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

0-0

Keystone responded to Mr. Dorr's letter by email on the evening of April 9, and again on April 10, in an effort to resolve the objections, supplying documents and clarifying interrogatory answers.

Response to the Motion to Compel

Mr. Dorr's motion begins with a narrative explaining what research he has done to amplify the discovery responses. His detailed complaint with discovery responses begins in the second full paragraph on the second page of his motion, but does not state with precision the interrogatories involved. Keystone will respond commencing at that point. Mr. Dorr didn't number the early paragraphs in his motion, so Keystone's response identifies the issues addressed by paragraph and page.

1. **Second paragraph beginning page 2:** Mr. Dorr challenges Keystone's belief that the right-of-way does not pass through Indian Country or over tribal lands, and that no usufructuary rights are violated. Mr. Dorr doesn't complain that the answer is insufficient. Rather, he makes a legal argument contending that tribal usufructuary rights exist. Keystone does not believe that a motion to compel is the correct forum to resolve the legal issue Mr. Dorr argues in his motion. Accordingly, Keystone stands on its answer.
2. **Second paragraph beginning middle of page 3:** Mr. Dorr contends that Keystone failed to respond to what appears to be Interrogatory 2, Dorr First Interrogatories. That interrogatory inquires whether Keystone obtained the consent of the Rosebud Sioux to cross certain lands described in Article 16 of the 1868 Treaty of Ft. Laramie. Keystone responded in part by saying it does not believe it is required to obtain consent from the Rosebud Sioux Tribe to construct the pipeline on the currently permitted route. To clarify the answer, Keystone has not obtained the permission of the Tribe to pass through the territory described in Article 16 of the Treaty, because it believes it is not legally required to do so.
3. **First paragraph on page 4:** Mr. Dorr contends Keystone did not sufficiently answer what appears to be Interrogatory 36 (a), Dorr First Interrogatories, inquiring about emergency response training. Keystone believes the question was answered in Keystone's responses.
4. **Second paragraph on page 4:** Mr. Dorr contends Keystone did not sufficiently answer Interrogatory 36 (b), Dorr First Interrogatories, inquiring about filing an emergency plan with the Rosebud Sioux Tribe. Keystone answered with a legal standard, which is the law. Mr. Dorr rephrases the question in his motion, which is inappropriate for a motion to compel. Keystone stands on its answer, and observes that when the Emergency Response Plan is finalized, the Rosebud Sioux may indeed be asked to participate as an emergency responder.

5. **Third paragraph on page 4:** Mr. Dorr contends Keystone didn't answer Interrogatory 36(d), Dorr First Interrogatories, regarding notice to rural communities in the event of an emergency. Keystone answered the question and stands on the answer. Mr. Dorr rephrases and expands the question in his motion, which is inappropriate for a motion to compel. None the less, Keystone responds to the new question that the Emergency Response Plan will take into account means to notify small communities and rural areas where law enforcement or other first responder services are sparse.
6. **First full paragraph on page 5:** Mr. Dorr challenges Keystone's answer to Interrogatory 43c, Dorr First Interrogatories, seeking proof that the Rosebud Sioux Tribe was consulted about the results of the cultural resource work performed. Keystone fully answered the question with references to the information sought and stands on its answer.
7. **Second paragraph on page 5:** Mr. Dorr challenges Keystone's answer to Interrogatory 43 (d), by expanding the question and arguing. Keystone fully answered the question with references to the SFEIS. The determination of the "appropriate Tribe for consultation" is made by the Department of State in consultation with the South Dakota State Historical Preservation Officer and is not Keystone's decision. Accordingly, the answer is correct and complete.
8. **Last paragraph on page 5, first two paragraphs on page 6:** Mr. Dorr asserts he did not receive documents responsive to his inquiry. Keystone believes it forwarded the documents mentioned to Mr. Dorr. On Friday April 10, the day after Keystone discovered the motion was filed, Keystone sent an internet link to the documents by email to Mr. Dorr. Had Mr. Dorr asked at any earlier time, Keystone would have re-sent the documents or the internet link.
9. **Second full paragraph on page 6, through the top of page 7:** Mr. Dorr's motion contains a narrative on his views of the legal effect of certain easements held by the United States pertaining to the Mni Wiconi pipeline, which he sometimes refers to as the Oglala Sioux Rural Water Supply System (OSRWSS). Mr. Dorr's original question is argumentative and an inaccurate statement of the law, to which Keystone objected and then answered. In his motion Mr. Dorr does not so much make an objection as argue that his interpretation of the easement is correct, and then rephrases and expands his question. Mr. Dorr's contentions are legal arguments, not challenges to the sufficiency of the interrogatory answer. Keystone stands on the sufficiency of its answer. Keystone's answer was made under oath, the "proof" Mr. Dorr seeks.

Although it is not entirely relevant to the issue Mr. Dorr argues, the Bureau of Reclamation is designated by the United States to manage the easements. By Congressional act the Mni Wiconi core pipelines and the easements are held in trust for certain Tribes. By designation of the Department of Interior, The Bureau of Reclamation administers federal trust responsibility for the easements and core facilities.

The federal core line easements were acquired from ranchers who own the underlying land. The easements are not exclusive, as shown by exhibits 1 and 2 to the

accompanying affidavit of counsel. The owners of the land hosting the Mni Wiconi easements may lawfully grant additional easements on the same property for other uses, subject to the conditions of the senior easement.

Keystone takes the position, as does the Bureau of Reclamation, that the KXL pipeline can be pass through the Mni Wiconi easements so long as Keystone has the landowner's permission and the installation does not interfere with the Mni Wiconi easement. As demonstrated by interrogatory answers, the Bureau of Reclamation has developed engineering conditions for the crossing. If Keystone meets the conditions, the Bureau of Reclamation will authorize construction of the KXL pipeline within the easements.

Keystone does not believe the permission of the Tribes or the management of the Oglala Sioux Rural Water Supply System is required to construct the KXL pipeline within the Mni Wiconi easements.

This is a legal question, not a discovery issue.

10. **Second paragraph page 8 numbered 5:** Mr. Dorr is referring to Interrogatory 5, Dorr Second Interrogatories, asking for copies of Keystone easements on land encumbered by Mni Wiconi easements. Mr. Dorr correctly observed one of the easements supplied by Keystone was incorrect. The easement supplied covered land across old Highway 16 from the Mni Wiconi pipeline right-of-way. Keystone supplied the correct easement on April 10.

Keystone answered the interrogatory as to the core lines, which consist of a pipeline crossed in Jones County and a pipeline in Haakon County. Keystone did not answer as to distribution lines, as the question didn't ask for easements involving distribution lines, which typically are with the individual rural water systems supplying retail service.

11. **Third paragraph page 8 numbered 6:** Mr. Dorr is referring to Interrogatory 6, Dorr Second Interrogatories, pertaining to the criteria the Bureau of Reclamation developed relative to the KXL line crossing the Mni Wiconi. Mr. Dorr is incorrect in his assertion that the Montana office of the Bureau of Reclamation approved the crossing criteria. The criteria was approved by the Bismarck office of the Bureau of Reclamation. The Bismarck office has jurisdiction over South Dakota.
12. **Fourth paragraph page 8, numbered 7:** Mr. Dorr doesn't object to the interrogatory answer provided. Rather, he makes a legal argument regarding who holds ownership of the Mni Wiconi easements. The easement in question is in fact held by the United States of America. The Department of the Interior, Bureau of Reclamation has been administratively delegated the management of the easement, as demonstrated by the language of the easement.
13. **Second paragraph page 9, numbered 8:** Keystone will attempt to provide a larger scale rendition of the map in question.

14. **Fourth paragraph page 9, numbered 9:** Keystone will attempt to provide a larger scale rendition of the map in question.
15. **Sixth paragraph page 9, numbered 10:** Keystone will attempt to provide a larger scale rendition of the map in question.
16. **First paragraph page 10, numbered 10:** Keystone's response contained an incorrect easement as noted above. The correct easement was forwarded April 10 by email.

Mr. Dorr concludes with a request that Keystone be precluded from offering certain testimony at the hearing, presumably because of his contention that discovery responses were incomplete. Keystone stands on its responses as noted above, and respectfully requests the Commission deny Mr. Dorr's motion to compel in all respects.

Dated this 13th day of April, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Response to Gary Dorr's Motion to Compel, to the following:

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IN THE MATTER OF THE APPLICATION
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STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF MINNEHAHA)

1. I am one of the attorneys for TransCanada Keystone Pipeline LP, ("Keystone"), applicant herein.

3. On April 7, 2015, Mr. Dorr filed a motion to compel with the South Dakota Public Utilities Commission, with accompanying exhibits. The motion parrots his letter to counsel of April 6. He did not serve the motion on Keystone or its counsel. I discovered the motion while reviewing the PUC docket on its website on April 9.

4. Attached hereto, collectively marked Exhibit 1, are emails sent to Mr. Dorr on April 9 and 10 regarding requests made in his motion and letter he sent to counsel on April 6, 2015.

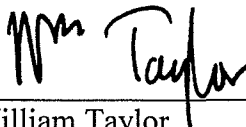
5. The Mni Wiconi water project brings water via pipeline from a treatment plant near Pierre, South Dakota to rural water systems serving a variety of customers across western South Dakota. The project, authorized by Congress and constructed primarily with federal funds, is owned by the United States in trust for several South Dakota Indian Tribes. It is sometimes called the Oglala Sioux Rural Water Supply System.

6. The Bureau of Reclamation, an agency within the Department of the Interior, is charged with management of the federal government's responsibility for the Mni Wiconi pipeline. The branch office of the Bureau of Reclamation dealing with the Mni Wiconi pipeline is in Bismarck, ND.

7. The Keystone KXL pipeline will cross the Mni Wiconi core lines in Haakon County and in Jones County. Keystone has secured easements from both landowners for the KXL pipeline.

8. The Bureau of Reclamation has developed crossing criteria for the KXL crossings of the Mni Wiconi core lines.

Dated this 13th day of April, 2015.



William Taylor

Subscribed and sworn to before me

this 13th day of April, 2015.



Notary Public – South Dakota

My commission expires:

**My Commission Expires
Sept. 13, 2017**

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Affidavit of William Taylor in Response to Gary Dorr's Motion to Compel, to the following:

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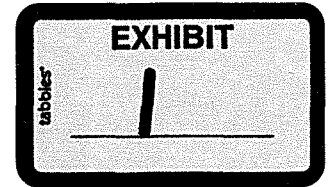
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Cc: James E. Moore
Subject: Keystone Matters



Mr. Dorr, I read your letter of the 6th and the motion you filed on the 7th.

I will check our discovery responses in the morning and try and determine what the issue is with the documents you said you didn't receive. I'm sorry you didn't tell us earlier that you didn't receive them. In any event, I'll have another set emailed to you tomorrow.

I understand your views regarding tribal rights. Based on the third and fourth paragraphs of your letter of the 6th, I think we can agree that the issue of reserved tribal rights in the non-tribally owned lands crossed by the pipeline is a legal question, not a discovery issue. A motion to compel isn't the forum to resolve that question. Can we agree on that point?

As to the issues you raise regarding the OSRWSS, the Bureau of Reclamation is the duly designated representative of the United States for matters dealing with the parts of the system that are held in trust for the Tribes, including matters dealing with the easements for the core lines. The Department of the Interior, acting through the BOR, represents the United States.

I understand that the Bismarck BOR office has had considerable discussion with the OSRWSS management and its contract engineers regarding core line crossings. I also understand that the crossing criteria was developed with input from, or at least as a part of discussions with OSRWSS management and its engineers. The Billings office has had discussion with Keystone regarding BOR canals in Montana.

The United States did not buy a fee interest in the real property under the Mni Wiconi core lines. Rather, it bought an easement. Fee ownership remains with the landowner, subject to the rights of the United States per the easement. The landowner has the right to convey another easement to a third party, in this case Keystone. Keystone in turn has the right to construct its pipeline within the easement corridor, provided that in so doing it doesn't interfere with the easement rights of the United States.

