number 9.

11. Provide all easement agreements between TransCanada or Keystone and those landowners who have both the Oglala Sioux Rural Water System and will have the proposed Keystone XL Pipeline situated on their land and also have a previous easement agreement with the Oglala Sioux Rural Water Supply System.

KS refused to provide an answer fully and provided incorrect documents. See my answer to Number 4.

I am hopeful that with more explanation TransCanada can more fully understand my questions and answer accordingly.

With respect to my witnesses, I have not fully compiled a list yet, however I plan to call the Honorable Wayne Frederick, and the Honorable Don Fire Thunder at minimum. I reserve the right to call more witnesses and will submit the list by the PUC's published deadline for witnesses.

Additionally, TransCanada did not provide appropriate questions as stipulated to and agreed to by the PUC. In an email to interveners, Kristin Edwards indicated that ALL parties must state question and amended permit number in their questions. Please re-word your questions so that I may be able to answer your questions. I hope we can come to some agreement on these issues.

Conclusion

Gary Dorr respectfully requests that the Commission enter an order:

- 1) to compel discovery, requiring KS to disclose answers to the above mentioned questions regarding the map, correct easement agreements, and tribal consultation;
- 2) precluding KS from offering evidence or witnesses at Hearing in relation to waterline and pipeline easements, waterline maps, and tribal consultation.

7 April 2015

Gary F. Dorr
27853 292d St
Winner, SD 57580
gfdorr@gmail.com

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

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

**GARY F. DORR’S FIRST INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS TO TRANS-CANADA**

TO: TRANS-CANADA, APPLICANT FOR RECERTIFICATION

YOU AND EACH OF YOU PLEASE TAKE NOTICE AND BE
ADVISED:

That the Intervenor, **Gary F. Dorr**, pursuant to the South Dakota Rules of Civil Procedure, demands answer, under oath, to the following written Interrogatories and Request for Production of Documents within thirty (30) days of the service upon you of said Interrogatories and Request.

These Interrogatories and Request for Production of Documents shall be deemed to be continuing and if information is discovered by or becomes known to you or the Applicant, or to anyone acting on Applicant’s behalf after answering the same, and before the start of the Evidentiary Hearing in the matter, which should

change or add to the answers given, you are hereby directed and requested to furnish said information to the undersigned under oath, giving timely notice thereof.

DEFINITIONS:

(a) “You” or “your” means the Applicant, Applicant’s attorneys, agents, employees, representatives, consultants, advisors, and all other persons acting or purporting to act on behalf of the Applicant with regard to Trans-Canada operations.

(b) As used herein, the term “document” shall mean the original and any electronic or written copy, regardless of origin or location, of any written, typed, printed, recorded or graphic matter of any kind, however, produced including but not limited to any book, pamphlet, periodical, letter, memorandum, e-mail, telegram, report, record, study, written notice, working paper, chart, paper, index, tape, data sheet, data processing card, letters or other correspondence, summaries, tabulations, cost sheets, canceled checks, financial reports and statements, motion picture films, book-keeping and accounting records of all types, photographs, advertisements, tape recordings, micro film, or any other written, recorded, transcribed, punched, audio, video or otherwise digital taped, filmed or graphic material, however produced or reproduced, other data compilations, including computer data, and the memory units containing data, to which you have or had access.

(c) The term “identify” or “identification,” when used with reference to an individual person, shall mean to state his or her full name, present position, business affiliation, if known, address, and prior position or affiliation, if no longer connected with the Applicant or beneficiaries in interest. The terms “identify” or “identification,” when used with reference to a document, shall mean to state the date and author or signor, as the case may be, the addressee, the type of document, its present or last known location or custodian and all means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a motion for its production

pursuant to the SD Rules of Civil Procedure. If any such document was, but is no longer in your possession or subject to your control, state the disposition which was made of it and the reason for such disposition and the date thereof.

If you or your attorney object to answering any of these interrogatories or withhold any document from production under a claim of privilege or other exemption from discovery, state in detail the grounds for the nature of the objection and, for responses to requests for production, the title and nature of the document, a statement of the specific basis on which privilege is claimed.

INTERROGATORIES

1. Please identify the person or persons providing each answer to an Interrogatory or portion thereof, giving the full name, address of present residence, date of birth, business address and occupation.

2. Prior to answering these interrogatories, have you made due and diligent search of all books, records, and papers of the Applicant with the view of eliciting all information available in this action?

INTERROGATORIES AND REQUESTS FOR PRODUCTION OF

DOCUMENTS:

	CONDITIONS OF PERMIT	INTERROGATORIES/REQUESTS
1	Keystone shall comply with all applicable laws and regulations in its construction and operation of the Project.	1. Provide proof that TransCanada has obtained consent from the Rosebud Sioux or Great Sioux Nation to pass through the 1868

	<p>These laws and regulations include, but are not necessarily limited to: the federal Hazardous Liquid Pipeline Safety Act of 1979 and Pipeline Safety Improvement Act of 2002, as amended by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, and the various other pipeline safety statutes currently codified at 49 U.S.C. § 601 01 et seq. (collectively, the "PSA"); the regulations of the United States Department of Transportation implementing the PSA, particularly 49 C.F.R Parts 194 and 195; temporary permits for use of public water for construction, testing or drilling purposes, SDCL 46-5-40.1 and ARSD 74:02:01 :32 through 74:02:01 :34.02 and temporary discharges to waters of the state, SDCL 34A-2-36 and ARSD Chapters 74:52:01 through 74:52:11, specifically, ARSD § 74:52:02:46 and the General Permit issued thereunder covering temporary discharges of water from construction dewatering and hydrostatic testing.</p>	<p>boundaries of the Great Sioux Nation in accordance with the un-abrogated treaty stipulation in Article 16 of TREATY WITH THE SIOUX—BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE—AND ARAPAHO, 1868, contained in 15 Stats., 635.</p> <p>2. Provide explanation for how TransCanada is consulting, separate of other applicable Federal laws, with the Rosebud Sioux Tribe about protecting usufructuary and reserved resource rights as contained in the un-abrogated treaty stipulation in Article 11 (...the right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill River") of the TREATY WITH THE SIOUX—BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE—AND ARAPAHO, 1868, otherwise known as 15 Stats., 635.</p>
41	Keystone shall follow all protection and mitigation efforts as identified by the US Fish and Wildlife Service	1. Please provide explanation for why TransCanada is consulting

	<p>("USFWS") and SDGFP. 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 FEIS and Biological Assessment (BA) prepared by DOS and USFWS. 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 USFWS and SDGFP.</p>	<p>with South Dakota and the USFWS but not consulting, separate of other applicable Federal laws, with the Rosebud Sioux Tribal Government despite the fact that the Rosebud Sioux Tribe has a Game, Fish, and Parks Department and a Land Use Code (Rosebud Sioux Tribe Title 18) about protecting usufructuary and reserved resource rights as contained in the un-abrogated treaty stipulation in Article 11 (...the right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill River") of the TREATY WITH THE SIOUX—BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE—AND ARAPAHO, 1868, contained in 15 Stats., 635.</p>
43	<p>43. In accordance with Application, Section 6.4, 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. If during construction, Keystone or its agents discover what may be an archaeological resource, cultural resource, historical resource or gravesite, Keystone or its</p>	<p>1. Please provide explanation for why TransCanada's unanticipated discoveries plan does not plan to notify the Federally-recognized Rosebud Sioux Tribal Historic Preservation Office (THPO) which also has the right to consultation under Section 106 of the National Historic Preservation Act as the "appropriate" tribe due to the fact</p>

