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8	25A Article "TransCanada's Keystone Pipeline Looks to Expand to the Gulf Coast"	618		8	<u>Kent Moeckly Exhibits</u>		
9	26 Article "Exxon Seeks Legal Sympathy Over Valdez"	618		9	1 Kent Moeckly Direct Testimony	1244	
10	26A Article "Exxon Asks High Court to Void Valdez Spill Damages"	618		2	2 Marshall County Resolution	1223	
11	26B Article "Shocking: 18 Years on and Exxon Still Won't Pay \$2.5 Billion for Valdez Oil Spill"	618		10	3 Argus Leader article of 12/5/07	--	
12	27 General Soil Map	618		11	<u>Staff Exhibits</u>		
13	<u>East River Exhibits</u>			12	1 Brenda Winkler Direct Testimony	786	
14	1 Jim Edwards Direct Testimony	650		2	2 Bryan Murdock Direct Testimony	1514	
15	<u>Richard Hastings Exhibits</u>			13	3 Dan Hannan Direct Testimony	1560	
16	1 Richard Hastings Direct Testimony	671		14	4 Applicant's filings for construction and operation of a crude oil pipeline	1514	
17	1A Soil Studies	671		5	5 Muehlhausen Direct Testimony	1600	
18	<u>Chris Hastings Exhibits</u>			15	6 Socio-economic Assessment	1600	
19	1 Chris Hastings Direct Testimony	689		7	7 Janssen Direct Testimony	1661	
20	<u>Wade Exhibits</u>			16	8 Schramm Testimony	1451	
21	1 Map of BDM water flow	700		9	9 Hudson Testimony	1474	
22				17	10 Walsh Testimony	1421	
23				11	11 Winkler Surrebuttal Testimony	786	
24				18	12 Hannan Surrebuttal Testimony	1560	
25				13(1)	13(1) Muehlhausen Surrebuttal Testimony	1600	
				19	14(2) Muehlhausen Surrebuttal Testimony	1600	
				15	15 Janssen Surrebuttal Testimony	1661	
				20	16 Schramm Surrebuttal Testimony	1451	
				17	17 Hudson Surrebuttal Testimony	1474	
				21	18 Walsh Surrebuttal Testimony	1421	
				19	19 Figure 19 (D-D)	784	
				22	20 Schematic Simplified Cross Section	784	
				21	21 Response to Staff's First Data Request	1470	
				23	22 Response to Staff's Second Data Request	1470	
				24			
				25			
			14				16
1	<u>Sieh Exhibits</u>	<u>Received</u>		1	CHAIRMAN JOHNSON: Ladies and gentlemen, good morning.		
2	1 Map of BDM water	739		2	We'll call this hearing, Docket HP 07-001, to order, and this		
3	2 John Sieh Direct Testimony	739		3	deals with the Application by TransCanada Keystone Pipeline, LP		
4	<u>Cassels Exhibits</u>			4	for a permit under the South Dakota Energy Conversion and		
5	1 Gene Cassels Direct Testimony	756		5	Transmission Facility Act to construct the Keystone Pipeline		
6	2 Marshall County Resolution	756		6	Project.		
7	<u>Ed Miller Exhibits</u>			7	The time this morning is approximately 9:30 in the		
8	1 Ed Miller Direct Testimony	832		8	morning and the date is December 3, 2007 and the location of the		
9	2 Miller Surrebuttal Testimony	832		9	hearing is here in Room 412 of the State Capitol in Pierre.		
10	3 PowerPoint presentation	832		10	I am Dusty Johnson, Commission Chairman. With me this		
11	4 CD with NTSB, PHMSA, etc. studies	832		11	morning are Commissioners Steve Kolbeck and Gary Hanson.		
12	<u>George Piper Exhibits</u>			12	I'm presiding over this hearing. This hearing was		
13	1 George Piper Direct Testimony	928		13	noticed pursuant to Commission's Scheduling and Procedural Order		
14	2 Photo of James River Stream/Flow	936		14	issued August 23, 2007. The issue at this hearing is whether		
15	3 Photo of James River Stream/Flow	936		15	TransCanada Keystone Pipeline, LP should be given a permit to		
16	<u>Tim Hofer Exhibits</u>			16	construct the Keystone crude oil pipeline in South Dakota.		
17	1 Tim Hofer Direct Testimony	890		17	It is the Applicant that has the burden of proof, and		
18	<u>Delwin Hofer Exhibits</u>			18	under 49-41B-22 that burden of proof is four-fold:		
19	1 Delwin Hofer Direct Testimony	902		19	First, that the proposed facility will comply with all		
20	2 Map of personal property	906		20	applicable laws and rules;		
21	3 Easement - back page of agreement	906		21	Secondly, the facility will not pose a threat of		
22	<u>Pam Hofer Exhibits</u>			22	serious injury to the environment nor to the social and economic		
23	1 Pam Hofer Direct Testimony	919		23	condition of the inhabitants or expected inhabitants in the		
24	2 Book of structures w/in mile of PS-21	919		24	siting area;		
25	<u>Edward Goss Exhibits</u>			25	Third, that the facility will not substantially impair		
	1 Ed Goss Direct Testimony	945					
	2 Packet of maps	961					
	3 Pink handwritten paper, map & drawing	961					
	4 Letter to land agent (redacted)	--					
	5 Packet attached to land agent letter	970					
	6 Four pictures of land	970					
	<u>Ben Grote Exhibits</u>						
	1 Ben Grote Direct	750					

<p style="text-align: right;">17</p> <p>1 the health, safety, or welfare of the inhabitants;</p> <p>2 And, finally, that the facility will not unduly</p> <p>3 interfere with the ordinarily development of the region with due</p> <p>4 consideration having been given to the views of governing bodies</p> <p>5 of affected local units of Government.</p> <p>6 All parties have the right to be present and to be</p> <p>7 represented by an attorney. All persons testifying will be</p> <p>8 sworn in and subject to cross-examination by the parties. The</p> <p>9 Commission's final decision may be appealed by the parties to</p> <p>10 the State Circuit Court and finally to the State Supreme Court.</p> <p>11 John Smith, the Commission's counsel, will act as</p> <p>12 Hearing Examiner and will conduct the hearing subject to the</p> <p>13 Commission's oversight. He may provide recommended rulings on</p> <p>14 procedural as well as evidentiary matters.</p> <p>15 The Commission may overrule its counsel's preliminary</p> <p>16 rulings throughout the hearing. If his rulings are not</p> <p>17 overruled, those preliminary rulings will become final rulings.</p> <p>18 With that, we'll turn it over to Mr. Smith to conduct</p> <p>19 the hearing.</p> <p>20 MR. SMITH: Thank you, Mr. Chairman. Welcome,</p> <p>21 everyone. Just one last reminder. I would ask that people make</p> <p>22 sure your cellphones are turned off. Not a real big deal, but</p> <p>23 it is interruptive of the proceedings. So please either leave</p> <p>24 them downstairs or turn them off, if you would.</p> <p>25 With that, we'll begin the hearing. And I think at</p>	<p style="text-align: right;">19</p> <p>1 list of Exhibit C as it was filed and Exhibit C as I wish to</p> <p>2 have the parts of it introduced into the record and become</p> <p>3 evidence.</p> <p>4 And I've asked Mrs. Kolbo downstairs to make copies of</p> <p>5 that for everyone's review so we can see where we're at for that</p> <p>6 matter. I understand we've got an agreement to stipulate with</p> <p>7 staff and WEB Water's counsel. I don't know about the remainder</p> <p>8 of the Interveners. We'll have to take that up as well.</p> <p>9 That constitutes my understanding of what we'd like to</p> <p>10 discuss before we start calling witnesses, Mr. Smith. Thank</p> <p>11 you.</p> <p>12 MR. SMITH: Commissioners, how do you wish -- let me</p> <p>13 ask you a question, Mr. Koenecke, right up front. Both of the</p> <p>14 motions that you filed deal with Intervener testimony, which we</p> <p>15 are a couple of days away from hearing. Are these motions</p> <p>16 something that might be better addressed at the point in time</p> <p>17 when we are ready to begin with the Interveners' testimony?</p> <p>18 MR. KOENECKE: I don't know, Mr. Smith. The question</p> <p>19 I don't know as I sit here, what the intentions of staff and the</p> <p>20 parties are as to cross-examination of my witnesses with respect</p> <p>21 to those matters. That would be one thing I could think of that</p> <p>22 we should consider in the timing of when to dispose of that</p> <p>23 motion.</p> <p>24 CHAIRMAN JOHNSON: Just to add to that, Mr. Smith, you</p> <p>25 know, if it's appropriate, I probably would have questions based</p>
<p style="text-align: right;">18</p> <p>1 the outset I'm going to ask of counsel and parties whether there</p> <p>2 are any preliminary matters that we wish to dispose of or take</p> <p>3 up before we turn to the Applicant's case in chief.</p> <p>4 MR. KOENECKE: Thank you, Mr. Smith. This is</p> <p>5 Brett Koenecke for the Applicant. We do have some preliminary</p> <p>6 matters to go through. If the parties and the Commission will</p> <p>7 permit me, perhaps I'll take the lead on what I think those</p> <p>8 matters are, and then we can flesh those out.</p> <p>9 First off, we did file motions late last week relative</p> <p>10 to the late filed testimony of Perry Rahn and also to the Motion</p> <p>11 in Limine regarding the discussions of matters surrounding land</p> <p>12 acquisition and eminent domain. If the Commission would wish to</p> <p>13 take those up at this time, those are things that we think are</p> <p>14 hanging out there that need to be decided at some point here in</p> <p>15 the hearings and probably initially.</p> <p>16 We have a number of exhibits. As everyone knows, the</p> <p>17 filings have been voluminous on our part, and the witness table</p> <p>18 is essentially covered with large documents which represent</p> <p>19 essentially the Application and the exhibits which were filed.</p> <p>20 I have asked staff and I have asked counsel for WEB</p> <p>21 Water if we could stipulate to the admission of the Application</p> <p>22 and -- I should say Exhibits A, B, and D to the Application.</p> <p>23 Exhibit C, if you'll recall, was very voluminous and contained a</p> <p>24 substantial amount of information which was not relevant to the</p> <p>25 proceedings in South Dakota in my view. And I have prepared a</p>	<p style="text-align: right;">20</p> <p>1 on information filed by other parties for TransCanada once</p> <p>2 they're up, as opposed to having them called back up as some</p> <p>3 sort of rebuttal witness.</p> <p>4 MR. SMITH: Okay. I'm not quite sure I'm following.</p> <p>5 Are you stating then you're recommending then that we take this</p> <p>6 up right now?</p> <p>7 CHAIRMAN JOHNSON: I think that would be most</p> <p>8 appropriate.</p> <p>9 MR. SMITH: Okay. Well, let's turn -- which one</p> <p>10 first? You know, I'll tell you, one particular that -- with</p> <p>11 respect to the Perry Rahn exhibit, his late filed testimony, for</p> <p>12 whatever reason, I guess I'm a little bit -- I would probably</p> <p>13 rather have the benefit of having Mr. Rahn here so we can ask</p> <p>14 him what happened as opposed to doing that without the benefit</p> <p>15 of that.</p> <p>16 But, you know, I'd be willing to hear from other</p> <p>17 parties, staff or Mr. Rasmussen on that.</p> <p>18 MR. RASMUSSEN: Well, I can address that. And I guess</p> <p>19 we might have some additional information, some copies of FedEx</p> <p>20 receipt slips, that sort of thing later on which I don't have</p> <p>21 right now.</p> <p>22 But my understanding is Mr. Hohn was primarily</p> <p>23 responsible for filing the WEB expert testimony. And my</p> <p>24 understanding is is that his office attempted to file Mr. Rahn's</p> <p>25 testimony on I believe it's the 13th of November was our date.</p>

<p style="text-align: right;">21</p> <p>1 And, in fact, there is a e-mail cover letter, so to speak, that 2 says enclosed is the Rahn and the -- what's the other guy's 3 name?</p> <p>4 MR. CURT HOHN: Davis.</p> <p>5 MR. RASMUSSEN: Davis testimony. For some reason the 6 PUC website rejected the Rahn testimony, and we believe it's 7 because there was a map that was too extensive or something. 8 I'm not a computer guy, but that's my understanding, that it was 9 kicked back. And there were several efforts made to resubmit 10 it.</p> <p>11 The technician at WEB contacted someone here at the 12 PUC and was told that there was some sort of problem with the 13 settings on the computer, and it couldn't be accepted.</p> <p>14 It was then, my understanding, was FedExed to the 15 Commission that day by mail.</p> <p>16 Now I also understand some people -- and Mr. Koenecke 17 may be one of them who did not receive it through the Internet. 18 Some people did. Or through e-mail. Some people did. But it 19 was Mr. Hohn's understanding, though, that it had been filed. 20 It was not until I believe it was the 26th or 27th of November 21 when I was looking at the PUC website and going through all the 22 direct testimony that had been filed and I saw that Mr. Rahn's 23 name was not listed.</p> <p>24 I contacted Mr. Hohn and asked him if he knew why, and 25 he didn't. And at that point in time it was resubmitted by</p>	<p style="text-align: right;">23</p> <p>1 testimony that day. But I -- I didn't see the e-mail that says 2 attached are both the Rahn and -- and our person downstairs, you 3 know, they don't -- our administrative people, they don't delve 4 into what's in attachments in detail. She would have had no way 5 of knowing, you know, or would not have checked to see whether 6 both of those testimonies was there. She just noticed -- she 7 saw that there was one attachment containing 16 pages.</p> <p>8 And so whether it was a case of -- and then I note 9 Curt Hohn resent an e-mail with Mr. Davis's testimony. Again, 10 it's just hard for us to know what happened.</p> <p>11 I think bottom line for us, if it was a mistake or 12 whatever, I know my attitude about it would be a lot different 13 than if it was just an intentional filing late. For me that 14 would matter.</p> <p>15 The testimony isn't lengthy, and so I don't view it as 16 something that would be that difficult for Applicant and staff 17 to address.</p> <p>18 So I don't know, Commissioners, what you think. 19 Perhaps do you want to wait until Mr. Rahn is here? I hate to 20 have him come and we exclude him, but what do you think?</p> <p>21 COMMISSIONER HANSON: If you're looking for direction, 22 I would think this Commission has historically erred on the side 23 of making certain we hear everything as opposed to excluding 24 something on something of that nature. So I would think that we 25 would hear him.</p>
<p style="text-align: right;">22</p> <p>1 e-mail, and maybe that's when Mr. Koenecke first received it. I 2 don't know the answer to that.</p> <p>3 But that's basically the background. We feel that we 4 did attempt to get it filed as ordered by the Commission. And, 5 in fact, it was, I believe, FedExed to the Commission on the 6 13th of November and should have been received presumably the 7 next day. That's my understanding of the background.</p> <p>8 And Mr. Hohn might be able to provide more information 9 if you want to hear from him since his office was the one that 10 was handling this.</p> <p>11 CHAIRMAN JOHNSON: We seem to be getting into the 12 merits of the issue a little bit, Mr. Smith. Have you 13 determined whether or not you want to take this question up now 14 or --</p> <p>15 MR. SMITH: You know, I don't know. You know, I guess 16 the question I would have had for Mr. Rahn is just he dated his 17 testimony on the 13th of November. That's the date of it. 18 Would just be to ask him, did you, in fact -- is that date in 19 fact accurate and did you, in fact, sign that and date it that 20 day.</p> <p>21 That's really about it. I mean, just looking at 22 the -- we don't -- I don't get to see all of the e-mails and 23 whatever that are involved in filing. That doesn't come to me. 24 I'm just like you guys. I see it when it posts up on the 25 website. And I did notice the omission of the Perry Rahn</p>	<p style="text-align: right;">24</p> <p>1 MR. SMITH: With that, I am going to deny the motion 2 to exclude the Rahn testimony and accept it as it was filed, 3 admittedly late.</p> <p>4 Moving on then to the Motion in Limine, do you want to 5 address that, Mr. Koenecke, now?</p> <p>6 MR. KOENECKE: Yes, I would. Thank you, Mr. Smith. 7 It's been a widely reported and known to those of us, well, 8 since the June hearings that the matters involving land 9 acquisition, the easements which have been signed, the 10 condemnation actions which have been filed, they're all matters 11 which are outside, I believe, the purview of the Commission that 12 I am not aware of a grant of authority from the legislature to 13 hear those things.</p> <p>14 And I think that resides in the circuit courts. And 15 we think that those matters are properly heard and held there or 16 there between the parties, a landowner, and TransCanada and not 17 probably appropriate for this hearing. I foresee a lengthening 18 of this hearing for matters I don't find to be terrifically 19 relevant to the issues at hand, not at all relevant, and we 20 would ask the Commission to essentially order that's not going 21 to be heard. We're not going to go down that road and we're 22 going to stick to the issues which are 49-41B-22, which are 23 properly heard today.</p> <p>24 MR. SMITH: Mr. Rasmussen.</p> <p>25 MR. RASMUSSEN: Yes, John. I guess from WEB's</p>

<p style="text-align: right;">25</p> <p>1 standpoint I don't know that, you know, we intend to</p> <p>2 specifically offer testimony about the eminent domain</p> <p>3 proceedings. But I hate to have a restriction placed upon what</p> <p>4 the issues are that can be addressed particularly -- and I don't</p> <p>5 represent Interveners, but I'm -- certainly this is probably</p> <p>6 more of an issue the Interveners want to address and maybe it</p> <p>7 would be more appropriate for one of them to respond to the</p> <p>8 motion.</p> <p>9 I would urge that it be denied because I think as</p> <p>10 Commissioner Hanson indicated, it's better to let things in than</p> <p>11 start excluding a lot of stuff. But I guess that would be my</p> <p>12 position on it.</p> <p>13 MR. SMITH: Staff, do you have a position?</p> <p>14 MS. SEMMLER: This is Kara Semmler for staff. Staff</p> <p>15 too does not believe that those issues are pertinent to the</p> <p>16 statutory elements at issue and would support the motion to</p> <p>17 exclude that testimony.</p> <p>18 MR. SMITH: Other parties wish to -- sir, could you</p> <p>19 please get up and take the mic, introduce yourself and talk into</p> <p>20 the mic, please.</p> <p>21 MR. MOECKLY: Good morning. My name is Kent Moeckly,</p> <p>22 and I'm a landowner, Marshall County in South Dakota, and lie</p> <p>23 under the proposed route that the Canadian company would like to</p> <p>24 take down through our state.</p> <p>25 I have been here on a few hearings, listened to an</p>	<p style="text-align: right;">27</p> <p>1 to address this?</p> <p>2 Mr. Hohn.</p> <p>3 MR. CURT HOHN: Members of the Commission, Mr. Smith,</p> <p>4 my name is Curt Hohn. I'm filed as an Intervener as a citizen</p> <p>5 of the state. I'm also associated with WEB Water, which is an</p> <p>6 Intervener. I'll be very brief.</p> <p>7 There are four burdens of proof, and one of them is a</p> <p>8 socio-economic. And while the details of a negotiation or a</p> <p>9 legal purchase or condemnation may not be relevant, the</p> <p>10 socio-economic impact of having land taken from somebody is an</p> <p>11 impact. And to some people it's a very big impact. It will be</p> <p>12 an impact on a community.</p> <p>13 There are at this time 18 landowners who have been</p> <p>14 condemned or filed. There probably will be more. There could</p> <p>15 be hundreds before this is done. And that's going to happen in</p> <p>16 each county if some resolution isn't reached here at the</p> <p>17 Commission level in these hearings.</p> <p>18 And so if you look at trying to resolve -- holding</p> <p>19 hearings to try to hear both sides, the jury -- it also looks</p> <p>20 like a jury room over here, and there's one attorney on this</p> <p>21 side. I think you can level the playing field and allow</p> <p>22 everyone to speak. We're going to live with whatever's done for</p> <p>23 50 years or more. It would seem that they would have the time</p> <p>24 to listen to some of the people they're impacting.</p> <p>25 And if you want to instruct the witnesses as to what</p>
<p style="text-align: right;">26</p> <p>1 awful lot of hearings around the state. I've watched the</p> <p>2 actions of TransCanada and their representatives, dealt with</p> <p>3 them, many of them.</p> <p>4 And it appears to me that the province of this whole</p> <p>5 proceedings is for representatives of the people of South Dakota</p> <p>6 to act for us.</p> <p>7 I'm very concerned about this. To act for us, the</p> <p>8 landowners, we the people of South Dakota. And it seems to me</p> <p>9 that everything is relevant in light of the fact that this</p> <p>10 foreign company attempts to come in here, take our land, act any</p> <p>11 way they want, print anything in the paper they want,</p> <p>12 half-truths, makes no -- in some cases lies to we, the</p> <p>13 landowners.</p> <p>14 It would seem to me that the only way you as</p> <p>15 representatives of me and all the other landowners can make a</p> <p>16 valid decision on this Application is for you to hear</p> <p>17 everything, everything about all that has gone on and all that</p> <p>18 this company has attempted to do already in this state.</p> <p>19 And it seems to me that they have to be responsible</p> <p>20 for their actions, and you need to hear about everything. It's</p> <p>21 a socio-economic issue. It's part of their obligation. And I</p> <p>22 feel that you should entertain and listen to any comments about</p> <p>23 any of these issues.</p> <p>24 Thank you.</p> <p>25 MR. SMITH: Thank you, Mr. Moeckly. Anyone else wish</p>	<p style="text-align: right;">28</p> <p>1 you would rather not hear versus what they might say, the legal</p> <p>2 negotiation maybe isn't relevant or shouldn't be brought up, but</p> <p>3 the effect is, the social impact is. I would think we have</p> <p>4 time. If we're going to live with a pipeline for 50 years,</p> <p>5 maybe you give a few minutes to the land owner. You can't</p> <p>6 separate the two. They didn't asked to be crossed. They're</p> <p>7 going to be crossed. It would seem like these people and the</p> <p>8 Commission could give them that time and then make your</p> <p>9 judgment.</p> <p>10 Thank you.</p> <p>11 MR. SMITH: Anyone else?</p> <p>12 I guess, Mr. Koenecke, I want to -- you know, the</p> <p>13 second factor that we look at that you have the burden of</p> <p>14 proving is that the facility will not pose a threat of serious</p> <p>15 injury, and then I'm going to leave out a few words, to the</p> <p>16 social and economic condition of inhabitants or expected</p> <p>17 inhabitants.</p> <p>18 And I guess, you know, I look at that and I say, you</p> <p>19 know, on some level a company's behavior in dealing with land --</p> <p>20 and I'm not presuming that it's been bad. But I'm saying to me</p> <p>21 at some level I would think that those relationships probably</p> <p>22 have some relevance to that factor, based upon my reading of</p> <p>23 the --</p> <p>24 I'm just going to tell you right now kind of a take</p> <p>25 that I have on this whole thing is that some of the testimony</p>

<p style="text-align: right;">29</p> <p>1 that I've read that delves into legal issues related to eminent 2 domain I think -- I do not think that's relevant on the one 3 hand, and I also think it's pure questions of law that are not 4 really suitable for evidence.</p> <p>5 But in terms of the -- in terms of the actual 6 landowner relationship actions, that kind of thing, in terms of 7 what that might speak to the ways in which the company, the 8 Applicant, does things, to me I think I might have to agree with 9 the Interveners and say that on some level at least that would 10 seem to me to be relevant.</p> <p>11 I don't know if Commissioners have any thoughts on 12 that.</p> <p>13 CHAIRMAN JOHNSON: Mr. Smith, is there a mechanism by 14 which you have in mind to where we would limit the -- I mean, I 15 just think the real danger -- I mean, I have a tendency to agree 16 with everything you said. I do think -- I mean, there are 17 really important questions at stake here and could they get 18 buried or really buried under by a lot of concerns about eminent 19 domain and landowner compensation? I want to make sure we get 20 to the heart of the issue.</p> <p>21 Is there a way in which we can focus testimony towards 22 the issues that you and I share without --</p> <p>23 MR. SMITH: Well, I think there is. Rather than a 24 blanket Motion in Limine, which, you know, the boundaries of it 25 are difficult to determine, the way we will deal with it is we</p>	<p style="text-align: right;">31</p> <p>1 And so I think when we cross into those kind of issues 2 in terms of whether or not -- and we don't have any power. This 3 Commission certainly doesn't have the power if the legislature 4 has given eminent domain power, and I don't know that it has. 5 That's for the court to decide.</p> <p>6 But to the extent the legislature has given that power 7 to a company, we certainly do not have the legal ability to 8 second-guess the legislature on that grant of authority. I 9 mean, we just don't.</p> <p>10 CHAIRMAN JOHNSON: So, Mr. Smith, my question would be 11 is there an appropriate way in which we would focus the 12 testimony away from some of those legal -- you know, purely 13 legal issues and towards some of the more factual matters with 14 regard to treatment of landowners by the Applicant?</p> <p>15 MR. SMITH: Well, I think there is. If you wanted to 16 grant the motion in part with respect to the availability of 17 eminent domain in this particular situation and what the law is 18 and all of that and the fact that the companies filed eminent 19 domain proceedings, I think that's properly excludable. That 20 kind of testimony really is not something that's before this 21 Commission. And if you want to grant it in part with respect to 22 that, I think that would be appropriate.</p> <p>23 With respect to the general -- I guess, the more 24 general subject of conduct of the company in its dealing with 25 landowners, I really believe that that testimony is at least</p>
<p style="text-align: right;">30</p> <p>1 will make rulings on particular questions.</p> <p>2 The Applicant, staff, each of the Interveners has the 3 right to object to testimony that they find to be irrelevant or 4 not based on adequate foundation, et cetera. And I guess from 5 my standpoint rather than a very broad blanket ruling, that we 6 take those matters up with respect to ruling on specific 7 objections as they occur.</p> <p>8 That would be what I would recommend.</p> <p>9 CHAIRMAN JOHNSON: Is there any value in making it 10 clear maybe in granting the motion in part that we don't want to 11 attempt to litigate those issues which will be clearly litigated 12 in a Circuit Court?</p> <p>13 MR. SMITH: Well, I think so. In terms of directory, 14 I mean, we can't -- this Commission doesn't make determinations, 15 for example, concerning whether or not a company is a common 16 carrier. That is not before this Commission.</p> <p>17 The eminent domain proceedings are a Circuit Court 18 matter. In some other states the law doesn't read that way. In 19 some other states their particular Commissions do have to 20 authorize the use of eminent domain. In South Dakota it just 21 doesn't work that way.</p> <p>22 Our statute prohibits construction without a permit. 23 And it's extremely clear in the definition of the statute that 24 construction means moving dirt, and it doesn't involve landowner 25 acquisition, that kind of thing.</p>	<p style="text-align: right;">32</p> <p>1 relevant, and we'll deal with that on a case-by-case basis. 2 How's that?</p> <p>3 If that's what you want to do, I would recommend that 4 one of you make a motion to that effect.</p> <p>5 CHAIRMAN JOHNSON: From a procedural standpoint, 6 Mr. Smith, since we've indicated you'll be making preliminary 7 rulings and I certainly -- at some point the Commissioners will 8 be on record on this issue regardless. Either they'll make a 9 motion to overrule you or they won't but --</p> <p>10 MR. SMITH: If you want me to just make a ruling, I'll 11 make it. I'll grant a motion with respect to the evidence 12 involving the availability of eminent domain and whether or not 13 the company has it or doesn't have it, and its actual invocation 14 by the company in a few cases has been noted. It's not 15 something we have the authority to deal with, and it's not 16 relevant.</p> <p>17 I'm going to deny the motion with respect to -- with 18 respect to general questions and testimony that might be offered 19 relative to company conduct in its dealings with landowners. To 20 me that's -- that's relevant to the social and economic impacts 21 of the project.</p> <p>22 MR. KOENECKE: Mr. Smith, how about as to 23 compensation?</p> <p>24 MR. SMITH: I think compensation is an issue that's 25 not -- that's an issue that we don't have authority to deal</p>

<p style="text-align: right;">33</p> <p>1 with. I mean, to me compensation has been committed to the</p> <p>2 courts through the eminent domain statutes, and that is not</p> <p>3 something that this Commission really has the legal authority to</p> <p>4 rule on.</p> <p>5 The court will have -- ultimately if it determines</p> <p>6 eminent domain is available, the court will have to determine</p> <p>7 what is appropriate compensation. The jury will.</p> <p>8 MR. KOENECKE: Thank you.</p> <p>9 MR. SMITH: With that, any other preliminary matters</p> <p>10 before we begin?</p> <p>11 MR. KOENECKE: We do have the copies of the</p> <p>12 differences in Exhibit C that we'd like to stipulate into the</p> <p>13 record at this time if you'd like to handle that.</p> <p>14 MR. SMITH: Okay. Yes. Let's do that right now.</p> <p>15 MR. KOENECKE: Mr. Smith, what Ms. Axthelm is passing</p> <p>16 out is two documents which look substantially similar. You'll</p> <p>17 have to pay attention to the bold-faced type on the top.</p> <p>18 Exhibit C as filed initially this is taken from the</p> <p>19 Commission's website, the rundown of Exhibit C which everyone</p> <p>20 should be familiar with from the Commission's website. What</p> <p>21 I've done then on Exhibit C introduced exhibits is pared down</p> <p>22 the Exhibit C which was filed initially to that which I seek to</p> <p>23 have introduced and put into evidence during the hearing.</p> <p>24 I haven't sought to introduce the bat reports from</p> <p>25 Illinois or the snake reports from Kansas. If someone wants</p>	<p style="text-align: right;">35</p> <p>1 MR. KOENECKE: As to Exhibit C, there is some question</p> <p>2 still. Exhibit C as found on the desk represents Exhibit C on</p> <p>3 introduced exhibits, but Exhibit C on the desk does not include</p> <p>4 the confidential material, which we are going to produce</p> <p>5 separately at those times, at which time, you know, they might</p> <p>6 come up. So that will be coming up here yet this morning.</p> <p>7 MR. SMITH: Okay. So but other than that, I mean, the</p> <p>8 books that you've got up there now already have -- they do not</p> <p>9 include the Missouri bat studies and all of that?</p> <p>10 MR. KOENECKE: The bat reports, the Topeka Shiner from</p> <p>11 Kansas are not there. If someone wants to introduce that, they</p> <p>12 would have to do that on their own volition if they deemed it</p> <p>13 appropriate and necessary to do so. It's just that on this</p> <p>14 sheet, introduced exhibits, is essentially what's over there</p> <p>15 minus the not available to the public, which will be done</p> <p>16 separately.</p> <p>17 MR. SMITH: Commissioner Johnson.</p> <p>18 CHAIRMAN JOHNSON: We have a large number of pro se</p> <p>19 interveners. Were you going to see if there was any objection</p> <p>20 on that front?</p> <p>21 MR. SMITH: Yeah. And I'm seeing some fidgeting going</p> <p>22 on over there.</p> <p>23 Mr. Rasmussen, any other comments?</p> <p>24 MR. RASMUSSEN: No. We're still fine. We were just</p> <p>25 talking about something else.</p>
<p style="text-align: right;">34</p> <p>1 those in, they'll have to do that on their own. But the</p> <p>2 South Dakota relevant documents are found on Exhibit C</p> <p>3 introduced exhibits, and I would ask at this time if all parties</p> <p>4 would stipulate to the introduction of the Application,</p> <p>5 Exhibit A, B, C as on the introduced exhibits, and D.</p> <p>6 I think we'll have a much easier time of it today if</p> <p>7 we don't have to unbundle these and go through with the</p> <p>8 individual witnesses each piece and put them in as what might</p> <p>9 otherwise be required. So I would ask the parties to stipulate</p> <p>10 to that.</p> <p>11 MR. RASMUSSEN: No objection.</p> <p>12 MS. SEMMLER: No objection.</p> <p>13 MR. SMITH: And if I'm understanding, the material</p> <p>14 you've removed is the material pertaining to other states?</p> <p>15 MR. KOENECKE: That's correct. There are matters --</p> <p>16 thank you for asking that -- on Exhibit C which have been deemed</p> <p>17 not available to the public. They've been available to parties</p> <p>18 pursuant to the Commission's Confidentiality Order, September,</p> <p>19 since that time.</p> <p>20 And if we do need to discuss those and have them</p> <p>21 discussed here, we'll have to, you know, observe those protocols</p> <p>22 at that time.</p> <p>23 MR. SMITH: Thank you. And are the booklets that I</p> <p>24 see piled up over there, do those reflect this on the Exhibit C</p> <p>25 introduced exhibits?</p>	<p style="text-align: right;">36</p> <p>1 MR. SMITH: Okay. Any other Intervener have a problem</p> <p>2 with that?</p> <p>3 Again, it's just the removal of out-of-state stuff,</p> <p>4 and I can tell you right now we don't have any authority to deal</p> <p>5 with that anyway. It's irrelevant. So with that, I think your</p> <p>6 exhibits have been stipulated to.</p> <p>7 And does that include the Application itself? Was</p> <p>8 that part of the motion?</p> <p>9 MR. KOENECKE: Yes. The Application itself as amended</p> <p>10 and a few pages, that was done late summer, as I recall. There</p> <p>11 were a few pages that needed amendments.</p> <p>12 MR. SMITH: And would you please identify -- what is</p> <p>13 this? What's the exhibit called? Is it called TC 1 and then --</p> <p>14 MR. KOENECKE: The Application is TC 1. Exhibit A to</p> <p>15 the Application then is TC 1A. Exhibit B is TC 1B, C, and D.</p> <p>16 MR. SMITH: Pursuant to the stipulation of the</p> <p>17 parties, Exhibits TC 1, TC 1A, TC 1B, TC 1C, and 1D are admitted</p> <p>18 into evidence.</p> <p>19 Other preliminary matters?</p> <p>20 MR. KOENECKE: Given my success with that motion,</p> <p>21 which is somewhat unprecedented, I would ask if the parties</p> <p>22 would agree to the stipulation into evidence of the direct and</p> <p>23 rebuttal testimony of our witnesses? It's just the stuff that</p> <p>24 we filed and served on the parties in September and then again</p> <p>25 in November.</p>

<p style="text-align: right;">37</p> <p>1 I think we can save ourselves some time there as well</p> <p>2 if people would be agreeable to that.</p> <p>3 MR. SMITH: Other parties?</p> <p>4 MR. RASMUSSEN: No objection on behalf of WEB.</p> <p>5 MS. SEMMLER: Staff has no objection.</p> <p>6 MR. SMITH: Other Interveners, objection?</p> <p>7 Okay. I'm not sure what the marking and numbering of</p> <p>8 all of that is, but there being no objection, maybe we can</p> <p>9 just --</p> <p>10 MR. KOENECKE: I guess the parties have shared it in</p> <p>11 advance but perhaps have left out the court reporter. I'd be</p> <p>12 glad to cite it for people interested. Robert Jones had direct</p> <p>13 testimony. He is TC 2D. D for direct. Michael Koski is TC 3,</p> <p>14 D for direct, R for rebuttal. Scott Ellis is TC 4, D for</p> <p>15 direct, then R for rebuttal. Buster Gray 5D and 5R. Again TC,</p> <p>16 TransCanada, 5 Buster D direct, R rebuttal.</p> <p>17 Meera Kothari had two rebuttals. So her earlier</p> <p>18 rebuttal would be 6 R1. Her rebuttal, 2, would be the later.</p> <p>19 Heidi Tillquist is TC 7D and R. Brian Thomas is 8D and R.</p> <p>20 And we'll provide a copy of this to the court reporter</p> <p>21 as soon as we can here.</p> <p>22 MR. SMITH: As we go along, I mean, I wasn't able to</p> <p>23 get all of that written down, Mr. Koenecke. So as we go along</p> <p>24 if you would be so kind as to refresh, I guess, as we go along,</p> <p>25 I'd appreciate it.</p>	<p style="text-align: right;">39</p> <p>1 would be for people to keep things relatively brief so that we</p> <p>2 can concentrate on cross-examination, which is the testing of</p> <p>3 the evidence that you've already submitted.</p> <p>4 Observations?</p> <p>5 MR. KOENECKE: Yes, Mr. Smith. I'll perhaps help you</p> <p>6 out here. We're not going to do summaries of our testimony.</p> <p>7 Our testimony is summarized in the Application and the exhibits.</p> <p>8 We'd have layers of summary. So we'll just launch right in if</p> <p>9 it's agreeable with you.</p> <p>10 I did not recall hearing you recite whether the direct</p> <p>11 testimony was -- and the rebuttal testimony of the Applicant was</p> <p>12 admitted.</p> <p>13 MR. SMITH: That's a good observation. I did not.</p> <p>14 Again, I hope I can understand this here, Mr. Koenecke. This is</p> <p>15 a -- this would be TC what, 2D, 3D, 3R, 4D, 4R, 5D, 5R, 6D, 6R1,</p> <p>16 6R2, 7D, 7R, 8D, 8R.</p> <p>17 MR. KOENECKE: And that's the end, I think.</p> <p>18 MR. SMITH: Is that it? Okay. Those exhibits are</p> <p>19 admitted into evidence pursuant to stipulation.</p> <p>20 MR. KOENECKE: At this time I'd call Robert Jones to</p> <p>21 the stand.</p> <p>22 (The witness is sworn by the court reporter)</p> <p>23 <u>DIRECT EXAMINATION</u></p> <p>24 <u>BY MR. KOENECKE:</u></p> <p>25 Q. Mr. Jones, would you state your name and address for the</p>
<p style="text-align: right;">38</p> <p>1 Anything else? Otherwise, please proceed with your</p> <p>2 case in chief.</p> <p>3 Basically one word of explanation about what we're</p> <p>4 going to do here. Again, we've got a mountain of stuff that</p> <p>5 we've had filed over the last couple of months. Generally our</p> <p>6 practice here is that we have the witness -- and we've all read</p> <p>7 and reviewed that. It's been available to the media. It's been</p> <p>8 available to everybody in the state via our public website.</p> <p>9 I think what we usually do is these cases where we</p> <p>10 have prefiled testimony is we have the witness sworn, qualified.</p> <p>11 He provides some foundation for the testimony and then a short</p> <p>12 summary. And we like to avoid having the short summary turn</p> <p>13 into a complete repetition of the material that we have already</p> <p>14 all seen so that the witness can be tendered promptly for</p> <p>15 cross-examination.</p> <p>16 CHAIRMAN JOHNSON: Mr. Smith, I think that's a good</p> <p>17 point. I did happen to see on the schedule of witnesses that I</p> <p>18 think somebody was planning on a one-hour presentation. And to</p> <p>19 me that would seem to run contrary to what we had set out as the</p> <p>20 operating procedure for this hearing.</p> <p>21 Is that your thought as well?</p> <p>22 MR. SMITH: It's a bit long. You know, I --</p> <p>23 CHAIRMAN JOHNSON: We lose a lot of the efficiencies</p> <p>24 of prefiled testimony if somebody spends an hour going over it.</p> <p>25 MR. SMITH: Right. It depends. I guess my request</p>	<p style="text-align: right;">40</p> <p>1 record, please, your business address.</p> <p>2 A. Robert Edward Jones. 451st Street Southwest, Calgary,</p> <p>3 Alberta.</p> <p>4 Q. Mr. Jones, are you an employee of TransCanada?</p> <p>5 A. Yes, I am.</p> <p>6 Q. And can you tell us what your position is?</p> <p>7 A. I'm the vice president of Keystone Pipeline Project.</p> <p>8 Q. Did you file direct testimony in connection with this</p> <p>9 proceeding?</p> <p>10 A. Yes, I did.</p> <p>11 Q. Over on the corner of the desk there I believe yours is on</p> <p>12 the top.</p> <p>13 A. I have it.</p> <p>14 Q. Does that appear to be your testimony?</p> <p>15 A. Yes, it is.</p> <p>16 Q. Do you have any additions or corrections to that testimony?</p> <p>17 A. I do.</p> <p>18 Q. I'll ask you at the time the Application was filed how many</p> <p>19 barrels per day did Keystone propose to transport?</p> <p>20 A. At that time we stated that we were proposing to transport</p> <p>21 435,000 barrels a day. As a result of a recent open season, we</p> <p>22 have underpinned contracts of 495,000 barrels a day. The</p> <p>23 pipeline is now designed to propose to move 591,000 barrels per</p> <p>24 day.</p> <p>25 Q. And so you intend to construct the pipeline as -- and are</p>

