

BEFORE THE  
PUBLIC UTILITIES COMMISSION  
STATE OF SOUTH DAKOTA

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 PIPELINE

DOCKET HP14-001

PREFILED TESTIMONY OF PAIGE OLSON  
ON BEHALF OF THE COMMISSION STAFF  
APRIL 2, 2015

1 **Q. State your name.**

2 A. Paige Olson.

3 **Q. By who are you employed?**

4 A. State of South Dakota.

5 **Q. For what department or program do you work?**

6 A. State Historic Preservation Office (SHPO)

7 **Q. Please explain the program goals and your role and duties within SHPO.**

8 A. The National Historic Preservation Act of 1966 is the foundation for the  
9 preservation work of the South Dakota State Historical Society (SDSHS). The  
10 State Historic Preservation Office (SHPO), a program under the SDSHS is  
11 charged to survey historic properties and maintain an inventory; identify and  
12 nominate properties to the National Register of Historic Places; advise and assist  
13 federal, state, and local government agencies in fulfilling their preservation  
14 responsibilities; provide education and technical assistance in historic  
15 preservation; develop local historic preservation programs, consult with federal  
16 and state agencies on their projects affecting historic properties; and advise and  
17 assist with rehabilitation projects involving federal assistance. My specific role is  
18 to monitor federally funded, licensed or permitted projects and to ensure historic  
19 properties are taken into consideration. I provide technical analyses, reviews and  
20 assistance to government agencies to ensure compliance with state and federal  
21 guidelines. I serve as the lead over the review and compliance function of SHPO.

22

23 From Class Specifications

1 Functions: (These are examples only; any one position may not include all of the  
2 listed examples nor do the listed examples include all functions which may be  
3 found in positions of this class.)

4 1. Reviews construction work plans for federally funded projects to determine if  
5 they are in compliance with state and federal preservation laws.

6 a. Assesses impact of the project on historic properties and ensures those  
7 properties are given due consideration during the planning and implementation of  
8 projects.

9 b. Concurs or disagrees with determinations of eligibility for historic properties  
10 and the effect of proposed project on those properties within legally mandated  
11 timelines.

12 c. Reviews archaeological survey reports and documentation submitted by  
13 principal investigators and Senior Archaeologists to determine if proper  
14 methodology and standards established by state and federal government are  
15 met.

16 d. Works with agency officials to determine appropriate mitigation techniques  
17 when resources cannot be avoided.

18 e. Negotiates with and assists agencies in developing legal agreements to  
19 mitigate effects to historic properties and agreements to provide for alternative  
20 review and compliance procedures.

21 2. Provides technical assistance to government officials, contractors, lending  
22 institutions and agencies, and the general public to help them understand federal  
23 and state laws and to suggest compliance requirements

- 1 .
- 2 a. Reviews survey reports developed for construction projects to determine if
- 3 findings are in compliance with appropriate federal and state rules and
- 4 regulations.
- 5 b. Monitors additions, deletions, or changes in interpretation of federal rules and
- 6 regulations.
- 7 c. Writes and recommends guidelines for government agencies or federal fund
- 8 recipients.
- 9 d. Compiles and analyzes data from a variety of sources to determine if agencies
- 10 are having difficulty complying with requirements.
- 11 e. Maintains a record of all determinations about construction projects to be used
- 12 as the basis of reports and future federal funding requests.
- 13 3. Prepares and writes comprehensive plans to manage cultural resources in
- 14 South Dakota and establish guidelines to ensure that cultural resources are
- 15 identified and protected.
- 16 a. Determines eligibility of archaeological sites and makes recommendations for
- 17 their inclusion in the National Register of Historic Places and contributes
- 18 research to a statewide comprehensive historic preservation plan.
- 19 b. Responds to requests from property owners, government agencies, and others
- 20 to provide technical information about significance of sites.
- 21 4. Develops effective public information programs to inform South Dakota
- 22 citizens about archaeology, pre-history, and the need to preserve South Dakota's
- 23 cultural heritage.

- 1 a. Develops and manages public education programs to inform amateur
- 2 archaeology groups, students, and the general public.
- 3 b. Designs and develops educational handouts, brochures and presentations.
- 4 c. Manages and participates in archaeological excavation projects to maintain a
- 5 working knowledge of South Dakota pre-history and to mitigate the impact of
- 6 development on significant sites.
- 7 5. Oversees the maintenance of a computerized system that tracks information
- 8 relating to archaeological sites in order to provide an accurate and effective data
- 9 base for research projects.
- 10 6. Provides work direction and training for review and compliance program staff
- 11 to ensure projects are reviewed in an accurate, consistent and timely manner.
- 12 a. Establishes program priorities.
- 13 b. Assigns and reviews work.
- 14 c. Sets goals and recommends changes in work plans.
- 15 d. Develops office procedures.
- 16 e. Recommends the hiring of new staff.
- 17 f. Makes budget recommendations.
- 18 7. Performs other work as assigned.

