

Construction began in 1991. In 1994, the Mni Wiconi statute was amended by Pub. L. No. 103-434, Title 8, to include core pipeline extensions to the Lower Brule and Rosebud reservations.

Two core pipelines were constructed. One pipeline, constructed from PVC plastic pipe, runs due west from the Ft. Pierre treatment plant to Haakon County, then south to a terminus in Haakon County. The other core pipeline is a twenty-four inch steel pipeline running south from the Ft. Pierre water treatment plant, then west, roughly paralleling Interstate 90 to near Kadoka, then southwesterly to Pine Ridge. Lower Brule is served by a core line extension that intersects the steel pipeline south of Pierre. Rosebud is served by an extension that intersects the steel pipeline near Murdo. Taylor Declaration, Ex. 1.

The Mni Wiconi core pipelines supply water to four retail rural water systems, the West River/Lyman-Jones Rural Water System, Inc., the Lower Brule Rural Water System, the Rosebud Rural Water System, and the retail portion of the OSRWSS on the Pine Ridge Reservation. Taylor Declaration, Ex. 1.

Lyman-Jones and West River rural water systems merged into a single water system in 1993. <http://www.wrlj.com/about-us-2/history/>. The merged water systems receive water from the steel pipeline and from the PVC pipeline and serve retail customers from a network of distribution lines in a multi-county area, including all or parts of Stanley, Lyman, Jones, Haakon, Jackson, Mellette, and Pennington counties. <http://www.wrlj.com/about-us-2/service-area-map/>. The merged West River/Lyman-Jones Rural Water System, Inc., is a non-profit utility headquartered in Murdo and managed by a board of directors. <http://www.wrlj.com/>.

The proposed Keystone KXL Pipeline will cross the Mni Wiconi core pipelines twice. It crosses the PVC line in Haakon County and the steel pipeline in Jones County. The KXL

Pipeline crosses more than a dozen West River/Lyman-Jones retail distribution lines². It does not cross any Lower Brule, Rosebud, or OSRWSS retail distribution lines. Taylor Declaration.

Public Law 100-516, section 3(e), provides

(e) Title to System.—Title to the Oglala Sioux Rural Water Supply System shall be held in trust for the Oglala Sioux Tribe by the United States and shall not be transferred without a subsequent Act of Congress.

The United States delegated its trust responsibility to Department of the Interior, Bureau of Reclamation (“BOR”). The Dakotas Area Office of the BOR in Bismarck manages the United States trust responsibility for the OSRWSS. The Dakota Area Office is supervised by the Great Plains Region Office of the BOR in Billings.

The BOR acquired easements for the construction and placement of the two core Mni Wiconi pipelines from private landowners. The easements and the rights associated with the easements are held in trust for the Oglala Sioux, per their terms and PL 100-516. The BOR easements permit construction of the Mni Wiconi core pipelines on the Hostutler property in Haakon County and the Dahlke-Mann property in Jones County. Both easements name the United States Bureau of Reclamation as the easement grantee. Taylor Declaration, Exhibits 2 and 3.

The Keystone KXL Pipeline will cross the PVC portion of the Mni Wiconi core pipeline on the Hostutler property in Haakon County and the steel core line on the Dahlke-Mann property in Jones County. Keystone has acquired easements for its pipeline from both property owners, Taylor Declaration Exhibits 4 and 5.

² Keystone has entered into a contract with West River/Lyman Jones Rural Water System authorizing the pipeline to cross various distribution lines. The contract identifies the locations and addresses engineering of the crossings and payment of the costs involved.

2. Keystone is not required to deal with the Oglala Sioux with respect to the crossings

The Mni Wiconi genesis statute, PL 100-516, provides that the United States will own the core pipelines and the easements, but will hold the easements in trust for the benefit of the Oglala Sioux Tribe. The statute provides, in section 3(e)

(e) Title to System.—Title to the Oglala Sioux Rural Water Supply System shall be held in trust for the Oglala Sioux Tribe by the United States and shall not be transferred without a subsequent Act of Congress.

The Hostutler easement provides

. . . the United States of America, represented by the officer executing this contract [is] hereinafter referred to as the GRANTEE. The acquiring federal agency is the Department of Interior, Bureau of Reclamation.

The Dahlke-Mann easements provide that they are between the Grantor land owner and

. . . the United States of America, acting through the Department of the Interior, Bureau of Reclamation hereinafter referred to as the GRANTEE, represented by the officer executing [the] contract.

Nothing in the BOR easements on the Hostutler and Dahlke-Mann properties requires Keystone to deal with the Oglala Sioux or any other tribe. The easements describe the Bureau of Reclamation as the easement Grantee, not the Oglala Sioux. Nothing in the genesis statute or any of its subsequent amendments³ modifies the ownership of the easement or the pipeline or requires that Keystone secure the consent of the Tribes to cross the easement premises or pipeline.

3. South Dakota Law permits Keystone to cross the Mni Wiconi

The easements are not exclusive to the United States. Both easements provide

³ The original Mni Wiconi statute has been amended several times since its enactment. The most significant amendment was the addition of the Lower Brule and Rosebud extensions in 1994, PL 103-434, Title 8. Subsequently the act has been amended to re-authorize the project and to fund the build out of retail distribution lines on the reservations.

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 . . .

The BOR easements don't grant the United States exclusive control over the easement premises. In *Canyon Lake Park, LLC v. Loftus Dental, PC*, 700 N.W.2d 729, 734 (S.D. 2005), the South Dakota Supreme Court held "The terms and extent of an easement by grant are ascertained either by the words clearly expressed, or by just and sound construction of the easement document." Under South Dakota law the scope of an easement is determined by the words used in the easement document.

In *Picardi v. Zimmond (Picardi II)*, 693 N.W.2d 656 (S.D. 2005), the South Dakota Supreme Court considered whether a road easement was exclusive to the easement holder, and what rights the easement grantor retained relative to the easement property. The court held "[w]e look first to the language and nature of the easement agreement and its terms. . . . If the terms of the agreement are specific in nature, the terms are decisive of the limits of the easement." The court held "[t]he grantor of an easement, who is also the owner in fee of the servient tenement . . . retain[s] all incidents of ownership over the property not specifically contracted away."⁴ (citing *Picardi v. Zimmond (Picardi I)*, 689 N.W.2d 886 (S.D. 2004)).

The court, citing *Knight v. Madison*, 634 N.W.2d 540, 543 (S.D. 2001), held "[t]he owner of the servient tenement generally reserves the right to use the easement property in any manner or for any purpose, so long as the owner does not interfere with the use or enjoyment of the easement." The court concluded "[o]ur law is clear that the owner of the servient tenement

⁴ Per SDCL 43-13-3, the land on which the burden of an easement is laid is called the servient tenement.

retains all the incidents of ownership in the easement . . . the grant of an easement does not dispossess the landowner.”

In *Picardi I, supra.*, the Supreme Court considered whether an easement could be considered exclusive absent language to that end. The Court held “[i]t is illogical that a grantor of an easement would grant away all benefits to his or her property including actual access thereto and retain all detriments such as the legal obligation for real estate taxes.” The court required exclusivity to be spelled out in the easement document, holding “[f]or such an unusual situation to arise, the nature of the grant would have to be explicit and not implied.”

In *Knight v. Madison, supra.*, Knight held an access easement over Madison’s land. Knight challenged Madison’s right to use the land and claimed the exclusive right to control the easement property. The court ruled that land owner Madison’s rights include “. . . granting additional easements over the property, so long as the additional uses do not interfere with . . .” the easement holders use of his easement. The Court further noted that the landowner could make use of the easement property “. . . so long as the owner does not interfere with the use of enjoyment of the easement.”

In *Stanga v. Husman*, 694 N.W.2d 716 (S.D. 2005), the South Dakota Supreme Court discussed post-grant uses by the owner of the easement. The court cited the Restatement (Third) of Property (Servitudes) § 4.8 (2000) for the proposition that the owner may modify the easement premises if “those modifications are reasonable and do not significantly lessen the utility of the easement, increase the burdens on the owner of the dominant tenement, or frustrate the purpose for which the easement was created.” *Stanga*, 694 N.W.2d at 719.

The Restatement (Third) of Property (Servitudes) § 4.12 (2000) provides

“[u]nless the terms of the servitudes . . . provide otherwise, holders of separate servitudes creating rights to use the same property must exercise their rights so

that they do not unreasonably interfere with each other. In the event of irreconcilable conflicts in use, priority of use rights is determined by priority in time.”

The illustrations in the Restatement official comments include

O, the owner of Blackacre, granted Pipeline Company an easement for installation and maintenance of a high pressure natural gas pipeline. Subsequently, O granted A, the owner of Whiteacre, an easement to build a road across Blackacre to Whiteacre. A took the easement with notice of the pipeline easement. The road will necessarily cross the pipeline. In the absence of other facts or circumstances, Pipeline Company and A must each act reasonably to avoid unreasonable interference with the other, but if A’s road will unreasonably interfere with operation of the pipeline, A must bear the expenses required to lower or strengthen the pipeline, or otherwise avoid the interference because A’s interest is later in time.

Nothing in the BOR easements granted the United States exclusive use of the burdened property. Under South Dakota law, Hostutlers and Dahlke-Mann may therefor grant TransCanada a subsequent easement involving the same property, provided the additional easement does not interfere with BOR’s use of its easement.

4. The Tribe’s remedy is in the Federal courts

If the Oglala Sioux claim that the United States has breached its trust responsibility by not objecting to Keystone crossing the Mni Wiconi core pipelines, the Tribe’s remedy is not with the South Dakota Public Utilities Commission. Federal law affords the Tribes’ remedies against the Bureau of Reclamation for any claimed breach of trust responsibility with respect to the Mni Wiconi crossings. The Indian Tucker Act, 28 U.S.C § 1505, provides

The United States Court of Federal Claims shall have jurisdiction of any claim against the United States accruing after August 13, 1946, in favor of any tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska whenever such claim is one arising under the Constitution, laws or treaties of the United States, or Executive orders of the President, or is one which otherwise would be cognizable in the Court of Federal Claims if the claimant were not an Indian tribe, band or group.

The federal Administrative Procedures Act, 5 U.S.C. § 702 *et seq.* allows the Tribes to sue an agency of the United States for actions that are “. . . an abuse of discretion, or otherwise not in accordance with law.” See 5 U.S.C. § 706(2)(A).