	<p>contractors or agents shall immediately cease work at that portion of the site and notify the DOS, the affected landowner(s) and the SHPO. 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. If such a plan will require a materially different route than that approved by the Commission, Keystone shall obtain Commission and landowner approval for the new route before proceeding with any further construction. Keystone 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.</p>	<p>that the pipeline passes between several Rosebud Tribal Housing communities, near tribal allotment land, and across established political precincts of the Rosebud Sioux Tribe, and the traditional homelands of those same people in those housing areas, on those allotments, and in those precincts.</p>
36	<p>Prior to putting the Keystone Pipeline into operation, Keystone shall prepare, file with PHMSA and implement an emergency response plan as required under 49 CFR 194 and a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies as required under 49 CFR 195.402. Keystone shall also prepare and implement a written integrity management program in the manner and at such time as required under 49 CFR 195.452. At such time as Keystone files its</p>	<ol style="list-style-type: none"> 1. Identify all emergency medical response planning being provided to the Rosebud Sioux Tribal Government as contained within the emergency response plan. 2. Provide explanation for why the Rosebud Sioux Tribal Government is being excluded from having the emergency management plan filed with them. 3. Identify what affect emergencies will have for every tribal housing community, tribal

	<p>Emergency Response Plan and Integrity Management Plan with PHMSA or any other state or federal agency, it shall also file such documents with the Commission. The Commission's confidential filing rules found at ARSD 20:10:01 :41 may be invoked by Keystone with respect to such filings to the same extent as with all other filings at the Commission. If information is filed as "confidential," any person desiring access to such materials or the Staff or the Commission may invoke the procedures of ARSD 20:10:01 :41 through 20:10:01 :43 to determine whether such information is entitled to confidential treatment and what protective provisions are appropriate for limited release of information found to be entitled to confidential treatment.</p>	<p>allotments, and political precincts that the pipeline passes through or nearby?</p> <p>4. Identify how will rural Tribal housing areas, tribal allotments, and political precincts of the Rosebud Sioux Tribe in and near to the project area be notified of spills or other emergencies?</p>
34	<p>In accordance with 49 C.F.R. 195, Keystone shall continue to evaluate and perform assessment activities regarding high consequence areas. 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. 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</p>	<p>1. Explain why the Rosebud Sioux Tribal Government, which has treaty-reserved and usufructuary rights which have never been abrogated from the Fort Laramie Treaty of 1868, is being excluded from consultation, separate from other applicable federal and state laws, regarding High Consequence Areas?</p>

	South Dakota Geological Survey, the Department of Game Fish and Parks and local landowners and governmental officials.	
43	<p>In accordance with Application, Section 6.4, 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. 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. 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. If such a plan will require a materially different route than that approved by the Commission, Keystone shall obtain Commission and landowner approval for the new route before proceeding with any further construction. Keystone 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.</p>	<ol style="list-style-type: none"> 1. Provide proof that a proper cultural resources survey was completed, in accordance with accepted methodologies and procedures, and acceptable to federal guidelines as the pipeline crosses boundaries contained in the 1868 Treaty of Fort Laramie which contains unabrogated treaty-reserved rights of the Rosebud Sioux Tribe among other tribes. 2. Provide information on who was contracted to conduct the cultural resources survey. 3. Provide proof that the Rosebud Sioux Tribe was consulted about the results of the survey. 4. Please provide proof that any maps used for the survey and compiled from the survey contain recognition that the Rosebud Sioux Tribe is the appropriate tribe of consultation. 5. Provide proof that the Rosebud Sioux Tribe which has political precincts, housing areas and

		tribal allotment land in Tripp and Gregory counties, and is the “appropriate tribe” to consult with under the rules of Section 106 of the National Historic Preservation Act, will be meaningfully consulted regarding unanticipated discoveries.
24	<p>The June 29, 2010 order recites Findings of Fact demonstrating the strong demand for the Project. Given the dynamic nature of the crude oil market, there have been changes in the nature of this demand since 2010. As demonstrated below, however market demand for the Project remains strong today. The transport of additional crude oil production from the WCSB continues to be necessary to meet demand by refineries and markets in the U.S. The need for the project is driven by a number of factors, including increasing domestic U.S. and Canadian, crude oil production combined with insufficient pipeline capacity; an energy efficient and safe method to transport this growing production; the opportunity to reduce U.S dependence on foreign offshore crude oil through increased access to North American supplies; and binding shipper commitments to utilize the Keystone Pipeline System.</p>	<ol style="list-style-type: none"> 1. Provide current documentation that the Keystone XL is necessary to meet demand by refineries and markets in the U.S. 2. Provide information by percentage how much U.S. domestic oil production has increased since 2010. 3. When Keystone says market demand for the Project is strong, which market is being referred to? 4. How much of the oil produced from the Keystone-pumped oil will be put into the United States’ domestic oil supply market and not the open market?

Dated this 6th day of January, 2015.

Respectfully submitted

Gary F. Dorr
27853 292d St
Winner, SD 57580
605-828-8391
Intervenor in PUC docket HP14-001

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the above Interrogatories and Request for Production of Documents was e-mailed to:

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
(605) 336-3890 (605) 336-3890 - voice
(605) 339-3357 - fax

Mr. Bill G. Taylor - Representing: TransCanada Keystone Pipeline, LP
Attorney
Woods, Fuller, Shultz and Smith P.C.
PO Box 5027
Sioux Falls, SD 57117
bill.taylor@woodsfuller.com
(605) 336-3890 (605) 336-3890 - voice
(605) 339-3357 - fax

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

0-0

IN THE MATTER OF THE APPLICATION	:	HP 14-001
BY TRANSCANADA KEYSTONE		
PIPELINE, LP FOR A PERMIT UNDER	:	KEYSTONE'S RESPONSES TO
THE SOUTH DAKOTA ENERGY		GARY F. DORR'S FIRST
CONVERSION AND TRANSMISSION	:	INTERROGATORIES AND
FACILITIES ACT TO CONSTRUCT THE		REQUEST FOR PRODUCTION OF
KEYSTONE XL PROJECT	:	DOCUMENTS
	:	

0-0

Applicant TransCanada makes the following responses to interrogatories pursuant to SDCL § 15-6-33, and responses to requests for production of documents pursuant to SDCL § 15-6-34(a). These responses are made within the scope of SDCL 15-6-26(e) and shall not be deemed continuing nor be supplemented except as required by that rule. Applicant objects to definitions and directions in answering the discovery requests to the extent that such definitions and directions deviate from the South Dakota Rules of Civil Procedure.

GENERAL OBJECTION

Keystone objects to the instructions and definitions contained in Gary Dorr's First Set of Interrogatories and Requests for Production of Documents to the extent that they are inconsistent with the provisions of SDCL Ch. 15-6. See ARSD 20:10:01:01.02.

Keystone's answers are based on the requirements of SDCL §§ 15-6-26, 15-6-33, 15-6-34, and 15-6-36.

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. Please identify the person or persons providing each answer to an Interrogatory or portion thereof, giving the full name, address of present residence, date of birth, business address and occupation.

ANSWER: Given the extremely broad scope volume of more than 800 discovery requests received by Keystone in this docket, a range of personnel were involved in answering the interrogatories. Keystone will designate the following witnesses with overall responsibility for the responsive information as related to the Conditions and proposed changes to the Findings of Fact, which are identified in Appendix C to Keystone's Certification Petition: Corey Goulet, President, Keystone Projects, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; Steve Marr, Manager, Keystone Pipelines & KXL, TransCanada Corporation, Bank of America Center, 700 Louisiana, Suite 700, Houston, TX 77002; Meera Kothari, P. Eng., 450 1st Street, S.W., Calgary, AB Canada T2P 5H1; David Diakow, Vice President, Commercial, Liquids Pipeline, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; Jon Schmidt, Vice President, Environmental & Regulatory, exp Energy Services, Inc., 1300 Metropolitan Boulevard, Suite 200,

Tallahassee, FL 32308; Heidi Tillquist, Senior Associate, Stantec Consulting Ltd., 2950 E. Harmony Rd., Suite 290, Fort Collins, CO 80528.

