

Attachment D

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION	:	HP 14-001
BY TRANSCANADA KEYSTONE PIPELINE, LP FOR A PERMIT UNDER THE SOUTH DAKOTA ENERGY CONVERSION AND TRANSMISSION FACILITIES ACT TO CONSTRUCT THE KEYSTONE XL PROJECT	:	KEYSTONE'S RESPONSES TO GARY F. DORR'S FIRST INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS
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Applicant TransCanada makes the following responses to interrogatories pursuant to SDCL § 15-6-33, and responses to requests for production of documents pursuant to SDCL § 15-6-34(a). These responses are made within the scope of SDCL 15-6-26(e) and shall not be deemed continuing nor be supplemented except as required by that rule. Applicant objects to definitions and directions in answering the discovery requests to the extent that such definitions and directions deviate from the South Dakota Rules of Civil Procedure.

GENERAL OBJECTION

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

(01815104.1)

Case Number: HP 14-001  
Keystone's Responses to Gary F. Dorr's First Interrogatories and Request for Production of Documents

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

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANSWER: SWCA Environmental Consultants performed the cultural resources surveys.

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

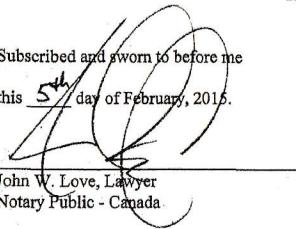
within the purview of the United States Department of State to determine whether the proposed project is in the national interest, under the applicable Presidential Executive Order. This request also seeks information that is not within Keystone's custody or control and is not maintained by Keystone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

Dated this 5<sup>th</sup> day of February, 2015.

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

By   
Its Director, Authorized Signatory

Subscribed and sworn to before me  
this 5<sup>th</sup> day of February, 2015.

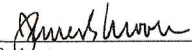
  
John W. Love, Lawyer  
Notary Public - Canada

### OBJECTIONS

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

Dated this 6<sup>th</sup> day of February, 2015.

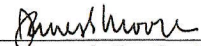
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### CERTIFICATE OF SERVICE

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

Gary F. Dorr  
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Winner, SD 57580

  
One of the attorneys for TransCanada