

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

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

REBUTTAL TESTIMONY OF
JENNIFER GALINDO

HP14-001

Q: What is your name?

A: Jennifer Galindo.

Q: Are you currently employed? What is your occupation?

A: Yes. I am an Archeologist

Q: Describe your education and relevant employment history?

A: I have a Bachelor of Science degree in Archeology from the University of New Mexico and a Master of Arts degree in Anthropology from the University of Nebraska-Lincoln. I have worked as an Archeologist for the National Park Service at the Midwest Archeological Center for approximately eight years (including five years as the Principal Investigator for a Systemwide Archeological Inventory Program at Wind Cave National Park which was in conjunction with my employment at the Sinte Gleska University). I have worked as an Independent Contractor in Archeology, and I've worked as an Archeologist on the Rosebud Reservation in South Dakota for approximately 15 years (six years with the Sinte Gleska University Heritage Center, five years with the Rosebud Sioux Tribe Sicangu Oyate Land Office, and the past three years with the Rosebud Sioux Tribe Historic Preservation Cultural Resource Management Office, where I am currently employed.

The remainder of me education and employment history is attached as RST Exhibit # 11 "JG CV Resume".

Q: How long have you been employed there?

A: I have been employed with the Tribe's Historic Preservation office since 2012. I have also performed similar archeological services for the RST since 2007.

Q: What are your job responsibilities?

A: My current job responsibilities include conducting archeological surveys for Section 306108 (formerly Section 106) Compliance of the National Historic Preservation Act within the five

county Rosebud Reservation area and other cultural site surveys as requested. I am also responsible for the training and supervision of tribal field crew, completing inventory reports and site forms, interviewing elders on oral history, conducting archeological excavations to evaluate sites, and for the overall quality assurance of the Tribal Historic Preservation Cultural Resource Management Office ArcMap GIS database. Other duties include developing policy to ensure the protection of site information and access to the site database, developing research and archeological site management plans, continuing work towards the ongoing Reservation-wide survey, and other duties as assigned by the Tribal Historic Preservation Officer.

Q: Have you reviewed any testimony by any other witness in preparation for this hearing?

A: Yes

Q: Specifically what documents have you reviewed?

A: I have reviewed the prefiled testimony of Paige Olson, with the State Historic Preservation Office, that was prepared for this hearing along with Paige Olson's prefiled testimony for the Keystone XL Project on Docket number HP09-001. I have also reviewed relevant portions of Keystone's responses to Rosebud Sioux Tribes discovery requests as well as relevant portions of the expert testimony reports submitted by the Goodman Group specifically RST Exhibit 4 "Landslide Hazard Areas."

Q: Did you review any other documents in preparation for this hearing?

A: Prior to the hearing and preparing my testimony I reviewed nine volumes of archeological inventory reports along the Keystone route and other proposed associated facilities including: South Dakota Level III Survey (Steel City Segment), South Dakota Level III Addendum 1, 2, 3, 4, 5, 6, 7, and 8.

Q: What is the purpose of your testimony for this hearing?

A: The purpose of my testimony is to rebut the testimony of Paige Olson with the State of South Dakota State Historic Preservation Office (SHPO) for the purpose of establishing that the conditions upon which Keystone's permit was granted have changed.

Q: Is there a specific finding of fact or condition from the Permit that your testimony relates to?

A: Yes, my testimony goes to Amended Permit Condition 1 and Amended Permit Condition 3.

Q: What is Amended Permit Condition 1?

A: Amended Permit Condition 1 "Compliance with Laws, Regulations, Permits, Standards and Commitments" provides that Keystone shall comply with all applicable laws and regulations in its construction and operation of the Project. These laws and regulations include, but are not necessarily limited to: the federal Hazardous Liquid Pipeline Safety Act of 1979 and Pipeline

Safety Improvement Act of 2002, as amended by the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006, and various other pipeline safety statutes currently codified at 49 U.S.C. Section 60101 et seq. (collectively the “PSA”); the regulations of the United States Department of Transportation implementing the PSA, particularly 49 C.F.R. 194 and 195; temporary permits for use of public water for construction, testing or drilling purposes, SDCL 46-5-40.1 and ARSD 74:02:01:32 through 74:02:01:34.2 and temporary discharges to waters of the state, SDCL 34A-2-36 and ARSD Chapters 74:52:01 through 74:52:11, specifically, ARSD Section 74:52:02:46 and the General Permit issued there under covering temporary discharges of water from construction dewatering and hydrostatic testing.”

Q: What is Amended Permit Condition 3?

A: Amended Permit Condition 3 provides that “Keystone shall comply with and implement the Recommendations set forth in the Final Environmental Impact Statement when issued by the United States Department of State pursuant to its Amended Department of State Notice of Intent to Prepare an Environmental Impact Statement and to Conduct Scoping Meetings and Notice of Floodplain and Wetland Involvement and to Initiate Consultation under Section 106 of the National Historic Preservation Act for the Proposed TransCanada Keystone XL Pipeline; Notice of Intent- Rescheduled Public Scoping Meetings in South Dakota and extension of comment period (FR vol. 74, no. 54, Mar. 23, 2009). The Amended Notice and other Department of State and Project Documents are available on-line at: <http://www.keystonepipeline-xlstate.gov/clientsite/keystonexl.nsf?open>.”

Q: Is it your opinion that the National Historic Preservation Act of 1966, as amended, is a law included in Condition 1 and 3.

A: Yes.

Q: Is the Rosebud Sioux Tribe a federally recognized Indian Tribe?

A: The Rosebud Sioux Tribe maintains a unique political and legal relationship with the United States based on the 1851 and 1868 Treaties of Fort Laramie and various federal statutes and court opinions. Yes, the Rosebud Sioux Tribe is a federally recognized sovereign Indian tribe which is organized pursuant to the act of June 18, 1934, 48 Stat. 984, as amended, and is governed by a Constitution and By-laws ratified on November 23, 1935, and approved by the Secretary of the Interior, Harold L. Ickes, on December 16, 1935, and as amended. The Rosebud Sioux Reservation includes Todd County, SD in its entirety as well as various trust lands and allotted lands located in surrounding Tripp, Mellette, Gregory and Lyman Counties, South Dakota. In addition, the Rosebud Sioux Tribe has jurisdiction of all trust lands located in the counties of Lyman, Todd, Tripp, Mellette and Gregory Counties in SD as well.