I understand the BOR, acting for the United States, has determined the pipeline can be constructed in a manner that doesn't interfere with the Mni Wiconi. The crossing criteria developed by the BOR are intended to insure that there is no interference. Keystone doesn't think OSRWSS permission to construct the crossing is required.

As to the question of potholing to locate the fiber optic cable in the Mni Wiconi easement, that won't be started until construction is started. I'm told that potholing to identify utility cables is a very common practice and that there are standard methods used to do it.

I'll look at the maps we sent in the morning in light of your contention that they are too difficult to read.

Finally, I think we have a definitional issue with your use of the phrase "core line." In your questions you refer to the core lines, or to branches of the core lines, as opposed to the distribution lines operated by the various rural water systems that supply retail customers. We read your question literally and answered as to the core lines, not as to the distribution lines.

I'm sorry you didn't raise these questions earlier. If you had, perhaps we could have worked out some resolution.

I'll yor discovery requests and Keystone's responses in the morning. If you would like to discuss the issues raised by your letter and motion, this email or any other issues, I'm available to talk, at your convenience, with the hope we can come to common ground where possible.

Bill Taylor

William Taylor

From: William Taylor
Sent: Friday, April 10, 2015 9:57 AM
To: 'gfdorr@gmail.com'
Cc: James E. Moore (James.Moore@woodsfuller.com)
Subject: Keystone Matters

Ms. Saker is sending you electronic copies of the documents you said you did not receive. They should be on the way shortly.

I am trying to secure an electronic or higher resolution copy of the map numbered document 1633. I will know more about its availability today, hopefully.

Bill Taylor

William Taylor

From: William Taylor
Sent: Friday, April 10, 2015 10:33 AM
To: gfdorr@gmail.com
Cc: James E. Moore (James.Moore@woodsfuller.com)
Subject: Interrogatory Answers

Reviewing the document production in response to interrogatories 5 and 11 in your second set, we may have sent you an incorrect easement. You asked about situations where land hosted both the OSRWSS core line and pipeline easements. We sent you the Hotstutler easement in Haakon County, but sent you the Iverson easement in Jones County.

Iverson's land is just north of the Mni Wiconi steel line in Jones County. The landowner who hosts both pipelines is Dahlke/Mann, immediately south of Iverson's property. The Iverson tract is separated from the Dahlke/Mann tract by old Highway 16. Both properties are in the north half of Section 35, T-1, R 29, Jones County.

I'll get you the Dahlke-Mann KXL easement this afternoon. You already have the BOR easement for Dahlke-Mann, it was included in the materials you sent.

Bill Taylor

William Taylor

From: William Taylor
Sent: Friday, April 10, 2015 11:47 AM
To: gfdorr@gmail.com
Cc: James E. Moore (James.Moore@woodsfuller.com)
Subject: Keystone Discovery Issues
Attachments: Dorr supplemental document production (01901039x9FB59).PDF

Mr. Dorr, the Dahlke-Mann KXL easement and an amendment to it are attached. These apply to the tract that hosts the Mni-Wiconi steel line in Jones County, and are responsive to your second set of interrogatories, questions 5 and 11. The Hotstutler easement included in the answer to question five, document number 1539 to 1562, also is covered by question 11.

Bill Taylor

Prepared By:

TransCanada Keystone Pipeline
2700 S. Post Oak Blvd., Suite 400
Houston, Texas 77056
(713)693-6426



STATE OF SOUTH DAKOTA } SS.
County of Jones

Filed for record this 6 day of

May 20 14

3:00 o'clock P.M. and recorded

In Book 21 Misc. page 542-557

Jenni Volmer Register of Deeds

Fee: \$30.00

(Above Space for Recorder's Use Only)

Tract No. ML-SD-JO-10670.000
10692.000

AMENDMENT OF EASEMENT AND RIGHT-OF-WAY
AGREEMENT

For and in consideration of the sum of Ten Dollars (\$10.00), paid in accordance with this Amendment to Easement and Right-of-Way Agreement, the mutual promises of the parties herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Dahlke Family Limited Partnership and Mann Family Limited Partnership, (hereinafter called the "Grantors") and TransCanada Keystone Pipeline, LP., a Limited Partnership having its principal place of business at 717 Texas Street, Suite 26000, Houston, Texas 77002, its successors and assigns (hereinafter called "Grantee"), hereby agree that the Easement and Right-Of-Way Agreement dated November 12, 2010, and recorded in Jones County, State of South Dakota at 8:45 A.M. on July 1, 2011 and recorded in Book 20 Misc., Page 501-523, (hereafter "Original Agreement") is hereby amended as follows:

Due to slight route variation, the Exhibit "A" & Exhibit "B" documents for tract ML-SD-JO-10670.000 and ML-SD-JO-10692.000, are replaced with the revised Exhibit "A" & Exhibit "B" documents attached hereto.

Grantors and Grantee ratify and confirm all terms and conditions of the Original Easement, except to the extent modified in this Amendment.

IN WITNESS WHEREOF, Grantors and Grantee have executed this Agreement as of the
17th day of April, 2014.

GRANTEE:

TransCanada Keystone Pipeline, LP

By its Agent, TC Oil Pipeline Operations Inc.

By: [Signature]
Name: Tim M. Irons
Title: Authorized Signatory

By: [Signature]
Name: Alex Osborne
Title: Authorized Signatory

STATE OF Texas)
COUNTY OF Harris)ss

This instrument was acknowledged before me on this 17 day of April, 2014,
by Tim M. Irons, as Authorized Signatory of TC Oil Pipeline Operations,
Inc.

(Seal)



[Signature]
Rocio Lozano

(Printed or Typed Name)

Notary Public for the State of Texas
Residing at Houston, Texas
My commission expires October 10, 2015

STATE OF Texas)
COUNTY OF Harris)ss

This instrument was acknowledged before me on this 17 day of April, 2014,
by Alex Osborne, as Authorized Signatory of TC Oil Pipeline Operations,
Inc.

(Seal)



[Signature]
Rocio Lozano

(Printed or Typed Name)

Notary Public for the State of Texas
Residing at Houston, Texas
My commission expires October 10, 2015

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the 11th
day of April, 2014.

GRANTOR:

Print: Rodney Mann

Sign: [Signature]

Its: _____

STATE OF South Dakota)
: SS
COUNTY OF Jones)

On this the 11th day of April, 2014, before me personally
appeared Rodney Mann, known to me to be the persons who are
described in and that they executed the within instrument and acknowledged to me that
they executed the same in the capacity therein stated and for the purposes therein
contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(NOTARIAL SEAL)

[Signature]

Notary Public

My Commission Expires: 9/7, 2018



IN WITNESS WHEREOF, Grantor has executed this Agreement as of the 11th
day of April, 2014.

GRANTOR:

Print: Betty Lou Mann

Sign: Betty Lou Mann

Its: _____

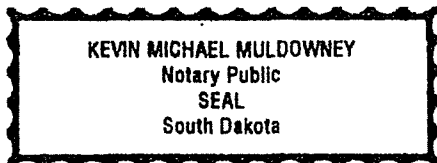
STATE OF South Dakota)
: SS
COUNTY OF Jones)

On this the 11th day of April, 2014, before me personally
appeared Betty Lou Mann, known to me to be the persons who are
described in and that they executed the within instrument and acknowledged to me that
they executed the same in the capacity therein stated and for the purposes therein
contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(NOTARIAL SEAL)

K. Mitchell
Notary Public
My Commission Expires: 9/7/, 2018



After Recording, Return to:
TransCanada Keystone Pipeline
2700 S. Post Oak Blvd., Suite 400
Houston, Texas 77056
(713)693-6426

EXHIBIT A

JONES COUNTY, SOUTH DAKOTA

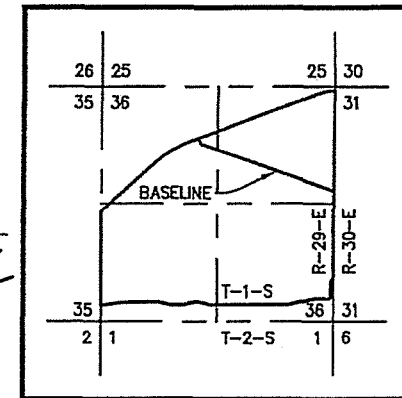
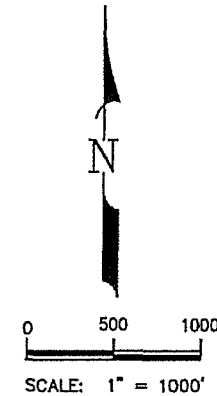
T-1-S, R-29-E, SECTION 36

ML-SD-JO-10670.000

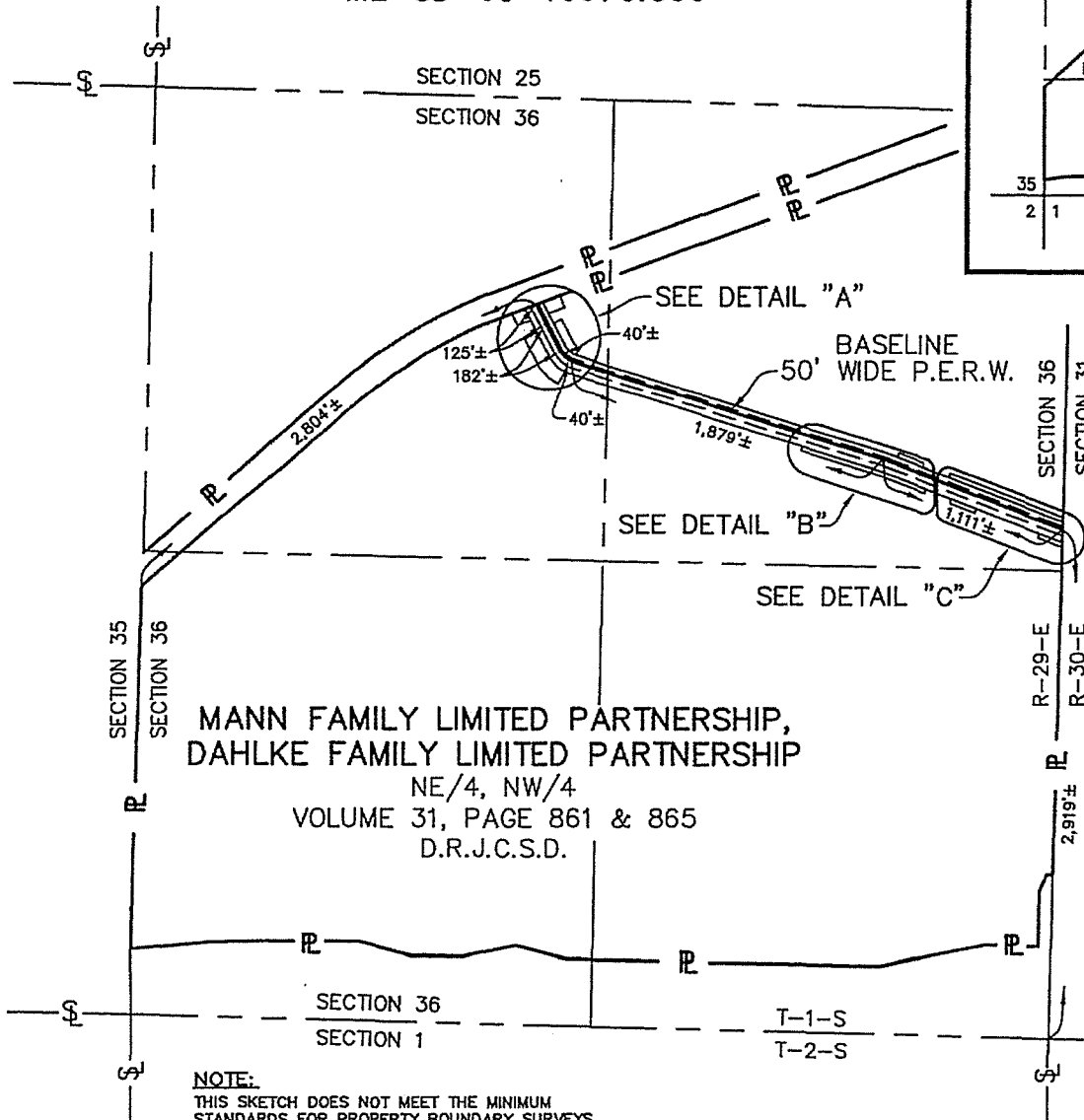
LEGEND

PL
S
PROP.
A.T.W.S.
P.E.R.W.
D.R.J.C.S.D.