If the Tribes and Mr. Dorr believe the Bureau of Reclamation acted improvidently and/or failed to communicate with the management of the Oglala Sioux Rural Water Supply System or with other tribes regarding the subject crossings, the affected parties remedy is in federal court, not before the PUC.

5. The PUC does not have authority to decide whether KXL can cross the Mni Wiconi

The South Dakota Public Utility Commission is a quasi-judicial agency, created with limited jurisdiction. Our Supreme Court has said that the PUC has no authority to define or interpret the law. In *In the Matter of the Petition of West River Electric*, 675 N.W.2d 222, 230 (S.D. 2004), the Court held “The PUC is not a court, and cannot exercise purely judicial functions. Defining and interpreting the law is a judicial function.”

The PUC simply does not have jurisdiction to hear and decide questions regarding the rights of the Tribes to consultation on the Mni Wiconi crossing, the rights of the BOR versus the landowners who granted BOR and KXL easements, or the nuances of the BOR and KXL relationships.

6. Conclusion

For all of the foregoing reasons, testimony regarding the relationship between the Tribes, BOR and Keystone regarding crossing the Mni Wiconi pipeline should be excluded. Keystone prays the Commission enter an order to that end.

Dated this 26th day of May 2015.

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Attorneys for Applicant TransCanada

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0

HP 14-001

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

AFFIDAVIT OF WILLIAM TAYLOR
IN SUPPORT OF MOTION
TO PRECLUDE TESTIMONY
REGARDING MNI WICONI
EASEMENTS

0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF MINNEHAHA)

William Taylor, having been first duly sworn on oath, deposes and says:

- 1. I am one of the attorneys for Applicant Keystone Pipeline LP.
- 2. Exhibit 1 is a map of the Oglala Sioux Rural Water Supply System that I received in 2011 from officials with the Dakotas Area Office of the Bureau of Reclamation in Bismarck, North Dakota. The map shows the Mni Wiconi core pipelines and the service areas for the four rural water systems served by the Mni Wiconi pipelines, namely West River Lyman/Jones, Lower Brule, Rosebud, and Oglala Sioux Rural Water Supply System.
- 3. The proposed Keystone XL Pipeline will cross the PVC portion of the Mni Wiconi core pipeline on the Hostutler property in Section 8, Township 2N, Range 23E of the Black Hills Meridian, Haakon County, South Dakota.
- 4. The proposed Keystone XL Pipeline will cross the steel portion of the Mni Wiconi core pipeline on the Dahlke-Mann property in Section 36, Township 1S, Range 29E of the Black Hills Meridian, Jones County, South Dakota.

5. Exhibit 2 is an easement between the Bureau of Reclamation and the Hostutlers pertaining to the Mni Wiconi core pipeline on the Hostutler property in Haakon County.

6. Exhibit 3 is an easement between the Bureau of Reclamation and the Dahlke-Mann partnerships pertaining to the Mni Wiconi core pipeline on the Dahlke-Mann property in Jones County.

7. Exhibit 4 is an easement between the Hostutlers and Keystone pertaining to the Haakon County property mentioned above.

8. Exhibit 5 is an easement between Keystone and the Dahlke-Mann partnerships pertaining to the Jones County property mentioned above.

9. The proposed Keystone XL pipeline will not cross any of the extension of the Mni Wiconi core pipeline that runs to Rosebud or Lower Brule and will not cross any Rosebud or Lower Brule rural water system distribution or service lines.

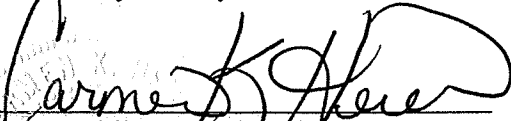
Dated this 26th day of May 2015.



William Taylor

Subscribed and sworn to before me

this 26th day of May 2015.

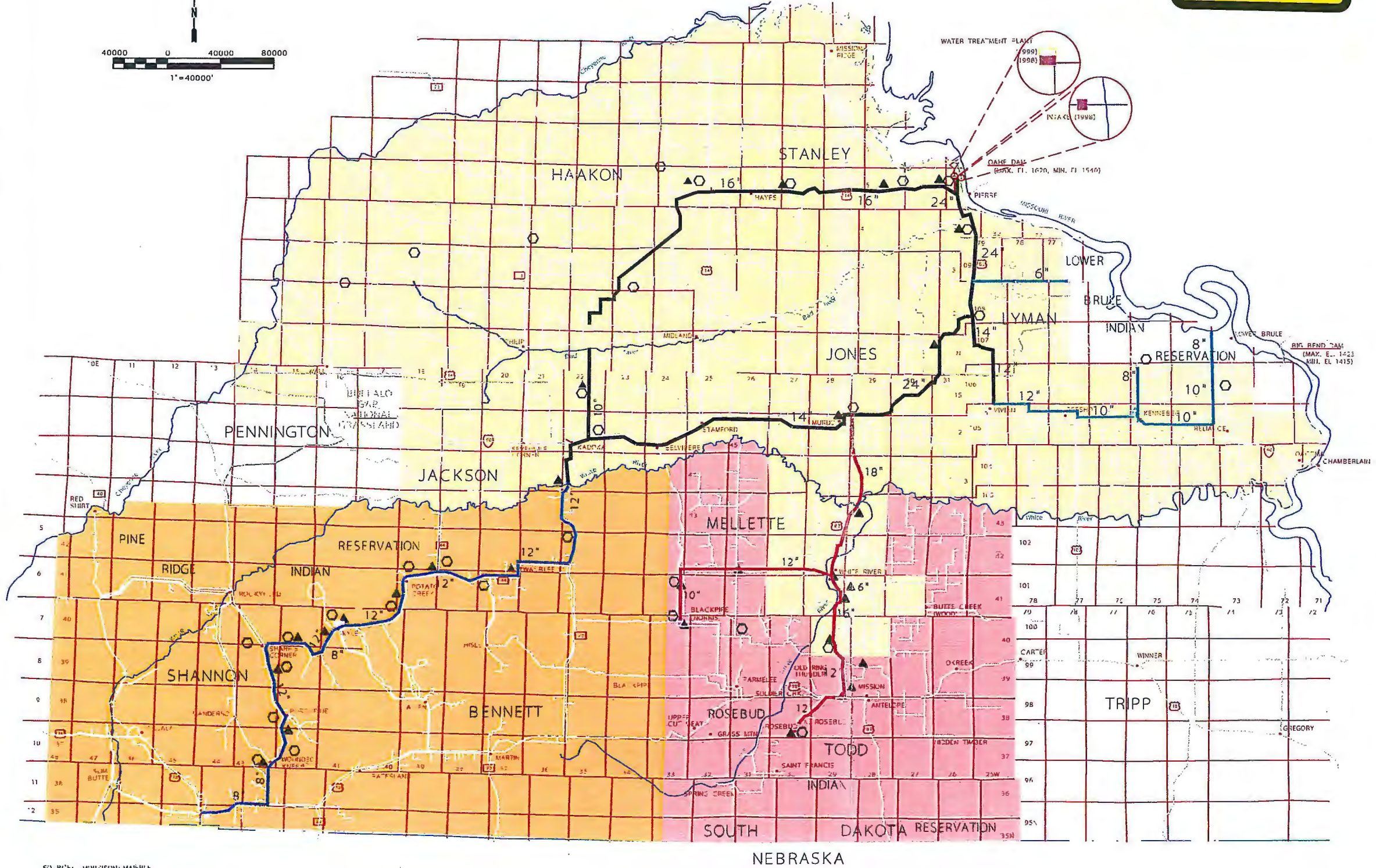
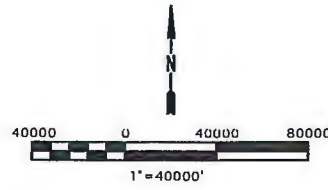
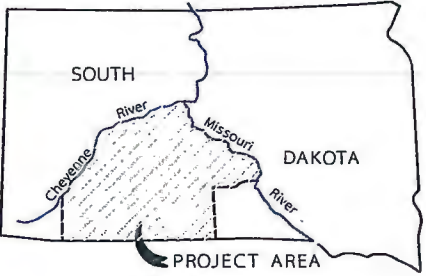


Notary Public—South Dakota

My commission expires:

CARMEN K. HEIER
NOTARY PUBLIC, SOUTH DAKOTA
My Commission Expires
March 27, 2019

EXHIBIT
1



- SERVICE AREA LEGEND**
- OGLALA SIOUX RURAL WATER SYSTEM SERVICE AREA
 - WR/L-J RURAL WATER SYSTEM SERVICE AREA
 - ROSEBUD RURAL WATER SYSTEM SERVICE AREA
 - LOWER BRULE RURAL WATER SYSTEM SERVICE AREA

- LEGEND**
- OST CORE PIPELINE - OFF RESERVATION
 - OST CORE PIPELINE - ON RESERVATION
 - LBST CORE PIPELINE
 - RST CORE PIPELINE
 - RESERVOIR
 - PUMP STATION

US BUREAU OF RECLAMATION

MNI WICONI RURAL WATER SUPPLY PROJECT

AUTHORIZED FINAL ENGINEERING REPORT
CORE PIPELINE SYSTEM

OCTOBER 1999

FIGURE 1

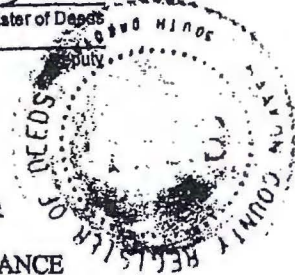
SOURCE: MNR-ROSON-MAIENHLE

07-096

Prepared for Recording By:
West River/Lyman Jones Rural
Water Systems Inc.
P.O. Box 407
Murdo, S.D. 57559
Phone 1-605-669-2931

44142
State of South Dakota }
County of Haakon }
Filed for record in this office on the 28 day
of February 2007 9:45 o'clock A.M.
and was recorded as Document No. 07-096
on Microfilm *Rayl S. Sidel*
\$14 Pd. By _____
Register of Deeds

TRACT NO. PRDG-COR-261-1-(E)
CONTRACT NO. 07-LA-100-5983



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE
GRANT OF EASEMENT
OGLALA SIOUX RURAL WATER SUPPLY SYSTEM

This Grant of Easement, made this 6th day of October, 2006, pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388), October 14, 1940 (34 Stat. 1119), December 22, 1944 (58 Stat. 887), October 24, 1988 (102 Stat. 2566), as amended or supplemented, and other relevant federal statutes, is between
Tract One: Glen H. Hostutler and Carolyn Joyce Hostutler, as tenants in common, each an undivided one half interest.
Tract Two: Glen H. Hostutler, 51% interest and Carolyn Joyce Hostutler, 49% interest as tenants in common.
hereinafter referred to as the GRANTOR and the United States of America, represented by the officer executing this contract hereinafter referred to as the GRANTEE. The acquiring federal agency is the Department of Interior, Bureau of Reclamation.