<p style="text-align: right;">41</p> <p>1 asking for a permit as if the pipeline will carry 591,000</p> <p>2 barrels per day?</p> <p>3 A. That's correct. The nominal capacity proposed will be</p> <p>4 591,000 barrels per day.</p> <p>5 Q. Mr. Jones, there's -- are you familiar with the Keystone</p> <p>6 requirements for assistance in the areas of maintenance and</p> <p>7 emergency response?</p> <p>8 A. Yes, I am.</p> <p>9 Q. Will you tell the Commission how, in fact, the Keystone</p> <p>10 intends to staff that enterprise?</p> <p>11 A. Certainly. The evidence that we've submitted so far</p> <p>12 described permanent staff with regards to just basic operations</p> <p>13 and, in fact, the operations at 435,000 barrels per day. What</p> <p>14 the evidence doesn't have is what we will require for</p> <p>15 maintenance and what we will require for emergency response.</p> <p>16 The reason it doesn't include that is because much of that</p> <p>17 work in regards to the details of the maintenance and the</p> <p>18 details of the emergency response will identify those people.</p> <p>19 However, I can tell you that there will be a tremendous number</p> <p>20 of people that will be contracted.</p> <p>21 The activities we're talking about is not activities that</p> <p>22 is required on a day-to-day basis like operations. With</p> <p>23 operations you need to have permanent employees because they're</p> <p>24 working constantly. But for maintenance and for emergency</p> <p>25 response that is not full-time employment. You contract that</p>	<p style="text-align: right;">43</p> <p>1 a reflection of that revised cost estimate.</p> <p>2 Q. Mr. Jones, you don't know whether the actual taxes will be</p> <p>3 as listed in Exhibit 14, do you?</p> <p>4 A. No. Thank you for that. That is anticipated. And so this</p> <p>5 is what we anticipate they will be obviously when we're finished</p> <p>6 construction. The revised capital numbers will be reflected and</p> <p>7 revised taxes, calculations.</p> <p>8 MR. KOENECKE: I'd ask for Exhibit 14 to be admitted,</p> <p>9 TC 14. Excuse me.</p> <p>10 MR. SMITH: Mr. Rasmussen.</p> <p>11 MR. RASMUSSEN: I think we would object, Mr. Smith.</p> <p>12 First of all, I don't believe this was prefiled as we've been</p> <p>13 hearing everything should be. And, secondly, as Mr. Jones just</p> <p>14 testified, I'd object on a lack of foundation. He's admitted</p> <p>15 they don't know what the actual taxes are going to be. This</p> <p>16 would appear to be a totally speculative exhibit.</p> <p>17 MR. SMITH: Staff.</p> <p>18 MS. SEMMLER: No objection from staff.</p> <p>19 MR. SMITH: Other parties. Do you have a response to</p> <p>20 the objection, Mr. Koenecke?</p> <p>21 MR. KOENECKE: We've always accepted additions and</p> <p>22 corrections to the testimony, and it's been explained clearly</p> <p>23 that this is an addition based on new estimates. Taxes are</p> <p>24 clearly relevant to the social and economic factors, and this is</p> <p>25 the best estimate that's available. It was prepared under his</p>
<p style="text-align: right;">42</p> <p>1 work because they work for numerous other pipeline companies.</p> <p>2 Q. Mr. Jones, I have put in front of you what I have marked as</p> <p>3 Exhibit TC 14. Is that a document you're familiar with?</p> <p>4 A. Yes, it is. I have it.</p> <p>5 Q. Was it prepared under your direction?</p> <p>6 A. Yes, it was.</p> <p>7 Q. Can you tell the Commissioners what it is?</p> <p>8 A. The Exhibit TC 14 is an adjustment to the South Dakota ad</p> <p>9 valorem property tax impact as expected under the revised cost</p> <p>10 estimate.</p> <p>11 The filed cost evidence was based on a cost estimate of</p> <p>12 \$300 million. The new cost estimate is \$500 million. The</p> <p>13 increase from 300 million to \$500 million is a combination of</p> <p>14 factors. We did the estimate originally in 2005. Since that</p> <p>15 time we have negotiated a tremendous number of contracts for</p> <p>16 construction and for acquisition of materials.</p> <p>17 So the new estimate is based on what we expect to be</p> <p>18 as-built dollars and obviously was exposed to significant</p> <p>19 inflationary pressures. So the increase recognizes a greater</p> <p>20 detail in the estimate and also considering that we'll need</p> <p>21 additional pumps because the capacity is increasing from 435,000</p> <p>22 to 590,000. So a combination of all of those items is why the</p> <p>23 cost estimate has increased to \$500 million.</p> <p>24 These taxes that we have shown here, \$9 million to counties</p> <p>25 and \$7 million specific of that 9 million to school districts is</p>	<p style="text-align: right;">44</p> <p>1 direction. I think it's admissible.</p> <p>2 MR. SMITH: The objection is overruled. Have you</p> <p>3 moved its admission? Have you offered it?</p> <p>4 MR. KOENECKE: I did.</p> <p>5 MR. SMITH: Okay. It's admitted. TC 14 is admitted.</p> <p>6 CHAIRMAN JOHNSON: Mr. Smith, Mr. Koenecke, did we</p> <p>7 have that exhibit for review?</p> <p>8 MR. SMITH: Yeah. We haven't -- we don't have it. We</p> <p>9 have the original. I'm sorry. I apologize.</p> <p>10 CHAIRMAN JOHNSON: Thank you.</p> <p>11 Q. Mr. Jones, what will be the maximum operating pressure of</p> <p>12 the Keystone Pipeline?</p> <p>13 A. The Keystone Pipeline will operate at a maximum operating</p> <p>14 pressure of 1,440 psi.</p> <p>15 Q. Finally, Mr. Jones, does Keystone commit to comply with all</p> <p>16 applicable laws and rules?</p> <p>17 A. Yes. Keystone commits to comply with all applicable rules.</p> <p>18 MR. KOENECKE: We'll tender the witness for</p> <p>19 cross-examination. Thank you.</p> <p>20 MR. SMITH: Mr. Rasmussen, please proceed.</p> <p>21 <u>CROSS-EXAMINATION</u></p> <p>22 <u>BY MR. RASMUSSEN:</u></p> <p>23 Q. Thank you. Mr. Jones, I'll ask you a couple of questions,</p> <p>24 first of all, about this Exhibit TC 14. In the explanation it</p> <p>25 states there will be approximately \$9,142,000 potential total</p>

<p style="text-align: right;">45</p> <p>1 tax revenue.</p> <p>2 What does the word potential mean in that context?</p> <p>3 A. My understanding of the way they levy taxes in these</p> <p>4 counties is subject to change. Based on the 2006 mill levy,</p> <p>5 this would be the numbers. These are not obviously what will</p> <p>6 happen in 2010 because the exact capital and the exact levies</p> <p>7 will be adjusted at that time.</p> <p>8 Q. This tax revenue will decrease over time as the pipeline</p> <p>9 depreciates in value, will it not?</p> <p>10 A. I believe there will be adjustments based on capital,</p> <p>11 whether the -- and the assessments. And so my understanding</p> <p>12 again of how the levy mills is based on the book value at that</p> <p>13 time.</p> <p>14 Q. Who actually prepared this exhibit?</p> <p>15 A. Under my direction there is a local firm in South Dakota.</p> <p>16 I can't recall the name of that accounting firm that came up</p> <p>17 with these numbers.</p> <p>18 Q. So you don't have any personal knowledge of the accuracy of</p> <p>19 these numbers; is that right?</p> <p>20 A. As is much of this testimony, there are a number of experts</p> <p>21 that have worked on this project. The evidence you have in</p> <p>22 front of you has been done by an expert here in South Dakota.</p> <p>23 Q. Now one of the school districts listed is Conde, which</p> <p>24 there was recent news stories about that district being so small</p> <p>25 that they might have to close or consolidate with somebody,</p>	<p style="text-align: right;">47</p> <p>1 have been made since April 27 of '07?</p> <p>2 A. The expert witness to testify with regards to specific</p> <p>3 questions on routes should go to Mr. Koski.</p> <p>4 Q. Okay. So you don't know?</p> <p>5 A. I believe this is a very accurate summary based on specific</p> <p>6 details. And you must recognize that as we work with landowners</p> <p>7 and agencies there may be slight changes. The most recent</p> <p>8 information and accurate information will come from that expert.</p> <p>9 Q. Are you familiar with the various route changes that are</p> <p>10 listed here? If I ask you questions about them, are you going</p> <p>11 to be able to respond to them?</p> <p>12 A. No, I'm not.</p> <p>13 Q. But Mr. Koski would be able to do that?</p> <p>14 A. Yes.</p> <p>15 Q. Is Mr. Koski the one that makes the decisions if a route's</p> <p>16 going to be changed or denied -- a requested change is going to</p> <p>17 be denied? Is he the one making that decision?</p> <p>18 A. Mr. Koski will make the recommendation. The decision</p> <p>19 usually considers a number of factors and a number of parties.</p> <p>20 So if it impacts construction, then we'll need to hear from the</p> <p>21 impact from Mr. Gray. If it impacts the environment, then we'll</p> <p>22 hear from Mr. Ellis. All of the experts consider every route</p> <p>23 change. But the ultimate decision on the route lies with the</p> <p>24 company, and I represent the company.</p> <p>25 Q. Looking at your answer to paragraph 6 of the</p>
<p style="text-align: right;">46</p> <p>1 you're telling us they're going to get \$819,000 through taxes,</p> <p>2 that school district? Is that right?</p> <p>3 A. That's correct.</p> <p>4 Q. Maybe they won't have to close then.</p> <p>5 Mr. Jones, you are the one that signed the Interrogatories</p> <p>6 that WEB served; is that right?</p> <p>7 A. Yes. I am the senior representative.</p> <p>8 Q. One of the issues that was addressed in the WEB</p> <p>9 Interrogatories had to do with the various route changes that</p> <p>10 have occurred over the last several months; is that right? Do</p> <p>11 you recall that?</p> <p>12 A. Yes. I recall that.</p> <p>13 Q. And there was a document that was attached to the</p> <p>14 Interrogatory Answers which summarized some of those route</p> <p>15 changes?</p> <p>16 A. Yes.</p> <p>17 Q. Do you have that available to you? Or maybe Mr. Koenecke</p> <p>18 could --</p> <p>19 MR. SMITH: While he's looking for it, read could you</p> <p>20 pull that mic over a little closer to your mouth, please. It's</p> <p>21 picking up kind of quiet.</p> <p>22 MR. RASMUSSEN: Okay.</p> <p>23 Q. Do you have that now?</p> <p>24 A. Yes, I do.</p> <p>25 Q. Does that document summarize all the route changes that</p>	<p style="text-align: right;">48</p> <p>1 Interrogatories, that question asked about pipeline leaks; is</p> <p>2 that right?</p> <p>3 A. Yes.</p> <p>4 Q. And you identified four failures in the past five years</p> <p>5 related to external corrosion and three related to third party</p> <p>6 damage; correct?</p> <p>7 A. That's correct. This is -- this question, Commissioners,</p> <p>8 was regarding leaks on all of TransCanada's pipelines which is</p> <p>9 an extensive network throughout North America. Over 36,000</p> <p>10 miles. And we advised that there were four -- sorry. Yes.</p> <p>11 Four failures in the past five years due to external corrosion</p> <p>12 and three failures in the past five years due to third-party</p> <p>13 damage throughout that entire extensive system.</p> <p>14 Q. And were these all natural gas pipelines? Do you know?</p> <p>15 A. Yes. They are all natural gas pipelines. I just wanted to</p> <p>16 make sure there wasn't -- we also have storage facilities. So I</p> <p>17 just wanted to make sure to include the storage facilities.</p> <p>18 Q. Does TransCanada currently operate any crude oil pipelines?</p> <p>19 A. Currently TransCanada does not operate any crude oil</p> <p>20 pipelines. That's correct.</p> <p>21 Q. Has TransCanada ever built a crude oil pipeline?</p> <p>22 A. Yes, we have.</p> <p>23 Q. How many of those have you built?</p> <p>24 A. Well, the company over time -- we've been in existence</p> <p>25 since the '50s. There have been a number of pipelines. There's</p>

<p style="text-align: right;">49</p> <p>1 two really applicable ones: The Express Pipeline, which runs</p> <p>2 from Hardisty to Montana and Wyoming and then the OCENSA</p> <p>3 Pipeline that we built across the Andes Mountains in Columbia.</p> <p>4 CHAIRMAN JOHNSON: I'm sorry, Mr. Jones. Could you</p> <p>5 say that second pipeline again? The Express and the --</p> <p>6 THE WITNESS: OCENSA Pipeline.</p> <p>7 Q. The Express Pipeline, I'm sorry, runs from where?</p> <p>8 A. Hardisty, Alberta down through Montana into Wyoming, and</p> <p>9 then it connects with the Platte Pipeline, which TransCanada</p> <p>10 also was a joint venture partner in, that moves then from</p> <p>11 Wyoming through Missouri and into Illinois.</p> <p>12 Q. Are you familiar with the -- well, the seven failures that</p> <p>13 are referenced in the Interrogatory Answer?</p> <p>14 A. The expert witness that can best respond to those would be</p> <p>15 Ms. Meera Kothari.</p> <p>16 Q. TransCanada has had other failures -- this lists the ones</p> <p>17 in the past five years. Before the last five years there have</p> <p>18 been other pipeline failures or leaks; correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Who's the person that would be best to respond to questions</p> <p>21 about the other pipeline failures?</p> <p>22 A. Meera Kothari. But I could also certainly attempt to try</p> <p>23 to answer any questions you might have about the history of</p> <p>24 pipeline failures.</p> <p>25 Q. Well, I'm familiar with a failure in April of '02. A</p>	<p style="text-align: right;">51</p> <p>1 decrease its sales and use tax payments by 75 percent. You're</p> <p>2 aware of that?</p> <p>3 A. I'm aware of that.</p> <p>4 Q. Is it TransCanada's intention to make use of that statute</p> <p>5 and reduce its taxes in that manner?</p> <p>6 A. There's -- those taxes will be paid by our contractors, and</p> <p>7 I would only assume that they would consider the laws and apply</p> <p>8 as required.</p> <p>9 Q. If it's available to them, you would certainly assume that</p> <p>10 they would take advantage of that tax break; correct?</p> <p>11 A. I think that's a reasonable assumption.</p> <p>12 Q. According to paragraph 12 of the Interrogatory Answers,</p> <p>13 some portion of 56,240 tons of this steel that's going to be</p> <p>14 used will be manufactured at a facility in India; is that right?</p> <p>15 A. Yes. There's three -- we've contracted the pipe to three</p> <p>16 different facilities. Pipe is made all over the world and is</p> <p>17 built to U.S. standard API 5L. The plants we've negotiated with</p> <p>18 are in Florida, Oregon and Welspun, India. The Welspun, India</p> <p>19 mill is a former Canadian mill out of Welland, Ontario that has</p> <p>20 been reassembled and is in the City of Welspun.</p> <p>21 That mill today produces tens of thousands of tons that is</p> <p>22 imported into the United States, and thousands of miles of pipe</p> <p>23 are built with pipe that has been produced out of this mill.</p> <p>24 Q. According to the Interrogatory Answer, 14,632 tons will</p> <p>25 come from the facility in Florida; is that right?</p>
<p style="text-align: right;">50</p> <p>1 natural gas pipeline cracked due to corrosion near Brookdale,</p> <p>2 Manitoba causing an evacuation of 100 people within a</p> <p>3 4-kilometer radius.</p> <p>4 Are you familiar with that?</p> <p>5 A. Definitely the Brookdale incident would be best answered by</p> <p>6 Ms. Kothari.</p> <p>7 Q. December 2 of 1997 a natural gas pipeline ruptured due to</p> <p>8 external corrosion near Cabri, Saskatchewan?</p> <p>9 A. A little French-Canadian there.</p> <p>10 Q. Okay. Are you familiar with that one?</p> <p>11 A. Again, these specific incidences Ms. Kothari is the correct</p> <p>12 witness. If you have about general industry failures, I am the</p> <p>13 appropriate witness.</p> <p>14 Q. But if I want to ask again about these specific instances,</p> <p>15 she would be -- is it a she or he?</p> <p>16 A. She.</p> <p>17 Q. She would be the best one to talk about that?</p> <p>18 A. That's correct.</p> <p>19 Q. Paragraph 11 of the Interrogatory Answers indicates that</p> <p>20 TransCanada has not sought any tax incentives from the State of</p> <p>21 South Dakota; correct?</p> <p>22 A. TransCanada has not actively sought any tax incentives.</p> <p>23 Any tax incentives that we may consider are already within the</p> <p>24 legislation.</p> <p>25 Q. There's a statute that arguably would allow TransCanada to</p>	<p style="text-align: right;">52</p> <p>1 A. That's correct.</p> <p>2 Q. And then the remaining 56,240 tons will come from either</p> <p>3 the Portland, Oregon plant or the one in India; correct?</p> <p>4 A. Yeah.</p> <p>5 Q. Do you have a breakdown between those two as to how much of</p> <p>6 that will come from Oregon and how much from India?</p> <p>7 A. No. I don't have the details. It's really a matter of</p> <p>8 different applications, timing, you know, when -- logistics with</p> <p>9 regard to transportation. So until those details are figured</p> <p>10 out. But, nonetheless, the three mills that we're looking at</p> <p>11 are the three that I just previously described.</p> <p>12 Q. How is pipe transported all the way from India to the</p> <p>13 location of this pipeline?</p> <p>14 A. Pipeline logistics, whether it's from Florida or from</p> <p>15 Oregon or from India or anywhere else in the world for that</p> <p>16 matter, is carefully done through different specifications that</p> <p>17 we have to follow under the PHMSA. We expect to use tankers</p> <p>18 from India, and then when it gets on shore we can use barges,</p> <p>19 rail cars, and trucks to ultimately get it on to the right of</p> <p>20 way.</p> <p>21 Q. Does TransCanada agree that rural water system pipelines</p> <p>22 that you cross are high consequence areas under federal law?</p> <p>23 A. I'm not an expert in the definition of high consequence</p> <p>24 areas. Mr. Koski is. But I believe the answer is no.</p> <p>25 Q. In paragraph 26 of the Interrogatories, a request was made</p>

<p style="text-align: right;">53</p> <p>1 for a 42-gallon barrel of the tar sands crude oil that will be 2 shipped through the pipeline to be made available for testing. 3 And there was no response to -- there was an answer then about 4 the general physical and chemical properties of the crude oil 5 and references to some website, but there was no response to 6 their request for a sample. 7 Would TransCanada be willing to provide such a sample? 8 A. No, we wouldn't. TransCanada is, as I have described in 9 the past, the trucker. We don't own the oil. We don't make the 10 oil. We have a specification that has to be rigorously met and 11 will be tested on the properties that come into the pipeline. 12 So we have a specification that we have followed. 13 Certainly there's a variety of crude oils in Western Canada 14 that are consumed every single day here in the United States. 15 And we intend to transport those crude oils. 16 Q. But you won't make any of those crude oils available for 17 independent testing. Do I understand that correctly? 18 A. That's correct. 19 Q. Paragraphs 30 and 31 of the Interrogatories -- 30 asks for 20 operational records for any pipeline built by TransCanada which 21 has experienced any spills or leaks and for some more 22 information in that regard, and paragraph 30 asks for any leak 23 reports for any pipeline built or operated by TransCanada. 24 And the answer to both of those questions was that 25 TransCanada Keystone Pipeline, LP has not built any pipeline to</p>	<p style="text-align: right;">55</p> <p>1 TransCanada's extensive network, TransCanada owns and operates 2 36,000 miles of pipelines. It's unreasonable to expect us to 3 produce all of these leak reports for our history. 4 However, we do file every leak report. It's documented to 5 the smallest amount. And that's why the Dow Jones 6 Sustainability Index six years in a row has nominated 7 TransCanada to be on their top 100. 8 Q. So you didn't answer the question because I didn't know 9 that the Applicant had no experience in building pipelines? Is 10 that why you answered that way? 11 A. No. It's the specific company is the Applicant, 12 TransCanada Keystone Pipeline, LP. 13 Q. So the specific company that is the Applicant in this 14 proceeding in South Dakota has never built a pipeline; is that 15 right? 16 A. Yeah. That's pretty common for all pipelines you'll find 17 that a new company is formed, and they file the Application. 18 And so the question was directly specific to that company. I 19 believe it's a legal question you've asked me. 20 Q. Well, I guess I didn't think I was asking you a legal 21 question, but that's the way you responded. That's fine. 22 A few questions about your direct testimony. Do you have 23 that available to you? 24 A. I do. 25 Q. Several times this morning and throughout the direct</p>
<p style="text-align: right;">54</p> <p>1 date. No information exists. 2 Can you explain that response? 3 MR. KOENECKE: I object to the question. Counsel has 4 not accurately described the question in the interrogatory. The 5 question asked what the Applicant had done, and the Applicant is 6 TransCanada Keystone Pipeline, LP. It's not TransCanada -- 7 that's not the question that was asked in the interrogatory, and 8 so I object to the question. It's not stated as it was in the 9 interrogatory. 10 MR. RASMUSSEN: I'm sorry. 11 MR. SMITH: Do you want to rephrase the question 12 slightly? 13 Q. 31 asks, "Produce any and all leak reports for any pipeline 14 built or operated by Applicant." And then the answer was, "The 15 Applicant TransCanada Keystone Pipeline, LP has not built any 16 pipeline to date. No information exists as requested." 17 Can you explain that answer? And so the Applicant in this 18 proceeding has never built any pipeline? Is that the way I read 19 that? 20 A. No. The question was specific to a company, TransCanada 21 Keystone Pipeline, LP, which I believe is a U.S. company 22 registered in Delaware and will be the company that will build 23 the pipeline. 24 If you're asking the question I assume you were trying to 25 ask was provide all leak reports for all instances in</p>	<p style="text-align: right;">56</p> <p>1 testimony, a lot of the witnesses, that there's a reference to 2 nominal capacity. What does that mean? 3 A. Pipelines are designed with a consideration of what they 4 are able to operate on a predictable basis. The 100 percent 5 design capacity is 10 percent greater than the nominal capacity. 6 Keystone Pipeline will operate at a 90 percent design factor. 7 In other words, the operating factor. 8 So we'll design it to move -- physically move or have the 9 capability of physically moving 10 percent greater but to be 10 able to go to customers and say what can you predict, what can 11 you ratably move every day you use a nominal capacity. 12 Q. You indicated in your testimony here this morning that 13 Keystone currently has contracts for 495,000 barrels per day; is 14 that right? 15 A. That's correct. 16 Q. Okay. And those contracts are with ConocoPhillips and 17 Suncor? 18 A. No. They're with a number of companies. Those two 19 companies have identified themselves as shippers. But, no, 20 there are more companies. They are both producers in Canada and 21 there are both U.S. and Canadian producers in Canada and there 22 are refiners, numerous refiners, that are American companies 23 based here in the United States. 24 Q. When you say those two companies, ConocoPhillips and 25 Suncor, have identified themselves as shippers, what do you</p>

<p style="text-align: right;">57</p> <p>1 mean? Where have they identified themselves?</p> <p>2 A. In other hearings. That would be the -- that would be the</p> <p>3 place that they identified themselves as shippers.</p> <p>4 Q. I'm sorry. Who are some of the other shippers?</p> <p>5 A. Under the Transportation Service Agreement that we sign</p> <p>6 with them, I am not -- I'm under confidentiality not to describe</p> <p>7 the terms of those companies. It's a competitive business, and,</p> <p>8 like I said, ConocoPhillips and Suncor have identified</p> <p>9 themselves, but the other companies have not.</p> <p>10 Q. You mentioned in your direct testimony that the final EIS</p> <p>11 is expected in November or December of '07. That hasn't been</p> <p>12 issued yet, has it?</p> <p>13 A. No. My understanding talking to the State Department is</p> <p>14 that they are working diligently on finishing the Environmental</p> <p>15 Impact Statement, and we still are anticipating to receive the</p> <p>16 final Environmental Impact Statement by the end of the year.</p> <p>17 Q. Are there plans for additional pipelines to run down this</p> <p>18 same corridor that we're talking about here today?</p> <p>19 A. Plans. TransCanada is in the business of developing</p> <p>20 pipelines. In the future, you know, we're trying to build all</p> <p>21 sorts of different pipelines to different spots, whether they be</p> <p>22 in the West Coast, the East Coast, the Midwest, the Gulf Coast.</p> <p>23 There's such significant amounts of oil in Canada and there's</p> <p>24 such large refining capacity here in the United States that, you</p> <p>25 know, we are proposing to try and build additional lines.</p>	<p style="text-align: right;">59</p> <p>1 South Dakota, but my understanding is that the benefit -- the</p> <p>2 taxes will be levied. Keystone will pay the taxes, and they</p> <p>3 will be distributed to the counties and to each school district.</p> <p>4 And the formula, whatever it will be when we go to pay those</p> <p>5 taxes, if they're counted as local effort and there's a</p> <p>6 reduction from the state into those school districts, it will</p> <p>7 still benefit the entire State of South Dakota. It's just my</p> <p>8 understanding is that there is a balancing that would occur.</p> <p>9 Q. Paragraph 19 on that same page you state, "The delay or</p> <p>10 termination of the project would have substantial adverse</p> <p>11 impacts upon the local economies."</p> <p>12 I won't argue with you about termination, but how would the</p> <p>13 delay in this project if more study was necessary have</p> <p>14 substantial adverse impacts upon local economies?</p> <p>15 A. The refineries in the United States are separate for</p> <p>16 additional crude oil from reliable sources. The price of oil,</p> <p>17 as you know, is extremely high today, and it's due to the</p> <p>18 instability of supply. So certainly the continued high price of</p> <p>19 gas here in the state will continue unless we build</p> <p>20 infrastructure, not only Keystone but other infrastructure to</p> <p>21 ensure the reliable supply of crude oil.</p> <p>22 On top of that, our project is certainly within -- requires</p> <p>23 to be built within a certain time frame for us to remain</p> <p>24 economic and to proceed. So any undue delay will have a drastic</p> <p>25 impact with regards to our ability to remain competitive and to</p>
<p style="text-align: right;">58</p> <p>1 There is no formal Application to build a second pipeline</p> <p>2 along this route, but certainly I don't want to rule out the</p> <p>3 fact that sometime in the future there may be another line.</p> <p>4 Q. It's my understanding that at least some of the easements</p> <p>5 that have been negotiated allow for the additional pipelines to</p> <p>6 be placed on the property of those people who have signed</p> <p>7 easements; is that correct?</p> <p>8 A. That's correct. It's very common in the industry to call</p> <p>9 that multiline rights or request multiline rights and you would</p> <p>10 negotiate authorization for an easement to put more than one</p> <p>11 line in the easement. And so we've asked for that and, again, I</p> <p>12 think that's in anticipation that sometime in the future we may</p> <p>13 be successful but we would have to follow the same processes as</p> <p>14 we are doing today.</p> <p>15 Q. Look at page 7 of your direct testimony. We'll be right at</p> <p>16 the top of the page. It would be part of paragraph 15 which</p> <p>17 starts on the prior page. But you state that, Keystone doesn't</p> <p>18 believe that property taxes paid to each county will be counted</p> <p>19 as "local effort."</p> <p>20 What's your understanding of what that means?</p> <p>21 MR. KOENECKE: Excuse me counsel. I didn't hear the</p> <p>22 question. Did you say does or doesn't?</p> <p>23 MR. RASMUSSEN: It should say does believe. If I said</p> <p>24 doesn't. I apologize.</p> <p>25 A. Again, I don't profess to be an expert in tax law here in</p>	<p style="text-align: right;">60</p> <p>1 proceed with construction.</p> <p>2 Q. In the testimony you presented here today you told</p> <p>3 Mr. Koenecke that a tremendous number of people will be</p> <p>4 contracted, which would include the emergency response people.</p> <p>5 And then I think you also said that those type of people also</p> <p>6 work for other companies; is that right?</p> <p>7 A. Yes. Other pipeline companies. In fact, they are today.</p> <p>8 Because of the -- when you think of the other pipelines that are</p> <p>9 in this state, there's refined products pipelines. There's</p> <p>10 natural gas pipelines. They have all contracted for maintenance</p> <p>11 and for emergency response. And we too will do the same.</p> <p>12 So, in fact, you know, we do operate a pipeline here in</p> <p>13 South Dakota. We operate the Northern Border Pipeline. And we</p> <p>14 have a number of contractors for maintenance and for emergency</p> <p>15 response on top of the permanent employees that we have here in</p> <p>16 the state.</p> <p>17 Q. I'm interested in the emergency response people. Well, for</p> <p>18 instance, the Northern Border emergency response people, where</p> <p>19 are they located or stationed?</p> <p>20 A. Well, the actual details on emergency response people would</p> <p>21 be best answered by Mr. Brian Thomas. As for Northern Border</p> <p>22 and those emergency response people, you know, that's not</p> <p>23 relevant to this hearing. However, I could tell you -- I can't</p> <p>24 tell you the details because I don't personally run that</p> <p>25 division. But I do know that the contractors and the people are</p>

<p style="text-align: right;">61</p> <p>1 based here in South Dakota.</p> <p>2 Q. Well, I guess, this pipeline is obviously relevant. Tell</p> <p>3 me about this pipeline. Where are these emergency response</p> <p>4 people going to be?</p> <p>5 A. Yeah. And I agree that is a relevant question, and</p> <p>6 Mr. Thomas would be best to answer.</p> <p>7 Q. Okay.</p> <p>8 MR. RASMUSSEN: Can I have just a minute?</p> <p>9 MR. SMITH: Sure.</p> <p>10 (Pause)</p> <p>11 MR. RASMUSSEN: Just a couple other questions.</p> <p>12 MR. SMITH: Mr. Rasmussen, can we wait? Mr. Johnson</p> <p>13 stepped out. He'll be right back.</p> <p>14 MR. RASMUSSEN: I apologize.</p> <p>15 MR. SMITH: Commissioner Johnson's back in the room.</p> <p>16 Please proceed, Mr. Rasmussen. Thank you.</p> <p>17 MR. RASMUSSEN: Thank you.</p> <p>18 Q. On these contract employees, do I understand they would be</p> <p>19 employed with other companies that TransCanada would then have a</p> <p>20 contract with? Is that the way it works?</p> <p>21 A. It can work that way. Again, the specific details will be</p> <p>22 developed over the next year. We have to have the ERP finalized</p> <p>23 prior to operation. Once the ERP has been finalized, it will</p> <p>24 identify the appropriate personnel and their location. And in</p> <p>25 order to -- once we've done all of that work, then the</p>	<p style="text-align: right;">63</p> <p>1 Q. But there would be a good chance they would also have</p> <p>2 responsibilities with other pipelines?</p> <p>3 A. I think that's reasonable to expect.</p> <p>4 MR. RASMUSSEN: Thank you. That's all I have.</p> <p>5 MR. SMITH: At this point, Cheri, would you like a</p> <p>6 break?</p> <p>7 (Discussion off the record)</p> <p>8 MR. SMITH: We're going to take a 5-minute recess.</p> <p>9 How about from now until 11 o'clock to give our court reporter a</p> <p>10 rest?</p> <p>11 (A short recess is taken)</p> <p>12 MR. SMITH: We're back in session. I note that at the</p> <p>13 outset usually I take appearances of counsel. I know there's</p> <p>14 some pro se people in the room as well. But I think probably</p> <p>15 our reporter knows all counsel except do you want to -- we have</p> <p>16 one pro hac attorney from outside the state, and do you want to</p> <p>17 put in an appearance for him?</p> <p>18 MR. WHITE: Yes. Thank you, Mr. Smith. My name is</p> <p>19 James White. I'm an attorney with the law firm of Sidley,</p> <p>20 Austin, LLP in Washington, D.C. And I've given my contact</p> <p>21 information to the reporter appearing on behalf of Keystone.</p> <p>22 MR. SMITH: Thank you. Mr. Rasmussen, were you done?</p> <p>23 MR. RASMUSSEN: Yes, I was.</p> <p>24 MR. SMITH: Okay. Staff.</p> <p>25 MS. SEMMLER: Thank you. This is Kara Semmler from</p>
<p style="text-align: right;">62</p> <p>1 contracting and training of all of those people will need to</p> <p>2 approve before we commence operation in the fourth quarter of</p> <p>3 '09 as well.</p> <p>4 Q. Just in general, you've worked with contract employees in</p> <p>5 the past; correct?</p> <p>6 A. Yes. All pipeline companies need to work with contract</p> <p>7 employees.</p> <p>8 Q. So I'm just wondering are these people that are employees</p> <p>9 of other companies, or are they just individuals that you enter</p> <p>10 into a contract with? How does it work in general?</p> <p>11 A. It really varies. You know, I mean, there are experts that</p> <p>12 you can hire with regards to certain activities, but there are</p> <p>13 activities that you would hire individuals as well. So like,</p> <p>14 for example, transporting would require just an individual, or</p> <p>15 the movement of dirt would require just an individual.</p> <p>16 But if there are companies that have specialized equipment,</p> <p>17 you would hire them. So the more specialized tend to be a</p> <p>18 company, and an employee would work for them and would be</p> <p>19 trained according to our hierarchy.</p> <p>20 Q. These contract employees, however they're hired, they would</p> <p>21 not be TransCanada employees, they would be either independent</p> <p>22 contractors or employees of another company?</p> <p>23 A. That's correct. But they would still have to comply with</p> <p>24 the RPNB training according to the rules and regulations and the</p> <p>25 laws that will govern the rates this pipeline's regulated to.</p>	<p style="text-align: right;">64</p> <p>1 staff. Just a few quick questions.</p> <p>2 <u>CROSS-EXAMINATION</u></p> <p>3 <u>BY MS. SEMMLER:</u></p> <p>4 Q. Is there any change to the pump station locations with the</p> <p>5 new pumping capacity?</p> <p>6 A. No, I'm not. The additional pumping capacity just requires</p> <p>7 additional pumping units.</p> <p>8 Q. So are there still then the 14 valves in South Dakota, or</p> <p>9 will there be additional valves in South Dakota?</p> <p>10 A. I'd ask that -- I don't recall there being any difference</p> <p>11 in the number of valves. However, the exact number is probably</p> <p>12 left for Mr. Gray to answer.</p> <p>13 MS. SEMMLER: Thank you. Nothing further.</p> <p>14 MR. SMITH: I guess I neglected to inquire if other</p> <p>15 Interveners have questions of Mr. Jones.</p> <p>16 Mr. Hohn.</p> <p>17 MR. HOHN: Yes, I do. I'm an individual Intervener as</p> <p>18 well as being involved with WEB, and I have a couple of</p> <p>19 questions.</p> <p>20 MR. SMITH: Please proceed.</p> <p>21 MR. HOHN: Thank you.</p> <p>22 <u>CROSS-EXAMINATION</u></p> <p>23 <u>BY MR. HOHN:</u></p> <p>24 Q. Mr. Jones, TransCanada has been a partner of the Northern</p> <p>25 Border Pipeline how long?</p>