PROPERTY LINE
SECTION LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF JONES COUNTY, SOUTH DAKOTA

VICINITY MAP
N.T.S.

TRACT LEGAL DESCRIPTION:
PORTION OF SECTION 36 LYING
SOUTH OF U.S. HWY. 16 &
NORTH OF INTERSTATE 90
SECTION 36,
T-1-S, R-29-E



MANN FAMILY LIMITED PARTNERSHIP,
DAHLKE FAMILY LIMITED PARTNERSHIP

NE/4, NW/4

VOLUME 31, PAGE 861 & 865

D.R.J.C.S.D.

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM
STANDARDS FOR PROPERTY BOUNDARY SURVEYS.
IT WAS NOT DERIVED FROM AN ON THE GROUND
SURVEY BUT IS INTENDED FOR RIGHT OF WAY
PURPOSES ONLY.

TOTAL DISTANCE ACROSS PROPERTY: 3,377'±
AREA OF PERMANENT EASEMENT: 3.9 ACRES
AREA OF TEMPORARY WORKSPACE: 4.7 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 2.2 ACRES



KEYSTONE XL PROJECT

EASEMENT AREA
ACROSS THE PROPERTY OF
MANN FAMILY LIMITED
PARTNERSHIP, DAHLKE FAMILY
LIMITED PARTNERSHIP
ML-SD-JO-10670.000

PROJECT: XL EXHIBIT A
APPROVED BY: DJS DRAWING NUMBER: XL-08-ML-SK-1369

NO.	REVISION	DATE
1	ADDED A.T.W.S.	03/31/10
2	LINE CHANGE	04/30/10
3	LINE CHANGE	08/30/10
4	REVISED WORKSPACE	02/23/11
5	REVISED WORKSPACE	08/14/13
6	LINE CHANGE	12/05/13

SCALE	DATE	DRAWN BY	CHECKED BY
1" = 1000'	05/21/09	PB	SM

exp.
The new identity of Trans

SHEET 1 OF 3

EXHIBIT A

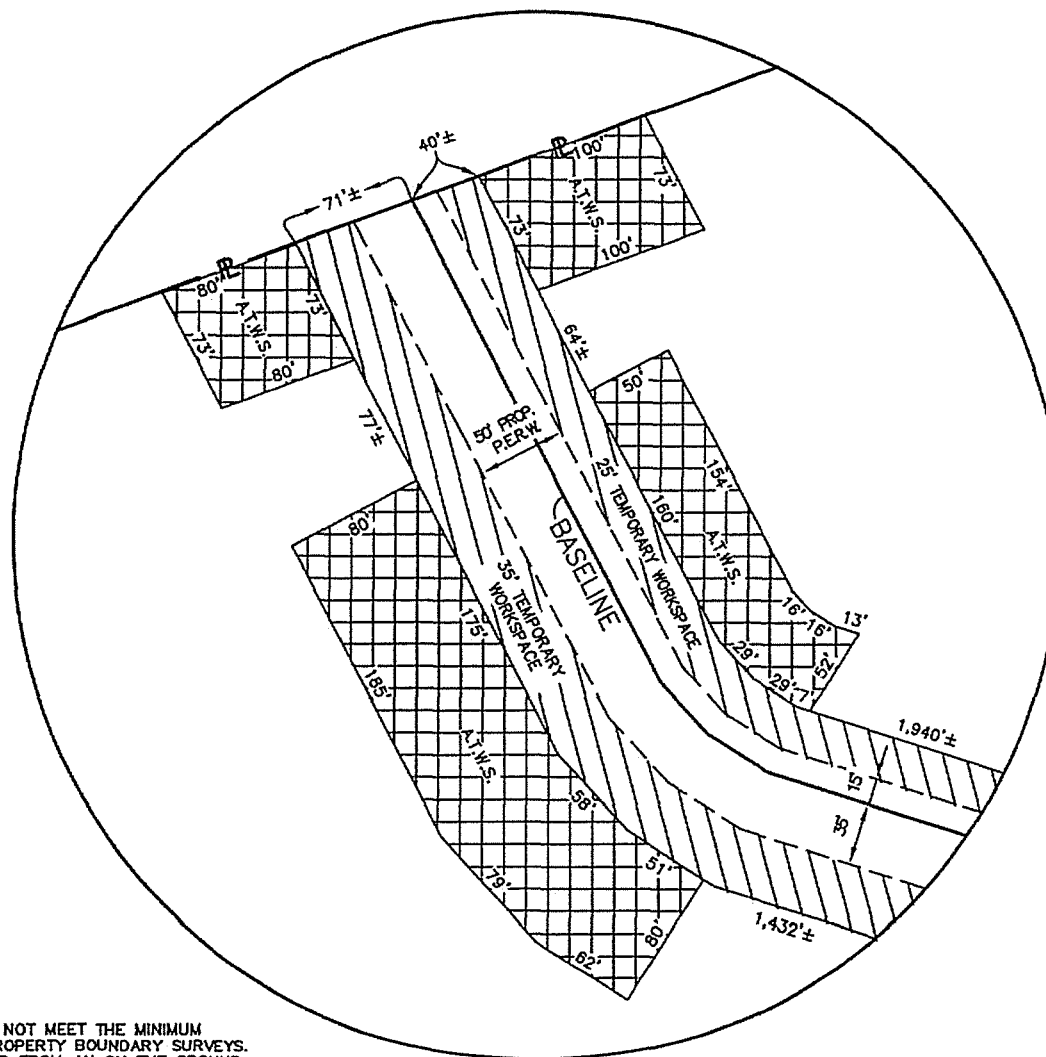
KEYSTONE 1939

004140

ML-SD-JO-10670.000

R.
PROP.
A.T.W.S.
P.E.R.W.

PROPERTY LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY



DETAIL "A"

N.T.S.

THIS SKETCH DOES NOT MEET THE MINIMUM
STANDARDS FOR PROPERTY BOUNDARY SURVEYS.
IT WAS NOT DERIVED FROM AN ON THE GROUND
SURVEY BUT IS INTENDED FOR RIGHT OF WAY
PURPOSES ONLY.



PROJECT:		EXHIBIT A	
APPROVED BY		DRAWING NUMBER	
DJS		XL-08-ML-SK-1369	
NO.	REVISION	DATE	
1	ADDED A.T.W.S.	03/31/10	
2	LINE CHANGE	04/30/10	
3	LINE CHANGE	08/30/10	
4	REVISED WORKSPACE	07/23/11	
5	REVISED WORKSPACE	08/14/13	
6	LINE CHANGE	12/05/13	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	05/21/09	PB	SM

EXHIBIT A

~~KEYSTONE 1940~~

004141

EXHIBIT A

JONES COUNTY, SOUTH DAKOTA

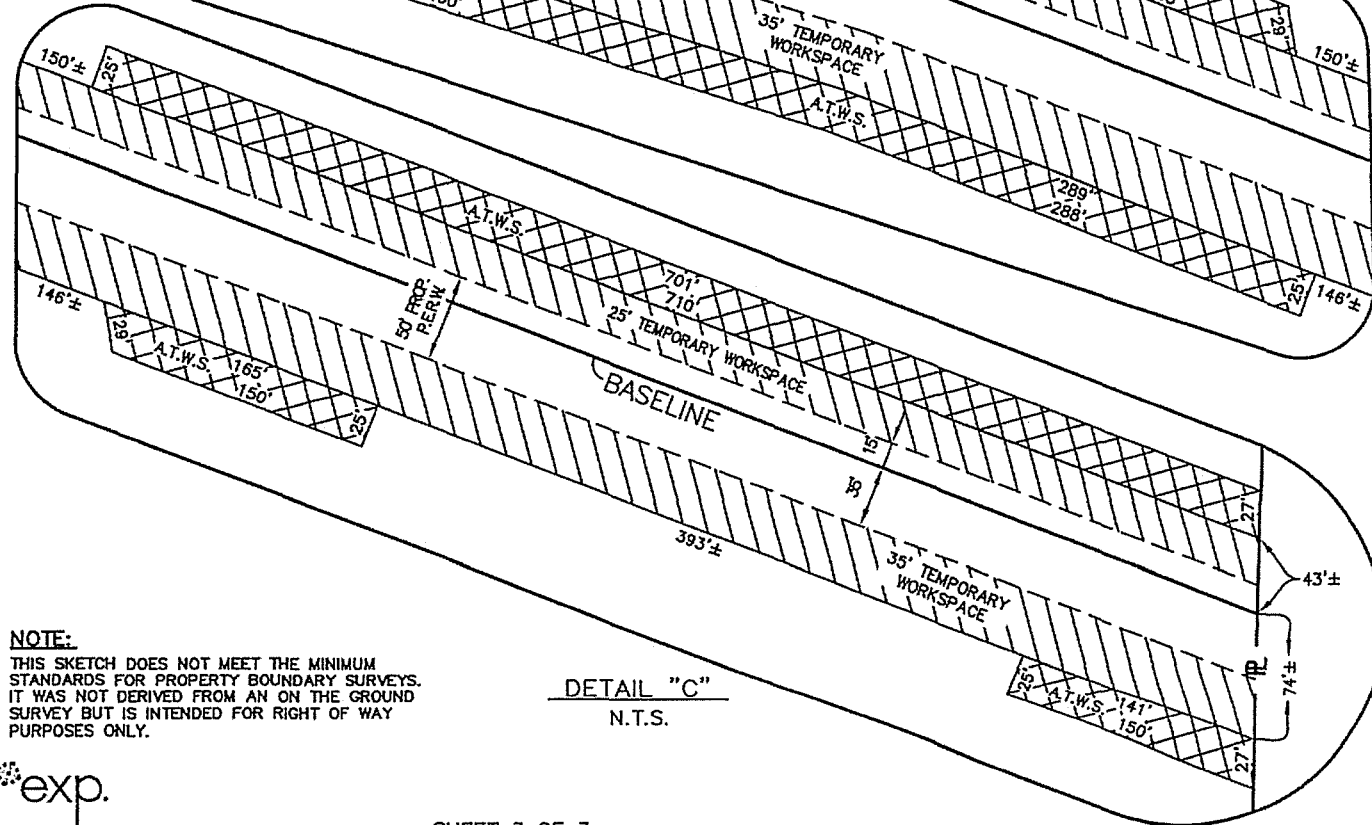
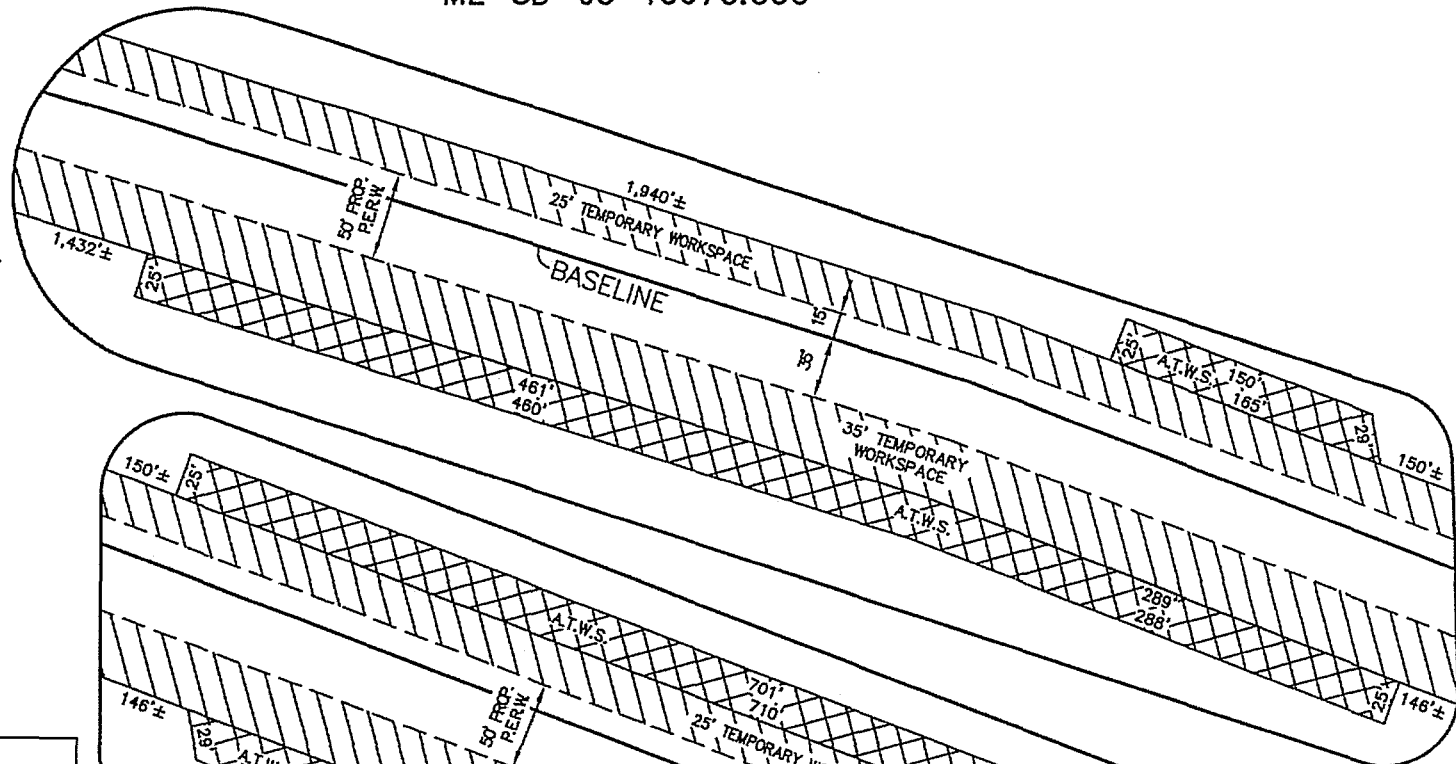
T-1-S, R-29-E, SECTION 36