In CONSIDERATION of the sum of One Dollar, receipt of which is hereby acknowledged, and the mutual covenants and agreements set forth herein, the GRANTOR hereby grants unto the GRANTEE, its assigns, authorized agents, and contractors, a perpetual design, construction, operation, maintenance and replacement Easement for an underground water pipeline and distribution system and any necessary surface appurtenances on, over, under, or across all that real property situated in the County of Haakon, State of South Dakota, and described as follows:

- Tract One: Lots One and Two and the South Half of the Northeast Quarter of Section Four in Township Two North, Range Twenty Three East of the Black Hills Meridian, Haakon County, South Dakota.
- Tract Two: East Half of Section Thirty Three in Township Three North, Range Twenty Three East of the Black Hills Meridian, Haakon County, South Dakota.
- And
South Half of Section Five; North Half of Section Eight all in Township Two North, Range Twenty Three East of the Black Hills Meridian, Haakon County, South Dakota.

Following construction, the easement shall consist of a strip of land being 75 feet wide extending 37.5 feet on each side of the pipeline as constructed. This land shall hereinafter be referred to as the "Premises".

1. The purpose of this underground or buried pipeline easement is to provide for the delivery of water to the West River/Lyman-Jones Rural Water Systems, Inc., to the Oglala Sioux Rural Water Supply System, to the Rosebud Sioux Rural Water Supply System and to the Lower Brule Sioux Rural Water Supply System and others in the manner, quantity and of a quality as provided for by Public Law 100-516, as amended. This easement grants to the GRANTEE the perpetual easement and right-of-way to locate, lay out, survey, construct, use, inspect, operate, maintain, repair, patrol, replace and/or remove an underground or buried pipeline and related facilities for a municipal, rural, and industrial water distribution system and any necessary surface appurtenances including, but not limited to, surface vents, vacuum blowoff vents or reliefs, hydrants or valves and manholes on, over, under, or across the Premises described above.



07-096

2. The grant of easement herein contained is subject to existing rights-of-way of any nature recorded in the Haakon County records.

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.

4. GRANTOR grants and guarantees to give the GRANTEE the perpetual right of ingress and egress during the period of design and construction and at any such time thereafter as may be necessary for the inspection, operation, maintenance, or replacement of the above-mentioned water pipeline and distribution system.

5. As part of the consideration for the Grant of Easement the GRANTEE agrees to provide for the delivery of water to West River/Lyman Jones Rural Water Systems, Inc. in the manner, quantity, and of a quality as provided for by Public Law 100-516 as amended, and any agreements entered into between the West River/Lyman Jones Rural Water Systems, Inc., and the Bureau of Reclamation representing the Secretary of the Interior, pursuant to said Act. The GRANTOR hereby releases the GRANTEE, its successors and assigns of all obligations to have an appraisal prepared to determine the amount of just compensation for the easement rights herein granted.

6. The GRANTEE, its successor and assigns, further agrees

a. to reclaim the Premises and improvements disturbed by the design, construction, operation, maintenance, and replacement of the above mentioned water pipeline and distribution system and restore the land and any improvements as near as reasonably possible to its' condition prior to the disturbance. Improvements include, but may not necessarily be limited to fences, roads, structures, and curbs. 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 design, construction, operation, maintenance or replacement of said pipeline, and facilities, any injury is necessarily done to the appurtenances, it will repair or replace the same and/or will pay the Grantor for such injury.

b. to exercise due care and diligence in the exercise of the rights and privileges herein granted.

7. 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." By this grant of easement, the GRANTOR does not intend to make or recognize the easement as "Indian Country."

8. No abandonment by the GRANTEE of said underground water distribution pipeline system and rights-of-way herein granted shall be deemed to have occurred, unless a subsequent Act of Congress declares it to be so, and provides that the easement herein granted shall end, cease, and terminate.

9. The GRANTOR warrants that the GRANTOR has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the United States the right to annul this contract. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the GRANTOR for the purpose of securing business with others than the United States.

10. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise here from, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

11. Where the operations of the contract extend beyond the current fiscal year, it is understood that the contract is made contingent upon Congress making the necessary appropriation for expenditures there under, after such current year has expired. In case such appropriation as may be necessary to carry out

07-096

this contract is not made, the GRANTOR hereby releases the GRANTEE from all liability due to failure of Congress to make such appropriation.

Special Conditions

1.) The Grantor and Grantee acknowledge that terms and conditions including location for a storage reservoir are addressed under separate agreement of this same date and take precedence over any conflicting agreement herein.

2.) No above ground pipeline appurtenances, specifically blow off hydrants or air release valves, will be located in existing cropland fields.

GRANTOR(S):

Glen H. Hostetter 10-6-06 date
Carolyn Joyce Hostetter 10-6-06 date

UNITED STATES OF AMERICA:
Dennis E. Britzman, Area Manager 11/13/06 Date

ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF Haakon)

On this 6th day of October in the year 2006, before me, a Notary Public, personally appeared

Glen H. Hostetter
Carolyn Joyce Hostetter
known to me or satisfactorily proven to be the person(s) who executed the within instrument, and acknowledged that they executed the same.

In Witness whereof I hereunto set my hand and official seal.
Tim Boyesen
Notary Public for South Dakota Residing at Pierre My Commission Expires 12-26-09

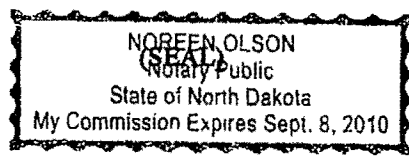
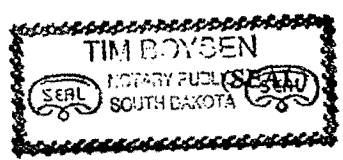
ACKNOWLEDGMENT

STATE OF NORTH DAKOTA)
COUNTY OF Burleigh)

On this 13th day of November in the year 2006, before me, a Notary Public, personally appeared

Greg Gure
known to me or satisfactorily proven to be the person(s) who executed the within instrument, and acknowledged that he executed the same. In Witness whereof I hereunto set my hand and official seal.

Noreen Olson
Notary Public for North Dakota Residing at Bismarck My Commission Expires 9-8-2010



TRACT NO. PRDG-COR-102-106-1-(E) B
CONTRACT NO. 00-LA-60-13510 B



STATE OF SOUTH DAKOTA } SS.
County of Jones

Filed for record this 29 day of
November 20 01

4:40 o'clock P M. and recorded
in Book 17 Misc page 599-603
Anna Hunt, Dep Register of Deeds
Fee \$18.00

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE
GRANT OF EASEMENT
OGLALA SIOUX RURAL WATER SUPPLY SYSTEM

This Grant of Easement, made this 19th day of May, 2000, pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388), October 14, 1940 (34 Stat. 1119), December 22, 1944 (58 Stat. 887), October 24, 1988 (102 Stat. 2566), as amended or supplemented, and other relevant federal statutes, is between the United States of America, acting through the Department of the Interior, Bureau of Reclamation, hereinafter referred to as the GRANTEE, represented by the officer executing this contract, and Mann Family Limited Partnership hereinafter referred to as the GRANTOR.

In CONSIDERATION of the sum of One Dollar, receipt of which is hereby acknowledged, and the mutual covenants and agreements set forth herein, the GRANTOR hereby grants unto the GRANTEE, its assigns, authorized agents, and contractors, a perpetual design, construction, operation, maintenance and replacement Easement for an underground water pipeline and distribution system and any necessary surface appurtenances on, over, under, or across all that real property situated in the County of Jones, State of South Dakota, and described as follows:

That Part of the West Half of Section Thirty Six lying South of U.S. Highway 16 and North of Interstate 90 in Township One South, Range Twenty Nine East of the Black Hills Meridian in Jones County, South Dakota, less and except of Lot H-1 as shown in 2 of Plats on page 77 and Lot H-1 as shown in Book 3 of Plat on page 147.

**Lots One and Two less and except Lot H-1 of Section Thirty One and Lots Three and Four and the East Half of the Southwest Quarter less and except Lot H-1 of Section Thirty in Township One South, Range Thirty East of the Black Hills Meridian and That part of the Northeast Quarter Lying south of Highway 16, less and except Lot H-1 of Section Thirty Six in Township One South, Range Twenty Nine East of the Black Hills Meridian
All in Jones County, South Dakota.**

Following construction, the easement Premises shall consist of a strip of land being 75 feet wide extending 37.5 feet on each side of the pipeline as constructed. Within two (2) years of the date of construction the GRANTEE agrees to provide and the GRANTOR agrees to accept an "as-built description" of said underground or buried water pipeline and distribution system. The GRANTEE shall be responsible for the completion and all associated costs of obtaining a certified engineering survey depicting the exact location of said underground or buried water pipeline and distribution system. The GRANTEE shall record the survey in the appropriate county records referencing this easement by book and page number, and provide the GRANTOR with a copy of the recorded survey as it pertains to GRANTOR'S ownership of the Premises.

1. The purpose of this underground or buried pipeline easement is to provide for the delivery of water to the West River/Lyman-Jones Rural Water Systems, Inc., to the Oglala Sioux Rural Water Supply System, to the Rosebud Sioux Rural Water Supply System and to the Lower Brule Sioux Rural Water Supply System and others in the manner, quantity and of a quality as provided for by Public Law 100-516, as amended. This easement grants to the GRANTEE the perpetual easement and right-of-way to locate, lay out, survey, construct, use, inspect, operate, maintain, repair, patrol, replace and/or remove an underground or buried pipeline for a municipal, rural, and industrial water distribution system and any necessary surface appurtenances including, but not limited to, surface vents, vacuum blowoff vents or reliefs, hydrants or valves and manholes on, over, under, or across the Premises described above.



2. The grant of easement herein contained is subject to existing rights-of-way of any nature recorded in the Jones County records.