<p style="text-align: right;">65</p> <p>1 MR. KOENECKE: I object on the relevance of that</p> <p>2 question.</p> <p>3 MR. HOHN: Well, the next question -- I could change</p> <p>4 the question.</p> <p>5 MR. SMITH: Overruled. If you know, you can answer.</p> <p>6 A. I guess I don't know the specific details. I know the</p> <p>7 pipeline was built in the '80s, and I believe we've been part of</p> <p>8 it ever since then. But I'm not an expert in the holdings of</p> <p>9 the Northern Border Pipeline.</p> <p>10 Q. Thank you. The Northern Border Pipeline is owned by a</p> <p>11 number of parties. The management or operating of that</p> <p>12 pipeline, does that change from year to year or time to time?</p> <p>13 MR. KOENECKE: Again, I object on the relevance. The</p> <p>14 Northern Border Pipeline is not at issue in this proceeding.</p> <p>15 MR. SMITH: Overruled. The witness himself brought it</p> <p>16 up so please proceed.</p> <p>17 A. The pipeline is owned as a joint venture between ONEOK and</p> <p>18 TC Pipelines.</p> <p>19 Q. Mr. Jones, as one of the water utilities in the community,</p> <p>20 we have had some contact with Northern Border over the 20 years</p> <p>21 or so that they've been in operation. At one time did Enron</p> <p>22 manage the operation of the Northern Border Pipeline?</p> <p>23 MR. KOENECKE: Same objection.</p> <p>24 MR. SMITH: This seems to be getting quite afar out</p> <p>25 there, but overruled.</p>	<p style="text-align: right;">67</p> <p>1 Northern Border Pipeline. I don't know that former ownerships</p> <p>2 and things of that nature -- and if you could cut to the chase.</p> <p>3 MR. HOHN: I'll move along.</p> <p>4 COMMISSIONER HANSON: Ask the question as opposed to</p> <p>5 the editorializing. We'd appreciate it.</p> <p>6 MR. HOHN: Yes, Mr. Commissioner.</p> <p>7 Q. My question is Northern Border has been represented by you</p> <p>8 as an example of a pipeline how it would be operated by either</p> <p>9 you or whoever the partners are in the future on your</p> <p>10 TransCanada Keystone line.</p> <p>11 It is true that they used to have in-house staff operate it</p> <p>12 and now some senior, very senior, operations staff and now they</p> <p>13 have less. Is that --</p> <p>14 MR. KOENECKE: I object. Lack of foundation.</p> <p>15 MR. HOHN: Well, I'm asking him the question, if</p> <p>16 there's been a change of how it was staffed from in-house to</p> <p>17 more contracted operation, if he knows.</p> <p>18 MR. KOENECKE: The objection stands.</p> <p>19 MR. SMITH: I think your problem -- you're combining</p> <p>20 an awful lot of things into one question. Maybe you can break</p> <p>21 it down into pieces. Go ahead.</p> <p>22 A. I don't know. So --</p> <p>23 Q. The next question, Mr. Jones, relating to taxes, this was</p> <p>24 TC 14, the document you just handed out today, the first time we</p> <p>25 had seen it this morning. You said that the portion of the</p>
<p style="text-align: right;">66</p> <p>1 CHAIRMAN JOHNSON: Mr. Smith, I'd like to take just a</p> <p>2 minute to get some more information. I may have an interest in</p> <p>3 overruling you.</p> <p>4 Mr. Hohn, could you just quickly give us an idea of</p> <p>5 where you're headed with this? I'm trying to determine</p> <p>6 relevancy.</p> <p>7 MR. HOHN: The relevancy is in terms of how the</p> <p>8 staffing and operation has been handled. And for a long time</p> <p>9 this pipeline, Northern Border, had in-house operation staff,</p> <p>10 and they've reduced the staff over the last say 10 years, five,</p> <p>11 10 years. And they have less in-house staff and more contract</p> <p>12 staff, which is relevant in terms of how you operate.</p> <p>13 And the question is if that's the way this one is</p> <p>14 operated, should we assume the way Northern Border is operated</p> <p>15 is the way TransCanada will operate this pipeline because they</p> <p>16 are a party to both pipelines.</p> <p>17 CHAIRMAN JOHNSON: I'm trying to remember the</p> <p>18 information immediately prior to that. Did Mr. Jones indicate</p> <p>19 TransCanada is sort of the managing partner of Northern Border?</p> <p>20 MR. HOHN: I'm sure he could restate --</p> <p>21 THE WITNESS: That's correct.</p> <p>22 CHAIRMAN JOHNSON: I have no motion at this time.</p> <p>23 COMMISSIONER HANSON: If I may, Mr. Chairman and</p> <p>24 Mr. Smith, I fully agree with you, and I appreciate you starting</p> <p>25 to pursue that because Mr. Jones was just touching on the</p>	<p style="text-align: right;">68</p> <p>1 pipeline in South Dakota would be worth 300 million. That was</p> <p>2 the original estimated value. And then that estimate has</p> <p>3 increased because of increased costs, which I assume were labor</p> <p>4 and material.</p> <p>5 Would that be a fair assumption?</p> <p>6 A. Yes. The costs are labor to -- with regards to</p> <p>7 construction contracts, materials with regards to the -- such</p> <p>8 things as pipes, valves, pumps that are required.</p> <p>9 There's also a time issue. The estimate was done in 2005,</p> <p>10 this current estimate is now done in as we expect dollars. So</p> <p>11 inflationary pressures are reflected in the cost estimate.</p> <p>12 Q. The question then is the cost increased looks like from</p> <p>13 about 40 percent, the taxes increased 30 percent. Is there a</p> <p>14 reason as far as you know based on the information that you're</p> <p>15 aware why there would be such a difference? Wouldn't they go up</p> <p>16 the same?</p> <p>17 A. Again, I think they are both based on estimates. The level</p> <p>18 of detail in this one is of a higher accuracy, and I would --</p> <p>19 only as I have answered before on the previous questions, these</p> <p>20 are what we anticipate them to be in 2010.</p> <p>21 Q. Along that same line, the school districts that are listed</p> <p>22 I assume what you're saying there is the taxes would be</p> <p>23 collected in those geographical school districts, and they would</p> <p>24 be centrally assessed by the state but that the money doesn't</p> <p>25 necessarily go back to them. You said that -- if I understood</p>

<p style="text-align: right;">69</p> <p>1 you correctly, it's collected locally but you're not familiar --</p> <p>2 you haven't talked to the Department of Revenue as to how much</p> <p>3 actually would go back to each school?</p> <p>4 MR. KOENECKE: I don't understand what the question is</p> <p>5 there.</p> <p>6 COMMISSIONER KOLBECK: I don't either, I guess.</p> <p>7 Mr. Hohn, are you just asking basically -- he's got an estimate</p> <p>8 of \$259,000 for Bridgewater. That's an estimate. Do you want</p> <p>9 to know is that going to go into the school district's</p> <p>10 checkbook?</p> <p>11 MR. HOHN: Yes. Commissioner Kolbeck, what I'm asking</p> <p>12 is, is it a net gain for the school district? Do those numbers</p> <p>13 represent what each of those school districts will get in</p> <p>14 addition to what they got last year?</p> <p>15 MR. KOENECKE: That's asked and answered. If that's</p> <p>16 the question, we've gone over that already, I think.</p> <p>17 MR. SMITH: Do you know?</p> <p>18</p> <p>19 A. I think my answer was in the past that there is a balancing</p> <p>20 that the money does get collected by the schools. Whether or</p> <p>21 not the State then continues to fund it in the same level I</p> <p>22 think does change.</p> <p>23 The bottom line is that the benefit to the State of South</p> <p>24 Dakota is as described here.</p> <p>25 Q. Okay. The next question is of the pipelines that you own</p>	<p style="text-align: right;">71</p> <p>1 oil into the U.S.?</p> <p>2 A. Keystone will compete with a number of pipelines to move</p> <p>3 oil from the Western Canadian Synergy Basin into the market.</p> <p>4 There are existing players. The existing players that move</p> <p>5 significant amounts of oil are the Enbridge Pipelines that move</p> <p>6 oil in towards the Chicago market, which is not a market for</p> <p>7 Keystone. And the Express Pipeline, which basically moves</p> <p>8 Canadian crude into the Wyoming markets, which again is not a</p> <p>9 market for Keystone.</p> <p>10 But there is an ability for the Express Pipeline with</p> <p>11 Platte and the Enbridge Pipeline with Spearhead to compete with</p> <p>12 Keystone at Cushing and Wood River.</p> <p>13 Q. And so the Enbridge Pipeline, being the vice president, a</p> <p>14 high-level executive in this company, you have to be quite</p> <p>15 familiar with your competition, I would assume?</p> <p>16 A. Yes.</p> <p>17 Q. You're familiar with the Enbridge Pipeline that runs</p> <p>18 through Clearbrook, Minnesota?</p> <p>19 A. I'm aware of it.</p> <p>20 Q. You're aware that they had an explosion, tragedy here</p> <p>21 recently?</p> <p>22 A. Yes, I am. This incident is a tragedy. TransCanada is</p> <p>23 certainly saddened by that incident. And for the families and</p> <p>24 the coworkers of the many who lost their lives, I want to tell</p> <p>25 the Commission that the industry takes these incidences very</p>
<p style="text-align: right;">70</p> <p>1 or built, is there a pipeline by the name of Foothills Pipeline</p> <p>2 that you either acquired or built?</p> <p>3 A. Yes.</p> <p>4 Q. Did you acquire it or build it?</p> <p>5 A. We built it.</p> <p>6 Q. You built it. And where is Foothills?</p> <p>7 A. There's actually a number of Foothills. There's Foothills</p> <p>8 Saskatchewan, which runs from the Alberta border diagonally and</p> <p>9 feeds into the Northern Border Pipeline, and there's Foothills</p> <p>10 BC that runs from the Alberta-BC border and runs into the</p> <p>11 United States to feed the market in the northwest. And there's</p> <p>12 Foothills, Alberta, which is prebuilt to the Alaska pipeline</p> <p>13 that runs throughout the province, and there is Foothills Yukon,</p> <p>14 which is a prebuilt that has not been built yet but it has been</p> <p>15 proposed and there's been regulatory proceedings.</p> <p>16 Q. Of the Foothills you've listed, which Foothills bring oil</p> <p>17 into the United States?</p> <p>18 A. None of them.</p> <p>19 Q. None of them. That was not on your list. I was just</p> <p>20 wondering, that is a recent pipeline that you've been involved</p> <p>21 with?</p> <p>22 A. I'm sorry. I don't understand the question.</p> <p>23 Q. Well, let me move on. You're familiar -- you have</p> <p>24 obviously competitors like any company, and you're competing --</p> <p>25 are you competing now with Enbridge Pipeline to bring tar sands</p>	<p style="text-align: right;">72</p> <p>1 seriously.</p> <p>2 The TransCanada Keystone Pipeline's a member of the</p> <p>3 Association of Oil Pipelines. They will be taking this incident</p> <p>4 very seriously. There's a thorough investigation being done by</p> <p>5 federal authorities, being conducted by state authorities. The</p> <p>6 investigation will result in a report.</p> <p>7 The report will have recommendations with regards to what</p> <p>8 happened with regards to the incident, and Keystone will</p> <p>9 implement any recommendations that come out of that report.</p> <p>10 Q. Mr. Jones, are you aware of the thickness of the steel of</p> <p>11 the pipe built and operating at Clearbrook, Minnesota?</p> <p>12 A. Again, I don't want to get into the details because I don't</p> <p>13 know them. I am aware that it was what they call line 3. That</p> <p>14 is a pipeline that was built many decades ago, and its grade and</p> <p>15 wall thickness I don't have the details.</p> <p>16 Q. And the pipe that failed, is that the pipe that leaked</p> <p>17 previously that they were going out to repair? Do you know?</p> <p>18 There were two pipes involved?</p> <p>19 MR. KOENECKE: I object. He said he didn't know the</p> <p>20 details.</p> <p>21 MR. HOHN: Well, he hasn't answered this question.</p> <p>22 Does he know the second pipe that had the pinhole leak that was</p> <p>23 also involved in the incident?</p> <p>24 MR. KOENECKE: There's a total lack of foundation for</p> <p>25 this question. I object.</p>

<p style="text-align: right;">73</p> <p>1 MR. SMITH: Do you know?</p> <p>2 THE WITNESS: No. I mean, I'm like all of us in the</p> <p>3 room here. I only know what information's been reported so I</p> <p>4 don't know those details.</p> <p>5 MR. SMITH: The objection is sustained.</p> <p>6 Q. Mr. Jones, do you know what pressure and what volume the</p> <p>7 Enbridge Pipeline through Clearbrook, Minnesota runs at?</p> <p>8 MR. KOENECKE: Again, I object. He said he didn't</p> <p>9 know the details.</p> <p>10 MR. HOHN: This is a different detail.</p> <p>11 MR. SMITH: I think he just testified that he doesn't</p> <p>12 know any more than what you and I have read in the media.</p> <p>13 MR. HOHN: Okay.</p> <p>14 Q. The pipe that has been made in India or any of the other</p> <p>15 plants you've listed, Florida, Oregon, and India, before you</p> <p>16 contracted with those pipe companies I'm sure you did a due</p> <p>17 diligence in terms of their reliability.</p> <p>18 Have any of those plants in the last 10 years had --</p> <p>19 produced pipe that then failed in the field under operation that</p> <p>20 you're aware of?</p> <p>21 A. There's no way I'd be aware of any of that information.</p> <p>22 Q. But before you'd buy 1,000 miles of steel pipe you would</p> <p>23 check a plant and see what their history was in terms of</p> <p>24 reliability, wouldn't you?</p> <p>25 A. But that wasn't your question. The question was have they</p>	<p style="text-align: right;">75</p> <p>1 failures?</p> <p>2 A. There wouldn't be a mill making pipe if it had failures.</p> <p>3 Q. Okay. I just got a couple more questions. In your</p> <p>4 testimony in response to Mr. Rasmussen you used the term</p> <p>5 90 percent design factor. And in all the literature and</p> <p>6 testimony we've seen 80 percent versus 72 or .72, did I miss</p> <p>7 hear that, or did you reference 90 percent design factor?</p> <p>8 A. I think you're misunderstanding the reference.</p> <p>9 Q. Okay.</p> <p>10 A. We're talking about operating volume. Nothing to do with</p> <p>11 pipe design. We're talking about operating. So we're going to</p> <p>12 operate the volume at 90 percent. So that has nothing to do</p> <p>13 with the pipe thickness or the pipe strength. It has to do with</p> <p>14 how much oil we think we can move every single day.</p> <p>15 So like any pipeline, it's very unreasonable to expect to</p> <p>16 move 100 percent of its design capacity 24 hours a day 7 days a</p> <p>17 week, 365 days a year.</p> <p>18 So when you consider the capacity you could either state</p> <p>19 its design capacity, which is unreasonable to expect that we'll</p> <p>20 move that much oil, or you can state its nominal capacity. Its</p> <p>21 nominal capacity is 90 percent.</p> <p>22 The range -- and, again, this is completely determined by</p> <p>23 the operator when he goes to determine how much product he wants</p> <p>24 to move down the line. The confusion I believe you were stating</p> <p>25 was with regards to the pipeline design factor under API 5L, and</p>
<p style="text-align: right;">74</p> <p>1 failed in the field. Once a pipeline has been installed in the</p> <p>2 field when it moves, how it is operated, those are all enormous</p> <p>3 factors on whether or not the pipe will fail.</p> <p>4 As for the specifications and the due diligence that</p> <p>5 Keystone will do, it will meet all the laws and rules and</p> <p>6 regulations according to the codes and standards of the</p> <p>7 United States. And we are doing industry best practices and</p> <p>8 certainly going above any standards that you'd have today.</p> <p>9 Q. Mr. Jones, if the plant in India had pipe that had failed</p> <p>10 in a major incident or if they had a history of problems with</p> <p>11 reliability, you probably wouldn't want to buy that pipe, would</p> <p>12 you, as the executive making that decision?</p> <p>13 A. But I don't understand the question. This pipe is being</p> <p>14 used today. It's built to U.S. standard. It looks, touches,</p> <p>15 and feels like all the other pipes that you would buy anywhere</p> <p>16 else in the world. There's nothing unique about it. It is</p> <p>17 API 5L pipe.</p> <p>18 Q. I guess what you're saying is you're not aware any pipe</p> <p>19 coming from the India plant has been put in, installed, and</p> <p>20 failed or had major disaster?</p> <p>21 A. Or the Florida plant or the Oregon plant or the IPSCO</p> <p>22 plant or any other plant.</p> <p>23 Q. Any of the plants you listed?</p> <p>24 A. Any plant in the world.</p> <p>25 Q. But would you buy pipe from them if you knew they had</p>	<p style="text-align: right;">76</p> <p>1 that's not what I'm talking about.</p> <p>2 Q. Well, Mr. Jones, just so we understand it, does the</p> <p>3 90 percent equate to numbers of barrels per day? Is 90 percent</p> <p>4 591,000 barrels, or is it a different number?</p> <p>5 A. No. You're right. 90 percent is 591,000 barrels.</p> <p>6 Q. Okay. Thank you. With regard to contract workers, the</p> <p>7 contract workers, the people that were doing the repair at</p> <p>8 Clearbrook, Minnesota according to several news reports were</p> <p>9 contract workers. They were not hired directly by the pipeline.</p> <p>10 They were hired as contract workers.</p> <p>11 In the event of an injury or a fatality do they appeal to</p> <p>12 their contracted employer, or do they appeal to, in your case</p> <p>13 TransCanada, if somebody's hurt, injured, or killed?</p> <p>14 MR. KOENECKE: I object. The Intervener not only</p> <p>15 testified before his question. We've been over this ground</p> <p>16 before. He doesn't know.</p> <p>17 MR. SMITH: Sustained. He has nothing to do with that</p> <p>18 particular situation.</p> <p>19 MR. HOHN: Let me rephrase the question then.</p> <p>20 Q. Mr. Jones, you're familiar, I'm sure, with any contracts</p> <p>21 and contract workers that do work on the TransCanada Pipeline,</p> <p>22 Keystone, or at least you will be involved in that process.</p> <p>23 In the case of TransCanada Keystone, when you set up</p> <p>24 contracts with subcontractors doing work in South Dakota on this</p> <p>25 pipeline, do your contracts with your subcontractors provide any</p>

<p style="text-align: right;">77</p> <p>1 insurance or death benefit to contract workers, or is that the</p> <p>2 responsibility of the party you hired to do the work?</p> <p>3 MR. KOENECKE: I object. I fail to see the relevance</p> <p>4 of that question in the proceeding at hand.</p> <p>5 MR. SMITH: Do you know?</p> <p>6 A. Well, you know, a number of -- all pipeline companies hire</p> <p>7 contractors. They should be qualified. They must be certified.</p> <p>8 They must be capable to do their jobs.</p> <p>9 The arrangements that every employee makes with its</p> <p>10 employers, I don't know how you can answer that question because</p> <p>11 I think it's such a wide range.</p> <p>12 CHAIRMAN JOHNSON: And, Mr. Smith, you sort of made a</p> <p>13 de facto ruling on the objection, and if your objection is to</p> <p>14 sustain it -- or, rather, to overrule the objection, I might be</p> <p>15 interested in making another motion.</p> <p>16 MR. SMITH: You're requesting that I overrule the</p> <p>17 objection?</p> <p>18 CHAIRMAN JOHNSON: I'm not sure I understand the</p> <p>19 relevance.</p> <p>20 COMMISSIONER HANSON: If I could --</p> <p>21 MR. SMITH: Go ahead. I don't know. To me, I mean,</p> <p>22 the availability of insurance, et cetera, to me might not be</p> <p>23 totally irrelevant and how you set up your indemnity coverages.</p> <p>24 I mean, to me it's not completely irrelevant to me but --</p> <p>25 CHAIRMAN JOHNSON: Well, the question was to contract</p>	<p style="text-align: right;">79</p> <p>1 crude oil that comes into the line, it clearly identifies the</p> <p>2 components. And those components highly minimize any issue with</p> <p>3 regards to internal corrosion.</p> <p>4 Q. One last question, Mr. Jones. In regard to the product, we</p> <p>5 requested a sample of the product that could be submitted to</p> <p>6 private labs in the United States to be examined and tested.</p> <p>7 And I understand you may take oil from a couple of fields</p> <p>8 or mines, but with all due respect, how will we know what the</p> <p>9 effect an oil spill would have on an aquifer or creek or stream</p> <p>10 or on a plastic water pipeline if we do not have from you some</p> <p>11 kind of documentation that says what this oil will be made of?</p> <p>12 Because you'd have to admit there are some chemicals in it</p> <p>13 like benzene, toluene, various chemicals that would have an</p> <p>14 effect on the environment if they were able to release or leak</p> <p>15 from the pipe.</p> <p>16 So how do we -- how can you say that there's no risk or</p> <p>17 worry about a contamination or an environmental impact in our</p> <p>18 water and our community if we can't see the oil ourselves and</p> <p>19 have it tested by somebody besides your company?</p> <p>20 MR. KOENECKE: Mr. Smith, I'm going to object to that</p> <p>21 on a number of grounds. The Intervener testified substantially</p> <p>22 there before finally coming to a question. But what it really</p> <p>23 points up is something that has finally become clear.</p> <p>24 The Intervener is acting as co-counsel for WEB Water,</p> <p>25 is alongside acting as own counsel in this matter. He referred</p>
<p style="text-align: right;">78</p> <p>1 workers, which I'm not sure I see the link between contract</p> <p>2 workers and South Dakota inhabitants or land. I mean, it may be</p> <p>3 indeed those contract workers were from South Dakota but maybe</p> <p>4 not. I don't know that we have an evidentiary foundation for</p> <p>5 that.</p> <p>6 MR. SMITH: I'll sustain the objection.</p> <p>7 Q. Mr. Jones, you mentioned in response to Reed's question</p> <p>8 about external corrosion and the incidents where pipe had</p> <p>9 failed, you spoke to that.</p> <p>10 What about the -- the same question in relation to internal</p> <p>11 corrosion. What are the numbers in the last five years,</p> <p>12 10 years, 20 years of this 36,000 miles of pipe that your</p> <p>13 company operates, granted on natural gas, not oil, but the</p> <p>14 36,000 miles of pipeline you operate the internal corrosion on</p> <p>15 that pipe over the last five, 10, and 20 years, how many</p> <p>16 failures have you had?</p> <p>17 A. Again, the specific expert to answer your question is</p> <p>18 Ms. Kothari. However, I can tell you generally internal</p> <p>19 corrosion is not a common failure mechanism for crude oil</p> <p>20 pipelines or for a natural gas pipeline. Internal corrosion is</p> <p>21 an issue with pipelines that move what we call raw gas or raw</p> <p>22 crude oil which comes out of the oil fields themselves directly</p> <p>23 before they get preprocessed. And we don't plan to move any</p> <p>24 crude oils that would be an issue with internal corrosion.</p> <p>25 And if you look at our specifications for the product, the</p>	<p style="text-align: right;">80</p> <p>1 to we requested a barrel of oil I don't know how many times in</p> <p>2 that statement. The "we" was WEB Water and not Mr. Hohn himself</p> <p>3 that requested that.</p> <p>4 At some point I think we need to see a dividing line</p> <p>5 as to who's representing WEB Water here today.</p> <p>6 MR. SMITH: The objection is sustained. Mr. Rasmussen</p> <p>7 is representing WEB Water.</p> <p>8 MR. HOHN: Well, as a citizen and someone who drinks</p> <p>9 WEB Water and lives in the community that you're crossing, I ask</p> <p>10 you the question again on that basis.</p> <p>11 Q. How can we feel assured -- or how can I feel assured or any</p> <p>12 person along the pipe route -- what could you tell us or what</p> <p>13 could you show us that might come from some maybe more</p> <p>14 independent party even in Canada besides your company that has</p> <p>15 analyzed it and would say this is what is in it?</p> <p>16 A. You know, the evidence is clear. We filed evidence with</p> <p>17 regards to this. The Keystone Pipeline the transport crude oil.</p> <p>18 The commodities that we will move and the MSDSs are found on the</p> <p>19 referenced web sheet that we filed.</p> <p>20 There has been significant independent testing with regards</p> <p>21 to crude oil impacts on the environment, and we have expert</p> <p>22 witnesses that will be able to testify and answer those</p> <p>23 questions.</p> <p>24 MR. HOHN: Thank you.</p> <p>25 MR. SMITH: Other Interveners? Mr. Moeckly? You're</p>

<p style="text-align: right;">81</p> <p>1 going to have to come to a mic, perhaps.</p> <p>2 MR. MOECKLY: I have a pretty good voice. I can just</p> <p>3 ask --</p> <p>4 MR. SMITH: It won't pick up. We're actually</p> <p>5 attempting to make this available to a wide audience via the</p> <p>6 internet, sir. Thank you.</p> <p>7 <u>CROSS-EXAMINATION</u></p> <p>8 <u>BY MR. MOECKLY:</u></p> <p>9 Q. Mr. Jones, I'm not quite clear. You had stated that you</p> <p>10 work for TransCanada. You're an employee of TransCanada; that's</p> <p>11 correct?</p> <p>12 A. Yes, I am.</p> <p>13 Q. Now you are also working for Keystone?</p> <p>14 A. I am the vice president of Keystone. Keystone has no</p> <p>15 employees. They're all -- TransCanada has the employees.</p> <p>16 Q. Okay. And so what is Keystone again?</p> <p>17 A. Keystone is a registered company in the State of Delaware,</p> <p>18 and also we're registered here in South Dakota.</p> <p>19 Q. And it is what? What is Keystone?</p> <p>20 A. It is a pipeline company.</p> <p>21 Q. It's a pipeline company. Is it a shell then, what they</p> <p>22 call a shell, there's nothing in it?</p> <p>23 A. Well, there will be. There will be all the assets and</p> <p>24 certainly today holds contracts for 495,000 barrels.</p> <p>25 Q. Keystone is a contracting company?</p>	<p style="text-align: right;">83</p> <p>1 different operating structure. They have different regulatory</p> <p>2 procedure. So you need to have separate entities to do</p> <p>3 business.</p> <p>4 Q. You say Keystone will have different ownerships. What does</p> <p>5 that mean?</p> <p>6 A. TransCanada has different subsidiaries. One of those</p> <p>7 subsidiaries is TransCanada Keystone Pipeline. We refer to it</p> <p>8 as Keystone. That company then has transactions with</p> <p>9 landowners, regulators, contractors.</p> <p>10 Q. But it is really TransCanada then, isn't it?</p> <p>11 A. 100 percent of the shares is owned by TransCanada. That's</p> <p>12 correct.</p> <p>13 Q. And so the purpose again for having a Keystone?</p> <p>14 A. It's to do business with regards to this transaction, which</p> <p>15 is to transport crude oil.</p> <p>16 Q. Now is this something that TransCanada could have done on</p> <p>17 its own without having a Keystone?</p> <p>18 MR. KOENECKE: I object. I don't understand where</p> <p>19 we're going with this line of questioning. I've let it go on</p> <p>20 too long I'm afraid.</p> <p>21 MR. MOECKLY: I don't understand where we're going</p> <p>22 with this. It looks like a shell game for a couple companies</p> <p>23 playing little games here having a company here and a company</p> <p>24 there.</p> <p>25 We're very interested in liability as landowners.</p>
<p style="text-align: right;">82</p> <p>1 A. That's one of its functions.</p> <p>2 Q. And so it isn't TransCanada?</p> <p>3 A. TransCanada owns all of TransCanada Keystone Pipeline, all</p> <p>4 the shares.</p> <p>5 Q. TransCanada owns Keystone?</p> <p>6 A. That's correct. And TransCanada -- just to be clear, the</p> <p>7 495,000 barrels a day of contracts was contracted with</p> <p>8 TransCanada Keystone Pipeline, LP, and all the applications for</p> <p>9 environmental impacts, all the contracts that have been let have</p> <p>10 all been with the entity TransCanada Keystone Pipeline, LP.</p> <p>11 Q. So there is an entity TransCanada Pipeline Keystone also?</p> <p>12 Is that also an entity?</p> <p>13 A. Sir, I don't understand the question.</p> <p>14 Q. Well, I don't either. You're talking about Keystone. And</p> <p>15 then you're talking about TransCanada. And then you're talking</p> <p>16 about Keystone TransCanada.</p> <p>17 Are they all one in the same then?</p> <p>18 A. Let me be clear. TransCanada corporation has a number of</p> <p>19 subsidiaries. One of those subsidiaries is TransCanada Keystone</p> <p>20 Pipeline, LP. We refer to it, because that's an awful long</p> <p>21 name, as Keystone.</p> <p>22 Q. I see. And what is the purpose for having Keystone?</p> <p>23 A. Like all pipeline companies, for example, the Northern</p> <p>24 Border Pipeline Company or the Foothills Pipeline Company, these</p> <p>25 are companies that have different ownerships. They have</p>	<p style="text-align: right;">84</p> <p>1 We're interested in a party that's going to be responsible, and</p> <p>2 when you have this kind of now you see it now you don't, we're</p> <p>3 very concerned.</p> <p>4 MR. SMITH: Well, I don't -- I mean, the company</p> <p>5 Keystone Pipeline, LP is a publicly registered limited</p> <p>6 partnership in Delaware. It's filed here with the Secretary of</p> <p>7 State. It's a legal entity. That's the way companies</p> <p>8 throughout the world organize themselves.</p> <p>9 I think the liability issue, if you want to go down</p> <p>10 that track, that's a different kettle of fish. But in terms of</p> <p>11 this implied boogeyman, I don't think that's getting anywhere.</p> <p>12 I think going down the liability track is a pertinent area of</p> <p>13 inquiry.</p> <p>14 MR. MOECKLY: Let's do that.</p> <p>15 Q. Who is liable, Mr. Jones, when there is a problem with this</p> <p>16 fictitious pipeline, this proposed pipeline, it blows up or it</p> <p>17 burns or it leaks? Who is going to be liable now for this</p> <p>18 damage?</p> <p>19 MR. KOENECKE: I object. The Interveners testifying</p> <p>20 and is badgering the witness.</p> <p>21 MR. SMITH: I'm going to sustain that. Can you just</p> <p>22 ask the questions straight up, please, Mr. Moeckly, without the</p> <p>23 characterizations that are prejudicial. And they're not --</p> <p>24 they're not in evidence, if you get my drift.</p> <p>25 MR. MOECKLY: Yeah.</p>

<p style="text-align: right;">85</p> <p>1 MR. SMITH: Keystone Pipeline is a legal entity.</p> <p>2 Keystone Pipeline, LP is a legal entity. It's a limited</p> <p>3 partnership. It's authorized to do business in South Dakota by</p> <p>4 the Secretary of State.</p> <p>5 And I think just straight forwardly I think the</p> <p>6 question, Mr. Jones, that he's asking is if you could possibly</p> <p>7 explain what the legal liability arrangements might be between</p> <p>8 TransCanada Corporation and the limited partnership.</p> <p>9 MR. MOECKLY: Thank you.</p> <p>10 A. Yes. I'd be pleased to answer that question. TransCanada</p> <p>11 Corporation through -- will maintain the responsibilities to</p> <p>12 ensure that its subsidiary, TransCanada Keystone, will operate</p> <p>13 the pipelines that follows the rules and laws of the State of</p> <p>14 South Dakota and of the United States.</p> <p>15 And part of that is an obligation to operate and maintain</p> <p>16 the pipeline in a safe fashion. So if there was to be an</p> <p>17 unfortunate incident, TransCanada would be responsible to clean</p> <p>18 up the leak, if it was a leak, and repair the pipeline and have</p> <p>19 it right back into operation.</p> <p>20 Q. Now you say that TransCanada would be responsible. Then</p> <p>21 Keystone wouldn't be involved?</p> <p>22 A. No. The legal entity would be TransCanada Keystone.</p> <p>23 Q. TransCanada Keystone?</p> <p>24 A. That's correct.</p> <p>25 Q. Uh-huh. Okay. Thank you. One other question. When you</p>	<p style="text-align: right;">87</p> <p>1 <u>CROSS-EXAMINATION</u></p> <p>2 BY MS. ANDERSON:</p> <p>3 Q. Mr. Jones, when you build this pipeline do you also</p> <p>4 establish something called a corridor?</p> <p>5 A. I think any time you build any linear infrastructure it can</p> <p>6 be considered a corridor. But we are acquiring an easement from</p> <p>7 landowners, and that is for transmission -- for the purpose of</p> <p>8 transmissioning crude oil.</p> <p>9 Q. Okay. So you have a corridor; right?</p> <p>10 A. I struggle with answering -- it could become a corridor</p> <p>11 possibly.</p> <p>12 Q. You have a --</p> <p>13 A. That is not what TransCanada is asking for, TransCanada</p> <p>14 Keystone. We are asking landowners for an easement.</p> <p>15 Q. You are asking for 50 feet of land for 30-inch pipe;</p> <p>16 correct?</p> <p>17 A. Yes. That's correct. An easement that's 50 feet wide, a</p> <p>18 permanent easement. The landowner continues to own the land.</p> <p>19 Q. Okay. So whether you want to call it a corridor or a</p> <p>20 50-foot easement, what's the potential value to that?</p> <p>21 A. I don't understand.</p> <p>22 MR. KOENECKE: I don't understand the question.</p> <p>23 Q. May I call it a corridor because that's my word I use?</p> <p>24 A. It's an easement.</p> <p>25 MR. KOENECKE: Define what you mean by corridor,</p>
<p style="text-align: right;">86</p> <p>1 were introducing yourself you said that you're a vice president</p> <p>2 of Keystone.</p> <p>3 Are you an officer then in TransCanada itself?</p> <p>4 A. I am a vice president for TransCanada. My title is vice</p> <p>5 president of the Keystone Pipeline Project. That's what I'm</p> <p>6 responsible for. But I am vice president of TransCanada.</p> <p>7 Q. Of TransCanada itself. How long have you been a vice</p> <p>8 president over there?</p> <p>9 A. A couple of years.</p> <p>10 Q. So you've only worked for TransCanada for two years?</p> <p>11 A. No. I've worked for TransCanada for 10 years. Only been</p> <p>12 vice president for two.</p> <p>13 Q. Okay. What was your position before that?</p> <p>14 A. I was director -- this is, by the way, in my testimony. I</p> <p>15 filed this. I was director for business development.</p> <p>16 Q. Business development. Okay.</p> <p>17 MR. MOECKLY: I have no further questions. Thank you.</p> <p>18 MR. SMITH: Thank you. Any other Interveners have</p> <p>19 questions for Mr. Jones?</p> <p>20 Ms. Anderson. Would you please then identify yourself</p> <p>21 for the reporter so we have it for the record. Is your mic on?</p> <p>22 Okay. Thank you.</p> <p>23 MS. ANDERSON: My name is Lillian Anderson.</p> <p>24</p> <p>25</p>	<p style="text-align: right;">88</p> <p>1 please.</p> <p>2 MS. ANDERSON: He has a 50-foot easement, which I'm</p> <p>3 saying makes a corridor, would make a possibility of three more</p> <p>4 pipes with 10 feet in between. Or excuse me. Two more pipes --</p> <p>5 A. Ms. Anderson, are you asking me is there a potential for</p> <p>6 three additional pipelines --</p> <p>7 Q. No. I'm asking you the value of this easement space.</p> <p>8 A. I don't know the value.</p> <p>9 Q. The value could be very -- because once you've established</p> <p>10 this pipeline number two, three, 15 pipes afterwards will be</p> <p>11 easier to put in.</p> <p>12 A. I don't know if it will be easier --</p> <p>13 MR. KOENECKE: I'm going to object. There's a lack of</p> <p>14 foundation for this.</p> <p>15 MR. SMITH: Yeah. I'm going to sustain that. You're</p> <p>16 assuming an awful lot there.</p> <p>17 MS. ANDERSON: I'm just trying to establish if there's</p> <p>18 a value to them. And if there's a value to them, I'm paying</p> <p>19 land tax on this corridor, on this easement so I want to know</p> <p>20 are they going to be paying some kind of extra tax because this</p> <p>21 is a valuable piece of asset to them?</p> <p>22 MR. KOENECKE: I think that's subject to the Motion in</p> <p>23 Limine, which was ruled on earlier.</p> <p>24 MR. SMITH: I'm going to overrule that. I think maybe</p> <p>25 another way to put that -- with respect to the values of the</p>

<p style="text-align: right;">89</p> <p>1 overall cost of the project, the \$500 million you're talking</p> <p>2 about, does that include -- the valuation, does that include a</p> <p>3 value attributable to the ownership of property, the easement</p> <p>4 right?</p> <p>5 MR. KOENECKE: I'd like to know if that's</p> <p>6 Mrs. Anderson's question before he answers it.</p> <p>7 MR. SMITH: Is that your question?</p> <p>8 MR. HOHN: Yes.</p> <p>9 MS. ANDERSON: Yes.</p> <p>10 MR. SMITH: First of all, do you know?</p> <p>11 A. I'm really confused now so I hate to do this to you but</p> <p>12 what is your question or could you repeat your question, please.</p> <p>13 Q. Let's just skip this until I can get it to where we all</p> <p>14 understand what I'm trying to say.</p> <p>15 You were at informal meetings in June, were you not, with</p> <p>16 the landowners?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. At that time did you not or your representatives</p> <p>19 come with a piece of metal that you said represented the pipe</p> <p>20 that would be installed in the ground?</p> <p>21 A. We came with a representative pipe sampling that was more</p> <p>22 to show the coating. But, yes, we had a representative sample.</p> <p>23 Q. But I also heard your people tell -- and they told me this</p> <p>24 would be what would be used. At that time did you not know that</p> <p>25 there had been a waiver applied for and approved for a variance</p>	<p style="text-align: right;">91</p> <p>1 So the sample that we were passing around was pretty darn close</p> <p>2 to a sample that's going to look like the pipe that we were</p> <p>3 going to install.</p> <p>4 Q. Okay. Let's skip to one more thing. At those same</p> <p>5 meetings you heard different people stand up and say that they</p> <p>6 did not like the treatment that they had received from your land</p> <p>7 agents.</p> <p>8 Did you do anything about it?</p> <p>9 A. Yes, we did. You know, TransCanada Keystone has, you know,</p> <p>10 hired land agents that are experts that are very aware of the</p> <p>11 concerns of the community, and we've instructed them to treat</p> <p>12 all the landowners with respect. We then asked for them to</p> <p>13 communicate any formal complaints. And we have never received</p> <p>14 any formal complaints from landowners in South Dakota through</p> <p>15 our 1 (800) number or through our process.</p> <p>16 However, we did instruct them to continue to treat</p> <p>17 landowners with respect and to continue to negotiate with them</p> <p>18 to try and get a settlement. There are landowners, however,</p> <p>19 that do not want to settle with TransCanada Keystone.</p> <p>20 Q. I guess I'm having a little trouble with what you're</p> <p>21 saying, "formal." At the Yankton meeting I spoke to Mr. Gray.</p> <p>22 On May 10 I had spoke with Mr. Gray. In July I spoke with</p> <p>23 Mr. Gray. Is he not part of your company?</p> <p>24 A. He's certainly part of our process, yes.</p> <p>25 Q. Well, as I'm speaking to him, I mean, I guess I'm assuming</p>
<p style="text-align: right;">90</p> <p>1 in thickness?</p> <p>2 A. But that sample we gave you is a representative sample of</p> <p>3 what the pipe looks like, the material, contact, what it feels</p> <p>4 like, what the coating is like. That's what it was there to</p> <p>5 demonstrate. Because a lot of folks never seen it.</p> <p>6 In fact, when we were there a lot of people thought the</p> <p>7 pipeline would be above ground. And so they wanted to have a</p> <p>8 look at it, feel it, touch it.</p> <p>9 Q. But there again, the question I had was when your people</p> <p>10 were saying that this was the pipe that was going to be used and</p> <p>11 you see something of one thickness and at that time you all knew</p> <p>12 that a waiver had been applied for and approved, was that not</p> <p>13 slightly deceptive on your part when your people were saying</p> <p>14 this is the thickness we'll use?</p> <p>15 MR. KOENECKE: I object. There's a total lack of</p> <p>16 foundation for that line of questioning.</p> <p>17 MR. SMITH: Do you have any comments on that?</p> <p>18 A. Well, I suspect this sample which -- I'd just like to --</p> <p>19 you know, it was about this big, with the size of my hand. And</p> <p>20 I can't even recall the strength. So one of the most important</p> <p>21 things -- and I like to communicate this to Ms. Anderson --</p> <p>22 about wall thickness is the strength of the steel.</p> <p>23 So, for example, if you were to use, you know, X100, which</p> <p>24 is extremely strong, then it results in a different wall</p> <p>25 thickness. If you use X50, you get a different wall thickness.</p>	<p style="text-align: right;">92</p> <p>1 that as a representative of your company along with Jeff Rauh,</p> <p>2 and Tim Prescott and you as you were sitting there -- and I</p> <p>3 wasn't the only one who said that through the course of these</p> <p>4 meetings, I guess we kind of assumed -- at least I did -- that</p> <p>5 when I spoke to you that it was pretty much formal.</p> <p>6 A. Well, that isn't formal, ma'am. That is informal. And we</p> <p>7 asked you and we asked others and we have not received any</p> <p>8 formal complaints. Now I can assure you we continue to work</p> <p>9 with all our landowners and we continue to make progress on</p> <p>10 easement payments and settle our easements.</p> <p>11 And, you know, it's our hope and desire that we can settle</p> <p>12 with all landowners.</p> <p>13 MR. SMITH: Thank you. Any other Intervener</p> <p>14 questions?</p> <p>15 We're at a quarter to noon. Do Commissioners want to</p> <p>16 proceed -- I think what I would propose for the order here is we</p> <p>17 go to Commissioner questions in order to enable then TransCanada</p> <p>18 to address any matters that you might bring up on their</p> <p>19 redirect.</p> <p>20 CHAIRMAN JOHNSON: That certainly makes sense to me.</p> <p>21 COMMISSIONER KOLBECK: Yes.</p> <p>22 MR. SMITH: Commissioners, please proceed.</p> <p>23 CHAIRMAN JOHNSON: I'll take first stab unless --</p> <p>24 okay. You discussed, Mr. Jones, a formal complaint process.</p> <p>25 Did you mean to insinuate that if a complaint was received</p>