A: To your knowledge, is much of the proposed pipeline route located within the exterior territorial boundaries of the land area under the 1851 and 1861 treaties of Fort Laramie.

Q: Yes, much of the pipeline route is in that area from the treaties.

Q: Is it your understanding that the tribe that has cultural and historical interests in land located in this area?

A: Yes, the tribe maintains interests in areas throughout the treaty area and seeks to actively monitor and protect significant areas in a manner that is consistent with the methods provided by federal law.

Q: Are you familiar with the National Historic Preservation Act of 1966, (as amended through December 19, 2014) in particular the Section 54 U.S.C. 306108 (formerly Section 106) requirement? If so, please describe.

A: Section 306108 of the National Historic Preservation Act, states that prior to the approval of the expenditure of any Federal funds, or the issuance of any license, the Federal Agency must take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places.

The historic preservation review process, mandated by Section 306108, is outlined in regulations issued by the Advisory Council on Historic Preservation (36 CFR Part 800). The first step in the 306108 process is to identify any historic properties that may be affected by the undertaking. The identification process includes reviewing existing information on historic properties within the area of potential effects, consultation with the SHPO/THPO, seeking information from knowledgeable parties, gathering information from any Indian tribe that might attach religious and cultural significance to historic properties in the area of potential effects, and conducting field surveys. Historic districts, sites, buildings, structures, and objects listed in the National Register are considered; unlisted properties are evaluated against the National Park Service's published criteria in consultation with the SHPO/THPO, and any Indian tribe or Native Hawaiian organization that may attach religious or cultural importance to them. Once sites are identified and evaluated for significance, the affect the proposed undertaking will have on the historic properties is determined.

Q: Are you familiar with Section 302706 of the National Historic Preservation Act?

A: Yes, Section 302706 of the National Historic Preservation Act requires the agency official to consult with any Indian tribe that attaches religious and cultural significance to properties that may be affected by an undertaking. This requirement applies regardless of the location of the property. Section 302706 further states that property of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

36 CFR Part 800 Section 800.4(c)(1) require federal agencies to acknowledge the special expertise of Indian tribes and Native Hawaiian organizations in assessing the eligibility of

historic properties that may be of religious and cultural significance to them. The Advisory Council on Historic Preservation states that “unless an archaeologist has been specifically authorized or permitted by an Indian tribe or Native Hawaiian organization to speak on its behalf, or has been determined by that entity to be qualified to conduct such surveys, it should not be assumed that the archaeologist possesses the appropriate expertise to determine what properties are or are not of religious and cultural significance to an Indian tribe or Native Hawaiian organization. The appropriate individual to make such a determination is the representative designated by the tribe or Native Hawaiian organization for this purpose.” This is often referred to as a Traditional Cultural Property (TCP) Survey.

36 CFR PART 800 states that: The agency official shall ensure that consultation in the Section 106 (now Section 306108) process provides the Indian tribe a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects.

Q: To your knowledge, has the Rosebud Sioux Tribal Historic Preservation Office communicated with Paige Olson at the State Historic Preservation Office about the Keystone pipeline? If the answer is yes, what communications are you aware of?

A: Yes. I am aware of two instances where the RST THPO communicated with the South Dakota SHPO about the Keystone XL pipeline project. The RST THPO requested the assistance of the SHPO in acquiring copies of the archeological survey reports completed along the proposed pipeline route, and after reviewing the survey reports, the RST THPO wrote a letter to the SHPO Review and Compliance Coordinator, Paige Olson, voicing his concerns over several aspects of the cultural surveys and requested that she not sign the Keystone XL Programmatic Agreement until these concerns have been addressed and resolved. These concerns related particularly to the lack of a Traditional Cultural Property Survey by the Rosebud Sioux Tribe, the lack of consultation with the Rosebud Sioux Tribe concerning potential Traditional Cultural Properties identified by the archeologists conducting the surveys, the omission of any consideration or evaluation of the effect of a proposed transmission line across a significant Lakota Battle Site that is currently in the process of being nominated as a National Historic Landmark Site, and the minimal survey efforts in locations with large concentrations of pre-contact archeological sites.

Q: I'd like to draw your attention to Paige Olson's 2009 Prefiled testimony on Docket HP 09-001 for a moment. Would you agree that Mrs. Olson's testimony identifies numerous potential sites that may be eligible for inclusion and protection under the National Historic Preservation Act?

A: Yes.

Q: Again, in reference to Mrs. Olson's 2009 prefiled testimony she states that the US Department of State is in the process of determining if any archeological and or historically sensitive areas that will be impacted by the Keystone Pipeline. She also states that SWCA Environmental Consultants prepared a report addressing possible sites on the following counties: Butte, Haakon, Harding, Jones, Lyman, Meade, Perkins and Tripp counties, South Dakota. Are any of these counties located in areas that the tribe considers to be under the 1868 or 1851 Fort Laramie Treaties entered into with the United States Government? If so, what counties would those be?

A: Yes, all of those counties are located within the boundaries of both the 1851 and the 1868 Fort Laramie Treaties.

Q: Does Mrs. Olsons testimony state that this report does not include the identification of places of religious and cultural significance, or the identification of deeply buried archaeological deposits?

A: Yes.

Q: Does Mrs. Olson's testimony state that sites 39BU0039, 39HK0138, 39JN0051, 39LM0519 and 39PE0400 are located within the APE and will be affected by construction?

A: Yes.

Q: I'd like to draw your attention to Paige Olson's 2015 Pre-filed testimony with respect to the question next to line number 14 on page 7, which states "Has Keystone, to the best of your knowledge, complied with the state and federal rules and regulations you described previously? and the corresponding answer starting at line Number 16 on page 7 which states "To the best of my knowledge Keystone XL is in the process of complying with Section 106 (now Section 306108) of the National Historic Preservation Act through the programmatic agreement." Do you agree with her answer?

A: I don't agree that Keystone has complied with the Section 106 (now Section 306108) requirements.

Q: Based on your understanding of Mrs. Olson's 2009 pre-filed testimony is it your understanding that the SHPO has identified several concerns with the Section 106 (now Section 306108) requirements that had not been adequately addressed?

A: Yes, my understanding of the testimony is that the SHPO has concerns with a number of sites that may be eligible for protection under the National Historic Preservation Act and the SHPO was unable to determine if Keystone could mitigate the risks associated with those concerns because the identification efforts were not complete a final determination of Keystone's ability to mitigate risks could not be determined in 2009. The testimony also indicated that the site

identified as 39PE0400 was recommended as not eligible for inclusion on the NRHP but the SHPO disagreed with that recommendation and requested additional information about that site.