ML-SD-JO-10670.000

LEGEND

P. PROPERTY LINE
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY

DETAIL "B"
N.T.S.



DETAIL "C"
N.T.S.

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY.

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KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
MANN FAMILY LIMITED
PARTNERSHIP, DAHLKE FAMILY
LIMITED PARTNERSHIP
ML-SD-JO-10670.000

PROJECT:	EXHIBIT A		
APPROVED BY	DRAWING NUMBER		
DJS	XL-08-ML-SK-1369		
NO.	REVISION	DATE	
1	ADDED A.T.W.S.	03/31/10	
2	LINE CHANGE	04/30/10	
3	LINE CHANGE	08/30/10	
4	REVISED WORKSPACE	02/23/11	
5	REVISED WORKSPACE	08/14/13	
6	LINE CHANGE	12/05/13	
SCALE	DATE	DRAWN BY	CHECKED BY
N.T.S.	05/21/09	PB	SM

SHEET 3 OF 3

EXHIBIT A

KEYSTONE 1941

004142

EXHIBIT B

Situated in the County of Jones and the State of South Dakota, to wit:

Township 1 South, Range 29 East

Section 36: That portion of Section 36 Lying South of US Hwy 16 & North of Interstate 90

Containing 455.00 acres, more or less, as recorded in Book 31, Page 861, and 865, Deed
Records of Jones County, South Dakota

ML-SD-JO-10670.000

KEYSTONE 1942

004143

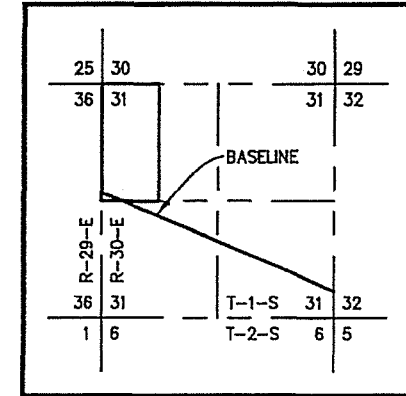
EXHIBIT A

JONES COUNTY, SOUTH DAKOTA

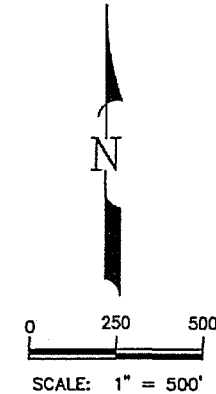
T-1-S, R-30-E, SECTION 31
ML-SD-JO-10692.000

LEGEND

PL PROPERTY LINE
S SECTION LINE
PROP. PROPOSED
A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
D.R.J.C.S.D. DEED RECORDS OF JONES COUNTY, SOUTH DAKOTA



VICINITY MAP
N.T.S.



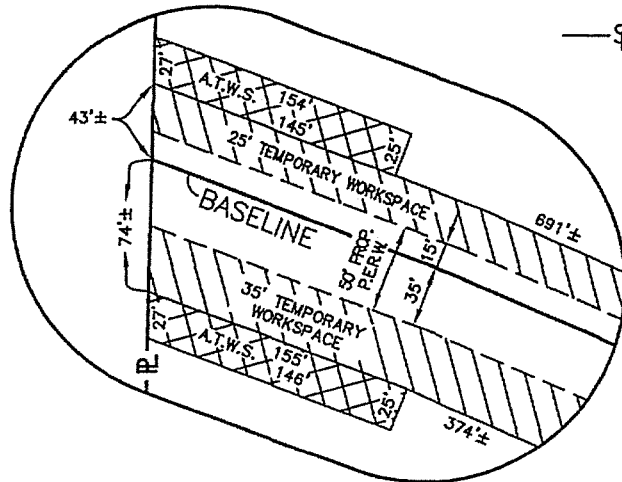
TRACT LEGAL DESCRIPTION:
W/2 NW/4 OF SECTION 31,
T-1-S, R-30-E

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY.

TOTAL DISTANCE ACROSS PROPERTY: 725'±
AREA OF PERMANENT EASEMENT: 0.8 ACRE
AREA OF TEMPORARY WORKSPACE: 0.9 ACRE
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.2 ACRE

KEYSTONE 1943



DETAIL "A"
N.T.S.

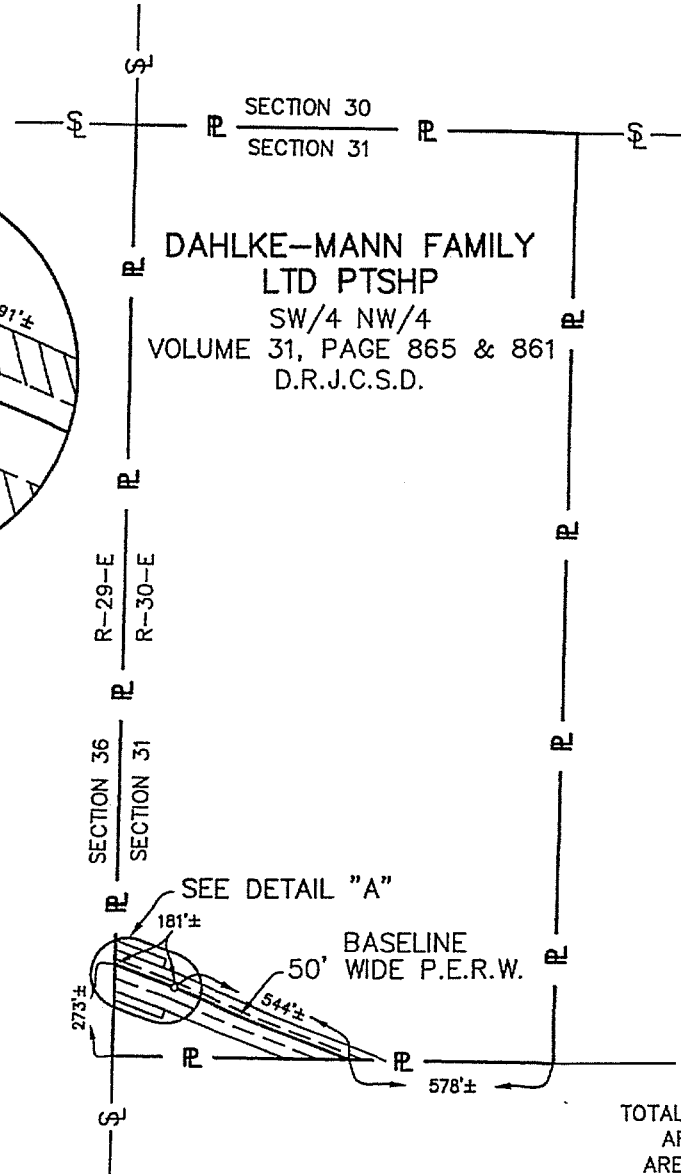


EXHIBIT A



KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
DAHLKE-MANN FAMILY LTD PTSHP
ML-SD-JO-10692.000

PROJECT:		EXHIBIT A	
XL		DRAWING NUMBER	
APPROVED BY		DRAWING NUMBER	
WSF		XL-08-ML-SK-3157	
NO.	REVISION		DATE
1	REVISED WORKSPACE		02/16/11
2	OWNERSHIP UPDATE		09/06/11



EXHIBIT B

Situated in the County of Jones and the State of South Dakota, to wit:

Township 1 South, Range 30 East

Section 31: W/2 NW/4

Containing 69.00 acres, more or less, as recorded in Book 31, Page 861, and 865, Deed Records of Jones County, South Dakota

ML-SD-JO-10692.000

KEYSTONE 1944

004145

Prepared by:

TransCanada Keystone Pipeline, LP
717 Texas Street
Houston, TX 77002
(832) 320-5294

STATE OF SOUTH DAKOTA } SS.
County of Jones

Filed for record this 1 day of
JULY 20 11

8:45 o'clock A. M. and recorded
in Book 20 MISC. page 501-523

Terri J. Jimer Register of Deeds

FEE: \$64.00 (NON-STANDARD)

ML-SD-JO-10670.000
10692.000

EASEMENT AND RIGHT-OF-WAY AGREEMENT

This nonexclusive Easement and Right-of-Way Agreement (this "**Agreement**") is made, dated and effective as of this 12th day of November, 2010 (the "**Effective Date**"), between Dahlke Family Limited Partnership (50% undivided interest) Mann Family Limited Partnership (50% undivided interest), (hereafter "**Grantor**"), and **TransCanada Keystone Pipeline, LP**, a limited partnership, organized under the laws of the State of Delaware, (hereafter "**Grantee**"), in light of the following recitals:

RECITALS

WHEREAS, Grantor owns certain real property located in Jones County, State of South Dakota (the "**Property**"), as more particularly described on Exhibit B, attached hereto and by this reference made a part hereof;

WHEREAS, Grantee is proposing to construct and operate a pipeline extending from Hardisty, Alberta, Canada, to the Port Arthur and east Houston areas of Texas in the United States; and

WHEREAS, Grantee desires to obtain certain easements and rights over the Property, and Grantor desires to grant such easements and rights, on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Grantor and Grantee (each, a "**Party**" and together, the "**Parties**") agree as follows:

1. Grant of Easement.

1.1. Grant. Grantor does hereby grant, sell, and convey unto Grantee a nonexclusive easement, right-of-way, and right of entry (the "**Easement**") solely for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, and removing or abandoning in place (to the extent abandonment in place is allowed by then applicable law) one 36-inch diameter pipeline, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment, devices, and appurtenances reasonably incidental to the construction, operation, marking, and maintenance thereof (the "**Pipeline**"), for the transportation of crude oil, , petroleum products or by-products thereof, upon, over, across and under the Property, on the terms provided herein.