2. Prior to answering these interrogatories, have you made due and diligent search of all books, records, and papers of the Applicant with the view of eliciting all information available in this action?

ANSWER: Yes, to the extent reasonably practicable in attempting to respond to over 800 discovery requests within the time allowed.

1(a). Provide proof that TransCanada has obtained consent from the Rosebud Sioux or Great Sioux Nation to pass through the 1868 boundaries of the Great Sioux Nation in accordance with the un-abrogated treaty stipulation in Article 16 of TREATY WITH THE SIOUX-BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE-AND ARAPAHO, 1868, contained in 15 Stats., 635.

ANSWER: The currently permitted route for the KXL pipeline in South Dakota does not pass across any lands owned by the federal government or any South Dakota resident tribe nor does it pass across Indian Country as that term is defined by the laws of the United States. Keystone does not believe that it is required to obtain consent from the Rosebud Sioux Tribe to construct the pipeline project on lands that are within the currently permitted route.

1(b). Provide explanation for how TransCanada is consulting, separate of other applicable Federal laws, with the Rosebud Sioux Tribe about protecting usufructuary and reserved resource rights as contained in the un-abrogated treaty stipulation in Article 11 (...the right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill River") of the TREATY WITH THE SIOUX-BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE-AND ARAPAHO, 1868, otherwise known as 15 Stats., 635.

ANSWER: The currently permitted route for the pipeline in South Dakota does not pass across any lands owned by the federal government or any South Dakota resident tribe nor does it pass across Indian Country as that term is defined by the laws of the United States. Keystone does not agree that the Treaties of Fort Laramie of 1851 and 1868 create usufructuary rights in lands that are within the KXL pipeline's currently permitted route.

41. Please provide explanation for why TransCanada is consulting with South Dakota and the USFWS but not consulting, separate of other applicable Federal laws, with the Rosebud Sioux Tribal Government despite the fact that the Rosebud Sioux Tribe has a Game, Fish, and Parks Department and a Land Use Code (Rosebud Sioux Tribe Title 18) about protecting usufructuary and reserved resource rights as contained in the

un-abrogated treaty stipulation in Article 11 (...the right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill River") of the TREATY WITH THE SIOUX-BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE-AND ARAPAHO, 1868, contained in 15 Stats., 635.

ANSWER: Keystone has had numerous consultations with the Rosebud Sioux tribal government and its political subdivisions regarding matters related to the construction of the KXL pipeline. Keystone does not agree that the Treaties of Fort Laramie of 1851 and 1868 create usufructuary rights in lands that are within the KXL pipeline's currently permitted route.

43. Please provide explanation for why TransCanada's unanticipated discoveries plan does not plan to notify the Federally-recognized Rosebud Sioux Tribal Historic Preservation Office (THPO) which also has the right to consultation under Section 106 of the National Historic Preservation Act as the "appropriate" tribe due to the fact that the pipeline passes between several Rosebud Tribal Housing communities, near tribal allotment land, and across established political precincts of the Rosebud Sioux Tribe, and the traditional homelands of those same people in those housing areas, on those allotments, and in those precincts.

ANSWER: Keystone does not believe that any part of its route as currently permitted passes through Indian Country or across tribally owned lands. Keystone recognizes the possibility that undiscovered cultural and/or historic sites may be found in the course of construction. Keystone believes Condition 43 and the provisions provided for therein suitably accommodate cultural and paleontological resource discoveries. Tribal monitors will be hired by Keystone to monitor designated areas during ground disturbing activities relating to construction to assist in managing previously undiscovered cultural and/or historic sites that are found in the course of construction and in complying with the unanticipated discoveries plan.

36(a). Identify all emergency medical response planning being provided to the Rosebud Sioux Tribal Government as contained within the emergency response plan.

OBJECTION AND RESPONSE: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL 49-41B-27. This request also seeks information addressing an issue that is governed by federal law and is within the province of PHMSA. The PUC's jurisdiction over the emergency response plan is preempted by federal law. See 49 C.F.R. Part 194; 49 U.S.C.

60101(c). This request further seeks information that is confidential and proprietary. Public disclosure of the emergency response plan could commercially disadvantage Keystone. Without waiving the objection, the local health authority will have medical

jurisdiction in the event of an incident. The Rosebud Sioux Tribal Government will be invited to participate in Emergency Response Exercises.

36(b). Provide explanation for why the Rosebud Sioux Tribal Government is being excluded from having the emergency management plan filed with them.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL 49-41B-27. This request also seeks information addressing an issue that is governed by federal law and is within the province of PHMSA. The PUC's jurisdiction over the emergency response plan is preempted by federal law. See 49 C.F.R. Part 194; 49 U.S.C. 60101(c). This request further seeks information that is confidential and proprietary. Public disclosure of the emergency response plan could commercially disadvantage Keystone.

36(c). Identify what affect emergencies will have for every tribal housing community, tribal allotments, and political precincts that the pipeline passes through or nearby?

ANSWER: TransCanada will cover costs associated with temporary relocation of tribal residences that are affected by a spill or incident.

36(d). Identify how will rural Tribal housing areas, tribal allotments, and political precincts of the Rosebud Sioux Tribe in and near to the project area be notified of spills or other emergencies?

ANSWER: If it is appropriate under the circumstances to notify political subdivisions of the Rosebud Sioux Tribe, it will be done in the manner provided in the emergency response plan, through contacts with law enforcement agencies and other official representatives of the body politic of the Rosebud Sioux Tribe.

34. Explain why the Rosebud Sioux Tribal Government, which has treaty-reserved and usufructuary rights which have never been abrogated from the Fort Laramie Treaty of 1868, is being excluded from consultation, separate from other applicable federal and state laws, regarding High Consequence Areas?

ANSWER: The currently permitted route for the KXL pipeline in South Dakota does not pass across any lands owned by the federal government or any South Dakota resident tribe nor does it pass across Indian Country as that term is defined by the laws of the United States. Keystone has had numerous consultations with the Rosebud Sioux tribal government and its political subdivisions regarding matters related to the construction of the KXL pipeline. Keystone does not agree that the Treaties of Fort Laramie of 1851 and 1868 create usufructuary rights in lands that are within the KXL pipeline's currently permitted route.

43(a). Provide proof that a proper cultural resources survey was completed, in accordance with accepted methodologies and procedures, and acceptable to federal guidelines as the pipeline crosses boundaries contained in the 1868 Treaty of Fort

Laramie which contains unabrogated treaty-reserved rights of the Rosebud Sioux Tribe among other tribes.

ANSWER: Section 3.11 of the Department of State FSEIS (2014) details the cultural resources work conducted for the Project route in South Dakota, and lists all findings.

43(b). Provide information on who was contracted to conduct the cultural resources survey.

ANSWER: SWCA Environmental Consultants performed the cultural resources surveys.

43(c). Provide proof that the Rosebud Sioux Tribe was consulted about the results of the survey.

ANSWER: Yes, the Rosebud Sioux Tribe was consulted on numerous occasions. A summary of government-to-government consultation with Indian tribes is included as Attachment I of Appendix E and in Section 3.11.4.3 of the Department of State FSEIS (2014). Appendix E2 of the Department of State FSEIS (2014) provides the most thorough list of consultation dates.

43(d). Please provide proof that any maps used for the survey and compiled from the survey contain recognition that the Rosebud Sioux Tribe is the appropriate tribe of consultation.

ANSWER: The SD SHPO and DOS reviewed and approved the survey methodologies used in the course of the surveys noted in Sections 3.11 and 4.11 of the Department of State SFEIS (2014).

43(e). Provide proof that the Rosebud Sioux Tribe which has political precincts, housing areas and tribal allotment land in Tripp and Gregory counties, and is the "appropriate tribe" to consult with under the rules of Section 106 of the National Historic Preservation Act, will be meaningfully consulted regarding unanticipated discoveries.