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.

4. GRANTOR grants and guarantees to give the GRANTEE the perpetual right of ingress and egress during the period of design and construction and at any such time thereafter as may be necessary for the inspection, operation, maintenance, or replacement of the above-mentioned water pipeline and distribution system.

5. As part of the consideration for the Grant of Easement, and pursuant to Section 807(b) of the Mni Wiconi Act Amendments of 1994, (108 Stat. 4542) the GRANTEE agrees to provide for the treatment and delivery of water to the West River/Lyman Jones Rural Water Systems, Inc., without charge or cost, from the Missouri River and through common facilities of the Oglala Sioux Rural Water Supply System. Said water will be provided in a manner, quantity, and of a quality as provided for by Public Law 100-516, as amended, and shall be in accordance with any water service agreements entered into between West River/Lyman-Jones Rural Water Systems, Inc. and the Bureau of Reclamation as representative of the Secretary of the Interior for the payment of an operation and maintenance fee as required by law. The GRANTOR hereby releases the GRANTEE, its successors and assigns of all obligations to have an appraisal prepared to determine the amount of just compensation for the easement rights herein granted.

6. The GRANTEE, its successor and assigns, further agree:

a. To reclaim the Premises and improvements disturbed by the design, construction, operation, maintenance, and replacement of the above mentioned water pipeline and distribution system and restore the land and any improvements as near as reasonably possible to the condition it was prior to the disturbance. Improvements include, but may not necessarily be limited to fences, roads, structures, and curbs. 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 design, construction, operation, maintenance or replacement of said pipeline, and facilities, any injury is necessarily done to the appurtenances, it will repair or replace the same and/or will pay the Grantor for such injury.

b. To exercise due care and diligence in the exercise of the rights and privileges herein granted to it.

c. To provide for the delivery of water to West River/Lyman Jones Rural Water Systems, Inc. in the manner, quantity, and of a quality as provided for by Public Law 100-516 as amended, and any agreements entered into between the West River/Lyman Jones Rural Water Systems, Inc., and the Bureau of Reclamation representing the Secretary of the Interior, pursuant to said Act or agreements.

7. 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." By this grant of easement, the GRANTOR does not intend to make or recognize the easement as "Indian Country."

8. It is a condition precedent to the transfer of the easement that the easement rights to the Premises described herein shall be vested in the GRANTEE, and to the matters set out in Article 2 hereof, and to such other defects, interests, or encumbrances as may be acceptable to the GRANTEE.

9. No abandonment by the GRANTEE of said underground water distribution pipeline system and rights-of-way herein granted shall be deemed to have occurred, unless a subsequent Act of Congress declares it to be so,

and provides that the easement herein granted shall end, cease, and determine, in which case title shall revert to the then landowner. Nothing in this section is intended to affect the rights of the Oglala Sioux Tribe to compensation and other protection guaranteed under the Fifth Amendment.

10. The GRANTOR warrants that the GRANTOR has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the United States the right to annul this contract. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the GRANTOR for the purpose of securing business with others than the United States.

11. No member of or Delegate to Congress or Resident Commissioner, employee of the Bureau of Reclamation, or employee of any other federal agency, shall be admitted to any share or part of this contract, or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or enterprise for its general benefit.

12. Where the operations of the contract extend beyond the current fiscal year, it is understood that the contract is made contingent upon Congress making the necessary appropriation for expenditures thereunder, after such current year has expired. In case such appropriation as may be necessary to carry out this contract is not made, the GRANTOR hereby releases the GRANTEE from all liability due to failure of Congress to make such appropriation.

Special exceptions;

All above ground appurtenances will be located on the West or North property line as appropriate in Sections 30 and 31 in Township one South, Range Thirty East.

Section 36 in Township one South, Range Twenty nine East will be fence with a 3 wire temporary fence so as pasture can be grazed and livestock will be keep out of the construction area. After construction fence will then become the property of the landowner.

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the date indicated across from their signature.

Dated 4/27/2001

UNITED STATES OF AMERICA

[Signature]
for Area Manager
Dakota Area Office
Bureau of Reclamation
Bismarck, North Dakota 58502

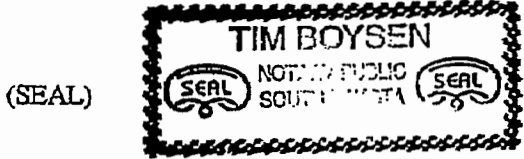
Dated 5-19-2000

Mann Family Limited Partnership
GRANTOR by *Betty Lou Mann*
Mann Family Limited Partnership
GRANTOR by *Mesley O. Mann*

ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
)
COUNTY OF James)

On this 19th day of May, in the year 2000, before me, a Notary Public, personally appeared Betty Ann & Wesley A. Menz known to me to be the persons who executed the within instrument, and acknowledged that they executed the same.



Tim Boyesen
Notary Public for South Dakota
Residing at Reedley, South Dakota
My Commission Expires 12-26-2003

Prepared for Recording By
West River/Lyman Jones Rural
Water System, Inc.
P.O. Box 523
Murdo, S.D. 57559
Phone 1-605-669-2931

My commission expires 12-26-2003:
My commission expires 12-26-2003:

ACKNOWLEDGEMENT

STATE OF NORTH DAKOTA

COUNTY of Burlingame

On this 27 day of April in the year 2001, before me, a Notary

Public, personally appeared Greg Hare

known to me to be the person who executed the within instrument, and
acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

(SEAL) SHARON A. BALKOWITSCH
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires FEBRUARY 23, 2005

Sharon A. Balkowitsch
Notary Public for State of North Dakota
Residing at Bismarck ND
My Commission Expires 2/23/2005

TRACT NO. PRDG-COR-102-106-1-(E) A
CONTRACT NO. 00-LA-60-L3510 A



STATE OF SOUTH DAKOTA } SS.
County of Jones

Filed for record this 29 day of
November 20 01
4:35 o'clock P M. and recorded
in Book 1/Misc page 594-598
Department Reg Register of Deeds
Fee \$18.00

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE
GRANT OF EASEMENT
OGLALA SIOUX RURAL WATER SUPPLY SYSTEM

This Grant of Easement, made this 17th day of *May*, 2000, pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388), October 14, 1940 (34 Stat. 1119), December 22, 1944 (58 Stat. 887), October 24, 1988 (102 Stat. 2566), as amended or supplemented, and other relevant federal statutes, is between the United States of America, acting through the Department of the Interior, Bureau of Reclamation, hereinafter referred to as the GRANTEE, represented by the officer executing this contract, and **Dahlke Family Limited Partnership** hereinafter referred to as the GRANTOR.

In CONSIDERATION of the sum of One Dollar, receipt of which is hereby acknowledged, and the mutual covenants and agreements set forth herein, the GRANTOR hereby grants unto the GRANTEE, its assigns, authorized agents, and contractors, a perpetual design, construction, operation, maintenance and replacement Easement for an underground water pipeline and distribution system and any necessary surface appurtenances on, over, under, or across all that real property situated in the County of Jones, State of South Dakota, and described as follows:

That Part of the West Half of Section Thirty Six lying South of U.S. Highway 16 and North of Interstate 90 in Township One South, Range Twenty Nine East of the Black Hills Meridian in Jones County, South Dakota, less and except of Lot H-1 as shown in 2 of Plats on page 77 and Lot H-1 as shown in Book 3 of Plat on page 147.

Lots One and Two less and except Lot H-1 of Section Thirty One and Lots Three and Four and the East Half of the Southwest Quarter less and except Lot H-1 of Section Thirty in Township One South, Range Thirty East of the Black Hills Meridian and That part of the Northeast Quarter Lying south of Highway 16, less and except Lot H-1 of Section Thirty Six in Township One South, Range Twenty Nine East of the Black Hills Meridian
All in Jones County, South Dakota.

Following construction, the easement Premises shall consist of a strip of land being 75 feet wide extending 37.5 feet on each side of the pipeline as constructed. Within two (2) years of the date of construction the GRANTEE agrees to provide and the GRANTOR agrees to accept an "as-built description" of said underground or buried water pipeline and distribution system. The GRANTEE shall be responsible for the completion and all associated costs of obtaining a certified engineering survey depicting the exact location of said underground or buried water pipeline and distribution system. The GRANTEE shall record the survey in the appropriate county records referencing this easement by book and page number, and provide the GRANTOR with a copy of the recorded survey as it pertains to GRANTOR'S ownership of the Premises.

1. The purpose of this underground or buried pipeline easement is to provide for the delivery of water to the West River/Lyman-Jones Rural Water Systems, Inc., to the Oglala Sioux Rural Water Supply System, to the Rosebud Sioux Rural Water Supply System and to the Lower Brule Sioux Rural Water Supply System and others in the manner, quantity and of a quality as provided for by Public Law 100-516, as amended. This easement grants to the GRANTEE the perpetual easement and right-of-way to locate, lay out, survey, construct, use, inspect, operate, maintain, repair, patrol, replace and/or remove an underground or buried pipeline for a municipal, rural, and industrial water distribution system and any necessary surface appurtenances including, but not limited to, surface vents, vacuum blowoff vents or reliefs, hydrants or valves and manholes on, over, under, or across the Premises described above.

2. The grant of easement herein contained is subject to existing rights-of-way of any nature recorded in the Jones County records.

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.

4. GRANTOR grants and guarantees to give the GRANTEE the perpetual right of ingress and egress during the period of design and construction and at any such time thereafter as may be necessary for the inspection, operation, maintenance, or replacement of the above-mentioned water pipeline and distribution system.

5. As part of the consideration for the Grant of Easement, and pursuant to Section 807(b) of the Mni Wiconi Act Amendments of 1994, (108 Stat. 4542) the GRANTEE agrees to provide for the treatment and delivery of water to the West River/Lyman Jones Rural Water Systems, Inc., without charge or cost, from the Missouri River and through common facilities of the Oglala Sioux Rural Water Supply System. Said water will be provided in a manner, quantity, and of a quality as provided for by Public Law 100-516, as amended, and shall be in accordance with any water service agreements entered into between West River/Lyman-Jones Rural Water Systems, Inc. and the Bureau of Reclamation as representative of the Secretary of the Interior for the payment of an operation and maintenance fee as required by law. The GRANTOR hereby releases the GRANTEE, its successors and assigns of all obligations to have an appraisal prepared to determine the amount of just compensation for the easement rights herein granted.