1.2. Width of Easement. The Easement shall be no greater than fifty (50) feet in width, as more particularly described on Exhibit A attached hereto and by this reference made a part hereof (the "**Easement Area**").

1.3. Single Pipeline. Grantee shall install no more than one pipeline upon or within the Easement Area.

1.4. Construction Right of Way. During the construction of the Pipeline, the easement and right-of-way granted herein shall include areas necessary for construction, construction operations, equipment and materials, as more particularly defined and set forth on Exhibit A (the "**Temporary Work Space**"). The combined width of the Easement Area and any Temporary Work Space shall be no greater than one-hundred ten (110) feet unless otherwise agreed to by the Parties. Grantee shall stake the outside boundary of the Temporary Workspace during construction. The stakes shall be located at a distance consistent with standard construction practices and at all times within a line of sight and at points of intersection. No construction or installation of the Pipeline, nor any other activities or operations of Grantee, including pipe storage, shall occur beyond or outside the boundaries of the Temporary Workspace and the Easement Area, unless otherwise agreed to by the parties. Use of the Temporary Workspace shall permanently expire upon completion of construction of the Pipeline and reclamation of the Temporary Workspace.

1.5. Notice of Location. Following completion of construction, Grantee may, and shall upon Grantor's request, further define the location of the Easement Area by recording a Notice of Location referring to this instrument and setting forth a legal description of the Easement Area and locating the pipeline contained therein, which description may be set forth by map attached to the Notice of Location. A copy of the Notice of Location shall be delivered to the Grantor.

1.6. Entry onto Land. Prior to entry upon Grantor's land, Grantee shall make reasonable attempts to notify Grantor. To minimize risk of damages or operational impacts, Grantee shall provide as much advance notice to Grantor

as is practicable. During continuous work activities such as construction projects, continuous notification is not required. Grantee shall notify Grantor upon completion of construction.

1.7. Access to Easement Area. After construction of the pipeline and the reclamation is complete, except in cases of emergency, Grantee shall not enter upon the lands of Grantor beyond the boundaries of the Easement Area without Grantor's prior consent. The determination of what constitutes an emergency is within Grantee's absolute discretion, but is subject to Grantor's right to compensation for all damages suffered as a result thereof. Grantee shall make reasonable efforts to advise Grantor of the emergency circumstances within twenty-four (24) hours following entry upon such lands.

1.8. Change of Location of Pipeline. Grantor and Grantee acknowledge that the actual location of the Easement Area may change because of various engineering and construction factors. Grantor shall execute and deliver to Grantee and, if necessary, in recordable form, any additional documents needed to correct the legal description of the Easement Area to conform with the actual location of the pipeline. Grantee need not obtain Grantor's permission to alter the location of the Easement Area or Temporary Work Space so long as the change of location is no greater than fifty (50) feet in any direction. In the event the Easement Area must be moved more than fifty (50) feet in any direction, Grantee shall obtain written approval from Grantor, which approval shall not be unreasonably withheld. Additional compensation shall be due only if the acreage encumbered increases. Any change in the location of the Pipeline that results in a decrease in the acreage encumbered by the Easement Area shall not result in Grantor being required to reimburse Grantee for any payments already made.

2. Grantor's Reserved Rights. Provided it does not in any manner materially interfere with or prevent the exercise by Grantee of its rights hereunder or create an actual or potential hazard to the Pipeline or its appurtenances, Grantor reserves for himself, his successors, heirs and assigns, the right to use the Property for any purpose, including agriculture, ranching, farming, grazing of livestock, or any other use which is necessary and incidental to ranching and other agricultural activities; developing surface or subsurface mineral, oil, or gas resources, or any other use which is necessary and incidental thereto; cutting timber; drilling and development of water for commercial or private use; hunting, fishing, and other recreational activities; and to otherwise fully use and enjoy the Property.

Grantor shall not drill wells, excavate, alter the ground elevation, construct any dam, or otherwise create a water impoundment within or over the Easement Area without prior written authorization of Grantee. Any existing structures and improvements located on the Property as of the Effective Date of this Agreement shall be allowed to remain or Grantee shall reasonably compensate Grantor for their replacement. Grantee shall make reasonable efforts not to disturb Grantor's

activities on the Property to the extent such activities are consistent with Grantee's rights under this Agreement.

Grantee hereby grants permission to Grantor to cross the Easement Area and Pipeline at any time with agricultural equipment necessary to carry out normal and customary cultivation of the Property. Grantee shall, if requested, implement measures so as to ensure the safe crossing of Grantor's farming equipment and livestock over the Easement Area and the Pipeline.

3. Grantee's Inspection. Grantee represents and warrants to Grantor that it and its representatives and employees have made or shall make their own independent inspection and investigation of Grantor's existing uses of the Property. Grantee acknowledges and agrees that Grantor's use of the Property, existing as of the Effective Date, is compatible and will not interfere with Grantee's intended use of the Property, subject to the provisions hereof.

4. Payments to Grantor. In consideration of the Easement and rights granted in this Agreement, Grantee shall pay to Grantor those amounts set forth in that certain Payment Addendum between Grantor and Grantee, dated as of the Effective Date (the "**Payment Addendum**"), which shall not be recorded herewith.

5. Liability for Improvements. Grantor shall have no liability for any costs or expenses incurred in connection with the siting, testing, construction, operation, maintenance, or removal of the Pipeline, or any other improvements of any kind made on the Property by Grantee. The rights granted to Grantee hereunder shall not be construed to create any responsibility on the part of Grantor to pay for any improvements, alterations or repairs occasioned by Grantee.

6. Grantee's Obligations.

6.1 Contact Information. Before, during, and after construction Grantee will provide Grantor contact information for the appropriate employees of Grantee with whom to discuss questions about the Pipeline, including its construction and operation.

6.2 Construction Liens. Grantee shall, at all times, keep the Property free and clear of all claims for and/or liens for labor and services performed, and materials, supplies or equipment furnished in connection with Grantee's use of the Property; *provided, however*, that if such a lien is filed against the Property, Grantee shall indemnify and hold Grantor harmless against the consequences thereof.

6.3 Compensation and Indemnity

(a) Grantee shall reasonably compensate Grantor for loss or damage to crops, pastures, fences, structures, improvements, waterlines, diversions, irrigation ditches, terraces, tile lines, tanks, timber, or any other damages to the Property, improvements, personal property or livestock caused by or resulting from Grantee's use or occupancy of the Easement Area and the Temporary Work Space, including damages due to installation, construction, operation, location, use, testing, repair, maintenance, removal or abandonment of the Pipeline.

(b) Grantee shall defend, protect, indemnify, and hold harmless Grantor, and pay all costs and expenses, including reasonable attorney's fees actually incurred by Grantor, from and against any and all judgments, fines, claims, actions, causes of action, penalties, costs, damages, injuries, expenses, or other liability of any kind arising from, out of, or as a result of any construction or operations, activities (including removal or abandonment of the Pipeline), actions or inactions of Grantee, its parent, subsidiary, and related companies and their officers, directors, employees, shareholders, agents, successors, assigns, attorneys, insurers, contractors, subcontractors, consultants, or any other person or entity acting through or under them, or any of them, including but not limited to the negligent, intentional, willful, or wanton exercise of the rights and privileges herein granted.

(c) Grantee shall promptly pay for all damage to any personal property, whether owned by Grantor or any successor, employee, agent, representative, assign, contractor, sublessee, grantee, licensee, invitee, guest, or permittee of Grantor, or any other person or entity that has obtained or hereafter obtains rights or interests from Grantor, which was caused by the operations, activities, actions or inactions of Grantee on the Easement Area or on Grantor's Property.

(d) The indemnity provisions herein shall survive the expiration or termination of this Agreement and/or the surrender of the Easement Premises to Grantor, shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy, and shall inure to the benefit of Grantor and any successor and assignee of Grantor and shall be binding upon Grantee and its successors and assigns.

6.4 Crop Damage. Should a growing crop, hay, grass or forage or rangeland be damaged or destroyed by Grantee during the construction, installation, use, operation, maintenance, or replacement of the Pipeline, including any damage resulting from the temperature of the Pipeline, Grantor shall be compensated at the then current market price based on the average production from the Property during the preceding five years.

6.5 Livestock. Grantee shall compensate Grantor for any injury or loss to Grantor's livestock resulting from construction or Grantee's operations and/or activities on the Property, at the then current market price for such livestock.

6.6 Conservation Reserve Program. Grantor agrees to timely notify the appropriate governmental agency of this Easement and its effect on any of Grantor's property enrolled in the Conservation Reserve Program. To the extent Grantee's construction of the Pipeline requires the removal of any of the Property from participation in the Conservation Reserve Program or any substantially similar government program in which it was enrolled and qualified on the Effective Date of this Agreement, Grantee shall reimburse Grantor for any penalties and reimbursement obligations levied against Grantor by the agency administering the program as a consequence of such removal. Grantor reserves the right to enroll in the Conservation Reserve Program, or any substantially similar program, or renew its enrollment, with regard to the Property. Grantor's failure to timely notify the appropriate governmental agency of entry into this agreement relieves Grantee of any liability under this paragraph.

6.7 Construction and Reclamation. Grantee shall, at a minimum and unless otherwise provided herein or by any more stringent applicable law, regulation, permit, or permit condition, whether promulgated now or in the future, comply with all provisions and requirements in the Grantee's Construction, Mitigation and Reclamation Plan ("CMR Plan") in the form incorporated into the Presidential Permit required under federal law.

By this reference, the CMR Plan incorporated into the Presidential Permit is incorporated herein; provided that in those instances in which the CMR Plan affords Grantee discretion to make a decision that impacts the interests of Grantor, Grantee shall have consulted with the Grantor and secured Grantor's consent.

Parties will enter into a Construction Agreement before construction begins on the Property, which, taking into account the provisions of the CMR Plan, this Agreement, and any applicable law, regulation, or permit condition, will address site-specific conditions and necessary modifications to anything contained in the CMR Plan.

Following the completion of construction, or upon removal of the Pipeline at the expiration, termination, or surrender of this Agreement, Grantee shall remediate the area disturbed by construction as best as practicable to its original preconstruction condition, in accordance with the CMR Plan, all applicable permits, laws and regulations. Reclamation and clean-up along the Easement Area shall be accomplished in a timely manner, as conditions permit.

Following is a non-exclusive list of the construction and reclamation obligations of the Grantee provided for in the CMR Plan, included in this Agreement for ease of reference, with modifications to those provisions made as necessary:

(a) Irrigation and Drainage. CMR Plan section 4.1. In addition, all existing irrigation, drainage and erosion control structures such as diversions, irrigation ditches, terraces, and tile lines shall be avoided by Grantee or in the alternative, appropriate measures shall be taken by Grantee to maintain the design and effectiveness of the existing structures. Where the Pipeline crosses agricultural drainage ditches, Grantee shall install the Pipeline in a manner that allows for ongoing operation and maintenance of all drainage ditches. After the Pipeline is installed, each drainage ditch shall be restored to its preconstruction configuration with erosion controls as needed, unless Grantor consents to alternative arrangements.

(b) Trash Cleanup. See CMR Plan sections 2.6, 2.10 and 4.12.

(c) Open Trench. Grantee shall use reasonable efforts to minimize the length of time that any section of pipeline trench is open.