ANSWER: The Rosebud Sioux Tribe would continue to be consulted by DOS through the course of the Project.

24(a). Provide current documentation that the Keystone XL is necessary to meet demand by refineries and markets in the U.S.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-27. It is within the purview of the United States Department of State to determine whether the proposed project is in the national interest, under the applicable Presidential Executive Order. This request also seeks information that is not within Keystone's custody or control and is not maintained by Keystone in the ordinary course of business. Without waiving the objection, Shippers have committed to long-term binding contracts, which support construction of the pipeline once all regulatory, environmental, and other

approvals are received. These long-term binding shipper commitments demonstrate a material endorsement of support for the Project, its economics, proposed route, and target market, as well as the need for additional pipeline capacity to access North Dakota and Canadian crude supplies.

24(b). Provide information by percentage how much U.S. domestic oil production has increased since 2010.

ANSWER: According to the Department of State FSEIS 1.4.2.3, U.S. production of crude oil has increased significantly, from approximately 5.5 million bpd in 2010 to 6.5 million bpd in 2012 and 7.5 million bpd by mid-2013. Even with the domestic production growth the U.S. is expected to remain a net importer of crude oil well into the future.

24(c). When Keystone says market demand for the Project is strong, which market is being referred to?

ANSWER: The market being referred to is the demand for transportation of crude oil. Demand for the Project is reflected in the commitment by shippers to long-term binding contracts for delivery through the Keystone XL pipeline.

24(d). How much of the oil produced from the Keystone-pumped oil will be put into the United States' domestic oil supply market and not the open market?

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-27. It is

within the purview of the United States Department of State to determine whether the proposed project is in the national interest, under the applicable Presidential Executive Order. This request also seeks information that is not within Keystone's custody or control and is not maintained by Keystone in the ordinary course of business.

Dated this 5th day of February, 2015.

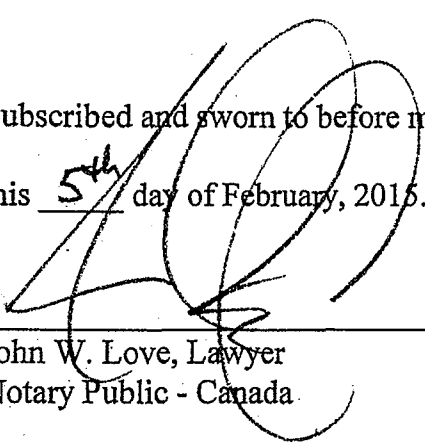
TRANSCANADA KEYSTONE PIPELINE, LP
by its agent, TC Oil Pipeline Operations, Inc.

By 

Its Director, Authorized Signatory

Subscribed and sworn to before me

this 5th day of February, 2015.



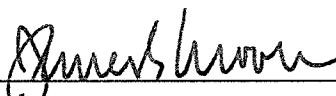
John W. Love, Lawyer
Notary Public - Canada

OBJECTIONS

The objections stated to Gary Dorr's Interrogatories and Request for Production of Documents were made by James E. Moore, one of the attorneys for Applicant TransCanada herein, for the reasons and upon the grounds stated therein.

Dated this 6th day of February, 2015.

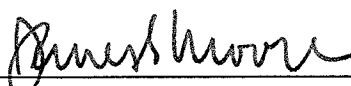
WOODS, FULLER, SHULTZ & SMITH P.C.

By 
William Taylor
James E. Moore
Post Office Box 5027
300 South Phillips Avenue, Suite 300
Sioux Falls, SD 57117-5027
Phone: (605) 336-3890
Fax: (605) 339-3357
Email: Bill.Taylor@woodsfuller.com
James.Moore@woodsfuller.com
Attorneys for Applicant TransCanada

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February, 2015, I sent by e-mail transmission, a true and correct copy of Keystone's Responses to Gary F. Dorr's First Interrogatories and Request for Production of Documents, to the following:

Gary F. Dorr
27853 292nd Street
Winner, SD 57580


One of the attorneys for TransCanada

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

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

**GARY F. DORR'S FINAL INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS TO TRANSCANADA.**

TO: TRANSCANADA, APPLICANT FOR RECERTIFICATION

YOU AND EACH OF YOU PLEASE TAKE NOTICE AND BE
ADVISED:

That the Intervenor, **Gary F. Dorr**, pursuant to the South Dakota Rules of Civil Procedure, demands answer, under oath, to the following written Interrogatories and Request for Production of Documents within thirty (30) days of the service upon you of said Interrogatories and Request.

These Interrogatories and Request for Production of Documents shall be deemed to be continuing and if information is discovered by or becomes known to you or the Applicant, or to anyone acting on Applicant's behalf after answering the same, and before the start of the Evidentiary Hearing in the matter, which should

change or add to the answers given, you are hereby directed and requested to furnish said information to the undersigned under oath, giving timely notice thereof.

DEFINITIONS:

(a) “You” or “your” means the Applicant, Applicant’s attorneys, agents, employees, representatives, consultants, advisors, and all other persons acting or purporting to act on behalf of the Applicant with regard to Trans-Canada operations.

(b) As used herein, the term “document” shall mean the original and any electronic or written copy, regardless of origin or location, of any written, typed, printed, recorded or graphic matter of any kind, however, produced including but not limited to any book, pamphlet, periodical, letter, memorandum, e-mail, telegram, report, record, study, written notice, working paper, chart, paper, index, tape, data sheet, data processing card, letters or other correspondence, summaries, tabulations, cost sheets, canceled checks, financial reports and statements, motion picture films, book-keeping and accounting records of all types, photographs, advertisements, tape recordings, micro film, or any other written, recorded, transcribed, punched, audio, video or otherwise digital taped, filmed or graphic material, however produced or reproduced, other data compilations, including computer data, and the memory units containing data, to which you have or had access.

(c) The term “identify” or “identification,” when used with reference to an individual person, shall mean to state his or her full name, present position, business affiliation, if known, address, and prior position or affiliation, if no longer connected with the Applicant or beneficiaries in interest. The terms “identify” or “identification,” when used with reference to a document, shall mean to state the date and author or signor, as the case may be, the addressee, the type of document, its present or last known location or custodian and all means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a motion for its production

pursuant to the SD Rules of Civil Procedure. If any such document was, but is no longer in your possession or subject to your control, state the disposition which was made of it and the reason for such disposition and the date thereof.

If you or your attorney object to answering any of these interrogatories or withhold any document from production under a claim of privilege or other exemption from discovery, state in detail the grounds for the nature of the objection and, for responses to requests for production, the title and nature of the document, a statement of the specific basis on which privilege is claimed.

INTERROGATORIES

1. Please identify the person or persons providing each answer to each Interrogatory or portion thereof, giving the full name, address of present residence, date of birth, business address and occupation.