6. The GRANTEE, its successor and assigns, further agree:

a. To reclaim the Premises and improvements disturbed by the design, construction, operation, maintenance, and replacement of the above mentioned water pipeline and distribution system and restore the land and any improvements as near as reasonably possible to the condition it was prior to the disturbance. Improvements include, but may not necessarily be limited to fences, roads, structures, and curbs. 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 design, construction, operation, maintenance or replacement of said pipeline, and facilities, any injury is necessarily done to the appurtenances, it will repair or replace the same and/or will pay the Grantor for such injury.

b. To exercise due care and diligence in the exercise of the rights and privileges herein granted to it.

c. To provide for the delivery of water to West River/Lyman Jones Rural Water Systems, Inc. in the manner, quantity, and of a quality as provided for by Public Law 100-516 as amended, and any agreements entered into between the West River/Lyman Jones Rural Water Systems, Inc., and the Bureau of Reclamation representing the Secretary of the Interior, pursuant to said Act or agreements.

7. 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." By this grant of easement, the GRANTOR does not intend to make or recognize the easement as "Indian Country."

8. It is a condition precedent to the transfer of the easement that the easement rights to the Premises described herein shall be vested in the GRANTEE, and to the matters set out in Article 2 hereof, and to such other defects, interests, or encumbrances as may be acceptable to the GRANTEE.

9. No abandonment by the GRANTEE of said underground water distribution pipeline system and rights-of-way herein granted shall be deemed to have occurred, unless a subsequent Act of Congress declares it to be so,

and provides that the easement herein granted shall end, cease, and determine, in which case title shall revert to the then landowner. Nothing in this section is intended to affect the rights of the Oglala Sioux Tribe to compensation and other protection guaranteed under the Fifth Amendment.

10. The GRANTOR warrants that the GRANTOR has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the United States the right to annul this contract. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the GRANTOR for the purpose of securing business with others than the United States.

11. No member of or Delegate to Congress or Resident Commissioner, employee of the Bureau of Reclamation, or employee of any other federal agency, shall be admitted to any share or part of this contract, or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or enterprise for its general benefit.

12. Where the operations of the contract extend beyond the current fiscal year, it is understood that the contract is made contingent upon Congress making the necessary appropriation for expenditures thereunder, after such current year has expired. In case such appropriation as may be necessary to carry out this contract is not made, the GRANTOR hereby releases the GRANTEE from all liability due to failure of Congress to make such appropriation.

Special exceptions;

All above ground appurtenances will be located on the West or North property line as appropriate in Sections 30 and 31 in Township one South, Range Thirty East.

Section 36 in Township one South, Range Twenty nine East will be fence with a 3 wire temporary fence so as pasture can be grazed and livestock will be keep out of the construction area. After construction fence will then become the property of the landowner.

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the date indicated across from their signature.

Dated 4/27/01

UNITED STATES OF AMERICA

[Signature]
for Area Manager
Dakota Area Office
Bureau of Reclamation
Bismarck, North Dakota 58502

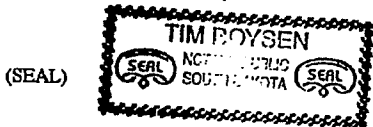
Dated 5-19-2000

Dahlke Family Limited Partnership
GRANTOR
Earl D. Dahlke
GRANTOR

ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
)
COUNTY OF Jones)

On this 19th day of May, in the year 2000, before me, a Notary Public, personally appeared Earl D. DeHlbe, known to me to be the person who executed the within instrument, and acknowledged that he executed the same.



Tim Boyesen
Notary Public for South Dakota
Residing at Lead, South Dakota
My Commission Expires My commission expires 12-26-2003.

Prepared for Recording By
West River/Lyman Jones Rural
Water System, Inc.
P.O. Box 523
Murdo, S.D. 57559
Phone 1-605-669-2931

597

ACKNOWLEDGEMENT

STATE OF NORTH DAKOTA

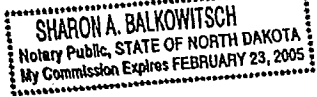
COUNTY of Burleigh

On this 27 day of April, in the year 2001, before me, a Notary Public, personally appeared Greg Aese

known to me to be the person who executed the within instrument, and acknowledged that she executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

(SEAL)



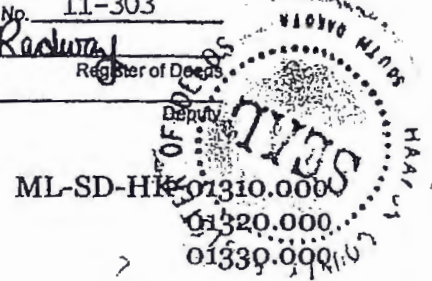
Sharon A. Balkowitsch
Notary Public for State of North Dakota
Residing at Bismarck, North Dakota
My Commission Expires 2/23/2005

49012
State of South Dakota }
County of Haakon }

11-303

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

Filed for record in this office on the 6 day
of September A.D. 2011 at 4:40 o'clock P.M.
and was recorded as Document No. 11-303
on Microfilm Chaei Radwan
Fee \$70.00 By _____
Register of Deeds
Deputy



EASEMENT AND RIGHT-OF-WAY AGREEMENT

This nonexclusive Easement and Right-of-Way Agreement (this "Agreement") is made, dated and effective as of this 10 day of Dec, 2010 (the "Effective Date"), between Glen H. Hostutler and Carolyn Joyce Hostutler, as tenants in common, (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 Haakon 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 Glen H. Hostutler and Carolyn Joyce Hostutler, as tenants in common, 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:

Glen H. Hostutler and
Carolyn Joyce Hostutler,
as tenants in common
22395 Ottumwa Rd
Midland, SD 57552

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]

IN WITNESS WHEREOF, Grantee has executed this Agreement as of the 19 day of JANUARY, ~~2010~~ 2011

GRANTEE:

Sign: A.C. Osborne

Print: Alex Osborne

Its: Authorized Signatory

GRANTEE:

Sign: [Signature]

Print: Tim M. Irons

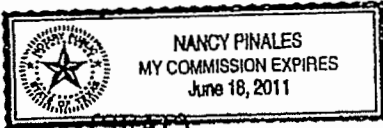
Its: Authorized Signatory

STATE OF TEXAS :
SS

COUNTY OF HARRIS :

On this the 19th day of January, 2011, 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.



(SEAL)

Nancy Pinales
Notary Public

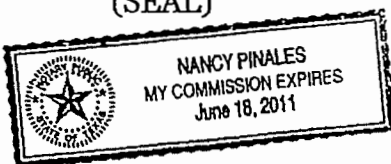
My Commission Expires: June 18, 2011

STATE OF TEXAS :
SS

COUNTY OF HARRIS :

On this the 19th day of January, 2011, 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.



(SEAL)

Nancy Pinales
Notary Public

My Commission Expires: June 18, 2011

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the 10 day of December, 2010.

GRANTOR:

Print: CAROLYN Joyce Hostutter

Sign: Carolyn Joyce Hostutter

Its: _____

STATE OF Texas)
COUNTY OF Hidalgo)^{SS}

On this the 10 day of December, 2010, before me, the undersigned officer, personally appeared Carolyn Joyce Hostutter 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.

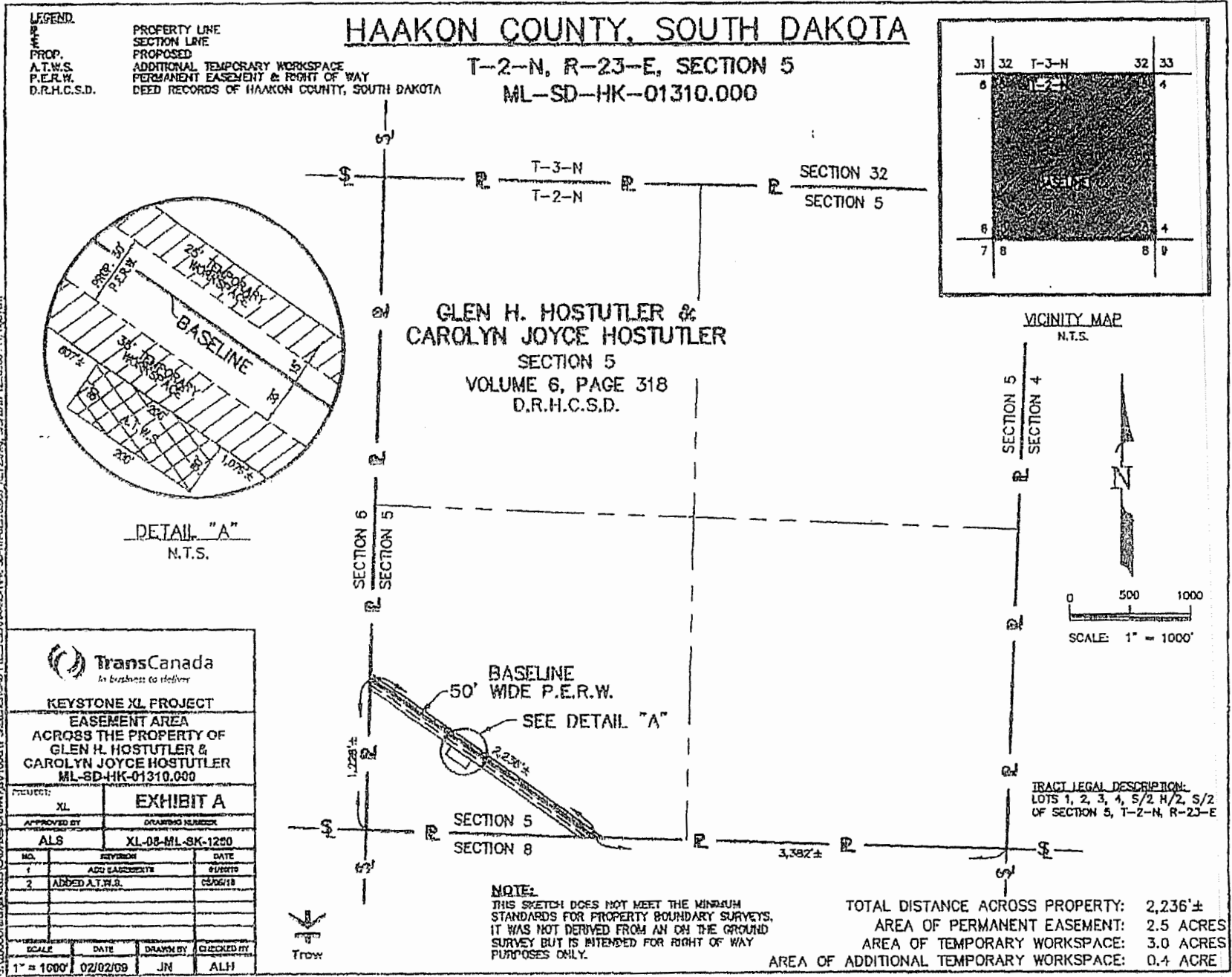
Sandra Lynn Moravitz
Notary Public

(SEAL)