Q: Based on your understanding of the 2009 prefiled testimony, how would these concerns be addressed?

A: The 2009 testimony indicates that the US Department of State intends to conduct a phased identification and evaluation and that a programmatic agreement would be developed to assist with NHPA Section 106 compliance. The testimony also states that the agreement should establish mitigation measures to ensure that previously identified sites and any new sites identified are taken into account.

Q: Have you reviewed the pre-filed testimony for Paige Olson for this case dated April 2, 2015.

A: Yes.

Q: Based on comparing the 2009 testimony with the 2015 testimony are the concerns raised in the 2009 testimony addressed.

A: After review of the 2009 and 2015 testimony, Mrs. Olson does not specifically address any of the concerns identified in the 2009 in her 2015 testimony.

A: Are there any new concerns in Mrs. Olson's 2015 pre-filed testimony?

Q: Yes. Mrs. Olson indicates that the SHPO wants to ensure that proper monitoring measures are put into place for 4 proposed Horizontal Directional Drilling (HDD) locations known as the Bad River HDD, Cheyenne River HDD, Little Missouri HDD and the White River HDD. She indicated that these locations were not included in the Attachment F "Historic Trail and Archeological Monitoring Plan of the Programmatic Agreement.

Q: Is there anything else about this testimony that you would like to bring to the attention of the commission?

A: Yes. Mrs. Olson's testimony also indicates that it is unclear if the applicant intends to follow these recommendations.

Q: Does Mrs. Olson's pre filed testimony indicate that the SHPO feels it would be appropriate to have tribal surveys conducted on those newly identified areas of concern?

A: No, the testimony does not state that Traditional Cultural Property Survey's of these areas should be a part of that recommendation.

Q: Do you feel that not including Traditional Cultural Property Survey for those four river crossings would satisfy the requirements of Section 106 (now Section 306108) consultation?

A: Leaving Traditional Cultural Property Survey's out of that process would be a violation of the National Historic Preservation Act Section 306108 and Section 302706 requirements.

Q: If the Section 106 requirements are not satisfied, has Keystone complied with all applicable laws from Amended Permit Condition 3?

A: No they will not have complied with the requirements and the requirements of the statute will not be satisfied.

Q: What is a Programmatic Agreement?

A: The goal of a programmatic agreement is to meet the statutorily mandated consultation requirement of the National Historic Preservation Act. Consultation necessarily requires that the proper Indian tribe is first identified. The goals of the Programmatic Agreement are, following identification of the proper Indian tribe to identify historic properties potentially affected by a federal undertaking such as the Keystone KXL pipeline, to assess its affects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

Q: To the best of your knowledge does the Rosebud Sioux Tribe and the Tribal Historic Preservation Office have concerns with the adequacy of the Programmatic Agreement?

A: Yes.

Q: How do you know that the Tribal Historic Preservation Office has concerns with the Programmatic Agreement?

A: I learned of the THPO concerns through my work with the Tribal Historic Preservation Office.

Q: Is it your understanding from Mrs. Olson's testimony that the Programmatic Agreement satisfies all of the SHPO concerns?

A: Yes.

Q: Is it your understanding from Mrs. Olson's testimony the State Historic Preservation Office position is that the Programmatic Agreement was entered into in conformance with the Section 106 requirements of the National Historic Preservation Act.

Q: What are the Rosebud Sioux Tribe's and the Tribal Historic Preservation Office's concerns with the programmatic agreement?

A: The THPO has numerous concerns with the Programmatic Agreement. The first concern is with the federal government's failure to identify Tripp County as containing "tribal lands" that are within the jurisdiction and control of the Rosebud Sioux Tribe. These lands are adjacent to the proposed pipeline construction corridor. Because these lands were not properly designated,

there has been no consultation with the Rosebud Sioux Tribe as required by federal law to identify and protect any historic properties that the Rosebud Sioux Tribe may ascribe cultural or religious significance too.

Q: You mentioned that there are additional concerns, please continue.

A: The next concern that the tribe has with the Programmatic Agreement is the improper designation of the Yankton Sioux Tribe as the consulting tribe with jurisdiction over tribal lands in Tripp County. As previously testified to, the Rosebud Sioux Tribe exercises jurisdiction over tribal trust land in Tripp County as that land is part of the original reservation boundaries from the 1851 and 1868 treaties.

Q: Can you point to a specific location in the Programmatic Agreement that supports the designation of the land in Tripp County as being under the jurisdiction of the Yankton Sioux Tribe?

A: Yes, the map that contains this mistaken designation is located within Appendix A of the Tribal Monitoring Plan, Programmatic Agreement. Please see Exhibit 12 "Map from Programmatic Agreement." The land in this area is land within the original boundaries of the Rosebud Reservation and under the jurisdiction of the Rosebud Sioux Tribe.

Q: Why is this mistaken designation problematic?

A: The problem with the mistaken designation is that without the proper tribe being designated, it is impossible to gather the necessary and required Tribal consultation under Sections 306108 and 302706. If the proper Tribe is not notified, it is impossible to comply with the requirements of Sections 306108 and 302706. This mistaken designation has resulted in the Rosebud Sioux Tribe from planning and taking part in appropriate Tribal Cultural Property surveys.

Q: To your knowledge have these concerns been communicated to the State Historic Preservation Office?

A: Yes. The RST Tribal Historic Preservation Officer communicated these concerns with the Programmatic Agreement along with other concerns to Paige Olson, State Historic Preservation Office by letter dated October 30, 2013. See Exhibit 13 "Letter to SHPO."

Q: Are there any other concerns that your office has with the cultural surveys or programmatic agreement?

A: Yes, in addition to the mistaken designation, the surveys that were done in certain areas with high concentrations of pre-contact sites across South Dakota were not properly conducted under relevant archeological standards. In addition to many sites being designated as potentially eligible for nomination to the National Register of Historic Places under Criterion A, pending

Native American consultation, and not being followed up on, the manner in which certain sites were evaluated in Tripp County is also unacceptable.

Q: Please explain.