INTERROGATORIES AND REQUESTS FOR PRODUCTION OF

DOCUMENTS:

	CONDITIONS OF PERMIT	INTERROGATORIES/REQUESTS
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.	1. TransCanada has publicly stated through its Tribal Liaison with the United States, Calvin Harlan, that it has a process of reaching out to a tribe "as a priority." Calvin Harlan further said "First, TransCanada researches the tribal historical jurisdictions of each tribe along a proposed project. Next, meetings are set up with the tribe, providing TransCanada the opportunity to introduce themselves and explain

	<p>74, no. 54, Mar. 23, 2009). The Amended Notice and other Department of State and Project Documents are available on-line at: http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open.</p>	<p>their reason for meeting. Tribes are then advised of all project details, ensuring they understand that the project's goal is to have little effect on their traditional lands." This was reported in the online edition of The Vindicator at http://www.thevindicator.com/news/article_5c63b1ee-e643-11e2-ad3a-001a4bcf887a.htm.</p> <p>Provide any and all documentation that TransCanada or Keystone complied with its publicly stated policy of consultation with Tribes and met with the Rosebud Sioux Tribal Council. The Tribe has a distinct National Government represented by an elected Tribal Council.</p> <p>2. Provide any and all documentation that TransCanada or Keystone met with Rosebud Sioux tribal communities other than the Rosebud Sioux Tribal Council.</p> <p>3. Provide any all documentation of any benefit or gift that was offered to Rosebud Sioux tribal communities as part of meetings with TransCanada or Keystone.</p>
16	<p>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). a) Keystone shall</p>	<p>4. Provide proof of TransCanada's or Keystone's compliance with the United States Easement Agreements held in South Dakota County Records' Offices between the United States and South Dakota Landowners whose land the Oglala Sioux Rural Water Supply System crosses, whereby permission must be granted by the United States to</p>

<p>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) Keystone shall repair any damage to property that results from construction activities. c) Keystone shall restore all areas disturbed by construction to their preconstruction condition, including their original preconstruction topsoil, vegetation, elevation, and contour, or as close thereto as is feasible, except as is otherwise agreed to by the landowner. d) Except where practicably infeasible, final grading and topsoil replacement and installation of permanent erosion control structures shall be completed in non-residential areas within 20 days after backfilling the trench. 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. 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. e) Keystone shall draft specific crop monitoring protocols for agricultural lands. 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</p>	<p>cross the Oglala Sioux Rural Water Supply System, otherwise known as the "Mni Wiconi" water line.</p> <p>5. Provide all easement agreements made by TransCanada or Keystone between TransCanada or Keystone and landowners on land where the Keystone XL pipeline will cross the Oglala Sioux Rural Water Supply System, otherwise known as the Mni Wiconi Waterline.</p> <p>6. In TransCanada or Keystone's required criteria for crossing Reclamation facilities, TransCanada said "TransCanada shall receive OSRWSS and Reclamation's review and approval of crossing specifications and drawings prior to starting work, including on the cathodic protection design to assure it does not impact the OSRWSS Core System or its cathodic protection system." Provide proof that TransCanada or Keystone gained approval of crossing specifications from the Oglala Sioux Rural Water Supply System and the Bureau of Reclamation in accordance with TransCanada's or Keystone's own reclamation plan.</p> <p>7. In the same Criteria for Crossing Reclamation facilities TransCanada said "OSRWSS has a buried fiber optic cable installed with its pipeline that was placed by plow; its precise location</p>
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<p>otherwise. f) Keystone shall work closely with landowners or land management agencies to determine a plan to control noxious weeds. Landowner permission shall be obtained before the application of herbicides. g) Keystone's adverse weather plan shall apply to improved hay land and pasture lands in addition to crop lands. h) The size, density and distribution of rock within the construction right-of-way following reclamation shall be similar to adjacent undisturbed areas. 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. i) Keystone shall utilize the proposed trench line for its pipe stringing trucks where conditions allow and shall employ adequate measures to decompact subsoil as provided in its CMR Plan. Topsoil shall be decompacted if requested by the landowner. j) Keystone shall monitor and take appropriate mitigative actions as necessary to address salinity issues when dewatering the trench, and field conductivity and/or other appropriate constituent analyses shall be performed prior to disposal of trench water in areas where salinity may be expected. Keystone 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. k) Keystone shall install trench and slope breakers where necessary in accordance with the CMR Plan as augmented by Staff's</p>	<p>is unknown. The burial depth information provided on the drawings is for information purposes only. TransCanada shall undertake exploratory excavations (potholing) to determine the exact burial depth for both the OSRWSS core pipeline and fiber optic line prior to starting crossing designs and construction of their pipeline." Provide proof that TransCanada or Keystone has received permission from the United States to "undertake exploratory excavations (potholing)" inside the Oglala Sioux Rural Water Supply System Right of Way, whereby permission must be gained from both the United States and the Oglala Sioux Rural Water Supply System to disturb the ground, as stipulated in the Oglala Sioux Rural Water Supply System Easement Agreement which was signed by the United States, and is held in a South Dakota County Recorder's Office.</p> <p>8. Provide maps showing for every single place where the Keystone XL pipeline will cross a Core Line of the Oglala Sioux Rural Water Supply System, providing Latitude and longitude or Public Land Survey System information to identify those locations.</p> <p>9. Provide a map showing every single place where the Keystone XL Pipeline</p>
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<p>recommendations in Post Hearing Commission Staff Brief, pp. 26-27. l) Keystone shall apply mulch when reasonably requested by landowners and also wherever necessary following seeding to stabilize the soil surface and to reduce wind and water erosion. Keystone shall follow the other recommendations regarding mulch application in Post Hearing Commission Staff Brief, p. 27. m) Keystone shall reseed all lands with comparable crops to be approved by landowner in landowner's reasonable discretion, or in pasture, hay or native species areas with comparable grass or forage crop seed or native species mix to be approved by landowner in landowner's reasonable discretion. Keystone shall actively monitor revegetation on all disturbed areas for at least two years. n) Keystone shall coordinate with landowners regarding his/her desires to properly protect cattle, shall implement such protective measures as are reasonably requested by the landowner and shall adequately compensate the landowner for any loss. o) Prior to commencing construction, Keystone shall file with the Commission a confidential list of property owners crossed by the pipeline and update this list if route changes during construction result in property owner changes. p) Except in areas where fire suppression resources as provided in CMR Plan 2.16 are in close proximity, to minimize fire risk, Keystone shall, and shall cause its contractor to, equip each of its vehicles used in pre-construction or construction activities, including offroad 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.</p>	<p>will cross a Branch of the Core Lines of the Oglala Sioux Rural Water Supply System, providing Latitude and longitude or Public Land Survey System information to identify those locations.</p> <p>10. Provide a map showing every single place where the Keystone XL Pipeline will cross the Core Lines of the Lyman-Jones Rural Water Supply System, providing Latitude and longitude or Public Land Survey System information to identify those locations.</p> <p>11. Provide all easement agreements between TransCanada or Keystone and those landowners who have both the Oglala Sioux Rural Water System and will have the proposed Keystone XL Pipeline situated on their land and also have a previous easement agreement with the Oglala Sioux Rural Water Supply System.</p> <p>12. Provide copies of all communication TransCanada has had with the Bureau of Reclamation regarding the Keystone XL pipeline crossing South Dakota.</p>
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21	<p>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. If a fracout 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.</p>	<p>13. Provide a map of all specific areas of frac-out along the Oglala Sioux Rural Water System Core and Branch Lines providing Latitude and longitude or Public Land Survey System information to identify those locations.</p> <p>14. Provide a map showing where all areas of horizontal drilling will take place in South Dakota, providing Latitude and longitude or Public Land Survey System information to identify those locations.</p>
35	<p>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.</p>	<p>15. Provide documentation showing proof that the Colome City Water Wells are upgradient from the Keystone XL Pipeline.</p>