(d) Erosion. See CMR Plan section 4.5 and 6.4. Grantee shall take reasonable steps to control erosion on the Property during construction and reclamation.

(e) Pipeline Depth. See CMR Plan section 2.9.

(f) Waterlines. If the Pipeline crosses a waterline, Grantee shall, at its expense, ensure that the waterline's depth is either maintained or the line is lowered and protected in a manner reasonably acceptable to Grantor. Grantee shall move waterlines that are parallel with the Pipeline out of the Easement Area, if Grantee requests, but shall not be responsible to compensate Grantor for damages to the Property that occur as a result thereof. If waterlines are interrupted, Grantee, at its expense, shall immediately supply water to Grantor until the original water supply has been restored. Before backfilling, Grantee shall determine whether any waterlines crossed during trenching were damaged during construction. Grantee shall use appropriate technology to probe open ends of lines, shall repair any damage, and prevent settling. If damage is extensive, broken lines shall be removed and replaced with new lines. Waterlines damaged during construction must be repaired to their preconstruction condition or better. If waterline relocation is necessary, Grantee shall work directly with Grantor to determine proper location.

(g) Gates and Fences. See CMR Plan sections 4.11.6 and 4.12. In addition, when reasonably possible, Grantee shall provide Grantor with forty-eight (48) hours notice to Grantor, before removing all fences from the Easement Area and the Temporary Work Space, as required for the construction of the Pipeline. If the work conducted by Grantee temporarily divides a livestock

pasture so that livestock are separated from the water supply, Grantee shall, at its expense, immediately provide an adequate water source for the livestock or alternatively compensate Grantor for providing water for livestock until such time the original source is restored.

(h) Removal of Trees. Grantee shall use reasonable efforts to avoid locating the Pipeline such that removal of mature trees shall be required.

(i) Topsoil. See CMR Plan sections 4.2 through 4.15.

(j) Seeding. See CMR Plan section 4.11.4.

(k) Revegetation. See CMR Plan sections 4.11 to 4.16. Grantee agrees to consult with Grantor to take such precautions as necessary to protect new vegetation, including in those instances where there is no reasonable alternative, fencing out of livestock; *provided that* Grantor's concerns such as livestock access to water or movement within a pasture shall be incorporated as necessary, and Grantee agrees to provide temporary water to livestock where temporary fencing has cut off the normal supply of water.

(l) Uneven Settling. If uneven settling occurs, sinking of topsoil, cracks in the surface, or surface water drainage problems develop as a result of Pipeline construction, Grantee, at its expense, shall provide corrective action to Grantor's reasonable satisfaction, or initiate negotiations for reasonable compensation to Grantor in lieu of additional work, all within forty-five (45) days of receiving Grantor's written notice, weather and soil conditions permitting.

(m) Dust Abatement. Grantee shall use dust abatement techniques on unpaved and unvegetated surfaces to minimize airborne dust. Grantee shall have a water truck on the Property at all times during construction to reduce dust generated by construction. Grantee shall cover open-bodied dump trucks carrying sand, soil, gravel, or other materials having the potential to be expelled out of the truck where necessary to prevent such materials from being expelled.

(n) Non-Crop Land Reclamation. Reclamation on non-crop land shall be deemed to be complete when: (1) the perennial species Grantor seeds on the reclaimed land are self-renewing under natural conditions prevailing at the site; (2) the total vegetation cover of perennial species (excluding noxious weed species) and any species in the approved seed mix is at least equal to the total vegetation cover of perennial species (excluding noxious weed species) on the reclaimed land before execution of this Agreement; (3) the species diversity and composition are suitable for the proposed post-construction land uses; and (4) the requirements in (1), (2) and (3) are achieved during one growing season, no earlier than the third full growing season on the reclaimed lands.

- (o) Cropland Reclamation. Reclamation on land used for production of crops shall be deemed complete when the land is tillable.
- (p) Noxious Weeds Management. See CMR Plan section 2.13.
- (q) Rock Removal. See CMR Plan sections 4.7, 4.9, and 4.11.2.
- (r) Decompaction. See CMR Plan section 4.6 and 4.11.1.

6.8 Location of Pipeline. Grantee will abide by all applicable laws and regulations with respect to siting its Pipeline. Grantee agrees to make reasonable efforts to locate aboveground installations (other than pipeline markers, corrosion protection test lead posts, and appropriate safety signage) adjacent to lot lines and as near as practicable to public road allowances, and in any event will comply with all applicable laws and regulations.

6.9 Water Wells. Should a water well be contaminated or its production be diminished in quantity and/or quality from Pipeline installation, operations, and/or removal, an equivalent water supply shall be immediately provided to Grantor and the water well shall be restored or replaced at Grantee's expense.

6.10 Cultural, Archaeological, or Paleontological Resources. Grantee acknowledges that, except as disclosed in writing by Grantor, neither Grantor nor any of its employees, agents, officers, directors or representatives has made any representations, warranties, or agreements to or with Grantee as to the location of any gravesite, cultural, archaeological, or paleontological resources on the Property. Grantee represents and warrants to Grantor that it has made or shall make its own independent paleontological inspection and investigation of the Property before construction begins to the extent it deems necessary. Grantee shall, at its expense, conduct a pre-construction field survey of each area identified by such inspection and investigation as a known site or high probability area. To the extent lawfully required, Grantee shall consult with the federal or state authorities regarding the existence of cultural, archaeological, or paleontological resources located on the Property. Grantee shall comply in all material respects with all laws, ordinances, statutes, orders and regulations of any governmental agency with regard to the location, identification, excavation, removal, disposition, or disturbance of any cultural, archaeological, or paleontological resources. If any cultural, archaeological, or paleontological resources are discovered by Grantee, Grantee shall promptly notify Grantor and, to the extent lawfully required, all appropriate governmental agencies. All construction and operations shall cease on that portion of the Easement Area and Temporary Work Space until any required approvals to recommence construction are obtained from the governmental agency with jurisdiction over the affected resource. Grantee shall make reasonable efforts to avoid the removal, excavation, or disturbance of any cultural, archaeological, and paleontological resources on the Property. Grantee acknowledges that any

cultural, archaeological, and paleontological resources discovered on the Property are not the property of the Grantee and shall be delivered to Grantor unless delivery would violate applicable local, state and federal law. Information concerning the nature and location of any cultural, archaeological, and paleontological resources shall remain confidential between Grantor and Grantee, to the extent permissible under applicable laws and regulations. Grantee shall be responsible for any costs that Grantor is legally obliged to incur as a consequence of the disturbance of a protected cultural, archaeological, or paleontological resource resulting from Grantee's construction or maintenance activities.

6.11 Hazardous Materials. Grantee at its expense shall comply with all applicable federal, state, and local laws, regulations, and ordinances governing Hazardous Materials. Hazardous Materials shall mean hazardous or toxic materials, wastes, substances, and/or pollutants, as defined or identified in federal, state, or local laws, rules, or regulations, whether now existing or hereinafter enacted. Grantee shall not use the Property or the Easement Area for treatment, emission, release, discharge, or disposal of Hazardous Materials. In the event of any emission, discharge, or release of any Hazardous Materials within the Easement Area, Grantee shall promptly undertake all environmental remediation required by applicable laws, rules, and/or regulations, and comply with orders, directives, or mandates of any local, state, or federal governmental or quasi governmental authority having jurisdiction over pollution, the protection or regulation of human health, natural resources, or the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, regulated, toxic, or hazardous substances into the environment (including, without limitation, ambient air, surface water, ground water or land or soil). Grantee's obligations under this Section shall survive the expiration or termination of this Agreement and/or the Easement.

6.12 Easement Area Maintenance. Grantee shall have the right to cut, keep clear, and remove all trees, brush, or shrubbery in the Easement Area that are reasonably deemed by Grantee to injure, endanger, or interfere in any manner with the efficient construction, operation, use, inspection, or maintenance of the Pipeline, or fittings, cathodic protection equipment, and other appurtenances thereto; *provided further*, that if Grantee either mows or cuts grass or crops of Grantor, Grantee is responsible for and shall compensate Grantor for such loss.

6.13 Notice to Grantor of Suits and Actions. Grantee agrees to promptly notify Grantor of any and all threatened, pending, or completed actions, suits, or proceedings, whether civil, criminal, administrative, or investigative in nature, involving or with regard to any activity or operation of Grantee on the Property.

6.14 Aerial Patrols. Aircraft owned or operated by Grantee shall maintain altitude in compliance with applicable laws and regulations.

Helicopters shall, except during emergencies, potential integrity or safety related situations, take reasonable care when hovering or landing near livestock.

7. **Assignment.**

7.1 Assignment by Grantor. Grantor, as used herein, shall mean, Dahlke Family Limited Partnership (50% undivided interest) Mann Family Limited Partnership (50% undivided interest), together with his/her/its heirs, executors, personal representatives, successors and assigns. With respect to Grantor's covenants and agreements under this Agreement, the term Grantor shall be limited to mean and include only the owner or owners of the fee title to the Property at the time in question and any successors, assigns or heirs.

7.2 Assignment by Grantee. Grantee may assign this Agreement and all rights hereunder without restriction. Notwithstanding any provision to the contrary contained herein, in no case shall the rights granted or conveyed to an assignee encumber Grantor's interest in this Agreement or Grantor's fee interest in the Property, other than the encumbrance resulting from this Agreement.

8. **Termination and Removal.**

8.1 Removal. Upon the termination or surrender of the rights and privileges provided for in this Agreement, Grantee shall, as soon as practicable thereafter, or within any period prescribed by applicable law or regulation, unless otherwise mutually agreed upon, (a) remove from the Property all above grade improvements and other personal property owned, located, installed or constructed by or on behalf of Grantee, (b) leave the surface of the Property free from debris arising from the foregoing or from the operations or activities of Grantee, and (c) otherwise reclaim any portion of the Property disturbed by Grantee to a condition reasonably similar to its original condition.

8.2 Quitclaim Deed. Upon the termination or surrender of the rights and privileges provided for in this Agreement, Grantee shall, at Grantor's request, execute, acknowledge, and record a quitclaim deed conveying all of Grantee's right, title, and interest in and to the Property, or to that part thereof as to which this Agreement has been terminated, to Grantor or Grantor's successor in interest, as the case may be. In the event that Grantee fails to execute and record a quitclaim deed as provided for in this Section within thirty (30) days of the Grantor's request, Grantor may either (i) evidence the termination of this Agreement by filing an affidavit with the county recorder or registrar of deeds attesting to the termination of this Agreement, or (ii) seek action against Grantee in a court of competent jurisdiction in order to obtain a release or termination of this Agreement and quiet title to the Property or portion thereof for which this Agreement has been terminated.

8.3 Abandonment of Pipeline. Abandonment of the Pipeline and the Easement shall occur if Grantee ceases to operate or maintain the Pipeline for the transportation of crude oil, natural gas, petroleum products or by products thereof, for a period of 5 consecutive years. Abandonment of the Pipeline shall not under any circumstance entitle Grantee to a refund of all or part of any compensation previously paid to Grantor. Upon the abandonment of the Pipeline, Grantee shall either:

(a) Remove the Pipeline from the lands, with full reclamation of the Easement Area on the Property; or

(b) Abandon the Pipeline in place in accordance with applicable regulations and law.

(c) The indemnity provisions hereof shall survive the expiration or termination of this Agreement and shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy and shall inure to the benefit of Grantor and any successor and assignee of Grantor and shall be binding upon Grantee and its successors and assigns.

9. Grantor's Liability. Grantor's liability for damaging the Pipeline shall be determined according to applicable law. Grantor shall not be liable or responsible for any damage to or release from the Pipeline that occurs as a result of normal and customary farming or livestock management practices, including damage to Grantee's machinery and equipment.