A: The State Historic Preservation Office assisted us in this process by helping us to obtain copies of the archeological survey reports and the accompanying site forms. Numerous sites were identified as potential TCP locations (or locations that may have traditional religious and cultural importance to the tribe); including, but not limited to 39HN1078, 39HN1079, 39HN1080, 39hn1144, 39HN1148, 39HN1151, 39HN1152, 39HN1167, 39BU39 and 39BU449. It is my understanding that according to the former Yankton Sioux Tribe Tribal Historic Preservation Officer, the Yankton Sioux Tribe attempted to work with Keystone to identify Traditional Cultural Properties along the pipeline route. The sites in Tripp County, were rushed to identify cultural sites from a moving vehicle, forbidden by Keystone officials to interview landowners in an area where known knowledge of cultural sites existed, was unable to access cultural areas because Keystone did not acquire prior land owner permissions and locations that were accessible had inadequate ground visibility to survey properly yet were still surveyed.

Q: Are you aware as to whether or not Keystone has a policy relating to its relationships with Native American tribes?

A: Yes. That policy is attached as RST Exhibit 14 “TC Native American Policy.”

Q: Have you reviewed that policy?

A: Yes.

Q: The applicant responded “yes” to RST First Set of Interrogatory’s Interrogatory Number 41, on page 15, “Does TransCanada believe that it has followed its Native American Relations Policy with respect to its applicability to the Rosebud Sioux Tribe. Based on your knowledge of their policy and your work at THPO do you feel that the answer is correct?”

A: No I do not feel that Keystone has followed its own policy on Native American relations.

Q: In response to RST First Set of Interrogatories, Interrogatory Number 66 on page 24, the applicant was asked the following question “What steps has TransCanada or any of its affiliates taken to ensure that all lands that the Rosebud Sioux Tribe have an interest in have had proper cultural and historic surveys completed to the satisfaction of the Rosebud Sioux Tribe?” Finding of Fact 110. The applicant provided the following answer “Keystone believes that the pipeline right of way as currently permitted does not pass through Indian Country or cross any land owned or held in trust for the Rosebud Sioux Tribe.” Do you feel that answer satisfies the requirements of National Historic Preservation Act consultation requirements?

A: No, that answer does not support the assertion that Keystone has complied with all National Historic Preservation Act requirements.

Q: In response to RST First Set of Interrogatories, Interrogatory Number 76 on page 30, the applicant was asked the following question “What steps, if any, has Keystone or any of its affiliates taken to ensure that the cultural and historic resources of the Rosebud Sioux Tribe are protected? Amended Permit Condition 44.” The applicant provided the following answer “Keystone has taken all steps required by state and federal law to ensure that the cultural and historic resources affected by the construction of the pipeline within the permitted rights of way are protected?” Do you feel that answer is sufficient to satisfy the requirements of Section 106?

A: No, that answer does not support the assertion that Keystone has complied with all National Historic Preservation Act requirements.

Q: Do the applicants responses to the previous 2 questions make you feel that should the permit be granted, the applicant will be able to comply with all National Historic Preservation Act requirements?

A: If the permit is granted I am not comfortable with Keystone’s ability to comply with permit conditions relating to the Rosebud Sioux Tribe.

Q: In Mrs. Olson’s 2015 pre filed testimony starting on page 2 at line 15 she states that “SHPO would like to ensure that Keystone XL is aware of our continued concerns about the construction of electrical distribution/transmission facilities and the potential impacts to the Slim Buttes area.” Do you think that this statement provides sufficient information to inform the PUC what the SHPO’s concerns are and why the concerns are relevant?

A: No, this answer does not adequately convey the SHPO’s concerns with the Slim Buttes area, nor does it tell the PUC why that information is relevant.

Q: Does the RST THPO office have any concerns with the cultural protection of the Slim Buttes area, if so, please state them.

A: The Slim Buttes site has important historical significance to the people of the Rosebud Sioux Tribe. Archeologists for Keystone conducted a surface survey for a proposed transmission line for the pipeline which would run across the middle of the Slim Buttes site. The survey performed fails to include any reference to the historical significance of the site and briefly makes mention of a sign on the side of the road that commemorates the battle that took place here. To the best of my knowledge Chris Nelson, the State Historic Preservation Specialist, of the South Dakota Historic Preservation Office, is preparing a proposal to nominate this site to the National Historic Landmark Site list. The Battle of the Slim Buttes is a significant event in the Great Sioux War. The site represents an association with events of transcendent importance in American Indian – army relations of the late nineteenth century which contributes to the broad

patterns of United States history. There are six potential National Historic Landmark Sites associated with the Great Sioux war. Those sites are the Rosebud Battlefield in Montana, Wolf Mountain Battlefield in Montana, Powder River Encounter site in Montana, Morning Star (Dull Knife) Village Site in Wyoming, Slim Buttes Encounter Site in South Dakota, and Cedar Creek Conference and Skirmish in Montana. Two of these sites were approved by Congress as National Historic Landmarks in 2008. It is my understanding that nomination reports are being created for the other four now and will be submitted to Congress for approval. Because the Slim Butte site holds the same level of significance as the other two sites it is expected that it too will be approved as a National Historic Landmark Site.

Q: Are there any other concerns with this site?

A: Yes. The U.S. Department of State includes the Slim Butte area as a “Monitoring Area” during the proposed construction of the pipeline. Because the proposed construction of a power transmission line through this area would constitute an unacceptable physical, visual, and audio disturbance to this site, the designation is improper and Mrs. Olson’s cursory reference to the site as something that Keystone XL should be aware of does not satisfy the requirements of the National Historic Preservation Act.

Q: Regarding RST Exhibit 4 “Landslide Hazard Areas,” were you able to determine if any reported are located in an area designated as a landslide hazard area?

A: Yes, There are 30 archeological sites that were recorded by the Keystone archeologists that are either eligible for listing on the National Register or are unevaluated (and therefore considered eligible until evaluated) within the red area on Exhibit 4, which are landslide hazard areas. Some sites are along the transmission lines or other development areas associated with the pipeline.

There are 15 recorded archeological sites that are eligible or unevaluated within the red area and are within the direct pipeline route. Of these 15 sites, 6 are ones identified by the Keystone archeologists as potential TCP's and they recommended Tribal TCP Consultation that was never followed up on. These six sites are: 39BU39, 39BU449, 39HN1078, 39HN1079, 39HN1080, and 39HN1144.

Q: Does this conclude your pre-filed rebuttal testimony for this case?

A: Yes.