19 **Q. On whose behalf was this testimony prepared?**

20 A. This testimony was prepared on behalf of the Staff of the South Dakota Public  
21 Utilities Commission

22 **Q. Were you involved in the Keystone XL permitting docket, HP09-001?**

23 A. Yes.

1 **Q. State and explain the South Dakota laws and federal regulations that**  
2 **protect archaeological and historic resources in this state.**

3 A. Section 106 of the National Historic Preservation Act requires federal agencies to  
4 take into account the effects of their project on historic properties. The federal  
5 regulations 36 CFR part 800 – Protection of Historic Properties explain how  
6 federal agencies take into consideration historic properties. In general, Section  
7 106 is a four step process.

8 Step 1: Initiate Section 106 Process – the federal agency establishes if it has a  
9 federal undertaking. (A federal undertaking in general is any project, activity, or  
10 program funded, permitted or licensed by a federal agency. This also includes  
11 federal approval.) The agency determines if the federal undertaking has the  
12 potential to affect historic properties. (Historic properties are prehistoric or historic  
13 district, site building, structure, or object listed on the National Register of Historic  
14 Places or eligible for listing on the National Register. This term includes  
15 properties of religious and cultural significance to Indian tribes.) If the federal  
16 undertaking does not have the potential to affect historic properties the agency is  
17 done. If the agency determines the undertaking does have the potential to affect  
18 historic properties they go to step 2.

19 Step 2: Identify Historic Properties – the federal agency identifies historic  
20 properties within the project area or area of potential effect (APE). If after  
21 conducting the appropriate level of research the agency determines that no  
22 historic properties are located within the APE, the agency documents their

1 findings and exits the process. If however, historic properties are identified the agency  
2 moves to the next step.

3 Step 3: Assess Adverse Effect – if historic properties are identified in the APE,  
4 the federal agency determines how the project will impact the identified  
5 properties. If the project can be modified or conditions are imposed as to  
6 minimize the impact of the project on historic properties the federal agency may  
7 determine the project will have a “No Adverse Effect”. If this is the case, the  
8 agency consults with the consulting parties, documents their decision, and exits  
9 the process. However, if the agency determines the project will have an “Adverse  
10 Effect” on historic properties the agency moves to the final step.

11 Step 4: Resolution of Adverse Effect – the federal agency, in consultation with  
12 other consulting parties, develops a memorandum of agree to mitigate the  
13 adverse effects.

14  
15 Throughout this process the federal agency should be consulting with various  
16 parties as described in the regulations.

17  
18 South Dakota Codified Law 1-19A-11.1 Preservation of historic property –  
19 Procedures. The state or any political subdivision of the state may not undertake  
20 any project which will encroach upon, damage or destroy any property included  
21 in the State or National Register of Historic Places.

1           However, in this case the National Historic Preservation Act supersedes SDCL 1-  
2           19A-11.1. The U.S. Department of State will be issuing a permit to TransCanada  
3           for the Keystone XL project. The U.S. Department of State is required to comply  
4           with Section 106 of the National Historic Preservation Act.

5   **Q.    Did you file prefiled testimony in HP09-001?**

6   A.    Yes. (Exhibit\_\_\_\_PO-1)

7   **Q.    Did you also provide testimony at the evidentiary hearing in HP09-001?**

8   A.    Yes.

9   **Q.    Have you thoroughly reviewed all of the information filed in HP14-001?**

10  A.    Yes.

11  **Q.    Have you reviewed the Final Supplemental Environmental Impact  
12        Statement for the Keystone XL project?**

13  A.    I have reviewed the cultural resource sections of the FSEIS.

14  **Q.    Has Keystone XL, to the best of your knowledge, complied with the state  
15        and federal rules and regulations you described previously?**

16  A.    To the best of my knowledge Keystone XL is in the process of complying with  
17        Section 106 of the National Historic Preservation Act through the programmatic  
18        agreement.

19  **Q.    Has your opinion on the Keystone XL project changed?**

20  A.    No.

21  **Q.    Are there any conditions in the Amended Final Decision and Order, dated  
22        June 29, 2010, that you believe, at this time, that Keystone XL cannot  
23        continue to meet?**



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A. SHPO would like to ensure that proper monitoring measures are in place for the four proposed horizontal directional drilling (HDD) locations known as the Bad River HDD, Cheyenne River HDD, Little Missouri River HDD and the White River HDD. As part of consultation under Section 106 of the National Historic Preservation Act, SHPO recommended that geomorphological/ geoarchaeological monitoring of the four HDD installations be conducted. These recommendations were not included in Attachment F “Historic Trail and Archaeological Monitoring Plan” of the Programmatic Agreement. It is unclear if Keystone XL intends to follow these recommendations which will ensure that if deeply buried cultural deposits are present they can be taken into consideration. SHPO recommends including these areas in the plan entitled “Keystone XL Pipeline Project, Historic Trail and Archaeological Monitoring Plan” to be monitored by a qualified geomorphologist/ geoarchaeologist.

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.