20	<p>FINDING: The Project will have seven pump stations in South Dakota, located in Harding (2), Meade, Haakon, Jones and Tripp (2) Counties. TC-1, 2.2.2, p. 10. The pump stations will be electrically driven. Power lines required for providing power to pump stations will be permitted and constructed by local power providers, not by Keystone. Initially, three pumps will be installed at each station to meet the nominal design flow rate of 700,000 bpd. If future demand warrants, pumps may be added to the proposed pump stations for a total of up to five pumps per station, increasing nominal throughput to 900,000 bpd. No additional pump stations will be required to be constructed for this additional throughput. No tank facilities will be constructed in South Dakota. Ex TC-1, 2.1.2, p.8. Sixteen mainline valves will be located in South Dakota. Seven of these valves will be remotely controlled, in order to have the capability to isolate sections of line rapidly in the event of an emergency to minimize impacts or for operational or maintenance reasons. Ex TC-1, 2.2.3, pp. 10- 11.</p>	<p>16. Provide copies of any lease, or easement agreement that been executed for the construction or use of a new substation or powerline on or through the Lower Brule Sioux Reservation.</p> <p>17. Is construction of a new substation or powerline through the Lower Brule Sioux Reservation necessary for operation of the Keystone XL pipeline based on current plan or updates to the final decision and order HP09-001?</p>
1	<p>Keystone shall comply with all applicable laws and regulations in its construction and operation of the Project. These laws and regulations include, but are not necessarily limited to: the federal Hazardous Liquid Pipeline Safety Act of 1979 and Pipeline Safety Improvement Act of 2002, as amended by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, and the various other pipeline safety statutes currently codified at 49 U.S.C. § 601 01 et seq. (collectively, the "PSA"); the regulations of the United States Department of Transportation implementing the PSA, particularly 49 C.F.R Parts 194 and 195; temporary permits for use of public water for construction, testing or drilling purposes, SDCL 46-5-40.1 and ARSD 74:02:01 :32 through 74:02:01 :34.02 and temporary discharges to waters of the state, SDCL 34A-2-36 and ARSD Chapters 74:52:01 through 74:52:11, specifically, ARSD § 74:52:02:46 and the General Permit issued thereunder covering temporary discharges of water from construction dewatering and</p>	<p>18. Provide documentation of all spills or leaks on the southern leg of the Keystone XL pipeline.</p> <p>19. Describe the nature, circumstances, cause, and magnitude, and impact of each spill or leak and identify with specificity substances that were spilled or leaked from the Southern leg of the Keystone XL pipeline.</p> <p>20. Did Keystone or its contractors experience difficulty or problems with the wielding of seams on the Southern Leg of the Keystone XL pipeline?</p> <p>21. If so, describe the nature and cause of the problems, how they were discovered, and describe what steps</p>

	hydrostatic testing.	were taken to resolve the problems.

Dated this 20th day of February, 2015.

Respectfully submitted

Gary F. Dorr
27853 292d St
Winner, SD 57580
605-828-8391
Intervenor in PUC docket HP14-001

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the above Interrogatories and Request for Production of Documents was e-mailed to:

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
(605) 336-3890 (605) 336-3890 - voice
(605) 339-3357 - fax

Mr. Bill G. Taylor - Representing: TransCanada Keystone Pipeline, LP
Attorney

Woods, Fuller, Shultz and Smith P.C.
PO Box 5027
Sioux Falls, SD 57117
bill.taylor@woodsfuller.com
(605) 336-3890 (605) 336-3890 - voice
(605) 339-3357 - fax

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

0-0

IN THE MATTER OF THE APPLICATION	:	HP 14-001
BY TRANSCANADA KEYSTONE		
PIPELINE, LP FOR A PERMIT UNDER	:	KEYSTONE'S RESPONSES TO
THE SOUTH DAKOTA ENERGY		GARY F. DORR'S FINAL
CONVERSION AND TRANSMISSION	:	INTERROGATORIES AND
FACILITIES ACT TO CONSTRUCT THE	:	REQUEST FOR PRODUCTION OF
KEYSTONE XL PROJECT	:	DOCUMENTS
	:	

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Applicant TransCanada makes the following responses to interrogatories pursuant to SDCL § 15-6-33, and responses to requests for production of documents pursuant to SDCL § 15-6-34(a). These responses are made within the scope of SDCL 15-6-26(e) and shall not be deemed continuing nor be supplemented except as required by that rule. Applicant objects to definitions and directions in answering the discovery requests to the extent that such definitions and directions deviate from the South Dakota Rules of Civil Procedure.

GENERAL OBJECTION

Keystone objects to the instructions and definitions contained in Gary Dorr's Final Set of Interrogatories and Requests for Production of Documents to the extent that they are inconsistent with the provisions of SDCL Ch. 15-6. *See* ARSD 20:10:01:01.02.

{01844225.1}

Keystone's answers are based on the requirements of SDCL §§ 15-6-26, 15-6-33, 15-6-34, and 15-6-36.

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. TransCanada has publicly stated through its Tribal Liaison with the United States, Calvin Harlan, that it has a process of reaching out to a tribe "as a priority." Calvin Harlan further said "First, TransCanada researches the tribal historical jurisdictions of each tribe along a proposed project. Next, meetings are set up with the tribe, providing TransCanada the opportunity to introduce themselves and explain their reason for meeting. Tribes are then advised of all project details, ensuring they understand that the project's goal is to have little effect on their traditional lands." This was reported in the online edition of The Vindicator at http://www.thevindicator.com/news/article_5c63b1ee-e643-11e2-ad3a-001a4bcf887a.htm.

Provide any and all documentation that TransCanada or Keystone complied with its publicly stated policy of consultation with Tribes and met with the Rosebud Sioux Tribal Council. The Tribe has a distinct National Government represented by an elected Tribal Council.

ANSWER: See Keystone Documents numbered 1122, 1129-30, 1135-1140, 1145-1146, 1148-1150, 1170-1181.

2. Provide any and all documentation that TransCanada or Keystone met with Rosebud Sioux tribal communities other than the Rosebud Sioux Tribal Council.

ANSWER: See Keystone Documents disclosed in answer to Interrogatory No. 1 above.

3. Provide any all documentation of any benefit or gift that was offered to Rosebud Sioux tribal communities as part of meetings with TransCanada or Keystone.

ANSWER: : See Keystone Documents disclosed in answer to Interrogatory No. 1 above, in particular Documents numbered 1135-1138 and 1170-72.

4. Provide proof of TransCanada's or Keystone's compliance with the United States Easement Agreements held in South Dakota County Recorders' Offices between the United States and South Dakota Landowners whose land the Oglala Sioux Rural Water Supply System crosses, whereby permission must be granted by the United States to cross the Oglala Sioux Rural Water Supply System, otherwise known as the "Mni Wiconi" water line.

OBJECTION AND ANSWER: Keystone objects to interrogatory number 4 on the grounds that it is argumentative, is an incorrect expression of law, and assumes facts not in evidence. Notwithstanding the objection and without waiving, the United States Department of Interior, acting through the Bureau of Reclamation, secured easements for the construction of the Oglala Sioux Rural Water Supply System core pipeline. Keystone's proposed route crosses the Oglala Sioux Rural Water Supply System core line in Haakon County and in Jones County. Discussions have been held between Keystone and the Bureau of Reclamation with respect to construction of the crossings and criteria governing the same.

5. Provide all easement agreements made by TransCanada or Keystone between TransCanada or Keystone and landowners on land where the Keystone XL pipeline will cross the Oglala Sioux Rural Water Supply System, otherwise known as the Mni Wiconi Waterline.

ANSWER: Responsive documents are attached as Keystone 1539-1564.

6. In TransCanada or Keystone's required criteria for crossing Reclamation facilities, TransCanada said "TransCanada shall receive OSRWSS and Reclamation's review and approval of crossing specifications and drawings prior to starting work, including on the cathodic protection design to assure it does not impact the OSRWSS Core System or its cathodic protection system." Provide proof that TransCanada or Keystone gained approval of crossing specifications from the Oglala Sioux Rural Water Supply System and the Bureau of Reclamation in accordance with TransCanada's or Keystone's own reclamation plan.

ANSWER: Keystone and the Bureau of Reclamation have agreed on crossing criteria. The Bureau of Reclamation has discussed the crossing criteria with both the executive and engineering staff of the Oglala Sioux Rural Water Supply System.