**Curriculum Vitae
Jennifer Galindo
Archeologist**

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Education

- 1997 M.A., Anthropology, University of Nebraska (Lincoln, Nebraska).
Thesis "Scales of Human Organization and Rock Art Distributions: An
Ethnoarchaeological Study Among The Kunwinkju People of Arnhem Land Australia."
- 1993 B.S., Archaeology with minor in Geology, (Magna Cum Laude Honors in Archaeology),
University of New Mexico (Albuquerque, New Mexico)

Employment, Research Activities and Laboratory Experience

- 2012-present Archeologist, Rosebud Sioux Tribe Historic Preservation Cultural Resource Management Office. Act as Principal Investigator in conducting archeological inventories for Section 106 Compliance of the National Historic Preservation Act and other cultural site surveys as requested, train and supervise field crew, complete reports, and enter site and survey information into the Tribal Historic Preservation Cultural Resource Management Office ArcMap GIS database. Responsible for the overall quality assurance of the GIS database, keeping the GIS software updated, and developing policy to ensure the protection of site information and access to the site database. Conduct archeological excavations to evaluate sites. Develop research and archeological site management plans, continue working towards the ongoing Reservation-wide survey, and other duties as assigned by the Tribal Historic Preservation Cultural Resource Management Officer.
- 2009-2012 Archeologist, Rosebud Sioux Tribe Sicangu Oyate Land Office, Rosebud, SD. Conduct archeological and cultural sites surveys, train and supervise archeological field crews, work with the Tribal Historic Preservation Officer on evaluating and protecting cultural resource sites, write archeological reports, continue development of the Land Office Tribal ArcMap GIS database, instruct staff on GIS and GPS (both Trimble GPS units with TerraSync, and TopCon GPS units with ArcPad) use, and work with the Tribal Land Office staff on the Integrated Resource Management Plan (IRMP) including research and production of Community and Reservation-wide land-use and resource of value profiles, preparing presentations for the Tribal Council and Land Use Commission on IRMP progress, and completing IRMP quarterly reports. Also responsible for training and supervising GPS range mapping technicians, writing grant proposals,

and managing personnel and supply budgets and expenditures for grant projects.

- 2007-2009 Archeologist, Independent Contractor. On contract with the Rosebud Sioux Tribe Sicangu Oyate Land Office to develop the Tribal GIS database, instruct staff on GIS use, conduct archeological and cultural sites surveys, and work with the Land Office staff on the Integrated Resource Management Plan including research and production of Community and Reservation-wide land-use profiles, updating the GIS system, preparing presentations for the Tribal Council and Land Use Commission on IRMP progress, and completing IRMP quarterly reports.
- 2001-2009 Archeologist, Independent Contractor. Conduct archeological surveys for National Historic Preservation Act Section 106 compliance for various agencies and individuals including the Rosebud Sioux Tribe, Pine Ridge Housing Office, Bureau of Indian Affairs, Cherry-Todd Electric Cooperative, Todd County School District, and individual tribal members and local ranchers utilizing Federal funds. Each of these involve conducting records reviews, systematic transect field surveys, and completing final reports presenting the findings and recommendations in accordance with Federal Historic Preservation laws.
- 2006 Archeologist/Principal Investigator. Section 106 compliance project within the Wounded Knee Massacre Historic Landmark Site, in South Dakota, under contract with the Bureau of Indian Affairs. This project involved extensive historic research, interviewing Lakota elders on family oral histories relating to the events of the 1890 massacre, and intensive archeological pedestrian surveys. By using the family oral history in conjunction with archeological survey fieldwork, we were able to identify and protect many unmarked graves and specific locations where significant historic events took place that were previously known only by a small group of massacre survivor's families. We worked with the Bureau of Indian Affairs to identify an alternate road route that would address the safety concerns of the road in question and avoid and protect the cultural sites in this culturally sensitive area.
- 2000-2006 Archeologist/GIS Specialist, Sicangu Heritage Center, Sinte Gleska University, Rosebud, South Dakota. Worked with Lakota elders and other knowledgeable tribal members within the twenty communities of the Rosebud Sioux Reservation to identify archeological sites, historic sites, sacred sites and traditional cultural properties within their community. Hired, trained, and supervised summer field crews of individuals from the community to conduct systematic archeological surveys of the sites identified by the elders and other locations in the community thought to have a high probability of sites. Completed tribal site forms and entered all site information into ArcView GIS database. Worked with the communities, the Sicangu Oyate Land Office, the Tribal Land Enterprise, and the Rosebud Sioux Tribe Land and Natural Resources Committee to help protect and preserve the significant sites.
- 1999-2004 National Park Service Archeologist, Wind Cave National Park. Archeologist for a

five year Systemwide Archeological Inventory Program (SAIP) funded project. Responsibilities included writing a research design to guide the work for the five year project, organizing and supervising archeological field crews each summer, cataloging collected artifacts, writing annual reports at the end of each field season, and writing a final report at the completion of the five year project. Fieldwork involved conducting systematic transect surveys following prescribed burns, recording newly discovered sites with a GPS, completing site forms, entering all data into an ArcView GIS database, conducting test excavations where needed to determine National Register eligibility, revisiting and monitoring the condition of previously recorded sites, and creating detailed maps of tipi ring sites using a Total Station to piece plot the location of each stone and artifact at each site.

- 1998 National Park Service Archeologist, Midwest Archeological Center, Lincoln, Nebraska. Director of Lewis and Clark Trail Center Archeological Inventory. Investigations included records reviews, systematic surface surveys, piece-plotting surface artifacts with a GPS, completing site forms, conducting a magnetometer survey to identify potential buried sites, digging test excavations at the locations identified by the magnetometer survey, evaluating the recorded sites for National Register eligibility, cleaning, analyzing, and cataloging collected artifacts, and completing a final report detailing the findings, analysis, and recommendations. Other duties during this appointment included digitizing mapped data into an ArcInfo GIS program. (R. Hartley and T. Theissen, supervisors)
- 1997 National Park Service Archaeological Technician, Lab Work for the Midwest Archaeological Center, Lincoln, Nebraska (R. Hartley, supervisor)
- 1996 National Park Service Archaeological Technician, Midwest Archeological Center, Lincoln, Nebraska. Conducted archeological excavations at the Cove Creek Site in Idaho, completed the lab work following the excavations, conducted research to interpret the findings, and wrote portions of the final report. (K. Cannon, principal investigator)
- Research Assistant for the Agate Fossil Beds Archaeological Excavation and Survey Project, University of Nebraska (L. Wandsnider, supervisor)
- 1995 Contract Anthropologist, Northern Land Council, Casuarina, Northern Territory, Australia. Conducted ethnographic research among Australian Aboriginal Clan groups who own tracks of land within two mining lease areas. Interviewed Aboriginal Traditional Owners to determine clan boundaries. Recorded genealogical histories of Aboriginal clan groups in question. Visited and recorded sacred sites and Dreaming stories associated with them. Recorded rock art sites, lithic quarries, and other archeological sites in the mining lease area. Prepared final report and maps delimiting “no-go” areas for mining companies. (Ian McIntosh)