Grantor may limit his liability by obtaining an insurance policy that insures and indemnifies Grantor from and against claims, actions, demands, lawsuits, judgments, and payments of any kind arising from damage to the Pipeline. The policy shall have liability limits of not less than Two Million Dollars (\$2,000,000). If Grantor maintains such a policy in full force and effect during the term of this Agreement, Grantor's liability to Grantee shall be limited to the coverage limits of the policy.

However, if Grantor's acts or omissions (or the acts or omissions of persons for whom Grantor is legally responsible) are reckless, grossly negligent, willful or intentional, or if Grantor (or persons for whom the Grantor is legally responsible) did not comply with the statutory requirements of the one call notification or similar underground facilities locator program, or failed to timely request that Grantee locate the Pipeline, and doing so would have avoided the occurrence that resulted in the damages, the limitations on Grantor's liability provided for in this section of the Agreement shall not apply.

If Grantee determines, based on changes to the Consumer Price Index as published by the United States Department of Labor, Bureau of Labor Statistics, that the limits of Grantor's insurance policy should be increased because of the changed value of the dollar, it will accordingly give notice to Grantor, but not

more than once every five years. If Grantor fails to increase coverage to the limits provided for in the notice within ninety (90) days of receipt thereof, the limitations on Grantor's liability provided for in this section of the Agreement shall not apply.

10. All Other Applicable Regulations. Grantee shall comply with all applicable local, state, and federal permits, conditions, rules, and regulations relating to the Pipeline siting, construction, reclamation, operation, and/or decommissioning and abandonment, whether now existing or enacted, imposed or granted in the future. To the extent that such laws, rules, regulations and/or permits or permit conditions impose more stringent standards or a greater standard of protection than as set forth in this Agreement such laws, rules, regulations and/or permits shall govern the relationship of the Parties. Such permits, conditions, rules, and regulations shall not abrogate anything required by this Agreement, but are in addition to the terms hereof. Nothing herein constitutes a waiver of Grantor's rights and protections under any applicable permit, law, or regulation, in force now or in the future.

11. Miscellaneous.

11.1 Notice. All notices or other communications required or permitted hereunder, shall, unless otherwise provided herein, be in writing, and shall be delivered personally, by reputable overnight courier, or sent by registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

If to Grantor:

Dahlke Family Limited Partnership
HC 74 Box 75
Murdo, SD 57559

Mann Family Limited Partnership
HC 74 Box 74
Murdo, SD 57559

If to Grantee:

Tim M. Irons, Senior Land Coordinator
TransCanada Keystone Pipeline
717 Texas Street
Houston, TX 77002-2761
832-320-5294 (Phone)
832-320-6294 (Fax)
tim_iron@transcanada.com

Notice personally delivered shall be deemed given the day so delivered. Notice given by overnight courier shall be deemed given on the first business day following the date received by the owner. Notice mailed as provided herein shall be deemed given on the third business day following the postmarked date. Any Party may change its address for purposes of this subsection by giving written notice of such change to the other Party in the manner provided in this subsection.

11.2 Entire Agreement. Except to the extent otherwise provided herein, this Agreement constitutes the entire agreement between the Parties. No other agreements have been made modifying, adding to, or changing the terms

hereof. This Agreement may not be abrogated, modified, rescinded, or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and, when appropriate, duly recorded in the appropriate real property records. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party.

11.3 Force Majeure. If performance of this Agreement or of any obligation hereunder (other than an obligation to pay any compensation as set forth in the Payment Addendum) is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, Grantee, upon giving written notice to Grantor, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. Grantee shall continue performance hereunder whenever such causes are removed. Force Majeure shall mean causes beyond the reasonable control of and without the fault or negligence of Grantee, including but not limited to acts of God, flood, earthquake, storm, fire, lightning, explosion, power failure or power surge, vandalism, theft, epidemic, war, revolution, riot, civil disturbance, sabotage, and action or inaction by any federal, state or local legislative, executive, administrative agency or body which in any of the foregoing cases, by exercise of due foresight Grantee could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

11.4 Governing Law. This Agreement shall be governed by the laws of the State of South Dakota, and the venue of any action brought concerning the interpretation or enforcement of this Agreement shall be proper in the County in which the Property is located or the appropriate district court of the United States.

11.5 No Waiver. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under this Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity. No waiver of any right under this Agreement shall be effective for any purpose unless it is in writing and is signed by the Party hereto possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Agreement.

11.6 Interpretation. The Parties agree that the terms and provisions of this Agreement embody their mutual intent and that such terms and conditions are not to be construed more liberally in favor of, or more strictly against, either Party.

11.7 Other General Provisions. The covenants contained herein are made solely for the benefit of the Parties and their respective successors and

assigns, and shall not be construed as benefiting any person or entity who is not a Party to this Agreement, or otherwise give rise to any cause of action in any person or entity not a Party hereto. The duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Neither this Agreement nor any agreements or transactions contemplated hereby shall be interpreted as creating any partnership, joint venture, association or other relationship between the Parties, other than that of landowner and easement grantee, or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party.

11.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; *provided, however*, that all such counterparts shall together constitute one and the same instrument.

11.9 Submission of Agreement. The submission of this Agreement for examination does not constitute an offer to grant the easement contemplated herein, and this Agreement becomes effective only upon the full execution of this Agreement by the Parties.

11.10 Invalidity. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement.

11.11 Warranty. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

11.12 Relationship of Parties. Grantee and Grantor shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

11.13 Grantee's Employees. Grantee shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform Grantee's obligations under this Agreement, including all federal, state, and local income, social security, payroll, and employment taxes, and statutorily mandated workers' compensation coverage. None of the persons employed by Grantee, or any successor, employee, agent, representative, assign, contractor, sublessee, grantee, licensee, invitee, guest, or permittee of Grantee, shall be considered employees of Grantor for any purpose; nor shall Grantee represent to any person or entity that Grantee shall become an employee or agent of Grantor.

11.14 Good Faith, Fair Dealing and Reasonableness. The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) wherever the Agreement requires the consent, approval, or similar action by a Party, such consent, approval, or similar action shall not be unreasonably withheld or delayed, and (ii) wherever this Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

11.15 Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.

[remainder of page intentionally left blank]

1st IN WITNESS WHEREOF, Grantee has executed this Agreement as of the
day of December, 2010.

GRANTEE:

Sign: A. C. Osborne

Print: Alex Osborne
Authorized Signatory

Its: _____

GRANTEE:

Sign: Tim M. Irons

Print: Tim M. Irons
Authorized Signatory

Its: _____

STATE OF TEXAS:
SS

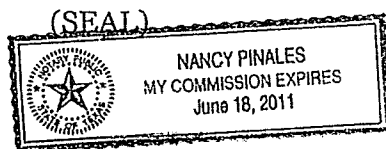
COUNTY OF HARRIS:

On this the 1st day of December, 2010, before me, the
undersigned officer, personally appeared Alex Osborne, known to me
or satisfactorily proven to be the person whose name is subscribed to the within
instrument and acknowledged that s/he executed the same for the purposes
therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Nancy Pinales

Notary Public



My Commission Expires: June 18, 2011

STATE OF TEXAS:
SS

COUNTY OF HARRIS:

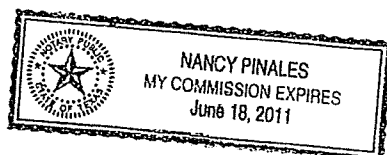
On this the 1st day of December, 2010, before me, the
undersigned officer, personally appeared Tim Irons, known to me
or satisfactorily proven to be the person whose name is subscribed to the within
instrument and acknowledged that s/he executed the same for the purposes
therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Nancy Pinales

Notary Public

(SEAL)



My Commission Expires: June 18, 2011

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the
12th day of November, 2010.

GRANTOR:

Mann Family Ltd Prtisbp
Betty Lou Mann

Print: Dahlke Family L.T.

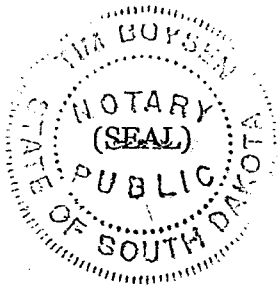
Sign: Earl Dahlke

Its: _____

STATE OF South Dakota
SS
COUNTY OF Jones

On this the 12th day of November, 2010, before me, the undersigned officer, personally appeared Betty Lou Mann & Earl Dahlke, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that s/he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Tim Boyesen
Notary Public

My Commission Expires: 12/26/15

EXHIBIT A

JONES COUNTY, SOUTH DAKOTA

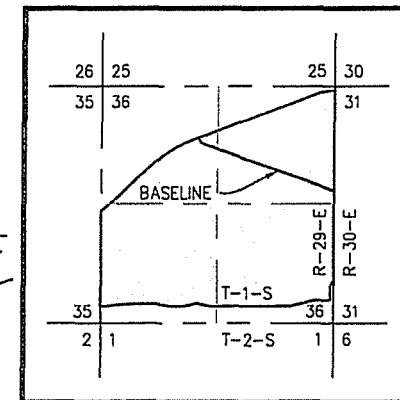
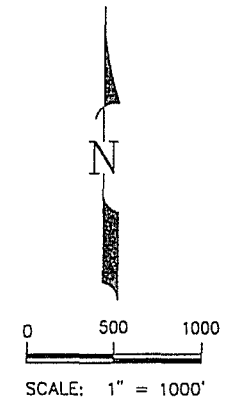
T-1-S, R-29-E, SECTION 36

ML-SD-JO-10670.000

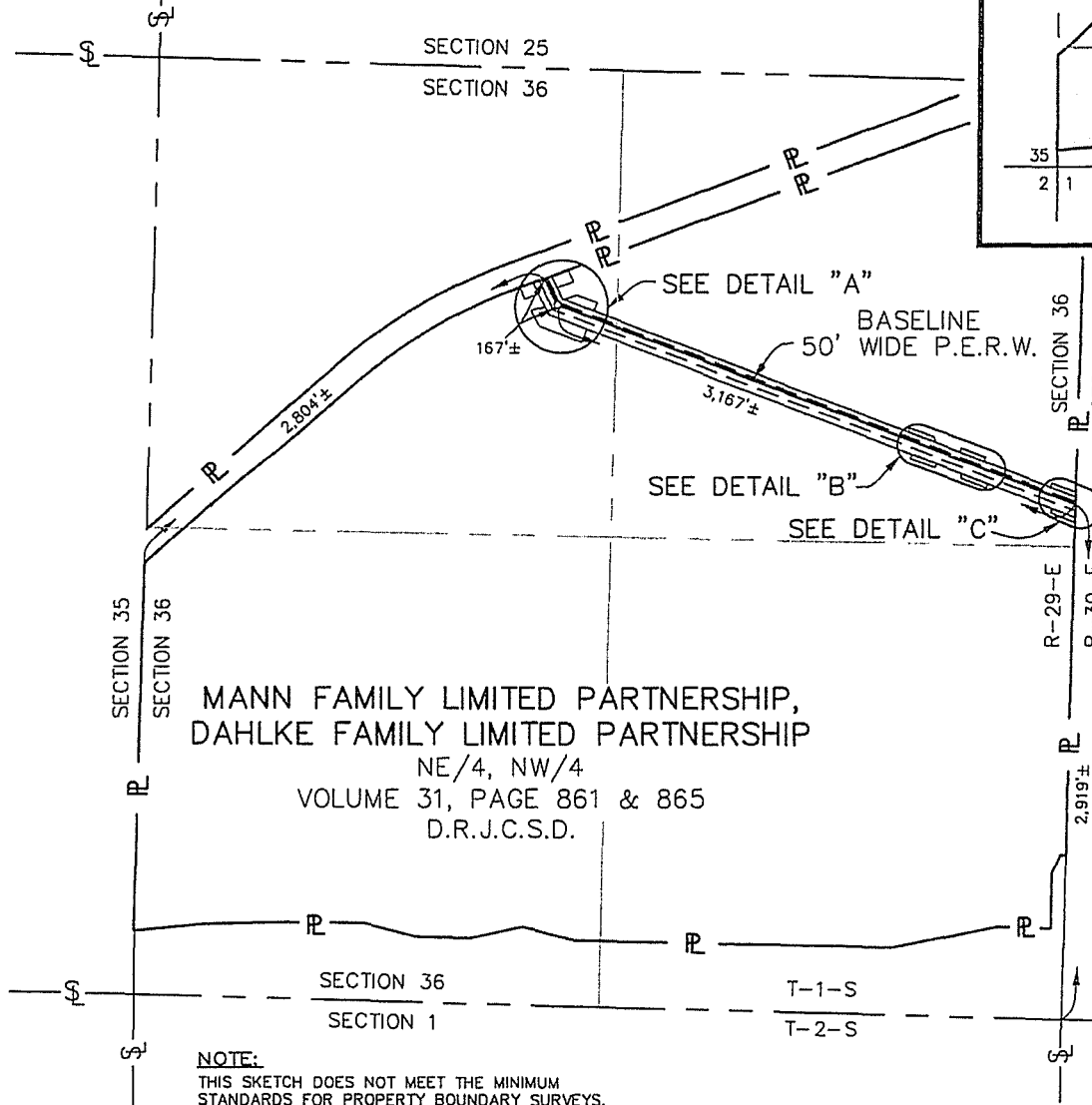
LEGEND

P
S
PROP.
A.T.W.S.
P.E.R.W.
D.R.J.C.S.D.