My Commission Expires: 06/02/2012

11-303



11-303

EXHIBIT B

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

Township 2 North, Range 23 East

Section 5: LOTS 1, 2, 3, 4, 5/2 N/2, S/2

Containing 640.00 acres, more or less, as recorded in Book 6, Page 318, Deed Records of Haakon County, South Dakota

ML-SD-HK-01310.000

006785

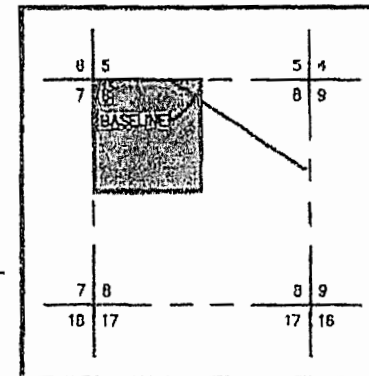
11-303

HAAKON COUNTY, SOUTH DAKOTA

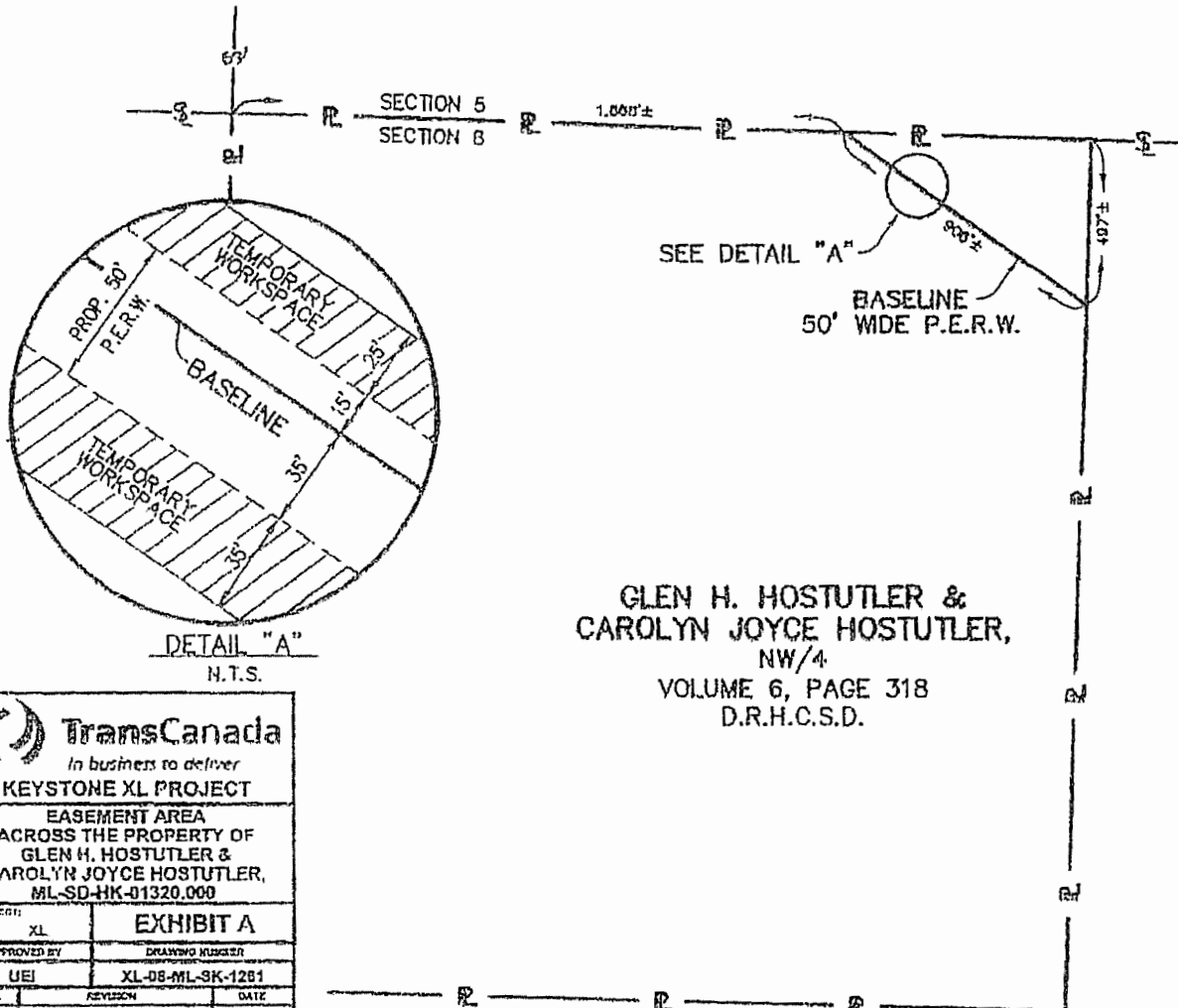
T-2-N, R-23-E, SECTION 8
ML-SD-HK-01320.000

LEGEND
 PL PROPERTY LINE
 SL SECTION LINE
 PRCP. PROPOSED
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.H.C.S.D. DEED RECORDS OF HAAKON COUNTY, SOUTH DAKOTA

PROPERTY LINE
 SECTION LINE
 PROPOSED
 PERMANENT EASEMENT & RIGHT OF WAY
 DEED RECORDS OF HAAKON COUNTY, SOUTH DAKOTA



VICINITY MAP
N.T.S.



GLEN H. HOSTUTLER &
 CAROLYN JOYCE HOSTUTLER,
 NW/4
 VOLUME 6, PAGE 318
 D.R.H.C.S.D.

TRACT LEGAL DESCRIPTION:
 NW/4 OF SECTION 8,
 T-2-N, R-23-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: 906'±
 AREA OF PERMANENT EASEMENT: 1.1 ACRES
 AREA OF TEMPORARY WORKSPACE: 1.3 ACRES

TransCanada
In business to deliver
KEYSTONE XL PROJECT
 EASEMENT AREA
 ACROSS THE PROPERTY OF
 GLEN H. HOSTUTLER &
 CAROLYN JOYCE HOSTUTLER,
 ML-SD-HK-01320.000

PROJECT:	XL	EXHIBIT A	
APPROVED BY:	UEI	DRAWING NUMBER	
		XL-08-ML-9K-12B1	
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	01/23/09	TH	JTH



11-303

EXHIBIT B

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

Township 2 North Range 23 East

Section 8: NW/4

Containing 160 acres, more or less, as recorded in Book 6, Page 318, Deed Records of Haakon County, South Dakota

ML-SD-HK-01320.000

006787

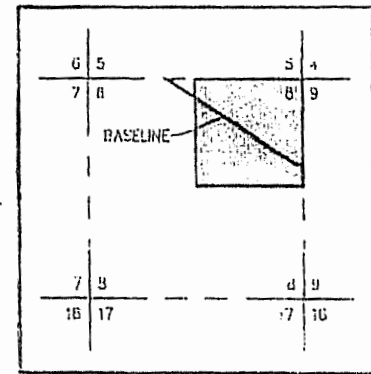
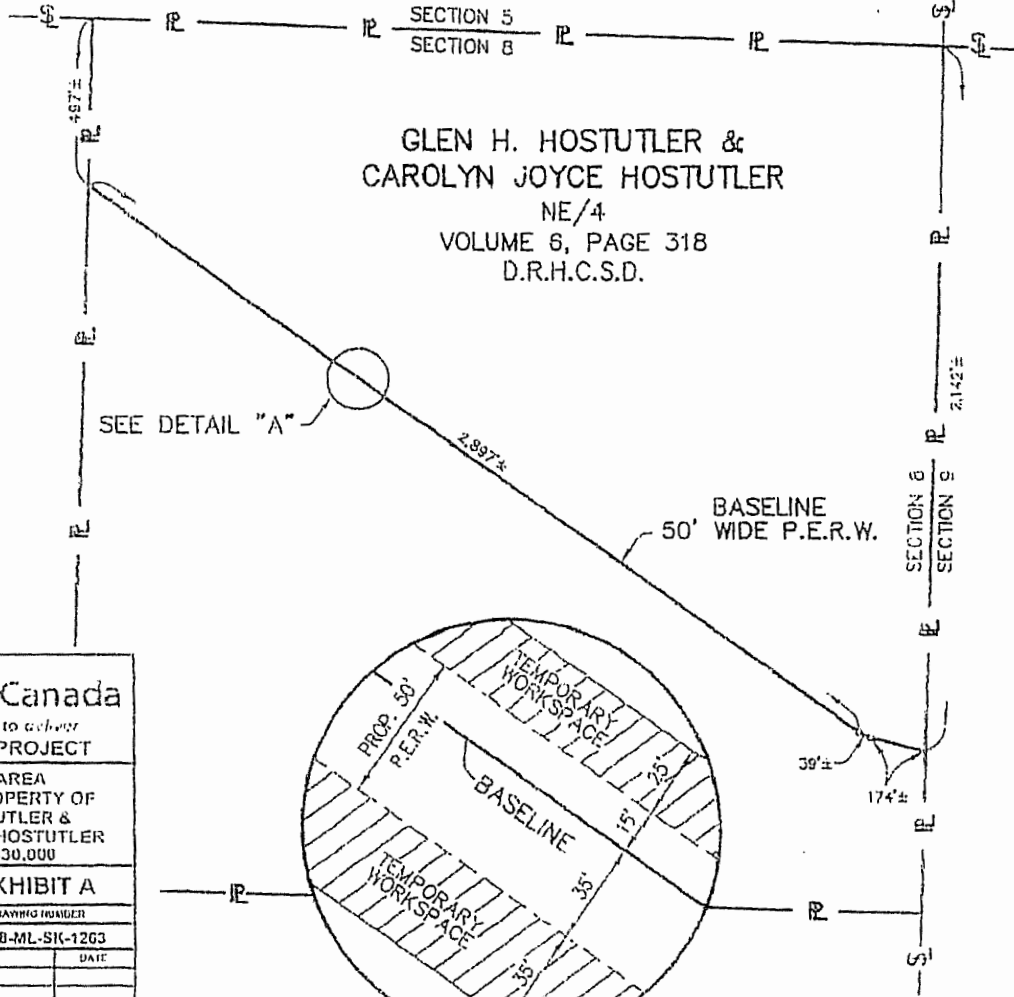
HAAKON COUNTY, SOUTH DAKOTA

T-2-N, R-23-E, SECTION 8

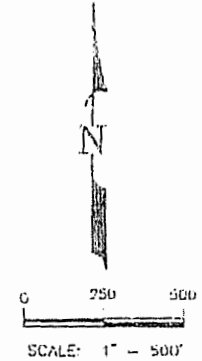
ML-SD-HK-01330.000

LEGEND:
 PL PROPERTY LINE
 S SECTION LINE
 PROP. PROPOSED
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.H.C.S.D. DEED RECORDS OF HAAKON COUNTY, SOUTH DAKOTA

11-303




VICINITY MAP
N.T.S.