<p style="text-align: right;">93</p> <p>1 informally that nothing would be done on TransCanada's part?</p> <p>2 THE WITNESS: No. Thank you for helping me clarify</p> <p>3 that response. That's not true. In fact, we have talked to all</p> <p>4 our land agents. We continue to talk to them. I personally get</p> <p>5 progress reports from them.</p> <p>6 You know, the exact conversations and details is best</p> <p>7 directed to Mr. Gray because those are whom those people report</p> <p>8 to, and then Mr. Gray, of course, reports to me.</p> <p>9 CHAIRMAN JOHNSON: So if I had a specific question</p> <p>10 about what happened to Mrs. Anderson's either formal or informal</p> <p>11 complaint, that would be best directed to Mr. Gray?</p> <p>12 THE WITNESS: That's correct.</p> <p>13 CHAIRMAN JOHNSON: Now I think on page 4 of your</p> <p>14 prefiled testimony you mentioned pump stations, valves, and</p> <p>15 densitometers. I was just wondering if you could give us an</p> <p>16 idea, those of us who are lay people in the pipeline industry,</p> <p>17 what's a densitometer?</p> <p>18 THE WITNESS: A densitometer is a device that measures</p> <p>19 the density of the crude oil that moves in the pipeline.</p> <p>20 Depending on the sophistication of the densitometer, it can</p> <p>21 provide signals or data that we put through a control system.</p> <p>22 That process or that device is called SCADA.</p> <p>23 So the densitometer would produce a signal that would</p> <p>24 then go to the 24-seven control center, and they'll be able to</p> <p>25 measure the product when it's coming past a certain point. And</p>	<p style="text-align: right;">95</p> <p>1 a -- you know, continues to be publicly traded. We have to</p> <p>2 follow the rules and relations of being publicly traded, which</p> <p>3 means that we'll have an investment grade credit rating and have</p> <p>4 the capability to make sure that we can meet all our</p> <p>5 liabilities.</p> <p>6 You can imagine if you operated 36,000 miles if you</p> <p>7 were to have a problem with one company, you know, the loan</p> <p>8 implications would be tremendous. Your rating implications</p> <p>9 would be tremendous from a financial perspective.</p> <p>10 So we are very well -- very much motivated to make</p> <p>11 sure that we meet all our liabilities.</p> <p>12 CHAIRMAN JOHNSON: Am I right in presuming that if</p> <p>13 there was a change of ownership or a change of name of the</p> <p>14 Keystone Pipeline corporate entity or if it ceased to be and</p> <p>15 that was rolled into a parent company, that liability wouldn't</p> <p>16 cease, that a parent company would still maintain liability?</p> <p>17 THE WITNESS: Well, the obligations of -- the</p> <p>18 liability sits within TransCanada Keystone Pipeline, LP.</p> <p>19 Ensuring to make sure those liabilities are met will be by the</p> <p>20 owners, whoever they may be. Today TransCanada is that owner,</p> <p>21 but the obligation of the liability still sits within</p> <p>22 TransCanada Keystone Pipeline, LP.</p> <p>23 CHAIRMAN JOHNSON: Mr. Jones, there have been some</p> <p>24 questions about the chemical makeup the product that might flow</p> <p>25 through Keystone.</p>
<p style="text-align: right;">94</p> <p>1 it's usually at pump stations.</p> <p>2 CHAIRMAN JOHNSON: So this densitometer, would that</p> <p>3 help to determine the density of the crude, meaning what</p> <p>4 pressure it was under, this part of your monitoring system?</p> <p>5 THE WITNESS: No. A densitometer is purely for</p> <p>6 density. There are other devices that measure pressure and the</p> <p>7 temperature and the like, full volume.</p> <p>8 MR. KOENECKE: Commissioner, you might save some time</p> <p>9 if you would ask if there are any densitometers to be located in</p> <p>10 South Dakota specifically. I don't want to leave an impression</p> <p>11 there.</p> <p>12 CHAIRMAN JOHNSON: What a brilliant question.</p> <p>13 Mr. Jones, are there going to be any densitometers located</p> <p>14 within South Dakota?</p> <p>15 THE WITNESS: With such a massive project I sometimes</p> <p>16 forget which state I'm in. There are going to be densitometers</p> <p>17 in terminal locations. So one in Cushing, Oklahoma, one in</p> <p>18 Wood River and one in Patoka, Illinois. There will also be a</p> <p>19 densitometer at the upstream location in Canada at Hardisty.</p> <p>20 CHAIRMAN JOHNSON: I'm going to ask a question to try</p> <p>21 to get to what Mr. Moeckly was attempting to ask about. If</p> <p>22 there was liability that would be assumed by Keystone because of</p> <p>23 an incident and if Keystone didn't have the assets or no longer</p> <p>24 existed, would that liability flow upstream to a parent company?</p> <p>25 THE WITNESS: That's my understanding. TransCanada is</p>	<p style="text-align: right;">96</p> <p>1 Would there be a variance within the chemical makeup</p> <p>2 of a product from day to day or week to week or year to year</p> <p>3 time period?</p> <p>4 THE WITNESS: Not a tremendous amount of variance.</p> <p>5 It's still crude oil. You know, we in the industry quickly</p> <p>6 describe things as light or medium or heavy. This will range</p> <p>7 from what they call a light crude oil. Which is in the</p> <p>8 United States commonly referred to as West Texas, WTI. In fact,</p> <p>9 you may see the benchmarks posted on business reports.</p> <p>10 We, of course, can't move WTI because it's produced in</p> <p>11 Texas. But we move an equivalent type of oil. We expect to.</p> <p>12 It's called synthetic oil which will have the same density in</p> <p>13 products and the other range and what they call heavy oil. And</p> <p>14 heavy oil is a little thicker. It comes from -- again, there's</p> <p>15 a range of heavy oils that come from Venezuela, Africa, and</p> <p>16 California so there's that oil.</p> <p>17 But at the end of the day it's still all crude oil,</p> <p>18 and its chemical composition is extremely similar. And our</p> <p>19 specification, which is filed, gives the range of the commodity</p> <p>20 type. So the sediments, the water, the other components are all</p> <p>21 restricted in its ability to look like crude oil.</p> <p>22 CHAIRMAN JOHNSON: Mr. Jones, are you familiar with</p> <p>23 the direct testimony of Edward Miller?</p> <p>24 THE WITNESS: I'm not familiar, no. I mean, I'm aware</p> <p>25 of, but I'm not familiar with it.</p>

<p style="text-align: right;">97</p> <p>1 CHAIRMAN JOHNSON: I'll ask you a general question and</p> <p>2 if it's better directed to somebody else on your team, please</p> <p>3 let me know. There's a reference made to ISL certification with</p> <p>4 regard to pipe mills.</p> <p>5 Do you know what that is?</p> <p>6 THE WITNESS: I do. But, again, the expert on ISL</p> <p>7 certification of pipe mills is best with Ms. Smith or</p> <p>8 Meera Kothari.</p> <p>9 CHAIRMAN JOHNSON: I will ask Ms. Kothari then.</p> <p>10 Mr. Jones, that's all questions I have at the time.</p> <p>11 COMMISSIONER KOLBECK: Mr. Jones, I just have one to</p> <p>12 maybe try to clear up Mrs. Anderson's question. A corridor is</p> <p>13 actually defined as an area or stretch of land identified by a</p> <p>14 specific common characteristic or purpose.</p> <p>15 Is it common for pipelines to stay in the same area?</p> <p>16 In other words, in electricity we see new coal plants built next</p> <p>17 to existing coal plants, new nuclears next to existing nuclears.</p> <p>18 Is it common in this sort of energy field to build a pipeline</p> <p>19 next to a existing pipeline?</p> <p>20 THE WITNESS: I would say it's common to a pipeline</p> <p>21 when it's filing its environmental impact to look at other</p> <p>22 linear structures. They may be power lines and they may</p> <p>23 definitely be other pipelines.</p> <p>24 COMMISSIONER KOLBECK: Could you give me an example of</p> <p>25 where in the pipeline industry in this organization that you</p>	<p style="text-align: right;">99</p> <p>1 COMMISSIONER HANSON: Thank you, Mr. Smith.</p> <p>2 Mr. Jones, forgive me, first of all. As a Commissioner I</p> <p>3 occasionally ask questions that you may have already filed with</p> <p>4 your prefiled testimony, and sometimes I take liberties to ask</p> <p>5 impertinent questions along with my pertinent questions. And</p> <p>6 sometimes my questions may sound like they've already been</p> <p>7 asked, but there's something that I'm looking for if I do.</p> <p>8 I often ask questions that are with prefiled testimony</p> <p>9 because I assume there's at least two or three people out there</p> <p>10 who haven't read the 8,000 pages of information that's been</p> <p>11 prefiled.</p> <p>12 There's been a lot of consternation about leaks and</p> <p>13 about the potential of leaks. And there's been rumors</p> <p>14 circulated and there's been, well, a lot of letters, editorials,</p> <p>15 et cetera. We are somewhat responsible for turning a blind eye</p> <p>16 to those things and just looking at testimony that's provided</p> <p>17 here and supported by evidence.</p> <p>18 But for those folks that are concerned about the</p> <p>19 potential for leaks, there have been concerns that there is</p> <p>20 either a potential for or that there would be situations in</p> <p>21 which landowners could, in fact, end up being responsible for</p> <p>22 the financial challenges of mitigation.</p> <p>23 Can you cite for us any laws, either through the State</p> <p>24 or through the Federal Government -- again, if you're the wrong</p> <p>25 person for this just say so -- that would be specific to show</p>
<p style="text-align: right;">98</p> <p>1 belong to where there are three or four pipelines laying in the</p> <p>2 same trench?</p> <p>3 THE WITNESS: Certainly. It's very common for there</p> <p>4 to be two or three, and in very remote occurrences there will be</p> <p>5 more than that. We happen to own one of those, and we have one</p> <p>6 where there's six and sometimes seven. They were built up over</p> <p>7 50 years. And it's not a common occurrence, but it is possible.</p> <p>8 However, I would say in this circumstance, I think</p> <p>9 it's pretty remote. But it's not -- it's not a remote</p> <p>10 expectation for there to be, for example, two or even three.</p> <p>11 COMMISSIONER KOLBECK: That's something that as of</p> <p>12 right now there are no predictions of?</p> <p>13 THE WITNESS: No. We have no -- even if there were,</p> <p>14 we'd have to follow this process, Commissioner.</p> <p>15 COMMISSIONER KOLBECK: Sure. Okay. And just maybe to</p> <p>16 someone else but would it be you or someone else -- you had</p> <p>17 spoke about the SCADA program that you used to monitor this.</p> <p>18 Who would be the best authority -- would it be you -- to tell me</p> <p>19 how the safety of that versus the internet, compared to hackers,</p> <p>20 different safeguards according to that SCADA system?</p> <p>21 THE WITNESS: Brian Thomas.</p> <p>22 COMMISSIONER KOLBECK: Mr. Thomas. And that's all I</p> <p>23 have right now.</p> <p>24 THE WITNESS: Thank you.</p> <p>25 MR. SMITH: Commissioner Hanson, questions.</p>	<p style="text-align: right;">100</p> <p>1 that Keystone -- and I use Keystone in the broadest sense --</p> <p>2 would be responsible for mitigation?</p> <p>3 THE WITNESS: I will answer that question. And</p> <p>4 certainly there are other people -- experts representing</p> <p>5 Keystone that may add to my response. Keystone will be</p> <p>6 responsible to clean up any leak. And Keystone will be designed</p> <p>7 to prevent any leak from occurring. So for whatever reason, if</p> <p>8 the leak occurs, we will be responsible to clean it up.</p> <p>9 And I think that's very important to get that on the</p> <p>10 record. If there was a malicious intent by somebody to damage</p> <p>11 the pipeline, I think that just has a different legal framework</p> <p>12 that would occur afterwards. The issue is is that the</p> <p>13 pipeline's leaking, it needs to be cleaned up, and the site</p> <p>14 needs to be restored, and we would be responsible to do that.</p> <p>15 COMMISSIONER HANSON: But you cannot cite any specific</p> <p>16 statutes or federal laws that require you to do that?</p> <p>17 THE WITNESS: I don't have any knowledge of the</p> <p>18 specific statutes.</p> <p>19 COMMISSIONER HANSON: Will you have someone in later</p> <p>20 testimony provide that for us, please.</p> <p>21 THE WITNESS: All right.</p> <p>22 COMMISSIONER HANSON: Thank you. You just stated that</p> <p>23 it would be designed to prevent leaks. Will it have -- are you</p> <p>24 testing for acidity of soil and wrapping the pipe or placing</p> <p>25 some type of substance on the exterior of the pipe to prevent</p>

<p style="text-align: right;">101</p> <p>1 exterior corrosion?</p> <p>2 A. Yes. So we are not going to use a substandard coating such</p> <p>3 as a tape wrap. We're using a industry best practice coating.</p> <p>4 It's a fusion bond. This coating is far superior to any of the</p> <p>5 coatings that have been designed in pipelines that were built</p> <p>6 pre-1980.</p> <p>7 We've been very successful with regards to mitigating</p> <p>8 external corrosion ever since we started using fusion bond</p> <p>9 epoxy.</p> <p>10 COMMISSIONER HANSON: What is the name of that again?</p> <p>11 THE WITNESS: Fusion bond epoxy. A lot of times it's</p> <p>12 referred to as FBE.</p> <p>13 COMMISSIONER HANSON: And that is coated around the</p> <p>14 entire length of the pipe?</p> <p>15 THE WITNESS: That's correct. Even in field joints</p> <p>16 there's an epoxy coating that goes into the field joint. So</p> <p>17 it's plant applied, and then afterwards there's an epoxy coating</p> <p>18 and. Ms. Kothari can provide you even further technical detail</p> <p>19 with regards to that coating to prevent external corrosion.</p> <p>20 COMMISSIONER HANSON: Thank you. During the public</p> <p>21 meetings there were questions pertaining to the number of leaks.</p> <p>22 And we seemed to have received a number of answers to that.</p> <p>23 Can you point to the prefilled testimony -- and, again,</p> <p>24 there was some discussion on it this morning -- of the number of</p> <p>25 leaks and what has caused them? I believe today you said there</p>	<p style="text-align: right;">103</p> <p>1 that is built with this new higher standard. So the fusion bond</p> <p>2 epoxy and the technological advances since the '50s and '60s to</p> <p>3 where we are today has grown quite a bit and is significant, and</p> <p>4 as a result we're getting way less leaks.</p> <p>5 COMMISSIONER HANSON: And I believe you testified that</p> <p>6 all of those were in -- were natural gas pipelines or at least</p> <p>7 they were --</p> <p>8 THE WITNESS: That's right. I believe there may be</p> <p>9 some testimony, and I'm not sure which one of our expert</p> <p>10 witnesses will provide it, on when we owned and operated the</p> <p>11 Express Pipeline we provided some evidence on that. But I'll</p> <p>12 get them to give you the exact location in the prefilled</p> <p>13 evidence.</p> <p>14 COMMISSIONER HANSON: Is the pressure similar in those</p> <p>15 natural gas pipelines as it is with this?</p> <p>16 THE WITNESS: Yes, it is.</p> <p>17 COMMISSIONER HANSON: I'm assuming the permeability of</p> <p>18 gas is different than that of the product that you're shipping</p> <p>19 here?</p> <p>20 THE WITNESS: Certainly the properties of natural gas</p> <p>21 when it comes to leak behavior and certainly when it comes to</p> <p>22 the impact on the environment is tremendously different than</p> <p>23 moving a crude oil pipeline.</p> <p>24 You know, natural gas pipelines, if they do leak, the</p> <p>25 product escapes into the atmosphere and disappears. Of course,</p>
<p style="text-align: right;">102</p> <p>1 were eight, five of which were failures and three -- I shouldn't</p> <p>2 testify here because I'm trying to remember exactly what you</p> <p>3 said.</p> <p>4 Would you repeat that, and will you point to the</p> <p>5 prefilled testimony that tells us what that is specifically?</p> <p>6 THE WITNESS: Certainly. And I can't answer exactly</p> <p>7 where in our prefilled testimony it is, and I'll have one of our</p> <p>8 witnesses actually cite specifically where it is in our</p> <p>9 testimony, the information you're asking.</p> <p>10 The question I received from Mr. Rasmussen was an</p> <p>11 interrogatory that we received before the hearing. And his</p> <p>12 question, and if you just give me a minute, I will bring it up,</p> <p>13 was that he requested us to list any leaks, virtually any of all</p> <p>14 of our pipeline system.</p> <p>15 And, you know, we responded that that was just a</p> <p>16 tremendous amount of work considering that we've been in</p> <p>17 business for 50 years and have over 36,000 miles.</p> <p>18 However, we did specifically address external</p> <p>19 corrosion and third-party damage, which by far are the number</p> <p>20 one reasons for any failure. And we said in Canada that we had</p> <p>21 four failures due to external corrosion in the past five years,</p> <p>22 and in the past five years we've had three failures due to</p> <p>23 third-party damage.</p> <p>24 And our record as time goes on gets better, and that's</p> <p>25 because we keep on increasing the amount of pipe that we have</p>	<p style="text-align: right;">104</p> <p>1 crude oil pipeline that's just not the case. The product comes</p> <p>2 to the surface and remains on the surface until it's cleaned up.</p> <p>3 COMMISSIONER HANSON: And the combustibility of that</p> <p>4 product is what?</p> <p>5 You gave us those properties in the prefilled</p> <p>6 testimony, and you gave it in the public hearings. And I</p> <p>7 understand from those hearings that this is ignitable, however,</p> <p>8 it is not explosive.</p> <p>9 Is that what you testified to?</p> <p>10 THE WITNESS: That's correct. Crude oil doesn't</p> <p>11 explode. The vapors that come off of crude oil could be ignited</p> <p>12 and could be in an explosive environment.</p> <p>13 A good example of that, for example, is the gasoline</p> <p>14 in your gasoline tank in your vehicle. The tank explodes</p> <p>15 because the vapors ignite quickly.</p> <p>16 COMMISSIONER HANSON: What about the corrosive nature</p> <p>17 of natural gas as opposed to crude oil?</p> <p>18 THE WITNESS: You know, because we're not moving raw</p> <p>19 product under the ground, the corrosive nature -- the corrosive</p> <p>20 products are -- the majority of them are removed so it's very</p> <p>21 similar that way. Neither one of them are very corrosive.</p> <p>22 COMMISSIONER HANSON: You went through a process to</p> <p>23 reduce the -- if I use the wrong terms, please correct me --</p> <p>24 I'll say the tensile strength of the pipeline.</p> <p>25 The reason I ask this question is because in some</p>

<p style="text-align: right;">105</p> <p>1 areas you did not -- it's my understanding you did not reduce</p> <p>2 the strength of the pipeline.</p> <p>3 THE WITNESS: Commissioner -- sorry, Commissioner. We</p> <p>4 didn't touch the tensile strength. I think the question is the</p> <p>5 pipeline is going to be built with what they call X70 pipe,</p> <p>6 which is the strength of the pipe.</p> <p>7 The design factor, which was part of the waiver we</p> <p>8 applied to to PHMSA, the Department of Transportation, which the</p> <p>9 law allows, we filed this waiver for the special permit, and</p> <p>10 that was to adjust the design factor.</p> <p>11 And simply, Commissioner, we had to apply to PHMSA.</p> <p>12 There were a number of conditions, and they did a thorough</p> <p>13 review of the Application. We had to agree to 51 additional</p> <p>14 conditions that are above and beyond the otherwise regulations,</p> <p>15 and after the review they found the design of Keystone will be</p> <p>16 at a level of safety at or above whether or not we did apply for</p> <p>17 this waiver.</p> <p>18 So the tensile strength doesn't change. The pipeline</p> <p>19 is going to be built wherever it is with the same strength of</p> <p>20 pipe. It's a high strength of pipe, 70,000 -- is the tensile</p> <p>21 strength, what we call X70 pipe. The wall thickness changes</p> <p>22 depending on whether or not you're in a populated area or a high</p> <p>23 consequence area. And that design factor is what we applied</p> <p>24 for.</p> <p>25 So the level of safety after PHMSA's thorough review</p>	<p style="text-align: right;">107</p> <p>1 COMMISSIONER HANSON: When I was in the earlier life</p> <p>2 in the utilities business we actually designed some facilities</p> <p>3 so that they would fail more readily in one area than in others</p> <p>4 so that it would decrease the amount of damage to highly</p> <p>5 populated areas and something of that nature. I'm talking about</p> <p>6 levies and things of this nature so that you have a failure</p> <p>7 point where you're going to flood farm fields as opposed to</p> <p>8 flooding residential areas.</p> <p>9 What, if anything of that nature, has been done with</p> <p>10 this pipeline? Is there any area that is considered to be a</p> <p>11 more likely failure point than other areas?</p> <p>12 THE WITNESS: No. We design the entire pipeline so</p> <p>13 that it -- you know, a failure is not a good thing. We</p> <p>14 absolutely do not want any failures. So the level of protection</p> <p>15 is the same. I think what we tend to look at more is the</p> <p>16 consequence.</p> <p>17 So, for example, if you were to have a failure near a</p> <p>18 water course, then the consequence is much more of a concern.</p> <p>19 But the level of safety remains the same throughout the entire</p> <p>20 pipeline.</p> <p>21 So, I mean, just don't want one. But I think the</p> <p>22 issue more goes to consequence. I would probably like to now</p> <p>23 defer further response to my experts. They can handle this</p> <p>24 question far better than I can.</p> <p>25 COMMISSIONER HANSON: Is the depth of this pipeline</p>
<p style="text-align: right;">106</p> <p>1 and rigorous review was that the pipeline design remains to be</p> <p>2 as safe or safer than otherwise.</p> <p>3 COMMISSIONER HANSON: It causes me to wonder why the</p> <p>4 wall thickness would be greater in some areas than in others.</p> <p>5 Obviously, I'm going to assume it's for safety purposes.</p> <p>6 THE WITNESS: Yes.</p> <p>7 COMMISSIONER HANSON: Why not provide that safety</p> <p>8 throughout the entire --</p> <p>9 THE WITNESS: You're right. And I would suggest you</p> <p>10 would have the same wall thickness through the entire length of</p> <p>11 the pipeline. Except for if you know that you're going to be in</p> <p>12 areas such as a road crossing where there is a higher</p> <p>13 likelihood, although again we're going to make sure it's deep</p> <p>14 and such that people won't excavate it and we'll have the</p> <p>15 One-Call system that will participate, but if you know there's a</p> <p>16 higher probability that somebody may strike that pipeline, then</p> <p>17 that is one of the main reasons why, for example, in that</p> <p>18 situation you'd have slightly thicker pipe wall.</p> <p>19 Because not that the damage would be -- it's going to</p> <p>20 occur, but you want to make sure that, for example, if a tooth</p> <p>21 of a bucket of a backhoe was to strike the pipe and cause a</p> <p>22 dent, it would dent the pipeline as opposed to actually rupture</p> <p>23 it. So that's why, for example -- that's just an example I</p> <p>24 wanted to give you why in that one situation you'd have slightly</p> <p>25 thicker pipe.</p>	<p style="text-align: right;">108</p> <p>1 consistent with other pipelines, of the 36,000 miles of pipeline</p> <p>2 that you operate?</p> <p>3 THE WITNESS: No. On average this pipeline is far</p> <p>4 deeper. Those 36,500 typically are probably more around 3 feet.</p> <p>5 The code is 2 feet. And we're going to build this one to 4 feet</p> <p>6 because that's an industry practice. And the number one cause</p> <p>7 we anticipate for any failure will be that somebody accidentally</p> <p>8 struck the pipeline.</p> <p>9 So to prevent that, and, again, the industry takes</p> <p>10 failures very seriously, the best practice is to make sure the</p> <p>11 top of the pipe has a depth of cover of 4 feet.</p> <p>12 COMMISSIONER HANSON: Can you foresee a situation in</p> <p>13 which any landowner would become responsible for the mitigation</p> <p>14 of a failure?</p> <p>15 THE WITNESS: No. I can't. And I'm not even aware if</p> <p>16 there ever was one, unless it was a malicious act of violence</p> <p>17 such as terrorism or something, I mean. But, no, if the</p> <p>18 pipeline was to fail because of, you know, a corrosive spot or</p> <p>19 some utility company was digging up the line and didn't notify</p> <p>20 us and they hit it and it failed and leaked on their property,</p> <p>21 I'm not aware of a landowner being responsible at all. And they</p> <p>22 wouldn't be.</p> <p>23 COMMISSIONER HANSON: Perhaps I can help you out with</p> <p>24 that question. At the public hearings there were photographs</p> <p>25 circulated of a large implement, farm equipment, that had been</p>

<p style="text-align: right;">109</p> <p>1 bogged down. Some of it looked like it was well beneath the</p> <p>2 4-foot level.</p> <p>3 In those type of situations where the farmer got</p> <p>4 bogged down with large equipment damage to the pipe, would you</p> <p>5 say that there's potential for the landowner to be responsible</p> <p>6 financially?</p> <p>7 THE WITNESS: Only if it was his 10th time or</p> <p>8 something. You know, Commissioner, I shouldn't jest, but it's</p> <p>9 very unlikely in that situation that a vehicle could damage the</p> <p>10 pipeline failure, extremely unlikely considering the strength of</p> <p>11 the steel and the protection of the coating and the depth. So</p> <p>12 even in those pictures that show that.</p> <p>13 Now that being said, you know, we do urge</p> <p>14 landowners -- they know the pipeline's there. If they have</p> <p>15 large equipment that is extremely heavy and the conditions are</p> <p>16 wet, you know, it would be prudent that they not drive over the</p> <p>17 line in those conditions. However, if by accident they did,</p> <p>18 they still would not be liable for the damage. And I don't</p> <p>19 believe they would damage the pipeline.</p> <p>20 You know, again, I think we're into legal grounds now.</p> <p>21 If they knew they were doing this, that's different.</p> <p>22 COMMISSIONER HANSON: Thank you. I have just a few</p> <p>23 more questions. You had testified that the construction will</p> <p>24 increase the value of property and result in a significant</p> <p>25 amount of taxes being paid by Keystone to the State of South</p>	<p style="text-align: right;">111</p> <p>1 wouldn't expect each landowner to see an adjustment or</p> <p>2 tremendous change in their personal property tax. Keystone will</p> <p>3 pay a tax based on the value of the pipe.</p> <p>4 As for each landowner's property tax bill, you know,</p> <p>5 it's been documented that the value of the -- the land values</p> <p>6 tend not to change very much. So I would assume then the</p> <p>7 assessed property taxes wouldn't change very much. That would</p> <p>8 be our assumption going forward.</p> <p>9 COMMISSIONER HANSON: There have been a number of</p> <p>10 questions pertaining to the capacity of the pipeline. Will this</p> <p>11 pipeline be able to carry a different type of product?</p> <p>12 THE WITNESS: In the remote situation where we no</p> <p>13 longer want to move crude oil through the Keystone Pipeline and</p> <p>14 we don't have a business case to do so, pipelines have applied</p> <p>15 to be converted to a different commodity. So in the future do I</p> <p>16 think it can move something else, let's say natural gas, which</p> <p>17 by the way pipelines have been converted from oil to gas or gas</p> <p>18 to oil, yes, but they have to go through an entire regulatory</p> <p>19 process to do so.</p> <p>20 COMMISSIONER HANSON: Would that include the State of</p> <p>21 South Dakota's regulatory process, to the best of your</p> <p>22 knowledge?</p> <p>23 THE WITNESS: I don't know that.</p> <p>24 COMMISSIONER HANSON: Okay. Thank you. And there</p> <p>25 have been -- sort of skirted around the question. There have</p>
<p style="text-align: right;">110</p> <p>1 Dakota.</p> <p>2 THE WITNESS: Sir, I don't think my testimony is to</p> <p>3 increase the value of property. I believe my testimony is the</p> <p>4 taxes as a result of the pipeline are in TC 14. But I don't</p> <p>5 believe it's because of increasing the value of the property.</p> <p>6 It's because of the asset.</p> <p>7 COMMISSIONER HANSON: Right. It's a value that is</p> <p>8 attached to the ground. It becomes a capital asset. Therefore,</p> <p>9 it's a real property tax that you are paying, not a personal</p> <p>10 property tax so it increases the value.</p> <p>11 Excuse me. What was that figure again? That was</p> <p>12 different --</p> <p>13 THE WITNESS: Because the capital cost estimate</p> <p>14 increase we are now looking at about \$9 million is our</p> <p>15 forecasted state tax in we expect 2010.</p> <p>16 COMMISSIONER HANSON: Since you've had discussions on</p> <p>17 that and potential for increase in value and increase in taxes</p> <p>18 paid, have you had any discussions or did any of those</p> <p>19 discussions involve the potential for a decrease in the property</p> <p>20 taxes of the landowner as a result of the easement being given?</p> <p>21 THE WITNESS: No. I don't believe so.</p> <p>22 COMMISSIONER HANSON: So you're not aware of any</p> <p>23 discussion pertaining to a potential --</p> <p>24 THE WITNESS: Historically, the price of land has not</p> <p>25 been adjusted due to an easement of a pipeline on a farm. So I</p>	<p style="text-align: right;">112</p> <p>1 been questions pertaining to a number of other pipelines that</p> <p>2 could be placed in this easement.</p> <p>3 Can you give us the maximum number of pipes that could</p> <p>4 be placed in this easement area?</p> <p>5 THE WITNESS: A general rule of thumb is you like to</p> <p>6 have pipeline spaced no closer than about 10 feet apart. And</p> <p>7 you don't want to have the edge of the easement -- so you go in</p> <p>8 10 feet from there.</p> <p>9 COMMISSIONER HANSON: Do you mean no less than</p> <p>10 10 feet?</p> <p>11 THE WITNESS: No less than 10 feet, and the edge of</p> <p>12 the easement would be 10 feet. So that being said, on a 50-foot</p> <p>13 easement that would be three pipes. And we would probably even</p> <p>14 then -- and I don't know, but in the situation if it ever was to</p> <p>15 occur, you know, you would have gone back for the third time to</p> <p>16 these landowners, you probably are widening the easement and</p> <p>17 buying a wider easement because just for access to maintain the</p> <p>18 line.</p> <p>19 COMMISSIONER HANSON: And you would have to go through</p> <p>20 a process with citing again or not?</p> <p>21 THE WITNESS: Yes. No. We'd go through the same</p> <p>22 process.</p> <p>23 COMMISSIONER HANSON: Thank you very much, Mr. Jones.</p> <p>24 Thank you, Mr. Smith.</p> <p>25 MR. SMITH: Other Commissioner questions? I had a</p>

<p style="text-align: right;">113</p> <p>1 couple. Do you want me to ask my few questions now before we</p> <p>2 break, and then we'll break and you can do your redirect?</p> <p>3 Either at the Keystone level or at the TransCanada</p> <p>4 level does your company carry pollution liability insurance, or</p> <p>5 how do you deal with that?</p> <p>6 THE WITNESS: We were just discussing this the other</p> <p>7 day. And I can't recall exactly how to answer this so I'm going</p> <p>8 to get one of my other expert witnesses to respond to that</p> <p>9 question for you.</p> <p>10 MR. SMITH: Okay. Thank you. In terms of</p> <p>11 capitalization of Keystone, how is that going to happen? Is</p> <p>12 this going to be a debt financed company or --</p> <p>13 THE WITNESS: We haven't determined that. We will be</p> <p>14 applying to FERC for capitalization. As you know, FERC</p> <p>15 regulates the tolls and tariffs of crude oil pipelines, and</p> <p>16 right now it is being funded through the parent, TransCanada.</p> <p>17 But the ultimate debt equity structure hasn't been determined</p> <p>18 yet.</p> <p>19 MR. SMITH: This may be an unfair question, but I'm</p> <p>20 just going to throw it out to let you think about it. You know,</p> <p>21 the Commission has the ability to impose conditions, and would</p> <p>22 the company, the parent company, be willing to provide at least</p> <p>23 some level of I call it a cut-through guarantee to guarantee</p> <p>24 that there are liquid funds available to fund clean up in the</p> <p>25 unfortunate event we were to have a leak?</p>	<p style="text-align: right;">115</p> <p>1 THE WITNESS: Yes.</p> <p>2 MR. SMITH: In terms of the four failures in Canada</p> <p>3 due to external corrosion, were any of those failures on pipe</p> <p>4 that has the FBE coating on it?</p> <p>5 THE WITNESS: I'd have to get Ms. Kothari to answer</p> <p>6 that question.</p> <p>7 MR. SMITH: Okay. Thank you. Mr. Hohn brought up</p> <p>8 benzene and the other toluene and so forth. It's a fact, isn't</p> <p>9 it, that all petroleum, crude oil, contains BTEX at some level,</p> <p>10 at least crude oil and refined gasoline? Is that a fact?</p> <p>11 THE WITNESS: I'm not an expert in this.</p> <p>12 Ms. Tillquist is the appropriate witness to respond to this. I</p> <p>13 think the question or the implications of BTEX in crude oil as</p> <p>14 opposed to, for example, BTEX in refined products or gasoline</p> <p>15 that go into our automobiles is significantly different and how</p> <p>16 it reacts is significantly different and how the BTEX</p> <p>17 potentially separates out of the crude oil as opposed to</p> <p>18 gasoline. But these complicated questions are best answered to</p> <p>19 and responded by Ms. Tillquist.</p> <p>20 MR. SMITH: Thank you. That's all I have. Should we</p> <p>21 take a recess for -- what do you want? One hour? Should we</p> <p>22 round it off and say -- should we say 1:30? We're in recess,</p> <p>23 and we'll reconvene at 1:30.</p> <p>24 (A lunch recess is taken)</p> <p>25 MR. SMITH: I'll reconvene the hearing. It's 1:30.</p>
<p style="text-align: right;">114</p> <p>1 THE WITNESS: Mr. Smith, I don't think so. And I'll</p> <p>2 tell you why. And the main reason is that it's a precedent that</p> <p>3 the industry wouldn't accept. And, you know, companies like</p> <p>4 TransCanada that are in the business of doing so are responsible</p> <p>5 for the cleanup. And in order to stay in business and to</p> <p>6 continue to be traded publicly and the scrutiny of all our</p> <p>7 shareholders that's just a liability a parent wouldn't accept.</p> <p>8 So, you know, we're regulated. We follow the laws and</p> <p>9 the rules, and it's just -- I just couldn't see that being an</p> <p>10 acceptable condition.</p> <p>11 MR. SMITH: I guess if you don't know the</p> <p>12 capitalization this might be hard to know. But in your -- if</p> <p>13 you could give us some indication in terms of the Keystone</p> <p>14 limited partnership itself, can you give us an indication of</p> <p>15 whether the assets of the Keystone Pipeline will be sufficient</p> <p>16 on their own to essentially ensure that there are sufficient</p> <p>17 funds available to accomplish successful cleanup in the event of</p> <p>18 a spill or leak?</p> <p>19 THE WITNESS: You know, it certainly is -- if you look</p> <p>20 at the estimated capital cost of Keystone today, it's well over</p> <p>21 \$5 billion. You know, far exceeds any liability exposure that</p> <p>22 would be on a leak.</p> <p>23 MR. SMITH: And you think -- and your belief is at</p> <p>24 least that there would be sufficient cash available to fund any</p> <p>25 kind of leak that might occur?</p>	<p style="text-align: right;">116</p> <p>1 Mr. Robert Jones was on the stand, and I don't see him.</p> <p>2 MR. SMITH: Mr. Jones has reentered the room and taken</p> <p>3 the stand. You're still under oath, Mr. Jones.</p> <p>4 Commissioners, are you done with your questions?</p> <p>5 Redirect, Mr. Koenecke, if any?</p> <p>6 MR. KOENECKE: Thank you, Mr. Smith.</p> <p>7 <u>REDIRECT EXAMINATION</u></p> <p>8 <u>BY MR. KOENECKE:</u></p> <p>9 Q. Mr. Jones, do you recall the testimony before the break</p> <p>10 regarding the liabilities of TransCanada Keystone?</p> <p>11 A. Yes.</p> <p>12 Q. For spills or other incidents?</p> <p>13 A. Yes.</p> <p>14 Q. In your opinion, would TransCanada Corporation be able to</p> <p>15 continue to operate as a pipeline company if it walked away from</p> <p>16 a major liability incurred by operating a pipeline subsidiary?</p> <p>17 A. No. TransCanada is a pipeline company. We have to honor</p> <p>18 all these liabilities, all of these operations, because that's</p> <p>19 the business we're in. We just couldn't continue to operate if</p> <p>20 we were to do otherwise.</p> <p>21 MR. KOENECKE: Thank you. I have nothing further.</p> <p>22 MR. SMITH: Recross.</p> <p>23 MR. RASMUSSEN: Just a few more questions.</p> <p>24</p> <p>25</p>