PROPERTY LINE
SECTION LINE
PROPOSED
ADDITIONAL TEMPORARY WORKSPACE
PERMANENT EASEMENT & RIGHT OF WAY
DEED RECORDS OF JONES COUNTY, SOUTH DAKOTA

VICINITY MAP
N.T.S.

TRACT LEGAL DESCRIPTION:
PORTION OF SECTION 36 LYING
SOUTH OF U.S. HWY. 16 &
NORTH OF INTERSTATE 90
SECTION 36,
T-1-S, R-29-E



MANN FAMILY LIMITED PARTNERSHIP,
DAHLKE FAMILY LIMITED PARTNERSHIP
NE/4, NW/4
VOLUME 31, PAGE 861 & 865
D.R.J.C.S.D.

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM
STANDARDS FOR PROPERTY BOUNDARY SURVEYS.
IT WAS NOT DERIVED FROM AN ON THE GROUND
SURVEY BUT IS INTENDED FOR RIGHT OF WAY
PURPOSES ONLY.

TOTAL DISTANCE ACROSS PROPERTY: 3,334'±
AREA OF PERMANENT EASEMENT: 3.8 ACRES
AREA OF TEMPORARY WORKSPACE: 4.6 ACRES
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 1.6 ACRES

SHEET 1 OF 2

EXHIBIT A

KEYSTONE 1963



KEYSTONE XL PROJECT

EASEMENT AREA

ACROSS THE PROPERTY OF
MANN FAMILY LIMITED PARTNERSHIP,
DAHLKE FAMILY LIMITED PARTNERSHIP
ML-SD-JO-10670.000

PROJECT: XL EXHIBIT A
APPROVED BY: JUMP DRAWING NUMBER: XL-08-ML-SK-1369

NO.	REVISION	DATE
1	ADDED A.T.W.S.	03/31/10
2	LINE CHANGE	04/30/10
3	LINE CHANGE	08/30/10
4	REVISED WORKSPACE	02/23/11

SCALE	DATE	DRAWN BY	CHECKED BY
1" = 1000'	05/21/09	JN	CPA



Trow

EXHIBIT A

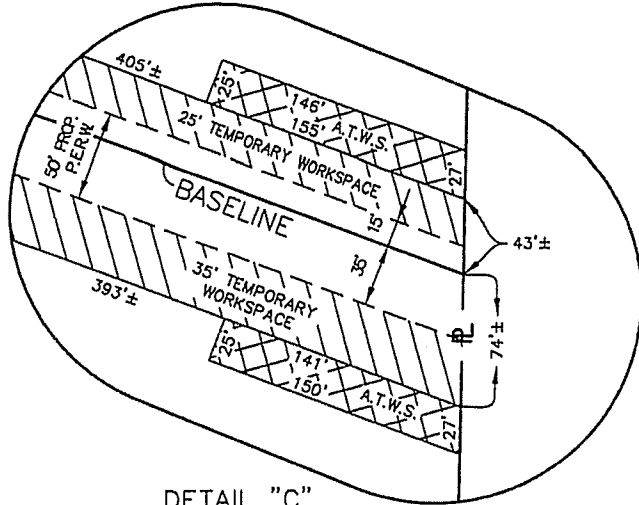
JONES COUNTY, SOUTH DAKOTA

T-1-S, R-29-E, SECTION 36

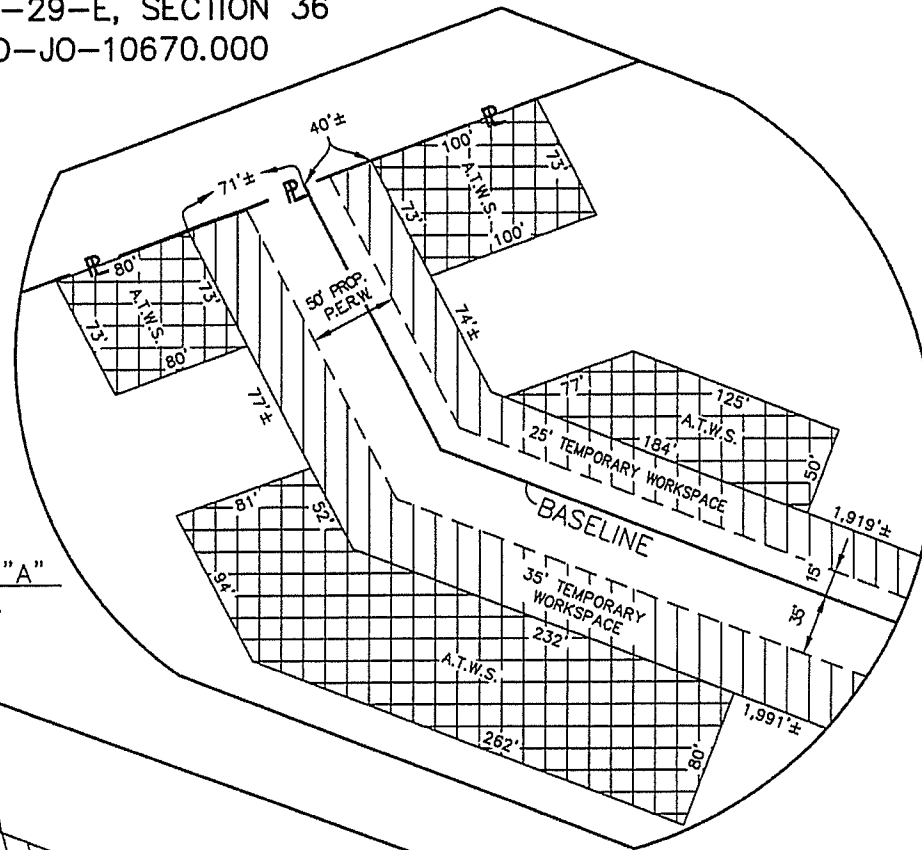
ML-SD-JO-10670.000

LEGEND

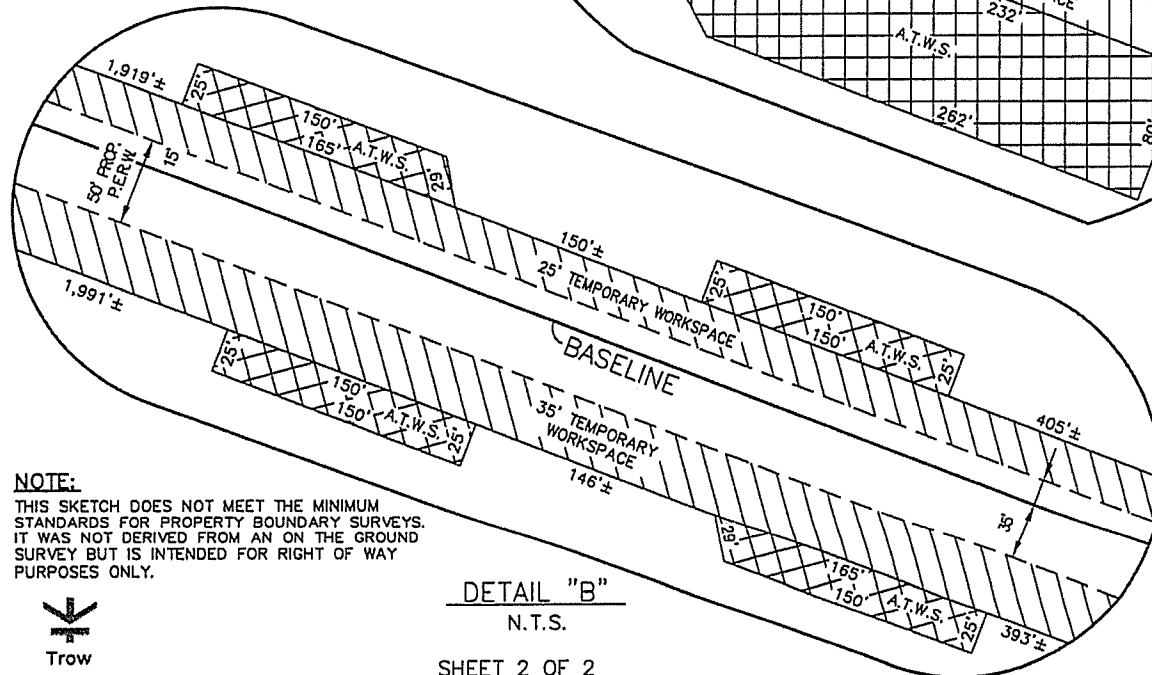
P. PROPERTY LINE
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



DETAIL "C"
N.T.S.



DETAIL "A"
N.T.S.



DETAIL "B"
N.T.S.

NOTE:

THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN ON THE GROUND SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY.



Trow

SHEET 2 OF 2
EXHIBIT A

KEYSTONE 1964

G:\2000DraftingandGIS\CADFiles\Drawings\Property Sketches\CAD FILES\SD\JONES\ML-SD-JO-10670.000_REV4.dwg, 2/25/2011 8:18:23 AM, frankline



KEYSTONE XL PROJECT
EASEMENT AREA
ACROSS THE PROPERTY OF
MANN FAMILY LIMITED PARTNERSHIP,
DAHLKE FAMILY LIMITED PARTNERSHIP
ML-SD-JO-10670.000

PROJECT:		EXHIBIT A	
XL			
APPROVED BY		DRAWING NUMBER	
JMP		XL-08-ML-SK-1369	
NO.	REVISION		DATE
1	ADDED A.T.W.S.		03/31/10
2	LINE CHANGE		04/30/10
3	LINE CHANGE		08/30/10
4	REVISED WORKSPACE		02/23/11
SCALE		DATE	DRAWN BY
N.T.S.		05/21/09	JN
			CPA

EXHIBIT B

Situated in the County of Jones and State of South Dakota, to wit:

Township 1 South Range 29 East

Section 36: PORTION OF SECTION 36 LYING SOUTH OF HWY 16 & NORTH OF
INTERSTATE 90

Containing 455 acres, more or less, as recorded in Book 31, Page 861 & 865, Deed
Records of Jones County, South Dakota

ML-SD-JO-10670.000

KEYSTONE 1965

004166

004167

:

EXHIBIT B

Situated in the County of Jones and the State of South Dakota, to wit:

Township 1 South, Range 30 East

Section 31: W/2 NW/4

Containing 69.00 acres, more or less, as recorded as Volume 31, Pages 861 and 865, Deed
Records of Jones County, South Dakota

MI.-SD-JO-10692.000

KEYSTONE 1967

004168