TRACT LEGAL DESCRIPTION:
 NE/4 OF SECTION 8,
 T-2-N, R-23-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: 3,110'±
 AREA OF PERMANENT EASEMENT: 3.6 ACRES
 AREA OF TEMPORARY WORKSPACE: 4.3 ACRES

			
in business. to achieve			
KEYSTONE XL PROJECT			
EASEMENT AREA ACROSS THE PROPERTY OF GLEN H. HOSTUTLER & CAROLYN JOYCE HOSTUTLER ML-SD-HK-01330.000			
PROJECT:	EXHIBIT A		
APPROVED BY:	DRAWING NUMBER		
UEI:	XL-08-ML-SK-1263		
NO.	REVISION	DATE	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	01/22/09	REL	FRC



DETAIL "A"
N.T.S.

11-303

EXHIBIT B

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

Township 2 North Range 23 East

Section 8: NE/4

Containing 160 acres, more or less, as recorded in Book 8, Page 318, Deed Records of Haakon County, South Dakota

ML-SD-HK-01330.000

006789

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

STATE OF SOUTH DAKOTA } SS.
County of Jonas

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

William 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 1st 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_irons@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: _____

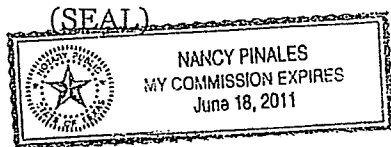
STATE OF TEXAS _____ :
SS
COUNTY OF HARRIS _____ :

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

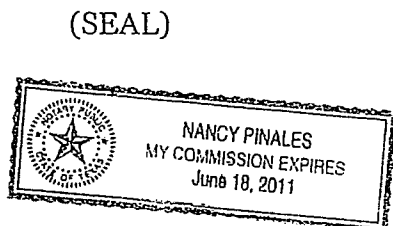
STATE OF TEXAS _____ :
SS
COUNTY OF HARRIS _____ :

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



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.#

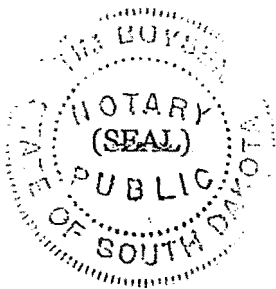
Sign: Earl Dahlke

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.



Notary Public

My Commission Expires: 12/26/15

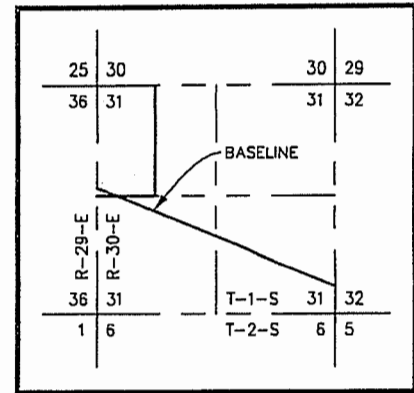
EXHIBIT A

JONES COUNTY, SOUTH DAKOTA

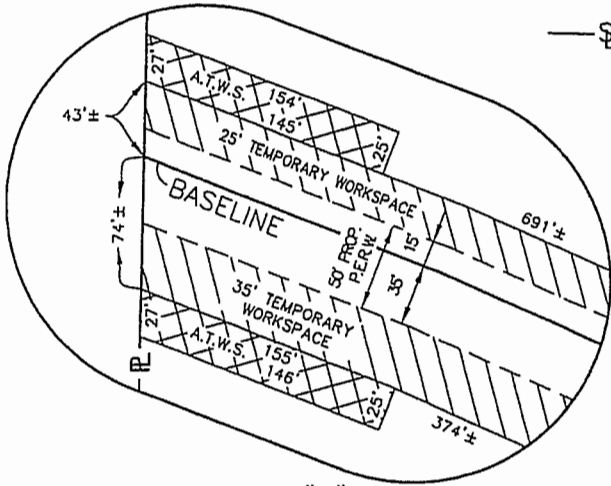
T-1-S, R-30-E, SECTION 31
ML-SD-JO-10692.000

LEGEND

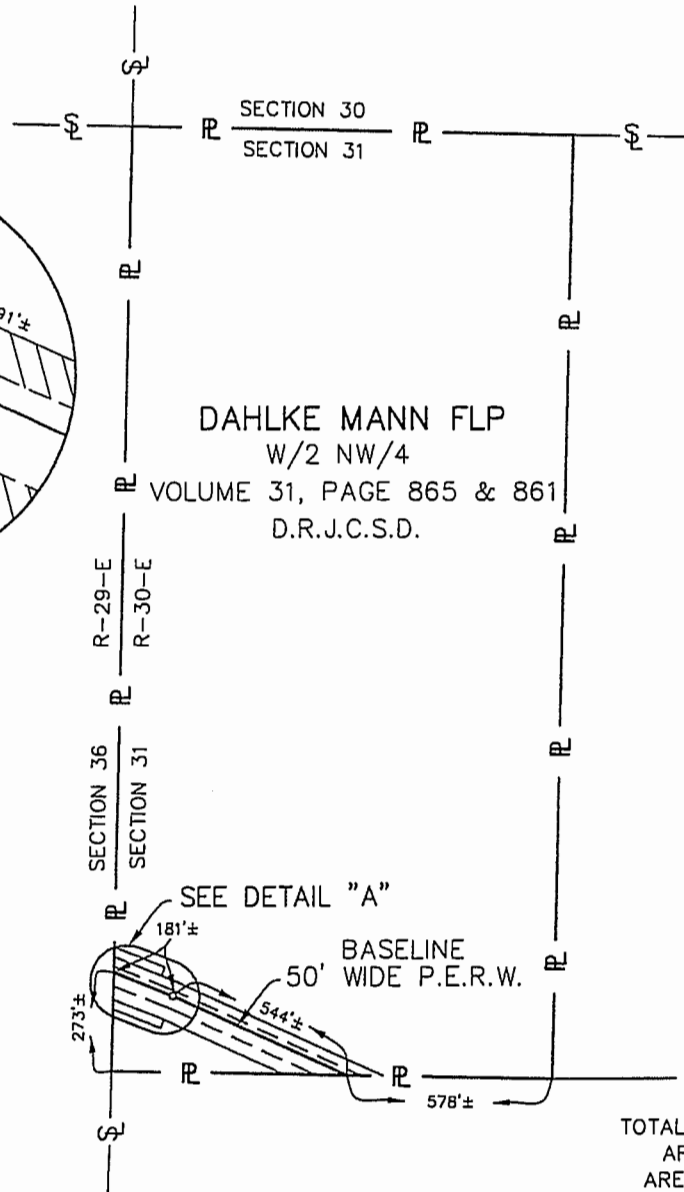
PL PROPERTY LINE
 SL SECTION LINE
 PROP. PROPOSED
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY
 D.R.J.C.S.D. DEED RECORDS OF JONES COUNTY, SOUTH DAKOTA



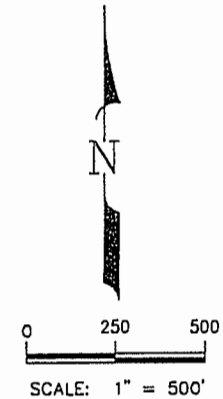
VICINITY MAP
N.T.S.



DETAIL "A"
N.T.S.



DAHLKE MANN FLP
W/2 NW/4
VOLUME 31, PAGE 865 & 861
D.R.J.C.S.D.



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

G:\2000DraftingandGIS\CADFiles\Drawings\Property Sketches\CAD FILES\SD\JONES\ML-SD-JO-10692.000_REV1.dwg, 2/25/2011 10:58:42 AM, csmnerosh



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

PROJECT:	XL	EXHIBIT A	
APPROVED BY:	WSF	DRAWING NUMBER: XL-08-ML-SK-3157	
NO.	REVISION	DATE	
1	REVISED WORKSPACE	02/16/11	
SCALE	DATE	DRAWN BY	CHECKED BY
1" = 500'	08/16/10	JN	CPA