<p style="text-align: right;">117</p> <p>1 <u>RECROSS-EXAMINATION</u></p> <p>2 BY MR. RASMUSSEN:</p> <p>3 Q. When Commissioner Hanson was questioning you, you talked</p> <p>4 about the coating that's factory installed, I understand, on the</p> <p>5 pipe?</p> <p>6 A. That's correct.</p> <p>7 Q. But the joints are done in the field; is that right?</p> <p>8 A. That's not completely correct. Half the joints are done in</p> <p>9 a -- on a -- probably right up to the mill unless they're the</p> <p>10 ones from India, and the ones coming off the tankers will be</p> <p>11 done in a plant in the United States. We call it double</p> <p>12 jointing.</p> <p>13 So half the joints are done in the plant and then coated</p> <p>14 and put on site on the right of way, and then the remainder of</p> <p>15 the pipeline's put together.</p> <p>16 Q. The stuff that's done on site, is it somehow painted on?</p> <p>17 A. The details of the Application for the epoxy can be best --</p> <p>18 the technical details on how the epoxy is applied can be best</p> <p>19 answered by Ms. Kothari.</p> <p>20 Q. You were asked by Commissioner Johnson about densitometers.</p> <p>21 And I guess if there aren't any in South Dakota, why was that</p> <p>22 even referenced in your direct testimony?</p> <p>23 A. You know -- it shouldn't have been. We don't have any</p> <p>24 densitometers in South Dakota.</p> <p>25 Q. So your testimony here at paragraph 10 on page 4, there</p>	<p style="text-align: right;">119</p> <p>1 Q. Costs less, though, doesn't it?</p> <p>2 A. There is a savings in weight. We had additional</p> <p>3 conditions. The net net is savings in acquisition of steel,</p> <p>4 which is a very high-commodity component of the project.</p> <p>5 MR. RASMUSSEN: I think that's all I have.</p> <p>6 MR. SMITH: Any other recross?</p> <p>7 MS. SEMMLER: No.</p> <p>8 MR. SMITH: Hearing none -- do you have a question,</p> <p>9 Mr. Hohn?</p> <p>10 MR. HOHN: I have one question.</p> <p>11 <u>RECROSS-EXAMINATION</u></p> <p>12 BY MR. HOHN:</p> <p>13 Q. In your earlier statement about -- in response to one of</p> <p>14 the Commissioner's questions why there may be locations where</p> <p>15 you thicken the wall, as a road, for example, or crossing a</p> <p>16 railroad, you said that it was because it might be an area where</p> <p>17 there would be a lot of activity with digging. A backhoe</p> <p>18 might -- you wouldn't want a backhoe to puncture the wall.</p> <p>19 Is that correct? Did I rephrase that correctly?</p> <p>20 A. Certainly there are areas along the route where the</p> <p>21 pipeline will have different wall thickness, and I believe one</p> <p>22 of them is railway crossings and road crossings.</p> <p>23 Q. And did I hear you correctly to say that the reason you</p> <p>24 might want to make that thicker there was in the event</p> <p>25 somebody -- if there's a lot of activity in that area such as</p>
<p style="text-align: right;">118</p> <p>1 will be above-ground facilities including four pump stations,</p> <p>2 isolation valves, and densitometers, and that's just simply not</p> <p>3 correct as it applies to South Dakota; correct?</p> <p>4 A. Yes.</p> <p>5 Q. You were asked some questions about the wall thickness, the</p> <p>6 .72 versus the .80. And I think you said it was increased in</p> <p>7 certain areas such as where it goes under roadways; is that</p> <p>8 right?</p> <p>9 A. No. The code requires you to design a pipeline different</p> <p>10 in certain areas such as, for example, a road crossing. So when</p> <p>11 that occurs -- when the code is instructing you to do that the</p> <p>12 wall thickness does change in that one specific location I</p> <p>13 described.</p> <p>14 Q. Does it also increase where it crosses -- goes under the</p> <p>15 Missouri River?</p> <p>16 A. I believe so. Again, I'm not the expert witness on the</p> <p>17 different locations where the wall thickness increases, but I --</p> <p>18 I believe that's correct.</p> <p>19 Q. Who would be the person that knows the most about that?</p> <p>20 A. I think it would be a number of people. I'm thinking that</p> <p>21 both Meera and Buster will know the answer to that question.</p> <p>22 Q. The primary reason for asking for the special permit so as</p> <p>23 to allow the thinner-walled pipe was an economic one; correct?</p> <p>24 A. It also allows the pipeline to have the same standard from</p> <p>25 start to finish.</p>	<p style="text-align: right;">120</p> <p>1 digging, that it would be stronger, and it would withstand the</p> <p>2 strike of a backhoe tooth?</p> <p>3 A. My understanding, the justification of the code that that</p> <p>4 increased activity is a result in a change in wall thickness.</p> <p>5 Q. So a water line that might be buried parallel to a fence,</p> <p>6 parallel to a road, a water line that might need to be dug up to</p> <p>7 fix a leak which is a water line that might be buried 6 feet</p> <p>8 deep, wouldn't that be a potential area where you might need to</p> <p>9 have thicker pipe?</p> <p>10 A. Again, the actual locations for wall thickness changes is</p> <p>11 one of code. And the reasons and where it is is probably best</p> <p>12 answered by Buster, Mr. Gray.</p> <p>13 MR. HOHN: Thank you.</p> <p>14 MR. SMITH: You may step down.</p> <p>15 (The witness is excused)</p> <p>16 MR. KOENECKE: We would call Mr. Koski to the stand.</p> <p>17 Thank you.</p> <p>18 (The witness is sworn by the court reporter)</p> <p>19 <u>DIRECT EXAMINATION</u></p> <p>20 BY MR. KOENECKE:</p> <p>21 Q. Would you state your name and business address for the</p> <p>22 record, please.</p> <p>23 A. My name is Michael Koski, and my business address is</p> <p>24 1300 Metropolitan Boulevard, Suite 200 Tallahassee, Florida.</p> <p>25 Q. What's your role with the TransCanada Keystone Project?</p>

<p style="text-align: right;">121</p> <p>1 A. I'm the project director of the consulting technical team</p> <p>2 assigned for the U.S. portion of the pipeline facility of the</p> <p>3 Keystone Project responsible for engineering, environmental</p> <p>4 permitting, and land acquisition.</p> <p>5 Q. Did you provide testimony in this matter?</p> <p>6 A. Yes, I did.</p> <p>7 Q. I believe on the stack to your left there you should find</p> <p>8 that testimony. I apologize for not having it out for you.</p> <p>9 A. That's okay. We'll let it go. Yes, I found it.</p> <p>10 Q. Did you find both of them?</p> <p>11 A. Yes, I have.</p> <p>12 Q. Thank you. Do you have any additions or corrections to</p> <p>13 that testimony?</p> <p>14 A. Yes, I do.</p> <p>15 Q. And are you responsible for the routing of the pipeline</p> <p>16 through South Dakota?</p> <p>17 A. Yes. I'm responsible for managing the team that conducted</p> <p>18 the routing.</p> <p>19 Q. Have you made route changes since the Application was filed</p> <p>20 in April?</p> <p>21 A. Yes, we have.</p> <p>22 Q. Showing you what I've marked as Exhibit TC 9, are you</p> <p>23 familiar with that exhibit?</p> <p>24 A. Yes, I am.</p> <p>25 Q. Have you seen it before?</p>	<p style="text-align: right;">123</p> <p>1 A. Yes, I have.</p> <p>2 Q. Can you tell us what it is?</p> <p>3 A. Yes. These are additional changes to the alignment in</p> <p>4 South Dakota that have been adopted since the response to the</p> <p>5 Interrogatory mentioned previous. However, there is one within</p> <p>6 this package was wasn't included in the Interrogatory, road</p> <p>7 variation 293.</p> <p>8 Q. 293 was included in the Interrogatory?</p> <p>9 A. Yes.</p> <p>10 Q. I apologize. Thank you for pointing that out. So how many</p> <p>11 are in TC 9 as you have it there?</p> <p>12 A. I have 15 in my package.</p> <p>13 Q. How many in TC 10?</p> <p>14 A. There are three, but there's a duplicate of TC 9.</p> <p>15 Q. Thank you. Which page in TC 10 is the duplicate? Do you</p> <p>16 know?</p> <p>17 A. The second page.</p> <p>18 Q. Can you remove that, please, from TC 10?</p> <p>19 A. Me?</p> <p>20 Q. Yes, please.</p> <p>21 A. Okay.</p> <p>22 (Witness complies)</p> <p>23 Q. So would you recite the numbers, please, or the identifying</p> <p>24 marks on the first page of TC 10?</p> <p>25 A. Route variation 292.</p>
<p style="text-align: right;">122</p> <p>1 A. Yes, I have.</p> <p>2 Q. Was it prepared under your direction?</p> <p>3 A. Yes. Prepared by the team formed under my direction.</p> <p>4 Q. Can you tell us what that is?</p> <p>5 A. It's a number of variations that have occurred to the</p> <p>6 alignment of the project since the Application was filed in</p> <p>7 South Dakota in April.</p> <p>8 Q. Are those changes the ones that were responded to in WEB</p> <p>9 Water's Interrogatories answered last week?</p> <p>10 A. Yes. I believe so.</p> <p>11 MR. KOENECKE: I'd ask that TC 9 be admitted at this</p> <p>12 time as changes and corrections to the maps which were put in</p> <p>13 with the Application and put in as part of Mr. Koski's</p> <p>14 testimony.</p> <p>15 MR. RASMUSSEN: Those are the ones that were attached</p> <p>16 to the Interrogatories?</p> <p>17 MR. KOENECKE: Yes. Exactly the same.</p> <p>18 MR. RASMUSSEN: I have no objection then.</p> <p>19 MR. SMITH: Objections from anyone else? Hearing</p> <p>20 none, Exhibit TC 9 is admitted.</p> <p>21 MR. KOENECKE: Thank you.</p> <p>22 Q. Mr. Koski, I've put in front of you what we've marked as</p> <p>23 Exhibit TC 10.</p> <p>24 A. Yes.</p> <p>25 Q. Have you seen that before?</p>	<p style="text-align: right;">124</p> <p>1 Q. And the second page of TC 10?</p> <p>2 A. Route variation 294.</p> <p>3 Q. And the third page? Is there no third page?</p> <p>4 A. There's no longer a third page.</p> <p>5 Q. Thank you. Can you describe what's shown on 292, please.</p> <p>6 A. On 292 the red line that's shown was the original route as</p> <p>7 filed in the Application in April, and the yellow line is a</p> <p>8 reroute that has since been adopted.</p> <p>9 Q. And 294, the same?</p> <p>10 A. The same.</p> <p>11 Q. Are you familiar with the land forms or the areas that are</p> <p>12 depicted on either of those pictures?</p> <p>13 A. I don't have personal knowledge of the specific land forms</p> <p>14 or the routing associated with either of these.</p> <p>15 Q. Okay.</p> <p>16 MR. KOENECKE: I'd ask that both pages of TC 10 be</p> <p>17 admitted as evidence.</p> <p>18 MR. SMITH: Objections?</p> <p>19 MR. RASMUSSEN: No objections.</p> <p>20 MR. SMITH: TC 10 is admitted.</p> <p>21 Q. Koski, do you have any other additions or corrections to</p> <p>22 your testimony that you're aware of?</p> <p>23 A. No, I do not.</p> <p>24 Q. Are you responsible for the creation and preparation of the</p> <p>25 Draft Environmental Impact Statement?</p>

<p style="text-align: right;">125</p> <p>1 A. I'm responsible for supporting the preparation of the Draft 2 Environmental Impact Statement. The Draft Environmental Impact 3 Statement was prepared by the Department of State and their 4 third-party contractor. I'm responsible for Keystone's supply 5 of information to that process to support the preparation of 6 that document. 7 Q. Where are we at in that process? Or where is Keystone at 8 in the DEIS process? 9 A. Well, certainly the DEIS has been out for some time now. 10 The DEIS comment period has been completed. The Department of 11 State is in the preparation of preparing a final impact 12 statement, and as was stated earlier by Mr. Jones we certainly 13 expect the FEIS by the end of the year. 14 Q. If you'll allow me just a minute. Thank you. 15 MR. KOENECKE: Excuse me a minute. 16 (Exhibit TC 15 is marked for identification) 17 Q. Mr. Koski I've put in front of you a binder containing a 18 large document, and we've marked it as TC 15. 19 Are you familiar with that document? 20 A. Yes. In the absence of the cover page, it appears to be 21 the Draft Environmental Impact Statement. 22 Q. Can you take a minute and ensure that it's there in its 23 complete form to the best of your knowledge? 24 A. Sure. 25 (Witness examines document)</p>	<p style="text-align: right;">127</p> <p>1 guess in light of the fact that things have been removed from 2 it, we want to look at it. Conditionally, I would say I don't 3 object, but that's subject to us having a chance to look at that 4 notebook. 5 MR. SMITH: Well, I think what we want to have is an 6 accurate copy of the Draft Environmental Impact Statement. If 7 it isn't that, then that's the document we ought to have in the 8 record. 9 Is that a fair statement? 10 MR. RASMUSSEN: I agree. Yes. 11 MS. SEMMLER: Staff does not object to the admission 12 of the Draft Environmental Impact Statement. 13 MR. KOENECKE: Okay. So ultimately we'll ensure that 14 that's what's in the record. 15 MR. SMITH: Okay. Would you like the attachments to 16 the Draft Environmental Impact Statement? Are they the same 17 things that we have in -- 18 MR. KOENECKE: Yes. I believe everybody's -- I'm 19 being advised not now. 20 Exactly. Where we're headed, I think, is the 21 stipulation of the introduction of the entire Draft 22 Environmental Impact Statement with the attachments as it's on 23 record with the Department of State. 24 MR. SMITH: Okay. Thank you. 25 MR. KOENECKE: We'll not use -- we'll not introduce</p>
<p style="text-align: right;">126</p> <p>1 A. I do note the third page of this document contains 2 something that is not part of the DEIS. 3 Q. Please remove it. 4 A. Don't worry. I'm not going to read it. 5 Yes. It appears to be the Draft Environmental Impact 6 Statement. 7 Q. Are you sure that there's no other pages in there? I just 8 want to make sure. 9 A. Well, I haven't looked at every page. 10 Q. We better look at them all, I think. 11 MR. SMITH: If you're wrong, we'll have to charge you 12 with perjury. 13 THE WITNESS: That's certainly my fear. 14 A. It is lacking the appendices, from what I can tell. 15 MR. SMITH: I mean, this is an official Government 16 record, is it not? 17 MR. KOENECKE: It is. 18 MR. SMITH: It is what it is, and if the exhibit's got 19 mistakes in it, I think we can correct that. 20 A. All right. It appears to be the Draft Environmental Impact 21 Statement without the attachments. 22 MR. KOENECKE: I guess it's obvious where I'm headed. 23 I'd like this to be introduced. Can we stipulate to the 24 introduction of the Draft Environmental Impact Statement? 25 MR. RASMUSSEN: I don't think we'll have a problem. I</p>	<p style="text-align: right;">128</p> <p>1 TC 15 then. Mark that TC 15. Very well. 2 MR. SMITH: Is that acceptable? 3 MR. RASMUSSEN: I'm not sure exactly what we're doing 4 now. 5 MR. KOENECKE: I'm not either. 6 MR. SMITH: Well, I think the document that I believe 7 he wants introduced is the actual official record copy with the 8 Department of State with the DEIS; is that correct? 9 MR. KOENECKE: That's correct. 10 MR. SMITH: It is what it is. It's an official 11 document of the United States Government. 12 MR. KOENECKE: It is. And ultimately we'll produce 13 that as TC 15. 14 MR. RASMUSSEN: Which will have all the attachments 15 then. 16 MR. KOENECKE: Correct. With all the attachments 17 indeed. I apologize to everybody. 18 MR. SMITH: Well, it isn't like we don't have a little 19 bit of paper here to shuffle. 20 Are there any objections to that, to the admission of 21 the DEIS? 22 MR. RASMUSSEN: No. 23 MR. SMITH: Okay. Thank you. Then TC 15 is admitted, 24 which will consist of the actual record copy of -- a copy of the 25 official DEIS on file with the Department of State.</p>

<p style="text-align: right;">129</p> <p>1 MR. KOENECKE: We'll tender the witness for</p> <p>2 cross-examination at this time.</p> <p>3 MR. SMITH: Mr. Rasmussen, please proceed.</p> <p>4 <u>CROSS-EXAMINATION</u></p> <p>5 <u>BY MR. RASMUSSEN:</u></p> <p>6 Q. Mr. Koski, I want to ask you about the route changes, first</p> <p>7 of all.</p> <p>8 CHAIRMAN JOHNSON: Mr. Rasmussen, your microphone</p> <p>9 again. Sometimes we get complaints from people on the internet.</p> <p>10 MR. RASMUSSEN: People complain they can't hear me?</p> <p>11 CHAIRMAN JOHNSON: Not specifically yet. I'm trying</p> <p>12 to head that off.</p> <p>13 Q. Looking at Exhibit 9, TC 9, that would be the first set of</p> <p>14 aerial photographs, I think it would be the second page if my</p> <p>15 pages are the same. Well, I guess I'm not sure. Looking at</p> <p>16 Route 231, it's a reroute to avoid NRCS easement.</p> <p>17 Do you know which one I'm referring to?</p> <p>18 A. Not yet.</p> <p>19 Q. Just looking through the ones that I have, I don't see a</p> <p>20 reference to 231. We have a document that was given to us with</p> <p>21 our Interrogatory Answers that make a reference to Route 231</p> <p>22 SD 10221.5-1. And it says reroute to avoid NRCS easement.</p> <p>23 Is there a corresponding photograph to that?</p> <p>24 A. I don't see that in my package.</p> <p>25 Q. Do you know where that was?</p>	<p style="text-align: right;">131</p> <p>1 activities associated with the Keystone Project we had routed</p> <p>2 through an area that had some areas of grasslands that were</p> <p>3 protected by U.S. Fish & Wildlife Service easements for the sole</p> <p>4 purpose of protecting these grassland areas.</p> <p>5 And, again, that's a type of information you receive as you</p> <p>6 work through the route refinement process where you are dealing</p> <p>7 with increasing levels of information. And those were brought</p> <p>8 to our attention by the Fish & Wildlife Service. They are not</p> <p>9 published, and they're not part of any particular public</p> <p>10 database. And we incorporated them into the route selection</p> <p>11 process and have routed to avoid them.</p> <p>12 Q. Some of these areas are basically just pasture land, are</p> <p>13 they not?</p> <p>14 A. I'd have to defer to the exact definition of a grassland to</p> <p>15 Scott Ellis who will testify later.</p> <p>16 Q. Did U.S. Fish & Wildlife tell you that they were not going</p> <p>17 to let you put the pipeline on any grassland easement areas</p> <p>18 under their control?</p> <p>19 A. I don't recall if those specific words were used, but</p> <p>20 certainly it was a resource that they had undertaken to protect</p> <p>21 through the formalization of a conservation easement on the</p> <p>22 property. And certainly they were interested in protecting</p> <p>23 them.</p> <p>24 Q. So the pipeline was then moved off of the grassland</p> <p>25 easement areas on to other private land; is that right?</p>
<p style="text-align: right;">130</p> <p>1 A. No, I don't.</p> <p>2 Q. Okay. You made the comment that you didn't have personal</p> <p>3 knowledge about these route changes; is that right?</p> <p>4 A. Yes. I lead a team that consists of numerous personnel</p> <p>5 representing various disciplines that participate in the</p> <p>6 evaluation and participate in the route refinement process</p> <p>7 including the evaluation of possible reroutes or refinement.</p> <p>8 Q. So if I wanted to know about specific changes, who would be</p> <p>9 the person to ask about that?</p> <p>10 A. I would suggest most of them would have to be deferred to</p> <p>11 Buster Gray.</p> <p>12 Q. Okay. Because I think the prior witness, Mr. Jones,</p> <p>13 indicated that you would be the one, but that's --</p> <p>14 A. Mr. Jones relies on me to put a team in place to conduct</p> <p>15 certain activities, one of which is route refinement. And I</p> <p>16 have delegated the management of that particular component of</p> <p>17 that exercise to Buster Gray.</p> <p>18 Q. All right. I'll defer my questions to him then. Looking</p> <p>19 then at your direct testimony, page 3 makes reference at the top</p> <p>20 of the page to shifts in the route to the west to avoid crossing</p> <p>21 environmentally sensitive areas consisting of U.S. Fish &</p> <p>22 Wildlife Service grassland easements.</p> <p>23 Why is a grassland easement area environmentally sensitive?</p> <p>24 A. Well, I think it's been recognized that native prairies and</p> <p>25 grasslands are an important resource, and in early routing</p>	<p style="text-align: right;">132</p> <p>1 A. Yes.</p> <p>2 Q. Page 3 of your testimony also talks about Raymond Prairie</p> <p>3 Chicken Leks? Is that how you say that?</p> <p>4 A. Yes, it is.</p> <p>5 Q. What is that?</p> <p>6 A. I should defer the specific definition of a prairie chicken</p> <p>7 lek, but habitat, obviously important to prairie chickens.</p> <p>8 Q. All right. And so that -- there was some area that that</p> <p>9 caused the pipeline to be moved away from the prairie chicken</p> <p>10 place?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And I think -- did Mr. Jones say that you were the</p> <p>13 HCA expert or the one to address that?</p> <p>14 A. Yes. But I am not the HCA expert. Heidi Tillquist who</p> <p>15 will testify later is the expert so she'll do the high</p> <p>16 consequence areas.</p> <p>17 Q. You were probably cringing when Mr. Jones was giving his</p> <p>18 testimony about all your expertise; is that right?</p> <p>19 A. I was certainly rehearsing that response.</p> <p>20 Q. Paragraph 26 of your testimony on page 9 talks about</p> <p>21 subsistence risk related to earthquakes. Are you aware of there</p> <p>22 being a history of earthquake activity in both Yankton County</p> <p>23 and the Britton area?</p> <p>24 A. I am not aware of that personally. A professional</p> <p>25 geologist prepared this response at my direction.</p>

<p style="text-align: right;">133</p> <p>1 Q. Who was that?</p> <p>2 A. The particular individual who participated in this was</p> <p>3 Henry Freedenburg (phonetic), the Tallahassee office.</p> <p>4 Q. He is not testifying?</p> <p>5 A. He is not.</p> <p>6 Q. And you don't have personal knowledge then of that subject</p> <p>7 either?</p> <p>8 A. No, I don't.</p> <p>9 Q. What was the document that was in the notebook that you</p> <p>10 said was not part of the EIS that was removed?</p> <p>11 A. It was the Summary of Anticipated Annual TransCanada</p> <p>12 Keystone Pipeline South Dakota Ad valorem Property Tax Impact</p> <p>13 that you have discussed previously.</p> <p>14 Q. Okay. That was the earlier Exhibit 14, I think?</p> <p>15 A. Yes.</p> <p>16 Q. And obviously that would have nothing to do with the EIS?</p> <p>17 A. It does not.</p> <p>18 MR. RASMUSSEN: I have no further questions.</p> <p>19 MR. SMITH: Other Intervener cross-examination?</p> <p>20 MR. HOHN: Yes. Curt Hohn. I have just two</p> <p>21 questions, I think.</p> <p>22 <u>CROSS-EXAMINATION</u></p> <p>23 <u>BY MR. HOHN:</u></p> <p>24 Q. Your testimony refers to the decision made not to consider</p> <p>25 an I-29 route or an I-29 corridor; is that correct?</p>	<p style="text-align: right;">135</p> <p>1 land, not in the road ditch right of way?</p> <p>2 A. That's correct.</p> <p>3 Q. Did you ever submit anything in writing to the South Dakota</p> <p>4 Highway Department and ask if you could place a pipe in that</p> <p>5 right of way?</p> <p>6 A. No, we have not.</p> <p>7 Q. You have not?</p> <p>8 A. No.</p> <p>9 Q. Are you aware of whether they've allowed other pipelines to</p> <p>10 be built within state road right of way?</p> <p>11 A. I'm aware of one discrete case as communicated by the</p> <p>12 South Dakota Department of Transportation where they allowed a</p> <p>13 pipeline to traverse a very short section of their right of way</p> <p>14 on the backside of an off-ramp to facilitate a better crossing</p> <p>15 location. I do not have specific knowledge of which pipeline or</p> <p>16 where that was.</p> <p>17 That was a comment made by the South Dakota DOT. And at</p> <p>18 the same time they said they would not allow a pipeline such as</p> <p>19 the Keystone Project to be located within their easement.</p> <p>20 Q. Would it surprise you if there were a petroleum pipeline</p> <p>21 located in a state road highway right of way?</p> <p>22 A. A state road or an interstate?</p> <p>23 Q. Well, the State manages the interstate highway system here</p> <p>24 in the state. They maintain it. They're responsible for it.</p> <p>25 Call it a state highway or federal highway.</p>
<p style="text-align: right;">134</p> <p>1 A. I referenced I-29 in here, yes.</p> <p>2 Q. Can you explain the reason -- what went into that decision</p> <p>3 not to -- it appears from your written testimony that it wasn't</p> <p>4 even approached.</p> <p>5 Can you explain how that decision was made, who was</p> <p>6 involved?</p> <p>7 A. Sure. Certainly in the very early stages, as I believe was</p> <p>8 presented at the public sessions, when the route did not</p> <p>9 contemplate going to Cushing, Oklahoma at that time actually</p> <p>10 went to Iowa and went direct to Wood River, Illinois there was</p> <p>11 an alternative considered that is presented in our Application</p> <p>12 with the Department of State.</p> <p>13 One of the options did have a discrete section collocated</p> <p>14 with I-29. Again, not within the right of way but adjacent to</p> <p>15 it. That was discounted at that time for various reasons when</p> <p>16 the project objectives were still the Wood River location and a</p> <p>17 point in Salisbury, Missouri.</p> <p>18 Subsequent to that, the need to service a market in</p> <p>19 Cushing, Oklahoma became part of the mix, and this is described</p> <p>20 in that Application to the DOS, which took I-29 out as an option</p> <p>21 for any alternative simply because the project focus shifted</p> <p>22 further west taking I-29 out of consideration.</p> <p>23 Q. You mentioned that the route, if it would have been</p> <p>24 considered or in the preliminary when you had some thought of</p> <p>25 considering it you were talking about putting it on private</p>	<p style="text-align: right;">136</p> <p>1 A. My comments relate to the interstate limited access</p> <p>2 highways. Freeways as they're commonly referred to.</p> <p>3 Q. Well, let me rephrase the question. Have you had any</p> <p>4 information from the South Dakota Department of Transportation</p> <p>5 who manages the interstate highways and state highways in</p> <p>6 South Dakota that they he would not allow you to consider</p> <p>7 placing part or all of the pipeline in the I-29 road ditch?</p> <p>8 A. Personal communication from the South Dakota Department of</p> <p>9 Transportation indicated they would not allow a project such as</p> <p>10 Keystone within an interstate highway right of way.</p> <p>11 Q. You have nothing in writing on that? It's a verbal?</p> <p>12 A. It's a verbal.</p> <p>13 Q. On page 8 of your testimony, item 22, it would be the</p> <p>14 second bullet from the bottom. Keystone did not consider</p> <p>15 locating the pipe within the I-29 corridor due to safety issues</p> <p>16 and the impediment the facility could create to highway</p> <p>17 maintenance and expansion.</p> <p>18 Are you aware of highway expansion out there that we're not</p> <p>19 aware of, or is that highway likely to expand?</p> <p>20 A. Well, I believe the bullet you're referring to says</p> <p>21 Keystone rejected the option of locating adjacent to the I-29</p> <p>22 right of way for the following reasons. You're referring to the</p> <p>23 second bullet?</p> <p>24 Q. I'm referring to the -- yeah. I'm sorry. The first</p> <p>25 bullet, second from the bottom up is what I meant. The first</p>

<p style="text-align: right;">137</p> <p>1 bullet under item 22, page 8.</p> <p>2 A. Yes.</p> <p>3 Q. Could you read that and then tell me --</p> <p>4 A. Keystone did not consider locating the project within the</p> <p>5 I-29 corridor as this is not allowed due to safety issues and</p> <p>6 the impediment the facility would create to highway maintenance</p> <p>7 and expansion.</p> <p>8 Q. Safety issues -- here's the question, I guess. There are a</p> <p>9 lot of pipelines installed in road ditches in this state and</p> <p>10 other states. In fact, petroleum lines. It's a wide right of</p> <p>11 way. It's wider than what you have -- what you're asking for.</p> <p>12 Is that -- was that really a reason made by the State, or</p> <p>13 was that your company's decision or reason?</p> <p>14 A. The State specifically mentioned safety concerns as</p> <p>15 outlined in this testimony, and as far as their maintenance and</p> <p>16 expansion needs, they also stated that as an issue, but I am not</p> <p>17 aware of any specific expansion plans. I am sure they are.</p> <p>18 Q. Well, being the person in charge or responsible for</p> <p>19 supervising the designation of a route, you obviously weigh</p> <p>20 various factors, safety, constructibility, and so forth.</p> <p>21 Was it -- was the I-29 corridor avoided because State</p> <p>22 officials thought it wouldn't be safe to have an oil line along</p> <p>23 the interstate highway?</p> <p>24 A. Certainly one of the factors. Another more compelling</p> <p>25 factor is it does not go where we want to go.</p>	<p style="text-align: right;">139</p> <p>1 you look at routing you also look at access for maintenance,</p> <p>2 constructibility, and emergency response; correct?</p> <p>3 A. Those are considerations, yes.</p> <p>4 Q. Would the routing of this pipeline along Interstate 29</p> <p>5 offer a better emergency response access than in a remote area</p> <p>6 in Marshall and Clark County?</p> <p>7 A. I would have to defer emergency response planning to</p> <p>8 Brian Thomas.</p> <p>9 Q. Thank you.</p> <p>10 MR. SMITH: Do other Interveners have any questions?</p> <p>11 Staff?</p> <p>12 <u>CROSS-EXAMINATION</u></p> <p>13 <u>BY MS. SEMMLER:</u></p> <p>14 Q. Thank you. Just real quick, staff wonders if the</p> <p>15 Application will be amended to reflect the route changes in</p> <p>16 TC 09 and TC 10.</p> <p>17 MR. KOENECKE: You and I can talk about that later as</p> <p>18 a matter of legality, but I don't know that it's proper for</p> <p>19 Mr. Koski to answer that.</p> <p>20 Would that be all right?</p> <p>21 MS. SEMMLER: Uh-huh. That's fine.</p> <p>22 MR. SMITH: That all?</p> <p>23 MS. SEMMLER: Uh-huh.</p> <p>24 MR. SMITH: Commissioners, do you have questions of</p> <p>25 Mr. Koski?</p>
<p style="text-align: right;">138</p> <p>1 Q. The State of South Dakota under someone's signature could</p> <p>2 grant you an easement to construct in their right of way with</p> <p>3 one signature granting that?</p> <p>4 MR. KOENECKE: Well, I object. There's no foundation</p> <p>5 for that.</p> <p>6 MR. HOHN: I'm asking him about route, Mr. Chairman.</p> <p>7 COMMISSIONER KOLBECK: I guess, Mr. Hohn, I worked for</p> <p>8 a telephone company for 15 years with an interstate separating</p> <p>9 two telephone companies. You put an innerduct under an</p> <p>10 interstate, yes, you could. But that's it. Otherwise, you</p> <p>11 could not bury any cable along the interstate. They wouldn't</p> <p>12 let you.</p> <p>13 Is that what you're fishing for?</p> <p>14 MR. HOHN: What I'm wondering is did the State Highway</p> <p>15 Department specifically say no, or was it their decision not to</p> <p>16 route it there?</p> <p>17 Q. Yes or no?</p> <p>18 A. We decided not to route there because it is not consistent</p> <p>19 with the objectives of the project. However, in doing the usual</p> <p>20 assessment that's part of any route selection process,</p> <p>21 communications did take place with the State of South Dakota,</p> <p>22 and they confirmed what is certainly common practice throughout</p> <p>23 the U.S., that projects such as this are not allowed within</p> <p>24 interstate rights of way.</p> <p>25 Q. Well, one last question then regarding the routing. When</p>	<p style="text-align: right;">140</p> <p>1 COMMISSIONER HANSON: Yes.</p> <p>2 MR. SMITH: Commissioner Hanson.</p> <p>3 COMMISSIONER HANSON: Good afternoon, Mr. Koski.</p> <p>4 THE WITNESS: Hi.</p> <p>5 COMMISSIONER HANSON: After looking at the information</p> <p>6 that was passed around here, I know that a number of the</p> <p>7 citizens appreciate the changes that took place after looking at</p> <p>8 some of the aerial photos and seeing them running through</p> <p>9 farmsteads and back yards of houses and things of that nature.</p> <p>10 I'm sure it creates a lot less consternation than they did</p> <p>11 previously.</p> <p>12 Can you tell us, are there -- are you aware of any</p> <p>13 other outstanding concerns by property owners as to the routing</p> <p>14 of the pipeline on property that they own as opposed to someone</p> <p>15 else owns?</p> <p>16 THE WITNESS: I'm not personally aware of outstanding</p> <p>17 properties' specific routing concerns. However, I will add that</p> <p>18 the process of negotiating easements with landowners and even</p> <p>19 before that process there's ample opportunity afforded to</p> <p>20 solicit the type of input from landowners along the lines of</p> <p>21 what you're suggesting.</p> <p>22 And we work to incorporate those sorts -- that sort of</p> <p>23 input into the route refinement process. To the extent we can</p> <p>24 accommodate specific requests such as that, we do.</p> <p>25 COMMISSIONER HANSON: Thank you. And page 6 of your</p>

<p style="text-align: right;">141</p> <p>1 testimony on question 17 you were asked if it was your opinion</p> <p>2 that the proposed location of the Keystone Pipeline has a</p> <p>3 minimal adverse effect on the environment, natural resources,</p> <p>4 citizens of South Dakota. Your answer was yes.</p> <p>5 What are some of those minimal adverse effects on the</p> <p>6 environment, natural resources, and the citizens?</p> <p>7 THE WITNESS: The specific adverse effects I believe</p> <p>8 will be testified to by Scott Ellis later on and has been</p> <p>9 included in the South Dakota Application. I guess I'd like to</p> <p>10 point out that the selection of a route must balance numerous</p> <p>11 often competing interests associated with natural resources,</p> <p>12 private landowner desires, safety, and reliability. And that</p> <p>13 process of route selection incorporates and balances all of</p> <p>14 those factors, and routing decisions have to be made with a</p> <p>15 consideration for all of them, not just for one particular</p> <p>16 issue.</p> <p>17 COMMISSIONER HANSON: Thank you. Digesting your</p> <p>18 answer means that you take into consideration the damages that</p> <p>19 could occur and the challenges to property owners and what is in</p> <p>20 the best interest of the pipeline as well as the property</p> <p>21 owners?</p> <p>22 THE WITNESS: Yes. And the mitigation that can be</p> <p>23 applied and committed to to minimize those effects.</p> <p>24 COMMISSIONER HANSON: In doing so do you place the</p> <p>25 property owners at the top of the list of concerns, or is there</p>	<p style="text-align: right;">143</p> <p>1 the three alternative locations considered on the general sense</p> <p>2 were upstream or west of Yankton crossing one of the -- the</p> <p>3 Gavins Point Reservoir. Because it was outside of the special</p> <p>4 designated reach of the River that the reservoir impoundment is</p> <p>5 not actually part of the designation.</p> <p>6 So we looked at that to be out of that special</p> <p>7 recreational designation from the Wild and Scenic Rivers Act.</p> <p>8 We, of course, looked at Yankton because of existing bridge</p> <p>9 crossings -- two existing pipeline crossings and a relatively</p> <p>10 narrow reach of the River. And we also looked downstream of the</p> <p>11 special designated area downstream or east of Ponca State Park.</p> <p>12 And Yankton was selected as the preferred location</p> <p>13 mainly because it's collocated with existing utilities that</p> <p>14 cross. It's a relatively stable section of the River. There's</p> <p>15 obviously other interests that are interested in keeping it at</p> <p>16 the location it's at. The topography is favorable on both sides</p> <p>17 for the preferred approach of a directional drill, and the</p> <p>18 directional drill can accomplish the crossing in one</p> <p>19 installation. And that drill passes under not only the River</p> <p>20 but also the jurisdictional limits of the National Parks Service</p> <p>21 in their jurisdiction under the Wild and Scenic Rivers Act.</p> <p>22 CHAIRMAN JOHNSON: Do collocation opportunities for</p> <p>23 these, you know, directional drilling, I mean, does that come</p> <p>24 with additional risk with regard to third-party damage?</p> <p>25 THE WITNESS: You mean during the installation of our</p>
<p style="text-align: right;">142</p> <p>1 a prioritization there? It sounds as if you said there's a</p> <p>2 balancing --</p> <p>3 THE WITNESS: Yeah. There's not a formalized</p> <p>4 prioritization. Everyone's situation's different. And that's</p> <p>5 where the -- having the procedures in place to evaluate all</p> <p>6 aspects come into play and also the importance of having a</p> <p>7 multidisciplinary team of people reviewing that so that no one</p> <p>8 person does it in isolation is critical to treating every</p> <p>9 situation as it should be.</p> <p>10 COMMISSIONER HANSON: Thank you.</p> <p>11 MR. SMITH: Other Commissioner questions?</p> <p>12 CHAIRMAN JOHNSON: Thanks, Mr. Smith. Mr. Koski, my</p> <p>13 question deals with control points. Now you described as the</p> <p>14 first task in selecting a route through South Dakota.</p> <p>15 You note that the southern control point was the</p> <p>16 Missouri River near Yankton.</p> <p>17 THE WITNESS: Yes.</p> <p>18 CHAIRMAN JOHNSON: And then you gave some rationales</p> <p>19 for why that was selected as a control point. Were there other</p> <p>20 southern control points considered?</p> <p>21 THE WITNESS: The Missouri River crossing, there was</p> <p>22 basically general locations that were considered. Major river</p> <p>23 crossings as you point out do often form control points and</p> <p>24 fixed portions of the route. The Missouri was certainly one</p> <p>25 that was recognized very early on as being one of those. And</p>	<p style="text-align: right;">144</p> <p>1 pipeline?</p> <p>2 CHAIRMAN JOHNSON: Well, no. I actually mean that if</p> <p>3 there are two already, if Keystone were to become the third and</p> <p>4 it becomes a place where pipelines collocate often, if there's a</p> <p>5 fourth pipeline and they're directionally drilling, does that</p> <p>6 raise the likelihood there will be third-party damage to what</p> <p>7 would be the existing Keystone Pipeline?</p> <p>8 THE WITNESS: I guess there would be a remote</p> <p>9 possibility there could be some interaction from a new</p> <p>10 installation with existing pipelines. But I will say</p> <p>11 directional drilling technology and the contractors that are</p> <p>12 employed are highly skilled, the technology is very advanced,</p> <p>13 and the progress of the drilling operation is monitored</p> <p>14 continuously.</p> <p>15 It is always known where it is down hole so there's</p> <p>16 very little risk of running into something that you know is</p> <p>17 there. Just because it's monitored continuously.</p> <p>18 CHAIRMAN JOHNSON: Are you familiar with the -- the</p> <p>19 property ownership along the I-29 corridor adjacent to the right</p> <p>20 of way that was briefly considered by TransCanada Keystone?</p> <p>21 THE WITNESS: No. I'm not familiar with it.</p> <p>22 CHAIRMAN JOHNSON: Okay. That's all I have.</p> <p>23 MR. SMITH: Other Commissioner questions?</p> <p>24 Any redirect?</p> <p>25 MR. KOENECKE: No. Thank you.</p>