- 1995-96 Fulbright Scholar. Ethnoarchaeological Fieldwork at Aboriginal Outstation in Arnhem Land, Northern Territory, Australia. Conducted one year of ethnoarchaeological field research within an Aboriginal community in the Australian tropics. Lived with two clan groups of Kunwinkju speaking people in the Northern Territory to record the rock art sites located within their clan lands, the stories associated with the glyphs, and the cultural context they occur in. Site locations were recorded with a GPS and associated stories, as conveyed by the Aboriginal consultants, were recorded on videotape. The resulting data were entered into a TNT-MIPS GIS database for analysis and interpretation.
- 1995 Excavator, University of New England Archaeological Excavation of a Macassan Trepan Processing Site, Kimberley Region, Australia (M. Morwood, principal investigator).
- Macrobotanical Analyst of Hearth Feature Fill, University of Nebraska Field School Excavations on the Oglala National Grasslands, northwest Nebraska. Sorted through sediment fill from prehistoric 'pit hearths' collected during 1994 summer field school. Sediment was floated and divided into heavy and light fraction. Light fraction was sorted under magnification to isolate and identify macro-botanical material (L. Wandsnider, supervisor).
- 1994 Research Assistant for the Oglala National Grasslands Archaeological Excavation Project, University of Nebraska Archaeological Field School. Cataloged artifacts recovered during UNL summer field school archeological excavations. Labeled and organized slides, fieldnotes, recording forms, etc, used during field school. Wrote selected sections of report and accompanying graphics. (L. Wandsnider, supervisor)
- Teaching Assistant, University of Nebraska summer field school. Supervised students in archaeological excavation at the Oglala National Grasslands, northwest Nebraska (L. Wandsnider, director)
- 1993 Teaching Assistant, University of Nebraska. Assisted instructors in the following courses: Anthro 110, Anthro 351, and Anthro 212. Also, supervised students at the summer field school in archaeological surface survey at the Oglala National Grasslands, northwest Nebraska (Dr. Ray Hames, Dr. Lee Davis, Stan Parks, and L. Wandsnider, instructors)
- 1992 Excavator, Ulm Pishkin Communal Bison Jump Site Excavations, Montana, for the Montana State University (T. Roll and J. Fisher, principal investigators)
- 1992 Archaeological Technician, Bitterroot National Forest, Hamilton, Montana. Archeological survey, site recording, literature search, report writing. (J. Bolton, supervisor)

- 1991 Rock Art Recording and Research in Montana, Wyoming, and Alberta Canada, for Senior Honors Thesis, University of New Mexico (L. Binford, thesis committee chair)
- 1990 Rock Art Recorder, Wall With Writing (Joliet, Montana) and Legend Rock (Hot Springs, Wyoming) Recording Project, , for the University of North Dakota Anthropology Department. (L. Loendorf, director)
- 1989 Rock Art Recorder and Photographer's Assistant, Pinon Canyon Archaeological Project, Pinon Canyon Colorado (L. Loendorf, principal investigator)

Teaching Experience

- 2000 Instructor, Sinte Gleska University, "ArcView GIS."
- 1999 Instructor, Sinte Gleska University, "Indigenous Cultures of the World," "Plains Rock Glyphs."
- 1994 Teaching Assistant, University of Nebraska - Lincoln, "Peoples and Cultures of Native North America", Instructor L. Davis
- Teaching Assistant, University of Nebraska - Lincoln, "Introduction to Cultural Anthropology", Instructor R. Hames
- Teaching Assistant, University of Nebraska Archaeological Field School Excavation at the Oglala National Grasslands, northwest Nebraska, Instructor L. Wandsnider
- 1993 Teaching Assistant, University of Nebraska - Lincoln, "Introduction to Culture and Society", Instructor S. Parks
- Teaching Assistant, University of Nebraska Archaeological Field School Survey at the Oglala National Grasslands, northwest Nebraska, Instructor L. Wandsnider

Fellowships, Grants, and Contracts

- 2006 Contract "A Class III Cultural Resource Survey of Four Alternatives for the Re-routing of BIA Route 27 through the Wounded Knee Massacre Site, on the Pine Ridge Reservation in Shannon County, South Dakota." Bureau of Indian Affairs, Aberdeen Area Office, South Dakota..
- 2006 Contract "Test Excavations of the Zimiga Site (39SH327), on the Pine Ridge Reservation in Shannon County, South Dakota." Oglala Sioux Tribe, Pine Ridge Housing Office, Pine Ridge, South Dakota.

- 2005 Contract "A Cultural Resource Survey of Five Areas Proposed for Mechanical Treatment By The Rosebud Fire Department on the Rosebud Sioux Reservation in Todd County, South Dakota."
- 2005 Contract "A Cultural Resource Survey for the Proposed Expansion of a Sand and Gravel Operation on LBT-862, on the Lower Brule Reservation in Stanley County, South Dakota."
- 2001-present Over 100 small contracts for National Historic Preservation Act Section 106 Compliance Projects completed for the Rosebud Sioux Tribe for individual's homesites and residential waterlines, local ranchers using NRCS funds, small county projects, Pine Ridge homesites, and other individuals and agencies.
- 2000 Contract "Archeological Inventory along the West Bank of the Missouri River, South Dakota." Rosebud Sioux Tribe, Rosebud, South Dakota.
- 1997 University of Nebraska Department of Anthropology Champe-Weekly Fellowship
- 1996 Contract "Report to the Northern Land Council: Aboriginal Patri-clan Estates and Significant Sites Within ELA 3346 and 4071," Northern Land Council, Northern Territory Australia
- 1995-96 IIE Fulbright Fellowship, Ethnoarchaeological Field Research at an Aboriginal Community in the Australian Tropics
- 1995 Center for Great Plains Studies Research Grant "Prehistoric Rock Art of South Dakota."
- 1994-95 University of Nebraska Graduate Student Fellowship
- 1994 University of Nebraska Department of Anthropology Champe-Weekly Fellowship
University of Nebraska Department of Anthropology Champe-Weekly Fellowship
Travel Funds
- 1993 University of Nebraska Department of Anthropology Champe-Weekly Fellowship