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

006809

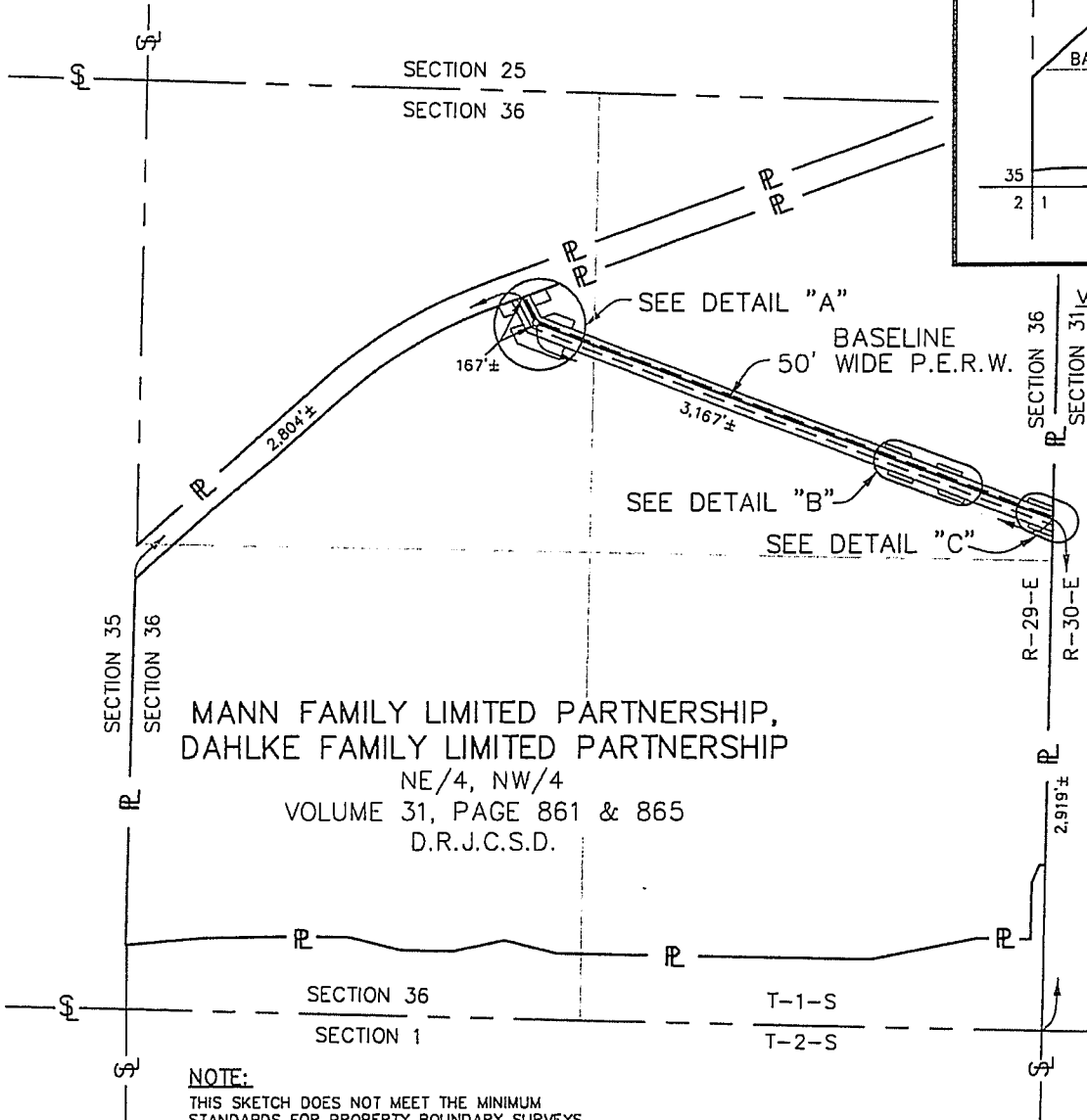
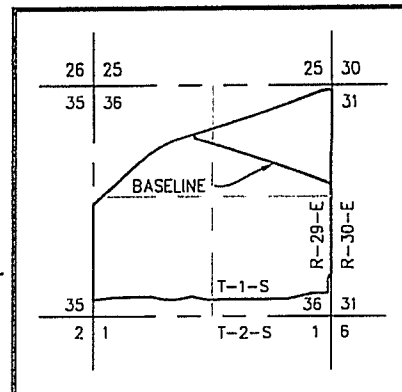
EXHIBIT A

JONES COUNTY, SOUTH DAKOTA

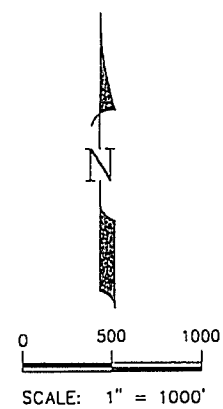
T-1-S, R-29-E, SECTION 36
ML-SD-JO-10670.000

LEGEND

PL PROPERTY LINE
 SL 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.




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

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

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



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: JMP		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



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EXHIBIT A

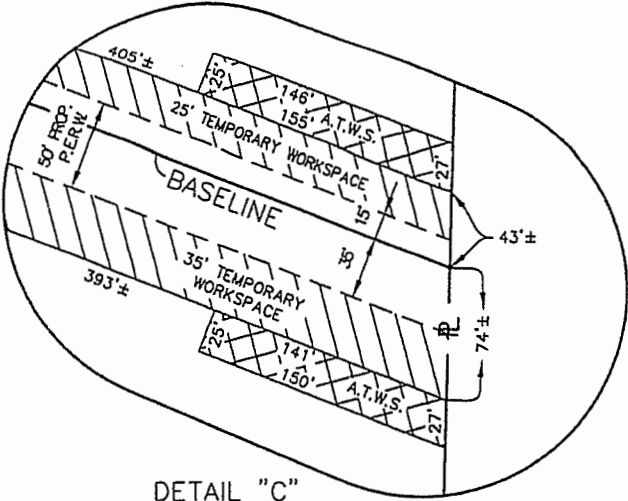
JONES COUNTY, SOUTH DAKOTA

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

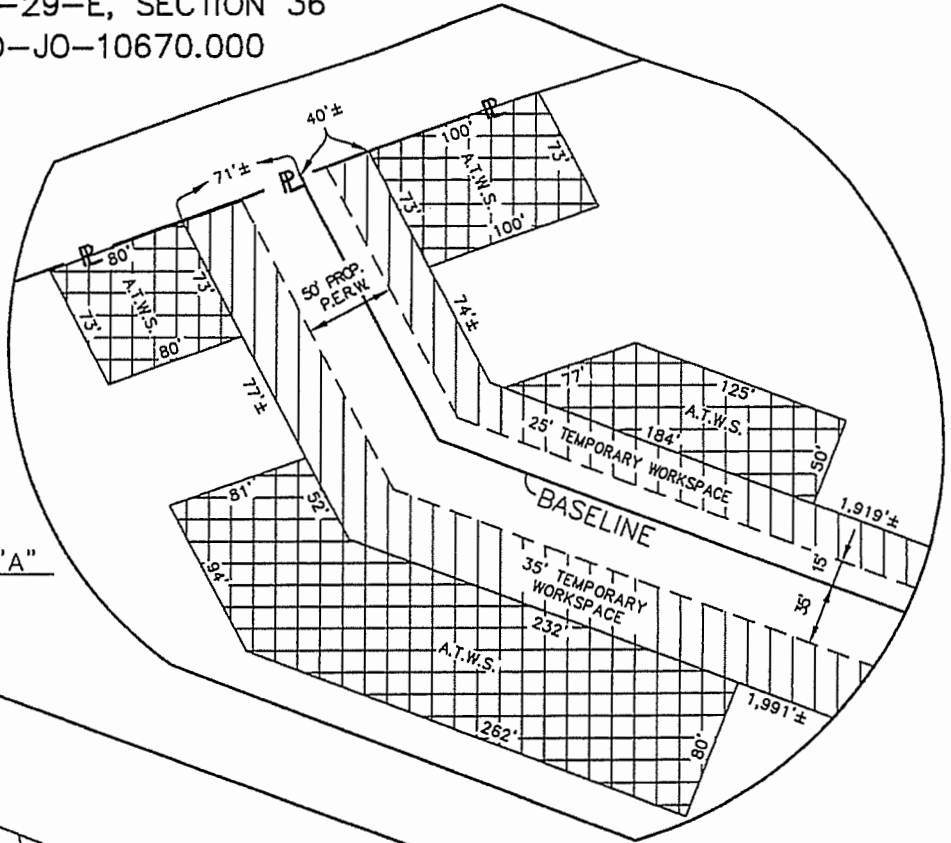
ML-SD-JO-10670.000

LEGEND

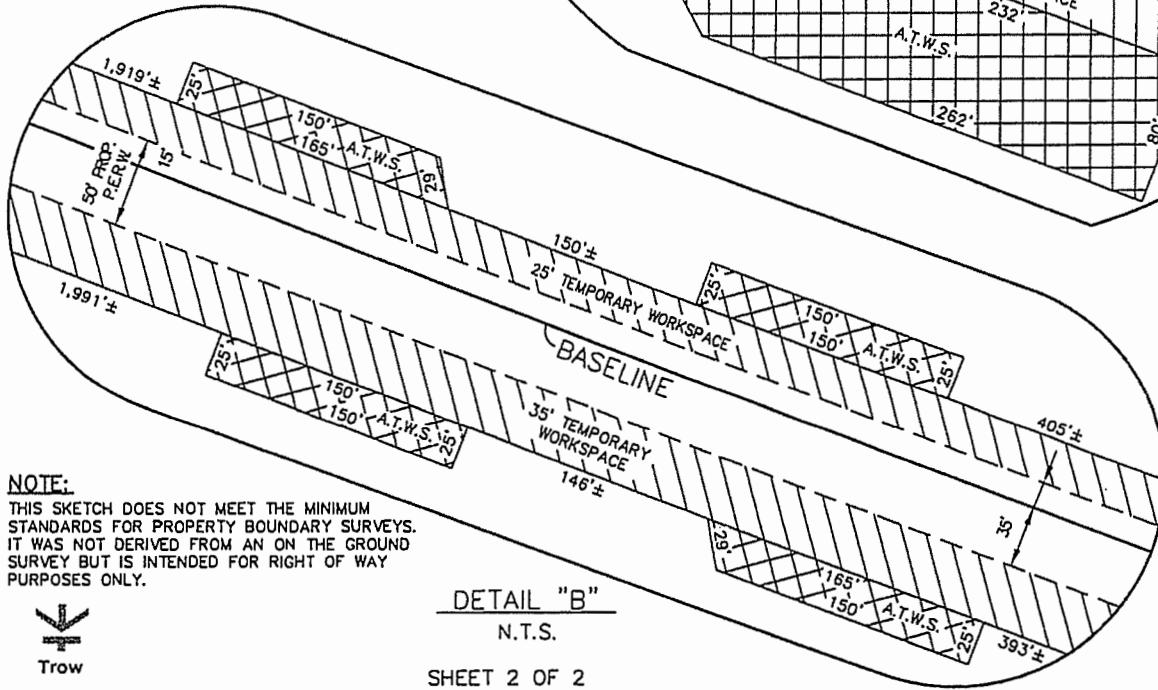
- P PROPERTY LINE
- PROP. PROPOSED
- A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE
- P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY



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.



SHEET 2 OF 2
EXHIBIT A

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TransCanada
In business to deliver

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		
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	CHECKED 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

006812