<p style="text-align: right;">145</p> <p>1 MR. SMITH: Any questions responsive to the</p> <p>2 Commissioners' questions?</p> <p>3 MR. RASMUSSEN: Just one question.</p> <p>4 <u>RECROSS-EXAMINATION</u></p> <p>5 <u>BY MR. RASMUSSEN:</u></p> <p>6 Q. In determining the Yankton site, was it the fact that the</p> <p>7 Lewis and Clark intake for its water system is located</p> <p>8 downstream? Did that play any part in determining the location?</p> <p>9 A. No, it did not.</p> <p>10 MR. RASMUSSEN: Thank you.</p> <p>11 MR. SMITH: Any other cross-examination?</p> <p>12 MR. HOHN: I have one question regarding your crossing</p> <p>13 at Yankton.</p> <p>14 <u>RECROSS-EXAMINATION</u></p> <p>15 <u>BY MR. HOHN:</u></p> <p>16 Q. If I'm viewing the picture right, this is right at the</p> <p>17 River. And this would be Exhibit 10. The red line and the</p> <p>18 yellow line, is the red line the original route?</p> <p>19 A. Yes, it is.</p> <p>20 Q. And the yellow line is the new route?</p> <p>21 A. Yes, it is.</p> <p>22 Q. I've stayed at both places and I may have the names</p> <p>23 reversed but there's -- near the yellow line there's a hotel --</p> <p>24 there's two hotels, and you're going right between the two; is</p> <p>25 that correct?</p>	<p style="text-align: right;">147</p> <p>1 Thank you.</p> <p>2 (The witness is sworn by the court reporter)</p> <p>3 <u>DIRECT EXAMINATION</u></p> <p>4 <u>BY MR. KOENECKE:</u></p> <p>5 Q. Would you state your name and business address for the</p> <p>6 record, please.</p> <p>7 A. My name is Scott Ellis. My business address is</p> <p>8 1601 Prospect Parkway, Fort Collins, Colorado.</p> <p>9 Q. Are you employed or engaged by the Keystone Pipeline in</p> <p>10 some capacity?</p> <p>11 A. Yes. I am responsible for collecting information that was</p> <p>12 then entered -- or entered into permit applications for both</p> <p>13 federal and state permit applications.</p> <p>14 Q. Can you briefly state your educational and professional</p> <p>15 background for us.</p> <p>16 A. I am currently a project manager for ENSR, a consulting</p> <p>17 engineering and environmental engineering company, and I have</p> <p>18 been a project manager for the last 20 years or so, primarily in</p> <p>19 the area of pipeline projects as well as other industrial</p> <p>20 facilities. And I'm a graduate of Cornell University.</p> <p>21 Q. Did you provide written testimony which was prefiled in</p> <p>22 this matter?</p> <p>23 A. Yes.</p> <p>24 Q. On the stack there to your left did you find that on the</p> <p>25 top?</p>
<p style="text-align: right;">146</p> <p>1 A. That's what it indicates here. I don't have personal</p> <p>2 knowledge of this route variation.</p> <p>3 Q. The federal regulations say that wherever possible you try</p> <p>4 to stay at least 50 feet away from a private dwelling or a place</p> <p>5 like a hotel where there may be a lot of people staying.</p> <p>6 Would you have a -- the red line is routed along 104 -- or</p> <p>7 4,000, 5,000, 6,000, 7, those are all warehouses facilities, and</p> <p>8 offices. Do you know why that route is changed?</p> <p>9 A. I do not know why the route has changed. However, I do</p> <p>10 note that there have been discussions ongoing with the City of</p> <p>11 Yankton to accommodate its expansion plans, and we've been</p> <p>12 working with the City engineer on locating the facility that's</p> <p>13 consistent with their planned developments.</p> <p>14 Q. Well, then one last question on this. Where you rerouted</p> <p>15 between the two hotels -- I believe one's a Super 8 and the</p> <p>16 other one's possibly a Best Western -- do you make the pipe</p> <p>17 thicker? Do you build the pipe thickener that area?</p> <p>18 A. I would have to defer that question.</p> <p>19 MR. HOHN: Thank you.</p> <p>20 MR. SMITH: Any follow-up, Mr. Koenecke?</p> <p>21 MR. KOENECKE: No. Thank you.</p> <p>22 (The witness is excused)</p> <p>23 MR. SMITH: You're excused. Mr. Koenecke, do you want</p> <p>24 to call your next witness?</p> <p>25 MR. KOENECKE: I will call Scott Ellis to the stand.</p>	<p style="text-align: right;">148</p> <p>1 A. I do.</p> <p>2 Q. Do you have any additions or corrections to that testimony?</p> <p>3 A. I do not.</p> <p>4 Q. If I asked you each of the questions contained in that</p> <p>5 document again, would you answer as you did in writing?</p> <p>6 A. Yes.</p> <p>7 Q. I handed you what I've marked as TC 12. Are you familiar</p> <p>8 with that document?</p> <p>9 A. I would have to look at it for a moment. I'm not familiar</p> <p>10 with it.</p> <p>11 (Witness examines document)</p> <p>12 Q. Perhaps if you look at the --</p> <p>13 A. Yeah. I'm looking. It appears to be that this has been</p> <p>14 copied from the Application.</p> <p>15 Q. And doesn't it constitute changes to some of the acreages</p> <p>16 contained in the Application?</p> <p>17 A. If I could take a moment, I'd like to quickly compare them.</p> <p>18 Q. You may.</p> <p>19 (Witness examines documents)</p> <p>20 A. Yes. I examined and compared the two and they are</p> <p>21 different, and the exhibit updates the disturbance estimates</p> <p>22 that were provided in the Application.</p> <p>23 Q. Can you tell us what the changes are, please.</p> <p>24 A. In the original Application the estimate was for</p> <p>25 construction of the pipeline would disturb approximately</p>

<p style="text-align: right;">149</p> <p>1 2,169 acres or 75 percent of the proposed corridor. And the</p> <p>2 update is that the pipeline would disturb approximately</p> <p>3 2,504 acres or 74 percent of the proposed corridor.</p> <p>4 And then there is a second section here, which if I could</p> <p>5 turn here, our original estimate was that the construction of</p> <p>6 the pipeline would disturb approximately 633 acres or 21 percent</p> <p>7 of the proposed corridor of grassland and rangeland. It's kind</p> <p>8 of a combined land use category.</p> <p>9 And in the exhibit it indicates that the pipeline would</p> <p>10 disturb approximately 679 acres or 20 percent of the proposed</p> <p>11 corridor of grassland/rangeland.</p> <p>12 Q. Does TC 12 then update correctly those disturbances to your</p> <p>13 knowledge?</p> <p>14 A. Yes.</p> <p>15 MR. KOENECKE: I'd ask that TC 12 be admitted as</p> <p>16 evidence.</p> <p>17 MR. SMITH: Objection?</p> <p>18 MR. RASMUSSEN: No objection.</p> <p>19 MR. SMITH: TC 12 is admitted.</p> <p>20 Q. Do you know of any other additions or corrections to your</p> <p>21 testimony?</p> <p>22 A. I have no other additions.</p> <p>23 Q. Oh, and your rebuttal testimony as well. Have you taken a</p> <p>24 look at R?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">151</p> <p>1 the ground by qualified archeologists.</p> <p>2 Q. It's my understanding some pipelines do a 100 percent</p> <p>3 pedestrian survey of proposed routes. Is that correct?</p> <p>4 A. It depends upon -- well, it depends upon what the State</p> <p>5 Historic Preservation authorizes the Applicant to do. I mean,</p> <p>6 it depends on sort of -- it depends on the project. It depends</p> <p>7 upon the types of environment that the pipeline is crossing.</p> <p>8 But there's not a fixed requirement to do a 100 percent survey.</p> <p>9 Q. How much of the South Dakota portion of the pipeline was --</p> <p>10 and I guess when we say pedestrian survey that means the site is</p> <p>11 walked by somebody; is that right?</p> <p>12 A. Correct.</p> <p>13 Q. How much of this pipeline route was actually walked by</p> <p>14 somebody?</p> <p>15 A. If you don't mind, I'd like to refer to the direct</p> <p>16 testimony on that.</p> <p>17 Q. Sure. I think it's paragraph 28, I believe.</p> <p>18 A. The direct testimony here states that approximately</p> <p>19 38 miles of the proposed 219.9-mile route in South Dakota was</p> <p>20 selected for intensive pedestrian field survey.</p> <p>21 Q. Intensive pedestrian field survey? Is there a</p> <p>22 nonintensive?</p> <p>23 A. Well, I think what it means is that it's -- what -- there's</p> <p>24 basic methods for people walking what are called transects, and</p> <p>25 they walk at a relatively fixed distance so they have a good</p>
<p style="text-align: right;">150</p> <p>1 Q. And if I asked you each of those questions, would you</p> <p>2 answer the same way as you did therein?</p> <p>3 A. Yes.</p> <p>4 MR. KOENECKE: Thank you. I have nothing further.</p> <p>5 I'll tender the witness for cross-examination.</p> <p>6 MR. SMITH: Mr. Rasmussen, please proceed.</p> <p>7 <u>CROSS-EXAMINATION</u></p> <p>8 <u>BY MR. RASMUSSEN:</u></p> <p>9 Q. Mr. Ellis, take a look at paragraph 9 of your direct</p> <p>10 testimony.</p> <p>11 A. Yes.</p> <p>12 Q. It talks about consultation with federal and state agencies</p> <p>13 and among the agencies mentioned are the State Historical</p> <p>14 Society.</p> <p>15 Can you describe for me the nature of the consultation that</p> <p>16 you had with the South Dakota State Historical Society?</p> <p>17 A. Yes. To determine what types of cultural resource surveys</p> <p>18 as well as the information needed to conduct those surveys. It</p> <p>19 was essential to conduct consultations with that agency.</p> <p>20 Q. And what sort of cultural resource surveys were done?</p> <p>21 A. Sort of -- sort of from the beginning there's a step that's</p> <p>22 called a records search in which you were looking for previously</p> <p>23 recorded sites which go into the development of what's called a</p> <p>24 research design, which is a document which is essentially a</p> <p>25 study plan for conducting what's called pedestrian surveys on</p>	<p style="text-align: right;">152</p> <p>1 survey area that they can with confidence see and determine if</p> <p>2 there are any artifacts on the ground. So it's a fairly</p> <p>3 systematic approach to looking for signs of cultural resources</p> <p>4 or artifacts.</p> <p>5 Q. If my math is right, 38 miles out of 219.9 is about</p> <p>6 17 percent. Does that sound about right?</p> <p>7 A. I think that's about right, yes.</p> <p>8 Q. You also state that you had consultation with the</p> <p>9 Department of Environment and Natural Resources. Can you</p> <p>10 describe the nature of that consultation for me?</p> <p>11 A. I could describe the consultation that I was involved in.</p> <p>12 There may have been others whom I cannot characterize. But we</p> <p>13 held meetings with the DENR to identify the types of permits</p> <p>14 that would be needed in the State of South Dakota. This was --</p> <p>15 these meetings were conducted in early 2006 as we were sort of,</p> <p>16 you know, bringing the project forward, and the DENR was invited</p> <p>17 to several meetings.</p> <p>18 Q. Who did you specifically meet with from DENR?</p> <p>19 A. I'd have to follow up with meeting notes, but I don't have</p> <p>20 them in front of me here.</p> <p>21 Q. Do you remember any of the people that were involved?</p> <p>22 A. Not with confidence, no.</p> <p>23 Q. Paragraph 10 of your direct testimony references -- and it</p> <p>24 would be on page 4. References Native American consultation.</p> <p>25 Can you describe that for me?</p>

<p style="text-align: right;">153</p> <p>1 Who was consulted with, and what was the nature of that</p> <p>2 consultation?</p> <p>3 A. Well, the Native American consultation is primarily a</p> <p>4 consultation that takes place between the Federal Government and</p> <p>5 the tribes. And in this case that consultation is being --</p> <p>6 being undertaken by the Department of State.</p> <p>7 Q. So Keystone itself or you yourself were not involved in any</p> <p>8 consultation with the Native Americans?</p> <p>9 A. I believe that our cultural resource contractors did send</p> <p>10 out letters simply stating that the project was -- was</p> <p>11 undertaking this project, but it was really -- but then a fairly</p> <p>12 short time after that the Department of State took that whole</p> <p>13 program over, and the project no longer had any direct</p> <p>14 communication with the tribes.</p> <p>15 Q. Are you aware of some concerns raised by Tim Mentz, the</p> <p>16 Standing Rock Tribal Historic Preservation Officer, in</p> <p>17 correspondence that was submitted in connection with the</p> <p>18 development of the draft EIS?</p> <p>19 A. I am not personally, no.</p> <p>20 Q. Were you aware that any such concerns were raised at all?</p> <p>21 A. Yeah. I'm aware that there have been concerns, but I can't</p> <p>22 characterize them in detail.</p> <p>23 Q. Have those concerns been addressed in any manner?</p> <p>24 A. To my knowledge that those discussions are being ongoing</p> <p>25 between the Department of State and the tribes.</p>	<p style="text-align: right;">155</p> <p>1 Q. Do you know where it would be or would it be part of the</p> <p>2 draft EIS?</p> <p>3 A. Well, I think it would have been part of the -- support</p> <p>4 materials I believe were -- it would have been Exhibit C. But</p> <p>5 where in Exhibit C, unfortunately, I can't tell you.</p> <p>6 Q. All right. It's in there somewhere, though?</p> <p>7 A. Yes.</p> <p>8 Q. This mentioned that Fish & Wildlife, that letter had to do</p> <p>9 with the crossing of grassland and wetland easements in</p> <p>10 South Dakota. I think it was Mr. Koski said you would be the</p> <p>11 guy to define a grassland.</p> <p>12 So could you do that for me?</p> <p>13 A. Well, I think that there's sort of two ways of looking at</p> <p>14 grassland. In the context of the section here under 20 it's</p> <p>15 really an area that the Fish & Wildlife Service is interested in</p> <p>16 protecting. And they protect them under what they call</p> <p>17 grassland easements. And some of these are -- for the most part</p> <p>18 they are -- some of them are native grasslands. Some are</p> <p>19 mixtures of former cropland and native grass.</p> <p>20 But by and large they are protecting them because they are</p> <p>21 primarily in -- you know, they are -- you know, they're</p> <p>22 dominated by grass.</p> <p>23 So that's kind of that sort of definition as it relates to</p> <p>24 what the Fish & Wildlife Service is interested in.</p> <p>25 And I think the other aspect of what we were looking at</p>
<p style="text-align: right;">154</p> <p>1 Q. Paragraph 16 of your direct testimony states that,</p> <p>2 Approximately 5 percent of the overall project surface</p> <p>3 disturbance will affect highly erodible soils. What's the</p> <p>4 source of that statement?</p> <p>5 A. I believe that it is mapping of soils that are based on the</p> <p>6 natural resource conservation service maps that -- where the map</p> <p>7 units are then characterized in accordance or are sorted by</p> <p>8 their erodibility and then grouped together to make estimates of</p> <p>9 their overall erodibility.</p> <p>10 Q. Is the crossing of highly erodible soils a concern?</p> <p>11 A. It's a concern to the extent that they need to be planned</p> <p>12 for, yes.</p> <p>13 Q. What do you do to plan for it?</p> <p>14 A. Well, we account for the fact that if there are both wind</p> <p>15 and water, there are certain measures during construction that</p> <p>16 you would want to consider to protect topsoil when it's</p> <p>17 excavated and reapplied.</p> <p>18 Q. Turn to paragraph 20 of your direct testimony on page 10.</p> <p>19 That references a June 8, 2006 letter from U.S. Fish & Wildlife</p> <p>20 Service. Has that letter been filed in connection with this</p> <p>21 proceeding?</p> <p>22 A. I believe it has. I believe that that letter was filed in</p> <p>23 conjunction with other materials that were filed with the</p> <p>24 Department of State but in turn were also filed with the</p> <p>25 Commission here.</p>	<p style="text-align: right;">156</p> <p>1 grasslands for was as support for some of the listed plant and</p> <p>2 animal species that are dependant on these types of native</p> <p>3 grasslands. We're calling them -- or undisturbed grasslands,</p> <p>4 they have a very high percentage of native species in their</p> <p>5 composition.</p> <p>6 Q. What is the danger to a grassland from construction of a</p> <p>7 pipeline such as this? Why is Fish & Wildlife concerned about</p> <p>8 that?</p> <p>9 A. I think largely that they -- in areas that have sort of</p> <p>10 high composition of -- or diverse composition of native plants</p> <p>11 are concerned about potential for weed invasion. They're</p> <p>12 concerned about just restoration of the species that were</p> <p>13 formerly there.</p> <p>14 Q. Would similar concerns with regard to weed invasion be true</p> <p>15 of any of the area where the pipeline is going to be installed?</p> <p>16 A. Yes.</p> <p>17 Q. So private landowners would have the same type of concern</p> <p>18 that Fish & Wildlife would have in that regard?</p> <p>19 A. It's possible, yes.</p> <p>20 Q. But they don't have -- private landowners don't have the</p> <p>21 power like the Government does to tell you to move the pipeline</p> <p>22 off of their land; correct?</p> <p>23 A. Well, I don't know if it's a matter of moving the pipeline</p> <p>24 but there are measures that can be applied to control weeds or</p> <p>25 at least look out for them or again plan to prevent weeds from</p>

<p style="text-align: right;">157</p> <p>1 being a problem.</p> <p>2 Q. But, nevertheless, Fish & Wildlife still didn't want the</p> <p>3 pipeline going across its grassland easement land?</p> <p>4 A. Well, I think it's fair to say that the Fish & Wildlife</p> <p>5 Service didn't prefer the pipeline on their grassland easements.</p> <p>6 They just simply stated that, you know, they would need to look</p> <p>7 at it in detail, and they would certainly want to see, you know,</p> <p>8 what kinds of planning would take place as part of their review</p> <p>9 process in granting an easement across their lands.</p> <p>10 Q. So rather than go through that process, the decision was</p> <p>11 made to simply move the pipeline off of that land?</p> <p>12 A. Well, I think in that sense that's true. It easier to go</p> <p>13 somewhere else.</p> <p>14 Q. Does the pipeline go across native grassland and private</p> <p>15 property that's not part of a Government easement area?</p> <p>16 A. Yes.</p> <p>17 Q. Are special things being done to protect that native</p> <p>18 grassland?</p> <p>19 A. Well, I think what we're doing now is trying to narrow down</p> <p>20 the areas that are the highest quality or the most sensitive.</p> <p>21 And then I think what we're anticipating is probably a fairly</p> <p>22 detailed reclamation planning effort to identify the best way to</p> <p>23 get across those grasslands to minimize the loss of diversity</p> <p>24 and ensuring that they recover.</p> <p>25 Q. Do you know how many areas of native grassland or how much</p>	<p style="text-align: right;">159</p> <p>1 that's the number we came up with.</p> <p>2 Q. So the definition that you use, is that a -- some sort of</p> <p>3 federal definition or defined in the law somewhere, or is it</p> <p>4 Keystone's definition?</p> <p>5 A. Well, I think in this case it's probably Keystone's</p> <p>6 definition.</p> <p>7 Q. And so just tell me again what is the definition that</p> <p>8 you're using in this case of a perennial stream?</p> <p>9 A. Well, I think we're using the definition, as I said</p> <p>10 earlier, of a consistent flow regime in that stream year-round</p> <p>11 sufficient to maintain aquatic life, you know, particularly</p> <p>12 fisheries.</p> <p>13 Q. And why is it significant -- why is a perennial stream</p> <p>14 significant to the project or the pipeline crossing it? Is that</p> <p>15 an area of higher danger or potential danger?</p> <p>16 A. Well, it's just an area that, you know, depending on the</p> <p>17 sensitivity of the resources in the stream it poses a -- you</p> <p>18 know, it requires planning to cross the stream to construct the</p> <p>19 pipeline across the stream.</p> <p>20 Q. Do you know -- we've heard testimony about some areas</p> <p>21 having thicker pipe and I believe one of those areas being the</p> <p>22 Missouri River. Would the other perennial streams also be areas</p> <p>23 where the thicker pipe would be used?</p> <p>24 A. I don't know the answer to that.</p> <p>25 Q. Not your area?</p>
<p style="text-align: right;">158</p> <p>1 acreage we're talking about that the pipeline's going to cross?</p> <p>2 A. We -- well, what we've done is in sort of the course of</p> <p>3 our, you know, mapping effort and reconnaissance effort and some</p> <p>4 ground survey effort for listed threatened and endangered</p> <p>5 species we've come up with -- I would use, you know, roughly</p> <p>6 5 miles of very high quality native grassland on private lands</p> <p>7 that we would cross.</p> <p>8 And then I think the Application says there's something</p> <p>9 like -- at least as it's been modified by the response, the data</p> <p>10 request, about 12 miles. So I think the very best is somewhere</p> <p>11 in the realm of 5 miles.</p> <p>12 Q. Paragraph 21 -- and actually it's on page 11 I'm</p> <p>13 questioning about -- mentions five perennial streams are crossed</p> <p>14 by the proposed pipeline route, including the Missouri River.</p> <p>15 What's the definition of a perennial stream?</p> <p>16 A. Well, pretty much means that water is running in it almost</p> <p>17 all the time. I think a number of these streams although</p> <p>18 they're classified as perennial tend to -- they have very low</p> <p>19 flows at certain times of the year but by and large they flow</p> <p>20 well -- you know, they flow consistently enough to support, you</p> <p>21 know, a diversity of aquatic life.</p> <p>22 Q. And there's only five such streams along the entire route</p> <p>23 in South Dakota?</p> <p>24 A. I think by the definitions that we were using in terms of</p> <p>25 looking at, you know, supporting aquatic communities, I think</p>	<p style="text-align: right;">160</p> <p>1 A. Not my answer.</p> <p>2 Q. All right. That's fine. You go on in the next paragraph</p> <p>3 of paragraph 22 to talk about hydrostatic testing. And you say</p> <p>4 that will have minor effects on the five perennial streams.</p> <p>5 Hydrostatic testing is when you test the pipeline with</p> <p>6 water after it's been completed but before the product, the</p> <p>7 crude oil, actually starts going through it; is that right?</p> <p>8 A. That's correct.</p> <p>9 Q. How is that done?</p> <p>10 A. Well, I mean, water is withdrawn from a water source. It's</p> <p>11 placed in a section of the pipeline. And then the pipeline is</p> <p>12 pressurized with water up to a -- you know, a fairly high</p> <p>13 pressure, higher than typically you would be operating the</p> <p>14 pipeline at. And you're testing, hold it, and then determine</p> <p>15 whether there are any leaks in the pipeline and release it and</p> <p>16 put the water back in the stream.</p> <p>17 Q. How much water does that take to do that?</p> <p>18 A. Oh, it's very dependant on the amount of water and the</p> <p>19 number of water supplies. And it's just -- it's highly variable</p> <p>20 in terms of that volume.</p> <p>21 Q. And where do you get the water?</p> <p>22 A. Well, I mean, there's a number of options for withdrawing</p> <p>23 hydrostatic test water. You can withdraw it from streams. You</p> <p>24 can withdraw it from wells. You don't have to -- I mean, you</p> <p>25 just have to have a water supply that's sufficient to do the</p>

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1 testing that you need.

2 Q. Well, it will take quite a bit of water to test this entire

3 pipeline, though, won't it?

4 A. Yes. And I think -- again, it's a -- you have to put

5 water -- you know, withdraw the water. You have to plan for it,

6 and then you have to put it back. And the amount of water you

7 can use to test a section is really dependant on how much is

8 available. And I think it's really more kind of part of the

9 construction planning.

10 And at this point I think I will defer a bit on this to

11 Buster Gray to maybe give you some more, you know, parameters

12 that are considered in terms of selecting hydrostatic test

13 sections.

14 Q. Has the planning for the hydrostatic testing been done yet,

15 or is that something that is done later on?

16 A. Well, I think it's been -- it's been done in a preliminary

17 fashion. There's still -- I think still more work to be done.

18 Q. But Mr. Gray would be the best one to talk about that?

19 A. I believe so.

20 Q. Paragraph 23 references a biological assessment submitted

21 to U.S. Fish & Wildlife, and it says that Mr. Kochnar (phonetic)

22 and his staff are currently reviewing a draft biological

23 assessment and that feedback to the Department of State and

24 Keystone is expected by mid-October.

25 Have you received that feedback?

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1 A. Actually it's some -- we have received some feedback, but

2 we have not received all of it. But there's -- what we have --

3 there's been further, you know, development of that biological

4 assessment, but it's not -- the process is not complete.

5 Q. When will that process be completed?

6 A. We're anticipating that it would be completed probably

7 sometime in the same time frame as the draft EIS is coming out.

8 Q. Paragraph 24 mentions that no tribal or federal lands are

9 crossed by the proposed route. Is that -- is there a reason for

10 that? Was that a decision that -- by Keystone that we don't

11 want to go across any tribal or federal lands, or is that just

12 the way it worked out?

13 A. I can't -- I don't know the answer to that question.

14 Q. Paragraph 24 mentions that there are 18 residences within

15 500 feet of the proposed pipeline centerline; is that right?

16 Do you see where I'm reading from?

17 A. Yeah. I'm trying. Yes. It says that.

18 Q. Okay. Do you know where those -- are those plotted out

19 somewhere, or do you know how far from the pipeline those -- are

20 they 20 feet or 500 feet? Do you know?

21 A. Well, they're 500 feet or more is really kind of -- well,

22 it says within 500.

23 Q. So it would be 500 or less, wouldn't it?

24 A. Yeah. You're correct.

25 Q. Do you know what the closest one is?

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1 A. I don't.

2 Q. What's the -- is there some magic about the 500 feet?

3 A. No. Just to simply give kind of a reference of, you know,

4 just sort of what is -- you know, it's a -- some sort of bench

5 of distance from the pipeline in terms of where people are

6 living.

7 Q. Is there any distance that you won't allow the pipeline? I

8 mean, say, 50 feet away or 100 feet away, anything like that?

9 The residence has to be more than a particular distance away?

10 A. I'd prefer that the safety experts respond to that

11 question.

12 Q. That would be Mr. Thomas?

13 A. That would be Mr. Thomas, yes.

14 Q. Okay. All right.

15 MR. RASMUSSEN: I think that's all I have. Thank you,

16 sir.

17 MR. SMITH: Other Intervener cross-examination of

18 Mr. Ellis?

19 MR. HOHN: Yes.

20 CROSS-EXAMINATION

21 BY MR. HOHN:

22 Q. Mr. Ellis, Curt Hohn. On page 3 of your testimony, the top

23 of the page in the middle of the paragraph, Tentatively

24 concludes the Keystone Project will result in limited adverse

25 and environmental impacts, both during construction and

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1 operation and would be an environmentally acceptable action.

2 Are you speaking there of the construction of the project,

3 the operation? And what about -- what about a likely spill in

4 the areas that you saw being crossed environmentally?

5 MR. KOENECKE: Object. That's a compound question.

6 MR. SMITH: Why don't you split it up.

7 MR. HOHN: I'll split it up.

8 Q. Your explanation there, what do you mean by those three

9 lines in terms -- you're the environmental expert; correct, for

10 this project?

11 A. I have a certain set of responsibilities about certain

12 things, yes.

13 Q. Okay. And so in terms of construction and operation you

14 were looking at when you walked the site and examined the site,

15 whatever you did in terms of reviewing documents you were

16 looking to the impacts this would have on the environment; is

17 that correct?

18 A. That's true.

19 Q. And when we say "environment," environment is what?

20 A. Well, I mean, from my perspective it's the environment as

21 it pertains to the areas that I am -- I guess I'm testifying to

22 today, which are listed in the front here.

23 Q. Would you relist them now specifically?

24 A. Yes. Be glad to. Well, again, this is under page 2. I

25 was responsible for -- again, some of this is by compilation.

<p style="text-align: right;">165</p> <p>1 This is information that came from other folks that came from</p> <p>2 other members of our team who put these sections together. But</p> <p>3 specifically the environmental -- 5.1, Environmental Information</p> <p>4 Filed with the Department of State; 5.2, the Summary of</p> <p>5 Environmental Impacts; 5.3, Physical Environment; 5.5,</p> <p>6 Terrestrial Ecosystems; 5.6, Aquatic Ecosystems; 5.7, Land Use</p> <p>7 and Local Controls Except For Local Land Use Controls; 5.9, Air</p> <p>8 Quality; 6.2.6, Cultural and Historical Resources; 6.4.3, Noise</p> <p>9 Impacts; and 6.4.4, Visual Impacts.</p> <p>10 Q. So to summarize, it would be people, wildlife, and natural</p> <p>11 resources. Is that a fair assessment of your summary?</p> <p>12 A. Well, I mean, people to the extent that, you know, we're</p> <p>13 looking at noise and visual impacts and, you know, the cultural</p> <p>14 and historical resources that people, you know, care about.</p> <p>15 Q. Okay. On page 4, item 12 in your answer, in the first line</p> <p>16 of the answer you state that the pipeline will cross terrain of</p> <p>17 a low relief and elevation changes of 150 feet or less.</p> <p>18 And what do you mean by that? The lay of the land? Is not</p> <p>19 that rolling or flat, or what does that statement say?</p> <p>20 A. Well, it's primarily flat, but the changes in elevation are</p> <p>21 relatively small.</p> <p>22 Q. Now the route of this pipeline is along the -- is running</p> <p>23 along the east side of the James River Basin; is that correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And what's immediately to the east -- let's say</p>	<p style="text-align: right;">167</p> <p>1 correct?</p> <p>2 Let me just add to that. The elevation of the coteau is</p> <p>3 about 500 feet higher than where this pipeline is routed</p> <p>4 according to U.S. Geological Survey Maps. Will that</p> <p>5 elevation -- is that elevation significant in terms of the</p> <p>6 environmental impact during rain storms, snowmelt?</p> <p>7 A. Well, I think it's fair to say that you would have to</p> <p>8 consider what sorts of drainages, you know, cross the pipeline</p> <p>9 and, you know, their size and their incision and that sort of</p> <p>10 thing. I mean, do they -- you would have to ask whether</p> <p>11 they're -- they have to be considered in terms of stabilization</p> <p>12 of the pipeline right of way.</p> <p>13 Q. And did you ask those questions, and did you look into that</p> <p>14 issue?</p> <p>15 A. I guess I personally did not, no.</p> <p>16 Q. So you're not -- you're not -- you would not be able to</p> <p>17 necessarily say where major drainage ways -- what volumes may be</p> <p>18 coming out of that watershed based on your study?</p> <p>19 A. To my knowledge we have not -- there are not -- there are</p> <p>20 not studies done on like -- it sounds like what you're saying is</p> <p>21 were there storm water studies done in those drainages.</p> <p>22 Q. By your part of this project.</p> <p>23 A. No. No, sir.</p> <p>24 Q. Okay. On page -- the top of page 5 you refer at the very</p> <p>25 top line to the little risk of subsistency (sic) from fissures</p>
<p style="text-align: right;">166</p> <p>1 Marshall County? What's immediately to the east of where the</p> <p>2 pipeline is routed? Is there any major geological formation?</p> <p>3 A. Well, I'm not sure exactly -- the Dakota Prairies, coteau</p> <p>4 is there. There was a major drumlin there.</p> <p>5 Q. Mr. Ellis, when you looked at the route and you looked at</p> <p>6 your environmental assessment did you take into account the</p> <p>7 elevation difference between the coteau and where the pipeline</p> <p>8 route was?</p> <p>9 A. Could you restate that question, please.</p> <p>10 Q. When you looked at the impacts that the project might have</p> <p>11 on the area did you look -- did you compare the elevation</p> <p>12 between where the pipe route goes through all the counties and</p> <p>13 the elevation of the coteau to the east in relation to runoff,</p> <p>14 spring runoff, snowmelt, that sort of thing?</p> <p>15 A. Well, I mean, it was a feature that we considered, but it</p> <p>16 was primarily because if we're talking about the coteau, it's</p> <p>17 quite -- it's quite rocky. It has -- you know, it's -- it has a</p> <p>18 slope, but again there was -- it was just to the east of</p> <p>19 where -- you know, where the pipeline was going to run so there</p> <p>20 was no benefit in going up it or near it or any closer than we</p> <p>21 needed to.</p> <p>22 Q. But in terms of looking at where the pipe went through and</p> <p>23 across a creek or stream or erodible soils, the drainage basin</p> <p>24 that contributes -- goes through that area would have an effect</p> <p>25 on what might happen to the environment where you cross; is that</p>	<p style="text-align: right;">168</p> <p>1 and sinkholes, (karst).</p> <p>2 Could you describe a karst for us?</p> <p>3 A. Karst is -- again, I think Mr. Koski testified to some of</p> <p>4 this in terms of subsidence. But, I mean, karst tends to be</p> <p>5 limestone deposits that -- in which you can get -- I guess I'll</p> <p>6 use the word sinkholes where you can actually get cavities or</p> <p>7 openings in the rock that allow certain amount of subsidence or</p> <p>8 above -- or the soil above it. So it's an area of concern in</p> <p>9 terms of stability.</p> <p>10 Q. Would a karst in an area along a pipeline route, would a</p> <p>11 karst also be an area of concern in the event of an oil spill?</p> <p>12 A. I think it really depends upon how -- you know, what</p> <p>13 confining materials are there between where the karst or the</p> <p>14 geologic bed is versus the surface and whether there are</p> <p>15 confining layers of clays and other materials that prevent any</p> <p>16 kind of downward movement of oil.</p> <p>17 Q. If there wasn't clay that would keep the oil away from</p> <p>18 the karst, the karst would allow the oil to go down into the</p> <p>19 ground greater than it normally would into soil; isn't that</p> <p>20 correct?</p> <p>21 A. You know, I think it's very site specific in terms of -- I</p> <p>22 don't know the answer to that.</p> <p>23 Q. On page 6, the very top of your testimony, you refer to</p> <p>24 gravelly soils where a water table is at or near the surface,</p> <p>25 soil surface. And you mentioned that they occurred</p>

<p style="text-align: right;">169</p> <p>1 predominantly in Marshall and Day Counties; is that correct?</p> <p>2 A. That's what it says.</p> <p>3 Q. Is that an area where you have an area where you have a lot</p> <p>4 of wetlands and you're in sandy soils, is that a concern in</p> <p>5 terms of the routing of an oil pipeline, both construction and</p> <p>6 operation?</p> <p>7 A. Well, it's a -- you know, I mean, I think it's a concern in</p> <p>8 terms of planning and response, but, again, those are conditions</p> <p>9 that are -- you know, sort of regionally occur in a number of --</p> <p>10 over a large area so it's -- it certainly is a consideration,</p> <p>11 but it's not a primary consideration.</p> <p>12 Q. Again, the top of page 6, the second sentence there, the</p> <p>13 predominant occurrence of soil is dominated by wetlands in</p> <p>14 Marshall and Day County. You must have encountered a great deal</p> <p>15 of sandy soil and shallow aquifer in that area.</p> <p>16 Would that be correct to say? Is that what you're saying?</p> <p>17 A. Well, again, I think this particular section I guess I'm</p> <p>18 not in a position to comment on just exactly where the water --</p> <p>19 you know, where the water table is and what's contributing to</p> <p>20 it.</p> <p>21 I think what we're trying to point out here is just simply</p> <p>22 that these are where we're seeing -- well, I think we're backing</p> <p>23 up poorly drained soils forming glacial till with high clay</p> <p>24 contents support --</p> <p>25 Let me just start over here. "Poorly drained soils formed</p>	<p style="text-align: right;">171</p> <p>1 says that, Approximately 752 acres represent potential wetland</p> <p>2 habitat.</p> <p>3 I assume that means it's crossed, those acres are crossed?</p> <p>4 Is that what that means?</p> <p>5 A. I believe it states approximately 752 acres represent</p> <p>6 potential wildlife habitat.</p> <p>7 Q. My question, Mr. Ellis, as the environmental officer on</p> <p>8 this project or one of them, is the Fish & Wildlife Service or</p> <p>9 the Game, Fish & Parks going to require mitigation of impacted</p> <p>10 wetlands as they would on other federal projects with a 6-to-1</p> <p>11 ratio of replacement? In your opinion? Based on your</p> <p>12 knowledge?</p> <p>13 A. Based on my knowledge now, I don't think we're looking at</p> <p>14 that kind of mitigation formula simply because we're essentially</p> <p>15 restoring -- putting a pipeline in and then the functions of</p> <p>16 that land above the pipe will be allowed to be restored.</p> <p>17 Q. I have just one last question then. On page 9, the third</p> <p>18 line down -- well, actually these three, four bullets in a row,</p> <p>19 the Bald Eagle, the Least Tern, the Dakota Skipper, and the</p> <p>20 Western Prairie Fringe Orchid, are these endangered species or</p> <p>21 protected?</p> <p>22 A. Well, the Bald Eagle was just recently delisted. The</p> <p>23 Least Tern and Piping Plover are threatened species. The</p> <p>24 Dakota Skipper Butterfly is a federal candidate species. The</p> <p>25 Western Prairie Fringed Orchid is a federal threatened species,</p>
<p style="text-align: right;">170</p> <p>1 in glacial till with a high clay content support pothole</p> <p>2 wetlands and wet meadows. Wetlands also occupy sandy and</p> <p>3 gravely soils where the water table is at or near the soil</p> <p>4 surface."</p> <p>5 Q. And the next sentence?</p> <p>6 A. "The predominant occurrences of soils dominated by wetlands</p> <p>7 are in Marshall and Day Counties."</p> <p>8 Q. So there is a connection between wetlands and shallow</p> <p>9 aquifer, and the recharging of aquifers in some areas might be</p> <p>10 more sensitive environmentally than areas that have clay soils?</p> <p>11 A. Correct.</p> <p>12 Q. On page 7 of your testimony, Item 18, in the answer about</p> <p>13 four lines down to mitigate the potential for impacts. Is</p> <p>14 Keystone required to mitigate the impact they cause on the</p> <p>15 environment when they go through an area with their pipeline?</p> <p>16 A. Well, I think there's -- you know, when we say mitigate I</p> <p>17 think what we're looking at is a -- you know, a -- sort of a</p> <p>18 restoration plan that conforms to the requirements of agencies,</p> <p>19 federal and state agencies. You know, it's plans that conform</p> <p>20 to the needs of landowners.</p> <p>21 This is just the way pipelines are, you know, constructed.</p> <p>22 And then there's a restoration process, again, sort of</p> <p>23 addressing, you know -- just simply trying to put things back</p> <p>24 together the way -- close to the way they were.</p> <p>25 Q. On the bottom of page 7, the last paragraph, first line</p>	<p style="text-align: right;">172</p> <p>1 I believe.</p> <p>2 Q. Are they protected under the HCA, the highly consequential</p> <p>3 area, or sensitive areas?</p> <p>4 A. Not explicitly. They are simply based on what their</p> <p>5 life -- where they occur and what they -- what their life</p> <p>6 requirements are is the focus of protection.</p> <p>7 MR. HOHN: Thank you.</p> <p>8 MR. SMITH: Do any other Interveners have</p> <p>9 cross-examination Mr. Ellis?</p> <p>10 MS. ANDERSON: May I ask one question?</p> <p>11 <u>CROSS-EXAMINATION</u></p> <p>12 <u>BY MS. ANDERSON:</u></p> <p>13 Q. I have just a question. You've got Bald Eagle Winter Roost</p> <p>14 Surveys. What does that mean?</p> <p>15 A. That means we were looking for where the Bald Eagles</p> <p>16 aggregate, usually where they roost in trees along the larger</p> <p>17 rivers, in some cases some of the smaller rivers, depending on</p> <p>18 where the food sources are.</p> <p>19 Q. So it only matters where they roost in the wintertime?</p> <p>20 A. I'm sorry?</p> <p>21 Q. It only matters where they roost in the wintertime?</p> <p>22 A. Well, I mean, it also matters where they nest in the</p> <p>23 summertime.</p> <p>24 Q. Okay. It says, No roosts were observed in South Dakota</p> <p>25 within 1 mile of the pipeline. 5 miles north of Highway 10 on</p>