Awards and Honors

- 1993 University of New Mexico Magna Cum Laude Honors in Anthropology
1990 University of New Mexico Distinguished Student Award (\$200)

Memberships

Society for American Archaeology

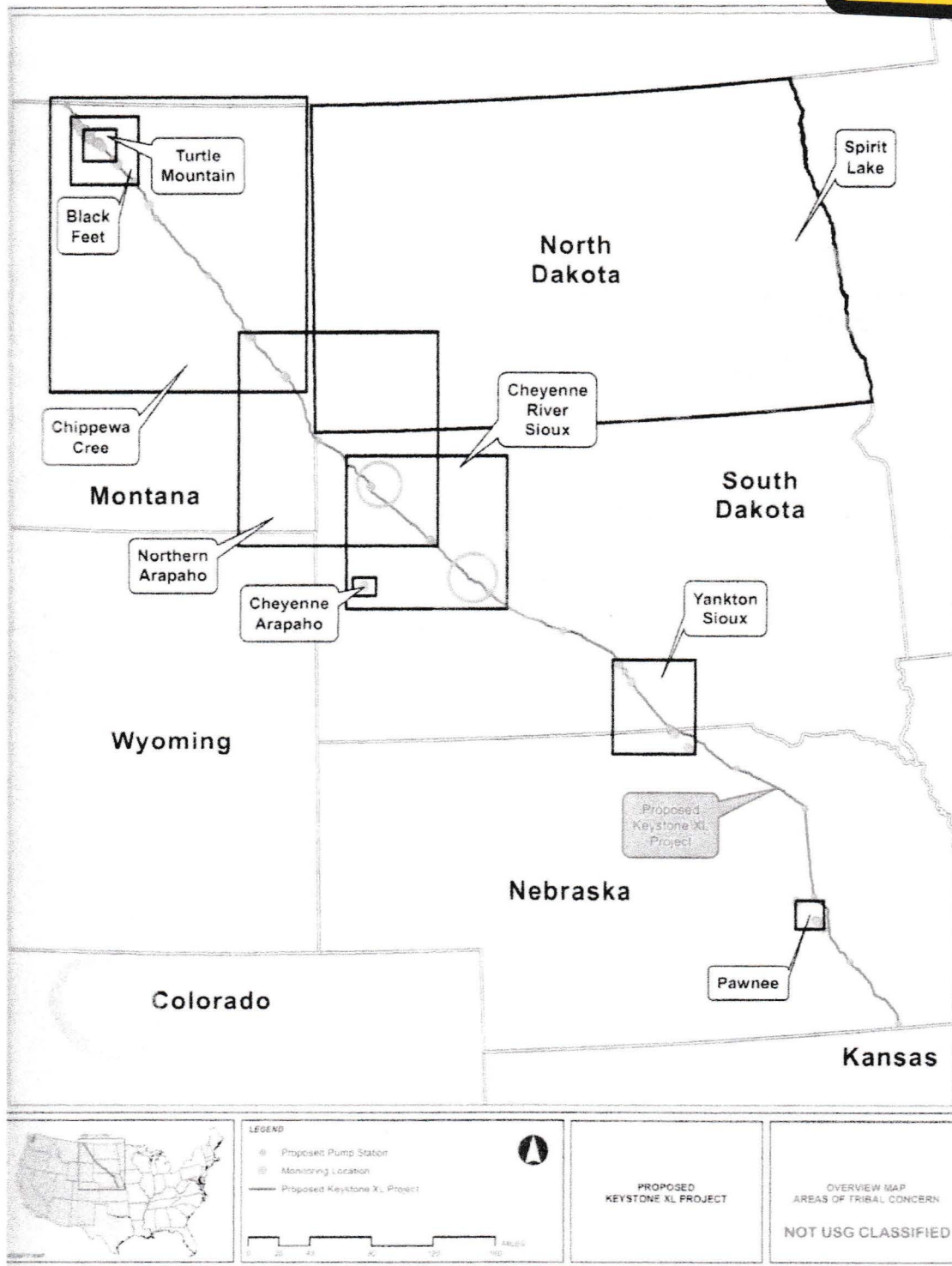


Figure 3. Map from Keystone XL Pipeline Programmatic Agreement Misidentifying Tripp County as part of the area of tribal consultation with the Yankton Sioux Tribe Rather than the Rosebud Sioux Tribe whose 1889 Reservation Boundary it is within.



matthew rappold <matt.rappold01@gmail.com>

FW: Keystone Pipeline XL PA

2 messages

J Galindo <galindo_j@hotmail.com>

Wed, Apr 22, 2015 at 11:59 AM

To: "matt.rappold01@gmail.com" <matt.rappold01@gmail.com>

Hi Matt, here's the email with the letter from Russell asking that Paige not sign the PA

Date: Wed, 22 Apr 2015 11:56:21 -0500
Subject: Fwd: Keystone Pipeline XL PA
From: rst.thpo@rosebudsiouxtribe-nsn.gov
To: galindo_j@hotmail.com

----- Forwarded message -----

From: **RST Historic Preservation** <rstthpo@yahoo.com>
Date: Thu, Oct 31, 2013 at 4:48 PM
Subject: Keystone Pipeline XL PA
To: Paige Hoskinson <Paige.Hoskinson@state.sd.us>

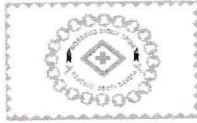
Hello Ms Paige,
Letter from Russell
Kathe

2 attachments



001.jpg
518K

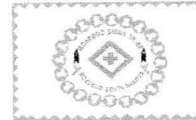
007554



Protecting the Land, Cultural,
Heritage and Tradition for
the Future Generation

Tribal Historic Preservation Office

P.O. Box 809
Rosebud, South Dakota
Telephone: (605) 747-4255
Fax: (605) 747-4211
Email: rsthpo@yahoo.com



Russell Eagle Bear
Officer

Kathy Arcoven
Administrative Assistant

Date: October 30, 2013

To: Paige Olson
Review and Compliance Coordinator
South Dakota State Historical Society
900 Governors Drive
Pierre, SD 57501

Re: The Rosebud Sioux Tribe Historic Preservation Office Request that you **not** sign the Keystone XL Programmatic Agreement until Tribes have addressed all Traditional Cultural Property issues.