7. In the same Criteria for Crossing Reclamation facilities TransCanada said "OSRWSS has a buried fiber optic cable installed with its pipeline that was placed by plow; its precise location is unknown. The burial depth information provided on the drawings is for information purposes only. TransCanada shall undertake exploratory excavations (potholing) to determine the exact burial depth for both the OSRWSS core pipeline and fiber optic line prior to starting crossing designs and construction of their pipeline." Provide proof that TransCanada or Keystone has received permission from the United States to "undertake exploratory excavations (potholing)" inside the Oglala Sioux Rural Water Supply System Right of Way, whereby permission must be gained from both the United States and the Oglala Sioux Rural Water Supply System to disturb the ground, as stipulated in the Oglala Sioux Rural Water Supply System

Easement Agreement which was signed by the United States, and is held in a South Dakota County Recorder's Office.

ANSWER: The construction of the pipeline has not yet begun. Accordingly, Keystone has not yet asked to undertake exploratory investigations within the easements held by the Bureau of Reclamation. Keystone disagrees with the contention that permission must be gained from "both the United States and the Oglala Sioux Rural Water Supply System to disturb the ground."

8. Provide maps showing for every single place where the Keystone XL pipeline will cross a Core Line of the Oglala Sioux Rural Water Supply System, providing Latitude and longitude or Public Land Survey System information to identify those locations.

OBJECTION AND ANSWER: The request for latitude and longitude seeks information that is confidential for security reasons. Without waiving the objection, see the map marked as Keystone 1633.

9. Provide a map showing every single place where the Keystone XL Pipeline will cross a Branch of the Core Lines of the Oglala Sioux Rural Water Supply System, providing Latitude and longitude or Public Land Survey System information to identify those locations.

OBJECTION AND ANSWER: The request for latitude and longitude seeks information that is confidential for security reasons. Without waiving the objection, see the map marked as Keystone 1633.

10. Provide a map showing every single place where the Keystone XL Pipeline will cross the Core Lines of the Lyman-Jones Rural Water Supply System, providing Latitude and longitude or Public Land Survey System information to identify those locations.

OBJECTION AND ANSWER: The request for latitude and longitude seeks information that is confidential for security reasons. Without waiving the objection, see the maps marked as Keystone 1633.

11. Provide all easement agreements between TransCanada or Keystone and those landowners who have both the Oglala Sioux Rural Water System and will have the proposed Keystone XL Pipeline situated on their land and also have a previous easement agreement with the Oglala Sioux Rural Water Supply System.

ANSWER: Responsive documents are attached as Keystone 1565-1588.

12. Provide copies of all communication TransCanada has had with the Bureau of Reclamation regarding the Keystone XL pipeline crossing South Dakota.

OBJECTION AND ANSWER: To the extent that the responsive documents include a site-specific draft Emergency Response Plan for the Oglala Tribal Water Supply Pipelines, the request seeks information that is confidential and proprietary. Without waiving the objection, responsive documents are attached as Keystone 1729-1921.

13. Provide a map of all specific areas of frac-out along the Oglala Sioux Rural Water System Core and Branch Lines providing Latitude and longitude or Public Land Survey System information to identify those locations.

OBJECTION AND ANSWER: This interrogatory does not make sense. A frac-out is an unplanned event that may occur during horizontal directional drilling. Without waiving the objection, Keystone previously provided its HDD frac-out contingency plan to the Commission in Docket HP09-001 as part of Exhibit TC-17. Keystone does not plan to use HDD in connection with any crossing of Oglala Sioux Water System lines.

14. Provide a map showing where all areas of horizontal drilling will take place in South Dakota, providing Latitude and longitude or Public Land Survey System information to identify those locations.

OBJECTION AND ANSWER: The request for latitude and longitude seeks information that is confidential for security reasons. Without waiving the objection, see the maps marked as Keystone 1634.

15. Provide documentation showing proof that the Colome City Water Wells are upgradient from the Keystone XL Pipeline.

ANSWER: As discussed in the March 2009 Keystone XL Project Application to South Dakota Public Utilities Commission: "The Mellette County Reroute crossed directly through a groundwater Zone A SWPA near Colome, South Dakota. A reroute to the northeast will avoid, and by hydrologically down gradient from, the SWPA. As a result of the realignment, risk to the SWPA will be reduced to negligible levels." (TransCanada Keystone, LP 2009).

16. Provide copies of any lease, or easement agreement that been executed for the construction or use of a new substation or powerline on or through the Lower Brule Sioux Reservation.

ANSWER: Keystone has no responsive documents. It is up to the power provider to obtain necessary easements to provide power to pump stations or valve sites on the Keystone XL Pipeline.

17. Is construction of a new substation or powerline through the Lower Brule Sioux Reservation necessary for operation of the Keystone XL pipeline based on current plan or updates to the final decision and order HP09-001?

ANSWER: Unknown. It is up to the power provider to obtain necessary easements to provide power to pump stations or valve sites on the Keystone XL Pipeline.

18. Provide documentation of all spills or leaks on the southern leg of the Keystone XL pipeline.

ANSWER: Attached as Keystone 774-784 is a spreadsheet showing spills associated with the Keystone Pipeline. The following spills occurred on the Gulf Coast Project:

December 20, 2013, Winnsboro; January 7, 2014, Bryan PS; January 24, 2014, Cromwell PS; March 19, 2014, Nederland; March 26, 2014, Nederland; March 27, 2014, Nederland; April 12, 2014, Cushing 01A valve; April 15, 2014, Nederland; June 3, 2014, Cushing; June 23, 2014, Cushing; July 7, 2014, Nederland; July 9, 2014, Bryan PS; July 9, 2014, Nederland; July 24, 2014, Nederland; July 29, 2014, Bryan PS; August 10, 2014, Nederland; August 12, 2014, Lufkin; August 27, 2014, Cushing; September 15, 2014, Cushing; October 2, 2014, Lucas Terminal; October 29, 2014, Lufkin PS; November 10, 2014, Nederland; January 13, 2015, Cushing; January 16, 2015, Cushing.

19. Describe the nature, circumstances, cause, and magnitude, and impact of each spill or leak and identify with specificity substances that were spilled or leaked from the Southern leg of the Keystone XL pipeline.

ANSWER: Please see the spreadsheet marked as Keystone 1635-1636.

20. Did Keystone or its contractors experience difficulty or problems with the welding of seams on the Southern Leg of the Keystone XL pipeline?

ANSWER: During 2013 construction a portion of the Gulf Coast Pipeline Project experienced a high weld reject rate upon start-up (first 3 weeks) of mainline manual welding of pipe joints.

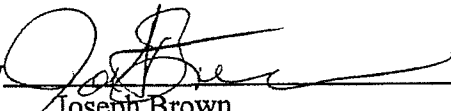
21. If so, describe the nature and cause of the problems, how they were discovered, and describe what steps were taken to resolve the problems.

ANSWER: The nature of the issue was thoroughly investigated and found to occur when the weld bead did not fuse with the base metal. Key contributing factors that causes this type of weld defect were weld preparation and welding technique. The weld defects were discovered through the use of non-destructive examination performed on completed welds per Project specifications and Federal Code requirements. Any welds exhibiting defects as defined by API 1104 were removed and new welds made and examined. Final examination of welds was performed through the use of hydrostatic testing with no defects found. The Project implemented various changes during start-up such as use of mechanical end facing over manual facing to improve cleanliness of the pipe bevel, requiring line up clamps to remain on the pipe joints through completion of the first weld pass, adjustment of the weld gap, refinement (within the

qualified ranges) of welding parameters (amps, volts and travel speed) and additional training of crews.

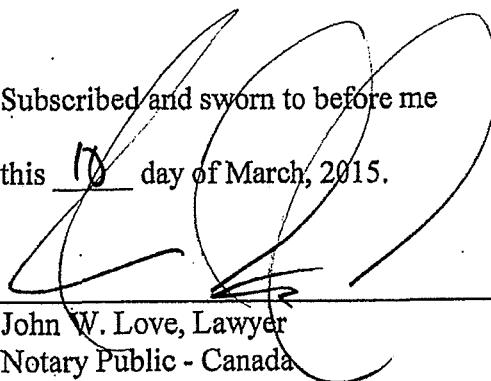
Dated this 10 day of March, 2015.