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1 415th Avenue a little over a half a mile to the east until
2 apparently this was taken there has been a Bald Eagle's nest
3 there. It's not there now.
4 MR. KOENECKE: I object. The Intervener's testifying.
5 There's no question.
6 MS. ANDERSON: I'm just asking. I want to know what
7 he's --
8 Q. This thing says, Winter Roost Survey.
9 A. Well, I mean it was very specifically for winter roost
10 areas which are where Bald Eagles aggregate usually.
11 Q. So my question is it doesn't matter if it's summer
12 roosting?
13 A. Not as it related to this survey.
14 Q. May I ask why?
15 A. I think we -- I'm trying to -- I mean, in part we were
16 looking primarily where Bald Eagles might be affected by the
17 project. And what we could determine from speaking with the
18 agency, the wildlife agency folks, the main area of concern were
19 the winter roosts. So that was where the primary focus of our
20 work was.
21 Q. Okay. So then summer does not matter.
22 MR. KOENECKE: Asked and answered.
23 MR. SMITH: Sustained.
24 MS. ANDERSON: Thank you.
25 MR. SMITH: Any other Interveners wish to

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1 cross-examine?
2 Staff, do you have questions of Mr. Ellis?
3 MS. SEMMLER: No. Thank you.
4 MR. SMITH: Commissioners, do you want to proceed now
5 with your questions, or do you want to give the reporter a break
6 first?
7 COMMISSIONER KOLBECK: I do have a couple for this
8 witness.
9 CHAIRMAN JOHNSON: I've got a couple. It seems like
10 Commissioner Kolbeck's got a couple.
11 MR. SMITH: Why don't we go ahead, and that will be a
12 logical break.
13 COMMISSIONER KOLBECK: Mr. Ellis, I guess the
14 grassland -- we were discussing grasslands. All of the
15 grasslands are identified; correct, regardless of ownership?
16 Whether it be on federal land, private land, all the grasslands
17 were identified?
18 THE WITNESS: Yes. That was what we tried to do is
19 identify -- well, again, it depends on your definition of
20 grasslands, but that was one of our requirements to do as part
21 of your process was to identify the grassland.
22 COMMISSIONER KOLBECK: So it was required of you and
23 you identified all of them; correct?
24 THE WITNESS: Yes, sir.
25 COMMISSIONER KOLBECK: And then in the hydro

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1 testing -- the hydrostatic testing, we touched on that. That
2 was another -- is that done by segment? You kind of insinuated
3 it was done by segment. I was curious. Is that done by the
4 full 1,300 miles --
5 THE WITNESS: No. It's done in shorter segments
6 depending on the viability of water. But you can pressurize
7 short segments, test it, move the water along, test another
8 segment. So you can use the same water over again.
9 And if it's important, you can bring the water back
10 and put it back in the watershed that it had originated from.
11 COMMISSIONER KOLBECK: How is that done? Through the
12 pipes or actually tested before the pipe is completed?
13 THE WITNESS: No. The pipe is completed -- again, I
14 mean, I could -- it's part of the -- you know, it's sort the
15 commissioning process for the pipeline. And then really what
16 you're doing is you're putting a pressure test on your line,
17 and, you know, that's all done before it can be filled with oil.
18 So you're -- that's -- that whole process goes on just before
19 the pipeline starts to fill with oil.
20 COMMISSIONER KOLBECK: My last question was just how
21 close is the closest house, but I think Mr. Rasmussen already
22 asked that. Could you refer us to someone who would know the
23 answer to that question?
24 THE WITNESS: I don't know. I think I would
25 probably -- I would probably refer it to Buster. I don't know

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1 exactly right now who is the best one to answer that question,
2 but we'll take it under advisement and try to get you an answer.
3 COMMISSIONER KOLBECK: The requirement that you're
4 required is 50 feet, though; correct?
5 THE WITNESS: Well, again, this is sort of -- you
6 know, is it a safety -- you know, what's the safety standard? I
7 mean, that's -- again, I think some of the safety folks can give
8 you a more direct answer, but I think that falls in the area of
9 being reasonable, yes.
10 COMMISSIONER KOLBECK: All right. That's it. Thank
11 you.
12 THE WITNESS: Sure.
13 CHAIRMAN JOHNSON: Mr. Ellis, my question has to do
14 with your testimony and your response to question number 28
15 that's on page 15, the last paragraph of that answer.
16 You talk about the 2007 Field Survey Reports. Have
17 those reports been completed?
18 THE WITNESS: There are Field Survey Reports that have
19 been completed, and they have been filed with the State Historic
20 Preservation Office here in North Dakota as well as -- excuse
21 me. The Department of State.
22 CHAIRMAN JOHNSON: Any route changes or other material
23 changes made to the pipeline route or construction plan as a
24 result of those field surveys?
25 THE WITNESS: Yes. I believe one of the realignments

<p style="text-align: right;">177</p> <p>1 that were presented here were in response to a cultural site</p> <p>2 that was found and, therefore, it's been deviated away from that</p> <p>3 site.</p> <p>4 CHAIRMAN JOHNSON: So not all of the Field Survey</p> <p>5 Reports have been completed, though?</p> <p>6 THE WITNESS: There are still some field work going on</p> <p>7 that will probably be reported ongoing into early next year.</p> <p>8 We've been filing reports incrementally as -- as work is</p> <p>9 completed. Then it's submitted and, you know, more work is done</p> <p>10 depending on what needs to be done.</p> <p>11 CHAIRMAN JOHNSON: Okay. Thanks. That's all I have,</p> <p>12 Mr. Smith.</p> <p>13 MR. SMITH: Thank you. I had one question if I might,</p> <p>14 Mr. Ellis, for you.</p> <p>15 On Paragraph 13, page 5 you state that, TransCanada</p> <p>16 will not attempt to recover or study fossils inadvertently</p> <p>17 discovered.</p> <p>18 Would you please elaborate on that? I mean, I'm</p> <p>19 assuming if you come upon a Tyrannosaurus Rex, that you will not</p> <p>20 dig it up and throw it away. Is that --</p> <p>21 THE WITNESS: Well, I think what it says is that we</p> <p>22 don't expect -- or we're not -- I mean, I think the project is</p> <p>23 saying that there's not a specific requirement to locate and</p> <p>24 preserve fossils that we're aware of.</p> <p>25 MR. SMITH: I've noticed in, you know, some of the</p>	<p style="text-align: right;">179</p> <p>1 be long-term noise sources. I'm trying to remember if in the</p> <p>2 Application there was information on how loud that would be or</p> <p>3 what impact that would have on humans or species? Do you know</p> <p>4 the answer to that?</p> <p>5 THE WITNESS: Well, I think what we've sort of relied</p> <p>6 on is kind of a standard that's typically used by the Federal</p> <p>7 Energy Regulatory Commission, which is the 55 decibel A-weighted</p> <p>8 sound level that could be experienced by a resident, you know,</p> <p>9 in a house at some distance -- at some distance from, you know,</p> <p>10 the pipe -- or from the above-ground facility being the pump</p> <p>11 station.</p> <p>12 And then usually what happens is that there's some</p> <p>13 kind of -- you know, you actually evaluate the amount of noise</p> <p>14 that you do, in fact, predict and then, you know, take</p> <p>15 mitigation measures if it exceeds that standard. But that's</p> <p>16 kind of the working standard that I think we have used in other</p> <p>17 filings and in this process.</p> <p>18 CHAIRMAN JOHNSON: Do you happen to know how far away</p> <p>19 from the pump station that 55 decibel level must be met at?</p> <p>20 THE WITNESS: Again, it depends on terrain. It</p> <p>21 depends on the equipment. And we don't have all the</p> <p>22 specifications on the equipment. So that is not yet resolved --</p> <p>23 I can't answer your question --</p> <p>24 CHAIRMAN JOHNSON: Okay. Thank you.</p> <p>25 THE WITNESS: -- specifically.</p>
<p style="text-align: right;">178</p> <p>1 other -- and, again, I'm certainly not an expert. Historical</p> <p>2 preservation is not something I know much about. But with some</p> <p>3 of the other projects we've had this whole process with history</p> <p>4 and all of that is culminated in and I regret to say I can't</p> <p>5 remember the exact name of the agreement but there's usually an</p> <p>6 agreement with the agency where you agree to undergo a set of</p> <p>7 steps and procedures if you encounter things that you have not</p> <p>8 identified prior to the beginning of construction.</p> <p>9 Do you anticipate that process being followed here?</p> <p>10 THE WITNESS: Well, again, I think I'm reflecting the</p> <p>11 sort of perspective of the project at this point, but I've heard</p> <p>12 you -- what we call unanticipated find plans where you encounter</p> <p>13 things you didn't expect.</p> <p>14 MR. SMITH: But none of the agencies have actually</p> <p>15 requested that you enter into a memorandum of agreement</p> <p>16 regarding the dealing with finds like that?</p> <p>17 THE WITNESS: Not that I'm aware of.</p> <p>18 MR. SMITH: Okay. Thank you.</p> <p>19 CHAIRMAN JOHNSON: Mr. Smith, I have one more</p> <p>20 question, if that's acceptable to you?</p> <p>21 MR. SMITH: Please. Oh, yes. You're my boss.</p> <p>22 Everything's acceptable.</p> <p>23 CHAIRMAN JOHNSON: I don't want to be out of order,</p> <p>24 though. On page 16 of your direct testimony in answer to</p> <p>25 question 29 you note that the pump station electrical pumps will</p>	<p style="text-align: right;">180</p> <p>1 MR. SMITH: Further Commissioner questions?</p> <p>2 Commissioner Kolbeck.</p> <p>3 COMMISSIONER KOLBECK: Sorry, Cheri. This is the last</p> <p>4 one. I forgot to ask to what is extent the relationship of</p> <p>5 these Government agencies continued through the construction</p> <p>6 phase? Are they on-site every day or -- do you have a contact</p> <p>7 person with these agencies? It's not just once this survey's</p> <p>8 done your relationship is over; is that correct?</p> <p>9 THE WITNESS: Well, I can't really directly answer</p> <p>10 your question. I mean, it's -- I mean, typically we get the</p> <p>11 permits. We fulfill, you know, the requirements of the permit.</p> <p>12 But the specific process by which, you know, the agencies are</p> <p>13 kept in the loop is defined by, you know, the individual</p> <p>14 agencies as well as the lead federal agency.</p> <p>15 COMMISSIONER KOLBECK: Okay. Thank you.</p> <p>16 MR. SMITH: Other Commissioner questions? Do you have</p> <p>17 any redirect, Mr. Koenecke?</p> <p>18 MR. KOENECKE: I do, and it's fairly substantial, I'd</p> <p>19 say.</p> <p>20 MR. SMITH: Okay. 10 minutes.</p> <p>21 (A short recess is taken)</p> <p>22 MR. SMITH: We're back on the record. The hearing is</p> <p>23 reconvened following about a 10-minute recess. Before we go to</p> <p>24 your redirect, Mr. Koenecke, there's a housekeeping matter I'd</p> <p>25 like to bring up.</p>

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1 If you recall in the original -- in the scheduling
2 orders that have been sent out, we referenced tomorrow's hearing
3 convening immediately following the Commission meeting which was
4 scheduled to commence originally at 9:30 and then it was going
5 to be moved to 8:30.
6 There will not be a Commission meeting tomorrow. The
7 items that we had planned to hear tomorrow have not ripened
8 sufficiently to hear, and so we cancelled it. The bottom line
9 is I think what we would like to do if it's okay with everybody
10 is commence tomorrow at 8:30, which is the day we're going to --
11 or the time we're going to commence on all other days.
12 You know, we've got a lot of ground to cover here.
13 And I think if we do that, we stand a real good chance of
14 staying on the schedule that we've sort of laid out.
15 So give everybody in the room an opportunity if you'd
16 like to comment or object to that. But I think that's what we
17 prefer to do.
18 Any problem with that from anybody? Commissioner
19 Hanson?
20 COMMISSIONER HANSON: 9 o'clock would have fared much
21 better with me but --
22 MR. SMITH: It would? That's fine. Whatever time you
23 want.
24 COMMISSIONER HANSON: 9 o'clock would work very well
25 for me. It's a day-specific issue.

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1 MR. SMITH: Commissioner Hanson had a conflict, and he
2 has requested we start at 9 o'clock. So we'll start at
3 9 o'clock tomorrow morning.
4 Comments?
5 MR. KOENECKE: None. That's acceptable to the
6 Applicant. Thank you, Mr. Smith and Commissioners.
7 MR. SMITH: Okay.
8 REDIRECT EXAMINATION
9 BY MR. KOENECKE:
10 Q. Mr. Ellis, do you recall before the break when you were
11 asked about unanticipated discovery plans in South Dakota?
12 A. Yes.
13 Q. Are you aware or is there in fact an unanticipated
14 discovery plan being prepared or have been prepared for
15 South Dakota?
16 A. There is one under preparation for cultural resources in
17 South Dakota.
18 Q. And if I recall correctly, your testimony before the break
19 was that there was not an unanticipated discovery plan; is that
20 correct?
21 A. There was not an unanticipated discovery plan for
22 paleontological resources. So I think if there was any
23 confusion there, I'd like to clear that up.
24 Q. So who is currently considering this cultural unanticipated
25 discovery plan?

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1 A. The Department of State and the Advisory Council.
2 Q. Is there any state agency currently -- State of South
3 Dakota agency currently considering the plan that you've
4 discussed?
5 A. Yes. The State Historic Preservation Office is also --
6 have been reviewing this plan.
7 Q. Is there any time line for a final word or preparation of
8 that plan that you're aware of?
9 A. I don't know when that will be out.
10 Q. Very good. Thank you. Do you recall your prior testimony
11 regarding perennial streams?
12 A. Yes.
13 Q. Are there any sources or references which you're aware that
14 determine or delineate or describe streams as perennial?
15 A. Yes. We have the U.S. Geological Survey Maps which make
16 sort of a separation between the intermittent and the perennial
17 streams, which is a good basis on which to start. Combined with
18 looking at other things like watershed size.
19 Q. Did you utilize those maps at all in the preparation of
20 anything you've prepared for the Keystone Project?
21 A. Yes. We used maps of all different sorts, but we did
22 definitely used the U.S.G.S. databases to define streams.
23 Q. Do you recall your testimony about the cultural survey work
24 that's been planned and completed in South Dakota?
25 A. Yes.

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1 Q. Was that cultural survey work done in accordance with the
2 research design?
3 A. Yes, it was.
4 Q. And was that research design approved by any particular
5 agency, federal or state, to your knowledge?
6 A. It was approved by the State Historic Preservation Office
7 in South Dakota.
8 MR. KOENECKE: Thank you very much. I have nothing
9 further.
10 MR. SMITH: Any follow-up cross-examination?
11 MR. RASMUSSEN: No.
12 MR. SMITH: Mr. Hohn.
13 RECROSS-EXAMINATION
14 BY MR. HOHN:
15 Q. Mr. Ellis, you mentioned the water to hydro test the pipe,
16 there would be attempts to find it along the route of the pipe,
17 either wells or streams; is that correct?
18 A. Yes. I offered those as options.
19 Q. Did you see any creeks or streams in the northern part of
20 South Dakota where there would be that volume of water at a
21 constant basis to fill a pipe?
22 A. I didn't make the -- I'm not making the appraisal for how
23 much water is available. I think that's probably better left to
24 Mr. Gray. But, again, it's -- you know, the reliability of the
25 water supply and its size is certainly important factors to

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1 consider.

2 Q. The one reach in the area that I'm most familiar with, the

3 reach of this pipeline, is about 40 miles between two pump

4 stations. Based on the size of the pipe that would be about

5 13 million gallons of water. That's a lot of water.

6 When the water moves through the pipe, regardless of where

7 you find it when you move it through the pipe and then you get

8 ready to discharge, will there be fines or oils or welding

9 materials that will be in that water or likely to be in that

10 water?

11 A. Well, I think -- and again I think Mr. Gray can comment

12 more directly, but, you know, in my experience when you

13 discharge the water it's subject to a discharge permit, which

14 requires consideration of any contaminants that might be in that

15 pipe.

16 Q. To your knowledge at this point has the project secured a

17 permit from the Department of Environment and Natural Resources

18 to discharge this water?

19 A. Not to date that I'm aware of.

20 Q. Do you know, have they filed for one?

21 A. I don't believe they've filed yet.

22 Q. If pipe -- the waters are found, wherever they're found in

23 that quantity, wells or creeks, it's going to be flowing south

24 to Yankton.

25 How do you determine what the point of discharge will be?

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1 Will it go into the Missouri River?

2 MR. KOENECKE: I object. We're way outside the scope

3 of redirect at this point. The witness has testified several

4 times that another witness is more logical for this line of

5 questioning.

6 MR. SMITH: I'm going to sustain that.

7 MR. HOHN: Thank you.

8 MR. SMITH: Staff?

9 You're excused, Mr. Ellis. Thank you very much.

10 (The witness is excused)

11 MR. KOENECKE: We'll call Buster Gray to the stand.

12 (The witness is sworn by the court reporter)

13 DIRECT EXAMINATION

14 BY MR. KOENECKE:

15 Q. Mr. Gray, would you state your name and business address

16 for the record, please.

17 A. My name is Loys A., nickname "Buster", Gray. And it's

18 7509 Tiffany Springs Parkway, Kansas City, Missouri 65153.

19 Q. Are you employed in a position with the Keystone Pipeline

20 Project?

21 A. Yes. I'm the engineering and construction manager for the

22 U.S. portion of the project.

23 Q. Did you provide direct testimony and rebuttal testimony in

24 connection with this Application in writing?

25 A. Yes.

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1 Q. And I believe that's located on an ever shortening stack of

2 papers to your left in the middle of the -- further to your

3 left. One more up. There you go.

4 Did you find your testimony on the top of that stack?

5 A. I have it.

6 Q. Is it in two separate exhibits?

7 A. Mr. Koenecke, there's a bunch of things here. I'm not sure

8 if I know how to tell if it's two separate exhibits. Yes. I

9 see it now, the TC 5 and 6.

10 Q. Should be 5D and 5R.

11 A. I have 5D and 6R.

12 Q. I'll come over there. Hang on.

13 A. Okay.

14 Q. Are those the written testimonies you have filed in

15 preparation for this matter today?

16 A. Yes.

17 Q. I see that you're responsible for Section 1.4 of the

18 Application, and that's contained in a binder right under your

19 left hand at page 1.

20 A. Yes.

21 Q. Is the project still proposing to commence construction in

22 April of 2008?

23 A. Construction right now is proposed for May, to the end of

24 May, first of June this coming year in '08.

25 Q. I do have some questions for you given the proceedings

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1 today in addition to what's in your written testimony. But I'll

2 ask you first if I was to ask you the questions contained in

3 your written testimony again today, would your answers be the

4 same?

5 A. Yes.

6 Q. Given that, have you had an opportunity to review the

7 rebuttal testimony filed by staff regarding native prairies?

8 A. I did review some members of that testimony, and I do

9 believe -- I can't remember if it was Mr. Janssen or

10 Mr. Muehlhausen, but one of those gentlemen.

11 Q. And I believe also Exhibit B, which has been introduced,

12 the Construction Mitigation Reclamation Plan, should be in front

13 of you there.

14 Is native prairie addressed within that document?

15 A. It's not addressed specifically in it as native prairie.

16 We talk about pasture and rangeland or grasslands in that

17 document.

18 Q. Do you know if Keystone is planning to take any steps to

19 reclaim native prairies?

20 A. Is the mitigations that are outlined, I'd have to go

21 specifically to the document in it, but indeed, you know, we

22 strip topsoil or strip the vegetation. We reclaim trying to use

23 native seed mixes. Those types of mitigations are utilized.

24 Q. Is one of the requests for condition of staff the proposal

25 to construct the pipeline for areas of native prairie only in

<p>189</p> <p>1 the fall?</p> <p>2 A. That was one of the recommendations in some of the</p> <p>3 testimony of staff.</p> <p>4 Q. Did you hear the prior testimony of Mr. Ellis that we're</p> <p>5 dealing with approximately 3 miles of native grasslands along</p> <p>6 the pipeline route?</p> <p>7 A. I don't recollect the specific miles, but I recollect the</p> <p>8 testimony.</p> <p>9 Q. Is it practical to construct those 3 miles wherever they</p> <p>10 might be of pipeline construction only in the fall, given the</p> <p>11 pipeline construction season, the number of spreads you're</p> <p>12 proposing?</p> <p>13 A. No. In looking at that -- in looking at that requirement</p> <p>14 with my staff in Kansas City, I actually have a table, and I</p> <p>15 don't have it with me but 3 miles were made up of I believe</p> <p>16 some -- in excess of 30 or 40 locations. They're not contiguous</p> <p>17 necessarily. And for pipeline construction we construct in an</p> <p>18 assembly line fashion of the various crews, I think that I</p> <p>19 discussed back when I made presentations back in the summer.</p> <p>20 But the continuity of that construction and the</p> <p>21 interruption that would be caused by moving around or skipping</p> <p>22 those tracts would be a significant impact to the construction</p> <p>23 of the project.</p> <p>24 Q. In your experience -- I guess I should ask you it's in your</p> <p>25 direct testimony but you do have substantial experience in</p>	<p>191</p> <p>1 equipment with and things, and there's no practicality to trying</p> <p>2 to cover those types of trailers.</p> <p>3 Q. Do you recall the request for a condition regarding</p> <p>4 maintaining a 75-foot right of way in wetlands?</p> <p>5 A. Yes. I recollect that as well.</p> <p>6 Q. What would be your position with respect to that request?</p> <p>7 A. Well, I have a couple of comments to it are is that the</p> <p>8 federal guidelines that seem to be the mechanism that the</p> <p>9 industry has followed over the past 16 or 17 years, it</p> <p>10 established a 75 feet criteria, but it has no relationship to</p> <p>11 diameter of pipeline. It has no relationship to depth of</p> <p>12 pipeline.</p> <p>13 And experience on projects has shown for large diameter</p> <p>14 pipelines with the amount of materials we have to excavate that</p> <p>15 it's extremely difficult to keep all the spoils in 75 feet. On</p> <p>16 our project we're actually adding another foot depth of cover to</p> <p>17 4 feet where most pipelines are constructed with 3 feet, which</p> <p>18 creates more spoil materials as well.</p> <p>19 And as we laid out our mitigation plan and things we laid</p> <p>20 out an 85 feet width just so we didn't have the constraints,</p> <p>21 particularly in noncohesive soils. With this additional width.</p> <p>22 Q. So I'm not sure I -- if I understand, are you willing to</p> <p>23 maintain a 75-foot right of way in wetlands where there's</p> <p>24 noncohesive soils?</p> <p>25 A. We are not willing to do it in noncohesive soils. Only in</p>
<p>190</p> <p>1 pipeline construction?</p> <p>2 A. I'm entering my 30th year of this type of work.</p> <p>3 Q. Are you aware of any place elsewhere you've been -- or do</p> <p>4 you recall any place else on any pipeline project you've been on</p> <p>5 in 30 years anywhere where grasslands could only be constructed</p> <p>6 in the fall?</p> <p>7 A. I've never had a condition or a mitigation like that on a</p> <p>8 project I've been involved in.</p> <p>9 Q. Are you also aware of a request to cover open bodied trucks</p> <p>10 during construction?</p> <p>11 A. Yes. Again, that was in staff's testimony or rebuttal</p> <p>12 testimony, one of the two.</p> <p>13 Q. Would it be your position then that the covering of open</p> <p>14 bodied trucks containing sand and soil on paved roads would be</p> <p>15 acceptable?</p> <p>16 A. That would be acceptable. And I believe in my -- I don't</p> <p>17 know if mine's rebuttal or surrebuttal or which one it is, but</p> <p>18 indeed I do not think it is on rural or unpaved roads. I don't</p> <p>19 believe it's a reasonable request.</p> <p>20 Q. What kind of open bodied trucks will be used in the</p> <p>21 construction process?</p> <p>22 A. Well, when I think -- I think the reference to this is more</p> <p>23 like a dump truck that would be hauling truly large volumes of</p> <p>24 sand or dirt or various things. That we have a lot of pickup</p> <p>25 trucks. We have a lot of open bodied lowboy that we move heavy</p>	<p>192</p> <p>1 cohesive soils that we believe we can meet that condition</p> <p>2 reasonably. But noncohesive soils, we don't believe we can meet</p> <p>3 it at all.</p> <p>4 Q. Do you recall the request regarding the topsoil stripping</p> <p>5 and the notion that we would strip the trench on the spoil side</p> <p>6 in the surrebuttal testimony from the staff?</p> <p>7 A. I do.</p> <p>8 Q. And what's your position with respect to that request?</p> <p>9 A. It's from my experience over the years is is that in</p> <p>10 agricultural lands, and particularly with landowners, it's been</p> <p>11 my experience that they understand their land and their topsoil</p> <p>12 better than anybody does. And I believe in our easement</p> <p>13 acquisition process we have a mechanism by which the landowner</p> <p>14 can pick or choose one of three methods, being our default</p> <p>15 method being the trench line only.</p> <p>16 I believe the surrebuttal testimony is recommending that</p> <p>17 the default be the trench and spoil side as we describe it. And</p> <p>18 from a personal basis, the three methods are trench line is the</p> <p>19 minimal disturbance, trench and spoil is the second, and full</p> <p>20 right of way is the third.</p> <p>21 It's my personal opinion we ought to let the landowner</p> <p>22 decide which of those three disturbances he would prefer to have</p> <p>23 rather than the default being the middle one.</p> <p>24 Q. Do you recall Mr. Ellis's testimony regarding permitting</p> <p>25 for surface water use and discharge and hydro testing?</p>

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1 A. Yes.

2 Q. Have you or anybody under your command or control applied

3 for permits for either use of water or discharge of it?

4 A. Those permits have been under preparation and are almost

5 finalized to be submitted for this permit application probably

6 near the end of the year around the 1st of January.

7 Q. When did those requirements for permitting come to your

8 attention?

9 A. The requirements for permitting have been known a long

10 time. It's just we -- as we move along in designing various

11 things, as we get further in the -- I guess in the processes of

12 design to where we know how we want to segment the pipeline for

13 testing, we're typically doing sources in discharge locations.

14 And as we get more knowledge but typically once we get a permit

15 application together, submit it, three to six months to receive

16 an approval is pretty standard.

17 Q. Do you anticipate any difficulties in receiving those

18 permits from the South Dakota Department of Environment and

19 Natural Resources?

20 A. I do not.

21 Q. Are they commonly obtained elsewhere?

22 A. Yes. They're very commonly obtained.

23 Q. You've been referred to previously as one of the expert

24 witnesses with regard to routing and route changes of the

25 pipeline. Is that correct?

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1 A. Yes. I believe the prior witnesses in deferring to me is

2 that the route change process that we implement, I'm ultimately

3 the person that makes the recommendation to TransCanada of

4 making a route change or not.

5 Q. Are you familiar with any route changes or the route

6 through the City of Yankton, South Dakota?

7 A. I am.

8 Q. Are you or someone under your command or control been

9 dealing with the City of Yankton or any officials of the City?

10 A. One of the engineers on my staff has been meeting with the

11 City. I will tell you we've met for over 18 months now at

12 various points in time discussing the City's intention, I guess,

13 an industrial park or something to the north and kind of the --

14 more to the east than to the north of the city and trying to

15 route our pipeline to minimize impact to that proposed

16 development.

17 Q. And have you been able to meet their requests?

18 A. When I say to our knowledge we have. We made one recent

19 adjustment that we still need to go back and meet with the City

20 on. And it's been discussed in this hearing the rerouting by

21 the particular hotels. We have not gotten complete confirmation

22 on the City on that without going back to meet with them.

23 MR. KOENECKE: If you'll give me just a minute,

24 please.

25 (Pause)

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1 Q. Mr. Gray, are you familiar with what we call data request

2 1-10?

3 A. I believe I am. That's the one that's related to the

4 construction cost or labor or something of that nature.

5 Q. I will tell you it's been admitted as evidence, and then I

6 will ask you are you the witness to whom people should address

7 questions regarding that?

8 A. Yes, I am.

9 MR. KOENECKE: Okay. I have nothing further. Thank

10 you.

11 MR. SMITH: Mr. Rasmussen, are you ready?

12 MR. RASMUSSEN: I think so.

13 MR. SMITH: You may proceed.

14 CROSS-EXAMINATION

15 BY MR. RASMUSSEN:

16 Q. Mr. Gray, I would like to ask you about the rerouting or at

17 least some of the rerouting that's been done. And I think it's

18 represented in Exhibits 9 and 10, which --

19 MR. RASMUSSEN: Brett, would they still be at the

20 table there?

21 MR. KOENECKE: I'm sorry. I'm at your disadvantage.

22 I was gathering my papers. What was your question?

23 MR. RASMUSSEN: Where are Exhibits 9 and 10?

24 MR. KOENECKE: I'll find them.

25 A. All right.

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1 Q. Are you familiar with each of these route changes that are

2 referenced in those documents that are part of Exhibit 9?

3 A. When I say I'm familiar with them is we've done a multitude

4 of these over the course of the project across all states over

5 the past year and a half. And the recollection of the specifics

6 of each one I would -- I may need a little refresher truly. And

7 something that would be helpful to me is there was a table -- a

8 table that was submitted that might help refresh my memory.

9 Q. That's what you were talking about?

10 A. Yes.

11 Q. I think Brett will give that to you.

12 (Mr. Koenecke hands document to the witness)

13 A. I have it now.

14 Q. Okay. I'm not going to ask you about each one of these,

15 but I did have questions about a few of them. And we'll just

16 refer to the table. I think that makes it easier.

17 The second one on the table, Reroute to avoid NRCS

18 easement. Do you recall what that was about?

19 A. I do recall -- I do recall that the -- that the NRCS had --

20 I'm trying to say three or four tracts of land across the

21 1,000 miles of project that they requested us consider a reroute

22 to avoid their easements on three or four tracts of land. And I

23 believe this was one of those.