Dear Paige,

Thank you for your recent assistance to our office in helping us to acquire copies of the archeological survey reports completed thus far on the Keystone XL Pipeline project. We have now had the opportunity to review all of the survey reports across South Dakota and have some concerns.

One of my major concerns is the lack of a properly conducted Traditional Cultural Property (TCP) survey along the proposed route. The Rosebud Sioux Tribe feels strongly that a Tribal TCP survey that covers 100% of the project area is necessary. Not only has this not been allowed, but the locations identified as a "Potential TCP" by the archeologist's conducting the Keystone XL corridor surveys, were never followed up with the recommended Tribal Consultation.

According to the archeological survey reports, and accompanying site forms, several sites (i.e. 39HN1078, 39HN1079, 39HN1080, 39HN1144, 39HN1148, 39HN1151, 39HN1152, 39HN1167, 39BU39, 39BU449) were identified as a potential TCP. As a potential TCP, the archeologist's recommended each site as potentially eligible for nomination to the NRHP under Criterion A pending Native American consultation. Rather than consulting with the Tribes on these sites, they claim to have "avoided" the sites by making small changes to the project route. This is inadequate as there was no Tribal input into how far is enough distance to protect the integrity of the property. These sites need to be fully evaluated with Tribal consultation.

A feeble attempt at Tribal Consultation by TransCanada in South Dakota occurred on August 9, 2010, when representatives from the Yankton Sioux Tribe spent one day driving through sections of Tripp County with TransCanada representatives. According to the report submitted by Lana Gravatt, the then Tribal Historic Preservation Officer for the Yankton Sioux Tribe, she was rushed to identify cultural sites from the moving vehicle, was forbidden by TransCanada to interview land owners in an area where she had knowledge of cultural sites and was unable to access cultural areas because TransCanada did not acquire landowner permission. Under these ridiculous and completely unacceptable conditions, the Yankton tribal representative did identify five areas in Tripp County where she recommended monitoring during construction. This is not an acceptable Traditional Cultural Property survey and demonstrates the level of disrespect and disregard TransCanada has for the Tribal Consultation process and protection of cultural sites.

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I have additional concerns with the proposed transmission lines running across the Slim Buttes Battle Site without proper evaluation and the 30 meter transect intervals across areas with a very high concentration of pre-contact sites, however, these concerns would be addressed in a Tribal TCP survey.

The Tribes are currently in the process of drafting their own Programmatic Agreement for the Keystone XL Project to submit for consideration as part of the government to government consultation process.

For these reasons, I am requesting your support and asking that you **not** sign the Keystone XL Programmatic Agreement until Tribes have addressed all Traditional Cultural Property issues (as we know they will not be properly addressed after the Agreement is signed) and have had the opportunity to submit our draft of a Programmatic Agreement. Some issues cannot be mitigated by monitors in the field – they must be addressed **prior** to the project being approved.

Thank you for your support and consideration of this request.

Sincerely,



Russell Eagle Bear
THPO Officer

007556

"It's important to me to work for a company that values different cultural perspectives and works to identify opportunities for Native American businesses across the great lands where we operate."

*Peter Knight
Community Liaison, TransCanada*



NATIVE AMERICAN RELATIONS

TransCanada — COMMITTED TO BEING A GOOD NEIGHBOR AND TO BUILDING AND MAINTAINING POSITIVE RELATIONSHIPS

TransCanada believes the road to success is supported by cultural exchange and understanding. Traditional land use studies are an important element to our project development process and TransCanada is committed to identifying and preserving important natural and cultural landscapes near our facilities and proposed developments.

For more details:

To reach our Native American Relations department directly, please email us at:
tribal_relations@transcanada.com

For general information, please call:
1.800.661.3805

Or visit our website at:
www.transcanada.com





OUR APPROACH

Communication — Engagement — Commitment

We recognize the diversity and uniqueness of each community, the significance of the land and traditions, and the importance of building relationships based on mutual respect and trust.

Collaborating with Native American Tribes

To support safe, healthy and vibrant Native American communities we invest in cultural, educational and environmental initiatives.

Creating an inclusive and supportive working environment

Our Native American human resources strategy supports an inclusive and supportive work environment for our employees.

Our Native American contracting strategy supports opportunities for Native American businesses to engage in our ongoing operations and development of new projects.

We truly appreciate and value the experience and knowledge of our employees and contractors and recognize the enormous contributions made by each individual.

Investing in education

TransCanada has been a long-time contributor in

support of many educational initiatives. The company has awarded hundreds of thousands of dollars through scholarships, bursaries, material contributions and in-kind donations to students and educational organizations across the country.

Through these initiatives, we can help support the increasing number of Native American professionals and trades people entering and preparing for tomorrow's workforce, contributing to an outcome beneficial to both the energy and resource industry and the Native American communities.

We are proud of our long-standing commitment to education and will continue to enhance and find new ways of furthering our support.

Awareness

To support TransCanada's employee understanding of Native American history and culture, and the role Native American people play in the United States and our business, we continue to offer a training program specifically for our employees and contractors.

The future

TransCanada will continue to review and adapt our Native American Relations Policy, programs and initiatives to meet the changing needs of our business and Native American communities.

NATIVE AMERICAN RELATIONS POLICY

TransCanada's Native American Relations Policy must be flexible to address the legal, social and economic realities of tribes across the United States.

The following principles guide this policy:

- TransCanada respects the diversity of Native American cultures, recognizes the importance of the land and cultivates relationships based on trust and respect;
- TransCanada works together with Native American communities to identify impacts of company activities on the tribes' values and needs in order to find mutually acceptable solutions and benefits;
- TransCanada strives to create short and long-term employment opportunities for Native American people impacted by our activities;
- TransCanada supports learning opportunities for Native American people to provide a well trained source of Native employees and to build capacity within Tribal communities;
- TransCanada respects the unique rights and status of Native American tribes and recognizes our relationships with Native American peoples are separate and different from that of the governments.

All TransCanada employees have a responsibility to help build and maintain relationships with the Native American tribes where we do business.