TRANSCANADA KEYSTONE PIPELINE, LP
by its agent, TC Oil Pipeline Operations, Inc.

By 
Joseph Brown
Its Director, Authorized Signatory

Subscribed and sworn to before me

this 10 day of March, 2015.


John W. Love, Lawyer
Notary Public - Canada

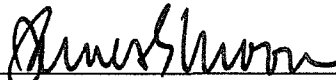
OBJECTIONS

The objections stated to Gary Dorr's Interrogatories and Request for Production of Documents were made by James E. Moore, one of the attorneys for Applicant TransCanada herein, for the reasons and upon the grounds stated therein.

Dated this 10th day of March, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By



William Taylor

James E. Moore

Post Office Box 5027

300 South Phillips Avenue, Suite 300

Sioux Falls, SD 57117-5027

Phone: (605) 336-3890

Fax: (605) 339-3357

Email: Bill.Taylor@woodsfuller.com

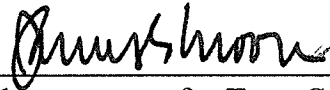
James.Moore@woodsfuller.com

Attorneys for Applicant TransCanada

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of March, 2015, I sent by e-mail transmission, a true and correct copy of Keystone's Responses to Gary F. Dorr's Final Interrogatories and Request for Production of Documents, to the following:

Gary F. Dorr
27853 292nd Street
Winner, SD 57580
gfdorr@gmail.com



One of the attorneys for TransCanada

Prepared by:
West River/Lyman-Jones RWS Inc.
PO Box 144
Philip, SD 57567
605-859-2829

RIGHT OF WAY AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between _____ called "Grantor" (whether one or more), and West River/Lyman-Jones Rural Water Systems, Inc. hereinafter called "Grantee";

WITNESSETH:

The Grantor, in consideration of One Dollars and other valuable considerations paid by Grantee, the receipt of which is hereby acknowledged, does grant and convey unto the Grantee, its successors and assigns, subject to the limitations hereinafter described, the exclusive and perpetual right, privilege, and easement in the following described property:

County	Description	Sec.	Twp.	Rge.
--------	-------------	------	------	------

This Easement is given to allow Grantee to: (1) Enter upon the described property; (2) To erect, construct, reconstruct, replace, operate, maintain, use and repair in, upon, under, over and through said land(s), and/or in, upon over or along all waterways, streets, roads or highways thereunto abutting, in a proper manner, a potable water transmission or distribution pipeline, together with all necessary and appurtenant incidental structures, appliances, and controls together with a right-a-way, on, along and in all of a strip of land being 50 feet wide extending 25 feet on each side of the pipeline as constructed; (3) To enter upon said land(s) at any time for the purpose of inspecting said pipeline lines and facilities and making necessary repairs and alternations thereof; (4) To make such changes, alterations and substitutions in said pipelines, facilities or structures from time to time as the Grantee deems advisable or expedient.

The Grantor agrees that all pipelines, facilities, structures, and related apparatus and appliances installed on the above-described land(s) by the Grantee or its representatives shall be and remain the property of the Grantee, removable or replaceable at its option; and that the Grantor will not construct any structure (other than ordinary fencing) within the right of way except upon the prior agreement thereto by the Grantee in writing. To the degree reasonably possible, all structures will be constructed below the surface with a minimum surface exposure.

The Grantee agrees that in locating and installing its pipeline and facilities it will endeavor to route the line along side of roadways, streets, ditches, fences, hedgerows, etc., so as to cause the least interference to the Grantor and his use of said land(s); and that if, in the construction of said pipeline, facilities or structures, any injury is necessarily done to, structures, fences, bridges or roads, it will repair or replace the same and/or will pay the Grantor for such injury.

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TO HAVE AND TO HOLD the aforesaid rights, privileges and easement unto the Grantee, its successors and assigns, forever.

WITNESS my hand and Notary Seal, this the _____ day of _____ 20____.

WITNESS my hand and Notary Seal, this the _____ day of _____ 20____.

Notary Public
My Commission Expires: _____

Certificate of Service

I hereby certify that on the 7th day of April, 2015 I sent by email transmission a true and correct copy of Motion to Compel Discovery and Preclude Keystone from offering evidence or witnesses at Hearing to the following.

Patricia Van Gerpen

Patty.vangerpen@state.sd.us

Kristen Edwards

Kristen.edwards@state.sd.us

Brian Rounds

Brian.rounds@state.sd.us

Darren Kearney

darrenkearney@state.sd.us

Tony Rogers

tuc@rosebudsiouxtribe-nsn.gov

Cindy Myers

csmyers77@hotmail.com

Jane KleeB

jane@boldnebraska.org

Byron T. Steskal

Diana L. Steskal

prairierose@nntc.net

Terry Frisch Cheryl Frisch

tcfrisch@g.com

Arthur R. Tanderup

atanderu@gmail.com

Lewis GrassRope

wisestar8@msn.com

Carolyn P. Smith

peachie_1234@yahoo.com

Robert G. Allpress

bobandnan2008@hotmail.com

Amy Schaffer

amyannschaffer@gmail.com

Louis T. Genung

tg64152@windstream.net

Benjamin D. Gotschall

ben@boldnebraska.org

Nancy Hilding

nhilshat@rapidnet.com

Elizabeth Lone Eagle

Paul F. Seamans

bethcbest@gmail.com

jackknife@goldenwest.net

John H. Harter

johnharter11@yahoo.com

Viola Waln

walnranh@goldenwest.net

Peter Capossela

pcapossela@nu-world.com

Wrexie Lainson Bardaglio

wrexie.bardaglio@gmail.com

Harold C. Frazier

haroldcfrazier@yahoo.com

kevinkeckler@yahoo.com

Jerry P. Jones

22584 US Hwy 14

Midland, SD 57552

Cody Jones

21648 Hwy 14/63

Midland, SD 57552

Debbie J. Trapp

mttdt@goldenwest.net

Gena M. Parkhurst

GMP66@hotmail.com

Joye Braun

Jmbraun57625@gmail.com

Duncan Meisel

Duncan@350.org

Yankton Sioux Tribe

robertflyinghawk@gmail.com

Thomasina Real Bird

trealbird@ndnlaw.com

Bruce Ellison

belli4law@aol.com

Chastity Jewett

chasjewett@gmail.com

Rox Ann Boettcher

boettcherann@abbnebraska.com

Bruce Boettcher

boettcherann@abbnebraska.com

Bonny Kilmurry

bjkilmurry@gmail.com

Ronald Fees

17401 Fox Ridge Road

Opal, SD 57758

Robert P. Gough

bobgough@intertribalCOUP.org

Tom BK Goldtooth

ien@igc.org

Dallas Goldtooth

Cyril Scott

goldtoothdallas@gmail.com

cscott@gwtc.net

ejantoine@hotmail.com

Paula Antoine

wopila@gwtc.net

Sabrina King

Sabrina@dakotarural.org

Frank James

fejames@dakotarural.org

Robin S. Martinez

robin.martinez@martinezlaw.net

Tracy Zephier

tzephier@ndnlaw.com

Paul C. Blackburn

paul@paulblackburn.net

Matthew Rappold

matt.rappold01@gmail.com

April D. McCart

april.mccart@martinezlaw.net

Kimberly E. Craven

kimecraven@gmail.com

Joy Lashley

joy.lashley@state.sd.us

Mary Turgeon Wynne

tuc@rosebudsiouxtribe-nsn.gov

Eric Antoine

ejantoine@hotmail.com

Gary F. Dorr

Individual Intervener

27853 292d St.

Winner, SD 57580

gfdorr@gmail.com