24 Q. Just so the record is clear, what is the NRCS?

25 A. National Resource Conservation Service, I believe.

<p style="text-align: right;">197</p> <p>1 Q. And what sort of -- do you remember what sort of land that</p> <p>2 we're talking about here on this particular reroute?</p> <p>3 A. I do not particularly remember, no.</p> <p>4 Q. It was in Marshall County, though, I take it; is that</p> <p>5 right? If you look at the actual map that corresponds, it will</p> <p>6 be the second page of Exhibit 9, it indicates at the bottom that</p> <p>7 it's Marshall County, does it not?</p> <p>8 A. Thank you. Yes.</p> <p>9 Q. The next one would be the next one down. It's a Hutterite</p> <p>10 request to move the alignment 500 feet to the east. Do you</p> <p>11 remember why they asked for that reroute?</p> <p>12 A. Yes. I do. And I'm not -- I don't remember which</p> <p>13 particular colony this was, but they have a -- a complex of</p> <p>14 buildings and homes and their farming operations at this</p> <p>15 particular location and had indicated a future plan to expand</p> <p>16 those operations in the direction of the pipeline with building</p> <p>17 some new buildings.</p> <p>18 I can't remember what the buildings were for, but they</p> <p>19 requested that we relocate the pipeline relative to that future</p> <p>20 development and we acknowledged it and did that.</p> <p>21 Q. The next one is a -- references a landowner request to</p> <p>22 offset the alignment east of a residence. I guess moved it from</p> <p>23 394 feet to 666 feet away from a -- Phyllis Tisher (phonetic)</p> <p>24 residence; is that right?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">199</p> <p>1 18 residences I think it was within 500 feet. Or -- I think it</p> <p>2 was 500 feet.</p> <p>3 A. I recollect that testimony.</p> <p>4 Q. Do you know what the closest of those residences is to the</p> <p>5 pipeline?</p> <p>6 A. You know, I was asked that in the break, and I'm relatively</p> <p>7 comfortable with saying a couple hundred feet. I could</p> <p>8 certainly verify that the closest structure to us to my</p> <p>9 knowledge right now is -- Mr. Hohn asked questions about the</p> <p>10 particular hotels. Actually, with that reroute I believe those</p> <p>11 would be the closest ones.</p> <p>12 And I would have to go back, but I think 100 feet or so is</p> <p>13 that distance. I would have to confirm those.</p> <p>14 Q. The hotels are about 100 feet?</p> <p>15 A. That's correct. The structures. I don't know if it's the</p> <p>16 living quarters or what the structures are.</p> <p>17 Q. Would that be 100 feet from both of the hotels, kind of</p> <p>18 split that down the middle?</p> <p>19 A. That's my understanding.</p> <p>20 Q. But you said that reroute isn't set in stone yet. That's</p> <p>21 still subject to negotiations or discussions with Yankton?</p> <p>22 A. Not only the City of Yankton but with the landowners as</p> <p>23 well.</p> <p>24 Q. And then on this summary sheet, the next one, it says</p> <p>25 Unsigned landowners, Wagner, Townsend, Anderson requested</p>
<p style="text-align: right;">198</p> <p>1 Q. And why would -- do you remember what the reason for that</p> <p>2 request was, just to get it farther away from their residence?</p> <p>3 A. As I recollect, that was it, is a will -- and there may be</p> <p>4 some other family involved in this one, a brother or a son or</p> <p>5 something that may have a few other connotations besides just</p> <p>6 the residence, but I don't remember the details of it.</p> <p>7 Q. But as originally designed it would have run within</p> <p>8 500 feet of the residence, but it was moved outside of that</p> <p>9 500-foot area; correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Is there a minimum distance that you have to be away from a</p> <p>12 residence?</p> <p>13 A. There's not by our codes or regulations, federal</p> <p>14 regulations. There's a 50-foot requirement in those regulations</p> <p>15 that if you're closer than 50 feet, you have to have additional</p> <p>16 depth of cover which by us being the 4 feet we comply with that.</p> <p>17 The industry -- there's an API recommended practice. It's</p> <p>18 not a code per se but a recommended practice that recommends a</p> <p>19 50-foot minimum distance.</p> <p>20 And then lastly our easement instrument that -- where we</p> <p>21 acquire rights from the landowner is we have a 50-foot easement.</p> <p>22 And just in this example if the pipeline's in the center of the</p> <p>23 easement, we have restrictions about the ability to build</p> <p>24 structures on that 50 foot of easement.</p> <p>25 Q. There was some testimony earlier about there being</p>	<p style="text-align: right;">200</p> <p>1 reroute to minimize possible impacts to land.</p> <p>2 When you say unsigned landowners does that mean landowners</p> <p>3 that haven't signed an easement?</p> <p>4 A. That's correct.</p> <p>5 Q. And did they sign an easement after the reroute?</p> <p>6 A. This being -- yes. Yes. This group of landowners did,</p> <p>7 yes.</p> <p>8 Q. And do you remember what impact that they were concerned</p> <p>9 about that they wanted the pipeline moved?</p> <p>10 A. They were concerned relative to the -- Mr. Wagner had</p> <p>11 approached us with this particular request concerning his</p> <p>12 description of being some of the most prime or valuable farmland</p> <p>13 in the particular county.</p> <p>14 I don't know if this is Day or Marshall. But he had</p> <p>15 approached us. In this particular location we are traversing</p> <p>16 kind of northeasterly to southwesterly. So we're cutting across</p> <p>17 tracts of lands in an angular fashion. And this request was</p> <p>18 made to us to adjust our route to where we weren't going through</p> <p>19 some of the prime tracts of land as he described at that angular</p> <p>20 fashion.</p> <p>21 Q. What sort of criteria do you use in deciding whether you</p> <p>22 will agree to a request like that from a landowner that they</p> <p>23 would like it rerouted somewhat?</p> <p>24 A. Is we have a process by which we engage the various</p> <p>25 disciplines or expertises involved in the project. And when I</p>

<p style="text-align: right;">201</p> <p>1 say that, there's environmental. There's, of course, land and</p> <p>2 right of way itself. There's engineering. There's</p> <p>3 construction.</p> <p>4 Those things, those inputs, are gathered through a process</p> <p>5 that we have. Costs are taken into consideration as well and</p> <p>6 even things like public consultation or other things that might</p> <p>7 be affected by the project. All of that information is</p> <p>8 gathered, and my engineers bring a recommendation to me to</p> <p>9 review and approve.</p> <p>10 Once I have all of that information I -- I guess I somewhat</p> <p>11 serve as judge and jury about the process and determine whether</p> <p>12 or not the reroute should be moved forward with or not.</p> <p>13 Although once I do approve it, TransCanada -- it's forwarded to</p> <p>14 TransCanada for final approval.</p> <p>15 Q. Have they followed your recommendation in all cases, or</p> <p>16 have they --</p> <p>17 A. I would tell you in, oh, 90 to 95 percent. There's been a</p> <p>18 few that they've rejected that I have forwarded. And I can't</p> <p>19 remember particularly the reasons, but there's been a few.</p> <p>20 Q. Have there been a number of landowner requests that have</p> <p>21 been denied for one reason or another?</p> <p>22 A. There have been a number through the project that have been</p> <p>23 denied. It would be hard for me to quantify in it, but I would</p> <p>24 tell you that probably as many or more have been denied as have</p> <p>25 been accepted.</p>	<p style="text-align: right;">203</p> <p>1 Q. What was the nature of the cultural site?</p> <p>2 A. I cannot speak for the details of it. When we do our</p> <p>3 cultural resource surveys when I say if artifacts or things are</p> <p>4 located, we have some options. One, obviously, is to further do</p> <p>5 cultural surveys to try and clear the site or to see if we can</p> <p>6 make route adjustments to simply avoid it.</p> <p>7 And we generally balance kind of the cost and impacts and</p> <p>8 landowners relative to that, and I would suggest on this one we</p> <p>9 determined that an adjustment to the route was the simplest or</p> <p>10 the easiest thing for us to do.</p> <p>11 Q. Do you remember what county that site was in?</p> <p>12 A. I would have to reference the site number and mile post,</p> <p>13 but I can't just looking at this table.</p> <p>14 Q. I think Exhibit 9 would have the map indicating that</p> <p>15 it's -- it looks like between mile post 392 and 393, if I read</p> <p>16 that correctly. It would be the one that looks like this at the</p> <p>17 top (indicating).</p> <p>18 A. I have it here. And I'm trying to see if it's got the</p> <p>19 county on there anywhere.</p> <p>20 Q. Yeah. I don't see the county.</p> <p>21 A. I do not. I could determine it by the mile post with a set</p> <p>22 of maps, but I can't do it sitting here.</p> <p>23 Q. The mile posts, you refer to the entire length of the</p> <p>24 pipeline; is that right?</p> <p>25 A. Our 0 is at the Canadian border.</p>
<p style="text-align: right;">202</p> <p>1 Q. I'm sorry. More have been denied? Is that what you said?</p> <p>2 A. I would say as many if not more, yes, sir.</p> <p>3 Q. Okay. Going down this list --</p> <p>4 MR. RASMUSSEN: Brett, do you have any objection if we</p> <p>5 just mark this as an exhibit since we've been referring to it?</p> <p>6 (Exhibit WEB 1 is marked for identification)</p> <p>7 Q. Mr. Gray, I've just now marked -- that summary sheet we've</p> <p>8 been talking about is WEB Exhibit 1. And I've got the original</p> <p>9 since I've been referring to it. But that's the summary of the</p> <p>10 route variations between April 27 and November 20 of '07 that</p> <p>11 we've been talking about; is that right?</p> <p>12 A. That's correct.</p> <p>13 MR. GERDES: What was the date on that again?</p> <p>14 MR. RASMUSSEN: The dates of this document? April 27,</p> <p>15 '07 through November 20, '07.</p> <p>16 Q. Following the one about the Wagner, Townsend, et cetera,</p> <p>17 then we have several reroutes due to the Fish & Wildlife</p> <p>18 Service, wetland easements. I don't think we need to talk about</p> <p>19 those individually.</p> <p>20 But reroutes were done because of input from U.S. Fish &</p> <p>21 Wildlife; correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And then we've got the next one we have is a reroute to</p> <p>24 avoid a cultural site; is that right?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">204</p> <p>1 Q. Right. What's the mile post at the South Dakota border?</p> <p>2 Do you know?</p> <p>3 A. It's 435, 4 something, in that range.</p> <p>4 Q. At the Northern Border?</p> <p>5 A. Oh, at the northern. 217. Southern is 430. Somewhere in</p> <p>6 that range.</p> <p>7 MR. KOENECKE: Mr. Rasmussen, we've got the maps up</p> <p>8 there. He could answer your question if you let him take a</p> <p>9 look, if you want.</p> <p>10 MR. RASMUSSEN: Yeah. I guess I'd like to know.</p> <p>11 A. It appears to be right -- of course, the county names</p> <p>12 aren't on here in it, but the -- there's Yankton County, would</p> <p>13 know it by name, and then it would be the third county up from</p> <p>14 Yankton.</p> <p>15 Q. Okay. Well, we can figure that out then.</p> <p>16 A. Okay.</p> <p>17 Q. All right. Going back to Exhibit WEB Exhibit 1 then, the</p> <p>18 next one indicates landowner indicated they would sign easement</p> <p>19 agreement if line was moved west adjacent to road right of way.</p> <p>20 And the landowner must be named Schultz; is that right?</p> <p>21 A. That would be my belief.</p> <p>22 Q. And I know you told me we had a similar situation with the</p> <p>23 Wagners and the Townsends, that they agreed to sign the easement</p> <p>24 after you moved the pipeline.</p> <p>25 Have you had that situation come up frequently?</p>

<p style="text-align: right;">205</p> <p>1 A. We've had it come up some. I will tell you, oh, in the</p> <p>2 areas we're acquiring right of way maybe -- we're acquiring in</p> <p>3 North Dakota, South Dakota, Nebraska, and Illinois at this time.</p> <p>4 And I would say in those states I'd say 20 or 30 times.</p> <p>5 Q. That you've moved the pipeline in order to get the</p> <p>6 landowner to sign the easement?</p> <p>7 A. No. I misunderstood your request. I thought the number of</p> <p>8 times it's been requested.</p> <p>9 Q. That may have been what I said.</p> <p>10 A. Okay.</p> <p>11 Q. How many times has it been moved?</p> <p>12 A. I would say less than five.</p> <p>13 Q. And the Wagner one and the Schultz one, would those have</p> <p>14 been the only ones in South Dakota that you're aware of?</p> <p>15 A. And I can't remember. I think there was one reroute that</p> <p>16 has occurred since November the 20th. I cannot recollect the</p> <p>17 details of it right now. I do not know if it is related to this</p> <p>18 topic or your question, though.</p> <p>19 Q. All right. Okay. The next one then, it indicates it was</p> <p>20 rerouted because the landowner had plans for an equestrian</p> <p>21 facility in the future; is that right?</p> <p>22 A. That's correct.</p> <p>23 Q. And it's similar to the next one, the landowner was going</p> <p>24 to have a future feedlot site, and so you moved it on that</p> <p>25 occasion too?</p>	<p style="text-align: right;">207</p> <p>1 that right?</p> <p>2 A. That's correct.</p> <p>3 Q. What would have been the concern about being -- well, when</p> <p>4 it says "encroach" I guess what does that mean? Does that mean</p> <p>5 it was close to it or --</p> <p>6 A. It's my understanding there was two issues here. One is</p> <p>7 the existing KANEB pipeline. But there's a large tower with guy</p> <p>8 wires that extend from -- that you see on the left hand, the</p> <p>9 little white dots or square there and the guy wires, and we were</p> <p>10 between the guy wires and the tower and did not realize we were</p> <p>11 there. And we were asked to move out from under that guy wire,</p> <p>12 and we did as such.</p> <p>13 The encroachment with KANEB, I honestly can't answer the</p> <p>14 question. I don't remember that as being the issue. I thought</p> <p>15 the issue was indeed moving away from the guy wire.</p> <p>16 Q. The KANEB pipeline isn't shown on the aerial photograph, is</p> <p>17 it?</p> <p>18 A. It is not to my knowledge, no. I don't see it.</p> <p>19 Q. Then why don't you turn to Exhibit 10. We don't have a</p> <p>20 summary sheet for those. Those are just the two-page exhibit --</p> <p>21 the second page is the hotel situation we've already talked</p> <p>22 about.</p> <p>23 The first page, do you know -- that's a Marshall County</p> <p>24 reroute. Do you know the specifics of that one?</p> <p>25 A. And I do believe these may be the two I've referenced that</p>
<p style="text-align: right;">206</p> <p>1 A. That's correct.</p> <p>2 Q. The second to the last one indicates the route was adjusted</p> <p>3 to shorten the length and to remove three bends. What was</p> <p>4 the -- removing bends, is that something that you like to do?</p> <p>5 A. As I remember, and I may need to refer to -- one moment,</p> <p>6 please.</p> <p>7 Q. Sure.</p> <p>8 (Witness examines document)</p> <p>9 A. This is just to the north of Yankton, and if my memory</p> <p>10 serves me -- I'm looking at this aerial photograph, but if my</p> <p>11 memory serves me, it's just north of Yankton. I don't know --</p> <p>12 within our left's the airport. But I believe originally a</p> <p>13 landowner had reflected to us that they would prefer us do the</p> <p>14 red line that had the bends, and in further conversations they</p> <p>15 were fine with the yellow route that was shown.</p> <p>16 And it simply makes the route shorter. Bends just create</p> <p>17 some additional welds for us, and we'd like to remove them.</p> <p>18 Q. Do bends create additional concerns about possible leaks?</p> <p>19 Is a leak more likely to occur at a bend than at a straight</p> <p>20 area?</p> <p>21 A. I would suggest to you no. It's made of compatible and</p> <p>22 comparable materials as the main line pipeline is.</p> <p>23 Q. Okay. And then the last one on this Exhibit 1 is a</p> <p>24 realignment so not to encroach on a KANEB pipeline. That's</p> <p>25 within the City of Yankton or right near the City of Yankton; is</p>	<p style="text-align: right;">208</p> <p>1 have came up since November 20.</p> <p>2 Q. That's my understanding. These are the more recent ones.</p> <p>3 A. Okay. The particular landowner's name on Exhibit 10, the</p> <p>4 first page that you see the very wet area where the pipeline was</p> <p>5 routed in red around it -- I don't know the best way to say this</p> <p>6 but the farmer has drained all of that, and he has dried it out.</p> <p>7 And my understanding from the request was that he has</p> <p>8 drained that. It's no longer wet. And he's going to be farming</p> <p>9 it. And he made the request that we go straight versus what we</p> <p>10 had.</p> <p>11 Q. Do you anticipate any additional changes -- well, I guess</p> <p>12 you've already talked a little bit about Yankton, there might be</p> <p>13 some additional change there.</p> <p>14 Other than through the City of Yankton, do you anticipate</p> <p>15 any additional changes to the route?</p> <p>16 A. Certainly my experience would tell you yes. And any time</p> <p>17 you move from kind of the initial routing phase into the</p> <p>18 easement acquisition phase, particularly in meeting with</p> <p>19 landowners, you get feedback to issues that you just don't learn</p> <p>20 about until you're in kind of more of an intimate setting of</p> <p>21 negotiation with them. Whether it's issues like we discussed on</p> <p>22 this list.</p> <p>23 But I would tell you that I think at this stage of the</p> <p>24 project they will be minimal, but to say there would be none,</p> <p>25 that's -- I don't know that we've uncovered absolutely every</p>

<p style="text-align: right;">209</p> <p>1 landowner's issue.</p> <p>2 Q. In constructing the pipeline you will cross a number of</p> <p>3 rural water pipelines. You're aware of that?</p> <p>4 A. That's correct.</p> <p>5 Q. Are there any special precautions that are taken or do you</p> <p>6 plan to take when crossing the water pipelines?</p> <p>7 A. It's relative to whether it's water pipelines or other</p> <p>8 utilities. We will typically communicate with those companies</p> <p>9 or organizations to determine any special things relative to</p> <p>10 their utilities.</p> <p>11 But I will tell you normally other than construction</p> <p>12 methods, how we excavate, how we support, how we do things as</p> <p>13 far as a design perspective other than meeting our code</p> <p>14 requirements, no.</p> <p>15 Q. You don't negotiate separate agreements with the other</p> <p>16 utilities you pass to ensure that those -- that those utilities</p> <p>17 are -- are okay with your construction methods, that sort of</p> <p>18 thing?</p> <p>19 A. When I say the interfacing, the meeting with those</p> <p>20 utilities is -- I'm trying to determine if the word "negotiate"</p> <p>21 is the proper term that I would say. We certainly -- any linear</p> <p>22 facility like this we intersect other utilities and highways and</p> <p>23 railroads, and we have to deal with those particular entities.</p> <p>24 My experience has been is that other utilities that have an</p> <p>25 easement similar to what we have, which I call a nonexclusive</p>	<p style="text-align: right;">211</p> <p>1 crossings.</p> <p>2 Q. I represent a rural pipeline, and I believe virtually all</p> <p>3 of our pipeline runs right next to the roadway or close to the</p> <p>4 roadway anyway. Would there be any reason that the wall</p> <p>5 thickness couldn't be extended a little farther so that it would</p> <p>6 be thicker as it went over or above the rural water lines?</p> <p>7 A. I think the -- I think what's relative to the question is</p> <p>8 that it would be a function of distance for me. If it's a few</p> <p>9 feet from the road right of way line, it's facilitated. But if</p> <p>10 it's a substantial distance, then I'm not certain that it would</p> <p>11 be warranted.</p> <p>12 Q. What would be --</p> <p>13 A. Not warranted but would be practical. I'm sorry.</p> <p>14 Q. What would be your definition of a substantial distance?</p> <p>15 A. I think probably anything greater than 5 or 10 feet.</p> <p>16 Q. There's been testimony here today about hydrostatic</p> <p>17 testing, and everybody says you're the guy to talk to about</p> <p>18 that. So tell me how that works or what the plan is for the</p> <p>19 hydrostatic testing of the pipe that would run through</p> <p>20 South Dakota.</p> <p>21 A. We typically segment the pipeline into about 20- or 30-mile</p> <p>22 sections relative to the length that we'll test at one</p> <p>23 particular time. Sometimes you might get 40. And worse case</p> <p>24 maybe 50 miles in it. But there are a variety of things that</p> <p>25 make you break up your test.</p>
<p style="text-align: right;">210</p> <p>1 easement because it doesn't have specific things in it that</p> <p>2 preclude -- the landowner still has the ultimate rights, and</p> <p>3 that's who we buy the land from.</p> <p>4 But we typically will meet with those organizations. The</p> <p>5 industry has a practice of we will enter a voluntary agreement</p> <p>6 with other utilities as long as the requirements put forth by</p> <p>7 those utilities are reasonable.</p> <p>8 Q. There's been testimony about the thickness of the pipe</p> <p>9 being increased when you go under a roadway. Are you familiar</p> <p>10 with that?</p> <p>11 A. I am.</p> <p>12 Q. Okay. And is that -- is that done under every roadway that</p> <p>13 the thicker pipe would be used?</p> <p>14 A. I will tell you there's a distinguishment between public</p> <p>15 and private roads.</p> <p>16 Q. Under every public roadway?</p> <p>17 A. Typically -- although I will tell you it varies by state</p> <p>18 and region -- for an oil pipeline, which is a liquid pipeline,</p> <p>19 is our federal codes do not require different design factors</p> <p>20 which relate to different wall thicknesses. Typically, what we</p> <p>21 run into in a lot of states and counties is is it's a local</p> <p>22 requirement and not a federal requirement.</p> <p>23 Q. Well, what is the plan for South Dakota?</p> <p>24 A. The plan in South Dakota, the project, and across the</p> <p>25 entire route is to put heavier wall pipe at public road</p>	<p style="text-align: right;">212</p> <p>1 Some of it's elevation is because of the hydrostatic head</p> <p>2 of the water it adds pressure into the test that gives you</p> <p>3 limits as to what you can -- length of test. And then things</p> <p>4 like where one contractor starts, another one stops, pump</p> <p>5 stations, other things in it.</p> <p>6 But with that in mind, I would have to go back and -- I</p> <p>7 don't know that I -- it's been filed anything to see, but at</p> <p>8 this time we do have a preliminary test plan across the State of</p> <p>9 South Dakota that has the various test sections and the water</p> <p>10 sources and discharge locations spelled out. And that will be</p> <p>11 submitted in various permit applications. But it is -- it has</p> <p>12 not been submitted today, but I would suggest to you within the</p> <p>13 month it would be.</p> <p>14 Q. And who does -- who will that be submitted to?</p> <p>15 A. It's generally an attachment to a number of applications.</p> <p>16 When I say the Corps of Engineers, which the 401 certifications</p> <p>17 which are a part of the state processes. But you don't seek a</p> <p>18 particular permit for the test plan itself. It's an attachment</p> <p>19 to other permits.</p> <p>20 Q. In reference to a discharge permit, I assume it would be</p> <p>21 attached to that?</p> <p>22 A. Right. Discharge permits. I guess NPDES permits and</p> <p>23 things like that that it's attached to.</p> <p>24 Q. What will be the source of the water that's used for the</p> <p>25 hydrostatic testing?</p>

<p style="text-align: right;">213</p> <p>1 A. Again, without it in front of me, it's some of the larger 2 streams that we cross in South Dakota. I mean, the James River, 3 probably the Missouri River, those that have a significant 4 supply of water at the time that we would be constructing that 5 would have the volumes needed to fill our pipeline. 6 Q. Is the water then returned to that particular stream when 7 you're done using it? 8 A. We have sought in our permits to return it to the watershed 9 of the stream, but my experience in the past 10 years is it's 10 typically mandated that we return it to the same stream that it 11 came out of. 12 MR. RASMUSSEN: Thank you. That's all the questions I 13 have. 14 MR. SMITH: Mr. Hohn, do you have questions of the 15 witness? 16 MR. HOHN: Yes. Please. 17 <u>CROSS-EXAMINATION</u> 18 <u>BY MR. HOHN:</u> 19 Q. Mr. Gray, in terms of your project, the way you construct 20 your project and design the project, will the Keystone Pipeline 21 come in contact with ductile iron, water lines on any of the 22 eight rural water systems you'll be crossing? 23 A. I'm trying to say I don't know that I know the answer to 24 the questions. We have sent correspondence to all the rural 25 water companies, and two or three have responded to us and some</p>	<p style="text-align: right;">215</p> <p>1 Is there a reason that the pipe is not routed along the 2 section line for maintenance and for accessibility? 3 A. No. I would tell you that -- of course when you look in a 4 microscale -- but, I mean, we are in essence trying to go from 5 point A to point B as efficiently as we can go because it takes 6 energy to pump product down the pipeline. 7 And because -- excuse me. Because our desire to try and go 8 as expediently as we can and our belief that we can restore the 9 right of way to preexisting conditions, pipeline industry's had 10 a tendency to route in the most expedient routing it can. 11 Q. I have attended meetings where you've been present, several 12 meetings where landowners have discussed issues with all pipes, 13 water pipes, oil pipes. 14 Would it be fair to say that cutting across a quarter or 15 section is an issue of concern for most landowners, farmers, 16 because of the sectioning off of the property? 17 A. I will tell you that from a landowner's perspective I would 18 concur that more landowners are concerned when we are crossing 19 diagonally versus parallel to their property. Even though as 20 you've heard me at meetings try and convince landowners that 21 that is not a concern, I would agree that it is. 22 Q. Well, and the issue that came up at those same meetings and 23 the colony at Britton and the various places, the question that 24 often comes up, and I'll pose it to you again, you've heard it 25 from landowners so this is not a new one.</p>
<p style="text-align: right;">214</p> <p>1 have not. Particularly we requested size, type, being cast iron 2 or plastic, and that information. But I can't tell you that 3 I've reviewed them today. My guess would be yes, though. 4 Q. And if there is, in fact, pipe that you either cross with 5 this pipeline -- a ductile iron water line that serves a rural 6 water system, they have cathodic protection and that pipeline, 7 your system, will have cathodic protection -- what precautions 8 do you take to ensure that neither pipe damages the other pipe? 9 A. I'm not going to profess to be a cathodic protection 10 expert, but when we cross other metallic utilities, be it 11 another pipeline which would cross ours, we'll typically work 12 with that company to bond -- to bond a wire on to their system 13 and on to our system and put a cathodic test station at that 14 location where we can check for interference. 15 Q. That is a very sensitive issue for your pipeline and 16 possibly for a water line because straight current can affect 17 either, can't it? 18 A. Straight current can affect either but we cross thousands 19 of other pipelines and utilities. It's a very manageable 20 interface. 21 Q. Thank you. The next question regarding the routing, your 22 pipe tends to -- say more than water lines, rural water lines, 23 your pipe tends to cut across quarter sections, cut across the 24 center of property or center of a section whereas rural water 25 tends to follow the section lines.</p>	<p style="text-align: right;">216</p> <p>1 If a leak occurs in the center of the section, the center 2 of the quarter, the access for your crews to get to it you have 3 to cross crop to get to it. In most cases you're not right 4 along the road. Is that fair to say? 5 A. That's fair to say. 6 Q. That's an issue for the landowner because they're concerned 7 about the damage to the crop to get out in the middle of the 8 field where the leak is? 9 A. It's certainly a concern. My comment being is we are 10 responsible for the damages that we cause. If we have to access 11 due to an unlikely event of an emergency and destroy crops, we 12 would have to compensate for those damages. 13 Q. On page 3, if I could refer you to your testimony -- I 14 think it's item 12 -- this is the hydrostatic testing again. 15 A. I have that. 16 Q. Okay. This statement refers to the hydro testing as being 17 125 percent of maximum pressure; correct? 18 A. 125 percent of the maximum operating pressure. 19 Q. So that would be how much pressure? 20 A. Approximately 1,800 pounds. 21 Q. When you're testing the pipeline, a section of pipeline or 22 a pump station at that pressure, do you evacuate homes that are 23 nearby or property that's occupied or nearby? 24 A. We typically do not. We do typically notify landowners 25 that we are -- a testing operation will be occurring to make</p>

<p style="text-align: right;">217</p> <p>1 them aware of it. But at the types of distances and setbacks</p> <p>2 that we have, 100 or 200 feet, we're not concerned because, one,</p> <p>3 water's not combustible, and then, secondly, because it's not a</p> <p>4 compressible fluid, it's water, that you don't have an explosion</p> <p>5 or -- if you did have a leak or a rupture.</p> <p>6 Q. Does the federal regulation that you have to comply with,</p> <p>7 does it require vacating the property when you're testing within</p> <p>8 300 feet?</p> <p>9 A. Vacating property?</p> <p>10 Q. Asking people to leave while you're testing.</p> <p>11 A. I do not believe that it requires you to vacate it.</p> <p>12 Q. Okay. The next question is in regard to discharge of the</p> <p>13 water you use to test. You're moving the water from one section</p> <p>14 to the other so it's used multiple times. You might pull the</p> <p>15 water out of the James River at say Britton and then use it all</p> <p>16 the way to Yankton? Is that what you're saying? Is that an</p> <p>17 example of what you're saying?</p> <p>18 A. Is we do transfer water from one test section to another</p> <p>19 test section. I would have to review this particular test plan.</p> <p>20 But because, again, of contractor breaks, other topographical</p> <p>21 features, the transfer of one, say, 30-mile section of water six</p> <p>22 or eight or 10 times is typically not -- I would tell you more</p> <p>23 of a rule of thumb would be two or three uses of the same water.</p> <p>24 Q. When you do secure a permit from the State to discharge,</p> <p>25 generally are you required to put the water in some kind of</p>	<p style="text-align: right;">219</p> <p>1 the event that a stream is not available?</p> <p>2 A. We haven't at this time is that my staff in Kansas City and</p> <p>3 interfacing with -- I don't know whether it's DENR here in</p> <p>4 South Dakota or agencies. We generally get information</p> <p>5 concerning the flow in streams and the volume available at the</p> <p>6 times of year that we'll be testing. Many times we may get a</p> <p>7 permit restriction that limits the rate that we can withdraw the</p> <p>8 water.</p> <p>9 We like to withdraw it around 3,000 gallons per minute, but</p> <p>10 sometimes we may be restricted on what we can withdraw so that</p> <p>11 we don't cause impact to the stream. But at this time no one on</p> <p>12 my staff has advised me that they don't believe that we will not</p> <p>13 have adequate water from streams that we cross along the route.</p> <p>14 Q. And when you do draw water out of the stream, in terms of</p> <p>15 getting a discharge permit from DNRD, you would probably also</p> <p>16 have to consult with the Game, Fish & Parks because of the</p> <p>17 impact on fisheries?</p> <p>18 A. Mr. Hohn, I might have to defer back to Mr. Ellis or</p> <p>19 someone more into the details of the permitting. My familiarity</p> <p>20 is the permits that I mentioned and getting permits to the</p> <p>21 streams we have, and whether that agency gets input from all the</p> <p>22 other agencies, I'm not sure exactly how that works.</p> <p>23 Q. But at some point you're going to issue contracts to</p> <p>24 someone who's building and testing, and you will tell them where</p> <p>25 you've got permission to draw water; is that correct?</p>
<p style="text-align: right;">218</p> <p>1 containment and settlement? There must be weld debris or steel</p> <p>2 debris or something in the pipe with all of those welds.</p> <p>3 There's a weld every 40 feet. Do you do anything in particular</p> <p>4 to treat the water before it's discharged?</p> <p>5 A. Well, at the start of the filling process we clean the</p> <p>6 pipeline. We actually use what we call wash water. And we'll</p> <p>7 put in say -- I'd have to figure it up in gallons or barrels,</p> <p>8 but we'll put in several hundred feet of what we call wash water</p> <p>9 between some cup or cleaning pigs by which we clean any debris</p> <p>10 out of the pipeline that's been put into it during construction.</p> <p>11 So, in essence, once you have cleaned the pipeline and you</p> <p>12 put water in it for testing, the majority of this debris that</p> <p>13 you're describing's already been removed.</p> <p>14 Q. Is there anything in the wash water? Is it just water</p> <p>15 between two Styrofoam pigs?</p> <p>16 A. It's wash water between two cup pigs we call it. It's</p> <p>17 just -- it's -- I'm at a loss for words. It's just heavy duty</p> <p>18 plastic.</p> <p>19 Q. Which kind of pushes the sediments or the pieces on down?</p> <p>20 A. That's correct.</p> <p>21 Q. On page 9, again, 49 you talk about the -- you know,</p> <p>22 testing the sections. We're kind of a water hungry state. A</p> <p>23 lot of where you're going through there's not a lot of water in</p> <p>24 creeks and streams as the environmental person testified.</p> <p>25 Have you identified any well sources that you might use in</p>	<p style="text-align: right;">220</p> <p>1 A. That's correct.</p> <p>2 Q. And that contractor will be instructed -- they won't just</p> <p>3 go out and do it on their own, they'll have direction in the</p> <p>4 document they bid?</p> <p>5 A. When I say at the time of bid we typically don't have that</p> <p>6 information. We give them assumptions about what can be used.</p> <p>7 But once we receive our permits with the actual locations we</p> <p>8 truth our bid document and put that in the actual construction</p> <p>9 contract that will be executed.</p> <p>10 Q. So you would convey to the contractor where and when they</p> <p>11 could draw and what the permits told them they could do? Is</p> <p>12 that fair to say?</p> <p>13 A. That's fair to say.</p> <p>14 Q. On page 2 of your -- I guess this would be your rebuttal,</p> <p>15 page 2.</p> <p>16 A. I have that document.</p> <p>17 Q. 6, item A, your answer to 6, about the third line down you</p> <p>18 were responding to compaction caused by construction? This is 6</p> <p>19 and then your answer, second or third line, "These include</p> <p>20 topsoil removal." Do you see --</p> <p>21 A. Yes. I do see that.</p> <p>22 Q. You're talking about the contractors went through, built</p> <p>23 the project, and now there's compaction of what soil? What</p> <p>24 area?</p> <p>25 A. Okay. Is what we call the work space or where the heavy</p>

<p style="text-align: right;">221</p> <p>1 equipment moves up and down the right of way is compaction 2 caused by our heavy equipment. 3 Q. And further on it talks about what you would do -- what 4 TransCanada Keystone would do to get the soil back to sort of 5 the normal state? Is that what it's saying? 6 In other words, how do you do that? How do you get the 7 compacted soil back to sort of a normal -- 8 A. We decompact with the use of ripping and tools and 9 para plows and things very similar to what the farmers utilize. 10 Q. Is that portion of the contract in the construction 11 contract -- does the contractor who built that part of the 12 pipeline have to go back then and do that? 13 A. He does. That's correct. 14 Q. And you have that specifically in the document -- 15 A. That is correct. 16 Q. -- as a requirement? The last sentence then talks about 17 agricultural production. And if the compaction wasn't done just 18 quite properly you might have a problem. It says, "Keystone 19 would be liable to work with the landowner to restore the land 20 further." 21 If the contractor did the ripping as you spelled out in 22 your contract and left the area, probably moved on down the 23 pipeline, and the next season the landowner contacted your 24 office and said, you know, I'm not happy with what happened, 25 what do you envision the mechanism might be? Does your person</p>	<p style="text-align: right;">223</p> <p>1 the contract specs and requirements to the fullest extent 2 possible or practical, but just as you've described with deep 3 compaction is are there potentially places along these thousand 4 miles of pipeline that are going to have compaction issues? I 5 would suggest to you there will be. 6 I believe they'll be minimal and localized. And that is 7 why we have these follow-up mechanisms to deal with the 8 process. 9 Q. Well, I'm leading to this question then. Will your office 10 have -- or Keystone have on-site inspectors that if a landowner 11 felt that the things that you promised when you were up in the 12 area when you talked to people at public meetings were not being 13 done the way they thought you or somebody had represented, will 14 there be representatives on-site, inspectors that they can go 15 to and on the job site issue a question to get enforcement? 16 A. Actually what you've described is that during construction 17 there will be probably at the peak of construction I would say 18 some 25 to 30 inspectors on a construction spread. That's a 19 contractor covering say 100 to 130 miles of pipeline. 20 And if you recollect from some of my presentations, the 21 assembly line, these inspectors generally are associated with 22 the various crews. 23 But a couple of things that -- and certainly they're 24 looking for quality. But there will be anywhere from two to 25 three environmental inspectors that their sole responsibility is</p>
<p style="text-align: right;">222</p> <p>1 go back out and meet with them? 2 And then what happens -- if the contractor's out of the 3 area, what happens? Who takes care of it? 4 A. Is TransCanada or Keystone in establishing its operations 5 in the area, generally one of the departments that it would have 6 for the project it maintains a land or right of way interface 7 with all landowners along the project. 8 What I would envision here -- and, granted, I do want to 9 make perfectly clear I'm not the operations person. But from my 10 experience is that a landowner would contact Keystone's office 11 registering a concern about the restoration of the land and the 12 productivity of his crops. And he would either present evidence 13 of such, say photographs, other things that he would submit to 14 TransCanada to substantiate his claims, or he may simply request 15 a meeting with a representative on his property to look at the 16 land and the issues that have occurred. 17 And that is a relatively normal process I would suggest to 18 you, whether it's one year after the pipeline's built or 10 19 years after it's built. 20 Q. Mr. Gray, you've been in the business a long time. I have 21 not been in it that long, but my experience has been -- and I'd 22 like to ask you this question: Do contractors always do what 23 you tell them in the contract specs? 24 A. You know, the question is you have to say is do contractors 25 comply 100 percent? Certainly it's our expectation to enforce</p>	<p style="text-align: right;">224</p> <p>1 the environmental permit requirements. 2 Typically imbedded within those two or three inspectors, 3 environmental inspectors, are when I say somebody that's very 4 familiar with agriculture and when we can arrange for it for 5 someone out of this region that's familiar with agriculture in 6 this region. But one of the most difficult tasks I face is the 7 restoration of the land to return it to its original 8 productivity for farming. 9 And to do that, whether it's ripping the land for 10 decompaction and testing it for that decompaction relative to 11 off-site lands, we try to achieve the same level of compaction 12 that's in the adjacent land to the right of way. Or removal of 13 rock or various things like that that there's documentation and 14 inspections done to ensure that those specifications are met to 15 the best of our ability. 16 Q. I have one last question, and it refers to page 4 of your 17 rebuttal -- or your rebuttal. Page 4, item 10 has to do with 18 township roads. 19 The road system in some of the rural areas is -- ranges 20 somewhere from county blacktop, gravel, to dirt road section 21 lines. And you've probably seen all of that. 22 MR. KOENECKE: Excuse me. Is that a question you want 23 an answer to? 24 MR. HOHN: That's a question, yes. 25 A. Yes. I've certainly seen the roads in this region of the</p>

<p style="text-align: right;">225</p> <p>1 country.</p> <p>2 Q. I guess the question is when -- the contractors that are</p> <p>3 bringing in equipment are bringing in some fairly heavy</p> <p>4 equipment compared to what we might see in those areas. It's</p> <p>5 large construction equipment?</p> <p>6 A. You know, Mr. Hohn, it's certainly very large equipment</p> <p>7 that I would say as far as equipment goes. But then -- and I</p> <p>8 don't mean this to be argumentative, but, I mean, there's heavy</p> <p>9 loads moved by farmers with agricultural grain and things as</p> <p>10 well. And some of that's comparable to us. But we do have some</p> <p>11 equipment that's large.</p> <p>12 Q. And when the pipe gets hauled in that will be heavy loads</p> <p>13 on trucks. Would that be correct?</p> <p>14 A. That is correct.</p> <p>15 Q. What can you do or what do you plan to do, I guess, in the</p> <p>16 document that would give the farmers and the township officials</p> <p>17 the assurance that the roads will be maintained while the</p> <p>18 construction is going on as well as after they leave?</p> <p>19 There's always road restrictions in our part of the world</p> <p>20 in the spring of the year, and the question is, you know, you</p> <p>21 bid the job. Does your instructions to your contractor also</p> <p>22 talk about him -- that contractor maintaining these roads?</p> <p>23 A. It speaks in terms of a couple of things. And one is I</p> <p>24 guess just some background. I constructed a large diameter</p> <p>25 pipeline across North Dakota in 1999 and 2000, and I'm</p>	<p style="text-align: right;">227</p> <p>1 their roads until we get a permit to cross them. So they have</p> <p>2 quite a bit of leverage to negotiate, for lack of a better word,</p> <p>3 requirements in it and encourage them to do so.</p> <p>4 MR. HOHN: Thank you.</p> <p>5 MR. SMITH: Mr. Rasmussen, you I don't think offered</p> <p>6 WEB Exhibit 1.</p> <p>7 MR. RASMUSSEN: I made a note of that, yeah. And I</p> <p>8 guess the only -- Mr. Hohn, did you already mark exhibits?</p> <p>9 MR. HOHN: No.</p> <p>10 MR. RASMUSSEN: Okay. Then I would offer it as</p> <p>11 Exhibit 1 then.</p> <p>12 MR. SMITH: Is there an objection?</p> <p>13 MR. KOENECKE: None from the Applicant.</p> <p>14 MS. SEMMLER: No objection.</p> <p>15 MR. SMITH: WEB Exhibit 1 is admitted. It is --</p> <p>16 CHAIRMAN JOHNSON: Mr. Smith, I might just note, this</p> <p>17 of course is a unique situation so this has more to do with the</p> <p>18 exhibits that were offered earlier today. If we have exhibits</p> <p>19 that have not been offered to the Commission, in the past if we</p> <p>20 could get copies for the Commissioners, I think it would be very</p> <p>21 helpful. Sometimes we have a hard time if we can't look over</p> <p>22 it.</p> <p>23 MR. KOENECKE: I apologize again, Commissioner. It's</p> <p>24 an oversight on my part. I do apologize. I know how difficult</p> <p>25 it is, and I won't let it happen again.</p>
<p style="text-align: right;">226</p> <p>1 intimately familiar with township and county roads, particularly</p> <p>2 high ground water and heavy equipment and the damage that can be</p> <p>3 done to roads in that environment.</p> <p>4 And we are in the -- again, like so many of our permits, we</p> <p>5 are in the process of filing all of our road crossing permits</p> <p>6 with the various counties and townships here over the next</p> <p>7 month.</p> <p>8 Typically what that instigates is the very question that</p> <p>9 you're asking about is you're asking for a permit to cross our</p> <p>10 road but we want assurance about damage to our road system</p> <p>11 besides just where you're going to cross it. And, again, in</p> <p>12 many rural counties in areas that don't have a lot of energy</p> <p>13 pipelines like we are, they many times don't even know how to</p> <p>14 deal with us.</p> <p>15 But typically what we work with them with is whether it's</p> <p>16 an agreement drafted by the county, an agreement about what are</p> <p>17 responsibilities for roads, we typically will work with counties</p> <p>18 about which roads we use, when we use them, kind of a traffic</p> <p>19 plan to minimize disruption or damage to the roads because we</p> <p>20 have to pay to fix them in it.</p> <p>21 So we certainly try and do that coordination. But that is,</p> <p>22 again, something in our process that just occurs at this point</p> <p>23 in time. But that is very common that we enter into some type</p> <p>24 of agreement. And many times people ask me about enforcement</p> <p>25 there in it is that the county and townships, we cannot cross</p>	<p style="text-align: right;">228</p> <p>1 CHAIRMAN JOHNSON: You may have apologized before in</p> <p>2 which case I missed it. I'm sorry for beating you up so much.</p> <p>3 MR. SMITH: Due to our reporter's schedule, we're</p> <p>4 going to adjourn for the evening, and we will reconvene at</p> <p>5 9 a.m. tomorrow morning. Thank you. And you will still be on</p> <p>6 the stand, Mr. Gray.</p> <p>7 (The proceedings are in recess at 5 o'clock p.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF HUGHES)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered Professional
6 Reporter, Certified Realtime Reporter, and Notary Public in and
7 for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed shorthand
9 reporter, I took in shorthand the proceedings had in the
10 above-entitled matter on the 3rd day of December 2007, and that
11 the attached is a true and correct transcription of the
12 proceedings so taken.

13 Dated at Pierre, South Dakota this 2nd day of January
14 2008.

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Cheri McComsey Wittler,

Notary Public

19

Registered Professional Reporter

Certified Realtime Reporter

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